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Tribunal pénal international pour le Rwanda

(5150-4945)

ORIGINAL: ENGLISH

TRIAL CHAMBER III

**Before:** Judge Khalida Rachid Khan, presiding  
Judge Lee Gacuiga Muthoga  
Judge Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 31 March 2011

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

JUDICIAL RECORDS/ARCHIVES  
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JUDGEMENT AND SENTENCE

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TABLE OF CONTENTS

**CHAPTER I: INTRODUCTION.....1**

**1. Overview .....1**

**2. Preliminary Matters .....7**

2.1 Notice.....7

2.1.1 Introduction.....7

2.1.2 Law.....7

2.2 Allegations Not Pursued .....8

2.3 Fair Trial Rights.....9

2.3.1 Undue Delay.....9

2.3.2 Adequate Time to Prepare Defence: Impact of Protective Measures .....12

2.3.3 Rule 15 *bis* Proceedings.....14

2.3.4 Right to Silence .....15

2.4 Rule 92 *bis* .....16

**3. Jean-Baptiste Gatete.....17**

**CHAPTER II: FACTUAL FINDINGS.....18**

**1. Meeting, Nyabisindu Sector, 7 April 1994.....18**

1.1 Introduction.....18

1.2 Evidence.....18

1.3 Deliberations.....20

**2. Meeting, Rwankuba Sector Office, 7 April 1994 .....23**

2.1 Introduction.....23

2.2 Evidence.....23

2.3 Deliberations.....28

**3. Akarambo Cellule, 7 April 1994.....39**

3.1 Introduction.....39

3.2 Evidence.....39

3.3 Deliberations.....45

3.3.1 Orders, 7 to 8 April 1994 .....46

3.3.2 Killing of Aisha Murekeyisoni, 7 April 1994 .....49

3.3.3 Killing of Witness BCS’s Father, 7 April 1994 .....52

3.3.4 Facilitation of Transport.....54

**4. Roadblocks, Byumba Prefecture, April 1994.....55**

- 4.1 Introduction.....55
- 4.2 Evidence.....55
- 4.3 Deliberations.....56
- 5. Kiziguro Parish, 11 April 1994 .....58**
  - 5.1 Introduction.....58
  - 5.2 Evidence.....58
  - 5.3 Deliberations.....70
    - 5.3.1 Killings at Kiziguro Parish.....72
    - 5.3.2 Rapes at Kiziguro Parish.....87
- 6. Mukarange Parish, 12 April 1994 .....89**
  - 6.1 Introduction.....89
  - 6.2 Evidence.....89
  - 6.3 Deliberations.....96
- 7. Kayonza Commune Office, 10 to 15 April 1994.....108**
  - 7.1 Introduction.....108
  - 7.2 Evidence.....108
  - 7.3 Deliberations.....112
- 8. Kayonza Roadblock, 12 April 1994.....115**
  - 8.1 Introduction.....115
  - 8.2 Evidence.....115
  - 8.3 Deliberations.....120
- 9. Cerai School, Mid to Late April 1994 .....125**
  - 9.1 Introduction.....125
  - 9.2 Evidence.....125
  - 9.3 Deliberations.....130
- 10. Killing of Mulinda, 12 April 1994 .....135**
  - 10.1 Introduction.....135
  - 10.2 Evidence.....135
  - 10.3 Deliberations.....137
- CHAPTER III: LEGAL FINDINGS.....139**
  - 1. Criminal Responsibility.....139**
    - 1.1 Introduction.....139
    - 1.2 Notice.....139



- 1.3 Law ..... 145
- 2. Genocide ..... 148**
  - 2.1 Introduction..... 148
  - 2.2 Law ..... 148
  - 2.3 Deliberations..... 149
    - 2.3.1 Meeting, Rwankuba Sector, 7 April 1994..... 149
    - 2.3.2 Kiziguro Parish, 11 April 1994 ..... 152
    - 2.3.3 Mukarange Parish, 12 April 1994 ..... 154
- 3. Complicity in Genocide ..... 156**
- 4. Conspiracy to Commit Genocide ..... 156**
  - 4.1 Introduction..... 156
  - 4.2 Law ..... 156
  - 4.3 Deliberations..... 157
    - 4.3.1 Meeting, Rwankuba Sector, 7 April 1994..... 158
    - 4.3.2 Kiziguro Parish, 11 April 1994 ..... 158
    - 4.3.3 Mukarange Parish, 12 April 1994 ..... 160
- 5. Crimes Against Humanity ..... 160**
  - 5.1 Introduction..... 160
  - 5.2 Widespread or Systematic Attack..... 161
  - 5.3 Extermination..... 162
    - 5.3.1 Introduction ..... 162
    - 5.3.2 Law..... 162
    - 5.3.3 Deliberations ..... 162
  - 5.4 Murder..... 164
    - 5.4.1 Introduction ..... 164
    - 5.4.2 Law..... 164
    - 5.4.3 Deliberations ..... 164
- 6. Cumulative Convictions ..... 165**
  - 6.1 Introduction..... 165
  - 6.2 Genocide and Conspiracy to Commit Genocide..... 165
  - 6.3 Genocide and Extermination as a Crime Against Humanity ..... 167
  - 6.4 Extermination and Murder as Crimes Against Humanity..... 168
- CHAPTER IV: VERDICT ..... 169**

**CHAPTER V: SENTENCING .....170**

**1. Introduction.....170**

**2. Submissions .....170**

**3. Deliberations .....171**

    3.1 Gravity of the Offence ..... 171

    3.2 Individual, Aggravating and Mitigating Circumstances..... 172

        3.2.1 Aggravating Circumstances .....172

        3.2.2 Mitigating Circumstances .....173

**4. Conclusion .....174**

**5. Consequential Orders.....174**

**ANNEX A: PROCEDURAL HISTORY .....175**

**1. Pre-Trial Proceedings.....175**

**2. Indictment Amendments.....176**

**3. Prosecution Case.....177**

**4. Defence Case.....177**

**5. Site Visit.....178**

**6. Further Proceedings .....179**

**ANNEX B: CITED MATERIALS AND DEFINED TERMS.....180**

**ANNEX C: INDICTMENT**



**CHAPTER I: INTRODUCTION**

**1. OVERVIEW**

*(i) Introduction*

1. The Accused in this case is Jean-Baptiste Gatete, born in 1953 in Murambi commune, Byumba prefecture, Rwanda. Between 1982 and 1993, he was the *bourgmestre* of Murambi commune and in April 1994, a director within the Ministry of Women and Family Affairs. The Prosecution has charged him with genocide (Count I), or, in the alternative, complicity in genocide (Count II), as well as conspiracy to commit genocide (Count III), and extermination, murder, and rape as crimes against humanity (Counts IV to VI, respectively). The Defence disputes all charges.

2. The trial commenced on 20 October 2009 and closed on 29 March 2010. The Prosecution presented 22 witnesses while the Defence called 27. Closing Arguments were heard on 8 November 2010.

3. The Indictment contains a series of allegations with respect to events in Byumba and Kibungo prefectures.

*(ii) Meeting, Nyabisindu Sector, 7 April 1994*

4. It is alleged that, at about 2.00 a.m. on 7 April 1994, Gatete conducted a meeting with local officials in Nyabisindu sector for the purposes of distributing weapons and instructing civilian militia to kill Tutsi civilians.

5. The Prosecution presented one witness in support of this allegation. However, the Chamber finds his evidence insufficient to support findings beyond reasonable doubt. Accordingly, this allegation has not been proven.

*(iii) Meeting, Rwankuba Sector, 7 April 1994*

6. The Indictment contains a series of allegations concerning Gatete's role in convening meetings with local administrative officials, as well as orders to kill Tutsis in Rwankuba sector, on 7 April 1994. In particular, it is alleged that at about 8.00 a.m., he met with the Murambi commune *bourgmestre*, Jean de Dieu Mwange, and the Rwankuba sector *conseiller*, Jean Bizimungu, for the purposes of distributing weapons and ordering civilian militia to kill Tutsi civilians.

7. The evidence consistently demonstrates that violence erupted in, and around, Nyagasambu *cellule*, in Rwankuba sector, on 7 April and that the Tutsi *Responsible* of that *cellule* was among those killed.

8. The Chamber finds that two Prosecution witnesses provided compelling and largely corroborated evidence. Based on their testimonies, the Chamber finds that, on the morning of 7 April 1994, *Conseiller* Bizimungu and about 20 *Interahamwe* had gathered at the Rwankuba sector office. Subsequently, Gatete arrived there with *Bourgmestre* Mwange. Shortly after, a vehicle full of *Interahamwe* also arrived. In total, about 40 *Interahamwe* were present, together with the *conseiller* and *bourgmestre*, when Gatete ordered the crowd to kill Tutsis, telling them to "work relentlessly". Before leaving, Gatete told those gathered to "sensitise" others to the killings. The only reasonable conclusion, based on the evidence, is that the *Interahamwe* who received orders from Gatete, were among the assailants who



participated in the killing of Tutsis in Rwankuba sector. The Chamber further finds that, pursuant to Gatete's instructions, further assailants were recruited and ultimately included soldiers, police and Hutu civilians.

9. In the Chamber's view, the evidence further supports a conclusion that the gathering of Gatete, local officials, and *Interahamwe*, the subsequent attacks on Tutsis on 7 April, which intensified as the day progressed, and the categories of assailants who were ultimately involved, would have required prior planning and coordination and, thus, could not have been achieved without prior agreement among those involved.

10. In reaching these conclusions, the Chamber has considered the Defence evidence. However, the Chamber finds it to be of limited probative value and insufficient to raise doubt with respect to the compelling Prosecution evidence.

11. Accordingly, the Chamber finds beyond reasonable doubt that Gatete is responsible for the killing of Tutsi civilians in Rwankuba sector on about 7 April 1994.

(iv) *Akarambo Cellule, 7 April 1994*

12. The Indictment alleges that, on the morning of 7 April 1994, Gatete and the Murambi commune *bourgmestre*, Jean de Dieu Mwangi, transported a convoy of armed *Interahamwe* to Akarambo *cellule*, and instructed those *Interahamwe* to rape and kill Tutsis, as well as destroy Tutsi homes.

13. The evidence establishes that killings occurred in Akarambo *cellule* on 7 April 1994. In particular, it is not disputed that a Tutsi woman called Aisha Murekeyisoni and Witness BCS's father, were killed by *Interahamwe*. Furthermore, the Chamber has no doubt that Witness BAT was raped on 8 and 9 April 1994. However, the critical issue for the Chamber concerns Gatete's alleged responsibility for those killings and rape.

14. The Chamber has separately considered the evidence of Gatete's alleged orders to *Interahamwe*, his alleged role during the killing of Murekeyisoni and Witness BCS's father, as well as the rape of Witness BAT, and the transport of *Interahamwe*.

15. The Prosecution presented three witnesses with respect to the allegation that Gatete issued orders to *Interahamwe* to kill Tutsis. However, three distinct narratives emerge from their accounts. Based on the individual merits of their testimonies, the Chamber finds their evidence insufficiently reliable for the purposes of supporting findings beyond reasonable doubt.

16. Turning to the allegations regarding Gatete's responsibility specifically for the killing of Aisha Murekeyisoni and Witness BCS's father, as well as Witness BAT's rape, the Chamber has considered the evidence of three Prosecution witnesses who, respectively, testified on each of these events. However, the Chamber finds their evidence insufficient to support findings beyond reasonable doubt.

17. Lastly, the Chamber considers whether the evidence establishes that Gatete facilitated the transport of *Interahamwe* in Akarambo *cellule* for the purposes of killing Tutsis. Two Prosecution witnesses provided relevant testimony but the Chamber finds their evidence insufficiently reliable to support findings beyond reasonable doubt.

18. In sum, the Chamber finds that the evidence is insufficient to establish Gatete's orders and responsibility for the killings and rape of Tutsi civilians in Akarambo *cellule*.

(v) *Roadblocks, Byumba Prefecture, April 1994*



19. The Indictment alleges that, between 6 and 30 April 1994, Gatete assembled *Interahamwe* and participated in the sealing off of roads and exits throughout Byumba prefecture, participated in the identification of Tutsi civilians by providing lists of Tutsi names, ordered the killing of Tutsis, and manned roadblocks himself. The Indictment also specifically alleges that, on 8 April, Gatete ordered killings at the Nyagasambu roadblock, and provided dogs to civilian militia to facilitate killings. It is alleged that Tutsi civilians were killed as a result of Gatete's actions.

20. However, the evidence does not establish beyond reasonable doubt that Gatete had any role in the administration and manning of roadblocks, nor that he issued instructions at roadblocks to kill Tutsis in Byumba prefecture. The Prosecution presented one witness with respect to the allegations concerning the Nyagasambu roadblock. The Chamber has reservations about the reliability of this witness and, therefore, has not accepted her evidence in the absence of adequate corroboration. Accordingly, the allegations in the Indictment regarding roadblocks in Byumba prefecture have not been proven.

(vi) *Kiziguro Parish, 11 April 1994*

21. The Indictment alleges that Gatete ordered, supervised and participated in the killing and rape of Tutsi civilians at Kiziguro parish complex on about 11 April 1994. In particular, it is alleged that Gatete acted with *Interahamwe* leader Augustin Nkundabazungu, Gasigwa Karangwa, and FAR soldiers. It is alleged that, as a result, thousands of Tutsis were killed.

22. The evidence consistently demonstrates that in the days following 6 April, hundreds and possibly thousands of mostly Tutsi refugees fled attacks in their localities and sought refuge at Kiziguro parish. On the morning of 11 April, the parish was attacked by members of the armed forces, *Interahamwe* and civilian militia, including displaced persons from nearby refugee camps. Among the assailants were *Interahamwe* leader, Augustin Nkundabazungu, and the Kiziguro sector *conseiller*, Gaspard Kamali. Refugees who were inside the church building were forced out into its courtyard. Tutsi refugees were separated from the Hutus. Subsequently, an extensive assault on the Tutsi refugees was launched and continued for hours. Hundreds and possibly thousands of Tutsi men, women and children were killed by assailants using guns and traditional weapons.

23. The Prosecution presented six witnesses who were at Kiziguro parish on 11 April. The Chamber finds that four of these witnesses provided compelling and largely corroborated evidence that, on the morning of 11 April, Gatete arrived at Kiziguro parish with *Conseiller* Kamali, *Interahamwe* leader Nkundabazungu, and soldiers. *Interahamwe* and other civilian militia were also at the parish. The Chamber finds that Gatete was present when refugees, who were inside the church, were forced out into the parish courtyard. Gatete was also present during the separation of Tutsi refugees from the Hutus. The Chamber further finds that Gatete issued express orders to kill the Tutsi refugees. As a result, soldiers surrounded the Tutsis so that they could not escape and *Interahamwe* and civilian militia attacked the refugees with traditional weapons and guns. The brutal attack resulted in the deaths of hundreds, if not thousands of Tutsi civilians. Their bodies were disposed of in a nearby pit used as a mass grave. Before being killed, some Tutsis were also forced to carry bodies of victims to the pit. Tutsi men were told to remove their shirts so that they were easily identifiable during the disposal of bodies. Once they reached the mass grave, they too were killed and thrown in.

24. The Chamber highlights that the massacre at Kiziguro parish was a well coordinated and planned operation, involving authorities such as Gatete, the *conseiller*, and an





*Interahamwe* leader, as well as various categories of assailants, including soldiers, *Interahamwe* and civilian militia. The large-scale killings, and the disposal of bodies, were carried out in a highly efficient manner. In sum, the Chamber finds that the conduct of those involved was concerted and coordinated for the purposes of killing Tutsis. This level of coordination could only have been achieved through prior agreement and planning among those involved.

25. In reaching these conclusions, the Chamber has carefully examined the Defence evidence but finds it of limited probative value and insufficient to cast doubt on the consistent and compelling Prosecution evidence.

26. Accordingly, the Chamber finds beyond reasonable doubt that Gatete is responsible for the deaths of hundreds, and possibly thousands, of Tutsi civilians at Kiziguro parish on 11 April 1994. While the Prosecution also relied on the evidence of two witnesses who testified that women and girls were raped by *Interahamwe* at the parish, the Chamber finds their evidence insufficient to conclude that Gatete was also responsible for rapes at Kiziguro parish.

(vii) *Mukarange Parish, 12 April 1994*

27. The Indictment alleges that, on about 10 to 11 April 1994, Gatete and the Kayonza commune *bourgmestre*, Célestin Senkware, transported armed soldiers and *Interahamwe* to Mukarange parish compound in Kibungo prefecture, where Tutsi refugees were raped and killed.

28. The evidence consistently establishes that more than a thousand mostly Tutsi refugees sought refuge at Mukarange parish during the days following 6 April. The evidence further demonstrates that, in the early hours of 12 April, the parish was attacked by over a thousand assailants using grenades and other weapons. It is not disputed that civilian authorities, gendarmes, reserve soldiers, and civilian militia participated in the attack. As a result, hundreds, if not thousands, of Tutsi refugees were killed.

29. The Prosecution presented three witnesses who provided compelling and largely corroborated accounts. Based on their evidence, the Chamber finds that, following an initial attack, which the refugees at Mukarange parish were able to repel, Gatete arrived in a vehicle on the football field near the parish with *Bourgmestre* Senkware, Mukarange sector *conseiller* Samson Gashumba, Gendarmes Lieutenant Twahira, an official called Ngabonzima, and gendarmes. They brought boxes containing guns and grenades, which were distributed to *Interahamwe*. Gatete subsequently directed the *Interahamwe* to attack the Tutsi civilians gathered at the Mukarange parish. Using the weapons brought by Gatete and the other officials, the assailants attacked the mostly Tutsi refugees. Tutsis who survived those attacks were later killed by assailants using traditional weapons such as machetes. As a result, hundreds, if not thousands, of Tutsi civilians were killed that day at the parish. Notably, the guns and grenades brought by Gatete and the other officials were a decisive factor in the success of the assault.

30. The Chamber also finds that the massacre at Mukarange parish was a well coordinated and planned operation. Such large-scale killings, involving a prominent personality such as Gatete, authorities such as the *bourgmestre*, *conseiller*, a gendarmes lieutenant, and which required the transportation of guns and grenades for distribution among various categories of assailants, could not have been achieved without significant organisation. Given these circumstances, the Chamber finds that the conduct of those involved was concerted and coordinated for the purposes of killing Tutsi civilians at the



parish. This level of coordination could only have been achieved by prior agreement and planning among the individuals involved.

31. In reaching these conclusions, the Chamber has carefully reviewed and considered the Defence evidence but does not find it sufficient to cast doubt on the compelling Prosecution evidence.

32. Accordingly, the Chamber finds beyond reasonable doubt that Gatete is responsible for the killing of hundreds and possibly over a thousand Tutsi civilians at Mukarange parish on 12 April 1994. However, it has not been proven that Gatete transported *Interahamwe* to the parish. The Prosecution also presented no evidence that rapes took place there.

(viii) *Kayonza Commune Office, 10 to 15 April 1994*

33. The Indictment alleges that, sometime between about 10 and 15 April 1994, Gatete arrived in Kayonza commune with a group of armed *Interahamwe* and the Kayonza commune *bourgmestre*. A crowd of local residents, including Tutsi women, and recently arrived *Interahamwe*, had assembled in the Kayonza commune office courtyard. It is alleged that Gatete ordered the *Interahamwe* to kill Tutsis and rape Tutsi women.

34. The Prosecution presented two witnesses in support of this allegation. However, the Chamber finds their evidence was insufficiently reliable for the purposes of supporting findings beyond reasonable doubt. Accordingly, this allegation has not been proven.

(ix) *Cerai School, Mid to Late April 1994*

35. The Indictment alleges that, in mid to late April 1994, Gatete arrived in Rulenge sector, in Rukira commune, in a convoy carrying armed Murambi communal policemen, civilian militia and two *bourgmestres*. It is alleged that Gatete ordered *Interahamwe* to rape and kill Tutsis in Rukira commune.

36. Two Prosecution witnesses testified with respect to Gatete's orders to *Interahamwe* at the Cerai school in Rulenge sector and subsequent killings. However, the Chamber finds that the evidence of both witnesses is insufficiently reliable and cannot support findings beyond reasonable doubt. Thus, the Chamber concludes that this allegation has not been proven.

(x) *Kayonza Roadblock, 10 to 15 April 1994*

37. The Indictment alleges that between about 10 and 15 April 1994, a man called Gatere was kicked by Gatete at a mass grave near the Kayonza commune office and then killed by *Interahamwe* further to Gatete's orders. It is also alleged that, on about 12 April, Gatete, as well as the Murambi and Kayonza commune *bourgmestres*, communal police and *Interahamwe*, inspected identity cards of travellers on the Kibungo road in Kayonza commune. At one roadblock, Gatete ordered killings and *Interahamwe* complied with those orders. A man called Mahmud was among those killed.

38. The evidence which emerged at trial was that Gatere and Mahmud were killed together at a roadblock near the Kayonza commune office. The Prosecution relied on two witnesses. However, the Chamber finds that their evidence does not support findings beyond reasonable doubt. Accordingly, this allegation has not been proven.

(xi) *Killing of Mulinda, Rutonde Commune, 12 April 1994*



39. The Indictment alleges that, on about 12 April 1994, Gatete, the Kayonza commune *bourgmestre* Senkware, and others, shot and killed a refugee called Mulinda who was hiding in a swamp in Rutonde commune. It also alleges that, before and after the killing, Gatete and others patrolled the hills and valleys to search for and kill Tutsi civilians.

40. The Prosecution presented one witness in support of this allegation. The Chamber finds his evidence insufficiently reliable for the purposes of supporting findings beyond reasonable doubt. Therefore, this allegation has not been proven.

(xii) *Cumulative Convictions*

41. The Chamber finds that the proven allegations support convictions for genocide, conspiracy to commit genocide, as well as extermination and murder as crimes against humanity. However, the Chamber has not entered convictions where it has found that cumulative convictions, based on the same facts, are impermissible. In particular, the Chamber has concluded that it may not enter convictions for both genocide and conspiracy to commit genocide based on the same facts. It has also determined that it is impermissible to enter convictions for both extermination and murder as crimes against humanity based on the same facts.

(xiii) *Verdict*

42. All the evidence in support of the six counts, as well as the various modes of responsibility upon which the Prosecution sought to convict Gatete have been considered. The Chamber finds Gatete guilty of genocide (Count I), and extermination as a crime against humanity (Count IV). The Chamber dismisses the charges of complicity in genocide (Count II), conspiracy to commit genocide (Count III), as well as murder as a crime against humanity (Count V), and finds Gatete not guilty of rape as a crime against humanity (Count VI).

(xiv) *Sentence*

43. The Chamber has considered the gravity of the crimes for which Gatete has been convicted as well as aggravating and mitigating circumstances submitted by the Parties. The Chamber has the discretion to impose a single sentence and chooses to do so. However, it emphasises that each of the crimes underlying each Count are deserving of the maximum sentence, given their gravity and several aggravating factors. Considering all the relevant circumstances, the Chamber sentences Gatete to a single sentence of life imprisonment. He shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.



## 2. PRELIMINARY MATTERS

### 2.1 Notice

#### 2.1.1 Introduction

44. In its Closing Brief, the Defence argues that the Prosecution failed to provide adequate notice regarding several allegations against Gatete.<sup>1</sup> The Chamber has considered evidence relevant to a particular allegation in the Indictment, but not found it necessary to address specific challenges based on notice where, in the relevant sections of the Judgement, the Prosecution did not prove its case. Moreover, several notice challenges have already been addressed by the Chamber in prior decisions.<sup>2</sup> The Chamber, however, finds it instructive to lay out in this section the legal principles it has applied when considering any notice issues where relevant in this Judgement.

#### 2.1.2 Law

45. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.<sup>3</sup> The Prosecution is expected to know its case before proceeding to trial, and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds. Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of the proceedings, or the exclusion of evidence outside the scope of the indictment.<sup>4</sup> In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.<sup>5</sup>

46. The Appeals Chamber has held that criminal acts that were personally and physically committed by the accused must be set forth in the indictment specifically, including, where feasible, “the identity of the victim, the time and place of the events, and the means by which the acts were committed”.<sup>6</sup> Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the

<sup>1</sup> Defence Closing Brief paras. 113, 115, 133-146, 305, 323-328, 339-341, 344-357, 364-367, 379-380, 646-648, 652-658, 660-662, 668, 671-673, 681, 685, 687-692, 697, 701, 713-714, 859-869, 901, 951, 1010-1014, 1089-1090, 1094, 1109, 1120, 1153-1165, 1201.

<sup>2</sup> See Decision on Defence Preliminary Motion (TC), 29 March 2004; Decision on Defence Motion Concerning Defects in the Amended Indictment (TC), 3 July 2009; Decision on Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009 (TC), 2 October 2009; Decision on Defence Motion for Exclusion of Evidence (TC), 24 November 2009.

<sup>3</sup> *Muvunyi* Appeal Judgement para. 18; *Seromba* Appeal Judgement paras. 27, 100; *Simba* Appeal Judgement para. 63; *Muhimana* Appeal Judgement paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement para. 49, *Ndindabahizi* Appeal Judgement, para. 16.

<sup>4</sup> *Muvunyi* Appeal Judgement para. 18; *Ntagerura et al.* Appeal Judgement para. 27; *Kvočka et al.* Appeal Judgement paras. 30-31; *Niyitegeka* Appeal Judgement para. 194; *Kupreškić et al.* Appeal Judgement para. 92.

<sup>5</sup> *Muvunyi* Appeal Judgement para. 18; *Nahimana et al.* Appeal Judgement para. 326; *Ntagerura et al.* Appeal Judgement para. 28; *Kvočka et al.* Appeal Judgement para. 33.

<sup>6</sup> *Muhimana* Appeal Judgement para. 76; *Gacumbitsi* Appeal Judgement para. 49; *Ntakirutimana* Appeal Judgement para. 32, citing *Kupreškić et al.* Appeal Judgement para. 89.

Prosecution is required to identify the “particular acts” or “the particular course of conduct” on the part of the accused which form the basis for the charges in question.<sup>7</sup>

47. An indictment lacking this precision is defective; however, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.<sup>8</sup> The principle that a defect in an indictment may be cured is not without limits.<sup>9</sup> The Appeals Chamber has held that a Pre-Trial Brief in certain circumstances can provide such information.<sup>10</sup>

## 2.2 Allegations Not Pursued

48. In its Closing Brief, the Prosecution withdrew the allegations contained in paragraphs 21, 26, 27, 28, 29, and 38 of the Indictment because it did not present evidence on them.<sup>11</sup> Moreover, the Prosecution partially withdrew portions of paragraphs 22 and 40 of the Indictment.<sup>12</sup> While the Prosecution confirmed, during its Closing Arguments, that its Closing Brief accurately represents the allegations withdrawn, the Chamber notes a number of other allegations on which evidence was not presented.<sup>13</sup>

49. Paragraphs 14 and 15 of the Indictment allege orders at gatherings as well as the facilitation of transport in various sectors and *cellules* in Murambi commune. The Prosecution presented evidence with respect to specific allegations in Nyabisindu sector, Rwankuba sector and Akarambo *cellule*. It did not present evidence to support allegations with respect to other sectors and *cellules* in Murambi commune as mentioned in the Indictment.

50. Paragraph 16 of the Indictment alleges that Gatete issued orders to “[e]xterminate all the families [of Tutsis]” and that as a result, the family of “AIM”, including AIM’s brother as well as his family, were among those killed. Witness AIM was never listed among the

<sup>7</sup> *Ntagerura et al.* Appeal Judgement para. 25.

<sup>8</sup> *Muvunyi* Appeal Judgement para. 20; *Seromba* Appeal Judgement para. 100; *Simba* Appeal Judgement para. 64; *Muhimana* Appeal Judgement paras. 76, 195, 217; *Gacumbitsi* Appeal Judgement para. 49; *Ntagerura et al.* Appeal Judgement paras. 28, 65.

<sup>9</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 30 (“[T]he ‘new material facts’ should not lead to a ‘radical transformation’ of the Prosecution’s case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Trial Chamber to amend the indictment and the Trial Chamber should only grant leave if it is satisfied that it would not lead to unfairness or prejudice to the Defence.”).

<sup>10</sup> *Muhimana* Appeal Judgement, para. 82; *Gacumbitsi* Appeal Judgement paras. 57-58; *Ntakirutimana* Appeal Judgement para. 48; *Naletilić and Martinović* Appeal Judgement para. 45.

<sup>11</sup> Prosecution Closing Brief paras. 246-253; Closing Arguments, T. 8 November 2010 p. 33.

<sup>12</sup> Prosecution Closing Brief paras. 254 (“Paragraph 22 of the Indictment described that, in part, on or around April 10 to 11, 1994, at Mukarange parish, a woman named Odette took her child outside of the compound and the two were immediately killed. The parish priest Father Basco [sic] asked Gatete to stop the killing but Gatete refused.”); 255 (“Paragraph 40 of the Indictment described that, in part, on or about April 9, 1994, in Akarambo *cellule*, AVO was raped by an *Interahamwe* named Karerangabo.”); Closing Arguments, T. 8 November 2010 p. 33.

<sup>13</sup> Closing Arguments, T. 8 November 2010 p. 33.

witnesses that the Prosecution intended to bring at trial.<sup>14</sup> Furthermore, no evidence was presented regarding the killing of AIM's family members, nor does the Prosecution Closing Brief refer to any evidence in support of the allegations concerning AIM. This is significant, as the Prosecution's final written submissions contain a detailed listing of the charges on which it is seeking conviction.<sup>15</sup> Consequently, the Chamber concludes that the Prosecution did not pursue this allegation.

51. Paragraph 20 of the Indictment alleges that on about 12 to 14 April 1994, Gatete instigated, commanded and facilitated displaced Hutu peasants to target and kill Tutsis moving southward through Murambi and Kibungo prefectures. It is further alleged that, on about 13 April, Gatete set up a roadblock at Gatore centre in Kibungo where he deployed his *Interahamwe* and ordered that any Tutsis fleeing to Tanzania should be intercepted and killed. The Prosecution did not present evidence in relation to these allegations. A further review of its final submissions and its Closing Brief also reveal that the Prosecution makes no reference to the "Gatore" roadblock.

52. It is alleged in paragraph 24 of the Indictment that, after the rapes and killings described in paragraph 23A of the Indictment, the *Interahamwe* returned to the Kayonza commune office courtyard, where Gatete ordered them to go to adjoining sectors to rape and murder the remaining Tutsis. The Chamber observes that the Prosecution Closing Brief makes mention only once of paragraph 24 of the Indictment, and that it points to the evidence of Witnesses BAQ, BAR, BVQ and BAY.<sup>16</sup> However, none of these witnesses gave testimony relevant to paragraph 24 (see instead II.7). Accordingly, the Chamber concludes that the Prosecution did not pursue this allegation.

53. Lastly, the Chamber recalls that the Prosecution confirmed that it did not present evidence in support of the allegation in paragraph 36 of the Indictment that Gatete ordered the killing of Kamuzinzi on about 12 April 1994.<sup>17</sup> The Chamber also notes that no evidence was led with respect to the killing of "AIX's" husband as alleged in paragraph 36 of the Indictment.

## 2.3 Fair Trial Rights

### 2.3.1 Undue Delay

54. The Defence submits that the right to trial without undue delay was violated. It refers exclusively to the length of Gatete's pre-trial detention, in particular, that over 7 years lapsed between his arrest in 2002 and the commencement of his trial in 2009. Accordingly, the Defence seeks appropriate relief for the Accused.<sup>18</sup>

<sup>14</sup> Witness AIM did not appear on the Prosecution list of witnesses annexed to its Pre-Trial Brief filed on 19 August 2009.

<sup>15</sup> The Prosecution Closing Brief's Table of Contents lists the factual allegations in support of Counts I and III (Genocide and Complicity in Genocide, respectively).

<sup>16</sup> Prosecution Closing Brief para. 390. The Chamber notes that, in its Pre-Trial Brief, the Prosecution pointed only to the testimony of Witness BAR in support of the allegations in paragraph 24 of the Indictment. Prosecution Pre-Trial Brief paras. 47, 75, 119, p. 47.

<sup>17</sup> Indictment para. 36; Closing Arguments, T. 8 November 2010 pp. 66-67.

<sup>18</sup> Defence Closing Brief paras. 1214-1254; Closing Arguments, T. 8 November 2010 pp. 39-40.

55. The Defence submits that the length of Gatete's pre-trial detention cannot be justified by the complexity and size of the case. It argues that the Prosecution did not bring the case to trial within an appropriate amount of time. The Defence further argues that the pre-trial Chamber delayed in rendering decisions between April 2003 and April 2007 and refers to the involvement of the Judges and legal staff in several other cases as the reason for the delays. It submits that, as a result of these pre-trial delays, Gatete has suffered prejudice due to the unnecessarily long deprivation of his liberty, and has adversely affected the preparation of his case, as the memories of witnesses and their availability have diminished. Accordingly, the Defence asserts that the right to be tried without undue delay has been violated and that, in the case of a conviction, the appropriate remedy is a reduction in his sentence.<sup>19</sup>

56. The Prosecution submits that the length of the pre-trial detention in this case was not due to its conduct, but to the structure and resources of the Tribunal. It further points to its request to transfer the case to the Republic of Rwanda pursuant to Rule 11 *bis* of the Rules, due to limited resources. The Prosecution also argues that Gatete avoided arrest and, thus, contributed to the delay.<sup>20</sup>

57. The Chamber recalls that the right to be tried without undue delay is guaranteed by Article 20 (4)(c) of the Statute. The Appeals Chamber has pointed out that this right only protects the accused against *undue* delay, which has to be decided on a case by case basis.<sup>21</sup> The following factors are relevant: (a) the length of the delay; (b) the complexity of the proceedings (the number of counts, the number of accused, the number of witnesses, the quantity of evidence, the complexity of the facts and of the law); (c) the conduct of the parties; (d) the conduct of the authorities involved; and (e) the prejudice to the accused, if any.<sup>22</sup> A determination of whether the right to trial without undue delay was violated can be made only in light of the totality of the above-mentioned criteria.<sup>23</sup>

58. The Chamber recalls that Gatete was arrested on 11 September 2002 in the Democratic Republic of the Congo. On 13 September 2002 he was transferred to the custody of the Tribunal.<sup>24</sup> Gatete's initial appearance was held on 20 September 2002, at which he pleaded not guilty to all of the Counts in the Indictment of 14 December 2000.<sup>25</sup> The case was transferred to this Chamber on 6 July 2009 and the trial commenced on 20 October 2009.<sup>26</sup>

<sup>19</sup> Defence Closing Brief paras. 1221-1254. The Defence further argued that the Prosecution contributed to the delay in bringing the case to trial because it filed its motion to transfer the case to Rwanda under Rule 11 *bis* five years after Gatete's arrest. Defence Closing Brief paras. 1235-1236.

<sup>20</sup> Closing Arguments, T. 8 November 2010 pp. 27- 28.

<sup>21</sup> *Nahimana et al.* Appeal Judgement para. 1074.

<sup>22</sup> *Id.* para. 1075. See also *Mugiraneza*, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004 p. 3.

<sup>23</sup> *Bizimungu et al.*, Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay (TC), 29 May 2007 para 15, citing *Mugiraneza et al.*, Decision on Prosper Mugiraneza's Application for a Hearing or other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay (TC), 3 November 2004 para. 28.

<sup>24</sup> Initial Appearance of Accused, 17 September 2002. Prosecution Closing Brief para. 13; Defence Closing Brief para. 1216.

<sup>25</sup> Initial Appearance, T. 20 September 2002 pp. 49-51.

<sup>26</sup> Interoffice Memorandum from the Office of the President, Notice of Designation in the case The Prosecution v. Jean-Baptiste Gatete, 6 July 2009; Defence Closing Brief para. 1221; Prosecution Closing Brief para. 17.

59. Turning first to consider the length of Gatete's pre-trial delay, the Chamber recognises that this has been significant. However, the Chamber must also take into consideration several other factors in determining whether the delay has been undue.

60. With respect to the complexity of the case, the Chamber notes that this is a single-accused case and, therefore, cannot be compared to multi-accused trials which have run for years and involved hundreds of trial days with over a thousand exhibits and in excess of a hundred witnesses.<sup>27</sup> The trial of Gatete ran for 30 days over a period of five months and nine days. A total of 49 witnesses appeared before the court and 146 exhibits were admitted. Nevertheless, the Chamber recalls that Gatete was originally charged with ten counts, in particular, genocide (Count I), complicity in genocide (Count II), conspiracy to commit genocide (Count III), direct and public incitement to commit genocide (Count IV), extermination, murder, persecution and rape as crimes against humanity (Counts V to VIII), and war crimes (Counts IX to X).<sup>28</sup> While the charges against Gatete were reduced to six counts in the operative Indictment, the underlying crimes involve several allegations, allege participation in a joint criminal enterprise, as well as conspiracy to commit genocide and, thus, involve complex issues of fact and law, as evidenced in this Judgement.

61. Notwithstanding the above, the Chamber notes particular instances where it appears that the conduct of the relevant authorities and the Prosecution has led to pre-trial delay which cannot be explained. For example, a Defence motion alleging defects in the indictment, filed on 12 April 2003, was not addressed by the Pre-Trial Chamber until almost one year later, on 29 March 2004.<sup>29</sup> Following the Prosecution's request for leave to file an amended indictment on 29 November 2004, leave was not granted until almost five months later on 21 April 2005.<sup>30</sup> The Defence filed a motion requesting protective measures for its witnesses on 11 October 2006, but that request was not granted until 10 April 2007.<sup>31</sup> The first status conference was not held until 19 April 2007.<sup>32</sup>

62. Moreover, while the Chamber recalls the Prosecution's discretion with respect to investigations and prosecutions, it also has a duty to drive the proceedings.<sup>33</sup> There are, however, instances of delay on the part of the Prosecution which the Chamber finds no justification for. For instance, on 29 March 2004, the Pre-Trial Chamber ordered the Prosecution to file an amended indictment.<sup>34</sup> However, the Prosecution did not request leave

<sup>27</sup> See for example *Bagosora et al.* and *Bizimungu et al.* cases.

<sup>28</sup> Indictment of 14 December 2000.

<sup>29</sup> Decision on Defence Preliminary Motion (TC), 29 March 2004.

<sup>30</sup> Decision on the Prosecution's Request for Leave to File an Amended Indictment (TC), 21 April 2005.

<sup>31</sup> Rule 62 (A)(iv) of the Rules provides that, upon initial appearance, if the Accused pleads not guilty, the Trial Chamber or the Judge shall "instruct the Registrar to set a date for trial".

<sup>32</sup> Status Conference, T. 19 April 2007.

<sup>33</sup> Article 15 of the Statute provides that the Prosecution is responsible for the investigation and prosecution of persons responsible for the crimes falling within the Tribunal's jurisdiction. See also Rules 39-43 of the Rules (Chapter IV "Investigation and rights of suspects"); Rule 47 ("Submission of the Indictment by the Prosecution"); Rule 50 ("Amendment of the Indictment"); Rule 55 *bis* ("Warrant of Arrest to All States"); Rule 60 ("Publication of the Indictment"); Rules 66-68 (relating to the production of evidence). See also *Barayagwiza*, Decision (AC), 3 November 1999 para. 92.

<sup>34</sup> Decision on Defence Preliminary Motion (TC), 29 March 2004.



to file an amended indictment until 29 November 2004.<sup>35</sup> Moreover, while the Accused was transferred to the Tribunal in September 2002, the Prosecution did not submit its request for referral to the Republic of Rwanda until 28 November 2007.<sup>36</sup>

63. The Chamber must also consider the prejudice suffered by Gatete. However, the Chamber considers that the Defence has failed to demonstrate prejudice. It has not shown that it has been unable to contact particular witnesses, or that witnesses have died. Indeed, during trial, it was able to present 27 witnesses with respect to the allegations against Gatete. Furthermore, the Defence did not raise the issue of delay during the pre-trial phase or in motions during the trial, to communicate to the Chamber that it was experiencing difficulties in its investigations or generally with respect to the preparation of its case due to the pre-trial delay. The Defence's failure to raise this challenge until its Closing Brief indicates that there was minimal, if any, prejudice as a result of the delay.

64. In sum, while the pre-trial delay in this case has been significant, after considering all the relevant factors, the Chamber finds that the delay was not undue. In particular, the Chamber highlights the complex nature of the case, given the number of counts and allegations, as well as the nature of the crimes the Accused is charged with. The case was also selected for referral to Rwanda pursuant to Rule 11 *bis* of the Rules. The Chamber further concludes that there has been minimal, if any, prejudice suffered by the Accused, and once the trial commenced, it was conducted extremely expeditiously.<sup>37</sup> Accordingly, the delay in this case has not been undue and, therefore, does not warrant a remedy.

### 2.3.2 Adequate Time to Prepare Defence: Impact of Protective Measures

65. The Defence submits that the Prosecution abused the protective measures regime by advising Prosecution witnesses to testify under a pseudonym rather than inquiring as to

<sup>35</sup> The Prosecutor's Submission and Request for Leave to File an Amended Indictment Complying with the Chamber's Order of 29 March 2004, 29 November 2004. Subsequently, the amended indictment was filed on 10 May 2005.

<sup>36</sup> Prosecutor's Request for the Referral of the Case to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 28 November 2007.

<sup>37</sup> In any event, the Chamber considers that a finding of undue delay would not have warranted the remedy of a reduction in sentence, as submitted by the Defence. The Chamber notes that, in light of the minimal, if any, prejudice, as well as the nature of the case, in particular, the gravity of the crimes, which warrant the maximum sentence, the appropriate remedy would be formal recognition that a violation occurred. The Chamber notes that cases where a reduction in sentence has been granted have involved a series of other fair trial violations. For instance, in *Semanza*, a sentence of 25 years was reduced by six months where the accused's rights to be promptly informed of the charges against him and to challenge the lawfulness of his detention were violated. See *Semanza* Trial Judgement paras. 578, 580, 590; *Semanza* Appeal Judgement paras. 323-325, 329. Moreover, in *Barayagwiza*, the accused's sentence of life imprisonment was reduced to 35 years. Barayagwiza was detained for 18 days without being informed of the reasons for his detention and thus his right to be informed promptly of the charges against him was violated. There was also a delay between his arrest and transfer to the Tribunal, and a period of 20 days lapsed before his initial appearance. See *Nahimana et al.* Trial Judgement paras. 1106-1107; *Nahimana et al.* Appeal Judgement paras. 1076-1097. In *Kajelijeli*, the accused's two life sentences as well as a sentence of 15 years were reduced to a single sentence of 45 years. He was not promptly informed of the reasons for his arrest or of the provisional charges against him and was impermissibly detained for a total of 306 days in Benin, nor was he promptly granted an initial appearance before a Judge or an official acting in a judicial capacity. See *Kajelijeli* Appeal Judgement paras. 320-324. The Chamber further notes that in the *Rwankuba* case, compensation was awarded for fair trial violations other than for the accused's pre-trial detention. See *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007 para. 24, citing *Semanza* Decision (AC), 31 May 2000.

whether they genuinely feared for their own safety or for that of their family and whether this fear was objectively justified. The Defence argues that disclosure of the identities of protected witnesses only 30 days prior to the start of trial, adversely affected the Accused's ability to prepare his defence pursuant to Article 20 (4)(b) of the Statute. The Defence requests an appropriate remedy.<sup>38</sup>

66. The Prosecution submits that the Defence has not demonstrated any prejudice and denies that it told witnesses to testify under a pseudonym. Furthermore, it argues that, in addition to the Parties, several others, including WVSS, have dealt with witnesses and could have instructed them to testify under a pseudonym.<sup>39</sup>

67. Pursuant to Article 19 of the Statute, the Tribunal shall conduct proceedings with due regard for the protection of victims and witnesses. Article 21 of the Statute obliges the Tribunal to provide for the protection of victims and witnesses. Such protective measures shall include, but shall not be limited to, the protection of victims' identities. To this end, Rule 69 of the Rules provides that, under exceptional circumstances, either of the parties may apply to a Trial Chamber to order that the identity of a witness or victim who may be in danger or at risk not be disclosed, until the Chamber decides otherwise. Rule 69 (C) of the Rules requires that, subject to Rule 75, the identity of the victim or witness shall be disclosed to the Defence within such time as determined by the Trial Chamber to allow adequate time for preparation of the Defence case. Rule 75 authorises a Judge or a Chamber, *proprio motu* or at the request of either party, the victim or witness concerned, or of WVSS, to order appropriate measures to safeguard the privacy and security of victims and witnesses. These measures must be consistent with the rights of the accused, including fair trial rights.

68. Measures for the protection of witnesses are granted on a case-by-case basis. According to the Tribunal's jurisprudence, the witnesses for whom protective measures are sought must have a real fear for their safety or that of their families, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves.<sup>40</sup>

69. In the present cases, protective measures for Prosecution witnesses were granted on 11 February 2004. The Pre-Trial Chamber determined that the Prosecution had presented persuasive evidence of the volatile security situation in Rwanda and of potential threats against Rwandans living in other countries, which could give rise to a justified and real fear that disclosure of their participation in the Tribunal's proceedings would threaten their safety and security.<sup>41</sup> This Chamber notes that the Defence is not alleging that the decision to grant protective measures was erroneous or an abuse of the Pre-Trial Chamber's discretion.

70. With respect to the witnesses referred to by the Defence, the Chamber notes that they were not asked whether they feared testifying under their own name, but whether they had

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<sup>38</sup> Defence Closing Brief paras. 1255-1263. In particular, the Defence points to Prosecution Witnesses AIZ, BBR, BAR, AIV, BBQ as illustrating a "policy" on the part of the Prosecution to instruct or encourage witnesses to testify under a pseudonym.

<sup>39</sup> Closing Arguments T. 8 November 2010 pp. 24-25 (quoted).

<sup>40</sup> *Ntawukulilyayo*, Decision on Prosecutor's Motion Requesting Protective Measures, 6 February 2009 para. 4, citing to *Kalimanzira*, Decision on Prosecution Motion for Protective Measures (TC), 8 November 2007 para. 3; *Setako*, Decision on Prosecution Motion for Protective Measures (TC), 18 September 2007 para. 4; *Nchamihigo*, Decision on Motions for Protective Measures for Prosecution Witnesses (TC), 26 July 2006 paras. 4-5.

<sup>41</sup> Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004, para. 4



themselves requested to testify under a pseudonym.<sup>42</sup> The Chamber, however, considers it reasonable that witnesses would not necessarily request to testify under pseudonyms. Indeed, many witnesses would not realise or understand the implications of testifying before the Tribunal, until advised. Such advice could have originated from a number of different sources, such as, investigators, Prosecution counsel, and WVSS. Moreover, the fact that the fear is expressed by a person other than the witness does not render the protective measures unwarranted or unnecessary.<sup>43</sup>

71. Moreover, the identity of all protected Prosecution witnesses was disclosed to the Defence 30 days prior to the commencement of trial. The Defence has failed to demonstrate how this time was insufficient for the purposes of preparing for the cross-examination of Prosecution witnesses. In the Chamber's view, the Defence has failed to demonstrate that the Prosecution acted improperly. Nor has the Defence demonstrated that it did not have adequate time to prepare for the Prosecution case. Accordingly, the Accused has not suffered any prejudice warranting a remedy.<sup>44</sup>

### 2.3.3 Rule 15 bis Proceedings

72. In its Closing Brief, the Defence argues that the Accused has suffered prejudice as a result of the Chamber having conducted the proceedings pursuant to Rule 15 bis of the Rules for a total of eight, out of 30, trial days. The Defence, however, acknowledges that the Chamber did not conduct the proceedings in violation of Rule 15 bis. Nevertheless, it submits that Accused suffered prejudice because the testimonies of 12 witnesses were affected and that viewing a video-recording of those testimonies does not assist in the assessment of the witness's demeanour, and, thus, the credibility of those witnesses, to the same extent as live testimony. The Defence further submits that the absence of one Judge has an impact on the level of questioning from the Bench during trial.<sup>45</sup>

73. Rule 15 bis (A) of the Rules provides that where, due to an illness, urgent personal reasons, or Tribunal business, a Judge is unable to continue sitting in a part-heard case for a

<sup>42</sup> Witness AIZ, T. 11 November 2009 pp. 69-71 ("Did you ask to testify under a pseudonym or were you told that you should testify under a pseudonym? I am not the one who made that request. I was told that it would be better if I testified under a pseudonym."); Witness BBR, T. 11 November 2009 p. 34 ("Did you ask to testify under a pseudonym or were you told to testify under a pseudonym? I did not ask to take on a pseudonym. It was explained to me that in order to safeguard the personal safety of the witness, he was assigned a pseudonym. That is how I was given a pseudonym. It was not on my personal initiative"); Witness BAR, T. 3 November 2009 p. 74 ("Did you ask to testify under a pseudonym? No, I could not have asked to use a pseudonym, but I believe it does not create any problem if I use a pseudonym").

<sup>43</sup> Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004 para. 4; Decision on Defence Motion for Protection of Witnesses (TC), 10 April 2007 para. 2; *Nzitorera*, Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC), 12 July 2000 para. 9.

<sup>44</sup> The Defence also refers to the affidavit of Defence Witness LA131. The Defence indicated that it would seek leave to admit pursuant to Rule 92 bis of the Rules. In particular, the Defence submits that the affidavit demonstrates that Prosecution Witnesses AIV and BBQ testified under pseudonyms despite announcing locally that they were going to testify before the Tribunal. See Defence Closing Brief para. 1260. However, the affidavit of Defence Witness LA131 does not form part of the record as it was never admitted pursuant to Rule 92 bis. The Chamber also recalls its "Decision on Defence and Prosecution Motions for Admission of Written Statements and Defence Motion to Postpone the Filing of Closing Briefs" of 24 June 2010, which found that the affidavit did not meet the requirements of Rule 92 bis of the Rules.

<sup>45</sup> Defence Closing Brief paras. 1264-1269.

period which is likely to be of short duration, the remaining Judges may order that the hearing continue in the absence of that Judge for a period of not more than five working days where they are satisfied that it is in the interests of justice to do so. Rule 15 *bis* therefore bestows discretion upon the remaining Judges of a Trial Chamber where the interests of justice require a continuation of the trial.

74. The Defence has not demonstrated that the remaining Judges of this Chamber abused their discretion under Rule 15 *bis* in determining whether the interests of justice required a continuation of the trial. Moreover, while there is a preference for live testimony to be heard by each Judge, this requirement is not absolute. As held by the Appeals Chamber, the Rules and the Tribunal's jurisprudence demonstrate that exceptions can be made.<sup>46</sup> Furthermore, a witness's demeanour in court is not the only factor taken into consideration in assessing credibility. Indeed, other relevant considerations include: the witness's role in the events in question; whether there is any motivation to give false testimony; the plausibility and clarity of the witness's testimony; whether there are inconsistencies between the witness's testimony and prior statements or other evidence; whether there are any prior examples of false testimony; and the witness's responses during cross-examination.<sup>47</sup>

75. Finally, the Chamber observes that the Defence made no objection to the Chamber sitting under Rule 15 *bis* of the Rules, did not move to recall any witnesses and has not identified any particular issue regarding the credibility of a witness which an absent Judge needed to assess on the basis of demeanour, tone of a witness's answers, or "non-verbal" behaviour.<sup>48</sup>

76. Accordingly, the Chamber finds no merit in the Defence submissions with respect to the proceedings being conducted pursuant to Rule 15 *bis* of the Rules.<sup>49</sup>

#### 2.3.4 Right to Silence

77. The Prosecution, in its Closing Brief, asserts that the Chamber should draw an adverse inference from Gatete's refusal to testify.<sup>50</sup> The Defence points to jurisprudence of this Tribunal, as well as that of the ICTY, and the Rome Statute of the International Criminal Court to submit that no negative inference can be drawn from the Accused's decision not to testify in the proceedings against him.<sup>51</sup>

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<sup>46</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15*bis* (D) (AC), 24 September 2003 paras. 24-25.

<sup>47</sup> *Nahimana et al.* Appeal Judgement para. 194; *Bikindi* Appeal Judgement para. 114; *Nchamihigo* Appeal Judgement paras. 47, 285. Moreover, the Appeals Chamber has noted that, even in the absence of video-recordings, the record of proceedings may be enough to enable a substitute Judge who has not been present for the previous testimonies to appreciate what has happened in the trial before he or she joined the Bench. *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15 *bis* (D) (AC), 24 September 2003 para. 33.

<sup>48</sup> Defence Closing Brief para. 1267.

<sup>49</sup> The Chamber also notes that the Judges who were not present during a witness's testimony have viewed the video-recordings.

<sup>50</sup> Prosecution Closing Brief paras. 197-199, 201-211.

<sup>51</sup> Defense Closing Brief paras. 68-73.



78. Article 20 of the Statute guarantees the Accused's right not to be compelled to testify against himself or to confess guilt.<sup>52</sup> In addition, Rule 85 (C) of the Rules provides that the accused may, if he so desires, appear as a witness in his own defence.<sup>53</sup> Moreover, the Appeals Chamber has held that any adverse inference from the Accused's decision not to testify against himself is clearly prohibited.<sup>54</sup> Accordingly, the Chamber finds no merit in the Prosecution submission that adverse inferences should be drawn from Gatete's decision not to testify in this proceeding.

#### 2.4 Rule 92 bis

79. In its Closing Brief, the Prosecution relies on the contents of prior statements of witnesses to prove certain conduct of the Accused. However, those statements were not admitted pursuant to Rule 92 bis of the Rules.

80. The Chamber recalls that Rule 92 bis (A) bestows discretion upon a Trial Chamber to admit, in whole or in part, the evidence of a witness in the form of a written statement, in lieu of oral testimony, on the condition that it goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.<sup>55</sup> Sub-Rule (B) provides certain formal requirements which must be satisfied before a written statement might be admissible under the Rule.<sup>56</sup> Given that the statements referred to by the Prosecution were not admitted pursuant to Rule 92 bis and, in any event, would not have satisfied the substantive and formal requirements for admission pursuant to that Rule, the Chamber does not rely on them as proof of their contents.<sup>57</sup>

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<sup>52</sup> Article 20 (4)(g) of the Statute of the International Criminal Tribunal for Rwanda, 31 Jan. 2010: "In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: ... (g) Not to be compelled to testify against himself or herself or to confess guilt."

<sup>53</sup> Rule 85 (C) of the Rules states: "The accused may, if he so desires, appear as a witness in his own defense".

<sup>54</sup> *Muvunyi* Appeal Judgment para 7. It also flows from the jurisprudence of the Appeals Chamber that, in order to draw adverse inferences from an accused's decision to remain silent, an express provision must appear in the Statute "setting out the appropriate safeguard". In the absence of such a provision, "the inference is therefore absolutely prohibited. *Delalic* Appeal Judgment para 783.

<sup>55</sup> Rule 92 bis of the Rules is entitled "Proof of Facts Other than by Oral Evidence". Sub-Rule (A) provides that [a] Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. It outlines a number of factors (in the form of non-exhaustive lists) in favour of, and against, admitting evidence in the form of a written statement.

<sup>56</sup> Furthermore, Sub-Rule (E) states that the Trial Chamber must decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

<sup>57</sup> These statements, however, were admitted pursuant to the general requirements for the admission of evidence under Rule 89 (C) of the Rules and have been considered by the Chamber as and when relevant to assessing the credibility of the witnesses who gave those statements.



3. JEAN-BAPTISTE GATETE

81. Jean-Baptiste Gatete was born in 1953 in Rwankuba sector, Murambi commune, Byumba prefecture, Rwanda.<sup>58</sup> He was educated in Rwanda and, subsequently, in Europe.<sup>59</sup> He is married and the father of several children.<sup>60</sup>

82. Gatete was a member of the national congress of the MRND party.<sup>61</sup> He was *bourgmestre* of Murambi commune, in Byumba prefecture, from 1982 until June 1993.<sup>62</sup> He subsequently held the position of a director in the Ministry of Women and Family Affairs, which was then headed by Pauline Nyiramasuhuko.<sup>63</sup>

83. Gatete left Rwanda in 1994.<sup>64</sup> He was arrested in the Democratic Republic of Congo on 11 September 2002 and was transferred to the custody of the Tribunal on 13 September 2002.<sup>65</sup>

<sup>58</sup> Indictment para. 1; Defence Closing Brief para. 8; Defence Response to the Prosecution’s Request to Admit Facts, 15 July 2009 (“Defence Response”) p. 5; Prosecution Closing Brief paras. 8, 256.

<sup>59</sup> Defence Closing Brief para. 9.

<sup>60</sup> Defence Closing Brief paras. 1270, 1277; Defense Opening Statement, T. 20 October 2009 p. 8.

<sup>61</sup> Indictment para. 2; Prosecution Closing Brief para. 9; Prosecution Opening Statement, T. 20 October 2009 pp. 2-3; Closing Arguments, T. 8 November 2010 p. 8; Defence Closing Brief para. 25; Defence Response p. 5.

<sup>62</sup> Paragraph 2 of the Indictment alleges that Gatete was appointed as *bourgmestre* in 1987. However, the Prosecution subsequently made submissions conforming to the Defence assertion that Gatete became *bourgmestre* of Murambi in 1982. Prosecution Opening Statement, T. 20 October 2009 p. 2; Prosecution Closing Brief para. 8. See also Defence Response p. 5 (2); Defence Opening Statement, T. 20 October 2009 p. 7; Defence Closing Brief paras. 5, 11, 1167, 1271.

<sup>63</sup> Indictment para. 2; Prosecution Opening Statement, T. 20 October 2009 pp. 2-3; Prosecution Closing Brief, para. 9; Defence Response p. 5.

<sup>64</sup> Prosecution Closing Brief para. 182; Defense Opening Statement, T. 20 October 2009 p. 8; Closing Arguments, T. 8 November 2010 p. 63.

<sup>65</sup> Order Regarding Initial Appearance of Accused, 17 September 2002; Prosecution Closing Brief para. 13; Defence Closing Brief para. 1216.



## CHAPTER II: FACTUAL FINDINGS

### 1. MEETING, NYABISINDU SECTOR, 7 APRIL 1994

#### 1.1 Introduction

84. The Indictment alleges that, on about 7 April 1994, Gatete held meetings with local administrative officials in various sectors and *cellules* in Murambi commune for the purpose of distributing weapons and “instigating” civilian militia to kill Tutsi civilians. In particular, at around 2.00 a.m. on 7 April, he conducted a meeting in Nyabisindu sector, in Murambi commune. The Prosecution relies on the testimony of Witness BBW.<sup>66</sup>

85. The Defence disputes that Gatete held such meetings and in particular, denies that he conducted a meeting in Nyabisindu sector at the relevant time. Reference is made to the testimony of Apolinaire Karemera. It further submits that the Accused received insufficient notice of the material facts with respect to the gathering.<sup>67</sup>

#### 1.2 Evidence

##### Prosecution Witness BBW

86. Witness BBW, a Tutsi, was a farmer and herdsman in 1994 and lived in Nyabisindu sector, Murambi commune. On 7 April, at around 5.00 a.m., he was at home when Gatete and other persons arrived in Ntete *cellule* in a pickup vehicle. Using a megaphone, Gatete told *Interahamwe* to meet him at the crossroads, at the house of “Nyirigango”. After hearing the announcement, the witness walked about 100 metres from his residence to the crossroads and hid behind a hedge to listen to Gatete address a crowd of *Interahamwe* and Hutu members of the population. Gatete told them that the President had been assassinated by the *Inkotanyi* and Tutsis. He called on those present to “combat the enemy”, namely, Tutsis and added that political party issues should be set aside so that Tutsis, including children and the elderly, “could be hunted down”.<sup>68</sup>

87. Following the address, the witness immediately returned home. At around 7.00 a.m., his godson arrived and informed him of President Habyarimana’s death and provided more details about the earlier gathering at which Gatete spoke. He told the witness that Gatete had also distributed guns.<sup>69</sup>

88. Pursuant to instructions broadcast on Radio Rwanda, the witness and his wife remained at home. That same day, *Interahamwe* came to his house, and the witness fled toward Lake Muhazi with his 12 year-old son, while his wife fled in the opposite direction with their other children. An *Interahamwe* saw the witness and pursued him. The witness and his son jumped into Lake Muhazi. Armed *Interahamwe* pursued them up to the lakeshore and

<sup>66</sup> Indictment paras. 14, 31, 34; Prosecution Closing Brief paras. 30-31, 229-231, 565-629, 695, 697-717. Paragraph 14 of the Indictment also alleges that Gatete convened meetings in Rwankuba, Gakenke, Kiramuruzi, and Gakoni sectors on about 7 April 1994. See II.2; II.3.

<sup>67</sup> Defence Closing Brief paras. 98-157, 698-701, 1089-1090.

<sup>68</sup> Prosecution Exhibit 23 (personal identification sheet); T. 13 November 2010 pp. 4-5, 7-8, 10, 12-14 (quoted), 15, 25. T. 13 November 2009 p. 10 (“Gatete arrived in a vehicle accompanied by other persons I did not know.”).

<sup>69</sup> T. 13 November 2009 pp. 14-16, 17, 27.

tried to persuade them to return. The witness remained in the lake with his son until the *Interahamwe* departed, and then went to his neighbour's land. He also testified that the *Interahamwe* wanted to kill them, and that he swam with his son across the lake to a place called Kavumu, in Muhazi commune. It took about 40 minutes to cross the lake.<sup>70</sup>

89. The witness remained in Kavumu for about one week, where it was safe. Later, the security situation deteriorated, and people tried to flee because the *Inkotanyi* were drawing closer. Local residents asked soldiers to help them cross Lake Muhazi in order to flee from the *Inkotanyi*. Massacres had started in Muhazi commune and the witness was told that he should cross the lake and return home, where the killings had stopped. He subsequently crossed the lake with two others, in a canoe, but left his son in Muhazi commune. The witness later fled to Rukara commune.<sup>71</sup>

Defence Witness Apolinaire Karemera

90. In 1994, Apolinaire Karemera, a Tutsi, was a teacher and lived in Nyabisindu sector, Murambi commune. At about 11.00 p.m. on 6 April, he was at his brother-in-law's house in Ntete *cellule*, in Nyabisindu sector, located about 800 metres from the house of one Nyilingango, also in Ntete *cellule*, when he heard a radio broadcast that the President's plane had been shot down. That night was calm and they remained at home in the living room but did not sleep. The morning of 7 April was also uneventful. The witness did not hear a vehicle arrive, or anyone speak through a megaphone.<sup>72</sup>

91. At about 6.00 a.m., news of the President's death circulated. At around 10.00 a.m., Karemera visited Witness BBW to discuss what they should do. He stayed for about 30 minutes and then left for his aunt's house, also in Ntete *cellule*.<sup>73</sup>

92. At around 4.00 p.m., Witness BBW, who had left his wife and children with his neighbour, informed Karemera of his decision to go to Kavumu, in Muhazi commune. They walked together towards *Société*, the commercial centre, where they separated and took two different routes across Lake Muhazi. Karemera was about 10 metres from the shore when he saw Witness BBW board a canoe alone to cross the lake. Karemera went to the Nyarubuye crossing point and contacted someone with a boat to help him cross the lake.<sup>74</sup>

93. One week later, Karemera returned home and joined his parents at the Kiramuruzi camp for displaced persons. Three days later, Witness BBW came to see the witness and told him that he had gone to the Gahini camp in Rukara commune.<sup>75</sup>

<sup>70</sup> T. 13 November 2009 pp. 17-20, 23, 27-28 Witness BBW named some of the attackers. T. 13 November 2009 pp. 18-19.

<sup>71</sup> T. 13 November 2010 pp. 20 (quoted), 21, 28-31.

<sup>72</sup> Defence Exhibit 45 (personal identification sheet); T. 4 March 2010 pp. 18-19, 22-25, 55-56. Karemera further explained that Nyilingango's house was located at the junction of three roads. One road led to Gasave, the second to a commercial centre referred to as *Société*, and the third, towards Kibungo. T. 4 March 2010 p. 24-25. The witness first stated that he was Tutsi but during cross-examination, admitted that he and his family had Hutu identity cards prior to 1994 and that he discovered his true ethnicity in 1994. T. 4 March 2010 pp. 36-38.

<sup>73</sup> T. 4 March 2010 pp. 25-26.

<sup>74</sup> T. 4 March 2010 pp. 26-27. Karemera explained that Witness BBW had many children who were still very young and therefore could not move about with them. T. 4 March 2010 p. 27.

<sup>75</sup> T. 4 March 2010 pp. 27-28.





### 1.3 Deliberations

94. The Indictment alleges that, on about 7 April 1994, Gatete held meetings with local administrative officials in various sectors and *cellules* in Murambi commune for the purpose of distributing weapons and “instigating” civilian militia to kill Tutsi civilians. In particular, it is alleged that he convened a meeting at around 2.00 a.m. in Nyabisindu sector and that Tutsis were killed with weapons distributed by him. The Prosecution relies on the testimony of Witness BBW.<sup>76</sup> Through Witness Apolinaire Karemera, the Defence submits that no such meeting took place.<sup>77</sup>

95. Considering first the Prosecution evidence, the Chamber has no doubt about Witness BBW’s ability to identify Gatete in 1994. He had known Gatete since 1966 when the latter was a school pupil in Nyabisindu, and saw the Accused often after he was appointed *bourgmestre* of Murambi commune.<sup>78</sup> The Chamber recalls the witness’s testimony accusing Gatete of abducting his brothers in 1990.<sup>79</sup> It is mindful of this when assessing his evidence.

96. With respect to the merits of Witness BBW’s testimony, the Defence confronted him with a statement provided to Tribunal investigators in December 1997, which did not include any reference to Gatete using a megaphone. The Chamber does not consider this point material. The statement is otherwise generally consistent with the witness’s testimony that Gatete addressed Hutus very early on the morning of 7 April. The Defence further highlights that, according to the December 1997 statement, the meeting occurred at 2.00 a.m., while the witness’s testimony was that it was held at around daybreak, at 5.00 a.m.<sup>80</sup> The witness explained that the time given in the statement was an estimate, that it was foggy that morning and that he had been confused about the precise time.<sup>81</sup> In light of the witness’s explanations and given that both the statement and his testimony referred to the early hours of 7 April, the Chamber does not consider this variance material.

97. However, the Chamber notes internal frailties within Witness BBW’s account. For instance, with respect to how he crossed Lake Muhazi when returning home, he first stated that he swam back, which was consistent with his December 1997 statement.<sup>82</sup> However, under cross-examination, he specifically explained why his return journey had been by canoe, which was consistent with his evidence during Gacaca proceedings.<sup>83</sup> When confronted with this inconsistency, he explained that his December 1997 statement had incorrectly recorded

<sup>76</sup> Indictment paras. 14, 31, 34; Prosecution Closing Brief paras. 30-31, 229-231, 565-629, 695, 697-717.

<sup>77</sup> Defence Closing Brief paras. 106-157.

<sup>78</sup> T. 13 November 2009 pp. 6-9. Witness BBW would see Gatete at the commune office and there were times when Gatete had the opportunity of visiting the witness’s *cellule*. The witness also identified the Accused in court. T. 13 November 2009 pp. 8-9.

<sup>79</sup> T. 13 November 2009 p. 6.

<sup>80</sup> Defence Exhibit 33 (statement of 24 December 1997) p. 3; T. 13 November 2009 p. 10, 15, 21, 23-25, 27.

<sup>81</sup> T. 13 November 2009 pp. 10, 21, 23.

<sup>82</sup> T. 13 November 2009 p. 20 (“Q. How did you get back to your region? A. I swam across the lake again. But before leaving, I found some *Interahamwe* and soldiers.”); Defence Exhibit 33 (statement of 24 December 1997) p. 3.

<sup>83</sup> T. 13 November 2009 p. 29 (“Q. ... And in the information you gave in Gacaca, you described crossing the lake in a canoe; do you remember that? A. That was a return lap of the journey. And I was with Kanyankure, whose first name is Gatete, and Nganyangabo from Nyabisindu. Those two were able to get a canoe and we were able to cross the lake together to get to our area. But, initially, when I was going, I was with my son. And on the return leg I was with Kanyankure, nicknamed Gatete, who was unable to swim. So it was necessary to find a canoe to cross the lake.”).

that he swam back across the lake.<sup>84</sup> While this is possible, it does not explain the inconsistency between his evidence in-chief that he swam back, and his evidence under cross-examination that he returned by canoe.

98. Moreover, the Chamber finds aspects of Witness BBW's account insufficiently compelling. He testified that he and his 12 year-old son swam across Lake Muhazi and went to Kavumu in Muhazi commune. About a week later, the security situation deteriorated there and he was advised to return home. He testified that he returned across the lake in a canoe but made no mention of his son. When questioned about what happened to his son, he stated that he left him in Muhazi commune. The Chamber has reservations about this account, since, according to the witness, killings had commenced in Muhazi commune and people were fleeing.<sup>85</sup>

99. The Chamber has also considered Witness BBW's account in light of the Defence evidence. It finds Apolinaire Karemera's testimony to be of limited probative value as he would not necessarily have heard events taking place almost a kilometre away from his sister's home. Nevertheless, his evidence does raise additional doubt with respect to Witness BBW's reliability, given that Karemera saw the witness crossing Lake Muhazi alone, and was not pursued by *Interahamwe*. The Chamber finds no reason to doubt this aspect of Karemera's testimony.

100. In sum, the Chamber does not find Witness BBW's testimony sufficiently compelling for the purposes of supporting findings beyond reasonable doubt. The Chamber has also considered his account in the context of other Prosecution evidence, in particular, the accounts of Witnesses BBR and AIZ regarding a gathering in Rwankuba sector. Based on their evidence, the Chamber has found that Gatete attended a gathering outside the Rwankuba sector office on the morning of 7 April and instructed *Interahamwe* to kill Tutsis (II.2). Both witnesses also recounted that they saw Gatete arrive from the direction of Nyabisindu sector.<sup>86</sup> One inference to be drawn from this evidence is that Gatete also earlier attended a similar gathering in Nyabisindu sector. However, in the Chamber's view, it is not the only reasonable inference.<sup>87</sup>

<sup>84</sup> T. 13 November 2009 pp. 30-31 ("Q. So we have to choose between the canoe and the swimming, don't we, Witness? A. I believe there was some confusion when my statement was recorded. I said that on the way out I swam across the lake and that on the return leg, I was with two traveling companions and that we used a canoe to cross the lake. I did not say that I swam across to get to my area. Therefore, I believe that those who recorded my statement were mistaken. They used the wrong word. When I said that I crossed the lake, they probably thought that I swam across. But I stated clearly that when I returned to my village, I was in a canoe.")

<sup>85</sup> T. 13 November 2009 pp. 17-20, 21 ("The massacres had started and they told me that it would be better for us to go back to our homes on the other side of the lake because the killings had stopped there because the local population was fleeing."), 28-31.

<sup>86</sup> Witness BBR, T. 11 November 2009 p. 5; Witness AIZ, T. 11 November 2009 pp. 46, 57. Furthermore, the Chamber notes that Witness AIZ also recalled that Gatete told the *Interahamwe* outside the Rwankuba sector office that killings had already commenced in Nyabisindu sector. T. 11 November 2009 p. 47.

<sup>87</sup> The Chamber has also considered the evidence of Defence Witness LA16 who testified that *Interahamwe* gathered at Félicien Nyilingango's house where the latter ordered the killing of Aisha Mureyekisoni and Witness BCS's father (II.3). According to Witness LA16, the gathering took place at about midnight on the night of 6 April 1994. T. 8 March 2010 pp. 40-42, 43-44, 64, 75-77, 80-82, 87, 89. Witness BBW testified that the gathering he observed took place at about 5.00 a.m. on 7 April. T. 13 November 2009 pp. 8, 10, 23, 25. Although Witness LA16 acknowledged that he would not have known if Félicien Nyilingango had met with Gatete before Nyilingango picked Witness LA16 up from his home (T. 8 March 2010 p. 77), it seems that the

101. Moreover, with respect to Witness BBW’s testimony that Gatete also distributed guns at the gathering, the Chamber notes that the witness received this information from his godson. Accordingly, in light of the second-hand nature of this evidence, the Chamber will not accept it without adequate corroboration. In this regard, the Chamber has also considered other evidence in the record and does not find circumstantial support for Witness BBW’s hearsay testimony that Gatete also distributed guns at the gathering in Nyabisindu sector.<sup>88</sup>

102. Accordingly, the Chamber finds the Prosecution evidence insufficient to establish beyond reasonable doubt that, on about 7 April 1994, Gatete conducted a meeting in Nyabisindu sector, at which he gave instructions to kill Tutsis and distributed weapons. In view of this finding, the Chamber considers it unnecessary to address the Defence notice objections.<sup>89</sup>

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meeting Witness BBW referred to would have taken place after the gathering attended by Witness LA16. Moreover, the Chamber notes that the description of the location of Nyilingango’s house by both witnesses does not necessarily suggest that they are referring to the same person. Witness BBW, who did not provide a first name for the “Nyiringango” he referred to, testified that his house was located at the crossroads in Ntete *cellule*, in Nyabisindu sector. T. 13 November 2009, pp. 10, 13. Witness LA16 stated that Nyilingango’s house was located “along the main road” at the trading centre, in the inner courtyard but did not provide information regarding the sector in which it was located. T. 8 March 2010 p. 40. Considering that he was referring to events which occurred in Akarambo *cellule*, it is reasonable to conclude that he was referring to the trading centre in that *cellule*. Ultimately, the Chamber finds the evidence of the two witnesses equivocal with respect to whether they testified about the same gathering.

<sup>88</sup> The Chamber has considered other evidence in the record, in particular, that Gatete delivered guns and grenades for distribution among assailants who subsequently attacked Tutsi refugees at Mukarange parish on 12 April. See II.6. However, it finds this evidence insufficient to provide circumstantial corroboration for Witness BBW’s account regarding the distribution of weapons in Nyabisindu sector. Furthermore, the Chamber also recalls the evidence of Prosecution Witness BBJ who testified that Gatete “often held meetings with [*Interahamwe* or *Impuzamugambi*] in the *secteur* office of Rwankuba, Gakenke and in other places like Gakoni, where they were taught to operate weapons.... The Accused had promised to reward them. He had told them, ‘The day is coming when you will sleep with their daughters and wives and you are going to eat their cows’”. T. 5 November 2009 p. 25. The Chamber finds this brief evidence insufficient to support findings beyond reasonable doubt and elsewhere, it has not accepted Witness BBJ’s evidence without adequate corroboration. See II.4; II.5.

<sup>89</sup> See Defence Closing Brief paras. 110, 113, 115-116, 134-146.



## 2. MEETING, RWANKUBA SECTOR OFFICE, 7 APRIL 1994

### 2.1 Introduction

103. The Indictment contains a series of allegations concerning gatherings in Rwankuba sector, Murambi commune, on about 7 April 1994, at which Gatete purportedly distributed weapons and issued instructions to kill Tutsi civilians. At around 8.00 a.m., he conducted a meeting with Murambi commune *bourgmestre*, Jean de Dieu Mwange, and Rwankuba sector *conseiller*, Jean Bizimungu. Tutsis were killed with the weapons distributed by Gatete.<sup>90</sup> Furthermore, *Conseiller* Bizimungu and local *Interahamwe* President, Gerard Kayonza, “incited” the local population in Rwankuba sector to destroy Tutsi homes and attack, rape and murder Tutsi civilians and organised attacks on Tutsis. Gatete then issued orders to kill all Tutsi families.<sup>91</sup> The Indictment also alleges that the Accused gathered *Interahamwe* and, using a megaphone, told them to start the “work” of killing Tutsis. He promised a reward of cattle once the killings were complete. Immediately after Gatete’s departure, *Conseiller* Bizimungu ordered *Interahamwe* to start killings. *Interahamwe* killed Tutsi civilians as a result of Gatete’s actions.<sup>92</sup> Gatete is also alleged to have facilitated the transport of *Interahamwe* throughout various sectors and *cellules* in Murambi commune, including Rwankuba sector.<sup>93</sup> The Prosecution relies on the evidence of Witnesses BBR and AIZ.<sup>94</sup>

104. The Defence denies the allegations concerning Gatete’s role in convening meetings, addressing gatherings for the purposes of distributing weapons, facilitating the transport of *Interahamwe*, and ordering the killing or rape of Tutsi civilians. In support, reference is made to the testimonies of Witnesses LA41, LA43, LA40 and Claver Mutimura.<sup>95</sup>

### 2.2 Evidence

#### Prosecution Witness BBR

105. Witness BBR, a Tutsi, was a farmer in 1994 and lived in Rwankuba sector, Murambi commune. On the morning of 7 April, at around 7.00 a.m., he was at home when he heard

<sup>90</sup> Indictment paras. 14, 31, 34.

<sup>91</sup> Indictment paras. 16, 31, 34. The Indictment alleges that members of AIM’s family were among those killed. However, the Prosecution presented no evidence to support this allegation. See I.2.2.

<sup>92</sup> Indictment paras. 17, 31, 34.

<sup>93</sup> Indictment paras. 15, 31, 34.

<sup>94</sup> Prosecution Closing Brief paras. 30-31, 38-39, 82, 109, 229-231, 565-629; Closing Arguments, T. 8 November 2010 pp. 4, 6, 8-9, 13. The Chamber notes that Witness BBT also testified about a gathering on 7 April and is referred to by the Prosecution in support of these allegations. The Chamber, however, considers that Witness BBT testified about a different gathering, possibly in Akarambo *cellule*. See II.3. However, the evidentiary record is equivocal with respect to the precise location of Akarambo *cellule*. See for example Witness BBT, T. 10 November 2009 pp. 64-65, 72, 87; Prosecution Exhibit 5 (personal identification sheet) (Akarambo *cellule*, Kiramuruzi sector); Prosecution Exhibit 19 (personal identification sheet) (Akarambo *cellule*, Rwankuba sector); Prosecution Exhibit 20 (personal identification sheet) (Akarambo *cellule*, Rwankuba sector); Prosecution Exhibit 21 (personal identification sheet) (Akarambo *cellule*, Kiramuruzi sector); Chambers Exhibit 1 (Confidential Report on Site Visit, 3 November 2010) para. 8 (suggesting Akarambo *cellule* was in Kiramuruzi sector). In any event, the Chamber finds that the most appropriate place to address Witness BBT’s evidence is in the section considering the allegations relating to Akarambo *cellule*.

<sup>95</sup> Defence Closing Brief paras. 98-105, 256-308, 318-322; Closing Arguments, T. 8 November 2010 p. 47.

Radio Rwanda announce President Habyarimana's death. He informed his family and neighbours who were all concerned. Subsequently, he decided to go to the Rwankuba sector office to assess the situation so that he could return and inform others of any news. As he was approaching, he saw *Interahamwe* in front of the sector office, and decided to hide in a small eucalyptus forest located between about 20 and 25 metres from there.<sup>96</sup>

106. While hiding, he saw Gatete arrive, driving a saloon vehicle and accompanied by *Bourgmestre* Jean de Dieu Mwange. They came from the direction of Nyabisindu sector and stopped in front of the Rwankuba sector office. Immediately behind them, a Toyota Hilux pickup vehicle arrived with *Interahamwe* on board. Mwange remained in the vehicle, while Gatete alighted and, standing in the sector office courtyard, addressed the *Interahamwe*. He told them to "[s]tart working, and by working I mean kill the Tutsis." He further told them to "do this like the last time" they had been asked "to kill the accomplices with [their] machetes and [they] were upset about clearing the grass." He added that they must "[w]ork relentlessly" and he would reward them. After about ten minutes, Gatete departed towards the direction of Rwimitereri sector.<sup>97</sup>

107. Following Gatete's departure, the crowd that had gathered outside the sector office had a discussion but the witness could not hear what they said. He was afraid and returned home to report what he had heard. He, his family, and Tutsi neighbours, believed that the killings had already commenced and decided to wait until nightfall to flee. From his home in Nyagasambu *cellule*, in Rwankuba sector, he could see houses on the hill opposite being torched and believed the killings would spread. He also saw the *Interahamwe* who had gathered at the sector office go with *Conseiller* Bizimungu, towards the Mumpara business centre, which was within a kilometre of the witness's residence. In the meantime, he and other Tutsis in Nyagasambu *cellule* prepared to defend themselves with traditional weapons against attackers.<sup>98</sup>

108. That day, three separate attacks were launched against them. The first was at about 10.00 a.m., and launched from the GITUZA locality in Rwankuba sector. It was repelled within ten minutes but homes were torched. The second attack was launched from Mumpara and assailants included soldiers, *Interahamwe*, Hutu civilians and local inhabitants, who Gatete had asked the *Interahamwe* to recruit. The soldiers carried grenades, and when they ran out,

<sup>96</sup> Prosecution Exhibit 19 (personal identification sheet); T. 11 November 2009 pp. 1-2, 4-5, 8, 20-22, 37. Witness BBR explained that the Rwankuba sector office was about one kilometre from his house. T. 11 November 2009 p. 4. The eucalyptus forest was in front of the house of a person called Nkurunziza. T. 11 November 2009 p. 21.

<sup>97</sup> T. 11 November 2009 pp. 5-6 (quoted), 7-8, 11, 20-22, 24-25. According to Witness BBR, the vehicle driven by Gatete was a saloon car "of a light green ... or light blue color that was more of gray". T. 11 November 2009 pp. 5 (quoted), 20. The witness was unable to see if the *Interahamwe* were armed but recognised them as *Interahamwe* because most of them wore uniforms and MRND hats. T. 11 November 2009 p. 6.

<sup>98</sup> T. 11 November 2009 pp. 6-8, 25-26. The group of about 50 resistance fighters were all Tutsis. There were no Hutus among them. T. 11 November 2009 pp. 25-26. The Chamber notes that the transcript records that the witness stated: "Whilst we were still home in Nyabisindu *secteur*, on the hill opposite us the houses were being torched." However, this appears to be an error, as he later stated "I am referring to myself and the members of my family, as well as neighbours, in other words, the Tutsis who lived in Nyagasambu *cellule*." T. 11 November 2009 p. 8. Moreover, the witness's personal identification sheet records his *cellule* of residence in 1994 as Nyagasambu *cellule*. See Prosecution Exhibit 19 (personal identification sheet). The *Interahamwe* and *Conseiller* Bizimungu used a road which was 500 metres from the witness's residence. T. 11 November 2009 p. 8.

the *Interahamwe* and other assailants continued the attack with traditional weapons. The assault continued for about an hour before the assailants fled. The third attack started at about 3.00 or 3.30 p.m., near the home of Nyagasambu *Responsable* Damascène Macari, who was Tutsi. He was shot and killed during the attack. The assailants included policemen armed with guns. The assailants also burnt, looted and destroyed Tutsi homes. The witness later counted between 25 and 30 persons at the site of the killings. More than ten of his family members were among the dead. His home was also torched and destroyed.<sup>99</sup>

109. On 9 April, the witness saw *Bourgmestre* Mwangé meet *Interahamwe* on the road. They took a cow and went in the direction of the Cerai School. Later, he saw people bringing meat back from there. That day, assailants continued to look for survivors in the woods but they did not find the witness. He believed that the cow was part of the “reward” which Gatete had promised the assailants. Later that day, the witness took his family to Giti commune, where it was safe.<sup>100</sup>

#### Prosecution Witness AIZ

110. In 1994, Witness AIZ, a Tutsi, was a farmer and lived in Rwankuba sector, Murambi commune. At about 7.00 a.m. on 7 April, he was at home when he heard Radio Rwanda announce President Habyarimana’s death. About ten minutes later, he left home to go to the Rwankuba sector office and assess the situation. As he was approaching the sector office at about 8.00 a.m., he saw that more than 20 *Interahamwe* armed with clubs, and *Conseiller* Jean Baptiste Bizimungu, had gathered in the sector office courtyard. He therefore hid behind a bush located about 20 metres away.<sup>101</sup>

111. From his hiding spot, he saw a saloon vehicle approach from the direction of Nyabisindu sector. Gatete was driving and was accompanied by *Bourgmestre* Jean de Dieu Mwangé. Gatete exited the vehicle and asked the *Interahamwe* to move close to him. He told them that “[p]eople in Nyabisindu sector [had] already started killing” and “burning down houses.” He added that they too had to start killing, sparing no Tutsi. Those gathered applauded and Gatete added that until they had killed the Tutsis, they should not loot or eat cows. The witness remained hidden but could hear and see Gatete as he moved up and down, issuing instructions.<sup>102</sup>

112. Three to four minutes after Gatete’s arrival, a yellow Toyota pickup vehicle carrying 10 to 12 *Interahamwe* and one communal policeman, arrived. The *Interahamwe* joined the initial group. Others continued to arrive until there were about 40 *Interahamwe* present.

<sup>99</sup> T. 11 November 2009 pp. 8-10, 25-28, 34. Others killed were Béatrice Musabyemariya, Dorothée Kankuyu, Laurence Mukankaka, Josseline Muteteri, and Stephanie Uwera.

<sup>100</sup> T. 11 November 2009 pp. 10-11, 36-37, 48. Witness BBR said he did not get close to where Mwangé was. Mwangé arrived in a white Hilux vehicle and took the road leading to Cerai. T. 11 November 2009 p. 36.

<sup>101</sup> Prosecution Exhibit 20 (personal identification sheet); T. 11 November 2009 pp. 40-44, 46-48, 52-55, 57, 59-61. The road where Witness AIZ stopped passed through Kiramuruzi, Nyabisindu, and Giti, and continued to Rwesero. He described the sector office as a single building with a veranda and courtyard. It overlooked the road and had no fence. T. 11 November 2009 pp. 46, 55. It took at most 15 minutes to walk from his home to the sector office. T. 11 November 2009 p. 54. The witness knew that they were *Interahamwe* because most were from his area and were wearing uniforms. T. 11 November 2009 p. 46.

<sup>102</sup> T. 11 November 2009 pp. 43, 47 (quoted), 48, 52, 56-57, 59-61. The colour of the vehicle was between grey and white. T. 11 November 2009 p. 47.

Before departing, Gatete told them “that they had to sensitise other persons to the killings”. He left, taking the road to Rwimitereri sector.<sup>103</sup>

113. The witness returned home and took his family to a hiding place where they remained until nightfall. That day, the *Interahamwe* started killing and over 60 Tutsis were killed. The witness learnt that the *responsable* of Nyagasambu *cellule*, a Tutsi named Macari, was also killed by *Interahamwe*, and his home destroyed. At about 10.00 p.m., the witness and his family left their hiding place and went to Giti commune, where it was safe. They arrived there the following night, on 8 April, at about 8.00 or 9.00 p.m.<sup>104</sup>

Defence Witness LA41

114. Witness LA41, a Hutu, owned a business at the Akabuga centre near the Rwankuba sector office in 1994. At about 6.00 a.m. on 7 April, she went to Lake Muhazi to buy items for her business. She arrived back at her establishment at about 7.00 a.m. and spent two hours working there. Her husband arrived at around 9.00 a.m. She closed the establishment between noon and 1.00 p.m. due to the deteriorating security situation brought on by the President’s death. She had also seen a house being burnt opposite her business. She returned home, where her husband later joined her after monitoring the situation and gathering certain items to take home.<sup>105</sup>

115. Nothing happened at the sector office on the morning of 7 April. There was no meeting there that day. Nor did the witness see Gatete there, or more generally, in Rwankuba sector that April. For the following three days, she remained at home while killings took place and homes were torched. She later learnt that Hutus were killing Tutsis. After the three days, she and her family fled with other Hutus to the Rwamagana displaced persons camp.<sup>106</sup>

Defence Witness LA43

116. In 1994, Witness LA43, a Hutu, lived in Rwankuba sector, Murambi commune. On 7 April, at 5.30 a.m., she heard about President Habyarimana’s death on the radio. Consequently, she was worried and paid particular attention to what was occurring at the sector office. That day, she remained at home and did not see any meeting being held at the sector office, nor did she see Gatete, *Bourgmestre* Mwangé or any members of the public there that morning. Had there been a gathering there, she would have seen or heard about it. She did not see Gatete in Rwankuba sector in April 1994.<sup>107</sup>

<sup>103</sup> T. 11 November 2009 pp. 49, 57-59, 61. Mwangé had stayed in the vehicle. T. 11 November 2009 p. 61. When Witness AIZ left, the violence had not yet started. T. 11 November 2009 p. 61.

<sup>104</sup> T. 11 November 2009 pp. 48-50, 52-53, 61-64, 66. Witness AIZ mentioned the Mahashyi family, the Sagahungu family, the Gahene family, the Nvunabandi family, and Mutanga and his family as among those killed that day. They were all Tutsis. T. 11 November 2009 p. 50.

<sup>105</sup> Defence Exhibit 37 (personal identification sheet); T. 2 March 2010 pp. 3, 5-7, 30-35, 37-38, 40, 42, 47-48. Witness LA41 explained that the Rwankuba sector office building is not the same today as it was in 1994. Although the building of the old sector office still remains, a new sector office has been built. T. 2 March 2010 p. 8.

<sup>106</sup> T. 2 March 2010 pp. 11, 13, 29, 31-32, 34-37, 42-43, 47.

<sup>107</sup> Defence Exhibit 39 (personal identification sheet); T. 2 March 2010 pp. 50, 52, 54-55, 57, 61-63, 70, 77, 83-84. The buildings of the sector office still exist but are no longer the sector office. T. 2 March 2010 p. 55.



Defence Witness LA40

117. Witness LA40, a Hutu, was a farmer living in Rwankuba sector, Murambi commune, in 1994. At around 5.00 a.m. on 7 April, he went to work on his farm, located at the lower side of his house, and to milk his cow. His brother arrived at about 6.45 a.m. and informed him of the President's death. He returned home, and later, he and his brother went to the trading centre where seven or eight people were discussing the news. He could see the sector office from the trading centre, which was about 15 to 20 metres away.<sup>108</sup>

118. Sometime between 8.00 and 9.00 a.m., he and his brother went to their father's home, which was approximately 900 metres to a kilometre from his own home. After about ten minutes, he returned home as everyone was frightened.<sup>109</sup>

119. A short while later, he returned to the trading centre for 25 to 30 minutes. Many people, mostly young Hutu men but also some young Tutsi men, went there to discuss the news. They talked about the President's death at a bar owned by Salatiel Kananura, across the road from the sector office. From the morning until about 2.00 p.m., the witness did not see anything happen at the sector office. He did not see Gatete, Jean de Dieu Mwangi, or anyone else there. He did not see Gatete in Rwankuba sector that April.<sup>110</sup>

Defence Witness Claver Mutimura

120. In 1994, Claver Mutimura, a Hutu, was a farmer and lived in Rwankuba sector, Murambi commune. At about 6.00 a.m. on 7 April, he was at home when he heard Radio Rwanda announce President Habyarimana's death. At about 10.00 a.m., two women, who were his neighbours, arrived and told him that people had assembled at the home of the Nyagasambu *responsable*, a Tutsi named Macali.<sup>111</sup>

121. The witness decided to go to Macali's house to find out what was happening. When he reached Macali's land, he saw about 40 Hutu men, and a group of about 80 Tutsi men, women and children, who had gathered there. The atmosphere was tense. The Tutsis had insulted the Hutus, prompting a confrontation between the two groups and soldiers intervened.<sup>112</sup>

122. The witness joined the Hutu group, which included three *Interahamwe*. A Tutsi threw a grenade at the group of Hutus but it did not explode and was caught by a Hutu Presidential Guard soldier called Ntarindwa, who threw the grenade back at the Tutsis. It exploded but did not injure anyone. The Hutus ran to about 500 or 700 metres away. As the witness's group

<sup>108</sup> Defence Exhibit 40 (personal identification sheet); T. 3 March 2010 pp. 4-6, 7-9, 15, 40-43, 48-51. Witness LA40's house was about 30 steps from his farm, and a banana field lay between them. T. 3 March 2010 p. 7. He also explained that the buildings remain the same as in 1994, but that the sector office is now someone's residence and workshop. T. 3 March 2010 pp. 6-7.

<sup>109</sup> T. 3 March 2010 pp. 8-9.

<sup>110</sup> T. 3 March 2010 pp. 9, 11-13, 14, 23-24, 30, 43-45, 49-50, 55. Witness LA40 was shown a list of seven names. He confirmed that one of them was among the people who were talking at the trading centre while the other six were not there. See Prosecution Exhibit 27 (list of seven names); T. 3 March 2010 pp. 48-49.

<sup>111</sup> Defence Exhibit 44 (personal identification sheet); T. 3 March 2010 pp. 61-63, 65-66, 68-69; T. 4 March 2010 pp. 5-8, 12. The Tutsis had gone to Macali's property because he was a Tutsi *responsable*. T. 4 March 2010 p. 12.

<sup>112</sup> T. 3 March 2010 pp. 65-69, 72; T. 4 March 2010 pp. 8, 11-13.



was running, they met a communal policeman called Shumbusho, who told them to return to Macali's house, which they did, joining the group of soldiers. Shumbusho entered Macali's house to steal a bicycle and Ntarindwa confiscated his firearm and told him that instead of "defending his ethnic group", he had come to steal a bicycle. During this time, Macali and the Tutsis were hiding in a sorghum field near the house. Ntarindwa pursued Macali and the group, before shooting and killing him. Only Macali was killed. No authorities were seen that morning.<sup>113</sup>

123. On the evening of 7 April, the witness heard a Radio Muhabura broadcast which said that Gatete was killing Tutsis in Kibungo prefecture. However, he did not see Gatete that month. Soldiers belonging to the RPF arrived in Rwankuba sector about a week later and started killing persons, forcing the witness and others to hide in sorghum farms. A week later, the witness fled to Giti commune.<sup>114</sup>

#### Defence Witness LA16

124. In 1994, Witness LA16, a Hutu, was a farmer and lived in Kiramuruzi sector, Murambi commune. In April, he was also a member of the Kiramuruzi *Interahamwe* which was led by Jean Gahutu. On 7 April, he was among *Interahamwe* who attacked Tutsis in Akarambo *cellule*, in Kiramuruzi sector. On 8 April, he participated in an attack in Rwankuba sector, during which he killed two persons downhill from the Rwankuba sector office.<sup>115</sup>

### 2.3 Deliberations

125. The evidence consistently establishes that, from 7 April 1994, violence erupted in and around Nyagasambu *cellule*, Rwankuba sector, and that Tutsis were targeted and killed. The evidence further shows that *Interahamwe* were among the assailants.<sup>116</sup> Nor is it disputed that the Nyagasambu *Responsable*, a Tutsi called Damscène Macali, was among those killed.<sup>117</sup> The Chamber turns to consider the evidence in light of the allegation that the killings occurred as a result of Gatete's actions.

<sup>113</sup> T. 3 March 2010 pp. 67-68, 70, 71 (quoted), 72; T. 4 March 2010 pp. 8-9, 11-15. Macali and some other Tutsis had only traditional weapons. T. 3 March 2010 p. 69. Among the Tutsis were persons named Sakindi, Nkubito and Kabuto. T. 3 March 2010 p. 68.

<sup>114</sup> T. 3 March 2010 pp. 72-74.

<sup>115</sup> Defence Exhibit 52 (personal identification sheet); T. 8 March 2010 pp. 30-34, 40, 84-85; T. 9 March 2010 pp. 19-20, 24. See also II.3.

<sup>116</sup> Witness BBR, T. 11 November 2009 pp. 8 (houses were torched), 8-9 (three attacks were launched and many people were killed), 9 (most Hutus joined *Interahamwe* against the Tutsis), 9 (the witness counted 25 to 30 bodies after the attacks ended and most were family members), 26-28; Witness AIZ, T. 11 November 2009 pp. 49-50 (*Interahamwe* had started killing Tutsis), 61 (killings started after the witness left his hiding place); Witness LA41, T. 2 March 2010 pp. 5-6, 30 (the security situation deteriorated and the witness closed her establishment between noon and 1.00 p.m.), 30-31 (killings were occurring), 33, 35 (the witness learnt that Hutus were killing Tutsis); Witness LA43, T. 2 March 2010 p. 64 (*Interahamwe* committed atrocities); Mutimura, T. 4 March 2010 p. 8 (three *Interahamwe* were among the group of Hutus gathered outside *Responsable* Macali's house); Witness LA16, T. 8 March 2010 pp. 40, 84-85; T. 9 March 2010 pp. 19-21, 24 (the witness was an *Interahamwe* who participated in attacks in Rwankuba sector on 8 April). The Chamber notes that, while Witness AIZ also appears to have referred to killings in the *cellule* where he lived, namely, Akarambo *cellule*, in Kiramuruzi sector, as discussed later, his residence was within an hour's walk of the Rwankuba sector office.

<sup>117</sup> Witness BBR, T. 11 November 2009 pp. 9, 28; Witness AIZ T. 11 November 2009 pp. 64; Mutimura, T. 3 March 2010 pp. 65, 68-69, 72.

126. The Prosecution relies on Witnesses BBR and AIZ to establish that, on the morning of 7 April, Gatete arrived at the Rwankuba sector office with *Bourgmestre* Mwange and addressed a crowd of *Interahamwe* who had gathered there with *Conseiller* Bizimungu.<sup>118</sup> It is alleged that Gatete instructed them to kill Tutsis and that these instructions were complied with. Gatete is also alleged to have facilitated the transport of *Interahamwe* in Rwankuba sector for the purposes of killing Tutsis. The Prosecution presented no evidence that Gatete distributed weapons, or that he gave instructions using a megaphone.<sup>119</sup>

127. Through Witnesses LA40, LA41, and LA43 the Defence submits that no gathering took place that day at the Rwankuba sector office and that Gatete was not seen there. It further relies on the testimony of Claver Mutimura to challenge Witness BBR's evidence regarding the killing of *Responsable* Macali and attacks on Tutsis. Moreover, the Defence denies that Gatete facilitated the transport of *Interahamwe*.<sup>120</sup>

128. Turning first to the Prosecution evidence, the Chamber notes that the fundamental features of the two witnesses' accounts are largely consistent. Both testified that on the morning of 7 April, they went to the Rwankuba sector office to assess the situation after hearing about the President's death. Both described Gatete arriving at the office in a saloon vehicle, accompanied by *Bourgmestre* Mwange. Following them was a pickup vehicle carrying *Interahamwe*. Both witnesses saw Gatete instruct the *Interahamwe* to kill Tutsi civilians and leave soon after issuing the instructions.<sup>121</sup> The Chamber notes some differences in the precise details of the witnesses' testimonies, such as the exact words spoken by Gatete, whether he spoke before or after the arrival of the second vehicle, and whether *Conseiller* Bizimungu was present.<sup>122</sup> However, such differences can be explained by varying vantage

<sup>118</sup> The Chamber has also considered the evidence of Prosecution Witness BBJ who testified that Gatete "often held meetings with [*Interahamwe* or *Impuzamugambi*] in the *secteur* office of Rwankuba, Gakenke and in other places like Gakoni, where they were taught to operate weapons.... The Accused had promised to reward them. He had told them, 'The day is coming when you will sleep with their daughters and wives and you are going to eat their cows'". T. 5 November 2009 p. 25. The Chamber finds this brief evidence insufficient to support findings beyond reasonable doubt and elsewhere, it has not accepted Witness BBJ's evidence without adequate corroboration. See II.4; II.5.

<sup>119</sup> Indictment paras. 14-17, 31, 34; Prosecution Closing Brief paras. 565-566, 577-593. In considering the evidence and making its findings, the Chamber is mindful that the Prosecution's submissions are sometimes unclear with respect to which specific paragraphs of the Indictment (paragraphs 14, 15, 16 or 17) relate to Witnesses BBR and AIZ's evidence. See Prosecution Pre-Trial Brief paras. 33, 37-38, 73 and annexed witness summaries; Prosecution Closing Brief paras. 565-629. However, the allegations in these paragraphs are inextricably linked and very clear with respect to Gatete's instructions at gatherings to kill Tutsis in Rwankuba sector (paras. 14, 16, 17), the presence and involvement of *Bourgmestre* Mwange (para. 14) and *Conseiller* Bizimungu (paras. 14, 16, 17), as well as Gatete's role in facilitating the transport of *Interahamwe* (para. 15). Indeed, the Indictment provided the Accused with clear, consistent and timely notice of material facts relating to a gathering in Rwankuba sector on the morning of 7 April 1994, involving *Bourgmestre* Mwange and *Conseiller* Bizimungu. The Prosecution Pre-Trial Brief and annexed witness summaries provided further consistent details with respect to the location of the gathering. See Prosecution Pre-Trial Brief para. 33 (alleged meeting in Rwankuba sector on 7 April at which *Bourgmestre* Mwange and *Conseiller* Bizimungu were also present) and annexed witness summaries for Witnesses AIZ and BBW. Furthermore, the Defence addresses paragraphs 14, 16 and 17 together and raises no notice objections with respect to the Rwankuba sector office meeting. See Defence Closing Brief paras. 256-322.

<sup>120</sup> Defence Closing Brief paras. 98-105, 256-308, 318-322; Closing Arguments, T. 8 November 2010 p. 47.

<sup>121</sup> Witness BBR, T. 11 November 2009 pp. 4-7, 20-25; Witness AIZ, T. 11 November 2009 pp. 43-44, 46-49, 53-55, 57-61.

<sup>122</sup> See also Defence Closing Brief para. 265.

points, the passage of time, and the tense circumstances. Accordingly, the Chamber does not find them to be significant.

129. The Defence sought to discredit Witnesses AIZ and BBR based on the close links between the two witnesses.<sup>123</sup> It further highlighted that they had been housed at the same safe house, despite the Chamber's order to the contrary.<sup>124</sup> The Chamber, however, does not find that these points necessarily lead to a finding of collusion. Witnesses BBR and AIZ commenced and completed their evidence on 11 November 2009.<sup>125</sup> Accordingly, they would have had very limited, if any, opportunity to discuss their testimonies. Moreover, as noted above, there were a number of differences in the precise details of their accounts. In sum, while the Chamber has considered the points raised by the Defence, it finds these insufficient to conclude that the two witnesses colluded to untruthfully implicate the Accused.<sup>126</sup>

130. The Defence further argues that Gatete's name was absent from any Rwankuba Gacaca proceedings which ran from 2003, and that Witnesses BBR and AIZ failed to mention Gatete in their testimonies during Gacaca proceedings concerning events in Rwankuba in April 1994.<sup>127</sup> However, the Chamber considers that the absence of Gatete's name from such proceedings is not significant. Indeed, it is highly speculative to suggest that the general absence of information about an accused in other judicial proceedings necessarily suggests that he was not involved.<sup>128</sup> Moreover, the Chamber recalls that Witnesses BBR and

<sup>123</sup> The Defence refers to close links between Prosecution Witnesses BBR, AIZ and BBT. The Chamber discusses the evidence of Witness BBT elsewhere (II.3). In particular, the Defence submits that the three witnesses grew up together, attended the same school, knew each other well, and have been neighbours for decades. Defence Closing Brief para. 261; Closing Arguments, T. 8 November 2010 p. 46.

<sup>124</sup> Defence Closing Brief para. 262; T. 11 November 2009 pp. 71, 73. See also Closing Arguments, T. 8 November 2010 p. 46. Although Witness BBT testified on 10 November 2009 and was subsequently housed together with Witnesses AIZ and BBR, Witness BBT appears to have testified about an entirely different gathering to that described by Witnesses AIZ and BBR. Elsewhere, the Chamber discusses Witness BBT's evidence and has not accepted it in the absence of adequate corroboration (II.3).

<sup>125</sup> The Defence misrepresents the record by asserting that Witness BBR also testified on 10 November 2009. See Defence Closing Brief para. 262. Rather, he commenced and completed his evidence on 11 November 2009, immediately before Witness AIZ, who also completed his evidence that day.

<sup>126</sup> See for example *Karera* Appeal Judgement paras. 231-235.

<sup>127</sup> Defence Closing Brief paras. 270-271, 280, 289, 292-295; T. 11 November 2009 pp. 34, 69. The Chamber also notes that Defence Witness LA41 testified that, in at least one of the Gacaca jurisdictions within Rwankuba sector, no person accused Gatete of committing crimes there, although Gacaca trials did take place with respect to former *Bourgmestre* Mwangi and former *Conseiller* Bizimungu, as well as a person called Charles Kayibanda, an *Interahamwe* leader. T. 2 March 2010 pp. 21-23, 43-44. Witness LA43 also testified that, during Gacaca proceedings, at the information-gathering phase, accused persons did not state that they were incited by anyone to commit crimes. T. 2 March 2010 pp. 62-63, 83. However, without further information about these trials, the Chamber can attach little, if any, weight to this evidence in determining Gatete's responsibility for the crimes alleged in the Indictment. Under the circumstances, the Chamber finds this point insufficient to cast doubt on the Prosecution evidence discussed later.

<sup>128</sup> See *Rutaganda*, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006 para. 13, quoting *Kajelijeli* Appeal Judgement para. 176; *Niyitegeka*, Decision on Request for Review (AC), 30 June 2006 para. 70, citing *Niyitegeka* Appeal Judgement para. 180. In any event, while parallel proceedings about the same crime as that charged against the accused may, in certain circumstances, provide relevant background or context, such evidence is not dispositive. Indeed, where courts rely on different records, it is conceivable that their results may vary. "[T]wo judges, both acting reasonably, can come to different conclusions on the basis of the same evidence." See *Kayishema and Ruzindana* Appeal Judgement para. 143.

AIZ testified in Gacaca proceedings relating to particular individuals.<sup>129</sup> Accordingly, it is reasonable that they would not necessarily have volunteered or been asked information about Gatete.

131. The Chamber next considers the individual merits of the Prosecution evidence. Turning first to Witness BBR, the Chamber has no reservations about his ability to identify the Accused in April 1994. He had known Gatete since the witness was young, they had lived in the same *cellule*, and had known Gatete as the *bourgmestre* of Murambi commune.<sup>130</sup>

132. The Chamber addresses points raised by the Defence to cast doubt on Witness BBR's reliability.<sup>131</sup> In particular, that he holds a specific position of authority does not, in the Chamber's view, necessarily undermine his impartiality.<sup>132</sup> Nor does the Chamber consider it significant that he gave a statement to Tribunal investigators in May 1998 at the Murambi commune office. The witness explained that the investigators informed the sector administrators that they had to interview persons at the commune office.<sup>133</sup> There is no basis for finding that he would have been improperly influenced and this point does not necessarily render his sworn testimony in this proceeding unreliable.

133. Turning to the merits of Witness BBR's evidence, the Defence submits that he could not have witnessed the gathering, or heard what was said, as there was a row of houses between the forest in which he was hiding, and the sector office.<sup>134</sup> However, Witness BBR consistently maintained that he saw Gatete in the sector office courtyard. His testimony describing Gatete's actions and words was clear and compelling.<sup>135</sup> As noted at the outset, it is also largely corroborated by Witness AIZ's account. Accordingly, Witness BBR's responses to questions regarding the layout of the area do not raise doubt with respect to his evidence that he saw and heard Gatete. In any event, his testimony distinguished between the

<sup>129</sup> Witness BBR, T. 11 November 2009 pp. 33-34; Witness AIZ, T. 11 November 2009 p. 69. The Chamber has also considered Witness LA41's testimony that Witnesses BBR and AIZ testified in Gacaca proceedings but did not accuse Gatete. T. 2 March 2010 pp. 22-23. Moreover, the Chamber is mindful of the Defence submission at paragraph 280 of the Defence Closing Brief. The Chamber has not detailed those submissions here in order to protect the identities of Witnesses BBR and AIZ. The Chamber does not find that the point raised by the Defence necessarily casts doubt on the witnesses' reliability.

<sup>130</sup> Witness BBR also identified the Accused in court. T. 11 November 2009 pp. 2-4, 20.

<sup>131</sup> Defence Closing Brief paras. 279-288.

<sup>132</sup> Defence Closing Brief para. 261; T. 11 November 2009 pp. 13, 30. Moreover, in the Chamber's view, the fact that Witness BBR lodged complaints against certain people in Rwankuba sector does not render him partial or unreliable. He acknowledged that he lodged complaints against certain persons when he became aware of their acts during the killings and those persons were subsequently arrested. T. 11 November 2009 p. 38.

<sup>133</sup> T. 11 November 2009 pp. 11, 28.

<sup>134</sup> Defence Closing Brief para. 281. Witness BBR specifically referred to three houses and a road located between the forest and the sector office. T. 11 November 2009 pp. 21 ("And the eucalyptus forest I mentioned belonged to the person called Nkurunziza. It is a forest planted in front of – or opposite his house.... on a small piece of land, and I was standing in that forest behind the houses.... In fact, there is a road, and between the road and Nkurunziza's house there is a small forest."), 22-23 ("Q. Now, Witness, between Nkurunziza's house and the *secteur* office there were some buildings, some shops, weren't there? A. Yes there were three houses above the road. At the time in question there were three houses.... Q. And to be clear, these houses are between Paul's house and the *secteur* office? A. That's correct.").

<sup>135</sup> T. 11 November 2009 pp. 7 ("Yes, I clearly heard his voice. Moreover, I could see him. He had alighted from his vehicle, and he was standing in front of the *Interahamwe*, to whom he spoke."), 24 ("Q. And did he stand in front of the group of people or in amongst them? A. He was in front of the spectators. Q. Did he have his back towards where you were or his front? A. At the beginning of the speech, his back was turned in my direction, but he moved gradually so that sometimes he would turn and face me."), 22, 24.

sector office building and its courtyard. He did not testify that the houses were between the forest and the large sector office courtyard, where he saw Gatete and the *Interahamwe*.<sup>136</sup> Nor did he state that the houses blocked his line of vision, such that he could not have observed events in the courtyard.<sup>137</sup>

134. Moreover, his evidence was consistent with respect to the short distance between where he was hiding and where he saw Gatete.<sup>138</sup> Indeed, it is not disputed that the sector office was close to Nkurunziza's property.<sup>139</sup> Accordingly, having carefully examined Witness BBR's evidence on this point, as well as in its entirety, the Chamber does not have reservations about his ability to have observed events in the Rwankuba sector office courtyard from his hiding place.

135. The Defence further confronted Witness BBR with the fact that he had never mentioned the arrival of the second vehicle, namely, the Hilux pickup carrying the *Interahamwe*, in his May 1998 statement.<sup>140</sup> However, he explained that the investigators asked questions only in relation to Gatete, and he was not asked a question concerning the other vehicle.<sup>141</sup> The Chamber considers the explanation reasonable. He may not have volunteered information about the second vehicle, or been asked about it, as Gatete was not in it.

<sup>136</sup> T. 11 November 2009 pp. 22-23 ("When I talk of that distance, I am referring to the edge of the forest right up to the courtyard of the *secteur* office where Gatete was standing.... I could estimate that distance at about 20 to 25 metres. I am referring to the edge of the forest to the courtyard where Gatete was. I am not referring to the edge of the forest to the wall of the *secteur* office.... Q. Now, Witness, between Nkurunziza's house and the *secteur* office there were some buildings, some shops, weren't there? A. Yes there were three houses above the road. At the time in question there were three houses.... Q. And to be clear, these houses are between Paul's house and the *secteur* office? A. That's correct. Q. Witness, before the break we spoke about houses that were between the eucalyptus forest and the *secteur* office; yes? A. Yes, there were three houses between the two areas, between the forest and the *secteur* office".), 24 ("In front of the *secteur* office building there is some space, which is more or less vast. And between the road and the *secteur* building there was about 20 metres; and the width of the road was about 16 metres; and beyond the road there were buildings; and behind the buildings there was a forest. So the houses were between the *secteur* office and the woods.... I told you that the courtyard of the *secteur* building is more or less large. It is in that courtyard that his vehicle was parked and that the *Interahamwes* came to meet him. He was, therefore, in the courtyard in front of the *secteur* office. And the courtyard separates the *secteur* office and the road.").

<sup>137</sup> T. 11 November 2009 p. 22 ("JUDGE MUTHOGA: And is it by a straight line, or is it in another direction? Between where you were standing and the *secteur*'s office and Nkurunziza's house, was that a straight line or was it different positions? A. I made an estimate following a straight line. To estimate the distance you have to use a straight line, but I did not measure it.").

<sup>138</sup> T. 11 November 2009 pp. 22-23 ("Q. And what is the distance between the forest and the *secteur* office. A. About 20 steps. I did not measure the distance, but I would estimate it at about 20 to 25 steps. Q. And what is the difference between Nkurunziza's house and the *secteur* office? A. That distance is about 60 steps.... I did not measure the distance. When I talk of that distance, I am referring to the edge of the forest right up to the courtyard of the *secteur* office where Gatete was standing.... I could estimate that distance at about 20 to 25 metres. I am referring to the edge of the forest to the courtyard where Gatete was.... I was hiding in the forest, which was very close to the border of the small forest.... [F]rom ... Nkurunziza's house, to the place where I was, there was a distance of about 20 to 30 metres from the place where I was in the forest to the door of Mr. Nkurunziza's house.").

<sup>139</sup> T. 3 March 2010 p. 33. Witness LA40 referred to Nkarunziza as a neighbour. Given Witness LA40's testimony about the location of his own house, Nkarunziza's house would also have been close to the Rwankuba sector office. T. 3 March 2010 p. 5.

<sup>140</sup> Defence Closing Brief paras. 282-284.

<sup>141</sup> T. 11 November 2009 pp. 20-21.



136. Lastly, the Defence sought to challenge Witness BBR’s evidence, regarding the killing of Tutsis and the attack on Tutsi *Responsable* Macali’s house, through the testimony of Claver Mutimura, who testified that a group of Tutsis provoked a confrontation there with a group of Hutus.<sup>142</sup> However, the Chamber does not find Mutimura’s account compelling. His evidence instead suggests that he went to Macali’s house, as other Hutu men did, to participate in an attack on Macali and other Tutsis who had gathered there.<sup>143</sup> Accordingly, his evidence is insufficient to cast doubt on Witness BBR’s evidence that an attack took place near the home of the Tutsi *Responsable* Macali. In sum, the Chamber finds that Witness BBR provided a consistent and compelling account.

137. Turning to Witness AIZ, the Chamber has no reservations about his ability to identify the Accused in April 1994. The witness knew Gatete as the former *bourgmestre* of Murambi commune and had known him for many years. They had attended the same school and lived in the same area.<sup>144</sup>

138. The Defence sought to discredit Witness AIZ on the basis that, at the time of his testimony, he was in a specific position of authority.<sup>145</sup> The Chamber does not consider that this necessarily renders him partial or unreliable. Nor, in the Chamber’s view, does the fact that he gave his May 1998 statement to Tribunal investigators at the home of the head of a genocide survivors group, necessarily render his sworn testimony in this proceeding unreliable.<sup>146</sup>

139. The Defence submits that Witness AIZ’s evidence, that he chose to go to the Rwankuba sector office after hearing about the President’s death, rather than flee with his family to Giti commune, which was more secure and nearer to his home, is implausible.<sup>147</sup> The witness explained that he first wanted to find out about the prevailing situation as he was concerned and curious about what would happen next.<sup>148</sup> The Chamber finds it reasonable that he did not choose to immediately flee, but decided to first assess the situation within his sector by going towards the sector office, which was within walking distance from his home.<sup>149</sup> Although under cross-examination, he stated that he in fact went to visit his friend

<sup>142</sup> Defence Closing Brief paras. 285-287.

<sup>143</sup> Mutimura acknowledged that Tutsis, who included women and children, had gathered at Macali’s house because he was a Tutsi *responsable*. He further accepted that the Hutus who went there only consisted of men. The only justification he gave for Hutu men going to Macali’s house was that Tutsis had gathered there. He provided no convincing basis for why he had proceeded to go to Macali’s house. He further conceded that Tutsis went into the fields there to hide and were chased by Hutus. Three *Interahamwe* and a Presidential Guard were among the Hutus. The witness accepted that a Presidential Guard soldier chased the Tutsis there. T. 4 March 2010 pp. 12-14. Moreover, the Chamber has already noted at the outset of its deliberations, that the evidence establishes that Tutsis were targeted at that time. Under the circumstances, the Chamber is not convinced by Mutimura’s testimony that Tutsis provoked the Hutus at Macali’s house. Rather, his evidence suggests that Hutus went to attack Tutsis who had gathered there.

<sup>144</sup> Witness AIZ also identified the Accused in court. T. 11 November 2009 pp. 42-43, 66.

<sup>145</sup> Defence Closing Brief para. 261. The Defence also suggested to Witness AIZ that he assisted in the identification and arrest of people suspected of involvement in attacks in Rwankuba sector in 1994 so that they were subsequently arrested, which he denied. T. 11 November 2009 p. 72. See also Mutimara, T. 3 March 2010 pp. 73-74. The Chamber does not consider this point sufficient to cast doubt on Witness AIZ’s evidence.

<sup>146</sup> T. 11 November 2009 pp. 64-65. See also Defence Closing Brief para. 278.

<sup>147</sup> Defence Closing Brief paras. 272-276.

<sup>148</sup> T. 11 November 2009 pp. 43-44, 48.

<sup>149</sup> Chambers Exhibit 1 (Confidential Report on Site Visit, 5 November 2010) para. 14 (“the distance between Witnesses AIZ and BBT’s house and the Rwankuba sector office is 1.8 km.”). Witness AIZ stated that the



on the morning of 7 April, he explained that he could not have approached the authorities to obtain further information as he feared they would harm him, and had intended to visit his friend, who lived just 15 metres from the sector office. This explanation is not necessarily inconsistent with his earlier testimony. His reason for going to the area of the sector office, namely, to enquire about the prevailing situation, was consistent.<sup>150</sup>

140. The Defence also confronted Witness AIZ with his May 1998 statement given to Tribunal investigators, in which he stated that from his hiding spot, he also observed the start of the massacres. He, however, denied that he had said this and maintained that the violence had not yet started.<sup>151</sup> It is possible that an error in the recording of the statement could have been made, particularly if the witness referred to subsequent killings, as he did in his testimony. Under the circumstances, the Chamber considers this point minor and finds it insufficient to cast doubt on his sworn testimony.

141. Furthermore, the Defence sought to discredit Witness AIZ by highlighting inconsistencies between his evidence and that of Witness BBT with respect to their activities in 1994, how well they knew each other, and how often they would meet.<sup>152</sup> However, elsewhere, the Chamber has not accepted Witness BBT's evidence (II.3). Moreover, the Chamber finds Witness AIZ's explanation with respect to how well he knew and how often he saw Witness BBT, to be credible. Indeed, Witness AIZ acknowledged that he travelled to Arusha with Witness BBT and that they stayed together in the same safe house, while the latter testified that he had not seen Witness AIZ since the previous month.<sup>153</sup> Witness AIZ also acknowledged that Witness BBT came to his house on the morning of 7 April 1994 and admitted that he saw Witness BBT regularly.<sup>154</sup> Furthermore, in the Chamber's view, Witness

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distance between his home and the sector office is less than a kilometre. T. 11 November 2009 p. 48. The Chamber has also considered Defence evidence regarding the distance between Witness AIZ's house and the Rwankuba sector office. See Witness LA43, T. 2 March 2010 p. 65 ("Between 30 to 32 minutes on foot, because there's a hill. Probably 40 to 45 minutes. In any event, you cover that distance in less than an hour."); Witness LA40, T. 3 March 2010 p. 27 ("I could cover that distance in between 30 to 40 minutes, of course, for someone who was well or fit."). In sum, the Chamber finds Witness AIZ's explanation for wanting to go to the Rwankuba sector office, plausible, particular, as confirmed by the Defence evidence, it was less than an hour away.

<sup>150</sup> T. 11 November 2009 pp. 54 ("As a matter of fact, I had a friend who lived not far from the *secteur* office. It was to his home that I went to enquire about the situation. You would understand fully well that under those circumstances I could not approach the authorities, the administrative authorities, to obtain further information since I was afraid that those authorities would harm me."), 55 ("Q. Witness, when you left your house 10 minutes after you heard the news of the death of the president, where were you intending to go, to your friend's house or to the *secteur* office? A. I intended to go to my friend's house. Q. Do you remember saying to the Prosecution earlier this afternoon when he asked you what you did after you heard the news? "I was curious to find out what would happen, so I went to the *secteur* office to acquaint myself with the prevailing situation." Do you remember giving that testimony, Witness? A. Yes, I remember. You should understand that that man lives not far from the *secteur* office about 15 metres from that office. I, therefore, did not want to be misunderstood as having said that I wanted to go to the *secteur* office. I intended to go to my friend's home not far from the *secteur* office, because while at his home, it was easy for me to find out the prevailing situation.."); Defence Exhibit 22 (name of Witness AIZ's friend).

<sup>151</sup> T. 11 November 2009 p. 61; Defence Closing Brief para. 276 (i).

<sup>152</sup> Defence Closing Brief paras. 276 (ii)-277.

<sup>153</sup> Witness AIZ, T. 11 November 2009 pp. 66-67; Witness BBT, T. 10 November p. 81.

<sup>154</sup> T. 11 November 2009 pp. 66, 69.

AIZ's testimony that he did not know about Witness BBT's general activities in 1994, but knew where the latter fled to in April 1994, is not necessarily contradictory.<sup>155</sup>

142. Lastly, the Chamber has also considered other evidence in the record regarding the timings of Gatete's movements on 7 April, as well as the vehicle he used that day.<sup>156</sup> However, the Chamber notes that the timings provided by Prosecution witnesses were estimates, and considers that the differences in the description of vehicles is not necessarily material, given the passage of time and the possibility that Gatete travelled in different vehicles. In any event, the Chamber has not accepted the other Prosecution evidence regarding events on 7 April.<sup>157</sup> Accordingly, this point does not cast doubt on the accounts of Witnesses BBR and AIZ.

143. In sum, the Chamber finds that Witnesses BBR and AIZ both provided consistent and compelling first-hand accounts of Gatete's arrival at the Rwankuba sector office on the morning of 7 April, and his instructions to *Interahamwe* to kill Tutsis. Both also recalled the arrival of additional *Interahamwe*. That only Witness AIZ referred to the gathering of about 20 *Interahamwe* armed with clubs and *Conseiller* Bizimungu prior to Gatete's arrival is, in the Chamber's view, not significant. Witness BBR later saw some of the same *Interahamwe*, who had gathered at the sector office, go with *Conseiller* Bizimungu towards the Mumpara business centre, from where an attack was subsequently launched.

144. The Chamber, however, considers that Witnesses BBR and AIZ's evidence is insufficient to conclude that Gatete also transported or facilitated the transport of *Interahamwe*. Neither witness testified that *Interahamwe* arrived with Gatete. While *Interahamwe* arrived shortly after Gatete, it is possible that others were responsible for facilitating that transport. Ultimately, the Chamber does not find that the only reasonable conclusion, based on the evidence, is that Gatete also facilitated the transport of the *Interahamwe* who gathered outside the Rwankuba sector office.

145. Turning to the Defence case, it submits that Gatete could not have ordered the killing of Tutsis in Rwankuba sector as during his time as Murambi commune *bourgmestre*, he had appointed Tutsis within the Rwankuba administration. It further argues that Gatete's Tutsi family members lived in the sector at the time he allegedly urged people to kill Tutsis.<sup>158</sup> The Chamber, however, is not persuaded by this argument. Evidence of Gatete having good relations with Tutsis in the past, and having Tutsi relatives in Rwankuba sector, is not sufficient to raise doubt that he also gave orders that Tutsis there be killed.

146. The Chamber next considers the Prosecution evidence in light of the testimonies of Defence Witnesses LA41, LA43 and LA40, all of whom testified that no meeting took place at the Rwankuba sector office on the morning of 7 April and that Gatete and other officials did not gather there that day.<sup>159</sup> The Chamber recalls that the Defence carries no independent burden when seeking to raise doubt with respect to elements of the Prosecution case.<sup>160</sup> However, the Chamber considers the Defence evidence to be of limited probative value.

<sup>155</sup> T. 11 November 2009 pp. 68-69.

<sup>156</sup> Defence Closing Brief paras. 98-105, 133.

<sup>157</sup> See II.1; II.3.

<sup>158</sup> Defence Closing Brief paras. 268-269.

<sup>159</sup> Defence Closing Brief paras. 290-291.

<sup>160</sup> See for example *Zigiranyirazo* Appeal Judgement paras. 17-18.



Indeed, all three witnesses accepted that they did not go to the sector office and could not see it at all times during the morning of 7 April.

147. In particular, Witness LA41 estimated that she went to buy fish at the lake between 6.00 and 7.00 a.m., and was working inside her establishment for the following two hours. The timings she provided, and those provided by Witnesses BBR and AIZ, were estimates.<sup>161</sup> It is possible that she could have returned to her business after the gathering at the sector office.<sup>162</sup> Moreover, while the sector office could be seen from outside her place of work, it was not visible from the backyard, where she worked for two hours after returning from the lake.<sup>163</sup> Accordingly, her account is not necessarily inconsistent with the Prosecution evidence and is insufficient to raise doubt with respect to the compelling and consistent testimonies of Witnesses BBR and AIZ.

148. Similarly, Witness LA43 did not go to the sector office but remained at home on the morning of 7 April. She testified that the front of the office was visible from in front of her house, but acknowledged that she was unable to see it from inside her home. She further accepted that she did not remain in front of her house for the entire day.<sup>164</sup> More importantly, given the distance between her house and the sector office, the Chamber has significant doubts that she was able to monitor events at the Rwankuba sector office on the morning of 7 April.<sup>165</sup> Accordingly, her testimony is insufficient to cast doubt on the compelling Prosecution evidence.

149. Witness LA40 described his movements on the morning of 7 April and how he remained close to the sector office. However, the Chamber has considered a number of factors in weighing his evidence. In particular, he moved around that morning and was first occupied with milking his cow, then with discussing recent events with people at the trading centre and subsequently went to his father's home for a brief visit, sometime between 8.00 and 9.00 a.m., from where he could not have monitored events at the sector office as,

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<sup>161</sup> Witness LA41, T. 2 March 2010 p. 34 (“Q. All right. So when you arrived at [your establishment] you told us that was also an estimate of the time. Have you now changed your mind and decided you arrived at exactly 7 a.m. or was your reference to 7 a.m. an estimate? A. ... You know, back home in Rwanda, we are not in the habit [sic] of checking the time, precise time, whenever you start an activity. It could have been six – some minutes past six. It could have been some minutes after seven. I had no interest checking the time each time I arrived at a place. Q. All right. So you can agree with me then that if someone had arrived at the Rwankuba *secteur* office before seven that you wouldn't have seen them? A. You should understand that yourself, because I had not yet arrived at the *secteur* office before seven.”). Witness BBR did not state a precise time but went to the sector office after hearing the 7.00 a.m. radio broadcast of the President's death. Witness AIZ also went after the radio announcement and saw the *Interahamwe* outside the sector office at about 8.00 a.m. but was only able to estimate the time.

<sup>162</sup> T. 2 March 2010 pp. 5-7, 30-31, 33-34, 38, 47-48.

<sup>163</sup> T. 2 March 2010 p. 42 (“Q. And on the morning of the 7<sup>th</sup> of April 1994, when you were [working] for two hours, were you inside [your establishment] or outside [it]? A. I was outside in the backyard but I have told you I did not see anything. Q. And from the backyard you can't see the *secteur* office? A. No, there was an obstacle. There was another house which would block your view and you cannot see the *secteur* office.”), 47.

<sup>164</sup> T. 2 March 2010 pp. 54-55, 62-63, 77-78. Witness LA43 further stated that normally, when a meeting was to take place at the sector office, people were so informed, sometimes using a megaphone. T. 2 March 2010 p. 63. The Chamber, however, notes that the gathering referred to by Witnesses AIZ and BBR was not a normal meeting intended for all members of the public, but was directed at a group of *Interahamwe*. Accordingly, it is reasonable that not all residents of the sector would have been informed about it.

<sup>165</sup> Chambers Exhibit 1 (Confidential Report on Site Visit, 5 November 2010) para. 14; T. 2 March 2010 p. 77.



according to his evidence, it was almost a kilometre away.<sup>166</sup> Notably, while the times provided by Prosecution Witness AIZ were estimates, he referred to seeing the gathering at about 8.00 a.m. Witness BBR did not provide a precise time. Furthermore, considering those who were present at the gathering (authorities and *Interahamwe*), it was not one which all members of the public would have been invited to attend. Having taken all of these points into consideration, the Chamber finds Witness LA40's testimony insufficient to cast doubt on the consistent and compelling accounts of Witnesses BBR and AIZ.

150. Lastly, the Chamber has also considered the Defence submission that there was a defamation campaign against Gatete.<sup>167</sup> The Chamber has considered the evidence referred to by the Defence, including the testimony of Claver Mutimura. However, it does not find it sufficient to raise doubt with respect to the convincing and consistent evidence of Witnesses BBR and AIZ.

151. In sum, based on the testimonies of Witnesses BBR and AIZ, the Chamber finds beyond reasonable doubt that, on the morning of 7 April 1994, about 20 *Interahamwe* armed with clubs and *Conseiller* Jean Bizimungu, gathered in the Rwankuba sector office courtyard. Gatete subsequently arrived in a vehicle, accompanied by *Bourgmestre* Jean de Dieu Mwange. Shortly after, a pickup vehicle arrived, carrying *Interahamwe* and a communal policeman. In total, about 40 *Interahamwe* had gathered at the sector office. At the gathering, Gatete issued instructions to the *Interahamwe* to kill Tutsis, telling them to "work relentlessly". Before leaving in the direction of Rwimitereri sector, Gatete gave further directions to "sensitise" others to killings.

152. Just hours after the gathering, assailants, who included *Interahamwe*, commenced attacks on Tutsis in and around Nyagasambu *cellule*. Ultimately, soldiers, police and Hutu civilians also joined in the attacks. Some of the *Interahamwe*, who had gathered at the sector office, went with *Conseiller* Bizimungu towards the Mumpara business centre, from where an attack was subsequently launched. Another attack took place near the house of the Tutsi *responsable*, Macali, resulting in his death.<sup>168</sup> Given these circumstances, particularly that *Interahamwe* were involved, as well as the proximity in time and place of the attacks to the

<sup>166</sup> T. 3 March 2010 pp. 7-9, 11-13, 14, 41-43, 48-51. The Chamber also notes that Kanarura's bar was across the road from the Rwankuba sector office. See Chambers Exhibit 1 (Confidential Report on Site Visit, 5 November 2010) para. 10. It further notes the Defence submission that the Prosecution has attempted to mould its case to Witness LA40's evidence by suggesting that the gathering at Kanarura's bar was effectively the same as gathering in front of the Rwankuba sector office. See Defence Closing Brief paras. 296-308. The Chamber however does not consider it necessary to address this point as the Prosecution evidence clearly refers to the gathering taking place outside the sector office.

<sup>167</sup> Defence Closing Brief paras. 35-58; T. 20 October 2009 p. 8.

<sup>168</sup> Witness BBR, T. 11 November 2009 pp. 7, 8 (after the gathering, the *Interahamwe* and *Conseiller* Bizimungu took the direction of Mumpara, located just one kilometre from the witness's residence), 8-9 (they managed to repel the first attack which was launched from Gituza, in Rwankuba sector and lasted less than ten minutes), 8-9 (the second attack from Mumpara lasted longer and included soldiers, police, *Interahamwe* and Hutu civilians), 9 ("Gatete had asked the *Interahamwe* to call on other members of the population to organise attacks. Most Hutus had joined the *Interahamwe* in order to confront the Tutsis. The attacks, therefore, comprised soldiers, *Interahamwe* and other members of the ordinary population."), 9 (the third attack, near Macali's house, was at about 3.00 or 3.30 p.m. and could not be repelled), 10, 27 (the witness's own house was torched that day), 27-28. Mutimura also referred to male Hutu civilians, a Presidential Guard, three soldiers, a policeman and three *Interahamwe* who were present at Macali's house when he was killed. T. 3 March 2010 pp. 65-67, 69-71; T. 4 March 2010 pp. 8, 12-15.

gathering, the only reasonable conclusion based on the evidence is that the *Interahamwe*, who received instructions from Gatete that morning, also participated in the killing of Tutsis.

153. Moreover, it is reasonable that the attacks did not start immediately after the gathering. Indeed, Gatete instructed the crowd at the gathering to “sensitise” others to the killings.<sup>169</sup> Given that attacks commenced a few hours later, increased in intensity as the day progressed, and that the assailants ultimately included not only *Interahamwe*, but also soldiers, policemen and Hutu civilians, the only reasonable conclusion based on the evidence is that the *Interahamwe* and authorities who were present at the gathering complied with Gatete’s instructions to “sensitise” others to killings and marshalled further reinforcements for the attacks. As a result, several Tutsi families were killed. Witness BBR counted at least 25 to 30 bodies of victims who included several family members. The Tutsi *responsable*, Damscène Macali, was also killed during the attacks.

154. However, the Prosecution has not established beyond reasonable doubt that Gatete distributed weapons to the *Interahamwe* and others gathered outside the Rwankuba sector office on 7 April. Nor has it been established that Gatete transported or facilitated the transport of *Interahamwe* in Rwankuba sector for the purposes of carrying out the killings.

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<sup>169</sup> Witness AIZ, T. 11 November 2009 p. 49.



3. AKARAMBO CELLULE, 7 APRIL 1994

3.1 Introduction

155. The Indictment alleges that, on the morning of 7 April 1994, Gatete facilitated the transport of *Interahamwe* through various Murambi commune sectors and *cellules* and ordered them to kill Tutsi civilians. Among the *Interahamwe* were persons called Rupia, Serena Gauframa and Rwasibo. In particular, it is alleged that Gatete and *Bourgmestre* Jean de Dieu Mwangé transported a convoy of armed *Interahamwe* to Akarambo *cellule*. There, Gatete ordered those *Interahamwe* to burn, loot and destroy Tutsi homes and to rape and kill Tutsi civilians. As a result, the *Interahamwe* raped and killed Tutsis in Akarambo *cellule*.<sup>170</sup> Among those killed were Aisha Murekeyisoni and Witness BCS's family and on about 8 April, Witness BAT was raped by two *Interahamwe* at her home in Akarambo *cellule*. Reference is made to the testimonies of Witnesses BBT, AIK, BCS, and BAT with respect to events in Akarambo *cellule*.<sup>171</sup>

156. The Defence denies that Gatete transported *Interahamwe* and gave orders to them to kill Tutsis. While it does not dispute that Witness BCS's father and Aisha Murekeyisoni were killed, it denies Gatete's involvement in these killings, as well as the rape of Witness BAT. Reference is made to Witnesses LA16, Afiza Nikuze and LA11.<sup>172</sup>

3.2 Evidence

Prosecution Witness BBT

157. In 1994, Witness BBT, a Tutsi, was a farmer living in Rwankuba sector, Murambi commune. On 7 April, after hearing about the President's death, he sent his wife and children to Giti commune. Sometime between 12.30 and 1.30 p.m., he followed the road in search of a place to hide.<sup>173</sup>

158. Between 1.00 and 2.00 p.m., he was crossing the road when he saw Gatete's white double-cabin pickup vehicle approaching. It was driven by Jean de Dieu Mwangé and carried

<sup>170</sup> The Chamber notes that the evidentiary record is equivocal with respect to the precise location of Akarambo *cellule*. See Witness BBT, T. 10 November 2009 pp. 64-65, 72, 87; Prosecution Exhibit 5 (personal identification sheet) (Akarambo *cellule*, Kiramuruzi sector); Prosecution Exhibit 19 (personal identification sheet) (Akarambo *cellule*, Rwankuba sector); Prosecution Exhibit 20 (personal identification sheet) (Akarambo *cellule*, Rwankuba sector); Prosecution Exhibit 21 (personal identification sheet) (Akarambo *cellule*, Kiramuruzi sector); Chambers Exhibit 1 (Confidential Report on Site Visit, 3 November 2010) para. 8 (suggesting Akarambo *cellule* was in Kiramuruzi sector).

<sup>171</sup> Indictment paras. 15, 31, 34, 39-40; Prosecution Closing Brief paras. 30-31, 37, 114, 160, 165, 229-233, 630-696. The Chamber notes that Prosecution Witness BVQ testified about Gatete's presence in Gakenke sector on 7 April and issuing orders to *Interahamwe* to find and kill Witness BVQ's family, as well as his neighbour's families. However, the Chamber has not accepted Witness BVQ's testimony (see II.8), nor will it do so in this instance. In any event, the Chamber notes that the Prosecution does not rely on Witness BVQ's evidence in support of paragraph 15 of the Indictment.

<sup>172</sup> Defence Closing Brief paras. 74, 158-255, 323-380, 702-703, 1095, 1199; Closing Arguments, T. 8 November 2010 pp. 35, 42-45, 47-48.

<sup>173</sup> Prosecution Exhibit 18 (personal identification sheet); T. 10 November 2009 pp. 54-56, 62-68; Defence Exhibit 15 (name written by Witness BBT). The witness did not specify where the road that he followed was located.



*Interahamwe*. The witness was frightened and hid in a sorghum farm in Akarambo *cellule*. From there, he saw Gatete alight from the vehicle and tell “local inhabitants” that the killing of Tutsis had started elsewhere, and that they too should start killing Tutsis. He added that before killing Tutsis, they should first loot their cattle and chicken. There were 60 to 70 *Interahamwe* armed with traditional weapons.<sup>174</sup>

159. After Gatete’s departure, Tutsis were killed and their homes torched. The witness remained in hiding until nightfall when he fled to Giti commune, which was safe for Tutsis. There, he found his wife and children.<sup>175</sup>

#### Prosecution Witness AIK

160. Witness AIK, a Tutsi, was a trader in 1994 and lived in Kiramuruzi sector, Murambi commune. He testified that Aisha Murekeyisoni, who was also Tutsi, was the president of the PL party at the commune level. After hearing about President Habyarimana’s death, Murekeyisoni went to hide at about 6.30 a.m. on 7 April. She later came out of hiding after being told by an *Interahamwe*, who claimed to be in charge of security, that there was nothing to fear.<sup>176</sup>

161. The witness also heard from another person that the *Interahamwe* had lied and that he was in fact organising an attack pursuant to Gatete’s instructions. According to the witness, the *Interahamwe* had met with Gatete at the commune office earlier that morning and had immediately gone to attack Murekeyisoni. All the *Interahamwe* of the *cellule*, who numbered around 2,000 and were armed with traditional weapons, participated in the attack at about 6.30 a.m. “Félicien”, the local *Interahamwe* leader, said that they should first kill Murekeyisoni and take their property later.<sup>177</sup>

162. Murekeyisoni was attacked with a machete, causing her to suffer head wounds. The *Interahamwe* told him that they would kill Murekeyisoni first and kill him later. At that point, Gatete arrived in his vehicle, but stopped only briefly. Members of the *Interahamwe* then left to participate in other killings.<sup>178</sup>

<sup>174</sup> T. 10 November 2009 pp. 55-56, 58-61, 66-67, 71-73, 88. Witness BBT was at least 10 metres away from where Gatete was speaking. T. 10 November 2009 p. 56.

<sup>175</sup> T. 10 November 2009 pp. 56-57, 59, 73-75, 85, 88. Witness BBT knew that the Nyagasambu *cellule responsable*, a Tutsi named Jean Damascène Macali, was killed. T. 10 November 2009 pp. 75-76.

<sup>176</sup> Prosecution Exhibit 22 (personal identification sheet); T. 12 November 2009 pp. 45-50, 52-53, 60, 64, 67, 91. See also Decision on Defence Motion for Exclusion of Evidence and Delineation of the Defence Case, 26 March 2010, para. 36 (ii), excluding evidence regarding a list allegedly published by Gatete in January 1994. See also T. 12 November 2009 pp. 52-53, 57. The Chamber notes that Witness AIK’s *cellule* of residence in 1994 appears to have been Akabuga *cellule* in Kiramuruzi sector. The Chamber has considered his evidence in this section, as it appears that Akarambo *cellule* was also in Kiramuruzi sector, and that his residence was in close proximity to Witness BCS’s home.

<sup>177</sup> T. 12 November 2009 pp. 48-50, 60-62, 65-66, 67. No explanation was offered or elicited as to how Witness AIK knew about the meeting. See T. 12 November 2009 p. 67 (“Q. What time did the militias come to your house in the morning? A. They first held a meeting at the *commune* office. And since I lived not far from the *commune* office, they immediately came to my house. It is true that there are other homes before you get to my home when you leave the *commune* office, but I was the first person to be attacked that morning after the meeting between Gatete and the *Interahamwe*.”).

<sup>178</sup> T. 12 November 2009 pp. 50, 59-62, 66-67, 82, 93. Witness AIK stated that Gatete had told the *Interahamwe* that they first had to kill Murekeyisoni. T. 12 November 2009 p. 50.

163. The witness could not recall the precise sequence of events. He fell unconscious after suffering a head wound and collapsed on the ground. When he regained consciousness, he tried to take Murekeyisoni to the hospital but his vehicle had been destroyed and its battery removed. Consequently, he went to his neighbour's house to borrow a battery but the neighbour refused to assist.<sup>179</sup>

164. He tried to take Murekeyisoni to a hospital but roadblocks had been mounted. He went to the Red Cross, which was located 500 metres from his home, for assistance. They took the witness and Murekeyisoni in their vehicle, but when they reached a roadblock, "attackers" punctured its tyres, forcing the Red Cross workers to flee. The witness tried to follow them, but the workers chased him away, fearing they would also be killed. He left Murekeyisoni at the roadblock. She died later in the day, when Gatete passed by there. Gatete asked the *Interahamwe* whether they had killed the witness and Murekeyisoni. The *Interahamwe* said that only Murekeyisoni had been killed, and Gatete told them to find the witness and kill him too. At the time, the witness was about 20 metres away, hiding behind a hedge.<sup>180</sup>

165. After hearing Gatete's orders, the witness went towards the mosque and hid in a banana plantation near his neighbour's house. The assailants pursued him. Later, the owner of the banana plantation told them that the witness had died. They found the witness's body and therefore stopped looking for him. He later heard that Gatete took Murekeyisoni's body to show to the *Interahamwe* that they had done their work properly.<sup>181</sup>

#### Prosecution Witness BCS

166. In 1994, Witness BCS, a Tutsi, was a secondary school student living in Kiramuruzi sector, Murambi commune. On the night of 6 April, he was at home with his family. At around midnight, Gatete, soldiers, gendarmes and an *Interahamwe* arrived at his home in a red Mitsubishi pickup truck. There were about 10 to 15 persons who arrived in that vehicle, including a communal policeman named Habibou and a cashier from the commune office called Nkundabazungu. They searched the house and said that they were looking for letters exchanged between the witness's family and *Inkotanyi*, as well as guns. The search took less than an hour and they found nothing.<sup>182</sup>

167. At around 5.00 a.m. the following morning, Gatete returned with *Interahamwe*. The witness watched from inside the house as they forced open the compound gate and took his father outside. Gatete held a pistol and accused the father of being among those who had killed the President. He then ordered that the father be killed and "cut up ... into pieces". The *Interahamwe* struck the witness's father on the head with an axe, killing him immediately. Gatete then ordered that the house be forced open and searched. The witness was forced out of the house and Gatete ordered that he and his family be killed, accusing them of being

<sup>179</sup> T. 12 November 2009 pp. 50, 61, 67-68, 81; Defence Exhibit 28 (name of Witness AIK's neighbour). Witness AIK testified that after Murekeyisoni was killed, he immediately left the scene, and went to hide in a banana plantation. T. 12 November 2009 pp. 60-61.

<sup>180</sup> T. 12 November 2009 pp. 61-63, 68-70, 82, Witness AIK also stated that Murekeyisoni died later, when she stayed in the Red Cross vehicle, at around 4.00 p.m. T. 12 November 2009 pp. 75, 77.

<sup>181</sup> T. 12 November 2009 pp. 59-63, 68 (Witness AIK was told that "sharp bits of wood had been pushed into her genitalia and that is how she was killed."), 70, 82, 93 (quoted).

<sup>182</sup> Prosecution Exhibit 5 (personal identification sheet); T. 21 October 2009 pp. 3-9, 21-23.

*Inkotanyis*. The witness was shot in the right shoulder as he tried to escape. He managed to run to his neighbour's house, but Gatete and the *Interahamwe* followed and caught him. The group, which was headed by Gatete and included Nkundabazungu, beat the witness and struck him with a machete, leaving him for dead.<sup>183</sup>

168. The witness was found by his Hutu neighbours, who took him to Kiziguro hospital but found members of the *Interahamwe* there. Consequently, the neighbours took the witness to Kiziguro parish that night. Two of the witness's sisters and an older brother also sought refuge at Kiziguro parish, where they were subsequently killed.<sup>184</sup>

#### Prosecution Witness BAT

169. In 1994, Witness BAT, a Tutsi, was a farmer living in Kiramuruzi sector, Murambi commune. On 8 April, she saw more than 30 *Interahamwe*, armed with traditional weapons, on the road in Akarambo *cellule*. Among them she recognised her neighbours, Karemera and Sabutimbili, son of Nyamuhara.<sup>185</sup>

170. Later, that same day, sometime between 9.00 and 11.00 a.m., she saw Gatete at the business centre in Akarambo *cellule*. While hiding in a nearby sorghum field, near the road, she heard the arrival of cars and stood up, believing that people were coming to provide security. Instead, she saw Gatete arrive in a vehicle carrying *Interahamwe* armed with traditional weapons. Upon arrival, Gatete alighted from the vehicle.<sup>186</sup>

171. Out of fear, the witness immediately left her hiding place and returned home. A few minutes later, two *Interahamwe*, Karemera and Sabutimbili, arrived at her house and attacked and raped her. Sabutimbili raped her first while Karemera watched. Sabutimbili said "the Tutsis are very wicked; that they could not offer themselves freely to the Hutus". The two men then left, after looting some items from the house. After their departure, the witness went to her mother-in-law's house.<sup>187</sup>

172. On 9 April, other *Interahamwe* arrived at her mother-in-law's house. They tried to rape the witness but she resisted and asked them to kill her instead. They left and a few minutes later, another *Interahamwe* arrived with women whose husbands had been killed. The witness was assembled with the other women at a location where, later that night, assailants came to rape them. The witness was raped by a man called Kalimungabo. Later, Mutsinzi, the leader of those *Interahamwe* arrived and told them to stop raping the women. He took the women to his home and the following day, on 10 April, took the witness back to her house.<sup>188</sup>

173. On 11 April, at about 3.00 p.m., *Interahamwe* took the witness from her mother-in-law's house to a primary school. They then took boys from the school to be killed. Subsequently, a school inspector called Karemera and a sector official, arrived, carrying

<sup>183</sup> T. 21 October 2009 pp. 10, 11 (quoted), 12-14, 15, 22, 26, 30.

<sup>184</sup> T. 21 October 2009 pp. 12-14, 16-18, 28-29. See also II.5.

<sup>185</sup> Prosecution Exhibit 21 (personal identification sheet); T. 12 November 2009 pp. 4-5 (she also recognised persons called Fisto and Mubibigi).

<sup>186</sup> T. 12 November 2009 pp. 3-6, 9, 11-15.

<sup>187</sup> T. 12 November 2009 pp. 16, 17 (quoted), 18. Witness BAT explained that Sabutimbili was a nick-name. She did not know his actual name or surname. T. 12 November 2009 pp. 5, 17-18.

<sup>188</sup> T. 12 November 2009 pp. 18-19.

firearms. The *Interahamwe* informed Karemera that they were taking the boys pursuant to instructions issued by the “authorities” that “all persons be killed, including children”. Karemera used an expression implying that the children would die anyway as they had lost their parents. Subsequently, they learnt that the *Inkotanyi* had arrived. The children were returned to the school and the following day, were saved by the *Inkotanyi*.<sup>189</sup>

#### Defence Witness LA16

174. In 1994, Witness LA16, a Hutu, was a farmer and lived in Kiramuruzi sector, Murambi commune. In April, he was also a member of the Kiramuruzi *Interahamwe* led by Jean Gahutu.<sup>190</sup>

175. Félicien Nyilingango, who was the chairman of the MRND party at the sector level, was a political opponent of Murekeyisoni, a Tutsi, who used to contact the *Inkotanyi* and try to organise political gatherings, but *Bourgmestre* Mwangi prevented her from doing so. The witness had often heard Murekeyisoni interviewed on Radio Muhabura, which, according to him, was why it was said that she often collaborated with the *Inkotanyi*. Nyilingango decided to carry out an attack on Murekeyisoni.<sup>191</sup>

176. On 6 April, at around midnight, Nyilingango arrived at the witness’s home and informed him that President Habyarimana had died. Nyilingango asked him to join “others” and they drove to Nyilingango’s house where six persons had already gathered. A few minutes later, the number had grown to more than 50. The witness did not know why the others had come or whether they had been invited by Nyilingango. Nyilingango told those gathered that the President had been killed by *Inkotanyi* and that they had to kill Aisha Murekeyisoni and Witness BCS’s father. The meeting took place at around midnight. The witness did not know who had given orders to Nyilingango and did not ask for explanations. He simply implemented the orders as Nyilingango was their leader.<sup>192</sup>

177. The attack took place at around 8.30 a.m. the following day, 7 April. The group of attackers, consisting of more than 50 persons, including the witness, Nyilingango, and Donat Rupiya, went to attack Murekeyisoni. They met two gendarmes led by another gendarme called Pascal Habururema, and others continued to arrive “from all over”. Nyilingango,

<sup>189</sup> T. 12 November 2009 pp. 18, 19 (quoted), 20-23. Witness BAT explained that Karemera, the school inspector and Karemera, the *Interahamwe* and son of Nyamahara, were two different people. T. 12 November 2009 p. 19.

<sup>190</sup> Defence Exhibit 52 (personal identification sheet); T. 8 March 2010 pp. 31-35, 40.

<sup>191</sup> T. 8 March 2010 pp. 42 (quoted), 43-45, 75; T. 9 March 2010 pp. 1-2 (“She [Murekeyisoni] was not a member of the MRND. She was an RPF militant”), 3.

<sup>192</sup> T. 8 March 2010 pp. 40-41, 43-44, 55, 64-65, 71, 75, 80-83, 86-87, 89. Félicien Nyilingango had a house “along the main road - but since the house was at the trading centre, he lived in part of a building which was in the inner courtyard, that is, behind the house itself.” T. 8 March 2010 p. 40. The six other persons who went to Félicien’s house were Yamaha Murabano, Rwabuhungu, Munyeshongore, Paul Mutsinzi, Fidèle Karangwa, alias Mikwege and Lucien Ntibaseke. T. 8 March 2010 p. 41. The witness first said that Nyilingango transported him to his house in a Toyota Stout pickup T. 8 March 2010 pp. 40-42. Later, he testified that Nyilingango took him to his house in his vehicle, a green minivan. T. 8 March 2010 p. 80. The witness sometimes saw Nyilingango with soldiers but did not know if he received orders from them. T. 8 March 2010 p. 50. They attacked civilians because they were collaborating with the *Inkotanyi*. T. 8 March 2010 p. 82. Nyilingango reported to Nkundabazungu, who was the MRND chairman at the commune level but not present at Nyilingango’s house. T. 8 March 2010 pp. 86-87.



Rupiya and Paul Mutsinzi carried firearms. The witness had been told to bring a weapon and was armed with a machete and a hammer.<sup>193</sup>

178. The attackers attacked and killed Murekeyisoni. Witness AIK tried to protect her but Witness LA16 hit him with a hammer. The attack lasted about 30 minutes. They did not kill Witness AIK because he was a Hutu. Gatete was not present during the attack.<sup>194</sup>

179. After the killing of Murekeyisoni, Nyilingango ordered the assailants to kill Witness BCS's father, as he was Tutsi. Nyilingango also selected a man called Paul Mutsinzi to lead the attack. More than 50 assailants participated in the attack at around 10.00 a.m. Witness BCS tried to escape but was stopped and wounded with a machete, causing him to fall to the ground. Witness LA16, along with Paul Mutsinzi, Gaspard Simpari Miheto, and others, killed Witness BCS's father. Later, Witness LA16 told Witness BCS's mother to hide and she thereby managed to survive.<sup>195</sup>

180. About two days after the President's death, the *Inkotanyi* arrived in the area and the witness fled towards Tanzania through Kibungo prefecture. He reached Tanzania about eight days later. At the border, he saw Gatete being arrested.<sup>196</sup>

#### Defence Witness Afisa Nikuze

181. In 1994, Afisa Nikuze was a social welfare assistant, and lived in Kiramuruzi sector, Murambi commune. She and her family lived close to Witness AIK's house. She confirmed that Aisha Murekeyisoni, a Tutsi woman, was known as an active member of the PL party.<sup>197</sup>

182. On the night of 6 April, the witness was at home. On 7 April, at about 8.00 a.m., a neighbour informed her that the President's plane had been shot down. At around 9.00 a.m., she heard noises and from her window, saw a group of *Interahamwe*. An *Interahamwe* leader called Félicien Nyilingango ordered them to kill Murekeyisoni.<sup>198</sup>

183. Subsequently, Nyilingango pushed Murekeyisoni and she was beaten by around 50 *Interahamwe* armed with traditional weapons who subsequently abandoned her on the road, close to death. The attack lasted for approximately 30 minutes. Only the leaders of the attack, Nyilingango and another *Interahamwe* called Rupiya Donat, carried firearms. Five minutes later, Witness AIK came to the witness's house to borrow a car battery to drive Murekeyisoni to the hospital. Nikuze's husband lent Witness AIK the battery and sent two of his sons to assist him. The sons returned about an hour later, explaining that *Interahamwe* had prevented them from passing through a roadblock on the way to the hospital. They asked for assistance from Red Cross workers, who agreed to escort Murekeyisoni to Kiziguro but those manning

<sup>193</sup> T. 8 March 2010 pp. 39, 42-48, 51, 55, 74, 76, 78, 81, 90. Witness LA16 also mentioned other attackers, such as Jean Gahutu, Yamaha Mudaheranwa, Benoit Sindikubwabo, Assumani Shyaka, Emmanuel Mutsintashyaka, and Lucien Ntibaseke. T. 8 March 2010 pp. 46-47. Nyilingango, Rupiya and Mutsinzi came with the weapons they owned before the meeting. T. 8 March 2010 p. 90.

<sup>194</sup> T. 8 March 2010 pp. 47-49, 55, 62, 74-77, 79.

<sup>195</sup> T. 8 March 2010 pp. 39, 55, 60-66, 73, 81. Witness BCS was also in the house and tried to escape through another door, but a few metres away from the house, a man called Karangwa struck him on the neck and temple with a machete. T. 8 March 2010 pp. 63-65.

<sup>196</sup> T. 8 March 2010 pp. 83-84; T. 9 March 2010 pp. 4-12.

<sup>197</sup> Defence Exhibit 48 (personal identification sheet); T. 4 March 2010 pp. 62-66; Defence Exhibit 49 (sketch drawn by Witness Nikuze).

<sup>198</sup> T. 4 March 2010 pp. 66-68.

the roadblock also prevented the Red Cross vehicle from passing through, and punctured its tyres. The two sons left the vehicle and returned home. Nikuze saw Witness AIK later in Rukara commune when he came out from hiding.<sup>199</sup>

#### Defence Witness LA11

184. In 1994, Witness LA11, a Hutu, lived in Kiramuruzi sector, Murambi commune and knew Witness AIK. Murekeyisoni was an active member of the PL party. The witness also knew Afisa Nikuze's husband.<sup>200</sup>

185. On the night of 6 April, the witness was at home. The following morning, on 7 April, she heard the radio broadcast President Habyarimana's death. That morning, she remained at home and saw *Interahamwe* on the street. Witness AIK's brother-in-law came to the house to hide and Murekeyisoni sought refuge with another neighbour, but shortly after, returned home. Subsequently, *Interahamwe* leader, "Félicien", arrived and said that he had told the *Interahamwe* to kill "that woman", not to bring him money.<sup>201</sup>

186. Witness LA11 was not inside her house but in its compound when the attack on Murekeyisoni occurred, and was able to see the assailants. There were between 50 and 80 *Interahamwe* involved in the attack, which lasted for about 30 minutes.<sup>202</sup>

187. Later, an *Interahamwe* called Saïd, told Witness AIK's sister-in-law, who was at Witness LA11's house, not to come out of hiding because Félicien had given the order to kill Witness AIK's family members.<sup>203</sup>

### **3.3 Deliberations**

188. The Indictment alleges that, on the morning of 7 April 1994, Gatete facilitated the transport of *Interahamwe* through various sectors and *cellules* in Murambi commune, and commanded the *Interahamwe*, including persons named Rupia, Serena Gauframa and Rwasibo, to kill Tutsi civilians. Elsewhere, the Chamber has considered evidence with respect to whether Gatete transported and ordered *Interahamwe* in Rwankuba sector to kill Tutsis (see II.2). The Indictment also specifically alleges that Gatete and Murambi commune *bourgmestre*, Jean de Dieu Mwange, transported a convoy of armed *Interahamwe* to Akarambo *cellule*. It is alleged that Gatete ordered them to burn, loot and pillage Tutsi homes and rape and kill Tutsi civilians. Among those killed were Aisha Murekeyisoni, and Witness BCS's family and on about 8 April, Witness BAT was raped by *Interahamwe*.<sup>204</sup>

189. It is not disputed that killings occurred in Akarambo *cellule* on 7 April, and in particular, that Murekeyisoni and Witness BCS's father, both Tutsis, were killed by *Interahamwe* that morning. Both Prosecution and Defence evidence establishes that a group of armed *Interahamwe* attacked the victims' homes. The critical issue for the Chamber

<sup>199</sup> T. 4 March 2010 pp. 68-69.

<sup>200</sup> Defence Exhibit 105 (personal identification sheet); T. 29 March 2010 pp. 2, 4-7, 10, 16, 20 Defence Exhibit 107 (sketch drawn by Witness LA11).

<sup>201</sup> T. 29 March 2010 pp. 10, 11-12 (quoted), 12, 13-14, 19-20.

<sup>202</sup> T. 29 March 2010 pp. 14-15, 17, 20.

<sup>203</sup> T. 29 March 2010 pp. 11-14.

<sup>204</sup> Indictment paras. 15, 31, 34, 39-40; Prosecution Closing Brief paras. 30-31, 37, 114, 160, 165, 229-233, 630-696.

concerns Gatete's alleged responsibility for the killings on 7 April, as well as Witness BAT's rape on 8 April. The Chamber discusses separately evidence of Gatete's alleged orders to *Interahamwe* at a gathering in Akarambo *cellule*; his role during the killing of Murekeyisoni and Witness BCS's father; and whether he transported the *Interahamwe* who carried out the attacks.

### 3.3.1 Orders, 7 to 8 April 1994

190. Prosecution Witnesses AIK, BBT and BAT testified that Gatete was seen with *Interahamwe* in Akarambo *cellule*. While Witnesses AIK and BBT referred to Gatete meeting with *Interahamwe* on 7 April, Witness BAT recalled a gathering on 8 April. The Chamber later considers evidence of Gatete's alleged orders to kill Aisha Murekeyisoni and Witness BCS's father.

191. The Chamber turns to compare the evidence of the three Prosecution witnesses. Witness AIK testified that the *Interahamwe* had met with Gatete at the commune office on 7 April immediately before arriving at his house at about 6.30 a.m. that morning.<sup>205</sup> While he did not specify which commune office, his testimony concerned events in Murambi commune. According to Witness BBT, on 7 April, sometime between 1.00 and 2.00 p.m., Gatete arrived at a place near a sorghum farm in Akarambo *cellule* with *Bourgmestre* Mwange, in a pickup carrying *Interahamwe*. There, Gatete told the *Interahamwe* and local inhabitants to kill Tutsis.<sup>206</sup> On 8 April, sometime between 9.00 and 11.00 a.m., Witness BAT saw Gatete and *Interahamwe* arrive in vehicles and join other *Interahamwe* at the Akarambo trading centre.<sup>207</sup>

192. All three witnesses recalled Gatete's presence in Akarambo *cellule* at a gathering with *Interahamwe*. Nonetheless, the differences between their testimonies with respect to the timings and locations of the gatherings, suggests that the witnesses are not necessarily referring to the same event. The Chamber proceeds to consider the individual merits of each witness's testimony as they relate to the alleged gatherings on 7 and 8 April.

#### (i) Orders, Early Morning, 7 April 1994

193. Witness AIK's evidence regarding an early morning meeting between Gatete and *Interahamwe* at the commune office appears to have been second-hand and the Chamber will not accept it without adequate corroboration. The Chamber also has more general concerns regarding the reliability of Witness AIK's testimony, as discussed in more detail when considering the killing of Aisha Murekeyisoni (II.3.3.ii).

194. As noted above, the Chamber does not find the accounts of Witnesses BBT or BAT sufficiently similar to Witness AIK's testimony for the purposes of providing adequate corroboration. Furthermore, as discussed later, the Chamber has reservations about the reliability of Witnesses BBT and BAT's testimonies.

195. The Chamber has also considered other evidence in the record to consider whether it provides circumstantial support for Witness AIK's account. In particular, it recalls its

<sup>205</sup> T. 12 November 2009 pp. 49-50, 60, 64-67.

<sup>206</sup> T. 10 November 2009 pp. 55-56, 58-60, 66-67, 71-72. Witness BBT's evidence is ambiguous with the respect to the precise location of the gathering.

<sup>207</sup> T. 12 November 2009 pp. 3-4, 6, 11-14, 16-18.



findings that Gatete arrived at the Rwankuba sector office on the morning of 7 April and ordered *Interahamwe* there to kill Tutsis (see II.2). However, while it is possible that he visited the commune office earlier that same day and issued similar orders, the Chamber considers it is not the only reasonable inference to be drawn from the evidence. In sum, the Chamber finds the evidentiary record insufficient to establish beyond reasonable doubt that on the morning of 7 April, Gatete met *Interahamwe* at the commune office and issued orders to *Interahamwe* to kill Tutsis.

(ii) *Orders, Afternoon, 7 April 1994*

196. Witness BBT provided a first-hand account of Gatete arriving in Akarambo *cellule*, sometime between 1.00 and 2.00 p.m. on 7 April, in a pickup vehicle driven by *Bourgmestre* Mwangi and carrying *Interahamwe*. He testified that Gatete ordered local inhabitants and *Interahamwe*, who were armed with traditional weapons, to kill Tutsis. At the outset, the Chamber has no doubt about Witness BBT's ability to identify Gatete in 1994.<sup>208</sup>

197. However, the Chamber has concerns with respect to the merits of Witness BBT's account. Notably, his testimony was unclear with respect to where in Akarambo *cellule* he saw Gatete arrive.<sup>209</sup> Moreover, aspects of his evidence were unconvincing. In particular, it is questionable that he would send his wife and children to Giti commune, where it was safe, while he himself chose to hide in a sorghum farm.<sup>210</sup> He offered no other explanation other than that he was worried and left home looking for a place to hide.<sup>211</sup> He did not want to leave with his family because he "preferred to go later".<sup>212</sup> The Chamber finds this evidence unconvincing.<sup>213</sup>

198. Furthermore, the Chamber is concerned by Witness BBT's evidence that he had not seen Witness AIZ for a month, despite having travelled together to Arusha, as acknowledged by the latter. Witness AIZ, whose evidence the Chamber has accepted (II.2.3), also acknowledged having seen Witness BBT on the morning of 7 April 1994. Notwithstanding Witness AIZ's evidence, as well as the fact that the two were neighbours in April 1994,

<sup>208</sup> Gatete was well known to Witness BBT, as their families were friends and neighbours when he and Gatete were growing up and attended the same school for six years. T. 10 November 2009 pp. 55, 61. The witness acknowledged the names of Gatete's father, mother, stepmother and brother, all persons known to him. T. 10 November 2009 pp. 55, 61-62, 78-79. He also identified the Accused in court. T. 10 November 2009 p. 60.

<sup>209</sup> T. 10 November 2009 pp. 55-56, 58, 63-68, 72-73, 87. Witness BBT was hiding in a sorghum field in Akarambo *cellule*. T. 10 November 2009 p. 64.

<sup>210</sup> T. 10 November 2009 p. 88.

<sup>211</sup> T. 10 November 2009 pp. 63-64, 65, 88.

<sup>212</sup> T. 10 November 2009 p. 88 ("JUDGE AKAY: "Mr. Witness, I wonder something. 7th of April in the morning, because of the fear, you sent your wife and children to Giti, and you said to Madam Prosecutor Giti had a good *bourgmestre* and a safe place. But you didn't go with them. You preferred to stay in your *cellule*, and you hid in millet or sorghum field. So why did you wait for the night of that date to go to Giti? Because you said you went to Giti end of the day, late night. Why didn't you go with them and you preferred to stay? THE WITNESS: I thank you, Your Honour. I didn't have to go at the same time as my wife and children. I sent them ahead, and I preferred to go later. That is what I did.").

<sup>213</sup> T. 10 November 2009 pp. 67-68, 73-75, 88. The Chamber notes its findings with respect to Witnesses AIZ and BBT's evidence that instead of fleeing to Giti commune, they wanted to first assess the situation and thus, went towards the Rwankuba sector office. Unlike in the present case, the Chamber was satisfied with the explanations provided by both witnesses in those instances. See II.2.3.

Witness BBT denied having seen Witness AIZ that morning.<sup>214</sup> These inconsistencies cast additional doubt on the reliability of Witness BBT's evidence. In sum, the Chamber finds his account insufficient to support findings beyond reasonable doubt.

199. The Chamber considers whether other evidence in the record provides circumstantial corroboration for Witness BBT's account. As noted earlier, Witness AIK's testimony appears to refer to a separate incident, appears to have been second-hand, and is not sufficiently reliable. Similarly, the Chamber finds Witness BAT's description of a gathering on 8 April to be sufficiently different to suggest that she referred to a different gathering. Moreover, as discussed later, the Chamber considers her evidence insufficient to conclude that Gatete issued orders to *Interahamwe* to kill Tutsis.

200. The Chamber has also considered the testimonies of Witnesses BBR and AIZ. Their evidence, which has been accepted by the Chamber, was that Gatete arrived at the Rwankuba sector office on the morning of 7 April and issued orders to *Interahamwe* to kill Tutsis (II.2.3). While it is possible that, later that afternoon, he issued similar instructions in Akarambo *cellule*, in the Chamber's view, this is not the only reasonable inference. In sum, the Chamber finds it not established beyond reasonable doubt that on the afternoon of 7 April, Gatete issued orders to *Interahamwe* in Akarambo *cellule* to kill Tutsis.

(iii) *Orders, 8 April 1994*

201. Witness BAT was the sole Prosecution witness to testify that on 8 April, sometime between 9.00 and 11.00 a.m., Gatete arrived at the business centre in Akarambo *cellule* in a vehicle carrying *Interahamwe*. They joined *Interahamwe* who were already gathered on the road there. Shortly after, the witness was raped by two *Interahamwe*. The following day, she and other women were raped by other *Interahamwe*.<sup>215</sup>

202. The Chamber considers points raised by the Defence to undermine the witness's impartiality. The Chamber does not consider that her membership of Twisungane, a subsidiary of Avega, a genocide survivors group for widows, necessarily undermines her impartiality, as suggested by the Defence.<sup>216</sup> However, that she holds Gatete responsible for the alleged imprisonment and subsequent banishment of her brother in 1990, suggests a possible motive to testify against the Accused, and the Chamber therefore exercises caution when assessing her evidence.<sup>217</sup>

203. Moreover, the Defence submits that Witness BAT did not mention Gatete when she testified before the Gacaca courts on the 1994 events.<sup>218</sup> It argues that this omission is particularly worrying, given the witness's position.<sup>219</sup> She did, however, testify with respect to Gatete's actions in 1990.<sup>220</sup> The witness explained that she did not come forward to testify about events in 1994 because she believed that it was not necessary, as she was to testify in

<sup>214</sup> Witness BBT, T. 10 November 2009 pp. 81-82; Witness AIZ, T. 11 November 2009 pp. 66-67.

<sup>215</sup> T. 12 November 2009 pp. 3-5, 10-11, 13-14, 16-18.

<sup>216</sup> T. 12 November 2009 pp. 34-35.

<sup>217</sup> Defence Closing Brief para. 375; Defence Exhibit 25 (Gacaca statement).

<sup>218</sup> Defence Closing Brief paras. 368-372.

<sup>219</sup> Defence Closing Brief paras. 372-375; T. 12 November 2009 pp. 35-36.

<sup>220</sup> T. 12 November 2009 pp. 26-27.

the current proceedings against Gatete before this Tribunal. The Chamber has doubts about this explanation.<sup>221</sup>

204. Nevertheless, while the Chamber has reservations about the reliability of Witness BAT's evidence, ultimately, it does not consider that the only reasonable inference to be drawn from her testimony is that Gatete ordered *Interahamwe* to kill and rape Tutsis, and that the *Interahamwe* who raped her, were acting pursuant to Gatete's orders.<sup>222</sup> In reaching this conclusion, the Chamber has also considered other evidence in the record, in particular, the testimonies of Witnesses BBR and AIZ, that Gatete issued orders to *Interahamwe* in Rwankuba sector to kill Tutsis. While it is possible that Gatete would also have issued orders to kill Tutsis, as well as rape Tutsi women, the following day in Akarambo *cellule*, in the Chamber's view, it is not the only reasonable inference.

205. Accordingly, while the Chamber does not doubt the traumatic events which Witness BAT experienced on 8 and 9 April, it finds the evidentiary record insufficient to find beyond reasonable doubt, that Gatete came to Akarambo *cellule* on 8 April and issued orders to kill and rape Tutsis, and that *Interahamwe* raped Witness BAT pursuant to his orders.

### 3.3.2 Killing of Aisha Murekeyisoni, 7 April 1994

206. The Prosecution and Defence evidence consistently establishes that on 7 April, a Tutsi woman named Aisha Murekeyisoni, who was the president of the PL party in Murambi commune, was violently attacked and killed by a crowd of armed *Interahamwe*.<sup>223</sup> Among the *Interahamwe* were Félicien Nyilingango, Donat Rupiya and Defence Witness LA16.<sup>224</sup> It is not disputed that Witness AIK was present during the attack.<sup>225</sup>

207. The Chamber considers the evidence in light of Gatete's alleged role in the killing. Through Witness AIK, the Prosecution seeks to establish that Aisha Murekeyisoni was killed pursuant to Gatete's orders and that the Accused also ordered the *Interahamwe* to kill Witness AIK.<sup>226</sup> The Defence disputes Gatete's involvement in the killing and relies on the testimonies of Witnesses LA16, LA9 and LA11.<sup>227</sup>

<sup>221</sup> T. 12 November 2009 p. 26.

<sup>222</sup> The Chamber recalls that Witness BAT's evidence of Gatete issuing orders to *Interahamwe* to kill Tutsis and rape Tutsi women was excluded by the Chamber. T. 12 November 2009 pp. 6-10. In the Chamber's view, had that evidence been admitted, it would nonetheless have doubts about Witness BAT's evidence. In particular, the Chamber is troubled by her prior statement of August 2000, which omitted any reference to Gatete issuing such orders, notwithstanding the fact that the statement mentions Gatete in other respects and that he appears to have been the target of that investigation. See Defence Exhibit 24 (statement of 8 August 2000) pp. 3-4.

<sup>223</sup> Witness AIK, T. 12 November 2009 pp. 47, 49, 66, 91; Witness LA16, T. 8 March 2010 pp. 42, 45, 55, 60, 64; T. 9 March 2010 pp. 1-3; Afisa Nikuze, T. 4 March 2010 pp. 65-68; Witness LA11, T. 29 March 2010 pp. 6, 11-12.

<sup>224</sup> Witness AIK, T. 12 November 2009 pp. 49-50, 66, 73-75, 81, 85 (mentioned the presence of both Félicien Nyilingango and Donat Rupiya); Witness LA16, T. 8 March 2010 pp. 39-40, 42-48, 55, 74-76, 78, 90 (he was among the attackers together with Félicien Nyilingango and Donat Rupiya); Witness LA11, T. 29 March 2010 pp. 11-13 (recalled that someone called "Félicien" was among the *Interahamwe*).

<sup>225</sup> Witness AIK, T. 12 November 2009 pp. 50, 60-61; Witness LA16, T. 8 March 2010 pp. 48, 55-56, 74-75.

<sup>226</sup> Indictment paras. 15, 31, 34; Prosecution Closing Brief paras. 114, 232-233.

<sup>227</sup> Defence Closing Brief paras. 158-255, 323-380, 702-703, 1095, 1199; Closing Arguments, T. 8 November 2010 pp. 42-45.

208. Turning first to consider Prosecution Witness AIK, the Chamber has no doubt about his ability to identify Gatete in 1994 as they had met on several occasions.<sup>228</sup> The Chamber considers points raised by the Defence to cast doubt on Witness AIK's impartiality.<sup>229</sup> In particular, the Defence refers to his May 1998 statement given to Tribunal investigators, wherein he claimed that Gatete made advances towards Murekeyisoni and that he was Gatete's "worst enemy in the entire commune".<sup>230</sup> Under the circumstances, the Chamber is mindful that Witness AIK may have a motive to testify against the Accused.

209. Moreover, the Defence confronted the witness with four prior statements, three of which were *pro justitia* statements given to the Rwandan authorities and the fourth, a statement given to Tribunal investigators in May 1998.<sup>231</sup> Considering first the *pro justitia* statements, all three recount the events that occurred on the morning of 7 April, in particular, the attack on Murekeyisoni's house and her subsequent killing, and also name individuals whom the witness held responsible for those actions. However, none of the three *pro justitia* statements make any reference to Gatete.<sup>232</sup>

210. Confronted with the omission in the first *pro justitia*, given in January 1998, the witness explained that the statement was not read back to him before he signed it.<sup>233</sup> With respect to the second *pro justitia*, given in March 1998, he maintained that he did mention Gatete's name but that it was not recorded.<sup>234</sup> As to the third *pro justitia*, also from March 1998, which listed persons who led the attack on Murekeyisoni, the witness again claimed that he had mentioned Gatete's name and explained that the record of the interview was not read back to him before he signed it.<sup>235</sup> The witness maintained that each time he gave a *pro justitia* statement, he mentioned Gatete.<sup>236</sup> While the Chamber acknowledges that, in some instances, there may be defects in the recording of statements, in this case, Gatete's name was repeatedly omitted on three occasions. The Chamber finds these omissions troubling and considers that they raise questions about the reliability of Witness AIK's evidence that Gatete was responsible for Murekeyisoni's killing.

211. Witness AIK also provided a statement to Tribunal investigators in May 1998. While it refers to Gatete addressing *Interahamwe* after the attack, it contradicts his testimony in other respects. The Chamber finds the discrepancies raise additional doubt, particularly as Gatete appears to have been the target of that investigation.<sup>237</sup>

<sup>228</sup> T. 12 November 2009 pp. 46-47. Witness AIK knew Gatete as the *bourgmestre* of Murambi commune. He first saw Gatete when the latter was introduced as the new *bourgmestre* to local inhabitants, sometime in about 1982. He also saw Gatete while working as a trader in Murambi commune.

<sup>229</sup> Defence Closing Brief paras. 209-222.

<sup>230</sup> T. 12 November 2009 p. 92; Defence Exhibit 32 (statement of 22 May 1998) p. 3.

<sup>231</sup> Defence Closing Brief paras. 195-208; Defence Exhibit 29 (*pro justitia* of 3 January 1998); Defence Exhibit 30 (*pro justitia* of 3 March 1998); Defence Exhibit 31 (*pro justitia* of 20 March 1998); Defence Exhibit 32 (statement of 22 May 1998).

<sup>232</sup> Defence Exhibit 29 (*pro justitia* of 3 January 1998); Defence Exhibit 30 (*pro justitia* of 3 March 1998); Defence Exhibit 31 (*pro justitia* of 20 March 1998).

<sup>233</sup> T. 12 November 2009 pp. 74-79, 96.

<sup>234</sup> T. 12 November 2009 pp. 80-83, 96.

<sup>235</sup> T. 12 November 2009 pp. 80-85, 96.

<sup>236</sup> T. 12 November 2009 pp. 95-96.

<sup>237</sup> Defence Exhibit 32 (statement of 20 May 1998) p. 4; T. 12 November 2009 pp. 50, 60, 66-67, 93.

212. In addition, the Chamber found Witness AIK's evidence confusing and inconsistent.<sup>238</sup> While the Chamber acknowledges the impact of trauma on a witness's memory, in this instance, these ambiguities raise further questions about his reliability. In sum, the Chamber finds Witness AIK's evidence insufficient to support findings beyond reasonable doubt.

213. The Chamber has also considered other evidence in the record to determine whether it offers circumstantial support for Witness AIK's account. In particular, Witness BBW testified that early in the morning, on 7 April, Gatete arrived in a vehicle at the home of a person called "Nyirigango", where he asked members of the population to kill Tutsis.<sup>239</sup> According to the Prosecution, Witness BBW's evidence suggests that Félicien Nyilingango acted pursuant to Gatete's orders when Nyilingango gathered assailants for the purposes of attacking Murekeyisoni and Witness BCS's father, as recounted by Defence Witness LA16.<sup>240</sup> However, as set out elsewhere (II.1.3), the Chamber has significant doubts about the evidence of Witness BBW and finds it insufficient to corroborate Witness AIK's account for the purposes of supporting findings beyond reasonable doubt. Moreover, the evidence of Witnesses BBW and LA16 is equivocal with respect to whether they refer to the same gathering.<sup>241</sup>

214. In addition, the Chamber has considered Witness AIK's testimony in the context of Defence Witness LA16's evidence. The Chamber is not convinced that Witness LA16 had no knowledge of who issued orders to Nyilingango with respect to the killings of Murekeyisoni and Witness BCS's father.<sup>242</sup> His evidence also suggests that other authorities were involved

<sup>238</sup> For example, Witness AIK stated that Murekeyisoni was killed at her house. T. 12 November 2009 pp. 60, 66. However, he also testified that he left Murekeyisoni at the roadblock and she died later at about 7.00 p.m., when Gatete passed by there. T. 12 November 2009 p. 61. See also T. 12 November 2009 p. 77. During cross-examination, he stated that they reached the roadblock between 9.30 and 10.00 a.m. He added that he was not present when Murekeyisoni died, and "was told subsequently that she was finished off at about 4 or 4:30 p.m". T. 12 November 2009 p. 68, 75.

<sup>239</sup> T. 13 November 2009 pp. 10, 13-14, 24-25.

<sup>240</sup> Prosecution Closing Brief paras. 694-695.

<sup>241</sup> Witness BBW testified that the gathering he observed took place at about 5.00 a.m. on 7 April. T. 13 November 2009 pp. 8, 10, 23-25, 27. Witness LA16 stated that the gathering at Nyilingango's house took place at around midnight on the night of 6 April. T. 8 March 2010 pp. 40-43, 80-82. Moreover, the Chamber notes that the description of the location of Nyilingango's house by both witnesses does not necessarily suggest that they are referring to the same person. Witness BBW, who did not provide a first name for the "Nyirigango" he referred to, testified that his house was located at the crossroads in Ntete *cellule*, in Nyabisindu sector. T. 13 November 2009, pp. 10, 13, 27; Prosecution Exhibit 23 (personal identification sheet). Witness LA16 stated that Nyilingango's house was located "along the main road" at the trading centre, in the inner courtyard, but did not provide information regarding the sector in which it was located. T. 8 March 2010 p. 40. Considering that he was referring to events which occurred in Akarambo *cellule*, in Kiramuruzi sector, it is reasonable to conclude that he was referring to the trading centre in Akarambo *cellule*. Ultimately, the Chamber finds that the evidence of the two witnesses is ambiguous with respect to whether they testified about the same gathering.

<sup>242</sup> The Chamber has no doubt that the attack on Murekeyisoni was planned prior to the President's death. Moreover, the Chamber is not convinced that Witness LA16 did not think of asking questions about why they were being asked to kill immediately after the President's death, nor that no discussion took place about why these orders were given. T. 8 March 2010 p. 91; T. 9 March 2010 pp. 34-35. Witness LA16's evidence also suggests that he was travelling in the same convoy as Gatete when fleeing to Tanzania. T. 9 March 2010 pp. 4 ("Q. Yesterday, you told us that you saw Jean-Baptiste Gatete being arrested and, as I understand it, you saw him being arrested while you were crossing the border into Tanzania; is that right? A. Yes, that is what I said, and that is what I was able to see.... A. I explained that, when I got to the border, he had been arrested - or, rather, he had been stopped and the vehicle was parked. Let me explain that I did not personally see him. I was



but maintained that Nyilingango reported to *Interahamwe* leader Nkundabazungu.<sup>243</sup> The Chamber recalls that elsewhere it has found that Gatete and Nkundabazungu were together at Kiziguro parish when orders were given to kill Tutsis (II.5). Nevertheless, the evidentiary record is insufficient to conclude that Nkundabazungu was receiving orders from Gatete.

215. The Chamber has also considered Witness AIK's testimony in light of other Defence evidence. It finds the accounts of Afisa Nikuze and Witness LA11 to be of limited probative value. Indeed, Nikuze accepted that her knowledge of the incident was second-hand.<sup>244</sup> Witness LA11's evidence also suggests that her knowledge of the attack was partly second-hand.<sup>245</sup> However, ultimately, the Prosecution evidence is insufficient to support findings beyond reasonable doubt.

216. In sum, the Chamber finds the evidentiary record insufficient to find beyond reasonable doubt that Aisha Murekeyisoni was killed as a result of Gatete's actions or that he was present during the attack and killing on 7 April. Nor has it been established that Gatete also issued subsequent orders to *Interahamwe* to kill Witness AIK.

### 3.3.3 Killing of Witness BCS's Father, 7 April 1994

217. It is not disputed that Witness BCS's father, a Tutsi living in Akarambo *cellule*, in Kiramuruzi sector, was killed by *Interahamwe* on the morning of 7 April. The evidence also establishes that Witness BCS was present during the attack and was seriously wounded while trying to escape.<sup>246</sup> The Prosecution points to the testimony of Witness BCS to establish that

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simply informed that he was there, but I did not see him with my own eyes.... Q. So when you were crossing the border, you were doing it in a large group of people from your region, right? A. Somewhere [sic] from my region. And others were from other regions. There were very many of us, and we had to find passage somewhere.... Q. So it is just coincidence that you were crossing the border at the same time as Jean-Baptiste Gatete? ), 5 ("JUDGE MUTHOGA: So the vehicle [Gatete's vehicle] was part of your convoy. You were travelling together in a vehicle? THE WITNESS: Between the vehicle and myself, there were two other vehicles. So we were behind, but the vehicles were moving very slowly because there were very many people and a lot of cattle.... Yes, I could see him on board his vehicle."). Nonetheless, the Chamber finds the circumstances do not necessarily lead to the conclusion that Gatete issued orders to kill Murekeyisoni and Witness BCS's father.

<sup>243</sup> Witness LA16, T. 8 March 2010 p. 86 ("Q. So who was Félicien's superior? A. At the level of the community, his superior was Mr. Nkundabazungu, who was the chairman at the level of the *commune*, that is, the chairman of the MRND at the level of the *commune*. Therefore, in that capacity he was his hierarchical superior"); See also, for example, Witness BUY, 21 October 2009 p. 70 ("I saw Gatsinzi and Nkundabazungu who seemed to be among the *Interahamwe* leaders"); Witness LA84, T. 9 March 2010 p. 54 ("I mentioned Mr. Nkundabazungu, who is a native of the Murambi *commune*. He was the leader of those inciting people to violence").

<sup>244</sup> T. 5 March 2010 pp. 9-11, 12 ("Q: Did you yourself witness this act or is this something that somebody else recounted to you? A: I heard it from someone else. Q. From ... whom did you hear this? A: Initially I heard it from Mr. Gatabazi, who was [Witness AIK's] brother. Subsequently I heard it from [Witness AIK] himself, as well as his child ...."), 13. See also T. 5 March 2010 pp. 13-16.

<sup>245</sup> T. 29 March 2010 pp. 12-16, 19-20; Defence Exhibit 107 (sketch drawn by Witness Nikuze). The witness also bases her knowledge of the attack on what she heard during the Gacaca proceedings she attended. T. 29 March 2010 p. 12 ("THE WITNESS: Yes, I was present at that Gacaca proceeding. JUDGE MUTHOGA: So what you are telling us is what you heard at the Gacaca proceedings? THE WITNESS: There is some information I learnt during the events because some people came to give information to the person who had sought shelter in our house and, in that process, I got to know or learn something."). See also T. 29 March 2010 pp. 13, 15-16.

<sup>246</sup> T. 21 October 2009 pp. 10-13, 15, 22, 30; T. 8 March 2010 pp. 39, 55, 60-66, 73, 79, 81.

Gatete was present during an attack on Witness BCS's house, and that his father was killed pursuant to the Accused's instructions.<sup>247</sup> However, his evidence does not establish that other members of his family were killed on that occasion.

218. The Defence disputes Gatete's involvement in the attack and killing and relies on the testimony of Witness LA16.<sup>248</sup> The Chamber turns to consider the evidence based on allegations concerning Gatete's involvement in the attack and killing.

219. At the outset, the Chamber has no reservations about Witness BCS's ability to identify Gatete in April 1994.<sup>249</sup> With respect to the merits of his testimony, the Defence confronted the witness with his October 1998 statement wherein he stated that his father, mother and two sisters were killed by militiamen at his home. His testimony, on the other hand, was that only his father was killed at the house, and his brother and two sisters later died at Kiziguro parish, while his mother survived. The witness explained that he was not asked by the investigator to state where each member of his family was killed and, therefore, had not specified whether they were all killed on that occasion or if some died later.<sup>250</sup> The Chamber notes that while this may have been the case, the statement nonetheless records that his elder brother was killed at Kiziguro parish.

220. The Chamber also recalls a significant discrepancy between his October 1998 statement and his evidence regarding killings at Kiziguro parish.<sup>251</sup> Elsewhere, it has not accepted his testimony (II.5.3.i), nor will it do so in this instance without adequate corroboration.

221. The Chamber has also considered Witness BCS's testimony in light of the evidence of Defence Witness LA16.<sup>252</sup> However, ultimately, it finds Witness BCS's uncorroborated testimony insufficient to support findings beyond reasonable doubt. Consequently, it has not been established that Witness BCS's father was killed in Gatete's presence, or that he was killed as a result of Gatete's actions.

<sup>247</sup> Indictment paras. 15, 31, 34; Prosecution Closing Brief paras. 114, 232-233, 630-696.

<sup>248</sup> Defence Closing Brief paras. 158-255, 323-380; Defence Closing Arguments, T. 8 November 2010 pp. 42-45.

<sup>249</sup> Witness BCS testified that although Gatete was no longer *bourgmestre* of Murambi commune in April 1994, he would see him often and knew him well. He also identified the Accused in court. T. 21 October 2009 p. 7.

<sup>250</sup> T. 21 October 2009 pp. 13, 27-28 ("Talking about my sisters when I gave that statement, I simply want to include all my family members who were killed in the case file, but they were not killed at the same time. The person who came to interview me did not want us to go into details that we talk about the circumstances of the death of each person. He did not ask me questions to find out the difference places where those different individuals had been killed. So when I was answering that question, I was simply answering in a general manner, since the question that had been put to me did not require any details").

<sup>251</sup> See II.5.3.i, citing Defence Exhibit 2 (statement of 3 and 10 October 1998) p. 4, which specifically refers to the witness being "able to observe [the] execution" while during his testimony, he maintained that he did not see the shooting and only heard it. T. 21 October 2009 p. 35-36.

<sup>252</sup> As noted earlier by the Chamber, while Defence Witness LA16's evidence suggests that Nyilingango received orders from authorities, his evidence that he had no knowledge of who had issued the orders was unconvincing, and he appears to have crossed the border into Tanzania at around the same time as Gatete. The Chamber nonetheless considers that the only reasonable inference from these circumstances is not that Gatete issued the orders to kill Witness BCS's father.



**3.3.4 Facilitation of Transport**

222. Lastly, the Chamber considers whether the evidence establishes that Gatete facilitated the transport of *Interahamwe* in Akarambo *cellule* for the purposes of killing Tutsis, as alleged in the Indictment.

223. Prosecution Witnesses BBT and BAT testified that Gatete arrived in Akarambo *cellule* in a vehicle carrying *Interahamwe*. The Chamber, however, has determined that their evidence suggests that they were not referring to the same incident and, after considering the individual merits of their testimonies, has found their accounts insufficient for the purposes of supporting findings beyond reasonable doubt. Similarly, while Witness BCS recounted that Gatete arrived at his house with *Interahamwe*, the Chamber has not accepted his uncorroborated evidence, nor will it do so in this instance.

224. In sum, the Chamber finds the evidentiary record insufficient to find beyond reasonable doubt that Gatete transported *Interahamwe* to Akarambo *cellule* for the purposes of killing Tutsis.



#### 4. ROADBLOCKS, BYUMBA PREFECTURE, APRIL 1994

##### 4.1 Introduction

225. The Indictment alleges that between 6 and 30 April 1994, Gatete assembled *Interahamwe* and participated in the sealing off of roads and exits throughout Byumba prefecture, participated in the identification of Tutsi civilians by providing lists of Tutsi names, ordered the killing of Tutsis, and manned roadblocks himself. In particular, it is alleged that, on about 8 April 1994, at a roadblock mounted in Nyagasambu *cellule*, on the road to Rwankuba sector, Gatete told civilians to hunt down and exterminate Tutsis, including babies in the womb. The Accused also gave dogs to the civilian militia to facilitate the hunt and Tutsi civilians were killed as a result. The Prosecution relies on the testimony of Witness BBJ.<sup>253</sup>

226. The Defence denies the allegations and submits that Witness BBJ did not provide credible evidence.<sup>254</sup>

##### 4.2 Evidence

###### Prosecution Witness BBJ

227. In 1994, Witness BBJ, a Tutsi, was a farmer living in Rwankuba sector, Murambi commune. At around midday, on 8 April, *Interahamwe* arrived in her area. They told people to line up and said they were going to hold a meeting. Instead, the *Interahamwe* starting killing them with bladed weapons. The witness hid in the bushes with her son and her neighbour's child.<sup>255</sup>

228. At about 9.00 p.m., while hiding, the witness saw Gatete arrive at a roadblock mounted in Nyagasambu *cellule*. He came from the direction of "Gacuba" in a red Toyota pickup with three dogs. Upon arrival, he alighted from the vehicle and passed in front of it. Believing that he may declare a truce, the witness moved closer to the roadblock with the children to hear what he would say. Instead, Gatete thanked the *Interahamwe* but told them that they had not "worked very well" but that the "people of Gacuba [had] worked better" than them. He added that many girls had been found in the "valley" and that their "breasts ... had to be buried in the valley, and ... cleared from the road". He told the *Interahamwe* that he had brought dogs and that they should start hunting the Tutsis. He ordered that all Tutsis, including pregnant Tutsi women and their foetuses, should be killed. Finally, he instructed that Tutsis be assembled at Kiziguro parish to be killed on the following Monday. Gatete stayed at the roadblock only a few minutes and departed immediately after issuing these instructions, leaving the dogs behind.<sup>256</sup>

<sup>253</sup> Indictment paras. 13, 18, 31, 34; Prosecution Closing Brief paras. 34-35, 40, 43 (iii), 75 (ii), 302-304; Closing Arguments, T. 8 November 2010 pp. 7, 9.

<sup>254</sup> Defence Closing Brief paras. 95, 476(a)-506, 696, 1094, 1097-1098, 1157, 1164, 1283; Closing Arguments, T. 8 November 2010 p. 49.

<sup>255</sup> Prosecution Exhibit 15 (personal identification sheet); T. 5 November 2009 pp. 14-16, 18. See also II.5.2.

<sup>256</sup> T. 5 November 2009 pp. 15, 16 (quoted), 17 (quoted), 59-60. Witness BBJ did not know how to distinguish between various makes of vehicles but described the Accused's vehicle as one that "ordinarily transports goods or people. It was a Toyota." It was the vehicle that Gatete usually used. T. 5 November 2009 p. 16.

229. Following Gatete's departure, the witness moved with the children to a marsh area. They reached the Rwimterere valley where assailants let the dogs loose on them. The witness almost drowned in the marsh and the *Interahamwe* attacked the children. Her neighbour's child was killed at a roadblock in Rwimterere and her son was beaten there. She and her son reached Kiziguro parish at around 7.00 a.m. on Sunday, 10 April. Her son died at Kiziguro parish during an attack there on 11 April.<sup>257</sup>

### 4.3 Deliberations

230. The Prosecution relies on Witness BBJ to establish that on about 8 April 1994, at a roadblock in Nyagasambu *cellule*, Gatete ordered civilians to hunt down and kill Tutsis, including babies in the womb, and gave them dogs to facilitate the hunt.<sup>258</sup> The Prosecution also relies on evidence relating to a roadblock near the Kayonza commune office. However, the Chamber notes that Kayonza commune was not in Byumba prefecture, but in Kibungo prefecture (II.8). The Defence submits that Witness BBJ did not provide credible testimony and that the Prosecution has not proven this allegation.<sup>259</sup>

231. At the outset, the Chamber is satisfied about Witness BBJ's ability to have identified the Accused in April 1994. Although no details were elicited about prior occasions that she had seen him, her evidence suggests that she did know Gatete. She stated that she had known him since he was young and knew his family members well. She also knew him as the former *bourgmestre* of Murambi commune.<sup>260</sup>

232. Nevertheless, the Chamber has concerns regarding the merits of Witness BBJ's evidence. It is not convinced that she would have moved to only metres away from the Accused at the roadblock when *Interahamwe*, who according to her testimony had killed persons with "bladed weapons", were present.<sup>261</sup> Moreover, the Chamber recalls its reservations regarding the reliability of Witness BBJ's evidence, as noted elsewhere (II.5.3.i). It has not accepted her testimony without adequate corroboration, nor will it do so in this instance.

233. Accordingly, the Chamber concludes that Witness BBJ's uncorroborated testimony is insufficient to support findings beyond reasonable doubt that, on about 8 April 1994, Gatete told civilians at a roadblock in Nyagasambu *cellule*, to hunt down and kill Tutsis, or that he gave them dogs to facilitate the hunt. The Prosecution presented no other evidence in support

<sup>257</sup> T. 5 November 2009 pp. 17-18, 61. One of the children was sexually assaulted and injured as a result of the assault by the *Interahamwe*. T. 5 November 2009 p. 18. See also II.5.2.

<sup>258</sup> Indictment paras. 18, 31, 34; Prosecution Closing Brief paras. 34-35, 40, 43 (iii), 75 (ii), 302-304; Closing Arguments, T. 8 November 2010 pp. 7, 9.

<sup>259</sup> Defence Closing Brief paras. 95, 476(a)-506, 696, 1094, 1097-1098, 1157, 1164, 1283; Closing Arguments, T. 8 November 2010 p. 49.

<sup>260</sup> Witness BBJ stated that she knew Gatete and his family and where he lived before moving to Gakenke. T. 5 November 2009 pp. 14-15. Although she initially struggled to identify the Accused in court, this appears to have been due to her eyesight and fear of moving closer to him in order to point him out. T. 5 November 2009 pp. 25-28. In any event, the Chamber recalls that in-court identification should be given little or no weight. See *Kalimanzira* Appeal Judgement para. 96, citing *Kamuhanda* Appeal Judgement para. 243.

<sup>261</sup> Witness BBJ testified that she was "very close" to the roadblock. Although she did not know how to measure distances in terms of metres, she estimated that she was probably one metre away. T. 5 November 2009 pp. 16-17.

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of the allegations regarding Gatete's role in the administration and manning of roadblocks in Byumba prefecture, as alleged in paragraph 13 of the Indictment.

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## 5. KIZIGURO PARISH, 11 APRIL 1994

### 5.1 Introduction

234. The Indictment alleges that, on about 11 April 1994, Gatete ordered, supervised and participated in the killings and rapes of Tutsi civilians at Kiziguro parish complex, a church and hospital where thousands of Tutsi civilians had taken refuge. Assisted by Gasigwa Karangwa, Kiziguro *Interahamwe* leader Augustin Nkundabazungu, and FAR soldiers armed with rifles, Gatete and his group of *Interahamwe* broke into the church compound, forced the Tutsi refugees to exit, and killed them. A number of refugees were forced to transport the bodies of Tutsi victims to a nearby mass grave where they too were killed and thrown in. Several thousand civilian Tutsi men, women and children were killed during the attack. Among them were the school inspector, Kalemera, a teacher called Munana, Claver Karurange, Gapfizi and Prosecution Witness BCS's brother. The Prosecution relies on the evidence of Witnesses BBP, BBM, BUY, BVS, BBJ, and BCS.<sup>262</sup>

235. The Defence does not dispute that Tutsis were killed at Kiziguro parish on 11 April 1994 but denies that Gatete was present during the attack, or anytime in April that year. Rather, *Interahamwe* leader Augustin Nkundabazungu led civilians, who included displaced persons from nearby refugee camps, to attack the Tutsis at Kiziguro parish. Defeated and retreating soldiers also participated in the massacre. Others who played a prominent role in gathering assailants and in the attack included Gendarme Lieutenant Pascal Habarurema and Kiziguro sector *Conseiller* Gaspard Kamali. The Defence further submits that the attack was not part of an orchestrated plan but the result of a build-up of tensions and violence in the days preceding the massacre. The Defence denies that any rapes took place at the parish that day. In support, it points to the testimonies of Witnesses LA84, LA27, Jean-Damascène Kampayana, LA32, and Augustin Habakubaho.<sup>263</sup>

### 5.2 Evidence

#### Prosecution Witness BBP

236. In 1994, Witness BBP, a Tutsi, was a farmer living in Ndatemwa sector, Murambi commune. On 7 April, he fled killings and sought refuge with between 2,000 and 4,000 other refugees at Kiziguro parish in Kiziguro sector, Murambi commune. The parish was guarded by gendarmes who were normally stationed in Ndatemwa sector.<sup>264</sup>

237. On around 10 April, in the afternoon, Gatete, who was the *Interahamwe* leader at the commune level, arrived with "Nkundabazungu", who was also an *Interahamwe* leader, as well as "Kamali", among others. From the parish, they took away members of "Kibaruta's" family.<sup>265</sup>

<sup>262</sup> Indictment paras. 19, 31, 34; Prosecution Closing Brief paras. 4, 39, 41-44, 47, 75, 86-88, 108, 115, 162, 168, 228-233, 258-329; Closing Arguments, T. 8 November 2010 pp. 2-5, 7, 13-14, 22.

<sup>263</sup> Defence Closing Brief paras. 93, 238, 381-645, 1100-1102, 1105, 1173, 1189, 1200; Closing Arguments, T. 8 November 2010 pp. 38, 48-51.

<sup>264</sup> Prosecution Exhibit 1 (personal identification sheet); T. 20 October 2009 pp. 14-17, 35, 37, 47-48, 57.

<sup>265</sup> T. 20 October 2009 pp. 16-18, 47, 49-50. The Chamber notes that Witness BBP later stated: "As one says, the *commune* policemen, I saw only Kam[a]li and Nkundabazungu. The other assailants were *Interahamwe* and

238. By the morning of 11 April, the gendarmes who had guarded the parish had left. Using stones, the refugees attempted to repel the *Interahamwe* who tried to climb over the compound walls. Later that morning, Gatete returned, leading a group consisting of Kamali, Nkundabazungu, *Interahamwe* and soldiers. They were let in by a parish worker. The soldiers entered the parish compound and searched the refugees for *Inkotanyi*, while Gatete and the others remained outside. Refugees without identity cards were separated from the others and the soldiers then left the compound.<sup>266</sup>

239. Less than five minutes later, the soldiers returned with Gatete. He instructed them to remove a man called Munana, who was accused of owning a radio to communicate with the *Inkotanyi*. Munana refused to leave and Gatete stated, “[y]ou see, Munana is refusing to go, so we will kill you all”. Munana was subsequently taken out and Gatete then instructed the *Interahamwe* to kill all the refugees inside the parish “so that when their followers came they would lose the election”. The witness lay on the ground as the *Interahamwe* attacked the refugees with a range of weapons. Some were shot down while others were killed with machetes, spears or clubs. Refugees who continued to arrive that morning by climbing over the walls were also killed. The assailants also included displaced persons from Bidudu, Muvumba, Ngarama, Kiyombe, and Mutara refugee camps.<sup>267</sup>

240. In the middle of the attack, Gatete stopped the assailants so that Hutus, who were still among the refugees, could be separated from the others. Hutus were told to stand. The witness stood up in the hope that he would be saved, but he was recognised and, along with others, forced to carry dead bodies from the parish to a pit that was used as a mass grave and located about 500 to 600 metres from the compound. He was accompanied by assailants as he carried a body from the gate of the compound to the pit. Realising that the refugees carrying bodies were also being killed, the witness jumped into the pit in an attempt to save his life. The killings continued for some time, as more bodies were thrown in. He then lost consciousness and could not distinguish between day and night. Eventually, he was rescued by *Inkotanyi* soldiers. They said that he had been in the pit for approximately six days. Eleven victims were rescued from the pit but only seven are alive today.<sup>268</sup>

#### Prosecution Witness BBM

241. Witness BBM, a Tutsi, was a farmer in 1994 and resided in Gakoni sector, Murambi commune. On 7 April, he sought refuge at the office of MSF, an organisation that was assisting Tutsi refugees from Kiyombe. From there, he was transferred to the Gakoni orphanage together with other refugees. On 9 April, gendarmes evacuated the witness and

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other members of the population that I did not know.” However, when read in the context of his evidence and the question which he was responding to, it appears that he was not referring to Kamali and Nkundabazungu as communal policemen. The question from Defence counsel that he responded to was: “They were also followed by *Interahamwe* and communal policemen, weren’t they?” T. 20 October 2009 p. 42.

<sup>266</sup> T. 20 October 2009 pp. 17-20, 37-38, 42, 57. Witness BBP was not far from the gate, and able to see those who were standing outside the compound, including Gatete. T. 20 October 2009 pp. 19-20.

<sup>267</sup> T. 20 October 2009 pp. 18-19, 20 (quoted), 21-23, 36, 38-39, 42, 43 (quoted).

<sup>268</sup> T. 20 October 2009 pp. 21-25, 38. He named some of the survivors as Rugigana, Ntaganira and Bushayija. T. 20 October 2009 pp. 25-26. He also described the soldiers who rescued him as “soldiers of the current government of my country”. T. 20 October 2009 p. 25.



about 50 other Tutsi refugees to Kiziguro parish, where about 3,000 to 4,000 others had already sought refuge after fleeing Hutu attacks.<sup>269</sup>

242. On 11 April, between 9.00 and 11.00 a.m., Gatete entered the Kiziguro parish compound with members of the Presidential Guard and Nkundabazungu, a cashier at the commune office. They took away two teachers called Munana and Karemera.<sup>270</sup>

243. About ten minutes later, Gatete returned with Nkundabazungu and the soldiers and ordered the *Interahamwe*, who were on the road behind the wall of the compound, to “exterminate the refugees so that when their followers c[a]me they [would] find no Tutsis”. The *Interahamwe*, who were greater in number than the refugees, entered the parish compound and told the refugees to lie down. They were armed with machetes, clubs and axes, and began to attack the refugees. About ten minutes into the assault, the witness was stabbed in the back and subsequently dragged to, and thrown into a pit that was about 50 metres deep and located about 100 metres from the parish. Dead bodies were also thrown in. He was unable to follow what happened next and spent about one week in the pit before being rescued by the *Inkotanyi* on the following Saturday. He was among 14 survivors who were rescued from the pit, only seven of whom are alive today.<sup>271</sup>

#### Prosecution Witness BUY

244. In 1994, Witness BUY, a Tutsi, was a student living in Nyabisindu sector, Murambi commune. On 7 April, at 6.00 a.m., following the killing of Tutsis by *Interahamwe* in her village, she fled with her mother to a friend’s house. On the night of 8 April, they headed towards Kiziguro parish and arrived at 6.00 a.m. on 11 April. There, they found about 3,000 to 3,500 other refugees, who were mostly inside the church. Between two and three hundred were in the presbytery courtyard. They had all fled *Interahamwe* attacks and killings in their localities.<sup>272</sup>

245. At about 9.00 a.m., shortly after the witness entered the church, *Interahamwe* arrived through the church entrance facing the presbytery. They forced the refugees to leave the church and outside, took away a teacher called Munana, who was accused of possessing a device to communicate with the *Inkotanyi*. They also separated the Hutus from the Tutsis and started looting the refugees. Subsequently, Gatete arrived with Nkundabazungu and soldiers. Standing at the compound entrance, Gatete told the *Interahamwe* to stop stealing and to start

<sup>269</sup> Prosecution Exhibit 4 (personal identification sheet); T. 20 October 2009 pp. 58-60, 62-66, 74. Witness BBM also stated that about 3,000 refugees were inside the church, while around 50 were outside the church but in the parish compound. T. 20 October 2009 p. 67.

<sup>270</sup> T. 20 October 2009 pp. 64-67, 75, 77. Witness BBP was standing “below the church,” near the entrance leading to the presbytery. T. 20 October 2009 p. 65.

<sup>271</sup> T. 20 October 2009 pp. 66, 67 (quoted), 68, 70, 84. The pit was “below the primary school”. T. 20 October 2009 p. 68. Witness BBM fell about 30 metres into the pit. T. 20 October 2009 p. 84. He named Saidi, Bushayija, Mukabideri, Jacque, and Rugigana as among the survivors. T. 20 October 2009 p. 70. The Chamber notes that the Saturday following 11 April in 1994 would have been 16 April.

<sup>272</sup> Prosecution Exhibit 6 (personal identification sheet); T. 21 October 2009 pp. 54-55, 58, 65-66, 71.



killing the refugees so that when the *Inkotanyi* arrived, they “would not meet any of them”. He then left the parish while the *Interahamwe* and soldiers remained.<sup>273</sup>

246. Subsequently, the soldiers surrounded the refugees, who were ordered to lie down. The assailants, who consisted of *Interahamwe* and displaced persons, were many in number and scattered among the refugees. They attacked the refugees using machetes, spears, and clubs. The witness was beaten and suffered a blow to her head. By about 10.30 a.m., the bodies of victims started to pile up. She and other young persons were made to carry them out to a pit located about 500 metres from the presbytery courtyard. It took the whole day to carry bodies to the pit. The attack continued until the evening.<sup>274</sup>

247. The *Interahamwe* also took women and young girls to be raped at a place not far from where the refugees were. Screams were subsequently heard coming from that location. The witness knew two of the women who were taken away by the *Interahamwe*. One died while the other survived and told the witness “what had happened to her”. The witness did not see Gatete during this time.<sup>275</sup>

248. At around 3.00 p.m., after leaving the area around the pit, the witness saw Gatete in the parish courtyard accompanied by soldiers and *Interahamwe*. He asked the assailants how many Tutsis remained as the *Inkotanyi* were getting closer. He then told the assailants to gather the Tutsis and take them to the pit where they were killed and thrown in. The witness survived after being recognised by an *Interahamwe* who was her brother’s friend. He told the others that her father was Hutu and managed to save her. She left the parish at around 5.30 p.m. when killings were still ongoing and did not see Gatete again.<sup>276</sup>

Prosecution Witness BVS

249. Witness BVS, a Tutsi, was a farmer in 1994 and resided in Kiramuruzi sector, Murambi commune. On 8 April, she fled with her two young children to Kiziguro parish after Hutus started killing Tutsis. Upon arrival at the parish in the afternoon that day, she saw Gatete with gendarmes and Karemera, the Murambi primary school inspector. Gatete asked where the witness’s husband was and Karemera informed him that he had been killed. Karemera had a list of names and crossed her husband’s name off the list. A priest called Mubyarihehe let her into the church while Gatete and the others remained outside. She spent that night at the church.<sup>277</sup>

250. The following morning, on 9 April, she could hear persons being killed outside the parish compound. Refugees continued to arrive from various locations, including Gakoni and Muhurura. That morning, Gatete returned to the compound, spoke to the gendarmes and left. The witness did not hear what was said. The next morning, 10 April, Gatete returned and

<sup>273</sup> T. 21 October 2009 pp. 55-57, 58 (quoted), 59, 68, 71, 73-74, 76-77. Witness BUY stated that the refugees were not wearing watches to be able to ascertain the time but estimated that it was about 9.00 a.m. T. 21 October 2009 p. 56.

<sup>274</sup> T. 21 October 2009 pp. 59-62, 68, 72-74, 77.

<sup>275</sup> T. 21 October 2009 pp. 61-62, 75.

<sup>276</sup> T. 21 October 2009 pp. 59 (quoted), 60-61 (the point to which the remaining refugees were taken to be killed was about 100 to 150 metres from the pit), 62, 65-67, 73, 75-77. Witness BUY confirmed that both her parents were in fact Tutsi. T. 21 October 2009 pp. 65-66.

<sup>277</sup> Prosecution Exhibit 7 (personal identification sheet); T. 22 October 2009 pp. 1-4, 14, 22, 33. Witness BVS believed the gendarmes were at the parish to protect the refugees. T. 22 October 2009 p. 4.



spoke to two priests in the compound. The witness immediately went inside the church and did not listen to their discussion. That day, the priests left Kiziguro parish.<sup>278</sup>

251. By 11 April, about 3,000 refugees had gathered in the parish compound. At around 6.00 or 7.00 a.m., the witness saw Gatete again as she came out of the church to relieve her children. He stood at the church entrance, looked inside, and then departed. At around 10.00 or 11.00 a.m., she was near the altar when soldiers entered the church. One soldier told the refugees to sing a funeral hymn as they were moved out into the courtyard. The Hutus were then separated from the other refugees, and the men were separated from the women and told to undress and lie on the ground. During this time, Gatete stood near the main entrance of the compound together with commune workers Nkundabazungu and Karekezi, as well as soldiers and *Interahamwe*. The witness could see Gatete but could not hear him. She had expected him to stop the assailants but instead, he gestured with his hand and the *Interahamwe*, who were many in number, immediately attacked the refugees with a range of traditional weapons. The killings continued into the evening. Gatete was present throughout.<sup>279</sup>

252. At around 2.00 p.m., the killings continued and it started raining. The witness remained very close to the presbytery. As the attack was drawing to an end, she and other women and children were taken to a pit located about 50 metres from the parish compound. Some were forced to carry the bodies of victims to the pit. As the witness left the compound, she passed Gatete, who was with soldiers and *Interahamwe* who pushed and beat the refugees along the way. At the pit, the *Interahamwe* started attacking them with machetes and throwing them in. The witness, who was pregnant at the time, collapsed after a woman near her was decapitated. Believing that the witness was dead, the assailants left her alone. The *Interahamwe* continued to throw bodies into the pit. In the evening, as they were about to throw the witness in, she raised her head. An *Interahamwe* recognised the witness and took her to his home.<sup>280</sup>

253. Young girls were also raped by *Interahamwe* in a little garden close to the parish buildings and later killed. The witness knew two young girls called Nyiranuna and Nyirankundabagwira who were among the many who were raped. Both were killed.<sup>281</sup>

#### Prosecution Witness BBJ

254. In 1994, Witness BBJ, a Tutsi, was a farmer living in Rwankuba sector, Murambi commune. At around 7.00 a.m. on 9 April, she arrived at Kiziguro parish with her two children following an assault by *Interahamwe* at a roadblock located in "Rwimiterere". The previous evening, while hiding near the Nyagasambu roadblock, she had heard Gatete issue instructions to *Interahamwe* to kill Tutsis and assemble them at Kiziguro parish to be killed

<sup>278</sup> T. 22 October 2009 pp. 4-5, 14-16.

<sup>279</sup> T. 22 October 2009 pp. 5-7, 16 -19, 21, 23-24, 34. Witness BVS later stated that there were about 1,000 people within the compound but that she did not know how many were inside the church building. T. 22 October 2009 p. 18. From where she was standing, she could easily observe the gate. T. 22 October 2009 p. 21.

<sup>280</sup> T. 22 October 2009 pp. 6-8, 20-22 She did not have to carry a body as she had no strength and was with her children. The children were "flogged" but not killed. T. 22 October 2009 p. 22. The pit, which was very deep, had been dug long before April 1994 for water. T. 22 October 2009 p. 8. She did not state how the *Interahamwe* knew her.

<sup>281</sup> T. 22 October 2009 pp. 9-10, 20-21.

the following Monday. At the parish, she found about 2,000 other refugees who were mostly Tutsi. Many *Interahamwe* were also there, waiting for the right time to attack.<sup>282</sup>

255. At Kiziguro parish, there was a white priest called "Mariano" and Father Pierre Mbyariyehe, who was an *Interahamwe*. By about 10.00 a.m. on 10 April, the priests left the parish. Before leaving, Father Mbyariyehe called the refugees into the church for confession and then locked them in. As he departed, he left the door to the inner courtyard open so that the *Interahamwe* could have access to the refugees.<sup>283</sup>

256. At around 9.00 p.m., on 10 April, Gatete arrived at the parish in a red Toyota pickup. When the witness heard that Gatete had arrived, she went out into the courtyard. From the rear entrance of the church, she and others observed Gatete and the *Interahamwe* who had assembled in the courtyard in front of the priest's office. Gatete delivered a large quantity of drinks and told the *Interahamwe* to be "vigilant" and they would "achieve" their "objective". They spent the night singing, dancing and drinking. Gatete left the following morning.<sup>284</sup>

257. At about 10.00 a.m. on 11 April, the witness heard the arrival of motorbikes. Presidential Guards, led by "Nkundabazungu", who was Gatete's "assistant", and was armed with a gun, entered the church. The Presidential Guards told the *Interahamwe* to "start with" a school inspector called Munana and a teacher named Karemera. The two men were taken out of the church and the other refugees were also forced to exit. As they left, they sang a funeral hymn.<sup>285</sup>

258. Outside, the witness saw Gatete in the courtyard. The assailants ordered the refugees to sit down and then began attacking them with metal bars and machetes. The witness was beaten with a metal bar and her children were killed. In an attempt to kill herself, she jumped into a water tank, which had been dug in the grounds of the parish courtyard. She was saved by others who had also jumped into the tank. From inside, she heard Gatete thank the assailants. He told them to "[t]ake away the dirt", after which they could "go to the bar" for their "reward". At about 3.00 a.m. the next morning, she was helped out of the water tank and headed towards Mutara. She was among seven persons who had jumped into the tank. Only four survived.<sup>286</sup>

#### Prosecution Witness BCS

259. In 1994, Witness BCS, a Tutsi, was a student in secondary school and lived in Kiramuruzi sector, Murambi commune. Following an attack on his home on 7 April, during which he was injured, he was taken by neighbours to Kiziguro parish on the night of about 8

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<sup>282</sup> Prosecution Exhibit 15 (personal identification sheet); T. 5 November 2009 pp. 11-13, 15-18, 20-23, 59-61, 68. See also II.4.

<sup>283</sup> T. 5 November 2009 pp. 20-21, 62.

<sup>284</sup> T. 5 November 2009 pp. 16, 18-19, 20 (quoted), 22, 62-64. Witness BBJ later stated that she saw Gatete with the *Interahamwe* from 4.00 p.m. T. 5 November 2009 p. 64.

<sup>285</sup> T. 5 November 2009 pp. 22, 24-25, 65-66, 71. Witness BBJ described Nkundabazungu as the "most notorious because he is the one who had a gun" and "[w]hen they opened the gate to kill the refugees, Nkundabazungu was at the head of those who had people come out". T. 5 November 2009 p. 25.

<sup>286</sup> T. 5 November 2009 pp. 22-25, 60-61, 63, 65, 67-69.



April. They left him in a small office belonging to the priest, within the parish compound. He remained there for two to three days.<sup>287</sup>

260. On about 11 April, between 9.00 and 10.00 a.m., out of a small window in the priest's office, he saw his elder brother and a teacher called Karemera, as well as a third person whom he did not recognise. He also saw Gatete, who was armed with a pistol, and accompanied by soldiers who were beating people. Using the butt of his pistol, Gatete was pushing the three persons towards the main road, where a small wooded area was located. As the witness lay back down on his mat, he heard gunshots coming from the wooded area, as well as people screaming and a crowd passing by. He remained at the parish for about three days, until he was found by *Inkotanyi* soldiers and taken to Gahini hospital. He did not see his sisters, who had sought refuge at Kiziguro parish, again.<sup>288</sup>

#### Defence Witness LA84

261. Witness LA84, a Hutu, was a teacher in 1994, residing in Kiziguro sector, Murambi commune. On 7 April, after hearing about the President's death, he left his home just after about 5.00 or 6.00 a.m. to buy food but found that the shop had been looted by displaced persons from nearby refugee camps. He also saw a corpse on the road leading to Kiziguro parish and upon returning home, found another in front of his house. He remained there until about 2.00 or 3.00 p.m., following which he left for the commercial centre. Up until that time, the acts of violence in the area were committed by displaced persons led by Nkundabazungu, who was a commune employee and always with a person called Kamashu. Others responsible were Juma Emmanuel, Mapengu, and local administrators such as Kiziguro sector *Conseiller* Kamali. A man called Nyirangene, and Valens Byansi, who was chairman of the Murambi commune CDR party, as well as a trader called Mbuguji were among others also responsible for the violence.<sup>289</sup>

262. On 8 and 9 April, the witness returned to the centre where many people had gathered and were concerned about the prevailing situation. Refugees from Bugarura camp had come to "take over" and it was being said that Tutsis from the Kiziguro region were fleeing to Kiziguro parish. Defeated or deserting soldiers also arrived.<sup>290</sup>

263. On 9 April, two vehicles belonging to Mbuguje, and another belonging to Valens Byansi, arrived at the centre. Nkundabazungu was also present and instructed people to go to Gakoma in the vehicles or on foot. The witness and others complied. If they had not done so, they would likely have been killed. When they reached a banana plantation, they commenced

<sup>287</sup> Prosecution Exhibit 5 (personal identification sheet); T. 21 October 2009 pp. 1-3, 9-18, 22-23, 26, 30-31, 35, 38. See II.3.3.iii.

<sup>288</sup> T. 21 October 2009 pp. 14-18, 28-29, 31, 36, 38. During cross-examination, Witness BCS provided further detail, that he "caught sight of Gatete pushing those people in front of him and he was taking them towards the main road where there is a small wooded area. And thereafter I heard a gunshot. That was a shot fired from a small calibre gun. It was not a very loud gunshot, and I drew the conclusion that he was the one who had fired. He was pushing those people in front of him with the butt of his pistol. That is why I inferred he was the one who had shot them when I heard the gunshot". T. 21 October 2009 p. 36.

<sup>289</sup> Defence Exhibit 54 (personal identification sheet); T. 9 March 2010 pp. 36-39, 41, 45, 48-49, 51-55, 58, 74. Bidudu and Rwakirenga camps were close to Kiziguro. Those in the camps lived in difficult conditions. T. 9 March 2010 pp. 46-48, 58. There were many displaced persons in and around Murambi commune. T. 9 March 2010 pp. 46, 54-55.

<sup>290</sup> T. 9 March 2010 pp. 56-58.

an attack during which a man named Karake and his family were killed. They subsequently continued onto Gikoma and Bugarura and injured and killed people with guns and bladed weapons. Kamashu and Kamali were at the centre of the attack, together with displaced persons. The authorities could do nothing as they no longer controlled the area.<sup>291</sup>

264. By 10 April, there were many soldiers on the road leading to Kayonza and people, especially Tutsis, were afraid. On the morning of 11 April, the witness returned to the centre, which was crowded, as the refugee camps had been dismantled. Wounded soldiers had also gathered. Other soldiers came from the Ndatemwa base with their National Gendarmerie commander, Pascal Habarurema. At about 9.00 or 10.00 a.m., Nkundabazungu, Kamali, Mbuguje, Byansi and others arrived and told everyone to go to Kiziguro parish where many Tutsis had sought refuge. The witness and others complied, as they were threatened by soldiers with guns. When they arrived at the parish, they learnt that they were required to kill those inside.<sup>292</sup>

265. There were about 450 to 500 people in the Kiziguro parish compound and although the witness did not enter the church, he estimated that there were between 400 and 500 refugees inside. Nkundabazungu arrived and fired at the church door. Subsequently, soldiers came and opened the door. At this time, most of the Tutsi refugees were in the presbytery, in front of the priest's living quarters. The witness believed Munana, who was chair of the PL party in Murambi commune and a teacher at the Murambi primary school, was at the presbytery, but the witness did not go there to see what was happening. He heard that Munana was among the first victims to be killed in front of the priest's living quarters, within the parish compound.<sup>293</sup>

266. During the attack, *Conseiller* Kamali took some Hutus aside to be saved. Nkundabazungu selected some women and children and took them to a yard in a primary school on the lower side of the church where they were guarded by soldiers and *Interahamwe* but later killed, pursuant to his instructions. Nkundabazungu, who had led attacks throughout the region, "stood out" among the assailants and was at the "forefront" of the attack. Pascal Habarurema led the gendarmes and soldiers. Gendarmes also issued orders. The "bystanders" outnumbered the assailants who included soldiers, gendarmes, local inhabitants and displaced persons.<sup>294</sup>

267. Refugees were killed with machetes and guns either in the courtyard or as they tried to flee. Some Tutsis were required to take fellow Tutsi victims to a mass grave, located "below" the football pitch, and were also killed. The witness remained in front of the parish until the killings ended at about 3.00 or 4.00 p.m. He did not see any women or girls being raped.<sup>295</sup>

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<sup>291</sup> T. 9 March 2010 pp. 58-60, 71.

<sup>292</sup> T. 9 March 2010 pp. 60-63 (the gendarmes wore red berets, while Rwandan Army soldiers wore black berets), 64, 71-73; T. 10 March 2010 pp. 14-15.

<sup>293</sup> T. 9 March 2010 pp. pp. 40-41, 61-62, 64, 67-70, 73-76; T. 10 March 2010 pp. 13-14. When Witness LA84 arrived, he was facing the door of the church. T. 9 March 2010 p. 66; Defence Exhibit 56 (photograph 1 of Kiziguro parish).

<sup>294</sup> T. 9 March 2010 pp. 67-69, 70 (quoted), 71, 73 (quoted), 74-75.

<sup>295</sup> T. 9 March 2010 pp. 70 ("Some people were taken to the mass grave, and often those people were taken by fellow Tutsis. And when they got to the mass grave, the attackers would kill people who had been taken there as well as the people who had taken them - the victims - there, because both of those groups were Tutsis."), 74-75;



268. After leaving the parish, the witness walked an acquaintance home and passed the mass grave into which the bodies of victims of the attack had been thrown. He heard people groaning there and the site was covered in blood. The following morning, at about 8.00 a.m., he returned to the centre. After being approached by a woman asking for assistance, he took food to a Tutsi girl in hospital. He was then told that he would be killed for assisting an *Inyenzi*. He subsequently fled to Tanzania.<sup>296</sup>

#### Defence Witness LA27

269. In 1994, Witness LA27, a Hutu, was an agricultural trainer living in Kiziguro sector, Murambi commune. He heard about the President's death at about 5.00 a.m. on 7 April. By around 10.00 or 11.00 a.m., violence had erupted in Mulinga *cellule*. That day, he participated in attacks in which one person was beaten and another killed.<sup>297</sup>

270. On 9 April, Tutsi refugees were transported from the Gakoni orphanage to Kiziguro parish by *Bourgmestre* Mwange. At about 4.00 p.m., the witness went to the Agatovu centre in Mulinga *cellule*. He later saw an *Interahamwe* kill a man named Kanyamupira who was considered to be Tutsi. The following day, the witness participated in the looting of a shop. Those who led the attacks in the area were Augustin Nkundabazungu, who was the Murambi commune *Interahamwe* leader, and soldiers. Martin Kamana led the *Interahamwe* at the sector level. Displaced persons from Bidudu were also brought in to participate in attacks.<sup>298</sup>

271. On 11 April, at about 9.00 a.m., the witness wanted to leave the area but was stopped by soldiers who were gathering people, including *Interahamwe*, and forcing them to go to Kiziguro parish. He was one of around 300 others, in addition to at least 50 soldiers armed with guns, who went to the parish. The assailants included Nkundabazungu who was armed with a gun, Gendarme Lieutenant Pascal Habarurema, *Conseiller* Gaspard Kamali, a man called Gatsinzi and about 150 displaced persons.<sup>299</sup>

272. They arrived at the parish at about 10.40 a.m. Soldiers fired shots at the gate but it would not open. One soldier climbed over to open it from the inside and the witness and others entered the presbytery and then the church building. Inside, they found about 500 refugees who were forced out. Those who did not leave were shot by soldiers inside the church.<sup>300</sup>

273. Outside, the refugees were ordered to sit. Those who refused were shot. Kamali identified some Hutus, two girls in particular, and took them away. Other Hutus were separated from the remaining Tutsi refugees, who were killed. Among them was François Munana, who had refused to sit down. Nkundabazungu took him to soldiers for questioning and he was shot at about 11.15 a.m. The witness heard two gunshots but could not identify

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T. 10 March 2010 p. 12 (quoted).

<sup>296</sup> T. 9 March 2010 p. 77; T. 10 March 2010 p. 2.

<sup>297</sup> Defence Exhibit 57 (personal identification sheet); T. 10 March 2010 pp. 25, 27-28, 35, 60-61, 64. After pleading guilty, Witness LA27 was convicted for his participation in the attack on Kiziguro parish and sentenced to 24 years' imprisonment. He served 12 years and nine months. T. 10 March 2010 pp. 29-31, 55, 59.

<sup>298</sup> T. 10 March 2010 pp. 30-31, 33, 35-36, 62-65.

<sup>299</sup> T. 10 March 2010 pp. 37-38, 40-41, 43, 48-49, 65-66.

<sup>300</sup> T. 10 March 2010 pp. 37-41, 43, 66-68, 70, 72-73. On a photograph, Witness LA27 identified the gate at which the soldiers shot. T. 10 March 2010 p. 38. See Defence Exhibits 59 (photograph 3 of Kiziguro parish) and 61 (photograph 4 of Kiziguro parish).



who fired them. An *Interahamwe* named Manirakora dealt the fatal blow to Munana with a machete. The witness was some five metres away when Munana was killed near the water tank. The killings continued and intensified. Pursuant to Nkundabazungu's orders, the witness participated in the killing of one person using a club.<sup>301</sup>

274. At around noon, the bodies of victims began to pile up. Nkundabazungu, Lieutenant Habarurema and soldiers ordered civilians to carry the bodies to a mass grave located about 300 to 350 metres away from the parish, downhill from the football field. The witness carried 10 to 12 bodies to the grave over a period of about three hours. By around 1.00 p.m., it became apparent that there were too many bodies to move and Tutsi men were also ordered to assist. When they reached the grave, they too were immediately killed and thrown in. Meanwhile, Tutsi women were taken to a playground by Nkundabazungu and soldiers and later killed and also thrown into the pit. By around 4.00 p.m., all the Tutsis had been killed. The witness did not hear any women or girls screaming or see them being raped.<sup>302</sup>

275. About three to four hours into the attack, the witness helped Witness BUY escape by saying that she was the daughter of a Hutu. He assisted her because they had attended the same school. He took her to a relative's house and did not see her again. He believed that the attack lasted about five hours, as those who had stayed at the parish passed by his home at about 4.00 p.m. On 14 April, he fled towards Tanzania.<sup>303</sup>

#### Defence Witness Jean-Damascène Kampayana

276. Jean-Damascène Kampayana, a Hutu, was a nurse working for *Médecins Sans Frontières* in 1994. From mid-February 1993 to 9 April 1994, he lived in Bidudu displaced persons camp, which was one of four refugee camps in Murambi commune. Between 6,000 and 8,000 displaced persons lived in Bidudu camp where living conditions were difficult. Following President Habyarimana's death on 6 April, people in the camp feared that the RPF would find them.<sup>304</sup>

277. On 7 April, at around 8.00 a.m., *Interahamwe* leader Nkundabazungu came to the camp and met about 15 *Interahamwe* on a field in front of the witness's tent. Ten minutes later, he left and the *Interahamwe* subsequently went towards neighbouring villages, returning later with looted items. The following day, some displaced persons went in search of food, while the witness remained behind to sell beer and banana wine. On 9 April, he went to Kiziguro to get food and stayed at a colleague's house by the roadside, close to the *chantier* neighbourhood. On 10 April, at around 2.00 p.m., displaced persons came to loot property in Kiziguro.<sup>305</sup>

278. On 11 April, the witness was returning to Bidudu camp when he saw angry and wounded soldiers on the road. He instead took a path leading to the camp. Along the way, he

<sup>301</sup> T. 10 March 2010 pp. 41-46, 60, 66-68, 70, 74; T. 11 March 2010 p. 4.

<sup>302</sup> T. 10 March 2010 pp. 46-50, 50-51, 55, 66, 71-72, 75-75.

<sup>303</sup> T. 10 March 2010 pp. 49, 52-55.

<sup>304</sup> Defence Exhibit 62 (personal identification sheet); T. 11 March 2010 pp. 8, 10-12, 14-15, 19. The other three displaced persons camps were Rwakirenga, Gikoma and Kabukunga camps. T. 11 March 2010 p. 14.

<sup>305</sup> T. 11 March 2010 pp. 19-24, 31, 34-35, 38, 50-51. Some of the *Interahamwe* who attended the meeting were Djuma, Rukara, Nsabimana, Matoci, Gahinano, Bategire, Kazizi and others. T. 11 March 2010 pp. 20, 50. Kampayana knew Nkundabazungu, who was a commune employee, and would see him at the marketplace close to the commune office. T. 11 March 2010 p. 22.



met *Interahamwe* coming from the camp who told him that the refugees had started fleeing towards Kiziguro hill, as the RPF were bombing the area near the camp and would soon capture it. The witness proceeded to the Ndatemwa gendarmerie post, where soldiers informed the gendarmes about the RPF advance. Gendarme Lieutenant Pascal Habarurema and soldiers ordered everyone passing by to go to Kiziguro parish.<sup>306</sup>

279. Kampayana proceeded to his colleague's house in Kiziguro but did not find him there. He continued to Kiziguro parish and arrived at 11.10 a.m. There, *Interahamwe* armed with traditional weapons and some with guns, as well as soldiers, had surrounded the parish compound. Its gate was open and there were approximately between 250 and 300 people at the parish, where he also found his friend, who told him that they too had been ordered to go there. Soldiers were forcing Tutsi refugees out of the church and Nkundabazungu, who was armed with a gun, stood at the church entrance. Soldiers and gendarmes outside the church ordered the Tutsi refugees to sit on the ground. One man refused and Nkundabazungu took him to a corner where there were soldiers. After a short while, the witness heard gunshots. During this time, he stood at the entrance facing the church "backyard". He was unarmed and could not leave the premises until the killings ended.<sup>307</sup>

280. Later, he and others were required to carry the bodies of victims to a mass grave. He carried bodies from inside the church, which was covered in blood. There were so many corpses that Tutsi men were also ordered to assist. They were told to remove their shirts so that they were easily identifiable and were accompanied by soldiers to the grave. Those Tutsi men were not seen again. Tutsi women were taken by Nkundabazungu, soldiers, gendarmes and *Interahamwe* to a football field. There were about 50 Tutsi women in total, and the witness later heard that they were also led to the mass grave and killed. At about 3.00 p.m., he went to his friend's house. He did not see or hear of any rapes being committed at the parish that day. He fled to Tanzania on 12 April.<sup>308</sup>

#### Defence Witness LA32

281. In 1994, Witness LA32, a Hutu, was a farmer living in Kiziguro sector, Murambi commune. At about 11.00 a.m. on 11 April, he was at home when he heard gunshots coming from the direction of Kiziguro parish. At about 11.30 a.m., the sounds diminished and he went out to see where they had come from. He met two acquaintances, who accompanied him along the road. They came across several soldiers and Nkundabazungu, who was an *Interahamwe* leader at the commune level and cashier at the commune office. Nkundabazungu asked them what they had been doing that morning and why they had not assisted in removing dead bodies from Kiziguro parish. He ordered them to go there immediately and a soldier was told to accompany them.<sup>309</sup>

282. They reached the church between 1.00 and 2.00 p.m. and stopped in front of the gate to the inner courtyard, which was open. Outside the compound were soldiers, gendarmes and

<sup>306</sup> T. 11 March 2010 pp. 24-25, 38-39, 46-48, 52.

<sup>307</sup> T. 11 March 2010 pp. 25-29, 33-36, 38, 40, 44-48, 52-57. Kampayana could not say how many people were inside the church (T. 11 March 2010 p. 26) but later estimated that there were between 900 and 1,000 people in the compound and included about 120 armed and 40 unarmed assailants. T. 11 March 2010 p. 34, 54, 56.

<sup>308</sup> T. 11 March 2010 pp. 27, 28-33, 40-41, 43, 47, 53, 57.

<sup>309</sup> Defence Exhibit 67 (personal identification sheet); T. 15 March 2010 p. 48-50, 53, 60-61, 72. Jean Ntaganda was *Interahamwe* leader at the sector level. T. 15 March 2010 pp. 88, 97.



*Interahamwe*. More than 500 people were scattered in front of the church, the school, in the yard and elsewhere. A large crowd of soldiers, gendarmes and *Interahamwe* were also inside the compound. Many people were moving dead bodies to a pit and the witness was ordered by soldiers to assist. The corpses were scattered inside the church and its backyard. Nkundabazungu, *Conseiller* Kamali, and the soldiers ordered those assisting, including the witness and other local inhabitants, to work fast and beat them so that the site would be cleared by the time the *Inkotanyi* arrived. Shirtless Tutsi men also carried bodies to the pit where they were then killed.<sup>310</sup>

283. In order to reach the pit, the witness had to pass through the compound, the classrooms, and football field, where about 100 Tutsi women and children had been assembled and made to sit. They were guarded by *Interahamwe* under the supervision of Nkundabazungu and soldiers. With the exception of Nkundabazungu, who carried a gun, other members of the “public” were armed with traditional weapons.<sup>311</sup>

284. Between 3.00 and 3.30 p.m., they finished carrying bodies to the pit. Nkundabazungu and soldiers checked whether there were any other bodies in the banana plantations and church. When they saw that all the bodies had been removed, Nkundabazungu, soldiers and *Interahamwe* led the Tutsi women to the pit just before about 4.00 p.m. and killed them there using firearms and traditional weapons. The witness was next to the pit at the time. To his knowledge, the women were not harmed before they were killed. Some of the children were killed with clubs. At this point, everyone was at the pit. From when the witness arrived, about 150 to 200 bodies were taken there. He carried about ten bodies and left the site at about 4.00 p.m., after the killings had ended. On 12 April, he fled towards Tanzania.<sup>312</sup>

#### Defence Witness Augustin Habakubaho

285. In 1994, Augustin Habakubaho, a Hutu, was a soldier in the Rwandan armed forces assigned to the staff headquarters and services company in the Mutara operational zone, based in Gabiro camp in Murambi commune. The commander of the operational zone was Lieutenant Colonel Léonard Nkundiye.<sup>313</sup>

286. On 6 April, at about 9.30 or 10.00 p.m., the witness received a telegram announcing the President’s death. Nkundiye ordered all soldiers to defend the camp until the morning. On 7 April, Nkundiye attended a meeting for all commanders at the senior officers’ academy. Upon his return, he announced that Major General Gatsinzi had been appointed acting chief of staff. At about 7.30 or 8.00 p.m., gunshots were heard and, about 30 minutes later, a

<sup>310</sup> T. 15 March 2010 pp. 56, 61-62, 67-68, 89-91, 94-95, 97-98.

<sup>311</sup> T. 15 March 2010 pp. 70-71, 90-93, 97. Soldiers and gendarmes were distinguishable because the former wore black berets while the latter wore red berets. T. 15 March 2010 p. 67. Others present were Laurent Ntaganda, Jean-Baptiste Ntaganda, Emmanuel Nkurunziza, Jean Damscène Kampayana, Fidèle Karangwa, Ngegene Habimana, Charles Rwabukwandi, Célestin Manirakora, François Nkuranga, Elias Ruzibiza, Pierre Sekamana, and Elias Twahirwa Kadunguri. Valensi Byansi was transporting *Interahamwe* to the “scene of the massacre”. “Eustache” was one of the leaders of the killers and was violent. Gakiga Nsenguyumva was also present and carried bodies. T. 15 March 2010 pp. 68-69, 95-98, 100. T. 15 March 2010 p. 95.

<sup>312</sup> T. 15 March 2010 pp. 71-76, 78, 80, 87-91, 93-94, 97, 100-101.

<sup>313</sup> Defence Exhibit 84 (personal identification sheet), T. 17 March 2010 pp. 24-25, 27-29, 40, 43-46.

telegram arrived stating that the *Inkotanyi* had attacked Rwandan armed forces in Muvumba, Ngarama, Gituza and Rurenge.<sup>314</sup>

287. On 8 April, at about 7.00 or 7.30 p.m., a telegram was sent stating that Muvumba, Ngarama, and Gituza had fallen to the RPF. Consequently, the command post was moved to Murambi.<sup>315</sup>

288. On 9 April, a telegram announced that soldiers at Kagitumba, Ryabega and Nyagatare had abandoned their posts and regrouped at Gabiro. By around 1.00 or 2.00 p.m., Gabiro military camp had also fallen to RPF forces. Fearing that the roads would be blocked, the soldiers took positions on the Nyakayaga and Rwagitima hills. The witness's company left Gabiro and went to Gakenke, using the tarred road leading from Kagitumba to Kayonza.<sup>316</sup>

289. In the late afternoon of 10 April, the witness heard gunshots. As Gakenke was not well protected, the operational positions were moved to the Rwamagana gendarmerie. The witness, along with about 2,000 other soldiers, moved at night from Gakenke to Rwamagana. The road to Kayonza was empty but when they reached Kayonza, they found many refugees.<sup>317</sup>

290. On the morning of 11 April, the witness received news of fighting in Nyakayaga and Rwagitama. At about 10.00 a.m., a telegram arrived stating that the Rwandan army was losing those positions to the RPF. At about 7.30 or 8.00 p.m., the soldiers returned. They wanted to fight the Rwamagana gendarmerie and accused the gendarmes of hiding the "enemy" at Kiziguro parish. The witness heard that the soldiers had committed massacres at Kiziguro parish.<sup>318</sup>

### 5.3 Deliberations

291. The evidence consistently demonstrates that, in the days following 6 April 1994, hundreds and possibly thousands of mostly Tutsi refugees fled attacks in their localities and sought refuge within the Kiziguro parish compound in Kiziguro sector, Murambi commune.<sup>319</sup>

<sup>314</sup> T. 17 March 2010 pp. 28-33, 45.

<sup>315</sup> T. 17 March 2010 p. 34.

<sup>316</sup> T. 17 March 2010 pp. 35-36; Defence Exhibit 85 (map of Byumba prefecture).

<sup>317</sup> T. 17 March 2010 pp. 37-38, 49.

<sup>318</sup> T. 17 March 2010 pp. 38, 39 (quoted), 50. The uniforms of the soldiers and gendarmes were not very different. The commando unit and the Presidential unit wore the same uniform as soldiers but those units had berets in camouflage colours. T. 17 March 2010 p. 39. During cross-examination, Habakubaho stated that he knew Gatete, as Gabiro camp was situated in Murambi commune, which Gatete led at that time. Sometime between the end of 1993 and the beginning of 1994, an *Interahamwe* group consisting of about 300 to 400 was trained at Gabiro camp. A group of about 150 to 200 Burundians was also trained there. T. 17 March 2010 pp. 45-47, 50-51.

<sup>319</sup> Witness BBP, T. 20 October 2009 p. 17 (about 2,000 to 4,000 refugees were inside the church); Witness BBM, T. 20 October 2009 pp. 60 (fled Hutus killing Tutsis), 64-67 (about 3,000 to 4,000 refugees were at the parish); Witness BUY, T. 21 October 2009 pp. 54 (fled *Interahamwe* killings of Tutsis which began on 7 April), 55 (about 3,000 to 3,500 refugees were at the parish and about 200 to 300 in the presbytery courtyard); Witness BVS, T. 22 October 2009 pp. 3 (fled Hutus killing Tutsis), 5 (about 3,000 persons were at Kiziguro parish); Witness BBJ, T. 5 November 2009 pp. 16 (fled *Interahamwe* attacks), 21 (by 10 April, there were about 2,000 people at the parish); Witness LA84, T. 9 March 2010 pp. 51, 53-55 (as of 7 April, there were acts of violence taking place in Kiziguro sector), 56 (on 8 April, it was being said that Tutsis had begun seeking refuge in Kiziguro), 64 (about 450 to 500 people were at Kiziguro parish), 73 (about 400 to 500 refugees were inside the



5075

292. On the morning of 11 April, many refugees were inside the church building and others in the courtyard within the parish compound when it was attacked by members of the armed forces, *Interahamwe* and civilian militia, including displaced persons from nearby refugee camps. Among the assailants were *Interahamwe* leader Augustin Nkundabazungu, who had worked as a cashier at the commune office, and Kiziguro sector *Conseiller* Gaspard Kamali.<sup>320</sup> Refugees who were inside the church building were forced out into its courtyard.<sup>321</sup> Tutsi refugees were then separated from the Hutus.<sup>322</sup> A Tutsi teacher from the Murambi primary school called Munana was taken aside from the other refugees and was one of the first to be killed.<sup>323</sup>

parish); T. 10 March 2010 pp. 14 (450 to 500 people were scattered about the parish), 62 (members of a family considered to be Tutsi had been killed at the Agatovu centre); Witness LA27, T. 10 March 2010 pp. 35 (on 7 April, violence erupted in the witness's *cellule* and refugees from Gakoni orphanage were taken to Kiziguro parish), 43, 51-52 (about 500 people were inside the church); Kampayana, T. 11 March 2010 pp. 26 (Tutsis had sought refuge inside the Kiziguro parish church), 34, 54, 56 (there were about 900 to 1,000 people in the parish compound, including about 120 armed and 40 unarmed assailants); Witness LA32, T. 15 March 2010 pp. 68 (more than 500 people were scattered everywhere, including in front of the church, school, and in the yard), 89.

<sup>320</sup> Witness BBP, T. 20 October 2009 pp. 17-20 (Gatete arrived with *Interahamwe* leader Nkundabazungu, Kamali, soldiers and *Interahamwe*), 36 (the assailants included displaced persons from Bidudu, Muvumba, Ngarama, Kiyombe and Mutara camps); Witness BBM, T. 20 October 2009 pp. 65 (Gatete was with Nkundabazungu and Presidential Guards), 67-68 (*Interahamwe* carried out the attack); Witness BUY, T. 21 October 2009 pp. 55-56, 59 (*Interahamwe* attacked and killed refugees), 58, 60 (Gatete was with Nkundabazungu, soldiers and *Interahamwe*), 73-74 (soldiers surrounded refugees while *Interahamwe* carried out the killings, although the witness could not distinguish between soldiers and Presidential Guards); Witness BVS, T. 22 October 2009 pp. 6-8 (*Interahamwe* attacked the refugees), 16-18 (soldiers moved the refugees out of the church to be killed), 6, 33 (Gatete was with Nkundabazungu, Karekezi, soldiers and *Interahamwe*); Witness BBJ, T. 5 November 2009 pp. 22 (Gatete came with Presidential Guards), 24 (Nkundabazungu was also there), 25 (*Interahamwe* were at the parish); Witness BCS, T. 21 October 2009 p. 15 (Gatete was with soldiers); Witness LA84, T. 9 March 2010 pp. 67 (Nkundabazungu, Kamali, and soldiers were present at the parish), 68 (soldiers and *Interahamwe* guarded the women), 71, 73-74 (Nkundabazungu and Kamali were among the leaders of the attack); Witness LA27, T. 10 March 2010 pp. 37-38 (*Interahamwe* and soldiers were at the parish), 40-41 (Nkundabazungu, Kamali, soldiers, and war displaced persons entered the church), 43 (soldiers from the Gabiro front were at the parish); Kampayana, T. 11 March 2010 pp. 26 (Nkundabazungu was inside the church, while *Interahamwe*, soldiers and gendarmes were outside), 29 (the *Interahamwe* were with Nkundabazungu), 31 (Nkundabazungu was leader of the *Interahamwe*), 34 (*Interahamwe*, gendarmes, soldiers, Nkundabazungu and a *conseiller* were at the parish), 54 (soldiers and *Interahamwe* were in the backyard), 55-56 (gendarmes, soldiers and *Interahamwe* were present), 56 (Nkundabazungu was present); Witness LA32, T. 15 March 2010 pp. 62, 67 (at the church, there was a large crowd of soldiers with black berets, gendarmes with red berets, *Interahamwe* and war-displaced people. Nkundabazungu and soldiers appeared to be in charge).

<sup>321</sup> Witness BUY, T. 21 October 2009 pp. 55-57 (*Interahamwe* forced refugees out of the church); Witness BVS, T. 22 October 2009 p. 5 (soldiers moved refugees out of the church and into the courtyard); Witness BBJ, T. 5 November 2009 pp. 22 (members of the Presidential Guard asked people to leave the church); Witness LA27, T. 10 March 2010 p. 41 (soldiers forced refugees out of the church); Kampayana, T. 11 March 2010 p. 26 (soldiers were forcing refugees out of the church).

<sup>322</sup> Witness BUY, T. 21 October 2009 p. 57 (the sorting out of Hutus from the remaining refugees lasted a few minutes); Witness BVS, T. 22 October p. 18 (Tutsis and Hutus were separated); Witness LA84, T. 9 March 2010 p. 69 (Kamali took some Hutus aside to save them); Witness LA127, T. 10 March 2010 pp. 43, 47 (Hutus were separated from the Tutsis).

<sup>323</sup> Witness BBP, T. 20 October 2009 p. 19 (Munana was taken away by soldiers); Witness BBM, T. 20 October 2009 pp. 66-68 (Karemera and Munana were first taken away, just before the killings began); Witness BUY, T. 21 October 2009 pp. 55 (the attackers first took away a teacher called Munana); Witness BBJ, T. 5 November 2009 pp. 65 (it was ordered that Karemera and Munana be brought out of the crowd); Witness LA84, T. 9 March 2010 pp. 68-70 (heard that Munana was among the first victims); Witness LA27, T. 10 March 2010 pp.



293. Subsequently, a brutal and extensive assault on the Tutsi refugees was launched and continued for hours. As a result, hundreds and possibly thousands of Tutsi men, women and children were killed by assailants using guns and traditional weapons.<sup>324</sup> The bodies of the victims were carried to a nearby pit which was used as a mass grave. Due to the numbers killed, some Tutsis were also ordered to assist in disposing of the bodies. Tutsi men were ordered to remove their shirts, so that they were easily identifiable while carrying bodies to the grave. Once there, they too were killed and thrown in. It was imperative that the area be cleared before the arrival of the RPF.<sup>325</sup>

294. The Chamber turns to review the evidence based on allegations that Gatete was involved in the attack on Kiziguro parish and the killing of Tutsi refugees there, as well as the rape of Tutsi women and girls.

### 5.3.1 Killings at Kiziguro Parish

295. The Indictment alleges that, on about 11 April 1994, Gatete ordered, supervised and participated in the killing of Tutsi civilians at Kiziguro parish complex, a church and hospital where thousands of Tutsi civilians had taken refuge. Gatete and his group of *Interahamwe*

41-42 (Munana fell down after two gunshots were fired at him), 44; Kampayana, T. 11 March 2010 pp. 26 (a man who refused to sit down was taken to a corner and shortly thereafter, gunshots were heard).

<sup>324</sup> Witness BBP, T. 20 October 2009 pp. 20 (*Interahamwe* carried various weapons including machetes and spears), 21 (guns were also used in killings); Witness BBM, T. 20 October 2009 p. 68 (the *Interahamwe* were armed with machetes, axes, knives and clubs); Witness BUY, T. 21 October 2009 pp. 59 (the attackers used machetes, spears and clubs), 68 (soldiers were armed with guns); Witness BVS, T. 22 October p. 6 (*Interahamwe* carried various weapons including clubs, spears, machetes, hoes, hammers); Witness BBJ, T. 5 November 2009 p. 25 (assailants used metal bars and machetes), 67 (the soldiers and *Interahamwe* used machetes, and axes); Witness LA84, T. 9 March 2010 p. 70 (Tutsi refugees were killed with machetes or guns); Witness LA27, T. 10 March 2010 pp. 41-42 (soldiers had guns), 46 (by noon, there were many bodies of victims), 47 (all Tutsis at the parish were killed), 48 (there were too many bodies for the Hutus alone to move), 63, 65 (the witness was armed with a club), 71 (some victims were struck, others hacked with machetes or shot down); Kampayana, T. 11 March 2010 pp. 29 (*Interahamwe* had traditional weapons and Nkundabazungu had a rifle; Tutsis were killed at the parish; there were so many corpses that Tutsis were ordered to help transport them), 32 (some women were hacked to death by machetes), 55 (the killers were armed with small hoes, rifles, clubs and also guns); Witness LA32, T. 15 March 2010 pp. 70, 73 (Nkundabazungu had a firearm and other members of the public were carrying traditional weapons), 75 (some of the children were killed clubs), 67, 71, 101 (from the time the witness arrived, at about 1.00 or 2.00 p.m., to about 3.00 or 3.30 p.m., about 150 to 200 bodies were carried to the mass grave). See also above footnote citing the number of refugees who had sought refuge at the parish.

<sup>325</sup> Witness BBP, T. 20 October 2009 pp. 21, 23 (he was required to carry bodies to the mass grave and those carrying bodies were also killed), 24; Witness BBM, T. 20 October 2009 pp. 68 (he was stabbed and thrown into the pit), 70 (bodies were thrown into the pit); Witness BUY, T. 21 October 2009 pp. 59 (she was among those ordered to carry bodies to the pit, and it took the whole day to move the bodies), 60-61; Witness BVS, T. 22 October p. 8 (*Interahamwe* threw bodies into the pit); Witness LA84, T. 9 March 2010 p. 70 (people, including Tutsis, carried bodies to a mass grave); Witness LA27, T. 10 March 2010 pp. 46, 48 (Tutsi men were among the persons carrying the bodies to a mass grave and were also killed), 71 (bodies were carried to a mass grave); Kampayana, T. 11 March 2010 pp. 29-30 (members of the public carried bodies to the grave, including some Tutsi men who did not return), 36 (Tutsi men were told to remove their shirts so that they were easily identifiable), 54 (*Interahamwe* and soldiers ordered those who did not have weapons to remove corpses and bury them); Witness LA32, T. 15 March 2010 p. 70 (Tutsis helped carry bodies to the mass grave, the men were told to remove their shirts, and were then killed at the grave), 89 (the witness and others were beaten to work faster as the *Inkotanyi* were getting closer); Habakabuho, T. 17 March 2010 pp. 34, 35-36, 38-39 (the RPF were advancing).

broke into the church compound with the assistance of Gasigwa Karangwa, Kiziguro *Interahamwe* leader Nkundabazungu, and FAR soldiers armed with rifles. They forced the Tutsi refugees to exit and killed them. It is alleged that among those killed were Karemera, Munana, Claver Karurange, Gapfizi and Prosecution Witness BCS's brother. The Prosecution relies on the first-hand accounts of Witnesses BBP, BBM, BUY, BVS, BBJ and BCS, who all testified about Gatete's presence at Kiziguro parish on the morning of 11 April and an attack on refugees there. While the witnesses arrived at the parish on different days and at different times, and some also observed the arrival of Gatete prior to 11 April, all testified about his presence during an attack on the refugees that day. The Prosecution led no evidence with respect to an attack on Kiziguro hospital, or in relation to the killing of Claver Karurange, as alleged in the Indictment.<sup>326</sup>

296. The Defence concedes that an attack took place at Kiziguro parish on 11 April but denies that Gatete was present or involved. Rather, it presented evidence that Nkundabazungu led the attack in which *Interahamwe*, civilian militia, including displaced persons from nearby refugee camps, and large numbers of retreating soldiers, participated. Gendarme Lieutenant Pascal Habarurema also took a lead role in the attack, as did *Conseiller* Gaspard Kamali. The Defence relies on the testimonies of Witnesses LA84, LA27, Jean-Damascène Kampayana, and LA32, who were all present at Kiziguro parish during or soon after the attack. The Defence further submits that the events at Kiziguro parish took place in the context of a war, and that battles were underway in nearby locations, as recounted by Jean-Damascène Kampayana and Augustin Habakubaho. Thus, the events at Kiziguro parish were not the result of an orchestrated plan to commit massacres there.<sup>327</sup>

297. The Chamber first turns to consider the Prosecution witnesses and notes a number of similarities in their accounts. All recalled the presence of Gatete at Kiziguro parish on the morning of 11 April.<sup>328</sup> Given the passage of time since the events, the Chamber considers the minor variances, with respect to the precise timings, immaterial.

298. Some witnesses also recalled Gatete's presence at the parish prior to 11 April. While their accounts diverge with respect to the precise details, there are clear thematic

<sup>326</sup> Indictment paras. 19, 31, 34; Prosecution Closing Brief paras. 41-44, 46-47, 75, 86, 88, 108, 115, 162, 168, 228 - 233, 258-259, 261-311; Closing Arguments, T. 8 November 2010 pp. 2-4, 7, 13-14, 22.

<sup>327</sup> Defence Closing Brief paras. 381-383, 394-406, 614-628; Closing Arguments, T. 8 November 2010 pp. 48-51.

<sup>328</sup> Witness BBP, T. 20 October 2009 p. 18 (saw Gatete "shortly before afternoon"); Witness BBM, T. 20 October 2009 p. 65 (saw Gatete between 9.00 and 11.00 a.m.); Witness BUY, T. 21 October 2009 pp. 55-57 (*Interahamwe* entered the church building at about 9.00 a.m., and shortly after the refugees came out of the church, she saw Gatete); Witness BVS, T. 22 October 2009 pp. 5-6, 15-16, 18 (she saw Gatete twice on 11 April: the first occasion was earlier in the morning between 6.00 and 7.00 a.m. and the second was at about 10.00 a.m. when the refugees were forced out of the church and into the parish compound); Witness BBJ, T. 5 November 2010 p. 22 (Gatete arrived at around 10.00 a.m. and she saw him when she came out of the church into the parish courtyard); Witness BCS, T. 21 October pp. 14-16 (he saw Gatete between 9.00 and 10.00 a.m. from the office building in which he was hiding). The Chamber notes that Witness BUY also testified that, at around 10.00 or 10.30 a.m., the bodies of victims started to pile up and she was among those who were told to carry them to a pit located outside the parish compound. T. 21 October 2009 p. 59. The Defence submits that, according to other accounts, the attack had not yet begun at that point. Defence Closing Brief para. 554. However, the timings provided by the witnesses were estimates, and, given the passage of time since the events, the Chamber finds this discrepancy immaterial. Moreover, contrary to the Defence submission (Defence Closing Brief paras. 572, 574-575), the Chamber does not consider it material that only Witness BVS saw Gatete earlier in the morning, given the number of refugees in the compound and their varying vantage points.

consistencies between them, in particular, that Gatete came to the parish prior to 11 April, spoke to gendarmes, who witnesses recalled had guarded the parish, and also spoke to the two priests at the parish.<sup>329</sup> By 11 April, the priests and gendarmes had left the parish.<sup>330</sup> That other witnesses did not recount the arrival of Gatete prior to 11 April is not material. It is reasonable that such differences emerge given the numbers at the parish, varying vantage points, as well as their different times of arrival at the parish.

299. Regarding Gatete's arrival on 11 April, the Prosecution evidence is generally consistent with respect to who accompanied him. Witnesses BBP, BBM, BUY, BVS and BBJ all referred to Nkundabazungu as being with the Accused that morning. They further recalled the presence of *Interahamwe* and soldiers. The latter were in some instances referred to as Presidential Guards, although notably, some witnesses had difficulties in distinguishing between Presidential Guards and soldiers.<sup>331</sup> While Witness BBP was the sole Prosecution witness to recall that Gatete was accompanied by Kamali on 11 April, and Witness BVS testified that there was also a person called Karekezi, the lack of reference to these individuals by other witnesses is not significant.<sup>332</sup> It is possible that some refugees were not familiar with Kamali or Karekezi. Varying vantage points could also account for the differences in the witnesses' testimonies here.

300. While the witnesses largely referred to soldiers entering the church building and removing the refugees, and Witness BUY recalled that it was *Interahamwe* who entered the church, the Chamber does not consider this variance significant. As noted at the outset, the Prosecution and Defence evidence suggests that both categories of assailants were observed inside the compound. In addition, although Witness BCS saw only soldiers, he viewed the events for a limited time from a limited vantage point and was injured.<sup>333</sup> Accordingly, he was not in a position to have observed all those present within the compound.

<sup>329</sup> Witness BVS, T. 22 October 2009 pp. 3-4 (the witness saw Gatete with gendarmes on the afternoon of 8 April and believed that the gendarmes were protecting the refugees. Gatete came again on 9 April, spoke to the gendarmes, and then left); 4-5 (Gatete spoke to the two priests at the parish); Witness BBP, T. 20 October 2009 pp. 16-18 (Gatete came to the parish with Kamali and Nkundabazungu and they took away members of Kibaruta's family), 37-38, 57 (gendarmes had guarded the parish); Witness BBJ, T. 5 November 2009 pp. 18-21 (the priests had left the parish by the morning of 10 April), 64 (the witness saw Gatete join *Interahamwe* in the parish courtyard on the night of 10 April).

<sup>330</sup> Witness BBP, T. 20 October 2009 pp. 37-38, 57; Witness BBJ, T. 5 November 2009 p. 21.

<sup>331</sup> Witness BBP, T. 20 October 2009 pp. 17-20 (Gatete arrived with Nkundabazungu, Kamali, soldiers and *Interahamwe*), 42 (based on what other refugees told him, Witness BBP believed that the soldiers were Presidential Guards, although he could not distinguish between them and other soldiers); Witness BBM, T. 20 October 2009 pp. 65 (Gatete was with Nkundabazungu and Presidential Guards), 67-68 (*Interahamwe* carried out the attack); Witness BUY, T. 21 October 2009 pp. 55-56, 58-59 (*Interahamwe* attacked and killed the refugees), 58, 60 (Gatete was with Nkundabazungu, soldiers and *Interahamwe*), 68 (soldiers were present that day), 72-74 (soldiers surrounded refugees while *Interahamwe* carried out the killings using traditional weapons, but the witness could not distinguish between soldiers and Presidential Guards); Witness BVS, T. 22 October 2009 pp. 6-8 (the *Interahamwe* attacked the refugees), 16-18 (soldiers moved the refugees out of the church to be attacked), 6 (Gatete was with Nkundabazungu, Karekezi, soldiers and *Interahamwe*); Witness BBJ, T. 5 November 2009 pp. 22 (Gatete came with Presidential Guard), 24 (Nkundabazungu was also present), 25 (*Interahamwe* were also at the parish).

<sup>332</sup> Witness BBP, T. 20 October 2009 pp. 17-20; Witness BVS, T. 22 October 2009 pp. 6, 18, 33. As noted at the outset by the Chamber, the Defence evidence also suggests that *Conseiller* Kamali was present. See Witness LA84, T. 9 March 2010 pp. 67, 73-74; Witness LA27, T. 10 March 2010 p. 40.

<sup>333</sup> T. 21 October 2009 pp. 16, 38.



301. Furthermore, Prosecution witnesses consistently confirmed that certain individuals were singled out from the refugees and removed from the compound before the attack commenced. Some recounted that both Munana and Karemera were taken away (Witnesses BBM and BBJ) while others only recalled Munana (Witness BBP and BUY) or Karemera (Witness BCS).<sup>334</sup> Witness BCS was the only witness to refer to his brother being selected, along with Karemera and another individual whom he did not recognise.<sup>335</sup> However, the ability of different witnesses to recognise different individuals, as well as varying vantage points, could account for the variances on this point.

302. Moreover, Witnesses BBP, BUY and BVS all described how the assailants separated the Tutsis from the Hutus.<sup>336</sup> Witnesses BBM (who had been injured during the attack), BBJ (who jumped into a water tank during the attack), and BCS (who lay injured in the priest's office) did not mention the separation of Hutus from the other refugees or the checking of identity cards. It is reasonable that such variances emerge in the witnesses' recollection of the precise events, given the traumatic nature of the attack as well as the movement of persons around the compound, particularly given the large crowds.<sup>337</sup>

303. The fundamental features of Gatete's role in the attack, as described by Witnesses BBP, BBM, BUY and BVS, are also largely consistent. Witnesses BBP, BBM and BUY stated that they heard Gatete issue clear orders to kill the Tutsi refugees.<sup>338</sup> While Witness BVS could not hear what Gatete said, she saw him gesture with his hand to the *Interahamwe* and the assailants then commenced their attack.<sup>339</sup> The evidence is also consistent with

<sup>334</sup> Witness BBM, T. 20 October 2009 pp. 66-67; Witness BBJ, T. 5 November 2009 pp. 22, 65-66; Witness BBP, T. 20 October 2009 p. 19; Witness BUY, T. 21 October 2009 p. 56.

<sup>335</sup> Witness BCS, T. 21 October 2009 pp. 15-16 See also Defence Closing Brief para. 544.

<sup>336</sup> Witness BBP, T. 20 October 2009 pp. 19 (recalled that refugees without identity cards were separated from the others), 23 (after the attack commenced, Gatete stopped the assailants so that the Hutus could be separated from the remaining refugees); Witness BUY, T. 21 October 2009 p. 57 (the refugees were looted and Hutu refugees were separated out from the others before Gatete arrived and told the *Interahamwe* to stop looting and start killing); Witness BVS, T. 22 October p.18 (Gatete stood by the side as Hutus were separated from the other refugees). The Defence points out that Witness BUY is the only witness to have testified that Gatete told *Interahamwe* to stop looting. See Defence Closing Brief paras. 552, 557. The Chamber does not find this to be significant, as other witnesses may not have been present during this time, or may not have seen or recalled this incident.

<sup>337</sup> In particular, the Chamber notes that Witness BBP, who described the search by soldiers, was outside the church building, while Witnesses BUY, BVS and BBJ were inside the church and Witness BCS was inside the priest's office. Witness BBM, while outside the church, did not describe the search. T. 20 October 2009 pp. 65, 67. It is possible that he did not recall this specific incident, or that he was at a different vantage point and did not observe it.

<sup>338</sup> Witness BBP, T. 20 October 2009 p. 20 ("Gatete called on his companions and asked them to kill all the persons who were there without sparing a single one"); Witness BBM, T. 20 October 2009 p. 68 (Gatete said "exterminate these refugees so that when their followers come they will find no Tutsis here"); Witness BUY, T. 21 October 2009 p. 58 ("[Gatete] told them to start the killings with men and youngsters"). The Defence submits that Witness BBM was the only witness to describe Gatete ordering the *Interahamwe*, who were waiting outside the parish and then climbed over the fence when the gate was open, to attack. See Defence Closing Brief para. 534. The Chamber does not consider this significant. It appears from both Prosecution and Defence evidence that *Interahamwe* were scattered around the Kiziguro parish area. Some may have still been outside the compound. Varying vantage points can also account for this difference.

<sup>339</sup> Witness BVS, T. 22 October 2009 pp. 23-24, 34. The Defence submits that Witness BVS is the only witness to refer to Gatete gesturing to the *Interahamwe*. See Defence Closing Brief para. 579. The Chamber considers this immaterial since other witnesses testified that they heard what the Accused said while Witness BVS could not hear him.





respect to Gatete's presence during the assault.<sup>340</sup> Although Witness BUY testified that Gatete left immediately after giving instructions, she saw him again in the parish compound at about 3.00 p.m.<sup>341</sup> Given that the witness was being beaten, it is possible that she would not have seen the Accused during the attack.

304. The existence of a pit which was used as a mass grave, located outside the parish compound, is not disputed. While the evidence of Prosecution Witnesses BBP, BBM, BUY and BVS varies with respect to the exact distance of the pit from the parish compound, as well as its dimensions, the Chamber considers such differences to be minor given witnesses' varying abilities to judge distances and measurements, particularly in traumatic circumstances.

305. Notwithstanding the above similarities, the Chamber must consider the individual merits of each witness's testimony. Turning first to Witness BBP, the Chamber has no doubt about his ability to identify the Accused in April 1994. He knew Gatete as the former *bourgmestre* of Murambi commune and had attended meetings chaired by him. He further confirmed that, when Gatete spoke, he was not far from him and could hear him clearly.<sup>342</sup>

306. Witness BBP provided a statement to Tribunal investigators in June 1998 and a reconfirmation statement in August 2003.<sup>343</sup> The Defence submits that the June 1998 statement diverges from the witness's testimony as it referred to the compound gate being opened for Presidential Guard soldiers at 8.30 a.m., while his testimony referred to the "late morning" and to "soldiers".<sup>344</sup> Witness BBP explained that he was unable to distinguish between Presidential Guards and other soldiers, and the time of their arrival was an estimate.<sup>345</sup> The Chamber considers that these minor variances are immaterial. Both the witness's statement and testimony consistently refer to soldiers entering the parish compound on the morning of 11 April.<sup>346</sup> Moreover, that the June 1998 statement did not mention persons other than Gatete, while his testimony included reference to Nkundabazungu and

<sup>340</sup> Witness BBP, T. 20 October 2009 pp. 21-22, 23 (Gatete was there at the beginning of the killings and was present when the witness left, about 20 to 30 minutes after the attack began); Witness BBM, T. 20 October 2009 p. 67 (Gatete gave the order to kill the refugees), 68 (killings immediately started); Witness BVS, T. 22 October 2009 pp. 5-6 (Gatete was standing by the side when the attackers started striking the men), 7 (in the afternoon, when the killings were coming to an end, she passed Gatete), 7 (Gatete was present throughout the killings); Witness BBJ, T. 5 November 2009 p. 23 (the refugees saw Gatete when they exited the church, and the attackers immediately started the killings); Witness BCS, T. 21 October 2009 p. 15 (Gatete was accompanied by soldiers who were beating people).

<sup>341</sup> Witness BUY, T. 21 October 2009 pp. 60, 77.

<sup>342</sup> As of 1994, Witness BBP had known the Accused for about ten years. Gatete was also the official who had signed the witness's identity card. Witness BBP also identified the Accused in court. T. 20 October 2009 pp. 14-15, 26. The Chamber notes that Witness BBP also stated that when Gatete spoke to the *Interahamwe* on 11 April, the witness was not far away and could hear him clearly. Although he could not monitor Gatete at all times, he consistently maintained that he saw the Accused. Witness BBP saw Gatete when the killings in the parish commenced, and when he was forced to go out of the compound, he "passed very close to [Gatete]". T. 20 October 2009 pp. 18, 19-20, 21-22, 23, 39.

<sup>343</sup> Prosecution Exhibit 2B (statement of 4 June 1998); Prosecution Exhibit 3 (reconfirmation statement of 18 August 2003).

<sup>344</sup> Defence Closing Brief para. 509. Prosecution Exhibit 2B (statement of 4 June 1998) p. 4; T. 20 October 2009 p. 20, 38 (quoted), 42.

<sup>345</sup> T. 20 October 2009 pp. 38, 42. The June 1998 statement reads, "[a]t around 8:30 a.m., Gatete came with Presidential Guard soldiers."

<sup>346</sup> Prosecution Exhibit 2B (statement of 4 June 1998) p. 4; T. 20 October 2009 pp. 18-19.

Kamali, is not material. The witness explained that his answers depended on the questions that were asked and “the person who was targeted by those questions”.<sup>347</sup> The Chamber finds this explanation reasonable.

307. The Defence further submits that Witness BBP was unable to provide details such as why Gatete was at the parish on the afternoon of 10 April, the time he spent there, or whether he arrived on foot or in a vehicle.<sup>348</sup> However, the witness explained that Gatete arrived with Kamali and Nkundabazungu and that they took away members of Kibaruta’s family. His inability to say how long Gatete spent at the parish is not material. He would not necessarily have observed the Accused for the entire time that he was at the parish that day. Further, since the witness was inside the compound, he would not necessarily have been in a position to see the mode of transport Gatete arrived in.<sup>349</sup>

308. The Defence also questions the plausibility of Witness BBP’s account. It submits that he could not have survived for six days without food or water, or the 65 metre-fall into the pit.<sup>350</sup> The Chamber, however, notes that, while in the pit, the witness had no concept of time and was unconscious. Although he was told that he had remained there for about six days, and the killings are commemorated on 16 April each year, he would not have known exactly how many days he remained there.<sup>351</sup> He could not measure the pit, nor did he attempt to estimate its depth. Rather, he stated that “some people said that it was about 65 metres deep”.<sup>352</sup> Under the circumstances, the Chamber finds this point insufficient to cast doubt on his testimony regarding the events at Kiziguro parish on 11 April. Indeed, Defence evidence also suggests that some people would still have been alive after being thrown into the pit.<sup>353</sup>

309. In addition, the Defence argues that Witness BBP provided conflicting testimony about his Gacaca participation.<sup>354</sup> The Chamber, however, notes that his testimony was largely consistent. He maintained that he did not testify against the Accused in any Gacaca sessions, including those in Kiziguro sector. He further explained that he did not volunteer information about the Accused as he did not think he would ever see Gatete again. Had he

<sup>347</sup> T. 20 October 2009 p. 43; Prosecution Exhibit 2B (statement of 4 June 1998).

<sup>348</sup> Defence Closing Brief paras. 517, 528; T. 20 October 2009 p. 17.

<sup>349</sup> The Defence also submits that Witness BBP’s evidence is inconsistent with that of Defence Witness LA84 regarding the removal of Kibaruta’s family members. It argues that Witness BBP’s evidence that Gatete, Nkundabazungu and Kamali took away members of that family from the parish on about 10 April cannot be reconciled with Witness LA84’s testimony that Kamali separated members of “his” family on the morning of 11 April. However, Witness LA84’s testimony does not suggest that Kamali removed members of Kibaruta’s family on 11 and not 10 April. Rather, Witness LA84 referred to Kamali taking away members of his own family on 11 April (T. 9 March 2010 pp. 64, 67) and saving a group of Hutus (T. 9 March 2010 p. 69).

<sup>350</sup> Defence Closing Brief paras. 507, 510-515.

<sup>351</sup> T. 20 October 2009 p. 24 (“I remained in the mass grave for a very long time. As far as I am concerned, there was no distinction between day and night. When I was pulled out of the mass grave, I was told that I had spent about six days in it. And today, when we go to the site of that mass grave to commemorate the genocide, we do so on the 16th of April every year ... And I have always borne in mind, or it has always been stated, that the massacres lasted six days at that site”), 26-27.

<sup>352</sup> T. 20 October 2009 p. 24.

<sup>353</sup> Defence Witness LA84 testified that after leaving the parish, he passed the mass grave and could hear people groaning there. T. 9 March 2010 p. 77; T. 10 March 2010 p. 2.

<sup>354</sup> Defence Closing Brief paras. 507, 524-525.

been asked to testify against Gatete in Gacaca proceedings, he would have done so.<sup>355</sup> The Chamber finds the witness’s explanation reasonable.

310. Lastly, although Witnesses BBP did not describe the attack on the church building and refugees being forced out of it, the Chamber recalls that he was not inside the church at the time.<sup>356</sup> Moreover, he was not specifically asked about what occurred inside the church. In sum, having considered the entirety of his account, the Chamber finds Witness BBP’s evidence compelling and consistent.

311. Turning to Witness BBM, the Chamber is satisfied about his ability to identify Gatete in April 1994. He knew Gatete as the former “head” of Murambi commune and they would participate in the same commune activities.<sup>357</sup>

312. Witness BBM provided a statement to Tribunal investigators in May 1998, which the Defence used to challenge aspects of his testimony, but did not seek to admit into evidence.<sup>358</sup> The Defence reminded Witness BBM that his May 1998 statement referred to the attack commencing at about 11.00 a.m. and that the *Interahamwe* broke down the gate of the parish compound, while his testimony was that the attack began sometime between 9.00 and 11.00 a.m. and the *Interahamwe* climbed over the fence. Witness BBM explained that the events were harrowing and occurred a long time ago.<sup>359</sup> Given their traumatic nature and the passage of time, the Chamber considers these variances immaterial.

<sup>355</sup> Witness BBP first stated that he had not testified, nor was he ever asked to appear, before a Gacaca court. T. 20 October 2009 p. 28. However, when read in the context of his later testimony, it appears that he was referring to having never testified against the Accused in Gacaca proceedings. See T. 20 October 2009 pp. 44 (“I did not provide such information before the Gacaca courts because in my *cellule* and in my *secteur*, I was not interviewed on the Accused or on that issue. No other member of the population provided information about Gatete in my *cellule* and in my *secteur*. The information about the Accused was provided in the *secteur* in which the Accused lived.”), 45 (“... in my *cellule* no one made mention of your client, but in others, like Kiziguro, Kirambo and others, mention is made of him. But in Ndatemwa, during Gacaca sessions, no mention was made of your client and no one had made any statement whatsoever regarding your client. We have provided information on persons who were involved in the events in our area.”), 46 (“I do participate in Gacaca sessions and I have already had occasion to provide information before such court sessions. But let me point out that I have never talked about your client before the Gacaca court for the simple reason that I told myself I would never see him again.”), 47 (“Gatete was not prosecuted in Ndatemwa because he was only active in the Kiziguro area. I personally did not see him carrying out any acts in Ndatemwa.”), 49 (Witness BBP acknowledged that he testified in Kiziguro sector for a person called Segicondo), 56-57 (“Q. Do you know whether or not Jean-Baptiste Gatete has ever been charged in absentia in Ndatemwa sector? A. I do not know. I never had any such information. Q. And, similarly, do you know whether or not Jean-Baptiste Gatete has ever been charged and tried in absentia by the Gacaca of Kiziguro sector. A. I do not know”).

<sup>356</sup> During the attack, Witness BBP was outside the church but inside the compound trying to repel the attackers. T. 20 October 2009 p. 51. See also Defence Closing Brief para. 520.

<sup>357</sup> T. 20 October 2009 p. 59. With respect to the Defence submission that Witness BBM referred to Gatete as *bourgmestre* of Murambi commune, the Chamber does not find this significant. Rather, he said “as far as he [knew]” Gatete was *bourgmestre* and that, at the time, he “headed Murambi commune”. He did not definitively say that the Accused was the Murambi commune *bourgmestre* at the relevant time. T. 20 October 2009 p. 79. See also Defence Closing Brief para. 540.

<sup>358</sup> T. 20 October 2009 pp. 81-83. Witness BBM also testified in Gacaca proceedings against Gatete in 2007. The Accused was charged alongside Mwange, Munyabuhoro, and Nkundabazungu. T. 20 October 2009 pp. 79-81.

<sup>359</sup> T. 20 October 2009 pp. 75. Similarly, the absence of the names of Nkundabazungu, Munana and Karemera from the May 1998 statement, as alleged by the Defence, is not significant. It is possible that the witness may not have been asked about other individuals, or that their names may not have been recorded, particularly if



313. The Defence further submits that Witness BBM could not have survived without food and water for one week, or the fall into the pit, particularly as he had suffered a stab wound.<sup>360</sup> As with Witness BBP, the Chamber does not consider that this point necessarily undermines Witness BBM's reliability. Indeed, his ability to survive in the pit is corroborated by Witness BBP and his evidence with respect to the approximate depth of the pit and how long he spent in it does not cast doubt on his otherwise consistent and compelling testimony. Lastly, although he did not describe the attack on the church and how refugees were removed from it, the Chamber recalls that, like Witness BBP, he was not inside the church at the time and was not specifically questioned on this point.

314. Looking next at Witness BUY, the Chamber is satisfied that she was able to identify Gatete in April 1994. When he was Murambi commune *bourgmestre*, she had met with him to discuss grievances and also knew his family.<sup>361</sup> Notably, that she was at Kiziguro parish on 11 April is not disputed.<sup>362</sup> Turning to the points raised by the Defence with respect to her credibility, the Chamber notes that the Defence misrepresents the record by stating that Witness BUY was "open about her willingness to lie".<sup>363</sup> The portion of her testimony cited to by the Defence in no way suggests that she was willing to provide false testimony in this, or any other, instance. Rather, she confirmed that she had come to testify about events that she had personally experienced.<sup>364</sup>

315. While Witness BUY acknowledged that she twice saw Gatete only briefly at the parish compound on 11 April, she clearly maintained that she saw him arrive with Nkundabazungu and soldiers and, after his arrival, order *Interahamwe* to start killing the refugees. She saw him again in the afternoon at about 3.00 p.m.<sup>365</sup> The Defence suggests that she only mentioned seeing Gatete on the second occasion after being led by the Prosecution.<sup>366</sup> The Chamber, however, does not find this to have been the case. Rather, when asked whether she had seen Gatete only once, she explained that she saw him again at 3.00 p.m.<sup>367</sup> The Chamber, having reviewed Witness BUY's evidence and considered the points raised by the Defence, finds that she provided a consistent and compelling account.

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Gatete was the target of that investigation. T. 20 October 2009 pp. 77-78; Defence Closing Brief paras. 534, 538-539.

<sup>360</sup> Defence Closing Brief paras. 530, 532, 536.

<sup>361</sup> T. 21 October 2009 pp. 57-58, 71. Witness BUY also identified the Accused in court. T. 21 October 2009 p. 62.

<sup>362</sup> Defence Witness LA27, T. 10 March 2010 pp. 49, 52-55, 58, 67.

<sup>363</sup> Defence Closing Brief para. 551.

<sup>364</sup> T. 21 October 2009 p. 76 ("I'm not imagining anything. I personally saw Mr. Gatete, and I know him very well. If I had to lie, I would have lied about other persons. I have come to testify before the Chamber because the country and the entire world have asked me to do so. I am not lying. I'm talking about things that I witnessed personally, so I'm not lying").

<sup>365</sup> T. 21 October 2009 p. 74; Defence Closing Brief para. 552. Witness BUY was standing close to Gatete when he issued the instructions to kill. She compared the distance to the distance between the witness stand and the wall on her left in court. T. 21 October 2009 p. 58. Nothing obstructed her view of Gatete. T. 21 October 2009 p. 77. See also T. 21 October 2009 p. 71.

<sup>366</sup> Defence Closing Brief paras. 559-560.

<sup>367</sup> T. 21 October 2009 pp. 59-60 ("Q. Now, between the first trip and your departure at around 5.30 that day ... did you see [Gatete] there continuously for the rest of that day during the killing? A. Gatete left immediately after giving instructions. I did not see him again there. Q. So, it's your evidence that you only saw him once giving instructions for the killings? A. No, in the afternoon at around 3 p.m., I saw Gatete again."). Notably, the initial question asked by the Prosecution was whether she saw Gatete "continuously", which she did not. The

316. Turning to Witness BVS, the Chamber has no doubt about her ability to have identified Gatete in April 1994. She knew him as the former *bourgmestre* of Murambi commune and he had officiated her marriage at the Murambi commune office.<sup>368</sup>

317. The Defence confronted Witness BVS with aspects of a statement which she gave to Tribunal investigators in January 2007.<sup>369</sup> In particular, the statement referred to refugees arriving at Kiziguro parish from the Gakoni orphanage on 10 April, while her testimony was that they had arrived on 9 April. The Chamber finds the discrepancy of one day to be minor, given the length of time since the events and the traumatic circumstances in which they occurred.<sup>370</sup> The statement also indicated that Gatete spoke to gendarmes when she first saw him at the parish on 11 April, while her testimony was that gendarmes had left the compound and that Gatete spoke to soldiers.<sup>371</sup> However, she accepted that she was not certain and, given that both would have worn military uniform, the Chamber considers this variance immaterial.<sup>372</sup>

318. Moreover, the Defence submits that her January 2007 statement failed to mention that she saw Gatete during the killings.<sup>373</sup> The Chamber, however, finds nothing in the statement which is inconsistent with her in-court evidence that Gatete was present at Kiziguro parish that day.<sup>374</sup> Although the statement does not refer to Gatete gesturing to the *Interahamwe*, the witness explained that she only provided information in response to the specific questions asked of her.<sup>375</sup> Moreover, her reference to a “gesture” may not have been recorded by the

Chamber further notes that the Defence raised no objection to this line of questioning during the proceedings. Moreover, contrary to the Defence suggestion (Defence Closing Brief para. 561), the Chamber finds her testimony, that she carried bodies to the mass grave, plausible. She was a young woman (about 26 years old) and, while the evidence generally suggests that men were carrying bodies to the grave, there is no reason to doubt that some young and able women may also have assisted.

<sup>368</sup> Witness BVS’s husband and Gatete also participated in the same cooperative for Murambi livestock breeders. T. 22 October 2009 pp. 2-3, 11. The Chamber notes that the Defence misrepresents the record by stating in its Closing Brief that Witness BVS said that Gatete was *bourgmestre* in April 1994. See Defence Closing Brief para. 568, citing to T. 22 October 2009 p. 2 line 37. Her evidence that he occupied that position was clearly in relation to his occupation *prior* to April 1994. Although she later referred to him as “acting as” *bourgmestre* in 1994, she did not state that he in fact formally occupied that position. See T. 22 October 2009 pp. 2-3 (“Q. Prior to 1994, did you know what his occupation was? A. Yes. Q. Can you tell us what his occupation was? A. He was *bourgmestre* of Murambi commune”).

<sup>369</sup> Defence Exhibit 1 (statement of 19 January 2007); T. 22 October 2009 pp. 14-15.

<sup>370</sup> T. 22 October 2009 p. 14 (“I think the refugees from Gakoni came on the 9<sup>th</sup>. They met us inside the church and they told us that they had been transported from Gakoni to Kiziguro on board a vehicle.”); Defence Exhibit 1 (statement of 19 January 2007) p. 3.

<sup>371</sup> Defence Exhibit 1 (statement of 19 January 2007) p. 3; T. 22 October 2009 pp. 16-18.

<sup>372</sup> T. 22 October 2009 p. 18 (“I believe that on that 11<sup>th</sup> of April the gendarmes were no longer there. Maybe there were soldiers.”).

<sup>373</sup> T. 22 October 2009 p. 21; Defence Closing Brief para. 579.

<sup>374</sup> Defence Exhibit 1 (statement of 19 January 2007) pp. 3-4; T. 22 October 2009 pp. 5-7, 16, 18-19, 23-24, 34. Indeed, the statement states that when she first came out of the church at about 6:30 or 7.00 a.m. on 11 April, she saw Gatete near the entrance to the church, which is consistent with her testimony. T. 22 October 2009 pp. 15-16. It further reads that, when she came out of the church the second time, at the time that the Hutus were separated from the Tutsis, she saw Gatete “near the gate”. Her oral testimony is that, at that point, Gatete was standing “by the side”, “not far from the main entrance near the church compound”. T. 22 October 2009 p. 6. While it states that, as she walked to the pit, she saw the Accused standing outside the compound, near the gate, while in her oral testimony she said that, at this point, he was standing in the middle of the compound, the Chamber does not find this variance to be material. T. 22 October 2009 p. 21.

<sup>375</sup> T. 22 October 2009 p. 24.

person taking the statement, or she may not have mentioned it on that occasion, given that she did not actually hear what Gatete said. Under the circumstances, the Chamber finds this omission insufficient to cast doubt on the witness's sworn testimony.

319. In addition, the Defence argues that Witness BVS was imprecise as to the first time she saw Gatete on 11 April at Kiziguro parish.<sup>376</sup> The Chamber, however, considers that her account was detailed and, when questioned about the times that she saw him, she provided a clear and precise answer.<sup>377</sup> The Defence further questions her reference to Karemera, whom the witness saw with Gatete when she arrived at Kiziguro parish, while other witnesses referred to Karemera as a refugee taken away by the assailants.<sup>378</sup> The Chamber, however, notes that no further details were elicited from the witness with respect to the full name of the Karemera who met her upon arrival at Kiziguro parish. It is possible that there were two different individuals present that day, both called Karemera. Indeed, her January 2007 statement refers to them as such.<sup>379</sup>

320. Furthermore, the Defence argues that Witness BVS's testimony is inconsistent with other evidence in the record, as she recounted that women and children were left to carry the bodies of the victims.<sup>380</sup> While other evidence suggests that Tutsi men were ordered to assist in moving bodies to the mass grave, it is possible that some women and young persons may also have been required to assist. Accordingly, the Chamber does not find this point sufficient to cast doubt on Witness BVS's testimony.

321. Lastly, the fact that she did not testify before a Gacaca court with respect to the events at Kiziguro parish does not necessarily raise questions about her reliability.<sup>381</sup> Witness BVS explained that acts alleged to have been committed by Gatete were addressed in Kabuga *cellule*, which is not her *cellule*. She further explained that many persons who attended the national assembly of Gacaca courts spoke about Gatete and that she did not consider it necessary to repeat what others had said.<sup>382</sup> The Chamber considers her explanation reasonable. The Chamber does, however, note the witness's acknowledgment that, during the information-gathering phase, she mentioned how Gatete had helped her into Kiziguro parish but did not speak about his alleged role in the attack.<sup>383</sup> This aspect of her evidence is confusing. Nonetheless, the Chamber finds it insufficient to cast doubt on her otherwise consistent and compelling testimony, the central features of which are corroborated by other credible and convincing evidence, as noted earlier.

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<sup>376</sup> Defence Closing Brief paras. 572, 574.

<sup>377</sup> Witness BVS described the three occasions she saw Gatete that day: "The first time I saw him in the morning, the second time I saw him when the killings were going on, and the third time I saw him when we were being led to the ditch". T. 22 October 2009 p. 21. See also T. 22 October 2009 pp. 6, 15-16.

<sup>378</sup> T. 22 October 2009 pp. 3, 14; Defence Closing Brief para. 569.

<sup>379</sup> Defence Exhibit 1 (statement of 19 January 2007) pp. 3 ("On the steps in front of the door I found our neighbour Karemera John, inspector of primary schools."), 4 ("I saw *Interahamwe* take Karemera Emmanuel who was a teacher at CERAI.").

<sup>380</sup> T. 22 October 2009 p. 20.

<sup>381</sup> Defence Closing Brief para. 568, T. 22 October 2009 p. 36.

<sup>382</sup> T. 22 October 2009 pp. 32-33.

<sup>383</sup> T. 22 October 2009 p. 33. Witness BVS further explained that, while her January 2007 statement referred to Nkundabazungu and Karekezi, she did not testify in the Gacaca trial as the former's trial took place in Kiziguro sector and the witness lives in Kiramuruzi sector. The latter was tried in his own sector, which was not Kiramuruzi. T. 22 October 2009 p.33.



322. Turning to Witness BBJ, the Chamber is satisfied about her ability to have identified the Accused in April 1994. Although no details were elicited about prior occasions that she had seen him, she stated that she had known Gatete since he was young and knew him and his family members well. She also knew him as the former *bourgmestre* of Murambi commune.<sup>384</sup>

323. However, the Chamber considers that she would not necessarily have been in a position to have observed events, or heard Gatete, after jumping into the water tank in an attempt to commit suicide. Moreover, her recollection of events was materially different to that of other witnesses, in particular, with respect to the arrival of Gatete on the night of 10 April, as well as the details of the removal of Munana and Karemera on 11 April. Notably, although Witnesses BBP, BBM and BVS described events at the parish on 10 April and the morning of 11 April, they made no reference to Gatete arriving and joining *Interahamwe* in the courtyard for a night of singing, dancing, and drinking, as referred to by Witness BBJ.<sup>385</sup> In view of these differences, the Chamber accepts her account to the extent that it is adequately corroborated.<sup>386</sup> In this regard, the Chamber notes that key aspects of her evidence, such as Gatete's presence at the parish, and an attack having taken place there on 11 April involving various assailants, is corroborated by other consistent and compelling evidence discussed above.

324. Regarding Witness BCS, the Chamber is satisfied that he could have identified the Accused in April 1994.<sup>387</sup> However, it has doubts about his ability to observe events from the window of a small office building within the parish compound, particularly given his physical condition at the time.

325. The Defence points to Witness BCS's October 1998 statement to Tribunal investigations, wherein he stated that his father, mother and two sisters were killed by militiamen at his home. His evidence before this Chamber was that only his father was killed at the house, and his brother and two sisters later died at Kiziguro parish, while his mother survived (II.3.3.iii). The witness explained that he was not asked by the investigator to state where each member of his family was killed and, therefore, had not specified whether they were all killed on that occasion or if some died later.<sup>388</sup> While this may have been the case,

<sup>384</sup> Witness BBJ testified that she had seen Gatete six times after 6 April 1994, the first being on 8 April at the roadblock in Nyagasambu *cellule*. T. 5 November 2009 pp. 15-16. See II.4.3. She also stated that she knew him and his family, and where he lived before moving to Gakenke. T. 5 November 2009 pp. 14-15. Although she initially struggled to identify the Accused in court, this appears to have been due to her eyesight and fear of moving closer to him in order to point him out. T. 5 November 2009 pp. 25-28. In any event, the Chamber recalls that in-court identification should be given little or no weight (*Kalimanzira* Appeal Judgement para. 96, citing *Kamuhanda* Appeal Judgement para. 243).

<sup>385</sup> T. 5 November 2009 pp. 18-21, 64.

<sup>386</sup> The Chamber also notes that Witness BBJ denied knowledge of a Gacaca court judge who she had appeared before on several occasions and who testified that he knew her. Witness BBJ, T. 5 November 2009 p. 59; Witness BBR, T. 11 November 2009 pp. 31-33. See also Defence Closing Brief paras. 478-480. This point raises questions with respect to Witness BBJ's reliability. Moreover, in light of her testimony that on about 8 April, she heard Gatete tell *Interahamwe* at the Nyagasambu roadblock that Tutsis should be assembled at Kiziguro parish to be killed on the following Monday, it is unclear why she subsequently went there. See T. 5 November 2009 pp. 15-16, 17 (quoted), 59-60. See II.4.3.

<sup>387</sup> Witness BCS testified that, although Gatete was no longer *bourgmestre* of Murambi commune in April 1994, he would see the Accused often and knew him well. He also identified the Accused in court. T. 21 October 2009 p. 7.

<sup>388</sup> T. 21 October 2009 pp. 12-13, 26-27, 28.

the Chamber notes that the statement nonetheless records that his elder brother was killed at Kiziguro parish. The Chamber also has doubts that the investigator would have recorded that the witness's mother was killed when she in fact survived.

326. Moreover, the Defence points to the detailed description in the October 1998 statement of Gatete shooting Karemera and the witness's brother at Kiziguro parish. The statement specifically refers to the witness being "able to observe those executions" while during his testimony, he maintained that he did not see the shooting and only heard it.<sup>389</sup> Given the significance of these incidents, the Chamber finds the discrepancies troubling. In light of these concerns, the Chamber accepts Witness BCS's evidence only to the extent that it is adequately corroborated.

327. Having considered the Prosecution evidence, the following picture emerges from the consistent and compelling testimonies of Witnesses BBP, BBM, BUY and BVS, and, to the extent that they are adequately corroborated, from the evidence of Witnesses BBJ and BCS. According to the evidence of Witness BVS, Gatete visited the parish on 8, 9 and 10 April, and spoke to gendarmes who had guarded the parish, as well as the priests. Witness BBP also recalled Gatete arriving on 10 April with Kamali and Nkundabazungu. By 11 April, the priests and gendarmes had left the parish. That morning, Gatete returned to Kiziguro parish with Nkundabazungu and soldiers. *Interahamwe* were also present. Those witnesses inside the church did not see Gatete until they exited and were gathered in the open area outside the church building. More specifically, Witnesses BBP and BBM, who were outside the church, observed Gatete enter the parish compound. Witness BBP saw and heard Gatete order the removal of Munana, while Witness BBM saw Gatete, Nkundabazungu and Presidential Guards when "they" took away Munana and Karemera. The slight variance in the exact description of the removal is not significant, given varying vantage points, the passage of time, and the tense circumstances.

328. Witnesses BUY and BVS were inside the church and did not see Gatete until they exited. Once outside, Witness BUY saw Munana being taken away. While she did not see Gatete order or participate in his removal, it is possible that she exited the church after an order was given. Varying vantage points may also account for her failure to see Gatete at the time that Munana was removed. In addition, as already noted, her recollection of the presence of *Interahamwe* rather than soldiers is not significant, considering that both categories of assailants were at the compound that morning. While Witness BVS did not mention the removal of Munana, it is possible that she had not exited the church at the point that Munana and Karemera were removed or may not have been familiar with either individual. Accordingly, the evidence of Witnesses BBP and BBM on the one hand, and that of Witnesses BUY and BVS on the other, is not necessarily inconsistent.

329. According to the testimonies of Witnesses BUY and BVS, once the refugees were outside the church building, Gatete was seen within the compound, near the church entrance. Witnesses BBP and BVS described Gatete as being present when Tutsis were separated from the Hutus. Witness BVS saw Gatete standing to the side, near the gate, when Hutus were

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<sup>389</sup> Defence Exhibit 2 (statement of 3 and 10 October 1998) p. 4 ("[Gatete] forced Emmanuel Karemera, a teacher at Kiramuruzi primary school, and my brother ... to come out of the church and immediately shot them dead. Although I was seriously wounded, I was able to observe those executions. To do so, I crouched in front of one of the church windows and saw Gatete personally carry out the execution to set the example"). See T. 21 October 2009 p. 35.





separated out. While Witness BUY recalled seeing Gatete after the Hutus had been separated, varying vantage points and the number of people in the compound can account for this variance. Witnesses BBP, BBM and BUY then saw and heard the Accused give express orders to the *Interahamwe* to kill the Tutsi refugees, while Witness BVS saw him gesture to the *Interahamwe*. The Prosecution evidence consistently shows that the assailants, including soldiers, then commenced an attack on the refugees using traditional weapons, as well as guns.<sup>390</sup>

330. Witness BUY was the only witness to see Gatete again at the parish at about 3.00 p.m. That other Prosecution witnesses did not see him then is not significant, given that Witnesses BBP and BBM either jumped, or were thrown into the mass grave, Witness BVS collapsed near the mass grave, Witness BBJ jumped into the water tank and Witness BCS lay wounded in the priests' office.

331. The Chamber next considers the Prosecution testimonies in the context of the Defence case. The Defence presented evidence that Gatete was not seen at Kiziguro parish on 11 April and that the attack was led by Nkundabazungu. It relies on the first-hand accounts of Witnesses LA84, LA27, Jean-Damscène Kampayana, and LA32, who were all at the parish on 11 April but testified that they did not see Gatete there. The Defence also refers to the evidence of Augustin Habakubaho, a soldier, who was not at Kiziguro parish that day, but testified about the volatile situation and RPF advances in the region. He heard that soldiers had committed massacres at the parish while gendarmes had protected the refugees there.

332. The Chamber has carefully considered this evidence, recalling that the Defence carries no independent burden when seeking to raise doubt with respect to elements of the Prosecution case.<sup>391</sup> However, the Chamber notes that Witnesses LA84, LA27, Kampayana and LA32 all played a role in the attack and/or burial of victims. The Chamber considers that these witnesses, particularly Witnesses LA84, LA27 and Kampayana, minimised their role in the massacre and does not find them to be reliable.<sup>392</sup> Witness LA32's fugitive status also raises questions about his reliability.<sup>393</sup> After examining their testimonies in detail in the context of the consistent, compelling and corroborated accounts of Witnesses BBP, BBM, BUY and BVS, the Chamber does not find the evidence of Defence Witnesses LA84, LA27, Kampayana and LA32 sufficient to raise doubt.

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<sup>390</sup> Witness BUY stated that there were no gunshots within the compound. T. 21 October 2009 p. 72. The Chamber does not consider this significant. It is possible that gunshots were fired outside the compound but that some witnesses thought they were fired inside. Moreover, given the circumstances the refugees were facing at the time, the Chamber does not consider this discrepancy material.

<sup>391</sup> See for example *Zigiranyirazo* Appeal Judgement paras. 17-18.

<sup>392</sup> Witness LA84's evidence that he did not kill anyone is difficult to reconcile with his participation in an attack on 9 April, and his participation in the Kiziguro parish massacre on 11 April. T. 9 March 2010 pp. 71-72; T. 10 March 2010 p. 11. It is further inconsistent with Witness LA32's description of Witness LA84 as "violent like the other *Interahamwes* who were at the gate" and he "could even kill you if you attempted to flee". T. 15 March 2010 pp. 96-97, 103. Witness LA27 testified that, during all the attacks in which he participated (on 7, 9 and 11 April), he participated in the killing of only one person. T. 10 March 2010 pp. 66-67. The Chamber also questions Kampayana's testimony that he did not go to Kiziguro parish to participate in the attack, but that he went to look for a friend and, save for obeying an order to transport bodies, merely stood at the compound entrance until the killings were over. T. 11 March 2010 pp. 25-28, 40. According to Witness LA32, Kampayana stood by the gate, preventing people from leaving the compound and was violent. T. 15 March 2010 p. 97.

<sup>393</sup> Witness LA32 admitted to having fled Rwanda before completing the community service phase of his sentence. T. 15 March 2010 pp. 84-87, 103; Prosecution Exhibit 36 (Kinyarwanda release order).



333. In any event, even if the Chamber were to accept the Defence evidence, it is of limited probative value, as none of the witnesses were in a position to have been able to monitor all events and persons at the parish. In particular, Witness LA84 did not see any events which occurred inside the compound, or the "fenced area".<sup>394</sup> He moved around the area and acknowledged that others persons may have been present.<sup>395</sup> Thus, he would not necessarily have seen Gatete had the latter been present within the compound. For instance, he did not see the removal of Munana,<sup>396</sup> at which point Prosecution witnesses saw Gatete within the compound.

334. With respect to Witness LA27, after the initial attack on the church, he was occupied with carrying bodies to the mass grave for the majority of his time at the site.<sup>397</sup> He accepted that it was possible that Gatete was there but that he did not see him.<sup>398</sup> Although he later recanted this statement, he acknowledged that he could not see the inner courtyard from the mass grave, or from inside the church. Once outside the compound, he could not see what occurred inside.<sup>399</sup> According to his account, there were about 800 people within the compound. Under the circumstances, had Gatete been present, the witness would not necessarily have seen him.<sup>400</sup>

335. Turning to Kampayana, he testified that he carried bodies to the mass grave, left the parish at about 3.00 p.m., and acknowledged that he could not have seen everyone in the parish. Indeed, according to his account, there were about 900 to 1,000 people there.<sup>401</sup>

<sup>394</sup> T. 9 March 2010 pp. 68, 76 ("I was not an eye-witness to events that took place within the compound – or within the fenced area.").

<sup>395</sup> T. 9 March 2010 pp. 65, 70; T. 10 March 2010 p. 14 ("Maybe there were other people whom I knew but I did not see."); Defence Exhibit 56 (photograph of Kiziguro parish area).

<sup>396</sup> T. 10 March 2010 p. 13 ("I was outside the church, and I was outside the fence of the presbytery."). Moreover, Witness LA84 stated that he remained outside and in front of the parish compound, until the killings ended at about 3.00 or 4.00 p.m. T. 9 March 2010 pp. 73-75, 76 ("outside the premises of the church but within the compound on the playing ground"; "beyond the fence, not inside the church"). Accordingly, he would not have seen Gatete inside the parish compound at about 3.00 p.m. as did Prosecution Witness BUY. See T. 21 October 2009 pp. 60, 77.

<sup>397</sup> T. 10 March 2010 pp. 49-50, 52-53, 71, 74.

<sup>398</sup> T. 10 March 2010 pp. 71-72 ("Q. I'm asking you whether or not it's possible that Jean-Baptiste Gatete was there and you didn't see him. Is it possible or impossible? A. It was possible.").

<sup>399</sup> T. 10 March 2010 pp. 72-73. The Chamber notes that, while Witness BUY saw Gatete inside the parish compound at about 3.00 p.m., Witness LA27 would not necessarily have also seen the Accused if the witness was carrying bodies to the mass grave or was at the mass grave at that time.

<sup>400</sup> T. 10 March 2010 p. 73. Moreover, while Witness LA27 testified that he saw the killing of Munana, none of the Prosecution witnesses testified to Gatete's presence during the killing. Rather, they testified that Munana was removed from where the other refugees were. Witness BBP, T. 20 October 2009 pp. 19, 42-43 (Munana was taken out of the compound); Witness BBM, T. 20 October 2009 pp. 66-67 (Karempera and Munana were removed); Witness BUY, T. 21 October 2009 pp. 56-57 (the attackers first took away a teacher called Munana); Witness BBJ, T. 5 November 2009 pp. 22, 65-66 (Karempera and Munana were not killed on site and the witness did not know where they were taken). Witness BVS did not testify about the removal of Munana. Furthermore, none of the Prosecution witnesses testified to having seen Gatete during the attack on the church building in which Witness LA27 participated, nor did they see the Accused inside the church. Rather, Prosecution Witnesses BUY and BVS, who were inside the church, saw Gatete after they had exited. At this point, had Witness LA27 been inside the church, or at the place where Munana was killed, he would not necessarily have seen the Accused. Witness LA27's failure to see Gatete during the assault would also explain why he did not mention the Accused as a co-perpetrator as part of his guilty plea before the Gacaca court. See T. 10 March 2010 pp. 30-31.

<sup>401</sup> T. 11 March 2010 pp. 33, 34 (quoted), 52-53.



Moreover, when carrying bodies to the mass grave, he entered the church through the presbytery entrance and exited through the main door, thereby limiting his ability to monitor all persons moving around the compound.<sup>402</sup>

336. Looking next at Witness LA32, he arrived at the parish between 1.00 and 2.00 p.m. after most of the killings had taken place, and moved about ten bodies from the parish church and compound to the mass grave, leaving the site at about 4.00 p.m.<sup>403</sup> Thus, he was not present during the initial attack on the church, the removal of refugees from the church, or for most of the killings. As he was carrying bodies to the grave, he could not see all persons at all times and would not necessarily have seen Gatete, had he been at the parish in the afternoon, as recounted by Prosecution Witness BUY.<sup>404</sup>

337. In sum, the Chamber finds the evidence of Defence Witnesses LA84, LA27, Kampayana and LA32 of limited reliability and probative value and, thus, insufficient to cast doubt on the consistent and compelling Prosecution evidence.

338. The Defence also points to the testimony of Habakubaho to demonstrate the context within which the attack on Kiziguro parish took place. Habakubaho was not at the parish but recalled that the RPF had attacked government forces in Muvumba, Ngarama, Gituza and Rurenge. Soldiers who had retreated had recounted how they attacked Kiziguro parish and committed massacres there.<sup>405</sup> Kampayana also testified about the conditions in nearby refugee camps and the role of displaced persons in the attack on Kiziguro parish.<sup>406</sup> Notably, these accounts are consistent with the Prosecution evidence that soldiers and civilian militia, who included displaced persons, participated in the attack.<sup>407</sup>

339. Moreover, the Chamber has no doubt that the situation in the region was increasingly volatile and that conflicts were taking place between RPF and FAR soldiers. However, the participation of soldiers and displaced persons, as well as the security situation in the region, does not cast doubt on Prosecution evidence that Gatete also played a role in the massacre. Nor does the Chamber find it sufficient to suggest that the attack on Kiziguro parish was not orchestrated. Rather, the only reasonable conclusion, based on the number and categories of assailants, the authorities involved, as well as the number of victims, is that the assault was well orchestrated and aimed at killing hundreds, if not thousands, of Tutsi civilians.

<sup>402</sup> T. 11 March 2010 pp. 41-42; Defence Exhibit 60 (photograph 2 of Kiziguro parish); Defence Exhibit 61 (photograph 4 of Kiziguro parish). Kampayana did not go to the football field which was located to the side of the parish compound. T. 11 March 2010 pp. 43-44.

<sup>403</sup> T. 15 March 2010 pp. 71, 75, 94, 101 (“... people had already been killed. The only work remaining was to transport the corpses, be it inside the church or outside in the yard.”).

<sup>404</sup> T. 15 March 2010 p. 101 (“You cannot see everyone at all times. There was a to-and-from movement. However, I could see some people. For example, when I would leave the grave in order to go to the church, I could not see what was happening at the grave. And the same thing applied to when I would leave the church in order to go to the grave. Then I wouldn’t know what was happening at the church. ... I did not follow each and every person’s movement. When we were carrying bodies, every person would have his or her body which he would be carrying, so we wouldn’t know what other people who were not involved in carrying bodies were doing.”).

<sup>405</sup> T. 17 March 2010 p. 50.

<sup>406</sup> T. 11 March 2010 pp. 14-15, 23-25.

<sup>407</sup> See for example, Witness BBP, T. 20 October 2009 pp. 18-20 (soldiers), 36 (assailants included displaced persons from Bidudu, Muvumba, Ngarama, Kiyombe and Mutara camps).



340. The Chamber also notes Defence evidence suggesting that other individuals played a lead role in gathering and ordering assailants. Indeed, it is clear from both Prosecution and Defence evidence that *Interahamwe* leader Augustin Nkundabazungu and *Conseiller* Gaspard Kamali were present during the attack and provided direction to assailants. Nevertheless, this is not necessarily inconsistent with evidence that Gatete was also present, and played a lead role in the operation. Rather, it is reasonable that a number of authority figures cooperated, and were required to marshal hundreds of assailants in order to kill the hundreds, if not thousands, of Tutsis at the parish, before the RPF reached them.

341. In sum, the Chamber finds that the Defence evidence is insufficient to cast doubt on the consistent and compelling testimonies of Prosecution Witnesses BBP, BBM, BUY and BVS, and to the extent that they are corroborated, Witnesses BBJ and BCS.<sup>408</sup> Accordingly, the Chamber finds beyond reasonable doubt that, on 8, 9, and 10 April, Gatete visited Kiziguro parish and spoke to the gendarmes, who had been guarding the compound, as well as the priests. On 10 April, Gatete arrived with Kiziguro sector *Conseiller* Gasard Kamali and *Interahamwe* leader Augustin Nkundabazungu, and took away certain persons from the parish. By the morning of 11 April, the gendarmes and priests had left Kiziguro parish.

342. Gatete returned to the parish on the morning of 11 April with Nkundabazungu, *Conseiller* Kamali, and soldiers. *Interahamwe* were also present at the parish, as well other civilian militia, which included displaced persons from nearby camps. Refugees who were in the parish church were forced out into the courtyard area, located inside the parish compound. Tutsis called Munana and Karemera were singled out and removed from the group of refugees pursuant to Gatete's instructions. Tutsi refugees were also separated from the Hutus and Gatete issued instructions to the *Interahamwe* to kill the Tutsi refugees. Pursuant to Gatete's directions, *Interahamwe* and civilian militia attacked the Tutsi refugees with a range of traditional weapons, while some assailants also used guns. Soldiers surrounded the Tutsis, so that they could not escape. As a result, hundreds, and possibly thousands of Tutsis were killed and their bodies disposed of in a nearby pit which was used as a mass grave. Able bodied Tutsis were also forced to carry bodies to the grave and were escorted by soldiers. So that they were easily identifiable, Tutsi men were told to remove their shirts as they disposed of the bodies. Once they reached the mass grave, they too were killed and thrown in. The killings and disposal of bodies took several hours, and continued into the evening. It was imperative that the area be cleared before the arrival of the RPF.

**5.3.2 Rapes at Kiziguro Parish**

343. The Indictment alleges that Gatete ordered, supervised and participated in the rapes of Tutsi women at Kiziguro parish complex, a church and hospital where thousands of Tutsi civilians had taken refuge. The Prosecution led no evidence with respect to an attack and subsequent rapes at Kiziguro hospital. Nor did it present evidence suggesting that Gatete participated in rapes. It relies on the testimonies of Witnesses BUY and BVS, who testified that women and girls were raped by *Interahamwe* at Kiziguro parish.<sup>409</sup> The Defence denies

<sup>408</sup> In reaching this conclusion, the Chamber has also considered the Defence submission that there was a defamation campaign against Gatete. See Defence Closing Brief paras. 35-58; T. 20 October 2009 p. 8. However, the Chamber does not find the evidence referred to by the Defence sufficient to cast doubt on the credible and consistent Prosecution evidence discussed above.

<sup>409</sup> Indictment paras. 19, 31, 34; Prosecution Closing Brief paras. 287-288, 294-295.



the allegation and points to the evidence of Witnesses LA84, LA27, Jean-Damascène Kampayana and LA32.<sup>410</sup>

344. Turning first to the Prosecution case, Witness BUY saw *Interahamwe* take women and girls to a place not far from the refugees. She subsequently heard screams coming from that location but did not look in that direction. She concluded from the screams that the women and girls had been raped. One woman, who had been taken away, subsequently told the witness what had happened to her. However, further details were not elicited with respect to what the witness was told.<sup>411</sup> The Chamber finds Witness BUY's brief evidence to be of limited probative value. She did not see any rapes being committed, nor did she testify that Gatete issued orders to the *Interahamwe* or other assailants to rape women and girls. Nor did she suggest that he was present when they were taken away, or during the alleged rapes.

345. Although Witness BVS testified that she saw girls being raped by *Interahamwe* at Kiziguro parish, she did not state that Gatete was present, or that he issued orders for rapes to be committed.<sup>412</sup> Her evidence was also extremely brief and vague on this point, and the Chamber finds it insufficient for the purposes of supporting findings beyond reasonable doubt.

346. The Chamber has also considered the Defence evidence which suggests that women and girls were taken aside and killed at a later time.<sup>413</sup> The Chamber finds this troubling. However, ultimately the Prosecution evidence is insufficient to establish beyond reasonable doubt that Gatete ordered, supervised, participated, or played any role in the rape of women and young girls at Kiziguro parish. In reaching this conclusion, it has also considered its findings with respect to Gatete ordering killings at Kiziguro parish. While it is possible that he also issued orders to rape Tutsi women and girls, in the Chamber's view, it is not the only reasonable conclusion based on the evidence.

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<sup>410</sup> Defence Closing Brief paras. 601, 605-609, 634-640.

<sup>411</sup> T. 21 October 2009 pp. 61 ("We avoided looking in that direction, and we heard their screams. We could not have failed to know when somebody is being cut up or being raped. One can distinguish the screams. And so we were able to know that that is what was happening from the screams of the victims."), 62, 75.

<sup>412</sup> T. 22 October 2009 pp. 9-10.

<sup>413</sup> Witness LA84, T. 9 March 2010 pp. 67-68, 74-75 (Nkundabazungu took some women from the church to a yard in a primary school, at the lower side of the church. They were guarded by *Interahamwe* and soldiers); Witness LA27, 10 March 2010 pp. 48-49 (Nkundabazungu and the soldiers assembled Tutsi women at the playground to be later killed); Kampayana, T. 11 March 2010 p. 30 (Nkundabazungu, *Interahamwe*, soldiers and gendarmes took about 50 women away to a football field. The witness later heard they were killed). Witness LA32, T. 15 March 2010 pp. 71, 74-75, 89-92 (about a hundred Tutsi women and children were assembled in a football field. They were killed at about 4.00 p.m.).



## 6. MUKARANGE PARISH, 12 APRIL 1994

### 6.1 Introduction

347. The Indictment alleges that, on about 10 to 11 April 1994, Gatete and Kayonza commune *bourgmestre*, Célestin Senkware, transported armed soldiers and *Interahamwe* to Mukarange parish compound in Kibungo prefecture. Together, they attacked the Tutsi refugees there. Tutsis were raped and killed as a result of Gatete's actions. The Prosecution relies on the evidence of Witnesses AWF, BVP, and BVR.<sup>414</sup>

348. The Defence does not dispute that Tutsis sought refuge at Mukarange parish from 9 April 1994, and that on 12 April they were the victims of an attack by local assailants, reservists and gendarmes. However, the Defence denies that Gatete was involved in the 12 April attack and submits that no evidence was led to show that any violence occurred at the parish on 10 or 11 April, or that any rapes ever took place there that month. The Defence relies on the evidence of Witnesses LA44, LA50, and Innocent Habyalimana.<sup>415</sup>

### 6.2 Evidence

#### Prosecution Witness AWF

349. Witness AWF, a Tutsi, was a student in 1994, and lived in Mukarange sector, Muhazi commune. On 8 April, he and his family fled killings committed by Hutus against Tutsis in his sector. They sought refuge at Mukarange parish and arrived the same day. By 9 April, between 1,500 and 2,500 refugees had gathered there. At around noon, Gatete arrived at the parish in a blue Daihatsu pickup vehicle with Kayonza commune *Bourgmestre* Senkware, Mukarange sector *Conseiller* Samson Gashumba, a person called Ngabonzima, who worked for the Rwandan tourism and parks authority, and five to eight gendarmes. The group stopped a short distance away from the witness. Gatete remained at the entrance while the others entered the compound.<sup>416</sup>

350. The gendarmes ordered the refugees to line up according to their sector of origin to be counted. The refugees complied, having been assured of their security by the gendarmes. Two priests, Father Gatere, who was Tutsi, and Father Bosco, who was Hutu, were present. One of the priests, who the witness first referred to as Gatere, and then as Bosco, refused to move away from the refugees and asked them to break the lines. He was immediately killed.

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<sup>414</sup> Indictment paras. 22, 32, 35, 41; Prosecution Closing Brief paras. 45-47, 75 (iii)-(vii), 84, 108, 254 (withdrawing the example in paragraph 22 of the Indictment alleging that a woman named Odette took her child outside Mukarange parish and both were immediately killed, and that Father Bosco, the parish priest, asked Gatete to stop the killings but he refused); Closing Arguments, T. 8 November 2010 pp. 2, 4-5, 13-14, 22.

<sup>415</sup> Defence Closing Brief paras. 92, 644, 715-772, 812, 836, 845, 857, 1104-1106, 1172, 1189, 1282-1283; Closing Arguments, T. 8 November 2010 pp. 36-38, 52-55.

<sup>416</sup> Prosecution Exhibit 8 (personal identification sheet); T. 22 October 2009 pp. 39, 43-46, 48-49, 56, 58-59, 66-67, 69. The Chamber notes that Witness AWF referred to "Ngabozima". Elsewhere, this person has been referred to as "Ngabonzima". The Chamber has used the spelling most consistently used in the evidentiary record, bearing in mind that the evidence consistently establishes that the witnesses are referring to the same person.



Gatete said nothing. After the refugees broke the lines, Gatete left in the vehicle with his group. Only a small number of refugees had been counted at that point.<sup>417</sup>

351. On 10 and 11 April, the refugees tried to defend themselves against attacks by Hutus. On 12 April, at about 4.00 a.m., the refugees were again attacked, this time by *Interahamwe* with grenades. The refugees, including the witness, fought back all morning. By late morning, they had repelled the attackers, who withdrew to a football field located about 200 metres from the parish. The fighting continued on the field.<sup>418</sup>

352. Subsequently, Gatete arrived in the same Daihatsu vehicle in which he had come on 9 April. It was driven by a gendarmerie lieutenant. Gatete and Senkware were in the front of the vehicle, with Gashumba, Ngabonzima and two gendarmes in the rear cabin. Gatete, Senkware and the lieutenant alighted from the vehicle and offloaded boxes of grenades. The boxes were opened and Ngabonzima distributed the grenades to the *Interahamwe* on the football field. Gatete remained on the field for "quite a while."<sup>419</sup>

353. A grenade was thrown into the crowd of Tutsis with whom the witness was standing and killed a man called Munyagipimo. At this point, Gatete was among the *Interahamwe* and was gesturing to them. The *Interahamwe* continued to throw grenades at the crowd, and the Tutsis hurled stones back from "below" a school classroom that was located behind the parish, not far from the football pitch. Others among the crowd were killed. The survivors retreated towards the wall of the parish compound. The *Interahamwe* followed and continued the attack between about 4.00 and 6.00 p.m., wounding the refugees both inside the parish compound and on the football field.<sup>420</sup>

354. The assailants had prepared a list and called out names of persons from it. Those on the list were taken outside the compound to a fallen tree trunk in front of the parish near the road. The victims were undressed, decapitated and "cut up". Their heads fell into a deep trench located there. The assailants attacked those who were not on the list inside the compound.<sup>421</sup>

355. The witness was among those taken outside to the tree trunk and undressed, but he managed to run away and escape. At that point, the number of refugees had risen to between 4,000 and 6,000. The compound and the area outside it, including the football field, were strewn with bodies. The witness estimated about 5,000 persons had already been killed when he escaped. Among the dead were the witness's father and three sisters. His mother was seriously injured from grenade shrapnel.<sup>422</sup>

#### Prosecution Witness BVP

<sup>417</sup> T. 22 October 2009 pp. 46, 59, 69.

<sup>418</sup> T. 22 October 2009 pp. 46-48.

<sup>419</sup> T. 22 October 2009 pp. 48-50, 54, 60 (quoted), 68. Witness AWF stated that the vehicle arrived "where we were". T. 22 October 2009 p. 48. Witness AWF was standing on the same field, between 30 and 50 metres from the point of distribution. T. 22 October 2009 p. 50.

<sup>420</sup> T. 22 October 2009 pp. 47, 50-52, 60-61, 63. Witness AWF could not hear Gatete but concluded from his gestures that he was instructing the *Interahamwe*. T. 22 October 2009 p. 51.

<sup>421</sup> T. 22 October 2009 pp. 52 ("They were cutting up those whom they knew already, and then they would have them go outside the church compound. ... "[T]he assailants would ... take them out of the compound to kill them at the place where there was a tree."), 53 (quoted), 62.

<sup>422</sup> T. 22 October 2009 pp. 53-54.

356. Witness BVP, a Tutsi, was a farmer living in Mukarange sector, Muhazi commune, in 1994. On the afternoon of 8 April, he and his family arrived at Mukarange parish, seeking refuge from killings of Tutsis by *Interahamwe* or Hutus. At that point, there were about 2,000 persons, mostly from Kayonza commune, at the parish. Both Hutus and Tutsis were among the refugees.<sup>423</sup>

357. By 12 April, the number of refugees at the parish had risen to between 3,000 and 5,000. That day, the witness left the parish at around 4.00 a.m. to look for food for his children. Upon his return, he saw that around 8,000 to 10,000 Hutu *Interahamwe* had surrounded the parish. The bulk of the *Interahamwe* were in the parish courtyard, while others were around the priests' living quarters or had surrounded the parish compound. The witness was afraid and hid in a small wooded area located behind one of the goalposts on the football field, which was about 120 to 130 metres from the parish site.<sup>424</sup>

358. After about an hour, he saw Gatete arrive in a Daihatsu pickup vehicle carrying many *Interahamwe*, most of whom came from the witness's area. They arrived on the football field, and came from the direction of the parish.<sup>425</sup>

359. Gatete alighted from the vehicle and stood between about 50 and 80 steps from where the witness was hiding. Gatete then told the *Interahamwe*, who had surrounded the Tutsis at the parish, that he had brought weapons for reinforcement, to kill "the enemies of the Hutus, in other words, the *Inyenzis* and *Inkotanyis*". The witness understood Gatete to be referring to Tutsis. Gatete also said that the inhabitants of that area were "distracted" because all Tutsis in the Murambi community had been killed. He then delivered crates containing grenades and guns to the *Interahamwe* on the football field. The weapons were distributed at one of the goalposts on the field. The witness was hiding in the woods behind that goalpost. Gatete first had three crates offloaded from the vehicle. The crates were opened and Gatete removed a grenade, showed it to those present, and gave it to an assailant, telling the others to line up and take one grenade each.<sup>426</sup>

360. Gatete next distributed long guns which appeared to be sub-machine guns. He then called on reserve officers, who were former members of the armed forces, to show the other assailants how to shoot. There were many reservists, and the witness recognised four or five of them as his neighbours.<sup>427</sup>

361. Following the distribution, Gatete told the attackers to kill the "enemies of the Hutus, namely the Tutsis". He took a gun and shot it three times in the air to signal the start of the

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<sup>423</sup> Prosecution Exhibit 9 (personal identification sheet); T. 2 November 2009 pp. 3-6, 19-21, 32. Witness BVP also later stated that there were between 3,000 and 5,000 refugees at the parish. T. 2 November 2009 p. 15.

<sup>424</sup> T. 2 November 2009 pp. 6-8, 13-16, 21-22, 28. It was still dark when Witness BVP left that morning. Witness BVP believed that *Interahamwe* arrived at around 6.00 or 7.00 a.m. to surround the parish. T. 2 November 2009 p. 21. He initially said that he returned at about 10.00 a.m., but later stated that he spent only four hours outside. T. 2 November 2009 p. 22. There were more *Interahamwe* than refugees. T. 2 November 2009 p. 16.

<sup>425</sup> T. 2. November 2009 pp. 7-9, 15-17, 21-22, 36. Witness BVP described Gatete as a "great" and "major" *Interahamwe*, and the "chief" *Interahamwe*. T. 2 November 2009 pp. 7, 9, 16.

<sup>426</sup> T. 2. November 2009 pp. 7, 8-9 (quoted), 11-14, 22. Witness BVP estimated a step to be one metre. T. 2 November 2009 p. 8. He could see Gatete with no obstruction but Gatete and the attackers did not see the him. T. 2 November 2009 pp. 8-9, 11, 27.

<sup>427</sup> T. 2 November 2009 pp. 9, 11-12, 23. Witness BVP said the guns were about 80 centimetres long. He saw about 20 guns. T. 2 November 2009 p. 11.





massacre. At that point, the assailants commenced an attack on the parish using the weapons that Gatete had brought. Some *Interahamwe* used machetes, daggers and other traditional weapons.<sup>428</sup>

362. When the attack commenced, Gatete was with Senkware, who was *bourgmestre* of Kayonza commune, and the "other influential *Interahamwe*". They then got back into their vehicle and went towards the parish to "supervise" the attack. The witness left there at about 1.30 p.m. His wife, children, mother uncles, cousins, and several in-laws, who had sought refuge at the parish, were killed during the attack. He named eight other persons who survived.<sup>429</sup>

Prosecution Witness BVR

363. Witness BVR, a Hutu, was a mason in 1994 and lived in Mukarange sector, Muhazi commune. On 12 April, at about 8.00 a.m., a local official called Édouard Kabashaand Ngabonzima, who was a political leader and former director of the Rwandan tourism authority, gathered the witness and others. Ngabonzima told those assembled that he had just attended a meeting at the home of a businessman called Kanyangoga in which it was decided that Tutsi refugees at Mukarange parish should be killed. Among those at that meeting were Gatete, Senkware, who was the Kayonza commune *bourgmestre*, Lieutenant Twahirwa, who was the Kayonza gendarmerie chief, Mukarange sector *Conseiller* Samson Gashumba, the brigadier of the communal police Rwabagabo, and Kanyangoga. At the end of the meeting, sometime between 9.00 and 10.00 a.m., the witness and others received orders to kill Tutsis at Mukarange parish. Ngabonzima also told them that they would receive "reinforcements", as well as guns and grenades. The witness, who was among a group of about 200, then went to Mukarange parish.<sup>430</sup>

364. After his arrival at the parish, sometime after 10.00 a.m., the witness saw Gatete there with Lieutenant Twahirwa, *Bourgmestre* Senkware, and Brigadier Rwabagabo. They had brought guns and gendarmes and subsequently assisted in the killings at Mukarange parish. The witness arrived at the football field, which was about 200 to 250 metres from Mukarange parish, sometime between about 10.00 and 11.00 a.m. One group of assailants was at the chapel, but the witness, who was among attackers on the football field, heard of, but did not see the distribution of weapons at the chapel. Gatete, who arrived with reinforcements, met the group of attackers who were on the football field. He was protected by gendarmes from Kayonza commune. They called Hutu *Interahamwe* who had been trained in the use of weapons and wore military uniforms and banana leaves. Gatete selected those who were properly trained and gave them arms.<sup>431</sup>

365. Between about 10.00 and 11.00 a.m., following the distribution of weapons, the assailants launched an attack, using the arms distributed by Gatete. In addition to guns and

<sup>428</sup> T. 2 November 2009 pp. 14 (quoted), 15-16.  
<sup>429</sup> T. 2 November 2009 pp. 15-16, 17 (quoted), 27-29; Defence Exhibit 3 (names of survivors).  
<sup>430</sup> Prosecution Exhibit 10 (personal identification sheet); T. 2 November 2009 pp. 42-49, 59 (quoted).  
<sup>431</sup> T. 2 November 2009 pp. 42-43, 49-50, 58, 61, 70.



grenades, they also used traditional weapons, including machetes, spears, clubs, and bows and arrows. The witness was armed with a machete.<sup>432</sup>

366. Other groups of attackers had been organised by other leaders. The witness estimated that, in total, there were more than 800 assailants, including Hutus from displaced persons camps in Murambi commune. During the killings, Kabasha was the witness's immediate supervisor, and reported to Ngabonzima.<sup>433</sup>

367. Most of the refugees at the parish were Tutsi. When the killings began, the authorities asked the Hutu refugees to separate themselves from the Tutsis so that they would not be killed. Hutus who remained with the Tutsis were killed.<sup>434</sup>

368. The assailants pushed the Tutsis back to the presbytery wall and killed them there. When all the grenades brought by Gatete had been used, Ngabonzima went to look for him to ask for more ammunition. The gendarmes, who were assisting in the killings, were sent to Kayonza and returned with more bullets and grenades, whereupon the fighting resumed. The attack ended while there was still daylight, at about 3.00 p.m. The witness estimated that more than 1,700 Tutsi refugees were killed, including women and children.<sup>435</sup>

#### Defence Witness LA44

369. In 1994, Witness LA44, a Hutu, was a student living in Mukarange sector, Muhazi commune. On 9 April, he was at Mukarange parish when refugees arrived there from nearby areas. About 1,500 refugees had gathered there. Late in the afternoon, Senkware, the *bourgmestre* of Kayonza commune, arrived at the parish with four gendarmes and two policemen in a white Toyota Hilux double cabin pickup, which stopped in front of the compound. He did not see any other authorities there that day.<sup>436</sup>

370. Senkware and the two policemen entered the compound, while the four gendarmes remained at the gate. Senkware asked the refugees why they were fleeing and why they had fled without informing him. They replied that, as an official, he should have known the reasons for why they had fled. Senkware told them that he did not want to enter into a discussion and that they would "know the result of that visit shortly afterwards." Senkware

<sup>432</sup> T. 2 November 2009 pp. 49-50, 60, 63. Witness BVR estimated that the attack commenced when the reinforcements arrived. T. 2 November 2009 p. 60.

<sup>433</sup> T. 2 November 2009 pp. 43-44, 47, 60-61.

<sup>434</sup> T. 2 November 2009 p. 60.

<sup>435</sup> T. 2 November 2009 pp. 49, 58, 60-61, 70-71. At one point, the attackers said that women should be spared. More women than men survived. T. 2 November 2009 pp. 49, 60-61.

<sup>436</sup> Defence Exhibit 87 (personal identification sheet); T. 17 March 2010 pp. 56-58, 60-62; T. 18 March 2010 pp. 19-21. Witness LA44 identified parts of the parish on several photographs. See Defence Exhibits 78-80; T. 17 March 2010 pp. 58-60. The gendarmes wore military uniform and could be identified by their red berets, while soldiers wore black berets. The police wore green uniforms. Senkware alone was in civilian attire. T. 17 March 2010 p. 61; T. 18 March 2010 p. 19. Witness LA44 had previously seen the Toyota pickup vehicle parked outside meetings that Senkware had organised. T. 17 March 2010 p. 60. He was certain that the vehicle was a white Toyota and could not have been a blue Daihatsu. T. 18 March 2010 p. 19. At the time, the witness was standing near a building where stocks were kept, inside the compound and close to the kitchen. T. 17 March 2010 p. 61; T. 18 March 2010 p. 20.

and his companions left. The parish priests, Jean-Bosco Munyaneza and "Gatare", were present but did not talk to Senkware.<sup>437</sup>

371. At dawn, on 12 April, the parish was attacked by assailants using grenades and traditional weapons. The assailants numbered about 1,600. The grenades killed a person called Gacukuzi and injured others. After the attack, the refugees tried to leave the compound but the assailants threw stones and broke windows. At that point, the witness was among the approximately 70 refugees in the kitchen. He and many others were injured.<sup>438</sup>

372. The refugees tried to push the attackers back in order to escape the compound. Some managed to exit the compound and the fighting continued in the courtyard and on the field. The witness was at the back of the group of refugees, still within the parish premises. He could not move quickly due to his injury. At that point, gendarmes arrived aboard a Hilux vehicle and opened fire on the refugees trying to flee, forcing them to retreat back into the parish compound near the priests' quarters. The witness did not see anyone in the Hilux dressed in civilian clothing, but did not approach the vehicle. The only authority he saw at the parish or football field that day was Uwimana, the *conseiller* of Kayonza sector.<sup>439</sup>

373. The attackers then encircled the parish compound, threw stones at the roof and forced the windows open. The witness saw Father Jean-Bosco Munyaneza hit by a bullet and killed. The refugees were then ordered to come out of the parish compound, one at a time with their hands up and told to go to a building called "JOC", which was the name of a religious organisation. The witness saw, but did not hear, a person called Ngabonzima issue the order. Ngabonzima stood in front of the compound near the entrance as he gestured to the refugees to raise their hands and move out one by one.<sup>440</sup>

374. The witness was among those taken to the JOC building. He knew some of the attackers, who also recognised him. They asked him why he was there with the refugees, since he was Hutu. He answered that he had not come with the refugees, but had been living at the parish even before they arrived. He and other Hutus had not tried to separate themselves from the Tutsi refugees because they had not understood what was happening and the attackers were so violent. He had thought that everyone was being targeted. He also did not want to abandon the others who were being attacked.<sup>441</sup>

<sup>437</sup> T. 17 March 2010 pp. 60-61, 62 (quoted); T. 18 March 2010 p. 19. Neither Ngabonzima or Gashumba were present. T. 17 March 2010 p. 62. Witness LA44 did not know Gatare's full name. T. 17 March 2010 p. 57. Gatare died the following day at the sister's convent. T. 17 March 2010 p. 62. After the grenade attack, the priests came and said it appeared that the assailants did not want to spare anybody. T. 17 March 2010 p. 63.

<sup>438</sup> T. 17 March 2010, pp. 63-64; T. 18 March 2010 pp. 3, 5, 21, 23-24, 26-27.

<sup>439</sup> T. 17 March 2010 p. 57; T. 18 March 2010 pp. 3 (quoted), 5, 7-8, 11, 25, 29. Witness LA44 concluded that they were gendarmes because they wore military uniform with red berets. T. 18 March 2010 p. 7. Witness LA44 confirmed that he fled in the direction away from the shooting. T. 18 March 2010 p. 29.

<sup>440</sup> T. 17 March 2010 p. 62; T. 18 March 2010 pp. 8-10, 16; Defence Exhibit 89 (photograph 6 of Mukarange parish). Gatare died the next day at a convent. T. 17 March 2010 p. 62.

<sup>441</sup> T. 18 March 2010 pp. 10, 15-18, 28, 32-33.

375. At the JOC building, the attackers took the refugees' money. The refugees were then removed, one at a time, and most were killed in a coffee plantation nearby. The Hutus were not killed. After the events at Mukarange parish, the witness sought refuge in Tanzania.<sup>442</sup>

#### Defence Witness LA50

376. In 1994, Witness LA50, a Hutu, was a farmer and bar owner living in Kayonza sector, Kayonza commune. On 7 April, he heard about the President's death on the radio. After hearing the news, he remained at home until 9 April. That day, he left his home and noticed Lieutenant Twahirwa at the house of a man named Migabo. Twahirwa told the witness and others to "keep" his cattle and sheep and he would pay them. He also said that the *Inkotanyis* were killing Hutus in Byumba prefecture. That evening, the witness and others went to the home of Karugenge and looted it. He also participated in attacks on other homes during which people were killed.<sup>443</sup>

377. On the evening of 11 April, *Conseiller* Uwimana sent someone to ask the witness to assemble members of the population at the Kayonza primary school and await further instructions from the *conseiller* there. As it was during the war, the witness complied and carried a weapon as everyone did at that time.<sup>444</sup>

378. At about 4.00 a.m. on 12 April, he arrived at the school, where Uwimana, *cellule* administrators, and other members of the population had gathered. Uwimana told them they had to go to Mukarange parish to attack the Tutsi refugees there, who would otherwise kill them and attack their own homes. The witness left the school for Mukarange parish, which was about 30 minutes away on foot.<sup>445</sup>

379. When he arrived at the parish, it was not quite daylight. He knew that reservist soldiers had thrown grenades at the parish and persons inside the church had exited to fight on the football field, close to a wooded area. The Tutsis, who were more than 1,000, first threw stones but some were also armed with bows and arrows. The assailants, who also numbered more than 1,000, carried traditional weapons such as machetes, spears, arrows and sticks. They were led by Uwimana, Kyanzira and Ngabonzima. The witness also considered himself as one of the leaders, because he had assembled the inhabitants at the school. Reservists, gendarmes, civilian authorities, and civilians all co-operated in the attack, but not *Interahamwe*. No authority told the assailants to stop the attack. Rather, the authorities, including Uwimana and Ngabonzima, encouraged them. The confrontation lasted about three hours.<sup>446</sup>

380. At the parish, there were more than 1,000 Tutsis who defended themselves against the attackers. Some threw stones at the assailants, while others used bows and arrows. After

<sup>442</sup> T. 18 March 2010 pp. 10-11, 16. Witness LA44 later learned that his father, who was Hutu, was forced to participate in the attack at the parish on 12 April. His father later confessed and was imprisoned. He did not see his father at the parish on 12 April. T. 18 March 2010 pp. 11, 30-32.

<sup>443</sup> Defence Exhibit 90 (personal identification sheet); T. 22 March 2010 pp. 9-12. Witness LA50 denied that he was an *Interahamwe*. T. 22 March 2010 pp. 9-11, 13, 21. He was convicted for his role in the genocide and was detained at the time of his testimony. T. 22 March 2010 pp. 9, 26.

<sup>444</sup> T. 22 March 2010 pp. 13-14.

<sup>445</sup> T. 22 March 2010 pp. 13-14, 21, 26. Witness LA50 gave the same hour of 4.00 a.m. as the time of his departure from the school to go to Mukarange parish. T. 22 March 2010 p. 14.

<sup>446</sup> T. 22 March 2010 pp. 12-15, 20-21, 36-37; Defence Exhibit 88 (photograph 4 of Mukarange parish site).

about three hours of fighting, gendarmes arrived in a white Hilux pickup truck and shot at the refugees, who then retreated into the compound. The vehicle was some ten "steps" away from the witness. There were not more than three gendarmes on board.<sup>447</sup>

381. When the Tutsis retreated, the assailants followed them back to the compound. The reservist soldiers positioned themselves at the entrance to the compound and a person called Rwabagabo called the Tutsis one by one and led them out to the JOC building, located next to the parish, to be killed.<sup>448</sup>

382. At the JOC building, the victims' pockets were emptied. The witness left the parish around midday, but estimated that the killings stopped at around 2.00 p.m. He later learnt, during his trial in Rwanda in 2000, that the majority of Tutsis were then taken to a coffee plantation on the "lower side" of the JOC building, where they were killed.<sup>449</sup>

#### Defence Witness Innocent Habyalimana

383. Innocent Habyalimana, a Hutu, was a university student in 1994, living in Kayonza sector, Kayonza commune, four to five kilometres from Mukarange parish. He was at home early on the morning of 7 April when he heard about the President's death. People were afraid and some sought refuge at the Mukarange church. On 12 April, those who had sought refuge there were attacked and many were killed. The witness was not present but from between 4.00 and 5.00 a.m. that day, heard gunshots and grenades exploding.<sup>450</sup>

384. Although the witness did not go to Mukarange parish in April 1994, he had been going there, sometimes daily, since primary school. There were three priests there. The parish priest was called Bosco Munyaneza and the vicar was Joseph Gatare. Munyaneza was killed on 12 April 1994 and Gatare was killed on 12 or 13 April of the same year.<sup>451</sup>

### **6.3 Deliberations**

385. The evidence consistently establishes that, following President Habyarimana's death on 6 April 1994, over a thousand, mostly Tutsi, refugees sought refuge at the Mukarange parish.<sup>452</sup> It is undisputed that, on 12 April, the parish was attacked by at least a thousand

<sup>447</sup> T. 22 March 2010 pp. 15-17, 36 Witness LA50 knew the gendarmes by their red berets. T. 22 March 2010 p. 16. He did not see anyone else in the vehicle, nor did he see another vehicle that day. T. 22 March 2010 pp. 18, 21. He did not know how many gendarmes were in the vehicle but they were "not very many". When questioned further, he stated that there were no more than three. T. 22 March 2010 pp. 16-17.

<sup>448</sup> T. 22 March 2010 pp. 18-19.

<sup>449</sup> T. 22 March 2010 pp. 19-20, 21 ("I did not go back with the other attackers. I went back with someone called Jean-Pierre at around midday. And, therefore, I left the other attackers behind at the parish"). Witness LA50 could see inside the JOC building as the door was open. T. 22 March 2010 p. 19.

<sup>450</sup> Defence Exhibit 76 (personal identification sheet); T. 16 March 2010 pp. 49-51, 53-54; T. 17 March 2010 pp. 13-14.

<sup>451</sup> T. 16 March 2010 pp. 54-55.

<sup>452</sup> Witness AWF, T. 22 October 2009 pp. 43 (sought refuge at Mukarange parish after fleeing attacks in which Hutus were killing Tutsis), 45-46 (1,500 to 2,500 refugees were at the parish as of 9 April and more arrived), 50 (a grenade was thrown into the crowd of Tutsis); Witness BVP, T. 2 November 2009 pp. 8 (*Interahamwe* had surrounded Tutsis at the parish), 15 (between 3,000 and 5,000 refugees were at the parish), 15, 21; Witness BVR, T. 2 November 2009 pp. 42 (he was at the parish to take part in the killing of Tutsis), 48-49 (more than 1,700 were killed), 60-61 (on 12 April, Tutsi refugees were at the parish); Witness LA44, T. 18 March 2010 pp. 15-17 (there were a few Hutus among the refugees, and the assailants asked the witness why he was at the parish

assailants using grenades and other weapons.<sup>453</sup> Nor is it disputed that civilian authorities, gendarmes, reserve soldiers, and civilian militia participated in an attack at the parish.<sup>454</sup> As a result, hundreds, if not thousands, of Tutsi refugees were killed.<sup>455</sup>

386. The Chamber turns to consider the allegations regarding Gatete's role in the attack. In particular, it is alleged that on about 10 to 11 April, Gatete and Kayonza commune *Bourgestre* Senkware transported armed soldiers and *Interahamwe* to Mukarange parish, where Tutsi refugees were raped and killed. The Prosecution relies on the testimonies of Witnesses AWF and BVP, both refugees who went to the parish on about 8 April and were present during the attack there on 12 April, as well as Witness BVR, who participated in the attack that day. Through these witnesses, the Prosecution further seeks to establish that Gatete distributed grenades and guns to assailants for the purpose of attacking the Tutsi refugees at the parish.<sup>456</sup> The Prosecution presented no evidence of rapes committed at Mukarange parish.

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if he was Hutu), 26 (there were about 1,500 refugees); Witness LA50, T. 22 March 2010 pp. 14 (he went to fight Tutsi refugees at the parish), 15 (there were more than 1,000 Tutsis at the parish).

<sup>453</sup> Witness AWF, T. 22 October 2009 p. 47 (a grenade attack took place at the parish at about 4.00 a.m. on the morning of 12 April); Witness BVP, T. 2 November 2009 pp. 7 (the attack occurred on 12 April), 16 (8,000 to 10,000 assailants), 21-22 (in the morning); Witness BVR, T. 2 November 2009 p. 47 (there were over 800 assailants); Witness LA44, T. 17 March 2010 pp. 62-63 (a grenade attack took place at the parish at dawn on 12 April); T. 18 March 2010 pp. 3 (the grenade attack began at dawn on 12 April), 5 (assailants were armed with traditional weapons during the attack), 26 (over 1,600 assailants); Witness LA50, T. 22 March 2010 pp. 13 (he and other attackers arrived at Mukarange parish at about 4.30 a.m. on 12 April, when it was not quite daylight. As it became lighter, after grenades were thrown at the church, there were further confrontations with the refugees), 15 (traditional weapons, such as machetes, spears, arrows and sticks, were used during the attack and there were over 1,000 assailants), 36 (it was not quite daylight when the witness arrived at the parish, but he knew that reservist soldiers had thrown grenades at the parish); Habyalimana, T. 16 March 2010 pp. 53-54 (he heard the first grenade of an attack that morning, sometime between 4.00 and 5.00 a.m. on 12 April).

<sup>454</sup> Witness AWF, T. 22 October 2009 pp. 46-47 (*Interahamwe* attacked on 12 April), 45-50 (*Bourgestre* Senkware, *Responsable* Gashumba, Ngabonzima and gendarmes helped unload boxes of grenades from the vehicle before the attack); Witness BVP, T. 2 November 2009 pp. 9, 14-16 (*Interahamwe* attacked the parish that day and after the distribution of weapons, *Bourgestre* Senkware went towards the parish to supervise the attack); Witness BVR, T. 2 November 2009 pp. 42-46 (on 12 April, Senkware, Gashumba, Brigadier Rwabagabo, and a gendarme at Mukarange parish arrived with guns), 70-71 (Ngabonzima requested more ammunition after the initial supply was exhausted); Witness LA44, T. 18 March 2010 pp. 7-8 (gendarmes arrived and shot at the refugees), 9-11 (*Conseiller* Uwimana was present during the attack on 12 April) (the witness's father was also forced to participate in the attack); Witness LA50, T. 22 March 2010 pp. 12-14 (the witness was ordered to gather local inhabitants who received instructions to fight Tutsis at Mukarange parish) (*Conseiller* Uwimana and *cellule* administrators were present when the witness arrived at the parish at about 4.00 a.m.), 15 (reserve soldiers had thrown grenades and gendarmes also arrived), 20-21 (*Conseiller* Uwimana, Kanyanzira and Ngabonzima led attacks), 36 (reserve soldiers participated in the attack, as did local inhabitants of Mukarange, Cyeru and Miyange sectors, as well as ordinary members of the MRND).

<sup>455</sup> Witness AWF, T. 22 October 2009 pp. 53 (about 5,000 refugees were killed); Witness BVR, T. 2 November 2009 pp. 49, 60-61 (he estimated that more than 1,700 Tutsi refugees were killed on 12 April); Witness LA44, T. 18 March 2010 pp. 11, 19 (as of 9 April, there were about 1,500 refugees, and most of them were killed), 16-17 (some Hutus were mixed in with the refugees but were not killed); Witness LA50, T. 22 March 2010 pp. 15, 20 (on 12 April, more than 1,000 Tutsis defended themselves, and the majority were killed).

<sup>456</sup> Indictment paras. 22, 32, 35, 41; Prosecution Closing Brief paras. 45-47, 75 (iii)-(vii), 84, 108, 254. The Chamber notes that the Indictment refers to 10 or 11 April, and does not allege that Gatete distributed weapons, or that Gatete attended a meeting prior to the attack where it was decided that Tutsis at the parish should be killed. However, the dates "on or about 10 to 11 April" provided in the Indictment were clearly intended to be an approximation. Moreover, the Indictment provides details such as the specific location of the attack,

387. The Defence relies on the evidence of Witnesses LA44 and LA50 to show that Gatete was not present during the 12 April attack on Mukarange parish. Rather, both witnesses saw *Conseiller* Uwimana at the parish or on the nearby football field that day and, according to Witness LA50, Uwimana and Ngabonzima were among the authority figures who led the attack. The Defence also points to the testimony of Innocent Habyalimana, who was not present at the parish on 12 April but heard gunshots and grenades exploding between 4.00 and 5.00 a.m. that morning. It further submits that no evidence was led that Gatete transported killers to the Mukarange parish compound.<sup>457</sup>

388. The Chamber turns to consider the Prosecution evidence and notes at the outset that Witness AWF recalled seeing Gatete at the parish prior to 12 April. That he is the only witness to have referred to Gatete arriving at the parish with others on 9 April and refugees being ordered to line up, as well as attacks occurring on 10 and 11 April, is not material. Under cross-examination, Witness BVP did mention attacks starting on 8 April and the situation becoming more serious by 10 April. However, further details were not elicited with respect to events prior to 12 April.<sup>458</sup> Furthermore, it is possible that Witness BVP was not at the same location as Witness AWF to observe the same events on 9 April. Witness BVR was only at the parish on 12 April while participating in the attack.

389. The Chamber notes that the Prosecution evidence is largely consistent with respect to the events of 12 April. All three witnesses recalled seeing Gatete on the football field near Mukarange. Witness AWF saw Gatete arrive after he and other refugees had repelled an early morning attack.<sup>459</sup> Witness BVP testified that he saw the Accused arrive there in the morning,

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identifies other participants and alleges Gatete's participation in the attack. The Prosecution Pre-Trial Brief provides further details, in particular, that on 12 April, Gatete distributed guns and grenades to assailants on the football field near the Mukarange parish compound in preparation for the attack. Prosecution Pre-Trial Brief para. 46 and annexed witness summaries for Witnesses AWF, BVP and BVR. Furthermore, it specifically refers to Gatete attending a meeting at Kanyangoga's house prior to the attack on 12 April, identifies others present at the meeting, and specifies its purpose. Prosecution Pre-Trial Brief para. 74 and annexed witness summary for Witness BVR. Accordingly, the Chamber finds that the Accused received clear, timely and consistent notice of the allegation that Gatete attended a meeting at Kanyangoga's house in preparation for the attack on Tutsis at Mukarange parish on 12 April, and, once there, distributed weapons to assailants for use during the attack.

<sup>457</sup> Defence Closing Brief paras. 92, 644, 715-772, 812, 836, 845, 857, 1104-1106, 1172, 1189, 1282-1283; Closing Arguments, T. 8 November 2010 pp. 36-38, 52-55.

<sup>458</sup> T. 2 November 2009 p. 20 ("Q. And at that time you arrived on the 8<sup>th</sup>, were there already attackers around the Mukarange parish site? .... A. On that day attacks started. The *Interahamwe* from my area, who were very influential, asked the members of the Hutu population to come and meet us at the parish and kill. From the 8<sup>th</sup> to the 12<sup>th</sup>, we were facing those attacks, but until the 12<sup>th</sup> of April, the assailants were not able to overcome us. Q. So when you arrived on the 8<sup>th</sup>, did you have any problems entering the parish with your family members? A. There were no obstacles. We entered the church without any difficulty. It was only two days later on that we started meeting our difficulties.").

<sup>459</sup> T. 22 October 2009 p. 48 ("Q. What happened [on the football field after the morning attack] in the afternoon at about 1.30 p.m.? A. We saw the same vehicle that had arrived on the 9<sup>th</sup>, arrive where we were. Q. Are you referring to the Daihatsu pickup that you had given evidence earlier on? A. Yes, I mean the same vehicle."), 49 ("Q. So when the vehicle arrived on this day at 1.30 p.m., who got out of the vehicle? A. I have made mention of Gatete.... Q. So when you say the same people arrived at 1.30 p.m. on the 12<sup>th</sup> of April, are you saying that it was ... Gatete [among others]? A. That is correct."), 60 ("Q. Moving now to the 12<sup>th</sup> of April 1994, Witness. You testified that a truck carrying Mr. Gatete and others came to the football field at 1.30 p.m. Is that your testimony? A. I have told you that I did not have a watch. All I did was to give you an approximate time.").

sometime between about 9.00 and 11.00 a.m.<sup>460</sup> Upon arrival at the parish sometime between 10.00 and 11.00 a.m., Witness BVR also saw Gatete on the football field.<sup>461</sup> Given the passage of time since the events and the tense circumstances, the slight variance in timings is immaterial.

390. Furthermore, Witnesses AWF and BVP both stated that Gatete arrived in a Daihatsu pickup vehicle. When Witness BVR arrived, Gatete was already on the football field. Thus, he would not necessarily have referred to the vehicle in which the Accused arrived.<sup>462</sup> All three witnesses testified that Gatete was accompanied by other individuals. Witness AWF recalled that Gatete arrived with *Bourgmestre* Senkware, *Conseiller* Gashumba, a gendarme lieutenant, Ngabonzima, and two gendarmes. Witness BVR also recalled seeing Gatete with Senkware and Lieutenant Twahira, as well as a brigadier and later also referred to Ngabonzima. Witness BVP referred to Gatete arriving with *Interahamwe*, but also saw him with Senkware, who he described as “the other influential *Interahamwe*”.<sup>463</sup> Given the witnesses’ varying abilities to recognise individuals, their vantage points, as well as the tense circumstances, the Chamber does not find the differences on this point to be material.

391. All three Prosecution witnesses testified that Gatete arrived with grenades for distribution among the assailants. Witnesses BVP and BVR also recalled that the Accused arrived with guns, as well as grenades, and that these were given to the attackers.<sup>464</sup> That Witness AWF did not mention guns and saw only Ngabonzima, but not Gatete, distribute the weapons to *Interahamwe* is, in the Chamber’s view, immaterial and can be explained by varying vantage points, as well as the tense circumstances.

<sup>460</sup> T. 2 November 2009 p. 58. Although Witness BVP also testified that he spent only four hours outside after leaving at 4.00 a.m. (T. 2 November 2009 p. 22), the Chamber does not consider this material, considering that the times provided were approximations and given the passage of time since the events.

<sup>461</sup> T. 2 November 2009 pp. 42, 58.

<sup>462</sup> Witness AWF, T. 22 October 2009 pp. 45, 48; Witness BVP, T. 2 November 2009 p. 7; Witness BVR, T. 2 November 2009 pp. 42-43 (“On arrival there, we met Jean Baptiste Gatete and his colleagues, who were bringing in guns.”).

<sup>463</sup> Witness AWF, T. 22 October 2009 p. 49; Witness BVR, T. 2 November 2009 pp. 42-45; Witness BVP, T. 2 November 2009 pp. 7-9, 16-17.

<sup>464</sup> Witness AWF, T. 22 October 2009 pp. 49-51, 54, 59-60 (Gatete offloaded grenades from the vehicle he arrived in and Ngabonzima distributed them to the *Interahamwe* on the football field near the parish); Witness BVP, T. 2 November 2009 pp. 8, 11-12, 16, 26 (Gatete delivered crates of guns and grenades and distributed both to the attackers); Witness BVR, T. 2 November 2009 pp. 43, 49-50 (Gatete distributed guns and grenades both at the chapel and on the football field). The Chamber notes the Defence submission that Witness BVR did not see the distribution of weapons. See Defence Closing Brief para. 727, citing to T. 2 November 2009 p. 43. However, the Defence only cites to that part of Witness BVR’s testimony which referred to the distribution of weapons at the chapel, which he acknowledged he did not see. See T. 2 November 2009 p. 43 (“A group of attackers was at the chapel, while another group was on the football field. I was with those who were on the football field, and we attacked the parish from various points. Gatete was with those who were near the chapel, and I was in the football field. I did not witness ... the distribution of weapons, but Gatete also met us in the football field. He called out Ngabonzima and the other *Interahamwe* who had been trained in the handling of guns and grenades.”). His testimony that he did not see the distribution of weapons appears to refer only to the distribution at the chapel. This was further clarified later in his evidence. See T. 2 November 2009 p. 49 (“Q. Did you also see him during this attack on that day? A. Yes. He brought guns and grenades. He first of all, distributed those weapons at the chapel, as I pointed out earlier. I was not there. But he gave those guns and grenades to the attackers. Then he came to the football pitch where I was and selected the persons who had been trained in the handling of those weapons, and then those weapons were given to those persons, after which the killings started.”).





392. According to the evidence of Witnesses AWF and BVP, Gatete was still present after the attack on the parish commenced. Witness BVR's testimony also suggests that the Accused was on site during the attack as he testified that, after the initial supply of ammunition was exhausted, Ngabonzima went in search of Gatete to obtain further supplies.<sup>465</sup>

393. Furthermore, all three witnesses described *Interahamwe* as being among the assailants on 12 April.<sup>466</sup> Witness BVP also referred to former armed forces officers and Witness BVR stated that the assailants included Hutu refugees from displaced persons camps, as well as men in military uniform, including gendarmes. Given the large crowds at the parish, as well as the witnesses' varying abilities to distinguish among the categories of assailants under tense circumstances, it is reasonable that they recall different aspects of the same event.

394. There are also thematic consistencies between the three witnesses' testimonies with respect to Gatete's role in the attack. Witness AWF testified that Gatete gestured to *Interahamwe* as they attacked the refugees with grenades, Witness BVP recounted that Gatete issued express instructions to kill and shot three times into the air to signal the start of the attack, and Witness BVR recalled Gatete selecting trained assailants to distribute arms to.<sup>467</sup> Moreover, all three witnesses described different aspects of the attacks at the parish. The Chamber considers this to be reasonable, in light of the scale of the massacre, the number of persons present around the site, and the witnesses' different positions in and around the parish.<sup>468</sup>

395. Notwithstanding the above similarities, the Chamber must consider the individual merits of the witnesses' testimonies. Turning first to the Prosecution evidence, the Chamber is satisfied that Witness AWF was able to identify the Accused in April 1994. He had known Gatete as the *bourgmestre* of Murambi commune since 1992 and had seen him arrive at a school that same year.<sup>469</sup>

<sup>465</sup> Witness AWF stated that Gatete was still with the *Interahamwe* after the first grenade was thrown. T. 22 October 2009 pp. 50-51, 61. Witness BVP testified that Gatete was present when the attack commenced and that he and Senkware and others got back into their vehicle and went towards the parish to supervise the attack. T. 2 November 2009 p. 17. Witness BVR suggested that Gatete stayed at least through part of the attack, as Ngabonzima requested his assistance in procuring more grenades when the first batch was exhausted. He later stated that Ngabonzima went in search of Gatete to ask for additional ammunition. T. 2 November 2009 pp. 58, 61, 70-61.

<sup>466</sup> Witness AWF, T. 22 October 2009 pp. 47-50, 60-61; Witness BVP, T. 2 November 2009 pp. 6-9, 20-21; Witness BVR, T. 2 November 2009 pp. 42-43.

<sup>467</sup> Witness AWF, T. 22 October 2009 pp. 47, 49-52, 54, 60-61; Witness BVP, T. 2 November 2009 pp. 14-15; Witness BVR, T. 2 November 2009 pp. 43, 49.

<sup>468</sup> Witness AWF was on the football field, fighting assailants and was eventually pushed back to the presbytery. He testified that subsequently, some victims were taken to a fallen tree trunk located outside the compound, where they were decapitated and cut up, while others were attacked inside the parish compound. T. 22 October 2009 pp. 50-53, 62. Witness BVP would not necessarily have seen this from his hiding spot, and in addition, had left the site by about 1.30 p.m. T. 2 November 2009 pp. 27-28. Witness BVR was participating in the attack and would not necessarily have been able to see all the incidents of killings that occurred at the parish. He did, however, testify that people were killed with, among other weapons, machetes, which is consistent with Witness AWF's account that assailants were "cutting up" refugees. Witness BVR, T. 2 November 2009 p. 49; Witness AWF, T. 22 October 2009 pp. 52-53.

<sup>469</sup> T. 22 October 2009 pp. 39-42.

396. Witness AWF provided a statement to Tribunal investigators in December 2004 which was referred to by the Defence but not admitted into evidence. The Defence submits that there were several differences between the statement and his testimony. In particular, he testified that the killings were still ongoing at 4.00 p.m., while his statement indicated that the killings were almost over by around that time. In addition, he testified that he arrived at Mukarange parish on 8 April, but according to his statement, he arrived on 9 April. The witness maintained that he arrived on 8 April.<sup>470</sup> In the Chamber's view, such variances are minor, and are insufficient to cast doubt on the witness's sworn testimony.

397. The Defence also challenged Witness AWF's evidence that Gatete entered the compound on 9 April, while his December 2004 statement referred to the Accused being left "behind".<sup>471</sup> The witness explained that Gatete was on the "threshold" and that he was "behind" his companions.<sup>472</sup> The Chamber considers the witness's explanation reasonable and does not find this point material. His evidence suggests that Gatete was behind those accompanying him but in the vicinity of the compound entrance.

398. The Defence further submits that the December 2004 statement failed to mention that Gatete gave instructions to the *Interahamwe*. The Chamber, however, recalls that the witness's testimony only referred to Gatete gesturing to the *Interahamwe*. He concluded from those gestures that Gatete was issuing instructions. He further emphasised that he did not hear Gatete speak and that, while he may have had great deal of information at the time, not everything he knew would necessarily have been recorded.<sup>473</sup> The Chamber finds the witness's explanation reasonable and, considering that he did not hear Gatete speak, the witness might not have volunteered this information, or it might not have been recorded.

399. With respect to the merits of his account, the Defence argues that Witness AWF's evidence was ambiguous as to whether it was Father Gatete, or Father Bosco, who told the refugees to break the lines on 9 April, after they had been ordered to line up according to

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<sup>470</sup> T. 22 October 2009 pp. 55-58, 63.

<sup>471</sup> T. 22 October 2009 p. 45 ("Gatete and gendarmes, as well as Senkware and Gashumba, as well as Ngabonzima, all went into the parish compound."). The December 2004 statement was not admitted into evidence but was read out in court. T. 22 October 2009 pp. 58 ("After we had opened the gate, Samson Gashumba, ... Senkware, ..., and the Rwamagana lieutenant entered the parish compound leaving Gatete behind. The three entered together with the gendarmes they had come with."), 59 ("Q: Witness, can I ask you which is the truth? Did Gatete enter the compound or was he left behind? A. Gatete remained on the threshold. So I wouldn't say whether he was – I wouldn't say that he was inside or outside.").

<sup>472</sup> T. 22 October 2009 p. 69 ("Q. [I]n your statement, as read out by Defence counsel, at page 3 you mentioned ... "After we had opened the gate, Samson Gashumba, who was the *conseiller* for Mukarange *secteur*, Senkware, who was the *bourgmestre* of Kayonza; and the Rwamagana lieutenant entered the parish compound, leaving Gatete behind. The three entered together with the gendarmes they had come with." What did you mean by "leaving Gatete behind"? A. By that, I meant that he was behind. He was behind those people. But he was at the level of the door.").

<sup>473</sup> T. 22 October 2009 pp. 60-61 ("Q. [Y]ou did testify today that you could see Gatete giving instructions to the *Interahamwe*. You said you didn't hear him give instructions but you saw him gesturing towards the *Interahamwe*. Why does this fact not appear in your statement? A. If you clearly understood my testimony, I stated that I did not hear what he said, but I was able to observe his gestures.... A. When you are questioned you have a lot of information at your disposal. And it is not all the details that are recorded. Q. So is it your testimony that this detail was just not recorded, is that your testimony? A. He recorded what I told him. Q. Thank you, Witness.").



their sector of origin.<sup>474</sup> The Chamber does not consider this significant, given that his testimony suggests that he had limited knowledge of, or familiarity with, the priests.<sup>475</sup> The Defence also submits that Witness AWF was inconsistent with respect to the location of the tree trunk at which Tutsi refugees were decapitated. The Chamber, however, notes that he largely referred to the tree trunk as being close to the road.<sup>476</sup> Moreover, given the chaotic and traumatic circumstances, the Chamber considers this point insufficient to cast doubt on his evidence, which, having carefully considered, the Chamber finds generally consistent and compelling.

400. Turning to Witness BVP, he testified that he knew Gatete as the *bourgmestre* of Murambi commune and, when asked when Gatete held this position, said he believed “it was in maybe 1981 or later”.<sup>477</sup> While the Chamber notes that no further information was elicited on when he had last seen Gatete, it recalls that the Accused was a prominent official prior to, and during the events of April 1994.<sup>478</sup> Furthermore, his evidence shares similarities with the testimony of Witness AWF, in particular, that Gatete was seen on the football field near Mukarange parish, during the morning or early afternoon of 12 April.<sup>479</sup> Accordingly, in the

<sup>474</sup> Defence Closing Brief paras. 763-764; T. 22 October 2009 p. 46 (“A: A senior priest who was there asked us to move away from the lines that we had formed. Q. Do you know the name of that priest? A. Father Gatete .... Q. So what was the name of the priest that told you to move out from the lines where you were being counted? A. It was a Hutu priest who was called Bosco, who asked us to break the lines.”).

<sup>475</sup> Witness AWF’s testimony suggests that he did not even know the priests’ full names. T. 22 October 2009 p. 69 (“A. Gatete was Tutsi, and Bosco was Hutu. Judge Akay: You have the full names of those two priests? Do you know? The Witness: I only know these two names, Gatete and Bosco. I did not know the other’s first name, and I did not know the other’s family name.”). For the same reasons, the Chamber finds the discrepancy in the witness’s December 2004 statement to be minor. See T. 22 October 2009 p. 59 (“Q. Witness, if I can take you back to your statement, and I’m reading from the same page, the same paragraph, at the end of that paragraph. And your statement says as follows: ‘We lined up accordingly and Senkware and his group started counting us. As they were still counting, Father Bosco, Gatete discouraged us and we got mixed up.’ Do you agree, Witness, that in your statement you referred to one priest but you give him both names; Bosco and Gatete? A. I believe the problem is that when what I had stated was being jotted down, the person taking notes did not properly record what I said. Q. So it’s a mistake in the recording of your statement; is that your testimony? A. Yes.”).

<sup>476</sup> T. 22 October 2009 pp. 52 (“The assailants would ... take them out of the compound to kill them at the place where there was a tree”), 62 (“That tree trunk was inside the compound very close to the road.”), 71 (“I explained that the tree trunk referred to as Golgotha was in front of the parish near the road running past the parish, the road in front of the parish. So the assailants arrested the people they knew, notably the intellectuals, took them out of the parish compound and killed them at that tree trunk, at the place called Golgotha”).

<sup>477</sup> T. 2 November 2009 p. 4. The Defence submits that, in light of Witness BVP’s professional background, his testimony that Gatete was *bourgmestre*, while at the same time holding a post in a Kigali ministry, undermines the witness’s reliability. Defence Closing Brief para. 740. However, the Chamber notes that the witness’s testimony suggests that he believed that Gatete was treated, or acted like a *bourgmestre* during the genocide, not that he actually was *bourgmestre* in 1994. T. 2 November 2009 p. 7 (“I said that he was *bourgmestre* because at that time he was working in the ministry of family affairs and women’s advancement. He had a police officer who served as his security detail. So one could say that he was *bourgmestre* of Murambi commune, and he still had that policeman on board his vehicle.”), 37 (“I have said that he was *bourgmestre* of Murambi commune, since he was the one giving orders during the genocide. In 1994, again, Gatete always had a policeman as his security detail.”). The Chamber notes that the witness later said that Gatete was the *former bourgmestre* of Murambi commune. T. 2 November 2009 p. 17.

<sup>478</sup> See III.2.3; V.3.2.i.

<sup>479</sup> The Defence raises several additional points about the credibility of Witness BVP, such as, the fact that he went to look for food when the refugees had just killed a cow, his estimate of the number of assailants, and how long he hid before Gatete arrived. See Defence Closing Brief paras. 733-737. The Chamber considers these points to be minor.

Chamber's view, his identification evidence, including the fact that he was hiding in a forest at the time, does not raise doubt with respect to the reliability of his account.

401. The Defence raised points to undermine Witness BVP's impartiality, in particular, that he held a specific position of responsibility after the genocide and was involved in post-genocide arrests.<sup>480</sup> The Chamber, however, does not consider that this necessarily undermines his impartiality or reliability.

402. The Defence also confronted Witness BVP with a statement given to Tribunal investigators in January 2007. In particular, it submits that the statement omitted certain details, such as reference to Gatete signalling to assailants by shooting into the air with a gun, holding up a grenade to the attackers or generally brandishing weapons.<sup>481</sup> The Chamber, however, notes that the statement refers to the arrival of Gatete with *Bourgmestre* Senkware as well as the distribution of guns and grenades. It further states that, after receiving "directives", the attackers went towards the parish and started an attack.<sup>482</sup> Thus, the Chamber finds the statement to be generally consistent with the witness's testimony. While it may not be as detailed as his evidence before this Chamber, he explained that, in court, he was answering questions that were put to him.<sup>483</sup> The Chamber finds his explanation reasonable and considers that his testimony did not significantly depart from the January 2007 statement. In sum, having carefully considered Witness BVP's account, the Chamber finds that his evidence was generally compelling and consistent.

403. With respect to Witness BVR, he stated that he "knew" Gatete "shortly before 1994" and "throughout 1994" and believed that he was still the *bourgmestre* of Murambi commune in 1994 but no further details were elicited with respect to when he had last seen the Accused prior to 12 April.<sup>484</sup> Nevertheless, given Gatete's prominent personality, and that Witness BVR's evidence regarding the Accused's presence on the football field near Mukarange parish, during the morning of 12 April, is largely corroborated by Witnesses AWF and BVP, the Chamber is not troubled by Witness BVR's identification evidence.

404. The Defence sought to undermine the credibility of Witness BVR's evidence on the basis that he had testified on several occasions before Gacaca courts without mentioning Gatete.<sup>485</sup> He explained that he was summoned to appear before the Gacaca court whenever a person was accused of participating in the Mukarange parish attack and would testify whether or not he had seen that person there.<sup>486</sup> Under the circumstances, the Chamber considers that he would not necessarily have mentioned Gatete if he was being called to testify in relation to specific individuals. Thus, the Chamber considers this point immaterial.

405. Having carefully examined Witness BVR's evidence regarding the attack on 12 April, the Chamber considers that he provided a detailed, coherent and convincing account. The Chamber is mindful that he was convicted and sentenced in Rwanda for his participation in the Mukarange parish attack and, at the time of his testimony, was in the community service

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<sup>480</sup> Defence Closing Brief para. 741.

<sup>481</sup> Defence Closing Brief para. 739.

<sup>482</sup> Defence Exhibit 4 (statement of 19 January 2007).

<sup>483</sup> T. 2 November 2009 p. 26.

<sup>484</sup> T. 2 November 2009 p. 42.

<sup>485</sup> Defence Closing Brief para. 751.

<sup>486</sup> T. 2 November 2009 p. 64.



phase of his sentence.<sup>487</sup> The Chamber has, therefore, exercised the appropriate caution when considering his evidence, as it may have been influenced by a desire to positively impact his circumstances in Rwanda. However, the Chamber notes that his account is largely corroborated by the evidence of Witnesses AWF and BVP. Furthermore, the Chamber finds no reason to doubt Witness BVR's more general testimony with respect to how the extensive attack on the Tutsi refugees unfolded that day. In sum, the Chamber finds that Witness BVR provided convincing testimony.

406. In view of the above, the Chamber finds that all three Prosecution witnesses provided consistent and largely corroborated accounts of the attack on Mukarange parish on 12 April. All testified that they saw Gatete on the football field near the parish compound. Witness AWF saw him arrive with *Bourgmestre* Senkware, *Conseiller* Gashumba, a gendarmes lieutenant, as well as other gendarmes, and an official called Ngabonzima. His account is generally consistent with the testimonies of Witnesses BVP (who saw Gatete with Senkware) and BVR (who saw Gatete with Senkware and Gendarmes Lieutenant Twahira). Further circumstantial support can be found in the evidence of Witness BVR who was told by Ngabonzima that a meeting took place prior to the attack on 12 April. Those present at the gathering were Gatete, Senkware, *Conseiller* Gashumba, Lieutenant Twahira, and Brigadier Rwabagabo and it was decided that Tutsis at Mukarange parish should be killed. Following the meeting, Witness BVR and others received orders to kill Tutsis at Mukarange parish. While the Chamber has approached this evidence of the meeting with caution due to its second-hand nature, it nevertheless provides further circumstantial support for the first-hand account of Witness AWF, who testified that Gatete, *Bourgmestre* Senkware, *Conseiller* Gashumba, Ngabonzima and a gendarme lieutenant arrived together on the football field near the parish, on the morning of 12 April.

407. The evidence of all three Prosecution witnesses suggests that Gatete and those accompanying him brought guns and grenades for distribution among the assailants. Further support can also be found in the testimony of Witness BVR, that, prior to the attack, Ngabonzima promised assailants that they would receive guns and grenades.

408. Moreover, Witness BVP gave first-hand testimony of Gatete instructing the *Interahamwe* to kill the "enemy" of the Hutus, and referred to the killing of Tutsis already having taken place in Murambi commune.<sup>488</sup> The Chamber also finds support for Witness BVP's account in the testimony of Witness AWF who saw Gatete gesturing to the *Interahamwe* as they threw grenades at the Tutsi refugees. It is reasonable that Witness BVP, who was hiding close to the goalposts of the football field, heard Gatete's instructions, while Witness AWF, who was among a crowd of Tutsis defending themselves, may not have been able to hear what was said but instead saw Gatete's actions. Witness BVR's testimony, that Gatete selected properly trained assailants to distribute weapons to, following which assailants attacked the parish, is further consistent with evidence that the Accused took a lead role during the assault.

409. The Chamber next considers the Prosecution evidence in the context of the Defence case and first addresses the Defence submission that, had Gatete been involved in the attack at Mukarange parish, his name would have appeared among the accused persons in a

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<sup>487</sup> T. 2 November 2009 pp. 49, 56-57, 61-63, 66.

<sup>488</sup> T. 2 November 2009 pp. 5, 8-9, 14.



September 2000 Rwandan Judgement of the Kibungo Court of First Instance, which specifically addressed the events at Mukarange parish.<sup>489</sup> It further submits that Gatete was not mentioned by the accused persons as having been a leader of, or participated in, the killings at Mukarange parish.<sup>490</sup> The Chamber, however, considers that the absence of Gatete's name from the September 2000 Judgement, as well as the ruling in Witness LA50's case, is not significant in the present context. As noted elsewhere by the Chamber, it is highly speculative to suggest that the general absence of information about an accused in other judicial proceedings necessarily suggests that he was not involved.<sup>491</sup> Indeed, the Chamber notes that Defence Witness Innocent Habyalimana testified that the proceedings in which the September 2000 Judgement was rendered were not the only proceedings that took place in Rwanda concerning events at Mukarange parish.<sup>492</sup> He further agreed that he and his 35 co-accused in that proceeding were not the only persons accused of committing crimes there during that month.<sup>493</sup>

410. Turning to the Defence evidence, as noted at the outset by the Chamber, it is not disputed that refugees, who were mostly Tutsis, were attacked in the early hours of 12 April at Mukarange parish by assailants using grenades and other weapons. Nor is it disputed that among the assailants were gendarmes, civilian authorities and civilian militia. However, the Defence submits that Gatete was not present at the parish that day, and relies on the testimonies of Witnesses LA44 and LA50, both of whom were present on 12 April during the attack. The Defence also refers to the evidence of Innocent Habyalimana, who was not at the parish that day, but heard grenades and gunshots that morning.

411. The Chamber recalls that the Defence carries no independent burden when seeking to raise doubt with respect to elements of the Prosecution case.<sup>494</sup> However, it finds the Defence evidence to be of limited probative value, as none of the witnesses were in a position to have been able to monitor all events at the parish on 12 April.

412. In particular, Witness LA44 was inside the parish compound on 12 April when the grenade attack commenced and in the parish kitchen when assailants threw stones and broke windows.<sup>495</sup> When the refugees tried to escape the compound, he remained within it, at the back of the group, and did not have sight of the events occurring outside the compound, such as the arrival of a vehicle carrying gendarmes.<sup>496</sup> When he was finally brought out with other

<sup>489</sup> Defence Closing Brief paras. 719-724; Defence Exhibit 81 (Judgement of 8 September 2000).

<sup>490</sup> T. 16 March 2010 pp. 66, 79.

<sup>491</sup> See *Rutaganda*, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006 para. 13, quoting *Kajelijeli* Appeal Judgement, para. 176; *Niyitegeka*, Decision on Request for Review (AC), 30 June 2006 para. 70, citing *Niyitegeka* Appeal Judgement, para. 180. Furthermore, while parallel proceedings about the same crime as that charged against the accused may, in certain circumstances, provide relevant background or context, such evidence is not dispositive. Indeed, where courts rely on different records, it is conceivable that their results may vary. "[T]wo judges, both acting reasonably, can come to different conclusions on the basis of the same evidence." See *Kayishema and Ruzindana* Appeal Judgement para. 143. See also Witness LA50, T. 22 March 2010 pp. 29-30.

<sup>492</sup> T. 16 March 2010 pp. 60-61, 77-79.

<sup>493</sup> T. 16 March 2010 pp. 77-78.

<sup>494</sup> See for example *Zigiranyirazo* Appeal Judgement paras. 17-18.

<sup>495</sup> T. 17 March 2010, pp. 63-64; T. 18 March 2010 pp. 3, 5, 21, 23-24, 26-27.

<sup>496</sup> T. 18 March 2010 pp. 3 ("A. We were further away from the church or parish compound, and some metres away a gendarmerie vehicle arrived and opened fire on us, and we had to turn back and go back inside the parish compound. Q. All right. Witness, where were you ... with this group of refugees fighting the assailants when



5040

refugees, he was taken to the JOC building. Accordingly, had Gatete been present on the football field, Witness LA44 would not necessarily have seen him, given his vantage point and the number of assailants and refugees scattered around the compound.

413. The Chamber has further considered the Defence submissions regarding alleged inconsistencies between the testimonies of Witness LA44 and Prosecution Witness AWF with respect to events on 9 April.<sup>497</sup> The Chamber, however, does not find that the variances in what the witnesses recalled observing on 9 April necessarily amount to material inconsistencies and could be explained by the traumatic nature of the events. In any event, the differences do not put in doubt Witness AWF's consistent and compelling evidence regarding the attack on 12 April, which is also largely corroborated by the testimonies of Witnesses BVP and BVR. The Chamber also has doubts about aspects of Witness LA44's evidence.<sup>498</sup> In sum, it finds Witness LA44's testimony insufficient to cast doubt on the compelling and consistent Prosecution evidence.

414. Turning to Witness LA50, the Chamber recalls that he was among the assailants who attacked the parish on 12 April. The Chamber, however, finds his evidence to be of limited probative value. He was occupied with participating in the attack and subsequently went to the JOC building. According to his account, there were over a thousand assailants and refugees in and around the parish compound. In view of these circumstances, the Chamber considers that the witness would not necessarily have seen Gatete, had he arrived on the football field. Moreover, the witness left the parish site at around midday on 12 April.<sup>499</sup>

415. Furthermore, the Chamber notes that Witness LA50 named certain individuals as leaders of the Mukarange parish attack during his own trial in Rwanda, but did not mention Gatete.<sup>500</sup> However, given the scale of the killings, it appears that several authority figures and individuals would have been involved in marshalling assailants for the attack, as well as issuing orders to them. Indeed, his particular group of assailants would not necessarily have had contact with Gatete. Accordingly, the fact that the witness named certain individuals who participated in the attack, but did not include Gatete, is immaterial. In sum, the Chamber finds Witness LA50's testimony insufficient to cast doubt on the compelling Prosecution evidence.

you say the gendarmes arrived? A. Since I was at the back of the refugee group, I would say that those who were in front of the group were somewhat far away from the parish compound, but I was still on the parish premises.”), 29 (“A. When the gendarmes arrived, there was confrontation and we heard gunshots and became afraid and went back inside the parish compound. Q. So you were never close enough to see who was in the vehicle because you were running back inside, correct. A. I did not approach the vehicle.”), 31 (“MADAM PRESIDENT: Mr. Witness, the question is: Why did you not see your father? THE WITNESS: I was in the back of the refugee group. I had been injured so I had difficulty walking.”).

<sup>497</sup> In particular, the Chamber notes that Witness LA44 did not see Gatete arrive at the parish around noon on 9 April, as Witness AWF did, but referred instead to the arrival of *Bourgmestre* Senkware, gendarmes and policemen later in the day. Nor did Witness LA44 recall the killing of a priest or the lining up of refugees on 9 April.

<sup>498</sup> According to Witness LA44's account, he was a young Hutu at Mukarange parish and was present when *Bourgmestre* Senkware arrived and warned the refugees that they would soon find out the result of his visit. T. 17 March 2010 pp. 60-62. His father subsequently participated in the attack on 12 April but the witness claimed to have had no knowledge of this before the attack began. He also knew some of the assailants. T. 18 March 2010 p. 10. Despite these circumstances, he remained among the Tutsi refugees there. T. 18 March 2010 pp. 17-18.

<sup>499</sup> T. 22 March 2010 p. 21.

<sup>500</sup> T. 22 March 2010 p. 29.

416. The Chamber also finds the evidence of Innocent Habyalimana to be of limited probative value as he was not at the parish on 12 April.<sup>501</sup> Moreover, his testimony, that Father Bosco Munyaneza was killed on 12 April, and Father Joseph Gatere was killed on 12 or 13 April, is insufficient to raise doubt with respect to Witness AWF's evidence, as Habyalimana was not an eye-witness to either of the killings.<sup>502</sup>

417. In view of the above, the Chamber concludes that the Defence evidence is insufficient to cast doubt on the consistent and compelling testimonies of Prosecution Witnesses AWF, BVP and BVR.<sup>503</sup> Accordingly, the Chamber finds beyond reasonable doubt that, in the early hours of 12 April, *Interahamwe* launched an attack on Mukarange parish which the refugees were able to repel. Later that morning or early in the afternoon, Gatete arrived on the football field near the parish with *Bourgmestre* Célestin Senkware, *Conseiller* Samson Gashumba, Lieutenant Twahira, an official called Édouard Ngabonzima and gendarmes, in a vehicle carrying boxes of guns and grenades. These weapons were distributed to the assailants, who included *Interahamwe*, and who were directed by Gatete to attack the Tutsis at the parish. Also among the assailants were gendarmes, reserve soldiers, and civilian militia. Using the weapons brought by Gatete and the other officials, the assailants attacked the mostly Tutsi refugees. Tutsis who survived those attacks were later killed by assailants using traditional weapons such as machetes. As a result, hundreds, if not thousands, of Tutsi civilians were killed that day at Mukarange parish.

418. However, the Chamber does not find it established beyond reasonable doubt that Gatete transported *Interahamwe* to the Mukarange parish site. The Prosecution also presented no evidence that rapes took place at Mukarange parish.<sup>504</sup>

<sup>501</sup> T. 16 March 2010 p. 55.

<sup>502</sup> The Chamber notes that Habyalimana said only that he heard of the priests' deaths through "reliable sources" but did not specify what those were or when he heard the news of the killings. T. 16 March 2010 p. 55. The Chamber recalls that Witness AWF testified that one of the priests was killed on 9 April.

<sup>503</sup> The Chamber has also considered the difference between the Prosecution and Defence evidence with respect to the vehicle that arrived at Mukarange parish on 12 April. Witness AWF described a blue Daihatsu pickup. Witness LA44, T. 18 March 2010 pp. 7-8, 19 (he testified that a Hilux pickup vehicle arrived on 12 April but also testified that he was at the back of the group of refugees as he was injured); Witness LA50, T. 22 March 2010 pp. 15, 18, 21 (he saw a white Hilux pickup vehicle arrive but did not see another vehicle that day). Given the passage of time and the chaotic circumstances, the Chamber finds these differences immaterial. Moreover, the Chamber has also been mindful of the Defence submission that there was a defamation campaign against Gatete. Defence Closing Brief paras. 35-58; T. 20 October 2009 p. 8. The Chamber has considered these submissions and the evidence referred to but finds it insufficient to cast doubt on the consistent and compelling Prosecution evidence discussed above.

<sup>504</sup> While Witness AWF provided compelling evidence, his uncorroborated testimony regarding events of 9 April was ambiguous and the Chamber finds it insufficient to support findings beyond reasonable doubt. Accordingly, the Chamber does not make findings with respect to the events at the parish on 9 April 1994.



## 7. KAYONZA COMMUNE OFFICE, 10 TO 15 APRIL 1994

### 7.1 Introduction

419. The Indictment alleges that sometime between about 10 and 15 April 1994, Gatete arrived in Kayonza commune with a group of armed *Interahamwe* and Kayonza commune *Bourgmestre* Célestin Senkware. A crowd consisting of local residents, including Tutsi women, and recently arrived *Interahamwe*, had assembled in the Kayonza commune office courtyard. Gatete reported to the *Interahamwe* that Tutsis in other areas had been “decimated”, and ordered that they also rape and kill Tutsis. He also ordered that Tutsis be segregated and taken to a mass grave. As a result, Tutsis were raped and killed at that location. The Prosecution relies on the testimonies of Witnesses BAQ and BAR.<sup>505</sup>

420. The Defence denies that any rapes or killings occurred at the Kayonza commune office in April 1994. It further disputes Gatete’s presence at the commune office during that period. In support, the Defence points to the evidence of Witnesses LA66, Denise Dusabe, LA44 and LA50.<sup>506</sup>

### 7.2 Evidence

#### Prosecution Witness BAQ

421. Witness BAQ, a Tutsi, was a farmer living in Nyamirama sector, Kayonza commune in 1994. On a Thursday in April, she learnt that the President had died the previous night. Local authorities called on all persons to stay at home, but when she heard the news, she left to inform her aunt, who lived about 150 metres away, in Giparara, in Kabarondo commune. As she was returning from there, she stopped at the Giparara commercial centre, where she saw a Toyota Hilux pickup carrying about 20 persons, as well as “the person who was called *bourgmestre*”, Gatete. Although she had not seen him before, someone shouted “our fate ha[s] been sealed because Gatete is coming”. She was told that the man sitting next to the driver was Gatete. She saw him briefly as he “passed like a lightning”. The occupants in the back of the vehicle alighted, while those in front remained seated. Immediately after, the witness returned home where she spent the night.<sup>507</sup>

422. On Friday, the witness remained at home. There were rumours that Tutsis would be killed. That night, she hid in the bushes with her husband and four children. The following morning, they decided to return home but were informed that some persons they knew had been killed. Consequently, she went home to pack a few belongings and headed for the

<sup>505</sup> Indictment paras. 23, 23A, 32, 35, 42-43; Prosecution Closing Brief paras. 48-49, 75 (v), 82, 108, 129, 229 (e), 230 (e), 231 (e), 233 (d), 391, 393-412, 447-456, 458-463; Closing Arguments, T. 8 November 2010 p. 8. Regarding the killing of Gatete, as alleged in paragraph 23A of the Indictment, the Prosecution evidence which emerged at trial was that Gatete was killed with Mahmud, as alleged in paragraph 36 of the Indictment. The Chamber, therefore, addresses the allegations concerning Gatete’s killing when considering paragraph 36 of the Indictment. See II.4; II.7.

<sup>506</sup> Defence Closing Brief paras. 826, 829-857, 1107, 1108, 1110, 1201, 1210; Closing Arguments, T. 8 November 2010 pp. 54-56.

<sup>507</sup> Prosecution Exhibit 11 (personal identification sheet); T. 2 November 2009 pp. 73 (quoted), 74 (quoted), 75; T. 3 November 2009 pp. 2, 10-14, 19, 36. The vehicle stopped 10 metres from Witness BAQ. T. 3 November 2009 p. 14.



Kayonza commune office with her two children. Her husband took his two children from his late wife, to Kabarondo parish, where he was later killed. At the Kayonza commune office, the witness found other refugees of both Hutu and Tutsi ethnicity.<sup>508</sup>

423. On Saturday, before noon, “*Bourgmestre Gatete*” arrived at the Kayonza commune office in the same grey or khaki pickup that the witness had seen him in at Giparara, the previous Thursday. He was accompanied by *Interahamwe* and a soldier. Ntaganda, a communal policeman, informed the witness that the soldier accompanying Gatete was a lieutenant. *Bourgmestre* Senkware welcomed Gatete who said “Senkware, I don't know what you are doing because I see that there is still dirt in your commune”. Gatete then gathered *Interahamwe*, who were armed, and told them to “get hold of the younger women”, “to sleep with them” and to kill them. He also ordered the *Interahamwe* to “get rid” of the men, who he referred to as “dirt”, which was also understood to mean Tutsis. Gatete departed immediately after issuing the orders. The majority of Tutsi women who had assembled at the commune office were raped in the open courtyard and then killed. There was a ditch behind the commune office and persons were dragged to that ditch.<sup>509</sup>

424. The witness was also raped by two *Interahamwe* in the Kayonza commune office courtyard. She eventually left with her two children to hide in the woods and spent the night at her neighbour's house. The majority of the rape victims died.<sup>510</sup>

#### Prosecution Witness BAR

425. In 1994, Witness BAR, a Tutsi, was a farmer living in Nyamirama sector, Kayonza commune. Following the President's death on a Wednesday in April, insecurity prevailed in her sector. Tutsis were killed on the following Friday and the witness and others left their homes to hide in banana plantations and bushes. Subsequently, the *Conseiller* of Nyamirama sector, Nyampame, said that it was safe for women and children to return to their homes. The following Wednesday, the witness returned home.<sup>511</sup>

426. The following Friday, after an attack was launched in her area, she sought refuge with three of her children at the Kayonza commune office. She was allowed through a roadblock, which had been mounted on the road in front of the commune office. There, she found over 30 Tutsi refugees, including women and children.<sup>512</sup>

427. Sometime between 12.00 and 1.00 p.m., Gatete arrived at the Kayonza commune office in a vehicle, accompanied by several *Interahamwe*. Also present were Kayonza commune *Bourgmestre* Senkware and communal police officer Ntaganda. Other commune officials were in their offices. Gatete was approximately five metres from the witness and women who knew him shouted “this is the end of our lives because Gatete has arrived”. He

<sup>508</sup> T. 2 November 2009 pp. 74-76. T. 3 November 2009, pp. 2-3, 6-7, 14-15, 17.

<sup>509</sup> T. 2 November 2009 pp. 77 (quoted), 78; T. 3 November 2009 pp. 2-6, 19-20. Witness BAQ was not wearing a watch and referred to the position of the sun to estimate the time. T. 3 November 2009 pp. 3-4, 19. She was about five metres from Gatete and “was able to see him very well”. T. 3 November p. 4. No further details were elicited or volunteered with respect to what happened at the “ditch”. T. 2 November 2009 p. 78.

<sup>510</sup> T. 2 November 2009 p. 78; T. 3 November 2009 pp. 5-6, 20-22, 33-35.

<sup>511</sup> Prosecution Exhibit 12 (personal identification sheet); T. 3 November 2009 pp. 40-41, 43-45. Witness BAR did not specify whether she left to hide in the banana plantation with her family. T. 3 November 2009 p. 44.

<sup>512</sup> T. 3 November 2009 pp. 45-46, 50, 66. Witness BAR went with only three of her children and the others who remained behind were subsequently killed. T. 3 November 2009 p. 50.

stood in front of Senkware's office and asked him "what are those persons doing?" Senkware replied that they had come to seek refuge at the commune office. Gatete then ordered the *Interahamwe* to take the women and "sleep with them".<sup>513</sup>

428. Men among the refugees were killed and women were raped in different locations around the commune office and also killed. The witness was also raped. Later, when the rapes were over, Gatete and Senkware left for "Kayonza". The witness left the commune office on Sunday with her three children. They hid in the bushes for the next three days and then stayed with neighbours. On the following Tuesday, they were found by *Inkotanyi*.<sup>514</sup>

#### Defence Witness LA66

429. In 1994, Witness LA66, a Tutsi, was a farmer and lived with her eight children in Nyamirama sector, Kayonza commune. On the night of 6 April, she stayed with a friend after hearing about a killing. The following four nights, she hid in the bushes alone. She believed that her children had already been killed but later learnt that three had survived.<sup>515</sup>

430. The witness next moved to the home of a friend who was an *Interahamwe* member. There, she met Witness BAR, her neighbour, who was also hiding alone in the house. Witness BAR was not physically hurt. They hid together for a week and a half. The friend, who was hiding them, would go out each day and at nights, returned and told them about the killings he and his *Interahamwe* group had carried out. Witness LA66, Witness BAR, and the friend, fled separately before the *Inkotanyi* arrived. Witness LA66 fled to Kabarondo commune.<sup>516</sup>

431. Witnesses LA66 and BAR are still neighbours and see each other almost everyday. While they had a disagreement after Witness BAR testified against her during Gacaca proceedings, the Avega association had since assisted them in reconciling their differences. As far as Witness LA66 was aware, nothing had happened to Witness BAR during April 1994.<sup>517</sup>

432. Witnesses LA66 and BAQ are also neighbours. Their homes are a 20 minute walk away from each other. During the events of April 1994, Witness BAQ hid in someone's house until the *Inkotanyi* arrived. Witness BAQ had never mentioned that anything happened to her during that time. Witnesses BAR's and BAQ's husbands are cousins.<sup>518</sup>

#### Defence Witness Denise Dusabe

<sup>513</sup> T. 3 November 2009 pp. 45-46 (quoted), 47-49, 66, 68-69.

<sup>514</sup> T. 3 November 2009 pp. 45, 47, 49 (quoted), 50, 68-69, 73-75. One of her children was killed at home, and the other wounded with a spear and thrown alive into a pit latrine. T. 3 November 2009 pp. 68-70. Witness BAR did not know the names of the men who raped here, but knew that they were inhabitants of Murambi commune. T. 3 November 2009 p. 49.

<sup>515</sup> Defence Exhibit 70 (personal identification sheet); T. 16 March 2010 pp. 4-7.

<sup>516</sup> T. 16 March 2010 pp. 6-8, 28-29.

<sup>517</sup> T. 16 March 2010 pp. 8-9, 10-14, 25-28. Witness BAR had alleged in Gacaca proceedings that Witness LA66 had distributed cows to assailants in 1994 when in fact the assailants had seized the cows from her. The Gacaca court accepted Witness BAR's testimony. T. 16 March 2009 pp. 12, 13-15.

<sup>518</sup> T. 16 March 2010 pp. 11, 15-17, 28.



433. Denise Dusabe, a Hutu, was a farmer in 1994 and lived in Nyamirama sector, Kayonza commune. She could see the Kayonza commune office from an elevated place just 100 metres, or a five minute walk away, from her compound. On the night of 6 April, she was at home, in Ruvumu *cellule* and the following morning, was informed that President Habyarimana had died. During the days that followed, she did not see anything occurring, or any refugees, at the Kayonza commune office. She saw only policemen there.<sup>519</sup>

434. On 10 April, in the afternoon, a crowd of Hutu refugees, who were fleeing *Inkotanyi* attacks in Murambi commune, arrived in Nyamirama sector. The witness later went to buy items for the refugees fleeing the *Inkotanyi* advance.<sup>520</sup>

435. Mbwenu, Karangwa and Gatsinzi led attacks in her area in April 1994. Whenever assailants were preparing to launch an attack, they would meet on the road in front of the witness's house and discuss events. One day, on about 11 April, she was hiding behind a hedge in the family compound when she saw them pass through the junction in front of her house. She knew their voices well and heard them issue orders.<sup>521</sup>

436. On 15 April, the *Inkotanyi* took over Kayonza commune and the witness fled with her family to Tanzania. Two years later she was repatriated to Rwanda and returned to her locality where she continued farming.<sup>522</sup>

437. In 1994, Dusabe and Witness BAQ would often meet on the road when fetching water. In April 1994, Witness BAQ was hiding in the house of the same person recalled by Witness LA66. The witness learnt this from Gracias Mbateye, who was looking for that person and wanted to kill his wife for hiding Witness BAQ. The witness did not know if anything happened to Witness BAQ in April 1994.<sup>523</sup>

#### Defence Witness LA44

438. Witness LA44, a Hutu, was a student in 1994 and lived in Mukarange sector, Kayonza commune. At that time, there were soldiers and gendarmes posted at the Kayonza roundabout to maintain public order and had been there since 1990. On 14 April, the witness passed the Kayonza commune office building, which was very close to the road. It was possible to see into the building as he walked past. He did not see anything happening there.<sup>524</sup>

#### Defence Witness LA50

439. In 1994, Witness LA50, a Hutu, was a farmer and bar owner, living in Kayonza sector, Kayonza commune. At that time, gendarmes were posted in Kayonza centre and their commander was a lieutenant named Twahirwa. On 12 April, the witness participated in the

<sup>519</sup> Defence Exhibit 74 (personal identification sheet); T. 16 March 2010 pp. 32, 34-38. Behind the Kayonza commune office there were latrines, plots of arable land and banana farms. No mass grave or pit was located there. T. 16 March 2010 pp. 36-37.

<sup>520</sup> T. 16 March 2010 pp. 38-40.

<sup>521</sup> T. 16 March 2010 pp. 43-45.

<sup>522</sup> T. 16 March 2010 pp. 39-41.

<sup>523</sup> T. 16 March 2010 pp. 41-42.

<sup>524</sup> Defence Exhibit 87 (personal identification sheet); T. 17 March 2010 pp. 56-58; T. 18 March 2010 pp. 12-13, 16-18. See also II.6.

attack on Mukarange parish and left at around noon to go home. He remained there until 15 April, when he left and passed by the Kayonza commune office with his family and others. He did not see anything happening there. Many people were on the road that day. The witness subsequently fled to Tanzania.<sup>525</sup>

### 7.3 Deliberations

440. The Indictment alleges that sometime between about 10 and 15 April 1994, Gatete arrived in Kayonza commune, in Kibungo prefecture, with a group of armed *Interahamwe* and Kayonza commune *Bourgmestre* Célestin Senkware. Local residents, including Tutsi women, and recently arrived *Interahamwe*, had assembled in the Kayonza commune office courtyard. Gatete reported to the *Interahamwe* that Tutsis in other areas had been “decimated” and ordered that they also rape and kill Tutsis. He further ordered that the Tutsis be segregated and that they be taken to a mass grave. It is alleged that Tutsis were raped and killed at that location as a result of Gatete’s actions. The Prosecution relies on the first-hand accounts of Witnesses BAQ and BAR, who both sought refuge at the Kayonza commune office, and recounted the arrival of Gatete, as well as his subsequent orders to *Interahamwe* to rape and kill Tutsis there. Both witnesses further testified that they were raped by *Interahamwe* at the commune office.<sup>526</sup>

441. Through the accounts of Witnesses LA66, Denise Dusabe, LA44 and LA50, the Defence disputes that killings and rapes occurred at the Kayonza commune office in April 1994 and submits that Witnesses BAQ and BAR did not seek refuge there at that time. It further points to the testimony of Prosecution Witness BAY, who did not see any refugees at the Kayonza commune office on 13 April.<sup>527</sup>

442. Turning first to the Prosecution evidence, the Chamber notes a number of similarities in the accounts of Witnesses BAQ and BAR. Both testified that they fled to the Kayonza commune office following the onset of attacks in their areas, after the President’s death.<sup>528</sup> Both recounted Gatete’s arrival in a vehicle at the commune office, in the company of *Interahamwe*. They further recalled the presence of *Bourgmestre* Senkware and communal policeman Ntaganda. Both recounted that when Gatete arrived, he spoke to Senkware, enquiring after the refugees and subsequently issued instructions to the *Interahamwe* to “sleep” with the women.<sup>529</sup> Witness BAQ further recalled Gatete’s orders to kill the refugees.<sup>530</sup> Both testified that Tutsis were raped and killed following Gatete’s orders and that they themselves were raped by *Interahamwe*.<sup>531</sup>

<sup>525</sup> Defence Exhibit 90 (personal identification sheet); T. 22 March 2010 pp. 9, 11-13, 21-25. See II.6.

<sup>526</sup> Indictment paras. 23, 23A, 32, 35, 42-43; Prosecution Closing Brief paras. 48-49, 75 (v), 82, 108, 129, 229 (e), 230 (e), 231 (e), 233 (d), 390-412; Closing Arguments, T. 8 November 2010 p. 8

<sup>527</sup> Defence Closing Brief paras. 826, 829-857, 1107, 1108, 1110, 1201, 1210; Closing Arguments, T. 8 November 2010 pp. 54-56. For Prosecution Witness BAY, see II.8.

<sup>528</sup> Witness BAQ, T. 2 November 2009 pp. 75-76; T. 3 November 2009 pp. 14-15; Witness BAR, T. 3 November 2009 pp. 44-45.

<sup>529</sup> Witness BAQ, T. 2 November 2009 pp. 77-78; T. 3 November 2009 pp. 3-5; Witness BAR, T. 3 November 2009 pp. 45-48.

<sup>530</sup> T. 2 November 2009 p. 77 (“And [Gatete] said that the men to whom he referred as dirt should be gotten rid of”).

<sup>531</sup> Witness BAQ, T. 2 November p. 78; T. 3 November pp. 5-6; Witness BAR, T. 3 November 2009 pp. 47, 49.

443. Notwithstanding these similarities, the evidence of Witnesses BAQ and BAR diverges with respect to the date of the attack. While a variance of a few days may, in some instances, be explained by the passage of time, on this occasion, both witnesses precisely recalled their movements during the days following the President's death, up until they arrived at the Kayonza commune office, suggesting that they went there on different days. Witness BAQ recalled that she went to the Kayonza commune office on the Saturday following the President's death which would have been 9 April and that Gatete arrived there the same day, when the alleged killings and rapes also occurred.<sup>532</sup> Witness BAR, on the other hand, specifically recounted that killings in her area commenced on the Friday after the President's death, which would have been 8 April. She consequently hid in a banana plantation but returned home on the following Wednesday, which would have been 13 April. The following Friday, which was 15 April, she sought refuge at the Kayonza commune office, and the same day, Gatete arrived and the alleged killings and rapes took place.<sup>533</sup>

444. In any event, the Chamber must examine the individual merits of the witnesses' testimonies to assess whether either, or both, sufficiently supports findings beyond reasonable doubt. At the outset, the Chamber has doubts about both witnesses' ability to identify Gatete in April 1994. Although Witness BAQ testified that she saw him once prior to 9 April, her previous sighting of him was extremely brief as he "passed like a lightning", and on that occasion, her knowledge of him was based on hearsay.<sup>534</sup> The Chamber has similar doubts with respect to Witness BAR. She testified that she did not know Gatete in April 1994 and had not seen him prior to the day she purportedly saw him at the Kayonza commune office. Her knowledge of him on that occasion was also second-hand.<sup>535</sup> Consequently, the basis of both witnesses' identification of the Accused is hearsay and, thus, requires that the Chamber approach it with caution.<sup>536</sup>

445. Moreover, the Chamber notes that Witnesses BAQ and BAR are closely related and gave statements to Tribunal investigators together at the same place.<sup>537</sup> Both admitted that they had discussed the events with each other.<sup>538</sup> The Chamber is, thus, mindful of the possibility of collusion between the two witnesses, which warrants additional caution when weighing their evidence.

446. Regarding the individual merits of the witnesses' testimonies, the Chamber notes that, despite being related to Witness BAR, Witness BAQ was initially evasive when asked whether she knew any other women who had been victims of rape at Kayonza commune

<sup>532</sup> T. 2 November 2009 pp. 74-77; T. 3 November 2009 pp. 17-18, 30.

<sup>533</sup> T. 3 November 2009 pp. 44-45, 66, 69.

<sup>534</sup> T. 2 November 2009 p. 73. The Chamber notes that Witness BAQ stated that she "did not know Gatete before that [day]". T. 3 November 2009 p. 14.

<sup>535</sup> T. 3 November 2009, pp. 43-44, 46, 66-67.

<sup>536</sup> See for example, *Kalimanzira* Appeal Judgement paras. 96, 99.

<sup>537</sup> Witness BAR, T. 3 November 2009 pp. 72-73; Witness BAQ, T. 3 November 2009 pp. 31-33. The Chamber, however, does not consider that the witnesses' membership of Avega necessarily renders their evidence unreliable, as suggested by the Defence. See Defence Closing Brief paras. 831, 845, 856.

<sup>538</sup> Witness BAQ, T. 3 November 2009 pp. 31-32 ("It often happens that we [Witnesses BAQ and BAR] discuss what happened to us at the time of the events."); Witness BAR, T. 3 November 2009 pp. 72-73 ("Yes, I know that person [Witness BAQ] and we met at the commune office. She suffered the same events as I did. After the war, we met and we discussed those events from which we suffered"), 76-77.

office.<sup>539</sup> Considering that her identification of the Accused was based on hearsay, and recalling her close links to Witness BAR, as well as her evasiveness under cross-examination, the Chamber does not find Witness BAQ's evidence sufficiently reliable for the purposes of supporting findings beyond reasonable doubt.

447. With respect to Witness BAR, the Defence points to her unwillingness to cooperate during cross-examination.<sup>540</sup> While the Chamber acknowledges that witnesses may have difficulties when questioned in court about traumatic events, in this instance, Witness BAR was uncooperative when asked by Defence counsel about matters unrelated to the attack at the Kayonza commune office.<sup>541</sup> Moreover, her account was internally inconsistent. For instance, she initially clearly stated that she knew no women who were raped at the commune office and who had survived, but later named Witness BAQ as a survivor, and accepted that they had met to discuss the events.<sup>542</sup> In sum, given the concerns about Witness BAR's ability to identify Gatete, her close links with Witness BAQ, as well as concerns about the merits of her evidence, the Chamber finds her testimony insufficient to support findings beyond reasonable doubt.

448. The Chamber has also considered the Defence evidence, as well as the testimony of Witness BAY.<sup>543</sup> While it considers this evidence to be of limited probative value, ultimately, the testimonies of Witnesses BAQ and BAR are insufficient to support findings beyond reasonable doubt.<sup>544</sup> Consequently, the Prosecution has not proven that Gatete arrived at the Kayonza commune office sometime between 10 and 15 April 1994, and ordered *Interahamwe* to rape and kill Tutsis there. Nor is it proven that he ordered the segregation of Tutsis and that they be taken to a mass grave. In addition, it has not been established that Tutsis were raped and killed at that location as a result of Gatete's actions.

<sup>539</sup> T. 3 November 2009 p. 20 ("Q. Were there any women who survived, apart from yourself? A. No. Why would you like me to be interested in the lives of other people? What are you looking for madam?").

<sup>540</sup> Defence Closing Brief paras. 848-850.

<sup>541</sup> T. 3 November 2009 pp. 56-58.

<sup>542</sup> T. 3 November 2009 pp. 69 ("Q. And, Witness, do you know if any other women, apart from yourself, were raped and survived? A. No, I don't know of any such cases. All women who were victims of rape whom I knew have died. We were many at that place and I do not know the other victims."), 72 (referring to Witness BAQ, "Yes, I know that person and we met at the commune office. She suffered the same events as I did. After the war, we met and we discussed those events from which we suffered"). The Chamber has additional concerns regarding a statement which she purportedly gave to Tribunal investigators. Although she acknowledged having met with Tribunal investigators in Rwanda on five occasions and recalled signing a statement, when confronted with the statement by the Defence, she did not recognise it as hers. T. 3 November 2009 p. 51.

<sup>543</sup> The Chamber recalls Witness BAY's testimony that on about 13 April 1994, he was at the Kayonza commune office. He explained that there was no fence around the commune office and it was possible to see what was happening outside the commune office buildings. The witness only saw assailants and *Interahamwe* at the roadblock. He also saw about ten children at the commune office who told him that their parents had been killed in their villages. There were no other persons there. T. 13 November 2009 p. 44. However, his evidence is not necessarily inconsistent with the possibility that events took place at the commune office either before or prior to that day.

<sup>544</sup> In reaching this conclusion, the Chamber has also considered other evidence in the record, in particular, that Gatete was seen with *Bourgmestre* Senkware during the attacks on Tutsis at Mukarange parish. However, that evidence is insufficient to offer sufficient circumstantial support for Witnesses BAQ and BAR's accounts.

**8. KAYONZA ROADBLOCK, 12 APRIL 1994**

**8.1 Introduction**

449. The Indictment alleges that between about 10 and 15 April 1994, a man called Gatete was karate kicked by Gatete at a mass grave near the Kayonza commune office and then killed by *Interahamwe* further to Gatete's orders. Moreover, on about 12 April, Gatete, *Bourgmestre* Jean de Dieu Mwangi, *Bourgmestre* Célestin Senkware, communal police and *Interahamwe*, inspected identity cards of travellers on the Kibungo road in Kayonza commune. At one roadblock, Gatete, several *Interahamwe* and communal police, including a policeman named Déo, chased AIX's Tutsi husband and Kamuzinzi, a moderate Hutu and political party opponent, from his car. Gatete ordered the communal police to shoot them, which they did. The occupants of Kamuzinzi's vehicle, including Mahmud, were also killed by *Interahamwe* upon Gatete's further orders. Gatete then appropriated the vehicle. The Prosecution relies on the testimonies of Witnesses BVQ and BAY.<sup>545</sup>

450. The Defence does not dispute that a roadblock was mounted on the road coming up the hill from the Kayonza commune roundabout. It further accepts that Gatete and Mahmud were killed at that barrier. However, it denies Gatete's presence at the roadblock, as well as his role in the killings. In support, the Defence points to the evidence of Djuma Habineza and Assumani Ndayambaje. It further submits that Gatete did not receive adequate notice of the material facts supporting the allegations concerning the killing of Gatete and Mahmud.<sup>546</sup>

**8.2 Evidence**

Prosecution Witness BVQ

451. In 1994, Witness BVQ, a Hutu, was a secondary school student living in Gakenke sector, Murambi commune. He learnt about President Habyarimana's death from his father, the morning after the event, at about 4.00 a.m. on either 7 or 8 April. Frodauld, the Gakenke *Interahamwe* leader, had informed Witness BVQ's father that Gatete and *Interahamwe* were planning an attack on the family. Consequently, his father told the family to hide in separate locations.<sup>547</sup>

452. At about 4.30 a.m., the witness and his mother, who was Tutsi, went to hide in the home of their neighbour, who was also their herdsman, just 30 metres away. They hid in a ceiling in the house, which had a very small window. From there, the witness watched about

<sup>545</sup> Indictment paras. 23A, 32, 35-36; Prosecution Closing Brief paras. 48, 50, 108, 116, 232 (d), 232 (e), 390-392, 413-446, 464-491; Closing Arguments, T. 8 November 2010 pp. 63, 65-67. The Chamber notes that AIX was not a witness in this case. The Chamber also notes that the Prosecution refers to the roadblock near the Kayonza commune office in support of paragraph 13 of the Indictment. See Prosecution Closing Brief para. 36. However, paragraph 13 of the Indictment relates to roadblocks in Byumba prefecture. The roadblock in Kayonza commune was located in Kibungo prefecture.

<sup>546</sup> Defence Closing Brief paras. 827-828, 858-902, 1094, 1109-1110; Closing Arguments, T. 8 November 2010 pp. 40, 56-57.

<sup>547</sup> Prosecution Exhibit 14 (personal identification sheet); T. 4 November 2009 pp. 37, 39-42; T. 5 November 2009 pp. 1-2.





200 assailants, led by police officers and *Interahamwe*, as they looted his home, as well as the homes of two other families.<sup>548</sup>

453. Sometime between 9.30 and 10.30 a.m., just after the *Interahamwe* had looted the property of the three houses, Gatete arrived in a red Toyota Hilux pickup vehicle. The Accused was on the road with *Interahamwe*, just 20 metres away from the witness, when he asked them if they had succeeded in killing the three families whose homes they had looted. The assailants replied that they had not. Gatete offered them a reward of one million Rwandan francs if they found them, adding: "It is of no use looting property. You must find the members of those families and kill them. These are the main *Inyenzi*. So I, therefore, urge you to look for them". Gatete left after about 20 minutes. The *Interahamwe* searched for the families but to no avail.<sup>549</sup>

454. After hiding for four or five days, the witness's neighbour told him that he and his mother should leave, as the *Inkotanyi* had arrived in Kiziguro and the *Interahamwe* were fleeing. There was also no more food for them. Mahmud helped the witness and his younger siblings leave in a white Nissan saloon vehicle, which belonged to Kamuzinzi. They left at about 7.00 a.m., heading towards Tanzania. The witness's mother, who was injured, remained behind with their neighbour but was later picked up by the *Inkotanyi*.<sup>550</sup>

455. The witness travelled with Mahmud, who drove the vehicle, Gatete, who was a Hutu and MDR party member, Mahmud's two children, Kamuzinzi's son Jaji, Mushaka, who was the witness's house help, and the witness's two-month old brother. They moved slowly as many people and vehicles were on the road, including displaced persons, government soldiers and *Interahamwe*. Between about 10.00 to 10:30 a.m., they were stopped at a roadblock, mounted close to the Kayonza commune office. The barrier was manned and operated by Gatete and *Interahamwe*. About 20 persons were posted there, including communal policemen "Déo" and Habib Manihura, as well as an *Interahamwe* called Rugwasibo. More *Interahamwe* continued to arrive.<sup>551</sup>

456. At the roadblock, Gatete asked Mahmud where the owner of the vehicle was. Mahmud replied that he did not know. Gatete told the occupants of the vehicle to exit and stand near the roadside. Upon seeing Gatete, Gatete announced "these are the *Inyenzi*s I told you about". He then beat Gatete for about ten minutes. Mahmud attempted to run away but had difficulties due to a broken leg, and was stopped by *Interahamwe*, and others persons, pursuant to Gatete's orders. Mahmud was brought back to the roadblock and Gatete said "[t]his dirt must be cleared away". The *Interahamwe* hit Mahmud with clubs and wounded his left temple. During the beatings, the witness was less than three metres away.<sup>552</sup>

457. Mahmud and Gatete were taken away and killed with "others" near the Kayonza commune office, at a place visible from the road. Mahmud was shot once and Gatete was shot twice. Mahmud's two children were also killed. The witness was saved by a Hutu neighbour who told the assailants that he was his son. He was allowed to leave after being hit

<sup>548</sup> T. 4 November 2009 pp. 37-42, 44, 66-69, 74-75; T. 5 November 2009 pp. 1-2.

<sup>549</sup> T. 4 November 2009 pp. 39 (quoted), 37-39, 42-43, 68; T. 5 November 2009 p. 2.

<sup>550</sup> T. 4 November 2009 pp. 43-44, 46-49, 56-57, 67, 69-71, 73-76; T. 5 November 2009 pp. 2-3.

<sup>551</sup> T. 4 November 2009 pp. 44 (the roadblock was manned by Gatete and *Interahamwe*), 46-49 (and a man with a gun), 58, 70-71, 73-74; T. 5 November 2009 pp. 2-4, 8. Witness BVQ later referred to one of the policemen as Habibou Rwasibo. T. 4 November 2009 p. 74.

<sup>552</sup> T. 4 November 2009 pp. 44, 46 (quoted), 47 (quoted), 48-49, 57-58; T. 5 November 2009 pp. 2-3, 6-7.



by one of the assailants with the butt of a gun. Gatete and the two communal policemen kept the vehicle. Mushaka, Kamuzinzi's son, and the witness's two-month old brother, also survived.<sup>553</sup>

458. The witness walked with his neighbour from Kayonza to Remera, also in Kibungo prefecture, which took about 10 to 15 days. Many people were on the road fleeing the war. As he was crossing a roadblock in Remera, he "caught sight" of Gatete. The roadblock was crowded and Gatete was ordering those manning it to stop all young men and adults so that "they could go and fight the *Inyenzi* at the battle front". The distance between the witness and Gatete was less than four metres. The witness did not stop at the barrier. He was able to pass through as he hid his face with a mat and his neighbour protected him.<sup>554</sup>

459. The witness saw Gatete again on the Tanzanian side of the border at Rusumo, during the first week of May. He observed Gatete for an hour as the latter was arrested by Tanzanian police who retrieved Kamuzinzi's vehicle. Kamuzinzi was killed sometime later.<sup>555</sup>

#### Prosecution Witness BAY

460. Witness BAY, a Tutsi, was a magistrate in 1994 and would return home to his family in Kayonza sector, Kayonza commune. Between 6 and 12 April, he and his family stayed at home further to a Ministry of Defence announcement that all persons should remain indoors. The family spent the night of 12 April in the bush, close to the Kayonza commune office.<sup>556</sup>

461. On 13 April, at about 2.00 p.m., the witness and his family arrived at the Kayonza commune office. He went to a store located 20 metres from the commune office, towards the dirt road. From there, he saw Gatete arrive at the commune office in a white "Audi 100". Upon arrival, Gatete went to see *Bourmestre* Senkware "behind" the commune office. The witness did not know what they discussed. Shortly after, the *Interahamwe* approached the witness and asked him and his family to go behind the commune office. The witness refused and went back onto the road. The *Interahamwe* continued to ask him to go with them but he refused. During this time, Gatete was with Senkware on the veranda in front of the commune office but was not interested in the witness and the *Interahamwe*.<sup>557</sup>

462. There was no fence around the Kayonza commune office and it was possible to see what was happening outside the commune office buildings. The witness only saw assailants and *Interahamwe* at the roadblock. He also saw about ten children at the commune office who told him that their parents had been killed in their villages. There were no other persons there.<sup>558</sup>

463. Subsequently, *Interahamwe* from Murambi and communal police removed a man from a vehicle at the roadblock. He appeared to be the driver of the vehicle and the

<sup>553</sup> T. 4 November 2009 pp. 47-51, 74. Mahmud was taken "alongside other people", a few metres away from where they were, near the commune office, and killed. T. 4 November 2009 p. 47.

<sup>554</sup> T. 4 November 2009 pp. 51, 52 (quoted), 53, 77-79; T. 5 November 2009 pp. 5-6. Under cross-examination, Witness BVQ added that Mushaka, their house help, and his two-month old brother, also followed them to Tanzania. T. 4 November 2009 p. 76.

<sup>555</sup> T. 4 November 2009 p. 53; T. 5 November 2009 pp. 2, 5.

<sup>556</sup> Prosecution Exhibit 24 (personal identification sheet); T. 13 November 2009 pp. 34, 40-41, 49-50.

<sup>557</sup> T. 13 November 2009 pp. 34-35, 41.

<sup>558</sup> T. 13 November 2009 pp. 35-44.



*Interahamwe* seemed to know him. He was taken to Gatete who kicked him and broke his leg. The man fell to the ground and Gatete told the *Interahamwe* to take him to “the place where the others are”. He was immediately taken away. The witness did not know what happened to the man but saw persons with clubs, bows and arrows. Those who were killed were later thrown into a pit near the commune office.<sup>559</sup>

464. The *Interahamwe* continued to harass the witness but a Hutu Major, Emmanuel Habyarimana, who was the Mutara zone commander, arrived and accused Gatete of killings. Habyarimana told Senkware that Gatete wanted to kill people in Kayonza commune and that they would lose the war. Gatete accused Habyarimana of being an accomplice. Habyarimana then told the soldiers to arrest the *Interahamwe* and send them to the warfront. The *Interahamwe* fled and Gatete and Senkware also departed.<sup>560</sup>

465. Subsequently, Major Himbana arrived in a helicopter which landed behind the Kayonza commune office. Habyarimana placed a vehicle at the witness’s disposal, which was driven by Second Lieutenant “Pascal”, and included an escort of 20 soldiers. Habyarimana told the soldiers that if the family were stopped by anyone at a roadblock, they should open fire on them. They left the Kayonza commune office and came across a roadblock manned by soldiers. The soldiers accompanying the family negotiated with those manning the barrier, and the witness was required to pay 20,000 Rwandan francs before he and his family were allowed through. On 29 April, he crossed the border into Tanzania in a canoe.<sup>561</sup>

466. In 1999, the witness learnt that the man who was removed from the vehicle at the roadblock was called Gatere. He learnt this from his son, and a child who went to school in Murambi commune. He also read in a newspaper that Gatere was an accomplice and a rival of Gatete’s and opposed the Murambi commune authorities.<sup>562</sup>

Defence Witness Djuma Habineza

467. In 1994, Djuma Habineza, a Hutu, was a mechanic and drove motorbike taxis, as well as sold petrol. He lived in Gakenke sector, Murambi commune, with his family. He knew Witness BVQ’s father as he lived about 1 kilometre away and they would pray together. Witness BVQ’s father was a wealthy Hutu who drove a white Datsun vehicle. Habineza also knew Witness BVQ, the eldest child who was a student and about 15 or 16 years old.<sup>563</sup>

468. In April 1994, the witness knew Kamuzinzi, who worked with Witness BVQ’s father and was his neighbour. At that time, Kamuzinzi owned a Nissan Sunny vehicle. The witness also knew Antoine Gatere as they sold petrol together.<sup>564</sup>

469. The last time the witness saw Gatere was on about 12 April 1994, at around 11.00 a.m., at a roadblock near the Kayonza commune office, when the witness was fleeing with many others. When they arrived at the roadblock, their identity cards were inspected to confirm that there were no *Inkotanyi* among them. A few minutes later, the Datsun vehicle

<sup>559</sup> T. 13 November 2009 pp. 35, 36 (quoted), 37, 42-43.

<sup>560</sup> T. 13 November 2009 pp. 38-39, 45-46.

<sup>561</sup> T. 13 November 2009 pp. 46-47, 49-50.

<sup>562</sup> T. 13 November 2009 pp. 43, 48.

<sup>563</sup> Defence Exhibit 64 (personal identification sheet); T. 11 March 2010 pp. 64-65, 67-70. Habineza also named Witness BVQ’s mother. T. 11 March 2010 p. 68.

<sup>564</sup> T. 11 March 2010 pp. 65 (Gatere was referred to as “Antoine Gatere, Marie Zacharias”), 70.



belonging to Witness BVQ's father arrived, and was stopped at the roadblock by a communal policeman named "Déo". Déo said there were *Inyenzis* in the vehicle, which was driven by "Muhamud". Gatere, Muhamud, and two young children were removed from the vehicle. Witness BVQ was not among them.<sup>565</sup>

470. A short while later, the witness was just 20 metres away when he saw Déo shoot Gatere and Muhamud. Déo then took the two children to where the two men had been killed. At that moment, the witness and those accompanying him were told to leave. The witness ran through the roadblock and saw Gatere for the last time. He did not see Gatete at the roadblock.<sup>566</sup>

471. On 14 April, the witness saw Kamuzinzi's white Nissan Sunny vehicle, in Kibungo prefecture at "Cyasenakamba". It was driven by a young man who was accompanied by *Interahamwe*. Gatete was not among the passengers.<sup>567</sup>

#### Defence Witness Assumani Ndayambaje

472. In 1994, Assumani Ndayambaje, a Hutu, lived in Gakenke sector, Murambi commune and worked as a trader and Muslim preacher. He knew Witness BVQ's father as they were neighbours and the witness considered him a relative. Witness BVQ's father was a wealthy man and owned a white Nissan Sunny vehicle. He had four children, including Witness BVQ. When the witness returned from exile in Tanzania, he lived with Witness BVQ's father. The witness also knew Kamuzinzi but did not see him in April 1994.<sup>568</sup>

473. On 7 April, at about 6.00 a.m., the witness visited Witness BVQ's home. On the way, he saw Froduald, who was returning from Witness BVQ's house. There, the witness spoke to Witness BVQ's father, who was sad. The witness stayed at the house for 15 to 20 minutes and then returned home. There, he found Witness BVQ's mother hiding. She was being targeted as she was Tutsi. At around 8.00 a.m., Witness BVQ also arrived at the witness's house but had "problems" and left for "Muhamud's" house.<sup>569</sup>

474. That evening, at around 7.00 or 7.30 p.m., the *Interahamwe* arrived at Witness BVQ's house to attack and loot it. Witness BVQ's mother asked the witness to join the *Interahamwe* in order to recover some of their belongings. The witness was able to retrieve a television, a mattress and clothes belonging to Witness BVQ's father. The *Interahamwe* did not ask the witness any questions as they thought he had joined them. Witness BVQ's mother remained at the witness's house until the following morning. She went to stay with a trader with whom she remained until leaving Rwanda.<sup>570</sup>

475. On 9 April, soldiers arrived in Gakenke sector and carried out attacks. On 11 April, the witness left Gakenke sector. At around 11.00 a.m., on 12 April, he came across a roadblock not far from the Kayonza commune office. There, he saw Antoine-Marie Zacharias Gatere, who he knew well. The roadblock was manned by *Interahamwe*, a policeman called

<sup>565</sup> T. 11 March 2010 pp. 72 (one had to pass the roadblock to get to the Kayonza commune office), 73-74, 78-79. The victims were not beaten before they were shot. T. 11 March 2010 p. 80.

<sup>566</sup> T. 11 March 2010 pp. 73, 75, 79.

<sup>567</sup> T. 11 March 2010 p. 75.

<sup>568</sup> Defence Exhibit 65 (personal identification sheet); T. 15 March 2010 pp. 5-7, 9-11, 15-16, 40.

<sup>569</sup> T. 15 March 2010 pp. 11-14, 42-43.

<sup>570</sup> T. 15 March 2010 pp. 11-15, 41-44.

“Déo”, and a brigadier from the commune office. At the barrier, the brigadier examined the witness’s identity card. Déo then returned it and the witness was able to pass. He believed that the roadblock had been mounted to arrest those who were considered to be accomplices and *Inyenzis*.<sup>571</sup>

476. Subsequently, a whitish Datsun vehicle belonging to Witness BVQ’s father, but driven by Muhamud Mugiraneza, arrived at the roadblock. The occupants also included Gatere and Muhamud’s two children who were between four and seven years old. The *Interahamwe* said, “[t]hese are the people we are looking for” and forced the passengers out of the vehicle. Déo shot Gatere, and then Muhamud, by the roadside. At the time, the witness was about seven or eight metres away from them, and about five metres away from the roadblock. Before leaving, he also saw the two children being taken out of the vehicle but did not see what happened to them. He assumed that they were also killed. Both Muhamud and Gatere were Hutu and the witness did not know why they were targeted.<sup>572</sup>

477. The witness was among a crowd of thousands, including displaced persons, who were moving along the road, and was with Marie-Rose and Djuma Habineza, when he witnessed the killings. He did not see Gatete at the roadblock. That night, the witness stayed in Kayonza and subsequently fled towards Tanzania.<sup>573</sup>

478. The last time he saw Witness BVQ was before he left Rwanda on 15 September 2006. Witness BVQ was aware of the events that took place at the roadblock that day, as he had heard about them from eyewitness testimonies during Gacaca proceedings.<sup>574</sup>

**8.3 Deliberations**

479. The Indictment alleges that between 10 and 15 April 1994, Gatere was karate-kicked by Gatete at a mass grave near the Kayonza commune office and then killed by *Interahamwe* further to Gatete’s orders. On about 12 April, Gatete, *Bourgmestre* Jean de Dieu Mwangi, *Bourgmestre* Célestin Senkware, communal police and *Interahamwe* inspected identity cards of travellers on the Kibungo road in Kayonza commune. At one roadblock, Gatete, several *Interahamwe* and communal police, including a policeman named Déo, chased AIX’s Tutsi husband and Kamuzinzi, a moderate Hutu and political party opponent, from his car. Gatete ordered the communal policemen to shoot them, which they did. The occupants of Kamuzinzi’s vehicle, including Mahmud, were also killed by *Interahamwe* upon Gatete’s further orders. Gatete then appropriated the vehicle. In support, the Prosecution relies on the testimonies of Witnesses BVQ and BAY.<sup>575</sup>

<sup>571</sup> T. 15 March 2010 pp. 15-16, 29, 31. Gatere lived about 700 metres from Assumani, in Akamasine *cellule*. T. 15 March 2010 p. 15.

<sup>572</sup> T. 15 March 2010 pp. 16 (quoted), 17-18, 43.

<sup>573</sup> T. 15 March 2010 pp. 18-20, 25-28, 30, 37, 43.

<sup>574</sup> T. 15 March 2010 pp. 32-33.

<sup>575</sup> Indictment paras. 23A, 32, 35-36; Prosecution Closing Brief paras. 48, 50, 108, 116, 232 (d), 232 (e), 390-392, 413-446, 464-491; Closing Arguments, T. 8 November 2010 pp. 63, 65-67. The Chamber notes that the spelling of “Mahmud” varies from one witness’s evidence to another. However, given the details provided, the Chamber is satisfied that the witnesses referred to the same person. The Chamber uses the spelling of “Mahmud” used in the Indictment. The Prosecution concedes that it did not lead sufficient evidence to support the allegation that Kamuzinzi was among those killed at the roadblock. Moreover, no evidence was led with respect to the killing of AIX’s Tutsi husband. See I.2.2.



480. Through the testimonies of Assumani Ndayambaje and Djuma Habineza, the Defence concedes that a barrier was mounted on the road coming up the hill from the Kayonza commune roundabout. It further accepts that Gatete and Mahmud were killed at that roadblock, but that they were shot by a communal policeman named Déo. The Defence disputes Gatete's presence at the barrier, as well as his role in the killings.<sup>576</sup>

481. Turning first to the Prosecution evidence, the Chamber finds it instructive to compare the accounts of Witnesses BVQ and BAY to determine whether they sufficiently corroborate each other. Witness BVQ described the killing of Gatete as occurring at around 10.00 to 10.30 a.m., four to five days after 7 April, which would have been around 11 or 12 April 1994.<sup>577</sup> Witness BAY recalled the event occurring at about 2.00 p.m. on 13 April.<sup>578</sup> Such a difference in timings or dates is not necessarily material, considering the passage of time since the events, as well as the stressful circumstances.

482. However, in this instance, the Chamber is faced with two accounts which are also sufficiently different in other respects to suggest that they do not necessarily refer to the same incident. Witness BVQ described Gatete as being among those who were manning the roadblock when Gatete and Mahmud, as well as Mahmud's children, were killed.<sup>579</sup> Witness BAY, on the other hand, referred to Gatete arriving in a white "Audi 100" and being on the veranda of the commune office when *Interahamwe* and communal police removed "someone" from a vehicle at the barrier.<sup>580</sup> Witness BVQ referred to the killing of Gatete, Mahmud and Mahmud's children occurring in a place visible from the road.<sup>581</sup> Witness BAY only described one man, who appeared to be the driver of the vehicle, being removed from it but made no mention of other occupants. Furthermore, he did not witness any killing, nor testify to having heard any gunshots, as described by Witness BVQ.<sup>582</sup>

483. On the other hand, both witnesses described one of the victims having a broken leg. Witness BVQ testified that Mahmud had a broken leg and that Gatete was beaten by Gatete.<sup>583</sup> Witness BAY referred to a man who appeared to be the driver of the vehicle, being removed from it, and Gatete kicking and breaking his leg. However, Witness BAY maintained, based on what he later learnt, that the man he saw was Gatete.<sup>584</sup>

484. When comparing the evidence of Witnesses BVQ and BAY, the picture that emerges is confusing and their accounts cannot necessarily be reconciled. The Chamber, in any event, considers the individual merits of the witnesses' testimonies.

485. Turning first to Witness BVQ, the Chamber is satisfied about his ability to identify the Accused in April 1994. Between 1987 and 1989, Gatete would visit the witness's home as his father and Gatete were friends.<sup>585</sup> His parents were political rivals of Gatete.<sup>586</sup> His

<sup>576</sup> Defence Closing Brief paras. 859-869, 901.

<sup>577</sup> Witness BVQ specifically recalled leaving his neighbour's house at 7.00 a.m. and arriving at the roadblock at about 10.00 or 10.30 a.m. T. 4 November 2009 p. 66, 70, 73.

<sup>578</sup> T. 13 November 2009 pp. 34, 41.

<sup>579</sup> T. 4 November 2009 p. 44.

<sup>580</sup> T. 13 November 2009 pp. 34-35, 41.

<sup>581</sup> T. 4 November 2009 p. 49.

<sup>582</sup> T. 13 November 2009 pp. 35-36, 41-43.

<sup>583</sup> T. 4 November 2009 pp. 44, 46-49, 57-58; T. 5 November 2009 pp. 6-7.

<sup>584</sup> T. 13 November 2009 pp. 35-37, 42-43, 48.

<sup>585</sup> T. 4 November 2009 pp. 36-37, 67. Witness BVQ also knew Gatete in his capacity as *bourgmestre* of Murambi commune.

mother, a Tutsi, was a member of the PL party, while his father was a member of the MDR party.<sup>587</sup> The Chamber considers that the family's political affiliations do not necessarily undermine the witness's impartiality.<sup>588</sup>

486. However, the Chamber finds Witness BVQ's account, that *Interahamwe* were searching for his family, pursuant to Gatete's orders, difficult to reconcile with the fact that, at the that time, he was hiding just 20 metres away in the home of his neighbour, who was also the family's herdsman.<sup>589</sup> The witness explained that the *Interahamwe* would not have thought of searching so close to his family home.<sup>590</sup> The Chamber does not find this compelling. According to Witness BVQ, the *Interahamwe* were specifically searching for his family and would have been rewarded one million Rwandan francs had they found them.<sup>591</sup>

487. Similarly, other aspects of Witness BVQ's evidence were unconvincing. He testified that he passed through the roadblock in Remera just 10 to 15 days after passing through the Kayonza roadblock. He was only four metres from Gatete when the latter gave orders to stop all young men and adults, and yet was not discovered. The witness explained that he was not stopped because he was just a child and was hiding his face with a mat.<sup>592</sup> The Chamber is not convinced by this explanation as, by his own account, he was 18 years old at the time and Gatete had issued orders specifically to stop all young men.

488. Furthermore, Witness BVQ was inconsistent, particularly with regard to the occupants of the vehicle in which he travelled, and what happened to them. He first stated that, in the vehicle, were Mahmud, his two children, Gatere, Kamuzinzi's son named Jaji, and the witness's house help called Mushaka. Therefore, according to this account, there were seven people, including the witness, in the vehicle.<sup>593</sup> He then added that five children survived the killings but Mahmud's two children were killed, making a total of nine persons in the vehicle (five children who survived, two who died, Gatere and Mahmud) and not seven, as initially recounted.<sup>594</sup> Later, he stated that there were eight people in the vehicle and that actually four persons survived.<sup>595</sup> His testimony was further contradictory under re-examination when he

<sup>586</sup> T. 4 November 2009 p. 57.

<sup>587</sup> T. 4 November 2009 pp. 57, 74-76.

<sup>588</sup> The Chamber also notes that, at the time of his testimony, Witness BVQ was detained in Rwanda due to forgery charges relating to a vehicle document, and failure to appear before the court. T. 4 November 2009 pp. 54-55, 60-63. Witness BVQ was initially arrested in 2003, and then provisionally released in 2004. On 17 April 2009, he was arrested again and has since been detained. T. 4 November 2009 p. 63. The crime for which he is detained is unrelated to the charges in this case and the Chamber does not consider that his detainee status in this instance necessarily renders him unreliable. The Chamber does, however, have some concerns regarding the witness's failure to appear before the court after being summoned. Although he explained that he was ill, questions remain about his status.

<sup>589</sup> T. 4 November 2009 pp. 37-40, 44, 66-70.

<sup>590</sup> T. 4 November 2009 p. 69.

<sup>591</sup> T. 4 November 2009 p. 39; T. 5 November 2009 pp. 2-3.

<sup>592</sup> T. 4 November 2009 pp. 52 ("I was carrying a mat which hid my face.... I caught sight of [Gatete] at the time when I was crossing that roadblock.... Gatete was telling the people manning that roadblock to prevent every adult and every young man from crossing that roadblock...."), 53 ("I had no difficulty getting across the roadblock. I was in the company of that neighbour. As a child accompanying his father, you would understand that they could not attack little children.... I was hardly 18"); T. 4 November 2009 pp. 78-79; T. 5 November 2009 pp. 5-6.

<sup>593</sup> T. 4 November 2009 p. 47.

<sup>594</sup> T. 4 November 2009 p. 47.

<sup>595</sup> T. 5 November 2009 p. 4.

recalled that there were a total of four children in the vehicle who were from his family and that the only persons who were not from his family were “the one who was killed and the house help”.<sup>596</sup> However, he finally recalled that there were two adults and six children and among those, two died and four, including the house help, survived.<sup>597</sup>

489. Moreover, his explanation of how he was saved by a Hutu neighbour made no mention of the other occupants of the vehicle who also survived. Rather, he described how he and his Hutu neighbour managed to leave the roadblock near the Kayonza commune office and walk to Remera. Only under cross-examination, when asked about what happened to his house help and two-month old brother, did he add that they too had “followed” them to Tanzania.<sup>598</sup> No further details were elicited or volunteered with respect to what happened to Kamuzinzi’s son, Jaji.

490. In sum, the Chamber considers that Witness BVQ’s evidence was unconvincing and inconsistent. Accordingly, it finds his account insufficient to support findings beyond reasonable doubt and will not accept it in the absence of adequate corroboration.

491. Turning to Witness BAY, the Chamber has no doubt about his ability to identify Gatete in April 1994. They both knew each other through their work and due to Gatete’s position as the former *bourgmestre* of Murambi commune.<sup>599</sup>

492. However, with respect to the merits of Witness BAY’s evidence, the Chamber finds it to be of limited probative value. His first-hand account that he saw *Interahamwe* and communal police take a man out of a vehicle at the roadblock does not establish that it was necessarily Gatete or Mahmud or that the man who was removed from his vehicle was subsequently killed. Indeed, Witness BAY stated that he “did not pay attention” at the time.<sup>600</sup> He did not know who the man was at the time and did not know what subsequently happened to him after the man was kicked by Gatete and taken away by *Interahamwe*. Moreover, he did not witness a killing, nor hear any gunshots. Therefore, his first-hand evidence is inconclusive with respect to whether the man who was taken away by *Interahamwe* was Gatete, Mahmud, or someone else. Nor does it necessarily establish that the man was subsequently killed.

493. More specifically, Witness BAY’s evidence regarding the identity of the victim was confusing. He initially stated that he thought that the victim was the driver of the vehicle. According to Witness BVQ, the driver of the vehicle was Mahmud. However, Witness BAY further recalled that, in 1999, he became aware that it was Gatete who had been killed at that roadblock. His source for this information was his son, a child who went to school in Murambi commune, and a newspaper article.<sup>601</sup> As a result, he concluded that the man who was taken to Gatete was Gatete.

<sup>596</sup> T. 5 November 2009 p. 7.

<sup>597</sup> T. 5 November 2009 p. 8.

<sup>598</sup> T. 4 November 2009 p. 76.

<sup>599</sup> T. 13 November 2009 pp. 33-34, 40-41. Witness BAY also identified the Accused in court. T. 13 November 2009 p. 34.

<sup>600</sup> T. 13 November 2009 p. 35.

<sup>601</sup> T. 13 November 2009 pp. 35, 43 (“Q. Witness, you have said that Gatete kicked someone. Yes? A. Yes, I said so. Q. And it is not clear to me who this person was. Can you tell us? A. I thought it was a driver. But I believe I have told you that my son, who was returning from the army, told me that it was Mr. Lambert Gatete. But later on, after making this statement, I learned it in 1999. Q. So, Witness, can you tell the Court who it was?”)



494. Moreover, Witness BAY was confronted with his statement of May 2004 which supplemented the statement given to Tribunal investigators in September 1998.<sup>602</sup> In particular, the May 2004 supplementary statement, which sought to add to, or correct the earlier statement, stated that the man who was kicked by Gatete was “Nyagatare young [sic] brother, Mbuguje, the owner of the vehicle, not the driver”.<sup>603</sup> It appears the supplementary statement was referring to Mbuguje as the man who was kicked. Under cross-examination, the witness denied that it was Nyagatare but learnt later from other sources that it was Gatere.<sup>604</sup> The Chamber considers that the supplementary statement creates further uncertainty and raises additional doubts with respect to Witness BAY’s hearsay evidence that the man was Gatere.

495. In sum, while it is possible that the man who Witness BAY saw being beaten by Gatete and taken away by *Interahamwe* could have been Mahmud or Gatere, this is not the only reasonable inference to be drawn from his evidence. Nor did Witness BAY provide sufficient information to conclusively establish why the man was beaten, or what subsequently happened to him. Therefore, the Chamber finds Witness BAY’s evidence of limited probative value and when considered in the context of Witness BVQ’s testimony, does not offer adequate corroboration.

496. The Chamber has also considered the Defence evidence. It has doubts about aspects of Assumani Ndayambaje’s testimony, in particular, that he joined *Interahamwe* in looting Witness BVQ’s house so that he could retrieve items for Witness BVQ’s mother. However, ultimately, the Chamber finds the Prosecution evidence insufficient to support findings beyond reasonable doubt.

497. Accordingly, it has not been established that on about 12 April 1994, Gatete ordered the killing of Gatere, Mahmud, or other occupants of the vehicle driven by Mahmud, which was stopped at the roadblock near the Kayonza commune office. In view of these findings, the Chamber finds it unnecessary to consider the Defence notice objections.<sup>605</sup>

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Was it a driver or was it someone you were calling Gatere? A. Back then I thought it was the driver, but it was actually Mr. Gatere, who had some conflict with Mr. Gatete. I learnt about that subsequently when I read an article in a newspaper called *Ukuri kwa Murambi*, which could be translated as “the truth of Murambi” and that article gave me information on that person. Q. So, Witness, at the time that ... you say you saw Mr. Gatete kick someone. You didn’t know who that person was. Is that your testimony? A. I did not know that person, but at least a child who went to school in Murambi knew that person, but the child did not tell me so that day. He told me much later. Q. And so today the evidence that you are giving under oath is that this person’s name was Gatere, and you say this because you read it in a newspaper. Is that your evidence? A. Earlier, I said that I learnt it from the child, but I read the article in a newspaper and it confirmed the information. And the newspaper article ... stated that there were some accomplices who were against the authorities of Murambi, and it mentioned a number of persons including the name of that person. Q. And, Witness, you say you don’t know what happened to this person who was kicked; is that right? A. Yes, and I have a reason. All round there were assailants who had to kill people. And you will understand that I was traumatised by the events I was experiencing. I did not follow to find out what happened to that person. Q. Do you agree with me that in the first statement you made to the Prosecution, you told the Prosecutors what had happened to the person who was kicked ...? A. I do remember. Yes, I do remember. Q. But now you are saying you can’t remember; is that right? A. I remember that Gatete kicked that person, but I do not know what happened to that person subsequently.... All I know is that the assailants took him away somewhere.”).

<sup>602</sup> Defence Exhibits 34 (statement of 10 September 1998) and 35 (supplementary statement of 5 May 2004).

<sup>603</sup> Defence Exhibit 35 (supplementary statement of 5 May 2004) p. 3.

<sup>604</sup> T. 13 November 2009 p. 48.

<sup>605</sup> Defence Closing Brief paras 859-869, 901.

## 9. CERAI SCHOOL, MID TO LATE APRIL 1994

### 9.1 Introduction

498. The Indictment alleges that in mid to late April 1994, Gatete arrived in Rulenge sector, in Rukira commune, in a convoy carrying armed Murambi communal policemen, civilian militia and the Kabarondo and Kigarama commune *bourgmestres*. Gatete publicly castigated the local residents for not killing Tutsis and ordered *Interahamwe* to rape and kill Tutsis, including women and children, in Rukira commune. The following morning, those *Interahamwe*, who included Emmanuel Rukiramakuba, Ephraim, Fabien, and Rwabirekezi, destroyed Tutsi homes and raped and killed Tutsi civilians in Rukira commune. In particular, Gatete ordered Fabien to kill a Ugandan woman who was perceived to be Tutsi. Also killed were Vedaste Kalisa, Ferdinand Sanane, his wife, and Nzoyori, a girl from Binego. The Prosecution relies on the evidence of Witnesses BBQ and AIV.<sup>606</sup>

499. The Defence denies that Gatete gave orders to kill Tutsis in Rulenge sector as alleged. It submits that while he went to Rulenge sector in April 1994, he only stopped for one night with his family at the house of a Protestant preacher, and fled early the following morning with other refugees from Murambi commune. In support, the Defence points to the evidence of Witnesses LA127, Joseph Karushya, Sareh Majoro and LA128.<sup>607</sup>

### 9.2 Evidence

#### Prosecution Witness BBQ

500. In 1994, Witness BBQ, a Tutsi, was a farmer living in Rulenge sector, Rukira commune. About nine or ten days after the President's death, he was hiding in a coffee and banana plantation near the Rulenge sector office. At about 10.00 p.m., he saw Gatete arrive in a convoy of three vehicles carrying about 60 to 70 persons. They included *Interahamwe* and policemen, some of whom were armed with guns, clubs, machetes and spears. One vehicle also carried refugees.<sup>608</sup>

501. The convoy parked about four metres from the witness's hiding spot. Gatete and some of those accompanying him alighted from their vehicles and walked to a field where *Interahamwe* had assembled and had lit a fire. Gatete introduced himself as the *bourgmestre* of Murambi commune. The *Interahamwe* told him that the Rukira commune *bourgmestre* was "Moise" but that he was no longer alive. Gatete was then introduced to the new *bourgmestre*. They greeted each other warmly. The witness later stated that the man Gatete met was in fact Moise Niyonshuti, who was the former *bourgmestre* of Rukira commune.<sup>609</sup>

<sup>606</sup> Indictment paras. 25, 32, 35; Prosecution Closing Brief paras. 51-57, 75 (viii), 82, 108, 117, 229 (f), 230 (f), 231 (f), 519-564; Closing Arguments, T. 8 November 2010 pp. 5, 13. At times, Rulenge sector is spelt "Rurenge". The Chamber has used the most commonly used "Rulenge" in this Judgement.

<sup>607</sup> Defence Closing Brief paras. 82, 84, 903-977, 982-988, 997, 1111-1113, 1202; Closing Arguments, T. 8 November 2010 pp. 39, 58-59.

<sup>608</sup> Prosecution Exhibit 16 (personal identification sheet); T. 9 November 2009 pp. 10, 12, 15-17, 26, 64-67, 70. Some wore the national police uniform and Witness BBQ concluded that they were *Interahamwe*. T. 9 November 2009 p. 17. It was "one week and two or three days" after the President's death. T. 9 November 2009 p. 64.

<sup>609</sup> T. 9 November 2009 pp. 11-14, 16-18, 61, 65, 68-70.

502. Gatete requested that Niyonshuti house him and those accompanying him at the Cerai School, as Niyonshuti was the school director. They both walked over to the school, which was about 15 to 20 metres from the sector office. Some of the group also went there in vehicles. The witness followed them and hid behind a hedge which was less than two metres high and surrounded the school. There, Gatete told Niyonshuti that the local inhabitants had “done nothing” and that “there were still many Tutsis in that area”. He requested Niyonshuti to call the *Interahamwe* so that they could show Gatete the houses of Tutsis in the region who had not yet been killed.<sup>610</sup>

503. The following morning, while the witness was hiding in a banana plantation next to the Cerai School, he saw Gatete arrive. He was joined by many *Interahamwe*. They killed Kalisa, his wife and their child, Bizimana, in their home. The witness could not stay in his hiding spot because it was daytime and he could easily be seen. He left before “the killings came to an end” and believed that others were also killed after his departure. The *Interahamwe* who participated in the attack included Emmanuel Rukiramakuba, Hategeka and Ngabonzima, but the witness did not see who carried out the killings. At night, he moved around in the rain, and did not sleep. He also stated that he spent the night in a wood near the Cerai School.<sup>611</sup>

504. Killings also took place at the Cerai School. Gatete asked those accompanying him to check that there were no Tutsis there and “[t]hey” killed two young people who were said to be Tutsis, as well as a woman who spoke “Ugandan”, and was also said to be Tutsi. They were killed with small hoes, clubs and machetes. Gatete was among the attackers at the Cerai School. The witness did not see the bodies of the victims as he was outside the school but the following morning, saw them being transported to the residence of Bizimana. The body of the Ugandan woman remained at the school and was buried later.<sup>612</sup>

505. A few days later, the local *Interahamwe* fled because gunshots were heard and it was said that they came from RPF troops. The *Interahamwe* spoke to Gatete and asked him to give them firearms in order to fight the *Inkotanyi*. Gatete refused and replied that he was “very familiar with confrontations with the *Inkotanyi*” and they left in his vehicle towards Tanzania, through the Rusumo border. *Interahamwe* among Gatete’s “group” organised attacks with the local *Interahamwe* before taking the road to Rusumo and going into exile. They fled using vehicles and motorcycles they had looted. The witness was subsequently forced to participate in attacks.<sup>613</sup>

#### Prosecution Witness AIV

506. Witness AIV, a Hutu, was a farmer in 1994 and lived in Rulenge sector, Rukira commune. One night in late April, he saw Gatete at the Cerai rural and handicraft training

<sup>610</sup> T. 9 November 2009 pp. 13, 14 (quoted), 15, 17-18, 70, 74.

<sup>611</sup> T. 9 November 2009 pp. 18-19 (quoted), 20, 70, 74, 91-92. Witness BBQ first stated that he was 10 to 20 metres away (T. 9 November 2009 p. 19), but later, that he was not near their homes. T. 9 November 2009 pp. 19-20. Witness BBQ later referred to the *Interahamwe*, who participated in the attack, as Emmanuel Rukiramakuba, Celestin Habarurema and Yabikeyrezi Ntabubeza. T. 9 November 2009 p. 70.

<sup>612</sup> T. 9 November 2009 pp. 18, 21 (“I was an eyewitness of the massacres that were committed at CERAI.”), 75.

<sup>613</sup> T. 9 November 2009 pp. 22, 44, 46, 62, 75-76.

centre, which he later referred to as the Cerai School. He heard the sound of vehicles arriving and concluded that it was the *Inkotanyi*.<sup>614</sup>

507. At about 7.00 a.m. the following morning, the witness heard that there were many vehicles parked at the Cerai School and that several people had gathered there. Out of curiosity, he went to the school and upon arrival, saw local inhabitants assembled on the Rusumo road. *Interahamwe* had also gathered behind the hedge surrounding the school and armed policemen stood in front of the school gate.<sup>615</sup>

508. A man in a crowd on the road asked another man standing near the policemen why he and the others were there. The latter replied that they were refugees from Byumba prefecture and were with Gatete. Next, the witness saw a man "with a shock of hair and beard" who opened a white vehicle to look inside, and then closed the door. That man then walked towards the crowd on the road. The witness heard someone say "[t]hat is Gatete". The man who was referred to as Gatete was about five metres from the witness and said "[t]he Tutsis here are not dead". The *Interahamwe* leader, Emmanuel Rukiramakuba, and another *Interahamwe* named Faustin Swangaziza, replied "[w]e have killed, but we have spared women and young girls". Gatete then said: "You have done nothing. The *Inkotanyi* are close at hand. I am going to lend you my *Interahamwe* from Byumba, and they will assist you in cleaning.... You have to kill all the Tutsis and you should not even spare fetuses". He added that he, too, had killed his Tutsi wife and that even Hutus married to Tutsis should be killed. Gatete was accompanied by the *bourgmestres* of Kigarama and Kabarondo communes, but they did not speak.<sup>616</sup>

509. After Gatete spoke, all the persons "who had been spared were exterminated". As the witness had Tutsi family members, he returned home and remained there. The next morning, he went out and met a woman who told him that killings were occurring everywhere in Ruvuzi *cellule*. Some of his neighbours and his sister-in-law were killed. Attacks took place in the eight *cellules* of Rulenge sector and were led by local *Interahamwe* who reported to Moise Niyonshuti, the former *bourgmestre* of Rukira commune.<sup>617</sup>

510. Other members of the witness's family were killed in April 1994. One of his wife's family members was killed in an assault launched by the *Interahamwe* of Rulenge sector in collaboration with Gatete's *Interahamwe*. Gatete remained in the area for about four days.<sup>618</sup>

#### Defence Witness LA127

511. In 1994, Witness LA27, a Hutu, was a teacher living in Mubabago sector, Rukira commune. On 7 April, the Cerai School was closed for the Easter holidays. A guard called Sylvain Murwanashyaka was posted at the school. The school consisted of three buildings and was surrounded by a fence and hedge of cypress trees, which was dense and over two metres tall. Beyond the fence were houses and banana plantations and opposite the school,

<sup>614</sup> Prosecution Exhibit 17 (personal identification sheet); T. 10 November 2009 pp. 3-4.

<sup>615</sup> T. 10 November 2009 pp. 4, 7, 10. Witness AIV first referred to it as a fence but then later specified that it was a "cypress hedge" and was about a metre taller than him. T. 10 November 2009 pp. 5 (quoted), 6.

<sup>616</sup> T. 10 November 2009 pp. 7 (quoted), 8 (quoted), 9 (quoted), 10-11.

<sup>617</sup> T. 10 November 2009 pp. 9, 10 (quoted), 26-27, 42-45.

<sup>618</sup> T. 10 November 2009 pp. 11-12, 35, 42-43. From 20 April, there were many displaced persons on their way to Rusumo, fleeing the RPF, who were close. T. 10 November 2009 p. 27.

was a primary school. From inside the Cerai School compound, it was not possible to see anything outside.<sup>619</sup>

512. After 7 April, the witness was informed that the sewing workshop at the Cerai School had been ransacked and the sewing machines had been stolen. Donat Ruhigira, *bourgmestre* of Rukira commune, also visited the witness and told him that he had authorised displaced persons to stay at the school. About one week later, the situation was calm in Rukira commune. After that time, armed *Interahamwe* from neighbouring Birenga commune arrived and carried out attacks, causing many people, including the witness, to flee. He left Rukira commune on 12 April.<sup>620</sup>

#### Defence Witness Joseph Karushya

513. Joseph Karushya, a Hutu, was a trader in 1994 and lived in Rulenge sector, Rukira commune. His shop was about 150 metres from the Cerai School, and his home, about a kilometre from the school.<sup>621</sup>

514. On 8 April, violence erupted in his area. A communal policeman called Saïd Munyehirwe, a soldier called François Bizimana, *Interahamwe* leader Emmanuel Rukiramakuba, and Festo Ngabonziza arrived and said they were coming from a meeting at the Kibungo prefecture office organised by Colonel Rwagafilita Cyasa. They had been told that the Presidential plane had crashed and that Tutsis, who had been the cause of that crash, had to be killed. Subsequently, Munyehirwe attacked the witness's Tutsi driver, François Nizeyimana, with a machete and killed him.<sup>622</sup>

515. After that day, the soldiers asked *Conseiller* Ngabonzima to tell members of the population to lock up their houses and participate in attacks. The witness was forced by Munyehirwe to participate in the looting of the house of his Tutsi neighbour, Simba. He did not participate in any other attacks. Some Tutsis sought refuge at the commune office, others with their neighbours, and some fled to Tanzania. No Tutsi went to the Cerai School because they sought refuge with the authorities and there were no authorities at the school. During an attack launched by Munyehirwe on 9 April, persons called Saanane and Kalisa were killed.<sup>623</sup>

516. On 19 April, at 7.30 p.m., Gatete came to the witness's shop to buy lemonade. He was in a white vehicle, accompanied by two ladies and two children. They came from the direction of the Rukira commune office and stopped at the market. They left at about 8.00 or 8.30 p.m., through a roadblock, which was a little further up the road, and went in the direction of Rusumo. The witness did not see Gatete again.<sup>624</sup>

<sup>619</sup> Defence Exhibit 96 (personal identification sheet); T. 23 March 2010 pp. 5-11, 18, 22-23; Defence Exhibit 98 (sketch of Cerai School). The fence was about 2.2 metres tall. T. 23 March 2010 p. 10. Moise Niyonshuti had been the principal's assistant since leaving his position as *bourgmestre* of Rukira commune. He was already in that position by December 1993. T. 23 March 2010 pp. 20-21.

<sup>620</sup> T. 23 March 2010 pp. 15, 17-19, 21-22. Only a limited number of people had keys for the Cerai School and its classrooms. T. 23 March 2010 pp. 12-16, 19-20; Defence Exhibit 99 (list of names).

<sup>621</sup> Defence Exhibit 103 (personal identification sheet); T. 25 March 2010 pp. 3-5, 7-10; Defence Exhibit 104 (sketch of the Cerai School area). Rulenge sector did not have a sector office. T. 25 March 2010 p. 5.

<sup>622</sup> T. 25 March 2010 pp. 11-14, 32-33.

<sup>623</sup> T. 25 March 2010 pp. 14-15.

<sup>624</sup> T. 25 March 2010 pp. 15-21, 28-29, 31-32, 36; Defence Exhibit 104 (sketch of the Cerai School area).

517. At 9.00 p.m., the witness's watchman arrived. He told the witness that Gatete had asked him if he would host him but the watchman's house was not big enough. Instead, the watchman took Gatete to the house of Kamabinga, a Protestant preacher, to spend the night. Gatete left the area the following day, on 20 April. That day, *Inkotanyi* arrived and took over the Rusumo commune office. Inhabitants started fleeing between 18 and 28 April. The witness also fled on 28 April to Burundi and subsequently, to Tanzania.<sup>625</sup>

#### Defence Witness Sareh Majoro

518. In 1994, Sareh Majoro was a mason and lived in Rulenge sector, Rukira commune. On 8 April, violence erupted in his area. A man named Sanane was the first victim of the violence. That same day, the witness was ordered by a soldier called Bateta to man a roadblock at the Rubuye centre. The witness also received instructions from Saïdi Munyehirwe, a communal policeman, that each vehicle should pay 10,000 Rwandan francs before being allowed through the roadblock. Munyehirwe supervised the barrier. The attacks in the witness's area were led by Munyehirwe and Bateta.<sup>626</sup>

519. On 19 April, at about 7.00 p.m., Gatete arrived at the witness's roadblock, driving a white saloon vehicle. He was accompanied by two women and two children. Gatete introduced himself, saying he was the former *bourgmestre* of Murambi commune and was fleeing. The witness had never seen him before. He and the others manning the barrier demanded that Gatete pay 10,000 Rwandan francs. After an initial disagreement, Gatete agreed to pay 5,000 Rwandan francs and promised to pay the balance the following day. He then parked his car close to the shops and went with the two women and children to get some lemonade.<sup>627</sup>

520. That evening, at about 9.00 p.m., the witness and two others started their night patrol. When they saw Gatete's vehicle parked outside the house of a Protestant preacher called Kamabinga, they went to the house and found Gatete there. They asked him for the remainder of the money he had promised them. Gatete told them to return the following morning but when they went back at 6.00 a.m., he had already left. The witness fled on 25 April.<sup>628</sup>

#### Defence Witness LA128

521. Witness LA128 was a farmer in 1994, residing in Rulenge sector, Rukira commune. He explained that the role of the Gacaca proceedings at the *cellule* level was to encourage those who had committed crimes to confess and ask for forgiveness. During the information-gathering phase, which lasted for one year, persons came forward and either confessed or named the perpetrators of crimes. After that, a list of accused persons was drawn up. A man named Selemani Mbanzabugabo, also known as Mudenge, appeared on the list for having killed an elderly woman called Mukaderevu at the Cerai School. No other names appeared on the list in relation to events at the Cerai School. Gatete's name did not appear on that list.<sup>629</sup>

<sup>625</sup> T. 25 March 2010 pp. 15-16, 22-25, 30-31, 37.

<sup>626</sup> Defence Exhibit 101 (personal identification sheet); T. 24 March 2010 pp. 6, 9, 11, 18-21.

<sup>627</sup> T. 24 March 2010 pp. 11-14, 26-27.

<sup>628</sup> T. 24 March 2010 pp. 9, 12, 14-18.

<sup>629</sup> Defence Exhibit 100 (personal identification sheet); T. 23 March 2010 pp. 33-42.

### 9.3 Deliberations

522. The Indictment alleges that in mid to late April 1994, Gatete arrived in Rulenge sector in Rukira commune, with a convoy consisting of armed Murambi communal policemen, civilian militia and the Kabarondo and Kigarama commune *bourgmestres*. Gatete publicly castigated the local residents for not killing Tutsis and ordered *Interahamwe* to rape and kill Tutsis in Rukira commune. The following morning, those *Interahamwe*, who included Emmanuel Rukiramakuba, Ephraim, Fabien, and Rwabirekezi, destroyed Tutsi homes and raped and killed Tutsi civilians in Rukira commune. In particular, Gatete ordered Fabien to kill a Ugandan woman who was perceived to be Tutsi. Also killed were Vedaste Kalisa, Ferdinand Sanane, his wife, and a girl called Nzoyori, who was from Binego. The Prosecution relies on the evidence of Witnesses BBQ and AIV.<sup>630</sup> No evidence was led by the Prosecution in relation to orders to rape Tutsis, or with respect to the killing of a girl called Nzoyori.

523. The Defence submits that while Gatete went to Rulenge sector in April 1994, he only stopped for one night with his family at the house of a Protestant preacher, and fled early the following morning, along with other refugees from Murambi commune. He did not order the killing of Tutsis in Rulenge sector. The Defence refers to the testimonies of Witnesses LA127, Joseph Karushya, Sareh Majoro and LA128.<sup>631</sup>

524. Looking first at the Prosecution evidence, Witnesses BBQ and AIV testified that they saw Gatete in mid and late April 1994, respectively. Both first saw him at night, at the Cerai School, with a convoy of vehicles.<sup>632</sup> Witness BBQ identified *Interahamwe*, policemen and refugees as accompanying him. They moved to the Cerai School and there, Gatete told Niyonshuti who, according to Witness BBQ, was the former Rukira commune *bourgmestre* that he should call the *Interahamwe* to show Gatete the houses of Tutsis who had not yet been killed.<sup>633</sup> Both witnesses testified that they saw Gatete the following morning.<sup>634</sup> Witness BBQ stated that Gatete was joined by *Interahamwe* who participated in the killings of Kalisa, his wife and child, as well as killings at the Cerai School.<sup>635</sup> Witness AIV recounted that orders were given by Gatete that morning, at about 7.00 a.m., to kill Tutsis and that killings subsequently took place in Rulenge sector.<sup>636</sup> While there are some similarities in the witnesses' evidence, the Chamber has several concerns with regard to the individual merits of their accounts.

525. Turning first to Witness BBQ, the Chamber has doubts about his ability to identify the Accused on the night in mid-April that he purportedly saw Gatete outside the Rulenge sector office and the Cerai School. The witness had not seen the Accused prior to that day, and while he testified that Gatete introduced himself as the Murambi commune *bourgmestre*, the Chamber recalls that he no longer held that position in April 1994. Notably, the witness was

<sup>630</sup> Indictment paras. 25, 32, 35; Prosecution Closing Brief paras. 51-57, 75 (viii), 82, 108, 117, 229 (f), 230 (f), 231 (f), 519-564; Closing Arguments, T. 8 November 2010 pp. 5, 13.

<sup>631</sup> Defence Closing Brief paras. 82, 84, 903-977, 982-988, 997, 1111-1113, 1202; Closing Arguments, T. 8 November 2010 pp. 39, 58-59.

<sup>632</sup> Witness BBQ, T. 9 November 2009 pp. 10, 12, 15-17, 64, 70; Witness AIV, T. 10 November 2009 pp. 3-4.

<sup>633</sup> T. 9 November 2009 pp. 10-18, 61, 68-70.

<sup>634</sup> Witness BBQ, T. 9 November 2009 pp. 18, 68; Witness AIV, T. 10 November 2009 p. 4, 7, 10.

<sup>635</sup> T. 9 November 2009 pp. 18-20.

<sup>636</sup> T. 10 November 2009 pp. 7-10, 42-44.



5015

also hiding, at night, creating additional doubt that he would have been in a position to recognise and identify the Accused.<sup>637</sup> Accordingly, the Chamber has reservations about the witness's ability to identify Gatete that evening.

526. Furthermore, his responses to questions regarding his current status, and the crimes for which he was convicted, were confusing and inconsistent. He confessed to crimes committed in 1994 before a Gacaca court and was sentenced on 21 February 2007, although his responses with respect to the date of his appearance before the court and sentence were initially extremely unclear.<sup>638</sup> He first accepted that he had pleaded guilty to participating in three attacks, but later claimed that it was only one attack.<sup>639</sup> In addition, after having initially stated that someone else confessed to a killing in relation to which the witness was charged, he later maintained that no one was killed during the attack for which he faced charges.<sup>640</sup>

527. The Chamber also finds aspects of his evidence regarding his conviction and sentence unconvincing. According to his testimony, the guilty plea document had been fabricated by one of the Gacaca court judges. There were, however, according to his testimony, three judges and he later claimed that all three were imprisoned for not wanting to try the real perpetrators of the crimes.<sup>641</sup> The Chamber has significant concerns about this response.

<sup>637</sup> T. 9 November 2009 pp. 10, 60, 64-65. The Chamber has also taken into consideration Witness BBQ's evidence that he was about five metres from Gatete when the latter introduced himself. However, it is unclear whether this was on the first or second occasion that he introduced himself. The Chamber has also considered the witness's testimony that there was nothing obstructing his view and although it was night, he could see them through a hedge because of the headlights from the vehicles. T. 9 November 2009 pp. 14-16, 68.

<sup>638</sup> T. 9 November 2009 pp. 34-35, 40.

<sup>639</sup> T. 9 November 2009 p. 27 ("Q. And I am correct that you pled guilty for taking part or participating in three attacks; is this correct? A. Yes, a document was drafted and shown to me and I signed it, but I subsequently lodged a complaint against the people who had fabricated that document."), later, also at p. 27 ("THE WITNESS: It had been alleged that I had participated in an attack and transported roofing sheets stolen from the home of Mr. Éphrem Niyonzima. During Gacaca proceedings, I was coerced to admit to having been present at that attack. MR. PRESIDENT: Okay, that is one. The other one, the second one? THE WITNESS: There were no other charges. The only charge was related to the allegation that I had participated in that attack. In fact, I had been wounded and coerced by the attackers to carry the roofing sheets on my head. That was the only charge against me. MR. PRESIDENT: But I thought the counsel for the Defence had told you and you agreed that you pleaded guilty to participating in three attacks. THE WITNESS: No, I was not implicated in three attacks. I was implicated only in one attack, on the home of Mr. Éphrem Niyonzima. And during that attack I was obliged to carry roofing sheets to the main road which tarred."). See also T. 9 November 2009 p. 39-40 referring to three attacks.

<sup>640</sup> T. 9 November 2009 p. 27 ("I was sentenced. Seven days later, another person appeared before the court and admitted to having killed Mr. Rutaneshwa."), 28 ("MR. PRESIDENT: Was anybody killed in that attack? THE WITNESS: No one was killed during that attack."). It further became apparent that two people were killed during an attack which he was charged with and he later added that nine persons were killed in the last attack with which he was charged. T. 9 November 2009 pp. 39 (Q. Yes. So you say now that someone was killed under your eyes during this attack, don't you? A. Yes, two victims. They were Niyonzima's child and another child to whom Niyonzima was an uncle. The last child was killed by Téléphore Ruhigira, and it is this last victim who was attributed to me as a result of corruption. Q. So what you said before to President Muthoga on his question, that is, that there was nobody killed in this first attack is incorrect, isn't it? A. I made a mistake. In fact, I was not aware of the attack referred to in the President's question. First of all, there was an attack launched at *Chez Niyonzira*, and the first attack was launched at Niyonzima's house. And then the second attack was launched at *Runyetereshwa*. And then there was a third attack below the road."), 40.

<sup>641</sup> T. 9 November 2009 pp. 27-28. The document containing the guilty plea had been drafted by the president of the Gacaca court and two other judges and those three persons were imprisoned. According to Witness BBQ, the Judges had not wanted to imprison the true perpetrators but instead wanted to imprison the witness. T. 9 November 2009 p. 35. Although the same Gacaca bench then heard his review which took place on 10 July





Moreover, he testified that he was acquitted after applying for review of his conviction, others were convicted instead, and he was released. However, he also stated that despite being acquitted, he was, nevertheless, required to complete his sentence of community service.<sup>642</sup> The witness's responses on this point were confusing.

528. The Chamber also has concerns about the merits of Witness BBQ's account. In particular, there were several inconsistencies within his testimony. He initially referred to the *bourgmestre* of Rukira commune as Moise, whose second name was unknown, and that the *Interahamwe* told Gatete that Moise was no longer alive. He then stated that Gatete was introduced to the new *bourgmestre*, but later testified that he was introduced to Moise Niyonshuti, who was in fact the former *bourgmestre*.<sup>643</sup>

529. In addition, he first recounted the killings of Kalisa, Kalisa's wife and their child, saying he was just 10 to 20 metres away. However, when questioned further about this, he acknowledged that they were killed in their homes and that he was not near that location, was moving around at the time, and "could not see what was happening".<sup>644</sup> He also recounted further killings at the Cerai School, yet his evidence suggests that he was outside the school

2007. T. 9 November 2009 pp. 36, 40. When the members of the "jury" or three judges, who tried him were found guilty of receiving bribes, his sentence was commuted to 18 months community service. In sum, he spent only four months and 19 days in prison. T. 9 November 2009 pp. 38, 41-42, 92-93.

<sup>642</sup> T. 9 November 2009 pp. 27 (seven days after being sentenced, the actual perpetrator of the crime for which he had been accused, appeared before the Gacaca court and admitted to having killed "Rutanesha" and the witness was released), 28 (he appealed and was acquitted), 31 (he was sentenced to community labour and "served that term in its entirety" and said "I have no problem at the moment in Rwanda), 31 ("... the true perpetrators of the crime were punished. But at the time those people were sentenced. I had already started the community labour. I was asked to proceed with such community labour and serve my sentence in its entirety."), 36-37. He also later stated that he spent nine months in prison. T. 9 November 2009 p. 43.

<sup>643</sup> T. 9 November 2009 pp. 10 ("When [Gatete] arrived on the scene, he wanted to know who was *bourgmestre* of Rukira commune, and he was informed that it was Moise - second name unknown - who was no longer alive. And he asked that the new *bourgmestre* be shown him. The two *bourgmestres* greeted one another."), 13 (A. Yes, the *Interahamwe* answered him, saying that Moise Niyonshuti, who had been *bourgmestre*, was no longer *bourgmestre*, that he has been replaced. Then Gatete asked them to call the new *bourgmestre*. He claimed that they had attended the same school at Shyogwe. But we are not sure whether Gatete asked that they should bring the new *bourgmestre* or the old *bourgmestre*.... A. They went to look for the former *bourgmestre*, Mr. Moise Niyonshuti. Q. Now, who was it that Jean-Baptiste Gatete said he had been at school with, the present *bourgmestre* or the ex-*bourgmestre*? A. It was the former *bourgmestre*, Moise Niyonshuti, who had been Gatete's former classmate.").

<sup>644</sup> T. 9 November 2009 pp. 19-20 ("THE WITNESS: No. I used to stay the night in that thicket, but I left it during the day. So the persons I mentioned a while ago were killed in their respective homes. MR. PRESIDENT: And were you at their respective homes? THE WITNESS: No, I was not near their homes. But I moved about and I could see what was happening. MR. PRESIDENT: And how, then, did you know who killed them? THE WITNESS: It was an attack that had been launched, and the *Interahamwes* participated in the attack. The *Interahamwes* included Emmanuel Rukiramakuba and Hategeka. Those were the persons leading the attacks. There was also a certain Ngabonzima rather, Ngabonzima. MR. PRESIDENT: Is it then correct to suggest that you don't know who actually did the killing of any of those persons, as you were not there when that happened? THE WITNESS: No. It was very difficult for me to be able to identify all those people; there were very many. You should also bear in mind the fact that I was hiding. I was not moving about with them."). The witness also stated that he was 10 to 20 metres away (T. 9 November 2009 p. 19) but later stated that he was not near their homes. T. 9 November 2009 pp. 19-20.

and that the killings took place inside, raising doubt that he would in fact have witnessed them.<sup>645</sup>

530. In sum, the Chamber has significant doubts about Witness BBQ's ability to have identified Gatete in April 1994, and further finds his evidence confusing and inconsistent. Accordingly, it will not accept his testimony in the absence of adequate corroboration.

531. With respect to Witness AIV, as with Witness BBQ, the Chamber has doubts about his ability to identify the Accused. He had never seen Gatete prior to the day in late April when he purportedly saw the Accused near the Cerai School.<sup>646</sup> His knowledge of him on that occasion was second-hand and, thus, requires that the Chamber approach his evidence with caution.<sup>647</sup>

532. The Chamber also has concerns about the witness's testimony that he was coerced by a Gacaca court judge to plead guilty to having participated in attacks. He first denied that he had pleaded guilty. However, when confronted with a document bearing his signature that contained a confession to having participated in an attack, he acknowledged his signature but stated that the Gacaca court judge had forced him to sign it and that the judge was subsequently imprisoned.<sup>648</sup> The Chamber has significant reservations about this explanation.

<sup>645</sup> According to Witness BBQ, the Cerai School was composed of buildings and has a big inner courtyard. Buildings surround the courtyard and access to the Cerai School is through a guarded gate. T. 9 November 2009 pp. 71-72, 91-92. The Chamber therefore also has significant doubts that he heard Gatete speaking as he was hiding behind a hedge, in a banana field, outside the school premises. Additional doubt is raised by the testimony of Defence Witness LA127 who testified that the school consisted of three buildings and was surrounded by a fence and hedge of cypress trees, which was dense and over two metres tall. Beyond the fence were houses and banana plantations and opposite the school, was a primary school. From inside the Cerai School compound, it was not possible to see anything outside. T. 23 March 2010 pp. 5-11, 22-23.

<sup>646</sup> T. 10 November 2009 pp. 4 ("Q. Did you or do you know ... Jean-Baptiste Gatete? A. Yes. Q. Since when have you known him? What month and what year, if you can remember? A. I used to hear the name Gatete over Radio Rwanda before I got to know him. Q. When you say "before I got to know him", when did you get to know him? A. I saw him in Rugombe *cellule*, Rurenge *secteur*, at the rural and handcraft training centre known as CERAI, integrated rural and handcraft trading centre, CERAI. MADAM PRESIDENT: When was it? THE WITNESS: That was in 1994, in the month of April."), 7 ("THE WITNESS: "... Before he got to where we were, the man who was speaking said, "That is Gatete". MADAM PRESIDENT: Did you see him yourself? The man, not Gatete. THE WITNESS: I saw him because I was standing there. MADAM PRESIDENT: That was your first time? THE WITNESS: Yes, it was the first time I was seeing him. MADAM PRESIDENT: And did you see him afterwards? THE WITNESS: I did not see him again. MADAM PRESIDENT: Would you be able to identify him if you see him today? THE WITNESS: I don't know. I have a sight problem, Your Honours. I saw him a long time ago...."), 38 (Q. Thank you. I didn't understand your answer. So you knew he was no longer *bourgmestre*. You also said that you saw Gatete for the first time at the CERAI school in Rulenge *secteur*, is that true? A. That is correct."), 40 (Q. So you had no direct knowledge of Mr. Gatete's action, did you, before you met him? A. I heard about his actions, but I had still not seen him.").

<sup>647</sup> See for example, *Kalimanzira Appeal Judgement* paras. 96, 99.

<sup>648</sup> T. 10 November 2009 pp. 20-21 ("Q. And you did plead guilty to participating in attacks in your area, didn't you? A. That is not the case." After being confronted with the confession letter: "A. Yes, I recognise this document, but I am not the author of it.... The author of this document came to see me to ask me to sign it. But subsequently his strategy was unmasked, his manoeuvring was unmasked, and that author was thrown in jail. JUDGE MUTHOGA: And did you sign it when he came to you to sign it? THE WITNESS: Yes, I signed this document out of constraint. I was coerced to sign it. And that is why the person who got me to sign it was punished.... He was presiding judge of the Gacaca court at the level of the *secteur*. And in that capacity, he coerced certain persons to confess to having committed crimes and to ask for pardon for crimes they did not commit. JUDGE MUTHOGA: And is it in connection with that that he was thrown in jail? THE WITNESS: Yes. When he forced people to sign documents admitting to having committed offences, he got people to appear



533. Moreover, his brief evidence regarding when killings occurred was ambiguous and inconsistent. It is further unclear whether he witnessed any attacks or only heard about them.<sup>649</sup>

534. The Chamber has also considered the Defence evidence. However, ultimately, the Chamber finds the testimonies of both Prosecution Witnesses BBQ and AIV to be insufficient to support findings beyond reasonable doubt. Accordingly, it has not been established that in mid to late April 1994, Gatete instructed *Interahamwe* in Rulenge sector, in Rukira commune, to rape and kill Tutsi civilians, or that he ordered the killings of an unnamed Ugandan woman, Vedaste Kalisa, Ferdinand Sanane and his family, or a girl called Nzoyori. In light of these findings, the Chamber finds it unnecessary to address the Defence notice objections.<sup>650</sup>

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before the court he presided over, and he would ask them to pay him money and get them to sign documents without having effectively committed offences, and that is why he was thrown in jail.”), 22-25.

<sup>649</sup> Witness AIV stated that massacres in his area had started after the President’s death but had stopped a week before Gatete’s arrival. About a week after Gatete’s arrival, they resumed. The witness heard this from a woman he met on the road on 26 April. However, he later stated that he heard about attacks the morning after seeing Gatete at Cerai School. T. 10 November 2009 pp. 35-36, 42, 46.

<sup>650</sup> Defence Closing Brief paras. 927-932.



## 10. KILLING OF MULINDA, 12 APRIL 1994

### 10.1 Introduction

535. The Indictment alleges that, on about 12 April 1994, Gatete, Célestin Senkware and others shot and killed Mulinda, a refugee hiding in a swamp in Rutonde commune. Before and after the killing, Gatete and others patrolled the hills and valleys to search for and kill Tutsi civilians. The Prosecution relies on the testimony of Witness BBL.<sup>651</sup>

536. The Defence denies that Gatete participated in the killing of Mulinda and makes reference to the testimonies of Witnesses LA54 and LA56.<sup>652</sup>

### 10.2 Evidence

#### Prosecution Witness BBL

537. Witness BBL, a Tutsi, was an agronomist in 1994, living in Syogo sector, Kayonza commune. On the night of 11 April, he was at his cousin's house when *Interahamwe* attacked it in an attempt to kill the witness. At dawn on 12 April, he escaped and hid in the Nkamba marsh, located between Gashoki, Rutonde and Nkamba hills, between Kabarondo and Rutonde communes. Six other persons also hid in the marsh and a man named Mulinda, who the witness knew as a wealthy Tutsi from Nkamba sector in Kabarondo commune, arrived later. The witness and Mulinda exchanged a few words while hiding in the marsh. Mulinda explained that he was fleeing *Interahamwe* who wanted to kill him and had destroyed his house and looted his property.<sup>653</sup>

538. That day, between 2.00 and 3.00 p.m., Gatete arrived together with Senkware, Bahigi and Kanobana. They were pursuing Tutsis who had taken refuge in the marsh. Gatete found Mulinda, who stood up. He tried to escape but Gatete shot and killed him using an 80 centimetre-long sub-machine gun. At that time, the witness was about six metres from Mulinda, who was about eight metres from Gatete. There was nothing obstructing the witness's view of Gatete but Gatete did not see the witness. Had Gatete seen him, the witness would have been killed. That night, the witness heard the assailants talk about how Mulinda's arm had been cut off. The witness left the marsh on 15 April.<sup>654</sup>

#### Defence Witness LA54

539. In 1994, Witness LA54, a Tutsi, was a trader residing in Nkamba sector, Kabarondo commune. He knew Mulinda well and described him as a wealthy man who was a

<sup>651</sup> Indictment para. 37; Prosecution Closing Brief paras. 49, 492-518.

<sup>652</sup> Defence Closing Brief paras. 773-824; Closing Arguments, T. 8 November 2010 pp. 57-58.

<sup>653</sup> Prosecution Exhibit 13 (personal identification sheet); T. 3 November 2009 pp. 83-85; T. 4 November 2009 pp. 5, 7, 18-21, 23-25, 28-29. Part of the marsh was situated slightly further uphill where there were rice farms but Witness BBL hid in the lower area, which was not used for farming. T. 4 November 2009 p. 20. Mulinda arrived in the marsh at dawn on 12 April, after the witness, and the six other refugees arrived. T. 4 November 2009 pp. 18-19.

<sup>654</sup> T. 3 November 2009 pp. 83-85; T. 4 November 2009 pp. 22, 26 (see corrigendum), 31. Witness BBL named the persons hiding with him as Pierre Rwatangabo, Claver Kagabo, Dominique Ruvusapama, Paul Gakuba, and persons called David and Cyrus. T. 3 November 2009 p. 85.

responsible. From 7 April, Tutsis were being killed and the witness fled and hid in the bushes in Rutonde commune for several days.<sup>655</sup>

540. On 15 April, he was at the Bitare quarry located on a hill in Rutonde commune. At around 8.00 a.m. the following morning, 16 April, he went to look for food. Upon his return to the hill, he saw that Hutus had begun attacking the Tutsi refugees. Mulinda and a person called Kagabo were among the refugees who, at that point, numbered about 50. Among the assailants was a person called Muneza, who led the attack, and two others called Ibrahim and Nassoro. The attackers included eight armed gendarmes from Rwamagana.<sup>656</sup>

541. The attack ended between about 11.00 a.m. and 1.00 p.m. The witness learnt the same day that Mulinda had been hacked to death with machetes in Bitare, where his body was found. He heard that the perpetrators were Nassoro and Ibrahim. As a result, there were many victims, and the majority of the men who had sought refuge on the hill were killed.<sup>657</sup>

542. After the attack had ended, the survivors buried the dead, including Mulinda, at a location which is now the Rutonde memorial site. The witness, who was present at Mulinda's burial, saw his wounded body and noticed that part of his arm had been cut off. The witness also attended Kagabo's burial. Five other survivors attended Mulinda's burial as well as that of Kagabo.<sup>658</sup>

#### Defence Witness LA56

543. Witness LA56, a Tutsi, was a farmer and lived in Rutonde sector, Rutonde commune in 1994. She knew Mulinda, who was a wealthy Tutsi living in the Nkamba locality. She did not know Gatete or what he looked like.<sup>659</sup>

544. On 14 April, there was fighting at the border between Rutonde and Munyaga sectors. The following morning, 15 April, the witness fled with her children and about 5,000 other persons, including Hutus and Tutsis, to the Rwamagana gendarmerie. On their way, the group was intercepted by *Interahamwe* at Bitare, where there was a small hill with quarries. Many refugees were killed, while others spent that night in the banana plantation belonging to a person called Patrice. The witness had heard that Mulinda was among those who took refuge on Bitare hill on 15 April, although she did not see him in the large crowd.<sup>660</sup>

545. On 16 April, the witness saw Mulinda when the refugees went to the quarries to cross over to Rwamagana. Sometime between about 11.00 a.m. and 12.00 p.m., a group of attackers from Nkamba came to look for Mulinda. They could not find him, as he was

<sup>655</sup> Defence Exhibit 50 (personal identification sheet); T. 8 March 2010 pp. 5, 7-9, 23-24, 26.

<sup>656</sup> T. 8 March 2010 pp. 7, 10, 11 (there were "less than 50 Tutsis" and some Hutus), 12-13, 17. The last time he saw Mulinda was on the morning of 16 April. T. 8 March 2010 p. 13. The Chamber notes that the spelling of "Nassoro" varies in the evidence. The spelling used in this Judgement is the one which most commonly appears in the transcripts.

<sup>657</sup> T. 8 March 2010 pp. 12-17. Witness LA54 first said that the battle ended at 11.00 a.m., and later testified that it ended at 1.00 p.m. T. 8 March 2010 pp. 13, 15. He did not see the killing of Mulinda. T. 8 March 2010 p. 26. The witness later participated in Gacaca proceedings in which Nassoro and Ibrahim pleaded guilty to, and were sentenced for, the killing of Mulinda. T. 8 March 2010 pp. 21-23, 27.

<sup>658</sup> T. 8 March 2010 pp. 13-17, 19-20, 26; Defence Exhibit 51 (list of names).

<sup>659</sup> Defence Exhibit 94 (personal identification sheet); T. 22 March 2010 pp. 86-87, 89, 90-92, 94.

<sup>660</sup> T. 22 March 2010 pp. 90-92, 95, 98, 104. Witness LA56 later testified that she personally saw Mulinda on 15 April but did not talk to him. T. 22 March 2010 p. 104.



disguised in women's clothing and was carrying a baby on his back. The witness saw a man called Kabago killed instead, as he closely resembled Mulinda.<sup>661</sup>

546. At around 3.00 p.m., the attackers commenced an extensive assault on the refugees, using traditional weapons and firearms. A man named Saïdi Karangwa stopped the attackers because Hutus were also being killed. The assailants separated the Hutus and Twa from the others, but by the time they finished this process at about 4.00 p.m., it was too late to continue the attack. The assailants then told the *responsables de cellules* to take away people from their respective *cellules*. Women were also allowed to leave. Before the witness escaped, she saw Mulinda for the last time. She later heard from a survivor called Gasana that Mulinda had been killed along with several other men. He further said that persons from Nkamba sector cut off his hand as proof that he had been killed. Those who were killed during the attack were exhumed and re-buried at the Bitare memorial site. Mulinda's name, along with many others, appears on the memorial.<sup>662</sup>

### 10.3 Deliberations

547. The Indictment alleges that, on about 12 April 1994, Gatete, Senkware and others shot and killed Mulinda, a refugee hiding in a swamp in Rutonde commune. Before and after the killing, Gatete and others patrolled the hills and valleys to search for and kill Tutsi civilians. The Prosecution relies on the first-hand account of Witness BBL to establish that on 12 April, Gatete shot Mulinda who was among Tutsi refugees hiding in the Nkamba marsh in Rutonde commune.<sup>663</sup> Through Witnesses LA54 and LA56, the Defence denies that Gatete killed Mulinda. Rather, he was killed on 16 April by Hutu assailants Nassoro and Ibrahim in Rutonde commune, at or near some quarries on a hill in the Bitare area.<sup>664</sup>

548. The evidence consistently establishes that, around mid-April 1994, Mulinda, a wealthy Tutsi from Nkamba sector in Kabarondo commune, was killed in Rutonde commune following an attack by Hutu assailants on Tutsi refugees.<sup>665</sup> It further suggests that following the killing, Mulinda's body was mutilated by assailants as they cut off his arm or hand as proof that he had been killed.<sup>666</sup> The Chamber proceeds to consider the evidence in light of the allegations concerning Gatete's role in the killing.

549. Turning first to the Prosecution evidence, the Chamber has no doubt about Witness BBL's ability to identify Gatete in 1994.<sup>667</sup> The Chamber is also satisfied with his ability to

<sup>661</sup> T. 22 March 2010 pp. 91-92, 104. The attackers were looking for Mulinda because he was wealthy and "not on good terms with these people who were very often put in prison". T. 22 March 2010 p. 92.

<sup>662</sup> T. 22 March 2010 pp. 91-93, 97, 103

<sup>663</sup> Indictment para. 37; Prosecution Closing Brief paras. 49, 492-518.

<sup>664</sup> Defence Closing Brief paras. 773-824; Closing Arguments, T. 8 November 2010 pp. 57-58.

<sup>665</sup> Witness BBL, T. 3 November 2009 p. 83; T. 4 November 2009 p. 19; Witness LA54, T. 8 March 2010 pp. 5, 7, 10-13, 26; Witness LA56, T. 22 March 2010 pp. 87, 92.

<sup>666</sup> Witness BBL, T. 4 November 2009 pp. 25-26, 31; Witness LA54, T.8 March pp. 19, 26; Witness LA56, T. 22 March 2009 p. 92.

<sup>667</sup> Witness BBL testified that he saw Gatete three times in August 1993 in Kayonza commune, namely, at a meeting, a petrol station, and at the house of Kayonza commune *Bourgmestre* Senkware. T. 3 November 2009 p. 81.

recognise Mulinda.<sup>668</sup> As noted above, his description of Mulinda as a wealthy Tutsi from Nkamba sector is also consistent with the testimonies of Defence Witnesses LA54 and LA56.

550. The Chamber next considers points raised by the Defence to cast doubt on Witness BBL's impartiality.<sup>669</sup> In particular, the Defence notes that he was a police officer employed by the current regime and assumed this post in July 1994, prior to the end of the war.<sup>670</sup> The Chamber considers that this point does not necessarily render his testimony unreliable or partial. Furthermore, the Chamber has considered the fact that his statement to Tribunal investigators of May 1998 was recorded at a commune office in the presence of the *bourgmestre* who was the witness's superior. However, that statement is not part of the evidentiary record and this point does not necessarily render his sworn testimony in this proceeding questionable.<sup>671</sup>

551. The Chamber, however, has reservations about relying on Witness BBL's testimony for the purposes of supporting findings beyond reasonable doubt. In sum, it did not find his account sufficiently compelling. His brief evidence suggests he was extremely close to Gatete and yet was not discovered, despite his testimony that the Accused was searching for Tutsis.<sup>672</sup> Moreover, he first stated that Gatete found Mulinda, who then stood up and was shot.<sup>673</sup> However, he later testified that Mulinda was killed as he tried to leave the marsh and go to Rutonde hill.<sup>674</sup>

552. The Chamber has also considered the Defence evidence but finds it of limited probative value, given that neither Witnesses LA54 nor LA56 witnessed the killing of Mulinda. However, ultimately, the Chamber finds Witness BBL's uncorroborated testimony insufficient to find beyond reasonable doubt that, on about 12 April 1994, Gatete, with Célestin Senkware and others, shot and killed Mulinda in Rutonde commune. Nor is it established that before or after the killing, Gatete patrolled the hills and valleys to search for and kill Tutsi civilians.

<sup>668</sup> T. 3 November 2009 pp. 83-85. Mulinda was a neighbour of one of Witness BBL's relatives. T. 4 November 2009 p. 19; Defence Exhibit 10 (name and residence of Witness BBL's relative).

<sup>669</sup> Defence Closing Brief paras 777, 809, 811-824.

<sup>670</sup> Defence Closing Brief paras. 814-816; T. 4 November 2009 pp. 5-9, 27. Witness BBL confirmed that he gave a previous statement to Tribunal investigators in 1998 with approval from the commune administration and in the presence of the *bourgmestre*. T. 4 November 2009 p. 7. He also admitted that he had links with the current Rwandan government when his statement against Gatete was taken because, from July 1994 to 1999, he was a policeman. T. 4 November 2009 pp. 5-6, 32.

<sup>671</sup> T. 4 November 2009 pp. 7, 9, 27-28, 31.

<sup>672</sup> T. 3 November 2009 p. 84.

<sup>673</sup> T. 3 November 2009 pp. 83-84.

<sup>674</sup> T. 3 November 2009 p. 85; T. 4 November 2009 p. 22.

## CHAPTER III: LEGAL FINDINGS

553. The Prosecution has charged Gatete with genocide (Count I) or in the alternative, complicity in genocide (Count II), conspiracy to commit genocide (Count III), and crimes against humanity (extermination, murder, and rape under Counts IV to VI, respectively) pursuant to Article 6 (1) of the Statute.

554. In its factual findings, the Chamber has found that at a gathering in Rwankuba sector, Murambi commune, Gatete instructed *Interahamwe* to kill Tutsis and that Tutsis were killed as a result (II.2.3). It has also concluded that Gatete was involved in the killing of Tutsis at Kiziguro parish (II.5.3.i) and that he distributed weapons, as well as issued instructions to kill, at Mukarange parish (II.6.3). The Chamber next considers the legal consequences of Gatete's role in these events. It need not address the charge of rape as a crime against humanity (Count VI), as none of the allegations in support of this count were proven.

### 1. CRIMINAL RESPONSIBILITY

#### 1.1 Introduction

555. Article 6 (1) of the Statute sets out the forms of individual criminal responsibility applicable to the crimes falling within the Tribunal's jurisdiction, namely planning, instigating, ordering, committing as well as aiding and abetting.

556. The Indictment charges Gatete with all the forms of individual criminal responsibility set out in Article 6 (1) of the Statute. The Prosecution also seeks to establish Gatete's criminal liability for the above acts based on the theory of joint criminal enterprise.<sup>675</sup> Before setting forth the legal principles applicable to the modes of liability, the Chamber first considers whether each form, as relevant to its findings, is sufficiently pleaded.

#### 1.2 Notice

557. The Appeals Chamber has held that, where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or the "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.<sup>676</sup> The Prosecution should only plead those modes of responsibility on which it intends to rely.<sup>677</sup> It has been discouraged from simply restating Article 6 (1) of the Statute,

<sup>675</sup> Indictment paras. 7-9; Prosecution Pre-Trial Brief paras. 16-23, 44, 46; Prosecution Closing Brief paras. 45, 105-106, 133, 145-152, 228, 230.

<sup>676</sup> *Ntagerura et al.* Appeal Judgement para. 25.

<sup>677</sup> *Kvočka et al.* Appeal Judgement para. 41; *Rukundo* Appeal Judgement para. 30, citing *Semanza* Appeal Judgement para. 357; *Blagoje Simić* Appeal Judgement para. 21; *Blaskić* Appeal Judgement para. 215. See also *Ntakirutimana* Appeal Judgement para. 473; *Aleksovski* Appeal Judgement para. 171, n. 319; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the form of the Amended Indictment, 20 February 2001 ("*Brđanin and Talić* Decision of 20 February 2001") para. 10; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000 ("*Krnojelac* Decision of 11 February 2000") para. 60.



unless it intends to rely on all of the forms of individual criminal responsibility contained therein, because of the ambiguity that this causes.<sup>678</sup>

558. The Appeals Chamber has also held that, where an individual count of the indictment does not indicate precisely the form of responsibility pleaded, an accused might have received clear and timely notice, for instance, in other paragraphs of the indictment. Thus, the law requires that the indictment be read as a whole when determining whether there is notice of the relevant modes of liability applicable to the particulars pleaded in it.<sup>679</sup> Where it is unclear from the indictment, which form or forms of responsibility are pleaded, the Prosecution must identify precisely the mode or modes of liability alleged for each count as soon as possible, such as, through its pre-trial brief.<sup>680</sup>

559. Recently, in *Rukundo*, the Appeals Chamber held that chapeau paragraphs contained in the indictment, which included a verbatim reproduction of Article 6 (1) of the Statute, were simply meant as an introduction to the more specific paragraphs under each count which expressly identified the relevant modes of liability relied upon by the Prosecution.<sup>681</sup> It overturned the Trial Chamber's finding of commission, where the relevant paragraph of particulars pleaded only ordering, instigating and aiding and abetting. The Chamber finds it instructive to look at some of the factors, considered by the Appeals Chamber, in reaching its conclusion.

560. First, the Appeals Chamber noted that the *Rukundo* Trial Chamber found that the majority of the paragraphs setting out the specific factual allegations stated only that *Rukundo* was charged with ordering, instigating and aiding and abetting the killing of Tutsis. The *Rukundo* Trial Chamber further found that the reference to "commission" in the two paragraphs relating to individual criminal responsibility was "particularly ambiguous when read in light of the particulars allegedly giving rise to individual criminal responsibility". These paragraphs referred only to *Rukundo*'s mode of participation as "ordering, instigating or aiding and abetting."<sup>682</sup> Notwithstanding these observations by the Trial Chamber, it proceeded to convict *Rukundo* of committing the relevant crimes.

561. Moreover, the Appeals Chamber considered that the chapeau paragraphs were merely an introduction to the "more specific paragraphs contained in each Count."<sup>683</sup> This Chamber notes that the paragraphs of particulars in the *Rukundo* indictment, for the most part, clearly

<sup>678</sup> *Rukundo* Appeal Judgement para. 30, citing *Semanza* Appeal Judgement para. 357; *Ntakirutimana* Appeal Judgement para. 473; *Krnjelac* Decision of 11 February 2000 para. 60; *Aleksovski* Appeal Judgement para. 171, n. 319; *Delalić et al.* Appeal Judgement para. 351; *Brdanin and Talić* Decision of 20 February 2001 para. 10.

<sup>679</sup> *Semanza* Appeal Judgement paras. 259, 358; *Ntakirutimana* Appeal Judgement para. 473; *Aleksovski* Appeal Judgement para. 171, n. 319. See also *Gacumbitsi* Appeal Judgement paras. 120-124.

<sup>680</sup> *Gacumbitsi* Appeal Judgement paras. 161, 163, citing *Krnjelac* Appeal Judgement para. 138; and *Ntakirutimana* Appeal Judgement para. 475

<sup>681</sup> *Rukundo* Appeal Judgement paras. 34-35. The Appeals Chamber found, with respect to specific allegations, the individual paragraph of particulars alleged only that *Rukundo* had "ordered, instigated, or aided and abetted", and it was, therefore, clear that he was not also accused of "committing". *Id.* para. 35.

<sup>682</sup> *Rukundo* Appeal Judgement para. 32, citing *Rukundo* Trial Judgement para. 27.

<sup>683</sup> *Rukundo* Appeal Judgement para. 33. Emphasis added.

identified the mode or modes of liability relied upon, which, notably, were limited in each case to either instigating, ordering or aiding and abetting.<sup>684</sup>

562. The Appeals Chamber further noted that the three chapeau paragraphs of the *Rukundo* indictment stated that, “[w]ith respect to the commission of th[e] crime[s]”, Rukundo “ordered, instigated, or aided and abetted” soldiers, armed civilians and *Interahamwe* “to do the acts” described in the indictment.<sup>685</sup> In this Chamber’s view, the chapeau paragraphs in the *Rukundo* indictment were ambiguous with respect to the pleading of commission. Rather, they tended to suggest that the modes of liability being pursued were limited to ordering, instigating or aiding and abetting.

563. Lastly, the Chamber notes the Appeals Chamber’s conclusion that, even if the failure to plead “committing” with respect to the relevant events could have been cured, a review of the Prosecution’s opening statement revealed that “committing” was not part of its case at the commencement of the trial. Rather, the Prosecution submitted, in its opening statement, that Rukundo’s role was “a subtle one involving instigation [and] aiding and abetting”.<sup>686</sup>

564. The Chamber also finds it instructive to consider Appeals Chamber jurisprudence concerning indictments where, unlike the *Rukundo* indictment, an individual count did not indicate precisely the form of responsibility pleaded. In *Semanza*, the Appeals Chamber found that the accused was on sufficient notice that he was being charged with “ordering”, although the relevant indictment paragraph pleading the material facts in support of it did not expressly allege “ordering”. The Appeals Chamber noted that the chapeau paragraph alleged all forms of responsibility listed in Article 6 (1) of the Statute. Furthermore, the material facts pleaded in the relevant indictment paragraph, as well as other paragraphs showing the accused’s “prominent” role in the attacks and his superior status *vis-à-vis* the attackers, when read together, provided the Defence with sufficient notice that “ordering” was being pursued.<sup>687</sup>

565. In *Gacumbitsi*, the scenario was slightly different, in that the relevant paragraph of particulars did specify a mode of liability, namely, that the accused had “ordered” killings. However, the Appeals Chamber held that the Trial Chamber erred in not considering aiding and abetting as a relevant form of liability, as the relevant paragraph also pleaded material facts sufficient to sustain an aiding and abetting conviction. The Appeals Chamber highlighted that the chapeau paragraph alleged all forms of responsibility listed in Article 6 (1) of the Statute, including aiding and abetting. It further noted that other paragraphs provided context that would have also put the accused on notice that, if the facts pleaded in the relevant indictment were proven, *Gacumbitsi* clearly would have aided and abetted

<sup>684</sup> See *Rukundo*, Amended Indictment Filed Pursuant to the Decision of Trial Chamber II of 28 September 2006, 6 October 2006 paras. B (iii), 10 (ii), (iii), (iv), 12-13, 15, 17, 19, 22-23, 25 (ii), (iii), (iv), 27, 29.

<sup>685</sup> *Rukundo* Appeal Judgement para. 34.

<sup>686</sup> *Rukundo* Appeal Judgement para. 37, citing *Rukundo*, T. 15 November 2006 pp. 3 (“Your Honours, through evidence we will establish the following: That the role of Emmanuel Rukundo was a subtle one involving instigation, aiding and abetting the soldiers, *Interahamwe* and armed civilians who physically committed the crimes that are charged in this indictment.”), 3-5; *Rukundo*, T. 20 February 2008 p. 5 (“Your Honours, against this backdrop, it is easy to understand the role that Emmanuel Rukundo played during the genocide in 1994. As we represented to Your Honours during our opening statement, the role of Emmanuel Rukundo was a subtle one, involving instigation and aiding and abetting soldiers, the *Interahamwe* and armed civilians who physically killed members of the Tutsi ethnic group.”).

<sup>687</sup> *Ntawukulilyayo* Trial Judgement para. 404, citing *Semanza* Appeal Judgement paras. 356-358.

killings. When read together, the Appeals Chamber considered that the indictment provided sufficient notice that the Prosecution was also pursuing aiding and abetting for the relevant crime.<sup>688</sup>

566. It is worth noting that the indictments in *Semanza* and *Gacumbitsi* did not expressly plead the relevant modes of liability in every paragraph of particular, as they largely did in *Rukundo*.<sup>689</sup>

567. In light of the above principles, the Chamber turns to consider the Indictment in the present case. Paragraph 9 of the Indictment, which is a chapeau paragraph, clearly sets out all the forms of individual criminal responsibility contained in Article 6 (1) of the Statute, and also alleges that Gatete participated in a joint criminal enterprise. In the Chamber's view, paragraph 9 unequivocally indicates the Prosecution's intention to rely on all modes of liability under Article 6 (1), including commission through a joint criminal enterprise.<sup>690</sup> Accordingly, unlike the *Rukundo* indictment, where the chapeau paragraphs were found to be ambiguous with respect to the pleading of commission,<sup>691</sup> the Indictment in the present case explicitly states that all modes of liability are relied upon by the Prosecution.

568. Turning to the specific paragraphs of particulars, the Chamber notes that, in contrast to the *Rukundo* indictment, where the majority of paragraphs under each count expressly pleaded instigating, ordering or aiding and abetting, the paragraphs of particulars in the *Gatete* Indictment do not all identify the relevant mode or modes of liability. While some paragraphs, detailing the factual basis for each count, refer to ordering or instigating, only one refers to planning, none specifically allege committing or aiding and abetting, and others are silent with respect to the mode or modes of liability relied upon.<sup>692</sup> Moreover, where

<sup>688</sup> *Ntawukulilyayo* Trial Judgement para. 405, citing *Gacumbitsi* Appeal Judgement paras. 122-124.

<sup>689</sup> See *Semanza*, Third Amended Indictment, 12 October 1999 para. 3.15; *Gacumbitsi*, Indictment, 20 June 2001 paras. 4, 7, 9, 10, 15, 20, 22, 24, 35; *Rukundo*, Amended Indictment Filed Pursuant to the Decision of Trial Chamber II of 28 September 2006, 6 October 2006 paras. B (iii), 10 (ii), (iii), (iv), 12-13, 15, 17, 19, 22-23, 25 (ii), (iii), (iv), 27, 29.

<sup>690</sup> Indictment para. 9 ("The accused, Jean-Baptiste Gatete, is individually responsible for the crimes alleged against him in this indictment under Articles 2, 3, and 6 of the Statute. The accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. In addition, the accused participated in a joint criminal enterprise.... The crimes enumerated within this Indictment were within the object of the joint criminal enterprise. Alternatively, the crimes enumerated were natural and foreseeable consequences of the joint criminal enterprise...."). Paragraph 7 of the Indictment provides further details with respect to the participants and purpose of the joint criminal enterprise.

<sup>691</sup> *Rukundo* Appeal Judgement para. 34.

<sup>692</sup> Indictment paras. 13 ("Gatete assembled *Interahamwe* and planned and participated in the sealing off of all roads and exits throughout Byumba..." and "ordered" killings at roadblocks), 14 (meetings were held for the purposes of "distributing weapons and instigating civilian militias to exterminate Tutsi civilians..."), 15 (Gatete "ordered" *Interahamwe*), 16 (attacks were "instigated" by Gatete who "commanded" killings), 17 (Gatete "instigated the *Interahamwe*..., commanding and ordering them to kill Tutsi"), 18 (Gatete "instigated and ordered civilians to hunt down and exterminate Tutsi"), 19 (Gatete "ordered, supervised and participated in the killings and rapes" at Kiziguro parish), 20 (Gatete "instigated, commanded and facilitated" and "ordered"), 21 (no mode of liability is pleaded but it is alleged that Gatete held a meeting with *Bourgmestre* Mpambara who then ordered Tutsis to leave Rukara parish), 22 (no mode of liability is pleaded but it is alleged that Gatete "transported" soldiers and *Interahamwe*, and together they "attacked" Mukarange parish), 23 (Gatete "instigated" *Interahamwe* and "commanded" rapes and killings), 23A (Gatete "ordered" the segregation of Tutsi, kicked Gatete, and "ordered" *Interahamwe* to kill him), 24 (Gatete "order[ed]" and "instigat[ed]" and provided vehicles to facilitate attacks), 25 (Gatete "ordered" *Interahamwe* to rape and kill Tutsis), 26 (no mode of liability is pleaded but it is alleged that militia, briefed by Gatete, killed 400 people), 27 (no mode of liability

some paragraphs mention a mode of liability, such as ordering, they also contain material facts which, if proven, could sustain a conviction based on other forms of individual criminal responsibility, similar to the scenario addressed by the Appeals Chamber in *Gacumbitsi*.<sup>693</sup>

569. In the Chamber's view, it is clear from the Indictment, when read as a whole, that the Prosecution was not limiting itself to a form or forms of liability expressly mentioned in certain paragraphs of particulars but, where applicable, intended to rely on all forms of Article 6 (1) responsibility as pleaded in chapeau paragraph 9, as well as other chapeau paragraphs dealing with the separate crimes.<sup>694</sup> Indeed, this is confirmed by the Prosecution's post-Indictment submissions. Its Pre-Trial Brief clearly indicated that it was relying on all forms of individual criminal responsibility under Article 6 (1) of the Statute, and specifically, that it alleged Gatete's participation in a joint criminal enterprise, with respect to all of the Counts in the Indictment, including all three of the proven allegations.<sup>695</sup>

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is pleaded but it is alleged that Gatete and others convened a meeting), 28 (no mode of liability is pleaded but it is alleged that Gatete attended a security meeting), 36 (Gatete "ordered" police and *Interahamwe* to kill), 37 (no mode of liability is specified but it is alleged that Gatete and others "killed" Mulinda), 38 (Gatete "ordered" *Interahamwe* to kill Butare), 40 (Gatete "facilitated" the transportation of *Interahamwe*, "commanded", and "incited" them to rape but no mode of liability is expressly pleaded), 41 (no mode of liability is pleaded but it is alleged that Gatete "transported" armed soldiers and "attacked" Mukarange parish), 42 (Gatete "commanded" *Interahamwe*), 43 (Gatete addressed *Interahamwe* "ordering" and "instigating" them to rape and exterminate).

<sup>693</sup> See, for example, Indictment paras. 13 (alleges that Gatete "planned" and "ordered" but also that he "assembled" *Interahamwe*, "participated in sealing off of roads", provided lists of Tutsis to be stopped at roadblocks), 14 (refers to "instigating" but also alleges that Gatete held meetings to "distribute weapons"), 15 (alleges "ordering" but also that Gatete "facilitated the transport of *Interahamwe*" and was present during killings), 16 (alleges that Gatete "instigated" killings but also that he "commanded" killings), 19 (alleges that Gatete "ordered" but also specifies that he "supervised and participated" in killings and rapes at Kiziguro parish), 23 (Gatete "instigated" *Interahamwe* and "commanded" rapes and killings), 24 (Gatete ordered and instigated and provided vehicles to facilitate attacks).

<sup>694</sup> See also Indictment paras. 10-11 (genocide and complicity in genocide), 30 (extermination as a crime against humanity), 33 (murder as a crime against humanity), 39 (rape as a crime against humanity).

<sup>695</sup> Prosecution Pre-Trial Brief para. 7 ("...the Trial Chamber is entitled to conclude that any one or more of the modes of participation enumerated in Article 6 (1) apply.... The Prosecutor thus puts the Defence on notice through the pleading of Article 6 (1) that any one or more of the modes of direct responsibility may be found to apply."). Generally, see also paras. 8-25 (setting out all the modes of liability under Article 6 (1), and specifically with respect to a joint criminal enterprise, see paras. 18 ("It is the Prosecutor's case that Gatete's actions, as outlined under all of the Counts in the Indictment, were carried out in furtherance of a JCE....), 19 ("The members of this JCE shared the common purpose, object, or design of destroying the Tutsi ethnic group, by killing, maiming, and raping members of that group as alleged in Counts 1-3 of the Indictment."). With respect to the proven allegations, see Prosecution Pre-Trial Brief paras. 33 (referring to the meeting in Rwankuba under the heading "planning"), 37-38 (referring to the meeting in Rwankuba sector under the heading "instigating, ordering, committing, or otherwise aiding and abetting in the genocide"), 41 (referring to the Kiziguro parish massacre under the heading "instigating, ordering, committing or otherwise aiding and abetting in the genocide"), 42 (alleging "planning, instigating, ordering and committing the Kiziguro massacre"), 46 (referring to the Mukarange parish massacre under the heading "instigating, ordering, committing or otherwise aiding and abetting in the genocide"). The Chamber notes that the Prosecution does not expressly refer to "planning" as a mode of liability with respect to Gatete's involvement in the Mukarange parish massacre. Nevertheless, upon reading the Indictment as a whole, in particular taking into consideration paragraphs 9 to 11, and when considered in light of the Prosecution's post-Indictment submissions, the Chamber considers that the Defence was put on notice that planning was also part of the Prosecution's case against Gatete with respect to the Mukarange parish massacre. In this regard, see Indictment paras. 9 (referring to all modes of liability under Article 6 (1), including planning), 12 (charging Gatete with conspiracy to commit genocide and naming *Bourgestre* Senkware, who was with Gatete at Mukarange parish, as a co-conspirator), 22 (the

570. Moreover, while the Prosecution’s opening submissions at the commencement of its case clearly indicated that it considered commission to be the most appropriate mode of liability applicable to all the crimes charged, it did not limit itself to this form of individual responsibility.<sup>696</sup> Similarly, in its Closing Brief, the Prosecution relies on all modes of liability, including commission through a joint criminal enterprise, with respect to all of the Counts in the Indictment.<sup>697</sup>

571. Finally, the Chamber notes that the Defence did not raise any notice objections with respect to the form or forms of individual criminal responsibility relied upon by the Prosecution.<sup>698</sup>

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material facts pleaded, namely, that Gatete was with Senkware, transported armed soldiers, and together they attacked the parish, suggest that a level of planning would have been required); Prosecution Pre-Trial Brief, Annexed Witness Summary for Witness BVR (Gatete, Senkware, Gashumba, Uwimana and others attended a meeting at Kanyangoga’s house where it was decided that Mukarange parish should be attacked); Prosecution Closing Brief para. 33 (referring to the Mukarange parish attack under the heading “planning”).

<sup>696</sup> T. 20 October 2009 pp. 3 (“Gatete ... stands charged with six counts: ..., all arising from culpable acts we allege he committed in concert with others as part of a joint criminal enterprise....”), 5 (“We shall ... be asking you to hold the Accused individually responsible, pursuant to Article 6 (1), for committing the crimes charged. And permit me at this stage to underscore the mode of committing under Article 6 (1) of the Statute, which we submit should be reserved for the final verdict in respect of the counts charged, as it best captures the criminal culpability of the Accused.”), 6 (“As alleged in the Gatete indictment and further elaborated in the pre-trial brief, we will, in view of the facts we’ve proved at trial and on the basis of the jurisprudence of the tribunals, be asking this Chamber to find the Accused guilty of committing the crimes on account of his acts of planning, ordering, instigating or otherwise aiding and abetting their commission in furtherance of the criminal enterprise with shared intent, i.e., shared intent with the physical perpetrators of these crimes.... As was rightly held in the Gacumbitsi appeal judgement, ..., the findings of planning, ordering and instigating by the Trial Chamber in that case did not fully capture the criminal responsibility of the Accused, hence, the Appeals Chamber’s finding of committing, under Article 6 (1). And we submit on that score, ..., that the cumulative conduct of the Accused Gatete in the massacres I’ve just referred to is best characterized as nothing other than committing.”). The Chamber notes that the Prosecution relies on the expansive definition of commission under Article 6 (1), as articulated in *Gacumbitsi* and *Seromba* (see *Gacumbitsi* Appeal Judgement para. 60; *Seromba* Appeal Judgement para. 161), as well as commission through a joint criminal enterprise, with respect to all of the Counts in the Indictment.

<sup>697</sup> Prosecution Closing Brief paras. 133 (“While primarily relying on the basic form of Joint Criminal Enterprise ... to prove that Gatete is responsible for having committed the crimes charged, this does not preclude the Prosecutor from relying on additional modes of Article 6 (1) responsibility where the facts support other modes, it being understood that the Chamber has the discretion to elect which mode best characterises the culpability of the Accused.”), 138 (“...notwithstanding the Prosecution’s theory of Gatete’s mode of responsibility (or ‘participation’), the Trial Chamber is entitled to conclude that any one or more of the modes of participation enumerated in Article 6 (1) apply and, consequently, to find Gatete guilty of that particular form of participation. The Defence has previously been placed on notice through the pleading of Article 6 (1) that any one or more of the modes of direct responsibility may be found to apply.”), 139-147 (setting out the Article 6 (1) modes of liability). With respect to the proven allegations, see paras. 31 (referring to the Rwankuba sector meeting under the heading “planning”), 32 (referring to a meeting held for the purposes of planning the Mukarange parish massacre, under the heading “planning”), 38 (referring to the Rwankuba sector meeting under the heading “instigating, ordering, committing or otherwise aiding and abetting in the genocide”), 41 (referring to the Kiziguro parish massacre under the heading “instigating, ordering, committing or otherwise aiding and abetting in the genocide”), 42 (alleging planning, instigating, ordering, and committing with respect to the Kiziguro parish massacre), 43 (referring to the Mukarange parish massacre under the heading “instigating, ordering, committing or otherwise aiding and abetting in the genocide” and providing details of the joint criminal enterprise).

<sup>698</sup> See Pre-Defence Brief; T. 20 October 2009 pp. 7-12; Closing Arguments, T. 8 November 2010 pp. 39-63. The Chamber notes the Defence objection with respect to the pleading of “other unknown participants” of the



572. In sum, the Chamber concludes that the Indictment and the Prosecution's post-Indictment submissions have provided timely, clear and consistent notice that it would be relying on all modes of liability, including commission through a joint criminal enterprise, with respect to all of the Counts in the Indictment. Accordingly, the Chamber considers all forms of individual criminal responsibility under Article 6 (1), where relevant, in its legal findings.

### 1.3 Law

573. "Planning" requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.<sup>699</sup> It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.<sup>700</sup> The *mens rea* for this mode of responsibility entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.<sup>701</sup>

574. "Instigating" implies prompting another person to commit an offence.<sup>702</sup> It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>703</sup> The *mens rea* for this mode of responsibility is intent to instigate another person to commit a crime or at a minimum, awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.<sup>704</sup>

575. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator need exist. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime pursuant to the accused's order. The authority creating the kind of relationship envisaged under Article 6 (1) of the Statute for ordering may be informal or of a purely temporary nature.<sup>705</sup>

576. The Appeals Chamber has held that commission covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law.<sup>706</sup> "Committing" has also been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended.<sup>707</sup> The Prosecution has

alleged joint criminal enterprise. The Chamber, however, does not make any findings with respect to such participants.

<sup>699</sup> *Nahimana et al.* Appeal Judgement para 479, citing *Kordić and Čerkez* Appeal Judgement para. 26.

<sup>700</sup> *Nahimana et al.* Appeal Judgement para. 479, citing *Kordić and Čerkez* Appeal Judgement para. 26.

<sup>701</sup> *Nahimana et al.* Appeal Judgement para. 479, citing *Kordić and Čerkez* Appeal Judgement paras. 29, 31.

<sup>702</sup> *Nahimana et al.* Appeal Judgement para. 480, citing *Ndindabahizi* Appeal Judgement para. 117; *Kordić and Čerkez* Appeal Judgement para. 27.

<sup>703</sup> *Nahimana et al.* Appeal Judgement para. 480, citing *Gacumbitsi* Appeal Judgement para. 129; *Kordić and Čerkez* Appeal Judgement para. 27.

<sup>704</sup> *Nahimana et al.* Appeal Judgement para. 480, citing *Kordić and Čerkez* Appeal Judgement paras. 29, 32.

<sup>705</sup> *Bagosora et al.* Trial Judgement para. 2008, citing *Semanza* Appeal Judgement paras. 361, 363.

<sup>706</sup> *Nahimana et al.* Appeal Judgement para. 478.

<sup>707</sup> *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement paras. 82-83; *Ntakirutimana* Appeal Judgement paras. 463-465; *Vasiljević* Appeal Judgement paras. 96-99; *Krnojelac* Appeal Judgement para. 30. See also *Nahimana et al.* Appeal Judgement para. 478; *Brdanin* Appeal Judgement para. 364.

indicated that it is only pursuing the basic and extended forms of joint criminal enterprise.<sup>708</sup> As discussed in its legal findings, the Chamber finds the basic form to be relevant in this case.

577. According to settled jurisprudence, the required *actus reus* for each form of joint criminal enterprise comprises three elements.<sup>709</sup> First, a plurality of persons is required. They need not be organised in a military, political or administrative structure. Second, there must be a common purpose which amounts to or involves the commission of a crime provided for in the Statute. There is no necessity for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is necessary, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose. Although an accused's contribution to a joint criminal enterprise need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is found to be responsible.<sup>710</sup>

578. The required *mens rea* for each form of joint criminal enterprise varies. The basic form requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.<sup>711</sup> Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.<sup>712</sup>

579. The Appeals Chamber has explained that an aider and abetter carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on its commission.<sup>713</sup> The *actus reus* need not serve as condition precedent for the crime and may occur before, during, or after the principal

<sup>708</sup> Indictment para. 9; Prosecution Pre-Trial Brief para. 17; Prosecution Closing Brief para. 22. The Prosecution submits that Gatete's actions, as outlined under all the Counts in the Indictment, were carried out in furtherance of a joint criminal enterprise. See Prosecution Pre-Trial Brief para. 18.

<sup>709</sup> *Simba* Trial Judgement para. 387, citing *Kvočka et al.* Appeal Judgement para. 96; *Ntakirutimana* Appeal Judgement para. 466; *Vasiljević* Appeal Judgement para. 100; *Krnojelac* Appeal Judgement para. 31. See also *Brđanin* Appeal Judgement para. 364.

<sup>710</sup> *Simba* Appeal Judgement para. 303, citing *Brđanin* Appeal Judgement para. 430. See also *Kvočka et al.* Appeal Judgement para. 90 ("Where the aider and abettor only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator."); See also *Vasiljević* Appeal Judgement para. 102; *Tadić* Appeal Judgement para. 229.

<sup>711</sup> *Simba* Trial Judgement para. 388, citing *Ntakirutimana* Appeal Judgement para. 467; *Vasiljević* Appeal Judgement para. 101; *Krnojelac* Appeal Judgement para. 32.

<sup>712</sup> *Simba* Trial Judgement para. 388, citing *Kvočka et al.* Appeal Judgement paras. 109-110.

<sup>713</sup> *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 85; *Blaškić* Appeal Judgement paras. 45-46; *Vasiljević* Appeal Judgement para. 102; *Ntagerura et al.* Appeal Judgement para. 370.

crime has been perpetrated.<sup>714</sup> The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.<sup>715</sup> In cases of specific intent crimes such as persecution or genocide, the aider and abetter must know of the principal perpetrator's specific intent.<sup>716</sup>

580. The Chamber will assess these forms of criminal responsibility where relevant in its legal findings.

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<sup>714</sup> *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Blaškić* Appeal Judgement para. 48; *Simić* Appeal Judgement para. 85; *Ntagerura et al.* Appeal Judgement para. 372.

<sup>715</sup> *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 86; *Vasiljević* Appeal Judgement para. 102; *Blaškić* Appeal Judgement para. 46; *Ntagerura et al.* Appeal Judgement para. 370.

<sup>716</sup> *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127.

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## 2. GENOCIDE

### 2.1 Introduction

581. Count I of the Indictment charges Gatete with genocide under Article 2 (3)(a) of the Statute.

### 2.2 Law

582. To find an accused guilty of the crime of genocide, it must be established that the accused committed any one of the enumerated acts in Article 2 (2) of the Statute 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.<sup>717</sup> Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.<sup>718</sup> 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>719</sup>

583. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that can lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.<sup>720</sup>

584. The Prosecution charges Gatete with killing and causing serious bodily or mental harm to members of the Tutsi group. The Chamber has taken judicial notice of the fact that the Tutsi ethnicity is a protected group.<sup>721</sup> Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.<sup>722</sup> The Appeals Chamber has noted that the term "serious bodily or mental harm" is not defined in

<sup>717</sup> *Bagosora et al.* Trial Judgement para. 2115, citing *Nahimana et al.* Appeal Judgement paras. 492, 496, 522-523; *Niyitegeka* Appeal Judgement para. 48; *Gacumbitsi* Appeal Judgement para. 39; *Brdanin* Trial Judgement paras. 681, 695.

<sup>718</sup> *Bagosora et al.* Trial Judgement para. 2115, citing *Seromba* Appeal Judgement para. 175; *Gacumbitsi* Appeal Judgement para. 44; *Simba* Trial Judgement para. 412; *Semanza* Trial Judgement para. 316.

<sup>719</sup> *Bagosora et al.* Trial Judgement para. 2115, citing *Simba* Appeal Judgement para. 269, *Ntakirutimana* Appeal Judgement paras. 302-304; *Niyitegeka* Appeal Judgement paras. 48-54; *Krnjelac* Appeal Judgement para. 102, citing *Jelisić* Appeal Judgement para. 49.

<sup>720</sup> *Bagosora et al.* Trial Judgement para. 2116, citing *Seromba* Appeal Judgement para. 176, referring to *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>721</sup> Decision on Prosecution's Motion for Judicial Notice of Facts of Common Knowledge, 21 August 2009 paras. 12-13, citing *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 para. 25; *Semanza* Appeal Judgement para. 192.

<sup>722</sup> *Bagosora et al.* Trial Judgement para. 2117, citing *Simba* Trial Judgement para. 414, referring to *Kayishema and Ruzindana* Appeal Judgement para. 151.

the Statute, and that the definition of such harm has not squarely been addressed.<sup>723</sup> Examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs.<sup>724</sup> Serious mental harm includes “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat”.<sup>725</sup> To support a conviction for genocide, the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.<sup>726</sup>

## 2.3 Deliberations

### 2.3.1 Meeting, Rwankuba Sector, 7 April 1994

585. In its factual findings, the Chamber determined that, on the morning of 7 April 1994, a group of about 20 *Interahamwe* and *Conseiller* Jean Bizimungu had gathered in the Rwankuba sector office courtyard. Subsequently, Gatete arrived with *Bourgmestre* Jean de Dieu Mwange. Shortly after, a pickup vehicle carrying *Interahamwe* and a communal policeman also arrived. In total, about 40 *Interahamwe* had gathered in the sector office courtyard. Gatete issued instructions to the *Interahamwe* to start killing Tutsis, telling them to “work relentlessly”. Before departing, Gatete issued further instructions to “sensitise” other persons to killings. The Chamber has found that the *Interahamwe*, who received instructions from Gatete, participated in the killing of Tutsis and that those present at the gathering marshalled further reinforcements for the attacks which intensified as the day progressed and ultimately also involved soldiers, police and Hutu civilians. The Chamber has determined that, at least, 25 to 30 Tutsis were killed, including 10 members of Witness BBR’s family. Tutsi *Responsable* Damascène Macali was also killed during an attack near his home.

586. The Chamber considers that the gathering of *Interahamwe* and *Conseiller* Bizimungu at the sector office, the subsequent arrival of Gatete with *Bourgmestre* Mwange, and the timely arrival of further *Interahamwe*, as well as the subsequent attacks on Tutsis in Rwankuba sector, which intensified as the day progressed and involved a range of assailants, could not have been achieved without considerable organisation. The presence of local authorities such as *Conseiller* Bizimungu and *Bourgmestre* Mwange, as well as a prominent figure such as Gatete, who was respected and well-known in Murambi commune by virtue of his former position as *bourgmestre* there and his post at the time in a national ministry, provided direction and encouragement to the *Interahamwe* prior to the attacks.<sup>727</sup>

<sup>723</sup> *Seromba* Appeal Judgement para. 46. See also *Kayishema and Ruzindana* Trial Judgement, in which the Trial Chamber stated that, “that ‘causing serious mental harm’ should be interpreted on a case-by-case basis in light of the relevant jurisprudence.” *Id* paras. 110, 113.

<sup>724</sup> *Seromba* Appeal Judgement para. 46 citing *Semanza* Trial Judgement, para. 320, citing *Kayishema and Ruzindana* Trial Judgement, para. 109; *Ntagerura et al.* Trial Judgement, para. 664.

<sup>725</sup> *Seromba* Appeal Judgement para. 46, citing *Kajelijeli* Trial Judgement, para. 815, citing *Kayishema and Ruzindana* Trial Judgement, para. 110; *Semanza* Trial Judgement, para. 321.

<sup>726</sup> *Seromba* Appeal Judgement para. 46, citing *Kajelijeli* Trial Judgement, para. 184; *Krajišnik* Trial Judgement, para. 862; Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996).

<sup>727</sup> See for example, Witness BBP, T. 20 October 2009 p. 19 (Gatete was a person of authority); Witness LA41, T. 2 March 2010 pp. 5 (in 1994, Gatete was a member of the Ministry of Women and Family Matters), 10 (Gatete had been an active *bourgmestre*); Witness LA43, T. 2 March 2010 p. 59 (Gatete was an active *bourgmestre*); Karemera, T. 4 March 2010 p. 21 (people knew Gatete and talked about him often as he had been

587. Given these circumstances, the Chamber concludes that prior planning and coordination is the only reasonable explanation for the manner in which the gathering, and subsequent attacks on Tutsis, took place. The meeting of *Interahamwe*, and the attacks which ensued, necessarily demanded the involvement of a plurality of persons, which in this case, included Gatete, *Bourgmestre* Mwange, *Conseiller* Bizimungu, and *Interahamwe*. In the Chamber's view, the only reasonable conclusion based on the evidence is that Gatete coordinated his actions with these individuals for the purposes of ensuring the gathering of assailants to carry out the attacks, as well as the presence of the relevant local officials, namely, the *bourgmestre* and *conseiller*, to provide official sanction for the subsequent killings. Thus, the Chamber concludes that a common criminal purpose existed to kill Tutsis in Rwankuba sector.<sup>728</sup>

588. Indeed, elsewhere, the Chamber has also concluded that Gatete entered into an agreement with these individuals to kill Tutsis in Rwankuba sector (III.4.3.i). The Chamber further considers that the evidence evinces not only the existence of an agreement, but also a plan to kill Tutsis in Rwankuba sector. Given Gatete's prominent role in the gathering and his express instructions to the assailants, the Chamber considers that the only reasonable conclusion based on the evidence is that he would also have been among those who devised this plan.

589. Gatete's participation in the joint criminal enterprise is evidenced by his arrival at the gathering with *Bourgmestre* Mwange, and subsequent instructions to kill Tutsis. As a well-known and respected figure in Murambi commune, and in particular in Rwankuba sector where he was born, his personal presence at the sector office, together with *Bourgmestre* Mwange, offered encouragement and moral support to the *Interahamwe*, and indicated his approval of the killings which followed. Gatete's prominent personality and general authority, as well as his personal presence, would have had a similar encouraging effect on *Conseiller* Bizimungu, who was later seen with *Interahamwe* going towards Mumpara from where an attack was subsequently launched.<sup>729</sup> The Chamber, thus, considers that Gatete's actions substantially and significantly contributed to the killings. It further finds that Gatete's position of authority and his express orders to kill Tutsis and to "work relentlessly" would have compelled the *Interahamwe* to kill.

590. Furthermore, the Chamber finds beyond reasonable doubt that Gatete shared the common purpose of killing Tutsis in Rwankuba sector, based on his presence at the gathering of 7 April, as well as his express words, as recalled by Witness BBR ("[s]tart working, and by working I mean kill the Tutsis" and "[w]ork relentlessly"). Moreover, the evidence consistently establishes that Tutsi civilians were targeted in the days following President

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the "head of Murambi commune" for a long time); Witness LA16, T. 8 March 2010 p. 60 (Gatete was considered a "leader", and an "authority", because he had been *bourgmestre* and when he no longer held that position, he continued to be respected and considered an "official"); Witness LA27, T. 10 March 2010 p. 56 (Gatete was well-known as the former *bourgmestre* of Murambi commune); Ndayambaje, T. 15 March 2010 p. 8 (Gatete was an active *bourgmestre*); Majoro, T. 24 March 2010 p. 27 (Gatete was a respected and influential authority); Karushya, T. 25 March 2010 pp. 34-35 (Gatete was influential because he was an authority who had served as *bourgmestre*). See I.3.

<sup>728</sup> The Chamber notes that paragraph 7 of the Indictment includes reference to Jean de Dieu Mwange, Jean Bizimungu and *Interahamwe* as members of the joint criminal enterprise, as well as FAR and members of the civilian militia.

<sup>729</sup> T. 11 November 2009 pp. 7-8, 25-27.

Habyarimana's death and that, from 7 April, Tutsis were attacked in Rwankuba sector. Given this context, the only reasonable conclusion is that the assailants, who physically perpetrated the killings, possessed the intent to destroy in whole or in part the Tutsi ethnic group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Gatete.<sup>730</sup>

591. In sum, the Chamber concludes that the Accused is individually responsible for the killing of Tutsis in Rwankuba sector in April 1994. In considering the most appropriate mode or modes of liability applicable to his conduct, the Chamber recalls that the Appeals Chamber has highlighted the importance of unambiguously expressing the scope of a convicted person's criminal responsibility.<sup>731</sup> It has also affirmed that a Trial Chamber may cumulatively refer to various modes of responsibility where it is necessary to fully characterise an accused's criminal conduct.<sup>732</sup>

592. In this instance, the Chamber considers that the evidence establishes that Gatete played a central role in planning the killings in Rwankuba sector. He encouraged the attackers, and substantially and significantly contributed to the killings through his presence with local officials and his express instructions to kill Tutsis. Given his authority and presence, his orders also compelled the assailants to kill. The evidence further establishes the existence of a joint criminal enterprise in its basic form, and that Gatete participated in that

<sup>730</sup> In reaching this conclusion, the Chamber has considered evidence of Gatete's close association with Tutsis and the Defence submissions that he could not, therefore, have committed genocide. Defence Closing Brief paras. 8, 12-15, 23, 57, 256, 1121-1123, 1126. However, he was present at the Rwankuba sector gathering with *Interahamwe*, and issued express orders to kill Tutsis. In the Chamber's view, given the context and his position of authority, he would have known what would follow when he urged *Interahamwe* to kill Tutsis. The only reasonable conclusion, even accepting the Defence submissions that he maintained close associations with Tutsis, is that at that moment, he acted with genocidal intent. See also *Kvočka* Appeal Judgement paras. 232-233.

<sup>731</sup> See *Ndindabahizi* Appeal Judgement para. 122 ("While an accused can be convicted for a single crime on the basis of several modes of liability, alternative convictions for several modes of liability are, in general, incompatible with the principle that a judgement has to express unambiguously the scope of the convicted person's criminal responsibility. This principle requires, *inter alia*, that the sentence corresponds to the totality of guilt incurred by the convicted person. This totality of guilt is determined by the *actus reus* and the *mens rea* of the convicted person. The modes of liability may either augment (*e.g.*, commission of the crime with direct intent) or lessen (*e.g.*, aiding and abetting a crime with awareness that a crime will probably be committed) the gravity of the crime. Thus, the criminal liability of a convicted person has to be established unequivocally." (Internal citations omitted)).

<sup>732</sup> See *Ndindabahizi* Appeal Judgement paras. 122 (an accused can be convicted for a single crime on the basis of several modes of liability), 123 (noting that the Trial Chamber wanted to emphasise that a full characterisation of the accused's conduct had to cumulatively refer to various modes of liability); *Gacumbitsi* Appeal Judgement para. 204 (recalling that the accused played a central role in planning, instigating, ordering, committing, and aiding and abetting genocide and extermination in his commune of Rusumo, where thousands of Tutsis were killed or seriously harmed). The *Kamuhanda* Appeals Chamber, by a majority, found that "ordering" fully encapsulated the accused's criminal conduct. However, see also *Kamuhanda* Appeal Judgement, Separate And Partially Dissenting Opinion of Judge Mohamed Shahabuddeen, paras. 405, 407-409, 411, 413 ("There is no reason why a single crime cannot be perpetrated by multiple methods.... That the accused does several such acts may affect the appropriate penalty, but does not have the effect of multiplying his convictions for responsibility for the crime referred to in the Statute; his conviction for this remains one and singular.... A Trial Chamber is free to find that the accused engaged responsibility for a crime referred to in the Statute by doing several of the acts mentioned in article 6 (1). Were it otherwise, there would be a failure to define the true measure of the criminal conduct of the accused."). See also *Id.* Separate Opinions of Presiding Judge Theodor Meron and Judge Inés Mónica Weinberg De Roca agreeing with Judge Shahabuddeen.

enterprise and shared the common purpose of killing Tutsis in Rwankuba sector. Accordingly, the elements required for a finding that Gatete planned, instigated, ordered, committed through a basic form of joint criminal enterprise, and aided and abetted the killing of Tutsis in Rwankuba sector, are present.

593. Any one of these modes of liability could sustain a conviction for genocide, and, in the Chamber's view, Gatete's participation through a joint criminal enterprise most aptly sums up his criminal conduct. All other modes reflect merely a fraction of his responsibility for the crime. Nevertheless, the Chamber considers that, in order to fully capture the nature of Gatete's criminal culpability and involvement in the crime, it is appropriate to make findings based on all relevant modes of liability. Indeed, such findings are also relevant to the charge of conspiracy to commit genocide (III.4.3.i) as well as to sentencing.<sup>733</sup>

594. Accordingly, the Chamber finds beyond reasonable doubt that Gatete is responsible pursuant to Article 6 (1) of the Statute, for planning, instigating, ordering, committing through a basic form of joint criminal enterprise, and aiding and abetting the killing of Tutsis in Rwankuba sector on about 7 April 1994.

### 2.3.2 Kiziguro Parish, 11 April 1994

595. The Chamber has found that, in the days following 6 April 1994, hundreds and possibly thousands of primarily Tutsi refugees fled attacks in their localities and sought refuge at the Kiziguro parish. On 8, 9 and 10 April, Gatete visited the parish and spoke to gendarmes, who had been guarding the compound, as well as the priests. On 10 April, Gatete also arrived at the parish with Kiziguro sector *Conseiller* Gaspard Kamali and *Interahamwe* leader Augustin Nkundabazungu and the group took away certain persons from the parish. On 11 April, Gatete returned to the parish with *Conseiller* Kamali, Nkundabazungu, and soldiers. *Interahamwe* were also present at the parish, as well as civilian militia, who included displaced persons from nearby refugee camps. While Gatete was present, Tutsi refugees were separated from the Hutus and Gatete gave express instructions to the *Interahamwe* and civilian militia to kill the Tutsis. Pursuant to Gatete's directions, *Interahamwe* attacked the Tutsi refugees with a range of traditional weapons, while some assailants also used guns. Soldiers facilitated the killings by surrounding the refugees so that they could not escape. Hundreds and possibly thousands of assailants participated in the attack. As a result of the extensive assault, hundreds, and possibly thousands of Tutsi civilians were killed

<sup>733</sup> The Chamber further recalls that while it considers that Gatete's criminal conduct can also be characterised as "planning" and "commission" through a joint criminal enterprise, some Trial Chambers have found that an accused cannot be convicted of planning and committing the same offence. See, for example, *Brđanin* Trial Judgement para. 268; *Stakić* Trial Judgement para. 443; *Kordić and Čerkez* Trial Judgement para. 386. The Chamber notes that, where the accused is convicted of committing the offence in question, the accused's role in planning the offence is considered as an aggravating factor during sentencing. See *Stakić* Trial Judgement para. 443; *Stakić* Appeal Judgement para. 413 ("The Appellant's role in the planning and ordering of deportation is not an element required to prove the commission of deportation. Yet, it may be taken into account as an aggravating factor because of the contribution that planning and ordering make to the commission of a crime. It furthermore may bear on the moral culpability of the perpetrator."). The Chamber also considers that its finding of "planning" is highly relevant to the crime of conspiracy to commit genocide.

596. The Chamber recalls that the killings and burial of the victims were conducted in a systematic and efficient manner to ensure that the operation was completed before the arrival of the RPF. Prior to the killings, refugees who were inside the church building were taken outside, into the courtyard, to allow for the separation of Tutsis from the Hutus. After the killings, which took several hours, bodies of victims were carried to, and thrown into, a pit used as a mass grave. Due to the numbers killed, it was necessary to recruit able bodied Tutsis to assist in the burials, before they too were killed and thrown into the mass grave. Tutsi men, ordered to assist in carrying bodies to the grave, were instructed to remove their shirts during the disposal of bodies so that they were easily identifiable and when they reached the mass grave, were also killed and thrown in.

597. In the Chamber's view, the large-scale massacre at Kiziguro parish can only be described as a highly organised operation. It involved civilian militia and *Interahamwe* using a range of traditional weapons, as well as guns. Soldiers were brought in to facilitate the killings. Local authorities and prominent personalities, such as Gatete, *Conseiller* Kamali, and *Interahamwe* leader Nkundabazungu, were present to provide direction and encouragement to the killers. The operation was conducted over the course of the day, starting in the morning and finishing in the late afternoon or early evening.

598. Given the above circumstances, the Chamber concludes that prior planning and coordination is the only reasonable explanation for the manner in which the large-scale attack was conducted. The scale and efficiency of the killings necessarily demanded the involvement of a plurality of persons, which in this instance, involved Gatete, *Conseiller* Kamali, and *Interahamwe* leader Nkundabazungu, as well as various categories of assailants, in particular, military personnel, *Interahamwe*, and civilian militia.<sup>734</sup> The only reasonable conclusion to be drawn from the evidence is that Gatete coordinated his actions with these individuals before the attacks, and that a common criminal purpose among the participants existed to kill Tutsis at Kiziguro parish. Moreover, elsewhere the Chamber has found that these participants entered into an agreement for the purposes of killing Tutsis at Kiziguro parish (III.4.3.ii). Given Gatete's prominent role in the massacre, as well as his express orders, the only reasonable conclusion is that he was also among those who devised a plan to execute the aforementioned agreement.

599. Gatete participated in the joint criminal enterprise in several ways. Through his arrival at the massacre site with soldiers, who facilitated the killings, he provided material support to the killers. As a respected figure in Murambi commune by virtue of his former position as *bourgmestre*, his presence during the separation of the Tutsis from Hutus, and during the killings, offered further encouragement to the assailants and indicated his approval of their conduct, thus, substantially and significantly contributing to the killings. Indeed, given Gatete's prominent personality and the respect he maintained within the region, his participation would have had a similar encouraging effect on other authority figures there, such as, *Conseiller* Kamali and Nkundabazungu. Under the circumstances, Gatete's orders would also have compelled the soldiers to facilitate the killings, as well as the *Interahamwe* and civilian militia, to kill.

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<sup>734</sup> The Chamber notes that paragraph 7 of the Indictment names Augustin Nkundabazungu, *Conseiller* Kamali, *Interahamwe* and FAR soldiers, as well as Presidential Guards and civilian militia as members of the alleged joint criminal enterprise.



600. The Chamber finds beyond reasonable doubt that Gatete shared the common purpose of killing Tutsis at Kiziguro parish based on his presence during the operation, and on his express instructions to kill Tutsis there. Furthermore, the evidence consistently establishes that Tutsi civilians were targeted in the days following President Habyarimana's death. Hundreds and possibly thousands of Tutsis sought refuge at Kiziguro parish following attacks committed by Hutus. Those Tutsis were then slaughtered at the parish on 11 April. Considering the scale of the killings and their context, the only reasonable conclusion is that the assailants, who physically perpetrated the killings, possessed the intent to destroy in whole or in part the Tutsi ethnic group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Gatete.<sup>735</sup>

601. In light of the above, the Chamber recalls that it may characterise the Accused's criminal conduct using more than one mode of liability for the purposes of fully capturing the nature of his involvement and culpability.<sup>736</sup> In this case, the Chamber considers that Gatete's participation through a basic form of joint criminal enterprise most aptly encompasses his criminal conduct. The evidence also supports a finding that he is responsible under Article 6 (1) of the Statute for planning, instigating, ordering and aiding and abetting the killing of Tutsis at Kiziguro parish on 11 April 1994.

### 2.3.3 Mukarange Parish, 12 April 1994

602. In its factual findings, the Chamber found that, during the days following the President's death, at least a thousand, mostly Tutsi, refugees sought refuge at Mukarange parish. On 12 April 1994, *Interahamwe* launched an attack on the parish, which the refugees were able to repel. Later that same day, Gatete arrived on the football field near the parish with *Bourgmestre* Célestin Senkware, *Conseiller* Samson Gashumba, Gendarme Lieutenant Twahira, an official called Édouard Ngabonzima and gendarmes, in a vehicle carrying boxes of guns and grenades. These weapons were distributed to the assailants, who included *Interahamwe*, and who were directed by Gatete to attack the Tutsis at the parish. Using the weapons brought by Gatete and the other officials, the assailants attacked the mostly Tutsi refugees. Tutsis who survived those attacks were later killed by assailants using traditional weapons. As a result, hundreds, if not thousands, of Tutsi civilians were killed at Mukarange parish on 12 April.

603. At the outset, the Chamber notes striking similarities between the Kiziguro and Mukarange parish massacres. In both instances, hundreds and possibly thousands of Tutsis had sought refuge within the walls of the parish compounds. Both involved Gatete acting with local authorities, as well as military personnel, and the killers included *Interahamwe*. At both sites, Gatete played a pivotal role in providing direction during the attacks.

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<sup>735</sup> In reaching this conclusion, the Chamber has considered evidence that the Accused had close associations with Tutsis, as well as the Defence submissions. Defence Closing Brief paras. 8, 12-15, 23, 57, 256, 1121-1123, 1126. However, Gatete was physically present at the massacre site, would have been aware of the targeting of Tutsis throughout the country and the region, and would have known what would follow when he urged armed assailants to kill the Tutsi refugees. The only reasonable conclusion, even accepting the Defence submissions that he maintained close associations with Tutsis, is that at that moment, he acted with genocidal intent. See *Kvočka* Appeal Judgement paras. 232-233.

<sup>736</sup> *Id.* n. 732-733.



604. As with the killings at Kiziguro parish, the Chamber considers that the Mukarange parish massacre also required a high level of organisation, involving gendarmes, reserve soldiers, *Interahamwe* and civilian militia using grenades, guns, and traditional weapons. Gatete and officials including *Bourgmestre* Senkware, *Conseiller* Kamali, Lieutenant Twahira and Ngabonzima were present to provide encouragement and direction to the killers. Notably, guns and grenades, brought by these officials, were a decisive factor in the success of the assault. Indeed, the Chamber recalls Witness AWF's evidence that the Tutsi refugees at the parish had managed to repel an earlier attack, but were overcome by the arrival of further weapons.<sup>737</sup> The operation was conducted over several hours, and resulted in the killing of hundreds and possibly thousands of Tutsis.

605. Under the circumstances, the Chamber finds that prior planning and coordination is the only reasonable explanation for the manner in which the perpetrators conducted this large-scale assault. The scale and efficiency of the killings necessarily demanded the involvement of a plurality of persons, which in this case included Gatete, *Bourgmestre* Senkware, *Conseiller* Gashumba, Lieutenant Twahira, Ngabonzima, as well as various categories of assailants, in particular, gendarmes, reserve soldiers, *Interahamwe*, and civilian militia.<sup>738</sup> The only reasonable conclusion to be drawn from the evidence is that Gatete coordinated his actions with these individuals before the attacks and that a common criminal purpose existed among the participants to kill Tutsis at Mukarange parish. Indeed, elsewhere, the Chamber has found that these individuals also entered into an agreement to kill Tutsis at Mukarange parish (III.4.3.iii). The only reasonable conclusion based on the evidence is that, not only was there an agreement, but that there was also a plan to kill Tutsis at the parish. The Chamber further concludes that, given Gatete's prominent role in the operation, he was among those who formulated this plan.

606. Furthermore, Gatete's participation in the joint criminal enterprise is evident through his arrival at the site with guns and grenades, which provided material support to the assailants. Given his position of authority, the Chamber considers that Gatete's arrival with local officials, his express orders to attack, and his presence during the assault, also provided encouragement and moral support to the assailants and further sanction for their conduct, thus, substantially and significantly contributing to the killings. Indeed, his participation would have had a similar encouraging effect on other authorities there, such as *Bourgmestre* Senkware, *Conseiller* Gashumba, Lieutenant Twahira, and Ngabonzima. Given these factors, the Chamber further finds that the assailants would have felt compelled to kill in accordance with Gatete's instructions.

607. The Chamber finds beyond reasonable doubt that Gatete shared the common purpose of killing Tutsis at Mukarange parish, based on his delivery of guns and grenades for use in the attack, his orders to attack Tutsis, and his presence during the operation. Hundreds and possibly thousands of Tutsis sought refuge at Mukarange parish following attacks committed by Hutus in their localities. Those Tutsis were then slaughtered at the parish on 12 April. Given the scale of the killings and their context, the only reasonable conclusion is that the

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<sup>737</sup> Witness AWF, T. 22 October 2009 pp. 46-52, 60-61, 63. See also II.6.3.

<sup>738</sup> The Chamber notes that paragraph 7 of the Indictment refers to Celestin Senkware, *Interahamwe*, civilian militia, and FAR soldiers as members of the joint criminal enterprise. See also Indictment para. 22; Prosecution Pre-Trial Brief para. 46 (referring to Gashumba, Twahira, and Ngabonzima), 74 and witness summaries for Witnesses AWF and BVR.





assailants, who physically perpetrated the killings, possessed the intent to destroy in whole or in part the Tutsi ethnic group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Gatete.<sup>739</sup>

608. In view of the above, the Chamber finds that Gatete's participation through a basic form of joint criminal enterprise most aptly captures his responsibility for the killings at Mukarange parish. In order to fully characterise Gatete's criminal conduct, the Chamber also finds that he is responsible under Article 6 (1) of the Statute for planning, instigating, ordering and aiding and abetting the killing of Tutsis at Mukarange parish on 12 April 1994.<sup>740</sup>

### 3. COMPLICITY IN GENOCIDE

609. Count II of the Indictment charges Gatete with complicity in genocide under Article 2 (3)(e) of the Statute. The Prosecution has indicated that the count of complicity is pleaded in the alternative to the count of genocide (Count I). Accordingly, having found the Accused guilty of genocide under Count I, the Chamber dismisses Count II of the Indictment.

### 4. CONSPIRACY TO COMMIT GENOCIDE

#### 4.1 Introduction

610. Count III of the Indictment charges Gatete with conspiracy to commit genocide under Article 2 (3)(b) of the Statute.

#### 4.2 Law

611. Conspiracy to commit genocide is "an agreement between two or more persons to commit the crime of genocide".<sup>741</sup> The *actus reus* of the crime is the existence of an agreement between individuals to commit genocide.<sup>742</sup> The persons involved in the agreement must possess the *mens rea* for genocide, that is the intent to destroy in whole or in part a national, ethnic, racial or religious group as such.<sup>743</sup> The *mens rea* for genocide has been discussed more fully above in connection with the crime of genocide (III.2.2).

612. With respect to the *actus reus*, the agreement can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on

<sup>739</sup> In finding that Gatete had genocidal intent, consideration has been given to evidence of his close association with Tutsis and the Defence submissions that he could not, therefore, have committed genocide. However, when reviewing Gatete's conduct in relation to the killings at Mukarange parish, that evidence does not raise doubt that he possessed the genocidal intent at that time. See *Kvočka* Appeal Judgement, paras. 232-233.

<sup>740</sup> *Id.* n. 732-733.

<sup>741</sup> *Bagosora et al.* Trial Judgement para. 2087, citing *Seromba* Appeal Judgement paras. 218, 221; *Nahimana et al.* Appeal Judgement para. 894; *Ntagerura et al.* Appeal Judgement para. 92; *Kajelijeli* Trial Judgement para. 787; *Niyitegeka* Trial Judgement para. 423; *Ntakirutimana* Trial Judgement para. 798; *Musema* Trial Judgement para. 191.

<sup>742</sup> *Bagosora et al.* Trial Judgement para. 2087, citing *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

<sup>743</sup> *Bagosora et al.* Trial Judgement para. 2087 citing *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.

circumstantial evidence.<sup>744</sup> The concerted or coordinated action of a group of individuals can constitute evidence of an agreement. Given the requirements of “concerted or coordinated”, it is insufficient to simply show similarity of conduct.<sup>745</sup> When based on circumstantial evidence, the finding of a conspiracy must be the only reasonable inference that can be made based on the totality of the evidence.<sup>746</sup>

### 4.3 Deliberations

613. The Prosecution alleges that, on or between 6 and 30 April 1994, an agreement existed between Gatete and others, including, Murambi *Bourgmestre* Jean de Dieu Mwange, Kayonza *Bourgmestre* Célestin Senkware, various sector *conseillers*, *Interahamwe* leaders, communal police and the political leadership of the MRND at the regional and national levels, including members of the Interim Government of 8 April 1994. The purpose of the agreement was to kill or cause serious bodily harm to members of the Tutsi ethnic group, with the intention to destroy in whole or in part that group. The Prosecution further submits that the Accused was part of a concerted and coordinated action to persecute, terrorise and exterminate Tutsi civilians over a period of nearly four years, from October 1990 through April 1994.<sup>747</sup>

614. In support of the charge of conspiracy, the Prosecution relies on several witness statements which were not admitted pursuant to Rule 92 *bis* and, in any event, do not meet the substantive and formal requirements of that Rule (I.2.4). Accordingly, the Chamber will not consider these statements in its deliberations with respect to the count of conspiracy.

615. Moreover, the Prosecution relies on several allegations which precede the Tribunal’s temporal jurisdiction of 1 January to 31 December 1994.<sup>748</sup> The Chamber recalls that it can only convict the Accused of criminal conduct occurring in 1994.<sup>749</sup> In any event, the Chamber notes that much of the evidence concerning pre-1994 allegations, relied upon by the Prosecution, is either contained in prior statements of witnesses, or has not been accepted by the Chamber.<sup>750</sup> Furthermore, the Chamber does not consider, in this section, evidence of allegations which, in its factual findings, were not found to have been proven beyond reasonable doubt.

<sup>744</sup> *Bagosora et al.* Trial Judgement para. 2088, citing *Seromba* Appeal Judgement para. 221; *Nahimana et al.* Appeal Judgement para. 896.

<sup>745</sup> *Bagosora et al.* Trial Judgement para. 2088, citing *Nahimana et al.* Appeal Judgement paras. 896-897.

<sup>746</sup> *Bagosora et al.* Trial Judgement para. 2088, citing *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

<sup>747</sup> Indictment para. 12; Prosecution Closing Brief paras. 3, 7, 12, 67-72, 73, 74-80, 81-83, 84-89, 90, 134, 170, 231, 245.

<sup>748</sup> Prosecution Closing Brief paras. 76-81, 90.

<sup>749</sup> The Chamber recalls, however, that the Appeals Chamber has held that the provisions of the Statute on the temporal jurisdiction of the Tribunal do not preclude the admission of evidence on events prior to 1994, if the Chamber deems such evidence relevant and of probative value and there is no compelling reason to exclude it. Such evidence can be relevant to: clarify a given context; establishing by inference the elements (in particular, criminal intent) of criminal conduct occurring in 1994; and demonstrating a deliberate pattern of conduct. *Nahimana et al.* Appeal Judgement, paras. 313, 315-316. In that case, the Appeals Chamber did consider pre-1994 evidence in assessing whether a conspiracy existed. *Id.* paras. 905, 908.

<sup>750</sup> Prosecution Closing Brief paras. 76-81.

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616. The Chamber turns to consider whether the proven allegations support a finding of conspiracy to commit genocide.

**4.3.1 Meeting, Rwankuba Sector, 7 April 1994**

617. The Chamber has found beyond reasonable doubt that, the gathering at the Rwankuba sector office on 7 April 1994, and subsequent killings in Rwankuba sector, required prior planning and coordination by those involved and that they were carried out with genocidal intent. This intent was shared by Gatete. The Chamber has further found that Gatete was among those who planned the killings. It has also concluded that he participated in a joint criminal enterprise to kill Tutsis in Rwankuba sector and that, other members of that enterprise included *Bourgmestre* Mwangé, *Conseiller* Bizimungu and *Interahamwe*.

618. In the Chamber’s view, the gathering of *Conseiller* Bizimungu and *Interahamwe* at the sector office, Gatete’s timely arrival there with *Bourgmestre* Mwangé for the purposes of issuing instructions, as well as the subsequent arrival of additional *Interahamwe*, demonstrates a concerted and coordinated action and not merely similar conduct. The coming together of these individuals, Gatete’s orders, and the killings that ensued, could not have taken place without prior agreement among those involved. Indeed, the Chamber has found that Gatete devised a plan with these individuals to kill Tutsis (III.2.3.i). Such a plan could not have come into existence without prior agreement. Furthermore, based on Gatete’s express orders at the meeting to kill Tutsis and “work relentlessly”, the only reasonable conclusion is that the arrangement between the aforementioned individuals was to kill Tutsis.

619. Accordingly, the Chamber finds beyond reasonable doubt that, at the very latest, by the morning of 7 April, when the gathering at the Rwankuba sector office took place, Gatete, *Bourgmestre* Mwangé, *Conseiller* Bizimungu and the *Interahamwe* had entered into an agreement to kill Tutsis in Rwankuba sector, and, therefore, a conspiracy to commit genocide.<sup>751</sup>

**4.3.2 Kiziguro Parish, 11 April 1994**

620. The Chamber has found that a large-scale massacre took place at Kiziguro parish during which hundreds, and possibly thousands of Tutsi civilians were killed on 11 April 1994. The killings were carried out with genocidal intent. Such intent was shared by Gatete. The Chamber has found beyond reasonable doubt that Gatete was among those who planned and participated in a joint criminal enterprise to kill Tutsis at Kiziguro parish and that other members of that enterprise included *Conseiller* Kamali, *Interahamwe* leader Augustin Nkundabazungu, soldiers, *Interahamwe* and civilian militia.

621. A fundamental feature of the Chamber’s conclusion, that the killings were undertaken as part of a joint criminal enterprise with the common purpose to kill Tutsis, is the significant coordination and planning which would have been required for the operation. The Chamber further recalls that on 8 and 9 April, Gatete was seen at the parish talking to gendarmes who had been guarding the refugees, but by 11 April, had left. On the morning of 10 April, he was

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<sup>751</sup> The Chamber notes that Indictment paragraph 12 names *Bourgmestre* Mwangé as a co-conspirator, as well as specifies *conseillers de secteurs* and *Interahamwe* leaders. Paragraph 14 of the Indictment also refers to Mwangé and Bizimungu. The Prosecution Pre-Trial Brief also refers to *Bourgmestre* Mwangé, *conseillers* and *Interahamwe*. See paras. 33, 73, and annexed witness summaries for Witnesses BBR and AIZ.

seen speaking to the priests who, by 11 April, had also left the parish. That same day, in the afternoon he arrived at the parish with *Conseiller* Kamali and Nkundabazungu and took away certain individuals from the parish. On 11 April, he returned to the parish with *Conseiller* Kamali, Nkundabazungu and soldiers, this time, for the purposes of facilitating and directing the attack.

622. The killings were carried out in a systematic and efficient manner, involving various categories of assailants, which included soldiers, who facilitated the attacks by surrounding the refugees. *Interahamwe* and civilian militia, who included displaced persons from nearby refugee camps, carried out the killings. Prominent personalities were present to provide direction to the assailants and included Gatete, *Conseiller* Kamali and Nkundabazungu. Refugees were forced out of the church and into the courtyard, where Tutsis were separated from the Hutus. Gatete issued orders to the assailants to kill the Tutsis. The aim of the operation was to kill the hundreds, if not thousands, of Tutsi refugees and dispose of their bodies in an efficient manner, before the RPF arrived in the region. Consequently, various assailants were recruited to carry out the killings and dispose of the bodies in a pit used as a mass grave. Tutsi men, who were ordered to remove their shirts so that they could easily be identified, were also ordered to dispose of the bodies, before they too were killed and thrown into the mass grave. The operation took several hours, over the course of a day.

623. In the Chamber's view, the evidence demonstrates extensive planning and synchronisation between Gatete, *Conseiller* Kamali, *Interahamwe* leader Nkundabazungu, military personnel, *Interahamwe*, and civilian militia.<sup>752</sup> Not only does the evidence establish a common criminal purpose, but also that the purpose must have been decided and agreed upon prior to the attack. Indeed, the Chamber considers that Gatete's visits to the parish from 8 April, when refugees had started arriving there, offers further circumstantial support for this conclusion. Moreover, the Chamber has elsewhere found that Gatete was among those who devised a plan to kill Tutsis at Kiziguro parish. Such a plan could not have been developed without prior agreement.

624. In sum, the Chamber finds that the organised manner in which the killings were carried out on such a large-scale over the course of a day is clear evidence of the existence of an agreement to kill Tutsi civilians at Kiziguro parish. The conduct of those involved was not merely similar but concerted and coordinated. The way in which the soldiers came and facilitated the killings by surrounding the refugees, while the *Interahamwe* and civilian militia carried out killings, further demonstrates a concerted and coordinated plan of action being implemented. In the Chamber's view, such an operation could not be implemented without a prior agreement, the undeniable purpose of which was to kill Tutsis.

625. Accordingly, the Chamber finds that the only reasonable conclusion based on the evidence is that, at the very latest, by the morning of 11 April 1994, Gatete, *Conseiller* Gaspard Kamali, *Interahamwe* leader Augustin Nkundabazungu, soldiers, members of the

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<sup>752</sup> Paragraph 12 of the Indictment refers to various *conseillers de secteurs*, *Interahamwe* leaders, local administrative officials. Paragraph 19 of the Indictment specifically mentions Nkundabazungu, FAR soldiers and *Interahamwe*.



*Interahamwe*, and civilian militia had entered into an agreement to kill Tutsis at Kiziguro parish, and, thus, a conspiracy to commit genocide.<sup>753</sup>

#### 4.3.3 Mukarange Parish, 12 April 1994

626. The Chamber has found that the killing of Tutsis at Mukarange parish on 12 April 1994 was undertaken as part of a joint criminal enterprise with the common purpose to kill Tutsis and that Gatete was part of it. The Chamber has further concluded that he was among those who planned the killings at the parish. The killings were carried out with genocidal intent and such intent was shared by Gatete.

627. Central to the Chamber's findings with respect to the existence of a joint criminal enterprise was the planning and coordination required between the various authorities and assailants for the killings at Mukarange parish to be carried out on such a large-scale and in such an efficient manner. Indeed, Gatete arrived with civilian and military officials, gendarmes, and crates of guns and grenades for use by the assailants during the attack. Gendarmes, reserve soldiers, *Interahamwe* and civilians, who included displaced persons from refugee camps, were among the assailants. Gatete was among those issuing orders to the assailants. Hundreds, and possibly thousands of Tutsi refugees were killed a result of the extensive assault.

628. In the Chamber's view, such large-scale killings, involving a prominent personality such as Gatete, authorities such as *Bourgmestre* Célestin Senkware, *Conseiller* Samson Gashumba, and Lieutenant Twahira, and which required the transportation of guns and grenades for distribution among various categories of assailants, would have required significant organisation. Given these circumstances, the Chamber finds that the conduct of those involved was concerted and coordinated for the purposes of killing Tutsis at the parish. This level of coordination could only have been achieved by prior agreement and not merely similar conduct. Indeed, elsewhere, the Chamber has found that Gatete was among those who devised a plan to kill Tutsis at Mukarange parish (III.2.3.iii). Such a plan could not have been developed without prior agreement among the aforementioned individuals.

629. Thus, the Chamber finds that the only reasonable inference to be drawn from the totality of the evidence is that, at least by the morning of 12 April 1994, Gatete, *Bourgmestre* Célestin Senkware, *Conseiller* Samson Gashumba, Lieutenant Twahira, Édouard Ngabonzima, *Interahamwe* and civilian militia had entered into an agreement to kill Tutsis at Mukarange parish, and, thus, a conspiracy to commit genocide.

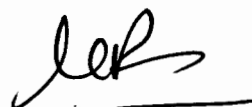
## 5. CRIMES AGAINST HUMANITY

### 5.1 Introduction

630. Counts IV and V of the Indictment charge Gatete with extermination and murder as crimes against humanity under Article 3 (b) and (a) of the Statute, respectively.

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<sup>753</sup> The Chamber finds further circumstantial support for this conclusion in its findings that Gatete conspired with others to kill Tutsis at Mukarange parish.



## 5.2 Widespread or Systematic Attack

631. For an enumerated crime under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.<sup>754</sup> An attack against a civilian population means the perpetration against that population of a series of acts of violence, or of the kind of mistreatment referred to in sub-paragraph (a) to (i).<sup>755</sup> Intended to be read as disjunctive elements, “widespread” refers to the large scale nature of the attack and the number of targeted persons, while “systematic” describes the organised nature of the acts of violence and the improbability of their random occurrence.<sup>756</sup>

632. With respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack, but need not share the purpose or goals of the broader attack.<sup>757</sup> The additional requirement that crimes against humanity have to be committed “on national, political, ethnic, racial or religious grounds” does not mean that a discriminatory *mens rea* must be established.<sup>758</sup>

633. Having considered the totality of the evidence, the Chamber concludes that there were widespread attacks against the Tutsi population in Byumba and Kibungo prefectures in April 1994. Witnesses recounted attacks against Tutsis in the days immediately following President Habyarimana’s death. Hundreds and possibly thousands of Tutsis sought refuge at Kiziguro and Mukarange parishes, fleeing attacks in their localities where Hutus were killing Tutsis. The evidence of the killings in Rwankuba sector, and at the two parishes, the scale of the killings, and the ethnic composition of the victims, can lead to no other conclusion that in April 1994, in Byumba and Kibungo prefectures, there were widespread attacks against the civilian Tutsi population on ethnic grounds.

634. Given Gatete’s position of authority at the time, his express orders on three separate occasions to kill Tutsis and the context in which those instructions were issued, the Chamber finds it inconceivable that the perpetrators of the killings, as well as Gatete and the other participants in the joint criminal enterprise, did not know that their actions formed part of a

<sup>754</sup> *Bagosora et al.* Trial Judgement para. 2156, citing *Semanza* Appeal Judgement paras. 326-332, referring to *Akayesu* Trial Judgement para. 578; *Rutaganda* Trial Judgement para. 73; *Akayesu* Appeal Judgement paras. 467, 469; *Ntakirutimana* Appeal Judgement para. 516; *Ntagerura et al.* Trial Judgement paras. 697-698; *Mpambara* Trial Judgement para. 11; *Simba* Trial Judgement para. 421; *Gacumbitsi* Trial Judgement para. 299; *Tadić* Appeal Judgement paras. 248, 255.

<sup>755</sup> *Bagosora et al.* Trial Judgement para. 2165, citing *Nahimana et al.* Appeal Judgement paras. 915-918; *Kordić and Čerkez* Appeal Judgement para. 666; *Kunarac et al.* Appeal Judgement para. 89; *Kunarac et al.* Trial Judgement para. 415.

<sup>756</sup> *Bagosora et al.* Trial Judgement para. 2165, citing *Nahimana et al.* Appeal Judgement para. 920, quoting *Kordić and Čerkez* Appeal Judgement para. 94; *Ntakirutimana* Appeal Judgement para. 516; *Mpambara* Trial Judgement para. 11; *Semanza* Trial Judgement paras. 328-329; *Kunarac et al.* Trial Judgement para. 429; *Kunarac et al.* Appeal Judgement para. 94; *Gacumbitsi* Appeal Judgement para. 101, citing *Gacumbitsi* Trial Judgement para. 299; *Stakić* Appeal Judgement para. 246; *Blaškić* Appeal Judgement para. 101, *Limaj et al.* Trial Judgement para. 180; *Brđanin* Trial Judgement para. 133.

<sup>757</sup> *Bagosora et al.* Trial Judgement para. 2166, citing *Gacumbitsi* Appeal Judgement paras. 86, 103, referring to *Tadić* Appeal Judgement paras. 251-252; *Galić* Appeal Judgement para. 142; *Semanza* Appeal Judgement paras. 268-269; *Simba* Trial Judgement para. 421; *Kordić and Čerkez* Appeal Judgement para. 99; *Kunarac et al.* Trial Judgement para. 434; *Kunarac et al.* Appeal Judgement para. 102; *Blaškić* Appeal Judgement paras. 124-127.

<sup>758</sup> *Bagosora et al.* Trial Judgement para. 2166, citing *Akayesu* Trial Judgement paras. 464-469, 595; *Bagilishema* Trial Judgement para. 81.

widespread, attack. Gatete, due to his position of authority, including his post as director in a national ministry, would have been familiar with the situation unfolding both nationally and regionally.<sup>759</sup>

### 5.3 Extermination

#### 5.3.1 Introduction

635. Count IV of the Indictment charges Gatete with extermination as a crime against humanity pursuant to Article 3 (b) of the Statute.

#### 5.3.2 Law

636. The crime of extermination requires proof that an accused participated in a widespread or systematic killing or in subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would inevitably lead to death.<sup>760</sup> Extermination is distinguishable from murder because it is the act of killing on a large-scale.<sup>761</sup> Although extermination is the act of killing a large number of people, such a designation does not suggest that a numerical minimum must be reached.<sup>762</sup> The mental element for extermination is the intent to perpetrate or to participate in a mass killing.<sup>763</sup>

#### 5.3.3 Deliberations

637. Gatete is charged with extermination as a crime against humanity with respect to all three of the proven allegations.<sup>764</sup> Other allegations with respect to this charge have not been proven. The Chamber considers whether the established allegations amount to extermination as a crime against humanity.

##### (i) Meeting, Rwankuba Sector, 7 April 1994

638. The Chamber has already determined that the killing of Tutsi civilians in Rwankuba sector, on 7 April 1994 amounts to genocide. For the same reasons, particularly recalling Gatete's express instructions to kill Tutsis, it is clear that the killings were conducted on ethnic grounds. The Chamber has also found that Gatete's responsibility for the killings can be characterised as planning, instigating, ordering, committing through a basic form of joint criminal enterprise, and aiding and abetting, pursuant to Article 6 (1) of the Statute.

639. The Chamber recalls its findings that at least 25 to 30 people were killed following Gatete's orders, as well as the Nyagasambu *cellule responsable*, Damascène Macali. About 40 *Interahamwe* had gathered at the sector office and the Chamber has determined that they

<sup>759</sup> See also Decision on Prosecution's Motion for Judicial Notice of Facts of Common Knowledge, 21 August 2009 paras. 12-13.

<sup>760</sup> *Ntakirutimana* Appeal Judgement para. 522; *Ndindabahizi*, Trial Judgement para. 480.

<sup>761</sup> *Ntakirutimana* Appeal Judgement para. 516. See also *Ndindabahizi* Trial Judgement para.479; *Semanza* Trial Judgement para. 340.

<sup>762</sup> *Ntakirutimana* Appeal Judgement para. 516.

<sup>763</sup> *Ntagerura et al.* Trial Judgement para. 701. See also *Ntakirutimana* Appeal Judgement para. 522.

<sup>764</sup> Indictment paras. 31-32.

would also have participated in killings, as well as marshalled further assailants, who ultimately included soldiers, policemen and Hutu civilians. Recalling that no numerical minimum is required, the Chamber is satisfied, in light of these findings, that the killings were conducted on a sufficiently large scale for the purposes of amounting to extermination. Moreover, the Chamber considers that Gatete’s express orders to kill Tutsis, and to “work relentlessly”, demonstrate his intention to kill on a large scale, particularly when viewed in the larger context of the other killings committed in the region and throughout Rwanda.<sup>765</sup>

640. Accordingly, the Chamber finds Gatete responsible for the crime of extermination as a crime against humanity (Count IV). His participation through a basic form of joint criminal enterprise most aptly reflects his individual criminal responsibility under Article 6 (1) of the Statute. The evidence also supports a finding that he planned, instigated, ordered, and aided and abetted the killing of Tutsi civilians in Rwankuba sector on 7 April 1994.<sup>766</sup>

(ii) *Kiziguro Parish, 11 April 1994*

641. The Chamber has found that the killings at Kiziguro parish on 11 April 1994 amount to genocide. It is clear from those findings that the killings at the parish were conducted on ethnic grounds. Gatete played a role in planning, instigating, ordering as well as aiding and abetting those killings. The Chamber has also found that he participated in a basic form of joint criminal enterprise to kill Tutsis at the parish.

642. Moreover, the Chamber recalls its findings that hundreds and possibly thousands of Tutsi civilians were killed at the parish. Accordingly, the Chamber has no doubt that the killings were conducted on a massive scale and, thus, amount to extermination. The number of Tutsi refugees who had sought refuge at the parish, and Gatete’s express orders to kill Tutsis, demonstrate his intention to kill on a large scale, particularly given the context in which the killings took place.

643. Therefore, the Chamber finds Gatete responsible for the crime of extermination as a crime against humanity (Count IV). His participation through a basic form of joint criminal enterprise most aptly describes his individual criminal responsibility under Article 6 (1) of the Statute. The evidence also supports a finding that he planned, ordered, instigated, and aided and abetted the killing of Tutsi civilians at Kiziguro parish on 11 April 1994.<sup>767</sup>

(iii) *Mukarange Parish, 12 April 1994*

644. The killings at Mukarange parish on 12 April 1994 have been found to constitute genocide. The Chamber’s findings demonstrate that the killings were conducted on ethnic grounds. The Chamber has also concluded that Gatete is responsible for those killings through planning, ordering, instigating, committing through a basic joint criminal enterprise, and aiding and abetting pursuant to Article 6 (1) of the Statute.

<sup>765</sup> Further circumstantial support for Gatete’s intention to kill on a large-scale can be found in the Chamber’s findings with respect to his role in the Kiziguro and Mukarange parish massacres, where hundreds and possibly thousands of Tutsis were killed.

<sup>766</sup> *Id.* n. 732-733.

<sup>767</sup> *Id.*





645. Hundreds and possibly thousands of Tutsis were massacred at the parish. The Chamber, therefore, finds that the killings were conducted on a large-scale, as required for the crime of extermination. In light of the number of Tutsis who had sought refuge at the parish, Gatete's arrival with guns and grenades, his express instructions to attack the parish, and the context in which the killings occurred, the Chamber has no doubt that he intended to kill on a large-scale.<sup>768</sup>

646. Accordingly, the Chamber finds Gatete responsible for the crime of extermination as a crime against humanity (Count IV). His participation through a basic form of joint criminal enterprise most aptly describes his individual criminal responsibility under Article 6 (1) of the Statute. The evidence also supports a finding that he planned, ordered, instigated, and aided and abetted the killing of Tutsi civilians at Mukarange parish on 12 April 1994.<sup>769</sup>

## 5.4 Murder

### 5.4.1 Introduction

647. Count V of the Indictment charges Gatete with murder as a crime against humanity under Article 3 (a) of the Statute.

### 5.4.2 Law

648. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.<sup>770</sup> Some Trial Chambers have held that murder requires an element of pre-meditation and not only intent.<sup>771</sup> In the present case, the Chamber is satisfied that the evidence establishes that the killings at issue would constitute murder as a crime against humanity under both standards (III.2.3; III.5.3.iii).

### 5.4.3 Deliberations

649. The Prosecution has charged the killing of Tutsis in Rwankuba sector, and at the Kiziguro and Mukarange parishes, as murder as a crime against humanity.<sup>772</sup> Other allegations with respect to the charge of murder have not been proven.

650. The Chamber has already determined that the killing of Tutsis in Rwankuba sector, and at Kiziguro and Mukarange parishes, amount to genocide and extermination as a crime against humanity. The Chamber has also found Gatete individually responsible for planning, instigating, ordering, committing through a basic joint criminal enterprise, and aiding and abetting those killings. On the same basis, the Chamber is satisfied that all three incidents of killings were intentional and conducted on ethnic grounds.

<sup>768</sup> With respect to Gatete's intention to kill on a large-scale, further circumstantial support can be found in the Chamber's findings relating to his role in the Kiziguro parish massacre on 11 April.

<sup>769</sup> *Id.*

<sup>770</sup> *Bagosora et al.* Trial Judgement para. 2169, citing *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 25; *Karera* Trial Judgement para. 558.

<sup>771</sup> See, for instance, *Bagilishema* Trial Judgement para. 86; *Ntagerura et al.* Trial Judgement para. 700; *Semanza* Trial Judgement para. 339.

<sup>772</sup> Indictment paras. 34-35.



651. Accordingly, the Chamber finds Gatete responsible for the crime of murder as a crime against humanity (Count V). His participation through a basic form of joint criminal enterprise most aptly describes his individual criminal responsibility under Article 6 (1) of the Statute. The evidence also supports a finding that he planned, ordered, instigated, and aided and abetted the murder of Tutsis in Rwankuba sector, and at Kiziguro and Mukarange parishes in April 1994.<sup>773</sup>

## 6. CUMULATIVE CONVICTIONS

### 6.1 Introduction

652. The Chamber has found that the evidence supports findings under different statutory provisions on the basis of the same conduct. The Appeals Chamber has held that cumulative convictions are permissible where each crime has a materially distinct element not contained in the other.<sup>774</sup> An element is materially distinct from another if it requires proof of a fact not required by the other element.<sup>775</sup> Where this test is not met, a conviction will be entered only under the more specific provision. The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.<sup>776</sup>

653. In light of these legal principles, the Chamber turns to consider whether it may enter cumulative convictions based on its findings with respect to the meeting in Rwankuba sector, and the Kiziguro and Mukarange parish massacres.

### 6.2 Genocide and Conspiracy to Commit Genocide

654. With respect to the killings in Rwankuba sector, and at the Kiziguro and Mukarange parishes, the Chamber has found that the evidence supports findings of both the crimes of genocide (Count I) and conspiracy to commit genocide (Count III), which are treated as distinct crimes under Articles 2 (3)(a) and 2 (3)(b) of the Statute, respectively. The *actus reus* for the two crimes is materially distinct. While the crime of genocide requires one of the enumerated acts in Article 2 (2) to have been committed, the crime of conspiracy to commit genocide merely requires the act of entering into an agreement to commit genocide.<sup>777</sup> Accordingly, the underlying acts or omissions upon which the crimes are based are distinct.<sup>778</sup> Therefore, as noted recently by the ICTY Trial Chamber in *Popović et al.* (“*Popović*”), the Appeals Chamber jurisprudence regarding cumulative convictions based on

<sup>773</sup> *Id.* n. 732-733.

<sup>774</sup> *Ntakirutimana* Appeal Judgement para. 542, citing *Musema* Appeal Judgement paras. 358-370; *Kordić and Čerkez* Appeal Judgement para. 1033; *Krstić* Appeal Judgement para. 218; *Čelebići* Appeal Judgement para. 412.

<sup>775</sup> *Ntakirutimana* Appeal Judgement para. 542, citing *Čelebići* Appeal Judgement, para. 412. The standard was clarified in the *Kunarac et al.* Appeal Judgement, para. 168. See also *Vasiljević* Appeal Judgement, paras. 135, 146; *Krstić* Appeal Judgement, para. 218.

<sup>776</sup> *Popović et al.* Trial Judgement para. 2111, citing *Galić* Appeal Judgement para. 163; *Krstić* Appeal Judgement para. 218.

<sup>777</sup> See III.2.1; III.4.2.

<sup>778</sup> *Popović et al.* Trial Judgement para. 2118, citing *Seromba* Appeal Judgement para. 221; *Nahimana et al.* Appeal Judgement paras. 894, 896; *Bagosora et al.* Trial Judgement para. 2087; *Krstić* Appeal Judgement para. 6. See also *Nahimana et al.* Appeal Judgement para. 492

the same conduct is not necessarily applicable, since the conduct relevant to the crime of conspiracy is the agreement, which is not a requisite element for genocide.<sup>779</sup>

655. Thus, it would appear that, based on the distinct nature of the two crimes, convictions for both genocide and conspiracy to commit genocide would be permissible. However, the jurisprudence with respect to this issue is equivocal, most likely, due to the unique nature of the crime of conspiracy to commit genocide. The Chamber finds it instructive to consider the approaches taken by Trial Chambers at both this Tribunal and the ICTY.

656. In *Musema*, the Trial Chamber discussed the rationale behind the offence of conspiracy to commit genocide, namely, to ensure, in view of the serious nature of the crime of genocide, that the mere agreement to commit genocide should be punishable even if no preparatory act had taken place.<sup>780</sup> As an inchoate crime, it is the act of conspiracy itself which is punishable and not its result. After considering both Civil and Common Law systems, the *Musema* Trial Chamber decided to adopt the definition of conspiracy which was favourable to the accused, whereby a conviction for both genocide and conspiracy to commit genocide could not be entered on the basis of the same acts.<sup>781</sup>

657. It is difficult to reconcile the approach taken in *Musema* with the case of *Kambanda*, where convictions were entered pursuant to the accused's guilty pleas with respect to genocide, as well as conspiracy to commit genocide, based on the same facts.<sup>782</sup> The Chamber, however, notes that the *Kambanda* Trial Judgement did not include any discussion of the issue, nor was the Appeals Chamber called upon to address it.

658. In *Niyitegeka*, the Trial Chamber found the accused guilty of genocide and conspiracy to commit genocide, but again, the specific issue was not discussed, nor was it addressed on appeal.<sup>783</sup> While the *Kajelijeli* Trial Chamber recognised that the Tribunal's jurisprudence diverges on this issue, it was not called upon to express a preference regarding the *Musema* or *Niyitegeka* approach.<sup>784</sup> In none of these cases, was the issue examined in detail, as it was in *Musema*.

659. Most recently, the ICTY Trial Chamber in *Popović* carried out an extensive analysis of the issue. It considered the jurisprudence of this Tribunal, as well as the approach taken by Common and Civil Law systems and found the position to be ambiguous.<sup>785</sup> However, it noted that the basis of the concern regarding multiple convictions for the same act is one of fairness to the accused.<sup>786</sup> The *Popović* Trial Chamber further observed that the purpose of

<sup>779</sup> *Popović et al.* Trial Judgement para. 2118.

<sup>780</sup> *Musema* Trial Judgement para. 185, citing to *Travaux Préparatoires* of the Genocide Convention (Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September-10 December 1948, Official Records of the General Assembly).

<sup>781</sup> *Musema* Trial Judgement paras. 193-194, 196 (observing that Civil Law systems do not allow for conviction of both conspiracy and the substantive offence), 197 (noting that, under the Common Law system, an accused can, in principle, be convicted of both conspiracy and a substantive offence, but that this position had incurred criticism), 198 (adopting the definition most favourable to *Musema*).

<sup>782</sup> *Kambanda* Trial Judgement paras. 3, 39, 40 (1)-(2).

<sup>783</sup> *Niyitegeka* Trial Judgement paras. 429, 480 and 502.

<sup>784</sup> *Kajelijeli* Trial Judgement paras. 787-793.

<sup>785</sup> *Popović et al.* Trial Judgement paras. 2117-2123.

<sup>786</sup> *Popović et al.* Trial Judgement para. 2123 ("the real risk of prejudice which lies in allowing cumulative convictions, including the punishment and social stigma inherent in being convicted of a crime, as well as the potential impact of a sentence ultimately served.").

criminalising an inchoate offence such as conspiracy is to prevent the commission of the substantive offence. Once the substantive offence is committed, the justification for punishing the prior conspiracy is less compelling, particularly when “proof of the substantive offence is the main piece of evidence from which an inference of a prior illegal agreement is drawn and upon which the conspiracy conviction is based.”<sup>787</sup>

660. In *Popović*, the Trial Chamber’s findings for both genocide and conspiracy to commit genocide were based on the accused’s participation in a joint criminal enterprise to murder with genocidal intent.<sup>788</sup> Accordingly, it concluded that entering a conviction for the substantive offence of genocide rendered a conviction for conspiracy redundant and thus decided to adopt the approach taken by the *Musema* Trial Chamber that “the position most favourable to the accused must be paramount.”<sup>789</sup>

661. The Chamber considers that the present case is very similar to the scenario which arose in *Popović*. Indeed, this Chamber has inferred, from the evidence establishing that Gatete participated in a joint criminal enterprise, that he also entered an agreement to commit genocide in Rwankuba sector, and at the Kiziguro and Mukarange parishes (III.4). In light of these circumstances, and given that a conviction for genocide, and not also conspiracy to commit genocide, in no way lessens the Accused’s criminal culpability, the Chamber decides to follow the approach taken by the *Popović* and *Musema* Trial Chambers.<sup>790</sup>

662. Accordingly, the Chamber will not enter a conviction for both genocide (Count I) and conspiracy to commit genocide (Count III) with respect to the killings in Rwankuba sector, and Kiziguro and Mukarange parishes. Having established that the findings support a conviction for genocide for all three of the proven allegations, the Chamber dismisses Count III of the Indictment.

**6.3 Genocide and Extermination as a Crime Against Humanity**

663. The Chamber’s findings with respect to the crime of genocide (Count I) and extermination as a crime against humanity (Count IV) are based on the same conduct. The two are treated as distinct crimes by Articles 2 (3)(a) and 3 (b) of the Statute, respectively. The jurisprudence of both this Tribunal and the ICTY consistently establishes that each crime contains materially distinct elements. The materially distinct element of genocide is the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The materially distinct element of extermination as a crime against humanity, is the requirement that the crime was committed as part of a widespread or systematic attack against a civilian population.<sup>791</sup> Convictions for both are permissible based on the same conduct.<sup>792</sup>

<sup>787</sup> *Popović et al.* Trial Judgement para. 2124.

<sup>788</sup> *Popović et al.* Trial Judgement para. 2125.

<sup>789</sup> *Popović et al.* Trial Judgement para. 2127.

<sup>790</sup> The Chamber considers that this conclusion would not impact sentencing, given the gravity of the crime of genocide, as well as the nature of Gatete’s responsibility for that crime.

<sup>791</sup> *Ntakirutimana* Appeal Judgement para. 542, citing *Musema* Appeal Judgement para. 366. See also *Nahimana et al.* Appeal Judgement para. 1029; *Ntagerura et al.* Appeal Judgement para. 426; *Semanza* Appeal Judgement para. 318.

<sup>792</sup> *Ntakirutimana* Appeal Judgement para. 542, citing *Musema* Appeal Judgement para. 370.



664. Therefore, the Chamber proceeds to enter convictions for both genocide (Count I) and extermination as a crime against humanity (Count IV) with respect to Gatete's responsibility for killings in Rwankuba sector, and at the Kiziguro and Mukarange parishes.

#### 6.4 Extermination and Murder as Crimes Against Humanity

665. The Chamber has determined that the evidence supports findings of both extermination and murder as crimes against humanity (Counts IV and V) based on the same conduct. Both are treated as distinct crimes under Article 3 (b) and (a) of the Statute, respectively. However, the Tribunal's jurisprudence establishes that it is not permissible to convict an accused of both crimes based on the same set of facts.<sup>793</sup> Murder as a crime against humanity does not contain a materially distinct element from extermination as a crime against humanity.

666. Some Trial Chambers have found that murder requires an element of pre-meditation, and not only intent.<sup>794</sup> However, as noted by the *Semanza* Trial Chamber, "it is difficult to imagine how a person could intend to perpetrate a mass killing of members of a civilian population with knowledge that this formed part of a wider attack on discriminatory grounds, without a level of intent very closely approaching or identical to premeditation."<sup>795</sup> In sum, the elements for murder are subsumed by the crime of extermination as a crime against humanity and, thus, are not materially distinct.

667. Given the scale of the killings in Rwankuba sector, and at the Kiziguro and Mukarange parishes, the Chamber finds that the crime of extermination (Count IV) most aptly reflects the Accused's criminal culpability for those killings. Therefore, the Chamber will not enter a conviction for murder as a crime against humanity (Count V) with respect to the three proven allegations. Accordingly, the Chamber dismisses Count V of the Indictment.

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<sup>793</sup> *Ntakirutimana* Appeal Judgement para. 542, citing *Kayishema and Ruzindana* Trial Judgement paras. 647-650; *Rutaganda* Trial Judgement para. 422; *Musema* Trial Judgement para. 957; *Semanza* Trial Judgement paras. 500-505.

<sup>794</sup> See, for instance, *Bagilishema* Trial Judgement para. 86; *Ntagerura et al.* Trial Judgement para. 700; *Semanza* Trial Judgement para. 339.

<sup>795</sup> *Semanza* Trial Judgement para. 503.



**CHAPTER IV: VERDICT**

668. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Chamber finds unanimously as follows:

- Count I: GUILTY of Genocide
- Count II: DISMISSED (Complicity in Genocide)
- Count III: DISMISSED of Conspiracy to commit Genocide
- Count IV: GUILTY of Crimes Against Humanity (Extermination)
- Count V: DISMISSED of Crimes Against Humanity (Murder)
- Count VI: NOT GUILTY of Crimes Against Humanity (Rape)



## CHAPTER V: SENTENCING

### 1. INTRODUCTION

669. Having found Gatete guilty of genocide (Count I) and extermination as a crime against humanity (Counts IV), the Chamber must determine an appropriate sentence.

670. 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 offence 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>796</sup> As pointed out by the Appeals Chamber, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.<sup>797</sup>

### 2. SUBMISSIONS

671. The Prosecution submits that Gatete should receive a sentence of life imprisonment and emphasises the gravity of the crime of genocide. The Prosecution seeks concurrent sentences for the remainder of the Accused's life for each Count of the Indictment for which the Trial Chamber finds the Accused guilty. It argues that his direct participation in the commission of the most heinous crimes places him in the category of the most serious offenders. As aggravating factors, the Prosecution submits that Gatete abused his position of influence and authority. It further points to the zeal with which he committed the crimes and in particular, his violation of the code of sanctuary by participating in attacks on places of worship where persons had sought refuge. The Prosecution further submits that Gatete did not cooperate with the Prosecution, has shown no remorse and that there are no mitigating circumstances. Reference is also made to the Tribunal's Statute and case-law, as well as Rwandan law.<sup>798</sup>

672. The Defence points to Gatete's active service as *bourgmestre* of Murambi commune between 1982 and 1993 and that, during this time, he appointed Tutsis to positions of authority within his commune and treated Hutus and Tutsis without distinction. It also refers to Gatete's recognition of the horrific impact of the genocide on the Rwandan population, as well as his good character, family situation, age and ill health.<sup>799</sup>


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<sup>796</sup> Article 23 (1)-(3) of the Statute and Rule 101 (B)(i)-(iv) of the Rules.

<sup>797</sup> *Kajelijeli* Appeal Judgement para. 290. See Rule 101 (C) of the Rules.

<sup>798</sup> Prosecution Closing Brief paras. 234-243.

<sup>799</sup> Defence Closing Brief paras. 12-23, 1272-1277.



### 3. DELIBERATIONS

#### 3.1 Gravity of the Offence

673. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>800</sup> When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualise penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.<sup>801</sup>

674. 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>802</sup>

675. The Chamber has found Gatete guilty of genocide and extermination as a crime against humanity with respect to the killing of Tutsis in Rwankuba sector, Kiziguro parish and Mukarange parish, in April 1994. It is difficult to overemphasise the gravity of these offences which led to a loss of life on a massive scale, and caused immense suffering.

676. Under Rwandan law, similar crimes carry the possible penalties of life imprisonment, depending on the nature of the accused's participation.<sup>803</sup> At this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities as well as the most senior authorities.<sup>804</sup>

<sup>800</sup> *Kayishema and Ruzindana* Appeal Judgement para. 367 (quoting Article 1 of the Statute).

<sup>801</sup> *Kajelijeli* Appeal Judgement para. 291.

<sup>802</sup> *Kvočka et al.* Appeal Judgement para. 681.

<sup>803</sup> *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008 paras. 22-25 (assessing Rwanda's penalty structure); *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008 paras. 22-25. See also *Semanza* Appeal Judgement para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), quoting *Serushago* Appeal Judgement para. 30; *Dragan Nikolić* Appeal Judgement para. 69.

<sup>804</sup> See *Renzaho* Trial Judgement para. 820 n. 890 (citing *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). Life sentences have been imposed against senior government and military authorities in: *Bagosora et al.* Trial Judgement paras. 2265, 2277 (*Directeur de cabinet* of Ministry of Defence, Commander of Para Commando Battalion, and Commander of Gisenyi Operational Sector); *Ndindabahizi* 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 several other cases, lower level officials, as well as those who did not hold government positions have received life sentences. See, for instance, *Bagosora et al.* Trial Judgement paras. , 2268, 2268-2269, 2278-2279 (Commander of Para Commando Battalion and Commander of Gisenyi Operational Sector); *Karera* Trial Judgement para. 585 (prefect of Kigali-Rural); *Kayishema and Ruzindana* Trial Judgement (Sentence) p. 8 (Kayishema was prefect of Kibuye); *Gacumbitsi* Appeal Judgement para. 206 (*bourgmestre*); *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).



### 3.2 Individual, Aggravating and Mitigating Circumstances

677. The Chamber will consider Gatete's individual circumstances, including aggravating and mitigating factors. Aggravating factors need to be proven beyond reasonable doubt, while mitigating circumstances need only be established by the balance of the probabilities.<sup>805</sup> Any particular circumstance that is included as an element of the crime for which the Accused is convicted will not also be considered as an aggravating factor.<sup>806</sup>

#### 3.2.1 Aggravating Circumstances

678. The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor.<sup>807</sup> While Gatete is not charged as a superior under Article 6 (3) of the Statute, his position of authority may be a sentencing consideration.<sup>808</sup> Indeed, the evidence consistently establishes that Gatete was a prominent personality in Byumba and Kibungo prefectures. He commanded respect and authority by virtue of his former position as Murambi commune *bourgmestre*, as well as his position in April 1994 as a director in the Ministry of Women and Family Affairs.<sup>809</sup> The abuse of his general authority *vis-à-vis* the assailants who carried out the killings, is an aggravating factor. The Chamber recalls that, in Rwankuba sector, assailants, as well as *Conseiller* Bizimungu, gathered to receive instructions from him. *Interahamwe* thereafter carried out Gatete's orders. At Kiziguro and Mukarange parishes, Gatete used his authority to ensure that hundreds and possibly thousands of assailants carried out attacks on Tutsi civilians.

679. The Chamber further finds that the number of victims of the attacks in Rwankuba sector, and at the Kiziguro and Mukarange parishes, for which Gatete is individually

<sup>805</sup> *Nahimana et al.* Appeal Judgement para. 1038; *Kajelijeli* Appeal Judgement para. 294.

<sup>806</sup> *Ndindabahizi* Appeal Judgement para. 137; *Brđanin* Appeal Judgement para. 413.

<sup>807</sup> *Simba* Appeal Judgement paras. 284-285; *Ndindabahizi* Appeal Judgement para. 136; *Seromba* Appeal Judgement, para. 230.

<sup>808</sup> See for example *Semanza*, Appeal Judgement para.336 ("The question of the criminal responsibility as a superior is analytically distinct from the question of whether an accused's prominent status should affect his or her sentence.").

<sup>809</sup> Witness BBP, T. 20 October 2009 pp. 18 ("as the person in authority in charge of the *commune*, Gatete was leading the attack), 19 (as Gatete arrived with soldiers and "other persons in authority", the refugees were discouraged and stopped facing up to the *Interahamwe*), 44 (Gatete was a person in authority); Witness LA41, T. 2 March 2010 pp. 8 (in 1994, Gatete was a member of the Ministry of Women and Family Matters), 10 (Gatete had been an active *bourgmestre*); Witness LA43, T. 2 March 2010 p. 59 (Gatete was an active *bourgmestre*); Karemera, T. 4 March 2010 p. 21 (people knew Gatete and talked about him often as he had been the "head of Murambi commune" for a long time); Witness LA16, T. 8 March 2010 p. 60 ("I had known long before that he was an official, and I had to respect him. I considered him and always considered him as an official or an authority.... I considered him an authority official because he had been a *bourgmestre*, and in that capacity he was an authority. And when he stopped being *bourgmestre* to go and work in a ministry, I could not disrespect him. I continued considering him as an official"); Witness LA27, T. 10 March 2010 p. 56 (Gatete was well-known as the former *bourgmestre* of Murambi commune); Ndayambaje, T. 15 March 2010 p. 8 (Gatete was an active *bourgmestre*); Majoro, T. 24 March 2010 p. 27 (Gatete was a respected and influential authority); Karushya, T. 25 March 2010 pp. 34-35 (Gatete was influential because he was an authority who had served as *bourgmestre*). See also I.3.

responsible, is an aggravating factor,<sup>810</sup> as is the fact that attacks took place at parishes, where people sought refuge because of their universally recognised status as sanctuaries.<sup>811</sup>

680. Moreover, Gatete participated in the crimes with particular zeal. He was not merely present, but issued express orders to kill Tutsis, telling assailants to “work relentlessly”, provided material support at massacre sites by arriving with military personnel, administrative officials, and weapons capable of killing on a mass-scale. Indeed, he ordered the killing of hundreds, if not thousands of Tutsi civilians. The lead role he took in killings through, planning and ordering, is also an aggravating factor.<sup>812</sup>

### 3.2.2 Mitigating Circumstances

681. The Chamber has considered Gatete’s background and individual circumstances. It is mindful of his lengthy public service to his country prior to the events, and in particular, that he developed Murambi commune during his time as *bourgmestre* and his close association with Tutsis.<sup>813</sup> The Chamber has also considered Gatete’s family situation and health condition.<sup>814</sup> However, the Chamber accords these mitigating circumstances very limited weight in view of the gravity of Gatete’s crimes and the nature of his involvement in them.<sup>815</sup>

<sup>810</sup> *Semanza* Appeal Judgement paras. 337-338; *Ndindabahizi* Appeal Judgement para. 135; *Simba* Trial Judgement para. 440; *Bagosora, Kabiligi, Niabakuze and Nsengiyumva*, Trial Judgement para. 2272; *Serugendo*, Trial Judgement para. 90; *Karera* Trial Judgement para. 579; *Rugambarara* Trial Judgement para. 24.

<sup>811</sup> *Kamuhanda* Appeal Judgement para. 357; *Ntakirutimana et al.* Appeal Judgement para. 563; *Karera* Trial Judgement paras. 579-580; *Muhimana* Trial Judgement para. 605.

<sup>812</sup> *Brđinin* Appeal Judgement para. 413. The Chamber recalls however that, contrary to the Prosecution’s submissions, the lack of cooperation with the Prosecution cannot be considered as an aggravating factor. See *Bisengimana* Trial Judgement para. 127.

<sup>813</sup> Defence Closing Brief paras. 12-23; See for example, Witness LA41, T. 2 March 2010 p. 10 (Gatete was an active *bourgmestre* who led development projects and built bridges, schools and health centres); Witness LA43, T. 2 March 2010 p. 59 (Gatete was an active *bourgmestre* who worked for the development of his region); Witness LA40, T. 3 March 2010 p. 19 (Gatete developed roads and bridges, constructed schools); Nikuze, T. 5 March 2010 pp. 2-3 (Gatete established two secondary schools in the commune and contacted foreign organisations to assist with the water and electricity supplies); Habineza, T. 11 March 2010 p. 66 (Gatete initiated development activities in the commune); Ndayambaje, T. 15 March 2010 p. 8 (Gatete was an active *bourgmestre* who developed the commune. He constructed schools, health centres, markets and the commune office); Habyarimana, T. 16 March 2010 p. 52 (during Gatete’s time as *bourgmestre*, there was progress in the commune). With respect to Gatete’s relationship with Tutsis, see for example, Witness LA41, T. 2 March 2010 p. 11 (Tutsis in Murambi commune did not have experience any problems under Gatete); Witness LA43, T. 2 March 2010 p. 60 (Gatete’s attitude towards Tutsis was positive. He recruited Tutsis, and treated Tutsis and Hutus equally). Witness LA 40, T. 3 March 2010 p. 20 (Gatete treated all members of the commune equally and did not discriminate against anyone); Nikuze, T. 4 March 2010 p. 71 (Tutsis were hired after his appointment as *bourgmestre* and he treated them the same as Hutus); Karemera, T. 4 March 2010, p. 20 (anyone, Tutsis, Hutus or Twa could join the agricultural cooperative set up by Gatete).

<sup>814</sup> Defence Closing Brief paras. 1270, 1275-1277.

<sup>815</sup> The Chamber also recalls that the accused’s previous good character is usually accorded little weight in the final determination of the sentence. See *Seromba* Appeal Judgement para. 235; *Semanza* Appeal Judgement paras. 334, 397, 398; *Gacumbitsi* Appeal Judgement para. 195.

#### 4. CONCLUSION

682. The Chamber has the discretion to impose a single sentence.<sup>816</sup> However, it emphasises that each of the crimes underlying each Count are deserving of the maximum sentence, given their gravity and several aggravating factors.

683. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Gatete to:

#### LIFE IMPRISONMENT

#### 5. CONSEQUENTIAL ORDERS

684. 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.

685. Until his transfer to his designated place of imprisonment, Jean-Baptiste Gatete shall be kept in detention under the present conditions.

686. 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, 31 March 2011



Khalida Rachid Khan  
Presiding Judge



Lee Gacuiga Muthoga



Aydin Sefa Akay  
Judge



<sup>816</sup> *Nahimana* Appeal Judgement, paras. 1042-1043; *Simba* Trial Judgement, para. 445; *Ndindabahizi* Trial Judgement, para. 497.

## ANNEX A: PROCEDURAL HISTORY

### 1. PRE-TRIAL PROCEEDINGS

1. On 14 December 2000, the Prosecution filed its original indictment against Jean-Baptiste Gatete charging him with ten counts of genocide or, in the alternative, complicity to commit genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, crimes against humanity (extermination, murder, persecution and rape), and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II. On 19 December 2000, Judge Pillay confirmed all counts in the Indictment of 14 December 2000.<sup>817</sup>

2. Gatete was arrested on 11 September 2002 in the Democratic Republic of Congo, pursuant to an order issued by Judge Pillay on 19 December 2000.<sup>818</sup> On 13 September 2002 he was transferred to the custody of the Tribunal.<sup>819</sup> Gatete's initial appearance was held on 20 September 2002 before Judge Ostrovsky, at which he pleaded not guilty to the ten counts in the Indictment of 14 December 2000.<sup>820</sup>

3. On 16 January 2003, Mr. Richard Dubé was assigned as Lead Counsel in the case.<sup>821</sup> On 11 February 2004, the Chamber granted a number of protective measures for Prosecution Witnesses.<sup>822</sup> On 10 April 2007, the Chamber granted protective measure to Defence witnesses.<sup>823</sup> On 19 April 2007, the Chamber held a status conference to assess the situation of the pre-trial stage.<sup>824</sup>

4. On 17 November 2008, the Chamber denied the Prosecution request for referral of the case against Gatete to the Republic of Rwanda for trial.<sup>825</sup>

5. During a status conference on 26 March 2009, Lead Counsel Mr. Dubé informed the Pre-Trial Chamber that he and his Co-Counsel, Ms. Isabelle Téolis, might not be available to represent the Accused during the trial.<sup>826</sup> On 25 April 2009, the Registrar withdrew the

<sup>817</sup> Confirmation of the Indictment (TC), 19 December 2000.

<sup>818</sup> Request for Arrest and Transfer (TC), 19 December 2000.

<sup>819</sup> Order Regarding Initial Appearance of Accused, 17 September 2002.

<sup>820</sup> Initial Appearance, T. 20 September 2002 pp. 49-51.

<sup>821</sup> Decision on Defence's Extremely Urgent Motion Seeking Leave to File Preliminary Motions, Out of Time, Under Rule 72 (TC), 20 January 2004 para. 2.

<sup>822</sup> Decision on Prosecution Request for Protection of Witnesses (TC), 11 February 2004.

<sup>823</sup> Decision on Defence Motion for Protection of Witnesses (TC), 10 April 2007.

<sup>824</sup> T. 19 April 2007.

<sup>825</sup> Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008. On 8 April 2008, the Office of the President designated Trial Chamber I as referral bench in accordance with Rule 11 *bis* of the Rules (Order Assigning to Trial Chamber I the Motion for Referral to Rwanda). On 27 June 2008, the Chamber denied the Defence Motion dated 8 April 2008, in which the Defence requested an oral hearing in order to assist the Chamber in its determination of the matter (Decision on Defence Motion for Oral Hearing). On 30 June and 9 September 2008, Trial Chamber I granted *amicus curiae* status to the International Criminal Defence Attorneys Association and the Republic of Rwanda, respectively, following applications pursuant to Rule 74 (Decisions on Amicus Curiae Requests).

<sup>826</sup> T. 26 March 2009 pp. 6-7.

assignment of Mr. Dubé and Ms. Téolis and assigned Ms. Marie-Pierre Poulain as Counsel for the Accused.<sup>827</sup>

6. Following transfer of the case to Trial Chamber III on 6 July 2009, the Chamber set 19 October 2009 as the date for commencement of trial and ordered the Prosecution to file a finalised Pre-Trial Brief, no later than 19 August 2009.<sup>828</sup> The Chamber rescheduled the case to commence on 20 October 2009.<sup>829</sup>

7. On 21 August 2009, the Chamber took judicial notice of facts of common knowledge, including of the occurrence of a genocide in Rwanda in 1994.<sup>830</sup>

8. On 13 October 2009, the Chamber found the Prosecution in violation of its disclosure obligations under Rule 66 (A)(ii) of the Rules with respect to one witness. The Chamber also ordered the Prosecution to conduct a review of materials in its possession to ensure compliance with its obligations under Rule 66 (A)(ii).<sup>831</sup>

9. On 14 October 2009, the Chamber held a status conference during which it was confirmed that the trial would commence on 20 October 2009.<sup>832</sup>

**2. INDICTMENT AMENDMENTS**

10. On 29 March 2004, the Chamber ordered the Prosecution to amend the Indictment of 14 December 2000 and provide further information on certain allegations.<sup>833</sup> On 21 April 2005, the Chamber granted the Prosecution’s request to file an amended indictment.<sup>834</sup> An amended indictment was filed on 10 May 2005, charging Gatete with six counts: genocide or complicity in the alternative, conspiracy to commit genocide, and extermination, murder and rape as crimes against humanity.

11. On 3 July 2009, the Chamber ordered the Prosecution to file a second amended indictment providing further information on certain allegations within five days of the filing

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<sup>827</sup> Decision on Withdrawal of the Assignment of Mr. Richard Dubé, Lead Counsel for the Accused *Jean-Baptiste Gatete* (Registrar), 25 April 2009; Decision on Withdrawal of the Assignment of Ms. Isabelle Téolis, Co-Counsel for the Accused (Registrar), 25 April 2009; Commission d’Office de Me Marie-Pierre Poulain à Titre de Conseil Principal Pour la Défense des Intérêts de M. Jean-Baptiste Gatete, Accusé Devant le Tribunal Pénal International pour le Rwanda, (Registrar), 24 April 2009.

<sup>828</sup> Notice of Designation (Office of the President), 6 July 2009; Scheduling Order (TC), 11 August 2009.

<sup>829</sup> Scheduling Order (TC), 30 September 2009.

<sup>830</sup> Decision on Prosecution’s Motion for Judicial Notice of Facts of Common Knowledge (TC), 21 August 2009.

<sup>831</sup> Decision on Defence Motions for Disclosure Pursuant to Rule 66 (A)(ii) and Commencement of Trial (TC), 13 October 2009. The Chamber granted the Prosecution motion for reconsideration of its witness schedule, *inter alia* based on reductions that had since been made in the volume of materials to be reviewed by the Defence, Decision on Defence and Prosecution Motions for Reconsideration of the Chamber’s Decision of 13 October 2009 and Scheduling of Prosecution Case (TC), 19 October 2009 (“19 October 2009 Reconsideration Decision”). See also Decision on Prosecutor’s Motion to Vary List of Witnesses Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence (TC), 19 October 2009 (removing two witnesses from the Prosecution Witness List). The Chamber denied a Defence motion for certification to appeal its 19 October 2009 Reconsideration Decision, finding that, if required, remedies were available to ensure fairness of proceedings and that postponement of the Prosecution case had not been shown to be necessary. Decision on Defence Application for Certification to Appeal the Chamber’s Decision of 19 October 2009 (TC), 10 November 2009.

<sup>832</sup> T. 14 October 2009.

<sup>833</sup> Decision on Defence Preliminary Motion (TC), 29 March 2004.

<sup>834</sup> Decision on the Prosecution’s Request for Leave to File an Amended Indictment (TC), 21 April 2005.

of the decision.<sup>835</sup> The Prosecution filed the second amended indictment on 7 July 2009, which is the operative Indictment.<sup>836</sup>

12. On 2 October 2009, the Chamber granted in part a Defence motion raising defects in the Prosecution's Pre-Trial Brief, and declared certain allegations contained in the Pre-Trial Brief to be irrelevant to the case.<sup>837</sup>

### 3. PROSECUTION CASE

13. On 21 July 2009, the Prosecution filed a Provisional Pre-Trial Brief. Following the scheduling order issued by the Chamber on 11 August 2009, the Prosecution filed its operative Pre-Trial Brief on 19 August 2009.<sup>838</sup>

14. The Prosecution commenced its case on 20 October 2009. The Prosecution case was conducted in two sessions from 20 to 22 October 2009, and from 2 to 16 November 2009. Over the course of 13 trial days, the Prosecution called 22 witnesses and tendered 39 exhibits.

15. On 22 October 2009, the Chamber ordered the transfer of detained Prosecution witnesses to Arusha.<sup>839</sup> On 18 December 2009, the Chamber denied a Prosecution motion requesting that the Defence disclose the Accused's alibi, finding insufficient grounds to conclude that the Defence intended to rely on the Defence of alibi.<sup>840</sup> On 23 November 2009, the Chamber denied a Defence motion for disclosure of Rwandan judicial records and for an order to the Prosecution to obtain documents, but *proprio motu*, ordered the Prosecution to use its best efforts to make enquiries with the Rwandan authorities regarding the existence of judicial records in respect of three Prosecution witnesses, disclose any such records immediately to the Defence, and report on the results of its efforts.<sup>841</sup>

### 4. DEFENCE CASE

16. On 26 May 2009, the Chamber held a pre-Defence Conference pursuant to Rule 73 *ter* of the Rules.<sup>842</sup>

17. On 19 November 2009, the Chamber ordered that the Defence commence its case on 1 March 2010 and file its Pre-Defence Brief no later than 29 January 2010.<sup>843</sup> The Pre-

<sup>835</sup> Decision on Defence Motion Concerning Defects in the Amended Indictment (TC), 3 July 2009. The Chamber denied certification to appeal that Decision in its Decision on Defence Application for Certification to Appeal the Chamber's Decision on Defects in the Indictment (TC), 19 August 2009.

<sup>836</sup> Indictment, 7 July 2009.

<sup>837</sup> Decision on Defence Motion Raising Defects in the Prosecution Pre-Trial Brief of 19 August 2009 (TC), 2 October 2009.

<sup>838</sup> The Prosecutor's Pre Trial Brief, Pursuant to the Trial Chamber's Scheduling Order dated 11 August 2009.

<sup>839</sup> Decision on Prosecutor's Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* (TC), 22 October 2009.

<sup>840</sup> Decision on Prosecutor's Motion for the Disclosure of the Particulars of the Accused's Alibi (TC), 18 December 2009.

<sup>841</sup> Decision on Defence Motion for Disclosure of Rwandan Judicial Records Pursuant to Rule 66 (A) (ii) and Order to the Prosecution to Obtain Documents (TC), 23 November 2009.

<sup>842</sup> Pre-Defence Conference, T. 26 May 2009.

<sup>843</sup> Scheduling Order Regarding Commencement of the Defence Case (TC), 19 November 2009. The Chamber denied a Defence motion requesting an order that evidence of pre-1994 acts, as disclosed by the Prosecution through its witness statements, be declared inadmissible and stated that it would assess the relevance and

Defence Brief was filed on 29 January 2010, together with the Defence witness list, summaries of proposed testimonies and an exhibit list. On 2 February 2010, the Chamber issued a further order scheduling the Defence case to proceed from 2 to 31 March 2010 and a status conference to be held on 23 February 2010. It also ordered the Defence to file a revised witness list by 19 February 2010.<sup>844</sup> On 19 February 2010, the Defence filed a revised list including 36 witnesses. On 23 February 2010, the Chamber ordered the transfer of detained Defence witnesses to Arusha.<sup>845</sup>

18. On 24 November 2009 the Chamber denied a Defence motion requesting that a portion of Prosecution evidence be excluded. The Chamber recalled that “the exact probative weight, if any, to be attached to admitted evidence is to be determined at a later stage when assessing the totality of the evidence.”<sup>846</sup>

19. The Chamber denied on 15 December 2009 a Defence motion to admit into evidence a *pro justitia* statement that had been marked for identification, as the Defence had not provided sufficient indicia of reliability regarding the document.<sup>847</sup>

20. On 26 March 2010, the Chamber granted in part a Defence request to exclude evidence and delineate the Defence case. The Chamber declared portions of two Prosecution witnesses testimonies inadmissible due to lack of notice.<sup>848</sup>

21. The Defence conducted its case from 2 to 29 March 2010 over 17 trial days. The Defence called 27 witnesses and tendered 107 exhibits.

## 5. SITE VISIT

22. At a status conference held on 29 March 2010, the Chamber decided, *proprio motu*, that a site visit to Rwanda was appropriate in this case.<sup>849</sup> During a further status conference on 31 March 2010, the Chamber ordered that the Parties file their Closing Briefs by 25 June 2010, that Closing Arguments be heard on 13 and, if need be, 14 July 2010, that the site visit

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probative value of any evidence on pre-1994 events presented, and determine the exact weight to be attached to such evidence at a later stage, when assessing all the evidence as a whole. Decision on Defence Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal (TC), 3 November 2009. See also Decision on Defence Application for Certification to Appeal the Chamber’s Decision of 3 November 2009 (TC), 8 December 2009.

<sup>844</sup> Scheduling Order and Order for the Defence to Reduce its List of Witnesses (TC), 2 February 2010.

<sup>845</sup> Decision on Defence Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* (TC), 23 February 2010.

<sup>846</sup> Decision on Defence Motion for Exclusion of Evidence (TC), 24 November 2009, para. 18. The Chamber denied certification to the Defence for leave to appeal that decision. Decision on Defence Application for Certification to Appeal Decision on Defence Motion for Exclusion of Evidence, 21 January 2010.

<sup>847</sup> Decision on Defence Motion to Admit MFI/3 into Evidence pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (TC), 15 December 2009.

<sup>848</sup> Decision on Defence’s Motion for Exclusion of Evidence and Delineation of the Defence Case (TC), 26 March 2010. The Chamber excluded portions of testimony relating to the alleged acts of the Accused at the Gakoni orphanage and portions of testimony stating that Gatete drew up a list of people to be killed that was published in a newspaper in January 1994. For both allegations, the Chamber considered that the Defence did not receive adequate notice.

<sup>849</sup> T. 29 March 2010 p. 3.

would take place from 10 to 16 June 2010 and that the Parties should make submissions on this matter by 30 April 2010.<sup>850</sup>

23. On 17 June 2010, the Chamber declined the Defence request to postpone the site visit and closing arguments, and issued an itinerary for the site visit as well as modalities for its conduct.<sup>851</sup> On 20 September 2010, the Chamber issued a scheduling order with modified dates for the site visit and hearings of Closing Arguments.<sup>852</sup> The Chamber conducted the site visit in Rwanda from 16 to 31 October 2010. The Registry's report on the site visit was filed on 3 November 2010, and the Parties made submissions on 5 November 2010 on the results of the site visit.<sup>853</sup>

## 6. FURTHER PROCEEDINGS

24. On 24 June 2010, the Chamber denied Prosecution and Defence motions to admit statements, finding that the tendered documents did not meet the requirements of Rule 92 *bis*, and further denied a Defence Motion to postpone the filing of the Closing Briefs.<sup>854</sup>

25. The Parties filed their Closing Briefs on 25 June 2010. Closing Arguments were heard on 8 November 2010.

26. The Chamber delivered the oral summary of its Judgement on 29 March 2011. It convicted Gatete for genocide and extermination as a crime against humanity. The written Judgement was filed on 31 March 2011 after completion of the editorial process.

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<sup>850</sup> Scheduling Order for Filing of Closing Briefs, Hearing of Closing Arguments and Site Visit to Rwanda (TC), 31 March 2010.

<sup>851</sup> Decision on Site Visit (TC), 17 June 2010. See also Decision on Defence Motion for Reconsideration of Decision on Site Visit Postponement or For Heightened Security During Site Visit and for Statement from Rwandan Authorities on Immunity of Defence Counsel (TC), 6 July 2010.

<sup>852</sup> Scheduling Order for Site Visit and Hearing of Closing Arguments (TC), 20 September 2010.

<sup>853</sup> Prosecutor's Submissions Regarding Completed Site Visit, 5 November 2010; Defence Submissions Regarding the Site Visit of 26-31 October 2010, 5 November 2010.

<sup>854</sup> Decision on Defence and Prosecution Motions for Admission of Written Statements and Defence Motion to Postpone Filing of Closing Briefs (TC), 24 June 2010. See also Decision on Defence Application for Reconsideration or Certification to Appeal the Decision of 24 June 2010 (TC), 14 July 2010.



**ANNEX B: CITED MATERIALS AND DEFINED TERMS****1. JURISPRUDENCE****1.1. ICTR****Akayesu**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“Akayesu Appeal Judgement”)

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR -96-4-T, Judgement (TC), 2 September 1998 (“Akayesu Trial Judgement”)

**Bagilishema**

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

**Bagosora et al.**

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-T, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-T, Judgement (TC), 18 December 2008 (“Bagosora et al. Trial Judgement”)

**Bisengimana**

*The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement (TC), 12 April 2006 (“Bisengimana Trial Judgement”)

**Gacumbitsi**

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

*The Prosecutor v. Sylvestre Gacumbitsi*, Case. No. ICTR-2001-64-T, Judgement (TC), 11 June 2004 (“Gacumbitsi Trial Judgement”)

**Gatete**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Decision on Prosecution’s Motion for Judicial Notice of Facts of Common Knowledge (TC), 21 August 2009

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 17 November 2008

**Kajelijeli**

*Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“*Kajelijeli Appeal Judgement*”)

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement (TC), 687. 1 December 2003 (“*Kajelijeli Trial Judgement*”)

**Kalimanzira**

*Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 (“*Kalimanzira Appeal Judgement*”)

**Kamuhanda**

*Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda Appeal Judgement*”)

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

**Kanyarukiga**

*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 6 June 2008,

**Karemera et al.**

*The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006

**Karera**

*Francois Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 (“*Karera Appeal Judgement*”)

*The Prosecutor v Francois Karera*, Case No. ICTR-01-74-T, Judgement (TC), 7 December 2007 (“*Karera Trial Judgement*”)

**Kayishema and Ruzindana**

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 (“*Kayishema and Ruzindana Appeal Judgement*”)

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999 (“*Kayishema and Ruzindana Trial Judgement*”)

**Mpambara**

*The Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 (“*Mpambara Trial Judgement*”)

**Muhimana**

*The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T, Judgement (TC), 28 April 2005 (“*Muhimana Trial Judgement*”)

**Musema**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 (“*Musema Appeal Judgement*”)

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (TC), 27 January 2000 (“*Musema Trial Judgement*”)

**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 Judgement*”)

**Ndindabahizi**

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“*Ndindabahizi Appeal Judgement*”)

*The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-T, Judgement (TC), 15 July 2004 (“*Ndindabahizi Trial Judgement*”)

**Niyitegeka**

*Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review (AC), 30 June 2006

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

*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement (TC), 16 May 2003 (“*Niyitegeka Trial 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*”)

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

#### **Ntakirutimana**

*The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana* Appeal Judgement”)

*The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 and ICTR-96-17-T, Judgement (TC), 21 February 2003 (“*Ntakirutimana* Trial Judgement”)

#### **Ntawukuliliyayo**

*The Prosecutor v. Dominique Ntawukuliliyayo*, Case No. ICTR-05-82-T, Judgement (TC), 3 August 2010 (“*Ntawukuliliyayo* Trial Judgement”)

#### **Renzaho**

*The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009 (“*Renzaho* Trial Judgement”)

#### **Rugambarara**

*The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59-T, Judgement (TC), 16 November 2007 (“*Rugambarara* Trial Judgement”)

#### **Rukundo**

*Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement (AC), 20 October 2010 (“*Rukundo* Appeal Judgement”)

*Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-T, Judgement (TC), 27 February 2009 (“*Rukundo* Trial Judgement”)

#### **Rutaganda**

*Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006

*Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-A, Judgement (AC), 26 May 2003 (“*Rutaganda* Appeal Judgement”)

*The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-03-T, Judgement (TC), 6 December 1999 (“*Rutaganda* Trial Judgement”)

**Rwamakuba**

*The Prosecutor v. André Rwamakuba.*, Case No. ICTR-98-44C-A, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007

**Semanza**

*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 (“*Semanza Appeal Judgement*”)

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

**Seromba**

*Athanase Seromba v. The Prosecutor*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 (“*Seromba Appeal Judgement*”)

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Judgement (TC), 13 December 2006 (“*Seromba Trial Judgement*”)

**Serugendo**

*The Prosecutor v. Joseph Serugendo*, Case No. ICTR-2005-84-I, Judgement (TC), 12 June 2006, (“*Serugendo Trial Judgement*”)

**Serushago**

*Omar Serushago v. The Prosecutor*, Case. No. ICTR-98-39-A, Judgement (AC), 6 April 2000 (“*Serushago Appeal Judgement*”)

**Simba**

*Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement and Sentence (AC), 27 November 2007 (“*Simba Appeal Judgement*”)

*The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005 (“*Simba Trial Judgement*”)

**Zigiranyirazo**

*Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR -01-73-A, Judgement (AC), 16 November 2009 (“*Zigiranyirazo Appeal Judgement*”)

**1.2. ICTY****Aleksovski**

*The Prosecutor v. Zlatko Aleksovski*, Case. No. IT-95-14/1-A, Judgement (AC), 24 March 2000 (“*Aleksovski Appeal Judgement*”)

**Blagojević and Jokić**

*The Prosecutor v. Vidoje Blagojević and and Dragan Jokić*, Case. No. IT-02-60-A, Judgement (AC), 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”)

**Blaškić**

*The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“*Blaškić Appeal Judgement*”)

**Brđanin**

*The Prosector v. Radoslov Brđanin* , Case No. IT-99-36-A, Judgement (AC), 3 April 2007 (“*Brđanin Appeal Judgement*”)

*The Prosector v. Radoslov Brđanin* , Case No. IT-99-36-T, Judgement (TC), 1 September 2004 (“*Brđanin Trial Judgement*”)

**Brđanin and Talić**

*The Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the form of the Amended Indictment, 20 February 2001

**Delalić et al.**

*The Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Delalić et al. Appeal Judgement*”)

**Galić**

*The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 (“*Galić Appeal Judgement*”)

**Jelisić**

*Goran Jelisić v. The Prosecutor*, Case No. IT-95-10-A, Judgement (AC) 5 July 2001 (“*Jelisić 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*”)

*The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement (TC), 26 February 2001 (“*Kordić and Čerkez Trial Judgement*”)

**Krajišnik**

*The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement (TC), 27 September 2006 (“*Krajišnik* Trial Judgement”)

**Krnojelac**

*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 (“*Krnojelac* Appeal Judgement”)

*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000

**Krstić**

*The Prosecutor v. Radoslav Krstić*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 (“*Krstić* Appeal Judgement”)

**Kunarac**

*The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & 96-23/1-A (AC), 12 June 2002 (“*Kunarac et al.* Appeal Judgement”)

*The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T & 96-23/1-T (AC), 22 February 2001 (“*Kunarac et al.* Trial Judgement”)

**Kupreškić et al.**

*The Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”)

**Kvočka**

*The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-A, Judgement (AC), 28 February 2005 (“*Kvočka et al.* Appeal Judgement”)

**Limaj**

*The Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement (TC), 30 November 2005 (“*Limaj et al.* Trial Judgement”)

**Mucić et al.**

*Mucić et al. v. The Prosecutor*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Mucić et al.* Appeal Judgement”)

**Nikolić**

*The Prosecutor v. Dragan Nikolić*, Case No IT-94-2-A, Judgement (AC), 4 February 2005, (“*Nikolić Appeal Judgement*”)

**Popović et al.**

*The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement (TC), 10 June 2010 (“*Popović et al. Trial Judgement*”)

**Simić**

*The Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 (“*Blagoje Simić Appeal Judgement*”)

**Stakić**

*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 (“*Stakić Appeal Judgement*”)

*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement (TC), 31 July 2003 (“*Stakić Trial Judgement*”)

**Tadić**

*The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić Appeal Judgement*”)

**Vasiljević**

*The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 (“*Vasiljević Appeal Judgement*”)



## **2. DEFINED TERMS AND ABBREVIATIONS**

### **AVEGA**

*Association des Veuves du Genocide* or the Association of the Widows of Genocide

### **FAR**

*Forces Armées Rwandaises* or Rwandan Armed Forces

### **Defence Closing Brief**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-T, Defence Closing Brief, 25 June 2010

### **Pre-Defence Brief**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-T, Pre-Defence Brief Pursuant to Rule 73 *ter*(B) of the Rules of Procedure and Evidence, 29 January 2010

### **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

### **ICTY**

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

### **Indictment of 14 December 2000**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-I, Indictment, 14 December 2000

### **Indictment of 10 May 2005**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-I, Indictment, 10 May 2005

### **Indictment**

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-I, Indictment, 7 July 2009

### **JCE**

Joint Criminal Enterprise

**MDR**

Mouvement Démocratique Républicain

**MRND**

Mouvement Révolutionnaire National our la Démocratie et le Développement

**n.**

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*Parti Libéral*

**Prosecution Closing Brief**

*The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-00-61-I, The Prosecutor's Final Brief, 25 June 2010*

**Prosecutor's Pre-Trial Brief of 21 July 2009**

*The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-00-61-I, The Prosecutor's Pre-Trial Brief, 21 July 2009*

**Prosecution Pre-Trial Brief**

*The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-00-61-I, The Prosecutor's Pre-Trial Brief, 11 August 2009*

**RPF**

Rwandan (also Rwandese) Patriotic Front

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, adopted pursuant to Article 14 of the Statute

**Statute**

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

**T.**

Transcript

**Twisungane**

A subsidiary of AVEGA, a Genocide Survivors Group for Widows

**UNDF**

United Nations Detention Facility

**WVSS**

Witnesses and Victims Support Section

ANNEX C

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*Prosecutor v Gatete ICTR-2000-61-I*

*2<sup>nd</sup> Amended Indictment, July 2009*

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**Case No. ICTR-2000-61-I**

**THE PROSECUTOR**

**AGAINST**

**JEAN-BAPTISTE GATETE**

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**SECOND AMENDED INDICTMENT**

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

**JEAN-BAPTISTE GATETE**

With **GENOCIDE**; or in the alternative **COMPLICITY IN GENOCIDE; CONSPIRACY TO COMMIT GENOCIDE; CRIMES AGAINST HUMANITY**, offenses stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal

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

**JEAN-BAPTISTE GATETE**

with **GENOCIDE**, pursuant to Article 2(3) (a) and 6(1) or in the alternative **COMPLICITY IN GENOCIDE**, pursuant to Art. 2(3) (e) and 6 (1); **CONSPIRACY TO COMMIT GENOCIDE** pursuant to 2(3) (b) and 6 (1); and **CRIMES AGAINST HUMANITY**, pursuant to Article 3(b), Article 3 (a), 3 (g) all under Article 6(1), offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below of the Statute of the Tribunal;

**THE ACCUSED**

1. **Jean-Baptiste GATETE** was born in 1953 in Rwankuba *secteur*, Murambi *commune*, Byumba *préfecture*, Rwanda.

2. **Jean-Baptiste GATETE** was *bourgmestre* of Murambi *commune*, in Byumba *préfecture*, from 1987 until June 1993. He was a member of the national congress of the MRND and was active in party politics at both the national and prefectural levels. He was dismissed as *bourgmestre* in 1993 during the administration of Dismas NSENGIYAREMYE's Second Multiparty Government of 1992 amidst allegations that he persecuted the Tutsi of Murambi. Thereafter he was appointed *Directeur* in the Ministry of Women and Family Affairs, then headed by Pauline NYIRAMASUHUKO.

3. **Jean-Baptiste GATETE** was also appointed President of the MRND in Murambi *commune* in June 1993.

4. During the period covered by this indictment, **Jean-Baptiste GATETE** was an *Interahamwe* leader. Though no longer formally affiliated with the local public administration, he continued to exercise influence over communal police, gendarmes and civilian militias in Byumba and Kibungo *préfectures* due to his former status as *bourgmestre* of Murambi *commune*, his national leadership role in the MRND political party and his leadership status among the *Interahamwe*.

**CONCISE STATEMENT OF FACTS, including CHARGES**

5. Between 1 January and 31 December 1994, citizens native to Rwanda were classified according to the following ethnic or racial classifications: Tutsi, Hutu, and Twa.

6. Between 6 April and 17 July 1994, throughout Rwanda, there were widespread or systematic attacks against a civilian population based on Tutsi ethnic or racial identification, political opposition, real or perceived, to the MRND, or perceived sympathies to the Tutsi. As a result of these attacks, large numbers of ethnically or

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racially identified Tutsis and of persons perceived to be politically opposed to the MRND, including moderate Hutus, were killed.

7. During the period covered by this indictment, **Jean-Baptiste GATETE**, acted individually or as part of a joint criminal enterprise with the following individuals and groups: Ret. Col. RWAGAFIRITA, Lt. Col. NYURIYEKUBONA, Lt. MIHIGO, Emmanuel HABIMANA (Cyasa), Jean de Dieu MWANGE, Celestin SENKWARE, Jean BIZIMUNGU, Gerard KAYONZA, Jean MPAMBARA, Kigarama Bourgmestre MUGIRANEZA, Conseiller, Gaspar KAMALI, Gasigwa KARANGWA, Augustin NKUNDABAZUNGU, the *Interahamwe*, the Forces Armees Rwandaises (FAR), the Presidential Guard, communal police, civilian militia and others, known and unknown. The object and purpose of the joint criminal enterprise was to commit genocide and crimes against humanity targeting the Tutsi racial or ethnical group. In execution of the joint criminal enterprise **Jean Baptiste GATETE** acted with members of the enterprise with the intent to destroy the Tutsi population in whole or in part as well as those believed to be sympathetic to the Tutsi.

8. **Jean-Batiste GATETE**, acted individually or in concert with other members of the joint criminal enterprise in the following ways:

- a. Killed members of the Tutsi ethnic group;
- b. Trained, indoctrinated, encouraged, provided intelligence to, transported and distributed arms to members of the *Interahamwe*, the *Arnahindure*, "Civil Defence Forces," and other militiamen who murdered, caused serious bodily and mental harm, raped and pillaged Tutsi group members;
- c. Met with local administrative officials to plan and organize the distribution of weapons and instigation of civilians to kill and rape Tutsi group members.

## CHARGES

### INDIVIDUAL CRIMINAL LIABILITY

#### Article 6 of the Statute

9. The accused, **Jean-Batiste GATETE**, is individually responsible for the crimes alleged against him in this indictment under *Articles 2, 3, and 6 of the Statute*. The accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. In addition, the accused participated in a joint criminal enterprise. The purpose of this joint criminal enterprise was the destruction, in whole or in part, of the Tutsi racial or ethnical group in Byumba and Kibungo *prefectures* as well as throughout all of Rwanda. To fulfill this criminal purpose, the accused, acting individually or with others known and unknown, significantly contributed to the joint criminal enterprise. The crimes enumerated within this Indictment were within the object of the joint criminal enterprise. Alternatively, the crimes enumerated were natural and foreseeable consequences of the joint criminal

enterprise and the accused and others known and unknown were aware that such crimes were the likely outcome of the joint criminal enterprise. Despite his awareness of the foreseeable consequences, **Jean-Batiste GATETE**, and others known and unknown, knowingly and willfully participated in the joint criminal enterprise.

**Counts 1 - 2**  
**GENOCIDE, or alternatively COMPLICITY IN GENOCIDE**

10. The Prosecutor charges **Jean-Batiste GATETE** with GENOCIDE, *a crime stipulated in Article 2 (3)(a) and Article 6(1) of the Statute*, in that on or between the dates of 6 – 30 April 1994, in Byumba and Kibungo *prefectures*, Rwanda, **Jean-Batiste GATETE**, with intent to destroy, in whole or in part, the Tutsi racial or ethnical group, or knowing that other people intended to destroy, in whole or in part, the Tutsi racial or ethnical group, planned, instigated, ordered, committed or otherwise aided and abetted those other people in the planning, preparation, or execution of killing or causing serious bodily or mental harm to members of the Tutsi group, as outlined in the factual paragraphs below:

*Alternatively,*

11. The Prosecutor charges **Jean-Bapiste GATETE** with COMPLICITY IN GENOCIDE, *a crime stipulated in Article 2 (3)(e) and Article 6(1) of the Statute*, in that on or between the dates of 6 - 30 April 1994, in Byumba and Kibungo *prefectures*, Rwanda, **Jean-Bapiste GATETE**, with intent to destroy, in whole or in part, the Tutsi racial or ethnical group, or knowing that other people intended to destroy, in whole or in part, the Tutsi racial or ethnical group, and knowing that his assistance would contribute to the crime of genocide, planned, instigated, ordered, committed, or otherwise aided and abetted those other people in the planning, preparation or execution of the killing or causing serious bodily or mental harm to members of the Tutsi group, as outlined in the factual paragraphs below;

**Count 3**  
**CONSPIRACY TO COMMIT GENOCIDE**

12. The Prosecutor charges **Jean-Baptiste GATETE** with CONSPIRACY TO COMMIT GENOCIDE, *a crime stipulated in Article 2(3)(b) and Article 6(1) of the Statute*, in that on or between the dates of 6 - 30 April 1994 in Byumba and Kibungo *préfectures*, Rwanda, **Jean-Baptiste GATETE**, with intent to destroy, in whole or in part, the Tutsi racial or ethnical group, or knowing that other people intended to destroy, in whole or in part, the Tutsi racial or ethnical group, conspired by making an agreement with others, including, but not limited to, local administrative officials, such as Murambi *bourgmestre*, Jean de Dieu MWANGE and Kayonza *bourgmestre*, Celestin SENKWARE and various *conseillers de secteur*, *Interahamwe* leaders, communal police, and the political leadership of the MRND at the regional and national levels, including, though not limited to, members of the Interim Government of 8 April 1994, to kill or cause serious bodily or mental harm to members of the Tutsi group, as outlined in the factual paragraphs below:

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**FACTUAL BASIS FOR COUNTS 1 - 3**

**April 1994 -Byumba**

13. On or about 6 April until 30 April 1994, **Jean-Baptiste GATETE** assembled the *Interahamwe* and planned and participated in the sealing off of all roads and exits throughout Byumba in *communes* such as Murambi. As **Jean-Baptiste GATETE** circulated around the various roadblocks, he participated in the identification and the killing of Tutsi civilians by providing lists of names of Tutsi that should not be allowed through. He ordered others present at the roadblocks to kill those Tutsi, and he also manned the roadblocks himself. Tutsi were killed by the *Interahamwe* at roadblocks with weapons distributed by **Jean-Baptiste GATETE**.

14. On or about 7 April 1994, **Jean-Baptiste GATETE** held meetings with local administrative officials in various *secteurs* and *cellules* of Murambi *commune* including Rwankuba, Gakenke, Kiramuzi, Gakoni and Nyabisindu for the purpose of distributing weapons and instigating civilian militias to exterminate Tutsi civilians whom he blamed for President Habyarimana's death. For example, at approximately 2 am, **Jean-Baptiste GATETE** conducted meetings with local administrative officials in Nyabisindu to distribute weapons and to instigate civilian militias to kill Tutsi civilians whom he blamed for President Habyarimana's death. Then, at approximately 8 am, **Jean-Baptiste GATETE** conducted a meeting in Byumba *prefecture*, Rwankuba *secteur*, with local *Interahamwe* administrative officials including Jean de Dieu MWANGE, the new Murambi *bourgmestre*, and *Conseiller de secteur*, Jean BIZIMUNGU to again distribute weapons and to instigate civilian militias to exterminate Tutsi civilians whom he blamed for the president's death. Tutsi were killed with the weapons distributed by **Jean-Baptiste GATETE**.

15. During the morning of 7 April 1994, **Jean-Baptiste GATETE** facilitated the transport of the *Interahamwe* through various Murambi *commune secteurs* and *cellules*, including Akarambo, Gakoni, Nyabisindu, Kiramuruzi, and Rwankuba, and commanded the *Interahamwe*, some of whom were RUIPA, Serena GAUFRAMA and RWASIBO, to kill the civilian Tutsi. Some examples, **Jean-Baptiste GATETE**, with Murambi *bourgmestre*, Jean de Dieu MWANGE, transported a convoy of armed *Interahamwe* to Akarambo *cellule* where **GATETE** ordered the *Interahamwe* to burn, loot and pillage Tutsi homes and to rape and kill civilian Tutsi. BCS's family was killed in their Akarambo home by the *Interahamwe* on the orders of **Jean-Baptiste GATETE**, who was also present during the killings. Also killed was Aisha MUREKEYISONI, a Tutsi from Kiramurzi. Then on or about 8 April 1994, BAT was raped at her house in Akarambo by two *Interahamwe*, one being the son of NYAMUHARA and the other KAREMERA. The *Interahamwe* raped and killed Tutsi as a result of the actions of **Jean-Baptiste GATETE**.



16. On or about 7 April 1994, in Rwankuba, **Jean-Baptiste GATETE** with Jean BIZIMUNGU and Gerard KAYONZA, the local President of the *Interahamwe*, incited the local population to pillage Tutsi homes and attack, rape and murder civilian Tutsi. For example, in Rwankuba, Jean BIZIMUNGU organized attacks against Tutsis with Gérard KAYONZA, which were then instigated by **Jean-Baptiste GATETE** who commanded them to, "Exterminate all the families [of Tutsi] ...". The family of AIM and AIM's brother and his family were killed among others as a result of **Jean-Baptiste GATETE's** actions.

17. On or about 7 April to 12 April 1994, **Jean-Baptiste GATETE** circulated through various *secteurs* of Murambi *commune*, including Kiramuruzi, Gakenke, Rwankuba, Rubona, and Nyabysindu where he incited and instigated the *Interahamwe* with a megaphone, commanding and ordering them to kill Tutsi. For example, on 7 April 1994 in Rwankuba, **Jean-Baptiste GATETE** instigated the *Interahamwe* with a megaphone, telling them to gather other *Interahamwe* and to start the "work" of killing the Tutsi. **Jean-Baptiste GATETE** promised the *Interahamwe* a reward of cattle when the Tutsi extermination was completed. As soon as **Jean-Baptiste GATETE** departed, *conseiller de secteur* Jean BIZIMUNGU ordered the *Interahamwe* to start the killing. The *Interahamwe* killed Tutsi civilians as a result of the actions of **Jean-Baptiste GATETE**.

18. On or about 8 April 1994, at Nyagasambu at a roadblock on the road to Rwankuba, **Jean Baptiste GATETE** instigated, and ordered civilians to hunt down and exterminate Tutsi, including the "baby in the womb." **Jean-Baptiste GATETE** also gave the civilian militia dogs to facilitate the hunt. Tutsi civilians were killed as a result of **Jean Baptiste GATETE's** efforts.

19. On or about 11 April 1994 **Jean-Baptiste GATETE** ordered, supervised and participated in the killings and rapes of civilian Tutsi at Kiziguro *paroisse* complex, a church and hospital where thousands of civilian Tutsis had taken refuge. Assisted by several FAR soldiers armed with rifles, Gasigwa KARANGWA and the Kiziguro *Interahamwe* leader, NKUNDABAZUNGU, **Jean-Baptiste GATETE** and his group of *Interahamwe* broke through the portals of the church compound, forced the Tutsi refugees to exit the church sanctuary, and killed the refugees. A number of refugees were forced to transport dead Tutsi to a nearby mass grave, then killed and tossed into the grave. Several thousand civilian Tutsi men, women, and children, including KALEMERA, the school inspector, MUNANA, a teacher, Claver KARURANGE, GAPFIZI and BCS's bother, were slaughtered during the 11 April 1994 Kiziguro *paroisse* complex massacre.

20. On or about and between 12 to 14 April 1994, **Jean Batiste GATETE** instigated, commanded and facilitated displaced Hutu peasants to target Tutsi moving southward through Murambi and Kibungo *prefectures*. He ordered displaced Hutu's in those regions to kill the interspersed civilian Tutsi. Tutsi were killed as a result of **Jean Baptiste GATETE's** actions. For example, on or about 13 April 1994, GATETE set up a roadblock at Gatore centre in Kibungo where he deployed his *Interahamwe* with orders that any Tutsis fleeing to Tanzania should be intercepted and killed at the roadblock. As

a result, several Tutsis and some moderate Hutus from the MDR and PL parties were massacred.

#### April 1994 - Kibungo

21. On or about 10 April 1994, **Jean-Baptiste GATETE** arrived in Rukara *commune* in adjoining Kibungo *préfecture* and held a meeting with the *bourgmestre* Jean MPAMBARA. Thereafter, MPAMBARA ordered thousands of Tutsi refugees who took shelter at Rukara *paroisse* to leave the church. When they refused, the *Interahamwe* armed with firearms, grenades, machetes and traditional weapons attacked the church and killed numerous Tutsi civilians.

22. On or about 10 to 11 April 1994, **Jean-Baptiste GATETE**, with Kayonza *bourgmestre* Celestin SENKWARE, transported armed soldiers, and the *Interahamwe*, to Mukarange *paroisse* compound. Together they attacked the Mukarange *paroisse* compound where Tutsi refugees were located Tutsi were raped and killed as a result of **Jean Baptiste GATETE's** actions. For example: A woman named Odette who was taking refuge at the Mukarange church, took her child to the toilet outside the compound and were immediately killed. The parish priest, Father Basco, asked **Jean Baptiste GATETE** to do something to stop the killing. **Jean Baptiste Gatete** refused.

23. On or about and between 10 April to 15 April 1994, **Jean-Baptiste GATETE** arrived in Kayonza *commune* with a group of armed *Interahamwe*. **Jean-Baptiste GATETE**, with Kayonza *bourgmestre* Célestin SENKWARE, instigated a crowd assembled in the *bureau communal* courtyard. Present in the courtyard were local residents, including a number of Tutsi women, and the recently arrived *Interahamwe*. To instigate those *Interahamwe* present, **Jean-Baptiste GATETE** reported that Tutsi populations in other areas had been decimated, and he commanded the *Interahamwe* to rape and then kill Tutsi.

A. On or about and between 10 April to 15 April 1994, **Jean-Baptiste GATETE** with a group of armed *Interahamwe* at the Kayonza *bureau communal* courtyard ordered the segregation of Tutsi and commanded that the Tutsi be taken to a mass grave. At the grave, **Jean-Baptiste GATETE** karate kicked GATARE's knee breaking it through **Jean-Baptiste GATETE** then ordered the *Interahamwe* to kill GATARE, which they did. Tutsi were raped and killed at that location as a result of **Jean Baptiste GATETE's** actions.

24. After the rapes and the killings described in the preceding paragraph, the *Interahamwe* returned to the Kayonza *bureau communal* courtyard where **Jean-Baptiste GATETE** addressed them again, ordering, instigating and instigating them to go to the adjoining *secteurs* of Nyarusage, Nkamba and Giparara to rape and exterminate the remaining Tutsi. Both **Jean-Baptiste GATETE** and Célestin SENKWARE provided their vehicles to the *Interahamwe* to facilitate the attacks. Tutsi were raped and killed as a result of **Jean Baptiste GATETE's** actions.

25. Mid to late April 1994, **Jean-Baptiste GATETE** arrived in Rulenge, Rukira *commune* with a caravan of armed Murambi communal police, civilian militias and the *bourgmestres* of Kabarondo and Kigarama *communes*. **Jean-Baptiste GATETE** publicly castigated the local residents for not massacring the Tutsi. **Jean-Baptiste GATETE** ordered the *Interahamwe* to rape and kill Tutsi in Rukira, including women and children. The following morning, those *Interahamwe*, some of whom were Emmanuel RUKIRAMAKUBA, EPHRAIM, FABIEN, and RWABIREKEZI, destroyed Tutsi homes and raped and killed Tutsi civilians in Rukira. For example, **Jean-Baptiste GATETE** ordered FABIEN to kill a Ugandan woman who was perceived to be Tutsi. Also killed were Vedaste KALISA, Ferdinand SANANE and SANANE's wife, and NZOYORI, a girl from Binego.

26. On or about 15 April 1994, at Cyasemakamba, in Kibungo, Jean Baptiste GATETE briefed his armed men comprising of policemen, and *Interahamwe* and then handed his men and the briefing over to Lt MIHIGO. Thereafter, Lt. MIHIGO and those militia briefed by **Jean Baptiste GATETE** attacked the Economat, where approximately 400 people were killed.

27. On or about 19 April 1994, at Cyasemakamba, in Kibungo, **Jean Baptiste GATETE**, Retired Col. RWAGAFIRITA, Lt. MIHIGO, GACUMBITIS, Jean MPAMBARA, MUGIRANEZA, Lt. Col. NYURIYEKUBONA, NTAHIMANA, and RUDAKUBANA and others convened a meeting the purpose of which was to remove Godfrey RUZINDANA, Kibungo *prefect* and member of the Social Democratic Party (PSD). By the end of the meeting RUZINDANA, who was later killed, was replaced with Huye RUDAKUBANA.

28. On or about the night of 19 April 1994, in Kibungo **Jean Baptiste GATETE** attended a security meeting with Ret. SGT. Major RWATORO, Birengo Bourgermester, NTAHIMANA Ret. Col. RWAGAFIRITA, Lt. Col. NYURIYEKUBONA, Kayonza Bourgermester SANKWARE, Kigarama Bourgermestre, MUGIRANEZA and others to share intelligence regarding the Rwandan Patriotic Front, RPF.

29. On or about 21 April 1994, in Kibungo, **Jean Baptiste GATETE** and other authorities organized, ordered and facilitated the *Interahamwe* militia and soldiers to fight the RPF at the front.

### CRIMES AGAINST HUMANITY

#### Count 4 EXTERMINATION

30. The Prosecutor charges **Jean-Baptiste GATETE** with EXTERMINATION as a CRIME AGAINST HUMANITY, as stipulated in Article 3(b) and Article 6(1) of the Statute, in that on or between 6 April and 30 April 1994, in Byumba and Kibungo *prefectures*, Rwanda, **Jean-Baptiste GATETE**, with intent to participate in the

4947  
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elimination of a number of individuals and knowing that his action was part of a vast murderous enterprise, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the extermination, or killing of any civilian population as part of a widespread or systematic attack against that civilian population on national, political, racial, religious or ethnic grounds, as outlined in the factual paragraphs below:

### FACTUAL BASIS FOR EXTERMINATION

#### Byumba

31. Paragraphs 13 through 19 above are incorporated by reference herein.

#### Kibungo

32. Paragraphs 21 through 25 above are incorporated by reference herein.

### Count 5 MURDER

33. The Prosecutor charges **Jean-Baptiste GATETE** with MURDER as a CRIME AGAINST HUMANITY, as stipulated in Article 3(a) and Article 6(1) of the Statute, in that on or between 6 April and 30 April 1994, in Byumba and Kibungo *préfectures*, Rwanda, **Jean-Baptiste GATETE**, with intent to kill, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution or killing of any civilian population as part of a widespread or systematic attack against that civilian population on national, political, racial, religious or ethnic grounds, as outlined in the factual paragraphs below:

### FACTUAL BASIS FOR MURDER

#### Byumba

34. Paragraphs 13 through 19 above are incorporated by reference herein.

#### Kibungo

35. Paragraphs 21 through 25 above are incorporated by reference herein.

36. On or about 12 April 1994, **Jean Baptist GATETE**, *Bourgmestre* Jean de Dieu MWANGE, Celestin SENKWARE, communal police and *Interahamwe*, conducted an inspection of identity cards of travelers on the Kibungo road through Kayonza *commune*. At one roadblock **Jean-Baptiste GATETE**, several *Interahamwe* and communal police including a policeman named Deo, chased AIX's husband, a Tutsi, and KAMUZINZI, a Hutu moderate and political party opponent, from his car. **Jean-Baptiste GATETE**

ordered the police to shoot AIX's husband and KAMUZINZI. The communal policeman shot and killed them upon orders from **Jean-Baptiste GATETE**. Thereafter, **Jean-Baptiste GATETE** ordered the *Interahamwe* to kill the occupants of KAMUZINZI's vehicle, which was driven by MAHMUD. The *Interahamwe* immediately killed the occupants including MAHMUD. **Jean-Baptiste GATETE** appropriated the vehicle.

37. On or about 12 April 1994 in Rutonde **Jean-Baptiste GATETE**, Celestin SENKWARE and several others, shot and killed MULINDA, a refugee hiding in a swamp. Before and after the time of the killing, **Jean-Baptiste GATETE** and others were patrolling the hills and valleys to search out and kill civilian Tutsis.

38. On or about 14 April 1994 in Kayonza *commune*, **Jean-Baptiste GATETE** ordered *Interahamwe* to kill BUTARE, a businessman. The *Interahamwe* following **Jean-Baptiste GATETE**'s orders to kill BUTARE hacked him to death with machetes and knives.

#### Count 6 RAPE

39. The Prosecutor charges **Jean-Baptiste GATETE** with RAPE as a CRIME AGAINST HUMANITY, as stipulated in Article 3(a) and Article 6(1) of the Statute, in that on or between 6 April and 30 April 1994, in Byumba and Kibungo *prefectures*, Rwanda, **Jean-Baptiste GATETE**, with the intention that rape occur, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution or killing of any civilian population as part of a widespread or systematic attack against that civilian population on national, political, racial, religious or ethnic grounds, as outlined in the factual paragraphs below:

#### FACTUAL BASIS FOR RAPE

##### Byumba

40. On or about 8 and 9 April 1994, **Jean-Baptiste GATETE** facilitated the transport of his civilian militias to the center of Akarambo *cellule*. **Jean-Baptiste GATETE** commanded and incited the *Interahamwe* to attack and rape Tutsi women. On or about 8 April, 1994, BAT was raped by two *Interahamwe*, the son of NYAMUHARA and KAREMERA. On or about 9 April 1994, AVO was raped by an *Interahamwe* named KARERANGABO. The *Interahamwe* raped Tutsi women in Akarambo *cellule*.

**Kibungo**

41. On or about 10 to 11 April 1994, **Jean-Baptiste GATETE**, with Kayonza *bourgmestre* Celestin SENKWARE, transported armed soldiers, and the *Interahamwe*, to the Mukarange *paroisse* compound. Together they attacked the Mukarange *paroisse* compound where Tutsi refugees were located. Tutsi were raped and killed as a result of **Jean Baptiste GATETE**'s actions.

42. On or about and between 10 - 15 April 1994, in Kayonza, **Jean-Baptiste GATETE**, with Célestin SENKWARE, Kayonza *bourgmestre*, commanded the *Interahamwe* to rape Tutsi women assembled in the bureau command courtyard. Tutsi women were dragged off by the *Interahamwe* and raped.

43.. After the rapes and the killings described in the preceding paragraph, the *Interahamwe* returned to the Kayonza *bureau communal* courtyard where **Jean-Baptiste GATETE** addressed them again, ordering and instigating them to go to the adjoining *secteurs* of Nyarusage, Nkamba and Giparara to rape and exterminate the remaining Tutsi. Both **Jean-Baptiste GATETE** and Célestin SENKWARE provided their vehicles to the *Interahamwe* to facilitate the attacks. Tutsi were raped and killed as a result of **Jean Baptiste GATETE**'s actions.

*The acts and omissions of Jean-Baptiste GATETE detailed herein are punishable in reference to Articles 22 and 23 of the Statute.*

Dated: Arusha, this 7<sup>th</sup> day of July 2009



**Hassan Bubacar Jallow**  
**The Prosecutor**