



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

UNITED NATIONS  
NATIONS UNIES

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**ORIGINAL: ENGLISH**

**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding  
Judge Solomy Balungi Bossa  
Judge Mparany Rajohnson

Registrar: Mr. Bongani Majola

Date: 20 December 2012

**THE PROSECUTOR**

v.

**Augustin NGIRABATWARE**

*Case No. ICTR-99-54-T*

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**JUDGEMENT AND SENTENCE**

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## CHAPTER I: INTRODUCTION

### 1.1 Overview of the Case<sup>1</sup>

1. Augustin Ngirabatware is charged with the crimes of Genocide, Complicity in Genocide, Direct and Public Incitement to Commit Genocide, and Extermination and Rape as Crimes against Humanity in Gisenyi *préfecture*, Rwanda, between 1 January and 17 July 1994.<sup>2</sup> Ngirabatware is alleged to bear individual criminal responsibility pursuant to Article 6(1) of the Statute for planning, instigating, ordering, committing or otherwise aiding and abetting various persons to plan or commit the crimes charged. The Prosecution also alleges that Ngirabatware knowingly and wilfully participated in a joint criminal enterprise, and that he is criminally liable under the basic and extended forms of this mode of liability.<sup>3</sup> Ngirabatware pleaded not guilty to all the charges against him.<sup>4</sup>

2. The Defence disputes these charges by challenging the credibility of the Prosecution evidence, and asserts that its own evidence is consistent, cogent and includes an indisputable alibi. The Defence observes that the majority of Ngirabatware's witnesses are Rwandans including victims and heroes who saved lives in 1994, persons of integrity and persons acquitted of charges in Rwanda. The Defence requests the Chamber to assess the Prosecution's case based solely on the evidence adduced before it, and not on the basis of the position Ngirabatware held in Rwanda at the time of the genocide. Furthermore, the Defence submits that Ngirabatware should be acquitted of all the charges against him.<sup>5</sup>

### 1.2 The Accused

3. Ngirabatware testified that he was born on 12 January 1957, in Ruhondo *cellule*, Munanira *secteur*, Nyamyumba *commune* of Gisenyi *préfecture*. After his secondary education in Rwanda, he went to pursue further studies in Switzerland where he remained for ten years. Ngirabatware was employed as an assistant lecturer in Switzerland from 1981-1986, and after training in business management and international financial instruments, he obtained a PhD in Economic Sciences in 1986.<sup>6</sup>

4. Upon his return to Rwanda, Ngirabatware worked on a research project under the Ministry of Finance and Economy which was financed by USAID, and from 1986, he worked in

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<sup>1</sup> This Judgement is rendered pursuant to Rule 88(C) of the Rules. An oral summary was pronounced on 20 December 2012. The written version was filed on 21 February 2013 after the completion of the editorial process.

<sup>2</sup> During Closing Arguments, the Prosecution dropped the charge of Conspiracy to Commit Genocide. Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>3</sup> See Indictment; Prosecution Closing Brief, paras. 44-45, 47, 131-132, 172. See also Prosecution Closing Argument, T. 23 July 2012, pp. 6, 9, 39, 42. The Indictment also charged Ngirabatware with responsibility pursuant to Article 6(3) of the Statute for superior-subordinate responsibility, but the Prosecution dropped the paragraph sustaining this allegation after the completion of the Prosecution case-in-chief. See Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, paras. 19-20, p. 12 (withdrawing various paragraphs of the Indictment, including paragraph 38).

<sup>4</sup> T. 10 October 2008, pp. 17-24 (Initial Appearance); T. 9 February 2009, pp. 26-28 (Further Appearance).

<sup>5</sup> Defence Closing Brief, paras. 1-2, 4-5.

<sup>6</sup> T. 16 November 2010, pp. 35-37, 53; T. 6 December 2010, p. 9 (Ngirabatware). According to his testimony, Ngirabatware left Rwanda in 1976 for further studies in Switzerland.



the Ministry of Industry.<sup>7</sup> In 1988, he was appointed *directeur général* at the Ministry of Mining, Industry and Handicraft. He was also part of many ministerial technical committees, particularly the committee in charge of promoting investments, and was a member of the technical committee in charge of economic policy, as well as a member of the technical crisis committee established by President Habyarimana in 1987.<sup>8</sup>

5. In July 1990, President Habyarimana appointed Ngirabatware as Minister of Planning. The Ministry was in charge of economic policy, investments, statistics and planning for the parastatal companies and oversaw the national office responsible for project studies, development and the implementation of agreements for cooperation.<sup>9</sup> He was also a part-time lecturer in the Faculty of Economics at the National University of Rwanda in Butare during the 1990s.<sup>10</sup> As the Minister of Planning between 1990 and 1994, Ngirabatware was part of several Rwandan delegations travelling abroad and led various joint commissions to other countries.<sup>11</sup>

6. Ngirabatware was a member of the MRND party from its inception in 1975. After 1991, he remained a member of the MRND and was elected a member of the *Préfecture* Committee of the MRND in Gisenyi in 1992. He was also elected a member of the National Committee of the MRND, and was an appointed member of the technical committee of Nyamyumba *commune*.<sup>12</sup>

7. Ngirabatware was sworn in as the Minister of Planning in the Interim Government on 9 April 1994 and remained in this position until fleeing Rwanda on 14 July 1994.<sup>13</sup>

### 1.3 Summary of the Procedural History

8. A complete procedural history is found in Annex A of this Judgement; however, the following provides an introductory summary of the case.

9. On 28 September 1999, the Prosecution filed a modified Indictment charging Ngirabatware and Jean de Dieu Kamuhanda with Genocide, Complicity in Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide, the Crimes Against Humanity of Murder, Extermination, Rape and Persecution, as well as Outrages upon Personal Dignity and Violence to Life, Health and Physical or Mental Well-Being as War Crimes.<sup>14</sup>

10. On 7 November 2000, Trial Chamber II ordered that Kamuhanda be granted a trial separate from Ngirabatware.<sup>15</sup>

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<sup>7</sup> T. 16 November 2010, p. 53 (Ngirabatware).

<sup>8</sup> T. 18 November 2010, pp. 4, 26, 53 (Ngirabatware).

<sup>9</sup> T. 18 November 2010, pp. 5-6, 56 (Ngirabatware).

<sup>10</sup> T. 16 November 2010, p. 41; T. 18 November 2010, pp. 51, 58 (Ngirabatware).

<sup>11</sup> T. 18 November 2010, p. 58 (Ngirabatware).

<sup>12</sup> T. 18 November 2010, pp. 17-18, 28-30; T. 6 December 2010, p. 27; T. 7 December 2010, pp. 41-43 (Ngirabatware).

<sup>13</sup> T. 25 November 2010, pp. 41, 43-44, 50, 52-56; T. 30 November 2010, p. 21; T. 6 December 2010, p. 11; T. 7 December 2010, p. 60 (Ngirabatware).

<sup>14</sup> Indictment, 28 September 1999.

<sup>15</sup> *The Prosecutor v. Augustin Ngirabatware and Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-I, Decision on the Defence Motion for Severance and Separate Trial Filed by the Accused (TC), 7 November 2000, pp. 3-4. The case against Augustin Ngirabatware retained Case Number ICTR-99-54-T.

11. Ngirabatware was arrested on 17 September 2007 in Germany, and was transferred to the Tribunal's custody on 8 October 2008.<sup>16</sup> On 10 October 2008 during his initial appearance he pleaded not guilty to all charges.<sup>17</sup> The Prosecution filed an amended Indictment on 5 February 2009,<sup>18</sup> and during his further appearance on 9 February 2009, Ngirabatware reaffirmed his plea of not guilty to all charges.<sup>19</sup> The operative Indictment was filed on 14 April 2009.<sup>20</sup>

12. Ngirabatware's trial commenced on 23 September 2009 before Trial Chamber II composed of Judge William Hussein Sekule, presiding, Judge Solomy Balungi Bossa and Judge Mparany Mamy Richard Rajohnson.<sup>21</sup> The Prosecution called 20 witnesses.<sup>22</sup> The Defence commenced its case on 16 November 2010 and presented 35 witnesses, starting with Ngirabatware. The Defence closed its case on 22 February 2012.<sup>23</sup> The Prosecution case-in-rebuttal commenced on 6 March 2012 and closed on 3 July 2012, during which time the Prosecution presented seven witnesses.<sup>24</sup>

13. The Parties submitted their Closing Briefs simultaneously on 14 May 2012.<sup>25</sup>

14. From 21 to 25 May 2012, the Chamber together with representatives of the Registry and the Parties conducted a site visit in Rwanda.<sup>26</sup>

15. The Chamber heard Closing Arguments on 23, 24 and 25 July 2012.<sup>27</sup>

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<sup>16</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, paras. 1, 30.

<sup>17</sup> T. 10 October 2008, pp. 17-24 (Initial Appearance).

<sup>18</sup> Amended Indictment, filed 5 February 2009.

<sup>19</sup> T. 9 February 2009, pp. 26-28 (Further Appearance).

<sup>20</sup> Amended Indictment, filed 14 April 2009. The Prosecution filed the French version of the Indictment on 15 April 2009. See Annex C.

<sup>21</sup> T. 23 September 2009, p. 1.

<sup>22</sup> T. 30 August 2010, p. 87 (CS).

<sup>23</sup> T. 16 November 2010; T. 22 February 2012, p. 28.

<sup>24</sup> T. 6 March 2012; T. 3 July 2012, p. 65. The Prosecution initially closed its case-in-rebuttal on 2 April 2012. T. 2 April 2012, pp. 6-8. On 18 May 2012, the Chamber granted leave for the Prosecution to reopen its case-in-rebuttal. Decision on Prosecution Motion for Leave to Reopen Prosecution Rebuttal Case (TC), 18 May 2012, p. 7.

<sup>25</sup> Prosecution Closing Brief; Defence Closing Brief.

<sup>26</sup> See Chambers Exhibit 1 (Site Visit Report).

<sup>27</sup> See generally T. 23 July 2012; T. 24 July 2012; T. 25 July 2012.

## CHAPTER II: PRELIMINARY MATTERS

### 2.1 Indictment

16. The operative Indictment against Ngirabatware contains 63 paragraphs.<sup>28</sup> After the close of the Prosecution case-in-chief, the Chamber granted the Prosecution request to withdraw 15 paragraphs of the Indictment, and declared that the Defence had no case to answer in respect of these paragraphs.<sup>29</sup>

17. During Closing Arguments, the Prosecution stated that it had dropped the charge of Conspiracy to Commit Genocide.<sup>30</sup> This statement appears to coincide with the systematic omission of this charge in the Prosecution's closing submissions.<sup>31</sup> In other situations where the Prosecution has expressed its desire to drop an allegation, the Chamber has granted this request.<sup>32</sup> Having taken the Prosecution submissions into account, the Chamber grants the Prosecution request to drop the charge of Conspiracy to Commit Genocide.

18. The Chamber also observes that the Prosecution has not made any specific submissions concerning Indictment paragraphs 19, 20, 28, 30, 35, 36, 44, 46, 55, 60 and 62.<sup>33</sup> Under certain circumstances, this may signal that the Prosecution is no longer pursuing a conviction based on the allegations contained in the omitted paragraphs, and that it may therefore be unfair to convict an accused on such allegations.<sup>34</sup>

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<sup>28</sup> Amended Indictment, filed 14 April 2009.

<sup>29</sup> Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, p. 12 (concerning paragraphs 10 through 12, 15, 31, 32, 34, 37, 38, 47, 54, and 56 through 59 of the Indictment).

<sup>30</sup> Prosecution Closing Argument, T. 25 July 2012, p. 56. The Chamber observes that the Prosecution stated that, as a result, "we only have genocide, complicity in genocide, rape and direct and public incitement". Although the Prosecution made no mention of extermination in this statement, the Chamber considers it clear from the other Prosecution submissions that this was an oversight.

<sup>31</sup> See, for example, Prosecution Closing Brief, paras. 2, 4, 381; Prosecution Closing Argument, T. 23 July 2012, p. 6.

<sup>32</sup> Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, paras. 19-20 (granting the Prosecution's request to withdraw 15 paragraphs of the Indictment); Decision on Defence Motion to Exclude Evidence of Material Facts Not Charged in the Indictment and/or in the Prosecution's Pre-Trial Brief (TC), 14 February 2011, paras. 16-17 (noting the statement by the Prosecution that it has "dropped" certain allegations, and granting the Defence request to have these allegations excluded). See also *Nzabonimana*, Judgement (TC), para. 24 (relating to paragraphs withdrawn by the Prosecution); *Nyiramasuhuko et al.*, Judgement (TC), paras. 92-93 (concerning Prosecution concessions that it led no evidence on a specific allegation).

<sup>33</sup> For the Prosecution Closing Brief's omission of any reference to paragraphs 19, 20, 28, 30, 35, 36, 44, 46, 55, 60 and 62, see Prosecution Closing Brief, pp. 24-38 (addressing Count 2 paragraph-by-paragraph, but omitting any discussion of paragraphs 19, 20, 28, 30, 35 and 36 of the Indictment), 42-49 (addressing Count 4 paragraph-by-paragraph, but omitting any reference to paragraphs 44 and 46 of the Indictment), 50-62 (addressing Count 5 paragraph-by-paragraph, but omitting any discussion of paragraphs 55 and 60 of the Indictment), 64-65 (addressing Count 6 paragraph-by-paragraph, but omitting any discussion of paragraph 62 of the Indictment). See also Prosecution Additional Closing Briefs on Site Visit; Prosecution Closing Argument, T. 23 July 2012; T. 24 July 2012; T. 25 July 2012. In relation to the omission of paragraph 62 of the Indictment, see also Prosecution Closing Brief, paras. 51, 54-55, 58, 195. The Chamber notes that, in the Prosecution Closing Brief section entitled "The Defence Case", the Prosecution avers without further elaboration that "[t]he following paragraphs in the Amended Indictment relate to the First Alibi period: paragraphs 16, 33 and 55". Prosecution Closing Brief, para. 227.

<sup>34</sup> See *Ntagerura et al.*, Judgement (AC), paras. 146-150, 164; *Nizeyimana*, Judgement (TC), para. 405; *Nzabonimana*, Judgement (TC), para. 1594; *Bizimungu et al.*, Judgement (TC), fn. 2719; *Ntawukulilyayo*,

19. The Chamber considers, however, that the circumstances in the present case make clear that the Prosecution is pursuing a conviction based on these 11 Indictment paragraphs. In particular, the Chamber recalls that it specifically asked the Prosecution for its comments on this issue, to which the Prosecution confirmed that it was dropping the charge of Conspiracy to Commit Genocide, but that it was not withdrawing any other allegations.<sup>35</sup> The Prosecution further explained that “[t]he trial record speaks for itself”,<sup>36</sup> which echoes its claim that the Prosecution filed a Closing Brief that provided only examples of the relevant evidence.<sup>37</sup> Accordingly, the Chamber will address these 11 Indictment paragraphs on their merits in the Factual Findings section.

## 2.2 Notice of Charges

20. The charges against an accused and the material facts supporting those charges must be pleaded in an indictment with sufficient precision to provide notice to the accused. In determining whether an accused was adequately put on notice of the nature and cause of the charges against him or her, an indictment must be considered as a whole. 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. In reaching its judgement, a Trial Chamber can only convict an accused of crimes that are charged in the indictment.<sup>38</sup>

21. Whether a fact is “material” depends on the nature of the Prosecution’s case. The nature of the Prosecution’s case and the proximity between the accused and the crime charged are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts in an indictment. While it may be impracticable to require a high degree of specificity due to the sheer scale of the alleged crimes, an indictment must specify the material facts in such a way that the accused can prepare his defence.<sup>39</sup>

22. The mode and extent of an accused’s participation in an alleged crime are material facts that must be clearly set forth in the indictment.<sup>40</sup> Criminal acts which are alleged to be physically committed by an 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>41</sup> Where it is alleged that an accused planned, instigated, ordered or aided

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Judgement (TC), paras. 58, 415; *Setako*, Judgement (TC), paras. 68-72; *Nsengimana*, Judgement (TC), para. 481, fn. 429; *Bagosora et al.*, Judgement (TC), fn. 2311.

<sup>35</sup> Prosecution Closing Argument, T. 25 July 2012, p. 56 (“As regards conspiracy, we [...] cautiously dropped it from [...] the charges which were laid against the accused. [...] As regards the other omissions in [...] the closing brief, the idea is that in the closing brief we just picked some [...] salient issues and addressed them. It’s not that if a paragraph is not mentioned or that if a witness is not mentioned it has been dropped.”).

<sup>36</sup> Prosecution Closing Argument, T. 23 July 2012, p. 7; T. 25 July 2012, p. 56.

<sup>37</sup> Prosecution Closing Brief, para. 4 (“[T]his Closing Brief is not exhaustive of the evidence in the trial record, but has discussed sufficient examples of the evidence viz-a-viz the Amended Indictment to discharge the burden of proof [...]”).

<sup>38</sup> *Ntabakuze*, Judgement (AC), paras. 30, 65; *Renzaho*, Judgement (AC), para. 53; *Muvunyi II*, Judgement (AC), para. 19; *Muvunyi I*, Judgement (AC), para. 18.

<sup>39</sup> *Ntabakuze*, Judgement (AC), para. 30; *Renzaho*, Judgement (AC), para. 53; *Nahimana et al.*, Judgement (AC), para. 324; *Ntagerura et al.*, Judgement (AC), paras. 22-23.

<sup>40</sup> *Kvočka et al.*, Judgement (AC), paras. 28, 42; *Krnjelac*, Judgement (AC), para. 138.

<sup>41</sup> *Muvunyi I*, Judgement (AC), para. 120.

and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the “particular acts” or “the particular course of conduct” on the part of the accused which forms the basis for the charges in question.<sup>42</sup>

23. An indictment which fails to set forth the specific material facts underpinning the charges against an accused is defective. The defect may be cured if the Prosecution provides an accused with timely, clear and consistent information detailing the factual basis underpinning the charge. This might be done, for instance, through information provided in the Pre-Trial Brief or opening statement, or through other communications. However, a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. While it is possible to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment under the Rules.<sup>43</sup>

24. In addition, the principle that a defect in an indictment may be cured is not without limits. The new material facts should not lead to a radical transformation of the Prosecution’s case against an accused, and the 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 an accused. If the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Chamber to amend the Indictment.<sup>44</sup>

25. The Defence raises numerous challenges to the notice it received in this case.<sup>45</sup> It also asserts, without further explanation, that exclusion of evidence is warranted because “[t]he accumulation of defects made the Indictment impossible to remedy and the Prosecution’s evidence turned out differently than expected”.<sup>46</sup> These submissions are discussed specifically in relevant parts of the Judgement.

26. The Chamber recalls that it has addressed notice concerns throughout the trial,<sup>47</sup> including those that the Defence raised at the beginning of the case in accordance with Rule 72 concerning preliminary motions which allege defects in the Indictment,<sup>48</sup> as well as those that the

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<sup>42</sup> *Ntawukulilyayo*, Judgement (AC), para. 188; *Nchamihigo*, Judgement (AC), para. 338; *Ntagerura et al.*, Judgement (AC), para. 25.

<sup>43</sup> *Ntabakuze*, Judgement (AC), para. 30; *Ntawukulilyayo*, Judgement (AC), para. 189; *Muvunyi I*, Judgement (AC), para. 20.

<sup>44</sup> *Muvunyi I*, Judgement (AC), para. 20; *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.

<sup>45</sup> See Defence Closing Brief, paras. 6-66; Defence Closing Argument, T. 24 July 2012, pp. 41-43, 49-50; T. 25 July 2012, pp. 38-39.

<sup>46</sup> Defence Closing Brief, para. 22. See also Defence Closing Brief, para. 21.

<sup>47</sup> See, for example, Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009; Decision on Defence Motion to Exclude Evidence Falling Outside the Temporal Jurisdiction of the Tribunal (TC), 3 February 2011; Decision on Defence Motion to Exclude Evidence of Material Facts Not Charged in the Indictment and/or in the Prosecution’s Pre-Trial Brief (TC), 14 February 2011; Decision on Defence Motion for Certification to Appeal the Decision on Exclusion of Evidence Falling Outside the Tribunal’s Temporal Jurisdiction (TC), 10 May 2011; Decision on Defence Motion for Certification to Appeal the Decision on Exclusion of Material Facts Not Charged in the Indictment and/or in the Pre-Trial Brief (TC), 10 May 2011; Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012. See also Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009.

<sup>48</sup> See Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009. Rule 72(A)(ii) provides in part that: “Preliminary motions, being motions which: [...] allege defects in the form of

Defence raised near the end of the case.<sup>49</sup> The Chamber has made its decisions in accordance with the applicable jurisprudence at each relevant stage of the proceedings.

27. In this regard, the Chamber notes that the Defence's closing submissions make only general and unsubstantiated allegations concerning any accumulation of defects, and seek only the exclusion of evidence.<sup>50</sup> The Chamber observes that Ngirabatware has benefited from an effective and well-planned trial strategy that reflects the Defence's complete understanding of the Prosecution case. To the extent that there may have been any defects in notice, there is no doubt that these have not prevented Ngirabatware from being able to materially and fully prepare his defence. The Chamber considers this as an indication that had there been any cumulative effect from such defects, the Defence was not materially prejudiced by it.

### 2.3 Joint Criminal Enterprise

28. Joint Criminal Enterprise ("JCE") must be specifically pleaded in the indictment. In order for an accused to fully understand the acts for which he is allegedly responsible, the indictment should further indicate clearly which form of JCE is being alleged: basic, systemic or extended. Since the three forms of JCE vary with respect to the *mens rea* element, the indictment must also plead the *mens rea* element of each category on which the Prosecution intends to rely. The Prosecution must plead the nature and purpose of the enterprise, the period over which the enterprise is said to have existed, the identity of the participants, the nature of the accused's participation therein, and the supporting material facts.<sup>51</sup>

29. The Chamber has considered the issue of notice in relation to joint criminal enterprise in three separate Decisions.<sup>52</sup> The same challenges have been renewed by the Defence in its Closing Brief; namely, that the Indictment is defective due to the Prosecution's failure to plead commission as a mode of liability, the purpose of the alleged JCE, the nature of the accused's participation, the time period of the enterprise and the identity and role of the alleged participants.<sup>53</sup> In addition, the Defence submits that the Prosecution has expanded the list of alleged members of the JCE from what was provided in the Indictment.<sup>54</sup> Finally, the Defence

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the indictment [...] shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 66(A)(i)". Rule 72(E) states that "[o]bjections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by a Trial Chamber." Rule 72(F) confirms that: "Failure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing good cause."

<sup>49</sup> See Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012.

<sup>50</sup> Defence Closing Brief, Chapter II.

<sup>51</sup> *Hategekimana*, Judgement (AC), para. 258; *Uwinkindi*, Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment (AC), 16 November 2011, para. 11; *Munyakazi*, Judgement (AC), para. 161; *Renzaho*, Judgement (AC), para. 53; *Muvunyi II*, Judgement (AC), para. 19; *Muvunyi I*, Judgement (AC), para. 18; *Simba*, Judgement (AC), paras. 63, 77; *Simić*, Judgement (AC), paras. 22, 31; *Gacumbitsi*, Judgement (AC), paras. 162, 167; *Ntagerura et al.*, Judgement (AC), para. 24.

<sup>52</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009; Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009; Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, para. 18.

<sup>53</sup> Defence Closing Brief, paras. 24-38; Defence Closing Argument, T. 24 July 2012, pp. 38, 41-42, 50.

<sup>54</sup> Defence Closing Brief, paras. 18-23, 28-30, 65-66; Defence Closing Argument, T. 24 July 2012, pp. 32-33, 38.

contends that, in relation to Count 6, “[n]o notice was provided regarding Ngirabatware’s alleged mode of participation in rape”.<sup>55</sup>

30. The Prosecution submits that, as previously concluded by the Chamber, the Indictment is not defective in relation to JCE. The Prosecution has provided the Defence with timely, clear and consistent notice of the requisite elements of the alleged JCE.<sup>56</sup>

31. The Chamber recalls that in its Decision of 29 January 2009, it granted the Prosecution request to add JCE to the Amended Indictment and found that the proposed amendment pleaded JCE with sufficient specificity.<sup>57</sup> On 8 April 2009, the Chamber concluded that the extended JCE was properly pleaded.<sup>58</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of these Decisions. The Chamber also held that the Defence had failed to demonstrate cumulative prejudice to Ngirabatware as a consequence of the alleged, combined effect of numerous defects in the Indictment, including those relating to JCE.<sup>59</sup>

32. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s Decisions that the Indictment provides sufficient specificity in relation to JCE. Accordingly, the Chamber declines to reconsider its earlier Decisions.

33. With regard to the addition of new participants in the alleged JCE, however, the Chamber observes that the Prosecution appears to have raised this allegation for the first time in its closing submissions.<sup>60</sup> The Defence objected to these additions during Closing Arguments, to which the Prosecution offered no response.<sup>61</sup> The Chamber recalls that notification of charges in closing submissions cannot constitute proper notice.<sup>62</sup> Taking this into account, as well as the Chamber’s prior Decisions that the Indictment provides sufficient specificity with regard to the participants in the alleged JCE,<sup>63</sup> the Chamber sees no basis to accept the additions proposed by the Prosecution in its closing submissions.

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<sup>55</sup> Defence Closing Brief, para. 59. See also Defence Closing Brief, paras. 54-58, 65-66, fn. 157.

<sup>56</sup> Prosecution Closing Brief, para. 35; Prosecution Closing Argument, T. 23 July 2012, pp. 38-44.

<sup>57</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, paras. 32-35. The Chamber noted that Ngirabatware was clearly charged with the basic form of JCE in relation to Counts 2, 3 and 5 of the Amended Indictment, and the extended form of JCE in relation to Count 6 of the Amended Indictment.

<sup>58</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, paras. 32-34.

<sup>59</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15, 18.

<sup>60</sup> In addition to the JCE members alleged in the Indictment, the Prosecution alleges in its closing submissions that the JCE also included Cenge, Maximilien Turinabo, Hassan Tubarumure, Égide Karemera, Honoré Ndyameyemensi, Vedaste Cyuma, Witnesses ANAO, ANAU, DWAN-4, DWAN-9, DWAN-11, DWAN-12, DWAN-15, DWAN-21, DWAN-25, DWAN-47, DWAN-74, DWAN-133 and DWAN-147, as well as “other members of the *Interahamwe* and/or *Impuzamugambi* militia”. See Prosecution Closing Brief, paras. 39, 50, 287, 313, fns. 513, 556; Prosecution Closing Argument, T. 23 July 2012, pp. 9, 18. See also Prosecution Closing Brief, paras. 33-38, 40-49, 51-58, 197; Prosecution Closing Argument, T. 23 July 2012, pp. 6, 10-17, 19, 38-43; T. 25 July 2012, pp. 23, 30-31.

<sup>61</sup> Defence Closing Brief, paras. 18-23, 28-30, 65-66; Defence Closing Argument, T. 24 July 2012, pp. 32-33, 38.

<sup>62</sup> *Ntawukuliyayo*, Judgement (AC), para. 202.

<sup>63</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, para. 14.

34. As for the Defence submission that Ngirabatware received no notice regarding his alleged mode of participation in rape as a crime against humanity, the Chamber recalls that on 29 January 2009 it stated that the Indictment: “clearly indicates the form of JCE charged against the Accused along with the required criteria. Under Counts 2 and 3, the Accused is charged with the ‘basic’ form of JCE whereas in Count 6, he is charged with the ‘extended’ form.”<sup>64</sup>

35. The Defence raised this issue anew in its preliminary motion challenging defects in the Indictment pursuant to Rule 72 of the Rules. On 8 April 2009, the Chamber denied the Defence submissions that there were defects in the Indictment in regard to Count 6. In doing so, the Chamber confirmed that “Count 6 clearly indicates that the Accused is charged with the ‘extended’ form of JCE, along with the required criteria”.<sup>65</sup>

36. The Defence did not take any further action on the matter at that stage. As noted above, the Chamber found on 3 April 2012 that no basis had been provided to warrant reconsideration of these Decisions.<sup>66</sup>

37. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decision that the Indictment properly pleaded the mode of liability in Count 6 of the Indictment.

## 2.4 Notice of Alibi

38. Rule 67(A)(ii) requires that:

As early as reasonably practicable and in any event prior to the commencement of the trial [...] [t]he Defence shall notify the Prosecutor of its intent to enter: [t]he defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

39. The Appeals Chamber has confirmed that “any notice of alibi should be tendered in a timely manner” in order “[t]o ensure a good administration of justice and efficient judicial proceedings”.<sup>67</sup> If the Defence fails in this regard, Rule 67(B) provides that the Defence may still rely on evidence in support of an alibi at trial.<sup>68</sup> However, in certain circumstances the failure to

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<sup>64</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, para. 34. The Chamber notes that this statement was made in regard to the proposed Amended Indictment, which formed the basis for the operative Indictment in this case.

<sup>65</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 34.

<sup>66</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>67</sup> *Rutaganda*, Judgement (AC), para. 243.

<sup>68</sup> *Rutaganda*, Judgement (AC), para. 243. Rule 67(B) provides that: “Failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences.”



raise an alibi in a timely manner can impact a Trial Chamber's findings, as the Trial Chamber may take such failure into account when weighing the credibility of the alibi.<sup>69</sup>

40. The Chamber recalls that it reminded the Defence of its Rule 67 obligations during the 19 May 2009 Status Conference, as well as during the 7 September 2009 Pre-Trial Conference.<sup>70</sup>

41. On 23 September 2009, prior to the commencement of the trial on the same day, the Defence filed a Notice of Alibi stating that "Ngirabatware was in Kigali town from 6<sup>th</sup> to 12<sup>th</sup> April 1994".<sup>71</sup> The Chamber found that this Notice of Alibi was lacking information and was not in conformity with the requirements of Rule 67(A)(ii)(a).<sup>72</sup> The Chamber directed the Defence to immediately make the necessary disclosures in accordance with this Rule, and reminded the Defence that any failure in this regard may be taken into account in the deliberations regarding the alibi.<sup>73</sup>

42. On 11 January 2010, the Defence "inform[ed] the Prosecutor that the Accused was specifically at the Presidential Guard Camp and at the French Embassy in Kigali on April 7<sup>th</sup> and April 8<sup>th</sup> 1994".<sup>74</sup> On 22 March 2010, the Defence filed an Additional Notice of Alibi,<sup>75</sup> which the Chamber found did not fulfil the requirements of Rule 67(A)(ii). The Chamber again recalled that any failure in fulfilling this Rule may be taken into account in the deliberations regarding the alibi, and directed the Defence to immediately make the appropriate disclosures.<sup>76</sup>

43. In a letter dated 3 May 2010, the Defence stated that Ngirabatware was at the Presidential Guard Camp and at the French Embassy in Kigali from 6 through 12 April 1994. It also disclosed the names and addresses of 15 potential alibi witnesses.<sup>77</sup> The Chamber noted that the information on this alibi appeared to have been disclosed in a piecemeal fashion. As a result, the Prosecution received no notice until approximately the end of its case-in-chief that Ngirabatware claims to have been in the Presidential Guard Camp and the French Embassy from 6 through 12 April 1994.<sup>78</sup>

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<sup>69</sup> *Kanyarukiga*, Judgement (AC), para. 97. See also *Munyakazi*, Judgement (AC), para. 19; *Nchamihigo*, Judgement (AC), para. 97; *Kalimanzira*, Judgement (AC), para. 56.

<sup>70</sup> T. 19 May 2009, pp. 16-17; T. 7 September 2009, pp. 14, 16-17.

<sup>71</sup> Notice of Alibi Pursuant to Rule 67 (A) (ii), 23 September 2009, para. 1. See also Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010, fn. 4.

<sup>72</sup> Decision on Prosecution Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 February 2010, para. 31; Decision on Prosecutor's Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 April 2010, para. 20.

<sup>73</sup> Decision on Prosecution Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 February 2010, para. 32, p. 9.

<sup>74</sup> Defence Response to Prosecutor's Motion for an Order to Compel the Accused to Disclosure Particulars of His Alibi, filed 11 January 2010, para. 22.

<sup>75</sup> Additional Alibi Notice, 22 March 2010.

<sup>76</sup> Decision on Prosecutor's Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 April 2010, paras. 23-25, p. 7.

<sup>77</sup> Second Additional Notice of Alibi, dated 3 May 2010, paras. 6-7. See also Corrigendum to the Second Additional Notice of Alibi, dated 7 May 2010.

<sup>78</sup> Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010, paras. 32-34.

44. During his testimony as the first Defence witness, Ngirabatware stated that he was outside of Rwanda from 23 April through 23 May 1994, and from 23 June through 3 July 1994.<sup>79</sup> The Chamber considered that these alibis cover significant periods of time, and that this belated disclosure was in contravention of Rule 67(A)(ii).<sup>80</sup>

45. In sum, Ngirabatware presented three alibis for the periods of 6 through 12 April, 23 April through 23 May, and 23 June through 3 July 1994, all of which failed to meet the requirements of Rule 67(A). Though the aforementioned violations do not limit Ngirabatware's right to rely on these alibis, the Chamber took various steps throughout the trial to remedy these violations. These included granting Prosecution requests for additional witnesses in relation to the first alibi period, for additional time to prepare for cross-examination of Ngirabatware on the second and third alibi periods, and for rebuttal witnesses on the second alibi period.<sup>81</sup> The Chamber will address these alibis, as well as any impact of the belated notice provided for them, below (3.9; 3.17).

## 2.5 Alibi

46. An alibi does not constitute a defence in its proper sense. By raising an alibi, an accused is simply denying that he or she was in a position to commit the crime with which he was charged. An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather, he must simply produce the evidence tending to show that he was not present at the time of the alleged crime, or otherwise stated, present evidence likely to raise a reasonable doubt in the Prosecution case. If the alibi is reasonably possibly true, it must be accepted.<sup>82</sup>

47. Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when an accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must eliminate the reasonable possibility that the alibi is true, for example, by demonstrating that the alibi evidence is not credible.<sup>83</sup>

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<sup>79</sup> T. 29 November 2010, pp. 46-74; T. 30 November 2010, pp. 3-6, 17-20 (Ngirabatware).

<sup>80</sup> T. 6 December 2010, pp. 1-4 (Oral Decision); Decision on Prosecution Motion for Leave to Present Rebuttal Evidence (TC), 14 November 2011, paras. 6, 39, 41. See also Decision on Defence Motion for Reconsideration and/or Certification to Appeal the Trial Chamber's Decision of 14 November 2011 on Rebuttal Evidence (TC), 13 December 2011, paras. 52, 66-67; Decision on Prosecution Motion To Be Provided with Passports that Have Been Tendered into Evidence (TC), 23 February 2012, paras. 1, 4; Decision on Defence Motion for Leave to Present Rejoinder Evidence (TC), 18 May 2012, para. 23; Decision on Defence Motion for Reconsideration of or Certification to Appeal the Decision on Leave to Present Rejoinder Evidence (TC), 21 June 2012, paras. 26, 35; Decision on the Second Defence Motion for Leave to Call Rejoinder Witnesses (TC), 23 July 2012, para. 28.

<sup>81</sup> Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010; T. 6 December 2010, pp. 1-4 (Oral Decision); Decision on Prosecution Motion for Leave to Present Rebuttal Evidence (TC), 14 November 2011.

<sup>82</sup> *Zigiranyirazo*, Judgement (AC), para. 17 (internal quotations omitted). See also *Ntawukulilyayo*, Judgement (AC), para. 103; *Setako*, Judgement (AC), para. 224.

<sup>83</sup> *Zigiranyirazo*, Judgement (AC), para. 18 (internal quotation omitted). See also *Ntawukulilyayo*, Judgement (AC), para. 109; *Setako*, Judgement (AC), para. 224.

## 2.6 Burden of Proof

48. Article 20(3) of the Statute guarantees the presumption of innocence of an accused person. Rule 87(A) requires that the guilt of an accused must be proven beyond reasonable doubt before a verdict may be entered against him or her. This requires that each element of the crime, the mode of liability and any fact which is indispensable for the conviction must be proven beyond reasonable doubt. There must be no reasonable explanation for the evidence other than the guilt of the accused.<sup>84</sup>

49. The burden of proving the guilt of an accused beyond reasonable doubt rests solely with the Prosecution and never shifts to the Defence.<sup>85</sup> While the Defence does not have to adduce rebuttal evidence to the Prosecution case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution case.<sup>86</sup> Since an accused has no burden to prove anything at a criminal trial, the Chamber need not resolve factual disputes further once it has concluded that the Prosecution has not proven a fact beyond a reasonable doubt.<sup>87</sup>

50. In assessing this burden, the Chamber cannot determine in isolation the ultimate weight to be attached to each piece of evidence. Even though in some instances a piece of evidence, viewed alone, may not be sufficient to satisfy the burden of proof beyond a reasonable doubt, it is the totality of the evidence that must be weighed to determine whether the Prosecution has met the burden upon it.<sup>88</sup>

## 2.7 Witness Protection

51. The Chamber has a duty, where appropriate, to protect the identity of witnesses.<sup>89</sup> Many witnesses testified in closed session or with other procedures designed to protect their identities. The Chamber is mindful of the need for the continued protection of these witnesses while still providing a reasoned opinion. The Chamber has therefore provided as much information as possible while being careful not to reveal the identities of protected witnesses.<sup>90</sup>

## 2.8 Assessment of Evidence

### 2.8.1 Witness Credibility

52. The Appeals Chamber has confirmed that “trial chambers have full discretionary power in assessing the credibility of a witness and in determining the weight to be accorded to his or her

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<sup>84</sup> *Hategekimana*, Judgement (AC), para. 16; *Renzaho*, Judgement (AC), para. 474 (“any doubt should be resolved in favour of the accused”); *Mrksić & Šljivančanin*, Judgement (AC), paras. 220, 325; *Martić*, Judgement (AC), paras. 55-56, 61, 325.

<sup>85</sup> *Kanyarukiga*, Judgement (AC), para. 167, quoting with approval *Kanyarukiga*, Judgement (TC), para. 43.

<sup>86</sup> *Niyitegeka*, Judgement (AC), paras. 60-61; *Kayishema & Ruzindana*, Judgement (AC), para. 117; *Nzabonimana*, Judgement (TC), para. 64.

<sup>87</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 140.

<sup>88</sup> *Martić*, Judgement (AC), para. 233.

<sup>89</sup> See, for example, Articles 21 and 22(2) of the Statute.

<sup>90</sup> See *Nzabonimana*, Judgement (TC), paras. 65-66; *Nyiramasuhuko et al.*, Judgement (TC), paras. 167, 170.

testimony”.<sup>91</sup> This assessment is based on various factors, including the witness’ demeanor in court, his or her role in the events in question, the plausibility and clarity of the witness’ testimony, whether there are contradictions or inconsistencies in his or her successive statements or between his or her testimony and other evidence, any prior examples of false testimony, any motivation to lie, the witness’ responses during cross-examination, the timing and circumstances of any confessions, and the possible vulnerability of a witness to undue influence. A witness’ close personal relationship to the Accused is an additional factor which the Chamber may consider in assessing his or her evidence.<sup>92</sup>

53. Minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable, and the Chamber has the main responsibility to resolve any inconsistencies that may arise within or amongst witnesses’ testimonies. It is within the Chamber’s discretion to evaluate any such inconsistencies, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence. It is also well-established that Trial Chambers have the discretion to accept some but reject other parts of a witness’ testimony.<sup>93</sup>

### 2.8.2 Hearsay Evidence

54. The Chamber has the discretion to cautiously consider and rely on hearsay evidence. While the weight and probative value to be afforded to hearsay evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon the infinitely variable circumstances which surround hearsay evidence. It is well-established that it is permissible to base a conviction on hearsay evidence, although caution is warranted in such circumstances.<sup>94</sup>

55. In assessing the weight or probative value of hearsay evidence, relevant criteria include the source of the information, the precise character of the information, and whether other evidence corroborates the hearsay evidence.<sup>95</sup>

### 2.8.3 Identification of the Accused

56. In assessing a witness’ identification evidence, the Chamber will take into account the following factors: prior knowledge of the Accused, the existence of adequate opportunity in which to observe the Accused, the reliability of the witness’ testimony, the conditions of observation of the Accused, discrepancies in the evidence or the identification, the possible influence of third parties, the existence of stressful conditions at the time the event took place,

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<sup>91</sup> *Kanyarukiga*, Judgement (AC), para. 121. See also *Hategekimana*, Judgement (AC), para. 190; *Ntawukulilyayo*, Judgement (AC), para. 21; *Bikindi*, Judgement (AC), para. 114; *Nchamihigo*, Judgement (AC), para. 47; *Nahimana et al.*, Judgement (AC), para. 194.

<sup>92</sup> *Kanyarukiga*, Judgement (AC), para. 121; *Setako*, Judgement (AC), para. 40; *Nchamihigo*, Judgement (AC), para. 47. See also *Kalimanzira*, Judgement (AC), para. 70.

<sup>93</sup> *Hategekimana*, Judgement (AC), paras. 82, 282; *Kanyarukiga*, Judgement (AC), paras. 136, 187; *Ntabakuze*, Judgement (AC), fn. 342; *Muvunyi II*, Judgement (AC), para. 44; *Renzaho*, Judgement (AC), para. 269; *Karera*, Judgement (AC), para. 174.

<sup>94</sup> *Hategekimana*, Judgement (AC), para. 270; *Munyakazi*, Judgement (AC), para. 77; *Kalimanzira*, Judgement (AC), para. 96; *Karera*, Judgement (AC), para. 39.

<sup>95</sup> *Karera*, Judgement (AC), para. 39.

the passage of time between the events and the witness' testimony and the general credibility of the witness.<sup>96</sup>

57. The Chamber must take into account the difficulties associated with identification evidence and must carefully evaluate any such evidence before accepting it as the basis for sustaining a conviction.<sup>97</sup> The Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness' identification of the accused made under difficult circumstances. Where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances the Chamber must rigorously implement its duty to provide a reasoned opinion. In particular, the Chamber must carefully articulate the factors relied upon in support of the identification of an accused and adequately address any significant factors impacting negatively on the reliability of the identification evidence. In-court identification evidence will be assigned little or no credence.<sup>98</sup>

#### 2.8.4 Corroboration

58. There is no requirement that convictions be made only on the evidence of two or more witnesses. Corroboration is simply one of many potential factors in the Chamber's assessment of a witness' credibility. If the Chamber finds a witness credible, that witness' testimony may be accepted even if not corroborated. Similarly, even if a Chamber finds a witness' testimony is inconsistent or otherwise problematic enough to warrant its rejection, it might choose to accept the evidence nonetheless because it is corroborated by other evidence. The corroboration of testimonies, even by many witnesses, does not establish absolutely the credibility of those testimonies.<sup>99</sup>

59. Two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact the same way, as every witness presents what he or she has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.<sup>100</sup>

#### 2.8.5 Circumstantial Evidence

60. It is well-established that a conclusion of guilt can be inferred from circumstantial evidence only if it is the only reasonable conclusion available from the evidence. Caution is

<sup>96</sup> *Niyitegeka*, Judgement (AC), paras. 100-101, quoting with approval *Niyitegeka*, Judgement (TC), para. 49.

<sup>97</sup> *Hategekimana*, Judgement (AC), para. 187; *Rukundo*, Judgement (AC), paras. 67, 195.

<sup>98</sup> *Renzaho*, Judgement (AC), paras. 527, 531; *Kalimanzira*, Judgement (AC), para. 96; *Kamuhanda*, Judgement (AC), para. 243; *Bagilishema*, Judgement (AC), para. 75; *Kupreškić et al.*, Judgement (AC), para. 39.

<sup>99</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 132; *Musema*, Judgement (AC), paras. 37-38, quoting with approval *Musema*, Judgement (TC), para. 46. See also *Hategekimana*, Judgement (AC), paras. 150, 187; *Kanyarukiga*, Judgement (AC), para. 177; *Ntabakuze*, Judgement (AC), para. 150, fn. 321; *Ntawukulilyayo*, Judgement (AC), para. 21; *Renzaho*, Judgement (AC), para. 556.

<sup>100</sup> *Gatete*, Judgement (AC), para. 205; *Nahimana et al.*, Judgement (AC), para. 428. See also *Hategekimana*, Judgement (AC), para. 82; *Ntabakuze*, Judgement (AC), para. 150; *Kanyarukiga*, Judgement (AC), paras. 177, 220; *Ntawukulilyayo*, Judgement (AC), paras. 24, 121, 134; *Karera*, Judgement (AC), para. 173.

warranted in such circumstances. If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact upon which the guilt of the Accused depends, the conclusion of guilt beyond reasonable doubt cannot be drawn.<sup>101</sup>

61. Just as circumstantial evidence may properly serve as a basis for conviction, an accused may also rely on such evidence and any reasonable inferences capable of being drawn from it in his or her defence. An inference based on circumstantial evidence need not be the only reasonable one in order to support a successful defence.<sup>102</sup>

### **2.8.6 Gacaca Judgements**

62. Throughout this case, the Chamber has admitted into evidence a number of judgements arising out of *Gacaca* proceedings in Rwanda. In assessing these judgements, the Chamber will recall that judgements from a separate proceeding are neither binding nor authoritative before this Tribunal.<sup>103</sup> The Chamber will consider what weight to accord to these judgements on a case-by-case basis.

### **2.8.7 Prior Statements**

63. Rule 90(A) of the Rules provides that witnesses shall be heard by the Chamber, and prior out-of-court witness statements are normally relevant only as necessary for the Chamber to assess credibility. While there is no absolute prohibition on accepting prior statements for the truth of their contents, the Appeals Chamber has discouraged this practice.<sup>104</sup>

64. Prior consistent statements, however, cannot be used to bolster a witness' credibility, except to rebut a charge of recent fabrication of testimony. The fact that a witness testifies in a manner consistent with an earlier statement does not establish that the witness was truthful on either occasion.<sup>105</sup>

65. A will-say statement differs from a typical statement given by a witness. Will-say statements are generally communicated by counsel upon learning of new details during the preparation of a witness for examination and are not necessarily acknowledged by the witness. Therefore, will-say statements have no probative value except to the extent that the witness confirms their content.<sup>106</sup>

### **2.8.8 Accomplice Witness Testimony**

66. A number of witnesses who testified in these proceedings could be considered potential accomplices of Ngirabatware. An accomplice is "an association in guilt, a partner in crime". The Chamber has the discretion to rely on evidence of accomplice witnesses, including the discretion

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<sup>101</sup> *Hategekimana*, Judgement (AC), para. 270; *Karera*, Judgement (AC), para. 34.

<sup>102</sup> *Zigiranyirazo*, Judgement (AC), para. 49, fn. 136.

<sup>103</sup> See *Renzaho*, Judgement (AC), para. 469 (making this statement in relation to separate proceedings against a different accused); *Nzabonimana*, Judgement (TC), paras. 1351, 1576; *Bizimungu et al.*, Judgement (TC), para. 493; *Rwamakuba*, Judgement (TC), para. 110.

<sup>104</sup> *Kalimanzira*, Judgement (AC), para. 180; *Nchamihigo*, Judgement (AC), para. 311.

<sup>105</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 147.

<sup>106</sup> *Kalimanzira*, Judgement (AC), para. 180.

to rely on uncorroborated, but otherwise credible, accomplice witness testimony. However, considering that accomplice witnesses may have motives or incentives to implicate the Accused before the Tribunal or to lie, the Chamber is required to approach accomplice evidence with appropriate caution and to consider the totality of circumstances in which such evidence is tendered. The caution associated with accomplice testimony is most appropriate where a witness is charged with the same criminal acts as the accused.<sup>107</sup>

67. When assessing the evidence of accomplice witnesses, the Chamber will take into account various factors, including: the extent to which discrepancies in the testimony were explained; whether the accomplice witness has made a plea agreement with the Prosecution; whether he (or she) has already been tried and, if applicable, sentenced for his own crimes or is still awaiting the completion of his trial; and whether the witness may have any other reason for holding a grudge against the Accused.<sup>108</sup>

### 2.8.9 Detained Witness Testimony

68. Some of the witnesses in this case were detained at the time of their testimony, and had yet to complete their own criminal proceedings. In this regard, the Chamber recalls that “a witness who faces criminal charges that have not yet come to trial ‘may have real or perceived gains to be made by incriminating accused persons’ and may be tempted or encouraged to do so falsely”.<sup>109</sup> Nevertheless, the fact that a detained witness may have an incentive to perjure himself to gain leniency from the Rwandan authorities “is not sufficient, by itself, to establish that the suspect did in fact lie”.<sup>110</sup> The Chamber recalls that a witness’ motives or incentives to implicate the accused are much stronger when the witness is charged with the same criminal acts as the accused, and the Chamber remains mindful of the need to consider employing a critical approach to such witnesses. However, provided no special circumstances have been identified, it is reasonable not to employ the same cautious approach towards the testimony of witnesses charged with similar crimes as to the testimony of accomplices in the ordinary sense of the word.<sup>111</sup>

### 2.8.10 Allegations of Collusion

69. Both Parties raise allegations of collusion between witnesses. The Defence alleges that some Prosecution witnesses agreed to concoct false evidence against Ngirabatware, and that they collaborated in the selection of Prosecution witnesses.<sup>112</sup> On the other hand, the Prosecution

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<sup>107</sup> *Gatete*, Judgement (AC), para. 154; *Kanyarukiga*, Judgement (AC), para. 181; *Munyakazi*, Judgement (AC), para. 93; *Setako*, Judgement (AC), para. 143; *Muvunyi II*, Judgement (AC), para. 37; *Renzaho*, Judgement (AC), para. 263; *Niyitegeka*, Judgement (AC), para. 98.

<sup>108</sup> *Nchamihigo*, Judgement (AC), para. 47.

<sup>109</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 129.

<sup>110</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 181.

<sup>111</sup> See *Ntagerura et al.*, Judgement (AC), para. 234; *Nzabonimana*, Judgement (TC), para. 80. See also *Munyakazi*, Judgement (AC), para. 93; *Setako*, Judgement (AC), para. 40 (“In assessing the credibility of a witness, various factors should be considered, including the timing and circumstances of any confessions as well as the possible vulnerability of a witness to undue influence.”)

<sup>112</sup> Defence Closing Brief, paras. 371, 415, 776; Defence Closing Argument, T. 24 July 2012, pp. 46-48, 57; T. 25 July 2012, pp. 41-42.

contends that there was collusion amongst Defence witnesses to testify in favour of Ngirabatware and to corroborate his manufactured alibis.<sup>113</sup>

70. Rule 95 of the Rules provides that “[n]o evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings”. Collusion has been defined as an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose. If an agreement between witnesses for the purpose of untruthfully incriminating or exculpating an accused was established, their evidence would have to be excluded pursuant to Rule 95 of the Rules. However, a mere risk of collusion is insufficient to exclude evidence under this Rule.<sup>114</sup>

71. In view of the above observations the Chamber will remain alive to these issues throughout the Judgement, and will address these allegations below where appropriate.

### 2.8.11 Site Visit

72. The Chamber undertook a site visit to Rwanda from 21 through 25 May 2012, and a detailed report was admitted into evidence and forms part of the trial record.<sup>115</sup> The Parties have made additional submissions based on this site visit and the report thereof that was admitted into evidence.<sup>116</sup>

73. Observations from a site visit taken several years after an event may only be of limited assistance, and their relevance will depend on the circumstances of the case.<sup>117</sup> The Chamber will take this into account when it draws upon site visit observations throughout the Judgement.

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<sup>113</sup> Prosecution Closing Brief, paras. 240, 242, 252, 256-257, 260, 277, 288, 304, 323; Prosecution Closing Argument, T. 25 July 2012, pp. 31-32.

<sup>114</sup> *Gatete*, Judgement (AC), para. 106; *Kanyarukiga*, Judgement (AC), para. 238; *Setako*, Judgement (AC), para. 137; *Renzaho*, Judgement (AC), para. 137; *Karera*, Judgement (AC), para. 234.

<sup>115</sup> Chambers Exhibit 1 (Site Visit Report). The Chamber recalls that this exhibit was admitted into evidence on 8 June 2012. See generally *Bikindi*, Judgement (AC), para. 97; *Zigiranyirazo*, Judgement (AC), para. 36; *Karera*, Judgement (AC), para. 50.

<sup>116</sup> Prosecution Additional Submissions on Site Visit, 14 June 2012; Defence Additional Submissions on Site Visit, 14 June 2012.

<sup>117</sup> *Kanyarukiga*, Judgement (AC), para. 150. See also *Zigiranyirazo*, Judgement (AC), para. 69.



## CHAPTER III: FACTUAL FINDINGS

### 3.1 Influence of Augustin Ngirabatware

#### 3.1.1 Introduction

74. The Indictment alleges that Ngirabatware exercised considerable influence in his home *commune* of Nyamyumba in Gisenyi *préfecture*, between January and July 1994. The Prosecution relies primarily upon Witnesses ANAE, ANAF, ANAJ, ANAK, ANAM and ANAO, but also makes reference to Witnesses ANAD, ANAG, ANAL, ANAN, ANAR, ANAS, ANAT, ANAU and AFS.<sup>118</sup>

75. The Defence submits that the relevant paragraph of the Indictment is vague and unclear.<sup>119</sup>

#### 3.1.2 Notice

76. The Chamber recalls the applicable principles on notice (2.2). The Defence submits that the relevant paragraph of the Indictment is “unclear” regarding the specific charges against Ngirabatware.<sup>120</sup>

77. The Chamber recalls that, in its Decision of 8 April 2009, it found that this paragraph of the Indictment was not “too imprecise”, as alleged by the Defence. In so finding, the Chamber reasoned that this paragraph must be read in the context of the rest of the Indictment.<sup>121</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>122</sup>

78. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decision that the Indictment paragraph when read in the context of the rest of the Indictment is sufficient to provide notice to the Defence.

79. The Chamber further notes the Defence submission that only Witnesses ANAF and AFS were listed to testify on this allegation in the Indictment. The Defence does not appear to develop

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<sup>118</sup> Indictment, para. 17; Prosecution Closing Brief, paras. 6-7, 69-72, 390-392; Prosecution Closing Argument, T. 23 July 2012, pp. 16, 54; T. 24 July 2012, p. 21; T. 25 July 2012, pp. 24-25. In assessing this allegation, the Chamber will also take into account paragraph 18 of the Indictment and the Prosecution’s submissions in relation to that paragraph. See Prosecution Closing Brief, para. 74 (referring, in part, to its submissions on paragraph 17 of the Indictment).

<sup>119</sup> Defence Closing Brief, paras. 41-42, 54-59, 65-66, 421; Defence Closing Argument, T. 24 July 2012, p. 38; T. 25 July 2012, pp. 40-41. The Defence submits that paragraph 17 of the Indictment provides an unacceptably broad date range, but the Chamber considers this submission to apply to a different aspect of this Indictment paragraph. See Defence Closing Brief, para. 42 (referring to the mention in Indictment paragraph 17 of “April 1994”). This aspect is addressed below (3.2.2).

<sup>120</sup> See Defence Closing Brief, paras. 54-59, 421.

<sup>121</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 40.

<sup>122</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

this submission in relation to the relevant Indictment paragraph, nor does it allege or substantiate any possible prejudice.<sup>123</sup>

### 3.1.3 Evidence

80. Numerous Prosecution and Defence witnesses described Ngirabatware as having been a minister in 1994,<sup>124</sup> with many witnesses identifying him as the Minister of Planning.<sup>125</sup>

81. Both Prosecution and Defence witnesses also testified that Ngirabatware was on the technical committee of Nyamyumba *commune*.<sup>126</sup> He was also known as a high-ranking member of the MRND party<sup>127</sup> and as an individual who contributed to the development of the region.<sup>128</sup>

82. Prosecution Witnesses ANAF, ANAL, ANAJ, ANAK, ANAE and ANAM also stated that Ngirabatware was considered “a god”.<sup>129</sup>

<sup>123</sup> Defence Closing Brief, para. 422 (noting as well that Witness ANAH had been dropped); Defence Closing Argument, T. 24 July 2012, p. 38 (rebutting a statement in the Prosecution Closing Brief); T. 25 July 2012, pp. 40-41 (rebutting a statement in the Prosecution Closing Argument).

<sup>124</sup> See, for example, T. 5 October 2009, p. 7; T. 5 October 2009, p. 25 (CS); T. 7 October 2009, pp. 57-58 (CS) (Witness ANAL); T. 20 October 2009, p. 38; T. 21 October 2009, pp. 45-45 (Witness ANAE); T. 25 January 2010, pp. 14-15 (Witness ANAM); T. 1 March 2010, p. 20 (CS) (Witness ANAG); T. 2 March 2010, pp. 8, 71 (Witness AFS); T. 9 March 2010, pp. 25, 67 (CS) (Witness ANAU); T. 18 March 2010, pp. 9, 24 (Witness ANAR) (Ngirabatware was a minister, and he was a highly important person in February 1994); T. 3 October 2011, p. 16 (CS) (Witness DWAN-47); T. 22 June 2011, p. 89 (Witness DWAN-71); T. 23 September 2011, p. 6 (Witness DWAN-39).

<sup>125</sup> See, for example, T. 30 September 2009, pp. 50-51 (Witness ANAF); T. 7 October 2009, p. 74 (Witness ANAJ); T. 13 October 2009, p. 6 (CS); T. 13 October 2009, p. 41 (Witness ANAK); T. 9 February 2010, p. 11 (Witness ANAD); T. 15 February 2010, p. 71 (Witness ANAO); T. 15 March 2010, p. 72 (Witness ANAS) (the witness had heard people saying that Ngirabatware was the Minister of Planning); T. 16 March 2010, p. 63 (Witness ANAT); T. 6 July 2011, pp. 14, 16, 53 (CS) (Witness DWAN-12); T. 19 September 2011, p. 32 (Witness DWAN-49); T. 20 September 2011, p. 51 (CS); T. 22 September 2011, pp. 15, 45 (CS) (Witness DWAN-13) (testifying that Ngirabatware was the Minister of Planning, that people knew he was a minister, and that this was an influential position); T. 29 September 2011, pp. 33, 38 (Witness DWAN-15).

<sup>126</sup> See, for example, T. 13 October 2009, pp. 28, 34; T. 19 October 2009, p. 35 (CS) (Witness ANAK) (describing Ngirabatware as one of the most important persons on the Nyamyumba *commune* executive committee); T. 14 June 2011, pp. 69, 71; T. 15 June 2011, p. 17 (Nsabimana); T. 22 June 2011, p. 89; T. 28 June 2011, p. 17 (CS) (Witness DWAN-71); T. 6 July 2011, pp. 14-16, 36 (CS) (Witness DWAN-12); T. 20 September 2011, p. 56 (CS) (Witness DWAN-13).

<sup>127</sup> See, for example, T. 7 October 2009, p. 75; T. 8 October 2009, p. 46 (CS); T. 12 October 2009, p. 79 (CS) (Witness ANAJ) (Ngirabatware was a member of the MRND executive committee); T. 13 October 2009, p. 16 (CS); T. 19 October 2009, pp. 21, 35 (CS) (Witness ANAK) (MRND official and important personality within the MRND party at the national level); T. 6 July 2011, p. 53 (CS) (Witness DWAN-12) (high-ranking member of the MRND party at the national level and in Gisenyi *préfecture*).

<sup>128</sup> See, for example, T. 30 September 2009, pp. 56, 59 (Witness ANAF) (“We all respected him because he had done good things for us. For us he was almost like a god and even today people in our community consider him as someone who did good things for them. [...] The minister used to go regularly to Nyamyumba and he was active in development projects in that region, which, in fact, prior to that had been forgotten. In short, one can say that he was the leader of that region because of what he did.”); T. 7 October 2009, pp. 74-75; T. 12 October 2009, pp. 84, 86-87 (CS) (Witness ANAJ) (Ngirabatware was known for the construction of schools); T. 13 October 2009, pp. 63-64 (CS) (Witness ANAK) (Ngirabatware was responsible for having electricity installed in Rushubi *secteur* in 1992); T. 10 February 2010, pp. 60-61 (CS) (Witness ANAD) (Ngirabatware had a reputation for having done a lot for his local community); T. 15 June 2011, pp. 4-5 (Nsabimana) (Ngirabatware rehabilitated Bwitereke school).

83. Augustin Ngirabatware testified that he was born in Nyamyumba *commune*. He received a scholarship to study overseas in 1976, and when he returned to Rwanda in 1986, he had obtained a doctorate degree in Economic Sciences. Ngirabatware became a member of the technical commission of Nyamyumba *commune* in 1987, and he was appointed the Minister of Planning in 1990. By 1992, he was a member of the MRND party's national committee and its committee for Gisenyi *préfecture*. In his opinion, the people of Nyamyumba *commune* regarded him as someone who had undergone lengthy studies abroad, and he supposed that they must have been very proud to have someone from the area who was a minister. Ngirabatware also described himself as an "important person" and "a figure of authority in Gisenyi".<sup>130</sup>

### 3.1.4 Deliberations

84. It is undisputed that Ngirabatware hails from Nyamyumba *commune* in Gisenyi *préfecture*, that he received a doctorate degree, and that he was the Minister of Planning in various governments from 1990 through mid-July 1994.<sup>131</sup> Nor does Ngirabatware dispute that he was a member of the technical commission of Nyamyumba *commune*, a member of the Gisenyi *préfecture* committee of the MRND party, and a member of the national committee of the MRND party.

85. It is also clear that Ngirabatware's various positions were well known in Nyamyumba *commune* and its surrounding areas. Indeed, a number of Prosecution and Defence witnesses identified Ngirabatware as being the Minister of Planning, a member of the technical commission of Nyamyumba *commune*, and a high-ranking member of the MRND party. Witnesses also confirmed that he was known to have contributed to the development of his home *commune*.

86. A number of Prosecution witnesses described Ngirabatware as being tantamount to "a god" in the region.<sup>132</sup> Although Ngirabatware did not describe himself in such glowing terms in his own evidence, he acknowledged that he was "a figure of authority in Gisenyi".<sup>133</sup>

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<sup>129</sup> T. 30 September 2009, p. 56 (Witness ANAF) ("For us he was almost like a god [...]"); T. 6 October 2009, p. 67 (CS) (Witness ANAL) ("he was considered like a god"); T. 7 October 2009, p. 75 (Witness ANAJ) ("Augustin Ngirabatware was considered as a god for the Hutu residents [...]"); T. 13 October 2009, pp. 27, 41 (Witness ANAK) ("Minister Ngirabatware was considered a god."); T. 20 October 2009, pp. 34, 38 (Witness ANAE) ("he was considered as a god"); T. 25 January 2010, p. 20 (Witness ANAM) ("In the eyes of the population of Nyamyumba, he was like a god.").

<sup>130</sup> T. 16 November 2010, pp. 33, 36-37, 52-53; T. 18 November 2010, pp. 5, 8-11, 16-17, 26, 28-30; T. 7 December 2010, p. 41; T. 8 December 2010, pp. 33, 47 (Ngirabatware). See also, for example, T. 16 November 2010, p. 52; T. 8 December 2010, p. 35 (Ngirabatware); Defence Exhibit 85A (Members of MRND Committee for Gisenyi *Préfecture*, 12 February 1992) (French).

<sup>131</sup> See Prosecutor's Request to Augustin Ngirabatware to Admit Facts Pursuant to Rule 73 bis (b)(ii) of The Rules of Procedure and Evidence, 9 March 2009, p. 2 (alleging these facts); Responses of Dr. Ngirabatware to Prosecutor's Requests to admit Facts, 12 March 2009 (admitting these facts), p. 2. See also T. 9 May 2009, pp. 14-15 (Status Conference).

<sup>132</sup> T. 30 September 2009, p. 56 (Witness ANAF) ("For us he was almost like a god [...]"); T. 6 October 2009, p. 67 (CS) (Witness ANAL) ("he was considered like a god"); T. 7 October 2009, p. 75 (Witness ANAJ) ("Augustin Ngirabatware was considered as a god for the Hutu residents [...]"); T. 13 October 2009, pp. 27, 41 (Witness ANAK) ("Minister Ngirabatware was considered a god."); T. 20 October 2009, pp. 34, 38 (Witness ANAE) ("he was considered as a god"); T. 25 January 2010, p. 20 (Witness ANAM) ("In the eyes of the population of Nyamyumba, he was like a god.").

87. Based on the foregoing, as well as the overwhelming evidence adduced throughout this case by both the Prosecution and the Defence, the Chamber finds beyond reasonable doubt that Ngirabatware was an influential and well-known personality in Nyamyumba *commune* and its surrounding areas throughout the relevant events in 1994.

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<sup>133</sup> T. 8 December 2010, p. 47 (Ngirabatware) (“[...] considering all my activities [in June 1994] because that should be borne in mind – and considering the many other persons who came to see me, I was a figure of authority in Gisenyi and there were people who visited me”). See also T. 18 November 2010, p. 10 (Ngirabatware).

## 3.2 Election of Faustin Bagango as *Bourgmestre*, 1993

### 3.2.1 Introduction

88. The Indictment alleges that as part of the preparation for the genocide in Gisenyi *préfecture*, Faustin Bagango was appointed *bourgmestre* of Nyamyumba *commune* in April 1994, and that Ngirabatware was instrumental in securing this appointment.<sup>134</sup> In its closing submissions, the Prosecution further alleges that prior to the election, Bagango had been convicted and jailed for beating a Tutsi and looting his property. This conviction should have barred Bagango's candidature in the election, but Ngirabatware secured his release from prison and later appointed him as *bourgmestre*. In support of these allegations, the Prosecution relies on Witnesses ANAK, AFS, ANAO, ANAF, ANAJ, ANAS, ANAU and ANAT.<sup>135</sup>

89. The Defence raises notice issues and submits that, in March 1993, Bagango was fairly elected through a secret ballot that featured seven candidates. Prior to the election, Bagango had been acquitted of having stolen a goat, and Ngirabatware was never implicated in Bagango's release from prison. The Defence further maintains that the allegations in the Indictment are vague and are not supported by the evidence of Prosecution witnesses who were supposed to testify on them. The Defence refers to the evidence of Augustin Ngirabatware and Witnesses Edison Nsabimana, DWAN-12, DWAN-13, DWAN-47, DWAN-71 and DWAN-21.<sup>136</sup>

### 3.2.2 Notice

90. The Chamber recalls the general principles on notice (2.2). The relevant paragraph of the Indictment alleges that Bagango was appointed *bourgmestre* in "April 1994", which the Defence maintains is too broad of a date range.<sup>137</sup> The Defence further submits that this paragraph is "unclear" regarding the specific charges against Ngirabatware.<sup>138</sup>

91. The Chamber recalls that, in its Decision of 8 April 2009, it previously denied the Defence submissions concerning this date range. The Chamber concluded that the information was sufficiently detailed to provide adequate notice.<sup>139</sup> In the same Decision, the Chamber found that this paragraph of the Indictment was not "too imprecise", as alleged by the Defence. In so finding, the Chamber reasoned that this paragraph must be read in the context of the rest of the Indictment.<sup>140</sup> The Defence did not take any further action on the matter at that stage.

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<sup>134</sup> Indictment, para. 17.

<sup>135</sup> Prosecution Closing Brief, paras. 44, 52, 73, 75, 367-371; Prosecution Closing Argument, T. 23 July 2012, pp. 10-11. The Chamber considers that Prosecution Witnesses ANAM, ANAN and ANAD also provided evidence that may be relevant to this allegation. In assessing this allegation, the Chamber will also take into account paragraph 18 of the Indictment and the Prosecution's submissions in relation to that paragraph. See Prosecution Closing Brief, para. 74 (referring, in part, to its submissions on paragraph 17 of the Indictment).

<sup>136</sup> Defence Closing Brief, paras. 41-42, 54-59, 421-487; Defence Closing Argument, T. 24 July 2012, pp. 38, 48-49; T. 25 July 2012, pp. 40-41.

<sup>137</sup> See Defence Closing Brief, paras. 18-22, 41-42, 65-66.

<sup>138</sup> See Defence Closing Brief, paras. 18-22, 54-59, 65-66, 421.

<sup>139</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>140</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 40.

Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>141</sup>

92. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber's decision that "April 1994", or the Indictment paragraph when read in the context of the rest of the Indictment as a whole, is sufficient to provide notice to the Defence.

93. The Chamber further notes the Defence submission that only Witnesses ANAF and AFS were listed to testify on these allegations in the Indictment. The Defence does not appear to develop this submission in relation to the relevant Indictment paragraph, nor does it allege or substantiate any possible prejudice.<sup>142</sup> The Chamber also notes that Ngirabatware brought a robust defence in respect of this allegation, which would further undermine any claim of prejudice.

### 3.2.3 Evidence

#### Prosecution Witness ANAK

94. Witness ANAK, a Tutsi native of Nyamyumba *commune*,<sup>143</sup> testified that between the end of 1992 and beginning of 1993, during which time the Bagogwe were being killed, Faustin Bagango stole a goat belonging to a Tutsi named Nzovu. Bagango was convicted and sentenced to six months in the central Gisenyi prison for taking goats belonging to Tutsis, and, in particular, for taking Nzovu's goat. However, with Ngirabatware's assistance, Bagango was released from prison.<sup>144</sup>

95. According to Witness ANAK, Égide Karemera had been *bourgmestre* of Nyamyumba *commune*, but he was charged with misappropriating funds from the *commune*. The governing council met, with Ngirabatware in attendance, and the council decided to dismiss Karemera from his post. An election took place in 1993, and the candidates included Faustin Bagango, André Babonampoze, one Nyandwi and opposition party candidates. The *commune* executive committee, which was chaired by Ngirabatware, elected Bagango. The witness testified that Ngirabatware had used his influence to have Bagango elected over worthier candidates.<sup>145</sup>

#### Prosecution Witness AFS

96. Witness AFS, a Hutu who lived in Nyamyumba *commune* and worked at the Bralirwa brewery in 1994,<sup>146</sup> testified that Faustin Bagango had been the *Interahamwe* president in the

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<sup>141</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>142</sup> Defence Closing Brief, para. 422 (noting as well that Witness ANAH had been dropped); Defence Closing Argument, T. 24 July 2012, p. 38 (rebutting a statement in the Prosecution Closing Brief); T. 25 July 2012, pp. 40-41 (rebutting a statement in the Prosecution Closing Argument).

<sup>143</sup> Prosecution Exhibit 11 (Personal Identification Sheet); T. 13 October 2009, p. 6 (CS).

<sup>144</sup> T. 13 October 2009, pp. 27-30; T. 19 October 2009, pp. 34-40, 47 (CS).

<sup>145</sup> T. 13 October 2009, pp. 27-30, 34-36; T. 19 October 2009, pp. 32-36, 38-40 (CS); T. 20 October 2009, p. 10 (CS).

<sup>146</sup> Prosecution Exhibit 19 (Personal Identification Sheet); T. 2 March 2010, p. 5 (CS).

*commune* prior to the genocide. When President Ndadaye of Burundi was killed, ethnic tension erupted. Bagango, accompanied by the *Interahamwe*, went to the house of a Tutsi named Nzovu who worked at the Bralirwa brewery. They beat up Nzovu and looted his property, including his goats, one of which Bagango later ate. *Bourgmestre* Égide Karemera learned of the incident and immediately informed the *préfecture* authorities, after which Bagango was placed in detention. Bagango was questioned for this conduct, but he was released shortly thereafter. The witness did not know the circumstances under which Bagango was released.<sup>147</sup>

97. After Bagango's release, there was a change in the *commune* authorities. Sometime around August or September 1993, it was announced that an election for *bourgmestre* would be held. The witness heard that there were three candidates: Bagango, a teacher at Rambo primary school named André, and another teacher named Jean de Dieu.<sup>148</sup>

98. A public election was held. But before the results were made public, Ngirabatware went to the Nyamyumba *commune* office and announced that Bagango had received the most votes. Afterwards, various people went to have a drink at Gérard's hotel bar near the brewery, including Ngirabatware and Bagango. André Babonampoze was there as well, and he told anyone who would listen that the election had been rigged by Ngirabatware, who declared his cousin the victor. The other losing candidate, Jean de Dieu Ndagijimana, complained as well.<sup>149</sup>

99. The witness did not participate in the election nor was he present at the *commune* office because it was during business hours, but at 4.00 p.m. he learned about what happened. The local population said that André had won the election, and that he was the best candidate because he was well-educated. Bagango, on the other hand, was involved in looting and had no or limited post-primary education, and it was being said on election day that Bagango was Ngirabatware's cousin. The population thus understood that the election had been rigged, and that Bagango was declared the winner through nepotism.<sup>150</sup>

#### Prosecution Witness ANAO

100. Witness ANAO, a Hutu native of Nyamyumba *commune*,<sup>151</sup> testified that Faustin Bagango had once been the youth leader in the *commune*. In 1992, Bagango collaborated in the theft of Nzovu's goat, which was slaughtered at a CDR demonstration. Bagango was arrested for the theft, and he spent one or two months in the central prison without appearing before a judge. After paying for the goat, Bagango was released by the prosecutor. According to the witness, Bagango became the *bourgmestre* one-and-a-half months later.<sup>152</sup>

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<sup>147</sup> T. 2 March 2010, pp. 7-8; T. 2 March 2010, pp. 66-67 (CS); T. 4 March 2010, pp. 55, 70, 76 (CS); T. 4 March 2010, p. 79 (French) (CS).

<sup>148</sup> T. 2 March 2010, p. 67 (CS); T. 2 March 2010, pp. 70, 75-76; T. 4 March 2010, p. 74 (CS).

<sup>149</sup> T. 2 March 2010, pp. 8, 70-74; T. 2 March 2010, p. 67 (CS); T. 4 March 2010, p. 74 (CS). Witness AFS does not provide the last names of "André" and "Jean de Dieu". But from the context of his evidence, as well as the other identifying features provided by the witness, the Chamber considers it clear that he was referring to André Babonampoze and Jean de Dieu Ndagijimana.

<sup>150</sup> T. 2 March 2010, pp. 8, 70-74; T. 2 March 2010, p. 67 (CS).

<sup>151</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS).

<sup>152</sup> T. 15 February 2010, pp. 87-88 (CS); T. 17 February 2010, pp. 27-28, 30, 33, 38; T. 22 February 2010, p. 38 (CS).

101. During the time of multipartyism, Égide Karemera was removed as *bourgmestre* so that he could remain the chairman of the MRND party, and an election was announced. There were several candidates, including André Babonampoze, who was the headmaster of the Rambo educational institute, and one Ndagijimana. But the election never took place.<sup>153</sup>

102. Instead, the radio announced that Bagango would be the new *bourgmestre*, which shocked the local inhabitants because he was not a candidate. Three days later, Ngirabatware came to introduce Bagango as *bourgmestre*, and this led the population to conclude that Ngirabatware had appointed Bagango to the position.<sup>154</sup>

103. The witness also testified that, in 1993, the Nyamyumba *commune* committee was composed of 12 members. Bagango was the chairman, and other members included Witness DWAN-47 and Witness DWAN-71.<sup>155</sup>

#### Prosecution Witness ANAF

104. Witness ANAF, a Tutsi who lived in Nyamyumba *commune* in 1994,<sup>156</sup> testified that Faustin Bagango had been responsible at one point in time for training and developing the youth within the *commune*. During the period of multiparty politics, Bagango was the first person to steal goats belonging to Tutsis, for which he was imprisoned and subsequently released. Shortly after being released, Bagango became *bourgmestre*.<sup>157</sup>

105. According to Witness ANAF, the radio announced that the *bourgmestres* who were insufficiently competent had to be replaced, and the people subsequently elected Bagango because that is what Ngirabatware wanted. The witness stated that Ngirabatware was the leader of the region, and as such, he had *bourgmestres* appointed in the area. Bagango was neither well-educated nor well-known, but Ngirabatware raised people's awareness about Bagango, which led to his election as *bourgmestre*. When asked how she knew about Ngirabatware's role in this regard, Witness ANAF explained that she observed the situation and "took a look at what was happening".<sup>158</sup>

#### Prosecution Witness ANAJ

106. Witness ANAJ, a Hutu native of Nyamyumba *commune*,<sup>159</sup> testified that Ngirabatware had Faustin Bagango appointed as a leader of the youth wing in the *commune* and later as the *bourgmestre* who replaced Égide Karemera. As youth leader, Bagango assembled youth to loot cattle and goats. As an example, Witness ANAJ mentioned the case of Nzovu, who was the father of Jean Mukamugema, the *commune* secretary. The witness, when asked how he knew that Ngirabatware arranged for Bagango to be appointed *bourgmestre*, stated that he was not present during any election, but that everyone in Nyamyumba *commune* knew that Ngirabatware was

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<sup>153</sup> T. 17 February 2010, pp. 34-38; T. 22 February 2010, p. 37 (CS).

<sup>154</sup> T. 15 February 2010, pp. 87-88 (CS); T. 17 February 2010, pp. 34, 36-38; T. 22 February 2010, p. 37 (CS).

<sup>155</sup> T. 22 February 2010, pp. 31-32, 37 (CS).

<sup>156</sup> Prosecution Exhibit 8 (Personal Identification Sheet); T. 30 September 2009, p. 55 (CS); T. 30 September 2009, pp. 59, 72.

<sup>157</sup> T. 30 September 2009, pp. 56-57.

<sup>158</sup> T. 30 September 2009, pp. 56-57, 59.

<sup>159</sup> Prosecution Exhibit 10 (Personal Identification Sheet); T. 7 October 2009, p. 75.



responsible for the appointment. Furthermore, Bagango had never been to school, and this should have prevented him from becoming *bourgmestre*.<sup>160</sup>

#### Prosecution Witness ANAS

107. Witness ANAS, a former *Interahamwe* and Hutu native of Nyamyumba *commune*,<sup>161</sup> testified that he attended a meeting in January 1994 at the Nyamyumba *commune* office, where Ngirabatware discussed the issue of how Bagango could replace Égide Karemera as *bourgmestre*. The witness knew Bagango as having been the *Interahamwe* leader in the *commune* and as not being well-educated. But at the meeting, Witness ANAS heard Ngirabatware say that Bagango must become *bourgmestre*, and subsequently in 1994, Bagango acceded to this position.<sup>162</sup>

108. An election was organized, and there were at least three candidates: André, Bagango, and Jean de Dieu. Witness ANAS did not participate in the election. Afterwards, André went about everywhere telling people that he won the election, but that it had been marked with fraud. According to the witness, this is how the population came to know what happened.<sup>163</sup>

#### Prosecution Witness ANAU

109. Witness ANAU, a former *Interahamwe* and Hutu native of Nyamyumba *commune*,<sup>164</sup> testified that André Babonampoze was the headmaster at the Rambo School. The witness attempted to help Babonampoze and his family members flee on the morning of 7 April 1994. As they were fleeing, Babonampoze said that although Ngirabatware had promised to help him become *bourgmestre*, and despite the fact that Babonampoze had won the election, Bagango had been appointed *bourgmestre* thanks to Ngirabatware.<sup>165</sup>

#### Prosecution Witness ANAT

110. Witness ANAT, a native of Nyamyumba *commune* and a former *Interahamwe*, lived in Gisenyi town in 1994.<sup>166</sup> He testified to hearing that Ngirabatware had to intervene for Faustin Bagango to become *bourgmestre*.<sup>167</sup>

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<sup>160</sup> T. 8 October 2009, pp. 19, 26-27; T. 8 October 2009, p. 26 (French); T. 12 October 2009, pp. 6, 8; T. 12 October 2009, pp. 79-80 (CS); T. 12 October 2009, pp. 80-81 (French) (CS).

<sup>161</sup> Prosecution Exhibit 22 (Personal Identification Sheet); T. 15 March 2010, pp. 74, 77; T. 16 March 2010, p. 47 (CS).

<sup>162</sup> T. 15 March 2010, pp. 72-75, 77, 83; T. 16 March 2010, pp. 5-8; T. 16 March 2010, pp. 41, 45-46 (CS).

<sup>163</sup> T. 15 March 2010, pp. 77, 83; T. 16 March 2010, p. 7.

<sup>164</sup> Prosecution Exhibit 20 (Personal Identification Sheet); T. 9 March 2010, p. 19; T. 9 March 2010, pp. 45, 58 (CS); T. 11 March 2010, p. 8 (CS); T. 15 March 2010, pp. 35, 45 (CS).

<sup>165</sup> T. 9 March 2010, pp. 53, 65-66 (CS); T. 11 March 2010, pp. 46, 63 (CS); T. 15 March 2010, pp. 43, 63 (CS); T. 15 March 2010, pp. 42-43 (CS).

<sup>166</sup> Prosecution Exhibit 23 (Personal Identification Sheet); T. 16 March 2010, pp. 63, 65, 71; T. 16 March 2010, p. 64; T. 17 March 2010, p. 56.

<sup>167</sup> T. 16 March 2010, p. 69.

### Prosecution Witness ANAM

111. Witness ANAM, whose father was Hutu and whose mother was Tutsi, is from Nyamyumba *commune* and was 16 years old in 1994.<sup>168</sup> She testified that she did not know of any relationship between Ngirabatware and Bagango, and only knew that Bagango had been detained for stealing a goat and had been subsequently freed. The witness also identified Bagango as being the *Interahamwe* leader at one point in time, as well as the *bourgmestre*.<sup>169</sup>

### Prosecution Witness ANAN

112. Witness ANAN, a Hutu who identified himself as a CDR official in Gisenyi *préfecture* in 1994,<sup>170</sup> testified that Faustin Bagango became the *bourgmestre* of Nyamyumba *commune* in December 1993. Prior to this, Bagango was a youth leader in the *commune*.<sup>171</sup>

### Prosecution Witness ANAD

113. Witness ANAD, a Hutu from Nyamyumba *commune* who resettled in Gisenyi town in January 1993,<sup>172</sup> testified that Bagango became *bourgmestre* at the end of 1993. The witness also described a meeting at Kanyabuhombo School in early 1994, where Ngirabatware publicly commended Bagango's energy and courage and said that these traits had led to Bagango's appointment as *bourgmestre*.<sup>173</sup>

### Augustin Ngirabatware

114. Augustin Ngirabatware testified that in 1987, he was appointed to the technical committee of Nyamyumba *commune*, which was responsible for advising on development matters. At the time, *bourgmestres* were appointed by the President of Rwanda. But in 1993, the Prime Minister announced that *bourgmestres* would henceforth be elected, and the Minister of the Interior promulgated an order that formed the electorate in each *commune*. The composition of this electorate included the members of the *commune* technical committee, *secteur conseillers*, heads of *commune* services, heads of religious bodies and political party representatives, among others. The electoral college in Nyamyumba *commune* was made up of approximately 60 to 80 people, which included Ngirabatware in his capacity as member of the technical committee.<sup>174</sup>

115. Prior to this change, in 1992, the RPF demanded that some *commune* and *préfecture* authorities be replaced. The Prime Minister established the Kabanda commission in order to

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<sup>168</sup> Prosecution Exhibit 13 (Personal Identification Sheet); T. 25 January 2010, pp. 20, 72-73; T. 25 January 2010, pp. 23, 27, 37, 55-56 (CS); T. 27 January 2010, pp. 50-51 (CS).

<sup>169</sup> T. 25 January 2010, pp. 40, 52-53, 69 (CS); T. 27 January 2010, p. 15 (CS); T. 27 January 2010, p. 47.

<sup>170</sup> Prosecution Exhibit 14 (Personal Identification Sheet); T. 27 January 2010, p. 62 (CS); T. 3 February 2010, pp. 8, 17-19 (CS).

<sup>171</sup> T. 27 January 2010, p. 67; T. 1 February 2010, pp. 4-5; T. 4 February 2010, p. 58 (CS); T. 8 February 2010, p. 86 (CS).

<sup>172</sup> Prosecution Exhibit 15 (Personal Identification Sheet); T. 9 February 2010, pp. 10-11; T. 9 February 2010, p. 27 (CS).

<sup>173</sup> T. 9 February 2010, pp. 40, 42; T. 10 February 2010, p. 14 (CS).

<sup>174</sup> T. 18 November 2010, pp. 25-28; T. 30 November 2010, pp. 55-58, 60-61, 66; T. 7 December 2010, pp. 40-43; T. 14 February 2011, p. 107. See also Defence Exhibit 116 (Law of 23 November 1963, as Amended on 26 September 1974 and 30 January 1975).

assess the performance of various state employees, including *bourgmestres*. In February 1993, the Rwandan government began the process of replacing 42 *bourgmestres*. This included the *bourgmestre* of Nyamyumba *commune*, Égide Karemera, who the RPF had identified as someone it wanted assessed. Karemera was removed from his post in March 1993.<sup>175</sup>

116. Following Karemera's removal, the *préfecture* authorities immediately conducted a pre-screening procedure, in which Ngirabatware played no role. The authorities shortlisted between six and eight candidates, including Faustin Bagango, André Babonampoze, a representative of the MDR party and a representative of the PSD party. The election took place a few days prior to 23 March 1993, in the Nyamyumba *commune* office. The *préfecture* sent staff to supervise the election, which was held in the presence of the candidates and all the members of the electoral college. Votes were cast by secret ballot, and Ngirabatware cast his vote for Babonampoze. The votes were counted, and they were tallied onto a board by the assistant to the *bourgmestre*, Edison Nsabimana. Bagango was declared the winner.<sup>176</sup>

117. Bagango received the highest number of votes by an overwhelming margin, which Ngirabatware attributed to the fact that Bagango had been head of the department of youth and cooperatives in the *commune* for at least five years and was the president of the largest and most popular political party, the MRND. This provided him with opportunities to work with all the members of the electoral college. Bagango was also a voter, and he was qualified to hold the position of *bourgmestre* in part because he had completed five years of secondary school. As for the other candidates, Babonampoze came in second place. The *préfecture* forwarded the results to the Minister of the Interior, who in turn would have submitted a report to the Cabinet.<sup>177</sup>

118. Ngirabatware denied allegations that he either determined the outcome of Bagango's election to *bourgmestre* or had Bagango appointed to the position. He stated that such manoeuvring would not have been possible given the political landscape of multiparty politics and the role of opposition parties in the election. Ngirabatware also denied that he campaigned for Bagango, sensitized the community to vote for a particular candidate, or had publicly proclaimed him the winner. Ngirabatware further stated that, regardless of whether Babonampoze claimed that the election had been rigged, he was certainly disappointed at having lost the election.<sup>178</sup>

119. In May 1993, the Kabanda commission presented a report to the Cabinet. This report noted that the *bourgmestre* of Nyamyumba *commune*, Égide Karemera, had been included on an RPF list for assessment, but that Karemera had already been replaced as of 23 March 1993.<sup>179</sup>

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<sup>175</sup> T. 18 November 2010, pp. 43-46; T. 30 November 2010, pp. 42-43, 46-49. See also Defence Exhibit 115 (Prime Minister Order for National Commission for the Evaluation of State Employees, 6 July 1992).

<sup>176</sup> T. 18 November 2010, pp. 44-46; T. 30 November 2010, pp. 55-59, 64, 66-68. T. 1 December 2010, p. 66; T. 7 December 2010, pp. 35-36; T. 8 December 2010, p. 26.

<sup>177</sup> T. 30 November 2010, pp. 57-59, 64, 68-69; T. 1 December 2010, pp. 26-27; T. 7 December 2010, pp. 35-36, 39-41, 43-44, 74, 81; T. 14 February 2011, pp. 105, 107.

<sup>178</sup> T. 18 November 2010, p. 28; T. 30 November 2010, pp. 64-65, 68, 76-77; T. 30 November 2010, p. 69 (French); T. 8 December 2010, pp. 25-26; T. 14 February 2011, p. 8.

<sup>179</sup> T. 18 November 2010, pp. 45-46; T. 30 November 2010, pp. 43-44, 52, 55, 68. See also Defence Exhibit 117B (Report of National Commission for the Evaluation of State Employees, 3 May 1993), p. 3 ("The list of the new

120. Ngirabatware testified that he did not intervene to have Bagango released from prison after the theft of Nzovu's goat. Ngirabatware explained that the first time he heard of Nzovu—which is a nickname for “Nzaramba”—or the issue of Faustin Bagango's detention for stealing Nzovu's goat was during trial. In any event, Ngirabatware was not a prosecutor, acting prosecutor, or part of the judiciary body in Rwanda, and thus could not have had Bagango released. Ngirabatware noted that the Rubona *Gacaca* court had acquitted Bagango for this alleged theft and the judgement did not mention Ngirabatware.<sup>180</sup>

121. Ngirabatware and Bagango are from different hills in the same *secteur*, and their difference in age is hardly two or three years. Ngirabatware has known Bagango since they were children, and they knew each other's families. Ngirabatware stated that Bagango knew him well, but he denied that they were relatives or friends.<sup>181</sup>

122. Bagango was replaced as *bourgmestre* on 17 June 1994, and he called Ngirabatware a few days later in order to enquire whether Ngirabatware was aware of this replacement.<sup>182</sup>

#### Defence Witness Edison Nsabimana

123. Edison Nsabimana, a Hutu, was an assistant to the Nyamyumba *bourgmestre* from 1989 until June 1994 and was responsible for the *commune*'s administrative, judicial and political affairs.<sup>183</sup> He testified that when he was appointed in 1989, Égide Karemera was the *bourgmestre*. In February or March 1993, the *préfet*'s office sent correspondence ordering that Karemera be relieved of his post and be temporarily replaced by the oldest *conseiller* in the *commune*. This *conseiller* filled the post for one or two weeks, after which an election took place.<sup>184</sup>

124. A letter from the *préfecture* was circulated, and announcements were posted in every *secteur*, which requested everyone who met the required criteria to present themselves as a candidate. In order to be eligible for the position of *bourgmestre*, each candidate was required to hail from that particular *commune*, be an upright person of proper conduct and good reputation, have completed at least three years of secondary school and have no criminal convictions. The applicants had to write letters and send their application to the *préfecture* office, which examined each candidate's file and then selected the final list of candidates. The witness recalled that the nominees for the post included Faustin Bagango, André Babonampoze, Jean de Dieu Ndagijimana, Ezéchias Nizeye and Nyandwi. The list of candidates was not known until the day of the election, and so candidates did not have an opportunity to campaign for themselves.<sup>185</sup>

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authorities was recently approved and published by the Cabinet on Wednesday, 23 March 1993. Some cases on the RPF list are now moot. They are: [...] Nyamyumba commune: Egide Karemera: already replaced.”)

<sup>180</sup> T. 30 November 2010, pp. 69-71; T. 7 December 2010, pp. 75, 78; T. 8 December 2010, pp. 22, 26-27. See also Defence Exhibit 216 (*Gacaca* Proceedings Concerning Faustin Bagango).

<sup>181</sup> T. 30 November 2010, pp. 74-76; T. 7 December 2010, pp. 33-35; T. 8 December 2010, pp. 27-28, 46-47; T. 7 February 2011, pp. 8-9; T. 14 February 2011, p. 105.

<sup>182</sup> T. 8 December 2010, pp. 27-28, 31-33, 47-48; T. 7 February 2011, pp. 93, 96-99.

<sup>183</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-60, 66, 75; T. 15 June 2011, pp. 22-23, 37, 42, 57-58, 62-63, 65.

<sup>184</sup> T. 14 June 2011, pp. 60, 66-67; T. 15 June 2011, pp. 32, 37-41, 43, 57-58.

<sup>185</sup> T. 14 June 2011, pp. 67-69, 74; T. 15 June 2011, pp. 32, 35-36.

125. The election was held around March 1993 in the *commune* office, in the hall of the centre for *commune* development and continuing training. Both the candidates and a limited pool of voters were present. The voters numbered about 60 to 70 people, including all the *conseillers*, the heads of services within the *commune*, members of the technical commission of the *commune*, and representatives of religious denominations and of projects in the *commune*. Nsabimana held one vote, as did Ngirabatware by virtue of his position on the technical committee. Other members of the technical committee included Fabien Gahimano, Martin Ayirwanda, Emmanuel Semasenge, Cléophas Bipfakubaho, Alphonse Higaniro, Jean-Baptiste and others.<sup>186</sup>

126. Each candidate was given at least five minutes to introduce himself to the voters and to talk about his personal particulars and academic background. While the candidates introduced themselves, this information was taken down on a blackboard. The voting process was then carried out through secret ballot, with each voter writing down his or her selection on a piece of paper. Nsabimana voted for Bagango. As the votes were being counted, they were recorded on the blackboard in the presence of all the voters. Faustin Bagango received the highest number of votes, more than 25, while André Babonampoze came in second.<sup>187</sup>

127. In Nsabimana's opinion, Bagango was elected because he was the most conversant with matters concerning the *commune* and the fittest person to lead the *commune* among the candidates. Bagango was a very active service head in the *commune*, was in charge of the youth, and he was working in cooperation with all the voters who took part in the election. He was also the chairman of the MRND party at the *commune* level. Nsabimana denied that the election result was obtained fraudulently. Nsabimana did not see Ngirabatware trying to influence people on how to vote that day, and nobody complained after the election.<sup>188</sup>

#### Defence Witness DWAN-12

128. Witness DWAN-12, a Hutu who held an advisory position in the administration of Nyamyumba *commune*,<sup>189</sup> testified that he was initially a candidate for *bourgmestre* in 1993.<sup>190</sup>

129. On the day of the election, the *préfecture* authorities came to announce the shortlisted candidates. The witness was not preselected, but among the candidates were Faustin Bagango, André Babonampoze and Emmanuel Nyandwi. Each candidate then presented his political programme to the voters, which was the extent of the campaigning that had been done prior the election.<sup>191</sup>

130. The electoral college was composed of *conseillers*, representatives of religious denominations in the *commune*, service heads in the *commune*, and members of the technical committee. Ngirabatware was present as a member of the technical committee, which also included Fabien Gahimano, Martin Ayirwanda, Eraste Sibomana, Télésphore Nyaramba, Fabien Nsengiyumva, Vincent Hakizimana, Emmanuel Semasenge and others. All the voters received a

<sup>186</sup> T. 14 June 2011, pp. 70-71, 74, 77; T. 15 June 2011, p. 32.

<sup>187</sup> T. 14 June 2011, pp. 70-71; T. 15 June 2011, pp. 32-33, 42.

<sup>188</sup> T. 14 June 2011, pp. 70-71; T. 15 June 2011, pp. 32-35, 61.

<sup>189</sup> Defence Exhibit 131 (Personal Identification Sheet); T. 6 July 2011, pp. 15, 17, 35-37 (CS).

<sup>190</sup> T. 6 July 2011, pp. 17, 54 (CS).

<sup>191</sup> T. 6 July 2011, pp. 17-18, 54, 58, 61 (CS).

piece of paper on which they wrote the name of their choice on the basis of the candidates' programmes, and their selections were kept secret. The witness voted for Emmanuel Nyandwi. After the ballots were cast, they were counted and Bagango was announced as the winner.<sup>192</sup>

131. According to the witness, Bagango won because he had collaborated closely with all the categories composing the electoral college in his work as a youth leader, and it was clear that if elected he could easily guarantee the development of the *commune*.<sup>193</sup>

132. Ngirabatware did not influence the results of the election, nor would he have attempted to do so given the supervision of the *préfecture* committee. No candidate complained about the conduct of the election, either during the voting or during the counting of the ballots, and they all admitted that the election was properly conducted.<sup>194</sup>

### Defence Witness DWAN-13

133. Witness DWAN-13, a Hutu, exercised administrative functions in Nyamyumba *commune* from 1985 to 1994.<sup>195</sup> He testified that in 1992, while going to the *commune* office to pay his taxes, he heard people say that Faustin Bagango had stolen Nzovu's goat and that he was detained at the *gendarmerie* brigade section. The staff at the *commune* office told the witness that Bagango had been released after one or two days. In the witness' view, Ngirabatware played no role in this release, since a minister could not have left Kigali just to settle an issue of a stolen goat.<sup>196</sup>

134. In 1993, the witness went to the Nyamyumba *commune* office in order to participate in the election for *bourgmestre*. Also in attendance were all 12 of the *conseillers*, members of the technical committee, heads of departments and leaders of religious institutions. Ngirabatware was there as a member of the technical committee, and Edison Nsabimana was present as well. The four candidates were also present, including Emmanuel Nyandwi and Bagango.<sup>197</sup>

135. The candidates had previously sent letters to the *préfet*, and on election day, the *préfecture* office sent a sub-*préfet* to the *commune* office. The sub-*préfet* asked the candidates to introduce themselves and say what they would do for the *commune*. Everyone received a ballot paper, which was cast in secret and without instructions on who to vote for. Witness DWAN-13 voted for Nyandwi. The sub-*préfet* collected the ballots, put them into a box, and then started reading out the names listed on the ballots. The secretary wrote these names on the blackboard. In this way, Bagango was elected *bourgmestre*.<sup>198</sup>

136. The witness denied that people were instructed on how to vote and that Ngirabatware arranged the results of the election. According to him, the election was a democratic and fair process thanks to the secret ballot system. Indeed, nobody challenged the result and Bagango

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<sup>192</sup> T. 6 July 2011, pp. 15, 17-19, 52 (CS).

<sup>193</sup> T. 6 July 2011, pp. 18-19 (CS).

<sup>194</sup> T. 6 July 2011, pp. 19, 52, 54, 58 (CS).

<sup>195</sup> Defence Exhibit 146 (Personal Identification Sheet); T. 20 September 2011, pp. 48-50, 59, 82 (CS).

<sup>196</sup> T. 20 September 2011, pp. 55-56, 80 (CS); T. 22 September 2011, pp. 46-47 (CS).

<sup>197</sup> T. 20 September 2011, pp. 53, 55-58, 80, 82 (CS).

<sup>198</sup> T. 20 September 2011, pp. 55-57 (CS); T. 22 September 2011, pp. 20, 41-43 (CS); T. 22 September 2011, p. 32.

obtained the highest number of votes because he was a youth organizer at the *commune* level and all the voters already knew him.<sup>199</sup>

#### Defence Witness DWAN-47

137. Witness DWAN-47, a Hutu who occupied an administrative position in Nyamyumba *commune* from 1979 to 1994,<sup>200</sup> testified that Bagango was elected *bourgmestre* towards the end of 1993. About 70 persons had a right to vote in the election, and they were *conseillers*, members of the technical committee, and heads of services at the *commune* level. Witness DWAN-47 saw Ngirabatware, who came for the election, but the witness denied having attended a meeting where Ngirabatware discussed how to get Bagango elected, noting that an election through ballot papers would have not been necessary otherwise. The witness never heard anyone say that the election was fraudulent.<sup>201</sup>

#### Defence Witness DWAN-71

138. Witness DWAN-71, a Hutu from Nyamyumba *commune*, held a position of authority from 1988 to July 1994.<sup>202</sup> He testified that in January 1993, the *préfecture* committee organized an election to replace Égide Karemera as *bourgmestre* of the *commune*, and it selected the list of candidates. Witness DWAN-71 participated in the election, where he saw Ngirabatware in his capacity as a member of the technical committee of Nyamyumba *commune*. Bagango won the election and, after the results were published, everyone expressed joy.<sup>203</sup>

#### Defence Witness DWAN-21

139. Witness DWAN-21, a Hutu, participated in the *Gacaca* proceedings in Rubona *secteur* of Nyamyumba *commune*.<sup>204</sup> He testified that Cyprien Nzaramba, also known as Nzovu, lived in Munanira *secteur*. After the genocide, a *Gacaca* court in Rushubi *secteur* heard a case alleging that Faustin Bagango attacked Nzovu with the intent of looting and killing him. Bagango was acquitted of all charges. Witness DWAN-21 also stated that Bagango faced charges in “the goat case”, for which Bagango was also found not guilty.<sup>205</sup>

### **3.2.4 Deliberations**

140. It is not disputed that Faustin Bagango had once been a youth leader in Nyamyumba *commune*, that he had been arrested for having stolen a goat from Nzovu, and that he was later released from prison. Nor do the Parties dispute that after these events took place, Bagango became the *bourgmestre* of Nyamyumba *commune*.

<sup>199</sup> T. 20 September 2011, pp. 56-57, 80 (CS); T. 22 September 2011, p. 20 (CS).

<sup>200</sup> Defence Exhibit 156 (Personal Identification Sheet); T. 29 September 2011, p. 68 (CS); T. 3 October 2011, pp. 14-15 (CS).

<sup>201</sup> T. 29 September 2011, pp. 68-69, 78 (CS).

<sup>202</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 28 June 2011, pp. 13, 15 (CS).

<sup>203</sup> T. 22 June 2011, p. 89; T. 23 June 2011, pp. 9-10; T. 28 June 2011, pp. 17-18 (CS).

<sup>204</sup> Defence Exhibit 153 (Personal Identification Sheet); T. 28 September 2011, p. 6 (CS); T. 29 September 2011, p. 2.

<sup>205</sup> T. 28 September 2011, pp. 24-27 (CS); T. 28 September 2011, p. 28 (French) (CS); T. 29 September 2011, pp. 22-23 (CS).

141. The Chamber notes that the Parties have adduced certain evidence concerning whether Bagango in fact stole this goat, how long he was imprisoned, whether he was later acquitted, and whether Ngirabatware improperly secured his release from prison. The Chamber observes that none of these aspects are found in the Indictment, and it is not disputed that Bagango was involved in an alleged theft of a goat, for which he was arrested and detained for some time.

142. As for how Bagango was released from prison, only Prosecution Witness ANAK attributed this to Ngirabatware's assistance. Conversely, Prosecution Witness ANAO stated that Bagango was released after he paid for the goat. Ngirabatware denied having played any role in Bagango's release, and Defence Witness DWAN-13 testified that a minister could not have left Kigali just to settle an issue of a stolen goat. In the Chamber's view, there is no clear evidence establishing that Ngirabatware played a role in securing Bagango's release from prison. The Chamber will therefore turn its attention to the issues of when, and under what circumstances, Bagango attained the post of *bourgmestre*.

143. The Indictment alleges that Bagango was appointed *bourgmestre* in April 1994.<sup>206</sup> Only Prosecution Witness ANAS provided evidence that Bagango became *bourgmestre* in 1994, having testified that he attended a meeting in January 1994 where Ngirabatware discussed how to have Bagango replace Égide Karemera as *bourgmestre*. Conversely, 11 witnesses stated or implied that Bagango became *bourgmestre* at some point in 1993. Although there was wide-ranging disagreement among these witnesses as to when precisely Bagango replaced Karemera, with testimony ranging from January through December 1993,<sup>207</sup> the Chamber considers that this wealth of evidence establishes that Bagango became the *bourgmestre* of Nyamyumba *commune* at some point in 1993.

144. The Chamber further observes that the National Commission for the Evaluation of State Employees issued a report, in which it stated that Karemera had already been replaced as *bourgmestre* by 23 March 1993.<sup>208</sup> The Chamber notes that this document was produced in May 1993, and the Chamber considers that this report further bolsters the conclusion that Karemera was replaced in 1993. In light of the evidence that a *conseiller* filled the post for one or two weeks while a pre-screening process was undertaken before the eventual election,<sup>209</sup> the Chamber considers that Faustin Bagango attained the post of *bourgmestre* during 1993.

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<sup>206</sup> Indictment, para. 17.

<sup>207</sup> T. 28 June 2011, pp. 17-18 (CS) (Witness DWAN-71) (in January 1993); T. 18 November 2010, p. 45 (Ngirabatware) (as of 23 March 1993); T. 14 June 2011, p. 77 (Nsabimana) (around March 1993); T. 2 March 2010, p. 9 (Witness AFS) (sometime around August or September 1993); T. 29 September 2011, p. 69 (CS) (Witness DWAN-47) (towards the end of 1993); T. 10 February 2010, p. 14 (CS) (Witness ANAD) (at the end of 1993); T. 8 February 2010, p. 86 (CS) (Witness ANAN) (in December 1993); T. 19 October 2009, p. 32 (CS) (Witness ANAK) (in 1993); T. 6 July 2011, pp. 17, 52 (CS) (Witness DWAN-12) (in 1993); T. 20 September 2011, p. 55 (CS) (Witness DWAN-13) (in 1993); T. 17 February 2010, p. 37 (Witness ANAO) (during the time of multipartyism); T. 30 September 2009, p. 57 (Witness ANAF) (during the period of multiparty politics).

<sup>208</sup> Defence Exhibit 117B (Report of National Commission for the Evaluation of State Employees, 3 May 1993), p. 3 ("The list of the new authorities was recently approved and published by the Cabinet on Wednesday, 23 March 1993. Some cases on the RPF list are now moot. They are: [...] Nyamyumba commune: [É]gide Karemera: already replaced."). See also Defence Exhibit 115 (Prime Minister Order for National Commission for the Evaluation of State Employees, 6 July 1992).

<sup>209</sup> T. 14 June 2011, pp. 66-67 (Nsabimana) (Karemera was temporarily replaced by a *conseiller* for one or two weeks, until an election took place); T. 18 November 2010, p. 44; T. 30 November 2010, p. 55 (Ngirabatware)



145. The Chamber considers that Ngirabatware and Bagango knew each other well throughout the relevant events in 1993 and 1994. Indeed, Ngirabatware testified that he and Bagango had known each other since childhood, and that they were acquainted with each other's families. Ngirabatware acknowledged that Bagango had known him well, and that Bagango telephoned him in mid-June 1994 in order to either greet Ngirabatware or else to inform him that he was no longer *bourgmestre*.<sup>210</sup>

146. Six Prosecution witnesses agreed that an election took place, and nine Prosecution witnesses testified that Bagango was either appointed by Ngirabatware or else was elected owing to the influence of Ngirabatware.<sup>211</sup> This is a significant quantity of evidence, and the sheer number of witnesses testifying in a similar fashion raises the possibility that Ngirabatware either rigged the election or swayed the electorate to vote for Bagango. This possibility is strengthened considering the close association between Ngirabatware and Bagango, as well as the fact that Ngirabatware was an influential person in Nyamyumba *commune* at the time (3.1.4).

147. The Chamber notes, however, that none of these witnesses provided a first-hand account of the election. Instead, their evidence is a mix of hearsay, general rumor, speculation and inference.

148. This lies in stark contrast to the evidence presented by the Defence. Six Defence witnesses testified to having participated directly in the election,<sup>212</sup> and none of these witnesses described an election that was rigged or unduly influenced by Ngirabatware.

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(immediately after Karemera was removed from his post, a pre-screening procedure was conducted); T. 6 July 2011, pp. 17, 54 (CS) (Witness DWAN-12) (a pre-selection was undertaken by the *préfecture* authorities); T. 22 September 2011, p. 20 (CS) (Witness DWAN-13) (prior to the election, the candidates sent letters to the *préfet*).

<sup>210</sup> See, for example, T. 8 December 2010, p. 28 (Ngirabatware) (“I have never denied that Bagango hailed from my *secteur* and that I knew Bagango from my childhood [...] and that Bagango knew me well. I know Bagango's grandparents, I know his father and mother. He knows my parents, my grandparents maybe not. Bagango was *bourgmestre*, and on the 17th of June 1994, he was replaced by the cabinet meeting, and a few days later, he telephoned me and it was not even to ask me to put him back into [...] office. I think he asked me whether I was aware. Perhaps, he could have thought if I was aware or not, or maybe he was mainly greeting me.”).

<sup>211</sup> T. 13 October 2009, pp. 28-29 (Witness ANAK) (Ngirabatware used his influence to have Bagango elected); T. 2 March 2010, p. 67 (CS) (Witness AFS) (the witness heard that the election had been rigged); T. 17 February 2010, pp. 36-37 (Witness ANAO) (three days after the election, Ngirabatware introduced Bagango as *bourgmestre*, which caused the population to conclude that Ngirabatware had appointed Bagango to the position); T. 30 September 2009, p. 59 (Witness ANAF) (Ngirabatware raised people's awareness about Bagango, which led to his election as *bourgmestre*); T. 12 October 2009, pp. 79-80 (CS) (Witness ANAJ) (the witness was not present during any election, but everyone knew that Ngirabatware was responsible for the appointment of Bagango); T. 9 March 2010, pp. 53, 65-66 (CS) (Witness ANAU) (André Babonampoze told the witness on 7 April 1994 that he had won the election, but that Bagango had been appointed to the post thanks to Ngirabatware). See also T. 16 March 2010, p. 69 (Witness ANAT) (the witness heard that Ngirabatware had to intervene in order for Bagango to become *bourgmestre*); T. 9 February 2010, pp. 40, 42 (Witness ANAD) (at a meeting in early 1994, Ngirabatware said that Bagango's energy and courage led to his appointment as *bourgmestre*); T. 15 March 2010, pp. 72-73, 83 (Witness ANAS) (Ngirabatware discussed, at a meeting in January 1994, how to have Bagango replace Égide Karemera as *bourgmestre*).

<sup>212</sup> T. 18 November 2010, p. 46; T. 30 November 2010, p. 58 (Ngirabatware); T. 14 June 2011, p. 67 (Nsabimana); T. 6 July 2011, p. 17 (CS) (Witness DWAN-12); T. 20 September 2011, p. 55 (CS) (Witness DWAN-13); T. 29 September 2011, pp. 68-69 (CS) (Witness DWAN-47); T. 22 June 2011, p. 89; T. 23 June 2011, p. 9 (Witness DWAN-71).

149. The Chamber acknowledges that these Defence witnesses, including Ngirabatware himself, may have a motive to distance themselves from any improprieties that may have occurred in the days surrounding the election. The Chamber therefore treats their evidence with the appropriate caution.

150. In conclusion, the Chamber considers that the Prosecution has not made out its case in relation to this allegation. Accordingly, the Chamber concludes that the Prosecution has not established beyond reasonable doubt that Ngirabatware was instrumental in having Bagango appointed *bourgmestre* of Nyamyumba *commune* in April 1994 or at any other point in time.

### 3.3 Meeting at Kanyabuhombo School, Early 1994

#### 3.3.1 Introduction

151. The Indictment alleges that in early 1994 Ngirabatware convened a meeting at Kanyabuhombo School in Nyamyumba *commune*, Gisenyi *préfecture*. At this meeting, Ngirabatware publicly addressed the audience and told them to hunt and kill Tutsis, and distributed firearms and grenades to the *Interahamwe* which were later used to kill or harm Tutsis in Nyamyumba *commune*. The Prosecution relies on Witnesses ANAD and ANAN.<sup>213</sup>

152. The Defence raises notice issues, and submits that Ngirabatware never visited Kanyabuhombo School after its inauguration in 1992, and disputes that he attended any meeting or distributed weapons there in 1994. The Defence further submits that Witnesses ANAN and ANAD alleged different meetings, that in any event they are not credible, and asserts that Witness ANAD was not listed as testifying on this allegation. The Defence relies on the testimony of Ngirabatware and Defence Witnesses DWAN-13, Edison Nsabimana, DWAN-71, DWAN-47, DWAN-129, DWAN-45, DWAN-12 and Jean Damascène Kayitana.<sup>214</sup>

#### 3.3.2 Notice

153. The Chamber recalls the general principles on notice (2.2). The Defence submits that Indictment paragraphs 22-23 and 40 fail to provide a specific date for this allegation.<sup>215</sup> In this regard, the Chamber recalls that in its Decision of 8 April 2009, this matter was adjudicated and the Chamber concluded that these paragraphs were sufficiently detailed to provide adequate notice with regard to dates.<sup>216</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber declined to reconsider its previous decision on the same submissions because no basis had been demonstrated to have done so.<sup>217</sup> The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of its previous decisions.

154. The Defence also submits that these Indictment paragraphs are defective in terms of alleged co-perpetrators and victims.<sup>218</sup> In addition, the Defence submits that Count 4 of the Indictment is defective in its entirety because it merely repeats the language of Article 6(1) of the Statute but does not contain any mode of responsibility nor material facts for all modes of

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<sup>213</sup> Indictment, paras. 22-23, 40; Prosecution Closing Brief, paras. 78-83, 124, 129-131; Prosecution Additional Submissions on Site Visit, para. 42; Prosecution Closing Argument, T. 23 July 2012, pp. 9, 11-12, 29-30; T. 25 July 2012, pp. 30-31. The Chamber notes that the transcripts and certain exhibits occasionally refer to the school or the area as “Kanyabihombo”. For the sake of consistency, the Chamber will use the spelling of “Kanyabuhombo” found in the Indictment.

<sup>214</sup> Defence Closing Brief, paras. 41-42, 46-59, 76, 270-285, 293-325, 699-701, 724-737; Defence Additional Submissions on Site Visit, para. 28; Defence Closing Argument, T. 24 July 2012, pp. 36, 45, 61; T. 24 July 2012, p. 37 (French); T. 25 July 2012, pp. 53-54. The Chamber considers that the evidence of Defence Witness DWAN-25 may also be relevant to this allegation.

<sup>215</sup> Defence Closing Brief, paras. 41-42.

<sup>216</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>217</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 12-19.

<sup>218</sup> Defence Closing Brief, paras. 46-53.

responsibility.<sup>219</sup> The Defence has not provided any reason or justification for raising these additional notice issues at this late stage of the proceedings, nor has it demonstrated that it suffered any prejudice. Accordingly, the Chamber finds no merit in these submissions.

155. As to the notice issue regarding the fact that Witness ANAD was not listed as testifying on this allegation, the Chamber notes that the Defence failed to raise this challenge during the trial stage,<sup>220</sup> and never sought recall of this witness for any reason. The Defence disputed this notice issue for the first time in its Closing Brief and has provided no explanations for not raising this earlier.<sup>221</sup> The Chamber further notes that in the Prosecution Pre-Trial Brief, the summary of Witness ANAD's anticipated testimony explicitly refers to an alleged rally at Kanyabuhombo.<sup>222</sup> The Chamber considers that these circumstances provided the Defence with sufficient notice such that it was not materially prejudiced in its ability to prepare a full defence to this allegation.

### 3.3.3 Evidence

#### Prosecution Witness ANAD

156. Witness ANAD, a Hutu from Nyamyumba *commune* who is married to a Tutsi, testified that he resettled in Gisenyi town in 1993 after being attacked at home.<sup>223</sup> Around early February 1994, he visited a friend in his former hometown and was walking back to Gisenyi town when he heard a drum beating at 10.00 a.m. Fearing punishment if he did not attend the rally, the witness followed the drumbeat to the football pitch of the Trinity School, located at Kanyabuhombo in Nyamyumba *commune*.<sup>224</sup>

157. When he arrived at the football pitch, he saw about 1,000 people and students in attendance. He stood about 20 meters away from various officials, including Ngirabatware, *Bourgmestre* Bagango, Minister Juvénal Uwiringiyimana, and various *conseillers*, including those of Buhoko, Gashashi and Mwufe *secteurs*. Égide Karemera and Edison Nsabimana, who were respectively the leaders of the MRND and CDR parties at the *commune* level, were also present, as was another individual who was later introduced as an agronomist and as an important member of the CDR. Witness DWAN-13 was also present. These officials, as well as Witness DWAN-13, sat in front of the crowd and were flanked by *Interahamwe*.<sup>225</sup>

158. After the *Interahamwe* marched, Bagango took the floor and introduced the officials, members of the CDR including the agronomist, and the *Interahamwe*. Bagango urged that the young people be given weapons because although they were patriotic, they only had traditional

<sup>219</sup> Defence Closing Brief, paras. 54-59.

<sup>220</sup> See, for example, T. 9 February 2010, pp. 17, 37-43.

<sup>221</sup> Defence Closing Brief, paras. 276, 727.

<sup>222</sup> Prosecution Pre-Trial Brief, Annex 1, Witness ANAD anticipated testimony ("The witness has attended many of Ngirabatware's rallies [at various locations], in Kanyabuhombo, [and at other locations]. In the rallies, Augustin Ngirabatware praised MRND [...] . These statements constituted direct incitement to hatred and violence against the Tutsi."). The Chamber notes that this summary does not make reference to Indictment paragraphs 22, 23 or 40.

<sup>223</sup> Prosecution Exhibit 15 (Personal Identification Sheet); T. 9 February 2010, pp. 11, 20, 24; T. 9 February 2010, p. 25 (CS).

<sup>224</sup> T. 9 February 2010, pp. 39-41; T. 10 February 2010, pp. 62, 67 (CS); T. 11 February 2010, pp. 48, 59-60, 62-64, 71 (CS); T. 11 February 2010, p. 57.

<sup>225</sup> T. 9 February 2010, p. 12 (CS); T. 9 February 2010, pp. 17, 40-41; T. 11 February 2010, p. 57; T. 11 February 2010, pp. 64-67, 69-71 (CS); T. 15 February 2010, p. 24 (CS).

weapons and could not fight the armed *Inkotanyi*. After about five minutes, Bagango gave the floor to Ngirabatware.<sup>226</sup>

159. Ngirabatware spoke for more than an hour. He began by commending Bagango's energy and saying this led to his appointment as *bourgmestre*. Ngirabatware then lauded the strength of the *Interahamwe*, chronicled the history of Rwanda, and called on the intellectuals to join the MRND and CDR parties because only these parties could safeguard Hutu interests by fighting the Tutsis. Witness ANAD said that such statements were commonly made at meetings of the time, and the witness understood that they were intended to fan hatred.<sup>227</sup>

160. Ngirabatware also said that weapons would be made available and later handed to the young people who, Ngirabatware emphasized, needed the weapons and who were trained to use them. Although the witness had seen Ngirabatware provide the keynote speech at three previous rallies in 1994, this was the first time that Ngirabatware mentioned weapons. The witness understood that this statement was a response to Bagango's call for weapons to fight the "*Inkotanyi*".<sup>228</sup>

161. The witness followed Ngirabatware's entire speech and stayed until the speech was over, but he never heard any suggestion that weapons would be distributed later that day at the *commune* office. The speech was followed by a parade by the *Interahamwe* that would typically last for a while, and which was taken by Witness ANAD and other attendees as an opportunity to leave the rally. Witness ANAD continued his walk to Gisenyi town, and did not see any weapons distributed on that day.<sup>229</sup>

#### Prosecution Witness ANAN

162. Witness ANAN, a Hutu who identified himself as a CDR official and *Impuzamugambi* representative in Gisenyi *préfecture* in 1994,<sup>230</sup> testified that he attended a meeting at Kanyabuhombo School in Nyamyumba *commune* in the beginning of January 1994. The meeting took place between 10.00 and 11.00 a.m., and it was open to the public, with more than 300 persons attending. Also in attendance were Ngirabatware, *Bourgmestre* Faustin Bagango and all of the *secteur conseillers*, as well as Defence Witnesses DWAN-13, DWAN-71 and DWAN-47. Bagango introduced Ngirabatware to start the meeting and, as Ngirabatware took the floor, the witness was about nine meters away.<sup>231</sup>

163. Ngirabatware said that he had organized the meeting, and told the gathered crowd to remember that he had promised to provide weapons for self-defence. He explained that he had kept his promise, and had come to give guns and grenades to the crowd so that the youth could

<sup>226</sup> T. 9 February 2010, pp. 40-43; T. 11 February 2010, p. 4; T. 11 February 2010, pp. 66-67, 69, 74 (CS).

<sup>227</sup> T. 9 February 2010, pp. 42-43, 57; T. 11 February 2010, pp. 3-4.

<sup>228</sup> T. 9 February 2010, pp. 17, 42-43; T. 10 February 2010, p. 65 (CS); T. 11 February 2010, pp. 3-4; T. 11 February 2010, p. 69 (CS). Witness ANAD described the word "*Inkotanyi*" as referring to "armed persons who had attacked the country from abroad to free the country, because they wanted to seize power and they considered themselves Rwandans of the diaspora", and that they were of Tutsi ethnicity. T. 9 February 2010, p. 43.

<sup>229</sup> T. 9 February 2010, p. 43; T. 11 February 2010, pp. 72-74 (CS).

<sup>230</sup> Prosecution Exhibit 14 (Personal Identification Sheet); T. 27 January 2010, p. 62 (CS); T. 3 February 2010, pp. 8, 17-19 (CS).

<sup>231</sup> T. 1 February 2010, pp. 4-5, 12-13, 31-33; T. 4 February 2010, pp. 58-59 (CS); T. 8 February 2010, p. 86 (CS).

carry out their work of fighting the *Inyenzi*. The witness testified that he came to understand that the enemy was the Tutsi. As Ngirabatware's speech was drawing to a close, he explained that the "tools" could not be distributed amidst all the confusion there, but that Bagango would distribute them at the *secteur* office to deserving people.<sup>232</sup>

164. At some point while he was still at the school, the supplier of the weapons showed Witness ANAN the firearms and grenades, and this person indicated the type and names of these weapons. Afterwards, Witness ANAN, in his capacity as an *Impuzamugambi* representative went to the Nyamyumba *commune* office, about an hour away from Kanyabuhombo School on foot or about ten minutes by motorbike. He was joined by *Interahamwe* leaders and those who had previously arranged weapons training. Once at the office, and around 1.00 p.m., Bagango and the *commune* police brigadier gave firearms and grenades to Witness ANAN and to the *Interahamwe* representative. The witness received six Uzi rifles and 15 grenades, which he handed to one Kabayiza, who immediately distributed them to the youths who had been taught to handle the weapons. Witness ANAN said that these weapons were to be distributed in the various *secteurs* of Nyamyumba *commune*, and that they were used to kill Tutsis. He also testified that, from the beginning of 1994, he was part of a plan to help to murder and injure Tutsis.<sup>233</sup>

#### Augustin Ngirabatware

165. Ngirabatware testified that he participated in the founding of a secondary school in Nyamyumba *commune* called Trinity College. The school opened in 1991 within Kabilizi *secteur*, and the following year it moved to the location known as Kanyabuhombo, which was located at the borders of Mwufe, Kivumu and Gashashi *secteurs*. At the occasion of the inaugural ceremony of the new building in 1992, Ngirabatware spoke to the students and their parents about the importance of education. By 1994, around 200 students attended this school.<sup>234</sup>

166. Ngirabatware denied that he participated in any political meeting held at the school, and he never heard of any such meeting from the radio, the newspaper or the school director. He also explained that holding meetings on business days had been forbidden in Rwanda since 1991. Ngirabatware further testified that he did not go to Gisenyi *préfecture* at any point from October 1993 until 12 April 1994, and that he returned to the school only between 6 and 12 July 1994.<sup>235</sup>

#### Defence Witness DWAN-13

167. Witness DWAN-13, a Hutu who exercised administrative functions in Nyamyumba *commune* in 1994,<sup>236</sup> testified that he saw Ngirabatware at the inauguration of Kanyabuhombo, or Trinity, School in 1992. The witness affirmed that no meeting was held by Ngirabatware where all 12 *conseillers* of Nyamyumba *commune* were present, aside from the election of

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<sup>232</sup> T. 1 February 2010, pp. 11, 17-18; T. 1 February 2010, pp. 17-18 (French); T. 8 February 2010, p. 86 (CS).

<sup>233</sup> T. 1 February 2010, pp. 18, 24, 26, 30-31; T. 1 February 2010, p. 24 (CS); T. 4 February 2010, pp. 74-75 (CS); T. 8 February 2010, pp. 86-87 (CS).

<sup>234</sup> T. 18 November 2010, pp. 18-25.

<sup>235</sup> T. 18 November 2010, p. 38; T. 1 December 2010, p. 47; T. 2 December 2010, pp. 8-9, 11; T. 8 December 2010, p. 20; T. 14 December 2010, pp. 27-29.

<sup>236</sup> Defence Exhibit 146 (Personal Identification Sheet); T. 20 September 2011, pp. 48-50, 59, 82 (CS).

Bagango in 1993. He further affirmed that this election was the last time that he had seen Ngirabatware prior to his testimony.<sup>237</sup>

Defence Witness Edison Nsabimana

168. Edison Nsabimana, a Hutu living in Kanyabuhombo *cellule*, worked as an assistant to the Nyamyumba *bourgmestre* from 1989 until June 1994 and was responsible for the *commune*'s administrative, judicial and political affairs.<sup>238</sup> He testified that the only secondary school in the *cellule* was called Trinity College, and that Ngirabatware never chaired a meeting there. Given the witness' responsibilities, he would have known had any such meeting ever taken place. Similarly, the witness never attended a meeting where Ngirabatware spoke, and he never heard of Ngirabatware, Faustin Bagango or any *commune* official distributing weapons prior to 6 April 1994, including at the *commune* office.<sup>239</sup>

Defence Witness DWAN-71

169. Witness DWAN-71, a Hutu who lived in Nyamyumba *commune* and played an administrative role in Rushubi *secteur* in 1994,<sup>240</sup> testified that he did not see Ngirabatware in 1994, and that drums were not used in 1994 to ask the population to attend any meetings.<sup>241</sup>

Defence Witness DWAN-47

170. Witness DWAN-47, a Hutu who occupied an administrative position in Nyamyumba *commune* in 1994,<sup>242</sup> testified that he did not attend any meeting in 1993 or 1994 at Kanyabuhombo School where Ngirabatware took the floor and spoke about the distribution of weapons. The witness added that nobody mentioned during *Gacaca* proceedings that Ngirabatware distributed weapons.<sup>243</sup>

Defence Witness DWAN-129

171. Witness DWAN-129, a Hutu, testified that from where he lived in 1994 he could see the Trinity College in Kanyabuhombo and would walk there almost every day to fetch water.<sup>244</sup> The witness saw Ngirabatware speak at the inauguration of Trinity College in 1992, but according to the witness, Ngirabatware never returned to the school. Given the close proximity between his house and the school and that Ngirabatware was a minister, it is impossible that Ngirabatware might have come to the school without the witness' knowledge. Nor was there any meeting there in January or February 1994. The witness fled the country in early July 1994, and did not see why Ngirabatware would have gone to the school when everyone was leaving. During the

<sup>237</sup> T. 20 September 2011, pp. 50-53, 55, 68, 80 (CS); T. 22 September 2011, pp. 14, 45 (CS).

<sup>238</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-60; T. 15 June 2011, pp. 22-23, 37, 42.

<sup>239</sup> T. 14 June 2011, p. 78; T. 15 June 2011, pp. 9-10, 12, 49-50, 65-66.

<sup>240</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 28 June 2011, p. 13 (CS).

<sup>241</sup> T. 22 June 2011, p. 89; T. 23 June 2011, p. 38.

<sup>242</sup> Defence Exhibit 156 (Personal Identification Sheet); T. 29 September 2011, p. 68 (CS); T. 3 October 2011, p. 14 (CS).

<sup>243</sup> T. 29 September 2011, pp. 68-69, 78-79, 81 (CS).

<sup>244</sup> Defence Exhibit 147 (Personal Identification Sheet); T. 22 September 2011, pp. 57, 79; T. 22 September 2011, pp. 63-64 (CS).

information-gathering phase and the *Gacaca* trials in the Kanyabuhombo area, no one mentioned Ngirabatware.<sup>245</sup>

#### Defence Witness DWAN-45

172. Witness DWAN-45, who identified herself as a Tutsi but explained that she carried an identity card identifying her as a Hutu, was a student at the Trinity College in Kanyabuhombo from 1990 through 31 March 1994.<sup>246</sup> She lived in the school's dormitories, and testified that from January to March 1994, she never left the college premises except to go to church each Sunday. The church was very close to the dormitories, and she would return to the college immediately after the service. According to her, no political meetings took place at the school during this time period, and she would have known if weapons had been distributed nearby. As for Ngirabatware, the only time she saw him at the school was in 1992, when he spoke at the opening of the new school building. She also heard that he came to the school in June or July 1994. If Ngirabatware had returned on another occasion, that information would have been known to her.<sup>247</sup>

#### Defence Witness DWAN-12

173. Witness DWAN-12, a Hutu from Nyamyumba *commune*, became affiliated with a *Gacaca* court at the *secteur* level starting in 2002.<sup>248</sup> He testified that, in his role in the *Gacaca* proceedings, he never heard Ngirabatware mentioned as playing any role in the events that occurred in his *secteur* or in neighboring *secteurs*, including those of Mwufe and Gashashi. He also affirmed that he has not seen Ngirabatware in Nyamyumba *commune* since 1993, and that the Minister of the Interior issued a communiqué in February 1993 that banned political meetings in Gisenyi *préfecture*. The witness further stated that in 1993 and 1994, everyone took part in meetings organized by their own political parties, and no one was forced to attend meetings of other parties.<sup>249</sup>

#### Defence Witness DWAN-25

174. Witness DWAN-25, a Hutu and MRND party member who lived in Nyamyumba *commune* in 1994 and who became affiliated with a *Gacaca* court at the *secteur* level in 2006 until its completion in 2010,<sup>250</sup> testified that he knows Ngirabatware because he saw the minister at the Kanyabuhombo School inauguration. He had never heard or seen people being summoned to a MRND meeting with drums, but rather said that the MRND used megaphones or loudspeakers to announce meetings. The witness was never forced to attend a MRND meeting.<sup>251</sup>

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<sup>245</sup> T. 22 September 2011, pp. 63-65, 67, 74, 79, 82-84, 86 (CS); T. 22 September 2011, pp. 78-79.

<sup>246</sup> Defence Exhibit 136 (Personal Identification Sheet); T. 15 August 2011, pp. 8-9, 14-15, 43-44, 47-48; T. 15 August 2011, pp. 10-11, 36, 38-39, 41-42 (CS); T. 16 August 2011, pp. 11-12 (CS).

<sup>247</sup> T. 15 August 2011, pp. 15-17, 19, 24-25, 30-32, 71, 74, 76; T. 15 August 2011, pp. 15, 25, 38-39, 81-82 (CS).

<sup>248</sup> Defence Exhibit 131 (Personal Identification Sheet); T. 6 July 2011, pp. 6, 19, 42, 44 (CS).

<sup>249</sup> T. 6 July 2011, pp. 8-9, 15, 18, 22-23, 47, 65, 68 (CS).

<sup>250</sup> Defence Exhibit 128 (Personal Identification Sheet); T. 28 June 2011, pp. 29, 47, 65; T. 28 June 2011, pp. 30, 53, 55 (CS); T. 29 June 2011, pp. 16, 18-19.

<sup>251</sup> T. 28 June 2011, pp. 44, 47-48.



175. The witness never heard any allegation in his or in neighboring *Gacaca* courts against Ngirabatware. He agreed that a minister accused of genocide would not be tried in *Gacaca* but would instead appear before an ordinary court. The witness said he was not aware of any provision in the law that prevented anyone from raising an allegation against a minister in the *Gacaca* proceedings.<sup>252</sup>

#### Defence Witness Jean Damascène Kayitana

176. Jean Damascène Kayitana, a Hutu, had been a driver in the Ministry of Planning since 1989.<sup>253</sup> The witness testified that he was assigned to work as Ngirabatware's personal driver from March 1994 onwards. He drove Ngirabatware to Trinity College at Kanyabuhombo once around 5 July 1994. Although Ngirabatware did not tell him why he was visiting the school, Kayitana deduced that the purpose was to speak with school leaders about the security of the students there.<sup>254</sup>

#### **3.3.4 Deliberations**

177. The Chamber now turns to assessing the evidence presented by the Parties on this allegation. It appears to be undisputed that Ngirabatware played a role in the formation of the Trinity College in 1991,<sup>255</sup> that he attended and spoke at the school's inauguration in the Kanyabuhombo area in 1992,<sup>256</sup> or that he returned there in July 1994.<sup>257</sup> The question for the Chamber is whether Ngirabatware attended a meeting there in early 1994 and, if so, what occurred at this meeting.

178. In relation to this allegation, the Prosecution refers to Witnesses ANAD and ANAN, whose evidence the Prosecution submits pertains to the same meeting.<sup>258</sup> The Defence, however, contends that these witnesses testified on different alleged events.<sup>259</sup>

179. The Chamber observes that the fundamental features of these witnesses' first-hand accounts of this alleged event are largely consistent. Both testified that sometime in early 1994, they attended a meeting at Kanyabuhombo School. Both witnesses stated that the meeting

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<sup>252</sup> T. 28 June 2011, pp. 53-54 (CS); T. 28 June 2011, pp. 63-64, 70; T. 29 June 2011, p. 27. See also Prosecution Exhibit 51B (Organic Law No. 16/2004 of Rwanda of 2004), Articles 2, 51; Prosecution Exhibit 52 (Organic Law No. 13/2008 of Rwanda of 2008), Articles 1, 7, 9.

<sup>253</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, p. 59.

<sup>254</sup> T. 24 October 2011, pp. 61, 73-74; T. 25 October 2011, pp. 2, 30-34, 43, 55.

<sup>255</sup> T. 18 November 2010, pp. 18-20, 23-25 (Ngirabatware).

<sup>256</sup> See T. 18 November 2010, pp. 20-22 (Ngirabatware); T. 20 September 2011, p. 51 (CS); T. 22 September 2011, p. 14 (CS) (Witness DWAN-13); T. 22 September 2011, pp. 63-65, 67-68 (CS); T. 22 September 2011, p. 78 (Witness DWAN-129); T. 15 August 2011, pp. 15-17, 19, 24, 74; T. 15 August 2011, pp. 15-16 (CS) (Witness DWAN-45); T. 28 June 2011, p. 44 (Witness DWAN-25); T. 4 October 2011, pp. 49-51 (CS) (Witness DWAN-133).

<sup>257</sup> T. 14 December 2010, pp. 27-28 (Ngirabatware); T. 24 October 2011, pp. 73-74; T. 25 October 2011, pp. 5, 30-39, 43, 55 (Kayitana) (around 5 July 1994); T. 15 August 2011, p. 25 (Witness DWAN-45) (heard that Ngirabatware came in June or July 1994). Although Witness DWAN-129 disputes that Ngirabatware went to Kanyabuhombo School in July 1994, the Chamber notes the testimony of this witness that he fled the area in early July 1994. T. 22 September 2011, p. 86 (CS) (Witness DWAN-129).

<sup>258</sup> See, for example, Prosecution Closing Brief, para. 130; Prosecution Closing Argument, T. 25 July 2012, pp. 30-31.

<sup>259</sup> See, for example, Defence Closing Brief, para. 280; Defence Closing Argument, T. 24 July 2012, p. 37 (French).

commenced around 10.00 a.m., and was attended by at least a few hundred people, as well as by Ngirabatware, Bagango, various *conseillers*, Defence Witness DWAN-13 and CDR party officials. Witness ANAD appeared to agree with Witness ANAN that the latter was present.<sup>260</sup> According to both witnesses, Bagango started the meeting by introducing Ngirabatware, after which Ngirabatware told the crowd that he would be providing weapons to the youth. These were the only two persons who the witnesses identified as speaking at the meeting, and both witnesses describe the meeting as lasting at least an hour.<sup>261</sup> In addition, both witnesses understood that the weapons were promised in order to fight the Tutsis.<sup>262</sup>

180. There were also differences between the two testimonies. Witness ANAD described about 1,000 people in attendance, and he discussed the presence of Minister Juvénal Uwiringiyimana and various *conseillers*. He also mentioned that *Interahamwe* marched before and after the meeting, and he addressed in detail Ngirabatware's speech. As for Witness ANAN, he considered that more than 300 persons attended, and he confirmed that all the *conseillers* were present but made no mention of Uwiringiyimana. He was also the only witness to allege that Ngirabatware said that weapons would be distributed at the *secteur* office, and that the weapons were actually distributed later that day at the *commune* office, which the witness described as being located about an hour away on foot.

<sup>260</sup> See, for example, T. 27 January 2010, pp. 59-62 (CS); T. 3 February 2010, pp. 8-12, 14 (CS); T. 8 February 2010, pp. 4-5, 32-33 (CS) (Witness ANAN).

<sup>261</sup> Witness ANAD testified that Bagango spoke for about five minutes and that Ngirabatware spoke for more than an hour, which was followed by an *Interahamwe* parade that would typically last for a while. Witness ANAN stated that the meeting took place between 10.00 and 11.00 a.m., after which weapons were distributed at the Nyamyumba *commune* office around 1.00 p.m. According to Witness ANAN, he travelled from the school to the *commune* office by motorbike, which took around 5 to 10 minutes, but for those walking, it took about an hour until they reached the office. See T. 9 February 2010, pp. 40-43; T. 11 February 2010, pp. 72-73 (CS) (Witness ANAD); T. 1 February 2010, pp. 30-31 (Witness ANAN).

<sup>262</sup> See T. 9 February 2010, p. 43 (Witness ANAD) (“Q. And now when [Ngirabatware] said that the [...] weapons would be handed to the young people for them to use [...] these weapons, did he specify the purpose of the weapons for these young people? A. The *bourgmestre* had already given that explanation when he had made the request. He had said that traditional weapons were not enough, and that to enable the youth to fight the *Inkotanyi*, they [...] needed weapons. Q. Can you explain to us what is *Inkotanyi*? A. *Inkotanyi* were armed persons who had attacked the country from abroad to free the country, because they wanted to seize power and they considered themselves as Rwandans of the diaspora. Q. What ethnicity does this *Inkotanyi* belong to? A. They were of Tutsi ethnicity.”); T. 1 February 2010, pp. 17-18 (Witness ANAN) (“Q. Did [Ngirabatware] specify the purpose for which the [weapons] were to be used? [...] A. The country had been attacked by those we called the *Inyenzi*, who penetrated the country. And the authorities upon realising that they did not have adequate troops, they trained citizens for the citizens to defend themselves. Subsequently, we understood that the enemy was, indeed, the Tutsi. We, therefore, targeted all the Tutsi but we were better armed or armoured than they were because they were launching their attacks from Mutara. We had weapons and, therefore, those weapons – or, in fact, those tools were used to kill.”). The Chamber notes that Witness ANAD testified that Ngirabatware said essentially the same thing at the alleged Kanyabuhombo School meeting as he had said at three prior meetings at the Nyamyumba *commune* office, Umuganda Stadium and Kitraco, with the only exception being that Ngirabatware also addressed weapons at Kanyabuhombo School. T. 11 February 2010, pp. 3-4 (Witness ANAD). Witness ANAD had found Ngirabatware's speech at the Nyamyumba *commune* office to have the objective of “creat[ing] and “increase[ing] the hatred between Hutus and Tutsis”. T. 9 February 2010, p. 19 (Witness ANAD). Similarly, the witness described Ngirabatware's speech at Umuganda Stadium as conveying a message that “fuel[ed] hatred between the Tutsi and the Hutu”. T. 9 February 2010, p. 33 (Witness ANAD). Consequently, the Chamber understands Witness ANAD's evidence about the message and the objective of these prior speeches by Ngirabatware to be relevant to Ngirabatware's alleged speech at Kanyabuhombo School.

181. These testimonies were not necessarily contradictory and, in the Chamber's view, any variations were minor and may be reasonably explained by the passage of time and by the varying vantage points of the witnesses. Indeed, the Chamber notes that Witness ANAD testified to being about 20 meters from the speakers, whereas Witness ANAN said he was around nine meters away. Furthermore, the Chamber observes that Witness ANAD described himself as being part of the assembled crowd, but he appears to allege that Witness ANAN may have played a more central role in the meeting.<sup>263</sup> Specific to the alleged distribution of weapons, Witness ANAD testified that he left the rally as it was coming to a close, while Witness ANAN testified that he went to the *commune* office after the meeting had concluded. The Chamber considers that this provides further evidence as to the varying vantage points of the witnesses and how they may reasonably explain any differences between their testimonies.

182. More notably, Witness ANAD described this meeting as taking place around early February 1994, whereas Witness ANAN ultimately placed the meeting in the beginning of January 1994. Despite this discrepancy, the Chamber considers that it does not undermine that the witnesses discussed the same alleged meeting, especially given the many similarities between their evidence. Moreover, the Chamber recalls that Witness ANAD testified that when he provided dates of alleged events, these were only "estimates".<sup>264</sup> Witness ANAN also exhibited some uncertainty over the exact timing of this meeting, as he testified that it occurred in December 1993, before later stating and then reconfirming that the meeting was in January 1994.<sup>265</sup>

183. Considering that the fundamental features of their accounts are largely consistent and that any discrepancies are reasonably explained by the witnesses' accounts and are relatively minor, the Chamber concludes that Witnesses ANAD and ANAN testified about the same alleged meeting at Kanyabuhombo School in early 1994. The Chamber will now address their testimonies in the context of their individual circumstances, including their credibility and reliability.

184. Turning first to Witness ANAD, the Defence challenges his general credibility by indicating that despite having met with Prosecution investigators in 2007 and 2009, the witness never mentioned that he attended four rallies in early 1994.<sup>266</sup> Witness ANAD explained that he only discussed events on which he was questioned,<sup>267</sup> which the Defence contends is unconvincing. The Chamber notes that any statements from these meetings in 2007 and 2009 were not entered into evidence, and thus it has been unable to review the purported omissions or

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<sup>263</sup> See, for example, T. 27 January 2010, pp. 59-62 (CS); T. 3 February 2010, pp. 8-12, 14 (CS) (Witness ANAN).

<sup>264</sup> T. 11 February 2010, p. 65 (CS) (Witness ANAD).

<sup>265</sup> T. 1 February 2010, pp. 4, 32-33 (December 1993); T. 4 February 2010, p. 58 (CS) (beginning of January 1994); T. 8 February 2010, p. 86 (CS) (January 1994, not December 1993) (Witness ANAN). Because the evidence of Witness ANAN was that this meeting occurred in January 1994, the Chamber need not address the Defence's contentions that his evidence falls outside of the temporal jurisdiction of the Tribunal. See Defence Closing Brief, paras. 15, 274, 700, 728. The Defence also claims that the Chamber ruled that Witness ANAN's testimony about this event could not be a basis for conviction because it fell outside the Indictment. The Chamber recalls, however, that it stated clearly that it was not determining whether this evidence was within the scope of the Indictment, but was only addressing admissibility of the evidence. Compare Defence Closing Brief, fn. 16 (K) (citing T. 1 February 2010, p. 10), and T. 1 February 2010, p. 10.

<sup>266</sup> Defence Closing Brief, para. 298. See also Defence Closing Brief, para. 322.

<sup>267</sup> T. 10 February 2010, p. 56 (CS) (Witness ANAD).

the content of these interviews. The Chamber further observes that in his previous statement to Tribunal investigators in June 1999, Witness ANAD described seeing Ngirabatware at various rallies, including at a secondary school in Kanyabuhombo. Although this June 1999 statement does not specify the year of these rallies, the Chamber does not consider this to be a material omission.<sup>268</sup> Given this context, the Chamber does not find that any omissions in his 2007 and 2009 statements would call into question Witness ANAD's credibility.

185. The Defence further alleges that Witness ANAD lacks credibility because although he believed that Faustin Bagango and Égide Karemera were responsible for attacks he suffered in 1993, the witness never mentioned them during *Gacaca* proceedings despite accusing 19 other people.<sup>269</sup> Witness ANAD explained that although he believed that Bagango and Karemera had planned the attack, he did not include them in his *Gacaca* allegations because he did not see them during the attack.<sup>270</sup> The Chamber finds this explanation to be reasonable, and does not consider that any such omission in *Gacaca* proceedings undermines his evidence in these proceedings.

186. Finally, the Defence submits that various inconsistencies between Witness ANAD's testimony and other evidence in this case impact upon his credibility.<sup>271</sup> The Chamber has reviewed these submissions, and does not consider that any variations among the evidence would be material or could reasonably impact upon Witness ANAD's overall credibility or his credibility in relation to the present allegation.

187. Indeed, the Chamber considers that Witness ANAD testified in a credible and unwavering manner. His evidence was precise and forthright. In the Chamber's view, Witness ANAD provided reliable and compelling evidence about the alleged meeting at Kanyabuhombo School.

188. The Defence disputes that Witness ANAD attended this meeting involuntarily, especially given that he no longer lived in the area. The Defence also claims that drums were not used to summon people to MRND meetings, and that the witness erred in identifying Edison Nsabimana as the CDR leader at the *commune* level.<sup>272</sup> Turning first to the latter submissions, the Chamber does not consider that the use of drums goes to the core of Witness ANAD's evidence. Likewise, the Chamber considers that identifying Nsabimana as the CDR leader is a mere detail that is incapable of impugning the core of his testimony about the meeting.

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<sup>268</sup> See Defence Exhibit 17 (Statement of Witness ANAD, 17 June 1999), p. 3. The statement discusses "l'école secondaire Eternité de Kanyabihombo". The Chamber does not consider that the identity of the school as "Eternité" rather than "Trinity" is a material difference in the circumstances. In addition to the consistency between Witness ANAD's 1999 statement and his 2010 testimony about Ngirabatware's presence at the secondary school, the Chamber also observes that Witness ANAD consistently described seeing Ngirabatware at other rallies at the Nyamyumba *commune* office, Umuganda stadium and Kitiraco. The Chamber recalls that prior consistent statements cannot be used to bolster a witness' credibility, except to rebut a charge of recent fabrication of testimony. See *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 147.

<sup>269</sup> See Defence Closing Brief, para. 300. See also Defence Exhibit 45 (*Gacaca* Proceedings Concerning Witness ANAD).

<sup>270</sup> T. 15 February 2010, p. 18 (CS) (Witness ANAD).

<sup>271</sup> See, for example, Defence Closing Brief, paras. 293-297, 299, 301-314, 316-325.

<sup>272</sup> See, for example, Defence Closing Brief, paras. 315-321.

189. More significantly, however, is the reasonableness of Witness ANAD's attending this rally. The witness testified to having attended, seemingly out of chance, four rallies where Ngirabatware spoke, with this being the last rally. The Chamber has taken this into account in assessing his testimony, but does not consider that it raises doubt in his evidence concerning the Kanyabuhombo School meeting.

190. Specific to this alleged meeting, the Chamber recalls that Witness ANAD testified that he previously lived in the area and was walking back to Gisenyi town when he learned of the meeting and attended out of fear of punishment. It appears that Witness ANAD would have passed the location of Kanyabuhombo School on the walk from his former *secteur* to Gisenyi town.<sup>273</sup> The Chamber further recalls that Witness ANAD testified to having been attacked at home, both when he lived in his former *secteur* and again after he moved to Gisenyi town.<sup>274</sup> In light of this evidence, the Chamber considers it reasonable that fear of further retribution would have motivated Witness ANAD to attend the meeting, regardless of whether he still lived in Gisenyi town.

191. The Chamber further considers that Witness ANAD would have been able to reliably identify Ngirabatware at the Kanyabuhombo School meeting. First, the witness testified that Bagango introduced Ngirabatware to the crowd, immediately before Ngirabatware's speech. While the Chamber is cognizant that this constitutes hearsay evidence,<sup>275</sup> and must therefore be treated with the appropriate caution, the Chamber has no doubt that any introduction by Bagango of Ngirabatware would be accurate and reliable.<sup>276</sup> Witness ANAD also testified that he saw Ngirabatware at this meeting, and although they had never met, the witness had seen him speak before at Rambo School in 1992 and at other rallies in 1994.<sup>277</sup> The Chamber notes that the Defence disputes that Ngirabatware was at any of these gatherings.<sup>278</sup> The Chamber further recalls that Witness ANAD said that he saw Ngirabatware from a distance of about 20 meters, and that he would have been in a position to observe Ngirabatware speaking for over an hour. Finally, the Chamber observes that the evidence in this case unequivocally establishes that Ngirabatware was a well-known personality in Nyamyumba *commune* (3.1.4), and that Witness ANAD is also from this *commune*. Considering these circumstances, the Chamber is convinced beyond any reasonable doubt that Witness ANAD would have been able to reliably identify Ngirabatware at the alleged meeting at Kanyabuhombo School.

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<sup>273</sup> For Witness ANAD's residence in 1993 *vis-à-vis* Kanyabuhombo School and Gisenyi town, see Defence Exhibit 1 (Map of Gisenyi *Préfecture*); Prosecution Exhibit 15 (Personal Identification Sheet); T. 11 February 2010, p. 60 (CS) (Witness ANAD). For the location of Kanyabuhombo School, see T. 18 November 2010, p. 20 (Ngirabatware); T. 20 September 2011, pp. 52-53 (CS) (Witness DWAN-13); T. 15 August 2011, p. 10 (CS) (Witness DWAN-45); Defence Exhibit 136 (Personal Identification Sheet) (Witness DWAN-45); T. 6 July 2011, p. 23 (CS) (Witness DWAN-12).

<sup>274</sup> See, for example, T. 9 February 2010, pp. 20, 24-25; T. 9 February 2010, pp. 25, 27 (CS); T. 11 February 2010, pp. 59-62 (CS) (Witness ANAD).

<sup>275</sup> See generally *Kamuhanda*, Judgement (AC), paras. 237-241, 300.

<sup>276</sup> For the relationship between Faustin Bagango and Ngirabatware, see (3.2.4). The Chamber further notes that Witness ANAN corroborates that Bagango introduced Ngirabatware to the persons in the crowd at this alleged meeting.

<sup>277</sup> See, for example, T. 9 February 2010, p. 12 (CS); T. 9 February 2010, pp. 16-17 (Witness ANAD).

<sup>278</sup> See, for example, Defence Closing Brief, paras. 283, 297, 307, 314; T. 2 December 2010, p. 11 (Ngirabatware).

192. The Chamber now turns to the credibility of Witness ANAN, starting with the history of his criminal proceedings in Rwanda. Witness ANAN testified that he was arrested in October 1994, and that he spent the next month in a military camp, where he says he was beaten and otherwise mistreated. He was then transferred to Gisenyi central prison, where he remained for twelve-and-a-half years. In 2000 or 2001, he was formally charged with genocide, to which he pleaded not guilty. In 2002, he confessed and pleaded guilty to involvement in genocide and to having incited others for events occurring in late April 1994, including the killing of seven children. The witness was released in April 2007. He claims that he never killed anyone, though admitted that he enjoyed his part in the killings.<sup>279</sup> Although Witness ANAN testified in these proceedings in early 2010 and was not incarcerated at the time, the Chamber has taken this criminal history into account in assessing his testimony.

193. Witness ANAN testified Ngirabatware said he brought weapons and that Bagango would distribute them, and that shortly thereafter, Bagango gave him weapons that the witness then relayed to CDR members and other youths. The Chamber considers that this may qualify Witness ANAN as a possible accomplice of Ngirabatware, and the Chamber treats his evidence with appropriate caution.

194. In relation to Witness ANAN's testimony on the alleged meeting at Kanyabuhombo School and weapons distribution at the *commune* office, the Chamber considers that his evidence was both credible and reliable. The Chamber further observes that Witness ANAN testified to being a CDR party leader within Gisenyi *préfecture* during the relevant time period and to having attended the Kanyabuhombo School meeting. Both of these aspects were corroborated by the credible testimony of Witness ANAD,<sup>280</sup> and the Chamber accepts them as true.<sup>281</sup> Witness ANAN's involvement in both the CDR party and in the events occurring in early 1994 would have provided him with significant knowledge of the events of this time period.

195. The Defence submits that Witness ANAN was an uncooperative witness who avoided responding to certain questions, and suggests that his testimony should be disregarded in its entirety.<sup>282</sup> The Chamber recalls that in its cross-examination, the Defence dwelled for days on the witness' offenses in Rwanda instead of on his evidence regarding Ngirabatware, and this caused uneasiness in the witness that his case would be reopened. Indeed, the Defence commenced its cross-examination of Witness ANAN in the morning of 2 February 2010, but did not put a question to the witness concerning Ngirabatware until the afternoon of 4 February

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<sup>279</sup> T. 1 February 2010, pp. 44-45; T. 2 February 2010, pp. 15-26; T. 2 February 2010, pp. 69, 88 (CS); T. 3 February 2010, pp. 59-61; T. 4 February 2010, pp. 74-75 (CS); T. 8 February 2010, pp. 45-47 (CS) (Witness ANAN).

<sup>280</sup> See, for example, T. 27 January 2010, pp. 59-62 (CS); T. 3 February 2010, pp. 8-12, 14 (CS) (Witness ANAN) (identifying both his position within the CDR party and his occupation). The Chamber has also taken into account the testimony of Witness ANAN concerning someone else with a similar occupation, but who was not identified as being a prominent member of the CDR party. See T. 8 February 2010, pp. 4-5, 32-33 (CS) (Witness ANAN).

<sup>281</sup> The Chamber has taken into account the Defence submissions concerning Witness ANAN's position, but does not consider that they impact Witness ANAN's credible and corroborated testimony about his position within the CDR party. See, for example, Defence Closing Brief, paras. 544-545, 563-564.

<sup>282</sup> See, for example, Defence Closing Brief, paras. 536, 552.

2010.<sup>283</sup> The Chamber considers that these circumstances account for any issues in the witness' demeanor during the proceedings.

196. The Defence also submits that Witness ANAN's prior statements either contained omissions or were inconsistent with his testimony, and call into question his credibility.<sup>284</sup> The Chamber notes that Witness ANAN first implicated Ngirabatware on 8 April 2005, which was before Ngirabatware's arrest in 2007. The witness gave a *Pro Justitia* statement in June 2002, and provided a confession in both February and December 2002. He also gave a statement to a Tribunal investigator over the course of six days in August, September and November 2002, in which he included the names of over 50 different persons. In none of these statements did he mention Ngirabatware,<sup>285</sup> which the witness explained was because no one asked him specific questions about Ngirabatware.<sup>286</sup> The Chamber considers that this explanation is reasonable in relation to these statements and confessions, and that it does not undermine the witness' credibility. As for the purported inconsistencies put forth by the Defence, the Chamber considers that they are insufficient to raise doubt in Witness ANAN's evidence in regard to this allegation.

197. The Defence also identifies various inconsistencies within Witness ANAN's testimony and between his testimony and other evidence.<sup>287</sup> Having reviewed these submissions and the evidence particularly on this issue, the Chamber does not consider that any variations could materially impact upon Witness ANAN's overall credibility or his credibility in relation to the allegation at issue here.

198. Turning to Witness ANAN's ability to identify Ngirabatware, the Chamber recalls that the witness testified that his brother-in-law worked under Ngirabatware and introduced them in 1990. The Chamber notes that the witness identified him in court, but also described him as the Minister of Finance rather than as the Minister of Planning.<sup>288</sup> Nevertheless, the Chamber considers that Witness ANAN would have been able to identify Ngirabatware in 1994. Specific to Kanyabuhombo School, the Chamber also recalls that Witness ANAN testified that Bagango introduced Ngirabatware, which would provide a hearsay basis for Ngirabatware's identification, subject to the appropriate caution. The Chamber further recalls that Witness ANAN appeared to allege a prominent role for Witness ANAN that would have permitted him to have a close view of Ngirabatware.<sup>289</sup> Taking this into account, the Chamber has no doubt that Witness ANAN

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<sup>283</sup> See T. 2 February 2010; T. 3 February 2010; T. 4 February 2010, p. 46 (CS) (Witness ANAN). The cross-examination was completed on 8 February 2010.

<sup>284</sup> See, for example, Defence Closing Brief, paras. 532-535, 545, 551-554, 556-560, 564.

<sup>285</sup> See Defence Exhibit 36 (Statement of Witness ANAN, 1 June 2002); Defence Exhibit 37 (Confession of Witness ANAN, 17 February 2002); Defence Exhibit 38 (Statement of Witness ANAN, 29 August, 11 and 13 September, and 18, 19 and 20 November 2002); Defence Exhibit 42 (Statement of Witness ANAN, 29 August, 11 and 13 September, and 18, 19 and 20 November 2002); Defence Exhibit 43 (Confession of Witness ANAN, 12 December 2002). Witness ANAN also testified to writing confessions in the first week of April 2005, but these documents were not entered into evidence and consequently the Chamber has not had an opportunity to review them. See T. 8 February 2010, pp. 58-61, 66-76, 83, 99 (CS) (Witness ANAN).

<sup>286</sup> See, for example, T. 8 February 2010, p. 30 (CS) (Witness ANAN).

<sup>287</sup> See, for example, Defence Closing Brief, paras. 537-550, 555-558, 561-564.

<sup>288</sup> T. 27 January 2010, p. 62 (CS); T. 27 January 2010, pp. 64-66; T. 1 February 2010, pp. 13, 15-17 (Witness ANAN).

<sup>289</sup> See, for example, T. 27 January 2010, pp. 59-62 (CS); T. 3 February 2010, pp. 8-12, 14 (CS) (Witness ANAN). See also T. 8 February 2010, pp. 4-5, 32-33 (CS) (Witness ANAN).

would have reliably identified Ngirabatware at the alleged Kanyabuhombo School meeting in 1994.

199. As noted above, the Chamber found both Witnesses ANAD and ANAN to be credible witnesses who provided a compelling and convincing account of the Kanyabuhombo School meeting. Furthermore, the fundamental features of their evidence are complementary and are corroborated by each other. They both testified to attending a meeting at Kanyabuhombo School in early 1994 which began around 10.00 a.m. Both witnesses stated that the meeting was attended by at least a few hundred people, as well as by Ngirabatware, Bagango, various *conseillers*, Defence Witness DWAN-13 and CDR party officials. Witness ANAD corroborates Witness ANAN's account that the latter was present. According to both witnesses, Bagango introduced Ngirabatware, after which Ngirabatware told the crowd that he would be providing weapons to the youth. These were the only two speakers at the meeting, which lasted at least an hour. In addition, both witnesses understood that the weapons were promised in order to fight the Tutsis. Although Witness ANAN was the only one to provide an account of the subsequent weapons distribution, the Chamber finds this account is corroborated by Witness ANAD. Witness ANAD testified that Ngirabatware promised that weapons would be made available to those who were trained to use them, while Witness ANAN described receiving weapons shortly thereafter, as well as the fact that he had received prior training in how to use weapons.<sup>290</sup> The Chamber will now view their mutually corroborated accounts in light of the Defence evidence adduced in this case.

200. Witnesses ANAD and ANAN alleged that Ngirabatware and Witness DWAN-13 were present at this meeting, Witness ANAD further stated that Edison Nsabimana was there, and Witness ANAN described Witnesses DWAN-47 and DWAN-71 as being present as well. All five of these persons were alleged to have played relatively visible roles during the alleged meeting, and all five denied that they were there. Ngirabatware stated that he was not in Gisenyi *préfecture* during the relevant time period, Witness DWAN-13 testified that he last saw Ngirabatware in 1993, Nsabimana said he never attended any meeting where Ngirabatware spoke, Witness DWAN-47 asserted that he never attended any such meeting in 1993 or 1994, and Witness DWAN-71 stated that he did not see Ngirabatware in 1994.

201. The Chamber notes the obvious motive that Ngirabatware may have in deflecting this criminal allegation against him in his own trial, and takes this into account in assessing his testimony. In addition, the Chamber considers that Witnesses DWAN-13, Nsabimana, DWAN-71 and DWAN-47 may have motives to distance themselves from any meeting that occurred that day, particularly given their alleged role as prominent officials who sat in front of the crowd as Ngirabatware discussed the provision of weapons. Moreover, it appears that in their administrative capacities in Nyamyumba *commune*, all of these witnesses would have reported to Faustin Bagango, who is also implicated by Witnesses ANAD's and ANAN's evidence. This may have provided the witnesses with an additional motive to deny any meeting at Kanyabuhombo School and, as potential accomplices, the Chamber views their evidence with appropriate caution.

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<sup>290</sup> T. 3 February 2010, pp. 7-8 (CS); T. 4 February 2010, pp. 26-29, 34-37, 43 (CS); T. 8 February 2010, p. 100 (Witness ANAN).



202. Turning to Witness DWAN-13, the Chamber considers that he testified in a way that raised significant questions about his credibility. In particular, the Chamber notes that in the course of a few minutes, the witness testified that he had been a member of the MRND party and that the *Interahamwe* were marijuana-smoking thieves, but that he did not know the name of the MRND youth wing. He could, however, identify the youth wing of the CDR party.<sup>291</sup> Although this matter is tangential to his testimony about Kanyabuhombo School, the Chamber considers that it is so unreasonable as to impugn his overall credibility as a witness on matters where he may be implicated as a participant, such as at the alleged Kanyabuhombo School meeting.

203. Regarding Edison Nsabimana, the Chamber considers that he appeared to display a propensity for testifying cautiously and in an unreasonable manner. For example, he testified that he was only knowledgeable about matters that concerned his own *commune*, and that he did not know whether *Interahamwe* killed people because the attackers did not show him their MRND membership cards.<sup>292</sup> The Chamber considers that his demeanor and approach to testifying calls into question his credibility as a witness, particularly on matters where he has reasons to avoid implicating himself.

204. Witness DWAN-71 also shared the same motive as the other witnesses to distance himself from the alleged meeting. But as recognized by the Defence during the course of his testimony, he is an alleged co-conspirator and member of a joint criminal enterprise with both Ngirabatware and Bagango.<sup>293</sup> The Chamber therefore considers that Witness DWAN-71 may have had an additional, and stronger, motive to deny that he attended the Kanyabuhombo School meeting with Ngirabatware and Bagango. The Chamber further observes that in addition to this alleged meeting, Witness DWAN-71 is implicated by Prosecution witnesses in other events that led up to the genocide in 1994.<sup>294</sup> Elsewhere (3.10.4.2), the Chamber has explained its numerous rationales for finding that Witness DWAN-71 is not a reliable or a credible witness. Likewise for this allegation, the Chamber does not consider the testimony of Witness DWAN-71 to be reliable or credible.

205. As for Witness DWAN-47, he also shared the same motive as many of the other witnesses who were alleged to be at Kanyabuhombo School in early 1994. Notably, Witness

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<sup>291</sup> T. 20 September 2011, pp. 77-78 (CS) (Witness DWAN-13). See also T. 22 September 2011, pp. 51-52 (CS) (Witness DWAN-13) (addressing further, but only at the very end of his testimony, who the *Interahamwe* were).

<sup>292</sup> See T. 15 June 2011, pp. 41, 46 (Nsabimana).

<sup>293</sup> See, for example, T. 23 June 2011, p. 36 (“Mr. Herbert: The only thing I’d raise is this is not an ordinary witness you may think because he’s named as a co-conspirator. That is a very serious difference which places him in a wholly different category. [...] He may, subsequent to your decision, if there is a conviction, for instance, face the prospect, here or somewhere else, of facing a prima facie case himself. [...]”).

<sup>294</sup> See, for example, T. 13 October 2009, pp. 66-68 (CS); T. 19 October 2009, pp. 15-17, 21, 23-30 (CS); T. 20 October 2009, pp. 6-8 (CS) (Witness ANAK) (Witness DWAN-71 was one of the intellectuals, along with Bagango who went to Ngirabatware’s parents’ house in 1992 and 1993 when Ngirabatware was making anti-Tutsi comments. Witness DWAN-71 was also present at Ngirabatware’s father’s funeral when Ngirabatware said the Tutsis deserve no attention, and he forced people to join the MRND party. He was among the criminals that were led by Bagango after the President’s plane crash. Three days after the crash, Witness DWAN-71 joined Bagango in leading the destruction of the witness’ house.); T. 10 February 2010, p. 65 (CS) (Witness ANAD) (at the meeting at the Nyamyumba *commune* office with Ngirabatware and Bagango in early 1994, Witness DWAN-71 would have been among those present); T. 18 February 2010, pp. 25-26 (CS); T. 22 February 2010, pp. 31-32, 37 (CS) (Witness ANAO) (The witness believed that Witness DWAN-71 was involved in ordering the killing of Tutsis). See also (3.8.1.4); (3.10.4.2).

DWAN-47 agreed that after President Habyarimana's plane crash, Hutus killed Tutsis in his area in Nyamyumba *commune*, and that this was justified and necessary.<sup>295</sup> The Chamber considers that this negatively impacts on his credibility as a witness in these proceedings.

206. Two Defence witnesses testified that, given their physical proximity to Kanyabuhombo School in early 1994, it is impossible that Ngirabatware spoke at the school without their knowledge. Witness DWAN-129 lived nearby, and Witness DWAN-45 was staying in the school's dormitory. The Chamber will now turn to their evidence.

207. Witness DWAN-129 said that he could see the school from his home and that he walked there almost every day to fetch water. The Chamber recalls that the site visit further revealed that the distance between his home and the school, including the football pitch that was the location of the alleged meeting, was about half a kilometer.<sup>296</sup>

208. The Chamber further recalls that Witness DWAN-129 emphatically testified that Ngirabatware did not return to Kanyabuhombo School after 1992, and that although the witness fled the country in early July 1994, he adamantly maintained that Ngirabatware "could not have gone there" at any point in July 1994.<sup>297</sup> In the Chamber's view, Witness DWAN-129's testimony and demeanor evinced a clear desire to protect Ngirabatware, and calls into question the credibility of his evidence in these proceedings.

209. Witness DWAN-45 testified that she was a 19-year-old student at Kanyabuhombo School, and that she lived in the dormitory through March 1994. The witness testified that the school itself was located in Mwufe *secteur*, while the dormitory was in Kivumu *secteur*.<sup>298</sup> This is corroborated by Ngirabatware, who described the main school building as being in Mwufe *secteur*, but with other buildings being in Kivumu and Gashashi *secteurs*.<sup>299</sup> During the site visit, the Chamber visited this dormitory, which was recorded as being almost two kilometers from the football pitch that allegedly held the meeting.<sup>300</sup> Given the dormitory's location, the Chamber is not convinced that Witness DWAN-45 would have been in a position to have observed any meeting that occurred on the football pitch.

210. The Chamber has also considered whether Witness DWAN-45 would have heard about any large, outdoor meeting at the school that featured threatening speeches and that lasted over an hour. Witness ANAD alleged that students were among the approximately 1,000 people in attendance at the meeting, and there were only about 300 students at Kanyabuhombo School in 1994.<sup>301</sup> The Chamber considers that the fact that she did not hear about any meeting is not a sufficient basis to undermine the credible and compelling accounts of Witnesses ANAD and ANAN.

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<sup>295</sup> T. 3 October 2011, pp. 31-32 (CS) (Witness DWAN-47).

<sup>296</sup> See Chambers Exhibit 1 (Site Visit Report), pp. 8-9.

<sup>297</sup> T. 22 September 2011, p. 86 (CS) (Witness DWAN-129).

<sup>298</sup> T. 15 August 2011, p. 10 (CS); Defence Exhibit 136 (Personal Identification Sheet) (Witness DWAN-45).

<sup>299</sup> T. 18 November 2010, p. 20 (Ngirabatware). For the spelling of the *secteurs*, see Defence Exhibit 1 (Map of Gisenyi *Préfecture*).

<sup>300</sup> See Chambers Exhibit 1 (Site Visit Report), pp. 8-9.

<sup>301</sup> T. 15 August 2011, p. 36 (CS) (Witness DWAN-45). See also T. 18 November 2010, p. 22 (Ngirabatware) (around 200 students in 1994).

211. The Defence also presented Witnesses DWAN-12 and DWAN-25, who were both affiliated with *Gacaca* courts at the *secteur* level. These witnesses testified that they never heard any allegations against Ngirabatware in their *secteurs* or in neighboring *secteurs*, including those where Kanyabuhombo School is located. In the Chamber's view, this evidence does not provide a comprehensive picture of all the evidence heard in the relevant *Gacaca* courts. Moreover, the Defence has not presented evidence to convince the Chamber that even if Ngirabatware was not mentioned during all of the relevant *Gacaca* proceedings, this should be given substantial weight. The Chamber recalls that the Defence need only raise reasonable doubt in the Prosecution's case, but considers that this evidence on its own is insufficient to do so in the present instance. Also of limited weight is the evidence of Witness DWAN-12 that he did not see Ngirabatware in Nyamyumba *commune* after 1993, particularly because the witness did not establish that he would have had an opportunity to see Ngirabatware if he had returned.

212. Finally, the Chamber has also considered the evidence of Jean Damascène Kayitana, who testified to becoming Ngirabatware's driver in March 1994, after the alleged meeting at issue here. His testimony carries no weight in relation to this allegation.

213. Viewing the evidence as a whole, the Chamber considers that Witness ANAD and Witness ANAN each provided a credible and compelling account of the same meeting at Kanyabuhombo School. Moreover, their testimonies on this meeting are mutually corroborative in many key aspects. Although Witness ANAN was the only one to testify about the subsequent distribution of weapons and that he had received six Uzi rifles and 15 grenades before arranging for them to be distributed to youths, the Chamber finds his testimony to be credible and reliable. It is also corroborated by Witness ANAD's account that Ngirabatware said that weapons would be made available at some later stage to young persons who had been trained to use them.

214. The Chamber has considered all of the Defence evidence, but does not consider that this evidence—either on an individual basis or when assessed cumulatively—is capable of undermining the strong and compelling accounts provided by Witnesses ANAD and ANAN.

215. The Chamber therefore finds beyond reasonable doubt that, in early 1994, a meeting was held at Kanyabuhombo School. At least a few hundred people attended, including Ngirabatware, *Bourgmestre* Faustin Bagango, his assistant Edison Nsabimana, all of the *secteur conseillers*, MRND and CDR party leaders, and Witnesses ANAD, ANAN, DWAN-13, DWAN-71 and DWAN-47. Bagango commenced the meeting by introducing the officials and by asking for weapons to fight the *Inkotanyi*. After Bagango's introduction, Ngirabatware spoke for at least an hour. Ngirabatware commended Bagango's energy and the *Interahamwe*'s strength, discussed Rwandan history, called on intellectuals to join the MRND and CDR parties, and claimed that only these parties could safeguard Hutu interests by fighting the Tutsis. Ngirabatware also told the crowd that he would be providing weapons to the youth who were trained to use these weapons. Those in attendance understood that this speech was intended to fan ethnic hatred, and that the weapons were to be used to fight the Tutsis. About an hour after this meeting, Bagango went to the Nyamyumba *commune* office and distributed weapons to *Interahamwe* and *Impuzamugambi* leaders. Witness ANAN received six Uzi rifles and 15 grenades, which were immediately distributed to youths who had received the necessary training to use them.

216. The Chamber observes that Witness ANAN indicated that these weapons were used to kill Tutsis.<sup>302</sup> He did not develop or explain this statement, including on what basis he believed these weapons were used to kill Tutsis. The witness provided no details concerning the circumstances, location or time period during which these weapons were used, nor did he give any identifying information concerning the assailants or victims.<sup>303</sup> Taking these factors into account, the Chamber concludes that the Prosecution has not established beyond reasonable doubt that these weapons were used to kill or harm Tutsis in Nyamyumba *commune*, as alleged in the Indictment.<sup>304</sup>

217. The Chamber has also considered whether Ngirabatware distributed these firearms and grenades to members of the *Interahamwe* at the meeting at Kanyabuhombo School, as alleged in the Indictment.<sup>305</sup> In this regard, the Chamber observes that Witness ANAN was the only person who testified about the distribution of these weapons. He was categorical that the weapons were distributed at the *commune* office after the meeting, and that they were not distributed by Ngirabatware but rather by Bagango and the *commune* police brigadier.<sup>306</sup> These facts were never alleged in the Indictment to be a part of the case against Ngirabatware. Although the Chamber finds that weapons were brought to the meeting at Kanyabuhombo School, there is no evidence that Ngirabatware distributed these weapons, or that he arranged or was present during their distribution. The Chamber therefore finds that the Prosecution has not established beyond reasonable doubt that Ngirabatware distributed weapons at the meeting at Kanyabuhombo School.

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<sup>302</sup> See T. 1 February 2010, pp. 17-18 (Witness ANAN) (“Q. Did [Ngirabatware] specify the purpose for which the tools were to be used? [...] A. The country had been attacked by those we called the *Inyenzi*, who penetrated the country. And the authorities upon realising that they did not have adequate troops, they trained citizens for the citizens to defend themselves. Subsequently, we understood that the enemy was, indeed, the Tutsi. We, therefore, targeted all the Tutsi but we were better armed or armoured than they were because they were launching their attacks from Mutara. We had weapons and, therefore, those weapons – or, in fact, those tools were used to kill.”).

<sup>303</sup> See generally *Kalimanzira*, Judgement (AC), para. 77.

<sup>304</sup> Indictment, para. 22.

<sup>305</sup> Indictment, para. 22. See also Indictment (French), para. 22 (“aux miliciens *Interahamwe*”).

<sup>306</sup> See T. 1 February 2010, p. 24 (“It was not the Accused person who distributed [the weapons], it was, rather, distributed by the *bourgmestre* and the policeman who was the *commune* brigadier.”); T. 8 February 2010, p. 87 (CS) (Witness ANAN) (“[A]fter the meeting the weapons were distributed – well, they were not distributed at the venue of the meeting. [...] The distribution took place as the *commune* office [...]”).

### 3.4 Speeches at Roadblocks, February 1994

#### 3.4.1 Introduction

218. There are four Indictment paragraphs relating to speeches that Ngirabatware allegedly gave at two roadblocks in Nyamyumba *commune* after the killing of CDR Chairman Martin Bucyana in late February 1994.<sup>307</sup> These relate to actions allegedly undertaken at the Electrogaz roadblock and the Cyanika-Gisa roadblock. Each of these roadblocks will be examined by the Chamber in turn.

219. Paragraph 48 of the Indictment alleges that following the killing of Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune* where he addressed the youths manning the roadblock and told them to kill members of the Tutsi population because the Tutsis had killed a Hutu colleague in Butare. Ngirabatware implored the youths to do everything in their power to track down the imbeciles, reminding them that they had been tolerant enough. The Prosecution asserts this occurred two or three days after the murder of Martin Bucyana in February 1994, and relies upon Witness ANAN.<sup>308</sup>

220. The Defence raises notice issues with regard to this Indictment paragraph and submits that there was no civilian roadblock at the Electrogaz location. It submits that Witness ANAN is the only witness testifying about a civilian manned roadblock at Electrogaz in February 1994 and he is not reliable. Ngirabatware was not present at the roadblock as alleged in the Indictment. The Defence relies on the testimony of Ngirabatware and Witnesses Edison Nsabimana, DWAN-11, DWAN-71, DWAN-2, DWAN-147, DWAN-4, DWAN-9, DWAN-21, Joseph Habinshuti, and Tchemi Tchambi Aouili. The Defence also refers to the testimony of Prosecution Witness ANAD.<sup>309</sup>

221. Paragraphs 24, 41 and 49 of the Indictment allege that in late February 1994 following the killing of CDR Chairman Bucyana, Ngirabatware went to the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba *commune* to address those present and gave 30,000 francs to *Interahamwe* youths manning the roadblock, including Honoré Ndayamiyemushi who was in charge of the roadblock. This sum was given to the *Interahamwe* as encouragement and incitement for their work in capturing and killing Tutsis.<sup>310</sup>

222. It is further alleged that Ngirabatware's speech incited listeners to kill members of the Tutsi population because a prominent Hutu leader was murdered the night before and called on them to kill all the Tutsis. In his speech Ngirabatware implored the youths to strengthen the

<sup>307</sup> Indictment, paras. 24, 41, 48-49.

<sup>308</sup> Indictment, para. 48; Prosecution Closing Brief, paras. 152-153; Prosecution Closing Argument, T. 23 July 2012, p. 14.

<sup>309</sup> Defence Closing Brief, paras. 46-50, 54-59, 62-64, 78-85, 756-761. The Chamber notes that the Defence refers to the testimony of André Delvaux for this allegation. The Chamber has considered his evidence but does not consider it to be sufficiently relevant to warrant it being set out below. The Chamber has also considered the evidence of Witnesses ANAO and DWAN-55 with regard to this allegation and has set out their evidence below.

<sup>310</sup> Indictment paragraphs 24, 41, 49. The Chamber notes that the spelling of the name of the youth allegedly given money varies. See, for example, Indictment, paras. 24, 41, 49 ("Honoré Ndayamiyemushi"); T. 1 February 2010, pp. 36, 40 (Witness ANAN) ("Honoré Ndyamiyemushi"); T. 16 March 2010, p. 68 (Witness ANAT) ("Honoré Ndyamiyemushi"); T. 19 September 2011, p. 32 (Witness DWAN-49) ("Honoré Ndyamiyemushi"). For clarity, the Chamber will adopt the spelling in the Indictment, "Honoré Ndayamiyemushi", throughout this Judgement.

roadblocks so no Tutsi could escape through Lake Kivu.<sup>311</sup> The Prosecution relies on Witnesses ANAN and ANAT.<sup>312</sup>

223. The Defence raises a number of notice issues with regards to these Indictment paragraphs. It submits that no roadblock existed at that time in that location and Ngirabatware was not present as alleged in the Indictment. Even if the testimony of Witnesses ANAN and ANAT are found to be credible, the words attributed to Ngirabatware are mere conversation between him and Ndyamiyemensi, rather than a public speech. The Defence contends that the testimony of both Witnesses ANAT and ANAN is inconsistent. Additionally, the Defence asserts that the Indictment states that the roadblock was in Nyamyumba *commune* but that the evidence in the trial record shows that Gisa *secteur* is in Rubavu *commune*, making this evidence outside the scope of the relevant Indictment paragraphs. The Defence relies on the testimony of Ngirabatware and Witnesses DWAN-49, Joseph Habinshuti, DWAN-114 and Tchemi Tchambi Aouili.<sup>313</sup>

### 3.4.2 Notice

224. The Chamber initially recalls the general principles on notice (2.2). The Defence submits that paragraph 48 is deficient in a material fact by reference to “the youths manning the roadblock”, and thereby cannot underpin the charge of Direct and Public Incitement to Commit Genocide.<sup>314</sup> The Defence further argues that paragraph 48 is defective because those who were instigated are not specifically identified.<sup>315</sup> The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>316</sup> and that the Chamber ruled upon this issue over three years ago.<sup>317</sup> The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings and it has not provided any explanation regarding any prejudice suffered. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to Indictment paragraph 48.

225. With regard to Indictment paragraphs 24 and 41 the Defence objects to the vagueness by referring to “February 1994”.<sup>318</sup> The Chamber recalls that this matter has already been adjudicated and dismissed in its Decision of 8 April 2009 and the Defence did not take any

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<sup>311</sup> Indictment, para. 49.

<sup>312</sup> Prosecution Closing Brief, paras. 84-85, 132-133, 154-157; Prosecution Closing Argument, T. 23 July 2012, pp. 14, 29, 42-48.

<sup>313</sup> Defence Closing Brief, paras. 41-45, 54-59, 62-64, 78-85, 565-583, 738-740, 762; Defence Closing Argument, T. 24 July 2012, pp. 33, 58-59; T. 25 July 2012, p. 41; Defence Additional Submissions on Site Visit, para. 11.

<sup>314</sup> Defence Closing Brief, paras. 62-64.

<sup>315</sup> Defence Closing Brief, paras. 46-50.

<sup>316</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and is defective in relation to Count 4).

<sup>317</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>318</sup> Defence Closing Brief, paras. 41-42.

further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>319</sup>

226. The Defence further submits that paragraphs 41 and 49 of the Indictment are deficient in a material fact, by referring to “the *Interahamwe* youth manning the roadblock” and “the youth who were present including the person in charge of the roadblock”<sup>320</sup> and thereby cannot underpin the charge of Direct and Public Incitement to Commit Genocide. The Defence also submits that paragraphs 24, 41 and 49 of the Indictment are defective, as they do not provide notice of the location of the alleged crime. Specifically, the Defence alleges that there is no customs office in Nyamyumba *commune* and that Cyanika and Gisa are locations in Rubavu *commune*, not Nyamyumba. The Defence further argues that the distance between Gisa and Cyanika is more than one kilometer.<sup>321</sup>

227. The Chamber observes that the Defence has not provided any reason or justification for raising these additional notice issues concerning Indictment paragraphs 24, 41 and 49 at this late stage of the proceedings and it has not provided any explanation of any prejudice suffered. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to these Indictment paragraphs.

228. Regarding the location, the Chamber observes that evidence in the trial record places the Cyanika-Gisa roadblock in Rubavu *commune*, and not Nyamyumba *commune* as alleged in the Indictment.<sup>322</sup> In both the summary of Witness ANAN’s anticipated testimony in the Annex to the Prosecution Pre-Trial Brief and his witness statement recorded on 8 April 2005, and disclosed to the Defence in unredacted form on 13 March 2009, the witness identifies the particular roadblock as at the Customs Office on the Cyanika-Gisa tarred road.<sup>323</sup> By contrast, the witness stated in his testimony that there was no customs office in Cyanika, but the roadblock was located in Cyanika, on Cyanika road.<sup>324</sup> Given that the Indictment alleges this event occurred in a location, namely at the Customs Office, that the Prosecution’s own witness acknowledged does not exist, the Indictment is factually incorrect in this regard. However, the Chamber considers that the Cyanika-Gisa area was well known to the Parties based on the additional details given in the relevant Indictment paragraphs.<sup>325</sup> As such, the Defence was in a position to know the location where this alleged event took place that would have enabled it to craft an investigative strategy accordingly. Therefore, the Chamber finds that the arguments advanced by the Defence are without merit.

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<sup>319</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>320</sup> Defence Closing Brief, paras. 62-64.

<sup>321</sup> Defence Closing Brief, paras. 43-45; Defence Additional Submissions on Site Visit, paras. 11-12.

<sup>322</sup> T. 16 March 2010, p. 14 (Witness ANAS); T. 17 March 2010, p. 59 (Witness ANAT). See also T. 1 December 2010, p. 64 (Ngirabatware); T. 19 September 2011, pp. 7-8 (CS); T. 20 September 2011, p. 40 (Witness DWAN-49).

<sup>323</sup> Prosecution Pre-Trial Brief – Annex 1, Witness ANAN anticipated testimony; ANAN Witness Statement, 8 April 2005.

<sup>324</sup> T. 1 February 2010, p. 43; T. 8 February 2010, p. 94 (CS).

<sup>325</sup> See Chambers Exhibit 1 (Site Visit Report), p. 5.

229. Finally, the Defence contends that Count 4 of the Indictment is defective in its entirety.<sup>326</sup> The Chamber recalls that it has addressed this challenge elsewhere in the Judgement (3.3.2), and has found no merit in this contention.

### 3.4.3 Evidence

#### Prosecution Witness ANAN

230. Prosecution Witness ANAN, is a Hutu who identified himself as a former CDR official and *Impuzamugambi* representative in Gisenyi *préfecture* in 1994.<sup>327</sup> Witness ANAN testified that he has known Ngirabatware since 1990 when the witness' brother-in-law, who worked under Ngirabatware, introduced them. Later on, Witness ANAN met and eventually befriended some of Ngirabatware's friends, including Faustin Bagango, Max Turinabo and Théogène Nzabanita. Witness ANAN described Ngirabatware as the head of the Ministry of Finance, and said that he would visit Ngirabatware at his Ministry when it was in Muhima in Kigali. Witness ANAN identified Ngirabatware in court.<sup>328</sup>

231. Witness ANAN learned of the assassination of Martin Bucyana, the National Chairman of the CDR party over the radio, in February 1994 while he was in Ramba *commune* in Gisenyi *préfecture*. That evening, he received a call from a CDR official informing him that everyone must proceed to Gisenyi the next morning to participate in demonstrations. The next morning he travelled to Gisenyi town to the CDR office. The demonstrations had already been organized at the *préfecture* level by many people, but this was done before the demonstrations took place and the witness was not involved in that meeting. At the CDR office speeches were given but only demonstrations were on the agenda.<sup>329</sup>

232. According to the witness, there were a "huge number" of people at Electrogaz on the day of the demonstration, since "the Hutus had already been killed" and "they felt like they could die at any time". People did not go to work, and the demonstrations lasted about a week.<sup>330</sup>

233. Witness ANAN saw Ngirabatware at Electrogaz that day.<sup>331</sup> Ngirabatware came to the roadblock from the road which leads from his parents' house. According to the witness, there were two roadblocks at this place: one roadblock located on the road that led to the brewery which was manned by soldiers, and another roadblock on the road leading to Gitarama which was manned by CDR members and *Interahamwe*.<sup>332</sup>

234. When the demonstrators arrived, Witness ANAN saw Ngirabatware at the Electrogaz roadblock, which was at a fork in the road that led either to Ngirabatware's house and

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<sup>326</sup> Defence Closing Brief, paras. 54-59.

<sup>327</sup> Prosecution Exhibit 14 (Personal Identification Sheet); T. 27 January 2010, p. 62 (CS); T. 3 February 2010, pp. 8, 17-19 (CS).

<sup>328</sup> T. 27 January 2010, p. 62 (CS); T. 27 January 2010, pp. 64-66; T. 1 February 2010, pp. 13, 15-17.

<sup>329</sup> T. 1 February 2010, p. 33; T. 4 February 2010, pp. 78-79 (CS); T. 8 February 2010, pp. 2, 4-8, 10, 88-89, 101 (CS).

<sup>330</sup> T. 1 February 2010, pp. 33-34, 43.

<sup>331</sup> T. 1 February 2010, pp. 32-33.

<sup>332</sup> T. 8 February 2010, pp. 84, 89, 94 (CS).



Nyamyumba *commune* or to Lake Kivu and through to Kitiraco.<sup>333</sup> There were approximately 400 demonstrators at the roadblock. Ngirabatware told the crowd: “I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock.” According to the witness, on that occasion they were all saddened because their party leader had just been killed and all the Hutus felt threatened. Ngirabatware also requested a roadblock to be erected at Kitiraco to block people fleeing through the port. Following these instructions, a roadblock was erected at Kitiraco.<sup>334</sup>

235. Several other leaders were also at the roadblock, including *Bourgmestre* Faustin Bagango; Max Turinabo, a doctor working at the Bralirwa; Balthazar Hategekimana, head of Electrogaz at Gihira; Philip Nizeyimana, head of the Electrogaz near Lake Kivu; *Sous-Préfet* Védaste Rulinda; and Ladislav Rugasira, the chairman of the CDR.<sup>335</sup>

236. After Ngirabatware spoke, there were no other speeches but the demonstrations started right away and lasted for approximately a week. The Electrogaz roadblock was the starting point of demonstrations into Gisenyi town. Ngirabatware did not follow the demonstration, but instead was seen moving towards Hotel Regina. After the speech, those assembled went ahead with the organization of the demonstration and the itinerary that the demonstrators had to follow. One group of demonstrators headed for Kizungu and had to pass in front of the office of the *préfecture*. Other demonstrators had to cross the town while a third group had to follow the tarmac road leading to Nyundo. It was agreed that they would all meet in front of the CDR office in town.<sup>336</sup>

237. As part of the demonstrations after the killing of Bucyana, the witness went to Cyanika. A roadblock was located on a tarmac road near the Cyanika market in the Gisa *secteur*. There was no customs office in that location, but the roadblock was in Cyanika before Gisenyi town. There were between 150 and 250 youths at the roadblock. Ngirabatware was at the roadblock at approximately 2.00 p.m. and spoke with Honoré Ndayamiyemshi, the leader of the *Impuzamugambi* of the CDR, and the youths at the roadblock. Ngirabatware stated: “[w]e were affected that the Tutsis had caused a calamity, but that we should take vengeance. You have to avenge yourselves; you have to kill Tutsi”. He told those assembled to leave his friend Tito, a Tutsi, alone. Ngirabatware then took “some little” money out of his pocket and gave it to “them”, possibly to buy drinks for the people manning the roadblock. The witness and others continued with their march right up to where they had to end the demonstration.<sup>337</sup>

#### Prosecution Witness ANAT

238. Witness ANAT, a Hutu farmer, lived in Rubavu *commune*, Gisenyi *préfecture* in 1994. The witness became a member of the CDR party in 1993. Witness ANAT was also an *Interahamwe*, a group that he said “worked together in order to foster a common plan or desire

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<sup>333</sup> The Chamber notes that throughout the transcripts the spelling of this location changes but recalls that the Parties agreed that the location would be “Kitiraco”, which is the spelling adopted throughout this Judgement. See T. 16 February 2010, pp. 55-56 (Witness ANAO).

<sup>334</sup> T. 1 February 2010, pp. 33-36.

<sup>335</sup> T. 1 February 2010, pp. 33-34.

<sup>336</sup> T. 1 February 2010, pp. 34, 36; T. 8 February 2010, p. 100 (CS).

<sup>337</sup> T. 1 February 2010, pp. 36-40, 43; T. 8 February 2010, p. 94 (CS).

[...] to pursue the Tutsi.” At the time of his testimony he was serving a 15-year prison sentence for his participation in the genocide. The witness knew of Augustin Ngirabatware because his younger brother was the witness’ classmate. He also knew of Ngirabatware as the Minister of Planning.<sup>338</sup>

239. A day after the death of Martin Bucyana, the CDR national leader, the witness saw Ngirabatware at the roadblock he was manning in Cyanika, which was located on the road leading from Gisenyi to Ruhengeri. Ngirabatware assembled the group at the roadblock and told them that Bucyana had been killed and that “finally we will have our turn”. He told the group “to track down all the Tutsi [...] for the purpose of killing each and every one of them, and that none of them should escape”. After the statement, he gave Honoré Ndayamiyemensi, a CDR leader, 50,000 francs. Ngirabatware asked Ndayamiyemensi to buy traditional weapons with the money and use the remainder to buy drinks. The weapons were to be used by the *Interahamwe* to kill Tutsis.<sup>339</sup>

240. Witness ANAT stated that “the weapons served that purpose”, as the Tutsis in the vicinity, particularly in Gisa, “were hunted down and killed”. According to the witness, some were killed as they were attacked with sharp objects, some were shot, and some were clubbed to death. The Tutsis had to be killed because “[t]he authorities of our country had instructed us to look for them and to kill them because the Tutsi had attacked our country”. He further clarified that after Bucyana was killed but before the death of President Habyarimana, Ngirabatware, “encouraged [them] to commit those acts, and that we did”.<sup>340</sup>

#### Prosecution Witness ANAO

241. Witness ANAO, a Hutu from Nyamyumba *commune*, joined the CDR party in 1992, and admits to being an *Interahamwe* present at roadblocks in the area.<sup>341</sup>

242. Witness ANAO stated that a roadblock was established in front of the Electrogaz building before April 1994. It consisted of a rope or twine that ran across the road from left to right. Witness ANAO also identified the Gisa roadblock, located in Rubavu *commune*. The witness is not familiar with this roadblock because he did not man it. However, the witness knows that Jean-Marie Vianney Benimana manned the roadblock at Gisa in 1994. According to Witness ANAO, one could easily realize that Benimana and Honoré were responsible for the Gisa roadblock. This roadblock was set up before President Habyarimana’s death.<sup>342</sup>

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<sup>338</sup> Prosecution Exhibit 23 (Personal Identification Sheet); T. 16 March 2010, pp. 62-63, 65, 71.

<sup>339</sup> T. 16 March 2010, pp. 67-68, 70; T. 17 March 2010, p. 59.

<sup>340</sup> T. 16 March 2010, pp. 68, 70.

<sup>341</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, pp. 36-38 (CS); T. 17 February 2010, p. 13; T. 17 February 2010, p. 42 (CS); T. 22 February 2010, pp. 13-14, 22, 31 (CS). According to Witness ANAO, “[t]he word ‘*Interahamwe*’ spells killer”. T. 17 February 2010, p. 45 (CS).

<sup>342</sup> T. 16 February 2010, pp. 14-23; T. 17 February 2010, pp. 4-5; T. 18 February 2010, pp. 6-7; Prosecution Exhibit 6A (Photograph); Prosecution Exhibit 6B (Photograph); Prosecution Exhibit 6C (Photograph); Prosecution Exhibit 6D (Photograph).

243. The witness testified that the CDR demonstrations in late February 1994 were not related to Bucyana's death, but rather to "voice the anger of the CDR because it was excluded from the broad based government".<sup>343</sup>

#### Prosecution Witness ANAD

244. Witness ANAD was a Hutu shopkeeper in 1994 and former president of *Ibuka*, whose mother and wife were Tutsi. He was attacked twice in 1993 by *Interahamwe*. The witness knew Ngirabatware as a native of Nyamyumba *commune*, as well as the Minister of Planning between 1992 and 1994. He was aware of the UNAMIR military observers present in Gisenyi and saw them around town.<sup>344</sup> He also testified that there was no roadblock at the intersection where Witness ANAN placed a civilian manned roadblock.<sup>345</sup>

#### Augustin Ngirabatware

245. Ngirabatware identified the Electrogaz roadblock as being opposite Gashogoro's house, when coming from Gisenyi town and before the hydroelectric plant. The roadblock had been manned by *gendarmes* since 1990. Ngirabatware believed the purpose of the roadblock was to protect the hydroelectric plant, as well as Bralirwa, because the road that led to Bralirwa also led to President Habyarimana's house.<sup>346</sup>

246. He denied being at the Electrogaz roadblock several days after Martin Bucyana's death and he could not have given any orders to the *gendarmes* at the roadblock because he was not empowered to do so.<sup>347</sup> As the situation built up to 23 February or 24 February 1994, Ngirabatware said he personally never went to such meetings or rallies nor did he deliver any hate-speech as rallies were suspended at that time. Moreover, no minister would have gone to participate in a demonstration after these events. He asserts that on 23, 24 and 25 February 1994 he was in Kigali.<sup>348</sup>

247. Following the assassination of Bucyana, there was chaos in some parts of Rwanda; namely Kigali, Butare, and Cyangugu, but it was not widespread. There were no demonstrations in Gisenyi and Ruhengeri. In the days after these murders, the Kigali-Gisenyi road was not safe. A situation report by UNAMIR indicated that on 7 February 1994, the soldiers of the RPF had blocked the Kigali-Ruhengeri road at a location called Rulindo. Ngirabatware says because of this blockade it was not possible for him to travel to Gisenyi to carry out activities such as making hate speeches.<sup>349</sup>

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<sup>343</sup> T. 17 February 2010, pp. 40-45 (CS); T. 17 February 2010, p. 47.

<sup>344</sup> Prosecution Exhibit 15 (Personal Identification Sheet); T. 9 February 2010, p. 24; T. 10 February 2010, pp. 10-11, 66-67, 71-72 (CS).

<sup>345</sup> T. 11 February 2010, pp. 12-16.

<sup>346</sup> T. 1 December 2010, pp. 47-48.

<sup>347</sup> T. 1 December 2010, p. 48; T. 14 December 2010, pp. 46-48. See generally Defence Exhibit 120 (Government Press Release, 6 February 1993).

<sup>348</sup> T. 22 November 2010, pp. 80-81; T. 23 November 2010, pp. 18-19, 25-28. See also Defence Exhibit 91 (Radio Rwanda Broadcast, 22 February 1994); Defence Exhibit 93A (Note Concerning Transitional Arrangements for the Rwandan Government, 23 February 1994).

<sup>349</sup> T. 7 December 2010, p. 44. See also Defence Exhibit 188 (UNAMIR Weekly Sitrep, 22 to 28 February 1994); T. 22 November 2010, p. 80. See also Defence Exhibit 92B (Declaration by the Special Representative of the United

Defence Witness Joseph Habinshuti

248. Joseph Habinshuti, also known as Datsun, is a Hutu who was a second lieutenant in the *gendarmerie* at the Gisenyi camp in 1994. This camp housed a company of more than 200 *gendarmes*, who were divided into five platoons. Habinshuti was in command of one platoon of 37 people. The entire company stationed at the Gisenyi camp, including the witness' group, was responsible for security in Gisenyi. The *gendarmerie* was also tasked with ensuring security in matters of meetings and other public gatherings that were held in Gisenyi. In 1994, he knew that Ngirabatware was the Minister of Planning.<sup>350</sup>

249. The witness confirmed that there was a roadblock at Electrogaz, which was manned by *gendarmes* or soldiers, and it was established in that location before the death of the President.<sup>351</sup>

250. After the assassination of CDR President Martin Bucyana, the witness received a telegram asking the *gendarmerie* to ensure security, and to stop protests and the erection of any roadblocks in Gisenyi town. After Bucyana's death, the witness received information that a group of 12 civilians had planned to block the roads at the Rubavu *commune* office, but the witness and other *gendarmes* stopped them once Habinshuti started his rounds at 6.00 a.m. The *commune* office was located six kilometers from the town of Gisenyi in Rugerero. After stationing *gendarmes* in various locations Habinshuti returned to his office. Apart from that, there were no incidents that occurred.<sup>352</sup>

251. The day after the death of Bucyana and on his way to Rugerero to stop the protest, the witness drove past Cyanika. He did not notice anything of concern in Cyanika, including any roadblock or gathering, at that time. Habinshuti knew Gisa and drove past it on his way to Rugerero, but also did not see any type of gathering, demonstration, or roadblock in Gisa after the assassination of Bucyana. There were no demonstrations in Gisenyi *préfecture* at this time. Habinshuti and his *gendarmes* returned to the military camp around 2.00 p.m.<sup>353</sup>

252. Witness Habinshuti did not see Ngirabatware in Gisenyi *préfecture* in the days after the assassination of Bucyana. He could not comment on whether Ngirabatware incited people at roadblocks or gatherings at that time because he received no information about that type of event. He did not know of any gatherings in Gisa or Cyanika in February 1994. The witness talked with his colleagues about the security situation in the area and the witness never heard any information that Ngirabatware incited people or spoke in a hateful way in Nyamyumba *commune*. There were no official reports that Ngirabatware behaved in this manner.<sup>354</sup>

Defence Witness Tchemi Tchambi Aouili

253. Tchemi Tchambi Aouili, from Togo, was the Deputy Chief of the UNAMIR military observers who were based in Gisenyi and he lived in Gisenyi *secteur*, Rubavu *commune* in 1994.

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Nations Secretary-General to Rwanda, 23 February 1993) (stating that acts like Bucyana's murder could "only further complicate an already tense political situation").

<sup>350</sup> Defence Exhibit 162 (Personal Identification Sheet); T. 17 October 2011, pp. 17-19, 26.

<sup>351</sup> T. 17 October 2011, pp. 35-36.

<sup>352</sup> T. 17 October 2011, pp. 21-23.

<sup>353</sup> T. 17 October 2011, pp. 23-24, 63.

<sup>354</sup> T. 17 October 2011, pp. 26, 36-37.

The witness arrived in Kigali on 24 December 1993 and arrived in Gisenyi in the first half of January 1994, and was one of seven UNAMIR observers in Gisenyi *préfecture*.<sup>355</sup>

254. According to the witness, UNAMIR's area of responsibility involved a major part of Gisenyi *préfecture*. The area that was under observation included 20 to 25 kilometers of the asphalted road that runs from Gisenyi to Ruhengeri all the way to Kigali, the Rwandan/Ugandan border, the Rwandan/Congolese border and Lake Kivu.<sup>356</sup>

255. When the UNAMIR observers arrived in Gisenyi they had three vehicles which were supplied by UNAMIR, two at the inception of their mission and a third which came a few days later. The patrols would go out of town with two of the vehicles each day and the third vehicle would remain with the officers on duty in Gisenyi town. The witness recalled two occasions where there was a fuel shortage, once towards the end of February and once towards the end of March 1994.<sup>357</sup>

256. When the observers first arrived they worked out of their chief's room at Hotel Regina, in Gisenyi town. After a few days they got an office attached to Hotel Regina, from which they subsequently worked. The witness testified that as a UNAMIR observer, his duties included: "ensuring that there [was] no infiltration of foreign troops to ensure that the weapons depots and the military camps which were in our area of responsibility [were] observed and reports made on incidents that may [have jeopardized] the implementation of the Arusha Accords; to observe and report on all incidents or events which, in our opinion, [were] of interest within the context of our mission". It was mandatory to report such incidents or events.<sup>358</sup>

257. The UNAMIR mission in Gisenyi was not in charge of investigations, that task belonged to the civilian police. The observers were tasked with reporting what they observed and what they were informed about. The witness testified that there were not many incidents or events to be reported, however he did recall two incidents, one between 15 and 28 February 1994 and the other between 20 and 30 March 1994. The witness described the work done by the UNAMIR observers.<sup>359</sup> There were briefing and debriefing sessions held before and after those on duty and those on patrol went out.<sup>360</sup>

258. The witness would have been aware if there had been a public gathering of about 100 people or if a minister had delivered a speech inciting hatred against the Tutsis in February 1994. If any such event had occurred, it would have been the duty of the witness to report it to his

<sup>355</sup> Defence Exhibit 202 (Personal Identification Sheet); T. 22 February 2012, pp. 6-8.

<sup>356</sup> T. 22 February 2012, pp. 9-10.

<sup>357</sup> T. 22 February 2012, pp. 12, 25, 27. During these times, in order to reduce fuel consumption, the observers reduced their patrols outside of Gisenyi town. During those times, they had one vehicle on duty in town and two officers would patrol on foot inside of town. T. 22 February 2012, p. 27.

<sup>358</sup> T. 22 February 2012, pp. 9, 11, 24, 26.

<sup>359</sup> T. 22 February 2012, pp. 11-13, 20. Observers would either be on patrol or on duty. Those who went on patrol would report upon their return everything they observed by way of incidents or events. Those on duty would report on everything that happened in town which they may have seen and which may have been reported to them. There were always two persons on duty and the shifts began at 6.00 a.m. and ended the following morning at 6.00 a.m. T. 22 February 2012, p. 11.

<sup>360</sup> T. 22 February 2012, pp. 12, 25. The patrols were carried out outside of Gisenyi town, and were made up of two vehicles, with two observers in each vehicle. One observer would leave each vehicle in the field, and would walk in the bush, observe, and would talk with people when they met them.

chief, who would have in turn reported it to his chief in Kigali. The witness knew of three military roadblocks on the Gisenyi/Ruhengeri/Kigali road that was in UNAMIR's area of operation in February 1994. The witness never heard of, nor saw, a minister addressing a large group of people or inciting violence at any roadblock.<sup>361</sup>

259. The witness never heard or saw the establishment of a civilian roadblock during his time in Gisenyi. However, he testified that if a witness came to testify about a civilian roadblock the witness would not be incorrect. According to the witness, it was possible that there was a roadblock which changed location subsequently.<sup>362</sup> The witness clarified that if meetings or speeches were held "secretly or clandestinely" then UNAMIR observers may not have been aware of it.

260. However, in 1994, Gisenyi was a small town and that gave them "a lot of advantages" of observing public events. He stated that in Africa, communication was rapid, and that everyone would have been aware of such a gathering in under an hour because of the "bush radio", whereby "everybody in less than an hour is aware of anything that has occurred". In addition, the witness testified that he was aware that President Habyarimana had a residence in Gisenyi *préfecture*, and that the road leading to the President's house had a checkpoint before the crossroads, manned by soldiers. The witness would have been aware if there had been a public gathering of about 100 people or if a minister had delivered a speech inciting hatred against the Tutsis in February 1994. The UNAMIR observers were required to report any political rallies they learned about from the local population.<sup>363</sup>

#### Defence Witness DWAN-114

261. Witness DWAN-114 was a military observer with the UNAMIR mission based in Gisenyi *préfecture*, from February to April 1994.<sup>364</sup> The military observers were tasked with monitoring compliance with the Arusha Accords and with showing up at events and gathering information about incidents that "might constitute a possible threat to the peace agreement". They were also tasked with keeping in contact with the authorities and the population. Witness DWAN-114 said that it was difficult to communicate with the population. The main language spoken by the UNAMIR observers was English, and so they would establish contact with civilians in that language.<sup>365</sup>

262. When they received information about or observed a threat to the peace agreement, they would make a note of it and pass it on to their superiors. As far as the witness was aware, he and the other observers were bound to report any incident which may have jeopardized the Arusha Accords. The witness acknowledged difficulties in carrying out their mandate, but testified that they did the best they could.<sup>366</sup>

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<sup>361</sup> T. 22 February 2012, pp. 16-17, 24, 26.

<sup>362</sup> T. 22 February 2012, pp. 23-24.

<sup>363</sup> T. 22 February 2012, pp. 15-16, 18, 20, 26.

<sup>364</sup> Defence Exhibit 199 (Personal Identification Sheet); T. 20 February 2012, pp. 16-18.

<sup>365</sup> T. 20 February 2012, pp. 29-30. He testified that they had no interpreter in the team. However, there was a French-speaking Togolese officer in the team, and there were also a number of Russian-speaking inhabitants of Gisenyi with whom the Russian team leader could interact. T. 20 February 2012, pp. 29-30.

<sup>366</sup> T. 20 February 2012, pp. 23, 35; T. 21 February 2012, p. 11.

263. When the witness deployed to Gisenyi in February 1994, they did not have vehicles or communication equipment, and the observers were lodged in Hotel Edelweiss and Hotel Regina. The witness' area of operation was the town of Gisenyi as far as the border crossing point to Goma along Lake Kivu and along the border to Zaire, and in the north as far as the border of the area of operation of the next team in Ruhengeri.<sup>367</sup>

264. From February 1994 until President Habyarimana's death, the witness observed several military roadblocks and one civilian roadblock in Gisenyi which was established by civilians after a shooting incident near the marketplace in town that left one person dead. This incident was reported in the weekly situation report.<sup>368</sup> The UNAMIR observers were given clear instructions on what to do if their "freedom of movement was obstructed by, particularly, civilian roadblocks" by their team leader.<sup>369</sup>

265. After the shooting of CDR Chairman Bucyana, Witness DWAN-114 could not recall any demonstrations or riots in Gisenyi. The witness does not recall hearing or observing a minister of the government inciting 100 to 200 civilians to violence followed by a demonstration where those people would have walked from one to two kilometers before getting to Gisenyi port (Kitraco) all the way passing in front of Hotel Meridien and Hotel Regina. The witness does not remember a civilian roadblock on the tarmac road from Gisenyi to Ruhengeri where a minister addressed and incited the civilians manning the roadblock. The witness could not remember any roadblock on the main road from Gisenyi at Cyanika-Gisa. If there had been a gathering, a report would have been made. If they heard that a minister or whoever had been inciting people to kill or assassinate others, they would have protested against that and reported it.<sup>370</sup>

266. The witness went on two weeks' leave, beginning approximately 20 March 1994 and returning to Gisenyi on 5 April 1994. He left Gisenyi the second or third week of April.<sup>371</sup>

#### Defence Witness Edison Nsabimana

267. Edison Nsabimana, a Hutu, lived in Nyamyumba *commune* in 1994 and was assistant *bourgmestre*. Nsabimana recalled roadblocks in the *commune* prior to 6 April 1994. Specifically there was a roadblock manned by soldiers at Electrogaz to protect those facilities. These soldiers were not joined by civilians at any time before 6 April 1994, and there were no civilian roadblocks set up for any purpose at that time in the *commune*.<sup>372</sup>

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<sup>367</sup> T. 20 February 2012, pp. 24-25, 50.

<sup>368</sup> T. 20 February 2012, pp. 41-42, 57-59. See also Defence Exhibit 187 (UNAMIR Weekly Sitrep, 15 to 22 February 1994).

<sup>369</sup> T. 20 February 2012, p. 40.

<sup>370</sup> T. 20 February 2012, pp. 48-50, 53; T. 21 February 2012, pp. 3-4.

<sup>371</sup> T. 20 February 2012, pp. 18, 46-47.

<sup>372</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58, 72-73; T. 15 June 2011, p. 10.

Defence Witness DWAN-9

268. Witness DWAN-9, a Hutu farmer and brick maker, lived in Rushubi *secteur* of Nyamyumba *commune* during the events of 1994.<sup>373</sup> He stated that in 1994 he manned a roadblock not far from the military checkpoint near Electrogaz.<sup>374</sup>

Defence Witness DWAN-11

269. Witness DWAN-11, a Hutu, worked at Bralirwa, and lived in Nyamyumba *commune*. Prior to the events in 1994, the witness knew Ngirabatware and had seen him at the burial of Ngirabatware's father. The witness never saw or heard Ngirabatware making anti-Tutsi speeches. During the *Gacaca* proceedings, Witness DWAN-11 never heard a member of the population make accusations against Ngirabatware.<sup>375</sup>

270. The witness saw a roadblock located not far from the Electrogaz filling station that was manned by *gendarmes*, and this roadblock had been set up well before the death of President Habyarimana. The witness did not man the Electrogaz roadblock, so he was not able to say what happened at it.<sup>376</sup>

Defence Witness DWAN-49

271. Witness DWAN-49, a Hutu, was living in Gisa *secteur*, and worked as a Bralirwa employee in 1994. During the information-gathering phase of the *Gacaca* proceedings in 2001, the witness was elected to a position in a *Gacaca* court, and he continued serving in various positions when trials began in 2006. The witness did not know Ngirabatware personally, but knew that he was the Minister of Planning, was from Nyamyumba *commune*, and lived in Rushubi *cellule*. Witness DWAN-49 did not see Ngirabatware between January and July 1994. Also, the witness never heard suspects, witnesses or victims mention Ngirabatware's name as being directly or indirectly involved in his *secteur* or *cellule*. If so, a case file would have been prepared against him.<sup>377</sup>

272. The witness was familiar with the general area of Cyanika-Gisa where the roadblock is alleged to have been, as he used that road to and from work and when using a road leading up to a church every morning for prayers, or in the afternoon to take part in the choir.<sup>378</sup> From April to July 1994, the witness saw a roadblock in the Cyanika *cellule* below the market, along a road that led to shops which was not there at the end of February. The roadblock was erected after the death of President Habyarimana. During the *Gacaca* process, the witness did not hear that the roadblock was erected prior to the death of Habyarimana. There was no customs office located in

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<sup>373</sup> T. 16 August 2011, p. 43; T. 16 August 2011, p. 45 (CS).

<sup>374</sup> Defence Exhibit 137 (Personal Identification Sheet); T. 16 August 2011, pp. 42-43, 72-73; T. 17 August 2011, p. 14 (CS).

<sup>375</sup> Defence Exhibit 126 (Personal Identification Sheet); T. 21 June 2011, pp. 44-45, 68-69 (CS); T. 22 June 2011, p. 39 (CS).

<sup>376</sup> T. 21 June 2011, p. 64 (CS); T. 22 June 2011, pp. 26-28 (CS).

<sup>377</sup> Defence Exhibit 145 (Personal Identification Sheet); T. 19 September 2011, pp. 7, 9-13 (CS); T. 19 September 2011, pp. 32, 40; T. 20 September 2011, p. 39 (CS).

<sup>378</sup> T. 19 September 2011, pp. 26-27.



the Gisa *secteur*. The witness did not remember hearing or seeing any demonstrations in his area after the death of Martin Bucyana.<sup>379</sup>

273. Witness DWAN-49 knew Honoré Ndayamiyemushi since his name was mentioned in several trials. Ndayamiyemushi was convicted of murder, looting, and leading activities at the Cyanika roadblock, which were all committed after the death of the President. During Ndayamiyemushi's trial, no one stated that Ngirabatware incited, encouraged, or conspired with Ndayamiyemushi. No one stated that Ngirabatware was present, was directly or indirectly related to crimes at the roadblock, or that he gave money to Ndayamiyemushi. Ngirabatware was a minister and native of the region, so if he had been present, everyone would have spoken about it.<sup>380</sup>

#### Defence Witness DWAN-21

274. Witness DWAN-21, a Hutu, lived in Nyamyumba *commune* in 1994.<sup>381</sup> The witness testified that Ngirabatware's name was never mentioned in any of the *Gacaca* courts in his locality. During those trials, Ngirabatware was not linked to public incitement, hate speech or weapons distribution.<sup>382</sup>

275. Witness DWAN-21 stated that Kitiraco is located between Rubona and Rushubi *secteurs*. The witness never heard allegations relating to incitement to commit genocide, distribution of weapons, hate speech or establishment of civilian roadblocks in Kitiraco or in the Electrogaz area.<sup>383</sup>

#### Defence Witness DWAN-55

276. Witness DWAN-55, a Hutu, worked at Bralirwa in 1994 and was a member of the PSD party. The witness testified that customarily there were two official roadblocks manned by the army, one at Electrogaz and one at the entrance to the breweries. However, from 6 April 1994 there were other improvised, "wild" roadblocks erected and manned by civilians.<sup>384</sup>

#### Defence Witness DWAN-71

277. Witness DWAN-71 is a Hutu and was a local government official in 1994. The witness testified that in 1994 there was a roadblock at Electrogaz, near Nyagasaza's house. There was no roadblock at the junction of the road that leads towards Butotori and the road that leads to the brewery. The Electrogaz roadblock was erected before the death of President Habyarimana and was manned by *gendarmes*.<sup>385</sup>

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<sup>379</sup> T. 19 September 2011, pp. 31, 39.

<sup>380</sup> T. 19 September 2011, pp. 32-33; T. 20 September 2011, pp. 6-7.

<sup>381</sup> Defence Exhibit 153 (Personal Identification Sheet).

<sup>382</sup> T. 28 September 2011, pp. 11-12, 15 (CS).

<sup>383</sup> T. 28 September 2011, p. 43 (CS).

<sup>384</sup> Defence Exhibit 166 (Personal Identification Sheet); T. 24 October 2011, p. 10; T. 24 October 2011, p. 23 (CS).

<sup>385</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 23 June 2011, pp. 16-17; T. 28 June 2011, p. 13 (CS).

Defence Witness DWAN-2

278. Witness DWAN-2 was a Hutu farmer who lived in Gisenyi town in 1994.<sup>386</sup> Witness DWAN-2 indicated that the “first roadblock was at Gashogoro’s house” and that it was manned by *gendarmes*, even before the death of the President.<sup>387</sup>

Defence Witness DWAN-4

279. Witness DWAN-4, a Hutu, was a soldier in the Rwandan army in April 1994.<sup>388</sup> Witness DWAN-4 testified that the first roadblock that he saw in Rushubi *secteur* was manned by *gendarmes* and was located at the Electrogaz installations.<sup>389</sup>

Defence Witness DWAN-147

280. Witness DWAN-147, a Hutu, was living in Rushubi *secteur*, Nyamyumba *commune* during the events of 1994.<sup>390</sup> The witness spoke about three roadblocks in his *secteur*, including the roadblock erected at the location known as Tam-Tam not far away from Nyagasaza’s residence, and this was manned by *gendarmes*.<sup>391</sup>

**3.4.4 Deliberations**

281. At the outset, the Chamber accepts the undisputed fact that on 22 February 1994, Martin Bucyana, the National Chairman of the CDR party, was killed.<sup>392</sup> The Chamber will therefore limit its deliberation to the events at Electrogaz and Cyanika-Gisa roadblocks as alleged in Indictment paragraphs 21, 24, 48 and 49.

282. The Chamber also observes that there is evidence from Prosecution and Defence witnesses to the effect that CDR demonstrations were planned or occurred in Nyamyumba and Rubavu *communes* in the aftermath of Martin Bucyana’s death.<sup>393</sup> In particular it notes that Witnesses ANAO and ANAN corroborate each other as to the fact that demonstrations occurred. The Chamber also finds that Witness ANAN’s position within the CDR gives him a unique basis for knowing about the demonstrations that the CDR organized. The Chamber accepts this evidence and finds it credible.

283. The Chamber notes that Prosecution Witnesses ANAN, ANAO and ANAT were convicted and have completed or are completing custodial sentences for crimes committed during the genocide. Accordingly, the Chamber considers their testimony with the appropriate

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<sup>386</sup> Defence Exhibit 133 (Personal Identification Sheet).

<sup>387</sup> T. 7 July 2011, pp. 75-76.

<sup>388</sup> Defence Exhibit 135 (Personal Identification Sheet); T. 13 July 2011, p. 31.

<sup>389</sup> T. 13 July 2011, p. 39.

<sup>390</sup> Defence Exhibit 134 (Personal Identification Sheet).

<sup>391</sup> T. 11 July 2011, p. 59.

<sup>392</sup> See, for example, Defence Exhibit 92 (Declaration by the Special Representative of the United Nations Secretary-General to Rwanda, 23 February 1994); Defence Exhibit 188 (UNAMIR Weekly Sitrep, 22 to 28 February 1994).

<sup>393</sup> T. 1 February 2010, pp. 32-33 (Witness ANAN); T. 17 October 2011, p. 21 (Habinshuti).

degree of caution.<sup>394</sup> The Chamber will now assess the evidence in relation to each alleged roadblock in turn.

#### **3.4.4.1 Electrogaz Roadblock**

284. Paragraph 48 of the Indictment alleges that following the killing of Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune*, where he addressed the youths manning the roadblock and told them to kill members of the Tutsi population because the Tutsis had killed a Hutu colleague in Butare. Ngirabatware implored the youths to do everything in their power to track down the imbeciles, reminding them that they had been tolerant enough. The Prosecution asserts this occurred two or three days after Bucyana's death, and relies upon Witness ANAN.<sup>395</sup>

285. The Chamber recalls that Witness ANAN testified that on the day of the demonstration he saw Ngirabatware at Electrogaz.<sup>396</sup> According to the witness, there were two roadblocks at this place and the meeting with the demonstrators took place at the civilian manned roadblock at Electrogaz.<sup>397</sup> There were a "huge number" of people on the day of the demonstration, people did not go to work, and the demonstrations lasted about a week because "the Hutus had already been killed" and "they felt like they could die at any time".<sup>398</sup> There was a group of approximately 400 demonstrators at the roadblock. Ngirabatware told the crowd: "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock." Ngirabatware also requested a roadblock to be erected at Kitiraco to block people fleeing through the port.<sup>399</sup> Following these instructions, a roadblock was erected at Kitiraco.<sup>400</sup>

286. The Defence submits that there was no civilian roadblock at the Electrogaz location. It further argues that Witness ANAN is the only witness testifying about a civilian manned roadblock at Electrogaz manned in February 1994 and he is not credible.<sup>401</sup>

287. The Chamber visited the location of the alleged Electrogaz roadblocks during its official site visit. The Chamber notes that the Prosecution and Defence agreed that a roadblock was mounted at Electrogaz, at the Y-junction to the Electrogaz office, adjacent to Gashogoro's house.<sup>402</sup> This is supported by ample evidence in the record about one military checkpoint in this location.<sup>403</sup> The Defence disputed during the site visit, as well as in their closing submissions,

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<sup>394</sup> T. 1 February 2010, pp. 44-45; T. 2 February 2010, pp. 15, 19, 24-26; T. 2 February 2010, p. 69 (CS); T. 3 February 2010, pp. 59-61 (Witness ANAN); T. 16 February 2010, pp. 3-8; T. 17 February 2010, p. 22; T. 17 February 2010, p. 72 (CS); T. 18 February 2010, pp. 13, 24, 39-40, 65, 67-69 (CS); T. 22 February 2010, pp. 42, 44 (CS) (Witness ANAO); T. 16 March 2010, p. 62; T. 17 March 2010, pp. 64-65 (CS) (Witness ANAT).

<sup>395</sup> Prosecution Closing Brief, paras. 152-153; Prosecution Closing Argument, T. 23 July 2012, pp. 14, 29, 42-44.

<sup>396</sup> T. 1 February 2010, pp. 32-33 (Witness ANAN).

<sup>397</sup> T. 8 February 2010, p. 94 (CS) (Witness ANAN).

<sup>398</sup> T. 1 February 2010, p. 34 (Witness ANAN).

<sup>399</sup> T. 1 February 2010, p. 33 (Witness ANAN).

<sup>400</sup> T. 1 February 2010, pp. 33-35 (Witness ANAN).

<sup>401</sup> Defence Closing Brief, paras. 756-761.

<sup>402</sup> Chambers Exhibit 1 (Site Visit Report), p. 6.

<sup>403</sup> See, for example, T. 8 February 2010, p. 94 (CS) (Witness ANAN) (there was a roadblock located on the road that led to the brewery and which was manned by soldiers); T. 16 February 2010, p. 15 (Witness ANAO) (the Electrogaz roadblock was established in front of the Electrogaz building before April 1994); T. 1 December 2010, p.

that a second civilian manned roadblock existed at the Y-Junction leading to the military premises at Butotori as testified to by Witness ANAN.<sup>404</sup>

288. The Chamber observes that Witness ANAN is the only witness in this case who testified as to the existence of a civilian manned roadblock at Electrogaz in 1994. Witness ANAN is further the only witness to testify to any demonstration taking place there in late February 1994 following the death of Bucyana.

289. The Chamber recalls that it has assessed Witness ANAN's general credibility and his ability to identify Ngirabatware in other sections of this Judgement, and that the Chamber has found him to be a credible and reliable witness (3.3.4). The Chamber will now evaluate Witness ANAN's credibility in relation to the Electrogaz allegations.

290. In relation to Witness ANAN's testimony on the alleged roadblock and demonstration at Electrogaz, the Chamber considers that his evidence was both credible and reliable. Witness ANAN testified to being a CDR party leader within Gisenyi *préfecture* during the relevant time period and to having attended the Electrogaz demonstration. His involvement in both the CDR party and in the events occurring in early 1994 would have provided him with significant knowledge of the events of this time period.

291. The Defence submits that Witness ANAN was an uncooperative witness who avoided responding to certain questions, and suggests that his testimony should be disregarded in its entirety.<sup>405</sup> The Chamber recalls that in its cross-examination, the Defence dwelled for days on the witness' offences in Rwanda instead of on his evidence regarding Ngirabatware, and this caused uneasiness in the witness that his case would be reopened. Indeed, the Defence commenced its cross-examination of Witness ANAN on the morning of 2 February 2010, but did not put a question to the witness concerning Ngirabatware until the afternoon of 4 February

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47 (Ngirabatware) (the Electrogaz roadblock had been manned by *gendarmes* since 1990); T. 15 June 2011, p. 10 (Nsabimana) (there was a roadblock manned by soldiers at Electrogaz and the soldiers were not joined by civilians at any time before 6 April 1994); T. 21 June 2011, p. 64 (CS); (Witness DWAN-11) (saw a roadblock located not far from Electrogaz filling station which was manned by *gendarmes* and set up before the death of the President); T. 24 October 2011, p. 23 (CS) (Witness DWAN-9) (one of two official roadblocks was manned by the army at Electrogaz); T. 7 July 2011, pp. 75-76 (Witness DWAN-2) (indicating that there was a roadblock at Gashogoro's house and that it was manned by *gendarmes* even before the death of the President); T. 22 February 2012, p. 16 (Aouili) (testifying that their headquarters was "not far" from the military checkpoint before the junction on the road leading to the brewery and the residence of the President); T. 13 July 2011, p. 39 (Witness DWAN-4) (indicating that the first roadblock that he saw in Rushubi *secteur* was manned by *gendarmes* and was located at the Electrogaz installations); T. 17 October 2011, pp. 35-36 (Habinshuti) (confirming that one of three roadblocks established before the death of the President was at Electrogaz and it was manned by *gendarmes* or soldiers); T. 20 February 2012, p. 42 (Witness DWAN-114) (testifying that in February 1994 the only roadblocks he knew of were manned by the military, save for one temporary civilian one in reaction to an event). The Chamber additionally notes the testimony of Witness DWAN-21 who testified that he did not hear of a civilian manned roadblock in the Electrogaz area. T. 28 September 2011, p. 43 (CS). However, the sole basis for this witness' testimony comes from *Gacaca* proceedings and as such, it has limited probative value.

<sup>404</sup> Chambers Exhibit 1 (Site Visit Report), p. 6; Defence Additional Submissions on Site Visit, para. 16.

<sup>405</sup> See, for example, Defence Closing Brief, paras. 536, 552.

2010.<sup>406</sup> The Chamber considers that these circumstances account for the witness' demeanor during the proceedings.

292. The Defence also submits that Witness ANAN's prior statements either contained omissions or were inconsistent with his testimony, and call into question his credibility.<sup>407</sup> In none of these statements did he mention Ngirabatware or his presence at roadblocks<sup>408</sup> which the witness explained was because no one asked him specific questions about Ngirabatware.<sup>409</sup> In a 2005 statement to ICTR investigators he did mention the event at Electrogaz in February 1994. As for the purported inconsistencies between his prior statements and his testimony, the Chamber considers that they are insufficient to raise doubt in Witness ANAN's evidence in regard to this allegation.

293. The Defence also identifies various inconsistencies within Witness ANAN's testimony and other evidence in this case.<sup>410</sup> Having reviewed these submissions and the evidence particularly on this issue, the Chamber does not consider that any variations could materially impact upon Witness ANAN's overall credibility or his credibility in relation to the allegation at issue here. The Chamber therefore considers that Witness ANAN gave a credible and consistent account of the events as alleged in paragraph 48 of the Indictment.

294. The Chamber will now turn to the Defence evidence. Ngirabatware identified the Electrogaz roadblock as being manned by *gendarmes* and denied being present there after Bucyana's death.<sup>411</sup> The Chamber notes the obvious motive that Ngirabatware may have in deflecting this criminal allegation against him in his own trial, and takes this into account in assessing his testimony.

295. The Chamber recalls the evidence of Witnesses Edison Nsabimana, DWAN-71, DWAN-11, DWAN-21, DWAN-2, DWAN-55, DWAN-4, DWAN-9, DWAN-147, Joseph Habinshuti, DWAN-114 and Tchemi Tchambi Aouili as well as Witness ANAD who testified as to one roadblock in the Electrogaz area which was manned by *gendarmes* or the military. The Chamber takes note of this evidence but considers it to be of limited probative value because of its general nature and because it does not raise doubt as to the existence of a civilian manned roadblock at that location on that particular day as testified to by Witness ANAN.

296. Witness DWAN-11 helped manning the roadblock in Kiroji near a market and at the cross-roads leading toward the brewery in June 1994.<sup>412</sup> He testified about the general scene at

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<sup>406</sup> See T. 2 February 2010; T. 3 February 2010; T. 4 February 2010, p. 46 (CS) (Witness ANAN). The cross-examination was completed on 8 February 2010.

<sup>407</sup> See, for example, Defence Closing Brief, paras. 532-535, 545, 551-554, 556-560, 564.

<sup>408</sup> See Defence Exhibit 36A (Statement of Witness ANAN, 1 June 2002) (Kinyarwanda); Defence Exhibit 37 (Confession of Witness ANAN, 17 February 2002); Defence Exhibit 38 (Statement of Witness ANAN, 29 August, 11 and 13 September, and 18, 19 and 20 November 2002); Defence Exhibit 43 (Confession of Witness ANAN, 12 December 2002). Witness ANAN also testified to writing confessions in the first week of April 2005, but these documents were not entered into evidence and consequently the Chamber has not had an opportunity to review them. See T. 8 February 2010, pp. 59-61, 66-76, 83, 99 (CS) (Witness ANAN).

<sup>409</sup> See, for example, T. 8 February 2010, p. 30 (CS) (Witness ANAN).

<sup>410</sup> See, for example, Defence Closing Brief, paras. 537-550, 555-558, 561-564.

<sup>411</sup> T. 1 December 2010, pp. 47-48; T. 14 December 2010, pp. 46-48.

<sup>412</sup> T. 21 June 2011, p. 56 (CS) (Witness DWAN-11).

Electrogaz, but admits that he did not man that roadblock. He denied seeing Ngirabatware in 1994. In the Chamber's view, this evidence carries limited weight because he stated that he is not in a position to "accept or contest the testimonies of other persons concerning that which unfolded at the roadblock close to Electrogaz".<sup>413</sup>

297. Finally, the Chamber notes the testimony of the two UNAMIR observers, Tchemi Tchambi Aouili and Witness DWAN-114, that they did not see or hear of a demonstration of this magnitude at this location and that it could not have taken place without their knowledge of it. Specifically, Aouili testified that he never heard of or saw a minister addressing a large group of people or inciting violence at any roadblock. He also never saw or heard of the establishment of a civilian roadblock during his time in Gisenyi. He was aware of the Electrogaz roadblock manned by soldiers and that he would have been aware of a public gathering of about 100 people or if a minister incited hatred against the Tutsi in February 1994.<sup>414</sup> Witness DWAN-114 testified that after the death of Bucyana he does not recall any demonstrations or riots in Gisenyi. He does not recall a civilian roadblock at Electrogaz where a minister addressed and incited civilians manning a roadblock.<sup>415</sup> He also testified that if such a gathering occurred a report would have been made by UNAMIR.

298. The Chamber has considered the limitations placed on UNAMIR observers in carrying out their mandate and their likely lack of information of events such as large-scale demonstrations in Gisenyi in February 1994. The Chamber observes that they were not tasked with investigations, which belonged to the civilian police. Additionally, both UNAMIR witnesses acknowledged that events may have occurred in the area about which they may not have been aware.

299. As such the evidence adduced by the Defence does not raise a reasonable doubt in the compelling account provided by Witness ANAN. The Chamber finds, Judge Sekule dissenting, that Witness ANAN can be relied upon to prove these allegations without corroboration. In view of these considerations, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that following the murder of CDR Chairman Martin Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune*. At Electrogaz he addressed those present, which were approximately 400 people, saying: "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock." The Chamber has found elsewhere that a roadblock was subsequently established at Kitracó after the death of the President on 6 April 1994 (3.5.4).

#### **3.4.4.2 Cyanika-Gisa Roadblock**

300. Paragraphs 24, 41 and 49 of the Indictment allege that in February 1994 Ngirabatware went to the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba *commune* to address the crowd and gave 30,000 francs to *Interahamwe* youths manning the roadblock, including Honoré Ndayamiyemensi. This sum was given to the *Interahamwe* as

<sup>413</sup> T. 22 June 2011, pp. 28, 68 (CS) (Witness DWAN-11).

<sup>414</sup> T. 22 February 2012, pp. 15-18, 20, 23-24, 26 (Aouili).

<sup>415</sup> T. 20 February 2012, pp. 48, 50, 53; T. 21 February 2012, pp. 3-4 (Witness DWAN-114).

encouragement and incitement for their work in capturing and killing Tutsis. The Prosecution relies on Witnesses ANAN and ANAT.<sup>416</sup>

301. Witness ANAN testified that as part of the demonstrations after the assassination of Bucyana, the witness went to Cyanika. A roadblock was located on a tarmac road near the Cyanika market in the Gisa *secteur*. There were between 150 and 250 youths at the roadblock. Ngirabatware was at the roadblock at approximately 2.00 p.m. and spoke with Honoré Ndayamiyemensi, the leader of the *Impuzamugambi* of the CDR, and the youths at the roadblock.<sup>417</sup> Ngirabatware stated: “[w]e were affected that the Tutsis had caused a calamity, but that we should take vengeance. You have to avenge yourselves; you have to kill Tutsi”. Ngirabatware then took “some little” money out of his pocket and gave it to “them”, possibly to buy drinks for the people manning the roadblock.<sup>418</sup>

302. Witness ANAT testified that a day after the death of Martin Bucyana, he saw Ngirabatware at the roadblock he was manning in Cyanika, which was located on the road leading from Gisenyi to Ruhengeri.<sup>419</sup> Ngirabatware assembled the group at the roadblock and told them that Bucyana had been killed and that “finally we will have our turn”. He told the group “to track down all the Tutsi [...] for the purpose of killing each and every one of them, and that none of them should escape”. After the statement, he gave Honoré Ndayamiyemensi, a CDR leader, 50,000 francs. Ngirabatware asked Ndayamiyemensi to buy traditional weapons with the money and use the remainder to buy drinks. The weapons were to be used by the *Interahamwe* to kill Tutsis.<sup>420</sup>

303. The Defence submits that no roadblock existed at that time in that location and Ngirabatware was not present there as alleged in the Indictment. Additionally, the Defence asserts that the Indictment states that the roadblock was in Nyamyumba *commune* but that the testimony shows that Gisa *secteur* is in Rubavu *commune*, making this evidence outside the scope of the relevant Indictment paragraphs. The Defence also argues that there is a major contradiction in the testimony of the Prosecution witnesses, as Witness ANAT testified that Witness ANAN was not present at the Cyanika roadblock because he was from Ngororero.<sup>421</sup>

304. The alleged location of the Cyanika-Gisa roadblock was identified and agreed upon by the Parties as it was placed by the Registry during the site visit. The Prosecution stated that there was no physical Customs House there in 1994. However, the Prosecution submits that Cyanika is 700 meters away from Gisa, and argues that Witnesses ANAN and ANAT were at the same demonstration at the same roadblock despite Witness ANAN referring to the roadblock as the “Cyanika” roadblock while Witness ANAT referred to it as the “Gisa” roadblock.<sup>422</sup> The Defence submits that the distance between Cyanika and Gisa is more than one kilometer.<sup>423</sup> The

<sup>416</sup> Indictment, paras. 24, 41, 49; Prosecution Closing Brief, paras. 84-85, 132-133, 154-157; Prosecution Closing Argument, T. 23 July 2012, pp. 14, 29, 42-44.

<sup>417</sup> T. 1 February 2010, pp. 36-37, 40, 43.

<sup>418</sup> T. 1 February 2010, pp. 36-39.

<sup>419</sup> T. 16 March 2010, pp. 67, 70; T. 17 March 2010, p. 59.

<sup>420</sup> T. 16 March 2010, pp. 67-68.

<sup>421</sup> Defence Closing Brief, paras. 566, 568, 570, 573, 583; Defence Closing Argument, T. 24 July 2012, p. 33; T. 25 July 2012, p. 41; Defence Additional Submissions on Site Visit, para. 11.

<sup>422</sup> Chambers Exhibit 1 (Site Visit Report), p. 5; Prosecution Additional Submissions on Site Visit, paras. 37-39.

<sup>423</sup> Defence Additional Submissions on Site Visit, para. 12.

Defence also submits that the location of the alleged roadblock is in Rubavu *commune* and falls outside the scope of the Indictment.

305. The Chamber observes that all the witnesses described the same roadblock, no matter what name they used to refer to it. The Chamber observed the alleged location of this roadblock on its site visit. This location of the alleged roadblock was also confirmed by the Parties at that time. Therefore, the Chamber finds that Witness ANAN and Witness ANAT testified as to the same roadblock and will refer to it as the Cyanika-Gisa roadblock.

306. The Chamber recalls that both Witness ANAN and Witness ANAT testified to Ngirabatware speaking and giving money to Honoré at Cyanika-Gisa.<sup>424</sup> The presence of Honoré at this roadblock is corroborated by Witness ANAO, who testified that one could easily realize that Benimana and Honoré were responsible for the Gisa roadblock in 1994.<sup>425</sup> It is also partially corroborated by Witness DWAN-49 who knew Honoré Ndayamiyemensi as his name was mentioned in several *Gacaca* trials as a leader of activities at the Cyanika roadblock, though all his convictions were for criminal activities after 6 April 1994.<sup>426</sup>

307. The Chamber is cognizant of the discrepancy in dates between the testimony of Witness ANAN placing the demonstrations two to three days after Bucyana's assassination and Witness ANAT who places this event as occurring the day after the assassination.<sup>427</sup> However, the Chamber considers this to be a minor discrepancy in light of the time that has elapsed since these events and because of the similarities of both accounts. The Chamber is convinced that they both refer to the same event.

308. The Chamber has dealt with Witness ANAN's general credibility in another section of this Judgement, and has found him to be a credible and reliable witness. The Chamber has also found that Witness ANAN would have been able to reliably identify Ngirabatware (3.3.4).

309. In relation to these allegations, the Defence submits that there was collusion between Witness ANAN and Witness ANAT. The Chamber considers this to be speculative. It may be that the testimony of Witness ANAT hints at the possibility that the testimony of Witness ANAN may be tainted based on his exposure to the statement of Witness ANAT. However, the Chamber observes that there are differences in their testimony, which precludes any tainting and does not see how this would affect the credibility of Witness ANAN.<sup>428</sup>

310. The Chamber notes the Defence submissions regarding the alleged contradiction in the Prosecution testimony, with both testifying as to being present but Witness ANAT stating that

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<sup>424</sup> T. 1 February 2010, pp. 36-37, 40, 43; T. 8 February 2010, p. 94 (CS) (Witness ANAN); T. 16 March 2010, pp. 67-68, 70; T. 17 March 2010, p. 59 (Witness ANAT).

<sup>425</sup> T. 16 February 2010, pp. 14-23; T. 17 February 2010, pp. 4-5; T. 18 February 2010, pp. 6-7 (CS) (Witness ANAO); Prosecution Exhibit 6A (Photograph); Prosecution Exhibit 6B (Photograph); Prosecution Exhibit 6C (Photograph); Prosecution Exhibit 6D (Photograph).

<sup>426</sup> T. 19 September 2011, p. 32; T. 20 September 2011, pp. 6-7.

<sup>427</sup> T. 1 February 2010, pp. 33-34, 43 (Witness ANAN); T. 16 March 2010, pp. 67-68, 70; T. 17 March 2010, p. 59 (Witness ANAT).

<sup>428</sup> For further detail about this, see Defence Closing Brief, para. 554, fn. 1104; Prosecution Exhibit 14 (Personal Identification Sheet) (Witness ANAN).



Witness ANAN was not present.<sup>429</sup> However, the Chamber considers this to be a minor discrepancy. In reviewing the record, it is clear that Witness ANAN and Witness ANAT appear to have met for the first time after the events of 1994. Given that they had not met in 1994, Witness ANAT would not have been able to recognize Witness ANAN at the time of the February 1994 demonstration. Both witnesses describe the presence of Honoré Ndayamiyemensi as the leader of that roadblock in 1994, which as discussed above is corroborated by other witnesses as well. Furthermore, both witnesses testify to “a group”, whose number Witness ANAN places between 150 and 250 people, assembled at this location. It is possible that both were present and did not see each other in the group. Finally, Witness ANAN was never asked during his testimony whether Witness ANAT was present at the meeting, his evidence is silent on this account. For all these reasons, the Chamber does not consider that this discrepancy casts any doubt on the credibility of either witness. The Chamber will now turn to assessing the evidence given by Witness ANAT.

311. The Chamber observes that Witness ANAT’s conviction was on appeal in Rwanda at the time of his testimony, which gives him a possible motive to colour his testimony. The Chamber also recalls that the witness admitted to signing a false statement dated 4 January 1997, albeit after allegedly being beaten by Rwandan authorities in the aftermath of his arrest.<sup>430</sup> The Chamber will therefore treat his testimony with the appropriate caution.

312. The Chamber notes that it is clear from the record that Witness ANAT had the ability to identify Ngirabatware, as he saw him at a rally in February 1994.<sup>431</sup> The Chamber has also considered that the witness does not implicate Bagango or Ngirabatware in letters he wrote to his *Gacaca* court after his conviction, though he does so in his testimony. He stated that the letters went through Gisenyi prison’s *Gacaca*, in which Bagango and Ngirabatware’s relatives attempted to influence prisoners not to name Ngirabatware in documents, and he feared for his life and lives of family members if he were to name them.<sup>432</sup> The Chamber finds that to be a reasonable explanation for the omissions.

313. The Chamber considers that both Prosecution witnesses were able to reliably identify Ngirabatware at Cyanika-Gisa. Both Witness ANAN and Witness ANAT gave credible and consistent accounts of the events as alleged in paragraph 24, 41 and 49 of the Indictment.

314. Moving to the Defence evidence the Chamber notes the testimony of the two UNAMIR observers, Tchemi Tchambi Aouili and Witness DWAN-114, that they were familiar with the Cyanika-Gisa area, that they did not see or hear of a demonstration of this magnitude there in February 1994 and that it could not have taken place without their knowledge of it. Specifically, Aouili testified that he never heard of or saw a minister addressing a large group of people or inciting violence at any roadblock in Gisenyi.<sup>433</sup> He also never saw or heard of the establishment of a civilian roadblock during his time in Gisenyi.<sup>434</sup> Witness DWAN-114 testified that after the

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<sup>429</sup> See Defence Closing Brief, paras. 565-583.

<sup>430</sup> T. 16 March 2010, p. 80 (CS) (Witness ANAT).

<sup>431</sup> T. 17 March 2010, pp. 54-55 (Witness ANAT). The Chamber notes that the Defence disputes that Ngirabatware attended such a rally.

<sup>432</sup> T. 17 March 2010, p. 44 (Witness ANAT).

<sup>433</sup> T. 22 February 2012, pp. 16-17, 24, 26 (Aouili).

<sup>434</sup> T. 22 February 2012, pp. 23-24 (Aouili).

death of Bucyana he does not recall any demonstrations or riots in Gisenyi.<sup>435</sup> He does not recall a civilian roadblock on the main road from Gisenyi at Cyanika-Gisa.<sup>436</sup> He also testified that if such a gathering occurred with a minister inciting people to kill others they would have protested and a report would have been made by the UNAMIR observers as they had a mandate to report on these kind of events.

315. The Chamber has considered the limitations placed on UNAMIR observers in carrying out their mandate and their likely lack of information of events such as large scale demonstrations in Gisenyi in February 1994. The Chamber observes that they were not tasked with investigations, which belonged to the civilian police. Additionally, both UNAMIR witnesses acknowledged that events may have occurred in the area which they may not have been aware of.

316. The Chamber recalls that Joseph Habinshuti gave general testimony to the effect that no such demonstration occurred at Cyanika-Gisa because he would have heard of it in his position as a *gendarme*, being tasked with providing security at public gatherings and particularly being ordered to be on alert for possible demonstrations in the aftermath of Bucyana's death.<sup>437</sup> However, the Chamber considers that based on his testimony Habinshuti was back at the military camp by 2.00 p.m. which is the time the Cyanika-Gisa demonstration is alleged to have occurred. Therefore, there is no contradiction between Habinshuti's testimony that the Cyanika-Gisa area was quiet when he drove through it on his way back to the camp and the testimony of Witness ANAN who testified that the demonstration at that location began at approximately 2.00 p.m.<sup>438</sup>

317. Moreover, the Chamber finds that Habinshuti's insistence that demonstrations, killings and other events did not happen in his area, despite being confronted with documents to the contrary dating from 1994, diminishes his credibility.<sup>439</sup>

318. The Chamber has also considered the evidence of Witness DWAN-49, that a roadblock did not exist at Cyanika-Gisa prior to the death of President Habyarimana,<sup>440</sup> but considers it to be of limited probative value. Part of the basis for his testimony stems from evidence gathered in the context of *Gacaca* proceedings. The Chamber considers however that it is possible that not all events occurring during 1994 may have been raised in *Gacaca* proceedings, and the Chamber chooses not to credit evidence of this nature over first-hand accounts. Another basis for his knowledge is that he travelled past this area every day. However, the Chamber considers that this general and vague testimony does not rule out the possibility of the mid-afternoon demonstration testified to by the Prosecution witnesses. At the time of the demonstration the witness may have been unable to observe any events taking place there. As such the evidence adduced by the Defence does not raise a reasonable doubt in the compelling accounts provided by Prosecution

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<sup>435</sup> T. 20 February 2012, pp. 48-50, 53; T. 21 February 2012, pp. 3-4 (Witness DWAN-114).

<sup>436</sup> T. 20 February 2012, pp. 48-50, 53; T. 21 February 2012, pp. 3-4 (Witness DWAN-114).

<sup>437</sup> T. 17 October 2011, pp. 17-19, 26 (Habinshuti).

<sup>438</sup> T. 17 October 2011, pp. 23-24, 63 (Habinshuti); T. 1 February 2010, pp. 36-40, 43; T. 8 February 2010, p. 94 (CS) (Witness ANAN).

<sup>439</sup> T. 17 October 2011, pp. 51-52, 67-70 (Habinshuti); Prosecution Exhibit 61A (UNAMIR Weekly Sitrep, 15 to 22 February 1994).

<sup>440</sup> T. 19 September 2011, pp. 31, 39 (Witness DWAN-49).

Witnesses ANAN and ANAT. The Chamber finds that these witnesses can be relied upon to prove these allegations.

319. In view of these considerations, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that following the murder of CDR Chairman Martin Bucyana, Ngirabatware went to the Cyanika-Gisa tarred road in Nyamyumba *commune* to address the crowd and told them to “kill Tutsi”. “A group”, whose number may have been as high as between 150 and 250 people, were assembled at this location.<sup>441</sup> Ngirabatware then gave 50,000 francs to Honoré Ndayamiyemensi to buy drinks and/or traditional weapons.

320. The Chamber observes that Witness ANAT indicated this money was to be used to buy traditional weapons and the weapons served that purpose”, as the Tutsis in the vicinity, particularly in Gisa, “were hunted down and killed”.<sup>442</sup> However, he did not develop or explain this statement, including on what basis he believed that weapons were purchased or that these weapons were used to kill Tutsis. Additionally, other than a murder in 1993, which he admits taking part in and the genocide crimes he pleaded guilty to; the witness mentions no killings between February and April 1994. The witness provided no details concerning the circumstances or location or time period during which these weapons were used, nor did he give any identifying information concerning the assailants or victims.<sup>443</sup> Taking these factors into account, the Chamber concludes that the Prosecution has not established beyond reasonable doubt that any weapons were purchased with this 50,000 Rwandan francs or that they would have been used in any attacks subsequent to this event.<sup>444</sup>

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<sup>441</sup> See T. 1 February 2010, p. 37 (Witness ANAN) (“Q. Witness, at that roadblock [at Cyanika-Gisa], about how many youths did Ngirabatware speak to? A. There were many. Q. Once again I will request you to give an estimate. A. I would say between 150 and 250.”). The Chamber observes that the non-authoritative, oral summary of the Judgement erroneously stated that “as many as 150 to 200 people had been assembled there”. T. 20 December 2012, p. 5. See also T. 20 December 2010, p. 2 (“[T]he Chamber emphasises that only the written judgment is authoritative.”).

<sup>442</sup> T. 16 March 2010, p. 68.

<sup>443</sup> See *Kalimanzira*, Judgement (AC), para. 77.

<sup>444</sup> Indictment, paras. 24, 41, 49.

### 3.5 Creation of *Interahamwe* Group, Early 1994

#### 3.5.1 Introduction

321. Paragraph 21 of the Indictment alleges that “in early 1994, Ngirabatware created a group of *Interahamwe* militia over whom he had effective *de facto* control, and positioned them at [Kitraco] crossing point in Nyamyumba *commune*, between Lake Kivu and Congo in order to capture and kill members of the Tutsi population”.<sup>445</sup>

322. The Prosecution submits that a close relationship existed between Ngirabatware and Bagango, the *bourgmestre* whom Ngirabatware used as his “right-hand” man, to create, organize and arm *Interahamwe* militia and lead them in the killings of Tutsis in Nyamyumba *commune*. It asserts that through Bagango, Ngirabatware exercised effective *de facto* control over the *Interahamwe* who played an instrumental role in the genocide. The Prosecution relies upon Witnesses ANAN and ANAO.<sup>446</sup>

323. The Defence challenges the sufficiency of paragraph 21 and submits that the Prosecution did not lead any credible evidence to support this allegation. The Defence relies upon Ngirabatware and Witness DWAN-21.<sup>447</sup>

#### 3.5.2 Notice

324. The Chamber recalls the general principles on notice (2.2). The Defence asserts that paragraph 21 is defective because no specific date is pleaded except “early 1994”.<sup>448</sup> The Chamber recalls that this matter has already been adjudicated and dismissed in its Decision of 8 April 2009.<sup>449</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>450</sup> The Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decision that the time frame of “early 1994” is sufficient to provide adequate notice to the Defence.

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<sup>445</sup> Indictment para. 21. The Chamber notes that the name “Gitarako” appearing in the Indictment sometimes appears as “Gitrako”, “Gitraco” or “Kitraco” in the transcripts and other materials submitted by the Parties but recalls that the Parties agreed that the location would be “Kitraco”, which is the spelling adopted throughout this Judgement. See T. 16 February 2010, pp. 55-56.

<sup>446</sup> Prosecution Closing Brief, paras. 75-77; Prosecution Closing Argument, T. 23 July 2012, p. 11; T. 24 July 2012, p. 49. See also Prosecution Closing Brief, fn. 132. The Chamber notes that the Prosecution also relies upon the evidence of Witnesses ANAK, ANAU, ANAJ, ANAT and ANAD in respect of this allegation. The Chamber has considered their evidence in relation to this allegation, but does not consider it to be sufficiently relevant to warrant being set out below. In assessing this allegation, the Chamber will also take into account paragraph 18 of the Indictment and the Prosecution’s submissions in relation to that paragraph. See Prosecution Closing Brief, para. 74 (referring, in part, to its submissions on paragraph 21 of the Indictment).

<sup>447</sup> Defence Closing Brief, paras. 41-45, 51-59, 256-259, 261-269; Defence Closing Argument, T. 24 July 2012, p. 38. The Chamber also notes that the Defence relies upon the evidence of witnesses whose testimony the Chamber considers is not relevant to the allegation in paragraph 21 such as Witnesses DWAN-1, DWAN-2, DWAN-3, DWAN-4, DWAN-11, DWAN-12, DWAN-41, DWAN-47 and DWAN-71.

<sup>448</sup> Defence Closing Brief, paras. 41-42, 259.

<sup>449</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>450</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

325. The Chamber also recalls that in its 8 April 2009 Decision it sufficiently addressed the Defence contention that it is illogical to charge Ngirabatware under Article 6(1) for exercising effective *de facto* control over the group of *Interahamwe* militia since he is not charged under Article 6(3) of the Statute for this paragraph.<sup>451</sup> In its Decision, the Chamber stated “it [...] does not find how the use of ‘*de facto* control’ for facts underpinning charges under Article 6(1) may be prejudicial to the Accused while preparing his defence. Consequently, the Chamber dismissed the Defence arguments on this issue.”<sup>452</sup> The Defence has not advanced any arguments that would now warrant reconsideration.

326. The Defence further submits that Indictment paragraph 21 is defective as it does not contain any mode of liability or the material facts on Ngirabatware’s alleged criminal activity.<sup>453</sup> It disputes the existence of “[Kitraco] crossing point in Nyamyumba commune between Lake Kivu and Congo which it claims does not exist”.<sup>454</sup> Finally, the Defence submits that the alleged victims are not specifically identified except through a broad categorisation of “members of the Tutsi population”.<sup>455</sup>

327. The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>456</sup> and that the Chamber ruled upon this issue over three years ago.<sup>457</sup> The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings and it has not provided any explanation regarding any prejudice suffered. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to this Indictment paragraph.

328. Regarding the Defence contention that Kitraco crossing point does not exist, the Chamber observes that during the site visit the location of Kitraco was identified, viewed and observed by the Parties.<sup>458</sup> Moreover, several Prosecution and Defence witnesses in this case testified to knowing the location of Kitraco. In the Chamber’s view, the Defence’s contention is therefore without merit.

329. Having found that the Defence arguments regarding adequate notice are without merit the Chamber will now proceed to determine whether the Prosecution has proven the allegations contained in Indictment paragraph 21 beyond a reasonable doubt.

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<sup>451</sup> Defence Closing Brief, paras. 54-59.

<sup>452</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 31.

<sup>453</sup> Defence Closing Brief, 54-59.

<sup>454</sup> Defence Closing Brief, paras. 43-45.

<sup>455</sup> Defence Closing Brief, paras. 51-53.

<sup>456</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009.

<sup>457</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>458</sup> Chambers Exhibit1 (Site Visit Report), p. 7.

### 3.5.3 Evidence

#### Prosecution Witness ANAN

330. Witness ANAN, is a Hutu who identified himself as a former CDR official and *Impuzamugambi* representative in Gisenyi *préfecture* in 1994.<sup>459</sup> Witness ANAN testified that he has known Ngirabatware since 1990 when the witness' brother-in-law, who worked under Ngirabatware, introduced them. Later on, Witness ANAN met and eventually befriended some of Ngirabatware's friends, including Faustin Bagango, Max Turinabo and Théogène Nzabanita. Witness ANAN described Ngirabatware as the head of the Ministry of Finance, and said that he would visit Ngirabatware at his Ministry when it was in Muhima in Kigali. Witness ANAN identified Ngirabatware in court.<sup>460</sup>

331. Witness ANAN learned of the assassination of Martin Bucyana, the National Chairman of the CDR party over the radio, in February 1994 while he was in Ramba *commune* in Gisenyi *préfecture*. That evening, he received a call from a CDR official informing him that everyone must proceed to Gisenyi the next morning to participate in demonstrations. The next morning he travelled to Gisenyi town to the CDR office. The demonstrations had already been organized at the *préfecture* level by many people, but this was done before the demonstrations took place and the witness was not involved in that meeting. At the CDR office speeches were given but only demonstrations were on the agenda.<sup>461</sup>

332. According to the witness, there were a "huge number" of people at Electrogaz on the day of the demonstration, since "the Hutus had already been killed" and "they felt like they could die at any time". People did not go to work, and the demonstrations lasted about a week.<sup>462</sup>

333. Witness ANAN saw Ngirabatware at Electrogaz that day. Ngirabatware came to the roadblock from the road which leads from his parents' house. According to the witness, there were two roadblocks at this place: one roadblock located on the road that led to the brewery which was manned by soldiers, and another roadblock on the road leading to Gitarama which was manned by CDR members and *Interahamwe*.<sup>463</sup>

334. When the demonstrators arrived, Witness ANAN saw Ngirabatware at the Electrogaz roadblock, which is at a fork in the road that leads either to Ngirabatware's house and Nyamyumba *commune* or to Lake Kivu and through to Kitracó.<sup>464</sup> There were approximately 400 demonstrators at the roadblock. Ngirabatware told the crowd: "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock." Ngirabatware also gave instructions for a roadblock to be erected at Kitracó to block

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<sup>459</sup> Prosecution Exhibit 14 (Personal Identification Sheet); T. 27 January 2010, p. 62 (CS); T. 3 February 2010, pp. 8, 17-19 (CS).

<sup>460</sup> T. 27 January 2010, p. 62 (CS); T. 27 January 2010, pp. 64-66; T. 1 February 2010, pp. 13, 15-17.

<sup>461</sup> T. 1 February 2010, p. 33; T. 4 February 2010, pp. 78-79 (CS); T. 8 February 2010, pp. 2, 4-8, 10, 88-89, 101 (CS).

<sup>462</sup> T. 1 February 2010, pp. 33-34, 43.

<sup>463</sup> T. 1 February 2010, pp. 32-33; T. 8 February 2010, pp. 84, 89, 94 (CS).

<sup>464</sup> The Chamber notes that throughout the transcripts the spelling of this location changes but recalls that the Parties agreed that the location would be "Kitracó", which is the spelling adopted throughout this Judgement. See T. 16 February 2010, pp. 55-56.

people fleeing through the port. Subsequent to these instructions, a roadblock was erected at Kitiraco. No one else spoke after Ngirabatware's speech and the demonstrations commenced immediately thereafter. Ngirabatware did not participate in the demonstration, but instead moved towards Hotel Regina.<sup>465</sup>

#### Prosecution Witness ANAO

335. Witness ANAO, a Hutu, who lived in Nyamyumba *commune*,<sup>466</sup> testified that he worked at the Kitiraco market in 1994. He was an *Interahamwe* and among those who manned the Gitsimbi/Cotagirwa roadblock.<sup>467</sup>

336. According to Witness ANAO only one roadblock was established after the death of President Habyarimana and it was located at Kitiraco on the road between Gisenyi town and the methane gas plant. He stated that the barrier was set up near the Trafirpro warehouse and shop, in front of Bunyago hill. It crossed the road near an avocado or pear tree, under which sat the *Interahamwe* and the person in charge of opening the roadblock. The witness mentioned that when they manned roadblocks they received caps and other attire from the *Interahamwe*. From the barrier, one could see part of Lake Kivu, which was between 35 and 40 meters away.<sup>468</sup>

#### Augustin Ngirabatware

337. Ngirabatware denied being at the Electrogaz roadblock several days after Martin Bucyana's death.<sup>469</sup>

338. Ngirabatware knew the Kitiraco area but denied taking part in any demonstration or meeting there. The last time he went to Kitiraco was ten years before 1994. Kitiraco centre is about one-and-a-half kilometers from the Gisenyi residence of President Habyarimana.<sup>470</sup>

339. Ngirabatware also testified that the *Interahamwe* was the youth wing of the MRND. He did not know if the youth wing of the MRND underwent military training. There were *Interahamwe* at *secteur*, *commune*, *préfecture*, and national level. The leadership of the MRND had an eye on the activities of the *Interahamwe* in the *préfecture*. However, at the national committee, he does not remember having to consider this matter. The president of the MRND never came to ask Ngirabatware for assistance.<sup>471</sup>

340. Ngirabatware stated that he never contributed money to any entity of the MRND in Nyamyumba *commune*, whether for the *Interahamwe* or for party matters. He never provided any moral or financial assistance to any organ of the MRND within Nyamyumba *commune*. He

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<sup>465</sup> T. 1 February 2010, pp. 34-36.

<sup>466</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS); T. 17 February 2010, p. 13; T. 17 February 2010, p. 42 (CS).

<sup>467</sup> T. 15 February 2010, p. 37 (CS).

<sup>468</sup> T. 16 February 2010, pp. 33-36, 65-74; T. 17 February 2010, pp. 50-51; Prosecution Exhibit 6F (Photograph); Prosecution Exhibit 6M (Photograph); Prosecution Exhibit 6R (Photograph); Prosecution Exhibit 6S (Photograph); Prosecution Exhibit 6T (Photograph); Prosecution Exhibit 6U (Photograph).

<sup>469</sup> T. 1 December 2010, p. 48; T. 14 December 2010, pp. 46-48.

<sup>470</sup> T. 24 November 2010, p. 69; T. 1 December 2010, p. 59. (CS)

<sup>471</sup> T. 6 December 2010, p. 27; T. 8 December 2010, p. 34.

did not know the name of the person who headed the *Interahamwe* in Nyamyumba *commune* because, since 1993, Bagango was not president of the MRND in Nyamyumba. Bagango was not the leader of the *Interahamwe* in 1994. Ngirabatware testified that he never distributed any weapons to Bagango or anyone else nor did he have *de jure* or *de facto* authority over the *Interahamwe* in Nyamyumba *commune* during the period in issue. Ngirabatware never had any direct or indirect link with the *Interahamwe* in Nyamyumba *commune*. He stated that the crimes the *Interahamwe* allegedly committed were committed without any direct or indirect involvement by him.<sup>472</sup>

#### Defence Witness DWAN-21

341. Witness DWAN-21, a Hutu, lived in Nyamyumba *commune*, Gisenyi *préfecture* in 1994.<sup>473</sup> The witness testified that Ngirabatware's name was never mentioned in any of the *Gacaca* courts in his locality. During those trials, Ngirabatware was not linked to public incitement, hate speech or weapons distribution.<sup>474</sup>

342. Witness DWAN-21 knows Kitiraco and stated that it is located between Rubona and Rushubi *secteur*. The witness never heard allegations relating to incitement to commit genocide, distribution of weapons, hate speech or establishment of civilian roadblocks in Kitiraco. There was no allegation made involving Ngirabatware in Rubona *secteur*.<sup>475</sup>

### **3.5.4 Deliberations**

343. As set out above (3.4.4.1), the Chamber recalls its finding, Judge Sekule dissenting, that following the killing of CDR Chairman Martin Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune*. At Electrogaz he addressed those present, which were approximately 400 hundred people, saying: "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock."

#### ***3.5.4.1 Establishment of Kitiraco Roadblock and Ngirabatware's Involvement***

344. Witness ANAN testified that at the CDR demonstration held at Electrogaz roadblock in late February 1994, Ngirabatware gave instructions that a roadblock be erected at Kitiraco.<sup>476</sup> Witness ANAN stated that subsequent to these instructions a roadblock was later erected at Kitiraco.<sup>477</sup> The establishment of a roadblock at Kitiraco is corroborated by Witness ANAO, who testified that the only roadblock set up after the death of the President was the Kitiraco roadblock. He indicated that the Kitiraco roadblock was located between Gisenyi town and the methane gas plant. It was manned by the *Interahamwe* and from the roadblock barrier, one could see part of

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<sup>472</sup> T. 8 December 2010, p. 35; T. 7 February 2011, pp. 10-11.

<sup>473</sup> Defence Exhibit 153 (Personal Identification Sheet).

<sup>474</sup> T. 28 September 2011, pp. 11-12, 15 (CS).

<sup>475</sup> T. 28 September 2011, pp. 43-44 (CS).

<sup>476</sup> T. 1 February 2010, p. 35 (Witness ANAN).

<sup>477</sup> T. 1 February 2010, p. 36 (Witness ANAN).



Lake Kivu, which was between 35 and 40 meters away.<sup>478</sup> The Chamber recalls that it has found these witnesses to be credible elsewhere in this Judgement (3.3.4; 3.4.4.1; 3.4.4.2; 3.8.3.4).

345. The Chamber notes that both witnesses are familiar with the location of Kitiraco, notably within the vicinity of Lake Kivu. The Chamber recalls that during the site visit<sup>479</sup> the delegation drove along the Methane Gas road where Nengo hill and Kitiraco were identified, viewed and observed by the Parties. The distance between Kitiraco and Electrogaz was estimated at 0.7 kilometers and the distance between the tarmac road and Lake Kivu at Kitiraco was 25 meters. In view of these observations, which the Parties agreed to, the Chamber is satisfied that Kitiraco and Lake Kivu are in the immediate vicinity of each other. The Chamber considers that this supports the testimony of Witness ANAO regarding the physical layout of the area and the location of Kitiraco.

346. Regarding the time frame of the establishment of the Kitiraco roadblock, the Chamber observes that while Witness ANAN did not specify when the roadblock was established, he indicated that it was set up subsequent to Ngirabatware's instructions at the Electrogaz roadblock in late February 1994. Conversely, Witness ANAO mentioned that the Kitiraco roadblock was established after the death of President Habyarimana. The Chamber considers that Witness ANAO corroborates the testimony of Witness ANAN as to the establishment of a roadblock at Kitiraco. The Chamber notes that only Witness ANAN testified that Ngirabatware gave instructions for the setting up of the roadblock.

347. Turning to the Defence evidence, the Chamber notes that Witnesses Ngirabatware and DWAN-21 admittedly knew Kitiraco which was located between Rubona and Rushubi *secteurs*. The Chamber considers that Ngirabatware had an obvious motive to distance himself from the events in 1994 and his evidence is thus of little probative value. The Chamber recalls that Witness DWAN-21 testified that during the *Gacaca* proceedings in that locality he never heard of allegations relating to the establishment of a civilian roadblock at Kitiraco.<sup>480</sup> The Chamber considers that the evidence of Ngirabatware and Witness DWAN-21 does not raise a reasonable doubt that a roadblock was set up at Kitiraco after 6 April 1994. Accordingly, the Chamber considers that the evidence of these witnesses is of little probative value and insufficient to cast doubt on the credible evidence adduced by the Prosecution.

348. The Chamber however observes that the Prosecution did not lead direct evidence to demonstrate that the Kitiraco roadblock was set up as a direct consequence of Ngirabatware's instructions in February 1994 nor is it the only reasonable inference. In the Chamber's view, it is plausible that the roadblock was set up because of the events that unfolded after 6 April 1994. The Chamber therefore considers that the Prosecution has failed to make a causal link that the Kitiraco roadblock was set up at the instruction of Ngirabatware at the CDR demonstration at Electrogaz roadblock in late February 1994.

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<sup>478</sup> T. 16 February 2010, pp. 33-37, 55-56, 65-74; T. 17 February 2010, pp. 50-51 (Witness ANAN); Prosecution Exhibit 6F (Photograph); Prosecution Exhibit 6R (Photograph); Prosecution Exhibit 6S (Photograph); Prosecution Exhibit 6T (Photograph).

<sup>479</sup> See Chambers Exhibit 1 (Site Visit Report).

<sup>480</sup> T. 28 September 2011, p. 43 (CS) (Witness DWAN-21).

349. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has proven beyond a reasonable doubt that a roadblock was set up at Kitracó after 6 April 1994. However, it has not been proven beyond reasonable doubt that the roadblock was set up as a result of Ngirabatware's instructions at the CDR demonstration at the Electrogaz roadblock in late February 1994.

#### **3.5.4.2 Subsequent Killings**

350. The Prosecution also alleges that the purpose for the establishment of the Kitracó roadblock was to prevent Tutsis from fleeing to Congo through Lake Kivu and that Tutsis were to be captured and killed by the *Interahamwe*. The Chamber, however, notes that the Prosecution has not led any direct evidence to substantiate this allegation. In addition, the Prosecution failed to demonstrate that any crimes whatsoever were committed by any *Interahamwe* manning the Kitracó roadblock. The Prosecution further does not identify any victims of alleged crimes perpetrated at this roadblock. Accordingly, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that those manning the Kitracó roadblock captured or killed Tutsis who may have attempted to flee to Congo via the Kitracó area.

#### **3.5.4.3 Ngirabatware's Alleged Involvement in the Creation of the Interahamwe**

351. The Prosecution alleges that Ngirabatware was involved in the creation of a group of *Interahamwe* militia over whom he exercised *de facto* control. The Chamber notes that none of the Prosecution witnesses cited in support of this allegation provided evidence to substantiate the assertion that Ngirabatware created a group of *Interahamwe* militia or that he positioned any such group at the Kitracó roadblock, which the Chamber has found was established after 6 April 1994.

352. Based on the foregoing, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegations in paragraph 21 of the Indictment.

### 3.6 Meeting at Cenge's House, March 1994

#### 3.6.1 Introduction

353. Paragraph 35 of the Indictment alleges that Ngirabatware convened a meeting at Cenge's house in March 1994, where the participants agreed to exercise vigilance against the Tutsi population. The Indictment alleges that *Bourgmestre* Faustin Bagango, *Conseiller* Jean Simpunga, and various CDR and MRND authorities were in attendance at this meeting.<sup>481</sup> The Prosecution Closing Brief makes no reference to any evidence to support this allegation.

354. The Defence raises notice issues and submits that no witnesses testified in support of these allegations,<sup>482</sup> which the Prosecution did not dispute in Closing Arguments.

#### 3.6.2 Notice

355. The Chamber recalls the general principles on notice (2.2). The Defence objects to the vagueness in the date in Indictment paragraph 35 by referring to "March 1994".<sup>483</sup> The Chamber recalls that this matter has already been adjudicated and dismissed in its Decision of 8 April 2009 and the Defence did not take any further action on the matter at that stage.<sup>484</sup> Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>485</sup>

356. The Chamber also notes the Defence argument that paragraph 35 refers to extermination whereas the applicable count of the Indictment is either genocide or complicity in genocide.<sup>486</sup> Seeing as the material facts, the nature of the charge, the *mens rea* and the *actus reus* are different between the crimes, the Defence submits there can be no finding as regards this paragraph. The Chamber will address this argument further, if necessary, in the Legal Findings section of the Judgement.

#### 3.6.3 Evidence

##### Augustin Ngirabatware

357. Ngirabatware had a half-brother<sup>487</sup> called Byukusenge, known as "Cenge", who lived in Rushubi *secteur* at a place known as *Bruxelles*. Ngirabatware had very good relations with

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<sup>481</sup> Indictment, para. 35. The Chamber notes that the Paragraph 13 of the Indictment makes a similar allegation under the charge of Conspiracy to Commit Genocide. During Closing Arguments, the Prosecution stated that it had dropped this charge. Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>482</sup> Defence Closing Brief, paras. 41-42, 60-61, 189-191, 327-328. See also Defence Closing Brief, paras. 80-82.

<sup>483</sup> Defence Closing Brief, paras. 41-42.

<sup>484</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>485</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>486</sup> Defence Closing Brief, paras. 60-61.

<sup>487</sup> The Chamber observes that the English transcript refers to Cenge as Ngirabatware's "step-brother" whereas the French transcript describes Cenge as Ngirabatware's "demi-frère". See T. 16 November 2010, p. 47; T. 16 November 2010, pp. 48-49 (French). The Chamber notes that the term "step-brother" may not adequately describe the fact that Ngirabatware and Cenge shared the same father, Paul Buzazi. This fact is amply reflected in the record and therefore the Chamber adopts the French translation of the relationship as the definitive one. See, for example,

Cenge, and Cenge would come to visit often when Ngirabatware came to Gisenyi. In the early years of Cenge's marriage, Ngirabatware would call on Cenge's house, but later Cenge would automatically go to Ngirabatware's parents' house when Ngirabatware visited.<sup>488</sup>

358. Ngirabatware stated that he only left Kigali twice in March 1994, on 12 March and 16 March when he travelled to Butare to lecture.<sup>489</sup> He denied convening meetings at his brother's house.<sup>490</sup>

#### Defence Witness DWAN-41

359. Witness DWAN-41, a Tutsi, was very familiar with the location of Cenge's house.<sup>491</sup> She knew Ngirabatware as the Minister of Planning and last saw him at the funeral of his father, Paul Buzazi, in 1993.

360. Cenge lived in Busheke *cellule* in his mother Venancie's house. When she passed away Cenge continued living in the house.<sup>492</sup> The witness knew *Conseiller* Simpunga and *Bourgmestre* Bagango in 1994 and no meeting was ever held at Cenge's house with Ngirabatware, Faustin Bagango, and Jean Simpunga.<sup>493</sup>

#### Defence Witness DWAN-71

361. Witness DWAN-71, a Hutu who lived in Nyamyumba *commune* and played an administrative role in Rushubi *secteur* in 1994,<sup>494</sup> testified that he knew Ngirabatware as a minister and member of the technical committee of Nyamyumba *commune* and that he did not see Ngirabatware in 1994.<sup>495</sup>

362. The witness knew Cenge and described the location of his house as being at "a centre called *Bruxelles* below the road" in Busheke *cellule*. Between April and July 1994, the witness never set foot inside Cenge's house.<sup>496</sup>

### **3.6.4 Deliberations**

363. The Chamber finds that there is undisputed and credible evidence that Ngirabatware had a half-brother named Cenge.<sup>497</sup> The Chamber further finds that Ngirabatware and Cenge shared the same father, Paul Buzazi.<sup>498</sup> However, according to the Prosecution Pre-Trial Brief, the sole individual who was anticipated to testify to a meeting convened by Ngirabatware at Cenge's

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T. 2 March 2010, p. 9 (Witness AFS); T. 1 March 2010, p. 24 (CS) (Witness ANAG); T. 16 June 2011, p. 9 (CS) (Witness DWAN-3).

<sup>488</sup> T. 16 November 2010, pp. 41-42; T. 1 December 2010, p. 41.

<sup>489</sup> T. 24 November 2010, pp. 44, 59; T. 7 December 2010, pp. 57-58.

<sup>490</sup> T. 2 December 2010, p. 44.

<sup>491</sup> Defence Exhibit 159 (Personal Identification Sheet); T. 6 October 2011, p. 27.

<sup>492</sup> T. 6 October 2011, p. 29 (CS); T. 10 October 2011, p. 19 (CS).

<sup>493</sup> T. 6 October 2011, p. 32 (CS).

<sup>494</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 28 June 2011, p. 13 (CS).

<sup>495</sup> T. 22 June 2011, p. 89; T. 23 June 2011, p. 38.

<sup>496</sup> T. 23 June 2011, pp. 2-3; T. 28 June 2011, p. 14 (CS).

<sup>497</sup> See T. 16 November 2010, p. 41; T. 16 November 2010, pp. 48-49 (French) (Ngirabatware).

<sup>498</sup> See, for example, T. 2 March 2010, p. 9 (Witness AFS); T. 16 June 2011, p. 9 (CS) (Witness DWAN-3).

house was Witness ANAI.<sup>499</sup> This individual, however, was dropped from the Prosecution witness list.<sup>500</sup> Although other witnesses were added in his place; namely Witnesses AFS, ANAS, ANAU, ANAR and ANAT, none of them were identified as being relevant to paragraph 35 of the Indictment.<sup>501</sup>

364. Taking this procedural history into account, and having reviewed the evidence adduced in this case, the Chamber concludes that the allegation presented in paragraph 35 of the Indictment has not been substantiated by the Prosecution.

365. The Chamber also notes that the Defence has brought evidence to challenge the allegations contained within paragraph 35 of the Indictment. However, given that the Prosecution has not proven this allegation beyond a reasonable doubt, the Chamber chooses not to address the Defence evidence in this regard.

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<sup>499</sup> See Prosecution Pre-Trial Brief, paras. 32-34, Annex 1.

<sup>500</sup> Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, para. 4.

<sup>501</sup> See Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 17-36.

### 3.7 Meeting at the MRND Palace in Gisenyi, March 1994

#### 3.7.1 Introduction

366. The Indictment alleges that Ngirabatware attended a meeting in March 1994 at the MRND Palace in Gisenyi, where he agreed with the participants to provide the *Interahamwe* with food, logistics and money to enhance their ability to hunt Tutsis who were identified as the enemy.<sup>502</sup> In its closing submissions, the Prosecution makes no reference to any evidence to support this allegation.<sup>503</sup>

367. The Defence raises notice issues and submits that no Prosecution witness testified to this allegation, and that insufficient notice was provided in relation to it.<sup>504</sup>

#### 3.7.2 Notice

368. The Chamber recalls the general principles on notice (2.2). The relevant paragraph of the Indictment alleges that this meeting took place in “March 1994”. The Defence maintains that this date range is too broad.<sup>505</sup>

369. The Chamber recalls that, in its Decision of 8 April 2009, it previously denied the Defence submissions concerning this date range. The Chamber concluded that the information was sufficiently detailed to provide adequate notice.<sup>506</sup> The Defence did not seek certification to appeal this Decision. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>507</sup>

370. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decision that “March 1994” is sufficient to provide notice to the Defence. As no reconsideration is merited, the Chamber will now turn to the merits of this allegation.

#### 3.7.3 Evidence

##### Prosecution Witness AFS

371. Witness AFS, a Hutu who lived in Nyamyumba *commune* from August 1993 through 6 April 1994,<sup>508</sup> testified that the MRND Palace in Gisenyi town had been located near Hotel

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<sup>502</sup> Indictment, para. 36. The Chamber notes that Paragraph 14 of the Indictment makes a similar allegation under the charge of Conspiracy to Commit Genocide. However the Chamber recalls that, during Closing Arguments, the Prosecution stated that it had dropped this charge. Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>503</sup> The Chamber recalls that Witness AFS discussed the MRND Palace in Gisenyi in relation to an alleged rally there in or around August 1993, and has set out his evidence below.

<sup>504</sup> Defence Closing Brief, paras. 41-42, 65-66, 189-195, 327-328. See also Defence Closing Brief, paras. 80-82. The Chamber has also set out Ngirabatware’s evidence, insofar as it may be relevant to this allegation, below.

<sup>505</sup> See Defence Closing Brief, paras. 41-42.

<sup>506</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>507</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>508</sup> Prosecution Exhibit 19 (Personal Identification Sheet); T. 2 March 2010, pp. 6, 62 (CS).

Meridien, and that it was a large space that had a multi-purpose conference room. Around the time of the Arusha Peace Accords in August 1993, Banzi Wellars organized a rally there, which the witness had learned about because the *conseiller* told the *reponsables de cellule* about this meeting, who in turn informed the population. Witness AFS went to this rally voluntarily and he estimated that there were more than 1,000 people in attendance. Because the conference room was full, he stood outside the MRND Palace with many other people in order to listen to the loudspeakers broadcasting the rally that took place inside. According to the witness, Wellars asked the population to give the Tutsis some respite, because the Peace Accords were about to be signed. Witness AFS stayed for about 45 minutes, and left after Wellars finished his speech because the witness figured there was nothing new to hear. He attended no other rallies between August 1993 and 6 April 1994.<sup>509</sup>

### Augustin Ngirabatware

372. Ngirabatware, in discussing the allegation that he had conspired at the MRND Palace in Gisenyi in March 1994, denied that he ever held a meeting with Casimir Bizimungu, Félicien Kabuga or Anatole Nsengiyumva.<sup>510</sup>

#### **3.7.4 Deliberations**

373. The Chamber observes that, according to the Prosecution Pre-Trial Brief, the sole individual who was anticipated to discuss these Indictment paragraphs was Witness ANAI.<sup>511</sup> This individual, however, was dropped from the Prosecution witness list.<sup>512</sup> Although other witnesses were added in his place, none of them were identified as being relevant to paragraphs 14 or 36 of the Indictment.<sup>513</sup>

374. The Chamber further notes that the Defence Closing Brief stated that no witness testified in support of this allegation,<sup>514</sup> which the Prosecution did not dispute in Closing Arguments.

375. The Chamber has reviewed the evidence adduced in this case. Although Witness AFS testified to attending a rally at the MRND Palace in or around August 1993, he did not attend any such rally in March 1994. The Chamber has not found any other testimony as being relevant to the alleged meeting at this location in March 1994.

376. The Chamber also observes that the former location of the MRND Palace was visited during the site visit,<sup>515</sup> and that the Parties did not address this location in their additional submissions concerning the site visit.<sup>516</sup>

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<sup>509</sup> T. 2 March 2010, pp. 56-62 (CS).

<sup>510</sup> T. 2 December 2010, p. 44.

<sup>511</sup> See Prosecution Pre-Trial Brief, paras. 32-34, Annex 1.

<sup>512</sup> Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, para. 4, p. 15.

<sup>513</sup> See Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 17-36; Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 24 June 2010, pp. 16-22.

<sup>514</sup> Defence Closing Brief, para. 327.

<sup>515</sup> See Chambers Exhibit 1 (Site Visit Report), p. 5.

<sup>516</sup> See Prosecution Additional Submissions on Site Visit, para. 50; Defence Additional Submissions on Site Visit.

377. Taking these factors into account, and having reviewed the evidence adduced in this case, the Chamber concludes that this allegation has not been proved by the Prosecution.



### 3.8 MRND Meetings in Nyamyumba Commune, March 1994

#### 3.8.1 Gatunda School

##### 3.8.1.1 Introduction

378. Paragraph 39 of the Indictment alleges that in March 1994 at MRND party meetings in Nyamyumba *commune*, Ngirabatware made statements that the Tutsi were the enemy and warned people that the enemy was right next to them. The Indictment further alleges that such characterizations of the Tutsi as an “enemy” to be exterminated made by highly placed and powerful government officials, such as Ngirabatware, were public invitations to kill with impunity and were part of a larger campaign to organize and prepare the civilian population and civilian militia to commit genocide against the Tutsi. The Indictment finally alleges that members of the Tutsi population were attacked and killed following Ngirabatware’s speech at MRND party meetings in March 1994.<sup>517</sup>

379. In support of these allegations, the Prosecution refers to the testimony of Witness ANAL as to a public meeting which occurred in March 1994 at Gatunda School in Rubona *secteur*, Nyamyumba *commune*.<sup>518</sup>

380. The Defence raises notice issues about the testimony of Witness ANAL as the testimony was not contained in the Indictment or in the Prosecution Pre-Trial Brief, and also argues that Witness ANAL lacks credibility and cannot prove these allegations beyond a reasonable doubt. The Defence refers to the testimony of Ngirabatware and of Witnesses DWAN-1, DWAN-3, DWAN-9, DWAN-21, DWAN-71 and Jean Damascène Kayitana.<sup>519</sup>

##### 3.8.1.2 Notice

381. The Chamber initially recalls the applicable jurisprudence on notice (2.2). In its Closing Brief, the Defence objects to the vagueness in the date in this Indictment paragraph.<sup>520</sup> The Chamber recalls that this matter has already been adjudicated and dismissed in its Decision of 8 April 2009 and the Defence did not take any further action on the matter at that stage.<sup>521</sup> Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>522</sup>

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<sup>517</sup> Indictment, para. 39.

<sup>518</sup> Prosecution Closing Brief, paras. 126-128; Prosecution Closing Argument, T. 23 July 2012, pp. 9-10, 24-26.

<sup>519</sup> Defence Closing Brief, paras. 41-45, 54-59, 613-620, 644, 689-690; Defence Closing Argument, T. 24 July 2012, p. 40. See also Defence Closing Brief, paras. 80-82. The Chamber notes that the Defence also relies upon the evidence of Witnesses DWAN-11 and DWAN-13 in respect of the alleged meeting at Gatunda School. The Chamber has considered their evidence in relation to this allegation, but does not consider it to be sufficiently relevant to warrant being set out below. The Chamber considers that Edison Nsabimana also provided evidence that may be relevant to this allegation.

<sup>520</sup> Defence Closing Brief, paras. 41-42.

<sup>521</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 38.

<sup>522</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

382. The Defence also objects in its Closing Brief to vagueness in the location of “Nyamyumba *commune*”.<sup>523</sup> The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber.<sup>524</sup> In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>525</sup> and that the Chamber ruled upon this issue over three years ago.<sup>526</sup> The Defence has not provided any explanation for raising this additional notice issue at this late stage of the proceedings.

383. The Chamber notes that the Gatunda School meeting is not listed in the Indictment. The Defence contemporaneously objected to hearing the evidence of Witness ANAL in regards to the Gatunda School meeting, as it is not contained in the Indictment or in the Prosecution Pre-Trial Brief.<sup>527</sup> Mention of the meeting was made in Witness ANAL’s March 2004 Statement, which was disclosed to the Defence on 8 May 2009.<sup>528</sup> This means that the Prosecution was aware of this meeting several years before the operative Indictment was filed.

384. While the 2004 Statement was disclosed to the Defence, it was done so prior to the filing of the revised Pre-Trial Brief on 25 May 2009. Considering the absence of any mention of the Gatunda School meeting, the Chamber finds that the Defence was reasonably entitled to assume that the Prosecution would not seek a conviction as to this event when building its investigative strategy. The Prosecution must know its case prior to trial and cannot mould the case against an accused in the course of the trial depending on how the evidence unfolds.<sup>529</sup>

385. Even if the Chamber were to find that the Gatunda School meeting fits under the general rubric of paragraph 39, the Indictment would be defective because the material facts underpinning the charge were not sufficiently pleaded.<sup>530</sup>

386. The Chamber recalls that a defect in the Indictment may be cured through timely, clear and consistent notice. The Prosecution claimed in court that paragraphs 47 and 74 of the Pre-Trial Brief may cure a defect if one exists<sup>531</sup>; however paragraph 47 deals with different allegations in the Indictment concerning meetings at Ngirabatware’s parents’ house, and paragraph 74 does not identify Gatunda School as the location, it merely reiterates allegations set forth in paragraph 39 of the Indictment. The Chamber has reviewed the opening statement of the Prosecution as well as the original and revised Pre-Trial Brief and their annexes and finds no mention of this meeting whatsoever. As mentioned above, the 2004 statement was disclosed to

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<sup>523</sup> Defence Closing Brief, paras. 43-45.

<sup>524</sup> See Rule 72(E) of the Rules.

<sup>525</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and suffers from other legal defects).

<sup>526</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>527</sup> T. 5 October 2009, pp. 7-12.

<sup>528</sup> See Disclosure to Ngirabatware, Augustin, 8 May 2009, pp. 42-47 (Statement of Witness ANAL to Tribunal Investigators of 24 and 26 March 2004) (referring to a meeting a few weeks before the President’s death at the Rubona *secteur* primary school, called for by Rushubi *Conseiller* Jean Simpunga).

<sup>529</sup> *Muvunyi I*, Judgement (AC), para. 18; *Ntagerura et al.*, Judgement (AC), para. 27; *Kupreškić et al.*, Judgement (AC), para. 92.

<sup>530</sup> See, for example, *Muvunyi I*, Judgement (AC), para. 94.

<sup>531</sup> T. 5 October 2009, pp. 12-13.

the Defence, but as it was not referred to in these documents, it would not have put Ngirabatware on notice that this allegation would be pursued. As such, any defect in the Indictment would not be cured.

387. The Chamber recalls that an accused must prepare his defence on the basis of material facts contained within an Indictment, not on the basis of all the material disclosed to him that may support any number of charges.<sup>532</sup> Considering all of the above, the material facts provided in the Indictment as well as in other relevant documents could not have provided Ngirabatware with timely, clear and consistent notice that the Prosecution would rely on this school meeting to discharge its burden of proving paragraph 39 beyond a reasonable doubt. As such, the Chamber cannot use the meeting at Gatunda School, were it to be proven, as the basis of any conviction under paragraph 39 of the Indictment. However, it is well established in the jurisprudence of the Tribunal that the Chamber may find the evidence relevant to substantiate other allegations pleaded in the Indictment and has therefore provided the evidence below and made the appropriate evaluation thereof.<sup>533</sup>

388. Finally, the Defence contends that Count 4 of the Indictment is defective in its entirety.<sup>534</sup> The Chamber recalls that it has addressed this challenge elsewhere in the Judgement (3.3.2), and has found no merit in this contention.

### 3.8.1.3 Evidence

#### Prosecution Witness ANAL

389. Witness ANAL, a Tutsi farmer, lived in Nyamyumba *commune* in 1994. The witness testified that she knew Augustin Ngirabatware since her youth as they attended the same school and were neighbors. Witness ANAL testified that Ngirabatware was a minister in the Rwandan government in 1994.<sup>535</sup>

390. The witness saw Ngirabatware before 7 April 1994, approximately three weeks before the President's plane was shot down. At approximately 11.00 a.m., Ndababonye, the person who announced meetings in town, whistled to announce a meeting and call people together from Rushubi *secteur* to go to a rally at Gatunda School, in Rubona *secteur*. At the meeting, the *conseiller* of Rushubi *secteur*, Jean Simpunga, welcomed everyone and introduced the *bourgmestre* of Nyamyumba *commune*, Faustin Bagango, and Ngirabatware. The witness stated that the *conseiller* of Rushubi *secteur* started the meeting because the *conseiller* of Rubona *secteur* had lost a child and could not attend.<sup>536</sup>

391. Bagango thanked the people in attendance and spoke about the meeting. After Simpunga and Bagango, Ngirabatware spoke. After stating that he heard the Tutsis were fleeing, he asked what they were fleeing from. Bagango answered that the Tutsis were fleeing because their properties and cattle had been seized. Ngirabatware responded that was a problem for the Tutsis

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<sup>532</sup> *Muvunyi I*, Judgement (AC), paras. 30, 100, 166.

<sup>533</sup> See *Renzaho*, Judgement (AC), paras. 71, 90; *Nyiramasuhuko et al.*, Judgement (TC), para. 111.

<sup>534</sup> Defence Closing Brief, paras. 54-59.

<sup>535</sup> Prosecution Exhibit 9 (Personal Identification Sheet); T. 5 October 2009, pp. 6-7.

<sup>536</sup> T. 5 October 2009, pp. 7, 16-19; T. 7 October 2009, pp. 45, 47-48 (CS).

and told the crowd that it “must seize and hand over good crops” and that “the bad grain should be separated from the good grain”. Elderly persons sitting near the witness explained that Ngirabatware was speaking about separating Tutsis from Hutus and that it was time for the Tutsis to leave.<sup>537</sup>

392. The witness stayed at the meeting for 30 minutes. After hearing Ngirabatware and before Ngirabatware’s speech or the meeting ended, the witness left.<sup>538</sup>

#### Defence Witness DWAN-9

393. Witness DWAN-9, a Hutu farmer and brick maker, lived in Nyamyumba *commune* in 1994. The witness had seen Ngirabatware at the inauguration of a school in Bwitereke at some point before 1994, and knew that Ngirabatware was the Minister of Planning.<sup>539</sup>

394. Witness DWAN-9 neither saw nor heard of any political meetings being held in his area. He knows Gatunda School in Rubona *secteur*, and he never heard of a meeting occurring there.<sup>540</sup>

#### Augustin Ngirabatware

395. Ngirabatware first heard the name of Gatunda School at the Tribunal, knowing it instead as Kabiza School. The school is located in Rubona *secteur*. Ngirabatware never attended or participated at any meeting at this school. He confirmed that Jean Simpunga was the *conseiller* of Rushubi *secteur* in Nyamyumba *commune* but noted that a *conseiller* cannot hold a meeting in a *secteur* which is not his. Simpunga has never been with Ngirabatware and Bagango in any meeting.<sup>541</sup>

#### Defence Witness Edison Nsabimana

396. Edison Nsabimana, a Hutu, was the assistant to the *bourgmestre* in charge of administration and judicial affairs in Nyamyumba *commune* and a member of the MRND party. In 1994, he was living in Nyamyumba *commune*. The last time the witness saw Ngirabatware was during *commune* elections in 1993.<sup>542</sup>

397. Political parties could not organize political meetings without first informing the *bourgmestre*. The *bourgmestre* was informed of the event seven days prior to the meeting or rally and was told where the meeting would be held. The *bourgmestre* then verified the location and would issue the authorization for the request. Although the *bourgmestre* himself gave the authorization for meetings, he may have been assisted by an assistant *bourgmestre*, typically Nsabimana. The witness attended the political rallies in order to be familiar with what the political parties were discussing and to ensure security at the events. He attended more than six

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<sup>537</sup> T. 5 October 2009, pp. 19-20; T. 7 October 2009, pp. 48, 50 (CS).

<sup>538</sup> T. 5 October 2009, p. 20; T. 7 October 2009, p. 48 (CS).

<sup>539</sup> Defence Exhibit 137 (Personal Identification Sheet); T. 16 August 2011, pp. 68, 77.

<sup>540</sup> T. 16 August 2011, p. 70 (CS). The Chamber observes that the school was spelled “Gatuntu” in the transcripts, however, the Chamber is convinced that the witness is talking about the same location as the other witnesses.

<sup>541</sup> T. 1 December 2010, pp. 28-29.

<sup>542</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-59, 75; T. 15 June 2011, pp. 11, 14.

political meetings; however, he never heard any speeches against Tutsis at these meetings. The witness testified that the MRND was one of the political parties that held rallies, but never saw Ngirabatware speak or chair a meeting. A minister could not have gone to Nyamyumba to give a public speech without the witness having known about it.<sup>543</sup>

398. After around March 1993, all political meetings were banned in Gisenyi *préfecture*. After the ban on political meetings was enacted, no rallies were held in Nyamyumba *commune*.<sup>544</sup>

#### Defence Witness DWAN-71

399. Witness DWAN-71, a Hutu who lived in Nyamyumba *commune* and played an administrative role in Rushubi *secteur* in 1994,<sup>545</sup> testified that there were no meetings for Rushubi *secteur* which were held outside of the *secteur* office. The witness never attended a meeting at Gatunda School in Rubona *secteur* in which Ngirabatware was present and further noted that no such meeting occurred. Witness DWAN-71 stated that if a *conseiller* was unable to chair a meeting, a dean was elected to chair the meeting. The *conseiller* of Rushubi *secteur* never chaired a meeting in Rubona *secteur* in 1994. He knew the *conseiller* of Rubona *secteur*, Pascal Kibubu, and was not aware of Kibubu losing a child between January and July 1994. He knew Ndababonye as an ordinary member of the population, and denied that he had any authority in the local administration.<sup>546</sup>

#### Defence Witness DWAN-3

400. Witness DWAN-3, a Tutsi, resided in Nyamyumba *commune* in 1994.<sup>547</sup> When Jean Simpunga, the *secteur conseiller*, wanted to call meetings he would tell members of the *cellule* committee who would in turn tell the inhabitants of their respective *cellules*. The meetings would be held in the Rushubi *secteur* office. According to Witness DWAN-3, Rubona *secteur* was far from Rushubi *secteur* and Jean Simpunga was not authorized to chair meetings in *secteurs* other than his own.<sup>548</sup>

#### Defence Witness DWAN-1

401. Witness DWAN-1, a Tutsi and member of *Ibuka* who lived in Nyamyumba *commune* in 1994,<sup>549</sup> has been involved with the *Gacaca* courts since their inception in Rwanda. In 1994, when Rushubi *secteur Conseiller* Jean Simpunga wanted to hold meetings, he would inform the population by asking the *responsables de cellule* to announce to their respective *cellules* the meeting, which would occur in the Rushubi *secteur* office.<sup>550</sup>

402. The witness knows Gatunda School, located in Rubona *secteur*. However, she never attended a meeting chaired by *Conseiller* Jean Simpunga at that school because a *conseiller*

<sup>543</sup> T. 14 June 2011, pp. 75-78, 84; T. 15 June 2011, pp. 10, 67.

<sup>544</sup> T. 14 June 2011, pp. 77-78; T. 15 June 2011, pp. 49-50.

<sup>545</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 28 June 2011, p. 13 (CS).

<sup>546</sup> T. 22 June 2011, p. 82 (CS); T. 22 June 2011, pp. 88-89; T. 27 June 2011, p. 3 (CS); T. 27 June 2011, p. 8.

<sup>547</sup> Defence Exhibit 125 (Personal Identification Sheet); T. 16 June 2011, pp. 7-8, 44 (CS).

<sup>548</sup> T. 16 June 2011, pp. 8, 20-21 (CS).

<sup>549</sup> Defence Exhibit 123 (Personal Identification Sheet); T. 13 June 2011, p. 8; T. 20 June 2011, p. 20 (CS).

<sup>550</sup> T. 13 June 2011, p. 27 (CS).

“cannot go and hold a meeting in the office of another *secteur* which is outside of his jurisdiction”.<sup>551</sup>

#### Defence Witness DWAN-21

403. Witness DWAN-21, a Hutu from Rubona *secteur* in Nyamyumba *commune*,<sup>552</sup> held an official position in the *Gacaca* process. The witness knows Gatunda School and *Conseiller* Jean Simpunga but is not aware of any allegation of Simpunga holding a meeting at the school. The witness testified that meetings were held at the Rubona *secteur* office at a place called Bugasha.<sup>553</sup>

#### Defence Witness Jean Damascène Kayitana

404. Jean Damascène Kayitana, a Hutu, had been a driver in the Ministry of Planning since 1989.<sup>554</sup> The witness testified that he was assigned to work as Ngirabatware’s personal driver starting in early March 1994, and that he never drove Ngirabatware to a political meeting where Ngirabatware engaged in hate speech.<sup>555</sup>

#### **3.8.1.4 Deliberations**

405. The Chamber has observed elsewhere in the Judgement that Witness ANAL’s testimony was generally credible and reliable, in spite of Defence challenges to the contrary (3.10.4.3). Specific to her evidence about the alleged meeting at Gatunda School, the Chamber considers that Witness ANAL provided credible and reliable evidence.

406. The Defence challenges Witness ANAL’s evidence on various grounds, including that she never discussed this meeting in her previous statement in June 1999 and gave a “ridiculous” explanation for this omission because she described this meeting five years later, in March 2004.<sup>556</sup> In explaining this omission, Witness ANAL stated that she did know whether it was possible to bring accusations against Ngirabatware because he was an official of some status and was not in the country.<sup>557</sup> The Chamber observes that her 1999 statement was brief, and did not address any matters in 1994 that took place prior to the President’s plane crash. Her 2004 statement, however, was more detailed.<sup>558</sup> The Chamber considers that her explanation for this omission was reasonable. Moreover, the Chamber does not consider that this omission was material or could reasonably impact upon Witness ANAL’s credible account of the Gatunda School meeting.

407. With regard to her ability to identify Ngirabatware, Witness ANAL stated that she had known Ngirabatware for many years since they both attended school in Nyamyumba *commune*,

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<sup>551</sup> T. 13 June 2011, p. 27 (CS).

<sup>552</sup> Defence Exhibit 153 (Personal Identification Sheet); T. 28 September 2011, p. 6 (CS).

<sup>553</sup> T. 28 September 2011, pp. 27-28 (CS).

<sup>554</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, p. 59.

<sup>555</sup> T. 24 October 2011, pp. 61, 74; T. 25 October 2011, p. 2.

<sup>556</sup> Defence Closing Brief, para. 619, fn. 1563.

<sup>557</sup> T. 7 October 2009, p. 52 (CS) (Witness ANAL).

<sup>558</sup> See Defence Exhibit 7 (Statements of Witness ANAL, 13 January 1997, 17 June 1999, and 24 and 26 March 2004).

and that they were neighbors.<sup>559</sup> Based on her credible evidence, the Chamber has no doubt that Witness ANAL would have been able to identify Ngirabatware in 1994. Moreover, Jean Simpunga introduced Ngirabatware at this meeting. Although this constitutes hearsay evidence warranting appropriate caution,<sup>560</sup> the Chamber considers that it would provide a further basis for Witness ANAL to reliably identify Ngirabatware at the Gatunda School meeting.

408. As for Bagango and Simpunga, the Chamber recalls that Witness ANAL was born in Rushubi *secteur*, Nyamyumba *commune*, and that she continued to live there in 1994.<sup>561</sup> Bagango was therefore the *bourgmestre* of her *commune*, and Simpunga was the *conseiller* of her *secteur*. Indeed, Witness ANAL identified Bagango and Simpunga as having held these positions during the relevant time period in 1994.<sup>562</sup> The Chamber has no doubt, based on her credible evidence, that Witness ANAL would have been able to reliably identify Bagango and Simpunga at this meeting.

409. In considering the Defence evidence, the Chamber considers that Ngirabatware and Witness DWAN-71 both denied this meeting, but they both have an interest in minimizing his role in events which occurred in 1994. Elsewhere, the Chamber has explained its numerous rationales for finding that Witness DWAN-71 is not a reliable or credible witness (3.10.4.2). Likewise for this allegation, the Chamber does not consider the testimony of Witness DWAN-71 to be reliable or credible.

410. Witnesses DWAN-9, DWAN-1 and DWAN-21 gave a general denial of any such meeting occurring because they never heard of such a meeting. The Chamber finds this evidence to be of little probative value, as a meeting could easily have occurred without the witnesses' knowledge.

411. Similarly, Edison Nsabimana's denial of knowledge of political meetings in Nyamyumba *commune* also has little probative value, as despite his administrative position, such a meeting could have occurred without his knowledge. Moreover, the Chamber has explained elsewhere that his demeanor and approach to testifying calls into question his credibility as a witness, particularly on matters where he may have reasons to avoid implicating himself (3.3.4).

412. Similarly, the Chamber considers that Jean Damascène Kayitana's testimony carries only minimal weight in relation to this allegation. Kayitana's denial that he ever drove Ngirabatware to a meeting where the latter engaged in hate speech is general in nature. The Chamber also recalls that a professional relationship existed between Ngirabatware and Kayitana, whereby Kayitana was granted improved financial gains as Ngirabatware's driver.<sup>563</sup> The Chamber has taken into consideration the nature and proximity of this relationship in assessing Kayitana's evidence which, as explained above, carries minimal weight here.

413. The Chamber accepts as credible Witness ANAL's account, and finds that the Defence evidence, taken individually or cumulatively, does not raise reasonable doubt as to the validity of

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<sup>559</sup> T. 5 October 2009, p. 6; T. 7 October 2009, p. 61 (CS) (Witness ANAL).

<sup>560</sup> See generally *Kamuhanda*, Judgement (AC), paras. 237-241, 300.

<sup>561</sup> Prosecution Exhibit 9 (Personal Identification Sheet).

<sup>562</sup> See, for example, T. 5 October 2009, pp. 17-18 (Witness ANAL).

<sup>563</sup> T. 24 October 2011, p. 61; T. 25 October 2011, pp. 2, 52 (Kayitana).

her testimony. Therefore, the Chamber finds that this credible evidence establishes that a meeting occurred at Gatunda School in March 1994. At that meeting Ngirabatware spoke. After stating that he heard the Tutsis were fleeing, he asked what they were fleeing from. Bagango answered that the Tutsis were fleeing because their properties and cattle had been seized. Ngirabatware responded that was a problem for the Tutsis and told the crowd that it “must seize and hand over good crops” and that “the bad grain should be separated from the good grain”. Ngirabatware spoke of separating Tutsis from Hutus and it was understood that it was time for the Tutsis to leave.

### **3.8.2 Umuganda Stadium**

#### **3.8.2.1 Introduction**

414. The Chamber notes that evidence of other meetings in or around March 1994 where Ngirabatware played a prominent role was adduced in the trial record. These alleged meetings do not form part of the Indictment against Ngirabatware, and the Prosecution does not rely upon them to prove the allegations in paragraph 39 of the Indictment. However, the Chamber notes that the Parties were fully heard on this allegation. Recalling that it is well-established in the jurisprudence of the Tribunal that the Chamber may find the evidence relevant to substantiate other allegations pleaded in the Indictment, the Chamber has set out the evidence below and made the appropriate evaluation thereof.<sup>564</sup>

#### **3.8.2.2 Notice**

415. The Chamber notes that this meeting is not in the Indictment and the Prosecution does not rely on this meeting in support of paragraph 39 of the Indictment.<sup>565</sup> The Chamber also recalls that the Defence contemporaneously objected to testimony being adduced regarding alleged rallies held at Umuganda Stadium, as being outside the scope of the Indictment. It was also argued that paragraph 39 of the Indictment alleges meetings which occurred in Nyamyumba *commune* whereas Umuganda Stadium was in Rubavu *commune*. The Chamber admitted this evidence pursuant to Rule 89(C) of the Rules, in that it may have probative value.<sup>566</sup>

416. The Chamber is aware that Prosecution Witnesses ANAD and ANAJ were listed in the Prosecution’s Pre-Trial Brief in relation to this paragraph of the Indictment. However, only the summary of Witness ANAJ’s anticipated testimony could potentially cure the defect within the Indictment as this summary speaks of a meeting in March 1994 at Umuganda Stadium. Witness ANAD’s summary speaks of Umuganda Stadium but does not offer any date range. Given that there is no mention of Umuganda Stadium in the Indictment, the Chamber considers that this could not have put Ngirabatware on notice that he would face charges of a rally at Umuganda Stadium in March 1994.

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<sup>564</sup> See *Renzaho*, Judgement (AC), paras. 71, 90; *Nyiramasuhuko et al.*, Judgement (TC), para. 111. The Chamber observes that Witness ANAD also testified about a rally at Umuganda Stadium. This witness, however, clearly placed this meeting in January 1994. See T. 9 February 2010, pp. 17, 30; T. 10 February 2010, p. 66 (CS) (Witness ANAD). As a result, the Chamber has not set out his evidence in this section pertaining to the allegation of meetings in March 1994, although the Chamber considers that his evidence corroborates the account of Witness ANAJ concerning a meeting at Umuganda Stadium at the beginning of 1994.

<sup>565</sup> See Prosecution Closing Brief, paras. 126-128.

<sup>566</sup> T. 7 October 2009, pp. 77-82.



417. In any event, this paragraph alleges meetings in Nyamyumba *commune*, whereas the evidence makes clear that Umuganda Stadium was in Rubavu *commune*. In the Chamber's view, entering a conviction on this count would amount to an impermissible, *de facto* amendment of the Indictment.<sup>567</sup> For all these reasons, no conviction can be entered for this meeting.

### 3.8.2.3 Evidence

#### Prosecution Witness ANAJ

418. Witness ANAJ, a Hutu, was a MRND member and Bralirwa employee living in Nyamyumba *commune* in 1994. The witness became a member of the MRND party sometime in 1993 and remained a member until April 1994, stating that he joined the party in order to protect his wife and other family members. The witness knew Ngirabatware since 1986 when Ngirabatware started construction of school buildings in his native *commune* of Nyamyumba. Witness ANAJ knew Ngirabatware as the Minister of Planning and as a member of the MRND Political Bureau in the *commune*. The Hutu residents of Nyamyumba *commune* considered him as a god and anything he said was considered as a law.<sup>568</sup>

419. Witness ANAJ was present at a MRND rally that took place in the beginning of 1994 up to around March 1994, at Umuganda Stadium in Rubavu *commune*. The witness testified that everyone had been informed previously that Ngirabatware would be present at the meeting. As the witness lived far from the stadium, he took a collective taxi from Busoro, arriving between 9.00 and 10.00 a.m. After a series of speakers who Witness ANAJ could not identify, Ngirabatware was introduced and he addressed those present. The witness was approximately 30 meters away from Ngirabatware as he spoke, and Witness ANAJ testified that he could see Ngirabatware who was located on the rostrum along with other speakers. Ngirabatware stated that the enemies of Rwanda were the Tutsis living outside of the country who were collaborating with those Tutsis who were still residing in Rwanda, those who were married to the Tutsis, and Hutus who were collaborating with the RPF. After Ngirabatware said this, Witness ANAJ felt immediately targeted since he was married to a Tutsi, and left the meeting early while Ngirabatware was still speaking. Sometime after the rally, the witness attended a meeting at the Nyamyumba *commune* office to ask Ngirabatware a question pertaining to the statements made at the rally at Umuganda Stadium.<sup>569</sup>

#### Augustin Ngirabatware

420. Ngirabatware testified that the suggestion that he chaired a MRND meeting in March 1994, at Umuganda Stadium is false. He never went to Gisenyi in March 1994. If there was a MRND meeting at Umuganda Stadium, it would have been chaired by the party president or the vice-president. The suggestion that at a meeting at Umuganda Stadium he commended the

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<sup>567</sup> See *Karera*, Judgement (AC), paras. 295-297.

<sup>568</sup> Prosecution Exhibit 10 (Personal Identification Sheet); T. 7 October 2009, pp. 74-76; T. 8 October 2009, p. 73 (CS); T. 12 October 2009, pp. 8-9, 13; T. 12 October 2009, pp. 84, 86-87 (CS).

<sup>569</sup> T. 7 October 2009, p. 77; T. 8 October 2009, pp. 3-4; T. 8 October 2009, pp. 57-61 (CS); T. 12 October 2009, pp. 21-24, 26, 83, 85 (CS).

*Interahamwe* for their deeds and their strength, and urged people to join the MRND because the party had the power to fight the Tutsis, is also false.<sup>570</sup>

Defence Witness Joseph Habinshuti

421. Joseph Habinshuti, also known as Datsun, is a Hutu who was a second lieutenant in the *gendarmerie* at the Gisenyi camp in 1994. This camp housed a company of more than 200 *gendarmes*, who were divided into five platoons. Habinshuti was in command of one platoon of 37 people. The entire company stationed at the Gisenyi camp, including the witness' group, was responsible for security in and around Gisenyi. The *gendarmerie* was also tasked with ensuring security in matters of meetings and other public gatherings that were held in Gisenyi *préfecture*. In 1994, he knew that Ngirabatware was the Minister of Planning.<sup>571</sup>

422. The entire company was in charge of security within the *préfecture* as well as handling road traffic security. The witness testified that their base camp was located approximately two kilometers from the border between Goma and Gisenyi. Umuganda Stadium was three to four kilometers between the base camp and Lake Kivu. When any meetings were organized in Gisenyi *préfecture*, the witness' company was in charge of security at the venue. The witness also stated that Gisenyi *préfecture* always had to authorize any meetings held and then his company would be informed three days prior to the event in order to organize security. If someone held a meeting without authorization, or without three days' notice, then it would have been an illegal gathering and it would have been the duty of the witness and his company to stop it. All orders or instructions relayed to the witness would come from the commander of their camp, Major Biganiro. At the national level, orders made within the *gendarmerie* were made through radio sets or telegraphic messages, many of which the witness himself, as an officer, read on a daily basis.<sup>572</sup>

423. There were no political meetings that took place at the stadium during February, March or April 1994. The only gathering at Umuganda Stadium that the witness was aware of was a concert at which the singer Chouchou Mihigo performed from 23 to 24 March 1994, which was duly authorized to take place.<sup>573</sup>

Defence Witness DWAN-25

424. Witness DWAN-25, a Hutu, was a fisherman living in Nyamyumba *commune* in 1994. He also played a role in the *Gacaca* process in the *commune*.<sup>574</sup> He knew Witness ANAJ because they lived in neighboring villages and Witness ANAJ often visited the father of Witness DWAN-25. Witness ANAJ was attacked sometime in late 1993 or early 1994. According to Witness DWAN-25, members of the PSD party from Gahinga attempted to attack Witness ANAJ's home, but they were counterattacked and repelled by MRND youth who lived on the lower side of Witness ANAJ's home. Witness DWAN-25 testified that Witness ANAJ was not injured during this attack and that Witness ANAJ named Antoine as the leader of the group which attacked him.

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<sup>570</sup> T. 1 December 2010, p. 67; T. 2 December 2010, p. 8.

<sup>571</sup> Defence Exhibit 162 (Personal Identification Sheet); T. 17 October 2011, pp. 17-19, 26.

<sup>572</sup> T. 17 October 2011, pp. 19-21.

<sup>573</sup> T. 17 October 2011, pp. 38, 69.

<sup>574</sup> Defence Exhibit 128 (Personal Identification Sheet); T. 28 June 2011, p. 29; T. 28 June 2011, p. 30 (CS).

Witness DWAN-25 does not know of any political meetings held in the days following the attack on Witness ANAJ.<sup>575</sup>

425. From May 1993, Witness DWAN-25, who was 18 years old at the time, became a member of the MRND party. The MRND at that time had many members and the party would invite members to political meetings using megaphones or loudspeakers that were attached to vehicles. The witness never saw the MRND using drums or whistling in order to inform its members of meetings. He was never forced to attend any MRND meeting. Witness DWAN-25 knew Umuganda Stadium very well since it was used to host many games and he often attended football matches in the stadium. The witness has never been to, or heard of, a meeting convened in Umuganda Stadium by the MRND in 1994. The witness stated that if there had been a meeting at the stadium with many people in attendance, he would have known about it because he was not far from Gisenyi, and because such meetings were often announced on the radio. The witness stated that he followed the radio broadcasts and had paid close attention to the political climate, so he would have been aware of any meetings at Umuganda Stadium.<sup>576</sup>

Defence Witness Edison Nsabimana

426. Edison Nsabimana, a Hutu, was the assistant to the *bourgmestre* in charge of administration and judicial affairs in Nyamyumba *commune* and a member of the MRND party. In 1994, he was living in Nyamyumba *commune*. The last time the witness saw Ngirabatware was during *commune* elections in 1993.<sup>577</sup>

Defence Witness Jean Damascène Kayitana

427. Jean Damascène Kayitana, a Hutu, had been a driver in the Ministry of Planning since 1989.<sup>578</sup> The witness testified that he was assigned to work as Ngirabatware's personal driver starting in early March 1994, and that he never drove Ngirabatware to a political meeting where Ngirabatware engaged in hate speech.<sup>579</sup>

Defence Witness DWAN-15

428. Witness DWAN-15, a Hutu, was a farmer, *nyumbakumi* and member of the MRND party, living within 500 meters of Umuganda Stadium in Rubavu *commune* in 1994.<sup>580</sup> Part of the witness' responsibilities as a *nyumbakumi*, or ten-house leader, were to sensitize members of the MRND to go and attend meetings. Therefore, he would have been in a position to know if a MRND meeting was occurring at Umuganda Stadium. The witness recalls a meeting at Umuganda Stadium towards the end of April 1994, attended by Justin Mugenzi, who introduced a *préfet*.<sup>581</sup>

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<sup>575</sup> T. 28 June 2011, pp. 31-32, 34 (CS); T. 28 June 2011, pp. 37-39, 44-45, 47; T. 29 June 2011, pp. 8-11.

<sup>576</sup> T. 28 June 2011, pp. 47-49; T. 29 June 2011, pp. 18-19.

<sup>577</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-59, 75; T. 15 June 2011, pp. 11, 14.

<sup>578</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, p. 59.

<sup>579</sup> T. 24 October 2011, pp. 61, 74; T. 25 October 2011, p. 2.

<sup>580</sup> Defence Exhibit 155 (Personal Identification Sheet); T. 29 September 2011, pp. 34-36; T. 29 September 2011, p. 61 (CS).

<sup>581</sup> T. 29 September 2011, pp. 37-38.

429. The witness' home was on a hill which looked down on the stadium, therefore the witness could see the stadium as well as hear what was happening or what was being said there, even without a megaphone being used if the speakers were speaking loudly. His fields were located approximately five meters away from the stadium. The witness recalls a meeting held at the stadium between 1991 and 1993 at which Banzi Wellars and Faziri Hakizimana spoke. However, there was no political rally held at Umuganda Stadium in 1994, including one at which Ngirabatware spoke.<sup>582</sup>

Defence Witness Tchemi Tchambi Auili

430. Tchemi Tchambi Auili, from Togo, was the Deputy Chief of the UNAMIR military observers who were based in Gisenyi and he lived in Gisenyi *secteur*, Rubavu *commune* in 1994. The witness arrived in Kigali on 24 December 1993 and arrived in Gisenyi in the first half of January 1994, and was one of seven UNAMIR observers in Gisenyi *préfecture*.<sup>583</sup>

431. According to the witness, UNAMIR's area of responsibility involved a major part of Gisenyi *préfecture*. The area that was under observation included 20 to 25 kilometers of the asphalted road that runs from Gisenyi to Ruhengeri all the way to Kigali, the Rwandan/Ugandan border, the Rwandan/Congolese border and Lake Kivu.<sup>584</sup>

432. When the UNAMIR observers arrived in Gisenyi they had three vehicles which were supplied by UNAMIR, two at the inception of their mission and a third which came a few days later. The patrols would go out of town with two of the vehicles each day and the third vehicle would remain with the officers on duty in Gisenyi town. The witness recalled two occasions where there was a fuel shortage, once towards the end of February and once towards the end of March 1994.<sup>585</sup>

433. When the observers first arrived they worked out of their chief's room at Hotel Regina, in Gisenyi town. After a few days they got an office attached to Hotel Regina, from which they subsequently worked. The witness testified that as a UNAMIR observer, his duties included: "ensuring that [there was] no infiltration of foreign troops to ensure that the weapons depots and the military camps which were in our area of responsibility [were] observed and reports made on incidents that may [have jeopardized] the implementation of the Arusha Accords; to observe and report on all incidents or events which, in our opinion, [were] of interest within the context of our mission". It was mandatory to report such incidents or events.<sup>586</sup>

434. The UNAMIR mission in Gisenyi was not in charge of investigations, that task belonged to the civilian police. The observers were tasked with reporting what they observed and what they were informed about. The witness testified that there were not many incidents or events to be reported, however he did recall two incidents, one between 15 and 28 February 1994 and the other between 20 and 30 March 1994. The witness described the work done by the UNAMIR

<sup>582</sup> T. 29 September 2011, pp. 34-36, 38; T. 29 September 2011, p. 61 (CS).

<sup>583</sup> Defence Exhibit 202 (Personal Identification Sheet); T. 22 February 2012, pp. 6-8.

<sup>584</sup> T. 22 February 2012, pp. 9-10.

<sup>585</sup> T. 22 February 2012, pp. 12, 25, 27. During these times, in order to reduce fuel consumption, the observers reduced their patrols outside of Gisenyi town. During those times, they had one vehicle on duty in town and two officers would patrol on foot inside of town. T. 22 February 2012, p. 27.

<sup>586</sup> T. 22 February 2012, pp. 9, 11, 24, 26.

observers. There were briefing and debriefing sessions held before and after those on duty and those on patrol went out.<sup>587</sup>

435. The witness testified that he knew of a stadium in Gisenyi and that it was approximately three to four kilometers away from their office. He never heard of or saw a gathering of more than 1,000 people at the stadium where a minister incited hatred in January, February or March 1994. The witness stated that if he had heard about such an event, it would have been his duty to report it. The witness stated that there was zero chance of an event with over a thousand people in the stadium taking place without him knowing about it.<sup>588</sup>

436. He stated that in 1994, Gisenyi was a small town and that gave them “a lot of advantages” of observing public events. In Africa, communication was rapid, and everyone would have been aware of such a gathering in under an hour because of the “bush radio”, whereby “everybody in less than an hour is aware of anything that has occurred”. The UNAMIR observers were required to report any political rallies they learned about from the local population. The UNAMIR observers left Gisenyi between 15 and 18 April 1994.<sup>589</sup>

#### Defence Witness DWAN-114

437. Witness DWAN-114 was a military observer with the UNAMIR mission based in Gisenyi *préfecture*, from February to April 1994.<sup>590</sup> The military observers were tasked with monitoring compliance with the Arusha Accords and with showing up at events and gathering information about incidents that “might constitute a possible threat to the peace agreement”. They were also tasked with keeping in contact with the authorities and the population. Witness DWAN-114 said that it was difficult to communicate with the population. The main language spoken by the UNAMIR observers was English, and so they would establish contact with civilians in that language.<sup>591</sup>

438. When they received information about or observed a threat to the peace agreement, they would make a note of it and pass it on to their superiors. As far as the witness was aware, he and the other observers were bound to report any incident which may have jeopardized the Arusha Accords. The witness acknowledged difficulties in carrying out their mandate, but testified that they did the best they could.<sup>592</sup>

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<sup>587</sup> T. 22 February 2012, pp. 11-13, 20. Observers would either be on patrol or on duty. Those who went on patrol would report upon their return everything they observed by way of incidents or events. Those on duty would report on everything that happened in town which they may have seen and which may have been reported to them. There were always two persons on duty and the shifts began at 6.00 a.m. and ended the following morning at 6.00 a.m. T. 22 February 2012, p. 11.

<sup>588</sup> T. 22 February 2012, pp. 13, 25.

<sup>589</sup> T. 22 February 2012, pp. 7, 18, 20.

<sup>590</sup> Defence Exhibit 199 (Personal Identification Sheet); T. 20 February 2012, pp. 16-18.

<sup>591</sup> T. 20 February 2012, pp. 29-30. Possible threats included such things as ethnic confrontations, especially by armed forces or by the authorities, mass demonstrations or major refugee movements. T. 20 February 2012, p. 18. He testified that they had no interpreter in the team. However, there was a French-speaking Togolese officer in the team, and there were also a number of Russian-speaking inhabitants of Gisenyi with whom the Russian team leader could interact. T. 20 February 2012, pp. 29-30.

<sup>592</sup> T. 20 February 2012, pp. 23, 35; T. 21 February 2012, p. 11.

439. When the witness deployed to Gisenyi in February 1994, they did not have vehicles or communication equipment, and the observers were lodged in Hotel Edelweiss and Hotel Regina. The witness' area of operation was the town of Gisenyi as far as the border crossing point to Goma along Lake Kivu and along the border to Zaire, and in the north as far as the border of the area of operation of the next team in Ruhengeri.<sup>593</sup>

440. He has no specific recollection of the stadium in Gisenyi itself, but does remember conversations he had with the population that in past years there had been violent incidents there. The witness has no recollection of hearing or observing a meeting taking place at Umuganda Stadium.<sup>594</sup>

441. The witness went on two weeks' leave, beginning approximately 20 March 1994 and returning to Gisenyi on 5 April 1994. He left Gisenyi the second or third week of April.<sup>595</sup>

#### 3.8.2.4 *Deliberations*

442. Witness ANAJ testified that he was present at a MRND rally that took place in the beginning of 1994, at Umuganda Stadium in Rubavu *commune*. After a series of speakers who Witness ANAJ could not identify, Ngirabatware addressed those present. Ngirabatware stated that the enemies of Rwanda were the Tutsis living outside of the country who were collaborating with those Tutsis who were still residing in Rwanda, those who were married to the Tutsis, and Hutus who were collaborating with the RPF. After Ngirabatware said this, Witness ANAJ felt immediately targeted since he was married to a Tutsi, and left the meeting early while Ngirabatware was still speaking.

443. The Chamber recalls that Witness ANAJ testified that he knew Ngirabatware because the latter built a school in 1986,<sup>596</sup> and that he saw him again in 1993 at a MRND meeting at the Nyamyumba *commune* office.<sup>597</sup> The witness also knew Ngirabatware as the Minister of Planning and as a prominent member of the MRND party in Nyamyumba *commune*,<sup>598</sup> and he stood 30 meters away from Ngirabatware at Umuganda Stadium. Moreover, Ngirabatware was introduced prior to addressing the audience.<sup>599</sup> The Chamber is cognizant that this constitutes hearsay evidence and was not attributed to any individual,<sup>600</sup> and must therefore be treated with the appropriate caution. Taking all of these factors together, the Chamber finds that Witness ANAJ was able to reliably identify Ngirabatware at this meeting.

444. The Chamber finds that Witness ANAJ provided credible evidence about a meeting which occurred at Umuganda Stadium. In considering the Defence evidence, the Chamber considers that Ngirabatware had an interest in distancing himself from events which occurred in

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<sup>593</sup> T. 20 February 2012, pp. 24-25, 50.

<sup>594</sup> T. 20 February 2012, p. 44.

<sup>595</sup> T. 20 February 2012, pp. 18, 44, 46-48.

<sup>596</sup> T. 7 October 2009, p. 74 (Witness ANAJ).

<sup>597</sup> T. 7 October 2009, pp. 76-77; T. 8 October 2009, pp. 4, 34-40; T. 8 October 2009, pp. 45-46 (CS); T. 12 October 2009, p. 5; T. 12 October 2009, p. 69 (CS) (Witness ANAJ). The Chamber observes that Ngirabatware denied presiding over this meeting. T. 1 December 2010, p. 66 (Ngirabatware).

<sup>598</sup> T. 7 October 2009, pp. 74-76 (Witness ANAJ).

<sup>599</sup> T. 12 October 2009, p. 85 (CS) (Witness ANAJ).

<sup>600</sup> See generally *Kamuhanda*, Judgement (AC), paras. 237-241, 300.

1994. Similarly, Edison Nsabimana's denial of knowledge of political meetings in Nyamyumba *commune* has no probative value for an alleged meeting in Rubavu *commune*. The Chamber also considers that Jean Damascène Kayitana's testimony carries only minimal weight in relation to this alleged event, for the same reasons as expressed above (3.8.1.4).

445. The testimony of Witnesses DWAN-25 and DWAN-15 that such a gathering at Umuganda Stadium could not have occurred without them knowing about it is of little probative value to the Chamber. They were not in the area at all times, and therefore it is possible that such an event occurred when they were not there to observe it.

446. The Chamber recalls that Joseph Habinshuti gave general testimony to the effect that no demonstration occurred at Umuganda Stadium because he would have heard of it in his position as a *gendarme*, being tasked with providing security at public gatherings.<sup>601</sup> However, the Chamber finds Habinshuti's insistence that demonstrations, killings and other events did not happen in his area, despite being confronted with documents to the contrary dating from 1994, diminishes his credibility.<sup>602</sup>

447. The Chamber has considered in detail in other sections of the Judgement (3.4.4.2) the limitations placed on UNAMIR observers, Tchemi Tchambi Aouili and Witness DWAN-114, in carrying out their mandate and their likely lack of information of events such as large-scale demonstrations in Gisenyi in March 1994. The Chamber observes that they were not tasked with investigations, which belonged to the civilian police. Additionally, both UNAMIR witnesses acknowledged that events may have occurred in the area about which they may not have been aware. Their evidence cannot cast doubt upon the credible evidence provided by Witness ANAJ.

448. As such, the Chamber accepts as credible Witness ANAJ's account and finds that the Defence evidence did not raise reasonable doubt as to the validity of his testimony. The Chamber therefore finds this credible evidence establishes that a meeting occurred at Umuganda Stadium at the beginning of 1994. At that meeting Ngirabatware stated that the enemies of Rwanda were the Tutsis living outside of the country who were collaborating with those Tutsis who were still residing in Rwanda, those who were married to the Tutsis, and Hutus who were collaborating with the RPF. After Ngirabatware spoke, Witness ANAJ felt immediately targeted since he was married to a Tutsi, and left the meeting early.

### **3.8.3 Kitiraco**

#### **3.8.3.1 Introduction**

449. The Chamber notes that evidence of other meetings in or around March 1994 where Ngirabatware played a prominent role was adduced in the trial record. These alleged meetings do not form part of the Indictment against Ngirabatware, and the Prosecution does not rely upon them to prove the allegations in paragraph 39 of the Indictment. However, the Chamber notes that the Parties were fully heard on this allegation. Recalling that it is well-established in the jurisprudence of the Tribunal that the Chamber may find the evidence relevant to substantiate

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<sup>601</sup> T. 17 October 2011, pp. 17-19, 38 (Habinshuti).

<sup>602</sup> T. 17 October 2011, pp. 67-70 (Habinshuti). See also Defence Exhibit 99 (UNAMIR Code Cable, 25 March 1994).

other allegations pleaded in the Indictment, the Chamber has set out the evidence below and made the appropriate evaluation thereof.<sup>603</sup>

### 3.8.3.2 Notice

450. Initially, the Chamber notes that this meeting is not in the Indictment and the Prosecution does not rely on this meeting in support of paragraph 39 of the Indictment.<sup>604</sup> The Chamber further observes that the meeting testified to by Witness ANAO occurred in April 1994. This means that it is *prima facie* outside the scope of paragraph 39 of the Indictment, which alleges meetings in March 1994. Consequently, the Chamber will not enter a conviction for this meeting, if proven.

### 3.8.3.3 Evidence

#### Prosecution Witness ANAO

451. Witness ANAO, a Hutu who lived in Nyamyumba *commune*,<sup>605</sup> testified that he worked at the Kitiraco market in 1994. He was an *Interahamwe* and was among those who manned the Gitsimbi/Cotagirwa roadblock. He testified that he knows Ngirabatware “very well” but only saw him once in 1994, a few days before President Habyarimana’s death. He did not see Ngirabatware during the genocide.<sup>606</sup>

452. Witness ANAO testified that Ngirabatware, Faustin Bagango, Égide Karemera and Major Xavier Uwimana attended a rally and flag-raising ceremony at Kitiraco two to four days before the President’s death. He stated that Ngirabatware spoke to around 600 to 800 *Interahamwe*, telling them that the *Interahamwe* must support the army, that since they live not far from the roadblocks, they needed to man those roadblocks and carry out night patrols to prevent the enemy from infiltrating the locality. Kavamahanga, the vice-chairman of the *Interahamwe* then asked Ngirabatware how ten people could take care of the night patrols armed only with sticks, without firearms, and also without the company of soldiers. Ngirabatware responded that he and Major Uwimana would find a solution to that problem and promised to give the ten people at least one firearm so that they could shoot in the air to disperse the enemy. Ngirabatware also distributed emblems, scarves and hats that were part of the *Interahamwe* uniform. Witness ANAO stated that a few hours later, Major Uwimana drove to the Gitsimbi/Cotagirwa roadblock in a vehicle with cartons and boxes. Bagango arrived and stated that Uwimana brought the material that had been promised to the *Interahamwe* earlier that day at the Kitiraco meeting. Bagango thanked Uwimana and asked him to express their thanks to Ngirabatware as well. Six cartons of grenades and crates with firearms were distributed to those who were manning the Gitsimbi/Cotagirwa roadblock and were subsequently used to kill Tutsis.<sup>607</sup>

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<sup>603</sup> See *Renzaho*, Judgement (AC), paras. 71, 90; *Nyiramasuhuko et al.*, Judgement (TC), para. 111.

<sup>604</sup> See Prosecution Closing Brief, paras. 126-128.

<sup>605</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS).

<sup>606</sup> T. 15 February 2010, pp. 36-38, 87 (CS); T. 15 February 2010, pp. 68-69, 71, 77-78; T. 17 February 2010, p. 42 (CS); T. 22 February 2010, p. 3; T. 22 February 2010, pp. 13-15, 22 (CS).

<sup>607</sup> T. 15 February 2010, pp. 71, 77-80, 84; T. 15 February 2010, pp. 71-72, 75-76, 82-83, 86-87 (CS); T. 16 February 2010, pp. 5-7, 71-76; T. 17 February 2010, p. 69 (CS); T. 18 February 2010, pp. 87-88 (CS); T. 22



453. There were six cartons and there were crates, but one of them was open and inside one crate were five rifles or guns. The rifles were given to those who had to handle them. The grenades were also distributed. What was left over was put in Bagango's vehicle and he left with the weapons. Furthermore, one person was designated to teach people how to operate the grenades.<sup>608</sup>

Augustin Ngirabatware

454. Ngirabatware denied that he was at Kitracó two to three days before the assassination of President Habyarimana in April 1994, as he was in Kigali at that time. In any case the alleged event must have appeared in the UNAMIR report since the location where he was alleged to have delivered that speech was the route through Kitracó that the representative of the Secretary-General, Roger Booh-Booh, had taken twice on that same day on his way to President Habyarimana's residence during his visit from 2 to possibly 4 April 1994.<sup>609</sup>

Defence Witness Joseph Habinshuti

455. Joseph Habinshuti, also known as Datsun, is a Hutu who was a second lieutenant in the *gendarmérie* at the Gisenyi camp in 1994. This camp housed a company of more than 200 *gendarmes*, who were divided into five platoons. Habinshuti was in command of one platoon of 37 people. The entire company stationed at the Gisenyi camp, including the witness' group, was responsible for security in and around Gisenyi. The *gendarmérie* was also tasked with ensuring security in matters of meetings and other public gatherings that were held in Gisenyi *préfecture*. In 1994, he knew that Ngirabatware was the Minister of Planning.<sup>610</sup>

456. The entire company was in charge of security within the *préfecture* as well as handling road traffic security. The witness testified that their base camp was located approximately two kilometers from the border between Goma and Gisenyi. Umuganda Stadium was three to four kilometers between the base camp and Lake Kivu. When any meetings were organized in Gisenyi *préfecture*, the witness' company was in charge of security at the venue. The witness also stated that Gisenyi *préfecture* always had to authorize any meetings held and then his company would be informed three days prior to the event in order to organize security. If someone held a meeting without authorization, or without three days notice, then it would have been an illegal gathering and it would have been the duty of the witness and his company to stop it. All orders or instructions relayed to the witness would come from the commander of their camp, Major Biganiro. At the national level, orders made within the *gendarmérie* were made through radio sets or telegraphic messages, many of which the witness himself, as an officer, read on a daily basis.<sup>611</sup>

457. The witness was not aware of any political meetings at Kitracó in February, March or April 1994, and had never seen Ngirabatware at any such meetings or distributing scarves and

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February 2010, pp. 5-9, 16; T. 22 February 2010, pp. 15-18, 20-21, 23, 29 (CS); Prosecution Exhibit 6S (Photograph); Prosecution Exhibit 6T (Photograph); Prosecution Exhibit 6U (Photograph).

<sup>608</sup> T. 15 February 2010, pp. 79-80; T. 15 February 2010, p. 80 (CS).

<sup>609</sup> T. 24 November 2010, p. 61.

<sup>610</sup> Defence Exhibit 162 (Personal Identification Sheet); T. 17 October 2011, pp. 17-19, 26.

<sup>611</sup> T. 17 October 2011, pp. 20-21.

caps to MRND supporters. The witness also testified that there were never any political flags raised at Kitiraco, only a flag in a nearby locality of Hindi.<sup>612</sup>

Defence Witness Edison Nsabimana

458. Edison Nsabimana, a Hutu, was the assistant to the *bourgmestre* in charge of administration and judicial affairs in Nyamyumba *commune* and a member of the MRND party. In 1994, he was living in Nyamyumba *commune*. The last time the witness saw Ngirabatware was during *commune* elections in 1993.<sup>613</sup>

459. Political parties could not organize political meetings without first informing the *bourgmestre*. The *bourgmestre* was informed of the event seven days prior to the meeting or rally and was told where the meeting would be held. The *bourgmestre* then verified the location and would issue the authorization for the request. Although the *bourgmestre* himself gave the authorization for meetings, he may have been assisted by an assistant *bourgmestre*, typically Nsabimana. The witness attended the political rallies in order to be familiar with what the political parties were discussing and to ensure security at the events. He attended more than six political meetings, however he never heard any speeches against Tutsis at these meetings. The witness never saw Ngirabatware speak or chair a meeting.<sup>614</sup>

460. After around March 1993, all political meetings were banned in Gisenyi *préfecture*. After the ban on political meetings was enacted, no rallies were held in Nyamyumba *commune*.<sup>615</sup>

Defence Witness Jean Damascène Kayitana

461. Jean Damascène Kayitana, a Hutu, had been a driver in the Ministry of Planning since 1989.<sup>616</sup> The witness testified that he was assigned to work as Ngirabatware's personal driver starting in early March 1994, and that he never drove Ngirabatware to a political meeting where Ngirabatware engaged in hate speech.<sup>617</sup>

Defence Witness DWAN-21

462. Witness DWAN-21, a Hutu, lived in Nyamyumba *commune* in 1994 and held an official position in the *Gacaca* process.<sup>618</sup> Witness DWAN-21 stated that Kitiraco is located between Rubona and Rushubi *secteurs*. The witness never heard allegations relating to incitement to commit genocide, distribution of weapons, hate speech or establishment of civilian roadblocks in Kitiraco. There was no allegation made involving Ngirabatware in Rubona *secteur*.<sup>619</sup>

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<sup>612</sup> T. 17 October 2011, pp. 27, 36, 38.

<sup>613</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-59, 75; T. 15 June 2011, pp. 11, 14.

<sup>614</sup> T. 14 June 2011, pp. 75-78, 84; T. 15 June 2011, pp. 10, 67.

<sup>615</sup> T. 14 June 2011, pp. 77-78; T. 15 June 2011, pp. 49-50.

<sup>616</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, p. 59.

<sup>617</sup> T. 24 October 2011, pp. 61, 74; T. 25 October 2011, p. 2.

<sup>618</sup> Defence Exhibit 153 (Personal Identification Sheet); T. 28 September 2011, p. 6 (CS).

<sup>619</sup> T. 28 September 2011, pp. 43-44 (CS).

Defence Witness DWAN-25

463. Witness DWAN-25, a Hutu, was a fisherman living in Nyamyumba *commune* in 1994.<sup>620</sup> During the months of January, February and March 1994, the witness was working as a fisherman on Lake Kivu, based in Gisenyi. The witness stated that he would fish at Lake Kivu at night, and in the morning, would go to the fisheries project office located before the former Hotel Meridien in Izuba, in the direction of the brewery. When the witness could not fish due to adverse weather conditions, he would take shelter at Kitiraco, which was between two *secteurs*, Rushubi and Rubona *secteurs*. The witness then testified that after fishing, he would leave his boat at a place below the house of a certain Mateke, at most 150 to 170 meters away from the Kitiraco landing site. The witness stated that from that location, he could see what was happening at Kitiraco and that he could also see Gisenyi town.<sup>621</sup>

464. From January until 6 April 1994, he never witnessed any meetings held at Kitiraco.<sup>622</sup>

Defence Witness DWAN-47

465. Witness DWAN-47, a Hutu and MRND party member, lived in Munanira *secteur*, Nyamyumba *commune* in 1994. He was also a local government official in Gisenyi *préfecture* in 1994.<sup>623</sup>

466. The witness is aware of Kitiraco and identified it as being in between Rushubi and Rubona *secteurs*. The witness testified that he had never organized or attended a meeting at Kitiraco chaired by Ngirabatware with over 500 people. Further, the witness stated that it would be impossible to hold that amount of people at this location.<sup>624</sup>

Defence Witness DWAN-71

467. Witness DWAN-71, a Hutu, was a local government official in Nyamyumba *commune* in 1994.<sup>625</sup> He testified that in 1994, no meeting was ever held at Kitiraco where Ngirabatware took the floor. In addition, Kitiraco is too small to hold 500 people.<sup>626</sup>

Defence Witness DWAN-147

468. Witness DWAN-147, a Hutu, was a former member of the Rwandan army and lived in Rushubi *secteur*, Nyamyumba *commune* in 1994.<sup>627</sup> He described Kitiraco as being located on the banks of Lake Kivu, and being between two *secteurs*, namely, Rushubi and Rubona. In 1994, that location was uninhabited.<sup>628</sup>

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<sup>620</sup> Defence Exhibit 128 (Personal Identification Sheet); T. 28 June 2011, pp. 29, 47.

<sup>621</sup> T. 29 June 2011, pp. 54-55 (CS).

<sup>622</sup> T. 28 June 2011, p. 53 (CS).

<sup>623</sup> Defence Exhibit 156 (Personal Identification Sheet); T. 3 October 2011, p. 15 (CS).

<sup>624</sup> T. 29 September 2011, p. 75 (CS).

<sup>625</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS).

<sup>626</sup> T. 23 June 2011, p. 14; T. 23 June 2011, p. 14 (CS).

<sup>627</sup> Defence Exhibit 134 (Personal Identification Sheet); T. 11 July 2011, p. 58.

<sup>628</sup> T. 11 July 2011, p. 78 (CS).

469. He never saw or heard about any political meeting held in the area of Kitracó or surrounding areas in 1993 and 1994. According to his testimony, it would have been impossible that a meeting of several hundreds of people had been held in that location at the time. He explained that political meetings are different from events. Only events can be organized on the road; to organize a political meeting, a larger space is needed.<sup>629</sup>

Defence Witness Tchemi Tchambi Auouli

470. Tchemi Tchambi Auouli is a native of Togo, and served with UNAMIR in 1994. He was the deputy leader of those military observers based in Gisenyi, and he lived in Gisenyi *secteur*, Rubavu *commune*.<sup>630</sup> The witness arrived in Rwanda on 24 December 1993 and in Gisenyi in January 1994 and the military observers operated from an office attached to Hotel Regina in Gisenyi. The military observers in Rwanda were there to ensure that there was no infiltration of foreign troops, observe and report on incidents at weapons depots and military camps that could jeopardize the implementation of the Arusha Accords, and to observe and report on all incidents which were of interest within the context of their mission, in Gisenyi *préfecture*.<sup>631</sup>

471. President Habyarimana had a residence in Gisenyi *préfecture*, on the shores of Lake Kivu. On the road leading to the residence, there was a checkpoint manned by soldiers.<sup>632</sup>

472. The witness did not observe any public meeting of 700 people on the shores of Lake Kivu two or three days before the death of the President. If any such event had occurred, it would have been the duty of the witness to report it to his chief, who would have in turn reported it to his chief in Kigali.<sup>633</sup>

Defence Witness DWAN-114

473. Witness DWAN-114 was a military observer with the UNAMIR mission based in Gisenyi *préfecture*, from February to April 1994.<sup>634</sup> The military observers were tasked with monitoring compliance with the Arusha Accords and with gathering information about incidents that could be a threat to the peace agreement such as ethnic confrontations especially by armed forces, by the authorities, mass demonstrations or major refugee movements. When they received information about a threat to the peace agreement, they would make a note of it and pass it on to their superiors. The military observers patrolled on foot within Gisenyi town within a radius of five to ten kilometers, but with vehicles they patrolled along Lake Kivu, the Zaire border, and around Ruhengeri.<sup>635</sup>

474. The witness returned from leave to Gisenyi on 5 April 1994 and does not recall hearing from colleagues, authorities, or members of the population that a minister made a speech near the port to approximately 700 people, inciting violence against Tutsis. He similarly did not hear

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<sup>629</sup> T. 12 July 2011, pp. 7-8.

<sup>630</sup> Defence Exhibit 202 (Personal Identification Sheet); T. 22 February 2012, pp. 3, 6, 8.

<sup>631</sup> T. 22 February 2012, pp. 6-7, 9, 24, 26.

<sup>632</sup> T. 22 February 2012, pp. 15-16.

<sup>633</sup> T. 22 February 2012, pp. 16-17.

<sup>634</sup> Defence Exhibit 199 (Personal Identification Sheet); T. 20 February 2012, pp. 16-18.

<sup>635</sup> T. 20 February 2012, pp. 25-26, 30, 49-50.

mention of a speech of that nature being given one to two days prior to his arrival back in Gisenyi.<sup>636</sup>

### 3.8.3.4 *Deliberations*

475. Witness ANAO provided credible and reliable testimony about a rally and flag-raising ceremony at Kitraco attended by Ngirabatware, Faustin Bagango, Égide Karemera and Major Xavier Uwimana where Ngirabatware spoke to around 600 to 800 *Interahamwe* and promised them at least one firearm so that they could shoot in the air to disperse the enemy. He also distributed emblems, scarves and hats that were part of the *Interahamwe* uniform. A few hours later, Bagango came to the Gitsimbi/Cotagirwa roadblock and distributed firearms and grenades that were subsequently used to kill Tutsis. These events occurred two to four days before President Habyarimana's plane was shot down.<sup>637</sup>

476. The Chamber will first turn to the credibility of Witness ANAO, starting with the history of his criminal proceedings in Rwanda. Witness ANAO testified that after fleeing Rwanda in July 1994, he returned in October 1996. Two months later, he was arrested and charged with murder, looting, manning of roadblocks, and destruction of property. Around 1999, he pleaded guilty to murdering two persons, and to looting, manning roadblocks, slaughtering cattle and impersonating a soldier. He had also participated in attacks where others were killed. Witness ANAO was sentenced to seven years' imprisonment, and one year of community work. He was released in 2003.<sup>638</sup>

477. Witness ANAO wrote a confession in 2005 or 2006, as *Gacaca* courts were being set up, and he has appeared before various *Gacaca* courts. In August 2006, the Rushubi *Gacaca* court sentenced him to five months' imprisonment for lying. He stated that he confessed before the Rubona *Gacaca* court to killing an individual, and received seven months' imprisonment. He also appeared in the Rushubi *Gacaca* court in September 2007, for the killing of another individual.<sup>639</sup> Although Witness ANAO testified in these proceedings in 2010 and was not incarcerated at the time, the Chamber has taken this criminal history into account in assessing his testimony.

478. The Chamber takes particular note that the Rushubi *Gacaca* court sentenced Witness ANAO for "false testimony". According to the court, this sentence was warranted because

<sup>636</sup> T. 20 February 2012, pp. 44, 46, 55.

<sup>637</sup> T. 15 February 2010, pp. 71-72, 77-80, 84; T. 15 February 2010, pp. 75-76, 86-88 (CS); T. 16 February 2010, pp. 5, 7, 71-76; T. 17 February 2010, p. 69 (CS); T. 18 February 2010, pp. 87-88 (CS); T. 22 February 2010, pp. 3, 5-9, 16; T. 22 February 2010, pp. 15-18, 20-21, 23, 29 (CS) (Witness ANAO); Prosecution Exhibit 6S (Photograph); Prosecution Exhibit 6T (Photograph); Prosecution Exhibit 6U (Photograph). The Chamber notes that, according to the English transcripts, Witness ANAO places these events "two or three days" prior to President Habyarimana's plane crash. T. 15 February 2010, p. 87 (CS). In the French transcripts, however, the witness is recorded as having said that the plane crashed three or four days later. T. 15 February 2010, p. 88 (French) (CS). See also T. 17 February 2010, p. 69 (CS) (stating that "a few days" after the Kitraco rally, President Habyarimana's plane crashed). In any event, the Chamber considers Witness ANAO's evidence to be that this rally and the subsequent weapons distribution took place in early April 1994.

<sup>638</sup> T. 16 February 2010, pp. 3-5, 7; T. 17 February 2010, p. 22; T. 17 February 2010, p. 72 (CS); T. 18 February 2010, pp. 13, 24, 39-40, 52-53, 65, 67-69 (CS); T. 22 February 2010, pp. 38-42, 44 (CS).

<sup>639</sup> T. 16 February 2010, pp. 5-8. See also T. 17 February 2010, pp. 21-22; T. 18 February 2010, pp. 58-59, 68-70, 79-82 (CS); T. 22 February 2010, pp. 24, 44, 46 (CS).

Witness ANAO had asked that his name be taken off the list of suspects and replaced with someone else's name, and for asking that another person be forgiven.<sup>640</sup> Witness ANAO explained that he had spoken with his co-perpetrators prior to the initiation of the *Gacaca* trials. He also stated that he acted as the intermediary between two individuals who sought to reconcile for 1,000 Rwandan francs, but that when this sum could not be produced, the criminal matter was continued.<sup>641</sup> The Chamber observes that although the *Gacaca* court characterized this as "false testimony", the impugned conduct appears to have taken place before any testimony was adduced. Witness ANAO also emphasized that, during the trial, he never named persons who were innocent, and that he was convicted because of his attempt to exculpate an individual.<sup>642</sup> Under these specific circumstances, the Chamber is not convinced that these issues greatly impact the overall credibility of Witness ANAO.

479. In relation to the crimes that he committed during the genocide, the Chamber considers that Witness ANAO is a possible accomplice of Ngirabatware. In light of this, as well as for the reasons addressed above, the Chamber treats the evidence of Witness ANAO with appropriate caution.

480. The Defence challenges the credibility of Witness ANAO on this allegation by noting minor differences between aspects of his evidence, or between his testimony and prior statements. For example, the Defence suggests that Witness ANAO was inconsistent as to who introduced the attendees at the rally, having alternated between Bagango and Siborurema on the one hand, and Pascal Kibubu on the other.<sup>643</sup> Witness ANAO testified that "the authorities" were the ones to introduce the population to the *Interahamwe*, and that Bagango and Siborurema introduced Ngirabatware.<sup>644</sup> The witness later mentioned, while discussing the parading *Interahamwe* that Kibubu attended the meeting in his capacity as *conseiller* and introduced the various attendees there.<sup>645</sup> The Chamber does not see any discrepancy, particularly because *Conseiller* Kibubu was an authority figure at the time.

481. The Defence further submits that unlike his testimony, Witness ANAO's prior statement did not mention the presence of Bagango at the alleged distribution of weapons at the Gitsimbi/Cotagirwa roadblock. In the Defence's view, "[t]his omission goes to the heart of [Witness] ANAO's credibility".<sup>646</sup> Witness ANAO, in his statement to Tribunal investigators in

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<sup>640</sup> See Defence Exhibit 67C (Judgement Concerning Witness ANAO, August 2006), pp. 6-7 ("Sentences [Witness ANAO] to 5 (five) months of imprisonment for false testimony, for having asked [one person] to strike his name off the list of suspects and replace it with [another person's] name, and for having asked [a third person] to forgive [a fourth person] and to invite him for an interview in order to have his name struck off the list of suspects.").

<sup>641</sup> T. 18 February 2010, pp. 55-56 (CS) (Witness ANAO). See also T. 18 February 2010, pp. 41, 50-53, 57-59 (CS) (Witness ANAO). See also Defence Closing Brief, paras. 214-218.

<sup>642</sup> T. 18 February 2010, p. 58 (CS) (Witness ANAO) ("I never named innocent people. The only people I named were convicted. Therefore, they were not innocent. On one occasion, I asked the Gacaca court to give the floor to other people who were co-perpetrators, and it is for that reason that those persons named their fellow criminals. I named my fellow criminals and they, in turn, named those they committed crimes with. [...] I was convicted because I had tried to exculpate [someone] on one fact.").

<sup>643</sup> See Defence Closing Brief, para. 200 ("[Witness] ANAO testified that Siborurema and Bagango introduced the attendees to the meeting. In cross-examination, [Witness] ANAO stated that it was Pascal Kibubu."), citing T. 15 February 2010, p. 78 (CS); T. 22 February 2010, pp. 17-18.

<sup>644</sup> T. 15 February 2010, p. 78 (CS) (Witness ANAO).

<sup>645</sup> T. 22 February 2010, pp. 17-18 (Witness ANAO).

<sup>646</sup> Defence Closing Brief, para. 203.

October 2008, reported that in the evening after the Kitracó rally, Major Xavier Uwimana arrived at the Gitsimbi/Cotagirwa roadblock after the Kitracó rally, accompanied by two soldiers. Witness ANAO did not identify Bagango as having also accompanied these individuals<sup>647</sup> When asked about this, Witness ANAO explained that he had mentioned Bagango on several occasions in his statement, and that he “could not repeat his name everywhere and on every occasion”.<sup>648</sup> The Chamber considers that this explanation is a reasonable one under the circumstances, and that this omission was not material in the context of Witness ANAO’s evidence.

482. The Defence submits that various inconsistencies between Witness ANAO’s testimony and other evidence in this case or in prior statements impact upon his credibility.<sup>649</sup> Having reviewed these submissions, the Chamber considers that they are collateral and that any variations would not be material or could reasonably impact upon Witness ANAO’s overall credibility or his credibility in relation to the allegation at issue here.

483. Turning now to Witness ANAO’s ability to identify Ngirabatware, the Chamber recalls that Witness ANAO testified that he knows Ngirabatware well because they were neighbors. Although the witness could only describe Ngirabatware as being of average height,<sup>650</sup> the Chamber considers that Witness ANAO would have been able to identify Ngirabatware in 1994. Furthermore, the Chamber has no doubt that the witness was well-acquainted with Faustin Bagango,<sup>651</sup> who the witness said was among those who introduced Ngirabatware prior to Ngirabatware’s speech. While the Chamber is cognizant that this constitutes hearsay evidence,<sup>652</sup> and must therefore be treated with the appropriate caution, the Chamber has no doubt that any introduction by Bagango of Ngirabatware would be accurate and reliable (3.3.4). Taking this into account, the Chamber has no doubt that Witness ANAO would have reliably identified Ngirabatware at the alleged Kitracó rally in early April 1994.

484. Turning to the Defence evidence, Ngirabatware’s general denial of his presence at this event carries little weight as he has an incentive to minimize his own alleged criminality. The Chamber has considered the evidence of Joseph Habinshuti who provides only a general denial of these allegations because he did not hear of it. The Chamber finds that such an event could have occurred without his knowledge. As for Jean Damascène Kayitana’s testimony, the Chamber considers that it carries only minimal weight in relation to this alleged event, for the same reasons as expressed above (3.8.1.4).

485. The Chamber has also considered the limitations placed on UNAMIR observers and *gendarmes* in carrying out their mandate and their likely lack of information of events such as large-scale demonstrations in Gisenyi in April 1994. Defence Witnesses Edison Nsabimana, DWAN-47 and DWAN-71 deny the ability to organize such an event as well as that this particular event at Kitracó occurred. However, all were local administrative officials at the time of these events, and as such may have a motive in distancing themselves. Their evidence carries little weight.

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<sup>647</sup> See Defence Exhibit 28 (Statement of Witness ANAO, 29 October 2008), pp. 7, 13.

<sup>648</sup> T. 22 February 2010, p. 7 (Witness ANAO).

<sup>649</sup> See, for example, Defence Closing Brief, paras. 196-199, 201-202, 204-213, 218-227.

<sup>650</sup> T. 15 February 2010, p. 68 (Witness ANAO).

<sup>651</sup> See, for example, the information contained in footnote .

<sup>652</sup> See generally *Kamuhanda*, Judgement (AC), paras. 237-241, 300.

486. Witness DWAN-25 is familiar with the Kitracó area and stated that from January until 6 April 1994, he never witnessed any meetings held at Kitracó. Similarly, Witness DWAN-147 gave general testimony that he never saw or heard about any political meeting held in the area of Kitracó in 1993 or 1994. However, the Chamber considers this evidence to have little probative value as events and meetings could have occurred at Kitracó that they did not witness. The Chamber has also considered the evidence of Witness DWAN-21, who did not hear of any events occurring at Kitracó during *Gacaca* sessions. The Chamber considers this evidence to also have limited probative value as there is no basis for concluding that every event which occurred in Rwanda in 1994 was discussed in *Gacaca* proceedings.

487. The Chamber further recalls that it visited this area during its official site visit. During this time the Chamber observed the area, and is of the opinion that this area could hold the 600 to 800 people about which Witness ANAO testified.<sup>653</sup>

488. Based on the foregoing, the Defence evidence does not cast doubt upon the credible and reliable evidence proffered by Witness ANAO as to this allegation. As such, the Chamber finds that it has been established that Ngirabatware, Faustin Bagango, Égide Karemera and Major Xavier Uwimana attended a rally and flag-raising ceremony at Kitracó, in Nyamyumba *commune*, between two and four days before President Habyarimana's plane was shot down. At this event, Ngirabatware spoke to around 600 to 800 *Interahamwe* and asked them to continue to man the roadblocks and carry out night patrols to avoid infiltration by the enemy. The vice-chairman of the *Interahamwe* asked Ngirabatware how they could manage night patrols armed only with sticks, and Ngirabatware responded that he and Major Uwimana would find a solution to that problem. Ngirabatware also promised them at least one firearm so that they could shoot in the air to disperse the enemy. A few hours later, Major Uwimana drove to the Gitsimbi/Cotagirwa roadblock in a vehicle with cartons and boxes. Bagango arrived and stated that Uwimana brought the material that had been promised to the *Interahamwe* earlier that day at the Kitracó meeting. Bagango thanked Uwimana and asked him to express their thanks to Ngirabatware as well. Six cartons of grenades and crates with firearms were distributed at the Gitsimbi/Cotagirwa roadblock. These weapons were subsequently used to kill Tutsis.

### 3.8.4 Other Meetings

489. The Chamber observes that there is significant evidence that Ngirabatware participated in other meetings in Nyamyumba *commune*, including by two Prosecution witnesses the Chamber has elsewhere deemed to be credible and reliable (3.3.4; 3.8.2.4). Witness ANAJ testified about a meeting at the Nyamyumba *commune* office in 1993,<sup>654</sup> whereas Witness ANAD discussed meetings at the Nyamyumba *commune* office, at Umuganda Stadium and at Kitracó in January 1994.<sup>655</sup> Defence witnesses, however, disputed these allegations.<sup>656</sup>

<sup>653</sup> See Chambers Exhibit 1 (Site Visit Report), p. 7.

<sup>654</sup> See, for example, T. 7 October 2009, pp. 76-77; T. 8 October 2009, pp. 4, 34-40; T. 8 October 2009, pp. 45-46 (CS); T. 12 October 2009, pp. 5, 12; T. 12 October 2009, p. 69 (CS) (Witness ANAJ).

<sup>655</sup> See, for example, T. 9 February 2010, pp. 17-18, 30, 33; T. 10 February 2010, p. 66 (CS) (Witness ANAD).

<sup>656</sup> See, for example, T. 1 December 2010, pp. 66-67; T. 2 December 2010, pp. 6-7 (Ngirabatware); T. 14 June 2011, pp. 77-78; T. 15 June 2011, pp. 49-50 (Nsabimana); T. 28 June 2011, pp. 44-47 (Witness DWAN-25); T. 20 September 2011, p. 68 (Witness DWAN-13); T. 23 June 2011, p. 10 (Witness DWAN-71).



490. The Chamber notes that these alleged meetings took place prior to March 1994, and could not fall within the scope of paragraph 39 of the Indictment. The Chamber will address this evidence elsewhere to the extent that it is applicable to allegations in the Indictment.

### 3.9 First Alibi, 6 – 12 April 1994

#### 3.9.1 Introduction

491. As set out in the Indictment, the Prosecution alleges that after 6 April 1994, Ngirabatware participated in the transportation or distribution of weapons and instigated members of the population to kill Tutsis in Nyamyumba *commune* in Gisenyi *préfecture*. The Prosecution submits that between 7 and 8 April 1994, Ngirabatware was in Nyamyumba *commune* committing crimes.<sup>657</sup>

492. The Defence submits that Ngirabatware was in Kigali from 6 to 12 April 1994, and could not have committed crimes in Nyamyumba *commune* during this time period.<sup>658</sup> The Defence claims that on 6 April 1994, Ngirabatware went to work and returned to his residence, in Kigali, at 6.30 p.m. On the night of 6 April 1994, Ngirabatware learnt of the President's plane crash and he and his family were subsequently escorted to the Presidential Guard Camp (the "PGC"), also located in Kigali, by soldiers. They arrived at the PGC located in Kigali at around midnight and found several Government officials with their respective families there. He spent the night of 6 April 1994 at the PGC. On 7 April 1994, Ngirabatware and his family stayed inside the PGC throughout the day and overnight and there was an exchange of gunfire near the PGC at around 4.00 p.m. During the morning of 8 April 1994, Ngirabatware drove his family to the French Embassy (the "Embassy"), arriving at around noon and spent the whole day and night at that location. The Defence relies on the testimony of Augustin Ngirabatware and Witnesses Winifred Musabeyezu-Kabuga, Léoncie Bongwa, DWAN-122, DWAN-7, DWAN-150, DWAN-55, Jean Damascène Kayitana, Jean Baptiste Byilingiro, Jérôme-Clément Bicamumpaka and Joseph Habinshuti. The Defence also refers to the evidence of Prosecution Witnesses Joseph Ngarambe, DAK and ANAW.<sup>659</sup>

493. The Prosecution submits that between 7 and 8 April 1994, Ngirabatware was committing crimes in Nyamyumba *commune*. The Prosecution asserts that the testimony of the Defence alibi witnesses is incredible, illogical and inconsistent. It relies on the testimony of Prosecution Witnesses DAK, ANAW, ANAL and AFS.<sup>660</sup>

494. In its deliberations, the Chamber has considered the alibi evidence in conjunction with the Prosecution evidence in order to make findings with respect to Paragraphs 16, 33 and 55 of the Indictment.

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<sup>657</sup> Indictment, paras. 16, 33, 55; Prosecution Closing Brief, para. 224. The Chamber notes that the alibi period is from 6 through 12 April 1994, but will consider only the period during which the Prosecution alleges that Ngirabatware was elsewhere committing crimes.

<sup>658</sup> The Chamber notes that there are no Prosecution allegations for the period from 9 through 12 April 1994 and therefore will not make a finding as to Ngirabatware's presence for that period. The Chamber further notes that in its Closing Brief, the Defence concludes the first alibi section up to the date of 22 April 1994. See Defence Closing Brief, paras. 86-126. The Chamber recalls that the official Notice of Alibi stated that the alibi period was from 6 through 12 April 1994 and accordingly will not make a finding as to this additional period in this section, but will address this period if necessary at the relevant portions of the Judgement.

<sup>659</sup> Defence Closing Brief, paras. 86-105; Defence Closing Argument, T. 24 July 2012, p. 41; T. 25 July 2012, pp. 9-16.

<sup>660</sup> Prosecution Closing Brief, paras. 223-224, 227, 234-255; Prosecution Closing Argument, T. 24 July 2012, pp. 4-13; T. 25 July 2012, pp. 24-27.

### 3.9.2 Evidence

#### Augustin Ngirabatware

495. Ngirabatware was appointed Minister of Planning by President Habyarimana on 19 July 1990. Ngirabatware believes that he was appointed because he was an expert in international monetary issues. The President also chose his government taking into account regional balance. President Habyarimana never appointed any member of his own family as a government leader. Within the government there was no minister who held a doctorate in economics. In Nyamyumba and Rubavu, Ngirabatware was regarded as someone who had undergone lengthy studies. After his appointment as a minister, many people from his native *commune* and other *préfectures* came to see him for help.<sup>661</sup>

496. On 6 April 1994, Ngirabatware spent the entire day at his office. The distance between his office and residence was about one kilometer. He went to the office on that day using his official car, like he did everyday. He had two official vehicles, one of which had a number plate of the ministry. The latter car was a white Audi 100 and which Ngirabatware used to commute to and from the office on 6 April 1994. Ngirabatware had a driver and was accompanied by an armed *gendarme* as usual. He testified that there was nothing out of the ordinary about that particular working day and he had granted audience and received people who were in charge of programmes under the Ministry of Planning. The only people whom he could remember in the office on that working day were those who were part of the follow-up committee of the social adjustment programme. He left the office around 6.30 p.m. as usual and headed directly back home in his official car.<sup>662</sup>

497. When he got home, his wife, two children, domestic staff and *gendarmes* were there. Ngirabatware testified that there were four *gendarmes* and a former *gendarme* with him that evening. Around 8.30 p.m. he was on the phone with his friend, Dr. Gaëtan Rusimbane, who told him that he had heard some peculiar noise coming from the Masaka area which lies in the eastern part of Kigali. Soon thereafter Ngirabatware called another friend, Bernard Ntegeye, who confirmed that his employees had just told him that a plane had been shot down. However, since Ngirabatware was not aware that President Habyarimana had gone to Tanzania, he did not think that it could have been the President's plane.<sup>663</sup> He then made other phone calls, but he clearly recalls the call to his next-door neighbor Prosper Mugiraneza, the Minister of Public Service at the time. Mugiraneza was also not aware about what had happened that night so Ngirabatware had to confirm the event from other persons. Around 8.45 p.m., he concluded that President Habyarimana had been killed. In the meantime Ngirabatware received a call from his sister-in-law, Winifred Musabeyezu-Kabuga, after which he sent the former *gendarme* at his residence to

<sup>661</sup> T. 16 November 2010, p. 33; T. 18 November 2010, pp. 5-8, 10; T. 6 December 2010, p. 9; T. 7 February 2011, p. 12 (at that time in Rwanda the administrative divisions did not have *cellules*).

<sup>662</sup> T. 25 November 2010, pp. 11-12 (Ngirabatware explained that vehicles attributed to Ministers had number plates bearing "R" for Rwandan Republic, the flag of the nation and a registration number reserved for the ministry. He was not sure whether others could testify to his presence in office on 6 April 1994.).

<sup>663</sup> T. 25 November 2010, pp. 13-15 (There were three domestic staff members in Ngirabatware's residence on 6 April 1994. He clarifies that the former *gendarme* would be included amongst the three domestic staff members. Dr. Gaëtan Rusimbane was the former dean of the faculty of economics of the National University of Rwanda. Mr. Ntegeye was at the time the resident representative of the UNDP in Togo and was at that time on holiday in Rwanda.).

go and get Musabeyezu-Kabuga and her husband from their residence in Kimihurura, in Kigali. Musabeyezu-Kabuga and her husband arrived between 30 and 40 minutes after he spoke to Dr. Gaëtan Rusimbane and by then he had conclusively learnt about the death of President Habyarimana, the Burundian President Ntaryamira and other persons who were on board the Presidential plane.<sup>664</sup>

498. Musabeyezu-Kabuga and her husband were accompanied by a little girl aged around 12 to 13 years and Musabeyezu-Kabuga was about seven to eight months pregnant. They sought refuge at Ngirabatware's residence because they believed that his house would be safer due to the presence of the *gendarmes*. After confirming the news of the plane crash and having received Musabeyezu-Kabuga and her husband, Ngirabatware noted that everybody at his residence was overwhelmed. While his reaction was silence, his wife was crying and screaming. He testified that in those circumstances they did not speak to each other or discuss anything.<sup>665</sup>

499. After the arrival of Musabeyezu-Kabuga and her husband, soldiers of the PGC came to Ngirabatware's house. The line superior entered his house and the other soldiers remained on the main road. The line superior told him that they had come to provide greater security to his family. Because Ngirabatware did not know him and was not aware of his intentions he refused the offer and the line superior left. However, the bus of soldiers remained at the entrance of the house. Ngirabatware then called Mugiraneza and learnt through him that the soldier was a warrant officer and when the bus of soldiers returned, Ngirabatware accepted their offer to help.<sup>666</sup>

500. That evening Ngirabatware along with his wife, two children, Musabeyezu-Kabuga, her husband and the little girl left his house along with Mugiraneza's family who had come to his house. Ngirabatware was told that they were being moved quickly for security reasons. They left the house empty-handed, in a white 4x4 Pajero jeep that belonged to the Ministry of Planning with the words "mini-plan" written on the door. He drove the Pajero and his wife, his two children, Musabeyezu-Kabuga and her husband were in the car. Mugiraneza's family was in its own vehicle. The convoy was escorted by the soldiers of the PGC. The convoy left his residence and headed towards Faustin Munyaseza's residence to pick up the Munyaseza family. Munyaseza was in Dar-es-Salaam at the time.<sup>667</sup> They picked up the Munyaseza family and drove to the residence of the President which was located close to Ngirabatware's residence. Ngirabatware met other families at the President's residence including the families of Siméon Nteziyayo and Augustin Ruzidana, the former governor of the Rwandan National Bank.<sup>668</sup>

501. Upon leaving the President's residence, they headed for the PGC which was located in Kimihurura in Kigali. The distance between the Kiyovu neighborhood, where the President's residence was located to Kimihurura was between two and two-and-a-half kilometers. The

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<sup>664</sup> T. 25 November 2010, pp. 13, 15-17.

<sup>665</sup> T. 25 November 2010, pp. 13, 15-17.

<sup>666</sup> T. 25 November 2010, pp. 17-18.

<sup>667</sup> T. 25 November 2010, pp. 18, 20 (Ngirabatware testified that all the other persons in his residence earlier, other than the ones with him in the car, stayed at home. The Munyaseza residence was located on the plateau right opposite the high school of Our Lady of Notre Dame.).

<sup>668</sup> T. 25 November 2010, p. 20 (Ngirabatware testified that these were the only families that he could recall meeting but there were certainly other families too).

entourage arrived at the PGC at around midnight and it was the first time he had been inside the PGC, it was thus very difficult for him to describe the location. Because he entered the camp at that time it was even more difficult to observe and remember the exact position of the buildings and the premises. He recalled the two halls and the place where he parked the white Pajero. On arrival at the camp, he did not hear much gunfire, just “sporadic gunshots here and there”.<sup>669</sup>

502. Once in the PGC, Ngirabatware saw and met many former ministers and colleagues along with their families who were already there. He saw the women and children in a very big hall where he went initially. He then met former colleagues including Casimir Bizimungu, André Ntagerura, Daniel Mbangura, Callixte Nzabonimana, Jean Baptiste Byilingiro and Télésphore Bizimungu in the other hall. Ngirabatware did not stay with his wife and children in the big hall which also had all the other women and children. He stayed in the small room with the former ministers and the room had around 20 to 25 people in it. The big hall was “quite close” to the small hall but Ngirabatware testified that he did not go inside the big hall. Ngirabatware’s family spent the night of 6 to 7 April 1994 in separate halls.<sup>670</sup>

503. On the morning of 7 April 1994, around 4.30 or 5.30 a.m., there was “an eruption of gunfire [...] loud noises”. The people in the two halls moved around to meet their family members. Ngirabatware moved close to his wife and children and Musabeyezu-Kabuga and her husband were also together. During the course of 7 April, they received no instructions about any further course of action and they had no contact with the soldiers of the PGC. They heard gunfire shots throughout the course of 7 April, with intermittent periods of silence as long as 20 to 30 minutes. From 4.00 p.m. onwards there was “intensive exchange of gunshots”. Ngirabatware did not go out of the PGC on 7 April 1994.<sup>671</sup>

504. In the early afternoon of 7 April 1994, Ngirabatware called Witness DWAN-7, with whom he shared a good relationship. He called Witness DWAN-7 because the “war was raging all around” them and Ngirabatware felt that it was time to leave the camp. Moreover, his sister-in-law was pregnant and it was necessary that she be evacuated from Kigali, thus he wanted to request Witness DWAN-7’s assistance so that his family could take refuge in his house, which Ngirabatware felt would be safer than the camp. Witness DWAN-7 advised Ngirabatware against coming to his residence because the “catastrophe was very hard at his residence”.<sup>672</sup>

505. On the evening of 7 April 1994, a lot of people started leaving the PGC. Ngirabatware recalled that Faustin Maniliho, the Director at the Ministry of Planning, left. He was not sure when the people left the camp. Ngirabatware testified that he, his family, brother-in-law and

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<sup>669</sup> T. 25 November 2010, pp. 20-21.

<sup>670</sup> T. 25 November 2010, pp. 20-22 (Jean Baptiste Byilingiro was a Director of Finance and a collaborator at the Ministry of Planning and someone who was in charge of a project at the Ministry of Planning. The small room had benches and chairs and was a third of the size of the courtroom.).

<sup>671</sup> T. 25 November 2010, pp. 21-23 (Ngirabatware testified that at the time they thought that it was the RPF soldiers lodged close by at the CND who were responsible for the gunfire but later they learnt that it was a mixture of either Rwandan soldiers or RPF soldiers who were beyond or outside the CND. The CND building was less than a kilometer or at most a kilometer away from the PGC. The soldiers of the Presidential Guard were busy with the fighting from the early morning of 7 April 1994 and were also busy transporting wounded persons. According to Ngirabatware the gunfire was being shot at a distance “very close by” but he could not be sure about the exact distance.).

<sup>672</sup> T. 25 November 2010, pp. 25-26.

sister-in-law spent the night in the small room lying down on the floor because of the heavy gunshots all around. He saw Mbangura and his wife, as well as Ntagerura and his wife, Léoncie Bongwa.<sup>673</sup> He never saw Nzabonimana and Mugiraneza again. It was the first time that night that he saw red shots of gunfire zooming past.<sup>674</sup>

506. On 8 April 1994 around 10.30 to 11.00 a.m., Ngirabatware left the PGC for the first time since he arrived there. He went to the French Embassy along with his family, Musabeyezu-Kabuga and her husband. One of Mugiraneza's sons, aged around six to eight years was in the car. They left in the same white 4x4 Pajero in which they had arrived at the PGC. He drove the car and they left the camp without any personal guard or *gendarme*. They left the PGC before the Mbangura and Ntagerura families. It took them 15 to 20 minutes to reach the Embassy which was about two kilometers away. According to Ngirabatware there were checkpoints on the way to the Embassy but there were no physical barriers on the road and nobody stopped them on their way.<sup>675</sup>

507. On reaching the Embassy, Ngirabatware gave his identity and told a French soldier at the entrance that they had come to seek refuge pursuant to which this person wrote the names of the people that were with him. On entering the Embassy Ngirabatware saw many people he knew, like Nzabonimana, Bizimungu, Augustin Ruzindana, Justin Mugenzi, Faustin Maniliho and Jean Baptiste Byilingiro.<sup>676</sup>

508. While inside the Embassy, Ngirabatware's wife and children were placed in a big room that was covered and he remained in the garden nearby with the other men such as former ministers and colleagues.<sup>677</sup>

509. Upon his arrival, Ngirabatware immediately met the French Ambassador Jean Michel Marlaud, alone in his office and the meeting lasted for about 20 minutes. They discussed various issues, and Ambassador Marlaud informed Ngirabatware for the first time about the process of setting up an interim government. Ngirabatware also asked Ambassador Marlaud to help evacuate his pregnant sister-in-law and the ambassador promised to look into the matter.<sup>678</sup>

510. In the afternoon of 8 April 1994 around 12.00 p.m., Ngirabatware asked Witness DWAN-122 to come to the Embassy. Witness DWAN-122 came to the Embassy around 4.00 to 5.00 p.m., then Ngirabatware and his wife gave him instructions about the running of the house. He also became aware that there was an agreement to put in place an interim government and that all the MRND ministers who were already in office were to be reappointed. He learnt this in

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<sup>673</sup> T. 25 November 2010, pp. 26-29, 33 (Ngirabatware explained that the room in which he spent the night of 7 to 8 April was different from the room that he spent the night of 6 to 7 April 1994. He stated that both rooms were close by and the room in which he spent the night of 7 to 8 April did not have any chairs or benches while the room where he stayed from 6 to 7 April had chairs and benches. Both rooms were small.).

<sup>674</sup> T. 25 November 2010, pp. 26, 28-29 (there were around 15 to 20 people in the small room on the night of 7 to 8 April 1994).

<sup>675</sup> T. 25 November 2010, pp. 29-32 (the *gendarmes* at Ngirabatware's residence in the evening of 6 April 1994 were still at his residence and Ngirabatware had no contact with them).

<sup>676</sup> T. 25 November 2010, pp. 32-33.

<sup>677</sup> T. 25 November 2010, pp. 33-34 (the big room was in a big building which was "not a hundred percent covered").

<sup>678</sup> T. 25 November 2010, pp. 34-36.

the afternoon of 8 April 1994. Ntagerura spoke to Ngirabatware and others around 4.00 to 5.00 p.m. or 6.00 to 7.00 p.m. regarding the reappointments. In the evening of 8 April, around 8.30 p.m., they heard the speech of President Sindikubwabo announcing the members of the new Interim Government. The gunfire and bomb blasts were ongoing all the time in the evening. On the same day, Ambassador Marlaud also convened a meeting which was not just a gathering of ministers because Ferdinand Nahimana was also present there. There was nothing special or new discussed in that meeting. Ngirabatware and his family spent the night of 8 April 1994 at the Embassy. His family was in an area which was wider in terms of space and the men were much closer to the entrance of the Embassy.<sup>679</sup>

511. On the morning of 9 April 1994, around 9.00 a.m. Ngirabatware, his wife, children and sister-in-law left the Embassy in the white Pajero for his residence which was 300 meters away. He does not recall if his brother-in-law came along. He went to his house, ate, bathed and changed his clothes. He left his residence around 9.30 a.m. for *Hôtel des Diplomates* in the white Pajero and was accompanied by a *gendarme*. His family members remained at home and later they went back to the Embassy. At about 9.45 a.m. he reached *Hôtel des Diplomates*, it took about five to ten minutes of travel time from his residence. At the hotel he greeted the persons he knew and then went into the hall where the swearing-in ceremony of the members of the Interim Government was to be held. The swearing-in ceremony began around 10.15 a.m. and was over around 11.15 a.m. Ngirabatware took oath of office in that ceremony as the Minister of Planning. It was a public ceremony.<sup>680</sup>

512. Ngirabatware testified that there were two Cabinet meetings held on that day at the *Hôtel des Diplomates*. The first one was held around 30 minutes or one hour after the swearing-in ceremony and the second one was held in the afternoon around 3.30 p.m., the beginning of which he had missed.<sup>681</sup>

513. During the first cabinet meeting that started around 10.30 or 11.00 a.m. he was entrusted, along with the Minister of Social Affairs, with the third mission of the Interim Government which involved providing assistance to the displaced persons. He was also entrusted with another special mission, which involved accompanying the head of the mission Minister of Foreign Affairs and International Co-operation, Jérôme-Clément Bicamumpaka and Casimir Bizimungu, Minister of Health (former Minister of Foreign Affairs) to go and meet the diplomatic corps accredited to Kigali to apprise them about the missions of the new Interim Government and garner political support from their governments. The preparation for these meetings with the diplomatic corps lasted for “one hour or an hour and thirty minutes” and the meetings themselves took place between the two cabinet meetings with the three ministers having missed the

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<sup>679</sup> T. 25 November 2010, pp. 36-39 (Nahimana was a university lecturer and a minister designate for the MRND. He was to become Minister of Higher Education and Scientific Research for the MRND in the Broad-Based Transitional Government).

<sup>680</sup> T. 25 November 2010, pp. 41-44, 51 (Ngirabatware testified that considering the distance of 300 meters between his house and the Embassy they encountered no problems in that travel. However to suggest that he could have gone from Kigali to Gisenyi during the same time would not be correct because the conditions were not the same at all.).

<sup>681</sup> T. 25 November 2010, pp. 44, 50, 52.

beginning of the second cabinet meeting because their meeting with the diplomatic corps was still ongoing at the start of it.<sup>682</sup>

514. The three ministers first met Ambassador Swinnen of the Belgian Embassy in Rwanda, at his residence in Kiyovu, Kigali at around 3.30 p.m. They left with a military escort and stayed at the Ambassador's residence for about 45 to 50 minutes. Before leaving Ambassador Swinnen's house, the Ambassador told the three ministers that Jean-Marie Vianney Nkubito, the State Prosecutor had sought shelter at his house. The Ambassador requested the three Ministers to take him to the Embassy with them where he could seek refuge.<sup>683</sup>

515. Thereafter, the three ministers headed towards the Embassy to meet the French Ambassador, Jean Michel Marlaud. After the meeting with Ambassador Marlaud, they went to the residence of the Apostolic Nuncio in Rwanda, Bishop Giuseppe Berthello who was the dean of the consular and diplomatic corps accredited to Kigali. The meeting lasted for about 30 to 40 minutes. After this meeting, the three ministers went back to *Hôtel des Diplomates* where the second cabinet meeting was in progress. They got to the meeting around 5.30 p.m. Bicumupaka presented a report of the three missions at the meeting and he was supported by Ngirabatware. According to Ngirabatware, Casimir Bizimungu came to the meeting with them, however he left again before the end of it. At the meeting there were two important decisions taken: the first with respect to the authorisation of the landing of the Belgian aircraft in Kigali for the protection and evacuation of the Belgian nationals, and the second with respect to ensuring that the anti-Belgium programmes at the RTL M were stopped.<sup>684</sup>

516. At the end of those two cabinet meetings in the evening, Ngirabatware went back to the French Embassy around 7.30 or 8.00 p.m. That evening he heard the broadcast of his swearing-in-ceremony on Radio Rwanda. He also heard the voices of the journalist commenting on the government, other ministers and the President of the Republic in that same broadcast. Ngirabatware stayed at the Embassy on the night of 9 April 1994.<sup>685</sup>

517. In the morning of 10 April 1994, Ngirabatware was still at the French Embassy in Kigali. That morning, he went to his residence in Kiyovu, in the same white Pajero jeep, accompanied by some persons whom he can no longer remember except for Mbangura and his wife. The people who accompanied him were mostly those who had residences in Kimihurura which was not far away from the Embassy. On the way from his residence to the Embassy, his car was not escorted by *gendarmes* because he had left them behind at his residence.<sup>686</sup>

518. Thereafter, and still in the morning, Ngirabatware attended another Cabinet meeting at the *Hôtel des Diplomates*. The agenda of that meeting was the issue of security in the country. The meeting ended in the afternoon. The meeting was not public but the decisions taken during the course of the meeting were communicated by the Ministry of Information to Radio Rwanda

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<sup>682</sup> T. 25 November 2010, pp. 44, 50, 52.

<sup>683</sup> T. 25 November 2010, pp. 52-53, 55 (the distance between Belgian Ambassador's residence and *Hôtel des Diplomates* was between 800 meters and one kilometer. Nkubito was later dropped at the French Embassy).

<sup>684</sup> T. 25 November 2010, pp. 53-56 (these two requests were made by the Belgian Ambassador during his meeting with the ministers), 58.

<sup>685</sup> T. 25 November 2010, pp. 44-45, 49.

<sup>686</sup> T. 25 November 2010, pp. 58-59.



and also through a press conference. It was decided that owing to the security situation in the country all the *préfets* of Rwanda were to be convened to a meeting in Kigali and that they would be invited to the cabinet meetings. Ngirabatware left during the meeting for some time to attend another meeting at *Hôtel des Diplomates* with Bizimungu and Philip Gaillard, a delegate of the International Committee of the Red Cross to discuss the abundance of dead bodies at a mortuary of the Kigali Hospital, and to provide assistance to persons in need. Ngirabatware testified that he was unable to do anything to help the delegate.<sup>687</sup>

519. At the end of the cabinet meeting, Ngirabatware went to his residence which is about 800 meters from *Hôtel des Diplomates*. He left his residence at about 6.30 p.m. and headed to the Embassy where he heard the report of the Cabinet meeting on Radio Rwanda. He spent the night of 10 April 1994 at the Embassy.<sup>688</sup>

520. In the morning of 11 April 1994, Ngirabatware went to his residence along with his family, including his sister-in-law and brother-in-law, and many other colleagues. He used the white Pajero as usual to commute. He does not recall the exact amount of time he spent at his residence but he left his residence to go to *Hôtel des Diplomates* to attend another cabinet meeting that morning. The cabinet meeting with the *préfets* extended into the afternoon. The acting *préfets* of Gisenyi and Ruhengeri could not attend the meeting because they were unable to travel between Gisenyi and Kigali through Ruhengeri.<sup>689</sup>

521. During the course of 11 April 1994, Ngirabatware left *Hôtel des Diplomates* to go to the Embassy. This visit to the Embassy was timed during a tea break of the cabinet meeting. Once at the Embassy, Ngirabatware met Ambassador Marlaud to discuss the issue of evacuation of his pregnant sister-in-law. The Ambassador made no promises to Ngirabatware. Immediately thereafter Ngirabatware had a brief conversation with the Apostolic Nuncio for Rwanda, Berthello and the head of the French cooperation at the French Embassy.<sup>690</sup>

522. In the evening of 11 April, Ambassador Marlaud spoke to Ngirabatware and his other colleagues and informed them about the plans of the French government to carry out the evacuation of the Embassy and “close its doors in a few days’ time”. He, however, did not specify the exact date or time when they intended to carry out the evacuation and close down the Embassy.<sup>691</sup>

523. On 11 April 1994, Ngirabatware was at the Embassy around 6.00 p.m. He immediately left the Embassy again to go to *Hôtel des Diplomates* where he spent the night of 11 April 1994. He spent the night at the hotel because, having spent the entire day at the hotel engaged in cabinet meetings, he expected the discussions and meetings between the ministers to continue through the evening. Like all ministers of the Interim Government, a room had been booked for him at the hotel for the night. His wife decided to spend the night at the Embassy since by then she had a lot of relatives with her including her mother, brothers and sisters. Before leaving the

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<sup>687</sup> T. 25 November 2010, pp. 59-60, 63.

<sup>688</sup> T. 25 November 2010, pp. 60-61 (the report covered the press conference granted by Prime Minister Kambanda and the communiqué read out by the Minister of Information, Eliézer Niyitegeka), 63.

<sup>689</sup> T. 25 November 2010, p. 65.

<sup>690</sup> T. 29 November 2010, p. 7.

<sup>691</sup> T. 29 November 2010, p. 7.

Embassy in the evening of 11 April 1994, Ngirabatware made no arrangements to leave Kigali because at that time the government had no intention of moving its base out of Kigali. Ngirabatware believed that he would meet his wife and children on the morning of 12 April 1994 at the Embassy. On the evening of 11 April 1994, Ngirabatware listened to Radio Rwanda which broadcasted the events that had taken place during the course of that day including the Cabinet meeting of the different *préfets* convened in Kigali on that day.<sup>692</sup>

524. On the morning of 12 April 1994, towards 8.00 to 8.30 a.m., Ngirabatware left the *Hôtel des Diplomates* for the Embassy. It took him about five to seven minutes. When he arrived at the Embassy slightly before 9.00 a.m., the doors of the Embassy were already closed and all the people who had sought refuge there, including his family members, had already been evacuated. At that moment he had no idea where the people had been taken except for the fact that they had headed towards Kanombe International Airport. He later learnt where his family and the others had actually been evacuated to.<sup>693</sup>

525. From the Embassy, Ngirabatware went home and then to *Hôtel des Diplomates* where he had to attend a cabinet meeting. At all times that morning, Ngirabatware was escorted by a *gendarme*. The cabinet meeting did not take place that day. While on his way to the hotel, just near the Ministry of Defence, specifically around Saint Michel Church, Ngirabatware bumped into the Chief of Staff of the *Gendarmerie*, General Ndindiliyimana, who informed him that the Interim Government was relocating to the south. On hearing this news, Ngirabatware's sole intention was to leave with the others because he was certain that it was only a matter of time before *Hôtel des Diplomates* would come under attack or be bombed by the RPF.<sup>694</sup>

526. Ngirabatware immediately left for *Hôtel des Diplomates* to collect his belongings. He met a few persons at the hotel; however he saw no fellow minister at the hotel. In that state of general panic, he lost the keys to his Pajero vehicle that he was driving. Consequently, Witness DWAN-122, who was at his residence, went to find a mechanic who could get the car started. Ngirabatware was in the company of the Minister of Labour and Social Affairs, Jean de Dieu Habineza, when Witness DWAN-122 came back with a mechanic to solve the car problem. The Pajero was repaired at the parking lot of *Hôtel des Diplomates*. Ngirabatware, Habineza and Witness DWAN-122 left the *Hôtel des Diplomates* shortly before 11.00 a.m. to go to his residence. They left the *Hôtel des Diplomates* in two different vehicles owned by the Ministry of Planning. The first vehicle was the white Pajero and the second vehicle, an Audi 100, was his vehicle which had been brought by Witness DWAN-122. They reached his residence around 11.00 or 11.10 a.m., where they stayed for some 10 to 15 minutes. Thereafter, they headed towards the south to Gitarama just like the rest of the population. It took them more than three hours to cover a distance of about 50 kilometers to Gitarama. They travelled on the main road like everybody. Ngirabatware stated that there was a massive crowd of both people and vehicles on the tarmacked Nyabugogo-Giticyinyoni-Ruyenzi road. There were no roadblocks on that road

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<sup>692</sup> T. 29 November 2010, pp. 3-4.

<sup>693</sup> T. 29 November 2010, pp. 7-8.

<sup>694</sup> T. 29 November 2010, p. 8.

on that day and it was impossible to have a roadblock there owing to the millions of people on the road.<sup>695</sup>

527. On arrival in Gitarama, Ngirabatware first enquired about the whereabouts of the other members of the government like the President and the Prime Minister but he got no specific response at the time. After refuelling his car at a petrol station at Gitarama, he and Habineza decided to proceed to Gisenyi because it was Ngirabatware's hometown where he had a house and a brother, and where he was sure that he could secure a room in Hotel Meridien at any time. He had no reasons to stay back in Gitarama or go to Butare.<sup>696</sup>

528. From Gitarama to Gisenyi, they crossed many roadblocks, some in the form of a huge piece of wood on the road, stones or people who stopped them. These roadblocks were mostly manned by civilians except for some roadblocks which were manned by *gendarmes* or soldiers. These included the roadblocks at Mukamira (at the junction of the road coming from Gitarama heading to Gisenyi and the road from Ruhengeri to Gisenyi) which was manned by either *gendarmes* or soldiers; the roadblock close to Pfunda, just after Nyundo which was manned by *gendarmes*; the roadblock at Bralirwa which was manned by *gendarmes*; and a roadblock at the entrance of Gisenyi town which was also manned by *gendarmes*. The road that continues from Gisenyi towards Bralirwa and the military barracks also had some soldiers. Ngirabatware encountered many difficulties in crossing the roadblocks, some more than the others. They were required to give an explanation and identification at each roadblock whether manned by civilian or soldiers/*gendarmes* and were subjected to checks and vehicle inspection. Ngirabatware and the others were required to alight from their vehicles at the Ngororero and Gasiza roadblocks. He testified that he did not see arms with the persons manning the roadblocks in general, except for the roadlock at Jende where the lady manning the roadblock was carrying a gun.<sup>697</sup>

529. They got to Gisenyi around 7.00 p.m. and immediately went to Hotel Meridien. As he entered the hotel Ngirabatware met many people including Désiré Habiyambere, the chief of marketing of Bralirwa; Bishop Wenceslas Kalibushi, the bishop of Nyundo; the manager of the hotel, Martin Nkwakuzi; and other bishops and clerics he did not know. Ngirabatware spent the night of 12 April 1994 in Hotel Meridien in Gisenyi.<sup>698</sup>

#### Defence Witness Winifred Musabeyezu-Kabuga

530. Winifred Musabeyezu-Kabuga is Ngirabatware's sister-in-law; Ngirabatware's wife Félicité Mukademali is her elder sister.<sup>699</sup> Musabeyezu-Kabuga is a Hutu of Belgian nationality.

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<sup>695</sup> T. 29 November 2010, pp. 8-9 (Ngirabatware explained that the other *gendarme* who was escorting him that morning was at the *Hôtel des Diplomates* because together he and the *gendarme* could not leave the *Hôtel des Diplomates*. It was for this reason that he had called the former *gendarme* to seek his help to call the mechanic.), 10-12, 15 (at home Ngirabatware fetched one of his wife's private vehicles, a white Mercedes-Benz in which he drove to Gitarama and thereafter Gisenyi on 12 April 1994).

<sup>696</sup> T. 29 November 2010, p. 12.

<sup>697</sup> T. 29 November 2010, pp. 12, 15-17 (the lady was a *conseiller*).

<sup>698</sup> T. 29 November 2010, pp. 12-13.

<sup>699</sup> T. 18 October 2011, pp. 7-10 (In physically describing Félicité as in 1994, the witness testified that among the eight Kabuga sisters, Félicité was the shortest and the slimmest. Félicité was less than 1.56 meters, which was the witness' height. Also Félicité was darker in complexion than the witness.).

In April 1994, she was a resident of Kigali-Ville.<sup>700</sup> She was seven months pregnant in April 1994.<sup>701</sup> She stated that in 1994, Félicité and Ngirabatware had a daughter and a son.<sup>702</sup>

531. On 6 April 1994, Musabeyezu-Kabuga was at home in the Kimihurura neighborhood of Kigali. She learnt about the death of President Habyarimana through a telephone call that her husband Eugène Mbarushimana received between 8.30 and 9.00 p.m. Immediately after receiving the news the witness and her family tried to find a place for refuge and the witness' husband called Félicité Ngirabatware. Soon thereafter, a driver, Witness DWAN-122 and a *gendarme* came to pick up the witness and her family in a white Pajero belonging to Ngirabatware. They reached Ngirabatware's house around 10.00 or 10.30 p.m. which was located in the Kiyovu neighborhood of Kigali. When she arrived at Ngirabatware's house, the witness saw Ngirabatware, his wife Félicité, their two children and two domestic staff. Apart from the driver and the *gendarme* there were two or three other *gendarmes* and a night watchman. All the *gendarmes* were men and to the best of her knowledge Ngirabatware never had a lady *gendarme* for as long as she has known him.<sup>703</sup>

532. Musabeyezu-Kabuga and her family were frightened and in a state of shock. After about one or one-and-a-half hours, as they sat in the living room a guard knocked on the door and asked to speak to Ngirabatware. Ngirabatware spoke to him and was told that the guard had come to fetch him and his family. Ngirabatware's family as well as the witness' family refused to go with the guard because they were not sure what the guard wanted of them and they did not leave Ngirabatware's house. Thereafter Ngirabatware spoke to Minister Prosper Mugiraneza over the phone and after he finished his conversation, Ngirabatware reassured his family and the witness' family that the guard who had come to fetch them could be trusted.<sup>704</sup>

533. Musabeyezu-Kabuga testified that soon thereafter the same guard returned to take them all to the PGC. Ngirabatware and his family as well as the witness, her husband and her cousin Chantal Mukandayambaje all left together for the PGC in the white Pajero which was parked in Ngirabatware's compound. When they left the compound and entered the road she saw military vehicles waiting for them. She recalled that one military vehicle was in front of the convoy and the other one was at the end of the convoy. They left in the same convoy as Prosper Mugiraneza's family who were Ngirabatware's neighbors. They first fetched the family of Minister Faustin Munyaseza's who also lived in the Kiyovu neighborhood. After picking them up, they stopped next at the residence of the President also in the Kiyovu neighborhood, and the witness saw many families there including the family of Augustin Ruzidana and Siméon. These families joined the convoy. They drove to the PGC in Kimihurura, Kigali and arrived at about 1.00 a.m. or "in any case after midnight". At the PGC, the witness saw many families including the family of Callixte Nzabonimana, who was Minister of Youth Affairs in 1994. She also saw the Mishema family, the wife of the Minister of Defence and her children, Minister Casimir

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<sup>700</sup> Defence Exhibit 163 (Personal Identification Sheet).

<sup>701</sup> T. 18 October 2011, pp. 6-7, 12 (her daughter was born on 9 June 1994 in Paris).

<sup>702</sup> T. 18 October 2011, pp. 10-11.

<sup>703</sup> T. 18 October 2011, pp. 11-15 (the witness stated that Félicité and Ngirabatware were married since 19 December 1987 and hence she knew him for almost seven years in 1994).

<sup>704</sup> T. 18 October 2011, pp. 15-16, 19.

Bizimungu and his family, Minister Mbangura and his family, Faustin Maniliho, Jean Baptiste Byilingiro, the Ntagerura family including his wife Léoncie, and Pauline Nyiramasuhuko.<sup>705</sup>

534. According to the witness all the families in the PGC were in a state of shock, panic-stricken and were hardly speaking to each other. They were led into an office with two rooms; one large room and a smaller one. The rooms were contiguous and close to one another. The bigger room was allocated to the women and children and the smaller room was allocated to the men. They all settled down on the floor and did not sleep that night. She was in the bigger room with the women and children and spent that night or the early hours of 7 April 1994 at the PGC. Ngirabatware was in the smaller room with the other men. She saw him at least once every hour on that night or the early hours of 7 April 1994. She recalled this because she was seven months pregnant, she had to urinate every 45 minutes to one hour. The rooms they were in were linked through a connecting door, and the toilets were found outside. Every time she went to the toilet, she had to go past the small room in which the men were settled and leave the building. Each time she went out, she would see her husband and Ngirabatware and would exchange a few words with Ngirabatware since he was not sleeping.<sup>706</sup>

535. Around 3.00 or 4.00 a.m. on 7 April 1994, the witness heard the noise of gunfire that was coming closer and closer. This created panic in both rooms and resulted in people moving around in the two rooms to meet their family members. The witness remained in the big room and asked Eugène to join her. The witness was by her sister Félicité Ngirabatware, when Ngirabatware came and fetched his kids who were by his wife, Félicité. The shooting intensified as time went on and they remained on the floor in the rooms to avoid being hit by the bullets. The witness testified that she was very scared and kept asking Ngirabatware to move them to a safer place since the PGC was not safe anymore.<sup>707</sup>

536. In the early afternoon of 7 April 1994, Ngirabatware called his friend Witness DWAN-7 in order to take refuge at his place. Witness DWAN-7 advised Ngirabatware not to come and seek refuge at his home.<sup>708</sup> After Witness DWAN-7 turned down Ngirabatware's request, Ngirabatware made no other attempt to get the witness out of the PGC because he could not do anything under the circumstances. Ngirabatware's house was located in Kiyovu but a bit further away from the PGC than Kacyiru.<sup>709</sup>

537. The witness' and Ngirabatware's families spent the afternoon of 7 April 1994 in the big room at the PGC. By the evening of 7 April 1994 the witness realized that some of the families had left the room, she was not sure when and where they had gone.<sup>710</sup>

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<sup>705</sup> T. 18 October 2011, pp. 19-24 (The witness stated that she remembers that these families joined the convoy but stated that there may be a possibility that other families also joined the convoy. She said that she did not remember clearly.)

<sup>706</sup> T. 18 October 2011, pp. 24-26, 34 (the witness explained that "it was a big room or an empty office").

<sup>707</sup> T. 18 October 2011, pp. 26-27.

<sup>708</sup> T. 18 October 2011, pp. 27, 31, 35 (the witness stated that this was the only time on 7 April 1994 that Ngirabatware went out of the witness' sight); T. 19 October 2011, p. 25 (it was after she begged Ngirabatware to do something about her evacuation, he called Witness DWAN-7 around 3.00 p.m. on 7 April 1994 to seek his help).

<sup>709</sup> T. 18 October 2011, pp. 27, 31; T. 19 October 2011, pp. 33-34, 36.

<sup>710</sup> T. 18 October 2011, p. 31; T. 19 October 2011, pp. 39-41 (According to the witness the families that left included the Mugiraneza family excluding one of their sons that accompanied the witness to the French Embassy later, the

538. The witness stated that the families including Ngirabatware spent the night of 7 to 8 April 1994 in the bigger room. Ngirabatware was about 20 to 30 meters away from her. She was lying on the floor with Eugène next to her. Ngirabatware was lying next to Eugène, with his two children between him and Félicité. They were all lying down at least until 1.00 a.m. amidst gunfire. The witness saw Ngirabatware at least once per hour when she got up and hopped over everybody lying down to go to urinate. He laid close to her. She recalled seeing the Ntagerura family on the night of 7 to 8 April 1994.<sup>711</sup>

539. Musabeyezu-Kabuga testified that on 8 April 1994, they left the PGC at about 10.30 to 11.00 a.m. for the French Embassy to seek refuge. They left aboard the same Pajero in which they had come to the PGC. When they left the PGC there was gunfire going off everywhere and they were compelled to crawl to get into the Pajero. Ngirabatware drove the vehicle, and inside the car were the witness, Félicité and her two children, Eugène, the witness' cousin and Mugarineza's child who had been forgotten behind. Once they arrived at the Embassy, they were registered before entering inside. There was an officer of the Embassy who was taking down their names at the entrance. She does not recall showing any identification. On entering the Embassy, the witness saw that there were many families already there. She was installed in a room that was used as the visa room along with other women and children. The men remained in a small garden right outside the small room where they stayed and talked to each other. Ngirabatware remained in the small garden at the Embassy. The witness saw Witness DWAN-122, whom she had last seen on the night of 6 April 1994, at the Embassy talking to Ngirabatware around 11.00 a.m. on 8 April 1994. She saw several families at the Embassy, including the families of Ruzindana, Siméon, Mbangura, Prosper, Callixte, Jean Baptiste Byilingiro, Ntagerura, Habamenshi and Justin Mugenzi.<sup>712</sup>

540. The witness spent the night of 8 to 9 April 1994 at the Embassy. Ngirabatware spent the night in the small garden at the Embassy. From the time of her arrival at the Embassy on 8 April 1994, the witness saw Ngirabatware at least once every hour because she frequently went out of the room to visit the toilet which was dug up in the backyard of the Embassy and hence in doing so would cross the small garden where Ngirabatware and her husband were and they would often stop her and speak to her.<sup>713</sup>

541. On the morning of 9 April 1994, the witness saw Ngirabatware. Around 7.30 to 8.00 a.m. they left the Embassy together in the same Pajero to go to Ngirabatware's house in Kiyovu, where Ngirabatware stayed for about 20 to 30 minutes. She stayed at Ngirabatware's house for

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Ruzindana family, the "Callixte family", the Byilingiro family, the family of the Minister of Defence and the Munyazesa family. The witness also states that it would have been impossible for these families to have left the Camp in the morning up to 2.00 p.m. on 7 April 1994 for the Embassy because the "firing was very intense from all sides".).

<sup>711</sup> T. 18 October 2011, pp. 31-32, 34-35.

<sup>712</sup> T. 18 October 2011, pp. 35-38 (the witness explained that when they entered the French Embassy there were many families already there and the visa room in which they were was very small); T. 19 October 2011, pp. 80-81, 84 (according to the witness, once at the French Embassy the gunshots were still audible but the noise was coming from afar).

<sup>713</sup> T. 18 October 2011, p. 37; T. 19 October 2011, p. 85 (according to the witness Ngirabatware's house only was "a few houses away" from the French Embassy – "less than 500 meters" away).

about 60 to 90 minutes. Ngirabatware left his house to go to *Hôtel des Diplomates*, located in Kigali, for his swearing-in ceremony.<sup>714</sup>

542. After they left Ngirabatware's house, they went back to the Embassy. She saw Ngirabatware again in the afternoon of 9 April at the Embassy in the other building with the office of the French Ambassador to Rwanda. Ngirabatware was in the company of two other ministers, Bizimungu and Bicomumpaka. The witness stated that it was not the first time Ngirabatware met the French Ambassador, because when they arrived at the Embassy in the morning of 8 April 1994, she had begged him to make a request to the Ambassador on her behalf to evacuate her.<sup>715</sup>

543. The witness saw Ngirabatware again in the evening of 9 April 1994 at around 6.30 to 7.00 p.m., when he returned to sleep at the Embassy. Ngirabatware spent the night of 9 to 10 April 1994 in the open air in the garden at the Embassy. From the time Ngirabatware returned to the Embassy that Saturday, 9 April 1994, in the early evening until 10 April, in the morning, the witness saw Ngirabatware at least once every hour.<sup>716</sup>

544. On the morning of 10 April, the witness and her ex-husband went with Ngirabatware and his family to his residence. Ngirabatware spent about 20 minutes at his home, while the witness spent about two hours there along with the others. Thereafter, they returned to the Embassy in Kigali. The witness saw Ngirabatware that evening in the Embassy around 7.00 p.m. Ngirabatware spent the night of 10 to 11 April 1994 at the Embassy, and she saw him about every hour under the same circumstances as the previous nights at the Embassy.<sup>717</sup>

545. On 11 April 1994 between 7.00 and 8.00 a.m. the witness left for Ngirabatware's residence along with the rest of the family members. Ngirabatware was there for about 10 to 20 minutes. Ngirabatware then left for the *Hôtel des Diplomates*. The witness and the other family members stayed at Ngirabatware's residence for about two hours. In that time, they showered, ate and immediately returned to the Embassy since they never felt safe there, despite being next to the Embassy. They felt safe only within the Embassy compound. During the early afternoon, at about 2.00 to 3.00 p.m., the witness saw Ngirabatware at the office of the French Ambassador. She again saw Ngirabatware around 6.00 p.m. when he returned to the Embassy. She had no idea what Ngirabatware did from 3.00 to 6.00 p.m. She spent the night between 11 and 12 April 1994 at the Embassy. Ngirabatware did not spend that night at the Embassy, but he told them that he spent it at the *Hôtel des Diplomates* in Kigali.<sup>718</sup>

546. In the early morning of 12 April 1994, at approximately 5.00 a.m., everyone at the Embassy was woken up by French soldiers, who said they had come to evacuate the people. The soldiers told them to leave the Embassy quickly in the trucks outside. The witness left the Embassy with Félicité and her two children, the witness' husband and mother who had joined

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<sup>714</sup> T. 18 October 2011, p. 46.

<sup>715</sup> T. 18 October 2011, pp. 47, 52-53 (Prosecution Counsel raised an identical objection to the one raised earlier that the details given were insufficient. The Chamber ruled that Defence Counsel could pursue the matter by following the will-say as provided and develop whatever aspect she wanted within that will-say statement.). See T. 18 October 2011, pp. 47-52; T. 19 October 2011, p. 81.

<sup>716</sup> T. 18 October 2011, pp. 47, 53-54.

<sup>717</sup> T. 18 October 2011, pp. 54, 56; T. 19 October 2011, p. 85.

<sup>718</sup> T. 18 October 2011, pp. 56-57; T. 19 October 2011, p. 82.

them at the Embassy, their cousin, the witness' sisters, brothers and cousins, and a niece. They boarded the trucks, left the Embassy and were driven to Kanombe Airport. Once at Kanombe Airport, they boarded military planes. They were unaware about the destination that they were flying to. About an hour later the planes landed in Bujumbura, Burundi, where they remained for three days. During those three days, Félicité and her two children were still with the witness. After the three days, they were flown in the same planes to Bukavu in Zaire. Félicité Ngirabatware and her two children accompanied them to Bukavu.<sup>719</sup>

Defence Witness DWAN-122

547. Witness DWAN-122 is a Hutu who worked for Ngirabatware. He served as a *gendarme* from 1979 until 1989. He worked for Ngirabatware since 1993 along with four other *gendarmes*. Only male *gendarmes* worked for Ngirabatware, throughout 1993 and 1994 Ngirabatware did not employ a female *gendarme*. These *gendarmes* had been requested by Ngirabatware after the death of Minister Gatabazi in February 1994. The witness was a reservist (former) *gendarme*; as he was not active, he did not wear military uniform.<sup>720</sup>

548. On 6 April 1994, the witness learned of the death of President Habyarimana from Ngirabatware, at around 7.00 or 8.00 p.m. He was at Ngirabatware's house along with Ngirabatware, his wife Félicité, his children Daisy and Lionel, the four *gendarmes* who worked there, and three house helps. There were two male and one female domestic staff; the witness could recall that one was named Vestine but did not know the names of the others. On the night of 6 April 1994, there was no driver at Ngirabatware's residence; the drivers did not usually spend the night at the residence. The witness stated that Ngirabatware lived in Kiyovu neighborhood, Kigali, below the National Bank building, which was about 200 meters from Saint Michel Church.<sup>721</sup>

549. Ngirabatware instructed Witness DWAN-122 to pick up his sister-in-law, Winnie, her husband and children from the Kimihurura neighborhood, and bring them to Ngirabatware's house. The witness stated that Winnie appeared to be pregnant. He was at Winnie's house for about 20 minutes before returning to Ngirabatware's residence. The whole process took 30 to 40 minutes.<sup>722</sup>

550. Around 30 minutes after he returned, a warrant officer called Turatsinze came to the house in an armored vehicle, and parked outside the gate. He wanted to pick up Ngirabatware, but Ngirabatware refused to go out. Turatsinze left but came back a second time and asked the witness to inform Ngirabatware that he had returned. Ngirabatware came out, along with his family and Winnie's family. The witness talked to Turatsinze at the gate but neither of them went into the house, so he did not know what happened inside. The witness believed that Ngirabatware came out this time because he had just been informed that it was a commander of the Presidential Guard who had sent this officer to fetch him. Ngirabatware, his wife, his two

<sup>719</sup> T. 18 October 2011, pp. 58 (they remained in the Burundi airport in the hangar for three days).

<sup>720</sup> Defence Exhibit 129 (Personal Identification Sheet); T. 29 June 2011, p. 67; T. 29 June 2011, pp. 68, 70-72 (CS); T. 30 June 2011, pp. 37, 45, 49, 65 (CS); T. 7 July 2011, p. 53 (CS).

<sup>721</sup> T. 29 June 2011, pp. 67, 82; T. 29 June 2011, p. 77 (CS); T. 30 June 2011, p. 16; T. 30 June 2011, pp. 52, 66 (CS).

<sup>722</sup> T. 29 June 2011, p. 74; T. 29 June 2011, p. 77 (CS); T. 30 June 2011, pp. 34, 53.



children, Winnie, her husband and their child boarded a Pajero vehicle. The vehicle was white with “MINIPLAN” inscribed on the door, and it belonged to the Ministry of Planning. The witness testified that the white Pajero and the white Audi 100 were the only two vehicles owned by the Ministry of Planning for Ngirabatware’s use (he also had a Mercedes-Benz which he personally owned). To the witness’ knowledge, Ngirabatware never owned a black Pajero or a blue Daihatsu.<sup>723</sup>

551. When the Ngirabatware family left for the PGC at Kimihurura, they were accompanied by soldiers in the armored car. They did not take any luggage. During that night the witness heard bombs falling in the direction of the PGC. When the Ngirabatware family left, the witness noticed a vehicle drive out of the neighboring compound, which was the residence of Prosper Mugiraneza, the Minister of Public Service, which was separated from Ngirabatware’s residence by a barbed wire fence. The witness could not see who was in the vehicle, but saw that Mugiraneza’s security personnel stayed in the compound.<sup>724</sup>

552. The witness did not see Ngirabatware on 7 April 1994.<sup>725</sup> On 8 April 1994, Ngirabatware sent someone with a message for Witness DWAN-122 before 2.00 p.m.<sup>726</sup> At 2.00 p.m., the witness went to meet Ngirabatware at the French Embassy, which was about 500 to 600 meters from Ngirabatware’s residence.<sup>727</sup> While at the Embassy, the witness saw many other people arriving. There were people who had been evacuated by white soldiers. He also saw Faustin Maniliho, who worked at the Ministry of Planning. The witness testified that he did not wear a watch so all of the times he gave were estimates.<sup>728</sup>

553. The witness went to the Embassy a second time on 8 April 1994, because Ngirabatware’s wife asked him to bring some personal effects. He does not recall the exact time he returned to the Embassy, only that it was between 2.00 p.m. and twilight.<sup>729</sup>

554. There were no roadblocks on the route the witness took to and from the Embassy, which was the road which passed Saint Michel Church. There was another route which went downward

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<sup>723</sup> T. 29 June 2011, pp. 76-78 (CS); T. 29 June 2011, pp. 80, 86, 88; T. 30 June 2011, p. 37 (CS); T. 30 June 2011, pp. 53, 58.

<sup>724</sup> T. 29 June 2011, p. 80 (“we all heard the noise of bombs that were falling at – that were thrown at that camp.”); T. 30 June 2011, pp. 54, 57 (“Mugiraneza drove out of his compound on – in a vehicle. But the – those in charge of his security stayed back [...] I could not identify the persons who were in Mugiraneza’s vehicle.”); T. 30 June 2011, 61 (CS).

<sup>725</sup> T. 30 June 2011, p. 72 (CS).

<sup>726</sup> T. 29 June 2011, pp. 80, 82 (the witness recounted that Ngirabatware had called him on the home telephone); T. 30 June 2011, pp. 73-74 (CS) (The witness stated that he wished to make a correction – that first, he was brought a message by a person whose name he did not recall, from Ngirabatware, asking him to come to the French Embassy. Later, he received a call from Ngirabatware’s wife, asking him to bring some personal effects to the Embassy) (“when I said that, I made a mistake because I had forgotten that it was his wife who called me on the phone.”).

<sup>727</sup> T. 29 June 2011, pp. 80, 82; Defence Additional Submissions on Site Visit, para. 6 (it is stated that the distance between the French Embassy and Ngirabatware’s residence was evaluated to be less than 300 meters, less than the 500 to 600 meters estimated by Witness DWAN-122). See also Prosecution Additional Submissions on Site Visit, para. 4 (noting that there are two entrances to the building of the former French Embassy).

<sup>728</sup> T. 29 June 2011, pp. 81, 85.

<sup>729</sup> T. 29 June 2011, pp. 81-82.

towards the Kiyovu neighborhood. The witness testified that there were stones across this road and soldiers deployed along it.<sup>730</sup>

555. On 9 April 1994, Ngirabatware returned home with his wife and children. He took a bath and ate breakfast before leaving again. His wife and children remained at home. The *gendarmes* accompanying Ngirabatware told the witness that they had been to *Hôtel des Diplomates*, opposite the military camp in Kigali. *Hôtel des Diplomates* was about 800 meters from Ngirabatware's residence. Ngirabatware returned at around 5.00 p.m. and he, his wife and children went back to the Embassy.<sup>731</sup>

556. On 10 April 1994, the witness saw Ngirabatware and his family when he again returned to his house in the morning, had breakfast and then went with the *gendarmes* to the *Hôtel des Diplomates*. Again, he returned at around 5.00 p.m. to drop off the *gendarmes* at his residence and collect his family before returning to the Embassy.<sup>732</sup>

557. On 11 April 1994, Ngirabatware returned to his house at around 8.00 a.m. He left and again returned to his house at about 5.00 p.m. before leaving once more. The *gendarmes* told the witness that they had gone to the *Hôtel des Diplomates* again. On this day the witness did not see Ngirabatware's family. The witness spent that night at Ngirabatware's house.<sup>733</sup>

558. At some time before 9.00 a.m. on 12 April 1994, Ngirabatware sent a messenger to ask the witness to come and join him at the *Hôtel des Diplomates*. When he arrived he saw Ngirabatware, the *gendarmes*, and Minister Habineza. Ngirabatware asked Witness DWAN-122 to find a mechanic to repair Ngirabatware's Pajero car as his car key had been stolen. The witness went to the Biryogo neighborhood in the Nyamirambo area and found a mechanic who came to do the job; the witness then returned him to Nyamirambo. Biryogo was approximately 1,500 meters from the *Hôtel des Diplomates*, in the former *préfecture* of Kigali-ville below the ONATRACOM office. He drove there in a white Audi 100 which belonged to the Ministry of Planning. The witness dropped the mechanic in Nyamirambo at around 9.40 a.m. then returned to the *Hôtel des Diplomates*. The witness stated that the time was an estimate, but he was certain that this was before midday.<sup>734</sup>

559. Upon returning to *Hôtel des Diplomates*, Witness DWAN-122 found Ngirabatware, Habineza and the *gendarmes* there. He handed over the Audi vehicle to Ngirabatware, then drove the Pajero vehicle back to Ngirabatware's house. Ngirabatware also drove to his residence in the Audi vehicle at the same time. On 12 April 1994, before midday, Ngirabatware and the witness, along with Habineza and other people who were at Ngirabatware's house, including security guards, set off for Gisenyi via Gitarama, Ngororero and Mukamira. Ngirabatware took his personal white Mercedes-Benz station wagon and the witness took the Pajero. The Audi vehicle was left in Kigali. Ngirabatware had requested an extra vehicle, a red Toyota pickup truck, which

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<sup>730</sup> T. 30 June 2011, pp. 61-62 (CS).

<sup>731</sup> T. 29 June 2011, pp. 82-83. Defence Additional Submissions on Site Visit, para. 7 (the distance between the hotel and Ngirabatware's residence was recorded to be 1,000 meters).

<sup>732</sup> T. 29 June 2011, pp. 83-85; T. 6 July 2011, p. 90.

<sup>733</sup> T. 29 June 2011, p. 85; T. 6 July 2011, p. 90; T. 7 July 2011, p. 39 (CS).

<sup>734</sup> T. 29 June 2011, pp. 86-89; T. 7 July 2011, pp. 26-27 ("As far as I can remember, I know that all this happened before midday, including me taking him back to Nyamirambo; that is what I recall.").

was also driven with them. Ngirabatware's family were not with them, but the witness believed them to be at the Embassy, although he did not discuss this with Ngirabatware.<sup>735</sup>

560. Witness DWAN-122 testified that there was a lot of traffic along the route as people were fleeing, and there were people walking towards Gitarama on both sides of the road. At one point in the journey the witness drove into the rear of Ngirabatware's car. At Gitarama, Ngirabatware stopped to refuel his vehicle, then they headed on towards Mukamira, going through the Ngororero locality, and finally Gisenyi. The witness recalled that there were two roadblocks along the way, one in the Karago *commune* and one at Jenda. Both were manned by civilians. At both roadblocks they were asked to get out while the vehicles were searched, then allowed to leave. The road between Gitarama and Gisenyi was paved up to Cyome, where it became a dirt road until Karago *commune*, after which it was paved all the way to Gisenyi.<sup>736</sup>

561. Once in Gisenyi, Ngirabatware, Habineza, the security guard and the witness went to Hotel Meridien, arriving at around 5.00 p.m. Ngirabatware and Habineza went inside while the witness and the *gendarmes* remained outside by the vehicles. The witness and the *gendarmes* were all armed. They spent the night outside by the vehicles. The *gendarmes* all carried guns. The witness carried a pistol.<sup>737</sup>

#### Defence Witness Jean Damascène Kayitana

562. Jean Damascène Kayitana is a Hutu and was a driver employed by the Ministry of Planning, when it was headed by Minister Callixte Nzabonimana. The witness worked in the general directorate of economic policy and had worked there since July 1989. He was assigned in particular to Japhet Ngendahayo, the acting head of that department, and François Kanimba, the director general. He first met Ngirabatware when he became Minister of Planning in 1990, and began driving him in March 1994. As a minister's driver, he was paid an allowance of 3,000 Rwandan francs, which was an improvement on his prior financial package. He drove Ngirabatware during his official duties, using government vehicles.<sup>738</sup>

563. On 6 April 1994, the witness was at work until about 6.00 or 6.30 p.m.; he dropped Ngirabatware at his residence in Kiyovu neighborhood, Kigali, where the witness left the car and then made his own way home to Gitega *secteur* of Kigali.<sup>739</sup>

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<sup>735</sup> T. 29 June 2011, pp. 88-89; T. 30 June 2011, p. 8; T. 7 July 2011, pp. 12, 57 (CS) (“[as we were fleeing on 12 April 1994] I had recently learnt that they were at the French embassy.”).

<sup>736</sup> T. 30 June 2011, pp. 9-11; T. 7 July 2011, pp. 42-43 (CS); Defence Additional Submissions on Site Visit, para. 10, corroborates this statement, and adds that the distance between Cyome and Kabaya was 40.2 kilometers. Prosecution Additional Submissions on Site Visit, para. 8 states that the dirt road between Ngororero (not Cyome) and Kabaya, was for a stretch of about 36 kilometers.

<sup>737</sup> T. 30 June 2011, p. 10; T. 30 June 2011, p. 13 (CS); T. 7 July 2011, pp. 55-56 (CS); Defence Additional Submissions on Site Visit states that the distance between the Kigali main roundabout and Hotel Meridien in Gisenyi is 189.5 kilometers and it took four hours and 43 minutes in good conditions including a 40.2 kilometer stretch of road that had not been tarmacked in 1994; Prosecution Additional Submissions on Site Visit, para. 8 states that the distance from Kigali to Gisenyi via Gitarama is 194.5 kilometers, and estimates that the time it would have taken in 1994 is about five hours.

<sup>738</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, pp. 59-61; T. 25 October 2011, pp. 2, 52.

<sup>739</sup> T. 24 October 2011, pp. 61-62; T. 25 October 2011, p. 12.

564. Following the death of President Habyarimana on 6 April 1994, the witness could not go to work as everyone had been instructed to stay indoors. About three days later, he attempted to travel to Ngirabatware's residence but was not able to get there due to the prevalent insecurity.<sup>740</sup>

565. The witness was unsure of the exact date but stated that about a week after the President's death he went from his home to Ngirabatware's residence. There, he met Witness DWAN-122, two *gendarmes* who worked as escorts for Ngirabatware, and a further two *gendarmes* seconded from the Gisenyi brigade. They had been assigned to pack Ngirabatware's possessions and transport them to Gitarama, where Ngirabatware was. They told the witness he should accompany them as Ngirabatware needed his services as a driver.<sup>741</sup>

566. They drove to Gitarama, specifically to Murambi. The convoy was made up of three vehicles; a red Toyota Stout pick-up truck driven by the *gendarmes*, a white Volkswagen Jetta driven by the witness, and a Renault 9 belonging to Ngirabatware's wife. The Volkswagen Jetta belonged to the Ministry of Planning. They left at around 1.30 or 2.00 p.m., and arrived in Gitarama at about 4.00 or 4.30 p.m. Driving conditions were difficult due to crowds fleeing and roadblocks that had been erected along the road. When they arrived in Murambi, they found a message from Ngirabatware asking them to continue their journey to Gisenyi as he had already left. They stayed in Gitarama for a very short time, a little longer than 30 minutes, and left shortly after 5.00 p.m. The journey took a bit more than three hours. They took the road from Gitarama towards Ngororero to Mukamira then Gisenyi. The road was only partially tarred, and there were roadblocks at which they had to stop. They arrived in Gisenyi at around 8.00 p.m. and spent the night in the parking lot of Hotel Meridien. They did not see Ngirabatware that night.<sup>742</sup>

567. The route they took from Kigali to Gisenyi was not the most direct route, as they did not initially intend to go all the way to Gisenyi. The more direct route was via Shyorongi then Ruhengeri. The witness did not know about the security situation on this route.<sup>743</sup>

568. Early next morning, Ngirabatware came and asked them to offload his property and store it in Hotel Meridien. This was the first time the witness had seen him since 6 April 1994. He then asked the witness to drive him to a meeting in Gitarama; they went in one vehicle with the *gendarmes* in charge of Ngirabatware's security. They returned to Gisenyi that evening. The road between Gisenyi and Gitarama had many roadblocks; the witness estimated they were about every 200 meters, in some places every 100 meters. They stopped at all of them. The witness had not heard about the formation of the Interim Government on 9 April 1994, and it was on this first trip from Gisenyi to Gitarama that he learned of it. The witness stated that the initial trip transporting Ngirabatware's belongings from Kigali to Gitarama was personal, but that the subsequent trips were part of Ngirabatware's official duties.<sup>744</sup>

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<sup>740</sup> T. 24 October 2011, p. 63; T. 25 October 2011, p. 13.

<sup>741</sup> T. 24 October 2011, pp. 65-66.

<sup>742</sup> T. 24 October 2011, pp. 65-67; T. 25 October 2011, pp. 4, 21-22, 25. See also Prosecution Additional Submissions on Site Visit, paras. 10-11 (stating that the distance from Murambi to Hotel Meridien is 153.5 kilometers and, taking into account the dirt road, that this would take about three or four hours to drive).

<sup>743</sup> T. 25 October 2011, p. 54.

<sup>744</sup> T. 24 October 2011, p. 67; T. 25 October 2011, pp. 3-4, 29, 53, 55, 57-58.

Defence Witness Jean Baptiste Byilingiro

569. Jean Baptiste Byilingiro is Hutu and of Belgian nationality. In 1994 he was a resident of Kimihurura in Kigali Town.<sup>745</sup> He was also the director of the national programme for social action which operated under the Ministry of Planning. Byilingiro knew Ngirabatware for a long time in a professional capacity, though he was not a close friend.<sup>746</sup>

570. On 6 April 1994, after his work at the end of the day he went to a bar called Ku Gasoko at Remera with friends and a colonel of the Rwandan Armed forces. He left the bar to go home in his official vehicle, however he was blocked at the roadblock near the PGC in Kigali along with other vehicles. According to Byilingiro, everybody was ordered by the Presidential Guard soldiers to disembark from their vehicles and lay out in the gutter at the roundabout, including the colonel who was in his own vehicle. After the colonel identified himself, the soldiers took him to the PGC and more than 30 minutes later Byilingiro was escorted by “someone” along with his car to the PGC. Byilingiro got to know about the death of President Habyarimana while at the PGC after 9.00 p.m.<sup>747</sup>

571. Byilingiro testified that he got to the PGC after 9.00 p.m. and was put in a small office with a desk, a table and a telephone set.<sup>748</sup> There was a Presidential Guard soldier with him in that room who was making a call and getting information from people who were at the residence of the late President Habyarimana. As soon as he started receiving the list of the persons who had been killed alongside the President, the soldier asked Byilingiro to leave the room and go to another small room close by. Towards 11.00 p.m. a number of politicians arrived at the PGC and Byilingiro saw Ngirabatware, and Ferdinand Nahimana in that small room where he was based. Byilingiro spent the night of 6 to 7 April 1994 in that small room and also confirmed that to his knowledge Ngirabatware spent the night in the same room. Byilingiro had a short conversation with Ngirabatware during the night and he dozed off from time to time during the night.<sup>749</sup>

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<sup>745</sup> Defence Exhibit 169 (Personal Identification Sheet).

<sup>746</sup> T. 26 October 2011, pp. 8, 21-25 (The witness stated that he started working for the Ministry in 1991 and thus effectively worked with Ngirabatware [who became Minister of Planning in 1990] for 3 years “as an employee of the government and the World Bank” and “reported” to Ngirabatware in his capacity as the Minister of Planning. The witness also stated that he reported to a Board of Ministers from various ministries. The witness stated that he knew Ngirabatware since the academic year 1972-73 while he was in his last year of studies at the official public school of Kigali and Ngirabatware was just starting his studies there.).

<sup>747</sup> T. 26 October 2011, pp. 8-10, 18 (according to the witness the colonel was in charge of the helicopters that ferried the President).

<sup>748</sup> T. 26 October 2011, pp. 10, 27-28, 37, 52; Prosecution Exhibits 63A and 64A; Prosecution Closing Argument, T. 24 July 2012, pp. 10-11; T. 25 July 2012, p. 22; Defence Closing Argument, T. 24 July 2012, pp. 31-32; T. 25 July 2012, pp. 37-38 (The Prosecution attacked the credibility of the witness on the point of going to the PGC on the night of 6 April 1994. The Prosecution pointed out that the witness while applying for refugee status in Belgium did not mention the fact of going to the PGC on 6 or 7 April 1994 before the Belgian Immigration authorities. The Prosecution also pointed out that the witness in his interview dated 29 May 2001 once again never mentioned his visits to the PGC on the night of 6 April and morning of 7 April 1994 and instead only mentioned that between 7 and 12 April 1994 he was at the French Embassy. The Prosecution finally suggested that the witness was at home until 7 April 1994 and only left for the French Embassy after the *Interahamwe* threatened his wife. However the witness stated that in making these allegations he was relying on handwritten notes that were taken by civil servants of the Belgian Authorities that he could not confirm because he did not personally write them or verify them.).

<sup>749</sup> T. 26 October 2011, pp. 10-12 (the witness confirmed seeing Ngirabatware at 11.00 p.m.).

572. On the morning of 7 April 1994, Byilingiro left the small room at dawn around 7.00 or 7.30 a.m., and went opposite that office in the courtyard and stayed there until 9.00 or 9.30 a.m. Thereafter, Byilingiro went to his residence, which was not far away from the PGC, and returned to the PGC along with his wife and five children. Byilingiro along with his family were directed to a building that had just been built and was yet unoccupied. Byilingiro left the PGC to go to the French Embassy in Kigali around 4.00 p.m. and spent the night of 7 to 8 April 1994 at the Embassy “in the open under the stars, in front of the chancery”. He saw Ngirabatware before leaving the PGC around 4.00 p.m. but did not talk to him. The witness saw many persons at the Embassy on the night of 7 to 8 April 1994 including Ferdinand Nahimana, Justin Mugenzi and Siméon Nteziryayo with their respective families, the witness’ own secretary, the wife of the ambassador of Rwanda to Uganda and the secretary-general at the Public Works.<sup>750</sup>

573. Byilingiro testified that on 8 April 1994 the number of people at the Embassy increased immensely and he “very vividly” remembers that Ngirabatware arrived around 11.00 a.m. or 12.00 p.m. accompanied by other persons, his family members and the family of his sister-in-law. He also saw Télésphore Bizimungu and Callixite, the Minister of Youth and Sports. The witness spent the night of 8 to 9 April 1994 at the Embassy, as did Ngirabatware.<sup>751</sup>

574. Byilingiro saw Ngirabatware and “the ministers” in the morning of 9 April 1994 at the Embassy around 9.00 a.m. and in the evening around 7.00 p.m. but he did not see them in the course of the day. The witness spent the night of 9 to 10 April 1994 at the Embassy and also confirmed that he saw Ngirabatware during that night at the Embassy.<sup>752</sup>

575. On 10 April 1994, Byilingiro saw Ngirabatware at the Embassy during the morning and the evening but not during the daytime. Byilingiro spent the night of 10 to 11 April 1994 at the Embassy, and Ngirabatware spent that night at the Embassy too.<sup>753</sup>

576. The witness saw Ngirabatware in the morning of 11 April 1994 at the Embassy. The witness spent the night of 11 to 12 April 1994 at the Embassy.<sup>754</sup>

577. On 12 April 1994, the witness along with the others was evacuated by French soldiers and taken to Kanombe International Airport because the Embassy was closing. They were flown to Bujumbura in French military planes and on reaching Bujumbura Airport they were put in an old building at the airport. They stayed in that old building for a maximum of three days. During the evacuation Byilingiro did not see Ngirabatware’s wife, children, his sister-in-law Winnie and her husband, but he saw them in Bujumbura.<sup>755</sup>

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<sup>750</sup> T. 26 October 2011, pp. 12, 16-18 (the witness stated that when he left the room in the morning “the politicians were no more with me in the –in the room”).

<sup>751</sup> T. 26 October 2011, pp. 18, 75 (The witness testified that he knew the sister-in-law of Ngirabatware because his father-in-law was an influential businessman who he knew him very well in his capacity as the director general of the income department. The witness confirms that Ngirabatware spent the night in the French Embassy since he saw him because “the men spent the night in the open air”).

<sup>752</sup> T. 26 October 2011, pp. 18-19.

<sup>753</sup> T. 26 October 2011, p. 19.

<sup>754</sup> T. 26 October 2011, pp. 19-20.

<sup>755</sup> T. 26 October 2011, p. 20 (according to the witness the military planes made several trips as they were many people).

Defence Witness Léoncie Bongwa

578. Léoncie Bongwa is the wife of André Ntagerura, former Minister of Transport and Communication in April 1994. She is Hutu and in 1994, she was a house wife living in Kimihurura *secteur*, Kacyiru *commune*, Kigali *préfecture*.<sup>756</sup>

579. Bongwa testified that she knew Ngirabatware and that he was the Minister of Planning in 1994. She knew Ngirabatware's wife, Félicité and was also aware that they had a son and a daughter.<sup>757</sup>

580. Bongwa stated that when she heard the news of the President's plane crash on 6 April 1994, she along with her family were at home in Kimihurura, a neighborhood in Kigali.<sup>758</sup> On learning about this news, Bongwa along with her family fled to the PGC which is located in Kimihurura in Kigali. They left for the PGC after 10.00 p.m. but she was unable to specify the time of their arrival at the PGC. On arriving at the PGC Bongwa saw many people in "the room".<sup>759</sup> Amongst the people who came into "the room" in the ensuing hours were Ngirabatware's wife, their two children, Ngirabatware's sister-in-law Winifred and her husband Eugène Mbarushimana. Winifred was maybe in the third quarter of her pregnancy. Bongwa spent the night of 6 to 7 April 1994 at the officer's mess of the PGC. Bongwa stated that Ngirabatware spent that night in the big officer's mess hall where she saw him with other people.<sup>760</sup>

581. According to Bongwa the PGC was attacked on the night of 6 April 1994 and the attack continued throughout the day and night of 7 April 1994. On the morning of 7 April 1994, they were moved to a small house which was inside the PGC<sup>761</sup> and they spent the night of 7 to 8 April 1994 in that small house.<sup>762</sup> In this small room Bongwa recalls seeing her husband André

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<sup>756</sup> Defence Exhibit 170 (Personal Identification Sheet); T. 30 January 2012, pp. 9, 12 (Ntagerura is an acquitted person and is currently in Arusha living under the protection of the ICTR).

<sup>757</sup> T. 30 January 2012, p. 13; T. 1 February 2012, p. 52 (the witness stated that before and after the events of 1994 there were and have been no "special link" between the witness' family and that of Ngirabatware).

<sup>758</sup> T. 30 January 2012, p. 13 (the witness stated that at the time of hearing the tragic news on 6 April 1994, she was at home with her husband Ntagerura, her three children, her mother, nephews and househelp).

<sup>759</sup> T. 30 January 2012, pp. 13-14 (she stated that among the people she knew there she saw the family of the former Minister of Defence, named Augustin, and Mbangura's family).

<sup>760</sup> T. 30 January 2012, pp. 14, 35; T. 1 February 2012, p. 45 (The Prosecution attacked the credibility of the witness on the point of seeing Ngirabatware and his family at the PGC. While making references to the prior testimony of the witness in certain previous cases, the Prosecution suggested that the witness had not mentioned seeing Ngirabatware or his family in the PGC between the night of 6 April 1994 and the afternoon of 8 April 1994 and subsequently in the French Embassy because she in fact did not see him there. The Prosecution also suggested that the witness mentioned seeing Ngirabatware in the French Embassy for the first time in the *Nzabonimana* trial because she had met Defence Counsel in 2009 and had agreed to testify for Ngirabatware and therefore it became important for her to mention that she saw him at the French Embassy on 8 April 1994 in order to support his alibi.).

<sup>761</sup> T. 30 January 2012, p. 14; T. 1 February 2012, pp. 50-51 (The witness testified that there were more than one "small houses" within the PGC, some of them were meant for soldiers but she is not sure about the exact number. She stated that those who remained in the PGC were put in these small houses. She further stated that the men, women and children were placed in the small houses together with the men in the living room and the women and the children in the small bedroom.).

<sup>762</sup> T. 30 January 2012, pp. 14-15; T. 1 February 2012, pp. 49, 51 (The witness stated that some people left the PGC on the night of 7 to 8 April 1994 namely Callixte Nzabonimana, Prosper Mugiraneza, Casimir Bizimungu and others. She stated that she got to know about this only when she reached the French Embassy on 8 April 1994.).

Ntagerura, Ngirabatware and Siméon Nteziryayo.<sup>763</sup> She saw Ngirabatware in the course of the evening in that house within the PGC; she saw and heard Ngirabatware who was “really frightened”.<sup>764</sup> Bongwa could not specify the exact time that she saw Ngirabatware, only that it was at night and must have been before midnight. She stated that Ngirabatware and his family also spent the night of 7 to 8 April 1994 at the PGC.<sup>765</sup>

582. Bongwa and her family were moved to the French Embassy in the city of Kigali on 8 April 1994 where they arrived at the beginning of the afternoon.<sup>766</sup> She could not say with certainty whether she saw Ngirabatware at the PGC on 8 April 1994 before leaving for the Embassy. On reaching the Embassy she heard people say that Ngirabatware and his family had left the PGC on 8 April 1994. Bongwa saw many people including Ngirabatware and his wife, two children, his sister-in-law Winifred and her husband Eugène at the beginning of the afternoon at the Embassy. Bongwa spent the night of 8 to 9 April 1994 in a “big hall within the French compound within the Embassy compound” which had a garden and a veranda. Ngirabatware and his family also spent the night of 8 to 9 April 1994 at the Embassy.<sup>767</sup>

583. The witness stayed at the Embassy on 9 April 1994 during the day. She saw Ngirabatware in the course of 9 April 1994. The witness also testified that her husband André Ntagerura and Ngirabatware were reappointed as ministers on 9 April 1994 and took the oath of office at the swearing-in ceremony of the newly appointed government held at the *Hôtel des Diplomates*, Kigali. She saw Ngirabatware after the swearing-in ceremony on 9 April 1994 at the Embassy.<sup>768</sup>

584. Bongwa stated that she saw Ngirabatware at the Embassy on 10 April 1994, however she could not specify the exact time when she saw him in the course of the day. She spent the night of 10 to 11 April 1994 at the Embassy with her family. She testified that Ngirabatware also spent the night of 10 to 11 April 1994 at the Embassy.<sup>769</sup>

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<sup>763</sup> T. 1 February 2012, p. 51 (the witness on being asked whether she spent the night in this small room along with these men answered affirmatively).

<sup>764</sup> T. 30 January 2012, p. 15 (The witness saw that Ngirabatware was “very scared” and “lamenting and trembling”. She noticed that “he was not really doing anything else”).

<sup>765</sup> T. 30 January 2012, pp. 15-16 (this piece of information along with footnote , suggest that Ngirabatware spent the night of 7 to 8 April 1994 in the “small room” with the witness).

<sup>766</sup> T. 30 January 2012, pp. 16-17 (the witness stated that the PGC was under attack all throughout the night of 7 April and “at one point in time” on 8 April 1994, they were helped by “a soldier or gendarme” to leave the camp and go to the French Embassy); T. 1 February 2012, p. 29 (the witness stated that she and her family left the PGC for the French Embassy along with the son of Mr. Mugiraneza, Robert Mugiraneza).

<sup>767</sup> T. 30 January 2012, pp. 16-18 (The witness stated that she also saw many other members of the government including Prosper Mugiraneza and Callixte, the former Minister of Youth); T. 1 February 2012, p. 44 (the witness was not sure about the whereabouts of Ngirabatware in the morning of 8 April 1994 before actually seeing him in the “beginning of afternoon.” The witness referred to this “big hall” as a “big room” also. The witness stated that the men were in the garden and some of them in front of the building. Also there were children running about in the garden.).

<sup>768</sup> T. 30 January 2012, p. 18 (the witness stated that Ngirabatware “was with all the others”); T. 1 February 2012, p. 52.

<sup>769</sup> T. 30 January 2012, pp. 18-19 (the witness stated that she saw him “most of the time because since his sister-in-law was pregnant [...] I would see him often with his family”); T. 1 February 2012, p. 49 (her husband did not spend the night of 11 April 1994 in the French Embassy because he had left Rwanda for Burundi on 10 April 1994 to accompany the dead body of the President of Burundi).



585. On 11 April 1994, Bongwa saw Ngirabatware “at some point in time” but did not see him again in the evening. The witness testified that Ngirabatware did not spend the night of 11 to 12 April 1994 at the Embassy and that she was aware of this because she heard later that there were ministers that spent the night at the *Hôtel des Diplomates* on 11 April 1994. She spent the night of 11 to 12 April 1994 at the Embassy.<sup>770</sup>

586. On 12 April 1994, the persons who took refuge at the French Embassy were transported in military vehicles or trucks to the Kigali Airport by French soldiers and boarded onto a military aircraft and flown to Bujumbura in Burundi. They were then put in a shelter at the old airport in Bujumbura and were kept there until 14 April 1994. She stated that Ngirabatware’s wife Félicité, their two children, his sister-in-law Winifred and her husband and Félicité’s mother were also taken to Bujumbura. On 14 April 1994, they then embarked on a French aircraft with the French army and flown to Bukavu in Zaire. Ngirabatware’s family was also flown to Bukavu on 14 April 1994 with the others.<sup>771</sup>

#### Defence Witness DWAN-7

587. Witness DWAN-7 worked at the European Community. He knew Ngirabatware, as the Minister of Planning. The witness and Ngirabatware’s professional relationship developed into a friendship in the third and fourth years of their acquaintance. They saw each other almost daily. However, he did not see Ngirabatware for the whole period of 7 April 1994 to 17 July 1994.<sup>772</sup>

588. In 1994, Witness DWAN-7 resided in Kigali, overlooking the airport, about half an hour by vehicle from Ngirabatware’s home. On 6 April 1994, he heard gunshots in his neighborhood as soon as the Presidential plane was shot down. It was impossible to go outside. He was preoccupied by the fate of his colleagues, whom he was attempting to assemble in order to organise an evacuation.<sup>773</sup>

589. On 7 April 1994 the gunshots intensified, and continued almost uninterruptedly all day. Soldiers stationed on the terrace of a neighboring property, about 50 to 80 meters away, fired warning shots when the witness attempted to leave his home to turn on the generator. He could not be sure whether these were RPF soldiers.<sup>774</sup>

590. In the early afternoon of 7 April 1994, Witness DWAN-7 received a telephone call from Ngirabatware who sought to take refuge at the witness’ residence. The witness dissuaded Ngirabatware due to the intense fighting and he believed Ngirabatware would not have been able to reach his home alive. The telephone call lasted about five minutes.<sup>775</sup>

591. According to Witness DWAN-7, the shooting and explosions intensified from 6 April 1994 to 13 April 1994 and on 7 April 1994 the fighting was very violent as heavy weapons were being used. The witness advised Ngirabatware to stay away from the streets. He could “perfectly recall” the date of 7 April 1994 due to the intense fighting, and also because he placed several

<sup>770</sup> T. 30 January 2012, p. 19; T. 1 February 2012, pp. 49-50.

<sup>771</sup> T. 30 January 2012, pp. 19-20.

<sup>772</sup> Defence Exhibit 130 (Personal Identification Sheet); T. 4 July 2011, pp. 5, 7 (CS); T. 4 July 2011, pp. 11, 26.

<sup>773</sup> T. 4 July 2011, pp. 34-35; T. 5 July 2011, pp. 71, 73 (CS).

<sup>774</sup> T. 4 July 2011, p. 34; T. 5 July 2011, pp. 16-19; T. 5 July 2011, p. 73 (CS).

<sup>775</sup> T. 4 July 2011, pp. 12, 34, 36, 38.

telephone calls in the morning but communications broke down after he had received Ngirabatware's call.<sup>776</sup>

592. Witness DWAN-7 stated that Ngirabatware "could only have called [...] from Kigali" as he could hear gunfire and shells' explosions over the telephone. He could hear sub-machinegun shots which were being fired close to his house, both directly and through the telephone. The witness had military experience and believed that the gunshots he heard through the telephone could only have been in Kigali due to the sound produced by the weapons and the clarity of the gunshots.<sup>777</sup>

593. Following this phone call, the witness had no further contact with Ngirabatware during the alibi period. The witness was evacuated from Rwanda on 13 April 1994 by French soldiers, after which he did not return.<sup>778</sup>

#### Defence Witness Jérôme-Clément Bicamumpaka

594. Jérôme-Clément Bicamumpaka is a Hutu, and was a member of the MDR party in 1994. Up to 6 April 1994 he worked as a consultant in management. From 8 April 1994 he was appointed the Minister of Foreign Affairs and International Co-operation.<sup>779</sup> From 6 April 1994 he was a resident of Rugenge *secteur* living near the city centre, in Kigali. According to him the security situation in Kigali on the night of 8 to 9 April 1994 was "very bad" and "dangerous".<sup>780</sup>

595. Bicamumpaka testified that on the night of 8 to 9 April 1994, he and his family were escorted to the *Hôtel des Diplomates*, in Kigali. On the morning of 9 April 1994, around 10.00 a.m., he attended the swearing-in ceremony of the Interim government where he saw Ngirabatware "well before that ceremony at the *Hôtel des Diplomates*". He saw Ngirabatware "around five minutes to ten around 10 a.m." and exchanged greetings.<sup>781</sup>

596. Bicamumpaka did not personally see Ngirabatware from 6 to 8 April 1994. However, he learnt about the movements of Ngirabatware between 6 and 8 April, on 9 April 1994, from André Ntagerura, former Rwandan minister, and Casimir Bizimungu, Minister of Health within the government. According to the information received, Ngirabatware had been hosted in the military camp of the Presidential Guard in the Kimihurura neighborhood of Kigali town from the

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<sup>776</sup> T. 5 July 2011, pp. 9-10; T. 5 July 2011, pp. 73-74 (CS).

<sup>777</sup> T. 4 July 2011, pp. 13, 35; T. 5 July 2011, p. 56 ("I participated in some wars, in some operations, some peacekeeping operations [...]. The gunshots were nearby and they could only have been coming from Kigali town, considering the sound that was produced by the weapons. It was impossible for that sound to be coming from far away because it would have reached me in a most – much muffled manner.").

<sup>778</sup> T. 4 July 2011, p. 25; T. 5 July 2011, p. 10; T. 5 July 2011, p. 69 (CS).

<sup>779</sup> Defence Exhibit 138 (Personal Identification Sheet); T. 22 August 2011, pp. 38-39 (Bicamumpaka stated that on the night of 8 to 9 April 1994 around midnight while listening to Radio Rwanda he heard the new Prime Minister Jean Kambanda announce his appointment as the new Minister of Foreign Affairs and International Cooperation.)

<sup>780</sup> T. 22 August 2011, pp. 42-45 (He stated that "because war had broken out in the city from the 7 of April 1994, and then there were massacres being committed in the city. He stated that "security situation had been explosive starting from the evening of the 6<sup>th</sup> of April 1994 as soon as President Habyarimana's aeroplane had been shot down not far from the Kigali Airport.").

<sup>781</sup> T. 22 August 2011, pp. 43, 45 (he stated that the swearing-in ceremony was slated to begin at 10.00 a.m. on 9 April 1994. However it began around 10.30 a.m. to 11.00 a.m.).

night of 6 April, but on 8 April 1994, had to leave the camp and take refuge in the French Embassy in Kigali.<sup>782</sup>

597. Bicumupaka testified that the swearing-in ceremony of 9 April 1994 was broadcast over the radio and that he heard the broadcast of his own and Ngirabatware's swearing-in ceremony. According to the witness the pictures of the ceremony were also broadcast as soon as it was over.<sup>783</sup> Ngirabatware maintained his office as the Minister of Planning in the new government. Immediately following the swearing-in ceremony, Prime Minister Jean Kambanda made a speech. The witness was certain that Ngirabatware did not leave the hall premises where the ceremony was taking place and was "certainly" present there. According to him, Ngirabatware was also present in the brief meeting convened by the President, following the speech by the Prime Minister, around 11.00 or 11.10 a.m. At the meeting, Bicumupaka along with Ngirabatware and Bizimungu were assigned by the Head of State to meet the members of the diplomatic corps in their office in Kigali "in order to sensitise them" about the government programme and seek rapid assistance from them to be able to achieve the government's objectives.<sup>784</sup> In preparation for these meetings, Bicumupaka met Ngirabatware and Bizimungu twice in the intermediate time gap between 11.45 a.m., when the Head of State's meeting ended, and 2.00 p.m., when they left *Hôtel des Diplomates* to meet the diplomatic corps.<sup>785</sup>

598. On the afternoon of 9 April 1994, Bicumupaka, Ngirabatware and Bizimungu met the Belgian Ambassador to Rwanda Johan Swinnen, the French Ambassador to Rwanda Jean-Michel Marlaud and the Ambassador of the Vatican to Rwanda Monsignor Giuseppe Bertello. Bicumupaka along with Ngirabatware and Bizimungu, in commencement of their round of diplomatic meetings, first met Ambassador Swinnen around 2.30 p.m. at his official residence in the Kiyovu neighborhood in Kigali. The distance between *Hôtel des Diplomates* and the residence of Ambassador Swinnen was "about one and a half kilometres, definitely less than 2 kilometres" and the travel time was "10, 12 minutes at the most". Their discussions pertained to condolences about the death of the Belgian Blue Helmets, and the help and support of the Belgian government to bring the situation in Rwanda under control. Ambassador Swinnen laid down two conditions including the safety of Belgians in the country and the authorisation from

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<sup>782</sup> T. 22 August 2011, p. 46.

<sup>783</sup> T. 23 August 2011, pp. 64-68 (the witness heard the two extracts of Radio Rwanda (audio) of the swearing-in ceremony of 9 April 1994—later admitted as Defence Exhibit 141—and identified his own and Ngirabatware's voice while taking oath as ministers); Defence Exhibit 141 (Radio Rwanda Broadcast, 9 April 1994) (Kinyarwanda).

<sup>784</sup> T. 22 August 2011, pp. 45-48 (The witness stated that the Prime Minister's speech took place "around 11– ten minutes to eleven, 15 minutes to eleven, around that on that 9<sup>th</sup> of April 1994". The meeting between the head of the state and the new government was convened in one of the halls of *Hôtel des Diplomates*. There were 20 diplomatic missions in Kigali in April 1994. However some were more involved than the others since the war outbreak in October 1990. These were United States of America, France, Belgium and United Nations. The head/dean of the diplomatic corps at the time was Bishop Giuseppe Bertello, "the apostolic nuncio and ambassador of the Vatican to Rwanda." The goals or set objectives of the government were explained by the witness as "put an end to the massacre of civilians; put an end to the war against the RPF; and lastly launch with the RPF a political debate which will enable us to put in place the institutions of the Arusha agreements in a six-week deadline".).

<sup>785</sup> T. 22 August 2011, p. 53; T. 25 August 2011, pp. 8-9 (The witness stated that they left the hotel around 2.00 or 2.15 p.m. The Prosecution suggested that the witness was not speaking the truth in Court that day because in his testimony dated 26 September 2007 he stated that he left the hotel at about 2.15 p.m., however initially in his testimony on 22 August 2011 at p. 53 he stated that they had left the hotel at 2.00 p.m. The witness explained this discrepancy by referring to an incident about the Ambassador's wife that caused the delay between reaching the Ambassador's residence and actually meeting him.).

the Rwandan government for the 1,000 Belgian paracommandos on standby in Nairobi, Kenya to enter Rwanda and repatriate the Belgians settled in Rwanda. Ambassador Swinnen was also concerned about the hate speeches on RTLM against the Belgians and the need to put an end to those.<sup>786</sup>

599. After this meeting Bicomumpaka, Ngirabatware, Bizimungu and Alphonse-Marie Nkubito, along with their military escorts, headed for the French Embassy located in the Kiyovu neighborhood of Kigali where they met the French Ambassador Marlaud around 3.30 or 3.40 p.m.<sup>787</sup> The meeting with Ambassador Marlaud lasted for about one hour and Bicomumpaka stated that both Ngirabatware and Bizimungu were present throughout this meeting.<sup>788</sup> The witness also testified that both Ngirabatware and Ambassador Marlaud appeared to know each other well and in fact, Ngirabatware had informed Bicomumpaka earlier at *Hôtel des Diplomates* that he had met Ambassador Marlaud on 8 April 1994. Following the meeting with Ambassador Marlaud, Bicomumpaka, Ngirabatware and Bizimungu went to meet Ambassador Bertello, the Vatican's representative in Kigali who also resided in the Kiyovu neighborhood and this meeting lasted for about 40 minutes.<sup>789</sup> After the meeting with Ambassador Bertello, Bicomumpaka and Ngirabatware went back directly to the *Hôtel des Diplomates*, where a meeting of the Council of Ministers was already in progress since 3.00 p.m. They reached *Hôtel des Diplomates* around 6.00 p.m. and joined the Cabinet meeting. At the meeting, Bicomumpaka testified that both he and Ngirabatware apprised the rest of the ministers about their meeting with the diplomats. The council of ministers' meeting ended around 7.00 p.m. and Bicomumpaka and Ngirabatware were present in the meeting until it ended.<sup>790</sup>

600. Bicomumpaka further testified that another meeting of the council of ministers was held in a room of the *Hôtel des Diplomates* on 10 April 1994. The meeting began around 9.00 a.m. and was attended by both Bicomumpaka and Ngirabatware until it ended between 11.45 a.m. and

<sup>786</sup> T. 22 August 2011, pp. 52-54, 57-59 (the witness stated that the diplomats had "indicated to me that they were afraid of moving around in town" so the witness, Ngirabatware and Bizimungu collectively took the decision to meet them at their respective residences.). See also T. 22 August 2011, p. 60 (the witness, Ngirabatware and Bizimungu were escorted by soldiers and bodyguards from *Hôtel des Diplomates*); T. 25 August 2011, pp. 8, 12 (the witness stated that he, Ngirabatware and Bizimungu reached the Ambassador's house "around 2:15").

<sup>787</sup> T. 22 August 2011, pp. 59-60 (The meeting with the Belgian ambassador lasted for "a little less than an hour, 50 minutes about". Nkubito was the general prosecutor at the Rwandan Court of Appeals in Kigali. He had sought refuge at the house of the Belgian Ambassador. However on account of lack of space in the Belgian Ambassador's residence, French Ambassador had agreed to host Nkubito in the French Embassy in Kigali.).

<sup>788</sup> T. 22 August 2011, p. 61 (Nkubito was handed over to the French Ambassador who took Nkubito to the place in the Embassy where they had other Rwandans seeking refuge); T. 25 August 2011, pp. 16, 19 (The Prosecution refers to the testimony dated 3 February 2011 at p. 17, where Ngirabatware stated that the meeting with the French Ambassador "took place between 4p.m., 4:30 p.m." The witness in response referred to his testimony dated 26 September 2007, p. 41 where he mentioned that the meeting with the French Ambassador ended approximately at 4.30 p.m.).

<sup>789</sup> T. 22 August 2011, pp. 62-64 (The witness did not specify where Ngirabatware met Ambassador Marlaud on 8 April 1994. The witness stated that Ngirabatware and Monsignor Bertello appeared to know each other better than Ngirabatware and Ambassador Marlaud.).

<sup>790</sup> T. 22 August 2011, pp. 64-65, 67, 73 (Bizimungu did not go along with the other two to the meeting of the council of ministers on account of urgent personal reasons. With regard to the opinion expressed by Ngirabatware at the meeting of the council of ministers, the witness stated that Ngirabatware emphasized the legitimacy of the requests of the Belgian Ambassador *vis-à-vis* the grant of authorization by the Rwandan Government to the Belgian contingent on standby in Kenya for entry into Kigali and regarding taking action against the anti-Belgian speeches being aired on RTLM.).

12.00 p.m. A press conference was convened after the meeting which was addressed by Prime Minister Jean Kambanda. Bicumupaka also testified that the press conference as well as a report of the decisions taken by the “ministerial council” on 9 April 1994 were broadcast over the radio.<sup>791</sup>

601. Bicumupaka next saw Ngirabatware in the evening of 11 April 1994 at the *Hôtel des Diplomates*, Kigali at around 9.00 p.m. According to him, Ngirabatware spent the night of 11 to 12 April 1994 at the *Hôtel des Diplomates*.<sup>792</sup>

#### Defence Witness DWAN-55

602. Witness DWAN-55 is a Hutu married to a Tutsi, and they have four children. He was an employee in Gisenyi and a founding member of the PSD political party, but held no specific office in 1994. He first met Ngirabatware between 1981 and 1984, while the witness worked at a Bank. He was not close to Ngirabatware but they would converse whenever they met by chance.<sup>793</sup>

603. On 6 April 1994, the witness was at his house in Gisenyi when he learned of the death of President Habyarimana. He left his house for Hotel Meridien for safety, and arrived at the hotel very early in the morning. The hotel was located next to Lake Kivu in Gisenyi, approximately one or two kilometers from the border with Zaire. At the time Witness DWAN-55's wife and children were in Kigali.<sup>794</sup>

604. The witness first saw Ngirabatware at Hotel Meridien on the evening of 12 April 1994. Ngirabatware arrived from Gitarama with Minister Jean de Dieu Habineza and three or four uniformed *gendarmes*. They discussed the ongoing events and the witness informed Ngirabatware of the deaths of André Babonampoze and Karekezi, who were from the same village as Ngirabatware. The witness testified that Ngirabatware was really affected by this news. Babonampoze and Karekezi were fellow members of the PSD, and they were among the first to be killed following the death of President Habyarimana. Both of these men were Hutu, and the witness believed they were killed because of their membership in the PSD.<sup>795</sup>

#### Defence Witness DWAN-150

605. In 1994, Witness DWAN-150 was in the Rwandan Armed Forces (the “FAR”), He is a French citizen of Hutu ethnicity. The witness described Ngirabatware as “an acquaintance”; they met once after his training in Rwanda in 1986, and he had not met Ngirabatware since. However, he knew of him through the international press.<sup>796</sup>

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<sup>791</sup> T. 22 August 2011, pp. 73-74; T. 23 August 2011, pp. 64-65, 70; Defence Exhibit 142 (Radio Rwanda Broadcast, 10 April 1994) (French)

<sup>792</sup> T. 22 August 2011, p. 79.

<sup>793</sup> T. 24 October 2011, pp. 12, 14 (CS).

<sup>794</sup> T. 24 October 2011, pp. 12-13, 15, 44 (CS).

<sup>795</sup> T. 24 October 2011, pp. 13-14, 18-19 (CS).

<sup>796</sup> Defence Exhibit 160 (Personal Identification Sheet); T. 11 October 2011, p. 8 (CS); T. 12 October 2011, pp. 19-20.

606. In April 1994, the FAR mission was to defend the headquarters at the Rulindo command post and supply units on the ground. Although they rotated with three other battalions, at any given time there would be at least 450 armed soldiers surrounding and protecting the headquarters. The headquarters were located about 20 kilometers from Kigali.<sup>797</sup>

607. Witness DWAN-150 stated that before 6 April 1994, the quickest route between Kigali and Gisenyi was via Base, Gakenke and Ruhengeri, because that road was asphalted. However in the period between January 1994 and 6 April 1994, it would be too risky for an unarmed person who did not know the area to take that road. The witness had been fired at on several occasions during this period while driving on that road in a machine-gun equipped four-wheel drive vehicle. He believed the reason there was no concerted effort to remove the RPF during this time was due to the government's intention to respect the Arusha Accords.<sup>798</sup>

608. He stated that even before 6 April 1994 the road was virtually impassable and dangerous, but it became completely impassable after 7 April 1994 when the RPF moved heavy weapons to the summit of Mount Tumba, in Byumba *préfecture*. From that position they could fire to the tarred road. The witness' instructions were to prevent civilians from using that road and tell them to look for other routes behind and not in front.<sup>799</sup>

609. In the period following 6 April 1994, the witness twice tried to use this route, but it was complicated and dangerous. He was armed with machine guns due to the RPF weapons along the road. After those two attempts he did not venture to use it again. He stated that members of the government were prohibited from using the road because it was very dangerous. He received no report to the effect that a minister or ministers had used that road. The witness testified that as from 7 April 1994 everybody knew that it was prohibited to use this tarred road. After 7 April 1994 the Rwandan Armed Forces attempted to dislodge the RPF from this position without success.<sup>800</sup>

610. The witness testified that from 6 April 1994, sporadic firing could be heard from Kigali in Shyorongi, where the witness was. He described the security situation in Kigali as "chaotic". They received no reinforcements from Kigali.<sup>801</sup>

611. The witness testified that on 7 April 1994 a second route from Kigali would have been via Nzove, along the Nyabarongo river then through Rushashi then Base, then Gakenke, Ruhengeri, and Gisenyi. This route meets with the first route at Gakenke and from there they

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<sup>797</sup> T. 11 October 2011, pp. 9-10 (CS); T. 12 October 2011, pp. 26, 28.

<sup>798</sup> T. 11 October 2011, pp. 34, 38-39; Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150); T. 13 October 2011, pp. 59-60 ("The government side was allowed to have a battalion or the RPF in the capital city. And I find that was a bigger thing than to allow a road to be held by the enemy. I think there was some sort of restraining the Rwandan army, in that the Rwandan army respected the agreement. I am not a chief of staff, but there are decisions to say which were not really proper.").

<sup>799</sup> T. 11 October 2011, p. 45; Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150); T. 13 October 2011, pp. 33, 57.

<sup>800</sup> T. 11 October 2011, p. 48; T. 12 October 2011, p. 17; T. 13 October 2011, p. 33.

<sup>801</sup> T. 12 October 2011, p. 17.

were the same. This second route was a dirt road; as it was the rainy season in April 1994, this road would have been slippery and taken longer to drive along.<sup>802</sup>

612. On 8 April 1994, an RPF platoon installed itself in Nzove, and so that route could no longer be used. The witness remembered receiving information about this on the night of 7 to 8 April 1994.<sup>803</sup>

613. There was a third route which could be used on 6 April 1994, which went from Kigali via Gitarama, Ngororero, Kabaya then Karago to Gisenyi. The road from Gitarama joined the main road to the north at Mukamira. To the best of Witness DWAN-150's knowledge, between Mukamira and Gitarama was mainly a dirt road though a small part was tarred, not more than 100 kilometers. The witness had not undertaken this journey himself in the days following 6 April 1994, but knew a friend who had. His friend had told him that the road was slippery and there were roadblocks, which made the journey much longer than it would have taken before 1994. He heard that the roadblocks were civilian, rather than military. The witness' friend estimated this took between seven-and-a-half and eight hours. To the witness' knowledge, this route would have been too risky after dark due to the roadblocks. Furthermore, after 6 April 1994 a curfew was declared prohibiting civilians from moving around after 7.00 p.m.<sup>804</sup>

614. There was a fourth route that the witness knew of, which went from Kigali past Shyorongi, then towards Rushashi, before joining the road that passes through Nzove (the second route mentioned), through Gakenke then onwards to the tarmac road again. The witness personally used this route following 6 April 1994, though following 7 April 1994 civilians were not allowed to use that route due to the RPF battalion at Nzove. He drove in one vehicle with an escort team of four people.<sup>805</sup>

615. The witness stated that the de-militarized zone (the "DMZ") was meant to start from a line approximately between the *Parc National des Volcans* across to Kayove, continuing to the east. To the south of this line all the way down to the tarmac road from Kigali to Ruhengeri, and abutting this road, was all meant to be the DMZ. Some of the road was within the DMZ.

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<sup>802</sup> T. 11 October 2011, pp. 48-50; route marked in green on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150). See also Defence Additional Submissions on Site Visit, para. 10 (this confirms that the stretch of road between Cyome and Kabaya was not tarmacked in April 1994. The distance between these two locations was 40.2 kilometers); Prosecution Additional Submissions on Site Visit, para. 8 (states the dirt road was between Ngororero (not Cyome) and Kabaya, for a stretch of about 36 kilometers).

<sup>803</sup> T. 11 October 2011, p. 50; T. 13 October 2011, pp. 28-29.

<sup>804</sup> T. 12 October 2011, pp. 3, 5-6, 9, 17 (route marked in orange on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150); Defence Additional Submissions on Site Visit, para. 10 (the distance between the Kigali main roundabout and Hotel Meridien in Gisenyi is 189.5 kilometers and it took four hours and 43 minutes in good conditions including a 40.2 kilometer stretch of road that had not been tarmacked in 1994); Prosecution Additional Submissions on Site Visit, para. 8 (stating that the distance from Kigali to Gisenyi via Gitarama is 194.5 kilometers, and estimate the time it would have taken in 1994 as about five hours).

<sup>805</sup> T. 12 October 2011, pp. 13, 16 (route marked in dark blue on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)).

However the witness stated: “There is a portion of this road which was part of the DMZ but which was not. It is from Shyorongi, Nyaringarama, all the way to Base.”<sup>806</sup>

Defence Witness Joseph Habinshuti

616. Habinshuti is a Hutu and in 1994 he was a resident of Gisenyi Town at the *Gendarmerie* Camp. He was a second lieutenant in the *gendarmerie* at the Gisenyi camp and was appointed to the position at the Gisenyi camp on 31 January 1994. As a second lieutenant he was in-charge of a platoon of 37 *gendarmes* which formed a part of the larger “Gisenyi group” which formed a company.<sup>807</sup>

617. Habinshuti was in Kigali when President Habyarimana’s plane was shot down on 6 April 1994. He had been in Kigali for a week and left for Gisenyi on 14 April 1994. He described the journey out of Kigali at that time as “not easy” and he stated that it took him seven hours to get from Kigali to Mukamira. According to the witness the Kigali-Ruhengeri road was impassable for security reasons and hence was not chosen to undertake the journey at the time.<sup>808</sup>

618. The witness described the Kigali-Gitarama-Mukamira road as a tarred road with only 30 kilometers of the road as not tarred. They encountered delays and obstacles on this road including many roadblocks, some manned by civilians and others by soldiers, all along the road<sup>809</sup> and crowds who were leaving Kigali at the time. The witness’ vehicle was stopped at all roadblocks and was allowed to pass only after they explained the reasons for their journey to those manning the roadblocks each time. After reaching Mukamira, the witness had to undertake the last stretch of the journey to Gisenyi in another vehicle because the vehicle in which he originally travelled was headed towards Nkuli. The witness completed this journey in about one hour in a vehicle from his camp and for this reason he was not stopped at the roadblocks on the road between Mukamira and Gisenyi.<sup>810</sup>

Prosecution Witness Joseph Ngarambe

619. Ngarambe lived in the Kimihurura area of Kigali in 1994 and ran his own business. In addition, he was the general treasurer of the Rwandan Football Federation and had an office in the Youth Ministry as well.<sup>811</sup>

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<sup>806</sup> T. 11 October 2011, pp. 29-30 (the approximate line is marked with a dotted pink line on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)), 38 (the road is again in light blue on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150) with a dotted red line indicating the edge of the DMZ).

<sup>807</sup> Defence Exhibit 162 (Personal Identification Sheet); T. 17 October 2011, pp. 17-19, 37, 63-64 (The witness had joined the *gendarmerie* in September 1992. According to the witness the “Gisenyi group” consisted of more than 200 *gendarmes*. The witness explained that there were five platoons in Gisenyi camp and they together formed a company and not a battalion. The witness also stated that UNAMIR military observers were stationed near the Gisenyi camp and he had seen them entering their base camp and speaking to his commander just once. The witness stated that UNAMIR was placed in Rwanda to monitor the ceasefire between the RGF and the RPF.).

<sup>808</sup> T. 17 October 2011, pp. 29-30, 39 (the route chosen by the witness was the Kigali-Gitarama-Mukamira route to get to Gisenyi).

<sup>809</sup> T. 17 October 2011, p. 30.

<sup>810</sup> T. 17 October 2011, p. 30 (the witness explained that these roadblocks did not exist before that period of time).

<sup>811</sup> T. 24 August 2010, p. 27; T. 25 August 2010, p. 4.



620. The witness testified that he did not know Ngirabatware personally but that they met on occasion at public events. He further testified that he would be able to recognise him and that their wives knew one another. Ngarambe said that he hardly knew Ngirabatware's wife and would have difficulty recognising her, though he knew her name was Felicite. He did not know Ngirabatware's children in 1994. The witness knew a few members of Ngirabatware's family, such as Ngirabatware's father-in-law Felicien Kabuga and Ngirabatware's sister-in-law, Winnie and her husband Eugène Mbarushimana. Ngarambe recalled that Ngirabatware drove an Audi in 1994.<sup>812</sup>

621. Ngarambe testified that he went to the French Embassy on 10 April 1994 around 4 to 4.30 p.m. Upon his arrival, he saw a crowd of about 200 people and he noticed that ministers and their families had taken refuge there. Ngarambe stated that Jérôme Bicamumpaka was present at the French Embassy.<sup>813</sup>

622. Ngarambe knew Jean Baptiste Byilingiro and described him as a senior official who advised the CDR party. Upon Ngarambe's arrival at the Embassy on 10 April 1994, Ngarambe spoke with Jean Baptiste Byilingiro and Télésphore Bizimungu, who both informed him that they had first sought refuge at the PGC, before moving to the "Kigali military camp" and finally to the French Embassy.<sup>814</sup>

623. The witness testified that he stayed at the Embassy from 10 to 12 April 1994, the day he was evacuated to Burundi. He did not have the impression that there was a record of people entering or leaving the Embassy. On 11 April 1994, he left the Embassy in the morning and went to a house across the street. He returned mid-morning<sup>815</sup>

624. The night of 10 April 1994, Ngarambe shared a mattress on the floor with Ngirabatware's sister-in-law, who was "heavily pregnant", and her husband.<sup>816</sup>

625. Ngarambe further testified that he did not see Ngirabatware at all at the French Embassy between 10 April 1994 and 12 April 1994. On 12 April 1994, when the Embassy announced who would be evacuated, Ngirabatware's name was not listed. However, the witness was asked about the statement he gave in 1996 where he indicated that he saw Ngirabatware and his wife at the French Embassy on 11 April 1994. To this, the witness responded that "I am hard put to give an affirmative answer". He further explained that at the time of making his statement in 1996, he had a better memory of the events he had witnessed.<sup>817</sup>

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<sup>812</sup> T. 24 August 2010, p. 28; T. 25 August 2010, pp. 7-9, 30, 34-36, 48-49.

<sup>813</sup> T. 25 August 2010, pp. 5-7, 45.

<sup>814</sup> T. 25 August 2010, pp. 7, 9, 26-28.

<sup>815</sup> T. 25 August 2010, pp. 7, 10-11.

<sup>816</sup> T. 25 August 2010, pp. 7-8 (Joseph Ngarambe described other aspects of the French Embassy's sleeping arrangements).

<sup>817</sup> T. 25 August 2010, pp. 9-10, 12-13, 18-19.

Prosecution Witness ANAW

626. Witness ANAW was a Hutu and Rwandan army officer, who lived in Kigali in 1994.<sup>818</sup>

627. According to Witness ANAW, Kigali is located 96 kilometers from Ruhengeri, which is slightly more than 60 kilometers from Gisenyi. The witness stated that, hence, the total distance between Kigali to Gisenyi via Ruhengeri is 156 kilometers and that this road is “fully macadamised”. Kigali is 50 kilometers from Gitarama, and the witness agreed that the distance between Gitarama and Gisenyi could be 164 kilometers. He stated that, presently, it takes approximately four hours to cover the distance from Kigali to Gisenyi by car on the tarmac road. In 1994, it took the same time, as the road was the same then.<sup>819</sup> He described four major routes between Kigali and Gisenyi.<sup>820</sup> All four routes could be used without any problem from 6 through 12 April 1994 in all types of vehicles, which he learned from information he had received from army and *gendarmerie* units operating all over the country. The two quickest routes would take four hours by car, and could be used by the population until at least 15 April 1994.<sup>821</sup>

628. The security situation in Kigali deteriorated daily in April 1994, although not to the point of widespread chaos. After President Habyarimana’s assassination on 6 April 1994, numerous ministers were evacuated to the PGC in the Kimihurura. While there, the ministers could leave freely, according to various persons who relayed information to the head of a unit responsible for protecting the ministers, who in turn told the witness. But even in areas not affected by fighting,

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<sup>818</sup> Prosecution Exhibit 28 (Personal Identification Sheet). Witness ANAW testified via video-link. See, for example, T. 30 August 2010, p. 13 (Oral Decision).

<sup>819</sup> T. 30 August 2010, pp. 21-22, 74; T. 30 August 2010, pp. 61-62 (CS).

<sup>820</sup> The first route covered around 156 kilometers, and passed through Giticyinyoni, Cyorongi, Rulindo, Busengo, Ruhengeri, and Mukamira. It was tarmacked in 1994, and travel from Kigali to Gisenyi would require about four hours. Regarding the security situation of this route, the witness stated that it was “passable” and the security was “normal” compared to other route. He knew this because of the army units operating in various parts of the country. The Kigali to Giticyinyoni section was no longer used after 15 April 1994 due to fighting, even though the route was safe. T. 30 August 2010, pp. 21-22, 24-25, 27-28, 64-65, 70-71, 74-75; T. 30 August 2010, pp. 61-62 (CS); Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The second route passed through Nzove, Muhondo, Rushashi, Gakenke, Ruhengeri and Mukamira. A large part of this route was untarred, and travel would take more than four hours from Kigali to Gisenyi, even though it was shorter in distance than the first route. This route was removed from the fighting in Kigali, and the lack of security issues meant that it could be used even until July 1994. T. 30 August 2010, pp. 23-26, 28, 66-71, 74-75; T. 30 August 2010, p. 62 (CS); Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The third route went through Giticyinyoni, Nyabarongo, Bishenyi, Taba, Kayenzi, Nyabikenke, Rushashi, Gakenke, Ruhengeri and Mukamira. Due to the poor state of the road, one would need more than five hours to travel from Kigali to Gisenyi. According to the witness, the security was normal on this route and it was used until the beginning of June. T. 30 August 2010, pp. 23-24, 26, 28, 71-75, 77-78; Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The fourth route passed through Gitarama, Ngororero, Kabaya and Mukamira, and the trip from Kigali to Gisenyi would take five-and-a-half hours because it was the longest in terms of length. The route was paved, except for the portion between Ngororero and Kabaya. This route remained secure into May, and was used until the beginning of June. The road between Kigali and Gitarama was in use until July 1994. T. 30 August 2010, pp. 24-26, 28, 36, 73-75, 78; Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW).

<sup>821</sup> T. 30 August 2010, pp. 21-28, 36, 70, 74; T. 30 August 2010, pp. 41-43 (CS).

people did not move about at night. People were too afraid to move about at night because attacks occurred at night.<sup>822</sup>

629. In the afternoon of 7 April 1994, the witness heard heavy weaponry and gunfire being exchanged between the PGC and the neighboring CND building.<sup>823</sup>

630. Witness ANAW stated that, between 6 and 12 April 1994, he did not receive any reports about the movement of ministers, all of whom had their own bodyguards. He had been unaware of any ministers or officials taken to the French Embassy, and knew nothing about Ngirabatware's movements between 6 and 9 April. He knew, however, that Ngirabatware and others went to the *Hôtel des Diplomates* to take their oath for the Interim Government on 9 April 1994. After this ceremony, the *gendarmérie* resumed its mission of protecting the ministers.<sup>824</sup>

#### Prosecution Witness DAK

631. Witness DAK is a Rwandan Hutu who was living in Camp Kigali, Gisenyi *préfecture* in 1994. In 1994 he was a soldier with the rank of corporal at the Kigali Military camp. During that time he escorted state officials in a marked military jeep.<sup>825</sup>

632. The witness testified that he knew Rwanda very well and was introduced as a Prosecution witness to address the conditions of the roads between Kigali and Gisenyi during the time of 7 April through 6 May 1994.<sup>826</sup> He identified two main routes between Kigali and Gisenyi towns in 1994. Route One went from Kigali to Gisenyi through Ruhengeri. He testified that it presently took about three-and-a-half hours to drive between Kigali town and Gisenyi town along Route One. Route Two went from Kigali through Gitarama to Ngororero and Mukamira, and then to Gisenyi. The travelling time between Kigali and Gisenyi via Route Two could be four hours presently.<sup>827</sup>

633. He used these routes between 6 April and 15 May 1994, and he noted that Route One was the shorter way to get to Gisenyi from Kigali as compared to Route Two.<sup>828</sup>

634. Witness DAK further stated that it would take about five hours for a civilian vehicle to drive Route One between Kigali and Gisenyi during 6 to 12 April 1994. However, it would only take an official or military or ministerial car about three-and-a-half hours to drive Route One because they were stopped less frequently at the roadblocks. He stated that the time required by a civilian car to cover the distance between Kigali and Gisenyi via Route Two, during the period

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<sup>822</sup> T. 30 August 2010, pp. 28-31, 34, 54, 70, 75; T. 30 August 2010, pp. 49-51 (CS) (The person heading this unit was Colonel Bavugamenshi).

<sup>823</sup> T. 30 August 2010, p. 49 (CS).

<sup>824</sup> T. 30 August 2010, pp. 50, 59, 82 (CS); T. 30 August 2010, pp. 55, 76.

<sup>825</sup> Prosecution Exhibit 27 (Personal Identification Sheet); T. 25 August 2010, pp. 62-63, 73.

<sup>826</sup> Decision on Prosecution Motion of 24 June 2010 for Leave to Vary Its Witness List (TC), 15 July 2010, para. 14(b); T. 25 August 2010, p. 63.

<sup>827</sup> T. 25 August 2010, pp. 63-64, 94.

<sup>828</sup> T. 25 August 2010, pp. 64, 90.

between 6 and 12 April 1994, was eight hours because of the numerous roadblocks; a military or an official vehicle would take only around five hours to cover Route Two.<sup>829</sup>

635. The witness testified that between 6 and 12 April 1994, he only drove as far as Shyorongi on Route One, 15 kilometers from Kigali. However, the witness was sure that Route One could be used throughout because he had seen vehicles (both military and civilian) going to Ruhengeri and Gisenyi and coming back to Kigali. The witness also confirmed that Route One (referred to as the Kigali-Ruhengeri-Gisenyi Highway) was a tarmac road.<sup>830</sup>

636. Witness DAK testified that the Route Two road was also tarmac except for a small section between Gisenyi and Ngororero that was not entirely paved. He had travelled on it many times and that the road was used by both military and civilian vehicles. He stated that on 8 April 1994, he traveled around 15 kilometers from Kigali to Ruyenzi in a military jeep on Route Two along with ten other soldiers between 9.30 and 10.00 a.m. He first stated the trip took around 30 minutes, but later stated it took only 15 minutes. He saw about three roadblocks manned by civilians, some of whom were armed with rifles. However, the witness was in a combat vehicle so it could pass through the roadblocks without stopping. It was possible that the whole journey between Gisenyi and Kigali was approximately 213 kilometers in 1994 with a stretch of dirt road located in the Giciye *commune*. He confirmed that both routes were passable at all times between 6 April and 15 May 1994. It was only after 15 May 1994 that the Route One was blocked by the RPF.<sup>831</sup>

637. Witness DAK testified that on the night of 6 to 7 April 1994 there was shooting from the Kivoyu neighborhood and also at the Ministry of Defence. He testified that he was in Kimihurura camp in Kigali town on 7 April 1994 and there was heavy shooting there as well. He further stated that on the night of 6 April 1994 into the early morning of 7 April and then 8 April 1994 there was fighting and firing between the RPF stationed in the CND area and the Presidential Guard camp. Between 3.00 and 5.30 a.m. on the morning of 7 April 1994, only the Kimihurura neighborhood, not far from the CND, was affected by the shooting and the other parts of Kigali were not affected.<sup>832</sup>

638. The witness further stated that he knew that the RPF had captured a part of northern Rwanda up to Rutare as of 6 April 1994, but that the RPF troops were later pushed back. The witness' battalion was aware at all times about the movements of the RPF soldiers towards Kigali.<sup>833</sup>

639. Lastly, the witness testified that it was possible to travel out of Kigali town between 6 and 12 April 1994, and that even up to the end of the war people could still get out of Kigali town.<sup>834</sup>

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<sup>829</sup> T. 25 August 2010, pp. 96-98.

<sup>830</sup> T. 25 August 2010, pp. 68-69, 91, 95.

<sup>831</sup> T. 25 August 2010, pp. 69-75, 78-79 (in cross-examination, Defence Counsel suggested that the portion of the dirt road was approximately 50 kilometers).

<sup>832</sup> T. 25 August 2010, pp. 80, 83.

<sup>833</sup> T. 25 August 2010, p. 93.

<sup>834</sup> T. 25 August 2010, p. 96.

## Prosecution Witness AFS

640. Witness AFS is a Hutu and lived in the *Bruxelles* area in Nyabagobe *cellule*, Rushubi *secteur*, Nyamyumba *commune*, Gisenyi *préfecture* in 1994. He was Ngirabatware's family friend and knew many of Ngirabatware's family members. In 1994, AFS was a machinery mechanic in Nyamyumba *commune*, Gisenyi *préfecture*.<sup>835</sup>

641. The witness testified that he knew Gisenyi town very well because he grew up there, was acquainted with Nyamyumba *commune*, and knew downtown Kigali very well because the brewery was located there. He testified that in 1994, "before the war", it took anywhere between five and eight hours, depending on the vehicle used, to drive between Kigali and Gisenyi. For instance using a lorry took longer than a car. He further testified that now the roads are better and the drive takes about three hours.<sup>836</sup>

### **3.9.3 Deliberations**

#### **3.9.3.1 Applicable Law**

642. The Appeals Chamber has repeatedly reaffirmed that "by raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged".<sup>837</sup> Accordingly, the Appeals Chamber has held:

An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.<sup>838</sup>

643. Nor does the existence of alibi evidence alter the standard of proof to which the Prosecution is held:

Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.<sup>839</sup>

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<sup>835</sup> Prosecution Exhibit 19 (Personal Identification Sheet); T. 2 March 2010, pp. 5-6 (CS); T. 2 March 2010, p. 9.

<sup>836</sup> T. 4 March 2010, p. 77 (CS).

<sup>837</sup> *Zigiranyirazo*, Judgement (AC), para. 17, citing *Nahimana et al.*, Judgement (AC), para. 414; *Ndindabahizi*, Judgement (AC), para. 66; *Kajelijeli*, Judgement (AC), paras. 41-42; *Niyitegeka*, Judgement (AC), para. 60; *Musema*, Judgement (AC), paras. 205-206; *Kayishema & Ruzindana*, Judgement (AC), para. 106; *Delalić et al.*, Judgement (AC), para. 581.

<sup>838</sup> *Zigiranyirazo*, Judgement (AC), para. 17 (internal citation omitted).

<sup>839</sup> *Zigiranyirazo*, Judgement (AC), para. 18 (internal citation omitted).

644. Further, the Appeals Chamber has held that the manner in which an alibi is presented may impact its credibility.<sup>840</sup> Therefore, it falls within the Trial Chamber's discretion to take this into account in assessing the alibi evidence in this case.

645. If the Chamber finds, beyond a reasonable doubt, that the alibi witnesses were not credible, it is not required to make findings, beyond a reasonable doubt, regarding the reasons why witnesses might offer incredible and inconsistent accounts of events.<sup>841</sup>

### 3.9.3.2 *Filing of Notice of Alibi and Witness List*

646. As previously articulated in this Judgement (2.4), pursuant to Rule 67(A)(ii)(a) of the Rules, the Defence must notify the Prosecution of its intention to rely upon an alibi before the commencement of trial, and "as early as reasonably practicable".<sup>842</sup> Nonetheless, late notice of an alibi does not prevent an accused from presenting alibi evidence at trial, or from having such evidence considered by the Chamber.<sup>843</sup> Submission of an alibi at a very late stage of the proceedings may have an impact on the extent to which the alibi is believed.<sup>844</sup> Late disclosure may suggest that the alibi is fabricated and tailored to respond to the Prosecution's case.<sup>845</sup>

647. In this case, the Defence gradually filed its Notice of Alibi. Its initial Notice of Alibi was filed on 23 September 2009, just prior to the commencement of the Prosecution's case-in-chief.<sup>846</sup> Before the start of the Prosecution's opening statement, Defence Co-Counsel alerted the Chamber that its Notice of Alibi had been filed notifying the Prosecution that Ngirabatware was in Kigali rather than Gisenyi between 6 and 12 April 1994.<sup>847</sup> In its Decision of 16 February 2010, the Chamber held that the initial Notice of Alibi lacked information and was not in conformity with the requirements of Rule 67(A)(ii)(a) and ordered the Defence to disclose to the Prosecution as soon as reasonably practicable, the names and addresses of witnesses and any other evidence upon which Ngirabatware intended to rely to establish the Defence alibi.<sup>848</sup>

648. On 22 March 2010, the Defence filed an Additional Alibi Notice, which included a list with 59 names of potential witnesses. On 16 April 2010, the Chamber ruled that the Defence failed to comply with Rule 67(A)(ii)(a) as the list of potential witnesses did not allow the

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<sup>840</sup> *Kalimanzira*, Judgement (AC), para. 56, citing *Rutaganda*, Judgement (AC), para. 242; *Musema*, Judgement (AC), para. 201.

<sup>841</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 161.

<sup>842</sup> Rule 67(A)(ii)(a) of the Rules; *Rutaganda*, Judgement (AC), para. 243 (quoted). See also *Kanyarukiga*, Judgement (AC), para. 97; *Kalimanzira*, Judgement (AC), para. 54.

<sup>843</sup> *Rutaganda*, Judgement (AC), para. 243 ("were the Defence to fail in this regard, Rule 67(B) provides that the Defence may still rely on evidence in support of an alibi at trial."); Rule 67(B) of the Rules ("Failure of the Defence to provide such notice [of alibi] under this Rule shall not limit the right of the accused to rely on the above defences.").

<sup>844</sup> *Kalimanzira*, Judgement (AC), paras. 54, 56; *Ndindabahizi*, Judgement (AC), para. 68; *Semanza*, Judgement (AC), para. 93.

<sup>845</sup> *Kanyarukiga*, Judgement (AC), para. 97; *Kalimanzira*, Judgement (AC), paras. 54, 56; *Nchamihigo*, Judgement (AC), para. 97; *Semanza*, Judgement (AC), para. 93.

<sup>846</sup> Notice of Alibi Pursuant to Rule 67 (A)(ii), filed 23 September 2009.

<sup>847</sup> T. 23 September 2009, p. 6. See also Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010, fn. 4.

<sup>848</sup> Decision on Prosecution Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 February 2010.

Prosecution time for adequate preparation. On 4 May 2010, the Defence filed its Second Additional Notice of Alibi with regard to the period of 6 through 12 April 1994.<sup>849</sup> The Chamber notes that at the time of filing the Second Additional Notice of Alibi, 17 Prosecution witnesses had already testified in the present case, including every witness who testified about the incidents alleged to have occurred between 6 and 12 April 1994, the period for which the Defence sets forth an alibi. The Chamber notes that Witnesses DWAN-122, Musabeyezu-Kabuga, DWAN-7, Bicomumpaka, DWAN-150 and Habinshuti were not listed as alibi witnesses in the Second Additional Notice of Alibi, with the other potential alibi witnesses, and were not revealed as potential alibi witnesses until October 2010 when the Defence filed its Pre-Defence Brief.<sup>850</sup> This raises the issue of whether, after having heard the Prosecution witnesses, the Defence moulded its alibi evidence to fit the Prosecution case.<sup>851</sup> Moreover, the fact that the Defence did not finalize its alibi witness list until October 2010 leads the Chamber to suspect, particularly with regard to Witnesses DWAN-122, Musabeyezu-Kabuga, DWAN-7, Bicomumpaka, DWAN-150 and Habinshuti, that the Defence sought out witnesses to accord with Ngirabatware's alibi.<sup>852</sup>

649. Bearing in mind the above, and despite the late filing of the Notice of Alibi and the very late finalization of the Defence witness list, the Chamber will still consider the evidence proffered by the Defence in support of its alibi, bearing in mind that the burden of proof never shifts to the Defence.<sup>853</sup>

### 3.9.3.3 General Observations

650. As set forth elsewhere in the Judgement (3.10.1), the Prosecution alleges that on 7 and 8 April 1994, Ngirabatware was physically present in Nyamyumba *commune* distributing weapons and inciting members of the population to kill Tutsis. It contends that the evidence supporting Indictment paragraphs 16, 33 and 55, places Ngirabatware in Nyamyumba *commune* on these days and renders the Defence alibi unreliable.<sup>854</sup> In particular, the Prosecution led evidence that Ngirabatware distributed weapons at the roadblocks in the *Bruxelles* area at two different times during the day of 7 April 1994, and that he met with Bagango at Bananiyie's house at 8.00 p.m. that same evening. The Prosecution further alleges that Ngirabatware attended another meeting

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<sup>849</sup> Additional Alibi Notice, filed 22 March 2010; Decision on Prosecutor's Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 April 2010, paras. 22-23; Second Additional Alibi Notice, filed 4 May 2010.

<sup>850</sup> The Chamber notes that the will-say statements contained in the Annexure to the Pre-Defence Brief for Witnesses DWAN-122, Musabeyezu-Kabuga, DWAN-7, Bicomumpaka and Habinshuti all provided clear information that these witnesses would testify as to the alibi period.

<sup>851</sup> See *Kanyarukiga*, Judgement (AC), para. 97 (The Appeals Chamber has "upheld [T]rial Chambers' inferences that the failure to raise an alibi in a timely manner suggested that the alibi was invented to respond to the Prosecution case.").

<sup>852</sup> See *Kalimanzira*, Judgement (AC), para. 56 ("the manner in which an alibi is presented may impact its credibility"). See also *Kanyarukiga*, Judgement (AC), paras. 100 ("the fact that the Rules allow for the variation of a witness list does not mean that a [T]rial [C]hamber does not have the discretion to take such variations into account"), 102 ("The Appeals Chamber considers that it was reasonable for the Trial Chamber to question the circumstances surrounding the late filing of the Notice of Alibi and the changes to the witness list.").

<sup>853</sup> *Rutaganda*, Judgement (AC), para. 243.

<sup>854</sup> See Indictment, paras. 16, 55; T. 2 March 2010, p. 13 (Witness AFS) (Ngirabatware was in Nyamyumba *commune* at 2.00 p.m. on 8 April 1994). The Chamber notes that paragraph 33 of the Indictment does not allege that Ngirabatware was present during the events in question within that paragraph; therefore, the Chamber will not consider the alibi in relation to paragraph 33 of the Indictment.

at Alphonse Bananiyie's house at 2.00 p.m. on 8 April 1994. The Defence maintains that between 6 and 12 April 1994, Ngirabatware was indisputably in Kigali.

651. The Chamber notes that Ngirabatware's alibi rests upon his claim that he was at the Presidential Guard Camp (the "PGC") from the night of 6 April 1994 to the morning of 8 April 1994, and at the French Embassy (the "French Embassy") during the remainder of 8 April 1994. In support of this assertion, the Defence relies on witness testimony and Defence Exhibit 104, diplomatic telegrams sent from the French Embassy in Kigali (the "Embassy telegrams") containing lists of those who sought refuge at the French Embassy in Kigali in April 1994. The Defence disputes the possibility of travelling from Kigali to Gisenyi due to the prevailing road conditions and security problems at the time.

652. The Embassy telegram of 8 April 1994 at 11.58 a.m., contains the lists of persons who sought refuge at the Embassy, including Ngirabatware, his wife, two of his own children and two other children. His sister-in-law Musabeyezu-Kabuga and her husband were also on the list. The Chamber notes, however, that Ngirabatware's testimony demonstrates that the registration at the Embassy was not systematic during the time period concerned, and that people who took refuge at the Embassy freely left the premises. This fact was corroborated by the testimony of Musabeyezu-Kabuga who testified that while at the Embassy, Ngirabatware and his family, as well as Musabeyezu-Kabuga and her husband, left the Embassy premises to go to Ngirabatware's residence, which was approximately 300 meters from the Embassy. Prosecution Witness Joseph Ngarambe also stated he did not have the impression that there was a record of people entering or leaving the Embassy. He personally left and returned mid-morning.<sup>855</sup>

653. Based on the foregoing, the Chamber considers that the Embassy telegrams do not indicate at what exact time Ngirabatware arrived at the Embassy. Nor does the evidence indicate the constant presence of Ngirabatware at the Embassy on 8 April 1994. In this regard, the Chamber recalls that the Defence does not need to establish Ngirabatware's presence outside of Gisenyi, but needs only to raise the reasonable possibility that Ngirabatware was elsewhere. The Chamber considers that the telegram sent at 11.58 a.m. on 8 April 1994 raises the reasonable possibility that Ngirabatware may have been present at the French Embassy around early afternoon on that day.

654. In assessing Ngirabatware's alibi for the period 6 to 12 April 1994, the Chamber will consider the evidence of the Embassy telegrams along with other evidence, in order to determine whether it is reasonably possibly true that Ngirabatware was in Kigali during this time period. As discussed above, the Chamber will limit its analysis to 7 and 8 April 1994, during which period the Prosecution witnesses placed Ngirabatware in Nyamyumba *commune*, Gisenyi *préfecture*.

#### **3.9.3.4 General Witness Credibility**

655. The Prosecution submits that the Defence witnesses are not credible because they have either a personal or professional relationship with Ngirabatware.<sup>856</sup> The Chamber notes that Ngirabatware acknowledged that he had a close relationship with Witness DWAN-7. Witness

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<sup>855</sup> Defence Exhibit 104A (French Embassy Telegrams) (French); T. 25 August 2010, pp. 10-11 (Ngarambe); T. 25 November 2010, p. 41 (Ngirabatware); T. 19 October 2011, p. 85 (Musabeyezu-Kabuga).

<sup>856</sup> Prosecution Closing Brief, para. 234.



DWAN-7 also testified that their professional relationship developed into a friendship, confirming that they had known each other for at least three or four years and saw each other almost on a daily basis.

656. The Chamber observes that Musabeyezu-Kabuga was Ngirabatware's sister-in-law, for whom Ngirabatware allegedly went to lengths to try and evacuate because of her pregnant condition in April 1994. A professional relationship existed between Ngirabatware and Witnesses DWAN-122, Kayitana and Byilingiro. Witness DWAN-122 worked closely with Ngirabatware as did Kayitana, who as Ngirabatware's driver was granted improved financial gains by virtue of his position.<sup>857</sup> Although Byilingiro stated that he was not a close friend of Ngirabatware, he affirmed that he had known Ngirabatware for a long time in a professional capacity from his position at the Ministry of Planning.

657. The Chamber further observes that Bicamumpaka was a minister and colleague of Ngirabatware at the relevant time and may have had a motive to exculpate Ngirabatware, particularly since he was an accused before this Tribunal at the time of his testimony in this case.<sup>858</sup> The Chamber also notes that Bongwa's husband, André Ntagerura, was a minister in the Interim Government and thus a colleague of Ngirabatware and that she may, therefore, have had an interest in exculpating Ngirabatware.<sup>859</sup>

658. The Chamber considers that the nature and proximity of the relationship between Ngirabatware and these witnesses does not, in and of itself, render their testimony incredible. However, these witnesses may have been motivated to protect Ngirabatware in this trial and the Chamber will therefore take this into consideration when assessing their evidence.

### 3.9.3.5 *Site Visit*

659. The Chamber conducted a site visit in Rwanda from 21 to 25 May 2012 during which the delegation visited various sites listed in paragraph 7 of the Site Visit Report. The Registry measured the distance and travel time between relevant sites.<sup>860</sup> The Chamber notes that during the site visit, the delegation travelled from Kigali to Gisenyi via Nyabugogo, Giticyinyoni, Ruhenzi, Gitarama, Ngororero, Kabaya and Mukamira. This route was calculated to cover 194.5 kilometers, and the total travel time was approximately five hours.<sup>861</sup>

660. The Chamber recalls that during the site visit it travelled on a different, shorter route to return from Gisenyi to Kigali through Ruhengeri. The total distance was 152.2 kilometers, which was covered within three hours.<sup>862</sup>

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<sup>857</sup> T. 24 October 2011, p. 61; T. 25 October 2011, pp. 2, 52 (Kayitana).

<sup>858</sup> See T. 24 August 2011, p. 16 (Bicamumpaka).

<sup>859</sup> The Chamber recalls that being related to a different accused before this Tribunal does not necessarily indicate that a witness would have distorted his or her testimony to the benefit of the Accused in the instant case, in particular where the witness' relative was not implicated in any charges concerning the event in question. See *Setako*, Judgement (AC), para. 189.

<sup>860</sup> Chambers Exhibit 1 (Site Visit Report), pp. 2-4.

<sup>861</sup> Chambers Exhibit 1 (Site Visit Report), p. 4. The Chamber recalls that the delegation stopped briefly at Murambi and Ngororero to discuss some factual issues that allowed the evidence to be put into perspective.

<sup>862</sup> Chambers Exhibit 1 (Site Visit Report), p. 9.

661. The Chamber notes that “evidence concerning specific travel details taken after several years can only be of limited assistance in establishing the time and exact itinerary of a trip taken in April 1994”.<sup>863</sup> While “observations from a site visit taken several years after an event may only be of limited assistance, their relevance will depend on the circumstances of each case”. In this regard, the Appeals Chamber has confirmed that it can be reasonable to compare observations made during a site visit with the evidence of alibi witnesses.<sup>864</sup> The Chamber will make such comparisons where appropriate.

662. The Chamber will now assess the alibi evidence in relation to the relevant Indictment paragraphs, analyzing whether Ngirabatware’s alibi is reasonably possibly true for the period of 7 and 8 April 1994, when Ngirabatware is alleged to have been committing crimes in Gisenyi *préfecture*.

### 3.9.3.6 7 April 1994

663. As previously articulated in the Judgement, the Prosecution presented evidence placing Ngirabatware in Nyamyumba *commune*, where he was distributing weapons on 7 April 1994 (3.10.3). The Defence presents evidence placing Ngirabatware at the PGC in Kigali on 7 April 1994.

664. Ngirabatware testified about his alleged presence at the PGC on the night of 6 April and during the course of 7 April 1994. Witnesses Musabeyezu-Kabuga, Byilingiro and Bongwa also testified to having personally seen him at the PGC on that day. However, the Chamber considers that these witnesses provided contradicting testimony and cannot be relied upon. The Chamber recalls Musabeyezu-Kabuga’s testimony that she arrived with Ngirabatware at the PGC on the night of 6 April, saw him and spoke to him every 45 minutes during the night of 6 to 7 April 1994, because she had to frequently urinate given her pregnant condition and had to pass through the small room where the men, including Ngirabatware, were staying. The Chamber does not find this account to be plausible. Ngirabatware was not the only person present at the PGC that night; her own husband and children were also present, yet she claims that she saw and spoke only to Ngirabatware every 45 minutes. The Chamber considers that this suggests the witness is trying to protect Ngirabatware and to place him at the PGC. The Chamber is not convinced of her testimony in this regard, and finds this aspect of her evidence to be incredible.

665. The Chamber notes that Bongwa has testified in several cases before this Tribunal, namely the *Ntagerura et al.*, *Bizimungu et al.* and *Nzabonimana* cases.<sup>865</sup> In cross-examination, the Prosecution highlighted the fact that Bongwa did not mention Ngirabatware’s presence at the PGC until her testimony in the *Nzabonimana* case in 2010. Bongwa testified that in 2002 during the *Ntagerura et al.* trial, she was only asked about the members of her family that accompanied her to the PGC and not about the members of government that she saw there. The Chamber

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<sup>863</sup> *Kanyarukiga*, Judgement (AC), para. 150; *Zigiranyirazo*, Judgement (AC), para. 69. See also *Kanyarukiga*, Judgement (AC), fn. 342.

<sup>864</sup> *Kanyarukiga*, Judgement (AC), para. 150. The Appeals Chamber also found it reasonable to consider that site visit observations of an approximately three-hour journey could call into question the credibility of alibi evidence that the journey took around six hours on 15 April 1994. *Kanyarukiga*, Judgement (AC), paras. 142-143, 153.

<sup>865</sup> Prosecution Exhibit 65 (Transcripts from *Ntagerura et al.* Case); Prosecution Exhibit 66 (Transcripts from *Bizimungu et al.* Case); Prosecution Exhibit 67 (Transcripts from *Bizimungu et al.* Case); Prosecution Exhibit 68 (Transcripts from *Nzabonimana* Case).

accepts this explanation.<sup>866</sup> In 2008 during the *Bizimungu et al.* trial, she listed some individuals such as Daniel Mbangura, Prosper Mugiraneza and Casimir Bizimungu that she recalled seeing at the PGC,<sup>867</sup> but stated there were other ministers and their families present at the PGC, who she did not mention. The Chamber recalls that Bongwa was testifying in the context of the *Bizimungu et al.* trial and so may not have immediately thought to mention Ngirabatware in that context. Nevertheless, the Chamber does not accept this explanation given that Bongwa was specifically asked which ministers and their families she recalled seeing at the PGC on 7 April 1994 and she failed to mention Ngirabatware. The specific manner in which Bongwa was asked to mention the other ministers and their families who were at the PGC should have solicited a more specific answer. The Chamber also recalls that Ngirabatware, Musabeyezu-Kabuga and Witness DWAN-122 all testified that Prosper Mugiraneza travelled in the same convoy as Ngirabatware from their respective homes to the PGC. Since Bongwa acknowledged that she saw Prosper Mugiraneza at the PGC on the night of 7 April 1994, she would have necessarily also seen Ngirabatware. Yet she omitted mentioning Ngirabatware among the ministers present at the PGC on 7 April. The Chamber considers that this omission renders her testimony unreliable and further suggests that Ngirabatware was not at the PGC.

666. The Chamber recalls that Bongwa first mentioned the presence of Ngirabatware at the PGC after she met with members of the Ngirabatware Defence team in 2009, namely in the *Nzabonimana* trial in 2010. During her testimony in this case Bongwa specifically stated that she saw Ngirabatware in the course of the evening in the PGC and described him as “really frightened”. Given that she recalled so clearly his demeanor on 7 April 1994 at the PGC, it is even more telling that she would not have mentioned Ngirabatware’s presence at the PGC on that date prior to the *Nzabonimana* trial in 2010. The Chamber therefore does not consider this belated inclusion of Ngirabatware’s name to remedy the unreliable nature of her testimony on this aspect.

<sup>866</sup> Prosecution Exhibit 65A (Transcripts from *Ntagerura et al.* Case), p. 3 (“Q. Now, very briefly, can you tell us to help our understanding what the Kimihurura camp was? A. The Kimihurura camp was the camp of the Presidential Guard. It was the camp which was closest to our house. For how long did you remain in the Kimihurura camp? A. We got to the Kimihurura camp in the night of the 6th April and we left on the 8th in the afternoon, 8th April in the afternoon. Q. And who were the members of your family who were with you at that time? A. I was with my husband, obviously, my three children and my mother.”).

<sup>867</sup> Prosecution Exhibit 66A (Transcripts from *Bizimungu et al.* Case), p. 8 (“Q. About what time did you get to the camp, if you recall? A. In any case, it must have been after 10 p.m. I do not recall the exact time, but it was after 10 p.m. Q. When you got to the camp, what did you do? A. We did nothing in particular. We went into a large room and remained there. Q. Do you know what kind – what kind of room that large room was, or what the room was used for? A. Yes, Counsel, I know. It was the officers’ mess. Q. And do you recall about how many people were there? A. I cannot say exactly how many of us were there, but there were many of us, because even the family members of the soldiers who were there had joined us in that hall. There were many people in it. Q. Of the people who were in it, did you later recognise any fellow ministers or ministerial families? A. Yes, Counsel, I recognised them. Q. Who do you recall being there from ministers and their families? A. I obviously recognised among those who came after us, for instance, the family of Prosper Munyaneza. I also saw Casimir Bizimungu’s family arrive. And when we got to the camp, we found the family of the former minister of defence there. I also saw family members of former minister Daniel Mbangura. Those are the ones I remember. Q. You said you saw the families of Prosper Mugiraneza and Casimir Bizimungu. Do you recall seeing either Dr. Bizimungu or Mr. Mugiraneza in that hall? A. Yes, I saw them with my own eyes. They arrived after us. Madam President: Did they arrive – Judge Muthoga: Did they arrive – sorry. Who arrived after you? The Witness: I am referring to the two ministers we’ve just talked about, the families of Mugiraneza and Bizimungu. They arrived after us at the camp.”).

667. Furthermore, the Chamber considers that the testimony of Bongwa is internally inconsistent. Bongwa was the only witness who testified that the PGC was attacked on the night of 6 April 1994, providing no specific time frame. Ngirabatware and Musabeyezu-Kabuga claimed that they heard the intense gunfire in the vicinity of the PGC at approximately 3.00 a.m. and 5.30 a.m. on 7 April 1994. Furthermore, Bongwa is also the only witness who stated that Ngirabatware spent the night in the big officer's mess hall, which is contradicted by Ngirabatware, Musabeyezu-Kabuga and Byilingiro who testified that Ngirabatware spent that night in the small hall while his wife, children and Musabeyezu-Kabuga and other families spent that night in the big hall. In addition, the Chamber notes that Bongwa was the only witness who testified that on the morning of 7 April 1994, they moved into a small house within the PGC compound. The Chamber is not convinced by the uncorroborated testimony of Bongwa, that while heavy shooting was ongoing around the PGC, they were moved into a small house. Given the foregoing omission and the internal inconsistencies, the Chamber considers the evidence of Bongwa regarding her stay at the PGC to be convoluted and unreliable as to Ngirabatware's presence at the PGC on 6 and 7 April 1994.

668. The Chamber recalls that Byilingiro testified that in his interview with the Belgian Immigration Authorities he did not mention that on 7 April 1994 he took refuge at the PGC, but he did talk about the fact that he went to the French Embassy.<sup>868</sup> Byilingiro explained that he was advised by his immigration lawyer that it would not be prudent for his asylum application to Belgium to mention that he was at the PGC in 1994 with the members of the government, who were then on trial for genocide. The Chamber does not consider this omission to be adequately explained and does not accept the explanation given especially considering that there were also members of the government at the French Embassy and he freely talked about his time there. Furthermore, the Chamber notes that Ngirabatware, Musabeyezu-Kabuga and Prosecution Witness DAK all testified as to hearing gunfire in the vicinity of the PGC in the early hours of the morning on 7 April 1994. Byilingiro, who was supposedly present at the PGC on the morning of 7 April 1994, did not mention hearing any gunfire. He testified that he left the small room at about 7.00 or 7.30 a.m. and went opposite that office in the courtyard where he stayed until 9.00 or 9.30 a.m. The Chamber considers it doubtful that he wandered around the vicinity so easily given that there was gunfire close by. The Chamber therefore questions Byilingiro's presence at the PGC and considers that he was placed at the scene in order to exonerate Ngirabatware. Having considered the sum total of Byilingiro's testimony, the Chamber doubts that Byilingiro was present at the PGC on 7 April 1994.

669. The Chamber also recalls that Prosecution Witness Joseph Ngarambe provided evidence that upon his arrival at the French Embassy on 10 April 1994 he spoke with Byilingiro and Télésphore Bizimungu who both informed him that they had first sought refuge at the PGC, before moving to the "Kigali military camp" and finally to the French Embassy.<sup>869</sup> The Chamber considers that Joseph Ngarambe's hearsay evidence that Byilingiro was at the PGC does not establish Byilingiro's presence at the PGC on 7 April 1994, particularly where the source of the information received by Joseph Ngarambe was Byilingiro himself. Accordingly, the Chamber is not convinced that this hearsay evidence supports the presence of Byilingiro at the PGC on 7 April 1994.

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<sup>868</sup> Prosecution Exhibit 64B (Immigration Documents of Byilingiro).

<sup>869</sup> T. 25 August 2010, p. 28 (Ngarambe).

670. Given the foregoing doubts about his presence at the PGC, coupled with his professional relationship with Ngirabatware and his inconsistent explanation with regards to his omissions, the Chamber considers that Byilingiro was not credible as to his testimony in this regard and is unreliable as to the presence of Ngirabatware at the PGC on 7 April 1994.

671. Witness DWAN-122 testified that during the night of 6 April 1994, he did not accompany Ngirabatware to the PGC and remained at Ngirabatware's residence when the convoy departed. Furthermore, by his own admission, he did not see Ngirabatware on 7 April 1994. The Chamber therefore considers his testimony to be of little probative value for Ngirabatware's whereabouts on 7 April 1994.

672. Witness DWAN-7 acknowledged that he has a very close relationship with Ngirabatware. Accordingly, his testimony will be assessed with appropriate caution. The Chamber observes that both Defence and Prosecution witnesses testified about the prevailing insecurity in Kigali on 7 April 1994, particularly around the PGC, including Witness DWAN-7.<sup>870</sup> Ngirabatware stated that he made a telephone call to Witness DWAN-7 in the early afternoon of 7 April 1994, with the aim of seeking refuge at his residence. According to Witness DWAN-7, Ngirabatware "could only have called [...] from Kigali" as he could hear sub-machinegun shots which were being fired close to his house, both directly and through the telephone. Witness DWAN-7 stated that he had military experience and believed that the gunshots he heard through the telephone could only have been in Kigali due to the clear sound produced by the weapons.<sup>871</sup>

673. The Chamber considers Witness DWAN-7's testimony that Ngirabatware must have only called him from Kigali, to be speculative. There is no direct evidence on record to show that Ngirabatware indeed called Witness DWAN-7 from the PGC or Kigali in the afternoon of 7 April 1994. Furthermore, Witness DWAN-7 was not at the PGC and therefore his evidence is of little probative value as to Ngirabatware's presence at that location on 7 April 1994.

674. Witness DWAN-7 also attested to Ngirabatware's good character by asserting that Ngirabatware was a technocrat and was well-respected by all the diplomats in Rwanda, not only for his technical expertise, but also due to his warmth, openness and humility. Witness DWAN-7 further stated that he never heard Ngirabatware express any prejudice towards Tutsis or Hutus. The witness testified that Ngirabatware advocated for peace in Rwanda, since this was a prerequisite for national development.<sup>872</sup> The Chamber finds the witness' attitude to be biased in favor of Ngirabatware, since the witness was determined to portray Ngirabatware's character as unblemished. Moreover, it recalls that Witness DWAN-7's denial of the video footage contained in Prosecution Exhibit 32 depicting Ngirabatware with *Interahamwe* in a MRND rally in 1992 renders him not credible, particularly since the witness alluded to the fact that the video footage may have been manipulated. Consequently, the Chamber considers that the testimony of Witness DWAN-7 is not objective or reliable.

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<sup>870</sup> T. 5 July 2011, pp. 9-10; T. 5 July 2011, pp. 73-74 (CS) (Witness DWAN-7)

<sup>871</sup> T. 4 July 2011, pp. 13, 35; T. 5 July 2011, p. 56 ("I participated in some wars, in some operations, some peacekeeping operations [...] . The gunshots were nearby and they could only have been coming from Kigali town, considering the sound that was produced by the weapons. It was impossible for that sound to be coming from far away because it would have reached me in a most – much muffled manner".); T. 5 July 2011, pp. 73-74 (CS) (Witness DWAN-7).

<sup>872</sup> T. 4 July 2011, pp. 8-9 (CS); T. 4 July 2011, pp. 11-14; T. 5 July 2011, pp. 19, 39-40 (Witness DWAN-7).

675. Furthermore, Ngirabatware testified that he wanted to seek refuge at Witness DWAN-7's residence because he thought it would be safer than the PGC. However, the Chamber considers implausible Ngirabatware's testimony that he sought to leave the PGC to seek refuge at the residence of Witness DWAN-7, not far from the PGC, rather than return to his own residence, across town, which would have been further away from the gunfire around the PGC and therefore safer.<sup>873</sup> The Chamber recalls Ngirabatware's own testimony that there was an "intensive exchange of gunshots" around the PGC which prevailed throughout the course of 7 April 1994.<sup>874</sup> Musabeyezu-Kabuga testified that when the shooting intensified on 7 April 1994, she was scared and kept asking Ngirabatware to move them to a safer place since the PGC was not safe anymore.<sup>875</sup> The Chamber finds it doubtful that after Ngirabatware's alleged attempt to leave the PGC for the residence of Witness DWAN-7, he opted to stay at the PGC with his family when Ngirabatware himself, Musabeyezu-Kabuga and Byilingiro all testified that a lot of the families left the PGC on the evening of 7 April 1994 for the French Embassy,<sup>876</sup> including ministers. Ngirabatware was accompanied by his pregnant sister-in-law and also testified that they all spent the night in the small room, lying down because of the "heavy gunshots" all around them. Given this context and the foregoing evidence, the Chamber doubts that Ngirabatware was at the PGC on 7 April 1994.

676. The Chamber recalls that both Defence and Prosecution witnesses provided evidence regarding the travel times, distances, routes and travelling conditions from Kigali to Gisenyi in April 1994. The Prosecution alleges that Ngirabatware was in Nyamyumba *commune* committing crimes on 7 April 1994. Taking into consideration the evidence on the record, the Chamber observes that the evidence does not demonstrate that it was impossible to travel from Kigali to Nyamyumba *commune*.

677. Prosecution Witness ANAW identified the four routes which could have been used to travel between Kigali and Gisenyi without any problem from 6 through 12 April 1994, based on information from the army and *gendarmerie* units operating all over the country. The two quickest routes would take four hours by car, and could be used by the population until at least 15 April 1994.<sup>877</sup> Witness DAK identified two routes: Route One went from Kigali to Gisenyi

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<sup>873</sup> Chambers Exhibit 1 (Site Visit Report), pp. 3-4. The distance between the PGC and Ngirabatware's residence was 6.5 kilometers, while the distance between the PGC and the former residence of Witness DWAN-7 was approximately two kilometers. The distance between the PGC and the French Embassy was 7.2 kilometers.

<sup>874</sup> T. 25 November 2010, pp. 23-24 (Ngirabatwrae) (the gunfire was being shot at a distance "very close by" but he could not be sure about the exact distance).

<sup>875</sup> T. 18 October 2011, p. 27 (Musabeyezu-Kabuga).

<sup>876</sup> T. 25 November 2010, p. 26 (Ngirabatware).

<sup>877</sup> The first route covered around 156 kilometers, and passed through Giticyinyoni, Cyorongi, Rulindo, Busengo, Ruhengeri, and Mukamira. It was tarmacked in 1994, and travel from Kigali to Gisenyi would require about four hours. Regarding the security situation of this route, the witness stated that it was "passable" and the security was "normal" compared to other route. He knew this because of the army units operating in various parts of the country. The Kigali to Giticyinyoni section was no longer used after 15 April 1994 due to fighting, even though the route was safe. T. 30 August 2010, pp. 21-22, 24-25, 27-28, 64-65, 70-71, 74-75; T. 30 August 2010, pp. 61-62 (CS); Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The second route passed through Nzove, Muhondo, Rushashi, Gakenke, Ruhengeri and Mukamira. A large part of this route was untarred, and travel would take more than four hours from Kigali to Gisenyi, even though it was shorter in distance than the first route. This route was removed from the fighting in Kigali, and the lack of security issues meant that it could be used even until July 1994. T. 30 August 2010, pp. 23-26, 28, 66-71, 74-75; T. 30 August 2010, p. 62 (CS); Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The third route went through Giticyinyoni, Nyabarongo, Bishenyi, Taba,

through Ruhengeri, and took about five hours in a civilian vehicle and about three-and-a-half hours for an official or military vehicle since these stopped less frequently at the roadblocks (“Route One”). He stated that Route Two went from Kigali through Gitarama to Ngororero and Mukamira, and then to Gisenyi (“Route Two”). It took a civilian vehicle travelling from Kigali to Gisenyi on Route Two in 1994, eight hours because of the numerous roadblocks, and for a military or an official vehicle it would take only around five hours. Route Two was on a tarmac road except for a small section between Gisenyi and Ngororero that was not entirely paved. It was possible that the whole journey between Gisenyi and Kigali was approximately 213 kilometers in 1994 with a stretch of dirt road located in the Giciye *commune*.<sup>878</sup> Furthermore, Witness AFS testified that in 1994, before the war, it took anywhere between five and eight hours, depending on the vehicle used, to drive between Kigali and Gisenyi.<sup>879</sup>

678. The Defence witnesses called into question Ngirabatware’s ability to travel to Gisenyi *préfecture*. Witnesses Kayitana, DWAN-150 and Habinshuti provided testimony about the different routes from Kigali to Gisenyi and generally testified about the difficult travelling and driving conditions, describing roads to be flooded with crowds of people fleeing Kigali in April 1994. Several roadblocks had also been set up which inevitably slowed down the movement. Kayitana noted that in early April 1994, he left Kigali at around 1.30 p.m. and arrived in Gisenyi at 8.00 p.m. however, this was not a direct route. He travelled from Kigali to Gitarama to Ngororero to Mukamira to Gisenyi. He noted that the road was partially tarred and that he stopped at roadblocks. Witness DWAN-150 described four different routes but did not provide the time it took to use those routes except for the third route which goes from Kigali via Gitarama, Ngororero, Kabya, Karago and Gisenyi. He acknowledged that he personally did not use this route but was told by a friend who used this route that it was slippery, and roadblocks had been set up and it took approximately seven-and-a-half and eight hours to cover the distance from Kigali to Gisenyi.<sup>880</sup>

679. Given the foregoing, the Chamber observes that it was feasible to travel from Kigali to Gisenyi in April 1994, using different routes. The Chamber also notes that the Prosecution witnesses estimated between approximately four to eight hours of travel time to cover the distance from Kigali to Gisenyi, depending on which route was used and what type of vehicle was involved. Witness DAK stated that it took a military or official vehicle a shorter time to travel than a civilian vehicle. Witness DAK estimated the travel time using a military or official vehicle to be five hours while the travel time using a civilian vehicle to be eight hours on Route

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Kayenzi, Nyabikenke, Rushashi, Gakenke, Ruhengeri and Mukamira. Due to the poor state of the road, one would need more than five hours to travel from Kigali to Gisenyi. According to the witness, the security was normal on this route and it was used until the beginning of June. T. 30 August 2010, pp. 23-24, 26, 28, 71-75, 77-78; Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW). The fourth route passed through Gitarama, Ngororero, Kabaya and Mukamira, and the trip from Kigali to Gisenyi would take five-and-a-half hours because it was the longest in terms of length. The route was paved, except for the portion between Ngororero and Kabaya. This route remained secure into May, and was used until the beginning of June. The road between Kigali and Gitarama was in use until July 1994. T. 30 August 2010, pp. 24-26, 28, 36, 73-75, 78; Defence Exhibit 63 (Map of Rwanda as Marked by Witness ANAW).

<sup>878</sup> T. 25 August 2010, pp. 63-64, 70, 78-79, 94, 96-98 (Witness DAK) (the Defence counsel cross examining the witness suggested that the portion of the dirt road was approximately 50 kilometers).

<sup>879</sup> T. 4 March 2010, p. 77 (CS) (Witness AFS).

<sup>880</sup> T. 12 October 2011, pp. 3, 17 (Witness DWAN-150) (route marked in orange on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)).

Two. The Chamber recalls that Witness DWAN-150 also stated that the quickest route would be too risky for an unarmed person who did not know the area, between January and 6 April 1994.<sup>881</sup> Defence Witnesses DWAN-122 and Kayitana provided evidence that Ngirabatware travelled in an official vehicle accompanied by *gendarmes*. Under these conditions, the Chamber considers that the travelling time would have been reduced. The Chamber further recalls that Witness DWAN-150 also testified about the difficult travelling conditions between Kigali and Gisenyi, however, the Chamber considers that his evidence does not contradict Prosecution evidence, in that he does not dispute the possibility of travel between Kigali and Gisenyi, in April 1994.

680. The Chamber recalls the observations made during the site visit that the distance between Kigali and Gisenyi, via Ruhengeri was 152.2 kilometers and was covered in three hours.

681. The Chamber further recalls that during the site visit, the delegation visited some locations outside of Kigali including Tumba Peak which was estimated to have been 66.6 kilometers from the Kigali main road. The delegation identified and observed a tarmac road down the hill from Tumba peak, which is the road leading from Kigali to Ruhengeri. At the site visit, the Defence argued that the distance between Tumba Peak and the road was five kilometers; the Prosecution contended that it was ten kilometers. Thereafter, no contentions of a factual nature were raised by the Parties. The Chamber recalls that Witness DWAN-150's evidence also indicated the quickest route between Kigali and Gisenyi was via Base, Gakenke and Ruhengeri (the "first route"), because that road was asphalted.<sup>882</sup> This evidence coincides with the observation made at the site visit, that there existed a tarmac road from Tumba Peak which presumably led from Kigali to Ruhengeri.

682. Witness DWAN-150 testified that after 7 April 1994, the RPF moved heavy weapons to the summit of Mount Tumba, in Byumba préfecture. The witness' instructions were to prevent civilians from using that road and tell them to look for other routes behind the positions.<sup>883</sup> However, the Chamber recalls the ample evidence that Ngirabatware was escorted by *gendarmes* and was in an armed vehicle and therefore considers that Ngirabatware could have feasibly travelled from Kigali to Gisenyi on this route.

683. Bearing in mind that travelling and road conditions in April 1994 were difficult, which Ngirabatware himself attested to during his testimony, the Chamber is not convinced that Ngirabatware, as a minister, travelling with *gendarmes* in his company, would have necessarily experienced constant stopovers at roadblocks as would civilian vehicles.

684. Taking into account the observations made during the site visit, as well as the evidence adduced at trial, the Chamber concludes that in April 1994, it would have taken Ngirabatware approximately four to five hours to travel from Kigali to Gisenyi, where Nyamyumba *commune* is located, and where Ngirabatware was allegedly distributing weapons and instigating and

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<sup>881</sup> T. 11 October 2011, p. 34 (Witness DWAN-150) (route marked in light blue on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)).

<sup>882</sup> T. 11 October 2011, p. 34 (Witness DWAN-150) (route marked in light blue on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)).

<sup>883</sup> T. 11 October 2011, p. 45 (Witness DWAN-150) ("behind the positions" is the area to the left of the light blue route marked on Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150)).



aiding and abetting members of the population to kill Tutsis, with an armed escort and taking Route One via Ruhengeri.

685. The Chamber considers that the witnesses that testified in support of the alibi for 7 April 1994 are individually and collectively not credible for the reasons explained above. Given also that the Defence provided late notice of its alibi, and also that at that point all the Prosecution witnesses had provided evidence in this case the Chamber considers that there is a high probability that the alibi was tailored and fabricated to fit the Prosecution case. Based on the inconsistencies and differences in the above evidence, and when viewed as a whole, the Chamber does not find the evidence adduced in support of Ngirabatware's alibi to be reasonably possibly true in regard to the Prosecution evidence placing him at the scene of alleged crimes in Nyamyumba *commune* on 7 April 1994.

### 3.9.3.7 8 April 1994

686. As set forth elsewhere in the Judgement (3.10.3), Prosecution Witness AFS testified that at 2.00 p.m. on 8 April 1994, Ngirabatware was in Nyamyumba *commune*. The Defence alibi witnesses placed Ngirabatware at the PGC and the French Embassy in Kigali on 8 April 1994.

687. Having reviewed the Embassy telegram for 8 April 1994, the Chamber observes that the date and time on the Embassy telegrams establish the time frame when the document was either prepared or disseminated, at 11.58 a.m. The Chamber considers that the telegrams list the names of persons who arrived at the Embassy, without specifying what time the listed persons necessarily arrived. However, based on their content, the Chamber considers that around early afternoon on 8 April 1994, Ngirabatware may have been present at the French Embassy with his family. The Chamber however, considers that the Embassy telegrams do not conclusively establish the subsequent and continuous presence of Ngirabatware at the Embassy on 8 April 1994.

688. Ngirabatware testified that he was exclusively in Kigali on 8 April 1994 and that around 10.30 to 11.00 a.m., he left the PGC for the French Embassy along with his family, his sister-in-law's family and Mugiraneza's young son. It took them 15 to 20 minutes to reach the Embassy which was about two kilometers away. On reaching the Embassy, they were registered. Ngirabatware saw Nzabonimana, Bizimungu, Augustin Ruzindana, Justin Mugenzi, Faustin Maniliho and Jean Baptiste Byilingiro among others.<sup>884</sup> The Chamber observes that the presence of some of these people at the Embassy including Jean Baptiste Byilingiro, Bizimungu, Musabeyezu-Kabuga and her husband is corroborated by Prosecution Witness Joseph Ngarambe.

689. The Chamber however, does not find it plausible that Ngirabatware allegedly left the PGC in the morning of 8 April 1994 with Mugiraneza's son, because this evidence contradicts the evidence of Bongwa, who testified that Mugiraneza's son was in her company.

690. The Chamber recalls the testimony of Bongwa that she arrived at the French Embassy on 8 April 1994 at the beginning of the afternoon. She heard people say that Ngirabatware and his

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<sup>884</sup> T. 25 November 2010, pp. 29-33 (Ngirabatware).

family had left the PGC on 8 April 1994.<sup>885</sup> The Chamber considers this portion of her testimony to be hearsay and although the Chamber is not precluded from relying on hearsay evidence, it is required to treat such evidence with caution especially given other credibility issues surrounding her evidence.<sup>886</sup> The Chamber considers that in the absence of any corroboration, it is not inclined to find Bongwa reliable. Moreover, the Chamber recalls that in Prosecution Exhibit 66B, the transcript of the *Bizimungu et al.* trial in 2008, Bongwa did not mention Ngirabatware as one of the ministers present at the PGC, and only mentioned his presence there for the first time in 2010 during the *Nzabonimana* trial, after she had met with Ngirabatware's Defence Counsel in 2009. The Chamber has already found Bongwa to not be credible as to Ngirabatware's whereabouts during this time and is convinced that Bongwa's testimony is engineered to protect Ngirabatware, who was a minister as was the witness' husband.

691. Ngirabatware testified that he asked Witness DWAN-122 to come to the Embassy around 12.00 p.m.<sup>887</sup> It is unclear from the testimony of Ngirabatware how he conveyed a message to Witness DWAN-122 to come and meet him at the French Embassy on 8 April 1994. Ngirabatware further testified that Witness DWAN-122 came to the Embassy around 4.00 to 5.00 p.m. then Ngirabatware and his wife gave him instructions to go to their home and bring some personal effects to the French Embassy.<sup>888</sup> Witness DWAN-122 on the other hand gave a slightly different account that on 8 April 1994, Ngirabatware sent someone, who Witness DWAN-122 did not identify, to Witness DWAN-122 with a message before 2.00 p.m. Furthermore, Witness DWAN-122 provided a different time when he allegedly met Ngirabatware at the French Embassy. Ngirabatware stated that he asked Witness DWAN-122 to meet him at the Embassy at 12.00 p.m. whereas Witness DWAN-122 stated that he received the message at 2.00 p.m. Witness DWAN-122 even stated that he returned later to the Embassy between 2.00 p.m. and twilight to take some personal effects for Ngirabatware's wife.<sup>889</sup> Ngirabatware does not corroborate this testimony of Witness DWAN-122. The Chamber recalls that Witness DWAN-122 admitted that he did not wear a watch and that the times he provided were estimates.<sup>890</sup> The Chamber considers this explanation to be reasonable.

692. Nevertheless, the Chamber notes that Bongwa stated that she saw Ngirabatware and his family including Musabeyezu-Kabuga and her family at the beginning of the afternoon at the Embassy.<sup>891</sup> A relatively similar account is provided by Ngirabatware who testified that he arrived with his family and Musabeyezu-Kabuga's family at the Embassy just before 12.00 p.m. on 8 April 1994. Byilingiro also placed Ngirabatware at the Embassy on the afternoon of 8 April 1994. He testified that on 8 April 1994 the number of people at the Embassy 'increased immensely and he "very vividly" remembers that Ngirabatware arrived around 11.00 a.m. or 12.00 p.m., accompanied by other persons, his family members and the family of his sister-in-

<sup>885</sup> T. 30 January 2012, pp. 16-17 (the witness stated that the PGC was under attack all throughout the night of 7 April and "at one point in time" on 8 April 1994, they were helped by "a soldier or gendarme" to leave the camp and go to the French Embassy); T. 1 February 2012, p. 51 (Bongwa).

<sup>886</sup> See *Muvunyi I*, Judgement (AC), para. 70.

<sup>887</sup> T. 25 November 2010, pp. 36, 38 (Ngirabatware).

<sup>888</sup> T. 25 November 2010, p. 38 (Ngirabatware).

<sup>889</sup> T. 29 June 2011, pp. 81-82 (Witness DWAN-122).

<sup>890</sup> T. 29 June 2011, p. 85 (Witness DWAN-122).

<sup>891</sup> T. 30 January 2012, p. 17 (she also saw many other members of the government including Prosper Mugiraneza and Callixte, the former Minister of Youth); T. 1 February 2012, p. 44 (Bongwa) (she was not sure about the whereabouts of Ngirabatware in the morning of 8 April 1994 before actually seeing him in the "early afternoon").

law.<sup>892</sup> Musabeyezu-Kabuga corroborates Ngirabatware's evidence that they were registered at the Embassy upon arrival. The evidence of Bongwa and Musabeyezu-Kabuga along with the testimony of Byilingiro and Witness DWAN-122 place Ngirabatware at the French Embassy at varying times, but specifically around midday or in the early afternoon.

693. The Chamber notes that the Embassy telegrams corroborate Bongwa's testimony that she was present at the Embassy on 8 April 1994.<sup>893</sup> Recalling that it is not unreasonable for the Trial Chamber to accept some parts of a witness' testimony while rejecting others,<sup>894</sup> the Chamber accepts the testimony of these witnesses that Ngirabatware may have been at the French Embassy around early afternoon on 8 April 1994, insofar as they corroborate the Embassy telegrams. However, as noted above, Ngirabatware's presence at the Embassy was not necessarily continuous throughout 8 April 1994.

694. Bicamumpaka affirmed that he did not personally see Ngirabatware from 6 to 8 April 1994, and only learnt of his whereabouts, on 9 April 1994, from André Ntagerura and Casimir Bizimungu, who confirmed that he was at the PGC from 6 to 7 April and moved to the French Embassy on 8 April 1994.<sup>895</sup> The Chamber recalls that it has already decided that it will assess with caution the testimony of Ngirabatware's former colleagues and accused persons held before this Tribunal for their respective roles in the events of the genocide in Rwanda. It is therefore the Chamber's view that not only is Bicamumpaka's evidence hearsay, but his testimony is of little probative value in assessing Ngirabatware's whereabouts on 8 April 1994.

695. Given the foregoing, the Chamber finds that it is reasonably possibly true that Ngirabatware may have been at the French Embassy around early afternoon on 8 April 1994, and possibly arrived before 11.58 a.m., the time of the Embassy telegram on that day. The Chamber is in no doubt that Ngirabatware was in a position to leave the Embassy at will. However, recalling that it took approximately 4 to 5 hours to travel from Kigali to Gisenyi the Chamber finds it reasonable possibly true that Ngirabatware was not attending a meeting in Gisenyi at around 2.00 p.m. as suggested by Prosecution Witness AFS. The Chamber recalls that it has found the testimony of Witness AFS to be credible elsewhere in this Judgement and considers that the conclusion made here does not impact his evidence as a whole but that the alibi evidence is reasonably possibly true and thereby raises a reasonable doubt about the meeting testified to by Witness AFS (3.10.4.4; 3.10.4.5).

### 3.9.3.8 Conclusion

696. In assessing Ngirabatware's alibi, the Chamber considers the totality of the circumstances and evidence, including: (1) that the Defence's Notice of Alibi was filed late and in a piecemeal fashion; (2) the close relationship between Ngirabatware and many of the alibi witnesses; (3) the credibility or reliability issues surrounding each of the witnesses; and (4) the conclusions on travel times derived from the evidence with limited assistance from the site visit observations.

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<sup>892</sup> T. 26 October 2011, pp. 18, 75 (Byilingiro) (he knew the sister-in-law of Ngirabatware because his father-in-law was an influential businessman who he knew very well in his capacity as the director-general of the income department. Ngirabatware spent the night in the French Embassy since he saw him because "the men spent the night in the open air").

<sup>893</sup> Defence Exhibit 104B (French Embassy Telegrams).

<sup>894</sup> *Karera*, Judgement (AC), paras. 229-230.

<sup>895</sup> T. 22 August 2011, p. 46 (Bicamumpaka).

Recalling that an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case and that the alibi does not carry a separate burden,<sup>896</sup> the Chamber concludes that the alibi evidence is incredible and insufficient to raise a reasonable doubt in the Prosecution's case with regards to 7 April 1994.<sup>897</sup> Therefore the Chamber does not consider that Ngirabatware's alibi for 7 April 1994 is reasonably possibly true in relation to the relevant paragraphs of the Indictment. However, the Chamber considers Ngirabatware's alibi to be reasonably possibly true in relation to his whereabouts on 8 April 1994, namely that there was a reasonable possibility that he may have been in Kigali in around early afternoon and thereby not in Nyamyumba *commune*, Gisenyi *préfecture* at 2.00 p.m. on 8 April 1994.

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<sup>896</sup> *Kalimanzira*, Judgement (AC), para. 67.

<sup>897</sup> *Kanyarukiga*, Judgement (AC), para. 169; *Kalimanzira*, Judgement (AC), para. 67.

### 3.10 Distribution of Weapons, April 1994

#### 3.10.1 Introduction

697. The Indictment alleges that in April 1994, after the death of President Habyarimana, Ngirabatware transported weapons to Nyamyumba *commune*, where he gave these weapons to *Bourgmestre* Faustin Bagango, for distribution to the *Interahamwe* militia to kill members of the Tutsi ethnic group in Gisenyi during the period April to July 1994. The Indictment further alleges that around mid-April 1994 Ngirabatware provided machetes to Bagango and ordered him to distribute these machetes to attackers and the *Interahamwe*. Bagango and the *Interahamwe* subsequently used these machetes to kill or cause grievous bodily or mental harm to members of the Tutsi population in Nyamyumba *commune* between mid-April and mid-July 1994. The Prosecution relies on Witnesses ANAE, ANAM, ANAL, AFS, ANAF, ANAS, ANAU, ANAG and ANAO.<sup>898</sup>

698. The Defence submits that it received insufficient notice of these allegations. Ngirabatware could not have distributed the said weapons in Nyamyumba *commune* considering his alibi that he was in Kigali during this time period. It argues that most witnesses relied upon by the Prosecution never saw Ngirabatware transport weapons to Nyamyumba *commune* and give weapons to Bagango for distribution, and that the Prosecution witnesses gave uncorroborated testimony and are not credible. None of the witnesses listed to testify on paragraphs 27 and 50 provided evidence regarding any distribution of machetes around mid-April 1994. The Defence argues that no order was given to Bagango to distribute machetes and that there is no evidence about the use of the allegedly distributed weapons. The Defence relies on Augustin Ngirabatware as well as Witnesses DWAN-71, DWAN-4, DWAN-9, DWAN-133, DWAN-147, DWAN-11, DWAN-12, DWAN-49, DWAN-13, DWAN-47, Edison Nsabimana, DWAN-21, DWAN-25, DWAN-39 and DWAN-3.<sup>899</sup>

#### 3.10.2 Notice

699. The Defence argues that the Indictment is defective because the time frames mentioned, “April 1994”, “around mid-April 1994” and “in mid-April 1994” are too broad; the place “Nyamyumba *commune*” is too vague and there is no location provided for ordering in paragraph 27; and references to “*Interahamwe* militia”, “attackers” and “*interahamwe*” are also too broad and vague. Furthermore, the Defence asserts that since Ngirabatware is charged with personal physical commission of transporting weapons and machetes the Indictment should set forth the identity of the victims instead of referring to broad groups such as “members of the Tutsi ethnic

<sup>898</sup> Indictment, paras. 16, 27, 50; Prosecution Closing Brief, paras. 59-68, 93-99, 159-166; Prosecution Closing Argument, T. 23 July 2012, pp. 7-8, 10-13, 31-33. The Prosecution also relies on Witness ANAJ. Having reviewed his testimony, the Chamber does not consider it necessary to set out his evidence here in relation to the alleged distribution of weapons. Nevertheless, the Chamber has taken his evidence into account. In assessing this allegation, the Chamber will also take into account paragraph 18 of the Indictment and the Prosecution’s submissions in relation to that paragraph. See Prosecution Closing Brief, para. 74 (referring, in part, to its submissions on paragraph 16 of the Indictment).

<sup>899</sup> Defence Closing Brief, paras. 41-59, 86-126, 329-420, 600-650, 767-768; Defence Closing Argument, T. 24 July 2012, pp. 30, 45, 60; T. 25 July 2012, pp. 50-55. The Defence also refers to the evidence of Witnesses DWAN-41 and DWAN-129. The Chamber has reviewed their evidence and has taken it into account, but does not deem it necessary to set out their evidence here. The Chamber, however, has set out the evidence of Witness DWAN-2 insofar as it relates to the attack on Safari Nyambwega.

group in Gisenyi”, “Tutsi population in Nyamyumba commune”, “Tutsi civilians” or “Tutsi population”. Also, the mode of responsibility gives rise to ambiguity as regards paragraph 27 because of the reference to Ngirabatware’s alleged “*de facto control*” under Article 6(1) of the Statute.<sup>900</sup>

700. The Chamber recalls that, in its Decision of 8 April 2009, it adjudicated most of the notice issues raised by the Defence and concluded that the information was sufficiently detailed to provide adequate notice to Ngirabatware.<sup>901</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>902</sup> Accordingly, the Chamber declines to reconsider its prior decisions.

701. The Defence argues that the Prosecution relied on Witnesses ANAL, AFS, ANAF and ANAM who were never listed in the Pre-Trial Brief in support of paragraph 16 of the Indictment. Moreover, Witness ANAM was never listed to support Counts 2 and 3 of the Indictment.<sup>903</sup> The Chamber notes that in the Pre-Trial Brief the Prosecution listed Witnesses ANAG, ANAE and ANAO in support of paragraph 16.<sup>904</sup> The Chamber also observes that on 28 January 2010, it granted the Prosecution’s motion to vary its witness list to include Witnesses AFS, ANAS, ANAT and ANAU.<sup>905</sup> Witnesses ANAT, ANAS and ANAU were listed to give evidence relating to paragraph 16, but Witness AFS was not.<sup>906</sup> However, in its Closing Brief the Prosecution relies on the evidence of Witnesses ANAE, ANAO, ANAU, ANAM, ANAL, AFS and ANAF in support of paragraph 16.<sup>907</sup>

702. The Chamber notes that although Witness ANAM was not listed in the Pre-Trial Brief to give evidence on paragraph 16 of the Indictment, the summary of her anticipated evidence contained in the Pre-Trial Brief and her statement disclosed on 13 November 2008, stated that the witness would testify that after the death of the President, Ngirabatware brought weapons to Bagango for distribution to the *Interahamwe*.<sup>908</sup> Noting that paragraph 16 deals with Ngirabatware transporting weapons to Nyamyumba *commune*, where he gave these weapons to *Bourgmestre* Bagango for distribution, the Chamber considers that Ngirabatware had adequate notice that Witness ANAM’s evidence would cover this Indictment paragraph.

703. The Chamber also notes that in Witnesses ANAL’s and ANAF’s summaries contained in the Pre-Trial Brief, and Witness AFS’s summary provided in the Prosecution Motion for Leave

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<sup>900</sup> Defence Closing Brief, paras. 41-59.

<sup>901</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, paras. 31, 38.

<sup>902</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>903</sup> Defence Closing Brief, para. 791; Defence Closing Argument, T. 24 July 2012, p. 38.

<sup>904</sup> Prosecution Pre-Trial Brief, Annex 1.

<sup>905</sup> Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, paras. 52, 58. The Chamber also granted the Prosecution request to add Witness ANAR.

<sup>906</sup> Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 17-26.

<sup>907</sup> Prosecution Closing Brief, paras. 59-68.

<sup>908</sup> Prosecution Pre-Trial Brief, Annex 1, Witness ANAM anticipated testimony. Statement of Witness ANAM, disclosed 13 November 2008.

to Vary Its Witness List, there was no reference to Ngirabatware distributing weapons.<sup>909</sup> The Chamber further notes that in their statements disclosed to the Defence, Witnesses ANAL,<sup>910</sup> ANAF<sup>911</sup> and AFS<sup>912</sup> mentioned weapons distribution. The Chamber is of the view that the information contained in the statements was clear and consistent that these witnesses would give evidence on this allegation.

704. More generally, the Defence submits that Prosecution witnesses who were anticipated to testify upon certain allegations, further provided testimony upon additional allegations in the Indictment.<sup>913</sup> The Defence does not appear to develop these submissions in detail, nor does it allege or substantiate any possible prejudice. The Chamber further recalls the well-established principle that “the Prosecution is required to state the charges and the material facts underpinning those charges in the indictment, but not the evidence by which such facts are to be proven”.<sup>914</sup>

705. The Defence also submits that Witness ANAE’s evidence regarding distribution of machetes should not be used to support the allegation of weapons distribution in paragraph 16 of the Indictment.<sup>915</sup> The Chamber finds this submission unfounded. The fact that paragraphs 27 and 50 specifically refer to the distribution of machetes does not in and of itself prevent the Prosecution from using the same evidence in support of the allegation contained in paragraph 16 of the Indictment. The Chamber notes that paragraph 16 charges Ngirabatware with transporting weapons to Nyamyumba *commune* to give to Bagango for distribution. The Prosecution in its Pre-Trial Brief clearly and consistently stated that Witnesses ANAE, ANAO and ANAG would testify on this paragraph. From the summaries of these witnesses’ anticipated evidence, it is evident that the Prosecution intended on leading evidence regarding the distribution of machetes, guns and grenades by Ngirabatware. The Chamber further notes that the modes of liability pleaded in paragraphs 16 and 27 are different and so too are the time frames.<sup>916</sup> Similarly paragraph 50 of the Indictment is under Count 5, which deals with crimes against humanity, and

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<sup>909</sup> Prosecution Pre-Trial Brief, Annex 1, Witnesses ANAL and ANAF anticipated testimony; Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 17-26.

<sup>910</sup> Statement of Witness ANAL, disclosed 8 May 2009. Witness ANAL talked about Ngirabatware bringing weapons to Alphonse’s house and giving them to Bagango.

<sup>911</sup> Statement of Witness ANAF, disclosed 13 November 2008.

<sup>912</sup> Prosecutor’s Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009.

<sup>913</sup> See, for example, Defence Closing Brief, paras. 276, 422, 727, 791; Defence Closing Argument, T. 24 July 2012, p. 38; T. 25 July 2012, pp. 40-41. The Chamber observes that the Defence Closing Brief does not raise this allegation in its section dedicated to notice allegations. Specific to the allegations considered here, the Chamber notes that the Defence challenges the witnesses relied upon by the Prosecution for both paragraphs 16 and 27 of the Indictment.

<sup>914</sup> See, for example, *Kanyarukiga*, Judgement (AC), para. 160; *Uwinkindi*, Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment (AC), 16 November 2011, para. 4; *Ntagerura et al.*, Judgement (AC), para. 21.

<sup>915</sup> Defence Closing Brief, para. 332, fn. 861.

<sup>916</sup> Paragraph 16 alleges that in April 1994 after the death of President Habyarimana, Ngirabatware transported weapons to Nyamyumba *commune*, where he gave these weapons to *Bourgmestre* Faustin Bagango, for distribution to the *Interahamwe* to kill Tutsis in Gisenyi during the period April to July 1994, thus Ngirabatware instigated and aided and abetted the genocide of the Tutsis. Paragraph 27 alleges that around mid-April 1994, Ngirabatware ordered Bagango to distribute machetes to attackers, and that these machetes were subsequently used to kill or cause grievous bodily or mental harm to Tutsi civilians.

the Prosecution is allowed to use the same set of facts to support allegations under different counts in the Indictment.<sup>917</sup>

706. Finally, the Defence submits that while it is possible to remedy the vagueness of an indictment, omitted charges can only be incorporated into the indictment by a formal amendment pursuant to Rule 50 of the Rules. It argues that Witness ANAE's alleged distribution of machetes at a roadblock in Busheke *cellule*, Witness ANAM's alleged distribution of grenades and rifles at Gitsimbi and *Bruxelles* roadblocks, and Witness ANAL's alleged distribution of grenades and rifles at Bananiye's house should have been included in the Indictment. Consequently, since the Prosecution failed to request to amend the Indictment, Ngirabatware cannot be found guilty of any of these charges.<sup>918</sup>

707. The Chamber notes that 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 an accused.<sup>919</sup> Paragraph 16 of the Indictment alleges that in April 1994, after the death of President Habyarimana, Ngirabatware transported weapons to Nyamyumba *commune*, where he gave these weapons to Bagango, for distribution to the *Interahamwe* to kill Tutsis. This paragraph sufficiently describes the circumstances of the incidents of weapons distribution in Nyamyumba *commune* alleged.<sup>920</sup> The Chamber notes that Witnesses ANAE and ANAM's evidence on weapons distribution concerned Nyamyumba *commune*, and involved Ngirabatware and Bagango. The Chamber recalls that the Prosecution has an obligation to state the material facts underpinning the charges in the indictment, but not the evidence by which such facts are to be proven.<sup>921</sup> The Chamber does not find that these incidents form a separate charge but that they serve as evidence by which the allegation contained in paragraph 16 of the Indictment may be proven.

### 3.10.3 Evidence

#### Prosecution Witness ANAE

708. Witness ANAE, a Tutsi, stated that she was 12 years old in 1994 and lived in Nyamyumba *commune*.<sup>922</sup> She visited Ngirabatware's parents regularly, and she first recognized Ngirabatware at his father's funeral in 1993. Afterwards, she saw Ngirabatware several times when he visited his family.<sup>923</sup>

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<sup>917</sup> *Ndindabahizi*, Judgement (TC), para. 491 ("It is well-established that an accused may be charged with more than one criminal offence arising out of a single incident.").

<sup>918</sup> Defence Closing Brief, paras. 6-15, 17.

<sup>919</sup> *Karera*, Judgement (AC), para. 295; *Muvunyi I*, Judgement (AC), para. 18; *Seromba* Judgement (AC), paras. 27, 100. See also *Simba* Judgement (AC), para. 63, referring to *Muhimana* Judgement (AC), paras. 76, 167, 195; *Gacumbitsi* Judgement (AC), para. 49.

<sup>920</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, paras. 28-31, 35-38.

<sup>921</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 470.

<sup>922</sup> Prosecution Exhibit 12 (Personal Identification Sheet); T. 20 October 2009, pp. 21, 47; T. 20 October 2009, pp. 30, 48, 51 (CS).

<sup>923</sup> T. 20 October 2009, pp. 29, 38, 45-48; T. 20 October 2009, pp. 30-31, 56, 58, 62-63 (CS).



709. Witness ANAE saw Ngirabatware at a Busheke *cellule* roadblock in April 1994, after the death of President Habyarimana but before the *Interahamwe* attack on Safari Nyambwega. Sometime during the day, Ngirabatware arrived in a black Pajero, along with a driver and a soldier. He alighted and told his younger brother Cenge to get *Bourgmestre* Faustin Bagango. A blue Daihatsu truck with four soldiers arrived at the location, and Cenge left with three soldiers and they quickly returned with Bagango. This blue Daihatsu truck was carrying weapons. About 30 minutes after Ngirabatware's arrival a crowd had gathered around him because of his popularity. She added that during these events, she was in the company of her friend, Alphonse Bananiye's child, and that they had gone to the road to buy candies and biscuits. The witness also testified that Witness ANAL was present when Ngirabatware arrived in the Pajero followed by the Daihatsu.<sup>924</sup>

710. The witness was standing five meters from Ngirabatware when he greeted Bagango and said: "These are the weapons. I have brought them. I would not want to see any Tutsi alive in *Bruxelles*." Dominique then boarded the Daihatsu vehicle and offloaded ten machetes. Bagango received these machetes, and following Ngirabatware's instructions, gave the machetes to *Conseiller* Simpunga, who had arrived at the Busheke *cellule* roadblock. *Conseiller* Simpunga distributed three machetes each to the three different roadblocks of *Bruxelles* and kept one for himself.<sup>925</sup> Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira.<sup>926</sup> The machetes were taken to Bagango's house, which is near Cotagirwa. Hassan Tubaramure, an *Interahamwe* who manned the Gitsimbi roadblock located not far from the entrance to Bagango's house, was present at *Bruxelles* and went with the driver of the Daihatsu to offload the machetes at Bagango's house. When they reached Bagango's house various *Interahamwe* who had remained at Gitsimbi roadblock while Tubaramure had gone to *Bruxelles* helped Tubaramure to offload the machetes. Ngirabatware, Bagango and Simpunga then went to Ngirabatware's parents' house, where he was in the company of Cenge, Dominique, Mathieu Butanda and Hassan Tubaramure, as well as Witnesses DWAN-4 and DWAN-9.<sup>927</sup>

711. Witness ANAE understood that these machetes were to be used to kill Tutsi members of the population. She specifically remembers the names of Safari Nyambwega and his mother, Thérèse, amongst those who had to be killed. In April 1994 after Ngirabatware distributed machetes, she got to know about Safari's attack while she was playing with other children in Alphonse Bananiye's house. A man came to Bananiye's house saying that Safari had been attacked and killed, and the witness decided to go and see what had happened. Running towards the coffee plantation where the attack was perpetrated, she saw Witness ANAM. When Witness ANAE reached the location, she saw Safari wounded with a bladed weapon but he was still alive. His face was disfigured, his tendons had been cut and one of his ears had been cut off. Many

<sup>924</sup> T. 20 October 2009, pp. 30, 71 (CS); T. 20 October 2009, pp. 32-34, 38, 40; T. 21 October 2009, pp. 38, 46-47, 54; T. 21 October 2009, pp. 60-61, 66 (CS).

<sup>925</sup> Witness ANAE stated there were three roadblocks at *Bruxelles*: one in front of Ngirabatware's parents' house, another near Adele's house on the left-hand side of the road coming from Gisenyi town, and the third was "near the Cotagirwa plant on the road leading to the breweries." T. 21 October 2009, pp. 77-78 (CS).

<sup>926</sup> The Chamber notes that Kabilizi and Munanira were *secteurs* in Nyamyumba *commune*. See Defence Exhibit 1 (Map of Gisenyi *Préfecture*).

<sup>927</sup> T. 20 October 2009, pp. 33-34, 38-39, 41; T. 20 October 2009, p. 58 (CS); T. 21 October 2009, pp. 24, 46-48, 58; T. 21 October 2009, p. 61 (CS). See also Defence Closing Brief, fns. 988-989 (confirming that Witness ANAE testified about Witnesses DWAN-4 and DWAN-9).

people were gathered at the scene. The witness left the scene immediately together with Witness ANAM and went back home.<sup>928</sup>

### Prosecution Witness ANAM

712. Witness ANAM, whose father was Hutu and whose mother was Tutsi, is from Nyamyumba *commune* and was 16 years old in 1994. According to her, she was persecuted because her mother was Tutsi. She testified that she saw Ngirabatware often when he came to visit his parents, and identified him in court.<sup>929</sup>

713. The witness testified that seven or eight days after President Habyarimana's death, she was at the *Bruxelles* roadblock around 2.00 p.m. when Ngirabatware arrived.<sup>930</sup> She saw two vehicles arriving at the roadblock about nine meters from where she was standing. The first vehicle, a black Pajero, contained Ngirabatware, his wife and two children, a domestic servant and a driver. A female *gendarme* drove the second vehicle, a white Hilux. Ngirabatware alighted and chastised the *Interahamwe* stating that: "[t]he Tutsis are moving about freely, for example, Safari is sending cards to *Inyenzi* and he is doing so under your nose and yet you pretend that you are working". He told them that he brought weapons because he did not want to see any Tutsis in Busheke *cellule*.<sup>931</sup>

714. Witness ANAM testified that many *Interahamwe* were present, including Bishirambona, Murazemungu, Juma and Biryia. These *Interahamwe* at the roadblock were checking whether the *Inyenzi* could go through that roadblock or whether any Tutsis were attempting to flee. Bishirambona offloaded boxes filled with firearms and grenades, and the grenades were handed out. The witness explained that she was able to identify the weapons as grenades and firearms because her brother who was a soldier had shown her weapons. After these weapons were offloaded, Ngirabatware drove to the Gitsimbi roadblock and the *Interahamwe* left for Safari's house.<sup>932</sup>

715. The Gitsimbi roadblock was located about 15 steps away from the *Bruxelles* roadblock, and Witness ANAM followed Ngirabatware there on foot. When she arrived, she saw many

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<sup>928</sup> T. 20 October 2009, p. 40; T. 20 October 2009, pp. 66-68, 70-71, 77 (CS); T. 21 October 2009, p. 77 (CS).

<sup>929</sup> Prosecution Exhibit 13 (Personal Identification Sheet); T. 25 January 2010, pp. 14-16, 20, 72-73; T. 25 January 2010, pp. 27, 37, 55-56 (CS); T. 27 January 2010, pp. 50-51 (CS).

<sup>930</sup> T. 25 January 2010, pp. 25, 29 (CS); T. 25 January 2010, pp. 81-82. Witness ANAM identified this location variously as "*Petit Bruxelles*", "*Centre de Bruxelles*" and "*Place Bruxelles*". See, for example, T. 25 January 2010, pp. 25 ("*Centre de Bruxelles*" and "*Place Bruxelles*"), 44-45 ("*Petit Bruxelles*") (CS). The Chamber recalls that it excluded a portion of Witness ANAM's testimony concerning her reason for having been at the roadblock on this date, after both Parties agreed that was not part of the Prosecution's case against Ngirabatware. See Decision on Defence Motion to Exclude Evidence of Material Facts Not Charged in the Indictment and/or in the Prosecution's Pre Trial Brief (TC), 14 February 2011, paras. 16(N), 17, p. 6. See also Defence Motion to Exclude Evidence of Material Facts Not Charged in the Indictment and/or in the Prosecution's Pre-Trial Brief, 20 September 2010, para. 1(N) (concerning this aspect of Witness ANAM's evidence).

<sup>931</sup> T. 25 January 2010, pp. 25-29, 35-37 (CS); T. 25 January 2010, pp. 72, 85; T. 26 January 2010, pp. 48-49 (CS); T. 27 January 2010, pp. 3, 5-6; T. 27 January 2010, pp. 7-11, 16-17 (CS).

<sup>932</sup> T. 25 January 2010, pp. 25-27, 37, 43-44, 46 (CS). Witness ANAM testified that this area was also called "*Cotagirwa*" because of the factory located there. T. 25 January 2010, p. 37 (CS).

*Interahamwe*, including Sebuwa, Hassan Tubaramure and Faraji.<sup>933</sup> She testified that at the Gitsimbi roadblock she was standing on the stairs near Bango's house but was not far from the Gitsimbi roadblock.<sup>934</sup>

716. Once he arrived, Ngirabatware sent Witness ANAO to summon Faustin Bagango, who lived nearby. Bagango came immediately in his vehicle and Ngirabatware asked him to offload the weapons he had brought. Witness ANAO and Faraji transferred the weapons to Bagango's vehicle. Ngirabatware explained to Bagango that he brought the weapons and did not want to see any Tutsis in Nyamyumba *commune*, and ordered Bagango to work well. During their conversation, Ngirabatware said that a certain *cellule* committee member named Safari needed to be located and killed. After this conversation, Ngirabatware went to his parents' house while Bagango said that he was going to the *commune* office and Witness ANAM returned home.<sup>935</sup>

717. When she returned home, the witness saw that Safari had just been arrested in the nearby coffee plantation. The witness joined the large crowd that had gathered to watch, and she recognized Witness ANAE in the crowd. Many *Interahamwe* were present, including Murazemungu, Hassan Tubaramure and Juma, who was nicknamed Cyimeza. Safari's ear had been cut off and his leg was wounded. Some of the *Interahamwe* brought a rope to tie him up before killing him, while other *Interahamwe* were looting his house. When those who were about to tie up Safari noticed that the house was almost empty, they left to retrieve some property for themselves. Safari took advantage of this opportunity and fled.<sup>936</sup>

718. The *Interahamwe* manning the *Bruxelles* roadblock and Gitsimbi roadblock were led by Bagango. Bagango gave these *Interahamwe* orders, and provided them with grenades, guns and machetes, which they used to kill people.<sup>937</sup>

#### Prosecution Witness ANAL

719. Witness ANAL, a Tutsi, lived in Nyamyumba *commune* in 1994. The witness stated that she has known Ngirabatware for many years since they were neighbors and both attended the same school in Nyamyumba *commune*.<sup>938</sup>

720. She testified that in the morning of 7 April 1994, she was at her house when a certain Kinyungutsi Ngirabatware told her that the President's plane had been shot down and that the Tutsis had to be dealt with. She went to her farm which was above the residence of her grandfather. She saw young people running and she asked them why they were running and they said that her grandfather's house had been attacked. She was afraid that she would be killed, and so hid in a banana plantation. Around 2.00 p.m., she went to her sister-in-law's house. Her husband was involved in construction work at Bagango's house, and when he returned he told

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<sup>933</sup> T. 25 January 2010, pp. 40-43 (CS); T. 27 January 2010, p. 51 (CS). According to Witness ANAM, the Gitsimbi roadblock was not visible from the *Bruxelles* roadblock because of a slope between them. T. 27 January 2010, p. 50 (CS).

<sup>934</sup> T. 27 January 2010, pp. 7-8, 51 (CS); T. 27 January 2010, p. 8 (French) (CS).

<sup>935</sup> T. 25 January 2010, pp. 40, 44-45 (CS); T. 27 January 2010, p. 15 (CS).

<sup>936</sup> T. 25 January 2010, pp. 45-47, 62 (CS).

<sup>937</sup> T. 25 January 2010, p. 52 (CS).

<sup>938</sup> Prosecution Exhibit 9 (Personal Identification Sheet); T. 5 October 2009, p. 6; T. 6 October 2009, p. 67 (CS); T. 7 October 2009, p. 61 (CS).

her to seek refuge in the house of Alphonse Bananiye, who was Ngirabatware's brother. She took her baby to hide there. When the witness arrived around 7.00 p.m., she saw that another Tutsi, Witness DWAN-3, was already seeking refuge there. Bananiye, his wife Alphonsine, and six or seven of their children were also present when Witness ANAL arrived at their house.<sup>939</sup>

721. Alphonsine placed her and Witness DWAN-3 in a room adjacent to the living room. Around 8.00 p.m., Alphonsine told them to remain quiet because Ngirabatware had just arrived. She testified that she had last heard Ngirabatware's voice at a rally two weeks earlier. Witness ANAL then recognized Ngirabatware's voice. Ngirabatware said: "Alphonse, you are an amateur of alcoholic beers and people are saying that you are hiding Tutsis, and if you are surprised hiding those two Tutsi people you shall regret it". Bananiye denied hiding any Tutsis and challenged Ngirabatware to search the house, which Ngirabatware did not do.<sup>940</sup>

722. The witness stated that Ngirabatware left and returned shortly afterwards with weapons. Ngirabatware told Bananiye that he had brought the weapons for the *bourgmestre* to distribute to the *conseillers*. Ngirabatware then left. Alphonse took the two boxes of weapons into the room where Witnesses ANAL and DWAN-3 were hiding. Alphonsine opened the boxes, showing them about ten rifles and 20 grenades, and said these weapons would be used to exterminate them. Ngirabatware returned 30 minutes later with Bagango, who said that they had run out of weapons. Ngirabatware replied that he had weapons in the house, and Bananiye returned the boxes to the living room. Alphonsine then told the witness that Bagango had left with the weapons. The next morning, Bananiye and his wife, for fear of being killed, asked Witnesses ANAL and DWAN-3 to leave.<sup>941</sup>

723. The witness stated that *Interahamwe* captured her and took her to Safari Nyambwega's house around 7.00 p.m. on 8 April 1994. By that time, *Interahamwe* had already destroyed Safari's house and no one was present. The following day she sought refuge at Sanzira's house. While at Sanzira's house, Sanzira told her that the *bourgmestre* had distributed machetes. He did not tell her the date when the *bourgmestre* distributed the machetes or to whom the machetes were given.<sup>942</sup>

724. Witness ANAL testified that she knew Sebuwa, an *Interahamwe*, but did not see him in 1994. After the war she attended a meeting where Sebuwa confessed that he killed many persons with weapons supplied by Bagango, who in turn had obtained them from Ngirabatware.<sup>943</sup>

#### Prosecution Witness AFS

725. Witness AFS, a Hutu, lived in Nyamyumba *commune* in 1994. He had known Ngirabatware's family since 1991.<sup>944</sup>

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<sup>939</sup> T. 5 October 2009, pp. 22-26, 31, 41 (CS); T. 6 October 2009, pp. 75, 78 (CS); T. 7 October 2009, pp. 6-7 (CS). Witness ANAL could not recall the month of Habyarimana's death, but remembered learning about it on the seventh day of a month in 1994. T. 5 October 2009, pp. 22-23, 26 (CS).

<sup>940</sup> T. 5 October 2009, pp. 27-29 (CS); T. 7 October 2009, pp. 8-10, 13-14, 61 (CS).

<sup>941</sup> T. 5 October 2009, pp. 29-30 (CS); T. 7 October 2009, pp. 9-18, 21-22, 28-29, 42, 53-54 (CS).

<sup>942</sup> T. 5 October 2009, pp. 30-31, 35-38 (CS); T. 6 October 2009, pp. 4-5, 8 (CS); T. 7 October 2009, pp. 62-63 (CS).

<sup>943</sup> T. 6 October 2009, pp. 66-68 (CS).

726. Witness AFS testified that, around 2.00 p.m. on 8 April 1994, he saw Ngirabatware at Alphonse Bananiye's home along with Faustin Bagango, Maximilien Turinabo and Égide Karemera. According to the witness, Ngirabatware and Turinabo were engaged in a conversation about the death of the President and about how to respond, during which Ngirabatware adopted a more moderate position than the rest of the attendees.<sup>945</sup>

727. Witness AFS also testified that about two days later at around 2.00 p.m. on 10 April 1994, he was treating Sebuwa and other *Interahamwe* to drinks at the bar located in *Bruxelles*. *Bourgmestre* Faustin Bagango arrived in a convoy of military vehicles with two soldiers and other *Interahamwe* and they were carrying about 50 grenades. Bagango first went to the roadblock at *Bruxelles* then proceeded to the bar where Witness AFS was situated. The *Interahamwe* having drinks with him went to greet Bagango and Bagango gave them weapons. Each *Interahamwe* received a grenade, and so did various youths aged between 10 and 20 who rushed to the scene. Bagango told them to use the grenades to protect themselves in the event that they were attacked. Witness AFS requested a grenade, but Bagango refused, telling him, "No I will not give you a grenade to go and protect your *Inyenzi*", referring to Witness AFS's Tutsi wife. Witness AFS then went home and later heard that Bagango proceeded to the Cotagirwa roadblock to distribute more grenades.<sup>946</sup>

728. Witness AFS was attacked at his house around 10.00 p.m. that same day. He attempted to bribe the attackers with 12,000 Rwandan francs, but it was not enough. They struck Witness AFS with the flat end of a machete. He managed to escape through the back door of his house by telling the attackers he needed to go into another room to find the key to his chest of valuables. When soldiers fired at the witness as he climbed a wall, he pretended to have been hit and fell down, and the soldiers left him for dead. About an hour later, the chairman of the MRND at *cellule* level passed by and brought Witness AFS to the chairman's house where Witness AFS spent the night with the witness' wife and children.<sup>947</sup>

729. In the morning of the following day, 11 April 1994, Witness AFS's elder brother learned that the witness had been attacked. His brother arrived along with some *Interahamwe*, including a young man, to evacuate Witness AFS, his wife Witness ANAF, and their children to his brother's house, which was located in Bugoyi *cellule*. Witness AFS and his family stayed there from 11 April to 14 July 1994.<sup>948</sup>

730. Witness AFS heard that Safari was beaten up and chased into a banana plantation situated at Nyaruteja. Safari tried to escape on his motorcycle and ended up in *Bruxelles*. The witness stated that he was not sure of the date when this attack took place.<sup>949</sup>

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<sup>944</sup> Prosecution Exhibit 19 (Personal Identification Sheet); T. 2 March 2010, pp. 3, 9 (CS); T. 2 March 2010, pp. 5-6; T. 4 March 2010, p. 10 (CS).

<sup>945</sup> T. 2 March 2010, pp. 13-15, 20; T. 2 March 2010, p. 13 (French); T. 4 March 2010, pp. 30, 73 (CS). The Chamber has set out Witness AFS's evidence in more detail about the alleged meeting on 8 April 1994 elsewhere in the Judgement (3.12.3).

<sup>946</sup> T. 2 March 2010, pp. 30-31, 33; T. 2 March 2010, p. 31 (CS).

<sup>947</sup> T. 2 March 2010, pp. 33-35; T. 2 March 2010, p. 36 (CS).

<sup>948</sup> T. 2 March 2010, pp. 36-37 (CS); T. 2 March 2010, p. 38.

<sup>949</sup> T. 4 March 2010, p. 16 (CS).

### Prosecution Witness ANAF

731. Witness ANAF, a Tutsi, lived in Nyamyumba *commune* and was married to Witness AFS in 1994. She stated that she knew Ngirabatware and that Ngirabatware's family lived in the area known as *Bruxelles*.<sup>950</sup>

732. Witness ANAF, stated that the day after President Habyarimana's plane was shot down, she heard people shouting and leading Safari away. She saw Safari being attacked by bladed weapons. Someone came and told her that the attackers were also coming to her home. She went to Nengo hill in the morning on 7 April 1994 where she hid.<sup>951</sup>

733. Witness ANAF testified that Witness AFS was alone at their house from 7 to 10 April 1994. Witness ANAF testified that she heard that Chinese grenades had become available, on 9 April 1994 and Witness AFS went to the roadblock located on the road leading to their house, where Bagango was personally distributing grenades and firearms. Bagango refused to give Witness AFS a grenade, as the latter would use it to protect Witness ANAF, who was considered an *Inyenzi*. The grenades and firearms were being distributed to attack Tutsis, who were characterized as the enemy.<sup>952</sup>

### Prosecution Witness ANAS

734. Witness ANAS, a Hutu, lived in Nyamyumba *commune* in 1994.<sup>953</sup> He attended a private meeting presided by Ngirabatware in the Nyamyumba *commune* office sometime in January 1994. At that meeting Ngirabatware stated that if they were able to get training in the handling of weapons, he would subsequently send weapons. Witness ANAS testified that a week before the death of President Habyarimana, while he manned the Gisa roadblock, Ngirabatware passed by and spoke to the witness and the other *Interahamwe* manning the roadblock. Ngirabatware inquired if they had any problems and the *Interahamwe* told him that they did not have any weapons to use at the roadblock. Ngirabatware told them that if they had any problems, they should see Jean Simpunga, or a doctor named Maxi. The weapons were brought after the death of President Habyarimana in April 1994 and at that time the people had already been trained in the use of weapons. The *Interahamwe* were asked to go and fetch the weapons from Bagango's house at Cotagirwa.<sup>954</sup>

### Prosecution Witness ANAU

735. Witness ANAU, a Hutu who lived in Nyamyumba *commune* in 1994,<sup>955</sup> testified that he and others began killing on 7 April 1994. He continued to assist in the killings for about two weeks after which he manned the Bralirwa roadblock until the end of that month. The Bralirwa roadblock was in Rubona *secteur*, at the boundary with Munanira *secteur*. He stated that a person called Mayere also manned the Bralirwa roadblock and that *Bourgmestre* Bagango would pass

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<sup>950</sup> Prosecution Exhibit 8 (Personal Identification Sheet); T. 30 September 2009, pp. 50-51, 72; T. 30 September 2009, p. 51 (CS).

<sup>951</sup> T. 30 September 2009, p. 65; T. 1 October 2009, pp. 8, 21 (CS).

<sup>952</sup> T. 30 September 2009, pp. 72-73; T. 1 October 2009, pp. 7-8, 20-21 (CS).

<sup>953</sup> Prosecution Exhibit 22 (Personal Identification Sheet); T. 16 March 2010, p. 47 (CS).

<sup>954</sup> T. 15 March 2010, pp. 72-73, 75-77, 83; T. 16 March 2010, pp. 5, 8; T. 16 March 2010, pp. 46-47 (CS).

<sup>955</sup> Prosecution Exhibit 20 (Personal Identification Sheet).

by daily and provide instructions. He asserted that after the first two weeks of the genocide, Bagango gave a firearm to Mayere and grenades to Witness ANAU and the others manning the Bralirwa roadblock. Bagango told them that he received these weapons from Ngirabatware.<sup>956</sup>

#### Prosecution Witness ANAG

736. Witness ANAG, a Tutsi, lived in Nyamyumba *commune* in 1994.<sup>957</sup> She testified that she fled to her uncle's house with her siblings a few days after the President's death and remained there for two to three months. She stated that during the genocide while she was at her uncle's house, she saw *Bourgmestre* Bagango coming from the house of Ngirabatware's parents. Bagango was in front of her uncle's house greeting the *Interahamwe* who were drinking beer in her uncle's yard. She stated that Bagango was carrying a bag and, although the witness could not see its contents, she heard the *Interahamwe* say that it contained grenades.<sup>958</sup>

#### Prosecution Witness ANAO

737. Witness ANAO a Hutu who lived in Nyamyumba *commune*,<sup>959</sup> testified that he worked at the Kitiraco market in 1994. He was an *Interahamwe* and was among those who manned the Gitsimbi/Cotagirwa roadblock. He testified that he knows Ngirabatware "very well" but only saw him once in 1994, a few days before President Habyarimana's death. He did not see Ngirabatware during the genocide.<sup>960</sup>

738. Witness ANAO testified that Ngirabatware, Faustin Bagango, Égide Karemera and Major Xavier Uwimana attended a rally and flag-raising ceremony at Kitiraco two to four days before the President's death. He stated that Ngirabatware spoke to around 600 to 800 *Interahamwe*, telling them that the *Interahamwe* must support the army, and that since they live not far from the roadblocks, they needed to man those roadblocks and carry out night patrols to prevent the enemy from infiltrating the locality. Kavamahanga, the vice-chairman of the *Interahamwe*, then asked Ngirabatware how ten people could take care of the night patrols armed only with sticks, without firearms, and also without the company of soldiers. Ngirabatware responded that he and Major Uwimana would find a solution to that problem and promised to give the ten people at least one firearm so that they could shoot in the air to disperse the enemy. Ngirabatware also distributed emblems, scarves and hats that were part of the *Interahamwe* uniform. Witness ANAO stated that a few hours later, Major Uwimana came to the Gitsimbi roadblock with weapons and Bagango thanked him for bringing the weapons. These firearms and grenades were distributed to those who were manning the Gitsimbi roadblock and were subsequently used to kill Tutsis.<sup>961</sup>

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<sup>956</sup> T. 9 March 2010, pp. 58-61, 63-65 (CS); T. 11 March 2010, pp. 86-87 (CS); T. 15 March 2010, pp. 9-11, 14-17, 35 (CS).

<sup>957</sup> Prosecution Exhibit 18 (Personal Identification Sheet); T. 1 March 2010, pp. 11-12, 50 (CS).

<sup>958</sup> T. 1 March 2010, pp. 33-35, 38, 51-52 (CS).

<sup>959</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS).

<sup>960</sup> T. 15 February 2010, pp. 36-38, 87 (CS); T. 15 February 2010, pp. 68-69, 71, 77-78; T. 17 February 2010, p. 42 (CS); T. 22 February 2010, p. 3; T. 22 February 2010, pp. 13-15, 22 (CS).

<sup>961</sup> T. 15 February 2010, pp. 71, 77-80, 84; T. 15 February 2010, pp. 71-72, 75-76, 82-83, 86-87 (CS); T. 16 February 2010, pp. 5-7, 71-76; T. 17 February 2010, p. 69 (CS); T. 18 February 2010, pp. 87-88 (CS); T. 22

739. There were six cartons and there were crates, but one of them was opened and inside one crate were five rifles or guns. The rifles were given to those who had to handle them. The grenades were also distributed. What was left over was put in Bagango's vehicle and he left with the weapons. Furthermore, one person was designated to teach people how to operate the grenades.<sup>962</sup>

#### Augustin Ngirabatware

740. Ngirabatware testified that he did not go to Gisenyi *préfecture* at any point between October 1993 and 12 April 1994. He was in Kigali from 5 April to 11 April 1994, and on 12 April 1994 he left Kigali to go to Gitarama and on to Gisenyi. He also testified that he knew Safari Nyambwega since childhood and Nyambwega was a friend of his family. Safari was *responsable de cellule* in which Ngirabatware's parents lived, and he was present at every ceremony that took place in Ngirabatware's family. Ngirabatware denied playing a role, either direct or indirect, in the death of Nyambwega.<sup>963</sup>

#### Defence Witness DWAN-71

741. Witness DWAN-71, a Hutu, lived in Nyamyumba *commune* in April 1994 and had a leadership role in the *commune*.<sup>964</sup> The witness testified that he did not see Ngirabatware in his *secteur* in 1994. Faustin Bagango lived in the same *secteur* where the witness resided.<sup>965</sup>

742. Witness DWAN-71 testified that after the President's death, he asked the brigadier of the *commune* police for assistance in protecting the population against the attacks of the *Interahamwe* and the brigadier gave him a gun. A few days later Witness DWAN-71 gave the firearm to a former soldier, who had been chosen to protect Nyabagobe *cellule* against the *Interahamwe* and CDR. The former soldier used the weapon at the roadblock below Adèle's house. Witness DWAN-71 testified that no other weapons were distributed within Rushubi *secteur*. He denied that he received weapons through Bagango from Ngirabatware, which he allegedly supplied to the *Interahamwe*.<sup>966</sup>

743. Witness DWAN-71 testified that Safari was taken from his house by the *Interahamwe* on the morning of 8 April 1994 and was attacked with a machete. Safari went for treatment and later went to see his boss, after which he was abducted and killed. The witness stated that the killings intensified from 7 April 1994.<sup>967</sup>

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February 2010, pp. 5-9, 16; T. 22 February 2010, pp. 15-18, 20-21, 23, 29 (CS); Prosecution Exhibit 6S (Photograph); Prosecution Exhibit 6T (Photograph); Prosecution Exhibit 6U (Photograph).

<sup>962</sup> T. 15 February 2010, pp. 79-80; T. 15 February 2010, p. 80 (CS).

<sup>963</sup> T. 18 November 2010, pp. 11, 38; T. 25 November 2010, pp. 11-13, 21, 23, 26, 30-38, 41-44, 51-56, 58-60, 65; T. 29 November 2010, pp. 3-4, 7-8, 11-12; T. 1 December 2010, pp. 28-29, 47; T. 1 December 2010, pp. 35, 77 (CS); T. 2 December 2010, pp. 2, 4, 6, 11, 24-28; T. 6 December 2010, p. 33; T. 8 December 2010, pp. 20, 35; T. 14 December 2010, pp. 27-29; T. 4 February 2011, pp. 2-6, 11-16, 24, 26-28, 30-31, 107-108.

<sup>964</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 22 June 2011, p. 82 (CS); T. 28 June 2011, p. 13 (CS).

<sup>965</sup> T. 22 June 2011, p. 89; T. 23 June 2011, pp. 34, 37-38; T. 27 June 2011, p. 22; T. 28 June 2011, pp. 3, 25 (CS).

<sup>966</sup> T. 23 June 2011, pp. 18, 20-21, 38; T. 27 June 2011, p. 36; T. 27 June 2011, p. 48 (CS); T. 28 June 2011, p. 8 (CS).

<sup>967</sup> T. 23 June 2011, p. 47; T. 27 June 2011, p. 31; T. 28 June 2011, p. 28 (CS).



Defence Witness DWAN-2

744. Witness DWAN-2, a Hutu farmer who lived in Nyamyumba *commune* in 1994,<sup>968</sup> testified that Safari was attacked two days after Chantal Murazemariya went to seek refuge. Safari was attacked by the *Interahamwe*, including Sebuwa, Kimeza and Ndarifite. The attack took place at about 3.00 p.m., at Safari's home. Safari was wounded by a machete, and the witness saw him running to Adèle's house after the attack. She also saw those manning the Nyabagobe roadblock, including Laurent and Mitwe, take Safari to the Gisenyi hospital since he was bleeding abundantly.<sup>969</sup>

Defence Witness DWAN-4

745. Witness DWAN-4, a Hutu, was a soldier in the Rwandan army in April 1994. He knows Ngirabatware and last saw him in January 1993 when he attended Ngirabatware's father's funeral.<sup>970</sup> He knew *Bourgmestre* Faustin Bagango but did not meet with Bagango between April and July 1994. Witness DWAN-4 did not see any distribution of weapons between April and July 1994 in Rushubi *secteur*. Between April and July 1994, he never assisted Ngirabatware to distribute machetes in Rushubi *secteur*.<sup>971</sup>

Defence Witness DWAN-9

746. Witness DWAN-9, a Hutu, resided in Nyamyumba *commune* throughout the events of 1994.<sup>972</sup> He stated that he only saw Ngirabatware at the inauguration of a school Ngirabatware had financed. He could not remember whether Ngirabatware delivered a speech on this occasion and he denied having had a drink with Ngirabatware at his parents' house in 1994.<sup>973</sup>

747. Witness DWAN-9 testified that he manned the Nyabagobe roadblock. The purpose of the roadblock was to protect the Tutsis and assist them in their flight to Zaire. He stated that Laurent Maniraguha also manned the Nyabagobe roadblock in 1994. Witness DWAN-9 testified that aside from the rifle Simpunga gave to Maniraguha, the only weapons available at the Nyabagobe roadblock were traditional weapons including spears, machetes, clubs and swords. Witness DWAN-9 carried a club, and denied having received a machete from Bagango. He denied the suggestion that there were hand grenades at the roadblock. Witness DWAN-9 refuted the suggestion that Ngirabatware had distributed weapons in Nyamyumba *commune*, saying that if he had done so, those manning his roadblock would have received such weapons and would not have used wooden rifles and their traditional weapons.<sup>974</sup>

748. He denied seeing *Bourgmestre* Bagango at the Nyabagobe roadblock or anywhere in 1994. He refuted the suggestion that Bagango had hand grenades in a bag, insisting that if Bagango possessed such weapons, he would have distributed them at the roadblock, and would

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<sup>968</sup> Defence Exhibit 133 (Personal Identification Sheet).

<sup>969</sup> T. 11 July 2011, p. 24 (CS); T. 11 July 2011, pp. 36, 38-40; T. 11 July 2011, p. 34 (French).

<sup>970</sup> Defence Exhibit 135 (Personal Identification Sheet); T. 13 July 2011, pp. 31, 37.

<sup>971</sup> T. 13 July 2011, pp. 37-40.

<sup>972</sup> Defence Exhibit 137 (Personal Identification Sheet); T. 16 August 2011, p. 40; T. 17 August 2011, p. 14 (CS).

<sup>973</sup> T. 16 August 2011, pp. 72, 76-77; T. 17 August 2011, p. 9.

<sup>974</sup> T. 16 August 2011, pp. 44, 66, 72-73, 76; T. 16 August 2011, pp. 44-47, 53, 55, 60-61, 63 (CS); T. 17 August 2011, p. 14 (CS); T. 18 August 2011, pp. 29-33 (CS); T. 22 August 2011, p. 21 (CS).

not have gone to hide them at his house. The witness affirmed that he saw Simpunga during the events of 1994 coming to the witness' roadblock on occasion to monitor its functioning.<sup>975</sup>

749. Witness DWAN-9 testified that he manufactured clubs in response to the *Interahamwe* coming into his *secteur* in 1994 to kill people. He made unique wooden clubs with carved human faces and helmets which were different from the nail-studded clubs used by the killers. He gave the clubs he made to the security committee. Other people including Tutsis began placing orders with him. Anastase Ngirabatware, the *responsable de cellule*, forbade the witness from selling the clubs to anyone besides those charged with providing security in his *cellule*, or anyone outside the *cellule*. He estimated that more than 100 clubs were distributed and sold in the *cellule*, but denied that his clubs were made for *Interahamwe* and were being used to kill Tutsis.<sup>976</sup>

#### Defence Witness DWAN-133

750. Witness DWAN-133, a Hutu, lived in Nyamyumba *commune* in 1994. He stated that he heard of Ngirabatware but had never met him.<sup>977</sup>

751. Witness DWAN-133 testified that he never saw Ngirabatware, nor did he hear anyone speak about him in Rushubi *secteur* or even in Gisenyi *préfecture* in 1994. He stated that on 7 April 1994, Witness ANAO invited him and other people to erect a roadblock in Gitsimbi/Cotagirwa, near a factory that manufactured shoes and belts. The witness helped man this roadblock along with Witness ANAO, Felix Niyoniringiye, Banteziminsi, Nkizinkiko (alias Bébé), Ntahompagaze (alias Turikunkiko), Hassan Mutume (alias Bombe), Birarya and Djuma. The purpose of the roadblock was to enhance the group's ability to track down Tutsis and to prevent young men from exiting, as they were needed to help man the roadblock. No one had firearms at the roadblock, only machetes and sticks taken from their homes.<sup>978</sup>

752. Witness DWAN-133 claimed that authorities, particularly the *conseiller* and *bourgemestre*, informed them it was an illegal roadblock and that they were behaving like bandits. He stated that each time they saw the *conseiller* and *bourgemestre* coming to the roadblock, they would run and hide. The Gitsimbi/Cotagirwa roadblock was not an official roadblock. The authorities started coming after them and after about one week, they removed the Gitsimbi/Cotagirwa roadblock. He testified there was an official roadblock set up by authorities downhill from Adèle's house to protect Tutsis and many Tutsis were saved by that roadblock.<sup>979</sup>

753. Witness DWAN-133 testified that Safari was attacked on 7 April 1994. He went to Safari's house, but it had already been demolished. He specifically remembered that date because it was when the violence commenced.<sup>980</sup>

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<sup>975</sup> T. 16 August 2011, pp. 65-66, 76; T. 17 August 2011, p. 72 (CS).

<sup>976</sup> T. 17 August 2011, pp. 2-3, 9; T. 17 August 2011, pp. 72-76, 79 (CS); T. 18 August 2011, pp. 5-7, 11, 13 (CS); T. 22 August 2011, pp. 11-13.

<sup>977</sup> Defence Exhibit 157 (Personal Identification Sheet); T. 4 October 2011, p. 10 (CS).

<sup>978</sup> T. 3 October 2011, p. 86 (CS); T. 4 October 2011, pp. 5, 7-10 (CS).

<sup>979</sup> T. 4 October 2011, pp. 7, 9-10 (CS); T. 5 October 2011, pp. 26-27.

<sup>980</sup> T. 4 October 2011, p. 5 (CS); T. 6 October 2011, pp. 7-8.

Defence Witness DWAN-147

754. Witness DWAN-147, a Hutu, lived in Nyamyumba *commune* in 1994. He was in the Rwandan army between 1990 and 1993, and gained experience training with weapons.<sup>981</sup> He stated that he knew Ngirabatware very well as they were natives of the same locality. The last time the witness saw Ngirabatware was towards the end of January 1993, during the funeral of Ngirabatware's father.<sup>982</sup>

755. Witness DWAN-147 testified that during the events of 1994 he manned the Nyabagobe roadblock in Nyamyumba *commune* at the crossroads between the dirt road coming from Kiroji and the tarred road leading to Bralirwa. He stated that Laurent Maniraguha asked Simpunga for a firearm in order to ensure security in the *cellule*. Simpunga gave a firearm to Maniraguha, which he used to protect the people. According to the witness, Simpunga had said that the weapon came from *commune* authorities but he did not specify whether it was from Bagango. Witness DWAN-147 claimed that Maniraguha did not leave the firearm in the custody of anyone else, but had it when he was manning the roadblock.<sup>983</sup>

756. Witness DWAN-147 stated that he did not hear the sounds of gunfire, mortars, artillery or any other types of weapons of that nature during the events from 6 April through July 1994, although prior to that period, he had heard gunfire and explosions at the war front.<sup>984</sup> He did not hear of any distribution of weapons in his area, apart from the firearm received by Maniraguha. He stated that any person distributing weapons between April and July 1994 would have had to pass by the Nyabagobe roadblock. He denied that there was distribution of weapons in his *secteur*, but stated that he could not say the same for the entire Nyamyumba *commune*, since it was vast.<sup>985</sup>

757. Witness DWAN-147 testified that he never heard anyone in Rushubi *secteur* make any allegations against Ngirabatware or say that he saw Ngirabatware between April and July 1994. He stated that he never saw Ngirabatware go past his roadblock, which Ngirabatware would have had to do to reach his parents' house. The witness also maintained he never heard that Ngirabatware distributed weapons in Nyamyumba *commune*.<sup>986</sup>

Defence Witness DWAN-11

758. Witness DWAN-11, a Hutu, resided in Nyamyumba *commune* in 1994.<sup>987</sup> He stated that he knew Ngirabatware and last saw him at Ngirabatware's father's funeral.<sup>988</sup>

759. Witness DWAN-11 testified that in Nyamyumba *commune* there was a roadblock on the road going from Kiroji towards Bralirwa and also a roadblock in Gitsimbi. The roadblock in

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<sup>981</sup> Defence Exhibit 134 (Personal Identification Sheet); T. 11 July 2011, pp. 58-59.

<sup>982</sup> T. 11 July 2011, p. 76 (CS). See also T. 13 July 2011, p. 18 (CS).

<sup>983</sup> T. 11 July 2011, pp. 65, 73-74 (CS); T. 12 July 2011, pp. 32-33, 35-37, 57-58 (CS).

<sup>984</sup> T. 11 July 2011, p. 59; T. 12 July 2011, p. 69.

<sup>985</sup> T. 11 July 2011, pp. 65, 77-78 (CS); T. 12 July 2011, p. 13 (CS); T. 13 July 2011, p. 18 (CS).

<sup>986</sup> T. 11 July 2011, p. 78 (CS); T. 13 July 2011, p. 18 (CS).

<sup>987</sup> Defence Exhibit 126 (Personal Identification Sheet); T. 21 June 2011, pp. 44-45 (CS); T. 22 June 2011, p. 29 (CS).

<sup>988</sup> T. 21 June 2011, p. 68 (CS).

Kiroji was near a market and at the crossroads leading toward the brewery between the road leading from Kiroji and the tarred road coming from Gisenyi. It was also near the homes of Adèle, Souda and the widow of Semivumbi, known as Mechtilde. The witness testified that this was a civilian roadblock and everyone in the area was called upon to help man the roadblock. Buhirike, Butanda, Byanganshaka and Musafiri manned that roadblock and the witness helped man it in June 1994.<sup>989</sup>

760. The witness never saw Bagango after 6 April 1994 nor did he ever hear that he made any anti-Tutsi speeches. He testified that he could not talk about events at any roadblock other than the one he manned. He further asserted that members of different political parties helped man this roadblock, including the *Interahamwe* and the *Impuzamugambi*. He knew about the events at all the roadblocks in his *cellule* through Laurent.<sup>990</sup>

#### Defence Witness DWAN-12

761. Witness DWAN-12, a Hutu, resided in Nyamyumba *commune* in 1994 and participated in *Gacaca* proceedings in Kivumu *secteur*.<sup>991</sup> He knew Ngirabatware and visited him once at Ngirabatware's home in Gitsimbi. He saw Ngirabatware during the meetings of the Nyamyumba technical committee in 1993. He testified that the last time he saw Ngirabatware in Nyamyumba *commune* was at the *bourgmestre's* election in 1993. He stated that he never heard anything concerning Ngirabatware's role or involvement in the genocide within Kivumu *secteur* or in neighboring *secteurs*.<sup>992</sup>

#### Defence Witness DWAN-49

762. Witness DWAN-49, a Hutu, lived in Rubavu *commune* and worked at Bralirwa in 1994.<sup>993</sup> He stated that he knew who Ngirabatware was and that he never saw Ngirabatware in his area between January and July 1994 nor did he ever hear anyone say they saw Ngirabatware in that region. He testified that during the entire time of his involvement in the *Gacaca* process, he never heard anyone, including suspects, witnesses and victims, mention Ngirabatware's name. The witness claimed that had Ngirabatware's name been mentioned, a case would have been prepared against him and submitted to the authorities.<sup>994</sup>

#### Defence Witness DWAN-13

763. Witness DWAN-13, a Hutu, was an official in Nyamyumba *commune* in 1994.<sup>995</sup> He stated that no weapons were distributed in Buhoko *secteur*. He testified that no meeting took

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<sup>989</sup> T. 21 June 2011, pp. 53-54, 56 (CS).

<sup>990</sup> T. 21 June 2011, pp. 68, 70, 76 (CS); T. 22 June 2011, pp. 26-29, 33, 46, 48, 66 (CS). The witness was told by Laurent that Mr. Kimeza had been killed at the roadblock.

<sup>991</sup> Defence Exhibit 131 (Personal Identification Sheet); T. 6 July 2011, pp. 6, 36, 44 (CS).

<sup>992</sup> T. 6 July 2011, pp. 14-17, 22, 36 (CS).

<sup>993</sup> Defence Exhibit 145 (Personal Identification Sheet); T. 19 September 2011, p. 7 (CS).

<sup>994</sup> T. 19 September 2011, pp. 32, 40. Witness DWAN-49 admitted he would not be able to recognize Ngirabatware. T. 20 September 2011, p. 39 (CS).

<sup>995</sup> Defence Exhibit 146 (Personal Identification Sheet); T. 20 September 2011, p. 46; T. 20 September 2011, p. 48 (CS).

place at the *commune* office in 1994, but that a meeting of *conseillers* was held in May 1994 during which the issue of weapons was not raised.<sup>996</sup>

Defence Witness DWAN-47

764. Witness DWAN-47, a Hutu, lived in Nyamyumba *commune* in 1994. He was an official in Nyamyumba *commune*.<sup>997</sup> He knew Ngirabatware and the last time he saw Ngirabatware was at Ngirabatware's father's funeral. The witness testified that he never received any weapons or machetes from Faustin Bagango.<sup>998</sup>

Defence Witness Edison Nsabimana

765. Edison Nsabimana, a Hutu, lived in Nyamyumba *commune* in 1994. He was assistant *bourgmestre* of Nyamyumba *commune* in 1994. He stated that he was answerable to the Minister of Interior who appointed assistant *bourgmestres*.<sup>999</sup> He saw Ngirabatware for the last time in 1993, during the *commune* elections. He never saw or heard it reported that Ngirabatware was responsible for inciting violence or hatred or distributing weapons during the genocide.<sup>1000</sup>

766. Nsabimana testified that he was never made aware of any distribution of weapons by *Bourgmestre* Bagango to the *conseillers* of Kabirizi, Munanira and Rushubi *secteurs* in Nyamyumba *commune*. The witness doubts that Bagango, a civilian who had no knowledge of military matters, would have been able to distribute firearms to members of the population when even the *commune* police officers did not have enough weapons. He testified that he was not aware of such distribution of weapons, and believes that it never took place.<sup>1001</sup>

Defence Witness DWAN-21

767. Witness DWAN-21, a Hutu, lived in Nyamyumba *commune* in 1994. He participated in the Rubona *secteur Gacaca* court.<sup>1002</sup> He participated in Faustin Bagango's case. Faustin Bagango was charged in Rubona *secteur* with inciting people to attend meetings to prepare for the genocide, but not with distribution of weapons, and he was acquitted at the end of the trial. Bagango was also charged in Munanira *secteur* with having launched an attack with the intent of looting and attempted murder during that attack, and was also acquitted. The witness testified that Ngirabatware's name was never mentioned during the proceedings against Bagango.<sup>1003</sup>

Defence Witness DWAN-25

768. Witness DWAN-25, a Hutu, lived in Nyamyumba *commune* in 1994. He participated in the *Gacaca* proceedings in Busoro.<sup>1004</sup> He stated that he saw Ngirabatware at the *bourgmestre's*

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<sup>996</sup> T. 20 September 2011, p. 68 (CS).

<sup>997</sup> Defence Exhibit 156 (Personal Identification Sheet); T. 3 October 2011, pp. 14-15 (CS).

<sup>998</sup> T. 29 September 2011, pp. 68-69, 79 (CS).

<sup>999</sup> Defence Exhibit 124 (Personal Identification Sheet); T. 14 June 2011, pp. 58-60, 72-73.

<sup>1000</sup> T. 15 June 2011, pp. 14, 16.

<sup>1001</sup> T. 15 June 2011, pp. 55-56.

<sup>1002</sup> Defence Exhibit 153 (Personal Identification Sheet); T. 28 September 2011, p. 6 (CS).

<sup>1003</sup> T. 28 September 2011, pp. 21-24 (CS).

<sup>1004</sup> Defence Exhibit 128 (Personal Identification Sheet); T. 28 June 2011, p. 29; T. 28 June 2011, pp. 30, 55 (CS).

election in January 1993 but did not see him again after that. He never heard any allegations of criminal activity or participation in the genocide by Ngirabatware raised in the *Gacaca* court in Busoro.<sup>1005</sup>

Defence Witness DWAN-39

769. Witness DWAN-39, a Hutu, was living in Nyamyumba *commune* in 1994. He testified that he has been involved in the *Gacaca* court system since 2000. He knew Ngirabatware because he was a minister. The last time he saw Ngirabatware was at Ngirabatware's father's funeral in 1993.<sup>1006</sup>

770. The witness stated that, from the beginning of the information-gathering process and up to the end of the trials in the Rushubi area, nobody ever mentioned that Ngirabatware distributed weapons. The witness testified that no rifles or grenades were distributed in Nyamyumba *commune*, because no one was killed in Nyamyumba *commune* with these types of weapons.<sup>1007</sup>

Defence Witness DWAN-3

771. Witness DWAN-3, a Tutsi, lived in Nyamyumba *commune* in 1994. She testified that she knew Ngirabatware and saw him when he came to visit his family. She last saw Ngirabatware at the burial ceremony of his father.<sup>1008</sup>

772. Witness DWAN-3 testified that after the death of the President, *Impuzamugambi* and *Interahamwe* members spent the night opposite the house of Safari Nyambwega. Safari's house was above the *secteur* office and Witness DWAN-3's house was some distance from the main road. In the morning of 7 April 1994, these *Impuzamugambi* and *Interahamwe* members brought Safari to the main road. They were beating him, saying that the Tutsis had shot down President Habyarimana's plane. As Cenge was coming out of his house, she saw the group of attackers and Safari Nyambwega on the road. From where the group was, one could see the entrance of the compound of Cenge's parents. Cenge requested the group to take Safari to Safari's house and leave him alone since he had done nothing wrong.<sup>1009</sup>

773. Witness DWAN-3 testified that on 7 April 1994, she learned that Tutsis were being hunted down because they were blamed for shooting down President Habyarimana's plane. After witnessing the attack on Safari Nyambwega she decided to seek refuge in Alphonse Bananiye's house. Witness DWAN-3 expected that Alphonse Bananiye's house would not be attacked because he was the brother of Ngirabatware. Witness DWAN-3 and her baby arrived at Alphonse Bananiye's home on 8 April 1994 around 8.00 p.m. Witness ANAL, her baby,

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<sup>1005</sup> T. 28 June 2011, pp. 17-18, 54 (CS).

<sup>1006</sup> Defence Exhibit 148 (Personal Identification Sheet); T. 23 September 2011, p. 6; T. 23 September 2011, p. 9 (CS).

<sup>1007</sup> T. 23 September 2011, p. 47 (CS); T. 27 September 2011, pp. 59-60 (CS).

<sup>1008</sup> Defence Exhibit 125 (Personal Identification Sheet); T. 16 June 2011, pp. 5, 13; T. 16 June 2011, pp. 8, 30, 44 (CS).

<sup>1009</sup> T. 16 June 2011, pp. 24, 26; T. 16 June 2011, p. 45 (CS); T. 20 June 2011, pp. 3-4; T. 21 June 2011, pp. 22-23 (CS).

Alphonse's wife, Alphonsine, and their children were present. Witnesses DWAN-3 and ANAL arrived at the compound around the same time.<sup>1010</sup>

774. Witness DWAN-3 testified that she and Witness ANAL stayed for five days in a room adjacent to the living room. They were fed and treated well by Alphonse and Alphonsine Bananiye. During this time Witness DWAN-3 never saw any weapons in the house, nor did she ever see or hear of anyone visiting the house including either Ngirabatware or Bagango. The witness said it would be a lie to say that Alphonsine had told her and Witness ANAL that "these weapons are going to be used to exterminate you".<sup>1011</sup>

775. Witnesses DWAN-3 and ANAL left Bananiye's house at the same time and went their separate ways. She stated that no one chased them out of the house; they chose to leave because they were afraid, and wanted to change their place of refuge. After hearing from her husband that Simpunga had announced that people's security would be guaranteed, and after noticing there was a lull in the violence, she returned to her house.<sup>1012</sup>

776. Witness DWAN-3 stated that a certain Ndayumujinya came and took her from home to the *Interahamwe* who were at Gitsimbi. Her husband followed them and bribed the *Interahamwe* to release her. She was released and she returned home with her husband. She stayed at home for around 15 days, before returning to the house of Alphonse Bananiye. During her second stay at Bananiye's house, she was the only guest and she stayed at Alphonse Bananiye's house for about ten days. She was treated well by Alphonse Bananiye and his wife, Alphonsine. She was never chased away, and she never heard anyone make any anti-Tutsi statements. She did not witness any delivery of weapons at the house, and asserted that Ngirabatware never came to Bananiye's home. She eventually left to go to Nyabagobe because Simpunga said that all Tutsis should move to a central location where their safety could be assured.<sup>1013</sup>

#### 3.10.4 Deliberations

777. The Prosecution has adduced evidence about various alleged distributions of weapons in April 1994. Witness ANAO described a distribution of weapons a few days before President Habyarimana's plane was shot down. In the aftermath of the President's death, Ngirabatware brought weapons into Nyamyumba *commune* and arranged for their distribution, according to the separate accounts provided by Witnesses ANAE, ANAM and ANAL. Witness AFS testified that he saw Ngirabatware with Bagango again on 8 April 1994, and that Bagango handed out grenades on 10 April 1994. The Defence disputes these allegations, and submits that Ngirabatware was in Kigali during the relevant time period.

778. The Chamber recalls that it has addressed Ngirabatware's alibi elsewhere and found that Ngirabatware's alibi for 7 April 1994 is not reasonably possibly true, but that there is a reasonable possibility that he may have been in Kigali in the early afternoon on 8 April 1994 (3.9.3.8).

<sup>1010</sup> T. 16 June 2011, pp. 14, 27; T. 16 June 2011, pp. 27-31, 45-48 (CS); T. 21 June 2011, p. 26 (CS).

<sup>1011</sup> T. 16 June 2011, pp. 29-30, 41-42, 50, 58 (CS); T. 21 June 2011, pp. 26-27 (CS).

<sup>1012</sup> T. 16 June 2011, pp. 30-31, 34, 50, 53, 58, 65 (CS); T. 21 June 2011, p. 27 (CS).

<sup>1013</sup> T. 16 June 2011, pp. 31, 34-35, 41, 51-52, 58-60, 62-63 (CS); T. 21 June 2011, p. 27 (CS).

779. In this section, the Chamber will first assess when Safari Nyambwega was attacked, as this may have an impact on the proper understanding of the evidence provided by Witnesses ANAE and ANAM that weapons were distributed at the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks prior to this attack taking place.<sup>1014</sup> Following this assessment, the Chamber will consider, in turn, the allegations arising from Witnesses ANAE, ANAM, ANAL, AFS and ANAF. The Chamber will then consider the relevant evidence adduced by the Defence with regard to this matter, and other pertinent evidence. Finally, the Chamber will address whether any of these weapons, allegedly supplied by Ngirabatware, played a role in any subsequent attacks or killings.

#### **3.10.4.1 The Attack on Safari Nyambwega, 7 April 1994**

780. The Chamber considers that, because both Witnesses ANAE and ANAM link the alleged distribution of weapons with the attack on Safari Nyambwega, the date of this attack is a material element in the determination of the date when the alleged distribution took place. In order for the assessment of the weapons distribution to be coherent and understandable, the Chamber will first assess when Nyambwega was attacked.

781. Two eyewitnesses described an attack on Nyambwega as having taken place on 7 April 1994. Prosecution Witness ANAF testified that on this day, she heard people shouting and leading Safari away. She saw Safari being attacked with bladed weapons in the road.<sup>1015</sup> Defence Witness DWAN-3 also described having seen, on 7 April 1994, *Interahamwe* attacking Nyambwega on the main road.<sup>1016</sup>

782. Defence Witness DWAN-133 testified that both Nyambwega and his house had been attacked on 7 April 1994, a date the witness specifically remembered because it was the day the violence commenced.<sup>1017</sup> This appears to accord with the account provided by Prosecution Witness ANAM that Nyambwega was attacked at the same time as his house was being looted.<sup>1018</sup>

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<sup>1014</sup> The Chamber notes that various names were given for these roadblocks. See, for example, Chambers Exhibit 1 (Site Visit Report), pp. 7 (“The parties also agreed that a roadblock was mounted adjacent to Adele’s house, referred to by the Prosecution as Petit Bruxelles roadblock and by the Defence as Nyabagobe roadblock.”), 8 (concerning the Parties’ agreement on the location identified as Gitsimbi and Cotagirwa); T. 15 February 2010, p. 38 (CS); T. 16 February 2010, pp. 22-23; T. 17 February 2010, p. 49 (Witness ANAO) (The *Bruxelles* roadblock was located near Nyabagobe hill. The Gitsimbi stream was the border between the Rushubi and Rubona *secteurs* of Nyamyumba *commune*. The factory there was named Cotagirwa. The witness, who manned the roadblock at this latter location, used the terms “Gitsimbi” and “Cotagirwa” interchangeably.). The Chamber further observes that the *Bruxelles* roadblock, located near Adèle’s house, was situated in Busheke *cellule*, Rushubi *secteur*. See, for example, T. 6 October 2011, p. 29 (CS) (Witness DWAN-41); Chambers Exhibit 1 (Site Visit Report), p. 7. For the sake of clarity, the Chamber will refer to the “Nyabagobe roadblock”, the “roadblock near Adèle’s house” and the “Busheke *cellule* roadblock” as the “*Bruxelles* roadblock” in the Deliberations. The Deliberations will likewise refer to the “Gitsimbi roadblock” and the “Cotagirwa roadblock” as the “Gitsimbi/Cotagirwa roadblock”.

<sup>1015</sup> T. 1 October 2009, p. 8 (CS) (Witness ANAF).

<sup>1016</sup> T. 16 June 2011, p. 45 (CS) (Witness DWAN-3).

<sup>1017</sup> T. 4 October 2011, pp. 4-5 (CS); T. 6 October 2011, pp. 7-8 (Witness DWAN-133).

<sup>1018</sup> T. 25 January 2010, p. 45 (CS) (Witness ANAM).



783. Prosecution Witness ANAL further testified that she went to Safari's house on 8 April 1994, and that it had already been destroyed.<sup>1019</sup> Defence Witness DWAN-71 also provided hearsay evidence concerning this attack, which the witness heard took place on 8 April 1994.<sup>1020</sup>

784. Witness DWAN-2 testified that Nyambwega was attacked four days after the President's death and she saw Nyambwega being transported to the hospital.<sup>1021</sup> The Chamber considers that the witness was confident in her evidence that Nyambwega was attacked some days after Habyarimana's assassination. The Chamber observes, however, that Witness DWAN-2 did not specify how she knew of this attack, including whether she was an eyewitness or whether she learned about it from another source. Given that her basis of knowledge remains vague and unclear, the Chamber deems it appropriate to rely on other evidence that consistently places the attack on Nyambwega earlier than the date referred to by Witness DWAN-2.

785. Prosecution Witness ANAE stated that she saw Nyambwega wounded and disfigured, and that this took place after the President's death and after Ngirabatware distributed weapons at the *Bruxelles* roadblock.<sup>1022</sup> No further information concerning the date was provided by Witness ANAE, although she testified that she joined Witness ANAM in observing the attack.<sup>1023</sup>

786. Witness ANAM testified that Nyambwega was attacked immediately following Ngirabatware's delivery of firearms and grenades to the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks. She described these events, however, as occurring seven or eight days after the President's death.<sup>1024</sup> When asked during cross-examination whether she was sure about this time frame, the witness responded that she was "absolutely positive".<sup>1025</sup>

787. The Chamber notes that Witness ANAM described herself as a peasant who never attended school.<sup>1026</sup> More significantly, however, the Chamber observes that the time ranges provided by Witness ANAM in other instances have not proven to be reliable. For example, she testified that she saw two *Interahamwe* take away Chantal Murazemariya around one month after President Habyarimana's death.<sup>1027</sup> Other credible evidence, however, places this event only seven or ten days after Habyarimana's plane was shot down (3.14.5.3).<sup>1028</sup> In addition to issues concerning the measurement of time, the Chamber also observes difficulties in the witness'

<sup>1019</sup> T. 5 October 2009, pp. 35-36 (CS); T. 6 October 2009, pp. 4-5, 8 (CS) (Witness ANAL).

<sup>1020</sup> T. 23 June 2011, pp. 44, 47; T. 27 June 2011, pp. 31, 33 (Witness DWAN-71).

<sup>1021</sup> T. 11 July 2011, pp. 20-21 (CS); T. 11 July 2011, pp. 38-39 (Witness DWAN-2).

<sup>1022</sup> T. 20 October 2009, p. 32; T. 20 October 2009, pp. 71, 77 (CS) (Witness ANAE).

<sup>1023</sup> T. 20 October 2009, pp. 65, 68 (CS) (Witness ANAE).

<sup>1024</sup> T. 25 January 2010, pp. 25-26, 40, 45-51 (CS) (Witness ANAM).

<sup>1025</sup> T. 25 January 2010, pp. 81-82 (Witness ANAM). The Chamber notes that Witness ANAM also testified that Safari Nyambwega died approximately 12 days after the death of President Habyarimana. T. 25 January 2010, p. 62 (CS) (Witness ANAM).

<sup>1026</sup> Prosecution Exhibit 13 (Personal Identification Sheet) (identifying Witness ANAM as a peasant in April 1994 as well as at the time of her testimony in January 2010); T. 26 January 2010, p. 30 (Witness ANAM).

<sup>1027</sup> T. 25 January 2010, pp. 61-62 (CS) (Witness ANAM) (about two weeks after Safari's death, which took place approximately 12 days after President Habyarimana's death).

<sup>1028</sup> The Chamber further recalls that Witness ANAM gave a statement on 17 October 2002, and testified that she signed it one week later. When the Defence suggested that she had instead signed it more than one month later, she responded that only one week had passed. In fact, she had actually signed it the following month, on 20 November 2002. T. 26 January 2010, pp. 2-4 (Witness ANAM); Defence Exhibit 14 (Statement of Witness ANAM, 17 October 2002); Defence Exhibit 15 (Statement of Witness ANAM, 17 October 2002).

estimations of distances.<sup>1029</sup> Based on these discrepancies, the Chamber does not consider Witness ANAM to be reliable concerning measurements of time and distance. As such, her evidence concerning the time frame for Nyambwega's attack carries no weight. The Chamber notes, however, that it will assess Witness ANAM's reliability as to other matters, as well as her credibility, below.

788. The Chamber considers that Witnesses ANAF and DWAN-3 witnessed the attack on Nyambwega and they specify that it took place on 7 April 1994. Taking into account their consistent and first-hand testimony, as well as the corroborative account of Witness DWAN-133 as to the date, the Chamber finds beyond reasonable doubt that Safari Nyambwega was attacked and seriously injured on 7 April 1994.

#### **3.10.4.2 Distributions at Roadblocks, 7 April 1994**

789. The Chamber observes that only Witnesses ANAE, ANAM and ANAL gave direct evidence about Ngirabatware transporting weapons to Nyamyumba *commune* and giving them to Bagango for distribution to the *Interahamwe* and others. The Chamber will first assess the evidence of Witnesses ANAE and ANAM concerning alleged distributions at roadblocks prior to the attack on Safari Nyambwega, before turning at a later stage to the testimony of Witness ANAL about an alleged delivery of weapons at Alphonse Bananiye's house on the evening of 7 April 1994.

790. Witnesses ANAE and ANAM gave evidence about Ngirabatware arriving at *Bruxelles* roadblock in a vehicle and distributing weapons there, and the Chamber considers that these two episodes share similar features. Both witnesses testify that Ngirabatware arrived in a black Pajero vehicle, which was followed by a second vehicle carrying weapons. According to both accounts, Ngirabatware explained that he had brought weapons because he did not want to see any Tutsis alive in that area. Notably, both witnesses place this event as being after President Habyarimana's death but prior to the attack on Safari Nyambwega, which the Chamber has found occurred on 7 April 1994.

791. The Chamber notes, however, that there are numerous differences in the two accounts. Witness ANAE stated that Ngirabatware was in his vehicle with a driver and a soldier, and that the second car was a blue Daihatsu truck with four soldiers. Witness ANAM asserted that Ngirabatware was with his wife and two children, a domestic servant and a driver, and that the second vehicle was a white Hilux driven by a female *gendarme*. Witnesses ANAE and ANAM named different persons present at the *Bruxelles* roadblock.<sup>1030</sup> Only Witness ANAE testified that Bagango came to the *Bruxelles* roadblock, while Witness ANAM stated that Bagango met

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<sup>1029</sup> When challenged on her estimation that the *Bruxelles* roadblock and Gitsimbi/Cotagirwa roadblock were "15 steps" apart, Witness ANAM stated that: "I never went to school, so I cannot estimate lengths [...] in metres. I gave my own estimate." T. 25 January 2010, p. 43 (CS); T. 26 January 2010, p. 30 (Witness ANAM). The Chamber recalls that during the site visit, the distance between these two locations was recorded as being 100 meters. See Chambers Exhibit 1 (Site Visit Report), p. 7.

<sup>1030</sup> T. 20 October 2009, pp. 33, 41; T. 21 October 2009, pp. 24, 46-48, 58 (Witness ANAE) (testified to having seen Faustin Bagango, Jean Simpunga, Hassan Tubaramure, Cenge, Butanda and Dominique at the *Bruxelles* roadblock); T. 25 January 2010, pp. 25-27, 46 (CS) (Witness ANAM) (described seeing Bishirambona, Murazemungu, Juma and Biryia).

Ngirabatware at the Gitsimbi/Cotagirwa roadblock. Furthermore, Witness ANAE testified about the distribution of machetes, whereas Witness ANAM discussed firearms and grenades.

792. Some of these differences are material in the context of this allegation. Given that paragraph 16 of the Indictment alleges that Ngirabatware gave weapons to Bagango, it is material that Witnesses ANAE and ANAM provided different accounts as to where Bagango first arrived to receive these weapons. In addition, the Chamber considers it significant that the witnesses provided detailed evidence about the weapons that they saw Ngirabatware distributing, and that they each described seeing Ngirabatware distribute different types of weaponry. Based on these material differences, the Chamber concludes that Witnesses ANAE and ANAM did not testify to the same alleged distribution of weapons, but rather that they testified to different alleged events.

793. The Chamber recalls that both Witnesses ANAE and ANAM described the weapons distributions that they saw as having occurred before the attack on Safari Nyambwega, which the Chamber has found took place on 7 April 1994. Witness ANAE testified that after she observed Ngirabatware distributing machetes at the *Bruxelles* roadblock, she went to a friend's house, where she was approached by someone who said that Safari was being attacked. Witness ANAM described seeing Ngirabatware at the *Bruxelles* roadblock, where he distributed firearms and grenades, chastised the *Interahamwe* and identified Safari as an *Inyenzi*. After Witness ANAM followed Ngirabatware to the nearby Gitsimbi/Cotagirwa roadblock where he distributed further weapons, she had just returned home when she saw that Safari had just been arrested and she noticed Witness ANAE in the gathered crowd. Given this sequence of events, the Chamber considers that the alleged distribution seen by Witness ANAE came before the alleged distribution discussed by Witness ANAM. The Chamber will now turn to consider each witness in turn.

794. Witness ANAE testified that after the death of President Habyarimana, but before the attack on Safari Nyambwega, she saw Ngirabatware at a Busheke *cellule* roadblock in 1994.<sup>1031</sup> Ngirabatware arrived in a black Pajero and told Cenge to get Bagango. A blue Daihatsu truck with four soldiers arrived, Cenge left with three soldiers and they returned with Bagango. The witness was five meters from Ngirabatware when he told Bagango that he brought weapons and did not want to see any Tutsis alive in *Bruxelles*. About ten *Interahamwe* were present and one of them, Dominique, boarded the vehicle and offloaded ten machetes. Bagango then gave the machetes to *Conseiller* Simpunga, who handed nine machetes to *Interahamwe* who were manning three roadblocks and kept one for himself. Bagango instructed that the other machetes in the vehicle should be taken to Kabilizi and Munanira. They were then taken to Bagango's house, and were offloaded with the help of various *Interahamwe*.<sup>1032</sup>

795. The Chamber notes that Witness ANAE stated that she was at the roadblock when Ngirabatware arrived because she and Alphonse Bananiye's child had gone to the road to buy some candies and biscuits, and that the witness' parents may have been in hiding in the bush during this period.<sup>1033</sup> The Chamber notes that the President's plane had been shot down only the

<sup>1031</sup> T. 20 October 2009, p. 32; T. 20 October 2009, p. 71 (CS) (Witness ANAE).

<sup>1032</sup> T. 20 October 2009, pp. 34, 41; T. 21 October 2009, pp. 46, 57-58 (Witness ANAE).

<sup>1033</sup> See T. 21 October 2009, p. 77 (CS) (Witness ANAE) (stating that her parents hid in the bush during the day, but not identifying the date on which they started hiding).

previous night, and that the killings in the area had either not begun or had not intensified. Witness ANAE also indicated that she was not hiding during this time period because she knew Ngirabatware's family well and was not afraid of him.<sup>1034</sup> In addition, she was in the company of the child of Ngirabatware's brother. Taking these factors into account, the Chamber considers that Witness ANAE convincingly explained why she was near the roadblock on 7 April 1994 and why she remained there after Ngirabatware arrived.

796. The Defence challenges the credibility and reliability of Witness ANAE based on her evidence that she was 12 years old when the President's plane crashed.<sup>1035</sup> According to the Defence, numerous witnesses identified Witness ANAE as having been between seven and nine years old at this time.<sup>1036</sup> The Chamber considers it speculative, however, that these witnesses would have been in a position to know Witness ANAE's age in 1994. Conversely, Defence Witness DWAN-147 is in a position to know this information, and he stated that she was born in 1982.<sup>1037</sup> The Chamber further recalls that at least one additional witness appeared to estimate that Witness ANAE was 14 years old in 1994.<sup>1038</sup> Taking this into account, the Chamber finds Witness ANAE's evidence about her age to be reliable and corroborated by Witness DWAN-147.

797. The Defence further contends that Witness ANAE stated that Witness ANAL was present during the distribution of machetes at the *Bruxelles* roadblock, while Witness ANAL never mentioned being there.<sup>1039</sup> The Chamber notes that Witness ANAL was not asked about this issue during her testimony, and as such the Chamber does not consider the testimonies of Witnesses ANAE and ANAL to be incompatible. In any event, this is not capable of raising doubt in Witness ANAE's evidence about Ngirabatware's role in the distribution of weapons.

798. The Defence also submits that Witness ANAE's prior statement to Tribunal investigators, in October 2002, falsified her date of birth and erroneously listed her father as her neighbor.<sup>1040</sup> When asked about these discrepancies, Witness ANAE explained that the person who took her statement made a mistake regarding her date of birth, and that the witness had since attempted to rectify this error.<sup>1041</sup> She confirmed that she listed her father as a neighbor, and explained that she did this because she was afraid for her security. The Chamber finds her explanations to have

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<sup>1034</sup> T. 21 October 2009, p. 76 (CS) (Witness ANAE).

<sup>1035</sup> See, for example, Defence Closing Argument, T. 24 July 2012, p. 47.

<sup>1036</sup> Defence Closing Brief, para. 362 (referring to the evidence of Witnesses ANAD, DWAN-1, DWAN-3, DWAN-9 and DWAN-11).

<sup>1037</sup> T. 12 July 2011, pp. 59-60 (CS); T. 13 July 2011, pp. 20-22 (CS) (Witness DWAN-147).

<sup>1038</sup> T. 5 October 2009, pp. 39-46 (CS) (Witness ANAL) (The witness fled to Zaire at an unspecified time and remained there for one month before returning to Rwanda. One month after her return, she became acquainted with Witness ANAE and estimated her age to be 14 years during this time.).

<sup>1039</sup> Defence Closing Brief, para. 365-366. See also T. 21 October 2009, pp. 60-61 (CS) (Witness ANAE); T. 5 October 2009, pp. 24-29 (CS); T. 7 October 2009, pp. 5, 7-11, 13-14, 42, 53-54, 61 (CS) (Witness ANAL).

<sup>1040</sup> Defence Closing Brief, para. 360; Defence Closing Argument, T. 24 July 2012, p. 46. The Chamber also notes that Witness ANAE's name was not spelled correctly. Compare Prosecution Exhibit 12 (Personal Identification Sheet) and Defence Exhibit 10 (Statement of Witness ANAE, 16 October 2002). Witness ANAE explained that this was due to an error made by the person who took down her statement. T. 21 October 2009, p. 11 (CS) (Witness ANAE). The Chamber accepts this explanation as reasonable.

<sup>1041</sup> T. 21 October 2010, pp. 7-8 (CS); T. 21 October 2009, pp. 10-13 (Witness ANAE); Defence Exhibit 10 (Statement of Witness ANAE, 16 October 2002); Prosecution Exhibit 12 (Personal Identification Sheet).

been reasonable under the circumstances, and that these inconsistencies do not raise any doubt in relation to her evidence on the weapons distribution.

799. The Defence also contends that various inconsistencies between Witness ANAE's testimony and other evidence in this case impact her credibility.<sup>1042</sup> After careful consideration, the Chamber finds that these issues do not impact her overall credibility and they do not call into question her evidence about the distribution of weapons.

800. Turning to her reliability, the Chamber first notes that Witness ANAE was 12 years old at the time she saw this alleged distribution of weapons. The Chamber has no doubt that her age provided no barrier to either her ability to have observed these events, or her ability to have properly recollected this episode and testified to it before the Chamber.

801. As for Witness ANAE's ability to identify Ngirabatware, the Chamber recalls that she testified to having visited Ngirabatware's parents regularly and that she first recognized Ngirabatware at his father's funeral in 1993. Afterwards, she saw Ngirabatware several times when he visited his family.<sup>1043</sup> Witness ANAE further stated that on the day of the alleged weapons distribution, Ngirabatware remained at the roadblock for about 30 minutes, that a crowd gathered around him due to his popularity, and that she was five meters away from Ngirabatware at one point during this event. Taking these factors into account, the Chamber has no doubt that Witness ANAE would have been able to reliably identify Ngirabatware during this event.

802. With regard to her ability to identify Faustin Bagango and Jean Simpunga, who are alleged members of the joint criminal enterprise, the Chamber observes that Witness ANAE was born in Rushubi *secteur*, Nyamyumba *commune*, and that she continued to live there in 1994.<sup>1044</sup> Bagango was therefore the *bourgmestre* of her *commune*, and Simpunga was the *conseiller* of her *secteur*. Indeed, Witness ANAE identified Bagango as the *bourgmestre* and Simpunga as having been *conseiller*.<sup>1045</sup> She also described Bagango and Simpunga, respectively, as supervising the *Interahamwe* at the *commune* and *secteur* level,<sup>1046</sup> and she identified the location of Bagango's home as having been near the Gitsimbi/Cotagirwa roadblock.<sup>1047</sup> Given these factors, and taking into account the proximity of Witness ANAE to the weapons distribution that also featured Bagango and Simpunga, the Chamber is convinced beyond any reasonable doubt about the ability of Witness ANAE to reliably identify Bagango and Simpunga during this episode.

803. The Chamber finds that Witness ANAE's testimony was detailed, consistent and credible that Ngirabatware distributed machetes at the *Bruxelles* roadblock to Bagango, Simpunga and others.

804. Turning to Witness ANAM, the Chamber considers that she also gave a credible and detailed account of having seen Ngirabatware at the *Bruxelles* roadblock prior to the attack on

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<sup>1042</sup> See, for example, Defence Closing Brief, paras. 363-364, 367-374; Defence Closing Argument, T. 24 July 2012, pp. 46-47; T. 25 July 2012, pp. 41, 55.

<sup>1043</sup> T. 20 October 2009, pp. 29, 38, 45-48; T. 20 October 2009, pp. 30-31, 56, 58, 62-63 (CS) (Witness ANAE).

<sup>1044</sup> Prosecution Exhibit 12 (Personal Identification Sheet).

<sup>1045</sup> See, for example, T. 20 October 2009, p. 34; T. 21 October 2009, p. 48 (Witness ANAE).

<sup>1046</sup> T. 20 October 2009, p. 41 (Witness ANAE).

<sup>1047</sup> T. 21 October 2009, p. 47; T. 21 October 2009, p. 61 (CS) (Witness ANAE).

Safari Nyambwega. Ngirabatware was in a black Pajero with his wife and two children, a domestic servant and a driver. There was a second vehicle, a white Hilux, loaded with firearms and grenades. Ngirabatware alighted and chastised the *Interahamwe*, who included the witness' step-brother, for letting Tutsis like Safari move around freely. He told the *Interahamwe* that he brought weapons because he did not want to see any Tutsis in Busheke *cellule*. After an *Interahamwe* offloaded some weapons at the *Bruxelles* roadblock, Ngirabatware continued his journey to the Gitsimbi/Cotagirwa roadblock, where other weapons were offloaded onto Bagango's vehicle. Ngirabatware ordered Bagango to work well because Ngirabatware did not want any Tutsis in Nyamyumba *commune* and directed that Safari needed to be located and killed. Safari was attacked shortly afterwards.<sup>1048</sup>

805. The Defence challenges her credibility by contending that Witness ANAM gave contradicting evidence regarding where her step-brother, who was an *Interahamwe* that protected her, was located when she witnessed the events at the Gitsimbi/Cotagirwa roadblock.<sup>1049</sup> Witness ANAM stated that her step-brother was at the *Bruxelles* roadblock when weapons were distributed, and from there he went immediately to join in the attack on Safari Nyambwega. He was not present at the Gitsimbi/Cotagirwa roadblock, and in his absence the witness stood at a distance from the roadblock.<sup>1050</sup> The Chamber notes that she was consistent throughout her testimony as to where she was located when she got to the Gitsimbi/Cotagirwa roadblock,<sup>1051</sup> and the Chamber does not see any discrepancy in this regard.

806. In addition, the Defence alleges that Witness ANAM "clearly colluded" with other Prosecution witnesses.<sup>1052</sup> To support this contention, the Defence submits that Witness ANAM is related to Witnesses ANAE, ANAG and ANAL, that they all listed the same contact person on prior statements, and that they agreed not to identify their family relationship. The Defence also submits that Witnesses ANAM and ANAE improperly agreed to testify that Ngirabatware and the Kabuga family were in the area in June 1994.<sup>1053</sup> The Chamber recalls that collusion is an agreement between witnesses for the purpose of untruthfully incriminating an accused and that, if established, their evidence would have to be excluded (2.8.10).<sup>1054</sup> The Chamber notes these submissions, but considers that the Defence has failed to show how this indicates collusion in their testimony. The Chamber finds that the Defence submissions in this regard are vague and wildly speculative. These submissions do not raise the spectre of collusion, let alone establish that it occurred in this case.

807. The Defence also identifies inconsistencies between Witness ANAM's in-court testimony and her statement to Tribunal investigators in October 2002. In particular, the Defence submits that her prior statement did not mention the presence of her *Interahamwe* step-brother at the

<sup>1048</sup> T. 25 January 2010, pp. 25-29, 35-40, 44-45 (CS); T. 25 January 2010, pp. 72, 85; T. 26 January 2010, pp. 48-49 (CS); T. 27 January 2010, pp. 3, 5-6; T. 27 January 2010, pp. 9-11, 16-17 (CS) (Witness ANAM).

<sup>1049</sup> Defence Closing Brief, paras. 792, 796-799.

<sup>1050</sup> T. 25 January 2010, pp. 26, 46 (CS); T. 27 January 2010, pp. 7-8, 51 (Witness ANAM).

<sup>1051</sup> T. 27 January 2010, pp. 7-8, 51 (CS) (Witness ANAM).

<sup>1052</sup> Defence Closing Brief, para. 776.

<sup>1053</sup> See Defence Closing Brief, paras. 371, 776, fns. 994, 1829; Defence Closing Argument, T. 24 July 2012, pp. 46-47; T. 25 July 2012, p. 41.

<sup>1054</sup> *Gatete*, Judgement (AC), para. 106; *Kanyarukiga*, Judgement (AC), para. 238; *Setako*, Judgement (AC), para. 137; *Renzaho*, Judgement (AC), para. 137; *Karera*, Judgement (AC), para. 234.

*Bruxelles* roadblock.<sup>1055</sup> Witness ANAM explained that in her prior statement she avoided discussing her step-brother in order to avoid disclosing her own identity, as she was unsure what could happen to her.<sup>1056</sup> The Chamber finds this explanation to be reasonable under the circumstances, and does not consider that this omission could raise doubt in her credible testimony about these weapons distributions.

808. The Chamber notes that Witness ANAM's prior statement only alleged that weapons were distributed at the roadside near the house of Ngirabatware's parents, while in court she described the distribution of weapons at the *Bruxelles* roadblock and at the Gitsimbi/Cotagirwa roadblock. Witness ANAM explained that what she said earlier was not very well understood or properly written down.<sup>1057</sup> The Chamber accepts this explanation and notes that both roadblocks are near each other, and are near Ngirabatware's parents' house.<sup>1058</sup>

809. The Chamber further notes that Witness ANAM testified that she knew Ngirabatware because they used to live in the same area, and would see him often when Ngirabatware would come to visit the witness' parents.<sup>1059</sup> In addition, she testified that she was about nine meters away from Ngirabatware when she first saw him at the *Bruxelles* roadblock, and that she was unafraid to be seen because her step-brother was nearby. The Chamber recalls that it has concerns with the ability of Witness ANAM to reliably discern distances, and the Chamber therefore does not rely on her testimony that she was nine meters away. But even without this detail, the Chamber has no doubt that Witness ANAM would have been sufficiently close to Ngirabatware to have been able to identify him at the *Bruxelles* roadblock. She then followed Ngirabatware's vehicle to the nearby Gitsimbi/Cotagirwa roadblock, where she was standing on the stairs near Bango's house and was "very near" to the roadblock.<sup>1060</sup> The Chamber considers that Witness ANAM provided credible testimony that she followed Ngirabatware to that location after having identified him, and that she could still observe what was taking place. Taking this into account, the Chamber has no doubt that Witness ANAM was able to identify Ngirabatware at the Gitsimbi/Cotagirwa roadblock as well.

810. With regard to Witness ANAM's ability to have identified Faustin Bagango at the Gitsimbi/Cotagirwa roadblock, the Chamber notes that she described Bagango as the *bourgmestre* and as an *Interahamwe* leader who used to give orders to her step-brother.<sup>1061</sup> She also testified that Ngirabatware asked someone at the roadblock to get Bagango, and that Bagango arrived immediately. From this evidence, the Chamber has no doubt that Witness ANAM was in a position to reliably identify Bagango at the Gitsimbi/Cotagirwa roadblock.

811. As for Witness ANAM's ability to have listened to Ngirabatware chastise the *Interahamwe* at the *Bruxelles* roadblock and to have overheard the conversation between

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<sup>1055</sup> Defence Exhibit 15 (Statement of Witness ANAM, 17 October 2002); T. 25 January 2010, p. 3; T. 27 January 2010, pp. 4, 8 (CS) (Witness ANAM).

<sup>1056</sup> T. 27 January 2010, p. 8 (CS) (Witness ANAM).

<sup>1057</sup> T. 27 January 2010, pp. 12-14 (CS) (Witness ANAM); Defence Exhibit 15 (Statement of Witness ANAM, 17 October 2002).

<sup>1058</sup> See, for example, Chambers Exhibit 1 (Site Visit Report), p. 7 (the distance from the *Bruxelles* roadblock location to the Gitsimbi/Cotagirwa roadblock location is approximately 100 meters).

<sup>1059</sup> T. 25 January 2010, pp. 14-16 (Witness ANAM).

<sup>1060</sup> T. 27 January 2010, p. 8 (CS) (Witness ANAM).

<sup>1061</sup> T. 25 January 2010, p. 52 (CS); T. 27 January 2010, p. 15 (CS); T. 27 January 2010, p. 47 (Witness ANAM).

Ngirabatware and Bagango at the Gitsimbi/Cotagirwa roadblock, the Chamber recalls that Witness ANAM testified to having been “near” and “very near” Ngirabatware at these respective roadblocks.<sup>1062</sup> The Chamber has found Witness ANAM to have provided credible testimony, and the Chamber does not doubt that she was in a position to have overheard the conversations, as she stated in her evidence.

812. Witness ANAM was also certain that she had seen Ngirabatware with his wife and children at this time. The Defence, however, has provided evidence that Ngirabatware’s wife and children were evacuated from Rwanda on 12 April 1994.<sup>1063</sup> The Chamber notes that Ngirabatware’s family was in Rwanda on 7 April 1994 and it is therefore possible that they may have been at *Bruxelles* on this date. In any event, the Chamber does not consider that any discrepancy as to the presence of Ngirabatware’s family is capable of raising doubt in the core aspect of Witness ANAM’s evidence that she saw Ngirabatware at the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks prior to the attack on Safari on 7 April 1994.

813. To further cast doubt on her general credibility, the Defence argues that Witness ANAM was unable to correctly describe Ngirabatware’s wife and children.<sup>1064</sup> The Chamber notes that these events happened years ago and with the passage of time it is reasonable that the witness may not be able to describe Ngirabatware’s family with precision. The Chamber finds that these issues have very little impact on the witness’ overall credibility. In the Chamber’s view, these differences are collateral to Ngirabatware’s role in the events.

814. Additionally, the Defence raises a host of challenges to the general credibility of Witness ANAM, based on alleged discrepancies between her evidence and other evidence in this case.<sup>1065</sup> The Chamber has reviewed these submissions, but does not consider that they are sufficient to raise reasonable doubt on the credible and compelling testimony of Witness ANAM concerning the weapons distribution about which she testified.

815. Before turning to the evidence of other witnesses, the Chamber observes that both Witness ANAE and Witness ANAM provided credible, reliable and compelling accounts that Ngirabatware distributed weapons at roadblocks on 7 April 1994. Although the witnesses describe different alleged events, the Chamber notes the significant number of similarities between their accounts, as stated above. The Chamber considers that Witnesses ANAE and ANAM corroborate each another to the extent that Ngirabatware was in the area of *Bruxelles* roadblock on 7 April 1994, where he was engaged in distributing weapons to Bagango and *Interahamwe*, as well as in encouraging attacks on Tutsis. The Chamber will now turn to any other evidence that may corroborate these accounts.

816. The Chamber recalls that, based on the credible evidence proffered by Witness ANAO, it has been established that Ngirabatware, Faustin Bagango, Égide Karemera and Major Xavier Uwimana attended a rally and flag-raising ceremony at Kitracó between two and four days

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<sup>1062</sup> T. 25 January 2010, pp. 27, 45 (CS) (Witness ANAM).

<sup>1063</sup> Defence Closing Brief, para. 793.

<sup>1064</sup> Defence Closing Brief, paras. 794, 800; T. 25 January 2010, pp. 75, 80-81 (Witness ANAM); T. 1 December 2010, p. 39 (Ngirabatware).

<sup>1065</sup> See Defence Closing Brief, paras. 777-802; Defence Closing Argument, T. 24 July 2012, pp. 45-47; T. 25 July 2012, p. 41.



before President Habyarimana's plane was shot down. At this event, Ngirabatware spoke to around 600 to 800 *Interahamwe* and promised them at least one firearm so that they could shoot in the air to disperse the enemy. A few hours later, Bagango came to the Gitsimbi/Cotagirwa roadblock and distributed firearms and grenades that were subsequently used to kill Tutsis (3.8.3.4).<sup>1066</sup> This event occurred prior to the death of President Habyarimana, and while paragraph 16 deals with events that happened after the death of the President, the Chamber considers that this evidence shows a pattern that Ngirabatware previously distributed weapons to the *Interahamwe*. Although the Chamber finds that the Kitracó event provides only minimal corroboration that Ngirabatware distributed weapons on 7 April 1994, the Chamber considers that this illustrates a possible trend of Ngirabatware arranging for and providing weapons, through Bagango, to persons manning roadblocks in the area.

817. The Chamber recalls that Witness ANAL testified that Ngirabatware was in Nyamyumba *commune* on the evening of 7 April 1994, and that he brought boxes of weapons to Alphonse Bananiye's house before providing these boxes to Bagango for further distribution. The Chamber also recalls that Witness AFS testified that Bagango possessed and distributed grenades in the *commune* on 10 April 1994. These allegations, if established, may further demonstrate a trend of Ngirabatware providing weapons to Bagango for the latter's eventual distribution. The Chamber will assess this evidence below.

818. The Chamber also notes that Witness ANAS testified that Ngirabatware promised weapons at the Gisa roadblock before the death of President Habyarimana. After Habyarimana's death, according to the witness, the *Interahamwe* were asked to go and fetch these weapons from Bagango's house. The Chamber observes that this evidence appears to be significant in the context of this case. But the Chamber is concerned by the lack of details provided by Witness ANAS in this instance. He does not say who informed the *Interahamwe* about these weapons, nor does he confirm that weapons were ever received from Bagango's house. The Chamber also notes that the witness' unattributed hearsay evidence needs to be treated with appropriate caution. Taking these factors into account, the Chamber will not rely on Witness ANAS's testimony as a possible basis of corroboration of the weapons distribution seen by Witnesses ANAE and ANAM.

819. Turning now to Witness ANAU, the Chamber recalls his evidence that two weeks after the killings began, Bagango came to the Bralirwa roadblock, gave those manning it a firearm and grenades and said that he had received the weapons from Ngirabatware.<sup>1067</sup> The Chamber observes that this constitutes hearsay that Bagango had received the weapons from Ngirabatware. The Chamber further recalls that Witness ANAU confessed to his involvement in the killing, looting, and destruction of houses in 1994, for which he was sentenced by the Rubona *secteur Gacaca* court to seven years' imprisonment.<sup>1068</sup> The witness also accepted

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<sup>1066</sup> The Chamber notes that the Prosecution relies upon Witness ANAO's evidence about this event in support of the allegation of weapons distribution in paragraph 16 of the Indictment. See Prosecution Closing Brief, paras. 59-61. Because Indictment paragraph 16 alleges the distribution of weapons "after the death of President Habyarimana", the Chamber considers that this evidence falls outside the scope of this paragraph of the Indictment, and accordingly will not consider it as a basis for conviction in relation to this allegation.

<sup>1067</sup> T. 9 March 2010, pp. 63-65 (CS); T. 15 March 2010, pp. 16-17 (CS) (Witness ANAU).

<sup>1068</sup> He was convicted by the *Gacaca* court of Rubona *secteur* and sentenced to seven years' imprisonment but spent only six years and eight months in prison after which he carried out community service for the remaining four

money to avoid implicating someone before the *Gacaca* court, for which he was jailed for one week.<sup>1069</sup> For all these reasons, the Chamber will treat his testimony with appropriate caution.

820. The Chamber also observes inconsistencies in the testimony of Witness ANAU. He first stated that he manned the Bralirwa roadblock starting on 8 April 1994, but later testified that he began manning this roadblock about two weeks later. The witness explained that if he had mentioned manning the roadblock starting on 8 April 1994, this would have been a mistake.<sup>1070</sup> The Chamber accepts the witness' explanation and correction as being reasonable under the circumstances.

821. The Chamber also notes that there was no mention of Witness ANAU having manned the Bralirwa roadblock in his testimony before the Rubona *secteur Gacaca* court in July 2007, or in his statement to Tribunal investigators in November and December 2007.<sup>1071</sup> When asked about this omission in his *Gacaca* testimony, the witness explained that he did not mention this because no killings took place at the roadblock.<sup>1072</sup> The Chamber considers this to be a reasonable explanation, and notes that Witness ANAU testified to manning this roadblock two weeks after the killings began. With regard to his Tribunal statement, the Chamber notes that because the Defence did not raise this particular omission when cross-examining the witness, he did not have an opportunity to explain this omission.<sup>1073</sup> The Chamber therefore does not consider that it impacts his credibility.

822. Nevertheless, the Chamber notes the caution required due to the witness' background and the hearsay nature of this aspect of his testimony. The Chamber therefore considers that Witness ANAU's evidence provides only minimal corroboration of activities concerning Bagango and the provision of weapons by Ngirabatware.

823. Witness ANAG stated that during the genocide, she saw Bagango with a bag and heard *Interahamwe* say that it contained grenades. Because this evidence constitutes hearsay, the Chamber will treat it with appropriate caution, especially in light of the fact that it is unclear whether the *Interahamwe* were making this claim from direct knowledge or from speculation. The Chamber also notes that the witness does not specify when this event happened, including whether it happened in April 1994 or in the following months. Taking this into account, the Chamber will not rely on her evidence as possible corroboration of the distribution of grenades testified to by Witness ANAM.

824. Both Witnesses ANAE and ANAM described the role of Prosecution Witness ANAO in Ngirabatware's alleged distribution of weapons on 7 April 1994. Witness ANAO confirmed that he was an *Interahamwe* who manned the Gitsimbi/Cotagirwa roadblock, but he testified that he

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months and was fined 450,000 Rwandan francs as reparation. He expressed remorse for his participation in the genocide. T. 9 March 2010, pp. 27, 45-47, 51 (CS); T. 15 March 2010, p. 44 (CS) (Witness ANAU).

<sup>1069</sup> The witness claimed that he accepted the payment, with every intention to speak the truth before the *Gacaca* court. T. 15 March 2010, pp. 20-24, 35-36 (CS) (Witness ANAU).

<sup>1070</sup> T. 11 March 2010, p. 86 (CS); T. 15 March 2010, p. 15 (CS) (Witness ANAU).

<sup>1071</sup> Defence Exhibit 57A (Testimony of Witness ANAU Before Rubona *Gacaca* Court, July 2007); Defence Exhibit 56 (Statement of Witness ANAU, 8 November and 3 December 2007).

<sup>1072</sup> T. 15 March 2010, p. 11 (CS) (Witness ANAU).

<sup>1073</sup> See generally *Ntawukuliyayo*, Judgement (AC), paras. 45, 152.

did not see Ngirabatware during the genocide, but instead last saw him a few days before President Habyarimana's death.

825. Witness ANAO was convicted and sentenced for his participation in the genocide in Rubona *secteur*. The Chamber also considers that he may have had a motive to distance himself from any weapons distribution that occurred on 7 April 1994, particularly given his role in effecting this alleged distribution. The Chamber therefore treats his evidence with appropriate caution with regard to this allegation. The Chamber also recalls that it has accepted and relied upon certain aspects of Witness ANAO's evidence elsewhere in the Judgement (3.8.3.4). In this instance, however, the Chamber does not consider that Witness ANAO's evidence—denying any role for Ngirabatware or himself in a weapons distribution on 7 April 1994—is capable of raising doubt in the consistent and corroborated accounts of Witnesses ANAE and ANAM.

826. The Chamber will now turn to the evidence adduced by the Defence. Preliminarily, the Chamber notes the obvious motive that Ngirabatware may have in deflecting this criminal allegation against him in his own trial, and takes this into account in assessing his testimony.

827. Witnesses DWAN-71 and DWAN-4 are also directly implicated in the alleged distribution of weapons on 7 April 1994, as testified to by Witness ANAE. She also described having seen Witnesses DWAN-71, DWAN-4 and DWAN-9 together after the weapons distribution, as they headed to Ngirabatware's parents' house with Ngirabatware and others. The Chamber considers that these three witnesses may have also shared a motive to distance themselves from these allegations. The Chamber will treat their evidence, therefore, with appropriate caution.

828. In addition to this motive, the Chamber recalls that Witness DWAN-71 is also an alleged co-conspirator and member of a joint criminal enterprise with both Ngirabatware and Bagango, as recognized by the Defence during the course of his testimony.<sup>1074</sup> The Chamber therefore considers that Witness DWAN-71 may have had an additional, and stronger, motive to deny that he was involved in the distribution of weapons in the *Bruxelles* area with Ngirabatware and Bagango on 7 April 1994.

829. The Chamber recalls that Witness DWAN-71 testified that the *Bruxelles* roadblock was set up in order to protect Tutsis.<sup>1075</sup> This roadblock, however, was very close to the

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<sup>1074</sup> See, for example, T. 23 June 2011, p. 36 (“Mr. Herbert: The only thing I'd raise is this is not an ordinary witness you may think because he's named as a co-conspirator. That is a very serious difference which places him in a wholly different category. [...] He may, subsequent to your decision, if there is a conviction, for instance, face the prospect, here or somewhere else, of facing a prima facie case himself. [...]”).

<sup>1075</sup> See, for example, T. 23 June 2011, p. 17; T. 27 June 2011, p. 42 (CS) (Witness DWAN-71) (stating that the *Bruxelles* roadblock was established to protect Tutsis, and listing the names of Tutsis who he said had been protected there). The Chamber notes the evidence that Tutsis sought refuge at Nengo hill, but does not consider that this implies that they were protected at the *Bruxelles* roadblock. See, for example, T. 1 October 2009, pp. 8-9 (CS) (Witness ANAF) (the witness, a Tutsi, hid with her children on Nengo hill on 7 April 1994 and testified that is how they managed to survive); T. 5 October 2009, p. 48 (CS) (Witness ANAL) (Tutsis were protected at Nengo); T. 4 March 2010, pp. 11-13, 29, 37, 40, 50 (CS) (Witness AFS) (His wife, a Tutsi, hid on Nengo hill on 7 April 1994 and was joined by her children on 8 April 1994. Tutsis who were protected were protected in their respective homes or in the homes of those who were protecting them on Nengo hill.); T. 11 July 2011, pp. 4-5; T. 11 July 2011, p. 51 (CS) (Witness DWAN-2) (Tutsis who were threatened went to Nengo to find refuge, which was about three kilometers from the roadblock and approximately 30 minutes away); T. 16 August 2011, p. 56 (CS); T. 16 August

Gitsimbi/Cotagirwa roadblock.<sup>1076</sup> The evidence establishes, and the Chamber finds, that the Gitsimbi/Cotagirwa roadblock served as a base of operations for the killers and looters in the area.<sup>1077</sup> In light of this, the Chamber does not accept that a roadblock was set up at *Bruxelles* in

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2011, p. 66; T. 18 August 2011, p. 6 (CS); T. 22 August 2011, pp. 25-26 (CS) (Witness DWAN-9) (Tutsis sought refuge on Nengo hill); T. 21 June 2011, pp. 56-57, 65-66 (CS); T. 22 June 2011, p. 46 (CS) (Witness DWAN-11) (Tutsis, including men with Tutsi wives, had taken refuge on Nengo hill because their lives were in danger); T. 27 September 2011, pp. 16-18, 65 (CS) (Witness DWAN-39) (His wife, a Tutsi, sought refuge on Nengo hill because his godfather had told him that Nengo hill was safe and they had heard that people were protecting Tutsis on that hill); T. 10 October 2011, pp. 2-3, 5 (Witness DWAN-41) (on or around 8 April 1994, many Tutsis went to Nengo hill in order to seek refuge and all the Tutsis on that hill survived the killings); T. 23 June 2011, p. 30 (CS) (Witness DWAN-71) (Tutsis sought refuge on Nengo hill); T. 11 July 2011, pp. 66, 68 (CS); T. 12 July 2011, pp. 38, 46, 48-49 (CS) (Witness DWAN-147) (Tutsis and non-Tutsis sought refuge in the Nengo zone of Nyabagobe *cellule* around five or six days after the death of President Habyarimana, and all those people who survived were hiding in Nengo).

<sup>1076</sup> See, for example, T. 1 October 2009, p. 7 (CS) (Witness ANAF) (50 meters); T. 27 January 2010, p. 50 (CS) (Witness ANAM) (people at these roadblocks could call out to one another, and if the ground was flat, one could easily see the other roadblock); T. 12 July 2011, pp. 38, 43 (CS) (Witness DWAN-147) (200 to 250 meters, and one could walk the distance in three to four minutes); T. 18 August 2011, pp. 25-26 (CS) (Witness DWAN-9) (200 to 250 meters); T. 16 June 2011, p. 65 (CS) (Witness DWAN-3) (the distance between the Gitsimbi/Cotagirwa and the Kiroji roadblock was “long”); T. 27 June 2011, p. 38 (Witness DWAN-71) (the distance between Adèle’s house and the Gitsimbi/Cotagirwa roadblock was 600 to 800 meters). See also Chambers Exhibit 1 (Site Visit Report), p. 7 (The Parties agreed that a roadblock was mounted adjacent to Adèle’s house, which the Prosecution referred to as the *Petit Bruxelles* roadblock and the Defence referred to as the Nyabagobe roadblock. The distance from Adèle’s house to Gitsimbi was 100 meters.). The Chamber recalls that “observations from a site visit taken several years after an event may only be of limited assistance, their relevance will depend on the circumstances of each case.” *Kanyarukiga*, Judgement (AC), para. 150.

<sup>1077</sup> See, for example, T. 15 February 2010, pp. 46, 49 (CS); T. 16 February 2010, p. 4; T. 17 February 2010, pp. 19-20 (Witness ANAO) (After President Habyarimana’s death, the instructions received by those manning the Gitsimbi/Cotagirwa roadblock was to kill Tutsis not only at the roadblocks, but in their homes as well. People were killed at that roadblock, including Thérèse.); T. 21 October 2009, p. 61 (CS) (Witness ANAE) (Sebuwa attacked Thérèse not far from this roadblock); T. 16 August 2011, p. 65; T. 17 August 2011, p. 70 (CS); T. 18 August 2011, pp. 25-26, 86 (CS) (Witness DWAN-9) (This roadblock was manned by killers, looters, bandits and thieves who would plan attacks to carry out at night. They targeted Tutsis and wanted to exterminate the Tutsi ethnic group. They also attacked rich Hutus married to Tutsi women, though the people manning the roadblock could be bribed to spare a life.); T. 4 October 2011, pp. 7, 9-10 (CS); T. 5 October 2011, pp. 26-27; T. 6 October 2011, pp. 2-3, 12-13 (Witness DWAN-133) (The roadblock was manned by bandits and thieves who would leave the roadblock to kill and loot. They manned it so that they could track down Tutsis in neighboring areas and to seek out Tutsis. Tutsis trying to cross the roadblock would be attacked or killed.); T. 11 July 2011, p. 61; T. 12 July 2011, pp. 38, 41-45 (CS) (Witness DWAN-147) (The persons manning this roadblock tried to kill and loot in Nyabagobe *cellule*. Although those manning the roadblock killed Tutsis, none were killed at this roadblock. Instead, they killed Tutsis in Rushubi *secteur* and other *secteurs*.); T. 16 June 2011, pp. 60-61 (CS); T. 16 June 2011, p. 73 (Witness DWAN-3) (The roadblock was manned by bandits and thieves, who held meetings there to determine which Tutsis’ houses to loot. No Tutsis were killed at the roadblock. The witness considered that she could have been killed there if her husband had not paid the *Interahamwe* there for her release.); T. 7 July 2011, p. 78 (Witness DWAN-2) (*Interahamwe* manned this roadblock and tried to kill people hiding in Nyabagobe *cellule*); T. 27 June 2011, p. 37 (Witness DWAN-71) (the roadblock was manned by killers and looters). The Chamber notes the evidence in the record that those manning the Gitsimbi/Cotagirwa roadblock would disperse when approached by Faustin Bagango, Jean Simpunga or other authority figures, but does not consider this evidence to be credible in light of the overwhelming evidence about the notorious nature of those manning this roadblock. See, for example, T. 16 August 2011, p. 65; T. 18 August 2011, p. 26 (CS) (Witness DWAN-9) (they would flee when approached by Simpunga or soldiers); T. 27 June 2011, p. 40 (CS) (Witness DWAN-71) (those manning the roadblock would leave when Bagango came, but would return after he passed); T. 4 October 2011, pp. 5, 9 (CS); T. 5 October 2011, pp. 25-27; T. 5 October 2011, p. 32 (CS); T. 6 October 2011, pp. 3, 12-13 (Witness DWAN-133) (The authorities knew of the Gitsimbi/Cotagirwa roadblock, and those manning it would avoid and hide from Simpunga, Bagango and the

order to protect Tutsis, while allowing the neighboring Gitsimbi/Cotagirwa roadblock to continue to serve as a base of insecurity.

830. The Chamber further observes that in addition to this alleged distribution of weapons, Witness DWAN-71 is implicated by Prosecution witnesses in other events that led up to the genocide in 1994.<sup>1078</sup> He was also the only witness to describe Faustin Bagango as having “behaved himself” during the genocide,<sup>1079</sup> which is opposed by the vast quantity of evidence in this case. Moreover, despite the fact that Witness DWAN-71 was a person of authority, and even though Safari Nyambwega was from his area, Witness DWAN-71 responded to Nyambwega’s attack by only filing a report with the *commune* secretariat. He also claims to have filed reports for the other victims,<sup>1080</sup> which the Chamber considers to be illogical and incredible given the circumstances of the genocide.

831. Taking these factors into account, the Chamber does not consider Witness DWAN-71 to be a reliable or a credible witness.

832. Witness DWAN-4 not only denied assisting Ngirabatware in distributing machetes in Rushubi *secteur* between April and July 1994, he also denied meeting with Bagango or having seen any distribution of weapons in Rushubi *secteur* during this time period.<sup>1081</sup> The Chamber notes that Witness DWAN-4 was a soldier, and that he testified that he was positioned in the Mukamira military camp in April 1994.<sup>1082</sup> Even if this were true, the Chamber considers that he

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authorities. The officials, however, did not have the power to hinder those manning the roadblock from doing what they were doing, and even if instructed to stop, they would not have obeyed such an order.).

<sup>1078</sup> See, for example, T. 13 October 2009, pp. 66-68 (CS); T. 19 October 2009, pp. 15-17, 21, 23-30 (CS); T. 20 October 2009, pp. 6-8 (CS) (Witness ANAK) (Witness DWAN-71 was one of the intellectuals, along with Bagango, who went to Ngirabatware’s parents’ house in 1992 and 1993 when Ngirabatware was making anti-Tutsi comments. Witness DWAN-71 was also present at Ngirabatware’s father’s funeral when Ngirabatware said the Tutsis deserve no attention, and he forced people to join the MRND party. He was among the criminals that were led by Bagango after the President’s plane crash. Three days after the crash, Witness DWAN-71 joined Bagango in leading the destruction of the witness’ house.); T. 10 February 2010, p. 65 (CS) (Witness ANAD) (at the meeting at the Nyamyumba *commune* office with Ngirabatware and Bagango in early 1994, Witness DWAN-71 would have been among those present); T. 18 February 2010, pp. 25-26 (CS); T. 22 February 2010, pp. 31-32, 37 (CS) (Witness ANAO) (The witness believed that Witness DWAN-71 was involved in ordering the killing of Tutsis). See also (3.3.4); (3.8.1.4).

<sup>1079</sup> T. 23 June 2011, p. 24 (Witness DWAN-71) (“Q. Mr. Witness, can you tell us in which circumstances you saw Bagango in your *secteur* between April and July 1994? A. In 1994 Bagango was *bourgmestre* of the *commune*. And he returned home to his house in the evenings. Since Bagango lived in my *secteur*, I had to make sure that he was alive and doing well. In my *secteur* Bagango behaved himself. He conducted himself properly. He did not put spokes in my wheel. He did not sabotage my action when I was dealing with the *Interahamwe*. I used to see Bagango in Rushubi *secteur*, and he conducted himself well during the events.”).

<sup>1080</sup> See, for example, T. 23 June 2011, pp. 44, 51-53; T. 23 June 2011, p. 58 (CS); T. 27 June 2011, p. 31; T. 28 June 2011, p. 21 (CS) (Witness DWAN-71) (After learning that Safari had been attacked with machetes by *Interahamwe*, the witness spoke with Safari’s wife, and later in the day went to the hospital but Safari had left by then. According to Witness DWAN-71, he filed a report with the secretariat of the *commune* about the attack on Safari. He learned only in June 1994 that Safari had been taken away from the hospital to be killed. Witness DWAN-71 also testified that for all the victims, he submitted reports to the secretariat of the *commune* office.).

<sup>1081</sup> T. 13 July 2011, pp. 37-40 (Witness DWAN-4).

<sup>1082</sup> T. 13 July 2011, p. 31 (Witness DWAN-4).

could have travelled home to Nyamyumba *commune* on 7 April 1994.<sup>1083</sup> He also claimed to have lived near Ngirabatware's parents, and asked permission from his work in order to take a day off to attend Ngirabatware's father's funeral.<sup>1084</sup> The Chamber considers that his denials of all aspects concerning Ngirabatware were vague and lacking in detail, and that his testimony is insufficient to raise a reasonable doubt in the credible accounts of Witnesses ANAE and ANAM.

833. Witness DWAN-9 testified that he manned the *Bruxelles* roadblock and was involved in the commission of crimes in April 1994.<sup>1085</sup> He was among the Defence witnesses who claimed that this roadblock had been set up to protect Tutsis,<sup>1086</sup> which the Chamber does not accept for the reasons noted above. The Chamber further recalls that Witness DWAN-9 testified to having manufactured clubs, and the Chamber considers that he was not forthright about to whom he distributed these weapons and the purpose for which they were distributed. His evidence is insufficient to raise doubt in the convincing accounts of Witnesses ANAE and ANAM.

834. Three other Defence witnesses testified to manning roadblocks in Nyamyumba *commune* after the death of the President in 1994. Witness DWAN-133 stated that he helped man the Gitsimbi/Cotagirwa roadblock, while Witnesses DWAN-147 and DWAN-11 said that they manned the *Bruxelles* and Kiroji roadblocks, respectively. Each of these three witnesses denied having seen Ngirabatware in 1994 and denied that weapons were distributed in the *commune* after President Habyarimana's assassination. The Chamber notes that if weapons were distributed at these respective roadblocks by Ngirabatware on 7 April 1994, each of these witnesses may have had a motive to distance themselves from these allegations. The Chamber further recalls that the evidence of a witness who denies having seen something is generally of limited probative value, particularly when that witness may not have been well-positioned to have observed the event in question.<sup>1087</sup> Here, only Witness DWAN-133 described having been at the roadblock since its inception on 7 April 1994, while it is unclear whether Witnesses

<sup>1083</sup> See, for example, Defence Exhibit 161 (Map of Rwanda as Marked by Witness DWAN-150) (circling Mukamira in pink); Chambers Exhibit 1 (Site Visit Report), p. 4 (Mukamira was measured as being 39.6 kilometers from the Serena Hotel in Gisenyi).

<sup>1084</sup> T. 13 July 2011, pp. 73-75 (Witness DWAN-4).

<sup>1085</sup> T. 16 August 2011, pp. 45-47, 53, 55, 60-61, 63 (CS); T. 16 August 2011, pp. 72, 76-77; T. 17 August 2011, pp. 9, 12; T. 17 August 2011, pp. 19-20, 34-36, 41-42 (CS); T. 18 August 2011, pp. 29-31 (CS); T. 22 August 2011, p. 21 (CS) (Witness DWAN-9). Witness DWAN-9 was tried before the *Gacaca* court for looting in April 1994 and was sentenced to six months' imprisonment. However, following a review of the decision and a request by the victim, Witness DWAN-9 was pardoned of his crimes and released.

<sup>1086</sup> See, for example, T. 16 August 2011, pp. 45-47 (CS) (Witness DWAN-9); T. 27 June 2011, p. 40 (CS) (Witness DWAN-71) (Jean Simpunga tried to confront the *Interahamwe* at the Gitsimbi/Cotagirwa roadblock and tried to block the road used by the *Interahamwe* who were coming to Rushubi); T. 4 October 2011, p. 10 (CS); T. 5 October 2011, pp. 26-27 (Witness DWAN-133) (The authorities set up an official roadblock on the road towards *Bruxelles* and near Adèle's house. This roadblock was set up to protect Tutsis, and many Tutsis were saved at that roadblock.); T. 11 July 2011, p. 72 (CS); T. 12 July 2011, pp. 36, 43 (CS) (Witness DWAN-147) (the roadblock was set up to protect those who sought refuge in the area). See generally Defence Closing Brief, para. 236 (summarizing Defence witnesses who allegedly corroborate that the person who set up this roadblock played a crucial role in protecting Tutsis in the area and in fighting the *Interahamwe*).

<sup>1087</sup> See, for example, *Ntawukuliyayo*, Judgement (AC), paras. 90, 103; *Rukundo*, Judgement (AC), paras. 106-107; *Kalimanzira*, Judgement (AC), para. 185 (such evidence is generally accorded minimal probative value, but the circumstances of that case were different because many of the witnesses had close ties to local authorities or lived near the location at issue, and therefore would have been well-positioned to know if a meeting took place there); *Muhimana*, Judgement (AC), para. 19.

DWAN-147 and DWAN-11 would have seen Ngirabatware if he went to their roadblock on 7 April 1994.

835. Turning to Witness DWAN-133 specifically, the Chamber considers that the manner in which he testified makes clear that his evidence was intended to protect Ngirabatware and other alleged members of the joint criminal enterprise. For example, the Chamber observes that Witness DWAN-133 testified that he was among those who manned the Gitsimbi/Cotagirwa roadblock. It was located on the way to Bagango's home, and Bagango would pass this roadblock often, even when going to his office. Witness DWAN-133 claimed, however, that this roadblock was not approved by the authorities such as Bagango and Simpunga, and that as a result, the roadblock would be abandoned every time Bagango passed through the area.<sup>1088</sup> The witness also testified that other, official roadblocks were set up by the authorities to protect Tutsis, and that Tutsis indeed were saved there, including at the *Bruxelles* roadblock.<sup>1089</sup> The Chamber does not consider his evidence to be even remotely credible, and will not rely on it in relation to the weapons distribution on 7 April 1994. Although the Chamber has relied upon his testimony in relation to the date of the attack on Safari Nyambwega, the Chamber recalls that it can accept some but reject other parts of a witness' testimony.<sup>1090</sup>

836. Witnesses DWAN-12 and DWAN-49 also testified that they never saw or heard that Ngirabatware was in Nyamyumba *commune* distributing weapons, whereas Witnesses DWAN-13, DWAN-47 and Edison Nsabimana denied any connection between Ngirabatware, Bagango and weapons in the *commune* in 1994. As stated above, such evidence is generally accorded limited probative value. The Chamber further recalls that it has questioned the credibility of Witnesses DWAN-13, DWAN-47 and Nsabimana elsewhere (3.3.4). In the context of this case, the Chamber considers that this evidence does not raise doubt in the credible testimony of Witnesses ANAE and ANAM.

837. Witnesses DWAN-21, DWAN-25 and DWAN-39 participated in the *Gacaca* court proceedings in Rubona, Busoro and Rushubi *secteurs*, respectively, and each witness testified that Ngirabatware's name was never mentioned during the *Gacaca* court proceeding in these *secteurs*.<sup>1091</sup> The Chamber notes that this type of evidence is of limited probative value,<sup>1092</sup> especially when weighed against the credible and corroborated accounts given by Witnesses ANAE and ANAM in these proceedings.

838. The Chamber has considered all of the Defence evidence, as well as the evidence of Prosecution Witness ANAO. But this evidence, whether considered individually or cumulatively, is not capable of undermining the strong, credible and compelling accounts provided by Witnesses ANAE and ANAM.

839. The Chamber therefore finds beyond reasonable doubt that on 7 April 1994 and prior to the attack on Safari Nyambwega, Ngirabatware went to the *Bruxelles* area of Nyamyumba

<sup>1088</sup> See, for example, T. 6 October 2011, p. 12 (Witness DWAN-133).

<sup>1089</sup> T. 5 October 2011, pp. 26-27 (Witness DWAN-133).

<sup>1090</sup> See, for example, *Kanyarukiga*, Judgement (AC), para. 187.

<sup>1091</sup> T. 28 September 2011, pp. 6, 21-24 (CS) (Witness DWAN-21); T. 28 June 2011, pp. 30, 54-55 (CS) (Witness DWAN-25); T. 23 September 2011, p. 47 (CS) (Witness DWAN-39).

<sup>1092</sup> *Gatete*, Judgement (AC), para. 115.

*commune* with two vehicles transporting weapons. At the *Bruxelles* roadblock, Ngirabatware asked that Faustin Bagango be located. Once Bagango arrived, Ngirabatware said that he brought weapons because he did not want any Tutsis alive in *Bruxelles*. Ngirabatware provided ten machetes to Bagango, who in turn gave them to Jean Simpunga for further distribution. Simpunga distributed nine machetes to roadblocks in the *Bruxelles* area and kept one for himself. Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira *secteurs* in Nyamyumba *commune*.

840. The Chamber also finds beyond reasonable doubt that, later that same day and still prior to the attack on Nyambwega, Ngirabatware returned to the *Bruxelles* roadblock with two vehicles transporting weapons. Upon arriving at the roadblock, Ngirabatware chastised the *Interahamwe* for only pretending to work. He said he brought weapons because he did not want to see any Tutsis in Busheke *cellule*, and he charged that Safari was communicating with “*Inyenzi*”. At the *Bruxelles* roadblock many *Interahamwe* were present including Juma. Firearms and grenades were offloaded at this roadblock, and Ngirabatware drove to the nearby Gitsimbi/Cotagirwa roadblock, where he summoned Bagango. Bagango came immediately, and weapons were offloaded. Ngirabatware explained that he brought weapons because he did not want to see any Tutsis in Nyamyumba *commune* and ordered Bagango to work well. Ngirabatware also told Bagango that Safari needed to be located and killed. After Ngirabatware left, Bagango said that he was going to the *commune* office.

#### **3.10.4.3 Alphonse Bananiye’s House, Evening of 7 April 1994**

841. Witness ANAL testified that on 7 April 1994, while she and Witness DWAN-3 were hiding at Alphonse Bananiye’s house, Ngirabatware arrived at around 8.00 p.m.<sup>1093</sup> She and Witness DWAN-3 were hiding in a room adjacent to the living room and from there she was able to recognize Ngirabatware’s voice. Ngirabatware told Bananiye, his brother, that if he was hiding Tutsis he would regret it. After Bananiye denied hiding anyone, Ngirabatware left and returned with weapons that he said were for the *bourgmestre* to distribute to the *conseillers*. Ngirabatware then left. Two boxes of weapons were taken to the room where Witnesses ANAL and DWAN-3 were hiding, and Alphonsine Bananiye uncovered the boxes to show them ten rifles and 20 grenades that she said would be used to exterminate them. Ngirabatware returned 30 minutes later with Bagango, to whom the boxes of weapons were provided.

842. Witness DWAN-3 denies that this event took place. She testified that she went to Bananiye’s house on 8 April 1994, that she arrived around the same time as Witness ANAL, and that they spent five days there without incident. Ngirabatware also denies the account provided by Witness ANAL, and states that he was in Kigali during this time period.

843. Turning first to the account of Witness ANAL, the Chamber considers that her testimony in court was generally credible and reliable.

844. The Chamber also observes, however, that there were certain differences between Witness ANAL’s in-court testimony and her statement to Tribunal investigators in June 1999. Most notably, Witness ANAL’s prior statement contains no reference to Ngirabatware having

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<sup>1093</sup> T. 5 October 2009, pp. 24-26 (CS); T. 6 October 2009, pp. 75, 78 (CS); T. 7 October 2009, pp. 6-7 (CS) (Witness ANAL).



taken weapons to Bananiye's house on 7 April 1994.<sup>1094</sup> When asked about this omission, Witness ANAL explained that she did not discuss this because Ngirabatware was out of the country and also because Bananiye and his wife were dead.<sup>1095</sup> The Chamber considers this omission to be significant, particularly given that in her June 1999 statement, she mentioned the presence of Ngirabatware at Bananiye's house. Although Witness ANAL described Ngirabatware bringing weapons to Bananiye's house in her March 2004 statement,<sup>1096</sup> this does not explain the omission from her first statement to Tribunal investigators.

845. In the Chamber's view, this omission warrants that the Chamber apply appropriate caution when assessing the evidence of Witness ANAL about the presence of weapons on 7 April 1994. As such, the Chamber will accept the witness' testimony concerning such weapons only with adequate corroboration. The Chamber notes, however, that this omission does not impact the credibility of Witness ANAL, nor does it apply to the reliability of other aspects of her evidence. In this regard, the Chamber notes that her June 1999 statement, as well as her March 2004 statement, identify Ngirabatware and Bagango as having been present at Bananiye's house in the evening of 7 April 1994.<sup>1097</sup>

846. It is clear from Witness ANAL's evidence that she never personally saw Ngirabatware or Bagango while she was hiding at Bananiye's house on 7 April 1994. Instead, she heard Ngirabatware's and Bagango's voices, and Alphonsine Bananiye told her that Ngirabatware had arrived and later that Bagango had left with the weapons. The Chamber considers that the voice identification, as well as the hearsay identification, warrants appropriate caution.

847. Witness ANAL asserted that she had known Ngirabatware for many years since they both attended school in Nyamyumba *commune* and that she last heard Ngirabatware's and Bagango's voices at a rally two weeks before 7 April 1994.<sup>1098</sup> She also testified that Bagango was the *bourgmestre*, and that she could recognize his voice.<sup>1099</sup> Given these circumstances and her testimony, the Chamber has no doubt that Witness ANAL could reliably identify Ngirabatware's voice at the Bananiye residence. Additionally, the Chamber considers that the hearsay evidence from Alphonsine Bananiye provides further support for this conclusion. The Chamber is convinced that Witness ANAL had an adequate basis upon which to identify Ngirabatware and Bagango at Bananiye's house.

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<sup>1094</sup> Defence Exhibit 5A (Statement of Witness ANAL, 17 June 1999). See also Defence Closing Brief, paras. 632, 636.

<sup>1095</sup> T. 7 October 2009, p. 25 (CS) (Witness ANAL).

<sup>1096</sup> Defence Exhibit 6 (Statement of Witness ANAL, 24 and 26 March 2004).

<sup>1097</sup> Defence Exhibit 5A (Statement of Witness ANAL, 17 June 1999); Defence Exhibit 6 (Statement of Witness ANAL, 24 and 26 March 2004). The Chamber recalls that prior consistent statements cannot be used to bolster a witness' credibility, except to rebut a charge of recent fabrication of testimony. See *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 147.

<sup>1098</sup> T. 5 October 2009, pp. 6, 17-18; T. 6 October 2009, p. 78 (CS); T. 7 October 2009, pp. 10, 47, 57-58 (CS) (Witness ANAL). The Chamber notes that the Defence challenges that Ngirabatware would have attended any rally in Gisenyi *préfecture* in March 1994.

<sup>1099</sup> T. 5 October 2009, p. 18; T. 5 October 2009, pp. 29-30 (CS) (Witness ANAL).

848. The Chamber has also considered the various Defence challenges to the credibility and reliability of Witness ANAL.<sup>1100</sup> These challenges are generally on issues that are collateral to Witness ANAL's testimony on this event, and the Chamber has discussed above that the Defence allegations of collusion are speculative and unsubstantiated. To the extent that the Defence submissions relate directly to this alleged event, they largely dispute Witness ANAL's evidence about the presence of weapons, which the Chamber has found requires adequate corroboration.<sup>1101</sup> Having reviewed the Defence submissions, the Chamber does not consider that they undermine the credible and reliable account provided by Witness ANAL as to the presence of Ngirabatware and Bagango at Bananiye's residence on the evening of 7 April 1994.

849. According to Witness ANAL, she was with Witness DWAN-3 at Bananiye's residence on 7 April 1994, when Ngirabatware and Bagango came to the house. Witness DWAN-3 testified, however, that she only arrived on 8 April 1994, and that she never saw or heard Ngirabatware there.

850. The Chamber notes that Witness DWAN-3's testimony was marked by inconsistencies. In particular, the Chamber observes the shifting story as to why she left Bananiye's house during the killings, despite the fact that she considered it safe. She initially stated that she left the Bananiye residence because the killings had slowed down and *Conseiller* Simpunga assured the Tutsis it was safe. Later, she testified that she had decided on her own to return to her house. Witness DWAN-3 also claimed that she left because she heard that *Conseiller* Simpunga killed an *Interahamwe* who had attacked Tutsis in the area.<sup>1102</sup>

851. Of greater concern to the Chamber is that Witness DWAN-3 described the Kiroji roadblock in the *Bruxelles* area as having been established to protect the Tutsis at Nyabagobe. Despite this purported reason, Witness DWAN-3 testified that when she was seeking safety days later, she passed through the bush at night in order to avoid being captured at the roadblock.<sup>1103</sup> The Chamber finds that this is only one example of the numerous contradictions present throughout her testimony. The Chamber also considers that Witness DWAN-3 testified in such a way as to shield Ngirabatware from criminal liability, and that this further calls into question her credibility and reliability on this allegation.

852. Although the Chamber has relied upon her testimony in relation to the attack on Safari Nyambwega, the Chamber recalls that it can accept some but reject other parts of a witness' testimony.<sup>1104</sup> The Chamber does not consider that Witness DWAN-3's evidence raises doubt in the testimony of Witness ANAL that Ngirabatware and Bagango were both present at Bananiye's house in the evening of 7 April 1994.

853. Ngirabatware also denies that he was present at Bananiye's house on 7 April 1994. As explained elsewhere (3.9.3.8), the Chamber does not consider that Ngirabatware's alibi for 7 April 1994 is reasonably possibly true.

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<sup>1100</sup> See Defence Closing Brief, paras. 613-644; Defence Closing Argument, T. 24 July 2012, p. 47; T. 25 July 2012, pp. 41, 53.

<sup>1101</sup> See, for example, Defence Closing Brief, paras. 623-626, 630-633, 636.

<sup>1102</sup> T. 16 June 2011, pp. 50-66 (CS) (Witness DWAN-3).

<sup>1103</sup> T. 16 June 2011, pp. 50-66 (CS); T. 16 June 2011, pp. 67-74 (Witness DWAN-3).

<sup>1104</sup> See, for example, *Kanyarukiga*, Judgement (AC), para. 187.

854. The Chamber considers that Witness ANAL provided a credible, reliable and convincing account of Ngirabatware's and Bagango's presence at Bananiye's house on 7 April 1994, and that the Defence evidence does not raise doubt in her testimony in this regard. Accordingly, the Chamber finds beyond reasonable doubt that Ngirabatware and Bagango were present at Bananiye's house in Nyamyumba *commune* in the evening of 7 April 1994. As for the presence of weapons at Alphonse Bananiye's house at this time, the Chamber does not consider this to have been established beyond a reasonable doubt.

855. The Chamber considers that this event corroborates Witnesses ANAE and ANAM's accounts that Ngirabatware was in Nyamyumba *commune* on 7 April 1994 and sought out Bagango.

#### **3.10.4.4 Alphonse Bananiye's House, Early Afternoon of 8 April 1994**

856. Witness AFS testified that around 2.00 p.m. on 8 April 1994, he saw Ngirabatware, Bagango and others engaged in a conversation at Alphonse Bananiye's house in Nyamyumba *commune* about how to respond to the death of President Habyarimana.

857. The Chamber considers that Witness AFS provided a credible account about Ngirabatware's presence at Bananiye's house on 8 April 1994. In particular, the Chamber observes that Witness AFS displayed a strong sense of dates and times about the days following President Habyarimana's assassination. The Chamber also considers that Witness AFS is a generally credible and reliable witness.

858. The Chamber recalls, however, that it has found that there was a reasonable possibility that Ngirabatware may have been in Kigali in the early afternoon on 8 April 1994, and thereby not in Nyamyumba *commune* at 2.00 p.m. on this date (3.9.3.8).

859. Despite the credible nature of Witness AFS's evidence about Ngirabatware's presence in Bananiye's house around 2.00 p.m. on 8 April 1994, the Chamber considers that the alibi raises reasonable doubt in this account. Accordingly, this raises reasonable doubt as to this event. The Chamber does not consider, however, that this doubt calls into question the overall credibility or reliability of Witness AFS.

#### **3.10.4.5 Distribution of Grenades by Faustin Bagango, 10 April 1994**

860. Witness AFS testified that around 2.00 p.m. on 10 April 1994, while he was treating Witness ANAO and other *Interahamwe* to drinks at the bar in *Bruxelles*, Bagango arrived with about 50 grenades and distributed these grenades to the *Interahamwe*.<sup>1105</sup> Bagango told them to use the grenades to protect themselves when attacked and refused to give Witness AFS a grenade because Bagango said he would use it to protect his "*Inyenzi*", referring to Witness AFS's Tutsi wife. Witness AFS heard that Bagango proceeded to the Gitsimbi/Cotagirwa roadblock to distribute more grenades.<sup>1106</sup>

<sup>1105</sup> T. 2 March 2010, p. 30 (Witness AFS).

<sup>1106</sup> T. 2 March 2010, pp. 30-31 (Witness AFS).

861. The Chamber considers that Witness AFS provided a credible, reliable and convincing account that Bagango distributed grenades to *Interahamwe* in the *Bruxelles* area. The Chamber also has no doubt about Witness AFS's ability to accurately identify Bagango, whom he described as being the *bourgmestre*,<sup>1107</sup> and with whom the witness spoke directly during the event on 10 April 1994.

862. The Chamber notes that Witness AFS testified that after this event, he later heard that Bagango distributed more grenades at the Gitsimbi/Cotagirwa roadblock. As hearsay, the Chamber treats this evidence with appropriate caution. The Chamber also observes that Witness AFS did not identify the source of this information. Under the circumstances, the Chamber will not rely on Witness AFS's unattributed hearsay account that Bagango continued to distribute grenades after their encounter on 10 April 1994.

863. Turning to Witness ANAF, she testified that grenades became available on 9 April 1994. The Chamber recalls, however, that Witness ANAF was in hiding during this time period, and that her evidence therefore appears to be hearsay. The Chamber also considers that Witness ANAF's source of information may have been her husband, Witness AFS. In light of this, the Chamber treats her evidence with appropriate caution, and considers that it appears to be duplicative of the account provided in court by Witness AFS. Her testimony provides minimal, if any, corroboration.

864. The Chamber observes that Witness ANAO did not discuss this event during his testimony. In this regard, the Chamber notes that Witness ANAO testified prior to Witness AFS, and that at the time of Witness ANAO's testimony, it was not clear that Witness AFS would discuss him.<sup>1108</sup> As such, the Defence may not have been aware at the time of Witness ANAO's testimony that he was implicated in the alleged distribution of 10 April 1994. The Chamber has taken this into account, but considers that this is not capable of impacting the credible testimony of Witness AFS on this issue. Indeed, the Chamber observes that Witness ANAO may have had a motive to distance himself from this event, and that he did not address it despite discussing other events that happened in the days following President Habyarimana's death (3.14.5.2).

865. The Chamber also notes the Defence submissions that Witnesses DWAN-9, DWAN-133, DWAN-39 and DWAN-147 provided contradictory testimony to that of Witness AFS.<sup>1109</sup> The Chamber has considered their evidence in relation to the distribution of weapons on 7 April 1994, and has found it to be of minimal probative value. For the same reasons, the Chamber considers that their general denials carry only low probative value.

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<sup>1107</sup> See, for example, T. 2 March 2010, p. 8 (Witness AFS).

<sup>1108</sup> Witness ANAO testified from 15 through 22 February 2010, and Witness AFS testified on 2 and 4 March 2010. The Chamber recalls that Witness AFS was to testify on Bagango's alleged distribution of weapons to the militia, and that his disclosed statement provided further details about this allegation but did not mention Witness ANAO. See Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, para. 17, Annex A (Statement of Witness AFS of 1 August 1999).

<sup>1109</sup> Defence Closing Brief, paras. 482-484.

866. As for the other Defence submissions concerning Witness AFS's testimony,<sup>1110</sup> the Chamber considers that they are collateral to this incident and are insufficient to raise doubt in his account about this event.

867. Based on Witness AFS's credible and compelling testimony, the Chamber finds that Bagango distributed grenades to *Interahamwe* in the *Bruxelles* area on 10 April 1994. When Witness AFS asked for a grenade, Bagango refused saying that the witness would use the grenade to protect his "*Inyenzi*" wife.

868. The Chamber also considers that this event corroborates Witness ANAM's evidence that Ngirabatware gave grenades to Bagango on 7 April 1994.

#### **3.10.4.6 Conclusion**

869. The Chamber finds that on 7 April 1994 and prior to the attack on Safari Nyambwega, Ngirabatware went to the *Bruxelles* area of Nyamyumba *commune* with two vehicles transporting weapons. At the *Bruxelles* roadblock, Ngirabatware asked that Faustin Bagango be located. Once Bagango arrived, Ngirabatware said that he brought weapons because he did not want any Tutsis alive in *Bruxelles*. Ngirabatware provided ten machetes to Bagango, who in turn gave them to Jean Simpunga for further distribution. Simpunga distributed nine machetes to roadblocks in the *Bruxelles* area and kept one for himself. Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira *secteurs* in Nyamyumba *commune*.

870. Later that same day, and still prior to the attack on Nyambwega, Ngirabatware returned to the *Bruxelles* roadblock with two vehicles transporting weapons. Upon arriving at the roadblock, Ngirabatware chastised the *Interahamwe* for only pretending to work. He said he brought weapons because he did not want to see any Tutsis in Busheke *cellule*, and he charged that Safari was communicating with "*Inyenzi*". At the *Bruxelles* roadblock many *Interahamwe* were present including Juma. Firearms and grenades were offloaded at this roadblock, and Ngirabatware drove to the nearby Gitsimbi/Cotagirwa roadblock, where he summoned Bagango. Bagango came immediately, and weapons were offloaded. Ngirabatware explained that he brought weapons because he did not want to see any Tutsis in Nyamyumba *commune* and ordered Bagango to work well. Ngirabatware also told Bagango that Safari needed to be located and killed. After Ngirabatware left, Bagango said that he was going to the *commune* office.

871. Safari Nyambwega was attacked and seriously injured on 7 April 1994, by various *Interahamwe*, including Juma. The implications of this finding will be addressed below.

872. The Chamber further finds that on 7 April 1994, in the evening after Ngirabatware distributed weapons at the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks, he went to Alphonse Bananiye's house. Ngirabatware sought out, and met with, Bagango.

873. Finally, the Chamber finds that on 10 April 1994, Bagango distributed grenades to the *Interahamwe* in the *Bruxelles* area. Bagango said that the grenades were to be used for protection, and he refused to give one to Witness AFS, saying that the witness would use the grenade to protect his "*Inyenzi*" wife.

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<sup>1110</sup> See Defence Closing Brief, paras. 469-487; Defence Closing Argument, T. 25 July 2012, pp. 52-53, 55.

### 3.10.4.7 Subsequent Attacks and Killings

874. Having reached these conclusions, the subsequent question for the Chamber is whether Ngirabatware substantially contributed to these attacks and killings through his words and actions in distributing weapons and stating to the *Interahamwe* manning the *Bruxelles* and *Gitsimbi/Cotagirwa* roadblocks on 7 April 1994 that Tutsis should be killed. The Chamber finds that there is sufficient circumstantial evidence in this case to make that conclusion. In doing so, the Chamber recalls that the burden of proof requires assessing whether any inference that could lead to criminal liability for Ngirabatware is the only reasonable inference from the totality of the evidence.<sup>1111</sup>

875. The Chamber notes that Ngirabatware's explicit purpose when he distributed the weapons was to ensure that he did not see any Tutsis in the area. This was confirmed by his statements that Tutsis should be killed and his order to Bagango to work well. Those who received these weapons were Bagango and the *Interahamwe* manning the *Bruxelles* roadblock and the *Gitsimbi/Cotagirwa* roadblock.<sup>1112</sup> The Chamber notes that Bagango complied with Ngirabatware's instructions by distributing the machetes to *Conseiller* Simpunga, who further handed them to *Interahamwe* who were manning the roadblocks. Bagango also received firearms and grenades which he distributed to the *Interahamwe*.

876. The Chamber observes that there is a substantial quantity of credible and reliable evidence that Tutsis were attacked and killed in Nyamyumba *commune* starting on 7 April 1994. For example, Witness ANAJ testified that *Impuzamugambi* and *Interahamwe* attacked families between 6 and 7 April 1994, and killed Tutsis and men married to Tutsi women.<sup>1113</sup> Witness ANAO, an *Interahamwe* who manned the *Gitsimbi/Cotagirwa* roadblock, stated that the morning after President Habyarimana's death, Faustin Bagango and Hassan Tubaramure instructed them to kill all the Tutsis.<sup>1114</sup> The Chamber therefore considers that Ngirabatware was aware that the *Interahamwe* were engaged in killing and that his actions would contribute to these killings. Witnesses ANAF and DWAN-45 confirmed that the *Interahamwe* manning the roadblocks

<sup>1111</sup> See, for example, *Karera*, Judgement (AC), para. 34. See also (2.8.5).

<sup>1112</sup> T. 25 January 2010, pp. 25-26, 40-43 (CS); T. 27 January 2010, p. 50 (CS) (Witness ANAM) (Many *Interahamwe* were present at the *Bruxelles* roadblock including Bishirambona, Murazemungu, Juma and Biryia. At the *Gitsimbi* roadblock there were many *Interahamwe*, including Witness ANAO, Hassan Tubaramure and Faraji.); T. 20 October 2009, p. 30 (CS); T. 20 October 2009, pp. 32-34, 38-44; T. 21 October 2009, pp. 38-50, 54-55, 57-58; T. 21 October 2009, pp. 60, 77-78 (CS) (Witness ANAE) (When Ngirabatware brought the weapons, Bagango, Dominique, Jean Simpunga and Hassan Tubaramure were present at the Busheke *cellule* roadblock. Simpunga gave three machetes apiece to those manning the roadblocks below Adèle's house, in *Bruxelles* and at *Cotagirwa*. Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira.).

<sup>1113</sup> T. 7 October 2009, p. 75; T. 8 October 2009, pp. 4-6, 17-18, 42; T. 12 October 2009, pp. 6, 8; T. 12 October 2009, pp. 16, 30-31, 33-34, 40, 52-54, 82 (CS) (Witness ANAJ). He specifically identified Catherine Mukankubito as a Tutsi lady who was killed, but the Chamber ruled that the Prosecution could not further develop the witness' evidence about her death. T. 8 October 2009, pp. 6, 10, 17 (Witness ANAJ).

<sup>1114</sup> T. 15 February 2010, pp. 46, 49-50 (CS); T. 15 February 2010, pp. 60-61, 66, 80; T. 16 February 2010, pp. 4-5; T. 17 February 2010, p. 75 (CS); T. 18 February 2010, pp. 39-40 (CS) (Witness ANAO). The Chamber notes that Witness ANAL also testified that Thérèse Nduhirabandi was killed at Kamere's house on 9 April 1994. T. 6 October 2009, pp. 4, 9-10, 13, 30, 59, 68-70 (CS); T. 7 October 2009, pp. 61, 63 (CS) (Witness ANAL). For additional evidence about the killing of Mukarugambwa by Felix Niyoniringiye in the evening of 7 April 1994, see (3.13.3).

sought out Tutsis to kill.<sup>1115</sup> Witness DWAN-71 testified that the killings intensified from 7 April 1994, and he identified ten Tutsis from Rushubi *secteur* who were killed.<sup>1116</sup>

877. More generally, Prosecution Witnesses AFS, ANAK and ANAL stated that they were personally attacked because of their Tutsi ethnicity or their close ties to Tutsis,<sup>1117</sup> and Prosecution Witnesses ANAE, ANAF, ANAL, ANAM, ANAN and ANAO stated that they personally witnessed attacks against Tutsi civilians.<sup>1118</sup> In addition, Ngirabatware and Defence Witnesses DWAN-2, DWAN-3, DWAN-9, DWAN-13, DWAN-15, DWAN-39, DWAN-41, DWAN-45, DWAN-47, DWAN-71, DWAN-133, DWAN-147 and Edison Nsabimana also testified that Tutsis, moderate Hutus and Hutus with close ties to Tutsis were attacked in April 1994, as well as prominent Hutus on political grounds.<sup>1119</sup>

878. In addition, the Chamber notes that there is sufficient evidence that people were attacked and killed after Ngirabatware left on 7 April 1994. For example, according to Witness ANAM, immediately after Ngirabatware gave weapons to the *Interahamwe* at the *Bruxelles* roadblock and reproached them for not killing Tutsis, specifically Safari, these *Interahamwe* went and attacked Safari with a machete, and inflicted serious bodily injury by cutting his ear and leg.<sup>1120</sup>

<sup>1115</sup> T. 30 September 2009, pp. 73-74; T. 1 October 2009, pp. 7, 20 (CS) (Witness ANAF) (during the genocide, people manning these roadblocks would require people passing by to show their identity cards and if the identity card indicated Tutsi, they would be killed); T. 15 August 2011, p. 27 (Witness DWAN-45) (the *Interahamwe* at the roadblocks were out to kill Tutsis during the day).

<sup>1116</sup> T. 28 June 2011, pp. 6, 22 (CS) (Witness DWAN-71). In this regard, the Chamber notes that Witness DWAN-71 testified that there were 38 Tutsi families in Rushubi *secteur*. See T. 23 June 2011, p. 42 (CS) (Witness DWAN-71).

<sup>1117</sup> T. 2 March 2010, pp. 30-31, 33-35; T. 2 March 2010, p. 32 (CS) (Witness AFS); T. 13 October 2009, p. 68 (CS) (Witness ANAK); T. 5 October 2009, pp. 30-32 (CS) (Witness ANAL).

<sup>1118</sup> T. 20 October 2009, p. 40; T. 20 October 2009, pp. 66-71, 77 (CS); T. 21 October 2009, pp. 61-63 (CS) (Witness ANAE); T. 30 September 2009, pp. 59-61 (Witness ANAF); T. 6 October 2009, pp. 4, 9-10, 13, 23-24, 30, 59, 66, 68-70, 72-73 (CS); T. 7 October 2009, p. 63 (CS) (Witness ANAL); T. 25 January 2010, pp. 25-27, 29, 45, 49-51, 62 (CS); T. 26 January 2010, pp. 48-49 (CS); T. 27 January 2010, p. 36 (CS); T. 27 January 2010, pp. 41, 45-46 (Witness ANAM); T. 1 February 2010, pp. 53-54 (Witness ANAN); T. 15 February 2010, pp. 46, 49-50 (CS); T. 15 February 2010, p. 60; T. 17 February 2010, p. 75 (CS) (Witness ANAO).

<sup>1119</sup> T. 2 December 2010, pp. 33-34 (Ngirabatware) (there was genocide in Rwanda, after 6 April 1994, where Tutsis, Hutus, the rich and the poor, politicians, non-politicians and innocent persons, were killed in all areas of Rwanda); T. 11 July 2011, pp. 20-21, 24 (CS); T. 11 July 2011, pp. 36, 38-40 (Witness DWAN-2) (Chantal was attacked after the death of Safari); T. 16 June 2011, p. 24; T. 16 June 2011, p. 45 (CS); T. 20 June 2011, p. 4 (Witness DWAN-3) (after the President's plane crash, Tutsis were attacked); T. 18 August 2011, p. 10 (CS) (Witness DWAN-9) (describing the attack on Safari); T. 20 September 2011, pp. 60-63, 78 (CS); T. 22 September 2011, pp. 10, 18-19 (CS) (Witness DWAN-13) (genocide occurred in 1994, and attacks happened after 8 April); T. 29 September 2011, pp. 43-44 (CS) (Witness DWAN-15) (there was a genocide which occurred in Rwanda in 1994); T. 26 September 2011, pp. 10, 12, 22, 32-33, 37-40, 57 (CS); T. 27 September 2011, p. 54 (Witness DWAN-39) (testified about the attack on Safari and the killing of Mukarugambwa); T. 6 October 2011, p. 34; T. 10 October 2011, pp. 11-12 (Witness DWAN-41); T. 15 August 2011, p. 41 (CS); T. 15 August 2011, p. 66 (Witness DWAN-45) (after 6 April, the house of Alphonse Kavamahanga was destroyed); T. 3 October 2011, pp. 31-32 (CS) (Witness DWAN-47); T. 23 June 2011, p. 31 (CS); T. 23 June 2011, pp. 43-44, 47; T. 28 June 2011, p. 22 (CS) (Witness DWAN-71) (testified about the events of April 1994, and also spoke of the attack on Safari.); T. 3 October 2011, pp. 85-86 (CS); T. 4 October 2011, p. 7 (CS) (Witness DWAN-133) (Butitira's children were killed on 7 April 1994, and a roadblock set up that same day); T. 12 July 2011, p. 38 (CS) (Witness DWAN-147) (the witness was not sure of the date the roadblock was set up but stated that it was after the death of the President); T. 15 June 2011, pp. 43-45 (Nsabimana) (attacks on civilians occurred between 6 April and 17 July 1994).

<sup>1120</sup> T. 25 January 2010, pp. 45-47 (CS); T. 26 January 2010, pp. 45, 47-48, 51 (CS); T. 27 January 2010, pp. 15, 33, 36, 50 (CS) (Witness ANAM) (the witness saw that Safari had just been arrested in the nearby coffee plantation and

879. The Chamber also notes that Witness ANAO stated that after the death of the President, all those manning the roadblocks were desirous of carrying out instructions and they acted accordingly. He stated that people were killed at those roadblocks.<sup>1121</sup> Inhabitants passed by the Gitsimbi/Cotagirwa roadblock and many Tutsis were selected at that roadblock, and some were even put to death there. A Tutsi from Kibuye who lived in Kamere's house was killed at the roadblock.<sup>1122</sup> Witness ANAO also stated that Biryabanzi, Halindintwali and other *Interahamwe* took Thérèse from Monica's house and led her to the Gitsimbi/Cotagirwa roadblock where they killed her and threw her body into the banana plantation of one Kamere.<sup>1123</sup> Witness ANAL stated that Thérèse Nduhirabandi had gone to Monique Nyirahabineza's house on 9 April 1994. Thérèse was attacked with traditional weapons at Monique's house. Cyuma was the one who fired at her arm and she was later killed at Kamari's.<sup>1124</sup>

880. The Chamber notes that Witness ANAO admitted that he killed Nzabanita and Dismas. Witness ANAO stated that these victims were killed with clubs and machetes, and that during the attack he was armed with a club and a grenade.<sup>1125</sup> In this regard, the Chamber notes that Witness ANAO was one of the people who received weapons from Ngirabatware on 7 April 1994, and who was present when Ngirabatware exhorted the killing of Tutsis.

881. The Chamber also observes the consistent and credible evidence that the *Interahamwe* who manned the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks were notorious for their role in killing Tutsis and looting their property in Nyamyumba *commune* in the days after President Habyarimana's death. From the evidence the Chamber concludes that the *Interahamwe* to whom weapons were distributed at the *Bruxelles* roadblock and the Gitsimbi/Cotagirwa roadblock were engaged in the killing of Tutsi civilians, at roadblocks and in their houses.<sup>1126</sup> The Chamber

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the *Interahamwe* present were Murazemungu, Hassan Tubaramure, and Juma, who was nicknamed Cyimeza); T. 5 October 2009, pp. 30-31, 38 (CS); T. 6 October 2009, pp. 4-5, 8, 59-60, 68-70 (CS); T. 6 October 2009, pp. 71-72 (Witness ANAL) (*Interahamwe* Cyuma Védaste and others attacked Safari at home with traditional weapons); T. 20 October 2009, p. 40; T. 20 October 2009, pp. 66-71, 77 (CS); T. 21 October 2009, p. 22 (CS) (Witness ANAE) (Safari Nyambwega was attacked with a bladed weapon in a coffee plantation); T. 11 July 2011, p. 36; T. 11 July 2011, p. 34 (French) (Witness DWAN-2) (identifying Sebuwa, Kimeza and Ndarifite as the attackers); T. 16 June 2011, p. 26 (CS) (Witness DWAN-3) (the *Impuzamugambi* and *Interahamwe* members included Charlot Kineza, Makuza and Ndarifite); T. 22 June 2011, p. 89; T. 23 June 2011, p. 47; T. 27 June 2011, p. 31 (Witness DWAN-71) (Safari was attacked with a machete and taken from his house by the *Interahamwe*). See also Defence Exhibit 150C (*Gacaca* Judgement Concerning Safari Nyambwega) (Cyimeza cut off one of Safari's ears with a machete and Shariro took Safari home).

<sup>1121</sup> T. 15 February 2010, pp. 61, 66 (Witness ANAO) (stating that roadblocks were erected at Electrogaz, at *Bruxelles*, at Gitsimbi/Cotagirwa, at Kabeza, at the brewery, at the statue of the Virgin, at Gatyazo on the road to Kibuye, at Kabilizi and at many other locations).

<sup>1122</sup> T. 15 February 2010, pp. 46, 49-50; T. 15 February 2010, p. 60 (CS) (Witness ANAO).

<sup>1123</sup> T. 15 February 2010, p. 46 (CS); T. 15 February 2010, p. 60; T. 17 February 2010, pp. 19-22 (Witness ANAO).

<sup>1124</sup> T. 6 October 2009, pp. 4, 9-10, 13, 30, 59, 68-70 (CS); T. 7 October 2009, pp. 61, 63 (CS) (Witness ANAL).

<sup>1125</sup> T. 16 February 2010, pp. 4-5; T. 18 February 2010, pp. 39-40 (CS) (Witness ANAO).

<sup>1126</sup> For evidence on Witness ANAO, see, for example, T. 15 February 2010, pp. 37-38, 40 (CS) (Witness ANAO) (he manned the Gitsimbi/Cotagirwa roadblock in Gisenyi before and after President Habyarimana's death in April 1994); T. 16 June 2011, p. 37 (CS) (Witness DWAN-3) (Witness ANAO manned the Gitsimbi/Cotagirwa roadblock); T. 16 August 2011, p. 64 (CS) (Witness DWAN-9) (Witness ANAO manned the Gitsimbi/Cotagirwa roadblock with Tubaramure, Cyimeza, Bandezi and Juma, among others); T. 3 October 2011, p. 86 (CS); T. 4 October 2011, p. 7 (CS) (Witness DWAN-133) (on 7 April 1994, Witness ANAO asked Witness DWAN-133 to establish a roadblock at Gitsimbi/Cotagirwa, which he did immediately).



notes that witnesses stated that clubs, machetes and firearms were some of the weapons used to kill and cause serious bodily injury. The Chamber finds that the only reasonable inference to be drawn from the totality of the evidence is that the *Interahamwe* used at least some of the weapons Ngirabatware distributed on 7 April 1994 during the attacks and killings.

882. Given that Ngirabatware was an influential personality in Nyamyumba *commune* in 1994 (3.1.4), the Chamber further considers that Ngirabatware's actions and words encouraged the *Interahamwe* to kill. This distribution was a distinct form of encouragement to the *Interahamwe* within Nyamyumba *commune*. While the distributions reflected in the testimonies above may not have been the only sources of weapons that made their way into the *commune*, the Chamber has no doubt that the act of distributing the weapons and prompting the *Interahamwe* to kill all Tutsis a day after the President's death, demonstrated Ngirabatware's explicit support for the attacks and killings of Tutsis in Nyamyumba *commune*, and substantially contributed to it.

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For evidence on Hassan Tubaramure, see, for example, T. 20 October 2009, p. 42; T. 21 October 2009, p. 46 (Witness ANAE) (Tubaramure was an *Interahamwe* and received weapons from Ngirabatware at the Gitsimbi/Cotagirwa roadblock in April 1994, and he assisted Bagango in transporting machetes delivered by Ngirabatware to that roadblock in April 1994); T. 25 January 2010, pp. 40-42; T. 25 January 2010, pp. 45-47 (Witness ANAM) (Tubaramure was an *Interahamwe* and manned the Gitsimbi/Cotagirwa roadblock in April 1994. He was one of the assailants of Safari and participated in the looting of his home.); T. 11 July 2011, p. 61 (Witness DWAN-147) (Tubaramure manned the Gitsimbi/Cotagirwa roadblock and participated in killings and lootings); T. 16 August 2011, p. 62 (CS); T. 18 August 2011, p. 33 (CS) (Witness DWAN-9) (Tubaramure manned the Gitsimbi/Cotagirwa roadblock which set was up to protect the Tutsis and to assist them to flee to Congo. Tubaramure and the other men were not *Interahamwe* or *Impuzamugambi*); T. 11 July 2011, p. 61 (Witness DWAN-147) (Tubaramure manned the Gitsimbi/Cotagirwa roadblock); T. 23 June 2011, p. 41 (CS) (Witness DWAN-71) (Hassan was one of the *Interahamwe* who was active in Rushubi *secteur* in 1994).

For evidence on Murazemungu, see, for example, T. 25 January 2010, pp. 37, 40, 44-47 (CS) (Witness ANAM) (Murazemungu was present at the *Bruxelles* roadblock when Ngirabatware arrived on 7 April 1994, and he also participated in the attack on Safari Nyambwega while wearing banana leaves); T. 7 July 2011, pp. 78-79 (Witness DWAN-2) (Murazemungu was among those who manned the Gitsimbi/Cotagirwa roadblock); T. 27 June 2011, p. 37 (Witness DWAN-71) (identifying Murazemungu as having manned the Gitsimbi/Cotagirwa roadblock); T. 11 July 2011, p. 61 (Witness DWAN-147) (Murazemungu manned the Gitsimbi/Cotagirwa roadblock).

For evidence on Juma Kimeza being among those who manned the Gitsimbi/Cotagirwa roadblock, see, for example, T. 15 February 2010, pp. 38, 40 (CS) (Witness ANAO); T. 7 July 2011, pp. 78-79 (Witness DWAN-2); T. 16 June 2011, p. 37 (CS) (Witness DWAN-3); T. 16 August 2011, p. 64 (CS) (Witness DWAN-9); T. 27 June 2011, p. 37 (Witness DWAN-71); T. 4 October 2011, pp. 8-9 (CS) (Witness DWAN-133); T. 11 July 2011, p. 59 (Witness DWAN-147). The Chamber notes the evidence that another *Interahamwe* named Juma operated in the area. See T. 7 October 2009, p. 44 (CS) (Witness ANAL) (Juma Kimeza's parents' names were Ndagijimana and Ntankumbi. On 8 April 1994, Kimeza and other *Interahamwe* abducted her and held her in Kimeza's house. That evening, Kimeza and the *Interahamwe* were going to kill the witness and her sister. As they approached *Bruxelles*, another *Interahamwe* named Juma, who was the son of Majidi, intervened and said they should not be looking for girls who were not involved in politics.); T. 1 October 2009, p. 16 (CS) (Witness ANAF) (Juma, the son of Madjidi, used to stand near the *Bruxelles* flag and speak with others about the "stupid Tutsis" who wanted to hoist their flag at that location). See also T. 17 August 2011, pp. 23-24; T. 17 August 2011, p. 80 (CS) (Witness DWAN-9) (Juma and Cyimeza both manned the Cotagirwa roadblock, along with Bändeze and others. Cyimeza also acted with Bändeze to try to kill a Tutsi woman named Julienne, but they were unsuccessful. Cyimeza was killed by his companions, and was subsequently displayed as a warning to others.); T. 27 June 2011, p. 37; T. 27 June 2011, p. 34 (French) (Witness DWAN-71) (There were various *Interahamwe* in Rushubi *secteur*, including Juma and Kimeza, both of whom were killers. Kimeza attacked Safari.). The Chamber considers, however, that the record is clear that the Juma at issue was Juma Kimeza.

For evidence on Makuze being among those who manned the Gitsimbi/Cotagirwa roadblock, see, for example, T. 16 June 2011, p. 37 (CS) (Witness DWAN-3); T. 11 July 2011, p. 61 (Witness DWAN-147).

### 3.10.4.8 *Distribution of Machetes by Bagango, Mid-April 1994*

883. The Chamber notes that the allegations in paragraphs 27 and 50 of the Indictment deal specifically with the distribution of machetes in mid-April 1994. To support these allegations the Prosecution relies on Witnesses ANAO, ANAE, ANAM, ANAL, AFS and ANAJ.<sup>1127</sup> The Chamber notes that the Prosecution relies on the same evidence presented to establish paragraph 16 of the Indictment to prove paragraphs 27 and 50 of the Indictment. The Defence argues that none of the Prosecution witnesses listed testify on these paragraphs.<sup>1128</sup>

884. The Chamber notes that Witness ANAO testified to Bagango distributing firearms and grenades at the Gitsimbi/Cotagirwa roadblock two to four days before the President's death.<sup>1129</sup> Nor does he discuss the distribution of machetes. The Chamber does not consider that this could qualify as "mid-April", and thus finds that his evidence does not fall within the scope of Indictment paragraphs 27 and 50.

885. In relation to Witnesses ANAE and ANAM, the Chamber has found that they described the distribution of weapons on 7 April 1994. Because the Chamber has found that their evidence supports paragraph 16 of the Indictment, the Chamber will not consider whether it also supports the allegations of machete distribution in mid-April 1994 as alleged in paragraphs 27 and 50 of the Indictment.

886. Witness ANAL stated that Ngirabatware brought weapons, namely, about ten rifles and 20 grenades, to Alphonse's house in the evening of 7 April 1994.<sup>1130</sup> Witness AFS also testified on the distribution of about 50 grenades by Bagango to *Interahamwe* at the *Bruxelles* roadblock on 10 April 1994.<sup>1131</sup> The Chamber has addressed this evidence above, and has not found that Ngirabatware brought or distributed weapons on these occasions. Nor do Witnesses ANAL or AFS discuss machetes. Therefore, the Chamber does not consider that this evidence is capable of sustaining the allegations in paragraphs 27 and 50 of the Indictment.

887. The Prosecution also relied on the evidence of Witness ANAJ. Witness ANAJ testified that *Impuzamugambi* and *Interahamwe* attacked other families between 6 and 7 April 1994, and killed Tutsis and men married to Tutsi women. On 7 April 1994, after members of the public attacked his home, he fled to Zaire with his Tutsi wife and returned to Rwanda only on 2 August 1994.<sup>1132</sup> The Prosecution has not established who these people were and how they were attacked or killed. The Chamber notes that these attacks and killings took place between 6 and 7 April

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<sup>1127</sup> Prosecution Closing Brief paras. 93-99, 159-166.

<sup>1128</sup> Defence Closing Brief, paras. 600-650.

<sup>1129</sup> T. 15 February 2010, pp. 77-80, 84; T. 15 February 2010, pp. 87-88 (CS); T. 16 February 2010, pp. 5, 7; T. 17 February 2010, p. 69 (CS); T. 18 February 2010, pp. 87-88 (CS); T. 22 February 2010, pp. 5-9, 16; T. 22 February 2010, pp. 15-18, 20-21, 23, 29 (CS) (Witness ANAO).

<sup>1130</sup> T. 5 October 2009, pp. 24-26 (CS); T. 6 October 2009, pp. 75, 78 (CS); T. 7 October 2009, pp. 6-7, 10-18, 21-22, 28-29, 42, 53-54 (CS) (Witness ANAL).

<sup>1131</sup> T. 2 March 2010, pp. 33-36 (CS) (Witness AFS).

<sup>1132</sup> T. 7 October 2009, p. 75; T. 8 October 2009, pp. 4-5, 6, 10, 17-18, 42; T. 8 October 2009, pp. 76, 78 (CS); T. 12 October 2009, pp. 6, 8; T. 12 October 2009, pp. 16, 30-31, 33-34, 40, 52-54, 82 (CS) (Witness ANAJ). He specifically identified Catherine Mukankubito as a Tutsi lady who was killed, but the Chamber ruled that the Prosecution could not further develop the witness' evidence about her death. T. 8 October 2009, pp. 6, 10, 17 (Witness ANAJ).

1994, and thus do not suffice to establish attacks and killings that would have resulted from any distribution of machetes in mid-April 1994.

888. The Chamber observes that the Prosecution did not lead any evidence that is capable of sustaining the allegations in paragraphs 27 and 50 of the Indictment. Accordingly, the Chamber finds that the Prosecution has not proven these allegations beyond reasonable doubt.

### 3.11 Killings in April 1994 in Furtherance of a Previous Agreement

#### 3.11.1 Introduction

889. Paragraph 60 of the Indictment alleges that in April 1994, in furtherance of the agreement made at the February 1994 Butare and March 1994 MRND Palace meetings, Ngirabatware instigated the *Interahamwe* to seek out and exterminate Tutsi civilians in Gisenyi *préfecture*. The *Interahamwe* then sought for and exterminated hundreds of Tutsi civilians, including Safari, Nehemie and others listed at the 22 February 1994 meeting in Butare town, as stipulated in paragraphs 11, 32 and 57 of the Indictment.<sup>1133</sup> The Prosecution did not make any submissions on this paragraph in its closing submissions.

890. The Defence raises notice issues and submits that the Prosecution withdrew the allegations in paragraphs 11, 32 and 57 and that Witnesses ANAS and ANAT cannot be used to prove the allegations contained in paragraph 60 of the Indictment.<sup>1134</sup>

#### 3.11.2 Notice

891. The Defence argues that the time frame mentioned of “April 1994” is broad and that the location of the alleged killings in “Gisenyi *Préfecture*” is too vague.<sup>1135</sup>

892. The Chamber recalls the general principles regarding notice (2.2). The Chamber notes that, in its Decision of 8 April 2009, it previously denied the Defence submissions concerning the date range. The Chamber concluded that the information was sufficiently detailed to provide adequate notice.<sup>1136</sup> The Defence did not take any further action on this matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>1137</sup> The Chamber notes that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decision on these issues. The Defence has also not provided any reason for raising any additional notice concerns with regard to this Indictment paragraph at this late state of the proceedings. It will therefore now proceed to assess the evidence adduced in support of this allegation.

#### 3.11.3 Evidence

##### Prosecution Witness ANAS

893. Witness ANAS, a Hutu, lived in Nyamyumba *commune* in 1994.<sup>1138</sup> He attended a private meeting presided by Ngirabatware in the Nyamyumba *commune* office sometime in

<sup>1133</sup> Indictment, para. 60. The Chamber notes that this paragraph is similar to paragraph 37 of the Indictment and also that this paragraph refers to paragraphs 11, 32 and 57 of the Indictment. The Prosecution withdrew paragraphs 11, 32, 37 and 57 of the Indictment after the close of the Prosecution case-in-chief. See Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, paras. 19-21, p. 12. See also (2.1).

<sup>1134</sup> Defence Closing Brief, paras. 41-45, 817-823.

<sup>1135</sup> Defence Closing Brief, paras. 41-45.

<sup>1136</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, paras. 35, 38.

<sup>1137</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>1138</sup> Prosecution Exhibit 22 (Personal Identification Sheet); T. 16 March 2010, p. 47 (CS).

January 1994. At that meeting Ngirabatware stated that if they were able to get training in the handling of weapons, he would subsequently send weapons. Witness ANAS testified that a week before the death of President Habyarimana, while he manned the Gisa roadblock, Ngirabatware passed by and spoke to the witness and the other *Interahamwe* manning the roadblock. Ngirabatware inquired if they had any problems and the *Interahamwe* told him that they did not have any weapons to use at the roadblock. Ngirabatware told them that if they had any problems, they should see Jean Simpunga, or a doctor named Maxi. The weapons were brought after the death of President Habyarimana in April 1994 and at that time the people had already been trained in the use of weapons. The *Interahamwe* were asked to go and fetch the weapons from Bagango's house at Cotagirwa.<sup>1139</sup>

894. Witness ANAS testified that during the genocide Kankindi, Mukarugambwa, Safari Nyambwega, Rwagasore, Mugoyi and Gorette Nyirandikubwimana were among the Tutsis who were killed. He stated that he was involved in the killings and as for Mugoyi he knew immediately he was killed. He added that for the other persons, during the genocide, several meetings were organized and in the course of these meetings, it was mentioned who had been killed and who had not yet been killed and must be hunted down.<sup>1140</sup>

#### Prosecution Witness ANAT

895. Witness ANAT is a Hutu and a former *Interahamwe* who lived in Gisenyi town in 1994. He testified that he was classmates with Ngirabatware's younger brother Oscar, and that Oscar told him about Ngirabatware. The witness also stated that Ngirabatware had been the Minister of Planning.<sup>1141</sup>

896. In February 1994 before the death of Martin Bucyana, Witness ANAT saw Ngirabatware and Faustin Bagango at Kitiraco. They had organized a rally, which was attended by *Interahamwe* from three different *secteurs*. He stated that Ngirabatware told them to target Tutsis in the *secteurs*, which the witness understood to mean that Tutsis should be hunted down and killed. Tutsis were then killed.<sup>1142</sup>

897. The day after Martin Bucyana's death in 1994, Witness ANAT was manning the Cyanika roadblock when Ngirabatware arrived and addressed a crowd and encouraged them to find and kill all the Tutsis in Gisa *secteur*. Afterwards, Ngirabatware handed 50,000 francs to a CDR *secteur* official named Honoré Ndyamiyemensi, and told him to go buy traditional weapons and drinks. According to the witness, these weapons were meant to kill Tutsis, and they were utilized for that purpose. The Tutsis living nearby, especially in Gisa, were killed with sharp objects, bullets and clubs.<sup>1143</sup>

#### **3.11.4 Deliberations**

898. At the outset the Chamber observes that the Prosecution did not make any submissions on this paragraph in its closing submissions. The Chamber notes that the allegation contained in

<sup>1139</sup> T. 15 March 2010, pp. 72-73, 75-77, 83; T. 16 March 2010, pp. 5, 8; T. 16 March 2010, pp. 46-47 (CS).

<sup>1140</sup> T. 15 March 2010, pp. 78-80 (CS); T. 15 March 2010, p. 79; T. 15 March 2010, pp. 74-75 (French) (CS).

<sup>1141</sup> Prosecution Exhibit 23 (Personal Identification Sheet); T. 16 March 2010, pp. 62-63, 65.

<sup>1142</sup> T. 16 March 2010, pp. 65-67; T. 17 March 2010, pp. 54-55.

<sup>1143</sup> T. 16 March 2010, pp. 67-68, 70-71; T. 17 March 2010, p. 49 (CS).

paragraphs 37 and 60 of the Indictment are similar and that paragraph 60 of the Indictment makes reference to the alleged 22 February 1994 meeting at Butare town which is discussed in paragraphs 11, 32 and 57 of the Indictment. The Chamber recalls that at the end of its case-in-chief the Prosecution dropped paragraphs 11, 32, 37 and 57 of the Indictment and the Chamber declared that the Defence had no case to answer in respect of these paragraphs.<sup>1144</sup>

899. The Chamber also observes that the Prosecution alleges that in April 1994, in furtherance of MRND Palace meetings in March 1994, Ngirabatware instigated the *Interahamwe* to seek and kill Tutsi civilians in Gisenyi *préfecture*. The Chamber recalls its finding that the Prosecution has not proven beyond a reasonable doubt that in March 1994 there were meetings at the MRND Palace in Gisenyi (3.7.4).

900. The Chamber recalls that in the Prosecution Pre-Trial Brief, Witness ANAI was listed to provide evidence on paragraph 60 of the Indictment.<sup>1145</sup> The Prosecution later dropped Witness ANAI and added Witnesses ANAS and ANAT to give evidence on paragraph 60.<sup>1146</sup> The Chamber observes that Witnesses ANAS and ANAT never testified to any meetings in Butare on 22 February 1994 or at the MRND Palace in March 1994. Neither witness testified to the existence of a list of Tutsis to be exterminated drawn up at the 22 February 1994 meeting. The Chamber notes that Witness ANAS mentioned a number of Tutsis who were killed during the genocide including Safari, but he never linked these killings to the alleged list of Tutsis drawn up in Butare in February 1994 (3.11.3).

901. The Chamber notes that the Prosecution did not lead evidence to establish the existence of a list of Tutsis to be executed, the 22 February 1994 Butare meeting and the alleged meetings at the MRND Palace in March 1994. The Chamber find that the Prosecution has not provided any evidence that the killing of Safari, Nehemie and other Tutsis by the *Interahamwe* in April 1994 was as a result of an agreement made at the Butare 22 February 1994 meeting or at meetings at the MRND Palace in March 1994. As such these allegations have not been proven beyond a reasonable doubt.

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<sup>1144</sup> Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, para. 20 (concerning paragraphs 10 through 12, 15, 31, 32, 34, 37, 38, 47, 54, and 56 through 59 of the Indictment). See also Prosecution's Response to Defence Motion for Acquittal under Rule 98 *bis* of Procedure and Evidence, 15 September 2010, para. 11.

<sup>1145</sup> Prosecution Pre-Trial Brief, Annex 1, Witness ANAI anticipated testimony.

<sup>1146</sup> Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 20, 26 (regarding calling of Witnesses ANAS and ANAT to give evidence on paragraph 60); Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, p. 15.

### 3.12 Instruction to the *Interahamwe*, Around 7 April 1994

#### 3.12.1 Introduction

902. Paragraph 55 of the Indictment alleges that, in Nyamyumba *commune* around 7 April 1994, Ngirabatware instructed members of the *Interahamwe* to “remove all the dirt between their teeth” and to “pull up all the weeds from the millet field”.<sup>1147</sup> The Prosecution refers to no evidence in its Closing Brief that supports this paragraph.

903. The Defence raises notice issues and submits that there is no evidence about the alleged instructions. The testimony of Witnesses ANAL and AFS cannot be used to prove the allegations contained in paragraph 55 of the Indictment. Additionally, the Defence raises an alibi for this time period.<sup>1148</sup>

#### 3.12.2 Notice

904. The Chamber recalls the general principles on notice (2.2). The Defence objects to Indictment paragraph 55 being vague in identification of the perpetrators only as “members of the *Interahamwe* militia”.<sup>1149</sup> The Chamber recalls that this matter has already been adjudicated and dismissed in its Decision of 8 April 2009 and the Defence did not take any further action on the matter at that stage.<sup>1150</sup> Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>1151</sup>

905. In its Closing Brief, the Defence also objects to Indictment paragraph 55 being vague in terms of the location, arguing that reference to “Nyamyumba *commune*” is too broad and that the definition of the victims as “many members of the Tutsi population in Gisenyi” is too generic.<sup>1152</sup> The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>1153</sup> and that the Chamber ruled upon this issue over three years ago as set about above.<sup>1154</sup> The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to this Indictment paragraph. It will now turn to the merits of the allegation.

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<sup>1147</sup> Indictment, para. 55.

<sup>1148</sup> Defence Closing Brief, paras. 43-45, 86-126, 812-816.

<sup>1149</sup> Defence Closing Brief, paras. 46-50.

<sup>1150</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 36.

<sup>1151</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>1152</sup> Defence Closing Brief, paras. 43-45, 51-53.

<sup>1153</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and is defective in relation to Count 4).

<sup>1154</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

### 3.12.3 Evidence

#### Prosecution Witness AFS

906. Witness AFS, a Hutu, lived in the *Bruxelles* area in Nyamyumba *commune*. He worked at the Bralirwa brewery in 1994.<sup>1155</sup>

907. Witness AFS knew Augustin Ngirabatware since 1991 as he was friends with Ngirabatware's older brother Alphonse Bananiye. Witness AFS was formally introduced to Ngirabatware by Alphonse at Ngirabatware's parents' home in 1994, when Alphonse asked Witness AFS to come and meet his brother. Bananiye knew that Witness AFS's wife was a Tutsi.<sup>1156</sup>

908. Witness AFS saw Ngirabatware around 8 April 1994 at Alphonse Bananiye's home. Faustin Bagango, Maximilien Turinabo and Égide Karemera were already there when the witness arrived at approximately 2.00 p.m.<sup>1157</sup>

909. Ngirabatware later arrived and took the floor. Nobody else arrived after Ngirabatware. Ngirabatware said: "You are aware of what has happened. You know that our parent, President Habyarimana, was killed. And you also know very well those who killed him. It is the Tutsis. So how are we supposed to conduct ourselves. What are we going to do?"<sup>1158</sup>

910. Turinabo then took the floor. He spoke to Ngirabatware saying: "You are asking us what we need to do. You know very well that he was killed by the Tutsis. Therefore, those Tutsi who killed him must die."<sup>1159</sup>

911. Ngirabatware then explained that there are: "Hutus who have married Tutsi women. And you also know that there are Hutu men who are our neighbours, who you live comfortably with." He then asked those present, "how are you going to kill those who have married your brothers and people who are your neighbours with whom you share everything?"<sup>1160</sup>

912. Turinabo replied saying, "Mr. Minister, don't you know that a child who is born of a Hutu father and a Tutsi mother is worse than a Burundian"? According to Witness AFS's understanding, Turinabo meant that such a child would be a killer and needed to be killed.<sup>1161</sup>

913. After that, Ngirabatware realized that people were furious and they did not want to listen to reason. He told those assembled that: "[I]f there is a Hutu who is able to protect his Tutsi neighbor, let him do so. And if there is a Hutu who has a Tutsi neighbour with whom they are not living easily, he can release him to the killers." Witness AFS understood that if there was a Hutu who had a Tutsi neighbor that he could kill, it was the Hutu that should kill the Tutsi first.

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<sup>1155</sup> Prosecution Exhibit 19 (Personal Identification Sheet); T. 2 March 2010, pp. 5-6 (CS).

<sup>1156</sup> T. 2 March 2010, p. 9; T. 4 March 2010, p. 29 (CS).

<sup>1157</sup> T. 2 March 2010, pp. 13-15.

<sup>1158</sup> T. 2 March 2010, pp. 13-15.

<sup>1159</sup> T. 2 March 2010, p. 14.

<sup>1160</sup> T. 2 March 2010, p. 14.

<sup>1161</sup> T. 2 March 2010, p. 15; T. 4 March 2010, p. 73 (CS).



Bagango did not speak at this meeting. The witness confirmed that Ngirabatware adopted a more moderate position than the others present.<sup>1162</sup>

#### Prosecution Witness ANAL

914. Witness ANAL, a Tutsi farmer, lived in Nyamyumba *commune* in 1994.<sup>1163</sup> The witness testified that she knew Augustin Ngirabatware since her youth as they attended the same school and were neighbors. Witness ANAL testified that Ngirabatware was a minister in the Rwandan government in 1994.<sup>1164</sup>

915. Prosecution Witness ANAL testified that shortly after President Habyarimana's assassination she hid in Alphonse Bananiye's home when Ngirabatware came to the residence to distribute weapons. When the witness arrived around 7.00 p.m., she saw that another Tutsi, Defence Witness DWAN-3, was already seeking refuge there.<sup>1165</sup> The witness stated that Ngirabatware brought weapons which Ngirabatware told Alphonse he had brought for the *bourgmestre* to distribute to the *conseillers* and which Alphonse took into the room where Witnesses ANAL and DWAN-3 were hiding. Ngirabatware left and, about 30 minutes later, returned with Bagango, who said that they had run out of weapons. Ngirabatware replied that he had weapons in the house, and Alphonse returned the boxes to the living room. The next morning, Alphonse and his wife, for fear of being killed, asked Witnesses ANAL and DWAN-3 to leave. During her time in hiding, Witness ANAL stated that she did not hear Ngirabatware talk to anyone besides Bananiye and Faustin Bagango.<sup>1166</sup>

916. During her testimony Witness ANAL confirmed that in her statement to ICTR investigators in 1999 she said that while hiding at Alphonse's house she heard Ngirabatware talking to the *Interahamwe* outside that house telling them to "remove all dirt lodged in between their teeth" and to "remove all the wheat from the millet farms". The witness confirmed that this statement was correct and recognized that there was a discrepancy between her 1999 statement and her trial testimony regarding the audience of the statement.<sup>1167</sup>

#### **3.12.4 Deliberations**

917. Preliminarily, the Chamber recalls that it has addressed Ngirabatware's alibi elsewhere and found that Ngirabatware's alibi for 7 April 1994 is not reasonably possibly true, but that there is a reasonable possibility that he may have been in Kigali in the early afternoon on 8 April 1994 (3.9.3.8).

918. The Chamber notes that Witness AFS testified to an alleged small meeting which occurred in Nyamyumba *commune* at the home of Alphonse Bananiye on 8 April 1994. There is no mention of *Interahamwe* militia being present. Similarly, the phrases "remove all the dirt between their teeth" and "pull up all the weeds from the millet field" are not mentioned by this

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<sup>1162</sup> T. 2 March 2010, pp. 15, 20; T. 4 March 2010, p. 30 (CS).

<sup>1163</sup> Prosecution Exhibit 9 (Personal Identification Sheet).

<sup>1164</sup> T. 5 October 2009, pp. 6-7.

<sup>1165</sup> T. 5 October 2009, pp. 22-31, 41 (CS); T. 6 October 2009, pp. 75-76, 78 (CS); T. 7 October 2009, pp. 6-8, 10, 13-14 (CS).

<sup>1166</sup> T. 5 October 2009, pp. 29-30 (CS); T. 7 October 2009, pp. 9-18, 21-22, 28-29, 42, 53-54 (CS).

<sup>1167</sup> T. 7 October 2009, pp. 11-12 (CS) (Witness ANAL).

witness as being having been uttered by any of the individuals present. As such, the testimony of Witness AFS cannot substantiate the allegation contained in paragraph 55 of the Indictment.

919. The Chamber recalls Prosecution Witness ANAL's testimony that shortly after President Habyarimana's assassination she hid in Alphonse Bananiye's home when Ngirabatware came to the residence to distribute weapons. This allegation is addressed in more detail above (3.10.3; 3.10.4.3), but of particular relevance to paragraph 55 is that Witness ANAL stated that she did not hear Ngirabatware talk to anyone besides Bananiye and Faustin Bagango.<sup>1168</sup> However, Witness ANAL admitted that in her 17 June 1999 statement, she claimed to Tribunal investigators to have overheard Ngirabatware tell *Interahamwe* assembled outside the house to "remove all the dirt lodged in between your teeth" but explained that she did not believe that this statement still existed. Her testimony then moved to a different subject.<sup>1169</sup>

920. The Chamber does not consider that Witness ANAL's evidence is sufficient to establish that Ngirabatware instructed members of the *Interahamwe* as alleged in paragraph 55 of the Indictment. Moreover, the Chamber has not identified any other evidence that would adequately support this charge. Accordingly, the Chamber finds that the Prosecution has not proven this allegation beyond reasonable doubt.

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<sup>1168</sup> T. 7 October 2009, p. 10 (CS) (Witness ANAL).

<sup>1169</sup> Defence Exhibit 5B (Statement of Witness ANAL, 17 June 1999), p. 3; T. 7 October 2009, pp. 11-12 (CS) (Witness ANAL).

### 3.13 Killing of Mukarugambwa, Around 8 April 1994

#### 3.13.1 Introduction

921. Paragraph 33 of the Indictment alleges that on 8 April 1994, in furtherance of an agreement made in Butare in late February 1994, Felix Niyoniringiye executed Mukarugambwa, a Tutsi businesswoman from Nyamyumba *commune* who was listed for extermination by Ngirabatware.<sup>1170</sup> The Prosecution relies on the evidence of Witnesses ANAO and ANAL.<sup>1171</sup>

922. The Defence raises notice issues and submits that the Prosecution dropped the only witness who was listed to testify on this paragraph, and that the Prosecution has admitted that it did not lead evidence relating to a meeting in Butare.<sup>1172</sup>

#### 3.13.2 Notice

923. The Chamber recalls the general principles regarding notice (2.2). The Defence argues that the Indictment is defective because there is no clear indication of the location where the alleged killing took place.<sup>1173</sup> The Chamber notes that the allegation in Indictment paragraph 33 concerns the list of Tutsis to be exterminated allegedly drawn up by Ngirabatware and others, which resulted in the killing of Mukarugambwa. The issue in dispute is not whether Mukarugambwa was killed but whether she was killed because she was allegedly listed among the Tutsis to be exterminated. In light of the numerous objections to the form of the Indictment that have been adjudicated at various points in the proceedings, the Chamber also notes that the Defence has given no reason or justification for raising this argument at this late stage of the proceedings and has not shown that it suffered any prejudice.

924. The Chamber also notes that the Defence argues that paragraph 33 refers to extermination whereas the applicable count of the Indictment is either genocide or complicity in genocide.<sup>1174</sup> Seeing as the material facts, the nature of the charge, the *mens rea* and the *actus reus* are different between the crimes, the Defence submits there can be no finding as regards this paragraph. The Chamber notes that the Defence has given no reason or justification for raising this argument at this late stage of the proceedings and has not shown that it suffered any prejudice. As these Defence arguments are without merit the Chamber will now assess the evidence adduced in support of this allegation.

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<sup>1170</sup> Indictment, para. 33. The Chamber notes that this paragraph appears to refer to paragraph 32 of the Indictment alleging an agreement in late February 1994, whereby a list of about 100 members of the Tutsi population was drawn up for extermination. The Prosecution withdrew paragraph 32 of the Indictment after the close of the Prosecution case-in-chief. See Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, paras. 19-21, p. 12. See also (2.1).

<sup>1171</sup> Prosecution Closing Brief, paras. 102-104, 111.

<sup>1172</sup> Defence Closing Brief, paras. 43-45, 60-61, 326; Defence Closing Argument, T. 24 July 2012, p. 39.

<sup>1173</sup> Defence Closing Brief, paras. 43-45.

<sup>1174</sup> Defence Closing Brief, paras. 60-61.

### 3.13.3 Evidence

#### Prosecution Witness ANAO

925. Witness ANAO, a Hutu, was a member of the *Interahamwe* in 1994. He lived in Nyamyumba *commune* and worked at the Kitiraco market in 1994. He was also one of those who manned the Gitsimbi/Cotagirwa roadblock in 1994.<sup>1175</sup> He stated that he knew Ngirabatware and only saw Ngirabatware once in 1994, a few days before President Habyarimana's death.<sup>1176</sup>

926. Witness ANAO testified that the morning after the President's plane crashed, Faustin Bagango and Hassan Tubaramuri instructed those manning the roadblock to hunt and kill all the Tutsis, not only the Tutsis who came to the roadblock but also those who were in their homes. Witness ANAO stated that a soldier asked the *Interahamwe* to kill every living Tutsi and that in the evening of 7 April 1994, he saw Felix Niyoniringiye participating in the killing of Mukarugambwa.<sup>1177</sup>

#### Prosecution Witness ANAL

927. Witness ANAL, a Tutsi farmer, lived in Nyamyumba *commune* in 1994.<sup>1178</sup> She stated that she has known Ngirabatware for many years, since they both attended the same school in Nyamyumba *commune*.<sup>1179</sup>

928. Witness ANAL testified that a certain Ibrahim told her that he witnessed the killing of a woman named Mukarugambwa. She stated that Mukarugambwa was killed. According to her, Felix Niyoniringiye killed Mukarugambwa with a club. She knew Niyoniringiye, a neighbor to Mukarugambwa and testified that she saw Niyoniringiye at his house on the morning of the day after the President's plane was brought down. She further testified that another *Interahamwe* whose name was Uwimana also played a role in the death of Mukarugambwa.<sup>1180</sup>

#### Defence Witness DWAN-39

929. Witness DWAN-39, a Hutu, lived in Nyamyumba *commune* in 1994. He participated in the *Gacaca* court proceedings of Rushubi *secteur*.<sup>1181</sup> He knew Ngirabatware and the last time he saw Ngirabatware was at Ngirabatware's father's funeral in January 1993 in Rushubi *secteur*.<sup>1182</sup>

930. Witness DWAN-39 stated that he knew a woman called Mukarugambwa who died in 1994. He took part in the *Gacaca* trial regarding the death of Mukarugambwa. He testified that Nyirasafari and Nzagenda were convicted for killing Mukarugambwa while Bazimaziki Bondo

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<sup>1175</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, pp. 36-38 (CS); T. 17 February 2010, p. 13; T. 22 February 2010, pp. 13-15, 22, 31 (CS).

<sup>1176</sup> T. 15 February 2010, pp. 68-69; T. 15 February 2010, p. 87 (CS); T. 22 February 2010, p. 3.

<sup>1177</sup> T. 15 February 2010, pp. 46, 49-50 (CS); T. 17 February 2010, p. 75 (CS). The Chamber notes that this information was adduced on cross-examination.

<sup>1178</sup> Prosecution Exhibit 9 (Personal Identification Sheet).

<sup>1179</sup> T. 5 October 2009, p. 6.

<sup>1180</sup> T. 6 October 2009, pp. 23-24, 69-70, 72-73 (CS).

<sup>1181</sup> Defence Exhibit 148 (Personal Identification Sheet); T. 23 September 2011, p. 9 (CS).

<sup>1182</sup> T. 23 September 2011, pp. 6-8.

and Bujyanamari were acquitted. According to the witness, Nyirasafari had hatched a plot against her daughter-in-law Mukarugambwa and showed the killers where Mukarugambwa was hiding.<sup>1183</sup>

931. The witness stated that Niyoniringiye was a witness in the Mukarugambwa case. Witness DWAN-39 testified that Witness ANAO was involved in *Gacaca* trials in Rushubi *secteur*. Witness ANAO did not accuse Ngirabatware of anything during his testimony before the *Gacaca* court.<sup>1184</sup>

932. Witness DWAN-39 further testified that no one mentioned Augustin Ngirabatware's name as being involved, whether directly or indirectly, in the killing of Mukarugambwa nor did anyone testify that there existed a "list of Tutsis" for extermination.<sup>1185</sup>

### 3.13.4 Deliberations

933. At the outset, the Chamber notes that paragraph 33 of the Indictment makes reference to an alleged meeting in Butare, at which Ngirabatware and other persons drew up a list of about 100 members of the Tutsi population for extermination. This allegation is contained in paragraphs 11 and 32 of the Indictment.<sup>1186</sup> The Chamber notes that in its Decision on Defence Motion for Judgement of Acquittal, the Chamber granted the Prosecution's request to withdraw paragraph 32 amongst other paragraphs of the Indictment. The Prosecution also declared that the Defence had no case to answer in respect of these paragraphs.<sup>1187</sup> The Chamber further recalls that the Prosecution during Closing Arguments explicitly dropped the Conspiracy charges under Count 1 of the Indictment, thus dropping paragraph 11 of the Indictment.<sup>1188</sup>

934. The Prosecution relies upon the testimony of Witnesses ANAO and ANAL to support its allegation that Ngirabatware was involved in the death of Mukarugambwa. Witness ANAO was an *Interahamwe* in Nyamyumba *commune* in 1994. He was convicted and sentenced by the *Gacaca* Court of Busheke *cellule* to seven years' imprisonment, and one year of community work for his role in the genocide of 1994, and was released in 2003.<sup>1189</sup> Consequently, the Chamber will treat his testimony with appropriate caution.

<sup>1183</sup> T. 26 September 2011, pp. 37-39, 55-57 (CS). See also T. 23 September 2011, pp. 42-43 (CS).

<sup>1184</sup> T. 23 September 2011, p. 26 (CS); T. 23 September 2011, pp. 29-30, 33-34, 36-38 (CS); T. 26 September 2011, pp. 39-40, 50-53, 57-58 (CS); T. 27 September 2011, pp. 34-37, 39, 43-45 (CS). See also Defence Exhibit 71 (Judgement Concerning Witness ANAO, April 2007); Defence Exhibit 151 (*Gacaca* Judgements of July and August 2006).

<sup>1185</sup> T. 26 September 2011, pp. 39-40, 47, 60-62 (CS).

<sup>1186</sup> The Chamber notes that a similar allegation was contained in paragraphs 11 and 57 of the Indictment. Paragraph 57 of the Indictment was withdrawn after the close of the Prosecution case-in-chief. Paragraph 11 of the Indictment makes a similar allegation under the charge of Conspiracy to Commit Genocide. During Closing Arguments, the Prosecution stated that it had dropped this charge. Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>1187</sup> Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, p. 12 (concerning paragraphs 10 through 12, 15, 31, 32, 34, 37, 38, 47, 54, and 56 through 59 of the Indictment). See also Prosecution's Response to Defence Motion for Acquittal under Rule 98 *bis* of the Rules of Procedure and Evidence, 15 September 2010, paras. 10-11.

<sup>1188</sup> Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>1189</sup> T. 16 February 2010, pp. 3-5, 7; T. 17 February 2010, p. 22; T. 17 February 2010, p. 72 (CS); T. 18 February 2010, pp. 13, 24, 39-40, 52-53, 65, 67-69 (CS); T. 22 February 2010, pp. 38-42, 44 (CS) (Witness ANAO). See also Defence Exhibit 67 (Judgement Concerning Witness ANAO, August 2006).

935. Witness ANAO provided first-hand evidence that on the evening of 7 April 1994, he saw Niyoniringiye participating in the killing of Mukarugambwa.<sup>1190</sup> The Chamber notes that the Indictment alleges that Mukarugambwa was killed on 8 April while Witness ANAO stated that Mukarugambwa was killed in the evening of the day after the President's death. The Chamber finds that these events happened 16 years prior to Witness ANAO's testimony, thus Witness ANAO's account that Mukarugambwa was killed on 7 April as opposed to 8 April, is considered a minor discrepancy.

936. Witness ANAL on the other hand provided hearsay evidence regarding Mukarugambwa's killing. She stated that she heard about Mukarugambwa's death from a certain Ibrahim who told her that he was present when Niyoniringiye killed Mukarugambwa.<sup>1191</sup> She added that Niyoniringiye killed Mukarugambwa with a club and that other *Interahamwe* played a role in the death of Mukarugambwa.<sup>1192</sup> The Chamber notes that although Witness ANAL did not specify the date Mukarugambwa was killed or when Ibrahim told her about the killing of Mukarugambwa, her evidence corroborates that of Witness ANAO with regard to the fact that Niyoniringiye killed Mukarugambwa.

937. To further support its position, the Prosecution refers to Defence Exhibit 158, the Judgement of the Court of First Instance of Gisenyi, to demonstrate that Niyoniringiye killed Mukarugambwa.<sup>1193</sup> The Chamber notes that in the case before the Court of First Instance of Gisenyi, Niyoniringiye was listed as one of the accused persons charged, among other things, with the death of Mukarugambwa. The Judgement subsequently stated that Niyoniringiye pleaded guilty to killing Mukarugambwa, and he was convicted and sentenced to 20 years' imprisonment.<sup>1194</sup> Furthermore, Defence Witness DWAN-39 stated that Niyoniringiye appeared before the *Gacaca* court as a witness in Mukarugambwa's murder case.<sup>1195</sup> Defence Exhibit 151 which deals with the *Gacaca* Judgement in the matter of Mukarugambwa's murder, contains Niyoniringiye's testimony acknowledging that he killed Mukarugambwa.<sup>1196</sup>

938. The Chamber finds Witnesses ANAO and ANAL's evidence that Niyoniringiye killed Mukarugambwa to be credible, and thus finds that the Prosecution has established that Niyoniringiye killed a woman named Mukarugambwa. The Chamber moreover notes that the

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<sup>1190</sup> T. 17 February 2010, p. 75 (CS) (Witness ANAO). The witness testified that "President Habyarimana was killed on the evening of Wednesday [6 April 1994], and the following day, on Thursday evening [7 April 1994], this person [Mukarugambwa] was also killed."

<sup>1191</sup> T. 6 October 2009, pp. 69-70, 72-73 (CS) (Witness ANAL).

<sup>1192</sup> T. 6 October 2009, pp. 23-24, 69-70, 72-73 (CS) (Witness ANAL).

<sup>1193</sup> Prosecution Closing Brief, paras. 102, 105. Defence Exhibit 158 (Judgement of Court of First Instance of Gisenyi, October 2000).

<sup>1194</sup> See Defence Exhibit 158C (Judgement of Court of First Instance of Gisenyi, October 2000), pp. 2-4, 18-19.

<sup>1195</sup> T. 26 September 2011, pp. 39-40, 57-58 (CS) (Witness DWAN-39); Defence Exhibit 151 (*Gacaca* Judgements of July and August 2006).

<sup>1196</sup> Defence Exhibit 151C (*Gacaca* Judgements of July and August 2006), p. 5.

Defence does not dispute the fact that Niyoniringiye killed Mukarugambwa<sup>1197</sup> but argues that Ngirabatware was not directly or indirectly involved in the killing of Mukarugambwa.<sup>1198</sup>

939. The Chamber will now assess whether Ngirabatware listed members of the Tutsi population, including Mukarugambwa, for extermination, and as a result Niyoniringiye killed Mukarugambwa. The Chamber finds that on this issue the Prosecution led no evidence. The Prosecution listed Witness ANAI in its Pre-Trial Brief, as a witness who would testify regarding this allegation, however, during its case the Prosecution dropped Witness ANAI.<sup>1199</sup> Furthermore, as stated above, the Prosecution, in its response to the Defence's Rule 98*bis* motion, indicated that it "did not lead evidence regarding the allegations relating to a meeting in Butare" where the alleged list of Tutsi members of the population was drawn.<sup>1200</sup>

940. Witness ANAO testified that in the morning after the death of the President, they were instructed by Faustin Bagango, Hassan Tubaramuri and a soldier to hunt and kill all the Tutsis.<sup>1201</sup> The Chamber notes that Witness ANAO never stated that Ngirabatware listed Tutsis including Mukarugambwa for extermination. Witness ANAO further stated that he last saw Ngirabatware a few days before the death of the President but makes no reference to Ngirabatware drawing up a list of Tutsis to be exterminated.<sup>1202</sup> Similarly Witness ANAL stated that she saw Felix Niyoniringiye at his house, the morning after the President's plane was brought down.<sup>1203</sup> Nowhere in her testimony did she state that she heard or was told that Ngirabatware drew up a list of Tutsis to be exterminated, or that Ngirabatware identified Mukarugambwa to be executed by Niyoniringiye or any other *Interahamwe*.

941. The Chamber notes that Defence Exhibit 151 and Defence Exhibit 158 do not mention Ngirabatware's involvement in the killing of Mukarugambwa nor do they state that Ngirabatware instructed Felix Niyoniringiye to kill Mukarugambwa.<sup>1204</sup> However, these exhibits solely cannot be regarded as conclusive evidence to prove that Ngirabatware was not involved in the killing of Mukarugambwa.

942. The Prosecution further argues that about three weeks after the President's death, Ngirabatware told people to kill the Tutsis.<sup>1205</sup> The Chamber notes that this alleged

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<sup>1197</sup> See T. 26 September 2011, pp. 39-40, 57-58 (CS) (Witness DWAN-39); Defence Exhibit 151 (*Gacaca* Judgements of July and August 2006); Defence Exhibit 158 (Judgement of Court of First Instance of Gisenyi, October 2000).

<sup>1198</sup> Defence Closing Brief, fn. 1938; Defence Exhibit 151 (*Gacaca* Judgements of July and August 2006); Defence Exhibit 158 (Judgement of Court of First Instance of Gisenyi, October 2000). The Chamber also notes that Ngirabatware denied knowing Felix Niyoniringiye. T. 2 December 2010, p. 29 (French) (Ngirabatware).

<sup>1199</sup> Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, para. 1. The Chamber also notes that the evidence regarding the killing of Mukarugambwa was adduced during the cross-examination of Witness ANAL and Witness ANAO.

<sup>1200</sup> Prosecution's Response to Defence Motion for Acquittal under Rule 98 *bis* of the Rules of Procedure and Evidence, 15 September 2010, para. 11. See also Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010.

<sup>1201</sup> T. 15 February 2010, pp. 46, 49-50 (CS); T. 17 February 2010, p. 75 (CS) (Witness ANAO).

<sup>1202</sup> T. 15 February 2010, pp. 68-69; T. 15 February 2010, p. 87 (CS); T. 22 February 2010, p. 3 (Witness ANAO).

<sup>1203</sup> T. 6 October 2009, pp. 72-73 (CS) (Witness ANAL).

<sup>1204</sup> Defence Closing Brief, fn. 1938, Defence Exhibit 151 (*Gacaca* Judgements of July and August 2006); Defence Exhibit 158 (Judgement of Court of First Instance of Gisenyi, October 2000). See paragraph 937 above.

<sup>1205</sup> Prosecution Closing Brief, paras. 100-102 (referring to Witness ANAG's testimony).

pronouncement happened weeks after the killing of Mukarugambwa and thus cannot be used as proof of Ngirabatware's involvement in Mukarugambwa's death.<sup>1206</sup>

943. The Chamber finds that the Prosecution has failed to present any evidence to suggest that Ngirabatware ever listed Mukarugambwa for extermination. Having considered all the evidence, the Chamber finds that although there is sufficient evidence adduced to conclude that around 8 April 1994, Felix Niyoniringiye killed Mukarugambwa, the Prosecution has not proven beyond a reasonable doubt that Mukarugambwa was listed by Ngirabatware for execution. Accordingly, the allegation contained in paragraph 33 of the Indictment has not been proven beyond a reasonable doubt.

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<sup>1206</sup> Defence Closing Argument, T. 24 July 2012, p. 39.



### 3.14 Rapes in Nyamyumba Commune, April 1994

#### 3.14.1 Introduction

944. Paragraphs 61 to 63 of the Indictment allege that around April 1994, in Nyamyumba commune, *Interahamwe* raped three Tutsi women named Bonishance, Denise Nyirabunori and Chantal Murazemariya as part of a widespread and systematic attack against the Tutsi population based on ethnic grounds. The *Interahamwe* were engaged in a joint criminal enterprise with Ngirabatware and acted in concert with Faustin Bagango, the *bourgmestre* and *Interahamwe* chairman for Nyamyumba commune. It specifically alleges the involvement of *Interahamwe* named Juma and Makuze in the rape of Chantal Murazemariya.<sup>1207</sup>

945. The Prosecution submits that the rapes were a natural and foreseeable consequence of the joint criminal enterprise to kill or destroy the Tutsi population in which Ngirabatware knowingly and willingly participated. Ngirabatware and his co-perpetrators were reckless and indifferent to the risk that such rapes would occur. The Prosecution relies on the evidence of Witnesses ANAF, ANAK, ANAM, ANAD, ANAG and ANAU to demonstrate that rapes of Tutsi women occurred in Nyamyumba commune in an open and notorious manner during the genocide. In relation to the rapes of Bonishance<sup>1208</sup> and Chantal Murazemariya, the Prosecution relies on Witnesses ANAG, ANAM and ANAO.<sup>1209</sup> In its closing submissions, the Prosecution makes no reference to any evidence supporting the alleged rape of Denise Nyirabunori.

946. The Defence raises notice issues and submits that the Prosecution failed to prove the existence of a joint criminal enterprise to exterminate Tutsis, Ngirabatware's intention to participate in such a common purpose, that the alleged rapes were a foreseeable consequence of that purpose and that Ngirabatware willingly took the risk that such rapes would occur. The Prosecution adduced no evidence demonstrating that Ngirabatware was aware of any person committing rapes in Rushubi secteur or of any link between Ngirabatware and Bagango or Bagango and the *Interahamwe*. It submits that no Prosecution witness testified about the rape of Denise Nyirabunori and contends that the Prosecution evidence in relation to rape in general, and specifically the rapes of Bonishance and Chantal Murazemariya, is insufficient, contradictory and vague. The Defence relies on the testimonies of Witnesses DWAN-2, DWAN-3, DWAN-39 and DWAN-71.<sup>1210</sup>

#### 3.14.2 Notice

947. The Chamber initially recalls the general principles on notice (2.2). In its Closing Brief the Defence objects to the vagueness in the date in Indictment paragraphs 61 to 63 by referring to

<sup>1207</sup> Indictment, Count 6, paras. 61-63.

<sup>1208</sup> The Chamber notes that "Bonishance" is spelled differently in various documents: Indictment, para. 61 ("Bonishance"); Prosecution Closing Brief, paras. 51, 54-55, 58, 195, 197, 199 ("Bonnichance"), paras. 51, 54-55, 58, 195, 199 ("Bonne Chance"); Defence Closing Brief, paras. 826, 830-831, 838 ("Bonichance"); T. 1 March 2010, pp. 15, 18-19 (CS) (Witness ANAG) ("Bonne Chance"). The Chamber is convinced that this refers to the same person and has opted to use "Bonishance" as spelled in the Indictment.

<sup>1209</sup> Prosecution Closing Brief, paras. 49-58, 195, 197-202; Prosecution Closing Argument, T. 23 July 2012, pp. 17-19, 26-27; T. 25 July 2012, p. 30. The Chamber considers that Witness ANAL may have provided relevant testimony, and has therefore set out her evidence below.

<sup>1210</sup> Defence Closing Brief, paras. 41-45, 54-59, 825-845; Defence Closing Argument, T. 24 July 2012, pp. 33, 35-36, 45; T. 25 July 2012, pp. 41, 51.

“around April 1994”.<sup>1211</sup> The Defence also objects to vagueness in terms of the location, as there are no locations mentioned where the alleged rapes occurred.<sup>1212</sup> The Chamber recalls that these matters have already been adjudicated in its Decision of 8 April 2009 and that the Chamber concluded that the information was sufficiently detailed to provide adequate notice.<sup>1213</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found no basis had been provided to warrant reconsideration of this Decision.<sup>1214</sup>

948. The Defence also argues that there is no notice provided as to Ngirabatware’s alleged mode of participation in rape.<sup>1215</sup> The Chamber notes that the Defence provides no reason or justification for raising this additional notice issue at this late stage of the proceedings and has not shown that it suffered any prejudice. This argument is without merit. The Chamber will now assess the evidence adduced in support of this allegation.

### 3.14.3 The Rape of Bonishance

#### 3.14.3.1 Evidence

##### Prosecution Witness ANAG

949. Witness ANAG, a Tutsi from Nyamyumba *commune*, testified that a female named Florence Bonishance was raped but did not know when this rape occurred.<sup>1216</sup>

#### 3.14.3.2 Deliberations

950. The Prosecution relies on the testimony of Witness ANAG to establish the facts alleged in Paragraph 61 of the Indictment. Aside from the general assertion of Defence Witnesses DWAN-3 and DWAN-71 that nobody was raped in Rushubi *secteur* and Witness DWAN-39’s testimony that there were no *Gacaca* convictions for rape in the area, the Defence did not bring evidence to dispute the allegation that Bonishance was raped. Although the Chamber recalls that it may rely on uncorroborated evidence to sustain a conviction (2.8.4), it chooses not to rely solely on the evidence of Witness ANAG to prove the rape of Bonishance. The witness fails to specify important factual details, including when the rape occurred, where the rape occurred, the identity of the perpetrators and the ethnicity of the victim. Additionally, it is also unclear how Witness ANAG learned of Bonishance’s rape.

951. Accordingly, the Chamber concludes that the Prosecution failed to prove beyond reasonable doubt that Bonishance was raped by *Interahamwe* in April 1994 in Nyamyumba *commune*.

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<sup>1211</sup> Defence Closing Brief, paras. 41-42.

<sup>1212</sup> Defence Closing Brief, paras. 43-45.

<sup>1213</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, paras. 38-39.

<sup>1214</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>1215</sup> Defence Closing Brief, paras. 54-59.

<sup>1216</sup> Prosecution Exhibit 18 (Personal Identification Sheet); T. 1 March 2010, pp. 12, 15, 18-19, 50 (CS); T. 1 March 2010, p. 18 (French) (CS).

### 3.14.4 The Rape of Denise Nyirabunori

#### 3.14.4.1 Evidence

##### Prosecution Witness ANAL

952. Witness ANAL, a Tutsi from Nyamyumba *commune*, testified that she hid with another Tutsi named Denise Nyirabunori at Alphonse Bananiye's house on the evening of 7 April 1994. Nyirabunori had not been bothered that evening, and the next morning the witness and Nyirabunori parted ways to seek refuge elsewhere. Nyirabunori was unharmed when they left each other.<sup>1217</sup>

##### Prosecution Witness ANAG

953. Witness ANAG stated that she knew someone called Nyirabunori, but did not know of anything that happened to this person.<sup>1218</sup>

##### Defence Witness DWAN-3

954. Witness DWAN-3, a Tutsi from Nyamyumba *commune*, testified that neither Denise Nyirabunori nor anyone in her *secteur* or *cellule* was sexually assaulted during the events of April to July 1994.<sup>1219</sup>

#### 3.14.4.2 Deliberations

955. The Chamber observes that the Prosecution failed to adduce any evidence suggesting that Denise Nyirabunori was raped. Accordingly, the Chamber concludes that the Prosecution failed to prove beyond reasonable doubt that Denise Nyirabunori was raped by *Interahamwe* in April 1994 in Nyamyumba *commune*.

### 3.14.5 The Rape of Chantal Murazemariya

#### 3.14.5.1 Preliminary Matters

956. On 25 January 2010, immediately prior to the testimony of Witness ANAM, the Defence informed the Chamber that it had received a will-say statement on 23 January 2010 which changed Witness ANAM's identity. The witness explained that she provided the real names of her biological parents when she arrived in Arusha because at that point she realized that there were no problems with her security. At the time the investigators came to see her in Rwanda, she testified that she had no guarantee for her security and did not know the reasons why they went to look for her so she chose to be "prudent" and provided the names of her foster parents instead of the names of her biological parents. She testified that "I wanted my safety to be reassured because I know that my parents had been killed by members of the families who testified against

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<sup>1217</sup> Prosecution Exhibit 9 (Personal Identification Sheet); T. 5 October 2009, pp. 25-26, 30 (CS); T. 7 October 2009, p. 44 (CS).

<sup>1218</sup> T. 1 March 2010, p. 18 (CS).

<sup>1219</sup> T. 16 June 2011, pp. 37-38, 42 (CS); T. 20 June 2011, pp. 52-54, 57 (CS).

those people”.<sup>1220</sup> The Defence submitted that it asked the Prosecution on 28 July 2009 to verify the identities of a number of witnesses, and raised the matter again in a motion but received notice of significant changes two-and-a-half days before the witness was to testify.<sup>1221</sup> The Chamber found that the information in the available statements should have allowed the Defence to prepare for cross-examination.<sup>1222</sup>

957. During Witness ANAM’s testimony, the Defence again objected to the testimony regarding the rape of Chantal Murazemariya because the first mention of Witness ANAM testifying to this allegation was provided in the will-say statement disclosed on 23 January 2010 and provided no time for investigations. The Chamber ruled that cross-examination of Witness ANAM would be delayed to allow for extra time for investigations.<sup>1223</sup>

958. On 27 January 2010, following the completion of Witness ANAM’s testimony, Defence Counsel explained that she had not asked any questions during the cross-examination in relation to rape because her team had not had time to investigate the matter between the time of disclosure and Witness ANAM’s testimony. The Chamber advised that the Defence should raise the matter formally should it wish to cross-examine her on this issue. The Defence did not contest this ruling.<sup>1224</sup>

959. On 2 February 2010, Prosecution Counsel asked the Chamber whether Witness ANAM should be sent back to Rwanda. It was determined that the witness should return to Rwanda and that the Defence should submit a formal motion should it wish to pursue any issue in relation to cross-examining her on the issue of rape. The Defence agreed that the witness should be sent back to Rwanda and did not contest the ruling.<sup>1225</sup>

960. The Chamber notes that the Defence did not object to its ruling that it should formally raise any issue it had in relation to the cross-examination of Witness ANAM on rape. The Defence did not file a motion in relation to this issue. As a consequence of the Defence’s failure to formally raise the issue at a subsequent time, the Chamber concluded that it had waived any objection it may have had. As such, Witness ANAM’s evidence on the rape of Chantal Murazemariya is admissible.

### **3.14.5.2 Evidence**

#### **Prosecution Witness ANAG**

961. Witness ANAG testified that Chantal Murazemariya, a Tutsi,<sup>1226</sup> fled to the home of “her father’s relative”, an uncle, with her siblings four days after President Habyarimana’s plane was

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<sup>1220</sup> T. 25 January 2010, p. 73.

<sup>1221</sup> Defence Extremely Urgent Motion on Issues Relating to the Preparation of the Trial, 11 September 2009; T. 25 January 2010, pp. 2-3.

<sup>1222</sup> T. 25 January 2010, p. 9.

<sup>1223</sup> T. 25 January 2010, pp. 57-60 (CS).

<sup>1224</sup> T. 27 January 2010, p. 52.

<sup>1225</sup> T. 2 February 2010, pp. 6-7.

<sup>1226</sup> Witness ANAG explained that Murezemariya was a Tutsi. Her biological father was a Tutsi, but the person referred to as Murezemariya’s father was a Hutu. T. 1 March 2010, p. 50 (CS).

shot down and remained there for two to three months.<sup>1227</sup> One week after Habyarimana's death, around 1.00 p.m., two *Interahamwe* named Juma and Makuze came and took Murazemariya to a banana plantation, where they raped her. Juma and Makuze returned three days later, and took Murazemariya again "to a banana plantation".<sup>1228</sup>

#### Prosecution Witness ANAM

962. Witness ANAM, a Hutu from Nyamyumba *commune*,<sup>1229</sup> testified that from the moment of President Habyarimana's death, Hutus attacked Tutsis and raped Tutsi women. Around one month after President Habyarimana's death,<sup>1230</sup> she witnessed two *Interahamwe* named Juma and Makuze arrive at the home of Chantal Murazemariya and lead her away. The witness and others called Murazemariya's half-brother, Innocent Murazemungu, who tried to follow them and later found her at the Rushubi *secteur* office. Murazemariya was crying and told the witness that the *Interahamwe* had raped her.<sup>1231</sup>

963. The witness recalled that Murazemariya's siblings remained in their own home throughout the genocide because they were protected by their half-brother, Innocent Murazemungu, who was an *Interahamwe*.<sup>1232</sup>

#### Prosecution Witness ANAO

964. Witness ANAO, a Hutu and former *Interahamwe* from Nyamyumba *commune*,<sup>1233</sup> testified that he and other *Interahamwe* went to the home of Chantal Murazemariya's uncle to find a Tutsi hiding there. Makuze, Juma<sup>1234</sup> and Witness ANAO asked the uncle to turn in the Tutsi. Witness ANAO also spoke with him. The uncle said that no Tutsis were inside, only children. The witness believed him but warned that he would be killed if any Tutsis were there. Makuze and Juma demanded money and he gave it to them. Meanwhile, Xavier Siborurema, the *Interahamwe* president for Rubona, had sent someone to collect Witness ANAO, who then left to raid another house in Kabiza. Makuze and Juma stayed behind and entered the home. Witness ANAO believed that Makuze and Juma found Chantal Murazemariya and attacked her. Witness

<sup>1227</sup> T. 1 March 2010, pp. 10, 38, 51 (CS). Witness ANAG described the man as "her father's relative" and as a paternal uncle. T. 1 March 2010, p. 19 (CS). See also T. 1 March 2010, pp. 50-51 (CS).

<sup>1228</sup> T. 1 March 2010, pp. 13, 18 (CS). Witness ANAG stated that Murazemariya was abducted the first time around 1.00 p.m., and on the second occasion around 7.00 p.m. T. 1 March 2010, p. 13 (CS). She also testified that Murazemariya went to her uncle's home four days after President Habyarimana was killed. T. 1 March 2010, p. 51 (CS). The Chamber notes that the names of the two *Interahamwe* allegedly involved in the rape are spelled differently in the Indictment, transcripts and the Closing Briefs. For example, "Juma" is also referred to as "Djuma" (T. 20 June 2011, p. 55 (CS)), "Cyimeza" (T. 25 January 2010, p. 48 (CS); T. 1 March 2010, p. 13 (CS); T. 20 June 2011, p. 55 (CS)) and "Kimeza" (T. 25 January 2010, pp. 46-47 (CS)). "Makuze" is also referred to as "Makuza" (T. 25 January 2010, p. 61 (CS); T. 1 March 2010, p. 13 (CS)). The Trial Chamber is convinced that reference is being made to the same two people and has opted to use "Juma" and "Makuze" as used in paragraph 63 of the Indictment.

<sup>1229</sup> Prosecution Exhibit 13 (Personal Identification Sheet). Prosecution Exhibit 13 identifies Witness ANAM's ethnicity as Tutsi, but she later explained that she was Hutu. See T. 25 January 2010, pp. 72-73.

<sup>1230</sup> Witness ANAM testified that this event "took place about two weeks after Safari's death", and then placed Safari's death about 12 days after Habyarimana's assassination. T. 25 January 2010, pp. 61-62 (CS).

<sup>1231</sup> T. 25 January 2010, pp. 24, 61-62 (CS).

<sup>1232</sup> T. 25 January 2010, pp. 55-56 (CS).

<sup>1233</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS); T. 17 February 2010, p. 13; T. 17 February 2010, p. 42 (CS).

<sup>1234</sup> Elsewhere, Witness ANAO stated that Kimeza was also known as "Juma". T. 15 February 2010, p. 40 (CS).

ANAO never personally entered into the house nor did he see Murazemariya between April and July 1994.<sup>1235</sup>

965. Chantal Murazemariya's uncle distributed money to Makuze. Later, Makuze and Juma joined Witness ANAO and the other *Interahamwe* in Kabiza, where they used the uncle's money to buy beer for the group.<sup>1236</sup>

#### Defence Witness DWAN-2

966. Witness DWAN-2, a Hutu living in Nyamyumba *commune* in 1994,<sup>1237</sup> testified that Chantal Murazemariya sought refuge at her uncle's home prior to the death of Safari but after the death of President Habyarimana. Murazemariya was afraid of the *Interahamwe*, in particular, Juma, who had frightened her because her mother was a Tutsi. Murazemariya stayed in her uncle's house for four days. Her siblings did not seek refuge there.<sup>1238</sup>

967. The witness denied that Murazemariya had been raped. She testified that nothing bad happened to Murazemariya while she was at her uncle's house. The witness did not see anybody raping Murazemariya and did not hear of anyone doing so during the events of 1994. Had Murazemariya been raped, the witness would have known about it, and Murazemariya would have made a complaint before the *Gacaca* courts.<sup>1239</sup>

968. The witness does not know Juma or Makuze and stated that neither of them set foot in Murazemariya's uncle's house following the death of President Habyarimana. According to Witness DWAN-2, Murazemariya fled along with her family and Witness DWAN-2, and her family to the Congo five days after Murazemariya left her uncle's house.<sup>1240</sup>

#### Defence Witness DWAN-3

969. Witness DWAN-3 testified that Chantal Murazemariya was never raped during the events of April to July 1994. The witness knows Juma and Makuze. She described them as "terrible, dangerous *Interahamwe*". They did not commit rape because if they had people would have complained against them and it would have been known during the *Gacaca* proceedings. The witness explained that all of the members of the *commune* were under the control of Bagango, not just Juma and Makuze. Bagango did not give orders to *Interahamwe*. Juma was one of the

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<sup>1235</sup> T. 15 February 2010, p. 75 (CS); T. 17 February 2010, pp. 70-72 (CS); T. 18 February 2010, pp. 38, 74 (CS); T. 22 February 2010, p. 38 (CS). The Chamber recalls that this evidence pertaining to Witness ANAO's belief of Chantal's rape was first adduced on cross-examination, and that the Chamber sustained a Defence objection to any questions pertaining to the type of attack on re-examination. See T. 22 February 2010, pp. 41-42 (CS).

<sup>1236</sup> T. 17 February 2010, pp. 71-72 (CS).

<sup>1237</sup> Defence Exhibit 133 (Personal Identification Sheet).

<sup>1238</sup> T. 7 July 2011, p. 80 (CS); T. 11 July 2011, pp. 20-21 (CS). The Chamber notes that the testimony referred to "Kimeza" as the person threatening Murazemariya, and refers to footnote . See also T. 11 July 2011, pp. 47-49 (CS) ("that would be a lie" if someone else testified that Murazemariya remained in her uncle's home for two to three months).

<sup>1239</sup> T. 7 July 2011, p. 81 (CS); T. 11 July 2011, p. 27 (CS).

<sup>1240</sup> T. 7 July 2011, p. 81 (CS); T. 11 July 2011, pp. 47-49 (CS).

most violent *Interahamwe* and flouted the authorities. He was killed in 1994 by other *Interahamwe* because he perpetrated killings and theft.<sup>1241</sup>

### 3.14.5.3 *Deliberations*

970. At the outset, the Chamber notes that Prosecution Witness ANAO was convicted and completed a custodial sentence for crimes committed during the genocide.<sup>1242</sup> Accordingly, it considers his testimony with the appropriate degree of caution.

971. The Chamber also recalls the Defence attempts to discredit the testimony of Witness ANAM because she changed material facts relating to her identity two days before she testified in this case. The Chamber has taken note of her explanation of why she did so and accepts it as reasonable.

972. The Prosecution relies on the testimony of Witnesses ANAG, ANAM and ANAO to support the allegation that in April 1994, Chantal Murazemariya was raped by *Interahamwe* named Juma and Makuze. Witnesses ANAG and ANAM provided mutually corroborative evidence that Murazemariya, a Tutsi, was abducted by *Interahamwe* named Juma and Makuze. Witness ANAG was in a unique position to testify to these events and she provided direct and credible evidence that Murazemariya was raped and the Chamber finds her to be generally reliable.<sup>1243</sup> Witness ANAM corroborated this with hearsay evidence, the source of which was Murazemariya herself. Witness ANAO, a former *Interahamwe*, provided consistent indirect evidence that he along with two *Interahamwe* named Juma and Makuze went to Murazemariya's uncle's house to find a Tutsi hiding there. They asked the uncle to turn in the Tutsi, and he believed Juma and Makuze attacked Murazemariya. As stated above, the Chamber considers his evidence with the appropriate degree of caution. The Chamber also notes that his testimony consists of hearsay evidence and must also be treated with the appropriate caution in that respect. It also lacks details with regard to whether Murazemariya was raped. Notwithstanding, it contains obvious parallels with the testimony of Witnesses ANAG and ANAM in relation to placing Juma and Makuze at Murazemariya's uncle's house and stating that they were searching for Tutsis to attack.

973. At this juncture, it is important to note differences between the testimonies of Witnesses ANAG and ANAM pertaining to the location from which Chantal Murazemariya was abducted, whether her siblings accompanied her to her uncle's house and the time period during which the alleged attack occurred. Witness ANAG testified that Murazemariya was abducted by Juma and Makuze from her uncle's house, which is a discrepancy when compared to Witness ANAM's assertion that Murazemariya was abducted from the house that Murazemariya shared with her siblings. Additionally, Witness ANAG recalled two incidences of rape that occurred seven to ten days after the death of President Habyarimana whereas Witness ANAM recalled one incident that occurred approximately one month after President Habyarimana's death. As expounded upon below, the Chamber considers these inconsistencies to be minor.

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<sup>1241</sup> T. 16 June 2011, pp. 37-38, 42 (CS); T. 20 June 2011, pp. 52-57 (CS).

<sup>1242</sup> T. 16 February 2010, pp. 3-5, 7; T. 17 February 2010, p. 22; T. 17 February 2010, pp. 53, 72 (CS); T. 18 February 2010, pp. 12-13, 24, 39-40, 52-53, 65, 67-69 (CS); T. 22 February 2010, pp. 42, 44 (CS) (Witness ANAO). See also Defence Exhibit 67 (Judgement Concerning Witness ANAO, August 2006).

<sup>1243</sup> See, for example, T. 1 March 2010, pp. 13-14 (CS) (Witness ANAG).

974. In relation to the house from which Murazemariya was abducted, the Chamber recalls that following its site visit to Nyamyumba *commune*, it concluded that Murazemariya's house was approximately three kilometers from her uncle's home.<sup>1244</sup> The Chamber notes that Witness ANAM testified that Murazemariya's house and her uncle's house were only separated by one house.<sup>1245</sup> This contrasts with the Chamber's observations on the site visit and Witness DWAN-2 and Witness ANAG's testimonies that, respectively, the houses were 2.5 kilometers apart, or a fifteen minute walk.<sup>1246</sup> Since Witness ANAM knew the houses of Murazemariya and her uncle very well yet appeared confused in relation to their locations, the Chamber considers that it is possible following the passage of time that she also incorrectly remembered where the abduction occurred. The Chamber notes that Chantal Murazemariya's abduction would have been a traumatic incident and though this may render it a clear and vivid memory, it could also lead to confusion when recollected. Furthermore, Witness ANAO testified that Juma and Makuze found Murazemariya in her uncle's house.

975. The Chamber recalls that although Defence Witness DWAN-2 testified that Murazemariya was not raped, her testimony that Murazemariya sought refuge at her uncle's house, in particular because she was afraid of an *Interahamwe* named Juma since her mother was a Tutsi, comports, in part, with Witness ANAG's evidence.

976. Nevertheless, the Chamber is cognizant of the inconsistency between Witness ANAG and Witness DWAN-2's testimonies regarding the length of time that Murazemariya spent at her uncle's house. Witness DWAN-2 claimed that she merely spent four days there which conflicts with Witness ANAG's assertion that she spent two to three months there. However, Witness DWAN-2 acknowledged that she is unable to tell time using the concept of days and months,<sup>1247</sup> and therefore the Chamber does not find Witness DWAN-2 credible. Consequently, the Chamber concludes that the inconsistencies between the testimonies of Witnesses ANAG, ANAM and DWAN-2 in relation to the house from which Murazemariya was abducted and the length of time she spent at her uncle's house are insufficient to raise reasonable doubt as to the Prosecution evidence that she was abducted from her uncle's house. Accordingly, the Chamber finds that Murazemariya, a Tutsi, was abducted from her uncle's house and subsequently raped by Juma and Makuze.

977. With regard to the issue of whether Murazemariya's siblings sought refuge with her in her uncle's house, the Chamber recalls that Witness ANAG testified that Murazemariya "went there [...] with [her] brothers and sisters".<sup>1248</sup> This appears to contradict Witness ANAM's recollection that Murazemariya's siblings stayed at their home because they were protected by their older half-brother. Witness DWAN-2 also testified that Murazemariya's siblings did not seek refuge at their uncle's house. However, the Chamber notes that Witness ANAG merely stated that she went there with them, not that they stayed with her. In fact, Witness ANAG testified that one of her sisters left Murazemariya there and went to Kinyogote's house. Accordingly, the Chamber considers the evidence consistent with regards to this issue.

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<sup>1244</sup> Chambers Exhibit 1 (Site Visit Report), pp. 7-8.

<sup>1245</sup> T. 25 January 2010, p. 56 (CS) (Witness ANAM).

<sup>1246</sup> Chambers Exhibit 1 (Site Visit Report); T. 1 March 2010, p. 26 (CS) (Witness ANAG); T. 7 July 2011, p. 69 (CS) (Witness DWAN-2).

<sup>1247</sup> T. 11 July 2011, p. 52 (CS) (Witness DWAN-2).

<sup>1248</sup> T. 1 March 2010, p. 13 (CS) (Witness ANAG).



978. Likewise, with regard to the differences in relation to the date of the alleged rapes, the Chamber does not consider the inconsistency sufficiently material to affect the credibility of the witnesses given the passage of time since the events. Similarly, the Chamber considers the fact that Witness ANAG talked of two incidences of rape whereas Witness ANAM and Witness ANAO mentioned only one, to be a minor inconsistency. It is entirely possible that neither Witnesses ANAM nor ANAO were present to witness both incidents. The testimony of Witness ANAG shows that Juma and Makuze took Murazemariya to a banana plantation on one occasion where they raped her, and then came back a second time and took her “to a banana plantation”. In the view of the Trial Chamber, the only reasonable inference from the evidence is that Witness ANAG was raped a second time by Juma and Makuze in the banana plantation three days after the initial rape.

979. Turning to the Defence evidence, the Chamber notes that Witnesses DWAN-2 and DWAN-3’s assertions that Murazemariya was not raped are rooted in the fact that they did not witness such a rape, were not informed of such a rape and that no such claim was heard before the *Gacaca* courts.<sup>1249</sup> The Chamber considers such evidence to be speculative. The Chamber is not convinced that the witnesses’ lack of knowledge of the rape is, in and of itself, sufficient to cast reasonable doubt upon the Prosecution’s evidence.

980. The Chamber notes that *Gacaca* proceedings in relation to rape were heard in closed session as a matter of policy. However, it observes that such proceedings were held in small communities and that if a woman initiated an action and then requested a closed session, the public may have reached certain conclusions.<sup>1250</sup> The Chamber further acknowledges that the positions of Witnesses DWAN-2 and DWAN-3 may have made them more likely than other members of the community to know if Murazemariya had been raped. Nonetheless, Witness ANAG explicitly stated that Murazemariya did not inform Witness DWAN-2 of her rape, and Murazemariya’s failure to bring the case before a *Gacaca* court does not mean that the rape did not happen. Indeed, the Chamber considers this argument to be inherently fallacious since it is based upon the illogical and questionable premise that all crimes committed during the genocide have been heard before *Gacaca* courts.

981. In conclusion, the Chamber finds that the testimonies of Witnesses ANAG, ANAM, ANAO and DWAN-2 concur on the presence of Chantal Murazemariya at her uncle’s house at the beginning of April 1994. The Chamber further finds that the testimony of Witnesses ANAG and ANAM establish that Murazemariya was raped, and that Witness ANAO provided circumstantial evidence that he went with Juma and Makuze to the house to find a Tutsi hiding there, and they asked the uncle to turn in the Tutsi. He then had to leave, but believes that Juma and Makuze attacked Murazemariya; Witness ANAO’s testimony consequently supports that finding. Therefore, the Prosecution has proven beyond reasonable doubt that Chantal Murazemariya, a Tutsi, was abducted from her uncle’s house and raped twice by *Interahamwe* named Juma and Makuze in Rushubi *secteur* in April 1994.

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<sup>1249</sup> Other witnesses also discuss the absence of *Gacaca* rape claims in Rushubi *secteur*. See paragraph 999 below.

<sup>1250</sup> See Witness DWAN-3, and paragraph 994 below.

### 3.14.6 General Occurrence of Rape

#### 3.14.6.1 Evidence

##### Prosecution Witness ANAM

982. Witness ANAM, a Hutu from Nyamyumba *commune*, stated that as soon as news spread of President Habyarimana's death, Hutus attacked Tutsis using machetes. They looted properties and attacked and raped Tutsi women in her area of Rushubi *secteur*, Nyamyumba *commune*.<sup>1251</sup>

##### Prosecution Witness ANAF

983. Witness ANAF is a Tutsi who lived in Nyamyumba *commune* in 1994. She testified that in her community Tutsi women were raped. The *Interahamwe* were led by the *commune* authorities, heads of *cellules*, *bourgmestres*, including Bagango, Égide Karemera and Simpunga.<sup>1252</sup>

##### Prosecution Witness ANAK

984. The witness, a Tutsi from Nyamyumba *commune*, testified that following the death of President Habyarimana there was total insecurity. Tutsis were murdered, there was looting and women were raped. In Nyamyumba *commune*, Faustin Bagango, assisted by Égide Karemera, called the *Interahamwe* and split them into groups. They then started killing Tutsis and committed rapes. The witness personally saw these acts committed while seeking refuge in a bush or in the houses of other citizens. Tutsis were targeted because they were considered accomplices of the *Inkotanyi*, who were fighting the Rwandan Armed Forces at the time.<sup>1253</sup>

985. The witness testified that Bagango was the leader of the *Interahamwe* and chairman of the MRND, and "carried out unjust acts". Ngirabatware had Bagango appointed *bourgmestre* for Nyamyumba *commune* between 1992 and 1993. During this time, the *Interahamwe* and CDR had started to kill the Bagogwe Tutsis. The same events occurred in Nyamyumba *commune* where Tutsis were attacked and raped, and their goods and belongings were looted.<sup>1254</sup>

##### Prosecution Witness ANAU

986. Witness ANAU, a Hutu from Nyamyumba *commune*, testified that the security situation in the *commune* deteriorated on 7 April 1994 when the massacre of Tutsis began. The *Interahamwe* were killing Tutsis, raping Tutsi women, looting Tutsi property and destroying

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<sup>1251</sup> Prosecution Exhibit 13 (Personal Identification Sheet); T. 25 January 2010, p. 24 (CS). Prosecution Exhibit 13 identifies Witness ANAM's ethnicity as Tutsi, but she later explained that she was Hutu. See T. 25 January 2010, pp. 72-73.

<sup>1252</sup> Prosecution Exhibit 8 (Personal Identification Sheet); T. 30 September 2009, pp. 60-61; T. 30 September 2009, p. 82 (CS).

<sup>1253</sup> Prosecution Exhibit 11 (Personal Identification Sheet); T. 13 October 2009, pp. 19-21; T. 19 October 2009, p. 50 (CS).

<sup>1254</sup> T. 13 October 2009, p. 27.

Tutsi houses. Tutsis were targeted because it was claimed they collaborated with the *Inkotanyi*.<sup>1255</sup>

#### Prosecution Witness ANAD

987. Witness ANAD, a Hutu, was around 36 years old at the time of the genocide and lived in Nyamyumba *commune*. He testified that the *Interahamwe* played the most important role, since they killed people, they destroyed houses and they raped women. Witness ANAD further testified that the leaders of the *Interahamwe* in Nyamyumba *commune* were Égide Karemera, as *bourgmestre*, and Faustin Bagango, as leader of the *Interahamwe*.<sup>1256</sup>

#### Augustin Ngirabatware

988. Ngirabatware stated that he never had any link, be it direct or indirect, with the *Interahamwe* in Nyamyumba *commune*. Therefore, the crimes they were alleged to have committed were perpetrated without his involvement.<sup>1257</sup>

989. Ngirabatware knows of two persons named Makuze. One is the father of the current Prime Minister of Rwanda and the other is a former student of the University of Laerbeek, who is currently living in the United States. The latter is not from Gisenyi town or Nyamyumba *commune*. Ngirabatware does not know anyone named Juma and therefore did not order any such person to do anything illegal.<sup>1258</sup>

#### Defence Witness DWAN-3

990. Witness DWAN-3, a Tutsi from Nyamyumba *commune*, testified that no one in her *secteur* or *cellule* was sexually assaulted during the events of April to July 1994. Had anyone been raped it would have been raised before the *Gacaca* courts. Rape cases before *Gacaca* courts were held in closed session; however, people would first have to request that the allegation be held in closed session. If that person was a woman then people would assume that it concerned an allegation of rape. The witness was unaware of any such reports.<sup>1259</sup>

#### Defence Witness DWAN-21

991. Witness DWAN-21 is a Hutu who lived in Nyamyumba *commune* in 1994. The witness testified that in Rubona *secteur* there were people who had Tutsi or Hutu wives who were attacked. However, there were no rape cases in his *secteur*.<sup>1260</sup>

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<sup>1255</sup> Prosecution Exhibit 20 (Personal Identification Sheet); T. 9 March 2010, p. 52 (CS).

<sup>1256</sup> Prosecution Exhibit 15 (Personal Identification Sheet); T. 10 February 2010, pp. 11, 14 (CS).

<sup>1257</sup> T. 8 December 2010, p. 35.

<sup>1258</sup> T. 1 December 2010, p. 44.

<sup>1259</sup> Defence Exhibit 125 (Personal Identification Sheet); T. 16 June 2011, pp. 37-38, 42 (CS); T. 20 June 2011, pp. 52-57 (CS).

<sup>1260</sup> Defence Exhibit 153 (Personal Identification Sheet); T. 29 September 2011, p. 3.

Defence Witness DWAN-39

992. Witness DWAN-39, a Hutu living in Nyamyumba *commune* in 1994, testified that rape trials before *Gacaca* courts took place in closed session. The judgement was rendered in public but the name of the victim was not mentioned. The witness does not know of any judgements being rendered in Rushubi *secteur* convicting someone of rape.<sup>1261</sup>

Defence Witness DWAN-71

993. Witness DWAN-71, a Hutu who lived in Nyamyumba *commune* in 1994, testified that Tutsi women were not raped in Rushubi *secteur*. Nobody had mentioned it before the *Gacaca* courts or in other jurisdictions. The witness denied that he conspired or participated in a joint criminal enterprise with Ngirabatware to commit rape against Tutsi women.<sup>1262</sup>

Defence Witness DWAN-25

994. The witness, a Hutu who lived in Nyamyumba *commune* in 1994, testified that from 2008 onwards, crimes of rape and sexual violence were heard before *Gacaca* level courts. The proceedings occurred behind closed doors but the decision was communicated to the entire population. Prior to this, cases of sexual assault were not heard before *Gacaca* judges and consequently members of the community would be unaware that such a complaint had been made.<sup>1263</sup>

Defence Witness DWAN-49

995. The witness, a Hutu who lived in Rubavu *commune* in 1994, testified that rape cases were initially tried by the ordinary level courts. They were then moved to *Gacaca* courts and heard in closed session.<sup>1264</sup>

**3.14.6.2 Deliberations**

996. As a preliminary issue, the Chamber notes that the Prosecution submits that the rapes of Bonishance, Denise Nyirabunori and Chantal Murazemariya occurred as a natural and foreseeable consequence of a joint criminal enterprise to destroy the Tutsi population of Rwanda.<sup>1265</sup> Accordingly, the Chamber considers evidence pertaining to the general occurrence of the rape of Tutsi women in Nyamyumba *commune* in 1994 relevant to its determination of Ngirabatware's responsibility in relation to the rape of Chantal Murazemariya.

997. With regard to the Prosecution evidence, only Witness ANAK explicitly stated that he personally witnessed acts of rape. Witnesses ANAM, ANAF, ANAD and ANAU provided

<sup>1261</sup> Defence Exhibit 148 (Personal Identification Sheet); T. 23 September 2011, pp. 19-21 (CS); T. 27 September 2011, p. 65 (CS).

<sup>1262</sup> Defence Exhibit 127 (Personal Identification Sheet); T. 23 June 2011, p. 38.

<sup>1263</sup> Defence Exhibit 128 (Personal Identification Sheet); T. 28 June 2011, pp. 30, 55 (CS); T. 29 June 2011, pp. 7, 47.

<sup>1264</sup> Defence Exhibit 145 (Personal Identification Sheet); T. 19 September 2011, p. 7 (CS); T. 19 September 2011, p. 20.

<sup>1265</sup> Indictment, paras. 61-63; Prosecution Closing Brief, paras. 197-202; Prosecution Closing Argument, T. 23 July 2012, p. 18.

general assertions that rape occurred and all witnesses, with the exception of Witness ANAG, failed to specify the names of any victims or specific details about the rapes. Notwithstanding, the Chamber notes that in addition to the testimony detailed above, Prosecution Witnesses ANAM, ANAF, ANAK, ANAD and ANAU consistently and corroboratively testified that Tutsi women were raped amidst a context of violence and killings perpetrated against Tutsis by Hutus or the *Interahamwe* in the area of Nyamyumba *commune* during the time of the genocide in 1994.

998. The Chamber notes Witness ANAK's testimony that Tutsis were attacked and raped in Nyamyumba *commune* in 1992 and 1993 when the *Interahamwe* and CDR had started to attack the Bagogwe Tutsis.

999. In contrast, Defence Witnesses DWAN-3, DWAN-21, DWAN-39 and DWAN-71 insisted that no Tutsi women were raped in Rushubi *secteur* during the genocide. Their evidence is based on the fact that these witnesses did not personally witness any acts of rape, were personally uninformed of any acts of rape and that no *Gacaca* judgements of rape were rendered in Rushubi *secteur*. As previously noted, the mere absence of rape cases from *Gacaca* courts does not raise reasonable doubt that such rapes occurred, not least because it is a highly sensitive subject. Furthermore, it is possible that rapes occurred outside of Rushubi *secteur* about which these witnesses would not be aware. Additionally, the fact that Witnesses DWAN-3, DWAN-21, DWAN-39 and DWAN-71 said that they did not witness or hear of the rapes does not mean that they did not happen.

1000. The testimony of the Prosecution witnesses evidence the rape of Tutsi women by the *Interahamwe* as a component of targeted violent attacks against the Tutsi population. In contrast, the Defence witnesses categorically deny that rape was perpetrated in Rushubi *secteur* in 1994. The Chamber finds it implausible that Defence witnesses can attest that such acts did not occur amidst this violence, when they simultaneously acknowledged that at the time Tutsis were being targeted by *Interahamwe*.<sup>1266</sup>

1001. In conclusion, the Chamber concludes that Chantal Murazemariya, a Tutsi, was raped in the context of a larger attack directed specifically against the Tutsi population.

### 3.14.7 Conclusion

1002. The Chamber notes that all submissions in relation to the notice issues of joint criminal enterprise have been dealt with in the Preliminary Matters section (2.3).

1003. The Chamber recalls that no witnesses, aside from Ngirabatware, testified as to Ngirabatware's specific knowledge of rapes in Rushubi *secteur*. The Chamber notes that the test for an extended joint criminal enterprise is one of foreseeability and that this shall be considered in the Legal Findings, if necessary. The evidence of Prosecution Witness ANAK and Defence Witnesses DWAN-71 and DWAN-3 concerning the relationship between the *Interahamwe* and Bagango will be considered in conjunction with the factual findings in its determination of whether Ngirabatware is criminally responsible for the rape of Chantal Murazemariya.

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<sup>1266</sup> T. 16 June 2011, pp. 24, 44-45, 61 (CS); T. 20 June 2011, p. 4 (Witness DWAN-3); T. 23 June 2011, p. 17 (Witness DWAN-71).

1004. The Chamber concludes that Chantal Murazemariya, a Tutsi, was abducted from her uncle's home and raped by *Interahamwe* named Juma and Makuze in Nyamyumba *commune* in April 1994, in the context of a larger attack directed specifically against the Tutsi population.

### 3.15 Killing of Ten Tutsis, Mid-April 1994

#### 3.15.1 Introduction

1005. Paragraphs 26 and 43 of the Indictment allege that around the same period as paragraphs 25, 42 and 51 of the Indictment, namely around mid-April 1994, Ngirabatware told members of the *Interahamwe* militia from Nyamyumba *commune* to kill ten Tutsis, including a lady named Nyamunini, in Rubavu *commune*, Gisenyi *préfecture*. The Prosecution relies on Witness ANAG to prove this allegation.<sup>1267</sup>

1006. The Defence raises notice issues and submits that Witness ANAG's testimony is not credible and could not support a finding that in mid-April 1994 Ngirabatware instigated the killing of ten Tutsis or that ten Tutsis including Nyamunini were actually killed. Ngirabatware's alibi further demonstrates that he could not have been in Gisenyi at this time. The Defence relies upon Ngirabatware and Prosecution Witness ANAF.<sup>1268</sup>

1007. With regard to paragraphs 26 and 43, the Chamber recalls that Witnesses ANAO, DWAN-39 and DWAN-49 also testified on the death of Nyamunini and therefore will consider their testimony in the deliberations.

#### 3.15.2 Notice

1008. The Chamber initially recalls the general principles on notice (2.2). In their Closing Brief the Defence argues that paragraphs 26 and 43 are defective because they refer to a broad time range of "around mid-April 1994". It similarly argues that these paragraphs are defective in the identification of the alleged perpetrators.<sup>1269</sup> The Chamber recalls that these matters have already been adjudicated and dismissed in its Decision of 8 April 2009.<sup>1270</sup> The Defence did not take any further action on the matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>1271</sup>

1009. The Defence also argues that paragraph 26 is defective because the locations mentioned refer to the whole of Nyamyumba and Rubavu *communes*, which is too vague.<sup>1272</sup> In relation to paragraph 43 the Defence submits that reference to "members of the *Interahamwe* from Nyamyumba *commune*" cannot underpin a charge of direct and public incitement to commit

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<sup>1267</sup> Indictment, paras. 26, 43. The Chamber notes that the Indictment spells the name of the Tutsi victim as "Myamunini". However, throughout the course of the trial, the Chamber heard consistent evidence that a rich Tutsi lady lived near the Pfunda tea factory whose name was Nyamunini. Given the consistencies between the identification of the lady in question, and the way the Indictment links this person to the Pfunda tea factory in paragraphs 25 and 26 of the Indictment, the Chamber is convinced that these names refer to the same person. For the sake of clarity in the Judgement, the Chamber will use the spelling "Nyamunini".

<sup>1268</sup> Defence Closing Brief, paras. 41-42, 46-50, 86-131, 594-599, 741-753.

<sup>1269</sup> Defence Closing Brief, paras. 41-42, 46-50.

<sup>1270</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>1271</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

<sup>1272</sup> Defence Closing Brief, paras. 43-45.

genocide.<sup>1273</sup> These matters were not raised or adjudicated in the Chamber's Decision of 8 April 2009.

1010. The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>1274</sup> and that the Chamber ruled upon this issue over three years ago.<sup>1275</sup> The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to these Indictment paragraphs.

1011. Finally, the Defence contends that Count 4 of the Indictment is defective in its entirety.<sup>1276</sup> The Chamber recalls that it has addressed this challenge elsewhere in the Judgement (3.3.2), and has found no merit in this contention. It will now turn to the merits of the allegation.

### 3.15.3 Evidence

#### Prosecution Witness ANAG

1012. Witness ANAG is a Tutsi from Nyamyumba *commune*. In April 1994, she was a student in that *commune* and was living with her siblings.<sup>1277</sup> The witness knew Ngirabatware because his parents also lived in Nyamyumba *commune*. She identified him as a minister who lived in Kigali.<sup>1278</sup>

1013. Witness ANAG testified that she took refuge at the home of "her father's relative", an uncle, four days after the death of President Habyarimana and remained there until fleeing to Zaire approximately two to three months later.<sup>1279</sup> She saw Ngirabatware during the genocide at the home of his parents, convening meetings with *Interahamwe* and local inhabitants. The two homes were separated by a household and a banana plantation. The first meeting was between three and three-and-a-half weeks after the President's plane crash.<sup>1280</sup> She was situated close to the enclosure surrounding Ngirabatware's parents' house, approximately six to seven meters away. From her location, she could hear "people who were speaking during that meeting". She heard Ngirabatware say that "when they are going to kill Tutsis their homes must not be

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<sup>1273</sup> Defence Closing Brief, paras. 60-64.

<sup>1274</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and is defective in relation to Count 4).

<sup>1275</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>1276</sup> Defence Closing Brief, paras. 54-59.

<sup>1277</sup> Prosecution Exhibit 18 (Personal Identification Sheet); T. 1 March 2010, pp. 11-12, 50 (CS). Witness ANAG initially stated that her father was a Hutu, but later explained that she was referring to the man who helped raise her. According to the witness, her biological father was a Tutsi. T. 1 March 2010, pp. 38, 50 (CS).

<sup>1278</sup> T. 1 March 2010, p. 20 (CS). Witness ANAG provided detailed descriptions of Ngirabatware's extended family and their places of residence. See T. 1 March 2010, pp. 21, 23-26, 30-31, 51 (CS).

<sup>1279</sup> T. 1 March 2010, pp. 12-13, 38, 51 (CS). Witness ANAG described the man as "her father's relative" and as a paternal uncle. T. 1 March 2010, p. 19. See also T. 1 March 2010, pp. 50-51.

<sup>1280</sup> Witness ANAG initially testified that the first meeting took place about three weeks after the President's plane crash. T. 1 March 2010, p. 28 (CS). Upon further questioning the witness clarified that it was about three weeks after she arrived at her uncle's house. T. 1 March 2010, p. 51 (CS).



destroyed because the Hutus who were poor were going to take over those houses and live in them”.<sup>1281</sup>

1014. She saw Ngirabatware hold a second meeting in his parents’ house, about two weeks after the first meeting, looking opposite from her uncle’s house. There were a lot of people and they were holding a meeting there. The witness did not hear Ngirabatware speak at the time. At some point after this meeting, an *Interahamwe* named Bideri came to her uncle’s house to have a drink, and from another room she overheard him<sup>1282</sup> say to her uncle that Ngirabatware was holding a meeting in that house and that “the minister had asked them to go to Pfunda because there were many Tutsis who had found refuge there and it was necessary to kill them”. Her uncle’s wife was present in the house at this event. Bideri came back to the uncle’s the next day and claimed that they had killed Tutsis in Pfunda, including a lady named Nyamunini but the witness does not actually know if *Interahamwe* went to Pfunda. Witness ANAG is familiar with the location of Pfunda and was used to going there as “one would go and work on the tea fields”. She knew Nyamunini as a rich lady who lived in Pfunda who would give them work and they would work in her plantations. She worked for Nyamunini until 1993 at which time she was still alive.<sup>1283</sup>

#### Prosecution Witness ANAF

1015. Witness ANAF, a Tutsi, was born in Kibuye *préfecture*, but lived in Nyamyumba *commune*, Gisenyi *préfecture* in 1994. She is the wife of Witness AFS.<sup>1284</sup>

1016. She did not know Nyamunini personally, but heard that she was killed during the Bagogwe massacres, along with her two daughters. These massacres took place towards the end of 1992 or the beginning of 1993 when CDR members sought to join the government.<sup>1285</sup>

#### Prosecution Witness ANAO

1017. Witness ANAO, a Hutu and *Interahamwe* from Nyamyumba *commune*, stated that about 20 persons killed Nyamunini on the day of a CDR demonstration in 1992.<sup>1286</sup> Afterwards, the witness appeared three times before a court for this crime but was acquitted because he was elsewhere on that day.<sup>1287</sup>

#### Augustin Ngirabatware

1018. Ngirabatware testified that Nyamunini is a woman who used to live in Kabilizi *secteur*, Nyamyumba *commune*, and whose nicknames are Mukamwambutsa and Didacienne.<sup>1288</sup>

<sup>1281</sup> T. 1 March 2010, pp. 26-28, 44, 49-51, 53 (CS).

<sup>1282</sup> Witness ANAG testified that Bideri lived in Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune* and that Bideri was the servant of and lived in the home of Ngirabatware’s older brother Alphonse Bananyie. T. 1 March 2010, pp. 30-31, 46-47 (CS).

<sup>1283</sup> T. 1 March 2010, pp. 26, 28-31, 44-45, 49 (CS).

<sup>1284</sup> Prosecution Exhibit 8 (Personal Identification Sheet); T. 30 September 2009, p. 72.

<sup>1285</sup> T. 30 September 2009, p. 72.

<sup>1286</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS); T. 17 February 2010, p. 13; T. 17 February 2010, p. 42 (CS).

<sup>1287</sup> T. 17 February 2010, p. 39; T. 22 February 2010, pp. 46-47 (CS).

<sup>1288</sup> T. 1 December 2010, p. 62.

Nyamunini was attacked in January 1993 and died a few days later and Ngirabatware attended her funeral in Ndera, Kigali *préfecture*. Ngirabatware testified that the suggestion that he had anything to do with her death or that Nyamunini was killed after a meeting at his parents' house is false.<sup>1289</sup>

#### Defence Witness DWAN-39

1019. Witness DWAN-39 was living in Rushubi *secteur* in 1994. He was in a position to know what occurred in the *Gacaca* courts in his area.<sup>1290</sup>

1020. Witness DWAN-39 knew a person called Nyamunini. She lived in Kabilizi, downhill from the bridge and died around 1992 or 1993, prior to the death of President Habyarimana.<sup>1291</sup> The witness knew this information through the case of Byuma Rukingamenshi who, on trial, had admitted to the killing Nyamunini in the Kabilizi *secteur* and was sentenced to community service.<sup>1292</sup>

#### Defence Witness DWAN-49

1021. Witness DWAN-49, a Hutu, was born in Rubavu *commune*, Gisenyi *préfecture*, and lived in the same location in 1994.<sup>1293</sup>

1022. He knew a lady named Nyamunini and recalled that she lived in a *cellule* north of Kabilizi *secteur*, on the lower side of the Pfunda tea factory. The witness heard she died around sometime in 1992 or 1993.<sup>1294</sup>

### **3.15.4 Deliberations**

1023. The Chamber initially recalls that the Prosecution is relying on Witness ANAG as a sole witness to prove this allegation and that the same witness was relied upon to prove the allegations in Indictment paragraphs 25, 42 and 51 regarding an alleged meeting in Ngirabatware's parents' house around mid-April 1994 (3.16.1). The Chamber notes that, as set forth below, Witness ANAG never testified to any meeting taking place in Ngirabatware's parents' house around mid-April 1994 where Ngirabatware would have been present and that this allegation has not been proven beyond a reasonable doubt. Since the same witness and alleged meeting is relied upon to prove the allegations contained in Indictment paragraphs 26 and 43, the evidence adduced cannot support this allegation. The Chamber observes that no other Prosecution witness testified to this event. As such, this allegation has not been proven beyond a reasonable doubt.

1024. The only evidence on the record which mentions a meeting in Ngirabatware's parents' house attended by Ngirabatware and which mentions the name of Nyamunini is a hearsay account of events taking place in mid-May 1994. Witness ANAG testified that while staying in

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<sup>1289</sup> T. 1 December 2010, p. 63.

<sup>1290</sup> Defence Exhibit 148 (Personal Identification Sheet); T. 23 September 2011, p. 9 (CS).

<sup>1291</sup> T. 26 September 2011, p. 46 (CS).

<sup>1292</sup> T. 27 September 2011, pp. 66-67 (CS).

<sup>1293</sup> Defence Exhibit 145 (Personal Identification Sheet); T. 19 September 2011, p. 7 (CS).

<sup>1294</sup> T. 19 September 2011, p. 37.

her uncle's house she overheard a conversation between an *Interahamwe* named Bideri and her uncle. Bideri told her uncle that at a meeting the day before at Ngirabatware's parents' house, Ngirabatware asked them to go to Pfunda to kill the Tutsis taking refuge there. The following day Bideri claimed that they had killed Tutsis in Pfunda, including a lady named Nyamunini.<sup>1295</sup> While the Chamber can accept hearsay testimony, it must treat such testimony with the requisite caution. In this regard, the Chamber has concerns regarding the testimony of Witness ANAG.

1025. The Chamber observes that while Witness ANAG may be faithfully recounting the conversation she overheard between her uncle and Bideri, there is no basis of knowledge in the record for Bideri's statements. The record shows no other evidence of Bideri being one of those *Interahamwe* present at a meeting at Ngirabatware's parents' house, other than his statement to Witness ANAG's uncle. While one inference could be that he was personally present at a meeting, an equally reasonable inference was that he heard about the contents of such meeting and was repeating information he received from other sources. In addition to the hearsay character of Witness ANAG's testimony it is also lacking in details regarding the circumstances of the alleged killings at Pfunda, including the date of the attack, who participated, the means by which they attacked the persons there, and the names of the persons killed other than Nyamunini. Indeed, Witness ANAG admitted that she did not follow up on this matter at any point after she had heard the conversation by Bideri and other *Interahamwe* in her uncle's house. The Chamber further notes that no other witness testified to this event leaving Witness ANAG's hearsay testimony uncorroborated.

1026. The Chamber further notes the discrepancy between the statement of Bideri, as heard by Witness ANAG, and the other evidence in the record relating to the death of Nyamunini. The hearsay account of Witness ANAG that Nyamunini and others were killed at the Pfunda tea factory after a meeting that Ngirabatware convened in mid-May 1994 is contrasted by other evidence adduced in this case. The trial record is replete with witnesses, both Prosecution and Defence, who testified that Nyamunini was killed before 1994.<sup>1296</sup> Given the amount of evidence in the record that Nyamunini was killed prior to 1994, the Chamber cannot use this evidence as a basis for finding that Nyamunini was killed in April 1994.

1027. Furthermore, the record contains no evidence of killings of other Tutsis occurring at the Pfunda tea factory in April 1994. For the foregoing reasons, the Chamber finds that the Prosecution has not met its burden in relation to these allegations.

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<sup>1295</sup> T. 1 March 2010, pp. 26, 28, 30-31, 44 (CS) (Witness ANAG).

<sup>1296</sup> See, for example, T. 30 September 2009, p. 72 (Witness ANAF) (stating that she heard Nyamunini and her two daughters were killed during the Bagogwe massacres, so at the end of 1992 or beginning of 1993); T. 15 February 2010, p. 37 (CS); T. 17 February 2010, p. 42 (CS) (Witness ANAO) (stating that about 20 persons killed Nyamunini on the day of a CDR demonstration in 1992); T. 1 December 2010, p. 63 (Ngirabatware) (stating that Nyamunini was killed in January 1993 and he attended her funeral in Kigali *préfecture* a few days later); T. 26 September 2011, p. 46 (CS) (Witness DWAN-39) (stating that Nyamunini was killed around 1992 or 1993); T. 19 September 2011, p. 37 (Witness DWAN-49) (stating that he heard Nyamunini died sometime in 1992 or 1993).

### 3.16 Meetings at Ngirabatware's Parents' House, Mid-April, Late April and Late May 1994

#### 3.16.1 Introduction

1028. There are eight Indictment paragraphs relating to at least three meetings Ngirabatware allegedly convened at the residence of his parents in Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune*.<sup>1297</sup> These meetings will be examined by the Chamber in turn.

1029. Paragraphs 25, 42 and 51 of the Indictment allege that around mid-April 1994 Ngirabatware convened a meeting with attackers, including *Interahamwe* militia and *Bourgmestre* Faustin Bagango, at the residence of his parents. At these meetings he publicly addressed and instigated the attackers and told them to kill the Tutsis who had sought refuge at the Pfunda tea factory. It is further alleged that these Tutsis were subsequently killed. The Prosecution also asserts in Paragraph 52 of the Indictment that around mid-April 1994 Ngirabatware brought hand grenades to *Interahamwe* militia who had convened at his parents' residence. The Prosecution relies on Witness ANAG.<sup>1298</sup>

1030. The Defence raises notice issues with regard to these paragraphs and argues that the only meeting Witness ANAG testified to which mentioned the Pfunda tea factory occurred in May 1994, outside the scope of these Indictment paragraphs. The Defence also argues that the hearsay nature of this testimony precludes finding these allegations proven beyond reasonable doubt. The Defence relies on Witness DWAN-2, as well as the testimony of Prosecution Witnesses ANAE, ANAL and ANAK regarding the locations at issue.<sup>1299</sup>

1031. Paragraphs 28 and 44 of the Indictment allege that at the end of April 1994 Ngirabatware convened a second meeting at his parents' house with attackers, including Faustin Bagango, and ordered, incited, instigated and/or aided and abetted them to kill members of the Tutsi ethnic group. He did this by telling those assembled that the inhabitants of Gisenyi had not done their work, or words to that effect. It is further alleged that he handed the ignition key of his vehicle to Bagango and ordered them to go and search for Tutsis and kill them. These actions allegedly facilitated the attackers' movements to the massacres sites, including Rubavu *commune*, where they exterminated members of the Tutsi population.<sup>1300</sup> The Prosecution has made no submissions on this meeting in its closing submissions.

1032. The Defence raises a number of notice issues with regards to these paragraphs and further argues that there was no evidence provided by Witness ANAG or any other witness regarding a meeting at Ngirabatware's parents' house towards the end of April 1994 where he handed over his ignition key and ordered, instigated or aided and abetted attackers to kill Tutsis. The Defence

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<sup>1297</sup> Indictment, paras. 25, 28-29, 42, 44-45, 51-52.

<sup>1298</sup> Indictment, paras. 25, 42, 51-52; Prosecution Closing Brief, paras. 86-88, 134-136, 167-169; Prosecution Closing Argument, T. 23 July 2012, p. 14. The Chamber notes that the Prosecution also relies upon the evidence of Witnesses ANAN, ANAO, ANAL, ANAF, ANAM and ANAU in support of the allegation that Ngirabatware distributed grenades at his parents' house around mid-April 1994. The Chamber has considered their evidence but does not deem it to be sufficiently relevant to this allegation to warrant being set out below.

<sup>1299</sup> Defence Closing Brief, paras. 41-42, 46-49, 54-59, 62-69, 349-350, 584-593, 741-753, 769-770.

<sup>1300</sup> Indictment, paras. 28, 44.

relies on Witness DWAN-2, as well as the testimony of Prosecution Witnesses ANAE, ANAL and ANAK regarding the locations at issue.<sup>1301</sup>

1033. Paragraphs 29 and 45 allege that in late May 1994, Ngirabatware convened a third meeting with the *Interahamwe* militia at the residence of his parents where he spoke and instigated them to kill members of the Tutsi population but spare their houses for occupation by Hutus. As a result of this meeting, it is alleged that Tutsis were killed and their houses looted in Gisenyi *préfecture*.<sup>1302</sup> The Prosecution relies on Witness ANAG.<sup>1303</sup>

1034. The Defence raises a number of notice issues with regards to these paragraphs. The Defence also argues that there is no meeting testified to by Witness ANAG which could be placed at the end of May 1994 and therefore no witness provided support for these allegations.<sup>1304</sup>

1035. The Chamber notes that the Defence proffers an alibi for the period of 23 April to 23 May 1994, which it submits would preclude any finding that Ngirabatware was present in Gisenyi at that time.<sup>1305</sup>

### 3.16.2 Notice

1036. The Chamber initially recalls the general principles on notice (2.2). The Defence argues that paragraph 28 refers to extermination whereas the applicable count of the Indictment is either genocide or complicity in genocide. Seeing as the material facts, the nature of the charge, the *mens rea* and the *actus reus* are different between the crimes, the Defence submits there can be no finding as regards this paragraph. The Defence further argues in relations to paragraphs 42, 44 and 45 that meetings held at Ngirabatware's parents' house would not equal a "mass communication" and therefore those paragraphs are defective insofar as they plead direct and public incitement to commit genocide.<sup>1306</sup>

1037. The Defence further argues that paragraphs 25, 42, 51 and 52 are defective because they refer to a broad time range of "around mid-April 1994" without further specificity. It similarly argues that paragraphs 25, 28, 29, 42, 51 and 52 are defective in the identification of the alleged perpetrators.<sup>1307</sup>

1038. The Defence also argues that paragraph 29 is defective in the location in which alleged killings and/or extermination occurred as the whole of Gisenyi *préfecture* is too vague. It further submits that paragraphs 28, 29 and 44 are defective in its pleading of the identity of the victims.<sup>1308</sup>

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<sup>1301</sup> Defence Closing Brief, paras. 41-42, 46-50, 349-359, 584-593, 741-753, 769-770.

<sup>1302</sup> Indictment, paras. 29, 45.

<sup>1303</sup> Prosecution Closing Brief, paras. 46-59, 62-64, 100-110, 141-151; Prosecution Closing Argument, T. 24 July 2012, p. 14.

<sup>1304</sup> Defence Closing Brief, paras. 43-53, 765-769.

<sup>1305</sup> Defence Closing Brief, paras. 127-175.

<sup>1306</sup> Defence Closing Brief, paras. 54-64.

<sup>1307</sup> Defence Closing Brief, paras. 41-42, 46-50.

<sup>1308</sup> Defence Closing Brief, paras. 43-45, 51-53.

1039. In view of the many challenges raised by the Defence with regard to these Indictment paragraphs the Chamber notes that many of them have been adjudicated in its Decision of 8 April 2009.<sup>1309</sup> As for new notice issues raised by the Defence the Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>1310</sup> and that the Chamber ruled upon this issue over three years ago.<sup>1311</sup> The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to these Indictment paragraphs.

1040. Finally, the Defence contends that Count 4 of the Indictment is defective in its entirety.<sup>1312</sup> The Chamber recalls that it has addressed this challenge elsewhere in the Judgement (3.3.2), and has found no merit in this contention.

### 3.16.3 Evidence

#### Prosecution Witness ANAG

1041. Witness ANAG is a Tutsi from Nyamyumba *commune*. In April 1994, she was a student in that *commune* and was living with her siblings.<sup>1313</sup> The witness knew Ngirabatware because his parents also lived in Nyamyumba *commune*. She identified him as a minister who lived in Kigali.<sup>1314</sup>

1042. Witness ANAG testified that she took refuge at the home of “her father’s relative”, an uncle, four days after the death of President Habyarimana and remained there until fleeing to Zaire approximately two to three months later.<sup>1315</sup> She saw Ngirabatware during the genocide at the home of his parents, convening meetings with *Interahamwe* and local inhabitants. The two homes were separated by a household and a banana plantation. The first meeting was between three and three-and-a-half weeks after the President’s plane crash.<sup>1316</sup> She was situated close to the enclosure surrounding Ngirabatware’s parents’ house, approximately six to seven meters away. From her location, she could hear “people who were speaking during that meeting”. She heard Ngirabatware say that “when they are going to kill Tutsis their homes must not be

<sup>1309</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>1310</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and is defective in relation to Count 4).

<sup>1311</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>1312</sup> Defence Closing Brief, paras. 54-59.

<sup>1313</sup> Prosecution Exhibit 18 (Personal Identification Sheet); T. 1 March 2010, pp. 11-12, 50 (CS). Witness ANAG initially stated that her father was a Hutu, but later explained that she was referring to the man who helped raise her. According to the witness, her biological father was a Tutsi. T. 1 March 2010, pp. 38, 50 (CS).

<sup>1314</sup> T. 1 March 2010, p. 20 (CS). Witness ANAG provided detailed descriptions of Ngirabatware’s extended family and their places of residence. See T. 1 March 2010, pp. 21, 23-26, 30-31, 51 (CS).

<sup>1315</sup> T. 1 March 2010, pp. 12-13, 38, 51 (CS). Witness ANAG described the man as “her father’s relative” and as a paternal uncle. T. 1 March 2010, p. 19. See also T. 1 March 2010, pp. 50-51.

<sup>1316</sup> Witness ANAG initially testified that the first meeting took place about three weeks after the President’s plane crash. T. 1 March 2010, p. 28 (CS). Upon further questioning the witness clarified that it was about three weeks after she arrived at her uncle’s house. T. 1 March 2010, p. 51 (CS).

destroyed because the Hutus who were poor were going to take over those houses and live in them”.<sup>1317</sup>

1043. She saw Ngirabatware hold a second meeting in his parents’ house, about two weeks after the first meeting, looking opposite from her uncle’s house. There were a lot of people and they were holding a meeting there. The witness did not hear Ngirabatware speak at the time. At some point after this meeting, an *Interahamwe* named Bideri came to her uncle’s house to have a drink, and from another room she overheard him<sup>1318</sup> say to her uncle that Ngirabatware was holding a meeting in that house and that “the minister had asked them to go to Pfunda because there were many Tutsis who had found refuge there and it was necessary to kill them”. Her uncle’s wife was present in the house at this event. Bideri came back to the uncle’s the next day and claimed that they had killed Tutsis in Pfunda, including a lady named Nyamunini but the witness does not actually know if *Interahamwe* went to Pfunda. Witness ANAG is familiar with the location of Pfunda and was used to going there as “one would go and work on the tea fields”. She knew Nyamunini as a rich lady who lived in Pfunda who would give them work and they would work in her plantations. She worked for Nyamunini until 1993 at which time she was still alive.<sup>1319</sup>

1044. While she was at her uncle’s house, she saw *Bourgmestre* Bagango coming from the house of Ngirabatware’s parents. Bagango was in front of her uncle’s house greeting the *Interahamwe* who were drinking beer in her uncle’s yard. Bagango was carrying a bag and, although the witness could not see its contents, she heard the *Interahamwe* say that it contained grenades. She did not hear them say what the grenades were to be used for. The witness did not specify when this event took place. This was the only time she saw Bagango during the genocide.<sup>1320</sup>

#### Prosecution Witness ANAE

1045. Witness ANAE, a Tutsi, testified that she was 11 or 12 years old in 1994 and lived in Nyamyumba *commune*.<sup>1321</sup> She described the location of Ngirabatware parents’ house, which was located on the same side of the road that leads to her house. Witness ANAE stated that she could not see Ngirabatware parents’ house while standing at Witness ANAG’s uncle’s house because of the many houses in between. She also observed that the compound of Ngirabatware’s parents was fenced with bamboo.<sup>1322</sup>

1046. After watching Ngirabatware distribute weapons in April 1994, after the death of the President, in her native area, she observed Ngirabatware go down towards his family’s house. She saw Ngirabatware in the company of Bagango and other *Interahamwe* as they had a discussion while drinking beer. She does not know what they talked about. There were many

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<sup>1317</sup> T. 1 March 2010, pp. 26-28, 44, 49-51, 53 (CS).

<sup>1318</sup> Witness ANAG testified that Bideri lived in Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune* and that Bideri was the servant of and lived in the home of Ngirabatware’s older brother Alphonse Bananyie. T. 1 March 2010, pp. 30-31, 46-47 (CS).

<sup>1319</sup> T. 1 March 2010, pp. 26, 28-31, 44-45, 49 (CS).

<sup>1320</sup> T. 1 March 2010, pp. 33-35, 51-52 (CS).

<sup>1321</sup> Prosecution Exhibit 12 (Personal Identification Sheet); T. 20 October 2009, p. 21; T. 20 October 2009, pp. 31, 51 (CS).

<sup>1322</sup> T. 20 October 2009, pp. 62, 78 (CS); T. 21 October 2009, pp. 3-5 (CS).

persons present at that meeting including Cenge, Dominique, Mathieu Butanda and Hassan Tubaramure.<sup>1323</sup>

#### Prosecution Witness ANAL

1047. Witness ANAL, a Tutsi farmer, lived in Nyamyumba *commune* in 1994.<sup>1324</sup> She said that a high bamboo fence surrounded Ngirabatware's parents' house and explained that a person could not see inside the compound from outside.<sup>1325</sup>

#### Prosecution Witness ANAK

1048. Witness ANAK, a Tutsi born in Nyamyumba *commune* and residing there in 1994,<sup>1326</sup> testified that he regularly visited Ngirabatware's parents' house from 1986 to 1993. He described the surrounding of Ngirabatware's parents' house to have been fenced with high bamboo on the downhill part of the property, and bush on the uphill part of the property. If one were coming to the house from downhill one could not see the house because of the bamboo. There were no buildings outside the compound apart from the kitchen.<sup>1327</sup>

#### Augustin Ngirabatware

1049. Ngirabatware denied having convened a meeting at his parents' house between 23 April and 23 May, or around three weeks and four days after President Habyarimana's plane was shot down. Ngirabatware stated that he was out of Rwanda during that period.<sup>1328</sup>

1050. Ngirabatware denied having convened a meeting at his parents' house addressing the *Interahamwe* and local inhabitants, telling them to kill the Tutsis while sparing their houses to be occupied by the poor Hutus.<sup>1329</sup>

#### Defence Witness DWAN-2

1051. Witness DWAN-2, a Hutu living in Nyamyumba *commune* in 1994,<sup>1330</sup> knew the location of Ngirabatware's parents' house and said that between Witness ANAG's uncle's house and Ngirabatware's parents' house was a banana plantation. Ngirabatware's parents' house was located at the opposite hill where Witness ANAG's uncle's house was. A high fence surrounded Ngirabatware's parents' house. As it was made of bamboo sticks one could see through it. The witness also stated that the fence was slightly taller than she was. According to the witness, one could not hear persons talking in the compound of Ngirabatware's parents' house if they were in Witness ANAG's uncle's compound.<sup>1331</sup>

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<sup>1323</sup> T. 20 October 2009, pp. 44, 61-62

<sup>1324</sup> Prosecution Exhibit 9 (Personal Identification Sheet).

<sup>1325</sup> T. 6 October 2009, p. 78 (CS).

<sup>1326</sup> Prosecution Exhibit 11 (Personal Identification Sheet); T. 13 October 2009, pp. 6, 17 (CS); T. 13 October 2009, p. 19; T. 19 October 2009, pp. 51-53 (CS).

<sup>1327</sup> T. 19 October 2011, pp. 11-13 (CS).

<sup>1328</sup> T. 1 December 2010, p. 61.

<sup>1329</sup> T. 1 December 2010, p. 62.

<sup>1330</sup> Defence Exhibit 133 (Personal Identification Sheet).

<sup>1331</sup> T. 7 July 2011, pp. 69-71, 82 (CS) (the witness' height was 1.67 meters).



1052. The witness testified that she had neither seen Faustin Bagango nor had he set foot in Witness ANAG's uncle's house after the death of President Habyarimana up to July 1994. The witness also rejected as false and implausible that *Interahamwe* had come to Witness ANAG's uncle's house in 1994, after the death of President Habyarimana, and had a discussion in her presence about a meeting that Ngirabatware had held in his parents' house to order the killings of Tutsis. The witness also denied the suggestion that after the death of the President, Hamisi, Bideri or any other *Interahamwe* had come to Witness ANAG's uncle's house and in her presence discussed the killings of Tutsis at the Pfunda tea factory.<sup>1332</sup>

### 3.16.4 Deliberations

1053. The Prosecution relies on the testimony of Witness ANAG in support of the allegations contained in paragraphs 25, 29, 42, 45, 51 and 52. The Chamber notes that the Prosecution in its Closing Brief alleges that two different meetings were held, rather than the three meetings as alleged in the Indictment. The Prosecution clearly and specifically argues that the first meeting testified to by Witness ANAG taking place "weeks after the death of the President" relates to paragraphs 25, 42 and 51, while the second meeting, "a number of weeks after the death of the President", relates to paragraphs 29 and 45 of the Indictment.<sup>1333</sup>

1054. The Chamber also notes that some of these alleged events fall within a period of time where Ngirabatware has proffered an alibi (3.17). The impact of that alibi evidence will be discussed below, if necessary. The Chamber will now evaluate each of the three alleged meetings in the Indictment in turn.

#### 3.16.4.1 Mid-April 1994 Meeting

1055. The Indictment alleges that around mid-April 1994 Ngirabatware convened a meeting with attackers, including *Interahamwe* militia and *Bourgmestre* Faustin Bagango, at the residence of his parents. At these meetings he publicly addressed, instigated and told them to kill the Tutsis who had sought refuge at the Pfunda tea factory. It is further alleged that these Tutsis were subsequently killed.<sup>1334</sup>

1056. Witness ANAG testified that she saw Ngirabatware during the genocide at the home of his parents, convening meetings with *Interahamwe* and local inhabitants.<sup>1335</sup> The first meeting was between three and three-and-a-half weeks after the President's plane crash.<sup>1336</sup> She was situated close to the enclosure surrounding Ngirabatware's parents' house, approximately six to seven meters away. From her location, she could hear people who were speaking during that meeting and heard Ngirabatware say that "when they are going to kill Tutsis their homes must

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<sup>1332</sup> T. 7 July 2011, pp. 79, 89. See also T. 11 July 2011, p. 25.

<sup>1333</sup> Prosecution Closing Brief, paras. 86-92, 134-151, 167-169; Prosecution Closing Argument, T. 23 July 2012, p. 14.

<sup>1334</sup> Indictment, paras. 25, 42, 51.

<sup>1335</sup> T. 1 March 2010, p. 26 (CS) (Witness ANAG).

<sup>1336</sup> Witness ANAG initially testified that the first meeting took place about three weeks after she arrived at her uncle's house. T. 1 March 2010, p. 28 (CS). Upon further questioning the witness clarified that it was about three-and-a-half weeks after she arrived at her uncle's house. T. 1 March 2010, p. 51 (CS) (Witness ANAG).

not be destroyed because the Hutus who were poor were going to take over those houses and live in them”<sup>1337</sup>.

1057. Preliminarily, the Chamber recalls that it has considered Witness ANAG to be a credible witness, and has relied upon her evidence elsewhere in the Judgement (3.14.5.3).

1058. The Chamber notes that Witness ANAG never testified to any meeting taking place in mid-April 1994 and that Witness ANAG places the first meeting around 1 May 1994. According to the Defence, Witness ANAG provided inconsistent testimony because she first testified that she was behind the enclosure of Ngirabatware’s parents’ house when she heard the first meeting taking place,<sup>1338</sup> but later during her testimony alluded to being at her uncle’s house when she heard the conversation in Ngirabatware’s parents’ house.

1059. However, the Chamber believes that any perceived inconsistencies in Witness ANAG’s testimony to which the Defence refers are collateral. Witness ANAG first testified that she was behind the enclosure of Ngirabatware’s parents’ house.<sup>1339</sup> She was later asked whether she was alone when she heard the meeting taking place and she replied that she was alone as usual since her uncle was usually out during the day. When reading Witness ANAG’s testimony as a whole it is clear that she testified that she was outside the fence of Ngirabatware’s parents’ house when she heard the meeting taking place.

1060. The Chamber recalls that Witness ANAG is the only witness to testify regarding this alleged meeting convened at Ngirabatware’s parents’ house. According to her testimony she never saw Ngirabatware at this meeting, but simply heard “people who were speaking during that meeting”, including Ngirabatware.<sup>1340</sup> However, the record provides no basis for Witness ANAG’s ability to identify Ngirabatware by voice only. She testified that she knew who Ngirabatware was, and that she saw him because his parents lived in the same general area, but she provides no account of having ever met him in person or hearing Ngirabatware speak.<sup>1341</sup> The Chamber considers that it may be that she believed it was Ngirabatware speaking because the alleged meeting was occurring at his parents’ residence while in fact she could have heard the voice of other people attending such meeting. How Witness ANAG would be in a position to identify beyond reasonable doubt the voice of Ngirabatware in these circumstances is unclear. In the absence of other corroborating evidence, the Chamber cannot conclude that the only reasonable inference is that Ngirabatware was in fact speaking at this event.

1061. Furthermore, the Chamber notes that near the time of these alleged meetings, the witness was experiencing traumatic events and it recognizes that this could have some bearing on her ability to recollect other events. In view of these observations the Chamber considers that this meeting has not been proven beyond reasonable doubt.

1062. The Indictment further alleges that Ngirabatware distributed grenades to the *Interahamwe* that had gathered in his parents’ house in mid-April 1994 and that the grenades were to be used

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<sup>1337</sup> T. 1 March 2010, pp. 26-28, 44, 49-51, 53 (CS) (Witness ANAG).

<sup>1338</sup> T. 1 March 2010, pp. 26-28 (Witness ANAG).

<sup>1339</sup> T. 1 March 2010, pp. 26-28 (Witness ANAG).

<sup>1340</sup> T. 1 March 2010, pp. 26-28, 44, 49-51, 53 (CS) (Witness ANAG).

<sup>1341</sup> T. 1 March 2010, p. 20 (CS) (Witness ANAG).

to kill Tutsis. Witness ANAG testified that she saw Bagango with a bag and heard *Interahamwe* say that it contained grenades. As the Chamber has found elsewhere in this Judgement (3.10.4.2), this evidence constitutes hearsay and thus the Chamber will treat it with appropriate caution, especially in light of the fact that it is unclear from whom Bagango would have received these grenades, and whether *Interahamwe* were making their claim regarding grenades from direct knowledge or from speculation. The Chamber also notes that the witness does not specify when this event happened, including whether it happened in April 1994 or in the following months. Taking this into account, the Chamber considers that the allegation contained in Indictment paragraph 52 has not been proven.

#### **3.16.4.2 Late April 1994 Meeting**

1063. The Indictment alleges that at the end of April 1994 Ngirabatware convened a second meeting at his parents' house with attackers, including Faustin Bagango, and ordered, incited, instigated and/or aided and abetted them to kill members of the Tutsi ethnic group. He did this by telling those assembled that the inhabitants of Gisenyi had not done their work, or words to that effect. It is further alleged that he handed the ignition key of his vehicle to Bagango and ordered them to go and search for Tutsis and kill them. These actions allegedly facilitated the attackers' movements to the massacres sites, including Rubavu *commune*, where they exterminated members of the Tutsi population.<sup>1342</sup> The Prosecution has made no submissions on this meeting in its closing submissions.

1064. The Chamber observes that while the allegation in the Indictment places this meeting as occurring in late April 1994, the evidence of Witness ANAG places the second meeting as occurring in mid-May 1994 or later. Witness ANAG testified that she saw Ngirabatware hold a meeting in his parents' house, about two weeks after the earlier gathering, looking opposite from her uncle's house where she had taken refuge.<sup>1343</sup> There were a lot of people and they were holding a meeting there.<sup>1344</sup> Witness ANAG did not clarify whether she actually saw Ngirabatware or if she only saw a gathering of people at his parents' house. No details were given as to who or how many attended the meeting or whether the meeting took place inside or outside the house. At some point after this meeting some *Interahamwe* came to Witness ANAG's uncle's house to have a drink, and from another room Witness ANAG overheard an *Interahamwe* named Bideri<sup>1345</sup> say to her uncle that "the minister had asked them to go to Pfunda because there were many Tutsis who had found refuge there and it was necessary to kill them". Bideri came back the next day and claimed that they had killed Tutsis in Pfunda, including a lady named Nyamunini. Witness ANAG did not actually know if *Interahamwe* went to Pfunda.<sup>1346</sup>

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<sup>1342</sup> Indictment, paras. 28, 44.

<sup>1343</sup> T. 1 March 2010, pp. 28, 44 (CS) (Witness ANAG).

<sup>1344</sup> T. 1 March 2010, p. 28 (CS) (Witness ANAG).

<sup>1345</sup> Witness ANAG testified that Bideri lived in Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune* and that Bideri was the servant of and lived in the home of Ngirabatware's older brother Alphonse. T. 1 March 2010, pp. 28, 30, 46 (CS). Witness ANAG identified another *Interahamwe* named Hamisi as among those at the house that day. T. 1 March 2010, p. 31 (CS). She stated that Hamisi lived in Nyabagobe *cellule*, Rushubi *secteur*, Nyamyumba *commune*, and that his parents were called Rucana and Rizabera. According to her, he is no longer alive. T. 1 March 2010, pp. 46-48 (CS) (Witness ANAG).

<sup>1346</sup> T. 1 March 2010, pp. 26, 28, 30-31, 44 (CS) (Witness ANAG).

1065. The ability of Witness ANAG to see a meeting at Ngirabatware's parents' house from her uncle's house is disputed by Witnesses DWAN-2, ANAE, ANAL and ANAK, who testified that the two houses were separated by a plantation and a high fence.<sup>1347</sup> Witness ANAG also agreed with the testimony of these witnesses that these barriers existed between the two houses.<sup>1348</sup> The Chamber observes that Witness DWAN-2's testimony seems to place the two houses on separate hills.<sup>1349</sup> However, the Chamber recalls that it visited the location of Ngirabatware's parents' house during its official site visit. The delegation had climbed a steep hill to get to the location and then determined that the distance between Ngirabatware's parents' house and the uncle's house was approximately 100 meters.<sup>1350</sup> As such, the Chamber credits its first-hand observations on the site visit, and believes that Witness DWAN-2 was mistaken or there was an error in translation regarding this portion of her testimony.

1066. The Chamber observes that the only evidence on the record which could substantiate this allegation is the testimony of Witness ANAG that she saw Ngirabatware address people at his parents' house and a hearsay account of events told to her uncle by an *Interahamwe* that Witness ANAG overheard. By his own account, the *Interahamwe* named Bideri said that at the meeting the day before, Ngirabatware asked them to go to Pfunda to kill the Tutsis taking refuge there. Bideri then claimed that they had killed Tutsis in Pfunda, including a lady named Nyamunini.<sup>1351</sup> While the Chamber can accept hearsay testimony, it must treat such testimony with the requisite caution.

1067. In addition to the hearsay character of Witness ANAG's testimony it is also lacking in details regarding the circumstances of the alleged killings at Pfunda, including the date of the attack, who participated, the means by which they attacked the persons there, and the names of the persons killed other than Nyamunini. Indeed, Witness ANAG admitted that she did not follow up on this matter at any point after she had heard the conversation by Bideri and other *Interahamwe* in the house. The Chamber further notes that no other witness testified to this event which leaves Witness ANAG's hearsay testimony uncorroborated on this event.

1068. While Witness ANAG may be faithfully recounting the conversation she overheard between her uncle and Bideri, the Chamber considers that this hearsay account has to be approached with caution. The record shows no evidence of Bideri being one of those *Interahamwe* present at a meeting at Ngirabatware's parents' house, other than his statement to Witness ANAG's uncle. Additionally, no evidence has been adduced regarding a subsequent attack on the tea factory. Furthermore, Bideri explicitly named Nyamunini as one of the victims of the attack. The Chamber recalls that both Prosecution and Defence witnesses testified that Nyamunini was killed prior to 1994 (3.15.3) and therefore the fact that Bideri named an already deceased woman diminishes the credibility of this account.<sup>1352</sup>

<sup>1347</sup> T. 7 July 2011, pp. 69-71 (CS) (Witness DWAN-2); T. 20 October 2011, pp. 61-62, 78 (CS); T. 21 October 2009, pp. 3-5 (CS) (Witness ANAE); T. 6 October 2009, p. 78 (CS) (Witness ANAL); T. 19 October 2009, pp. 11-13 (CS) (Witness ANAK).

<sup>1348</sup> T. 1 March 2010, p. 51 (CS) (Witness ANAG).

<sup>1349</sup> T. 7 July 2011, p. 70 (CS) (Witness DWAN-2).

<sup>1350</sup> Chambers Exhibit 1 (Site Visit Report), p. 7.

<sup>1351</sup> T. 1 March 2010, pp. 26, 28, 30-31, 44 (CS).

<sup>1352</sup> See, for example, T. 30 September 2009, p. 72 (Witness ANAF) (stating that she heard Nyamunini and her two daughters were killed during the Bagogwe massacres, so at the end of 1992 or beginning of 1993); T. 15 February

1069. The Chamber has not identified any other evidence that would adequately support the allegation contained in Indictment paragraphs 28 and 44. Accordingly, the Chamber finds that the Prosecution has not proven this allegation beyond reasonable doubt.

#### **3.16.4.3 Late May 1994 Meeting**

1070. The Indictment alleges that in late May 1994, Ngirabatware convened a third meeting with the *Interahamwe* militia at the residence of his parents where he spoke and instigated them to kill members of the Tutsi population but spare their houses for occupation by Hutus. As a result of this meeting, it is alleged that Tutsis were killed and their houses looted in Gisenyi *préfecture*.<sup>1353</sup>

1071. The Chamber begins by noting that the Prosecution's closing submissions, in part, rely on testimony of killings and other events which occurred prior to the alleged late May meeting and which are the subject of other Indictment allegations.<sup>1354</sup> It is impossible for killings which occurred prior to late May to have resulted from statements made by Ngirabatware at this alleged meeting. Therefore, the Chamber will consider these killings only as necessary in other sections of this Judgement.

1072. Furthermore, the Chamber has evaluated the evidence in the record and there is no evidence of a third meeting convened by Ngirabatware at the residence of his parents. Moreover, the Chamber has not identified any other evidence that would adequately support this charge. Accordingly, the Chamber finds that the Prosecution has not proven this allegation beyond reasonable doubt.

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2010, p. 37 (CS); T. 17 February 2010, p. 42 (CS) (Witness ANAO) (stating that about 20 persons killed Nyamunini on the day of a CDR demonstration in 1992); T. 1 December 2010, p. 63 (Ngirabatware) (stating that Nyamunini was killed in January 1993 and he attended her funeral in Kigali *préfecture* a few days later); T. 26 September 2011, p. 46 (CS) (Witness DWAN-39) (stating that Nyamunini was killed around 1992 or 1993); T. 19 September 2011, p. 37 (Witness DWAN-49) (stating that he heard Nyamunini died sometime in 1992 or 1993).

<sup>1353</sup> Indictment, paras. 29, 45.

<sup>1354</sup> Prosecution Closing Brief, paras. 100-110, 141-151.

### 3.17 Second Alibi, 23 April – 23 May 1994

#### 3.17.1 Introduction

1073. The Indictment alleges that around mid-April 1994, towards the end of April 1994, and in late May 1994, Ngirabatware convened meetings at his parents' house in Nyamyumba *commune*, Gisenyi *préfecture*, with attackers, including Faustin Bagango and *Interahamwe* over whom he exercised *de facto* effective control. In these meetings, Ngirabatware distributed grenades, provided his vehicle to the *Interahamwe* militia to facilitate their movements to massacre sites and ordered, instigated, and/or aided and abetted them in the killing of Tutsis in Gisenyi *préfecture*. The Prosecution further submits that Ngirabatware publicly incited the audience in these meetings to kill Tutsis.<sup>1355</sup>

1074. The Prosecution also alleges that around mid-April, mid-May and in late May 1994, Ngirabatware along with others brought and distributed machetes, arms and ammunition to the *Interahamwe* in Gisenyi *préfecture*, thereby aiding and abetting and instigating the killing of Tutsis in Gisenyi *préfecture*. The Prosecution further submits that Ngirabatware publicly incited those manning the *Bruxelles* roadblock to capture and kill members of the Tutsi population.<sup>1356</sup>

#### 3.17.2 Defence Submissions

1075. The Defence submits that Ngirabatware could not have committed the crimes alleged in various paragraphs of the Indictment because he was out of the country from 23 April until 23 May 1994 (the "Second Alibi Period"). The Defence claims that Ngirabatware left Rwanda for Kinshasa, Zaire on 23 April. He then travelled to Douala, Cameroon, and Libreville, Gabon, arriving there on 25 April. He was in Lomé, Togo, between 27 and 29 April and after that in Abidjan, Ivory Coast, before arriving in Dakar, Senegal. He stayed in Dakar between 30 April and 7 May. He subsequently went to Paris, France, to meet with the Rwandese Minister of Foreign Affairs and then came back to Dakar on 10 May. On 11 May he flew to Mbabane, Swaziland, through Paris and Johannesburg, South Africa. Ngirabatware then travelled to Lusaka, Zambia, then Nairobi, Kenya, and Kinshasa and Goma in Zaire, and arrived back in Gisenyi on 23 May.<sup>1357</sup>

1076. The Defence relies on Ngirabatware's own testimony, and Defence Witnesses Jérôme-Clément Bicamumpaka, Jean Damascène Kayitana, DWAN-122 and Winifred Musabeyezu-Kabuga, as well as documentary evidence admitted in support of Ngirabatware's Second Alibi Period. The Defence submits that the Prosecution did not cast any doubt on the presence of Ngirabatware in Senegal and Swaziland during the alleged period. The Defence further submits

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<sup>1355</sup> Indictment, paras. 25-26, 28-29, 42-45, 51-53.

<sup>1356</sup> Indictment, paras. 19-20, 27, 30, 46, 50.

<sup>1357</sup> Defence Closing Brief, paras. 127-131; Defence Closing Argument, T. 25 July 2012, pp. 2-9, 16-20, 42. The Defence also relies on another alibi, from 23 June to 5 July 1994. See Defence Closing Brief, paras. 176-179. Because the Prosecution has not brought evidence to support any allegations pertaining to this time frame, the Chamber does not consider it necessary to assess the reasonable possibility of this alibi.

that the Prosecution rebuttal witnesses combined with the documentary evidence confirm Ngirabatware's mission abroad during the alleged period.<sup>1358</sup>

### 3.17.3 Prosecution Submissions

1077. The Prosecution submits that the Second Alibi Period has many inconsistencies, contradictions, and documentation with false and suspect entries and forgeries such that no reasonable trier of fact could rely on or give weight to the alibi evidence.<sup>1359</sup>

1078. The Prosecution disputes that Ngirabatware was in Libreville, Gabon on 25 April 1994. Based on a note in Ngirabatware's diary, the Prosecution submits that Ngirabatware met with USAID in Kigali on 25 April 1994.<sup>1360</sup>

1079. The Prosecution submits that the Burundian visa found in Ngirabatware's passport, allegedly issued in Kigali on 21 April 1994, is forged, because of evidence suggesting that the Embassy of Burundi in Kigali was closed by 21 April 1994 and its staff evacuated. Further, Ngirabatware testified that on 20 and 21 April 1994, he was working in Murambi, Gitarama with Bicomumpaka. Lastly, Ngirabatware never testified that he went to the Embassy of Burundi in Kigali to get a visa.<sup>1361</sup>

1080. Ngirabatware claimed that on 22 April 1994, he, Bicomumpaka and Spérancie Karwera went to buy airline tickets in Goma and then returned to Gisenyi. However, Ngirabatware's passport was not stamped for a visit to Goma on 22 April 1994. Furthermore, Ngirabatware's passport does not have a French exit stamp, though his alleged travelling companion Bicomumpaka has a French stamp dated 30 April 1994.<sup>1362</sup>

1081. The Prosecution suggests that Ngirabatware's testimony regarding his visit to Dakar, Senegal, from 30 April to 7 May 1994 is false, and the entries in Ngirabatware's passport are forgeries. Ngirabatware claimed he had met and spoken with Witness PRWII many times; however, Witness PRWII testified that he neither knew nor met with Ngirabatware in his life. Witness PRWIII testified that no record exists regarding speeches or interviews Ngirabatware

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<sup>1358</sup> Defence Closing Brief, paras. 132-175; Defence Closing Argument, T. 25 July 2012, pp. 18-20; Defence Exhibit 111 (Excerpts from *Togo-Presse*, April 1994) (French); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport); Defence Exhibit 113 (Ngirabatware's Second Diplomatic Passport); Defence Exhibit 118 (List of ACP Participants, 19 and 20 May 1994); Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994); Defence Exhibit 194 (List of Participants at ACP Meetings, 19 May 1994); Defence Exhibit 195A (Letter from French Ministry of Foreign Affairs) (French); Defence Exhibit 196A (Telex from Gabonese Embassy in Kinshasa, 23 April 1994) (French); Defence Exhibit 197A (*L'Union*, 29 April 1994) (French); Defence Exhibit 203A (Correspondence between the Prosecution and *RFI*) (French); Defence Exhibit 204 (KNA/PANA Press Article); Defence Exhibit 205 (Letter from South African Home Affairs Department); Defence Exhibit 206 (Radio Rwanda Interview with Ngirabatware); Prosecution Exhibit 43 (Programme, Report and Preliminary Information Sheet for ACP Meetings); Prosecution Exhibit 78 (List of ACP Participants, 20 May 1994).

<sup>1359</sup> Prosecution Closing Brief, para. 256; Prosecution Closing Argument, T. 24 July 2012, p. 14.

<sup>1360</sup> Prosecution Closing Brief, para. 258; Prosecution Closing Argument, T. 24 July 2012, p. 14. See also Prosecution Exhibit 33 (Ngirabatware's Diary).

<sup>1361</sup> Prosecution Closing Brief, paras. 259-260. See also Prosecution Exhibit 31A (Cover Note from French Embassy of Tanzania) (French); Defence Exhibit 104B (French Embassy Telegrams).

<sup>1362</sup> Prosecution Closing Brief, para. 261-262; Prosecution Closing Argument, T. 24 July 2012, p. 14. See also Defence Exhibit 144 (Bicomumpaka's Diplomatic Passport).

allegedly gave while in Senegal. Furthermore, Ngirabatware's mission to Senegal was not reported in the government newspaper *Le Soleil*, which, the Prosecution submits, would have reported on an official visit. The Prosecution contends that after *Le Soleil* was admitted into evidence, Ngirabatware changed his testimony and said he tried to get contacts at the Presidency, but could not. Further, Ngirabatware's passport does not contain a Senegal entry visa but instead contains entry and exit stamps authorized by "LD 2741", who Ngirabatware claims to be Senegalese police. However, both Witnesses Massamba Ndiaye and PRWV testified that "LD" authorizations could not be for foreign officials. Witness PRWV further said that an "LD" was not necessary to leave the country and that LD numbers given on different occasions of the same year would be unique.<sup>1363</sup>

1082. The Prosecution submits that the Nigerian visa and stamp in Ngirabatware's first diplomatic passport, allegedly issued by the Embassy of Nigeria on 6 May 1994 in Dakar, were forged. Witness PRVIII signed a letter on behalf of the Nigerian Ambassador to Senegal stating that the Embassy believes it did not give Ngirabatware a Nigerian visa, nor had it received a visa request, and his passport had a stamp which was not yet in use in 1994. Further, per Nigerian regulations, Ngirabatware could not have gotten a Nigerian visa in Senegal because he was not a resident of Senegal. Lastly, there was no official correspondence between the Rwandan government or Embassy and the Nigerian Ministry of Foreign Affairs which could have granted a visa waiver.<sup>1364</sup>

1083. The Prosecution posits that Ngirabatware's testimony regarding his trip between Dakar and Paris is false because Ngirabatware's passport bears an entry stamp into Paris on 8 May 1994, but no exit stamp for 10 May 1994, the day he allegedly returned to Dakar. The Prosecution also points out that Ngirabatware, after initially testifying that he and Bicomumpaka gave joint interviews in France, said he gave separate interviews from Bicomumpaka and that his interview was never aired by *Télévision France II*. Further, no evidence of Ngirabatware's interviews has surfaced. In addition, Winifred Musabeyezu-Kabuga testified that Ngirabatware visited her in Paris weeks before she gave birth on 8 June 1994 but Ngirabatware never testified to this visit.<sup>1365</sup>

1084. The Prosecution also raises issue with Ngirabatware's second visit to Dakar on 10 May 1994 based on the testimony of Witness PRWVII. Witness PRWVII denied meeting with or knowing Ngirabatware. Further Witness PRWVII denied having written a letter of recommendation to the Food and Agriculture Organization for Ngirabatware and claimed that the document was a forgery and does not reflect his writing style.<sup>1366</sup>

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<sup>1363</sup> Prosecution Closing Brief, paras. 264-265; Prosecution Closing Argument, T. 24 July 2012, pp. 14-16. See also Prosecution Exhibit 38B (Letter from RTS General Manager to the Prosecutor); Prosecution Exhibit 39 (Excerpts from *Le Soleil*, April and May 1994) (French); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport), p. 21.

<sup>1364</sup> Prosecution Closing Brief, paras. 266-267; Prosecution Closing Argument, T. 24 July 2012, pp. 16-17. See also Prosecution Exhibit 40A (Correspondence between the Prosecutor and the Nigerian Embassy in Senegal); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1365</sup> Prosecution Closing Brief, paras. 268, 269; Prosecution Closing Argument, T. 24 July 2012, p. 17. See also Prosecution Exhibit 41 (Correspondence between the Prosecution and the AudioVisual National Institute of Archives of France) (French); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1366</sup> Prosecution Closing Brief, paras. 269(d)-(g). See also Defence Exhibit 207 (Letter to FAO) (French).



1085. The Prosecution further submits that Ngirabatware's testimony about his trip to Swaziland from 13 to 19 May 1994 is false. The Prosecution points out that Ngirabatware's passport only has an exit stamp for Swaziland and believes that the exit stamp is fraudulent. The Prosecution further disputes Ngirabatware's claim that he had a South African visa which allowed him to enter Swaziland. Per Swaziland's legal requirements, a visa is required to enter Swaziland, regardless of diplomatic status. Witness PRWIV said that delegates from Rwanda were required to apply for a visa to enter Swaziland. He also said that the list of participants at the ACP meeting, which included Ngirabatware's name, is not indicative of those who attended because it was prepared prior to the meetings per a *note verbale*. This is illustrated by Prosecution Exhibit 78<sup>1367</sup> which lists Télésphore Bizimungu as an expected attendee, though his name does not appear on the list of delegates. Lastly, the Prosecution posits that if the participant list was final, Ngirabatware's name could not have appeared on the 20 May 1994 list because he allegedly left Swaziland on 19 May 1994.<sup>1368</sup>

1086. The Prosecution submits that Ngirabatware's Second Alibi contains so many inconsistencies and forgeries that it does not raise a reasonable doubt in the Prosecution's case.<sup>1369</sup>

### 3.17.4 Evidence

#### Augustin Ngirabatware

##### *(i) Zaire, Gabon, Togo, Ivory Coast, 23 – 29 April 1994*

1087. Ngirabatware testified that he left Rwanda on 23 April 1994. The first country he visited was Zaire, where he met with the Rwandan ambassador to Zaire in Kinshasa, Étienne Sengegera. Since Ngirabatware was in transit and had already met with Zairian authorities in Goma, he did not meet them again in Kinshasa. Next, he then had a transit stop in Douala, Cameroon, where he met with a friend.<sup>1370</sup>

1088. Ngirabatware then travelled to Libreville, Gabon for his first official mission. He met with the Gabonese Minister of Foreign Affairs, Jean Ping, the minister-delegate, and the deputy director in charge of the cabinet at the Presidency of the Republic. The next destination was Lomé, Togo. Ngirabatware was in Togo from 27 until 29 or 30 April. He met with the Minister of Planning of Togo, Yent Chabre, and was granted an audience by the President of the Republic of Togo, Gnassingbe Eyadema.<sup>1371</sup>

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<sup>1367</sup> Prosecution Exhibit 78 (List of ACP Participants, 20 May 1994). See also Prosecution Closing Brief, para. 276 (submitting that Prosecution Exhibit 78 disputes Defence Exhibit 118 (List of ACP Participants, 19 and 20 May 1994)).

<sup>1368</sup> Prosecution Closing Brief, paras. 270-276; Prosecution Closing Argument, T. 24 July 2012, pp. 17-19. See also Prosecution Exhibit 79 (Preliminary Information Sheet for ACP Meetings); Prosecution Exhibit 85 (Affidavit of Swaziland Chief of Immigration), paras. 7-8; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport); Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994).

<sup>1369</sup> Prosecution Closing Brief, para. 277; Prosecution Closing Argument, T. 24 July 2012, p. 21.

<sup>1370</sup> T. 29 November 2010, pp. 47-48; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1371</sup> T. 29 November 2010, p. 48; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

1089. Ngirabatware testified that he was interviewed by both Gabonese and Togolese press. He was interviewed by Togolese television, *Togo-Presse* and other media. A picture of Ngirabatware and the President of Togo appeared in *Togo-Presse*, along with quotes by Ngirabatware in Togo. In particular, *Togo-Presse* printed excerpts of a speech by Ngirabatware given in Togo. In this speech, he described the political situation in Rwanda. He stated that the Rwandan government regretted that the Arusha Peace Agreements which bore a lot of hope had failed. Its most urgent hope was that the sons and daughters of Rwanda, both Hutu and Tutsi, should live in peace and under the same national territory. He also said in that speech that they were requesting the international community to assist in finding peace and to help them in bringing the RPF to the negotiating table. According to Ngirabatware, he gave this speech on 28 April 1994 and he was quoted correctly in *Togo-Presse*.<sup>1372</sup>

1090. Ngirabatware then left for Abidjan, Ivory Coast for a short stop on his way to Dakar, Senegal. In Abidjan, he met with the director of the cabinet of the President of the African Development Bank, Jaime Aguinaldo. Although he did not have a message for the Government of the Ivory Coast, he did discuss the situation in Rwanda.<sup>1373</sup>

(ii) *Senegal, 30 April – 7 May 1994*

1091. On 30 April 1994, Ngirabatware flew to Dakar, Senegal and stayed there until 7 May 1994. He met with officials of the Presidency of the Republic and the Ministry of Foreign Affairs. In particular, sometime between 1 and 7 May 1994, he met twice with a Foreign Affairs official together with Spérancie Karwera. They discussed problems relating to Rwanda, notably the content of the message that the President of Rwanda had sent to the President of Senegal. The message requested assistance to help restore peace and security in Rwanda and to help them to conduct negotiations with the RPF. Ngirabatware delivered the message to the official for him to pass it on to the President. He never met with President Abdou Diouf personally. Ngirabatware was in contact with this official until 1999.<sup>1374</sup>

1092. Ngirabatware interviewed with *Radio Télévision Senegal* (“RTS”) and *Radio France Internationale* (“RFI”) in Dakar. The interview with *RFI* was conducted by Nicolas Baldique in the UNESCO building. All media contacts were arranged for by Mr. Bombote, a national of Mali, who was employed as a senior international civil servant for UNESCO at the time. While in Dakar, Ngirabatware stayed in Hotel Teranga and his expenses were covered by the Republic of Senegal.<sup>1375</sup>

1093. Spérancie Karwera was in charge of arranging visas, flight tickets and hotel reservations, as well as asking authorities for accommodation. Ngirabatware cannot remember whether Karwera got the authorization to travel to Senegal in Libreville or Kinshasa. He does not recall

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<sup>1372</sup> T. 29 November 2010, pp. 48-49, 58; Defence Exhibit 111 (Excerpts from *Togo-Presse*, April 1994) (French).

<sup>1373</sup> T. 29 November 2010, p. 58; Defence Exhibit 112 (Ngirabatware’s First Diplomatic Passport).

<sup>1374</sup> T. 29 November 2010, p. 60; T. 9 February 2011, pp. 5-9, 17-18; Defence Exhibit 112 (Ngirabatware’s First Diplomatic Passport).

<sup>1375</sup> T. 29 November 2010, p. 60; T. 9 February 2011, pp. 7, 9-10, 17; T. 10 February 2011, pp. 20, 32-34; Defence Exhibit 204 (KNA/PANA Press Article); Defence Exhibit 203A (Correspondence between the Prosecution and *RFI*) (French). Although Ngirabatware identified the journalist as “Nicolas Baliq”, the Chamber considers it clear that he was referring to “Nicolas Baldique” as mentioned in Defence Exhibit 203A (Correspondence between the Prosecution and *RFI*) (French).

whether there is actually a Senegalese visa in his passport, however, he knows that there are two entry and two exit stamps for Senegal in it. In any event, as a minister holding a diplomatic passport, it is generally unnecessary to obtain a visa prior to arriving at a country's border, especially if the minister is expected.<sup>1376</sup>

1094. Ngirabatware stated that he was allowed entry into Senegal for four reasons: (1) the contact which the civil servant of the Ministry of Foreign Affairs of Rwanda had had with their Senegalese counterparts; (2) the authorization to allow Ngirabatware to disembark; (3) Ngirabatware held a diplomatic passport and was a minister of Rwanda; and (4) the message Ngirabatware had from the President of Rwanda addressed to the President of Senegal.<sup>1377</sup>

*(iii) Senegal, France, South Africa, Swaziland, 7 – 19 May 1994*

1095. Ngirabatware left Dakar on 7 May 1994 and travelled to Paris, France to meet with Jérôme-Clément Bicamumpaka who was the Minister of Foreign Affairs of Rwanda and his delegation. He did not meet with French officials, however Ngirabatware and Bicamumpaka gave separate interviews to *Télévision France II*, neither of which was aired. The interviews were given at the Rwandese Embassy in Paris and were arranged by Martin Ukobizaba, councillor at the embassy, who was also present during the interviews. Ngirabatware does not know why the interviews were not aired, but he believes it happens to many people that their interview is never broadcasted. He speculated the decision not to air the interview might have been taken because the television station associated him with the ongoing genocide.<sup>1378</sup>

1096. Ngirabatware left Paris on 10 May 1994 and returned to Dakar on the same day. Ngirabatware was welcomed at the airport by a Senegalese politician who also had knowledge of the African, Caribbean, and Pacific Group of States (the “ACP”) Parliamentary Committee. He stayed in Dakar for one day, and then travelled via Paris, to pick up the Rwandan Ambassador to the European Union, François Ngarukiyintwali, who accompanied him to Mbabane, Swaziland, where Ngirabatware was to chair a meeting of the Council of Ministers of the ACP. En route to Swaziland, they passed through Johannesburg. Ngirabatware did not have a visa for Swaziland, but his passport contains an exit stamp.<sup>1379</sup>

1097. Ngirabatware and Ngarukiyintwali met with Faustin Maniliho, a director in the Rwandese Ministry of Planning, in Mbabane. Together they formed the delegation to the ACP summit. Ngirabatware attended two meetings. The first meeting was the 58th Council of ACP Ministers, from 15 through 17 May 1994 and was chaired by Ngirabatware. The second meeting was the 19th Council of Ministers of ACP countries and EEC countries on 18 and 19 May 1994. Between those two meetings Ngirabatware convened another meeting with African ministers where they talked specifically about the issue of Rwanda. As Minister of Planning in Rwanda he was responsible for all relations with the ACP organization and he was also the vote holder over the European Development Fund. It was in that capacity that he led the Rwandan delegation.

<sup>1376</sup> T. 9 February 2011, pp. 6, 12-13.

<sup>1377</sup> T. 10 February 2011, p. 8.

<sup>1378</sup> T. 10 February 2011, pp. 62-68, 71-72.

<sup>1379</sup> T. 29 November 2010, pp. 60-61; T. 10 February 2011, p. 12; T. 11 February 2011, pp. 6-8; Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994).

Ngirabatware cannot remember where the meetings took place but it was at an international conference center in Mbabane. At all meetings he made statements, in particular during the meeting of the joint Council of Ministers of ACP/EEC where a resolution had to be voted on concerning Rwanda. In his speech he addressed the points relating to the position of the Interim Government, insofar as the Rwandan question was concerned; namely the total agreement of the Interim Government with the Arusha Peace Agreements and the three missions of the Interim Government.<sup>1380</sup>

1098. Ngirabatware testified that there is always a report and an annex of all ACP Council of Ministers' meetings or ACP/EEC joint meeting of councils. On 20 May 1994, there was a mid-term review of the implementation of the Lomé IV agreement in which Ngirabatware did not participate, because he left the day before. There was a list of participants that was given to the attendees before they left the meeting venue. Ngirabatware saw his name on the list on 19 May.<sup>1381</sup>

*(iv) Zambia, Kenya, Zaire, Rwanda, 20 May – 23 May 1994*

1099. After departing from Swaziland, Ngirabatware travelled to Lusaka, Zambia where he had discussions at the Zambian Ministry of Foreign Affairs. Ngirabatware then left for Nairobi, Kenya arriving on 21 May 1994. He subsequently travelled to Kinshasa on 22 May 1994, and the next day, 23 May, he travelled to Goma and then flew to Gisenyi on the same day.<sup>1382</sup>

1100. Upon returning to Rwanda, Ngirabatware granted an interview to a journalist who worked for Radio Rwanda called Jean Baptiste Bamwanga on 24 May 1994. The interview was broadcast that evening on Radio Rwanda. Ngirabatware recalled discussing three issues with Bamwanga: (1) talks he had had with the authorities of Gabon, Togo and Senegal; (2) his attendance at the ACP/EEC meetings in Mbabane and the subsequent resolution adopted at those meetings; and (3) the resolution recently adopted by the United Nations Security Council regarding an arms embargo on the Rwandan army.<sup>1383</sup>

#### Defence Witness Jérôme-Clément Bicamumpaka

1101. Jérôme-Clément Bicamumpaka is the former Minister of Foreign Affairs and International Cooperation in the Interim Government. He was appointed on 8 April 1994 and sworn in on 9 April 1994.<sup>1384</sup>

1102. He met Ngirabatware on 20 April 1994 in the town of Murambi, Gitarama at approximately 10.00 or 10.30 a.m. and then again sometime in the afternoon. During this meeting, both men worked together on the official mission that Ngirabatware was to undertake.

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<sup>1380</sup> T. 29 November 2010, pp. 61-63; T. 11 February 2011, pp. 6, 24-26; Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994).

<sup>1381</sup> T. 29 November 2010, pp. 62-63; T. 11 February 2011, p. 26. A list of participants was shown to Ngirabatware, with his name appearing under Rwanda on page 10. The document was later admitted as Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994).

<sup>1382</sup> T. 29 November 2010, p. 68.

<sup>1383</sup> T. 30 November 2010, pp. 5-6.

<sup>1384</sup> Defence Exhibit 138 (Personal Identification Sheet); T. 22 August 2011, pp. 39, 46.

Ngirabatware was to visit Libreville in Gabon, Lomé in Togo and Dakar in Senegal. Ngirabatware was given a personal message from the Rwandan Head of State to be conveyed to each of the Heads of State of those three countries.<sup>1385</sup>

1103. The witness, Ngirabatware and others left Murambi, Gitarama around 1.00 p.m. on 21 April 1994 and arrived at Hotel Meridien in Gisenyi sometime that evening. Both the witness and Ngirabatware stayed the night there.<sup>1386</sup>

1104. The witness testified that he left Gisenyi and went to Goma in Zaire, on 22 April 1994. He stated that he was accompanied by Ngirabatware, André Rwamakuba and his wife and children, Spérancie Karwera, Jean-Bosco Barayagwiza and others. The purpose of the journey was to obtain visas for travel beyond Goma, further into Zaire, and to book flight tickets.<sup>1387</sup>

1105. The witness, Ngirabatware and others purchased tickets in Goma on 22 April 1994, for a flight to Kinshasa, Zaire, boarding at 9.00 a.m. on 23 April 1994. While in Goma on 22 April 1994, the witness, Ngirabatware, Karwera and others obtained a visa from the Zairian immigration office. Bicomumpaka received his visa in his service passport. He saw that Ngirabatware was carrying a diplomatic passport and assumed the visa was in that passport.<sup>1388</sup>

1106. Both the witness and Ngirabatware returned to Hotel Meridien in Gisenyi on the evening of 22 April 1994 and spent the night at the hotel. The next morning, 23 April 1994, they both got on the flight from Goma to Kinshasa, departing at approximately 10.00 a.m. That evening the witness flew from Kinshasa to Paris, parting with Ngirabatware whose next stop was Libreville, Gabon.<sup>1389</sup>

1107. On 8 May 1994 he met Ngirabatware, who was accompanied by Spérancie Karwera, in an office at the Rwandan Embassy in Paris. The witness and Ngirabatware discussed the official mission that Ngirabatware had just completed; this had included visits to Gabon, Togo and Senegal, in addition to Ngirabatware's transit through Congo-Brazzaville and Ivory Coast.<sup>1390</sup>

1108. On 9 May 1994, the witness and Ngirabatware received a message from President Sindikubwabo while at the Rwandan Embassy in Paris. The purpose of the message was to request Ngirabatware to do all he could to attend the ministerial conference of the ACP in addition to the ACP/EEC meeting, in Mbabane, Swaziland. The witness testified that Ngirabatware was supposed to be accompanied to the conference and meeting in Mbabane by François Ngarukiyintwali, the Rwandan Ambassador to the European Union in Brussels and a civil servant from the planning department called Faustin Maniliho. Ngirabatware's mission in Mbabane was planned for sometime in May 1994 but the witness could not recall the exact dates.<sup>1391</sup>

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<sup>1385</sup> T. 22 August 2011, pp. 82-84.

<sup>1386</sup> T. 23 August 2011, pp. 8-9.

<sup>1387</sup> T. 22 August 2011, p. 81; T. 23 August 2011, p. 9.

<sup>1388</sup> T. 23 August 2011, p. 12; Defence Exhibit 144 (Bicomumpaka's Diplomatic Passport).

<sup>1389</sup> T. 23 August 2011, p. 13.

<sup>1390</sup> T. 23 August 2011, p. 14.

<sup>1391</sup> T. 23 August 2011, pp. 14-15.

1109. On the date that the witness and Ngirabatware left Rwanda, 23 April 1994, neither of them was aware of the mission to Mbabane, Swaziland, to which Ngirabatware was subsequently assigned.<sup>1392</sup>

1110. On 29 May 1994, Bicamumpaka returned to Rwanda from New York. He returned to Murambi, Gitarama, and found Ngirabatware at the Murambi centre. While there, Ngirabatware told him that he had returned to Rwanda from Mbabane, Swaziland, one week earlier.<sup>1393</sup>

Defence Witness Jean Damascène Kayitana

1111. Jean Damascène Kayitana was a driver for the Ministry of Planning from 1989 to 1994, and was a resident of Kigali town in 1994. The witness first became aware of who Ngirabatware was in 1990 when Ngirabatware became Minister of Planning, and the witness was first assigned to drive him in early March 1994. Sometime after 6 April 1994, the witness made two trips to Goma Airport with Ngirabatware. On the first journey, the witness drove Ngirabatware, a woman named Karwera and some *gendarmes* from Gisenyi. In addition to the vehicle the witness was driving, there was another vehicle transporting Jérôme-Clément Bicamumpaka on the same trip at the same time. After Goma Airport the witness, Ngirabatware, Karwera and the *gendarmes*, returned to Gisenyi.<sup>1394</sup>

1112. The second journey to Goma Airport took place the following day. They drove to Goma Airport and his passengers, including Ngirabatware, left. The witness was uncertain as to the length of time Ngirabatware spent out of Rwanda after leaving from Goma, but he estimated it to be 30 days.<sup>1395</sup>

1113. The witness stated that it was impossible that Ngirabatware returned to Rwanda during this period of absence without him knowing because the witness was responsible for driving Ngirabatware every time he was in Rwanda, and every time Ngirabatware left the country the witness was responsible for driving him to the airport. When Ngirabatware was on mission, the witness would stay with Ngirabatware's family. Ngirabatware would not return to Rwanda and not visit his family or go back to where the government was based.<sup>1396</sup>

Defence Witness DWAN-122

1114. Witness DWAN-122 was employed as a security guard by the Ministry of Planning in 1994. The witness returned to work, from a short break, on 16 April 1994 wherein his assignment was guarding Ngirabatware at the Ministry and at his residence. In the course of his employment during the days following 16 April 1994 he would spend days at Ngirabatware's residence in Gisenyi and return to his own home in the evenings.<sup>1397</sup>

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<sup>1392</sup> T. 23 August 2011, p. 14.

<sup>1393</sup> T. 23 August 2011, p. 15.

<sup>1394</sup> Defence Exhibit 167 (Personal Identification Sheet); T. 24 October 2011, pp. 59-61, 65, 69-70.

<sup>1395</sup> T. 24 October 2011, p. 71.

<sup>1396</sup> T. 25 October 2011, pp. 29-30.

<sup>1397</sup> Defence Exhibit 129 (Personal Identification Sheet); T. 29 June 2011, p. 68 (CS); T. 30 June 2011, p. 19 (CS); T. 30 June 2011, pp. 16, 20.

1115. From April through July, Ngirabatware went abroad twice. The first trip abroad taken by Ngirabatware lasted about one month. Ngirabatware's wife and children returned to Gisenyi from Burundi on approximately 19 April 1994. The witness recalls that Ngirabatware departed on his first mission abroad either four or five days after the arrival of his wife and children in Gisenyi.<sup>1398</sup>

Defence Witness Winifred Musabeyezu-Kabuga

1116. Winifred Musabeyezu-Kabuga is the sister-in-law of Ngirabatware. She left Rwanda and arrived in France on 28 April 1994 and gave birth to her daughter on 9 June 1994 in Paris. Some of her family members were with her, including her sister Félicité Ngirabatware, the wife of Ngirabatware. The witness testified that Félicité Ngirabatware arrived in Paris in June 1994; however she did not recall the exact date.<sup>1399</sup>

1117. The witness recalled that Augustin Ngirabatware visited her about ten days after she had arrived in Paris. Ngirabatware spent about two or three nights at her home. He was brought there by Martin Ukobizaba, councilor at the Rwandan Embassy in Paris. Ngirabatware visited her again one-and-a-half months after she had the baby.<sup>1400</sup>

Prosecution Rebuttal Witness Massamba Ndiaye

1118. Massamba Ndiaye is a crime analyst with the Office of the Prosecutor of the ICTR and has worked with the organization since 2001. He was asked to join the Ngirabatware investigation team in December 2010, and prior to this assignment he was working on the *Karempera et al.* case. Generally, the witness' role in the Office of the Prosecutor is to assess witness statements obtained by investigators in the field and decide whether the facts contained therein are sufficient. Additionally, the witness assists the legal section of the Office of the Prosecutor in finding documents and assessing defence alibis.<sup>1401</sup>

1119. The witness was asked to work on the Defence alibi for the period 21 April through July 1994. He was given a bundle of transcripts and exhibits relating to this alibi period and he conducted an in-depth study of the documents provided in addition to documents he found in the course of his own investigations. After his in-depth study of the evidence, the witness noted a number of things he considered to be "suspect". The witness subsequently embarked on four missions in order to verify the suspect facts.<sup>1402</sup>

1120. In addition to the witness' individual missions, his colleagues visited and obtained appropriate documents from the Swaziland authorities, France, South Africa, the ACP and

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<sup>1398</sup> T. 30 June 2011, pp. 33-34.

<sup>1399</sup> Defence Exhibit 163 (Personal Identification Sheet); T. 18 October 2011, pp. 7, 59; T. 19 October 2011, p. 67. See also Defence Exhibit 164 (Birth Certificate); Defence Exhibit 168 (Photographs).

<sup>1400</sup> T. 18 October 2011, p. 73.

<sup>1401</sup> Prosecution Exhibit 70 (Personal Identification Sheet); Prosecution Exhibit 69 (Curriculum Vitae); T. 6 March 2012, pp. 3, 7.

<sup>1402</sup> T. 6 March 2012, pp. 7-8.

INTERPOL. This evidence was collated and formed part of his analysis with regards to the validity of the Defence alibi.<sup>1403</sup>

1121. The witness conceded that his qualifications did not allow him to distinguish between different types of visas because he was not an expert and that distinguishing types of visa was not his field of expertise.<sup>1404</sup>

*(i) Meeting with Senegalese Police Officer*

1122. The witness testified that he met a senior police officer during the witness' trip to Dakar, Senegal, between 9 and 18 January 2011.<sup>1405</sup>

1123. The witness referred the senior police officer to the diplomatic passport D112000910 of Ngirabatware in order to get his opinion on the evidence regarding Ngirabatware's arrival into Dakar, Senegal, in April and May 1994. The stamps dated 30 April, 10 May and 30 May 1994 had the handwritten inscription "LD2741" next to it.<sup>1406</sup> Writing these inscriptions next to the passport stamps was described by the senior police officer as a practice which had become custom, noting that there was no legal procedure for the officials at the airport to follow.<sup>1407</sup>

1124. The witness was told by the senior police officer that the "LD" marking on an entry visa was only used for "ordinary" people. The letters "LD" are used in Senegal as a temporary form of permission to enter the territory in order to subsequently apply for a normal visa. Ngirabatware travelling on a diplomatic passport would not have had "LD" written in his passport upon arrival in Senegal. A minister coming to Senegal would have to come with a diplomatic passport and a mission order, an official passport with a mission order, or an ordinary passport but with a visa which he would have obtained before arrival.<sup>1408</sup>

1125. The senior police officer also explained to the witness that the repetition of the inscription "LD2741" next to each of the three passport stamps was questionable. The same "LD" stamp can only be used once, for entry and not exit stamps. The senior police officer concluded that using the same "LD" inscription for three stamps would not be possible.<sup>1409</sup>

*(ii) Meeting with Hamet Ba*

1126. Hamet Ba was the head of the audiovisual section at *Radio Télévision Senegal* ("RTS") when he met the witness on 9 January 2011. The witness met Ba because Ngirabatware had stated in his evidence that he had given an interview for RTS in Senegal during his trip to Dakar in 1994.<sup>1410</sup>

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<sup>1403</sup> T. 6 March 2012, pp. 12-13.

<sup>1404</sup> T. 12 March 2012, p. 27.

<sup>1405</sup> T. 6 March 2012, p. 28.

<sup>1406</sup> According to Massamba Ndiaye, "LD" is the acronym for "*laissez débarquer*". T. 6 March 2012, p. 33 (French).

<sup>1407</sup> T. 6 March 2012, pp. 29-30; T. 13 March 2012, p. 48. See also Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1408</sup> T. 6 March 2012, p. 31.

<sup>1409</sup> T. 6 March 2012, p. 32.

<sup>1410</sup> T. 6 March 2012, p. 33.



1127. On 9 January 2011, the witness asked Ba to search the audiovisual archive for any record of an interview with Ngirabatware in 1994. Ba informed the witness that he could not find any evidence of an interview involving Ngirabatware and stated to the witness that he was 80% sure that if Ngirabatware had given an interview, particularly in his capacity as special envoy, then it would have been filed in the archives.<sup>1411</sup>

*(iii) Meeting with Senegalese Official*

1128. The first meeting between the witness and a Senegalese official in the Office of the Presidency was on his mission to Dakar, Senegal, from 9 to 18 January 2011, the second meeting took place during his mission from 14 January to 1 February 2012. The purpose of the meetings was to verify the assertions made by Ngirabatware that he had met several of the Senegalese authorities between 30 April and 7 May 1994.<sup>1412</sup>

1129. The Senegalese official informed the witness that he conducted a search into the archives and found no record of a meeting between Ngirabatware and any authorities of the Presidency.<sup>1413</sup>

*(iv) Meeting with a Former Senegalese Politician*

1130. The witness initially met with a former Senegalese politician during his second mission to Dakar, Senegal, from 2 to 9 February 2011. They met for a second time during his mission of 14 to 20 September 2011, and they later spoke on the phone during the witness' mission of 14 January to 2 February 2012. The purpose of these meetings was to verify whether Ngirabatware's assertions were correct, in that he claimed to have met the former Senegalese politician during his trips to Dakar, Senegal, therefore corroborating his alibi.<sup>1414</sup>

1131. When the witness asked the former Senegalese politician about alleged meetings with Ngirabatware between 30 April and 7 May 1994 and on 11 May 1994, during his first mission to Senegal, he denied all the allegations and stated that he had never met Ngirabatware. Furthermore, the witness agreed that the former Senegalese politician said that he had met thousands of people in the course of his official duties.<sup>1415</sup>

*(v) Meeting with a Former Senegalese Politician*

1132. The witness met a Senegalese politician during his mission of 14 January to 2 February 2012. According to the witness, he met with this individual to ascertain if Ngirabatware met with the politician in May 1994.<sup>1416</sup>

1133. The former politician denied having met Ngirabatware in 1994 and stated that he had never met him. He also stated to the witness that it was impossible that such a meeting could

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<sup>1411</sup> T. 6 March 2012, pp. 33-34.

<sup>1412</sup> T. 6 March 2012, pp. 25-27.

<sup>1413</sup> T. 6 March 2012, p. 27; Prosecution Exhibit 74 (Letter from Senegal Office of the Presidency to the Prosecutor) (French).

<sup>1414</sup> T. 6 March 2012, pp. 22, 24-25.

<sup>1415</sup> T. 6 March 2012, pp. 14, 22; T. 13 March 2012, pp. 39-40.

<sup>1416</sup> T. 6 March 2012, p. 34.

have occurred as testified to by Ngirabatware. The politician was not a Member of Parliament at the time of this supposed meeting, and this politician could not have received Ngirabatware in any other capacity.<sup>1417</sup>

1134. The politician signed a written statement declaring that he had never met Ngirabatware. However, during the meeting between the Senegalese politician and the witness, the politician told him that even if Ngirabatware had come to ask him to say that the two had met in 1994 he would have refused. The Senegalese politician told the witness that he did not want this later meeting between himself and Ngirabatware to be included in his statement.<sup>1418</sup>

*(vi) Mission to Le Soleil Newspaper*

1135. The witness visited the Senegalese newspaper *Le Soleil* during his first mission of 9 to 18 January 2011. As it was a government newspaper, the archives ought to have shown any visit by Ngirabatware on the dates he allegedly met officials from the Senegalese President's office. The witness took photocopies of every page of every issue of *Le Soleil* printed for the duration of Ngirabatware's alleged trip to Senegal in 1994. He found no reports of a visit by Ngirabatware. The witness believed that there is a high likelihood that had Ngirabatware made an official visit during 1994, *Le Soleil* would have covered the story, in particular because the events in Rwanda were being covered in some detail in the Senegalese press at that time. The witness was unable to say how many newspapers existed in Senegal in 1994, except to say that there were a large number.<sup>1419</sup>

*(vii) Nigerian Embassy*

1136. The witness visited the Nigerian Embassy in Dakar, Senegal, during his missions from 9 to 18 January 2011, 14 to 20 September 2011 and 14 January to 1 February 2012. He visited the embassy in order to establish the validity of a Nigerian visa, dated 6 May 1994, in Ngirabatware's passport.<sup>1420</sup>

1137. During his first trip, the witness met with a Nigerian civil servant. This civil servant was instructed by the then-Ambassador to investigate the validity of the Nigerian visa in Ngirabatware's passport. The Nigerian civil servant, after investigation, stated that the visa in question was not used in 1994 but was used only after 2000. Furthermore, the Nigerian civil servant told the witness that it was not possible for a non-Senegalese resident to obtain a Nigerian visa in Senegal, therefore Ngirabatware could not have obtained the Nigerian visa during his alleged trip to Senegal in 1994.<sup>1421</sup>

*(viii) French Embassy*

1138. The witness also visited the French embassy while on mission in Dakar, Senegal. The purpose of this visit was to verify the authenticity of the French visa in Ngirabatware's passport dated 6 May 1994, allegedly issued in Dakar. The consular section at the French Embassy told

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<sup>1417</sup> T. 6 March 2012, p. 35.

<sup>1418</sup> T. 6 March 2012, p. 35.

<sup>1419</sup> T. 6 March 2012, pp. 38-39; T. 13 March 2012, p. 43.

<sup>1420</sup> T. 6 March 2012, p. 39; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1421</sup> T. 6 March 2012, pp. 40, 44.

the witness that the official who had signed the visa was retired. The Deputy Consular was not in a position to say whether the employee had signed the visa or not.<sup>1422</sup>

*(ix) ACP Headquarters Brussels*

1139. The witness visited the headquarters of the ACP during his mission in February 2011. The purpose of his visit was to verify the alleged attendance of Ngirabatware at the ACP conference in Mbabane, Swaziland, from 13 to 19 May 1994. The witness was met by an ACP lawyer and was given a series of documents on the 1994 meetings, including on the preparation and execution of those meetings.<sup>1423</sup>

1140. The witness enquired whether a Rwandan delegate would have to obtain a visa to enter Swaziland as some countries were exempt from that requirement. According to ACP employees who attended the ACP meetings in Mbabane in 1994, Rwandans were not one of the nationalities that were exempt from the requirement to obtain a visa. His colleague also told the witness that the fact that Ngirabatware was travelling on a diplomatic passport did not circumvent the requirement to obtain a visa as the colleague himself was obliged to obtain a visa for the ACP meetings in 1994, despite travelling on a diplomatic passport. The information communicated to the witness by the ACP was later reduced to writing and admitted into evidence.<sup>1424</sup>

1141. In the course of his testimony, the witness confirmed that Defence Exhibit 205A is a letter from the Department of Home Affairs of the Republic of South Africa stating that the stamps in Ngirabatware's passport indicate the issuance of a transit visa on 13 and 19 May 1994 to and from Swaziland, respectively.<sup>1425</sup>

1142. The witness also stated that Prosecution Exhibit 78 is a list of participants at the ACP/EEC meetings in Mbabane, Swaziland, dated 20 May 1994. The list shows Ngirabatware as the head of the Rwandan delegation. The witness admitted that the list in Prosecution Exhibit 78 must have been written after the arrival of the delegates in Mbabane.<sup>1426</sup>

1143. Furthermore, the witness confirmed that Prosecution Exhibit 80 is a list of participants at the 19th ACP/EEC Council of Ministers dated 18 to 20 May 1994. The list shows Ngirabatware as the head of the Rwandan delegation. The witness stated that, although Ngirabatware's name is on the list of attendees in Prosecution Exhibit 80, that list is not definitive proof that Ngirabatware actually attended the meeting. The witness admitted that the list in Prosecution Exhibit 80 must have been written after the arrival of the delegates in Mbabane.<sup>1427</sup>

1144. According to the witness, Defence Exhibit 203 shows a chain of emails between the witness and a number of people at *RFI*. The witness presented these emails to the Defence as soon as he received them, which prove the existence of a recording of Ngirabatware conducted in Dakar, Senegal, on 4 May 1994 by *RFI*. The witness testified that he submitted this exhibit to the

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<sup>1422</sup> T. 6 March 2012, p. 50; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1423</sup> T. 6 March 2012, pp. 51-52.

<sup>1424</sup> T. 6 March 2012, pp. 52-53; T. 7 March 2012, pp. 22-23; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport); Prosecution Exhibit 75 (Letter from ACP to the Prosecutor).

<sup>1425</sup> T. 12 March 2012, pp. 80-83.

<sup>1426</sup> T. 7 March 2012, pp. 42-45; T. 13 March 2012, p. 67.

<sup>1427</sup> T. 13 March 2012, pp. 61-62, 67.

Defence, despite the fact that it tended to prove that Ngirabatware was in Dakar at some point during the alibi period.<sup>1428</sup>

1145. The witness testified to the existence of a newspaper article dated 2 May 1994 by the Pan-African News Agency. He demonstrated that the article showed that Ngirabatware was in Dakar, Senegal, on 2 May 1994 in order to give an interview to the News Agency, which is based in Dakar. Despite the fact that the article stated that Ngirabatware was in Dakar on 2 May 1994 to give a message from the Rwandan Head of State to the Senegalese President, the witness stated that the wording of the article only shows that Ngirabatware was in Dakar to deliver a message, not that he was successful in delivering that message.<sup>1429</sup>

#### Prosecution Rebuttal Witness PRWII

1146. Witness PRWII, a former Senegalese politician, testified that he does not recall any meeting with a Rwandan minister named Augustin Ngirabatware in Dakar in April or May 1994. Neither does he recall receiving any messages in April or May 1994 from the Interim Government of Rwanda delivered by Ngirabatware. He said that if Ngirabatware were to deliver a message, he would have been received by Ngirabatware's counterpart, the Minister of Planning of Senegal or by the Minister of Foreign Affairs if that had been requested by the Head of State. However, the witness cannot recall such thing happening in 1994.<sup>1430</sup>

1147. Given the large number of people that the witness meets through his work, he cannot remember all the people that he met. However, Senegal was not involved in Rwanda and was participating in meetings of the Organization of African Unity at the time. The witness reiterated that he does not deny meeting Ngirabatware, he only does not remember. He further added that he has no reason whatsoever to deny or affirm meeting with Ngirabatware.<sup>1431</sup>

1148. In July 1993, the witness attended the Heads of States and Governments summit of the Organization of African Unity. During these meetings, the witness met dozens of ministers and other persons and he cannot recall all of them, including Ngirabatware. If he were to have met any Rwandan at the summit, it would have been his Rwandan counterpart and not another minister, unless it happened to be someone else heading the delegation.<sup>1432</sup>

#### Prosecution Rebuttal Witness PRWIII

1149. Witness PRWIII is a Nigerian civil servant. Since 2010, the witness has been posted in Senegal and is responsible for providing consular services, particularly dealing with immigration and issuing visas and residence permits.<sup>1433</sup>

1150. On 20 December 2010, the Embassy of Nigeria in Dakar received a letter from the Prosecution about Ngirabatware's passport. The letter was forwarded to the Ambassador, who

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<sup>1428</sup> T. 13 March 2012, pp. 81-82.

<sup>1429</sup> T. 12 March 2012, pp. 61, 64-65; Defence Exhibit 204 (KNA/PANA Press Article).

<sup>1430</sup> Prosecution Exhibit 89 (Personal Identification Sheet); T. 23 March 2012, pp. 5-8 (CS); T. 23 March 2012, p. 9.

<sup>1431</sup> T. 23 March 2012, pp. 15-17.

<sup>1432</sup> T. 23 March 2012, p. 15.

<sup>1433</sup> Prosecution Exhibit 90 (Personal Identification Sheet); T. 5 June 2012, pp. 30-32 (CS); T. 7 June 2012, p. 12 (CS); T. 8 June 2011, p. 42 (CS).

directed this issue to the witness. Within the week, the witness met with Massamba Ndiaye, who introduced himself as a crime analyst attached to the ICTR. Ndiaye disclosed a colored, scanned copy of Ngirabatware's passport and asked the witness to verify the authenticity of the Nigerian visa and stamps found therein. The Embassy commenced its inquiry into the authenticity of the Nigerian visa and stamps. At trial, the witness testified that the investigation was still ongoing and up to that point inconclusive. The witness testified that there were many procedural irregularities regarding the issuance of the visa, and believes the visa was wrongly obtained.<sup>1434</sup>

1151. The witness found two categories of anomalies in relation to Ngirabatware's visa. First, per visa regulations, an applicant must obtain a Nigerian visa in his or her home country. If that is not possible, applicants must go to a neighboring country with a Nigerian Embassy to apply for the visa. Second, without a telegram or official correspondence from the applicant's home government requesting a waiver, only residents of Senegal could get a Nigerian visa from the Embassy in Senegal, not third-country residents.<sup>1435</sup>

1152. Ngirabatware could have obtained a visa in his home country, or a neighboring country in East Africa. Absent a waiver request, Ngirabatware could not have received a Nigerian visa in Senegal because he was not a resident of Senegal and the Embassy did not receive a waiver request for Ngirabatware. The Nigerian Embassy doubted if Ngirabatware's visa was obtained through the procedures prevailing in 1994. The Embassy's position was that the procedures Ngirabatware purportedly followed to obtain his alleged Nigerian visa in Senegal were flawed and faulty, and that no consular official would have granted a visa to Ngirabatware in the manner he alleged to have received his visa. Once the Embassy had decided that the visa was not obtained through proper procedures, it did not go further in their investigations before responding to the Prosecution in its letter of 18 January 2011. However, the witness reiterated that the investigation is still ongoing.<sup>1436</sup>

1153. The witness testified that visa regulations are controlled by the General Immigration Act of 1990, and that part "E" of these regulations pertains to diplomatic visas. In addition, the witness testified that a *note verbale* would have been required for a diplomat to obtain a *gratis* visa. The witness further testified that visa applications are completed at the Embassy and that the Embassy found nothing in its archives pertaining to Ngirabatware's alleged Nigerian visa that would have complied with the regulations.<sup>1437</sup>

1154. The witness explained that the Nigerian visa application was not the exact form that was used in 1994, as it is updated regularly, but the basic details were the same. When asked if the Nigerian Embassy was in possession of Ngirabatware's visa application, the witness responded

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<sup>1434</sup> T. 5 June 2012, pp. 32-34 (CS); T. 6 June 2012, p. 45 (CS). See also Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport); Prosecution Exhibit 40A (Correspondence between the Prosecutor and the Nigerian Embassy in Senegal).

<sup>1435</sup> T. 5 June 2012, p. 45 (CS); T. 7 June 2012, pp. 66-67 (CS).

<sup>1436</sup> T. 5 June 2012, pp. 34, 45 (CS); T. 6 June 2012, p. 45 (CS); T. 7 June 2012, pp. 26-29, 38, 64, 66 (CS); T. 8 June 2012, pp. 2-3 (CS). See also Prosecution Exhibit 40A (Correspondence between the Prosecutor and the Nigerian Embassy in Senegal).

<sup>1437</sup> T. 5 June 2012, pp. 76-77 (CS); T. 3 July 2012, pp. 33-35 (CS); Prosecution Exhibit 92 (Immigration Act of Nigeria).

that he could not answer because the Embassy's investigation into the matter was still ongoing.<sup>1438</sup>

1155. The witness testified that the Embassy traced the Nigerian visa stamps found in Ngirabatware's passport and determined that these stamps were not in use in 1994, but were used from 2000 to 2005. The witness explained the differences between the stamps found in Ngirabatware's passport and those in use from 1990 to 1999. The witness surmised that the visa was irregular because it was the wrong visa obtained at the wrong time.<sup>1439</sup>

1156. The witness stated that when the Nigerian embassies were still using stamp impressions, each embassy would design its own impression and have it authorized by the Ministry of Foreign Affairs. The Embassy found only one official stamp impression which was in use between 1990 and 1994. While the Embassy found only one stamp in use at that time, there could have been more than one stamp.<sup>1440</sup>

1157. The witness demonstrated how Nigerian visa stamps were applied to passports. He explained that in 1994, every person receiving a Nigerian visa would get a general visa stamp. Those who were diplomats would have received the general stamp in addition to a stamp that read "*courtesy visa gratis*". The 1994 courtesy visa stamp would have been placed next to the common stamp. The witness conceded that occasionally secretaries made mistakes and put the "*courtesy visa*" stamp directly on the general stamp.<sup>1441</sup>

1158. In response to a question regarding Section C of the 18 January 2011 letter, which claimed that Zambian authorities had mistakenly placed their stamp on top of the Nigerian stamp, he testified that no country will stamp its own stamp over another country's stamp existing in a passport. He disagreed with the assertion that the stamp the witness brought to the Tribunal which he presented as being the diplomatic visa was actually the *gratis* visa given to a certain category of travelers.<sup>1442</sup>

1159. Around 2005, Nigerian embassies were directed by the Nigerian Ministry of Foreign Affairs to stop using stamps and start using stickers. As of 2005, all visas and stickers are designed and issued by the Ministry of Foreign Affairs to its embassies. Except for individual reference numbers, the stickers are uniform. The embassies do not have their own models of stickers. The coloring or design in the stickers used by the Nigerian Embassy since 2005 could have changed yearly. He did not agree with the assertion that the Nigerian Embassy in Dakar was using stickers between 2000 and 2005.<sup>1443</sup>

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<sup>1438</sup> T. 7 June 2012, pp. 33-34 (CS); T. 8 June 2012, p. 38 (CS). See also Defence Exhibit 208 (Nigerian Visa Application).

<sup>1439</sup> T. 5 June 2012, pp. 40, 45-47 (CS); T. 6 June 2012, pp. 4, 26-27, 39-40 (CS); T. 3 July 2012, pp. 17-18 (CS). See also Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport), p. 25.

<sup>1440</sup> T. 8 June 2012, pp. 46-47 (CS).

<sup>1441</sup> T. 6 June 2012, pp. 27, 29-30, 39 (CS).

<sup>1442</sup> T. 8 June 2012, pp. 9-10 (CS); T. 3 July 2012, p. 36 (CS). See also Prosecution Exhibit 40A (Correspondence between the Prosecutor and the Nigerian Embassy in Senegal).

<sup>1443</sup> T. 8 June 2012, pp. 42-44 (CS); T. 3 July 2012, pp. 19-20, 29, 32 (CS). See also Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport), p. 25.

1160. The witness testified that while meeting with Ndiaye, he only saw page 25 of Ngirabatware's passport. He had never seen a document dated 3 May 1994, which made reference to an interview given by Ngirabatware on 2 May 1994 while he was in Dakar, Senegal. He was also not shown the visa for Benin issued 6 May 1994 or the visa issued on 7 May 1994 by the French Embassy in Dakar. The Nigerian Embassy made its determination based on the information it was given.<sup>1444</sup>

1161. Certain members of the Defence went to the Embassy in March 2011 and asked for a re-examination of the letter sent to the Office of the Prosecutor on 18 January 2011 which stated that Ngirabatware could not have received a visa from the Nigerian Embassy in Senegal in May 1994. Embassy staff wrote a memo to the Defence, dated 1 April 2011, saying the Embassy would re-examine its findings of 18 January 2011 if the Defence could provide more concrete evidence of Ngirabatware's presence in Dakar and his qualifications for the Nigerian visa.<sup>1445</sup>

#### Prosecution Rebuttal Witness PRWIV

1162. Witness PRWIV, a lawyer at the African, Caribbean, and Pacific Group of States (the "ACP") headquarters in Brussels, testified that the ACP is based in Brussels, Belgium and it has 79 members.<sup>1446</sup> In the course of the witness' employment, the ACP Secretariat received a request from the Office of the Prosecutor on three issues: (1) information and records about the 58th ACP ministerial meeting held in Mbabane, Swaziland in 1994; (2) any records or information that would confirm the presence of Ngirabatware at this conference; and (3) the visa requirements for delegates who attended this meeting. The witness was the one who handled these matters.<sup>1447</sup>

1163. Upon receiving the request, the witness proceeded to look into the archives of the ACP Secretariat to determine whether that particular ministerial meeting was held in Swaziland in 1994. He found documents in the archives which showed that the ministerial conference or meeting took place in Mbabane, Swaziland in 1994.<sup>1448</sup>

1164. The witness found: (1) a *note verbale* which was circulated to all member countries of the ACP informing them to submit names or the lists of their delegations to this ministerial meeting in Swaziland; (2) a transmission note, which has all the various requirements in connection with visas, accommodations and the conference facilities; (3) the programme of the ministerial conference; (4) the summary record of the ministerial meeting; (5) the list of participants in the meeting; and (6) the decisions and resolutions passed during the ministerial meeting.<sup>1449</sup>

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<sup>1444</sup> T. 8 June 2012, pp. 22-24 (CS).

<sup>1445</sup> T. 5 June 2012, pp. 56-58 (CS). See also Prosecution Exhibit 91 (Letter from Nigerian Embassy in Senegal to Defence Counsel).

<sup>1446</sup> Prosecution Exhibit 86 (Personal Identification Sheet); T. 20 March 2012, p. 7; T. 20 March 2012, pp. 7, 10 (CS).

<sup>1447</sup> T. 20 March 2012, pp. 12, 17.

<sup>1448</sup> T. 20 March 2012, pp. 12-13.

<sup>1449</sup> T. 20 March 2012, pp. 17-18.

1165. The witness also searched for audio recordings in the ACP archives and talked to other employees within the organization. However, no one could recollect that they were taping the ministerial meetings at that time.<sup>1450</sup>

1166. The witness identified Prosecution Exhibit 79 as a document originating from the ACP. Based on his research, the witness concludes that any delegate from Rwanda would need a visa, as the transmission note indicates that Rwanda is one of the non-exempt countries. From his experience working with the ACP, the witness believes it would not matter whether the delegate is a holder of a diplomatic passport. Although the witness was not working for the ACP in 1994, his experiences working in international organizations, including the ACP and the Commonwealth Secretariat make him believe that a visa either needs to be obtained at an embassy or upon arrival.<sup>1451</sup>

1167. The witness stated that the fact that Ngirabatware appears on a list of participants to the meeting of the 58th session does not confirm that Ngirabatware actually was present. The list is compiled on the basis of information sent in by participating countries prior to the conference.<sup>1452</sup>

1168. After receiving the cooperation request from the Tribunal, the witness spoke to a number of people employed with the ACP in 1994, however this returned no useful information on whether Ngirabatware was present. A reviser working for ACP at the time confirmed to him that all holders of a passport from a non-exempt country would have required a visa to enter Swaziland, regardless of diplomatic status.<sup>1453</sup>

1169. In 1994, the witness did not work at the ACP Secretariat. However, since joining the ACP in 2007, the witness has become familiar with the laws governing the running of ACP and joint ACP-EEC ministers' meetings. At the beginning of each meeting a list of delegates is compiled based on the information countries sent in. This list is used to register arriving delegates. However, the witness was not sure how the final list was compiled, as this is done by the conference section of the ACP group.<sup>1454</sup>

1170. The witness was shown Defence Exhibit 193 and confirmed that Ngirabatware was named a delegate of Rwanda to the Mbabane conference, along with François Ngarukiyintwali and Téléphore Bizimungu. However, he insisted that it does not confirm their actual presence. The letter does not confirm that the Rwandese delegation would attend the mid-term review of the 4th ACP-EU (Lomé) Convention. However, usually no separate delegations are sent.<sup>1455</sup>

1171. The witness was shown Prosecution Exhibit 78 and agreed that it was produced on 20 May 1994. The witness confirms Ngirabatware appears on the list of delegates, along with Ngarukiyintwali and Faustin Maniliho. He agreed that the list dated 20 May 1994 is different from the letter sent by the Rwandese Embassy on 10 May 1994, in that Bizimungu is no longer

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<sup>1450</sup> T. 21 March 2012, pp. 18-19.

<sup>1451</sup> T. 20 March 2012, pp. 19-21; Prosecution Exhibit 79 (Preliminary Information Sheet for ACP Meetings).

<sup>1452</sup> T. 21 March 2012, pp. 3-4.

<sup>1453</sup> T. 21 March 2012, pp. 5-6.

<sup>1454</sup> T. 21 March 2012, pp. 16, 18.

<sup>1455</sup> T. 21 March 2012, pp. 49-56. See also Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994), p. 4.



on the list and that Maniliho was added to the list. The witness was not sure why these changes were made, as he does not know what transpired between the circulation of the *note verbale* of 10 May and 20 May 1994.<sup>1456</sup>

1172. The witness was shown a document containing the decisions and outcomes of the meetings at Mbabane. According to the witness, the decisions are signed by the president, but not the resolutions.<sup>1457</sup>

1173. The witness was shown a note from the Swaziland Embassy to the ACP Secretariat, containing information regarding visas. The witness confirmed that the document states that delegates from non-exempt countries will be issued with a visa upon arrival at the airport, which includes Rwanda. It is the host state and not the ACP secretariat who admits people to countries in which ministerial meetings are held.<sup>1458</sup>

#### Prosecution Rebuttal Witness PRWV

1174. Witness PRWV testified that he was a senior police officer in Senegal. The witness was not working at Dakar airport in 1994, when Ngirabatware allegedly visited Senegal, as the witness only began work at the airport in 2008.<sup>1459</sup>

1175. The witness was asked to examine stamps for authenticity in a passport, together with his colleagues who were working at the airport in 1994. The passport stamps for verification were dated 30 April 1994 (arrival stamp), 7 May 1994 (departure stamp), 10 May 1994 (arrival stamp) and 11 May 1994 (departure stamp). All the stamps were for arrival or departure at Dakar airport, Senegal, and the witness stated that all the stamps were allegedly issued by police officers at that airport.<sup>1460</sup>

1176. The witness observed that written under the stamps dated 30 April, 10 May and 11 May 1994, there were the inscriptions “LD2741”. The letters “LD” are an acronym for the words “*laissez-débarquer*”. This permit allows the bearer of the passport to temporarily enter Senegal in order to subsequently apply for an appropriate visa. This temporary admission into the country is reserved specifically for those people carrying ordinary passports on unplanned, emergency visits, not those individuals travelling on a diplomatic passport.<sup>1461</sup>

1177. The witness confirmed that the four stamps in Ngirabatware’s passport have the characteristics of the stamps of the special superintendent of Dakar airport that were in use in 1994. However, the stamp’s validity cannot be guaranteed by the witness as the embarkation/disembarkation forms from April and May 1994 are no longer in existence. The

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<sup>1456</sup> T. 21 March 2012, pp. 57, 59, 61, 71; Prosecution Exhibit 78 (List of ACP Participants, 20 May 1994).

<sup>1457</sup> T. 21 March 2012, p. 61; Prosecution Exhibit 83 (ACP Decisions and Resolutions, 18 May 1994).

<sup>1458</sup> T. 21 March 2012, pp. 63-64, 69; Prosecution Exhibit 43 (Programme, Report and Preliminary Information Sheet for ACP Meetings), p. 9. See also Prosecution Exhibit 79 (Preliminary Information Sheet for ACP Meetings).

<sup>1459</sup> Prosecution Exhibit 88 (Personal Identification Sheet); T. 21 March 2012, p. 43.

<sup>1460</sup> T. 21 March 2012, pp. 33-34.

<sup>1461</sup> T. 21 March 2012, pp. 34-35.

“LD2741” inscriptions below the entry and exit stamps are written by hand and the witness agreed that there was the potential for human error arising from this “LD” procedure.<sup>1462</sup>

1178. The first abnormality noted by the witness regarding these stamps was that under the second entry stamp dated 10 May 1994, there is the inscription “LD2741” dated 30 May 1994. According to the witness this means that Ngirabatware allegedly benefited from disembarkation 20 days after his arrival. He described this as being an abnormality. The second abnormality noted by the witness was the “LD2741” inscription under the departure stamp dated 11 May 1994. According to him an “LD” inscription is not required for an exit stamp. The third abnormality is that all the “LD” inscriptions have the same number, namely “2741”, after them. According to the witness each “LD” inscription must have a different number within the same year. Furthermore, each individual “LD” inscription can only be used for a single entry, not multiple entries as is evidenced in Ngirabatware’s passport.<sup>1463</sup>

#### Prosecution Rebuttal Witness PRWVII

1179. Witness PRWVII, a Senegalese politician who had knowledge of the ACP, testified that, as a result of his position, he could not have met Ngirabatware in 1994 and had never previously met him. The witness also stated that he met many people in the course of his official duties and could not remember all of them. During cross-examination the witness stated that as he does not remember meeting Ngirabatware, it is possible that he met him, but to the best of his memory he did not.<sup>1464</sup>

1180. The witness testified that he could not remember the names of every Rwandan delegate he had met. There were over 80 countries in the ACP-EU assembly and they met every year in different cities in Africa, Europe and Asia. As a result, the witness met many people and could not remember them all by name. The witness stated that he cannot remember meeting Ngirabatware or hearing him giving a speech as the chairman of the ACP council of ministers at the 1991 meeting in Kampala, Uganda. The Senegalese politician attended the ACP-EU meeting in Amsterdam, Netherlands, in September 1991. The witness stated that he does not recognize Ngirabatware from this meeting, despite Ngirabatware’s report that he allegedly delivered at the meeting.<sup>1465</sup>

1181. The Senegalese politician stated that he knew Jacques Diouf, who was former general manager or director-general of the Food and Agriculture Organization of the United Nations (the “FAO”).<sup>1466</sup> In his official capacity the witness had knowledge of the unique stamp that he used for correspondence in addition to the letterhead specific to the municipality of Dakar. The witness also confirmed that the Mayor of Dakar would often send letters of recommendation to various other officials, including Diouf. The witness was asked if he knew whether the Mayor of Dakar had written a letter of recommendation to Diouf on behalf of Ngirabatware. He said that although it was possible that the Mayor wrote a letter of recommendation, it was not possible

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<sup>1462</sup> T. 21 March 2012, p. 41.

<sup>1463</sup> T. 21 March 2012, pp. 35-36. See also Defence Exhibit 112 (Ngirabatware’s First Diplomatic Passport).

<sup>1464</sup> Prosecution Exhibit 87 (Personal Identification Sheet); T. 20 March 2012, pp. 37, 46-47 (CS).

<sup>1465</sup> T. 20 March 2012, pp. 41-44, 47-48 (CS).

<sup>1466</sup> T. 20 March 2012, p. 48 (CS).

that he wrote a letter of recommendation for Ngirabatware as the Mayor did not know him at that time.<sup>1467</sup>

1182. The witness was presented with a letter of recommendation addressed to Jacques Diouf from the Mayor of Dakar concerning Ngirabatware dated 24 October 1994. He confirmed that the letterhead and the stamp on the letter of recommendation were those of the Dakar municipality. The witness, however, stated that he could not confirm or authenticate the contents of the letter because the letter was written 18 years ago, in a post that the Mayor had left 13 years prior. He also stated that Senegalese officials made recommendations, even for people they did not know; therefore the contents could have been valid. Additionally, the witness submitted that there were many instances in which people's signatures had been forged. The witness confirmed that he could see the name written on the letter of recommendation, but stated that despite this and despite the use of the official stamp, he did not give any credit to the significance of the letter. This was due to the fact that the witness believed that it was possible that the letter was forged. In addition, he disputed the validity of the letter on account of the style of writing, stating that the Mayor had never signed a letter off using the words "Kindly accept my heartiest greetings". The witness stated a further issue with the language of the letter. He stated that using the words "I have the honour" had been banned, administratively speaking, in Senegal since 1973. Therefore, the wording of the letter indicated that the Mayor could not have written it. Additionally, the witness stated that because the letter referred to the FAO as a "banking" organization, this was indicative of its fraudulent nature.<sup>1468</sup>

#### Prosecution Rebuttal Witness Hamet Ba

1183. Hamet Ba, a Senegalese citizen, testified that since July 1989, he has been working as a documentarist at the Senegalese national radio. Currently, he is the chief of service of audiovisual records at *RTS*, the national television department of Senegal based in Dakar.<sup>1469</sup>

1184. In his position, he is in charge of archiving news items for television, as well as the programmes at the Senegalese television department. After the General Manager of *RTS* received a letter from the Prosecution he contacted the witness. The letter concerned a research inquiry regarding an interview that a person whose name the witness did not recall had supposedly given in April or May 1994. In January 2011, the General Manager asked the witness to carry out the necessary research as soon and as meticulously as possible. The witness enlisted four co-workers and together they searched for any traces of the alleged interview. He searched the archives for any interviews given during the time frame as mentioned in the letter, which the witness recalls to be 30 April to 7 May 1994, plus the week before that period and the week after. It took the archivist team three to four days to complete the research.<sup>1470</sup>

1185. The archives of the television news are recorded on video cassette and through conductors or programme logs, which are written documents that list the items covered in news broadcasts. Moreover, each cassette contains its own log, which indicates the nature of the

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<sup>1467</sup> T. 20 March 2012, pp. 51, 54-55 (CS).

<sup>1468</sup> T. 20 March 2012, pp. 57-59, 61, 63, 74-76 (CS); and exhibit cited therein.

<sup>1469</sup> Prosecution Exhibit 84 (Personal Identification Sheet); T. 8 March 2012, pp. 8-9.

<sup>1470</sup> T. 8 March 2012, pp. 9-11.

content of a particular video. To double-check their research, the witness and his co-workers checked these logs for the relevant time period too.<sup>1471</sup>

1186. The witness stated that research lead him and his co-workers to a finding that, in their archives, an interview or interviews of Ngirabatware did not exist for the relevant time period. Ba also stated that due to some organizational and technical reasons linked to the nature of television work he could only be 80% sure about the results obtained. He is not 100% certain of his results, because it could happen that by mistake a recording never reached the archives. But normally a person of authority who was interviewed in a television newscast would make it to the archives.<sup>1472</sup>

1187. The *RTS* consists of two entities, a radio station and a television station. The national radio station keeps its own archives. The witness did not research them, because he is not in charge of those archives.<sup>1473</sup> To the witness' knowledge there were private radio stations in Dakar in 1994. The archives are conserved for an indefinite length of time. Since 1994 the national television station has not moved to any other premises. The archive activities of the *RTS* extend beyond their own programming, in that foreign news broadcasts received are included, but not any domestic television broadcasts from private television stations.<sup>1474</sup>

### 3.17.5 Deliberations

#### 3.17.5.1 *Applicable Law*

1188. The basic principles concerning the assessment of alibi evidence are well-established in the Tribunal's case law. The Appeals Chamber has repeatedly reaffirmed that "[b]y raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged".<sup>1475</sup> Accordingly, the Appeals Chamber has held:

An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.<sup>1476</sup>

1189. Nor does the existence of alibi evidence alter the standard of proof to which the Prosecution is held:

Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the

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<sup>1471</sup> T. 8 March 2012, p. 13.

<sup>1472</sup> T. 8 March 2012, pp. 12-14.

<sup>1473</sup> T. 8 March 2012, p. 21.

<sup>1474</sup> T. 8 March 2012, pp. 18-20.

<sup>1475</sup> *Zigiranyirazo*, Judgement (AC), para. 17, citing *Nahimana et al.*, Judgement (AC), para. 414; *Ndindabahizi*, Judgement (AC), para. 66; *Kajelijeli*, Judgement (AC), paras. 41-42; *Niyitegeka*, Judgement (AC), para. 60; *Musema*, Judgement (AC), paras. 205-206; *Kayishema & Ruzindana*, Judgement (AC), para. 106; *Delalić et al.*, Judgement (AC), para. 581.

<sup>1476</sup> *Zigiranyirazo*, Judgement (AC), para. 17 (internal citation omitted).

period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.<sup>1477</sup>

1190. If the Chamber finds, beyond a reasonable doubt, that the alibi witnesses were not credible, it is not required to make findings beyond a reasonable doubt regarding the reasons why witnesses might offer incredible and inconsistent accounts of events.<sup>1478</sup>

### 3.17.5.2 *Late Filing of Notice of Alibi*

1191. Pursuant to Rule 67(A)(ii)(a) of the Rules, the Defence must notify the Prosecution of its intention to rely upon an alibi before the commencement of trial, and "as early as reasonably practicable".<sup>1479</sup> Nonetheless, late notice of an alibi does not prevent an accused from presenting alibi evidence at trial, or from having such evidence considered by the Trial Chamber.<sup>1480</sup> Submission of an alibi at a very late stage of the proceedings may have an impact on the extent to which the alibi is believed. Late disclosure may suggest that the alibi is fabricated and tailored to respond to the Prosecution's case.<sup>1481</sup>

1192. In the present case, the Defence filed its Notice of Alibi in a piecemeal fashion and at a late stage of the proceedings. The Defence filed its first Notice of Alibi on 23 September 2009, on the day of the commencement of the Prosecution's case-in-chief. The Chamber found that this Notice of Alibi lacked information and was not in conformity with the requirements of Rule 67(A)(ii)(a) and ordered the Defence to disclose to the Prosecution as soon as reasonably practicable, the names and addresses of witnesses and any other evidence upon which the Accused intends to rely to establish the defence of alibi.<sup>1482</sup>

1193. On 22 March 2010, the Defence filed the Additional Alibi Notice, which included a list with at least 59 names of potential witnesses. On 16 April 2010, the Chamber ruled that the Defence failed to comply with Rule 67(A)(ii)(a) as the list of potential witnesses did not allow the Prosecution to adequately prepare itself. On 4 May 2010, the Defence filed its Second Additional Notice of Alibi with regard to the period of 6 through 12 April 1994.<sup>1483</sup>

1194. The Defence never filed an official notice of the alibi regarding the period of 23 April to 23 May 1994 and 23 June to 5 July 1994 and his purported travel during this time frame only

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<sup>1477</sup> *Zigiranyirazo*, Judgement (AC), para. 18 (internal citation omitted).

<sup>1478</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 161.

<sup>1479</sup> *Rutaganda*, Judgement (AC), para. 243. See also *Kanyarukiga*, Judgement (AC), para. 97; *Kalimanzira*, Judgement (AC), para. 54.

<sup>1480</sup> *Rutaganda*, Judgement (AC), para. 243 (where the Defence fails to comply with Rule 67, it may still rely on the alibi defence at trial); Rule 67(B) of the Rules ("Failure of the Defence to provide such notice [of alibi] under this Rule shall not limit the right of the accused to rely on the above defences.").

<sup>1481</sup> *Semanza*, Judgement (AC), para. 93; *Kalimanzira*, Judgement (AC), paras. 54, 56; *Nchamihigo*, Judgement (AC), para. 97.

<sup>1482</sup> Notice of Alibi Pursuant to Rule 67 (A)(ii), filed 23 September 2009; Decision on Prosecution Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 February 2010, para. 31, p. 9.

<sup>1483</sup> Additional Alibi Notice, filed 22 March 2010; Decision on Prosecutor's Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 April 2010, paras. 22-23; Second Additional Notice of Alibi, filed 4 May 2010.

came out in the course of Ngirabatware's testimony on trial. On 7 December 2010, two months into the Defence's case the Defence disclosed three witnesses for the second and third alibi period.<sup>1484</sup> The Chamber therefore finds that the Defence did not properly raise the alibi for these periods as required by Rule 67(A)(ii)(a).

1195. Taking all this into account raises the question of whether, after having heard the Prosecution witnesses and the testimony of Ngirabatware, the Defence moulded its alibi evidence to fit the Prosecution case and that of the testimony of Ngirabatware.<sup>1485</sup> Moreover, the fact that the Defence did not finalize its alibi witness list until December 2010 leads the Chamber to suspect that the Defence sought out witnesses to accord with Ngirabatware's alibi.<sup>1486</sup> Bearing in mind the above, and despite the late Notice of Alibi and finalization of the Defence witness list, the Chamber will still consider the evidence proffered by the Defence in support of its alibi, bearing in mind that the burden of proof never shifts to the Defence.<sup>1487</sup>

### 3.17.5.3 *General Observations*

1196. The Chamber observes that part of the evidence adduced in support of the Second Alibi is based upon the visa and stamp impressions located in Ngirabatware's diplomatic passport.<sup>1488</sup> In this regard, the Chamber notes that there are numerous discrepancies and irregularities located throughout this passport. For example, various entry and exit stamps are missing, including for Zaire, France and Swaziland. The inscription "LD2741" appears four times in the passport in relation to Ngirabatware's alibi in Senegal and Witness PRWV described the abnormality of having used this numbered inscription repeatedly, the post dating of the entry stamp and the fact that these procedures would not have applied to Ngirabatware. Regarding the Nigerian visa, Witness PRVIII testified that the stamp appearing in Ngirabatware's passport was not yet in use in 1994. These discrepancies and irregularities, as well as others, will be addressed more fully below. Under these circumstances, and considering the late notice of alibi the Chamber considers that it cannot rely on the visa and stamp impressions contained in Ngirabatware's diplomatic passport as evidence that may raise the reasonable possibility of Ngirabatware's presence in the locations indicated in this passport.

1197. The Chamber recalls, however, that the Defence has no independent burden to establish its alibi. Even though Ngirabatware's diplomatic passport as a whole is unreliable, the Chamber will nevertheless consider its contents when assessing whether Ngirabatware's alibi for a specific location and time period is reasonably possibly true in particular where other, more reliable documentation in support of the alibi is available.

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<sup>1484</sup> Disclosure of Particulars of Alibi Defence Witnesses covering the periods of 23 April to 23 May 1994 and 23 June to 3 July 1994, filed 7 December 2010.

<sup>1485</sup> See *Kanyarukiga*, Judgement (AC), para. 97 (The Appeals Chamber has "upheld [T]rial [C]hambers' inferences that the failure to raise an alibi in a timely manner suggested that the alibi was invented to respond to the Prosecution case.").

<sup>1486</sup> See *Kalimanzira*, Judgement (AC), para. 56 ("the manner in which an alibi is presented may impact its credibility"). See also *Kanyarukiga*, Judgement (AC), paras. 100 ("the fact that the Rules allow for the variation of a witness list does not mean that a [T]rial [C]hamber does not have the discretion to take such variations into account"), 102 ("The Appeals Chamber considers that it was reasonable for the Trial Chamber to question the circumstances surrounding the late filing of the Notice of Alibi and the changes to the witness list.").

<sup>1487</sup> *Rutaganda*, Judgement (AC), para. 243.

<sup>1488</sup> See Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

#### 3.17.5.4 *General Witness Credibility*

1198. At the outset, the Chamber notes that all four of the Defence alibi witnesses are either related to Ngirabatware or have had professional working relationships with him. Defence Witness Musabeyezu-Kabuga is Ngirabatware's sister-in-law.<sup>1489</sup> Defence Witness Bicomumpaka is the former Minister of Foreign Affairs for the Interim Government in Rwanda. He was appointed on 8 April 1994 and he allegedly subsequently conducted a number of official duties with his colleague Ngirabatware.<sup>1490</sup> Defence Witness Kayitana was assigned into the service of Ngirabatware as his driver in early March 1994 and was working for him until July 1994.<sup>1491</sup> Defence Witness DWAN-122 was assigned to work under Ngirabatware in the course of his employment at the Ministry of Planning, and he continued working for Ngirabatware until the witness fled Rwanda in July 1994.<sup>1492</sup>

1199. The Chamber notes that the proximity and nature of Ngirabatware's relationship with these four witnesses does not in and of itself call into question the credibility of their testimony. However, the Chamber considers that, because of these relationships, the witnesses may have had an interest in a positive outcome for Ngirabatware in his trial. The Chamber will take this into account in assessing their evidence.

1200. As for the rebuttal witnesses presented by the Prosecution, the Chamber notes that Witnesses Massamba Ndiaye, PRWIII, PRWIV and PRWV expressed their views on the disputed stamps in Ngirabatware's passport. The Chamber recalls that these witnesses did not testify as expert witnesses, and consequently their evidence will not be treated as that of an expert.

1201. The Chamber observes that although Witnesses PRWIII, PRWIV and PRWV were not employed in their current positions in May 1994, they testified in their professional capacity as civil servants of their home ministries or international organizations which included experience in applicable procedures that provided them relevant knowledge regarding procedures in place in 1994. Other aspects of their credibility and reliability will be addressed for each witness as and when they arise. The Chamber will now assess the alibi on its merits.

#### 3.17.5.5 *Assessment of Alibi Evidence*

##### *(i) 23 – 29 April 1994*

1202. Ngirabatware testified that he left Rwanda and entered Zaire on 23 April 1994. Bicomumpaka testified that he travelled from Gisenyi to Kinshasa with Ngirabatware on 23 April 1994 and that both himself and Ngirabatware obtained Zairian visas in Goma on 22 April 1994 as evidenced in Defence Exhibits 112 and 144. Kayitana also provided evidence that he drove Ngirabatware from Gisenyi to Goma airport on these two occasions, and Witness DWAN-

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<sup>1489</sup> T. 18 October 2011, p. 7 (Musabeyezu-Kabuga).

<sup>1490</sup> T. 22 August 2011, pp. 39, 47-48 (Bicomumpaka).

<sup>1491</sup> T. 24 October 2011, pp. 60-61, 74 (Kayitana).

<sup>1492</sup> T. 29 June 2011, p. 68 (CS); T. 30 June 2011, p. 35 (Witness DWAN-122).

122, employed by Ngirabatware at the time, also described Ngirabatware's departure for a mission at this time.<sup>1493</sup>

1203. The Chamber observes the absence of visa stamps in Ngirabatware's diplomatic passport that he travelled to Goma on 22 April 1994. The Chamber notes the testimony from Bicumupaka, Witness DWAN-122 and Kayitana, but attaches limited weight to their evidence, due to the close personal or professional relationships between these individuals and Ngirabatware.

1204. The Chamber further observes that the multi-entry visa for Zaire in Ngirabatware's diplomatic passport indicates that he obtained it in Goma, Zaire on 22 April 1994 and exit and entry stamps in his passport indicates that he did travel to Zaire on 23 April 1994. For the reasons explained above, the Chamber does not consider stamps contained in this passport, in and of themselves, to raise the reasonable possibility of Ngirabatware's presence.

1205. Ngirabatware further testified that he met Rwandan Ambassador Étienne Sengegera in Kinshasa. After leaving Kinshasa he continued his travel arriving in Douala, Cameroon on 24 April 1994, which the Defence submits is supported by the entry visa stamp in his diplomatic passport. On 25 April 1994, Ngirabatware left Cameroon and arrived in Libreville, Gabon. The Defence submits that this is further supported by a Cameroonian exit stamp, a visa stamp for Gabon in his diplomatic passport as well as a copy of a telex dated 23 April 1994 from the Gabonese Embassy in Kinshasa announcing the arrival of Ngirabatware in Libreville, Gabon scheduled on 25 April 1994. In addition, the Defence produced a news article contemporaneous to his visit in Gabon which supports this part of his testimony.<sup>1494</sup>

1206. From 27 to 29 April 1994, Ngirabatware stated that he was in Lomé, Togo, where he met the Togolese Planning Minister and the Togolese President. Ngirabatware's assertion that he visited Togo from 27 to 29 April 1994 is supported by the stamps and visas in his diplomatic passport and a press article contemporaneous to his visit. Ngirabatware spent the night of 29 April 1994 in Abidjan, Ivory Coast. While there he met the Director of the Cabinet of the President of the African Development Bank. Ngirabatware's journey through Abidjan, Ivory Coast, is supported by entry and exit stamps in his diplomatic passport, according to the Defence. The Prosecution did not bring rebuttal evidence to challenge the Defence evidence with regard to Ngirabatware's travel to either Togo or Ivory Coast.<sup>1495</sup>

1207. In view of the evidence adduced the Chamber considers it sufficient to raise the reasonable possibility that Ngirabatware was outside of Rwanda and on mission from 23 until 29 April 1994.

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<sup>1493</sup> T. 29 November 2010, p. 47 (Ngirabatware); T. 22 August 2011, p. 81; T. 23 August 2011, pp. 9, 13 (Bicumupaka); T. 24 October 2011, pp. 69, 71 (Kayitana); T. 30 June 2011, p. 34 (Witness DWAN-122); Defence Exhibit 144 (Bicumupaka's Diplomatic Passport); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1494</sup> T. 29 November 2010, p. 47 (Ngirabatware); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport), p. 20; Defence Exhibit 197A (*L'Union*, 29 April 1994) (French).

<sup>1495</sup> T. 29 November 2010, pp. 48, 58 (Ngirabatware); Defence Exhibit 111 (Excerpts from *Togo-Presse*, April 1994) (French), pp. 3, 6; Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport), p. 10



(ii) 30 April – 7 May 1994

1208. Ngirabatware testified that between 30 April and 7 May 1994, he was in Dakar, Senegal, where he met with government officials and gave interviews to various radio and television stations. Ngirabatware further testified that his expenses while in Senegal were covered by the Senegalese government. The Prosecution submits that Ngirabatware's alibi is inconsistent and contradictory, and that his passport entries are riddled with forgeries.<sup>1496</sup>

1209. The Chamber notes the inconsistency between Ngirabatware's testimony regarding his meetings with Witness PRWII while in Senegal, and Witness PRWII's testimony. Ngirabatware contends that he met with Witness PRWII while in Senegal, and asked him to relay a message to then-Senegalese President Abdou Diouf. Ngirabatware further contends that he spoke with Witness PRWII numerous times during his life. The Chamber recalls that Witness PRWII denied having met Ngirabatware in Dakar in May 1994, and the Chamber considers that he testified in a credible and forthright manner.<sup>1497</sup>

1210. The Chamber notes that as a high-ranking Senegalese politician, Witness PRWII would most likely be aware of official visits from government officials of other countries. In addition, if Ngirabatware did have a message to give to the Senegalese President, as he alleges in his testimony, Witness PRWII would have known about this message and recalled the meeting concerning it.<sup>1498</sup> Furthermore, Prosecution Witness Ndiaye testified to meeting with Bruno Diatta, the Chief of Protocol in the President's Office in Senegal, and asked him to search the archives for any records of such a meeting. Diatta did not find a record of any meetings between Ngirabatware and officials from the Presidency of Senegal.<sup>1499</sup>

1211. The Chamber finds that Ngirabatware's assertion that he met with officials from the Presidency of Senegal is not credible. The absence of any records regarding Ngirabatware's alleged meetings with officials from the Presidency of Senegal calls into question Ngirabatware's credibility that he met with these officials, and consequently fails to raise the possibility of this having taken place.

1212. Ngirabatware further testified that he gave an interview to *Radio France Internationale* ("RFI") on 4 May 1994 while in Dakar. This claim was supported by RFI and by Prosecution Witness Ndiaye and the Prosecution did not bring specific rebuttal evidence to dispute this. The Chamber considers that this exhibit suggests the reasonable possibility that Ngirabatware may have been in Dakar, Senegal on 4 May 1994.<sup>1500</sup>

1213. The Defence also submitted evidence to support Ngirabatware's claim that he was interviewed on 2 May 1994 by the PanAfrican News Agency on the situation in Rwanda while in

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<sup>1496</sup> T. 9 February 2011, pp. 7, 9, 17 (Ngirabatware). See also Defence Closing Brief, para. 129; Prosecution Closing Brief, paras. 256, 264-265.

<sup>1497</sup> See T. 9 February 2011, pp. 8-9, 17 (Ngirabatware); T. 23 March 2012, pp. 14-15 (Witness PRWII).

<sup>1498</sup> T. 9 February 2011, p. 8 (Ngirabatware).

<sup>1499</sup> T. 9 February 2011, pp. 8, 17 (Ngirabatware); T. 6 March 2012, pp. 25-27 (Ndiaye); Prosecution Exhibit 74 (Letter from Senegal Office of the Presidency to the Prosecutor) (French).

<sup>1500</sup> T. 9 February 2011, pp. 9-10; T. 10 February 2011, pp. 32-33 (Ngirabatware); T. 13 March 2012, p. 82 (Ndiaye); Defence Exhibit 203A (Correspondence between the Prosecution and RFI) (French). See also Defence Closing Argument, T. 25 July 2012, p. 17.

Dakar. The Prosecution did not bring rebuttal evidence to challenge the authenticity of the PanAfrican News Agency interview. However, the Chamber notes that this newspaper article does not indicate the date and place of the purported interview with Ngirabatware and therefore deems it insufficient to suggest the reasonable reasonability that Ngirabatware may have been in Dakar, Senegal on 2 May 1994.<sup>1501</sup>

1214. The Chamber further notes the inconsistency between the Defence and Prosecution's claim that Ngirabatware granted an interview with *Radio Télévision Senegal* ("RTS"). The Prosecution disputes Ngirabatware's claim that he was interviewed by RTS. Prosecution Witness Hamet Ba testified that the television and radio archives were separate and he only dealt with the former. Ngirabatware testified that he conducted an interview with RTS while in Dakar, however, he also testified that he did not give a television interview but a radio interview. Accordingly, the Chamber is not in a position to draw any negative inferences based on this evidence.<sup>1502</sup>

1215. The Chamber notes the Prosecution's claim that *Le Soleil* would have reported on an official government mission to Senegal had there been one. The Prosecution posits that the absence of any mention of Ngirabatware in *Le Soleil* during this time is proof that he was lying about his mission in Senegal. In support of this claim, the Prosecution submitted clippings from *Le Soleil* between 30 April and 9 May 1994, none of which mention Ngirabatware's alleged mission to Senegal. The Defence submits that Prosecution Exhibit 39, *Le Soleil*, is incomplete and therefore should not be relied on to verify Ngirabatware's visit to Dakar. Moreover, Ngirabatware never claimed to have been interviewed by *Le Soleil* specifically, but only that he was interviewed by journalists.<sup>1503</sup> The Chamber notes that between 30 April and 9 May 1994, *Le Soleil* reported on official visits from foreign dignitaries to Senegal but did not report on any visit to Dakar by Ngirabatware. However, the Chamber considers that these news clippings are of limited probative value and declines to draw any conclusions thereon.<sup>1504</sup>

1216. Of more concern to the Chamber is the evidence of Witness PRWV, a senior police officer in Dakar, Senegal, who testified in a credible and forthright manner that there were abnormalities with the entry and exit stamps found in Ngirabatware's passport. He first testified that the "LD" marking found in the passport is not used for diplomats but is reserved for people with ordinary, non-diplomatic passports, and those who need to enter the country in an emergency. He then noted three irregularities about the "LD" inscriptions found in Ngirabatware's passport. First, under the second entry stamp of 10 May 1994 is the "LD2741" inscription dated 30 May 1994, which Witness PRWV took to mean that Ngirabatware embarked 20 days after he arrived. Second, Witness PRWV testified that an "LD" inscription is not needed for an exit stamp, yet Ngirabatware has the "LD2741" inscription under his exit stamp of 11 May 1994. Lastly, he testified that it is unusual that the three "LD" inscriptions have the same number, as "LD" inscriptions usually have unique numbers within each year and that an "LD"

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<sup>1501</sup> Defence Exhibit 204 (KNA/PANA Press Article). See also Defence Closing Argument, T. 25 July 2012, p. 17.

<sup>1502</sup> T. 29 November 2010, p. 60 (Ngirabatware); T. 8 March 2012, p. 21 (Ba).

<sup>1503</sup> Prosecution Exhibit 39 (Excerpts from *Le Soleil*, April and May 1994) (French); Defence Closing Argument, T. 25 July 2012, p. 17.

<sup>1504</sup> Prosecution Exhibit 39 (Excerpts from *Le Soleil*, April and May 1994) (French), pp. 3, 5.

inscription can only be used for a single entry and not for multiple entries as is found in Ngirabatware's passport.<sup>1505</sup>

1217. The Defence disagrees with Witness PRWV's assertions on the curiosity of the "LD" inscriptions found in Ngirabatware's passport, as Ngirabatware asserts that he complied with the regulations in place for entering and exiting Senegal at that time, though he admitted that he did not know the actual Senegalese legislation on the matter. Further, according to the Defence, Witness PRWV testified that the stamps in Ngirabatware's passport reflect the stamps in use in Senegal in 1994.<sup>1506</sup>

1218. The Chamber notes that there are indeed irregularities regarding the entry and exit stamps, and the "LD" inscriptions in Ngirabatware's passport. As the Prosecution points out, Ngirabatware's passport does not contain a Senegalese entry visa. In addition, though Witness PRWV testified that the stamps in Ngirabatware's passport appear to be the stamps in use in 1994, he was not able to verify their authenticity.<sup>1507</sup>

1219. Ngirabatware testified that he obtained a visa for Benin while in Dakar, and questioned why the Prosecution chose not to pursue the issue of his Benin visa specifically. Furthermore, the Defence refers to Defence Exhibit 212, which is a *note verbale* from the Ministry of Foreign Affairs of the Republic of Benin attesting to the validity of the Benin visa by Ngirabatware obtained in Dakar, Senegal on 6 May 1994. The Prosecution did not bring rebuttal evidence to challenge the authenticity of the Benin visa.<sup>1508</sup> The Chamber considers that the attestation by the Benin authorities is not sufficiently reliable to support Ngirabatware's alibi that he was in Dakar, Senegal on 6 May 1994 especially in light of all the other discrepancies and irregularities located throughout the passport which makes it unreliable as a whole.

1220. Ngirabatware also testified to obtaining a French visa while in Dakar, and the Defence refers to a letter from the French Department of Visa Policy stating that the French visa in Ngirabatware's passport, indicating that he obtained it in Dakar, Senegal in 1994, "appears" authentic. The Prosecution did not bring rebuttal evidence to challenge the authenticity of the French visa.<sup>1509</sup> The Chamber considers that the attestation by the French authorities is too vague and that it cannot be relied upon to support the authenticity of the French visa in the passport.

1221. The Chamber further notes the Prosecution's assertion that the Nigerian visa found in Ngirabatware's passport, allegedly issued at the Nigerian Embassy in Senegal on 6 May 1994, is forged. Witness PRVIII testified that the Nigerian visa stamp in Ngirabatware's passport was not yet in use in 1994. The Prosecution further submits that according to the testimony of

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<sup>1505</sup> T. 21 March 2012, pp. 35-36 (Witness PRWV); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

<sup>1506</sup> T. 10 February 2011, pp. 5-7 (Ngirabatware); Defence Closing Brief, para. 143; Prosecution Exhibit 37B (Letters from Senegalese National Police to the Prosecutor) (French).

<sup>1507</sup> Prosecution Closing Brief, para. 264. See also Prosecution Exhibit 37B (Letters from Senegalese National Police to the Prosecutor) (French).

<sup>1508</sup> T. 10 February 2011, pp. 55, 62 (Ngirabatware); Defence Exhibit 212 (Letter from Benin Ministry of Foreign Affairs) (French).

<sup>1509</sup> T. 10 February 2011, p. 65 (Ngirabatware); Defence Exhibit 195A (Letter from French Ministry of Foreign Affairs) (French).

Witness PRVIII, Ngirabatware travelled to Dakar in 2000 and while there had the opportunity to fraudulently obtain a Nigerian visa of 6 May 1994.<sup>1510</sup>

1222. The Defence submits that there is no evidence that Ngirabatware visited Dakar in 2000. Furthermore, the Defence asserts that Witness PRVIII never testified that the visa was obtained fraudulently; instead he just said there had been irregularities and that the procedure was not followed. The Defence submits that this witness could not draw final conclusions on the authenticity of the visa. In particular, the Defence submits that the witness testified that archives in the Nigerian Embassy could be incomplete, that he was not sure whether records of diplomatic and ordinary visa applications are kept in the same logbook, that the investigation into the visa was still ongoing and inconclusive, and that none of the staff involved in investigating the visa worked in the Nigerian embassy in 1994. The Defence further asserts that the Zambian stamp dated 25 May 1994 affixed slightly on top of the Nigerian visa was never claimed to be a forgery. Thus, this rules out that the Nigerian visa underneath it was a forgery too.<sup>1511</sup>

1223. The Chamber finds that Witness PRVIII testified in a credible and forthright manner and his denial of the authenticity of the Nigerian visa stamp in Ngirabatware's passport raises serious doubt as to the authenticity of the Nigerian visa in the passport.

1224. At this juncture the Chamber considers that it is reasonable possibly true that Ngirabatware may have been in Dakar, Senegal for a day or two between 30 April and 7 May 1994, however the evidence adduced in support of the alibi does not reasonably account for his whereabouts during this entire time period.

*(iii) 7 – 19 May 1994*

1225. Ngirabatware testified that he left Dakar on 7 May 1994 and travelled to Paris to meet with Bicumumpaka and his delegation. The Defence asserts that his testimony is corroborated by that of Bicumumpaka. The Defence also refers to documentary evidence which states that both the visa and the entry stamp in Ngirabatware's passport appear to be authentic. The Prosecution, however, submits that Ngirabatware's testimony is false in this respect. The Prosecution further highlights that although Defence Exhibit 112 contains a French visa and entry stamp for 8 May 1994, it has no exit stamp.<sup>1512</sup>

1226. The Chamber observes that the Prosecution did not dispute the authenticity of the visa and entry stamp as such, and that the French authorities have confirmed that the visa and the entry stamp "appear authentic". The Chamber has already addressed the reasons that the visa and stamp impressions in the passport cannot be relied upon in this case. The Chamber further notes that the Defence did not present any explanations for the missing exit stamp from France, and the Chamber finds this to be yet another irregularity in Ngirabatware's diplomatic passport.

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<sup>1510</sup> Prosecution Closing Brief, para. 267; Prosecution Closing Argument, T. 24 July 2012, pp. 16-17.

<sup>1511</sup> Defence Closing Argument, T. 25 July 2012, pp. 2-5.

<sup>1512</sup> T. 29 November 2010, p. 60 (Ngirabatware); T. 23 August 2011, p. 14 (Bicumumpaka); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport); Defence Exhibit 195A (Letter from French Ministry of Foreign Affairs) (French). See also Defence Closing Brief, para. 129; Prosecution Closing Brief, paras. 268-269.

1227. Ngirabatware and Bicomumpaka allegedly were both interviewed by a French news station at the Rwandan Embassy. However, Ngirabatware, for reasons unbeknownst to him, never saw this interview aired. The Prosecution submits that Ngirabatware's testimony on this point remained uncorroborated. Further, the Prosecution submits that Ngirabatware changed his testimony during cross-examination with regard to whether Ngirabatware and Bicomumpaka were interviewed jointly or separately.<sup>1513</sup>

1228. The Chamber observes that during his examination-in-chief Ngirabatware never said the interview was given jointly, but only that both he and Bicomumpaka were interviewed.<sup>1514</sup> Therefore Ngirabatware did not necessarily contradict himself on this point. Moreover, the Chamber notes that even if an inconsistency was to be construed from Ngirabatware's testimony, the discrepancy is only minor in nature. However, the Chamber observes that this testimony remains uncorroborated.

1229. The Chamber further recalls that Ngirabatware never testified to the fact that he met his sister-in-law Winifred Musabeyezu-Kabuga in Paris in May 1994, while she testified that Ngirabatware had visited and stayed with her weeks before she gave birth to a daughter on 8 June 1994.<sup>1515</sup> The Chamber considers this to be a material discrepancy, particularly given Ngirabatware's detailed, day-by-day evidence of his whereabouts during this alibi period. The Chamber does not find this evidence credible.

1230. Ngirabatware also testified that he left Paris on 10 May 1994, however the Chamber notes that there is no exit stamp in his passport. The Chamber finds, in view of the issues surrounding Ngirabatware's diplomatic passport, the discrepancies in the testimonies of Ngirabatware and Musabeyezu-Kabuga, and the possible incentives of Bicomumpaka as a professional colleague and Musabeyezu-Kabuga as a family member to see Ngirabatware acquitted, that the Defence has failed to demonstrate the reasonable possibility that Ngirabatware was in Paris from 7 to 10 May 1994.

1231. Ngirabatware testified that he returned to Dakar, Senegal on 10 May 1994, where he was welcomed again at the airport by Witness PRWVII, the same Senegalese politician. He left Dakar the next day on 11 May 1994. The Chamber observes that Ngirabatware's passport contains an entry and exit stamp for Senegal dated 10 and 11 May 1994, respectively.<sup>1516</sup>

1232. In this regard, the Chamber recalls that Witness PRWVII denied having ever met Ngirabatware. During his testimony Witness PRWVII was also confronted with a letter purportedly dated October 1994 to the Food and Agriculture Organization of the United Nations (the "FAO") on the letterhead of the Office of the Mayor of Dakar, with the Mayor's stamp, recommending Ngirabatware for a position within that organization. According to Witness PRWVII, who was in a position to know details relating to the duties of the Dakar Mayor's office, the letter does not reflect the style of writing that was in use by Senegalese bureaucrats in

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<sup>1513</sup> T. 29 November 2010, p. 60; T. 10 February 2011, pp. 62-65 (Ngirabatware); Prosecution Closing Brief, para. 269.

<sup>1514</sup> T. 29 November 2010, p. 60 (Ngirabatware).

<sup>1515</sup> T. 19 October 2011, p. 67 (Musabeyezu-Kabuga). See also Prosecution Closing Brief, para. 269.

<sup>1516</sup> Defence Closing Brief, para. 129; T. 29 November 2010, p. 60; T. 10 February 2011, p. 12 (Ngirabatware); Defence Exhibit 112 (Ngirabatware's First Diplomatic Passport).

1994. Additionally, the witness stated that because the letter referred to the United Nations Food and Agriculture Organization as a “banking” organization, this was indicative of its fraudulent nature.<sup>1517</sup>

1233. The Defence submits that the letter is authentic as it was sent to it directly from the FAO headquarters in Rome, Italy through the External Relations and Special Projects Section of the Tribunal. Moreover, Witness PRWVII testified that the layout, letterhead, and the stamp match those that were in use in the Office of the Mayor of Dakar in 1994. The Defence therefore submits that for these reasons the testimony of Witness PRWVII refuting meeting or even knowing Ngirabatware in May 1994 should be rejected. The Chamber notes the submission by both Parties on this matter but finds that this matter is collateral to the issue at hand whether Ngirabatware met with a politician in Dakar, Senegal in May 1994.<sup>1518</sup>

1234. The Chamber questions what reason Ngirabatware would have had to travel to Dakar, Senegal on 10 May 1994. Given the denial by Witness PRWVII that he ever met Ngirabatware coupled with the ambiguities concerning the authenticity of the letter, the Chamber does not consider it sufficient to impugn the credibility of Witness PRWVII. On the contrary, PRWVII testified in a credible and forthright manner and the Chamber sees no motive for him to tell untruths in this matter. The Chamber therefore concludes that it is not reasonably possible that Ngirabatware could have met Witness PRWVII in Dakar on 10 or 11 May 1994, or that Ngirabatware was in Dakar on these dates.

1235. Ngirabatware testified that he left Dakar on 11 May 1994 to attend ACP ministerial meetings in Mbabane, Swaziland. On his way to Mbabane, he travelled through Paris and Johannesburg. He arrived in Mbabane on 13 May and left again on 19 May. The Defence submits that Ngirabatware’s testimony is corroborated by Defence Exhibit 112, which contains a South African transit visa, entry and exit stamps for the dates of 13 and 19 May 1994 and a Swazi exit stamp of 19 May 1994. The South African transit visa and entry stamp for 19 May is affixed slightly on top of the Swazi exit stamp of that same day. Furthermore, the Defence submits that in a letter dated 2 June 2006, the South African authorities confirmed that it appears that Ngirabatware was travelling through South Africa as he was on his way to Swaziland. The Chamber takes note of Ngirabatware’s testimony that his South African visa, together with his diplomatic passport and his mission authorization, was sufficient to allow him entry into Swaziland.<sup>1519</sup>

1236. The Chamber observes that there is neither a Swazi visa nor an entry stamp in Ngirabatware’s diplomatic passport, even though these should be in the passport in order for admission into Swaziland, according to Witness PRWIV and Prosecution Exhibits 79 and 85. The Defence submits that Witness PRWIV’s testimony that Ngirabatware could not have been admitted without a visa is speculation, as he was not with the ACP in 1994 nor is he a Swazi immigration official. He is therefore unfamiliar with the procedures in place in 1994. Moreover,

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<sup>1517</sup> T. 6 March 2012, p. 35 (Ndiaye); T. 20 March 2012, pp. 57-59, 63, 74-75 (CS) (Witness PRWVII); Defence Exhibit 207 (Letter to FAO) (French).

<sup>1518</sup> T. 20 March 2012, pp. 57-58, 61, 75-76 (CS) (Witness PRWVII); Defence Closing Brief, paras. 154, 157.

<sup>1519</sup> T. 9 February 2011, p. 5; T. 11 February 2011, pp. 9-10 (Ngirabatware); Defence Exhibit 112 (Ngirabatware’s First Diplomatic Passport); Defence Exhibit 193 (Correspondence from Rwandan Embassy in Brussels, 9 and 10 May 1994, and List of ACP Participants, 20 May 1994). See also Defence Closing Brief, paras. 129, 171.

the Defence submits that Witness PRWIV contradicted himself regarding the possibility of obtaining visas at the airport for nationals of non-exempt countries. In his testimony he confirmed that Prosecution Exhibit 43 indicates that non-exempt nationals will be issued visas upon arrival, while his statement to the Tribunal of 2 February 2012 indicates that such nationals can only obtain the necessary visas at an embassy.<sup>1520</sup> The Chamber considers this discrepancy to be minor and recalls that Witness PRWIV testified in a credible and forthright manner on this point and the Defence arguments are therefore without merit.

1237. The Chamber has also noted the Prosecution argument that the dates in the South African visa have been altered from 1 March 1994 to 19 May 1994. The Defence submits that no evidence was adduced to this point and that this is mere speculation on the Prosecution's part.<sup>1521</sup>

1238. The Defence also led evidence that Ngirabatware was in Swaziland as his name appeared in Defence Exhibit 118 which is a list of delegates who attended the conference dated 20 May 1994. As proof that this was the final list of actual attendants the Defence refers to Defence Exhibit 194 which is a letter dated 10 May 1994 containing the names of the Rwandan delegation including Télésphore Bizimungu who was expected to participate in the conference but later cancelled, which is why his name does not appear on the final list dated 20 May 1994 of the actual attendants. The Chamber, however, recalls the testimony of Witness PRWIV, who testified in a credible and forthright manner that the list dated 20 May 1994 was prepared pursuant to a *note verbale*, which is not indicative of the actual attendants at the conference. Moreover, the Chamber cannot reconcile Ngirabatware's testimony that he left Mbabane, Swaziland on 19 May 1994 while his name appears on a final list of delegates dated 20 May 1994.<sup>1522</sup>

1239. The Chamber has taken into account all the alibi evidence discussed above. The Chamber has also taken into account Defence Exhibit 206 which is a Radio Rwanda Broadcast of 24 May 1994 in which Ngirabatware gives a detailed account of his presence and activities during the ACP conference in Swaziland. The Prosecution did not bring any rebuttal evidence. The Chamber finds from this broadcast that there is a reasonable possibility that he may have been in Swaziland to attend this meeting in May 1994. The Chamber accordingly finds that it is reasonably possibly true that Ngirabatware was in Swaziland from 13 to 19 May 1994. As for the other countries mentioned by Ngirabatware in the course of this interview the Chamber notes that there is no travel itinerary or dates for when those countries would have been visited and that this is insufficient to raise the reasonable possibility that he was there at the relevant time.

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<sup>1520</sup> T. 21 March 2012, pp. 63-65 (Witness PRWIV); Prosecution Exhibit 43 (Programme, Report and Preliminary Information Sheet for ACP Meetings); Prosecution Exhibit 79 (Preliminary Information Sheet for ACP Meetings); Prosecution Exhibit 85 (Affidavit of Swaziland Chief of Immigration). See also Defence Closing Brief, paras. 164-165, 167.

<sup>1521</sup> Prosecution Closing Argument, T. 24 July 2012, p. 19; Defence Closing Argument, T. 25 July 2012, p. 18.

<sup>1522</sup> Defence Exhibit 118 (List of ACP Participants, 19 and 20 May 1994); Defence Exhibit 194 (List of Participants at ACP Meetings, 19 May 1994); T. 21 March 2012, p. 3 (Witness PRWIV).

(iv) 20 — 23 May 1994

1240. Ngirabatware testified that he left Mbabane, Swaziland, on 19 May 1994 and travelled to Lusaka, Zambia, before returning to Gisenyi, Rwanda, via Nairobi, Kenya, and Goma, Zaire.<sup>1523</sup>

1241. The Chamber finds that, in the absence of rebuttal evidence from the Prosecution, there is no reason to question the reasonable possibility that Ngirabatware may have been outside of Rwanda from 20 until 23 May 1994.

### **3.17.5.6 Conclusion**

1242. In assessing Ngirabatware's alibi, the Chamber considers the evidence and circumstances in their entirety, including: (1) the lack of notice in relation to the Second Alibi Period; (2) the relationship between Ngirabatware and the Defence witnesses; (3) the credibility or reliability issues surrounding each of the witnesses; and (4) the reliability of the evidence pertaining to the disputed stamps in Ngirabatware's diplomatic passport and all other documentary evidence.

1243. Having assessed the credibility of the alibi evidence as a whole the Chamber finds it lacking both credibility and sufficient probative value to even suggest the reasonable possibility of its truthfulness for the entire period of 23 April to 23 May 1994. On the contrary, the Prosecution presented credible and compelling rebuttal evidence that further challenges the credibility and reliability of the alibi evidence. The Chamber acknowledges that there are aspects of the alibi that are neither disputed nor disproved by the Prosecution which appear to indicate the reasonable possibility that Ngirabatware was outside Rwanda at some point during this time frame but it does not account for Ngirabatware's whereabouts for the entire period of 23 April to 23 May 1994. The Chamber will be mindful of these findings when assessing the evidence adduced by the Prosecution in support of the allegations that may fall into this time period.

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<sup>1523</sup> T. 29 November 2010, p. 68 (Ngirabatware).



### 3.18 Provision of Vehicle to the *Interahamwe*, End of April 1994

#### 3.18.1 Introduction

1244. The Indictment alleges that towards the end of April 1994, at Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune*, Ngirabatware provided the *Interahamwe* with his vehicle thereby facilitating their movements to massacre sites, where they exterminated members of the Tutsi population. In support of this allegation, the Prosecution refers to the evidence of Witnesses ANAE, ANAM and ANAO.<sup>1524</sup>

1245. The Defence raises notice issues and submits that no evidence was presented to support this allegation, emphasizing that no Prosecution witness testified that Ngirabatware provided his vehicle to anyone, let alone the *Interahamwe*. The Defence further submits that Ngirabatware was not present in Nyamyumba *commune* towards the end of April 1994.<sup>1525</sup>

#### 3.18.2 Notice

1246. The Chamber recalls the general principles on notice (2.2). The relevant paragraph of the Indictment refers to the “*Interahamwe* militia” having exterminated “members of the Tutsi population”. The Defence avers that these terms which refers to categories of perpetrator and victims are too vague and defective.<sup>1526</sup>

1247. The Chamber recalls that, in its Decision of 8 April 2009, it previously denied the Defence submissions concerning the identification of alleged perpetrators in Indictment paragraph 53. The Chamber concluded that the information was sufficiently detailed to provide adequate notice.<sup>1527</sup> The Defence did not take any further action on this matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>1528</sup>

1248. The Chamber considers that the Defence has not provided any argument that would now warrant reconsideration of the Chamber’s decisions.

1249. With regard to the alleged vagueness of the category of victims the Chamber notes that the Defence has not provided any reason or justification for raising this additional notice issue at this late stage of the proceedings and has not shown that it has suffered any prejudice. Accordingly, the Chamber does not give any merit to this argument. The Chamber will now turn to the merits of this allegation.

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<sup>1524</sup> Indictment, para. 53; Prosecution Closing Brief, paras. 183-193.

<sup>1525</sup> Defence Closing Brief, paras. 46-53, 86-175, 810-811.

<sup>1526</sup> See Defence Closing Brief, paras. 46-53.

<sup>1527</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, para. 36.

<sup>1528</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.

### 3.18.3 Evidence

#### Prosecution Witness ANAE

1250. Witness ANAE, a Tutsi from Nyamyumba *commune*,<sup>1529</sup> testified that she saw Ngirabatware in April 1994, after President Habyarimana's death. According to her, Ngirabatware came to a roadblock in Busheke *cellule* in a black Pajero vehicle along with a driver and an armed soldier. Ngirabatware alighted and told his brother Cenge to get Bagango. As they were speaking, a blue Daihatsu pickup carrying weapons, with a tarpaulin covering part of the rear of the vehicle, arrived. Inside the Daihatsu were four soldiers. Three soldiers accompanied Cenge while he went to find Bagango. They returned quickly, and Bagango then ordered the driver of the Daihatsu to go to Bagango's residence together with an *Interahamwe* so that machetes could be unloaded.<sup>1530</sup>

#### Prosecution Witness ANAM

1251. Witness ANAM, whose father was Hutu and whose mother was Tutsi, lived in Nyamyumba *commune* in 1994.<sup>1531</sup> She testified that seven or eight days after President Habyarimana's death, she went to the *Bruxelles* roadblock, which was being manned by various *Interahamwe* including Bishirambona, Juma, Biryana and Murazemungu. Around 2.00 p.m., Ngirabatware arrived in a black Pajero together with his wife and two children, a driver and a domestic servant, followed by a female *gendarme* in a white Hilux vehicle. Ngirabatware chastised the *Interahamwe* stating that: "[t]he Tutsis are moving about freely, for example, Safari is sending cards to Inyenzi and he is doing so under your nose and yet you pretend to be working". He told them that he had brought weapons because he did not want to see any Tutsis in Busheke *cellule*. *Interahamwe* offloaded some weapons from the Hilux vehicle, and then Ngirabatware went to the Gitsimbi/Cotagirwa roadblock where other weapons were loaded off and transferred to Bagango's vehicle. Ngirabatware ordered Bagango to work well because he did not want to see any Tutsis in Nyamyumba *commune*.<sup>1532</sup>

#### Prosecution Witness ANAO

1252. Witness ANAO, a Hutu and *Interahamwe* from Nyamyumba *commune*,<sup>1533</sup> testified that he saw Ngirabatware for the last time in early April 1994, a few days before Habyarimana's death.<sup>1534</sup>

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<sup>1529</sup> Prosecution Exhibit 12 (Personal Identification Sheet).

<sup>1530</sup> T. 20 October 2009, pp. 32-34, 38, 44; T. 21 October 2009, pp. 39-47, 49-50, 54, 57.

<sup>1531</sup> Prosecution Exhibit 13 (Personal Identification Sheet); T. 25 January 2010, pp. 20, 72-73; T. 25 January 2010, pp. 20, 23, 37, 55-56 (CS); T. 27 January 2010, pp. 50-51 (CS).

<sup>1532</sup> T. 25 January 2010, pp. 25-27, 29, 37, 43-45 (CS); T. 25 January 2010, p. 72; T. 27 January 2010, pp. 8-13, 15-17 (CS).

<sup>1533</sup> Prosecution Exhibit 16 (Personal Identification Sheet); T. 15 February 2010, p. 37 (CS); T. 17 February 2010, p. 13; T. 17 February 2010, p. 42 (CS).

<sup>1534</sup> T. 15 February 2010, pp. 77-78; T. 15 February 2010, p. 87 (CS); T. 17 February 2010, p. 69 (CS); T. 22 February 2010, p. 3.

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1253. Ngirabatware denied that he went to Busheke *cellule* after the death of President Habyarimana and testified that he was out of the country from 23 April to 23 May 1994.<sup>1535</sup>

**3.18.4 Deliberations**

1254. Preliminarily, the Chamber observes that this allegation pertains to late April 1994, a time period for which the Defence has presented an alibi (3.17).

1255. The Chamber recalls that it has addressed elsewhere (3.10.4.2) the evidence of Witnesses ANAE and ANAM insofar as it relates to an alleged distribution of weapons. In this section, the Chamber considers whether the Prosecution has proven that Ngirabatware provided his vehicle to the *Interahamwe* towards the end of April 1994, and that this facilitated their movements to massacre sites.

1256. In relation to this allegation, the Prosecution Closing Brief refers to the evidence of Witnesses ANAE, ANAM and ANAO.<sup>1536</sup> Although Witness ANAE testified that she saw Ngirabatware arriving at Busheke *cellule* in April 1994 in his vehicle, the witness provided no evidence that Ngirabatware supplied the *Interahamwe* with his vehicle to facilitate their movement to massacre sites. Similarly, Witness ANAM never alluded to the possibility that Ngirabatware furnished his vehicle to the *Interahamwe* situated at the roadblocks to facilitate their movement to massacre sites. Finally, Witness ANAO stated that he did not see Ngirabatware after Habyarimana's plane crash, let alone in late April 1994. It is clear that these witnesses do not claim that Ngirabatware furnished the *Interahamwe* with his vehicle, or that his vehicle was used to facilitate the movements of the *Interahamwe* to massacre sites where Tutsis were exterminated.

1257. In addition to the testimony that the Prosecution appears to submit is most relevant to its allegation, the Chamber has also considered the totality of the evidence adduced in this case. The Chamber has not identified any evidence that is capable of sustaining this allegation.

1258. Indeed, the Chamber notes that although the Defence Closing Brief submits that no evidence supports this allegation,<sup>1537</sup> the Prosecution never disputed this submission during Closing Arguments.

1259. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has not proven this allegation beyond a reasonable doubt.

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<sup>1535</sup> T. 29 November 2010, pp. 46-47; T. 1 December 2010, p. 33.

<sup>1536</sup> Prosecution Closing Brief, paras. 183-193.

<sup>1537</sup> Defence Closing Brief, paras. 810-811.

### 3.19 Distribution of Weapons, Mid-May 1994

#### 3.19.1 Introduction

1260. Paragraphs 19 and 20 of the Indictment allege that in or around mid-May 1994, Ngirabatware, along with Anatole Nsengiyumva and Casimir Bizimungu and others, used two Benz lorries and a Toyota pick-up truck to bring arms and ammunition to Gisenyi *préfecture* for distribution to the *Interahamwe* militia in Gisenyi. These weapons were used from mid-May to mid-July to exterminate the ethnic Tutsi population in Gisenyi *préfecture*.<sup>1538</sup> The Prosecution did not refer to any evidence to support this allegation.

1261. The Defence raises notice issues and submits that no Prosecution witness testified to these allegations, and that Ngirabatware was not in Gisenyi in mid-May 1994.<sup>1539</sup>

#### 3.19.2 Notice

1262. The Chamber recalls the general principles on notice (2.2). The Defence submits that paragraphs 19 and 20 are defective because the time frames mentioned are too broad,<sup>1540</sup> the locations where the alleged distribution occurred are vague,<sup>1541</sup> the identification of the alleged perpetrators is broad and the identity of the victims is not specific enough.<sup>1542</sup>

1263. The Chamber also notes the Defence argument that paragraph 20 refers to extermination whereas the applicable count of the Indictment is either genocide or complicity in genocide.<sup>1543</sup> Seeing as the material facts, the nature of the charge, the *mens rea* and the *actus reus* are different between the crimes, the Defence submits there can be no finding as regards this paragraph.

1264. The Chamber recalls the principle that objections to an indictment should be made in one motion only before the commencement of trial. In this case the Defence has not provided any reason or explanation for raising these additional notice issues at this late stage of the proceedings and has not shown that it suffered any prejudice. These arguments are therefore without merit. The Chamber will now assess the allegations based on the evidence adduced in this case.

#### 3.19.3 Evidence

##### Prosecution Witness ANAG

1265. Witness ANAG, a Tutsi, lived in Nyamyumba *commune* in 1994.<sup>1544</sup> She identified Faustin Bagango as the *bourgmestre* of Nyamyumba *commune*. Witness ANAG testified that during the genocide, she saw Bagango while he was coming from Ngirabatware's parents'

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<sup>1538</sup> Indictment, paras. 19-20.

<sup>1539</sup> Defence Closing Brief, paras. 41-53, 60-61, 127-131, 253-255.

<sup>1540</sup> Defence Closing Brief, paras. 41-42.

<sup>1541</sup> Defence Closing Brief, paras. 43-45.

<sup>1542</sup> Defence Closing Brief, paras. 46-53.

<sup>1543</sup> Defence Closing Brief, paras. 60-61.

<sup>1544</sup> Prosecution Exhibit 18 (Personal Identification Sheet); T. 1 March 2010, pp. 12, 50 (CS).

house. When she saw Bagango, he was in front of her uncle's house and he was greeting the *Interahamwe* who were drinking beer in the yard of her uncle's house. She stated that Bagango was carrying a bag and, although the witness could not see its contents, she heard the *Interahamwe* say that it contained grenades. The witness did not state the date when she saw Bagango carrying these weapons.<sup>1545</sup>

#### Prosecution Witness ANAR

1266. Witness ANAR, a Hutu, lived in Gisenyi in 1994. He testified that around 25 February 1994, at about 6.00 p.m., he opened the gate of Barnabé Samvura's residence to let a Hilux vehicle in. Samvura indicated that the two persons in the car were Ngirabatware and Barayagwiza and the latter was the one driving.<sup>1546</sup>

1267. While Samvura, Ngirabatware and Barayagwiza were sitting in the house, Samvura asked Witness ANAR to fetch a bag from the Hilux vehicle. With the help of a colleague, Witness ANAR brought the bag into the house and unloaded its contents: eight Kalashnikovs, four Uzis, two pistols with magazines, and magazines for various types of guns. Witness ANAR testified that Ngirabatware said to Samvura: "Mr. President, if we have lost someone dear to us, you should not continue crying. Do not be afraid. [...] Do not be afraid, even if we have lost our person, but I am bringing this contribution to you and I am supporting you. [...] I am supporting you. Therefore, if you use these weapons properly, they are going to be of service to you. But if you are not careful, if you don't watch out, the Tutsi will exterminate you." These weapons were later distributed to CDR party members and used during the genocide in Gisenyi.<sup>1547</sup>

#### Prosecution Witness ANAE

1268. Witness ANAE, a Tutsi, stated that she was 12 years old in 1994 and lived in Nyamyumba *commune*.<sup>1548</sup> She saw Ngirabatware at a Busheke *cellule* roadblock, after the death of President Habyarimana, but before the *Interahamwe* attack on Safari Nyambwega in April 1994. Sometime during the day, Ngirabatware arrived in a black Pajero, along with a driver and a soldier. He alighted and told his younger brother, Cenge, to get *Bourgmestre* Faustin Bagango. A blue Daihatsu truck with four soldiers arrived at the location, and Cenge left with three soldiers and they quickly returned with Bagango.<sup>1549</sup> According to Witness ANAE, about 30 minutes after Ngirabatware's arrival, a crowd had gathered around him because of his popularity.<sup>1550</sup>

1269. The witness was standing five meters from Ngirabatware when he greeted Bagango and told him: "These are the weapons. I have brought them. I would not want to see any Tutsi alive in *Brussels*". Dominique, an *Interahamwe*, then boarded the vehicle and offloaded ten machetes. Bagango received these machetes, and following Ngirabatware's instructions gave the machetes

<sup>1545</sup> T. 1 March 2010, pp. 33, 51-52 (CS).

<sup>1546</sup> Prosecution Exhibit 24 (Personal Identification Sheet); T. 18 March 2010, pp. 14, 23-24, 26-28.

<sup>1547</sup> T. 18 March 2010, pp. 14-15.

<sup>1548</sup> Prosecution Exhibit 12 (Personal Identification Sheet); T. 20 October 2009, p. 21; T. 20 October 2009, pp. 30, 51 (CS).

<sup>1549</sup> T. 20 October 2009, pp. 30, 71 (CS); T. 20 October 2009, pp. 32-34; T. 21 October 2009, pp. 38-39.

<sup>1550</sup> T. 20 October 2009, pp. 34, 37-38; T. 21 October 2009, p. 46.

to *Conseiller* Jean Simpunga, who had arrived at the Busheke *cellule* roadblock. Simpunga distributed three machetes to each of the three roadblocks of *Bruxelles* and kept one for himself. According to the witness, Bagango said that the other machetes in the vehicle should be taken to Kabilizi and Munanira. They were then taken to Bagango's house by the driver and Hassan Tubaramure, and were offloaded with the help of various *Interahamwe*, such as Sebuwa and Kazingufu.<sup>1551</sup>

#### Prosecution Witness ANAU

1270. Witness ANAU, a Hutu, worked at Bralirwa and lived in Nyamyumba *commune* in 1994.<sup>1552</sup> He stated that they began the killings on 7 April 1994 and that he continued to assist in the killings for about two weeks after which he joined the people manning the Bralirwa roadblock. He manned the Bralirwa roadblock until the end of April 1994. The Bralirwa roadblock was in Rubona *secteur*, at the boundary with Munanira.<sup>1553</sup>

1271. Witness ANAU testified that at the Bralirwa roadblock, an *Interahamwe* leader named Mayere supervised them. Bagango, as *bourgmestre* of Nyamyumba *commune*, would pass by daily and provide instructions. After the first two weeks of the genocide, Bagango provided Mayere with a firearm and each person manning the roadblock received a grenade. He stated that Bagango told them that he had received these weapons from Ngirabatware. The firearm was referred to as SMGs, a type of Kalashnikov.<sup>1554</sup>

#### **3.19.4 Deliberations**

1272. The Chamber recalls that in the Prosecution Pre-Trial Brief, Witness ANAA was listed to provide evidence on paragraph 19 of the Indictment and Witnesses ANAE and ANAG were listed to provide evidence regarding paragraph 20.<sup>1555</sup> The Prosecution subsequently dropped Witness ANAA and added Witnesses ANAU and ANAR to give evidence on paragraphs 19 and 20 of the Indictment.<sup>1556</sup> The Chamber notes that none of these witnesses listed gave evidence to the effect that Ngirabatware distributed arms and ammunition to *Interahamwe* in mid-May 1994. In its closing submissions, the Prosecution makes no reference to any evidence to support the allegations in paragraphs 19 and 20 of the Indictment.

1273. The Chamber observes that Witness ANAR talked about weapons distribution in February 1994, and Witnesses ANAE and ANAU gave evidence regarding weapons distribution in April 1994 after the President's death. While Witness ANAG saw Bagango with a bag and was later told that the bag contained grenades, she does not state in terms of dates, when this event may have taken place or any other detail relevant for these allegations.

<sup>1551</sup> T. 20 October 2009, pp. 33, 39-41; T. 20 October 2009, p. 58 (CS); T. 21 October 2009, pp. 46-47, 58.

<sup>1552</sup> Prosecution Exhibit 20 (Personal Identification Sheet).

<sup>1553</sup> T. 9 March 2010, pp. 58, (CS); T. 11 March 2010, pp. 86-87 (CS); T. 15 March 2010, pp. 14-16, 35 (CS) (the witness stated that the roadblock was set up two weeks after the beginning of the genocide).

<sup>1554</sup> T. 9 March 2010, pp. 63-65 (CS); T. 15 March 2010, pp. 16-17 (CS).

<sup>1555</sup> Prosecution Pre-Trial Brief, Annex 1, Witnesses ANAA, ANAE and ANAG anticipated testimony.

<sup>1556</sup> Prosecutor's Extremely Urgent Motion for Leave to Vary the List of Witnesses To Be Called and Extension of Witness Protection Orders, 22 December 2009, paras. 38, 45 (regarding the calling of Witnesses ANAR and ANAU to give evidence on paragraphs 19 and 20); Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, p. 15.

1274. The Chamber has identified no evidence in the record that could substantiate the allegations contained in paragraphs 19 and 20 of the Indictment. As such, the Chamber concludes that the Prosecution has not proven these allegations beyond a reasonable doubt.

### 3.20 *Bruxelles* Roadblock, Late May 1994

#### 3.20.1 Introduction

1275. Paragraphs 30 and 46 of the Indictment allege that in late May 1994, Ngirabatware distributed rifles to the *Interahamwe* militia manning the *Bruxelles* roadblock in Busheke *cellule*, Rushubi *secteur*, Nyamyumba *commune*, and told them to kill Tutsis at the roadblock. These weapons were used to kill members of the Tutsi population.<sup>1557</sup> The Prosecution has not referred to any evidence to support these allegations.

1276. The Defence raises notice issues and submits that the evidence of Prosecution Witness ANAG, the sole Prosecution witness who was anticipated to testify on this allegation, turned out differently than expected. The evidence provided by Witness ANAG cannot support a finding that rifles were distributed by Ngirabatware at that roadblock in May 1994 or even that any Tutsis were killed with a rifle allegedly distributed there. The Defence also presents an alibi for Ngirabatware from 23 April to 23 May 1994.<sup>1558</sup>

#### 3.20.2 Notice

1277. The Chamber recalls the applicable principles on notice (2.2). In its Closing Brief the Defence objects to the vagueness in Indictment paragraph 30 by referring to “members of the Tutsi population”.<sup>1559</sup> In addition the Defence submits that the material facts of Indictment paragraph 46, which refers to “those manning the roadblock”, cannot support a charge of direct and public incitement to commit genocide.<sup>1560</sup> In addition, the Defence submits that paragraph 30 is defective as it pleads four different modes of liability while failing to set out the facts underpinning each mode.<sup>1561</sup>

1278. The Chamber recalls that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Chamber. In this regard, the Chamber recalls that the Defence already objected extensively to the form of the Indictment,<sup>1562</sup> and that the Chamber ruled upon this issue over three years ago.<sup>1563</sup> The Defence did not take any further action on this matter at that stage. Subsequently, on 3 April 2012, the Chamber found that no basis had been provided to warrant reconsideration of this Decision.<sup>1564</sup>

<sup>1557</sup> Indictment, paras. 30, 46. Although the Indictment refers to the “*Centre de Bruxelles*” roadblock, the Chamber will refer to this alleged location as the “*Bruxelles* roadblock” for the sake of consistency throughout the Judgement.

<sup>1558</sup> Defence Closing Brief, paras. 52-59, 62-64, 127-131, 667-681, 754-755.

<sup>1559</sup> Defence Closing Brief, paras. 52-53.

<sup>1560</sup> Defence Closing Brief, paras. 62-64.

<sup>1561</sup> Defence Closing Brief, paras. 54-59.

<sup>1562</sup> See Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 11 March 2009, pp. 3-8 (alleging that the Indictment uses vague terms, lacks specificity in providing dates and locations, inadequately identifies alleged collaborators and victims, and is defective in relation to Count 4).

<sup>1563</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009.

<sup>1564</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, paras. 14-15.



1279. The Defence has not provided any explanation for raising these additional notice issues at this late stage of the proceedings. The Chamber therefore considers that the Defence has not been prejudiced by the alleged lack of notice with respect to these Indictment paragraphs.

1280. Finally, the Defence contends that Count 4 of the Indictment is defective in its entirety.<sup>1565</sup> The Chamber recalls that it has addressed this challenge elsewhere in the Judgement (3.3.2), and has found no merit in this contention.

### 3.20.3 Evidence

#### Prosecution Witness ANAG

1281. Witness ANAG is a Tutsi who lived in Nyamyumba *commune* in 1994.<sup>1566</sup> The witness stated that she knew Ngirabatware because he was identifiable as a minister from Kigali whose parents were neighbors of the witness in Nyamyumba *commune*.<sup>1567</sup>

1282. The witness testified that, about one month after the President's death, she saw Ngirabatware in the *Bruxelles* area at a place called *St Bruxelles*, standing near the road with a group of people who were not doing anything unusual.<sup>1568</sup>

### 3.20.4 Deliberations

1283. The Chamber notes that the Prosecution Pre-Trial Brief lists Witness ANAG as the sole supporting witness for these charges<sup>1569</sup> and that the Prosecution in its Closing Brief did not make any submissions regarding paragraphs 30 and 46 of the Indictment. Additionally, the Chamber observes that no oral submissions were made by the Prosecution in relation to these allegations.

1284. The Chamber also notes that the submissions made by the Defence in its Closing Brief regarding paragraphs 30 and 46 of the Indictment<sup>1570</sup> were not challenged by the Prosecution in Closing Arguments.

1285. The Chamber has assessed the totality of the evidence relating to these paragraphs of the Indictment and notes the testimony of Witness ANAG. Although the witness testified that Ngirabatware may have been in the area of *Bruxelles* during the period in question, the Chamber notes that she places him there in the beginning of May 1994 rather than in late May 1994. More significantly, there is no evidence as to his activities there that could support the charges alleged in these Indictment paragraphs.

1286. Taking these factors into account, and having reviewed the evidence adduced in this case, the Chamber concludes that this allegation has not been proved by the Prosecution.

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<sup>1565</sup> Defence Closing Brief, paras. 54-59.

<sup>1566</sup> Prosecution Exhibit 18 (Personal Identification Sheet).

<sup>1567</sup> T. 1 March 2010, p. 20 (CS).

<sup>1568</sup> T. 1 March 2010, pp. 32-33, 51 (CS).

<sup>1569</sup> See Prosecution Pre-Trial Brief, para. 66, Annex 1.

<sup>1570</sup> Defence Closing Brief, paras. 667-681, 754-755.

## CHAPTER IV: LEGAL FINDINGS

1287. Having completed its consideration and analysis of the factual allegations brought by the Prosecution against Ngirabatware, the Chamber will proceed to assess Ngirabatware's legal culpability.

1288. The Indictment alleges that Ngirabatware is criminally responsible, pursuant to Article 6(1) of the Statute, for the crimes of genocide or in the alternative complicity in genocide, direct and public incitement to commit genocide, extermination as a crime against humanity and rape as a crime against humanity.<sup>1571</sup>

### 4.1 Article 6(1) of the Statute

1289. Article 6(1) of the Statute provides for individual criminal responsibility for anyone who planned, instigated, ordered, committed, or aided and abetted a crime falling within the Tribunal's jurisdiction.

1290. "Planning" requires that one or more persons design the criminal conduct constituting a statutory crime that is later perpetrated. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. The *mens rea* 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>1572</sup>

1291. "Instigating" implies prompting another person to commit an offence. 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. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.<sup>1573</sup>

1292. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. A person in a position of authority may incur responsibility for ordering if the order has a direct and substantial effect on the commission of the illegal act. No formal superior-subordinate relationship between the accused and the perpetrator is required. The authority envisaged by ordering under Article 6(1) of the Statute may be informal or of a purely temporary nature. It is sufficient that there is proof of a position of authority on the part of the accused that would compel another person to commit a crime. Whether such authority exists is a question of fact.<sup>1574</sup>

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<sup>1571</sup> The Indictment also charged Ngirabatware with responsibility pursuant to Article 6(3) of the Statute for superior-subordinate responsibility, but the Prosecution dropped the paragraph sustaining this allegation after the completion of the Prosecution case-in-chief. See Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, paras. 19-20 (withdrawing various paragraphs of the Indictment, including paragraph 38). During Closing Arguments, the Prosecution dropped the charge of Conspiracy to Commit Genocide. Prosecution Closing Argument, T. 25 July 2012, p. 56.

<sup>1572</sup> *Dragomir Milošević*, Judgement (AC), para. 268; *Nahimana et al.*, Judgement (AC), para. 479.

<sup>1573</sup> *Karera*, Judgement (AC), para. 317; *Nahimana et al.*, Judgement (AC), para. 480.

<sup>1574</sup> *Setako*, Judgement (AC), para. 240.

1293. “Committing” consists of the physical perpetration of a crime with criminal intent or a culpable omission, as well as participation in a joint criminal enterprise. Physical perpetration may include physical killing or other acts which may constitute direct participation in the *actus reus* of the crime.<sup>1575</sup> The question is whether an accused’s conduct was as much an integral part of the crimes as were the killings which it enabled.<sup>1576</sup> The leadership role played by an accused may constitute an integral part of the crimes.<sup>1577</sup>

1294. The *actus reus* of “aiding and abetting” is constituted by acts or omissions specifically aimed at assisting, encouraging or lending moral support to the perpetration of a certain specific crime, and which have a substantial effect on the perpetration of the crime. Whether a particular contribution qualifies as substantial is a fact-based inquiry, and need not serve as condition precedent for the commission of the crime.<sup>1578</sup> The contribution may occur before, during or after the principal crime has been perpetrated, and the location where the *actus reus* takes place may be removed from the location of the principal crime.<sup>1579</sup>

1295. The *actus reus* of aiding and abetting may also be constituted through tacit approval and encouragement of a crime, which substantially contributes to the perpetration of the crime. The authority of the accused, combined with his presence at or very near the crime scene, especially if considered together with the prior conduct of the accused, may amount to an official sanction of the crime and thus substantially contribute to it.<sup>1580</sup> This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission.<sup>1581</sup>

1296. The *mens rea* for aiding and abetting is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal perpetrator. Specific intent crimes, such as genocide, do not require that the aider and abettor share the *mens rea* of the principal perpetrator; it suffices to prove that he knew of the principal perpetrator’s specific intent.<sup>1582</sup>

1297. The Chamber will discuss these modes of liability, where applicable, in making its legal findings.

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<sup>1575</sup> *Munyakazi*, Judgement (AC), para. 135; *Nahimana et al.*, Judgement (AC), para. 478.

<sup>1576</sup> *Munyakazi*, Judgement (AC), para. 135, citing *Kalimanzira*, Judgement (AC), para. 219, quoting *Gacumbitsi*, Judgement (AC), para. 60. See also *Seromba*, Judgement (AC), para. 161.

<sup>1577</sup> *Munyakazi*, Judgement (AC), para. 135.

<sup>1578</sup> *Ntawukulilyayo*, Judgement (AC), para. 214. See also *Lukić & Lukić*, Judgement (AC), para. 424 (recalling that “specific direction has not always been included as an element of the *actus reus* of aiding and abetting”, but that “such a finding of specific direction will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime”) (internal quotations omitted).

<sup>1579</sup> *Kalimanzira*, Judgement (AC), para. 87, fn. 238.

<sup>1580</sup> *Kalimanzira*, Judgement (AC), para. 74.

<sup>1581</sup> *Brđanin*, Judgement (AC), para. 273; *Ntagerura et al.*, Judgement (AC), para. 338.

<sup>1582</sup> *Ntawukulilyayo*, Judgement (AC), para. 222.

## 4.2 Joint Criminal Enterprise

### 4.2.1 Introduction

1298. The Prosecution seeks to convict Ngirabatware under the basic form of joint criminal enterprise (“JCE”) liability for genocide or, alternatively complicity in genocide, and for extermination as a crime against humanity. It also seeks to convict Ngirabatware for rape as a crime against humanity on the basis of the extended form of JCE liability.<sup>1583</sup>

### 4.2.2 Law

1299. Although Article 6(1) does not explicitly refer to “joint criminal enterprise”, the Appeals Chamber has held that participating in a JCE is a form of liability which exists in customary international law and that it is a form of “commission” under Article 6(1) of the Statute.<sup>1584</sup> It exists in three separate forms: basic, systemic, and extended.<sup>1585</sup>

1300. The *actus reus* for each form of JCE comprises three elements.<sup>1586</sup> First, a plurality of persons is required. These persons need not be organized in a military, political or administrative structure.<sup>1587</sup> Second, the existence of a common purpose that amounts to or involves the commission of a crime under the Statute is required. The common purpose need not be express and may be inferred from the facts. It can therefore arise extemporaneously.<sup>1588</sup> Third, the accused must contribute to the common purpose. This contribution need not involve the commission of a specific crime under the Statute but can take the form of any contribution to the execution of the common criminal purpose. The contribution need not be essential for the commission of the crime but must form a link in the chain of causation and constitute a significant contribution to the crimes for which the accused is to be held responsible.<sup>1589</sup>

1301. The required *mens rea* for each form of JCE varies. The basic form requires that all of the JCE members share the intent to perpetrate a certain crime.<sup>1590</sup> Where the underlying crime requires a specific intent, the accused, as a JCE member, must share the specific intent.<sup>1591</sup>

<sup>1583</sup> See Indictment, Counts 2-3, 5-6 (*chapeaus*).

<sup>1584</sup> See *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 461-462, 466, 468. See also *Kvočka et al.*, Judgement (AC), paras. 79-80, 99; *Vasiljević*, Judgement (AC), paras. 94-95; *Tadić*, Judgement (AC), paras. 188, 195-226. See also *Rwamakuba*, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004, para. 31 (recognizing applicability of joint criminal enterprise to the crime of genocide).

<sup>1585</sup> *Kvočka et al.*, Judgement (AC), paras. 82-83; *Ntakirutimana & Ntakirutimana* Judgement (AC), paras. 463-465; *Vasiljević*, Judgement (AC), paras. 96-99.

<sup>1586</sup> *Kvočka et al.*, Judgement (AC), para. 96; *Vasiljević*, Judgement (AC), para. 100.

<sup>1587</sup> *Brđanin*, Judgement (AC), paras. 364, 430; *Kvočka et al.*, Judgement (AC), para. 96; *Vasiljević*, Judgement (AC), para. 100; *Tadić*, Judgement (AC), para. 227.

<sup>1588</sup> *Simba*, Judgement (AC), para. 90; *Brđanin*, Judgement (AC), paras. 364, 418; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 466.

<sup>1589</sup> *Gotovina & Markač*, Judgement (AC), para. 149 (confirming that the threshold for finding a “significant contribution” to a JCE is lower than the “substantial contribution” required to enter a conviction for aiding and abetting); *Simba*, Judgement (AC), para. 303; *Brđanin*, Judgement (AC), paras. 424, 430; *Kvočka et al.*, Judgement (AC), para. 98; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 466.

<sup>1590</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 467; *Vasiljević*, Judgement (AC), para. 101.

<sup>1591</sup> *Simba*, Judgement (AC), para. 264; *Kvočka et al.*, Judgement (AC), para. 110.

1302. The extended form of JCE requires that the accused had the requisite intent to participate in and significantly contribute to the JCE.<sup>1592</sup> Additionally, it must have been foreseeable that such a crime might be perpetrated by one or other members of the JCE and that the accused willingly took that risk. In other words, the accused, with subjective awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.<sup>1593</sup> The extended crime must be perpetrated in the execution of the common purpose.<sup>1594</sup>

#### 4.2.3 Deliberations

1303. The Chamber recalls its finding that on 7 April 1994, Ngirabatware went to the *Bruxelles* area of Nyamyumba *commune* with two vehicles transporting weapons. At the *Bruxelles* roadblock, Ngirabatware asked that *Bourgmestre* Faustin Bagango be located. Once Bagango arrived, Ngirabatware said that he brought weapons because he did not want any Tutsis alive in *Bruxelles*. Ngirabatware provided ten machetes to Bagango, who in turn gave them to *Conseiller* Jean Simpunga for further distribution. Simpunga distributed nine of these machetes to roadblocks in the *Bruxelles* area, and kept one for himself. Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira *secteurs* in Nyamyumba *commune*.

1304. Later that same day, Ngirabatware returned to the *Bruxelles* roadblock with two vehicles transporting weapons. Many *Interahamwe* were present, including Juma. Ngirabatware chastised the *Interahamwe* there for only pretending to work. He said that he brought weapons because he did not want to see any Tutsis alive in Busheke *cellule*, and he charged that Safari was communicating with “*Inyenzi*”. Firearms and grenades were offloaded, and Ngirabatware then drove to the Gitsimbi/Cotagirwa roadblock, where he again summoned Bagango. Bagango came immediately, and weapons were offloaded. Ngirabatware explained that he brought weapons because he did not want to see any Tutsis in Nyamyumba *commune* and ordered Bagango to work well. Ngirabatware further told Bagango that Safari needed to be located and killed. At least some of the weapons distributed this day were used by the *Interahamwe* during the attacks and killings of Tutsis in Nyamyumba *commune*. After this distribution, Safari was attacked and seriously injured by various *Interahamwe*, including Juma (3.10.4).

1305. In the Chamber’s view, the only reasonable inference from the evidence is that a common criminal purpose existed by 7 April 1994 between Ngirabatware, Bagango and Simpunga. In particular, the Chamber observes that Ngirabatware stated on this date that he brought weapons because he did not want to see any Tutsis alive in the area, after which he provided the weapons to Bagango, who ensured their further distribution. This occurred on two separate occasions on 7 April 1994. Simpunga also received weapons and effectuated their distribution to the roadblocks in the *Bruxelles* area. Given these explicit statements by Ngirabatware, as well as the coordination demonstrated by these actions, the Chamber has no doubt that both Ngirabatware, Bagango and Simpunga possessed genocidal intent and that they shared the common purpose of destroying, in whole or in part, the Tutsi ethnic group as such, and exterminating the Tutsi civilian population in Nyamyumba *commune*.

<sup>1592</sup> *Brđanin*, Judgement (AC), para. 411.

<sup>1593</sup> *Brđanin*, Judgement (AC), paras. 365, 411; *Karadžić*, Decision on Prosecution’s Motion Appealing Trial Chamber’s Decision on JCE III Foreseeability (AC), 25 June 2009, para. 18.

<sup>1594</sup> *Brđanin*, Judgement (AC), para. 424; *Stakić*, Judgement (AC), para. 87.

1306. The Chamber also has no doubt that Ngirabatware significantly contributed to this common criminal purpose. He brought weapons for distribution throughout the *commune* on two different occasions, said they were distributed because he did not want to see any Tutsis in the area, and prompted and encouraged the *Interahamwe* to attack and kill Tutsis. As will be addressed further below, this common purpose was realized, as the *Interahamwe* attacked and killed Tutsis in Nyamyumba *commune*.

1307. Accordingly, the Chamber finds beyond reasonable doubt that Ngirabatware, Faustin Bagango and Jean Simpunga participated in a joint criminal enterprise starting on 7 April 1994, if not sooner.

1308. This finding is further bolstered by the extent to which Ngirabatware, Bagango and Simpunga had previously and jointly promoted an anti-Tutsi message throughout Nyamyumba *commune*.

1309. For example, Witness ANAJ credibly and reliably described a meeting at the Nyamyumba *commune* office in 1993, which was attended by Ngirabatware and Bagango. Bagango spoke first and said that the MRND and CDR parties were working together, and that the population should not be afraid because the CDR party was a Hutu party. He then introduced Ngirabatware, and Ngirabatware asked the crowd about the killings that were occurring in the country. Ngirabatware stated that the Tutsis who were outside the country were the enemies, and that their accomplices were those Tutsis who were still residing in the country and those married to the Tutsis. He specifically told Witness ANAJ that he knew that the witness was married to a Tutsi, and that those married to Tutsis were making contributions and giving information to the RPF.<sup>1595</sup>

1310. Witness ANAD further described two meetings in January 1994 at which Ngirabatware and Bagango spoke: at the Nyamyumba *commune* office and at Kitracó. Bagango began both meetings by speaking for a few minutes, after which Ngirabatware took the floor and delivered a speech that the witness understood as fuelling hatred between Tutsis and Hutus.<sup>1596</sup> The Chamber has already stated its view that Witness ANAD testified in a credible and unwavering manner, and that his evidence was precise and forthright (3.3.4). The Chamber considers that these observations apply equally to Witness ANAD's testimony about the joint role played by Ngirabatware and Bagango at these two meetings in January 1994.

1311. In addition, the Chamber has found that in early 1994, Bagango and Ngirabatware both spoke at the rally at Kanyabuhombo School, at which Simpunga was present. After Bagango asked for weapons to fight the *Inkotanyi*, Ngirabatware addressed the crowd for one hour, where he first commended Bagango's energy and the *Interahamwe*'s strength, before going on to discuss Rwandan history and to claim that only the MRND and CDR parties could safeguard Hutu interests by fighting the Tutsis. Ngirabatware also said that he would be providing weapons, and those in attendance understood that Ngirabatware's speech was intended to fan ethnic hatred and that the weapons would be used to fight the Tutsis. An hour later, Bagango went to the Nyamyumba *commune* office and distributed rifles and grenades to *Interahamwe* and

<sup>1595</sup> See, for example, T. 7 October 2009, pp. 76-77; T. 8 October 2009, pp. 4, 34-40; T. 8 October 2009, pp. 45-46 (CS); T. 12 October 2009, pp. 5, 12 (Witness ANAJ).

<sup>1596</sup> See, for example, T. 9 February 2010, pp. 17-18, 30, 33; T. 10 February 2010, p. 66 (CS) (Witness ANAD).

*Impuzamugambi* leaders, which were immediately distributed to youths who had received the necessary training to use these weapons (3.3.4).

1312. The Chamber has also found that Ngirabatware, Bagango and Simpunga all attended and spoke at a meeting at Gatunda School in March 1994. Ngirabatware stated that he heard Tutsis were fleeing, and he asked what they were fleeing from. Bagango answered that the Tutsis were fleeing because their properties and cattle had been seized, to which Ngirabatware responded that this was a problem for the Tutsis. Ngirabatware then told the persons in the crowd that they “must seize [...] and hand over good crops” and that the “bad grain should be separated from the good grain”, which was understood to refer to separating Tutsis from Hutus (3.8.1.4).

1313. Furthermore, the Chamber has found that Ngirabatware, Bagango, Major Xavier Uwimana and others attended a rally and flag-raising ceremony at Kitracó, in Nyamyumba *commune*, between two and four days before President Habyarimana’s plane was shot down. Ngirabatware spoke to around 600 to 800 *Interahamwe* and asked them to continue to man the roadblocks and carry out night patrols to avoid infiltration by the enemy. The vice-chairman of the *Interahamwe* asked Ngirabatware how they could manage night patrols armed only with sticks, and Ngirabatware responded that he and Major Uwimana would find a solution to that problem. Ngirabatware also promised them at least one firearm so that they could shoot in the air to disperse the enemy. A few hours later, Major Uwimana drove to the Gitsimbi/Cotagirwa roadblock in a vehicle with cartons and boxes. Bagango arrived and stated that Uwimana brought the material that had been promised to the *Interahamwe* earlier that day at the Kitracó meeting. Bagango thanked Uwimana and asked him to express their thanks to Ngirabatware as well. Six cartons of grenades and crates with firearms were distributed at the Gitsimbi/Cotagirwa roadblock. These weapons were subsequently used to kill Tutsis (3.8.3.4).

1314. On 7 April 1994, in the evening after Ngirabatware distributed weapons at the *Bruxelles* and Gitsimbi/Cotagirwa roadblocks in Nyamyumba *commune*, he went to Alphonse Bananiye’s house. Ngirabatware sought out, and met with, Bagango. Three days later, Bagango distributed more grenades to the *Interahamwe* manning the *Bruxelles* roadblock (3.10.4.6).

1315. The Chamber further observes the significant quantity of evidence linking Ngirabatware with Bagango and with Simpunga.<sup>1597</sup> Indeed, Ngirabatware testified that he and Bagango had

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<sup>1597</sup> In addition to the evidence considered in the factual findings, see, for example, T. 13 October 2009, pp. 19-20, 27, 30, 33-36; T. 13 October 2009, pp. 66-68 (CS); T. 19 October 2009, pp. 15-17, 23-30, 80 (CS); T. 20 October 2009, pp. 6-8 (CS) (Witness ANAK) (Bagango, Simpunga and other intellectuals would join Ngirabatware at his parents’ house in 1992 and 1993, where Ngirabatware would make anti-Tutsi comments. Similarly, Bagango and Simpunga were there at Ngirabatware’s father’s funeral when Ngirabatware said that the Tutsi ethnic group deserved no attention or support. Bagango was close to Ngirabatware and enjoyed his support. He led those who killed, raped and looted in the *commune*, including Simpunga. Simpunga was among the criminals that were led by Bagango after the President’s plane crash. Three days after the crash, Simpunga joined Bagango in leading the destruction of the witness’ house.); T. 7 October 2009, pp. 76-77; T. 7 October 2009, pp. 79-80 (French); T. 8 October 2009, pp. 19, 26-28, 33-36, 40; T. 12 October 2009, pp. 5-6; T. 12 October 2009, pp. 16, 79 (CS) (Witness ANAJ) (Ngirabatware and Bagango were from the same hill. Both of them spoke at a meeting in Nyamyumba *commune* in 1993, where Ngirabatware said that Tutsis were the enemy and that Hutus married to Tutsis were their accomplices. After Ngirabatware spoke with Bagango and Égide Karemera, he told the witness that they knew he was married to a Tutsi. Afterwards, Bagango and Karemera tried to “go after” the witness in order to ultimately kill him.); T. 15 March 2010, pp. 72, 77, 83; T. 16 March 2010, pp. 45-46 (CS) (Witness ANAS) (Ngirabatware and all of the *conseillers*, including Simpunga, were present at the Nyamyumba *commune* office in early 1994. Simpunga

known each other since childhood, that they were acquainted with each other's families, and that Bagango telephoned him as late as mid-June 1994 (3.2.3). Ngirabatware confirmed that he also knew Simpunga.<sup>1598</sup>

1316. The Chamber has no doubt that this evidence further bolsters the conclusion that Ngirabatware, Bagango and Simpunga had jointly taken steps to promote an anti-Tutsi message in Nyamyumba *commune*, and that Bagango played a central role in coordinating weapons distributions and activities at roadblocks.

1317. The Chamber will now turn to the other alleged JCE members, as provided in the Indictment. Preliminarily, the Chamber observes that it has made no factual findings concerning Théoneste Bagosora, Felicien Kabuga, Jean Bosco Murekumbazo, Matthieu Ngirumpatse, Ildephonse Nizeyimana, Anatole Nsengiyumva, Mathias Nyagasaza, Mateke Nyakabwa, Gerson Nzabahiranya, Banzi Wellars, Protais Zigiranyirazo, Bandesiminsi and Gahamango. Thus, the Chamber considers that it need not assess whether the Prosecution has proven beyond reasonable doubt that these individuals participated in a JCE along with Ngirabatware.

1318. The Chamber recalls, however, that it has made findings concerning alleged JCE members Juma, Makuze and Felix Niyoniringiye. In particular, the Chamber has found that Juma and Makuze raped Chantal Murazemariya (3.14.5.3), and that Niyoniringiye killed Mukarugambwa (3.13.4).

1319. With regard to Juma, Makuze and Niyoniringiye, the Chamber notes the substantial quantity of credible and reliable evidence from both Prosecution and Defence witnesses that these three were among the *Interahamwe* who manned the Gitsimbi/Cotagirwa roadblock, and that they were involved in attacking Tutsi civilians starting on 7 April 1994.<sup>1599</sup>

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spoke first, and then Ngirabatware asked him to find policemen to train the *Interahamwe* to handle firearms. Ngirabatware said that weapons would be distributed at a later time.); T. 16 March 2010, pp. 65-67, 69 (Witness ANAT) (Ngirabatware and Bagango were neighbors, and Bagango organized meetings when Ngirabatware was not present); T. 30 September 2009, pp. 57-61, 74-76 (Witness ANAF) (Bagango and Ngirabatware knew each other well, as they were neighbours from the same hill. Bagango and Jean Simpunga were among the *commune* authorities who ordered that roadblocks be set up to prevent enemy infiltration in the area, and who appointed the leaders of these roadblocks.); T. 20 October 2009, pp. 34, 41, 44; T. 21 October 2009, pp. 46, 49-50 (Witness ANAE) (Simpunga supervised the *Interahamwe* at the *secteur* level); T. 2 March 2010, pp. 13-15, 20-21, 24, 30-31, 33, 71, 73-75; T. 2 March 2010, p. 31 (CS); T. 4 March 2010, pp. 44, 51-52, 55-58, 70 (CS) (Witness AFS) (Bagango was the leader of the *Interahamwe*, and he was said to be related to Ngirabatware. On 9 April 1994, Bagango convened a meeting at Bwitereke school with *conseillers*. On 10 April 1994, Bagango distributed grenades to the *Interahamwe* located near *Bruxelles* roadblock, before moving on to the Gitsimbi/Cotagirwa roadblock. Kimeza was among the *Interahamwe* near *Bruxelles* roadblock.); T. 9 March 2010, pp. 42-44, 54, 64-65, 67, 69, 71 (CS); T. 11 March 2010, p. 45 (CS) (Witness ANAU) (Bagango and Ngirabatware both played a role in the killing of André Babonampoze, his son Blaise and Karekezi once the genocide began. Two weeks into the genocide, the witness began manning the Bralirwa roadblock. Bagango would pass by daily to give instructions, and he distributed a firearm and grenades at the roadblock that he said he received from Ngirabatware.).

<sup>1598</sup> See, for example, T. 1 December 2010, pp. 29, 33 (Ngirabatware).

<sup>1599</sup> The Chamber considers that the record is clear that the Juma at issue was Juma Kimeza. A significant quantity of evidence establishes that it was Juma Kimeza who raped Chantal Murazemariya, as alleged in paragraph 63 of the Indictment (3.14.5.3), and that Juma Kimeza manned the Gitsimbi/Cotagirwa roadblock. See T. 25 January 2010, pp. 25-27, 46-47, 61 (CS) (Witness ANAM) (Juma, nicknamed Kimeza, was an *Interahamwe* who manned the *Bruxelles* roadblock. He was present when Ngirabatware distributed firearms and grenades and said that Safari was



1320. The Chamber has found that, on 7 April 1994, Ngirabatware distributed weapons at the *Bruxelles* roadblock and the Gitsimbi/Cotagirwa roadblock, and that he encouraged the *Interahamwe* present to attack Tutsis, including Safari. Juma was present at the *Bruxelles*

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communicating with the *Inyenzi*. Juma was among the *Interahamwe* who attacked Safari later that day. He also raped Chantal Murazemariya, along with Makuza.); T. 15 February 2010, pp. 37-38, 40, 49 (CS); T. 22 February 2010, p. 38 (CS) (Witness ANAO) (Juma, last name Kimeza, and the witness manned the Gitsimbi/Cotagirwa roadblock with Bandeze, also known as Bantesiminzi. They received instructions from Faustin Bagango. Juma Kimeza was also involved in the attack on Chantal Murazemariya.); T. 1 March 2010, p. 13 (CS) (Witness ANAG) (Juma Cyimeza and Makuza, members of the *Interahamwe*, raped a Tutsi named Chantal Murazemariya after the President's plane crash); T. 7 July 2011, pp. 78-79; T. 7 July 2011, pp. 80-81 (CS) (Witness DWAN-2) (Kimeza was among the *Interahamwe* who manned the Gitsimbi/Cotagirwa roadblock. He had sought to harm Murazemariya.); T. 11 July 2011, p. 61 (Witness DWAN-147) (Kimeza and Makuza were among those who manned the Gitsimbi roadblock, which did not protect the population); T. 4 October 2011, p. 8 (CS) (Witness DWAN-133) (Djuma manned the Gitsimbi/Cotagirwa roadblock with Felix Niyoniringiye, Bantesiminzi and others); T. 2 March 2010, pp. 25, 30-31; T. 4 March 2010, pp. 46, 68 (CS) (Witness AFS) (Kimeza was an *Interahamwe* and the MRND chairman of the *secteur*. He was near the *Bruxelles* roadblock on 10 April 1994 when Bagango arrived and distributed a grenade to every *Interahamwe* there. Kimeza was later killed and buried near Cenge's house.); T. 16 June 2011, pp. 36-37 (CS); T. 20 June 2011, pp. 55-56 (CS) (Witness DWAN-3) (Juma Kimeza was one of the most dangerous *Interahamwe*, and he flouted authority. He manned the Gitsimbi roadblock with Makuza and others. Kimeza was killed by *Interahamwe* in 1994 because he killed and stole in another *cellule*.) The Chamber has observed that the transcripts refer at times to "Juma" as "Djuma", and to "Cyimeza" as "Kimeza" (3.14.5.2).

The Chamber notes the evidence that another *Interahamwe* named Juma operated in the area, but considers that this does not raise any issues with regard to the identity of the alleged member of the joint criminal enterprise. See T. 7 October 2009, p. 44 (CS) (Witness ANAL) (Juma Kimeza's parents' names were Ndagijimana and Ntankumbi. On 8 April 1994, Kimeza and other *Interahamwe* abducted her and held her in Kimeza's house. That evening, Kimeza and the *Interahamwe* were going to kill the witness and her sister. As they approached *Bruxelles*, another *Interahamwe* named Juma, who was the son of Majidi, intervened and said they should not be looking for girls who were not involved in politics.); T. 1 October 2009, p. 16 (CS) (Witness ANAF) (Juma, the son of Madjidi, used to stand near the *Bruxelles* flag and speak with others about the stupid Tutsis who wanted to hoist their flag at that location). See also T. 17 August 2011, pp. 23-24; T. 17 August 2011, p. 80 (CS) (Witness DWAN-9) (Juma and Cyimeza both manned the Cotagirwa roadblock, along with Bandeze and others. Cyimeza also acted with Bandeze to try to kill a Tutsi woman named Julienne, but they were unsuccessful. Cyimeza was killed by his companions, and subsequently displayed as a warning to others.); T. 23 June 2011, p. 43; T. 27 June 2011, pp. 37-38 (Witness DWAN-71) (There were various *Interahamwe* in Rushubi *secteur*, including Juma and Kimeza, both of whom were killers. Kimeza attacked Safari, and he confessed before a *Gacaca* court that he had struck Safari with a machete.) The Chamber also notes that Ngirabatware denied knowing anyone named Juma. T. 1 December 2010, p. 44 (Ngirabatware).

For evidence concerning Makuze, in addition to the evidence addressed in the factual findings, see T. 16 June 2011, p. 26; T. 16 June 2011, p. 37 (CS); T. 20 June 2011, pp. 55-56 (CS) (Witness DWAN-3) (Makuze was a dangerous *Interahamwe*, and he was involved in the attack on Safari Nyambwega. Makuze manned the Gitsimbi roadblock with Juma Kimeza and others, but they did not commit rape.); T. 11 July 2011, p. 61 (Witness DWAN-147) (Makuze and Kimeza were among those who manned the Gitsimbi roadblock, which did not protect the population); T. 26 September 2011, pp. 10, 12 (CS) (Witness DWAN-39) (Makuze was convicted in a *Gacaca* court for participating in the attack on Safari Nyambwega, although Ngirabatware's name was not mentioned in the Judgement). See also T. 1 December 2010, p. 44 (Ngirabatware) (Ngirabatware knew no one by the name of Makuze in Gisenyi town or Nyamyumba *commune*). The Chamber has considered that the references in the record to "Makuza" clearly refer to the individual in the Indictment referred to as "Makuze" (3.14.5.2).

For evidence concerning Felix Niyoniringiye, in addition to the evidence addressed in the factual findings, see T. 4 October 2011, pp. 3-4, 8 (CS) (Witness DWAN-133) (Felix Niyoniringiye joined Bantesiminzi in participating in the destruction of Butitira's home on 7 April 1994. He also manned the Gitsimbi/Cotagirwa roadblock along with Bantesiminzi and Juma.); T. 23 June 2011, p. 43; T. 27 June 2011, pp. 37-38 (Witness DWAN-71) (Felix Niyoniringiye was among the *Interahamwe* who manned the Gitsimbi/Cotagirwa roadblock with Kimeza, Juma, Banteziminzi and Jean Bosco). For the possible role of Felix Niyoniringiye in other aspects of this case, see, for example, T. 28 September 2009, p. 86 (CS) (Delvaux).

roadblock when Ngirabatware named Safari as someone who was communicating with “*Inyenzi*”, and Juma was among the *Interahamwe* who attacked Safari after Ngirabatware left (3.10.4.6). Makuze was also part of this attack, according to the credible evidence of Defence Witness DWAN-3.<sup>1600</sup>

1321. Witness DWAN-3 also confirmed that Juma and Makuze were two of the many *Interahamwe* who were under the authority of Bagango.<sup>1601</sup> Prosecution Witness ANAO testified credibly that he also manned the Gitsimbi/Cotagirwa roadblock, that he received instructions from Bagango and Hassan Tubaramure which he then passed on to others at the roadblock, and that these instructions changed after Habyarimana’s death. They were to hunt down Tutsis and kill them, which they continued to do until they were stopped.<sup>1602</sup>

1322. In the Chamber’s view, the only reasonable inference from the evidence is that Juma, Makuze and Felix Niyoniringiye were also participants in the joint criminal enterprise with Ngirabatware, Bagango and Simpunga. The Chamber, in particular, observes the compelling evidence of coordination between Ngirabatware, Bagango and Simpunga as authority figures, with Juma, Makuze and Niyoniringiye, who manned the Gitsimbi/Cotagirwa roadblock together and singled out Tutsis for attack and killed them. Given these interactions and chain of events, the Chamber has no doubt that Juma, Makuze and Niyoniringiye possessed genocidal intent and shared the common purpose with Ngirabatware, Bagango and Simpunga, of destroying, in whole or in part, the Tutsi ethnic group as such, and exterminating the Tutsi civilian population in Nyamyumba *commune*. The Chamber also has no doubt that Juma, Makuze and Niyoniringiye significantly contributed to this common criminal purpose, in particular through their attacks on Tutsis.

1323. Accordingly, the Chamber finds beyond reasonable doubt that Juma, Makuze and Felix Niyoniringiye participated in a joint criminal enterprise with Ngirabatware, Bagango and Simpunga by 7 April 1994. The Chamber will address the implications of this finding, where applicable, in more detail below.

## 4.3 Genocide

### 4.3.1 Introduction

1324. Count 2 of the Indictment charges Ngirabatware with genocide pursuant to Article 2(3)(a) of the Statute, for killing or causing serious bodily or mental harm to members of the Tutsi population.

### 4.3.2 Law

1325. A person commits the crime of genocide if he or she commits one of the acts enumerated in Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a national,

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<sup>1600</sup> T. 16 June 2011, p. 26; T. 20 June 2011, pp. 55-56 (CS) (Witness DWAN-3).

<sup>1601</sup> T. 20 June 2011, pp. 55-56 (CS) (Witness DWAN-3).

<sup>1602</sup> T. 15 February 2010, pp. 40-41, 46, 49-50 (CS) (Witness ANAO).

ethnic, racial or religious group, as such. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.<sup>1603</sup>

1326. The acts enumerated in Article 2(2) include “[k]illing members of the group”, and “[c]ausing serious bodily or mental harm to members of the group”. For this latter category 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>1604</sup> The Appeals Chamber has also noted that “nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings”.<sup>1605</sup>

1327. Genocidal intent may be proven by circumstantial evidence. Such intent may be inferred from a number of facts and circumstances, including overt statements by the accused, the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts. The specific intent need not be formed prior to the commission of the acts, but must be possessed at the moment of commission. Evidence of limited and selective assistance towards a few individuals does not generally preclude a reasonable finding of the requisite intent to commit genocide. When based on circumstantial evidence, any finding that the accused had genocidal intent must be the only reasonable inference from the totality of the evidence.<sup>1606</sup>

### 4.3.3 Deliberations

#### 4.3.3.1 *Kanyabuhombo School, Early 1994*

1328. In early 1994, a meeting was held at Kanyabuhombo School. At least a few hundred people attended, including Ngirabatware and *Bourgmestre* Faustin Bagango. Bagango commenced the meeting by introducing the officials and by asking for weapons to fight the *Inkotanyi*. After Bagango’s introduction, Ngirabatware spoke for at least an hour. Ngirabatware commended Bagango’s energy and the *Interahamwe*’s strength, discussed Rwandan history, called on intellectuals to join the MRND and CDR parties, and claimed that only these parties could safeguard Hutu interests by fighting the Tutsis. Ngirabatware also told the crowd that he would be providing weapons to the youth who were trained to use these weapons. Those in attendance understood that this speech was intended to fan ethnic hatred, and that the weapons were to be used to fight the Tutsis. About an hour after this meeting, Bagango went to the Nyamyumba *commune* office and distributed weapons to *Interahamwe* and *Impuzamugambi* leaders. Witness ANAN received six Uzi rifles and 15 grenades, which were immediately distributed to youths who had received the necessary training to use them.

<sup>1603</sup> *Seromba*, Judgement (AC), para. 175; *Nahimana et al.*, Judgement (AC), para. 492; *Gacumbitsi*, Judgement (AC), para. 39; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 304; *Niyitegeka*, Judgement (AC), paras. 52-53; *Krnojelac*, Judgement (AC), para. 102; *Jelisić*, Judgement (AC), para. 49; *Kayishema & Ruzindana*, Judgement (AC), para. 161.

<sup>1604</sup> *Seromba*, Judgement (AC), para. 46.

<sup>1605</sup> *Seromba*, Judgement (AC), para. 46.

<sup>1606</sup> *Munyakazi*, Judgement (AC), para. 142; *Rukundo*, Judgement (AC), para. 61; *Nchamihigo*, Judgement (AC), fn. 478, quoting *Jelisić*, Judgement (AC), para. 47; *Seromba*, Judgement (AC), para. 176; *Nahimana et al.*, Judgement (AC), para. 524; *Muhimana*, Judgement (AC), para. 32; *Gacumbitsi*, Judgement (AC), paras. 40-41; *Rutaganda*, Judgement (AC), para. 525.

1329. The Prosecution has not established beyond reasonable doubt, however, that Ngirabatware distributed weapons at the meeting at Kanyabuhombo School. Nor has the Prosecution established that the distributed weapons were indeed used to kill or harm Tutsis in Nyamyumba *commune*, as alleged in the Indictment (3.3.4).

1330. Because there is insufficient evidence to link this meeting with any subsequent killings or attacks, the Chamber finds that Ngirabatware has not been proven guilty of genocide in relation to the meeting at Kanyabuhombo School. However, the Chamber considers that Ngirabatware's actions and words at this meeting provide circumstantial evidence of his negative disposition towards the Tutsi population.

#### **4.3.3.2 Speeches at Roadblocks, February 1994**

1331. The Chamber has found, Judge Sekule dissenting, that following the murder of CDR Chairman Martin Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune*. At Electrogaz he addressed those present which were approximately 400 people, saying: "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock" (3.4.4.1).<sup>1607</sup>

1332. Following the murder of Bucyana, Ngirabatware also went to the Cyanika-Gisa tarred road in Nyamyumba *commune* to address the crowd and told them to "kill Tutsi". "A group", whose number may have been as high as between 150 and 250 people, were assembled at this location. Ngirabatware then gave 50,000 francs to Honoré Ndayamiyemensi to buy drinks and/or traditional weapons. The Prosecution has not established beyond reasonable doubt, however, that any weapons were purchased with this 50,000 Rwandan francs or that they would have been used in any attacks subsequent to this event (3.4.4.2).

1333. After the death of President Habyarimana on 6 April 1994, a roadblock was set up at Kitiraco. The Prosecution has not established that this was the result of the instructions given by Ngirabatware at the Electrogaz roadblock after Bucyana's murder. Nor has the Prosecution proven beyond reasonable doubt that those manning the Kitiraco roadblock captured or killed Tutsis who may have attempted to flee to Zaire via the Kitiraco area, as alleged in the Indictment (3.5.4).

1334. Because there is insufficient evidence to establish that Ngirabatware's role at the Electrogaz and Cyanika-Gisa roadblocks contributed to any subsequent killings or attacks, the Chamber finds that Ngirabatware has not been proven guilty of genocide in relation to his speeches at these roadblocks. However, the Chamber considers that Ngirabatware's actions and

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<sup>1607</sup> The Chamber observes that the Electrogaz incident is pleaded in paragraph 48 of the Indictment for direct and public incitement to commit genocide, and is not pleaded for genocide or complicity in genocide. The allegation about the creation of an *Interahamwe* group, however, is pleaded for these latter two crimes, in paragraph 21 of the Indictment. Because of the possible link between the Electrogaz speech and the positioning of an *Interahamwe* group at the Kitiraco roadblock, the Chamber considers it beneficial to address both events insofar as they may relate to genocide or complicity in genocide.

words at the Cyanika-Gisa roadblock provide circumstantial evidence of his intent to destroy, in whole or in part, the Tutsi ethnic group, as such.<sup>1608</sup>

#### 4.3.3.3 *Distribution of Weapons, 7 April 1994*

1335. On 7 April 1994 and prior to the attack on Safari Nyambwega, Ngirabatware went to the *Bruxelles* area of Nyamyumba *commune* with two vehicles transporting weapons. At the *Bruxelles* roadblock, Ngirabatware asked that Faustin Bagango be located. Once Bagango arrived, Ngirabatware said that he brought weapons because he did not want any Tutsis alive in *Bruxelles*. Ngirabatware provided ten machetes to Bagango, who in turn gave them to Jean Simpunga for further distribution. Simpunga distributed nine of these machetes to roadblocks in the *Bruxelles* area, and kept one for himself. Bagango said that the rest of the machetes would be taken to Kabilizi and Munanira *secteurs* in Nyamyumba *commune*.

1336. Later that same day, and still prior to the attack on Nyambwega, Ngirabatware returned to the *Bruxelles* roadblock with two vehicles transporting weapons. Upon arriving at the roadblock, Ngirabatware chastised the *Interahamwe* for only pretending to work. Many *Interahamwe* were present, including Juma. Ngirabatware said he brought weapons because he did not want to see any Tutsis in Busheke *cellule*, and he charged that Safari was communicating with “*Inyenzi*”. Firearms and grenades were offloaded at this roadblock, and Ngirabatware drove to the nearby Gitsimbi/Cotagirwa roadblock, where he summoned Bagango. Bagango came immediately, and weapons were offloaded. Ngirabatware explained that he brought weapons because he did not want to see any Tutsis in Nyamyumba *commune* and ordered Bagango to work well. Ngirabatware also told Bagango that Safari needed to be located and killed. After Ngirabatware left, Bagango said that he was going to the *commune* office. Also on 7 April 1994, Safari Nyambwega was attacked and seriously injured by various *Interahamwe*, including Juma.

1337. The *Interahamwe* used at least some of the weapons Ngirabatware distributed on 7 April 1994 during the attacks and killings, and Ngirabatware’s actions and words encouraged the *Interahamwe* to kill. This distribution formed a distinct form of encouragement to the *Interahamwe* within Nyamyumba *commune*. The act of distributing the weapons and prompting the *Interahamwe* to kill all Tutsis a day after the President’s death, demonstrated Ngirabatware’s explicit support for the attacks and killings of Tutsis in Nyamyumba *commune*, and substantially contributed to it (3.10.4.7).

1338. The Indictment alleges that Ngirabatware is responsible for having instigated, aided and abetted, ordered and committed genocide, including through a JCE.<sup>1609</sup> However, in relation to the weapons distribution alleged in paragraph 16, the Indictment clearly charges Ngirabatware only with having instigated and aided and abetted genocide.<sup>1610</sup> The Chamber considers that this

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<sup>1608</sup> The Chamber, Judge Sekule dissenting, has also found Ngirabatware went to the Electrogaz roadblock in February 1994 and said that another roadblock should be established because Tutsis could easily cross the one roadblock. The Chamber considers it preferable, however, that all members of the Bench approach the issue of genocidal intent from the same basis. The Chamber also considers that this event would not be dispositive of Ngirabatware’s genocidal intent. Accordingly, the Chamber will not take this event into account when assessing the existence of such intent.

<sup>1609</sup> Indictment, pp. 5-6 (*chapeau*).

<sup>1610</sup> Indictment, para. 16 (“In April 1994, after the death of President Habyarimana, Augustin Ngirabatware transported weapons to Nyamyumba *commune*, Gisenyi where he gave these weapons to Faustin Bagango,

specification indicates that the Prosecution did not charge Ngirabatware with any other mode of liability for this distribution of weapons, even considering the Indictment as a whole.<sup>1611</sup> Accordingly, the Chamber will only consider whether Ngirabatware's role in distributing weapons on 7 April 1994 instigated and/or aided and abetted genocide.

1339. The Chamber has found that on 7 April 1994, Ngirabatware encouraged the *Interahamwe* at the *Bruxelles* and *Gitsimbi/Cotagirwa* roadblocks to kill Tutsis, that he distributed weapons to these *Interahamwe*, and that the *Interahamwe* used at least some of these weapons during the attacks and killings of Tutsis in Nyamyumba *commune*. Given this chain of events, the Chamber finds beyond reasonable doubt that Ngirabatware prompted these *Interahamwe* to attack and kill Tutsis, and that his acts—taken both individually and cumulatively—assisted and encouraged these attacks and killings of Tutsis. As noted above, the Chamber has already found that Ngirabatware's actions on this day substantially contributed to the attacks and killings of Tutsis in Nyamyumba *commune*.

1340. This chain of events, as well as the totality of the evidence adduced in this case, leaves the Chamber with no doubt that these *Interahamwe* attacked and killed Tutsis in Nyamyumba *commune* with the requisite intent to destroy, in whole or in part, the Tutsi ethnic group as such, and that Ngirabatware knew of the principal perpetrators' specific intent.

1341. The Chamber therefore finds beyond reasonable doubt that Ngirabatware is guilty of genocide for instigating and aiding and abetting the attacks and killings of Tutsis in Nyamyumba *commune* through his role in distributing weapons and the words he uttered on 7 April 1994.

#### 4.3.3.4 *Killing of Mukarugambwa, Around 8 April 1994*

1342. Around 8 April 1994, Felix Niyoniringiye killed a woman named Mukarugambwa. The Chamber, however, has found that the Prosecution has not proven that Mukarugambwa was listed for extermination by Ngirabatware, as alleged in the Indictment (3.13.4). As found above, Niyoniringiye was a member of the JCE with Ngirabatware.

1343. In relation to the killing of Mukarugambwa, the Indictment clearly charges Ngirabatware only with having planned, instigated, ordered and aided and abetted the killing of Mukarugambwa, through his listing members of Tutsis for extermination.<sup>1612</sup> The Chamber

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*bourgmestre* of Nyamyumba *commune* for distribution to the *Interahamwe* militia for the purpose of eliminating members of the Tutsi ethnic group in Gisenyi during the period April to July 1994. In so doing, Augustin Ngirabatware instigated and aided and abetted the genocide of the Tutsi.”)

<sup>1611</sup> See *Ntawukulilyayo*, Judgement (AC), para. 197 (The Indictment generally pleaded four modes of liability, but only pleaded committing and aiding and abetting with respect to the allegation contained in the Indictment paragraphs at issue. The Appeals Chamber stated that these Indictment paragraphs: “provide a clear and precise indication that, with respect to [the allegation], both committing and aiding and abetting were being pursued. If the Prosecution had intended to charge [the Accused] with ordering [the allegation] in addition to committing and aiding and abetting them, it should have provided an equally clear and precise indication to this effect. To the extent that ordering did form part of the Prosecution's case, the Appeals Chamber considers that the specification of certain modes of liability in individual paragraphs created more ambiguity with respect to the pleading of ordering than if the Prosecution had failed to specify any modes of liability within the particular paragraphs at all.”).

<sup>1612</sup> Indictment, para. 33 (“On 8 April 1994, in furtherance of the agreement referred to above, Felix Niyoniringiye executed Mukarugambwa, a Tutsi businesswoman from Nyamyumba *commune* who was listed for extermination by Augustin Ngirabatware. By listing members of the Tutsi population, including Mukarugambwa for extermination,

considers that this specification indicates that the Prosecution did not charge Ngirabatware with commission as a mode of liability for this killing, even considering the Indictment as a whole.<sup>1613</sup> Accordingly, the Chamber will only consider whether Ngirabatware planned, instigated, ordered and/or aided and abetted this killing.

1344. The Indictment alleges that Ngirabatware substantially contributed to the killing of Mukarugambwa through his listing Tutsis for extermination. Because the Prosecution has not established this allegation, the Chamber does not find Ngirabatware guilty of genocide on the basis of this event.

#### 4.3.4 Conclusion

1345. Ngirabatware instigated and aided and abetted the killings of Tutsis in Nyamyumba *commune* through his role in distributing weapons and the words he uttered on 7 April 1994. The principal perpetrators committed these killings with genocidal intent, of which Ngirabatware had knowledge. The Chamber therefore finds Ngirabatware guilty of instigating and aiding and abetting genocide.

### 4.4 Complicity in Genocide

#### 4.4.1 Introduction

1346. Count 3 of the Indictment charges Ngirabatware with complicity in genocide pursuant to Article 2(3)(e) of the Statute, which is pleaded as an alternative to genocide.

#### 4.4.2 Law

1347. The jurisprudence of this Tribunal has treated complicity in genocide as the aiding and abetting, instigating, or procuring of genocide. Complicity in genocide by aiding and abetting requires knowledge of the specific genocidal intent of the principal perpetrators, while the other forms of complicity may require proof that the accomplice shared that specific intent. The accomplice's criminal participation may occur before or after the act of the principal perpetrator, and the accomplice need not be present during the commission of the crime.<sup>1614</sup>

#### 4.4.3 Deliberations and Conclusion

1348. The Chamber has found Ngirabatware guilty of genocide in relation to his actions on 7 April 1994. Since the Prosecution pleads complicity in genocide as an alternative to genocide, the Chamber dismisses this count in respect of this allegation.

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Augustin Ngirabatware planned, instigated, ordered and aided and abetted their killing by Felix Niyoniringiye and other *Interahamwe* militia.”).

<sup>1613</sup> See *Ntawukulilyayo*, Judgement (AC), para. 197.

<sup>1614</sup> See *Bagaragaza*, Sentencing Judgement (TC), paras. 22-23 (citing *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 500; *Kajelijeli*, Judgement (TC), para. 766; *Krnojelac*, Judgement (AC), para. 52; *Semanza*, Judgement (TC), paras. 386, 393; *Bagilishema*, Judgement (TC), para. 69; *Musema*, Judgement (TC), paras. 125, 177-183; *Tadić*, Judgement (AC), para. 229); *Blagojević & Jokić*, Judgement (AC), paras. 119-124; *Krstić*, Judgement (AC), paras. 137-144. See also *Nyiramasuhuko et al.*, Judgement (TC), para. 5980.

1349. In respect of the other allegations of genocide which the Prosecution has failed to establish beyond a reasonable doubt, for the same reasons, the Chamber acquits Ngirabatware of complicity in genocide.

1350. The Chamber therefore dismisses this charge in relation to Ngirabatware.

## 4.5 Direct and Public Incitement to Commit Genocide

### 4.5.1 Introduction

1351. Count 4 of the Indictment charges Ngirabatware with direct and public incitement to commit genocide under Article 2(3)(c) of the Statute.

### 4.5.2 Law

1352. The *actus reus* of direct and public incitement to commit genocide is that the accused must have directly and publicly incited the commission of genocide. The *mens rea* is that the accused had the intent to directly and publicly incite others to commit genocide. The *mens rea* required for the crime presupposes a genocidal intent.<sup>1615</sup>

1353. “Direct” incitement to commit genocide requires that the speech is a direct appeal to commit an act referred to in Article 2(2) of the Statute. It must be more than a vague or indirect suggestion, and an accused cannot be held accountable for this crime based on hate speech that does not directly call for the commission of genocide. However, even when a speech contains no explicit appeal to commit genocide, it may still constitute direct incitement to commit genocide in a particular context, so long as the speech is not considered ambiguous within that context. In order to determine the speech’s true meaning, it may be helpful to examine how it was understood by the intended audience. In the context of Rwanda, the culture and nuances of the Kinyarwanda language should be considered when determining what constitutes direct incitement to commit genocide.<sup>1616</sup>

1354. Direct and public incitement to commit genocide is an inchoate crime and is punishable even if no act of genocide has resulted from the incitement. The crime is completed as soon as the discourse in question is uttered. The fact that a speech leads to acts of genocide may be an indication that, in that particular context, the speech was understood to be an incitement to commit genocide, and that this was indeed the intent of the speaker.<sup>1617</sup>

1355. In discussing the “public” element of this crime, the Appeals Chamber has noted that “all convictions before the Tribunal for direct and public incitement to commit genocide involve speeches made to large, fully public assemblies, messages disseminated by the media, and communications made through a public address system over a broad public area”.<sup>1618</sup> Moreover,

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<sup>1615</sup> *Kalimanzira*, Judgement (AC), para. 155.

<sup>1616</sup> *Nahimana et al.*, Judgement (AC), paras. 692-693, 700-701, 703. See also *Nyiramasuhuko et al.*, Judgement (TC), para. 5986.

<sup>1617</sup> *Nahimana et al.*, Judgement (AC), paras. 678, 709, 720, 723. See also *Nzabonimana*, Judgement (TC), para. 1752.

<sup>1618</sup> *Kalimanzira*, Judgement (AC), paras. 155-156, citing *inter alia Bikindi*, Judgement (AC), paras. 50, 86; *Nahimana et al.*, Judgement (AC), paras. 758, 775, 862; *Kajelijeli*, Judgement (AC), paras. 105, 133; *Niyitegeka*,



the Appeals Chamber has taken into account the *travaux préparatoires* of the Genocide Convention, which confirm that “public” incitement to genocide pertains to mass communications. Conversely, the *travaux préparatoires* indicate that “private” incitement, understood as more subtle forms of communication such as conversations, private meetings, or messages, was specifically removed from the Convention.<sup>1619</sup>

### 4.5.3 Deliberations

#### 4.5.3.1 *Kanyabuhombo School, Early 1994*

1356. The Chamber recalls its finding that in early 1994, a meeting was held at Kanyabuhombo School. At least a few hundred people attended, including Ngirabatware, *Bourgmestre* Faustin Bagango, his assistant Edison Nsabimana, all of the *secteur conseillers*, MRND and CDR party leaders, and Witnesses ANAD, ANAN, DWAN-13, DWAN-71 and DWAN-47. Bagango commenced the meeting by introducing the officials and by asking for weapons to fight the *Inkotanyi*. After Bagango’s introduction, Ngirabatware spoke for at least an hour. Ngirabatware commended Bagango’s energy and the *Interahamwe*’s strength, discussed Rwandan history, called on intellectuals to join the MRND and CDR parties, and claimed that only these parties could safeguard Hutu interests by fighting the Tutsis. Ngirabatware also told the crowd that he would be providing weapons to the youth who were trained to use these weapons. Those in attendance understood that this speech was intended to fan ethnic hatred, and that the weapons were to be used to fight the Tutsis. About an hour after this meeting, Bagango went to the Nyamyumba *commune* office and distributed weapons to *Interahamwe* and *Impuzamugambi* leaders. Witness ANAN received six Uzi rifles and 15 grenades, which were immediately distributed to youths who had received the necessary training to use them (3.3.4).

1357. The Chamber has no doubt that Ngirabatware’s speech was given in a public location to a public audience. The audience included a few hundred people, and the testimony of Witnesses ANAD and ANAN clearly characterize the meeting as a rally that was open to the general public.

1358. However, the Chamber is not convinced beyond reasonable doubt that Ngirabatware’s speech directly appealed for the commission of genocide.

1359. The Chamber observes that Witnesses ANAD and ANAN understood the speech to be intended to fan ethnic hatred. Witness ANAD testified that the *bourgmestre* stated that the traditional weapons were not enough and that to enable the youth to fight the *Inkotanyi*, they needed weapons. He defined *Inkotanyi* as “armed persons who had attacked the country from abroad to free the country, because they wanted to seize power and they considered themselves as Rwandans of the diaspora”. He specified that the *Inkotanyi* were of Tutsi ethnicity. Similarly, Witness ANAN testified that the country had been attacked by the *Inyenzi* and that the authorities realized that they did not have sufficient troops, and therefore trained citizens to defend themselves.<sup>1620</sup> That Witness ANAD, who had been attacked by the *Interahamwe* twice

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Judgement (AC), para. 270; *Akayesu*, Judgement (AC), para. 238 (upholding a finding that a speech in a public place to a crowd of over 100 people to eliminate the “enemy” constituted direct and public incitement).

<sup>1619</sup> *Kalimanzira*, Judgement (AC), para. 158. See also *Nyiramasuhuko et al.*, Judgement (TC), para. 5987.

<sup>1620</sup> T. 9 February 2010, p. 43 (Witness ANAD); T. 1 February 2010, pp. 17-18 (Witness ANAN).

in 1993, stayed for the length of the speech and continued his walk towards Gisenyi following its completion indicates that it was not sufficiently direct to imply an imminent attack. Hate speech, though it may precede or accompany direct incitement to commit genocide, is not prohibited under Article 2(3)(c). Mobilizing hatred against an ethnic group is distinct from direct incitement to commit a violent act against an ethnic group.<sup>1621</sup>

1360. Accordingly, the Chamber finds that Ngirabatware has not been proven guilty beyond a reasonable doubt of direct and public incitement to commit genocide on the basis of his speech at the Kanyabuhombo School meeting.

#### 4.5.3.2 *Speeches at Roadblocks, February 1994*

1361. The Chamber has found, Judge Sekule dissenting, that following the murder of CDR Chairman Martin Bucyana, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune*. At Electrogaz he addressed the approximately 400 persons present, saying: “I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock.” A roadblock was subsequently established at Kitiraco after the death of President Habyarimana (3.4.4.1; 3.5.4).

1362. The Appeals Chamber has previously stated that instructions given at roadblocks do not constitute public incitement where the intended recipients of the message are limited to those persons manning the roadblock.<sup>1622</sup> However, these are not the circumstances here. Rather, the evidence establishes that although Ngirabatware delivered his speech at the Electrogaz roadblock, his intended audience was a group of 400 persons who had gathered there. The Chamber therefore has no doubt that Ngirabatware’s speech at the Electrogaz roadblock was made publicly and was intended for a public audience.

1363. However, the Chamber is unconvinced that Ngirabatware’s speech was sufficiently direct to constitute incitement to commit genocide. The Chamber notes that though Ngirabatware’s speech did not contain a direct appeal to commit an act prohibited by Article 2(2) of the Statute this does not necessarily render it ambiguous. The Chamber considers the context surrounding Ngirabatware’s speech and evidence of how the audience understood the speech insufficient to establish that it was a direct incitement to commit genocide.

1364. Furthermore, the Chamber recalls that direct and public incitement is an inchoate crime, therefore it is not necessary to prove that genocide was subsequently perpetrated, though evidence of the perpetration of genocide can assist in determining whether the accused possessed the requisite intent.<sup>1623</sup> The actions of the audience following the speech can also be indicative of how they understood the speech. The Chamber notes that although Ngirabatware instructed that a roadblock be established at Kitiraco, this roadblock was not set up until after the death of President Habyarimana some weeks later, and no evidence was adduced to prove that any killings occurred there.

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<sup>1621</sup> *Nahimana et al.*, Judgement (AC), para. 692.

<sup>1622</sup> *Kalimanzira*, Judgement (AC), para. 155, quoting *Nahimana et al.*, Judgement (AC), para. 862. See also *Nyiramasuhuko et al.*, Judgement (TC), para. 6008.

<sup>1623</sup> *Nahimana et al.*, Judgement (AC), para. 678.

1365. Accordingly, the Chamber does not find Ngirabatware guilty of direct and public incitement to commit genocide on the basis of his speech at the Electrogaz roadblock.

1366. Turning to the Cyanika-Gisa roadblock, the Chamber has also found that following the murder of Bucyana, Ngirabatware went to the Cyanika-Gisa tarred road in Nyamyumba *commune* to address the crowd and told them to “kill Tutsi”. “A group”, whose number may have been as high as between 150 and 250 people, were assembled at this location. Ngirabatware then gave 50,000 francs to Honoré Ndayamiyemshi to buy drinks and/or traditional weapons.

1367. The Chamber has no doubt that Ngirabatware’s speech fulfils the public element of the crime of direct and public incitement. The Appeals Chamber has previously stated that instructions given at roadblocks do not constitute direct and public incitement where the intended recipients of the message are limited to those persons manning the roadblock.<sup>1624</sup> However, the evidence clearly indicates that though Ngirabatware delivered his speech at a roadblock, the intended audience was a group that may have been composed of as many as 150 to 250 people who had gathered there as opposed to only those manning it.

1368. The Chamber is convinced beyond reasonable doubt that Ngirabatware’s speech constituted direct incitement to commit genocide. His instruction to “kill Tutsis” objectively and unambiguously called for an act of violence prohibited by Article 2(2) of the Statute, and the Chamber has no doubt that Ngirabatware made this statement with the intent to directly incite genocide.

1369. Accordingly, the Chamber finds Ngirabatware guilty of committing direct and public incitement to commit genocide on the basis of this event.

#### **4.5.4 Conclusion**

1370. Ngirabatware directly and publicly incited the commission of genocide at the Cyanika-Gisa roadblock after Martin Bucyana’s death in February 1994. The Chamber therefore finds Ngirabatware guilty of committing direct and public incitement to commit genocide.

### **4.6 Crimes Against Humanity**

#### **4.6.1 Introduction**

1371. In Counts 5 and 6 of the Indictment, the Prosecution charges Ngirabatware with extermination and rape as crimes against humanity pursuant to Articles 3(b) and 3(g) of the Statute, respectively.

#### **4.6.2 Widespread and Systematic Attack**

1372. An enumerated crime under Article 3 of the Statute constitutes a crime against humanity if it is proven to have been committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.<sup>1625</sup> The “attack” perpetrated against a civilian population refers to a series of acts of violence or of the kind of

<sup>1624</sup> *Kalimanzira*, Judgement (AC), para. 155, quoting *Nahimana et al.*, Judgement (AC), para. 862.

<sup>1625</sup> *Bagosora & Nsengiyumva*, Judgement (AC), paras. 389-390.

mistreatment referred to in subsections (a) through (i) of Article 3.<sup>1626</sup> The term “widespread” refers to the large-scale nature of the attack and the number of victims, whereas the term “systematic” refers to the organized nature of the acts of violence and the improbability of their random occurrence.<sup>1627</sup>

1373. Regarding the *mens rea*, the accused must have acted with knowledge of the broader context of the attack, and with knowledge that his or her act formed part of the widespread and systematic attack against the civilian population. The additional requirement that crimes against humanity have to be committed “on national, political, ethnic, racial or religious grounds” does not necessarily mean that the accused must have a discriminatory intent when committing the act.<sup>1628</sup>

1374. As a preliminary matter, the Chamber recalls that it has taken judicial notice that between 6 April 1994 and 17 July 1994, there were widespread or systematic attacks throughout Rwanda against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsis. As a result of the attacks, there were a large number of deaths of persons of the Tutsi ethnic identity.<sup>1629</sup> Nonetheless, the Prosecution still bears the burden of proving each element beyond a reasonable doubt.<sup>1630</sup>

1375. The Chamber has considered the totality of the evidence adduced in this case, especially as it relates to the ethnic composition of the people who were targeted for attack beginning on 7 April 1994. Starting on this date, weapons were distributed in Nyamyumba *commune* with the explanation that no Tutsis should remain in the *commune*. Thereafter, Tutsis were sought out and killed in Nyamyumba *commune* (3.10.4.7). Others were raped (3.14.5.3; 3.14.6.2). The evidence further establishes that the Gitsimbi/Cotagirwa roadblock in Nyamyumba *commune* served as a base of operations for persons who attacked, looted and killed civilians, mainly Tutsis.<sup>1631</sup>

<sup>1626</sup> *Nahimana et al.*, Judgement (AC), para. 918.

<sup>1627</sup> *Bagosora & Nsengiyumva*, Judgement (AC), para. 389, citing *Nahimana et al.*, Judgement (AC), para. 920, quoting *Kordić & Čerkez*, Judgement (AC), para. 94; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 516; *Gacumbitsi*, Judgement (AC), para. 101.

<sup>1628</sup> *Gacumbitsi*, Judgement (AC), paras. 86, 103; *Semanza*, Judgement (AC), paras. 268-269, quoting *Akayesu*, Judgement (AC), para. 467; *Kordić & Čerkez*, Judgement (AC), paras. 99-100; *Blaškić*, Judgement (AC), paras. 124, 126; *Kunarac et al.*, Judgement (AC), paras. 102-103.

<sup>1629</sup> Decision on the Prosecution’s Motion for Judicial Notice (TC), 30 March 2009, para. 1 (iii).

<sup>1630</sup> *Semanza*, Judgement (AC), para. 192.

<sup>1631</sup> See, for example, T. 15 February 2010, pp. 46, 49 (CS); T. 16 February 2010, p. 4; T. 17 February 2010, pp. 19-20 (Witness ANAO) (after President Habyarimana’s death, the instructions received by those manning the Gitsimbi/Cotagirwa roadblock was to kill not only Tutsis at the roadblocks, but in their homes as well); T. 16 August 2011, p. 65; T. 17 August 2011, p. 70 (CS); T. 18 August 2011, pp. 25-26, 86 (CS) (Witness DWAN-9) (The Gitsimbi/Cotagirwa roadblock was manned by killers, looters, bandits and thieves who would plan attacks to carry out at night. They targeted Tutsis and wanted to exterminate the Tutsi ethnic group. They also attacked rich Hutus married to Tutsi women. They could be bribed to spare a life.); T. 4 October 2011, pp. 7, 9-10 (CS); T. 5 October 2011, pp. 26-27; T. 6 October 2011, pp. 2-3, 12-13 (Witness DWAN-133) (The Gitsimbi/Cotagirwa roadblock was manned by bandits and thieves who would leave the roadblock to kill and loot. They manned it so that they could track down Tutsis in neighboring areas and to seek out Tutsis. Tutsis trying to cross the roadblock would be attacked or killed.); T. 11 July 2011, p. 61; T. 12 July 2011, pp. 38, 41-45 (CS) (Witness DWAN-147) (The persons manning this roadblock tried to kill and loot in Nyabagobe *cellule*. Although those manning the roadblock killed Tutsis, none were killed at this roadblock. Instead, they killed Tutsis in Rushubi *secteur* and other *secteurs*.); T. 16 June 2011, pp.

1376. The Chamber finds beyond reasonable doubt that after 6 April 1994, there was a widespread and systematic attack that was directed against the civilian population of Rwanda on ethnic grounds, in particular against members of the Tutsi ethnic group. Considering the nature of this attack, and the fact that it materialized in Nyamyumba *commune*, the Chamber finds beyond reasonable doubt that Ngirabatware and the principal perpetrators both knew of this widespread and systematic attack, and knew that their acts formed part of it.

#### **4.6.2.1 Extermination**

1377. In Count 5 of the Indictment, the Prosecution charges Ngirabatware with extermination as a crime against humanity under Article 3(b) of the Statute.

1378. As addressed in the Factual Findings, the Prosecution has not established beyond reasonable doubt any of the allegations pleaded in support of this charge. The Chamber therefore finds that Ngirabatware has not been proven guilty of extermination as a crime against humanity, insofar as he was charged with this crime.

1379. Accordingly, the Chamber finds Ngirabatware not guilty of extermination as a crime against humanity.

#### **4.6.2.2 Rape**

##### **4.6.2.2.1 Introduction**

1380. In Count 6 of the Indictment, the Prosecution charges Ngirabatware with rape as a crime against humanity under Article 3(g) of the Statute.

##### **4.6.2.2.2 Law**

1381. The *actus reus* of rape involves the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator. Consent for this purpose must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim. Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.<sup>1632</sup>

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60-61 (CS); T. 16 June 2011, p. 73 (Witness DWAN-3) (The roadblock was manned by bandits and thieves, who held meetings there to determine which Tutsis' houses to loot. No Tutsis were killed at the roadblock. The witness believed that she could have been killed there had her husband had not paid the *Interahamwe* to release her.); T. 7 July 2011, p. 78 (Witness DWAN-2) (*Interahamwe* manned this roadblock and tried to kill people hiding in Nyabagobe *cellule*); T. 27 June 2011, p. 37 (Witness DWAN-71) (the roadblock was manned by killers and looters).<sup>1632</sup> *Gacumbitsi*, Judgement (AC), para. 151, 155; *Kunarac et al.*, Judgement (AC), paras. 127-129, See also *Nyiramasuhuko et al.*, Judgement (TC), para. 6075.

#### **4.6.2.2.3 Deliberations**

##### **4.6.2.2.3.1 Rape as a Crime Against Humanity**

1382. The Chamber recalls its finding that a Tutsi named Chantal Murazemariya was abducted from her uncle's home and raped twice by *Interahamwe* named Juma and Makuze in Nyamyumba *commune* after the death of the President. The rape of Murazemariya occurred in the context of a larger attack directed specifically against the Tutsi population (3.14.5.3).

1383. The Chamber has no doubt that these events occurred without the consent of the victim and that the perpetrators would have known this fact.

1384. Therefore, the Chamber finds that this offence constitutes rape as a crime against humanity. It now turns to Ngirabatware's responsibility under the extended form of JCE.

##### **4.6.2.2.3.2 Existence of the JCE**

1385. The Chamber has found beyond reasonable doubt that Ngirabatware was a participant in a JCE with the common criminal purpose of destroying, in whole or in part, the Tutsi ethnic group as such, and exterminating the Tutsi population in Nyamyumba *commune*. Both Juma and Makuze were also members of this JCE (4.2.3).

##### **4.6.2.2.3.3 Awareness that Rape was a Foreseeable Consequence of the JCE**

1386. The Chamber observes that a significant number of Prosecution witnesses testified that Tutsi women were raped by the *Interahamwe* in the area of Nyamyumba *commune* during the time of the genocide in 1994. This evidence is contextualized by a substantial quantity of credible and reliable testimony that Tutsis were specifically targeted, attacked and killed in Nyamyumba *commune* starting on 7 April 1994. These attacks were perpetrated by *Interahamwe*, including those who manned roadblocks.

1387. The Chamber considers that during a JCE to destroy, in whole or in part, an ethnic group as such or exterminate a specific population, a natural and foreseeable consequence of that JCE will be that some members of this enterprise who participate in the destruction will resort to rapes and sexual assaults.<sup>1633</sup>

1388. The Chamber considers that the specific circumstances of the case clearly demonstrate that Ngirabatware was subjectively aware that the rape of Tutsis in Nyamyumba *commune* was a possible consequence of the JCE. Ngirabatware distributed weapons to the *Interahamwe* and verbally encouraged them to kill Tutsis on 7 April 1994 with genocidal intent. There is no doubt that Ngirabatware knew that these weapons would be used to perpetrate horrific violence against the Tutsi population of Nyamyumba *commune* in order to kill or seriously attack members of this group. The Chamber considers that it was entirely foreseeable to Ngirabatware that the *Interahamwe*, including Juma and Makuze, might rape Tutsis as part of the brutal attacks they had been encouraged to commit without restraint.

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<sup>1633</sup> See *Karempera & Ngirumpatse*, Judgement (TC), para. 1476.

1389. Furthermore, the Chamber notes that several witnesses testified of massacres against the Bagogwe Tutsis in 1992 and 1993.<sup>1634</sup> Witness ANAF testified that the Bagogwe killings were known to the international community and that Habyarimana had ordered that the perpetrators be jailed. This implies that it was also known of at the national level.<sup>1635</sup> At the *commune* level, Witness ANAJ specifically testified that Ngirabatware spoke at a meeting in Nyamyumba *commune* in 1993 of the Bagogwe massacres.<sup>1636</sup> Witness ANAK testified that he heard Ngirabatware discuss the Bagogwe massacres with his friends.<sup>1637</sup> Witness ANAJ testified that he was a victim of the attacks because he had a Tutsi wife.<sup>1638</sup> Witness ANAK further testified that Tutsis had been raped in Nyamyumba *commune* during these attacks.<sup>1639</sup> The Chamber has no doubt that Ngirabatware, as a native of Gisenyi *préfecture* who spent large amounts of time there, knew of such prior attacks. That rape occurred during these attacks is evidence that the possible reoccurrence of sexual violence during similar violence against the Tutsi population in 1994 was foreseeable on the basis of previous experience.

1390. Accordingly, the Chamber has no doubt that the rape of Tutsis was a natural and foreseeable consequence of the common criminal purpose and that Ngirabatware was at least subjectively aware that this was a possible consequence of the JCE.

#### **4.6.2.2.3.4 Acceptance of the Risk**

1391. The Chamber has found that Ngirabatware significantly contributed to the JCE by distributing weapons in Nyamyumba *commune* and encouraging the *Interahamwe* to kill Tutsis. In so doing, Ngirabatware willingly took the risk that the rape of Tutsis, such as Chantal Murazemariya, would be committed.

#### **4.6.2.2.4 Conclusion**

1392. Based on the totality of the evidence, the Chamber is satisfied beyond reasonable doubt that at the time he distributed weapons to the *Interahamwe*, including members of the JCE, and verbally encouraged them to kill Tutsis on 7 April 1994, Ngirabatware was aware of the possible consequence that those *Interahamwe*, including members of the JCE, might rape Tutsis as part of a widespread and systematic attack against the Tutsi population. By distributing the weapons, Ngirabatware significantly contributed to the JCE and demonstrated his willingness to take the risk that the rape of Tutsis, such as Chantal Murazemariya, would be committed.

1393. Accordingly, Ngirabatware is criminally responsible through a JCE in the extended form for the repeated rape of Chantal Murazemariya by Juma and Makuze in Nyamyumba *commune* in April 1994 as a crime against humanity.

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<sup>1634</sup> T. 30 September 2009, p. 72 (Witness ANAF); T. 7 October 2009, pp. 75-76; T. 8 October 2009, pp. 37, 40-41; T. 12 October 2009, p. 6 (Witness ANAJ).

<sup>1635</sup> T. 30 September 2009, p. 75 (Witness ANAF).

<sup>1636</sup> T. 7 October 2009, pp. 75-76; T. 8 October 2009, pp. 37, 40-41; T. 12 October 2009, p. 6 (Witness ANAJ).

<sup>1637</sup> T. 13 October 2009, p. 15 (CS); T. 19 October 2009, p. 18 (CS) (Witness ANAK).

<sup>1638</sup> T. 12 October 2009, p. 6 (Witness ANAJ).

<sup>1639</sup> T. 13 October 2009, p. 27 (CS) (Witness ANAK).

**CHAPTER V: VERDICT**

1394. For the reasons set out in this Judgement, having considered all evidence and submissions of the Parties, the Trial Chamber finds unanimously in respect of

**AUGUSTIN NGIRABATWARE** as follows:

- Count 1: WITHDRAWN (Conspiracy to Commit Genocide)
- Count 2: GUILTY of Genocide
- Count 3: DISMISSED (Complicity in Genocide)
- Count 4: GUILTY of Direct and Public Incitement to Commit Genocide
- Count 5: NOT GUILTY of Extermination as a Crime Against Humanity
- Count 6: GUILTY of Rape as a Crime Against Humanity



## CHAPTER VI: SENTENCING

### 6.1 Introduction

1395. Having found Augustin Ngirabatware guilty of crimes under the jurisdiction of the Tribunal, the Chamber must determine an appropriate sentence.

### 6.2 Law

1396. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>1640</sup> When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualize 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>1641</sup>

1397. The gravity of the offences committed is the deciding factor in the determination of the sentence.<sup>1642</sup> Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.<sup>1643</sup> It is not relevant, for the purpose of assessing gravity, that the crimes were committed in the accused's own *préfecture*, rather than at the national level.<sup>1644</sup>

1398. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable".<sup>1645</sup> However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.<sup>1646</sup> In light of this, the Appeals Chamber has recognized that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results".<sup>1647</sup>

1399. Pursuant to Article 23 of the Statute and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, any aggravating circumstances, any mitigating circumstances, and the extent to which the convicted person has already served any penalty imposed by a court of any State for the same act. These factors are not exhaustive.<sup>1648</sup>

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<sup>1640</sup> *Kayishema & Ruzindana*, Judgement (AC), para. 367 (quoting Article 1 of the Statute).

<sup>1641</sup> *Nahimana et al.*, Judgement (AC), para. 1037; *Kajelijeli*, Judgement (AC), para. 291.

<sup>1642</sup> *Nshogoza*, Judgement (AC), para. 98; *Nahimana et al.*, Judgement (AC), para. 1060.

<sup>1643</sup> *Rukundo*, Judgement (AC), para. 243.

<sup>1644</sup> *Kalimanzira*, Judgement (AC), para. 229.

<sup>1645</sup> *Dragomir Milošević*, Judgement (AC), para. 326; *Strugar*, Judgement (AC), para. 348; *Kvočka et al.*, Judgement (AC), para. 681.

<sup>1646</sup> *Dragomir Milošević*, Judgement (AC), para. 326; *Kvočka et al.*, Judgement (AC), para. 681.

<sup>1647</sup> *Dragomir Milošević*, Judgement (AC), para. 326 (citing *Limaj et al.*, Judgement (AC), para. 135; *Dragan Nikolić*, Judgement (AC), para. 19).

<sup>1648</sup> *Seromba*, Judgement (AC), para. 228; *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 290.

1400. Under Rwandan law, similar crimes as those at issue in the present case carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.<sup>1649</sup>

1401. Aggravating circumstances must be proven beyond a reasonable doubt.<sup>1650</sup> The Chamber may only consider aggravating circumstances that are pleaded in the indictment.<sup>1651</sup> Any circumstance included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.<sup>1652</sup>

1402. The Appeals Chamber has listed various factors which, if proven beyond a reasonable doubt, may qualify as aggravating circumstances. These include the position of the accused, the length of time during which the crime continued, premeditation, the vulnerability of the victims, the status of the victims and the circumstances of the offences generally.<sup>1653</sup> The Appeals Chamber has also held that an abuse of influence by the accused may be considered as an aggravating factor.<sup>1654</sup>

1403. Mitigating circumstances need only be established by a balance of probabilities,<sup>1655</sup> and while a trial chamber is obliged to consider any mitigating circumstances when determining the appropriate sentence, it enjoys a considerable degree of discretion in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded to that factor.<sup>1656</sup> Such circumstances include cooperation with the Prosecution, voluntary surrender, good character with no prior criminal convictions, comportment in detention, personal and family circumstances, indirect participation, age and assistance to detainees or victims. Poor health is to be considered only in exceptional or rare cases.<sup>1657</sup> Selective assistance of Tutsis may be given only limited weight as a mitigating factor.<sup>1658</sup>

1404. An absence of mitigating factors does not require the maximum sentence,<sup>1659</sup> while the existence of mitigating factors does not preclude a life sentence where the gravity requires that

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<sup>1649</sup> *Munyagishari*, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda (TC), 6 June 2012, paras. 68-71 (assessing Rwanda's penalty structure); *Uwinkindi*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011, paras. 48-50 (same); *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (same); *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (same). See also *Semanza*, Judgement (AC), para. 377 ("[T]he 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*, Judgement (AC), para. 30); *Dragan Nikolić*, Judgement (AC), para. 69.

<sup>1650</sup> *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), paras. 82, 294.

<sup>1651</sup> *Renzaho*, Judgement (AC), para. 615; *Simba*, Judgement (AC), para. 82.

<sup>1652</sup> *Ndindabahizi*, Judgement (AC), para. 137.

<sup>1653</sup> *Blaškić*, Judgement (AC), para. 686.

<sup>1654</sup> *Simba*, Judgement (AC), paras. 284-285.

<sup>1655</sup> *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 294.

<sup>1656</sup> *Lukić & Lukić*, Judgement (AC), para. 647; *Ntabakuze*, Judgement (AC), para. 264; *Kvočka et al.*, Judgement (AC), para. 715.

<sup>1657</sup> *Blaškić*, Judgement (AC), para. 696.

<sup>1658</sup> *Nchamihigo*, Judgement (AC), para. 389. See also *Rukundo*, Judgement (AC), para. 256; *Kajelijeli*, Judgement (AC), para. 311.

<sup>1659</sup> *Muvunyi II*, Judgement (AC), para. 70.

the maximum sentence be imposed.<sup>1660</sup> There is no category of case where a life sentence is required, or a category where a life sentence is barred.<sup>1661</sup>

1405. Rule 86(C) of the Rules states that “[t]he parties shall also address matters of sentencing in closing arguments”, and it is therefore the accused’s prerogative to identify any mitigating circumstances at the time. The Chamber also ordered the Parties to address matters of sentencing in their closing submissions.<sup>1662</sup> As a general rule, if an accused fails to put forward relevant information at the appropriate time, the Chamber is not under an obligation to seek out such information.<sup>1663</sup>

### 6.3 Submissions

1406. The Prosecution submits that Ngirabatware should receive the maximum sentence of life imprisonment for the crimes that he has committed. It asserts that Ngirabatware was one of the main architects of the genocide and crimes against humanity in his native *commune* of Nyamyumba, Gisenyi *préfecture* where he was an influential person. He committed these crimes as a leader, and there are no mitigating circumstances to justify a lower sentence. The Prosecution submits that Ngirabatware has shown no remorse for the crimes committed, refusing to recognize them and instead portraying himself as a victim.<sup>1664</sup>

1407. The Prosecution refers to various aggravating factors in this case. It argues that Ngirabatware was an academic and an active and dynamic politician, who abused his position as Minister of Planning. He was also the son-in-law of Felicien Kabuga, as well as a senior member of the MRND party. He used his connections, political power and education as a formidable think-tank of the Rwandan genocide, and as such is responsible for the murder and rape of Tutsis in Nyamyumba *commune*. It further argues that as Minister of Planning in both the Habyarimana and Kambanda governments, he exercised substantial influence over the physical perpetrators of the crimes in the JCE, using his status and authority to influence people to kill and rape innocent, unarmed civilians in order to retain his power and privilege as a member of the ruling political class.<sup>1665</sup>

1408. The Prosecution also points to the calculated and premeditated nature of his crimes, evidenced by the degree of preparation and coordination that was required to implement his criminal designs, as an aggravating factor.<sup>1666</sup>

1409. The Defence submits that Ngirabatware was a humble, efficient and respected professional, who loved his country and never discriminated based on ethnicity. He maintained good relations with Tutsis, propagated the ideas of peace and unity between Hutus and Tutsis and has rendered many years of loyal service to his country. For example, he was instrumental in generating the Rwandan economy and disseminating peace within Rwanda through the

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<sup>1660</sup> *Renzaho*, Judgement (AC), para. 612.

<sup>1661</sup> *Rukundo*, Judgement (AC), para. 260.

<sup>1662</sup> Addendum to the Scheduling Order for Closing Briefs and Arguments (TC), 23 April 2012, p. 2.

<sup>1663</sup> *Rukundo*, Judgement (AC), para. 255; *Bikindi*, Judgement (AC), para. 165; *Muhimana*, Judgement (AC), para. 231.

<sup>1664</sup> Prosecution Closing Brief, paras. 382, 388, 398-399; Prosecution Closing Argument, T. 24 July 2012, pp. 21-23.

<sup>1665</sup> Prosecution Closing Brief, paras. 382, 390-393; Prosecution Closing Argument, T. 24 July 2012, pp. 21-23.

<sup>1666</sup> Prosecution Closing Brief, paras. 394-397; Prosecution Closing Argument, T. 24 July 2012, pp. 21-22.

implementation of the Arusha Peace Accords. Furthermore, according to the Defence, his ministry contained the largest Tutsi representation in Rwanda. Prosecution Witness ANAP, a Tutsi and former staff member at his ministry, testified that Ngirabatware was sincerely happy to see her alive in Goma in 1995, while Ngirabatware testified that he transported the daughter of a member of the Rwandan Patriotic Front from Gitarama to Gisenyi on 30 or 31 May 1994.<sup>1667</sup>

1410. The Defence further submits that Ngirabatware has maintained exemplary conduct during his time in detention, and has no prior criminal record, a fact which remains unchallenged by the Prosecution. The Defence also reminds the Chamber of Ngirabatware's medical condition. These circumstances should serve as mitigation for the purposes of sentencing. The Defence requests that Ngirabatware be immediately released.<sup>1668</sup>

## 6.4 Deliberations

### 6.4.1 Gravity of the Offences

1411. The Chamber has found Ngirabatware guilty of committing direct and public incitement to commit genocide at the Cyanika-Gisa roadblock following CDR Chairman Martin Bucyana's death in February 1994. This is an inchoate offence, which the Prosecution has not linked with any subsequent attacks or killings, and which took place before the genocide commenced on 6 April 1994.<sup>1669</sup> The Chamber accepts that Ngirabatware's incitement may lack a heightened gravity, particularly in comparison to other cases that feature different circumstances. Nevertheless, this crime is a serious violation of international humanitarian law, and it requires genocidal intent. There is no doubt that its commission is inherently grave, regardless of the circumstances under which it was committed.

1412. The Chamber has also found Ngirabatware guilty of instigating and aiding and abetting genocide through his words and actions in distributing weapons on 7 April 1994, which substantially contributed to the killing of Tutsis in Nyamyumba *commune*. Ngirabatware also participated in a joint criminal enterprise, through which he was criminally responsible for the repeated rapes of Chantal Murazemariya as a crime against humanity. The Chamber observes that the number of Tutsis killed in Nyamyumba *commune* remains unknown, and that Ngirabatware was convicted in relation to the repeated rape of one individual. This in no way detracts from Ngirabatware's crimes, which were heinous and inherently grave.

### 6.4.2 Individual, Aggravating and Mitigating Circumstances

1413. The Chamber recalls its finding that Ngirabatware was a highly educated and influential personality in Nyamyumba *commune* and its surrounding areas throughout the relevant events in 1994 (3.1.4). Ngirabatware abused this position to prompt and encourage the genocide of Tutsis in his native *commune* of Nyamyumba. The Chamber considers this to be an aggravating factor.

1414. The Chamber recalls its finding that in early 1994, a meeting was held at Kanyabuhombo School, where Ngirabatware made inflammatory statements for at least an hour (3.3.4).

<sup>1667</sup> Defence Closing Argument, T. 25 July 2012, pp. 44-46.

<sup>1668</sup> Defence Closing Argument, T. 25 July 2012, pp. 48-50, 55.

<sup>1669</sup> See Decision on the Prosecution's Motion for Judicial Notice (TC), 30 March 2009, pp. 2, 4 (taking judicial notice that, between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda).

Furthermore, the Chamber recalls that it has found, Judge Sekule dissenting, that Ngirabatware was present at a CDR demonstration at Electrogaz roadblock in late February 1994. There, he addressed a crowd of approximately 400 demonstrators and asked that a roadblock be set up (3.4.4.1).

1415. As for the remaining Prosecution submissions on aggravating circumstances, in particular concerning premeditation, the Chamber recalls that an aggravating circumstance must be pleaded in the Indictment. The Prosecution, however, appears to refer primarily to meetings which were not pleaded in the Indictment.<sup>1670</sup> The Chamber therefore does not consider these to qualify as aggravating circumstances in this case.

1416. In mitigation, the Chamber has considered Ngirabatware's background and individual circumstances. The Chamber observes that Ngirabatware devoted some years of his life to the public service of his country, and the Chamber recalls that several witnesses testified that prior to 6 April 1994, Ngirabatware contributed to the development of his native region (3.1.3). The Chamber has borne in mind these contributions and accords them some weight.

1417. The Chamber is further mindful of the Defence submissions concerning Ngirabatware's positive attitude towards Tutsis.<sup>1671</sup> However, the Chamber does not consider these submissions to demonstrate a lack of discrimination against the Tutsi population as a whole, particularly in light of the other findings made above by the Chamber. Ngirabatware's selective assistance of Tutsis has not been established on a balance of probabilities, and in any event it would not qualify as a mitigating factor in this case.

1418. The Chamber also takes note of the Defence submissions with regards to sentencing and considers that no evidence substantiates its claims that Ngirabatware's conduct in detention was sound, that he had no prior criminal convictions, that his medical condition warrants exceptional mitigation in these circumstances, and that Ngirabatware propagated the ideas of peace and unity between Hutus and Tutsis in Rwanda.<sup>1672</sup>

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<sup>1670</sup> See Prosecution Closing Brief, paras. 395-397 (concerning a meeting in Umuganda Stadium, a meeting at Alphonse Bananiye's house on 8 April 1994, and a series of meetings in Nyamyumba *commune* in 1994 described by various Prosecution witnesses). To the extent that the Prosecution wishes to refer to the Kanyabuhombo School meeting, the Chamber considers this to be vague and improperly supported by the Prosecution's submissions. See Prosecution Closing Brief, para. 397, fn. 671 (supporting its submissions only by referring to the "testimony of ANAD, ANAN, ANAO, ANAL and ANAG"). The Chamber recalls that it ordered the Parties to provide appropriate citations, including precise references to the trial record, to support the assertions and arguments made in their Closing Briefs. See Scheduling Order for Closing Briefs and Arguments (TC), 29 March 2012, p. 3. The Chamber further recalls that it has previously reminded the Prosecution on numerous occasions that it must provide appropriate citations to support its written arguments, and the Chamber has warned the Prosecution, pursuant to Rule 46 (A) of the Rules, that omissions of precise citations could attract sanction. See, for example, Decision on Site Visit to the Republic of Rwanda (TC), 3 April 2012, paras. 19-21. The Chamber does not consider it in the interests of justice to attempt to interpret these submissions in the Prosecution Closing Brief, particularly because the Defence may have been prevented from understanding these submissions and responding to them accordingly during Closing Arguments.

<sup>1671</sup> T. 25 February 2010, p. 95 (CS) (Witness ANAP); T. 4 July 2011, pp. 11-14; T. 5 July 2011, pp. 19, 39-40 (Witness DWAN-7). See also T. 24 October 2011, p. 74 (Kayitana).

<sup>1672</sup> The Chamber notes the Defence arguments quoting a Togolese newspaper and his interview with Radio Rwanda on 24 May 1994, with regards to comments he allegedly made propagating the ideas of Hutu and Tutsi unity. The Chamber considers that these exhibits were tendered and used on the record, in order to substantiate Ngirabatware's

## 6.5 Conclusion

1419. The Chamber has the discretion to impose a single sentence and it chooses to do so.

1420. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Augustin Ngirabatware to:

### **35 YEARS' IMPRISONMENT**

## 6.6 Consequential Orders

1421. This sentence shall be enforced immediately and Ngirabatware shall receive credit for the time served since his arrest, pursuant to Rule 101(C) of the Rules. The Chamber observes that Ngirabatware was arrested on 17 September 2007.

1422. 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.

1423. Until his transfer to his designated place of imprisonment, Ngirabatware shall be kept in detention under the present conditions.

1424. Pursuant to Rule 102(A) of the Rules, on notice of appeal, if any,<sup>1673</sup> enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with Ngirabatware nevertheless remaining in detention.

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Second Alibi and as such do not carry any weight for sentencing purposes. See Defence Exhibit 111 (Excerpts from *Togo-Presse*, April 1994) (French); T. 29 November 2010, pp. 48-49 (Ngirabatware); Defence Exhibit 206 (Radio Rwanda Interview with Ngirabatware); T. 30 November 2010, pp. 5-6 (Ngirabatware). The Chamber further notes that that Defence Exhibit 96 (UNAMIR Code Cable, 23 March 1994) shows Ngirabatware's participation at meetings concerning the implementation of the Arusha Peace Accords, but it does not show Ngirabatware's actions or views expressed at these meetings. The Chamber considers that this document does not carry any weight for sentencing purposes.

<sup>1673</sup> The Chamber observes that any appeal will be heard by the Mechanism for International Criminal Tribunals ("MICT"), pursuant to Security Council Resolution 1966 (2010). The MICT shall have competence to conduct and complete any appellate proceedings in this case, however, only if and when any notice of appeal is filed before it. Because the MICT does not currently have such jurisdiction, the Chamber has mentioned above only the applicable practice and Rules of Procedure and Evidence in the ICTR.

Arusha, 21 February 2013

William H. Sekule  
Presiding Judge

Solomy Balungi Bossa  
Judge

Mparany Rajohnson  
Judge

[Seal of the Tribunal]

## DISSENTING OPINION OF JUDGE WILLIAM H. SEKULE

1. The Majority found it proven beyond a reasonable doubt that following the murder of CDR Chairman Martin Bucyana in February 1994, Ngirabatware went to the Electrogaz roadblock in Nyamyumba *commune* and addressed approximately 400 people there, saying: “I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock.” In so finding, the Majority reasoned that Prosecution Witness ANAN could be relied upon to prove this allegation without corroboration (3.4.4.1).

2. I disagree, respectfully, with the Majority in this instance. In my view, Witness ANAN’s uncorroborated testimony is insufficient to base a finding beyond reasonable doubt as to this allegation.

3. As noted elsewhere in the Judgement (3.4.4), there is evidence from Prosecution and Defence witnesses to the effect that CDR demonstrations were planned or occurred in Nyamyumba and Rubavu *communes* in the aftermath of Bucyana’s assassination. I accept this evidence and concur with the conclusion that these demonstrations took place.

4. Witness ANAN testified that such a demonstration took place at a civilian-manned roadblock at Electrogaz.<sup>1</sup> He is the only witness to testify about this alleged demonstration at Electrogaz and, more significantly, he stands alone in placing a civilian-manned roadblock in this area.<sup>2</sup> It may be possible that this roadblock existed and was of a temporary nature erected there for the purposes of the demonstration on that day,<sup>3</sup> but such a conclusion remains only a possibility as no evidence was adduced to that effect.

5. As Witness ANAN’s evidence on this issue is uncorroborated, I decline to act on it in order to base a finding beyond a reasonable doubt of the existence of this roadblock and of what happened there.

6. This does not impact the credibility of Witness ANAN, nor does it apply to the reliability of other aspects of his evidence. Indeed, I consider Witness ANAN to be credible as to this event but, for the reasons explained above, decline to act on his evidence alone on this allegation.

Arusha, 21 February 2013

William H. Sekule  
Judge

[Seal of the Tribunal]

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<sup>1</sup> T. 1 February 2010, pp. 32-35; T. 8 February 2010, pp. 94, 99 (CS) (Witness ANAN).

<sup>2</sup> For the quantity of evidence that only a military-manned roadblock existed at Electrogaz, see footnote above.

<sup>3</sup> See T. 16 February 2010, pp. 14-15 (Witness ANAO) (testifying that the Electrogaz roadblock consisted of a string or twine that ran across the road).



## ANNEX A: PROCEDURAL HISTORY

### A.1 Pre-Trial Proceedings

1. On 9 September 1999, the Prosecution submitted a draft indictment against Augustin Ngirabatware and Jean de Dieu Kamuhanda. This indictment was found to be insufficient, and the Prosecutor withdrew it on 27 September 1999.<sup>1</sup>
2. On 28 September 1999, the Prosecution filed a modified indictment charging Ngirabatware and Kamuhanda with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, the crimes against humanity of murder, extermination, rape and persecution, as well as outrages upon personal dignity and violence to life, health and physical or mental well-being as war crimes.<sup>2</sup> On 1 October 1999, Judge Navanethem Pillay confirmed the indictment and ordered its non-disclosure.<sup>3</sup>
3. Also on 1 October 1999, Judge Pillay requested that Belgium, Canada, France, the Netherlands and Switzerland search for, arrest, and transfer Ngirabatware to the Tribunal.<sup>4</sup> Judge Pillay addressed a similar request to Gabon on 26 November 1999, and to all Member States of the United Nations on 2 November 2000.<sup>5</sup>
4. On 7 November 2000, Trial Chamber II ordered that Kamuhanda be granted a trial separate from Ngirabatware.<sup>6</sup>
5. On 28 May 2001, Judge Pillay ordered the rescission of the non-disclosure order, thereby permitting the public dissemination of the confirmed Indictment and the arrest warrants for Ngirabatware.<sup>7</sup> On 8 November 2001, Judge Andréia Vaz issued a warrant to all States to arrest Ngirabatware.<sup>8</sup>
6. On 17 September 2007, Ngirabatware was arrested in Germany, and he was transferred to the Tribunal's custody on 8 October 2008.<sup>9</sup> Ngirabatware's initial appearance took place on 10 October 2008, and he pleaded not guilty to all charges.<sup>10</sup>

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<sup>1</sup> Daily Case Minutes, 30 September 1999, p. 1.

<sup>2</sup> Indictment, 28 September 1999.

<sup>3</sup> Confirmation of the Indictment and Order for Non-Disclosure, dated 1 October 1999, p. 3.

<sup>4</sup> Warrant of Arrest and Order for Transfer and Detention, dated 1 October 1999, pp. 2-3 (Belgium); Warrant of Arrest and Order for Transfer and Detention, dated 1 October 1999, pp. 2-3 (Canada); Warrant of Arrest and Order for Transfer and Detention, dated 1 October 1999, pp. 2-3 (France); Warrant of Arrest and Order for Transfer and Detention, dated 1 October 1999, pp. 2-3 (the Netherlands); Request for Arrest and Transfer, dated 1 October 1999, pp. 2-3 (Switzerland). Judge Navanethem Pillay also requested the arrest and transfer of Jean de Dieu Kamuhanda.

<sup>5</sup> Warrant of Arrest and Order for Transfer and Detention, 26 November 1999, pp. 2-3; Request for Arrest and Transfer, dated 2 November 2000, pp. 2-3.

<sup>6</sup> Decision on the Defence Motion for Severance and Separate Trial Filed by the Accused, 7 November 2000, pp. 3-4. Because the Chamber ordered that the case against Jean de Dieu Kamuhanda be assigned a new case number, the case against Augustin Ngirabatware retained Case Number ICTR-99-54.

<sup>7</sup> Rescission of the Non-Disclosure Order, Dated 28 May 2001, p. 6.

<sup>8</sup> Warrant of Arrest and Order for Transfer and Detention *Addressed to All States, pursuant to Rule 55 bis of the Rules*, 8 November 2001, pp. 2-3.

<sup>9</sup> See Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, paras. 1, 30.

<sup>10</sup> T. 10 October 2008, pp. 20-22, 24-27.

7. On 23 October 2008, the Prosecution filed a motion to amend the Indictment.<sup>11</sup> After the Defence was given additional time to respond to this motion,<sup>12</sup> the Chamber granted it, in part, on 29 January 2009.<sup>13</sup> The Prosecution filed an amended Indictment on 5 February 2009, charging Ngirabatware with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and extermination and rape as crimes against humanity.<sup>14</sup> At his further appearance on 9 February 2009, Ngirabatware pleaded not guilty to these charges.<sup>15</sup>

8. On 25 February 2009, the Chamber denied the Defence motion to vacate the trial date of 4 May 2009, but due to scheduling issues, ordered that the trial commence on 18 May 2009.<sup>16</sup> The Prosecution filed its Pre-Trial Brief on 19 March 2009.<sup>17</sup>

9. From 24 to 26 March 2009, the Chamber denied four Defence motions: one seeking disclosure of unspecified documents, another requesting a later trial date, a third praying for further disclosures under Rule 66 of the Rules, and a fourth moving for an order to strike the Prosecution's request to admit facts.<sup>18</sup>

10. On 30 March 2009, the Chamber took judicial notice of various facts concerning the genocide and state of affairs in Rwanda in 1994.<sup>19</sup> Following a Defence request, the Chamber ordered the Prosecution, on 8 April 2009, to amend the Indictment by providing further detail in two paragraphs.<sup>20</sup> The Prosecution filed its Amended Indictment on 14 April 2009.<sup>21</sup>

11. On 15 April 2009, the Chamber granted the Defence motion seeking certification to appeal the Decision denying a later trial date.<sup>22</sup> On 6 May 2009, the Chamber granted protective measures to Prosecution witnesses and ordered the timely disclosure of identifying information to the Defence.<sup>23</sup> On 12 May 2009, the Appeals Chamber granted the Defence appeal and

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<sup>11</sup> Prosecutor's Motion for Leave to Amend the Indictment, 23 October 2008.

<sup>12</sup> Decision on Defence Motion for Extension of Time to Respond to Prosecutor's Motion for Leave to Amend the Indictment Filed on 23 October 2008 (TC), 30 December 2008, p. 3.

<sup>13</sup> Decision on Prosecution Motion for Leave to Amend the Indictment (TC), 29 January 2009, p. 11.

<sup>14</sup> Amended Indictment, filed 5 February 2009.

<sup>15</sup> T. 9 February 2009, pp. 28-30.

<sup>16</sup> Decision on Defence Motion to Vacate Trial Date of 4 May 2009 (TC), 25 February 2009, p. 4.

<sup>17</sup> The Prosecutor's Pre-Trial Brief (filed pursuant to Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence), 19 March 2009.

<sup>18</sup> Decision on Ngirabatware's Motion for Disclosure Pursuant to Rule 68 (TC), 24 March 2009, p. 3; Decision on Defence Motion to Vary Trial Date (TC), 25 March 2009, p. 6; Decision on Ngirabatware's Motions under Rule 66 (TC), 26 March 2009, p. 4; Decision on Defence Motion to Strike the Prosecutor's Request to Augustin Ngirabatware to Admit Facts Pursuant to Rule 73 *bis* (B)(ii) of the Rules (TC), 26 March 2009, p. 4.

<sup>19</sup> Decision on the Prosecution's Motion for Judicial Notice (TC), 30 March 2009, pp. 2-4.

<sup>20</sup> Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment (TC), 8 April 2009, p. 11.

<sup>21</sup> Amended Indictment, filed 14 April 2009.

<sup>22</sup> Decision on Defence Motion for Certification to Appeal the Trial Chamber's Decision of 25 March 2009 on Defence Motion to Vary Trial Date (TC), 15 April 2009, p. 6. On 27 April 2009, the Presiding Judge of the Appeals Chamber assigned the Bench to hear this matter. See Order Assigning Judges to a Case Before the Appeals Chamber (AC), 27 April 2009, p. 2.

<sup>23</sup> Decision on Prosecution's Motion for Special Protective Measures for Prosecution Witnesses and Others (TC), 6 May 2009, p. 7.

remanded the determination of a new trial date to the Trial Chamber.<sup>24</sup> On 13 May 2009, the Chamber, ordered written submissions in order to determine an appropriate trial date.<sup>25</sup>

12. On 19 May 2009, the Chamber directed the Prosecution to file its revised Pre-Trial Brief, which the Prosecution submitted on 25 May 2009.<sup>26</sup> On 29 May 2009, Defence Co-Counsel was informed of her assignment.<sup>27</sup> On 2 June 2009, the Chamber granted, in part, the Defence motion objecting to the Prosecution Pre-Trial Brief, and ordered the Prosecution to clarify various paragraphs and to submit a new exhibit list.<sup>28</sup> The Prosecution filed its clarifications and a revised exhibit list on 8 June 2009.<sup>29</sup>

13. On 12 June 2009, the Chamber set the commencement of trial for 3 August 2009.<sup>30</sup> On 16 June 2009, the Registrar withdrew the individual who was Lead Counsel for the Defence.<sup>31</sup> On 25 June 2009, the Chamber ordered the Prosecution to supplement its Pre-Trial Brief.<sup>32</sup> New Lead Counsel for the Defence was appointed on 1 July 2009.<sup>33</sup>

14. On 15 July 2009, the Chamber directed the Registry to send to the Defence transcript pages and exhibits under seal in the *Nahimana et al.* case.<sup>34</sup> That same day, it postponed the commencement of trial until 23 September 2009, based largely on the recent appointment of new Lead Counsel for the Defence.<sup>35</sup> The Defence sought certification to appeal this schedule, which the Chamber denied on 10 August 2009.<sup>36</sup>

15. On 24 August 2009, the Chamber dismissed the Defence request to amend its admission of certain facts.<sup>37</sup> On 16 September 2009, the Chamber requested Belgium to provide the

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<sup>24</sup> Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date (AC), 12 May 2009, para. 33.

<sup>25</sup> Scheduling Order (TC), 12 May 2009, p. 2.

<sup>26</sup> T. 19 May 2009, p. 12; The Prosecutor's Revised Pre-Trial Brief, 25 May 2009.

<sup>27</sup> Letter from Pascal Besnier, Chief of Defence Counsel and Detention Management Section, to Ms. Mylène Dimitri, 29 May 2009.

<sup>28</sup> Decision on Defence Motion Objecting to the Prosecution's Pre-Trial Brief (TC), 2 June 2009, p. 18.

<sup>29</sup> Prosecution's Clarifications to Revised Pre-Trial Brief Made Pursuant to Court Order Dated 02 June 2009 and Rule 73 (B) *bis* of the Rules of Procedure and Evidence, filed 8 June 2009.

<sup>30</sup> Decision on Trial Date (TC), 12 June 2009, p. 14.

<sup>31</sup> Decision Withdrawing Professor David Thomas as Counsel for the Accused Augustin Ngirabatware (Registrar), 16 June 2009, p. 2.

<sup>32</sup> Decision on Defence Motion Objecting to the Prosecution's Pre-Trial Brief (TC), 2 June 2009, p. 14.

<sup>33</sup> See Decision on Defence Motion for Certification to Appeal the Trial Chamber Decision on Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Trial Date Rendered on 15 July 2009 (TC), 10 August 2009, para. 2.

<sup>34</sup> Decision on Extremely Urgent and Confidential Defence Motion for Disclosure of Closed Session Testimony of Prosecution Witness AHI in *Nahimana et al.* and Associated Exhibits Filed Under Seal (TC), 15 July 2009, pp. 3-4.

<sup>35</sup> Decision on Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Trial Date (TC), 15 July 2009, p. 9.

<sup>36</sup> Decision on Defence Motion for Certification to Appeal the Trial Chamber Decision on Defence Extremely Urgent Motion for Reconsideration of the Trial Chamber's Decision on the Trial Date Rendered on 15 July 2009 (TC), 10 August 2009, p. 6.

<sup>37</sup> Decision on Defence Request for an Amendment to the Response of Ngirabatware to Prosecutor's Request to Admit Facts (TC), 24 August 2009, p. 9.

Defence with documents and assistance.<sup>38</sup> On 17 September 2009, the Chamber denied the Defence motion to postpone the start of trial.<sup>39</sup>

## A.2 Trial Proceedings

### A.2.1 Prosecution Case-in-Chief

16. The Prosecution case-in-chief commenced on 23 September 2009.

17. On 2 October 2009, the Chamber ordered the temporary transfer of two detained witnesses.<sup>40</sup> The Defence sought certification to appeal the Chamber's Decision of 17 September 2009 declining a further postponement of the trial, which the Chamber denied on 5 October 2009.<sup>41</sup> On 13 October 2009, the Chamber denied a Defence request to postpone the testimony or cross-examination of Prosecution Witness ANAE.<sup>42</sup> On 28 October 2009, the Chamber permitted the Defence to meet with Prosecution Witness ANAE's husband in the presence of the Prosecution.<sup>43</sup>

18. On 30 October 2009, the Chamber ordered an investigation into possible violations of its protective measures for Prosecution Witness ANAF.<sup>44</sup> On 2 December 2009, the Chamber denied the Defence motion for certification to appeal the oral rulings about the permissible scope of cross-examination and the disclosure of Prosecution notes.<sup>45</sup> On 4 December 2009, the Chamber requested that France and Belgium provide documents and other assistance to the Defence.<sup>46</sup>

19. On 27 January 2010, the Chamber denied the Defence motion to adjourn the proceedings.<sup>47</sup> On 28 January 2010, the Chamber permitted the Prosecution to drop Witnesses ANAB, ANAI and ANAQ, and to add Witnesses AFS, ANAR, ANAS, ANAT and ANAU, who

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<sup>38</sup> Decision on Defence Urgent Motion for an Order Directed at the Kingdom of Belgium Pursuant to Article 28 of the Statute (TC), 16 September 2009, p. 4.

<sup>39</sup> Decision on Defence Extremely Urgent Motion on Issues Related to the Preparation of the Trial (TC), 17 September 2009, p. 10.

<sup>40</sup> Decision on Prosecutor's Urgent Requests for an Order Transferring Detained Witnesses ANAQ and ANAI Pursuant to Rule 90 *bis* (TC), 2 October 2009, p. 3.

<sup>41</sup> Decision on Defence Motion for Certification to Appeal the Trial Chamber Decision Dated 17 September 2009 (TC), 5 October 2009, p. 6.

<sup>42</sup> T. 13 October 2009, pp. 55-56 (CS).

<sup>43</sup> Decision on Defence Motion for Leave to Meet with the Husband of Witness ANAE and for Postponement of Her Testimony (TC), 28 October 2009, p. 6.

<sup>44</sup> Decision on Prosecution Oral Motion for Rule 77 Investigation Related to Witness ANAF (TC), 30 October 2009, pp. 4-5.

<sup>45</sup> Decision on Defence Motion for Certification of the Chamber's Oral Rulings of 29 and 30 September 2009 (TC), 2 December 2009, p. 7.

<sup>46</sup> Decision on Defence Urgent Motion Requesting an Order Directed to France Pursuant to Article 28 of the Statute (TC), 4 December 2009, p. 5; Decision on Defence Urgent Motion for an Order Directed at the Kingdom of Belgium Pursuant to Article 28 of the Statute (TC), 4 December 2009, pp. 2-3.

<sup>47</sup> Decision on Defence Motion to Adjourn Proceedings from 1 to 3 February 2010 (TC), 27 January 2010, p. 7.

would be covered by protective measures.<sup>48</sup> On 9 February 2010, the Chamber ordered various protective measures for Defence witnesses.<sup>49</sup>

20. On 16 February 2010, the Chamber directed the Defence to disclose its alibi evidence as soon as practicable.<sup>50</sup> On 22 February 2010, the Chamber denied the Defence motion for certification to appeal the 28 January 2010 Decision allowing the Prosecution to vary its witness list.<sup>51</sup> That same day, the Chamber ordered that two detained witnesses be temporarily transferred to the Tribunal's detention facilities.<sup>52</sup> On 23 February 2010, the Chamber ruled that there was no basis for excluding documents disclosed by the Prosecution with regard to Witness ANAP.<sup>53</sup>

21. On 9 March 2010, the Chamber declined to compel the Defence to disclose material it obtained from a Prosecution witness.<sup>54</sup> On 12 March 2010, the Chamber denied a Defence motion to postpone a witness' testimony.<sup>55</sup> On the same day, the Chamber initiated contempt proceedings against Aphrodis Bugimgo, issued an order in lieu of an indictment, and directed the Registry to appoint *amicus curiae* to prosecute the matter.<sup>56</sup>

22. On 23 March 2010, the Chamber denied the Prosecution motion for a site visit.<sup>57</sup> On 31 March 2010, the Chamber denied the Defence motion for reconsideration of its Decision granting protective measures for Defence witnesses,<sup>58</sup> and encouraged the Holy See to resume communication with the Defence.<sup>59</sup>

23. On 15 April 2010, the Chamber issued a Scheduling Order and dismissed as moot the Defence motion for reconsideration of, or certification to appeal, the trial schedule.<sup>60</sup> On 16 April 2010, the Chamber directed the Defence to disclose immediately the particulars of the witnesses and evidence upon which it intended to rely for its alibi.<sup>61</sup>

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<sup>48</sup> Decision on Prosecution Motion for Leave to Vary Its Witness List (TC), 28 January 2010, p. 15.

<sup>49</sup> Decision on Defence Urgent Motion for Witness Protective Measure (TC), 9 February 2010, pp. 8-9.

<sup>50</sup> Decision on Prosecution Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 February 2010, p. 9.

<sup>51</sup> Decision on Defence Motion for Certification to Appeal the Decision on Variation of Prosecution Witness List (TC), 22 February 2010, p. 7.

<sup>52</sup> Decision on the Prosecutor's Urgent Request for an Order Transferring Detained Witnesses Pursuant to Rule 90*bis* (TC), 22 February 2010, pp. 4-5.

<sup>53</sup> T. 23 February 2010, pp. 2-3.

<sup>54</sup> T. 9 March 2010, pp. 2-3.

<sup>55</sup> Decision on Defence Urgent Motion to Postpone the Testimony of Witness ANAC (TC), 12 March 2010, p. 5.

<sup>56</sup> Decision on Allegations of Contempt (TC), 12 March 2010, p. 4.

<sup>57</sup> Decision on the Prosecution Motion for a Site Visit (TC), 23 March 2010, p. 4.

<sup>58</sup> Decision on Defence Motion for Reconsideration of the Decision on the Defence Motion for Protective Measures of 9 February 2010 (TC), 31 March 2010, p. 7.

<sup>59</sup> Decision on Defence Motion Requesting an Order Directed to the Holy See (TC), 31 March 2010, pp. 5-6.

<sup>60</sup> Scheduling Order (TC), 15 April 2010, p. 3; Decision on Defence Motion for Reconsideration, or, in the Alternative, Certification to Appeal the Oral Decision of 18 March 2010 (TC), 15 April 2010, p. 3.

<sup>61</sup> Decision on Prosecutor's Supplementary Motion to Compel the Accused to Disclose Particulars of His Alibi (TC), 16 April 2010, p. 7.

24. On 27 April 2010, the Chamber requested the cooperation of the World Bank in providing documents and information to the Defence.<sup>62</sup> On 28 April 2010, the Chamber requested similar cooperation from Belgium, Senegal, and Switzerland.<sup>63</sup>
25. On 24 May 2010, the Chamber granted the Prosecution's withdrawal of Witness ANAC, and ordered that if the Prosecution did not move to vary its witness list further by 24 June 2010, then the Chamber would deem its case-in-chief closed.<sup>64</sup> On 28 May 2010, the Chamber denied the Defence request for cooperation from Belgium relating to Witness ANAV.<sup>65</sup>
26. On 3 June 2010, the Chamber declined to exercise any inherent power to remove Indictment paragraphs alleging the diversion of funds.<sup>66</sup> On 29 June 2010, the Chamber denied certification to appeal the Decision of 24 May 2010.<sup>67</sup>
27. On 6 July 2010, the Chamber ordered the Registrar to appoint *amicus curiae* to investigate allegations of contempt arising out of the testimonies of Prosecution Witnesses ANAU, ANAS and ANAT.<sup>68</sup> On 7 July 2010, the Chamber declined to reconsider the admission into evidence of four Prosecution exhibits.<sup>69</sup>
28. On 15 July 2010, the Chamber ordered that Witnesses ANAW, DAK and AHJ be added to the Prosecution witness list, and that the Prosecution case-in-chief would recommence on 23 August 2010.<sup>70</sup> That same day, the Chamber took judicial notice of the contents of a map of Rwanda,<sup>71</sup> and denied the Defence's second request for reconsideration of the protective measures for Defence witnesses.<sup>72</sup>
29. On 24 August 2010, the Chamber denied the Defence motion for certification to appeal the Decision of 7 July 2010,<sup>73</sup> and denied a Prosecution request to take Witness ANAW's testimony by video-link.<sup>74</sup> In an Oral Decision that same day, the Chamber denied a Defence

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<sup>62</sup> Decision on Defence Motion Requesting an Order Directed at the World Bank Pursuant to Article 28 (TC), 27 April 2010, p. 5.

<sup>63</sup> Decision on Defence Motion for an Order Directed at the Kingdom of Belgium (TC), 28 April 2010, p. 4; Decision on Defence Motion Requesting an Order Directed at the Republic of Senegal (TC), 28 April 2010, pp. 4-5; Decision on Defence Motion for an Order Directed at Switzerland (TC), 28 April 2010, p. 4.

<sup>64</sup> Decision on Prosecution Motion to Vacate the Trial Date (TC), 24 May 2010, p. 9.

<sup>65</sup> Decision on Defence Motion for an Order Directed at the Kingdom of Belgium Regarding Witness ANAV (TC), 28 May 2010, p. 5.

<sup>66</sup> Decision on Defence Motion for Immediate Withdrawal of the Allegation of Diversion of Funds (TC), 3 June 2010, p. 4.

<sup>67</sup> Decision on Defence Motion for Certification to Appeal the Trial Chamber's Decision on Prosecution Motion to Vacate the Trial Date (TC), 29 June 2010, p. 6.

<sup>68</sup> Decision on Prosecution Oral Motions for Amendment of the Chamber's Decision on Allegations of Contempt (TC), 6 July 2010, p. 6.

<sup>69</sup> Decision on Defence Motion for Reconsideration of the Trial Chamber's Oral Decisions Rendered on 23 September 2009 (TC), 7 July 2010, p. 6.

<sup>70</sup> Decision on Prosecution Motion of 24 June 2010 for Leave to Vary Its Witness List (TC), 15 July 2010, p. 10.

<sup>71</sup> Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 15 July 2010, p. 6.

<sup>72</sup> Decision on Defence Motion for Second Reconsideration of Witness Protective Measures (TC), 15 July 2010, p. 7.

<sup>73</sup> Decision on Defence Motion for Certification to Appeal the Decision on Reconsideration of Oral Decisions Rendered on 23 September 2009 (TC), 24 August 2010, p. 7.

<sup>74</sup> T. 24 August 2010, pp. 13-14.

motion for withdrawal of Prosecution Witness Joseph Ngarambe, or for postponement of his testimony for sixty days.<sup>75</sup> On 25 August 2010, the Chamber partially granted a Defence request for additional time to review official transcripts of audiotapes of an interview with Ngarambe.<sup>76</sup>

30. On 26 August 2010, the Chamber granted a Prosecution motion to hear Witness ANAW's evidence via video-link.<sup>77</sup> On 30 August 2010, the Chamber denied the Defence motion for reconsideration of its Decision of 26 August 2010.<sup>78</sup>

31. The Prosecution closed its case-in-chief on 31 August 2010.<sup>79</sup> The Prosecution case-in-chief spanned three sessions: from 23 September through 22 October 2009, from 25 January through 18 March 2010, and from 23 August through 31 August 2010. Over the course of 53 trial days, the Prosecution called 20 witnesses and tendered 28 exhibits that were admitted into evidence.

### **A.2.2 Defence Case**

32. On 14 October 2010, the Chamber denied the Defence motion for judgement of acquittal on 45 paragraphs of the Indictment, granted the Prosecution request to withdraw 15 paragraphs of the Indictment, and scheduled the Pre-Defence Conference for 25 October 2010.<sup>80</sup>

33. On 15 October 2010, the Chamber directed WVSS to obtain, from the husband of Prosecution Witness ANAE, a signed statement indicating his willingness to testify as a Defence witness.<sup>81</sup> On 25 October 2010, the Chamber held the Pre-Defence Conference.<sup>82</sup> On 11 November 2010, the Chamber denied the Defence motion for certification to appeal the Decision concerning judgement of acquittal.<sup>83</sup>

34. On 15 November 2010, the Chamber heard oral submissions by the Parties concerning the Prosecution motion to postpone the commencement of the Defence case.<sup>84</sup> In an Oral Decision on 16 November 2010, the Chamber denied this motion, ordered the Defence to disclose further information concerning its witnesses, and ordered that the Defence case begin immediately.<sup>85</sup>

35. The Defence case commenced on 16 November 2010.

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<sup>75</sup> T. 24 August 2010, pp. 21-22.

<sup>76</sup> T. 25 August 2010, pp. 21-22.

<sup>77</sup> T. 26 August 2010, pp. 14-16.

<sup>78</sup> T. 30 August 2010, p. 13.

<sup>79</sup> T. 31 August 2010, p. 56.

<sup>80</sup> Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, para. 3, p. 12; Scheduling Order (TC), 14 October 2010, p. 3.

<sup>81</sup> Decision on Defence Motion for Reconsideration of the Decision Rendered on 28 October 2009 (TC), 15 October 2010, para. 34, p. 10.

<sup>82</sup> See generally T. 25 October 2010.

<sup>83</sup> Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for Judgement of Acquittal (TC), 11 November 2010, p. 6.

<sup>84</sup> T. 15 November 2010, pp. 2-22.

<sup>85</sup> T. 16 November 2010, pp. 2-5.

36. On 23 November 2010, the Chamber requested the cooperation of Togo in facilitating a meeting between the Defence and a Togolese national.<sup>86</sup> On 25 November 2010, the Chamber admitted into evidence nine telegrams concerning persons taking refuge at the French Embassy in Kigali between 7 and 12 April 1994.<sup>87</sup>

37. On 6 December 2010, the Chamber directed the Prosecution to begin its cross-examination of Ngirabatware that day, but deferred the cross-examination on the newly raised alibis until 17 January 2011.<sup>88</sup> On 14 December 2010, the Chamber ordered that the husband of Prosecution Witness ANAE be added to the Defence witness list, and be covered by the protective measures for Defence witnesses.<sup>89</sup>

38. On 5 January 2011, the Defence filed a motion before the Bureau for the disqualification of Trial Chamber II's Judges.<sup>90</sup> On 10 January 2011, the Bureau granted the Prosecution additional time to file its Response.<sup>91</sup> On 17 January 2011, when the next trial session was scheduled to resume,<sup>92</sup> the Chamber adjourned the proceedings pending the Decision of the Bureau.<sup>93</sup> On 25 January 2011, the Bureau denied the Defence motion for disqualification.<sup>94</sup> The following day, the Chamber instructed the Court Management Section to inform the Parties that the proceedings would resume on 31 January 2011.<sup>95</sup>

39. On 27 January 2011, the Chamber denied the Defence motion to reconsider its Decision deferring the cross-examination of Ngirabatware on the newly raised alibis.<sup>96</sup> On 31 January 2011, the Chamber adjourned the proceedings for three days, until after the funeral of Ngirabatware's brother.<sup>97</sup> On 1 February 2011, the Chamber dismissed as moot three Prosecution motions for Defence disclosure.<sup>98</sup> On 3 February 2011, the proceedings resumed,<sup>99</sup> and the Chamber denied the Defence motion to exclude evidence falling outside the Tribunal's temporal jurisdiction.<sup>100</sup>

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<sup>86</sup> Decision on Defence Motion Requesting an Order Directed at the Togolese Republic (TC), 23 November 2010, p. 4.

<sup>87</sup> Decision on Defence Motion for Admission of Documentary Evidence (TC), 25 November 2010, p. 4.

<sup>88</sup> T. 6 December 2010, pp. 1-4.

<sup>89</sup> Decision on Defence Motion for Variation of Protective Measures for Prosecution Witnesses and Others (TC), 14 December 2010, p. 7.

<sup>90</sup> Defence Motion for Disqualification of the Judges of the Trial Chamber, 5 January 2011.

<sup>91</sup> Decision on Prosecutor's Extremely Urgent Motion for Extension of Time to File Response to Defence Motion for Disqualification of Trial Chamber II's Judges (Bureau), 10 January 2011, p. 3.

<sup>92</sup> See, for example, T. 14 December 2010, pp. 53, 59.

<sup>93</sup> T. 17 January 2011, p. 2.

<sup>94</sup> Decision on the Defence Motion for the Disqualification of the Judges of the Trial Chamber (Bureau), 25 January 2011, p. 23.

<sup>95</sup> Order for the Resumption of Trial In the Matter of "The Prosecutor vs. Augustin Ngirabatware" (ICTR-99-54-T) (CMS), 26 January 2011, paras. 1, 5.

<sup>96</sup> Decision on Defence Motion for Reconsideration of the Oral Decision Rendered on 6 December 2010 (TC), 27 January 2011, p. 8.

<sup>97</sup> T. 31 January 2011, pp. 4-5.

<sup>98</sup> Decision on Three Prosecution Motions to Compel Immediate Disclosure by the Defence (TC), 1 February 2011, p. 5.

<sup>99</sup> See generally T. 3 February 2011.

<sup>100</sup> Decision on Defence Motion to Exclude Evidence Falling Outside the Temporal Jurisdiction of the Tribunal (TC), 3 February 2011, p. 5.



40. On 9 February 2011, the Chamber denied an oral Prosecution motion to admit into evidence documents obtained from Senegal.<sup>101</sup> On 14 February 2011, the Chamber granted in part a Defence motion to exclude evidence, and excluded the testimony pertaining directly to four allegations that both Parties appeared to agree were not part of the Prosecution's case against Ngirabatware.<sup>102</sup>

41. On 28 February 2011, the Chamber issued a Scheduling Order that, in part, directed the Defence to file an updated witness list and to identify the order of appearance of its next 20 witnesses.<sup>103</sup> The Defence filed an Amended Pre-Defence Brief on 4 March 2011.<sup>104</sup> On 9 March 2011, the Chamber denied a Prosecution motion to compel a reduction in the Defence witness list and to order the disclosure of additional witness statements, and dismissed as moot the Prosecution request concerning the Defence order of appearance.<sup>105</sup>

42. On 15 March 2011, the Chamber requested that Egypt assist in facilitating a meeting between the Defence and an Egyptian national.<sup>106</sup> On 30 March 2011, the Chamber requested the assistance of France in providing immigration and other records of six listed Defence witnesses, and directed the Prosecution to disclose these records once obtained.<sup>107</sup>

43. On 1 April 2011, the Chamber ordered the Prosecution to disclose immediately the audio records of various Radio Rwanda broadcasts of April and May 1994,<sup>108</sup> but denied the Defence motion for disclosure of the broadcast of 4 March 1994.<sup>109</sup> On 11 April 2011, the Chamber denied the Defence motions to reconsider the admission into evidence of four Prosecution exhibits,<sup>110</sup> and to admit written statements in lieu of oral testimony.<sup>111</sup>

44. On 12 April 2011, the Chamber rendered four Decisions: denying a second Defence motion to admit written statements in lieu of oral testimony,<sup>112</sup> granting a Defence motion to authorize Defence Witness DWAN-7 to testify via video-link,<sup>113</sup> and denying the Defence

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<sup>101</sup> T. 9 February 2011, pp. 56-57.

<sup>102</sup> Decision on Defence Motion to Exclude Evidence of Material Facts Not Charged in the Indictment and/or in the Prosecution's Pre-Trial Brief (TC), 14 February 2011, paras. 16-17, p. 6.

<sup>103</sup> Scheduling Order (TC), 28 February 2011, p. 4.

<sup>104</sup> Amended Pre-Defence Brief, 4 March 2011.

<sup>105</sup> Decision on Prosecution Motion to Compel the Defence to Reduce the Number of Defence Witnesses, Disclose the Order of Appearance of Defence Witnesses, and Disclose Defence Witness Statements (TC), 9 March 2011, p. 7.

<sup>106</sup> Decision on Defence Motion Requesting a Cooperation Order Directed to the Arab Republic of Egypt (TC), 5 March 2011, p. 4.

<sup>107</sup> Decision on Prosecution Motion Requesting a Cooperation Order Directed to France (TC), 30 March 2010, p. 6.

<sup>108</sup> Decision on Defence Motion for Disclosure of Additional Exculpatory and Other Relevant Material Pursuant to Defence Oral Motion Presented on 24 November 2010 (TC), 1 April 2011, p. 8.

<sup>109</sup> Decision on Defence Oral Motion for Disclosure of the Audiotape of a Radio Rwanda Broadcast of 4 March 1994 (TC), 1 April 2011, p. 5.

<sup>110</sup> Decision on Defence Motion for Reconsideration of the Decision Rendered on 7 July 2010 (TC), 11 April 2011, p. 5.

<sup>111</sup> Decision on Defence Motion to Declare Written Statements Admissible and for Leave for Certification of These Written Statements by a Presiding Officer (TC), 11 April 2011, p. 6.

<sup>112</sup> Decision on Defence Second Motion to Declare Written Statements Admissible and for Leave for Certification of These Written Statements by a Presiding Officer (TC), 12 April 2011, p. 7.

<sup>113</sup> Decision on Defence Motion to Authorize Witness DWAN-7 to Testify via Video-Link (TC), 12 April 2011, p. 6.

motion for certification of the Oral Decisions of 24 and 25 August 2010.<sup>114</sup> The Chamber also deferred its Decision on a Prosecution motion to rescind the protective measures for Prosecution Witness ANAN, until the Prosecution submitted a further affidavit and declaration by the witness.<sup>115</sup>

45. On 18 April 2011, the Appeals Chamber dismissed the Defence appeal concerning the Bureau's Decision on the Defence motion for disqualification of Trial Chamber II's Judges.<sup>116</sup>

46. On 10 May 2011, the Chamber denied two Defence motions seeking certification to appeal the Decisions of 3 and 14 February 2011.<sup>117</sup> The Chamber also denied a Prosecution motion for reconsideration, or for certification to appeal, the Oral Decision of 9 February 2011.<sup>118</sup> On 13 May 2011, due to unforeseen circumstances, the Chamber rescheduled the resumption of the Defence case from 6 June to 13 June 2011.<sup>119</sup>

47. On 4 July 2011, the Chamber reconsidered in part its Decision of 1 April 2011, declared a portion of that Decision moot, but retained its ruling that the Prosecution had breached its disclosure obligations under Rule 68(A) of the Rules.<sup>120</sup> Also on 4 July 2011, and pursuant to a Prosecution motion, the Chamber ordered the partial lifting of the protective measures covering Prosecution Witness ANAN.<sup>121</sup>

48. On 13 July 2011, the Chamber ordered the Defence to significantly reduce its witness list, and to file its final list and order of appearance by 1 August 2011.<sup>122</sup> On 22 August 2011, the Chamber granted the Prosecution an extension of time to respond to a Defence motion for the admission of documentary evidence.<sup>123</sup> On 23 August 2011, the Chamber granted the Defence request for a cooperation order directed at Belgium.<sup>124</sup>

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<sup>114</sup> Decision on Defence Motion for Certification to Appeal the Oral Decisions Rendered on 24 and 25 August 2010 (TC), 12 April 2011, p. 7.

<sup>115</sup> Decision on Prosecution *Ex Parte* Motion to Rescind Protective Measures for Witness ANAN (TC), 12 April 2011, p. 5.

<sup>116</sup> Decision on Augustin Ngirabatware's Appeal of the Bureau's Decision of 25 January 2011 on Disqualification (AC), 18 April 2011, para. 10.

<sup>117</sup> Decision on Defence Motion for Certification to Appeal the Decision on Exclusion of Evidence Falling Outside the Tribunal's Temporal Jurisdiction (TC), 10 May 2011, p. 6; Decision on Defence Motion for Certification to Appeal the Decision on Exclusion of Material Facts Not Charged in the Indictment and/or in the Pre-Trial Brief (TC), 10 May 2011, p. 7.

<sup>118</sup> Decision on Prosecution Motion for Reconsideration or Certification to Appeal the Oral Decision Rendered on 9 February 2011 (TC), 10 May 2011, p. 9.

<sup>119</sup> Variation of Scheduling Order (TC), 13 May 2011, p. 2.

<sup>120</sup> Decision on Prosecution Motion for Reconsideration of the 1 April 2011 Decision on Additional Exculpatory Evidence (TC), 4 July 2011, para. 14, p. 5.

<sup>121</sup> Decision on Refiled Prosecution Motion to Rescind Protective Measures for Witness ANAN (TC), 4 July 2011, p. 5.

<sup>122</sup> T. 13 July 2011, pp. 89-90.

<sup>123</sup> T. 22 August 2011, p. 31.

<sup>124</sup> Decision on Defence Motion Requesting a Cooperation Order Directed at the Kingdom of Belgium (TC), 23 August 2011, p. 4.

49. On 26 August 2011, after noting that the Defence had not complied with the order to file a reduced list of witnesses, the Chamber ordered the Defence to file its final list of 35 witnesses by 5 September 2011.<sup>125</sup>

50. On 29 August 2011, the Chamber ordered the Prosecution to make available for inspection by the Defence seven pages of a specific document, as well as any items seized from, or belonging to, Ngirabatware.<sup>126</sup> On 2 September 2011, the Chamber denied the Defence request to stay the order for the final list of 35 witnesses to be filed by 5 September 2011.<sup>127</sup> On 14 September 2011, the Chamber respectfully requested Togo to facilitate and ensure a meeting with a Togolese national and the Defence, but declined to request that Togo be reported to the Security Council.<sup>128</sup>

51. On 15 September 2011, the Chamber granted certification to appeal the Decision of 26 August 2011, which had ordered the Defence to file a final list of 35 witnesses.<sup>129</sup>

52. On 22 September 2011, the Chamber denied reconsideration or certification to appeal the Oral Decision admitting Prosecution Exhibits 48 and 49 into evidence.<sup>130</sup> That same day, the Chamber denied the Defence request for certification of a presiding officer and admission of written statements in lieu of oral testimony pursuant to Rule 92*bis*, of written statements in lieu of oral testimony, and for reconsideration of previous Decisions concerning Rule 92*bis*.<sup>131</sup> On 27 September 2011, the Chamber ordered the Prosecution to immediately make available to the Defence certain immigration files, statements and *Gacaca* material relevant to potential Defence witnesses.<sup>132</sup>

53. On 6 October 2011, the Chamber denied the Prosecution's request to preclude Defence Witness DWAN-41 from testifying because her evidence was allegedly repetitive,<sup>133</sup> and granted

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<sup>125</sup> Decision on the Defence Motion for Reconsideration or Certification to Appeal the Oral Decision of 13 July 2011, and on the Reduction of the Defence Witness List (TC), 26 August 2011, paras. 53-54, 58, 60, p. 12.

<sup>126</sup> Decision on Defence Motion for Inspection of Materials in the Prosecution's Custody (TC), 29 August 2011, para. 49, p. 13.

<sup>127</sup> Order Denying the Defence Request for a Stay of the Order to File Its Final List of Witnesses by 5 September 2011 (TC), 2 September 2011, p. 3.

<sup>128</sup> Decision on Defence Motion Asking the Trial Chamber to Request the President to Report the Matter of the Republic of Togo's Refusal to Cooperate to the Security Council (TC), 14 September 2011, p. 6. On 26 January 2012, the Chamber took note of the Defence's withdrawal of its second Motion seeking similar relief. See Withdrawal of the Second Defence Motion Asking that Togo Be Reported to the Security Council (TC), 26 January 2012, p. 2.

<sup>129</sup> Decision on the Defence Motion for Reconsideration and/or Certification to Appeal the Decision of 26 August 2011 (TC), 15 September 2011, p. 6. On 23 September 2011, the Presiding Judge of the Appeals Chamber assigned the Bench to hear this matter. See Order Assigning Judges to a Case Before the Appeals Chamber (AC), 23 September 2011, p. 2.

<sup>130</sup> Decision on Defence Motion for Reconsideration or Certification to Appeal the Oral Decisions Rendered on 20 and 21 June 2011 (TC), 22 September 2011, paras. 1-2, p. 8.

<sup>131</sup> Decision on Defence Motion to Declare Written Statements Admissible, for Leave for Certification by a Presiding Officer of These Written Statements and/or Reconsideration of the Trial Chamber's Decisions Rendered on 11 and 12 April 2011 (TC), 22 September 2011, para. 2, p. 11.

<sup>132</sup> Decision on Defence Motion for Reconsideration or Certification to Appeal the Chamber's Decision of 29 August 2011, or Alternatively, a Defence Second Motion for Inspection of Materials in the Prosecution's Custody (TC), 27 September 2011, para. 47, p. 11.

<sup>133</sup> T. 6 October 2011, pp. 23-24.

the Defence an extension of time to respond to a Prosecution motion for further rebuttal witnesses.<sup>134</sup> On 17 October 2011, the Chamber granted the Defence motion to vary its witness list by substituting three anticipated witnesses.<sup>135</sup> On 24 October 2011, the Chamber granted the Defence request for Witness DWAN-40 to testify via video-link.<sup>136</sup> On 26 October 2011, the Chamber granted the Defence request to drop Witness DWAN-134 from its witness list,<sup>137</sup> and denied the Prosecution motion to admit two will-say statements into evidence for the stated purpose of discrediting the Defence case as a whole.<sup>138</sup>

54. On 14 November 2011, the Chamber granted a Prosecution motion to call rebuttal witnesses to address the alibi of Ngirabatware for the period of 23 April to 23 May 1994. The Chamber allowed the Prosecution to call eight rebuttal witnesses immediately after the close of the Defence case-in-chief.<sup>139</sup>

55. On 25 November 2011, the Chamber denied a Defence motion for reconsideration or certification to appeal the third Decision pertaining to Rule 92*bis* statements.<sup>140</sup> On 1, 7 and 14 December 2011, the Chamber invited submissions from the Registrar concerning Togo's alleged non-cooperation with the Tribunal.<sup>141</sup> On 13 December 2011, the Chamber denied a Defence motion for reconsideration or certification to appeal the Decision concerning Prosecution rebuttal evidence.<sup>142</sup>

56. On 25 January 2012, the Chamber granted the Defence request for leave to add Defence Witness DWAN-74 to its witness list.<sup>143</sup> On 1 February 2012, the Chamber granted authorization for Defence Witness DWAN-114 to testify via video-link,<sup>144</sup> and respectfully requested the cooperation of Austria and Togo to authorize DWAN-114 and DWAN-112, respectively, to travel for their testimony.<sup>145</sup> Also on 1 February 2012, the Chamber denied a request by the Defence of Bernard Munyagishari for disclosure of all confidential documents in the *Ngirabatware* case.<sup>146</sup>

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<sup>134</sup> T. 6 October 2011, p. 56.

<sup>135</sup> T. 17 October 2011, pp. 9-12.

<sup>136</sup> T. 24 October 2011, pp. 53-55.

<sup>137</sup> T. 26 October 2011, pp. 83-84.

<sup>138</sup> T. 26 October 2011, pp. 85-86.

<sup>139</sup> Decision on Prosecution Motion for Leave to Present Rebuttal Evidence (TC), 14 November 2011, para. 39, p. 12.

<sup>140</sup> Decision on Defence Motion for Reconsideration or Certification to Appeal the Trial Chamber's Rule 92*bis* Decision of 22 September 2011 (TC), 25 November 2011, p. 9.

<sup>141</sup> Order to Registrar for Submissions (TC), 1 December 2011, p. 3; Order to Registrar for Further Submissions (TC), 7 December 2011, p. 3; Order to Registrar for Further Submissions Upon Completion of Mission to Togo (TC), 14 December 2011, p. 3.

<sup>142</sup> Decision on Defence Motion for Reconsideration and/or Certification to Appeal the Trial Chamber's Decision of 14 November 2011 on Rebuttal Evidence (TC), 13 December 2011, p. 16.

<sup>143</sup> Decision on Defence Motion for Leave to Vary the Witness List by Adding Witness DWAN-74 (TC), 25 January 2012, p. 7.

<sup>144</sup> T. 1 February 2012, pp. 2-3.

<sup>145</sup> Decision on Defence Motion Requesting a Cooperation Order Directed at the Republic of Austria (TC), 1 February 2012, p. 6; Decision on Defence Motion Requesting a Cooperation Order Directed at the Togolese Republic (TC), 1 February 2012, p. 4.

<sup>146</sup> Decision on the Motion of Bernard Munyagishari for Disclosure of Confidential Documents in the *Ngirabatware* Case (TC), 1 February 2012, para. 4, p. 5.

57. On 2 February 2012, the Chamber sustained a Defence objection that the Prosecution could not show a closed session transcript from another case to a Defence witnesses, without first seeking a variation of the protective measures from the Chamber seized of that case.<sup>147</sup> On 9 February 2012, the Chamber granted in part a Defence motion for the admission into evidence of numerous documents.<sup>148</sup>

58. The Chamber held a status conference on 10 February 2012.<sup>149</sup> On 13 February 2012, the Chamber denied a Defence request for a cooperation order directed at Nigeria.<sup>150</sup>

59. On 15 February 2012, the Registrar withdrew the assignment of Defence Lead Counsel, and immediately assigned the former Defence Co-Counsel as Lead Counsel.<sup>151</sup>

60. On 20 February 2012, the Appeals Chamber rendered a Decision dismissing the Defence appeal concerning the reduction in its witness list.<sup>152</sup>

61. Also on 20 February 2012, the Chamber invited the Registrar to provide submissions concerning the feasibility of hearing four Prosecution rebuttal witnesses via video-link from Senegal.<sup>153</sup>

62. The Defence closed its case-in-chief on 22 February 2012.<sup>154</sup> The Defence case-in-chief spanned six sessions: from 16 November through 14 December 2010, from 3 February through 14 February 2011, from 13 June through 13 July 2011, from 15 August through 31 August 2011, from 19 September through 26 October 2011, and from 30 January 2012 through 22 February 2012. The Chamber also sat on 17 January and 31 January 2011, but adjourned the proceedings shortly thereafter. Over the course of 82 trial days, the Defence called 35 witnesses and tendered 123 exhibits that were admitted into evidence. The Accused testified for 23 trial days.

### **A.2.3 Prosecution Case-in-Rebuttal, Site Visit, Closing Submissions and *Amicus Curiae* Decision**

63. On 23 February 2012, the Chamber denied the Prosecution request to be provided with four exhibits so that they could be sent for forensic examination.<sup>155</sup> Also on 23 February 2012, the Registrar assigned new Co-Counsel to the Defence.<sup>156</sup> On 24 February 2012, the Chamber

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<sup>147</sup> T. 2 February 2012, pp. 56-57.

<sup>148</sup> Decision on Defence Motion for Admission of Documentary Evidence (TC), 9 February 2012, p. 21.

<sup>149</sup> See generally T. 10 February 2012.

<sup>150</sup> Decision on Defence Motion Requesting a Cooperation Order Directed at the Federal Republic of Nigeria (TC), 13 February 2012, p. 4.

<sup>151</sup> Decision of Withdrawal of Mr. Donald Peter Herbert, Lead Counsel of the Accused Augustin Ngirabatware (Registrar), 15 February 2012, p. 3 (assigning Ms. Mylène Dimitri as Lead Counsel). See also T. 20 February 2012, pp. 1-2.

<sup>152</sup> Decision on Ngirabatware's Appeal of the Decision Reducing the Number of Defence Witnesses (AC), 20 February 2012, para. 20.

<sup>153</sup> Order to Registrar for Submissions Concerning the Feasibility of Video-Link Testimony from Senegal (TC), 20 February 2012, pp. 2-3.

<sup>154</sup> T. 22 February 2012, pp. 28-29.

<sup>155</sup> Decision on Prosecution Motion To Be Provided with Passports that Have Been Tendered into Evidence (TC), 23 February 2012, para. 9, p. 6.

<sup>156</sup> Letter from Dunstain Mwaligulu, Legal Officer of Defence Counsel and Detention Management Section, to Mr. Claver Sindayigaya, 23 February 2012.

held a Status Conference to address the scheduling of the Prosecution rebuttal witnesses and other matters. The Chamber also granted a Prosecution request for an extension of time to respond to two Defence motions.<sup>157</sup>

64. On 5 March 2012, the Chamber granted a Prosecution motion to take the testimony of four rebuttal witnesses via video-link,<sup>158</sup> and denied a Defence motion to postpone the hearing of rebuttal evidence.<sup>159</sup> During court proceedings on 5 March 2012, the Chamber sustained a Defence objection concerning the scope of Prosecution Witness PRWI's testimony, and ordered that this witness commence his testimony the following day.<sup>160</sup>

65. The Prosecution case-in-rebuttal commenced on 6 March 2012.

66. On 15 March 2012, the Chamber ordered the Parties to provide further submissions concerning their request for a site visit.<sup>161</sup> On 21 March 2012, the Chamber provided an extension of time for any response and reply to the Prosecution motion on documentary evidence filed on 19 March 2012.<sup>162</sup>

67. On 29 March 2012, the Chamber denied a Defence motion to reconsider its Decision insofar as it denied admission into evidence of three documents.<sup>163</sup> On 2 April 2012, the Chamber dismissed as moot the Prosecution motion for a cooperation order directed at Nigeria.<sup>164</sup>

68. On 29 March 2012, the Chamber issued a Scheduling Order for the Closing Briefs and Closing Arguments.<sup>165</sup>

69. On 2 April 2012, the Prosecution closed its case-in-rebuttal.<sup>166</sup> Over the course of 13 trial days, the Prosecution called six rebuttal witnesses and tendered 21 exhibits that were admitted into evidence.

70. On 3 April 2012, the Chamber granted the request of the Parties for a site visit to Rwanda.<sup>167</sup> Also on 3 April 2012, the Chamber denied the Defence motion for dismissal of all

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<sup>157</sup> T. 24 February 2012, p. 7.

<sup>158</sup> Decision on Prosecution Motion for Testimony via Video-Link of Prosecution Rebuttal Witnesses II, V, VI and VII (TC), 5 March 2012, p. 9.

<sup>159</sup> Decision on Defence Motion to Postpone the Hearing of Rebuttal Evidence (TC), 5 March 2012, p. 8.

<sup>160</sup> T. 5 March 2012, pp. 25-26.

<sup>161</sup> Order to Parties for Further Submissions (TC), 15 March 2012, p. 2.

<sup>162</sup> T. 21 March 2012, p. 84.

<sup>163</sup> Decision on Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence (TC), 29 March 2012, p. 6.

<sup>164</sup> T. 2 April 2012, p. 8.

<sup>165</sup> Scheduling Order for Closing Briefs and Arguments (TC), 29 March 2012.

<sup>166</sup> T. 2 April 2012, pp. 6-8.

<sup>167</sup> Decision on Site Visit to the Republic of Rwanda (TC), 3 April 2012, pp. 8-9.

charges against Ngirabatware.<sup>168</sup> On 4 April 2012, the Chamber granted the Prosecution motion for additional time to file a response.<sup>169</sup>

71. On 20 April 2012, the Chamber granted in part a Defence motion, and gave the Parties an additional 6,000 words for the Closing Briefs.<sup>170</sup> On 23 April 2012, the Chamber ordered the Parties to address matters of sentencing in their Closing Briefs and/or Closing Arguments.<sup>171</sup>

72. On 26 April 2012, the Chamber denied a Defence motion to find that the Prosecution violated its disclosure obligations.<sup>172</sup> On 14 May 2012, the Chamber denied a Defence motion for the admission of written statements, as well as a Defence motion for an order for the Prosecution to provide further submissions on the site visit.<sup>173</sup>

73. On 18 May 2012, the Chamber granted a Prosecution motion to reopen its case-in-rebuttal to hear the evidence of Witness PRVIII.<sup>174</sup> Also on 18 May 2012, the Chamber denied a Defence motion to bring rejoinder evidence.<sup>175</sup>

74. From 21 through 25 May 2012, the Chamber undertook a site visit to Rwanda.<sup>176</sup>

75. On 4 June 2012, the Chamber denied a Defence motion for certification to appeal the Decision reopening the Prosecution case-in-rebuttal.<sup>177</sup> On 5 June 2012, the Chamber denied a Defence oral motion to preclude Witness PRVIII from testifying unless his immunity is waived.<sup>178</sup>

76. The Prosecution case-in-rebuttal was reopened on 5 June 2008, and Witness PRVIII commenced his testimony on this day.

77. On 5 and 6 June 2012, the Chamber rendered a series of Oral Decisions concerning whether the Prosecution could lead evidence through Witness PRVIII concerning the visa stamps that were said to have been used in Nigeria in 1994 and during other time periods.<sup>179</sup>

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<sup>168</sup> Decision on Defence Motion for Stay of Proceedings Based on Alleged Numerous Defects in the Indictment (TC), 3 April 2012, para. 18, p. 7.

<sup>169</sup> Decision on Prosecutor's Extremely Urgent Motion for Extension of Time to File Response to Defence Motion for Leave to Call Rejoinder Witnesses and in the Alternative, for Admission of Documentary Rejoinder Evidence and to Recall Prosecution Witness PRWVII (TC), 4 April 2012, p. 4.

<sup>170</sup> Decision on Defence Motion for Variations to Scheduling Order for Closing Briefs and Arguments (TC), 20 April 2012, para. 19, p. 7.

<sup>171</sup> Addendum to the Scheduling Order for Closing Briefs and Arguments (TC), 23 April 2012, p. 2.

<sup>172</sup> Decision on Defence Motion to Declare the Prosecution in Violation of Its Disclosure Obligations (TC), 26 April 2012, p. 13.

<sup>173</sup> Decision on Defence Motion for Admission of Written Statements (TC), 14 May 2012, p. 8; Decision on Defence Motion for an Order to the Prosecution to Provide Explanations and References for Each Location of the Site Visit (TC), 14 May 2012, p. 6.

<sup>174</sup> Decision on Prosecution Motion for Leave to Reopen Prosecution Rebuttal Case (TC), 18 May 2012, p. 7.

<sup>175</sup> Decision on Defence Motion for Leave to Present Rejoinder Evidence (TC), 18 May 2012, p. 10.

<sup>176</sup> See Chambers Exhibit 1 (Site Visit Report).

<sup>177</sup> Decision on Defence Motion for Certification to Appeal the Decision Granting Leave to Reopen the Prosecution Rebuttal Case (TC), 4 June 2012, p. 6.

<sup>178</sup> T. 5 June 2012, pp. 13-14.

<sup>179</sup> T. 5 June 2012, p. 69 (CS); T. 6 June 2012, pp. 14-15, 20-21 (CS).

78. On 7 June 2012, the Chamber granted in part a Defence oral motion for additional time to investigate the visa stamps brought by Witness PRVIII, and ordered that all necessary arrangements be made for the witness to return to Arusha to complete his testimony on 2 July 2012. As a result, the Chamber rescheduled the Closing Arguments for 23 and 24 July 2012.<sup>180</sup>

79. On 18 June 2012, the Chamber denied the Defence motion for certification to appeal the scheduling of Closing Arguments.<sup>181</sup> On 21 June 2012, the Chamber granted the Defence motion for video-link to be established with Canada so that Defence Lead Counsel could participate in Closing Arguments.<sup>182</sup>

80. Also on 21 June 2012, the Chamber denied Defence motions for certification to appeal the denial of written statements into evidence,<sup>183</sup> and for reconsideration or certification to appeal the denial of rejoinder evidence.<sup>184</sup> On 22 June 2012, the Chamber denied a Defence motion for a cooperation order directed at Nigeria.<sup>185</sup>

81. On 2 July 2012, the Chamber denied the Defence motion to postpone the further cross-examination of Witness PRVIII.<sup>186</sup>

82. The Prosecution case-in-rebuttal was closed on 3 July 2012, after having been reopened for two sessions: from 5 through 8 June 2012, and from 2 through 3 July 2012. Over the course of these six trial days, the Prosecution called one rebuttal witnesses and tendered four exhibits that were admitted into evidence.

83. On 4 July 2012, the Chamber granted in part a Defence motion for the admission of documentary material into evidence,<sup>187</sup> and denied a Defence motion and a Prosecution motion for the admission into evidence of other documents.<sup>188</sup> Also on 4 July 2012, the Chamber specified the schedule for Closing Arguments.<sup>189</sup>

84. On 23 July 2012, the Chamber denied the second Defence motion for rejoinder witnesses.<sup>190</sup> The Chamber also denied a Prosecution motion and a Defence motion seeking

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<sup>180</sup> T. 7 June 2012, pp. 3-5.

<sup>181</sup> Decision on Defence Motion for Certification to Appeal the Decision on the Scheduling of Closing Arguments (TC), 18 June 2012, p. 6.

<sup>182</sup> Decision on Defence Motion to Authorize the Lead Counsel to Do Oral Pleadings via Video-Link (TC), 21 June 2012, p. 5.

<sup>183</sup> Decision on Defence Motion for Certification to Appeal the Decision of 14 May 2012 on the Admission of Written Statements (TC), 21 June 2012, p. 5.

<sup>184</sup> Decision on Defence Motion for Reconsideration of or Certification to Appeal the Decision on Leave to Present Rejoinder Evidence (TC), 21 June 2012, p. 11.

<sup>185</sup> Decision on Defence Oral Motion Requesting a Cooperation Order Directed at the Federal Republic of Nigeria (TC), 22 June 2012, p. 5.

<sup>186</sup> Decision on Defence Motion for Leave to Postpone the Cross-Examination of Witness PRVIII (TC), 2 July 2012, p. 5.

<sup>187</sup> Decision on the Third Defence Motion for Admission of Documentary Evidence (TC), 4 July 2012, p. 12.

<sup>188</sup> Decision on the Fourth Defence Motion for Admission of Documentary Evidence (TC), 4 July 2012, p. 5; Decision on Prosecution Motion for Admission of Documentary Evidence (TC), 4 July 2012, p. 9.

<sup>189</sup> Further Scheduling Order for Closing Arguments (TC), 4 July 2012, pp. 2-3.

<sup>190</sup> Decision on the Second Defence Motion for Leave to Call Rejoinder Witnesses (TC), 23 July 2012, p. 8.



reconsideration of the Decisions of 4 July 2012 denying admission into evidence of certain documents.<sup>191</sup>

85. The Chamber heard Closing Arguments on 23, 24 and 25 July 2012.

86. Throughout the proceedings, the Chamber heard the testimony of 62 witnesses and admitted 310 exhibits into evidence. The Prosecution presented 27 witnesses and tendered 93 exhibits that were admitted into evidence. The Defence called 35 witnesses and tendered 216 exhibits that the Chamber admitted into evidence. The Chamber also admitted the site visit report as a Chamber exhibit. The Parties filed a total of 147 written motions: 47 from the Prosecution and 100 from the Defence.

87. On 30 November 2012, the Chamber scheduled the delivery of the Judgement for 20 December 2012.<sup>192</sup>

88. On 20 December 2012, the Chamber delivered an oral summary of the Judgement.

89. On 21 February 2013, the Chamber initiated contempt proceedings against Maximilien Turinabo and Deogratias Sebureze, issued an order in lieu of an indictment, and directed the Registry to inform the MICT that an *amicus curiae* should be appointed to prosecute the matter.<sup>193</sup>

90. The Chamber filed the written Judgement on 21 February 2013, following the completion of the editorial process.

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<sup>191</sup> Decision on Prosecution Motion for Reconsideration of Decision on Prosecution Motion for Admission of Documentary Evidence (TC), 23 July 2012, p. 7; Decision on Defence Motion for Reconsideration of Decision on Fourth Defence Motion for Admission of Documentary Evidence (TC), 23 July 2012, p. 6.

<sup>192</sup> Scheduling Order for Delivery of Judgement (TC), 30 November 2012, p. 2.

<sup>193</sup> Decision on Allegations of Contempt (TC), 21 February 2013, pp. 6-7, Annex.

## **ANNEX B: CITED MATERIALS AND DEFINED TERMS**

### **B.1 Cited Materials**

#### **B.1.1 ICTR**

##### **Akayesu**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“*Akayesu*, Judgement (AC)”)

##### **Bagaragaza**

*The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, Sentencing Judgement (TC), 17 November 2009 (“*Bagaragaza*, Sentencing Judgement (TC)”)

##### **Bagilishema**

*The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 (“*Bagilishema*, Judgement (TC)”)

*The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 (“*Bagilishema*, Judgement (AC)”)

##### **Bagosora et al.**

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-AR73, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006 (“*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”)

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-T, Judgement and Sentence (TC), 18 December 2008 (“*Bagosora et al.*, Judgement (TC)”)

##### **Bagosora & Nsengiyumva**

*Théoneste Bagosora & Anatole Nsengiyumva v. The Prosecutor*, Case No. ICTR 98-41-A, Judgement (AC), 14 December 2011 (“*Bagosora & Nsengiyumva*, Judgement (AC)”)

##### **Bikindi**

*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Judgement (AC), 18 March 2010 (“*Bikindi*, Judgement (AC)”)

**Bizimungu et al.**

*The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Judgement and Sentence (TC), 30 September 2011 (“*Bizimungu et al.*, Judgement (TC)”)

**Gacumbitsi**

*Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 (“*Gacumbitsi*, Judgement (AC)”)

**Gatete**

*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 (“*Gatete*, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 17 November 2008”)

*Jean-Baptiste Gatete v. The Prosecutor*, Case No. ICTR-00-61-A, Judgement (AC), 9 October 2012 (“*Gatete*, Judgement (AC)”)

**Hategekimana**

*Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Judgement (AC), 8 May 2012 (“*Hategekimana*, Judgement (AC)”)

**Kajelijeli**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003 (“*Kajelijeli*, Judgement (TC)”)

*Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“*Kajelijeli*, Judgement (AC)”)

**Kalimanzira**

*Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 (“*Kalimanzira*, Judgement (AC)”)

**Kamuhanda**

*Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda*, Judgement (AC)”)

**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 (“*Kanyarukiga*, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 6 June 2008”)

*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-T, Judgement and Sentence (TC), 1 November 2010 (“*Kanyarukiga*, Judgement (TC)”)

*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Judgement (AC), 8 May 2012 (“*Kanyarukiga*, Judgement (AC)”)

### **Karemera & Ngirumpatse**

*The Prosecutor v. Édouard Karemera & Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Judgement and Sentence (TC), 2 February 2012 (“*Karemera & Ngirumpatse*, Judgement (TC)”)

### **Karera**

*François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 (“*Karera*, Judgement (AC)”)

### **Kayishema & Ruzindana**

*The Prosecutor v. Clément Kayishema & Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 (“*Kayishema & Ruzindana*, Judgement (AC)”)

### **Muhimana**

*Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 (“*Muhimana*, Judgement (AC)”)

### **Munyagishari**

*The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda (TC), 6 June 2012 (“*Munyagishari*, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda (TC), 6 June 2012”)

### **Munyakazi**

*The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-A, Judgement (AC), 28 September 2011 (“*Munyakazi*, Judgement (AC)”)

### **Musema**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement and Sentence (TC), 27 January 2000 (“*Musema*, Judgement (TC)”)

*Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 (“*Musema*, Judgement (AC)”)

### **Muvunyi**

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi I*, Judgement (AC)”)

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 1 April 2011 (“*Muvunyi II*, Judgement (AC)”)

### **Nahimana et al.**

*Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al.*, Judgement (AC)”)

### **Nchamihigo**

*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Judgement (AC), 18 March 2010 (“*Nchamihigo*, Judgement (AC)”)

### **Ndindabahizi**

*The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004 (“*Ndindabahizi*, Judgement (TC)”)

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“*Ndindabahizi*, Judgement (AC)”)

### **Niyitegeka**

*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003 (“*Niyitegeka*, Judgement (TC)”)

*Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“*Niyitegeka*, Judgement (AC)”)

### **Nizeyimana**

*The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-2000-55C-T, Judgement and Sentence (TC), 19 June 2012 (“*Nizeyimana*, Judgement (TC)”)

### **Nsengimana**

*The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, Judgement (TC), 17 November 2009 (“*Nsengimana*, Judgement (TC)”)

**Nshogoza**

*Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-2007-91-A, Judgement (AC), 15 March 2010 (“*Nshogoza*, Judgement (AC)”)

**Ntabakuze**

*Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement (AC), 8 May 2012 (“*Ntabakuze*, Judgement (AC)”)

**Ntagerura et al.**

*The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Ntagerura et al.*, Judgement (AC)”)

**Ntakirutimana & Ntakirutimana**

*The Prosecutor v. Elizaphan Ntakirutimana & Gérard Ntakirutimana*, Cases Nos. ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana & Ntakirutimana*, Judgement (AC)”)

**Ntawukulilyayo**

*The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Judgement and Sentence (TC), 3 August 2010 (“*Ntawukulilyayo*, Judgement (TC)”)

*Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Judgement (AC), 14 December 2011 (“*Ntawukulilyayo*, Judgement (AC)”)

**Nyiramasuhuko et al.**

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence (TC), 24 June 2011 (“*Nyiramasuhuko et al.*, Judgement (TC)”)

**Nzabonimana**

*The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Judgement and Sentence (TC), 31 May 2012 (“*Nzabonimana*, Judgement (TC)”)

**Renzaho**

*Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Judgement (AC), 1 April 2011 (“*Renzaho*, Judgement (AC)”)

**Rukundo**

*Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement (AC), 20 October 2010 (“*Rukundo*, Judgement (AC)”)

## **Rutaganda**

*Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 (“*Rutaganda*, Judgement (AC)”)

## **Rwamakuba**

*André Rwamakuba v. The Prosecutor*, Case No ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004 (“*Rwamakuba*, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004”)

*The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Judgement (TC), 20 September 2006 (“*Rwamakuba*, Judgement (TC)”)

## **Semanza**

*The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003 (“*Semanza*, Judgement (TC)”)

*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 (“*Semanza*, Judgement (AC)”)

## **Seromba**

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 (“*Seromba*, Judgement (AC)”)

## **Serushago**

*Omar Serushago v. The Prosecutor*, Case No. ICTR-98-39-A, Reasons for Judgement (AC), 6 April 2000 (“*Serushago*, Judgement (AC)”)

## **Setako**

*The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement and Sentence (TC), 25 February 2010 (“*Setako*, Judgement (TC)”)

*Ephrem Setako v. The Prosecutor*, Case No. ICTR-04-81-A, Judgement (AC), 28 September 2011 (“*Setako*, Judgement (AC)”)

## **Simba**

*Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 (“*Simba*, Judgement (AC)”)

## **Uwinkindi**

*Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011 (“*Uwinkindi*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011”)

*Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR72(C), Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment (AC), 16 November 2011 (“*Uwinkindi*, Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment (AC), 16 November 2011”)

## **Zigiranyirazo**

*Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 (“*Zigiranyirazo*, Judgement (AC)”)

### **B.1.2 ICTY**

#### **Blagojević & Jokić**

*Prosecutor v. Vidoje Blagojević & Dragan Jokić*, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 (“*Blagojević & Jokić*, Judgement (AC)”)

#### **Blaškić**

*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“*Blaškić*, Judgement (AC)”)

#### **Brđanin**

*Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 (“*Brđanin*, Judgement (AC)”)

#### **Delalić et al.**

*Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Delalić et al.*, Judgement (AC)”)

#### **Gotovina & Markač**

*Prosecutor v. Ante Gotovina & Mladen Markač*, Case No. IT-06-90-A, Judgement (AC), 16 November 2012 (“*Gotovina & Markač*, Judgement (AC)”)

#### **Jelisić**

*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 (“*Jelisić*, Judgement (AC)”)



**Karadžić**

*Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability (AC), 25 June 2009 ("Karadžić, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability (AC), 25 June 2009")

**Kordić & Čerkez**

*Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 ("Kordić & Čerkez, Judgement (AC)")

**Krnojelac**

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 ("Krnojelac, Judgement (AC)")

**Krstić**

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 ("Krstić, Judgement (AC)")

**Kunarac et al.**

*Prosecutor v. Dragoljub Kunarac et al.*, Case Nos. IT-96-23-A & IT-96-23/1-A, Judgement (AC), 12 June 2002 ("Kunarac et al., Judgement (AC)")

**Kupreškić et al.**

*Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("Kupreškić et al., Judgement (AC)")

**Kvočka et al.**

*Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("Kvočka et al., Judgement (AC)")

**Limaj et al.**

*Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Judgement (AC), 27 September 2007 ("Limaj et al., Judgement (AC)")

**Lukić & Lukić**

*Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement (AC), 4 December 2012 ("Lukić & Lukić, Judgement (AC)")

**Martić**

*Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement (AC), 8 October 2008 (“*Martić*, Judgement (AC)”)

**Dragomir Milošević**

*Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement (AC), 12 November 2009 (“*Dragomir Milošević*, Judgement (AC)”)

**Mrkšić & Šljivančanin**

*Prosecutor v. Mile Mrkšić & Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement (AC), 5 May 2009 (“*Mrkšić & Šljivančanin*, Judgement (AC)”)

**Dragan Nikolić**

*Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-A, Judgement on Sentencing Appeal (AC), 4 February 2005 (“*Dragan Nikolić*, Judgement (AC)”)

**Simić**

*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 (“*Simić*, Judgement (AC)”)

**Stakić**

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 (“*Stakić*, Judgement (AC)”)

**Strugar**

*Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement (AC), 17 July 2008 (“*Strugar*, Judgement (AC)”)

**Tadić**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić*, Judgement (AC)”)

**Vasiljević**

*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 (“*Vasiljević*, Judgement (AC)”)

### **B.1.3 Security Council Resolution**

Security Council Resolution 1966 (22 December 2010), UN Doc. S/RES/1966 (2010) (“Security Council Resolution 1966 (2010)”)

## **B.2 Defined Terms**

### **ACP**

African, Caribbean, and Pacific Group of States

### **Arusha Accords**

A set of five accords (or protocols) signed in Arusha, Tanzania on 4 August 1993, by the Rwandan Government and the Rwandan Patriotic Front, designed to implement a power-sharing arrangement through a broad-based transitional government

### ***Bourgmestre***

Mayor of a *commune*

### **CND**

*Conseil National pour le Développement*

### **CDR**

*Coalition pour la Défense de la République*

### ***Cellule***

A political and administrative subdivision of a *secteur*

### ***Commune***

A political and administrative subdivision of a *préfecture*

### ***Conseiller***

An individual responsible for the administration of a *secteur*

### **CS**

Reference to transcripts heard in closed session, or to transcripts extracted from open session

**Defence Additional Submissions on Site Visit**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Defence's Additional Submissions to the Defence Closing Brief Following the Site Visit in the Republic of Rwanda on 21-25 May 2012, 14 June 2012

**Defence Closing Brief**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Dr. Augustin Ngirabatware's Defence Closing Brief, 14 May 2012

**DMZ**

De-Militarized Zone

**EEC**

European Economic Community

**EU**

European Union

**FAO**

Food and Agriculture Organization of the United Nations

**FAR**

*Forces Armées Rwandaises*

**fn. (fns.)**

Footnote (Footnotes)

***Gacaca***

Rwandan domestic tribunal

***Gendarme***

An officer of the *Gendarmerie*

***Gendarmerie***

Responsible for maintaining public law and order and enforcing the laws in force in Rwanda; members were assigned to public security territorial companies and brigades

***Ibuka***

Association of genocide survivors

**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 Rwanda 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**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-I, Amended Indictment, filed 14 April 2009.

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-I, *Acte d'Accusation Modifié*, filed 15 April 2009.

***Interahamwe***

The youth wing of the MRND party

**INTERPOL**

International Criminal Police Organization

***Impuzamugambi***

The youth wing of the CDR party

**JCE**

Joint Criminal Enterprise

**Judgement**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence (TC), 20 December 2012

**LD**

*Laissez débarquer*

**MDR**

*Mouvement Démocratique Républicain*

**MICT**

International Residual Mechanism for Criminal Tribunals (also Mechanism for International Criminal Tribunals)

**MRND**

*Mouvement Révolutionnaire National pour la Démocratie et le Développement* [before July 1991]

*Mouvement Républicain National pour la Démocratie et le Développement* [after July 1991]

**ONATRACOM**

*Office National de Transport en Commun*

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**para. (paras.)**

Paragraph (Paragraphs)

**PGC**

Presidential Guard Camp

***Préfecture***

A territorial and administrative unit in Rwanda

***Préfet***

An individual responsible for the administration of a *préfecture*

**Presidential Guard**

The Presidential Guard Battalion, a specialized unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

**Prosecution Additional Submissions on Site Visit**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Prosecution's Submissions on the Registry's Confidential Report on the Site Visit Dated 31 May 2012, 14 June 2012

**Prosecution Closing Brief**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Prosecutor's Closing Brief, 14 May 2012

**Prosecution Pre-Trial Brief**

*The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, The Prosecutor's Revised Pre-Trial Brief, 25 May 2009

**PSD**

*Parti Social Démocrate*

***Responsable de cellule***

An individual responsible for the administration of a *cellule*

**RFI**

*Radio France Internationale*

**RGF**

Rwandan (also Rwandese) Government Forces

**RPF**

Rwandan (also Rwandese) Patriotic Front

**RTL**

*Radio Télévision Libre des Mille Collines*

**RTS**

*Radio Télévision Senegal*

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

**Rwandan Francs**

Monetary unit in Rwanda

***Secteur***

A political and administrative subdivision of a *commune*

***Sous-préfecture***

A territorial and administrative unit below the *préfecture* unit in Rwanda

***Sous-préfet***

An individual responsible for the administration of a *sous-préfecture*

**Statute**

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

**T.**

Transcript

**UNAMIR**

United Nations Assistance Mission for Rwanda

**UNESCO**

United Nations Educational, Scientific and Cultural Organization

**USAID**

United States Agency for International Development



**ANNEX C: INDICTMENT**