



**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 Arlette Ramaroson  
Judge Solomy Balungi Bossa

Registrar: Adama Dieng

Date: 24 June 2011

**THE PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO  
Arsène Shalom NTAHOBALI  
Sylvain NSABIMANA  
Alphonse NTEZIRYAYO  
Joseph KANYABASHI  
Élie NDAYAMBAJE**

*Case No. ICTR-98-42-T*

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**JUDGEMENT AND SENTENCE**

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For **Arsène Shalom Ntahobali**  
Normand Marquis & Mylène Dimitri  
For **Sylvain Nsabimana**  
Josette Kadji & Pierre Tientcheu Weledji  
For **Alphonse Nteziryayo**  
Titinga Frederick Pacere &  
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For **Joseph Kanyabashi**  
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## CHAPTER I: INTRODUCTION

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

1. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje are alleged to have held positions of authority in the *préfecture* of Butare, during 1994, and to have helped both to formulate and implement a Government plan to massacre the Tutsi population and moderate Hutus in Butare.<sup>2</sup> Each Accused is charged with individual responsibility for conspiracy to commit genocide, genocide (or alternatively, complicity in genocide), direct and public incitement to commit genocide, several crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. Each is also alleged to have had superior responsibility with respect to some of the counts. All six Accused have pled not guilty to the charges against them.

2. Butare *préfecture* is located in the southern part of Rwanda; it borders Burundi.<sup>3</sup> Butare was considered to be the intellectual capital of Rwanda.<sup>4</sup> Many nationally renowned institutes, such as educational institutions and military facilities, were situated in Ngoma, a *commune* of Butare.<sup>5</sup> Butare's population also had the highest percentage of Tutsis in the country and Jean-Baptiste Habyalimana, the Butare *préfet*, was Rwanda's only Tutsi *préfet* until he was replaced by Nsabimana, a Hutu *préfet*, around 19 April 1994.<sup>6</sup>

3. The Prosecution alleges that the six Accused contributed to the magnitude of the massacres in Butare by forming an alliance that used state powers to ensure the destruction of Tutsis in the *préfecture*.<sup>7</sup> Unlike the rest of Rwanda, the genocide in Butare did not start immediately after the death of President Habyarimana on 6 April 1994. By mid-April 1994, there were some killings in a couple of the 20 *communes* in Butare, but the violence was not at the same level as in the rest of the country.<sup>8</sup> The Prosecution theory is that the genocide in Butare started two weeks later than in the rest of the country, after careful planning<sup>9</sup> and after the removal of *Préfet* Habyalimana.<sup>10</sup>

4. The Defence disputes the Prosecution's theory on various grounds. Defence Counsel have generally challenged the credibility of Prosecution evidence, claiming misuse of expert evidence and citing purported contradictions, omissions and lies in witnesses' testimonies. The Defence has complained of multiple alleged defects in the Indictments. Nyiramasuhuko, Ntahobali and Ndayambaje have raised alibis in relation to certain allegations. Several

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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 24 June 2011. The written version, consisting of two volumes, was filed on 14 July 2011 after the completion of the editorial process. A partially dissenting opinion is being filed separately.

<sup>2</sup> Paras. 4.2-4.6 and 5.1 of each of the Indictments (not in support of counts).

<sup>3</sup> Prosecution Exhibit 1 (Map of Butare).

<sup>4</sup> T. 19 September 2007 pp. 64-65 (Reyntjens).

<sup>5</sup> T. 20 September 2007 p. 9 (Reyntjens).

<sup>6</sup> T. 8 June 2004 pp. 33-34 (Des Forges); T. 28 June 2004 pp. 64, 75 (Guichaoua); T. 20 September 2007 p. 25 (Reyntjens).

<sup>7</sup> Prosecution Closing Brief, p. 1, para. 2.

<sup>8</sup> Prosecution Closing Argument, T. 20 April 1994 p. 18.

<sup>9</sup> Prosecution Closing Brief, p. 2, para. 6.

<sup>10</sup> T. 8 June 2004 p. 34 (Des Forges).

Accused holding official positions, in particular Nsabimana and Kanyabashi, have alleged that the authorities were not in control of their administration and staff, not in a position to stop the massacres, and not able to resign their positions. Nyiramasuhuko and Ntahobali alleged that the context of RPF attacks in Rwanda since 1 October 1990 explains the problems faced in 1994.<sup>11</sup> Ntahobali has raised identification issues.<sup>12</sup>

## 1.2 The Tribunal and Its Jurisdiction

5. The Tribunal was established by the United Nations Security Council on 8 November 1994.<sup>13</sup> The Security Council acted pursuant to Chapter VII of the United Nations Charter after requesting and considering reports by the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights<sup>14</sup> and the United Nations Secretary-General.<sup>15</sup>

6. The Tribunal is governed by the Statute, which is annexed to United Nations Security Council Resolution 955, and by the Rules, adopted by the judges of the Tribunal pursuant to Article 14 of the Statute.

7. Pursuant to the Statute, the Tribunal has authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states.<sup>16</sup> The Tribunal's temporal jurisdiction extends to a period beginning on 1 January 1994 and ending on 31 December 1994.<sup>17</sup> The Tribunal has subject matter jurisdiction over the crimes of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.<sup>18</sup> The Tribunal has personal jurisdiction over natural persons and concurrent jurisdiction with the national courts of all States.<sup>19</sup>

## 1.3 The Accused

### 1.3.1 Pauline Nyiramasuhuko

8. Nyiramasuhuko was born in April 1946 in Rugara *cellule*, Ndora *secteur*, Ndora *commune*, Butare *préfecture*.<sup>20</sup> During the events of 1994, Nyiramasuhuko served as Minister of Family and Women's Development under the Interim Government headed by Jean Kambanda.<sup>21</sup> At that time, she resided in Kigali and regularly returned to Butare.<sup>22</sup>

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<sup>11</sup> Nyiramasuhuko Closing Brief, para. 509; Ntahobali Closing Brief, Appendix 2, para. 5.

<sup>12</sup> Ntahobali Closing Brief, paras. 96-190.

<sup>13</sup> Security Council Resolution 955.

<sup>14</sup> Report on the Situation of Human Rights in Rwanda, 13 October 1994.

<sup>15</sup> Report of the Secretary-General on the Establishment of the Commission of Experts, 26 July 1994; Report of the Secretary-General on the Situation in Rwanda, 3 August 1994.

<sup>16</sup> Article 1 of the Statute.

<sup>17</sup> Articles 1, 7 of the Statute.

<sup>18</sup> Articles 2-4 of the Statute.

<sup>19</sup> Articles 5, 8 of the Statute.

<sup>20</sup> T. 10 October 2005 p. 5; T. 31 August 2005 p. 3 (Nyiramasuhuko).

<sup>21</sup> Nyiramasuhuko Closing Brief, para. 508. The Chamber notes that Nyiramasuhuko also refers to the ministry as the "Ministry of Family and Women Affairs": *see* T. 1 September 2005 p. 37 (Nyiramasuhuko).

<sup>22</sup> T. 12 October 2005 p. 60 (Nyiramasuhuko).

Nyiramasuhuko had been a Government minister since the creation of the first “power sharing government” on 16 April 1992.<sup>23</sup>

9. Upon completion of her studies in 1964, Nyiramasuhuko worked in a social welfare centre in Cyangugu *préfecture* for three months.<sup>24</sup> Subsequently, she trained for four months in Israel, in the field of community development and adult literacy.<sup>25</sup> Upon her return, she continued working as a trainer in Gitarama *préfecture*.<sup>26</sup> From Gitarama, she was transferred to Kibungo, where she was involved in the same training in 1966 and early 1967.<sup>27</sup> She became inspector of social development centres and operated from her office at the Ministry of Social Affairs in Kigali until 1968.<sup>28</sup>

10. After her marriage in 1968, Nyiramasuhuko left Kigali to live in Butare with her husband, Maurice Ntahobali. She was transferred to the Social Development Centre of Butare *préfecture*, located in Ngoma *commune*, where she worked as a trainer.<sup>29</sup> She gave birth to Shalom Ntahobali in 1970 while she was in Israel to take part in a seminar for African women leaders.<sup>30</sup> Around 1972, she taught the wives of soldiers.<sup>31</sup> She worked in social welfare until 1973.<sup>32</sup> In 1974, she was transferred to the Ministry of Health’s personnel department and worked there until 1976, when she returned to Butare to follow her husband who had been appointed Deputy Director of the IPN.<sup>33</sup> She continued to work with the Ministry of Health, but in the Butare health region, until her husband was transferred to Kigali upon his appointment as a Minister in March 1981.<sup>34</sup> Nyiramasuhuko and her children joined him at the end of that year.<sup>35</sup>

11. In 1982 or 1983, Nyiramasuhuko resumed her studies, enrolling in a training course on public accounts.<sup>36</sup> In November 1985, she obtained a diploma in social welfare, enabling her to enrol in university.<sup>37</sup> In 1986, she began her studies in law at the Butare campus of the National University of Rwanda, having moved to Butare from Kigali.<sup>38</sup> She obtained her *baccalauréat* in law after two years. Nyiramasuhuko submitted an application for a scholarship to continue the “second cycle” but it was denied.<sup>39</sup> She held a position in the Ministry of Interior in Butare from late 1990 or early 1991 until April 1992, where she was in charge of the secretariat of the MRND *préfecture* committee.<sup>40</sup> On 16 April 1992, she was appointed

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<sup>23</sup> Nyiramasuhuko Closing Brief, para. 508.

<sup>24</sup> T. 31 August 2005 pp. 16-17 (Nyiramasuhuko).

<sup>25</sup> T. 31 August 2005 pp. 17-19 (Nyiramasuhuko).

<sup>26</sup> T. 31 August 2005 p. 19 (Nyiramasuhuko).

<sup>27</sup> T. 31 August 2005 pp. 20-26 (Nyiramasuhuko).

<sup>28</sup> T. 31 August 2005 pp. 20-26 (Nyiramasuhuko).

<sup>29</sup> T. 31 August 2005 pp. 30-31 (Nyiramasuhuko).

<sup>30</sup> T. 31 August 2005 p. 32 (Nyiramasuhuko).

<sup>31</sup> T. 31 August 2005 p. 31 (Nyiramasuhuko).

<sup>32</sup> T. 31 August 2005 p. 19 (Nyiramasuhuko).

<sup>33</sup> T. 31 August 2005 pp. 33-35, 38 (Nyiramasuhuko).

<sup>34</sup> T. 31 August 2005 p. 39 (Nyiramasuhuko).

<sup>35</sup> T. 31 August 2005 p. 45 (Nyiramasuhuko).

<sup>36</sup> T. 31 August 2005 pp. 46, 49 (Nyiramasuhuko).

<sup>37</sup> T. 31 August 2005 pp. 52, 59 (Nyiramasuhuko).

<sup>38</sup> T. 1 September 2005 p. 10 (Nyiramasuhuko).

<sup>39</sup> T. 1 September 2005 p. 12 (Nyiramasuhuko).

<sup>40</sup> T. 1 September 2005 pp. 16-17, 20 (Nyiramasuhuko).

Minister of Family and Women's Development in the first multi-party government of Prime Minister Nsengiyaremye on 16 April 1992.<sup>41</sup> When she was appointed minister, she was elected as a MRND National Committee member.<sup>42</sup> She represented Butare *préfecture*.<sup>43</sup>

12. Nyiramasuhuko left Rwanda on 18 July 1994.<sup>44</sup>

13. The Prosecution submitted an initial Indictment against both Nyiramasuhuko and Ntahobali on 26 May 1997.<sup>45</sup> The Indictment was confirmed on 29 May 1997.<sup>46</sup>

14. On 18 July 1997, Nyiramasuhuko was arrested in Kenya and was transferred to Arusha, Tanzania.<sup>47</sup> At her initial appearance on 3 September 1997, Nyiramasuhuko pled not guilty to all five counts against her.<sup>48</sup>

15. On 12 August 1999, after subsequent amendments which added counts to the Indictment, Nyiramasuhuko pled not guilty to all 11 charges against her, namely genocide (Counts 1 through 4), crimes against humanity (Counts 5 through 9), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (Counts 10 and 11).<sup>49</sup>

16. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>50</sup>

17. On 1 November 2000, Trial Chamber II ordered the Prosecution to amend the Indictment following the Chamber's Decision on a preliminary motion.<sup>51</sup> On 1 March 2001, the Prosecution filed the Amended Indictment.<sup>52</sup> Nyiramasuhuko did not make a further appearance because the Nyiramasuhuko and Ntahobali Indictment of 1 March 2001 did not contain additional counts, compared to the 12 August 1999 Indictment.

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<sup>41</sup> T. 1 September 2005 pp. 34, 36-37 (Nyiramasuhuko); Nyiramasuhuko Closing Brief, para. 803.

<sup>42</sup> T. 6 September 2005 p. 58 (Nyiramasuhuko).

<sup>43</sup> T. 6 September 2005 p. 60 (Nyiramasuhuko).

<sup>44</sup> Nyiramasuhuko Closing Brief, para. 56. The Chamber notes the Closing Brief erroneously states 18 April 1994 in both the French and English versions.

<sup>45</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Indictment, 26 May 1997 (The initial Indictment contained seven counts, the first five against both Nyiramasuhuko and Ntahobali and the last two against Ntahobali only).

<sup>46</sup> *Nyiramasuhuko & Ntahobali*, Decision to Confirm the Indictment (TC), 29 May 1997.

<sup>47</sup> See, e.g., Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 1.

<sup>48</sup> T. 8 June 2000 p. 23 (Prosecution Oral Motion); T. 3 September 1997 pp. 32-35 (Pre-Joinder Transcript: see Case No. ICTR-97-21-T).

<sup>49</sup> T. 12 August 1999 pp. 24-28 (Pre-Joinder Transcript: see Case No. ICTR-97-21).

<sup>50</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999.

<sup>51</sup> *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000; *Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000.

<sup>52</sup> *Nyiramasuhuko et al.*, Decision on Prosecutor's Motion for Extension of Time Within Which to Comply With Court Order to File an Indictment (TC), 2 March 2001.



### 1.3.2 Arsène Shalom Ntahobali

18. As indicated above, Ntahobali is the son of Nyiramasuhuko and Maurice Ntahobali. He was born in 1970 in Israel.<sup>53</sup> On 6 April 1994, Ntahobali was both a student and part-time manager of Hotel Ihuliro.<sup>54</sup>

19. Ntahobali attended primary school first in Butare at the *Groupe Scolaire* complex and then in Kigali.<sup>55</sup> At the secondary school level, Ntahobali studied at *Groupe Scolaire* in Kigali for four years, at *Saint-André* College in Nyarugenge *commune* of Kigali for one year, and at ESAPAG in Gitwe, Muramba *commune*, for two years.<sup>56</sup> He started his higher education at Rwanda National University during the 1992-1993 academic year.<sup>57</sup> He registered in the Faculty of Applied Sciences for the 1993-1994 academic year.<sup>58</sup>

20. In 1993, Ntahobali assisted with the final building work of Hotel Ihuliro.<sup>59</sup> Hotel Ihuliro was located in Mamba *cellule*, Butare-ville *secteur*, Ngoma *commune*, Butare *préfecture*.<sup>60</sup> Ntahobali stayed with his parents in their Buye *secteur* house until he married and moved first to a house in Cyarwa *secteur* and then to Hotel Ihuliro.<sup>61</sup>

21. Ntahobali got married in early 1993.<sup>62</sup> During the events of 1994, Ntahobali had a young baby and his wife was pregnant.<sup>63</sup> Ntahobali, his wife and their child left Butare on 3 July 1994 and left Rwanda on 18 July 1994. He stayed for a few days in what was then Zaire before moving to Nairobi. In early 1995, Ntahobali returned to Zaire.<sup>64</sup>

22. The Prosecution submitted an initial Indictment against both Nyiramasuhuko and Ntahobali on 26 May 1997.<sup>65</sup> The Indictment was confirmed on 29 May 1997.<sup>66</sup>

23. On 24 July 1997, Ntahobali was arrested in Kenya and transferred to Arusha.<sup>67</sup> At his initial appearance on 17 October 1997, Ntahobali pled not guilty to all seven counts against him.<sup>68</sup>

24. On 12 August 1999, after subsequent amendments added counts to the Indictment, Ntahobali pled not guilty to all 10 counts against him, namely genocide (Counts 1 through 3),

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<sup>53</sup> T. 31 August 2005 p. 32; T. 1 June 2006 p. 30 (Nyiramasuhuko).

<sup>54</sup> Ntahobali Closing Brief, Appendix 1, para. 1.

<sup>55</sup> T. 6 April 2006 p. 25 (Ntahobali).

<sup>56</sup> T. 6 April 2006 pp. 27-29 (Ntahobali).

<sup>57</sup> T. 6 April 2006 pp. 63-64 (Ntahobali).

<sup>58</sup> T. 12 April 2006 p. 6 (Ntahobali).

<sup>59</sup> T. 6 April 2006 pp. 64-65 (Ntahobali).

<sup>60</sup> T. 10 April 2006 p. 79 (Ntahobali).

<sup>61</sup> Ntahobali Closing Brief, Appendix 3, para. 68.

<sup>62</sup> T. 6 April 2006 pp. 64-65 (Ntahobali).

<sup>63</sup> T. 26 April 2006 p. 16 (Ntahobali).

<sup>64</sup> T. 27 April 2006 p. 3 (Ntahobali).

<sup>65</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Indictment, 26 May 1997 (The initial Indictment contained seven counts, the first five against both Nyiramasuhuko and Ntahobali and the last two against Ntahobali only).

<sup>66</sup> *Nyiramasuhuko & Ntahobali*, Decision to Confirm the Indictment (TC), 29 May 1997.

<sup>67</sup> *See, e.g.*, Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 3.

<sup>68</sup> T. 17 October 1997 pp. 37-44.

crimes against humanity (Counts 5 through 9), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (Counts 10 and 11).<sup>69</sup>

25. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>70</sup>

26. On 1 November 2000, Trial Chamber II ordered the Prosecution to amend the Indictment following the Chamber's Decision on a preliminary motion with respect to defects of substance and form in the Indictment.<sup>71</sup> The Prosecution filed the amended Nyiramasuhuko and Ntahobali Indictment on 1 March 2001.<sup>72</sup> Ntahobali did not make a further appearance because the Nyiramasuhuko and Ntahobali Indictment did not contain additional counts, compared to the 12 August 1999 Indictment.

### 1.3.3 Sylvain Nsabimana

27. Nsabimana was born on 29 July 1951 in Mbazi *commune*, Butare *préfecture*.<sup>73</sup>

28. Nsabimana attended the *Groupe Scolaire* primary school before spending the first three years of his secondary education at Marist Brothers School and the following four in the Agricultural Section in Butare. He later attended an agricultural academy in the Soviet Union where he specialised in agronomical studies, starting in September 1974. Nsabimana obtained his *maîtrise* degree in agronomy in the Soviet Union in June 1981.<sup>74</sup>

29. In October 1981, Nsabimana was recruited by the National University of Rwanda as an assistant lecturer at the Faculty of Agronomy. At the end of 1984, he left Rwanda to pursue doctoral studies in Canada; he did not finish and returned to Rwanda in late 1986.<sup>75</sup> Upon his return to Rwanda, Nsabimana worked as a maize biologist with the Birunga Place Project, managed by the Scientific Institute of Agronomic Research. In 1987, from January until around September, Nsabimana specialised in maize biology at an international institute in Mexico.<sup>76</sup> In November or December 1988, Nsabimana resigned from the project and went to Denmark to study seed pathology at an institute affiliated with the Royal Veterinary and Agricultural University in Copenhagen. He returned to Rwanda in August or September 1989 with a further diploma.<sup>77</sup> At the end of 1989, Nsabimana was in charge of the second phase of the DGB project, an agricultural development scheme for Butare with an office in Gishamvu.<sup>78</sup> Towards the end of 1990, Nsabimana was in charge of the development of Busoro *sous-*

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<sup>69</sup> T. 12 August 1999 pp. 24-28, 41-44.

<sup>70</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999

<sup>71</sup> *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000; *Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000.

<sup>72</sup> *Nyiramasuhuko et al.*, Decision on Prosecutor's Motion for Extension of Time Within Which to Comply with Court Order to File an Indictment (TC), 2 March 2001.

<sup>73</sup> T. 11 September 2006 p. 20 (Nsabimana). The Indictments allege that Nsabimana was born on 29 July 1953.

<sup>74</sup> T. 11 September 2006 pp. 27-28 (Nsabimana).

<sup>75</sup> T. 11 September 2006 p. 29 (Nsabimana).

<sup>76</sup> T. 11 September 2006 p. 30 (Nsabimana).

<sup>77</sup> T. 11 September 2006 pp. 30-31 (Nsabimana).

<sup>78</sup> T. 11 September 2006 p. 31 (Nsabimana).

*préfecture*.<sup>79</sup> From April 1993 until April 1994, he was employed as a director of the Coffee Pilot Project in Kigali.<sup>80</sup>

30. Nsabimana was a PSD Party member from the time of the party's creation. He headed the Mbazi section of the PSD in Butare *préfecture*. Following his relocation to Kigali, Nsabimana became head of the PSD in Kigali-rural *préfecture*.<sup>81</sup>

31. Nsabimana served as *préfet* of Butare from 19 April until 17 June 1994, when he was replaced by Nteziryayo.<sup>82</sup> As *préfet*, Nsabimana permitted a BBC crew to video-tape scenes of the 1994 events depicting refugees at the *préfecture* office.<sup>83</sup>

32. On 18 July 1997, Nsabimana was arrested in Kenya and transferred to Arusha,<sup>84</sup> pursuant to an order for transfer and provisional detention.<sup>85</sup>

33. On 16 October 1997, the initial joint Indictment against both Nsabimana and Nteziryayo was confirmed and an order was issued for Nsabimana's continued detention.<sup>86</sup>

34. During his initial appearance on 24 October 1997, Nsabimana entered pleas of not guilty to all five counts against him.<sup>87</sup>

35. After subsequent amendments to the Indictment, Nsabimana made a further appearance on the basis of the 12 August 1999 Indictment, which included additional counts against him. At this appearance on 13 August 1999, Nsabimana pled not guilty to each of the nine counts against him, namely genocide (Counts 1 through 4), crimes against humanity (Counts 5 through 8), and serious violations of Article 3, common to the Geneva Conventions and of Additional Protocol II (Count 9).<sup>88</sup>

36. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>89</sup>

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<sup>79</sup> T. 11 September 2006 p. 32 (Nsabimana).

<sup>80</sup> T. 11 September 2006 pp. 33-34 (Nsabimana).

<sup>81</sup> Nsabimana Closing Brief, para. 1937.

<sup>82</sup> Paras. 4.1-4.3 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Nsabimana Closing Brief, para. 6; T. 18 September 2006 p. 22; T. 20 September 2006 p. 71 (Nsabimana).

<sup>83</sup> T. 10 October 2006 p. 33 (Nsabimana).

<sup>84</sup> See, e.g., Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 3.

<sup>85</sup> *Nsabimana*, Order for Transfer and Provisional Detention (in Accordance with Rule 40 *bis* of the Rules) (TC), 16 July 1997; *Nsabimana*, Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Accordance with Rule 40 *bis* (F) of the Rules of Procedure and Evidence) (TC), 14 August 1997; *Nsabimana*, Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Accordance with Rule 40 *bis* (G) of the Rules of Procedure and Evidence) (TC), 16 September 1997; *Nsabimana*, Warrant of Arrest and Order for Continued Detention (TC), 16 October 1997.

<sup>86</sup> *Nsabimana*, Warrant of Arrest and Order for Continued Detention (TC), 16 October 1997; *Nteziryayo*, Warrant of Arrest and Order for Surrender (TC), 16 October 1997.

<sup>87</sup> T. 24 October 1997 pp. 24-28 (Pre-Joinder Transcript: see Case No. ICTR-97-29).

<sup>88</sup> T. 13 August 1999 pp. 23-29 (French) (Pre-Joinder Transcript: see Case No. ICTR-97-29).

<sup>89</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999.

#### 1.3.4 Alphonse Nteziryayo

37. Nteziryayo was born on 26 August 1947 in Akagashuma *cellule*, Nyagahuru *secteur*, Kibayi *commune*, Butare *préfecture*.<sup>90</sup> He married Consolée Uwamahoro<sup>91</sup> in early 1990 and has four children.<sup>92</sup> Nteziryayo is a soldier by training.<sup>93</sup>

38. Nteziryayo attended primary school from May 1953 until 1959 in Mugombwa Parish in Muganza *commune*, and secondary school from 1961 until 1965 at *École des Moniteurs* in Save in Butare *préfecture*.<sup>94</sup> In 1960, he attended preparatory school in Bujumbura, Burundi, for one year. From 1965 until 1966, he taught at a school in Save in Shyanda *commune*, Butare *préfecture*.<sup>95</sup> From November 1966 to July 1970, he studied human sciences before teaching at the *Collège Inférieur* in Cyangugu *préfecture*.<sup>96</sup>

39. In August 1971, Nteziryayo enrolled at the *École des Officiers*, the military officers' school in Kigali, where he trained for two years. Nteziryayo graduated on 1 July 1973; on the same day, he was appointed as a non-commissioned officer and became head of the platoon of the Military Police Company.<sup>97</sup>

40. From July until November 1974, Nteziryayo undertook commando training in Belgium, where he was trained as a sports and physical education officer and where he attended para-commando training.<sup>98</sup> In 1974, Nteziryayo also trained at the *École Supérieure Militaire* ("ESM").<sup>99</sup> In 1975, Nteziryayo undertook military police officer training and from June 1975 to December 1980 he was seconded to the *gendarmerie*.<sup>100</sup> Between September 1975 and July 1976, he was trained at the *gendarmerie* school in Melun, France,<sup>101</sup> where he attended courses on the maintenance and establishment of public order, the *gendarmerie* as an auxiliary force to the Department of Prosecutions, road safety, criminal law, and the Criminal Investigations Department in the judiciary.<sup>102</sup>

41. When he assumed the rank of Captain in 1979, Nteziryayo also became a Criminal Investigations Officer.<sup>103</sup> At the *gendarmerie* in Rwanda, he worked with the Law and Order Service, the Road Safety Service, the Crime Control Service, the Main Card Index Service, the Order Maintenance Section, and within various detachments in Kigali.<sup>104</sup> From the end of May 1977 until the end of 1980, he was Chief of the *Fichier Central* (the central filing office) of the

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<sup>90</sup> T. 14 May 2007 p. 9 (Nteziryayo).

<sup>91</sup> T. 14 May 2007 p. 10 (Nteziryayo).

<sup>92</sup> T. 14 May 2007 p. 12 (Nteziryayo).

<sup>93</sup> T. 14 May 2007 pp. 20-21; T. 19 June 2007 p. 70; T. 20 June 2007 p. 46 (Nteziryayo).

<sup>94</sup> T. 14 May 2007 p. 12 (Nteziryayo).

<sup>95</sup> T. 14 May 2007 p. 13 (Nteziryayo).

<sup>96</sup> T. 14 May 2007 p. 13 (Nteziryayo); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 128.

<sup>97</sup> T. 14 May 2007 pp. 14-16 (Nteziryayo).

<sup>98</sup> T. 14 May 2007 p. 16 (Nteziryayo).

<sup>99</sup> T. 3 July 2007 p. 41 (Nteziryayo).

<sup>100</sup> T. 14 May 2007 p. 16 (Nteziryayo).

<sup>101</sup> T. 14 May 2007 p. 16; T. 3 July 2007 pp. 44-45 (Nteziryayo).

<sup>102</sup> T. 3 July 2007 pp. 44-45 (Nteziryayo).

<sup>103</sup> T. 13 June 2007 pp. 32-33 (Nteziryayo).

<sup>104</sup> T. 14 May 2007 p. 23; T. 20 June 2007 p. 43 (Nteziryayo).

Investigation Department, which gathered and recorded information on offences committed by anyone at the national level.<sup>105</sup>

42. In December 1980, he was appointed Commander of the Military Police, a position he held until July 1984,<sup>106</sup> having succeeded Colonel Théoneste Bagosora.<sup>107</sup> Nteziryayo was the head of the specialised cell of the MRND, as Commander of the Military Police Unit.<sup>108</sup>

43. Between September 1984 and December 1985, Nteziryayo underwent training at the *École de Guerre*, a military academy in Paris.<sup>109</sup> From January 1986 until April 1987, Nteziryayo was appointed head of Training and Operations of a defence battalion at Kanombe in Kigali *préfecture*.<sup>110</sup> Between April 1987 and July 1989, Nteziryayo was Commander of the Mutara Company, stationed in the north-east of the country; from July 1989 until 26 October 1990, he was Commander of the Huye battalion, in Kibungo *préfecture*.<sup>111</sup>

44. Nteziryayo was involved in the counter-attack between 6 and 18 October 1990, leading the Huye battalion in Kibungo against the RPF.<sup>112</sup> On 18 October 1990, the Rwandan Armed Forces were defeated by the RPF in Mutara, Byumba *préfecture*.<sup>113</sup>

45. On 26 October 1990, Nteziryayo was appointed Commander of the Butare Company at Ngoma Camp.<sup>114</sup> From April to September 1991, he was Company Commander of the Kibuye Company. In September 1991, he was appointed to the Ministry of Interior and Communal Development, where he was the Director of Communal Police matters until 17 June 1994, when he was appointed *préfet* of Butare.<sup>115</sup>

46. On 20 June 1994, Nteziryayo received the official telegram appointing him *préfet* of Butare.<sup>116</sup> On 3 July 1994, Nteziryayo left Butare town and headed south.<sup>117</sup>

47. From 1984 until June 1994, Nteziryayo was a member of the National Olympics Committee of Rwanda and from 1992 until June 1994, he was President of the Athletics Federation of Rwanda and accompanied athletes to African and European countries for international competitions.<sup>118</sup>

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<sup>105</sup> T. 20 June 2007 pp. 43-45; T. 3 July 2007 pp. 46-47 (Nteziryayo).

<sup>106</sup> T. 14 May 2007 pp. 23-24 (Nteziryayo).

<sup>107</sup> T. 14 May 2007 p. 26 (Nteziryayo); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 128; T. 20 June 2007 p. 45 (Nteziryayo).

<sup>108</sup> T. 9 July 2007 p. 67 (Nteziryayo).

<sup>109</sup> T. 14 May 2007 pp. 16, 24 (Nteziryayo).

<sup>110</sup> T. 14 May 2007 pp. 16-17 (Nteziryayo).

<sup>111</sup> T. 14 May 2007 p. 17 (Nteziryayo).

<sup>112</sup> T. 14 May 2007 p. 27 (Nteziryayo).

<sup>113</sup> T. 14 May 2007 p. 29; T. 4 July 2007 pp. 13, 15 (Nteziryayo).

<sup>114</sup> T. 14 May 2007 p. 30; T. 20 June 2007 p. 46 (Nteziryayo).

<sup>115</sup> T. 14 May 2007 pp. 19, 42 (Nteziryayo).

<sup>116</sup> T. 7 June 2007 pp. 22-23, 25, 29 (Nteziryayo); T. 17 October 2006 p. 8 (Nsabimana); T. 20 November 2006 p. 16 (Nsabimana) (French).

<sup>117</sup> T. 27 June 2007 pp. 56-57 (Nteziryayo).

<sup>118</sup> T. 14 May 2007 p. 23; T. 15 May 2007 p. 4; T. 26 June 2007 pp. 16-17 (Nteziryayo).

48. On 16 October 1997, the initial joint Indictment against both Nsabimana and Nteziryayo was confirmed and a warrant of arrest was issued against Nteziryayo, addressed to the Government of Burkina Faso.<sup>119</sup>

49. Nteziryayo was arrested in Burkina Faso on 24 April 1998 and transferred to Arusha on 21 May 1998.<sup>120</sup>

50. During his initial appearance on 17 August 1998, Nteziryayo pled not guilty to all six counts against him.<sup>121</sup>

51. After subsequent amendments, Nteziryayo made a further appearance on the basis of the 12 August 1999 Indictment, which included additional counts against him. At his further appearance on 13 August 1999, Nteziryayo pled not guilty to all nine counts against him, namely genocide (Counts 1 through 4), crimes against humanity (Counts 5 through 8), and serious violations of Article 3, Common to the Geneva Conventions and of Additional Protocol II (Count 9).<sup>122</sup>

52. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>123</sup>

### 1.3.5 Joseph Kanyabashi

53. Joseph Kanyabashi was born in 1937 in Mpare *secteur*, Huye *commune*, Butare *préfecture*.<sup>124</sup> Kanyabashi served as *bourgmestre* of Ngoma *commune* in Butare *préfecture* from April 1974 until he left Rwanda in July 1994.<sup>125</sup> Kanyabashi joined the PSD after the advent of multi-party politics.<sup>126</sup> Kanyabashi's wife, Bernadette Kamanzi, is Tutsi.<sup>127</sup>

54. As Kanyabashi elected not to testify, less information is available on his background. He is the only Accused who did not testify.

55. Kanyabashi was arrested on 28 June 1995 in the Kingdom of Belgium.<sup>128</sup> The initial Indictment against Kanyabashi was confirmed on 15 July 1996.<sup>129</sup> Kanyabashi was transferred to Arusha on 8 November 1996.<sup>130</sup>

56. On 29 November 1996, Kanyabashi made his initial appearance. He refused to enter a plea to any of the charges against him on the grounds that he lacked counsel of his choice. In

<sup>119</sup> *Nsabimana*, Warrant of Arrest and Order for Continued Detention (TC), 16 October 1997; *Nteziryayo*, Warrant of Arrest and Order for Surrender (TC), 16 October 1997.

<sup>120</sup> *See, e.g.*, Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 2.

<sup>121</sup> T. 17 August 1998 pp. 16-21 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29).

<sup>122</sup> T. 13 August 1999 pp. 23-29 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29).

<sup>123</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999.

<sup>124</sup> T. 29 November 1996 p. 6 (Pre-Joinder Transcript: *see* Case No. ICTR-96-15).

<sup>125</sup> Paras. 4.1-4.3 of the Kanyabashi Indictment (not in support of counts).

<sup>126</sup> Kanyabashi Closing Brief, para. 27 (according to Guichaoua, on 18 June 1991, the law on political parties was published, authorising, the introduction of multiparty politics); T. 25 June 2004 p. 44 (Guichaoua).

<sup>127</sup> Kanyabashi Closing Brief, para. 24.

<sup>128</sup> *See, e.g.*, Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 3.

<sup>129</sup> *Kanyabashi*, Decision Confirming the Indictment (TC), 15 July 1996.

<sup>130</sup> *See, e.g.*, Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 3.

default of any plea, the Trial Chamber entered pleas of not guilty to all five counts against him.<sup>131</sup>

57. Kanyabashi made a further initial appearance on the basis of the 12 August 1999 Indictment, which included additional counts against him. On 12 August 1999, Kanyabashi pled not guilty to all nine counts against him, namely genocide (Counts 1 through 4), crimes against humanity (Counts 5 through 8), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 9).<sup>132</sup>

58. On 31 May 2000, Trial Chamber II ordered further amendments to the Indictment, in order to clarify certain portions of the Indictment.<sup>133</sup> The Prosecution submitted Amended Indictments on 29 June 2000 and 2 November 2000.<sup>134</sup> On 8 June 2001, Trial Chamber II granted the Prosecution's request to harmonise the French and English versions of the Indictment.<sup>135</sup> Pursuant to this Order, the Prosecution submitted the Kanyabashi Indictment on 11 June 2001. Kanyabashi did not make a further appearance because the Kanyabashi Indictment did not introduce additional counts compared to the 12 August 1999 Indictment.

59. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>136</sup>

### 1.3.6 Élie Ndayambaje

60. Ndayambaje was born on 8 March 1958 in Musasti, Cyumba *secteur*, Muganza *commune*, Butare *préfecture*.<sup>137</sup>

61. Ndayambaje married Agnes Mukaneza on 27 June 1987 and they have three children.<sup>138</sup> Ndayambaje lived in Mugombwa *secteur*, Muganza *commune*, Butare *préfecture*.<sup>139</sup>

62. Upon completion of his secondary school education at the Butare *Groupe Scolaire*, Ndayambaje studied at the National University of Rwanda in Butare where, after three years of studies, he obtained his *baccalauréat* degree in social and economic sciences and management

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<sup>131</sup> T. 29 November 1996 pp. 21-26 (Pre-Joinder Transcript: *see* Case No. ICTR-96-15).

<sup>132</sup> T. 12 August 1999 pp. 18-21 (Pre-Joinder Transcript: *see* Case No. ICTR-96-15).

<sup>133</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

<sup>134</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Amended Indictment: as per the Decision of Trial Chamber II of 12 August 1999 and 31 May 2000, 2 November 2000.

<sup>135</sup> *Kanyabashi*, Decision on the Prosecutor's Urgent Motion for Harmonization of the English and French Version of the Amended Indictment (TC), 8 June 2001.

<sup>136</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999.

<sup>137</sup> T. 29 November 1996 p. 3 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8) (contrary to the Ndayambaje Indictment which alleges that Ndayambaje was born in Cyumba *secteur*, Kibayi *commune*, Butare *préfecture*); Ndayambaje Closing Brief, para. 1.

<sup>138</sup> T. 20 October 2008 p. 31 (Ndayambaje).

<sup>139</sup> T. 20 October 2008 p. 27 (Ndayambaje).

in 1981. He also studied in Belgium.<sup>140</sup> From then until 1992, he was employed in the Rwandan public sector.<sup>141</sup>

63. From 1981, Ndayambaje was employed as Chief Accountant at the *Société Rwandaise* in Kigali, for approximately a year and half. On 10 January 1983, he was appointed *bourgmestre* of Muganza *commune*, in Butare *préfecture*.<sup>142</sup> He held this office until October 1992. Chrysologue Bimenyimana replaced him as *bourgmestre* of Muganza *commune*.<sup>143</sup>

64. In 1992, Ndayambaje resumed his studies at the National University of Rwanda in Butare.<sup>144</sup> He attended a second cycle of university studies at the end of which he obtained in 1994 a first degree referred to as *licence* in Rwanda.<sup>145</sup>

65. Ndayambaje was involved in certain projects, namely the APAME secondary school and the Migina Peoples' Bank.<sup>146</sup> He was also Chairman of the Management Committee of the Kirarambogo Health Centre.<sup>147</sup>

66. Ndayambaje owned a rice-husking centre at the commercial centre in Kibayi<sup>148</sup> and a printing press located in Butare in partnership with his brother-in-law.<sup>149</sup>

67. On 18 June 1994, Ndayambaje was reappointed *bourgmestre* of Muganza *commune*.<sup>150</sup> On 7 July 1994, Ndayambaje left Muganza *commune* with his family and headed towards Burundi.<sup>151</sup> He and his family spent some time in Burundi and in Tanzania before moving to Belgium.<sup>152</sup>

68. On 21 June 1996, the initial Indictment against Ndayambaje was confirmed and a warrant for his arrest was issued to the Kingdom of Belgium.<sup>153</sup>

69. Ndayambaje was arrested in Belgium on 28 June 1995. On 8 November 1996, he was transferred to Arusha.<sup>154</sup>

70. Ndayambaje made his initial appearance on 29 November 1996, when he entered plea of not guilty to all five counts against him.<sup>155</sup>

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<sup>140</sup> T. 20 October 2008 pp. 8-9, 11 (Ndayambaje).

<sup>141</sup> T. 20 October 2008 p. 9 (Ndayambaje).

<sup>142</sup> T. 20 October 2008 p. 10 (Ndayambaje).

<sup>143</sup> T. 20 October 2008 p. 40 (Ndayambaje).

<sup>144</sup> T. 20 October 2008 p. 32 (Ndayambaje).

<sup>145</sup> T. 20 October 2008 p. 9 (Ndayambaje).

<sup>146</sup> T. 20 October 2008 pp. 52-53 (Ndayambaje).

<sup>147</sup> T. 24 November 2008 p. 45 (Ndayambaje).

<sup>148</sup> T. 20 October 2008 p. 61 (Ndayambaje).

<sup>149</sup> T. 20 October 2008 p. 65 (Ndayambaje).

<sup>150</sup> T. 10 November 2008 p. 12 (Ndayambaje).

<sup>151</sup> T. 17 November 2008 p. 15 (Ndayambaje).

<sup>152</sup> T. 17 November 2008 pp. 17-18 (Ndayambaje).

<sup>153</sup> *Ndayambaje*, Decision on the Review of the Indictment (TC), 21 June 1996; *Ndayambaje*, Warrant of Arrest and Order for Surrender (TC), 21 June 1996.

<sup>154</sup> See, e.g., Fourth Annual Report of the ICTR, 7 September 1999, Annex p. 1.

<sup>155</sup> T. 29 November 1996 pp. 27-28 (Pre-Joiner Transcript: see Case No. ICTR-96-8).



71. Ndayambaje made a further appearance on the basis of the 11 August 1999 Indictment, which added counts against him.<sup>156</sup> At the appearance on 12 August 1999, Ndayambaje pled not guilty to all nine counts against him, namely genocide (Counts 1 through 4), crimes against humanity (Counts 5 through 8), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 9).<sup>157</sup>

72. On 5 October 1999, Trial Chamber II ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>158</sup>

#### 1.4 Summary of the Procedural History

73. A complete procedural history is available as Annex A of this Judgement. For present purposes, however, it is helpful to recount the following summary.

74. The Joint Trial commenced on 12 June 2001 before Trial Chamber II, composed of Judge William H. Sekule, presiding, Judge Arlette Ramaroson and Judge Winston C. M. Maqutu.<sup>159</sup>

75. After the non re-election of Judge Maqutu in May 2003,<sup>160</sup> Judge Solomy B. Bossa was appointed to Trial Chamber II on 20 October 2003.<sup>161</sup> The Trial Chamber, composed of Judge Sekule and Judge Ramaroson, held that the interests of justice were best served by continuing the trial with a substitute judge.<sup>162</sup> The case resumed on 26 January 2004.

76. The Prosecution closed its case on 18 October 2004,<sup>163</sup> having called 59 witnesses including expert witnesses.

77. Nyiramasuhuko's Defence case ran from 31 January 2005 until 24 November 2005;<sup>164</sup> 26 witnesses were called, including the Accused.

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<sup>156</sup> T. 10 August 1999 p. 2 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8); *Ndayambaje*, Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 2 September 1999.

<sup>157</sup> T. 12 August 1999 pp. 17-20 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8).

<sup>158</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999.

<sup>159</sup> At the 19 April 2001 Pre-Trial Conference, Judges William H. Sekule and Mehmet Güney set the trial date for 14 May 2001. After the death of Judge Laity Kama, who was the Presiding Judge over the case, and the nomination of Judge Güney to the Appeals Chamber in May 2001, the start of trial was postponed until 12 June 2001. The Chamber was also seized of the case against Jean de Dieu Kamuhanda, which started on 17 April 2001 and rendered judgement on 22 January 2004, and of the case against Juvénal Kajelijeli, which re-started on 3 July 2001 and rendered judgement on 1 December 2003.

<sup>160</sup> Judge Maqutu's term of office expired on 24 May 2003. He was not re-elected and Security Council Resolution 1482 extended his term of office for the purposes of concluding the *Kamuhanda* and *Kajelijeli* trials but did not extend his term for the *Nyiramasuhuko et al.* trial. *See* Security Council Resolution 1482.

<sup>161</sup> *Nyiramasuhuko et al.*, Certification in the Matter of Proceedings Under Rule 15 bis (D) (TC), 5 December 2003.

<sup>162</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15 bis (D) (TC), 15 July 2003 (affirmed by the Appeals Chamber in its Decision in the Matter of Proceedings Under Rule 15 bis (D), 24 September 2003). *See Nyiramasuhuko et al.*, Decision in the Matter of Proceedings under Rule 15 bis (D) (AC), 24 September 2003.

<sup>163</sup> The case was closed with the exception of one final witness, who completed giving testimony on 5 November 2004.

<sup>164</sup> The case was closed with the exception of one final witness, who was eventually withdrawn.

78. Ntahobali's Defence case ran from 12 April 2005<sup>165</sup> until 26 June 2006; 23 witnesses were called, including the Accused.<sup>166</sup>
79. Nsabimana's Defence case ran from 27 June 2006 until 28 November 2006; 11 witnesses were called, including the Accused.<sup>167</sup>
80. Nteziryayo's Defence case ran from 4 December 2006 until 9 July 2007; 23 witnesses were called, including the Accused.<sup>168</sup>
81. Kanyabashi's Defence case ran from 10 July 2007 until 20 May 2008; 23 witnesses were called. The Accused chose not to testify.<sup>169</sup>
82. Ndayambaje's Defence case ran from 20 May 2008 until 2 December 2008; 24 witnesses were called, including the Accused.
83. A total of 130 Defence witnesses were called, including expert witnesses.
84. The joint trial concluded on 2 December 2008 after 714 trial days. Each Party filed their Closing Brief on 17 February 2009. Four Prosecution witnesses were recalled and gave further testimony on 23, 24 and 25 February 2009.
85. The closing arguments were heard from 20 April 2009 until 30 April 2009.

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<sup>165</sup> The opening statement for the Ntahobali Defence was made on 12 April 2005, except for the hearing of Edmond Babin in April 2005, a witness common to Nyiramasuhuko and Ntahobali, the Defence for Ntahobali presented the bulk of its evidence from 28 November 2005 onwards.

<sup>166</sup> The case was closed with the exception of one witness and some exhibits. The last witness finished giving testimony on 28 April 2008.

<sup>167</sup> The case was closed with the exception of the submission of one exhibit.

<sup>168</sup> The case was closed with the exception of one witness, who was later withdrawn.

<sup>169</sup> T. 10 March 2008 p. 5 (ICS).

## CHAPTER II: PRELIMINARY ISSUES

### 2.1 Introduction

86. In their Closing Briefs and arguments, the six Accused challenge various aspects of the fairness of the proceedings. Below the Chamber will consider submissions concerning paragraphs in the Indictments not in support of counts; defects in the Indictments, including insufficient notice; curing; pleading requirements; the effect of cumulative defects in the Indictments; the right to a fair trial free from undue delay; joinder; preliminary evidentiary matters; the issue of witnesses under investigation; the involvement of the Chief of Chambers in Deliberations; judicial notice; and the structure of the Judgement. First, however, the Chamber will briefly recall its findings with respect to partial acquittal under Rule 98 *bis* of the Rules as well as Prosecution concessions.

### 2.2 Partial Acquittal Under Rule 98 *bis*

87. On 16 December 2004, the Chamber granted in part Nsabimana's and Kanyabashi's Motions for acquittal and dismissed the other Motions in their entirety.<sup>170</sup>

88. The Chamber partially granted Nsabimana's Motion with respect to Paragraph 6.25 of the Nsabimana and Nteziryayo Indictment. Namely, the Chamber found that the Prosecution had not adduced evidence that, on Nyiramasuhuko's request, Nsabimana ordered military authorities to provide reinforcements at the Ngoma *commune* massacres. The Chamber ordered partial acquittal on this charge for Nsabimana.<sup>171</sup>

89. The Chamber partially granted Kanyabashi's Motion and acquitted him on the charges based on Paragraph 6.38 of the Kanyabashi Indictment. In particular, the Chamber found that the Prosecution had not adduced evidence that Kanyabashi checked identity cards of patients at Butare University Hospital on 15 May 1994.<sup>172</sup>

90. The Chamber also found that the Prosecution had not adduced evidence in support of part of Paragraph 6.43 of the Kanyabashi Indictment, which alleged that Kanyabashi "told the *Préfet* [Nsabimana] that the Tutsi refugees at the *Préfecture* had to be exterminated". The Chamber ordered partial acquittal for Kanyabashi on Paragraph 6.43 and found that Kanyabashi would not have to defend himself against the quoted portion of the paragraph.<sup>173</sup>

91. Consequently, the Chamber will not consider the above-mentioned allegations in this Judgement.

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<sup>170</sup> Nyiramasuhuko et al., Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004.

<sup>171</sup> Nyiramasuhuko et al., Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, paras. 168-169.

<sup>172</sup> Nyiramasuhuko et al., Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, paras. 177-178.

<sup>173</sup> Nyiramasuhuko et al., Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, paras. 182-183.

## 2.3 Prosecution Concessions

92. The Prosecution concedes that no evidence was led against Pauline Nyiramasuhuko on the allegation that she requested military assistance from Nsabimana on 17 June 1994, as set forth in Paragraph 6.25 of the Indictment against her.<sup>174</sup> Consequently, the Chamber will not consider this allegation in the Judgement.

93. The Prosecution also concedes that no evidence was led against Pauline Nyiramasuhuko on the allegation that she incited Jumapili, Nsengiyumva and Mashimangu to slaughter Tutsis, as set forth in Paragraph 6.38 of the Indictment against her.<sup>175</sup> The Prosecution notes that evidence was led that Nyiramasuhuko incited members of the population, as specified in that paragraph, but not that she incited the three named individuals. Consequently, the Chamber will not consider the portion of Paragraph 6.38 related to Jumapili, Nsengiyumva and Mashimangu in the Judgement.

## 2.4 Paragraphs of the Indictments Not in Support of Counts

94. Many paragraphs in the Indictments are of a general nature and are not in support of any count against the Accused. Moreover, some of the facts in these general paragraphs were the subject of judicial notice, as explained more fully in the preliminary section of this Judgement on judicial notice (). Failure by the Prosecution to specifically state that a paragraph supports a given count is an indication that the allegation it contains is not charged as a crime.<sup>176</sup> The omission of a count or charge from an indictment cannot be cured by the provision of timely, clear and consistent information.<sup>177</sup> Thus, where a paragraph is not pled in support of any count and is of no particular background or contextual interest, the Chamber declines to make additional factual and legal findings.<sup>178</sup>

95. The following paragraphs are specifically pled by the Prosecution in support of counts in the relevant Indictments:

Nyiramasuhuko and Ntahobali Indictment, Paragraphs 5.1, 5.8, 5.10 (Concise Statement of Facts: Preparation); 6.13 to 6.14, 6.20, 6.22, 6.25, 6.27, 6.30 to 6.39, 6.47, 6.49 to 6.56 (Concise Statement of the Facts: Other Violations of International Humanitarian Law);

Nsabimana and Nteziryayo Indictment, Paragraphs 5.1, 5.8, 5.12 to 5.13 (Concise Statement of Facts: Preparation); 6.16, 6.21 to 6.22, 6.25 to 6.26, 6.28 to 6.33, 6.35 to 6.38, 6.41, 6.51 to 6.59 (Concise Statement of Facts: Other Violations of International Humanitarian Law);

Kanyabashi Indictment, Paragraphs 5.1, 5.8, 5.12 to 5.13 (Concise Statement of Facts: Preparation); 6.22, 6.26, 6.28 to 6.35, 6.37 to 6.38, 6.41 to 6.46, 6.57 to 6.58, 6.60, 6.62 to 6.65 (Concise Statement of Facts: Other Violations of International Humanitarian Law); and

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<sup>174</sup> Prosecution Closing Brief, p. 60, fn. 210.

<sup>175</sup> Prosecution Closing Brief, p. 110, para. 285.

<sup>176</sup> *Muvunyi I*, Judgement (AC), para. 156.

<sup>177</sup> *Muvunyi I*, Judgement (AC), para. 156; *Ntagerura et al.*, Judgement (AC), para. 32.

<sup>178</sup> See *Kajelijeli*, Judgement (TC), para. 232.

Ndayambaje Indictment, Paragraphs 5.1, 5.8, 5.13 (Concise Statement of Facts: Preparation); 6.28, 6.30 to 6.34, 6.36 to 6.39, 6.50 to 6.54 (Concise Statement of Facts: Other Violations of International Humanitarian Law).

96. The Chamber will not make findings regarding paragraphs other than those enumerated above, but the Chamber may where relevant, in the course of evaluating the allegations contained in paragraphs listed in support of counts, consider evidence regarding allegations in paragraphs not in support of counts.<sup>179</sup>

## 2.5 Notice of Charges

### 2.5.1 General Challenges to the Indictments

97. During the trial, the Accused challenged the admission of some evidence on the grounds that the Indictments and the Pre-Trial Brief did not provide them with sufficient notice of the facts the Prosecution would seek to prove. In many cases, the Chamber admitted the challenged evidence because it was relevant, and held that it would determine its probative value after hearing all of the evidence in the case.<sup>180</sup> This position was upheld by the Appeals Chamber on 2 July 2004.<sup>181</sup> Numerous challenges with respect to notice have been renewed by the Defence, including submissions that the Indictments are unduly vague in their totality.<sup>182</sup> However, blanket objections that an entire indictment is defective are insufficiently specific.<sup>183</sup>

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<sup>179</sup> See generally *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the “Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible” (AC), 2 July 2004 (holding that while evidence of allegations not pled in the Indictment cannot serve as the basis for a conviction, such evidence is still admissible to the extent the Chamber determines it is relevant).

<sup>180</sup> See, e.g., T. 14 June 2001 pp. 78-79 (Shukry); T. 18 June 2001 pp. 31-32 (Shukry); T. 8 November 2001 p. 34 (Witness TA); T. 16 March 2004 pp. 30-32 (ICS) (Witness QG); T. 8 June 2004 pp. 47-49 (Des Forges); T. 24 June 2004 pp. 12-16 (Des Forges).

<sup>181</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the “Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible” (AC), 2 July 2004, paras. 14-15 (para. 15 notes that “[i]t should be recalled that admissibility of evidence should not be confused with the assessment of the weight to be accorded to that evidence, an issue to be decided by the Trial Chamber after hearing the totality of the evidence”).

<sup>182</sup> The Ntahobali Defence submits that the Nyiramasuhuko and Ntahobali Indictment is “deliberately vague, confused and imprecise” and that these defects have not been cured. The Ntahobali Defence specifically points to Paras. 5.1, 5.8, 6.35, 6.37, 6.38, 6.39, 6.47 and 6.49 to 6.56 of the Nyiramasuhuko and Ntahobali Indictment: see Ntahobali Closing Brief, paras. 65, 67-70, 73-75. The Nyiramasuhuko Defence recalls that Nyiramasuhuko and Ntahobali submitted preliminary motions on this issue, reiterates these arguments, and further submits that reliance on a paragraph that is so vaguely worded that it can potentially be used to charge almost any crime is prohibited: see *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-T, Preliminary Motion Based on Defects in the Form and the Substance of the Indictment, dated 27 October 1999. Similarly, the Ndayambaje Defence submits that at no time was Ndayambaje adequately informed of the material acts with which he was charged, that the acts cited in the Ndayambaje Indictment have nothing to do with Ndayambaje, that most of the paragraphs of the Ndayambaje Indictment that relate to Ndayambaje are vague and imprecise, and that these defects have never been cured, causing serious prejudice to the fairness of his trial: see Ndayambaje Closing Brief, para. 40. The Ndayambaje Defence disputes the Prosecution’s contention that these were “simple details” that were corrected by disclosures, and, moreover, the Prosecution’s statement during its oral closing arguments that, with respect to the Indictments, “[i]n the final analysis, what should actually hold the attention of the Chamber is the substance and not the form” is an admission that the Indictment was fundamentally defective: see Ndayambaje Closing Argument, T. 29 April 2009 p. 52; Ndayambaje Closing Brief, para. 71.

<sup>183</sup> See, e.g., *Renzaho*, Judgement (AC), para. 56.

98. It is within the Chamber's discretion to reconsider past decisions regarding deficiencies in an indictment.<sup>184</sup> The Chamber is aware that it must provide the Parties an opportunity to be heard, and has fully considered the arguments and submissions with respect to vagueness in the Prosecution's and Accused's Closing Briefs and arguments.<sup>185</sup>

### 2.5.2 Specific Challenges to Paragraphs of the Indictments

99. Specific challenges to particular factual allegations are addressed in the relevant section of the factual findings. In some instances, the Chamber has not, in its factual findings, expressly revisited its previous decisions to admit evidence or addressed the Accused's challenges regarding admission, in particular where the Prosecution did not prove its case. It has, nevertheless, considered all challenges in view of the general principles, as recapitulated below.

100. Pursuant to Article 20 (4) of the Statute, each accused is entitled to be informed promptly and in detail of the nature and cause of the charge against him or her. The charges against an accused and the material facts supporting those charges must be pled in an indictment with sufficient precision to provide notice to the accused,<sup>186</sup> and to enable him or her to adequately prepare a defence.<sup>187</sup> Whether a fact is "material" depends on the nature of the Prosecution's case.<sup>188</sup> The Prosecution's characterisation of the alleged criminal conduct and the proximity of the accused to the underlying crime are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case in the indictment in order to provide the accused with adequate notice.<sup>189</sup> For example, where the Prosecution alleges that an accused personally committed the criminal acts in question, it must plead "with the greatest precision" the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed.<sup>190</sup> However, less detail may be acceptable if the "sheer scale of the alleged crimes makes it impractical to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes."<sup>191</sup> Even in cases where a high degree of specificity is "impractical," however, "since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so."<sup>192</sup> Moreover, the Prosecution cannot simultaneously argue that the accused killed a named individual yet claim that the "sheer scale" of the crime made it impossible to identify that individual in the indictment. Quite the contrary, the Prosecution's obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual.<sup>193</sup>

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<sup>184</sup> *Ntagerura et al.*, Judgement (AC), para. 55.

<sup>185</sup> *See Ntagerura et al.*, Judgement (AC), paras. 55, 113.

<sup>186</sup> *Muvunyi II*, Judgement (AC), para. 19; *Muvunyi I*, Judgement (AC), para. 18; *Seromba*, Judgement (AC), paras. 27, 100; *Nahimana et al.*, Judgement (AC), para. 322; *Simba*, Judgement (AC), para. 63.

<sup>187</sup> *Nahimana et al.*, Judgement (AC), para. 322.

<sup>188</sup> *Renzaho*, Judgement (AC), para. 53; *Karera*, Judgement (AC), para. 292.

<sup>189</sup> *Ntagerura et al.*, Judgement (AC), para. 23.

<sup>190</sup> *Ntagerura et al.*, Judgement (AC), para. 23 (citing *Kupreškić et al.*, Judgement (AC), para. 89).

<sup>191</sup> *Muvunyi I*, Judgement (AC), para. 58; *Ntagerura et al.*, Judgement (AC), para. 23 (citing *Kupreškić et al.*, Judgement (AC), para. 89); *see also Renzaho*, Judgement (AC), para. 96; *Rukundo*, Judgement (AC), para. 160.

<sup>192</sup> *Kupreškić et al.*, Judgement (AC), para. 90.

<sup>193</sup> *Kupreškić et al.*, Judgement (AC), para. 89.

101. Additionally, there may well be situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations. In cases concerning physical acts of violence perpetrated by the accused personally, however, location can be very important. Thus, when the Prosecution seeks to prove that the accused committed an act at a specified location, it cannot simultaneously claim that it is impracticable to specify that location in advance.<sup>194</sup>

102. Where it is clear that the Prosecution was in a position to plead specific facts yet failed to do so, for example, where the identity of a particular victim is found in witness statements or the Prosecution Pre-Trial Brief and yet the information is not provided in the Indictment, this failure renders the Indictment defective.<sup>195</sup>

103. The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against an accused in the course of the trial depending on how the evidence unfolds.<sup>196</sup> Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings, or the exclusion of evidence outside the scope of the indictment.<sup>197</sup> In reaching its judgement, a Chamber can only convict an accused of crimes that are charged in the indictment.<sup>198</sup>

### 2.5.3 Generality in Pleading Dates

104. The Nsabimana Defence asserts that words such as “about” are, *per se*, insufficiently precise when used in an indictment and that, consequently, phrases such as “between April and June,” and “around 10 June” should be struck from the Nsabimana and Nteziryayo Indictment.<sup>199</sup> The Chamber recalls its Decision of 1 November 2000 where it held that the “magnitude, time, territorial dimensions, nature and the characteristics of the alleged crimes” did not enable the Prosecution to provide in the Amended Indictment all the particular dates of the given crimes.<sup>200</sup> The Chamber further recalls that “a broad date range, in and of itself, does not invalidate a paragraph of an indictment”,<sup>201</sup> and that the Indictment must be read as a whole.<sup>202</sup>

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<sup>194</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 33.

<sup>195</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 74; *see also Muvunyi I*, Judgement (AC), paras. 58 (“[T]he Prosecution remains obliged to give all the particulars which it is able to give.”), 94.

<sup>196</sup> *Muvunyi I*, Judgement (AC), para. 18; *Ntagerura et al.*, Judgement (AC), para. 27; *Kvočka et al.*, Judgement (AC), para. 30; *Niyitegeka*, Judgement (AC), para. 194; *Kupreškić et al.*, Judgement (AC), para. 92.

<sup>197</sup> *Muvunyi I*, Judgement (AC), para. 18; *Ntagerura et al.*, Judgement (AC), para. 27; *Kvočka et al.*, Judgement (AC), para. 31; *Niyitegeka*, Judgement (AC), para. 194; *Kupreškić et al.*, Judgement (AC), para. 92.

<sup>198</sup> *Muvunyi II*, Judgement (AC), para. 19; *Muvunyi I*, Judgement (AC), para. 18; *Nahimana et al.*, Judgement (AC), para. 326; *Ntagerura et al.*, Judgement (AC), para. 28; *Kvočka et al.*, Judgement (AC), para. 33.

<sup>199</sup> Nsabimana Closing Brief, paras. 40-42.

<sup>200</sup> *Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko’s Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000, para. 59; *see also Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali’s Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000, para. 31.

<sup>201</sup> *Rukundo*, Judgement (AC), para. 163.

<sup>202</sup> *See Mrkšić & Šljivančanin*, Judgement (AC), para. 138; *Gacumbitsi*, Judgement (AC), para. 123.

#### 2.5.4 Curing Defects in the Indictments

105. A defective indictment may be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her that gives details, resolves ambiguity, or clears up vagueness.<sup>203</sup> The Chamber has not only the power but also the obligation to determine whether the Prosecution cured the defects in the Indictment.<sup>204</sup> However, the principle that a defective indictment may be cured is not without limits.<sup>205</sup>

106. A distinction must 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 pursuant to Rule 50 of the Rules.<sup>206</sup>

107. The new material facts should not lead to a “radical transformation” of the Prosecution’s case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could support separate charges on their own, the Prosecution must seek leave from the Trial Chamber to amend the indictment.<sup>207</sup>

108. An accused may be put on notice through information provided in the Prosecution Pre-Trial Brief together with its annexes or the opening statement.<sup>208</sup> In this connection, the timing of such communications, the importance of the information to the ability of the accused to prepare its defence, and the impact of the newly disclosed material facts on the Prosecution’s case are relevant.<sup>209</sup> The list of witnesses the Prosecution intends to call at trial, containing a summary of the facts and charges in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment, may also in some cases serve to put the accused on notice.<sup>210</sup>

109. However, the mere service of witness statements or of potential exhibits by the Prosecution pursuant to the disclosure requirements of the Rules is insufficient to inform the Defence of material facts that the Prosecution intends to prove at trial.<sup>211</sup> In *Bagosora et al.*,

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<sup>203</sup> *Renzaho*, Judgement (AC), para. 55; *Rukundo*, Judgement (AC), para. 29; *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105; *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. 22; *Kupreškić et al.*, Judgement (AC), para. 141.

<sup>204</sup> See *Ntagerura et al.*, Judgement (AC), para. 65.

<sup>205</sup> *Muvunyi I*, Judgement (AC), para. 20; *Nahimana et al.*, Judgement (AC), para. 325; *Ntagerura et al.*, Judgement (AC), para. 32.

<sup>206</sup> *Renzaho*, Judgement (AC), para. 55; *Rukundo*, Judgement (AC), para. 29; *Karera*, Judgement (AC), para. 293.

<sup>207</sup> *Muvunyi I*, Judgement (AC), para. 20; *Nahimana et al.*, Judgement (AC), para. 323; *Ntagerura et al.*, Judgement (AC), paras. 26, 152.

<sup>208</sup> *Naletilić & Martinović*, Judgement (AC), para. 27.

<sup>209</sup> *Kupreškić et al.*, Judgement (AC), paras. 119-121.

<sup>210</sup> *Muhimana*, Judgement (AC), para. 82; *Gacumbitsi*, Judgement (AC), paras. 57-58; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 48; *Naletilić & Martinović*, Judgement (AC), para. 45.

<sup>211</sup> *Naletilić & Martinović*, Judgement (AC), para. 27; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 27.



the Trial Chamber found that the Appeals Chamber had made a distinction between the Pre-Trial Brief and the opening statement, which are adequate means of serving new material facts, and witness statements alone, which are not.<sup>212</sup> Thus, mention of a material fact in a witness statement does not necessarily constitute notice: the Prosecution must convey that the material allegation is part of the case against the accused. In sum, due to the volume of disclosure by the Prosecution in certain cases, a witness statement will not, without some other indication, adequately signal to an accused that the allegation is part of the Prosecution's case.<sup>213</sup>

110. To determine whether the indictment was cured of its defects, the Chamber must determine whether, in light of the circumstances of the case, the accused was reasonably able to understand the nature of the charges against him or her, and to prepare his or her defence.<sup>214</sup> Specifically, the Chamber should consider the following factors: the consistency, clarity and specificity with which the material fact is communicated to the accused; the novelty and incriminating nature of the new material fact; and the period of notice given to the accused.<sup>215</sup> Lastly, when the Chamber finds that a defective indictment was subsequently cured, it must determine whether the defects in question nevertheless caused considerable prejudice to the accused's right to a fair trial by preventing him or her from properly preparing his or her case.<sup>216</sup>

111. Where defects in the indictment are not cured, the appropriate remedy to ensure a fair trial is to not convict an accused on the basis of facts for which the Prosecution provided insufficient notice.<sup>217</sup> Evidence of material facts not pled in the indictment, however, may still be relevant to the proof of other allegations pled in the Indictment.<sup>218</sup> Similarly, evidence that is excluded as outside the scope of the indictment may still, in the interests of justice, be considered under Rule 93 of the Rules as corroborating evidence of a consistent pattern of conduct, provided that the defence receives sufficient notice from the Prosecution that the evidence will be used in such a manner.<sup>219</sup>

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<sup>212</sup> *Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, para. 7.

<sup>213</sup> *See Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, para. 4 (concluding that the curing inquiry is fact-specific and based on the presence or absence of prejudice to the Accused, but that under this test a witness statement will not cure defects without further indication of materiality).

<sup>214</sup> *See Niyitegeka*, Judgement (AC), para. 197; *Kupreškić et al.*, Judgement (AC), paras. 119-121.

<sup>215</sup> *Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 2-3.

<sup>216</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 26.

<sup>217</sup> *Ntagerura et al.*, Judgement (AC), para. 67; *Kvočka et al.*, Judgement (AC), para. 33; *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. 18.

<sup>218</sup> *Renzaho*, Judgement (AC), paras. 71, 90; *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15.

<sup>219</sup> *Kupreškić et al.*, Judgement (AC), paras. 321-323, 336.

### 2.5.5 Failure to Plead the Modes of Participation in the Crimes Charged Under Article 6 (1) of the Statute

112. Under Article 6 (1) of the Statute an accused may bear individual criminal responsibility for planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of a crime. The Defence submits that the Indictments in the instant case are defective because the Prosecution failed to specify the mode of participation for charges alleged under Article 6 (1), and that the defects in the Indictments were not cured by the disclosure of timely, clear and consistent information.<sup>220</sup>

113. The Chamber declines to make a general finding at this point, and instead will consider the Defence submissions with respect to failure to adequately plead individual responsibility pursuant to Article 6 (1) for each count on an allegation by allegation basis.

114. The practice of both the Tribunal and the ICTY requires the Prosecution to plead the specific forms of individual criminal responsibility for which the accused is being charged. The Prosecution has repeatedly been discouraged from simply restating Article 6 (1) of the Statute, unless it intends to rely on all the forms of individual criminal responsibility contained therein, because of the ambiguity that this causes.<sup>221</sup>

115. Moreover, where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution, of the alleged crimes, the Prosecution is required to identify the “particular acts” or “the particular course of conduct” of the accused that forms the basis for the charges in question.<sup>222</sup> When the Prosecution is intending to rely on

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<sup>220</sup> Ntahobali Closing Brief, paras. 32-36, 65; Nsabimana Closing Brief, paras. 24, 26, 29, 32, 34-44; Ndayambaje Closing Brief, para. 70. The Nsabimana Defence submits that the Prosecution failed to comply with the Chamber’s orders with respect to necessary indictment amendments. Specifically, the Nsabimana Defence recalls the Chamber’s “Decision on the Defence Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses” of 24 September 1998, which ordered the Prosecution to amend Paragraph 4 of the first Nsabimana and Nteziryayo Indictment, which stated that the “accused either planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation or execution of the said acts”, to specify the role of the Accused in planning the events charged: *see Nsabimana*, Decision on the Defence Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses (TC), 24 September 1998. The Chamber, in its “Decision on the Prosecutor’s Urgent Motion for Stay of Execution of Decision of 24 September 1998 & Decision on Nsabimana’s Motion for Withdrawal of the Indictment and Immediate Release” of 21 May 1999, held that it had already found that the Prosecution was not in compliance with the previous order and admonished the Prosecution for its continued non-compliance: *see Nsabimana & Nteziryayo*, Decision on the Prosecutor’s Urgent Motion for Stay of Execution of Decision of 24 September 1998 & Decision on Nsabimana’s Motion for Withdrawal of the Indictment and Immediate Release (TC), 21 May 1999. The Nsabimana Defence recalls raising the issue of the Prosecution’s continued non-compliance again at the status conference held on 2 February 2001, and repeatedly submitting at the time that the Accused reserved the right to raise the issue in his Closing Brief: T. 2 February 2001. *See also Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

<sup>221</sup> *Rukundo*, Judgement (AC), para. 30.

<sup>222</sup> *Nchamihigo*, Judgement (AC), para. 338; *Ntagerura et al.*, Judgement (AC), para. 25.

all modes of responsibility in Article 6 (1) of the Statute, then the material facts relevant to each of those modes must be pled in the indictment.<sup>223</sup>

116. Although such information should generally be contained in the indictment, the Appeals Chamber has held that, in certain circumstances, a failure to set forth the precise mode of participation in the indictment can be cured by a later submission from the Prosecution, made before the start of trial, identifying the form or forms of liability alleged for each count.<sup>224</sup>

### **2.5.6 Failure to Adequately Plead Superior Responsibility Pursuant to Article 6 (3) of the Statute**

117. The Defence submits that the Prosecution has inadequately pled the required elements for its claims of superior responsibility and that the paragraphs pled in the Indictments with respect to claims under Article 6 (3) are vague and contain imprecise information, which does not adequately inform the Accused of the material facts relating to their alleged responsibility.<sup>225</sup> Consequently, the Defence submits that the Indictments are defective with respect to the counts charged against the Accused under Article 6 (3) of the Statute, and that these defects have not been cured, rendering the Accused unable to adequately prepare their defence.<sup>226</sup>

118. In particular, the Defence submits that with respect to charges brought under superior responsibility pursuant to Article 6 (3) the Prosecution failed in its obligation to identify the subordinates in question, or the nature of the aid provided, and instead relied on generic references to subordinates in the Indictment.<sup>227</sup> The Defence also submits that the Prosecution did not adequately specify the criminal acts alleged to have been committed by the subordinates, knowledge of the acts by the Accused or the identity of the alleged victims, nor

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<sup>223</sup> *Simić*, Judgement (AC), para. 21 (citing *Semanza*, Judgement (AC), para. 357; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 473; *Blaškić*, Judgement (AC), para. 228; *Krnojelac*, Judgement (AC), para. 138; *Kvočka et al.*, Judgement (AC), para. 29).

<sup>224</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 475; *Krnojelac*, Judgement (AC), para. 471; *Rutaganda*, Judgement (AC), para. 303.

<sup>225</sup> Ntahobali Closing Brief, paras. 25-27, 30; Nsabimana Closing Brief, paras. 44-47, 53, 55; Ntahobali Closing Argument, T. 22 April 2009 pp. 70-71. The various Accused have previously raised the issue of insufficient information provided in the Indictments and requested additional information. Specifically the Accused have requested the identity of the persons concerned in certain paragraphs of the Indictment used to support counts brought under Article 6 (3) so that the Accused could know exactly who was involved, including in the alleged conspiracy: *see, e.g., Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000, paras. 11-12, 60; *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000, paras. 7, 9, 28, 30; *Nsabimana*, Decision on the Defence Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses (TC), 24 September 1998, pp. 2, 6-7; *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

<sup>226</sup> Ntahobali Closing Brief, paras. 25-31, 59-63; Nsabimana Closing Brief, para. 52; Kanyabashi Closing Brief, para. 319; Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 70; Ntahobali Closing Argument, T. 22 April 2009 p. 71.

<sup>227</sup> Ntahobali Closing Brief, paras. 25-28; Nsabimana Closing Brief, para. 52; Kanyabashi Closing Brief, para. 319; Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 70; Ntahobali Closing Argument, T. 22 April 2009 p. 71.

did it specifically allege that the Accused failed to punish the subordinates who committed the relevant criminal acts.<sup>228</sup>

119. The Prosecution argues that proof of the existence of a superior-subordinate relationship does not require the identification of the principal perpetrators, particularly not by name, nor that the superior had knowledge of the number or identity of possible intermediaries, provided that it is at least established that the individuals who are responsible for the commission of the crimes were within a unit or a group under the control of the superior.<sup>229</sup> The Prosecution argues that it has fulfilled its obligations with respect to the alleged subordinates of the respective Accused in the Indictments by indicating the group or the category to which these alleged subordinates belong.<sup>230</sup>

120. The Chamber will consider the Defence submissions on alleged defects in the Indictments with respect to crimes charged under Article 6 (3) of the Statute in the relevant factual findings sections of the Judgement, or in the legal findings. In doing so, the Chamber will apply the following standard.

121. If the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the Indictment should plead the following: (1) that the accused is the superior of subordinates sufficiently identified, over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible; (2) the criminal conduct of those others for whom he is alleged to be responsible; (3) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (4) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>231</sup>

122. A superior need not necessarily know the exact identity of his subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.<sup>232</sup> For example, an accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp under his authority.<sup>233</sup> Physical perpetrators of the crimes can also be identified by category in relation to a particular crime site.<sup>234</sup>

123. Although the Prosecution remains obliged to give all the particulars that it is able to give, the relevant facts relating to the acts of others for which the accused is alleged to be responsible as a superior will usually be stated with less precision because the details of those

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<sup>228</sup> Ntahobali Closing Brief, para. 29; Nsabimana Closing Brief, para. 54.

<sup>229</sup> Prosecution Closing Brief, p. 20, para. 52.

<sup>230</sup> Prosecution Closing Brief, p. 20, para. 52; Prosecution Closing Rebuttal Argument, T. 30 April 2009 p. 54.

<sup>231</sup> *Ntagerura et al.*, Judgement (AC), paras. 26, 152; *Renzaho*, Judgement (AC), para. 64; *Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>232</sup> *Muvunyi I*, Judgement (AC), para. 55; *Blagojević & Jokić*, Judgement (AC), para. 287.

<sup>233</sup> *Renzaho*, Judgement (AC), para. 64; *Muvunyi I*, Judgement (AC), para. 55; *Blagojević & Jokić*, Judgement (AC), para. 287.

<sup>234</sup> *Bagosora et al.*, Judgement (TC), para. 113; *see also, e.g., Simba*, Judgement (AC), paras. 71-72 (concerning identification of other members of a joint criminal enterprise).

acts are often unknown, and because the acts themselves are often not very much in issue.<sup>235</sup> Moreover, in certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.<sup>236</sup>

124. Finally, a Chamber may infer knowledge of the crimes from their widespread and systematic nature, and a superior's failure to prevent or punish them from their continuing occurrence.<sup>237</sup> These elements follow from reading the indictment as a whole.<sup>238</sup>

### 2.5.7 Indictment Defects – Cumulative Error

125. In addition to specific claims that particular Indictment paragraphs were defective, several Defence teams argue that the Indictment as a whole rendered the trial unfair. The Ndayambaje Defence argues the Indictment was “fundamentally defective.”<sup>239</sup> The Ntahobali Defence argues that the Nyiramasuhuko and Ntahobali Indictment is “an irremediably defective accusatory instrument which has materially affected their right to adequately prepare their defence.”<sup>240</sup> The Nsabimana Defence likewise argues that it was unable to adequately prepare its defence due to the insufficient information about the crimes, subordinates, identity, position and relationship with Nsabimana or the crimes committed as they relate to Nsabimana.<sup>241</sup> It argues this led to an unfair trial and, as a result, no conviction may be entered against Nsabimana.<sup>242</sup>

126. The Prosecution does not make any submissions related to any specific alleged defects in the Indictments. In fact, it does not address the issue of defects at all in its Closing Brief. The Prosecution did, however, briefly address the alleged defects in the Indictments in its closing argument.<sup>243</sup> It argues the Defence was able to fully answer the Prosecution's case against the Accused and cites in support the Defence's lengthy and informed cross-examinations which showed that it had mastered its case.<sup>244</sup>

127. The Chamber recalls the Appeals Chamber's admonition that even if the Prosecution succeeds in arguing that the defects in the indictments were remedied in each individual instance, the Chamber must still consider whether the overall effect of the numerous defects have rendered the trial unfair in itself.<sup>245</sup> The Appeals Chamber later expounded upon its reasoning, stating:

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<sup>235</sup> *Ntagerura et al.*, Judgement (AC), para. 26, fn. 82 (quoting *Blaškić*, Judgement (AC), para. 218); see also *Muvunyi I*, Judgement (AC), para. 58.

<sup>236</sup> *Muvunyi I*, Judgement (AC), para. 58; *Muhimana*, Judgement (AC), para. 79; *Gacumbitsi*, Judgement (AC), para. 50; *Kupreškić et al.*, Judgement (AC), para. 89.

<sup>237</sup> *Muvunyi I*, Judgement (AC), para. 62.

<sup>238</sup> *Muvunyi I*, Judgement (AC), para. 62.

<sup>239</sup> Ndayambaje Closing Argument, T. 29 April 2009 p. 52.

<sup>240</sup> Ntahobali Closing Brief, para. 40.

<sup>241</sup> Nsabimana Closing Brief, para. 55.

<sup>242</sup> Nsabimana Closing Brief, paras. 56-57.

<sup>243</sup> Prosecution Closing Argument, T. 20 April 2009 pp. 12-13.

<sup>244</sup> Prosecution Closing Argument, T. 20 April 2009 p. 13.

<sup>245</sup> *Ntagerura et al.*, Judgement (AC), para. 114.

[T]he accumulation of a large number of material facts not pled in the indictment reduces the clarity and relevancy of that indictment, which may have an impact on the ability of the accused to know the case he or she has to meet for purposes of preparing an adequate defence. While the addition of a few material facts may not prejudice the Defence in the preparation of its case, the addition of numerous material facts increases the risk of prejudice as the Defence may not have sufficient time and resources to investigate properly all the new material facts. Thus, where a Trial Chamber considers that a defective indictment has been subsequently cured by the Prosecution, it should further consider whether the extent of the defects in the indictment materially prejudice an accused's right to a fair trial by hindering the preparation of a proper defence.<sup>246</sup>

128. If a trial verdict is found to have relied upon material facts not pled in an indictment, the Chamber must determine whether the trial was thereby rendered unfair and, if so, an appropriate remedy must be found.<sup>247</sup>

129. In its decisions concerning notice in this Judgement, the Chamber has found specific Indictment paragraphs to be unduly vague for failing to specify, *inter alia*, the location, dates, assailants or victims of particular alleged crimes. In many instances, the Chamber determined that these defects were cured by the provision of timely, clear and consistent information.

130. The Chamber recalls, "the addition of numerous material facts increases the risk of prejudice as the Defence may not have sufficient time and resources to investigate properly all the new material facts."<sup>248</sup> Nonetheless, throughout the course of these proceedings, where appropriate, the Chamber has given the Defence additional time to prepare its case, particularly where requested by the Defence, to investigate allegations by the Prosecution.<sup>249</sup> As the Chamber explains throughout this Judgement, the new information that led to factual findings beyond a reasonable doubt was disclosed to the Defence through timely, clear, and consistent disclosures. Therefore, the Accused were in a reasonable position to understand the charges against them and had the time and resources available to investigate these charges.<sup>250</sup>

131. The Chamber therefore finds the trial was not rendered unfair and the Accused did not suffer any prejudice in the preparation of their respective defences.

### 2.5.8 Notice of Alibi

132. The Prosecution submits that Nyiramasuhuko, Ntahobali and Ndayambaje each provided late notice of their intention to run an alibi defence, without providing the Chamber with a convincing explanation as to why the alibi was first raised at such a late stage after the

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<sup>246</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 26.

<sup>247</sup> *Blaškić*, Judgement (AC), para. 221.

<sup>248</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 26.

<sup>249</sup> *See, e.g.*, T. 30 April 2004 p. 19 (ICS) (The Chamber granted the Defence additional time to prepare its case by scheduling trial to resume on 7 June 2004, instead of 24 or 31 May 2004 as proposed by the Prosecution); *see also* T. 18 October 2004 pp. 6, 17 (ICS) (The Chamber had planned to start the Defence cases on 17 January 2005, but upon the request of Defence Counsel, the Chamber scheduled the Defence cases to start on 31 January 2005 in order to give the Defence an additional two weeks to prepare its case).

<sup>250</sup> *Kordić & Čerkez*, Judgement (AC), paras. 142-143.

Prosecution had presented its case. Thus, the Prosecution argues that little weight can be attributed to their alibi defences.<sup>251</sup> The Chamber notes that it will make a finding with respect to the adequacy of notice with regard to the defence of alibi on a case-by-case basis.

133. The Chamber recalls that the procedure to be followed where an accused intends to enter an alibi in his or her defence is covered by Rule 67 (A)(ii) and (B) of the Rules. Pursuant to Rule 67 (A), to ensure a good administration of justice and efficient judicial proceedings, any notice of alibi should be tendered in a timely manner, and in any event before the commencement of the trial.<sup>252</sup> However, were the Defence to fail in this regard, Rule 67 (B) provides that it may still rely on the alibi defence at trial. “In certain circumstances, failure to raise an alibi in a timely manner can impact a Trial Chamber’s findings, as it may take such failure into account when weighing the credibility of the alibi.”<sup>253</sup>

## 2.6 Fair Trial

### 2.6.1 Undue Delay

134. The Ndayambaje Defence submits Ndayambaje’s right to be tried without undue delay was grossly violated, and asserts that he suffered prejudice owing to the unreasonable delay. It states that the fairness of the trial was seriously compromised by the undue delay and that he suffered additional social, psychological and economic prejudice.<sup>254</sup>

135. It argues the period of almost 15 years that Ndayambaje has spent in prison – beginning 28 June 1995 – is the longest period of pre-judgement detention in the history of United Nations Tribunals, and undermines the presumption of innocence.<sup>255</sup> The Ndayambaje Defence asserts that the aforementioned delay is excessive and the prejudice is irreparable. In submitting that the delay was not attributable to Ndayambaje or his Defence team, the Defence draws the Chamber’s attention to the late disclosure of evidence and documents by the Prosecution, repeated Prosecution requests for the trial to be postponed, the decision on joinder, the Rwandan government’s lack of cooperation, and the non-renewal of Judge Maqutu’s term of office.<sup>256</sup>

136. The Nyiramasuhuko Defence likewise argues that Nyiramasuhuko’s detention for 12 years (as of April 2009) without a decision by the Chamber on the merits of her case is unreasonable.<sup>257</sup> Further, the Chamber recalls that in 2008, the Ntahobali Defence filed a motion to stay the proceedings for undue delay which was supported by Kanyabashi and Ndayambaje.<sup>258</sup> The Chamber, therefore, considers whether each of the Accused suffered undue delay based on the length of these proceedings.

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<sup>251</sup> Prosecution Closing Brief, p. 208, para. 144; p. 504, paras. 200-201; Prosecution Closing Argument, T. 20 April 2009 p. 32.

<sup>252</sup> *Rutaganda*, Judgement (AC), para. 243.

<sup>253</sup> *Nchamihigo*, Judgement (AC), para. 97; *see also Kalimanzira*, Judgement (AC), para. 56.

<sup>254</sup> Ndayambaje Closing Brief, para. 21; Ndayambaje Closing Argument, T. 29 April 2009 p. 48.

<sup>255</sup> Ndayambaje Closing Argument, T. 29 April 2009 pp. 47-50; Ndayambaje Closing Brief, paras. 22, 24.

<sup>256</sup> Ndayambaje Closing Argument, T. 29 April 2009 p. 48.

<sup>257</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 53.

<sup>258</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-T, Arsène Shalom Ntahobali’s Motion for Stay of Proceedings Due to Unreasonable Delay, 22 August 2008; *Prosecutor v. Kanyabashi*, Case No. ICTR-96-

137. The Chamber recalls the Accused has a right to be tried without undue delay.<sup>259</sup> Whether a delay is “undue” is determined on a case-by-case basis, considering: (a) the length of the delay; (b) the complexity of the proceedings; (c) the conduct of the parties; (d) the conduct of the relevant legal authorities; and (e) any prejudice which accrued to the accused as a result.<sup>260</sup> If the delay is not “undue,” regardless of the length of time in question, the Accused is not entitled to relief.<sup>261</sup>

138. In *Nahimana et al.*, the Appeals Chamber concluded that the predominant part of the period of seven years and eight months between Jean-Bosco Barayagwiza’s arrest and judgement did not constitute an undue delay, because of the complexity of the case. The Chamber emphasised the complexity of the case against him, including the large number of counts, witnesses and exhibits, as well as the complexity of the pertinent facts and the relevant legal principles and the inherent complexity of international criminal proceedings.<sup>262</sup> The *Nahimana et al.* case involved 93 witnesses over the course of 241 trial days.<sup>263</sup> Similarly, the *Bagosora et al.* Trial Chamber concluded that a delay of approximately 11 years was not undue, owing to the complexity of the case.<sup>264</sup> The Chamber noted that the case involved 242 witnesses over the course of 408 trial days, and so was “two to three times” the size of the *Nahimana et al.* case.<sup>265</sup> Similarly, in the *Bizimungu et al.* case, the Trial Chamber concluded that no “undue delay” had occurred though a period of almost 10 years had elapsed after Mugiraneza’s arrest and the judgement had not yet been issued.<sup>266</sup>

139. The Chamber considers the instant case to be at least as complex as *Bagosora*. The Chamber heard 189 witnesses over the course of 726 trial days. Thus, the case is approximately twice the length of *Bagosora* and more than three times the length of *Nahimana et al.* Moreover, while there were fewer witnesses in this case than *Bagosora*, the increased length was necessitated by the replacement of a Judge, the presentation of six different Defence cases and a plurality of cross-examinations for every witness. In the circumstances, given the complexity of the instant case, the Chamber does not consider the length of this case to violate the Accused’s right to be tried without undue delay.

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15-T, *Réponse de Joseph Kanyabashi à la Requête de Arsène Shalom Ntahobali en arrêt des procédures pour cause de délais déraisonnables*, 26 August 2008, p. 2; *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Réponse d’Élie Ndayambaje à la Requête d’Arsène Shalom Ntahobali en arrêt des procédures pour cause de délais déraisonnables*, 26 August 2008, p. 2.

<sup>259</sup> Article 20 (4)(C) of the Statute.

<sup>260</sup> See *Nahimana et al.*, Judgement (AC), paras. 1074, 1076.

<sup>261</sup> See *Nahimana et al.*, Judgement (AC), para. 1074.

<sup>262</sup> *Nahimana et al.*, Judgement (AC), paras. 1076-1077. The Trial Chamber had already found that some initial delays in the case violated Barayagwiza’s rights and consequently reduced his sentence: *Nahimana et al.*, Judgement (AC), para. 1075.

<sup>263</sup> *Nahimana et al.*, Judgement (TC), para. 50.

<sup>264</sup> *Bagosora et al.*, Judgement (TC), paras. 78, 81-82.

<sup>265</sup> *Bagosora et al.*, Judgement (TC), paras. 78, 81.

<sup>266</sup> *Bizimungu et al.*, Decision on Prosper Mugiraneza’s Third Motion to Dismiss Indictment for Violation of His Right to a Trial Without Undue Delay (TC), 10 February 2009.



140. The Defence offers no specific assertion of legal prejudice beyond the general complaint that the trial was unfair and that Ndayambaje could not properly answer the charges against him.<sup>267</sup>

141. Moreover, the Chamber recalls its Decision of 26 November 2008 regarding Ntahobali's motion to stay the proceedings based upon undue delay.<sup>268</sup> That motion was supported by the Ndayambaje and Kanyabashi Defences.<sup>269</sup> The Ntahobali Defence argued that the arrest of its investigator shortly after the start of trial, the non re-election of Judge Maqutu and the lack of cooperation of the Rwandan authorities resulted in undue delay prejudicing Ntahobali.<sup>270</sup> The Chamber held that the gravity of the charges and the complexity of the case did not render unreasonable the length of the proceedings.<sup>271</sup> The Chamber finds there is no reason to reconsider its assessment of Ntahobali's motion at this time.

142. During this trial, there were 1,457 exhibits tendered (equivalent to about 13,000 pages of documents) and 913 introduced into evidence. In addition, there were 125,951 transcript pages, including 58,252 in English and 67,699 in French. Considering the complexity of this case along with the expansive trial record, the Chamber considers that the total duration of these proceedings, including the drafting of this Judgement, was reasonable.

143. As the length of the delay in this case is adequately explained by the complexity of the case, and the Accused have not demonstrated that they suffered any legal prejudice, the Chamber need not consider the conduct of the Prosecution or other legal authorities.

## 2.6.2 Joinder

144. The Chamber recalls that in its Decision granting joinder, it reasoned that the various Accused were charged with offenses arising out of the same transaction, within the meaning of Rules 2 and 48 of the Rules, and that the Defence had shown no prejudice.<sup>272</sup> The Chamber noted that none of the cases joined into this trial were about to start, and concluded that it would increase efficiency and fairness to have a single presentation of the various allegations arising out of the transaction at issue.<sup>273</sup> The Appeals Chamber subsequently dismissed the

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<sup>267</sup> See, e.g., *Bagosora et al.*, Judgement (TC), para. 83.

<sup>268</sup> *Ntahobali*, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008, para. 24.

<sup>269</sup> *Ntahobali*, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008, para. 24; *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Réponse d'Élie Ndayambaje à la Requête d'Arsène Shalom Ntahobali en arrêt des procédures pour cause de délais déraisonnables*, 26 August 2008.

<sup>270</sup> *Ntahobali*, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008, para. 56.

<sup>271</sup> *Ntahobali*, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008, para. 60.

<sup>272</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999, paras. 13, 15.

<sup>273</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Joinder of Trials (TC), 5 October 1999, para. 15.

appeals to the Chamber's Decision.<sup>274</sup> The Chamber subsequently issued several decisions on the joinder issue in response to motions from the various Accused.<sup>275</sup>

145. The Chamber considers that the Ndayambaje Defence has not advanced any reason that might justify reconsideration of its Decision granting joinder under this Tribunal's well-established reconsideration jurisprudence.<sup>276</sup> Under this jurisprudence, reconsideration is appropriate if: (1) the moving party demonstrates the existence of a new fact, not known to the Chamber when it issued its original decision, (2) the moving party demonstrates a material change in circumstances, or (3) the moving party demonstrates the original decision was erroneous or would cause an injustice.<sup>277</sup>

146. The Chamber notes that the Ndayambaje Defence does not raise any new fact or change in circumstances. Rather, the Ndayambaje Defence offers the general argument that the joinder undermined the fairness of the proceedings, and so implicitly that the Chamber's Decision caused an injustice.<sup>278</sup>

147. The Chamber recalls that under the Rules, two or more persons accused of crimes arising out of the same transaction may be jointly charged and tried.<sup>279</sup> Additionally, two or more persons who are accused of crimes arising out of the same transaction may be tried together, even if indicted separately, if the Trial Chamber grants leave.<sup>280</sup> A transaction is defined as "[a] number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan."<sup>281</sup> A determination of whether joinder is appropriate in this regard is properly based on the "factual allegations contained in the indictments and related submissions."<sup>282</sup>

148. The Defence offers only a general allegation that this determination was erroneous. Moreover, the Appeals Chamber has held in the *Gotovina et al.* case that litigating the

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<sup>274</sup> *Nyiramasuhuko*, Decision (Appeal Against Trial Chamber II's Decision of 5 October 1999) (AC), 13 April 2000; *Ntahobali*, Decision (Appeal Against Trial Chamber II's Decision of 5 October 1999) (AC), 13 April 2000; *Kanyabashi*, Decision (Appeal Against Trial Chamber II's Decision of 5 October 1999) (AC), 13 April 2000.

<sup>275</sup> *Nsabimana et al.*, Decision on the Defence Motion Seeking a Separate Trial for the Accused Sylvain Nsabimana (TC), 8 September 2000; *Ndayambaje*, Decision on the Defence Motion for Separate Trial (TC), 25 April 2001; *Nyiramasuhuko & Ntahobali*, Decision on the Motion for Separate Trials (TC), 8 June 2001; *Ntahobali*, Decision on Ntahobali's Motion for Separate Trial (TC), 2 February 2005; *Ntahobali*, Decision on Ntahobali's Motion for Reconsideration of the "Decision on Ntahobali's Motion for Separate Trial" (TC), 22 February 2005; *Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Motion for Separate Proceedings, a New Trial, and Stay of Proceedings (TC), 7 April 2006.

<sup>276</sup> While the Defence does not expressly frame its allegation as a motion for reconsideration, it *de facto* seeks the reconsideration of the Trial Chamber's earlier Decision. Under such circumstances, the Chamber will consider whether the Defence has justified reconsideration under the applicable legal standard.

<sup>277</sup> See, e.g., *Nyiramasuhuko et al.*, Decision on Ntahobali's Motion for Reconsideration of the Decision of 2 March 2006 (TC), 11 June 2007, paras. 9-10.

<sup>278</sup> See Ndayambaje Closing Argument, T. 29 April 2009 p. 49.

<sup>279</sup> Rule 48 of the Rules.

<sup>280</sup> Rule 48 *bis* of the Rules. However, under Rule 82 (B) the Trial Chamber may order persons accused jointly to be tried separately, either "to avoid a conflict of interests that might cause serious prejudice to an accused," or "to protect the interests of justice."

<sup>281</sup> Rule 2 (A) of the Rules.

<sup>282</sup> *Gotovina et al.*, Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder (AC), 25 October 2006, para. 16.

common issues in the case multiple times would have required a greater expenditure of judicial resources and so, while it is possible any one case could have concluded more quickly, more time and resources would have been spent litigating the cases as a whole.<sup>283</sup> Consequently, any assertion about the length of a particular trial if conducted independently is at best “hypothetical and speculative.”<sup>284</sup> Accordingly, the joinder did not create an injustice. As the Defence has not pointed to any specific error in the Chamber’s decision on joinder, and has shown no new fact or material change in circumstances, the Chamber will not reconsider its decision joining the trials of the various Accused.<sup>285</sup>

149. In a related manner, the Nyiramasuhuko Defence submits that Nyiramasuhuko was prejudiced by the fact that her defence was required to present and to cross-examine first among the six Accused. Specifically, the Defence maintains that because it was required to present first, it was difficult to adequately mount a defence to allegations made by other Accused after Nyiramasuhuko’s case had been presented to the Chamber.<sup>286</sup>

150. The Nyiramasuhuko Defence primarily offers a general allegation of prejudice, and does not suggest any new fact or material change in circumstances that might justify reconsideration of the 18 October 2004 Decision.<sup>287</sup> The only specific evidence adduced after the conclusion of the Nyiramasuhuko Defence case that that Defence asserts was prejudicial related to the Nyiramasuhuko Defence’s inability to identify the person alleged by witnesses to have served as Nyiramasuhuko’s driver at the time in question.<sup>288</sup> The Defence has not demonstrated that this inability undermined Nyiramasuhuko’s right to a fair trial or that had the allegation been made prior to Nyiramasuhuko’s Defence, the Defence would have been better able to rebut it. Accordingly, the issue of identification of Pauline Nyiramasuhuko’s driver does not justify reconsideration of the order of presentation of the Defence cases.

151. The Chamber notes that in a multi-accused trial the accused persons will necessarily have to present their cases in a specific order. To the extent that an accused person who presents earlier is prejudiced by the order in which the various defences are presented, that accused person may present rejoinder evidence as provided by the Rules.<sup>289</sup> Moreover, in this case, the various Accused were granted considerable freedom to cross-examine other Defence witnesses to avoid any prejudice resulting from the joint trial. Accordingly, the Defence has not shown that the 18 October 2004 Decision was erroneous and therefore cannot justify reconsideration.

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<sup>283</sup> *Gotovina et al.*, Decision on Interlocutory Appeals Against the Trial Chamber’s Decision to Amend the Indictment and for Joinder (AC), 25 October 2006, para. 44.

<sup>284</sup> *Ntahobali*, Decision on Ntahobali’s Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008, para. 59.

<sup>285</sup> Further, judicial economy is not the sole consideration governing a Trial Chamber’s discretionary determination whether to grant or deny a motion for joinder. Rather, Chambers consider, *inter alia*: protection of the rights of the accused; avoidance of conflicts of interest which might prejudice any accused; and protection of the interests of justice, including avoiding the duplication of evidence, minimizing hardship to witnesses, and ensuring consistency of verdicts, as well as promoting judicial economy: *Gotovina et al.*, Decision on Interlocutory Appeals Against the Trial Chamber’s Decision to Amend the Indictment and for Joinder (AC), 25 October 2006, para. 17.

<sup>286</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 71.

<sup>287</sup> See T. 18 October 2004 pp. 16-17.

<sup>288</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 71.

<sup>289</sup> Rule 85 (A)(iv) of the Rules.

152. Thus, the Chamber will not reconsider its 18 October 2004 Decision at this time. However, as described in the Evidentiary Matters section of this Judgement (), the Chamber will consider the order of Defence cases and any concomitant prejudice in evaluating testimony and other evidence offered by each Accused.

### **2.6.3 Other Threshold Issues**

#### ***2.6.3.1 Presence of Factual Witnesses in the Courtroom During Objections***

153. The Nyiramasuhuko Defence notes that for much of the trial, factual witnesses were not removed from the courtroom during objections made in the course of their testimony. Counsel posits that there was an impact on the witnesses whenever objections, comments and remarks by counsel and the Chamber were made in their presence.<sup>290</sup>

154. The Chamber recalls that it determined in its 30 January 2004 Decision that for the remainder of the trial, witnesses would be excluded from the courtroom during objections and associated arguments raised during the course of their testimony.<sup>291</sup> Thus, the Chamber notes, the Nyiramasuhuko Defence's argument can relate only to witnesses who completed their testimony prior to 30 January 2004.

155. The Chamber notes that the Nyiramasuhuko Defence has cited no specific witness or testimony which it argues was impacted by such discussions. As such, the Nyiramasuhuko Defence has not substantiated its allegations of prejudice. Therefore, this submission is denied.

#### ***2.6.3.2 Substitution of Judge Bossa***

156. The Nyiramasuhuko Defence avers that Nyiramasuhuko was prejudiced by the fact that Judge Bossa was not present during the presentation of the Prosecution's case and, consequently, did not hear all the Prosecution witnesses testify in person, as she was only appointed to the Bench in 2004.<sup>292</sup>

157. When Judge Maqutu's term of office was not renewed, Judges Sekule and Ramaroson determined on 15 July 2003 that to continue the trial with a substitute judge, rather than restarting the trial, would be in the interests of justice.<sup>293</sup>

158. The Appeals Chamber upheld the Chamber's determination.<sup>294</sup> In particular, it held that the fact that a substitute judge would not have personally heard every piece of testimony in the

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<sup>290</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 71-72.

<sup>291</sup> T. 30 January 2004 p. 10 (Witness SX).

<sup>292</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 14.

<sup>293</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15 bis (D) (TC), 15 July 2003. Rule 15 bis of the Rules provides that where the term of a judge of the Tribunal ends during a trial in which he is involved, the Chamber may choose to restart the case or continue the case with a substitute judge, if the parties consent. If the parties do not consent, the remaining two judges "may nonetheless decide to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice." In this case, only the Prosecution and the Nsabimana Defence consented to continuing with a substitute judge.

<sup>294</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings under Rule 15 bis (D) (AC), 24 September 2003.

case would not in itself require the trial to be restarted in the interests of justice.<sup>295</sup> It specifically endorsed the practice eventually adopted by the Chamber, noting that where a substitute judge has not witnessed testimony so as to facilitate that judge's evaluations of credibility:

the solution is as follows: If the judge assigned by the President certifies "that he or she has familiarised himself or herself with the record of the proceedings" ... and thereafter accordingly joins the bench of the Trial Chamber, the recomposed Trial Chamber may, on a motion by a party or *proprio motu*, recall a witness on a particular issue which in the view of the Trial Chamber involves a matter of credibility which the substitute judge may need to assess in the light of the witness's demeanour.<sup>296</sup>

159. As contemplated by the Appeals Chamber's Decision, Judge Bossa did not personally hear all of the Prosecution's evidence in this case. She did, however, familiarise herself with the evidence adduced before she joined the current Bench on the basis of both the written transcripts and audio recordings of the proceedings.<sup>297</sup> Where it was necessary to assess a particular witness' credibility in light of the witness' demeanour, the Chamber granted the motions to recall particular witnesses to be re-heard on specific issues.<sup>298</sup> In such cases, involving Witnesses QCB, QY, SJ, QBQ and QA, Judge Bossa based her assessment of the witness' demeanour on the testimony given when the witness was recalled. The Trial Chamber's approach to this issue has already been endorsed by the Appeals Chamber, and the Nyiramasuhuko Defence demonstrates no new fact, material change in circumstance, or legal error associated with the Chamber's approach. Accordingly, the Chamber will not reconsider its decision on this issue.

## 2.7 Evidentiary Matters

160. The Chamber has assessed the evidence in this case in accordance with the Statute, the Rules and the decisions and judgements of the Appeals Chamber. Specifically, Rule 89 (C) provides that a Chamber may admit any relevant evidence which it deems to have probative value. To be admissible the evidence must be in some way relevant to an element of a crime with which the Accused is charged. The Chamber does not need to set out in detail why it accepted or rejected a particular testimony. This is equally applicable to all evidence, including that tendered by the accused person.<sup>299</sup>

161. Where guidance is not provided by these sources, the Chamber has assessed the evidence so as to best favour a fair determination of the case against the Accused, consonant with the spirit of the Statute and the general principles of law.

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<sup>295</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings under Rule 15 bis (D) (AC), 24 September 2003, para. 25.

<sup>296</sup> *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings under Rule 15 bis (D) (AC), 24 September 2003, para. 35.

<sup>297</sup> *Nyiramasuhuko et al.*, Certification in the Matter of Proceedings Under Rule 15 bis (D) (TC), 5 December 2003; *Nyiramasuhuko*, Decision on Defence Motion for Recall of Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD and QY or, in Default, a Disjunction of Trial or a Stay of Proceedings Against Nyiramasuhuko (TC), 6 May 2004, para. 34.

<sup>298</sup> See, e.g., *Ndayambaje*, Decision on Defence Motion Requesting the Recall of Witness "TO" Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15 bis (D) (TC), 6 May 2004.

<sup>299</sup> *Karera*, Judgement (AC), para. 20.

### 2.7.1 Burden of Proof and the Presumption of Innocence

162. Article 20 (3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving each and every element of the offences charged against the accused beyond a reasonable doubt rests solely on the Prosecution and never shifts to the Defence.<sup>300</sup> The Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her.<sup>301</sup>

163. 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>302</sup> An accused must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.<sup>303</sup> Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still determine whether the evidence it does accept establishes the accused's guilt beyond a reasonable doubt.<sup>304</sup> Since the 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. The presumption of innocence does not require the Chamber to determine whether the accused is "innocent" of the fact at issue; it simply forbids the Chamber from convicting the accused based on any allegations that were not proven beyond a reasonable doubt.<sup>305</sup>

164. The Chamber must provide reasoning for its judgement,<sup>306</sup> but is not required to "refer to the testimony of every witness or every piece of evidence on the trial record".<sup>307</sup> Indeed, due to the volume of evidence, the Chamber "cannot be expected to refer to all of it".<sup>308</sup> In the present case, the Chamber has evaluated all of the evidence and, where appropriate, will refer specifically to relevant evidence.

### 2.7.2 Admissibility of Evidence on Pre-1994 Events

165. It is well established that the provisions of the Statute on the temporal jurisdiction of the Tribunal do not preclude the admission of evidence on events prior to 1994, if the Chamber deems such evidence relevant and of probative value and there is no compelling reason to exclude it. For example, a Trial Chamber may validly admit evidence relating to pre-1994 acts and rely on it where such evidence is aimed at: clarifying a given context; establishing by

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<sup>300</sup> Pursuant to Article 20 (4)(g) of the Statute, an accused is not compelled to testify. In this case, five of the six Accused have chosen to testify. Their decisions to testify do not entail acceptance of a burden to prove their innocence.

<sup>301</sup> Rule 87 (A) of the Rules (providing that a majority of the Trial Chamber must be so satisfied).

<sup>302</sup> *Kayishema & Ruzindana*, Judgement (AC), para. 117; *Niyitegeka*, Judgement (AC), paras. 60-61.

<sup>303</sup> *Delalić et al.*, Judgement (AC), para. 458.

<sup>304</sup> *Nchamihigo*, Judgement (TC), para. 13.

<sup>305</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 140.

<sup>306</sup> Article 22 (2) of the Statute; Rule 88 (C) of the Rules.

<sup>307</sup> *Halilović*, Judgement (AC), para. 121; *see also Seromba*, Judgement (AC), para. 94; *Kupreškić et al.*, Judgement (AC), para. 32.

<sup>308</sup> *Brđanin*, Judgement (AC), paras. 11, 95; *Kajelijeli*, Judgement (AC), para. 132.

inference the elements (in particular, criminal intent) of criminal conduct occurring in 1994; or demonstrating a deliberate pattern of conduct.<sup>309</sup>

166. Notwithstanding the above, the Chamber may only convict an accused for criminal conduct having occurred in 1994. The existence of continuing conduct is no exception to this rule. Even where such conduct commenced before 1994 and continued during that year, a conviction may be based only on that part of such conduct having occurred in 1994.<sup>310</sup>

### 2.7.3 Witness Credibility

#### 2.7.3.1 General Considerations

167. The Trial Chamber enjoys broad discretion in choosing which witness testimony to prefer, and in assessing the impact on witness credibility of inconsistencies within or between witnesses' testimonies and any prior statements. Minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable, and it is within the Chamber's discretion to evaluate such inconsistencies and to consider whether the evidence as a whole is credible. It is not unreasonable for the Chamber to accept some, but reject other parts of a witness' testimony.<sup>311</sup>

168. The Chamber also has the discretion to cautiously consider hearsay evidence and to rely on it. The weight and probative value to be afforded to hearsay evidence, however, 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.<sup>312</sup>

169. Evidence of facts outside the testifying witness' own knowledge constitutes hearsay evidence. The Chamber may admit any relevant evidence which it deems to have probative value,<sup>313</sup> hearsay evidence is not *per se* inadmissible.<sup>314</sup> However, hearsay evidence may be affected by a compounding of errors of perception, memory, narration, sincerity and recall, and thus should be subjected to careful scrutiny before being relied on.<sup>315</sup>

170. 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. However, in light of the need to provide some details to explain its reasoning, the Chamber has made sure to provide as much information as possible while being careful not to reveal the identities of protected witnesses.<sup>316</sup>

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<sup>309</sup> *Nahimana et al.*, Judgement (AC), para. 315.

<sup>310</sup> *Nahimana et al.*, Judgement (AC), para. 316.

<sup>311</sup> *Muvunyi II*, Judgement (AC), para. 44.

<sup>312</sup> *Kalimanzira*, Judgement (AC), para. 96; *Karera*, Judgement (AC), para. 39.

<sup>313</sup> Rule 89 (C) of the Rules.

<sup>314</sup> *Akayesu*, Judgement (AC), paras. 284-309.

<sup>315</sup> *Akayesu*, Judgement (AC), paras. 284-309; *Simić et al.*, Judgement (TC), para. 22.

<sup>316</sup> See Rule 88 (C) of the Rules; *Ntagerura et al.*, Judgement (TC), para. 27; *Rwamakuba*, Judgement (TC), para. 41.

### 2.7.3.2 Identification of the Accused

171. With respect to the assessment of witness identification, the Chamber must proceed with caution and carefully scrutinise factors in support of the identification, factors that impact negatively on the reliability of the identification, and any corroborating testimony.<sup>317</sup> Specifically, 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, reliability of witness testimonies, the possible influence of third parties, the existence of stressful conditions at the time the event took place, the passage of time between the events and the witness' testimony and the general credibility of the witness.<sup>318</sup>

172. In particular, 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. While the Chamber is not obliged to refer to every piece of evidence on the trial record in its judgement, 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, a reasoned opinion must carefully articulate the factors relied upon in support of the identification of the accused and adequately address any significant factors impacting negatively on the reliability of the identification evidence.<sup>319</sup>

173. No probative weight will be assigned to an identification given for the first time by a witness while testifying, who identifies the accused while he is standing in the dock. Because all of the circumstances of a trial necessarily lead such a witness to identify the person on trial (or, where more than one person is on trial, the particular person on trial who most closely resembles the man who committed the offence charged), no positive probative weight will be given by the Chamber to these "in court" identifications.<sup>320</sup>

### 2.7.3.3 Uncorroborated Testimony

174. There is no requirement that convictions be made only on evidence of two or more witnesses. The Chamber may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible.<sup>321</sup> 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 the Chamber finds that 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.<sup>322</sup>

175. The ability of the Chamber to rule on the basis of testimonies and other evidence is not bound by any rule of corroboration, but rather on the Chamber's own assessment of the

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<sup>317</sup> *Kalimanzira*, Judgement (AC), para. 96; *Bagilishema*, Judgement (AC), paras. 75-81; *Kupreškić et al.*, Judgement (AC), paras. 39, 135.

<sup>318</sup> *Niyitegeka*, Judgement (AC), paras. 100-101.

<sup>319</sup> *Kupreškić et al.*, Judgement (AC), para. 39.

<sup>320</sup> *Kunarac et al.*, Judgement (AC), para. 320.

<sup>321</sup> *Renzaho*, Judgement (AC), para. 556; *Musema*, Judgement (AC), para. 37.

<sup>322</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 132.



probative value of the evidence before it. The Chamber may freely assess the relevance and credibility of all evidence presented to it. The Chamber notes that this freedom to assess evidence extends even to those testimonies which are corroborated: the corroboration of testimonies, even by many witnesses, does not establish absolutely the credibility of those testimonies.<sup>323</sup>

176. When the evidence of only one witness is available in relation to a certain material fact, the Chamber may rely on such evidence even in the absence of corroboration, but should carefully scrutinise all uncorroborated evidence before making any findings on the basis of such evidence.<sup>324</sup> The Chamber recalls that in cases of sexual assault, pursuant to Rule 96 (i) of the Rules, the Chamber shall not require corroboration of the victim's evidence.

#### 2.7.3.4 Prior Statements

177. Rule 90 (A) of the Rules provides that witnesses shall be heard by the Chamber. Prior out-of-court witness statements are normally relevant only as necessary for the Trial Chamber to assess credibility. While there is no absolute prohibition on accepting prior statements for the truth of their contents, the Appeals Chamber has stated that Tribunal jurisprudence discourages this practice.<sup>325</sup>

178. Moreover, the Chamber has discretion to determine whether alleged inconsistencies between prior statements and later testimony render the testimony unreliable,<sup>326</sup> and the Chamber may accept parts of a witness' testimony while rejecting other parts.<sup>327</sup> Where testimony lacks precision or is inconsistent about matters such as the exact date, time or sequence of events, the lack of precision does not necessarily discredit the evidence provided that the discrepancies relate to matters peripheral to the charges in the indictments.<sup>328</sup> For example, some inconsistencies in testimony may be caused by cultural factors and interpretation issues.<sup>329</sup> Similarly, it may be difficult to recall particular dates with respect to events that are repetitive or continuous.<sup>330</sup>

179. Many witnesses lived through particularly traumatic events and the Chamber recognises that the emotional and psychological reactions that may be provoked by reliving those events may have impaired the ability of some witnesses to clearly and coherently articulate their stories.<sup>331</sup> Moreover, where a significant period of time has elapsed between the

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<sup>323</sup> *Musema*, Judgement (AC), para. 37.

<sup>324</sup> *Kayishema & Ruzindana*, Judgement (AC), para. 320; *Musema*, Judgement (AC), para. 36; *Rutaganda*, Judgement (AC), paras. 28-29.

<sup>325</sup> *Kalimanzira*, Judgement (AC), para. 180; *Nchamihigo*, Judgement (AC), para. 311.

<sup>326</sup> *Seromba*, Judgement (AC), para. 116; *Rutaganda*, Judgement (AC), paras. 443-447.

<sup>327</sup> *Seromba*, Judgement (AC), para. 110; *Simba*, Judgement (AC), para. 212; *Kupreškić et al.*, Judgement (AC), para. 333.

<sup>328</sup> *Simić et al.*, Judgement (TC), para. 22; *Delalić et al.*, Judgement (AC), para. 497; *Krnojelac*, Judgement (TC), para. 69.

<sup>329</sup> *Musema*, Judgement (TC), paras. 100-105; *Rwamakuba*, Judgement (TC), para. 40.

<sup>330</sup> *Akayesu*, Judgement (TC), paras. 142-143; *Kunarac et al.*, Judgement (AC), para. 267; *Kunarac et al.*, Judgement (TC), para. 564; *Naletilić & Martinović*, Judgement (TC), para. 10; *Vasiljević*, Judgement (TC), para. 21; *Krnojelac*, Judgement (TC), para. 69; *Furundžija*, Judgement (TC), para. 113.

<sup>331</sup> *Muvunyi I*, Judgement (TC), paras. 14, 324; *Karera*, Judgement (TC), paras. 141, 160; *Rwamakuba*, Judgement (TC), para. 40; *Kunarac et al.*, Judgement (TC), para. 564.

acts charged in the indictments and the trial, it is not always reasonable to expect the witness to recall every detail with precision.<sup>332</sup>

180. 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; after all, an unlikely or untrustworthy story is not made more likely or more trustworthy simply by rote repetition.<sup>333</sup>

181. Moreover, there is a general, though not absolute, preference for live testimony before the Tribunal.<sup>334</sup> This is consistent with Rule 90 (A) of the Rules which states in part that witnesses shall, in principle, be heard directly. The Chamber has the responsibility to resolve any inconsistencies that may arise within and/or among witnesses' testimonies, and it is within the discretion of the Chamber to evaluate any 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 may do this by relying on live testimony or documentary evidence.<sup>335</sup>

#### **2.7.3.5 Detained Witnesses and Accomplice Testimony**

182. Some of the witnesses for both the Prosecution and Defence were transferred from detention in Rwanda to testify. The Chamber recognises that even if a detained witness may have an incentive to perjure himself to gain leniency from the Rwandan authorities this "is not sufficient, by itself, to establish that the suspect did in fact lie."<sup>336</sup> However, accomplices may be motivated to shift blame by implicating others. More specifically, "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>337</sup> This risk, when properly raised and substantiated, should be considered by the Trial Chamber. Thus, the evidence of all detained witnesses must be treated with appropriate caution by the Chamber to ensure a fair trial and to avoid prejudice to the accused.<sup>338</sup> Such evidence in the present case has similarly been treated with appropriate caution, considering the "totality of the circumstances" of the testimony.<sup>339</sup>

183. It is well established that nothing prohibits the Chamber from relying on evidence given by a convicted person, including evidence of a partner in crime of the person being tried before the Tribunal. With regard to accomplice testimony, however, the Chamber is mindful that accomplice testimony should be treated with additional caution, as an accomplice may have incentives to craft his testimony to affect his own case or to ensure a lighter sentence, or

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<sup>332</sup> *Akayesu*, Judgement (TC), paras. 142-143; *Kunarac et al.*, Judgement (TC), para. 564; *Krnjelac*, Judgement (TC), para. 69; *Furundžija*, Judgement (TC), para. 113; *Muvunyi I*, Judgement (TC), paras. 14, 324.

<sup>333</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 147.

<sup>334</sup> See *Nyiramasuhuko et al.*, Decision in the Matter of Proceedings under Rule 15 bis (D) (AC), 24 September 2003, para. 25.

<sup>335</sup> *Kupreškić et al.*, Judgement (AC), para. 31.

<sup>336</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 181.

<sup>337</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 129.

<sup>338</sup> *Ntagerura et al.*, Judgement (AC), paras. 199-206.

<sup>339</sup> *Ntagerura et al.*, Judgement (AC), paras. 204-205, 233-234; *Niyitegeka*, Judgement (AC), para. 98.

even falsely implicate another accused to gain an advantage.<sup>340</sup> However, even uncorroborated accomplice testimony may be relied upon if the Chamber is convinced the witness is truthful and reliable. Other evidence which supports accomplice testimony will be relevant to bolster that testimony.<sup>341</sup> The Chamber, thus, is mindful of its obligation to explain why it accepts the evidence of witnesses who may have had motives or incentives to implicate the accused.<sup>342</sup>

### **2.7.3.6 Alibi Evidence and Burden of Proof**

184. The rules governing notice of alibi are set forth above ().

185. In raising an alibi, the Accused not only denies that he committed the crimes for which he is charged but also asserts that he was elsewhere than at the scene of these crimes when they were committed. The onus is on the Prosecution to prove beyond a reasonable doubt the guilt of the Accused. In establishing its case, when an alibi defence is introduced, the Prosecution must prove, beyond any reasonable doubt, that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence. The alibi defence does not carry a separate burden of proof. If the defence is reasonably possibly true, it must be successful.<sup>343</sup> In short, the Chamber may reject an alibi only if the Prosecution establishes “beyond a reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.”<sup>344</sup>

186. One of the most recent pronouncements regarding the legal standards governing the Chamber’s consideration of alibi evidence was set forth by the Appeals Chamber in the *Zigiranyirazo* Appeals Judgement. There, the Appeals Chamber reiterated that a defence of alibi does not shift the burden of proof to the accused. Rather, the finder of fact considers whether the alibi defence entailed the presentation of evidence “likely to raise a reasonable doubt in the Prosecution case,” and “[i]f the alibi is reasonably possibly true, it must be accepted.”<sup>345</sup> To sustain a conviction, the Prosecution must demonstrate that, regardless of the alibi, the facts as alleged are true beyond a reasonable doubt, either by demonstrating that the alibi evidence offered does not negate the presence of the accused at the critical place and at the critical time, or that the alibi evidence is not credible.<sup>346</sup>

187. However, once 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>347</sup>

### **2.7.3.7 Issues in Evaluating Testimony Relating to Joint Trial**

188. Because this is a joint trial, the Chamber has evaluated the charges against each of the Accused in light of all of the evidence put forth by the Prosecution and each of the defendants,

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<sup>340</sup> *Niyitegeka*, Judgement (AC), para. 98.

<sup>341</sup> *Muvunyi II*, Judgement (AC), para. 38; *Renzaho*, Judgement (AC), para. 263; *Ntagerura et al.*, Judgement (AC), paras. 204-206.

<sup>342</sup> *Muvunyi II*, Judgement (AC), para. 37.

<sup>343</sup> *Musema*, Judgement (AC), para. 205 (quoting *Musema*, Judgement (TC), para. 108).

<sup>344</sup> *Musema*, Judgement (AC), para. 202.

<sup>345</sup> *Zigiranyirazo*, Judgement (AC), para. 17.

<sup>346</sup> *Zigiranyirazo*, Judgement (AC), para. 18.

<sup>347</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 161.

not just the evidence of the Prosecution and each particular defendant. Additionally, the Chamber has taken all necessary measures to ensure that each of the Accused is afforded the same rights to which that Accused would have been entitled had they been tried alone.<sup>348</sup> The Chamber has been attentive to the possibility of prejudice arising from different Accused persons' presentations of their cases.

189. When an accused in a joint trial testifies before other co-accused present their cases, the Chamber will take this fact into consideration when assessing the weight of testimony of each accused relative to evidence subsequently presented, in recognition of the fact that the accused testified without the benefit of knowing what subsequent witnesses would say about their evidence beyond the indication provided in those witnesses' will-say statements.<sup>349</sup>

#### **2.7.3.8 Testimony by the Accused**

190. While there is a fundamental difference between being an accused, who might testify if he or she so chooses, and a witness, this does not imply that the rules applied to assess the testimony of an accused are different from those applied with respect to the testimony of an ordinary witness. The Chamber shall "decide which witness's testimony to prefer", without necessarily articulating every step of its reasoning in reaching this decision.<sup>350</sup> In doing so, as for any witness, the Chamber is required to determine the overall credibility of an accused testifying at his or her own trial, and then assess the probative value of the accused's evidence in the context of the totality of the evidence.<sup>351</sup>

191. The Chamber is cognisant of the rule that in joint trials, each accused is entitled to the same rights as he or she would be in an individual trial.<sup>352</sup> In this regard, the Chamber has been attentive to the risk that one Accused's evidence will prejudice another Accused, and will diligently assure that the guarantees of Rule 82 (A) are respected.

#### **2.7.4 Expert Witnesses**

##### **2.7.4.1 General Challenges to Expert Evidence by the Defence**

192. The Ntahobali Defence submits that testimony by Prosecution expert witnesses on the basis of unidentified and uncorroborated sources may not be relied on to support the charges proffered against them, that opinion testimony by expert witnesses has no probative value since it is not based on the evidence adduced by the Parties, and that such testimony is not helpful in providing context for the allegations in the Indictment, since it omits major events.<sup>353</sup> Other Defence teams further, and more specifically, aver that Prosecution Expert Witnesses Des Forges, Guichaoua and Ntakirutimana may have been partial, and were testifying outside their areas of expertise, and challenge the reliability of Expert Witness Guichaoua's sources.<sup>354</sup> The Nyiramasuhuko Defence further challenges the experts'

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<sup>348</sup> See Rule 82 (A) of the Rules.

<sup>349</sup> *Simić et al.*, Judgement (TC), paras. 17, 20.

<sup>350</sup> *Kupreškić et al.*, Judgement (AC), para. 32.

<sup>351</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 392; *Musema*, Judgement (AC), para. 50.

<sup>352</sup> Rule 82 (A) of the Rules.

<sup>353</sup> Ntahobali Closing Brief, para. 72.

<sup>354</sup> Nyiramasuhuko Closing Brief, paras. 380, 395-401, 428, 433, 447, 449-459, 465-507; Nsabimana Closing Brief, paras. 101-105; Ndayambaje Closing Brief, para. 906; *see also* Kanyabashi Closing Brief, para. 625.

qualifications, and asserts that the inability to cross-examine the confidential sources of Expert Witnesses Des Forges and Guichaoua constituted a violation of the Accused's rights.<sup>355</sup> The Defence notes that the lack of clear sourcing might render it difficult for the Chamber to evaluate the reliability and reasonableness of the experts' conclusions.<sup>356</sup>

193. The Prosecution maintains, by contrast, that each expert witness was cross-examined for several days, giving the Defence adequate opportunity to explore the sources of their testimony. The Prosecution further argues that the experts provided extensively researched and annotated reports, and that their testimonies were within their respective fields of expertise.<sup>357</sup>

194. With regards to qualifying, the Chamber certified the following witnesses as experts: Prosecution Witness Alison des Forges, as an expert in history and the human rights situation in Rwanda up to and including the events of 1994,<sup>358</sup> Prosecution Witness André Guichaoua, as an expert in political science,<sup>359</sup> Prosecution Witness Evariste Ntakirutimana, as an expert in social linguistic discourse analysis, lexicology, semantics, language and planning;<sup>360</sup> Prosecution Witness Antipas Nyanjwa, as an expert in handwriting analysis;<sup>361</sup> Nyiramasuhuko Defence Witness Eugène Shimamungu, as an expert in the Kinyarwanda language and in the analysis of political discourse,<sup>362</sup> and Kanyabashi Defence Witness Filip Reyntjens as an expert in history, law and governance in Rwanda.<sup>363</sup> Nyiramasuhuko and Ntahobali Defence Witness Edmond Babin was denied certification as an expert in crime scene analysis.<sup>364</sup>

195. The Chamber has closely considered the qualifications of each of the foregoing witnesses, including their relevant experience and methods of inquiry, and notes the Defence had adequate opportunity to *voir dire* the same witnesses. It was based upon all of these elements that the Chamber concluded that each of these witnesses met the threshold of expertise necessary to testify as an expert in this case. It is for the Chamber to decide whether, on the basis of the evidence presented by the parties, the person proposed can be admitted as an expert witness.<sup>365</sup> The Chamber will not revisit the issue of whether a particular witness qualified as an expert in their field.

#### ***2.7.4.2 Applicable Law on Consideration of Expert Evidence***

196. Specific challenges to the testimony of expert witnesses are addressed in the relevant section of the factual findings applying the legal principles set forth below. Just as for any other evidence presented, it is for the Chamber to assess the reliability and probative value of

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<sup>355</sup> Nyiramasuhuko Closing Brief, para. 376.

<sup>356</sup> Nyiramasuhuko Closing Brief, paras. 381-390.

<sup>357</sup> Prosecution Closing Argument, T. 20 April 2009 pp. 33-34.

<sup>358</sup> T. 7 June 2004 pp. 57-59 (Des Forges).

<sup>359</sup> T. 23 June 2004 p. 22 (Guichaoua).

<sup>360</sup> T. 13 September 2004 p. 30 (Ntakirutimana).

<sup>361</sup> T. 4 November 2004 p. 47 (Nyanjwa).

<sup>362</sup> T. 15 March 2005 pp. 52-53 (Shimamungu).

<sup>363</sup> T. 19 September 2007 pp. 4-5 (Reyntjens).

<sup>364</sup> T. 13 April 2005 pp. 10-13.

<sup>365</sup> *Nahimana et al.*, Judgement (AC), para. 199.

the expert report and testimony.<sup>366</sup> When assessing the probative value of the evidence adduced by these experts the Chamber has carefully considered the professional competence of each of the experts and the methods used by the experts.<sup>367</sup>

197. The evidence of an expert witness is meant to provide specialised knowledge – be it a skill or knowledge acquired through training – that may assist the fact-finder to understand the evidence presented. Expert witnesses are ordinarily afforded significant latitude to offer opinions within their expertise; their views need not be based upon first-hand knowledge or experience. Indeed, in general, the expert witness lacks personal familiarity with the particular case, but instead offers a view based on his or her specialised knowledge regarding a technical, scientific, or otherwise discrete set of ideas or concepts that is expected to lie outside the lay person’s ken.<sup>368</sup>

198. The Chamber is mindful that “while the report and testimony of an expert witness may be based on facts narrated by ordinary witnesses or facts from other evidence, an expert witness cannot, in principle, testify himself or herself on the acts and conduct of accused persons without having been called to testify also as a factual witness and without his or her statement having been disclosed in accordance with the applicable rules concerning factual witnesses.” Though an expert “may testify on certain facts relating to his or her area of expertise,” an expert witness’ function is not “to testify on disputed facts as would ordinary witnesses”, but only “to assist the Trial Chamber in its assessment of the evidence.”<sup>369</sup>

199. The party alleging bias on the part of an expert witness may demonstrate such bias through cross-examination, by calling its own expert witnesses or by means of an expert opinion in reply. Just as for any other evidence presented, it is for the Trial Chamber to assess the reliability and probative value of the expert report and testimony.<sup>370</sup>

### 2.7.5 Witnesses Under Investigation

200. The Chamber notes that, since their testimony in the present case, Prosecution Witnesses QA, QY and SJ have become the subject of on-going investigations before the Tribunal for false testimony and contempt of court.<sup>371</sup> In November 2008, the Chamber ordered an investigation into allegations that Witness QA gave false testimony in the present case in March 2004 and October 2008, and before the Canadian Rogatory Commission in the *Munyaneza* case in May 2008. The Chamber also ordered an investigation into Witness QA’s allegations of intimidation and bribery with respect to these three appearances.<sup>372</sup>

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<sup>366</sup> See *Popović et al.*, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness (AC), 30 January 2008, para. 22.

<sup>367</sup> *Vasiljević*, Judgement (TC), para. 20.

<sup>368</sup> *Renzaho*, Judgement (AC), para. 287; *Semanza*, Judgement (AC), para. 303.

<sup>369</sup> *Nahimana et al.*, Judgement (AC), paras. 212, 509; see also *Renzaho*, Judgement (AC), paras. 288-289.

<sup>370</sup> *Nahimana et al.*, Judgement (AC), para. 199.

<sup>371</sup> *Ntahobali*, Decision on Ntahobali’s Motion for an Investigation Relative to False Testimony and Contempt of Court (TC), 7 November 2008; *Nyiramasuhuko et al.*, Decision on Ntahobali’s Motion for an Investigation into False Testimony and Kanyabashi’s Motion for an Investigation into Contempt of Court Relative to Prosecution Witnesses QY and SJ (TC), 19 March 2009.

<sup>372</sup> *Ntahobali*, Decision on Ntahobali’s Motion for an Investigation Relative to False Testimony and Contempt of Court (TC), 7 November 2008.

201. In December 2008, the Chamber ordered the recall of Witnesses QY and SJ, to be cross-examined by Ntahobali and any other Defence on the following specific issues: whether Witness QY knew Witnesses SJ, TK and QBQ; whether Witness SJ knew Witnesses TK and QJ; and whether Witnesses QY and SJ lied in their previous testimonies before the Tribunal regarding this knowledge and, if so, about the circumstances surrounding such lies.<sup>373</sup>

202. Subsequently, the Chamber directed the Registrar to appoint an independent *Amicus Curiae* to investigate the false testimony of Witness QA and the related allegations of contempt, the allegations of false testimony by Witnesses QY and SJ, and the allegations of coercion with respect to certain appearances by these witnesses to determine whether there are sufficient grounds for instigating formal proceedings for false testimony and contempt.<sup>374</sup>

203. With respect to these allegations, and without prejudice to any such proceedings which may come before the Tribunal, the Chamber will treat these witnesses' testimony with added caution.

## 2.8 Participation of the Chief of Chambers

204. On reviewing the procedural history of the case, the Chamber became aware in July 2009 that the then-Chief of the Chambers Support Section at the ICTR, Mr. Chile Eboe-Osuji, participated in this case as an employee of the Office of the Prosecutor in 1998 and 1999. Mr. Eboe-Osuji is listed as counsel for the Prosecution on six decisions.<sup>375</sup> As an immediate precautionary measure, and before Mr. Eboe-Osuji had participated in any deliberations relating to the guilt or innocence of any of the various Accused, the Chamber determined he would preliminarily not be involved in the judgement drafting process. After reviewing relevant case law, the Chamber concluded that it is unclear whether Mr. Eboe-Osuji's participation would raise a conflict of interest which would impact on the fair trial rights of the

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<sup>373</sup> *Ntahobali*, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others (TC), 3 December 2008.

<sup>374</sup> *Ntahobali*, Decision on Ntahobali's Motion for an Investigation Relative to False Testimony and Contempt of Court (TC), 7 November 2008. The issue of Witness QA's credibility also arose in the Chamber's Decision on Nyiramasuhuko's Motion for Judicial Notice of an Appeals Chamber Factual Finding, 22 January 2009: *see Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Motion for Judicial Notice of an Appeals Chamber Factual Finding (TC), 22 January 2009. The Chamber observed that while Witness QA testified on recall that he lied when he first appeared before the Chamber, the question of whether he actually lied on recall or when he first appeared, and the identity of any people who may have been involved is the subject of an ongoing investigation; furthermore, the Chamber noted that it considered that the probative value of all the evidence tendered is yet to be determined: *Nyiramasuhuko et al.*, Decision on Ntahobali's Motion for an Investigation into False Testimony and Kanyabashi's Motion for an Investigation into Contempt of Court Relative to Prosecution Witnesses QY and SJ (TC), 19 March 2009.

<sup>375</sup> *See Ndayambaje*, Decision on the Defence Motion of Utmost Urgency to Resolve All Difficulties Posed by the File Processing and, in Particular, Issues of Evidence Disclosure, Judicial Calendar and Non-Enforcement of Decisions of the Trial Chamber in the *Ndayambaje* Case (TC), 16 April 1998; *Ndayambaje*, Decision on the Motion of the Accused for the Replacement of Appointed Counsel (TC), 7 July 1998; *Nyiramasuhuko et al.*, Decision on the Status of the Hearings for the Amendment of the Indictments and for Disclosure of Supporting Material (TC), 30 September 1998; *Kanyabashi*, Scheduling Order (AC), 18 December 1998; *Kanyabashi*, Decision on Extremely Urgent Defence Motion Requesting the Postponement of Appeals Chamber's Decision To Be Rendered on 3 June 1999, in the Matter of *Joseph Kanyabashi v. The Prosecutor* (AC), 3 June 1999; *Kanyabashi*, Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I (AC), 3 June 1999.

various Accused.<sup>376</sup> However, out of an abundance of caution and intent on preserving both justice and the appearance of justice, the Chamber determined in November 2009 that Mr. Eboe-Osuji's involvement from the judgement drafting process would be excluded. The Chamber notes that it has considered this issue *proprio motu*.

## 2.9 Judicial Notice

205. Rule 94 of the Rules provides that the Trial Chamber shall not require proof of facts of common knowledge, but shall take judicial notice thereof. Any fact that cannot reasonably be disputed must be judicially noticed pursuant to the mandatory language of Rule 94 (A) of the Rules; there is no exception for facts that may carry a legal meaning or that may be an element of an offence.<sup>377</sup> The judicial notice of facts, however, does not shift the burden of proof, which remains with the Prosecution.<sup>378</sup>

206. Because judicial notice is mandatory, the Chamber shall take notice of facts that the Appeals Chamber has confirmed are indisputable.<sup>379</sup> The following have been so deemed facts of common knowledge, not subject to reasonable dispute, and therefore must be judicially noticed under Rule 94 (A) of the Rules:

Widespread or systematic attacks against a civilian population based on Tutsi ethnic identification occurred in Rwanda between April and July 1994;<sup>380</sup>

During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsis and as a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity;<sup>381</sup>

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<sup>376</sup> See *Bizimungu et al.*, Decision on Appeals Concerning the Engagement of a Chambers Consultant or Legal Officer (AC), 17 December 2009, paras. 9 (holding that legal officers and consultants are not "subject to the same standards of impartiality as the Judges of the Tribunal"), 10 ("In some cases, a prospective staff member's statements or activities may be so problematic as to either impugn the perceived impartiality of the Judges or the appearance thereof, or, even if this were not the case, the Tribunal's fundamental guarantees of fair trial"). Compare also *Hartmann*, Report of Decision on Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Counsel (Panel), 27 March 2009, para. 54 (denying a Defence request to preclude the Senior Legal Officer of the Pre-Trial Chamber from working on the case because he had assisted in preparing the *amicus* report which led to the prosecution of the Accused); *Lubanga Dyilo & Kony et al.*, Administrative Decision by the President of the Pre-Trial Division concerning the communication of submissions relating to the Case of the Prosecutor vs. Thomas Lubanga Dyilo and the Case of the Prosecutor vs. Joseph Kony et. al. to the Senior Legal Advisor to the Pre-Trial Division (President of the Pre-Trial Division, ICC), 20 October 2006 (preliminarily separating the Senior Legal Advisor from participation); *Semanza*, Judgement (AC), para. 56 (concluding that Mr. Eboe-Osuji's presence in Chambers did not present a conflict in that case, because at the time he served in Trial Chamber II, *Semanza* was litigated in Trial Chamber III, and he consequently could not have participated in the judgement drafting process).

<sup>377</sup> *Bikindi*, Judgement (AC), para. 99; *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 29-30.

<sup>378</sup> *Semanza*, Judgement (AC), para. 192.

<sup>379</sup> *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 23, 29, 37, 41.

<sup>380</sup> *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 28-29, 32; *Semanza*, Judgement (AC), para. 192.

<sup>381</sup> *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 26, 31-32.



Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group;<sup>382</sup>

There was an armed conflict not of an international character in Rwanda between 1 January 1994 and 17 July 1994;<sup>383</sup>

Rwanda became a state party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948) on 16 April 1975;<sup>384</sup> and

Rwanda was a state party to the Geneva Conventions of 12 August 1949 and Additional Protocol II of 8 June 1977.<sup>385</sup>

207. The Chamber recalls its Decision of 15 May 2002 in which it took notice of the following additional facts of common knowledge pursuant to Rule 94 (A) of the Rules:

That “[b]etween 6 April 1994 and 17 July 1994, citizens native to Rwanda were identified according to the following ethnic classifications: Tutsi, Hutu and Twa”,<sup>386</sup> and

That “[o]n 6 April 1994, the President of the Republic of Rwanda, Juvénal Habyarimana, was killed when his plane was shot down on its approach to Kigali airport”.<sup>387</sup>

208. The Chamber also took judicial notice in its Decision of all the documents listed in Annex B of the “Prosecutor’s Motion for Judicial Notice and Admission of Evidence”, but not the facts contained therein.<sup>388</sup> Specifically, the Chamber took judicial notice of the authenticity of the following documents, including any subsequent modifications or amendments made up until 31 December 1994:

*Décret-loi No. 10/75, Organisation et fonctionnement de la préfecture, 11 mars 1975;*

*Organisation territoriale de la République, 15 Avril 1963, Annexe II, Limites des communes, at para. III;*

*Loi sur l’organisation communale, 23 novembre 1963, article 1;*

*Décret-loi, création de la Gendarmerie nationale (23 janvier 1974);*

*Ordonnance législative No. R/85/25, Création de l’Armée rwandaise (10 mai 1962, article 4);*

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<sup>382</sup> *Karemera et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 33, 38.

<sup>383</sup> *Karemera et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 26, 28-29, 32; *Semanza*, Judgement (AC), para. 192.

<sup>384</sup> *Karemera et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 28; *Semanza*, Judgement (AC), para. 192.

<sup>385</sup> *Karemera et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 28; *Semanza*, Judgement (AC), para. 192.

<sup>386</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, paras. 93, 105.

<sup>387</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, paras. 93, 105.

<sup>388</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, para. 133.

*Arrêté présidentiel No. 86/08, Intégration de la Police dans l'Armée rwandaise (26 juin 1973, articles 1, 2);*

*Arrêté présidentiel No. 01/02, Statut des officiers des forces armées rwandaises (3 Janvier 1977, article 2);*

UN Document S/RES/872 (1993), 5 October 1993; and

The Constitution of the Republic of Rwanda, 10 June 1991, Art. 45 (*Gazette*, 1991, p. 615).<sup>389</sup>

## **2.10 Structure of the Judgement**

209. This Judgement is divided into seven parts.

210. Part I contains an Introduction, which includes an overview of the case, the Tribunal's jurisdiction, a presentation of each Accused and a brief procedural history.

211. Part II contains this Preliminary Issues section addressing matters relating to the Indictments, and concludes with a summary of the evidentiary principles the Chamber used in deciding the case.

212. Part III contains the Chamber's factual findings, starting first with the general allegations about the events in Butare and in Rwanda in 1994 and then making factual findings about each of the events contained in the Indictments. Because many factual allegations are common to all four Indictments, the Chamber has decided to group the factual allegations chronologically and thematically instead of considering them Indictment by Indictment, to avoid unnecessary repetition. Nevertheless, the Chamber has remained mindful to treat each Accused individually when making its factual findings.

213. Part IV addresses the law applicable to the counts contained in the Indictments and proceeds to make legal findings with respect to each of the counts against each of the Accused.

214. Part V provides the Chamber's ultimate findings as to the responsibility of each of the Accused based on the factual findings contained in Part III and the legal findings contained in Part IV.

215. Part VI discusses the law applicable to sentencing, makes findings as to aggravating and mitigating factors, and concludes with sentences, when applicable, for each of the Accused.

216. Part VII contains Annexes, including the four Indictments in the case, a comprehensive procedural history, a list of defined terms and a list of cited jurisprudence.

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<sup>389</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, p. 28.

## CHAPTER III: FACTUAL FINDINGS

### 3.1 Background of the 1994 Events in Rwanda

217. In order to understand the events alleged and the evidence, the Chamber deems it helpful to summarise the historical context of the events of 1994. In this section the Chamber will briefly discuss the Rwandan administrative structure, the geographic and population characteristics of Butare *préfecture*, and some of the key historical events leading up to the relevant factual findings of the Judgement.

218. The Chamber bases its findings in this section on uncontested facts that are generally not linked to counts in the Indictments.

219. Before 6 April 1994, the population of Rwanda was categorised according to the following ethnic classifications: Hutu, Tutsi and Twa. Those living in Rwanda between 6 April 1994 and 17 July 1994 continued to be identified according to this taxonomy.<sup>390</sup>

#### 3.1.1 The Rwandan Administrative Structure

220. Rwanda was administratively divided into provinces known as *préfectures*. *Préfectures* were subdivided into *communes*, which were further subdivided into *secteurs*, which were in turn subdivided into *cellules*. In 1994, Rwanda was comprised of 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri.<sup>391</sup>

221. The Rwandan *préfecture* administration was organised with the *préfet* as the focal authority and the main representative of the Government at the *préfecture* level, some of whom had specific duties across the *préfecture*, while others were responsible for specific geographic areas, such as particular *communes*. Below the *préfet* were *sous-préfets*. Underneath the *sous-préfets* were the *bourgmestres*, who were each in charge of a *commune*. *Préfets*, *sous-préfets* and *bourgmestres* were appointed by the national Government. At the *secteur* level, *conseillers* were popularly elected. Below the *conseillers* were the *responsables de cellule*.<sup>392</sup>

222. The powers of the *préfet* were governed by Legislative Decree No. 10/75 of 11 March 1975, which was in force on 6 April 1994.<sup>393</sup> According to Article 4 of the decree, *préfets* were appointed and dismissed by order of the President of the Republic, on the recommendation of the Minister of the Interior and after deliberation by the Cabinet.<sup>394</sup> Article 8 of the decree provided that *préfets* had the responsibility to “[e]nsure peace, public order and the security of persons and property.” Pursuant to Article 8 (4), *préfets* were obliged to assist and supervise the *commune* authorities.<sup>395</sup> *Préfets* were required to act as intermediaries between the national Government and the local population, relaying instructions from central

<sup>390</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, para. 105.

<sup>391</sup> Para. 2.2 of each Indictment.

<sup>392</sup> T. 29 June 2004 p. 23 (Guichaoua).

<sup>393</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>394</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>395</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

authorities to the general public, as well as informing the Government of any events or information of interest from the grass-roots level.<sup>396</sup> *Préfets* were granted certain powers. For example, Article 9 of the decree stated, “[i]n the accomplishment of his mission, the *Préfet* shall be able to draw on the State services within the *préfecture*.”<sup>397</sup> Article 10 provided that *préfets* may, in conformity with laws and regulations in force, establish administrative regulations and impose penalties of up to 30 days imprisonment and/or a fine of 2,000 francs.<sup>398</sup> Under Article 11, *préfets* could request the intervention of the Armed Forces, particularly the *gendarmerie*, to establish public order.<sup>399</sup>

223. Pursuant to the communal law of 23 November 1963,<sup>400</sup> as amended by the Legislative Decree of 26 September 1974, *bourgmestres* were appointed by the President of the Republic on the proposal of the Minister of the Interior.<sup>401</sup> This law was in force on 6 April 1994.<sup>402</sup> According to Article 56 of this law, *bourgmestres* were the representatives of the central authority in the *commune* and the personification of the *commune* authority.<sup>403</sup> While Article 104 provided that *bourgmestres* had sole authority over the *commune* police, only *préfets* could requisition the *commune* police.<sup>404</sup> Articles 46 to 50 specified *préfets*’ disciplinary powers *vis-à-vis* *bourgmestres* and other listed authorities, and the circumstances under which such sanctions were authorised.<sup>405</sup> According to these Articles, while *préfets* could neither suspend nor dismiss a *bourgmestre* permanently, they could take measures to suspend him temporarily.<sup>406</sup> Specifically, if a *préfet* proposed to the Minister of the Interior that a *bourgmestre* be suspended or dismissed, that *préfet* could suspend the *bourgmestre*, pending a decision from the Ministry.<sup>407</sup>

### 3.1.2 Butare Préfecture

224. Butare *préfecture* is located in the south of Rwanda and borders Gitarama *préfecture* to the north, Gikongoro *préfecture* in the west, Kigali *préfecture* to the northeast and the country of Burundi in the east and south.<sup>408</sup>

225. During the events referred to in the Indictments, Butare *préfecture* was divided into 20 *communes*: Nyakizu, Kigembe, Gishamvu, Ngoma, Runyinya, Maraba, Ruhashya, Mbazi,

<sup>396</sup> T. 19 September 2007 p. 56 (Reyntjens).

<sup>397</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>398</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>399</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>400</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*).

<sup>401</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) (before the 1974 amendment to this law, *bourgmestres* were elected directly by the population of the *commune*).

<sup>402</sup> T. 19 September 2007 p. 42 (Reyntjens).

<sup>403</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*).

<sup>404</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*); T. 21 November 2007 pp. 17-18 (Reyntjens).

<sup>405</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*).

<sup>406</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*).

<sup>407</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*).

<sup>408</sup> T. 13 June 2001 p. 21 (Shukry); Prosecution Exhibit 1 (Map of Butare).

Shyanda, Muyaga, Mugusa, Nyaruhengeri, Ndora, Muganza, Kibayi, Rusatira, Nyabisindu, Ntyazo, Muyira and Huye.<sup>409</sup>

226. Butare *préfecture* was one of the most populated *préfectures* in Rwanda, with approximately 400 inhabitants per square kilometre.<sup>410</sup> It was also one of the *préfectures* most heavily populated by Tutsis; 25 percent of the Tutsi population in Rwanda lived in Butare.<sup>411</sup> In the two most Tutsi-populated *communes* of Butare, Runyinya and Muganza, Tutsis comprised 40 to 45 percent of the total population.<sup>412</sup>

### 3.1.3 Political System Before October 1990

227. Towards the end of the 19<sup>th</sup> century, Germany colonised Rwanda; years later the Kingdom of Belgium took over until Rwanda became independent.<sup>413</sup>

228. In 1959, inter-ethnic turmoil broke out, compelling a large contingent of Tutsis living in Rwanda to flee the country.<sup>414</sup> Some of those fleeing Tutsis organised into military groups later known as the RPF which began conducting raids into Rwanda from the early 1960s through 1967.<sup>415</sup> There were also some Hutus among the RPF leadership.<sup>416</sup>

229. On 1 July 1962, Rwanda became independent; the first President of the Republic was Dominique Mbonyumutwa, a Hutu, who was replaced by Grégoire Kayibanda, a Hutu, that same year.<sup>417</sup>

230. On 5 July 1973, General Juvénal Habyarimana, a Hutu, overthrew Grégoire Kayibanda following a *coup d'état* which marked the end of the first Republic.<sup>418</sup> In July 1975, Juvénal Habyarimana officially became President of the Republic.<sup>419</sup> From 1975 until the adoption of a new constitution on 10 June 1991, the MRND party founded by Habyarimana was the only political party in Rwanda.<sup>420</sup>

### 3.1.4 The RPF Attack of 1 October 1990

231. On 1 October 1990, the RPF launched an attack on Rwanda from Uganda.<sup>421</sup> After the attack, the Government arrested approximately 8,000 people nationwide claiming they were accomplices of the RPF. Nationally, the majority of those arrested were Tutsis.<sup>422</sup> In Butare, some political figures were among those arrested, including Frédéric Nzamurambaho and

<sup>409</sup> Para. 2.3 of each Indictment.

<sup>410</sup> T. 24 June 2004 p. 33 (Guichaoua).

<sup>411</sup> T. 24 June 2004 p. 33 (Guichaoua).

<sup>412</sup> T. 24 June 2004 p. 33 (Guichaoua).

<sup>413</sup> T. 8 June 2004 p. 7 (Des Forges).

<sup>414</sup> T. 8 June 2004 pp. 9-10 (Des Forges).

<sup>415</sup> T. 8 June 2004 p. 10 (Des Forges).

<sup>416</sup> T. 14 June 2004 p. 64 (Des Forges); T. 29 September 2004 p. 23 (Guichaoua).

<sup>417</sup> T. 8 June 2004 p. 22 (Des Forges).

<sup>418</sup> T. 8 June 2004 p. 11 (Des Forges); T. 19 September 2007 p. 11 (Reyntjens).

<sup>419</sup> T. 19 September 2007 p. 18 (Reyntjens); Prosecution Exhibit 110A (Des Forges Expert Report) p. 3.

<sup>420</sup> T. 19 September 2007 p. 18 (Reyntjens); Prosecution Exhibit 110A (Des Forges Expert Report) p. 3.

<sup>421</sup> T. 25 June 2004 pp. 35-36 (Guichaoua); T. 4 July 2007 pp. 13-15 (Nteziryayo); T. 21 October 2008 p. 57 (Ndayambaje).

<sup>422</sup> T. 25 June 2004 pp. 35-36 (Guichaoua); T. 22 February 2005 p. 4 (Witness WZJM).

Félicien Gatabazi, who later played a key role in the creation of the PSD, an opposition party.<sup>423</sup> In addition to the arrests, about 300 Tutsi civilians were killed in Kabilira *commune* in mid-October 1990.<sup>424</sup>

### 3.1.5 The Multi-Party Era in Rwanda

232. A new constitution was adopted on 10 June 1991, which created a multi-party system and provided for the creation of the Transitional Government. New political parties were created, including the MDR, PSD, PL, PDC and the CDR.<sup>425</sup>

233. On 7 April 1992, the MRND, MDR, PSD, PDC and PL signed a protocol agreement, which set forth the power-sharing arrangement that formed the heart of the Transitional Government.<sup>426</sup> On 16 April 1992, the multi-party Transitional Government, headed by Dismas Nsenyiremye of the MDR, was established.<sup>427</sup> Article 3 of the protocol provided for the organisation of *commune*, legislative and presidential elections to be held within 12 months of the creation of the Transitional Government.<sup>428</sup>

234. On 3 June 1992, the MDR, PL and PSD met representatives of the RPF in Brussels, Belgium, to discuss how to resolve the ongoing hostilities.<sup>429</sup> The MRND did not participate in these discussions.<sup>430</sup> At the end of the meeting, the participants issued a document entitled “Joint *Communiqué* between the Democratic Forces for Change and the RPF”, which declared its signatories’ agreement to a ceasefire.<sup>431</sup> Nevertheless, on the following night of 4-5 June 1992, the RPF launched an attack on Byumba *préfecture*, displacing approximately 350,000 people.<sup>432</sup>

235. On 8 February 1993, the RPF launched an attack in the north of Rwanda, notably in Byumba, Kigali, Ruhengeri and Kibungo *préfectures*.<sup>433</sup> Hundreds of thousands of people were displaced, increasing the total number of displaced persons to 1,000,000.<sup>434</sup>

236. On 13 April 1993, the five parties constituting the Transitional Government signed a second protocol, extending the Transitional Government’s mandate by three months since elections had not been conducted within 12 months of the Government’s creation as prescribed by the original protocol of 7 April 1992.<sup>435</sup> Article 2 of the second protocol provided that the

<sup>423</sup> T. 25 June 2004 pp. 34-36 (Guichaoua).

<sup>424</sup> T. 8 June 2004 p. 12 (Des Forges).

<sup>425</sup> T. 19 September 2007 p. 18 (Reyntjens).

<sup>426</sup> Defence Exhibit 320 (Nyiramasuhuko) (Protocol of Understanding Between Political Parties Called to Participate in the Transitional Government); T. 1 September 2005 pp. 40-41 (Nyiramasuhuko).

<sup>427</sup> T. 29 September 2004 p. 49 (Guichaoua).

<sup>428</sup> Defence Exhibit 320 (Nyiramasuhuko) (Protocol of Understanding Between Political Parties Called to Participate in the Transitional Government); T. 5 September 2005 pp. 46-47 (Nyiramasuhuko).

<sup>429</sup> T. 30 September 2004 pp. 45-47 (Guichaoua).

<sup>430</sup> T. 30 September 2004 pp. 46-47 (Guichaoua); T. 7 September 2005 pp. 11-13 (Nyiramasuhuko).

<sup>431</sup> T. 30 September 2004 pp. 45-47 (Guichaoua); T. 7 September 2005 pp. 19-21 (Nyiramasuhuko).

<sup>432</sup> T. 30 September 2004 pp. 45-47 (Guichaoua); T. 25 September 2007 pp. 45-47 (Reyntjens).

<sup>433</sup> T. 8 September 2005 p. 30 (Nyiramasuhuko); T. 30 September 2004 pp. 53-54 (Guichaoua).

<sup>434</sup> T. 30 September 2004 pp. 53-54 (Guichaoua).

<sup>435</sup> Defence Exhibit 324 (Nyiramasuhuko) (Additional Protocol to the Protocol Agreement Between the Political Parties Represented in the Transitional Government Formed on 16 April 1992); T. 1 September 2005 p. 55 (Nyiramasuhuko). The five parties were the MRND, MDR, PL, PSD and PDC.

main task of the Government during its extended term was to negotiate a peace deal and establish the Broad-Based Transitional Government.<sup>436</sup>

237. On 16 July 1993, the five governing parties signed a third protocol further extending the Transitional Government's mandate until the Broad-Based Transitional Government took office.<sup>437</sup> After this new protocol was signed, Dismas Nsengiyaremye was dismissed as Prime Minister and replaced by Agathe Uwilingiyimana, who was sworn in on 18 July 1993.<sup>438</sup>

### 3.1.6 The Arusha Accords

238. On 3 August 1993, President Habyarimana and Colonel Alexis Kanyarengwe, chairman of the RPF, signed the Arusha Accords, which comprised six military and political protocol agreements.<sup>439</sup>

239. The political protocol envisaged three transitional institutions: the Transitional National Assembly, the Broad-Based Transitional Government and the Presidency of the Republic.<sup>440</sup> The number of Government ministerial positions held by the MRND was to be limited to five, plus the Presidency, with the remaining posts to be shared as follows: RPF, five; MDR, four (including the Prime Minister); PSD, three; PL, three; and the PDC, one.<sup>441</sup>

240. On 5 January 1994, Juvénal Habyarimana was sworn in as President in conformity with the Arusha Accords. In the three months that followed, attempts to set up the Broad-Based Transitional Government and the Transitional National Assembly failed.<sup>442</sup>

### 3.1.7 The Murder of Félicien Gatabazi and Martin Bucyana

241. On 22 February 1994, Félicien Gatabazi, Secretary-General of the PSD, was murdered in Kigali.<sup>443</sup> Gatabazi had been very popular in Butare, having co-founded the PSD with other natives of Butare *préfecture*.<sup>444</sup>

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<sup>436</sup> Defence Exhibit 324 (Nyiramasuhuko) (Additional Protocol to the Protocol Agreement Between the Political Parties Represented in the Transitional Government Formed on 16 April 1992).

<sup>437</sup> Defence Exhibit 329 (Nyiramasuhuko) (Additional Protocol to the 7 April 1992 Protocol Signed by the Political Parties Participating in the Transitional Government Formed on 16 April 1992); T. 8 September 2005 pp. 57-59 (Nyiramasuhuko).

<sup>438</sup> T. 6 October 2004 p. 5 (Guichaoua); T. 8 September 2005 pp. 59-61 (Nyiramasuhuko).

<sup>439</sup> Defence Exhibit 325 (Nyiramasuhuko) (Peace Agreement Between the Government of the Republic of Rwanda and the RPF) (These protocol agreements were: (i) Ceasefire agreement dated 29 March 1991 between the Government of the Republic of Rwanda and the RPF, as amended in Gbadolite on 16 September 1991 and in Arusha on 12 July 1992; (ii) Protocol agreement between the Government of the Republic of Rwanda and the RPF on the rule of law, signed in Arusha on 18 September 1992; (iii) Protocol agreement between the Government of the Republic of Rwanda and the RPF on power-sharing within a broad-based transitional government, signed in Arusha on 30 October 1992 and 9 January 1993; (iv) Protocol agreement between the Government of the Republic of Rwanda and the RPF on the repatriation of refugees, and the resettlement of displaced persons, signed in Arusha on 9 June 1993; (v) Protocol agreement between the Government of the Republic of Rwanda and the RPF on the integration of the armed forces of the two parties, signed in Arusha on 3 August 1993; (vi) Protocol agreement between the Government of the Republic of Rwanda and the RPF on miscellaneous issues and final provisions, signed in Arusha on 3 August 1993).

<sup>440</sup> T. 19 September 2007 pp. 20, 22 (Reyntjens).

<sup>441</sup> Para. 1.11 of each Indictment.

<sup>442</sup> T. 19 September 2007 pp. 26-27 (Reyntjens); T. 20 September 2005 pp. 16, 29 (Nyiramasuhuko).

242. Shortly after Félicien Gatabazi's death, Martin Bucyana, the CDR President, was murdered in Mwulire *secteur*, Mbazi *commune*, Butare *préfecture*.<sup>445</sup>

### 3.1.8 President Habyarimana's Death and Its Immediate Consequences

243. On 6 April 1994, the plane carrying President Habyarimana and other passengers was shot down on its approach to Kigali airport.<sup>446</sup> On 7 April 1994, a *communiqué* from the Minister of Defence was broadcast on the radio asking people to remain at home until further notice.<sup>447</sup> On 7 April 1994, several key political figures were murdered in Kigali, including: Prime Minister Agathe Uwilingiyimana; Kavaruganda, the president of the Rwandan Constitutional Court; Frédéric Nzamurambaho, the president of the PSD; and Gafaranga and Ngango, vice-presidents of the PSD.<sup>448</sup> The search for and killing of people, mostly Tutsis, started on 7 April 1994 and proceeded to spread throughout the country.<sup>449</sup>

### 3.1.9 The Interim Government

244. The Interim Government was created on 8 April 1994, following the death of President Habyarimana and Prime Minister Uwilingiyimana. Doctor Théodore Sindikubwabo, Speaker of the Rwandan Parliament, was appointed President of the Republic on the basis of the 1991 constitution.<sup>450</sup> The same day, President Sindikubwabo appointed Jean Kambanda from the MDR to the post of Prime Minister.<sup>451</sup> Both President Sindikubwabo and Prime Minister Kambanda hailed from Butare.<sup>452</sup> The Interim Government included Pauline Nyiramasuhuko, another native of Butare, as Minister of Family and Women's Development.<sup>453</sup>

245. The objectives of the Interim Government were set out in a protocol agreement, signed on 8 April 1994 by representatives of the MRND, MDR, PSD, PDC and PL, which together comprised this Interim Government.<sup>454</sup> On 9 April 1994, the members of the Interim Government were sworn-in at the *Hôtel des Diplomates* in Kigali.<sup>455</sup>

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<sup>443</sup> T. 11 September 2006 pp. 49-50 (Nsabimana); T. 20 September 2007 pp. 27-28 (Reyntjens).

<sup>444</sup> T. 1 September 2005 p. 35 (Nyiramasuhuko); T. 28 June 2004 p. 7 (Guichaoua).

<sup>445</sup> T. 28 June 2004 p. 7 (Guichaoua); T. 11 September 2006 p. 51 (Nsabimana).

<sup>446</sup> T. 21 February 2007 p. 9 (ICS) (Witness AND-30).

<sup>447</sup> T. 2 October 2006 pp. 15, 17 (Rutayisire); T. 18 March 2002 pp. 63-64 (ICS) (Witness QBV).

<sup>448</sup> T. 19 September 2007 p. 30 (Reyntjens); T. 11 September 2006 pp. 52-54 (Nsabimana).

<sup>449</sup> T. 8 June 2004 p. 28 (Des Forges).

<sup>450</sup> T. 19 September 2007 p. 35 (Reyntjens); T. 28 June 2004 p. 58 (Guichaoua).

<sup>451</sup> T. 26 September 2007 p. 29 (Reyntjens); T. 28 June 2004 p. 58 (Guichaoua).

<sup>452</sup> T. 28 June 2004 p. 58 (Guichaoua).

<sup>453</sup> T. 28 June 2004 p. 60 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 36-37; Para. 4.2 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>454</sup> Defence Exhibit 345 (Nyiramasuhuko) (Additional Protocol to the Protocol of Understanding Between the Political Parties Invited to Participate in the Transitional Government, signed 7 April 1994); T. 26 September 2005 pp. 37-38 (Nyiramasuhuko).

<sup>455</sup> T. 26 September 2007 p. 25 (Reyntjens).



### 3.2 Allegation of Fabrication of Evidence

#### 3.2.1 Introduction

246. The Kanyabashi, Nyiramasuhuko and Nsabimana Defence contend that several Prosecution witnesses were improperly influenced in their testimony by the *Ibuka* association. Evidence led in this regard was aimed at discrediting the testimony of Prosecution witnesses.

247. The Kanyabashi Defence submits that 14 Prosecution witnesses were members of the *Ibuka* association, and were either improperly influenced to give false testimony against Kanyabashi or they encouraged others to testify falsely against Kanyabashi.<sup>456</sup> The Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witness D-2-21-T in submitting that Prosecution Witnesses RL, RO, SS, SU TK, QA, QAM, QBM, QC, QG, QI, QJ, QP and QY attended meetings of the *Ibuka* association where participants discussed falsification of testimony against Kanyabashi.<sup>457</sup> The Kanyabashi Defence further relies on the testimony of Kanyabashi Defence Witness D-2-18-O in submitting that Prosecution Witnesses QI and RL were *Ibuka* members who chaired meetings regarding false accusations against Kanyabashi.<sup>458</sup> The Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witness D-13-D in submitting that Prosecution Witnesses SU and FAE were influential *Ibuka* members who falsely accused many people they did not know.<sup>459</sup> The Kanyabashi Defence relies on Prosecution Witness QA's testimony that three influential *Ibuka* members met with him on several occasions and encouraged him to lie against Kanyabashi, which he did.<sup>460</sup>

248. The Nyiramasuhuko Defence relies on the testimony of Nyiramasuhuko Defence Witness WNMN in submitting that Prosecution Witness FAE is a militant member of the Association of Genocide Survivors, which is run by *Ibuka* and known for fabricating testimony against accused at the ICTR.<sup>461</sup> Additionally, Nyiramasuhuko Defence Witness WMCZ testified that Prosecution Witness QBP is an *Ibuka* member who informed him that she was accusing people in order to acquire their property.<sup>462</sup>

249. The Nsabimana Defence relies on the testimony of Nteziryayo Defence Witness AND-59, Kanyabashi Defence Witnesses D-2-21-T, D-2-18-O and D-13-D and Prosecution Witness QA in submitting that numerous Prosecution witnesses including, Witnesses SS, SU, TK, QAM, QBQ, QG, QI, TK, QJ, QP and QY, are not credible, because they are involved in the

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<sup>456</sup> Eleven of these Prosecution witnesses testified at trial, Witnesses QBM, QC and RO did not testify. See Kanyabashi Closing Brief, paras. 6-10.

<sup>457</sup> Kanyabashi Closing Brief, paras. 266-268, 620 (submissions regarding Witness QA); paras. 113, 155, 162, 199 (submissions regarding Witness QAM); paras. 113, 155, 162, 199 (submissions regarding Witness QP); para. 357 (submissions regarding Witness QG); paras. 280, 292, 302, 435, 480 (submissions regarding Witness QI); paras. 280, 291, 302, 435 (submissions regarding Witness QJ); paras. 280, 291, 302, 435 (submissions regarding Witness TK); para. 435 (submissions regarding Witness QY); paras. 267-268 (submissions regarding Witness RL); paras. 435, 447 (submissions regarding Witness SS); paras. 435, 447 (submissions regarding Witness SU).

<sup>458</sup> Kanyabashi Closing Brief, paras. 10, 207, 239, 302; *see also* para. 267 (submissions regarding Witness RL); fn. 1905 (citing Witness D-2-18-O's testimony with respect to Witness QI's alleged involvement in *Ibuka*).

<sup>459</sup> Kanyabashi Closing Brief, para. 10, fn. 1728 (submissions regarding Witness SU); T. 19 February 2008 p. 20 (ICS) (Witness D-13-D) (regarding Witness FAE).

<sup>460</sup> Kanyabashi Closing Brief, paras. 9, 266, 302. One of those individuals is allegedly Witness QC, who did not testify at trial.

<sup>461</sup> Nyiramasuhuko Closing Brief, paras. 286, 293, 602.

<sup>462</sup> T. 2 February 2005 pp. 6, 10 (ICS); T. 3 February 2005 p. 68 (ICS) (Witness WMCZ).

*Ibuka* association, which is well known for improperly influencing witnesses.<sup>463</sup> The Nsabimana Defence also relies on the testimony of Kanyabashi Defence Expert Witness Filip Reyntjens in support of its allegations that particular Prosecution witnesses were coached before testifying at the ICTR.<sup>464</sup>

250. The Kanyabashi Defence further submits that four Prosecution witnesses were members of a Rwandan prison group, whose mission was to fabricate evidence against Kanyabashi.<sup>465</sup> Specifically, the Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witness D-2-13-D in submitting that Prosecution Witnesses FAC, FAM, QCB and QAH belonged to a pressure group in prison whose mission was to incriminate Kanyabashi.<sup>466</sup> In support of this submission, the Kanyabashi Defence relied on the evidence of Prosecution Expert Witnesses Alison Des Forges and André Guichaoua and Kanyabashi Defence Expert Witness Filip Reyntjens.<sup>467</sup> Lastly, the Kanyabashi Defence submits that Kanyabashi Defence Witness D-1-4-O was also pressured to testify against Kanyabashi.<sup>468</sup>

251. Additional evidence relating to alleged fabrication of evidence was led through Kanyabashi Defence Witness D-2-16-P, Nteziryayo Defence Witnesses AND-30, AND-41 and AND-59, Nsabimana Defence Witness Charles Karemano and Nyiramasuhuko Defence Witness WNMN.

252. The Prosecution, relying on the *Zigiranyirazo* Trial Judgement, submits that membership in *Ibuka* alone does not give rise to any negative inferences regarding the credibility of witnesses, and the Defence did not lead any evidence of actual interference with a witness.<sup>469</sup>

### 3.2.2 Evidence

#### Kanyabashi Defence Witness D-2-21-T

253. Witness D-2-21-T, a Hutu restaurant employee in Ngoma *commune* in 1994,<sup>470</sup> testified that she was a member of the *Ibuka* association since its inception in 1995, and had attended various *Ibuka* meetings.<sup>471</sup> Survivors of the genocide came together to meet informally as of August 1994, although the association did not have a name at first.<sup>472</sup> It was officially named

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<sup>463</sup> Nsabimana Closing Brief, paras. 73-77, 421-422, 1106, 1553, 1759; Nsabimana Closing Argument, T. 24 April 2009 pp. 43-44.

<sup>464</sup> Nsabimana Closing Brief, para. 71.

<sup>465</sup> Kanyabashi Closing Brief, para. 11.

<sup>466</sup> Kanyabashi Closing Brief, paras. 113 (submissions regarding Witnesses QCB, FAM and QAH), 322 (submissions regarding Witness FAC).

<sup>467</sup> Kanyabashi Closing Brief, para. 7.

<sup>468</sup> Kanyabashi Closing Brief, para. 10.

<sup>469</sup> Prosecution Closing Brief, p. 153, para. 433; *Zigiranyirazo*, Judgement (TC), para. 241.

<sup>470</sup> Defence Exhibit 697 (Kanyabashi) (Personal Particulars).

<sup>471</sup> T. 3 November 2008 p. 16 (ICS) (Witness D-2-21-T).

<sup>472</sup> T. 4 November 2008 pp. 14-15 (ICS) (Witness D-2-21-T).

*Ibuka* in 1995, which means “remember” in Kinyarwanda.<sup>473</sup> Any survivor of the genocide was eligible for membership.<sup>474</sup>

254. Although Hutu, Witness D-2-21-T was eligible to join *Ibuka* because she was also a victim. She was married to a Tutsi, so her children were Tutsis. Many attacks were lodged against her family and assailants hunted her husband and children. Witness D-2-21-T’s mother-in-law and brothers-in-law were killed during the genocide; all her in-laws died, but for her husband’s sister. Her husband is also an *Ibuka* member, who sustained injuries during the genocide. He testified in several trials in Rwanda as a Prosecution witness.<sup>475</sup>

255. Witness D-2-21-T testified that the *Ibuka* association still existed. Members hold meetings during which they address issues facing survivors of the genocide, including housing and educational assistance for survivors’ families. They also testify against people who committed crimes against them during the genocide, and this includes giving false testimony.<sup>476</sup>

256. She admitted that it was possible *Ibuka* did not exist in Butare in 1995 but that another association known as the Association for Survivors of the Genocide (*Association des Rescapés du Génocide*) did, although she had thought they were the same thing. She did not know whether *Ibuka* had an office in Butare in 1995. When she joined *Ibuka* she received a health-care card from FARG, but did not know what FARG stood for.<sup>477</sup>

257. Witness D-2-21-T stated that at three meetings of the association, in June and December 1995, and in April 1997, members were encouraged to give false testimony against Kanyabashi.<sup>478</sup> In 1994, Rose Burizhiza, invited her to the first meeting.<sup>479</sup>

258. Witness D-2-21-T testified that the first meeting was held after the arrest of Kanyabashi.<sup>480</sup> This meeting took place in June 1995 at the University Hospital in Butare town.<sup>481</sup> Two persons by the same name as Prosecution Witnesses QC and RO chaired the meeting.<sup>482</sup> Between 15 and 30 people attended the meeting,<sup>483</sup> including Martin Uwariraye, Mr. Mubera,<sup>484</sup> Monique Ahenazaho,<sup>485</sup> Veredienne Mukansoro<sup>486</sup> and individuals whose names match those of Prosecution Witnesses QA,<sup>487</sup> QAM,<sup>488</sup> QP,<sup>489</sup> QG,<sup>490</sup> QI,<sup>491</sup> QY,<sup>492</sup>

<sup>473</sup> T. 4 November 2008 p. 14 (ICS); T. 5 November 2008 p. 52 (ICS) (Witness D-2-21-T).

<sup>474</sup> T. 3 November 2008 p. 14 (Witness D-2-21-T).

<sup>475</sup> T. 4 November 2008 pp. 58-62 (ICS) (Witness D-2-21-T).

<sup>476</sup> T. 3 November 2008 pp. 13-14 (Witness D-2-21-T).

<sup>477</sup> T. 5 November 2008 pp. 50-53 (ICS) (Witness D-2-21-T).

<sup>478</sup> T. 3 November 2008 pp. 35-36, 43, 45, 49-51, 59-60, 62 (ICS); T. 4 November 2008 pp. 32, 62 (ICS) (Witness D-2-21-T).

<sup>479</sup> T. 4 November 2008 pp. 16, 24 (ICS); T. 5 November 2008 p. 63 (ICS) (Witness D-2-21-T).

<sup>480</sup> T. 4 November 2008 p. 62 (ICS) (Witness D-2-21-T).

<sup>481</sup> T. 3 November 2008 pp. 20-21 (ICS) (Witness D-2-21-T).

<sup>482</sup> T. 3 November 2008 p. 21 (ICS); T. 4 November 2008 p. 31 (ICS) (Witness D-2-21-T).

<sup>483</sup> T. 3 November 2008 pp. 20, 22-24 (ICS); T. 4 November 2008 p. 27 (ICS) (Witness D-2-21-T).

<sup>484</sup> T. 3 November 2008 p. 21 (ICS); T. 4 November 2008 p. 20 (ICS) (Witness D-2-21-T).

<sup>485</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>486</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>487</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>488</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>489</sup> T. 3 November 2008 pp. 59-60 (ICS) (Witness D-2-21-T).

QBM<sup>493</sup> and others whose first names match those of Witnesses QJ,<sup>494</sup> TK, RL, SS,<sup>495</sup> and SU.<sup>496</sup>

259. At the first meeting, participants introduced themselves and spoke about where they were during the genocide and how they survived.<sup>497</sup> A man named Kayitare asked whether anyone knew about Kanyabashi's activities during the war, but nobody responded.<sup>498</sup> Kayitare urged participants to research grounds for accusations against Kanyabashi.<sup>499</sup> At the end of the meeting, each participant received 20,000 Rwandese francs to cover travel costs.<sup>500</sup> Participants were told that the date of a subsequent meeting would be communicated, and they should show up for that meeting with the requisite information about Kanyabashi.<sup>501</sup>

260. A second meeting was held around the beginning of December 1995 at the Multipurpose Hall in Butare town.<sup>502</sup> The same people attended as the previous meeting.<sup>503</sup> During this second meeting, Kayitare read out false accusations that were to be levied against Kanyabashi.<sup>504</sup> Participants were told that they would be called as Prosecution witnesses against Kanyabashi,<sup>505</sup> and to testify falsely.<sup>506</sup> Thereafter, sheets of paper containing accusations to be brought against Kanyabashi were distributed to some participants, including persons whose names match those of Prosecution Witnesses QA, RL, QAM, QP, QJ, TK, QI, QG, QY, SS and SU.<sup>507</sup>

261. Witness D-2-21-T testified that those who received papers at the meeting stood before the audience, read out what was written on the sheets and tried to memorise the contents.<sup>508</sup>

262. During this meeting, a person whose full name matched that of Witness QA read out from his sheet of paper that he had seen Kanyabashi have the former *conseiller* of Ngoma *secteur* killed, and that Kanyabashi incited people to commit killings at Ngoma Church.<sup>509</sup>

263. A 15-year-old participant from Matyazo, whose first name matches that of Witness RL, read out that he had seen Kanyabashi incite people to killing in Ngoma, that Kanyabashi was

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<sup>490</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>491</sup> T. 3 November 2008 p. 22 (ICS) (Witness D-2-21-T).

<sup>492</sup> T. 3 November 2008 pp. 22-24, 30 (ICS) (Witness D-2-21-T).

<sup>493</sup> T. 3 November 2008 p. 22 (ICS); T. 4 November 2008 p. 16 (ICS) (Witness D-2-21-T).

<sup>494</sup> T. 3 November 2008 pp. 22, 51 (ICS) (Witness D-2-21-T).

<sup>495</sup> T. 3 November 2008 p. 46 (ICS) (Witness D-2-21-T).

<sup>496</sup> T. 3 November 2008 pp. 22-24 (ICS); T. 4 November 2008 pp. 28, 30-31 (ICS) (Witness D-2-21-T).

<sup>497</sup> T. 3 November 2008 pp. 35, 47 (ICS) (Witness D-2-21-T).

<sup>498</sup> T. 3 November 2008 pp. 35-36 (ICS) (Witness D-2-21-T).

<sup>499</sup> T. 3 November 2008 p. 35 (ICS) (Witness D-2-21-T).

<sup>500</sup> T. 3 November 2008 p. 36 (ICS); T. 5 November 2008 p. 20 (ICS) (Witness D-2-21-T).

<sup>501</sup> T. 3 November 2008 p. 36 (ICS) (Witness D-2-21-T).

<sup>502</sup> T. 3 November 2008 pp. 36-38 (ICS) (Witness D-2-21-T).

<sup>503</sup> T. 3 November 2008 pp. 36-38, 43 (ICS) (Witness D-2-21-T).

<sup>504</sup> T. 3 November 2008 pp. 36-37 (ICS) (Witness D-2-21-T).

<sup>505</sup> T. 3 November 2008 pp. 37, 49 (ICS) (Witness D-2-21-T).

<sup>506</sup> T. 3 November 2008 pp. 37, 43, 49 (ICS) (Witness D-2-21-T).

<sup>507</sup> T. 3 November 2008 pp. 37, 43-45, 47-51 (ICS) (Witness D-2-21-T).

<sup>508</sup> T. 3 November 2008 p. 37 (ICS); T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>509</sup> T. 3 November 2008 pp. 37, 54-55 (ICS) (Witness D-2-21-T).

with soldiers, policemen and *Interahamwe* in Ngoma, and he incited people to kill at the Matyazo health centre.<sup>510</sup>

264. A person whose full name matched that of Witness QAM<sup>511</sup> read aloud that Kanyabashi incited killings at Kabakobwa, he incited members of the public to kill via megaphone, and said, “assemble the Tutsi who are at Kabakobwa, since before burning the weeds, you have to first gather them.”<sup>512</sup> Witness D-2-21-T testified about this person’s age in 1995, where this person lived and that this person had survived Kabakobwa.<sup>513</sup>

265. A person whose full name matched that of Witness QP similarly read out that Kanyabashi incited killings at Kabakobwa, that Kanyabashi used a megaphone and asked that Tutsis be assembled at Kabakobwa, stating that whoever wishes to burn weeds must first gather them. Witness D-2-21-T testified about this person’s age in 1995, where this person lived and that this person had survived the Kabakobwa killings.<sup>514</sup>

266. A man whose first name matched that of Witness QJ read out from his sheet of paper that Kanyabashi drove around Butare town with a megaphone, inciting members of the population to kill Tutsis and their children. This person added that Kanyabashi played a role at the Hotel Faucon roadblock. Witness D-2-21-T testified about this person’s age in 1995, where this person lived and how he had survived the events of 1994.<sup>515</sup>

267. A participant whose first name matched that of Witness TK read from her document that Kanyabashi used a megaphone to incite people to kill Tutsis and their children. Witness D-2-21-T did not know whether the statements made by this woman were true or not because she was just reading the document. Witness D-2-21-T testified about this person’s age in 1995, where this person lived and that this woman told them that she survived by hiding at a convent, after which she went to the *préfecture* office.<sup>516</sup>

268. A participant whose full name matched that of Witness QI read that he saw Kanyabashi travelling around in a vehicle with a megaphone, inciting people to kill, stating, “[k]ill all the Tutsis and ... all their children.” He also stated that he saw Kanyabashi with soldiers and policemen at Matyazo, inciting people to kill. Witness D-2-21-T testified about this person’s age in 1995 and where this person worked.<sup>517</sup>

269. A participant whose full name matched that of Witness QG read aloud that at Agateme in Cyarwa, Kanyabashi supervised the destruction of Karekezi’s (alias Gifuka’s) house, ordered the killing of Gitefano, the driver of the bishopric, and incited members of the public to handle firearms. Witness D-2-21-T testified about this person’s profession and that this

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<sup>510</sup> T. 3 November 2008 pp. 54-56 (ICS) (Witness D-2-21-T).

<sup>511</sup> T. 3 November 2008 pp. 22, 50 (ICS) (Witness D-2-21-T).

<sup>512</sup> T. 3 November 2008 p. 59 (ICS) (Witness D-2-21-T).

<sup>513</sup> T. 3 November 2008 p. 59 (ICS) (Witness D-2-21-T).

<sup>514</sup> T. 3 November 2008 p. 60 (ICS) (Witness D-2-21-T).

<sup>515</sup> T. 3 November 2008 pp. 50-51 (ICS) (Witness D-2-21-T).

<sup>516</sup> T. 3 November 2008 p. 52 (ICS) (Witness D-2-21-T).

<sup>517</sup> T. 3 November 2008 pp. 52-53 (ICS) (Witness D-2-21-T).

person told the association that during the genocide his pregnant wife and baby had been killed, and he survived by seeking refuge in the Ndora hills.<sup>518</sup>

270. A participant whose first name matched that of Witness SS read that on several occasions Kanyabashi attended meetings at the *préfecture* office and supervised killings.<sup>519</sup>

271. A participant whose first name matched that of Witness SU read out that she had seen Kanyabashi attending meetings at the *préfecture* office. This person also read that Kanyabashi supervised killings in Butare, that Kanyabashi made victims board buses to Nyange, that the Nyange survivors were able to reach the *préfecture* office, and were then bussed to Rango, where there were mass graves for burying Tutsis.<sup>520</sup> Witness D-2-21-T testified about this person's age in 1995.<sup>521</sup>

272. A participant whose full name matched that of Witness QY, who survived killings at the *préfecture* office, read that Kanyabashi had encouraged people to carry out killings and that he took people to Nyange. She also read that survivors of Nyange went to the *préfecture* office, and were taken from there to Rango, where they lived in miserable conditions.<sup>522</sup>

273. After reading, these individuals handed the documents back to the chairperson.<sup>523</sup> Witness D-2-21-T stated that what was read from those documents was lies.<sup>524</sup> No documents were distributed to Witness D-2-21-T.<sup>525</sup> Witness D-2-21-T acknowledged that she did not read those documents herself, nor did she take any notes.<sup>526</sup> Her testimony as to the contents of what each person read out was based on her recollection.<sup>527</sup>

274. A third meeting was held around the end of 1996 at the Multipurpose Hall.<sup>528</sup> Witness D-2-21-T subsequently corrected herself, stating that this third meeting actually took place in April 1997.<sup>529</sup> The purpose of the meeting was to sum up what had been said during the second meeting.<sup>530</sup> The meeting was attended by the same 15 to 30 persons who had participated in the two previous meetings.<sup>531</sup> During the meeting, each participant repeated what he or she had learned, and what they were to state when the time came to accuse Kanyabashi.<sup>532</sup>

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<sup>518</sup> T. 3 November 2008 pp. 56-57 (ICS) (Witness D-2-21-T).

<sup>519</sup> T. 3 November 2008 pp. 44-45 (ICS) (Witness D-2-21-T).

<sup>520</sup> T. 3 November 2008 pp. 47-48 (ICS) (Witness D-2-21-T).

<sup>521</sup> T. 3 November 2008 p. 46 (ICS) (Witness D-2-21-T).

<sup>522</sup> T. 3 November 2008 p. 50 (ICS) (Witness D-2-21-T).

<sup>523</sup> T. 3 November 2008 p. 37 (ICS); T. 5 November 2008 p. 62 (ICS) (Witness D-2-21-T).

<sup>524</sup> T. 3 November 2008 p. 48 (ICS) (Witness D-2-21-T).

<sup>525</sup> T. 4 November 2008 p. 65 (ICS) (Witness D-2-21-T).

<sup>526</sup> T. 4 November 2008 pp. 65-66 (ICS) (Witness D-2-21-T).

<sup>527</sup> T. 5 November 2008 pp. 62-63 (ICS) (Witness D-2-21-T).

<sup>528</sup> T. 3 November 2008 p. 60 (ICS) (Witness D-2-21-T).

<sup>529</sup> T. 4 November 2008 pp. 11, 67 (ICS) (Witness D-2-21-T).

<sup>530</sup> T. 3 November 2008 p. 60 (ICS) (Witness D-2-21-T).

<sup>531</sup> T. 3 November 2008 p. 61 (ICS) (Witness D-2-21-T).

<sup>532</sup> T. 3 November 2008 p. 62 (ICS) (Witness D-2-21-T).

275. Witness D-2-21-T testified that no one at the *Ibuka* meetings refused to comply with the instructions to bear false testimony. Survivors of the genocide agreed to follow the instructions because they were angry.<sup>533</sup>

276. Witness D-2-21-T testified that it was obvious to her that the association was attempting to have those individuals who were in a position of authority at the time of the genocide bear responsibility for what happened. Based on what she saw, the majority of leaders during the war took part in killings.<sup>534</sup>

277. Between 1996 and her testimony before the ICTR, she attended other *Ibuka* meetings in addition to the three regarding false testimony against Kanyabashi; these other meetings did not deal with false testimony.<sup>535</sup> She insisted however that the three earlier meetings were organised exclusively to prepare people to testify falsely against Kanyabashi and no one else.<sup>536</sup> Meeting participants were told that Kanyabashi, as a figure of authority, could not be innocent because he was a leader within Ngoma *commune*.<sup>537</sup> They were also told that even if they had not seen Kanyabashi during the massacres, they could level accusations against him in his official capacity.<sup>538</sup> The first of these three meetings took place after Kanyabashi's arrest, so they only talked about Kanyabashi. All three meetings were aimed at preparing accusations against Kanyabashi. She did not attend meetings that discussed other people.<sup>539</sup>

278. Concerning *Gacaca* trials, she said she knew where the members were located during the genocide and therefore she knew a member was lying when he or she testified as to events taking place in a different location.<sup>540</sup>

279. Witness D-2-21-T did not know whether the persons who agreed to bear false testimony actually did so at Kanyabashi's trial.<sup>541</sup> She never informed either Rwandan authorities or the Tribunal that a group of people were fabricating testimony against Kanyabashi.<sup>542</sup>

280. She acknowledged that *Ibuka* members spoke the truth on some aspects of the genocide. For this reason, she had remained a member of the organisation, despite being aware for approximately 13 years that the organisation was fabricating evidence.<sup>543</sup>

281. Witness D-2-21-T testified that she met with Nkeshimana, an investigator on the Kanyabashi Defence team, several times; in 2000, 2005, 2007 and 2008. During these meetings, Nkeshimana and Witness D-2-21-T discussed the possibility of her testifying before the Tribunal, although it was only in 2005 that Witness D-2-21-T found out Nkeshimana was employed by Kanyabashi and they discussed her knowledge about fabricated testimony against

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<sup>533</sup> T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>534</sup> T. 4 November 2008 pp. 32-33 (ICS) (Witness D-2-21-T).

<sup>535</sup> T. 4 November 2008 pp. 34, 69 (ICS) (Witness D-2-21-T).

<sup>536</sup> T. 4 November 2008 pp. 62, 65 (ICS); T. 5 November 2008 pp. 19-21, 41 (ICS) (Witness D-2-21-T).

<sup>537</sup> T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>538</sup> T. 4 November 2008 p. 35 (HC) (French); T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>539</sup> T. 4 November 2008 p. 62 (ICS) (Witness D-2-21-T).

<sup>540</sup> T. 4 November 2008 pp. 35-36 (ICS) (Witness D-2-21-T).

<sup>541</sup> T. 4 November 2008 p. 69 (ICS) (Witness D-2-21-T).

<sup>542</sup> T. 5 November 2008 pp. 36, 41 (ICS) (Witness D-2-21-T).

<sup>543</sup> T. 5 November 2008 p. 29 (ICS) (Witness D-2-21-T).

Kanyabashi.<sup>544</sup> She did not know that Nkeshimana was an investigator in the Kanyabashi Defence team.<sup>545</sup>

282. Witness D-2-21-T denied that she was related to Kanyabashi.<sup>546</sup> She stated that her uncle's extended sister was Nkeshimana's late wife.<sup>547</sup> She later admitted that her great grandfather's sister was the mother of the investigator's wife.<sup>548</sup> She acknowledged that she had family ties with him, but she did not know their exact relationship.<sup>549</sup>

#### Kanyabashi Defence Witness D-2-18-O

283. Witness D-2-18-O, a 16-year-old student at the beginning of 1994,<sup>550</sup> testified that he was a member of *Ibuka*, which helps members pay school fees and provides assistance in the form of healthcare and emotional support.<sup>551</sup> He joined because he was a Tutsi.<sup>552</sup>

284. Witness D-2-18-O testified that at *Ibuka* meetings, they discussed testifying on events that took place in 1994, but only discussed giving evidence for the Prosecution, even where that person was actually innocent.<sup>553</sup> They did not discuss evidence for the Defence.<sup>554</sup> They would say that all figures of authority had to be charged.<sup>555</sup> While some *Ibuka* members speak the truth, others do not.<sup>556</sup>

285. Witness D-2-18-O testified that he attended two *Ibuka* meetings, one in 2000 and another in 2001 and they were both held at the *bureau* of Matyazo *secteur*.<sup>557</sup> The meetings were attended by between 100 and 200 people and discussions encompassed the circumstances surrounding the members' survival, events which took place in Ngoma and Matyazo between April and July 1994, and people against whom charges had to be brought, namely all figures of authority, including Kanyabashi and other individuals.<sup>558</sup>

286. Witness D-2-18-O testified that two individuals bearing the same first names as Witnesses QI and RL chaired these two meetings.<sup>559</sup> One of those individuals suggested that people say they saw Kanyabashi in the company of soldiers at the Catholic Church in Ngoma *commune* and the other suggested that people say they saw Kanyabashi with soldiers at Matyazo Clinic.<sup>560</sup> One of these individuals, whom the witness identified by reference to first name, ethnicity, place of birth, employment in 1994, former and present place of residence and

<sup>544</sup> T. 5 November 2008 pp. 30-36 (ICS) (Witness D-2-21-T).

<sup>545</sup> T. 5 November 2008 p. 56 (ICS) (Witness D-2-21-T).

<sup>546</sup> T. 5 November 2008 p. 56 (ICS) (Witness D-2-21-T).

<sup>547</sup> T. 5 November 2008 pp. 55-57 (ICS) (Witness D-2-21-T).

<sup>548</sup> T. 5 November 2008 p. 57 (ICS) (Witness D-2-21-T).

<sup>549</sup> T. 5 November 2008 p. 58 (ICS) (Witness D-2-21-T).

<sup>550</sup> Defence Exhibit 652 (Kanyabashi) (Personal Particulars); T. 19 May 2008 p. 58 (ICS) (Witness D-2-18-O).

<sup>551</sup> T. 19 May 2008 pp. 16, 18, 20 (ICS) (Witness D-2-18-O).

<sup>552</sup> T. 20 May 2008 p. 24 (ICS) (Witness D-2-18-O).

<sup>553</sup> T. 19 May 2008 pp. 28, 33 (ICS) (Witness D-2-18-O).

<sup>554</sup> T. 19 May 2008 p. 28 (ICS) (Witness D-2-18-O).

<sup>555</sup> T. 19 May 2008 p. 21 (ICS); T. 19 May 2008 p. 30 (Witness D-2-18-O).

<sup>556</sup> T. 19 May 2008 p. 33 (ICS) (Witness D-2-18-O).

<sup>557</sup> T. 19 May 2008 p. 20 (ICS) (Witness D-2-18-O).

<sup>558</sup> T. 19 May 2008 pp. 20-22, 33 (ICS) (Witness D-2-18-O).

<sup>559</sup> T. 20 May 2008 p. 12 (ICS) (Witness D-2-18-O).

<sup>560</sup> T. 19 May 2008 p. 22 (ICS) (Witness D-2-18-O).



age, corresponds to Witness QI.<sup>561</sup> The other individual, who Witness D-2-18-O identified by reference to first name, approximate age in 2008, place of birth and residence, corresponds to Witness RL.<sup>562</sup>

287. Witness D-2-18-O testified that the person whose first name matches that of Witness RL told them that he was a survivor of killings at Ngoma Church.<sup>563</sup> This person had seen Major Hitabatuma encouraging people, namely soldiers and local inhabitants, to kill at Ngoma Church.<sup>564</sup> This person told the attendees that although he did not see Kanyabashi at Ngoma Church, it was necessary for them to say that Kanyabashi also went to that location to assist Major Hitabatuma.<sup>565</sup> This person asked them to agree that they saw Kanyabashi there, even though that was not the case. Witness D-2-18-O was aware that people died at Ngoma Church in 1994.<sup>566</sup>

288. Witness D-2-18-O stated that he agreed to testify in the Kanyabashi trial because he believed Kanyabashi was innocent.<sup>567</sup> The witness expressed fear of the consequences of his testimony, because an *Ibuka* member told him that if he ever testified on behalf of an Accused, he might be mistreated by the *Ibuka* association.<sup>568</sup>

289. Witness D-2-18-O testified that while he considered himself to be Tutsi in 1994, some people considered him to be Tutsi and others considered him to be Hutu.<sup>569</sup> He testified that he participated in the killings of 12 Tutsis.<sup>570</sup> He stated that he committed genocide and was also a victim of the genocide.<sup>571</sup> His fellow *Ibuka* members came to know he participated in the Matyazo killings when he pled guilty in 2007; he was not expelled from the association thereafter.<sup>572</sup> When it was put to him that as an attacker, he did not attend any *Ibuka* meetings, Witness D-2-18-O testified that he did.<sup>573</sup>

290. Witness D-2-18-O met the Kanyabashi Defence team for the first time in 2005. He disclosed his genocide conviction to the Kanyabashi Defence team when he arrived in Arusha, one week before his testimony.<sup>574</sup>

#### Kanyabashi Defence Witness D-13-D

291. Witness D-13-D, a Hutu who resided in Huye *commune* from April to July 1994,<sup>575</sup> testified that for a period of three months he was detained at the Huye *commune* jail after

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<sup>561</sup> T. 19 May 2008 pp. 22-24 (ICS) (Witness D-2-18-O).

<sup>562</sup> T. 19 May 2008 pp. 22, 24-26 (ICS) (Witness D-2-18-O).

<sup>563</sup> T. 19 May 2008 p. 24 (ICS) (Witness D-2-18-O).

<sup>564</sup> T. 19 May 2008 pp. 24, 26 (ICS) (Witness D-2-18-O).

<sup>565</sup> T. 19 May 2008 p. 24 (ICS) (Witness D-2-18-O).

<sup>566</sup> T. 19 May 2008 p. 26 (ICS) (Witness D-2-18-O).

<sup>567</sup> T. 19 May 2008 p. 29; T. 19 May 2008 p. 33 (ICS) (Witness D-2-18-O).

<sup>568</sup> T. 19 May 2008 p. 29 (Witness D-2-18-O).

<sup>569</sup> T. 15 May 2008 p. 12 (ICS); T. 19 May 2008 p. 51 (ICS) (Witness D-2-18-O).

<sup>570</sup> T. 20 May 2008 pp. 11, 19 (ICS) (Witness D-2-18-O).

<sup>571</sup> T. 19 May 2008 p. 43 (ICS) (Witness D-2-18-O).

<sup>572</sup> T. 19 May 2008 p. 49 (ICS); T. 20 May 2008 p. 19 (ICS) (Witness D-2-18-O).

<sup>573</sup> T. 20 May 2008 p. 11 (ICS) (Witness D-2-18-O).

<sup>574</sup> T. 19 May 2008 pp. 43-47 (ICS) (Witness D-2-18-O).

<sup>575</sup> T. 14 February 2008 p. 38 (ICS) (Witness D-13-D).

which he was transferred to Rwandex prison.<sup>576</sup> While detained, he was asked to give false evidence against three individuals, including Kanyabashi.<sup>577</sup> Witness D-13-D was asked to accuse Kanyabashi of having participated in the genocide by sensitising the population to participate in killings.<sup>578</sup>

292. The Deputy Prosecutor also told Witness D-13-D to accuse, *inter alia*, Kanyabashi, or he would not be released from prison, but Witness D-13-D refused to accuse those people or sign false statements.<sup>579</sup> He was beaten in prison because he refused to comply with instructions to level accusations and tell lies about a number of individuals, including Kanyabashi.<sup>580</sup>

293. While he was in prison he was asked by many other people, including his cousin, to accuse others in order to secure his own release.<sup>581</sup> All those who tried inciting him to give false evidence were members of the *Ibuka* association.<sup>582</sup> He testified that he was a victim of the *Ibuka* association. His cousins, who were Tutsis and *Ibuka* members, told him what was discussed at their meetings, including plans to put him in prison. He contended that he was imprisoned although he never participated in killings.<sup>583</sup>

294. Witness D-13-D testified that while he was in prison, during the course of *Gacaca* proceedings, he learned that two women, whose full names match Prosecution Witnesses SU and FAE, were influential *Ibuka* members who falsely accused many people, including people they did not know.<sup>584</sup> Witness D-13-D stated that the woman whose name matches Prosecution Witness SU implicated almost anyone who had a broad nose.<sup>585</sup>

#### Kanyabashi Defence Witness D-2-13-D

295. Witness D-2-13-D, a Hutu detainee,<sup>586</sup> testified that during his time at the Butare prison, there was a small group of people who were trying to incriminate Kanyabashi.<sup>587</sup> The group included individuals whose names corresponded to Prosecution Witnesses FAM, QAH and QCB, together with an individual whose last name matches that of Witness FAC.<sup>588</sup>

296. According to Witness D-2-13-D, the individual whose last name matches that of Witness FAC, together with the two individuals whose full names match those of Witnesses QCB and FAM, found Witness D-2-13-D in his cell and told him they wanted to recruit him

<sup>576</sup> T. 18 February 2008 p. 32 (ICS); T. 19 February 2008 p. 24 (ICS) (Witness D-13-D).

<sup>577</sup> T. 19 February 2008 pp. 13, 24-25 (ICS) (Witness D-13-D).

<sup>578</sup> T. 18 February 2008 p. 37 (ICS) (Witness D-13-D).

<sup>579</sup> T. 18 February 2008 pp. 34, 36 (ICS); T. 19 February 2008 p. 25 (ICS); T. 21 February 2008 pp. 42-43 (ICS) (Witness D-13-D).

<sup>580</sup> T. 18 February 2008 pp. 28-31 (ICS) (Witness D-13-D).

<sup>581</sup> T. 18 February 2008 p. 37 (ICS); T. 21 February 2008 p. 43 (ICS) (Witness D-13-D).

<sup>582</sup> T. 19 February 2008 p. 13 (ICS) (Witness D-13-D).

<sup>583</sup> T. 19 February 2008 p. 14 (ICS); T. 20 February 2008 p. 73 (ICS) (Witness D-13-D).

<sup>584</sup> T. 19 February 2008 pp. 17, 19-21 (ICS) (Witness D-13-D).

<sup>585</sup> T. 19 February 2008 p. 21 (ICS) (Witness D-13-D).

<sup>586</sup> T. 28 August 2007 pp. 60, 62 (ICS) (Witness D-2-13-D).

<sup>587</sup> T. 30 August 2007 p. 49 (ICS) (Witness D-2-13-D).

<sup>588</sup> T. 30 August 2007 pp. 50-51 (ICS); T. 10 September 2007 pp. 63-64 (ICS) (Witness D-2-13-D).

on behalf of their community to join the group testifying against Kanyabashi in Arusha.<sup>589</sup> The witness told them that he did not know anything about Kanyabashi and asked them to leave.<sup>590</sup>

297. On one occasion, Witness D-2-13-D met the person by the same name as Witness QAH. This person told Witness D-2-13-D that he had obtained the necessary documents to go to Arusha to testify against Kanyabashi and that this would be his opportunity to pay Kanyabashi back in kind for this person becoming unemployed.<sup>591</sup>

#### Kanyabashi Defence Witness D-1-4-O

298. Witness D-1-4-O, a Hutu health attendant in 1994,<sup>592</sup> testified that around 2006, certain individuals, including policemen, asked him to be a Prosecution witness for the Butare case.<sup>593</sup> Since Witness D-1-4-O refused, he was beaten up by the policemen such that he was forced to move houses.<sup>594</sup> He refused to testify for the Prosecution because they proposed many things that were false. For example, they asked Witness D-1-4-O to say that he heard Kanyabashi request the population to kill people.<sup>595</sup>

#### Kanyabashi Defence Witness D-2-16-P

299. Witness D-2-16-P, a Tutsi, testified that he joined the *Ibuka* association in 2004 and continued to be a member.<sup>596</sup> The association assists and counsels survivors. The *Ibuka* association existed in Butare *préfecture*.<sup>597</sup> Witness D-2-16-P testified that the *Ibuka* association did not want members to testify on behalf of former authorities, because according to *Ibuka*, the former authorities led the genocide.<sup>598</sup>

300. Witness D-2-16-P feared being arrested and detained if it were to be known that he testified for Kanyabashi; *Ibuka* members could complain to authorities that people who have testified in support of the Defence should be arrested.<sup>599</sup>

301. Witness D-2-16-P testified that *Ibuka* did not train people to give testimony, and he never heard that the association prepared witnesses.<sup>600</sup> Witness D-2-16-P testified that most of the female members of *Ibuka* in his *secteur* were Hutu widows, and most of the male members were Tutsis.<sup>601</sup> At the *secteur* level, *Ibuka* members did not have membership cards, although a register listed the names of all members.<sup>602</sup>

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<sup>589</sup> T. 30 August 2007 p. 50 (ICS) (Witness D-2-13-D).

<sup>590</sup> T. 30 August 2007 pp. 50-51 (ICS) (Witness D-2-13-D).

<sup>591</sup> T. 30 August 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>592</sup> T. 6 May 2008 p. 37 (ICS) (Witness D-1-4-O).

<sup>593</sup> T. 6 May 2008 p. 70 (ICS); T. 12 May 2008 p. 10 (ICS) (Witness D-1-4-O).

<sup>594</sup> T. 6 May 2008 pp. 70-71 (ICS); T. 12 May 2008 p. 10 (ICS) (Witness D-1-4-O).

<sup>595</sup> T. 12 May 2008 p. 11 (ICS) (Witness D-1-4-O).

<sup>596</sup> T. 13 March 2008 p. i (Extract) (Witness D-2-16-P).

<sup>597</sup> T. 13 March 2008 p. 34 (Witness D-2-16-P).

<sup>598</sup> T. 13 March 2008 pp. 25, 39-40 (ICS) (Witness D-2-16-P).

<sup>599</sup> T. 13 March 2008 p. 41 (ICS) (Witness D-2-16-P).

<sup>600</sup> T. 13 March 2008 p. 39 (ICS) (Witness D-2-16-P).

<sup>601</sup> T. 13 March 2008 p. 42 (ICS) (Witness D-2-16-P).

<sup>602</sup> T. 13 March 2008 p. 43 (ICS) (Witness D-2-16-P).

Nteziryayo Defence Witness AND-30

302. Witness AND-30, a Hutu teacher in 1994,<sup>603</sup> testified that *Ibuka* was a widely known association that seeks to assist Tutsi survivors by improving their living conditions; it pays school fees for orphans, looks for accommodation for survivors, and attempts to have survivors compensated. This information about *Ibuka's* activities was broadcast over the radio.<sup>604</sup>

303. Witness AND-30 testified that he learned that *Ibuka* entailed remembering the victims and bringing revenge against perpetrators. Most perpetrators were in custody outside the country, and they do not want those people to return. Within this framework, they searched for witnesses to come and give false testimony.<sup>605</sup>

304. Witness AND-30 testified that he knew a man who shared the last name of Witness RL, and he knew this person's father.<sup>606</sup> He did not know whether this person was the president of *Ibuka* in Butare.<sup>607</sup>

Nteziryayo Defence Witness AND-41

305. Witness AND-41, a Hutu student in 1994,<sup>608</sup> testified that he heard that *Ibuka* was drilling people on how to testify against certain people, who were accused on account of their actions in Rwanda. They were training people to give false evidence. In addition to hearing this from others, he also read this in the newspaper.<sup>609</sup>

306. Witness AND-41 testified that he heard that a person who shared the same last name as Witness RL was the president of an organisation called *Ibuka*.<sup>610</sup>

Nteziryayo Defence Witness AND-59

307. Witness AND-59 was a Hutu<sup>611</sup> civil servant in Rwanda in late 1994, who thereafter worked for several years in the Prosecutor General's office. He testified that an association named *Ibuka* existed in Rwanda in the period between 1994 and 1997.<sup>612</sup> He stated that although it was not the purpose of *Ibuka*, there was some form of guidance of Prosecution witnesses.<sup>613</sup> Witness AND-59 testified that *Ibuka's* purpose was to exercise moral influence.<sup>614</sup> *Ibuka* was responsible for locating witnesses in locations where it was known killings had occurred and ensuring that their testimonies were consistent. When asked whether

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<sup>603</sup> Defence Exhibit 514 (Nteziryayo) (Personal Particulars); T. 21 February 2007 pp. 8, 80 (ICS) (Witness AND-30).

<sup>604</sup> T. 22 February 2007 pp. 27-28 (Witness AND-30).

<sup>605</sup> T. 22 February 2007 p. 28 (Witness AND-30).

<sup>606</sup> T. 22 February 2007 pp. 22-23, 26 (Witness AND-30).

<sup>607</sup> T. 22 February 2007 p. 28 (Witness AND-30).

<sup>608</sup> Defence Exhibit 528 (Nsabimana) (Personal Particulars).

<sup>609</sup> T. 22 March 2007 p. 60 (ICS) (Witness AND-41).

<sup>610</sup> T. 22 March 2007 p. 59 (ICS) (Witness AND-41).

<sup>611</sup> Defence Exhibit 533 (Nteziryayo) (Personal Particulars).

<sup>612</sup> T. 30 April 2007 pp. 11-12 (ICS) (Witness AND-59).

<sup>613</sup> T. 30 April 2007 p. 12 (ICS) (Witness AND-59).

<sup>614</sup> T. 30 April 2007 p. 19 (ICS) (Witness AND-59).

he meant that the testimonies of Prosecution witnesses were being aligned, he agreed that is what he meant.<sup>615</sup>

308. Witness AND-59 testified that he knew very well a man who shared the last name of Witness RL.<sup>616</sup> Witness AND-59 stated this person's first name, and testified that he was Tutsi.<sup>617</sup> Witness AND-59 heard that this man was president of the *Ibuka* association in Butare.<sup>618</sup> He also knew this person's father.<sup>619</sup>

#### Nsabimana Defence Witness Charles Karemano

309. Charles Karemano, a Hutu sociologist who was formerly national secretary of the PSD party, testified that the *Ibuka* association was established sometime around the end of 1994 or the beginning of 1995; he was unsure of the date.<sup>620</sup> Karemano knew that *Ibuka* was an association of survivors but did not know the association's objectives; he did not know if it was training potential witnesses.<sup>621</sup> Karemano was not a member.<sup>622</sup> Karemano testified that there was also a survivors' association for widows, named *Avega*.<sup>623</sup>

#### Nyiramasuhuko Defence Witness WMCZ

310. Witness WMCZ, a Hutu engineer with two Tutsi wives,<sup>624</sup> testified that he knew very well a woman by the same full name as Prosecution Witness QBP.<sup>625</sup> This woman was his wife's goddaughter, his brother was married to this woman's sister, and he was neighbours with this woman's parents in Rwanda.<sup>626</sup>

311. Witness WMCZ testified that he saw her several times in June 1994,<sup>627</sup> and between 1996 and 1999 this woman came to his house twice and they conversed; she told him that she was a member of the *Ibuka* association and that the association was paying them a sum of 1,000,000 Rwandan francs to point out those who had been responsible for the looting of houses.<sup>628</sup>

312. Witness WMCZ testified that when interviewed, he told the Defence team that this woman informed him that she was accusing people in order to acquire their property. A man whose wife was a member of the same group also told him this information.<sup>629</sup>

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<sup>615</sup> T. 30 April 2007 p. 13 (ICS) (Witness AND-59).

<sup>616</sup> T. 30 April 2007 p. 17 (ICS) (Witness AND-59).

<sup>617</sup> T. 30 April 2007 pp. 18-19 (ICS) (Witness AND-59).

<sup>618</sup> T. 30 April 2007 p. 18 (ICS) (Witness AND-59).

<sup>619</sup> T. 30 April 2007 pp. 15-17 (ICS) (Witness AND-59).

<sup>620</sup> T. 25 August 2006 pp. 28, 35 (Karemano).

<sup>621</sup> T. 25 August 2006 pp. 28-29 (Karemano).

<sup>622</sup> T. 25 August 2006 p. 28 (Karemano).

<sup>623</sup> T. 25 August 2006 p. 29 (Karemano).

<sup>624</sup> T. 1 February 2005 pp. 70-71 (ICS); T. 3 February 2005 pp. 7-8 (ICS) (Witness WMCZ).

<sup>625</sup> T. 1 February 2005 p. 76 (ICS); T. 2 February 2005 pp. 6, 10 (ICS) (Witness WMCZ).

<sup>626</sup> T. 1 February 2005 pp. 76-77 (ICS); T. 7 February 2005 p. 24 (ICS) (Witness WMCZ).

<sup>627</sup> T. 2 February 2005 p. 37 (ICS); T. 7 February 2005 p. 24 (ICS) (Witness WMCZ).

<sup>628</sup> T. 2 February 2005 pp. 50-51; T. 3 February 2005 pp. 67-68 (ICS) (Witness WMCZ); *see also* T. 2 February 2005 pp. 6, 10 (ICS) (Witness WMCZ).

<sup>629</sup> T. 3 February 2005 pp. 67-68 (ICS) (Witness WMCZ).

Nyiramasuhuko Defence Witness WNMN

313. Witness WNMN, a Hutu teacher in 1994,<sup>630</sup> testified that a woman whose full name matches that of Prosecution Witness FAE is an *Ibuka* member.<sup>631</sup> This woman denounced his sister, and collaborated with certain *Ibuka* members to secure his sister's arrest; he was told this by other people, including his mother and his sister.<sup>632</sup>

314. Witness WNMN stated that this woman was his sister's colleague and neighbour.<sup>633</sup> Witness WNMN gave a physical description of the woman, described her job, and testified that she was about 40 years old and Tutsi and had five children.<sup>634</sup> In 1994, Witness WNMN had known this woman for over five years; she had been friends with his sister a long time, and he had seen her for a long time. She lived about 300 or 400 metres away from his sister, and they spent almost all of their evenings together, mostly at the witness' sister's home, where they would share a drink and compare notes.<sup>635</sup>

315. Witness WNMN stated the name and profession of this woman's alleged partner, and testified that they had four children; this woman had a fifth child as well, who had a different father.<sup>636</sup> Witness WNMN saw this woman twice in May 1994,<sup>637</sup> and he met her at his sister's home in June 1994.<sup>638</sup> When it was put to Witness WNMN that he never saw this woman by the same name as Witness FAE in the period April to mid-June 1994, Witness WNMN testified that although he could not give specific dates as to when he saw this woman, he did see her and it was not possible to give specific dates since it was a very long time ago.<sup>639</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

316. Filip Reyntjens testified that the phenomenon of denunciation was widespread and involved many people including public officials.<sup>640</sup> Reyntjens cited that the phenomenon had even been discussed in a report by the US State Department in the context of *Gacaca* proceedings.<sup>641</sup> Reyntjens discussed the phenomenon of denunciation and the preparation of Rwandan witnesses in his Expert Report. His Report stated that denunciation was organised at national and local levels; for example, the association of genocide survivors, ARG, in Butare, organised denunciations and false testimony, and at times prepared witnesses and paid them several thousand Rwandan francs to testify for the Prosecution. This information was reliably obtained both within and outside Rwanda.<sup>642</sup>

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<sup>630</sup> T. 14 June 2005 pp. 14-15 (ICS) (Witness WNMN).

<sup>631</sup> T. 14 June 2005 p. 61 (ICS) (Witness WNMN).

<sup>632</sup> T. 14 June 2005 pp. 59-60 (ICS) (Witness WNMN).

<sup>633</sup> T. 14 June 2005 pp. 16-17 (ICS) (Witness WNMN).

<sup>634</sup> T. 14 June 2005 pp. 37-38 (ICS); T. 15 June 2005 p. 60 (ICS) (Witness WNMN).

<sup>635</sup> T. 14 June 2005 p. 37 (ICS); T. 15 June 2005 p. 41 (ICS) (Witness WNMN).

<sup>636</sup> T. 14 June 2005 pp. 38-40 (ICS) (Witness WNMN).

<sup>637</sup> T. 14 June 2005 pp. 41-43 (ICS); T. 15 June 2005 p. 43 (ICS) (Witness WNMN).

<sup>638</sup> T. 14 June 2005 pp. 44-45 (ICS) (Witness WNMN).

<sup>639</sup> T. 15 June 2005 p. 44 (ICS) (Witness WNMN).

<sup>640</sup> T. 24 September 2007 p. 40 (Reyntjens).

<sup>641</sup> T. 24 September 2007 pp. 40-41 (Reyntjens); Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 15, fn. 19.

<sup>642</sup> Defence Exhibit 571B (Reyntjens Expert Report) pp. 15-16; T. 27 September 2007 p. 38 (Reyntjens).

317. As for witnesses who appeared before this Tribunal, Reyntjens testified that false testimony is given by both Defence and Prosecution witnesses and that many witnesses are prepared before they come to testify here.<sup>643</sup> Reyntjens discussed these phenomena regularly in his political chronicles which he published each year.<sup>644</sup>

318. Reyntjens' Report further stated that even in the absence of a reward or threats, witnesses testify in a restrictive atmosphere and are aware of what is expected from them; for example, the former *préfet* of Gitarama, Fidèle Uwizeye, was arrested after testifying for the Defence in the *Akayesu* trial before the ICTR. According to his Report, the testimony of several witnesses who implicate Kanyabashi should be treated with extreme caution, including that of Witnesses QA and RE, and those witnesses who implicated Kanyabashi in the Kabakobwa massacres.<sup>645</sup>

319. At trial, Reyntjens also discussed various instances where witnesses provided false testimony before various courts, for example, the trial of the "Four of Butare" in Belgium, as well as in the *Akayesu* case before the ICTR, where a witness claimed he had been influenced by the *Ibuka* association.<sup>646</sup>

320. Concerning fabrication of evidence, in cross-examination Reyntjens agreed that witnesses who were detainees in Rwandan prisons or awaiting to be tried by *Gacaca* trials for their involvement in the events of 1994 at the time of their testimony before this Tribunal likely felt more powerless and pressured than other witnesses.<sup>647</sup>

#### Prosecution Witness QI

321. Witness QI, a Tutsi and former cook, testified that he was not a member of any association which followed the conduct of trials or dealt with the survivors of the 1994 events.<sup>648</sup>

322. Witness QI was asked during cross-examination whether he knew someone with the last name of Prosecution Witness RL, who was 14 years old in 1994 and came from a specified area; he agreed that he knew someone by that last name from the area specified.<sup>649</sup> Witness QI testified that he had lived with a person with Witness RL's last name at one point in time.<sup>650</sup> When they met after the war, this person told Witness QI where he subsequently lived. Witness QI never lived together with the person whose last name matches Witness RL.<sup>651</sup>

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<sup>643</sup> T. 24 September 2007 p. 41 (Reyntjens).

<sup>644</sup> T. 27 September 2007 p. 38 (Reyntjens).

<sup>645</sup> Defence Exhibit 571B (Reyntjens Expert Report) pp. 15-16.

<sup>646</sup> T. 27 September 2007 pp. 38-39 (Reyntjens).

<sup>647</sup> T. 2 October 2007 p. 44 (Reyntjens).

<sup>648</sup> T. 25 March 2004 pp. 14-16 (ICS) (Witness QI). The Chamber notes he was not cross-examined on *Ibuka* nor was he examined on his knowledge of Witness D-2-21-T or Witness D-2-18-O.

<sup>649</sup> T. 25 March 2004 p. 14 (ICS) (Witness QI).

<sup>650</sup> T. 25 March 2004 pp. 14-15 (ICS) (stating that Witness QI testified that he lived together with Witness RL at a certain location); T. 25 March 2004 p. 17 (HC) (Witness QI) (French) (stating that Witness QI previously lived with Witness RL in another house, and that Witness RL subsequently moved to this new location alone).

<sup>651</sup> T. 25 March 2004 p. 15 (ICS) (Witness QI).

323. Witness QI testified that this person told him that he almost died because he was hit on the head with clubs and had to find his way out of the dead bodies, and he then crawled to a church.<sup>652</sup>

#### Prosecution Witness RL

324. Witness RL, a Tutsi who was 13 years old in 1994, testified in cross-examination that he was not a member of any survivors' groups nor had he ever attended any trial in Rwanda concerning the events that occurred in Ngoma and Matyazo in 1994.<sup>653</sup>

325. Witness RL testified that he knew a person with the same surname as Witness QI. Witness RL testified that he was only close to Witness QI to the extent of greeting him. Witness RL would see Witness QI from time to time on account of Witness QI's occupation.<sup>654</sup> They were not close enough however for Witness RL to discuss the events of 1994 with Witness QI, and at no time did he and Witness QI discuss events that occurred in 1994 at Ngoma Church or at Matyazo Clinic.<sup>655</sup> Under cross-examination, when it was put to Witness RL that Witness QI had testified about the experiences suffered by a person by the same surname as Witness RL and was asked whether he maintained that he never spoke with Witness QI about his experiences from April to July 1994, Witness RL insisted he never spoke to Witness QI.<sup>656</sup>

#### Prosecution Witness QJ

326. Witness QJ, a Tutsi waiter in 1994,<sup>657</sup> testified that he is married to Witness TK.<sup>658</sup> Witness QJ stated that they had never discussed the events of April to July 1994 together.<sup>659</sup> He testified that he did not know of her plans to testify before the Tribunal.<sup>660</sup>

#### Prosecution Witness TK

327. Witness TK, a Tutsi teacher,<sup>661</sup> was asked during cross-examination whether she knew of the *Ibuka* association. She testified that she had heard the association mentioned over the radio, but did not have details.<sup>662</sup>

328. Witness TK married Witness QJ in 1995.<sup>663</sup> When put to Witness TK that she and her husband were interviewed and met the same investigators on 22 January 1997, Witness TK testified that they did not simultaneously meet the investigator; the investigator must have met

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<sup>652</sup> T. 25 March 2004 p. 15 (ICS) (Witness QI).

<sup>653</sup> T. 29 March 2004 pp. 62-63 (ICS) (Witness RL). The Chamber notes he was not cross-examined on his knowledge of Witness D-2-21-T or Witness D-2-18-O.

<sup>654</sup> T. 29 March 2004 p. 61 (ICS) (Witness RL).

<sup>655</sup> T. 29 March 2004 pp. 61-62, 64 (ICS); T. 30 March 2004 pp. 17, 23-24 (ICS) (Witness RL).

<sup>656</sup> T. 30 March 2004 p. 24 (ICS) (Witness RL).

<sup>657</sup> T. 8 November 2001 p. 96 (ICS) (Witness QJ).

<sup>658</sup> T. 12 November 2001 p. 59 (ICS) (Witness QJ).

<sup>659</sup> T. 12 November 2001 p. 56 (ICS) (Witness QJ).

<sup>660</sup> T. 12 November 2001 p. 60 (ICS) (Witness QJ).

<sup>661</sup> T. 21 May 2002 p. 109 (ICS) (Witness TK).

<sup>662</sup> T. 28 May 2002 p. 47 (ICS) (Witness TK).

<sup>663</sup> T. 21 May 2002 p. 101 (ICS) (Witness TK).



with them one by one.<sup>664</sup> Witness TK testified that they did not discuss the events that took place between April and July 1994; she never knew that her husband had given statements to the Tribunal's investigators or that he had testified before the Tribunal in 2001.<sup>665</sup> Although she told her husband that she was coming to Arusha, she did not tell him that she was coming as a witness in the Butare case.<sup>666</sup>

#### Prosecution Witness FAE

329. Witness FAE testified that she was a member of the association of survivors of the 1994 Rwandan genocide.<sup>667</sup> When asked during cross-examination whether the ARG association had a custom of character destruction, she testified that they only told what they saw and heard with their own ears.<sup>668</sup> When asked whether she and others in her association denounced people in order to be requited with scholarships for their children, she responded that she, and no one else, paid for her children's studies.<sup>669</sup>

#### Prosecution Witness QBP

330. Witness QBP, a Tutsi woman, was asked during cross-examination whether she was a member of *Abasa* or another association that worked with the *Ibuka* association, along with several named individuals, including Witness TA.<sup>670</sup> She testified that she shared pain with the named individuals, but they do not constitute an association.<sup>671</sup> She denied that she denounced people in exchange for monetary compensation, and denied that Butare officials chased her out of Butare town in February 1995 for making false accusations.<sup>672</sup>

#### Prosecution Witness SU

331. Witness SU, a Tutsi woman, was asked during cross-examination whether she knew an association of victims of the events of 1994, named *Ibuka*, to which she testified that she had heard people talk about this association.<sup>673</sup> When she was also asked whether she knew an association of victims of the events of 1994, named *Avega*, she stated that people talk about *Avega*, but she did not know it.<sup>674</sup> When asked whether she was a member of either association or a similar association, she testified that she was "between these two associations."<sup>675</sup> By this she meant she was not a member of either.<sup>676</sup> She testified that these associations had their own

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<sup>664</sup> T. 21 May 2002 pp. 45-48 (ICS) (Witness TK).

<sup>665</sup> T. 21 May 2002 pp. 44-47, 92-93, 101-103 (ICS) (Witness TK).

<sup>666</sup> T. 21 May 2002 pp. 106-107 (ICS) (Witness TK).

<sup>667</sup> T. 18 March 2004 p. 58 (ICS) (Witness FAE).

<sup>668</sup> T. 18 March 2004 p. 59 (ICS) (Witness FAE).

<sup>669</sup> T. 18 March 2004 pp. 59-60 (ICS) (Witness FAE).

<sup>670</sup> T. 29 October 2002 pp. 47-48 (ICS) (Witness QBP).

<sup>671</sup> T. 29 October 2002 p. 50 (ICS) (Witness QBP).

<sup>672</sup> T. 29 October 2002 pp. 50-51 (ICS) (Witness QBP).

<sup>673</sup> T. 22 October 2002 p. 89 (Witness SU).

<sup>674</sup> T. 22 October 2002 p. 89 (Witness SU).

<sup>675</sup> T. 22 October 2002 p. 90 (Witness SU).

<sup>676</sup> T. 22 October 2002 p. 92 (ICS) (Witness SU).

mode of functioning and activities but she was not involved with them.<sup>677</sup> She was not a member of any other association of survivors.<sup>678</sup>

#### Prosecution Witness QP

332. Witness QP, a 15-year-old Tutsi girl in 1994,<sup>679</sup> was asked during cross-examination whether she ever attended meetings or discussions during which the events at Kabakobwa in 1994 were discussed.<sup>680</sup> Witness QP responded that there were no such meetings; she talked about those events before the Tribunal.<sup>681</sup> She had never been questioned by Rwandan authorities about the Kabakobwa events.<sup>682</sup>

#### Prosecution Witness QG

333. Witness QG, a Tutsi technician,<sup>683</sup> was asked during cross-examination whether he was a member of *Ibuka*. He stated that *Ibuka* was not active in his area, although FARG was. He was not associated with this association; he just worked with other survivors in the region for the purpose of burying victims in dignity.<sup>684</sup> They looked for people that died on the hill and buried them. He never collaborated with a person with the same first name as Witness FAE.<sup>685</sup>

#### Prosecution Witness QA

334. Witness QA, a Hutu, testified that before the Canadian Rogatory Commission concerning the case of Désiré Munyaneza in 2008, he testified that he had lied to the Office of the Prosecutor in 1996, and this Tribunal in 2004 when he said that he had heard Kanyabashi give a speech in which he purportedly promised to carry out the instructions of the President.<sup>686</sup> He also testified that he lied to Canadian policemen when he falsely accused Munyaneza in several respects in a case before Canadian courts and gave false testimony in the Munyaneza trial.<sup>687</sup> Witness QA stated that only a few aspects of his original testimony before this Tribunal were true; most of his original testimony was a lie.<sup>688</sup>

335. Witness QA claimed that he was encouraged to lie against Kanyabashi by three men who were influential figures within the administration of the *Ibuka* association, namely Innocent Kayitare, Martin Uwariraye and Polisi Mubera, the *conseiller* of Ngoma *secteur*.<sup>689</sup>

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<sup>677</sup> T. 22 October 2002 p. 93 (ICS) (Witness SU).

<sup>678</sup> T. 22 October 2002 pp. 93-94 (ICS) (Witness SU).

<sup>679</sup> T. 6 June 2002 pp. 35-36 (ICS) (Witness QP).

<sup>680</sup> T. 6 June 2002 pp. 61-62 (ICS) (Witness QP).

<sup>681</sup> T. 6 June 2002 p. 62 (ICS) (Witness QP).

<sup>682</sup> T. 6 June 2002 p. 64 (ICS) (Witness QP).

<sup>683</sup> Prosecution Exhibit 89 (Personal Particulars); T. 16 March 2004 p. 48 (ICS) (Witness QG).

<sup>684</sup> T. 16 March 2004 p. 44 (ICS) (Witness QG).

<sup>685</sup> T. 16 March 2004 p. 45 (ICS) (Witness QG).

<sup>686</sup> T. 29 October 2008 p. 11; T. 29 October 2008 pp. 13, 15-16, 23 (ICS); T. 30 October 2008 p. 19; T. 30 October 2008 pp. 24, 32, 47-48 (ICS) (Witness QA).

<sup>687</sup> T. 29 October 2008 pp. 31, 44, 49-50, 52-53 (ICS) (Witness QA).

<sup>688</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

<sup>689</sup> T. 29 October 2008 pp. 16-17, 20-21, 23, 34 (ICS); T. 30 October 2008 p. 24 (ICS) (Witness QA).

Witness QA testified that prior to his interview with the Office of the Prosecutor in 1996 he took part in preparatory meetings with these three men.<sup>690</sup>

336. These three men came to Witness QA's home where they discussed Kanyabashi. Witness QA asked for money in order to lie against Kanyabashi. He told them that if they did not give him money, he would not do what they wanted him to do.<sup>691</sup> They promised to give him 1,000,000 francs.<sup>692</sup>

337. On another occasion sometime after his testimony before this Tribunal, Martin Uwarariraye, Innocent Kayitare and two policemen came to his home to prepare him to testify falsely in the case of Desiré Munyaneza, who was accused by the Canadian justice system.<sup>693</sup> He told them that he was no longer prepared to lie against Munyaneza, nor was he willing to testify falsely in another proceeding, as they had not given him the money he had initially been promised in exchange for testifying falsely against Kanyabashi; as such he would revisit his testimony concerning Kanyabashi.<sup>694</sup>

338. When asked why he agreed to make false statements and assertions, Witness QA testified that Hutus who had not fled after the genocide had to be careful because they could be considered authors of the genocide, especially if they refused to obey instructions from the *Ibuka* administration.<sup>695</sup> He lied in order to please those who sent him and in order to spare his life.<sup>696</sup> He followed their instructions for his personal security believing they were capable of either ensuring or threatening his safety; he also followed their instructions because they promised to give him 1,000,000 francs after their first meeting. Despite several attempts, he did not receive the money he was promised.<sup>697</sup> That is why he decided to tell the truth.<sup>698</sup>

#### Prosecution Witness FAM

339. Witness FAM, a Hutu detainee, testified that he did not mention Kanyabashi or Nteziryayo in one of his prior statements because he was detained with members of their families and he was concerned for his safety.<sup>699</sup> He testified that he was detained with Witness QCB in Karubanda prison and, at the time of giving his testimony to the ICTR, had also been detained with Witness QCB in Arusha for 5 to 6 months while they waited to give their testimony before this Tribunal.<sup>700</sup> He stated that he attended *Gacaca* sessions in prison with Witness QCB, but stated that they were each concerned with their own case.<sup>701</sup> Witness FAM

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<sup>690</sup> T. 29 October 2008 pp. 23, 64 (ICS); T. 30 October 2008 pp. 28-29 (ICS) (Witness QA).

<sup>691</sup> T. 29 October 2008 pp. 29, 64 (ICS) (Witness QA).

<sup>692</sup> T. 29 October 2008 p. 29 (ICS) (Witness QA).

<sup>693</sup> T. 29 October 2008 pp. 28-30, 49, 64-66 (ICS); T. 30 October 2008 pp. 56-57 (Witness QA).

<sup>694</sup> T. 29 October 2008 pp. 30-31, 64-66 (ICS) (Witness QA).

<sup>695</sup> T. 29 October 2008 pp. 23, 28, 32 (ICS) (Witness QA).

<sup>696</sup> T. 29 October 2008 p. 56 (ICS) (Witness QA).

<sup>697</sup> T. 29 October 2008 p. 56 (ICS); T. 30 October 2008 pp. 51-53 (Witness QA).

<sup>698</sup> T. 29 October 2008 p. 57 (ICS) (Witness QA).

<sup>699</sup> T. 12 March 2002 pp. 93-94, 106-107 (Witness FAM).

<sup>700</sup> T. 13 March 2002 pp. 12-14 (ICS) (Witness FAM).

<sup>701</sup> T. 13 March 2002 pp. 13-14 (ICS) (Witness FAM).

agreed that he had been detained both in Karubanda prison and together in Arusha with a person with the same full name as Defence Witness D-2-13-D.<sup>702</sup>

#### Prosecution Witness QCB

340. Witness QCB, a Hutu driver in 1994 and detainee at the time of testimony,<sup>703</sup> testified that he was detained with Witness FAM in Arusha pending his testimony before this Tribunal, and that they were detained in the same area in Rwanda.<sup>704</sup> Witness QCB was asked whether he had seen someone with the same last name as Defence Witness D-2-13-D after 1994. Witness QCB testified that he heard that this man came to town with investigators, but he did not see him with his own eyes.<sup>705</sup>

#### Prosecution Witness QAH

341. Witness QAH, a Hutu farmer and detainee, was asked whether he knew someone with the same last name as Defence Witness D-2-13-D. Witness QAH testified that he met this person at Karubanda prison. Witness QAH testified that he never had discussions regarding events in their *secteur* with this person.<sup>706</sup>

#### Prosecution Expert Witness André Guichaoua

342. In an article entitled *The Tribunal for Rwanda: from Crisis to Failure?*,<sup>707</sup> André Guichaoua wrote that the credibility of both Prosecution and Defence witnesses varied, since they were identified and advised by either the former or present Rwandan authorities. Both the associations of survivors and the network of former authorities, supporting Prosecution or Defence respectively, had established a kind of subcontracting network for the preparation of witnesses who came to the Tribunal.

### **3.2.3 Deliberations**

343. The Chamber has carefully considered the totality of evidence adduced in support of the theory that testimony led through several Prosecution witnesses is not credible because these witnesses were improperly influenced by the *Ibuka* association. The Chamber recalls that the Prosecution bears the burden of establishing the guilt of the Accused beyond a reasonable doubt, and that the Defence need only raise reasonable doubt.<sup>708</sup> The Chamber has reviewed the testimony of factual and expert witnesses who alleged generally that the *Ibuka* association, among others, is motivated by a collective desire for revenge and accountability, and coaches Prosecution witnesses to falsely testify against an accused at the ICTR.<sup>709</sup> Specifically, the

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<sup>702</sup> T. 13 March 2002 pp. 11-12 (ICS) (Witness FAM).

<sup>703</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).

<sup>704</sup> T. 28 March 2002 p. 42 (ICS) (Witness QCB).

<sup>705</sup> T. 2 April 2002 p. 138 (ICS) (Witness QCB).

<sup>706</sup> T. 7 April 2004 pp. 42-43 (ICS) (Witness QAH).

<sup>707</sup> Defence Exhibit 254 (Kanyabashi) (*The Tribunal for Rwanda: from Crisis to Failure?*, by Guichaoua); T. 12 October 2004 pp. 49-50 (Guichaoua).

<sup>708</sup> See *Zigiranyirazo*, Judgement (AC), paras. 38, 42.

<sup>709</sup> T. 3 November 2008 pp. 13-14 (Witness D-2-21-T); T. 19 May 2008 pp. 21, 28, 33 (ICS) (Witness D-2-18-O); T. 22 February 2007 p. 28 (ICS) (Witness AND-30); T. 22 March 2007 p. 60 (ICS) (Witness AND-41); T. 30

Chamber has carefully considered the testimony of Defence witnesses who sought to implicate Prosecution Witnesses FAE, QAM, QBM, QG, QI, QJ, QP, QY, RL, SS, SU, TK and QBP as *Ibuka* members who may have been coached in their testimony before the ICTR.

344. The Chamber notes that the Defence teams failed to consistently establish that an individual identified by a Defence Witness as an *Ibuka* member allegedly involved in fabricating testimony, is in fact the same person as a Prosecution witness with the same name. The Chamber has applied a case-by-case approach to determine whether the information provided by Defence witnesses in this regard was sufficient to establish that a Defence Witness was, in actual fact, testifying about a Prosecution witness in the instant case.

345. The Chamber notes that it is striking that every key witness in the Prosecution's case against Kanyabashi was levelled with an allegation of fabricated testimony. This raises questions regarding the plausibility of these Defence submissions.

#### *Credibility of Witness D-2-21-T*

346. The Kanyabashi Defence relies heavily on the testimony of Witness D-2-21-T in support of its submissions regarding falsification of evidence led against Kanyabashi. Witness D-2-21-T identified various individuals who, she claimed, attended three meetings of the *Ibuka* association, during which they discussed giving false testimony against Kanyabashi.<sup>710</sup> The Chamber finds her testimony not credible for several reasons.

347. First, the Kanyabashi Defence raised these allegations of false testimony long after the Prosecution rested its case. The Chamber considers it significant that Witness D-2-21-T's specific allegations against relevant Prosecution witnesses were not put to those witnesses during their cross-examination, despite the fact that the Kanyabashi Defence had ample opportunity to discover this information before the testimony of the said Prosecution witnesses.<sup>711</sup> Witness D-2-21-T testified that she met with an investigator on the Kanyabashi Defence team in 2000, 2005, 2007 and 2008.<sup>712</sup> She stated that during these meetings, they discussed the possibility of her testifying before the Tribunal although it was only in 2005 that Witness D-2-21-T found out Nkeshimana was employed by Kanyabashi and she informed them about her knowledge of meetings concerning the fabrication of testimony against Kanyabashi.<sup>713</sup> When Nkeshimana asked her to appear before the Tribunal to relay this same information, Witness D-2-21-T first declined.<sup>714</sup> Witness D-2-21-T was added to the Kanyabashi witness list on 24 April 2008 and she first testified in November 2008, after the formal closure of the Kanyabashi Defence case in May 2008. The question remains as to why the Defence did not put forward this information at an earlier date.

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April 2007 pp. 12-13 (ICS) (Witness AND-59); T. 27 September 2007 pp. 38-41 (Reyntjens); T. 12 October 2004 pp. 47-48 (Guichaoua).

<sup>710</sup> T. 3 November 2008 pp. 35-36, 43, 45, 49-51, 59-60, 62 (ICS); T. 4 November 2008 pp. 32, 62 (ICS) (Witness D-2-21-T).

<sup>711</sup> Prosecution Witnesses QJ and QAM first testified in 2001; Prosecution Witnesses TK, SU and QP first testified in 2002; Prosecution Witnesses QY and SS first testified in 2003; Prosecution Witnesses QI, RL, QA and QG first testified in 2004.

<sup>712</sup> T. 5 November 2008 pp. 30-36 (ICS) (Witness D-2-21-T).

<sup>713</sup> T. 5 November 2008 pp. 31-33 (ICS) (Witness D-2-21-T).

<sup>714</sup> T. 5 November 2008 p. 32 (ICS) (Witness D-2-21-T).

348. Second, Witness D-2-21-T may have been an *Ibuka* member during the period of the three meetings at issue, given that she was married to a Tutsi during the events of 1994,<sup>715</sup> and members of her extended family were killed during the genocide.<sup>716</sup> However, the Chamber finds her account of these three meetings to be unbelievable with respect to the modality of fabricating testimony. Witness D-2-21-T's testimony that select participants at the 1995 meeting read out to the rest of the group false testimony that was written on sheets of paper,<sup>717</sup> is unconvincing.

349. Third, the Chamber considers it significant that Witness D-2-21-T was not among the group of people who were given documents to read from, nor did she actually read the contents of any of the distributed documents.<sup>718</sup> As such, she cannot verify the content of any of those documents.

350. Fourth, Witness D-2-21-T testified that she did not take notes during the meetings.<sup>719</sup> The Chamber doubts her ability to accurately recall details of what transpired at those meetings, and the specifics of the alleged false testimony, more than a decade later.

351. Fifth, Witness D-2-21-T insisted that these meetings were organised exclusively to prepare people to testify "falsely" against Kanyabashi,<sup>720</sup> however, she nevertheless acknowledged that *Ibuka* members spoke the truth on some aspects of the genocide. She stated that not all of the meetings involved discussions on false testimony.<sup>721</sup> Having reviewed Witness D-2-21-T's account of these meetings, the Chamber notes that no one at the meetings ever referred to the events discussed as "false evidence."<sup>722</sup> The leader of the alleged meetings gave instructions asking members to bring forth evidence against Kanyabashi in his individual capacity or in his capacity as the leader of Ngoma *commune*; it was never said that members needed to give false testimony.<sup>723</sup>

352. Sixth, Witness D-2-21-T testified that she did not know whether the persons who agreed to bear false testimony actually did so at Kanyabashi's trial. She stated that at each of the subsequent association meetings that she attended, the members never discussed whether false testimony had actually been provided at Kanyabashi's trial.<sup>724</sup>

353. Seventh, Witness D-2-21-T could not have been aware of Kanyabashi's movements between April and July 1994, since she admitted that she did not see Kanyabashi during this period and she was at home.<sup>725</sup> Accordingly, she was not in a position to assess the veracity of

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<sup>715</sup> T. 4 November 2008 p. 61 (ICS) (Witness D-2-21-T).

<sup>716</sup> T. 4 November 2008 pp. 58-61 (ICS) (Witness D-2-21-T).

<sup>717</sup> T. 3 November 2008 pp. 36-38 (ICS); T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>718</sup> T. 4 November 2008 pp. 65-66 (ICS) (Witness D-2-21-T).

<sup>719</sup> T. 4 November 2008 p. 66 (ICS) (Witness D-2-21-T).

<sup>720</sup> T. 4 November 2008 pp. 62, 65 (ICS); T. 5 November 2008 pp. 19-21, 41 (ICS) (Witness D-2-21-T).

<sup>721</sup> T. 4 November 2008 pp. 34, 69 (ICS); T. 5 November 2008 p. 29 (ICS) (Witness D-2-21-T). The Chamber notes Witness D-2-21-T's testimony that *Ibuka* members discussed issues facing survivors of the genocide, including accommodation and educational assistance for the families of survivors: T. 3 November 2008 p. 14 (ICS) (Witness D-2-21-T).

<sup>722</sup> T. 4 November 2008 p. 36 (ICS) (Witness D-2-21-T).

<sup>723</sup> T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>724</sup> T. 4 November 2008 p. 69 (ICS) (Witness D-2-21-T).

<sup>725</sup> T. 5 November 2008 p. 26 (ICS) (Witness D-2-21-T).

statements made at the *Ibuka* meetings regarding Kanyabashi's actions between April and July 1994.

354. Eighth, while Witness D-2-21-T testified that these three *Ibuka* meetings were organised exclusively to prepare potential witnesses to testify against Kanyabashi and no one else,<sup>726</sup> Witness D-2-21-T did not provide a convincing explanation as to why the *Ibuka* association would have specifically targeted Kanyabashi. Her testimony that Kanyabashi was targeted by *Ibuka* because he held a position of authority in Ngoma *commune*<sup>727</sup> is unconvincing, as the association could have targeted many other figures of authority in Butare *préfecture*.

355. Ninth, Witness D-2-21-T testified that she did not know that a certain Nkeshimana was an investigator in the Kanyabashi Defence team.<sup>728</sup> However, she had testified earlier that she met with Joseph Nkeshimana, an investigator on the Kanyabashi Defence team, several times; in 2000, 2005, 2007 and 2008.<sup>729</sup> During these meetings, they discussed the possibility of her testifying before the Tribunal and her knowledge of Kanyabashi.<sup>730</sup> Furthermore, she admitted that her great-grandfather was the uncle of Nkeshimana's late wife.<sup>731</sup> The Chamber finds Witness D-2-21-T's assertion that she did not know that Nkeshimana was an investigator in the Kanyabashi Defence team<sup>732</sup> to be implausible, given that they met on a number of occasions and considering her extended family ties to him. Her inconsistent testimony on her knowledge of Nkeshimana's role as an investigator for the Kanyabashi Defence casts further doubt on her credibility and reliability.

356. Tenth, the Chamber notes that Witness D-2-21-T asserted that she knew that members were providing false testimony in *Gacaca* trials because she knew where these members were living during the killings and they read statements as to events in other locations.<sup>733</sup> Even if the Chamber were to accept that Witness D-2-21-T knew where each of the members was living during the killings, the Chamber does not find it credible that Witness D-2-21-T knew the whereabouts of each of the association's members who purportedly agreed to bear false testimony during the course of the more than three months in which killings occurred in Ngoma *commune*.

357. Finally, the Chamber observes that Witness D-2-21-T admitted in cross-examination that the *Ibuka* association may not have existed in 1995, but that another genocide survivors' group did exist.<sup>734</sup> This is inconsistent with Witness D-2-21-T's prior assertion that two of the three *Ibuka* meetings at issue took place in 1995.<sup>735</sup> The Chamber considers it significant that the witness' examination-in-chief focused on the *Ibuka* association rather than any other survivors' group. While the witness gave detailed testimony on the inception of the *Ibuka*

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<sup>726</sup> T. 4 November 2008 pp. 32, 62, 65 (ICS) (Witness D-2-21-T).

<sup>727</sup> T. 4 November 2008 p. 32 (ICS) (Witness D-2-21-T).

<sup>728</sup> T. 5 November 2008 p. 56 (ICS) (Witness D-2-21-T).

<sup>729</sup> T. 5 November 2008 pp. 30-36 (ICS) (Witness D-2-21-T).

<sup>730</sup> T. 5 November 2008 pp. 30-36 (ICS) (Witness D-2-21-T).

<sup>731</sup> T. 5 November 2008 pp. 56-57 (ICS) (Witness D-2-21-T).

<sup>732</sup> T. 5 November 2008 p. 56 (ICS) (Witness D-2-21-T).

<sup>733</sup> T. 4 November 2008 pp. 35-36 (ICS) (Witness D-2-21-T).

<sup>734</sup> T. 5 November 2008 pp. 51-52 (ICS) (Witness D-2-21-T).

<sup>735</sup> T. 3 November 2008 pp. 20-21, 36-38 (ICS) (Witness D-2-21-T).

association and the identity of attendees at this set of meetings,<sup>736</sup> no mention was made of any other survivors' group until cross-examination.

358. Witness D-2-21-T disavowed a portion of a prior statement in which she claimed her *conseiller de secteur* organised meetings and that she observed him with documents bearing the names of individuals to be killed. She asserted that the investigators did not accurately take down her statement; her actual statement to investigators was that the *conseiller* held a meeting to discuss community work and announced to the members of the public that they all had a right to join a political party in this period of multiparty politics.<sup>737</sup> She also stated that the remainder of the prior statement was in fact accurate.<sup>738</sup> The Chamber accepts this explanation, and notes that this inconsistency is not material to the allegation at issue.

359. Taking into account all of the foregoing, the Chamber finds that the testimony of Witness D-2-21-T is neither credible nor reliable.

#### *Credibility of Witness D-2-18-O*

360. The Kanyabashi Defence also relies on Witness D-2-18-O in support of its allegations. This witness was added to the Kanyabashi witness list on 24 April 2008 and gave evidence in May 2008, towards the end of the Kanyabashi Defence case, which opened in July 2007. Witness D-2-18-O testified that he was a member of *Ibuka*, that he attended two *Ibuka* meetings where they discussed providing evidence against certain individuals, including Kanyabashi, even when an individual was actually innocent.<sup>739</sup>

361. The testimony of Witness D-2-18-O suffers from serious credibility issues. Although Witness D-2-18-O identifies as a Tutsi, and is a member of the *Ibuka* association, he confessed in 2007 to having manned roadblocks and participated in killing 12 Tutsis during the 1994 genocide.<sup>740</sup> The Chamber does not consider the witness' portrayal of himself as both a victim and perpetrator of the genocide<sup>741</sup> to be plausible.

362. Witness D-2-18-O's attempt to hide his criminal record from the Kanyabashi Defence also seriously undermines his credibility. Witness D-2-18-O was sentenced and imprisoned for his crimes.<sup>742</sup> In cross-examination, Witness D-2-18-O admitted that he had not disclosed his genocide conviction to the Kanyabashi Defence team until he arrived in Arusha one week before his testimony, even though he met that team for the first time in 2005.<sup>743</sup>

363. For these reasons, the Chamber is of the view that his testimony should be treated with appropriate caution.

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<sup>736</sup> T. 3 November 2008 pp. 14, 16, 20-24 (ICS); T. 4 November 2008 p. 14 (ICS) (Witness D-2-21-T).

<sup>737</sup> T. 4 November 2008 p. 54 (ICS) (Witness D-2-21-T).

<sup>738</sup> T. 4 November 2008 p. 70 (ICS) (Witness D-2-21-T).

<sup>739</sup> T. 19 May 2008 pp. 16, 18, 20-22, 28, 33 (ICS) (Witness D-2-18-O).

<sup>740</sup> T. 15 May 2008 p. 12 (ICS); T. 19 May 2008 pp. 16, 18, 20 (ICS); T. 20 May 2008 pp. 7-8, 11 (ICS) (Witness D-2-18-O).

<sup>741</sup> T. 19 May 2008 p. 43 (ICS) (Witness D-2-18-O).

<sup>742</sup> T. 19 May 2008 p. 36; T. 19 May 2008 pp. 37-41 (ICS) (Witness D-2-18-O).

<sup>743</sup> T. 19 May 2008 pp. 43-47 (ICS) (Witness D-2-18-O).



*Credibility of Witness D-13-D*

364. The Chamber notes Witness D-13-D's testimony that when he was detained in Rwanda, *Ibuka* members tried to "incite" him to give false evidence against Kanyabashi, among others.<sup>744</sup> Witness D-13-D further testified that after he was tried and acquitted in Rwanda, he was asked to falsely implicate Kanyabashi and two other individuals as a precondition for his release.<sup>745</sup>

365. Other than that Witness D-13-D was asked to accuse Kanyabashi of having participated in the genocide by sensitising the population to participate in killings.<sup>746</sup> Witness D-13-D did not provide any specific information about the false allegations that he was allegedly told to level against Kanyabashi.

366. Furthermore, the Chamber notes the existence of personal ties between Witness D-13-D and Kanyabashi.<sup>747</sup> Taking into account the foregoing, the Chamber finds that Witness D-13-D's testimony on this matter should be treated with appropriate caution.

*Credibility of Witness D-2-13-D*

367. Witness D-2-13-D also testified that while detained at Butare prison, there was a small group of people who were trying to incriminate Kanyabashi.<sup>748</sup> An individual with the same surname as Witness FAC, together with the two individuals whose full names match those of Witnesses QCB and FAM, found Witness D-2-13-D in his cell and told him they wanted to recruit him on behalf of their community to join the group going to testify against Kanyabashi in Arusha.<sup>749</sup> Like Witness D-13-D, Witness D-2-13-D did not provide any specific information about the false allegations that he was allegedly told to level against Kanyabashi. Further, Witness D-2-13-D did not state why he thought the group was preparing to testify falsely against Kanyabashi.

368. Witness D-2-13-D also testified that Witness QAH told him that he was going to Arusha to testify against Kanyabashi and that this would be his opportunity to pay Kanyabashi back in kind for Witness QAH becoming unemployed.<sup>750</sup> The Chamber recalls that Witness QAH confirmed that from 1975 to 1979 he had been a civil servant appointed by Kanyabashi, but he denied that he had been dismissed for a professional misdemeanour testifying that he chose to resign.<sup>751</sup> Accordingly, based on Witness QAH's own admission, the Chamber considers he had no motive to seek revenge upon Kanyabashi.

369. Therefore, the Chamber finds that Witness D-2-13-D's testimony does not undermine the credibility of the testimonies of Witnesses QAH, QCB and FAM.

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<sup>744</sup> T. 18 February 2008 p. 32 (ICS); T. 19 February 2008 pp. 13, 24-25 (ICS) (Witness D-13-D).

<sup>745</sup> T. 18 February 2008 pp. 34, 36 (ICS); T. 19 February 2008 p. 25 (ICS) (Witness D-13-D).

<sup>746</sup> T. 18 February 2008 p. 37 (ICS) (Witness D-13-D).

<sup>747</sup> T. 14 February 2008 p. 31 (Witness D-13-D).

<sup>748</sup> T. 30 August 2007 p. 49 (ICS) (Witness D-2-13-D).

<sup>749</sup> T. 30 August 2007 p. 50 (ICS) (Witness D-2-13-D).

<sup>750</sup> T. 30 August 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>751</sup> T. 7 April 2004 pp. 75-76 (ICS) (Witness QAH).

*Credibility of Witness D-1-4-0*

370. The Chamber notes Witness D-1-4-O's testimony that around 2006, certain individuals, including Rwandan policemen, asked him to be a Prosecution witness for the Butare case, and falsely testify that Kanyabashi asked the population to kill.<sup>752</sup> The Chamber notes that the only specific example of false testimony that Witness D-1-4-O cited implicated Kanyabashi. This witness did not provide any explanation as to why the individuals who approached him wanted to target Kanyabashi. The Chamber considers Witness D-1-4-O's testimony on this point to be vague and unsubstantiated, and finds that it does not undermine the credibility of specific evidence led against Kanyabashi.

*Evidence of Kanyabashi Defence Witness D-2-16-P*

371. Notwithstanding that Witness D-2-16-P testified that the *Ibuka* association does not want members to testify on behalf of former authorities, Witness D-2-16-P testified that *Ibuka* does not train people to give testimony, and he never heard that the association prepared witnesses.<sup>753</sup> The Chamber considers it significant that this witness, who is Tutsi and had been an *Ibuka* member for approximately four years at the time of his testimony, testified that the *Ibuka* association does not train people to give testimony.<sup>754</sup>

*Other Defence Evidence Regarding the Credibility of Prosecution Witnesses Who Were Allegedly Ibuka Members*

372. The Chamber's attention has been drawn to issues that may adversely reflect on the credibility of relevant Prosecution witnesses.

373. The Kanyabashi Defence claims that Prosecution Witness RL was a member of *Ibuka* and involved in fabricating evidence. Defence Witnesses AND-30, AND-41 and AND-59 testified about a Tutsi man who shared the last name of Witness RL.<sup>755</sup> Witnesses AND-41 and AND-59 testified that they knew this man well, and this man was president of the *Ibuka* association in Butare.<sup>756</sup> Witness RL denied that he was a member of *Ibuka*.<sup>757</sup> The Chamber considers that these three Defence witnesses are all referring to the same person, as they all identified that person's last name and the name of his father.<sup>758</sup> The Chamber notes, however, that two of these Defence witnesses did not provide a first name for the said *Ibuka* president. Witness AND-59 provided a first name<sup>759</sup> that does not correspond to Witness RL's first name. Accordingly, and given the absence of other evidence to establish that the person these Defence witnesses were referring to is Prosecution Witness RL, the Chamber need not consider this testimony further.

<sup>752</sup> T. 12 May 2008 pp. 10-11 (ICS) (Witness D-1-4-O).

<sup>753</sup> T. 13 March 2008 pp. 25, 39 (ICS) (Witness D-2-16-P).

<sup>754</sup> T. 13 March 2008 p. 39 (ICS); T. 13 March 2008 p. i (Extract) (Witness D-2-16-P).

<sup>755</sup> T. 22 February 2007 pp. 22-23, 26 (Witness AND-30); T. 22 March 2007 p. 59 (ICS) (Witness AND-41); T. 30 April 2007 pp. 17-19 (ICS) (Witness AND-59).

<sup>756</sup> See, e.g., T. 22 March 2007 p. 59 (ICS) (Witness AND-41); T. 30 April 2007 p. 18 (ICS) (Witness AND-59).

<sup>757</sup> T. 29 March 2004 pp. 62-63 (ICS) (Witness RL).

<sup>758</sup> T. 22 February 2007 pp. 22-23 (ICS) (Witness AND-30); T. 22 March 2007 p. 59 (ICS) (Witness AND-41); T. 30 April 2007 pp. 15-17 (ICS) (Witness AND-59).

<sup>759</sup> T. 30 April 2007 p. 18 (ICS) (Witness AND-59).

374. The Chamber notes apparent discrepancies in the testimonies of Witnesses RL and QI regarding their knowledge of each other.<sup>760</sup> Prosecution Witness QI initially testified that he once lived with a person whose last name and profile closely match that of Prosecution Witness RL.<sup>761</sup> Witness QI testified that this person told him about surviving an attack at Ngoma Church, where he was hit on the head with clubs and managed to crawl out of dead bodies to the church.<sup>762</sup> The Chamber observes that Witness RL testified that he was not close to Witness QI, he only knew him from seeing him about town.<sup>763</sup> Witness RL testified that they were not close enough to discuss the events of 1994, and he never discussed these events with Witness QI.<sup>764</sup> While the Chamber does not believe Witness RL's assertion that he hardly knew Witness QI, this does not impact the Chamber's assessment of other aspects of Witness RL's testimony. This discrepancy between Witness RL's and Witness QI's testimony is of minor significance, and does not affect the credibility of either witness.

375. The Kanyabashi Defence also highlights the fact that Witnesses TK and QJ, a married couple, testified that they did not discuss with each other the events that took place between April to July 1994,<sup>765</sup> and this couple testified that they did not discuss with each other their plans to testify before this Tribunal.<sup>766</sup> The Defence asserts that this testimony was incredible, that the similarity of their evidence indicates that these *Ibuka* members fabricated their testimony.<sup>767</sup> The Chamber does not believe Witness TK and QJ's testimony that they never discussed the events at issue in this case, or their plans to testify before the ICTR. Nevertheless, the Chamber considers that the Defence assertions in this regard do not undermine Witnesses TK's or QJ's credibility.

#### *Credibility of Prosecution Witness QA*

376. The Chamber notes the existence of serious credibility issues surrounding the testimony of Prosecution Witness QA. When recalled in 2008, he admitted that he lied to Canadian police in another proceeding,<sup>768</sup> he lied to the Office of the Prosecutor in 1996,<sup>769</sup> and that most of his testimony under oath to this Tribunal in 2004 was false.<sup>770</sup> The witness admitted that "in everything that I said, there are only a few things that are truthful. For the most part, my testimony was lies."<sup>771</sup>

<sup>760</sup> Kanyabashi Closing Argument, T. 28 April 2009 pp. 64-65.

<sup>761</sup> T. 25 March 2004 pp. 14-15 (ICS) (Witness QI) (identified an individual with the same last name as Witness RL, who was from the same *secteur* as Witness RL, who was of approximately the same age as Witness RL in 1994, and who, like Witness RL, was hit on the head during attacks at Ngoma Parish and managed to make his way out of dead bodies and return to the church); cf. T. 25 March 2004 pp. 85, 87 (Witness RL); T. 30 March 2004 pp. 27-28 (Witness RL).

<sup>762</sup> T. 25 March 2004 p. 15 (ICS) (Witness QI).

<sup>763</sup> T. 29 March 2004 p. 61 (ICS) (Witness RL).

<sup>764</sup> T. 29 March 2004 pp. 61-62, 64 (ICS); T. 30 March 2004 pp. 17, 23-24 (ICS) (Witness RL).

<sup>765</sup> T. 21 May 2002 p. 102 (ICS) (Witness TK); T. 12 November 2001 p. 56 (ICS) (Witness QJ).

<sup>766</sup> T. 21 May 2002 pp. 102-103, 106-107 (ICS) (Witness TK); T. 12 November 2001 p. 60 (ICS) (Witness QJ).

<sup>767</sup> Kanyabashi Closing Brief, para. 291.

<sup>768</sup> T. 29 October 2008 pp. 31, 44, 49-50, 52-53 (ICS) (Witness QA).

<sup>769</sup> T. 29 October 2008 pp. 13, 23 (ICS); T. 30 October 2008 pp. 32, 47-48 (ICS) (Witness QA).

<sup>770</sup> T. 29 October 2008 p. 11; T. 29 October 2008 pp. 13, 16-17 (ICS); T. 30 October 2008 p. 19; T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>771</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

377. Witness QA testified that he lied against Kanyabashi on the encouragement of three men who were influential figures in the administration of the *Ibuka* association.<sup>772</sup> The Chamber observes that the three individuals whom Witness QA identified correspond in either the first, last or full name with the three individuals Witness D-2-21-T testified allegedly attended *Ibuka* meetings where participants discussed false testimony against Kanyabashi.<sup>773</sup>

378. Witness QA testified that if he refused to obey the instructions of these people, he would have encountered difficulties.<sup>774</sup> The Chamber has taken note of Witness QA's account as to why he lied before the Chamber.<sup>775</sup> Further, the Chamber notes Witness QA asked for money in order to lie against Kanyabashi and told the three men that if they did not give him the money, he would not do what they wanted him to do.<sup>776</sup> Witness QA stated that one of the reasons for which he also followed their instructions, was because they promised to give him 1,000,000 francs after their first meeting. Despite several attempts, he did not receive the money he was promised.<sup>777</sup> That is why he decided to tell the truth.<sup>778</sup> This witness' demonstrably flexible attitude to telling the truth casts doubt on the credibility and reliability of his own testimony. Given this, Witness QA's testimony about his reasons for lying to this Tribunal lacks credibility.

379. The Kanyabashi and Nsabimana Defence relied on expert evidence in support of the submission that Prosecution witnesses were improperly influenced to testify about an Accused at the ICTR.<sup>779</sup> The Chamber has reviewed the relevant expert evidence, and considers that this evidence may provide context for specific allegations of fabrication of testimony. The most specific expert evidence adduced on this issue was led through Defence Expert Witness Reyntjens, who discussed the preparation of Rwandan witnesses who came before this Tribunal.<sup>780</sup> Reyntjens also provided an example of a witness being improperly influenced by the *Ibuka* association in the *Akayesu* case.<sup>781</sup>

380. The Chamber also notes Reyntjens' Expert Report specifically identified several witnesses whose testimony should be treated with extreme caution, namely Witnesses QA and RE, and those witnesses who implicated Kanyabashi in the Kabakobwa massacres.<sup>782</sup> First, the Chamber notes no accusations of fabrication were levelled against Witness RE by any Defence witnesses. Insofar as concerns Witness QA or witnesses called to testify about Kabakobwa, the Chamber declines to have regard to Reyntjens' evidence on the basis that it falls outside his sphere of expertise.

381. The Chamber recalls its observation, above, that every key witness in the Prosecution's case against Kanyabashi was implicated with the allegation that they were an *Ibuka* member

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<sup>772</sup> T. 29 October 2008 pp. 16-17, 20-21, 23, 34 (ICS); T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>773</sup> T. 3 November 2008 pp. 21-24 (ICS) (Witness D-2-21-T).

<sup>774</sup> T. 29 October 2008 pp. 23, 28, 32 (ICS) (Witness QA).

<sup>775</sup> T. 29 October 2008 pp. 23, 28, 32, 56 (ICS); T. 30 October 2008 pp. 51-53 (ICS) (Witness QA).

<sup>776</sup> T. 29 October 2008 pp. 29, 64 (ICS) (Witness QA).

<sup>777</sup> T. 29 October 2008 p. 56 (ICS); T. 30 October 2008 pp. 51-53 (Witness QA).

<sup>778</sup> T. 29 October 2008 p. 57 (ICS) (Witness QA).

<sup>779</sup> T. 12 October 2004 pp. 47-48 (Guichaoua); T. 27 September 2007 pp. 38-41 (Reyntjens).

<sup>780</sup> T. 27 September 2007 p. 41 (Reyntjens).

<sup>781</sup> T. 27 September 2007 pp. 38-39 (Reyntjens).

<sup>782</sup> Defence Exhibit 571B (Reyntjens Expert Report) pp. 15-16.

who fabricated testimony. Although Reyntjens downplayed his personal ties to Kanyabashi in his testimony before this Tribunal,<sup>783</sup> he had known Kanyabashi for a long time,<sup>784</sup> and he confirmed that Kanyabashi named him as his lawyer before an Investigating Judge in Belgium.<sup>785</sup> The Chamber considers that Reyntjens' testimony before this Tribunal was largely biased in favour of Kanyabashi (). As such, Reyntjens may have had a motive to discredit the *Ibuka* association in support of the Kanyabashi Defence case.

### 3.2.4 Discussion of Evidence and Findings

382. Prosecution Witnesses FAE, QBP, QG, QI, RL and SU were asked during cross-examination whether they were members of a survivors association. Prosecution Witness FAE testified that she was a member of a survivors association,<sup>786</sup> while the others testified they were not members of any such association.<sup>787</sup> Witnesses SU and TK testified that they had simply heard about the *Ibuka* association.<sup>788</sup> Witness QP denied that she attended meetings or participated in discussions concerning the events she testified about, testifying that there were no such meetings.<sup>789</sup> Apart from Witness QA, who the Chamber has found to be not credible, none of these Prosecution witnesses testified that they were paid or otherwise influenced to testify falsely. The Chamber notes that the Defence relies heavily on hearsay evidence to discredit the testimony of Prosecution Witnesses FAE, QBP, QG, QI, RL and SU. The Chamber assesses such evidence with caution and on a case-by-case basis. The Chamber believes these Prosecution witnesses and attaches more weight to their testimony under oath than to hearsay evidence that was led to undermine their credibility.

383. Taking into account the Chamber's assessment of the credibility of relevant Defence witnesses, the testimony of the Prosecution witnesses under cross-examination, relevant contextual evidence, and the content of general and specific allegations of false testimony levelled against Prosecution witnesses, the Chamber finds that the evidence led by the Defence relating to the alleged fabrication of testimony does not undermine the testimony of Prosecution Witnesses FAE, FAC, FAM, QAM, QBM, QG, QI, QJ, QP, QY, RL, SS, SU, TK, QAH, QBP and QCB. The Chamber again recalls that the Defence does not bear a burden to prove fabrication and that it need only raise a reasonable doubt as to the Prosecution case.

384. The Chamber will otherwise address specific allegations of fabricated testimony in the context of relevant factual findings.

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<sup>783</sup> T. 20 September 2007 p. 11 (Reyntjens).

<sup>784</sup> T. 21 November 2007 p. 14 (Reyntjens).

<sup>785</sup> T. 21 November 2007 pp. 11-12 (Reyntjens).

<sup>786</sup> T. 18 March 2004 p. 58 (ICS) (Witness FAE).

<sup>787</sup> T. 29 October 2002 pp. 49-50 (Witness QBP); T. 16 March 2004 p. 44 (ICS) (Witness QG); T. 25 March 2004 pp. 14-16 (ICS) (Witness QI); T. 29 March 2004 pp. 62-63 (ICS) (Witness RL); T. 22 October 2002 pp. 92-94 (ICS) (Witness SU).

<sup>788</sup> T. 22 October 2002 p. 89 (Witness SU); T. 28 May 2002 p. 47 (ICS) (Witness TK).

<sup>789</sup> T. 6 June 2002 pp. 61-62 (ICS) (Witness QP).

### 3.3 Events in Butare Between 6 April 1994 and 18 April 1994

#### 3.3.1 Remera Massacre, 7 April 1994

##### 3.3.1.1 Introduction

385. Although not mentioned in any of the Indictments or in the Prosecution Closing Brief and oral arguments, Prosecution Witness QBZ testified regarding the massacre of Tutsis at the Muganza *commune* office in Remera on 7 April 1994.

386. The Ndayambaje Defence submits that these events are material facts which are not pled in the Indictment and reiterates its request of 31 May 2006 that the Chamber exclude them from the analysis of the evidence.<sup>790</sup> The Defence also avers that Witness QBZ's evidence is unreliable and not credible because he is the sole witness on this event, he is mentally unstable, and his evidence is uncorroborated and contradicted by Witnesses RV, EV, GABON and KEPİR.<sup>791</sup>

##### 3.3.1.2 Preliminary Issues

387. The Chamber notes that neither the Ndayambaje Indictment nor the Prosecution Pre-Trial Brief mentions the massacre at the Muganza *commune* office in Remera on 7 April 1994. The Appendix to the Pre-Trial Brief contains a summary of Witness QBZ's expected testimony. The summary sets out that Witness QBZ would testify to a meeting Ndayambaje held with the Remera *secteur* populace at his office, where Ndayambaje said all Tutsis must be killed; it did not refer to a massacre at the *commune* office, but further stated that Witness QBZ is said to have "witnessed other massacres".<sup>792</sup>

388. Witness QBZ's prior statements refer to the same *secteur* office meeting called by Ndayambaje, although only the second statement of 28-30 March 2001 outlines an ensuing massacre that occurred at the Muganza *commune* office, purportedly arranged by Ndayambaje.<sup>793</sup>

389. The Chamber recalls that Witness QBZ testified about this massacre and at the end of his examination-in-chief, the Ndayambaje Defence pointed out that much of this witness' testimony was not mentioned in the witness' prior statement or the factual allegations disclosed to the Defence by the Prosecution and requested that it be allowed to recall Witness QBZ if needed at a later stage.<sup>794</sup>

390. The Ndayambaje Defence filed a motion for exclusion of the evidence of Prosecution witnesses, including Witness QBZ, arguing that those witnesses testified about facts not pled

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<sup>790</sup> Ndayambaje Closing Brief, para. 126 (citing *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006, paras. 351-360).

<sup>791</sup> Ndayambaje Closing Brief, paras. 146-150.

<sup>792</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBZ (49).

<sup>793</sup> 9 October 1999, Statement of Witness QBZ, disclosed 1 December 1999; 28-30 March 2001, Statement of Witness QBZ, disclosed 23 May 2001.

<sup>794</sup> T. 23 February 2004 p. 40 (ICS) (Witness QBZ).

in the Indictment and, therefore, that Ndayambaje did not have timely notice of them.<sup>795</sup> The Prosecution objected to the motion on the basis it was filed out of time. The Prosecution acknowledged that the Ndayambaje Defence had objected to the admissibility of the evidence of Witness QBZ in February 2004 when the witness testified before the Chamber.<sup>796</sup>

391. The Chamber recalls its Decision of 1 September 2006 in which it stated that some issues of exclusion of evidence, credibility of witnesses and evaluation of evidence may be considered at a later stage of the proceedings with the totality of the evidence.<sup>797</sup>

392. The Chamber considers that Witness QBZ's statement of 28-30 March 2001 is the only statement with detailed information on the massacre at the Muganza *commune* office in Remera on 7 April 1994. The English translation of this statement was first disclosed to the Defence in redacted form on 23 May 2001 and the French translation on 7 June 2001. The unredacted statements in both English and French were disclosed to the Defence on 31 January 2002.

393. In the present case, the Chamber considers that the Ndayambaje Defence did not have sufficient notice of this massacre so as to enable the Defence to mount an effective defence. As a result the Chamber will not make a finding on the alleged involvement of Ndayambaje in the massacre at the Muganza *commune* office in Remera on 7 April 1994. In any case, the Chamber considers that Witness QBZ's evidence on the Remera massacre is insufficient.

### 3.3.2 *Interahamwe* Training in Mugusa Commune, 7 April 1994

394. The allegation that *Interahamwe* were trained at the Mugusa *commune* office on 7 April 1994 was put into evidence during the testimony of Prosecution Witness QBV. The witness testified that *Bourgmestre* Kabayiza organised weapons training for approximately 100 young Hutus from the *commune*, for the purpose of fighting the RPF and killing Tutsis.<sup>798</sup>

395. The Nteziryayo Defence challenges Witness QBV's credibility, asserting that there was no *Interahamwe* training at the *commune* office on 7 April 1994.<sup>799</sup> On 7 April 1994 the Ministry of Defence had issued a *communiqué* prohibiting anyone from leaving their houses until further notice. The Nteziryayo Defence submits that no other witness testifies about training on this day and there is no corroboration of Witness QBV's evidence.<sup>800</sup>

396. The Chamber notes that this allegation was not pled in any of the Indictments and was mentioned in neither the Prosecution Closing Brief nor its closing oral submissions. The

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<sup>795</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006.

<sup>796</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Prosecutor's Response to the *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 9 June 2006.

<sup>797</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006, paras. 25-26.

<sup>798</sup> T. 18 March 2002 pp. 56-57, 63-64, 67-68 (ICS) (Witness QBV).

<sup>799</sup> Nteziryayo Closing Brief, para. 573.

<sup>800</sup> Nteziryayo Closing Brief, para. 573.

Chamber therefore declines to make a finding on whether training of *Interahamwe* took place at the Mugusa *commune* office on 7 April 1994.

### 3.3.3 Cyarwa *Secteur* Meeting and Agateme Attacks, Mid-April 1994

#### 3.3.3.1 Introduction

397. The Kanyabashi Indictment alleges that from late 1990 to July 1994, Kanyabashi conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. The plan was alleged to consist of, *inter alia*, encouraging hatred and ethnic violence and the preparation of lists of Tutsis to be killed. The Kanyabashi Indictment further alleges that Kanyabashi, together with others, adhered to and executed this plan and in doing so organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>801</sup>

398. The Kanyabashi Indictment alleges that in or around May 1994, Kanyabashi held at least two meetings in Cyarwa *secteur*, Ngoma *commune* at which he encouraged local residents to kill Tutsis and that, in the days following these meetings, Tutsis in the area were attacked.<sup>802</sup> The Indictment further alleges that Ngoma *commune* was the site of numerous massacres in which Kanyabashi was either directly involved or in which his subordinates, acting under his orders, were implicated.<sup>803</sup>

399. The Prosecution submits that these meetings and the subsequent killings were a general pattern of conduct by Kanyabashi throughout the genocide, and that Kanyabashi was heavily involved in the planning of killings and met frequently with his administrative subordinates to provoke them into action.<sup>804</sup> In support of these submissions, the Prosecution relies on the testimony of Witness QG.

400. Aside from submissions relating to the imprecision of the Indictment,<sup>805</sup> the Kanyabashi Defence submits that Prosecution Witness QG is not credible because he contradicts himself.<sup>806</sup> The Kanyabashi Defence submits there was a meeting on 17 or 18 April 1994 in which Kanyabashi made a one-and-a-half hour speech asking members of the population not to kill one another and urging the population to welcome refugees to Ngoma *commune*. However, furious soldiers, claiming to be part of the Presidential Guard, interrupted the meeting and called Kanyabashi an accomplice of the *Inkotanyi*.<sup>807</sup> The Kanyabashi Defence further contends that there was no evidence adduced as to the existence of two inciting meetings in Cyarwa around May 1994 as provided by Paragraph 5.8 of the Kanyabashi Indictment.<sup>808</sup>

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<sup>801</sup> Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>802</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts).

<sup>803</sup> Para. 6.29 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9); *see also* Para. 6.32 of the Kanyabashi Indictment (defining the “subordinates” referred to).

<sup>804</sup> Prosecution Closing Brief, pp. 390-391, para. 20.

<sup>805</sup> Kanyabashi Closing Brief, paras. 353-354.

<sup>806</sup> Kanyabashi Closing Brief, paras. 354, 358.

<sup>807</sup> Kanyabashi Closing Brief, paras. 367-368; Kanyabashi Closing Argument, T. 28 April 2009 p. 37.

<sup>808</sup> Kanyabashi Closing Brief, para. 373.



401. The Kanyabashi Defence asserts that unrest started in the afternoon of Thursday 21 April 1994 and not in the morning of 20 April 1994, as alleged by Witness QG.<sup>809</sup> Attacks in Agateme were launched and encouraged by *gendarmes* and not, as Witness QG suggests, by *commune* policemen sent by Kanyabashi.<sup>810</sup> The Defence further submits that Kanyabashi issued strict instructions forbidding policemen from becoming involved in the killings.<sup>811</sup>

402. Finally, the Defence points out that Witness QG is part of a group that fabricated false testimony.<sup>812</sup> In support of its submissions, the Defence relies on the testimony of Witnesses D-2-YYYY, D-2-20-F, D-2-5-I and D-2-21-T.

### 3.3.3.2 Preliminary Issues

403. The Defence asserts the evidence produced at trial cannot sustain a conviction because of contradictions between the dates and facts alleged in the Indictment and Witness QG's account. The Defence first raised this issue in its preliminary motion and during Witness QG's testimony on 15 March 2004.<sup>813</sup>

404. On 15 March 2004, in the course of Witness QG's testimony, the Kanyabashi Defence asserted that Witness QG's testimony was not contained within Paragraph 5.8 of the Amended Indictment because he testified as to meetings taking place in the month of April 1994 and not, as Paragraph 5.8 asserts, in or around the month of May 1994.<sup>814</sup> In short, it asserted the evidence did not conform to the Indictment.

405. The Chamber recalls its Decision of 15 May 2004 in which it held that Witness QG's testimony regarding the Cyarwa *secteur* meetings chaired by Kanyabashi was generally encompassed by the Indictment.<sup>815</sup> In this regard, the Chamber notes the Kanyabashi Indictment specified that Kanyabashi took part in the meetings "in or around May 1994".<sup>816</sup>

406. The Chamber finds that Paragraph 5.8 of the Kanyabashi Indictment did not provide adequate notice of the alleged April 1994 meetings by alleging they occurred *in or around* May 1994 at Cyarwa *secteur*, Ngoma *commune*. The location is clearly specified, however the time frame is ambiguous. The Chamber must then determine whether this specific paragraph has been cured of this defect through subsequent Prosecution disclosures.

407. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness QG, who was expected to testify as to: a meeting between Kanyabashi with the *conseiller* of his *secteur*; a 15 April 1994 public meeting chaired by Kanyabashi at which he urged the people to start night patrols to protect themselves against the

<sup>809</sup> Kanyabashi Closing Brief, paras. 389-390.

<sup>810</sup> Kanyabashi Closing Brief, paras. 393, 398.

<sup>811</sup> Kanyabashi Closing Brief, para. 395.

<sup>812</sup> Kanyabashi Closing Brief, para. 8. The Chamber notes that it has previously set out the evidence of Witness D-2-21-T as it relates to the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>813</sup> Kanyabashi Closing Brief, paras. 353-354.

<sup>814</sup> T. 15 March 2004 pp. 9-10 (Witness QG).

<sup>815</sup> T. 15 March 2004 p. 10 (Witness QG).

<sup>816</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts) (emphasis added).

enemy; and a meeting convened by Kanyabashi on around 18 or 19 April 1994 that Witness QG attempted to attend but from which he was chased away.<sup>817</sup> This information is consistent with Witness QG's previous statement of 12 June 1996, disclosed to the Defence on 4 December 2000, over three years prior to Witness QG's testimony at trial on 15 March 2004. Therefore, the Defence was given adequate notice by the Prosecution Pre-Trial Brief and disclosures that the meetings chaired by Kanyabashi allegedly took place in the month of April 1994.

408. For the foregoing reasons, the Chamber considers that Paragraph 5.8 of the Kanyabashi Indictment is cured by the disclosure of clear, consistent and timely information.<sup>818</sup> Consequently, Kanyabashi was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence case.<sup>819</sup>

### 3.3.3.3 Evidence

#### Prosecution Witness QG

409. Witness QG, a Tutsi who worked in Ngoma *commune*,<sup>820</sup> testified that he saw Kanyabashi on two occasions after 6 April 1994.<sup>821</sup> The first occasion was about two to four days after the President's plane crash, on or about 8 to 10 April 1994.<sup>822</sup> He observed Kanyabashi come to meet with the *conseiller* of Cyarwa *secteur* at the *secteur* office, shared between Cyarwa-Sumo and Cyarwa-Cyimana *secteurs*.<sup>823</sup> Kanyabashi was accompanied by two policemen, including the deputy brigadier of the *commune* police, whose first name was Gabriel.<sup>824</sup> Witness QG was not present at this meeting between Kanyabashi and the *conseiller* on that date.<sup>825</sup>

410. The witness saw Kanyabashi about four to six days after the first occasion, when Witness QG participated in a meeting at which Kanyabashi was present, convened at the Cyarwa *secteur* office, between noon and 2.00 p.m.<sup>826</sup> When confronted with his prior statement, he agreed the meeting was likely to have taken place on 15 April 1994.<sup>827</sup> Kanyabashi arrived in a white Peugeot vehicle and was again accompanied by two police officers, including Gabriel, and other members of the Ngoma *commune* population.<sup>828</sup> The

<sup>817</sup> Prosecution Pre-Trial Brief – Appendix; Witness QG (55).

<sup>818</sup> *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105; *Niyitegeka*, Judgement (AC), para. 195 (citing *Kupreškić et al.*, Judgement (AC), para. 114); *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. 22.

<sup>819</sup> See *Niyitegeka*, Judgement (AC), para. 197; *Kupreškić et al.*, Judgement (AC), paras. 119-121; *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. 35; *Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 2-3.

<sup>820</sup> Prosecution Exhibit 89 (Personal Particulars).

<sup>821</sup> T. 15 March 2004 pp. 6-7 (Witness QG).

<sup>822</sup> T. 15 March 2004 pp. 7, 33-34 (Witness QG).

<sup>823</sup> T. 15 March 2004 pp. 7, 33, 39; T. 15 March 2004 p. 42 (Witness QG) (French).

<sup>824</sup> T. 15 March 2004 pp. 7, 34, 36, 39 (Witness QG).

<sup>825</sup> T. 15 March 2004 p. 7 (Witness QG).

<sup>826</sup> T. 15 March 2004 pp. 7, 37 (Witness QG).

<sup>827</sup> T. 15 March 2004 p. 49 (Witness QG).

<sup>828</sup> T. 15 March 2004 pp. 7, 34, 39 (Witness QG).

witness could not identify the other policeman.<sup>829</sup> A camouflage military vehicle with a back similar to a pickup, containing about four soldiers, followed Kanyabashi's vehicle to the meeting and arrived almost at the same time as Kanyabashi's vehicle.<sup>830</sup> The witness could not specify whether they were *gendarmes*, but noticed that they were wearing military uniforms.<sup>831</sup>

411. At the moment Kanyabashi arrived, Witness QG was in the courtyard in front of the *secteur* office. The witness entered the building only after Kanyabashi's arrival, as the conference room where the meeting was to be held was only opened upon Kanyabashi's arrival.<sup>832</sup> There were many people there from the neighbouring *secteurs* of Cyarwa-Sumo and Cyarwa-Cyimana.<sup>833</sup>

412. Witness QG stated that at the time of the meeting killings had not yet started and *Gendarmerie* Commander Habyarabatuma was still in his post.<sup>834</sup> He could not be certain as to whether *Préfet* Habyalimana was still in his post or not, but testified about a rumour that *Préfet* Habyalimana had been dismissed from his post because he was Tutsi.<sup>835</sup>

413. Witness QG testified that Kanyabashi addressed the population, composed of both Tutsis and Hutus.<sup>836</sup> According to the witness, Kanyabashi said, "[y]ou can take weapons, and defend yourselves to stop the enemy from infiltrating amongst you." When an attendee of the meeting retorted that there were people from other *communes* looking for refuge in the *commune*, he responded: "You have to chase those people who are seeking refuge out. They may create insecurity." Again, when asked what he was going to do about the houses being burnt in Ngoma, he responded, "[t]hose are *Interahamwe* who attacked that area and soon they will be chased away from the *secteur*."<sup>837</sup>

414. Witness QG testified that people were asked to organise night patrols and roadblocks, but that after the meeting there was insecurity in the *commune*. Hutus separated themselves from Tutsis and started to chase out the Tutsis.<sup>838</sup>

415. Witness QG testified that on 20 April 1994, he travelled to Mukoni and on the return trip he encountered a vehicle filled with soldiers from the Rwandan Army and police officers from Ngoma *commune*, including Gabriel. They asked one of the people travelling with Witness QG to direct them to the house of Etienne Gitefano, who worked for the bishopric, and whether Gitefano was home. The police and soldiers fired at Gitefano's residence and took a radio, a television set and mattresses out of the house.<sup>839</sup>

416. Witness QG stated the police and soldiers left Gitefano's house and proceeded to attack the house of Jean Karekezi, a merchant, who lived opposite Gitefano. The police and soldiers

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<sup>829</sup> T. 15 March 2004 p. 39 (Witness QG).

<sup>830</sup> T. 15 March 2004 pp. 39-40 (Witness QG).

<sup>831</sup> T. 15 March 2004 p. 40 (Witness QG).

<sup>832</sup> T. 15 March 2004 p. 37 (Witness QG).

<sup>833</sup> T. 15 March 2004 pp. 38-39 (Witness QG).

<sup>834</sup> T. 15 March 2004 pp. 39-40 (Witness QG).

<sup>835</sup> T. 15 March 2004 pp. 40-41 (Witness QG).

<sup>836</sup> T. 15 March 2004 pp. 8, 40 (Witness QG).

<sup>837</sup> T. 15 March 2004 pp. 8, 10-11, 42 (Witness QG).

<sup>838</sup> T. 15 March 2004 p. 11 (Witness QG).

<sup>839</sup> T. 15 March 2004 pp. 11-12 (Witness QG).

told other members of the population to go inside and loot the home. Witness QG stated that two men, named Safari and Mingoti, had received weapons training and took part in the lootings.<sup>840</sup>

417. Witness QG testified that on returning home, his own house was being attacked. Soldiers and those who had undergone training were knocking down his front door. Some of the attackers had grenades, rifles and clubs. He had left his pregnant wife and three-year-old child in the home when he went out that morning and had not seen them since that day.<sup>841</sup>

418. Witness QG stated that Kanyabashi issued instructions which people apparently did not respect or obey, and went beyond them. The witness averred that there were instructions to exterminate Tutsis and that Kanyabashi was not in a position to stop what was going on. Kanyabashi should have informed his superiors what was going on so that they could stop those people from perpetrating reprehensible acts.<sup>842</sup>

419. Witness QG testified that he knew Kanyabashi before April 1994. He recalled seeing Kanyabashi on two occasions after 6 April 1994, but was somewhat unclear on this point.<sup>843</sup> Witness QG identified Kanyabashi in court.<sup>844</sup>

420. Witness QG was asked during cross-examination whether he was a member of *Ibuka*. He stated that he worked with other survivors in the region for the purpose of burying victims in dignity.<sup>845</sup> They looked for people that died on the hill and buried them.<sup>846</sup>

#### Kanyabashi Defence Witness D-2-YYYY

421. Witness D-2-YYYY, a Hutu civil servant,<sup>847</sup> testified that around 18 to 20 April 1994 he was stationed at Mukura Bridge for three days.<sup>848</sup> On the third day, a Thursday, he returned to his home at around 12.30 or 1.30 p.m. and was picked back up by a *commune* police vehicle to go back on duty.<sup>849</sup> He knew it was Thursday because his wife had gone to the animal market, which was held every Thursday, to sell a goat.<sup>850</sup> 21 April 1994 was a Thursday.<sup>851</sup>

422. Witness D-2-YYYY was picked up by a *commune* police vehicle at about 3.30 or 4.00 p.m. and taken to a place called Ku'gateme, also known as Agateme or Gateme, at the

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<sup>840</sup> T. 15 March 2004 pp. 12-13 (Witness QG) (French) (for spelling of "Jean").

<sup>841</sup> T. 15 March 2004 p. 13 (Witness QG).

<sup>842</sup> T. 15 March 2004 p. 50 (Witness QG).

<sup>843</sup> T. 15 March 2004 p. 5 (Witness QG) (saw Kanyabashi twice prior to 6 April 1994); T. 15 March 2004 p. 25 (Witness QG) (saw Kanyabashi twice after April 1994); T. 15 March 2004 pp. 32-33 (Witness QG) (testifying in cross-examination that he saw Kanyabashi regularly prior to April 1994, and twice after 6 April 1994).

<sup>844</sup> T. 15 March 2004 pp. 25-26 (Witness QG).

<sup>845</sup> T. 16 March 2004 p. 44 (ICS) (Witness QG).

<sup>846</sup> T. 16 March 2004 p. 45 (ICS) (Witness QG).

<sup>847</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>848</sup> T. 27 November 2007 pp. 39, 41-42 (ICS) (Witness D-2-YYYY).

<sup>849</sup> T. 27 November 2007 pp. 45, 53-54 (ICS); T. 3 December 2007 p. 46 (ICS) (Witness D-2-YYYY).

<sup>850</sup> T. 27 November 2007 p. 54 (ICS) (Witness D-2-YYYY).

<sup>851</sup> Defence Exhibit 12 (Ndayambaje) (April 1994 Calendar); T. 3 December 2007 p. 46 (ICS) (D-2-YYYY).

Cyarwa-Cyimana *secteur*.<sup>852</sup> There was a new roadblock at Ku'gateme manned by four *gendarmes*. There were also *Interahamwe* and more *gendarmes* in the area.<sup>853</sup>

423. At Ku'gateme a group of about 50 *gendarmes* and citizens were looting homes, breaking windows and forcing doors open.<sup>854</sup> In addition, *gendarmes* were firing at the houses and breaking through the walls of the homes.<sup>855</sup> The assailants targeted the home of Karekezi, nicknamed Gifuka and Muzungu, and the home of the bishop's driver, whose name he could not recall.<sup>856</sup> He stated that *gendarmes* and *Interahamwe* were ransacking and destroying houses, and that Karekezi's home was attacked by about 50 *Interahamwe*.<sup>857</sup>

424. *Interahamwe* arrived in a civilian Toyota Hilux belonging to CUSP, the university public health centre, and driven by a man named Déo with whom the witness was acquainted.<sup>858</sup> It was filled with between 15 and 20 persons.<sup>859</sup> Most of them, including Déo, were wearing military shirts and civilian trousers. Others were wearing the *kitenge* fabric worn by the *Interahamwe*.<sup>860</sup>

425. The *Interahamwe* vehicle proceeded immediately to Tumba.<sup>861</sup> Witness D-2-YYYY and the *commune* police vehicle arrived at Ku'gateme at almost the same time as the *Interahamwe* vehicle.<sup>862</sup> The *commune* police vehicle stopped at Ku'gateme and the brigadier stepped out of the vehicle to inquire of the *gendarmes* at the roadblock what was happening. The *gendarmes* responded angrily and stated, "[y]ou and your boss are unaware of what you are doing." The brigadier and the witness responded that it was them, namely the brigadier and the witness, who did not know what the *gendarmes* were doing. The police then returned to town.<sup>863</sup>

#### Kanyabashi Defence Witness D-2-20-F

426. Witness D-2-20-F, a Hutu who worked at the *Groupe Scolaire*,<sup>864</sup> testified that he attended a meeting at the *secteur* office, chaired by Kanyabashi, around 17 or 18 April 1994, one-and-a-half weeks after the death of the President.<sup>865</sup> He attended the meeting with Witness QG.<sup>866</sup> The witness estimated the number of participants as between 200 and 300, stated they were from both *secteurs*, and were both Hutus and Tutsis.<sup>867</sup> The *conseillers* of Cyarwa-Sumo

<sup>852</sup> T. 27 November 2007 pp. 56-58 (ICS); T. 28 November 2007 p. 5; T. 3 December 2007 p. 46 (ICS) (Witness D-2-YYYY).

<sup>853</sup> T. 27 November 2007 p. 58 (ICS); T. 28 November 2007 pp. 4-5 (Witness D-2-YYYY).

<sup>854</sup> T. 27 November 2007 p. 59 (ICS); T. 28 November 2007 p. 5 (Witness D-2-YYYY).

<sup>855</sup> T. 27 November 2007 p. 59 (ICS); T. 28 November 2007 p. 4 (Witness D-2-YYYY).

<sup>856</sup> T. 28 November 2007 p. 5; T. 3 December 2007 p. 46 (ICS) (D-2-YYYY).

<sup>857</sup> T. 3 December 2007 p. 46 (ICS) (D-2-YYYY).

<sup>858</sup> T. 27 November 2007 pp. 58-59 (ICS) (Witness D-2-YYYY).

<sup>859</sup> T. 27 November 2007 p. 59 (ICS) (Witness D-2-YYYY).

<sup>860</sup> T. 27 November 2007 p. 59 (ICS) (Witness D-2-YYYY).

<sup>861</sup> T. 28 November 2007 p. 4 (Witness D-2-YYYY).

<sup>862</sup> T. 27 November 2007 p. 59 (ICS) (Witness D-2-YYYY).

<sup>863</sup> T. 28 November 2007 p. 13 (ICS) (Witness D-2-YYYY).

<sup>864</sup> Defence Exhibit 634 (Kanyabashi) (Personal Particulars).

<sup>865</sup> T. 4 March 2008 pp. 11-12 (ICS) (Witness D-2-20-F).

<sup>866</sup> T. 4 March 2008 pp. 36-37 (ICS) (Witness D-2-20-F).

<sup>867</sup> T. 4 March 2008 pp. 12-13 (ICS) (Witness D-2-20-F).

and Cyarwa-Cyimana were both present, as were the heads of the *cellules*.<sup>868</sup> The meeting started at around 11.00 a.m.<sup>869</sup> Kanyabashi arrived in a vehicle with one policeman, but other policemen attended the meeting as civilians and were out of uniform.<sup>870</sup> The witness asserted that a police officer named Gabriel Twagiramungu attended the meeting, but not as Kanyabashi's escort.<sup>871</sup>

427. Witness D-2-20-F stated that Kanyabashi informed the population that there were people from Gikongoro *préfecture* and Runyinya *commune* who were taking refuge in Cyarwa-Sumo and Cyarwa-Cyimana *secteurs*. Kanyabashi said: "My brothers and sisters, I am inviting you to show compassion and to welcome those brothers and sisters that have come to take refuge in your homes or in your area. I am appealing to you and I am calling on you to welcome these people. I promise you that we are going to bring you assistance in order to help you to give food to those people. If you welcome them to your homes we will assist you by providing you what is needed for their upkeep."<sup>872</sup>

428. Kanyabashi went on to say: "I am pleading with you and I am urging you to ... do all that can be done to ensure that nobody should attack any other persons. We have seen what is happening in Gishamvu and ... we could see smoke rising ... in Gishamvu because houses were being burnt there ... we don't want what is happening there to happen in our *communes*."<sup>873</sup>

429. Finally, Kanyabashi lamented that it was difficult to understand how people who were living in peaceful coexistence and intermarrying could start fighting each other. He said: "No one should take advantage of the death of the president to sow seeds of discord amongst people. This matter concerns only the higher authorities of the country and you ... should continue to live in harmony."<sup>874</sup> Kanyabashi spoke for around an hour-and-a-half.<sup>875</sup>

430. This meeting was interrupted by soldiers from a Presidential Guard unit who dispersed the population by beating or kicking them.<sup>876</sup> The soldiers intervened when the members of the population began expressing their opinions and asking for further explanations.<sup>877</sup> The soldiers said the meeting was not authorised while the country was at war and they suspected it was convened by accomplices of the *Inkotanyi*.<sup>878</sup>

431. Witness D-2-20-F denied that Kanyabashi asked the population to take up weapons or to chase away the refugees. He asserted that, pursuant to Kanyabashi's request, he hosted three refugees in his own home.<sup>879</sup>

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<sup>868</sup> T. 5 March 2008 p. 58 (ICS) (Witness D-2-20-F).

<sup>869</sup> T. 4 March 2008 p. 12 (ICS) (Witness D-2-20-F).

<sup>870</sup> T. 4 March 2008 pp. 12, 20 (ICS); T. 5 March 2008 p. 55 (ICS) (Witness D-2-20-F).

<sup>871</sup> T. 5 March 2008 p. 56 (ICS) (Witness D-2-20-F).

<sup>872</sup> T. 4 March 2008 p. 13 (ICS) (Witness D-2-20-F).

<sup>873</sup> T. 4 March 2008 p. 13 (ICS) (Witness D-2-20-F).

<sup>874</sup> T. 4 March 2008 p. 13 (ICS) (Witness D-2-20-F).

<sup>875</sup> T. 4 March 2008 p. 14 (ICS) (Witness D-2-20-F).

<sup>876</sup> T. 4 March 2008 p. 19 (ICS) (Witness D-2-20-F).

<sup>877</sup> T. 4 March 2008 p. 15 (ICS) (Witness D-2-20-F).

<sup>878</sup> T. 4 March 2008 p. 19 (ICS) (Witness D-2-20-F).

<sup>879</sup> T. 4 March 2008 p. 20 (ICS) (Witness D-2-20-F).

432. Witness D-2-20-F testified that on 21 April 1994, at around 2.00 p.m., he went to fetch groceries from Karekezi's at Agateme.<sup>880</sup> Karekezi was also known as Muzungu and Gifuka.<sup>881</sup> There were about 10 *gendarmes* and a group of about 50 civilians on the road who were accompanied by a member of Parliament named Laurent Baravuga.<sup>882</sup> A few moments later there were gunshots coming from Grégoire Hategekimana's house and people scattered. Two *gendarmes* appeared from Hategekimana's house.<sup>883</sup> People coming from Hategekimana's house told Witness D-2-20-F that Hategekimana, Simpunga and one other person had all been shot and they had seen their bodies.<sup>884</sup>

433. When the *gendarmes* arrived at Karekezi's shop, they fired about three shots at the lock and opened the door. They told the members of the population that they should follow the example of the *gendarmes* and loot the shop. Minister Baravuga added: "You, the inhabitants of C'lyarwa, you have become impossible. I came here with the *gendarmes* to show you the example to kill. Our country is plagued by a difficult war, and I would like to show that you have to track down the enemy as well as their ... accomplices." He stated the enemies were the Tutsi and their accomplices included the authorities such as "Kanyabatutsi".<sup>885</sup> The population proceeded to loot Karekezi's shop.<sup>886</sup> The witness stated that Karekezi was not killed that day and he was still alive.<sup>887</sup>

434. After shooting open the door of Karekezi's shop, the *gendarmes* went down the road to the home of a driver at the bishopric, Gitefano.<sup>888</sup> The *gendarmes* fired shots at the home at which time the witness left the location to tend to his pregnant wife.<sup>889</sup> Witness D-2-20-F did not witness the looting of Gitefano's home.<sup>890</sup> Witness D-2-20-F encountered Safari as the witness was leaving for home.<sup>891</sup> He testified that Safari was not among the looters of Gitefano's and Karekezi's homes. Several of the looters confessed to their crimes before the *Gacaca* courts, including André Gakwaya and Dudoni Banzubaze.<sup>892</sup>

435. Witness D-2-20-F stated that no *commune* police were present.<sup>893</sup> He distinguished the police from *gendarmes* because the former wore green shirts and trousers, yellow berets and black shoes whereas the latter wore the same uniforms as soldiers, but with reddish berets.<sup>894</sup> He denied that Kanyabashi had sent assailants and police officers to attack the homes because,

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<sup>880</sup> T. 4 March 2008 pp. 28-29 (ICS); 11 March 2008 p. 35 (ICS) (Witness D-2-20-F).

<sup>881</sup> T. 11 March 2008 p. 35 (ICS) (Witness D-2-20-F).

<sup>882</sup> T. 4 March 2008 pp. 28-29, 31 (ICS) (Witness D-2-20-F).

<sup>883</sup> T. 4 March 2008 p. 28 (ICS) (Witness D-2-20-F).

<sup>884</sup> T. 4 March 2008 pp. 30-31 (ICS) (Witness D-2-20-F).

<sup>885</sup> T. 4 March 2008 p. 31 (ICS) (Witness D-2-20-F).

<sup>886</sup> T. 4 March 2008 p. 32 (ICS) (Witness D-2-20-F).

<sup>887</sup> T. 11 March 2008 p. 34 (Witness D-2-20-F).

<sup>888</sup> T. 4 March 2008 pp. 32-33 (ICS) (Witness D-2-20-F).

<sup>889</sup> T. 4 March 2008 pp. 28, 33 (ICS) (Witness D-2-20-F).

<sup>890</sup> T. 4 March 2008 p. 33 (ICS) (Witness D-2-20-F).

<sup>891</sup> T. 11 March 2008 pp. 36-37 (ICS) (Witness D-2-20-F).

<sup>892</sup> T. 11 March 2008 p. 36 (ICS) (Witness D-2-20-F).

<sup>893</sup> T. 4 March 2008 pp. 32, 34 (ICS) (Witness D-2-20-F).

<sup>894</sup> T. 4 March 2008 p. 34 (ICS) (Witness D-2-20-F).

if Kanyabashi had sent them, it would not have been necessary for the *gendarmes* to come and mount the attack themselves.<sup>895</sup>

436. Witness D-2-20-F also stated that when he arrived at Agateme, the *gendarmes* were on foot but at one point a vehicle arrived and one of the *gendarmes* went to speak to the driver, who parked the vehicle near Cyarwa primary school.<sup>896</sup> The witness thought that the *gendarmes* had arrived at Agateme in that vehicle.<sup>897</sup>

437. Witness D-2-20-F stated that immediately after the 17 or 18 April 1994 meeting, Witness QG told him that soldiers had begun to interfere with issues of the *secteur*.<sup>898</sup> Witness D-2-20-F also stated that on 22 April 1994, he heard that Witness QG's wife and child had been killed during an attack the day before at Witness QG's house. Witness D-2-20-F therefore concluded that Witness QG had fled the country.<sup>899</sup>

438. Witness D-2-20-F testified that a *Gacaca* court sentenced him to 12 years in prison for killing a Tutsi neighbour, after accepting his confession.<sup>900</sup> He was given credit for nine years' time served in prison and was sentenced to serve the remaining three years by performing labour.<sup>901</sup> He stated that he attended all of the *Gacaca* proceedings in Cyarwa-Sumo *secteur* and that he never heard any charges against Kanyabashi.<sup>902</sup>

439. Witness D-2-20-F testified that he knew Kanyabashi since before 1976.<sup>903</sup> He described Kanyabashi as about 1.75 to 1.78 metres in height, dark in complexion and between 52 and 55 years of age in 1994. The witness identified Kanyabashi in court.<sup>904</sup> The witness testified that he knew Kanyabashi as director of Mamba Hospital and as *bourgmestre*, but he had never spoken directly to Kanyabashi.<sup>905</sup>

#### Kanyabashi Defence Witness D-2-5-I

440. Witness D-2-5-I, a Hutu civil servant,<sup>906</sup> testified that on 21 April 1994 he was riding in a *commune* vehicle from Rango to Cyarwa which passed by Agateme and he observed a roadblock manned by *gendarmes*.<sup>907</sup> In front of the roadblock there were other *gendarmes* and several other people committing murders and looting the home of Gitefano and Karekezi's place.<sup>908</sup>

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<sup>895</sup> T. 4 March 2008 p. 34 (ICS) (Witness D-2-20-F).

<sup>896</sup> T. 11 March 2008 p. 36 (ICS) (Witness D-2-20-F).

<sup>897</sup> T. 11 March 2008 p. 36 (ICS) (Witness D-2-20-F).

<sup>898</sup> T. 11 March 2008 pp. 43-44 (ICS) (Witness D-2-20-F).

<sup>899</sup> T. 11 March 2008 pp. 43-45 (ICS) (Witness D-2-20-F).

<sup>900</sup> T. 3 March 2008 pp. 20-21, 24-26; T. 4 March 2008 p. 4 (Witness D-2-20-F).

<sup>901</sup> T. 3 March 2008 p. 21 (Witness D-2-20-F).

<sup>902</sup> T. 4 March 2008 p. 4; T. 4 March 2008 p. 10 (ICS) (Witness D-2-20-F).

<sup>903</sup> T. 5 March 2008 p. 14 (ICS) (Witness D-2-20-F).

<sup>904</sup> T. 4 March 2008 pp. 5-6 (Witness D-2-20-F).

<sup>905</sup> T. 5 March 2008 p. 14 (ICS) (Witness D-2-20-F).

<sup>906</sup> Defence Exhibit 615 (Kanyabashi) (Personal Particulars).

<sup>907</sup> T. 21 January 2008 pp. 29-30 (ICS) (Witness D-2-5-I).

<sup>908</sup> T. 21 January 2008 p. 30 (ICS) (Witness D-2-5-I).



441. When he arrived in Agateme, Witness D-2-5-I encountered the *conseiller* of Cyarwa-Sumo *secteur*, Nicodemus Hategekimana, who stated that he had witnessed attacks and killings by soldiers. At the same time a vehicle transporting soldiers arrived with Masabo and his family, who the witness believed were to be killed.<sup>909</sup>

442. The police brigadier of Ngoma *commune*, Gahamanyi, spoke to the citizens in Agateme and urged them to return to their homes and abstain from committing criminal acts. The *gendarmes* there threatened the *commune* police and told them to leave.<sup>910</sup>

443. Witness D-2-5-I testified that the *bourgmestre* of Ngoma *commune* in April 1994 was Kanyabashi, and he had been *bourgmestre* since he (the witness) was a child.<sup>911</sup> The witness said that Kanyabashi was never a personal friend of his. The witness was his subordinate and their relationship was limited to that.<sup>912</sup> He identified Kanyabashi in court.<sup>913</sup>

### 3.3.3.4 Deliberations

444. The Prosecution asserts that Kanyabashi incited the population to kill Tutsis by his remarks at the Cyarwa *secteur* meeting held around mid-April 1994. As a result, attacks were launched on Tutsi homes in Agateme, including those of Étienne Gitefano and Jean Karekezi and Ngoma *commune* policemen, among others, took part in the attacks. The Defence denies these attacks were triggered by Kanyabashi's speech at the Cyarwa *secteur* meeting, and denies the involvement of Ngoma *commune* policemen in these attacks.<sup>914</sup>

#### *Cyarwa Secteur Public Meeting*

445. Prosecution Witness QG and Defence Witness D-2-20-F both testified that Kanyabashi chaired a public meeting in Cyarwa-Sumo and Cyarwa-Cyimana *secteurs* around mid-April 1994.<sup>915</sup> However, they did not agree on the exact date of the meeting; Witness QG testified that it was on 15 April 1994 between noon and 2.00 p.m.,<sup>916</sup> while Witness D-2-20-F testified that it occurred on 17 or 18 April 1994, starting at around 11.00 a.m.<sup>917</sup> Both witnesses testified that Cyarwa-Sumo and Cyarwa-Cyimana *secteurs* shared offices at the same location and that the meeting was held outside the offices.<sup>918</sup> Both witnesses testified that the meeting was held when refugees were entering into those *secteurs* but prior to the start of killings in the *secteurs*.<sup>919</sup> Furthermore, both witnesses testified that Kanyabashi presided over the meeting and both Hutus and Tutsis were present.<sup>920</sup>

<sup>909</sup> T. 21 January 2008 pp. 30-31 (ICS) (Witness D-2-5-I).

<sup>910</sup> T. 21 January 2008 p. 31 (ICS) (Witness D-2-5-I).

<sup>911</sup> T. 11 December 2007 p. 59 (Witness D-2-5-I).

<sup>912</sup> T. 11 December 2007 p. 62 (ICS) (Witness D-2-5-I).

<sup>913</sup> T. 11 December 2007 p. 51 (ICS); T. 11 December 2007 pp. 59-60 (Witness D-2-5-I).

<sup>914</sup> Kanyabashi Closing Brief, paras. 372-373, 393-394.

<sup>915</sup> T. 15 March 2004 pp. 7, 33, 37, 39 (Witness QG); T. 4 March 2008 pp. 11-12 (ICS) (Witness D-2-20-F).

<sup>916</sup> T. 15 March 2004 pp. 7, 37, 49 (Witness QG).

<sup>917</sup> T. 4 March 2008 pp. 11-12 (ICS) (Witness D-2-20-F).

<sup>918</sup> T. 15 March 2004 pp. 7, 33, 37, 39 (Witness QG); T. 4 March 2008 pp. 11-12 (ICS) (Witness D-2-20-F).

<sup>919</sup> T. 15 March 2004 pp. 8, 10-11, 40-42 (Witness QG); T. 4 March 2008 p. 13 (ICS) (Witness D-2-20-F).

<sup>920</sup> T. 15 March 2004 pp. 7-8, 37, 40 (Witness QG); T. 4 March 2008 pp. 11-13 (ICS) (Witness D-2-20-F).

446. Considering that 15 years have elapsed since this event occurred, and taking into account the corroborating elements between the witnesses as to the location and participants in the Cyarwa *secteur* public meeting, the Chamber finds that the witnesses testified about the same meeting which occurred in mid-April. Witness QG stated that Kanyabashi arrived at the Cyarwa *secteur* meeting accompanied by two policemen, including the Deputy Brigadier, named Gabriel.<sup>921</sup> He also stated that a car transporting about four soldiers followed Kanyabashi's vehicle to the meeting.<sup>922</sup> Witness QG testified that during the meeting Kanyabashi instructed the population to take weapons to defend themselves and to chase out those seeking refuge because they were creating insecurity.<sup>923</sup> The witness stated that after the meeting there was insecurity in the *commune*, and Hutus separated themselves from Tutsis and chased the Tutsis out.<sup>924</sup>

447. In contrast, Witness D-2-20-F stated that Kanyabashi came to the meeting escorted by a single police officer whom he was not able to identify.<sup>925</sup> There were no soldiers with Kanyabashi on that occasion.<sup>926</sup> Soldiers only arrived later to disrupt the meeting.<sup>927</sup> In his speech, Kanyabashi urged the population to welcome the refugees and did not instruct the population to take up arms.<sup>928</sup>

448. The Chamber notes that Witness D-2-20-F was added as a witness on 15 February 2008.<sup>929</sup> The Chamber recalls that Witness D-2-20-F confessed to participating in killing his neighbour during the genocide and was sentenced to 12 years in prison. However, he was not detained at the time of his testimony and did not have a motive to lie to seek leniency in his punishment.<sup>930</sup>

449. In light of the conflicting testimony of Witnesses D-2-20-F and QG, and absent any corroborating evidence to support Witness QG's account of the meeting, the Chamber finds the Prosecution has not established that Kanyabashi urged the population to take up arms and to defend themselves at the Cyarwa *secteur* meeting of mid-April 1994.

#### *Agateme Attacks*

450. Witness QG testified that he observed both soldiers and *commune* police, including one named Gabriel, attack the homes of Karekezi and Gitefano at Agateme on 20 April 1994.<sup>931</sup> He stated that police and soldiers encouraged the population to loot the homes.<sup>932</sup> However, during cross-examination, Witness QG was confronted with the fact that in the Kinyarwanda version of his prior statement of 12 June 1996, he did not mention the presence of police officers

<sup>921</sup> T. 15 March 2004 pp. 7, 34, 36, 39 (Witness QG).

<sup>922</sup> T. 15 March 2004 pp. 39-40 (Witness QG).

<sup>923</sup> T. 15 March 2004 pp. 8, 10-11, 40, 42 (Witness QG).

<sup>924</sup> T. 15 March 2004 p. 11 (Witness QG).

<sup>925</sup> T. 4 March 2008 pp. 12, 20 (ICS); T. 5 March 2008 pp. 55-56 (ICS) (Witness D-2-20-F).

<sup>926</sup> T. 4 March 2008 pp. 12, 20 (ICS); T. 5 March 2008 pp. 55-56 (ICS) (Witness D-2-20-F).

<sup>927</sup> T. 4 March 2008 pp. 15, 19 (ICS) (Witness D-2-20-F).

<sup>928</sup> T. 4 March 2008 pp. 13, 20 (ICS) (Witness D-2-20-F).

<sup>929</sup> *Kanyabashi et al.*, Decision on Kanyabashi's Motion to Vary His List of Witnesses Pursuant to Rule 73ter (TC), 15 February 2008, para. 69.

<sup>930</sup> T. 3 March 2008 pp. 20-21, 24-26; T. 4 March 2008 p. 4 (Witness D-2-20-F).

<sup>931</sup> T. 15 March 2004 pp. 11-12 (Witness QG).

<sup>932</sup> T. 15 March 2004 pp. 11-12 (Witness QG).

during this incident. The witness clarified that when the shooting began, he also saw a police officer among the soldiers, but since several shots were fired he could not tell whether it was the soldiers or police officers who opened fire.<sup>933</sup>

451. The Defence adduced evidence through Witnesses D-2-21-T to support the assertion that Prosecution Witness QG was an *Ibuka* member who participated in meetings where they were asked to falsely accuse Kanyabashi regarding events of which the witness had no personal knowledge.<sup>934</sup> Witness D-2-21-T testified that Witness QG was encouraged to lie about Kanyabashi's involvement in the attacks at Agateme. According to Witness D-2-21-T, Witness QG was told to say that Kanyabashi supervised the destruction of Karekezi's house and ordered that Gitefano be killed.<sup>935</sup> The Chamber finds that because Witness D-2-21-T lacked credibility, as already discussed in this Judgement (), her testimony does not undermine the testimony of Witness QG.

452. In contrast to Witness QG's testimony, Witness D-2-20-F stated that *commune* police were not involved in the attacks on Karekezi's and Gitefano's homes.<sup>936</sup> However, he acknowledged that he did not personally observe the looting of Gitefano's home.<sup>937</sup> The Chamber further notes also that Witness D-2-20-F was added as a witness on 15 February 2008.<sup>938</sup> Witness D-2-YYYY and Witness D-2-5-I both stated that *gendarmes* participated in the attacks.<sup>939</sup> The Chamber notes, however, as already outlined in another section of this Judgement, that Witnesses D-2-YYYY and D-2-5-I both worked closely with Kanyabashi during the events at issue (). Therefore, they had a motive to deny involvement in the Agateme attacks. The Chamber thus cannot rely on their testimony.

453. Nevertheless, in light of the inconsistency between Witness QG's prior statement and his trial testimony and absent any corroborating evidence to support Witness QG's account of the attacks, the Chamber finds the Prosecution has not proven beyond a reasonable doubt that *commune* policeman participated in the attacks of Gitefano's and Karekezi's homes at Agateme or that Kanyabashi ordered them to participate in such attacks.

### 3.4 Cabinet Meetings, 9 April – 14 July 1994

#### 3.4.1 Introduction

454. Each of the Indictments allege that between 9 April 1994 and 14 July 1994, numerous Cabinet meetings were held in Kigali, Gitarama and Gisenyi and that during this period Prime Minister Jean Kambanda and ministers, including Nyiramasuhuko, were regularly briefed on civilian massacres. It is further alleged that during such meetings, ministers demanded

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<sup>933</sup> T. 15 March 2004 p. 82 (Witness QG).

<sup>934</sup> T. 3 November 2008 pp. 37, 39, 49, 56, 66 (ICS) (Witness D-2-21-T).

<sup>935</sup> T. 3 November 2008 pp. 56, 66 (ICS) (Witness D-2-21-T).

<sup>936</sup> T. 4 March 2008 pp. 32, 34 (ICS) (Witness D-2-20-F).

<sup>937</sup> T. 4 March 2008 p. 33 (ICS); T. 11 March 2008 p. 36 (ICS) (Witness D-2-20-F).

<sup>938</sup> *Kanyabashi et al.*, Decision on Kanyabashi's Motion to Vary His List of Witnesses Pursuant to Rule 73ter (TC), 15 February 2008, p. 17, para. 69.

<sup>939</sup> T. 21 January 2008 p. 30 (ICS) (Witness D-2-5-I); T. 27 November 2007 pp. 58-59 (ICS) (Witness D-2-YYYY); T. 3 December 2007 p. 46 (ICS) (Witness D-2-YYYY).

weapons for distribution in their respective home *préfectures* knowing that such weapons would be used in massacres.<sup>940</sup>

455. Each Indictment further alleges that during these Cabinet meetings, the Interim Government adopted directives and gave instructions to *préfets* and *bourgmestres*, which were then passed on to the general public, intended to incite, aid and abet the perpetration of the massacres. In order to ensure that the directives and instructions were carried out, a minister was appointed for each *préfecture* with responsibility for what was termed “pacification”. Nyiramasuhuko was assigned this task for Butare.<sup>941</sup>

456. These allegations are advanced only in support of counts against Nyiramasuhuko, namely conspiracy to commit genocide, genocide, complicity in genocide, incitement to commit genocide, crimes against humanity and a violation of Article 3 common to the Geneva Conventions and Additional Protocol II. Therefore, they will be considered only with respect to Nyiramasuhuko.

457. This section contains a general discussion of Cabinet meetings and “pacification”, followed by a more specific analysis of particular Cabinet meetings. The Chamber’s deliberations are based on a review of the totality of the evidence presented by the Parties, both general and specific, and are therefore contained in a single section at the end of this thematic heading. In support of the allegations as described below, the Prosecution relies on the testimony of Prosecution Witnesses FA, FAG, FAH, FAI, FAL, FAP, QBU, TA, TQ and SS, and Prosecution Expert Witnesses André Guichaoua, Alison Des Forges and Évariste Ntakirutimana. The Prosecution further relies on the evidence given by Nyiramasuhuko, Nyiramasuhuko Defence Expert Witness Eugène Shimamungu, Nyiramasuhuko Defence Witness WMKL, Kanyabashi Defence Expert Witness Filip Reyntjens, Nsabimana and Nsabimana Defence Witness Patrick Fergal Keane.

458. The Defence relies on the testimony of Nyiramasuhuko.

### 3.4.2 Preliminary Issues

459. The Ntahobali Defence, on behalf of Ntahobali and Nyiramasuhuko, requests the exclusion of, *inter alia*, the testimony of Prosecution Expert Witnesses Guichaoua and Expert Witness Ntakirutimana on the grounds that the Defence did not receive sufficient notice of the testimony of these two witnesses. It further submits that the admission into evidence of the alleged diary of Nyiramasuhuko, on which Guichaoua’s report was based, was prejudicial to

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<sup>940</sup> Para. 6.13 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8, 10 against Nyiramasuhuko); Para. 6.13 of the Kanyabashi Indictment (not in support of counts); Para. 6.13 of the Ndayambaje Indictment (not in support of counts); Para. 6.13 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>941</sup> Para. 6.14 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8-10 against Nyiramasuhuko); Para. 6.14 of the Kanyabashi Indictment (not in support of counts); Para. 6.14 of the Ndayambaje Indictment (not in support of counts); Para. 6.14 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

the rights of both Accused. It asks the Chamber to find that Nyiramasuhuko and Ntahobali's right to prepare their defence has been violated.<sup>942</sup>

460. As regards Ntakirutimana, the Chamber recalls its Decision of 30 March 2004 in which it, *inter alia*, granted the Prosecution's motion to add three new witnesses, including Ntakirutimana, to its witness list. In that Decision, the Chamber also ordered the disclosure of the non-redacted statements of the new witnesses to the Defence with a view to avoiding any delay that could prejudice the Defence in its preparation and directed the Prosecution to call such witnesses at the end of its case in order to provide the Defence with sufficient time to prepare for the cross-examination of the new witnesses.<sup>943</sup>

461. The Chamber took the view that it would be in the interests of justice to add such witnesses to the Prosecution witness list. The Chamber noted that the Prosecution disclosed Ntakirutimana's Report on 12 January 2004. The witness was not called until more than eight months later, after the end of the Prosecution case.<sup>944</sup>

462. In view of the foregoing and the fact that the Ntahobali Defence has not established the existence of prejudice as a result of Ntakirutimana being permitted to testify, the Chamber finds no reason to reconsider its earlier ruling.

463. As regards Guichaoua and Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994), the Chamber recalls its Oral Decision of 24 June 2004.<sup>945</sup> In that Decision, the Chamber first noted that the Nyiramasuhuko Defence did not object to the characterisation of the diary in question as belonging to Nyiramasuhuko despite numerous opportunities to do so.<sup>946</sup> It found that both the diary and Volume Two of Guichaoua's Report opining on the meaning of the diary were admissible as evidence.<sup>947</sup> The Chamber noted, however, that the probative value of this evidence would be evaluated at a later date.<sup>948</sup> For these reasons, the Chamber finds no reason to reconsider its earlier ruling.

### 3.4.3 Cabinet Meetings – General

#### 3.4.3.1 Introduction

464. The Prosecution submits that Nyiramasuhuko, as a member of the Interim Government and a figure of authority in Butare, conspired with the Interim Government as a whole and with influential figures in Butare to commit genocide in Butare. The Prosecution contends that she actively participated in and supported the Interim Government's agreement to commit genocide and played an active role in ensuring that the agreement was drawn up, adhered to and implemented in Butare. In support of this contention, the Prosecution relies on, *inter alia*, Nyiramasuhuko's use of the word "we".<sup>949</sup>

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<sup>942</sup> Ntahobali Closing Brief, paras. 80-81.

<sup>943</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004.

<sup>944</sup> T. 13 September 2004 (Ntakirutimana).

<sup>945</sup> T. 24 June 2004 pp. 12-17 (Oral Decision).

<sup>946</sup> T. 24 June 2004 pp. 13-14 (Oral Decision).

<sup>947</sup> T. 24 June 2004 pp. 12-17 (Oral Decision).

<sup>948</sup> T. 24 June 2004 p. 14 (Oral Decision).

<sup>949</sup> Prosecution Closing Brief, pp. 31, 35-36, paras. 15, 24, 28-29.

465. It is the Prosecution's submission that the Interim Government continued to function between 9 April 1994 and 14 July 1994: meetings were held, political appointments were made, and directives and instructions were issued and executed by the various levels in the political hierarchy, soldiers and militia, and by the local population itself, in accordance with the political structure of Rwanda.<sup>950</sup>

466. According to the Prosecution, these directives and meetings show that between 9 April 1994 and 14 July 1994 the Interim Government had decided upon a specific course of action and reached agreement on the execution of a plan to commit genocide and incite, aid and abet the massacres of Tutsi and Hutu moderates. The Prosecution argues that the Interim Government, as a fully functioning government, had developed an explicit policy to exterminate Tutsis and its members had conspired as superiors to intentionally refrain from preventing or punishing perpetrators of crimes.<sup>951</sup>

467. The Prosecution specifically refers to two Directives issued on 25 May 1994 from Prime Minister Kambanda to *préfets*; one concerning the organisation of the civilian self-defence, and the other concerning the implementation of the orders issued by the Prime Minister. Nyiramasuhuko participated in the drafting of the former document.<sup>952</sup> The Prosecution submits that these directives are an indication of a fully functioning Interim Government,<sup>953</sup> and further alleges that the Interim Government, its members and subordinates played a key role in the plan to commit genocide in Rwanda between April and July 1994.<sup>954</sup>

468. The Prosecution stresses what it considers to have been an important issue throughout the trial: the use of double-speak, or the attribution of specific hidden meanings to certain words and phrases in Rwanda in 1994, such as "enemy", "*Inyenzi*", "*Inkotanyi*", "pacification", "accomplice", "dirt", "snake" and "infiltrator". In the Prosecution's view, an analysis of the words used by figures of authority during the genocide, the context in which they were used and their meaning to the people who heard them, is necessary in order to understand how the genocide took place.<sup>955</sup>

469. The Nyiramasuhuko Defence does not contest the Prosecution's assertion in Paragraph 6.13 of the Indictments that "numerous Cabinet meetings were held successively in Kigali, Gitarama and Gisenyi." However, it rejects the allegation that between 9 April 1994 and 14 July 1994, ministers (including Nyiramasuhuko) received "regular briefings" on the situation with regard to civilian massacres.<sup>956</sup>

470. Further, the Nyiramasuhuko Defence does not contest that from 17 May 1994, Nyiramasuhuko took part in the editing of governmental directives on civil defence, which were signed by the Prime Minister on 25 May 1994. However, it submits that these directives

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<sup>950</sup> Prosecution Closing Brief, p. 35, para. 25.

<sup>951</sup> Prosecution Closing Brief, p. 36, para. 27.

<sup>952</sup> Prosecution Exhibit 121B (Prime Minister's Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994); Prosecution Exhibit 122B (Implementing the Directives of the Prime Minister on Organizing the Civil Self-Defence, 25 May 1994); Prosecution Closing Brief, pp. 59-60, para. 106.

<sup>953</sup> Prosecution Closing Brief, p. 60, para. 107.

<sup>954</sup> Prosecution Closing Brief, p. 36, para. 30.

<sup>955</sup> Prosecution Closing Brief, pp. 36-37, paras. 31-32.

<sup>956</sup> Nyiramasuhuko Closing Brief, para. 539.

were aimed at creating a uniform structure for the self-defence organisation which was already existent under various forms in the *préfectures* of the country not under RPF control.<sup>957</sup>

471. In relation to Paragraph 6.13 of the Indictments, the Nyiramasuhuko Defence submits that the allegation that during Cabinet meetings, “ministers demanded weapons for distribution in their respective home *préfectures*, knowing that the weapons would be used in the massacres”, lacks specification as regards the identity of the individuals alleged to be involved. The Nyiramasuhuko Defence also argues that the Prosecution has failed to prove that allegation against Nyiramasuhuko.<sup>958</sup>

472. Concerning Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment, the Nyiramasuhuko Defence submits that the Prosecution has not provided proof beyond a reasonable doubt in relation to the charge laid against Nyiramasuhuko, relating to the adoption and implementation of directives and instructions intended to incite, aid and abet the perpetration of the massacres.<sup>959</sup>

### 3.4.3.2 Evidence

#### Prosecution Expert Witness André Guichaoua

473. During his testimony, André Guichaoua referred to Volume Two of his Report, which contains an analysis of Nyiramasuhuko’s 1994 diary.<sup>960</sup> He testified that of all the personal diaries he has consulted, no other contains as much information on, or such a specific narration of, the period under consideration, as Nyiramasuhuko’s diary. He considered that its significance was even greater, given that the author made a particular effort to include people who were occupying important positions and in that regard, she was a very keen observer.<sup>961</sup>

474. In Guichaoua’s view, the diary was significant on two levels: first, in terms of the volume of note-taking; and second, in demonstrating the central role of the Interim Government. In relation to the first point, he considered the abundance of notes provided a deep insight into the political activities of the presidential movement before, during and after the genocide. The witness considered that the notes, as a whole, reflect Nyiramasuhuko’s perception of the political situation and a number of conclusions can be drawn from them, for instance in relation to the issue of ethnicity or the use of propaganda as employed at the time by the power-wing of the MRND. As regards the second point, the witness also stated that according to the diary, during the period from April to July 1994, the Government played a key role and was the place where discussions took place and decisions were taken.<sup>962</sup>

475. Commenting on Table 3 of Volume Two of his Report, in which he provided a non-exhaustive list of meetings and political activities attended by Nyiramasuhuko between 6 April 1994 and 17 July 1994, Guichaoua observed that she was one of the most regular attendees of

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<sup>957</sup> Nyiramasuhuko Closing Brief, para. 554.

<sup>958</sup> Nyiramasuhuko Closing Brief, para. 540.

<sup>959</sup> Nyiramasuhuko Closing Brief, para. 538.

<sup>960</sup> T. 29 June 2004 p. 68 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2).

<sup>961</sup> T. 29 June 2004 p. 68 (Guichaoua).

<sup>962</sup> T. 29 June 2004 p. 68 (Guichaoua).

Cabinet meetings.<sup>963</sup> The proximity between Gitarama and Butare made it possible for her to be present in Butare and regularly visit Murambi in Gitarama where the Cabinet would meet. According to Table 3, the Cabinet met on 15 occasions between 6 April 1994 and 17 July 1994.<sup>964</sup>

Prosecution Expert Witness Évariste Ntakirutimana

476. Évariste Ntakirutimana testified that in the context of Rwanda in 1994, “*Inkotanyi*” and “snake” referred to those who had attacked Rwanda from abroad.<sup>965</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

477. Filip Reyntjens testified to the use of double-speak in the Directive issued by the Prime Minister to all *préfets* on 27 April 1994, in which the words “enemy” and “accomplices” were used to refer to the Tutsis and possibly Hutu opponents and the word “*Inkotanyi*” to mean Tutsis.<sup>966</sup>

Nyiramasuhuko

478. In cross-examination, Nyiramasuhuko stated that between April and July 1994, she would always carry her handbag containing first aid items and her diary. She testified that she sometimes forgot her handbag and was therefore without her diary, although she did not know how many times this had occurred.<sup>967</sup> When questioned on whether she recorded events in the diary entries for the dates on which they occurred, Nyiramasuhuko answered that while this was possible, the lack of paper available after the assassination of the President led her to take notes in the diary to the extent that in only a few instances were the events written down in the corresponding date entries.<sup>968</sup>

479. In discussing her notes on what transpired at the meeting of 9 April 1994 establishing the Interim Government, Nyiramasuhuko stated: “I explained that as far as we were concerned, the massacres were not supposed to take place. That is what we were fighting against when we took office. We were opposed to the massacres. We wanted, and we stood for peace.”<sup>969</sup>

480. When questioned under cross-examination on how the Government obtained information on security across the country between April and July 1994, Nyiramasuhuko stated that as resources were limited, it was difficult to collect information. She testified that telephones were not operational, the country was at war, there was no media and the intelligence services were in the hands of the RPF.<sup>970</sup>

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<sup>963</sup> T. 29 June 2004 pp. 71-72 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 25.

<sup>964</sup> T. 29 June 2004 pp. 71-72 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 25.

<sup>965</sup> T. 13 September 2004 pp. 55-57 (Ntakirutimana).

<sup>966</sup> T. 21 November 2007 pp. 67, 70 (Reyntjens); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>967</sup> T. 12 October 2005 p. 34 (Nyiramasuhuko).

<sup>968</sup> T. 12 October 2005 p. 35 (Nyiramasuhuko).

<sup>969</sup> T. 15 November 2005 p. 25 (Nyiramasuhuko).

<sup>970</sup> T. 10 October 2005 p. 37 (Nyiramasuhuko).



### 3.4.4 Pacification

#### 3.4.4.1 Introduction

481. The Prosecution submits that a minister with responsibility for “pacification” was appointed to each *préfecture* in order to ensure that the Interim Government’s directives and instructions were implemented. The Prosecution submits that Nyiramasuhuko was assigned this duty for Butare.<sup>971</sup>

482. The Prosecution alleges that well before the issuance of the Prime Minister’s Directive of 27 April 1994, the Interim Government had already assigned ministers to *préfectures* for the purposes of pacification.<sup>972</sup> The Prosecution alleges that the Prime Minister’s Directive on restoring security of 27 April 1994 requires explanation in order for its true meaning to be understood by members of the population.<sup>973</sup> According to the Prosecution, Eliezer Niyitegeka could not have been in charge of pacification in Butare, as submitted by the Defence, because he was not a native of Butare.<sup>974</sup> The Prosecution submits that the speech he delivered as part of the pacification campaign in Butare was not a pacification speech, but rather a war speech.<sup>975</sup>

483. The Nyiramasuhuko Defence rejects the Prosecution’s contention that pacification was a campaign intended to incite, aid and abet the perpetration of massacres. It argues that the Prosecution has not adduced any evidence in support of this contention or the allegation that the Government entrusted Nyiramasuhuko with responsibility for pacification in Butare.<sup>976</sup>

484. The Defence submits that it has proved that pacification was the Government’s attempt to restore calm to the population and stop the killings.<sup>977</sup> It further submits that the only evidence adduced in relation to Nyiramasuhuko’s alleged involvement in pacification in Butare was the opinion evidence of Guichaoua, who extracted the word “pacification” from her notes and used that to conclude that Nyiramasuhuko was responsible for pacification in Butare.<sup>978</sup>

485. The Nyiramasuhuko Defence submits that pacification was a continual effort to restore peace to the population through radio messages and by meeting the *préfets* so that they, together with their subordinates, could in turn calm the population. It is the Nyiramasuhuko Defence’s submission that proof of this can be found in the Prime Minister’s Directive of 27

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<sup>971</sup> Para. 6.14 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>972</sup> T. 21 November 2005 p. 8 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>973</sup> T. 21 November 2005 p. 8 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>974</sup> T. 21 November 2005 p. 9 (Nyiramasuhuko).

<sup>975</sup> T. 21 November 2005 p. 17; Defence Exhibit 360C (Nyiramasuhuko) (Minister Niyitegeka’s pacification speech of 30 April 1994 to Butare).

<sup>976</sup> Nyiramasuhuko Closing Brief, paras. 524, 527.

<sup>977</sup> Nyiramasuhuko Closing Brief, para. 525.

<sup>978</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 57-58; Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994).

April 1994, reminding *préfets* of their obligations, and in evidence of ministers' meetings on the ground at which that message of calm was emphasised.<sup>979</sup>

#### **3.4.4.2 Evidence**

##### Prosecution Expert Witness André Guichaoua

486. André Guichaoua pointed to the assertion he made in his Report, that each minister was given responsibility for pacification in a particular *préfecture*, and stated that Nyiramasuhuko was responsible for pacification in Butare.<sup>980</sup> He admitted that Nyiramasuhuko's diary contained no mention of the fact that she had been assigned to Butare for the purposes of pacification.<sup>981</sup> He stated that the diary, taken as a whole, showed that Butare was Nyiramasuhuko's main concern and that information pertaining to Nyiramasuhuko's assignment to Butare *préfecture* existed elsewhere.<sup>982</sup> In this connection, Guichaoua pointed to two diary entries in his Report to show that Nyiramasuhuko was the minister in the Interim Government responsible for pacification in Butare. The first diary entry under 25 May 1994 (allegedly containing notes from 22 May 1994) states "[d]emystify the enemy, therefore journalists would travel with the ministers in charge of particular *préfectures*." The second diary entry of 3 June 1994 (allegedly containing notes from 1 June 1994) states, "Mifaprofe → Muramba and Butare and keep an eye on Gikongoro". Guichaoua asserted "Mifaprofe" means the *Ministre de la famille et de la promotion féminine*, which was the post held by Nyiramasuhuko.<sup>983</sup>

##### Prosecution Expert Witness Alison Des Forges

487. Alison Des Forges testified that the literal translation of the Kinyarwanda term commonly referred to as "pacification" was in fact "restoring security".<sup>984</sup> She drew a distinction between, on the one hand, "pacification", which means ending violence to most people and, on the other hand, "restoring security", which could mean ending violence but could also encompass eliminating the enemy who is a threat to security.<sup>985</sup> Des Forges stated, in both her testimony and her Expert Report, that pacification was the result of the need not to end the killings but rather the need to get them under better control.<sup>986</sup> This need arose for three main reasons: (i) Government officials were concerned with Rwanda's international image; (ii) when the killings began, some people saw this as an opportunity to settle scores, resulting in Hutus killing Hutus – this threatened solidarity; and (iii) some Tutsis were

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<sup>979</sup> Nyiramasuhuko Closing Brief, para. 538; Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>980</sup> T. 8 October 2004 p. 5 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 25-26.

<sup>981</sup> T. 8 October 2004 pp. 10-11 (Guichaoua).

<sup>982</sup> T. 8 October 2004 p. 11 (Guichaoua) (French); T. 8 October 2004 pp. 10-11 (Guichaoua) (English translation, "the whole diary testifies to the fact that it was part of our main concern", is erroneous).

<sup>983</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 26.

<sup>984</sup> T. 8 June 2004 p. 28 (Des Forges).

<sup>985</sup> T. 8 June 2004 pp. 28-29 (Des Forges).

<sup>986</sup> T. 8 June 2004 p. 28 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 9.

escaping by buying their lives, for example, by selling sexual services.<sup>987</sup> The authorities also used pacification as a tactic to lure Tutsis out of hiding to be killed.<sup>988</sup>

488. Des Forges testified that at the Cabinet meeting of 23 April 1994 Nyiramasuhuko was assigned the responsibility of implementing the pacification campaign for Butare *préfecture*, and she was often present there.<sup>989</sup> Des Forges stated that the pacification policy was officially launched via the Prime Minister's Directive on restoring security issued on 27 April 1994.<sup>990</sup> In commenting on the contents of the Directive, the witness stated that it was important to appreciate the subtleties and complexities of the Kinyarwanda language, which allows for a great deal of ambiguity.<sup>991</sup> Accordingly, when reading a document such as the Prime Minister's Directive of 27 April 1994, attention must be paid to the surface message and to the message underneath.<sup>992</sup> In Des Forges' view the surface message was apparently to restore calm, but there is a distinction between restoring peace and restoring security – restoring security means eliminating the threat, *i.e.* the enemy who is the Tutsi.<sup>993</sup>

### Nyiramasuhuko

489. Nyiramasuhuko testified that pacification was one of the main issues to be discussed at the Cabinet meeting of 9 April 1994 and to that end, radio messages were broadcast that were aimed at the public, the army and the international community based in Rwanda. These messages were delivered by the President, Prime Minister, Minister of Defence and the leaders of political parties, and urged listeners not to attack each other and be vigilant to ensure that violent confrontations did not take place in their homes.<sup>994</sup>

490. Nyiramasuhuko stated that a clear pacification campaign schedule was drawn up at that meeting, according to which members of the Government would meet *préfets*, *bourgmestres*, *conseillers* and the population on particular days. She stated that this schedule was implemented.<sup>995</sup>

491. Nyiramasuhuko also gave evidence as to why pacification was again raised at the meeting of 23 April 1994. She stated that the Cabinet had received information that many people were dying and a decision was taken on that day to adopt a new approach to pacification. A document entitled "pacification" was therefore drawn up and disseminated on 27 April 1994.<sup>996</sup> This document took the form of a letter from the Prime Minister to the *préfets*

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<sup>987</sup> T. 8 June 2004 p. 28 (Des Forges).

<sup>988</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 10.

<sup>989</sup> T. 5 July 2004 p. 65 (Des Forges).

<sup>990</sup> T. 9 June 2004 p. 19 (Des Forges); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>991</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>992</sup> T. 9 June 2004 p. 23 (Des Forges); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>993</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>994</sup> T. 26 September 2005 pp. 61-62 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994) p. 3.

<sup>995</sup> T. 26 September 2005 pp. 64-65 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994) p. 6.

<sup>996</sup> T. 29 September 2005 p. 30 (Nyiramasuhuko).

and contained instructions on the restoration of security in the country.<sup>997</sup> According to Nyiramasuhuko, the word “enemy” in that document referred to the RPF-*Inkotanyi*, not Tutsis.<sup>998</sup>

492. Nyiramasuhuko testified that the pacification campaign involved the dissemination of the Prime Minister’s instructions of 27 April 1994 to members of the *préfecture* conference, invitees of the *préfet* and others responsible for restoring peace.<sup>999</sup> After the instructions had been communicated, Nyiramasuhuko explained that observations were made on those instructions. These included potential difficulties and suggestions for better implementation. All *préfectures* that were not held by the RPF were covered during the pacification campaign, which began on 30 April 1994 and ended on 5 May 1994.<sup>1000</sup> Nyiramasuhuko testified she attended meetings aimed at pacification purposes, specifically the meetings held on 4 May 1994 in Kigali-rural and on 6 May 1994 in Ruhengeri.<sup>1001</sup>

493. Nyiramasuhuko testified that as far as she was concerned, pacification and restoring security were the same. She denied that the instructions issued on 27 April 1994 needed to be explained to the population, stating that these instructions provided a clear explanation of what had to be done. She claimed that it was necessary for the message to be repeated day after day and that the Interim Government wanted people to understand that it did not support the massacres. The message was therefore read out so that people could understand.<sup>1002</sup>

494. Nyiramasuhuko emphasised that her notes on the meeting of 23 April 1994 did not mention that pacification should be used to propagate a policy of genocide, nor that ministers were appointed to spread such a message. She testified that at no time did she have responsibility for the organisation or supervision of killings in Butare, nor was she ever given responsibility of any other kind as regards Butare. Nyiramasuhuko stated that the decision as to which minister would be responsible for disseminating the pacification policy and where, was taken by consensus at the Cabinet meeting of 27 April 1994 and followed the principle that members of the government would go where they had the largest number of supporters and on the basis of ministerial availability, since many were absent on mission. She added that leaders of political parties proceeded in the same way.<sup>1003</sup>

495. Nyiramasuhuko denied that she had been in charge of pacification in Butare and testified that the Cabinet decided to send her to Gisenyi *préfecture* as part of the pacification campaign, accompanied by Minister André Rwamakuba (Minister of Primary and Secondary Education) and one representative each from the MDR and PECO parties.<sup>1004</sup> According to her

<sup>997</sup> T. 29 September 2005 pp. 30-31 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>998</sup> T. 29 September 2005 p. 31 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>999</sup> T. 29 September 2005 pp. 30-36 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>1000</sup> T. 29 September 2005 pp. 30, 36, 38 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>1001</sup> T. 21 November 2005 p. 25 (Nyiramasuhuko).

<sup>1002</sup> T. 21 November 2005 p. 8 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>1003</sup> T. 29 September 2005 pp. 34-36 (Nyiramasuhuko).

<sup>1004</sup> T. 29 September 2005 pp. 37, 64 (Nyiramasuhuko).

testimony, she specifically visited Ngororero, Kigali-rural and Ngenda.<sup>1005</sup> She testified that Ministers Eliezer Niyitegeka (Minister of Information) and Stratom Sabumukunzi (Minister of Agriculture and Livestock), accompanied by Francois Ndungutse (Chairman of the PSD), were dispatched to deliver the pacification message in Butare. Nyiramasuhuko stated that the *préfet* of Butare, Ndungutse and Niyitegeka spoke at the pacification meeting in Butare, which was broadcast over the radio on 30 April 1994, and that Niyitegeka issued instructions to the attendees.<sup>1006</sup>

496. Regarding Minister Niyitegeka's pacification speech to Butare, there is a passage which reads:

Know that we are all *abatabazi*; that we already know who the enemy is. He is called *Inkotanyi*. *Inkotanyi* are not found only in Kigali and Butare ... or rather, they are not found only in Ruhengeri and Byumba but also in Butare. Be vigilant, identify them and do not look out only for them. Do not attack a person because of his ethnic origin, because he is handsome or ugly, tall or short, or rich or poor.<sup>1007</sup>

497. Nyiramasuhuko rejected the Prosecution's assertion that this was a war speech, claiming that such an opinion could only come from a misunderstanding of Kinyarwanda. She testified that what Niyitegeka was in fact saying was that the enemy was not one's neighbour, but the *Inkotanyi*.<sup>1008</sup>

498. Nyiramasuhuko confirmed she participated in the drafting of the Directive issued from Prime Minister Kambanda on 25 May 1994, yet she clarified this was a document of the Government, not her personal paper.<sup>1009</sup>

### 3.4.5 Cabinet Meeting, 9 April 1994

#### 3.4.5.1 Introduction

499. The Prosecution submits that massacres had already started before the formation of the Interim Government on 9 April 1994 and the Interim Government at that point knew what was happening. It further alleges that at that time, the members of the Interim Government were aware, for example, that Government security forces, such as the Presidential Guard, were involved in the massacres.<sup>1010</sup> The Prosecution alleges that apart from dispatching three information-gathering delegations, the Interim Government took no steps to deal with a report delivered to the Cabinet that stated that only Tutsis were being killed.<sup>1011</sup> The Prosecution submits that statements were made during the course of the meeting of 9 April 1994 which

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<sup>1005</sup> T. 29 September 2005 p. 37 (Nyiramasuhuko).

<sup>1006</sup> T. 29 September 2005 pp. 56-60 (Nyiramasuhuko); Defence Exhibit 360C (Nyiramasuhuko) (Minister Niyitegeka's pacification speech of 30 April 1994 to Butare).

<sup>1007</sup> T. 21 November 2005 p. 17 (Nyiramasuhuko); Defence Exhibit 360C (Nyiramasuhuko) (Minister Niyitegeka's pacification speech of 30 April 1994 to Butare) p. 7.

<sup>1008</sup> T. 21 November 2005 p. 17 (Nyiramasuhuko).

<sup>1009</sup> T. 22 November 2005 p. 9 (Nyiramasuhuko).

<sup>1010</sup> Prosecution Closing Brief, pp. 37-38, paras. 33, 35.

<sup>1011</sup> T. 14 November 2005 pp. 69-70 (Nyiramasuhuko).

purported to justify the massacres on the basis that they were the outcome of Rwandans' anger over the President's murder.<sup>1012</sup>

500. The Prosecution argues that in view of the large-scale massacres of Tutsis, who were seen as accomplices of the RPF, the only logical conclusion to be drawn from reading certain extracts of Nyiramasuhuko's notes on the Cabinet meeting of 9 April 1994 is that the Interim Government considered massacres of Tutsis to be the solution to the conflict.<sup>1013</sup> According to the Prosecution, the issue of "accomplices" is of key importance.<sup>1014</sup> It submits that evidence led from expert and factual witnesses of both the Prosecution and Defence shows that any Tutsi or person who appeared to help the Tutsis could be considered to be an accomplice, including Hutu moderates.<sup>1015</sup> The Prosecution argues that members of the Interim Government, other officials, soldiers, *Interahamwe* and perpetrators of massacres used words such as "accomplice", "*Inyenzi*" and "*Inkotanyi*" interchangeably and as part of a concerted action to incite, aid and abet the massacres of Tutsis throughout Rwanda.<sup>1016</sup>

501. The Prosecution submits that it is not credible for any member of the Interim Government to claim they did not know that when the Interim Government referred to the RPF-*Inkotanyi* as the enemy, this would be understood by listeners as a reference to Tutsis.<sup>1017</sup>

502. The Nyiramasuhuko Defence submits that from its first day in office, the Interim Government was intent on calling for assistance to end hostilities with the RPF and the killings.<sup>1018</sup> The Nyiramasuhuko Defence claims that the fact that the Interim Government had informed international authorities of the situation and requested the intervention of the international community is inconsistent with the allegation that it issued directives and incited, aided and abetted the population to commit genocide.<sup>1019</sup>

503. The Nyiramasuhuko Defence contends that the Interim Government inherited a pre-existing violent situation and endeavoured to end the killings through communication with administrative officials. It rejects the allegation that the Government's decisions had anything to do with incitement or aiding and abetting the population to commit massacres and argues that the Government did not have a premeditated plan to kill Tutsis.<sup>1020</sup>

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<sup>1012</sup> T. 14 November 2005 p. 71 (Nyiramasuhuko).

<sup>1013</sup> Prosecution Closing Brief, pp. 37-38, paras. 34-35; Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994).

<sup>1014</sup> Prosecution Closing Brief, p. 38, para. 37.

<sup>1015</sup> Prosecution Closing Brief, p. 39, para. 39.

<sup>1016</sup> Prosecution Closing Brief, p. 41, para. 49.

<sup>1017</sup> Prosecution Closing Brief, p. 41, para. 49.

<sup>1018</sup> Nyiramasuhuko Closing Brief, para. 528.

<sup>1019</sup> Nyiramasuhuko Closing Brief, para. 526.

<sup>1020</sup> Nyiramasuhuko Closing Brief, para. 527.

### 3.4.5.2 Evidence

#### Prosecution Expert Witness Alison Des Forges

504. Alison Des Forges testified that sometimes the only proof that someone was an “accomplice” was an identity card stating that the person was Tutsi.<sup>1021</sup>

#### Nyiramasuhuko

505. Nyiramasuhuko testified that Defence Exhibit 346C comprised her notes on the Cabinet meeting of 9 April 1994, the first Cabinet meeting after the death of President Habyarimana which she had attended.<sup>1022</sup> Referring to the part of her notes which reads, “Nuncio – furious because of the death of priests in the upheavals and says that only Tutsis are being killed”, Nyiramasuhuko testified that this statement was reportedly made by the apostolic nuncio, although she did not recall the identity of the person who provided that report. Nyiramasuhuko claimed that ministerial delegations were dispatched to the apostolic nuncio and the Belgian and French ambassadors to seek assistance. The delegations reported back to the Cabinet the following day and reported that the apostolic nuncio and the French ambassador had agreed to help the Interim Government.<sup>1023</sup>

506. When questioned as to whether the Interim Government took any steps, aside from dispatching ministerial delegations, to address reports that only Tutsis were being killed, Nyiramasuhuko only replied that the Government sought the assistance and views of the nuncio and the Belgian and French ambassadors. When asked whether she took the floor during the meeting to make a statement concerning the reports that Tutsis were being killed, Nyiramasuhuko answered that she was not in possession of that information at the time, but when such information became available to her through others, she aligned herself with those calling for assistance to help resolve the problems they were facing.<sup>1024</sup>

507. When the Prosecution suggested that the presence at the meeting of the *gendarmierie* Chief of Staff, General Ndindiliyimana, meant that ministers should have been aware of the situation in Kigali up to 9 April 1994, Nyiramasuhuko replied that the Chief of Staff told attendees of the meeting that after the death of the President the RPF had attacked the Presidential Guard camp, the Kacyiro camp and individuals in Kenamba and that all the Government could do was ask for help.<sup>1025</sup> In the section concerning the Chief of Staff, Nyiramasuhuko’s notes on this meeting also contain a reference made by her to disarming the Presidential Guard soldiers.<sup>1026</sup>

508. Referring to her notes, Nyiramasuhuko testified that the Minister of Environment and Tourism asked: “Who organises the massacres? Is RPF also organised so that the massacres

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<sup>1021</sup> T. 9 June 2004 pp. 23-24 (Des Forges).

<sup>1022</sup> T. 14 November 2005 p. 67 (Nyiramasuhuko).

<sup>1023</sup> T. 14 November 2005 p. 69 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 2.

<sup>1024</sup> T. 14 November 2005 p. 70 (Nyiramasuhuko).

<sup>1025</sup> T. 15 November 2005 p. 18 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 3.

<sup>1026</sup> T. 15 November 2005 pp. 18-23 (Nyiramasuhuko).

will be a solution?”<sup>1027</sup> Nyiramasuhuko explained that the speaker was asking himself whether the RPF was committing massacres as a way of achieving its aim, *i.e.* taking power by force.<sup>1028</sup> It was suggested to Nyiramasuhuko in cross-examination that given the circumstances in which the meeting of 9 April 1994 took place, the view was that, were the RPF to refuse to negotiate, massacres would be the response.<sup>1029</sup> In reply, Nyiramasuhuko stated that as far as she was concerned, the massacres were not supposed to have taken place.<sup>1030</sup>

509. The Prosecution suggested to Nyiramasuhuko that the question appearing on page 5 of her notes, which reads “[w]hat is your opinion about the accomplices?”, was ambiguous, in common with the notes made in respect of previous speakers at the meeting. Nyiramasuhuko denied that this was the case and when questioned on what she considered to be an accomplice, she stated that question went unanswered as of 9 April 1994, but that an accomplice would be someone who would hide RPF weapons in his home or inform RPF soldiers who was not on their side.<sup>1031</sup>

510. Nyiramasuhuko testified that the phrase, “[v]ery important media contact with diplomats”, followed by “Tanzania, Zaire, France, Kenya, UNAMIR” contained in her notes on the meeting of 9 April 1994, referred to the fact that contact with those countries and organisations was important because they had previously assisted the two parties and would have a role to play in restoring peace in Rwanda.<sup>1032</sup>

511. As regards the statement in the notes which reads “notify the Security Council, OAU, etc.”, Nyiramasuhuko was questioned on whether the Interim Government actually contacted the Security Council and the OAU on 9 April 1994.<sup>1033</sup> Nyiramasuhuko answered that it did so immediately through UNAMIR because the war had just begun and the Security Council had sent UNAMIR to Rwanda.<sup>1034</sup> Nyiramasuhuko testified that it was therefore necessary for the Security Council to be informed so that the UNAMIR troops could be increased and their mandate be extended in order to bring an end to the killings and the war.<sup>1035</sup>

512. Nyiramasuhuko was also questioned on a statement attributed to Minister Mugenzi, who reportedly said that the massacres were not an act of barbarity but rather the anger of the Rwandan people, and that such reaction was normal in view of the three years of war,

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<sup>1027</sup> T. 15 November 2005 p. 20 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 4.

<sup>1028</sup> T. 15 November 2005 p. 21 (Nyiramasuhuko).

<sup>1029</sup> T. 15 November 2005 p. 24 (Nyiramasuhuko).

<sup>1030</sup> T. 15 November 2005 p. 25 (Nyiramasuhuko).

<sup>1031</sup> T. 15 November 2005 pp. 35-36 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 5.

<sup>1032</sup> T. 26 September 2005 p. 55 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 1.

<sup>1033</sup> T. 26 September 2005 p. 59 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 2.

<sup>1034</sup> T. 26 September 2005 p. 59 (Nyiramasuhuko).

<sup>1035</sup> T. 26 September 2005 p. 59 (Nyiramasuhuko).



1,000,000 displaced persons and the deaths of the Rwandan and Burundian Presidents. Nyiramasuhuko testified that this statement was a reflection of the reality of the situation.<sup>1036</sup>

513. Nyiramasuhuko testified that as the Interim Government had just been formed, it could not have organised the massacres; the massacres took place before the Interim Government took power and the meeting on 9 April 1994 was the first Cabinet meeting of the new Government.<sup>1037</sup> She claimed that the RPF attributed responsibility for the massacres to the Interim Government as a way of creating division and frustrating the establishment of Government institutions.<sup>1038</sup>

514. Nyiramasuhuko also testified that “*Inyenzi*” was not synonymous with Tutsi but rather referred to the *Inkotanyi*. She stated that *Inyenzi* were virtually everywhere in the country and that it was the government’s right to fight the *Inyenzi*.<sup>1039</sup>

Nsabimana Defence Witness Patrick Fergal Keane

515. Patrick Fergal Keane, a British journalist, testified that he understood *Inyenzi* to mean “cockroaches” which could be applied to RPF soldiers or Tutsi civilians.<sup>1040</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

516. When questioned on the meaning of “accomplice”, Reyntjens testified that this term would be generally understood by Rwandans to refer to Tutsis. He further testified that there was no need for a person’s identity card to specify that they were Tutsi in order to be a target; many had been killed because they looked like Tutsis or were known to be Tutsis in their neighbourhood.<sup>1041</sup>

Nyiramasuhuko Defence Expert Witness Eugène Shimamungu

517. Eugène Shimamungu explained the term *Inkotanyi* as follows:

Dualistic globalisation is a phenomenon that occurs in all conflicts ... In Rwanda, either you are with me or against me. These are the two parties in conflicts. In Rwanda it was the same case, on the one hand, you had the *Inkotanyi*, on the other side you had the Rwandan government army, and the globalisation that occurred is that the Tutsis were considered as the *Inkotanyi*, because the *Inkotanyi* were majority Tutsi.<sup>1042</sup>

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<sup>1036</sup> T. 26 September 2005 p. 60 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 9 April 1994) p. 2.

<sup>1037</sup> T. 26 September 2005 p. 64 (Nyiramasuhuko).

<sup>1038</sup> T. 26 September 2005 p. 64 (Nyiramasuhuko).

<sup>1039</sup> T. 21 November 2005 p. 24 (Nyiramasuhuko).

<sup>1040</sup> T. 27 September 2006 p. 78 (Keane).

<sup>1041</sup> T. 21 November 2007 p. 71 (Reyntjens).

<sup>1042</sup> T. 16 March 2005 p. 38 (Shimamungu).

### 3.4.6 Cabinet Meeting, 10 April 1994

#### 3.4.6.1 Introduction

518. The Prosecution submits that a Cabinet meeting took place on 10 April 1994, during which the Interim Government decided on and established a formal structure for roadblocks which involved security forces, *gendarmes*, local authorities, *Interahamwe* and civilians working together.<sup>1043</sup> According to the Prosecution, the evidence on what happened between April and July 1994 largely confirms that the roadblock structure was consistent with the decisions of the Interim Government and that at these roadblocks, Tutsis were identified and killed.<sup>1044</sup>

519. The Prosecution argues that the discussion on the position of *responsables de cellule* was significant, as payment of the *cellule* members was part of the Government's plan for the execution of the massacres. It contends that the Interim Government considered *responsables de cellule* to be the basic unit for denouncing Tutsis and identifying infiltrators.<sup>1045</sup>

520. It is not disputed that the meeting in question took place on 10 April 1994. What is contested is the content of said meeting. The Nyiramasuhuko Defence claims that the decisions taken in the course of this meeting were aimed at restoring peace. It submits that the Interim Government was powerless to stop the killings and tried to resolve the situation while defending the sovereignty of Rwanda against the RPF.<sup>1046</sup> The Nyiramasuhuko Defence rejects the Prosecution's contention that the Interim Government insisted on a ceasefire before it would intervene to halt the massacres. Further, the Nyiramasuhuko Defence underscores that the Prosecution never challenged its assertions that the FAR was defending itself or that the Interim Government repeatedly attempted to secure a ceasefire.<sup>1047</sup>

#### 3.4.6.2 Evidence

##### Nyiramasuhuko

521. Nyiramasuhuko testified that security and roadblocks were discussed at the meeting of 10 April 1994. She explained that a decision was taken to maintain roadblocks supervised by soldiers and that roadblocks manned by civilians, wherever necessary due to inadequate numbers of *gendarmes*, had to be under the control of local authorities.<sup>1048</sup>

522. When cross-examined on the role of *cellules*, Nyiramasuhuko refuted the Prosecution submission that *cellules* were part of the Government's plan to commit massacres on the basis that the *cellule* was an integral part of the Rwandan administrative structure and that the

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<sup>1043</sup> Prosecution Closing Brief, p. 42, para. 50.

<sup>1044</sup> Prosecution Closing Brief, p. 42, para. 50.

<sup>1045</sup> T. 15 November 2005 pp. 42-43; Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 10 April 1994).

<sup>1046</sup> Nyiramasuhuko Closing Brief, para. 529.

<sup>1047</sup> Nyiramasuhuko Closing Brief, para. 529.

<sup>1048</sup> T. 27 September 2005 pp. 7-9 (Nyiramasuhuko).

government had been in office for only one day. She emphasised that *cellules* had been in place long before the troubles.<sup>1049</sup>

523. Referring to her notes on this meeting under the heading “security”, Nyiramasuhuko testified that the Government felt that it was abnormal for the situation of insecurity to persist in view of its appointment and decided to do its best to restore security.<sup>1050</sup> According to Nyiramasuhuko, at the meeting the Government decided that in view of the various incidences of looting and stealing, the Prosecutors’ offices must carry out investigations.<sup>1051</sup> Nyiramasuhuko testified that in line with what was discussed during the meeting, the Government subsequently wrote to the RPF requesting a ceasefire.<sup>1052</sup>

524. In relation to the issue of contacting the *préfets*, as discussed at the Cabinet meeting of 9 April 1994, Nyiramasuhuko testified that this issue was discussed again on 10 April 1994 and it was stated that they should be contacted by fax and telephone, although she could not confirm whether this actually occurred.<sup>1053</sup>

### 3.4.7 Joint Meeting of Government and *Préfets*, 11 April 1994

#### 3.4.7.1 Introduction

525. The Prosecution submits that at a meeting held on 11 April 1994, the *préfet* of Gikongoro proposed that the Government protect only a part of the population, *i.e.* those who lived on the hills, and that no measures were taken in respect of refugees.<sup>1054</sup> The Prosecution asserts that the Government, including Nyiramasuhuko, understood the statement made by the *préfet* of Gikongoro and endorsed a plan to guard or disarm the refugees so that they would not pose a threat to the population remaining on the hills.<sup>1055</sup> The Prosecution argues that the statement made by the *préfet* of Gikongoro, to which no objections were raised, was in line with the Interim Government’s propaganda campaign targeting the civilian population in order to create fear and hatred among them.<sup>1056</sup>

526. The Prosecution submits that in Nyiramasuhuko’s notes on this meeting, references to the need to guard refugees and to pre-empt potential problems in the statement made by the *préfet* of Gikongoro were references to Tutsi men, women and children of all ages. According

<sup>1049</sup> T. 15 November 2005 p. 42 (Nyiramasuhuko).

<sup>1050</sup> T. 27 September 2005 p. 8 (Nyiramasuhuko); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 10 April 1994) p. 1.

<sup>1051</sup> T. 27 September 2005 p. 8 (Nyiramasuhuko); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 10 April 1994) p. 2.

<sup>1052</sup> T. 27 September 2005 p. 10 (Nyiramasuhuko); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 10 April 1994) p. 2.

<sup>1053</sup> T. 27 September 2005 p. 12 (Nyiramasuhuko); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 10 April 1994) p. 3.

<sup>1054</sup> Prosecution Closing Brief, p. 42, paras. 51-52.

<sup>1055</sup> T. 16 November 2005 pp. 6, 9 (Nyiramasuhuko); Prosecution Closing Brief, p. 42, paras. 51-52. The Chamber notes that in its Closing Brief, the Prosecution refers to the *préfet* of Gitarama, instead of Gikongoro. However, considering the content of Nyiramasuhuko’s cross-examination on the mentioned transcript references, jointly with her notes concerning the 11 April 1994 meeting (Defence Exhibit 349C) the Chamber finds this is a mistake and it is satisfied that the Prosecution intended to refer to the *préfet* of Gikongoro.

<sup>1056</sup> T. 27 September 2005 p. 10 (Nyiramasuhuko); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko’s Notes on the Cabinet Meeting of 10 April 1994) p. 2.

to the Prosecution, while the refugee population did contain some Hutus, those fleeing the violence were primarily Tutsis, while those remaining in their homes on the hills were Hutus.<sup>1057</sup>

527. The Prosecution contends that despite a clear request from the *préfets* of Kibungo and Gikongoro for means to put an end to the killings, as testified to by Nyiramasuhuko, no such means were provided, except for the establishment of roadblocks.<sup>1058</sup>

528. The Prosecution argues that the erection of roadblocks was one of the methods used in the commission of the genocide and many Tutsis were killed at them. It submits that Nyiramasuhuko and the Interim Government had full knowledge of the purpose of the roadblocks.<sup>1059</sup>

529. The Prosecution emphasises the importance of the issue of payment of allowances to *responsables de cellule*, to which reference is made in Nyiramasuhuko's notes on this meeting, underlining that the Interim Government had discussed this matter on previous occasions, particularly during the Cabinet meeting of 10 April 1994. The Prosecution notes that many people were not paid during the genocide and questions why *responsables de cellule* were singled out.<sup>1060</sup> The Prosecution submits that the importance placed on ensuring that *responsables de cellule* were paid could be explained by reference to the structure of the Rwandan political and administrative system, which was highly centralised with decisions being made at the top and filtered down through the *préfets* and *bourgmestres* to the *conseillers de secteur* and *responsables de cellule*. In order to ensure that the Interim Government's decisions were carried out, officials at all levels of the Rwandan political system had to be on side. The Prosecution argues that the need to ensure that *responsables de cellule* were paid was a way of ensuring that those in the government structure closest to the civilian population were willing to implement the Interim Government's instructions.<sup>1061</sup>

530. The Nyiramasuhuko Defence submits that the Prime Minister's opening statements at the meeting of 11 April 1994 had to be taken at face value and could not be interpreted in any other way.<sup>1062</sup> It argues that the message concerning the need to stop the killings and restore peace had been transmitted by the Government to the *préfets* to be handed down, in turn, to the subordinates of the latter and implemented.<sup>1063</sup>

### **3.4.7.2 Evidence**

#### Nyiramasuhuko

531. Referring to her notes on the meeting, Nyiramasuhuko stated that when the Prime Minister opened the meeting, he said three things: the first was on raising the population's

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<sup>1057</sup> T. 16 November 2005 p. 5 (Nyiramasuhuko); Prosecution Closing Brief, p. 42, paras. 51-52; Defence Exhibit 349C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the joint meeting of Government and *préfets* of 11 April 1994).

<sup>1058</sup> Prosecution Closing Brief, p. 43, para. 54.

<sup>1059</sup> Prosecution Closing Brief, pp. 43-44, para. 55.

<sup>1060</sup> Prosecution Closing Brief, p. 43, para. 53.

<sup>1061</sup> Prosecution Closing Brief, p. 43, para. 53.

<sup>1062</sup> Nyiramasuhuko Closing Brief, para. 530.

<sup>1063</sup> Nyiramasuhuko Closing Brief, para. 531.

awareness of the existence of three ethnic groups in the country; the second was on extending relief while asking people to reconsider their behaviour; and the third was on examining ways of securing the population's cooperation with the army with a view to restoring security. She testified that the Prime Minister's address was not propaganda nor did it contain double-speak.<sup>1064</sup>

532. Nyiramasuhuko confirmed that during the meeting of 11 April 1994 the *préfet* of Gikongoro made a statement in which he said that using speeches for pacification was not good enough and that the refugees must be guarded because 2,000 people gathered in the same location might organise themselves and create problems for those who remained on the hills. Nyiramasuhuko disputed the assertion that the statement referred to Tutsis who were being pursued, insisting that both Hutus and Tutsis had fled from Gikongoro *préfecture*.<sup>1065</sup> Nyiramasuhuko testified that she knew nothing of any plan to guard or disarm refugees to prevent them from posing a threat to the population. She denied that there were no measures of protection for refugees.<sup>1066</sup>

533. Nyiramasuhuko explained that the *préfet* was not proposing that the refugees be killed, but rather that the *gendarmes* should watch over them because trouble could break out in view of their high numbers.<sup>1067</sup> Nyiramasuhuko subsequently stated that what was meant was that the refugees needed to be protected to prevent them from committing criminal acts such as attacking members of the public.<sup>1068</sup>

534. When asked by the Prosecution what concrete means were placed at the disposal of the *préfecture* authorities in response to the demands made by the *préfets* of Kibungo and Gikongoro for an end to the killings, Nyiramasuhuko answered that the *préfecture* authorities could requisition the forces of law and order. As far as the Government was concerned, Nyiramasuhuko testified that the Chief of Staff, who was in charge of military operations, had ordered a truce.<sup>1069</sup>

535. Nyiramasuhuko testified that during the meeting the Prime Minister issued instructions to *préfets*. She confirmed that the conclusions of this Cabinet meeting included a decision concerning the erection and supervision of roadblocks and another on allowances for *responsables de cellule*.<sup>1070</sup>

536. On the issue of *responsables de cellule*, Nyiramasuhuko confirmed that these formed part of the administration and explained that as a result of the conflict, they had not received their salaries for a year and it was therefore necessary for these arrears to be paid.

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<sup>1064</sup> T. 27 September 2005 pp. 30-31, 33-35 (Nyiramasuhuko); Defence Exhibit 349C (Nyiramasuhuko) (Nyiramasuhuko's notes on the joint meeting of Government and *préfets* of 11 April 1994) pp. 1-2.

<sup>1065</sup> T. 27 September 2005 p. 33 (Nyiramasuhuko).

<sup>1066</sup> T. 16 November 2005 pp. 5-7, 9 (Nyiramasuhuko); Defence Exhibit 349C (Nyiramasuhuko) (Nyiramasuhuko's notes on the joint meeting of Government and *préfets* of 11 April 1994) p. 2.

<sup>1067</sup> T. 27 September 2005 p. 33 (Nyiramasuhuko).

<sup>1068</sup> T. 27 September 2005 p. 34 (Nyiramasuhuko).

<sup>1069</sup> T. 9 November 2005 p. 10 (Nyiramasuhuko).

<sup>1070</sup> T. 16 November 2005 pp. 9, 22 (Nyiramasuhuko); Defence Exhibit 349C (Nyiramasuhuko) (Nyiramasuhuko's notes on the joint meeting of Government and *préfets* of 11 April 1994) pp. 2-3.

Nyiramasuhuko denied that payment of *responsables de cellule* was a priority for the Government, insisting that the priority was to provide security.<sup>1071</sup>

#### Prosecution Expert Witness André Guichaoua

537. In cross-examination, André Guichaoua agreed with counsel's assertion that the Government had decided on 10 April 1994 to summon all the *préfets* to the Government's seat at Kigali on 11 April 1994, and that 11 April 1994 was the date on which the Government asked the *préfets* to implement its policy of genocide. He said that he was interested in what was said and what happened at the meeting of 11 April 1994 but was more interested in what the *préfets* did after the meeting because their behaviour might have been influenced by what they remembered of things not made explicit during the meeting.<sup>1072</sup>

538. In relation to the section of the speech delivered by the Prime Minister at this occasion in which he addressed the *préfets* and asked them to relay the message to the population, Guichaoua maintained that the speech was propaganda, even if it was made and broadcast in Kinyarwanda only.<sup>1073</sup>

539. Guichaoua testified that at the meeting of 11 April 1994, there was a move to dismiss *Préfet* Habyalimana from office, from Butare. In this connection, Callixte Kalimanzira agreed to draft a report which contained serious allegations against Habyalimana concerning his

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<sup>1071</sup> T. 16 November 2005 pp. 12-14 (Nyiramasuhuko).

<sup>1072</sup> T. 6 October 2004 pp. 20-21 (Guichaoua).

<sup>1073</sup> Defence Exhibit 350C (Nyiramasuhuko) (Transcript of Kambanda's speech of 11 April 1994) pp. 13-14 ("So this is the message that we want you to convey to members of the population: we would like you to organize pacification meetings at the *commune* level. The prefectoral authorities will ask the *bourgmestres* to organize such meetings at the *secteur* level, as well as the *conseillers*, to ensure that these meetings are held at all levels. Department heads will have to organize meetings as soon as work resumes. You will also have to explain to them that the death of the Head of State, as well as the disturbances that occurred in the city of Kigali and the resumption of fighting by the *Inkotanyi*, should not cause divisions among them. You will have to make them understand that there are three ethnic groups in the country, namely Hutu, Tutsi and Twa, as well as several regions, and that the country belongs to them all. You will ask them to refrain from doing anything that could division [*sic*]. Some problems are caused by jealousy, because it has become apparent that acts of aggression against *sic* people were followed by looting. No one can say that such and such an ethnic group has been the target of looting, because anyone with property, whether he is Hutu, Tutsi or Twa, could fall victim to looting not because of his ethnic origins, but because he had what others did not have. That is why I am saying that jealousy could explain the discord among the people. Members of the population should therefore refrain from anything that could create divisions among them, such as jealousy and other issues that I have referred to, especially regionalism, and above all ethnic problems. On a closer look, it would appear that these days some practices have been institutionalized. People should refrain from taking the law into their own hands; rather they should know that the security forces, the law and the authorities still exist. You will have to remind them that the authorities are present. The Head of State was killed, but we have a President of the Republic installed in accordance with the law. The Prime Minister was killed, but he has been replaced in accordance with the law. The Government has been put in place; it is ready to get down to the job and this can be seen through the decisions it is adopting aimed at resolving the problem of insecurity. You will have to ask members of the population to perpetuate our culture of helping one another and to know that when a neighbour is attacked, it is their duty to come to his rescue; that when a neighbour is wounded, they have an obligation to make sure he gets treatment. You should tell them that they are requested to rebuild dwelling houses that have been burnt. This is normal in Rwandan culture. If they are able to understand that we are all Rwandans, that this country belongs to all of us, they will also understand that when tragedy befalls someone, his neighbour is also affected. Rwandan culture calls on people to help one another."); T. 6 October 2004 pp. 22-23 (Guichaoua).

relations with the *Inkotanyi*. According to Guichaoua, this report was tabled at a Cabinet meeting held on 17 April 1994.<sup>1074</sup>

### 3.4.8 Cabinet Meeting, 16 April 1994

#### 3.4.8.1 Introduction

540. The Prosecution submits that this meeting provides an insight into the Interim Government and its involvement in matters relating to the army.<sup>1075</sup>

541. The Defence makes no specific submissions in relation to this meeting, although it did lead evidence as to the contents of Nyiramasuhuko's notes on this meeting.<sup>1076</sup>

#### 3.4.8.2 Evidence

##### Nyiramasuhuko

542. Nyiramasuhuko confirmed that the notes relating to this meeting were made on the page of her 1994 diary corresponding to 1 February 1994.<sup>1077</sup> These notes contained various references to military matters including: the appointment of the chief of staff of the army; the need to teach the population how to use arms; an assessment that the majors leading the combat units did not have confidence in the chief; and the promotion of certain soldiers.<sup>1078</sup>

543. Referring to her notes on this meeting, Nyiramasuhuko testified about the reference to a death toll of 20,000 related to members of the population massacred by the RPF. The witness stated that the army was not in a position to defend the population as the *Inkotanyi* were present across the country.<sup>1079</sup>

544. In respect of the reference in her notes to teaching the public to handle arms in order to defend themselves, the witness stated that this had originally been the intention but that after the signature of the Arusha Accords the government ordered that weapons distributed to the Rwandan-Ugandan border area for this purpose be returned. She was unable to confirm whether all the weapons distributed were collected.<sup>1080</sup>

545. Nyiramasuhuko testified that a Burundian political party, referred to in her notes as "PARPEHUTU", had offered to send military reinforcements to bolster the Rwandan army. She explained that the Government declined the offer because it advocated peace and thought that the opposition shared that view.<sup>1081</sup>

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<sup>1074</sup> T. 7 October 2004 p. 21 (Guichaoua).

<sup>1075</sup> Prosecution Closing Brief, pp. 46-47, para. 63.

<sup>1076</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994).

<sup>1077</sup> T. 16 November 2005 p. 60 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 19.

<sup>1078</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 19.

<sup>1079</sup> T. 28 September 2005 p. 41 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 19.

<sup>1080</sup> T. 28 September 2005 pp. 41-42 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 19.

<sup>1081</sup> T. 28 September 2005 p. 43 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 19.

### 3.4.9 Cabinet Meeting, 21 April 1994

#### 3.4.9.1 Introduction

546. The Prosecution submits that Nyiramasuhuko's notes on this meeting show that she was aware of the prevailing situation in Rwanda in terms of the war.<sup>1082</sup> The Prosecution argues that the Cabinet agreed to continue the killings if the RPF refused to negotiate.<sup>1083</sup>

547. The Defence submits that when the Government became aware that killings were continuing, it took steps to control the situation.<sup>1084</sup>

#### 3.4.9.2 Evidence

##### Nyiramasuhuko

548. Nyiramasuhuko confirmed that the notes relating to this meeting were made on the pages of her 1994 diary corresponding to 11-13 February 1994. She referred to her entries concerning the continuance of killings, negotiations with the RPF and missions to African countries. Nyiramasuhuko conceded that she was aware that the situation was bad and of the existence of massacres, although she did not know the identity of the killers. She stated that having information does not necessarily mean that one is aware of everything that is going on in places where one is not present.<sup>1085</sup>

549. Referring to the entry in her notes which states “[s]ituation – killings continue”, it was put to Nyiramasuhuko that the Cabinet had agreed to continue the killings if the RPF refused to negotiate. Nyiramasuhuko dismissed this assertion as speculation and indicated that as far as the Government was concerned, the situation was critical. She stated that there was a link between the advance of the RPF and the killings – as the RPF advanced, people became increasingly nervous and began to carry out killings. Nyiramasuhuko testified that the forces of law and order which should have been assisting the Government to control the situation in problematic areas were at the battlefield which made it difficult for the Government to fulfil its objectives.<sup>1086</sup>

550. Nyiramasuhuko testified that on 21 April 1994 the Government decided to send people to Tanzania, the OAU, Egypt, Gabon, Togo and Senegal to seek assistance. She stated that the RPF was responsible for the killings and that people were being killed in areas under Government control. Nyiramasuhuko added that the Government issued a mandate to negotiate a ceasefire with the RPF.<sup>1087</sup>

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<sup>1082</sup> T. 17 November 2005 p. 39 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) pp. 24-25.

<sup>1083</sup> T. 17 November 2005 p. 40 (Nyiramasuhuko).

<sup>1084</sup> T. 29 September 2005 p. 10 (Nyiramasuhuko).

<sup>1085</sup> T. 17 November 2005 pp. 37-40 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) pp. 24-25.

<sup>1086</sup> T. 17 November 2005 pp. 40-41 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 24.

<sup>1087</sup> T. 29 September 2005 p. 10 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 24.



### 3.4.10 Cabinet Meeting, 23 April 1994

#### 3.4.10.1 Introduction

551. The Prosecution submits that there was no discussion during this meeting on how to stop the killings. Instead, there was talk of the need to disarm “infiltrators”, which was a veiled reference to Tutsis. According to the Prosecution, the Interim Government, including Nyiramasuhuko, equated Tutsi refugees with infiltrators, thereby conveying the message that the population should be afraid of Tutsis and that they should kill the Tutsis before the Tutsis killed them.<sup>1088</sup>

552. It is the Prosecution’s submission that the Interim Government’s concern, expressed during the meeting, that the refugees were dangerous and had to be disarmed was the same concern as that expressed by the *préfet* of Gikongoro at the meeting of 11 April 1994, and that the Government supported and endorsed the *préfet*’s statement in that regard.<sup>1089</sup>

553. The Prosecution further argues that as Nyiramasuhuko had not taken a note of everything that transpired during the meeting, the fact that note had been taken of disarming the refugees signified that the issue was more important than others discussed and that the danger was linked to the fact that Tutsi refugees were involved.<sup>1090</sup>

554. The Prosecution claims that by referring specifically in her notes to disarming a Tutsi camp, Nyiramasuhuko meant that Tutsis must be set apart from other refugees and killed. Further, it alleges that Nyiramasuhuko referred to “Tutsi refugees” in her diary and not to “infiltrators” because these terms were synonymous.<sup>1091</sup> The Prosecution suggested that the decision to disarm refugees who no longer had homes or property meant that they would be put in a situation where it would be very easy to kill them.<sup>1092</sup>

555. The Defence submits that the Interim Government sought to end hostilities by negotiating and signing ceasefire proposals.<sup>1093</sup> The Defence further submits that, pursuant to the discussions held during the meeting of 23 April 1994 and contrary to the allegation found in Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment, the Directive on restoring security issued by the Government on 27 April 1994 was clear, direct and explicit.<sup>1094</sup>

#### 3.4.10.2 Evidence

##### Nyiramasuhuko

556. In relation to her notes on this meeting, in particular the reference to the seven refugee camps for Tutsis in Gitarama described as being “ready to pounce” and which “should be disarmed”, Nyiramasuhuko testified that it had been reported that refugee camps in Gitarama

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<sup>1088</sup> Prosecution Closing Brief, pp. 51-52, paras. 81-82.

<sup>1089</sup> T. 16 November 2005 pp. 16-17 (Nyiramasuhuko).

<sup>1090</sup> T. 16 November 2005 pp. 18-19 (Nyiramasuhuko).

<sup>1091</sup> T. 16 November 2005 pp. 19-20 (Nyiramasuhuko).

<sup>1092</sup> T. 16 November 2005 p. 21 (Nyiramasuhuko).

<sup>1093</sup> T. 29 September 2008 pp. 18-19 (Nyiramasuhuko).

<sup>1094</sup> Nyiramasuhuko Closing Brief, para. 533; Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

had been infiltrated by armed members of the RPF and that the *gendarmes* there tried to provide protection to prevent unrest. She denied that the situation in Gitarama had anything to do with the events in Gikongoro.<sup>1095</sup> Nyiramasuhuko insisted that the reference to disarming them was not double-speak; it did not refer to the killing of refugees. Rather, it meant that the *gendarmes* had to search the refugees to find out whether they were carrying weapons.<sup>1096</sup>

557. Nyiramasuhuko testified that her notes on this meeting were essentially scraps of information rather than minutes and that disarming the refugees was noted not for its importance but because it would have been an impossible task to “disarm the infiltrators”. She went on to testify that armed infiltrators were present in seven camps and it was proposed that they be disarmed. However, due to insufficient army resources and the threat that such action might provoke disturbances, no steps were taken and the *gendarmes* proceeded to protect all those in the camp until they were chased out by the infiltrators. The proposal to disarm the infiltrators was never carried out.<sup>1097</sup>

558. Nyiramasuhuko denied that Tutsi refugees had been singled out or that the term infiltrator was synonymous with Tutsi. She did, however, testify that the Gitarama camps held Tutsi refugees who had been sent by the RPF.<sup>1098</sup>

559. Nyiramasuhuko testified that a proposed ceasefire agreement with the RPF was signed on 23 April 1994 on behalf of the Interim Government by General Marcel Gatsinzi and Colonel Aloys Ntiwiragabo. She stated that representatives of the Government travelled to Arusha and Badolite to secure the RPF’s signature but that the RPF was not present and so did not agree to the proposed ceasefire.<sup>1099</sup>

560. Referring to the Prime Minister’s Directive on restoring security, Nyiramasuhuko testified that the document was approved by consensus before being made public. She stated that it clearly identified the enemy and in this connection referred specifically to page two of the document, on which one of the instructions issued read:

The enemy who attacked Rwanda is well known: it is the RPF-INKOTANYI. You are therefore requested to explain to the people that they must avoid anything that would bring about violence among them on the pretext of ethnic groups, regions, denominations, political parties, hatred, etc, because violence within the population constitutes a breach for the enemy.<sup>1100</sup>

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<sup>1095</sup> T. 16 November 2005 pp. 16-18 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 27.

<sup>1096</sup> T. 29 September 2005 pp. 32-33 (Nyiramasuhuko).

<sup>1097</sup> T. 16 November 2005 pp. 17-19 (Nyiramasuhuko).

<sup>1098</sup> T. 16 November 2005 pp. 19-20 (Nyiramasuhuko).

<sup>1099</sup> T. 29 September 2005 pp. 18-19 (Nyiramasuhuko); Defence Exhibit 358B (Nyiramasuhuko) (Ceasefire Declaration, 23 April 1994).

<sup>1100</sup> T. 29 September 2005 p. 31 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

### 3.4.11 Cabinet Meeting, 17 June 1994

#### 3.4.11.1 Introduction

561. The Prosecution submits that the various appointments made during this meeting were a means for the Interim Government to ensure that its programme of genocide would continue.<sup>1101</sup>

562. The Defence made no specific submissions in relation to this meeting.

#### 3.4.11.2 Evidence

##### Nyiramasuhuko

563. Nyiramasuhuko testified that a number of appointments were made during the meeting, including the appointment of Ndayambaje as *bourgmestre* of Muganza *commune*, and the appointment of Nteziryayo to replace Nsabimana as *préfet* of Butare.<sup>1102</sup>

### 3.4.12 Deliberations

#### 3.4.12.1 Briefings on Massacres and Demands for Weapons During Cabinet Meetings

564. It is not contested that numerous Cabinet meetings were held in Kigali, Gitarama and Gisenyi in April and June 1994. Indeed, the Nyiramasuhuko Defence acknowledges that this is confirmed by Nyiramasuhuko's testimony and corroborated by her diary and other personal notes adduced as evidence.<sup>1103</sup> In particular, the Chamber notes that the Nyiramasuhuko Defence does not dispute the existence of the meetings in respect of which specific submissions were made and which are discussed above.

565. Nyiramasuhuko herself testified to the Government's endeavours to agree on a ceasefire and contact the Security Council, the OAU and foreign governments in order to end the killings.<sup>1104</sup> She also testified that ministerial delegations were dispatched to the apostolic nuncio and the Belgian and French ambassadors to seek assistance.<sup>1105</sup> The Chamber notes that they would not have done this had they not known about the massacres. Furthermore, her notes on meetings contain numerous references to the occurrence or continuance of massacres. For instance, Nyiramasuhuko confirmed that pages 24 and 25 of her diary refer to her notes on the Cabinet meeting of 21 April 1994.<sup>1106</sup> Page 24 contains an entry that reads: "Situation – Killings continue ... Rivers Mwongo and Nyabarongo strewn with bodies." Page 25 contains a further entry stating "[s]top the killings". Notwithstanding the Nyiramasuhuko Defence's position that in view of the infancy of the Interim Government and the fact that the country was at war (together with the associated communication difficulties), only limited information

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<sup>1101</sup> Prosecution Closing Brief, p. 60, para. 108.

<sup>1102</sup> T. 27 October 2005 pp. 4-6 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 81.

<sup>1103</sup> See, e.g., Nyiramasuhuko Closing Brief, para. 539.

<sup>1104</sup> T. 26 September 2005 pp. 55, 59-60 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994) pp. 1-2.

<sup>1105</sup> T. 14 November 2005 p. 69 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994) p. 2.

<sup>1106</sup> T. 17 November 2005 pp. 39-40 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) pp. 24-25.

was available, the Chamber finds the evidence established beyond a reasonable doubt that, between 9 April 1994 and 14 July 1994, the Government was aware that massacres were taking place.<sup>1107</sup>

566. With respect to Expert Witness Guichaoua, evidence was led to demonstrate that the Interim Government was a government that functioned during the three months of war: frequent meetings were held, issues were discussed and decisions taken.<sup>1108</sup> According to Table 3, Volume Two of Guichaoua's Report, the Cabinet met on 15 occasions between 6 April and 17 July 1994. Moreover, proof that discussions were held on a variety of issues and that decisions were taken by the Interim Government was borne out by the entries in Nyiramasuhuko's diary and her notes on individual Cabinet meetings.<sup>1109</sup>

567. Based on all the above evidence, the Chamber is persuaded that information on civilian massacres was provided and discussed at Cabinet meetings, and that the Government took decisions in light of such information.

568. The Prosecution did not make any specific submissions in its Closing Brief or lead evidence during trial to substantiate its allegation that in the course of Cabinet meetings ministers demanded that weapons be distributed in their respective home *préfectures* knowing that such weapons would be used in the massacres.

569. Having assessed the totality of the evidence in relation to Paragraph 6.13 of the Nyiramasuhuko and Ntahobali Indictment, the Chamber finds it established beyond a reasonable doubt that between 9 April 1994 and 14 July 1994, numerous Cabinet meetings were held and that during such meetings ministers, including Nyiramasuhuko, were briefed on the situation *vis-à-vis* massacres of the civilian population. However, it has not been proven that ministers demanded that weapons be distributed in their respective home *préfectures*.

#### **3.4.12.2 Issuance of Directives and Instructions During Cabinet Meetings and Pacification**

570. Nyiramasuhuko's testimony showed that the Interim Government indeed issued instructions and directives during April and June 1994. In particular, the Chamber notes Nyiramasuhuko's testimony that at the meeting of 11 April 1994, the Prime Minister issued instructions to *préfets*<sup>1110</sup> and that at the meeting of 27 April 1994, a document on the restoration of security in the country was discussed, agreed on and disseminated.<sup>1111</sup>

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<sup>1107</sup> See T. 26 September 2005 pp. 59-60, 64; T. 15 November 2005 p. 25; T. 17 November 2005 pp. 39-41; T. 21 November 2005 p. 8 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) pp. 24-25; Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994).

<sup>1108</sup> T. 29 June 2004 pp. 68, 71-72 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 25.

<sup>1109</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) pp. 19, 24-25, 27; Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994); Defence Exhibit 347C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 10 April 1994); Defence Exhibit 349C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the joint meeting of Government and *préfets* of 11 April 1994).

<sup>1110</sup> T. 16 November 2005 p. 9 (Nyiramasuhuko) (these instructions were later broadcast to the *préfets* on Radio Rwanda; cf. Defence Exhibit 350C (Nyiramasuhuko) (Transcript of Kambanda's speech of 11 April 1994).

<sup>1111</sup> T. 29 September 2005 pp. 30-31 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994) pp. 13-14.

571. Nyiramasuhuko also testified to the manner in which these instructions were conveyed to the people: through the pacification campaign. A campaign timetable was drawn up and members of the Government met with various stakeholders on specific days.<sup>1112</sup> The Chamber recalls that Nyiramasuhuko testified that ministers were given responsibility for pacification in specified *préfectures*.<sup>1113</sup> In the context of this campaign, ministers visited various areas of the country to disseminate the instructions contained in the Prime Minister's Directive of 27 April 1994,<sup>1114</sup> which was the official manifestation of the pacification policy (). These instructions were read out in order to be understood.<sup>1115</sup>

572. The main question for the Chamber is whether these directives and instructions were intended to incite, aid and abet the perpetration of massacres and whether Nyiramasuhuko was responsible for "pacification" in Butare.

573. Dealing with these two issues in turn, at the root of the first issue is the Interim Government's motive when it issued its instructions and directives. In the Chamber's view, the language used in the instructions and directives, the meaning attributed to them by their recipients and the Government's knowledge of the meaning so attributed is key to determining the Interim Government's motive in this respect.

574. During the course of trial proceedings, the Prosecution introduced considerable evidence on the use of double-speak in Rwanda in 1994, particularly in relation to the words "enemy", "*Inyenzi*", "*Inkotanyi*", "accomplice" and "infiltrator" as referring to Tutsis. For example, Prosecution Witness FAG was asked whether, in 1994, "*Inyenzi*" was used to refer to RPF accomplices to which he replied that the term was used to refer to all Tutsis.<sup>1116</sup> () Prosecution Witnesses FAH () and FAI () testified that it was common knowledge that "enemy" referred to the RPF and "accomplices" meant the Tutsis.<sup>1117</sup> Numerous witnesses provided consistent testimony that the words "enemy", "*Inyenzi*", "*Inkotanyi*", "accomplice" and "infiltrator" were commonly used to refer to Tutsis.<sup>1118</sup>

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<sup>1112</sup> T. 26 September 2005 pp. 65-66 (Nyiramasuhuko); Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994) p. 6.

<sup>1113</sup> T. 29 September 2005 pp. 34-36 (Nyiramasuhuko).

<sup>1114</sup> T. 29 September 2005 pp. 30-31, 36 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>1115</sup> T. 21 November 2005 p. 8 (Nyiramasuhuko).

<sup>1116</sup> T. 3 March 2004 p. 49 (Witness FAG).

<sup>1117</sup> T. 21 April 2004 p. 15 (Witness FAH); T. 31 October 2002 p. 12 (ICS) (Witness FAI).

<sup>1118</sup> T. 9 February 2004 p. 59 (Witness FAL) (no distinction was drawn between the Tutsis inside the country and the Tutsis who attacked the country, all Tutsis were considered to be the enemy); *see also* (); T. 7 November 2001 pp. 95-96 (Witness TA) (Tutsi refugees not allowed to go to hospital because if a doctor were to give drugs to a Tutsi, the *Interahamwe* would kill the doctor as he would be considered to be an accomplice); *see also* (); T. 6 September 2004 p. 48 (ICS) (Witness TQ) (Tutsis described by *Interahamwe* as RPF accomplices and referred to as, "*Inkotanyi*" and "*Inyenzi*"); *see also* (); T. 3 March 2003 p. 46 (Witness SS) (saw Nyiramasuhuko pick up a piece of cloth and state: "I don't understand, it's these refugees here who threw this cloth. These refugees are the accomplices of the *Inkotanyi*"); *see also* (); T. 6 April 2004 pp. 21, 52 (Witness QAH) (Ntezirayayo told recruits the purpose of training was to counter the enemy. Ntezirayayo's role at Kamena Stadium was twofold: he taught them how to operate arms and incited them to hate the Tutsis.); *see also* (); T. 4 March 2008 p. 31 (ICS) (Witness D-2-20-F) (Minister Baravuga told members of the population "Our country is plagued by a difficult war, and I would like to show that you have to track down the enemy as well as their ... accomplices." The enemies were the Tutsi and their accomplices included the authorities such as "Kanyabatutsi"); *see also* (); T. 16 February 2004 pp.

575. This was largely corroborated by Prosecution Expert Witness Des Forges and Defence Expert Witnesses Reyntjens and Shimamungu, as well as Nsabimana Defence Witness Fergal Keane.<sup>1119</sup> In addition to testimony on the use of double-speak, documentary evidence was adduced and referred to in witness testimony demonstrating that such words were indeed used by the Interim Government in its directives and instructions. In this connection, the Chamber refers to the contents of Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994),<sup>1120</sup> and Defence Exhibit 360C (Minister Niyitegeka's pacification speech of 30 April 1994 to Butare).<sup>1121</sup> The Chamber notes that the language used in these Exhibits refers to actions such as "unmask[ing] the enemy and his accomplices" and "fight[ing] against the enemy."<sup>1122</sup>

576. Witnesses also testified that Tutsis fled or were chased from their homes in April 1994.<sup>1123</sup> The Prosecution also led evidence from Des Forges that the Prime Minister's Directive on restoring security issued on 27 April 1994 had a double meaning: while the

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35, 37 (ICS) (Witness RV); T. 19 February 2004 p. 60 (ICS) (Witness RV) ("Work" meant struggle against the enemy whom the Prime Minister defined as the *Inkotanyi* and their accomplices. The witness explained that *Inkotanyi* accomplices were Tutsis or Hutus who supported the RPF); *see also* (); Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 14-15 (From a traditional Rwandan perspective, the aggressor of Rwanda, the Tutsi, were referred to as a real enemy); *see also* (); T. 14 October 2002 p. 50 (Witness SU); T. 16 October 2002 pp. 25, 27, 35 (Witness SU) (Nyiramasuhuko said that refugees had brought the cloth and therefore the *Inkotanyi* accomplices had infiltrated. It was said that there were RPF accomplices among the refugees); *see also* (); T. 20 May 2002 p. 40 (Witness TK) (explaining that Tutsis were called "*Inyenzi*" during that period); *see also* (); T. 23 March 2004 pp. 59-60 (ICS) (Witness QI); T. 24 March 2004 pp. 76, 80 (ICS) (Witness QI) (understood *Inkotanyi* to mean Tutsis hiding in the bushes); *see also* (); T. 21 April 2004 p. 22 (Witness FAH) (Colonel Muvunyi said that if the population did not fight the Tutsis, who were accomplices, then the Tutsis would exterminate the population); *see also* (); T. 12 November 2001 p. 33 (Witness QJ) (Witness QJ testified that when Kanyabashi used the word "enemy", it meant Tutsis); *see also* (); T. 27 September 2006 pp. 77-78 (Keane); Defence Exhibit 473D (Nsabimana) (Transcript of Interview) (young man who worked at roadblock used the phrase "*Inyenzi*", which they were led to understand referred to cockroaches, a term used to reflect Tutsis. He understood the word *Inyenzi* meant cockroach and was applied to RPF soldiers or Tutsi civilians and Tutsis as an ethnic group in 1994); *see also* (); T. 14 April 2004 p. 16 (Witness FAK); T. 15 April 2004 p. 6 (Witness FAK) (The witness and others were later made to understand that *Inkotanyi* were Tutsis); *see also* (); T. 6 July 2004 p. 69 (Des Forges) (enemy was the RPF and Tutsis who were defined as part of the enemy, because of their ethnicity and because of their presumed association with the RPF); *see also* ()).

<sup>1119</sup> T. 9 June 2004 pp. 23-24 (Des Forges); T. 21 November 2007 p. 71 (Reyntjens); T. 16 March 2005 p. 38 (Shimamungu); T. 27 September 2006 p. 78 (Keane).

<sup>1120</sup> For example, "The enemy who attacked Rwanda is well known: it is the RPF-*INKOTANYI* ... the population must remain watchful in order to unmask the enemy and his accomplices and hand them over to the authorities,"; "The authorities of the *communes*, *secteurs* and *cellules* are requested ... to identify places where should be set up officially recognized roadblocks and to set up a system in which the rounds would continue to be done in order to prevent the enemy from infiltrating."

<sup>1121</sup> For example, "Rwandans, your Excellences, dear brothers and sisters, we are begging you to help us fight .... We are asking you to join us so that, together, we can fight against the enemy ...."; "We know that the enemy is present here in the country, we know that there are accomplices even here in Butare."; "If you see an accomplice or someone who resembles an accomplice, or if you suspect that someone is an accomplice, tell the authorities"; "The enemy's collaborators are easy to identify, since we have already discovered their characteristics."

<sup>1122</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); Defence Exhibit 360C (Nyiramasuhuko) (Minister Niyitegeka's pacification speech of 30 April 1994 to Butare).

<sup>1123</sup> *See, e.g.* T. 1 March 2004 p. 13 (ICS) (Witness FAG) (saw Tutsi homes being destroyed and Tutsis fleeing into the hills, mainly towards Kabuye Hill, because they were being pursued by Hutus); *see also* (); T. 13 April 2004 p. 7 (Witness QBU); T. 13 April p. 42 (ICS) (Witness QBU) (Tutsis living in the area of Kibuye fled from their homes towards Burundi in April 1994); *see also* ()).

surface message was apparently to restore calm, the restoration of security hid an underlying meaning, *i.e.* the elimination of Tutsis who represented a threat to security.<sup>1124</sup>

577. The Chamber is mindful of the fact that some of the witnesses testifying on these matters were detained at the time of their testimony.<sup>1125</sup> The Chamber notes that appropriate caution should be exercised when considering the evidence of a detained witness to ensure a fair trial and to avoid prejudice to the accused. However, the Chamber considers that the testimony of the witnesses on the issues described in the foregoing paragraphs is consistent and reliable.

578. In light of the foregoing, the Chamber finds beyond a reasonable doubt that, throughout 1994 in Rwanda, words such as “enemy”, “*Inyenzi*”, “*Inkotanyi*”, “accomplice” and “infiltrator” were used to refer to Tutsis.

579. With respect to the second issue, *i.e.* whether Nyiramasuhuko was responsible for pacification in Butare, the Prosecution relies on Guichaoua’s assertion in his Report that each minister was assigned a *préfecture* for the purposes of pacification and that Nyiramasuhuko was appointed to Butare.<sup>1126</sup> He admitted that Nyiramasuhuko’s diary contained no mention of the fact that she had been assigned to Butare for the purposes of pacification.<sup>1127</sup> However, he pointed to two entries from Nyiramasuhuko’s diary which, in his opinion, showed that Nyiramasuhuko was responsible for pacification in Butare.

580. The first diary entry states, “[d]emystify the enemy, therefore journalists would travel with the ministers in charge of particular *préfectures*.”<sup>1128</sup> The second diary entry states, “Mifaprofe → Muramba and Butare and keep an eye on Gikongoro.”<sup>1129</sup> Guichaoua stated that “Mifaprofe” meant the *Ministre de la famille et de la promotion féminine* which was the post held by Nyiramasuhuko.<sup>1130</sup> Guichaoua provided no further foundation for his assertion.

581. In contrast, the Defence presented evidence through Nyiramasuhuko by which it sought to demonstrate that Ministers Niyitegeka and Sabumukunzi spoke at a pacification meeting in Butare.<sup>1131</sup> The Chamber notes that the transcript of the speech made by Minister Niyitegeka at the Butare pacification meeting indicates that the meeting took place in Butare and that the Prime Minister’s Directive on restoring security was read out.<sup>1132</sup> Nyiramasuhuko did not deny having been involved in pacification *per se*; instead, she testified that she was responsible for

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<sup>1124</sup> T. 9 June 2004 p. 23 (Des Forges); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994).

<sup>1125</sup> T. 21 April 2004 p. 10 (Witness FAH); T. 31 October 2002 p. 76 (ICS) (Witness FAI); T. 9 February 2004 p. 47 (ICS) (Witness FAL); T. 7 April 2004 p. 42 (ICS) (Witness QAH); T. 8 April 2004 p. 6 (ICS) (Witness QAH); T. 18 February 2004 pp. 50-52 (ICS) (Witness RV); T. 14 March 2004 p. 10 (Witness QBV); T. 14 April 2004 pp. 54-55 (Witness FAK).

<sup>1126</sup> T. 8 October 2004 p. 5 (Guichaoua); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 25-26.

<sup>1127</sup> T. 8 October 2004 pp. 10-11 (Guichaoua).

<sup>1128</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 26.

<sup>1129</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 26.

<sup>1130</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 26.

<sup>1131</sup> T. 29 September 2005 pp. 56-60 (Nyiramasuhuko).

<sup>1132</sup> Defence Exhibit 360C (Nyiramasuhuko) (Minister Niyitegeka’s pacification speech of 30 April 1994 to Butare).

pacification in Gisenyi *préfecture* and not Butare *préfecture*.<sup>1133</sup> She stated that she did not attend the Butare pacification meeting, but did listen to Minister Niyitegeka's speech on the radio.<sup>1134</sup> Nyiramasuhuko also confirmed she participated in the drafting of the Directive issued from the Prime Minister on 25 May 1994.<sup>1135</sup> Des Forges testified that at the Cabinet meeting of 23 April 1994 Nyiramasuhuko was assigned the responsibility of implementing the pacification campaign in Butare *préfecture* and she was often present there.<sup>1136</sup> No further information was elicited or provided as to the basis for Des Forges' opinion on this issue.

582. The Chamber does not consider the evidence of Expert Witnesses Guichaoua and Des Forges, on the issue of Nyiramasuhuko's responsibility for pacification in Butare, to be sufficient to establish that she was in fact the minister in charge of pacification for that *préfecture*. The first diary entry cited by Guichaoua in support of his assertion simply confirms Nyiramasuhuko's own testimony that ministers were assigned particular *préfectures*. It does not establish or suggest that Nyiramasuhuko was responsible for pacification in Butare. The Chamber recalls that Nyiramasuhuko did not deny being involved in the pacification programme. She admitted that she was responsible for pacification in Gisenyi. The second diary entry contains an arrow drawn from the designation of Nyiramasuhuko's ministerial post to the words "Muramba and Butare and keep an eye on Gikongoro." The Chamber does not consider that this entry establishes that Nyiramasuhuko was responsible for pacification in Butare. Indeed, the Chamber notes that this entry corresponds, in Guichaoua's view, to 1 June 1994, over one month after the launch of the pacification campaign on 27 April 1994 and the Butare pacification meeting of 30 April 1994.

583. To conclude, having assessed the totality of the evidence in relation to Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment, the Chamber finds that between 9 April 1994 and 14 July 1994, the Interim Government of which Nyiramasuhuko was a member adopted directives and issued instructions during Cabinet meetings. In addition, the Chamber considers that the intention behind these directives and instructions was to encourage the population to hunt down and take action against the "enemy" and its "accomplices"; terms which referred to Tutsis in general. However, although pacification may have been the mechanism to ensure that such directives were implemented, and notwithstanding the evidence that Nyiramasuhuko attended Cabinet meetings at which the pacification programme was drawn up, as well as Nyiramasuhuko's own evidence that she was involved in this programme, the Chamber considers that the Prosecution has not established that Nyiramasuhuko was assigned responsibility for what was termed "pacification" in Butare, as alleged in Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment.

### **3.5 Removal of *Préfet* Habyalimana and Swearing-in Ceremony of *Préfet* Nsabimana, 17-19 April 1994**

#### **3.5.1 Introduction**

584. Each of the Indictments allege that the Interim Government, of which Nyiramasuhuko was a member, removed Butare *Préfet* Jean-Baptiste Habyalimana from office and incited the

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<sup>1133</sup> T. 29 September 2005 p. 37 (Nyiramasuhuko).

<sup>1134</sup> T. 29 September 2005 p. 57 (Nyiramasuhuko).

<sup>1135</sup> T. 22 November 2005 p. 9 (Nyiramasuhuko).

<sup>1136</sup> T. 5 July 2004 p. 65 (Des Forges).



people of Butare *préfecture* to participate in the genocide.<sup>1137</sup> They further allege that on 19 April 1994, Nsabimana was sworn in as the new *préfet* of Butare *préfecture*. On that occasion, President Sindikubwabo made an inflammatory speech, openly and explicitly calling on the people of Butare to follow the example of the other *préfectures* by beginning the massacres.<sup>1138</sup>

585. Through their presence at the ceremony and their failure to dissociate themselves from the President's statements, Nyiramasuhuko and Kanyabashi gave a clear signal to the people that the massacres were ordered and condoned by the Government. Furthermore, Kanyabashi, in the presence of the new *préfet*, Nsabimana, gave a speech in support of the President, assuring him that his instructions would be heeded. Shortly thereafter, the large-scale massacre of Tutsis began in Butare *préfecture*.<sup>1139</sup>

586. The Prosecution contends that the genocide of Tutsis which unfolded in Butare was not a spontaneous outburst of violence; rather, it was organised and planned, and groups of people from different walks of life acted in concert to perpetrate it.<sup>1140</sup>

587. The Prosecution argues that killings were only taking place in a few of the 20 *communes* in Butare by mid-April 1994 and that the scale of violence was not at the same level as the rest of the country.<sup>1141</sup> An essential step to precipitate the genocide in Butare was gaining control of the administrative hierarchy. The perpetrators of the genocide judged that they needed to remove *Préfet* Habyalimana and replace him with Nsabimana in order to influence *bourgmestres* who were not supporting the programme of genocide. Without *Préfet* Habyalimana's removal, the genocidal policy in Butare *préfecture* would not have been successful.<sup>1142</sup>

588. The Prosecution contends that Nsabimana's swearing-in ceremony is key to understanding why and how the genocide commenced in Butare *préfecture*.<sup>1143</sup> At this ceremony, President Sindikubwabo called on the people of Butare to "cross the line" and start the genocide in Butare *préfecture*. This message was part of the Interim Government's plan to commit genocide throughout Rwanda, including Butare *préfecture*. It was fully supported by the leaders and influential figures in attendance who, with the assistance of the military and local militia, ensured that the plan was passed on to local authorities and the local population, to ensure that genocide was indeed carried out in Butare *préfecture*.<sup>1144</sup>

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<sup>1137</sup> Para. 6.20 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8 and 10 against Nyiramasuhuko); Para. 6.20 of the Kanyabashi Indictment (not in support of counts); Para. 6.20 of the Ndayambaje Indictment (not in support of counts); Para. 6.20 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Prosecution Pre-Trial Brief, para. 6. Given that this allegation only supports criminal counts against Nyiramasuhuko, the remaining Accused have no case to defend with regard to this allegation and their submissions, if any, will not be considered.

<sup>1138</sup> Para. 6.21 of each of the Indictments (not in support of counts against Nyiramasuhuko or Kanyabashi); (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>1139</sup> Para. 6.22 of each of the Indictments (in support of Counts 1-6, 8 and 10 against Nyiramasuhuko); (in support of all counts); (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>1140</sup> Prosecution Closing Brief, p. 47, paras. 65-66.

<sup>1141</sup> Prosecution Closing Argument, T. 20 April 2009 p. 18.

<sup>1142</sup> Prosecution Closing Brief, p. 46, para. 61.

<sup>1143</sup> Prosecution Closing Brief, p. 47, para. 67.

<sup>1144</sup> Prosecution Closing Brief, pp. 47-48, para. 67.

589. In support of these allegations, the Prosecution relies on the testimonies of Witnesses RV, TQ, QJ, QA, FAE, FAI, FAM, FAB, QAH, QCB, QBU, QI, Prosecution Expert Witnesses Alison Des Forges, André Guichaoua and Francis Ntakirutimana, Kanyabashi Defence Expert Witness Filip Reyntjens, Nyiramasuhuko Defence Witness WMCZ, Maurice Ntahobali, and the Accused Nyiramasuhuko and Nsabimana.<sup>1145</sup>

590. The Nsabimana Defence asserts that massacres of Tutsis started in Butare *préfecture* as early as 13 April 1994 and that this fact negates the Prosecution theory that Nsabimana's appointment as *préfet* on 19 April 1994 instigated the commencement of massacres in the *préfecture*.<sup>1146</sup> The Nsabimana Defence submits that killings were progressing inexorably into Butare *préfecture*.<sup>1147</sup> In support of its submissions, the Defence cites Prosecution Witnesses QCB, TQ, FAI, QAH, Prosecution Expert Witnesses Alison Des Forges and André Guichaoua, Nyiramasuhuko Defence Expert Witness Shimamungu, Nsabimana Defence Witness Karemano, Kanyabashi Defence Witnesses D-2-5-I, D-1-4-O, Ndayambaje Defence Witness Constant Julius Goetschalckx (a.k.a Brother Stan), Nsabimana Defence Witness AGWA, Nsabimana and Ndayambaje.

591. The Nsabimana Defence further avers that although Nsabimana attended his swearing-in ceremony on 19 April 1994, he did not understand the President's speech and believed that it would have been difficult for the population to understand it.<sup>1148</sup> As he did not understand the speech, he did not implement it.<sup>1149</sup> The Nsabimana Defence submits that Nsabimana was left with no other choice but to accept his surprise appointment as *préfet* because he feared for himself and his family if he refused.<sup>1150</sup>

592. The Nyiramasuhuko Defence submits that Nyiramasuhuko did not replace *Préfet* Habyalimana to perpetrate the genocide. It argues that the various political parties decided among themselves that Habyalimana should be dismissed as *préfet* and that Nsabimana should be appointed. The Nyiramasuhuko Defence states that Habyalimana was congratulated for doing all that he had been able to do.<sup>1151</sup> In support of these submissions, the Nyiramasuhuko Defence relies on the testimonies of Nyiramasuhuko, Nyiramasuhuko Defence Witness WMCZ and Kanyabashi Defence Expert Witness Filip Reyntjens.

593. The Nyiramasuhuko Defence further disputes the Prosecution thesis that the visit of the President and other members of the Interim Government (including Nyiramasuhuko) was a means of removing obstacles to the beginning of the massacres in Butare and demonstrating that local authorities opposed to the extermination of the Tutsis would be replaced.<sup>1152</sup> Further, the Defence submits that the President's speech, which was addressed to the local authorities and not the population, is impossible to understand if it is removed from its war-time context.<sup>1153</sup> Far from being inflammatory, the President's speech was peaceful in nature.<sup>1154</sup>

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<sup>1145</sup> Prosecution Closing Brief, pp. 44-51, paras. 57, 68, 73-79.

<sup>1146</sup> Nsabimana Closing Brief, paras. 222-240.

<sup>1147</sup> Nsabimana Closing Brief, paras. 236, 238.

<sup>1148</sup> Nsabimana Closing Brief, paras. 166, 187, 205.

<sup>1149</sup> Nsabimana Closing Brief, para. 201.

<sup>1150</sup> Nsabimana Closing Brief, para. 152.

<sup>1151</sup> Nyiramasuhuko Closing Brief, para. 492.

<sup>1152</sup> Nyiramasuhuko Closing Brief, para. 352.

<sup>1153</sup> Nyiramasuhuko Closing Brief, paras. 359-360.

The Defence relies on Nyiramasuhuko Defence Expert Witness Eugène Shimamungu and the Accused Nyiramasuhuko.<sup>1155</sup>

594. The Kanyabashi Defence submits that Kanyabashi did not support the President, agree to any slogan to spark off the killings of Tutsis, or address the President in his own speech.<sup>1156</sup> The Kanyabashi Defence relies on the testimony of Prosecution Witness RV, Prosecution Expert Witnesses André Guichaoua and Francis Ntakirutimana, Kanyabashi Defence Expert Witness Filip Reyntjens, and the Accused Nyiramasuhuko and Nsabimana.<sup>1157</sup>

### 3.5.2 Preliminary Issues

#### *Exclusion of Evidence*

595. The Ntahobali Defence requests the exclusion of evidence adduced by Prosecution Witnesses QJ, RV, QI and Expert Witnesses Guichaoua and Ntakirutimana on the grounds of insufficient notice of their testimonies. Witness Ntakirutimana specifically, was introduced to the Prosecution case very late on 30 March 2004.<sup>1158</sup>

596. The Nyiramasuhuko and Ntahobali Indictment and the Prosecution Pre-Trial Brief specifically assert that the Interim Government, of which Nyiramasuhuko was a part, removed *Préfet* Habyalimana from office.<sup>1159</sup> In addition, the Chamber previously addressed a motion by the Nyiramasuhuko Defence, joined by the other Defence teams, challenging certain allegations in the Will-Say statements of Witnesses RV and QBZ for failure to plead facts in the Indictments.<sup>1160</sup> In its Decision of 16 February 2004, the Chamber held that the challenged allegations were encompassed by the Amended Indictments, noted that the Prosecution had disclosed Witness RV's statement to the Defence more than 18 months before Witness RV was to testify, and held that the Accused had sufficient time to investigate and prepare its defence.<sup>1161</sup>

597. The Chamber considers that Nyiramasuhuko was duly informed of the nature and cause of the allegation that Nyiramasuhuko was a part of the Interim Government and that the Interim Government removed *Préfet* Habyalimana from office. Furthermore, the Chamber considers that the Accused had adequate notice of this charge to prepare a defence because it was encompassed by the Indictment and the Prosecution Pre-Trial Brief.

598. The Ntahobali Defence submitted a motion to exclude the testimony of or to recall Witness QJ, *inter alia*, for further cross-examination.<sup>1162</sup> The Defence highlighted that the

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<sup>1154</sup> Nyiramasuhuko Closing Brief, para. 362.

<sup>1155</sup> Nyiramasuhuko Closing Brief, paras. 332-366.

<sup>1156</sup> Kanyabashi Closing Brief, paras. 102, 107.

<sup>1157</sup> Kanyabashi Closing Brief, para. 102.

<sup>1158</sup> Ntahobali Closing Brief, para. 80.

<sup>1159</sup> Para. 6.20 Nyiramasuhuko and Ntahobali Indictment; Prosecution Pre-Trial Brief, para. 6.

<sup>1160</sup> *Nyiramasuhuko et al.*, Decision on Defence Urgent Motions to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible (TC), 16 February 2004.

<sup>1161</sup> *Nyiramasuhuko et al.*, Decision on Defence Urgent Motions to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible (TC), 16 February 2004, paras. 18, 20, 26.

<sup>1162</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-T, *Requête de Arsène Shalom Ntahobali en rappel de témoins*, 24 November 2008.

Prosecution disclosed the unredacted statements of this witness on 30 January 2002; seven and a half months after the trial began.<sup>1163</sup> The Chamber denied the Defence requests, noting that the motion was filed almost at the end of the case, by which point the Defence team had been in possession of the data and information for a substantial amount of time. There was no valid reason set forth for the exclusion of this evidence and no adequate legal basis to pre-empt a recall in this case.<sup>1164</sup>

599. Within the context of a Prosecution motion to add Expert Witness Ntakirutimana,<sup>1165</sup> the Chamber granted the request to add the witness.<sup>1166</sup>

600. The Chamber finds no reason to reconsider the Decisions of 16 February 2004, 30 March 2004 and 19 January 2009. As such, the Accused's right to a fair trial was not prejudiced, and the Chamber will consider the evidence of these witnesses as to the removal of *Préfet Habyalimana*, the appointment of Nsabimana and the alleged start of the massacres in Butare *préfecture*.

#### *Vagueness of the Indictment*

601. The Nsabimana Defence contends that neither Paragraph 6.21 nor 6.22 of the Indictment accuses Nsabimana of criminal behaviour, and that omission could not be cured by subsequent disclosure.<sup>1167</sup> The Chamber notes that Paragraphs 6.21 and 6.22 of the Nsabimana and Nteziryayo Indictment allege that Nsabimana's presence during the President's speech and the fact that he did not dissociate himself from the inflammatory statements constitute adherence to the governmental plan to commit genocide; however, the Indictment does not specify what, if anything, Nsabimana is alleged to have done at the swearing-in ceremony. The Prosecution does not allege that Nsabimana acted in a particular way or said particular things. Accordingly, the Nsabimana Defence would not have had notice of the Prosecution's intention to lead evidence on particular acts by Nsabimana in support of its case against that Accused. The Chamber concludes that the Indictment is defective in this respect.

602. The Chamber must consider whether this defect has been cured by subsequent disclosures. The summary of Witness ST's expected testimony in the Appendix to the Prosecution Pre-Trial Brief indicates that the witness saw Nsabimana at a meeting on 19 or 20 April 1994 at the MRND Headquarters.<sup>1168</sup> The meeting involved *bourgmestres*, military chiefs and political party leaders. The summary states that the killings commenced on the day after the meeting. This is consistent with Witness ST's previous statement of 20 November 1997, which the Prosecution disclosed to the Defence on 4 December 2000.<sup>1169</sup> Furthermore,

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<sup>1163</sup> *Ntahobali*, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Witnesses (TC), 19 January 2009, para. 3.

<sup>1164</sup> *Ntahobali*, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Witnesses (TC), 19 January 2009, paras. 19, 25, 27.

<sup>1165</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Prosecutor's Motion to Drop and Add Witnesses, 12 January 2004.

<sup>1166</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004, para. 37.

<sup>1167</sup> Nsabimana Closing Brief, paras. 160-161.

<sup>1168</sup> Prosecution Pre-Trial Brief – Appendix; Witness ST (85).

<sup>1169</sup> 20 November 1997, Statement of Witness ST, disclosed 4 December 2000.

in its opening statement, the Prosecution submitted that some of the Accused were present at the swearing-in ceremony and stated that it would lead evidence to show that the Accused publicly identified themselves, through their statements as well as their presence, as being involved in and supportive of the President and exhibited their intent to comply with his directives.<sup>1170</sup> The Prosecution submitted that Kanyabashi and Nsabimana made speeches which showed that Butare authorities understood Sindikubwabo's message and expressed their desire to organise the same activities in Butare.<sup>1171</sup> The Chamber considers that this information provided Nsabimana with sufficient notice of his alleged criminal behaviour. Thus, any defect in the Indictment was cured and there was no prejudice in the preparation of his defence.

#### *Prosecution Exhibits 113 and 114*

603. The Nsabimana Defence argues that Prosecution Exhibits 113 (*The Truth About the Massacres in Butare*, by Nsabimana) and 114 (Interview with Nsabimana, dated 1 October 1994), said by Des Forges to have been sent to her by Nsabimana, were accepted for the sole purpose of establishing the basis for Des Forges' opinions. The Defence asserts that these documents were to be used only to establish contradictions, if necessary.<sup>1172</sup>

604. The Chamber recalls its oral ruling of 8 June 2004, in which it held that Prosecution Exhibits 113 and 114 were admissible as one of the sources relied upon by Des Forges in formulating her expert opinion.<sup>1173</sup> The Chamber ruled that the weight and probative value of the expert opinion would be evaluated at the end of the trial. The Chamber did not rule that Prosecution Exhibit 113 and 114 could only be used to establish contradictions; rather the exhibits were admitted to help substantiate Des Forges' opinion. The Chamber's deliberations on these matters necessarily implicate the weight and probative value to be attributed to Des Forges' opinion, as well as the materials upon which she relied. The Chamber also notes that Nsabimana did not object to the admissibility or contest the authenticity of these documents. In fact, during cross-examination, while he did not expressly admit that the writings were in fact his own, Nsabimana stated that Prosecution Exhibit 114 reflected his own views.<sup>1174</sup> The Chamber will evaluate the weight and probative value of these documents in light of the other evidence, considering in due course the opinion of Expert Witness Des Forges and Nsabimana's assertions regarding these documents.

#### *Nyiramasuhuko's Diary*

605. The Ntahobali Defence submits that including into evidence the alleged diary of Nyiramasuhuko was prejudicial to the rights of both Nyiramasuhuko and Ntahobali.<sup>1175</sup> The Chamber recalls its Oral Decision of 24 June 2004, where it noted that the Nyiramasuhuko Defence did not object to the characterisation of the diary in question as belonging to Nyiramasuhuko, despite numerous opportunities to do so.<sup>1176</sup> In fact, on numerous occasions

<sup>1170</sup> Prosecution Opening Statement, T. 12 June 2001 p. 74.

<sup>1171</sup> Prosecution Opening Statement, T. 12 June 2001 p. 75.

<sup>1172</sup> T. 8 June 2004 pp. 43-46 (Des Forges).

<sup>1173</sup> T. 8 June 2004 pp. 47-49, 62 (Des Forges).

<sup>1174</sup> T. 13 November 2006 p. 14 (Nsabimana).

<sup>1175</sup> Ntahobali Closing Brief, para. 80.

<sup>1176</sup> T. 24 June 2004 pp. 13-14 (Guichaoua).

Nyiramasuhuko accepted ownership of the diary in her Closing Brief, her oral submissions and at trial during her testimony.<sup>1177</sup>

606. The Ntahobali Defence, in particular, objected to consideration of Volume Two of Guichaoua's Expert Report on the meaning of the diary.<sup>1178</sup> In this respect, the Chamber found that both the diary and Volume Two of Guichaoua's Report were admissible as evidence.<sup>1179</sup> The Chamber noted, however, that the probative value of this evidence would be evaluated at a later date.<sup>1180</sup> There is no reason put forward for the Chamber to reconsider the 24 June 2004 Oral Decision.

### 3.5.3 Evidence

#### Prosecution Witness RV

607. Witness RV, a Hutu former civil servant in Muganza *commune*, testified that he attended a meeting at which Habyalimana was dismissed and replaced by Nsabimana, in the company of Callixte Kalimanzira, Minister of Interior.<sup>1181</sup> *Préfet* Habyalimana was replaced because he was suspected of being an *Inkotanyi* accomplice.<sup>1182</sup> Prior to the death of President Habyarimana, the atmosphere in Muganza *commune* was good. After the President's death, the situation changed because the different political parties were affected by the news in different ways. MRND party members within the community were saddened by the President's death, whereas opposition party members were happy. In addition, due to the fact that Muganza *commune* was close to the Burundi border, people were frightened that the RPF would attack at any time from Burundi.<sup>1183</sup>

608. The witness attended Nsabimana's swearing-in ceremony on 19 April 1994 in the multi-purpose *préfecture* hall, which was also the local MRND Headquarters.<sup>1184</sup> The meeting started before noon and went on into the afternoon.<sup>1185</sup> Many officials attended the meeting including President Théodore Sindikubwabo, Prime Minister Jean Kambanda, other ministers including Éliezer Niyitegeka, Doctor Straton Semukunzi and Pauline Nyiramasuhuko, Alphonse Nteziryayo and all the *bourgmestres*, including Joseph Kanyabashi.<sup>1186</sup> Kanyabashi and Nteziryayo were seated among the population rather than among the officials and did not make speeches.<sup>1187</sup> Ndayambaje did not attend the ceremony.<sup>1188</sup>

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<sup>1177</sup> Nyiramasuhuko Closing Brief, paras. 369, 457-458, 469, 495, 498, 520, 548, 549, 553, 561-563; Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 58, 60, 68; Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 52; T. 21 September 2005 p. 34; T. 12 October 2006 pp. 34-37, 55; T. 25 October 2005 p. 58 (Nyiramasuhuko).

<sup>1178</sup> Ntahobali Closing Brief, fn. 1186.

<sup>1179</sup> T. 24 June 2004 pp. 12-17 (Guichaoua).

<sup>1180</sup> T. 24 June 2004 p. 14 (Guichaoua).

<sup>1181</sup> T. 17 February 2004 p. 54 (ICS) (Witness RV).

<sup>1182</sup> T. 16 February 2004 p. 32 (ICS) (Witness RV).

<sup>1183</sup> T. 17 February 2004 p. 53 (ICS) (Witness RV).

<sup>1184</sup> T. 16 February 2004 p. 33 (ICS); T. 19 February 2004 p. 25 (ICS) (Witness RV).

<sup>1185</sup> T. 19 February 2004 p. 25 (ICS) (Witness RV).

<sup>1186</sup> T. 16 February 2004 pp. 33-34 (ICS) (Witness RV).

<sup>1187</sup> T. 19 February 2004 pp. 25-26, 58-59 (ICS) (Witness RV).

<sup>1188</sup> T. 17 February 2004 p. 60 (ICS) (Witness RV).

609. Witness RV stated that Prime Minister Kambanda spoke first, followed by President Sindikubwabo. He stated that the two speeches were complementary.<sup>1189</sup> President Sindikubwabo said that those in Butare who were not concerned with what was going on should be sacked from their jobs in the administration and local government. President Sindikubwabo encouraged everyone present at the meeting “to work.” “Work” meant struggle against the enemy whom the Prime Minister defined as the *Inkotanyi* and their accomplices.<sup>1190</sup> The witness explained that *Inkotanyi* accomplices were Tutsis or Hutus who supported the RPF.<sup>1191</sup> The witness did not object to what he heard because there were many Presidential Guards there and to say something would have been suicidal.<sup>1192</sup>

610. Nsabimana took the floor and thanked the people who showed that they had confidence in him. Nsabimana closed his speech by calling on the *bourgmestres* and heads of department to attend a meeting which was held the following day, 20 April 1994.<sup>1193</sup>

611. The witness stated that massacres began in Muganza *commune*, on 20 April 1994.<sup>1194</sup> Prior to that date, no one was killed within that *commune*.<sup>1195</sup> During the massacres, the *commune* administration lost control of the roadblocks and they were used for killing and looting.<sup>1196</sup>

612. Witness RV identified Ndayambaje, Nteziryayo and Kanyabashi in court.<sup>1197</sup> He stated that he knew where Nteziryayo was born, where he lived and he had attended his wedding; he had known him since 1988.<sup>1198</sup> He knew Nyiramasuhuko before 1994 when she attended MRND meetings. However, he was not sure he could identify Nyiramasuhuko in court because he had not seen her in a long time. He identified the Accused Ntahobali in his attempt to identify Nsabimana.<sup>1199</sup>

#### Prosecution Witness TQ

613. Witness TQ, a Hutu, was acquitted of charges of genocide on 20 January 2003.<sup>1200</sup> He testified that around 16 April 1994, he encountered persons fleeing from Runyinya, Huye and Gishamvu *communes*. They told him there were Tutsis being killed and Tutsi homes torched in those *communes*.<sup>1201</sup>

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<sup>1189</sup> T. 19 February 2004 p. 26 (ICS) (Witness RV). The Chamber notes that while the English transcript describes the speeches as complimentary, the French transcript states “*les deux discours se complétaient*”: T. 19 February 2004 p. 29 (HC) (Witness RV) (French).

<sup>1190</sup> T. 16 February 2004 pp. 34-35 (ICS) (Witness RV).

<sup>1191</sup> T. 16 February 2004 pp. 35, 37 (ICS); T. 19 February 2004 p. 60 (ICS) (Witness RV).

<sup>1192</sup> T. 19 February 2004 pp. 26, 59 (ICS) (Witness RV).

<sup>1193</sup> T. 16 February 2004 p. 38 (ICS) (Witness RV).

<sup>1194</sup> T. 16 February 2004 pp. 39-40 (ICS); T. 17 February 2004 p. 64 (Witness RV).

<sup>1195</sup> T. 17 February 2004 pp. 56-57 (ICS) (Witness RV).

<sup>1196</sup> T. 17 February 2004 p. 56 (ICS) (Witness RV).

<sup>1197</sup> T. 17 February 2004 pp. 8-10 (ICS) (Witness RV).

<sup>1198</sup> T. 17 February 2004 p. 9 (ICS); T. 18 February 2004 p. 67 (ICS) (Witness RV).

<sup>1199</sup> T. 17 February 2004 p. 11 (ICS) (Witness RV).

<sup>1200</sup> T. 7 September 2004 p. 22 (ICS) (Witness TQ).

<sup>1201</sup> T. 8 September 2004 pp. 33-34 (ICS) (Witness TQ).

614. On 19 April 1994, President Sindikubwabo held a meeting in Butare. Although Witness TQ did not attend the meeting personally, he was told that the President was angry with the people of Butare because they were not working. The witness also said that at that time, “work” meant to kill. It was coded language which incited people to kill.<sup>1202</sup>

615. After the speech, the witness heard gunshots at the National University of Rwanda, which lasted through the night of 19 and 20 April 1994. A woman who had been at the university and who had taken refuge at the school where the witness was, told him that all the Tutsis who were studying at the university were killed that night and she was raped.<sup>1203</sup>

#### Prosecution Witness QJ

616. Witness QJ, a Tutsi waiter, told the Chamber that the killing of Tutsis in Butare town began after a party meeting held at the *Palais du MRND*, in Butare, attended by the President between 17 and 21 April 1994.<sup>1204</sup> Although the witness did not attend the meeting or hear what was said at the meeting, he testified to having seen a number of important figures such as Kanyabashi, Nsabimana and Nteziryayo going to the meeting.<sup>1205</sup> The witness testified about a conversation he witnessed between a soldier named Habineza and the newly installed *préfet* of Butare, Nsabimana. Habineza greeted Nsabimana and claimed to have killed *Préfet* Habyalimana.<sup>1206</sup> Nsabimana provided Habineza with a 1,000 Rwandan franc note to thank him for what he had done.<sup>1207</sup>

617. The witness also stated that prior to the arrival of President Sindikubwabo in Butare *préfecture* there were not that many roadblocks. After the President’s visit on 19 April 1994, roadblocks were erected and the killing of Tutsis began.<sup>1208</sup>

618. Witness QJ knew Nteziryayo as Nteziryayo was a resident guest at the Hotel Faucon around 10 April 1994, and later at the Hotel Ibis.<sup>1209</sup> Witness QJ saw Nteziryayo on several occasions at the Hotel Ibis between April and the end of June 1994.<sup>1210</sup> He knew Nsabimana as Nsabimana lived in Butare town in 1994<sup>1211</sup> and frequented the Hotel Faucon between January and March 1994.<sup>1212</sup> Witness QJ testified that he knew Kanyabashi as the *bourgmestre* of Ngoma *commune*, where the witness was living in 1994.<sup>1213</sup> Kanyabashi was “a fairly elderly man with some gray hair, not too tall, nor too short.”<sup>1214</sup> The witness identified Nteziryayo, Nsabimana and Kanyabashi in court.<sup>1215</sup>

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<sup>1202</sup> T. 6 September 2004 p. 36 (ICS) (Witness TQ).

<sup>1203</sup> T. 6 September 2004 p. 36 (ICS) (Witness TQ).

<sup>1204</sup> T. 8 November 2001 pp. 108-109 (ICS); T. 13 November 2001 p. 118 (Witness QJ).

<sup>1205</sup> T. 8 November 2001 pp. 108-109 (ICS) (Witness QJ).

<sup>1206</sup> T. 8 November 2001 pp. 106-107; T. 13 November 2001 pp. 52-53 (Witness QJ).

<sup>1207</sup> T. 8 November 2001 pp. 106-107; T. 13 November 2001 pp. 44, 53 (Witness QJ).

<sup>1208</sup> T. 13 November 2001 p. 117 (Witness QJ).

<sup>1209</sup> T. 14 November 2001 p. 66 (Witness QJ).

<sup>1210</sup> T. 14 November 2001 pp. 66-67 (Witness QJ).

<sup>1211</sup> T. 8 November 2001 p. 109 (ICS) (Witness QJ).

<sup>1212</sup> T. 8 November 2001 pp. 98-100 (ICS) (Witness QJ).

<sup>1213</sup> T. 12 November 2001 p. 24 (Witness QJ).

<sup>1214</sup> T. 12 November 2001 p. 25 (Witness QJ).

<sup>1215</sup> T. 12 November 2001 pp. 35-38 (Witness QJ).



Prosecution Witness QA

619. Witness QA, a Hutu, testified that one week after becoming President of Rwanda, Sindikubwabo visited the Butare region and made a speech that the witness heard on the radio.<sup>1216</sup> It was a live speech made during a meeting organised and convened for *bourgmestres* in the multi-purpose room of the *préfecture* office that was simultaneously broadcast at about 4.00 p.m., and lasted 10 minutes.<sup>1217</sup> In his speech, President Sindikubwabo said:

I have come to visit Butare region, my native region, and I am here to give you some work to do. You must work because we are being chased by the enemy. You must work without any pity. I know that the people of Butare, you people, are careless; you behave as though you are sometimes not concerned. If you cannot do the work pitilessly, mercilessly, leave it to us and we will do the work.<sup>1218</sup>

620. Witness QA testified that “to work” in the President’s speech meant to kill. People understood that they had to get up in the morning and arm themselves with weapons, machetes or guns to kill Tutsis or opponents of the regime in place.<sup>1219</sup>

621. Witness QA testified that Sindikubwabo’s speech was answered, on behalf of all the *bourgmestres* of Butare, by a speech by Kanyabashi, lasting about four or five minutes.<sup>1220</sup> Kanyabashi thanked the President for having come to visit Butare and promised that the *bourgmestres* would implement his instructions.<sup>1221</sup>

622. These two speeches were the only ones transmitted on the radio. The witness could not say whether the transmission of the speeches was in their entirety or only portions of them.<sup>1222</sup> There were no *Interahamwe* looking for and killing Tutsis in the *préfecture* before these speeches.<sup>1223</sup> Killings began in his *secteur* on 21 or 22 April 1994.<sup>1224</sup>

623. The witness identified Kanyabashi in court.<sup>1225</sup> He knew Kanyabashi before the events.<sup>1226</sup> He stated that Kanyabashi was the authority to whom the population listened most,<sup>1227</sup> and that before the events of 1994, Kanyabashi liked Tutsis.<sup>1228</sup>

624. When Witness QA was recalled to testify in 2008, he testified that he did not hear Kanyabashi’s speech on the radio, but he heard from other people what Kanyabashi had said.<sup>1229</sup> Witness QA testified that his 2004 testimony on Kanyabashi’s statement about

<sup>1216</sup> T. 18 March 2004 pp. 78-79 (Witness QA).

<sup>1217</sup> T. 22 March 2004 pp. 21-23; T. 22 March 2004 p. 69 (ICS) (Witness QA).

<sup>1218</sup> T. 18 March 2004 p. 79 (Witness QA).

<sup>1219</sup> T. 23 March 2004 p. 34 (Witness QA).

<sup>1220</sup> T. 18 March 2004 p. 79; T. 22 March 2004 p. 23 (Witness QA).

<sup>1221</sup> T. 18 March 2004 p. 79 (Witness QA).

<sup>1222</sup> T. 22 March 2004 p. 23 (Witness QA).

<sup>1223</sup> T. 23 March 2004 p. 4 (Witness QA).

<sup>1224</sup> T. 23 March 2004 p. 34 (Witness QA).

<sup>1225</sup> T. 22 March 2004 p. 10 (Witness QA).

<sup>1226</sup> T. 18 March 2004 p. 79 (Witness QA).

<sup>1227</sup> T. 23 March 2004 p. 4 (Witness QA).

<sup>1228</sup> T. 23 March 2004 p. 35 (Witness QA).

<sup>1229</sup> T. 29 October 2008 pp. 15-16 (ICS) (Witness QA).

implementing the President's instructions "was a lie".<sup>1230</sup> The witness also admitted that "in everything that I said [in 2004] there were only a few things that are truthful. For the most part, my testimony was lies".<sup>1231</sup>

#### Prosecution Witness FAE

625. Witness FAE, a Tutsi employee at the Butare Medical University, testified that prior to 21 April 1994, there were no problems between Hutus and Tutsis living in rural areas, but that on 21 April 1994, she saw Hutu civilians and soldiers attacking her Tutsi neighbours' houses in Cyarwa-Sumo *secteur*, Ngoma *commune*. Simeon Remera, of the CDR, led the attackers.<sup>1232</sup> Remera had a list of names and indicated which houses were to be attacked.<sup>1233</sup> When the attackers arrived at a Tutsi residence, they entered the property and killed the people they found.<sup>1234</sup> She stated that persons seeking refuge only started arriving in her area in great numbers in July 1994.<sup>1235</sup>

#### Prosecution Witness FAI

626. Witness FAI, a Hutu former civil servant in Ntyazo *commune*, estimated that killings began in Muyira *commune* around the middle of April 1994. He also stated that he had visited Nyabisindu *commune* and that killings started there about two weeks after the death of the President.<sup>1236</sup>

#### Prosecution Witness FAM

627. Witness FAM, a Hutu who was a detained witness in Rwanda at the time of his testimony,<sup>1237</sup> testified that problems did not begin in his *secteur* until after 20 April 1994 when Kanyabashi came to the *secteur* office to tell the *conseiller* that the killing had already finished elsewhere and to ask him when he was going to start.<sup>1238</sup>

#### Prosecution Witness FAB

628. Witness FAB, a Hutu farmer living in Muyaga *commune*, testified that after the President's plane crash, *commune* authorities directed the population to construct roadblocks to address the security problem in the *commune*. He manned a roadblock in Muyaga *commune* together with Tutsis until about 20 April 1994.<sup>1239</sup> Around that time, those at the roadblock heard a broadcast on Radio Muhabura stating that Tutsis, in addition to Hutus opposed to the MRND, were being killed. As a result, those Tutsis who were manning the roadblock with the

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<sup>1230</sup> T. 29 October 2008 p. 16 (ICS) (Witness QA).

<sup>1231</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

<sup>1232</sup> T. 18 March 2004 pp. 25, 27, 64 (Witness FAE).

<sup>1233</sup> T. 18 March 2004 pp. 25, 64 (Witness FAE).

<sup>1234</sup> T. 17 March 2004 p. 70; T. 18 March 2004 p. 25 (Witness FAE).

<sup>1235</sup> T. 18 March 2004 p. 7 (Witness FAE).

<sup>1236</sup> T. 4 November 2002 pp. 14-15 (ICS); T. 4 November 2002 p. 27 (HC) (Witness FAI) (French) (for spelling of "Nyabisindu").

<sup>1237</sup> T. 11 March 2002 p. 15 (Witness FAM).

<sup>1238</sup> T. 6 March 2002 pp. 59-61 (Witness FAM).

<sup>1239</sup> T. 5 April 2004 p. 19 (Witness FAB).

witness became frightened, and he assisted them in fleeing to Burundi.<sup>1240</sup> He estimated that massacres began in Muyaga *commune* on 27 April 1994, although some killings occurred immediately after the plane crash. He said that, like the general population, he refused the calls to massacre Tutsis at first, but in the end he participated when asked.<sup>1241</sup>

### Prosecution Witness QAH

629. Witness QAH, a Hutu, testified that killings started in Gikongoro *préfecture* and later continued to Butare *préfecture*. Within Butare, the killings starting in Runyinya and Nyakizu *communes* and then extended into Gishamvu *commune*. The witness could not indicate the precise dates that the killings started in each *commune*.<sup>1242</sup>

630. Witness QAH stated that some days after the President's plane crash, he noticed houses being burnt down in Gishamvu *commune*, as near to Ngoma *commune* as Mubumbano *secteur*. People were taking refuge in Ngoma *commune*.<sup>1243</sup> The *conseiller de secteur* decided that the people of the *secteur* should go to the border to prevent the assailants from entering from Gishamvu *commune*.<sup>1244</sup> The assailants pursued them into Ngoma *commune* and, because the Ngoma police had fled, the people of Ngoma were unable to stop them.<sup>1245</sup>

631. Witness QAH stated several times that he could not identify the dates when killings began.<sup>1246</sup> He stated that the burning of homes in Gishamvu *commune* started after 10 April 1994, more than four days after the death of the President. The witness confirmed his prior statement, that people were attacked by Hutus in his *cellule* about four days after the plane crash.<sup>1247</sup> According to what he was told by Gishamvu refugees, it was obvious that no Tutsi was still alive in Gishamvu. The remaining Tutsis were being chased into the witness' *cellule*. There were no Tutsis remaining in Gishamvu by 10 April 1994.<sup>1248</sup> He also stated that from 6 to 10 or 15 April 1994, there was a lot of killing in Gishamvu *commune*. Witness QAH stated that it was after the announcement of *Préfet* Habyalimana's assassination sometime in April 1994, that there were killings, houses were burnt down, and people started fleeing from Ngoma *commune*. He testified that before Habyalimana was assassinated, there was not a significant number of killings.<sup>1249</sup>

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<sup>1240</sup> T. 5 April 2004 p. 20 (Witness FAB).

<sup>1241</sup> T. 5 April 2004 p. 41 (Witness FAB).

<sup>1242</sup> T. 8 April 2004 p. 12 (Witness QAH). The Chamber notes the English version states that Gikongoro is a *commune*, misspells Nyakizu *commune*, and does not mention Runyinya: T. 8 April 2004 pp. 14-15 (Witness QAH) (French).

<sup>1243</sup> T. 8 April 2004 p. 9 (Witness QAH).

<sup>1244</sup> T. 8 April 2004 p. 9 (Witness QAH). The Chamber notes the French transcript says "*pour empêcher ceux*", while the English transcript says "to present those": T. 8 April 2004 p. 11 (Witness QAH) (French).

<sup>1245</sup> T. 8 April 2004 p. 9 (Witness QAH).

<sup>1246</sup> T. 8 April 2004 pp. 9, 12 (Witness QAH).

<sup>1247</sup> T. 8 April 2004 p. 9 (Witness QAH); Defence Exhibit 209 (Nsabimana) (11 April 2001, Statement of Witness QAH).

<sup>1248</sup> T. 8 April 2004 pp. 10-11 (Witness QAH).

<sup>1249</sup> T. 8 April 2004 p. 11 (Witness QAH).

Prosecution Witness QCB

632. Witness QCB, a Hutu driver in 1994 and detainee at the time of testimony,<sup>1250</sup> testified that after the plane crash on 6 April 1994, massacres began in *préfectures* surrounding Butare. When the massacres began in Butare *préfecture*, they started in Nyakizu, Runyinya and Gishamvu *communes* in addition to others to the north of Ngoma *commune*.<sup>1251</sup> At that time, people came to the Ngoma *commune* in search of refuge.<sup>1252</sup> The witness approximated that killings started in Nyakizu *commune* on 20 April 1994.<sup>1253</sup>

Prosecution Witness QBU

633. Witness QBU, a Hutu farmer in 1994 and a detained witness at the time of his testimony, stated that following the death of President Habyarimana, meetings were held in his *secteur* to prepare for the killings.<sup>1254</sup> The witness testified that in Rususa *cellule*, killings of Tutsis began around 20 April 1994.<sup>1255</sup> The witness took part in the massacres in April on the instructions of his leaders. He stated that the authorities incited members of the population to participate in the killings.<sup>1256</sup> He testified that Tutsis living in the area of Kibuye fled from their homes towards Burundi in April 1994.<sup>1257</sup>

Prosecution Witness QI

634. Witness QI, a Tutsi cook,<sup>1258</sup> testified that the killings began in his *secteur* on 21 and 22 April 1994.<sup>1259</sup> However, he also stated that prior to 18 April 1994 there were some disturbances in Huye *commune*, but Ngoma *commune* was still calm.<sup>1260</sup>

Prosecution Expert Witness Alison Des Forges

635. Alison Des Forges, an expert in Rwandan history and human rights,<sup>1261</sup> testified that three concomitant events triggered the start of mass killings in Butare *préfecture*: the removal of Habyalimana; the public way in which this was done which incorporated serious and powerful incitement to violence by the leading authorities of the national Government; and the transfer of *Gendarmerie* Commander Habyarabatuma to Kigali.<sup>1262</sup> She opined that although some killings were occurring within Butare despite *Préfet* Habyalimana's efforts, the Interim Government needed to gain control over the administrative hierarchy in order to implement the

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<sup>1250</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).

<sup>1251</sup> T. 26 March 2002 p. 63 (Witness QCB).

<sup>1252</sup> T. 20 March 2002 p. 98; T. 26 March 2002 p. 63 (Witness QCB).

<sup>1253</sup> T. 26 March 2002 p. 64 (Witness QCB).

<sup>1254</sup> T. 13 April 2004 p. 39 (ICS) (Witness QBU).

<sup>1255</sup> T. 13 April 2004 pp. 38, 41-42 (ICS) (Witness QBU).

<sup>1256</sup> T. 13 April 2004 pp. 39, 42 (ICS) (Witness QBU).

<sup>1257</sup> T. 13 April 2004 p. 7; T. 13 April 2004 p. 42 (ICS) (Witness QBU).

<sup>1258</sup> T. 23 March 2004 p. 42 (ICS) (Witness QI).

<sup>1259</sup> T. 23 March 2004 p. 34 (Witness QI).

<sup>1260</sup> T. 23 March 2004 p. 43 (ICS); T. 24 March 2004 p. 37 (Witness QI).

<sup>1261</sup> T. 7 June 2004 p. 59 (Des Forges).

<sup>1262</sup> T. 8 June 2004 p. 34 (Des Forges).

genocidal plan. The Interim Government needed to remove *Préfet* Habyalimana in order to influence the *bourgmestres* to accept a role in the plan to exterminate Tutsis.<sup>1263</sup>

### *The Removal of Préfet Habyalimana*

636. Des Forges stated that *Préfet* Habyalimana had an important role in preventing the spread of violence into Butare *préfecture* prior to his removal on 17 April 1994 and that his removal played an important part in carrying forward the killings in Butare.<sup>1264</sup> *Préfet* Habyalimana directed his subordinates to hold public meetings to dispel rumours and prohibited the erection of unauthorised roadblocks.<sup>1265</sup> He imposed a curfew in *communes* where violence broke out.<sup>1266</sup> The local *bourgmestres* and other administrative authorities largely followed *Préfet* Habyalimana's lead and attempted to prevent the spread of violence in the *préfecture*.<sup>1267</sup> Killings were very limited prior to 20 April 1994 and local authorities arrested people who attacked Tutsis.<sup>1268</sup>

637. *Préfet* Habyalimana refused to cooperate with the Interim Government, ignoring a summons to a meeting of all *préfets* held in Kigali on 11 April 1994. In addition, he directed the local head of the immigration service to give travel documents to a group attempting to flee with religious sisters, in contravention to an Interim Government Directive to prevent Rwandans from leaving the country.<sup>1269</sup>

638. On 17 April 1994, as *Préfet* Habyalimana was returning from Nyakizu *commune* where he was attempting to quell violence at the border, he was removed from office via a radio *communiqué*.<sup>1270</sup> This was a humiliating way to be removed from office, and was exacerbated by the fact that he was not permitted to speak at the public swearing-in ceremony of the new *préfet*, Nsabimana.<sup>1271</sup> Habyalimana then went into hiding and was reported to be actively pursued by Nyiramasuhuko and her collaborators.<sup>1272</sup>

639. Des Forges testified that after his removal, around the second week of May 1994, *Préfet* Habyalimana was captured and imprisoned in a cell at the *préfecture* office.<sup>1273</sup> He was later moved to the new Interim Government headquarters at Gitarama, released from jail, and killed by an unidentified individual.<sup>1274</sup> This occurred because *Préfet* Habyalimana was

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<sup>1263</sup> T. 8 July 2004 pp. 73-74 (Des Forges).

<sup>1264</sup> T. 5 July 2004 p. 38; T. 8 June 2004 pp. 28, 34; T. 8 July 2004 p. 77 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 13.

<sup>1265</sup> T. 8 June 2004 p. 34 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 14.

<sup>1266</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 15.

<sup>1267</sup> T. 8 June 2004 p. 34 (Des Forges).

<sup>1268</sup> T. 8 June 2004 pp. 28, 34 (Des Forges).

<sup>1269</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 15.

<sup>1270</sup> T. 8 June 2004 pp. 34, 73; T. 9 July 2004 p. 10 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) pp. 17-18.

<sup>1271</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 19.

<sup>1272</sup> T. 15 June 2004 pp. 65, 77 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 23.

<sup>1273</sup> T. 15 June 2004 pp. 67-68 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 55.

<sup>1274</sup> T. 15 June 2004 pp. 77-78 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 55.

symbolically too important for anyone to take responsibility for signing his death order.<sup>1275</sup> Several weeks later, soldiers from the ESO killed his wife and children.<sup>1276</sup>

*Nsabimana's Swearing-in Ceremony*

640. Des Forges testified that the 19 April 1994 meeting at which Nsabimana was installed as *préfet* was attended by people from a variety of levels of the administrative hierarchy and members of the Interim Government, including the President, the Prime Minister and the Minister of Family Affairs. The military leaders in Butare *préfecture* were also in attendance.<sup>1277</sup> Three other high ranking officials from Butare were present: Mr. Mugenzi, the Minister of Trade, Mr. Niyitegeka, the Minister of Information and Madam Ntamabyaliro, the Minister of Justice.<sup>1278</sup> The presence of these national figures underscored the importance of the occasion and placed it firmly within the context of the programme to extend the genocide.<sup>1279</sup> Des Forges opined that she did not believe that the public would have been invited, but that it was not a closed meeting in the sense of excluding non-governmental people. However, she did not recall having met such a person who had attended the meeting.<sup>1280</sup>

641. Kambanda, Sindikubwabo and Kanyabashi spoke at the ceremony. Other speakers included Ministers Mugenzi and Niyitegeka, well-known for their anti-Tutsi views. The remarks of these ministers were less important than those of President Sindikubwabo, not only because they were lower in status than the President, but also because they were not native to the region.<sup>1281</sup>

642. Des Forges explained that because the President's speech was so inflammatory and had such enormous impact, it was important to establish whether Kanyabashi had heard the words in the speech before delivering his own.<sup>1282</sup> She stated that she had received information on the itinerary of President Sindikubwabo, suggesting that the President was in Gikongoro on the morning of 19 April 1994, making it likely that he arrived after the meeting in Butare had begun.<sup>1283</sup> Therefore, she was not convinced that Kanyabashi had heard Sindikubwabo's speech before he spoke at the beginning of the meeting. She did not exclude the possibility that Kanyabashi spoke after Kambanda but before the President and in the presence of both the President and Kambanda.<sup>1284</sup> However, she explained that this would be unusual in view of the ordinary order of precedence followed at such events. In her opinion, the lowest ranked person would either speak first or last, but not in between two higher ranked officials unless, for instance, the President had arrived when Kanyabashi was already on his feet or unless there

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<sup>1275</sup> T. 15 June 2004 pp. 77-78 (Des Forges).

<sup>1276</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 55.

<sup>1277</sup> T. 9 July 2004 p. 16 (Des Forges).

<sup>1278</sup> T. 9 July 2004 p. 18 (Des Forges).

<sup>1279</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 19.

<sup>1280</sup> T. 9 July 2004 p. 18 (Des Forges).

<sup>1281</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 22.

<sup>1282</sup> T. 9 July 2004 p. 19 (Des Forges).

<sup>1283</sup> T. 9 July 2004 pp. 19-21 (Des Forges).

<sup>1284</sup> T. 9 July 2004 p. 20 (Des Forges).

were other circumstances that would have made it awkward for the President to take the floor first.<sup>1285</sup>

643. Des Forges also reported that when the formal addresses were finished, Jonathas Ruremesha, *bourgmestre* of Huye, asked what he should say to the people of his *commune* who wanted “to begin conflicts.” The highest authorities stood back and allowed Minister Mugenzi to respond on behalf of the Government. Mugenzi said that “if the population gets angry, it should be allowed to do what it wants.” Ruremesha reportedly decided at that point that he would make no further attempts to halt the violence.<sup>1286</sup>

644. Des Forges testified that the parts of the President’s speech which referred to the people of Butare as being unconcerned with what was going on and which were quoted in her Report, were broadcast via radio; many witnesses spoke of them.<sup>1287</sup> She said that the President’s speech was very threatening. In her view, the President’s statement that, “[t]oday we have only come part of the way, and we will now wait to see the reaction to see how much further to go”, could not be understood as anything except a threat. Another excerpt read, “[y]ou must take great care in understanding the words that we say today ... this is not a time for joking, and we really mean what we say.” The President issued a further threat when he warned members of the administrative hierarchy that they would not be able to simply abstain from actions by not coming to the office or by closing their office doors and pretending not to be there. Des Forges explained that the President was requiring the administrative hierarchy to be actively involved or else face the consequences.<sup>1288</sup>

645. Des Forges testified that the visit of the President and Cabinet Ministers on 19 April 1994 would have been something of an event, but would not have been known beyond the immediate area of Ngoma *commune* where the meeting was held. However, as the visit became more widely known, by the morning of 20 April 1994 it had taken on a meaning for people on the hills of Butare.<sup>1289</sup>

646. Des Forges stressed the importance of Nsabimana’s post as *préfet*, which gave him access to the *gendarmerie* and authority over the *bourgmestres* and local *conseillers*. When Nsabimana chose to be sworn in as *préfet*, he knew what the Government’s plan was and agreed to serve a Government that intended to kill the Tutsis in Butare.<sup>1290</sup>

647. Nsabimana’s description of what the President said in his speech of 19 April 1994, as contained in *The Truth About the Massacres in Butare*, was read out to Des Forges, in particular Nsabimana’s analysis of the President’s use of the words *Nyirandabizi*, *Ntibindeba* and *Baranjenijesi*.<sup>1291</sup> Des Forges testified that she received this document from Nsabimana after two telephone conversations with him on 25 March 1996 and 3 April 1996.<sup>1292</sup> She stated

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<sup>1285</sup> T. 9 July 2004 pp. 20-21 (Des Forges).

<sup>1286</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 22.

<sup>1287</sup> T. 9 July 2004 p. 23 (Des Forges).

<sup>1288</sup> T. 9 July 2004 p. 24 (Des Forges).

<sup>1289</sup> T. 9 July 2004 p. 15 (Des Forges).

<sup>1290</sup> T. 6 July 2004 pp. 14-15 (Des Forges).

<sup>1291</sup> T. 8 June 2004 pp. 49-50 (Des Forges); Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016626.

<sup>1292</sup> T. 8 June 2004 pp. 35-36 (Des Forges).

that Nsabimana's description of the President's speech was consistent with reports from other witnesses and also with a transcription of the speech from the President's national radio broadcast that she had previously read.<sup>1293</sup>

648. Des Forges explained that in the context of the killing campaign, slaughter was known as "work" and machetes and firearms were described as "tools".<sup>1294</sup>

#### *The Start of Killings in Butare Préfecture*

649. In her Report, Des Forges asserted that violence started in Butare along the Western border in the *communes* of Maraba, Runyinya and Nyakizu and subsequently spread to the adjacent *communes* of Huye, Gishamvu, Kigembe, Muganza and Nyaruhengeri.<sup>1295</sup> The Report posited that the *communes* of Ngoma, Mbazi, Ruhashya, Mugusa, Shyanda and Ndora were largely untouched by killings and violence on or before 18 April 1994.<sup>1296</sup>

650. Nonetheless, Des Forges testified that Runyinya *commune* suffered relatively early attacks due to raids from across the border with Gikongoro *préfecture*.<sup>1297</sup> Furthermore, she stated that assailants attacked 20,000 displaced persons at Cyahinda church in Nyakizu *commune*, from 15 to 19 April 1994.<sup>1298</sup> Two local policemen joined in the first days of the Cyahinda attack, but those seeking refuge were able to disarm and kill them.<sup>1299</sup> The assailants were nonetheless successful in killing those seeking refuge in subsequent days. This killing brought large-scale slaughter to Butare which had already been experienced elsewhere in Rwanda.<sup>1300</sup>

651. Des Forges testified that the Gikongoro and Butare *préfets* met on 16 April 1994 to discuss the security situation. They issued a *communiqué* that same day acknowledging that ethnic violence in Gikongoro *préfecture* had spread to Nyakizu, Runyinya, Maraba and Nyabisindu *communes* in Butare *préfecture*. The *communiqué* also stated that the disturbances led to deplorable acts such as killings, the destruction of houses, looting and armed robbery.<sup>1301</sup>

652. Des Forges' Report stated that on 18 April 1994, soldiers, police and civilian assailants launched attacks on Simbi church in Maraba *commune*, on Kansi church in Nyaruhengeri *commune* and at the *commune* office of Kigembe. At Kansi church, she stated 10,000 to 10,500 persons were killed.<sup>1302</sup>

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<sup>1293</sup> T. 8 June 2004 pp. 49-50 (Des Forges); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1294</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 8.

<sup>1295</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 18; *see also* Prosecution Exhibit 1 (Map of Butare).

<sup>1296</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 18.

<sup>1297</sup> T. 5 July 2004 p. 39 (Des Forges).

<sup>1298</sup> T. 9 July 2004 pp. 7-9 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 16.

<sup>1299</sup> T. 9 July 2004 pp. 8-9 (Des Forges).

<sup>1300</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 16.

<sup>1301</sup> T. 8 July 2004 pp. 74-75 (Des Forges); Defence Exhibit 240C (*Communiqué* sanctioning the Security Meeting of the Authorities of Butare and Gikongoro, 16 April 1994); *see also* Exhibit 240A (English version misidentifies Habyalimana as *préfet* of Gikongoro).

<sup>1302</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 18.



Prosecution Expert Witness André Guichaoua

653. André Guichaoua, an expert in political sciences, testified that until 19 April 1994, there was strong resistance to the genocide in Butare *préfecture* due in part to the efforts of *Préfet* Habyalimana, *Gendarmerie* Commander Habyarabatuma and Colonel Gatsinzi of the Rwandan Army.<sup>1303</sup> He stated that there was not a spontaneous launching of massacres in Butare and that for the genocide to happen it was necessary to remove *Préfet* Habyalimana, Habyarabatuma and Colonel Gatsinzi from office. On 18 or 19 April 1994, these personalities, in the eyes of the inhabitants of Butare, were like a “shield”. They were considered to be protectors and the population trusted them. The resistance of the *bourgmestres* was based on the protection they enjoyed from these three men.<sup>1304</sup> With the removal of *Préfet* Habyalimana and Habyarabatuma around 19 April 1994, the two key figures of the *préfecture*, the administrative, political and military chain of command collapsed.<sup>1305</sup> It was necessary to eliminate *Préfet* Habyalimana because he was accepted by the local population and used to resist the massacres and genocide of Tutsis.<sup>1306</sup>

*The Removal of Préfet Habyalimana*

654. Guichaoua testified that from *Préfet* Habyalimana’s appointment in 1992, his running of Butare *préfecture* was considered exemplary.<sup>1307</sup> He contained partisan excesses and confrontations and safeguarded the security of persons and property in Butare.<sup>1308</sup>

655. Guichaoua testified that *Préfet* Habyalimana was part of a strong opposition to the generalisation of violence in Butare.<sup>1309</sup> *Préfet* Habyalimana was able to maintain a measure of independent control by using the *préfecture* Security Council to isolate people holding dissident opinions and to neutralise his opponents.<sup>1310</sup> *Préfet* Habyalimana maintained that conditions of law, order and security depended on the security committees of each *commune*. These committees followed the *préfecture* Security Council’s directives, which ordered that no arrests be made without search warrants.<sup>1311</sup>

656. The Interim Government decided to implement a policy of genocide at a meeting of the country’s *préfets* on 11 April 1994.<sup>1312</sup> At that meeting, Callixte Kalimanzira undertook to draft a report regarding *Préfet* Habyalimana, which he later provided to the Cabinet on 17 April 1994.<sup>1313</sup> Guichaoua testified that the decision to remove *Préfet* Habyalimana was made,

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<sup>1303</sup> T. 28 June 2004 p. 77; T. 29 June 2004 pp. 59-60; T. 8 October 2004 pp. 53-54 (Guichaoua).

<sup>1304</sup> T. 29 June 2004 pp. 59-60; T. 6 October 1994 p. 29 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 152.

<sup>1305</sup> T. 6 October 2004 p. 29 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 152.

<sup>1306</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 123.

<sup>1307</sup> T. 28 June 2004 pp. 6-7 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 119.

<sup>1308</sup> T. 13 October 2004 p. 75 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 120.

<sup>1309</sup> T. 28 June 2004 p. 77 (Guichaoua).

<sup>1310</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 122.

<sup>1311</sup> T. 13 October 2004 p. 11 (Guichaoua).

<sup>1312</sup> T. 6 October 2004 pp. 20-21; T. 14 October 2004 p. 30 (Guichaoua).

<sup>1313</sup> T. 7 October 2004 pp. 19, 21 (Guichaoua).

and Nsabimana had already given his acceptance to become the new Butare *préfet* by 16 April 1994.<sup>1314</sup>

657. Guichaoua confirmed that there was a *communiqué* issued at the end of the 16 April 1994 Security Council meeting between the authorities of the Gikongoro and Butare *préfectures*.<sup>1315</sup> There were three resolutions stemming from the meeting identified by President Sindikubwabo, and contained in the *communiqué*.<sup>1316</sup> The third stated: “The population is requested to report to the authorities all persons suspected to be in possession of weapons of war without authorisation. These persons should be aware that failure to report such cases will be held against them and the consequences arising there from can be serious”.<sup>1317</sup> Guichaoua stated that the *bourgmestre* of Nyakizu was one of the persons targeted for keeping arms and transferring grenades to refugees from Burundi.<sup>1318</sup> The witness testified that on the day the *communiqué* was drafted, Kalimanzira was preparing a file in relation to *Préfet* Habyalimana. The minister in charge of the *préfecture* submitted the file the next day, calling for the resignation of the *préfet*. Guichaoua referred to this as “a slap in the face” to Habyalimana.<sup>1319</sup> Guichaoua testified that the Kalimanzira report was tabled to the Cabinet on 17 April 1994 and that Nyiramasuhuko read the report. The report alleged that *Préfet* Habyalimana was colluding with the *Inkotanyi* and that he attempted to attack the *bourgmestre* of Nyakizu *commune*.<sup>1320</sup>

658. Guichaoua’s Report states that *Préfet* Habyalimana’s removal from office was announced on 17 April 1994.<sup>1321</sup> On 18 or 19 April 1994, *Préfet* Habyalimana was formally removed from office and publicly humiliated during a visit of the Interim President.<sup>1322</sup>

659. As to responsibility for the decision, in his Report, Guichaoua said that Nyiramasuhuko’s diary provides insight into the power system in place. Nyiramasuhuko took notes concerning 17 April 1994, which appear in her diary entry for 2 February 1994. In the diary, it is written that the Interim Government debated and decided on important matters, including those involving the army. The Interim Government was the operations and coordinating organ of the State during the war.<sup>1323</sup>

660. Guichaoua stated that within the Interim Government, Nyiramasuhuko had responsibility for Butare *préfecture*.<sup>1324</sup> He admitted that nowhere in her diary is she explicitly assigned to Butare,<sup>1325</sup> but that the diary, taken as a whole, shows that Butare was her main

<sup>1314</sup> T. 11 October 2004 pp. 19-26 (Guichaoua).

<sup>1315</sup> T. 7 October 2004 p. 16 (Guichaoua); Defence Exhibit 240C (Kanyabashi) (*Communiqué* Sanctioning the Security Meeting of the Authorities of Butare and Gikongoro, 16 April 1994).

<sup>1316</sup> T. 7 October 2004 p. 18 (Guichaoua); Defence Exhibit 240C (Kanyabashi) (*Communiqué* Sanctioning the Security Meeting of the Authorities of Butare and Gikongoro, 16 April 1994).

<sup>1317</sup> T. 7 October 2004 p. 18 (Guichaoua).

<sup>1318</sup> T. 7 October 2004 p. 19 (Guichaoua). The Chamber notes the English transcript omits that the refugees were from Burundi; see T. 7 October 2004 p. 22 (Guichaoua) (French).

<sup>1319</sup> T. 7 October 2004 p. 19 (Guichaoua).

<sup>1320</sup> T. 7 October 2004 pp. 19, 21 (Guichaoua).

<sup>1321</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 151.

<sup>1322</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 123, 152.

<sup>1323</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 29-30.

<sup>1324</sup> T. 8 October 2004 p. 5 (Guichaoua).

<sup>1325</sup> T. 8 October 2004 pp. 10-11 (Guichaoua).

concern.<sup>1326</sup> His Report pointed to two diary entries in particular. The 25 May 1994 diary entry (allegedly containing notes from 22 May 1994) states “[d]emystify the enemy, therefore journalists would travel with the ministers in charge of particular *préfectures*.” The 3 June 1994 diary entry (allegedly containing notes from 1 June 1994) states, “Mifaprofe → Muramba and Butare and keep an eye on Gikongoro.”<sup>1327</sup> Guichaoua asserted “Mifaprofe” means the *Ministre de la famille et de la promotion féminine* which was the post held by Nyiramasuhuko. Guichaoua concluded these diary entries show that Nyiramasuhuko was the minister within the Interim Government in charge of Butare *préfecture*.<sup>1328</sup>

661. Guichaoua’s Report stated that *Préfet* Habyalimana’s administration prevented the organisation and action of armed youth militias in Butare prior to the start of the genocide. No militia group was known to exist in Butare before 6 April 1994.<sup>1329</sup> In his testimony, Guichaoua clarified that no militia in Butare was systematically involved in acts of terror, murder or killings.<sup>1330</sup> Guichaoua acknowledged that some training of militia did occur at the SORWAL factory, but insisted that such training was clandestine.<sup>1331</sup> He also testified that the militia situation in Butare was distinct from other *préfectures* because Butare was not marked by constant confrontation between militia groups.<sup>1332</sup>

662. It was Guichaoua’s opinion that on 18 or 19 April 1994, despite the widespread violence in *préfectures* surrounding Butare, killings could have been limited in Butare *préfecture* if *Préfet* Habyalimana had not been removed from office.<sup>1333</sup> He stated that an influential Butare army officer<sup>1334</sup> told him that it would not have been possible to evacuate *Préfet* Habyalimana from Butare as of 14 April 1994.<sup>1335</sup> *Préfet* Habyalimana’s fate was already sealed; he was under surveillance and, as far as the officer was concerned, orders had been issued that *Préfet* Habyalimana should not be allowed to escape.<sup>1336</sup>

663. Guichaoua testified that in mid-May 1994, the *gendarmes* threatened and hunted down *Préfet* Habyalimana to appear before the Interim Government at Murambi.<sup>1337</sup> He left with the *gendarmes* sent to find him and was executed.<sup>1338</sup>

<sup>1326</sup> T. 8 October 2004 p. 11; T. 8 October 2004 p. 11 (Guichaoua) (French). The Chamber notes the French transcript says “*ses préoccupations principales*”, while the English transcript says “our main concern”.

<sup>1327</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 26.

<sup>1328</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 25-26.

<sup>1329</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 73

<sup>1330</sup> T. 12 October 2004 p. 59 (Guichaoua).

<sup>1331</sup> T. 12 October 2004 pp. 57, 59 (Guichaoua).

<sup>1332</sup> T. 12 October 2004 p. 59 (Guichaoua).

<sup>1333</sup> T. 7 October 2004 p. 36 (Guichaoua).

<sup>1334</sup> This could perhaps be the Chief of General Staff of the Army. See T. 13 October 2004 p. 14; see also T. 13 October 2004 p. 16 (Guichaoua) (French) (“*si un chef d’état-major, déjà partiellement coupé de ses moyens, avait pris le risqué d’envoyer un hélicoptère, il aurait été très aisé de négocier, avec des interlocuteurs de l’armée, à Butare, que cela ne se fasse pas.*”).

<sup>1335</sup> T. 13 October 2004 p. 14 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 147.

<sup>1336</sup> T. 13 October 2004 p. 11 (Guichaoua).

<sup>1337</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 123; T. 28 June 2004 p. 75 (Guichaoua).

<sup>1338</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 123.

*Nsabimana's Swearing-in Ceremony*

664. Guichaoua testified he was not present at the ceremony.<sup>1339</sup> He stated he was able to indicate the names of the ceremony's participants based upon the speeches they made, which were broadcast over the radio.<sup>1340</sup> He based his interpretations on transcripts of the speeches delivered on 19 April 1994 at Butare *préfecture*.<sup>1341</sup> Guichaoua explained that the announcement of Nsabimana's appointment as *préfet* was made on the radio on 18 April 1994. Nsabimana formally took up his duties on 19 April 1994 in Butare.<sup>1342</sup> Until he became *préfet* of Butare, Nsabimana's career was in difficulty, and he had experienced some failures, particularly in school and at university.<sup>1343</sup>

665. Being a PSD *préfet* in a *préfecture* where most of the *sous-préfets* and senior officials were close to MRND did not facilitate Nsabimana's work, especially since he did not have experience in that professional set-up.<sup>1344</sup> However, Nsabimana accepted the position, knowing exactly what he was doing, especially since someone better placed than him had turned the same position down.<sup>1345</sup>

666. Guichaoua stated that he had called Nsabimana a "*préfet* by proxy" in his Report, meaning that he had been placed at the helm of the *préfecture* for the purpose of being manipulated, and he let himself be manipulated.<sup>1346</sup> When Nsabimana took office, he was aware of what was happening. Any reasonable person, and particularly one who had been in political office for a few months, knew what was expected of him at that time.<sup>1347</sup>

667. Guichaoua testified that President Sindikubwabo, Prime Minister Kambanda, five ministers, a representative of the Minister of the Interior, Callixte Kalimanzira, two party representatives and Kanyabashi attended the swearing-in ceremony. Guichaoua's testimony relied on the speeches made by those present at the ceremony, information that he obtained from the radio, and various documents provided to him by the Kanyabashi Defence and the Prosecution.<sup>1348</sup> Guichaoua relied on a transcript of speeches delivered on 19 April 1994 at Butare *préfecture*, in forming the following analysis.<sup>1349</sup> He pointed out that from this material it was difficult to know the order of speakers, as some documents addressed material which appeared on radio in the days subsequent to the ceremony and not the ceremony *per se*.<sup>1350</sup>

668. Guichaoua stated that holding the meeting with all these authorities in Butare was supposed to impress the audience. According to a note on the top of a document Guichaoua

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<sup>1339</sup> T. 14 October 2004 p. 4 (Guichaoua).

<sup>1340</sup> T. 28 June 2004 pp. 77, 82-85; T. 29 June 2004 p. 17 (Guichaoua).

<sup>1341</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1342</sup> T. 28 June 2004 p. 75 (Guichaoua).

<sup>1343</sup> T. 28 June 2004 pp. 75-76 (Guichaoua).

<sup>1344</sup> T. 28 June 2004 pp. 64, 72-73; T. 12 October 2004 p. 16 (Guichaoua).

<sup>1345</sup> T. 29 June 2004 pp. 55, 62-63; T. 12 October 2004 p. 16 (Guichaoua).

<sup>1346</sup> T. 11 October 2004 p. 54 (Guichaoua); Prosecution Exhibit 148B (Letter concerning the appointment of Nsabimana); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 123.

<sup>1347</sup> T. 11 October 2004 p. 53 (Guichaoua).

<sup>1348</sup> T. 14 October 2004 p. 4 (Guichaoua).

<sup>1349</sup> T. 14 October 2004 p. 11 (Guichaoua); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1350</sup> T. 14 October 2004 p. 7 (Guichaoua).

had received from the Office of the Prosecutor, the meeting was held at the *préfecture's* ceremony hall, the former MRND Palace. He did not know who was seated on the podium. Asked whether he knew if members of the population were present, Guichaoua answered that he merely copied the information contained in the transcript, which listed many *bourgmestres* from Butare, *conseillers* and public servants from Butare, the Butare Prosecutor, the director of the prison, the rector of the University and military authorities.<sup>1351</sup> This list was not exhaustive.<sup>1352</sup>

669. Guichaoua stated that Butare *préfecture* was not “ready”, in the sense that the militia had not been sufficiently structured and that many people still had cold feet because of the resistance of the authorities, especially at the level of territorial administration. Concurrently, some “catching up work” had been done by the real authorities, beyond mere speeches, to prepare the *préfecture* before the authorities travelled there in great numbers to conduct the final shift to large-scale slaughters.<sup>1353</sup>

#### *President Sindikubwabo's Speech*

670. To analyse Sindikubwabo's speech, Guichaoua referred to Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994). Guichaoua quoted President Sindikubwabo's speech, in which he identified the new *Abatabazi* ministers saying: “Ministers came out of their offices and went down into the field. There were days when they would be at the office and other days when they would work with the population. Problems will be studied together and solutions will be found by consensus.” According to Guichaoua, this description corresponds to the profile of Minister Nyiramasuhuko.<sup>1354</sup>

671. Guichaoua stated the President spoke after Kanyabashi. He testified that the President did not directly refer to Kanyabashi in his speech, although Kanyabashi had spoken before him.<sup>1355</sup> The President did refer to the *préfet*, saying that he was a member of the population under the *préfet's* control.<sup>1356</sup> He assured the *préfet* of his support. Guichaoua agreed that President Sindikubwabo resided in Cyarwa *secteur*, Ngoma *commune*, yet never mentioned that his *bourgmestre* was Kanyabashi. He further stated that, although the President ignored Kanyabashi while giving his speech, he issued a warning which according to the witness was clearly addressed to Kanyabashi. The President repeated the statement made by the Prime Minister, “[u]nfortunately I was informed, but I was unaware.” The President repeated this sentence twice.<sup>1357</sup>

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<sup>1351</sup> T. 14 October 2004 p. 10 (Guichaoua); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1352</sup> T. 14 October 2004 p. 10 (Guichaoua).

<sup>1353</sup> T. 13 October 2004 p. 9 (Guichaoua).

<sup>1354</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 5; T. 30 June 2004 p. 35 (Guichaoua).

<sup>1355</sup> T. 14 October 2004 pp. 30-31 (Guichaoua).

<sup>1356</sup> T. 14 October 2004 p. 32 (Guichaoua); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 3. The Chamber notes that the Exhibit quotes the President as saying “under his care”, rather than “under his control” as specified in the transcripts.

<sup>1357</sup> T. 14 October 2004 p. 32 (Guichaoua).

*Kanyabashi's Speech*

672. To analyse Kanyabashi's speech, Guichaoua referred to Prosecution Exhibit 149C (Translation of speech by Kanyabashi).<sup>1358</sup> Kanyabashi spoke after Prime Minister Jean Kambanda<sup>1359</sup> and addressed the attendees on behalf of all the *bourgmestres* in Butare *préfecture*.<sup>1360</sup> Guichaoua commented on an extract from Kanyabashi's speech taken from a transcript of a broadcast on Radio Rwanda.<sup>1361</sup> The extract read:

We shall do anything in our power to ensure that our country does not fall into the hands of the enemies of Rwanda. We shall do everything in our power to ensure that each inhabitant wherever they may be become aware that they are concerned about the sovereignty of their country. We shall continue to maintain security where need be, and we shall have such security where there is no security.<sup>1362</sup>

673. According to Guichaoua, this extract confirmed what the Prime Minister had previously said and endorsed the fact that enemies of Rwanda exist. It was also significant given the venue of the speech, *i.e.* Butare *préfecture*. This implied that there were enemies in Butare *préfecture*, namely Tutsi civilians, who could only be defined and identified by the authorities.<sup>1363</sup>

674. Guichaoua concluded that Kanyabashi was a successful politician.<sup>1364</sup> He managed to protect his image. He was honoured by the population and respected by the President, which was not easy with so much political competition.<sup>1365</sup> Kanyabashi also retained his position at the head of Ngoma *commune*, even though he had already reached retirement age. He had worked at the helm of affairs there for more than 20 years and had full control over the finance and represented the office of the President in the south. He also sat on the central committee of the MRND party, which according to the witness, was how he retained his position.<sup>1366</sup>

675. Guichaoua stated that the following passage in Kanyabashi's speech was a reference to the Interim Government orders, issued many times before, but particularly at Gitarama during the meeting of *préfets* on 11 April 1994. The extract read: "Your Excellency, the Prime Minister, in these difficult times it is difficult to find one's words, but we want to reassure you that we shall do everything possible to implement what is possible based on the important advice you have given us and the directives you have recalled."<sup>1367</sup>

676. Guichaoua was asked whether Kanyabashi's speech was in-line with what all of the *bourgmestres* had been doing in Butare since 6 April 1994, namely, the safeguarding of

<sup>1358</sup> T. 14 October 2004 pp. 5-6 (Guichaoua).

<sup>1359</sup> T. 29 June 2004 p. 14 (Guichaoua).

<sup>1360</sup> T. 28 June 2004 p. 79 (Guichaoua).

<sup>1361</sup> T. 28 June 2004 pp. 78, 83 (Guichaoua).

<sup>1362</sup> T. 28 June 2004 p. 78 (Guichaoua).

<sup>1363</sup> T. 28 June 2004 p. 79 (Guichaoua).

<sup>1364</sup> T. 25 June 2004 pp. 20-21; T. 29 June 2004 pp. 34-35 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 142.

<sup>1365</sup> T. 29 June 2004 p. 35; T. 13 October 2004 pp. 22, 64-65 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 138-139.

<sup>1366</sup> T. 29 June 2004 pp. 35, 39 (Guichaoua); Prosecution Exhibit 153B (Information Regarding the Retirement of Joseph Kanyabashi, *Bourgmestre* of Ngoma).

<sup>1367</sup> T. 28 June 2004 p. 79 (Guichaoua).

security. Guichaoua responded that Kanyabashi was one of those *bourgmestres* that was not keen to go to war, but that the Prime Minister's speech of 19 April 1994 was a call to order. A *bourgmestre* like Kanyabashi could not have been unaware that the killings had already intensified in Gikongoro, Kibungo and Kibuye.<sup>1368</sup> He also could not have been unaware that the killings were happening in areas governed by *préfets* who had been present at the meeting on 11 April 1994 and who had agreed on what needed to be done. Kanyabashi could not have been completely unaware of these instructions or the reasons for media coverage of the visit of so many officials in Butare. Kanyabashi seemed unable to find the appropriate words to use in his speech. However, when Kanyabashi said that they shall implement what the President and Prime Minister had said through their advice and directives, he was thereby recognising that what had been said by the President and Prime Minister would be implemented.<sup>1369</sup>

677. Guichaoua did not hear Kanyabashi's speech of 19 April 1994, but stated that it did not last longer than five minutes and that it seemed to have been an impromptu address.<sup>1370</sup> According to Prosecution Exhibit 149C, Kanyabashi did not mention or address the President, which was why Guichaoua had doubts regarding Sindikubwabo's presence.<sup>1371</sup>

678. Guichaoua further commented on another extract of Kanyabashi's speech which was read aloud to him. The extract read:

We too in Butare *préfecture*, on behalf of our population, will express our gratitude by maintaining the peace he [President Habyarimana] gave us and safeguarding the unity he left with us. Your Excellency, Mister Prime Minister and the government you head, we renew our support for you, as we have always supported your government and we shall leave no stone unturned to make sure the government achieves its objectives.<sup>1372</sup>

679. Guichaoua testified that Kanyabashi's reference to the peace and unity the *préfecture* enjoyed when President Habyarimana was still alive, may have been a message of peace. However, Guichaoua testified that the message of the speech could have been ambiguous since the President had not espoused peace as understood by various parties, including Kanyabashi, for some time. While it was an impromptu speech which was not calling people to take up arms, it may have been intended to indicate that they were not in a position to do anything else but renew their support to the Government and to its actions since 6 April 1994, when Butare *préfecture* was relatively sheltered from the violence prevailing elsewhere in the country. President Sindikubwabo's speech, by comparison, was quite clear as to what was expected

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<sup>1368</sup> T. 14 October 2004 p. 30; T. 14 October 2004 p. 37 (Guichaoua) (French) (for spelling of "Kibuye").

<sup>1369</sup> T. 14 October 2004 p. 30 (Guichaoua).

<sup>1370</sup> T. 14 October 2004 p. 16 (Guichaoua).

<sup>1371</sup> Prosecution Exhibit 149C (Translation of Speech by Kanyabashi); T. 14 October 2004 p. 16 (Guichaoua) (referring to Exhibit 149B, French).

<sup>1372</sup> T. 14 October 2004 pp. 18-19 (Guichaoua). The Chamber notes the transcripts differ significantly from the quote in the exhibit. The transcript says, "We also in Butare *préfecture*, on behalf of our people, our acknowledgement would be to maintain the peace that has been granted us and to protect the unity that he bequeathed us" and "Your Excellency, the President, the government you are heading, we wish to reassure you of our support, you have always supported our government and we will do everything possible for the government to meet its objectives"; Prosecution Exhibit 149C (Translation of Speech by Kanyabashi).

from the *préfet*, the Government and the administration. The two speeches were not in the same category.<sup>1373</sup>

680. Guichaoua testified that Kanyabashi promised to support the Government, whose objective was not to maintain peace in Butare *préfecture*. While Guichaoua did not exclude the possibility that Kanyabashi was referring to the “positive facet” of Kambanda’s speech and possibly regretted the turn things had taken, Kanyabashi was still responding to the Prime Minister who at this point had not made a speech that purported to be calming.<sup>1374</sup>

681. Guichaoua agreed that the population of Rwanda was informed about the war situation. According to his information, the RPF shot down the President’s plane. As of 7 April 1994 there were RPF troops in Kigali and more marching towards the capital. Further, Butare town was only 30 kilometres from the border with Burundi and there was propaganda about a possible RPF offensive from the south, *i.e.* from Burundi, even if this did not correspond to the facts. These were rumours that were unfounded as there was no “southern front” to speak of in terms of the RPF advancement, although the population of Butare might have wished for these rumours to come to fruition, given that there were some 150,000 Tutsi residents in Butare *préfecture*.<sup>1375</sup>

#### *Order of Speeches*

682. Guichaoua pointed out that the order of the speeches was of great importance to how Kanyabashi was supposed to reply. He could not tell in which order the speeches were broadcast on the radio.<sup>1376</sup>

683. Guichaoua was questioned on Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) and the re-broadcast of the speeches on radio.<sup>1377</sup> He testified that he used different documents and transcripts in order to determine the order of speeches, but that this did not actually help him to ascertain the order. However, it seemed that the President spoke after Kanyabashi, as the President arrived towards the end of the meeting. Of particular difficulty was Defence Exhibit 573B (Extracts of speeches by Kambanda and Kanyabashi) because it contained the end of a speech by Kambanda while the beginning was missing.<sup>1378</sup> A journalist, Jean-Baptiste Bamwanga, then spoke and Kanyabashi took the floor thereafter.<sup>1379</sup>

684. Analysing Prosecution Exhibit 151B, Guichaoua asserted that if the version of events based on this exhibit is correct, then Jean Kambanda spoke before Kanyabashi. At the end of his speech, Kambanda said: “I am saying this to some *bourgmestres* who I had told [*sic*] had

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<sup>1373</sup> T. 14 October 2004 pp. 17-19 (Guichaoua).

<sup>1374</sup> T. 14 October 2004 pp. 20-21 (Guichaoua).

<sup>1375</sup> T. 14 October 2004 pp. 24-25 (Guichaoua).

<sup>1376</sup> T. 14 October 2004 pp. 9-10 (Guichaoua).

<sup>1377</sup> T. 14 October 2004 p. 6 (Guichaoua); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1378</sup> T. 14 October 2004 p. 6 (Guichaoua); Defence Exhibit 573B (Kanyabashi) (Extracts of speeches by Kambanda and Kanyabashi).

<sup>1379</sup> T. 14 October 2004 p. 6 (Guichaoua).



gone training amongst the *Inkotanyi* so that they tell them that the government is determined, the state, the army and the population – we are determined to wage this war and to win it.”<sup>1380</sup>

685. Guichaoua speculated that Kanyabashi was responding to this sentence in his ensuing speech. If this version was correct, it would be terrible because Kambanda was saying that three *bourgmestres* had to be eliminated and Kanyabashi would be replying to this. However, Guichaoua could not be sure if this was fabricated by the radio and done after the ceremony on 19 April 1994.<sup>1381</sup>

686. Guichaoua was then asked whether from the beginning of Kambanda’s speech, where Kambanda greeted President Sindikubwabo, one could assume that the President was present for the speeches. The extract referred to read: “Your Excellency the President of the Republic, Honourable Ministers, *Prefets* and *Burgmestres*, and residents of Butare attending this meeting, first of all, I would like to greet you.”<sup>1382</sup>

687. This was Guichaoua’s assumption but he had also been told by others that it was not the case that President Sindikubwabo was present during Kambanda’s speech. He was doubtful, but assumed that Sindikubwabo had in fact been present for the speeches. Guichaoua also agreed that it would seem that there were at least three other ministers present. Guichaoua used the French version given to him by the Office of the Prosecutor as the basis for his analysis; he had not listened to the original tapes. The witness stressed that if Kanyabashi spoke after Kambanda’s accusation of the *bourgmestres* who had become traitors, then there could not have been a scapegoat as Kambanda’s speech required. The mere fact of having listened to and registering it would have been the equivalent of a tacit acceptance of a direct order. This also applied to the possibility of Kanyabashi’s speech being made after Sindikubwabo’s, because this speech was not couched in trivial terms, and merely saying “we shall put into practice all that is possible by relying, in particular, on the important advice you have given us, in addition to the directives you reminded us of” signified a firm commitment.<sup>1383</sup>

#### *Minutes in Nyiramasuhuko’s Diary on the Swearing-in Ceremony*

688. Guichaoua testified that Nyiramasuhuko’s diary mentioned the swearing-in ceremony in the entries of 10 and 11 February 1994. The entry for 10 February 2004 mentions the introduction of the new *préfet* in the presence of the President and the Prime Minister and four *bourgmestres*. The entry then has something written in Kinyarwanda and then a word by the representative of the *bourgmestres*, by the new *préfet* and the President. The entry makes no reference to the content of the speeches of the incoming *préfet* and the *bourgmestres*’ representative. The last person to have spoken seemed to have been the President, but these were assumptions in the diary. Guichaoua testified that he did not wish to delve into the issue

<sup>1380</sup> T. 14 October 2004 pp. 6-7 (Guichaoua).

<sup>1381</sup> T. 14 October 2004 pp. 6-7 (Guichaoua).

<sup>1382</sup> Defence Exhibit 575 (Kanyabashi) (Transcript of Radio Rwanda Broadcast of Jean Kambanda’s Speech); T. 14 October 2004 p. 8 (Guichaoua) (the version in the transcripts differs from the version in the Exhibit. It reads, “Your Excellency Mr President of the Republic, Your Excellency, the ministers, the *préfet*, the *bourgmestres*, the inhabitants of Butare attending this meeting, I wish, first of all, to greet you.”).

<sup>1383</sup> T. 14 October 2004 pp. 8-9 (Guichaoua); Prosecution Exhibit 149C (Translation of Speech by Kanyabashi); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 24.

of whether protocol required the President to speak last. The entry did not mention that Kambanda gave a speech.<sup>1384</sup>

### *The Start of Killings in Butare Préfecture*

689. Guichaoua acknowledged that there was a certain amount of disorder by 14 April 1994, but noted the *préfecture* had not fallen into the wide-scale killings or massacres that affected other parts of Rwanda. He acknowledged that from 14 April 1994, there were some soldiers who showed signs of impatience to follow national directives.<sup>1385</sup>

690. Guichaoua's Report stated that at the 16 April 1994 meeting of the Interim Government, Interim President Théodore Sindikubwabo requested that the PL Chairman and Minister Mugenzi agree to exchange the *préfet* post in Butare *préfecture* for the *préfet* post of Gisenyi.<sup>1386</sup> Nsabimana, a member of the PSD, was then granted the post of *préfet* for Butare.<sup>1387</sup> The PSD had split into two factions and, when the genocide began, the power wing of the PSD had control of the party. The power wing openly supported the policies of the MRND after the assassination of the Secretary General of the PSD, Félicien Gatabazi.<sup>1388</sup> Guichaoua testified that the MRND could not appoint a member of its own party as *préfet* because it was considered a party of northerners and disliked by the southerners in Butare.<sup>1389</sup>

691. Guichaoua emphasised that external factors started the massacres in Butare *préfecture*. He stated that on 19 April 1994, there was a shift in the implementation of the Interim Government policy that came from outside the *préfecture*.<sup>1390</sup> He stated in his Report, and confirmed in testimony, that military units from Kigali and militiamen were forced to intervene to quash the last bastions of resistance in Butare *préfecture*.<sup>1391</sup>

692. Guichaoua testified that on 20 April 1994, the massive killings began in Butare *préfecture*, although he testified, in reference to his Report, that there was a massacre of Tutsis in Nyakizu *commune* starting on 13 or 15 April 1994. He also confirmed there was a massacre in Maraba *commune* prior to 19 April 1994. Finally, he confirmed that there were attacks on Runyinya *commune* prior to 19 April 1994, without indicating the magnitude of those attacks.<sup>1392</sup>

693. In his Report, Guichaoua stated that Nyakizu *commune* was the only *commune* within Butare *préfecture* that was capable of organising large-scale killings starting from 13 April 1994. On 15 April 1994, the *bourgmestre* and others opposed to the genocide were killed. On 17 April 1994, there was a massacre at Cyahinda church despite a visit from *Préfet* Habyalimana and Major Habyarabatuma. On 18 April 1994, President Sindikubwabo went to

<sup>1384</sup> T. 14 October 2004 pp. 14-17 (Guichaoua).

<sup>1385</sup> T. 13 October 2004 pp. 10-11 (Guichaoua).

<sup>1386</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 124.

<sup>1387</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 125.

<sup>1388</sup> T. 28 June 2004 pp. 6-7 (Guichaoua).

<sup>1389</sup> T. 28 June 2004 p. 6; T. 6 October 2004 p. 26 (Guichaoua).

<sup>1390</sup> T. 29 June 2004 p. 61 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 153.

<sup>1391</sup> T. 29 June 2004 p. 61 (Guichaoua); 14 October 2004 p. 18 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 153.

<sup>1392</sup> T. 8 October 1994 pp. 51-53 (Guichaoua).

the Cyahinda church to support the killings, and on 19 April 1994, when the attacks ceased at the church, between 10,000 and 20,000 Tutsis had been killed.<sup>1393</sup>

694. President Sindikubwabo gave a speech at the 19 April 1994 meeting. Sindikubwabo stated that he had passed through Maraba *commune* and met with the *bourgmestre* regarding the problem of refugees. He also stated that he travelled to Nyakizu *commune*, but was unable to meet with that *bourgmestre* who had left on another mission. He observed that the inhabitants were frightened and that it appeared that the refugees had powerful weapons, rifles and grenades. He did not state whether there had been massacres or killings in these *communes*, but stated that there was a situation of insecurity in Gikongoro *préfecture*.<sup>1394</sup>

#### Prosecution Expert Witness Francis Ntakirutimana

695. Francis Ntakirutimana testified as an expert in social linguistics, discourse analysis, lexicology, semantics and language planning.<sup>1395</sup> He testified that from 6 April 1994 to 19 April 1994 he lived in Butare *préfecture* and killing was going on throughout Rwanda, but not in Butare *préfecture*.<sup>1396</sup>

696. Ntakirutimana's Report analysed the use of proverbs and phrases in Rwanda during the events of 1994.<sup>1397</sup> Ntakirutimana explained that a speech cannot be analysed without taking its form and substance into account. In order to understand the subtleties of the message in a speech, it is important to pay particular attention not only to what is said but also how what is said is expressed.<sup>1398</sup>

697. In his Report, Ntakirutimana explained that the manner a speaker uses combines not only vocal signs that are likely to be graphically re-transcribed, but can also include non-vocal signs like gestures, tone, mimes, the appearance of the speaker, instruments the speaker uses and his clothing. These ingredients unquestionably contribute to strengthening the message of a speech.<sup>1399</sup>

#### *Sindikubwabo's Speech*

698. Ntakirutimana referred to the transcript of Sindikubwabo's speech contained in Prosecution Exhibit 159B (*Tolerance or Intransigence in Sindikubwabo's speech in Butare*).<sup>1400</sup> Ntakirutimana explained that given the context of Sindikubwabo's speech, words

<sup>1393</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 145-146.

<sup>1394</sup> T. 29 June 2004 p. 15 (Guichaoua); Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 2.

<sup>1395</sup> T. 13 September 2004 p. 30 (Ntakirutimana).

<sup>1396</sup> T. 14 September 2004 p. 14 (Ntakirutimana).

<sup>1397</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis of Some Polysemic Terms Produced During the War Period 1990-1994 in Rwanda*, by Ntakirutimana) (hereinafter "*Sociolinguistic Analysis*, by Ntakirutimana"); T. 13 September 2004 pp. 13, 32 (Ntakirutimana).

<sup>1398</sup> Prosecution Exhibit 161B (*Joseph Kanyabashi's Unswerving Support for the Jean Kambanda Government*, by Ntakirutimana) p. 3; (hereinafter "*Kanyabashi's Unswerving Support*, by Ntakirutimana").

<sup>1399</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 12.

<sup>1400</sup> T. 13 September 2004 pp. 81-82 (Ntakirutimana); Prosecution Exhibit 159B (*Tolerance or Intransigence in Sindikubwabo's speech in Butare*, by Ntakirutimana) (hereinafter "*Tolerance or Intransigence*, by Ntakirutimana").

do not always signify what they suggest at first sight.<sup>1401</sup> Recourse to encyclopaedic knowledge is often required in order to grasp the purpose of a speech in all its complexity. These complexities are dependent on a number of closely linked factors including the speaker's social status, the context, the feedback from the audience and the speaker's attitude, such as demeanour, gestures and tone of voice. The aim of a speech needs to be judged by the results achieved, where this is possible.<sup>1402</sup>

699. Ntakirutimana testified that Sindikubwabo's speech was delivered in Kinyarwanda.<sup>1403</sup> Ntakirutimana analysed this speech in his Report<sup>1404</sup> and by listening to taped segments played during his testimony in court.<sup>1405</sup> The following are the relevant sections from Ntakirutimana's analysis, based on his Report.

700. Ntakirutimana's Report explained that the prologue of Sindikubwabo's speech consists of the first seven paragraphs and represents the general framework of the speech. The President and his colleagues had travelled to Butare from Gikongoro, where they had discussed the problem of insecurity with administrative officials. Gikongoro, which borders Butare, was facing the same problem of insecurity, which had been heightened by an influx of internally displaced persons. Ntakirutimana explained that in the speech, a generic use of the word refugee to mean both refugees and internally displaced persons is implied and the Kinyarwanda language does not make a distinction between the two terms.<sup>1406</sup>

701. Ntakirutimana's Report referred to Paragraph 1 of the speech, which read: “[A]bout the problem of those who are referred to as refugees, but who are they at this time?”<sup>1407</sup>

702. The Report also referred to Paragraph 3, which stated: “So this is the issue of the refugees, I wish there was someone to explain to us exactly what it is. Because I don't understand it yet. What refugees are these? Are they Hutus who have fled? Are they Tutsis who have fled? Who are these refugees? What were they running away from? That is the question.”<sup>1408</sup>

703. Ntakirutimana stated that the rhetorical question posed by the President as to who the refugees were at that time and whether they were Hutus or Tutsis, revealed that the refugees' ethnic identity was the crux of the problem.<sup>1409</sup>

704. Ntakirutimana further explained that directing questions to the audience in this way permitted the establishment of a direct dialogue and aimed to win over the target audience. The

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<sup>1401</sup> T. 14 September 2004 p. 9 (Ntakirutimana).

<sup>1402</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 3, paras. 3-4.

<sup>1403</sup> T. 14 September 2004 p. 7 (Ntakirutimana).

<sup>1404</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana).

<sup>1405</sup> Prosecution Exhibit 160 (CD-ROM containing Excerpt of Radio Broadcast of Speech of Sindikubwabo); T. 13 September 2004 p. 72 (Ntakirutimana).

<sup>1406</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 4.

<sup>1407</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) Annex 1, p. 22.

<sup>1408</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) Annex 1, p. 22.

<sup>1409</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 4.

latter should feel compelled to go along with the speaker. Ntakirutimana explained that these questions gave the audience an opportunity to reflect and take appropriate measures.<sup>1410</sup>

705. Ntakirutimana's Report stated that the term *rubanda* (inhabitants), which was of particular significance in this speech, took on a different meaning during the war. Generally the term means "crowd, populace, public or people". However, *rubanda* came to mean members of the Hutu ethnic group known as *rubanda nyamwiinshi* (majority ordinary people) in reference to their large number. The President was disturbed by the attack on the majority ethnic group and the behaviour of some members of the majority ethnic group, who abandoned their tasks and gave way to greed. Paragraph 5 of the speech reads:

Yesterday, I had the unhappy experience of asking a citizen a question ... "Aren't there any men in this commune?" The citizen had the courage to answer that there were not many left. "What about the others?" I asked him....He told me that they were eaten up by greed .... I said "gendarmes" but in fact, I think you have not understood the directives we have issued, you have not understood what we have asked you to do, or else you understand perfectly but refuse to act for reasons that are unknown to us.<sup>1411</sup>

706. Paragraph 2 of the speech reads:

I met members of the local population [at Nyakizi *commune*]. They are faced with the same problem as the refugees, who, they said, are being housed in the Nyumba church precinct. What I saw was that the inhabitants were afraid of them, because it would appear that they possess very powerful weapons, guns and grenades.... Some of them were on top of the hill, according to one of the Ministers ... the way they do things, the others were inside the church while the *defenceless common folk* were roaming about.<sup>1412</sup>

707. It was clear to Ntakirutimana that although the paragraph does not refer to Tutsis as the enemy and Hutus as the ordinary people [or defenceless common folk], the enemies were undoubtedly Tutsis and the ordinary people were Hutus.<sup>1413</sup>

708. Ntakirutimana's Report referred to Paragraph 7 of the speech. It reads: "Unhappily, I have been informed of something I didn't know, namely that there were some among the administrative officials who are training to fight against us. Fortunately, the Prime Minister has declared that we will fight them back."<sup>1414</sup>

709. Ntakirutimana stated that the Prime Minister's remarks endorsed by the President in the paragraph cited above encourage vengeance rather than tolerance. This constitutes a second response to the problem of insecurity, *i.e.* that it is necessary to fight.<sup>1415</sup>

710. Ntakirutimana's Report stated that, according to the President, the existence of the refugee centres was not a matter for satisfaction, as people "suffer there when it rains" and "others go there for porridge." The Report explained that in the speech the President referred

<sup>1410</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 18.

<sup>1411</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 5, 22-23, Annex 1.

<sup>1412</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 22, Annex 1 (emphasis added).

<sup>1413</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 15.

<sup>1414</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 23, Annex 1.

<sup>1415</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 6.

to refugee centres as full of armed people with guns and grenades; the refugees posed a threat to the security of the inhabitants. Sindikubwabo supported Kambanda's exhortation to "fight them back". Ntakirutimana explained that here again, Sindikubwabo's response to fight them back contains no trace of tolerance.<sup>1416</sup>

711. Paragraphs 14 and 15 of Sindikubwabo's speech state: "We have been lucky so far, because the war has not yet reached the region ... do not take things lightly .... by the grace of God, you have been spared from the war so far .... No, *be vigilant*, protect your *préfecture*."<sup>1417</sup>

712. Ntakirutimana explained that the purpose of these references was to attract the attention of the people of Butare. The President was saying that the business of security must not be left solely to the *gendarmes*. Rather, security was a matter of concern for everyone especially political officials and their colleagues, from ministers to *cellule* committee members. Ntakirutimana explained that the use of the word *kudaabagira* (to live the good life) in reference to not taking things lightly and protecting the *préfecture* was an invitation to fight as a form of self-defence. In Paragraph 15, the President reminded the new *préfet* that he was accountable for the *préfecture*.<sup>1418</sup> The paragraph reads: "The *préfecture* the *préfet* is in charge of ... do not think that you are coming to heaven: you are coming at the wrong time ... Approach your *bourgmestres*, hold frequent meetings with them ... If you conclude that he is lazy or naïve, tell him to get down to work instead of leaving it all for the others to do."<sup>1419</sup>

713. Ntakirutimana explained that the verb *gukora* (to work) has, over the years, come to mean to kill Tutsis.<sup>1420</sup> He listed different examples of the use of *gukora* and explained that once the target is identified, the next step is action, *i.e.* going for the target.<sup>1421</sup> The operation to eliminate the enemy is euphemistically called *gukora*.<sup>1422</sup> In the end, *gukora* means to kill Tutsis or to destroy their houses so as to avoid their possible return to the place.<sup>1423</sup> Ntakirutimana explained that when reference was made to the meaning of the verb *gukora*, the message conveyed to the people of Butare was a powerful and unambiguous one. It did not go hand in hand with tolerance.<sup>1424</sup>

714. Ntakirutimana wrote that Paragraph 16 from the President's speech reads:

So I think, dear people of Butare and forgive me, because I'm not used to speaking like this ... those who wait for others to do the work, those who don't feel concerned, well, they should come out into the open and let the rest of us do the work, and they can watch while we work, but without being part of our team ... Those whose job it is to

<sup>1416</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 6, 9 (referring to paras. 7 and 13 of President Sindikubwabo's speech).

<sup>1417</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 24, Annex 1.

<sup>1418</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 10.

<sup>1419</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 24, Annex 1.

<sup>1420</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 11.

<sup>1421</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 32.

<sup>1422</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 32.

<sup>1423</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 35.

<sup>1424</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 11.

... get him out of the way just have to get him out of the way as quickly as possible, because there are other good workers who want to work for their country.<sup>1425</sup>

715. Ntakirutimana explained that this apology is a powerful one. The President was obliged to apologise for the message and the harsh tone used to convey it, probably because he realised he had gone too far.<sup>1426</sup> Ntakirutimana explained that apologising is a way of admitting one's guilt. However Sindikubwabo's apology read together with related comments conveyed a message that was spine-chilling and explicit. It was aimed at easing the impact on any sensitive listeners.<sup>1427</sup>

716. Ntakirutimana went on to discuss Paragraphs 16 and 17, which read:

If someone wants to say: "Me, I'm not concerned, that's not my business ...", he should go far away from us ... get him out of the way ... they are other good workers who want to work for their country ... These traitors who went for weapons training in order to eliminate us ... let us be rid of them! ... "We must fight and win this war" ... We shall win if you get rid of the "it-doesn't-concern-me" types ... who went to learn how to kill, and rid them for us.<sup>1428</sup>

717. Ntakirutimana explained that this meant that such people must be eliminated swiftly, which was an open invitation to violence. The President urged the people of Butare to work in concert with the Government towards final victory. Ntakirutimana explained that this was quite obvious incitement to murder anyone who was indifferent to the ongoing situation.<sup>1429</sup>

718. The President also said, "[w]e are going to begin watching everyone's behaviour and here I am referring particularly to the behaviour of the leadership."<sup>1430</sup> Ntakirutimana explained that Sindikubwabo meant that the road to the ultimate goal was still long. Draconian measures were required of everyone. It was clear that everyone, particularly the leadership, was under the Government's control.<sup>1431</sup> Paragraph 18 reads: "A government without a common philosophy has nothing to do with ours, because ours is an *Abatabazi* government."<sup>1432</sup>

719. Ntakirutimana explained that as the name *Abatabazi* (saviour) indicated, the Government had a common philosophy, with the single goal or ideal of victory and peace for Rwandans.<sup>1433</sup>

720. Paragraph 22 states:

the employees whose job it is to receive visitors ... must be capable of performing their duties, not people who are only there to make money ... it is the same people who are

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<sup>1425</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 24.

<sup>1426</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 11.

<sup>1427</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 19.

<sup>1428</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 24.

<sup>1429</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 12.

<sup>1430</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 24-25.

<sup>1431</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 13.

<sup>1432</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 24-25.

<sup>1433</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 13.

against transparency, they are the same people we are fighting against ... They attack us with their stupidity ... They are enemies too. They must be eliminated.<sup>1434</sup>

721. Ntakirutimana reported that in Kinyarwanda, *umwaanzi* (enemy), the antonym of which is *incuti* (friend), is a term derived from the verb to hate (*kwaanga*). The word *umwaanzi* gave rise to a number of proverbs or set expressions. From a traditional Rwandan perspective, the aggressor of Rwanda, the Tutsis, were referred to as a real enemy and their elimination or driving out, which was prescribed by ancestral practices, should be respected. That “a person who hates another so much that he cannot wish him any good ... is the image Hutus have of Tutsis”. Linguistic expressions revealed that the enemy were the Tutsis and the defenceless ordinary people were the Hutus.<sup>1435</sup>

722. In his speech, President Sindikubwabo said: “I want you to be able to analyse our message, understand it and analyse the terms we use, you must know why we choose one term over another. The reason is that we are going through an unusual period.” Sindikubwabo warned his listeners and recapitulated what his Government expected of them, as though to recall the idea that the people must do what the Government requires of them.<sup>1436</sup>

723. In conclusion, Sindikubwabo said “[j]okes, laughter, banter, childish behaviour, capriciousness and trifling must give way to work. After we have won the victory, once calm has been restored in the country, we can start making jokes once again but now is not the time for joking.”<sup>1437</sup> Ntakirutimana explained that here, the President reverted to the core message saying joking must stop and people must get down to “work.”<sup>1438</sup> Ntakirutimana explained that by the term *kudaabagira*, which connotes the good life, Sindikubwabo wanted people to be aware of the critical situation that existed and react accordingly, in any event not to be indifferent, which was a clear invitation to “work.”<sup>1439</sup>

724. Ntakirutimana explained that Sindikubwabo employed the communication technique of quoting another person of good faith in order to emphasise one’s agreement and solidarity with the message conveyed. In Paragraphs 1, 17, 18 and 23 he quotes statements of the Prime Minister and in Paragraph 13 he quotes Minister Mugenzi. Both spoke well and conveyed a pertinent message which was important to contemplate and heed in every detail. Sindikubwabo also repeated the response given by a deeply disgruntled ordinary citizen in order to emphasise the fact that the situation is truly appalling. By doing so, Sindikubwabo urged the population not to remain indifferent, but to fight to get rid of and eliminate the traitors. According to Ntakirutimana there was no question of tolerance here.<sup>1440</sup>

725. Ntakirutimana identified prolonged applause from the audience in several points in the speech. Ntakirutimana explained that people react directly or indirectly to everything that reaches their ears. The reaction made it possible to evaluate the impact of what they heard.<sup>1441</sup>

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<sup>1434</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 25.

<sup>1435</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 14-15.

<sup>1436</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 16.

<sup>1437</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 25.

<sup>1438</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 16-17.

<sup>1439</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 17.

<sup>1440</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 18.

<sup>1441</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 19.



726. In the first part of the speech, the audience applauded the President when he pledged support for the new *préfet*. The audience gave two rounds of applause following the presentation of the new Government. There was also applause in the form of drums. Ntakirutimana's Report stated that in the cultural and religious context, drums are beaten during certain ceremonies to signal approval of the message conveyed, and it was to be inferred from the reactions of the audience that the Government and its programme would not meet with a great deal of resistance in Butare.<sup>1442</sup>

727. Ntakirutimana explained that it is common in many cases that a speaker is often applauded as a matter of courtesy at the end of his remarks. However, the multiple rounds of applause at the end of President Sindikubwabo's speech showed that this was not merely a matter of courtesy. These final acclamations were congratulating the speaker as a sign of recognition of the relevance of his message.<sup>1443</sup>

728. Ntakirutimana said the linguistic data showed that the speech was not indicative of tolerance. It was aimed at mobilising the people of Butare and heightening their awareness, urging them to stop being indifferent and encouraging them to fight for final victory. The feedback from the audience showed that the message was clearly understood.<sup>1444</sup>

729. Ntakirutimana disagreed with the proposition that the population could have understood the President's speech in different ways.<sup>1445</sup>

#### *Kanyabashi's Speech*

730. Ntakirutimana analysed Kanyabashi's speech in a Report entitled *Kanyabashi's Unswerving Support for the Jean Kambanda Government*.<sup>1446</sup> Ntakirutimana identified six strategies that inspired Kanyabashi in his speech. These were:

1. Support the Jean Kambanda Government and its objectives.
2. Support the Army in defending the sovereignty of the country.
3. Preserve the sovereignty of the country.
4. Sensitize the population to defend the sovereignty of the country.
5. Safeguard security everywhere and by all means.
6. Effectively honour the various promises made.<sup>1447</sup>

731. Ntakirutimana analysed Kanyabashi's radio broadcast speech in Kinyarwanda.<sup>1448</sup> Ntakirutimana explained that it would be expected that Kanyabashi's speech would reflect the ideas expressed by the different speakers and would accordingly be longer. Kanyabashi's

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<sup>1442</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 19.

<sup>1443</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 19.

<sup>1444</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 19-20.

<sup>1445</sup> T. 14 September 2004 p. 35 (Ntakirutimana).

<sup>1446</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana); T. 14 September 2004 pp. 19-21 (Ntakirutimana).

<sup>1447</sup> T. 14 September 2004 p. 29 (Ntakirutimana); Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 7.

<sup>1448</sup> T. 14 September 2004 p. 23 (Ntakirutimana).

speech was only half a page. The length of Kanyabashi's address in response to speeches by a number of members of the Government is unusual.<sup>1449</sup>

732. In part one of the speech, Kanyabashi on behalf of all the *bourgmestres* of Butare *préfecture* thanked the members of Government who visited the population during the hard times. According to Kanyabashi, the visit constituted tremendous support.<sup>1450</sup>

733. Kanyabashi then focused his message on the death of President Habyarimana and its direct consequences for Butare *préfecture*. Kanyabashi said that the people of Butare were deeply disturbed and overcome with grief by the event, but they did not know what they had to do. Ntakirutimana explained that Kanyabashi meant that the people of Butare did not know what to do to avenge this sudden death. All that they managed to do was react, like all other Rwandans. Kanyabashi did not elaborate on this reaction.<sup>1451</sup>

734. Kanyabashi returned to the death of the President to show that it was the only way that the criminals had to seize power. Kanyabashi said that the criminals deluded themselves given that the population had remained ever more attached to their President. Ntakirutimana explained that the Rwandan proverb which translates as "good rewards good" is often used ironically when evil is called into question. Therefore, Kanyabashi's use of the word *kwitura*, alluding to the Rwandan proverb of "good rewards good", was an allusion to acts of vengeance resulting from the death of President Habyarimana.<sup>1452</sup>

735. Kanyabashi indirectly mentioned the names of the assassins of President Habyarimana by using the word *inyangarwanda*, which Ntakirutimana explained literally translates to "those who hate Rwanda", means dishonest and disloyal people or a person who disturbs the peace of a country. Between 1990 and 1994, these definitions directly referred to *Inkotanyi*/RPF members and/or their accomplices. Ntakirutimana also explained the historical background and the set expressions and proverbs that have resulted from the word *Inkotanyi*.<sup>1453</sup>

736. From a day-to-day traditional Rwandan perspective, the aggressor of Rwanda, the Tutsi, was referred to as the real enemy. References to eliminating the enemy or flushing him out of the country therefore referred to Tutsis.<sup>1454</sup> Ntakirutimana explained that members of the RPF disturbed the peace by attacking Rwanda in October 1990 and deprived the population of President Habyarimana.<sup>1455</sup>

737. Ntakirutimana explained that referring to those who hate Rwanda and showing that they killed President Habyarimana, was a way of inciting the population to increase their vigilance so as to defend the sovereignty of the country. Kanyabashi concluded by affirming on behalf of the inhabitants of Butare that everything would be done to protect the peace and unity fostered by the late President. Ntakirutimana explained that this could mean that

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<sup>1449</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 5.

<sup>1450</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 6.

<sup>1451</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 6.

<sup>1452</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 6.

<sup>1453</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) pp. 6-7.

<sup>1454</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 30; Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 14-15.

<sup>1455</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 7.

Kanyabashi was saying that if you wish peace, prepare for war. Ntakirutimana explained that the visit of the Prime Minister and other members of Government came within the perspective of sensitising the population. Sindikubwabo's speech corroborated this assertion, when he made reference to the widespread killings already in the country.<sup>1456</sup>

738. Ntakirutimana explained that in part two, Kanyabashi revisited the six strategies to deal with the prevailing situation (mentioned above). In conclusion, Kanyabashi indicated that no energy would be spared to effectively execute these strategies by scrupulously following "the very important advice and directives" given by Prime Minister Kambanda. The use of that phrase illustrated that the advice and directives of the Prime Minister were to be strictly followed.<sup>1457</sup>

739. Ntakirutimana identified the key words in Kanyabashi's speech. Kanyabashi addressed the main speaker, the Prime Minister, six times. This was a clear way of emphasising his sympathy. The Prime Minister was addressed in each of the six paragraphs and the core message was to thank him for going to the field to give important advice and directives.<sup>1458</sup>

740. Ntakirutimana reported that it was important for the population to be abreast of the prevailing situation and be sensitised to the appropriate measures to defend the sovereignty and security of the country. The population was therefore an important component of this matter, and was mentioned nine times in the short speech. The death of President Habyarimana was mentioned five times. Ntakirutimana explained that by mentioning the death several times, Kanyabashi wanted to incite the population to react given that the criminals who caused the death had only one objective; to seize power.<sup>1459</sup>

#### Nyiramasuhuko Defence Witness WMCZ

741. Witness WMCZ, a Hutu classmate of Nyiramasuhuko, testified that killings started in his *secteur*, in Ndora *commune* on about 22 or 23 April 1994. He stated that at that time groups of bandits were created with the purpose of looting and killing Tutsis. Soldiers who had deserted the battlefield and who did not respect their commanders' orders began to attack, plunder and kill people. They started by attacking his home and demanding money.<sup>1460</sup>

#### Nsabimana Defence Witness Charles Karemano

742. Charles Karemano, a Hutu sociologist who was formerly national secretary of the PSD party, testified that he arrived in Butare, Ngoma *commune* on 18 April 1994 when the *bourgmestre* was Kanyabashi.<sup>1461</sup> He went to the house of a Tutsi friend, Jean Marie Rumiya, who lived in one of the university houses in the Ngoma *commune*, Butare-ville *secteur*.<sup>1462</sup> Karemano asked Rumiya for shelter but Rumiya said that it was dangerous for the witness to stay with him. He showed the witness Mount Huye where houses were being burnt down and

<sup>1456</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) pp. 6-7.

<sup>1457</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) pp. 7-8.

<sup>1458</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 8.

<sup>1459</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 9

<sup>1460</sup> T. 2 February 2005 pp. 30-31 (Witness WMCZ).

<sup>1461</sup> T. 21 August 2006 p. 35 (Karemano).

<sup>1462</sup> T. 21 August 2006 pp. 33-34 (Karemano).

people were being killed and told him that Butare was also unsafe, although it did not appear that way to the witness.<sup>1463</sup> The witness testified that when he arrived in Butare and met Rumiya, the massacres had not yet started and he felt safe.<sup>1464</sup>

743. The witness spent the night of 18 April 1994 at a place known as the Procure of Butare located opposite the Butare Cathedral; this place was owned by the Diocese and gave priority lodging to former seminarians.<sup>1465</sup> People were seeking refuge there and fighting over rooms.<sup>1466</sup> On 19 April 1994, the witness went to Cyarwa where he had a house.<sup>1467</sup>

744. The witness confirmed that page 72 of his book, *Beyond the Roadblocks*, contained a reference to the events of 19 April 1994. The relevant section states:

19 April 1994: Theodore Sindikubwabo makes his first official speech in Butare and settles down in his house in Tumba, the killings start in Butare. Some consider that the beginning of the killings in Butare coincides with the dismissal of *Préfet* Jean-Baptiste Habyarimana. It is true that the latter had not favoured such killings. But what force did he have at his disposal to stop them? Neither the army nor the gendarmerie obeyed his orders, just as they will not obey his civilian successor. But, on the other hand, the speech of the interim president, first of all, and then his settling down in Butare, will spark things off. The speech urges the population to chase the enemy. They will be easily identified to the Tutsis. When he settled down in his town, he brought with him the guard of his assassinated predecessor. These soldiers kill and incite the population to also kill and loot. The population will note that it is possible to kill and take other people's possessions without being punished. And it will no longer stop.<sup>1468</sup>

745. The witness testified that he did not hear Sindikubwabo's speech, but from 19 April 1994 onwards, he heard many comments about it, especially in relation to the President's statement that people should not remain indifferent and should work, which stuck in people's minds. The meaning of the President's statement was easy to ascertain when viewed against the background of the events that occurred after 19 April 1994. The witness' understanding of what occurred was that the soldiers who accompanied the President killed and incited the population to loot. The population realised that this could be done with impunity and also started killing and looting. People used the speech to legitimate their actions.<sup>1469</sup>

746. To the witness' knowledge, the President's speech was made in Kinyarwanda and reference was made during the speech to the term "to work" or *gukora*. In the context of Sindikubwabo's speech, this word was ambiguous and not everyone understood the speech to mean the same thing. He did not know if those who perpetrated the killings used the word *gukora*. The witness confirmed that the person he referred to in page 83 of his book as

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<sup>1463</sup> T. 21 August 2006 p. 34 (Karemano).

<sup>1464</sup> T. 24 August 2006 p. 13 (Karemano).

<sup>1465</sup> T. 21 August 2006 p. 35 (Karemano).

<sup>1466</sup> T. 23 August 2006 p. 73 (Karemano).

<sup>1467</sup> T. 21 August 2006 p. 35 (Karemano).

<sup>1468</sup> T. 5 September 2006 p. 22 (Karemano).

<sup>1469</sup> T. 5 September 2006 pp. 23-27 (Karemano).

disapproving of the inflammatory speeches and being regretful of the fact that he had to answer to Sindikubwabo's speech, was Kanyabashi.<sup>1470</sup>

747. The witness testified that he saw many dead bodies during his stay in Butare between 18 April and 3 July 1994. A truck-load of bodies passed his house around 19 to 22 April 1994 heading towards a mass grave close by. The vehicle was a public works vehicle from a department within the *préfecture*. There were many killings between 20 and 30 April 1994. The killings mainly began after 20 April 1994 and would occur during the day. Subsequently, people hid during the day, so most of the killings took place at night. It would have been difficult for the political and military authorities not to know what was going on. The witness did not personally see any killings.<sup>1471</sup>

748. By mid-May 1994, Tutsi professors Karenzi and Rumiya and many others had already been killed. Further, a Professor named Gaétan, whom people considered to be Tutsi, was killed. To Karemano's knowledge, all the Tutsi lecturers of the university who were in Butare on the campus were killed immediately after 19 April 1994.<sup>1472</sup>

#### Kanyabashi Defence Witness D-2-5-I

749. Witness D-2-5-I, a Hutu,<sup>1473</sup> testified that on 18 or 19 April 1994, he noticed that homes were burning in Runyinya, Gishamvu and Huye *communes*.<sup>1474</sup> He testified that at the roadblock manned by soldiers at Hotel Faucon, he saw the body of a university lecturer called Claver Karenzi.<sup>1475</sup> He knew the professor but could not say if he was a Tutsi. He said it could clearly be seen that the soldiers had killed Karenzi. He did not see bodies at this roadblock on other days.<sup>1476</sup>

#### Kanyabashi Defence Witness D-1-4-O

750. Witness D-1-4-O, a Hutu health worker, testified that refugees began to enter Ngoma *commune* from Gikongoro *préfecture* between 13 and 18 April 1994. The *communes* near Gikongoro *préfecture*, namely Nyakizu and Runyinya *communes* and the Nyaruguru region, were experiencing insecurity.<sup>1477</sup> Witness D-1-4-O testified that on 18 April 1994, people began burning and plundering homes in Ngoma *commune*.<sup>1478</sup>

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<sup>1470</sup> T. 5 September 2006 pp. 30-31 (Karemano).

<sup>1471</sup> T. 24 August 2006 pp. 82-84 (Karemano).

<sup>1472</sup> T. 5 September 2006 pp. 53-54 (Karemano).

<sup>1473</sup> Defence Exhibit 615 (Kanyabashi) (Personal Particulars).

<sup>1474</sup> T. 12 December 2007 p. 16 (ICS) (Witness D-2-5-I).

<sup>1475</sup> T. 21 January 2008 p. 34 (ICS) (Witness D-2-5-I).

<sup>1476</sup> T. 31 January 2008 pp. 10-11 (ICS) (Witness D-2-5-I).

<sup>1477</sup> T. 7 May 2008 p. 14 (Witness D-1-4-O).

<sup>1478</sup> T. 6 May 2008 p. 37 (ICS) (Witness D-1-4-O).

Ndayambaje Defence Witness Constant Julius Goetschalckx a.k.a. Brother Stan

751. Brother Stan, a Belgian clergyman, testified that on 18 April 1994, he heard for the first time a gunshot in Butare town. On that same day, he also observed houses set ablaze near Gikongoro *préfecture*.<sup>1479</sup>

Nsabimana Defence Witness AGWA

752. Witness AGWA, a Hutu, testified that he arrived in Kigembe *commune* on 12 April 1994 and the situation was calm. Shortly thereafter, the situation deteriorated rapidly because the area was receiving Tutsi refugees from the neighbouring Nyakizu and Runyinya *communes*. The refugees gathered at the *commune* office and at CERAI, an agricultural training centre. About one week later, around 19 April 1994, those gathering at CERAI were massacred.<sup>1480</sup>

Nyiramasuhuko Defence Witness Maurice Ntahobali

753. Maurice Ntahobali, Nyiramasuhuko's husband, Shalom Ntahobali's father and Rector of Rwandan National University,<sup>1481</sup> testified that he was aware that one of his friends, Professor Pierre Claver Karenzi, was murdered in April 1994 in Butare. He heard of this crime a few days after it occurred and he was sad at losing a friend, as well as a member of the teaching staff of the institution of which he was in charge.<sup>1482</sup> He did not visit Karenzi's widow, because he did not know how to find her. In addition, he was ill and had reduced his movements in order to avoid suffering the same fate as Karenzi.<sup>1483</sup>

Nyiramasuhuko Defence Expert Witness Eugène Shimamungu

754. Eugène Shimamungu, a doctor of linguistic science with a specialisation in grammar,<sup>1484</sup> testified on the use of propaganda in armed conflict to disseminate and manipulate information.<sup>1485</sup> He stated that the propaganda used in Rwanda was through radio - such as Radio Rwanda, RTLM for the Government and Radio Muhabura for the RPF - and written medium.<sup>1486</sup> In his opinion, Nyiramasuhuko used RTLM to transmit the message of non-violence because there were not many other choices.<sup>1487</sup>

755. Shimamungu explained that he used lexicon items (words) and semantic fields (the entire range of meaning that can be given to a word), to analyse the speeches made.<sup>1488</sup>

756. Shimamungu opined that *Inyenzi* was coined by Alloys Nkurumbe, who was a member of a Tutsi incursion group in the 1960s consisting of 36 people which, at the time, tried to

<sup>1479</sup> T. 18 September 2008 p. 35 (Brother Stan).

<sup>1480</sup> T. 8 November 2006 pp. 17-18 (Witness AGWA).

<sup>1481</sup> T. 12 September 2005 p. 16 (Maurice Ntahobali).

<sup>1482</sup> T. 16 September 2005 p. 73 (Maurice Ntahobali).

<sup>1483</sup> T. 16 September 2005 p. 74 (Maurice Ntahobali).

<sup>1484</sup> T. 15 March 2005 p. 8 (Shimamungu).

<sup>1485</sup> T. 16 March 2005 pp. 10-11 (Shimamungu).

<sup>1486</sup> T. 16 March 2005 p. 14 (Shimamungu).

<sup>1487</sup> T. 1 April 2005 p. 4 (Shimamungu).

<sup>1488</sup> T. 16 March 2005 pp. 41, 43-44, 47-48 (Shimamungu).

destabilise the Government through terrorist actions. The word was coined by the group as a name for themselves after the 1959 Rwandan revolution which overthrew the Tutsi monarchy. This word has been used since that time in Rwanda to describe Tutsi incursions into Rwanda.<sup>1489</sup> Shimamungu was of the opinion that the word *Inyenzi* was understood to mean “aggressor” when the *Inyenzi-Inkotanyi* attacked the country. In 1994, the *Inyenzi-Inkotanyi* who attacked from Uganda could have been called aggressors.<sup>1490</sup>

757. Shimamungu explained that *Inkotanyi* was a word used to refer to the militia of Rwabugiri who was a king in power towards the end of the 19<sup>th</sup> century. He testified that the word was revived again by the RPF in 1990 so that they became known as the RPF-*Inkotanyi* and occasionally, *Inyenzi-Inkotanyi*. He testified that the word *Inkotanyi* itself meant die-hard combatant. The word *Inkotanyi* also carried the meaning “to devour”, which is an extreme meaning which causes fear if a group goes by this name.<sup>1491</sup>

758. In Shimamungu’s view, the words *Inkotanyi* and *Inyenzi* are related to war. *Inyenzi* means “cockroach” and cockroaches hide during the day and then operate during the night, similar to the actions of *Inyenzi* fighters. There was an attempt to transform the word *Inyenzi* into an acronym, meaning “the combatant of the militia,” and indicating they were the most valiant and brave.<sup>1492</sup>

759. It would be incorrect to say that the word *Inkotanyi* was used by people who did not like Rwandan Tutsis. From a historic standpoint, the origin of the word, which could not be subject to challenge according to Shimamungu, denotes that this would be an incorrect interpretation.<sup>1493</sup>

760. Shimamungu consulted Guichaoua’s Report and noted that Guichaoua analysed Nyiramasuhuko’s diary in which the word “enemy” was referenced. Shimamungu testified that although he read Guichaoua’s analysis of Nyiramasuhuko’s diary, he did not rely on it in reaching his conclusions because the diary was personal material and, in his opinion, “diaries use codes and it is not possible to analyse a diary without consulting the person who is the author of the diary. And therefore it is impossible to come to any conclusions.”<sup>1494</sup> Shimamungu opined that the people identified as belonging to the enemy circles were social groups from which members of the RPF were enlisted and recruited, mainly Tutsi refugees.<sup>1495</sup>

761. Shimamungu stated that the enemy was not only military or soldiers, but also civilians, particularly having regard to the infiltrators during the events of 1994. At the root of the massacres was that it was no longer possible to distinguish infiltrators from civilians during the events of 1994.<sup>1496</sup>

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<sup>1489</sup> T. 16 March 2005 p. 49 (Shimamungu).

<sup>1490</sup> T. 30 March 2005 p. 56 (Shimamungu).

<sup>1491</sup> T. 16 March 2005 p. 50; T. 22 March 2005 p. 68 (Shimamungu).

<sup>1492</sup> T. 16 March 2005 p. 50 (Shimamungu).

<sup>1493</sup> T. 16 March 2005 pp. 50-51 (Shimamungu).

<sup>1494</sup> T. 30 March 2005 p. 74 (Shimamungu).

<sup>1495</sup> T. 1 April 2005 p. 48 (Shimamungu).

<sup>1496</sup> T. 1 April 2005 p. 56 (Shimamungu).

*President Sindikubwabo's Speech*

762. With reference to Sindikubwabo's speech of 19 April 1994, Shimamungu stated in his Report that:

There is no coding or encoding of the word *Gukora* ... outside of its meaning in everyday Kinyarwanda. The word has always been used in its usual context. There is no reason to establish codes for the purpose of giving orders. Everybody was surprised by events, but there was no time to codify anything whatsoever in connivance with the Rwandan population.<sup>1497</sup>

763. Shimamungu stated that the most common meanings of the word *gukora* were "do, work, act", and "be occupied with". He stated that the meaning of a word may mutate, based upon the context of a sentence. The word *gukora* carried negative meanings as well, but only when used in certain contexts. The negative meanings of *gukora* include "to destroy somebody's dwelling", and "to rob everything, to leave nothing behind." Other non-negative meanings of the term are "to pass a trial, a test".<sup>1498</sup>

764. Shimamungu opined that according to the 1985 dictionary he consulted, the meaning of *gukora* has never been "to kill Tutsis,"<sup>1499</sup> and Rwandans could not have understood it to mean so.<sup>1500</sup> The word did not have a coded meaning in President Sindikubwabo's speech.<sup>1501</sup>

765. Shimamungu testified that before 1994, the word *gukora* was somewhat related to *umuganda*, which generally meant "going to do community work in a self-help mutual assistance context." When neighbours were building, each person would bring a piece of timber to assist in the building and in that mutual self-help context, the term *umuganda* meant "to work." In February 1974, "*umuganda*" was introduced by the MRND. This involved building roads and other things that the state was unable to do but that could be effectuated by the community or population. This was mandatory every Saturday of each week. Shimamungu indicated this was a political meaning not found in the dictionary.<sup>1502</sup>

766. Shimamungu testified that after the introduction of multi-party politics in Rwanda in the 1990s, the practice of community work ended.<sup>1503</sup> Shimamungu clarified his opinion saying: "I appeared to hesitate at that time [earlier during his testimony] because I wasn't sure I was able to confirm *umuganda* existed, but not in any structure or organised manner by the MRND, but it was organised at the level of the population ... It existed right up to 1994."<sup>1504</sup>

767. In his Report, Shimamungu explained that in the 1994 framework *gukora/umuganda* represented the fight against the RPF and infiltrators, where the population came together to clear areas where the infiltrators could hide, such as forests and bushes. The RPF was issuing

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<sup>1497</sup> T. 24 March 2005 p. 59 (Shimamungu); Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) pp. 38-40.

<sup>1498</sup> T. 16 March 2005 p. 57 (Shimamungu).

<sup>1499</sup> T. 16 March 2005 pp. 55-57 (Shimamungu).

<sup>1500</sup> T. 16 March 2005 pp. 56-57 (Shimamungu).

<sup>1501</sup> T. 30 March 2005 p. 23 (Shimamungu).

<sup>1502</sup> T. 16 March 2005 pp. 58-59 (Shimamungu).

<sup>1503</sup> T. 16 March 2005 pp. 58-59; T. 30 March 2005 pp. 47-48 (Shimamungu).

<sup>1504</sup> T. 24 March 2005 p. 20 (Shimamungu).



negative propaganda to discredit these operations and claimed that the population was trying to flush out Tutsis in order to massacre them.<sup>1505</sup>

768. Shimamungu consulted Alison Des Forges' book, *Leave None to Tell the Story*, for his Report.<sup>1506</sup> In the book Des Forges contended that the word *gukora* meant "kill the Tutsis" during the 1959 revolution and in 1994.<sup>1507</sup> Shimamungu stated that he did not rely upon the said paragraph because "all the scientific requirements were not met [, *i.e.*] some references ... to specific texts were missing".<sup>1508</sup>

769. Shimamungu further recalled his Report where he noted that the French translation of the speech by the President makes much reference to the word *gukora* to mean "work." In his opinion, the Prosecution gave the wrong meaning to the word *gukora* as used in Sindikubwabo's speech because the word has different meanings. Shimamungu did not use the word in his own translation because it was not suitable in the context. In place of the word "work," Shimamungu used the words, "[I]et them stand aside and allow us to act."<sup>1509</sup>

770. Shimamungu stated that when Sindikubwabo said "step aside" in the context of the war, the President was referring to people working in the administration.<sup>1510</sup> In other words, members of the administration who are ignorant and do not do their work should step aside and be replaced.<sup>1511</sup> Given the context, *gukora* and its derivatives were used exclusively with regard to staff and administrative personnel. In Shimamungu's opinion, it was not possible to conclude that President Sindikubwabo would have used that term to incite the population. *Gukora* is only used in very specific circumstances and with very specific meaning.<sup>1512</sup>

771. The main theme of the President's speech of 19 April 1994 was that everyone had to be "the guardian or the custodian of his or her neighbour". This theme concerned insecurity and the presence of so many displaced people. No *gendarmes* were available, so everyone was told to be his neighbour's keeper.<sup>1513</sup>

772. Shimamungu opined that in Sindikubwabo's speech, it was unclear who the refugees were, *i.e.* whether they were Hutus or Tutsis. The issue of security arose because refugees were carrying weapons. He concluded that Sindikubwabo was in fact talking about RPF infiltrators who were among the refugees in the camps. These infiltrators were not necessarily Tutsis.<sup>1514</sup>

773. In one part of his speech, Sindikubwabo stated "[s]eek these people out who went to learn how to kill us and get rid of them," and that "the traitors should be identified so that they maybe – maybe prevented from causing havoc." Shimamungu was asked what he understood

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<sup>1505</sup> T. 1 April 2005 p. 8 (Shimamungu); Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 40.

<sup>1506</sup> T. 30 March 2005 pp. 5, 40 (Shimamungu).

<sup>1507</sup> T. 30 March 2005 p. 41 (Shimamungu).

<sup>1508</sup> T. 30 March 2005 pp. 41-43 (Shimamungu).

<sup>1509</sup> T. 17 March 2005 pp. 40-43 (Shimamungu); *see also* Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 38.

<sup>1510</sup> T. 31 March 2005 p. 79 (Shimamungu).

<sup>1511</sup> T. 31 March 2005 p. 80 (Shimamungu).

<sup>1512</sup> T. 17 March 2005 p. 70; T. 31 March 2005 p. 80 (Shimamungu).

<sup>1513</sup> T. 17 March 2005 pp. 8-9 (Shimamungu).

<sup>1514</sup> T. 17 March 2005 pp. 20-22 (Shimamungu).

by the phrases “getting rid of,” and “preventing them from causing havoc.” Shimamungu explained that Sindikubwabo was making reference to several people. At one point he referred to the administration – that blockages were caused by ignorance – so that those who were blocking the proper running of the administration should be replaced. The President also made reference to infiltrators who, in view of the war, should be neutralised to stop them causing havoc.<sup>1515</sup>

774. Shimamungu opined that the unusual appearance of the President at the swearing-in ceremony of a *préfet* – usually an administrative ceremony – was a cover-up, hiding the fact that the Government had fled Kigali and had been in hiding in Murambi. The fact that the Government had moved to Butare logically gave the population the awareness that there was fierce fighting in Kigali and that Kigali was either already in the hands of the RPF or about to be.<sup>1516</sup>

775. Shimamungu explained that the word *nyirandabizi* was not a coded word, but meant “those who claim to know everything.”<sup>1517</sup> The word referred to people who are waiting for the regime to change to make the best out of it. In Butare *préfecture* some people thought that the purpose of the war was to simply overthrow the Government, after which they would be able to obtain positions or posts.<sup>1518</sup>

776. When President Sindikubwabo spoke of “[t]hose who are indifferent”, he was not talking about enemies. Because he was talking in an administrative meeting, he meant that those who were indifferent should be ignored and not fought against with weapons.<sup>1519</sup> Shimamungu stated that *Préfet* Habyalimana might have been part of this group of indifferent/ignorant people, but that he was no longer a target after his removal.<sup>1520</sup>

777. Shimamungu considered the conclusion of Sindikubwabo’s speech to be consistent with his speech of 17 April 1994. In the conclusion, the President indicated that everyone was to work together for the same cause. His Government would not govern as the previous one and that rather than being a saviour Government, it was a crisis Government. His Government was united and would work for a common purpose, namely, victory and peace for Rwanda.<sup>1521</sup>

778. Shimamungu stated that it was difficult to make a detailed analysis of the statements in the President’s speech because they would have been taken out of context. The speech was made to administrative officials and not to the population. He explained that the speech was a product of the war and contained extremist statements calling for the death of others. He nonetheless noted that these statements were made by both sides of the conflict.<sup>1522</sup> Although

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<sup>1515</sup> T. 1 April 2005 pp. 56-57 (Shimamungu); *see also* Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report).

<sup>1516</sup> T. 17 March 2005 pp. 31-33 (Shimamungu).

<sup>1517</sup> Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 49.

<sup>1518</sup> T. 31 March 2005 p. 41 (Shimamungu).

<sup>1519</sup> T. 31 March 2005 p. 63 (Shimamungu).

<sup>1520</sup> T. 31 March 2005 pp. 64-65 (Shimamungu).

<sup>1521</sup> T. 17 March 2005 p. 72 (Shimamungu).

<sup>1522</sup> T. 21 March 2005 pp. 74-75 (Shimamungu).

the speech was delivered to administrative authorities, the fact that it was broadcast over the radio meant that it also targeted the population as a whole.<sup>1523</sup>

779. Shimamungu explained that the new Government used inauguration ceremonies to eliminate insecurity. During his speech, Nsabimana, the new *préfet*, accepted to perform his duties with the support of the President.<sup>1524</sup> No *préfet* could be sworn-in against his will – therefore, Nsabimana must have spoken during the ceremony and asked for support in the performance of his future duties. Shimamungu did not possess Nsabimana’s speech, if indeed he spoke.<sup>1525</sup>

#### *Prime Minister Kambanda’s Speech*

780. Shimamungu identified a document as a speech by Jean Kambanda, recorded on Radio Rwanda on 11 April 1994.<sup>1526</sup> Since the broadcast was given over the radio, it was addressed both to the authorities, as well as to the population.<sup>1527</sup> In his opinion, this broadcast as well as all the speeches made from 8 April 1994 to 19 April 1994 required members of the population and, more specifically the officials, to ensure the maintenance of security. This was a response to the fact that it had been observed that roadblocks had been erected without the knowledge of the authorities.<sup>1528</sup>

781. Shimamungu testified that he associated with the Habyarimana family when his company in France published the book *Juvénal Habyarimana, the man assassinated on 6 April 1994* in 2004.<sup>1529</sup> As part of his membership of the RDR party (Movement for Democracy and Return of Refugees to Rwanda), he wrote Prosecution Exhibit 167B (correspondence between Shimamungu and the French media). The correspondents expressed their views on a television programme which concerned the reaction to justice in Rwanda following the 1994 genocide.<sup>1530</sup> Read as a whole, Exhibit 167B attributes responsibility for the genocide in Rwanda in 1994 to the current President Paul Kagame and his army, the RPF. Shimamungu considered that the programme wrongly blamed Hutus alone for the 1994 genocide and opined that the assassination of President Habyarimana triggered the genocide.<sup>1531</sup>

782. Shimamungu testified that he was a member of AGIIR, an association for impartial international justice for Rwanda following the events of 1994.<sup>1532</sup> He attended an AGIIR meeting that resulted in the Amsterdam Declaration of 28 November 2004, part of which calls on the democratic opposition and civil society in Rwanda to resist the current political regime and insists that donor agencies halt all assistance and support to the RPF regime.<sup>1533</sup>

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<sup>1523</sup> T. 22 March 2005 pp. 53, 58-59 (Shimamungu).

<sup>1524</sup> T. 17 March 2005 p. 28 (Shimamungu).

<sup>1525</sup> T. 22 March 2005 pp. 64-65 (Shimamungu).

<sup>1526</sup> T. 22 March 2005 p. 42 (Shimamungu); Defence Exhibit 282C (Nyiramasuhuko) (Kambanda’s speech of 19 April 1994).

<sup>1527</sup> T. 22 March 2005 p. 45 (Shimamungu).

<sup>1528</sup> T. 22 March 2005 pp. 42-45 (Shimamungu).

<sup>1529</sup> T. 29 March 2005 pp. 7-8 (Shimamungu).

<sup>1530</sup> T. 29 March 2005 pp. 12-13, 16-17 (Shimamungu).

<sup>1531</sup> T. 29 March 2005 pp. 18-19 (Shimamungu).

<sup>1532</sup> T. 29 March 2005 p. 38 (Shimamungu).

<sup>1533</sup> T. 29 March 2005 p. 40 (Shimamungu).

Kanyabashi Defence Expert Witness Filip Reyntjens

*The Removal of Préfet Habyalimana*

783. Filip Reyntjens, an expert in Rwandan history, government and human rights, testified that the overriding reason why *Préfet* Habyalimana was killed was because he was Tutsi. He stated that *commune* authorities in Ngoma *commune* and Butare town did not play a major role in the genocide. Other factors intervened and other players committed the genocide in Butare.<sup>1534</sup>

784. *Préfet* Habyalimana, along with the *bourgmestres* of Butare town and Ngoma *commune*, managed to maintain the peace. The dismissal of *Préfet* Habyalimana under very humiliating circumstances was also a factor precipitating violence.<sup>1535</sup> The dismissal was particularly humiliating because it was announced to the populace when the Interim President, the Prime Minister and eight ministers were visiting town. *Préfet* Habyalimana was chased out unceremoniously and was later assassinated.<sup>1536</sup> Reyntjens testified that the Interim Government decided to dismiss *Préfet* Habyalimana on 16 April 1994 and that he was formally removed from office on 19 April 1994.<sup>1537</sup> Only after *Préfet* Habyalimana was removed, and the Interim President spoke at the 19 April 1994 meeting, did the genocide spread throughout Butare *préfecture*.<sup>1538</sup>

*Nsabimana's Swearing-in Ceremony*

785. Reyntjens testified that on 19 April 1994, President Sindikubwabo, Prime Minister Kambanda and eight ministers came to Butare town; they held speeches which were also broadcast over radio, thus reaching all the inhabitants of Butare *préfecture*. The speakers demanded that the inhabitants should not stand by while the events were taking place in other parts of the country. Reyntjens further testified that the massacres started in Butare through "external influences."<sup>1539</sup>

786. Reyntjens confirmed that the replacement of the *préfet*, the speeches by Kambanda and Sindikubwabo, the introduction of the Presidential Guard and the introduction of the *Interahamwe* in Butare contributed to the spread of the genocide in Butare.<sup>1540</sup> The Government did not need to communicate with the population through the *bourgmestres*; it had means to communicate directly with the population via radio or speeches.<sup>1541</sup>

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<sup>1534</sup> T. 21 November 2007 pp. 42-43 (Reyntjens).

<sup>1535</sup> T. 20 September 2007 p. 40 (Reyntjens).

<sup>1536</sup> T. 20 September 2007 p. 44 (Reyntjens).

<sup>1537</sup> T. 20 September 2007 p. 45; T. 25 September 2007 p. 64 (Reyntjens).

<sup>1538</sup> T. 25 September 2007 p. 62; T. 21 November 2001 pp. 24, 42 (Reyntjens).

<sup>1539</sup> T. 20 September 2007 p. 40 (Reyntjens).

<sup>1540</sup> T. 2 October 2007 p. 15 (Reyntjens).

<sup>1541</sup> T. 21 November 2008 p. 43 (Reyntjens).

### *Kambanda's and Kanyabashi's Speeches*

787. Reyntjens testified that he had analysed a transcript of a radio broadcast, containing a short excerpt of Kambanda's speech and the full text of Kanyabashi's speech.<sup>1542</sup> The two speeches were in a transcript from a Radio Rwanda broadcast, with a journalist from Radio Rwanda, Jean Baptiste Bamwanga, speaking between the Kambanda excerpt and Kanyabashi's speech.<sup>1543</sup>

788. Reyntjens also analysed a document of 38 pages containing the larger part of Kambanda's 19 April 1994 speech from the beginning, but with the end cut off.<sup>1544</sup> He received the French translation from the Kanyabashi Defence, but never saw the original transcript or the audio tape.<sup>1545</sup> Reyntjens analysed the speeches on the basis of the French translation of the transcripts only. He did not specifically interview anybody in connection with these speeches.<sup>1546</sup>

### *Prime Minister Kambanda's Speech*

789. Reyntjens testified that Prime Minister Kambanda ended with a direct threat to the *bourgmestres*, by saying, "I am saying this to some *bourgmestres* about whom it has been said, they are going to have themselves trained among the *Inkotanyi*." Reyntjens stated that "[a]mong the *Inkotanyi*" obviously referred to the RPF. Reyntjens stated that Kanyabashi was almost arrested in October 1990 as a so-called accomplice of the RPF.<sup>1547</sup>

790. Kambanda's speech was a sign of "the spread of power" because the Prime Minister was addressing himself directly to *responsables de cellule*, the lowest echelons of the administrative system, instead of following the normal hierarchical way – through the *préfets*, *bourgmestres* and *conseillers*. The broadcast of the address to the population and to the political parties was a sign of the power spread from the traditional hierarchies to the political parties.<sup>1548</sup>

### *President Sindikubwabo's Speech*

791. Reyntjens agreed that President Sindikubwabo's speech was an appeal for the spread of the genocide to Butare and an instruction from the highest authority to start the massacres in Butare.<sup>1549</sup> Reyntjens confirmed that the President directed himself to Nsabimana saying that the new *préfet* had just promised to do his utmost to discharge his duties and that Nsabimana

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<sup>1542</sup> T. 20 September 2007 pp. 51-52, 57, 59 (Reyntjens); Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana).

<sup>1543</sup> Defence Exhibit 573B (Kanyabashi) (Extracts of speeches by Kambanda and Kanyabashi); T. 20 September 2007 pp. 58-59 (Reyntjens).

<sup>1544</sup> T. 20 September 2007 pp. 51-52, 57, 59 (Reyntjens).

<sup>1545</sup> Defence Exhibit 575 (Kanyabashi) (Transcript of Radio Rwanda Broadcast of Kambanda's Speech); T. 24 September 2007 pp. 7-8, 12 (Reyntjens).

<sup>1546</sup> T. 21 November 2007 pp. 43-44 (Reyntjens).

<sup>1547</sup> Defence Exhibit 573B (Kanyabashi) (Extracts of speeches by Kambanda and Kanyabashi); T. 20 September 2007 p. 60 (Reyntjens).

<sup>1548</sup> T. 24 September 2007 pp. 16-17 (Reyntjens).

<sup>1549</sup> T. 21 November 2007 p. 45 (Reyntjens).

asked for the Government's support.<sup>1550</sup> Reyntjens confirmed that in the context of talking about spreading the genocide to Butare, the duties of the *préfet* included the massacre of Tutsis.<sup>1551</sup>

792. Reyntjens confirmed the President directly addressed the *préfet* saying, “[a]pproach the *bourgmestres*, organise meetings with them often, ask each of them what he needs ... If you decide he is lazy or carefree, tell him to apply himself to the work instead of leaving all the work to others.”<sup>1552</sup> He agreed that “work” in this context of genocide in Rwanda between April and July 1994 meant to kill Tutsis. Reyntjens affirmed that the President's words, “[n]ow be vigilant ... protect your *préfecture* instead. It is everybody's duties”, meant that everyone, including the *bourgmestres*, should start the massacres of the Tutsis.<sup>1553</sup>

793. Reyntjens testified that Sindikubwabo and Kambanda had sent a clear message to the people of Butare, and more precisely, to the local authorities, telling them that, “[y]ou are either with us or against us.”<sup>1554</sup> He added that Sindikubwabo, who had legitimate political power and power over the army, required the people of Butare to follow the Government. Therefore no *commune* authority could have openly opposed the genocide, otherwise he would have been killed. Reyntjens stated that several *bourgmestres* tried to flee and they were killed.<sup>1555</sup>

794. Reyntjens testified that President Sindikubwabo's speech with its open or veiled threats, and the speech of Prime Minister Kambanda, with its threats towards the *bourgmestres* and the dismissal of *Préfet* Habyarimana, sent a message to everybody in Butare that the Government expected Butare town and *préfecture* to get involved in the genocide.<sup>1556</sup> Reyntjens later stated that he found Kambanda's and Sindikubwabo's speeches “fundamentally different”. President Sindikubwabo appealed to the population of Butare to spread the genocide to Butare *préfecture*; Kambanda's speech seemed to be legitimate and without any “double meaning”. Reyntjens added that the two tasks that Kambanda assigned to the *bourgmestres*, to ensure the security of the population and to safeguard national sovereignty, appeared to be normal and legitimate within the context of the time.<sup>1557</sup>

### *Kanyabashi's Speech*

795. Reyntjens also analysed Kanyabashi's speech of 19 April 1994.<sup>1558</sup> When Kanyabashi delivered his speech he “did not have any choice. He had to say something ... it was a speech

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<sup>1550</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994); T. 21 November 2008 pp. 45-46 (Reyntjens).

<sup>1551</sup> T. 21 November 2008 p. 45 (Reyntjens).

<sup>1552</sup> T. 21 November 2008 p. 46 (Reyntjens).

<sup>1553</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994); T. 21 November 2008 p. 47 (Reyntjens).

<sup>1554</sup> Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 9.

<sup>1555</sup> Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 10; T. 2 October 2007 pp. 19-20 (Reyntjens).

<sup>1556</sup> T. 20 September 2007 p. 67 (Reyntjens).

<sup>1557</sup> T. 24 September 2007 pp. 15-17 (Reyntjens).

<sup>1558</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana); T. 20 September 2007 p. 61 (Reyntjens).

which was not prepared.”<sup>1559</sup> Reyntjens added that Kanyabashi was the elder of the *bourgmestres* in Butare *préfecture*, and a refusal to speak would have been seen as a hostile act from the opposition, given what had been said by the President and the Prime Minister.<sup>1560</sup>

796. Reyntjens testified that Kanyabashi’s speech expressed discomfort, referring to passages, such as “[i]t is difficult to find the appropriate words.”<sup>1561</sup> Reyntjens stated that Kanyabashi remained “extremely vague” in his speech. Reyntjens referred to the following passage: “I wanted to say that we espouse the ideas of peace and unity”,<sup>1562</sup> and stated that Kanyabashi did not specify his objectives. Reyntjens added that Kanyabashi subscribed to the two Governmental objectives mentioned in Kambanda’s speech without involving in the plan to commit genocide, namely the security of the population and the safeguard of the national sovereignty. Reyntjens stated that he did not find any support for the genocide plan of the Interim Government in Kanyabashi’s speech.<sup>1563</sup>

797. Reyntjens testified that he did not see anything incriminating in Kanyabashi’s speech, if he was simply responding to Kambanda’s speech. Kanyabashi tried to focus on positive elements. Reyntjens emphasised that if Kanyabashi had subscribed to the statements of the President and accepted the fact that the genocide should have been spread to that *préfecture*, he would have told the President that he agreed with his speech. Kanyabashi did not say this.<sup>1564</sup>

798. Reyntjens was asked about Kanyabashi’s speech in which he stated, “[a]s we have shown, we would like to reiterate our support to your Government and we will continue to do our utmost for the Government to achieve its objectives.” Reyntjens confirmed that Kanyabashi was addressing the Prime Minister and all of the other members of the Government and that he was affirming the support of all *bourgmestres* and of the people to the objectives of the Government.<sup>1565</sup>

799. Reyntjens disagreed with the suggestion that the population who listened to the speeches of 19 April 1994 got the impression that all the authorities at the national, *préfecture* and *commune* level who were attending the ceremony, were in support of the Government’s plan of genocide. He stated that Kanyabashi only addressed the Prime Minister but not the President; and this could be because Kanyabashi was in disagreement with the President’s speech.<sup>1566</sup>

800. Reyntjens stated that Kanyabashi held a pacification meeting on 19 April 1994, on the same day as Nsabimana’s swearing-in ceremony. He discouraged the genocide, that too after Sindikubwabo’s speech, which must have required a certain amount of courage.<sup>1567</sup>

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<sup>1559</sup> T. 20 September 2007 p. 61 (Reyntjens).

<sup>1560</sup> T. 20 September 2007 p. 62 (Reyntjens).

<sup>1561</sup> Prosecution Exhibit 161B (*Kanyabashi’s Unswerving Support*, by Ntakirutimana); T. 20 September 2007 pp. 61-62 (Reyntjens).

<sup>1562</sup> Prosecution Exhibit 161B (*Kanyabashi’s Unswerving Support*, by Ntakirutimana); T. 20 September 2007 p. 63 (Reyntjens).

<sup>1563</sup> T. 20 September 2007 p. 63 (Reyntjens).

<sup>1564</sup> T. 24 September 2007 p. 19 (Reyntjens).

<sup>1565</sup> T. 21 November 2008 p. 48 (Reyntjens).

<sup>1566</sup> T. 21 November 2008 p. 49 (Reyntjens).

<sup>1567</sup> T. 28 September 2007 p. 22 (Reyntjens).

*Order of the Speeches*

801. Reyntjens voiced uncertainty regarding the order in which the speeches were made.<sup>1568</sup> From the details of the radio broadcast, he deduced that the speeches were probably delivered in the following order: first Kambanda, then Sindikubwabo and finally Kanyabashi.<sup>1569</sup>

802. Reyntjens admitted that before coming to testify, he had not seen the importance of the order of the speeches. He had therefore accepted the research done by Des Forges. He conceded that he should and could have looked into this before coming to testify. He stated that he did not have the documents concerning the order of the speeches when he drafted his Report.<sup>1570</sup>

803. Reyntjens testified that he did not consider Kanyabashi as a friend but as an acquaintance and that his relationship with Kanyabashi did not have any impact on his independent opinion as an expert.<sup>1571</sup> Reyntjens said that he had brief conversations with Kanyabashi in the street, he shared a drink with Kanyabashi four or five times, but they never visited each other's homes.<sup>1572</sup>

804. Kanyabashi named Reyntjens as his lawyer before Investigating Judge Vandermeersch in Belgium, however, Reyntjens said that he did not talk to Kanyabashi after his arrest, or represent Kanyabashi as he was not a practicing lawyer at the time.<sup>1573</sup> In that statement, Reyntjens indicated that he had known Kanyabashi for a long time and that "he knew him as somebody who never practiced ethnic discrimination and who always did everything to maintain peace in his *commune*."<sup>1574</sup>

*Start of Killings in Butare Préfecture*

805. Reyntjens testified that events in Butare *préfecture* did not follow what was happening in other regions of Rwanda between 6 April 1994 and 19 to 20 April 1994.<sup>1575</sup> There were massacres in some *préfectures* that commenced within 24 hours after 6 April 1994. In contrast, the only *préfecture* in Rwanda in which there were no massacres in the first days after the President's plane crash was Butare *préfecture*.<sup>1576</sup>

806. Reyntjens testified that up until 19 or 20 April 1994, there was no genocide taking place in Butare town despite the fact that other *communes* close to Butare town were suffering from mass killings.<sup>1577</sup> The genocide only began in Butare town when people from outside arrived.<sup>1578</sup> The fact that violence was delayed in Butare town and Butare *préfecture* was no coincidence; it was due to internal factors within Butare, including the presence of *Préfet*

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<sup>1568</sup> T. 20 September 2007 p. 45 (Reyntjens).

<sup>1569</sup> T. 20 September 2007 p. 61 (Reyntjens).

<sup>1570</sup> T. 22 November 2008 pp. 12-13 (Reyntjens).

<sup>1571</sup> T. 20 September 2007 p. 11 (Reyntjens).

<sup>1572</sup> T. 20 September 2007 p. 10; T. 21 November 2008 pp. 8-9 (Reyntjens).

<sup>1573</sup> T. 21 November 2007 pp. 11-12 (Reyntjens).

<sup>1574</sup> T. 21 November 2007 p. 14 (Reyntjens).

<sup>1575</sup> T. 19 September 2007 p. 5; T. 20 September 2007 p. 39 (Reyntjens).

<sup>1576</sup> T. 20 September 2007 p. 38 (Reyntjens).

<sup>1577</sup> T. 20 September 2007 p. 39; T. 2 October 2007 p. 15 (Reyntjens).

<sup>1578</sup> T. 20 September 2007 p. 39 (Reyntjens).



Habyalimana.<sup>1579</sup> Butare was able to resist the genocide because *Préfet* Habyalimana set a policy of preventing violence, which was carried down through the administrative chain to *bourgmestres* and *conseillers*, despite the national genocide policy.<sup>1580</sup> However, Reyntjens confirmed that massacres started on a small scale quite early after 6 April 1994 in Butare *préfecture*.<sup>1581</sup>

807. He testified that even if President Sindikubwabo had not spoken at the swearing-in ceremony, *Préfet* Habyalimana had not been replaced, and the Presidential Guard and *Interahamwe* had not been introduced into Butare *préfecture*, the genocide would still likely have spread to Butare *préfecture*. The witness stated that even before the speech of 19 April 1994, the genocide was spreading like wildfire. Even if Sindikubwabo and Kambanda had not come to make their speeches, Reyntjens opined that it was very likely that Butare would not have been spared. He did, however, recognise that this was speculation as the speeches were made and the *préfet* was replaced, and it is difficult to verify what did not happen.<sup>1582</sup>

808. In his Report, however, Reyntjens explained that there were some cases of violence immediately after the death of President Habyarimana. He stated that the situation began to deteriorate during the course of the week of 11 April 1994 with the arrival of displaced people and “troublemakers” in Gikongoro. From 15 April 1994, more locals joined the killers who had arrived from elsewhere. The massacres of Tutsis in Simbi, Kansi, Kigembe, Nyakizu and Huye *communes* were telling of the extension of the genocide to Butare. The *préfecture* was inevitably sliding towards the situation that was widespread in the rest of Rwanda.<sup>1583</sup>

### Nsabimana

809. Nsabimana was a member of the PSD political party.<sup>1584</sup> On 16 April 1994, Francois Ndungutse and Etienne Bashimiki, both PSD members, visited Nsabimana at his home and proposed his appointment as *préfet* of Butare *préfecture*.<sup>1585</sup> Nsabimana was surprised by the visit as he had never considered such a post, knew nothing about politics and viewed political positions as being onerous. Nsabimana refused, telling them to return to him only if they did not find anyone else.<sup>1586</sup> He also told Jean Kambanda that he would not be interested in the post of *préfet*.<sup>1587</sup> From Guichaoua’s Report, Nsabimana learned that Ndungutse and Bashimiki had first approached Jean Bapfakurera, a well-respected PSD member, to become

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<sup>1579</sup> T. 20 September 2007 p. 39; 21 November 2007 p. 24 (Reyntjens).

<sup>1580</sup> T. 21 November 2007 pp. 29-30 (Reyntjens).

<sup>1581</sup> T. 2 October 2007 p. 12; T. 21 November 2007 p. 23 (Reyntjens).

<sup>1582</sup> T. 2 October 2007 pp. 14-15 (Reyntjens).

<sup>1583</sup> Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 7.

<sup>1584</sup> T. 11 September 2006 p. 40 (Nsabimana).

<sup>1585</sup> T. 11 September 2006 pp. 67-68 (Nsabimana); Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) pp. 4-5; Defence Exhibit 494B (Nsabimana) (*Facts about the Massacre in Butare*, by Nsabimana) pp. 3-4.

<sup>1586</sup> T. 11 September 2006 p. 69 (Nsabimana).

<sup>1587</sup> T. 22 November 2006 pp. 40-41; Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. 5; Defence Exhibit 494B (Nsabimana) (*Facts about the Massacre in Butare*, by Nsabimana) p. 3.

*préfet*.<sup>1588</sup> Nsabimana testified that he did not think it possible to refuse the position of *préfet* in mid-April 1994.<sup>1589</sup>

810. Nsabimana testified that on 17 April 1994, a trader who worked in Butare town informed him that he had been appointed *préfet*. Nsabimana told the trader that he had no comment and had not heard the news.<sup>1590</sup> Although he initially refused the appointment, he could do nothing about his situation.<sup>1591</sup> On 18 April 1994, Nsabimana listened to the radio and confirmed his appointment as *préfet*. He heard that the swearing-in ceremony would take place on 19 April 1994. He had no written document of appointment; everything was done over the radio.<sup>1592</sup> No one from the Ministry contacted Nsabimana about the appointment.<sup>1593</sup>

811. Nsabimana testified that he met Nyiramasuhuko at *Chez Christine* on 10 June 1994 and she denied involvement in the arrest of *Préfet* Habyalimana.<sup>1594</sup>

### *The Swearing-in Ceremony*

812. Nsabimana testified that the ceremony took place in Ngoma in Butare town on 19 April 1994, on a Tuesday.<sup>1595</sup> Nsabimana arrived for the swearing-in ceremony at the MRND Palace, also known then as the multi-purpose house in Butare town at precisely 10.00 a.m.<sup>1596</sup> Soon thereafter the Government officials arrived.<sup>1597</sup> The ceremony was attended by Government ministers, *bourgmestres* and other officials, including Callixte Kalimanzira - a representative of the Ministry of Interior, who was the master of ceremonies, Prime Minister Jean Kambanda, Doctor Straton Nsabumukunzi - the Minister of Culture, Minister Justin Mugenzi, the Interim President Sindikubwabo, Eliezer Niyitegeka - Minister of Information, Colonel Muvunyi and *Bourgmestre* Kanyabashi of Ngoma *commune*.<sup>1598</sup> Nsabimana did not see Nyiramasuhuko when she arrived at the swearing-in ceremony, but concluded that she was also there.<sup>1599</sup>

813. Nsabimana testified that he did not expect to see the President at the ceremony and he was surprised by the manner in which he came. It looked as if the President had arrived by chance and Nsabimana was surprised.<sup>1600</sup> Sindikubwabo sat next to Nsabimana at the front.<sup>1601</sup> Nsabimana could not confirm whether Nteziryayo was present at the ceremony.<sup>1602</sup> Nsabimana explained that Sindikubwabo was not wearing military fatigues that day.<sup>1603</sup>

<sup>1588</sup> T. 22 November 2006 pp. 35-36 (Nsabimana).

<sup>1589</sup> T. 22 November 2006 p. 37 (Nsabimana).

<sup>1590</sup> T. 11 September 2006 p. 71 (Nsabimana).

<sup>1591</sup> T. 11 September 2006 p. 73 (Nsabimana).

<sup>1592</sup> T. 11 September 2006 p. 74 (Nsabimana).

<sup>1593</sup> T. 12 September 2006 pp. 7-8 (Nsabimana).

<sup>1594</sup> T. 11 October 2006 pp. 17-18 (Nsabimana).

<sup>1595</sup> T. 11 September 2006 p. 81 (Nsabimana); Defence Exhibit 499A (Nteziryayo) (Calendar of 1994).

<sup>1596</sup> T. 11 September 2006 pp. 76, 78 (Nsabimana).

<sup>1597</sup> T. 11 September 2006 pp. 75, 78 (Nsabimana).

<sup>1598</sup> T. 11 September 2006 pp. 79-80 (Nsabimana).

<sup>1599</sup> T. 11 September 2006 p. 80 (Nsabimana).

<sup>1600</sup> T. 12 September 2006 p. 14 (Nsabimana).

<sup>1601</sup> T. 12 September 2006 p. 15 (Nsabimana).

<sup>1602</sup> T. 20 November 2006 p. 32 (Nsabimana).

<sup>1603</sup> T. 20 November 2006 p. 33 (Nsabimana).

### Speeches

814. Nsabimana testified that Ministers Mugenzi and Niyitegeka spoke in harsh tones.<sup>1604</sup> Prime Minister Kambanda used a normal tone of speech and essentially provided an account of what happened, akin to a briefing of the situation.<sup>1605</sup> *Bourgmestre* Kanyabashi also spoke and President Sindikubwabo made a lengthy speech in a very harsh tone.<sup>1606</sup>

815. Nsabimana testified that Ministers Mugenzi and Niyitegeka spoke first.<sup>1607</sup> Prime Minister Kambanda then took the floor after he was introduced by Kalimanzira.<sup>1608</sup> President Sindikubwabo was not present when Kambanda began his speech. Sindikubwabo arrived while Kambanda was making his speech.<sup>1609</sup> Sindikubwabo then took the floor and spoke at length.<sup>1610</sup> At the conclusion of his speech, Sindikubwabo gave the floor to Nsabimana.<sup>1611</sup> After a brief address by Nsabimana, the President took the floor again to say that he had to leave to attend to other concerns and he left.<sup>1612</sup> After the President left, the ceremony continued and Kambanda resumed his speech that he had started before the President's arrival.<sup>1613</sup> After Kambanda's speech, Kanyabashi spoke and at the end, the *bourgmestres* put questions to the Prime Minister.<sup>1614</sup> Kanyabashi was the last to speak.<sup>1615</sup> The question and answer session involving the *bourgmestres* did not last long and although Nsabimana did not remember the specific questions asked, he was sure they concerned insecurity.<sup>1616</sup> The outgoing *préfet*, Habyalimana, was present in the room but never took the floor to speak.<sup>1617</sup>

### President Sindikubwabo's Speech

816. Nsabimana testified that the President had the effect of a "tsunami" when he took the floor.<sup>1618</sup> Sindikubwabo spoke at length and used a very harsh tone. Nsabimana did not remember whether Sindikubwabo also used gestures and body language.<sup>1619</sup> Nsabimana said that nothing was written but the President had a small agenda with words written at random on a piece of paper and his speech was a political speech. The President thanked the former *préfet* for his work. When the President was speaking, it was noticeable that something was

<sup>1604</sup> T. 12 September 2006 pp. 9-10 (Nsabimana); Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016626; Defence Exhibit 494B (Nsabimana) (*Facts about the Massacre in Butare*, by Nsabimana) p. 3.

<sup>1605</sup> T. 12 September 2006 p. 11 (Nsabimana).

<sup>1606</sup> T. 12 September 2006 pp. 13-14 (Nsabimana).

<sup>1607</sup> T. 12 September 2006 pp. 9-10 (Nsabimana).

<sup>1608</sup> T. 12 September 2006 p. 11 (Nsabimana).

<sup>1609</sup> T. 12 September 2006 p. 13 (Nsabimana).

<sup>1610</sup> T. 12 September 2006 p. 14 (Nsabimana).

<sup>1611</sup> T. 12 September 2006 p. 20 (Nsabimana).

<sup>1612</sup> T. 12 September 2006 p. 30 (Nsabimana).

<sup>1613</sup> T. 12 September 2006 pp. 20-21, 28-30 (Nsabimana).

<sup>1614</sup> T. 12 September 2006 pp. 28-30 (Nsabimana).

<sup>1615</sup> T. 12 September 2006 p. 31 (Nsabimana).

<sup>1616</sup> T. 12 September 2006 p. 27 (Nsabimana).

<sup>1617</sup> T. 12 September 2006 pp. 31-32 (Nsabimana).

<sup>1618</sup> T. 12 September 2006 p. 17 (Nsabimana).

<sup>1619</sup> T. 12 September 2006 p. 14 (Nsabimana).

happening within him. Nsabimana queried whether it was anguish, sadness, fury or anger and stated that the situation was rather complicated.<sup>1620</sup>

817. Nsabimana testified that Sindikubwabo spoke about his recent tour of Gikongoro *préfecture*, his visit to Maraba and Nyakizu in Butare and then gave his speech. Sindikubwabo described how he addressed the population in Nyakizu, that people had already been killed in Nyakizu, and that there was insecurity everywhere in Butare.<sup>1621</sup> Nsabimana testified that the President used the word *ntidindeba*, which means “it does not concern me” or “I am not concerned.”<sup>1622</sup> The President also used the word *barajenjetse* which Nsabimana loosely translated to mean “perhaps they are not serious”. Nsabimana understood these words but not what the President meant by them in his speech. Nsabimana concluded that those who were present at the speech did not understand and were wondering about the President’s complex speech.<sup>1623</sup>

818. Nsabimana heard the totality of Sindikubwabo’s speech but its analysis was not his concern at the time. His only concern was that he was becoming *préfet*; he was seeing ministers; he had never been in the presence of the President of the Republic and was concerned where all this was leading to.<sup>1624</sup> Nsabimana testified that Sindikubwabo made a very ambiguous political speech,<sup>1625</sup> and that an expert was needed to translate and explain the words the President used.<sup>1626</sup>

819. Nsabimana testified that the majority of Sindikubwabo’s speech was in a harsh tone so much so that the people attending were not saying a word; they were trying to listen and Nsabimana wondered whether they understood anything. Nsabimana did not personally perceive the speech as providing him guidelines or as inciting him to carry out any action whatsoever in his capacity as *préfet* of Butare.<sup>1627</sup>

820. Nsabimana explained that he called Sindikubwabo’s speech inflammatory while he was in exile around September 1994. Nsabimana said that as time went by he understood more and more that it was indeed inflammatory and that the massacres took place in Butare because of this speech.<sup>1628</sup>

821. On the President’s specific message to Nsabimana as the new *préfet* in paragraph 9 of Defence Exhibit 279, Nsabimana explained that he did not vote for the President. He had no particular interest in what the President was saying to him and that Sindikubwabo’s words were only binding on Sindikubwabo himself. He stated that the President might have repeated his words 10,000 times but it did not matter to Nsabimana.<sup>1629</sup> The President never helped him

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<sup>1620</sup> T. 12 September 2006 p. 15 (Nsabimana).

<sup>1621</sup> T. 12 September 2006 p. 19 (Nsabimana).

<sup>1622</sup> T. 12 September 2006 pp. 15-16 (Nsabimana).

<sup>1623</sup> T. 12 September 2006 p. 16 (Nsabimana).

<sup>1624</sup> T. 12 September 2006 p. 16 (Nsabimana).

<sup>1625</sup> T. 20 November 2006 p. 32 (Nsabimana).

<sup>1626</sup> T. 12 September 2006 pp. 15-16 (Nsabimana).

<sup>1627</sup> T. 12 September 2006 p. 20 (Nsabimana).

<sup>1628</sup> T. 21 November 2006 p. 36 (Nsabimana).

<sup>1629</sup> T. 22 November 2006 pp. 77-78 (Nsabimana); Defence Exhibit 279 (Nyiramasuhuko) (Comparative Table of Translations of Speeches of President Théodore Sindikubwabo, on 19 April 1994 in Butare).

solve the *préfecture's* problems. Nsabimana testified that he asked no one about the mission assigned to him in the President's speech because it was not necessary. He said that what he expected to hear was not what he heard. Nsabimana said he understood Kinyarwanda but could not understand when people speak in parables.<sup>1630</sup>

822. The Prosecution confronted Nsabimana with Prosecution Exhibit 114A (Interview with Nsabimana, dated 1 October 1994) in which he said: "The President made a speech which was very bad. This speech was only telling people to kill others. People didn't know why he was giving this speech."<sup>1631</sup> Nsabimana agreed that Prosecution Exhibit 114A contained a faithful reflection of what he had said during an interview but denied that he was aware of a plan to eliminate Tutsis before he accepted to become *préfet* of Butare in April 1994.<sup>1632</sup> Nsabimana explained that the interview recorded in Prosecution Exhibit 114A was not given to Expert Witness Des Forges and that the document did not specify with whom the interview was conducted. Nsabimana explained that he spoke to Des Forges on the telephone on two occasions in March and April 1995 or 1996, but that these two interviews were not admitted in evidence. Nsabimana did not know how Des Forges came by Prosecution Exhibit 114A.<sup>1633</sup> Nsabimana thought that he gave this information in a video interview to two individuals from the BBC. Nsabimana did not deny the content of the document.<sup>1634</sup>

823. Annex IX to Defence Exhibit 492B (Letter from Nsabimana to the Prosecutor of the ICTR, dated 20 January 1997) was admitted into evidence as Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996). Nsabimana recognised that document as being his own.<sup>1635</sup> On the first page of Prosecution Exhibit 185, Nsabimana described the speeches of Sindikubwabo, Niyitegeka and Mugenzi as "an incitement to hatred, ... inflammatory."<sup>1636</sup>

### *Other Speeches*

824. Nsabimana testified that he spoke at his swearing-in ceremony, thanking the authorities for his appointment, and invited *bourgmestres* for a council meeting the following day on 20 April 1994 so that they could inform him what was happening in their *communes*.<sup>1637</sup> He delivered one or two sentences; his speech was so insignificant and it was not broadcast on the radio.<sup>1638</sup>

825. Nsabimana testified that Minister Mugenzi spoke about the war in Kigali, including roadblocks. People could interpret his speech in various ways. His impression was that Mugenzi was speaking in the context of war. Mugenzi spoke in a harsh tone, in very simple terms and spoke fluently; Mugenzi said nothing about Butare and what he said was not

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<sup>1630</sup> T. 22 November 2006 p. 78 (Nsabimana).

<sup>1631</sup> Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994) p. K0120068.

<sup>1632</sup> T. 22 November 2006 pp. 42-43 (Nsabimana).

<sup>1633</sup> T. 22 November 2006 p. 43 (Nsabimana).

<sup>1634</sup> T. 22 November 2006 pp. 44-45 (Nsabimana).

<sup>1635</sup> T. 27 November 2006 pp. 64-66 (Nsabimana).

<sup>1636</sup> Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996).

<sup>1637</sup> T. 12 September 2006 pp. 22-23 (Nsabimana).

<sup>1638</sup> T. 12 September 2006 p. 26 (Nsabimana).

important to Nsabimana.<sup>1639</sup> There was nothing new in Mugenzi's speech as Nsabimana had heard all that he said over the radio.<sup>1640</sup>

826. Nsabimana testified that Minister Niyitegeka spoke about massacres on the hills and mountains in Kibuye. Niyitegeka spoke in a rather harsh tone and said nothing about Butare. It was not of interest to Nsabimana.<sup>1641</sup> Niyitegeka's speech had a negative effect in the minds of the people of Butare and it was not needed in Butare.<sup>1642</sup> Nsabimana explained that people in Butare were already or nearly at the point of explosion. People who heard this kind of speech, particularly those who were involved in the massacres which started on 20 or 21 April 1994, used this speech to resume the killings. That was the negative aspect of the speech according to Nsabimana.<sup>1643</sup>

827. Nsabimana did not perceive anything particular in Kambanda's speech. It was more of an informative statement giving a briefing or an account of what happened in Kigali and how the attacks were being launched. Kambanda had a normal tone, different from Niyitegeka and Mugenzi.<sup>1644</sup> Kanyabashi, the *bourgmestre* of Ngoma *commune* also took the floor.<sup>1645</sup> Kanyabashi did not speak for long; he thanked Kambanda who was present since the President had left already, and thanked the people.<sup>1646</sup>

#### *The Start of Killings in Butare Préfecture*

828. Nsabimana testified that he heard about killings in Maraba *commune* prior to his installation as *préfet*.<sup>1647</sup> Around 22 April 1994, he decided to visit the areas where massacres had occurred with Colonel Muvunyi.<sup>1648</sup> Muvunyi and Nsabimana travelled to Simbi parish in Maraba *commune*.<sup>1649</sup> Nsabimana testified that on 16 April 1994, there was a massive influx of refugees from Gikongoro to Maraba.<sup>1650</sup> There was a massacre there on about 17 April 1994. Muvunyi knew one of the nuns who managed the parish school and asked her who had committed the killings. She stated that it was people from Kinyamakara *commune*, in Gikongoro *préfecture*.<sup>1651</sup> Inside the church, they saw that the church had been washed with water, window panes were broken and there were traces of blood on the altar. Outside of the church there was a small tomb. They attempted to speak to the *bourgmestre* of Maraba *commune* but were unable to locate him.<sup>1652</sup>

829. Nsabimana and Muvunyi travelled to Gishamvu *commune* in Nyumba parish. Nyumba church was locked and they were unable to enter. Opposite the church, they observed that a

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<sup>1639</sup> T. 12 September 2006 pp. 9-10 (Nsabimana).

<sup>1640</sup> T. 22 November 2006 pp. 66-68 (Nsabimana).

<sup>1641</sup> T. 12 September 2006 pp. 10-11 (Nsabimana).

<sup>1642</sup> T. 22 November 2006 p. 69 (Nsabimana).

<sup>1643</sup> T. 22 November 2006 pp. 70-71 (Nsabimana).

<sup>1644</sup> T. 12 September 2006 p. 11 (Nsabimana).

<sup>1645</sup> T. 12 September 2006 p. 28 (Nsabimana).

<sup>1646</sup> T. 12 September 2006 p. 31 (Nsabimana).

<sup>1647</sup> T. 14 September 2006 p. 50 (Nsabimana).

<sup>1648</sup> T. 14 September 2006 p. 66 (Nsabimana).

<sup>1649</sup> T. 14 September 2006 p. 70 (Nsabimana).

<sup>1650</sup> T. 14 September 2006 p. 50 (Nsabimana).

<sup>1651</sup> T. 14 September 2006 pp. 70, 72 (Nsabimana).

<sup>1652</sup> T. 14 September 2006 pp. 70-71 (Nsabimana).

number of bodies had been buried. They were unable to speak to anyone during this visit because no one would approach them. At Gishamvu, *Sous-préfet* Simbarikure told them that the dead bodies at the parish were people from Runyinya *commune* and Gishamvu itself. The *sous-préfet* stated that the killers were two policemen and soldiers from Gishamvu *commune*.<sup>1653</sup>

830. Nsabimana and Muvunyi then travelled to Nyakizu *commune*.<sup>1654</sup> They did not meet the *bourgmestre* and continued to Cyahinda parish. The entrance door and the walls of the church were cracked as a result of an explosion. Inside the church, there were bricks scattered all over and a smell of rot or stench.<sup>1655</sup> The schools next door to the church were destroyed and there were sheep's heads and skins in the courtyard.<sup>1656</sup> Nsabimana concluded that those who were killed were attacked and could not defend themselves properly. He stated that it had occurred on 15 April 1994.<sup>1657</sup>

831. *Sous-préfet* Hakizimungu told Nsabimana that people fought among themselves and there were killings in Nyakizu *commune*.<sup>1658</sup> Colonel Muvunyi told him that two *gendarmes* were killed at the Cyahinda church by refugees at the Cyahinda parish.<sup>1659</sup> The massacres were a result of the death of those two *gendarmes*.<sup>1660</sup> Nsabimana concluded that the explosion was caused by a shot from soldiers, but that the explosion was not the only action carried out; civilians were involved as well.<sup>1661</sup> He clarified that the perpetrators of the Cyahinda massacres were *Interahamwe* and *gendarmes*.<sup>1662</sup>

## Nyiramasuhuko

### *The Removal of Préfet Habyalimana*

832. Nyiramasuhuko testified that *Préfet* Habyalimana was a personal friend of hers and she had nothing critical to say about his performance as *préfet*.<sup>1663</sup> She confirmed that *Préfet* Habyalimana was not present at the 11 April 1994 meeting of the country's *préfets* in Kigali.<sup>1664</sup> The Government was not provided any reason for his absence, and Habyalimana did

<sup>1653</sup> T. 14 September 2006 pp. 72-73 (Nsabimana).

<sup>1654</sup> T. 14 September 2006 pp. 74-75 (Nsabimana).

<sup>1655</sup> T. 14 September 2006 pp. 75-76 (Nsabimana).

<sup>1656</sup> T. 14 September 2006 p. 76 (Nsabimana). The Chamber notes that while the English transcript makes no mention of sheep, but only of skin, and says that it was in the church, the French transcript states that it was in the courtyard: "And in the church, there was a very strong stench and there was a mixture. That is what I saw – all sorts of people ... I had seen animal skins, not skins, but rather pieces of – pieces of skin."); compare T. 14 September 2006 pp. 84-85 (Nsabimana) (French) ("Et j'ai vu dans la cour meme les têtes de moutons, des peaux...c'était un mélange. Voila ce que j'ai vu ... j'avais vu des peaux d'animaux, j'ai vu des peaux – des peaux, ce n'est pas une peau comme ça, c'est des déchirures, des parties de peaux de moutons.")

<sup>1657</sup> T. 14 September 2006 p. 76 (Nsabimana).

<sup>1658</sup> T. 14 September 2006 p. 78 (Nsabimana).

<sup>1659</sup> T. 14 September 2006 p. 78; T. 18 September 2006 p. 11 (Nsabimana).

<sup>1660</sup> T. 18 September 2006 p. 11 (Nsabimana).

<sup>1661</sup> T. 14 September 2006 pp. 78-79 (Nsabimana).

<sup>1662</sup> T. 18 September 2006 p. 11 (Nsabimana).

<sup>1663</sup> T. 24 November 2005 p. 23 (Nyiramasuhuko).

<sup>1664</sup> T. 16 November 2005 p. 22 (Nyiramasuhuko).

not send anyone to replace him.<sup>1665</sup> The absent *préfets*, including *Préfet* Habyalimana, were not criticised for failing to attend the meeting.<sup>1666</sup>

833. Nyiramasuhuko testified that she took notes in her diary regarding the 16 to 17 April 1994 Cabinet meeting.<sup>1667</sup> The diary listed the names of the newly appointed *préfets* and began “Butare PSD: Sylvain Nsabimana.”<sup>1668</sup> She stated that the *préfet* of Butare was dismissed at that meeting and another *préfet* was appointed.<sup>1669</sup> On cross-examination, Nyiramasuhuko stated she was unsure whether she took notes at this meeting.<sup>1670</sup>

834. Nyiramasuhuko explained the manner in which *préfets* were appointed. She stated that during the time of multi-party politics, each political party would submit a candidate for a *préfet* to be short-listed. This policy was not followed on 17 April 1994. On that date, each of the five political parties that were part of the Interim Government was required to reach a consensus on a single candidate.<sup>1671</sup> The Interim Government was then to submit the candidate to the Minister of the Interior.<sup>1672</sup> Because the Minister of the Interior was in Tanzania, the Prime Minister submitted the name of the candidate to the Council of Ministers.<sup>1673</sup> The Interim Government was then obliged to endorse that choice; it did not turn down any candidate once the person was selected by the parties.<sup>1674</sup> Another guiding principle for choosing *préfets* was that the *préfet* should be native to the area over which he had jurisdiction.<sup>1675</sup>

835. As to the removal of *Préfet* Habyalimana, Nyiramasuhuko stated that the PL and the PSD political parties came to an agreement by which the PSD would obtain the office of *préfet* in Butare and the PL would obtain the office of *préfet* for Gisenyi.<sup>1676</sup> It was necessary for a *préfet* to be appointed from a party with many supporters, because then he would be better understood by the population.<sup>1677</sup> The PSD argued that it had many members in Butare and that a PSD *préfet* would help to restore peace among the population.<sup>1678</sup> The PSD presented their candidate for Butare and the Interim Government accepted their choice.<sup>1679</sup>

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<sup>1665</sup> T. 27 September 2005 p. 30; T. 16 November 2005 p. 62 (Nyiramasuhuko).

<sup>1666</sup> T. 27 September 2005 p. 30 (Nyiramasuhuko).

<sup>1667</sup> T. 28 September 2005 pp. 43-44 (Nyiramasuhuko).

<sup>1668</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 20.

<sup>1669</sup> T. 28 September 2005 p. 44; T. 16 November 2005 pp. 60, 64 (Nyiramasuhuko); Defence Exhibit 357C (Nyiramasuhuko) (*Communiqué* issued by the Rwandan Government, 17 April 1994); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994).

<sup>1670</sup> T. 16 November 2005 p. 60 (Nyiramasuhuko).

<sup>1671</sup> T. 28 September 2005 pp. 45, 48 (Nyiramasuhuko).

<sup>1672</sup> T. 28 September 2005 p. 47 (Nyiramasuhuko).

<sup>1673</sup> T. 28 September 2005 pp. 47-48 (Nyiramasuhuko).

<sup>1674</sup> T. 28 September 2005 pp. 45, 47 (Nyiramasuhuko).

<sup>1675</sup> T. 28 September 2005 p. 48 (Nyiramasuhuko).

<sup>1676</sup> T. 28 September 2005 p. 48 (Nyiramasuhuko).

<sup>1677</sup> T. 16 November 2005 p. 62 (Nyiramasuhuko).

<sup>1678</sup> T. 28 September 2005 p. 48 (Nyiramasuhuko).

<sup>1679</sup> T. 28 September 2005 p. 46 (Nyiramasuhuko). The Chamber notes that the English transcript says the Interim Government “endorsed” the choice, whereas the French transcript states the Interim Government accepted the PSD choice): T. 28 September 2005 p. 56 (Nsabimana) (French).



Nyiramasuhuko did not refuse the appointment because she wanted peace restored as the PSD promised to do.<sup>1680</sup>

836. Nyiramasuhuko testified that the ministers adhered to the demands of the political parties in removing *Préfet* Habyalimana because the parties had control over the population. The ministers needed the help of the parties in restoring security in the country. The population listened to *Préfet* Habyalimana before 7 April 1994, but the political landscape changed after the death of the President. Therefore, the political parties suggested that he be replaced by a member of a party with more militants.<sup>1681</sup>

837. Nyiramasuhuko denied that she personally insisted that *Préfet* Habyalimana be replaced. The political parties made decisions on *préfet* appointments. She stated that she was not a member of the political bureau and therefore could not intervene on *Préfet* Habyalimana's behalf. She denied that she wanted or sought to kill *Préfet* Habyalimana.<sup>1682</sup> She stated: "I am not a killer, but you know, how could I suddenly become a killer at my age, whereas I have never done that, right from my birth. I can't even kill a chicken. So, I would say to you, all these people [Guichaoua and Des Forges] told lies about me."<sup>1683</sup>

838. Nyiramasuhuko testified that around the end of May, or during June 1994 she heard Habyalimana was imprisoned in Butare due to security concerns.<sup>1684</sup>

#### *The Swearing-in Ceremony*

839. Nyiramasuhuko testified that the entry in her diary dated 10 February 1994 referred to the swearing-in ceremony of the new *préfet* of Butare. The notes state: "Meeting to introduce the new *préfet*, presence of the President and the Prime Minister." Apart from herself, the Prime Minister and the President, other members of the Government were present, as well as ministers of all political parties. Nyiramasuhuko did not know, however, if there was a PDC minister. The reason for the meeting was to show support to a new official who was mandated to restore peace in Butare *préfecture*.<sup>1685</sup> Nyiramasuhuko stated that the entry for 19 April 1994 in her diary did not correspond to the events of that day, but to what *Préfet* Zilimwabagabo said on 3 May 1994 during the pacification operations in Gisenyi.<sup>1686</sup>

840. Nyiramasuhuko confirmed that Nsabimana took office on 19 April 1994 as *préfet* of Butare. The appointment was discussed at a meeting of the Council of Ministers.<sup>1687</sup> Nyiramasuhuko acknowledged that the Interim Government under Prime Minister Kambanda had issued a *communiqué* to the public on 17 April 1994.<sup>1688</sup> The *communiqué* stated:

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<sup>1680</sup> T. 28 September 2005 p. 49 (Nyiramasuhuko).

<sup>1681</sup> T. 24 November 2005 p. 24 (Nyiramasuhuko).

<sup>1682</sup> T. 28 September 2005 pp. 48-49 (Nyiramasuhuko).

<sup>1683</sup> T. 28 September 2005 p. 49 (Nyiramasuhuko).

<sup>1684</sup> T. 28 September 2005 p. 49 (Nyiramasuhuko).

<sup>1685</sup> T. 28 September 2005 p. 63 (Nyiramasuhuko).

<sup>1686</sup> T. 29 September 2005 pp. 3-4 (Nyiramasuhuko).

<sup>1687</sup> T. 26 October 2005 p. 63; T. 16 November 2005 pp. 66-67 (Nyiramasuhuko).

<sup>1688</sup> T. 28 September 2005 p. 64 (Nyiramasuhuko); Defence Exhibit 357C (Nyiramasuhuko) (*Communiqué* issued by the Rwandan Government, 17 April 1994).

The Cabinet also decided to dismiss the *préfets* of Butare and Kibungo. Silvain Nsabimana has become the new *préfet* of Butare and Anaclet Rudakubana is the new *préfet* of Kibungo. The Cabinet congratulated the *préfets* of Kigali-Ville, Gitarama, Gikongoro, Cyangugu, and Kibuye on the work they have done. It also confirmed that those *préfets* will continue to head those *préfectures*.<sup>1689</sup>

841. Another portion of the *communiqué* stated: “[A]fter hearing the ideas and proposals from the representatives of the political parties in the Government, the Cabinet appointed the *préfets* of those *préfectures* as follows...”.<sup>1690</sup> This confirmed that the political parties had come together and asked the Government to follow their demands in terms of these appointments. As it was put together by the political parties, the Government recognised that it had to follow these requests. It could not refuse what was in the interest of the Rwandan people.<sup>1691</sup>

842. Nyiramasuhuko was informed on 18 April 1994 while she was in Murambi, that Nsabimana would be officially installed as *préfet* of Butare and went to the ceremony with the other ministers, citing Straton Nsabumukunzi, the Prime Minister, the President, Mugenzi, Ntamabyariro, Eliezer and Mugiraneza. Callixte Kalimanzira was also present and possibly Ntagerura as well. Nyiramasuhuko believed Callixte Kalimanzira attended the ceremony because he was *directeur de cabinet* and a native of Butare. He did not go to other ceremonies where *préfets* were installed, like the one at Gisenyi on 21 April 1994. Nyiramasuhuko did not know how President Sindikubwabo travelled to Butare, but stated that he had been in Gikongoro on the preceding day.<sup>1692</sup>

843. Nyiramasuhuko stated that she arrived at the venue for the ceremonies around 10.00 a.m. The President was not yet present. She believed that he arrived when she was already inside the hall and left while she was still there. When he walked in, he was with his bodyguard. Nyiramasuhuko believed that there must have been guards outside. Nyiramasuhuko stressed that it was public knowledge that the President was accompanied by Presidential Guards. According to Nyiramasuhuko, the President explained in his speech why he was present for the ceremony. Prime Minister Kambanda stated in his speech that he was interested in events in his *préfecture* and was obliged to travel to Butare because he was in charge of the Ministry of the Interior.<sup>1693</sup> Nyiramasuhuko left at the end of the meeting, at around 2.00 p.m.<sup>1694</sup>

844. Nyiramasuhuko stated that she did not speak at the meeting.<sup>1695</sup> The outgoing *préfet*, Jean-Baptiste Habyalimana, was present. Habyalimana was not humiliated, but was congratulated by the President who said, “man is not all-powerful” and told him that he had done what he was able to do well. Nyiramasuhuko did not see Habyalimana ordered to leave

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<sup>1689</sup> Defence Exhibit 357C (Nyiramasuhuko) (*Communiqué* issued by the Rwandan Government, 17 April 1994).

<sup>1690</sup> Defence Exhibit 357C (Nyiramasuhuko) (*Communiqué* issued by the Rwandan Government, 17 April 1994).

<sup>1691</sup> T. 16 November 2005 p. 66 (Nyiramasuhuko).

<sup>1692</sup> T. 26 October 2005 p. 64 (Nyiramasuhuko).

<sup>1693</sup> T. 26 October 2005 p. 65 (Nyiramasuhuko).

<sup>1694</sup> T. 28 September 2005 p. 65 (Nyiramasuhuko).

<sup>1695</sup> T. 28 September 2005 p. 63 (Nyiramasuhuko).

the hall.<sup>1696</sup> She thought that she did not see Nteziryayo in the hall during the installation ceremony.<sup>1697</sup>

845. Nyiramasuhuko testified that the swearing-in ceremony of the new *préfet*, Nsabimana, took place at the multi-purpose hall and it was not open to the public. Only those who were invited were present.<sup>1698</sup> Ndayambaje did not attend the ceremony, as students were not allowed to do so at that time.<sup>1699</sup>

#### *President Sindikubwabo's Speech*

846. Nyiramasuhuko stated that the message the Government sought to convey to the leaders of Butare *préfecture* was to ensure the security and safety of their neighbours. The President said that the natives of Butare were known to be individualistic, but this habit had to be dropped in this difficult situation. They had to be aware that they too were concerned by the security of their peers, as well as the problems of the country.<sup>1700</sup> The mission assigned to the new *préfet* was to restore peace in Butare *préfecture*. The new *préfet* also spoke and said that he would do his utmost to accomplish this mission. Asked about the atmosphere at the ceremony, she said that there could not be any relaxed atmosphere during war time and that it was visible that there was an atmosphere of war. However, there was a will to put an end to that situation and restore peace and security.<sup>1701</sup>

847. Nyiramasuhuko testified that she heard parts of the President's 19 April 1994 speech on the radio. Radio Rwanda broadcast excerpts on 19 and 20 April 1994, and the full speech was broadcast on 21 April 1994.<sup>1702</sup> She heard the full speech on 21 April 1994 on Radio Rwanda.<sup>1703</sup> Nyiramasuhuko testified that it was not possible that President Sindikubwabo told the Butare administrators to encourage and continue killings, because the President was an old and peace-loving man. Further, it was not possible to talk about killings in Butare along ethnic lines. The President never encouraged, incited, ordered or otherwise called on the population to exterminate Tutsis in his speeches.<sup>1704</sup>

#### *Start of Killings in Butare Préfecture*

848. Nyiramasuhuko testified that she first learned of large-scale massacres occurring in Butare *préfecture* during the swearing-in ceremony of the *préfet* in Maraba *commune* on 19 April 1994.<sup>1705</sup> She denied involvement in the Maraba *commune* massacre, stating: (1) she was not present at the massacre site; (2) she did not know who had committed the massacres because she did not know the daily goings-on in Butare; (3) she was not responsible, she did not have a duty to know and did not have any authority in Butare *préfecture* to be able to do

<sup>1696</sup> T. 28 September 2005 p. 64 (Nyiramasuhuko).

<sup>1697</sup> T. 10 October 2005 p. 42 (Nyiramasuhuko).

<sup>1698</sup> T. 9 November 2005 p. 20 (Nyiramasuhuko).

<sup>1699</sup> T. 10 November 2005 p. 28 (Nyiramasuhuko).

<sup>1700</sup> T. 28 September 2005 p. 64 (Nyiramasuhuko).

<sup>1701</sup> T. 10 October 2005 p. 42 (Nyiramasuhuko).

<sup>1702</sup> T. 28 September 2005 p. 64 (Nyiramasuhuko).

<sup>1703</sup> T. 28 September 2005 pp. 64-65 (Nyiramasuhuko).

<sup>1704</sup> T. 28 September 2005 p. 65 (Nyiramasuhuko).

<sup>1705</sup> T. 24 November 2005 pp. 27-28; T. 24 November 2005 pp. 35-36 (Nyiramasuhuko) (French) (for spelling of Cyahinda and Maraba).

anything whatsoever and nobody asked for her help; and (4) she learned about the massacre when she could no longer do anything.<sup>1706</sup> She noted that she learned of the killing of *gendarmes* at Cyahinda parish on 15 April 1994. However this was not a large-scale massacre.<sup>1707</sup>

849. Nyiramasuhuko said that when she learned of the killings she asked to be informed and was told that the perpetrators of the crimes would be punished. She believed that the local authorities and the judiciary would arrest and punish the arrested criminals.<sup>1708</sup>

#### Ndayambaje

850. Ndayambaje testified that on 18 April 1994, he was travelling from his home in Butare town to Muganza *commune* and heard a gunshot as he was leaving Butare town.<sup>1709</sup> On that same trip, he also noticed some houses were burning to the west of Butare town in the vicinity of Huye and Runyinya *communes*.<sup>1710</sup> Ndayambaje stated that he was not aware of any deaths in Mugombwa *secteur*, Muganza *commune*, on 20 April 1994.<sup>1711</sup>

### **3.5.4 Deliberations**

851. The Chamber notes that the Prosecution relies, *inter alia*, on the testimony of Expert Witnesses Des Forges and Guichaoua in support of allegations addressed in this section. As the Chamber noted in its Oral Decision of 23 June 2004 in relation to the testimony of Expert Witness Guichaoua, expert witnesses give opinion evidence, some of which may be based on hearsay evidence. This is subject to evaluation and consideration by the Chamber in its deliberations.<sup>1712</sup> The Chamber reiterates that it is not bound by an expert witness' opinion, but must weigh the evidentiary value of the relevant portion of an expert's report and testimony.<sup>1713</sup>

#### ***3.5.4.1 Background to the Removal of Préfet Habyalimana and Nsabimana's Swearing-in Ceremony***

852. The Prosecution asserts that the genocide in Butare did not commence immediately following the death of the President on 6 April 1994, but alleges that it took two weeks before the large-scale massacres of Tutsis began. Groups of people from different walks of life acting in concert organised, planned, and carried out the massacres. It alleges the removal of *Préfet* Habyalimana and Nsabimana's swearing-in ceremony are key to understanding why and how the genocide commenced in Butare *préfecture*.<sup>1714</sup>

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<sup>1706</sup> T. 24 November 2005 p. 27 (Nyiramasuhuko).

<sup>1707</sup> T. 24 November 2005 pp. 27-28 (Nyiramasuhuko).

<sup>1708</sup> T. 24 November 2005 p. 28 (Nyiramasuhuko).

<sup>1709</sup> T. 19 November 2008 pp. 37-39 (Ndayambaje).

<sup>1710</sup> T. 19 November 2008 p. 39 (Ndayambaje).

<sup>1711</sup> T. 19 November 2008 p. 40 (Ndayambaje).

<sup>1712</sup> T. 23 June 2004 p. 23 (Guichaoua).

<sup>1713</sup> *Kunarac et al.*, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4; T. 29 June 2004 p. 16 (Guichaoua).

<sup>1714</sup> Prosecution Closing Brief, p. 47, para. 67.

853. The Chamber notes the theory advanced by the Nyiramasuhuko, Ntahobali and Nsabimana Defences that massacres already occurred in Nyakizu and Maraba before 19 April 1994. This, however, does not contradict the Prosecution theory that the genocide in Butare did not commence immediately following the death of the President on 6 April 1994 and that the large-scale massacres of Tutsis began two weeks later. The determination as to whether the swearing-in ceremony of 19 April 1994 had an impact on the massacres must be evaluated in light of the scale of the massacres in Butare prior to and after the swearing-in ceremony.

854. Prosecution Witness TQ, Prosecution Expert Witnesses Des Forges and Guichaoua, Defence Witness D-1-4-O, Nsabimana and Nyiramasuhuko, testified consistently that killings occurred prior to 17 April 1994, within Butare's western *communes*.<sup>1715</sup> Furthermore, the joint *communiqué* issued by the Butare and Gikongoro *préfets* on 16 April 1994, confirmed that ethnic violence had spread to Butare's western *communes* across the border with Gikongoro.<sup>1716</sup>

855. The Chamber attributes significant weight to the *communiqué* emanating from the 16 April 1994 meeting of the Butare and Gikongoro *préfets*.<sup>1717</sup> *Préfets* Habyalimana and Bucyibaruta had nothing to gain by falsely asserting that ethnic violence was spilling into Butare's western *communes* on 16 April 1994. In this connection, the Chamber finds Prosecution Witness TQ to be credible and reliable regarding his testimony that people were already being killed on 16 April 1994.<sup>1718</sup> Furthermore, the Chamber considers that Witness D-1-4-O was working in a health clinic, and learned of the particular details of the refugees from the forms they filled out. Although his evidence is largely hearsay, Witness D-1-4-O's testimony that refugees were already fleeing from Gikongoro towards Ngoma *commune* between 13 and 18 April<sup>1719</sup> lends credence to the testimonies of Witness TQ, Nsabimana and Nyiramasuhuko.

856. Nsabimana, Des Forges and Guichaoua also testified that there was an attack at Cyahinda church on around 15 April 1994.<sup>1720</sup> The Chamber treats Nsabimana's testimony with appropriate caution; however this evidence was corroborated by Des Forges and Guichaoua. Furthermore, Nyiramasuhuko testified that she heard about the killing of *gendarmes* at Cyahinda parish, Nyakizu *commune* that occurred on 15 April 1994, but stated that this was not a large-scale massacre.<sup>1721</sup> However, the three other aforementioned witnesses who testified as to this event were consistent as to this attack being of a larger-scale. The

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<sup>1715</sup> T. 8 September 2004 pp. 33-34 (Witness TQ); T. 5 July 2004 p. 39 (Des Forges); T. 9 July 2004 pp. 8-9 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) pp. 16, 18; Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 146; T. 6 May 2008 p. 37 (ICS) (Witness D-1-4-O); T. 7 May 2008 p. 14 (ICS) (Witness D-1-4-O); T. 14 September 2006 pp. 75-76 (Nsabimana); T. 24 November 2005 pp. 27-28 (Nyiramasuhuko).

<sup>1716</sup> Defence Exhibit 240C (Kanyabashi) (*Communiqué* sanctioning the Security Meeting of the Authorities of Butare and Gikongoro, 16 April 1994).

<sup>1717</sup> Defence Exhibit 240C (Kanyabashi) (*Communiqué* sanctioning the Security Meeting of the Authorities of Butare and Gikongoro, 16 April 1994).

<sup>1718</sup> T. 8 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>1719</sup> T. 7 May 2008 p. 14 (Witness D-1-4-O).

<sup>1720</sup> T. 14 September 2006 pp. 75-76 (Nsabimana); T. 9 July 2004 pp. 8-9 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 16; Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 146.

<sup>1721</sup> T. 24 November 2005 pp. 27-28 (Nyiramasuhuko).

Chamber concludes that homes were burnt and Tutsis were killed in Butare's western *communes* prior to 17 April 1994.

### 3.5.4.2 The Removal of *Préfet Habyalimana*

857. Expert Witnesses Guichaoua, Des Forges and Reyntjens agreed that *Préfet Habyalimana* had established a strong control of the administrative hierarchy within Butare *préfecture*.<sup>1722</sup> The Chamber finds these conclusions to be reliable because the assessment of *Préfet Habyalimana*'s historical and political role falls squarely within the experts' area of expertise and the experts also agree on this point. Even Nyiramasuhuko agreed that Habyalimana had the confidence of the population prior to 7 April 1994.<sup>1723</sup> Guichaoua testified that from 6 April 1994, Habyalimana used the *préfecture* Security Council to maintain control within the *préfecture*.<sup>1724</sup> Although Guichaoua acknowledged that some soldiers in Butare were showing signs of impatience to start killing, he testified that the administrative hierarchy under *Préfet Habyalimana* largely obeyed his directives to maintain order.<sup>1725</sup>

858. Guichaoua testified that Callixte Kalimanzira drafted a report that was read out by Nyiramasuhuko at the 16 April 1994 meeting of *préfets* and the Interim Government, in which it was alleged that *Préfet Habyalimana* was colluding with the *Inkotanyi* and that he attempted to attack the *bourgmestre* of Nyakizu *commune*.<sup>1726</sup> Guichaoua had not seen the alleged Kalimanzira report, and based his opinion on references to the alleged report in other documents.<sup>1727</sup> This report was not tendered into evidence and this assertion is not corroborated either. Therefore, the Chamber does not find that the Prosecution has proven the existence of the alleged Kalimanzira report or its contents.<sup>1728</sup>

859. The evidence established that Habyalimana's removal and Nsabimana's appointment were Government decisions. Nyiramasuhuko claims that the PSD and PL political parties made the decision to remove *Préfet Habyalimana* and to appoint Nsabimana in his place.<sup>1729</sup> She admits that names of *préfet* candidates were brought to the Ministry of the Interior. In view of the fact that he was not present, as he was in Tanzania at the time, the Prime Minister, acting on behalf of the Minister of the Interior, submitted the names to the Council of Ministers for approval.<sup>1730</sup>

860. Nyiramasuhuko claims that she had no choice but to consent to the removal of *Préfet Habyalimana*.<sup>1731</sup> She claims she and the rest of the Interim Government were figureheads with

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<sup>1722</sup> T. 8 June 2004 pp. 28, 34 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 14; T. 28 June 2004 pp. 6-7, 12, 77 (Guichaoua); T. 13 October 2004 p. 11 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 119, 122; T. 20 September 2007 p. 40 (Reyntjens); T. 21 November 2007 p. 30 (Reyntjens).

<sup>1723</sup> T. 24 November 2005 p. 24 (Nyiramasuhuko).

<sup>1724</sup> T. 8 June 2004 pp. 28, 34 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 14; T. 13 October 2004 p. 11 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 122.

<sup>1725</sup> T. 13 October 2004 pp. 10-11 (Guichaoua).

<sup>1726</sup> T. 7 October 2004 pp. 19, 21 (Guichaoua).

<sup>1727</sup> T. 7 October 2004 pp. 19, 26 (Guichaoua).

<sup>1728</sup> T. 7 October 2004 p. 26 (Guichaoua).

<sup>1729</sup> T. 28 September 2005 pp. 45, 47-48 (Nyiramasuhuko).

<sup>1730</sup> T. 28 September 2005 pp. 47-48 (Nyiramasuhuko).

<sup>1731</sup> T. 28 September 2005 pp. 45, 47 (Nyiramasuhuko).

no real power to make the important decision of appointing *préfets*.<sup>1732</sup> Guichaoua contradicted this testimony. Guichaoua testified that Interim President Sindikubwabo proposed to the PL Chairman Justin Mugenzi the exchange of the *préfet* post in Butare for that of the *préfet* post of Gisenyi *préfecture*.<sup>1733</sup> Nyiramasuhuko also testified that the Interim Government was obliged to accept the proposal of the PSD to appoint Nsabimana in order to gain the support of the PSD militants in Butare.<sup>1734</sup> Guichaoua opined that the PSD had split into two factions and, when the genocide began, the power wing of the PSD had control of the party. This group supported the policies of the MRND after the assassination of the Secretary General of the PSD, Félicien Gatabazi.<sup>1735</sup> The MRND could not appoint a member of its own party to be *préfet* because it was considered a party of northerners and disliked by the southerners in Butare.<sup>1736</sup>

861. Nyiramasuhuko's testimony was not credible with regard to the decision to remove Habyalimana. Guichaoua testified, and Nyiramasuhuko's diary confirmed, that the Interim Government met at least 19 times between 6 April 1994 and July 1994 and that Nyiramasuhuko attended each of these meetings.<sup>1737</sup> Many of these meetings extended over the course of two days.<sup>1738</sup> Further, the *préfets* and *bourgmestres* of the country continued to report to the Interim Government throughout this period.<sup>1739</sup> Guichaoua testified that the Interim Government elevated and demoted military leaders at these meetings.<sup>1740</sup> The Defence did not refute this claim. Therefore, the Chamber considers that the Interim Government had the power to make important decisions about the running of the Government after the Presidential plane crash. Even if the political parties made the initial proposal to remove Habyalimana, the ministers made the final decision to remove him and replace him with Nsabimana at the 16-17 April 1994 meeting.

862. Nyiramasuhuko admits that she took part in the 16 to 17 April 1994 Cabinet meeting and that the decision to remove *Préfet* Habyalimana was taken at that meeting.<sup>1741</sup> This decision was recorded, albeit briefly, in her diary which noted the name of the new *préfet*, Nsabimana, and his political party next to Butare.<sup>1742</sup> The testimony of Guichaoua corroborated this account.<sup>1743</sup> The Chamber therefore finds that Nyiramasuhuko participated in the Cabinet meeting in which the Interim Government decided to remove *Préfet* Habyalimana from office on 16-17 April 1994.

863. Nyiramasuhuko testified that she was unaware of large-scale killings in Butare *préfecture* until 19 April 1994.<sup>1744</sup> Yet she stated the purpose of removing Habyalimana, on

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<sup>1732</sup> T. 28 September 2005 pp. 48-49 (Nyiramasuhuko).

<sup>1733</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 124.

<sup>1734</sup> T. 28 September 2005 pp. 45-48 (Nyiramasuhuko); T. 16 November 2005 pp. 62, 66, 68 (Nyiramasuhuko).

<sup>1735</sup> T. 28 June 2004 pp. 6-7 (Guichaoua).

<sup>1736</sup> T. 28 June 2004 p. 6 (Guichaoua).

<sup>1737</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 24.

<sup>1738</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 24.

<sup>1739</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 24-96.

<sup>1740</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 29-30.

<sup>1741</sup> T. 27 September 2005 p. 30; T. 28 September 2005 pp. 43-44; T. 16 November 2005 p. 22 (Nyiramasuhuko).

<sup>1742</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 20.

<sup>1743</sup> T. 7 October 2004 pp. 19, 21 (Guichaoua).

<sup>1744</sup> T. 24 November 2005 pp. 27-28 (Nyiramasuhuko).

16-17 April 1994 was to restore peace. In this regard, she stated: (1) the political parties in Butare decided that a new *préfet* was necessary in order to restore the peace; (2) the Interim Government adhered to the political parties' request to replace *Préfet* Habyalimana because they needed the parties' help to restore calm in the country; and (3) the new *préfet*, Nsabimana, was given a mandate to restore peace.<sup>1745</sup> It is incongruous that she would seek to restore peace in Butare when she was unaware of large-scale killings within that *préfecture*. Despite the chaos and prevalence of massacres throughout Rwanda between 6 April 1994 and 17 April 1994, Butare was the only *préfecture* in Rwanda that resisted large-scale killings. Yet she asserts that the people of Butare had lost faith in *Préfet* Habyalimana and the Interim Government chose to remove him to restore peace.<sup>1746</sup> The Chamber does not find Nyiramasuhuko's testimony to be credible on this point.

864. Nyiramasuhuko denied responsibility for the Maraba *commune* massacre citing several logically inconsistent rationales. She stated that she did not have any responsibility for Butare *préfecture* and therefore could not have done anything. Yet, she lamented that she learned of the massacre after it occurred when it was too late for her to do anything.<sup>1747</sup> This latter claim suggests Nyiramasuhuko did have power in Butare and could have taken action to prevent the massacre if she knew about it sooner. Nonetheless, there was no other evidence led to support this possibility. The Trial Chamber finds that Nyiramasuhuko, as a member of the Interim Government, participated in the decision to remove *Préfet* Habyalimana from office for reasons other than maintaining peace.

#### 3.5.4.3 Nsabimana's Swearing-in Ceremony

865. Prosecution and Defence evidence establishes that President Sindikubwabo, Prime Minister Kambanda, Nyiramasuhuko, Kanyabashi and a number of ministers from the Interim Government attended the swearing-in ceremony.<sup>1748</sup> The speakers at the ceremony included, *inter alia*, Sindikubwabo, Kambanda, Kanyabashi and Nsabimana.<sup>1749</sup> Most of the speeches at the ceremony were broadcast on Radio Rwanda.<sup>1750</sup> Nyiramasuhuko testified that she heard parts of the President's 19 April speech on the radio. Radio Rwanda broadcast excerpts on 19 and 20 April 1994, and the full speech was broadcast on 21 April 1994. Nyiramasuhuko heard the full speech on 21 April 1994 on Radio Rwanda.<sup>1751</sup> Shimamungu stated that although the speech was delivered to administrative authorities, the fact that it was broadcast over the radio

<sup>1745</sup> T. 28 September 2005 pp. 48, 63; T. 24 November 2005 p. 24 (Nyiramasuhuko).

<sup>1746</sup> T. 24 November 2005 p. 24 (Nyiramasuhuko).

<sup>1747</sup> T. 24 November 2005 p. 27 (Nyiramasuhuko).

<sup>1748</sup> T. 8 November 2001 pp. 108-110 (ICS) (Witness QJ); T. 16 February 2004 pp. 33-34 (ICS) (Witness RV); T. 14 October 2004 p. 4 (Guichaoua); T. 20 September 2007 p. 40 (Reyntjens); T. 26 October 2005 p. 63 (Nyiramasuhuko); T. 11 September 2006 pp. 79-80 (Nsabimana); Prosecution Exhibit 110A (Des Forges Expert Report) p. 19.

<sup>1749</sup> T. 16 February 2004 p. 38 (ICS) (Witness RV); T. 19 February 2004 p. 26 (ICS) (Witness RV); T. 14 October 2004 p. 8 (Guichaoua); T. 20 September 2007 p. 61 (Reyntjens); T. 14 September 2004 p. 7 (Ntakirutimana); T. 26 October 2005 p. 65 (Nyiramasuhuko); T. 12 September 2006 pp. 9-14 (Nsabimana); Prosecution Exhibit 110A (Des Forges Expert Report) p. 22; Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana).

<sup>1750</sup> T. 28 June 2004 p. 83 (Guichaoua); T. 20 September 2007 pp. 58-59 (Reyntjens); T. 28 September 2005 p. 64 (Nyiramasuhuko).

<sup>1751</sup> T. 28 September 2005 pp. 64-65 (Nyiramasuhuko).



meant that it also targeted the population as a whole.<sup>1752</sup> In the Chamber's view, the fact that the speeches were retransmitted by radio extended their influence, and implies that they were also intended for a wider audience composed of members of the population.

866. Although several speeches were made during the ceremony, in the Chamber's view the most important speeches were those of Sindikubwabo, Kambanda, Kanyabashi and Nsabimana. These speeches shall be looked at in turn. Although Kambanda and Sindikubwabo are not accused in this case, their speeches are important to understand the context and effect of the ceremony on the population of Butare at the time.

#### 3.5.4.4 *Sindikubwabo's Speech*

867. Expert witnesses analysed various sections of Sindikubwabo's speech, including the following excerpt:

I met members of the local population [at Nyakizi *commune*]. They are faced with the same problem as the refugees, who, they said, are being housed in the Nyumba church precinct. What I saw was that the inhabitants were afraid of them, because it would appear that they possess very powerful weapons, guns and grenades.... Some of them were on top of the hill, according to one of the Ministers ... the way they do things, the others were inside the church while the *defenceless common folk* were roaming about.

The issue of refugees therefore, I wanted someone to tell us exactly what this was about, because I don't understand it yet. Which refugees are these? Are these Hutus who have fled? Are these Tutsis who have fled? Who are these refugees? What are they fleeing from? That is the question.<sup>1753</sup>

868. Ntakirutimana explained that the term *rubanda* (inhabitants), which is of particular significance in this speech, took on a different shade of meaning during the war and probably well before that. Generally the term means "crowd, populace, public or people." However, *rubanda* (inhabitants) developed to mean members of the Hutu ethnic group known as *rubanda nyamwiinshi* (majority ordinary people) in reference to their large number.<sup>1754</sup> Although the speech does not give any specific indication as to the ethnicity of the ordinary population, or the implied "enemy", Ntakirutimana confirmed that the enemies were Tutsis and the ordinary people were the Hutus.<sup>1755</sup>

869. Shimamungu stated that it was unclear whether the refugees referred to were Hutus or Tutsis. He suggested that Sindikubwabo was talking about RPF infiltrators who were among the refugees in the camps and also said that the infiltrators may not have been Tutsis.<sup>1756</sup>

870. The Chamber notes that Shimamungu's testimony was tainted by bias. He testified that he associated with the Habyarimana family when his company in France published *Juvénal*

<sup>1752</sup> T. 22 March 2005 pp. 53, 58-59 (Shimamungu).

<sup>1753</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 2 (emphasis added). The Chamber notes that Prosecution Exhibits 151B and 159B contained translations of Sindikubwabo's speech which are essentially the same; see Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 22, paras. 2-3.

<sup>1754</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 3.

<sup>1755</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 15.

<sup>1756</sup> T. 17 March 2005 pp. 21-22 (Shimamungu).

*Habyarimana, the man assassinated on 6 April 1994*, in 2004.<sup>1757</sup> Shimamungu also testified that, as part of his political activism during his membership of the RDR party (Movement for Democracy and Return of Refugees to Rwanda<sup>1758</sup>), he wrote Prosecution Exhibit 167B (correspondence between Shimamungu and the French media) on behalf of himself and his party. The correspondence expressed their views on a television programme which concerned the reaction to justice in Rwanda following the 1994 genocide.<sup>1759</sup> Read as a whole, this Exhibit attributes responsibility for the genocide in Rwanda in 1994 to the current President Paul Kagame and his army, the RPF. Shimamungu considered that the programme wrongly blamed Hutus alone for the 1994 genocide and opined that the assassination of President Habyarimana triggered the genocide.<sup>1760</sup>

871. Shimamungu testified that he was a member of AGIIR, an association for impartial international justice for Rwanda following the events of 1994.<sup>1761</sup> He attended an AGIIR meeting that resulted in the Amsterdam Declaration of 28 November 2004, part of which calls on the democratic opposition and civil society in Rwanda to resist the current political regime and insists that donor agencies halt all assistance and support to the RPF regime.<sup>1762</sup>

872. The Chamber considers that Shimamungu's political and civic activism illustrate his opposition to the RPF who were considered to be the enemies of Rwanda in 1994. This opposition was also shared by the Interim Government of which Nyiramasuhuko was a member and Nyiramasuhuko as an individual. Such activism when viewed independently does not adversely affect his credibility. However, when viewed against the background of the 1994 events, Shimamungu's defence of Nyiramasuhuko, with whom he shared interests and views (for example, that the enemy in 1994 was the RPF *Inkotanyi*), is tainted by his activism. The Chamber further recalls Shimamungu's admission that according to what the Nyiramasuhuko Defence required of him, he was specifically to criticise Ntakirutimana's report.<sup>1763</sup> His testimony should therefore be viewed with appropriate caution.

873. The Chamber therefore does not consider Shimamungu's opinion to be plausible on the issue as to whether the refugees referred to were Hutus or Tutsis. Sindikubwabo's choice of words revealed that the refugees' ethnic identity was the major distinguishing factor in understanding the security problem at hand. The listeners had to determine on which side the Hutus and Tutsis fell in Sindikubwabo's speech, *i.e.* which group represented the defenceless inhabitants and which group was armed on hilltops and in churches. The Chamber finds Ntakirutimana's analysis to be credible on this point, as his reasoning is both plausible and in-line with a plain reading of the extract of Sindikubwabo's speech. The Chamber finds that the references in Sindikubwabo's speech to refugees and armed groups in churches and on hilltops were references to Tutsis. Sindikubwabo was implying that the Tutsis used these guns and grenades to attack the defenceless ordinary people, *i.e.* the Hutus. In the Chamber's view, the

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<sup>1757</sup> T. 29 March 2005 pp. 7-8 (Shimamungu).

<sup>1758</sup> T. 29 March 2005 pp. 12-13 (Shimamungu).

<sup>1759</sup> T. 29 March 2005 pp. 16-17 (Shimamungu).

<sup>1760</sup> T. 29 March 2005 pp. 18-19 (Shimamungu).

<sup>1761</sup> T. 29 March 2005 p. 38 (Shimamungu).

<sup>1762</sup> T. 29 March 2005 p. 40 (Shimamungu).

<sup>1763</sup> T. 30 March 2005 p. 7 (Shimamungu).

purpose of such words was to provoke Sindikubwabo's listeners into viewing Tutsis as an armed threat against which Hutus needed to be protected.

874. Sindikubwabo also said the following:

We also have the "none of my business" type here in Butare, as well as the "I know it all" types ....

[I]n Butare there is a certain lie which ... produces the "none-of-my-business" type. And so everybody says: "Ah! If they acted like this, if they acted like that, if things were like this"; but who is *they*? This is my message to you. I leave this problem in your hands; it is for you to solve and I wish you success! ...

We will win [the war] if you get rid of the "that is none of my business" types.... This government to which I am speaking, look for the "that is none of my business" type, look for those people who ... have gone to train so as to kill us and get rid of them for us. As for the rest of the Rwandan citizens, those of us who are decided, we will continue until the final victory.<sup>1764</sup>

875. Ntakirutimana explained that the "it-is-not-my-business" types are those who deliberately detach themselves from a matter of national concern in order to take care of personal business that is often unrelated to the community's concerns.<sup>1765</sup> The reference to getting rid of the "it-is-not-my-business-types" was an open invitation to murder.<sup>1766</sup> The President urged the people of Butare to work in concert with the Government towards final victory. Ntakirutimana explained that this was quite obvious incitement to murder anyone who was indifferent to the prevailing situation.<sup>1767</sup>

876. The reference to the "know-it-all" types is to those who claim to know everything and by implication, have no need at all for guidance or advice in their actions. Ntakirutimana explained that these two terms reveal that in both Butare and Gikongoro, there were people who were completely detached from the national concern of safeguarding security, and they included administrative officials.<sup>1768</sup>

877. Ntakirutimana's explanation of these two types of individuals was corroborated by Shimamungu, Nyiramasuhuko and Nsabimana.<sup>1769</sup> Ntakirutimana's analysis and explanation demonstrate that Sindikubwabo wanted these types of people to either be removed or to begin supporting the Interim Government's actions in response to the security situation.

878. Sindikubwabo continued in his speech:

[T]hose who are waiting for others to work do not feel concerned. Well, let them come clean and leave us to work, and let them watch us work but without being part of our

<sup>1764</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) pp. 3-4; *see also* Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 23-24, paras. 6, 12, 17.

<sup>1765</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 6.

<sup>1766</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 12.

<sup>1767</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 12.

<sup>1768</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 6.

<sup>1769</sup> T. 31 March 2005 pp. 41, 63-65 (Shimamungu); Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 49; T. 17 November 2005 p. 27 (Nyiramasuhuko); T. 12 September 2006 pp. 15-16 (Nsabimana).

team. If somebody feels like saying: “I am not concerned; that does not concern me; I am afraid,” let him withdraw far from us. Those who are in charge of ... getting rid of him for us should do it as quickly as possible, because there are other good persons willing to work for their country ....<sup>1770</sup>

879. The Chamber recalls the testimony of Nsabimana Defence Witness Karemano that although he did not hear Sindikubwabo’s speech, the President’s statement that people should not remain indifferent and should work stuck in the people’s minds and was widely commented on.<sup>1771</sup> In Karemano’s view, the meaning of the President’s statement was easy to ascertain when viewed in the context of the events that occurred after 19 April 1994, *i.e.* killings and lootings.<sup>1772</sup>

880. Considered in the context of 1994 in Rwanda, with the massacre of Tutsis spreading throughout Butare and people anxious to hear from the Government on what to do at the time, the President’s words constituted an instruction to the people of Butare to change their attitude and get actively involved in the massacre of Tutsis. Implicit in this instruction was a threat that those who failed to take action and participate in the genocide would be sought out and removed. In the Chamber’s view, Sindikubwabo’s words on this issue were inflammatory.

881. Sindikubwabo concluded:

I should like, dear brothers, to end my message or rather suspend it by going back on what I have just said. I would like you to analyze our message, understand it and analyze the terms we are using; you should understand why we choose to use one term and not another. It is because we are in an unusual period.

Jokes, laughter, jesting, childishness and caprice should give way to work. After obtaining victory, when the country will have regained calm, we will go back to our jokes; but now is not the time for joking.<sup>1773</sup>

882. According to Des Forges, this part of the President’s speech constituted a threat.<sup>1774</sup> Ntakirutimana explained that here Sindikubwabo was warning his listeners and recapitulating what his Government expected of them. Ntakirutimana further stated that the President was aware of the coded meaning of the terms he used and asked his listeners to decode carefully in order to understand the message. He observed that encoding was common practice in speeches during the period 1990 to 1994.<sup>1775</sup>

883. The Chamber considers Ntakirutimana’s analysis to be plausible and consistent with a plain reading of the President’s conclusion. At the end of his speech, Sindikubwabo clearly acknowledged that he used coded language and ordered his audience to analyse the specific words and phrases used in his speech in order to decipher the Government’s message.

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<sup>1770</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 4; *see also* Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 24, para. 16.

<sup>1771</sup> T. 5 September 2006 pp. 23-24 (Karemano).

<sup>1772</sup> T. 5 September 2006 pp. 25, 27 (Karemano).

<sup>1773</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994) p. 5.

<sup>1774</sup> T. 9 July 2004 p. 24 (Des Forges).

<sup>1775</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 16, 20.

884. The parties also led evidence from a number of factual witnesses on the content and impact of Sindikubwabo's speech. Nyiramasuhuko did not consider the speech to be inflammatory. In contrast, Nsabimana explained that when the President took the floor, the effect was like a "tsunami".<sup>1776</sup> He testified that as time went by after the speech, he came to realise that it was indeed inflammatory.<sup>1777</sup> Ntakirutimana opined that for all practical purposes, the aim of a speech needs to be judged by the results achieved where this is possible.<sup>1778</sup> The testimony of Witnesses TQ, QJ, QI, FAM, QBU, FAE and Karemano concerning events in the Butare area around 19 April 1994, demonstrate that the massacres in Butare commenced or intensified after that date.<sup>1779</sup> The Chamber recalls that at the time of their testimony, Witnesses FAM and QBU, both Hutus, were detained witnesses in Rwanda serving sentences for their involvement in the 1994 genocide. In the Chamber's view, the status of these witnesses as accomplices renders them capable of bias and their testimony should therefore be treated with appropriate caution. Witness TQ had also been convicted of genocide but had been acquitted and released from prison before he testified in 2004. The Chamber therefore considers that he had no reason to implicate any one of the Accused, as he was acquitted prior to testifying in this case and by virtue of the fact that he was a Hutu.

885. Witness QA also testified regarding President Sindikubwabo's speech. However, on recall in 2008, Witness QA testified that he had lied about Kanyabashi's speech and that most of his prior testimony was lies. The Chamber does not rely on Witness QA's testimony.

886. Nsabimana testified that he heard the totality of Sindikubwabo's speech but its analysis was not his concern. He further stated that he understood the words *barajenjetse* and *ntibindeba* in Sindikubwabo's speech but not what Sindikubwabo meant by them;<sup>1780</sup> that an expert was needed to translate and explain Sindikubwabo's words in his very ambiguous and political speech;<sup>1781</sup> that he called Sindikubwabo's speech inflammatory while in exile in September 1994; and that only after a period of time after the swearing-in ceremony did he come to realise that the speech was inflammatory and the massacres took place because of it.<sup>1782</sup> Nsabimana insisted that he did not understand anything in Sindikubwabo's speech.<sup>1783</sup>

887. Notwithstanding Nsabimana's assertions that he did not appreciate the nature and impact of the speech when it was delivered, contradictory evidence establishes that Nsabimana did in fact understand Sindikubwabo's speech as and when it was given on 19 April 1994. Furthermore, the Chamber notes that in Prosecution Exhibit 114A (Interview with Nsabimana, dated 1 October 1994), Nsabimana stated: "The President made a speech which was very bad. This speech was only telling people to kill others. People didn't know why he was giving this

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<sup>1776</sup> T. 12 September 2006 p. 17 (Nsabimana).

<sup>1777</sup> T. 20 November 2006 p. 36 (Nsabimana).

<sup>1778</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 3.

<sup>1779</sup> T. 6 September 2004 pp. 26-27 (ICS) (Witness TQ); T. 8 September 2004 pp. 33-34 (ICS) (Witness TQ); T. 8 November 2001 p. 108 (ICS) (Witness QJ); T. 23 March 2004 p. 34 (Witness QI); T. 23 March 2004 p. 43 (ICS) (Witness QI); T. 24 March 2004 p. 37 (Witness QI); T. 13 March 2002 p. 14 (ICS) (Witness FAM); T. 13 April 2004 pp. 38, 41-42 (ICS) (Witness QBU); T. 17 March 2004 p. 70 (Witness FAE); T. 18 March 2004 p. 25 (Witness FAE); T. 24 August 2006 p. 84 (Karemano).

<sup>1780</sup> T. 12 September 2006 p. 16 (Nsabimana).

<sup>1781</sup> T. 12 September 2006 pp. 15-16, 20 (Nsabimana); T. 20 November 2006 p. 32 (Nsabimana).

<sup>1782</sup> T. 21 November 2006 p. 36 (Nsabimana).

<sup>1783</sup> T. 22 November 2006 p. 78 (Nsabimana).

speech.” Nsabimana agreed that Prosecution Exhibit 114A contained a faithful reflection of what he had said during the interview.<sup>1784</sup> In the interview, Nsabimana does not indicate that he only came to realise the inflammatory nature of the President’s speech until after the event. On the contrary, a plain reading of Prosecution Exhibit 114 suggests that Nsabimana’s opinion of the speech was based on the impressions he formed when the speech was delivered. Similarly, Nsabimana recognised Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996) as being part of a letter he had sent to the Prosecutor in January 1997.<sup>1785</sup> On the first page of that exhibit, Nsabimana describes the speeches of Sindikubwabo, Niyitegeka and Mugenzi as “an incitement to hatred, ... inflammatory”. He subsequently explains, “Visibly, in that atmosphere, I did not know what to do.”<sup>1786</sup> The fact that Nsabimana admitted that he did not know what to do when the President gave his inflammatory speech suggests that he must have been aware that the speech constituted incitement at the time the speech was given, rather than afterwards.

888. Des Forges also disagreed with the contention that Nsabimana was not a knowing and therefore guilty participant in the official genocide plan. She stressed the importance of Nsabimana’s post as *préfet* and opined that when Nsabimana accepted to be sworn in as *préfet*, he knew what the Government’s plan was and agreed to serve a Government that intended to kill the Tutsis in Butare.<sup>1787</sup> Reyntjens agreed that President Sindikubwabo’s speech was an instruction from the highest authority to start the massacres in Butare and confirmed that the duties of the *préfet* included the massacre of Tutsis.<sup>1788</sup> Reyntjens further confirmed that the President directly addressed the *préfet* saying, “[a]pproach the *bourgmestres*, organise meetings with them often, ask each of them what he needs...”<sup>1789</sup> In this connection, the Chamber takes note of Nsabimana’s admission that he convened a meeting of all the *bourgmestres* on 20 April 1994, the day following his swearing-in ceremony.<sup>1790</sup> In the Chamber’s view, this is a clear indication that Nsabimana understood the President’s speech and acted on the instructions contained therein.

889. The Chamber recalls Nsabimana’s demeanour in court when answering questions regarding his understanding of Sindikubwabo’s speech. Nsabimana was very elusive, avoiding or refusing to answer questions particularly from the Prosecution on his specific understanding of this speech, while insisting that he understood nothing in Sindikubwabo’s speech.<sup>1791</sup> The Chamber considers that Nsabimana’s description of Sindikubwabo’s speech as being inflammatory, as described in the previous paragraph, conflicts with his insistence that he did not understand it at all and points to his lack of truthfulness with regard to his testimony on his specific understanding of Sindikubwabo’s speech on 19 April 1994.<sup>1792</sup> Nsabimana’s testimony that he did not understand a thing is an exaggeration and not plausible. Nsabimana described and showed understanding of the speeches by Niyitegeka, Mugenzi and Kambanda

<sup>1784</sup> T. 22 November 2006 pp. 42-43 (Nsabimana).

<sup>1785</sup> T. 27 November 2006 pp. 64-66 (Nsabimana).

<sup>1786</sup> Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996) p. 1.

<sup>1787</sup> T. 6 July pp. 14-15 (Des Forges).

<sup>1788</sup> T. 21 November 2007 p. 45 (Reyntjens).

<sup>1789</sup> T. 21 November 2007 p. 46 (Reyntjens).

<sup>1790</sup> T. 12 September 2006 p. 48 (Nsabimana).

<sup>1791</sup> T. 12 September 2006 pp. 15-16; T. 20 November 2006 pp. 32, 36 (Nsabimana).

<sup>1792</sup> T. 12 September 2006 p. 17 (Nsabimana); Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994); Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996).

given in similar language at the same ceremony. Taking all of the above into account, the Chamber considers that Nsabimana is not truthful and his testimony is therefore not credible with regard to his understanding of Sindikubwabo's speech on 19 April 1994 and on the impact of the speech.

890. In light of all of the above, and bearing in mind the political context in which the speech was delivered and the existence of war, the Chamber finds that the attendance of the President, Prime Minister and a number of ministers made Nsabimana's swearing-in ceremony a very important occasion. The people of Butare were looking for guidance from the Interim Government. When Sindikubwabo took the floor and made his speech, he clearly called on his audience to take action against Tutsis, which translated in their participation in the killings. The Chamber is therefore convinced that Sindikubwabo's speech of 19 April 1994 was inflammatory and called on his listeners to kill Tutsis and their accomplices.

#### **3.5.4.5 Kambanda's Speech and Sindikubwabo's Speech – Shared Themes**

891. The expert witnesses analysed various sections of Kambanda's speech, including the following excerpt:<sup>1793</sup> "I am saying this to some *bourgmestres* who I had told [*sic*] had gone training amongst the *Inkotanyi* so that they tell them that the government is determined, the state, the army and the population – we are determined to wage this war and to win it."<sup>1794</sup>

892. The speeches made by Sindikubwabo and Kambanda share a number of common themes. Both speeches underline the existence of war, urge the people of Butare to take action and warn of traitors who underwent weapons training. These common themes illustrate that the speeches were complementary and had a common purpose at the swearing-in ceremony: that of inciting the population to take action against Tutsis. The Chamber therefore considers that when Kambanda talked about not tolerating those who support the enemy and the *bourgmestres* who he had been told went to train with the *Inkotanyi*, he was in effect inciting his listeners to commit killings and violence against these people.

893. According to Witness RV, Kambanda defined the enemy as *Inkotanyi* as well as the *Inkotanyi* accomplices who were Tutsis or Hutus who had ideas that supported the RPF.<sup>1795</sup> In explaining the historical background and the set expressions and proverbs that have resulted from the word *Inkotanyi*, Ntakirutimana opined that from a day-to-day traditional Rwandan perspective, the aggressor of Rwanda, the Tutsi, was referred to as the real enemy. References to eliminating the enemy or flushing him out of the country therefore referred to Tutsis.<sup>1796</sup> Ntakirutimana explained that the linguistic expressions in the President's speech revealed that the enemy was the Tutsis and the defenceless ordinary people were the Hutus.<sup>1797</sup>

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<sup>1793</sup> Defence Exhibits 282C and 575B are translations of Kambanda's speech of 19 April 1994 and their content is substantially the same: see Defence Exhibit 282C (Nyiramasuhuko) (Kambanda's speech of 19 April 1994); Defence Exhibit 575 (Kanyabashi) (Transcript of Radio Rwanda Broadcast of Kambanda's Speech). Defence Exhibit 573B is a translation of an extract from Kambanda's speech that day taken from a Radio Rwanda broadcast; this extract does not appear in Defence Exhibits 282C and 575B.

<sup>1794</sup> Defence Exhibit 573B (Kanyabashi) (Extracts of speeches by Kambanda and Kanyabashi) p. 1.

<sup>1795</sup> T. 16 February 2004 pp. 35, 37 (ICS); T. 19 February 2004 p. 60 (ICS) (Witness RV).

<sup>1796</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 30; Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 14-15.

<sup>1797</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) pp. 14-15.

894. At the time of his testimony, Witness RV was a detained witness in Rwanda serving a sentence for his involvement in the 1994 genocide. Given his status as an accomplice witness, the Chamber will treat his evidence with appropriate caution. Bearing this in mind, the Chamber considers that Witnesses RV and Ntakirutimana described the Tutsis in Rwanda, the RPF *Inkotanyi* and Hutus in Rwanda who were dissatisfied with the regime, as falling within the definition of “enemy”. The common feature of these categories is either being Tutsi, being directly or indirectly associated with Tutsis. The Chamber considers this conclusion to be credible in the context of the events of 1994 in Rwanda. It is also supported by Sindikubwabo’s speech where he raises the issue of whether the refugees are Hutus or Tutsis. In view of the foregoing consistent evidence on the identity of the “enemy” in Rwanda in 1994, the Chamber finds that the Prosecution has established that the enemy as described in Sindikubwabo and Kambanda’s speeches were the Tutsis.

895. As regards the use of the word *gukora*, or “work”, Shimamungu identified several positive usages of the word *gukora* including to do, to act and to be occupied with.<sup>1798</sup> In his view, *gukora* did not have a coded meaning.<sup>1799</sup> Shimamungu said in his opinion that up until 19 April 1994 the word had never been used to mean “to kill Tutsis.”<sup>1800</sup> In contrast, Ntakirutimana claimed that the verb *gukora* (to work) has, since the 1959 social revolution and the abolition of the monarchy, taken on a coded meaning and come to refer to killing Tutsis. In his view, *gukora* also meant to destroy the homes of Tutsis to prevent them from returning to their home.<sup>1801</sup> Any message conveyed using this word would therefore be a very powerful one.<sup>1802</sup> Des Forges explained that in the context of the killing campaign, slaughter was known as work and machetes and firearms were described as tools.<sup>1803</sup> Witness TQ testified that he was told that during the meeting of 19 April 1994, the President expressed his anger with the people of Butare because they were not working. At that time “work” meant to kill and the President’s statement was coded language inciting people to engage in killings.<sup>1804</sup> Although this is hearsay evidence, as he was not present at the meeting, it corroborates the following testimonies.

896. Witness RV testified that “work” referred to the struggle against the enemy, *i.e.* the Tutsis.<sup>1805</sup> Reyntjens agreed that “work” in the context of genocide in Rwanda between April and July 1994 meant to kill Tutsis.<sup>1806</sup> Karemano stated that the use of the word “work” or *gukora* in Sindikubwabo’s speech was ambiguous.<sup>1807</sup> Although this witness did not hear Sindikubwabo’s speech, the statement that people should not remain indifferent and should work stuck in the people’s minds and was widely commented on.<sup>1808</sup>

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<sup>1798</sup> T. 16 March 2005 pp. 56-57 (Shimamungu).

<sup>1799</sup> T. 16 March 2005 pp. 56-57; T. 24 March 2005 p. 59; T. 30 March 2005 p. 23 (Shimamungu).

<sup>1800</sup> T. 16 March 2005 pp. 56-57 (Shimamungu).

<sup>1801</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 35.

<sup>1802</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 11.

<sup>1803</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 8.

<sup>1804</sup> T. 6 September 2004 p. 36 (ICS) (Witness TQ).

<sup>1805</sup> T. 16 February 2004 p. 35 (ICS) (Witness RV).

<sup>1806</sup> Prosecution Exhibit 151B (Speeches by Sindikubwabo and others delivered on 19 April 1994).

<sup>1807</sup> T. 5 September 2006 p. 31 (Karemano).

<sup>1808</sup> T. 5 September 2006 pp. 23-24 (Karemano).



897. Bearing in mind its finding that Shimamungu's testimony should be treated with appropriate caution, the Chamber does not consider Shimamungu's unsupported opinion on the meaning of *gukora* to be plausible. The Chamber considers Ntakirutimana's explanation to be convincing and corroborated by Expert Witness Des Forges, Witnesses TQ and RV, Expert Witness Reyntjens and Charles Karemano, both Defence witnesses. The Prosecution has established beyond a reasonable doubt that in Kambanda and Sindikubwabo's speeches of 19 April 1994, the word "work" (*gukora*) meant to kill Tutsis.

898. In light of the foregoing, the Chamber finds that Kambanda's speech was inflammatory and called upon the population to identify and kill Tutsis and their accomplices.

#### **3.5.4.6 Kanyabashi's Speech**

899. It is not disputed that Kanyabashi was present at the swearing-in ceremony on 19 April 1994 and made a speech. The Kanyabashi Defence only contends that in the circumstances, Kanyabashi could not have disapproved of anything in Sindikubwabo's speech or else he and his family would have faced death. The Defence also contends that Kanyabashi spoke before the President and in response to Kambanda, not Sindikubwabo.

#### **3.5.4.7 The Order of Speeches**

900. The expert witnesses did not provide any conclusive evidence on the order of the speeches, but Guichaoua and Des Forges agreed about the importance of determining to whom Kanyabashi was responding when he took the floor, and hypothesised that Kanyabashi spoke after Kambanda.<sup>1809</sup> Reyntjens maintained uncertainty, and admitted that he did not see the importance of determining the order of the speeches.<sup>1810</sup> From the radio broadcast that he analysed, he concluded that the order may have been Kambanda, Sindikubwabo and then Kanyabashi.<sup>1811</sup>

901. Guichaoua admitted that he could not tell in which order the speeches were broadcast on the radio.<sup>1812</sup> He used different documents and transcripts in order to determine the order of speeches, but this did not actually help him to ascertain the order of the speakers.<sup>1813</sup> However, he opined that it seemed that the President spoke after Kanyabashi, as the President arrived towards the end of the meeting.<sup>1814</sup> Based on the concluding remarks of Kambanda's speech, Guichaoua stated that Kambanda spoke before Kanyabashi.<sup>1815</sup> Guichaoua asserted that Kanyabashi's vague assertion that "we shall put into practice all that is possible by relying, in particular, on the important advice you have given us, in addition to the directives you

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<sup>1809</sup> T. 14 October 2004 p. 10 (Guichaoua); T. 9 July 2004 pp. 19-21 (Des Forges).

<sup>1810</sup> T. 22 November 2008 pp. 12, 20-21 (Reyntjens).

<sup>1811</sup> T. 20 September 2007 pp. 45, 61 (Reyntjens).

<sup>1812</sup> T. 14 October 2004 p. 11 (Guichaoua).

<sup>1813</sup> T. 14 October 2004 p. 6 (Guichaoua).

<sup>1814</sup> T. 14 October 2004 p. 6 (Guichaoua).

<sup>1815</sup> T. 14 October 2004 p. 6; T. 14 October 2004 pp. 6-7 (Guichaoua).

reminded us of”,<sup>1816</sup> signifies a firm commitment. This could have been in response to either Kambanda’s or Sindikubwabo’s speeches.<sup>1817</sup>

902. Des Forges stated that she received information on the itinerary of President Sindikubwabo, suggesting that the President was in Gikongoro on the morning of 19 April 1994, making it likely that he arrived after the meeting in Butare had begun.<sup>1818</sup> Therefore, she was not convinced that Kanyabashi had heard Sindikubwabo’s speech before he spoke at the beginning of the meeting. She did not exclude the possibility that Kanyabashi spoke after Kambanda but before the President and in the presence of both the President and Kambanda.<sup>1819</sup>

903. Nsabimana testified that Ministers Mugenzi and Niyitegeka spoke first followed by Kambanda.<sup>1820</sup> Sindikubwabo was not present when Kambanda began his speech but arrived while Kambanda was speaking.<sup>1821</sup> Sindikubwabo then took the floor followed by Nsabimana.<sup>1822</sup> After a brief address by Nsabimana, Sindikubwabo took the floor again to say that he had to leave.<sup>1823</sup> After the President left, Kambanda resumed the speech that he had started before the President’s arrival.<sup>1824</sup> After Kambanda’s speech, Kanyabashi spoke and at the end, the *bourgmestres* put questions to the Prime Minister.<sup>1825</sup>

904. Witness RV stated that the ceremony started before noon and went on into the afternoon.<sup>1826</sup> Kanyabashi was in attendance but the witness stated that he did not hear Kanyabashi on that day.<sup>1827</sup> Kambanda spoke first, followed by Sindikubwabo.<sup>1828</sup> Nsabimana took the floor and expressed his thanks.<sup>1829</sup>

905. Nyiramasuhuko testified that she arrived at the ceremony around 10.00 a.m. The President had not yet arrived. He arrived when Nyiramasuhuko was already inside the hall and left while she was still there.<sup>1830</sup> This was consistent with Nsabimana’s testimony on Sindikubwabo’s presence at the ceremony.<sup>1831</sup> The President and the Prime Minister both delivered speeches.<sup>1832</sup> Nyiramasuhuko did not specify who spoke first or whether Nsabimana or Kanyabashi delivered speeches that day.

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<sup>1816</sup> Prosecution Exhibit 149C (Translation of Speech by Kanyabashi); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 24.

<sup>1817</sup> T. 14 October 2004 p. 9 (Guichaoua).

<sup>1818</sup> T. 9 July 2004 pp. 19-21 (Des Forges).

<sup>1819</sup> T. 9 July 2004 pp. 20-21 (Des Forges).

<sup>1820</sup> T. 12 September 2006 pp. 9-11 (Nsabimana).

<sup>1821</sup> T. 12 September 2006 p. 13 (Nsabimana).

<sup>1822</sup> T. 12 September 2006 pp. 14, 20 (Nsabimana).

<sup>1823</sup> T. 12 September 2006 p. 30 (Nsabimana).

<sup>1824</sup> T. 12 September 2006 pp. 20-21, 28-30 (Nsabimana).

<sup>1825</sup> T. 12 September 2006 pp. 28-30 (Nsabimana).

<sup>1826</sup> T. 19 February 2004 p. 25 (ICS) (Witness RV).

<sup>1827</sup> T. 16 February 2004 pp. 33-34 (ICS); T. 19 February 2004 pp. 25-26, 58-59 (ICS) (Witness RV).

<sup>1828</sup> T. 19 February 2004 p. 26 (ICS) (Witness RV).

<sup>1829</sup> T. 16 February 2004 p. 38 (ICS) (Witness RV).

<sup>1830</sup> T. 26 October 2005 p. 65 (Nyiramasuhuko).

<sup>1831</sup> T. 11 September 2006 pp. 79-80 (Nsabimana).

<sup>1832</sup> T. 26 October 2005 p. 65 (Nyiramasuhuko).

906. Nyiramasuhuko and Nsabimana are co-Accused together with Kanyabashi, and as such they may have had an incentive to implicate Kanyabashi in order to deflect potential liability. Nevertheless, the Chamber considers that on the specific issue of who spoke at the ceremony or the order of speeches, Nyiramasuhuko and Nsabimana are credible. Their testimonies provided a detailed, eyewitness account of the ceremony, which was not contradicted by any other source. Nsabimana, in particular, corroborates Guichaoua and Des Forges in his assertion that Kanyabashi spoke after Kambanda. Nyiramasuhuko's diary entry for 10 February 1994 reads that the representatives of the *bourgmestres*, the new *préfet* and the President spoke. According to the diary, the last person to have spoken seemed to have been the President.<sup>1833</sup>

907. The Chamber therefore considers their testimony plausible and reliable on this particular issue. Although Witness RV's status as a detained witness and an accomplice renders him capable of bias, the Chamber does not find that he had any reason to lie on the issue of the order of speeches. As such, the Chamber considers his testimony to be reliable in this regard. Witness RV corroborates Nsabimana's testimony that Kambanda spoke first followed by Sindikubwabo and Nsabimana.

908. The Chamber notes Witness RV's evidence that he did not "hear" Kanyabashi speak during the ceremony.<sup>1834</sup> However, the Chamber does not consider that this contradicts Nsabimana's testimony that Kanyabashi spoke at the ceremony. Witness RV's evidence on this point was in response to the following specific question: "Is it correct to say, Witness, that during the meeting for the swearing-in, the swearing-in of 19 April 1994, you did not hear any statement from Kanyabashi inciting people to kill the Tutsi?"<sup>1835</sup> The fact that Witness RV did not hear Kanyabashi incite people to kill Tutsis does not exclude the possibility that Kanyabashi addressed the attendees at the end of the ceremony. Similarly, the fact that Nyiramasuhuko did not mention Nsabimana's or Kanyabashi's speeches during her testimony does not mean that they did not take the floor.

909. Nsabimana's testimony on the order of the speeches is supported by Des Forges who stated that, following the usual order of precedence, a *bourgmestre* would not have spoken between the Prime Minister and the President; normally the least important authority would either speak first or last.<sup>1836</sup> The Chamber considers this explanation by Des Forges to be plausible. Although Des Forges was clearly speculating, as she herself was unconvinced that Kanyabashi heard the President's speech,<sup>1837</sup> the Chamber considers it logical that the only reason Kanyabashi did not mention Sindikubwabo in his speech was because Sindikubwabo was not present at the time Kanyabashi made his speech, having left during the ceremony.

910. In light of all the evidence, the Chamber considers that Nsabimana's account of the order of the speeches, which is supported by Nyiramasuhuko and to a certain extent, Des Forges, is the more convincing account. The Chamber concludes that Kanyabashi spoke after having heard the inflammatory speeches of both Kambanda and Sindikubwabo. The reason why Kanyabashi made no reference to Sindikubwabo in his speech was because by the time

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<sup>1833</sup> T. 14 October 2004 p. 16 (Guichaoua).

<sup>1834</sup> T. 19 February 2004 p. 58 (ICS) (Witness RV).

<sup>1835</sup> T. 19 February 2004 p. 58 (ICS) (Witness RV).

<sup>1836</sup> T. 9 July 2004 pp. 20-21 (Des Forges).

<sup>1837</sup> T. 9 July 2004 pp. 20-21 (Des Forges).

Kanyabashi took the floor, Sindikubwabo had left the ceremony. Additionally, Sindikubwabo and Kambanda did not refer to Kanyabashi's speech in their own speeches because Kanyabashi had not yet spoken.

#### 3.5.4.8 Content of Kanyabashi's Speech

911. The Chamber recalls its finding that Kambanda and Sindikubwabo's speeches were inflammatory and that Kanyabashi took the floor after those speeches. The Chamber notes that in common with Sindikubwabo and Kambanda, Kanyabashi also referred to "enemies".<sup>1838</sup> Ntakirutimana explained that in his speech, Kanyabashi promised that the inhabitants of Butare *préfecture* and their authorities would do everything possible to support the Kambanda Government and the army, preserve the sovereignty of the country and safeguard security.<sup>1839</sup> He also considered that the following sentence illustrated that the Prime Minister's orders were to be strictly followed:

Prime Minister, it is difficult to find the right words during these difficult times, but we assure you that we shall put into practice all that is possible by relying, in particular, on the important advice you have given us, in addition to the directives you reminded us of. We, in turn, at our level, and the population at all levels, shall do all we possibly can to safeguard together the security of our *préfecture*.<sup>1840</sup>

912. Ntakirutimana further identified multiple repetitions of key words in Kanyabashi's speech, such as Prime Minister, the population and the death of the President. Ntakirutimana concluded that Kanyabashi staunchly supported the Prime Minister's directives.<sup>1841</sup>

913. Guichaoua opined that Kanyabashi's speech was an expression of the *préfecture's* support for the policies of the Government.<sup>1842</sup> Reyntjens disagreed and stated that when Kanyabashi delivered his speech he did not have any choice and had to say something. His speech was unprepared. As the elder of the *bourgmestres* in Butare *préfecture*, any refusal to speak by Kanyabashi would have been seen as a hostile act in view of what had been said by the President and the Prime Minister.<sup>1843</sup>

914. The Chamber recalls Reyntjens' testimony that he did not consider Kanyabashi as a friend but as an acquaintance and that his relationship with Kanyabashi did not have any impact on his independent opinion as an expert.<sup>1844</sup> Reyntjens said that he had brief conversations with Kanyabashi in the street, he shared a drink with Kanyabashi four or five times, but they never visited each other's homes.<sup>1845</sup>

915. However, Reyntjens confirmed that Kanyabashi named him as his lawyer before Investigating Judge Vandermeersch in Belgium, in 1995. However, Reyntjens said that he did not talk to Kanyabashi after his arrest, or represent Kanyabashi as he was not a practicing

<sup>1838</sup> Prosecution Exhibit 149C (Translation of Speech by Kanyabashi).

<sup>1839</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 7.

<sup>1840</sup> Prosecution Exhibit 149C (Translation of Speech by Kanyabashi); Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) p. 8.

<sup>1841</sup> Prosecution Exhibit 161B (*Kanyabashi's Unswerving Support*, by Ntakirutimana) pp. 8-9.

<sup>1842</sup> T. 14 October 2004 p. 22 (Guichaoua).

<sup>1843</sup> T. 20 September 2007 p. 62 (Reyntjens).

<sup>1844</sup> T. 20 September 2007 p. 11 (Reyntjens).

<sup>1845</sup> T. 20 September 2007 p. 10; T. 21 November 2008 pp. 8-9 (Reyntjens).

lawyer at the time.<sup>1846</sup> Reyntjens confirmed that Defence Exhibit 584B was his statement to Judge Vandermeersch in Brussels on 31 July 1995 concerning the genocide in Rwanda. In that statement, Reyntjens indicated that he had known Kanyabashi for a long time and that “he knew him as somebody who never practiced ethnic discrimination and who always did everything to maintain peace in his *commune*.”<sup>1847</sup>

916. In light of the foregoing, the Chamber considers that although Reyntjens may have downplayed his knowledge of and friendship with Kanyabashi during his testimony, he had known and been friends with Kanyabashi for a long time. For this reason, the Chamber finds that Reyntjens’ testimony and Report, with respect to Kanyabashi’s speech, might have been biased in Kanyabashi’s favour. His testimony in relation to Kanyabashi should therefore be treated with appropriate caution.

917. The Chamber considers Ntakirutimana and Guichaoua’s analyses to be more reliable than Reyntjens’ and further considers that they are corroborated by a plain reading of Kanyabashi’s speech. The Chamber recalls the words used by Kanyabashi when he concluded his speech (reproduced above) and is of the view that they constituted an unambiguous commitment to support the objectives of the Interim Government as set forth in the speeches of Sindikubwabo and Kambanda.

918. The Chamber finds that Kanyabashi did not dissociate himself from the inflammatory statements made by the President or the Prime Minister. Furthermore, having analysed the content of Kanyabashi’s speech, the Chamber finds that this speech was in support of Sindikubwabo and Kambanda and contained a commitment to execute the directives and instructions previously announced by the President and Prime Minister.

#### **3.5.4.9 Nyiramasuhuko’s Presence**

919. It is not disputed that Nyiramasuhuko was present at the swearing-in ceremony. Nyiramasuhuko acknowledges having been present as part of the Government delegation as a Minister.<sup>1848</sup> The content of Sindikubwabo’s speech has been discussed at length above and the Chamber recalls its finding that it was inflammatory.

920. In the Chamber’s view, it is understandable that Nyiramasuhuko, as a minister in Sindikubwabo’s Interim Government, would maintain that the President preached peace in his speech. Nonetheless, this illustrates that Nyiramasuhuko believed in and supported the actions of the Government, of which she was a member, when it issued its inflammatory instructions to the people of Butare. The Chamber finds that Nyiramasuhuko ascribed to and supported the policies of the Government of which she was a member, as set forth in Sindikubwabo’s speech. Accordingly, her silence constituted tacit approval of those policies.

921. For the foregoing reasons, the Chamber finds that Nyiramasuhuko’s presence at the swearing-in ceremony and her failure to dissociate herself from the statements made by the President and Prime Minister, constituted tacit approval of their inflammatory statements.

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<sup>1846</sup> T. 21 November 2007 pp. 11-12 (Reyntjens).

<sup>1847</sup> T. 21 November 2007 pp. 12-14 (Reyntjens); Defence Exhibit 584B (Ndayambaje) (Statement of Reyntjens to Judge Vendermeersch, 31 July 1995).

<sup>1848</sup> T. 26 October 2005 p. 63 (Nyiramasuhuko).

#### 3.5.4.10 Nsabimana's Presence

922. It is not disputed that Nsabimana was present at his swearing-in ceremony. Nsabimana acknowledges that he was there and provides an account of how he learned of the appointment.<sup>1849</sup>

923. When Nsabimana learned of his appointment as *préfet*, he made an informed decision, as an adult of sound mind, to accept the offer. When he was first approached by Ndungutse and Bashimiki to become *préfet*, Nsabimana told them to return only if they failed to find another candidate. Nsabimana did not reject the proposal outright nor did he give any indication of his unwillingness to take up this political position. Furthermore, when Nsabimana heard of his appointment over the radio on 18 April 1994, he took no steps to distance himself from the appointment nor did he make any attempt to decline the position.

924. The Chamber recalls its finding above that Nsabimana's testimony that he did not understand the content and import of the President's speech was not credible. Accordingly, the Chamber finds that he was present at the ceremony as a political appointee and failed to dissociate himself from the statements made by the President and Prime Minister. In doing so, the Chamber considers that he gave his tacit approval to the President's and Prime Minister's inflammatory statements.

#### 3.5.4.11 Conclusion to Nsabimana's Swearing-in Ceremony

925. In light of all of the above, the Chamber finds that the speeches delivered by Sindikubwabo and Kambanda at Nsabimana's swearing-in ceremony on 19 April 1994 were inflammatory and contained coded language that was understood by the attendees and the public. In particular, the Chamber considers that "enemy" meant Tutsis and the word "work" (*gukora*) meant to kill Tutsis.

926. The Chamber further finds that the presence of Nyiramasuhuko, Kanyabashi and Nsabimana at the ceremony and their failure to dissociate themselves from the statements made by the President and Prime Minister constituted tacit approval of their inflammatory statements and the directives and instructions to the population contained therein. In addition, with respect to Kanyabashi specifically, the Chamber considers that Kanyabashi's speech was in support of Sindikubwabo and Kambanda, and contained a commitment to execute the directives and instructions previously announced by the President and Prime Minister.

#### 3.5.4.12 Start of Widespread Killings in Butare Préfecture

927. Although there is some evidence suggesting that a few large-scale massacres occurred around 17 and 18 April 1994,<sup>1850</sup> there is overwhelming evidence that massacres in most of the Butare *communes* started in the wake of the events of 19 April 1994.

928. Witness FAM testified that killings started after 20 April 1994, when Kanyabashi came to the *secteur* office to tell the *conseiller* that the killing had already finished elsewhere and to

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<sup>1849</sup> T. 11 September 2006 pp. 71, 73-74, 78; T. 12 September 2006 pp. 7-8 (Nsabimana).

<sup>1850</sup> T. 14 September 2006 pp. 70, 72 (Nsabimana); Prosecution Exhibit 110A (Des Forges Expert Report) pp. 18, 74-75; T. 12 December 2007 p. 16 (ICS) (Witness D-2-5-I); T. 19 November 2008 p. 29 (Ndayambaje); T. 18 September 2008 p. 35 (Brother Stan).

ask him when he was going to start.<sup>1851</sup> Witness QBU testified that in Rususa *cellule*, killings of Tutsis began around 20 April 1994.<sup>1852</sup> Witness QCB estimated the killings started in Nyakizu, Runyinya and Gishamvu *communes*, on 20 April 1994.<sup>1853</sup> Witness FAI testified that killings started in Nyabisindu *commune* two weeks after the death of the President, or around 20 April 1994.<sup>1854</sup> He also testified that killings started in Muyira *commune* around the middle of April, but was not more specific.<sup>1855</sup> Witness QI testified that the killings began in his *secteur* on 21 and 22 April 1994.<sup>1856</sup> Witnesses FAB, FAE, Defence Witness WMCZ and Ndayambaje estimated that killings began on dates between 21 and 27 April 1994 in Muyaga, Ngoma, Ndora and Muganza *communes*, respectively.<sup>1857</sup> These *communes* are located in central or eastern Butare *préfecture*.<sup>1858</sup> None of these witnesses estimated that killings began prior to 17 April 1994.

929. Witness QAH's testimony was inconsistent in this regard. He stated that killings only started after *Préfet* Habyalimana's assassination was announced,<sup>1859</sup> which, based on the evidence of Des Forges, Guichaoua and Nyiramasuhuko, was in May or June 1994.<sup>1860</sup> Witness QAH fluctuated between stating that killings started after 10 April 1994, and asserting that he could not remember the date the killings began.<sup>1861</sup> The Chamber concludes that Witness QAH's recollection as to the date killings began is unreliable.

930. The variation in the exact date identified by the witnesses is plausible considering each resided in different *communes* in April to July 1994. In addition, the evidence of Witnesses FAB, FAE, WMCZ, Ntakirutimana and Ndayambaje was corroborated by Prosecution Witnesses RV and QJ and Expert Witnesses Des Forges and Guichaoua.<sup>1862</sup> The Chamber finds that widespread killings of Tutsis did not occur in Butare *préfecture* prior to 19 April 1994.

### 3.5.5 Conclusion

931. Expert Witnesses Guichaoua and Des Forges testified that the genocide would not have occurred within Butare *préfecture* if *Préfet* Habyalimana had not been removed from office.<sup>1863</sup> Expert Witness Reyntjens asserted that *Préfet* Habyalimana's removal triggered the

<sup>1851</sup> T. 6 March 2002 pp. 59-61 (ICS) (Witness FAM).

<sup>1852</sup> T. 13 April 2004 pp. 38, 41-42 (ICS) (Witness QBU).

<sup>1853</sup> T. 26 March 2002 p. 64 (Witness QCB).

<sup>1854</sup> T. 4 November 2002 p. 14 (Witness FAI).

<sup>1855</sup> T. 4 November 2002 p. 15 (Witness FAI).

<sup>1856</sup> T. 23 March 2004 p. 34 (Witness QI).

<sup>1857</sup> T. 5 April 2004 p. 41 (Witness FAB); T. 17 March 2004 p. 70 (Witness FAE); T. 18 March 2004 pp. 7, 24-25, 63-64 (Witness FAE); T. 2 February 2005 p. 30 (Witness WMCZ); T. 19 November 2008 p. 40 (Ndayambaje); see also Prosecution Exhibit 1 (Map of Butare).

<sup>1858</sup> See Prosecution Exhibit 1 (Map of Butare).

<sup>1859</sup> T. 8 April 2004 p. 11 (Witness QAH).

<sup>1860</sup> T. 15 June 2004 pp. 67-68, 77-78 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 55; Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 123; T. 28 September 2005 p. 49 (Nyiramasuhuko).

<sup>1861</sup> T. 8 April 2004 pp. 9, 12 (Witness QAH).

<sup>1862</sup> T. 17 February 2004 pp. 56-57 (ICS) (Witness RV); T. 13 November 2001 p. 117 (Witness QJ); T. 5 July 2004 p. 39 (Des Forges); T. 9 July 2004 pp. 8-9 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) pp. 16, 18; Prosecution Exhibit 1 (Map of Butare); T. 7 October 2004 p. 53 (Guichaoua).

<sup>1863</sup> T. 8 July 2004 p. 83 (Des Forges); T. 23 June 2004 p. 23 (Guichaoua); T. 7 October 2004 p. 36 (Guichaoua).

start of the large-scale massacres in Butare.<sup>1864</sup> The Chamber is not bound by the Expert Witnesses' opinions in this regard. However, in view of the evidence that large-scale killings did not occur in the heart of Butare *préfecture* until after the removal of *Préfet* Habyalimana, and the substantial work performed by Des Forges and Guichaoua in their research into the history of the Rwandan genocide, the Chamber accepts that the removal of *Préfet* Habyalimana was one of the events that triggered the start of mass-killings in Butare *préfecture*. Furthermore, the Chamber finds that as long as *Préfet* Habyalimana stayed in office, he was a major force in limiting killings within the *préfecture*.

932. Regarding President Sindikubwabo's speech, Expert Witness Ntakirutimana stated that the aim of a speech may be judged by the results achieved in its aftermath.<sup>1865</sup> An audience's reaction to a speech makes it possible to evaluate the impact of the speech.<sup>1866</sup> Likewise, Charles Karemano testified that from 19 April 1994 onwards, he heard many comments about Sindikubwabo's speech, especially in relation to the statement that people should not remain indifferent and should work.<sup>1867</sup> Here, the meaning of the President's statements was easy to ascertain when viewed against the background of the events that occurred after 19 April 1994.<sup>1868</sup> People used the speech to legitimate their actions.<sup>1869</sup> The Chamber finds that the inflammatory nature of the speeches delivered at the swearing-in ceremony on 19 April 1994 in Butare, also triggered the widespread killings and large-scale massacres in Butare *préfecture*.

933. Recalling its finding that widespread killings of Tutsis did not occur in Butare *préfecture* prior to 18 or 19 April 1994, and in light of the foregoing, the Chamber finds that the removal of *Préfet* Habyalimana, the appointment of Nsabimana as *préfet*, and the speeches at Nsabimana's swearing-in ceremony were factors that were consistent with the commencement of widespread killings and large-scale massacres throughout Butare *préfecture*, including in the large number of *communes* that had resisted such massacres until that time.

### 3.6 Events After 19 April 1994

#### 3.6.1 Arrival of Soldiers at Butare Airport, 20 April 1994

##### 3.6.1.1 Introduction

934. Each of the Indictments alleges that on 20 April 1994, two military planes landed in Butare, transporting numerous Presidential Guard and Para-Commando Battalion soldiers. According to each of the Indictments these soldiers, in tandem with the *Interahamwe* of

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<sup>1864</sup> T. 25 September 2007 p. 62; T. 21 November 2001 pp. 24, 42 (Reyntjens).

<sup>1865</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 3, para. 4.

<sup>1866</sup> Prosecution Exhibit 159B (*Tolerance or Intransigence*, by Ntakirutimana) p. 20.

<sup>1867</sup> T. 5 September 2006 pp. 23-24 (Karemano).

<sup>1868</sup> T. 5 September 2006 p. 25 (Karemano).

<sup>1869</sup> T. 5 September 2006 p. 27 (Karemano).



Butare, took part in murdering and massacring civilians, notably Rosalie Gicanda, the former Tutsi Queen of Rwanda.<sup>1870</sup>

935. The Prosecution did not make any submissions on this allegation.

936. The Ntahobali Defence disputes that a large plane landed in Butare to deliver the *Interahamwe* and soldiers, as the Butare airport was too small to accommodate a jumbo aircraft.<sup>1871</sup> The Ntahobali Defence relies on the testimony of Witness WDUSA.

937. The other Defence teams do not dispute that a plane landed in Butare around 20 April 1994 but submit that the purpose of the plane was to evacuate expatriates. The Kanyabashi Defence relies on the evidence of Prosecution Expert Witness Alison Des Forges in this regard.<sup>1872</sup> Des Forges, Prosecution Witnesses QA, QAH, Kanyabashi Defence Witnesses D-2-5-W, D-13-D and D-9-U, Nyiramasuhuko Defence Witness WBTT and Kanyabashi Defence Expert Witness Reyntjens all gave evidence that a plane landed in Butare around 20 April 1994.

### **3.6.1.2 Preliminary Issues**

938. The Chamber notes that this allegation is not in support of any counts against any of the Accused. The Prosecution did not make any submission in this respect. Therefore, the Chamber declines to make any finding in respect of this allegation.

### **3.6.1.3 Evidence**

#### Prosecution Witness QA

939. Witness QA testified that at the end of a meeting held at Ngoma *secteur* office around 18 April 1994, at around 5.30 p.m., people attending the meeting heard an engine noise, like the sound of a helicopter that was landing at the Butare airfield.<sup>1873</sup> On the day after the meeting, he saw many *Interahamwe*, wearing *kitenge* clothing and berets with the effigy of the President.<sup>1874</sup> There were also several soldiers in the city of Butare.<sup>1875</sup>

940. Witness QA stated that he went to the airport at about 9.00 a.m. the next day.<sup>1876</sup> He saw the plane and was told that on that plane, *Interahamwe* and soldiers or Presidential Guards arrived in the area.<sup>1877</sup>

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<sup>1870</sup> Para. 6.23 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Para. 6.23 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Para. 6.23 of the Kanyabashi Indictment (not in support of counts); Para. 6.23 of the Ndayambaje Indictment (not in support of counts).

<sup>1871</sup> Ntahobali Closing Brief, Appendix 3, para. 41.

<sup>1872</sup> Kanyabashi Closing Brief, para. 32.

<sup>1873</sup> T. 18 March 2004 pp. 81, 83; T. 22 March 2004 p. 6 (Witness QA).

<sup>1874</sup> T. 18 March 2004 p. 83 (Witness QA).

<sup>1875</sup> T. 18 March 2004 p. 83 (Witness QA).

<sup>1876</sup> T. 22 March 2004 p. 37 (Witness QA).

<sup>1877</sup> T. 18 March 2004 p. 83; T. 22 March 2004 p. 35 (Witness QA).

Prosecution Witness QAH

941. Witness QAH stated that he heard of the arrival of the Presidential Guards by aircraft at the Butare airport and he heard they had killed *Préfet* Habyalimana and had started the killings in Butare town.<sup>1878</sup> The witness was unable to provide a specific time or date of arrival.<sup>1879</sup>

Prosecution Expert Witness Alison Des Forges

942. Alison Des Forges stated in her Report that militiamen and members of the Presidential Guard from Kigali arrived by plane in Butare before 20 April 1994.<sup>1880</sup>

943. She later acknowledged that the statement in her Report about the Presidential Guard flying into Butare airport was erroneous.<sup>1881</sup> According to the witness, this was a rumour prevalent in Butare at the time. On further investigation she discovered that the airplane which flew into Butare airport was actually a Belgian C-130 which landed to evacuate UN military observers and a group of Spanish nuns.<sup>1882</sup> Des Forges learned that the airplane was in fact dispatched by the UN through documents recording the movement of airplane related to the UN force.<sup>1883</sup>

Nyiramasuhuko Defence Witness WBTT

944. Witness WBTT testified that she and her children were evacuated on 20 April 1994 in a Belgian plane which had come from Bujumbura to Butare to evacuate nuns.<sup>1884</sup>

Kanyabashi Defence Witness D-2-5-W

945. Witness D-2-5-W testified that on the afternoon of 20 April 1994, a huge military aircraft landed at Butare airport. The aircraft had difficulties to land but managed after a third attempt.<sup>1885</sup>

Kanyabashi Defence Witness D-13-D

946. Witness D-13-D, a driver from Huye *commune*, testified that on the night of 19 April 1994, between 11.00 p.m. and midnight, the population of Butare town heard an aircraft arriving that made a lot of noise. Very early the next morning, attacks were launched against the residence of Madam Kabatesi and the massacres began in Mpare *secteur*.<sup>1886</sup> The following day some people said that the plane carried Presidential Guards or *Interahamwe* to perpetrate killings; others said the plane came to evacuate Belgians.<sup>1887</sup>

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<sup>1878</sup> T. 8 April 2004 p. 27 (Witness QAH).

<sup>1879</sup> T. 8 April 2004 p. 27 (Witness QAH).

<sup>1880</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 29; T. 9 July 2004 pp. 24-25 (Des Forges).

<sup>1881</sup> T. 10 June 2004 p. 49 (Des Forges).

<sup>1882</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 29, fn. 80; T. 10 June 2004 p. 49 (Des Forges).

<sup>1883</sup> T. 17 June 2004 pp. 16-17 (Des Forges).

<sup>1884</sup> T. 31 May 2005 pp. 43-45, 48, 63 (ICS) (Witness WBTT).

<sup>1885</sup> T. 12 September 2007 p. 20 (Witness D-2-5-W).

<sup>1886</sup> T. 14 February 2008 p. 49 (ICS) (Witness D-13-D).

<sup>1887</sup> T. 19 February 2008 pp. 40-41 (ICS) (Witness D-13-D).

Kanyabashi Defence Witness D-9-U

947. Witness D-9-U, a farmer from Nkima *secteur*, testified that about two weeks after the death of President Habyarimana, a huge aircraft landed at Butare. The witness placed this event three days after the population had started to guard the border to push back assailants from Huye.<sup>1888</sup> The following morning, many soldiers accompanied by *Interahamwe* were seen around the area and it was on that day that the search for Tutsis began.<sup>1889</sup>

Ntahobali Defence Witness WDUSA

948. Witness WDUSA stated that due to the small size of the Butare airstrip it was not possible and was prohibited for planes larger than 20 seats to land there.<sup>1890</sup> The witness said that his statements regarding the size of an aeroplane referred to civilian planes only, and that military planes like the C-130 do not need a long landing strip to land.<sup>1891</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

949. Filip Reyntjens testified that on 20 April 1994 a Belgian military aircraft landed in Butare to evacuate expatriates and Spanish religious persons.<sup>1892</sup>

**3.6.1.4 Deliberations**

950. The Prosecution and Defence evidence suggests that a plane indeed landed in Butare around 20 April 1994. The Chamber does not consider the fact that the plane carried soldiers and *Interahamwe* on board to be established. On this point, the Chamber has heard the hearsay testimonies of Prosecution Witnesses QA and QAH, and those of Kanyabashi Defence Witnesses D-9-U and D-13-D.

951. The Chamber is reluctant to give weight to Witness QA's testimony without corroboration due to serious reservations about his credibility. During his first appearance before this Chamber Witness QA gave false testimony at the request of individuals living in Rwanda.<sup>1893</sup> The Chamber is also reluctant to give weight to the hearsay testimony of detainee Witness QAH without corroboration due to reservations about his credibility. In addition, Des Forges testified that her statement about a plane bringing soldiers to Butare in her Report was a mistake and that the plane was in fact arriving to evacuate foreigners.<sup>1894</sup> Her testimony was corroborated by Defence Witness WBTT and Reyntjens.<sup>1895</sup>

952. The Chamber considers that the Prosecution has not led sufficient evidence to support the allegation that soldiers arrived in Butare by airplane and that these soldiers in tandem with the *Interahamwe*, took part in murdering and massacring civilians in Butare, notably the former Queen of Rwanda, Rosalie Gicanda.

<sup>1888</sup> T. 4 February 2008 p. 30 (ICS) (Witness D-9-U).

<sup>1889</sup> T. 4 February 2008 p. 30 (ICS) (Witness D-9-U).

<sup>1890</sup> T. 3 April 2006 p. 70 (ICS) (Witness WDUSA).

<sup>1891</sup> T. 4 April 2006 p. 22 (ICS) (Witness WDUSA).

<sup>1892</sup> T. 24 September 2007 p. 42 (Reyntjens).

<sup>1893</sup> T. 30 October 2008 p. 52 (Witness QA).

<sup>1894</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 29, fn. 80; T. 10 June 2004 p. 49 (Des Forges).

<sup>1895</sup> T. 31 May 2005 pp. 43-45 (ICS) (Witness WBTT); T. 24 September 2007 p. 42 (Reyntjens).

### 3.6.2 Meeting with *Bourgmestres* and Gatonde Secteur Meeting, 20 April 1994

#### 3.6.2.1 Introduction

953. The Nsabimana and Nteziryayo Indictment alleges that in the days following his taking office, Nsabimana called a meeting of all the *bourgmestres* of the *préfecture* where he was informed of the extent of the massacres of Tutsis that had begun in Butare. The Indictment alleges that Nsabimana took no decision, nor did he propose any measures to stop the massacres, and thus, the *bourgmestres* returned to their *communes* and ordered the massacres to continue, and that the administrative authorities who opposed this order were dismissed.<sup>1896</sup>

954. The Prosecution further submits, without giving a precise time frame, that Nsabimana participated in numerous meetings in Butare *préfecture* during which decisions were made to further the extermination of Tutsis.<sup>1897</sup> Nsabimana's role in the conspiracy to commit genocide was, *inter alia*, to convene and attend meetings to give effect to the plan.<sup>1898</sup> The Prosecution contends that every meeting resulted in a decision leading to the execution of the common plan to kill Tutsis. The conspiracy was continuous and endorsed in subsequent meetings held by the Accused, including Nsabimana.<sup>1899</sup>

955. Specifically, the Prosecution submits that on 20 April 1994, Nsabimana convened a meeting bringing together the *bourgmestres* of the *préfecture* where he revisited the objectives, which consisted of fighting the enemy and erecting roadblocks to prevent the enemy from taking up positions in the country. The enemy, as described by Prime Minister Kambanda at the 19 April 1994 meeting, were described as Tutsis, the *Inkotanyi* and Tutsi accomplices.<sup>1900</sup> The participants at the meeting are alleged to have agreed that the "infiltrators" were responsible for the violence and the local Tutsi residents were armed RPF agents. The Prosecution argues that this meeting planned ahead for the hunt that would follow the first massacres; the participants talked of eliminating hiding places, such as empty houses, and of directing all residents to cut the "brush" around their houses.<sup>1901</sup> According to the Prosecution, the meeting destroyed the last hope of most *bourgmestres* opposed to the genocide, and the only inference to be drawn from this meeting (and the 19 April 1994 meeting) is that massacres of Tutsis were planned, as evidence shows that massacres took place at Kabakobwa, Matyazo, Kabuye Hill and elsewhere in Butare.<sup>1902</sup> In support of its submissions, the Prosecution relies on the testimony of Prosecution Witness RV and Prosecution Expert Witnesses André Guichaoua and Alison Des Forges.

956. The Prosecution also refers to a meeting that allegedly took place in Gatonde *secteur*, Ntyazo *commune*, Butare *préfecture*, at the end of April 1994. It alleges that the purpose of this meeting was to inform the participants that orders had been given from a meeting held in Butare to kill the Tutsis. The president of the MDR party in Gatonde *secteur* chaired the meeting and told the participants that Nsabimana had openly told him that killing Tutsis should

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<sup>1896</sup> Para. 6.26 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>1897</sup> Prosecution Closing Brief, p. 231, para. 9.

<sup>1898</sup> Prosecution Closing Brief, p. 232, paras. 14-15.

<sup>1899</sup> Prosecution Closing Brief, p. 238, para. 34.

<sup>1900</sup> Prosecution Closing Brief, pp. 236-237, para. 32.

<sup>1901</sup> Prosecution Closing Brief, p. 237, para. 32.

<sup>1902</sup> Prosecution Closing Brief, p. 236, para. 32; p. 403, para. 64.

not be only the responsibility of other *préfectures* but that Butare should do the same. The Prosecution alleges that after this meeting, the Gatonde *conseiller* assembled members of the population from the *secteur* and told them that the Tutsis had been delivered to be killed, given that they had plotted against the government. The few Tutsis present fled and the Hutus started burning their houses, and after this meeting Hutus started killing Tutsis at roadblocks.<sup>1903</sup> In support of its submissions, the Prosecution relies on Witness FAI.

957. The Nsabimana Defence does not challenge the Prosecution's allegation that on 19 April 1994, Nsabimana called a meeting of all the *bourgmestres* for the following day.<sup>1904</sup> However, in addition to its submission that Paragraph 6.26 of the Indictment is unduly vague, addressed below, the Nsabimana Defence, relying on Nsabimana's testimony, rejects the allegation that during this meeting Nsabimana was informed about the massacres in the *préfecture*, as well as any implicit allegation that the purpose of the meeting was to launch, extend or organise killings in Butare.<sup>1905</sup> The Defence submits that Nsabimana, as the newly installed *préfet*, requested the meeting to be informed about the current situation in the *préfecture*.<sup>1906</sup> The Nsabimana Defence asserts that none of the Prosecution witnesses testified to Nsabimana having received information on the extent of the massacres in Butare during the alleged meeting.<sup>1907</sup> The Nsabimana Defence denies that the purpose of the 20 April 1994 meeting was to organise killings and denies that the meeting was the catalyst for massacres in Butare *préfecture*.<sup>1908</sup> Nsabimana testified on his own behalf with respect to this allegation.

958. Further, the Nsabimana Defence submits that Nsabimana cannot be held responsible for the dismissal of the three *bourgmestres* on 17 June 1994, since he neither took that decision nor instigated it.<sup>1909</sup> The Nsabimana Defence further refers to the killing of some *bourgmestres* which occurred sometime after the 20 April 1994 meeting, and argues that there is confusion in the Prosecution's case because no link has been established between the 20 April 1994 meeting and these deaths.<sup>1910</sup> In support of its submission, the Nsabimana Defence relies on Prosecution Witness RV and Expert Witness André Guichaoua.

959. Regarding the allegation concerning the meeting in Gatonde *secteur*, the Nsabimana Defence submits that Witness FAI's testimony cannot be relied upon because it is not credible.<sup>1911</sup>

### 3.6.2.2 Preliminary Issues

960. The Nsabimana Defence submits that Paragraph 6.26 of the Nsabimana and Nteziryayo Indictment is unduly vague in that it does not provide the date or place of the meeting specified, the names of the *bourgmestres* in attendance, or the identity of the authorities who

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<sup>1903</sup> Prosecution Closing Brief, p. 238, para. 34.

<sup>1904</sup> Nsabimana Closing Brief, para. 254.

<sup>1905</sup> Nsabimana Closing Brief, para. 254; T. 12 September 2006 pp. 61-64 (Nsabimana).

<sup>1906</sup> T. 12 September 2006 pp. 61-64 (Nsabimana).

<sup>1907</sup> Nsabimana Closing Brief, paras. 257, 259.

<sup>1908</sup> Nsabimana Closing Brief, paras. 299, 303.

<sup>1909</sup> Nsabimana Closing Brief, paras. 317-322.

<sup>1910</sup> Nsabimana Closing Brief, paras. 323-330.

<sup>1911</sup> Nsabimana Closing Brief, para. 278.

were allegedly dismissed for opposing the order to carry on the massacres.<sup>1912</sup> The Prosecution concedes that the date of 20 April 1994 was not specifically pled in Paragraph 6.26 of the Nsabimana and Nteziryayo Indictment, but argues that a reading of the Indictment in its entirety makes clear that Nsabimana had notice that the meeting would fall within Paragraph 6.26.<sup>1913</sup>

961. The Chamber notes that while Paragraph 6.26 of the Nsabimana and Nteziryayo Indictment makes a general accusation that Nsabimana called a meeting of all the *bourgmestres* of the *préfecture* in the days following his taking office, the reference to the alleged meeting in the Indictment is exceedingly broad, and did not adequately provide Nsabimana with sufficient notice to prepare his defence with respect to this allegation. The Indictment is therefore defective in this respect.

962. Recalling the principles of notice previously articulated in this Judgement (), the Chamber must determine whether Paragraph 6.26 was cured of its defects through subsequent disclosure by the Prosecution. The Chamber notes that in its opening statement, the Prosecution alleged that Nsabimana summoned the *bourgmestres* to a meeting on 20 April 1994, in order to organise “work”.<sup>1914</sup>

963. The Chamber further notes that in his 2 October 1997 statement, Witness RV stated that he met Nsabimana on the day he was sworn in, and that during the ceremony, Nsabimana asked all the *bourgmestres* to attend a meeting the following day, 20 April 1994.<sup>1915</sup> During the meeting in question, Nsabimana presented his work plan and asked the people to increase the frequency of the patrols in order to prevent the RPF from infiltrating. According to Witness RV, the situation in the neighbouring *communes* was serious because houses were being burned down. Faced with these threats, Witness RV stated that he informed the *sous-préfet* of the matter.<sup>1916</sup> According to Witness RV, the *sous-préfet* passed along the information to Nsabimana, who said to wait until the end of the meeting. Witness RV alleges that he did not receive a ‘positive answer’.

964. Witness RV was not listed as a potential witness in the Appendix to the Prosecution Pre-Trial Brief because he was added to the Prosecution’s witness list on 24 July 2001.<sup>1917</sup> The Nsabimana Defence, however, was provided with Witness RV’s previous statements in three separate disclosures on 14 March 2001, 23 May 2001 and 27 May 2002, well before the witness started his examination-in-chief on 16 February 2004. The Chamber considers the length of time between the disclosure of Witness RV’s statements to the Nsabimana Defence and the witness’ testimony in court alleviated any possible prejudice that might have been

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<sup>1912</sup> Nsabimana Closing Brief, paras. 243-247.

<sup>1913</sup> Prosecution Closing Rebuttal Argument, T. 30 April 2009 pp. 52-53.

<sup>1914</sup> Prosecution Opening Statement, T. 12 June 2001 p. 76.

<sup>1915</sup> 2 October 1997, Statement of Witness RV, disclosed 14 March 2001.

<sup>1916</sup> 2 October 1997, Statement of Witness RV, disclosed 14 March 2001.

<sup>1917</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001, para. 14.

caused to the Nsabimana Defence by the later addition of Witness RV to the Prosecution witness list.<sup>1918</sup>

965. The Chamber finds that the disclosure of Witness RV's previous statements, together with the information contained in the Prosecution opening statement, sufficiently informed Nsabimana of the material facts the Prosecution intended to prove at trial. Nsabimana was therefore able to adequately prepare his defence with regard to this allegation.

### 3.6.2.3 Evidence

#### Prosecution Witness RV

966. Witness RV, a Hutu and former civil servant who was detained at the time he testified, gave evidence that he was awoken on the morning of 20 April 1994 by Ndayambaje and a priest by the name of Father Tiziano, and was told that there was 'no security' in Mugombwa *secteur*.<sup>1919</sup> Witness RV went to Mugombwa where he saw armed attackers.<sup>1920</sup> He then travelled to Butare where he spoke with *Sous-préfet* Dominique Ntawukulilyayo about his security concerns. Witness RV testified that the *sous-préfet* told him that he would speak to Nsabimana about the matter. Witness RV testified that the *sous-préfet* later confirmed that he had discussed the matter with Nsabimana, and that the issue would be addressed at the meeting being held later that morning.<sup>1921</sup>

967. Witness RV testified that the meeting, chaired by Nsabimana, was held at approximately 11.00 am on 20 April 1994, bringing together *bourgmestres*, *sous-préfets*, heads of departments in the *préfecture*, and other senior officers, and that during the meeting Nsabimana revisited the objectives, which consisted of fighting the enemy, carrying out patrols and erecting roadblocks to prevent the enemy from taking up positions in the country.<sup>1922</sup> Witness RV testified that the "enemy" as defined by Prime Minister Jean Kambanda, was the *Inkotanyi* as well as their accomplices who, as he understood, were Tutsis or Hutus who had ideas that supported the RPF.<sup>1923</sup> Witness RV further testified that Nsabimana did not address the security concerns that RV had previously raised with *Sous-préfet* Ntawukulilyayo regarding the situation in Mugombwa, and that at around 7.00 p.m. that same day the witness left Butare to return to Muganza *commune*.<sup>1924</sup>

968. Witness RV further testified that on 18 June 1994, the *bourgmestre* of Muganza *commune* was dismissed in order to be replaced by the former *bourgmestre*, Élie Ndayambaje. Other *bourgmestres* were dismissed at the same time, on the grounds that they had not been capable of maintaining security and safety.<sup>1925</sup>

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<sup>1918</sup> *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 35.

<sup>1919</sup> T. 16 February 2004 p. 38 (ICS) (Witness RV).

<sup>1920</sup> T. 16 February 2004 p. 39 (ICS) (Witness RV).

<sup>1921</sup> T. 16 February 2004 p. 41 (ICS) (Witness RV).

<sup>1922</sup> T. 16 February 2004 p. 42 (ICS) (Witness RV).

<sup>1923</sup> T. 16 February 2004 pp. 35, 37 (ICS); T. 19 February 2004 p. 60 (ICS) (Witness RV).

<sup>1924</sup> T. 16 February 2004 p. 43 (ICS) (Witness RV).

<sup>1925</sup> T. 17 February 2004 pp. 4-5 (ICS) (Witness RV).

### Prosecution Witness FAI

969. Witness FAI, a Hutu health worker who was appointed to public office in May 1994 and a detained witness when he gave evidence, testified that at the end of April 1994, a secret meeting was held in Gatonde *secteur*, Ntyazo *commune*, Butare *préfecture*.<sup>1926</sup> The meeting was chaired by Zaché Twagiramungu, president of the MDR party in Ntyazo *commune* and attended by Hutu intellectuals, including two teachers, a trader, a businessman, a *conseiller* and the witness.<sup>1927</sup> Twagiramungu informed the attendees that he had attended a meeting in Butare sometime between 20 and 25 April during which the new *préfet* of Butare, Nsabimana, had openly stated that other *préfectures* should not bear the responsibility of killing Tutsis alone and that Butare should also be responsible for killings.<sup>1928</sup> The purpose of the meeting in Gatonde *secteur* was to transmit the order that Tutsis should be killed.<sup>1929</sup> Twagiramungu said that he had been invited to attend the meeting with Nsabimana because of his capacity as President of the MDR party in Ntyazo *commune*.<sup>1930</sup>

970. After the meeting, the *conseiller* assembled a group of young men from Gatonde *secteur* and informed them that Tutsis had to be killed as they had plotted against the country. The few Tutsis who were present in the *commune* fled and the Hutus started burning Tutsi homes. After the meeting, Tutsis were killed at the roadblock in front of the Nyamure Health Centre.<sup>1931</sup>

971. In cross-examination, it was suggested to Witness FAI that he had not mentioned the secret meeting in Gatonde *secteur* in any of his previous statements. The witness stated that he had very briefly mentioned the meeting and hoped to be able to provide more details during his testimony.<sup>1932</sup>

### Prosecution Expert Witness Alison Des Forges

972. Alison Des Forges did not directly testify about the 20 April 1994 meeting; however, in her Report she stated that on the day after his swearing-in, Nsabimana chaired a well-attended meeting of the *préfecture* security committee during which the participants agreed that “infiltrators” accounted for the mounting violence; that such persons must be arrested and brought to the authorities; that military operations would be executed to disarm those who were armed; that search operations should be carried out whenever solid information indicated the need; and that administrative meetings should be held the next day with subordinate officials and other local leaders “who could contribute to restoring security”.<sup>1933</sup>

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<sup>1926</sup> T. 31 October 2002 pp. 7-8 (ICS) (Witness FAI).

<sup>1927</sup> T. 31 October 2002 pp. 7-9 (ICS) (Witness FAI).

<sup>1928</sup> T. 31 October 2002 p. 8 (ICS); T. 4 November 2002 p. 52 (Witness FAI).

<sup>1929</sup> T. 31 October 2002 p. 8 (ICS) (Witness FAI).

<sup>1930</sup> T. 31 October 2002 p. 9 (ICS) (Witness FAI).

<sup>1931</sup> T. 31 October 2002 pp. 9-10 (ICS) (Witness FAI).

<sup>1932</sup> T. 4 November 2002 p. 100 (ICS) (Witness FAI).

<sup>1933</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 23.



Prosecution Expert Witness André Guichaoua

973. André Guichaoua testified that on 20 April 1994, Nsabimana chaired a meeting of *bourgmestres*. According to Guichaoua, the objective of this meeting was to implement directives adopted by the highest State authorities announced the previous day, and after the meeting massacres commenced in the *communes* of the *préfecture*.<sup>1934</sup>

974. Guichaoua further testified that the local officials were to implement the instructions and orders set forth at the 20 April 1994 meeting, and that they were to be assessed or rejected based on their actions pursuant to those orders. The witness referred to some local *bourgmestres* who were murdered soon after the meeting took place, namely Jean-Marie Vinne Gisagara, the *bourgmestre* of Nyabisindo, Narcissi Nyajasaza, the *bourgmestre* of Ntyazo, Jean-Batiste Nyagaza and Denis Simonyo.<sup>1935</sup>

Nsabimana

975. Nsabimana testified that he held a meeting with the *bourgmestres* in Butare *préfecture* at the MRND party house, on 20 April 1994.<sup>1936</sup> Nsabimana testified that the meeting took the form of a panel, where he asked the *bourgmestres* whether there were displaced persons in their respective *communes*, or whether massacres had taken place. He testified that the *bourgmestres* generally told him that there had not been massacres in their *communes* except for some 10 or 15 persons. Nsabimana testified that he had already seen people moving about, that the town was teeming with people, and thus he was expecting to hear whether people had been killed in the *communes*, or if there were criminals around.<sup>1937</sup>

976. Nsabimana testified that after the questions of massacres and displaced persons were discussed, the participants addressed the issue of how the on-going problems were to be solved in the *communes*.<sup>1938</sup> Nsabimana testified that some resolutions relating to issues of security, famine, displaced persons, refugees and petrol were discussed. He further stated that it was noted that a number of people had to be arrested.<sup>1939</sup>

977. Nsabimana testified that during the meeting of 20 April 1994, Colonel Muvunyi announced to the *bourgmestres* that young persons would be recruited into the Rwandan army, but no plan on how to conduct the recruitment was discussed. Nsabimana denied that anyone defined the strategy for fighting the enemy during the meeting. Nsabimana testified that he did not know what the “enemy” would have meant, and that neither he nor the *bourgmestres* present were soldiers, and thus they would not be discussing “how to go to war”.<sup>1940</sup> Nsabimana disagreed with Expert Witness Guichaoua’s interpretation of the purpose of the 20 April 1994 meeting.<sup>1941</sup>

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<sup>1934</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 155; T. 29 June 2004 pp. 22-23 (Guichaoua).

<sup>1935</sup> T. 22 June 2004 p. 22 (Guichaoua).

<sup>1936</sup> T. 12 September 2006 p. 48 (Nsabimana).

<sup>1937</sup> T. 12 September 2006 p. 53 (Nsabimana).

<sup>1938</sup> T. 12 September 2006 p. 53 (Nsabimana).

<sup>1939</sup> T. 12 September 2006 p. 61 (Nsabimana).

<sup>1940</sup> T. 12 September 2006 pp. 61-62 (Nsabimana).

<sup>1941</sup> T. 12 September 2006 pp. 64-67 (Nsabimana).

978. Nsabimana also testified that while *Sous-préfet* Hakizamungu was taking down official minutes of the meeting, he himself took notes as well as he could, though he undoubtedly left out a number of things and might have added a few others.<sup>1942</sup> Nsabimana testified that on 21 or 22 April 1994, he had the opportunity to see Hakizamungu's notes, and that Hakizamungu told Nsabimana what he had written. Nsabimana testified that he could recognise Hakizamungu's handwriting.<sup>1943</sup> The English translation of Hakizamungu's notes was admitted into evidence during Nsabimana's testimony as Defence Exhibit 465C.<sup>1944</sup>

979. When confronted with FAI's testimony, Nsabimana denied that the meeting at Gatonde *secteur* took place. He further explained the meeting he held on 20 April 1994 with all the *bourgmestres* was only open to certain people and there was no reason for someone in Zaché Twagiramungu's position to attend such a meeting.<sup>1945</sup>

### 3.6.2.4 Deliberations

980. It is not disputed that Nsabimana called a meeting of *bourgmestres* for the 20 April 1994, the day after his swearing-in. Nsabimana confirmed this in his testimony. The issues before the Chamber are: the purpose and content of the meeting; whether Nsabimana was informed, during the meeting, about the extent of the ongoing massacres; whether, upon return to the *communes*, the various *bourgmestres* who took part in the said meeting ordered the slaughter to continue; and thus whether Nsabimana's inaction at the meeting resulted in a continuation of the massacres.

981. The Chamber notes that both Des Forges and Guichaoua gave evidence with respect to the 20 April 1994 meeting either in testimony or through their respective Reports. The Chamber recalls that while it may not rely on expert witness evidence alone to prove a factual allegation in support of a count, it may, however, use expert evidence to interpret a fact once it is proven.<sup>1946</sup>

982. The Chamber further observes that Witness RV is the only factual Prosecution witness to testify about the 20 April 1994 meeting. The Chamber considers that Witness RV was a detained witness at the time of his testimony, and was subject to potential further criminal proceedings in Rwanda; that he had previously confessed to aiding in the murder of Tutsis in *Gacaca* proceedings;<sup>1947</sup> and that during April 1994, Witness RV was a figure of authority in Butare, which might entail that his testimony could be that of an accomplice. For the foregoing reasons, the Chamber will treat Witness RV's testimony with appropriate caution.

983. In order to assess Nsabimana's responsibility with regard to his alleged failure to stop the killings, the Chamber must first consider whether or not, despite any decision that might or might have not been taken by Nsabimana at this meeting, the killings continued after 20 April 1994 in the various *communes*, and whether they were carried out under the instructions of the *bourgmestres* who attended the meeting.

<sup>1942</sup> T. 12 September 2006 pp. 53-54 (Nsabimana).

<sup>1943</sup> T. 12 September 2006 p. 54 (Nsabimana).

<sup>1944</sup> Defence Exhibit 465C was admitted into evidence on 12 September 2006.

<sup>1945</sup> T. 20 November 2006 p. 56 (ICS) (Nsabimana).

<sup>1946</sup> See *Renzaho*, Judgement (AC), para. 287.

<sup>1947</sup> T. 17 February 2004 pp. 33-36 (ICS) (Witness RV).

984. The Chamber has found that massacres took place at various locations in Butare, including Kabakobwa (), Matyazo () and Kabuye Hill (), in the period after the 20 April meeting.

985. As to the content of the 20 April 1994 meeting, Witness RV testified that during the meeting Nsabimana revisited the objectives, which consisted of fighting the enemy, carrying out patrols and erecting roadblocks to prevent the enemy from taking up positions in the country.<sup>1948</sup> Similarly, Guichaoua gave evidence that during the meeting, the implementation of directives adopted by the State authorities was discussed.<sup>1949</sup> Nsabimana's testimony partially corroborates this evidence. He testified, in more general terms, that in the course of the meeting, the massacres, security, famine, displaced persons, refugees and petrol were discussed, and that solutions for these problems were also addressed.<sup>1950</sup>

986. Nsabimana's testimony finds corroboration in Defence Exhibit 465C, a copy of the notes taken by *Sous-préfet* Hakizamungu during the 20 April 1994 meeting. The Exhibit contains the subject heading: "Infiltration by people seeking to cause unrests", and lists six topics covered during the meeting. The first was to obtain information in order to identify people who support the RPF and who are in possession of weapons. Such people were to be arrested and handed over to the authorities. Under this subheading are six bullet points: (1) intervention to be limited to disarming those who are armed; (2) searches to be conducted on the basis of accurate information; (3) contact with Gikongoro administrative authorities; (4) meetings to be held with administrative authorities capable of restoring security; (5) displaced persons to return to their homes, and to receive assistance; and (6) search for the leaders: identify them and know where they are located.<sup>1951</sup>

987. Witness RV testified that he raised the matter of his concern over security in Mugombwa *secteur* with *Sous-préfet* Ntawukulilyayo, who also stated that he would raise the issue with Nsabimana. Later, according to Witness RV, the *sous-préfet* confirmed that he had done so.<sup>1952</sup> Nsabimana testified that he asked the *bourgmestres* whether massacres were occurring in their respective *communes*, but was told that generally they were not.<sup>1953</sup> Defence Exhibit 465C, however, indicates that during the meeting it was stated that the people of Nyabisindu *commune* said that their "kith and kin" had been "exterminated".<sup>1954</sup>

988. The Chamber observes that Witness RV provided no detail as to what exactly is alleged to have been said to Nsabimana by *Sous-préfet* Ntawukulilyayo, and notes that the issue of whether any information regarding the witness' security concerns was in fact passed on to Nsabimana is hearsay and uncorroborated.

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<sup>1948</sup> T. 16 February 2004 p. 42 (ICS) (Witness RV).

<sup>1949</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 155; T. 29 June 2004 pp. 22-23 (Guichaoua).

<sup>1950</sup> T. 12 September 2006 pp. 53, 61 (Nsabimana).

<sup>1951</sup> Defence Exhibit 465C (Nsabimana) (Minutes of the Security meeting chaired by Nsabimana on 20 April 1994) pp. 1-2.

<sup>1952</sup> T. 16 February 2004 p. 41 (ICS) (Witness RV).

<sup>1953</sup> T. 12 September 2006 p. 53 (Nsabimana).

<sup>1954</sup> Defence Exhibit 465C (Nsabimana) (Minutes of the Security meeting chaired by Nsabimana on 20 April 1994) p. 2.

989. The only other reference to potential massacres in the record is the abovementioned statement contained in Defence Exhibit 465C, regarding the extermination in Nyabisindu *commune*. No other information which could be construed as relating to on-going massacres is provided.

990. In light of the foregoing, the Chamber finds that the 20 April 1994 meeting primarily dealt with issues of safety, security, displaced persons, and measures to be taken in order to keep the situation under control. It has not been established that the furtherance of the massacres was discussed.

991. The Chamber further recalls the testimony of Witnesses RV and Guichaoua, that right after the meeting some of the *bourgmestres* were dismissed, replaced, or even murdered.<sup>1955</sup> However, the Chamber notes that Guichaoua did not give a clear explanation as to why such measures were taken, and Witness RV generally stated it was done because these administrative authorities had not been capable of maintaining security and safety. The Chamber thus finds the evidence has not established that these repercussions were a consequence of the fact that the said *bourgmestres* had opposed the orders given by Nsabimana at the 20 April meeting. No other evidence was led in relation to the events taking place right after the meeting. Therefore, and considering that it was not established that Nsabimana gave any order relating to the progress of the massacres during the meeting, no link can be drawn between the dismissal of the said authorities and the furtherance of the massacres.

992. Having weighed all the evidence before it, the Chamber finds that it was not established beyond a reasonable doubt that during the 20 April meeting Nsabimana was “informed of the extent of massacres of Tutsi that had begun in the *communes* of Butare”, as the Indictment alleges. Furthermore, it was not proven that after the 20 April 1994 meeting the *bourgmestres* returned to their *communes* and ordered to kill, while those who refused to do so were dismissed. Therefore, though it has been found that after the 20 April massacres occurred in various locations in Butare, a link between these massacres and the said meeting was not established. Accordingly, the Chamber finds it has not been proven beyond a reasonable doubt that, as a consequence to Nsabimana’s failure to take any measure with a view to stop the killings during the 20 April 1994 meeting, the slaughter continued.

993. The Prosecution also seeks to use Witness FAI’s testimony on the secret meeting in Gatonde *secteur* to illustrate that Nsabimana’s orders to kill Tutsis were implemented on the ground. The Prosecution does not allege that Nsabimana was present at the secret meeting in Gatonde *secteur*, but the evidence adduced was used to provide the content of a previous meeting, allegedly held by Nsabimana between 20 and 25 April 1994. Witness FAI testified that the chairman of the secret meeting, Zaché Twagiramungu, told the participants that he had attended an earlier meeting held between 20 and 25 April 1994 during which Nsabimana had ordered the killing of Tutsis.<sup>1956</sup> After the secret meeting in Gatonde *secteur*, Tutsis were killed.<sup>1957</sup>

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<sup>1955</sup> T. 17 February 2004 pp. 4-5 (ICS) (Witness RV); T. 22 June 2004 p. 22 (Guichaoua).

<sup>1956</sup> T. 31 October 2002 pp. 7-9 (ICS) (Witness FAI).

<sup>1957</sup> T. 31 October 2002 p. 10 (ICS) (Witness FAI).

994. In relation to the content of secret meeting in Gatonde *secteur*, where Zaché Twagiramungu allegedly reported Nsabimana's orders to kill, the Chamber notes that Witness FAI's testimony is uncorroborated hearsay.

995. Further, the Chamber notes there are credibility issues in relation to Witness FAI. The witness pled guilty to crimes including genocide in 1997 and was a detained witness awaiting sentence when he gave evidence before the Tribunal, in 2002.<sup>1958</sup> The Chamber exercises appropriate caution when deliberating on the testimony of an accomplice witness, particularly since Witness FAI was detained at the time of his testimony. The Chamber considers that Witness FAI's testimony may have been motivated by a hope that, by testifying against Nsabimana he would receive favourable or lenient treatment when sentenced. The Chamber further notes that in his previous statement of 24 February 2000, Witness FAI mentioned that Zaché Twagiramungu told him that he had attended a meeting at which Nsabimana had ordered the extermination of Tutsis. However, the witness made no reference in this statement to any secret meeting subsequently held in Gatonde *secteur*, during which Zaché Twagiramungu allegedly informed Hutu intellectuals about Nsabimana's orders.<sup>1959</sup>

996. In view of the nature of Witness FAI's evidence as uncorroborated hearsay in relation to the secret meeting in Gatonde *secteur*, the credibility issues outlined above and the omission of key aspects of his testimony from his previous statement, the Chamber does not consider Witness FAI's testimony to be credible on this particular event.

997. The Chamber notes that the Prosecution did not provide any further evidence concerning a meeting held in Gatonde *secteur*, or any evidence to establish that Zaché Twagiramungu in fact stated that Nsabimana had issued orders to kill at a previous meeting. The Chamber also recalls Nsabimana's testimony that Zaché Twagiramungu would not have had any reason to attend the *secteur*-level meeting of 20 April 1994, as it was not open to persons in his position, *i.e.* a *commune*-level party president.<sup>1960</sup> Further, as found above, no evidence was led that Nsabimana actually issued orders to kill Tutsis at the meeting of 20 April 1994.

998. In light of the foregoing, the Chamber finds that the Prosecution has failed to establish that a meeting chaired by Zaché Twagiramungu was held in Gatonde *secteur* at the end of April 1994, during which Nsabimana's orders to kill Tutsis, previously issued at another meeting, were conveyed to the participants.

### **3.6.3 Sahera *Secteur* Office Meeting, 20 April 1994**

#### **3.6.3.1 Introduction**

999. Paragraph 6.45 of the Kanyabashi Indictment provides that on several occasions between 20 April and June 1994, Kanyabashi encouraged and instructed the soldiers and militiamen, and certain members of the civilian population, to search for Tutsis who had escaped the massacres, in order to exterminate them. These instructions were given notably on

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<sup>1958</sup> T. 30 October 2002 pp. 96-97 (Witness FAI).

<sup>1959</sup> T. 4 November 2002 p. 100 (ICS) (Witness FAI); Defence Exhibit 82 (Nsabimana) List of Alleged Omissions; 24 February 2000, 22 October 2000, 28 January 2001, 12 October 2001, Statements of Witness FAI).

<sup>1960</sup> T. 20 November 2006 p. 56 (ICS) (Nsabimana).

21 April 1994 in Butare, in late April in Save, and in June 1994 near Butare.<sup>1961</sup> Paragraph 6.28 of the same Indictment alleges that in Ngoma *commune*, Kanyabashi, meeting the commitment he had made on the occasion of President Sindikubwabo's speech at Nsabimana's swearing-in ceremony, took the necessary measures for Tutsis to be eliminated.<sup>1962</sup>

1000. The Prosecution submits that Kanyabashi directly participated in the massacres of Tutsis through his acts, conduct, utterances and directives in Butare *préfecture*, between April and July 1994.<sup>1963</sup> It contends that in April 1994, Kanyabashi came to the *secteur* office and told the *conseiller* when he was going to start the killings and that in other areas they had finished the killing.<sup>1964</sup> Kanyabashi asked him what he was going to do.<sup>1965</sup> The next day the *Interahamwe* told Tutsis to go to Kabakobwa Hill, where many people died.<sup>1966</sup> The Prosecution submits that the *conseillers* were vital in encouraging and leading the attackers against the Tutsis.<sup>1967</sup> In support of these submissions, the Prosecution relies on the testimony of Witness QAM.

1001. In addition to its contention that the Indictment is defective,<sup>1968</sup> the Kanyabashi Defence cites the testimony of Prosecution Witness QCB stating that on 20 April 1994, Kanyabashi went to Kabuga asking the population not to harm the refugees as Kanyabashi did not want killings to take place within Ngoma *commune*.<sup>1969</sup> Finally, the Defence submits that Witness QAM was part of a group that fabricated false testimony against Kanyabashi.<sup>1970</sup> In support of this submission the Defence relies on Kanyabashi Defence Witness D-2-21-T.<sup>1971</sup>

### 3.6.3.2 Preliminary Issues

1002. The Kanyabashi Defence submits that this meeting was not mentioned in the Kanyabashi Indictment and therefore the Indictment is defective.<sup>1972</sup> The Chamber observes that the alleged meeting between Kanyabashi and the *conseiller* of Sahera on around 20 April 1994, is not specifically pled in the Kanyabashi Indictment. The Indictment is therefore defective in this regard.

1003. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness QAM, who was expected to testify that Kanyabashi went to her *secteur* shortly before the massacres began and gave instructions to the *conseiller*, saying: "What are you waiting for? Your people are not doing anything, whereas others have already finished the job."<sup>1973</sup>

<sup>1961</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>1962</sup> Para. 6.28 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>1963</sup> Prosecution Closing Brief, p. 405, paras. 73-75.

<sup>1964</sup> Prosecution Closing Brief, p. 397, para. 41.

<sup>1965</sup> Prosecution Closing Brief, p. 406, para. 78.

<sup>1966</sup> Prosecution Closing Brief, p. 397, para. 41.

<sup>1967</sup> Prosecution Closing Brief, p. 417, para. 114.

<sup>1968</sup> Kanyabashi Closing Argument, T. 28 April 2009 p. 42.

<sup>1969</sup> Kanyabashi Closing Argument, T. 28 April 2009 p. 42.

<sup>1970</sup> Kanyabashi Closing Brief, para. 155.

<sup>1971</sup> The Chamber notes that it has previously set out the evidence of Witness D-2-21-T as it relates to the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>1972</sup> Kanyabashi Closing Argument, T. 28 April 2009 p. 42.

<sup>1973</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAM (2).

The Chamber notes that neither the location nor the time frame are clearly specified in the summary of Witness QAM's intended evidence.

1004. The Chamber observes that Witness QAM's prior statement, dated 20 May 1997, was disclosed to the Defence on 4 November 1998 and in unredacted form on 23 April 2001.<sup>1974</sup> This statement made a specific reference to the meeting between Kanyabashi and the *conseiller*. Witness QAM identified her *secteur* as Sahera and clearly specified that the massacres began in her *secteur* on 23 April 1994. Kanyabashi came to her *secteur* the day before the massacres and said to the *conseiller*, "what are you waiting for; your people are not doing anything whereas others have already finished the job." These disclosures were made well before the start of Witness QAM's testimony on 22 October 2001.

1005. The Chamber notes that the summary of the intended evidence and the prior statement of Witness QAM provided adequate details as to the exact date and the specific locations of this meeting. For the foregoing reasons, the Chamber considers that the Kanyabashi Indictment was cured by the disclosure of clear, consistent and timely information.<sup>1975</sup> Consequently, Kanyabashi was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence case.

### 3.6.3.3 Evidence

#### Prosecution Witness QAM

1006. Witness QAM, a 19 year-old Tutsi student in 1994,<sup>1976</sup> testified that Joseph Kanyabashi was the *bourgmestre* of her *commune* in 1994.<sup>1977</sup> Prior to April 1994, the witness saw Kanyabashi come to the *secteur* office to hold meetings with members of the population, on four occasions.<sup>1978</sup> She described Kanyabashi as a dark-skinned man, but who was not very dark, aged about 50 years in 1994.<sup>1979</sup> She identified Kanyabashi in court.<sup>1980</sup>

1007. Witness QAM testified that the last time she saw Kanyabashi was when he came to the Sahera *secteur* office.<sup>1981</sup> She testified that it was an evening on or after 20 April 1994 and a short time before people were attacked at Kabakobwa.<sup>1982</sup> Kanyabashi travelled in a vehicle, but the witness did not specify as to which type of vehicle it was.<sup>1983</sup> The vehicle stopped at the *secteur* office and Kanyabashi came out alone.<sup>1984</sup> Kanyabashi then met the *conseiller* of Sahera outside the *secteur* office, slightly to the side of the door.<sup>1985</sup> There was nobody else

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<sup>1974</sup> 20 May 1997, Statement of Witness QAM, disclosed 4 November 1998; Unredacted Statement of Witness QAM, disclosed 23 April 2001.

<sup>1975</sup> *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105.

<sup>1976</sup> Prosecution Exhibit 43 (Personal Particulars).

<sup>1977</sup> T. 22 October 2001 p. 46 (Witness QAM).

<sup>1978</sup> T. 22 October 2001 pp. 46, 139-140 (Witness QAM).

<sup>1979</sup> T. 22 October 2001 pp. 46-47 (Witness QAM).

<sup>1980</sup> T. 22 October 2001 p. 76 (Witness QAM).

<sup>1981</sup> T. 22 October 2001 p. 47 (Witness QAM).

<sup>1982</sup> T. 22 October 2001 pp. 47, 49, 98; T. 23 October 2001 p. 41 (Witness QAM).

<sup>1983</sup> T. 23 October 2001 p. 42 (Witness QAM).

<sup>1984</sup> T. 23 October 2001 p. 42 (Witness QAM).

<sup>1985</sup> T. 23 October 2001 pp. 54, 56 (Witness QAM).

apart from Kanyabashi and the *conseiller* during this encounter.<sup>1986</sup> Kanyabashi addressed the *conseiller*, saying: “Elsewhere they have already finished killing. What are you waiting for as far as you are concerned.”<sup>1987</sup> Kanyabashi immediately left after talking to the *conseiller*.<sup>1988</sup> Witness QAM was about three metres away from Kanyabashi when Kanyabashi spoke.<sup>1989</sup> She heard everything that Kanyabashi said, but not the statements of the *conseiller*, as she moved away once Kanyabashi stopped speaking.<sup>1990</sup> At that time, the witness was with three or four other young people on the road next to the *secteur* office.<sup>1991</sup> None of these young people were members of her family, and they were no longer alive.<sup>1992</sup> She could only remember two of their names.<sup>1993</sup>

1008. Witness QAM testified that after hearing what Kanyabashi said, she and the other children went back to her house. Upon their arrival, the witness reported to her mother what Kanyabashi had said to the *conseiller*. Her family decided not to sleep at their house that night and instead spent the night in a school just below their house. They returned home the next morning at around 5.00 a.m.<sup>1994</sup>

1009. Confronted with her prior statement of 20 May 1997, which stated that upon hearing what Kanyabashi said, Witness QAM and the young people she was with tried to escape but were told by the *conseiller* that they had nothing to fear, Witness QAM suggested the statement was not an accurate reflection of what she said but conceded that she could not remember everything she told the investigators at that time as it was a long time ago.<sup>1995</sup>

1010. Witness QAM testified that she did not know Rose Burizihiza or Béllancie Knayire.<sup>1996</sup>

#### Prosecution Witness QCB

1011. Witness QCB, a Hutu driver in 1994 and detainee at the time of his testimony,<sup>1997</sup> testified that on 20 April 1994, refugees from Gishamvu, Runyinya and Nyakizu came down to Ngoma *commune*. The refugees went by the school located between Sahera and Nkubi *secteurs*. Upon the refugees’ arrival, *Conseillers* Kanywabahizi and Habyarimana Pascal went to report to Kanyabashi about what they had noticed. Shortly after, Kanyabashi convened the members of population of Sahera and Nkubi *secteurs* and the refugees to a meeting during which, Kanyabashi stated that he did not want any crimes to be committed in his *commune*. On

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<sup>1986</sup> T. 23 October 2001 p. 54 (Witness QAM).

<sup>1987</sup> T. 22 October 2001 pp. 49-52 (Witness QAM).

<sup>1988</sup> T. 23 October 2001 p. 55 (Witness QAM).

<sup>1989</sup> T. 22 October 2001 p. 51 (Witness QAM).

<sup>1990</sup> T. 23 October 2001 pp. 56-57 (Witness QAM).

<sup>1991</sup> T. 22 October 2001 p. 51; T. 23 October 2001 p. 43 (Witness QAM).

<sup>1992</sup> T. 23 October 2001 pp. 43-44, 48 (Witness QAM); Defence Exhibit 2 (Kanyabashi) (Two Handwritten Names).

<sup>1993</sup> T. 23 October 2001 pp. 43-44, 48 (Witness QAM); Defence Exhibit 2 (Kanyabashi) (Two Handwritten Names).

<sup>1994</sup> T. 22 October 2001 pp. 57-58 (Witness QAM).

<sup>1995</sup> T. 23 October 2001 p. 63 (Witness QAM); Defence Exhibit 4B (Kanyabashi) (20 May 1997, Statement of Witness QAM).

<sup>1996</sup> T. 22 October 2001 p. 106 (ICS); T. 22 October 2001 pp. 127-128 (HC) (Witness QAM) (French).

<sup>1997</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).



that day, Witness QCB spent the night with the refugees in order to protect them from attacks perpetrated by assailants from Gishamvu.<sup>1998</sup>

#### 3.6.3.4 Deliberations

1012. The Prosecution relies on the testimony of a single eyewitness, Witness QAM, in support of its allegation that on around 20 April 1994, Kanyabashi came to the Sahera *secteur* office, met with the *conseiller* and asked him why the killings had not yet started in Sahera.<sup>1999</sup> Witness QAM's evidence is that she was with other children very near the *secteur* office when Kanyabashi arrived and met with the *conseiller* outside the office.<sup>2000</sup> She was about three metres away from Kanyabashi and heard everything that Kanyabashi said to the *conseiller*.<sup>2001</sup>

1013. Witness QCB testified that on 20 April 1994, refugees from Gishamvu, Runyinya and Nyakizu came to settle at a place located between Sahera and Nkubi *secteurs*, Ngoma *commune*.<sup>2002</sup> Upon the refugees' arrival, Kanyabashi convened the members of population of Sahera and Nkubi *secteurs* and the refugees to a meeting during which, Kanyabashi declared that he did not want any crimes to be committed in his *commune*.<sup>2003</sup>

1014. The Chamber observes that Witness QCB's testimony relates to a specific meeting which may have also taken place on around 20 April 1994; however it does not rule out the possibility that another meeting took place at some point the same day without Witness QCB's knowledge.

1015. The Chamber is not convinced by Witness QAM's testimony regarding her presence at the location from where she was alleged to have heard Kanyabashi's address to the *conseiller* on around 20 April 1994. The Chamber observes that it is unlikely that Witness QAM could remember and repeat the words that Kanyabashi might have said to the *conseiller*, but was unable to provide the number and especially the identity of all children with whom she was alleged to have been playing at that time. Witness QAM merely disclosed the family name of two children and not their first names and claimed that none of these children were members of her family.<sup>2004</sup> In addition, Witness QAM's testimony lacks details regarding the type or colour of the vehicle that was used by Kanyabashi.<sup>2005</sup> Assuming that Witness QAM was present when Kanyabashi allegedly met with the *conseiller*, the Chamber considers that her testimony still requires corroboration in order to be reliable.

1016. Consequently, the Chamber is of the view that the Prosecution has failed to prove beyond a reasonable doubt that Kanyabashi met with the *conseiller* of Sahera *secteur* at the *secteur* office, on around 20 April 1994. Because the Chamber has concluded that the Prosecution has failed to prove this allegation for independent reasons, it need not address the

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<sup>1998</sup> T. 28 March 2002 pp. 111-112 (ICS) (Witness QCB).

<sup>1999</sup> T. 22 October 2001 pp. 47-52, 98; T. 23 October 2001 p. 56 (Witness QAM).

<sup>2000</sup> T. 22 October 2001 p. 51; T. 23 October 2001 pp. 40, 48 (Witness QAM).

<sup>2001</sup> T. 22 October 2001 p. 51; T. 23 October 2001 p. 57 (Witness QAM).

<sup>2002</sup> T. 28 March 2002 p. 111 (ICS) (Witness QCB).

<sup>2003</sup> T. 28 March 2002 p. 111 (ICS) (Witness QCB).

<sup>2004</sup> T. 23 October 2001 p. 43 (Witness QAM).

<sup>2005</sup> T. 23 October 2001 pp. 40, 42 (Witness QAM).

impact of Witness D-2-21-T's testimony on Witness QAM's credibility as regards this allegation.

### 3.6.4 Mugombwa Church Massacre, 20-21 April 1994

#### 3.6.4.1 Introduction

1017. The Ndayambaje Indictment alleges that before and during the events referred to therein, Ndayambaje distributed weapons to the militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and its "accomplices."<sup>2006</sup> The Prosecution submits that Ndayambaje distributed weapons to Hutu attackers at Mugombwa Church in April 1994 in order to facilitate the massacre there.<sup>2007</sup>

1018. Paragraph 6.37 of the Ndayambaje Indictment states that from 20 April 1994 in Muganza *commune* and the surrounding area, Ndayambaje ordered, supervised and participated in massacres of the Tutsi population, committed by militiamen, soldiers, *commune* policemen and *commune* authorities.<sup>2008</sup>

1019. The Prosecution submits that Ndayambaje facilitated the massacre at Mugombwa Church in April 1994 through the acts specified in Paragraphs 5.13 and 6.37.<sup>2009</sup>

1020. In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAR, FAG, TU and FAU.

1021. The Ndayambaje Defence does not dispute that attacks took place at Mugombwa Church on Wednesday, 20 and Thursday, 21 April 1994.<sup>2010</sup> The Ndayambaje Defence submits, however, that the Indictment is unduly vague and does not adequately inform the Accused of the allegation that he participated in the massacre at Mugombwa Church or that he was alleged to have distributed weapons at the massacre site.<sup>2011</sup>

1022. In the alternative, the Ndayambaje Defence submits that the Prosecution witnesses lacked credibility, that Ndayambaje was not present at Mugombwa Church on 20 and 21 April 1994, and therefore, the Accused could not have ordered, supervised or participated in the massacre there or distributed weapons to the attackers.<sup>2012</sup> The Defence submits that Ndayambaje was at the *commune* office from 20 to 23 April 1994.<sup>2013</sup> To establish this alibi the Defence relies on the testimony of Defence Witnesses GABON, KEPİR, MARVA, BIDI and Ndayambaje.

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<sup>2006</sup> Para. 5.13 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 against Ndayambaje).

<sup>2007</sup> Prosecution Closing Brief, pp. 461-462, 475, paras. 44, 91.

<sup>2008</sup> Para. 6.37 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9, pursuant to Article 6 (1) and 6 (3), and Count 4 pursuant to Article 6 (1) responsibility only).

<sup>2009</sup> Prosecution Closing Brief, pp. 461-462, 475, paras. 44, 91, 93.

<sup>2010</sup> Ndayambaje Closing Brief, para. 154.

<sup>2011</sup> Ndayambaje Closing Brief, paras. 47, 49-52, 55, 79-81, 155.

<sup>2012</sup> Ndayambaje Closing Brief, paras. 236-254.

<sup>2013</sup> Ndayambaje Closing Brief, paras. 236-254.

### 3.6.4.2 Preliminary Issues

#### *Pleading of Ndayambaje's Alleged Participation in the Massacre at Mugombwa Church*

1023. The Ndayambaje Defence submits that the events at Mugombwa Church are not pled in the Indictment and thus requests the Chamber not to consider the evidence relating to Mugombwa Church.<sup>2014</sup> This objection was raised on 3 March 2004, but the Chamber declined to make a finding on the issue at that stage of the proceedings.<sup>2015</sup>

1024. The Chamber notes that the location and dates of the massacre at Mugombwa Church are not specified in the Indictment. Recalling the principles set out in the Preliminary Issues section of this Judgement (), the Chamber finds that Ndayambaje's alleged role in the massacre at Mugombwa Church is not sufficiently pled in the Indictment. The Indictment is therefore defective on this point. The Chamber will determine whether the defect in the Indictment was subsequently cured through timely, clear and consistent notice to the Ndayambaje Defence.

1025. The Chamber further notes that the Prosecution Pre-Trial Brief does not mention Witness QAR's intention to testify about the massacre at Mugombwa Church.<sup>2016</sup> The Chamber observes, however, that the summaries of Witnesses FAG's, FAU's and TU's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief mention Ndayambaje's participation in the attacks at Mugombwa Church.<sup>2017</sup>

1026. The summary of Witness FAG's anticipated testimony states that he was ordered by Venant, Kanyenzi, Bosco, the assistant *bourgmestre* of Muganza, and Viateur to go to Mugombwa where there was a group of attackers that was brought there by Ndayambaje. Witness FAG states that the attackers threw grenades at the Tutsis and killed them. Witness FAG saw Ndayambaje driving the pickup with about 20 Burundians on board.<sup>2018</sup>

1027. Witness FAU's anticipated testimony further states that in April 1994, he witnessed the massacre of 300 Tutsis at Mugombwa Church and that Ndayambaje supervised the massacre.<sup>2019</sup>

1028. The summary of Witness TU's anticipated testimony states that on 21 April 1994, he hid with others in Mugombwa Church. On 24 April 1994, Ndayambaje arrived at the church with his white pickup, loaded with soldiers with grenades. Ndayambaje then instructed the soldiers to kill those inside the church. The soldiers began throwing grenades into the church which resulted in the death of approximately 2,000 people.<sup>2020</sup> Witness TU was not called to testify.

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<sup>2014</sup> Ndayambaje Closing Brief, para. 155.

<sup>2015</sup> T. 3 March 2004 p. 42 (ICS) (Witness FAG).

<sup>2016</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAR (5).

<sup>2017</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAG (19); Witness FAU (32); Witness TU (96).

<sup>2018</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAG (19).

<sup>2019</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAU (32).

<sup>2020</sup> Prosecution Pre-Trial Brief – Appendix; Witness TU (96).

1029. Furthermore, the Chamber observes that in its opening statement, the Prosecution mentioned that large-scale massacres took place at the end of April at Mugombwa Church.<sup>2021</sup>

1030. The Chamber finds that the Prosecution was in possession of material facts regarding the massacre at Mugombwa Church which it failed to include in the Amended Indictment.

1031. However, having regard to the summaries of the anticipated testimonies of Witnesses FAG, FAU and TU in the Prosecution Pre-Trial Brief, the Chamber considers that in the present circumstances, the Prosecution gave the Defence timely, clear and consistent notice that Ndayambaje was accused of participating in, including through giving orders, and supervising the massacre at Mugombwa Church, Muganza *commune*, along with other *commune* authorities in late April 1994. The Chamber finds the defect in Paragraph 6.37 of the Indictment is thereby cured, and there was no prejudice in the preparation of Ndayambaje's defence case.

*Ndayambaje's Alleged Distribution of Weapons at Mugombwa Church*

1032. With regard to Ndayambaje's alleged distribution of weapons, the Chamber notes that the Indictment does not specify Mugombwa Church as an alleged site of weapons distribution, nor does it specify the identities of those to whom he is alleged to have distributed weapons. The Chamber therefore finds that this allegation was not sufficiently pled in the Indictment and the Indictment was therefore defective.

1033. The summary of Witness TU's anticipated testimony in the Prosecution Pre-Trial Brief stated that on 24 April 1994, Ndayambaje arrived at the church with his white pickup, loaded with soldiers with grenades. Ndayambaje then instructed the soldiers to kill those inside the church. The soldiers began throwing grenades into the church, which resulted in the death of approximately 2,000 people.<sup>2022</sup> In his previous statement of 18 December 1996, disclosed to the Defence on 4 November 1998, Witness TU stated that Ndayambaje transported soldiers with grenades and guns to Mugombwa Church to facilitate the massacre.<sup>2023</sup> The Chamber observes that neither the summary of Witness TU's anticipated testimony included in the Prosecution Pre-Trial Brief nor his previous statement of 18 December 1996, mention that Ndayambaje distributed weapons at the church.

1034. The summary of Witness FAU's anticipated testimony in the Prosecution Pre-Trial Brief stated that in April 1994, Witness FAU witnessed the massacre of 300 Tutsis at Mugombwa Church and that Ndayambaje supervised the massacre. The summary further states that Witness FAU saw Ndayambaje participate in arms distribution.<sup>2024</sup> The Chamber observes that there is no information in the summary about the date, place or circumstances of the alleged arms distribution, nor is the allegation seemingly connected to the massacre at Mugombwa Church.

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<sup>2021</sup> Prosecution Opening Statement, T. 12 June 2001 p. 85.

<sup>2022</sup> Prosecution Pre-Trial Brief – Appendix; Witness TU (96).

<sup>2023</sup> 18 December 1996, Statement of Witness TU, disclosed 4 November 1998.

<sup>2024</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAU (32).

1035. In his previous statement of 10 October 1999, Witness FAU stated that during the massacre at Mugombwa Church, Ndayambaje would pick up killers around the *commune* to exterminate the Tutsis.<sup>2025</sup> In his previous statement of 22 February 2001, Witness FAU stated that Ndayambaje was present at Mugombwa Church during the massacre and was supervising the killings.<sup>2026</sup> Neither of his previous statements mentions that Ndayambaje distributed weapons at this site.

1036. The Chamber notes that there was no mention of Ndayambaje's alleged distribution of weapons in the summary of Witness QAR's anticipated testimony in the Prosecution Pre-Trial Brief.<sup>2027</sup> The alleged distribution of weapons by Ndayambaje at Mugombwa Church was however mentioned in Witness QAR's previous statement of 20 May 1997 but not mentioned in her previous statements of 20 June 1995 or 14 October 1997.<sup>2028</sup> The Chamber considers that the mention of the alleged distribution of weapons in a single witness statement does not constitute clear and consistent notice of the allegation.

1037. The Chamber therefore finds that the defect in the Indictment was not cured. As a result, the Chamber will not make a finding on the alleged distribution of weapons by Ndayambaje at Mugombwa Church.

### **3.6.4.3 Evidence**

#### **Prosecution Witness QAR**

1038. Witness QAR, a Tutsi woman from Muganza *commune*, testified that she had known Ndayambaje since they were both children.<sup>2029</sup> The witness identified Ndayambaje in court.<sup>2030</sup> The witness testified that at 8.00 a.m. on Wednesday, 19 April 1994, she and many other Tutsis arrived and took refuge in Mugombwa Church.<sup>2031</sup> She maintained that she arrived in the morning, despite being presented with her previous statement of 20 June 1995, which states that she arrived at the church at 2.00 p.m.<sup>2032</sup> When told that 19 April 1994 was a Tuesday, the witness said she was sure that the events at issue commenced on a Wednesday morning.<sup>2033</sup> The witness denied that she had given a different account of events to Prosecution investigators in her previous statement of 20 May 1997.<sup>2034</sup>

1039. Witness QAR testified that within an hour and a half of her arrival, the church was full.<sup>2035</sup> Inside the church there were several thousands of people from various hills, namely

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<sup>2025</sup> 10 October 1999, Statement of Witness FAU, disclosed 14 March 2001.

<sup>2026</sup> 22 February 2001, Statement of Witness FAU, disclosed 14 March 2001.

<sup>2027</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAR (5).

<sup>2028</sup> 20 May 1997, Statement of Witness QAR, disclosed 4 November 1998; 20 June 1995, Statement of Witness QAR, disclosed 4 December 2000; 14 October 1997, Statement of Witness QAR, disclosed 15 June 1999.

<sup>2029</sup> T. 19 November 2001 pp. 101-102 (ICS) (Witness QAR).

<sup>2030</sup> T. 19 November 2001 pp. 103-104 (ICS) (Witness QAR).

<sup>2031</sup> T. 15 November 2001 p. 146; T. 19 November 2001 pp. 5, 10; T. 20 November 2001 pp. 100-101 (Witness QAR).

<sup>2032</sup> T. 20 November 2001 pp. 103-104 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, 20 May 1997 and 14 October 1997, Statements of Witness QAR) p. 2.

<sup>2033</sup> T. 20 November 2001 pp. 99-101 (Witness QAR).

<sup>2034</sup> T. 21 November 2001 pp. 43, 45-48 (Witness QAR).

<sup>2035</sup> T. 19 November 2001 p. 10; T. 20 November 2001 pp. 107-108 (Witness QAR).

Mugombwa, Saga, Cyumba, Rinda, Nyagahuru and Kibayi, the majority of whom the witness did not know.<sup>2036</sup> The refugees in the church were either Tutsis or the spouses of Tutsis, as the Hutus had not fled their homes.<sup>2037</sup> As Witness QAR was entering the church, people outside were throwing stones which broke all the windows in the church.<sup>2038</sup> During the morning, the priest of Mugombwa Church had attempted to lock all the doors to the church and then left following a quarrel with those outside the church.<sup>2039</sup>

1040. The witness testified that at approximately noon, from her position inside the church, she saw Ndayambaje arrive in a white vehicle from the road leading to Remera, where the *commune* office was.<sup>2040</sup> She later testified that she did not actually see Ndayambaje arrive but was informed of his arrival, only then seeing his car that was already parked, facing the direction of Remera.<sup>2041</sup>

1041. Witness QAR testified that she occupied various positions inside the church which was oval-shaped, since the people inside were pushing and shoving each other.<sup>2042</sup> She saw Ndayambaje through a broken window, which she stood near, but in the centre of the church.<sup>2043</sup> Without getting out of his vehicle, Ndayambaje showed those in the church a picture of President Habyarimana.<sup>2044</sup> The picture was approximately 24 by 30 centimetres in size, and Ndayambaje held it in front of his own face.<sup>2045</sup> Ndayambaje kept the photograph.<sup>2046</sup> Ndayambaje said that those in the church were going to be killed because they were accomplices of the *Inkotanyi* who had killed the President.<sup>2047</sup> The witness denied telling investigators that Ndayambaje was carrying a gun and handed the photograph to someone else, as reflected in her previous statement of 20 June 1995.<sup>2048</sup>

1042. Witness QAR testified that when Ndayambaje arrived, she saw many other Hutus with bows and arrows, spears and machetes outside the church.<sup>2049</sup> There were no priests, policemen or soldiers present.<sup>2050</sup> Ndayambaje said to them, in Kinyarwanda, that since the people in the church were now gathered together, their work would no longer be very difficult. He told the attackers that some of them should stay and watch those in the church and others should go and look for those that were hiding in ditches and in bushes. Upon hearing this,

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<sup>2036</sup> T. 20 November 2001 pp. 108-110; T. 20 November 2001 p. 130 (Witness QAR) (French) (for the spelling of “Kibayi”).

<sup>2037</sup> T. 20 November 2001 pp. 110-111 (Witness QAR).

<sup>2038</sup> T. 19 November 2001 p. 7; T. 20 November 2001 pp. 106-107 (Witness QAR).

<sup>2039</sup> T. 21 November 2001 pp. 13-14 (Witness QAR).

<sup>2040</sup> T. 19 November 2001 pp. 7, 10-11, 15-16, 21; T. 20 November 2001 pp. 119-120; T. 21 November 2001 pp. 38-39 (Witness QAR).

<sup>2041</sup> T. 20 November 2001 pp. 132-133; T. 21 November 2001 pp. 5-10; 20 November 2001 p. 156 (Witness QAR) (French) (for the spelling of “Remera”).

<sup>2042</sup> T. 19 November 2001 p. 11 (Witness QAR).

<sup>2043</sup> T. 19 November 2001 pp. 16, 20; T. 20 November 2001 p. 121 (Witness QAR).

<sup>2044</sup> T. 19 November 2001 pp. 7, 10-11; T. 20 November 2001 p. 125 (Witness QAR).

<sup>2045</sup> T. 20 November 2001 pp. 123-125 (Witness QAR).

<sup>2046</sup> T. 20 November 2001 pp. 128-129 (Witness QAR).

<sup>2047</sup> T. 19 November 2001 pp. 7-10 (Witness QAR).

<sup>2048</sup> T. 20 November 2001 pp. 129-131 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, 20 May 1997 and 14 October 1997, Statements of Witness QAR) p. 2.

<sup>2049</sup> T. 19 November 2001 pp. 7, 10-11, 54 (Witness QAR).

<sup>2050</sup> T. 21 November 2001 p. 12 (Witness QAR).

many people left, whereas some stayed behind at the church.<sup>2051</sup> Immediately after saying this, after being on the church premises for less than 15 minutes, Ndayambaje left in the direction of his house.<sup>2052</sup> There were no problems until the evening of that day.<sup>2053</sup>

1043. At approximately 4.00 p.m., two grenades were thrown at the people inside the church, which exploded killing some and wounding others.<sup>2054</sup> The witness denied that she told investigators that only one of the two grenades exploded.<sup>2055</sup> The witness testified that she did not see who threw either grenade.<sup>2056</sup> She maintained that she did not see who threw the grenades and claimed that her previous statement of 20 May 1997, which stated that Witness QAR saw a boy throw two grenades, did not reflect the account she gave to the investigators.<sup>2057</sup> Among the attackers present at the church on Wednesday were Damascene, Tabaro, Mathias, Mushimire, Sikubwabo, Cyabarena, Yohani, Siridiyo and Nyandwi.<sup>2058</sup>

1044. Witness QAR testified that at about 10.00 a.m. the next day, Thursday (which she said was 20 April 1994), from her position by the entrance door and through a broken window, she saw Ndayambaje return to the church by the road leading to Remera.<sup>2059</sup> Ndayambaje arrived in the same white vehicle that the witness had seen him in the previous day.<sup>2060</sup> The witness saw Ndayambaje park his car approximately 10 metres away from her vantage point.<sup>2061</sup> Ndayambaje told the crowd outside the church that he saw they were concentrating on eating the Tutsis' cows, asked what they were going to do when the cows would be exhausted, and what they would pay if the owners of the cows escaped.<sup>2062</sup> Seeing that some of the crowd had no weapons, Ndayambaje left again in the direction of Remera and returned at about 10.30 a.m. with machetes and small axes, which he distributed to the people.<sup>2063</sup> Ndayambaje left the church immediately after distributing these weapons.<sup>2064</sup>

1045. Witness QAR testified that after Ndayambaje had left, at about 3.00 p.m., five grenades were thrown into the church, killing and injuring some of the people inside.<sup>2065</sup> After the grenades were thrown, petrol was poured inside the church.<sup>2066</sup> As the petrol was being poured, the men outside the church were trying to break down the church door.<sup>2067</sup> Fire broke out in the

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<sup>2051</sup> T. 19 November 2001 p. 17 (Witness QAR).

<sup>2052</sup> T. 19 November 2001 pp. 17-19; T. 20 November 2001 pp. 131-132 (Witness QAR).

<sup>2053</sup> T. 19 November 2001 p. 19 (Witness QAR).

<sup>2054</sup> T. 19 November 2001 p. 19; T. 21 November 2001 p. 23 (Witness QAR).

<sup>2055</sup> T. 21 November 2001 pp. 32-33 (Witness QAR).

<sup>2056</sup> T. 21 November 2001 pp. 23, 26 (Witness QAR).

<sup>2057</sup> T. 21 November 2001 pp. 26-30 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, 20 May 1997 and 14 October 1997, Statements of Witness QAR) p. 8.

<sup>2058</sup> T. 21 November 2001 pp. 11-12; T. 21 November 2001 pp. 15-16 (Witness QAR) (French) (for the spelling of "Damascene", "Yohani" and "Nyandwi").

<sup>2059</sup> T. 19 November 2001 pp. 19-23, 30; T. 19 November 2001 p. 34 (Witness QAR) (French) (for the spelling of "Remera").

<sup>2060</sup> T. 19 November 2001 p. 21 (Witness QAR).

<sup>2061</sup> T. 19 November 2001 pp. 23-25 (Witness QAR).

<sup>2062</sup> T. 19 November 2001 pp. 26-29 (Witness QAR).

<sup>2063</sup> T. 19 November 2001 pp. 26, 29-31 (Witness QAR).

<sup>2064</sup> T. 19 November 2001 p. 31 (Witness QAR).

<sup>2065</sup> T. 19 November 2001 pp. 31, 37-38 (Witness QAR).

<sup>2066</sup> T. 19 November 2001 pp. 31, 38 (Witness QAR).

<sup>2067</sup> T. 19 November 2001 pp. 37-38 (Witness QAR).

church at the same time the door was broken down.<sup>2068</sup> Some of the attackers wanted to enter the church, but they were dissuaded from doing so by the people outside.<sup>2069</sup> Witness QAR denied that it was Ndayambaje who advised the attackers against entering the church, despite an assertion to this effect that appeared in her previous statement of 20 May 1997.<sup>2070</sup>

1046. Witness QAR testified that she decided to leave the church through the broken door, considering that it was better to be killed by machete than by fire.<sup>2071</sup> Witness QAR indicated in Prosecution Exhibit 41 (Video of *commune* office and Mugombwa Church) the broken door of the church through which she came out.<sup>2072</sup> She also pointed out the rear part of the church<sup>2073</sup> and the inside of the church where the grenades were thrown in<sup>2074</sup> and their various impacts.<sup>2075</sup> The witness confirmed the passage in her previous statement of 20 June 1995 that the attackers tricked the women in the church into leaving by promising them safety, only then to attack them.<sup>2076</sup> She was the fourth person to leave the church; three women left before her.<sup>2077</sup> Witness QAR testified that at the doorway the witness was told to remove her clothes, which she did. She was asked whether she was a Hutu and answered that she was.<sup>2078</sup>

1047. Witness QAR testified that she was permitted to leave the church and went to the middle of the church compound where she was met by three Burundians about 30 steps from the church door.<sup>2079</sup> The Burundians wanted to attack her with machetes but following Witness QAR's request to be allowed to sit, and the intervention of the Hutu father of Witness QAR's child, they spared her and accompanied her to a place in front of the priest's office.<sup>2080</sup> The many people still alive in the church at this time were being attacked.<sup>2081</sup> In the courtyard, she saw the corpses of very many people who had been cut to pieces.<sup>2082</sup> The people had been massacred by the "*Bene Sebahinzi*", who were Hutus from many places, including Mugombwa and Saga.<sup>2083</sup> Six other women survived the massacre at the church.<sup>2084</sup> The seven women were taken to the priest's house, where they spent the night, and were released the following day,

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<sup>2068</sup> T. 19 November 2001 p. 39 (Witness QAR).

<sup>2069</sup> T. 21 November 2001 p. 55 (Witness QAR).

<sup>2070</sup> T. 21 November 2001 pp. 53-57 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, 20 May 1997 and 14 October 1997, Statements of Witness QAR) p. 8.

<sup>2071</sup> T. 19 November 2001 pp. 37, 39 (Witness QAR).

<sup>2072</sup> T. 19 November 2001 p. 72 (Witness QAR); Prosecution Exhibit 41 (Video of *commune* office and Mugombwa Church) at 12:37.

<sup>2073</sup> T. 19 November 2001 p. 87 (Witness QAR); Prosecution Exhibit 41 (Video of *commune* office and Mugombwa Church) at 12:38.

<sup>2074</sup> T. 19 November 2001 pp. 89-90 (Witness QAR); Prosecution Exhibit 41 (Video of *commune* office and Mugombwa Church) at 12:43.

<sup>2075</sup> T. 19 November 2001 pp. 97-99 (Witness QAR); Prosecution Exhibit 41 (Video of *commune* office and Mugombwa Church) at 12:44.

<sup>2076</sup> T. 21 November 2001 pp. 58-60 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, 20 May 1997 and 14 October 1997, Statements of Witness QAR) p. 2.

<sup>2077</sup> T. 21 November 2001 pp. 50-51 (Witness QAR).

<sup>2078</sup> T. 19 November 2001 p. 39 (Witness QAR).

<sup>2079</sup> T. 19 November 2001 pp. 40-48 (Witness QAR).

<sup>2080</sup> T. 19 November 2001 pp. 40, 42-48; T. 21 November 2001 pp. 62-63 (Witness QAR).

<sup>2081</sup> T. 19 November 2001 pp. 54-55 (Witness QAR).

<sup>2082</sup> T. 19 November 2001 pp. 48-49 (Witness QAR).

<sup>2083</sup> T. 15 November 2001 pp. 140-141, 144-145; T. 19 November 2001 p. 49 (Witness QAR) (transcripts refer to "Isaga" rather than Saga).

<sup>2084</sup> T. 19 November 2001 p. 49 (Witness QAR).



Friday (which she said was 20 April 1994), after which they were told to go home.<sup>2085</sup> She did not specify where she went after that.<sup>2086</sup>

### Prosecution Witness FAG

1048. Witness FAG, a 16-year-old Hutu farmer in Muganza *commune* in 1994, who confessed to having participated in attacks on Tutsis during the genocide and is no longer detained,<sup>2087</sup> testified that on Thursday 21 April 1994, he was in a group of over 100 people at Bishya Centre when, at approximately 2.00 p.m., he saw a number of community leaders, including Viateur, the *conseiller* of Mugombwa, Kanyenzi, Venant and Bosco Mushimiyimana, the assistant *bourgmestre*.<sup>2088</sup> He also saw Ndayambaje, who stopped his vehicle and talked to these community leaders without alighting. After this conversation, Ndayambaje left in his vehicle in the direction of Butare.<sup>2089</sup>

1049. After these community leaders had listened to Ndayambaje, they told Witness FAG and his group that Ndayambaje was ordering all those present in Bishya to go to Mugombwa Parish.<sup>2090</sup> Witness FAG was standing very close, side by side, to these people when the instructions were given.<sup>2091</sup> Witness FAG maintained that these community leaders told him and his group that they were conveying orders issued by Ndayambaje and that they referred to Ndayambaje by name rather than by the title “*bourgmestre*”.<sup>2092</sup> He clarified that if his previous statement of 23 February 2000 made no mention of Ndayambaje, it was an omission by the person recording this statement rather than his own error or contradiction.<sup>2093</sup>

1050. Witness FAG testified that immediately upon hearing those words, all the able-bodied people walked quickly to Mugombwa Parish, arriving there at about 2.15 p.m.<sup>2094</sup> The witness heard no explosions during his walk to Mugombwa.<sup>2095</sup>

1051. Witness FAG testified that upon arriving in Mugombwa his group found people from Kabaye, Burundians from the Saga refugee camp, and students and inhabitants of Mugombwa already in the parish.<sup>2096</sup> Neither *commune* police nor soldiers were present.<sup>2097</sup> The parish priest was not present.<sup>2098</sup> The Tutsi victims of the attack were already locked up in the church

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<sup>2085</sup> T. 19 November 2001 pp. 49-52 (Witness QAR).

<sup>2086</sup> T. 19 November 2001 p. 52 (Witness QAR).

<sup>2087</sup> T. 1 March 2004 pp. 5, 45; T. 1 March p. 6 (ICS) (Witness FAG); Prosecution Exhibit 83 (Personal Particulars).

<sup>2088</sup> T. 1 March 2004 pp. 6, 15 (ICS); T. 2 March 2004 pp. 16-19 (Witness FAG). The Chamber notes while Witness FAG did not expressly refer to the date, 21 April 1994, he testified that the events took place on the Thursday two weeks after the death of President Habyarimana.

<sup>2089</sup> T. 1 March 2004 p. 30 (Witness FAG).

<sup>2090</sup> T. 1 March 2004 p. 15 (ICS); T. 2 March 2004 p. 16 (Witness FAG).

<sup>2091</sup> T. 1 March 2004 p. 29; T. 2 March 2004 p. 19 (Witness FAG).

<sup>2092</sup> T. 2 March 2004 p. 19; T. 3 March 2004 p. 33 (Witness FAG).

<sup>2093</sup> T. 3 March 2004 p. 33 (Witness FAG).

<sup>2094</sup> T. 1 March 2004 p. 15 (ICS); T. 2 March 2004 p. 16 (Witness FAG).

<sup>2095</sup> T. 2 March 2004 pp. 19-20 (Witness FAG).

<sup>2096</sup> T. 1 March 2004 pp. 15-16 (ICS); T. 1 March 2004 p. 17 (HC) (Witness FAG) (French) (for the spelling of “Saga”).

<sup>2097</sup> T. 2 March 2004 pp. 22-23 (Witness FAG).

<sup>2098</sup> T. 2 March 2004 p. 21 (Witness FAG).

when the witness arrived.<sup>2099</sup> All those assembled had come to kill Tutsis in Mugombwa Parish.<sup>2100</sup>

1052. Witness FAG testified that between 2.15 and 3.00 p.m. a growing number of refugees gathered together in Mugombwa.<sup>2101</sup> Witness FAG estimated that 5,000 Tutsis were inside the church at the time of the attack. This assessment was based on his knowledge that in the normal course of events the church accommodated about 3,000 to 4,000 people, and the fact that on the day of the attack he saw from outside the church that a large number of Tutsis inside could not sit down.<sup>2102</sup>

1053. Witness FAG testified that he participated in the attack against the Tutsis hiding in Mugombwa Church, insofar as he was present at the scene with a club that he would have used to defend himself if he was attacked.<sup>2103</sup> He did not kill anybody.<sup>2104</sup> Everybody who was present participated in the attack.<sup>2105</sup> No Hutus were targeted.<sup>2106</sup> The attack began at 3.00 p.m. as the group of Burundians threw grenades at and into the church.<sup>2107</sup> These Burundians then threw bottles of petrol, taken from jerry cans they brought with them and dry fodder into the church and started a fire.<sup>2108</sup> Witness FAG did not go into the church.<sup>2109</sup> After they had run out of grenades, some of the attackers used traditional weapons including clubs, axes, and spears to break down the church door and bring out and kill those Tutsis who were not yet dead.<sup>2110</sup> While the witness was present, nobody was able to leave the church without being killed.<sup>2111</sup>

1054. Witness FAG testified that he did not stay at the church until the end of the attack and so he did not know whether anybody survived.<sup>2112</sup> Later, he stated that all those in the church were killed; there were no survivors.<sup>2113</sup>

1055. Witness FAG testified that he did not see Ndayambaje in Mugombwa on this day.<sup>2114</sup>

1056. Witness FAG testified that he did not mention the attacks on Mugombwa Church in his previous statement dated 11 August 1998 because at that time he was afraid and there were things he could not talk about.<sup>2115</sup>

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<sup>2099</sup> T. 2 March 2004 p. 20 (Witness FAG).

<sup>2100</sup> T. 1 March 2004 p. 16 (ICS) (Witness FAG).

<sup>2101</sup> T. 2 March 2004 p. 16 (Witness FAG).

<sup>2102</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 pp. 20-21 (Witness FAG).

<sup>2103</sup> T. 1 March 2004 p. 48; T. 2 March 2004 p. 22 (Witness FAG).

<sup>2104</sup> T. 1 March 2004 p. 48 (Witness FAG).

<sup>2105</sup> T. 2 March 2004 p. 21 (Witness FAG).

<sup>2106</sup> T. 2 March 2004 p. 20 (Witness FAG).

<sup>2107</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 p. 16 (Witness FAG).

<sup>2108</sup> T. 1 March 2004 p. 16 (ICS) (Witness FAG).

<sup>2109</sup> T. 2 March 2004 p. 20 (Witness FAG).

<sup>2110</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 p. 20 (Witness FAG).

<sup>2111</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 p. 21 (Witness FAG).

<sup>2112</sup> T. 2 March 2004 p. 21 (Witness FAG).

<sup>2113</sup> T. 2 March 2004 p. 26 (ICS) (Witness FAG).

<sup>2114</sup> T. 2 March 2004 p. 27 (ICS) (Witness FAG).

<sup>2115</sup> T. 6 September 2004 p. 11 (ICS) (Witness FAG).

Prosecution Witness FAU

1057. Witness FAU, a Hutu farmer from Muganza *commune*, detained at the time of his testimony,<sup>2116</sup> testified that on one afternoon in late April 1994, he went to Mugombwa to see the refugees who had gathered inside the church.<sup>2117</sup> Witness FAU was not armed.<sup>2118</sup> The refugees had been locked inside the church by the priest who had then left.<sup>2119</sup>

1058. Witness FAU saw the priest leave at midday but was told by somebody else that the priest had said he was going to Butare to get protection for the refugees.<sup>2120</sup> At this time there was a large crowd outside the church as well as the refugees inside.<sup>2121</sup> There were no assailants or attackers; the crowd was composed of Tutsis and Hutus who wanted to buy things brought by the refugees inside the church and Hutus who had sought refuge out of fear.<sup>2122</sup> The witness saw no policemen or *gendarmes* at the church.<sup>2123</sup> There were no injured people in the courtyard of the church.<sup>2124</sup> After the priest had left, the witness returned to his home and saw nothing more of what happened at the church that day.<sup>2125</sup>

1059. On that day, only one person was killed by gunshot at Mugombwa and no other victims died.<sup>2126</sup> Witness FAU did not go up to the doors or windows of the church. Witness FAU was told that some people were taken out of the church and to safety by their family members, although he did not see this himself.<sup>2127</sup>

1060. At night, Witness FAU heard many explosions from his home, where he was on a night patrol on his hill.<sup>2128</sup> The explosions were only heard at night.<sup>2129</sup> He was told that the Burundians attacked the church and the refugees with projectiles they had made themselves from bottles and inflammable liquid, and the witness heard explosions.<sup>2130</sup>

1061. Witness FAU returned to the church the following morning along with many others, including Cassien Ngonza and Rutabama, who he knew.<sup>2131</sup> He saw no policemen or *gendarmes* at the church that morning.<sup>2132</sup> Witness FAU went to the church in the hope of finding some

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<sup>2116</sup> T. 8 March 2004 pp. 84-86 (ICS) (Witness FAU); Prosecution Exhibit 85 (Personal Particulars).

<sup>2117</sup> T. 10 March 2004 p. 4 (Witness FAU). On the issue of the date, *see* T. 10 March 2004 pp. 3-4 (he went to Mugombwa the day after the event at Mukabuga market); T. 9 March 2004 p. 70 (the Mukabuga market killings took place a few days after the meeting at the Mugombwa *secteur* office, which was formerly the Muganza *commune* office); T. 9 March 2004 p. 67 (the Mugombwa *secteur* office meeting took place during the second week after the death of President Habyarimana) (Witness FAU).

<sup>2118</sup> T. 10 March 2004 p. 8 (Witness FAU).

<sup>2119</sup> T. 10 March 2004 pp. 4, 6 (Witness FAU).

<sup>2120</sup> T. 10 March 2004 pp. 6-7, 11 (Witness FAU).

<sup>2121</sup> T. 10 March 2004 p. 13 (Witness FAU).

<sup>2122</sup> T. 10 March 2004 pp. 6, 13 (Witness FAU).

<sup>2123</sup> T. 10 March 2004 pp. 15-16 (Witness FAU).

<sup>2124</sup> T. 10 March 2004 p. 13 (Witness FAU).

<sup>2125</sup> T. 10 March 2004 pp. 11, 15 (Witness FAU).

<sup>2126</sup> T. 10 March 2004 p. 8 (Witness FAU).

<sup>2127</sup> T. 10 March 2004 p. 11 (Witness FAU).

<sup>2128</sup> T. 10 March 2004 pp. 11-12 (Witness FAU).

<sup>2129</sup> T. 10 March 2004 p. 13 (Witness FAU).

<sup>2130</sup> T. 10 March 2004 pp. 4, 11, 15 (Witness FAU).

<sup>2131</sup> T. 10 March 2004 pp. 4-5, 11-12, 15, 17 (Witness FAU).

<sup>2132</sup> T. 10 March 2004 pp. 15-16 (Witness FAU).

items abandoned by the refugees but there were no such items there.<sup>2133</sup> Upon his arrival, the witness saw corpses inside the church and on the church grounds.<sup>2134</sup> He did not witness any attacks, although he saw people with machetes and spears.<sup>2135</sup>

1062. Witness FAU looked at the church without entering.<sup>2136</sup> The window panes were broken but there was no evidence that there had been a fire in the church.<sup>2137</sup> The witness was told that 2,000 refugees had been killed at the church.<sup>2138</sup> Witness FAU stated that he did not remember if Ndayambaje was at the church on either day.<sup>2139</sup>

1063. Witness FAU testified that he did not see Witness RV at the church.<sup>2140</sup> The witness stated that he did not see a man named Venant at the church and that he could not remember whether he saw Kanyenzi at the church, but stated that these men were leading the attacks and so were everywhere.<sup>2141</sup> Witness FAU was reminded about his statement of 10 (*sic*) October 1999, in which he said that there were 2,500 Tutsis in the church, that Kanyenzi and Venant led the Hutus and Burundians in attacking the church, and that he saw Ndayambaje in vehicles belonging, respectively, to the *commune* and an international organisation.<sup>2142</sup> Witness FAU testified that this was information received from other people rather than things that he saw himself and that any discrepancies are attributable to the passage of a very long time.<sup>2143</sup>

1064. When confronted with his confession of 29 December 1999, which stated that Ndayambaje arrived at the church after the priest's departure, Witness FAU noted that he was obliged to include all evidence, including hearsay, in his confession.<sup>2144</sup> The witness was read his statement of 22 February 2001, in which he said that he witnessed the murder of an estimated 200 to 300 Tutsi refugees at Mugombwa Church by *gendarmes* following the orders of Ndayambaje who was at the scene.<sup>2145</sup> The witness testified that there were many things that he could not remember. He denied that his testimony contradicted this previous statement.<sup>2146</sup>

#### Prosecution Witness RV

1065. Witness RV, a Hutu civil servant in Muganza *commune*, testified that on 20 April 1994, he was woken at 6.00 a.m. by Ndayambaje and Father Tiziano, the Italian priest of Mugombwa Parish, who told him that the local population in Mugombwa had taken up arms and that there

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<sup>2133</sup> T. 10 March 2004 pp. 14-15 (Witness FAU).

<sup>2134</sup> T. 10 March 2004 pp. 13-14 (Witness FAU).

<sup>2135</sup> T. 10 March 2004 p. 14 (Witness FAU).

<sup>2136</sup> T. 10 March 2004 p. 14 (Witness FAU).

<sup>2137</sup> T. 10 March 2004 p. 14 (Witness FAU).

<sup>2138</sup> T. 10 March 2004 p. 14 (Witness FAU).

<sup>2139</sup> T. 10 March 2004 pp. 18-19 (Witness FAU).

<sup>2140</sup> T. 10 March 2004 p. 15 (Witness FAU).

<sup>2141</sup> T. 10 March 2004 p. 18; T. 10 March 2004 p. 21 (Witness FAU) (French) (for the spelling of "Venant").

<sup>2142</sup> T. 10 March 2004 p. 20; T. 10 March 2004 p. 21 (Witness FAU) (French); Defence Exhibit 192 (Ndayambaje) (9 October 1999, Statement of Witness FAU) p. 3.

<sup>2143</sup> T. 10 March 2004 pp. 20-21 (Witness FAU).

<sup>2144</sup> T. 10 March 2004 p. 21 (Witness FAU); Defence Exhibit 193 (Ndayambaje) (29 December 1999, Confession of Witness FAU to Rwandan Authorities) p. 3.

<sup>2145</sup> T. 10 March 2004 pp. 21-22 (Witness FAU); Defence Exhibit 195 (Ndayambaje) (22 February 2001, Statement of Witness FAU) p. 3.

<sup>2146</sup> T. 10 March 2004 p. 22 (Witness FAU).

was insecurity in the area.<sup>2147</sup> Father Tiziano drove with the witness and Ndayambaje to the *commune* office. Witness RV joined Ndayambaje in the *commune* vehicle until they collected a driver from his home in Bishya. The driver then drove Witness RV while Ndayambaje accompanied Father Tiziano. Ndayambaje and Father Tiziano proceeded to Ndayambaje's residence.<sup>2148</sup>

1066. The vehicle Witness RV was travelling in stopped when it came across a group of about 30 assailants, including *Conseiller Viateur* Singirankabo.<sup>2149</sup> Witness RV asked the group why they had mobilised themselves and was told that if he did not watch out he would be killed.<sup>2150</sup>

1067. At about 7.30 a.m., the witness went to Ndayambaje's residence to tell Ndayambaje that he was overwhelmed and that he was going to Butare to request assistance.<sup>2151</sup> Witness RV proceeded to Butare, where he reported the event to Dominique Ntawukulilyayo, the *sous-préfet* of Gisagara.<sup>2152</sup>

1068. Witness RV waited until about 6.00 p.m. for the *sous-préfet* to accompany him to Mugombwa, but he did not come so he left without him.<sup>2153</sup>

1069. Witness RV testified that upon returning to the Muganza *commune* office, at about 7.00 p.m. that day, he found that many people had taken refuge at the *commune* office, including Ndayambaje and his family, two on-duty policemen and six armed *gendarmes*.<sup>2154</sup> After about 30 minutes, the witness heard grenades exploding from the direction of Mugombwa Parish.<sup>2155</sup> He then learned that Tutsis had taken refuge at the parish.<sup>2156</sup> He did not go to the church because the *gendarmerie* commander refused to go with him and, along with the *conseiller* and Ndayambaje, the witness thought it would be suicidal to go there, and he was afraid.<sup>2157</sup> Instead, the witness spent the night in the *commune* office. The last time Witness RV saw Ndayambaje that evening was at 8.00 p.m., when Ndayambaje went to his room with his family.<sup>2158</sup> The sound of grenade explosions stopped during the night of 20 April 1994.<sup>2159</sup>

1070. During the afternoon of 21 April 1994, Witness RV went to Mugombwa Parish with Ndayambaje, who wanted to collect a khaki Toyota Corolla that belonged to a white woman

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<sup>2147</sup> T. 16 February 2004 pp. 38-39 (ICS); T. 17 February 2004 pp. 61, 63 (ICS) (Witness RV).

<sup>2148</sup> T. 17 February 2004 p. 62 (ICS) (Witness RV).

<sup>2149</sup> T. 16 February 2004 p. 41 (ICS); T. 17 February 2004 p. 62 (ICS); T. 16 February 2004 p. 46 (HC) (Witness RV) (French) (for the spelling of "Viateur").

<sup>2150</sup> T. 16 February 2004 p. 39 (ICS) (Witness RV).

<sup>2151</sup> T. 17 February 2004 pp. 67-69 (ICS) (Witness RV).

<sup>2152</sup> T. 16 February 2004 p. 41 (ICS); T. 16 February 2004 p. 47 (Witness RV) (French) (for the spelling of "Dominique").

<sup>2153</sup> T. 18 February 2004 p. 7 (ICS) (Witness RV).

<sup>2154</sup> T. 16 February 2004 p. 43 (ICS); T. 18 February 2004 pp. 10-11 (ICS) (Witness RV).

<sup>2155</sup> T. 16 February 2004 p. 43 (ICS) (Witness RV).

<sup>2156</sup> T. 18 February 2004 p. 17 (ICS) (Witness RV).

<sup>2157</sup> T. 16 February 2004 p. 43 (ICS); T. 18 February 2004 pp. 11-12 (ICS); T. 19 February 2004 pp. 49-50 (ICS) (Witness RV).

<sup>2158</sup> T. 16 February 2004 p. 43 (ICS) (Witness RV).

<sup>2159</sup> T. 18 February 2004 p. 19 (ICS) (Witness RV).

called Monique.<sup>2160</sup> The witness waited until the afternoon because his driver, who Witness RV had sent to the church in the morning, had already reported to him that there was no one left there to save.<sup>2161</sup> The killing had stopped, but there were about 1,000 corpses in the compound. Witness RV supposed that there were more bodies in the church, but he did not go inside.<sup>2162</sup> He saw no survivors.<sup>2163</sup>

1071. The witness asserted that most of the victims were Tutsis, although a few Hutus who had taken refuge in the church had also been killed.<sup>2164</sup> Witness RV stated that he learned that the attack had been launched by Burundian refugees, assisted by the inhabitants of Kivomo *secteur* and Kibaye *commune*.<sup>2165</sup> The witness reported the incident to the *sous-préfet*, who was the closest authority.<sup>2166</sup>

#### Prosecution Witness RT

1072. Witness RT, a Tutsi teacher from Muganza *commune*, testified that on a Wednesday, which was either 19 or 20 April 1994, he remained at home.<sup>2167</sup> On that day, soon after 9.30 a.m., he saw the parish priest, Father Tiziano, drive past the witness' house in a vehicle, heading in the direction of the *commune* office. The priest again passed his house, driving back in the direction of the church, followed by the official *commune* vehicle in which sat Witness RV and some police officers.<sup>2168</sup> Witness RT did not see Ndayambaje in the *commune* vehicle.<sup>2169</sup>

#### Ndayambaje Defence Witness JAMES

1073. Witness JAMES, a Hutu student with a Tutsi mother from Mugombwa *secteur*, testified that he knew Ndayambaje in 1994.<sup>2170</sup> One of Witness JAMES' brothers was involved in attacks at Mugombwa but not at the church; his brother pled guilty at the *Gacaca* courts and was granted a pardon.<sup>2171</sup> Two of Witness JAMES' cousins took part in the attack at the church. One was subsequently imprisoned for acts committed during the genocide. He was initially categorised as a Category 1 prisoner but pled guilty and was released. The other cousin who participated in the attack on the church left the country and had not returned.<sup>2172</sup>

1074. Witness JAMES testified that he used to attend mass at Mugombwa Church.<sup>2173</sup> The church had stained glass windows which could not be opened.<sup>2174</sup> It was impossible to see

<sup>2160</sup> T. 18 February 2004 pp. 18-19 (ICS) (Witness RV).

<sup>2161</sup> T. 18 February 2004 p. 19 (ICS) (Witness RV).

<sup>2162</sup> T. 16 February 2004 p. 44 (ICS); T. 18 February 2004 pp. 20-21 (ICS) (Witness RV).

<sup>2163</sup> T. 18 February 2004 p. 20 (ICS) (Witness RV).

<sup>2164</sup> T. 18 February 2004 p. 22 (ICS) (Witness RV).

<sup>2165</sup> T. 18 February 2004 p. 24 (ICS); T. 18 February 2004 p. 28 (HC) (Witness RV) (French) (for the spelling of "Kivomo").

<sup>2166</sup> T. 18 February 2004 p. 24 (ICS) (Witness RV).

<sup>2167</sup> T. 10 March 2004 p. 47; T. 11 March 2004 p. 8 (Witness RT).

<sup>2168</sup> T. 11 March 2004 pp. 11-12, 15-16 (ICS) (Witness RT).

<sup>2169</sup> T. 11 March 2004 p. 17 (ICS) (Witness RT).

<sup>2170</sup> T. 2 June 2008 pp. 13-14 (ICS) (Witness JAMES).

<sup>2171</sup> T. 3 June 2008 pp. 32-33 (ICS) (Witness JAMES).

<sup>2172</sup> T. 3 June 2008 pp. 34-36 (ICS) (Witness JAMES).

<sup>2173</sup> T. 2 June 2008 p. 35 (ICS) (Witness JAMES).

through the windows from inside and recognise people outside and vice versa.<sup>2175</sup> He testified that every single window was made of coloured glass.<sup>2176</sup> Explosions at the church in 1994 broke the windows but he was not sure exactly when the windows broke.<sup>2177</sup> The church was made of brick, and there were ventilation holes in the church walls that were not covered with glass but it was not possible to see through them from the inside because they were slanted.<sup>2178</sup> There were seven doors in the church, and it was impossible to see through them.<sup>2179</sup> The church was around 100 to 120 metres from the witness' home.<sup>2180</sup>

1075. Witness JAMES testified that two weeks after the death of President Habyarimana, killings started in his area.<sup>2181</sup> The witness saw members of the population carrying their luggage on their heads fleeing towards Mugombwa Parish at 6.00 a.m.<sup>2182</sup> He remembered this day to be a Wednesday because it was market day.<sup>2183</sup> The witness testified that he did not know why people were fleeing.<sup>2184</sup>

1076. The same day, between 3.00 and 5.00 p.m., the witness heard explosions from Mugombwa Church.<sup>2185</sup> This was Wednesday 20 April 1994.<sup>2186</sup> There were many explosions, he could not say how many, but there were less explosions than on the next day.<sup>2187</sup>

1077. Witness JAMES testified that the same day (Wednesday) he was at a pub.<sup>2188</sup> At around 3.30 p.m., Cyabarene and Mushimire came to the pub followed by a group of hoodlums including Frédéric Mushimire and Innocent and some inhabitants of Karonkano, including Boniface, Nkundabagenzi and Kibirikibi.<sup>2189</sup> Cyabarene told those present to come and help him and the others at Mugombwa Church because the situation had become complicated.<sup>2190</sup>

1078. Witness JAMES testified that Mushimire, Cyabarene and other hoodlums relayed to those present in the bar that they were attacking people at Mugombwa Church but they had not been successful and they had had to get some Burundian refugees to help them.<sup>2191</sup> The hoodlums told them that the first attack on the church was carried out by them, the second one by Burundian refugees and the last one by a different group of assailants.<sup>2192</sup>

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<sup>2174</sup> T. 2 June 2008 p. 35 (ICS) (Witness JAMES).

<sup>2175</sup> T. 2 June 2008 pp. 35-36 (ICS) (Witness JAMES).

<sup>2176</sup> T. 3 June 2008 p. 61 (Witness JAMES).

<sup>2177</sup> T. 3 June 2008 p. 64 (Witness JAMES).

<sup>2178</sup> T. 3 June 2008 pp. 64-65 (Witness JAMES).

<sup>2179</sup> T. 4 June 2008 p. 20 (ICS) (Witness JAMES).

<sup>2180</sup> T. 2 June 2008 p. 14 (ICS) (Witness JAMES).

<sup>2181</sup> T. 2 June 2008 pp. 24-25 (Witness JAMES).

<sup>2182</sup> T. 2 June 2008 pp. 24-25 (Witness JAMES).

<sup>2183</sup> T. 2 June 2008 p. 25 (Witness JAMES).

<sup>2184</sup> T. 2 June 2008 p. 29 (ICS) (Witness JAMES).

<sup>2185</sup> T. 2 June 2008 p. 29 (ICS) (Witness JAMES).

<sup>2186</sup> T. 2 June 2008 p. 29 (ICS); T. 4 June 2008 p. 5 (ICS) (Witness JAMES).

<sup>2187</sup> T. 3 June 2008 p. 65 (Witness JAMES).

<sup>2188</sup> T. 2 June 2008 p. 32 (ICS) (Witness JAMES).

<sup>2189</sup> T. 2 June 2008 p. 32 (ICS); T. 2 June 2008 pp. 33, 48 (Witness JAMES) (French) (for the spelling of "Cyabarene" and "Frédéric").

<sup>2190</sup> T. 2 June 2008 pp. 29, 32 (ICS) (Witness JAMES).

<sup>2191</sup> T. 2 June 2008 p. 33 (ICS) (Witness JAMES).

<sup>2192</sup> T. 2 June 2008 p. 34 (ICS) (Witness JAMES).

1079. On Wednesday night, Cyabarene came to the witness' house. He asked the witness' mother and younger brother to leave.<sup>2193</sup> The witness' mother and sister left to go to Kayitani's house.<sup>2194</sup> Cyabarene spent the night of 20 April 1994 in a building close to the witness' house, while the witness stayed at the witness' house.<sup>2195</sup>

1080. The witness did not hear anyone mention the name of Ndayambaje with respect to the attack launched on the church.<sup>2196</sup> On cross-examination, he admitted that his knowledge of what happened at the church was based on what a few of the attackers said and he overheard.<sup>2197</sup>

1081. Witness JAMES testified that he saw Cyabarene, Mushimire and Innocent again on Thursday, 21 April 1994. Mushimire and others told the witness that a further attack had been carried out at Mugombwa Church and that an axe was used to break the church door to get access inside on that day.<sup>2198</sup> He did not hear anybody mention Ndayambaje's name with respect to the attack on the church.<sup>2199</sup> On cross-examination, when it was put to him that he could not have heard everything the men at the bar discussed about the attacks they participated in, Witness JAMES testified that he narrated what he had heard.<sup>2200</sup>

1082. Witness JAMES testified that the assailants ate and drank at the bar but did not spend the night there.<sup>2201</sup> They came in the evenings of Wednesday and Thursday at about 5.00 p.m. and would leave around 8.00 p.m.<sup>2202</sup>

1083. On cross-examination he said it was not possible that Ndayambaje had gone to the church, it would have been known if he had.<sup>2203</sup>

1084. Witness JAMES testified that Witness QAR gave false testimony about the Mugombwa Church massacre.<sup>2204</sup> Witness JAMES testified that he lived in a house 400 metres from that of Witness QAR.<sup>2205</sup> On cross-examination, Witness JAMES testified that he last met with her the day before he left to testify before the Tribunal.<sup>2206</sup> The witness stated that he never discussed the events at Mugombwa in 1994 with Witness QAR but Witness QAR often discussed the events with Witness JAMES' mother and he listened to their conversations.<sup>2207</sup>

1085. On cross-examination, Witness JAMES drew a sketch describing various sites including his home, the Statue of the Virgin Mary, Kayitani's house, Mugombwa Church, the

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<sup>2193</sup> T. 2 June 2008 p. 33 (ICS) (Witness JAMES).

<sup>2194</sup> T. 2 June 2008 pp. 33, 41 (ICS) (Witness JAMES).

<sup>2195</sup> T. 2 June 2008 p. 33 (ICS) (Witness JAMES).

<sup>2196</sup> T. 2 June 2008 p. 35 (ICS) (Witness JAMES).

<sup>2197</sup> T. 3 June 2008 p. 60 (Witness JAMES).

<sup>2198</sup> T. 2 June 2008 p. 43 (ICS) (Witness JAMES).

<sup>2199</sup> T. 2 June 2008 p. 44 (ICS) (Witness JAMES).

<sup>2200</sup> T. 3 June 2008 p. 35 (ICS) (Witness JAMES).

<sup>2201</sup> T. 3 June 2008 p. 72 (ICS) (Witness JAMES).

<sup>2202</sup> T. 3 June 2008 pp. 72-73 (ICS) (Witness JAMES).

<sup>2203</sup> T. 3 June 2008 p. 62 (ICS) (Witness JAMES).

<sup>2204</sup> T. 2 June 2008 pp. 37, 39, 41 (ICS) (Witness JAMES).

<sup>2205</sup> T. 2 June 2008 p. 22 (ICS) (Witness JAMES).

<sup>2206</sup> T. 3 June 2008 p. 28 (ICS) (Witness JAMES).

<sup>2207</sup> T. 3 June 2008 p. 29 (ICS) (Witness JAMES).



bar where he worked, the football pitch and the priest's house.<sup>2208</sup> The sketch was admitted as Prosecution Exhibit 200.<sup>2209</sup>

1086. Witness JAMES testified that he was with the father of Witness QAR's child at all times on Wednesday, 20 April 1994. He heard that Witness QAR was inside Mugombwa Church. He did not see her that day. The witness testified that the next day, Thursday, 21 April 1994, Damascène from *Chez Amahuma* came to the bar and told the witness' cousin that his wife had just been brought out of the church, and that she was near the primary school headmaster's office.<sup>2210</sup>

1087. Witness JAMES testified that he saw Witness QAR between 7.00 and 8.00 p.m. on Thursday 21 April 1994; Witness QAR was with the father of Witness QAR's child, and some other people the witness did not recognise.<sup>2211</sup> Thereafter, Witness QAR and her husband went to a house and spent the night there.<sup>2212</sup> On cross-examination, the witness testified that he saw Witness QAR go to the house from his vantage point outside the bar where he worked. It was dark at the time.<sup>2213</sup>

#### Ndayambaje Defence Witness MAJIK

1088. Witness MAJIK, a Hutu farmer from Muganza *commune*, testified that on a Wednesday two weeks after the death of President Habyarimana, her mother asked her to go to Mugombwa, from her house, to visit Witness MAJIK's maternal aunt, a Tutsi, and check whether she was experiencing any problems.<sup>2214</sup> On her way, she passed by Mugombwa Church at about 11.30 a.m.<sup>2215</sup> She noticed that the church doors were closed and that outside the church there were people carrying traditional weapons.<sup>2216</sup> One of the armed assailants, a young boy who was Witness MAJIK's neighbour, told her that Tutsis had taken refuge inside the church.<sup>2217</sup> The people inside the church were screaming.<sup>2218</sup> The witness saw no vehicle on the church grounds.<sup>2219</sup>

1089. The witness then proceeded to her aunt's home, but found that it was closed and her aunt was not there. She went to her maternal uncle's home, which was also closed. She then returned to Mugombwa Church to look for her uncle.<sup>2220</sup>

1090. The armed assailants were still at the front of the church. Nobody could see into the church as the doors were shut and the windows were opaque.<sup>2221</sup> At around 12.30 p.m., having

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<sup>2208</sup> T. 3 June 2008 pp. 42-45 (ICS) (Witness JAMES); Prosecution Exhibit 200 (Sketch by Witness JAMES).

<sup>2209</sup> T. 3 June 2008 p. 45 (ICS) (Witness JAMES).

<sup>2210</sup> T. 2 June 2008 p. 37 (ICS) (Witness JAMES).

<sup>2211</sup> T. 2 June 2008 p. 39 (ICS) (Witness JAMES).

<sup>2212</sup> T. 2 June 2008 pp. 39, 41 (ICS) (Witness JAMES).

<sup>2213</sup> T. 3 June 2008 p. 73 (ICS) (Witness JAMES).

<sup>2214</sup> T. 17 June 2008 pp. 38-39; T. 17 June 2008 p. 43 (ICS) (Witness MAJIK).

<sup>2215</sup> T. 17 June 2008 p. 41 (ICS) (Witness MAJIK).

<sup>2216</sup> T. 17 June 2008 pp. 41-42 (ICS) (Witness MAJIK).

<sup>2217</sup> T. 17 June 2008 pp. 42-43 (ICS); T. 18 June 2008 p. 16 (Witness MAJIK).

<sup>2218</sup> T. 17 June 2008 p. 43 (ICS) (Witness MAJIK).

<sup>2219</sup> T. 17 June 2008 p. 45 (ICS) (Witness MAJIK).

<sup>2220</sup> T. 17 June 2008 p. 44 (ICS) (Witness MAJIK).

<sup>2221</sup> T. 17 June 2008 p. 44 (ICS); T. 18 June 2008 p. 16 (Witness MAJIK).

remained on the grounds for about half an hour, she left and returned home.<sup>2222</sup> The assailants had not attacked the church at this time. She saw no vehicle on the church grounds during this second visit to the church.<sup>2223</sup>

1091. The witness testified that in April 1994, the Muganza *commune* office had one vehicle, a white Toyota. She did not see this vehicle on Wednesday when she passed by Mugombwa Church.<sup>2224</sup>

1092. The witness did not see Ndayambaje, whom she knew from his time as *bourgmestre*.<sup>2225</sup> Nobody told the witness that Ndayambaje had been present at the church on that day.<sup>2226</sup> Witness MAJIK did not see Ndayambaje in Muganza during the period 6 April 1994 to the beginning of May 1994.<sup>2227</sup>

#### Ndayambaje Defence Witness ALIZA

1093. Witness ALIZA, a Hutu student in 1994, testified that about two weeks after Habyarimana's death, disturbances started in Muganza *commune*. On a Wednesday evening, at around 5.00 p.m., the witness heard gunshots and explosions coming from the direction of Mugombwa Church, which was about five to seven kilometres from Witness ALIZA's home.<sup>2228</sup>

#### Ndayambaje Defence Witness KEPİR

1094. Witness KEPİR, son of a Hutu father and Tutsi mother, was a friend of Ndayambaje.<sup>2229</sup>

1095. Witness KEPİR testified that he was at the *commune* office on 20 April 1994, when he saw Ndayambaje arrive in a car that he did not recognise. On arrival, Ndayambaje informed the witness that he had come to seek refuge because he had heard gunfire in his neighbourhood.<sup>2230</sup> The witness and Ndayambaje then walked to the witness' house a short distance away.<sup>2231</sup> The vehicle that brought Ndayambaje to the *commune* office left and returned a few minutes later with Ndayambaje's family and some others.<sup>2232</sup> Ndayambaje lived approximately 15 minutes away from the *commune* office by car.<sup>2233</sup> Ndayambaje was joined by his family and the others who had travelled with them at the witness' house and 10 or 15 minutes later, they all went together to the *commune* office.<sup>2234</sup>

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<sup>2222</sup> T. 17 June 2008 p. 49; T. 17 June 2008 pp. 44-45 (ICS); T. 18 June 2008 p. 16 (Witness MAJIK).

<sup>2223</sup> T. 17 June 2008 p. 45 (ICS) (Witness MAJIK).

<sup>2224</sup> T. 17 June 2008 p. 46 (Witness MAJIK).

<sup>2225</sup> T. 17 June 2008 pp. 46-48; T. 18 June 2008 pp. 16-17 (Witness MAJIK).

<sup>2226</sup> T. 17 June 2008 p. 48 (Witness MAJIK).

<sup>2227</sup> T. 18 June 2008 p. 17 (Witness MAJIK).

<sup>2228</sup> T. 4 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>2229</sup> T. 10 September 2008 p. 39; T. 15 September 2008 p. 15 (Witness KEPİR).

<sup>2230</sup> T. 10 September 2008 p. 39 (Witness KEPİR).

<sup>2231</sup> T. 10 September 2008 p. 39; T. 10 September 2008 p. 41 (ICS) (Witness KEPİR).

<sup>2232</sup> T. 10 September 2008 pp. 41, 43 (ICS) (Witness KEPİR).

<sup>2233</sup> T. 10 September 2008 p. 19 (Witness KEPİR).

<sup>2234</sup> T. 10 September 2008 p. 41 (ICS) (Witness KEPİR).

1096. Ndayambaje, a *gendarme* and the witness took the vehicle belonging to an international organisation and left at approximately 12.30 or 1.00 p.m. to inform *Bourgmestre* Chrysologue in Butare of the prevailing situation in the *commune*.<sup>2235</sup> They arrived in Butare at approximately 2.00 p.m., returning to the Muganza *commune* office at around 4.00 or 5.00 p.m.<sup>2236</sup> Ndayambaje spent the night of 20 April 1994 in the courtyard of the *commune* office.<sup>2237</sup>

1097. Witness KEPIR testified that he did not see Ndayambaje leave the *commune* office on the night of 20 April 1994.<sup>2238</sup> That evening, the *bourgmestre* used the *commune* vehicle to move items between his home and the *commune* office where he stayed the night.<sup>2239</sup> Both the *commune* vehicle and the vehicle belonging to an international organisation remained in the parking space behind the *commune* office during that night.<sup>2240</sup>

1098. On Thursday 21 April 1994, neither Ndayambaje nor the *commune* vehicle left the *commune* office.<sup>2241</sup> Witness KEPIR testified that at around 4.00 or 5.00 p.m. on 21 April 1994, he heard very loud noises followed by grenade detonations from Mugombwa Parish, which was about seven to 10 kilometres away from the *commune* office.<sup>2242</sup>

1099. On the morning of 22 April 1994, Witness KEPIR saw and spoke to Ndayambaje, Witness RV and Charles. This group told the witness that they were leaving to monitor the situation in Mugombwa and Kabuga.<sup>2243</sup> The witness testified that Ndayambaje wanted to collect a car from an expatriate called Monique who worked there and to check on his mother at the Mugombwa health centre.<sup>2244</sup> The group left at around 10.00 a.m. Ndayambaje returned to the *commune* office 20 to 30 minutes later in the car he had collected. It was a khaki-coloured Toyota Corolla.<sup>2245</sup> Ndayambaje was not accompanied by his mother.<sup>2246</sup>

1100. A few minutes after Ndayambaje's return, Witness RV arrived.<sup>2247</sup> Ndayambaje and Witness RV told people at the *commune* office that they had seen dead bodies at Mugombwa Church.<sup>2248</sup>

1101. At approximately 1.00 or 2.00 p.m. on 22 April 1994, the witness accompanied Ndayambaje who decided to collect the vehicle belonging to the Kirarambogo health centre.<sup>2249</sup> They left in the vehicle belonging to an expatriate.<sup>2250</sup> Returning from Kirarambogo,

<sup>2235</sup> T. 10 September 2008 pp. 45-46 (ICS) (Witness KEPIR).

<sup>2236</sup> T. 10 September 2008 pp. 46-47 (ICS) (Witness KEPIR).

<sup>2237</sup> T. 10 September 2008 pp. 51-52, 55-57; T. 10 September pp. 59-61 (ICS) (Witness KEPIR).

<sup>2238</sup> T. 10 September 2008 p. 51 (Witness KEPIR).

<sup>2239</sup> T. 10 September 2008 p. 52 (Witness KEPIR).

<sup>2240</sup> T. 10 September 2008 pp. 52-53 (Witness KEPIR).

<sup>2241</sup> T. 10 September 2008 pp. 53-54; T. 15 September 2008 p. 8 (Witness KEPIR).

<sup>2242</sup> T. 15 September 2008 pp. 8-9 (Witness KEPIR).

<sup>2243</sup> T. 10 September 2008 p. 55 (Witness KEPIR).

<sup>2244</sup> T. 10 September 2008 pp. 55-57; T. 15 September 2008 p. 15 (Witness KEPIR).

<sup>2245</sup> T. 10 September 2008 pp. 56-57 (Witness KEPIR).

<sup>2246</sup> T. 15 September 2008 p. 16 (Witness KEPIR).

<sup>2247</sup> T. 10 September 2008 p. 57 (Witness KEPIR).

<sup>2248</sup> T. 10 September 2008 p. 57; T. 15 September 2008 p. 15 (Witness KEPIR).

<sup>2249</sup> T. 10 September 2008 p. 59 (ICS); T. 15 September 2008 pp. 13-14 (Witness KEPIR).

<sup>2250</sup> T. 10 September 2008 p. 59 (ICS) (Witness KEPIR).

Ndayambaje drove the Kirarambogo health centre vehicle and the witness followed close behind.<sup>2251</sup> Both cars stopped at a roadblock that was about 500 metres from the Kirarambogo health centre and then proceeded to the Muganza *commune* office, arriving at about 4.00 p.m.<sup>2252</sup> Witness KEPIR stayed with Ndayambaje that evening until they parted company to go to bed.<sup>2253</sup>

1102. The witness testified that Ndayambaje did not leave the *commune* office on 22 April 1994, on any occasion other than the trip to Mugombwa and the trip to Kirarambogo.<sup>2254</sup>

1103. The witness testified that in 1994, Muganza *commune* had a white single-cabin Stout pickup with “Muganza *commune*” written on the side.<sup>2255</sup> The official driver of this vehicle was Charles Habakurama.<sup>2256</sup> Ndayambaje had his own private vehicle in April 1994, a white double-cabin Toyota Hilux with slats on the back on which tarpaulin could be placed. The vehicle was rented out to *Médecins Sans Frontières* (“MSF”) Belgium, in Butare.<sup>2257</sup> The witness did not see this vehicle in Muganza *commune* in April 1994 and disagreed that Ndayambaje used this vehicle on 22 April 1994.<sup>2258</sup>

#### Ndayambaje Defence Witness GABON

1104. Witness GABON, a Hutu policeman, testified that on 20 April 1994, he went to the Muganza *commune* office at around 9.00 or 9.30 a.m.<sup>2259</sup> At that time, the *bourgmestre* was not present.<sup>2260</sup> A policeman on duty told the witness that the situation in Mugombwa was precarious and that Ndayambaje and Father Tiziano, the parish priest, had come by car to the *commune* office to look for *Bourgmestre* Chrysologue Bimenyimana.<sup>2261</sup> Witness GABON’s colleague said that the *bourgmestre* left in his car with his driver.<sup>2262</sup>

1105. Witness GABON testified that Ndayambaje arrived at the Muganza *commune* office in a vehicle at about 11.00 a.m. which left soon afterwards. He returned at about 12.30 p.m. with his family and others.<sup>2263</sup> Ndayambaje and his family moved into the IGA room in the *commune* office.<sup>2264</sup> Later, Ndayambaje left in a blue vehicle belonging to the international organisation and went to Butare.<sup>2265</sup> He returned between 5.00 and 5.30 p.m.<sup>2266</sup> At around 7.00 p.m., the *bourgmestre* and his driver returned to the *commune* office in the white

<sup>2251</sup> T. 10 September 2008 p. 60 (ICS) (Witness KEPIR).

<sup>2252</sup> T. 10 September 2008 pp. 60-61 (ICS) (Witness KEPIR).

<sup>2253</sup> T. 10 September 2008 p. 61 (ICS) (Witness KEPIR).

<sup>2254</sup> T. 10 September 2008 p. 62 (ICS) (Witness KEPIR).

<sup>2255</sup> T. 4 September 2008 pp. 15, 19 (Witness KEPIR).

<sup>2256</sup> T. 4 September 2008 p. 19 (Witness KEPIR).

<sup>2257</sup> T. 4 September 2008 p. 24 (Witness KEPIR).

<sup>2258</sup> T. 10 September 2008 p. 63 (Witness KEPIR).

<sup>2259</sup> T. 28 August 2008 p. 61 (ICS) (Witness GABON).

<sup>2260</sup> T. 28 August 2008 p. 64 (ICS) (Witness GABON).

<sup>2261</sup> T. 28 August 2008 pp. 63-65 (ICS) (Witness GABON).

<sup>2262</sup> T. 28 August 2008 p. 64 (ICS) (Witness GABON).

<sup>2263</sup> T. 28 August 2008 pp. 65-71 (ICS) (Witness GABON).

<sup>2264</sup> T. 28 August 2008 p. 69 (ICS); T. 1 September 2008 p. 21 (ICS) (Witness GABON).

<sup>2265</sup> T. 28 August 2008 pp. 65-71 (ICS) (Witness GABON).

<sup>2266</sup> T. 28 August 2008 p. 71 (ICS) (Witness GABON).

*commune* vehicle, which they parked in the car park.<sup>2267</sup> On the night of 20 April 1994 these were the only two vehicles in the *commune* office car park.<sup>2268</sup>

1106. Witness GABON testified that about 150 people took refuge at the *commune* office on Wednesday, 20 April 1994.<sup>2269</sup> They stayed day and night at the *commune* office until the following Saturday.<sup>2270</sup>

1107. Witness GABON testified that Ndayambaje did not leave the *commune* office premises during the day or night of 21 April 1994.<sup>2271</sup> Ndayajbame remained there, playing cards with other refugees.<sup>2272</sup> Witness GABON testified that Ndayambaje was still present at the *commune* office on the morning of 22 April 1994, which was a Friday.<sup>2273</sup> Ndayambaje left the office with the *bourgmestre* in the *commune* vehicle at about 9.00 a.m.<sup>2274</sup>

1108. Witness GABON testified that Ndayambaje returned about one hour later, driving the small grey four-door sedan vehicle of the Kirarambogo health centre that belonged to Monique, a white lady who worked at the health centre.<sup>2275</sup> About an hour later, *Bourgmestre* Chrysologue and his driver arrived at the *commune* office in the *commune's* vehicle, which they parked in its normal place in the office car park.<sup>2276</sup> Neither car left the *commune* compound again that day.<sup>2277</sup>

1109. Witness GABON testified that at about 11.00 a.m., Ndayambaje left the *commune* office with Witness KEPIR and a driver in the blue vehicle belonging to an international organisation.<sup>2278</sup> At approximately 2.00 p.m., Ndayambaje returned alone in the khaki-coloured Kirarambogo health centre dual-cabin van, which was normally used as an ambulance.<sup>2279</sup> Witness GABON emphasised that the Kirarambogo health centre had two vehicles and, while he knew little about motor vehicles, this van should not be confused with the sedan vehicle used by Ndayambaje earlier that day.<sup>2280</sup> Soon after Ndayambaje's return, Witness KEPIR and his driver arrived in the vehicle and parked in the *commune* office car park. Thereafter, none of the four vehicles left the *commune* office for the rest of the day. Ndayambaje and his family spent the night of 22 April 1994 in the IGA room of the *commune* office.<sup>2281</sup>

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<sup>2267</sup> T. 1 September 2008 pp. 20-21 (ICS) (Witness GABON).

<sup>2268</sup> T. 1 September 2008 p. 24 (ICS) (Witness GABON).

<sup>2269</sup> T. 1 September 2008 pp. 11, 13 (ICS) (Witness GABON).

<sup>2270</sup> T. 1 September 2008 p. 13 (ICS) (Witness GABON).

<sup>2271</sup> T. 1 September 2008 p. 26 (ICS) (Witness GABON).

<sup>2272</sup> T. 1 September 2008 p. 26 (ICS) (Witness GABON).

<sup>2273</sup> T. 1 September 2008 p. 28 (ICS) (Witness GABON).

<sup>2274</sup> T. 1 September 2008 p. 28 (ICS) (Witness GABON).

<sup>2275</sup> T. 1 September 2008 pp. 29, 32 (ICS) (Witness GABON).

<sup>2276</sup> T. 1 September 2008 p. 29 (ICS) (Witness GABON).

<sup>2277</sup> T. 1 September 2008 pp. 29-30 (ICS) (Witness GABON).

<sup>2278</sup> T. 1 September 2008 pp. 21, 31 (ICS) (Witness GABON).

<sup>2279</sup> T. 1 September 2008 pp. 32-34 (ICS) (Witness GABON).

<sup>2280</sup> T. 1 September 2008 p. 32 (ICS) (Witness GABON).

<sup>2281</sup> T. 1 September 2008 p. 34 (ICS) (Witness GABON).

1110. On cross-examination, Witness GABON testified that he remained at the *commune* office until 24 April 1994 and that from 20 April 1994 until then he slept for just 27 minutes.<sup>2282</sup>

Ndayambaje Defence Witness MARVA

1111. Witness MARVA, a Hutu from Muganza *commune*, testified that on the Wednesday two weeks after the death of President Habyarimana she was at Ndayambaje's home.<sup>2283</sup> A Tutsi named Chanvrier and Elyseus' family, including a person named Uwodukunda, took refuge in Ndayambaje's residence.<sup>2284</sup> After Elyseus' family arrived, loud gunshots were heard coming from a distance.<sup>2285</sup> They all decided to flee.<sup>2286</sup>

1112. During cross-examination, Witness MARVA testified that these gunshots were not coming from the direction of Mugombwa Church. She stated that she did not hear that Mugombwa Church was attacked in April 1994.<sup>2287</sup> She testified that it takes approximately 10 minutes to drive to Mugombwa Church from Ndayambaje's home.<sup>2288</sup>

1113. Witness MARVA testified that Ndayambaje was picked up by someone in a vehicle in order to take him to the *commune* office to seek refuge.<sup>2289</sup> After approximately one hour, the vehicle came back to take her, François, Uwodukunda, Chanvrier, Ndayambaje's wife and children to the Muganza *commune* office where they all took refuge.<sup>2290</sup>

1114. Witness MARVA testified that they met Ndayambaje at Witness KEPIR's house before proceeding to the IGA building in the Muganza *commune* office compound.<sup>2291</sup> François, Uwodukunda, Chanvrier, Ndayambaje, Ndayambaje's wife and children and the witness walked to the IGA building from Witness KEPIR's house on foot since it was not far.<sup>2292</sup> She testified that once they arrived at the IGA building, other people were there.<sup>2293</sup> She did not know most of their names, but knew that Witness KEPIR's wife and the driver's wife were there.<sup>2294</sup>

1115. Witness MARVA testified that all this happened on a Wednesday, and the rest of the day and night was spent in the IGA building. She testified that everyone spent the night in the

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<sup>2282</sup> T. 3 September 2008 p. 17 (ICS) (Witness GABON).

<sup>2283</sup> T. 1 July 2008 p. 19 (ICS) (Witness MARVA).

<sup>2284</sup> T. 1 July 2008 p. 20 (ICS) (Witness MARVA).

<sup>2285</sup> T. 1 July 2008 p. 21 (ICS); T. 2 July 2008 p. 14 (ICS) (Witness MARVA).

<sup>2286</sup> T. 1 July 2008 p. 21 (ICS) (Witness MARVA).

<sup>2287</sup> T. 2 July 2008 p. 14 (ICS) (Witness MARVA).

<sup>2288</sup> T. 2 July 2008 p. 13 (ICS) (Witness MARVA).

<sup>2289</sup> T. 1 July 2008 p. 21 (ICS); T. 2 July 2008 p. 15 (ICS) (Witness MARVA).

<sup>2290</sup> T. 1 July 2008 pp. 21-22 (ICS); T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>2291</sup> T. 1 July 2008 p. 24 (ICS) (Witness MARVA).

<sup>2292</sup> T. 1 July 2008 pp. 24-25 (ICS) (Witness MARVA).

<sup>2293</sup> T. 1 July 2008 p. 25 (ICS) (Witness MARVA).

<sup>2294</sup> T. 1 July 2008 pp. 25-26 (ICS) (Witness MARVA).

same room, including Ndayambaje.<sup>2295</sup> She explained that they all stayed in the IGA building until Saturday, and Ndayambaje did not leave the room.<sup>2296</sup>

1116. During cross-examination, it was suggested that Ndayambaje could not have spent the entire night in the same enclosed room, but the witness reaffirmed that he did.<sup>2297</sup> When asked if he could have left for some fresh air, to use the bathroom or to check on his vehicle, the witness admitted that upon their arrival at the *commune* office, Ndayambaje went to see Chrysologue, the *bourgmestre* of Muganza *commune*, in order to ask about the situation, but that she did not ask him what had happened and did not see Chrysologue herself.<sup>2298</sup> Then, according to the witness, Ndayambaje went to his room and never went out again.<sup>2299</sup>

1117. During cross-examination, Witness MARVA explained that it takes an hour to get to the *commune* office from Ndayambaje's house by foot. She conceded that from the time Ndayambaje left in the vehicle to the time the witness and the others arrived at the *commune* office, the witness did not see Ndayambaje and could not tell the Chamber what he was doing and where he had been.<sup>2300</sup> On cross-examination, she testified that when they arrived at the *commune* office premises, there were *commune* policemen there. She testified that she saw them as they moved about in the courtyard, every day, through the windows from the room in which she was locked in, or when she had to go to the restroom outside. She stated that she did not see these policemen greet and speak to Ndayambaje, however. She stated that she was with Ndayambaje inside the room, and could not see what was happening outside.<sup>2301</sup>

1118. Witness MARVA testified that Ndayambaje and the rest of the group remained in the same room throughout Thursday, 21 April 1994.<sup>2302</sup> They stayed in the same place until the following Saturday when the *commune* office was attacked and the group, including Ndayambaje, fled.<sup>2303</sup>

#### Ndayambaje Defence Witness Father Tiziano Pegoraro

1119. Father Tiziano Pegoraro, an Italian priest, testified that from 1988 until 20 April 1994 he was the parish priest of Mugombwa.<sup>2304</sup> He had known Ndayambaje since 1983, when Ndayambaje was the *bourgmestre* of Muganza *commune*. In his capacity as parish priest, the witness worked with Ndayambaje on social and educational projects.<sup>2305</sup>

1120. Father Tiziano drew a sketch of Mugombwa Church (Defence Exhibit 677).<sup>2306</sup> He marked and explained the church's shape, the position of the church bell, the altar, the sacristy,

<sup>2295</sup> T. 1 July 2008 p. 25 (ICS) (Witness MARVA).

<sup>2296</sup> T. 1 July 2008 pp. 25-26 (ICS); T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>2297</sup> T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>2298</sup> T. 2 July 2008 pp. 16-17, 34 (ICS) (Witness MARVA).

<sup>2299</sup> T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>2300</sup> T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>2301</sup> T. 2 July 2008 p. 17 (ICS) (Witness MARVA).

<sup>2302</sup> T. 1 July 2008 p. 25 (ICS) (Witness MARVA).

<sup>2303</sup> T. 1 July 2008 pp. 25-27 (ICS) (Witness MARVA).

<sup>2304</sup> T. 8 September 2008 pp. 17-18, 46 (Father Tiziano).

<sup>2305</sup> T. 8 September 2008 p. 32 (Father Tiziano).

<sup>2306</sup> T. 8 September 2008 p. 29 (Father Tiziano); Defence Exhibit 677 (Ndayambaje) (Sketch Map by Father Tiziano).

and the seven doors and windows.<sup>2307</sup> From the inside the windows were 1.20 metres above the ground; from the outside the height differed because the church was built on a slope.<sup>2308</sup> The church was between 50 and 60 metres long.<sup>2309</sup>

1121. Father Tiziano testified that in the evenings, the church staff would close all doors from the inside, save for the last one which was closed from the outside with a padlock.<sup>2310</sup> He stated that the windows had opaque green glass, so it was not possible to look through them.<sup>2311</sup> He said that there were small benches in the church and that about 700 persons could be seated in the church. The church had no electricity; natural light came through the windows and roof.<sup>2312</sup> He testified that the distance between the church building and the priest's residence was about 20 metres.<sup>2313</sup>

1122. Father Tiziano testified that on 20 April 1994, at around 6.00 a.m., Ndayambaje knocked at his window and told him that there had been riots and that it was necessary to speak with Witness RV who lived close to the *commune* office.<sup>2314</sup> The witness and Ndayambaje therefore drove to Remera Hill, Muganza *commune*, in the parish vehicle.<sup>2315</sup>

1123. Father Tiziano testified that at the *commune* office, they first talked to a *gendarme* who went to fetch Witness RV from his residence.<sup>2316</sup> The witness later stated that he and Ndayambaje went directly to Witness RV's residence.<sup>2317</sup> Ndayambaje informed Witness RV about the riots and Witness RV said that he would deliver a speech at Kabuga Market around 9.00 a.m. to calm the population.<sup>2318</sup> Father Tiziano stated that the *bourgmestre* did not get into the witness' car on 20 April 1994, contrary to Witness RV's testimony.<sup>2319</sup> After speaking with the *bourgmestre*, Father Tiziano and Ndayambaje drove to Mugombwa Church in the parish vehicle. Ndayambaje got out of the vehicle and went home on foot, while Father Tiziano drove into the church premises with the vehicle.<sup>2320</sup>

1124. Father Tiziano testified that he walked to Ndayambaje's house at 9.00 a.m. on 20 April 1994, because they had agreed to drive together to Kabuga.<sup>2321</sup> The distance between his residence and that of Ndayambaje was approximately 500 metres.<sup>2322</sup> On his way, Father Tiziano encountered a group of violent people, armed with machetes and spears, and wearing banana leaves on their heads near the Chapel of Our Lady opposite the entrance of the health

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<sup>2307</sup> T. 8 September 2008 pp. 20-26 (Father Tiziano).

<sup>2308</sup> T. 10 September 2008 p. 19 (Father Tiziano).

<sup>2309</sup> T. 8 September 2008 p. 22 (Father Tiziano).

<sup>2310</sup> T. 8 September 2008 p. 24 (Father Tiziano).

<sup>2311</sup> T. 8 September 2008 p. 25 (Father Tiziano).

<sup>2312</sup> T. 8 September 2008 p. 27 (Father Tiziano).

<sup>2313</sup> T. 9 September 2008 p. 29 (Father Tiziano).

<sup>2314</sup> T. 8 September 2008 pp. 48-49 (Father Tiziano).

<sup>2315</sup> T. 8 September 2008 p. 49 (Father Tiziano).

<sup>2316</sup> T. 8 September 2008 pp. 49-50 (Father Tiziano).

<sup>2317</sup> T. 8 September 2008 p. 52 (Father Tiziano).

<sup>2318</sup> T. 8 September 2008 p. 50 (Father Tiziano).

<sup>2319</sup> T. 8 September 2008 p. 58 (Father Tiziano).

<sup>2320</sup> T. 8 September 2008 p. 51 (Father Tiziano).

<sup>2321</sup> T. 8 September 2008 p. 58; T. 8 September 2008 p. 69 (Father Tiziano) (French) (for the spelling of "Kabuga").

<sup>2322</sup> T. 8 September 2008 p. 39 (Father Tiziano).



centre.<sup>2323</sup> They seemed to be drugged. Father Tiziano told them to go back home and not engage in violent activities.<sup>2324</sup>

1125. Father Tiziano continued walking towards Ndayambaje's residence. He met Ndayambaje on the road opposite his house talking with people. Ndayambaje said that they should wait for Witness RV before going to Kabuga, but mentioned that as the situation in Kabuga was dangerous, the witness was free to return home if the *bourgmestre* did not turn up. Ndayambaje then said that they would certainly not go to Kabuga. The witness waited for a few minutes for the *bourgmestre* and then returned to the parish on foot.<sup>2325</sup> That was the last time he saw Ndayambaje.<sup>2326</sup>

1126. Father Tiziano testified that he left Ndayambaje at around 9.30 a.m. When he returned to the parish around 60 refugees, men, women and children carrying arms, had gathered in the church.<sup>2327</sup> He went into the church and asked the refugees what they were doing in the church bearing arms. The refugees told him that they fled because there had been violence on their hills and at their homes.<sup>2328</sup> He asked them to leave and to find a safer place to hide, such as schools, because the witness had heard via radio that churches were not secure.<sup>2329</sup> On cross-examination, he added that he also asked them to put down the machetes, but only a few did so.<sup>2330</sup> The witness stated that he asked them to lay down the weapons because he did not think the refugees would be attacked in Mugombwa Church.<sup>2331</sup>

1127. Father Tiziano testified that when he left the church, he saw huts burning and people running away on the hillside opposite Saga parish, in Kibayi *commune*. One could see groups of people who were running away.<sup>2332</sup>

1128. Father Tiziano testified that at around 11.30 a.m., upon a suggestion of Bosco Munyaneza, the *chef de cellule* of Karonkano, he drove to the Muganza *commune* office to report the violent situation to the authorities.<sup>2333</sup> The witness stated that between 9.30 a.m. until the time he left at around 11.30 a.m., no vehicle passed the front of the church.<sup>2334</sup>

1129. Father Tiziano testified that at the Muganza *commune* office, he did not find any person of authority, besides a few policemen and the criminal investigations officer who asked the witness to give him a lift to Butare town, which Tiziano declined to do.<sup>2335</sup> At that moment, Brother Stan, a monk who worked in a Burundian refugee camp arrived by car at Muganza

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<sup>2323</sup> T. 8 September 2008 pp. 58, 60 (Father Tiziano).

<sup>2324</sup> T. 8 September 2008 p. 60 (Father Tiziano).

<sup>2325</sup> T. 8 September 2008 p. 61 (Father Tiziano).

<sup>2326</sup> T. 9 September 2008 p. 28 (Father Tiziano).

<sup>2327</sup> T. 9 September 2008 p. 65 (Father Tiziano).

<sup>2328</sup> T. 8 September 2008 p. 62; T. 10 September 2008 p. 6 (Father Tiziano).

<sup>2329</sup> T. 8 September 2008 pp. 62-63; T. 10 September 2008 pp. 6-9 (Father Tiziano).

<sup>2330</sup> T. 10 September 2008 p. 6 (Father Tiziano).

<sup>2331</sup> T. 10 September 2008 pp. 7-8 (Father Tiziano).

<sup>2332</sup> T. 8 September 2008 p. 64 (Father Tiziano).

<sup>2333</sup> T. 8 September 2008 p. 64 (Father Tiziano).

<sup>2334</sup> T. 8 September 2008 p. 65 (Father Tiziano).

<sup>2335</sup> T. 8 September 2008 pp. 66-67 (Father Tiziano).

*commune* office. The witness and Brother Stan greeted each other and Brother Stan went with the criminal investigations officer to Butare.<sup>2336</sup>

1130. Father Tiziano testified that he left the *commune* office and drove towards Mugombwa.<sup>2337</sup> He met the *bourgmestre's* assistant, Bosco, about 10 metres from the *commune* office yard, who asked the witness to give him a lift to Bishya.<sup>2338</sup> The witness only allowed Bosco to sit in the back of the car, because Bosco was carrying a machete.<sup>2339</sup> On cross-examination, he added that he drove a blue single-cabin Toyota Hilux truck.<sup>2340</sup> He drove directly to Mugombwa Church.<sup>2341</sup>

1131. Father Tiziano testified that he drove inside the premises despite the fact that Bosco was armed. Bosco immediately left through the exit gate where he met Bosco Munyaneza, the *chef de cellule*. The witness saw that they were talking to each other but could not hear what they said.<sup>2342</sup>

1132. Father Tiziano testified that on returning to the parish at around 12:30 p.m., the church windows were broken and stones were lying in the yard.<sup>2343</sup> On the road leading to the health centre, the witness saw a group of armed individuals, some of them were sitting down, others were standing, and some of them were dancing around.<sup>2344</sup> His fellow clergymen told the witness that numerous armed individuals had attacked the church and that the body of a parishioner from Mugombwa,<sup>2345</sup> Chrysostome, was opposite the small staircase outside the brothers' accommodation. Chrysostome had been stoned to death. The witness assumed that the armed individuals, who he had seen previously, had participated in the attack on the church.<sup>2346</sup> In cross-examination, the witness stated that the attackers were of Hutu ethnicity.<sup>2347</sup>

1133. On cross-examination, Father Tiziano testified when he entered the church the second time at around 2.30 p.m., the number of refugees had increased to 200 or 300 people. He confirmed that most of them were Tutsis.<sup>2348</sup> The witness stated that they did not provide food to the refugees, as they had not asked for it and because the parish had nothing to give.<sup>2349</sup>

1134. Father Tiziano testified that in view of the violent situation, he and his fellow clergymen decided to leave the parish.<sup>2350</sup> At around 3.30 p.m., the witness left the parish together with the three nuns who were in charge of the Italian health centre, three clergymen

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<sup>2336</sup> T. 8 September 2008 p. 67 (Father Tiziano).

<sup>2337</sup> T. 9 September 2008 p. 5 (Father Tiziano).

<sup>2338</sup> T. 9 September 2008 p. 5; T. 10 September 2008 p. 9 (Father Tiziano).

<sup>2339</sup> T. 10 September 2008 p. 10 (Father Tiziano).

<sup>2340</sup> T. 10 September 2008 pp. 9-10 (Father Tiziano).

<sup>2341</sup> T. 10 September 2008 p. 27 (Father Tiziano).

<sup>2342</sup> T. 10 September 2008 pp. 21-22 (Father Tiziano).

<sup>2343</sup> T. 9 September 2008 pp. 11, 13 (Father Tiziano).

<sup>2344</sup> T. 9 September 2008 p. 11 (Father Tiziano).

<sup>2345</sup> T. 10 September 2008 p. 20 (Father Tiziano).

<sup>2346</sup> T. 9 September 2008 p. 11 (Father Tiziano).

<sup>2347</sup> T. 9 September 2008 pp. 61-62 (Father Tiziano).

<sup>2348</sup> T. 9 September 2008 p. 66 (Father Tiziano).

<sup>2349</sup> T. 9 September 2008 p. 68 (Father Tiziano).

<sup>2350</sup> T. 9 September 2008 p. 11 (Father Tiziano).

and another Italian nun, who lived at the parish.<sup>2351</sup> They left in three vehicles, two belonging to the parish and one belonging to the health centre, driving through Bishya, Kibilizi and Tumba towards Butare town.<sup>2352</sup> On cross-examination, he testified that it took around one hour and 10 minutes to drive from Mugombwa to the centre of Butare town via Kibilizi.<sup>2353</sup>

1135. Father Tiziano testified that he did not inform any authorities about the incident.<sup>2354</sup> The witness stated that he presumed that Bosco, the assistant of the *bourgmestre*, and Bosco, the head of the *cellule*, discussed the incident and the refugees when they met just outside the precincts of the parish church.<sup>2355</sup> For that reason, Father Tiziano did not ask Bosco to give assistance with regard to the security of the refugees in the church and in the area as a whole.<sup>2356</sup>

1136. Ndayambaje parked Monique's vehicle in the parking lot of the parish on 19 April 1994 because it was the only protected parking lot.<sup>2357</sup> It remained there when Father Tiziano left on 20 April 1994.<sup>2358</sup>

Ndayambaje Defence Witness Constant Julius Goetschalckx, a.k.a. Brother Stan

1137. Constant Julius Goetschalckx, a.k.a. Brother Stan, a Belgian Catholic friar who lived in Mugombwa Parish from 1993 to 1994,<sup>2359</sup> lived in Amici house which was approximately 100 metres from Mugombwa Church on the Bishya side.<sup>2360</sup> He had known Ndayambaje since 1988 and they were friends.<sup>2361</sup> In 1994, the witness worked in the field of education in the Burundian refugee camps and lived and worked in Saga refugee camp in Kibayi *commune*.<sup>2362</sup>

1138. Brother Stan testified that attacks against the Tutsis had commenced on 18 April 1994.<sup>2363</sup>

1139. Brother Stan testified that he saw Ndayambaje's mother at Ndayambaje's house prior to 20 April 1994, and he believed she was ill at the time. He did not know if she travelled with Ndayambaje to Kibayi later, he did not know what happened to her.<sup>2364</sup>

1140. Brother Stan testified that the car belonging to the expatriate, Monique, was parked at the priest's house and the Kirarambogo health centre vehicle was parked at the health centre.<sup>2365</sup> Monique had left both vehicles in the care of Ndayambaje.<sup>2366</sup> Brother Stan testified

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<sup>2351</sup> T. 9 September 2008 pp. 12-13 (Father Tiziano).

<sup>2352</sup> T. 9 September 2008 p. 13 (Father Tiziano).

<sup>2353</sup> T. 9 September 2008 p. 26 (Father Tiziano).

<sup>2354</sup> T. 10 September 2008 pp. 20-21 (Father Tiziano).

<sup>2355</sup> T. 10 September 2008 pp. 21, 23 (Father Tiziano).

<sup>2356</sup> T. 10 September 2008 pp. 22-23 (Father Tiziano).

<sup>2357</sup> T. 10 September 2008 pp. 25-26 (Father Tiziano).

<sup>2358</sup> T. 9 September 2008 pp. 16-17 (Father Tiziano).

<sup>2359</sup> T. 18 September 2008 pp. 23-24 (Brother Stan).

<sup>2360</sup> T. 18 September 2008 p. 25 (Brother Stan).

<sup>2361</sup> T. 18 September 2008 p. 27 (Brother Stan).

<sup>2362</sup> T. 18 September 2008 p. 25 (Brother Stan).

<sup>2363</sup> T. 24 September 2008 p. 35 (Brother Stan).

<sup>2364</sup> T. 23 September 2008 p. 16 (Brother Stan).

<sup>2365</sup> T. 24 September 2008 pp. 4, 8 (Brother Stan).

that he saw Ndayambaje in the Kirarambogo health centre vehicle on 23 April 1994 near the Saga camp.<sup>2367</sup> The witness saw Ndayambaje with Monique's car and the Kirarambogo health centre vehicle in the month of May 1994.<sup>2368</sup>

1141. Brother Stan testified that the Mugombwa health centre was run by Italian nuns who left with Father Tiziano on 20 April 1994. Brother Stan testified that he had heard that after the nuns left, the patients at the health centre were taken to the church in the morning of 20 April 1994.<sup>2369</sup>

1142. Brother Stan testified that at 8.00 a.m. on the morning of 20 April 1994, he set off to the Kibayi *commune* office from the Saga camp where he was staying. He was delivering supplies to those who had sought refuge there.<sup>2370</sup> The distance between Saga and Kibayi is approximately 15 kilometres and the witness arrived there between 8.30 and 9.00 a.m.<sup>2371</sup> He was stopped by the *commune* office secretary in Kibayi who told him that there was insecurity in the *commune* and he asked Brother Stan to accompany him to inform the *bourgmestre* of Kibayi *commune* who was in Butare.<sup>2372</sup> Brother Stan agreed and they set off in the normal direction, passing by the Saga camp towards Kabuga, Mugombwa, Bishya and on to Butare.<sup>2373</sup>

1143. Brother Stan testified that after having gone past the Saga camp, before getting to Kabuga, a crowd of hundreds or thousands of people with spears and machetes surrounded the vehicle and climbed onto it, so they could not continue to Kabuga. The crowd was saying that they were going to fight at Kabuga.<sup>2374</sup> He testified that he drove slowly backwards towards the Saga camp. Just before getting to the Saga camp, he drove on the road which leads from Saga to Saga 2 and on towards Kirarambogo.<sup>2375</sup>

1144. Brother Stan testified that he arrived at the Muganza *commune* office at about 12.30 p.m. on 20 April 1994.<sup>2376</sup> He was informed that Ndayambaje and his family had sought refuge there.<sup>2377</sup> He stopped at the *commune* office to ask for authorisation to drive around. The *bourgmestre* was not there but he saw Father Tiziano from Mugombwa Parish who was leaving when he arrived.<sup>2378</sup>

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<sup>2366</sup> T. 24 September 2008 pp. 3, 8 (Brother Stan).

<sup>2367</sup> T. 24 September 2008 p. 4 (Brother Stan).

<sup>2368</sup> T. 24 September 2008 p. 4 (Brother Stan).

<sup>2369</sup> T. 23 September 2008 p. 15 (Brother Stan).

<sup>2370</sup> T. 18 September 2008 p. 36 (Brother Stan).

<sup>2371</sup> T. 22 September 2008 p. 46 (Brother Stan).

<sup>2372</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>2373</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>2374</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>2375</sup> T. 18 September 2008 p. 38 (Brother Stan).

<sup>2376</sup> T. 18 September 2008 p. 39 (Brother Stan).

<sup>2377</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>2378</sup> T. 18 September 2008 p. 39 (Brother Stan).

1145. Brother Stan testified that he met the criminal investigations officer at the *commune* office who asked if he could accompany Brother Stan to Butare.<sup>2379</sup> They went in the direction of Mugombwa Parish in order to pick up some fuel.<sup>2380</sup>

1146. From Muganza *commune* to Mugombwa Parish the witness travelled with the *commune* secretary of Kibayi and the criminal investigations officer. On arrival in Bishya, the criminal investigations officer asked the witness to take Mr. Fidèle, the district judge, his wife who was about to give birth, and a young girl in the vehicle. They travelled together in the vehicle towards the Mugombwa health centre.<sup>2381</sup> He testified that he arrived in Mugombwa Parish at about 1.00 or 1.30 p.m.<sup>2382</sup> He was not able to go any further than the parish because the vehicle was surrounded by a group of people armed with machetes and spears and he was concerned because the district judge was with him. The district judge, his wife and the young girl were Tutsis.<sup>2383</sup> The crowd was hostile because of the presence of the district judge in the car. He reversed and when he was level with his house he shouted that he needed petrol, and two jerry cans were put in his vehicle.<sup>2384</sup> The witness testified that the land in front of the parish was empty. He had gone past the church in order to go to the health centre when the gang appeared.<sup>2385</sup>

1147. Brother Stan testified that on leaving Mugombwa Parish he proceeded to the MRND Palace in Butare where the *bourgmestre's* meeting was being held.<sup>2386</sup> On the way to Butare, the witness' car was stopped at a roadblock manned by armed soldiers.<sup>2387</sup> Those travelling in the vehicle were asked for their identity papers.<sup>2388</sup> Mr. Fidèle and the young girl travelling with him had their documents. Mr. Fidèle's wife, who was about to give birth, did not have an identity card. She was asked to get out of the vehicle, and Mr. Fidèle stayed with his wife at that roadblock. Brother Stan dropped off the girl at Bihira's place, and on his return, stopped at the roadblock to find out whether Mr. Fidèle and his wife were still there. He was told that they had gone to the hospital. He did not attempt to find out what happened to them. He never saw them again.<sup>2389</sup> Given the circumstances at the time, he believed they were killed but he did not know where or when.<sup>2390</sup>

1148. The *bourgmestre's* meeting had ended and Brother Stan was told that the *bourgmestre* from Kibayi was going to return to his *commune*.<sup>2391</sup> He testified that as a result of this he turned back to Mugombwa, travelling with the criminal investigations officer and the

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<sup>2379</sup> T. 18 September 2008 pp. 39-40 (Brother Stan).

<sup>2380</sup> T. 18 September 2008 p. 40 (Brother Stan).

<sup>2381</sup> T. 18 September 2008 p. 40 (Brother Stan).

<sup>2382</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>2383</sup> T. 18 September 2008 p. 40; T. 23 September 2008 p. 4 (Brother Stan).

<sup>2384</sup> T. 18 September 2008 p. 41 (Brother Stan).

<sup>2385</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>2386</sup> T. 18 September 2008 p. 41 (Brother Stan).

<sup>2387</sup> T. 24 September 2008 p. 36 (Brother Stan).

<sup>2388</sup> T. 23 September 2008 pp. 3-4 (Brother Stan).

<sup>2389</sup> T. 23 September 2008 p. 4 (Brother Stan).

<sup>2390</sup> T. 24 September 2008 p. 40 (Brother Stan).

<sup>2391</sup> T. 18 September 2008 p. 41 (Brother Stan).

*commune* secretary from Kibayi *commune*. He dropped the criminal investigations officer off at the Muganza *commune* office at about 5.00 or 5.30 p.m.<sup>2392</sup>

1149. Brother Stan testified that on arrival at the *commune* office that evening, he was informed that Ndayambaje and his family had sought refuge there but he did not see him. He spent the night of 20 April 1994 at Saga refugee camp.<sup>2393</sup>

1150. Brother Stan testified that the massacre at Mugombwa Church began on 21 April 1994.<sup>2394</sup> He testified that on 21 April 1994, he heard grenades explode at the level of Mugombwa Church which was a little more than a kilometre from Saga camp as the crowd flies.<sup>2395</sup> He remained at Saga camp throughout 22 April 1994 until the morning of 23 April 1994. He did not hear anything out of the ordinary.<sup>2396</sup>

1151. Brother Stan testified that because there was a food shortage in Saga camp, he left the camp with some students and went to Mugombwa Parish to get food supplies which were stored near the old church and the Amici house. As they drove past the church, the witness noticed that there were bodies of people who had been killed everywhere on the parish ground.<sup>2397</sup> He did not enter Mugombwa Church on 23 April 1994. With the car, he drove through the bodies to the stores, got the food supplies and returned to Saga camp in the evening.<sup>2398</sup> On seeing the dead bodies, he decided to flee Rwanda the following day but he was turned back at the Burundian border on 24 April 1994.<sup>2399</sup>

1152. There were Burundian refugees who participated in the killings on or around 20 April 1994, some from the Saga camp where he worked, but the bulk of Burundian refugees remained locked up in their houses at the refugee camp.<sup>2400</sup> He informed the *bourgmestre* that some of the Burundian refugees were involved in the killings.<sup>2401</sup> He did not make any attempt to disarm the refugees in the camp who had machetes. He was a simple priest, and in his mind, machetes had never been weapons as such.<sup>2402</sup> The Burundian refugees were not armed. They had hoes, as everybody did, and everyone had machetes. They were not weapons. They were tools which they used in April 1994. Some of them used them in April 1994, but they were not weapons. There was no possible measure to rid the persons of their tools which they needed for their work.<sup>2403</sup> During April 1994 the refugees remained in the camps, and wherever possible, they would render or carry out agricultural work for Rwandans living around the

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<sup>2392</sup> T. 18 September 2008 pp. 41-42 (Brother Stan).

<sup>2393</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>2394</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>2395</sup> T. 18 September 2008 p. 43 (Brother Stan).

<sup>2396</sup> T. 18 September 2008 pp. 43-44 (Brother Stan).

<sup>2397</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>2398</sup> T. 18 September 2008 pp. 44-45 (Brother Stan).

<sup>2399</sup> T. 18 September 2008 pp. 45-46 (Brother Stan).

<sup>2400</sup> T. 23 September 2008 p. 18 (Brother Stan).

<sup>2401</sup> T. 23 September 2008 pp. 58-59 (Brother Stan).

<sup>2402</sup> T. 23 September 2008 pp. 55, 58 (Brother Stan).

<sup>2403</sup> T. 23 September 2008 p. 59 (Brother Stan).

camp.<sup>2404</sup> The Burundian refugees were not armed. They had agricultural instruments. Brother Stan did not inform the *préfecture* authorities because he did not know how.<sup>2405</sup>

1153. When referred to his previous statement to the Belgian judge, Vandermeersch, dated 24 November 1995, the witness testified that his statement was incorrect and that he saw Ndayambaje on 23 April 1994, on his way to Kibayi with his family, not on 27 or 28 April 1994 as recorded in the statement.<sup>2406</sup> Brother Stan testified that the judge was mistaken.<sup>2407</sup>

1154. On cross-examination, Brother Stan was referred to a letter of complaint he wrote on 25 November 1995 to a journalist named Van den Abeele of *Belgische Radio en Televisie Nederlands*, regarding the television coverage of the genocide in relation to Muganza *commune*.<sup>2408</sup> In this letter, he stated that Ndayambaje had sought refuge at the *commune* office from 20 to 25 April 1994. Brother Stan testified that there was a mistake in the letter and that he saw Ndayambaje at about 4.00 or 4.30 p.m. on 23 April 1994 at Saga camp where he was travelling in the Kirarambogo health centre vehicle, on his way to Kibayi.<sup>2409</sup> He testified that he had been mistaken in this letter that Ndayambaje sought refuge at the *commune* office from 20 to 25 April, the correct dates were 20 to 23 April 1994.<sup>2410</sup>

1155. Brother Stan testified that his testimony before the Tribunal was clearer and more precise than the statements he made in 1995 because he was still traumatised by the events of 1994. In his view, this is why there were contradictions between the statement to the Belgian judge and the letter to the journalist written in 1995, and his testimony in 2008.<sup>2411</sup>

1156. Brother Stan testified that on 25 April 1994, he decided to start burying the dead who were lying around Mugombwa Church and on the road leading up to it. He went to the church with a group of about 20 Burundian refugees to start the burial.<sup>2412</sup> There were about 200 dead people inside the church, most of whom were children, women and the elderly. There were about 200 dead bodies on the grounds in front of the church and the primary school classes, and there were some dead bodies scattered here and there in the woods or on the pitch near the old church.<sup>2413</sup> He clarified that the burials started on 25 April 1994 and went on for more than a week, until 2 or 3 May 1994.<sup>2414</sup>

1157. Brother Stan testified that he saw that the Mugombwa health centre had reopened after he had completed burying the dead.<sup>2415</sup>

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<sup>2404</sup> T. 23 September 2008 p. 56 (Brother Stan).

<sup>2405</sup> T. 23 September 2008 p. 60 (Brother Stan).

<sup>2406</sup> T. 23 September 2008 p. 32 (Brother Stan).

<sup>2407</sup> T. 23 September 2008 p. 40 (Brother Stan).

<sup>2408</sup> T. 23 September 2008 p. 45 (Brother Stan).

<sup>2409</sup> T. 23 September 2008 pp. 46-47 (Brother Stan).

<sup>2410</sup> T. 23 September 2008 p. 47 (Brother Stan).

<sup>2411</sup> T. 23 September 2008 p. 47 (Brother Stan).

<sup>2412</sup> T. 18 September 2008 p. 46; T. 23 September 2008 pp. 15-16 (Brother Stan).

<sup>2413</sup> T. 18 September 2008 p. 46 (Brother Stan).

<sup>2414</sup> T. 18 September 2008 p. 47 (Brother Stan).

<sup>2415</sup> T. 23 September 2008 p. 15 (Brother Stan).

1158. The witness testified that in May 1994, after the burial of dead bodies at Mugombwa Church, he was bed-ridden with malaria for three weeks and Ndayambaje and his wife looked after him.<sup>2416</sup>

Ndayambaje Defence Witness ANGES

1159. Witness ANGES, a Hutu shopkeeper from Muganza *commune*, testified that the road from Kibayi to Mugombwa passed by the Bishya shopping centre.<sup>2417</sup> Bishya and Mugombwa were around one and a half kilometres from each other. Her house and shop were around three metres away from the road and she could see everything that was happening on the road and at the Bishya shopping centre.<sup>2418</sup>

1160. Witness ANGES testified that the road forked in different directions at the Bishya shopping centre. One road led to the forest; a second led to the church; and a third went to the Muganza *commune* office. The distance between Bishya shopping centre and the *commune* office was around two to three kilometres.<sup>2419</sup> In Bishya, there was another main road going from Bishya to Butare.<sup>2420</sup>

1161. Witness ANGES testified that on Wednesday, 20 April 1994, which was a market day, she went with her husband on his motorcycle to Ndayambaje's house.<sup>2421</sup> Around 20 metres before Ndayambaje's house, the witness saw around 30 to 50 persons with traditional weapons. They were shouting and seemed to be searching for people.<sup>2422</sup>

1162. Witness ANGES testified that she and her husband arrived at Ndayambaje's house around 7.30 or 8.00 a.m. When she entered the house she met Chanvrièr, a teacher from APAME who had sought refuge at Ndayambaje's house because assailants had wanted to kill him.<sup>2423</sup> In cross-examination, the witness confirmed that Chanvrièr was still alive in July 1994.<sup>2424</sup>

1163. Witness ANGES testified that she could not go to work that day due to the insecure situation and the attackers outside. On cross-examination, the witness stated that when Ndayambaje heard about the attackers, he became frightened and remained at home.<sup>2425</sup> Witness ANGES said that she spent around one hour at Ndayambaje's house because they could still hear the noise from the attacks on the road.<sup>2426</sup> Afterwards, the witness and her husband drove home on the way through the forest below Mugombwa Parish, arriving at home between 9.00 and 10.00 a.m.<sup>2427</sup>

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<sup>2416</sup> T. 18 September 2008 p. 49 (Brother Stan).

<sup>2417</sup> T. 20 August 2008 p. 10 (ICS) (Witness ANGES).

<sup>2418</sup> T. 20 August 2008 p. 13 (ICS) (Witness ANGES).

<sup>2419</sup> T. 20 August 2008 pp. 10-11 (ICS) (Witness ANGES).

<sup>2420</sup> T. 20 August 2008 pp. 11-12 (ICS) (Witness ANGES).

<sup>2421</sup> T. 20 August 2008 p. 23 (Witness ANGES).

<sup>2422</sup> T. 20 August 2008 pp. 26-27 (ICS); T. 21 August 2008 p. 7 (Witness ANGES).

<sup>2423</sup> T. 20 August 2008 pp. 27, 29 (ICS) (Witness ANGES).

<sup>2424</sup> T. 21 August 2008 p. 23 (ICS) (Witness ANGES).

<sup>2425</sup> T. 21 August 2008 p. 8 (Witness ANGES).

<sup>2426</sup> T. 20 August 2008 p. 62 (ICS) (Witness ANGES).

<sup>2427</sup> T. 20 August 2008 p. 29 (ICS) (Witness ANGES).



1164. Witness ANGES testified that after she returned home, she remained at her house that day. Around midday, she saw Ndayambaje being chauffeured in a vehicle on the road from Mugombwa heading towards the Muganza *commune* office in Remera.<sup>2428</sup> In cross-examination, Witness ANGES testified that she stayed the whole day in front of her house. She only went inside her house to use the bathroom twice and to eat her meal.<sup>2429</sup>

Ndayambaje Defence Witness BOZAN

1165. Witness BOZAN, a Hutu civil servant from Muganza *commune*, used to attend mass at Mugombwa Church in 1994.<sup>2430</sup> The witness testified that the church had metallic windows which could not be opened and the panes were multi-coloured.<sup>2431</sup> He indicated that from inside the church, one could not see anybody outside through those windows and vice versa.<sup>2432</sup> On cross-examination, the witness testified that Mugombwa Parish was in Nyarunazi *cellule* and that he lived two kilometres from the parish and the Statue of the Virgin Mary.<sup>2433</sup>

1166. The witness did not see Ndayambaje travelling in the pickup belonging to the Muganza *commune* between April and June 1994.<sup>2434</sup>

1167. Witness BOZAN testified that unrest began during the market day at Kabuga, on Wednesday 20 April 1994.<sup>2435</sup> People fled their homes which were subsequently burned down and thugs started looting. On the following days, the situation worsened with countless killings.<sup>2436</sup> The unrest lasted for a week and a half.<sup>2437</sup>

1168. Witness BOZAN testified that the Mugombwa dispensary was shut from 20 April 1994 onwards due to insecurity in the area.<sup>2438</sup>

1169. On cross-examination, Witness BOZAN testified that in the morning of 20 April 1994, around 9.30 a.m., Augustin Ntambara, who was the catechist at Mugombwa Parish, came to the witness' home to inform him of the situation at the church.<sup>2439</sup> Ntambara begged the witness to come with him to the church so they went there together and reached the place after 30 minutes walk. Upon their arrival, Ntambara pointed out to the witness a group of persons who had gathered outside the church and another group locked up in the church.<sup>2440</sup> He saw three groups of people numbering about 15 in one group and 20 in another. One group was by the road leading to the health centre, one group was by the school by the church and one group was by the convent.<sup>2441</sup> There was a group of men in the church courtyard who were armed

<sup>2428</sup> T. 20 August 2008 pp. 31-32 (ICS) (Witness ANGES).

<sup>2429</sup> T. 21 August 2008 pp. 8-9 (Witness ANGES).

<sup>2430</sup> T. 16 September 2008 p. 5 (Witness BOZAN).

<sup>2431</sup> T. 16 September 2008 p. 5 (Witness BOZAN).

<sup>2432</sup> T. 16 September 2008 p. 5 (Witness BOZAN).

<sup>2433</sup> T. 17 September 2008 pp. 12, 14 (ICS) (Witness BOZAN).

<sup>2434</sup> T. 16 September 2008 p. 7 (Witness BOZAN).

<sup>2435</sup> T. 16 September 2008 p. 8; T. 17 September 2008 pp. 13-14 (ICS) (Witness BOZAN).

<sup>2436</sup> T. 16 September 2008 p. 9 (Witness BOZAN).

<sup>2437</sup> T. 16 September 2008 p. 10 (Witness BOZAN).

<sup>2438</sup> T. 17 September 2008 p. 45 (ICS) (Witness BOZAN).

<sup>2439</sup> T. 17 September 2008 p. 14 (ICS) (Witness BOZAN).

<sup>2440</sup> T. 17 September 2008 p. 15 (ICS) (Witness BOZAN).

<sup>2441</sup> T. 17 September 2008 p. 16 (ICS) (Witness BOZAN).

with clubs and short sticks. There were people inside the church; the witness could not see them but could hear their voices. He testified that the assailants had not yet started throwing stones at the church.<sup>2442</sup>

1170. Witness BOZAN testified that the assailants did not appreciate his presence at the church. Realising this, the witness went to see Côme, a.k.a. Kosima, the parish gardener to accompany him to look for the priest inside the presbytery.<sup>2443</sup> The priest, Father Tiziano said that he was overwhelmed by the events. The witness asked him to go and inform the *bourgmestre*.<sup>2444</sup>

1171. Father Tiziano took his car and rushed to the *commune* office.<sup>2445</sup> Before leaving, Father Tiziano asked the witness to stay there so as to prevent the thugs from gaining access to his home.<sup>2446</sup> Father Tiziano was alone on that day but normally he lived with Brother Stan.<sup>2447</sup>

1172. The witness testified that assailants started throwing stones and broke one window of the church right after the priest's departure, around 11.15 or 11.20 a.m.<sup>2448</sup> He was standing in front of the presbytery gate and could see that only one window was broken.<sup>2449</sup> The witness denied that he took part in the attack on the church.<sup>2450</sup> He testified that he was unarmed and frightened and stayed to the side of the attack.<sup>2451</sup> He talked to one of the assailants, Samson, who was not happy with his presence there and told him "this isn't yourself".<sup>2452</sup> Witness BOZAN admitted that the assailants knew of his presence at the priest's residence during the attack.<sup>2453</sup>

1173. Witness BOZAN testified that he witnessed the murder of Chrysostome by a group of 15 to 20 assailants from his position on the veranda.<sup>2454</sup> The assailants chased Chrysostome while he was running in the direction of the convent of the nuns, he was carrying a sword, and the assailants chased him. Chrysostome went through the entrance to the presbytery used by the priest to say mass and the assailants killed him with stones which had been left there for the construction of the church.<sup>2455</sup> He was killed on the stairs by the door to the priest's residence.<sup>2456</sup> The witness recognised Samson, Cyabarene, Innocent and Kalinda among the killers.<sup>2457</sup>

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<sup>2442</sup> T. 17 September 2008 p. 17 (ICS) (Witness BOZAN).

<sup>2443</sup> T. 17 September 2008 pp. 17-18 (ICS) (Witness BOZAN).

<sup>2444</sup> T. 17 September 2008 pp. 18, 20 (ICS) (Witness BOZAN).

<sup>2445</sup> T. 17 September 2008 p. 18 (ICS) (Witness BOZAN).

<sup>2446</sup> T. 17 September 2008 p. 20 (ICS) (Witness BOZAN).

<sup>2447</sup> T. 17 September 2008 pp. 20-21 (ICS) (Witness BOZAN).

<sup>2448</sup> T. 17 September 2008 p. 18 (ICS) (Witness BOZAN).

<sup>2449</sup> T. 17 September 2008 pp. 23-24 (ICS) (Witness BOZAN).

<sup>2450</sup> T. 17 September 2008 p. 24 (ICS) (Witness BOZAN).

<sup>2451</sup> T. 17 September 2008 p. 23 (ICS) (Witness BOZAN).

<sup>2452</sup> T. 17 September 2008 p. 19 (ICS) (Witness BOZAN).

<sup>2453</sup> T. 17 September 2008 p. 23 (ICS) (Witness BOZAN).

<sup>2454</sup> T. 17 September 2008 pp. 21-22, 24 (ICS) (Witness BOZAN).

<sup>2455</sup> T. 17 September 2008 p. 24 (ICS) (Witness BOZAN).

<sup>2456</sup> T. 18 September 2008 p. 15 (ICS) (Witness BOZAN).

<sup>2457</sup> T. 17 September 2008 p. 24 (ICS) (Witness BOZAN).

1174. On Friday, 22 April 1994, the witness reported the murder of Chrysostome to the *conseiller* who, in turn, handed the matter over to André, a member of the *cellule*, who was supposed to bring the report to the *commune* office.<sup>2458</sup> Despite the report, those four thugs were not arrested. He added that those individuals were also involved in the killings of Tutsis in his area between April and July 1994.<sup>2459</sup>

1175. Witness BOZAN testified that Father Tiziano returned at around 12.30 p.m.; he was accompanied by the assistant *bourgmestre*, Bosco Nshimiyimana, in a blue single-cabin Hilux.<sup>2460</sup> The witness reported to Father Tiziano and the assistant *bourgmestre* about what happened during their absence and showed them Chrysostome's corpse and the broken window. The attackers were still in the church courtyard, on the road leading to the health centre and on the road leading to his house, and were watching Witness BOZAN and Father Tiziano.<sup>2461</sup> The witness denied the Prosecution's suggestion that he was walking around comfortably among the assailants, but testified that the assailants were angry with him.<sup>2462</sup>

1176. Witness BOZAN testified that the attack was over by the time Father Tiziano and Bosco arrived at the church.<sup>2463</sup> Bosco Nshimiyimana wore a machete on his belt.<sup>2464</sup> Bosco Nshimiyimana was among those who perpetrated genocide in Mugombwa but it happened after he was no longer assistant *bourgmestre*.<sup>2465</sup>

1177. Witness BOZAN testified that he went home at around 1.00 p.m. to assist his wife who was about to give birth.<sup>2466</sup> He testified that he did not return to the church after the afternoon of 21 April 1994 and did not leave his *cellule* except to go to the market at Kabuga until he left the country in July 1994.<sup>2467</sup>

#### Ndayambaje Defence Witness SHICO

1178. Witness SHICO, a Hutu farmer from Muganza *commune* married to a Tutsi in 1994, testified that two weeks after the President's death, the situation changed in the witness' *commune*. It was being said that the RPF was attacking people and killing them.<sup>2468</sup>

1179. Witness SHICO testified that she went to mass with her husband at Mugombwa Church at 6.00 a.m. on a Wednesday when war broke out.<sup>2469</sup> It was Easter and many people attended church that day in order to have their children baptised.<sup>2470</sup> At the end of mass people from Mugombwa, Kibayi and Saga came into the church and said that war had broken out and that

<sup>2458</sup> T. 17 September 2008 p. 28 (ICS); T. 17 September 2008 p. 30 (HC) (Witness BOZAN) (French) (for the spelling of "André").

<sup>2459</sup> T. 17 September 2008 p. 29 (ICS) (Witness BOZAN).

<sup>2460</sup> T. 17 September 2008 pp. 29, 32-33 (ICS) (Witness BOZAN).

<sup>2461</sup> T. 17 September 2008 p. 30 (ICS) (Witness BOZAN).

<sup>2462</sup> T. 17 September 2008 p. 31 (ICS) (Witness BOZAN).

<sup>2463</sup> T. 18 September 2008 p. 13 (ICS) (Witness BOZAN).

<sup>2464</sup> T. 17 September 2008 p. 33 (ICS) (Witness BOZAN).

<sup>2465</sup> T. 17 September 2008 p. 30 (ICS) (Witness BOZAN).

<sup>2466</sup> T. 17 September 2008 p. 44 (ICS) (Witness BOZAN).

<sup>2467</sup> T. 17 September 2008 p. 51 (Witness BOZAN).

<sup>2468</sup> T. 23 June 2008 p. 16 (Witness SHICO).

<sup>2469</sup> T. 23 June 2008 p. 18; T. 23 June 2008 p. 19 (ICS) (Witness SHICO).

<sup>2470</sup> T. 23 June 2008 pp. 19-20 (ICS) (Witness SHICO).

people were trying to kill them.<sup>2471</sup> The witness and her husband were frightened and left the church. On their way home – around half an hour on foot – the witness noticed smoke and houses on fire.<sup>2472</sup>

1180. Witness SHICO testified that she heard that people had been killed at Mugombwa Church but she did not witness the killings because she had sought refuge on Kabuye Hill.<sup>2473</sup>

### Ndayambaje

1181. Ndayambaje testified that on 20 April 1994 at around 6.00 a.m., he noticed that houses were burning on the hills of Saga and Kibayi.<sup>2474</sup> He decided to go and see the parish priest of Mugombwa, Father Tiziano, so that they could go together and warn the *commune* authorities about what was happening.<sup>2475</sup> Mugombwa Church was 500 metres away from Ndayambaje's residence and he went there on foot.<sup>2476</sup> Ndayambaje met Father Tiziano in his room and immediately thereafter they headed to the *commune* office in Remera in Father Tiziano's car, a blue single-cabin Toyota Hilux pickup.<sup>2477</sup> On arriving at the *commune* office, they met a security guard who told Ndayambaje and Father Tiziano that the *bourgmestre* was still asleep.<sup>2478</sup> After a wait of 30 or 40 minutes, the *bourgmestre* came and Ndayambaje reported what he had seen on the hills of Saga and Kibayi.<sup>2479</sup> The *bourgmestre* said that he had to go to Butare for a meeting but that he would first stop at Mugombwa to assess the situation.<sup>2480</sup> The *bourgmestre* stated that he would meet Ndayambaje and Father Tiziano at Ndayambaje's home so that they could go to Kabuga together to address the population.<sup>2481</sup> Thereafter, Ndayambaje and Father Tiziano returned to Mugombwa, still aboard Father Tiziano's car.<sup>2482</sup> They left the *bourgmestre* at the *commune* office.<sup>2483</sup> Father Tiziano dropped Ndayambaje off at the presbytery between 7.00 and 8.00 a.m. in front of the church. Ndayambaje continued on foot towards his residence.<sup>2484</sup>

1182. When he arrived home he found a man known as Chanvrier who had come to seek refuge.<sup>2485</sup> Ndayambaje took Chanvrier to the guest room to rest.<sup>2486</sup> At around 9.00 a.m., Father Tiziano came to see Ndayambaje on the road outside his home where they were supposed to meet with the *bourgmestre*.<sup>2487</sup> Ndayambaje, Father Tiziano and the *bourgmestre* had agreed that the three of them would go and address the population at the marketplace of

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<sup>2471</sup> T. 23 June 2008 p. 18; T. 23 June 2008 pp. 19-20 (ICS) (Witness SHICO).

<sup>2472</sup> T. 23 June 2008 p. 20 (ICS) (Witness SHICO).

<sup>2473</sup> T. 23 June 2008 p. 62 (Witness SHICO).

<sup>2474</sup> T. 22 October 2008 p. 26 (Ndayambaje).

<sup>2475</sup> T. 22 October 2008 p. 34 (Ndayambaje).

<sup>2476</sup> T. 22 October 2008 p. 34 (Ndayambaje).

<sup>2477</sup> T. 22 October 2008 pp. 35-36 (Ndayambaje).

<sup>2478</sup> T. 22 October 2008 p. 36 (Ndayambaje).

<sup>2479</sup> T. 22 October 2008 p. 36; T. 26 November 2008 pp. 59-60 (Ndayambaje).

<sup>2480</sup> T. 22 October 2008 p. 36 (Ndayambaje).

<sup>2481</sup> T. 22 October 2008 p. 41 (Ndayambaje).

<sup>2482</sup> T. 22 October 2008 p. 36 (Ndayambaje).

<sup>2483</sup> T. 22 October 2008 p. 38 (Ndayambaje).

<sup>2484</sup> T. 22 October 2008 p. 38; T. 27 November 2008 p. 13 (Ndayambaje).

<sup>2485</sup> T. 22 October 2008 p. 39 (Ndayambaje).

<sup>2486</sup> T. 22 October 2008 p. 41 (Ndayambaje).

<sup>2487</sup> T. 22 October 2008 p. 42 (Ndayambaje).

Kabuga, however the *bourgmestre* did not show up.<sup>2488</sup> Father Tiziano therefore decided to return home (to the parish).<sup>2489</sup>

1183. At around 11.00 a.m., a man named Célestin Halindintwari, a civil servant in Butare *préfecture*, visited Ndayambaje at his home.<sup>2490</sup> Around noon, Halindintwari drove Ndayambaje to the Muganza *commune* office because the situation outside was becoming dangerous; gunfire could be heard.<sup>2491</sup> Halindintwari drove a red pickup truck with a single cabin.<sup>2492</sup> When they arrived at the *commune* office, Ndayambaje met Witness KEPIR and went to Witness KEPIR's home, which was located very close to the *commune* office.<sup>2493</sup> Halindintwari returned to Mugombwa to pick up Ndayambaje's family and others who were at his home in Mugombwa and transported them to Witness KEPIR's house, arriving approximately one hour later.<sup>2494</sup> On cross-examination, Ndayambaje testified that after dropping him off at the *commune* office, Halindintwari headed towards Butare.<sup>2495</sup>

1184. Later that day, Ndayambaje and his family moved into one of the IGA classrooms at the *commune* office.<sup>2496</sup> Ndayambaje testified that his mother did not join them at the *commune* office because she was in the Mugombwa health centre.<sup>2497</sup>

1185. Ndayambaje testified that around 1.00 p.m.,<sup>2498</sup> he went with Witness KEPIR and a *gendarme* to Butare aboard the vehicle belonging to an international organisation, to notify the *bourgmestre* of the deteriorating situation.<sup>2499</sup> The vehicle was a blue double-cabin Toyota Hilux.<sup>2500</sup> On cross-examination, Ndayambaje testified that they took the road through Gisagara because Gisagara was still safe.<sup>2501</sup> They went directly to Butare through Gisagara in Ndora *commune*.<sup>2502</sup> It was impossible for them to access the MRND hall where the *bourgmestres* attended a meeting.<sup>2503</sup> However, the driver of the Muganza *commune* vehicle, Charles Habakurama saw and approached them.<sup>2504</sup> Ndayambaje talked to Charles Habakurama and asked him to convey a message to the *bourgmestre*.<sup>2505</sup> On cross-examination, he testified that the meeting was between the *préfet* and *bourgmestres*.<sup>2506</sup>

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<sup>2488</sup> T. 22 October 2008 p. 42; T. 26 November 2008 p. 61 (Ndayambaje).

<sup>2489</sup> T. 22 October 2008 p. 42 (Ndayambaje).

<sup>2490</sup> T. 22 October 2008 p. 53; T. 27 November 2008 p. 16 (Ndayambaje).

<sup>2491</sup> T. 22 October 2008 p. 55; T. 27 November 2008 p. 19 (Ndayambaje).

<sup>2492</sup> T. 27 November 2008 p. 16 (Ndayambaje).

<sup>2493</sup> T. 22 October 2008 pp. 55-56 (Ndayambaje).

<sup>2494</sup> T. 22 October 2008 pp. 56-57 (Ndayambaje).

<sup>2495</sup> T. 1 December 2008 p. 7 (Ndayambaje).

<sup>2496</sup> T. 22 October 2008 p. 58 (Ndayambaje).

<sup>2497</sup> T. 2 December 2008 p. 30 (Ndayambaje).

<sup>2498</sup> T. 1 December 2008 p. 11 (Ndayambaje).

<sup>2499</sup> T. 22 October 2008 pp. 59-60 (Ndayambaje).

<sup>2500</sup> T. 22 October 2008 p. 60 (Ndayambaje).

<sup>2501</sup> T. 1 December 2008 p. 10 (Ndayambaje).

<sup>2502</sup> T. 22 October 2008 p. 60 (Ndayambaje).

<sup>2503</sup> T. 22 October 2008 p. 60 (Ndayambaje).

<sup>2504</sup> T. 22 October 2008 pp. 60-61 (Ndayambaje).

<sup>2505</sup> T. 22 October 2008 p. 61 (Ndayambaje).

<sup>2506</sup> T. 18 November 2008 p. 37 (Ndayambaje).

1186. Ndayambaje testified that thereafter he and the others returned to Muganza using the same road.<sup>2507</sup> They reached the *commune* office between 4.00 and 5.00 p.m.<sup>2508</sup> Witness KEPIR's family also joined the others at the *commune* office premises, along with other people.<sup>2509</sup> He did not leave the *commune* office after his return from Butare on 20 April 1994.<sup>2510</sup> The blue vehicle belonging to the international organisation was parked at the parking lot of the *commune* office.<sup>2511</sup>

1187. Ndayambaje testified that *Bourgmestre* Chrysologue Bimenyimana arrived at the *commune* office at around 7.00 p.m. on 20 April 1994.<sup>2512</sup> He was with Charles Habakurama aboard the Muganza *commune* vehicle, a white single-cabin Toyota Stout bearing the inscription MININTER.<sup>2513</sup> The *commune* vehicle was also parked at the parking lot of the *commune* office.<sup>2514</sup>

1188. Ndayambaje testified that during that night, explosions were heard from Mugombwa area.<sup>2515</sup> He added that like everyone else, *Bourgmestre* Chrysologue Bimenyimana was also frightened by these explosions and deterred him from going to Mugombwa Parish.<sup>2516</sup> Ndayambaje testified that the blue vehicle belonging to an international organisation and the *commune* vehicle were the only vehicles which were parked at the *commune* office on that day.<sup>2517</sup> He did not leave the *commune* office after his return from Butare on 20 April 1994.<sup>2518</sup> Ndayambaje did not travel in the *commune* vehicle on 20 April 1994.<sup>2519</sup> On cross-examination, Ndayambaje testified that there were five or six kilometres between Mugombwa Parish and the Muganza *commune* office.<sup>2520</sup>

1189. Ndayambaje testified that he remained at the Muganza *commune* office throughout 21 April 1994.<sup>2521</sup> The situation had seriously deteriorated as other people came to the *commune* office fleeing the violence on the hills.<sup>2522</sup> In the afternoon, further explosions were heard. Ndayambaje testified that nobody dared to leave the Muganza *commune* office, including *Bourgmestre* Chrysologue Bimenyimana. Because of the insecurity, Witness RV also spent the night at the *commune* office. In the morning, Ndayambaje and Witness RV found each other in the internal courtyard of the *commune* compound.<sup>2523</sup>

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<sup>2507</sup> T. 22 October 2008 p. 61 (Ndayambaje).

<sup>2508</sup> T. 22 October 2008 p. 62 (Ndayambaje).

<sup>2509</sup> T. 22 October 2008 p. 62 (Ndayambaje).

<sup>2510</sup> T. 23 October 2008 p. 36 (Ndayambaje).

<sup>2511</sup> T. 23 October 2008 p. 25 (Ndayambaje).

<sup>2512</sup> T. 23 October 2008 p. 22 (Ndayambaje).

<sup>2513</sup> T. 23 October 2008 p. 23 (Ndayambaje).

<sup>2514</sup> T. 23 October 2008 p. 26 (Ndayambaje).

<sup>2515</sup> T. 23 October 2008 pp. 23-24 (Ndayambaje).

<sup>2516</sup> T. 23 October 2008 p. 25 (Ndayambaje).

<sup>2517</sup> T. 23 October 2008 p. 26 (Ndayambaje).

<sup>2518</sup> T. 23 October 2008 p. 36 (Ndayambaje).

<sup>2519</sup> T. 23 October 2008 p. 26 (Ndayambaje).

<sup>2520</sup> T. 19 November 2008 p. 41 (Ndayambaje).

<sup>2521</sup> T. 23 October 2008 p. 37 (Ndayambaje).

<sup>2522</sup> T. 23 October 2008 pp. 37-38 (Ndayambaje).

<sup>2523</sup> T. 23 October 2008 p. 37 (Ndayambaje).

1190. On cross-examination, Ndayambaje testified that there were only two vehicles which were parked at the *commune* office parking lot on 21 April 1994, the PAMU vehicle and the Muganza *commune* car.<sup>2524</sup> Ndayambaje testified that Ngiryi Bridge and the Mugombwa Parish church were 25 kilometres apart and the distance could be covered in more than one hour, given the state of the roads. He added that the road between Remera and Ngiryi River was rough, very slippery and rocky.<sup>2525</sup>

1191. Ndayambaje testified that he did not go to Mugombwa Church on 21 April 1994 to distribute machetes and axes.<sup>2526</sup> He spent the night with his family in the classroom of the IGA.<sup>2527</sup>

1192. Ndayambaje testified that on 22 April 1994, he went to Mugombwa Parish to pick up Monique's car, to check on his house and to check on his mother who had been admitted to the health centre.<sup>2528</sup> He got a lift with Witness RV and the *commune* driver in the white Toyota pickup. Witness RV dropped him at the Statue of the Virgin Mary in front of the Mugombwa health centre.<sup>2529</sup> Ndayambaje retrieved Monique's car which was parked at the parish priest's house and went on towards his house.<sup>2530</sup> When he arrived at his house he learned that his mother and grandmother had sought temporary refuge at his house. They had already left when he arrived and had returned to their houses in Cyumba *secteur*, Muganza *commune*.<sup>2531</sup> Ndayambaje returned to the *commune* office 45 minutes to an hour later, around noon.<sup>2532</sup>

1193. At around 2.00 p.m. he went to the Kirarambogo health centre with Witness KEPIR, a driver and a *gendarme* to pick up the Kirarambogo health centre pickup truck after which they returned to the *commune* office. The trip took about two hours.<sup>2533</sup>

#### **3.6.4.4 Deliberations**

1194. It is not disputed that a massacre took place at Mugombwa Church on 20 and 21 April 1994. The issue before the Chamber is what role, if any, Ndayambaje had in the massacre.

1195. With respect to the scale of the massacre, Witness QAR testified that the church was crowded with thousands of Tutsis on the morning of 20 April 1994.<sup>2534</sup> She testified that she was one of seven women who survived the attack on the second day, 21 April 1994.<sup>2535</sup> Her testimony was corroborated by Witness FAG who estimated that there were about 5,000 Tutsis inside the church during the attack in the afternoon of 21 April 1994.<sup>2536</sup> He did not stay at the church until the end of the attack and did not know whether anybody survived, although he

<sup>2524</sup> T. 1 December 2008 p. 21 (Ndayambaje).

<sup>2525</sup> T. 23 October 2008 p. 42 (Ndayambaje).

<sup>2526</sup> T. 23 October 2008 p. 38 (Ndayambaje).

<sup>2527</sup> T. 23 October 2008 pp. 18, 36 (Ndayambaje).

<sup>2528</sup> T. 23 October 2008 pp. 63-64 (Ndayambaje).

<sup>2529</sup> T. 23 October 2008 p. 51 (Ndayambaje).

<sup>2530</sup> T. 23 October 2008 pp. 52-53 (Ndayambaje).

<sup>2531</sup> T. 1 December 2008 pp. 38-40 (Ndayambaje).

<sup>2532</sup> T. 23 October 2008 p. 57 (Ndayambaje).

<sup>2533</sup> T. 23 October 2008 p. 58; T. 1 December 2008 p. 43 (Ndayambaje).

<sup>2534</sup> T. 19 November 2001 pp. 10-11; T. 20 November 2001 p. 108 (Witness QAR).

<sup>2535</sup> T. 19 November 2001 p. 49 (Witness QAR).

<sup>2536</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 p. 20 (Witness FAG).

presumed not.<sup>2537</sup> Witness RV testified that on the afternoon of 21 April 1994, he saw about 1,000 corpses in the church grounds.<sup>2538</sup> Most of the victims were Tutsis.<sup>2539</sup> He saw no survivors.<sup>2540</sup> Brother Stan testified that he began burying the dead bodies in the church and its surrounding area on 25 April 1994 with a group of about 20 Burundian refugees.<sup>2541</sup> There were about 200 dead people inside the church and about 200 dead bodies in the surrounding grounds.<sup>2542</sup> It took more than a week to bury the dead.<sup>2543</sup> Witness FAU gave hearsay testimony that 2,000 Tutsis were killed in the massacre at the church.<sup>2544</sup> The Chamber finds that the eyewitness testimony of Witnesses QAR, FAG, RV and Brother Stan, and the hearsay testimony of Witness FAU, establishes that hundreds, if not thousands, of Tutsis died in the massacre at Mugombwa Church on 20 and 21 April 1994.

1196. Witnesses BOZAN, GABON, KEPIR, MARVA and ANGES gave alibi evidence that they were with Ndayambaje, in various locations, on 20 and 21 April 1994 and that Ndayambaje did not participate in or facilitate the massacre at Mugombwa Church.

1197. The Chamber observes that the Ndayambaje Defence did not file a formal notice of alibi before the start of the trial. The Chamber recalls that the Defence only filed an “additional” notice of alibi identifying its witnesses on 29 April 2008.<sup>2545</sup> The Chamber recalls the applicable law relating to notice of alibi set out in the Preliminary Issues section of this Judgement (). The Chamber recalls the Chamber’s Decision of 1 March 2005, on the Prosecutor’s Motion to be Served with Particulars of Alibi, in which the Chamber directed the Defence to make the necessary disclosure if it wished to rely on alibi evidence.<sup>2546</sup> The Chamber observes that the Ndayambaje Defence did not comply with the Chamber’s Decision, despite the clear intention, evidenced in the Ndayambaje Pre-Defence Brief that it intended to rely on alibi evidence.

1198. The Prosecution complained about the *Avis additionnel et identification des témoins d’alibi* indicating that Ndayambaje was contesting the Prosecution evidence placing him at Mugombwa Church.<sup>2547</sup> The *Avis additionnel* states that Ndayambaje had sought refuge at the Muganza *commune* office during the Mugombwa Church massacre. It was served on the Prosecution just over one month before the Ndayambaje Defence case commenced. The Chamber finds that the *Avis additionnel* is no substitute for providing the Prosecution with formal notice of alibi in accordance with the Rules. The Chamber reiterates that it is settled case law that where good cause is not shown for the application of Rule 67 (B), which states that the Defence’s failure to file a notice of alibi under Rule 67 (A) shall not limit the

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<sup>2537</sup> T. 2 March 2004 p. 21 (Witness FAG).

<sup>2538</sup> T. 16 February 2004 p. 44 (ICS); T. 18 February 2004 p. 20 (ICS) (Witness RV).

<sup>2539</sup> T. 18 February 2004 p. 22 (ICS) (Witness RV).

<sup>2540</sup> T. 18 February 2004 p. 20 (ICS) (Witness RV).

<sup>2541</sup> T. 18 September 2008 p. 46; T. 23 September 2008 pp. 15-16 (Brother Stan).

<sup>2542</sup> T. 18 September 2008 p. 46 (Brother Stan).

<sup>2543</sup> T. 18 September 2008 p. 47 (Brother Stan).

<sup>2544</sup> T. 10 March 2004 p. 14 (Witness FAU).

<sup>2545</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Avis additionnel et identification des témoins d’alibi*, 29 April 2008.

<sup>2546</sup> *Ndayambaje et al.*, Decision on the Confidential Prosecutor’s Motion To Be Served With Particulars of Alibi Pursuant to Rule 67 (A)(ii)(a) (TC), 1 March 2005.

<sup>2547</sup> Prosecution Closing Brief, pp. 503-504, paras. 200-202.



accused's right to rely on an alibi defence, the Chamber is entitled to take such failure into account when weighing the credibility of the alibi.<sup>2548</sup> The Chamber further notes that Witness MARVA and Father Tiziano, who also gave evidence in support of Ndayambaje's alibi, were not named in the *Avis additionnel*. Witness MARVA was reinstated to the Ndayambaje Defence's witness list on 4 June 2008, after having been initially removed on 23 January 2006.<sup>2549</sup> The Chamber also recalls that in cross-examination by the Ndayambaje Defence, the Prosecution witnesses were not confronted with the Defence's assertion that Ndayambaje could not have been at the scene of the events because he had an alibi. This further detracts from the credibility of the alibi.

1199. As to the credibility of the alibi witnesses, the Chamber recalls that all of the alibi witnesses have close ties to Ndayambaje. Witness GABON is a former policeman employed by Ndayambaje.<sup>2550</sup> Witness MARVA was an employee of Ndayambaje.<sup>2551</sup> Witness KEPIR lived and worked a short distance from the *commune* office in Remera, he used to report to Ndayambaje on matters related to his professional activities and accompanied him on various trips throughout Butare in the latter half of April 1994.<sup>2552</sup> Witness KEPIR also testified that he was a friend of Ndayambaje.<sup>2553</sup> Witness BIDI is a friend of Ndayambaje.<sup>2554</sup> Accordingly, their evidence must be reviewed bearing these personal ties in mind. Furthermore, Witness KEPIR is implicated in the massacres at Kabuye Hill by eyewitness accounts of two Prosecution witnesses.<sup>2555</sup> This evidence also has a bearing on Witness KEPIR's credibility ( ).

1200. Father Tiziano testified that Ndayambaje came to see him at about 6.00 a.m. on 20 April 1994 and together they went to see Witness RV.<sup>2556</sup> They left the *commune* office together and the witness dropped Ndayambaje near his home at an unspecified time before 9.00 a.m.; the witness later saw Ndayambaje again at the latter's home around 9.00 a.m.<sup>2557</sup> This is consistent with Ndayambaje's account of his movements on the morning of 20 April 1994.<sup>2558</sup> Witness RV on the other hand testified that Ndayambaje and Father Tiziano did indeed come to see him at 6.00 a.m. but contradicts their assertions that they later waited for him in vain outside Ndayambaje's residence at 9.00 a.m. in order to go to Kabuga to address the population. Instead, Witness RV contends that he went to Ndayambaje's residence at around 7.30 a.m. and informed Ndayambaje and Father Tiziano that he was going to Butare.<sup>2559</sup>

1201. Witness MARVA testified that she was with Ndayambaje on the morning of 20 April 1994 at his home although she does not specify when she saw him for the first time that

<sup>2548</sup> *Semanza*, Judgement (AC), para. 93.

<sup>2549</sup> *Ndayambaje*, Decision on Ndayambaje's Motion to Vary His List of Witnesses (TC), 4 June 2008.

<sup>2550</sup> T. 28 August 2008 p. 38 (ICS) (Witness GABON).

<sup>2551</sup> T. 1 July 2008 p. 12 (ICS) (Witness MARVA).

<sup>2552</sup> T. 3 September 2008 p. 66 (ICS); T. 4 September 2008 p. 8 (ICS); T. 10 September 2008 pp. 45-46, 59, 73 (ICS) (Witness KEPIR).

<sup>2553</sup> T. 10 September 2008 p. 39; T. 15 September 2008 p. 15 (Witness KEPIR).

<sup>2554</sup> T. 30 June 2008 p. 23 (ICS) (Witness BIDI).

<sup>2555</sup> T. 25 February 2004 pp. 74-75 (Witness EV); T. 26 February 2004 pp. 60-61 (Witness EV); T. 4 March 2004 pp. 71-72, 78 (Witness FAU); T. 9 March 2004 pp. 46-47 (Witness FAU).

<sup>2556</sup> T. 8 September 2008 pp. 48-49 (Father Tiziano).

<sup>2557</sup> T. 8 September 2008 pp. 51, 58-60 (Father Tiziano).

<sup>2558</sup> T. 22 October 2008 pp. 26, 42 (Ndayambaje).

<sup>2559</sup> T. 16 February 2004 pp. 38-39 (ICS); T. 17 February 2004 pp. 61, 63, 67-70 (ICS) (Witness RV).

day.<sup>2560</sup> She subsequently met up with him at the house of Witness KEPIR, near the *commune* office.<sup>2561</sup> Witness MARVA, Ndayambaje and his family went to the *commune* office and remained in the IGA building, until Saturday, 23 April 1994.<sup>2562</sup> Ndayambaje did not leave the IGA building during that time.<sup>2563</sup> Witness MARVA's testimony is, however, contradicted by Witness KEPIR who testified that Ndayambaje spent the night of 20 April 1994 in the courtyard of the *commune* office.<sup>2564</sup> Her testimony is also contradicted by that of Witness GABON who stated that he saw Ndayambaje playing cards in the courtyard with other refugees, away from the IGA building.<sup>2565</sup> Furthermore, the Chamber recalls that Ndayambaje himself testified that on the morning of 21 April 1994, he met with Chrysologue Bimenyimana in the courtyard of the *commune* compound.<sup>2566</sup>

1202. The Chamber observes that Father Tiziano's testimony contradicts that of Ndayambaje and Witness RV regarding Ndayambaje's movements on 20 April 1994. Father Tiziano testified that he went to Ndayambaje's house at about 9.30 a.m. and left shortly afterwards to return to the parish.<sup>2567</sup> This was the last time that he saw Ndayambaje.<sup>2568</sup> He further testified that when he drove to the Muganza *commune* office at around 11.30 a.m. to report the situation to the authorities, he was alone.<sup>2569</sup> This contradicts Ndayambaje's testimony that he went to Father Tiziano's house at 6.00 a.m. and that they went to the Muganza *commune* office together to warn the authorities of the insecurity in the area.<sup>2570</sup> Ndayambaje's testimony is in concordance with that of Witness RV who testified that he was woken at 6.00 a.m. by Ndayambaje and Father Tiziano warning him of insecurity in the area. Witness RV further testified that Father Tiziano drove the witness and Ndayambaje to the *commune* office.<sup>2571</sup>

1203. Addressing first the morning of 20 April 1994, the Chamber considers that the evidence of Ndayambaje and Father Tiziano on Ndayambaje's presence at his home at around 9.00 a.m. is not credible. The Chamber recalls that as an Accused, Ndayambaje's testimony must be treated with appropriate caution as he has a personal interest in demonstrating that he was not present at Ngiriyi Bridge on the morning of 20 April 1994. The Chamber also has doubts regarding the credibility of Father Tiziano.

1204. Father Tiziano testified that there were only about 60 people seeking refuge at the church by 9.30 a.m. on 20 April 1994 and they were armed.<sup>2572</sup> Father Tiziano asked those seeking refuge in the church to leave because it was not safe. On cross-examination, he testified that he asked them to lay down their weapons because he did not think the refugees would be attacked in the church.<sup>2573</sup> The Chamber finds his testimony to be contradictory. The

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<sup>2560</sup> T. 1 July 2008 p. 20 (ICS) (Witness MARVA).

<sup>2561</sup> T. 1 July 2008 p. 24 (ICS) (Witness MARVA).

<sup>2562</sup> T. 1 July 2008 pp. 24-26 (ICS) (Witness MARVA).

<sup>2563</sup> T. 1 July 2008 pp. 24-27 (ICS); T. 2 July 2008 pp. 16-17 (ICS) (Witness MARVA).

<sup>2564</sup> T. 10 September 2008 pp. 51-52, 55-57 (Witness KEPIR).

<sup>2565</sup> T. 1 September 2008 p. 26 (ICS) (Witness GABON).

<sup>2566</sup> T. 23 October 2008 p. 37 (Ndayambaje).

<sup>2567</sup> T. 8 September 2008 pp. 59-61 (Father Tiziano).

<sup>2568</sup> T. 9 September 2008 p. 28 (Father Tiziano).

<sup>2569</sup> T. 8 September 2008 p. 64 (Father Tiziano).

<sup>2570</sup> T. 22 October 2008 p. 34 (Ndayambaje).

<sup>2571</sup> T. 16 February 2004 pp. 38-39 (ICS); T. 17 February 2004 pp. 61-63 (ICS) (Witness RV).

<sup>2572</sup> T. 9 September 2008 p. 65 (Father Tiziano).

<sup>2573</sup> T. 10 September 2008 pp. 7-8 (Father Tiziano).

Chamber observes that Witnesses QAR and FAU gave first-hand testimony that Father Tiziano attempted to, or succeeded in locking the doors to the church in the morning of 20 April 1994 before leaving the site.<sup>2574</sup> Witness QAR testified that Father Tiziano tried to lock the door after a quarrel with those outside the church.<sup>2575</sup> Witness FAU testified that Father Tiziano locked the door to the church; he heard that the priest was going to Butare to fetch help for the refugees.<sup>2576</sup> Further, Father Tiziano testified that he went to the Muganza *commune* office to report the situation but there were no authorities at the *commune* office.<sup>2577</sup> However, Father Tiziano also testified that he met Bosco, the *bourgmestre's* assistant about 10 metres from the *commune* office. According to Father Tiziano's testimony, Bosco was armed with a machete and Father Tiziano and Bosco returned to Mugombwa Church together.<sup>2578</sup> Father Tiziano testified that he left the parish in the afternoon of 20 April 1994 due to the violent situation. He did not ask Bosco for help in ensuring the security of those seeking refuge in the church.<sup>2579</sup>

1205. Considering the testimony of Witnesses QAR and FAU placing Father Tiziano at the massacre site and Father Tiziano's incentive to minimise his role, in addition to his testimony that he did not request help for those seeking refuge in the church, the Chamber finds Father Tiziano's testimony not credible as to the sequence of events in the morning of 20 April 1994.

1206. In this connection, the Chamber refers to the convincing eyewitness testimony of Witnesses QAR and FAU that Father Tiziano locked those seeking refuge inside the church, who were later massacred. This witness may have had an incentive to minimise his involvement in the events of 1994 or at least minimise the role of Ndayambaje, a long-standing acquaintance. For these reasons, the Chamber does not consider the alibi evidence provided by Father Tiziano and Ndayambaje to be reasonably possibly true, and therefore finds it does not raise a reasonable doubt as to the Prosecution's case that Ndayambaje was at Ngiryi Bridge early in the morning of 20 April 1994.

1207. As regards the evidence of Witness MARVA, the Chamber notes that she said she saw Ndayambaje at an unspecified time in the morning of 20 April 1994 when he hid Chanvrier in the guest room.<sup>2580</sup> Witness MARVA could not specify at what time Ndayambaje left his home or the time when he was reunited with his family and the witness at Witness KEPİR's residence. Her evidence was simply that a decision was taken to flee on the morning of 20 April 1994.<sup>2581</sup>

1208. The Prosecution case is that on the morning of 20 April 1994, Ndayambaje was in the vicinity of Ngiryi Bridge, on the border between Muyaga and Mugusa *communes*, between daybreak and 11.00 a.m.<sup>2582</sup> The distance between Mugombwa *secteur* and Ngiryi, where the refugees were intercepted before being forced back to Gisagara *commune*, is approximately 31

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<sup>2574</sup> T. 21 November 2001 pp. 12-14 (Witness QAR); T. 10 March 2004 pp. 4, 6-7, 11 (Witness FAU).

<sup>2575</sup> T. 21 November 2001 pp. 13-14 (Witness QAR).

<sup>2576</sup> T. 10 March 2004 pp. 4, 6-7, 11 (Witness FAU).

<sup>2577</sup> T. 8 September 2008 p. 66 (Father Tiziano).

<sup>2578</sup> T. 10 September 2008 p. 27 (Father Tiziano).

<sup>2579</sup> T. 10 September 2008 p. 23 (Father Tiziano).

<sup>2580</sup> T. 1 July 2008 p. 20 (ICS) (Witness MARVA).

<sup>2581</sup> T. 1 July 2008 p. 21 (ICS) (Witness MARVA).

<sup>2582</sup> T. 25 February 2004 pp. 69-70 (Witness EV); T. 26 February 2004 p. 34 (Witness EV); T. 10 March 2004 pp. 51-52 (Witness RT); T. 11 March 2004 p. 49 (Witness RT).

kilometres.<sup>2583</sup> The distance between Ngiryi and Remera is approximately 25 kilometres, a journey that would take around one hour by car.<sup>2584</sup> On this basis, Ndayambaje would have needed between two and three hours on the morning of 20 April 1994 to travel from his home in Mugombwa *secteur* to Ngiryi and from Ngiryi back to his home or to Witness KEPIR's residence.

1209. In assessing the alibi evidence for 20 April 1994, the Chamber considers it to be significant that Witness MARVA did not testify to the whereabouts of the Accused during a substantial part of the morning of 20 April 1994. Although Ndayambaje may not have had time to travel to Gisagara before going to Witness KEPIR's home near the *commune* office, the Chamber considers that he could have made a return trip from his home to Gisagara in the time between being seen by Witness RV at around 7.30 a.m. and hiding Chanvrier in his guest room, as testified to by Witness MARVA. In the absence of any other explanation for the Accused's whereabouts, the Chamber considers that the Defence alibi evidence is not reasonably possibly true, and therefore finds it does not raise a reasonable doubt in the Prosecution case as regards the morning of 20 April 1994.

1210. Ndayambaje testified that he was picked up from his home at around noon, and was reunited with his family later that afternoon, before 1.00 p.m.<sup>2585</sup> Witness MARVA testified that it took one hour for the car that first collected Ndayambaje to return and pick up the witness.<sup>2586</sup> The car then had to travel approximately six kilometres from Mugombwa *secteur*, where Ndayambaje lived, to nearby the Muganza *commune* office in Remera to drop the witness off at Witness KEPIR's residence, a journey that takes around one hour by foot or approximately 15 minutes by car.<sup>2587</sup> Taking this evidence together, Ndayambaje would have been out of Witness MARVA's sight for between one and a quarter and one and a half hours. This is consistent with Ndayambaje's account of the time lapse between his departure from home and the arrival of his family at Witness KEPIR's house.

1211. With respect to Ndayambaje's alleged facilitation and participation in the massacre at Mugombwa Church, the testimony of Witness QAR places Ndayambaje at Mugombwa Church at about noon on 20 April 1994 where, according to her testimony, he spent no more than 15 minutes before leaving the site in the direction of his house.<sup>2588</sup> The Chamber observes that Mugombwa Church is a matter of 500 metres from Ndayambaje's house.<sup>2589</sup> Recalling Witness MARVA's evidence above, it is clear that her alibi evidence does not cover the period between 12.00 p.m. and 1.00 p.m. on 20 April 1994. Various witnesses estimated the distance between Witness KEPIR's house and the nearby Muganza *commune* office and Mugombwa Parish to be between two and 10 kilometres. Taken at the highest estimate, this would be more than enough time for Ndayambaje to travel from the Muganza *commune* office to his house

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<sup>2583</sup> Prosecution Exhibit 1 (Map of Butare); T. 23 October 2008 p. 42 (Ndayambaje).

<sup>2584</sup> T. 23 October 2008 p. 42 (Ndayambaje).

<sup>2585</sup> T. 22 October 2008 pp. 55, 59-60, 62; T. 27 November 2008 p. 19 (Ndayambaje).

<sup>2586</sup> T. 1 July 2008 pp. 21-22 (ICS) (Witness MARVA).

<sup>2587</sup> Prosecution Exhibit 1 (Map of Butare); T. 2 July 2008 p. 16 (ICS) (Witness MARVA); T. 10 September 2008 p. 19 (Witness KEPIR); T. 23 October 2008 p. 42 (Ndayambaje).

<sup>2588</sup> T. 19 November 2001 pp. 7, 10-11, 15-19, 21; T. 20 November 2001 pp. 119-120, 131-132; T. 21 November 2001 pp. 38-39 (Witness QAR).

<sup>2589</sup> Defence Exhibit 693 (Ndayambaje) (Sketch Map, by Ndayambaje); T. 23 September 2008 p. 15 (Brother Stan).

and the church; a distance of approximately six kilometres and an estimated 15 minutes by car.<sup>2590</sup>

1212. Ndayambaje testified that his mother was being cared for at the Mugombwa health centre from 20 April 1994 and this is why she did not join him and the rest of his family at the Muganza *commune* office.<sup>2591</sup> The Chamber finds his account doubtful. When he heard explosions on 20 April 1994 Ndayambaje testified that he decided to evacuate his family to the *commune* office. He did not, however, collect his mother from the health centre despite the proximity of the health centre to his house and the ease with which she could have been evacuated with the rest of his family. Furthermore, Father Tiziano testified that he left Mugombwa Parish along with the three nuns who were in charge of the health centre in the afternoon of 20 April 1994.<sup>2592</sup> In the Chamber's view this casts doubt on the version of events given by Ndayambaje. Ndayambaje testified that he left with his family to seek refuge in Kibayi *commune* on the afternoon of 23 April 1994.<sup>2593</sup> He did not testify that his mother joined the rest of his family in Kibayi *commune*. The Chamber does not find Ndayambaje's account regarding his whereabouts, and those of his mother on 20 April 1994 to be convincing.

1213. Brother Stan gave hearsay testimony that Ndayambaje and his family had sought refuge at the Muganza *commune* office when he arrived there at approximately 12.30 p.m. on 20 April 1994.<sup>2594</sup> The Chamber has doubts regarding Brother Stan's credibility. Brother Stan testified that attacks against the Tutsis had started by 18 April 1994.<sup>2595</sup> Therefore, the Chamber finds it curious that two days later, he left two Tutsis; Mr. Fidèle and his pregnant wife, at a roadblock manned by armed soldiers.<sup>2596</sup> He did not attempt to find out what happened to them but he believed they may have been killed.<sup>2597</sup> This incident casts doubt on his credibility.

1214. The Chamber observes that Brother Stan acknowledged that Burundian refugees from the Saga camp where he worked participated in the killings on and around 20 April 1994.<sup>2598</sup> By his own admission, he did not make any attempt to disarm the refugees in the camp who had machetes, stating that he was a simple priest. He testified that in his view machetes were not weapons and the Burundian refugees were therefore not armed.<sup>2599</sup> In his view, there was no way he could confiscate their machetes because they needed them for their work.<sup>2600</sup> The Chamber finds this reasoning very weak. By his own admission, the refugees were not working in the fields after the outbreak of violence in April 1994, but, he testified, remained inside the camps.<sup>2601</sup> They therefore did not need the machetes for "work". Further, Brother

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<sup>2590</sup> T. 22 September 2008 p. 49 (Brother Stan) (2 to 3 kilometres); T. 19 November 2008 p. 41 (Ndayambaje) (5 to 6 kilometres); T. 15 September 2008 p. 8 (Witness KEPIR) (7 to 10 kilometres).

<sup>2591</sup> T. 2 December 2008 p. 30 (Ndayambaje).

<sup>2592</sup> T. 9 September 2008 pp. 12-13 (Father Tiziano).

<sup>2593</sup> T. 27 October 2008 p. 25 (Ndayambaje).

<sup>2594</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>2595</sup> T. 24 September 2008 p. 35 (Brother Stan).

<sup>2596</sup> T. 23 September 2008 p. 4 (Brother Stan).

<sup>2597</sup> T. 23 September 2008 p. 4; T. 24 September 2008 p. 40 (Brother Stan).

<sup>2598</sup> T. 23 September 2008 pp. 18, 55 (Brother Stan).

<sup>2599</sup> T. 23 September 2008 p. 20 (Brother Stan).

<sup>2600</sup> T. 23 September 2008 p. 59 (Brother Stan).

<sup>2601</sup> T. 23 September 2008 p. 56 (Brother Stan).

Stan was not just a “simple priest”, but worked in the refugee camp in education and therefore exercised a degree of authority over the refugees.

1215. Brother Stan testified that he was able to travel around Butare freely prior to 25 April 1994. Despite this fact, he made no attempt to notify the authorities of the unrest in Kibayi and Muganza *communes*. It was the Kibayi *commune* office secretary who wished to notify the authorities about the insecurity in the *commune* and he asked Brother Stan to accompany him.<sup>2602</sup> Brother Stan did not inform the *préfecture* authorities because, he explained, he did not know how.<sup>2603</sup> The Chamber does not accept this explanation and finds that his failure to seek assistance, despite his knowledge of the Burundian refugees’ involvement, and his position of responsibility over them, further detracts from his credibility.

1216. The Chamber also notes that there were some discrepancies between two earlier statements given in 1995, to a Belgian judge and a journalist, respectively. In his previous statement before the Belgian judge, Vandermeersch, the witness stated that he saw Ndayambaje on his way to Kibayi on 27 or 28 April 1994.<sup>2604</sup> Brother Stan testified that the judge was mistaken and that the correct date was 23 April 1994.<sup>2605</sup> In the letter of complaint he wrote to the journalist Van den Abeele, he stated that Ndayambaje had sought refuge at the *commune* office from 20 to 25 April 1994. At trial, Brother Stan testified that this was a mistake and that he saw Ndayambaje on 23 April 1994 on his way to Kibayi.<sup>2606</sup> He testified that he was mistaken in this statement in the letter that Ndayambaje sought refuge at the *commune* office from 20 to 25 April; the correct dates were 20 to 23 April 1994.<sup>2607</sup> Seeking to explain the discrepancy in dates, Brother Stan testified that his testimony before the Tribunal is clearer and more precise than the statements he made in 1995 because he was still traumatised by the events of 1994. In his view, this is why there were contradictions between the statement to Judge Vandermeersch and the letter to the journalist written in 1995, and his testimony in 2008 but that he is clearer now about the events of 1994.<sup>2608</sup> The Chamber does not find this reasoning to be convincing. In the Chamber’s view, Brother Stan would have been much clearer about the dates of certain events one year later. The Chamber rejects his statement that he is clearer about the events of 1994, and their specific dates, 14 years later.

1217. Taking these factors into consideration, and noting that Brother Stan was a close friend of Ndayambaje and close associate of the Burundian refugees, some of whom are implicated in the massacres at Kabuye Hill and Mugombwa Church, the Chamber does not find Brother Stan’s evidence credible insofar as it relates to Ndayambaje’s presence at the Muganza *commune* office at 12.30 p.m. on 20 April 1994.

1218. The Chamber therefore considers that the alibi evidence does not raise a reasonable doubt in the Prosecution case that Ndayambaje was present at Mugombwa Church for 15 minutes between about noon and 1.00 p.m. on 20 April 1994.

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<sup>2602</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>2603</sup> T. 23 September 2008 p. 60 (Brother Stan).

<sup>2604</sup> T. 23 September 2008 p. 32 (Brother Stan).

<sup>2605</sup> T. 23 September 2008 p. 46 (Brother Stan).

<sup>2606</sup> T. 23 September 2008 p. 46 (Brother Stan).

<sup>2607</sup> T. 23 September 2008 p. 47 (Brother Stan).

<sup>2608</sup> T. 23 September 2008 p. 47 (Brother Stan).

1219. With respect to the morning of 21 April 1994, Witness QAR testified that Ndayambaje arrived at Mugombwa Church at approximately 10.00 a.m. According to her testimony she saw him arrive at the church by the road from Remera.<sup>2609</sup> He went away and returned half an hour later, after which he left immediately afterwards.<sup>2610</sup>

1220. With respect to the alibi evidence brought by the Defence regarding the whereabouts of Ndayambaje on 21 April 1994, Witness GABON testified that Ndayambaje did not leave the *commune* office compound on 21 April 1994. The Chamber recalls that on cross-examination, Witness GABON testified that between 20 and 24 April 1994, he slept for just 27 minutes.<sup>2611</sup> The Chamber finds his testimony to be unrealistic in this respect. Furthermore, the Chamber recalls Defence Exhibit 694 (Sketch Map, by Ndayambaje) which establishes that the Muganza *commune* office comprises a number of buildings.<sup>2612</sup> Witness GABON would therefore not have had sight of Ndayambaje at all times during 21 April 1994 due to the size and layout of the *commune* office.

1221. Witness MARVA testified that Ndayambaje and the rest of the group remained in the same room throughout Thursday, 21 April 1994.<sup>2613</sup> The Chamber also finds this to be unrealistic. The Chamber observes that Witness MARVA's testimony is contradicted by Witness GABON who saw Ndayambaje playing cards in the courtyard with other refugees.<sup>2614</sup> Furthermore, the Chamber recalls that Ndayambaje himself testified that on the morning of 21 April 1994, he met with Chrysologue Bimenyimana in the courtyard of the *commune* compound.<sup>2615</sup>

1222. Witness MARVA further testified that she and Ndayambaje remained in the room until Saturday, 23 April 1994 when the *commune* office was attacked and the group, including Ndayambaje, fled.<sup>2616</sup> In addition to the Chamber's finding that this is not realistic, her evidence is contradicted by Witness KEPIR, Witness GABON and Ndayambaje himself who all testified that Ndayambaje left the *commune* office on two occasions on 22 April 1994, to go to Mugombwa to pick up Monique's car, and to retrieve the Kirarambogo health centre vehicle.

1223. Ndayambaje testified that he was at the *commune* office all day on 21 April 1994 and did not leave. The Chamber recalls that there were approximately 150 people seeking refuge at the *commune* office between 20 and 24 April 1994.<sup>2617</sup> Given the relatively large geographical space and the large number of people present at the *commune* office, the Chamber does not find that the evidence of Witnesses GABON, KEPIR and MARVA that they were with Ndayambaje at all times over the course of 21 April 1994 to be credible and finds that they were not in a position to state that Ndayambaje never left the *commune* office on 21 April 1994.

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<sup>2609</sup> T. 19 November 2001 pp. 19-23 (Witness QAR).

<sup>2610</sup> T. 19 November 2001 pp. 26, 29-31 (Witness QAR).

<sup>2611</sup> T. 3 September 2008 p. 17 (ICS) (Witness GABON).

<sup>2612</sup> Defence Exhibit 694 (Ndayambaje) (Sketch Map, by Ndayambaje).

<sup>2613</sup> T. 1 July 2008 p. 25 (ICS) (Witness MARVA).

<sup>2614</sup> T. 1 September 2008 p. 26 (ICS) (Witness GABON).

<sup>2615</sup> T. 23 October 2008 p. 37 (Ndayambaje).

<sup>2616</sup> T. 1 July 2008 pp. 25-27 (ICS) (Witness MARVA).

<sup>2617</sup> T. 1 September 2008 pp. 11, 13 (ICS) (Witness GABON).

1224. Witness FAG, a participant in the massacre, testified that he was told to go to Mugombwa Church by community leaders Kanyenzi, Venant, Bosco and Viateur who were acting on the orders of Ndayambaje.

1225. The Chamber also heard evidence from two passers-by, Witnesses FAU and MAJIK who were in the vicinity of the church before and after the massacre; from Witness RV, Brother Stan and Ndayambaje who testified that they visited the church in the aftermath of the massacre; Father Tiziano, the parish priest of Mugombwa who was present before the attacks started; and Witness ALIZA who heard explosions coming from the church.

1226. The Chamber observes that Witnesses FAU, FAG and RV were detained witnesses at the time of their testimony. Witness FAU was awaiting trial in Rwanda for crimes related to the 1994 genocide.<sup>2618</sup> Witness FAG confessed to having participated in various attacks in 1994, spent eight years in prison and was released in 2003,<sup>2619</sup> before he gave evidence to this Tribunal in 2004. Despite being released from prison he nevertheless still awaited a decision by a *Gacaca* court at the time of his testimony.<sup>2620</sup> The Chamber therefore treats his testimony with appropriate caution considering he may have had an incentive to lie during his testimony in order to obtain preferential treatment in connection with his *Gacaca* sentence. Witness RV had pled guilty to crimes committed during the genocide and was waiting to see if his plea would be accepted at the time of his testimony. The Chamber will therefore treat their testimony with appropriate caution.

1227. Witness QAR testified that she had known Ndayambaje since they were children.<sup>2621</sup> This was not challenged by the Ndayambaje Defence. She testified that she saw him at noon on 20 April 1994 at Mugombwa Church, about 10 metres from her position inside the church.<sup>2622</sup> She saw Ndayambaje speaking to the attackers through a broken window.<sup>2623</sup> Father Tiziano and Witnesses JAMES and BOZAN testified that the windows in the church were made of opaque coloured glass and it was not possible to look through them unless they were broken.<sup>2624</sup> This evidence supports Witness QAR's account of her sighting of Ndayambaje in the church grounds on that day.

1228. The Chamber observes that there are conflicting accounts of precisely when the windows in the church were broken. Witness QAR testified that as she entered the church at about 8.00 a.m. on 20 April 1994, people were throwing stones at the church, breaking the windows.<sup>2625</sup> According to her testimony, the window by which she was standing was broken by noon, enabling her to see Ndayambaje outside the church.<sup>2626</sup> Witness BOZAN testified that

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<sup>2618</sup> T. 8 March 2004 pp. 84-86 (ICS) (Witness FAU).

<sup>2619</sup> T. 1 March 2004 p. 6 (ICS); T. 1 March 2004 pp. 47-50 (Witness FAG).

<sup>2620</sup> T. 3 March 2004 p. 45 (ICS) (Witness FAG).

<sup>2621</sup> T. 19 November 2001 pp. 101-102 (ICS) (Witness QAR).

<sup>2622</sup> T. 19 November 2001 p. 23 (Witness QAR).

<sup>2623</sup> T. 19 November 2001 pp. 16, 20 (Witness QAR).

<sup>2624</sup> T. 8 September 2008 p. 25 (Father Tiziano); T. 2 June 2008 pp. 35-36 (ICS) (Witness JAMES) (the windows were made of coloured glass, were impossible to see through and impossible to open); T. 16 September 2008 p. 5 (Witness BOZAN) (the panes of glass in the windows were multi-coloured, opaque and it was not possible to open the windows).

<sup>2625</sup> T. 19 November 2001 p. 7; T. 20 November 2001 p. 107 (Witness QAR).

<sup>2626</sup> T. 20 November 2001 pp. 119-120 (Witness QAR).



the attackers had not started throwing stones at the church by around 9.30 a.m. but that later he saw from his vantage point near the presbytery, that at about 11.15 a.m. a single window nearest the priest's house was broken.<sup>2627</sup> The Chamber observes that Witness BOZAN testified that he watched the assailants throwing stones from the presbytery gate where he saw only one window broken.<sup>2628</sup> His view of the church was restricted to one side of the church and does not cast doubt on the testimony of Witness QAR that more than one window was broken. Furthermore, Father Tiziano testified that the windows in the church were broken by about 12.30 p.m. and there were stones lying in the churchyard.<sup>2629</sup> His testimony corroborates that of Witness QAR regarding the broken windows.

1229. Witness QAR gave testimony that when Ndayambaje arrived at the church on 20 April 1994 there were no priests, policemen or soldiers present and the massacre had not yet begun.<sup>2630</sup> This is corroborated by the testimony of Prosecution Witness FAU and Defence Witness MAJIK. Witness FAU testified that he saw the priest leave the church at midday but that there were no police or *gendarmes* present at the church at this time and the massacre had not started.<sup>2631</sup> He left the site shortly afterwards.<sup>2632</sup> Witness MAJIK passed by Mugombwa Church at about 11.30 a.m. on 20 April 1994. The church doors were closed; she could hear the people inside the church screaming. There were people outside the church carrying traditional weapons.<sup>2633</sup> On her way back past the church an hour later the attackers had not attacked the church.<sup>2634</sup> Witness QAR further testified that upon arrival, Ndayambaje rolled down the windows of the vehicle and stretched out his hand to show the refugees a photograph of Habyarimana, saying that the Tutsis had to be killed as they were accomplices in the President's death, after which he left in his vehicle with the photograph.<sup>2635</sup>

1230. Witness FAU testified that he did not remember if Ndayambaje was at the church on 20 April 1994.<sup>2636</sup> Witness MAJIK also testified that she did not see Ndayambaje on either of her journeys past the church.<sup>2637</sup> The Chamber observes, however, that both witnesses were passers-by and neither witness was at the church for an extended period of time on that day. The Chamber therefore finds that their testimony does not cast doubt on Witness QAR's eyewitness testimony that Ndayambaje came to the church for 15 minutes at about midday when he spoke to the attackers.

1231. Witness QAR testified that the attack on the church began at about 4.00 p.m. on 20 April 1994 when grenades were thrown into the church.<sup>2638</sup> This account is consistent with the testimony of Witness ALIZA who heard gunshots coming from Mugombwa Church at around

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<sup>2627</sup> T. 17 September 2008 p. 18 (ICS) (Witness BOZAN).

<sup>2628</sup> T. 17 September 2008 pp. 23-24 (ICS) (Witness BOZAN).

<sup>2629</sup> T. 9 September 2008 pp. 11, 13 (Father Tiziano).

<sup>2630</sup> T. 21 November 2001 p. 12 (Witness QAR).

<sup>2631</sup> T. 10 March 2004 pp. 6-7, 11, 15-16 (Witness FAU).

<sup>2632</sup> T. 10 March 2004 pp. 11, 15 (Witness FAU).

<sup>2633</sup> T. 17 June 2008 p. 41 (ICS) (Witness MAJIK).

<sup>2634</sup> T. 17 June 2008 p. 45 (ICS) (Witness MAJIK).

<sup>2635</sup> T. 19 November 2001 pp. 7, 10-11, 17-19; T. 20 November 2001 pp. 125, 131-132 (Witness QAR).

<sup>2636</sup> T. 10 March 2004 pp. 18-19 (Witness FAU).

<sup>2637</sup> T. 17 June 2008 pp. 46-48 (Witness MAJIK).

<sup>2638</sup> T. 19 November 2001 p. 19 (Witness QAR).

5.00 p.m. that afternoon,<sup>2639</sup> Witness JAMES who heard explosions coming from the church between 3.00 and 5.00 p.m.,<sup>2640</sup> and Witness FAU who heard explosions coming from the church during the night of 20 April 1994.<sup>2641</sup>

1232. Witness QAR testified that Ndayambaje returned to the church the next day, 21 April 1994, at approximately 10.00 a.m. She saw him arrive in the same white vehicle he had been driving the day before, through a broken window from her position in the church near the door.<sup>2642</sup> He was approximately 10 metres away and she saw him address the crowd after which he left in the direction of Remera, returning at about 10.30 a.m. with machetes and axes which he distributed to the people. He left immediately afterwards.<sup>2643</sup>

1233. Witness QAR testified that some hours after Ndayambaje left the church, at about 3.00 p.m. on 21 April 1994, five grenades were thrown into the church after which petrol was poured into the church and it was set on fire.<sup>2644</sup> As the fire broke out some of the attackers tried to break down the door.<sup>2645</sup> This sequence of events is corroborated by Witness FAG who testified that attackers congregated at Mugombwa between around 2.15 and 3.00 p.m. on that afternoon.<sup>2646</sup> The attack began at about 3.00 p.m. when a group of Burundians threw grenades into the church, then bottles of petrol and dry fodder, in order to start a fire. The attackers then tried to break down the door and bring out those that were not yet dead. Nobody left the church alive while Witness FAG was there but he did not stay until the end of the attack.<sup>2647</sup>

1234. Witness FAG testified that he did not see Ndayambaje at the massacre site at 2.15 p.m.<sup>2648</sup> That Witness FAG did not see Ndayambaje when he arrived at the church in the afternoon of 21 April 1994 does not cast doubt on Witness QAR's assertion that Ndayambaje had visited the church in the morning of that day. The Chamber observes that Witness FAG's testimony corroborates Witness QAR with respect to the grenade attack, the church being set on fire and the attempts by the attackers to break down the church door on the afternoon of 21 April 1994. Her testimony on these events is further corroborated by the hearsay testimony of Witness JAMES who testified that he overheard the attackers discussing a further attack on the church on that day in which an axe was used to break the church door.<sup>2649</sup>

1235. Witness QAR testified that Damascene, Tabaro, Mathias, Mushimire, Sikubwabo, Cyabarene, Yohane, Siridiyo and Nyandwi were among the attackers present at the church on Wednesday.<sup>2650</sup> Her testimony with respect to the identity of the assailants at the church is partly corroborated by Witness BOZAN who identified Cyabarene and Innocent among the

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<sup>2639</sup> T. 4 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>2640</sup> T. 2 June 2008 p. 29 (ICS) (Witness JAMES).

<sup>2641</sup> T. 10 March 2004 pp. 11-12 (Witness FAU).

<sup>2642</sup> T. 19 November 2001 pp. 19-23 (Witness QAR).

<sup>2643</sup> T. 19 November 2001 pp. 17-18, 31 (Witness QAR).

<sup>2644</sup> T. 19 November 2001 pp. 31, 37-38 (Witness QAR).

<sup>2645</sup> T. 19 November 2001 pp. 37-38 (Witness QAR).

<sup>2646</sup> T. 2 March 2004 p. 16 (Witness FAG).

<sup>2647</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 pp. 22-24; T. 2 March 2004 p. 26 (ICS) (Witness FAG).

<sup>2648</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 p. 27 (ICS) (Witness FAG).

<sup>2649</sup> T. 2 June 2008 p. 43 (ICS) (Witness JAMES).

<sup>2650</sup> T. 21 November 2001 pp. 11-12 (Witness QAR).

killers<sup>2651</sup> and Witness JAMES' hearsay testimony that Cyabarene and Mushimire were among the attackers at the church.<sup>2652</sup>

1236. Witness FAG gave detailed testimony regarding the identities of the assailants and the sequence of events during the massacre. Nonetheless, the Chamber notes that Witness FAG did not mention the attacks on Mugombwa Church in his confession to the Rwandan authorities as well as his explanation that he was afraid, and there were things he could not talk about at the time.<sup>2653</sup> The Chamber accepts his explanation for not mentioning the massacre at Mugombwa Church in his 1998 confession. The Chamber accepts Witness FAG's testimony insofar as it relates to the massacre at Mugombwa Church on 21 April 1994 and his account of how he came to find himself at Mugombwa Church.

1237. Witness QAR testified that on leaving the church on 21 April 1994 she was forced to take off her clothes and was able to avoid being attacked by Burundians with machetes when the father of her child, a Hutu, intervened. As a result she was taken to the priest's house and released the following day.<sup>2654</sup> The presence of Burundian refugees at the church on 21 April 1994 is corroborated by the testimony of Witness FAG that Burundian refugees attacked the church with grenades that afternoon,<sup>2655</sup> and the hearsay testimony of Witness JAMES that the attackers at the church were accompanied by Burundian refugees.<sup>2656</sup>

1238. The Chamber observes that there are some discrepancies between Witness QAR's testimony at trial and her previous statements of 20 June 1995 and 20 May 1997. At trial, the witness testified that she took refuge inside Mugombwa Church at around 8.00 a.m. on Wednesday, whereas in her previous statement of 20 June 1995, she stated that she arrived at the church at 2.00 p.m.<sup>2657</sup> The witness explained the discrepancy between her previous statement and her testimony at trial arose because the investigators had not recorded her statements correctly.<sup>2658</sup>

1239. Witness QAR testified that she did not personally see Ndayambaje's vehicle arrive at the church on Wednesday (20 April 1994) but was informed of his arrival by others in the church whereas her previous statement stated that she saw Ndayambaje arrive in a vehicle.<sup>2659</sup> On cross-examination, the witness maintained that she did not see him pull up in his car but saw him after he arrived at the church.<sup>2660</sup> She testified that Ndayambaje was not holding a gun, whereas in her previous statement, she stated that he carried a gun and gave the photograph of Habyarimana to someone before he left.<sup>2661</sup> She explained she could not tell a

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<sup>2651</sup> T. 17 September 2008 p. 24 (ICS) (Witness BOZAN).

<sup>2652</sup> T. 2 June 2008 pp. 32, 43 (ICS) (Witness JAMES).

<sup>2653</sup> T. 6 September 2004 p. 11 (ICS) (Witness FAG).

<sup>2654</sup> T. 19 November 2001 pp. 39, 48-52 (Witness QAR).

<sup>2655</sup> T. 1 March 2004 p. 16 (ICS); T. 2 March 2004 pp. 22-24; T. 2 March 2004 p. 26 (ICS) (Witness FAG).

<sup>2656</sup> T. 2 June 2008 p. 34 (ICS) (Witness JAMES).

<sup>2657</sup> T. 20 November 2001 pp. 99-104 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, Statement of Witness QAR).

<sup>2658</sup> T. 20 November 2001 p. 103 (Witness QAR).

<sup>2659</sup> T. 20 November 2001 p. 133 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 May 1997, Statement of Witness QAR).

<sup>2660</sup> T. 21 November 2001 pp. 7-13 (Witness QAR).

<sup>2661</sup> T. 19 November 2001 p. 7; T. 20 November 2001 pp. 120-123, 128 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, Statement of Witness QAR).

lie and this discrepancy arose because her statement had been wrongly recorded.<sup>2662</sup> The Chamber does not find this discrepancy material and observes that she is consistent in her previous statements that she saw Ndayambaje at the site.

1240. Witness QAR testified that on Wednesday, two grenades were thrown into the church and exploded, but she did not see who threw them or who distributed them. In her previous statement, she stated that grenades were distributed at the church on Wednesday by a white clergyman, that a boy among the assailants threw them, and that only one grenade exploded.<sup>2663</sup> The Chamber observes that the witness explained the discrepancies between her previous statements and her testimony at trial by stating that the investigators had made mistakes in recording her statements and that additions had been made to her statements.<sup>2664</sup> The Chamber accepts her explanation and finds it reasonable.

1241. The Chamber finds that the discrepancies between the testimony of Witness QAR and her previous statements of 20 June 1995 and 20 May 1997, are not material and do not cast doubt on her credibility.

1242. The Chamber observes that Witness JAMES testified that Witness QAR gave false testimony regarding the events of 21 April 1994. According to Witness JAMES, Witness QAR was released from the church on 21 April 1994 on account of an intervention by the Hutu father of her child. His hearsay evidence on this point corroborates Witness QAR's testimony that she was spared by the Burundians outside the church after the intervention of her child's Hutu father.<sup>2665</sup> However, contrary to Witness QAR's testimony that she spent the night in the priest's house on 21 April 1994 and was released the following day, Witness JAMES testified that he saw her at the bar where he worked in the evening of 21 April 1994 and that Witness QAR spent the night at a nearby house.<sup>2666</sup>

1243. The Chamber accepts Witness JAMES' hearsay evidence insofar as it corroborates the presence of Witness QAR inside the church on 20 and 21 April 1994.<sup>2667</sup> The Chamber recalls Witness QAR was an eyewitness to the massacre at Mugombwa Church and her testimony was compelling. In relation to Witness JAMES' testimony that Witness QAR was not telling the truth about where she spent the night on 21 April 1994, the Chamber considers that Witness JAMES' account does not contradict Witness QAR's evidence in any material respect. The Chamber accepts Witness QAR's evidence that she spent the night at the priest's house. Witness QAR testified that she returned home on 22 April 1994 and it is possible that Witness JAMES was mistaken and that he in fact saw her on the following evening. The Chamber therefore finds that Witness JAMES' evidence does not cast doubt on Witness QAR's credibility.

1244. The Chamber considers the circumstances of Witness QAR's identification of Ndayambaje at Mugombwa Church on 20 and 21 April 1994 and her prior knowledge of the

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<sup>2662</sup> T. 20 November 2001 pp. 126-127 (Witness QAR).

<sup>2663</sup> T. 21 November 2001 pp. 25-27, 29, 35-37 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 May 1997, Statement of Witness QAR).

<sup>2664</sup> T. 20 November 2001 pp. 103, 126, 130-131; T. 21 November 2001 p. 31 (Witness QAR).

<sup>2665</sup> T. 21 November 2001 pp. 62-63 (Witness QAR).

<sup>2666</sup> T. 19 November 2001 pp. 49-52 (Witness QAR); T. 2 June 2008 p. 41 (ICS) (Witness JAMES).

<sup>2667</sup> T. 2 June 2008 p. 37 (ICS) (Witness JAMES).

Accused. Further, the Chamber notes the corroboration of the salient details of Witness QAR's testimony concerning the attacks on the church on 20 April 1994 by Witnesses FAU, ALIZA, BOZAN and JAMES, *i.e.* that the attack on the church began at about 4.00 p.m. when grenades were thrown into the church;<sup>2668</sup> and by Witnesses FAG and JAMES, *i.e.* that at about 3.00 p.m. on 21 April 1994 grenades were thrown into the church after which it was set on fire and some attackers, among whom were Innocent and Cyabarene,<sup>2669</sup> tried to break down the door.<sup>2670</sup> In light of the foregoing, and considering the consistent and detailed account of Witness QAR, the Chamber finds that the alibi evidence does not raise a reasonable doubt as to the Prosecution's case that Ndayambaje was present at Mugombwa Church in the morning of 21 April 1994.

1245. The Chamber therefore finds it proven beyond a reasonable doubt that on the morning of 20 April 1994 Ndayambaje spoke with community leaders at Bishya trade centre who immediately thereafter directed men at Bishya, including Witness FAG, to Mugombwa Church; several thousand refugees, predominantly Tutsis, were seeking shelter in Mugombwa Church at the time, while a number of armed civilians were outside the church; Ndayambaje came to Mugombwa Church at about noon on 20 April 1994; Ndayambaje showed the refugees in the church a picture of President Habyarimana and told the refugees that they were going to be killed because they were accomplices of the *Inkotanyi* who had killed the President; Ndayambaje also spoke to a group of armed people posted outside the church and told them that since the people in the church were now gathered together, their work would no longer be very difficult; he also told the attackers that some of them should stay and watch those in the church and others should go and look for those that were hiding in ditches and in bushes, after which many people left, whereas some stayed behind at the church; Ndayambaje remained on the spot for about 15 minutes and left; and the same day at around 4.00 p.m., the armed people launched an attack against the Tutsis sheltering in the church.

1246. The Chamber also finds it established beyond a reasonable doubt that Ndayambaje came to Mugombwa Church for half an hour at around 10.00 a.m. on 21 April 1994; he asked the crowd what they would pay if the cattle's Tutsi owners escaped, then left; he returned to the church at about 10.30 a.m., before leaving again; at about 3.00 p.m. several grenades were thrown into the church, petrol was poured inside the church, and fire erupted; at least one refugee escaping the church was told to remove her clothes; all the escaping refugees were attacked by the civilians outside in the church courtyard; several hundred, if not thousands, of Tutsis died.

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<sup>2668</sup> T. 19 November 2001 p. 19 (Witness QAR); *see also* T. 4 June 2008 p. 34 (ICS) (Witness ALIZA) (gunshots came from Mugombwa Church at around 5.00 p.m. that afternoon); T. 2 June 2008 p. 29 (ICS) (Witness JAMES); T. 4 June 2008 p. 5 (ICS) (Witness JAMES) (explosions came from the church between 3.00 and 5.00 p.m.); T. 10 March 2004 pp. 11-12 (Witness FAU) (explosions came from the church during the night of 20 April 1994).

<sup>2669</sup> T. 21 November 2001 pp. 11-12 (Witness QAR); *see also* T. 2 June 2008 pp. 32, 43 (ICS) (Witness JAMES); T. 17 September 2008 p. 24 (ICS) (Witness BOZAN).

<sup>2670</sup> T. 19 November 2001 pp. 31, 37-38 (Witness QAR); *see also* T. 1 March 2004 p. 16 (ICS) (Witness FAG); T. 2 March 2004 pp. 23-24 (Witness FAG) (corroborating Witness QAR with respect to the grenade attack, the church being set on fire and the attempts by the attackers to break down the church door on the afternoon of 21 April 1994); T. 2 June 2008 p. 43 (ICS) (Witness JAMES) (corroborating Witness QAR in stating that he overheard the attackers discussing a further attack on the church on the day an axe was used to break the church door).

1247. Lastly, the Chamber recalls Witness QAR testified that she was told to remove her clothes at the doorway of the church before being allowed to escape, which she did.<sup>2671</sup> The Chamber observes the Ndayambaje Indictment does not refer to this specific incident and the Chamber is of the view that the Ndayambaje Defence was not provided with notice of this allegation by means of information in the Prosecution Pre-Trial Brief. As such, the Chamber will not base any conviction upon this finding.

### 3.6.5 Kabuye Hill Massacre, 20-24 April 1994

#### 3.6.5.1 Introduction

1248. The Ndayambaje Indictment alleges that on 20 April 1994, Ndayambaje took *commune* policeman to Gisagara *commune*, Butare *préfecture*, where, together with soldiers, they arrested refugees and took them to Kabuye Hill. The Tutsis were separated from the other refugees and forced to relinquish their traditional tools. It is further alleged that on 22 April 1994, Ndayambaje, *commune* policemen, *gendarmes*, soldiers and civilians armed with traditional tools attacked the Tutsis at Kabuye Hill resulting in deaths and injuries. On the night of 22 April, armed civilians prevented the survivors of that day's attack from escaping. The attacks at Kabuye Hill continued on 23 and 24 April 1994. Ndayambaje transported attackers to Kabuye Hill, issued them with weapons and personally threw grenades into the crowd of refugees.<sup>2672</sup>

1249. The Prosecution submits that between January and July 1994, Ndayambaje was an influential figure who exercised his authority over the public, subordinates in the *commune* office, *conseillers* and the *commune* police even though he was no longer officially *bourgmestre* of Muganza *commune*.<sup>2673</sup> He ordered the *Interahamwe* to kill Tutsis and his instructions were followed.<sup>2674</sup> The Prosecution claims that Ndayambaje led the attack on Kabuye Hill, instigated others to participate in the attack, provided weapons and supervised the killing of Tutsis.<sup>2675</sup> The Prosecution asserts that Ndayambaje personally murdered two individuals at Kabuye Hill: the uncle of Witness TW<sup>2676</sup> and a Tutsi woman by the name of Venerande.<sup>2677</sup>

1250. In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses EV, RT, TW, QAQ, TP, QAL, RV, FAU, FAG and QBZ.

1251. In addition to its submission on defects in the Indictment, considered below, the Ndayambaje Defence submits that the Prosecution evidence is inconsistent and contradictory, particularly as regards the time frame of events, and the presence of soldiers and vehicles at Kabuye.<sup>2678</sup> The Defence presented an alibi for the time when Ndayambaje was allegedly at

<sup>2671</sup> T. 19 November 2001 p. 39 (Witness QAR).

<sup>2672</sup> Paras. 6.30, 6.31 and 6.32 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (1) and 6 (3)).

<sup>2673</sup> Prosecution Closing Brief, pp. 450-453, paras. 4-5, 8, 13.

<sup>2674</sup> Prosecution Closing Brief, p. 477, para. 100.

<sup>2675</sup> Prosecution Closing Brief, pp. 470, 473, paras. 72, 86.

<sup>2676</sup> Prosecution Closing Brief, p. 471, para. 76.

<sup>2677</sup> Prosecution Closing Argument, T. 21 April 2009 p. 44 (referring to "Venerandah"); see also T. 21 April 2009 p. 50 (French) (for spelling of "Venerande").

<sup>2678</sup> Ndayambaje Closing Argument, T. 30 April 2009 pp. 7-11.

Kabuye Hill; it submits that Ndayambaje was not present at Kabuye Hill between 20 and 24 April 1994 claiming that Ndayambaje was at the *commune* office from 20 to 23 April 1994 and thereafter took refuge at Kibayi for one week as from 23 April 1994.<sup>2679</sup>

1252. In support of its submissions, the Ndayambaje Defence relies on the testimony of Ndayambaje Defence Witnesses ALIZA, TOVIA, KEPIR, GABON, MARVA, BIDI, Father Tiziano, SABINE, Nteziryayo Defence Witness AND-5 and Ndayambaje.

### 3.6.5.2 Preliminary Issues

#### *Vagueness of Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment*

1253. The Ndayambaje Defence submits that Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment lack specificity. In particular, the Defence claims that Paragraph 6.30 does not mention the identity and number of policemen involved, their place of departure or how they were transported to Gisagara. Nor is there any reference to where or when the refugees were arrested, or whether Ndayambaje was present during the arrests and the subsequent transportation of refugees to Kabuye Hill. Paragraph 6.31 fails to specify when the attack took place at Kabuye, whether Ndayambaje was present, his role and conduct during the attack, and the identity, number and origin of the policemen, *gendarmes*, soldiers and civilians. There is no reference to Ndayambaje's involvement in the events that occurred at night when the attackers prevented the refugees from fleeing or the link between him and the alleged attackers. Lastly, Paragraph 6.32 does not specify the number or identity of the attackers reportedly transported by Ndayambaje to Kabuye, or the link between Ndayambaje and the attackers.<sup>2680</sup> There is no indication as to when the weapons were distributed or how they were used. As regards the allegation that Ndayambaje threw grenades into a crowd of refugees, there is no information on the number of grenades used, the number of victims or the date and place of the attack.<sup>2681</sup>

1254. The Chamber first notes that the events at Kabuye Hill, which are addressed in Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment, are linked to a number of general themes running through the Indictment, such as Ndayambaje's position of authority, and should not be considered in isolation. Rather, the Indictment should be read as a whole. As regards Ndayambaje's alleged relationship with his subordinates, the Chamber refers to Paragraphs 3.5, 4.2, 4.3 and 6.28 of the Ndayambaje Indictment. Paragraph 3.5 sets out the *bourgmestre's* position in the administrative hierarchy, in particular his position of authority over civil servants in the *commune* and his duties concerning the enforcement of law and order. Paragraph 4.2 explains that Ndayambaje held the office of *bourgmestre* of Muganza *commune* from 1983 to 1992 and again from June 1994, while Paragraph 4.3 alleges that the Accused continued to exercise authority over his subordinates during the period between 1992 and June 1994. Paragraph 6.28 further alleges that Ndayambaje was an influential political figure in Muganza *commune* in 1994 even though he no longer officially held office.

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<sup>2679</sup> Ndayambaje Closing Brief, paras. 523-527, 604.

<sup>2680</sup> Ndayambaje Closing Brief, para. 55.

<sup>2681</sup> Ndayambaje Closing Brief, paras. 51-57.

1255. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber is of the view that the Ndayambaje Indictment, when read as a whole, was drafted with sufficient precision as to provide notice to the Accused and enable him to adequately prepare a defence against the allegations contained in Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment. In this connection, the Chamber notes that key elements of the Kabuye Hill events, *i.e.* the movement of Tutsis to Kabuye Hill, the attacks that took place there, the distribution of weapons and the grenade incident, are linked to a specific date or dates and a specific location. Ndayambaje is placed at the scene of each of these events and his role as a superior over subordinates can be inferred from the Prosecution's allegations elsewhere in the Indictment.<sup>2682</sup> The alleged attackers are identified by reference to their category (policeman, soldier, *gendarme* or civilian) rather than identity and the Chamber underlines that a superior need not necessarily know the exact identity of his subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.<sup>2683</sup> The Chamber does not consider the mode of transportation used to be material to the Prosecution's case. As regards the alleged grenade attack, Paragraph 6.32 specifies that numerous Tutsis were killed or injured, which is consistent with the effect of throwing a grenade into a crowd of people. The precise number of grenades used in such an attack or the number of victims would not be material to the Prosecution case. For the above reasons, the Chamber finds that Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment provided sufficient notice to the Accused to enable him to prepare his defence.

*Murder of Witness TW's Uncle and Venerande at Kabuye Hill*

1256. The Ndayambaje Defence submits that the allegations that Ndayambaje personally murdered Witness TW's uncle and a Tutsi named Venerande are not mentioned anywhere in the Amended Indictment and cannot be reasonably linked to any paragraph. The Defence submits that Ndayambaje is not accused of having personally committed crimes and he is not charged with murder. The testimony of Witnesses TW and QBZ on these murders introduce not only new material facts against the Accused but also new charges, which should have been incorporated into the Indictment. Failure to do so cannot be cured by disclosure, even if such disclosure was made in a timely, clear and consistent manner. In any event, the murders were not referred to in any of the pre-trial materials disclosed to the Defence which are deemed to be adequate means of providing notice.<sup>2684</sup> The Ndayambaje Defence requests the exclusion of the testimony of Witnesses TW and QBZ insofar as they relate to such murders.<sup>2685</sup>

1257. The Chamber notes that Ndayambaje is charged with murder as a crime against humanity and killing as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II pursuant to Article 6 (1) of the Statute.<sup>2686</sup> The Chamber further notes that Paragraphs 6.30, 6.31 and 6.32 of the Ndayambaje Indictment are listed in support of those counts. That said, the Indictment makes no reference to the Prosecution's allegation that two identifiable individuals were murdered by Ndayambaje at Kabuye. Although Ndayambaje is accused of having thrown grenades into a crowd of refugees, there is nothing to

<sup>2682</sup> Cf. Paras. 3.5, 4.2, 4.3 and 6.28 of the Ndayambaje Indictment.

<sup>2683</sup> *Muvunyi I*, Judgement (AC), para. 55; *Blagojević & Jokić*, Judgement (AC), para. 287.

<sup>2684</sup> Ndayambaje Closing Brief, para. 94.

<sup>2685</sup> Ndayambaje Closing Brief, paras. 90-92, 94, 96.

<sup>2686</sup> Counts 5 and 9 of the Ndayambaje Indictment.



suggest that these individuals were victims of such an attack. Indeed, Witnesses TW and QBZ made no mention of grenades being used in the murders of these specific individuals. No information is provided on when the murders took place or how the victims were killed. Furthermore, in relation to the allegation that Ndayambaje murdered Witness TW's uncle, it is clear from Witness TW's previous statement given on 15 November 1995, over six months before the original Indictment was filed, that the Prosecution was aware of the identity of the alleged victim, yet failed to include that information in any of the Indictments. For the above reasons, the Chamber finds that the Ndayambaje Indictment is defective as regards both murder allegations.

1258. The Chamber notes, with regard to the murder of Witness TW's uncle, that the summary of this witness' testimony as set forth in the Appendix to the Prosecution Pre-Trial Brief states: "TW saw his family member sitting at the back of Ndayambaje's Toyota pickup truck with his hands tied at his back. Ndayambaje said: 'I will kill this one myself.'" The Pre-Trial Brief goes on to state, "TW learned that Ndayambaje killed his family member."<sup>2687</sup> The Chamber notes that Witness TW's statement gives a similar account to that found in the Appendix to the Pre-Trial Brief. It indicates that Witness TW never saw his uncle again and that he later heard Ndayambaje killed his uncle.<sup>2688</sup> This statement was first disclosed in December 2000, over three years before Witness TW was called to testify, and disclosed again in December 2001 in unredacted form. With regard to the murder of Venerande, there is no mention of this allegation anywhere in either of the witness' previous statements of November 2000 and March 2001, or in the Prosecution Pre-Trial Brief or opening statement.

1259. Even though the allegation that Ndayambaje murdered Witness TW's uncle was not specifically included in the Indictment, the Chamber nevertheless considers that the information contained in the Appendix to the Prosecution Pre-Trial Brief, when read together with Witness TW's previous statement of 1995, disclosed in 2000 and again in 2001, was sufficient to inform Ndayambaje of the allegation and enable him to prepare his defence. Ndayambaje's Defence would have had time to read and investigate the allegations made by Witness TW in his previous statement and prepare for his cross-examination in court. Witness TW's previous statement and the summary of his expected testimony contained in the Prosecution Pre-Trial Brief are clear and consistent with each other. Accordingly, the Chamber considers that the defect in the Indictment has been cured.

1260. As regards the allegation that Ndayambaje murdered Venerande, the Chamber considers that in view of the absence of subsequent Prosecution disclosures, the lack of notice of this allegation has not been cured. This allegation would cause prejudice to the Defence were it not excluded. The Ndayambaje Defence had no way of knowing about this allegation until Witness QBZ testified in February 2004 and was therefore unable to properly prepare its defence case in respect of this alleged murder. Accordingly, the Chamber considers that the defect in the Indictment has not been cured. The Chamber therefore finds that the testimony of Witness QBZ should be excluded insofar as it relates to the allegation that Ndayambaje murdered a Tutsi named Venerande in April 1994 at Kabuye Hill.

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<sup>2687</sup> Prosecution Pre-Trial Brief – Appendix; Witness TW (97).

<sup>2688</sup> 15 November 1995, Statement of Witness TW, disclosed in redacted form 4 December 2000, and in unredacted form 14 December 2001.

*Chamber's Refusal to Authorise a Site Visit*

1261. The Ndayambaje Defence submits that the witnesses heard during trial and the documents tendered as exhibits do not allow for a proper assessment of the sites. Referring to the Trial Chamber's Decision of 26 February 2009, the Defence claims that the Chamber's refusal to authorise a site visit led to incomprehension of the sites and therefore caused serious prejudice to the Defence.<sup>2689</sup>

1262. The Chamber recalls its Decision of 26 February 2009 in which it denied the Prosecutor's Motion for site visits, in particular paragraph 21 thereof which reads:

[T]he Chamber considers that the visits are no longer necessary for the following reasons. Firstly, a considerable number of photographs, sketches and maps have been tendered as exhibits to assist the Chamber's familiarisation with relevant locations testified upon by the witnesses and to assist in the determination of truth. Secondly, the Chamber considers that after over 14 years, it is likely that most of the sites to be visited will no longer be in the same state as they were in 1994 and that visiting them may not help much in the discovery of the truth or in the fair determination of the matters before the Chamber. In addition, the sites proposed by the Parties are too numerous and may have extraordinary logistical and cost implications for the Tribunal and may not be completed in a short period of time.<sup>2690</sup>

1263. In its submissions, the Ndayambaje Defence does not describe the kind of prejudice it allegedly suffered as a result of the Chamber's refusal to authorise a site visit nor does it explain how or why there is "incomprehension" of the sites. Further, the Chamber has considered a number of exhibits relating to Kabuye Hill including video footage, photographs and sketches of the site. The Chamber therefore sees no reason to reconsider its Decision of 26 February 2009 and does not find the Defence's allegation of prejudice to have been established.

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<sup>2689</sup> Ndayambaje Closing Argument, T. 30 April 2009 p. 6.

<sup>2690</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Site Visits in the Republic of Rwanda (TC), 26 February 2009.

### 3.6.5.3 Evidence

#### Prosecution Witness EV

1264. Witness EV, a Tutsi teacher from Muganza *commune*, testified that he had known Ndayambaje for a long time, since the Accused's days as a primary school student.<sup>2691</sup> He and his family fled their home in Muganza *commune*, Butare *préfecture*, on 19 April 1994 because their house was burnt down.<sup>2692</sup> On cross-examination, the witness stated that he left his house in the evening of 18 April 1994 and wandered all night with his family; they finally decided to leave on 19 April 1994 even though they had nowhere to go.<sup>2693</sup>

1265. Witness EV and his family, together with numerous other refugees, headed towards Burundi.<sup>2694</sup> On the first day of their flight, they stopped at the marketplace in Gisagara *secteur*, Ndora *commune*, at about midday and joined up with another group of refugees which swelled their number to the thousands.<sup>2695</sup> *Sous-préfet* Ntawukulilyayo was present at the marketplace in the company of soldiers.<sup>2696</sup> He addressed the refugees in the afternoon and asked where they were going; he assured the refugees that the soldiers would protect them.<sup>2697</sup> The refugees remained in Gisagara marketplace until sunset and then left.<sup>2698</sup> During the journey that ensued, they stopped once to rest and arrived at an area between Muyaga and Mugusa *communes* at daybreak, near Ngiryi Bridge.<sup>2699</sup> At that point, there was a huge crowd and the witness was near the front; there were 200 people in front of him and thousands behind him.<sup>2700</sup> Three vehicles, two from the witness' native *commune* and one military vehicle, came through the crowd from the back and blocked its advance.<sup>2701</sup> One of the *commune* vehicles was white and the other green with the acronym "MRND" written on the side.<sup>2702</sup> The green vehicle, a double-cabin Hilux, was carrying policemen, soldiers and civilians. The convoy was headed by the white vehicle, a single-cabin Hilux, which bore the name of Muganza *commune*.<sup>2703</sup> The witness was approximately five metres away when he saw *Bourgmestre* Ndayambaje seated in the driver's seat of the white Hilux with *Sous-préfet* Ntawukulilyayo.<sup>2704</sup> The witness was able to recognise two policemen, Pierre and Népomuscène, travelling in the rear of Ndayambaje's vehicle with two soldiers and some others.<sup>2705</sup> The military vehicle was a pickup truck and carried only soldiers.<sup>2706</sup>

<sup>2691</sup> T. 25 February 2004 p. 67 (Witness EV).

<sup>2692</sup> Prosecution Exhibit 82 (Personal Particulars); T. 25 February 2004 p. 69 (Witness EV).

<sup>2693</sup> T. 26 February 2004 pp. 20-22, 36 (Witness EV).

<sup>2694</sup> T. 25 February 2004 p. 69 (Witness EV).

<sup>2695</sup> T. 25 February 2004 pp. 70-71; T. 26 February 2004 p. 30 (Witness EV).

<sup>2696</sup> T. 25 February 2004 p. 70; T. 26 February 2004 pp. 31-32 (Witness EV).

<sup>2697</sup> T. 26 February 2004 p. 33 (Witness EV).

<sup>2698</sup> T. 26 February 2004 pp. 31, 33 (Witness EV).

<sup>2699</sup> T. 25 February 2004 pp. 69-70; T. 26 February 2004 pp. 33-34 (Witness EV).

<sup>2700</sup> T. 26 February 2004 p. 38 (Witness EV).

<sup>2701</sup> T. 26 February 2004 pp. 38-39 (Witness EV).

<sup>2702</sup> T. 26 February 2004 p. 39 (Witness EV).

<sup>2703</sup> T. 26 February 2004 pp. 39-40 (Witness EV).

<sup>2704</sup> T. 25 February 2004 p. 70; T. 26 February 2004 p. 41 (Witness EV).

<sup>2705</sup> T. 26 February 2004 pp. 41-42 (Witness EV).

<sup>2706</sup> T. 26 February 2004 p. 42 (Witness EV).

1266. When the vehicles reached the front of the crowd, the occupants got out to prevent the crowd from advancing.<sup>2707</sup> Ndayambaje and the *sous-préfet* ordered the refugees to stop and they were then beaten by members of the population and the soldiers. Shots were also fired.<sup>2708</sup> The refugees turned and headed back the way they had come towards Gisagara *secteur*, Ndora *commune*, followed by the three vehicles.<sup>2709</sup> It was before midday.<sup>2710</sup> The refugees arrived at Gisagara marketplace for the second time at 10 a.m., although in cross-examination the witness stated that the refugees arrived before sunset, around 4.00 p.m.<sup>2711</sup> The three vehicles that had previously intercepted the refugees also parked in the marketplace.<sup>2712</sup> Ndayambaje was there with President Sindikubwabo and several others.<sup>2713</sup> The President, who was standing on a table, addressed the crowd using a megaphone and demanded that the refugees go to Kabuye Hill in Ndora *commune*.<sup>2714</sup> The refugees were then escorted by soldiers and policemen on foot in the direction of Kabuye Hill.<sup>2715</sup> The soldiers wore different uniforms: some had red berets, others black berets, some had khaki uniforms, other camouflage.<sup>2716</sup>

1267. The refugees arrived at Kabuye Hill before 6.00 p.m. when it was still daylight.<sup>2717</sup> The journey from Gisagara marketplace did not take long because Gisagara *secteur* neighbours the *secteur* in Ndora *commune* where Kabuye Hill is located. The witness saw the same three-vehicle convoy.<sup>2718</sup> There were as many as 50,000 refugees on the hill who had come from various *communes* including Kibayi, Muganza, Ndora, Runyinya and Nyaruguru.<sup>2719</sup> Most were Tutsis but there were also a few Hutu women married to Tutsi men who were with their children and husbands, and some Hutu men who did not agree with what was going on. The witness saw a total of three Hutus.<sup>2720</sup> The refugees were unarmed.<sup>2721</sup> During his stay at Kabuye Hill, the witness saw people being killed with a variety of weapons and observed many corpses.<sup>2722</sup> He thought he spent five days at Kabuye Hill, arriving there on a Wednesday and leaving with his wife and children on a Saturday night at around 1.00 a.m.<sup>2723</sup>

1268. Some of the soldiers who arrived at Kabuye Hill with the refugees on that first day spent the night there while others left in a vehicle. The vehicle brought back soldiers and took away others.<sup>2724</sup>

<sup>2707</sup> T. 26 February 2004 p. 42 (Witness EV).

<sup>2708</sup> T. 26 February 2004 p. 43 (Witness EV).

<sup>2709</sup> T. 26 February 2004 pp. 43-44 (Witness EV).

<sup>2710</sup> T. 26 February 2004 p. 43 (Witness EV).

<sup>2711</sup> T. 25 February 2004 pp. 70-71; T. 26 February 2004 p. 44 (Witness EV).

<sup>2712</sup> T. 26 February 2004 p. 44 (Witness EV).

<sup>2713</sup> T. 25 February 2004 p. 71 (Witness EV).

<sup>2714</sup> T. 25 February 2004 p. 71; T. 26 February 2004 pp. 44-45 (Witness EV).

<sup>2715</sup> T. 25 February 2004 p. 71; T. 26 February 2004 pp. 45-47 (Witness EV).

<sup>2716</sup> T. 26 February 2004 p. 49 (Witness EV).

<sup>2717</sup> T. 26 February 2004 pp. 45-46 (Witness EV).

<sup>2718</sup> T. 26 February 2004 p. 46 (Witness EV).

<sup>2719</sup> T. 25 February 2004 p. 71; T. 26 February 2004 p. 47 (Witness EV).

<sup>2720</sup> T. 25 February 2004 p. 72 (Witness EV).

<sup>2721</sup> T. 25 February 2004 p. 73 (Witness EV).

<sup>2722</sup> T. 25 February 2004 p. 78 (Witness EV).

<sup>2723</sup> T. 25 February 2004 pp. 74, 76-77; T. 26 February 2004 pp. 70, 76 (Witness EV).

<sup>2724</sup> T. 26 February 2004 p. 49 (Witness EV).

1269. The massacres started on the day Witness EV arrived at Kabuye Hill.<sup>2725</sup> On that day, the refugees were surrounded by groups of people on three sides, comprising soldiers, the *Interahamwe* and members of the Hutu population who had accompanied the soldiers.<sup>2726</sup> Ndayambaje arrived before noon in a white Hilux driven by Charles Habakurama.<sup>2727</sup> He was accompanied by several others including two *commune* policemen called Pierre Karekeza and Népomuscène and Witness KEPIR.<sup>2728</sup> The refugees were attacked with bows and arrows, clubs, guns and grenades; they tried to defend themselves by throwing stones at the attackers.<sup>2729</sup> The witness recognised Ndayambaje among the attackers, who was wearing black trousers and a khaki shirt, and carrying a pistol.<sup>2730</sup> Witness EV was approximately 20 to 30 metres from the Accused.<sup>2731</sup> Ndayambaje also had grenades in his vehicle, which were taken by other assailants.<sup>2732</sup> The witness saw Ndayambaje fire his weapon and throw grenades that he had brought with him in his vehicle. Everyone tried to escape but there was no way of doing so.<sup>2733</sup> The gunfire continued that night and the male refugees tried to shield the women and children from the attackers.<sup>2734</sup>

1270. After the first day, the attacks worsened and the number of assailants increased.<sup>2735</sup> The additional assailants arrived in vehicles with rear cages and bars, some of which were painted in military colours.<sup>2736</sup> He saw Ndayambaje arriving before noon on the second day from the direction of Muganza *commune* in the same white Hilux vehicle as the previous day.<sup>2737</sup> The witness was approximately nine metres from Ndayambaje's vehicle.<sup>2738</sup> The space in front of the witness was occupied by other male refugees leaving approximately two clear metres between the front of the refugee group and Ndayambaje.<sup>2739</sup> The Accused was accompanied by Bosco, an assistant *bourgmestre*, the two policemen named Pierre and Népomuscène, Ndayambaje's driver Charles, and other civilians.<sup>2740</sup> The occupants of the vehicle got out and began shooting at the refugees, who were also being shot at by other people.<sup>2741</sup> Witness EV saw the vehicle again in the evening when the assailants went home.<sup>2742</sup>

1271. Ndayambaje arrived on the third day at about 10.00 a.m. with Witness KEPIR and others in two separate vehicles.<sup>2743</sup> Witness KEPIR was driving a blue double-cabin Hilux.<sup>2744</sup>

<sup>2725</sup> T. 25 February 2004 pp. 73-74 (Witness EV).

<sup>2726</sup> T. 25 February 2004 p. 74 (Witness EV).

<sup>2727</sup> T. 25 February 2004 p. 75 (Witness EV).

<sup>2728</sup> T. 25 February 2004 p. 75 (Witness EV).

<sup>2729</sup> T. 25 February 2004 p. 74 (Witness EV).

<sup>2730</sup> T. 25 February 2004 p. 75; T. 26 February 2004 pp. 60-61 (Witness EV).

<sup>2731</sup> T. 25 February 2004 pp. 75, 78 (Witness EV).

<sup>2732</sup> T. 25 February 2004 p. 75; T. 26 February 2004 p. 60 (Witness EV).

<sup>2733</sup> T. 25 February 2004 p. 75; T. 26 February 2004 p. 60 (Witness EV).

<sup>2734</sup> T. 26 February 2004 pp. 50-51, 61 (Witness EV).

<sup>2735</sup> T. 25 February 2004 p. 75; T. 26 February 2004 pp. 50-51 (Witness EV).

<sup>2736</sup> T. 26 February 2004 p. 54 (Witness EV).

<sup>2737</sup> T. 26 February 2004 pp. 54-55, 60 (Witness EV).

<sup>2738</sup> T. 26 February 2004 pp. 56-57 (Witness EV).

<sup>2739</sup> T. 26 February 2004 p. 56 (Witness EV).

<sup>2740</sup> T. 26 February 2004 pp. 58-59 (Witness EV).

<sup>2741</sup> T. 26 February 2004 p. 60 (Witness EV).

<sup>2742</sup> T. 26 February 2004 p. 60 (Witness EV).

<sup>2743</sup> T. 26 February 2004 p. 61 (Witness EV).

<sup>2744</sup> T. 26 February 2004 p. 62 (Witness EV).

The witness was unable to identify who was driving Ndayambaje's vehicle.<sup>2745</sup> The vehicles parked at Ndatemwa, between Kabuye and Dahwe Hills, about 20 metres away from the witness.<sup>2746</sup> At that time, Witness EV and his fellow refugees were under attack from a group of assailants on Dahwe Hill.<sup>2747</sup> There were approximately 100 metres between Kabuye Hill and Dahwe Hill.<sup>2748</sup> The assailants descended Dahwe Hill, crossed the valley and began to climb Kabuye Hill towards the refugees.<sup>2749</sup> When Ndayambaje got out of his vehicle, the witness turned and went to the other side of the hill.<sup>2750</sup> He heard shots but did not see from whom they emanated.<sup>2751</sup> Ndayambaje's vehicle left at approximately 3.00 or 4.00 p.m. and did not return again that day.<sup>2752</sup> The attacks on the refugees continued throughout the night.<sup>2753</sup>

1272. Ndayambaje returned to Kabuye Hill on the fourth day from the direction of Gisagara, arriving at around 10.00 a.m. in a convoy of three vehicles.<sup>2754</sup> One of the vehicles was a Daihatsu full of Burundian refugees.<sup>2755</sup> Ndayambaje was travelling in a green double-cabin Hilux vehicle bearing the acronym "MRND".<sup>2756</sup> The third vehicle was the blue Hilux driven by Witness KEPIR.<sup>2757</sup> The vehicles parked near the top of Kabuye Hill, slightly higher than the location of the refugees.<sup>2758</sup> Ndayambaje was wearing a khaki trousers and a black denim shirt.<sup>2759</sup> Witness EV did not see Ndayambaje shoot on the fourth day, although the Burundians who had arrived with Ndayambaje attacked the refugees with grenades.<sup>2760</sup> Ndayambaje left at about 5.00 p.m.<sup>2761</sup> On the night of the fourth day there was some light rain and Witness EV's wife and children sheltered in one of the approximately 100 abandoned houses on Kabuye Hill.<sup>2762</sup> Soldiers continued to shoot and attack the refugees throughout the night.<sup>2763</sup>

1273. On the fifth day it rained towards the evening and throughout the night until morning.<sup>2764</sup> Ndayambaje arrived around 9.30 a.m. in a convoy of vehicles carrying a number of people including Kabuga, the trader, and three *conseillers de secteur*, Kikubwabo from Tawe, Rwamabare from Baziro and Singirankabo from Mugombwa.<sup>2765</sup> The Accused was

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<sup>2745</sup> T. 26 February 2004 p. 67 (Witness EV).

<sup>2746</sup> T. 26 February 2004 pp. 62-63 (Witness EV).

<sup>2747</sup> T. 26 February 2004 p. 63 (Witness EV).

<sup>2748</sup> T. 26 February 2004 p. 52 (Witness EV).

<sup>2749</sup> T. 26 February 2004 p. 65 (Witness EV).

<sup>2750</sup> T. 26 February 2004 p. 67 (Witness EV).

<sup>2751</sup> T. 26 February 2004 p. 67 (Witness EV).

<sup>2752</sup> T. 26 February 2004 pp. 67-68 (Witness EV) (vehicles returned at 3.00 or 4.00 p.m.); T. 26 February 2004 p. 78 (Witness EV) (French) (vehicles left at 3.00 or 4.00 p.m.).

<sup>2753</sup> T. 26 February 2004 p. 68 (Witness EV).

<sup>2754</sup> T. 26 February 2004 pp. 68-70 (Witness EV).

<sup>2755</sup> T. 26 February 2004 p. 68 (Witness EV).

<sup>2756</sup> T. 26 February 2004 p. 69 (Witness EV).

<sup>2757</sup> T. 26 February 2004 p. 68 (Witness EV).

<sup>2758</sup> T. 26 February 2004 p. 69 (Witness EV).

<sup>2759</sup> T. 26 February 2004 pp. 69-70 (Witness EV).

<sup>2760</sup> T. 26 February 2004 p. 70 (Witness EV).

<sup>2761</sup> T. 26 February 2004 p. 70; T. 26 February 2004 p. 81 (Witness EV) (French).

<sup>2762</sup> T. 26 February 2004 pp. 71-72 (Witness EV).

<sup>2763</sup> T. 26 February 2004 p. 71 (Witness EV).

<sup>2764</sup> T. 26 February 2004 p. 71 (Witness EV).

<sup>2765</sup> T. 26 February 2004 pp. 73-74 (Witness EV).

wearing a black sleeveless sweater over a white shirt and khaki trousers.<sup>2766</sup> The witness did not see which vehicle Ndayambaje arrived in, he only saw the Accused walking in the company of the three *conseillers de secteur*.<sup>2767</sup> The group left around 4.00 p.m.<sup>2768</sup> He did not see the *conseillers* or Ndayambaje carrying weapons.<sup>2769</sup> That night, the witness fled from Kabuye Hill with his wife and children and returned to his *secteur* where he stayed in the house next door to his own as his own had been destroyed.<sup>2770</sup> It was raining heavily when they left.<sup>2771</sup>

1274. During the massacre, people were dying in large numbers. There were corpses everywhere. Everywhere you stepped, was strewn with corpses.<sup>2772</sup>

1275. Witness EV testified that Ndayambaje did not stay in one place when he was at Kabuye Hill; he moved around all the time and did not stay in the same position for long.<sup>2773</sup> He saw Ndayambaje every day of his stay at Kabuye Hill; he would be present during the day and go home in the evening.<sup>2774</sup> The only people who stayed at night were those who were guarding the refugees.<sup>2775</sup> Witness EV identified Ndayambaje in court.<sup>2776</sup>

#### Prosecution Witness RT

1276. Witness RT, a Tutsi teacher from Muganza *commune*, testified that on Wednesday 19 April 1994, he and his wife, together with other refugees, fled their homes as violence had broken out in their area.<sup>2777</sup> On cross-examination, the witness stated that while he was not completely certain of the dates, he was sure of the day, Wednesday, as that was market day in his neighbourhood.<sup>2778</sup> They took refuge at the Remera *secteur* office at about 10.00 a.m.<sup>2779</sup> At around 2.00 p.m. the refugees decided to flee to Burundi via Gisagara *commune* because there was no fighting in that direction and all other the roads were blocked.<sup>2780</sup> On the way to Gisagara people joined their group until they numbered approximately 18,000.<sup>2781</sup> On their way towards Burundi, the refugees stopped in Gisagara marketplace at about 7.00 p.m. Many people had gathered there and the *sous-préfet* instructed the refugees to remain there so that the authorities could ensure their safety. After the *sous-préfet's* departure, policemen wearing green uniforms and berets surrounded the refugees and confiscated their weapons.<sup>2782</sup> Approximately 20,000 refugees stayed in the marketplace that night waiting for instructions,

<sup>2766</sup> T. 26 February 2004 p. 75 (Witness EV).

<sup>2767</sup> T. 26 February 2004 p. 73 (Witness EV).

<sup>2768</sup> T. 26 February 2004 p. 74 (Witness EV).

<sup>2769</sup> T. 26 February 2004 p. 74 (Witness EV).

<sup>2770</sup> T. 25 February 2004 pp. 76-77; T. 26 February 2004 p. 77 (Witness EV).

<sup>2771</sup> T. 25 February 2004 p. 76 (Witness EV).

<sup>2772</sup> T. 25 February 2004 p. 78 (Witness EV).

<sup>2773</sup> T. 26 February 2004 p. 76 (Witness EV).

<sup>2774</sup> T. 25 February 2004 p. 76; T. 26 February 2004 pp. 61, 75 (Witness EV).

<sup>2775</sup> T. 25 February 2004 p. 76 (Witness EV).

<sup>2776</sup> T. 25 February 2004 p. 79 (Witness EV).

<sup>2777</sup> T. 10 March 2004 pp. 47-48 (Witness RT).

<sup>2778</sup> T. 11 March 2004 p. 8 (Witness RT).

<sup>2779</sup> T. 11 March 2004 pp. 13-14 (ICS) (Witness RT).

<sup>2780</sup> T. 10 March 2004 p. 49; T. 11 March 2004 pp. 14, 17-18 (ICS); T. 11 March 2004 p. 23 (Witness RT).

<sup>2781</sup> T. 11 March 2004 p. 20 (ICS); T. 11 March 2004 p. 22 (Witness RT).

<sup>2782</sup> T. 10 March 2004 p. 49; T. 11 March 2004 pp. 23, 33-35 (Witness RT).

but none came.<sup>2783</sup> Policemen guarded the crowd until the morning.<sup>2784</sup> In the morning, the refugees overheard Hutus discussing using grenades on the refugees so they fled, continuing their journey towards the Burundian border at 9.00 or 10.00 a.m.<sup>2785</sup>

1277. At around 11.00 a.m., the refugees were intercepted by about four policemen upon reaching the Ngiriyi river area between Mugusa and Muyaga *communes*.<sup>2786</sup> The policemen wore normal green police uniforms and yellow berets, and were on foot.<sup>2787</sup> A red Toyota vehicle carrying four soldiers arrived from the direction of Gisagara.<sup>2788</sup> The vehicle had a front cabin for the driver and passenger and a box with bars on the back; the soldiers were travelling in the back and Ndayambaje was in the front passenger seat.<sup>2789</sup> The vehicle passed Witness RT and stopped approximately 80 metres away.<sup>2790</sup> Both the driver of the vehicle and Ndayambaje were wearing civilian clothes.<sup>2791</sup> The soldiers wore camouflage fatigues and black berets, and carried guns.<sup>2792</sup> They got out of the Toyota and started firing into the air.<sup>2793</sup> Ndayambaje remained inside the vehicle.<sup>2794</sup> At the sound of the gunfire, the refugees ran in all directions; most ran back towards Gisagara.<sup>2795</sup> The witness did not return to Gisagara because he wanted to go to Burundi.<sup>2796</sup> He reached Nyerinzi Hill in Muyaga *commune* where he came across the *bourgmestre* of Muyaga *commune* who was travelling in a white single-cabin Toyota Hilux vehicle accompanied by approximately eight *gendarmes*.<sup>2797</sup> On the orders of the Muyaga *bourgmestre*, the witness turned back and headed towards Gisagara *commune*. He reached Gisagara marketplace at about 6.00 p.m. and spent the night there with other refugees.<sup>2798</sup> They were guarded by policemen all night.<sup>2799</sup>

1278. The following morning, Friday, policemen and Hutus armed with traditional weapons escorted the refugees from Gisagara marketplace to Kabuye Hill, a distance of approximately three kilometres.<sup>2800</sup> They arrived at Kabuye Hill around 9.00 or 10.00 a.m. and encountered a group of Hutu civilians armed with traditional weapons and grenades.<sup>2801</sup> There were approximately 40,000 people gathered on Kabuye Hill.<sup>2802</sup> Upon their arrival, soldiers and policemen opened fire on the refugees from all directions.<sup>2803</sup> He subsequently testified that he

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<sup>2783</sup> T. 10 March 2004 p. 50; T. 11 March 2004 p. 23 (Witness RT).

<sup>2784</sup> T. 11 March 2004 pp. 35-36 (Witness RT).

<sup>2785</sup> T. 10 March 2004 pp. 50-51; T. 11 March 2004 p. 36 (Witness RT).

<sup>2786</sup> T. 10 March 2004 pp. 51-52; T. 11 March 2004 pp. 39, 49 (Witness RT).

<sup>2787</sup> T. 10 March 2004 pp. 51-52 (Witness RT).

<sup>2788</sup> T. 10 March 2004 pp. 52-53; T. 11 March 2004 pp. 39, 43-44, 46 (Witness RT).

<sup>2789</sup> T. 10 March 2004 pp. 52-53 (Witness RT).

<sup>2790</sup> T. 11 March 2004 pp. 39-40, 43 (Witness RT).

<sup>2791</sup> T. 11 March 2004 p. 46 (Witness RT).

<sup>2792</sup> T. 11 March 2004 p. 47 (Witness RT).

<sup>2793</sup> T. 10 March 2004 pp. 53-54; T. 11 March 2004 p. 48 (Witness RT).

<sup>2794</sup> T. 10 March 2004 p. 53; T. 11 March 2004 pp. 45, 48 (Witness RT).

<sup>2795</sup> T. 10 March 2004 pp. 54-55; T. 11 March 2004 p. 48 (Witness RT).

<sup>2796</sup> T. 10 March 2004 p. 55 (Witness RT).

<sup>2797</sup> T. 10 March 2004 pp. 55, 57; T. 11 March 2004 p. 50 (Witness RT).

<sup>2798</sup> T. 10 March 2004 p. 57; T. 11 March 2004 pp. 51, 53 (Witness RT).

<sup>2799</sup> T. 10 March 2004 p. 57; T. 11 March 2004 p. 53 (Witness RT).

<sup>2800</sup> T. 10 March 2004 pp. 57-58; T. 11 March 2004 p. 55 (Witness RT).

<sup>2801</sup> T. 10 March 2004 pp. 59, 66; T. 11 March 2004 p. 55 (Witness RT).

<sup>2802</sup> T. 10 March 2004 p. 59 (Witness RT).

<sup>2803</sup> T. 10 March 2004 p. 67; T. 11 March 2004 p. 61 (Witness RT).



did not see any soldiers on this day.<sup>2804</sup> Those who attempted to flee the gunfire were attacked by armed Hutus bearing machetes and hoes.<sup>2805</sup> The attack on the refugees continued until the evening when the attackers went home.<sup>2806</sup> On cross-examination, the witness clarified that the attackers left between 2.00 and 3.00 p.m.<sup>2807</sup> Many people were killed that day, but Witness RT could not put a figure on the number of casualties.<sup>2808</sup>

1279. The attackers returned the following morning, Saturday, at about 9.00 a.m. and small groups of attackers with traditional weapons, soldiers and *commune* policemen gathered near Dahwe and Gahondo.<sup>2809</sup> Subsequently, Ndayambaje arrived aboard a white Toyota *commune* vehicle with approximately 10 soldiers in the back.<sup>2810</sup> The witness observed the soldiers' arrival from approximately 100 metres.<sup>2811</sup> He saw *conseillers* and Ndayambaje walking around and distributing grenades to the attackers.<sup>2812</sup> He did not actually see grenades in Ndayambaje's hands but he assumed that the items being distributed by the Accused were indeed grenades because many assailants subsequently used grenades against the refugees that day.<sup>2813</sup> Witness RT was about 80 to 100 steps away from Ndayambaje and could see him clearly.<sup>2814</sup> Ndayambaje left shortly thereafter but Witness RT saw the Accused's vehicle make approximately three round-trips transporting people to and from the hill, though he could not exactly see who was being transported.<sup>2815</sup> He did not see Ndayambaje during those trips.<sup>2816</sup>

1280. The next day, Sunday, more Tutsi refugees were killed on Kabuye Hill by attackers with guns and traditional weapons; the attackers were police and Hutus, he did not see any soldiers on that day.<sup>2817</sup> The attacks lasted all day and it was raining.<sup>2818</sup> The witness stayed on Kabuye Hill that day and night hiding in a house with his children; he did not know the whereabouts of his wife.<sup>2819</sup> One of his children was killed on Sunday evening and another four were killed on the following Monday morning when a grenade exploded in front of the house in which they were hiding.<sup>2820</sup>

1281. Witness RT testified that he had known Ndayambaje prior to the events of 1994 in his capacity as the *bourgmestre*. He also knew that Ndayambaje ceased to be the *bourgmestre* and

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<sup>2804</sup> T. 11 March 2004 p. 61 (Witness RT).

<sup>2805</sup> T. 10 March 2004 pp. 67-68 (Witness RT).

<sup>2806</sup> T. 10 March 2004 p. 68 (Witness RT).

<sup>2807</sup> T. 11 March 2004 p. 61 (Witness RT).

<sup>2808</sup> T. 10 March 2004 p. 68 (Witness RT).

<sup>2809</sup> T. 10 March 2004 p. 68; T. 11 March 2004 p. 66 (Witness RT).

<sup>2810</sup> T. 10 March 2004 pp. 68-70; T. 11 March 2004 pp. 67-68, 71 (Witness RT).

<sup>2811</sup> T. 11 March 2004 p. 68 (Witness RT).

<sup>2812</sup> T. 10 March 2004 pp. 68-70 (Witness RT).

<sup>2813</sup> T. 11 March 2004 p. 71 (Witness RT).

<sup>2814</sup> T. 10 March 2004 p. 69 (Witness RT).

<sup>2815</sup> T. 10 March 2004 p. 69; T. 11 March 2004 pp. 71-72, 75-76, 79 (Witness RT).

<sup>2816</sup> T. 10 March 2004 p. 69; T. 11 March 2004 p. 79 (Witness RT).

<sup>2817</sup> T. 10 March 2004 p. 71; T. 11 March 2004 p. 80 (Witness RT).

<sup>2818</sup> T. 10 March 2004 p. 71 (Witness RT).

<sup>2819</sup> T. 10 March 2004 p. 72; T. 11 March 2004 p. 81 (Witness RT).

<sup>2820</sup> T. 11 March 2004 pp. 82-83 (Witness RT).

went on study leave. The witness used to see him often, at least twice a week.<sup>2821</sup> Witness RT positively identified the Accused in court.<sup>2822</sup>

### Prosecution Witness TW

1282. Witness TW, a Tutsi farmer from Muganza *commune*, testified that he had known Ndayambaje for a long time before the events of 1994 because he was the *bourgmestre* of Muganza *commune* where the witness lived.<sup>2823</sup> On the afternoon of 19 April 1994, the witness saw Ndayambaje drive past his bar in Muganza *commune*.<sup>2824</sup> Ndayambaje was driving the official vehicle of the *bourgmestre*, a white double-cabin vehicle, and there were soldiers in the cabin and on the back of the vehicle.<sup>2825</sup> The soldiers were wearing camouflage uniforms and black berets, and carried weapons.<sup>2826</sup>

1283. Later that night, Witness TW saw Tutsi homes being torched in his neighbourhood and decided to flee with his family.<sup>2827</sup> They spent one night hiding in their sorghum field and the next day walked to the area where the witness was born.<sup>2828</sup> The witness and his family spent one night there and left the next day for Kabuye.<sup>2829</sup> They arrived at Kabuye Hill two days later at around 7.00 p.m. when it was already dark and spent three days there.<sup>2830</sup> Approximately 20,000 Tutsi refugees had gathered on Kabuye Hill.<sup>2831</sup> His estimation of the number of refugees was based on subsequent reports that the remains of 20,000 people were buried there.<sup>2832</sup> He did not see any bodies at Kabuye Hill that night and there were no attacks.<sup>2833</sup>

1284. The following day, Witness TW's first day at Kabuye Hill, he saw Ndayambaje arrive at the hill between 11.00 a.m. and noon.<sup>2834</sup> Ndayambaje was in a white double-cabin Toyota Hilux or similar and was transporting Hutu civilians armed with traditional weapons.<sup>2835</sup> Ndayambaje made two trips to the hill<sup>2836</sup> and drove the vehicle himself.<sup>2837</sup> The witness could clearly see Ndayambaje from where he was standing, between 100 and 200 metres away.<sup>2838</sup> Ndayambaje got out of his vehicle and stood talking to the attackers.<sup>2839</sup> Around noon, the armed civilians attacked the Tutsi refugees.<sup>2840</sup> The refugees were able to repel the armed

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<sup>2821</sup> T. 10 March 2004 p. 76 (Witness RT).

<sup>2822</sup> T. 10 March 2004 p. 77 (Witness RT).

<sup>2823</sup> T. 10 February 2004 p. 15 (Witness TW).

<sup>2824</sup> T. 10 February 2004 pp. 7, 29; T. 10 February 2004 pp. 31, 34, 37 (ICS) (Witness TW).

<sup>2825</sup> T. 10 February 2004 pp. 7, 30; T. 10 February 2004 pp. 34, 37, 43 (ICS) (Witness TW).

<sup>2826</sup> T. 10 February 2004 p. 42 (ICS) (Witness TW).

<sup>2827</sup> T. 10 February 2004 p. 7 (Witness TW).

<sup>2828</sup> T. 10 February 2004 p. 7; T. 10 February 2004 pp. 46-48 (ICS) (Witness TW).

<sup>2829</sup> T. 10 February 2004 p. 51 (ICS) (Witness TW).

<sup>2830</sup> T. 10 February 2004 pp. 51-53 (ICS) (Witness TW).

<sup>2831</sup> T. 10 February 2004 p. 7; T. 10 February 2004 p. 58 (ICS) (Witness TW).

<sup>2832</sup> T. 12 February 2004 p. 20 (Witness TW).

<sup>2833</sup> T. 10 February 2004 p. 57 (ICS); T. 11 February 2004 p. 44 (Witness TW).

<sup>2834</sup> T. 10 February 2004 pp. 11-12; T. 11 February 2004 p. 44 (Witness TW).

<sup>2835</sup> T. 10 February 2004 p. 8; T. 11 February 2004 pp. 44-45 (Witness TW).

<sup>2836</sup> T. 11 February 2004 p. 45 (Witness TW).

<sup>2837</sup> T. 11 February 2004 p. 47 (Witness TW).

<sup>2838</sup> T. 11 February 2004 p. 46 (Witness TW).

<sup>2839</sup> T. 11 February 2004 p. 47 (Witness TW).

<sup>2840</sup> T. 11 February 2004 p. 44 (Witness TW).

attackers, who were fewer in number, using stones and domestic implements that they had brought with them.<sup>2841</sup>

1285. The second day, Ndayambaje arrived at Kabuye Hill with the witness' uncle tied up in his vehicle.<sup>2842</sup> The man was guarded by a policeman and some other people.<sup>2843</sup> Witness TW was between 30 and 50 metres away from Ndayambaje when he heard him say, "[t]ake care of the others. I am going to kill this one." Witness TW's uncle was taken away and the witness had not seen him since.<sup>2844</sup>

1286. On the same day, Ndayambaje also made several trips in his white double-cabin vehicle to Kabuye Hill transporting armed policemen and civilians, and Burundian refugees carrying traditional weapons.<sup>2845</sup> Those who had not been killed by gunfire were killed by other attackers with traditional weapons.<sup>2846</sup> Witness TW did not see any soldiers at Kabuye Hill on the second day.<sup>2847</sup>

1287. On the third day,<sup>2848</sup> the witness saw Ndayambaje driving the same white vehicle transporting soldiers and *Interahamwe* armed with grenades and machetes.<sup>2849</sup> The soldiers wore military uniforms and berets.<sup>2850</sup> In the evening, the refugees were attacked.<sup>2851</sup> Soldiers were also stationed on neighbouring hills from which they shot at the refugees.<sup>2852</sup> The refugees could not defend themselves with stones alone and almost all were killed.<sup>2853</sup> Witness EV's wife, five children, mother and eight younger brothers perished in this attack.<sup>2854</sup>

1288. The witness did not see Ndayambaje carrying weapons or distributing grenades or guns; he did, however, see him transporting people armed with guns and grenades to Kabuye Hill.<sup>2855</sup> Witness TW identified Ndayambaje in court.<sup>2856</sup>

### Prosecution Witness QAQ

1289. Witness QAQ, a Tutsi civil servant from Muganza *commune*, testified that he knew Ndayambaje from when the Accused was in his 6<sup>th</sup> year of primary school.<sup>2857</sup> Until the events of 1994, the witness was friends with Ndayambaje and they regularly visited each other's homes.<sup>2858</sup> Witness QAQ stated that on 20 April 1994, Hutus began killing Tutsis and burning

<sup>2841</sup> T. 10 February 2004 p. 8; T. 11 February 2004 p. 43 (Witness TW).

<sup>2842</sup> T. 10 February 2004 p. 9; T. 11 February 2004 pp. 50-52 (Witness TW).

<sup>2843</sup> T. 10 February 2004 p. 9 (Witness TW).

<sup>2844</sup> T. 10 February 2004 pp. 9-10; T. 11 February 2004 p. 54 (Witness TW).

<sup>2845</sup> T. 10 February 2004 p. 8; T. 11 February 2004 pp. 49-51, 53 (Witness TW).

<sup>2846</sup> T. 10 February 2004 p. 8 (Witness TW).

<sup>2847</sup> T. 11 February 2004 p. 57 (Witness TW).

<sup>2848</sup> T. 11 February 2004 p. 60 (Witness TW).

<sup>2849</sup> T. 10 February 2004 p. 12; T. 11 February 2004 pp. 60, 62 (Witness TW).

<sup>2850</sup> T. 10 February 2004 pp. 12-13; T. 11 February 2004 pp. 63-64 (Witness TW).

<sup>2851</sup> T. 10 February 2004 pp. 12, 15 (Witness TW).

<sup>2852</sup> T. 11 February 2004 p. 65 (Witness TW).

<sup>2853</sup> T. 10 February 2004 p. 12 (Witness TW).

<sup>2854</sup> T. 10 February 2004 p. 15; T. 11 February 2004 p. 63 (Witness TW).

<sup>2855</sup> T. 11 February 2004 pp. 68, 71-72 (Witness TW).

<sup>2856</sup> T. 10 February 2004 p. 16 (Witness TW).

<sup>2857</sup> T. 11 November 2002 p. 46 (ICS) (Witness QAQ).

<sup>2858</sup> T. 11 November 2002 p. 46 (ICS); T. 12 November 2002 pp. 27-28 (Witness QAQ).

down houses in his home *secteur*.<sup>2859</sup> He therefore fled and hid in the bush for three or four days.<sup>2860</sup> He subsequently followed other refugees to Kabuye Hill.<sup>2861</sup>

1290. The witness arrived at Kabuye Hill at about 10.00 a.m. He could not see all the refugees from where he was positioned but estimated that there were 300 refugees near him.<sup>2862</sup> In cross-examination, the witness stated that he could see 300 refugees although many refugees came later and there were others that the witness could not see as they were outside his field of vision.<sup>2863</sup> He spent the night at Kabuye Hill and the following day, at around 10.00 a.m., he saw Ndayambaje driving a white vehicle carrying *gendarmes*.<sup>2864</sup> He did not count the number of *gendarmes* on board, but estimated there were more than five.<sup>2865</sup> The *gendarmes* were positioned on Dahwe Hill, opposite Kabuye Hill.<sup>2866</sup> In cross-examination Witness QAQ testified that from where he was he could not personally say whether the person in the car was Ndayambaje.<sup>2867</sup> Other refugees in the company of Witness QAQ on Kabuye Hill recognised Ndayambaje's vehicle and told the witness it was the same vehicle that had prevented them from continuing on their way to Burundi the previous day.<sup>2868</sup> The witness saw the vehicle come and go on three occasions but did not know whether it was transporting people as the refugees were under attack at the time.<sup>2869</sup> The *gendarmes* shot at the refugees who tried to defend themselves by throwing stones. The refugees were also attacked by *Interahamwe* carrying clubs and machetes.<sup>2870</sup> Several people died as a result of these attacks, but the witness did not know the exact number of victims; all he knew was that after the war people came to exhume the bodies for a proper reburial.<sup>2871</sup>

1291. Witness QAQ identified Ndayambaje in court.<sup>2872</sup>

#### Prosecution Witness TP

1292. Witness TP, a Hutu farmer who was married to a Tutsi, testified that she and her family arrived in Gisagara at around 7.00 p.m. on Wednesday 20 April 1994.<sup>2873</sup> Upon their arrival, they saw Ndayambaje who told them to go home as it was safe.<sup>2874</sup> Witness TP was a few metres from Ndayambaje and recognised his face and voice.<sup>2875</sup> Ndayambaje then left in his

<sup>2859</sup> T. 11 November 2002 p. 23 (ICS) (Witness QAQ).

<sup>2860</sup> T. 11 November 2002 p. 24 (ICS) (Witness QAQ).

<sup>2861</sup> T. 11 November 2002 p. 25 (ICS) (Witness QAQ).

<sup>2862</sup> T. 11 November 2002 p. 25 (ICS) (Witness QAQ).

<sup>2863</sup> T. 12 November 2002 pp. 85-86 (ICS) (Witness QAQ).

<sup>2864</sup> T. 11 November 2002 pp. 26, 30-31 (ICS) (Witness QAQ).

<sup>2865</sup> T. 11 November 2002 p. 26 (ICS) (Witness QAQ).

<sup>2866</sup> T. 11 November 2002 p. 26 (ICS) (Witness QAQ).

<sup>2867</sup> T. 12 November 2002 p. 85 (ICS) (Witness QAQ).

<sup>2868</sup> T. 11 November 2002 pp. 26, 28, 31 (ICS); T. 12 November 2002 pp. 84, 86 (ICS) (Witness QAQ).

<sup>2869</sup> T. 11 November 2002 pp. 31-32 (ICS); T. 13 November 2002 p. 5 (Witness QAQ).

<sup>2870</sup> T. 11 November 2002 p. 32 (ICS) (Witness QAQ).

<sup>2871</sup> T. 13 November 2002 p. 6 (Witness QAQ).

<sup>2872</sup> T. 11 November 2002 p. 47 (ICS) (Witness QAQ).

<sup>2873</sup> T. 11 February 2004 p. 9; T. 12 February 2004 p. 55 (Witness TP).

<sup>2874</sup> T. 11 February 2004 p. 9; T. 12 February 2004 pp. 31, 60, 62 (Witness TP).

<sup>2875</sup> T. 11 February 2004 pp. 37, 60 (Witness TP).

official vehicle, which was white with two doors.<sup>2876</sup> The witness spent the night in the marketplace at Gisagara.<sup>2877</sup>

1293. The following morning, Thursday 21 April 2004, the *sous-préfet* visited the refugees and told them that if they had somewhere else to go, they could leave.<sup>2878</sup> Witness TP did not see the *sous-préfet* because of the huge crowd but other refugees told her what he said.<sup>2879</sup> The witness' husband decided that they would leave for Burundi and set out at 6.30 a.m.<sup>2880</sup> At 11.00 a.m., the witness and her family were intercepted by a group of people armed with traditional weapons and grenades at Musha and were told to go back home in order not to create insecurity.<sup>2881</sup> They threw arrows at the witness and her family, loaded their guns and prepared grenades for launching.<sup>2882</sup> Witness QAQ and her family therefore went back to the marketplace at Gisagara.<sup>2883</sup> The assailants did not pursue them.<sup>2884</sup> On their way back to Gisagara, they were again harassed at Ngiriyi by armed civilians and soldiers who told them to go back and so they returned to Gisagara.<sup>2885</sup>

1294. The refugees arrived at Gisagara for the second time around 8 p.m. where they spent the night. The *sous-préfet* was there but he did not speak that evening.<sup>2886</sup> During the night, Ndayambaje passed by the marketplace on his way home at around 3.00 a.m., but did not stop. Witness TP thought Ndayambaje had prevented the refugees from continuing their journey to Burundi.<sup>2887</sup> The next morning, 22 April 1994, the *sous-préfet* told the refugees to go to Kabuye where there would be more space for their cattle and children.<sup>2888</sup> She and the other refugees left Gisagara for Kabuye at 7.00 a.m.<sup>2889</sup>

1295. Witness TP testified that she arrived at Kabuye Hill at around 8.00 a.m. on Saturday 23 April 1994.<sup>2890</sup> Her family stayed near the base of the hill.<sup>2891</sup> On their arrival, they found a large number of refugees, many more than their own group. Hutu, Burundian and Twa civilians attacked the refugees with guns and grenades, and traditional weapons including machetes and spears.<sup>2892</sup> The attacks lasted all day and carried on until the morning of the following day.<sup>2893</sup> The refugees defended themselves by throwing stones.<sup>2894</sup> Those who were lucky survived, those who were not, died. The attackers told their leader, Ndayambaje, that

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<sup>2876</sup> T. 11 February 2004 p. 10 (Witness TP).

<sup>2877</sup> T. 11 February 2004 p. 11 (Witness TP).

<sup>2878</sup> T. 12 February 2004 pp. 31, 56 (Witness TP).

<sup>2879</sup> T. 12 February 2004 pp. 56-57 (Witness TP).

<sup>2880</sup> T. 12 February 2004 p. 57 (Witness TP).

<sup>2881</sup> T. 11 February 2004 p. 11; T. 12 February 2004 pp. 31-32, 57-58 (Witness TP).

<sup>2882</sup> T. 12 February 2004 p. 58 (Witness TP).

<sup>2883</sup> T. 11 February 2004 p. 11; T. 12 February 2004 p. 58 (Witness TP).

<sup>2884</sup> T. 12 February 2004 p. 58 (Witness TP).

<sup>2885</sup> T. 12 February 2004 p. 63 (Witness TP).

<sup>2886</sup> T. 12 February 2004 p. 58 (Witness TP).

<sup>2887</sup> T. 12 February 2004 pp. 60, 64 (Witness TP).

<sup>2888</sup> T. 11 February 2004 pp. 12-13; T. 12 February 2004 p. 58 (Witness TP).

<sup>2889</sup> T. 12 February 2004 p. 59 (Witness TP).

<sup>2890</sup> T. 11 February 2004 pp. 19-20; T. 12 February 2004 p. 64 (Witness TP).

<sup>2891</sup> T. 12 February 2004 p. 67 (Witness TP).

<sup>2892</sup> T. 11 February 2004 pp. 13-14 (Witness TP).

<sup>2893</sup> T. 12 February 2004 pp. 65-66, 68-70 (Witness TP).

<sup>2894</sup> T. 12 February 2004 p. 69 (Witness TP).

they could not fight the refugees.<sup>2895</sup> In the witness' view, this was because the refugees far outnumbered the attackers.<sup>2896</sup> The witness did not see any policemen, soldiers or vehicles at Kabuye Hill on Saturday.<sup>2897</sup>

1296. On the evening of Sunday 24 April 1994 at around 7.30 p.m., five vehicles full of people arrived at Kabuye Hill.<sup>2898</sup> It was dark but the moon was bright.<sup>2899</sup> There were three buses, a white vehicle called *ruhumbangegera*, which was used for patrols in the *commune*, and Ndayambaje's vehicle.<sup>2900</sup> Ndayambaje's vehicle, which led the convoy, was small, white, with two doors and a cage in the back.<sup>2901</sup> She did not see Ndayambaje but guessed that he was on board since it was his vehicle.<sup>2902</sup> Witness TP did not see the buses but she was told by others that they contained members of the Presidential Guard.<sup>2903</sup> In cross-examination, the witness stated that she did see the buses and they were white and green.<sup>2904</sup> However, because it was dark and raining, the witness could not describe the passengers' uniforms but she could tell that they wore military uniforms.<sup>2905</sup>

1297. The people who arrived in the vehicles rushed at the refugees and attacked them.<sup>2906</sup> The attackers, who included some of the witness' Hutu neighbours and policemen, were using clubs, machetes, small hoes, spears, bows and arrows, grenades and guns.<sup>2907</sup> Some of the attackers hurled grenades at the refugees from the neighbouring hills of Kanyahukeri, Dahwe and Gahondo.<sup>2908</sup> Many refugees were killed during the attack on Sunday evening and Witness TP estimated that not more than 50 refugees survived.<sup>2909</sup> Refugees were running up the hill and in all directions in panic.<sup>2910</sup> The witness lost a number of family members during the attack including her husband.<sup>2911</sup> The witness and nine of her children left Kabuye Hill between 8.30 and 9.00 p.m. on Sunday 24 April 1994.<sup>2912</sup> In cross-examination, the witness testified that the attack on Sunday started at 6.00 a.m. and that it rained heavily from about 5.00 p.m. until the following morning.<sup>2913</sup> The witness could not estimate how many people were killed; even an educated person would not be able to count the victims. It was not possible to bury the victims decently. The bodies of the victims were just covered with some earth.<sup>2914</sup>

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<sup>2895</sup> T. 11 February 2004 pp. 13, 20 (Witness TP).

<sup>2896</sup> T. 11 February 2004 pp. 20-21 (Witness TP).

<sup>2897</sup> T. 12 February 2004 p. 67 (Witness TP).

<sup>2898</sup> T. 11 February 2004 pp. 13-14 (Witness TP).

<sup>2899</sup> T. 11 February 2004 p. 14 (Witness TP).

<sup>2900</sup> T. 11 February 2004 pp. 13, 15; T. 12 February 2004 p. 76 (Witness TP).

<sup>2901</sup> T. 11 February 2004 pp. 14, 24; T. 12 February 2004 p. 76 (Witness TP).

<sup>2902</sup> T. 12 February 2004 p. 76 (Witness TP).

<sup>2903</sup> T. 11 February 2004 p. 16 (Witness TP).

<sup>2904</sup> T. 12 February 2004 p. 75 (Witness TP).

<sup>2905</sup> T. 12 February 2004 pp. 75-76 (Witness TP).

<sup>2906</sup> T. 11 February 2004 pp. 14, 18 (Witness TP).

<sup>2907</sup> T. 11 February 2004 pp. 13-14, 17-18, 21 (Witness TP).

<sup>2908</sup> T. 12 February 2004 p. 70 (Witness TP).

<sup>2909</sup> T. 11 February 2004 p. 21 (Witness TP).

<sup>2910</sup> T. 12 February 2004 p. 72 (Witness TP).

<sup>2911</sup> T. 11 February 2004 p. 22 (Witness TP).

<sup>2912</sup> T. 12 February 2004 p. 32 (Witness TP).

<sup>2913</sup> T. 12 February 2004 pp. 71-73 (Witness TP).

<sup>2914</sup> T. 11 February 2004 p. 21 (Witness TP).

1298. Witness TP did not identify Ndayambaje in court; she explained that it had been a long time and she could not remember his face.<sup>2915</sup> She knew Ndayambaje before the events as the *bourgmestre* of Muganza,<sup>2916</sup> she also knew his wife and his two children.<sup>2917</sup>

#### Prosecution Witness QAL

1299. Witness QAL, a Hutu farmer from Muganza *commune*, testified that Ndayambaje had officiated her marriage in 1987.<sup>2918</sup> She stated that she saw Ndayambaje driving the *commune's* white Toyota pickup truck in Muganza *secteur*, Muganza *commune*, at around 2.00 p.m. while on her way to the market one Thursday in April 1994.<sup>2919</sup> The vehicle was carrying guns and grenades in the back.<sup>2920</sup> It was followed by a green vehicle driven by a man in military uniform.<sup>2921</sup> The witness was approximately two metres away from the vehicle at the time.<sup>2922</sup> Ndayambaje was telling people to hurry up and go in the direction of Kabuye.<sup>2923</sup> The vehicles were travelling in the direction of Kabuye Hill where Tutsis had started to take refuge the previous day, Wednesday.<sup>2924</sup> The vehicles were moving slowly and were followed by a crowd of people.<sup>2925</sup> One or two hours later that day, she heard gunfire from the direction where the two vehicles had headed.<sup>2926</sup> The gunfire lasted throughout the night until the next day, which was a Friday.<sup>2927</sup>

1300. Witness QAL identified Ndayambaje in court.<sup>2928</sup>

#### Prosecution Witness RV

1301. Witness RV, a Hutu civil servant in 1994 and a detainee in Rwanda at the time of his testimony, testified that on 20 April 1994, he was woken at 6.00 a.m. by Ndayambaje and Tiziano Pegoraro, the Italian priest of Mugombwa Parish, who told him that the local population in Mugombwa had taken up arms and that there was insecurity in the area.<sup>2929</sup> The witness could not recall the type of vehicle in which Father Tiziano and Ndayambaje arrived.<sup>2930</sup> The witness, Father Tiziano and Ndayambaje drove to the *commune* office in the vehicle in which Father Tiziano and Ndayambaje had arrived where they collected the *commune* vehicle that was parked there. At the *commune* office, Witness RV and Ndayambaje got aboard the *commune* vehicle and drove to Bishya where they collected the *commune* driver, Charles, from his home. Father Tiziano followed in his own vehicle; the vehicle in

<sup>2915</sup> T. 11 February 2004 p. 38 (Witness TP).

<sup>2916</sup> T. 11 February 2004 p. 37 (Witness TP).

<sup>2917</sup> T. 12 February 2004 pp. 53-54 (Witness TP).

<sup>2918</sup> T. 25 February 2004 p. 7 (Witness QAL).

<sup>2919</sup> T. 25 February 2004 pp. 8-9, 35 (Witness QAL).

<sup>2920</sup> T. 25 February 2004 p. 8 (Witness QAL).

<sup>2921</sup> T. 25 February 2004 pp. 9-10 (Witness QAL).

<sup>2922</sup> T. 25 February 2004 p. 8 (Witness QAL).

<sup>2923</sup> T. 25 February 2004 p. 9 (Witness QAL).

<sup>2924</sup> T. 25 February 2004 pp. 9, 35 (Witness QAL).

<sup>2925</sup> T. 25 February 2004 p. 15 (Witness QAL).

<sup>2926</sup> T. 25 February 2004 p. 35 (Witness QAL).

<sup>2927</sup> T. 25 February 2004 p. 36 (Witness QAL).

<sup>2928</sup> T. 25 February 2004 p. 14 (Witness QAL).

<sup>2929</sup> T. 16 February 2004 pp. 38-39 (ICS); T. 17 February 2004 pp. 61, 63 (ICS) (Witness RV).

<sup>2930</sup> T. 17 February 2004 p. 61 (ICS) (Witness RV).

which Father Tiziano and Ndayambaje had used to reach the witness' house. From the *commune* office, Charles drove Witness RV while Ndayambaje accompanied Father Tiziano. Ndayambaje and Father Tiziano proceeded to Ndayambaje's residence.<sup>2931</sup>

1302. At about 7.30 a.m., the witness went to Ndayambaje's residence to tell him that he was overwhelmed and that he was going to Butare to request assistance; he saw Ndayambaje and Father Tiziano there.<sup>2932</sup> Witness RV proceeded to Butare, arriving at about 9.00 a.m., where he reported the event to Dominique Ntawukulilyayo, the *sous-préfet* of Gisagara.<sup>2933</sup>

1303. Witness RV further testified that Hutus began to attack Tutsi refugees on Kabuye Hill on 22 April 1994 but they were unable to kill them so they needed firearms to attack them.<sup>2934</sup> There was an arms and ammunitions store in the same building as the Muganza *commune* office.<sup>2935</sup> On Saturday 23 April at about 1.00 p.m., Witness RV met Ndayambaje at Bishya. Ndayambaje was with Célestin Habiyambere, the chairman of the MRND in Muganza *commune*, and they were travelling in an off-white double-cabin Toyota Hilux vehicle.<sup>2936</sup> Ndayambaje was angry with the witness because he needed firearms and ammunition to use at Kabuye and had not been able to find Witness RV to help him do this.<sup>2937</sup> Ndayambaje told the witness that he was going to Kibayi *commune* to look for weapons to use in the attack at Kabuye.<sup>2938</sup> Ndayambaje left in the direction of Kibayi *commune*.<sup>2939</sup> Witness RV left Bishya with Célestin Habiyambere on a motorbike belonging to an agricultural project in Muganza *commune* and they drove to the Muganza *commune* office.<sup>2940</sup>

1304. Witness RV saw Ndayambaje again that day at about 2.00 p.m. Ndayambaje arrived at the *commune* office with Gaspard, a Burundian refugee, Witness FAU, who used to live in Mugombwa *secteur*, and some others travelling in the back of his vehicle; they had about five firearms with them.<sup>2941</sup> Ndayambaje insisted the weapons store be opened because Ndayambaje and Célestin Habiyambere wanted to take ammunition in order to kill people in Kabuye.<sup>2942</sup> A *commune* policeman called Charles Habakurama, who was also the driver for Muganza *commune*, was also present and Ndayambaje asked him to go into the store and take some ammunition.<sup>2943</sup> Charles took some ammunition and a gun that was not working properly because the bulk of the guns had been taken by *commune* police officers. Ndayambaje then left the *commune* office with Charles and they headed to Kabuye. Witness RV later learned

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<sup>2931</sup> T. 17 February 2004 p. 62 (ICS) (Witness RV).

<sup>2932</sup> T. 17 February 2004 pp. 67-69 (ICS) (Witness RV).

<sup>2933</sup> T. 16 February 2004 pp. 41-42 (ICS) (Witness RV).

<sup>2934</sup> T. 16 February 2004 p. 45 (ICS) (Witness RV).

<sup>2935</sup> T. 16 February 2004 p. 44 (ICS); T. 17 February 2004 pp. 53-54 (ICS) (Witness RV).

<sup>2936</sup> T. 16 February 2004 pp. 44-45 (ICS) (Witness RV).

<sup>2937</sup> T. 16 February 2004 p. 44 (ICS) (Witness RV).

<sup>2938</sup> T. 16 February 2004 p. 45 (ICS) (Witness RV).

<sup>2939</sup> T. 16 February 2004 p. 46 (ICS) (Witness RV).

<sup>2940</sup> T. 16 February 2004 p. 45 (ICS) (Witness RV).

<sup>2941</sup> T. 16 February 2004 pp. 44, 46 (ICS) (Witness RV).

<sup>2942</sup> T. 16 February 2004 pp. 44, 46 (ICS) (Witness RV).

<sup>2943</sup> T. 16 February 2004 pp. 46-47 (ICS) (Witness RV) (the English transcript refers to "Ahaakurama"); see T. 16 February 2004 p. 53 (HC) (Witness RV) (French) (the driver's surname is "Habakurama"). Habakurama is consistent with the spelling found elsewhere in the transcripts; see, e.g., T. 25 February 2004 p. 75 (Witness EV).



through Charles that the Tutsis in Kabuye were killed with the support of members of the population who assisted the attackers with traditional weapons.<sup>2944</sup>

1305. On cross-examination, Witness RV testified that on the morning of 23 April 1994, he saw the deputy to the police brigadier taking bullets from the weapons store in the Muganza *commune* office and stopped him. At about 10.00 a.m., Witness RV left the *commune* office and went to the dispensary in Mugombwa. Célestin Habiya mbere came to see him there to complain that he needed guns.<sup>2945</sup> Witness RV testified that he met Ndayambaje and Célestin Habiya mbere at 5.00 p.m. when he arrived at Bishya and they addressed him in a violent manner.<sup>2946</sup> Ndayambaje went to Kibayi to look for guns while Habiya mbere went with the witness to the *commune* office.<sup>2947</sup> Célestin Habiya mbere told Witness RV that they needed the guns for Kabuye because they were going to kill some people. Witness RV saw that other people had come with Célestin Habiya mbere and they were getting ready to open the weapons store by force if he were to refuse to open it.<sup>2948</sup>

1306. Witness RV did not open the weapons store until Ndayambaje had returned from Kibayi.<sup>2949</sup> Ndayambaje asked where the witness had gone because he had been trying to get in touch with him; he asked Witness RV to supply guns and stated that they were to go to do some work in Kabuye.<sup>2950</sup> When Witness RV opened the weapons store, Ndayambaje asked Charles, the driver, to go inside the store and to come out with all the equipment he needed. Charles came out with ammunition and a large gun which he said did not work.<sup>2951</sup> They loaded everything into the vehicle and headed for Kabuye.<sup>2952</sup> Witness RV stated that Ndayambaje and Célestin Habiya mbere travelled in a whitish double-cabin Toyota Hilux belonging to the Kirarambogo health centre with “C-M-S Kirarambogo” written on the side.<sup>2953</sup>

1307. Witness RV identified Ndayambaje in court.<sup>2954</sup>

#### Prosecution Witness FAU

1308. Witness FAU, a Hutu farmer from Muganza *commune* and a detainee in Rwanda at the time of his testimony, testified that one Saturday he went on foot to Bishya to have a drink.<sup>2955</sup> He arrived at the Bishya business centre at around noon where Ndayambaje and Charles, a

<sup>2944</sup> T. 16 February 2004 p. 47 (ICS) (Witness RV).

<sup>2945</sup> T. 18 February 2004 pp. 27, 29-30 (ICS) (Witness RV).

<sup>2946</sup> T. 18 February 2004 p. 27 (ICS) (Witness RV).

<sup>2947</sup> The Chamber notes the English transcript erroneously states “Kabuye”: T. 18 February 2004 pp. 27, 29-30 (ICS) (Witness RV), rather than “Kibayi” which appears in the French transcript: T. 18 February 2004 pp. 33, 35 (HC) (Witness RV) (French).

<sup>2948</sup> T. 18 February 2004 p. 30 (ICS) (Witness RV).

<sup>2949</sup> The Chamber notes the English transcript erroneously states “Kabuye”: T. 18 February 2004 p. 30 (ICS) (Witness RV), rather than “Kibayi” which appears in the French transcript: T. 18 February 2004 p. 36 (HC) (Witness RV) (French).

<sup>2950</sup> T. 18 February 2004 pp. 29, 31 (ICS) (Witness RV).

<sup>2951</sup> T. 18 February 2004 pp. 31-32 (ICS) (Witness RV).

<sup>2952</sup> T. 18 February 2004 p. 31 (ICS) (Witness RV).

<sup>2953</sup> T. 18 February 2004 p. 28 (ICS) (Witness RV).

<sup>2954</sup> T. 17 February 2004 pp. 8-9 (ICS) (Witness RV).

<sup>2955</sup> T. 9 March 2004 p. 38 (Witness FAU).

*commune* policeman, were present.<sup>2956</sup> Ndayambaje told the witness and the other people that they should attack Kabuye Hill where Tutsis had taken refuge; Ndayambaje said that if they did not do so the Tutsis were going to attack them.<sup>2957</sup> Witness FAU got on board Ndayambaje's vehicle with 20 others and headed for Muganza *commune* office.<sup>2958</sup> Ndayambaje was driving a vehicle belonging to an international organisation.<sup>2959</sup>

1309. When they reached the Muganza *commune* office, Ndayambaje got out of the vehicle and went inside for about 10 minutes.<sup>2960</sup> Brigadier Pierre took a gun from the *commune* office weapons store and he, along with the witness and two policemen named Makubwa and Ferdinand, went to Kabuye Hill with Ndayambaje.<sup>2961</sup> There was also another white vehicle belonging to the *commune* driven by Charles, the *commune* policeman, which went to Kabuye Hill carrying other persons later that day.<sup>2962</sup> On cross-examination, Witness FAU testified that Brigadier Pierre took three Kalashnikovs from the weapons store; he gave one each to the policemen Makubwa and Ferdinand, and kept one for himself.<sup>2963</sup> They left in the direction of Kabuye before noon.<sup>2964</sup>

1310. Witness FAU testified that he often used to see the Accused during the events of April 1994.<sup>2965</sup> He identified Ndayambaje in court.<sup>2966</sup>

#### Prosecution Witness FAG

1311. Witness FAG, a Hutu farmer from Muganza *commune*, testified that he remembered seeing Ndayambaje approximately 10 times before the events in 1994.<sup>2967</sup> The witness confessed to having participated in various attacks in 1994 when he was aged 16.<sup>2968</sup> He spent eight years in prison and was released in 2003, before he gave evidence.<sup>2969</sup> He was nevertheless still waiting to be sentenced by *Gacaca* courts.<sup>2970</sup>

1312. Witness FAG testified that two weeks and two days after the death of the President, trouble erupted in Kibaye *commune*; Tutsis were attacked and houses were torched.<sup>2971</sup> He saw Tutsi homes being destroyed and Tutsis fleeing into the hills, mainly towards Kabuye Hill, because they were being pursued by Hutus.<sup>2972</sup> Two weeks and five days after the President's death, Witness FAG saw Ndayambaje driving a Muganza *commune* vehicle, a Hilux, at around

<sup>2956</sup> T. 4 March 2004 pp. 67-68; T. 9 March 2004 p. 40 (Witness FAU).

<sup>2957</sup> T. 4 March 2004 p. 70; T. 9 March 2004 pp. 42-43 (Witness FAU).

<sup>2958</sup> T. 4 March 2004 pp. 70-71; T. 9 March 2004 p. 43 (Witness FAU).

<sup>2959</sup> T. 4 March 2004 p. 71; T. 9 March 2004 pp. 42, 46-47 (Witness FAU).

<sup>2960</sup> T. 4 March 2004 p. 71; T. 9 March 2004 pp. 43-45 (Witness FAU).

<sup>2961</sup> T. 4 March 2004 p. 72; T. 9 March 2004 pp. 44-45 (Witness FAU).

<sup>2962</sup> T. 4 March 2004 p. 72; T. 9 March 2004 p. 58 (Witness FAU).

<sup>2963</sup> T. 9 March 2004 p. 45 (Witness FAU).

<sup>2964</sup> T. 4 March 2004 p. 72; T. 9 March 2004 p. 48 (Witness FAU).

<sup>2965</sup> T. 4 March 2004 pp. 63, 77; T. 9 March 2004 p. 68 (Witness FAU).

<sup>2966</sup> T. 4 March 2004 p. 79 (Witness FAU).

<sup>2967</sup> T. 1 March 2004 p. 36 (Witness FAG).

<sup>2968</sup> T. 1 March 2004 pp. 46-50 (Witness FAG).

<sup>2969</sup> T. 1 March 2004 p. 6 (ICS); T. 1 March 2004 pp. 44, 46 (Witness FAG).

<sup>2970</sup> T. 3 March 2004 p. 45 (ICS) (Witness FAG).

<sup>2971</sup> T. 1 March 2004 p. 8 (Witness FAG).

<sup>2972</sup> T. 1 March 2004 p. 13 (ICS) (Witness FAG).

10.00 a.m. in Bishya, Muganza *commune*.<sup>2973</sup> He saw Ndayambaje on four separate occasions; on each occasion, the Accused was transporting people in his vehicle, including Burundians, people from Mugombwa, Kibaye and Sagwa and policemen.<sup>2974</sup> The policemen were armed with guns and the civilians carried traditional weapons.<sup>2975</sup> The vehicle was moving between Kibayi and the area of the *commune* office via Bishya.<sup>2976</sup> The vehicle was empty when travelling in the direction of Kibayi whereas when it went in the opposite direction, towards the area of the *commune* office, there were passengers in the vehicle.<sup>2977</sup> Witness FAG saw the vehicle go towards Kibayi at about 10.00 a.m. and come back through Bishya around 10.30 a.m.<sup>2978</sup> The third time he saw Ndayambaje, the latter was coming from the direction of the *commune* office and Kabuye, heading towards Kibayi around 12.15 p.m.<sup>2979</sup> He was alone in the vehicle apart from his two police escorts.<sup>2980</sup> The last time he saw Ndayambaje in Bishya centre that day was around 1.00 p.m.<sup>2981</sup>

1313. The following day, the witness saw Ndayambaje driving the same vehicle as the previous day and transporting the same people towards the end of the afternoon.<sup>2982</sup> He also saw Ndayambaje accompanied by two policemen heading towards Butare between 3.30 and 4.00 p.m.<sup>2983</sup> Witness FAG further attested to seeing Ndayambaje with policemen and three soldiers in his vehicle at sunset on the same day returning from Butare and heading towards the *commune* office in Remera on the road leading to Gisagara.<sup>2984</sup> The policemen and the soldiers were armed.<sup>2985</sup>

1314. Witness FAG testified that the next day, a Sunday, he saw the bodies of many refugees who had been shot on Kabuye Hill.<sup>2986</sup> He recalled having heard many gunshots the previous Saturday evening between 7.00 p.m. and 9.00 p.m.<sup>2987</sup> People informed the witness that Ndayambaje had gone for reinforcements from Butare and that the shots had been fired by soldiers from Butare.<sup>2988</sup> Witness FAG identified Ndayambaje in court.<sup>2989</sup>

#### Prosecution Witness QBZ

1315. Witness QBZ, a Hutu farmer, testified that he knew Ndayambaje before the events of 1994; he was familiar with Ndayambaje's family house in Cymba *secteur* in 1991 when

<sup>2973</sup> T. 1 March 2004 pp. 18-19 (ICS); T. 2 March 2004 pp. 37, 40-41 (Witness FAG).

<sup>2974</sup> T. 1 March 2004 pp. 18-19 (ICS); T. 2 March 2004 pp. 42-44; T. 3 March 2004 p. 8 (Witness FAG).

<sup>2975</sup> T. 1 March 2004 p. 19 (ICS) (Witness FAG).

<sup>2976</sup> T. 2 March 2004 pp. 42-46 (Witness FAG).

<sup>2977</sup> T. 2 March 2004 p. 29 (Witness FAG).

<sup>2978</sup> T. 2 March 2004 p. 42 (Witness FAG).

<sup>2979</sup> T. 3 March 2004 p. 8 (Witness FAG) (French); as the English transcript for this day refers to Kibayi, Kibuye and Kabuye interchangeably, the French transcript is to be preferred.

<sup>2980</sup> T. 3 March 2004 p. 9 (Witness FAG).

<sup>2981</sup> T. 1 March 2004 p. 19 (ICS) (Witness FAG).

<sup>2982</sup> T. 1 March 2004 p. 19 (ICS); T. 3 March 2004 pp. 12-13 (Witness FAG).

<sup>2983</sup> T. 1 March 2004 p. 28; T. 3 March 2004 pp. 11-13 (Witness FAG).

<sup>2984</sup> T. 3 March 2004 pp. 16-17 (Witness FAG).

<sup>2985</sup> T. 3 March 2004 p. 17 (Witness FAG).

<sup>2986</sup> T. 1 March 2004 p. 20 (ICS); T. 1 March 2004 pp. 32-33; T. 3 March 2004 p. 18 (Witness FAG).

<sup>2987</sup> T. 1 March 2004 p. 20 (ICS) (Witness FAG).

<sup>2988</sup> T. 1 March 2004 pp. 20-21 (ICS) (Witness FAG).

<sup>2989</sup> T. 1 March 2004 p. 39 (Witness FAG).

Ndayambaje was a student; he also used to see the Accused when he was *bourgmestre*.<sup>2990</sup> The witness was a detainee in Rwanda when he testified before the court in 2004.<sup>2991</sup> Witness QBZ testified that about one week after the death of the President, he went to Kabuye with Ndayambaje, members of the *cellule* committee and *commune conseillers*, including Kanyabashi, all of whom were Hutus.<sup>2992</sup> They went there in order to kill Tutsis who had taken refuge on the hill.<sup>2993</sup> The group went on foot, arriving at 10.00 a.m. on Friday and were joined by civilians on their way.<sup>2994</sup> On arriving they met resistance from the Tutsis so Ndayambaje therefore left at 11.00 a.m. in the Muganza *commune* vehicle in order to fetch soldiers from Butare as they needed reinforcements.<sup>2995</sup> Ndayambaje dropped off five policemen at the *commune* office then continued on his way to Butare with his police escort and members of the population.<sup>2996</sup> The witness also travelled to Butare in the Ndora *commune* vehicle.<sup>2997</sup>

1316. The military reinforcements were collected in Butare; they travelled in the Ndora and Muganza *commune* vehicles, a green military vehicle and a bus. Other reinforcements also came from the direction of Kibayi.<sup>2998</sup> They arrived at Kabuye at around 2.00 p.m. on Friday.<sup>2999</sup> A number of Hutu soldiers were already shooting at the refugees.<sup>3000</sup> The killings started on Friday and did not stop until 4.00 p.m. on Sunday.<sup>3001</sup> The soldiers left on Monday while members of the population who participated in the attack left on Sunday.<sup>3002</sup> Ndayambaje was not present at Kabuye during the night; he would leave at the end of each day and return the following morning.<sup>3003</sup>

1317. Witness QBZ left Kabuye on Sunday and went home to rest, returning to Kabuye on Monday with other Hutus to bury the bodies.<sup>3004</sup> They used hoes and shovels to dig pits and there was also a vehicle equipped with a compressor which filled the pits with earth over the corpses.<sup>3005</sup> During the burial process, various authorities were present including Ndayambaje, policemen, *commune conseillers* and members of the *cellule* committees.<sup>3006</sup>

1318. Witness QBZ identified Ndayambaje in court.<sup>3007</sup>

<sup>2990</sup> T. 23 February 2004 p. 35; T. 23 February 2004 pp. 37, 41-42 (ICS) (Witness QBZ).

<sup>2991</sup> Prosecution Exhibit 80 (Personal Particulars); T. 23 February 2004 pp. 43-44 (ICS) (Witness QBZ).

<sup>2992</sup> T. 23 February 2004 p. 68 (ICS); T. 23 February 2004 pp. 22, 25; T. 24 February 2004 pp. 58, 61-62 (ICS) (Witness QBZ). The Chamber notes that while the English transcript of 24 February 2004 refers to Kibuye throughout, the French transcript refers to Kabuye: T. 24 February 2004 pp. 66-67 (HC) Witness QBZ (French).

<sup>2993</sup> T. 23 February 2004 pp. 24-25 (Witness QBZ).

<sup>2994</sup> T. 24 February 2004 pp. 58, 60-62 (ICS) (Witness QBZ).

<sup>2995</sup> T. 23 February 2004 pp. 25-28; T. 24 February 2004 pp. 58, 60-62, 64, 66 (ICS) (Witness QBZ).

<sup>2996</sup> T. 24 February 2004 pp. 64-65 (ICS) (Witness QBZ).

<sup>2997</sup> T. 24 February 2004 p. 68 (ICS) (Witness QBZ).

<sup>2998</sup> T. 24 February 2004 p. 69 (ICS) (Witness QBZ).

<sup>2999</sup> T. 24 February 2004 p. 70 (ICS) (Witness QBZ).

<sup>3000</sup> T. 23 February 2004 p. 26; T. 24 February 2004 pp. 62, 71 (ICS) (Witness QBZ).

<sup>3001</sup> T. 24 February 2004 pp. 71-74 (ICS) (Witness QBZ).

<sup>3002</sup> T. 24 February 2004 p. 73 (ICS) (Witness QBZ).

<sup>3003</sup> T. 24 February 2004 p. 76 (ICS) (Witness QBZ).

<sup>3004</sup> T. 23 February 2004 p. 34; T. 24 February 2004 pp. 58-59 (ICS) (Witness QBZ).

<sup>3005</sup> T. 23 February 2004 p. 34 (Witness QBZ).

<sup>3006</sup> T. 23 February 2004 p. 34 (Witness QBZ).

<sup>3007</sup> T. 23 February 2004 p. 38 (ICS) (Witness QBZ).

Ndayambaje Defence Witness ALIZA

1319. Witness ALIZA, whose father was Hutu and mother was Tutsi, was brought up as Tutsi in Muganza *commune*, Butare *préfecture*.<sup>3008</sup> In 1994, he was a 19-year-old student.<sup>3009</sup> About two weeks after Habyarimana's death, disturbances started in Muganza *commune*.<sup>3010</sup> One Wednesday, around 5.00 p.m., there were gunshots and explosions coming from Remera hill. The witness remembered that it was a Wednesday because it was market day and Gisagara market was open.<sup>3011</sup> Witness ALIZA and the Tutsi members of his family decided to flee to Burundi with their livestock.<sup>3012</sup> They headed in the direction of Gisagara and arrived there on the same Wednesday between 6.30 and 7.00 p.m.<sup>3013</sup> The witness and his family spent the night at Gisagara football pitch with around 2,000 other refugees; some refugees also settled in the adjacent market square.<sup>3014</sup> There was no violence that night and the refugees were free to move around and buy supplies at a store without any hindrance.<sup>3015</sup> At some point, policemen passed by in a vehicle belonging to Ndora *commune*; the policemen remained in the car and observed the refugees. Apart from the policemen, the witness did not see any *gendarmes*, soldiers or persons of authority at Gisagara.<sup>3016</sup> He did not see Ndayambaje at Gisagara.<sup>3017</sup> He later learned that the date was 19 April 1994.<sup>3018</sup>

1320. The following day, Thursday, the number of refugees at Gisagara had increased to between 2,000 and 5,000.<sup>3019</sup> In the morning at around 8.00 a.m., all of the refugees continued their journey to Ngiryi Bridge, located between Ndora and Mugusa *communes*, arriving there around midday.<sup>3020</sup> The witness did not see any vehicles during the journey to Ngiryi Bridge nor did he see or hear people attempting to prevent the refugees from moving.<sup>3021</sup> When Witness ALIZA crossed Ngiryi Bridge, he and his family were towards the front of the column of refugees,<sup>3022</sup> there were lines of refugees moving ahead of him and even more refugees behind him.<sup>3023</sup> After crossing the bridge, the refugees were stopped by two *commune* policemen with firearms and two or three civilians.<sup>3024</sup> The policemen had come from the direction of Mugusa *commune*.<sup>3025</sup> One of the civilians said that the refugees had to turn around.<sup>3026</sup> When the refugees did not obey, the policemen pointed their guns at the refugees ready to open fire. The refugees were scared and returned to Ngiryi Bridge. The policemen did

<sup>3008</sup> T. 4 June 2008 pp. 31, 33 (ICS); T. 9 June 2008 p. 21 (Witness ALIZA).

<sup>3009</sup> T. 4 June 2008 p. 31 (ICS) (Witness ALIZA).

<sup>3010</sup> T. 4 June 2008 pp. 34-35 (ICS) (Witness ALIZA).

<sup>3011</sup> T. 4 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>3012</sup> T. 4 June 2008 pp. 35-38 (ICS) (Witness ALIZA).

<sup>3013</sup> T. 4 June 2008 p. 38 (ICS); T. 4 June 2008 p. 40 (Witness ALIZA).

<sup>3014</sup> T. 4 June 2008 p. 41; T. 9 June 2008 p. 17 (Witness ALIZA).

<sup>3015</sup> T. 4 June 2008 pp. 40, 42, 46; T. 9 June 2008 p. 20 (Witness ALIZA).

<sup>3016</sup> T. 4 June 2008 pp. 42-44, 46; T. 9 June 2008 pp. 17-18 (Witness ALIZA).

<sup>3017</sup> T. 4 June 2008 pp. 44-46 (Witness ALIZA).

<sup>3018</sup> T. 4 June 2008 p. 37 (ICS) (Witness ALIZA).

<sup>3019</sup> T. 4 June 2008 pp. 46-48 (Witness ALIZA).

<sup>3020</sup> T. 4 June 2008 pp. 46, 48; T. 9 June 2008 p. 17 (Witness ALIZA).

<sup>3021</sup> T. 4 June 2008 p. 49 (Witness ALIZA).

<sup>3022</sup> T. 9 June 2008 p. 39 (ICS) (Witness ALIZA).

<sup>3023</sup> T. 4 June 2008 p. 49 (Witness ALIZA).

<sup>3024</sup> T. 4 June 2008 p. 50 (Witness ALIZA).

<sup>3025</sup> T. 4 June 2008 pp. 53, 55 (Witness ALIZA).

<sup>3026</sup> T. 4 June 2008 pp. 51-52 (Witness ALIZA).

not fire their weapons nor beat the refugees.<sup>3027</sup> The witness did not see Ndayambaje at Ngiryi Bridge when the refugees were intercepted, nor did he see any other police officers, soldiers or *gendarmes*.<sup>3028</sup>

1321. After being intercepted, the refugees went back towards Gisagara.<sup>3029</sup> Witness ALIZA and his family were in the middle of the stream of refugees towards the end of the crowd as it headed back to Gisagara, although he could still not see the people at the end of the procession.<sup>3030</sup> The witness did not see the refugees being escorted by three vehicles nor did he see any policemen or soldiers following the refugees to Gisagara. The witness and his family reached Gisagara on Thursday at around 4.00 p.m. and rested at Gisagara football field for 40 minutes to one hour. There were no authorities at Gisagara but Witness ALIZA heard from others that President Sindikubwabo had come to Gisagara.<sup>3031</sup> After resting, the witness left Gisagara for Kabuye Hill, a journey which took around 40 minutes. During that journey, the refugees were not attacked by civilians nor were they escorted by policemen or soldiers.<sup>3032</sup>

1322. Witness ALIZA testified that Kabuye *secteur* was comprised of four hills separated by small valleys.<sup>3033</sup> The first hill was *Ku Ka Kabuye*, the second *Ku Badivantiste*, the third did not have a name and the fourth was called *Mugorewindekwe*.<sup>3034</sup> The refugees went to the nameless hill and gathered there.<sup>3035</sup> When the witness and his family arrived at Kabuye around 6.00 p.m., he saw that the nameless hill was covered with refugees. They settled near the valley, from where the witness could see the hill with refugees. The witness estimated that there were between 4,000 and 5,000 refugees on the hill.<sup>3036</sup> He explained that the refugees chose to remain on the hill instead of going home because they were convinced that together they would be in a better position to defend themselves.<sup>3037</sup> On that day, Thursday, Witness ALIZA did not see or hear about vehicles coming to the hill nor was he aware of Ndayambaje having been present.<sup>3038</sup> There were no attacks during the night from Thursday to Friday.<sup>3039</sup>

1323. On Friday, at around 10.00 or 11.00 a.m., between 50 and 70 civilians carrying traditional weapons arrived from Gahondo *cellule*.<sup>3040</sup> The assailants wanted to take the refugees' livestock and they attacked the refugees, who fought back using bows and arrows, machetes and stones.<sup>3041</sup> The attack started around midday and lasted until around 5.00 p.m.<sup>3042</sup>

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<sup>3027</sup> T. 4 June 2008 pp. 51-52 (Witness ALIZA).

<sup>3028</sup> T. 4 June 2008 pp. 53, 58-60 (Witness ALIZA).

<sup>3029</sup> T. 4 June 2008 p. 55 (Witness ALIZA).

<sup>3030</sup> T. 4 June 2008 p. 62; T. 9 June 2008 p. 39 (ICS) (Witness ALIZA).

<sup>3031</sup> T. 4 June 2008 pp. 62-63 (Witness ALIZA).

<sup>3032</sup> T. 5 June 2008 p. 5 (Witness ALIZA).

<sup>3033</sup> T. 5 June 2008 pp. 12, 14; T. 5 June 2008 p. 21 (ICS) (Witness ALIZA).

<sup>3034</sup> T. 5 June 2008 pp. 13-14, 17 (Witness ALIZA).

<sup>3035</sup> T. 5 June 2008 pp. 13, 15, 17 (Witness ALIZA).

<sup>3036</sup> T. 5 June 2008 p. 18 (Witness ALIZA).

<sup>3037</sup> T. 9 June 2008 p. 28 (Witness ALIZA).

<sup>3038</sup> T. 5 June 2008 p. 19 (Witness ALIZA).

<sup>3039</sup> While the English transcript erroneously refers to "the night of Wednesday breaking Thursday": T. 5 June 2008 p. 22 (ICS) (Witness ALIZA), the French transcript cites "la nuit du jeudi au vendredi": T. 5 June 2008 p. 25 (HC) (Witness ALIZA) (French).

<sup>3040</sup> T. 5 June 2008 pp. 23-25 (ICS) (Witness ALIZA).

<sup>3041</sup> T. 5 June 2008 pp. 25-26 (ICS) (Witness ALIZA).

<sup>3042</sup> T. 5 June 2008 p. 27 (ICS) (Witness ALIZA).

More attackers arrived around 1.00 p.m.<sup>3043</sup> In total, there were between 100 and 200 assailants.<sup>3044</sup> That day, around 20 refugees died and many sustained injuries.<sup>3045</sup> No guns or grenades were used during the attack.<sup>3046</sup> After the attack ended and the assailants departed, the refugees dug pits in which they buried the victims.<sup>3047</sup> Witness ALIZA did not see any vehicles in the vicinity of the refugees on that Friday but he did see cars moving on the road going past the peak of Kabuye Hill and on the road linking Muganza and Ndora *cellule*.<sup>3048</sup> After sunset, the witness and his family rested; there were no attacks during the night.<sup>3049</sup> He did not see or hear that Ndayambaje had been present on the hills that day.<sup>3050</sup>

1324. On the morning of Saturday around 10.00 a.m., the refugees were attacked again by civilians carrying traditional weapons, and the number of assailants increased during the day; by around 2.00 p.m. there were approximately 1,000 attackers.<sup>3051</sup> Around 4.00 p.m., between 100 and 200 persons came from *Ku-Badivantiste* hill carrying Kalashnikovs and grenades.<sup>3052</sup> They wore camouflage uniform, normally worn by Rwandan soldiers, and caps, normally worn by *gendarmes*.<sup>3053</sup> They crossed the valley separating Gahondo hill from the hill where the refugees had gathered and moved towards the refugees in a half circle to prevent them from fleeing.<sup>3054</sup> The refugees who were on top of the hill without a name told Witness ALIZA that they had seen vehicles at the top of *Ku Badivantiste* hill bringing soldiers.<sup>3055</sup> The witness did not see any figure of authority but he had the impression that the soldiers followed instructions because they drew nearer without shooting and then all opened fire at the same time.<sup>3056</sup> There were about 4,000 to 5,000 refugees at the site.<sup>3057</sup> The refugees defended themselves by throwing stones and using traditional weapons.<sup>3058</sup> Around 5.00 p.m., the soldiers opened fire and threw grenades.<sup>3059</sup> People were falling like fruit being shaken from a tree; after around 30 minutes, there was thunder and heavy rain and the attackers withdrew to *Ku-Badivantiste* hill.<sup>3060</sup> The attack lasted between 30 and 50 minutes.<sup>3061</sup> It was very hard to estimate how many people were killed but about 1,000 refugees survived.<sup>3062</sup>

1325. Witness ALIZA testified that he did not see Ndayambaje or hear of his presence that Saturday afternoon.<sup>3063</sup> He conceded that when the attack was launched and people were

<sup>3043</sup> T. 5 June 2008 pp. 24-26 (ICS) (Witness ALIZA).

<sup>3044</sup> T. 5 June 2008 p. 29 (ICS) (Witness ALIZA).

<sup>3045</sup> T. 5 June 2008 pp. 26, 28 (ICS) (Witness ALIZA).

<sup>3046</sup> T. 5 June 2008 pp. 27, 29 (ICS) (Witness ALIZA).

<sup>3047</sup> T. 5 June 2008 p. 28 (ICS) (Witness ALIZA).

<sup>3048</sup> T. 5 June 2008 pp. 27-28 (ICS) (Witness ALIZA).

<sup>3049</sup> T. 5 June 2008 pp. 29-30 (ICS) (Witness ALIZA).

<sup>3050</sup> T. 5 June 2008 p. 29 (ICS) (Witness ALIZA).

<sup>3051</sup> T. 5 June 2008 p. 31 (ICS) (Witness ALIZA).

<sup>3052</sup> T. 5 June 2008 pp. 33-34; T. 5 June 2008 p. 37 (ICS) (Witness ALIZA).

<sup>3053</sup> T. 5 June 2008 pp. 33-34; T. 9 June 2008 p. 11 (Witness ALIZA).

<sup>3054</sup> T. 5 June 2008 pp. 33-34; T. 5 June 2008 p. 37 (ICS) (Witness ALIZA).

<sup>3055</sup> T. 5 June 2008 p. 38 (ICS) (Witness ALIZA).

<sup>3056</sup> T. 5 June 2008 p. 39 (ICS) (Witness ALIZA).

<sup>3057</sup> T. 9 June 2008 pp. 36-38 (ICS) (Witness ALIZA).

<sup>3058</sup> T. 5 June 2008 p. 39 (ICS) (Witness ALIZA).

<sup>3059</sup> T. 5 June 2008 p. 39 (ICS); T. 9 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>3060</sup> T. 5 June 2008 p. 39 (ICS) (Witness ALIZA).

<sup>3061</sup> T. 5 June 2008 p. 39 (ICS); T. 9 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>3062</sup> T. 9 June 2008 p. 38 (ICS) (Witness ALIZA).

<sup>3063</sup> T. 5 June 2008 p. 40 (ICS) (Witness ALIZA).

running for their lives, he could not see everything that was happening or every person on the hill.<sup>3064</sup> On Saturday night, the witness met his cousin and together they crossed the valley between Kabuye and Gahondo and went to the witness mother's home in Gahondo where they spent the night.<sup>3065</sup>

1326. On the morning of Sunday, the witness and his cousin returned to Kabuye to look for family members.<sup>3066</sup> They saw civilians with traditional weapons attacking and killing women and children who had survived the previous attack. The witness and his cousin therefore fled and hid at a sorghum farm.<sup>3067</sup>

1327. Witness ALIZA testified that he knew Ndayambaje as *bourgmestre* of Muganza *commune*. In 1991, Ndayambaje certified that the witness' mother was unable to pay for the witness' school fees and, as a consequence, he was given financial assistance to fund his studies.<sup>3068</sup> Ndayambaje resigned from the post of *bourgmestre* in 1992 and was succeeded by Chrysologue who remained *bourgmestre* until 1994.<sup>3069</sup> In 1994, Muganza *commune* had a white single-cabin Toyota Hilux vehicle without a tarpaulin at the back.<sup>3070</sup>

#### Ndayambaje Defence Witness TOVIA

1328. Witness TOVIA, a local Hutu politician in 1994, testified that approximately two weeks after the death of the President,<sup>3071</sup> on 21 April 1994,<sup>3072</sup> a named individual who lived near Ngiriyi Bridge informed him that assailants with traditional weapons had launched an attack on that bridge.<sup>3073</sup> The witness immediately went to Ngiriyi valley to verify the information and on arrival saw a crowd of civilians and cattle.<sup>3074</sup> He estimated that there were between 500 and 600 people in the crowd at Ngiriyi Bridge although he had no idea of their ethnicity.<sup>3075</sup>

1329. Witness TOVIA testified that Ndayambaje was not present at Ngiriyi Bridge on that day nor did he see any vehicles carrying policemen or soldiers.<sup>3076</sup> If Ndayambaje had been present, the witness would have been informed.<sup>3077</sup> After verifying the situation at Ngiriyi Bridge, the witness went to the *commune* office and informed the *bourgmestre* of Mugusa *commune* about what had happened.<sup>3078</sup> He told the *bourgmestre* that a crowd of people were attempting to gain access to Mugusa *commune*.<sup>3079</sup> The *bourgmestre* had his driver take him,

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<sup>3064</sup> T. 9 June 2008 pp. 15-16 (Witness ALIZA).

<sup>3065</sup> T. 5 June 2008 pp. 41-42 (ICS) (Witness ALIZA).

<sup>3066</sup> T. 5 June 2008 pp. 42-43 (ICS); T. 9 June 2008 p. 8 (Witness ALIZA).

<sup>3067</sup> T. 5 June 2008 p. 43 (ICS) (Witness ALIZA).

<sup>3068</sup> T. 4 June 2008 p. 33 (ICS); T. 9 June 2008 p. 25 (Witness ALIZA).

<sup>3069</sup> T. 4 June 2008 p. 34 (ICS) (Witness ALIZA).

<sup>3070</sup> T. 9 June 2008 p. 34 (ICS) (Witness ALIZA).

<sup>3071</sup> T. 3 July 2008 p. 33 (ICS) (Witness TOVIA).

<sup>3072</sup> T. 3 July 2008 p. 42 (Witness TOVIA).

<sup>3073</sup> T. 3 July 2008 pp. 11-12 (ICS) (Witness TOVIA).

<sup>3074</sup> T. 3 July 2008 pp. 11-12 (ICS); T. 3 July 2008 p. 34 (ICS) (Witness TOVIA).

<sup>3075</sup> T. 3 July 2008 pp. 35, 52 (Witness TOVIA).

<sup>3076</sup> T. 3 July 2008 p. 17; T. 3 July 2008 p. 24 (ICS) (Witness TOVIA).

<sup>3077</sup> T. 3 July 2008 p. 17 (Witness TOVIA).

<sup>3078</sup> T. 3 July 2008 pp. 11-12 (ICS) (Witness TOVIA).

<sup>3079</sup> T. 3 July 2008 p. 14; T. 3 July 2008 p. 34 (ICS) (Witness TOVIA).



together with the witness and two policemen, to Ngiryi Bridge in order to check on the situation.<sup>3080</sup>

1330. The *bourgmestre*'s car stopped in the centre of Musha, the occupants got out and they headed towards the area where the crowd was in Rugarama *cellule*.<sup>3081</sup> The *bourgmestre* stood in front of the crowd and asked where the people were going. After an address of between 15 and 20 minutes, during which the *bourgmestre* told the people to leave, the crowd returned to Ndora *commune* using Ngiryi Bridge. During this address the two policemen accompanying the *bourgmestre* were carrying firearms but were not threatening anybody; the barrels of their firearms were not pointed at anyone.<sup>3082</sup> There were no other vehicles present in the areas surrounding Ngiryi Bridge that day.<sup>3083</sup> Furthermore, no acts of violence were perpetrated against the crowd of civilians as they obeyed the *bourgmestre*'s instructions to return back.<sup>3084</sup>

1331. The day after the events at Ngiryi Bridge, the *bourgmestre* told Witness TOVIA that he had drafted a report on the events and asked the witness to take it to Butare town.<sup>3085</sup> The witness acknowledged that Defence Exhibit 555C was the report submitted by the *bourgmestre* of Mugusa *commune* on the incident at Ngiryi Bridge.<sup>3086</sup> The witness agreed that the date written on the right-hand corner of the document was 22 April 1994 which meant that the events at Ngiryi Bridge occurred on 21 April 1994.<sup>3087</sup>

#### Nteziryayo Defence Witness AND-5

1332. Witness AND-5, a Hutu policeman, was a detained witness when he gave evidence, having been convicted and sentenced to life imprisonment for his participation in killings in Mugusa *commune*, although he intended to lodge an appeal.<sup>3088</sup> He testified that around 21 April 1994, he and another policeman accompanied the *bourgmestre* of Mugusa *commune* and Witness TOVIA on a trip to the border between Ndora and Mugusa *communes* at the Ngiryi river in order to verify the presence of refugees there.<sup>3089</sup> Witness TOVIA had alerted the *bourgmestre* to the situation. The group had to leave the blue *commune* vehicle in Musha centre and walk two kilometres to where the refugees were as this route was not accessible by car.<sup>3090</sup> The refugees told the group that they were fleeing because they had heard gunshots. The *bourgmestre* told them to return to where they had come from because their movement would create panic among the population and disrupt the safety of the *commune*.<sup>3091</sup> The group accompanied the refugees back to the bridge over the Ngiryi river; there were no gunshots or cars present.<sup>3092</sup> The witness did not see Ndayambaje in the vicinity of the Ngiryi Bridge nor

<sup>3080</sup> T. 3 July 2008 p. 14 (Witness TOVIA).

<sup>3081</sup> T. 3 July 2008 p. 15 (Witness TOVIA).

<sup>3082</sup> T. 3 July 2008 p. 16 (Witness TOVIA).

<sup>3083</sup> T. 3 July 2008 p. 17 (Witness TOVIA).

<sup>3084</sup> T. 3 July 2008 p. 20 (ICS) (Witness TOVIA).

<sup>3085</sup> T. 3 July 2008 pp. 36, 38 (Witness TOVIA).

<sup>3086</sup> T. 3 July 2008 p. 41 (Witness TOVIA); Defence Exhibit 555C (Ndayambaje) (Letter from the *bourgmestre* of Mugusa *commune* to the *préfet* of Butare, with the subject: Security Report, 22 April 1994).

<sup>3087</sup> T. 3 July 2008 p. 42 (Witness TOVIA).

<sup>3088</sup> T. 4 December 2006 p. 41 (ICS) (Witness AND-5).

<sup>3089</sup> T. 4 December 2006 pp. 54-56 (ICS) (Witness AND-5).

<sup>3090</sup> T. 4 December 2006 pp. 56-57 (ICS) (Witness AND-5).

<sup>3091</sup> T. 4 December 2006 p. 58 (ICS); T. 5 December 2006 p. 5 (ICS) (Witness AND-5).

<sup>3092</sup> T. 5 December 2006 p. 6 (ICS) (Witness AND-5).

did he receive any reports of Ndayambaje's presence.<sup>3093</sup> A copy of the report on the incident was sent to the *préfet* and the prosecutor.<sup>3094</sup>

### Ndayambaje Defence Witness KEPİR

1333. Witness KEPİR, son of a Hutu father and Tutsi mother, testified that he saw Ndayambaje at the *commune* office on 20 April 1994. Ndayambaje arrived in a car that the witness did not recognise and informed the witness that he was fleeing because he had heard gunfire in his neighbourhood.<sup>3095</sup> Witness KEPİR and Ndayambaje then walked to the witness' house.<sup>3096</sup> The vehicle that brought Ndayambaje to the *commune* office left and returned a few minutes later with Ndayambaje's family and some others.<sup>3097</sup> Ndayambaje was joined by his family and the others who had travelled with them at the witness' house and 10 or 15 minutes later, they all went together to the *commune* office.<sup>3098</sup>

1334. Ndayambaje, a *gendarme* and the witness took the vehicle belonging to an international organisation and left at approximately 12.30 or 1.00 p.m. to inform *Bourgmestre* Chrysologue in Butare of the prevailing situation in the *commune*.<sup>3099</sup> They arrived in Butare at approximately 2.00 p.m., returning to the Muganza *commune* office at around 4.00 or 5.00 p.m.<sup>3100</sup> Ndayambaje spent the night of 20 April 1994 in the courtyard of the *commune* office.<sup>3101</sup>

1335. On Thursday 21 April 1994, neither Ndayambaje nor the *commune* vehicle left the *commune* office.<sup>3102</sup>

1336. On the morning of 22 April 1994, Witness KEPİR saw and spoke to Ndayambaje, *Bourgmestre* Chrysologue and the *bourgmestre's* driver, Charles. This group told the witness that they were leaving to monitor the situation in Mugombwa and Kabuga.<sup>3103</sup> The witness testified that Ndayambaje wanted to collect a car from an expatriate called Monique who worked there and to check on his mother who was hospitalised at the Mugombwa clinic.<sup>3104</sup> The group left at around 10.00 a.m.<sup>3105</sup> Ndayambaje returned to the *commune* office 20 to 30 minutes later in the car he had collected, a khaki-coloured Toyota Corolla.<sup>3106</sup> Ndayambaje was not accompanied by his mother.<sup>3107</sup> At approximately 1.00 or 2.00 p.m. on 22 April 1994, the witness accompanied Ndayambaje who decided to collect the vehicle belonging to the

<sup>3093</sup> T. 5 December 2006 pp. 7-8 (ICS) (Witness AND-5).

<sup>3094</sup> T. 5 December 2006 p. 10 (ICS) (Witness AND-5).

<sup>3095</sup> T. 10 September 2008 p. 39 (Witness KEPİR).

<sup>3096</sup> T. 10 September 2008 p. 39; T. 10 September 2008 p. 41 (ICS) (Witness KEPİR).

<sup>3097</sup> T. 10 September 2008 p. 40; T. 10 September 2008 pp. 41, 43 (ICS) (Witness KEPİR).

<sup>3098</sup> T. 10 September 2008 p. 41 (ICS) (Witness KEPİR).

<sup>3099</sup> T. 10 September 2008 pp. 45-46 (ICS) (Witness KEPİR).

<sup>3100</sup> T. 10 September 2008 pp. 46-47 (ICS) (Witness KEPİR).

<sup>3101</sup> T. 10 September 2008 pp. 51-52, 55 (Witness KEPİR).

<sup>3102</sup> T. 10 September 2008 pp. 53-54; T. 15 September 2008 pp. 8, 14 (Witness KEPİR).

<sup>3103</sup> T. 10 September 2008 p. 55 (Witness KEPİR).

<sup>3104</sup> T. 10 September 2008 p. 55; T. 15 September 2008 p. 15 (Witness KEPİR).

<sup>3105</sup> T. 10 September 2008 p. 56 (Witness KEPİR).

<sup>3106</sup> T. 10 September 2008 pp. 56-57 (Witness KEPİR).

<sup>3107</sup> T. 15 September 2008 p. 16 (Witness KEPİR).

Kirarambogo health centre.<sup>3108</sup> They left in the vehicle belonging to an international organisation.<sup>3109</sup> Returning from Kirarambogo, Ndayambaje drove the Kirarambogo health centre vehicle and Witness KEPIR followed close behind.<sup>3110</sup> Both cars stopped at a roadblock about 500 metres from the Kirarambogo health centre and then proceeded to the Muganza *commune* office, arriving at about 4.00 p.m.<sup>3111</sup> Witness KEPIR stayed with Ndayambaje that evening until they parted company to go to bed.<sup>3112</sup> The witness testified that Ndayambaje did not leave the *commune* office on 22 April 1994 on any occasion other than the trip to Mugombwa and the trip to Kirarambogo.<sup>3113</sup> Both the witness and Ndayambaje spent the night of Friday 22 to Saturday 23 April at the *commune* office.<sup>3114</sup>

1337. On the morning of Saturday 23 April 1994, there was an attack on the *commune* office premises.<sup>3115</sup> Ndayambaje was at the *commune* office at the time.<sup>3116</sup> Ndayambaje did not leave the *commune* office until the afternoon when Ndayambaje and his wife left in the Kirarambogo health centre vehicle to seek refuge in Kibayi.<sup>3117</sup> They left at around 2.00 p.m. or 3.00 p.m.<sup>3118</sup>

1338. Witness KEPIR testified that in 1994, Muganza *commune* had a white single-cabin Toyota Stout pickup with “Muganza *commune*” written on the side.<sup>3119</sup> The official driver of this vehicle was Charles Habakurama.<sup>3120</sup> Ndayambaje had his own private vehicle in April 1994, a white double-cabin Toyota Hilux with slats on the back on which tarpaulin could be placed. The vehicle was rented out to *Médecins Sans Frontières* (MSF) Belgium, in Butare.<sup>3121</sup> The witness did not see this vehicle in Muganza *commune* in April 1994.<sup>3122</sup>

#### Ndayambaje Defence Witness GABON

1339. Witness GABON, a Hutu policeman, testified that on 20 April 1994, Ndayambaje arrived at the Remera *commune* office in a vehicle at about 11.00 a.m. which left soon afterwards.<sup>3123</sup> He returned at about 12.30 p.m. with his family and others.<sup>3124</sup> Ndayambaje and his family moved into the IGA room in the *commune* office.<sup>3125</sup> Later, Ndayambaje left in a blue vehicle belonging to an international organisation and went to Butare.<sup>3126</sup> He returned between 5.00 p.m. and 5.30 p.m.<sup>3127</sup> The witness testified that about 150 persons took refuge at

<sup>3108</sup> T. 10 September 2008 p. 59 (ICS); T. 15 September 2008 pp. 12-14 (Witness KEPIR).

<sup>3109</sup> T. 10 September 2008 p. 59 (ICS) (Witness KEPIR).

<sup>3110</sup> T. 10 September 2008 p. 60 (ICS) (Witness KEPIR).

<sup>3111</sup> T. 10 September 2008 pp. 60-61 (ICS) (Witness KEPIR).

<sup>3112</sup> T. 10 September 2008 p. 61 (ICS) (Witness KEPIR).

<sup>3113</sup> T. 10 September 2008 p. 62 (ICS) (Witness KEPIR).

<sup>3114</sup> T. 10 September 2008 p. 64 (Witness KEPIR).

<sup>3115</sup> T. 10 September 2008 pp. 64, 68 (Witness KEPIR).

<sup>3116</sup> T. 10 September 2008 pp. 66, 68 (Witness KEPIR).

<sup>3117</sup> T. 10 September 2008 pp. 70, 72; T. 10 September 2008 p. 73 (ICS) (Witness KEPIR).

<sup>3118</sup> T. 10 September 2008 p. 73 (ICS) (Witness KEPIR).

<sup>3119</sup> T. 4 September 2008 pp. 15, 19 (Witness KEPIR).

<sup>3120</sup> T. 4 September 2008 p. 19 (Witness KEPIR).

<sup>3121</sup> T. 4 September 2008 p. 24; T. 10 September 2008 p. 63 (Witness KEPIR).

<sup>3122</sup> T. 10 September 2008 p. 63 (Witness KEPIR).

<sup>3123</sup> T. 28 August 2008 pp. 65, 68 (ICS) (Witness GABON).

<sup>3124</sup> T. 28 August 2008 pp. 67-68 (ICS) (Witness GABON).

<sup>3125</sup> T. 28 August 2008 p. 69 (ICS) (Witness GABON).

<sup>3126</sup> T. 28 August 2008 pp. 67, 70 (ICS) (Witness GABON).

<sup>3127</sup> T. 28 August 2008 p. 71 (ICS) (Witness GABON).

the *commune* office on Wednesday 20 April 1994.<sup>3128</sup> They stayed day and night at the *commune* office until the following Saturday.<sup>3129</sup>

1340. Witness GABON testified that Ndayambaje did not leave the *commune* office premises during the day or night of 21 April 1994.<sup>3130</sup>

1341. On Friday 22 April 1994 Ndayambaje left the *commune* office at around 9.00 a.m., returning one hour later. He left again at about 11.00 a.m. in the blue vehicle belonging to an international organisation, returning at about 2.00 p.m., driving the vehicle of the Kirarambogo health centre.<sup>3131</sup> Ndayambaje and his family spent the night in the IGA room of the *commune* office.<sup>3132</sup>

1342. There was an attack at the *commune* office at about 9.00 a.m. on Saturday 23 April 1994 in which people were abducted. Ndayambaje and his family were still in the IGA room at the time of the attack.<sup>3133</sup> Later that same day, Ndayambaje, his family and others left in the Kirarambogo health centre vehicle heading in the direction of Mugombwa; he was told they were going to Kibayi.<sup>3134</sup> Ndayambaje did not return to the *commune* office that day.<sup>3135</sup>

1343. On cross-examination, Witness GABON testified that he remained at the *commune* office until 24 April and that from 20 April until then he slept for just 27 minutes.<sup>3136</sup>

#### Ndayambaje Defence Witness MARVA

1344. Witness MARVA, a Hutu who lived in Ndayambaje's house from 1990 until 1994 in Mugombwa *secteur*, Muganza *commune*, testified that on a Wednesday, two weeks after the death of the President at around 8.00 a.m. or 8.30 a.m., a young man named Chanvrièr came to Ndayambaje's house, where she was living, to seek refuge.<sup>3137</sup> Ndayambaje hid Chanvrièr in the guest room and locked him inside.<sup>3138</sup> Later that morning, after hearing gunshots, they all decided to flee.<sup>3139</sup> A man who was driving his vehicle on the way to the market square passed by Ndayambaje's house to pick him up and take him to the *commune* office to seek refuge.<sup>3140</sup> The man returned after approximately one hour to pick up the remaining people in the Accused's house, including the witness.<sup>3141</sup> They went by car to the home of Witness KEPIR, near the *commune* office, where they met Ndayambaje.<sup>3142</sup> They then went on foot to the

<sup>3128</sup> T. 1 September 2008 pp. 11, 13 (ICS) (Witness GABON).

<sup>3129</sup> T. 1 September 2008 p. 13 (ICS) (Witness GABON).

<sup>3130</sup> T. 1 September 2008 pp. 24-28 (ICS) (Witness GABON).

<sup>3131</sup> T. 1 September 2008 pp. 28-29, 31-32, 34 (ICS) (Witness GABON).

<sup>3132</sup> T. 1 September 2008 p. 34 (ICS) (Witness GABON).

<sup>3133</sup> T. 1 September 2008 pp. 35-36 (ICS) (Witness GABON).

<sup>3134</sup> T. 1 September 2008 pp. 39-40 (ICS) (Witness GABON).

<sup>3135</sup> T. 1 September 2008 pp. 40-42 (ICS) (Witness GABON).

<sup>3136</sup> T. 3 September 2008 pp. 13, 16-17 (ICS) (Witness GABON).

<sup>3137</sup> T. 1 July 2008 pp. 19-20 (ICS); T. 2 July 2008 p. 28 (ICS) (Witness MARVA).

<sup>3138</sup> T. 1 July 2008 p. 20 (ICS) (Witness MARVA).

<sup>3139</sup> T. 1 July 2008 p. 21 (ICS) (Witness MARVA).

<sup>3140</sup> T. 1 July 2008 p. 21 (ICS); T. 2 July 2008 p. 15 (ICS) (Witness MARVA).

<sup>3141</sup> T. 1 July 2008 pp. 21-22 (ICS); T. 2 July 2008 pp. 15-16 (ICS) (Witness MARVA).

<sup>3142</sup> T. 1 July 2008 p. 24 (ICS) (Witness MARVA).

Muganza *commune* office.<sup>3143</sup> On cross-examination, Witness MARVA stated that the distance between Ndayambaje's home and the *commune* office would take around one hour to cover on foot.<sup>3144</sup> They remained at the *commune* office from Wednesday 20 April 1994 until Saturday 23 April 1994.<sup>3145</sup>

1345. On Saturday 23 April 1994, assailants attacked the *commune* office and abducted people.<sup>3146</sup> In the afternoon, Ndayambaje, his family and other persons, including Witness MARVA went to Kibayi *commune* where they stayed all week at someone's house.<sup>3147</sup> They left at about 3.00 or 4.00 p.m. and arrived after sunset.<sup>3148</sup> There were three buildings at the house where they were staying.<sup>3149</sup> Ndayambaje and the witness stayed in the main house; they slept in separate rooms.<sup>3150</sup>

#### Ndayambaje Defence Witness BIDI

1346. Witness BIDI, a Hutu from Kibayi *commune* who was 16 years old in 1994, testified that on Saturday 23 April 1994, about 10 people came to her house in Kibayi *commune* in a vehicle driven by Ndayambaje.<sup>3151</sup> One of the persons in the group accompanying Ndayambaje told her that their group had fled from the *commune* office.<sup>3152</sup> Ndayambaje and those accompanying him spent the night of 23 April 1994 at the witness' house.<sup>3153</sup> Ndayambaje got up at about 10.00 a.m. on Sunday 24 April 1994 and he did not leave the house all day.<sup>3154</sup>

1347. Witness BIDI was confronted with the testimony of Prosecution Witnesses EV, QAQ, TW and TP allegedly placing Ndayambaje at Kabuye Hill on the morning of Sunday 24 April 1994. She disagreed with the accounts provided by those witnesses and reiterated that Ndayambaje did not leave her house on that day.<sup>3155</sup>

#### Ndayambaje Defence Witness Father Tiziano Pegoraro

1348. Father Tiziano Pegoraro, an Italian priest, testified that from 1988 until 20 April 1994 he was the parish priest of Mugombwa Parish.<sup>3156</sup> He had known Ndayambaje since becoming a member of the Mugombwa community in 1983, when Ndayambaje was the *bourgmestre* of Muganza *commune*.<sup>3157</sup> He testified that on 20 April 1994, at around 6.00 a.m., Ndayambaje knocked at the witness' window and told him that there had been riots and that it was

<sup>3143</sup> T. 1 July 2008 pp. 24-25 (ICS); T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>3144</sup> T. 2 July 2008 p. 16 (ICS) (Witness MARVA).

<sup>3145</sup> T. 1 July 2008 pp. 25-26 (ICS) (Witness MARVA).

<sup>3146</sup> T. 1 July 2008 pp. 26-28 (ICS) (Witness MARVA).

<sup>3147</sup> T. 1 July 2008 pp. 27, 30 (ICS) (Witness MARVA).

<sup>3148</sup> T. 1 July 2008 pp. 27-28 (ICS); T. 2 July 2008 p. 18 (ICS) (Witness MARVA).

<sup>3149</sup> T. 1 July 2008 p. 28 (ICS) (Witness MARVA).

<sup>3150</sup> T. 1 July 2008 p. 28 (ICS); T. 2 July 2008 pp. 18-19 (ICS) (Witness MARVA).

<sup>3151</sup> T. 30 June 2008 pp. 14-16 (ICS) (Witness BIDI).

<sup>3152</sup> T. 30 June 2008 pp. 16, 33, 36 (ICS) (Witness BIDI).

<sup>3153</sup> T. 30 June 2008 p. 16 (ICS) (Witness BIDI).

<sup>3154</sup> T. 30 June 2008 pp. 16-18 (ICS) (Witness BIDI).

<sup>3155</sup> T. 30 June 2008 pp. 17-18 (ICS) (Witness BIDI).

<sup>3156</sup> T. 8 September 2008 pp. 17-18, 46 (Father Tiziano).

<sup>3157</sup> T. 8 September 2008 p. 32 (Father Tiziano).

necessary to speak with Witness RV who lived close to the *commune* office. Father Tiziano and Ndayambaje therefore drove to Remera hill, Muganza *commune*, in the parish vehicle.<sup>3158</sup>

1349. Father Tiziano testified that at the *commune* office, they first talked to a *gendarme* who went to fetch Witness RV from his residence.<sup>3159</sup> The witness later stated that he and Ndayambaje went directly to Witness RV's residence.<sup>3160</sup> Ndayambaje informed Witness RV about the riots and Witness RV said that he would deliver a speech at Kabuga market around 9.00 a.m. to calm the population.<sup>3161</sup> Father Tiziano stated that Witness RV did not get into the witness' car on 20 April 1994, contrary to Witness RV's testimony.<sup>3162</sup> After speaking with Witness RV, Father Tiziano and Ndayambaje drove to Mugombwa Church in the parish vehicle. Ndayambaje got out of the vehicle and went home on foot, while Father Tiziano drove into the church premises with the vehicle.<sup>3163</sup>

1350. At 9.00 a.m. the witness walked to Ndayambaje's house because they had agreed to drive together to Kabuga.<sup>3164</sup> He met Ndayambaje on the road opposite his house talking to various people. Ndayambaje said that they should wait for Witness RV before going to Kabuga but mentioned that as the situation in Kabuga was dangerous, Father Tiziano was free to return home if Witness RV did not turn up. Ndayambaje then said that they would certainly not go to Kabuga. Father Tiziano waited for a few minutes for Witness RV and then returned to the parish on foot.<sup>3165</sup> That was the last time he saw Ndayambaje.<sup>3166</sup> Ndayambaje lived approximately 15 minutes away from the *commune* office by car.<sup>3167</sup>

1351. Father Tiziano testified that he left Mugombwa Parish along with the three nuns who were in charge of the health centre in the afternoon of 20 April 1994.<sup>3168</sup>

#### Ndayambaje Defence Witness Constant Julius Goetschalckx, a.k.a Brother Stan

1352. Brother Stan is a Catholic monk who lived in Mugombwa Parish from 1993 to 1994.<sup>3169</sup> He had known Ndayambaje since 1988 and they were friends.<sup>3170</sup> In 1994 the witness worked in education in the Burundian refugee camps and lived and worked mainly in Saga refugee camp in Kibayi *commune*.<sup>3171</sup>

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<sup>3158</sup> T. 8 September 2008 pp. 48-49 (Father Tiziano).

<sup>3159</sup> T. 8 September 2008 pp. 49-50 (Father Tiziano).

<sup>3160</sup> T. 8 September 2008 p. 52 (Father Tiziano).

<sup>3161</sup> T. 8 September 2008 p. 50 (Father Tiziano).

<sup>3162</sup> T. 8 September 2008 pp. 51, 54, 57-58 (Father Tiziano).

<sup>3163</sup> T. 8 September 2008 p. 51 (Father Tiziano).

<sup>3164</sup> T. 8 September 2008 pp. 58-60 (Father Tiziano).

<sup>3165</sup> T. 8 September 2008 p. 61 (Father Tiziano).

<sup>3166</sup> T. 9 September 2008 p. 28 (Father Tiziano).

<sup>3167</sup> T. 10 September 2008 p. 19 (Father Tiziano).

<sup>3168</sup> T. 9 September 2008 p. 13 (Father Tiziano).

<sup>3169</sup> T. 18 September 2008 pp. 22, 25 (Brother Stan).

<sup>3170</sup> T. 18 September 2008 p. 27 (Brother Stan).

<sup>3171</sup> T. 18 September 2008 p. 25 (Brother Stan).

1353. Brother Stan testified that attacks against the Tutsis had commenced on 18 April 1994.<sup>3172</sup>

1354. Brother Stan testified that he saw Ndayambaje's mother at Ndayambaje's house prior to 20 April 1994, and he believed she was ill at the time. He did not know if she travelled with Ndayambaje to Kibayi later, he did not know what happened to her.<sup>3173</sup>

1355. Brother Stan testified that the car belonging to the expatriate Monique was parked at the priest's house and the Kirarambogo health centre vehicle was parked at the health centre. Monique had left both vehicles in the care of Ndayambaje.<sup>3174</sup> Brother Stan testified that he saw Ndayambaje in the Kirarambogo health centre vehicle on 23 April 1994 near the Saga camp. The witness saw Ndayambaje with Monique's car and the Kirarambogo health centre vehicle in May 1994.<sup>3175</sup>

1356. Brother Stan testified that the Mugombwa health centre was run by Italian nuns who left with Father Tiziano on 20 April 1994. Brother Stan testified that he had heard that after the nuns left the patients at the health centre were taken to Mugombwa Church in the morning of 20 April 1994.<sup>3176</sup>

1357. Brother Stan testified that at 8.00 a.m. on the morning of 20 April 1994 he set off to the Kibayi *commune* office from the Saga camp where he was staying, to deliver supplies to those who had sought refuge there.<sup>3177</sup> The distance between Saga and Kibayi was approximately 15 kilometres and the witness arrived there between 8.30 a.m. and 9.00 a.m.<sup>3178</sup> He was stopped by the *commune* office secretary in Kibayi who told him that there was insecurity in the *commune* and he asked Brother Stan to accompany him to inform the *bourgmestre* of Kibayi *commune* who was in Butare. He testified that he agreed and they set off in the normal direction, passing by the Saga camp towards Kabuga, Mugombwa, Bishya and on to Butare.<sup>3179</sup>

1358. Brother Stan testified that after having gone past the Saga camp, before getting to Kabuga, a crowd of hundreds or thousands of people with spears and machetes surrounded the vehicle and climbed onto it so they could not continue to Kabuga. The crowd were saying that they were going to fight at Kabuga.<sup>3180</sup> He testified that he drove slowly backwards towards the Saga camp; just before getting to the Saga camp he took the road which leads from Saga to Saga 2 and on towards Kirarambogo.<sup>3181</sup>

1359. Brother Stan testified that he arrived at Muganza *commune* at about 12.30 p.m. on 20 April 1994. He stopped at the *commune* office to ask permission to drive around. The

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<sup>3172</sup> T. 24 September 2008 p. 35 (Brother Stan).

<sup>3173</sup> T. 23 September 2008 p. 16 (Brother Stan).

<sup>3174</sup> T. 24 September 2008 pp. 3-4, 8 (Brother Stan).

<sup>3175</sup> T. 24 September 2008 p. 4 (Brother Stan).

<sup>3176</sup> T. 23 September 2008 p. 15 (Brother Stan).

<sup>3177</sup> T. 18 September 2008 p. 36; T. 22 September 2008 p. 46 (Brother Stan).

<sup>3178</sup> T. 22 September 2008 p. 46 (Brother Stan).

<sup>3179</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>3180</sup> T. 18 September 2008 p. 37 (Brother Stan).

<sup>3181</sup> T. 18 September 2008 p. 38 (Brother Stan).

*bourgmestre* was not there but he saw Father Tiziano from Mugombwa Parish who was leaving when he arrived.<sup>3182</sup> He was informed that Ndayambaje and his family had sought refuge there.<sup>3183</sup> Brother Stan testified that he met the criminal investigations officer at the *commune* office who asked if he could accompany Brother Stan to Butare. They first went in the direction of Mugombwa Parish in order to pick up some fuel.<sup>3184</sup>

1360. From Muganza *commune* to Mugombwa Parish the witness travelled with the Kibayi *commune* secretary and the criminal investigations officer. On arrival in Bishya, the criminal investigations officer asked the witness to take Mr. Fidèle, the district judge, his wife who was about to give birth, and a young girl in the vehicle. They travelled together in the vehicle towards the Mugombwa health centre.<sup>3185</sup> He testified that he arrived in Mugombwa Parish at about 1.00 p.m. or 1.30 p.m.<sup>3186</sup> He was not able to go any further than the parish because the vehicle was surrounded by a group of people armed with machetes and spears; the crowd was hostile because of the presence of the district judge in the car.<sup>3187</sup> The district judge, his wife and the young girl were Tutsis.<sup>3188</sup> He reversed and when he was level with his house he shouted that he needed petrol, and two jerry cans were put in his vehicle.<sup>3189</sup> The witness testified that the land in front of the parish was empty. He had gone past the church in order to go to the health centre when the gang appeared.<sup>3190</sup>

1361. Brother Stan testified that on leaving Mugombwa Parish he proceeded to the MRND Palace in Butare where the *bourgmestre's* meeting was being held.<sup>3191</sup> On the way to Butare, the witness' car was stopped at a roadblock manned by armed soldiers.<sup>3192</sup> Those travelling in the vehicle were asked for their identity papers.<sup>3193</sup> Mr. Fidèle and the young girl travelling with him had their documents. Mr. Fidèle's wife, who was about to give birth, did not have an identity card. She was asked to get out of the vehicle, and Mr. Fidèle stayed with his wife at that roadblock. Brother Stan dropped off the girl at Bihira's place, and on his return, stopped at the roadblock to find out whether Mr. Fidèle and his wife were still there. He was told that they had gone to the hospital. He did not attempt to find out what happened to them. He never saw them again.<sup>3194</sup> Given the circumstances at the time he believed they were killed but he did not know where or when.<sup>3195</sup>

1362. The *bourgmestre's* meeting had ended and Brother Stan was told that the *bourgmestre* from Kibayi was going to return to his *commune*. He testified that as a result of this he turned back to Mugombwa, travelling with the criminal investigations officer and the *commune*

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<sup>3182</sup> T. 18 September 2008 p. 39 (Brother Stan).

<sup>3183</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>3184</sup> T. 18 September 2008 p. 40 (Brother Stan).

<sup>3185</sup> T. 18 September 2008 p. 40 (Brother Stan).

<sup>3186</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>3187</sup> T. 18 September 2008 pp. 40-41 (Brother Stan).

<sup>3188</sup> T. 23 September 2008 p. 4 (Brother Stan).

<sup>3189</sup> T. 18 September 2008 p. 41 (Brother Stan).

<sup>3190</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>3191</sup> T. 18 September 2008 p. 41 (Brother Stan).

<sup>3192</sup> T. 24 September 2008 p. 36 (Brother Stan).

<sup>3193</sup> T. 23 September 2008 pp. 3-4 (Brother Stan).

<sup>3194</sup> T. 23 September 2008 p. 4; T. 24 September 2008 p. 36 (Brother Stan).

<sup>3195</sup> T. 24 September 2008 p. 40 (Brother Stan).



secretary from Kibayi *commune*.<sup>3196</sup> He dropped the criminal investigations officer off at the Muganza *commune* office at about 5.00 or 5.30 p.m.<sup>3197</sup>

1363. Brother Stan testified that on arrival at the *commune* office that evening, he was informed that Ndayambaje and his family had sought refuge there but he did not see him. Brother Stan spent the night of 20 April 1994 at Saga refugee camp.<sup>3198</sup>

1364. Brother Stan testified that the massacre at Mugombwa Church began on 21 April 1994.<sup>3199</sup> He testified that on 21 April, he heard grenades explode at the level of Mugombwa Church which was a little more than a kilometre from Saga camp as the crow flies. He remained at Saga camp throughout 22 April until the morning of 23 April. He did not hear anything out of the ordinary.<sup>3200</sup>

1365. Brother Stan testified that in the afternoon of 23 April 1994, he saw Ndayambaje on the road near Saga camp. Ndayambaje told the witness that he was with his family on his way to Kibayi.<sup>3201</sup>

1366. Brother Stan testified that he left the camp with some students and went to Mugombwa Parish to get food supplies which were stored near the old church and the Amici house because there was a food shortage in Saga camp. As they drove past the church, the witness noticed that there were bodies of people who had been killed everywhere on the parish ground.<sup>3202</sup> He did not enter Mugombwa Church on 23 April 1994. With the car, he drove through the bodies to the stores, got the food supplies and returned to Saga camp in the evening.<sup>3203</sup> On seeing the dead bodies, he decided to flee Rwanda the following day but he was turned back at the Burundian border on 24 April.<sup>3204</sup>

1367. There were Burundian refugees who participated in the killings on or around 20 April 1994, some from the Saga camp where he worked, but the bulk of Burundian refugees remained locked up in their houses at the refugee camp.<sup>3205</sup> He informed the *bourgmestre* that some of the Burundian refugees were involved in the killings.<sup>3206</sup> He did not make any attempt to disarm the refugees in the camp who had machetes. He was a simple priest, and in his mind, machetes had never been weapons as such.<sup>3207</sup> The Burundian refugees were not armed; they had hoes and machetes, as everybody did. They were not weapons, they were agricultural tools which they used in April and there was no way to rid the persons of their tools which they needed for their work.<sup>3208</sup> During April the refugees remained in the camps, and wherever

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<sup>3196</sup> T. 18 September 2008 p. 41 (Brother Stan).

<sup>3197</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>3198</sup> T. 18 September 2008 p. 42 (Brother Stan).

<sup>3199</sup> T. 24 September 2008 p. 38 (Brother Stan).

<sup>3200</sup> T. 18 September 2008 p. 43 (Brother Stan).

<sup>3201</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>3202</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>3203</sup> T. 18 September 2008 pp. 44-45 (Brother Stan).

<sup>3204</sup> T. 18 September 2008 pp. 45-46 (Brother Stan).

<sup>3205</sup> T. 23 September 2008 pp. 18, 55 (Brother Stan).

<sup>3206</sup> T. 23 September 2008 pp. 20, 58 (Brother Stan).

<sup>3207</sup> T. 23 September 2008 p. 58 (Brother Stan).

<sup>3208</sup> T. 23 September 2008 pp. 59-60 (Brother Stan).

possible, they would carry out agricultural work for Rwandans living around the camp.<sup>3209</sup> The Burundian refugees were not armed, they had agricultural instruments. Brother Stan did not inform the *préfecture* authorities because he did not know how; he had never heard of any measure by a *bourgmestre* to take away a person's tools.<sup>3210</sup>

1368. On being referred to a previous statement before the Belgian judge, Vandermeersch, dated 24 November 1995 the witness testified that his statement was incorrect and that he saw Ndayambaje on 23 April 1994, on his way to Kibayi with his family, not on 27 or 28 April 1994 as recorded in the statement.<sup>3211</sup> Brother Stan testified that the judge was mistaken.<sup>3212</sup>

1369. On cross-examination, Brother Stan was referred to a letter of complaint he wrote on 25 November 1995 to a journalist named Van den Abeele of *Belgische Radio en Televisie Nederlands*, regarding the television coverage of the genocide in relation to Muganza *commune*.<sup>3213</sup> In this letter, he stated that Ndayambaje had sought refuge at the *commune* office from 20 to 25 April. Brother Stan testified that there was a mistake in the letter and that he was not under oath at the time of its writing; he saw Ndayambaje at about 4.00 or 4.30 p.m. on 23 April at Saga camp where he was travelling in the Kirarambogo health centre vehicle, on his way to Kibayi. He testified that he had been mistaken in this letter when he said that Ndayambaje sought refuge at the *commune* office from 20 to 25 April, the correct dates were 20 to 23 April 1994.<sup>3214</sup>

1370. Brother Stan testified that his testimony before the Tribunal was clearer and more precise than the statements he made in 1995 because at the time of his statements he was still traumatised by the events of 1994. In his view, this is why there were contradictions between the statement to the Belgian judge and the letter to the journalist written in 1995, and his testimony in 2008.<sup>3215</sup>

1371. Brother Stan and some Burundian refugees buried the dead at Mugombwa Church from 25 April 1994 until 2 or 3 May 1994.<sup>3216</sup> It took about 10 days. The dead were virtually all women, children and elderly.<sup>3217</sup>

1372. The witness testified that in May 1994, after the burial of dead bodies at Mugombwa Church, he was bed-ridden with malaria for three weeks and Ndayambaje and his wife looked after him.<sup>3218</sup>

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<sup>3209</sup> T. 23 September 2008 p. 56 (Brother Stan).

<sup>3210</sup> T. 23 September 2008 p. 60 (Brother Stan).

<sup>3211</sup> T. 23 September 2008 p. 32 (Brother Stan); Prosecution Exhibit 204 (Statement of Frère Constant J. Goetschalckx before Judge D. Vandermeersch, 24 November 1995).

<sup>3212</sup> T. 23 September 2008 pp. 35, 40 (Brother Stan).

<sup>3213</sup> T. 23 September 2008 p. 45 (Brother Stan); Prosecution Exhibit 203 (Statement of Frère Constant J. Goetschalckx to Mr. Van Den Abeele, Journalist BRTN, 25 November 1995).

<sup>3214</sup> T. 23 September 2008 pp. 46-47 (Brother Stan).

<sup>3215</sup> T. 23 September 2008 p. 47 (Brother Stan).

<sup>3216</sup> T. 18 September 2008 pp. 46-47; T. 23 September 2008 pp. 16, 35-37 (Brother Stan).

<sup>3217</sup> T. 18 September 2008 p. 46; T. 24 September 2008 p. 39 (Brother Stan).

<sup>3218</sup> T. 18 September 2008 p. 49 (Brother Stan).

Ndayambaje Defence Witness SABINE

1373. Witness SABINE was convicted for genocide-related killings and had been released from prison having served his sentence when he gave evidence before the Tribunal.<sup>3219</sup> He testified that one Sunday around two weeks after the death of the President, he went to Kabuye Hill with some acquaintances in order to loot from the bodies of dead refugees.<sup>3220</sup> From Kabuye Hill, the witness had a view of Dahwe Hill although his view of the road on that hill was obscured by trees. The distance between Dahwe and Kabuye Hills could be covered in 30 minutes to one hour. He said that throughout the time he was on Kabuye Hill, he did not see or hear about any vehicles on the road on Dahwe Hill. Furthermore, he did not hear any gunshots or explosions, or see any soldiers while he was on Kabuye Hill.<sup>3221</sup>

1374. Witness SABINE testified that he did not see Ndayambaje or hear that he had been present on Kabuye or Dahwe Hills that Sunday.<sup>3222</sup> The witness disagreed with the testimony of Prosecution Witnesses QAQ and TW that Ndayambaje allegedly transported attackers to Kabuye Hill on Sunday 24 April 1994.<sup>3223</sup> He said that he did not go to Kabuye Hill on the previous Wednesday, Thursday, Friday or Saturday nor did he hear of attacks having taken place on those days.<sup>3224</sup>

Ndayambaje

1375. Ndayambaje testified that on 20 April 1994 at around 6.00 a.m., he noticed that houses were burning on the hills of Saga and Kibayi.<sup>3225</sup> He decided to go and see the parish priest of Mugombwa, Father Tiziano, so that they could go together and warn the *commune* authorities about what was happening.<sup>3226</sup> Mugombwa Church was 500 metres away from Ndayambaje's residence and he went there on foot.<sup>3227</sup> Ndayambaje met Father Tiziano in his room and immediately thereafter they headed to the *commune* office in Remera in Father Tiziano's car, a blue single-cabin Hilux pickup. On arriving at the *commune* office, they met a security guard who told Ndayambaje and Father Tiziano that Witness RV was still asleep. The guard therefore went to inform Witness RV that he had visitors.<sup>3228</sup> After a wait of 30 or 40 minutes, Witness RV came and Ndayambaje reported what he had seen on the hills of Saga and Kibayi.<sup>3229</sup> Witness RV said that he had to go to Butare for a meeting but that he would first stop at Mugombwa to assess the situation.<sup>3230</sup> Witness RV stated that he would meet Ndayambaje and Father Tiziano at Ndayambaje's home so that they could go to Kabuga together to address the population.<sup>3231</sup> Thereafter, Ndayambaje and Father Tiziano returned to

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<sup>3219</sup> T. 16 June 2008 p. 36 (ICS) (Witness SABINE).

<sup>3220</sup> T. 12 June 2008 p. 9; T. 12 June 2008 p. 16 (ICS) (Witness SABINE).

<sup>3221</sup> T. 12 June 2008 p. 20 (Witness SABINE).

<sup>3222</sup> T. 12 June 2008 p. 22 (Witness SABINE).

<sup>3223</sup> T. 12 June 2008 pp. 22-24 (Witness SABINE).

<sup>3224</sup> T. 17 June 2008 p. 15 (Witness SABINE).

<sup>3225</sup> T. 22 October 2008 p. 26 (Ndayambaje).

<sup>3226</sup> T. 22 October 2008 p. 34 (Ndayambaje).

<sup>3227</sup> T. 22 October 2008 p. 34 (Ndayambaje).

<sup>3228</sup> T. 22 October 2008 p. 36; T. 26 November 2008 pp. 59-60 (Ndayambaje).

<sup>3229</sup> T. 22 October 2008 p. 36; T. 26 November 2008 p. 60 (Ndayambaje).

<sup>3230</sup> T. 22 October 2008 p. 36 (Ndayambaje).

<sup>3231</sup> T. 22 October 2008 p. 41 (Ndayambaje).

Mugombwa, still aboard Tiziano Pegoraro's car.<sup>3232</sup> They left Witness RV at the *commune* office.<sup>3233</sup> Father Tiziano dropped Ndayambaje off at the presbytery between 7.00 and 8.00 a.m. in front of the church and Ndayambaje continued on foot towards his residence.<sup>3234</sup>

1376. When he arrived home he found a man known as Chanvriev who had come to seek refuge.<sup>3235</sup> Ndayambaje took Chanvriev to the guest room to rest.<sup>3236</sup> At around 9.00 a.m., Father Tiziano came to see Ndayambaje on the road outside his home where they were supposed to meet with Witness RV.<sup>3237</sup> Ndayambaje, Father Tiziano and Witness RV had agreed that the three of them would go and address the population at the marketplace of Kabuga, however Witness RV did not show up.<sup>3238</sup> Father Tiziano therefore decided to go back home.<sup>3239</sup>

1377. At around 11.00 a.m., a man named Célestin Halindintwari, a civil servant in Butare *préfecture*, visited Ndayambaje at his home.<sup>3240</sup> Around noon, Halindintwari drove Ndayambaje to the Muganza *commune* office in Remera because the situation outside was becoming dangerous; gunfire could be heard.<sup>3241</sup> Halindintwari drove a red pickup truck with a single-cabin.<sup>3242</sup> When they arrived at the *commune* office, Ndayambaje met Witness KEPIR and went to his home, which was located very close to the *commune* office.<sup>3243</sup> Halindintwari returned to Mugombwa to pick up Ndayambaje's family and others who were at his home in Mugombwa and transported them to Witness KEPIR's house, arriving approximately one hour later.<sup>3244</sup> On cross-examination, Ndayambaje testified that after dropping him off at the *commune* office, Halindintwari headed towards Butare.<sup>3245</sup>

1378. Later that day, Ndayambaje and his family moved into one of the IGA classrooms at the *commune* office.<sup>3246</sup> Ndayambaje testified that his mother did not join them at the *commune* office because she was in the Mugombwa Health Centre.<sup>3247</sup> At around 1.00 p.m., Ndayambaje went to Butare to notify the *bourgmestre* of the deteriorating situation returning between 4.00 p.m. and 5.00 p.m.<sup>3248</sup> He did not leave the *commune* office after his return from Butare on 20 April 1994.<sup>3249</sup>

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<sup>3232</sup> T. 22 October 2008 p. 36 (Ndayambaje).

<sup>3233</sup> T. 22 October 2008 p. 38 (Ndayambaje).

<sup>3234</sup> T. 22 October 2008 p. 38; T. 27 November 2008 p. 13 (Ndayambaje).

<sup>3235</sup> T. 22 October 2008 p. 39 (Ndayambaje).

<sup>3236</sup> T. 22 October 2008 p. 41 (Ndayambaje).

<sup>3237</sup> T. 22 October 2008 p. 42; T. 27 November 2008 p. 13 (Ndayambaje).

<sup>3238</sup> T. 22 October 2008 p. 42; T. 26 November 2008 pp. 14, 61 (Ndayambaje).

<sup>3239</sup> T. 22 October 2008 p. 42; T. 26 November 2008 p. 62 (Ndayambaje).

<sup>3240</sup> T. 22 October 2008 p. 53 (Ndayambaje).

<sup>3241</sup> T. 22 October 2008 p. 55; T. 27 November 2008 p. 19 (Ndayambaje).

<sup>3242</sup> T. 27 November 2008 p. 16 (Ndayambaje).

<sup>3243</sup> T. 22 October 2008 pp. 55-56 (Ndayambaje).

<sup>3244</sup> T. 22 October 2008 pp. 56-57 (Ndayambaje).

<sup>3245</sup> T. 1 December 2008 p. 7 (Ndayambaje).

<sup>3246</sup> T. 22 October 2008 p. 58 (Ndayambaje).

<sup>3247</sup> T. 2 December 2008 p. 30 (Ndayambaje).

<sup>3248</sup> T. 22 October 2008 pp. 59-60, 62 (Ndayambaje).

<sup>3249</sup> T. 23 October 2008 p. 36 (Ndayambaje).

1379. In the morning of 21 April 1994, Ndayambaje and Chrysologue Bimenyimana met each other in the internal courtyard of the *commune* compound.<sup>3250</sup> Ndayambaje remained at the *commune* office during the day and night of 21 April 1994.<sup>3251</sup> He spent the night with his family in the classroom of the IGA.<sup>3252</sup>

1380. Ndayambaje testified that he did not go to Kabuye Hill on 22 April 1994.<sup>3253</sup> He went to Mugombwa in the morning of 22 April with *Bourgmestre* Bimenyimana. They travelled in the white pickup and the *bourgmestre* dropped him off in Mugombwa where he went to retrieve Monique's car which was parked at the priest's house.<sup>3254</sup>

1381. Ndayambaje retrieved Monique's car which was parked at the parish priest's house and went on towards his house.<sup>3255</sup> When he arrived at his house he learned that his mother and grandmother had sought temporary refuge at his house. They had already left when he arrived and had returned to their houses in Cyumba *secteur*, Muganza *commune*.<sup>3256</sup> Ndayambaje returned to the *commune* office 45 minutes to an hour later, around noon.<sup>3257</sup> Ndayambaje left the *commune* office again at about 2.00 p.m. with the *bourgmestre* in the vehicle belonging to an international organisation. He returned driving the khaki Kirarambogo health centre vehicle.<sup>3258</sup> He spent the night of 22 April 1994 at the Muganza *commune* office.<sup>3259</sup>

1382. On the morning of Saturday 23 April 1994 there was an attack at the *commune* office. Ndayambaje was in the internal courtyard of the *commune* office at the time.<sup>3260</sup> He left for Kibayi at around 3.00 p.m. with his family and others.<sup>3261</sup>

1383. Ndayambaje testified that he saw Brother Stan on his way to Kibayi on that day.<sup>3262</sup> On cross-examination, Ndayambaje testified that he stopped, alighted from the vehicle and talked to Brother Stan for a few moments before continuing on his way.<sup>3263</sup> Ndayambaje testified that they went through various roadblocks and at each roadblock they were searched and had to unload all their luggage. Sometimes these searches took a very long time especially at roadblocks located within Kibayi *commune*. The roadblocks were located in Kabuga, Saga, Kirembwa and at Nyabisagara and were manned by civilians.<sup>3264</sup> They arrived at 7.00 p.m.; the

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<sup>3250</sup> T. 23 October 2008 p. 37 (Ndayambaje).

<sup>3251</sup> T. 23 October 2008 pp. 37, 50 (Ndayambaje).

<sup>3252</sup> T. 23 October 2008 p. 36 (Ndayambaje).

<sup>3253</sup> T. 23 October 2008 p. 62 (Ndayambaje).

<sup>3254</sup> T. 23 October 2008 pp. 51-52 (Ndayambaje).

<sup>3255</sup> T. 23 October 2008 pp. 52-53 (Ndayambaje).

<sup>3256</sup> T. 1 December 2008 pp. 38-40 (Ndayambaje).

<sup>3257</sup> T. 23 October 2008 p. 57 (Ndayambaje).

<sup>3258</sup> T. 23 October 2008 pp. 58-59, 61 (Ndayambaje).

<sup>3259</sup> T. 27 October 2008 p. 5 (Ndayambaje).

<sup>3260</sup> T. 27 October 2008 pp. 6-7 (Ndayambaje).

<sup>3261</sup> T. 27 October 2008 p. 25 (Ndayambaje).

<sup>3262</sup> T. 27 October 2008 p. 51; T. 1 December 2008 p. 60 (Ndayambaje).

<sup>3263</sup> T. 1 December 2008 p. 61 (Ndayambaje).

<sup>3264</sup> T. 27 October 2008 p. 27 (Ndayambaje).

20 kilometre journey took four hours.<sup>3265</sup> He did not leave the place he was staying on Sunday 24 April 1994.<sup>3266</sup>

1384. Ndayambaje denied transporting weapons, ammunition or armed persons towards Kabuye Hill on 23 April 1994 or taking weapons and ammunition from the Muganza *commune* office in Remera on that day; he was only transporting himself and his family to Kibayi.<sup>3267</sup> There had been a weapons depot at the *commune* office compound when he was *bourgmestre* but by April 1994, he had not been in charge of the *commune* office for almost two years. He did not know whether the new *bourgmestre* kept the weapons in the same place or how they were kept secure.<sup>3268</sup>

1385. Ndayambaje testified that in 1994, Muganza *commune* owned a white single-cabin Toyota Stout pickup bearing the inscription MININTER.<sup>3269</sup> He also owned a double-cabin Toyota Hilux pickup equipped with metal bars at the back and covered with orange canvas.<sup>3270</sup> At the beginning of 1994, he rented this car to a Belgian NGO, *Médecins Sans Frontières*, until the beginning of June 1994.<sup>3271</sup> He had no other vehicle apart from this Toyota pickup and a motorcycle in 1994.<sup>3272</sup> Charles Habakurama was a *commune* policeman as well as the *commune*'s driver between April and July 1994.<sup>3273</sup>

#### 3.6.5.4 Deliberations

1386. Paragraphs 6.30 to 6.32 of the Ndayambaje Indictment allege Ndayambaje's involvement in the arrest, transfer and massacre of Tutsi refugees at Kabuye Hill, covering the period from 20 to 24 April 1994. The Defence led alibi evidence to establish that Ndayambaje could not have been involved in the arrest of Tutsis at Gisagara and their subsequent escort to Kabuye Hill on 20 April; the attacks at Kabuye Hill on 22, 23 and 24 April 1994; the transportation of attackers to Kabuye Hill; and the distribution of weapons to the attackers. In its deliberations, the Chamber has considered each piece of evidence in light of the totality of evidence admitted at trial. In addition, it has assessed the Prosecution evidence in respect of each Indictment paragraph alongside the Defence alibi evidence.

1387. The Chamber recalls that there are a number of general issues regarding the Defence alibi evidence, set out in the Preliminary Issues section of this Judgement (), that have been borne in mind when considering each Indictment paragraph. In this connection, the Chamber notes that the Ndayambaje Defence did not file a formal notice of alibi. While Rule 67 (B) of the Rules specifies that failure of the Defence to provide notice of an alibi shall not limit the right of the accused to rely on an alibi defence, in its Decision of 1 March 2005 on the Prosecutor's Motion to be Served with Particulars of Alibi pursuant to Rule 67 (A)(ii)(a) the Chamber specifically directed the Defence to make the necessary disclosure in accordance

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<sup>3265</sup> T. 27 October 2008 pp. 26-27 (Ndayambaje).

<sup>3266</sup> T. 27 October 2008 p. 38 (Ndayambaje).

<sup>3267</sup> T. 27 October 2008 pp. 29, 31-32, 36 (Ndayambaje).

<sup>3268</sup> T. 1 December 2008 pp. 50-51 (Ndayambaje).

<sup>3269</sup> T. 22 October 2008 p. 38; T. 23 October 2008 p. 23 (Ndayambaje).

<sup>3270</sup> T. 20 October 2008 pp. 51-52 (Ndayambaje).

<sup>3271</sup> T. 20 October 2008 pp. 51-52; T. 20 November 2008 p. 35 (Ndayambaje).

<sup>3272</sup> T. 20 October 2008 p. 52 (Ndayambaje).

<sup>3273</sup> T. 19 November 2008 pp. 9-10 (Ndayambaje).

with the Rules.<sup>3274</sup> The Ndayambaje Defence did not comply with the Chamber's direction, despite its clear intention to rely on alibi evidence.

1388. The Defence filed an *Avis additionnel et identification des témoins d'alibi* ("additional notification and identification of alibi witnesses") on 29 April 2008, less than one month before the Defence opened its case, summarising the evidence of Witnesses BIDI, GABON and KEPIR. The *Avis additionnel* states that Ndayambaje had sought refuge at a family friend's house during the massacre at Kabuye Hill. Despite its name, this *Avis additionnel* or additional notification was the first occasion on which the Ndayambaje Defence gave notice of its intention to raise an alibi. The Chamber finds that the *Avis additionnel* is no substitute for providing the Prosecution with formal notice of alibi in accordance with the Rules. The Chamber reiterates that it is settled case law that where good cause is not shown for the application of Rule 67 (B), which states that the Defence's failure to file a notice of alibi under Rule 67 (A) shall not limit the accused's right to rely on an alibi defence, the Chamber is entitled to take such failure into account when weighing the credibility of the alibi. The Chamber further notes that Witnesses MARVA and Tiziano, who also gave evidence in support of the Accused's alibi, were not named in the *Avis additionnel*. Witness MARVA was reinstated to the Ndayambaje Defence's witness list on 4 June 2008, after having been initially removed on 23 January 2006.<sup>3275</sup> The Chamber also recalls that in cross-examination by the Ndayambaje Defence, the Prosecution witnesses were not confronted with the Defence's assertion that Ndayambaje could not have been at the scene of the events because he had an alibi. This further detracts from the credibility of the alibi. Furthermore, the Chamber observes that the late notice the Defence gave regarding its decision to bring alibi evidence suggests that the alibi may be a fabrication, tailored to suit the Prosecution's case.

1389. As to the credibility of the alibi witnesses, the Chamber recalls that Witness GABON testified that between 20 and 24 April he slept for just 27 minutes.<sup>3276</sup> The Chamber does not consider such an assertion to be plausible. Furthermore, the Chamber notes that all of the alibi witnesses have close ties to Ndayambaje. Witness MARVA lived in Ndayambaje's house between 1990 until 1994 and fled Rwanda with Ndayambaje's family in July 1994.<sup>3277</sup> Witness GABON is a former policeman employed by Ndayambaje.<sup>3278</sup> Witness KEPIR, a friend of Ndayambaje, lived and worked a short distance from the *commune* office in Remera. He used to report to Ndayambaje on matters related to his professional activities and has been implicated in the massacre at Kabuye Hill.<sup>3279</sup> Witness BIDI is the daughter of Ndayambaje's friend and Ndayambaje claimed to have taken refuge at Witness BIDI's family home on 23 April 1994.<sup>3280</sup> Accordingly, their evidence must be reviewed bearing these personal ties in mind. Furthermore, as regards Witness KEPIR, the Chamber recalls Witness EV's testimony that on the day of his arrival at Kabuye Hill, he saw Witness KEPIR with Ndayambaje on two

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<sup>3274</sup> *Ndayambaje et al.*, Decision on the Confidential Prosecutor's Motion To Be Served With Particulars of Alibi Pursuant to Rule 67 (A)(ii)(a) (TC), 1 March 2005, paras. 27, 29.

<sup>3275</sup> *Ndayambaje*, Decision on Ndayambaje's Motion to Vary His List of Witnesses (TC), 4 June 2008.

<sup>3276</sup> T. 3 September 2008 pp. 13, 16-17 (ICS) (Witness GABON).

<sup>3277</sup> T. 1 July 2008 pp. 11-12, 15, 36, 43 (ICS) (Witness MARVA).

<sup>3278</sup> T. 2 September 2008 pp. 56-57 (ICS) (Witness GABON).

<sup>3279</sup> T. 3 September 2008 p. 66 (ICS); T. 4 September 2008 p. 8 (ICS); T. 10 September 2008 p. 39; T. 10 September 2008 pp. 45-46, 59, 73 (ICS); T. 15 September 2008 p. 15 (Witness KEPIR).

<sup>3280</sup> T. 30 June 2008 pp. 9-10, 14-16, 23 (ICS) (Witness BIDI).

separate occasions during which refugees came under attack.<sup>3281</sup> On the second occasion, Witness KEPIR was driving a blue double-cabin Hilux.<sup>3282</sup> Witness FAU also testified that Ndayambaje used Witness KEPIR's blue vehicle to drive to the Muganza *commune* office to pick up weapons for use at Kabuye Hill.<sup>3283</sup> This evidence also has a bearing on Witness KEPIR's credibility.

1390. Brother Stan gave alibi evidence that he saw Ndayambaje on the afternoon of 23 April 1994, travelling with his family to Kibayi *commune*.<sup>3284</sup> The Chamber has doubts regarding Brother Stan's credibility. Brother Stan testified that attacks against the Tutsis had started by 18 April 1994.<sup>3285</sup> Yet, the Chamber notes that two days later, he left two Tutsis, Mr. Fidèle and his pregnant wife, at a roadblock manned by armed soldiers.<sup>3286</sup> The Chamber finds it curious that he made no effort to follow-up or report the incident to the authorities, nor did he attempt to find out what happened to them although he testified that he believed they may have been killed.<sup>3287</sup> This incident casts doubt on his credibility.

1391. The Chamber observes that Brother Stan acknowledged that Burundian refugees from the Saga camp where he worked participated in the killings on and around 20 April 1994.<sup>3288</sup> By his own admission, he did not make any attempt to disarm the refugees in the camp who had machetes, stating that he was a simple priest. He testified that in his view machetes were not weapons and the Burundian refugees were therefore not armed.<sup>3289</sup> In his view, there was no way he could confiscate their machetes because they needed them for their work.<sup>3290</sup> The Chamber finds this reasoning very weak. By his own admission, the refugees were not working in the fields after the outbreak of violence in April 1994, but, he testified, remained inside the camps.<sup>3291</sup> They therefore did not need the machetes for "work". Further, the Chamber is of the view that Brother Stan was not just a "simple priest", but worked in the refugee camp in education<sup>3292</sup> and therefore exercised a degree of authority over the refugees.

1392. Brother Stan testified that he was able to travel around Butare freely prior to 25 April 1994.<sup>3293</sup> Despite this fact, he made no attempt to notify the authorities of the unrest in Kibayi and Muganza *communes*. It was the Kibayi *commune* office secretary who wished to notify the authorities about the insecurity in the *commune* and he asked Brother Stan to accompany him.<sup>3294</sup> Further, Brother Stan did not inform the *préfecture* authorities that the Burundian refugees who participated in the killings were armed with traditional weapons because, he explained, he did not know how and had never heard of any measure by a *bourgmestre* to take

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<sup>3281</sup> T. 25 February 2004 p. 75; T. 26 February 2004 pp. 61-62 (Witness EV).

<sup>3282</sup> T. 26 February 2004 p. 62 (Witness EV).

<sup>3283</sup> T. 4 March 2004 pp. 71-72; T. 9 March 2004 pp. 42, 46-47 (Witness FAU).

<sup>3284</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>3285</sup> T. 24 September 2008 p. 35 (Brother Stan).

<sup>3286</sup> T. 18 September 2008 pp. 40-41; T. 23 September 2008 p. 4; T. 24 September 2008 p. 36 (Brother Stan).

<sup>3287</sup> T. 23 September 2008 p. 4; T. 24 September 2008 p. 40 (Brother Stan).

<sup>3288</sup> T. 23 September 2008 pp. 18, 55 (Brother Stan).

<sup>3289</sup> T. 23 September 2008 p. 58 (Brother Stan).

<sup>3290</sup> T. 23 September 2008 pp. 59-60 (Brother Stan).

<sup>3291</sup> T. 23 September 2008 p. 56 (Brother Stan).

<sup>3292</sup> T. 18 September 2008 p. 25 (Brother Stan).

<sup>3293</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>3294</sup> T. 18 September 2008 p. 37 (Brother Stan).



away a person's tools.<sup>3295</sup> The Chamber does not accept this explanation and finds that his failure to seek assistance, despite his knowledge of the Burundian refugees' involvement in killings, and his position of responsibility over them, further detracts from his credibility.

1393. The Chamber also notes that there were some discrepancies between two earlier statements given by Brother Stan in 1995, to a Belgian judge, Vandermeersch and a journalist, respectively. In his previous statement before Judge Vandermeersch, the witness stated that he saw Ndayambaje on his way to Kibayi on 27 or 28 April 1994.<sup>3296</sup> Brother Stan testified that the judge was mistaken and that the correct date was 23 April 1994.<sup>3297</sup> In the letter of complaint he wrote to the journalist Van den Abeele, he stated that Ndayambaje had sought refuge at the *commune* office from 20 to 25 April 1994; at trial, Brother Stan testified that this was a mistake and that he saw Ndayambaje on 23 April 1994 on his way to Kibayi.<sup>3298</sup> He testified that he was mistaken when he wrote in the letter that Ndayambaje sought refuge at the *commune* office from 20 to 25 April 1994; in fact, the correct dates were 20 to 23 April 1994.<sup>3299</sup> Seeking to explain the discrepancy in dates, Brother Stan testified that his testimony before the Tribunal is clearer and more precise than the statements he made in 1995 because at that time he was still traumatised by the events of 1994. In his view, this is why there are contradictions between the statement to the Belgian judge and the letter to the journalist written in 1995, and his testimony in 2008 but that at the time of his testimony in 2008 he was clearer about the events of 1994.<sup>3300</sup> The Chamber does not find this reasoning to be convincing. In the Chamber's view, it is more likely that Brother Stan would have been more certain about the dates of certain events one year after they occurred. The Chamber rejects his assertion that he is clearer about the events of 1994, and their specific dates, 14 years later, in 2008.

1394. The Chamber further notes that Brother Stan was also a close friend of Ndayambaje and a close associate of the Burundian refugees, some of whom are implicated in the massacres at Kabuye Hill and Mugombwa Church. For the reasons set out above the Chamber does not find Brother Stan's evidence credible.

1395. Ndayambaje testified that his mother was being cared for at the Mugombwa health centre from 20 April 1994 and this is why she did not join him and the rest of his family at the *commune* office.<sup>3301</sup> The Chamber finds his account not credible. When he heard explosions on 20 April 1994 Ndayambaje testified that he decided to evacuate his family to the Muganza *commune* office. He did not, however, collect his mother from the health centre despite the proximity of the health centre to his house, merely 500 metres, and the ease with which she could have been evacuated with the rest of his family.<sup>3302</sup> Furthermore, Father Tiziano testified that he left Mugombwa Parish along with the three nuns who were in charge of the health

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<sup>3295</sup> T. 23 September 2008 p. 60 (Brother Stan).

<sup>3296</sup> T. 23 September 2008 p. 32 (Brother Stan); Prosecution Exhibit 204 (Statement of Frère Constant J. Goetschalckx before Judge D. Vandermeersch, 24 November 1995).

<sup>3297</sup> T. 23 September 2008 pp. 32, 35, 40 (Brother Stan).

<sup>3298</sup> T. 23 September 2008 pp. 46-47 (Brother Stan); Prosecution Exhibit 203 (Statement of Frère Constant J. Goetschalckx to Mr. Van Den Abeele, Journalist BRTN, 25 November 1995).

<sup>3299</sup> T. 23 September 2008 pp. 46-47 (Brother Stan).

<sup>3300</sup> T. 23 September 2008 p. 47 (Brother Stan).

<sup>3301</sup> T. 2 December 2008 p. 30 (Ndayambaje).

<sup>3302</sup> T. 2 December 2008 pp. 27-28, 30-31 (Ndayambaje).

centre in the afternoon of 20 April 1994,<sup>3303</sup> undermining Ndayambaje's claim that his mother was being cared for at the health centre from 20 April 1994.

1396. According to Ndayambaje's version of events, on the morning of 22 April 1994, Ndayambaje left the *commune* office to travel to Mugombwa to pick up Monique's car from the priests' house,<sup>3304</sup> collect some supplies from his house and check on his mother.<sup>3305</sup> On arriving at his house he learned that his mother and grandmother had sought temporary refuge there but had already left when he arrived and returned to their homes in Cyumba *secteur*, Muganza *commune*.<sup>3306</sup> Ndayambaje testified that he left with his family to seek refuge in Kibayi *commune* on the afternoon of 23 April 1994.<sup>3307</sup> He did not testify that his mother joined the rest of his family in Kibayi *commune*. The Chamber does not find Ndayambaje's account regarding both his and his mother's whereabouts to be convincing.

1397. Regarding Ndayambaje's claimed movements on 23 and 24 April 1994, the Chamber observes that Ndayambaje himself testified that he saw that houses were burning in Kibayi *commune* on 20 April 1994.<sup>3308</sup> Yet, despite the evident unrest in the *commune*, he chose to travel to Kibayi to seek refuge with his family, at 3.00 p.m. on 23 April 1994.<sup>3309</sup> According to Ndayambaje, Kibayi *commune* was 20 kilometres away from the *commune* office, yet the drive took four hours.<sup>3310</sup> Ndayambaje testified that the reason the journey took four hours was because there were a number of roadblocks on the way and at each roadblock they were searched and had to unload all their luggage.<sup>3311</sup> The roadblocks were located in Kabuga, Saga, Kirembwa and at Nyabisagara and were manned by civilians.<sup>3312</sup> The Chamber does not find Ndayambaje's testimony to be credible in this respect. As a former *bourgmestre* of Muganza *commune*, and as a Hutu, the Chamber considers that Ndayambaje was not in any danger, and did not need to seek refuge with his family. Furthermore, he was a well-known figure of authority in the area. For the foregoing reasons, the Chamber finds it unlikely that Ndayambaje would have been subject to repeated stops and searches by civilians at roadblocks during the journey between Muganza *commune* office and Kibayi *commune*. For the reasons set out above, considering the late notice of the alibi evidence and the fact that Ndayambaje might have had an interest to remove himself from the crime scene, the Chamber does not find Ndayambaje's account of his movements on 23 and 24 April 1994 to be credible.

1398. The Chamber is mindful that in addition to being present at Ngiriyi Bridge and Kabuye Hill on 20 and 21 April 1994, Ndayambaje is alleged to have visited Mugombwa Church at about noon on 20 April 1994 for approximately 15 minutes,<sup>3313</sup> and between 10.00 and 10.30 a.m. on 21 April 1994.<sup>3314</sup> The Chamber observes that the distances pertinent to Ndayambaje's

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<sup>3303</sup> T. 9 September 2008 p. 13 (Father Tiziano).

<sup>3304</sup> T. 23 October 2008 pp. 51-52 (Ndayambaje).

<sup>3305</sup> T. 23 October 2008 pp. 52, 56 (Ndayambaje).

<sup>3306</sup> T. 1 December 2008 pp. 38-40 (Ndayambaje).

<sup>3307</sup> T. 27 October 2008 p. 25 (Ndayambaje).

<sup>3308</sup> T. 22 October 2008 p. 26 (Ndayambaje).

<sup>3309</sup> T. 27 October 2008 p. 25 (Ndayambaje).

<sup>3310</sup> T. 27 October 2008 pp. 26-27 (Ndayambaje).

<sup>3311</sup> T. 27 October 2008 p. 27 (Ndayambaje).

<sup>3312</sup> T. 27 October 2008 p. 27 (Ndayambaje).

<sup>3313</sup> T. 19 November 2001 p. 17; T. 20 November 2001 pp. 131-132 (Witness QAR).

<sup>3314</sup> T. 19 November 2001 pp. 26, 29-31 (Witness QAR).

alibi on these dates; between Ngiryi Bridge and the Muganza *commune* office, the *commune* office and Kabuye Hill, the *commune* office and Mugombwa Parish and between Kabuye Hill and Mugombwa Parish, are no more than one hour's distance from each other, and a matter of 10 kilometres or less in most instances. Between Ngiryi Bridge, where Ndayambaje is alleged to have been sighted in the morning of 20 April 1994, and Mugombwa Parish and the Muganza *commune* office, where Ndayambaje claims he was that morning, the distance is approximately 25 kilometres and took about one hour by car according to Ndayambaje.<sup>3315</sup> The distance between the Muganza *commune* office and Mugombwa Parish, where Ndayambaje claims to have been is six kilometres, according to Ndayambaje's testimony, and the distance between his house which was next door to the health centre, and Mugombwa Church was 500 metres.<sup>3316</sup> According to Ndayambaje, Kabuye Hill was nine or 10 kilometres from the Muganza *commune* office.<sup>3317</sup> The Chamber observes that it was therefore possible for Ndayambaje to reach each of these locations in little more than one hour's time and, in most cases, a significantly shorter time frame than the four hours' drive testified to by Ndayambaje. These aspects are considered in more detail below and in the section dealing with the Mugombwa Church Massacre ().

#### 3.6.5.4.1 20 April 1994 – Tutsis Arrested and Escorted from Gisagara to Kabuye Hill

1399. The Defence led alibi evidence through Witnesses GABON, KEPİR, MARVA and Father Tiziano to establish that Ndayambaje could not have been involved in the arrest of Tutsis on the morning of 20 April 1994 as he was at home or at the Muganza *commune* office. Father Tiziano testified that Ndayambaje came to see him at 6.00 a.m. on 20 April 1994 and together they went to see Witness RV at the *commune* office.<sup>3318</sup> They left the *commune* office together and the witness dropped Ndayambaje near his home at an unspecified time before 9.00 a.m.; the witness later saw Ndayambaje again at the latter's home around 9.00 a.m.<sup>3319</sup> This is consistent with Ndayambaje's account of his movements on the morning of 20 April 1994.<sup>3320</sup> Witness RV on the other hand testified that Ndayambaje and Father Tiziano did indeed come to see him at 6.00 a.m. but contradicts their assertions that they later waited for him in vain outside Ndayambaje's residence at 9.00 a.m. in order to go to Kabuga to address the population; instead, Witness RV contends that he went to Ndayambaje's residence at around 7.30 a.m. and informed Ndayambaje and Father Tiziano that he was going to Butare.<sup>3321</sup>

1400. Witness MARVA testified that she was with Ndayambaje on the morning of 20 April 1994 at his home although she does not specify when she saw him for the first time that

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<sup>3315</sup> T. 23 October 2008 p. 42 (Ndayambaje).

<sup>3316</sup> T. 23 October 2008 p. 42 (Ndayambaje); T. 22 October 2008 pp. 34, 46 (Ndayambaje); T. 23 September 2008 p. 15 (Brother Stan); *see also* Defence Exhibit 693 (Ndayambaje) (Sketch Map, by Ndayambaje).

<sup>3317</sup> T. 19 November 2008 p. 41; T. 2 December 2008 p. 34 (Ndayambaje).

<sup>3318</sup> T. 8 September 2008 pp. 48-49 (Father Tiziano).

<sup>3319</sup> T. 8 September 2008 pp. 51, 58-60 (Father Tiziano).

<sup>3320</sup> T. 22 October 2008 pp. 26, 34, 42 (Ndayambaje).

<sup>3321</sup> T. 16 February 2004 pp. 38-39 (ICS); T. 17 February 2004 pp. 61, 63, 67-69 (ICS) (Witness RV).

day.<sup>3322</sup> She subsequently met up with him at the house of Witness KEPIR, near the *commune* office.<sup>3323</sup>

1401. The Chamber considers that the evidence of Ndayambaje and Father Tiziano as to Ndayambaje's presence at his home at 9.00 a.m. is not credible. The Chamber recalls that as an Accused, Ndayambaje's testimony must be treated with appropriate caution as he has a personal interest in demonstrating that he was not present at Ngiryi Bridge on the morning of 20 April 1994. In addition, the Chamber recalls its analysis that Father Tiziano was not a credible witness as regards the events at Mugombwa Church (). The Chamber considers that the reasons underpinning the finding that Father Tiziano was not credible as regards the events at Mugombwa Church are also relevant to the assessment of his general credibility as to whether he was with the Accused on the morning of 20 April 1994. In this connection, the Chamber refers to the convincing eyewitness testimony of Witnesses QAR and FAU that Father Tiziano locked refugees inside Mugombwa Church, who were later massacred<sup>3324</sup> (). He may have had an incentive to minimise his involvement in the events of 1994 or at least minimise the role of Ndayambaje, a long-standing acquaintance. For these reasons, the Chamber does not consider that the testimony of Father Tiziano and Ndayambaje to raise a reasonable doubt as to the Prosecution's case that Ndayambaje was at Ngiryi Bridge early in the morning of 20 April 1994.

1402. As regards the evidence of Witness MARVA, the Chamber notes that she said she saw Ndayambaje at an unspecified time in the morning of 20 April 1994 when he hid Chanvrier in the guest room.<sup>3325</sup> Witness MARVA could not specify at what time Ndayambaje left his home or the time when he was reunited with his family and the witness at Witness KEPIR's residence. Her evidence was simply that a decision was taken to flee on the morning of 20 April 1994.<sup>3326</sup> However, Ndayambaje testified that he was picked up from home at around noon and was reunited with his family later that afternoon, before 1.00 p.m.<sup>3327</sup> Witness MARVA testified that it took one hour for the car that first collected Ndayambaje to return and pick up the witness.<sup>3328</sup> The car then had to travel approximately six kilometres from Mugombwa *secteur*, where Ndayambaje lived, to near the Muganza *commune* office in Remera to drop the witness off at Witness KEPIR's residence, a journey that takes around one hour by foot or approximately 15 minutes by car.<sup>3329</sup> Taking this evidence together, Ndayambaje would have been out of Witness MARVA's sight for between one and a quarter and one and a half hours. This is consistent with Ndayambaje's account of the time lapse between his departure from home and the arrival of his family at Witness KEPIR's house. The Prosecution case is that on the morning of 20 April 1994, Ndayambaje was in the area of Ngiryi Bridge on the border between Muyaga and Mugusa *communes* between daybreak and

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<sup>3322</sup> T. 1 July 2008 p. 20 (ICS) (Witness MARVA).

<sup>3323</sup> T. 1 July 2008 pp. 20-22, 24 (ICS) (Witness MARVA).

<sup>3324</sup> T. 21 November 2001 pp. 13-14, 18-19 (Witness QAR); T. 10 March 2004 pp. 4, 6 (Witness FAU).

<sup>3325</sup> T. 1 July 2008 pp. 20-21 (ICS) (Witness MARVA).

<sup>3326</sup> T. 1 July 2008 p. 21 (ICS) (Witness MARVA).

<sup>3327</sup> T. 22 October 2008 pp. 55-57, 59-60, 62; T. 27 November 2008 p. 19 (Ndayambaje).

<sup>3328</sup> T. 1 July 2008 pp. 21-22 (ICS); T. 2 July 2008 pp. 15-16 (ICS) (Witness MARVA).

<sup>3329</sup> Prosecution Exhibit 1 (Map of Butare); T. 2 July 2008 p. 16 (ICS) (Witness MARVA); T. 10 September 2008 p. 19 (Witness KEPIR); T. 23 October 2008 p. 42 (Ndayambaje).

11.00 a.m.<sup>3330</sup> The distance between Mugombwa *secteur*, where Ndayambaje lived, and Ngiriyi, where the refugees were intercepted before being forced back to Gisagara *commune*, is approximately 31 kilometres.<sup>3331</sup> The distance between Ngiriyi and Remera is approximately 25 kilometres, a journey that would take around one hour by car.<sup>3332</sup> On this basis, Ndayambaje would have needed between two and three hours on the morning of 20 April 1994 to travel from his home in Mugombwa *secteur* to Ngiriyi and from Ngiriyi back to his home or to Witness KEPIR's residence.

1403. The Chamber considers it significant that Witness MARVA did not testify to the whereabouts of Ndayambaje during a substantial part of the morning of 20 April 1994. Although Ndayambaje may not have had time to travel to Gisagara before going to Witness KEPIR's home near the *commune* office, the Chamber considers that he could have made a return trip from his home to Gisagara in the time between being seen by Witness RV at 7.30 a.m. and hiding Chanvrièr in his guest room, as testified to by Witness MARVA.<sup>3333</sup>

1404. In the absence of any other explanation for the Accused's whereabouts, the Chamber considers the Defence alibi as regards the morning of 20 April 1994 not to be reasonably possibly true.

1405. The Prosecution led evidence through Witnesses EV, RT and TP, all survivors of the Kabuye Hill massacre, in support of the allegation that on 20 April 1994, Ndayambaje took *commune* policeman to Gisagara *commune* where, together with soldiers, they arrested refugees and later took them to Kabuye Hill. The Chamber observes that the evidence of Witnesses EV, RT and TP is consistent on this issue: all three witnesses testified to the general movement of Tutsis towards Burundi via Gisagara<sup>3334</sup> and the *sous-préfet's* address to the refugees at Gisagara marketplace.<sup>3335</sup> Witnesses EV and RT described their interception by Ndayambaje at Ngiriyi Bridge between Muyaga and Mugusa *communes*,<sup>3336</sup> their return to Gisagara<sup>3337</sup> and subsequent escort to Kabuye Hill by soldiers and policemen.<sup>3338</sup> Both witnesses further testified to the presence of soldiers,<sup>3339</sup> policemen,<sup>3340</sup> and the Accused<sup>3341</sup> at

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<sup>3330</sup> T. 25 February 2004 pp. 69-70 (Witness EV); T. 26 February 2004 pp. 33-34 (Witness EV); T. 10 March 2004 pp. 51-52 (Witness RT); T. 11 March 2004 pp. 39, 49 (Witness RT).

<sup>3331</sup> Prosecution Exhibit 1 (Map of Butare); T. 23 October 2008 p. 42 (Ndayambaje).

<sup>3332</sup> T. 23 October 2008 p. 42 (Ndayambaje).

<sup>3333</sup> T. 1 July 2008 pp. 19-20 (ICS); T. 2 July 2008 p. 28 (ICS) (Witness MARVA).

<sup>3334</sup> T. 25 February 2004 pp. 70-71 (Witness EV); T. 10 March 2004 p. 49 (Witness RT); T. 11 March 2004 pp. 14, 17-18 (ICS) (Witness RT); T. 11 March 2004 p. 23 (Witness RT); T. 12 February 2004 pp. 31, 56-58 (Witness TP).

<sup>3335</sup> T. 26 February 2004 pp. 31-33 (Witness EV); T. 10 March 2004 p. 49 (Witness RT); T. 11 March 2004 pp. 33-34 (Witness RT); T. 12 February 2004 pp. 31, 56 (Witness TP).

<sup>3336</sup> T. 26 February 2004 pp. 38-39 (Witness EV); T. 10 March 2004 pp. 51-52 (Witness RT); T. 11 March 2004 pp. 39, 49 (Witness RT).

<sup>3337</sup> T. 26 February 2004 pp. 43-44 (Witness EV); T. 10 March 2004 pp. 54-55 (Witness RT); T. 11 March 2004 p. 48 (Witness RT).

<sup>3338</sup> T. 25 February 2004 p. 71 (Witness EV); T. 26 February 2004 pp. 45-47 (Witness EV); T. 10 March 2004 pp. 57-58 (Witness RT); T. 11 March 2004 p. 55 (Witness RT).

<sup>3339</sup> T. 26 February 2004 pp. 39-40 (Witness EV); T. 10 March 2004 pp. 52-53 (Witness RT); T. 11 March 2004 p. 46 (Witness RT).

<sup>3340</sup> T. 26 February 2004 pp. 39-42 (Witness EV); T. 10 March 2004 pp. 51-52 (Witness RT); T. 11 March 2004 pp. 40, 49 (Witness RT).

Ngiryi Bridge and the firing of guns to force the refugees to retreat.<sup>3342</sup> Witness TP testified that the refugees were harassed by armed civilians at Ngiryi and forced back to Gisagara marketplace.<sup>3343</sup> She described the presence of Ndayambaje at Gisagara marketplace on 20 and 21 April 1994 and her impression that Ndayambaje was responsible for preventing the refugees from continuing their journey to Burundi.<sup>3344</sup> Witness EV was able to name the policemen accompanying Ndayambaje, Pierre and Népomuscène, and also testified to seeing Ndayambaje in Gisagara after the refugees' interception at Ngiryi Bridge.<sup>3345</sup> With regard to the identification of the Accused, the Chamber notes that Witnesses EV, RT and TP all testified to knowing Ndayambaje before the 1994 events. Witness EV testified that he had known Ndayambaje since he was a primary school student,<sup>3346</sup> Witness RT that he had known Ndayambaje prior to the events of 1994 in his capacity as the *bourgmestre*. He also knew that Ndayambaje ceased to be the *bourgmestre* and went on a study leave. The witness used to see him often, at least twice a week.<sup>3347</sup> This prior knowledge was not challenged by the Defence.<sup>3348</sup> Witness TP was unable to identify Ndayambaje in court. The Chamber observes that she knew Ndayambaje before the events of 1994 in his capacity as *bourgmestre* of Muganza, and that she was asked to identify the Accused in court a decade later.<sup>3349</sup> As such, the Chamber finds that her failure to identify him in court does not diminish her credibility.

1406. As regards time frames, Witness EV testified that they reached Gisagara marketplace for the first time at noon on Tuesday 19 April 1994 and left at sunset, arriving at Ngiryi Bridge at daybreak the following morning, 20 April 1994.<sup>3350</sup> Witness EV stated that the refugees arrived at Gisagara for the second time around 10.00 a.m. (in examination-in-chief) and 4.00 p.m. (in cross-examination) on 20 April 1994 and reached Kabuye Hill before 6.00 p.m. on the same day.<sup>3351</sup> Witness RT stated that on a Wednesday, which he thought to be 19 April 1994, the refugees reached Gisagara for the first time around 7.00 p.m. and spent the night there, continuing to Ngiryi Bridge the following day, Thursday, and being intercepted around 11.00 a.m.<sup>3352</sup> The Chamber notes that the Wednesday to which Witness RT refers would have fallen on 20 April 1994. He said that on returning to Gisagara for the second time, the refugees spent the night there and were escorted to Kabuye Hill the next morning, a Friday, arriving at 9.00 or 10.00 a.m.<sup>3353</sup> Witness TP testified that the refugees arrived in Gisagara for the first time on 20 April 1994 where they spent the night and travelled towards Burundi the following day, 21 April 1994, when they were intercepted in the area of Mugusa, beyond Ngiryi Bridge, and

<sup>3341</sup> T. 25 February 2004 p. 70 (Witness EV); T. 26 February 2004 p. 41 (Witness EV); T. 10 March 2004 p. 53 (Witness RT).

<sup>3342</sup> T. 26 February 2004 p. 43 (Witness EV); T. 10 March 2004 pp. 53-54 (Witness RT); T. 11 March 2004 p. 48 (Witness RT).

<sup>3343</sup> T. 12 February 2004 p. 63 (Witness TP).

<sup>3344</sup> T. 11 February 2004 p. 9; T. 12 February 2004 pp. 31, 60, 62, 64 (Witness TP).

<sup>3345</sup> T. 25 February 2004 p. 71; T. 26 February 2004 p. 41 (Witness EV).

<sup>3346</sup> T. 25 February 2004 p. 67 (Witness EV).

<sup>3347</sup> T. 10 March 2004 p. 76 (Witness RT).

<sup>3348</sup> T. 25 February 2004 p. 67 (Witness EV); T. 10 March 2004 p. 76 (Witness RT).

<sup>3349</sup> T. 11 February 2004 pp. 37-38; T. 12 February 2004 pp. 53-54 (Witness TP).

<sup>3350</sup> T. 25 February 2004 pp. 69-71; T. 26 February 2004 pp. 30-31, 33-34 (Witness EV).

<sup>3351</sup> T. 25 February 2004 pp. 70-71; T. 26 February 2004 pp. 44-46 (Witness EV).

<sup>3352</sup> T. 10 March 2004 pp. 49-51; T. 11 March 2004 pp. 23, 36 (Witness RT).

<sup>3353</sup> T. 10 March 2004 pp. 57-58; T. 11 March 2004 pp. 51, 53, 55 (Witness RT).

forced back to Gisagara.<sup>3354</sup> The refugees stayed at Gisagara marketplace on the night of 21 April 1994 and went to Kabuye Hill on Saturday 23 April 1994.<sup>3355</sup>

1407. Therefore, according to Witness RT's testimony, the refugees were intercepted at Ngiryi Bridge on 20 or 21 April 1994 and subsequently escorted to Kabuye Hill on 21 or 22 April 1994, while Witness EV testified that both events occurred on 20 April 1994. Witness TP's evidence was that the refugees were intercepted on 21 April 1994 and arrived at Kabuye Hill on 23 April 1994. Although there are some discrepancies as to times and dates of departures and arrivals, the Chamber does not consider these to be significant, especially in view of the time that has elapsed since the events and the trauma the witnesses may have suffered as a consequence. It is quite possible that given the number of refugees said to have been on the move between Gisagara, Ngiryi Bridge and Kabuye Hill, the refugees were moved in groups from Gisagara marketplace to Kabuye Hill, some on the same day as the interception at Ngiryi Bridge and Mugusa, and others on the days immediately after. Even if the refugees were not separated into groups, it is also possible that the slow movement of a huge number of refugees from one location to another would result in different departure and arrival times depending on the refugees' location within the crowd.

1408. In cross-examination, Witness EV was confronted with his statement of 20 June 1995 in which he failed to mention the presence of a white vehicle when the refugees were intercepted at Ngiryi Bridge or the three-vehicle convoy positioned at the head of the crowd of refugees to prevent them from advancing.<sup>3356</sup> The witness then explained that the investigators had not recorded his testimony properly.<sup>3357</sup> The Chamber does not consider that these omissions go to the root of the witness' testimony or contradict the thrust of the Prosecution's case in respect of Paragraph 6.30 of the Ndayambaje Indictment.

1409. Certain inconsistencies between the testimony of Witnesses EV and RT appeared, in particular as regards the number of vehicles present at Ngiryi Bridge,<sup>3358</sup> the colour of Ndayambaje's vehicle<sup>3359</sup> and whether Ndayambaje got out of his vehicle.<sup>3360</sup> However, the Chamber notes that the witnesses may have been in different locations in the large crowd of refugees and may not have witnessed the same events. The Chamber observes that as regards the colour of the vehicle in which Ndayambaje was allegedly travelling, the Accused admitted that he was driven from his home to the *commune* office on the morning of 20 April 1994 in a red pickup truck with a single cabin.<sup>3361</sup> This is consistent with Witness RT's testimony that he saw Ndayambaje in a red Toyota around 11.00 a.m. in Ngiryi on 20 April 1994.<sup>3362</sup> Witness

<sup>3354</sup> T. 11 February 2004 pp. 9, 11; T. 12 February 2004 pp. 31-32, 55, 57-58 (Witness TP).

<sup>3355</sup> T. 11 February 2004 pp. 19-20; T. 12 February 2004 pp. 59-60, 64 (Witness TP).

<sup>3356</sup> Defence Exhibit 167 (Ndayambaje) (20 June 1995, Statement of Witness EV to Rwandan Authorities); T. 26 February 2004 pp. 80-81 (ICS) (Witness EV).

<sup>3357</sup> T. 26 February 2004 p. 81 (ICS) (Witness EV).

<sup>3358</sup> T. 26 February 2004 pp. 38-39 (Witness EV) (three vehicles); T. 10 March 2004 pp. 52-53 (Witness RT) (only one vehicle).

<sup>3359</sup> T. 26 February 2004 pp. 39, 42 (Witness EV) (one green, one white and one greenish military vehicle); T. 10 March 2004 pp. 52-53 (Witness RT); T. 11 March 2004 pp. 43-44 (Witness RT) (red).

<sup>3360</sup> T. 26 February 2004 p. 42 (Witness EV) (the occupants descended from the vehicle); T. 10 March 2004 p. 53 (Witness RT); T. 11 March 2004 pp. 45, 48 (Witness RT) (Ndayambaje remained inside the vehicle).

<sup>3361</sup> T. 27 November 2008 p. 16 (Ndayambaje).

<sup>3362</sup> T. 10 March 2004 pp. 52-53; T. 11 March 2004 pp. 43-44, 46 (Witness RT).

EV's testimony that he saw Ndayambaje travelling in a white single-cabin Toyota Hilux bearing the name of Muganza *commune* on the morning of 20 April 1994 is also supported by the testimony of Ndayambaje, Witness KEPIR and Witness ALIZA that in 1994, Muganza *commune* owned a white single-cabin Toyota pickup.<sup>3363</sup> The Chamber considers that Witness EV's description of Ndayambaje's vehicle is corroborated by the descriptions given by Ndayambaje, and Witnesses KEPIR, ALIZA, RT, TW, QAQ, QAL, RV and FAG of the vehicles Ndayambaje had access to or used on other occasions between 20 and 24 April 1994 in terms of colour, type and, in several cases, make, *i.e.* a white pickup, according to several witnesses to be a Toyota. In the Chamber's view, given that Ndayambaje had access to both a white and a red vehicle on 20 April 1994, it is plausible that both vehicles were present at Ngiryi Bridge on the morning of 20 April 1994 and that Ndayambaje used both vehicles during the interception of the refugees.

1410. The Chamber considers the testimony of Witnesses EV, RT and TP on this allegation are detailed, consistent, clear and convincing in terms of the sequence of events, the places and persons involved and time frames. It also considers to be consistent the testimonies of Witnesses EV, KEPIR, ALIZA, RT, TW, QAQ, QAL, RV FAG and Ndayambaje as to the vehicle used by Ndayambaje.

1411. The Defence led evidence through Witnesses ALIZA, TOVIA and AND-5 to show that Ndayambaje was not involved in the interception of refugees at Ngiryi Bridge. All three witnesses testified that refugees were intercepted at Ngiryi Bridge on 21 April 1994: Witness ALIZA stated that the interception took place on a Thursday morning about two weeks after the death of the President, which would have fallen on 21 April 1994;<sup>3364</sup> Witness TOVIA was certain of the date and referred to a report dated 22 April 1994 describing the event of the previous day;<sup>3365</sup> Witness AND-5 accompanied Witness TOVIA on an inspection of the site where the refugees were intercepted and also referred to 21 April 1994.<sup>3366</sup> According to their version of events, Ndayambaje was not involved in this incident.<sup>3367</sup> However, the Chamber recalls that the Prosecution's allegation as regards the events at Ngiryi Bridge focuses on 20 April 1994. The Chamber considers that, in view of the large number of refugees present in the vicinity of Gisagara and Ngiryi Bridge during the time frame in question, estimated by Witness ALIZA to have been between 2,000 and 5,000,<sup>3368</sup> it is quite possible that two different groups of refugees were intercepted on 20 and 21 April 1994. Indeed, Witness ALIZA's estimate of the numbers of refugees is consistent with Witness EV's testimony that the crowd of refugees at Ngiryi Bridge numbered in the thousands and Witness RT's testimony that there were approximately 20,000 refugees at Gisagara marketplace the night before their failed attempt to

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<sup>3363</sup> T. 26 February 2004 pp. 39, 41 (Witness EV); T. 22 October 2008 p. 38 (Ndayambaje); T. 23 October 2008 p. 23 (Ndayambaje); T. 4 September 2008 pp. 15, 19 (Witness KEPIR); T. 9 June 2008 p. 34 (ICS) (Witness ALIZA).

<sup>3364</sup> T. 4 June 2008 pp. 34-35 (ICS) (Witness ALIZA); T. 4 June 2008 pp. 46, 50 (Witness ALIZA).

<sup>3365</sup> T. 3 July 2008 p. 42 (Witness TOVIA); Defence Exhibit 555C (Ndayambaje) (Letter from the *bourgmestre* of Mugusa *commune* to the *préfet* of Butare, with the subject: Security Report, 22 April 1994).

<sup>3366</sup> T. 4 December 2006 pp. 54-56 (ICS) (Witness AND-5).

<sup>3367</sup> T. 4 June 2008 pp. 53, 58-60 (Witness ALIZA); T. 3 July 2008 p. 17 (Witness TOVIA); T. 3 July 2008 p. 24 (ICS) (Witness TOVIA); T. 5 December 2006 pp. 7-8 (ICS) (Witness AND-5).

<sup>3368</sup> T. 4 June 2004 pp. 46-48 (Witness ALIZA).



cross to Burundi.<sup>3369</sup> Even though Witness TOVIA only claimed that between 500 and 600 refugees were present at Ngiriyi Bridge, this could be explained by the witness' particular vantage point.

1412. The Chamber notes that the testimony of Witness ALIZA is also consistent with the testimony of Witnesses EV, RT and TP in a number of other respects: Witness ALIZA testified to the general movement of refugees from Gisagara to Burundi,<sup>3370</sup> their interception at Ngiriyi Bridge and return to Gisagara,<sup>3371</sup> the violence shown towards the refugees when they were intercepted<sup>3372</sup> and the alleged presence of Sindikubwabo at Gisagara.<sup>3373</sup> The Chamber considers Witness ALIZA's testimony to be reliable and credible in this regard.

1413. On the issue of Ndayambaje's absence from the scene of the event, the Chamber considers that in view of the number of refugees in the area at the time, as attested to by Witnesses EV, RT and ALIZA, it is quite possible Witnesses ALIZA, TOVIA and AND-5 simply did not have the same opportunities as the Prosecution witnesses to identify Ndayambaje in a crowd so large. The Chamber recalls Witness ALIZA's testimony that when he crossed Ngiriyi Bridge, there were rows of refugees ahead of him and even more behind.<sup>3374</sup> It would therefore have been difficult for him to pick out a single person from the midst of that crowd. Further, the Chamber notes that Witness ALIZA was only present at Gisagara for between 40 minutes and one hour.<sup>3375</sup> The Chamber also notes that Witness ALIZA may have felt inclined to omit any reference to Ndayambaje's presence at the scene of the events given that in 1991 the witness received financial assistance for school fees thanks to a decision taken by Ndayambaje as *bourgmestre*.<sup>3376</sup> Further, Witness TOVIA's claim that the policemen present at the scene did not point their guns at anyone is contradicted not only by Witnesses EV and RT but also by Witness ALIZA who stated that the policemen threatened the refugees by pointing their guns at them, ready to open fire.<sup>3377</sup> For these reasons, the Chamber does not consider that the testimony of Witnesses ALIZA, TOVIA or AND-5 casts doubt on the testimony of Witnesses EV and RT on the presence of Ndayambaje when the refugees were intercepted.

1414. In light of all of the foregoing, and bearing in mind the general issues relating to the Defence alibi evidence as explained above, the Chamber finds it established beyond a reasonable doubt that Ndayambaje travelled to Ngiriyi Bridge in Gisagara with several armed soldiers and *commune* policemen where they arrested Tutsi refugees fleeing to Burundi, fired shots in the air and threatened them with their guns, obliging them to return to Gisagara marketplace, and thereafter soldiers and policemen escorted the refugees on foot and later took them to Kabuye Hill, as alleged in Paragraph 6.30 of the Ndayambaje Indictment. Accordingly, the Chamber holds that the Prosecution has discharged its burden of proof in

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<sup>3369</sup> T. 26 February 2004 p. 38 (Witness EV); T. 10 March 2004 p. 50 (Witness RT); T. 11 March 2004 p. 23 (Witness RT).

<sup>3370</sup> T. 4 June 2008 pp. 35-38 (ICS) (Witness ALIZA).

<sup>3371</sup> T. 4 June 2008 pp. 46-48, 50-52, 55 (Witness ALIZA).

<sup>3372</sup> T. 4 June 2008 pp. 51-52 (Witness ALIZA).

<sup>3373</sup> T. 4 June 2008 p. 63 (Witness ALIZA).

<sup>3374</sup> T. 4 June 2008 p. 49 (Witness ALIZA).

<sup>3375</sup> T. 4 June 2008 p. 63 (Witness ALIZA).

<sup>3376</sup> T. 4 June 2008 p. 33 (ICS); T. 9 June 2008 p. 25 (Witness ALIZA).

<sup>3377</sup> T. 4 June 2008 pp. 51-52 (Witness ALIZA); T. 3 July 2008 p. 16 (Witness TOVIA).

respect of this allegation. Further, having regard to the testimony of both Prosecution and Defence witnesses as to unrest in the *commune* which caused Tutsi refugees to flee,<sup>3378</sup> the Chamber accepts that the refugees were Tutsis.

#### 3.6.5.4.2 22 April 1994 – Tutsis Attacked at Kabuye Hill

1415. The Defence led alibi evidence through Witness ALIZA that on 22 April 1994 the refugees were attacked by assailants armed with traditional weapons and that no guns were used during the attack.<sup>3379</sup> The Chamber notes that Witnesses EV and RT talked about guns being used during the attack on 22 April 1994.<sup>3380</sup> However, the Chamber notes that Witness RT also stated that civilians armed with traditional weapons participated in the attack on 22 April 1994.<sup>3381</sup> Further, Witness EV stated that Ndayambaje was present at Kabuye Hill on 22 April whereas Witness ALIZA testified that he did not see Ndayambaje or hear about his presence that day.<sup>3382</sup> The Chamber does not consider that Witness ALIZA's account casts a reasonable doubt on the testimony of the Prosecution witnesses. Witness ALIZA may have had a different experience on the hill due to his location and may have viewed a different aspect of the attack. Moreover, the Chamber observes that the fact that Witness ALIZA did not see Ndayambaje does not mean that the Accused was not present at all on that day. For these reasons, the Chamber does not consider that Witness ALIZA's testimony casts a reasonable doubt on the Prosecution's case.

1416. The Defence also led evidence through Witness MARVA that she and Ndayambaje remained in the IGA building of the *commune* office until Saturday 23 April 1994.<sup>3383</sup> Witness MARVA's evidence as it relates to 22 April 1994 is contradicted by Witnesses KEPIR, GABON and Ndayambaje, who all testified that the Accused left the *commune* office on two occasions on 22 April 1994 to go to Mugombwa to pick up a car and collect the Kirarambogo Health Centre vehicle.<sup>3384</sup>

1417. The Chamber notes the contradictions between the evidence of Witness MARVA on the one hand and Witnesses KEPIR and GABON on the other. This, together with the general issues arising from the Defence alibi evidence described above, undermine the credibility of

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<sup>3378</sup> T. 10 February 2004 p. 7 (Witness TW) (later that night [19 April 1994], Witness TW saw Tutsi homes being torched in his neighbourhood and decided to flee with his family); T. 11 November 2002 pp. 23-24 (ICS) (Witness QAQ) (on 20 April 1994, Hutus began killing Tutsis and burning down houses in his home *secteur*; he therefore fled and hid in the bush for three or four days); T. 1 March 2004 p. 8 (Witness FAG) (two weeks and two days after the death of the President, trouble erupted in Kibaye *commune*; Tutsis were attacked and houses were torched); T. 4 June 2008 pp. 34-36, 38 (ICS) (Witness ALIZA) (about two weeks after Habyarimana's death, disturbances started in Muganza *commune*. One Wednesday, around 5.00 p.m., there were gunshots and explosions coming from Remera hill. Witness ALIZA and the Tutsi members of his family decided to flee to Burundi with their livestock); T. 24 September 2008 p. 35 (Brother Stan) (Attacks against the Tutsis had commenced on 18 April 1994).

<sup>3379</sup> T. 5 June 2008 pp. 23-25, 27, 29 (ICS) (Witness ALIZA).

<sup>3380</sup> T. 26 February 2004 p. 67 (Witness EV); T. 10 March 2004 p. 67 (Witness RT); T. 11 March 2004 p. 61 (Witness RT).

<sup>3381</sup> T. 10 March 2004 pp. 67-68 (Witness RT).

<sup>3382</sup> T. 26 February 2004 pp. 61-62 (Witness EV); T. 5 June 2009 p. 29 (ICS) (Witness ALIZA).

<sup>3383</sup> T. 1 July 2008 pp. 25-26 (ICS); T. 2 July 2008 pp. 16-17 (ICS) (Witness MARVA).

<sup>3384</sup> T. 10 September 2008 pp. 55-57 (Witness KEPIR); T. 10 September 2008 pp. 59-60 (ICS) (Witness KEPIR); T. 1 September 2008 pp. 28-32 (ICS) (Witness GABON); T. 23 October 2008 pp. 51-52, 57-59, 61 (Ndayambaje).

the alibi evidence, which the Chamber finds not to be reasonably possibly true in relation to the alleged events on 22 April 1994.

1418. The Prosecution led evidence through Witnesses EV and RT in support of the allegation that on 22 April 1994, Ndayambaje, *commune* policemen, *gendarmes*, soldiers and civilians armed with traditional tools attacked the Tutsis at Kabuye Hill and that at night, survivors of the attack were prevented from escaping by armed civilians. Both witnesses testified that the refugees gathered on Kabuye Hill were attacked that day.

1419. Witness RT testified that on 22 April 1994, there were approximately 40,000 people gathered on Kabuye Hill.<sup>3385</sup> Witness EV testified that when he arrived at Kabuye Hill, which would have fallen on 20 April 1994, there were as many as 50,000 present.<sup>3386</sup> The Chamber considers these figures to be consistent given that, according to Witness EV's testimony, the refugees had already been attacked on 20 and 21 April 1994<sup>3387</sup> and many would have died. This would explain why there were fewer refugees on the hill when Witness RT observed the crowd on 22 April 1994. Although Witness QAQ estimated that there were only 300 refugees near him, the Chamber does not consider his account to be inconsistent with that of EV and RT because Witness QAQ explained that he could not see all of the refugees and that in any event, many came later on.<sup>3388</sup> The Chamber further recalls that Witness QAQ's testimony concerns a different day, *i.e.* 23 or 24 April 1994, when many of the refugees may have already fled or been killed.<sup>3389</sup>

1420. According to Witness EV, on the third day of his stay at Kabuye Hill, which would have fallen on 22 April 1994, he saw Ndayambaje arrive at around 10.00 a.m. from a distance of about 20 metres.<sup>3390</sup> At that time, the refugees, including the witness, were being pursued by a group of assailants who were approaching Kabuye Hill from neighbouring Dahwe Hill, about 100 metres away.<sup>3391</sup> The refugees were attacked and shots were fired.<sup>3392</sup> According to Witness EV, Ndayambaje left at around 3.00 or 4.00 p.m. and the attacks on the refugees continued throughout the night.<sup>3393</sup> The only figures of authority to stay on the hill at night throughout Witness EV's stay were those who were surrounding the refugees.<sup>3394</sup> Similarly, Witness RT testified that the day after his arrival, a Friday at around 9.00 or 10.00 a.m., which would also have fallen on 22 April 1994, soldiers and policemen opened fire on the refugees from all directions.<sup>3395</sup> Hutu civilians armed with machetes and hoes also participated in the attack.<sup>3396</sup> The attackers left between 2.00 and 3.00 p.m.<sup>3397</sup>

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<sup>3385</sup> T. 10 March 2004 p. 59 (Witness RT).

<sup>3386</sup> T. 25 February 2004 p. 71; T. 26 February 2004 p. 47 (Witness EV).

<sup>3387</sup> T. 25 February 2004 pp. 73-75; T. 26 February 2004 pp. 54-60 (Witness EV).

<sup>3388</sup> T. 11 November 2002 p. 25 (ICS); T. 12 November 2002 pp. 85-86 (ICS) (Witness QAQ).

<sup>3389</sup> T. 11 November 2002 pp. 23-25 (ICS) (Witness QAQ).

<sup>3390</sup> T. 26 February 2004 pp. 61-63 (Witness EV).

<sup>3391</sup> T. 26 February 2004 pp. 52, 63 (Witness EV).

<sup>3392</sup> T. 26 February 2004 p. 67 (Witness EV).

<sup>3393</sup> T. 26 February 2004 pp. 67-68 (Witness EV). The Chamber notes the English transcript says the vehicles returned at 3.00 or 4.00 p.m., whereas the French transcript says the vehicles left at 3.00 or 4.00 p.m.: T. 26 February 2004 p. 78 (Witness EV) (French).

<sup>3394</sup> T. 25 February 2004 p. 76 (Witness EV).

<sup>3395</sup> T. 10 March 2004 pp. 59, 66-67; T. 11 March 2004 p. 61 (Witness RT).

<sup>3396</sup> T. 10 March 2004 pp. 67-68 (Witness RT).

1421. The Chamber recalls that only Witness EV testified that Ndayambaje was present during the attack on 22 April 1994 and that the refugees were surrounded. However, the Chamber also notes the existence of circumstantial evidence that points to Ndayambaje's general involvement in the Kabuye Hill events and supports the contention that the refugees were surrounded. In this regard, the Chamber recalls that Witness EV testified that Ndayambaje was present or participated in attacks at Kabuye Hill on each day of the witness' stay from 20 to 24 April 1994.<sup>3398</sup> Witness RT also identified Ndayambaje as being present at Kabuye Hill distributing weapons on the Saturday following his arrival,<sup>3399</sup> which would have fallen on 23 April 1994. Moreover, Witness TW testified that he saw Ndayambaje at Kabuye Hill on three consecutive days transporting armed attackers. By the Chamber's estimation, these days would have fallen on 23, 24 and 26 April 1994. The Chamber considers that there is considerable testimony placing Ndayambaje at Kabuye Hill on 20, 21, 23, 24 and 26 April 1994 which supports the contention that he was also present on 22 April 1994. In connection with the allegation that the refugees were surrounded, the Chamber recalls Witness RT's testimony that on both nights he spent at Gisagara marketplace before being escorted to Kabuye Hill, the refugees were guarded by policemen until morning.<sup>3400</sup> In addition, Witness EV testified that the refugees were escorted from Gisagara marketplace to Kabuye Hill by soldiers and policemen.<sup>3401</sup> Witness EV recalled the presence of soldiers during his first night on the hill.<sup>3402</sup>

1422. The Chamber considers Witness EV's testimony on the presence of Ndayambaje during the attack on 22 April 1994 and the subsequent surrounding of refugees to be credible and convincing. It further considers that the circumstantial evidence described above on the Accused's presence at Kabuye Hill on days other than 22 April 1994 and on the refugees being surrounded demonstrates that Ndayambaje was closely involved in the series of events at Kabuye Hill and thus corroborates Witness EV's testimony that Ndayambaje was also present on 22 April 1994. Furthermore, the Chamber finds Witness RT's testimony on the involvement of policemen, soldiers and civilians armed with traditional weapons to be convincing and similarly well-corroborated by circumstantial evidence from Witnesses EV and TW.

1423. In light of the foregoing, the Chamber finds that the Prosecution has established that Ndayambaje was present at Kabuye Hill on 22 April 1994 when the refugees were attacked by soldiers, policemen and armed civilians and that the refugees were guarded at night to prevent them from escaping.

1424. Having considered the totality of the evidence admitted on Paragraph 6.31 of the Ndayambaje Indictment, and bearing in mind the general issues relating to the Defence alibi evidence as explained above, the Chamber considers it established beyond a reasonable doubt that on 22 April 1994, Ndayambaje was present during an attack against Tutsis who had gathered on Kabuye Hill in which "large",<sup>3403</sup> albeit unquantified, numbers of Tutsis were

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<sup>3397</sup> T. 10 March 2004 pp. 61-62, 68; T. 11 March 2004 p. 61 (Witness RT).

<sup>3398</sup> T. 25 February 2004 p. 76; T. 26 February 2004 pp. 61, 75 (Witness EV).

<sup>3399</sup> T. 10 March 2004 pp. 68-70 (Witness RT).

<sup>3400</sup> T. 10 March 2004 p. 57; T. 11 March 2004 pp. 35-36, 53 (Witness RT).

<sup>3401</sup> T. 25 February 2004 p. 71; T. 26 February 2004 pp. 45-47 (Witness EV).

<sup>3402</sup> T. 26 February 2004 p. 49 (Witness EV).

<sup>3403</sup> T. 10 March 2004 p. 68 (Witness RT) (referring to the attack of Friday 22 April 1994 alone).

killed. The Chamber further finds that soldiers, policemen with guns and civilians armed with traditional weapons participated in the attack and that at night, survivors of the attack were prevented from escaping. The Chamber therefore finds that the Prosecution has discharged its burden of proof in relation to this allegation.

#### 3.6.5.4.3 23 and 24 April 1994 – Tutsis Attacked at Kabuye Hill, Transportation of Attackers and Distribution of Weapons

1425. The Prosecution led evidence through Witnesses EV, RT, TP, TW, FAG, QBZ, QAQ and QAL to demonstrate that attacks at Kabuye Hill continued on 23 and 24 April 1994, and that Ndayambaje transported attackers to Kabuye Hill, issued them with weapons and personally threw grenades into the crowd of refugees. The Chamber notes that all of these witnesses testified to knowing Ndayambaje before the 1994 events. Witnesses EV and QAQ testified that they had known Ndayambaje since he was a child;<sup>3404</sup> Witness QAL testified that Ndayambaje had officiated at her marriage in 1987;<sup>3405</sup> Witness QBZ testified that he had lived with Ndayambaje when he was a student;<sup>3406</sup> Witness FAG testified that he had seen Ndayambaje approximately 10 times before the events in 1994;<sup>3407</sup> and Witnesses RT, TP and TW testified that they knew Ndayambaje before the events of 1994 in his capacity as *bourgmestre* of Muganza.<sup>3408</sup> This prior knowledge was not contested by the Ndayambaje Defence.

##### 3.6.5.4.3.1 Transportation of Attackers

1426. Prosecution Witnesses EV, RT, TW and QAQ testified to seeing Ndayambaje aboard or arriving with vehicles transporting individuals to Kabuye Hill who later participated in the attacks of 23 and 24 April 1994. Witness EV testified that he saw Ndayambaje arrive in a convoy of vehicles, one of which was full of Burundian refugees on the fourth day of his stay, which would have fallen on 23 April 1994.<sup>3409</sup> According to Witness EV, these Burundians subsequently attacked the Tutsis with grenades.<sup>3410</sup> Witness RT stated that on 23 April 1994, he saw Ndayambaje in a white Toyota *commune* vehicle that was carrying approximately 10 soldiers.<sup>3411</sup> He testified that he saw the same vehicle make about three round-trips to and from the hill transporting people, although he did not see Ndayambaje during those trips.<sup>3412</sup> Witness TW saw Ndayambaje at Kabuye Hill on 24 April 1994 driving a white double-cabin Toyota Hilux carrying Hutu civilians armed with traditional weapons.<sup>3413</sup> These civilians later attacked the Tutsis.<sup>3414</sup> On the day following his arrival at Kabuye Hill, which would have fallen on 24 or 25 April 1994, Witness QAQ saw Ndayambaje driving a white vehicle

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<sup>3404</sup> T. 25 February 2004 p. 67 (Witness EV); T. 11 November 2002 p. 46 (ICS) (Witness QAQ).

<sup>3405</sup> T. 25 February 2004 p. 7 (Witness QAL).

<sup>3406</sup> T. 23 February 2004 p. 35; T. 23 February 2004 pp. 37, 41-42 (ICS) (Witness QBZ).

<sup>3407</sup> T. 1 March 2004 p. 36 (Witness FAG).

<sup>3408</sup> T. 10 March 2004 p. 76 (Witness RT); T. 11 February 2004 p. 37 (Witness TP); T. 10 February 2004 p. 15 (Witness TW).

<sup>3409</sup> T. 26 February 2004 pp. 68-70 (Witness EV).

<sup>3410</sup> T. 26 February 2004 p. 70 (Witness EV).

<sup>3411</sup> T. 10 March 2004 pp. 68-70; T. 11 March 2004 pp. 67-68, 71 (Witness RT).

<sup>3412</sup> T. 10 March 2004 p. 69; T. 11 March 2004 pp. 71-72, 75-76, 79 (Witness RT).

<sup>3413</sup> T. 10 February 2004 p. 8; T. 11 February 2004 pp. 44-45 (Witness TW).

<sup>3414</sup> T. 11 February 2004 p. 44 (Witness TW).

transporting over five *gendarmes* to Kabuye Hill.<sup>3415</sup> He later witnessed the *gendarmes* shooting at the refugees.<sup>3416</sup>

1427. Witness TP testified that on 24 April 1994 she saw a convoy of vehicles, led by Ndayambaje's vehicle, arrive at Kabuye Hill.<sup>3417</sup> However, the Chamber considers that Witness TP's evidence on the events at Kabuye Hill on that day contain a number of serious discrepancies that render her testimony unreliable, but only as it relates to 24 April 1994. In this connection, the Chamber notes that she initially testified that she did not see the three buses in the convoy but later stated that she did in fact see them and that they were white and green.<sup>3418</sup> In addition, Witness TP stated that she could not describe the uniforms of the passengers because it was dark and raining although she previously described there being a bright moon.<sup>3419</sup> Furthermore, she testified that an attack followed the arrival of the convoy at 7.30 p.m. however subsequently claimed that the attack started at 6.00 a.m.<sup>3420</sup> For these reasons, the Chamber will not rely on the testimony of Witness TP as it relates to 24 April 1994.

1428. Prosecution Witness QBZ also testified that after meeting resistance from the Tutsis gathered at Kabuye Hill, Ndayambaje went to Butare for military reinforcements.<sup>3421</sup> The reinforcements were then transported to Kabuye in the Ndora and Muganza *commune* vehicles and a bus.<sup>3422</sup> Witness QBZ stated that this event occurred about one week after the death of the President, *i.e.* around 13 April 1994.<sup>3423</sup> Prosecution Witness FAG testified that about two weeks and five days after the President's death, *i.e.* around 25 April 1994, he saw Ndayambaje transporting people in a Hilux vehicle belonging to Muganza *commune* in the direction of Kabuye, including Burundians, policemen and civilians armed with traditional weapons.<sup>3424</sup>

1429. The Chamber notes that although Witness QBZ provided a slightly different time frame for the alleged transportation of attackers, his testimony is consistent with regard to the material facts. As regards Witness FAG, the Chamber notes that the time frame advanced by this witness corresponds to the dates during which Ndayambaje was alleged to have transported attackers in Paragraph 6.32 of the Indictment. The Chamber is aware that Witness FAG confessed to having participated in various attacks in 1994, spent eight years in prison and was released in 2003,<sup>3425</sup> before he gave evidence to this Tribunal in 2004. Despite being released from prison he nevertheless still awaited a decision by a *Gacaca* court at the time of his testimony.<sup>3426</sup> The Chamber therefore treats his testimony with appropriate caution considering he may have had an incentive to lie during his testimony in order to obtain

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<sup>3415</sup> T. 11 November 2002 pp. 26, 30-31 (ICS) (Witness QAQ).

<sup>3416</sup> T. 11 November 2002 p. 32 (ICS) (Witness QAQ).

<sup>3417</sup> T. 11 February 2004 pp. 13-14, 24; T. 12 February 2004 p. 76 (Witness TP).

<sup>3418</sup> T. 11 February 2004 pp. 13, 16; T. 12 February 2004 p. 75 (Witness TP).

<sup>3419</sup> T. 11 February 2004 p. 14; T. 12 February 2004 pp. 75-76 (Witness TP).

<sup>3420</sup> T. 11 February 2004 pp. 14, 18; T. 12 February 2004 pp. 71-73 (Witness TP).

<sup>3421</sup> T. 23 February 2004 pp. 25-28; T. 24 February 2004 pp. 58, 60-62, 64, 66 (ICS) (Witness QBZ).

<sup>3422</sup> T. 24 February 2004 p. 69 (ICS) (Witness QBZ).

<sup>3423</sup> T. 23 February 2004 p. 68 (ICS); T. 23 February 2004 pp. 22, 25; T. 24 February 2004 pp. 58, 61-62 (ICS) (Witness QBZ).

<sup>3424</sup> T. 1 March 2004 pp. 18-19 (ICS); T. 2 March 2004 pp. 37, 40-44; T. 3 March 2004 pp. 6-8 (Witness FAG).

<sup>3425</sup> T. 1 March 2004 p. 6 (ICS); T. 1 March 2004 pp. 47-50 (Witness FAG).

<sup>3426</sup> T. 3 March 2004 p. 45 (ICS) (Witness FAG).

preferential treatment in connection with his *Gacaca* sentence. Nevertheless, the Chamber found his evidence to be detailed as regards dates, the number of trips Ndayambaje allegedly made through Bishya and the identification of the area to and from which the Accused's vehicle was moving. Furthermore, his testimony is partly corroborated by the account of Witnesses EV, TW, RT and QAQ as to the transportation of Burundians and armed civilians, and the use of a Hilux vehicle.<sup>3427</sup> The Chamber also notes that Witness FAG testified to having seen Ndayambaje before the events of 1994 and that this was not contested.<sup>3428</sup>

1430. The Chamber recalls the testimony of Ndayambaje and KEPİR that in 1994, Muganza *commune* owned a white single-cabin Toyota Stout.<sup>3429</sup> The Chamber notes that Witness TW testified to having seen a white double-cabin Toyota Hilux involved in the transportation of attackers. Witness RT stated that Ndayambaje was travelling in a white Toyota *commune* vehicle. Witness QAQ simply referred to a white vehicle while Witness FAG referred to a Hilux vehicle belonging to the *commune*. The Chamber considers that the description provided by Witnesses TW, RT, QAQ and FAG of the vehicle used by Ndayambaje to transport attackers is corroborated by the descriptions given by Ndayambaje, KEPİR, ALIZA, EV, QAL, RV and FAG of the vehicle Ndayambaje had access to and/or used on other occasions between 20 and 24 April 1994 in terms of colour, type and, in several cases, make, *i.e.* a white pickup, according to several witnesses to be a Toyota. Furthermore, the evidence points to the actual participation of the persons transported by Ndayambaje in the massacres.

1431. The Chamber therefore considers the testimony of Witnesses EV, RT, TW, QAQ and FAG to be credible on the issue of Ndayambaje's involvement in the transportation of attackers and therefore finds that on 23 and 24 April 1994, Ndayambaje transported soldiers, civilians and policemen to Kabuye Hill where they participated in attacks against Tutsis.

#### 3.6.5.4.3.2 *Distribution of Weapons*

1432. Prosecution Witnesses RT, EV and QAL testified to Ndayambaje distributing weapons at Kabuye Hill. Witness RT testified the day after his arrival at Kabuye Hill, which would have fallen on 23 April 1994, he saw Ndayambaje arrive at Kabuye Hill in a white Toyota *commune* vehicle.<sup>3430</sup> The witness saw Ndayambaje distributing what he thought to be grenades to the attackers and supervising their distribution.<sup>3431</sup> While he did not actually see grenades in Ndayambaje's hands, Witness RT stated that the Accused must have been distributing grenades because many assailants subsequently threw grenades at the refugees and the grenades could only have come from the Accused.<sup>3432</sup>

1433. The Chamber notes Witness TW's testimony that Ndayambaje was present at Kabuye Hill but that he did not see Ndayambaje distribute weapons to the attackers, which differs from

<sup>3427</sup> T. 26 February 2004 pp. 68-70 (Witness EV); T. 10 February 2004 p. 8 (Witness TW); T. 11 February 2004 pp. 44-45 (Witness TW); T. 10 March 2004 pp. 68-70 (Witness RT); T. 11 March 2004 pp. 67-68, 71 (Witness RT); T. 11 November 2002 pp. 26, 30-31 (ICS) (Witness QAQ).

<sup>3428</sup> T. 1 March 2004 p. 36 (Witness FAG).

<sup>3429</sup> T. 22 October 2008 p. 38 (Ndayambaje); T. 23 October 2008 p. 23 (Ndayambaje); T. 4 September 2008 pp. 15, 19 (Witness KEPİR).

<sup>3430</sup> T. 10 March 2004 pp. 68-70; T. 11 March 2004 pp. 67-68, 71 (Witness RT).

<sup>3431</sup> T. 10 March 2004 pp. 68-70 (Witness RT).

<sup>3432</sup> T. 11 March 2004 p. 71 (Witness RT).

the account given by Witnesses EV and RT.<sup>3433</sup> However, the Chamber is of the view that these witnesses may not have had the same opportunities to witness the events in question. The Chamber also notes that there were many thousands of refugees on Kabuye Hill, which covered an expansive area.

1434. The Chamber recalls that only Witness RT testified that Ndayambaje distributed weapons within the time frame covered by Paragraph 6.32 of the Indictment. However, the Chamber also notes the existence of circumstantial evidence that supports the allegation that Ndayambaje was generally involved in distributing weapons at Kabuye Hill. In this connection, the Chamber recalls that Witness EV gave a detailed and consistent eyewitness account that on the day he arrived at Kabuye Hill, which would have fallen on 20 April 1994, Ndayambaje arrived at Kabuye Hill in a white Hilux driven by Charles Habakurama.<sup>3434</sup> Ndayambaje brought grenades in his vehicle that were distributed to the attackers and then used in the ensuing massacre.<sup>3435</sup> Witness QAL also testified that she saw Ndayambaje driving the *commune's* white Toyota pickup carrying guns and grenades in the direction of Kabuye Hill one Thursday in April 1994.<sup>3436</sup>

1435. Moreover, the Chamber observes that Witnesses RT, EV and QAL gave similar descriptions of the vehicle Ndayambaje was travelling in when he was allegedly carrying or distributing weapons: a white Toyota *commune* vehicle, a white Hilux vehicle and the *commune's* white Toyota pickup, respectively.<sup>3437</sup> The Chamber considers that the description of Ndayambaje's vehicle as provided by Witnesses RT, EV and QAL is corroborated by the descriptions given by Ndayambaje, KEPIR, ALIZA, TW, QAQ, RV and FAG of the vehicle Ndayambaje had access to and/or used on other occasions between 20 and 24 April 1994 in terms of colour, type and, in several cases, make, *i.e.* a white pickup, according to several witnesses to be a Toyota. In addition, Witness EV testified that the vehicle was being driven by Charles Habakurama.<sup>3438</sup> This is also supported by the testimony of Ndayambaje and KEPIR that Charles Habakurama was the driver of Muganza *commune* in April 1994.<sup>3439</sup>

1436. On cross-examination, Witness EV was referred to his written statements of 20 June 1995, 4 October 1995 and 14 November 1995, in which the witness did not mention that Ndayambaje was among the crowd on 20 April 1994.<sup>3440</sup> The witness stated that the omission must be due to the error of the investigators who recorded his statements and that it was impossible for him to mention all the details of the events in his statements.<sup>3441</sup> The Chamber accepts Witness EV's explanation and finds his testimony to be credible. The Chamber considers that it would have been impossible for him to remember the details of all the events he experienced at Kabuye Hill. In view of the passage of time and the trauma associated with

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<sup>3433</sup> T. 11 February 2004 pp. 71-72 (Witness TW).

<sup>3434</sup> T. 25 February 2004 p. 75 (Witness EV).

<sup>3435</sup> T. 25 February 2004 p. 75; T. 26 February 2004 p. 60 (Witness EV).

<sup>3436</sup> T. 25 February 2004 pp. 8-9, 35 (Witness QAL).

<sup>3437</sup> T. 10 March 2004 pp. 68-69 (Witness RT); T. 11 March 2004 pp. 67-68, 71 (Witness RT); T. 25 February 2004 p. 75 (Witness EV); T. 25 February 2004 pp. 8-9, 35 (Witness QAL).

<sup>3438</sup> T. 25 February 2004 p. 75 (Witness EV).

<sup>3439</sup> T. 19 November 2008 pp. 9-10 (Ndayambaje); T. 4 September 2008 p. 19 (Witness KEPIR).

<sup>3440</sup> T. 27 February 2004 pp. 5-6, 8-9, 12 (Witness EV).

<sup>3441</sup> T. 27 February 2004 pp. 5-6, 8-9, 12 (Witness EV).



the events, Witness EV could not have been expected to provide a full description of every event that occurred at Kabuye Hill during his five-day stay.

1437. As for Witness QAL, the Chamber considers that she would not have had any reason to lie during her testimony. In this connection, the Chamber notes that Witness QAL was a Hutu and that the Accused officiated at her wedding. Accordingly, the Chamber considers the testimony of Witness QAL to be reliable on this particular issue.

1438. The Chamber finds that the eyewitness account of Witness RT on the distribution of grenades by Ndayambaje on 23 April 1994 to be clear and convincing and further finds that the testimony of Witnesses EV and QAL lends weight to Witness RT's account of weapons distribution by Ndayambaje.

1439. The Chamber has also considered evidence adduced by the Prosecution through Witnesses RV and FAU that Ndayambaje distributed weapons at the Muganza *commune* office for the purposes of arming the attackers at Kabuye Hill. Witness RV testified that Ndayambaje came to the *commune* office at 2.00 p.m. on 23 April 1994 with a *commune* policeman, took ammunition and a gun from the weapons store and left in the direction of Kabuye Hill.<sup>3442</sup> The Chamber recalls that in cross-examination, Witness RV also testified that on the morning of 23 April 1994, he tried to prevent the deputy police brigadier from taking bullets from the weapons store.<sup>3443</sup> He added that he went to the dispensary in Mugombwa where Habiyambere, the chairman of the MRND in Muganza *commune*, came to complain to him that he wanted guns.<sup>3444</sup> Ndayambaje went to Kibayi to look for guns while Habiyambere went with the witness to the *commune* office.<sup>3445</sup> Witness RV waited until Ndayambaje had returned from Kibayi before he opened the weapons store.<sup>3446</sup> The Chamber finds that these two versions are not inconsistent with regard to the sequence of events, simply that Witness RV did not mention the incident with the deputy police brigadier in the morning of 23 April 1994 until cross-examination. The Chamber finds Witness RV's testimony on this allegation to be detailed, credible and consistent. Furthermore, his testimony is partly corroborated by Witness FAU. The Chamber notes that it must treat Witness RV's testimony with appropriate caution; he was a figure of authority in April 1994 in Butare, was a detained witness at the time of his testimony, had previously confessed to aiding in the murder of Tutsis in *Gacaca* proceedings, and was subject to potential further criminal proceedings in Rwanda.<sup>3447</sup>

1440. The Chamber observes that Witness FAU was also a detained witness at the time of his testimony and was awaiting trial in Rwanda for crimes related to the 1994 genocide.<sup>3448</sup> Appropriate caution must therefore be exercised when deliberating on his evidence as he may have had incentives to implicate the Accused in order to secure favourable or lenient treatment. Witness FAU testified that he went to Bishya in April 1994 where he found Ndayambaje with

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<sup>3442</sup> T. 16 February 2004 pp. 44, 46-47 (ICS) (Witness RV).

<sup>3443</sup> T. 18 February 2004 p. 27 (ICS) (Witness RV).

<sup>3444</sup> T. 18 February 2004 pp. 29-30 (ICS) (Witness RV).

<sup>3445</sup> The Chamber notes the English transcript erroneously states Kabuye: T. 18 February 2004 pp. 27, 29-30 (ICS) (Witness RV), rather than Kibayi which appears in the French transcript: T. 18 February 2004 pp. 33, 35 (HC) (Witness RV) (French).

<sup>3446</sup> T. 18 February 2004 p. 30 (ICS) (Witness RV); T. 18 February 2004 p. 36 (HC) (Witness RV) (French).

<sup>3447</sup> T. 17 February 2004 pp. 33-36 (ICS) (Witness RV).

<sup>3448</sup> T. 8 March 2004 pp. 84-86 (ICS) (Witness FAU).

Charles, a *commune* policeman.<sup>3449</sup> Ndayambaje told the witness and others present that they should attack Kabuye Hill, where Tutsis had taken refuge.<sup>3450</sup> Witness FAU travelled with Ndayambaje in a vehicle belonging to the international organisation together with 20 others to the Muganza *commune* office.<sup>3451</sup> Brigadier Pierre took a gun from the weapons store and Witness FAU accompanied two policemen and Ndayambaje to Kabuye Hill.<sup>3452</sup>

1441. On cross-examination, Witness FAU testified that Brigadier Pierre took out three Kalashnikovs from the weapons store: he kept one for himself and gave one each to Makubwa and Ferdinand.<sup>3453</sup> The Chamber finds that his testimony was clarified during cross-examination and corroborates Witness RV's testimony that weapons were distributed at Muganza *commune* office, which were later used against Tutsis during the massacre at Kabuye Hill. In this connection, the Chamber observes that Witnesses FAU and RV testified that Charles Habakurama, the Muganza *commune* office driver, accompanied Ndayambaje. This is consistent with the testimony of Ndayambaje and KEPIR that Charles Habakurama was the driver of Muganza *commune* in April 1994.<sup>3454</sup>

1442. The Chamber notes that there were some contradictions in the testimony of Witnesses RV and FAU. Witness FAU testified that the weapons distribution took place in the morning and that the weapons store was opened by Brigadier Pierre who gave guns to two policemen and took one for himself.<sup>3455</sup> According to Witness RV's account, on the morning of 23 April 1994 he stopped the deputy to the police brigadier from taking bullets from the weapons store at the *commune* office.<sup>3456</sup> He testified that at 2.00 p.m. that day, Ndayambaje came to the *commune* office with Witness FAU in search of weapons to use at Kabuye Hill.<sup>3457</sup> Witness RV testified that he opened the weapons store for Ndayambaje and Charles took ammunition and a gun before leaving with Ndayambaje for Kabuye Hill.<sup>3458</sup>

1443. The Chamber considers that both Witness RV and Witness FAU gave credible evidence on this allegation. In the Chamber's view, the contradictions in these two versions of events do not cast doubt on the two eyewitness accounts that Ndayambaje was involved in the distribution of weapons at the Muganza *commune* office on 23 April 1994.

1444. The Chamber therefore finds that the Prosecution has proven beyond a reasonable doubt that Ndayambaje distributed weapons at Kabuye Hill and the Muganza *commune* office and that these weapons were later used in the massacres at Kabuye Hill.

#### 3.6.5.4.3.3 Attacks of 23 and 24 April 1994

1445. The Defence led alibi evidence through Witness GABON that Ndayambaje was at the *commune* office in the morning of Saturday 23 April 1994, but then left with his family to

<sup>3449</sup> T. 4 March 2004 pp. 67-68; T. 9 March 2004 p. 40 (Witness FAU).

<sup>3450</sup> T. 4 March 2004 p. 70; T. 9 March 2004 pp. 42-43 (Witness FAU).

<sup>3451</sup> T. 4 March 2004 pp. 70-71; T. 9 March 2004 p. 43 (Witness FAU).

<sup>3452</sup> T. 4 March 2004 p. 72; T. 9 March 2004 pp. 44-45 (Witness FAU).

<sup>3453</sup> T. 9 March 2004 p. 45 (Witness FAU).

<sup>3454</sup> T. 19 November 2008 pp. 9-10 (Ndayambaje); T. 4 September 2008 p. 19 (Witness KEPIR).

<sup>3455</sup> T. 9 March 2004 p. 45 (Witness FAU).

<sup>3456</sup> T. 18 February 2004 p. 27 (ICS) (Witness RV).

<sup>3457</sup> T. 16 February 2004 pp. 44, 46 (ICS) (Witness RV).

<sup>3458</sup> T. 16 February 2004 p. 47 (ICS) (Witness RV).

travel to Kibayi *commune*.<sup>3459</sup> According to Witness KEPIR, Ndayambaje was at the *commune* office on Saturday 23 April 1994 until the afternoon when he left with his family for Kibayi.<sup>3460</sup> Witness BIDI testified that Ndayambaje came to stay at her family home on Saturday 23 April 1994.<sup>3461</sup> According to her, the Accused did not leave the house on Sunday 24 April 1994.<sup>3462</sup> Witness BIDI disagreed with the testimony of Prosecution Witnesses EV, QAQ, TW and TP allegedly placing Ndayambaje at Kabuye Hill on the morning of Sunday 24 April 1994, and reiterated that Ndayambaje did not leave her house on that day.<sup>3463</sup> Witness MARVA testified to being with Ndayambaje at the *commune* office until Saturday 23 April 1994 when she fled with the Accused and others to Kibayi *commune* where they stayed all week.<sup>3464</sup> Witness SABINE testified that he was present at Kabuye Hill on a Sunday around two weeks after the death of the President, which would have fallen on 24 April 1994.<sup>3465</sup> He stated that he did not see Ndayambaje or hear that he had been present on Kabuye or Dahwe Hills that Sunday and disagreed with the testimony of Prosecution Witnesses QAQ and TW that Ndayambaje allegedly transported attackers to Kabuye Hill on Sunday 24 April 1994.<sup>3466</sup>

1446. The Chamber notes that Witnesses GABON, KEPIR, MARVA and BIDI contended that Ndayambaje left the *commune* office in the afternoon of 23 April 1994 and travelled with his family and Witness MARVA to a friend's house in Kibayi *commune* where he remained all day on 24 April 1994. The Chamber also recalls Brother Stan's testimony that in the afternoon of 23 April 1994, he saw Ndayambaje on the road near Saga camp and that Ndayambaje told the witness that he was with his family on his way to Kibayi.<sup>3467</sup> However, the Chamber considers that the general issues arising from the Defence alibi evidence, as described above, adversely affect the credibility of the alibi to such an extent that it cannot be said to be reasonably possibly true.

1447. As regards the evidence of Witness SABINE, the Chamber notes that this witness has convictions for genocide-related killings and his testimony should therefore be treated with appropriate caution. In any event, the fact that he did not see Ndayambaje at Kabuye Hill does not mean that Ndayambaje was not present.

1448. The Chamber observes that the evidence of Prosecution Witnesses EV, RT, TW and QAQ, all of whom are Tutsi survivors of the Kabuye Hill massacre, is consistent as to the events covered by Paragraph 6.32 of the Ndayambaje Indictment: Witness EV testified to major attacks on the fourth and fifth days of his stay at Kabuye Hill (which would have fallen on 23 and 24 April 1994);<sup>3468</sup> Witness RT stated that attacks took place on 23 and 24 April 1994;<sup>3469</sup> Witness TW described an attack on 24 April;<sup>3470</sup> and Witness QAQ gave evidence

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<sup>3459</sup> T. 1 September 2008 pp. 35-36, 39-42 (ICS) (Witness GABON).

<sup>3460</sup> T. 10 September 2008 pp. 64, 68, 70, 72; T. 10 September 2008 p. 73 (ICS) (Witness KEPIR).

<sup>3461</sup> T. 30 June 2008 pp. 14-16 (ICS) (Witness BIDI).

<sup>3462</sup> T. 30 June 2008 pp. 16-18 (Witness BIDI).

<sup>3463</sup> T. 30 June 2008 pp. 17-18 (ICS) (Witness BIDI).

<sup>3464</sup> T. 1 July 2008 pp. 27-28, 30 (ICS) (Witness MARVA).

<sup>3465</sup> T. 12 June 2008 p. 9; T. 12 June 2008 p. 16 (ICS) (Witness SABINE).

<sup>3466</sup> T. 12 June 2008 pp. 22-24 (Witness SABINE).

<sup>3467</sup> T. 18 September 2008 p. 44 (Brother Stan).

<sup>3468</sup> T. 26 February 2004 pp. 68-78 (Witness EV).

<sup>3469</sup> T. 10 March 2004 pp. 68, 71; T. 11 March 2004 pp. 66, 80 (Witness RT).

<sup>3470</sup> T. 10 February 2004 pp. 11-12; T. 11 February 2004 p. 44 (Witness TW).

that an attack occurred on 23 or 24 April 1994.<sup>3471</sup> Defence Witness ALIZA also testified that attacks took place on 23 and 24 April 1994.<sup>3472</sup> With regard to the first attack on 23 April 1994, Witnesses EV and RT stated that Ndayambaje arrived in the morning around 9.00 or 10.00 a.m. and testified that the refugees were attacked with grenades.<sup>3473</sup> Witness RT testified that Ndayambaje arrived in a white Toyota *commune* vehicle and described how an attack was launched by assailants who had gathered in the area of Dahwe.<sup>3474</sup> More specifically, Witness RT stated that the attackers included soldiers and *commune* police.<sup>3475</sup> Witness ALIZA also stated that soldiers shot at the refugees and threw grenades.<sup>3476</sup> Witness QAQ also testified that on 23 or 24 April 1994, Ndayambaje arrived around 10.00 a.m. in a white vehicle and saw that *gendarmes* were positioned on Dahwe Hill, opposite Kabuye Hill, who subsequently shot at the refugees.<sup>3477</sup> The *Interahamwe* also attacked the refugees with clubs and machetes.<sup>3478</sup> The Chamber notes that the testimony of Witnesses RT and QAQ on Ndayambaje's use of a white vehicle is supported by the testimony of Ndayambaje and Witness KEPIR who stated that in 1994, Muganza *commune* owned a white single-cabin Toyota Stout.<sup>3479</sup> With regard to the second attack of 24 April 1994, Witnesses EV and TW testified that they saw Ndayambaje arrive at Kabuye Hill between 10.00 a.m. and noon.<sup>3480</sup> Witnesses EV and RT both described how it rained on 24 April<sup>3481</sup> and Witnesses RT and TW stated that the attack involved the use of guns.<sup>3482</sup> Witness TW described how the refugees used stones to defend themselves.<sup>3483</sup> Witness QAQ also stated that on 23 or 24 April 1994, the refugees under attack defended themselves by throwing stones.<sup>3484</sup> Witness ALIZA said that the refugees used stones to defend themselves during the attack of 23 April 1994 which resulted in a massive number of deaths.<sup>3485</sup>

1449. Witness TW acknowledged that before the 1994 events, he and his brother had been arrested, detained and beaten up on the orders of the Accused for being *Inyenzi* accomplices.<sup>3486</sup> He also admitted that Ndayambaje had been involved in the forced closure of his bar.<sup>3487</sup> However, the witness denied harbouring any resentment towards the Accused.<sup>3488</sup>

<sup>3471</sup> T. 11 November 2004 pp. 25-26, 32 (ICS) (Witness QAQ).

<sup>3472</sup> T. 5 June 2008 pp. 31, 42-43 (ICS) (Witness ALIZA).

<sup>3473</sup> T. 26 February 2004 pp. 68, 70 (Witness EV); T. 10 March 2004 pp. 68-70 (Witness RT); T. 11 March 2004 pp. 66, 71 (Witness RT).

<sup>3474</sup> T. 10 March 2004 p. 68; T. 11 March 2004 p. 66 (Witness RT).

<sup>3475</sup> T. 10 March 2004 p. 68; T. 11 March 2004 p. 66 (Witness RT).

<sup>3476</sup> T. 5 June 2008 p. 39 (ICS); T. 9 June 2008 p. 35 (ICS) (Witness ALIZA).

<sup>3477</sup> T. 11 November 2002 pp. 26, 30-31 (ICS) (Witness QAQ).

<sup>3478</sup> T. 11 November 2002 p. 32 (ICS) (Witness QAQ).

<sup>3479</sup> T. 22 October 2008 p. 38 (Ndayambaje); T. 23 October 2008 p. 23 (Ndayambaje); T. 4 September 2008 pp. 15, 19 (Witness KEPIR).

<sup>3480</sup> T. 26 February 2004 pp. 73-74 (Witness EV); T. 10 February 2004 pp. 11-12 (Witness TW); T. 11 February 2004 p. 44 (Witness TW).

<sup>3481</sup> T. 25 February 2004 p. 76 (Witness EV); T. 26 February 2004 p. 71 (Witness EV); T. 10 March 2004 p. 71 (Witness RT).

<sup>3482</sup> T. 10 March 2004 p. 71 (Witness RT); T. 11 March 2004 p. 80 (Witness RT); T. 11 February 2004 p. 65 (Witness TW).

<sup>3483</sup> T. 10 February 2004 p. 8 (Witness TW).

<sup>3484</sup> T. 11 November 2002 p. 32 (ICS) (Witness QAQ).

<sup>3485</sup> T. 12 February 2004 p. 69 (Witness TP); T. 5 June 2008 pp. 38-39 (ICS) (Witness ALIZA).

<sup>3486</sup> T. 12 February 2004 pp. 8-10 (Witness TW).

<sup>3487</sup> T. 12 February 2004 p. 10 (Witness TW).

<sup>3488</sup> T. 12 February 2004 pp. 8-10 (Witness TW).

Witness TW also acknowledged that his statement of 15 November 1995 contained some errors. In particular the witness' uncle, whom he alleged was killed by Ndayambaje, had been described as his maternal rather than paternal uncle.<sup>3489</sup> Furthermore, the statement describes how Ndayambaje passed by the witness' house on 19 April 1994 in the morning, rather than the evening as he stated in his testimony.<sup>3490</sup> Witness TW explained that he had pointed these errors out to investigators but they declined to correct the statements.<sup>3491</sup> In the Chamber's view, Witness TW's denial that events prior to 1994 may have influenced his testimony was vigorous and believable. As regards the inconsistencies between his previous statement and his testimony, the Chamber does not find these to be significant and they do not impact on the credibility of his testimony.

1450. With regard to the allegation in Paragraph 6.32 of the Indictment that Ndayambaje threw grenades into the crowd, the Chamber recalls the testimony of Witness EV that on the day he arrived at Kabuye Hill, which would have fallen on 20 April 1994, Ndayambaje fired his own weapon and threw the grenades he had brought.<sup>3492</sup> The Chamber first notes that the date on which this incident is alleged to have occurred by the witness does not correspond to the time frame advanced by the Prosecution in Paragraph 6.32 of the Indictment. Moreover, on cross-examination, Witness EV was referred to his written statements of 20 June 1995, 4 October 1995 and 14 November 1995, in which the witness did not mention that Ndayambaje was among the crowd on that day, that he had a weapon or that he shot at people during the Kabuye Hill events.<sup>3493</sup> As indicated in the discussion concerning distribution of weapons, above, Witness EV stated that he had consistently told the investigators that he saw Ndayambaje shooting and the omission must be due to the error of the investigators who recorded his statements; he stated that it was impossible for him to mention all the details of the events in his statements.<sup>3494</sup>

1451. While the Chamber agrees that it would have been impossible for Witness EV to remember all the details of his stay at Kabuye Hill, the Chamber considers that an incident as striking as the throwing of a grenade by a figure of authority such as Ndayambaje would have been at the forefront of the witness' mind when he recorded his experiences in his previous statements. For that reason, the Chamber accepts the witness' testimony that Ndayambaje distributed weapons at Kabuye Hill but finds his uncorroborated account that Ndayambaje threw grenades and shot at the refugees to be unconvincing.

1452. In sum, the Chamber considers the evidence led by the Prosecution on the attacks of 23 and 24 April 1994 to be clear, consistent and credible. The Chamber therefore finds that Ndayambaje transported attackers to Kabuye Hill, distributed weapons to the attackers and was

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<sup>3489</sup> T. 10 February 2004 pp. 35, 37 (ICS) (Witness TW); Defence Exhibit 171 (Ndayambaje) (15 November 1995, Statement of Witness TW).

<sup>3490</sup> T. 10 February 2004 pp. 34-35 (ICS) (Witness TW); Defence Exhibit 171 (Ndayambaje) (15 November 1995, Statement of Witness TW).

<sup>3491</sup> T. 10 February 2004 p. 37 (ICS) (Witness TW).

<sup>3492</sup> T. 25 February 2004 p. 75; T. 26 February 2004 p. 60 (Witness EV).

<sup>3493</sup> T. 27 February 2004 pp. 5-6, 8-9, 12 (Witness EV); Defence Exhibit 167 (Ndayambaje) (20 June 1995, Statement of Witness EV to Rwandan Authorities); Defence Exhibit 168 (Ndayambaje) (4 October 1995, Statement of Witness EV to Rwandan Authorities); Defence Exhibit 169 (Ndayambaje) (14 November 1995, Statement of Witness EV).

<sup>3494</sup> T. 26 February 2004 pp. 80-81 (ICS); T. 27 February 2004 pp. 5-6, 8-9, 12 (Witness EV).

present during the attacks against Tutsis at Kabuye Hill on 23 and 24 April 1994 and that thousands of deaths resulted from these attacks.

#### 3.6.5.4.3.4 *Murder of Witness TW's Uncle*

1453. As regards the Prosecution allegation that Ndayambaje murdered Witness TW's uncle, the Chamber notes that the witness' account of this event is uncorroborated and he does not describe how his uncle died – the witness was not present at the time of the alleged murder and did not see his uncle's body. The Chamber does not consider there to be sufficient evidence to enable it to make such a determination. Accordingly, the Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Ndayambaje killed Witness TW's uncle.

#### 3.6.5.4.3.5 *Conclusion on Indictment Paragraph 6.32*

1454. The Prosecution alleged that attacks at Kabuye Hill continued on 23 and 24 April 1994, and that Ndayambaje transported attackers to Kabuye Hill, issued them with weapons and personally threw grenades into the crowd of refugees.

1455. Having considered the totality of the evidence on all of the constituent elements of Paragraph 6.32 of the Ndayambaje Indictment, for the reasons set forth above, and bearing in mind the general issues relating to the Defence alibi evidence as explained above, the Chamber finds it established beyond a reasonable doubt that Ndayambaje transported soldiers, civilians and policemen to Kabuye Hill where they participated in attacks against Tutsis. Furthermore, the Chamber finds that Ndayambaje distributed grenades to the attackers on Kabuye Hill. The Chamber, however, does not find that Ndayambaje threw a grenade himself.

1456. The Chamber also finds it established beyond a reasonable doubt that Ndayambaje participated in the removal of weapons from Muganza *commune* office on 23 April 1994, which were then distributed to attackers at Kabuye Hill. In addition, the Chamber finds it established that attacks took place at Kabuye Hill on 23 and 24 April 1994 and that Ndayambaje was present during the attacks against Tutsis at Kabuye Hill on 23 and 24 April 1994 and that deaths resulted from these attacks. Accordingly, the Chamber holds that the Prosecution has discharged its burden of proof in respect of this allegation.

### 3.6.6 **IRST Massacre, 21 April 1994**

#### 3.6.6.1 *Introduction*

1457. Paragraph 6.15 of the Nyiramasuhuko and Ntahobali Indictment alleges that on 27 April 1994, the Interim Government ordered roadblocks to be set up, knowing that the roadblocks were being used to identify the Tutsis and their “accomplices” for the purpose of eliminating them.<sup>3495</sup> Paragraph 6.35 of the Nyiramasuhuko and Ntahobali Indictment further provides that from April to July 1994, Ntahobali travelled throughout Butare *préfecture* in

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<sup>3495</sup> Para. 6.15 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts).

search of Tutsis. When the victims were located, Ntahobali abducted them and took them to various locations, where they were executed.<sup>3496</sup>

1458. The Prosecution submits that Ntahobali participated in the abduction of Tutsis at the “fifth roadblock” and instructed the *Interahamwe* manning the roadblock to “take them to the same place where the others had been taken to”. Subsequently they were taken to this location and killed.<sup>3497</sup> In support of its submissions, the Prosecution relies on the testimony of Witness QCB.

1459. The Ntahobali Defence did not call any witnesses with regard to this allegation. Rather, the Defence challenged the credibility of Witness QCB, asserting that Witness QCB’s account of the 21 April 1994 events is incompatible in time with the testimony of Prosecution Witness TN.<sup>3498</sup> In support of its contentions, the Ntahobali Defence relies on the testimony of Prosecution Witness TN.

### 3.6.6.2 Preliminary Issues

1460. The Chamber, *proprio motu*, observes that this allegation is not specifically pled in the Nyiramasuhuko and Ntahobali Indictment and therefore finds that the Indictment is defective. The Chamber must determine whether the Indictment has been cured through subsequent Prosecution disclosures.

1461. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness QCB, who was expected to testify that he went to three roadblocks. At the third roadblock, supervised by Ntahobali and situated opposite Ntahobali’s parents’ house, the *Interahamwe* and civilians wearing military vests were segregating Tutsis and putting them by the roadside. Subsequently, Ntahobali led those Tutsis to the ESO roadblock and to the *Institut de Recherche Scientifique et Technique* (“IRST”). Witness QCB saw them being killed.<sup>3499</sup> The Chamber notes that the summary of the intended evidence of Witness QCB provides adequate details as to the exact locations, but no time frame.

1462. The prior statement of Witness QCB, dated 7 April 1999 and disclosed to the Defence on 10 December 1999, stated that on 21 April 1994, Ntahobali led away Tutsis who were gathered at the ESO roadblock, located opposite Ntahobali’s parents’ house, towards the IRST. The witness further stated that he witnessed people being killed with traditional weapons.<sup>3500</sup> This disclosure was made well before the start of Witness QCB’s testimony on 20 March 2002.

1463. The Chamber finds the substance of Witness QCB’s previous statement is consistent with the summary of his anticipated testimony contained in the Appendix to the Pre-Trial Brief.

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<sup>3496</sup> Para. 6.35 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against Ntahobali).

<sup>3497</sup> Prosecution Closing Brief, p. 171, para. 42.

<sup>3498</sup> Ntahobali Closing Brief, paras. 139-140, 142, 276.

<sup>3499</sup> Prosecution Pre-Trial Brief – Appendix; Witness QCB (52).

<sup>3500</sup> 7 April 1999, Statement of Witness QCB, disclosed 10 December 1999.

1464. For the foregoing reasons, the Chamber considers that the Nyiramasuhuko and Ntahobali Indictment is cured by the disclosure of timely, clear and consistent information in line with previous jurisprudence.<sup>3501</sup> Consequently, Ntahobali was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence.

### 3.6.6.3 Evidence

#### Prosecution Witness QCB

1465. Witness QCB, a Hutu driver in 1994 and a detainee at the time of his testimony,<sup>3502</sup> testified that he went to his place of work on the morning of 21 April 1994 at around 7.00 a.m.<sup>3503</sup> On his way, he saw roadblocks and killings.<sup>3504</sup> He noticed that 13 roadblocks were erected throughout the area.<sup>3505</sup> There were no roadblocks in Nkubi *secteur* prior to that day.<sup>3506</sup> The witness rode on a motorcycle up to the “first roadblock” located at the residence of President Sindikubwabo, and after that he continued on foot as the motorcycle was not allowed to proceed.<sup>3507</sup> This first roadblock is indicated by the number “1” on Prosecution Exhibit 54, a hand-drawn map by Witness QCB of Butare town.<sup>3508</sup> It was manned by Presidential Guards.<sup>3509</sup>

1466. Witness QCB testified that one of the roadblocks was located at the house of Amandin Rugira<sup>3510</sup> on the main road to Bujumbura (the “Rugira roadblock”) also referred to by Witness QCB as the “fifth roadblock”.<sup>3511</sup> The location of the roadblock was indicated by the number “5” on Prosecution Exhibit 54. *Interahamwe* and two soldiers armed with knives and Kalashnikovs manned the roadblock.<sup>3512</sup> He reached this roadblock at around 8.30 a.m. The *Interahamwe* were checking people’s identity cards to determine their ethnicity. They allowed Hutus to go through and detained Tutsis on the spot.<sup>3513</sup> The witness observed that a woman unknown to him was asked to produce her identification, after which *Interahamwe* stabbed her to death with knives.<sup>3514</sup>

1467. Witness QCB saw another roadblock located near the house of Maurice Ntahobali also referred to by Witness QCB as the “sixth roadblock” and indicated by number “6” on Prosecution Exhibit 54.<sup>3515</sup> The witness saw Shalom standing in front of his parents’ house,

<sup>3501</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105.

<sup>3502</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).

<sup>3503</sup> T. 20 March 2002 p. 37 (Witness QCB).

<sup>3504</sup> T. 20 March 2002 p. 38 (Witness QCB).

<sup>3505</sup> T. 20 March 2002 pp. 38-54 (Witness QCB); Prosecution Exhibit 54 (Sketch of Butare town by Witness QCB).

<sup>3506</sup> T. 25 March 2002 p. 34; T. 25 March 2002 p. 73 (ICS) (Witness QCB).

<sup>3507</sup> T. 20 March 2002 pp. 37-38, 55; T. 25 March 2002 p. 113 (ICS) (Witness QCB).

<sup>3508</sup> Prosecution Exhibit 54 (Sketch of Butare town by Witness QCB). This exhibit was admitted on 21 March 2002.

<sup>3509</sup> T. 20 March 2002 p. 55 (Witness QCB).

<sup>3510</sup> T. 20 March 2002 p. 58; T. 20 March 2002 p. 69 (Witness QCB) (French) (for spelling of “Amandin”).

<sup>3511</sup> T. 20 March 2002 pp. 57-59 (Witness QCB).

<sup>3512</sup> T. 20 March 2002 p. 57 (Witness QCB).

<sup>3513</sup> T. 20 March 2002 p. 59 (Witness QCB).

<sup>3514</sup> T. 20 March 2002 pp. 56-57 (Witness QCB).

<sup>3515</sup> T. 20 March 2002 p. 60 (Witness QCB).



leaning on the door of a Peugeot 505.<sup>3516</sup> Shalom was wearing ordinary trousers and a sleeveless military jacket.<sup>3517</sup> He had grenades at his belt and a Kalashnikov gun slung on his shoulder.<sup>3518</sup> It was the first time Witness QCB saw Ntahobali.<sup>3519</sup>

1468. Witness QCB identified Ntahobali in court.<sup>3520</sup> Witness QCB also testified that he had known Shalom since 1989, when the witness worked at the Rwandan University in Ruhunde, Butare.<sup>3521</sup> The witness explained that he feared for his own safety which was why he stated in open session that this day was the first time he had seen Ntahobali during his evidence-in-chief.<sup>3522</sup>

1469. Upon his arrival at work, Witness QCB was told that there was no assignment for him on that day, so he immediately decided to return home.<sup>3523</sup> On his way home, at around 9.10 a.m., he stopped at the fifth roadblock again, close to the mosque. He saw that Tutsis kept at this roadblock were being held at the EER School.<sup>3524</sup> They were being boarded onto a white Daihatsu pickup belonging to Isaac Munyagasheke.<sup>3525</sup> They had been arrested at the Rugira roadblock and were gathered at the primary school, which was made up of three buildings.<sup>3526</sup> The pickup was moving from the EER School to a place between the IRST and the Laboratory.<sup>3527</sup> A Peugeot car driven by Ntahobali drove behind the Daihatsu pickup. Ntahobali's vehicle stopped at the fifth roadblock, while the other Daihatsu pickup continued its journey until the place where massacres were subsequently carried out.<sup>3528</sup> The Peugeot car belonged to Ntahobali's father.<sup>3529</sup>

1470. At the roadblock, Ntahobali asked the *Interahamwe* if they had arrested anyone. The *Interahamwe* responded in the affirmative and Ntahobali told them to bring the arrestees to "the same place where the others have been taken to", a place between the IRST and the Laboratory, in order to join others who had been arrested.<sup>3530</sup> The witness was 10 steps away from Ntahobali.<sup>3531</sup> About 40 people were loaded onto the Daihatsu pickup and taken to the area indicated.<sup>3532</sup> Witness QCB went to that location and saw the pickup and the Peugeot parked there. People were being killed after they had been undressed.<sup>3533</sup> He heard people screaming as numerous *Interahamwe* killed about 200 people with clubs and knives.<sup>3534</sup>

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<sup>3516</sup> T. 20 March 2002 pp. 69-70 (Witness QCB).

<sup>3517</sup> T. 20 March 2002 p. 71 (Witness QCB).

<sup>3518</sup> T. 20 March 2002 pp. 72-73 (Witness QCB).

<sup>3519</sup> T. 20 March 2002 p. 71 (Witness QCB).

<sup>3520</sup> T. 21 March 2002 pp. 81-82 (Witness QCB).

<sup>3521</sup> T. 25 March 2002 pp. 46-47, 50 (ICS) (Witness QCB).

<sup>3522</sup> T. 25 March 2002 p. 45 (ICS) (Witness QCB).

<sup>3523</sup> T. 20 March 2002 p. 77 (Witness QCB).

<sup>3524</sup> T. 20 March 2002 p. 78 (Witness QCB).

<sup>3525</sup> T. 20 March 2002 pp. 78, 84; T. 20 March 2002 p. 91 (Witness QCB) (French) (for spelling of "Isaac Munyagasheke").

<sup>3526</sup> T. 20 March 2002 p. 83 (Witness QCB).

<sup>3527</sup> T. 20 March 2002 p. 85; T. 20 March 2002 p. 97 (Witness QCB) (for spelling of acronym).

<sup>3528</sup> T. 20 March 2002 p. 85; T. 25 March 2002 p. 16 (Witness QCB).

<sup>3529</sup> T. 20 March 2002 pp. 85-86 (Witness QCB).

<sup>3530</sup> T. 20 March 2002 pp. 86, 88 (Witness QCB).

<sup>3531</sup> T. 20 March 2002 p. 86 (Witness QCB).

<sup>3532</sup> T. 20 March 2002 p. 88 (Witness QCB).

<sup>3533</sup> T. 20 March 2002 p. 89 (Witness QCB).

<sup>3534</sup> T. 20 March 2002 pp. 89-91 (Witness QCB).

Among the assailants, Witness QCB identified Ntahobali, Désiré the son of Munyagasheke, and Pierre Claver who worked at the service in charge of civilian buildings.<sup>3535</sup> He claimed that Ntahobali was the leader because he witnessed him issuing orders at this time.<sup>3536</sup> The witness left the scene at around 9.30 a.m.<sup>3537</sup>

1471. Witness QCB testified that his statement of 7 April 1999 was not properly recorded by Prosecution investigators where it was written, “I continued towards Mukoni when I heard screams”. The witness testified that he actually meant that he left the “fifth roadblock” and went on towards the IRST where he saw people being stripped naked, screaming and being killed. He was frightened by what he saw and was asked to leave, and decided to leave for Mukoni towards home.<sup>3538</sup> The witness explained that he did not fully understand what was being read to him because there were several documents and the investigator appeared to be in a hurry. He signed the documents as a matter of course because he believed them to be statements that he himself had made, and which were properly recorded.<sup>3539</sup>

#### Prosecution Witness TN

1472. Witness TN, a Tutsi who was 19 years old in 1994, testified that on 21 April 1994, she saw Ntahobali arrive in Tumba *secteur* accompanied by soldiers of the Presidential Guard in a Toyota.<sup>3540</sup> She identified Ntahobali’s companions as soldiers because they were wearing military uniforms.<sup>3541</sup> Ntahobali and some of the soldiers stepped out of the vehicle and took two Tutsi men – identified as Rwabugiri and Philippe – to the veterinarian’s house, behind the *secteur* office.<sup>3542</sup> On arrival at the veterinarian’s house, one of the soldiers handed a jack knife to Ntahobali. Ntahobali then attacked the men with the knife and killed them.<sup>3543</sup>

1473. These events took place between 9.00 and 10.00 a.m.<sup>3544</sup> The witness stated that she was approximately two and a half metres away from Ntahobali when Ntahobali killed the two Tutsi men.<sup>3545</sup> She further testified that after having killed Rwabugiri and Philippe, Ntahobali ordered that Tutsis should be found and killed.<sup>3546</sup>

#### **3.6.6.4 Deliberations**

1474. Prosecution Witness QCB is the only eyewitness to testify about this allegation. At the time of his testimony, Witness QCB was a detainee in Rwanda. He confessed to his participation in the killing of certain persons during the events and, at the time of his testimony, was awaiting his sentence.<sup>3547</sup> The Chamber will treat his testimony with

<sup>3535</sup> T. 20 March 2002 pp. 89-90 (Witness QCB).

<sup>3536</sup> T. 20 March 2002 p. 90 (Witness QCB).

<sup>3537</sup> T. 20 March 2002 p. 95 (Witness QCB).

<sup>3538</sup> T. 26 March 2002 pp. 37, 39 (Witness QCB).

<sup>3539</sup> T. 26 March 2002 p. 38 (Witness QCB).

<sup>3540</sup> T. 3 April 2002 pp. 133-134 (Witness TN); Prosecution Exhibit 55 (Personal Particulars).

<sup>3541</sup> T. 3 April 2002 pp. 134-135 (Witness TN).

<sup>3542</sup> T. 3 April 2002 p. 133 (Witness TN).

<sup>3543</sup> T. 3 April 2002 pp. 133-134 (Witness TN).

<sup>3544</sup> T. 3 April 2002 p. 134 (Witness TN).

<sup>3545</sup> T. 3 April 2002 pp. 135-136 (Witness TN).

<sup>3546</sup> T. 3 April 2002 p. 138 (Witness TN).

<sup>3547</sup> T. 20 March 2002 p. 37 (Witness QCB).

appropriate caution as he may have had an incentive to implicate Ntahobali in order to avoid a severe sentence.

1475. Witness QCB provided first-hand testimony that on 21 April 1994, at around 9.00 a.m., on his way back from his place of work, he stopped at the Rugira roadblock, referred to as the “fifth roadblock”.<sup>3548</sup> At the roadblock, Witness QCB witnessed Tutsis, who were being held at the EER School, being boarded onto a white Daihatsu pickup belonging to Isaac Munyagasheke.<sup>3549</sup> Those Tutsis had been arrested at the Rugira roadblock.<sup>3550</sup> The pickup was moving from the EER School to a place located between the IRST and the Laboratory.<sup>3551</sup> A Peugeot car driven by Ntahobali followed the pickup and stopped at the Rugira roadblock, while the Daihatsu pickup continued its journey.<sup>3552</sup> Ntahobali then asked the *Interahamwe* posted there if they had arrested anyone.<sup>3553</sup> The *Interahamwe* responded in the affirmative and Ntahobali told them to bring those arrested to a place between the IRST and the Laboratory to join others who had been arrested.<sup>3554</sup>

1476. Although the witness stated that 21 April 1994 was the first time he saw Ntahobali, during his examination-in-chief, in cross-examination he stated that he knew Ntahobali for a while before 1994.<sup>3555</sup> Witness QCB explained this inconsistency by stating that he feared for his own safety and that was why he claimed to have met Ntahobali for the first time on 21 April 1994, during his evidence-in-chief, in open session.<sup>3556</sup> The Chamber accepts this explanation and notes that the witness clearly identified Ntahobali in court.<sup>3557</sup>

1477. The Defence asserts that Witness QCB’s testimony is incompatible with the testimony of Witness TN, with regard to the time frame of this event. Witness QCB stated that about 40 people were loaded onto the Daihatsu pickup and taken to the area indicated.<sup>3558</sup> He saw the pickup and the Peugeot parked together near the place between the IRST and the Laboratory.<sup>3559</sup> Once at the IRST, Witness QCB saw Tutsi people being stripped naked and screaming.<sup>3560</sup> Roughly 200 people were stabbed or clubbed to death by members of the *Interahamwe*.<sup>3561</sup> Among the assailants, the witness recognised Ntahobali as the leader, Désiré the son of Munyagasheke and Pierre Claver.<sup>3562</sup> According to Witness QCB, Ntahobali was

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<sup>3548</sup> T. 20 March 2002 p. 78 (Witness QCB).

<sup>3549</sup> T. 20 March 2002 pp. 78, 84 (Witness QCB).

<sup>3550</sup> T. 20 March 2002 pp. 78, 86 (Witness QCB).

<sup>3551</sup> T. 20 March 2002 p. 85 (Witness QCB).

<sup>3552</sup> T. 20 March 2002 p. 85; T. 25 March 2002 p. 16 (Witness QCB).

<sup>3553</sup> T. 20 March 2002 p. 86 (Witness QCB).

<sup>3554</sup> T. 20 March 2002 pp. 86-88 (Witness QCB).

<sup>3555</sup> T. 20 March 2002 p. 71; T. 25 March 2002 pp. 45-47, 50 (ICS) (Witness QCB).

<sup>3556</sup> T. 25 March 2002 p. 45 (ICS) (Witness QCB).

<sup>3557</sup> T. 21 March 2002 pp. 81-82 (Witness QCB).

<sup>3558</sup> T. 20 March 2002 p. 88 (Witness QCB).

<sup>3559</sup> T. 20 March 2002 pp. 88-89 (Witness QCB).

<sup>3560</sup> T. 26 March 2002 p. 39 (Witness QCB).

<sup>3561</sup> T. 20 March 2002 pp. 89-92 (Witness QCB).

<sup>3562</sup> T. 20 March 2002 pp. 89-90 (Witness QCB).

issuing orders during this time.<sup>3563</sup> Witness QCB was frightened by what he saw and decided to leave for Mukoni towards his home at around 9.30 a.m.<sup>3564</sup>

1478. Prosecution Witness TN testified that Ntahobali killed Rwabugiri and Philippe behind the Tumba *secteur* office between 9.00 and 10.00 a.m. on 21 April 1994.<sup>3565</sup> This would account for a portion of the time frame during which Witness QCB submits that the killings of Tutsis at the IRST occurred, *i.e.* between 9.00 and 9.30 a.m.<sup>3566</sup> This evidence, however, does not exclude the possibility that Ntahobali may have participated in the killings as described by Witness QCB. Furthermore, the location at which Witness QCB sighted Ntahobali, *i.e.* the area between the IRST and the Laboratory, is only a very short distance away from the border of Tumba *secteur*, approximately one kilometre away.<sup>3567</sup> The Prosecution evidence establishes that Ntahobali was in possession of a car during this time.<sup>3568</sup> Therefore, the existence of this information does not cast a doubt on the Prosecution's case.

1479. The Chamber accepts Witness QCB's explanation that the Prosecution investigators did not properly record his statement when they wrote, "I continued towards Mukoni when I heard screams". The Chamber accepts Witness QCB's explanation that he actually meant that he left the Rugira roadblock and went on towards the IRST, where he saw people being stripped naked, screaming and being killed. He was frightened by what he saw and was asked to leave, so decided to leave for Mukoni, towards home.<sup>3569</sup>

1480. The Chamber observes that Witness QCB is the only Prosecution witness to implicate Ntahobali in these events. Nevertheless the Chamber finds Witness QCB's detailed evidence to be credible with respect to this incident. In light of the foregoing and having assessed the evidence at hand, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that on 21 April 1994 Ntahobali participated in the abduction of approximately 40 Tutsis at the "Rugira roadblock" and subsequently took them to the IRST to be killed. Furthermore, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that at the Rugira roadblock, Ntahobali ordered the *Interahamwe* present to take those Tutsis who had been arrested to a place between the IRST and the Laboratory, and that at the massacre site, Ntahobali issued orders to the *Interahamwe* to kill the Tutsis. Ntahobali's orders were followed and approximately 200 Tutsis were killed at the IRST on 21 April 1994.

### **3.6.7 Tumba Secteur Abductions and Killings, 21 April 1994**

#### **3.6.7.1 Introduction**

1481. Paragraph 6.35 of the Nyiramasuhuko and Ntahobali Indictment alleges that in late April 1994, Ntahobali travelled throughout Butare *préfecture* searching for Tutsis. When the

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<sup>3563</sup> T. 20 March 2002 p. 90 (Witness QCB).

<sup>3564</sup> T. 20 March 2002 p. 95; T. 26 March 2002 p. 39 (Witness QCB).

<sup>3565</sup> T. 3 April 2002 pp. 133-134 (Witness TN).

<sup>3566</sup> T. 20 March 2002 pp. 78, 95; T. 26 March 2002 p. 39 (Witness QCB).

<sup>3567</sup> Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites), using scale provided on map.

<sup>3568</sup> T. 20 March 2002 pp. 85, 88 (Witness QCB).

<sup>3569</sup> T. 26 March 2002 p. 39 (Witness QCB).

Tutsis were located, Ntahobali abducted them and took them to various locations where they were executed.<sup>3570</sup>

1482. In support of this allegation, the Prosecution led evidence through Witness TN to show that on 21 April 1994, Ntahobali came to Tumba *secteur* in Ngoma *commune* accompanied by soldiers, abducted two Tutsis named Rwabugiri<sup>3571</sup> and Philippe,<sup>3572</sup> and killed them.<sup>3573</sup> In response to the Defence's submission that the murders were committed by a soldier who has already been tried and convicted of the crimes, the Prosecution submits that the existence of a judgement from a Rwandan court attributing responsibility for the murders to another person does not relieve Ntahobali from criminal responsibility before the ICTR. The Prosecution further submits that the judgement supports the Prosecution case.<sup>3574</sup>

1483. The Ntahobali Defence submits that Witness TN's testimony is not credible.<sup>3575</sup> It argues that Rwabugiri and Philippe were in fact murdered by a soldier, Jean Baptiste Nzisabira, who has already been convicted of the murders by the Rwandan Court of First Instance and the Military Court of Appeal. It further submits that Prosecution Witness QCB contradicts Witness TN as to the time frame during which Ntahobali allegedly abducted and killed Tutsis in Tumba *secteur* on 21 April 1994. According to the Ntahobali Defence, Ntahobali was at a roadblock outside Hotel Ihuliro at the time of his involvement in the abduction and murder of Rwabugiri and Philippe.<sup>3576</sup> In support of its submissions, the Ntahobali Defence relies on Kanyabashi Defence Witness D-2-21-T, Ntahobali and Witness QCB.

### 3.6.7.2 Preliminary Issues

1484. The Chamber notes that the allegation that Ntahobali abducted and personally murdered two Tutsis named Rwabugiri and Philippe was not pled in the Indictment. Although Paragraph 6.35 of the Nyiramasuhuko and Ntahobali Indictment alleges that Ntahobali abducted Tutsis "and took them to various places, where they were executed", there is no mention of the murders of Rwabugiri and Philippe. Recalling the principles previously set out in this Judgement, the Chamber finds that it is not always necessary that an indictment provide the specific name of a victim. Nonetheless, where the Prosecution alleges that an accused personally committed criminal acts, it must plead the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed with the greatest precision (). The Nyiramasuhuko and Ntahobali Indictment provides no information on the identity of the Tutsi victims, the *locus* of the crime, the date on which it took place or how the victims were murdered. It is clear from Witness TN's statement dated 11-12 March 1998, *i.e.* over one year before the Amended Indictment was filed, that the

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<sup>3570</sup> Para. 6.35 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8 and 10 against Ntahobali only).

<sup>3571</sup> T. 3 April 2002 p. 133 (Witness TN) (spelled "Lwabugili" in the English transcript); T. 3 April 2002 p. 156 (Witness TN) (French) (spelled "Rwabugiri" in the French transcript). For the purposes of this section, the Chamber will refer to the spelling in the French version.

<sup>3572</sup> T. 3 April 2002 p. 156 (Witness TN) (French) (for spelling of "Philippe").

<sup>3573</sup> Prosecution Closing Brief, p. 171, para. 41.

<sup>3574</sup> Prosecution Closing Argument, T. 20 April 2009 p. 41.

<sup>3575</sup> Ntahobali Closing Brief, para. 272.

<sup>3576</sup> Ntahobali Closing Brief, paras. 275-276.

Prosecution was aware of the details of the alleged murders and the identities of the victims. In particular, Witness TN's statement contains her eyewitness account of the murders of two Tutsis, Rwabugiri and Philippe, behind the Tumba *secteur* office on 21 April 1994, by a man named Shalom, who used a knife. Such information should have been contained in the Indictment. The Indictment is thus defective in this respect.

1485. The Chamber must then determine whether the defect has been cured by subsequent Prosecution disclosures. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber notes that the Prosecution made no reference to the murders of Rwabugiri and Philippe by Ntahobali in either its Pre-Trial Brief or opening statement. The Prosecution disclosed a redacted version of Witness TN's statement of 11-12 March 1998 on 15 November 2000 and on 23 May 2001; an unredacted version was disclosed on 23 April 2001 and on 1 October 2001.<sup>3577</sup>

1486. The Chamber finds that the information provided to the Defence through subsequent disclosure was not consistent, as the murder of Rwabugiri and Philippe was only mentioned in a single witness statement that was disclosed on four separate occasions. Accordingly, the Chamber finds that the defect in the Indictment has not been cured and it will not consider the Prosecution evidence insofar as it relates to this allegation. In any case, the Chamber notes that the evidence was insufficient to prove this allegation beyond a reasonable doubt.

### **3.6.8 Kabakobwa Massacres, 21-24 April 1994**

#### ***3.6.8.1 Introduction***

1487. The Kanyabashi Indictment alleges that on 21 and 22 April 1994, Tutsis fleeing the massacres took refuge in a pasture in Kabakobwa *cellule* on the orders of Kanyabashi, who had promised to protect them. Kanyabashi ordered his subordinates, notably *conseillers de secteur*, *commune* policemen and certain members of the Hutu population to go to Kabakobwa *cellule* to eliminate the refugees.<sup>3578</sup> Indictment Paragraph 6.45 also alleges that on one occasion on 21 April 1994 in Butare, Kanyabashi encouraged and instructed soldiers and militiamen and certain members of the civilian population to search for Tutsis who had escaped massacres, in order to exterminate them.<sup>3579</sup>

1488. The Kanyabashi Indictment further alleges that on 22 April 1994, at around 4.00 p.m., the *commune* policemen and *conseillers de secteur*, assisted by Hutu peasant farmers and militiamen, attacked the refugees. Subsequently, Kanyabashi called in reinforcements from the Presidential Guard. On their arrival, they took part in the attacks.<sup>3580</sup>

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<sup>3577</sup> 11-12 March 1998, Statement of Witness TN, disclosed in redacted form 15 November 2000 and 23 May 2001, and in unredacted form 23 April 2001 and 1 October 2001.

<sup>3578</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

<sup>3579</sup> Para. 6.45 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (1) and 6 (3), and Count 4 pursuant to Article 6 (1) responsibility only).

<sup>3580</sup> Para. 6.33 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) responsibility).

1489. The Nsabimana and Nteziryayo Indictment alleges that during the month of April 1994, thousands of Tutsi refugees gathered in various locations in Ngoma *commune*, such as Kabakobwa *cellule*, Matyazo Clinic and Ngoma Church, often on the recommendation of Kanyabashi, the long-serving *bourgmestre*, who had promised to protect them. Kanyabashi then ordered and supervised the massacres of these refugees by *commune* civil servants, soldiers and militiamen.<sup>3581</sup> The Nsabimana and Nteziryayo Indictment further alleges generally that between April and July 1994, to make sure that the massacres were carried out in an efficient and unflagging manner, Nsabimana, Nteziryayo, Kanyabashi and Nyiramasuhuko, individually or in the presence of one another, not only incited, but also aided and abetted the population to slaughter the Tutsis in Butare *préfecture*.<sup>3582</sup>

1490. The Prosecution submits that in his capacity as *bourgmestre* of Ngoma *commune*, Kanyabashi was primarily responsible for planning, ordering and supervising the killing of Tutsis who had gathered at Kabakobwa. Kanyabashi knew that Tutsis were to be killed at Kabakobwa and that is why he encouraged them to go there.<sup>3583</sup> Moreover, Kanyabashi is alleged to have told certain individuals on the same day Tutsis were told to go to Kabakobwa that “those who burn leaves must first gather them”. This is alleged to be a proverb used to refer to the Tutsis and to invite members of the population to exterminate them.<sup>3584</sup> The Prosecution submits that through the use of such proverbs and direct encouragement, Kanyabashi incited the population to kill Tutsis as part of the genocidal campaign of the Interim Government of which he was a member.<sup>3585</sup>

1491. The Prosecution submits that once Tutsis were gathered at Kabakobwa, Kanyabashi issued instructions preventing them from escaping.<sup>3586</sup> Kanyabashi also authorised certain individuals to go to Kabakobwa, armed with machetes, clubs and traditional weapons, to attack the approximately 2,500 refugees who were present there, and policemen used Kalashnikovs and grenades to attack the refugees.<sup>3587</sup> Ngoma *commune* police took part in the attacks at Kabakobwa.<sup>3588</sup> While the massacres were taking place at Kabakobwa, Kanyabashi watched as Tutsi refugees were killed.<sup>3589</sup> The Prosecution Closing Brief further alleges that to ensure no Tutsis escaped from Kabakobwa, Kanyabashi ordered *umuganda* (communal work) the next day, 23 April 1994, and that upon these orders more Tutsis were killed.<sup>3590</sup>

1492. The Prosecution submits that Nteziryayo instigated, ordered, and aided and abetted in the killing of Tutsis.<sup>3591</sup> Nteziryayo together with Kanyabashi authorised the population to arm

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<sup>3581</sup> Para. 6.49 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>3582</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo pursuant to Article 6 (1) and Article 6 (3) responsibility); *see also* Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo pursuant to Article 6 (1) and Article 6 (3) responsibility).

<sup>3583</sup> Prosecution Closing Brief, p. 409, para. 88.

<sup>3584</sup> Prosecution Closing Brief, p. 398, paras. 45-46.

<sup>3585</sup> Prosecution Closing Brief, p. 398, para. 47.

<sup>3586</sup> Prosecution Closing Brief, p. 410, para. 93.

<sup>3587</sup> Prosecution Closing Brief, pp. 398, 411, paras. 43, 95.

<sup>3588</sup> Prosecution Closing Brief, pp. 415-416, paras. 107-109.

<sup>3589</sup> Prosecution Closing Brief, p. 398, para. 44.

<sup>3590</sup> Prosecution Closing Brief, p. 411, para. 97.

<sup>3591</sup> Prosecution Closing Brief, p. 348, para. 138.

themselves and go to Kabakobwa Hill to kill Tutsis.<sup>3592</sup> The Prosecution also submits that Nteziryayo is responsible pursuant to Article 6 (3) because he knew that *Interahamwe* and militia under his control were committing genocide, yet failed to prevent or punish them for the wrongs committed.<sup>3593</sup> Nteziryayo was together with Kanyabashi when Kanyabashi was rounding up members of the population to disguise themselves and go to Kabakobwa and knew that these people would kill.<sup>3594</sup>

1493. The Prosecution also submits that Nsabimana is responsible under Article 6 (1) and 6 (3) for aiding and abetting massacres in Butare, including the massacre in which Kanyabashi and Nteziryayo were implicated at Kabakobwa.<sup>3595</sup> Nsabimana was responsible for the disposal of the corpses after Kabakobwa and the manner in which he did this amounted to the commission of an inhumane act as a crime against humanity.<sup>3596</sup>

1494. In support of these allegations the Prosecution relies on Prosecution Witnesses FAM, QAM, QCB, QP and QW.

1495. The Kanyabashi Defence does not contest that there was a massacre at Kabakobwa on 22 April 1994 involving soldiers, civilians and *Interahamwe*.<sup>3597</sup> It submits, however, that Kanyabashi was not involved in the massacre in any way. It submits that Kanyabashi was not at Rango market on 21 April 1994 nor at Kabakobwa on 22 April 1994.<sup>3598</sup> It states that Kanyabashi did not order that the Tutsi refugees be forced to go to Kabakobwa; rather, refugees congregated on Kabakobwa Hill because it was a natural stopping point for refugees fleeing the unrest in Rwanda on their way to Burundi.<sup>3599</sup> It submits that the attackers at Kabakobwa on 22 April 1994 were acting on the instructions of soldiers, and not Kanyabashi.<sup>3600</sup> The Kanyabashi Defence asserts that on 24 April 1994, a man named Semwiza issued the order to bury the bodies at Kabakobwa after the massacre, not Kanyabashi.<sup>3601</sup> Finally, it submits Prosecution Witnesses FAM, QAH, QCB, QAM and QP are part of a group of detained witnesses who conspired to fabricate testimony against Kanyabashi.<sup>3602</sup>

1496. Regarding Article 6 (3) responsibility, the Kanyabashi Defence submits that *commune* policemen were not involved in the massacre at Kabakobwa and, in fact, Kanyabashi had held a meeting on 22 April 1994 exhorting his men not to participate in any killings.<sup>3603</sup> Although it

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<sup>3592</sup> Prosecution Closing Brief, pp. 317, 348, paras. 41, 136.

<sup>3593</sup> Prosecution Closing Brief, p. 348, para. 139.

<sup>3594</sup> Prosecution Closing Brief, p. 319, para. 47.

<sup>3595</sup> Prosecution Closing Brief, pp. 243-244, 276, paras. 50-52, 153-154.

<sup>3596</sup> Prosecution Closing Brief, p. 285, para. 190.

<sup>3597</sup> Kanyabashi Closing Brief, para. 184.

<sup>3598</sup> Kanyabashi Closing Brief, paras. 180, 184.

<sup>3599</sup> Kanyabashi Closing Brief, paras. 181-183.

<sup>3600</sup> Kanyabashi Closing Brief, para. 184.

<sup>3601</sup> Kanyabashi Closing Brief, para. 193.

<sup>3602</sup> Kanyabashi Closing Brief, paras. 113, 117, 145, 155; Kanyabashi Closing Argument, T. 28 April 2009 pp. 48-49. The Chamber notes that it has previously set out the evidence of the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>3603</sup> Kanyabashi Closing Brief, paras. 184-187.



acknowledges a *commune* policeman named Nsanzabahizi was a driver for the *commune* and was an attacker at Kabakobwa, it submits that Kanyabashi was not driven by this man.<sup>3604</sup>

1497. The Nteziryayo Defence challenges the credibility of the Prosecution witnesses called to testify about the Kabakobwa massacre, pointing out inconsistencies and examples of fabricated testimony.<sup>3605</sup> Nteziryayo submits he did not know of a place called Kabakobwa in 1994, did not know that a massacre took place there, and was not asked to go there by Kanyabashi. According to the Nteziryayo Defence, Nteziryayo is unaware of who committed the killings at Kabakobwa.<sup>3606</sup>

1498. In addition to submissions concerning notice, addressed below, the Nsabimana Defence challenges the credibility of Prosecution Witness QCB, the sole witness to implicate Nsabimana in the Kabakobwa events.<sup>3607</sup>

1499. The Defence for Kanyabashi and Nteziryayo rely on Kanyabashi Defence Witnesses D-2-5-I, D-2-10-Y, D-2-13-D, D-2-14-D, D-2-16-L, D-2-16-P and D-2-YYYY, Nyiramasuhuko Defence Witness WKML and Prosecution Expert Witness Alison Des Forges.

### **3.6.8.2 Preliminary Issues**

#### *Alleged Defect in Paragraph 6.53 of the Nsabimana and Nteziryayo Indictment*

1500. The Nteziryayo Defence submits that Paragraph 6.53 of the Nsabimana and Nteziryayo Indictment is vague, and did not adequately plead the Kabakobwa massacres in order to provide notice to Nteziryayo. Accordingly, it argues the Kabakobwa incident should be excluded in its entirety, including all evidence from Prosecution Witness FAM implicating Nteziryayo.<sup>3608</sup> At trial, the Nteziryayo Defence specified that Paragraph 6.53 was impermissibly vague because it made no reference to Kabakobwa. Further, it argued that Paragraph 6.49, which mentions Kabakobwa, did not add specificity to the charge because it did not name Nteziryayo and was not listed in support of counts.<sup>3609</sup> The Nteziryayo Defence also objected to Witness FAM's testimony as to Nteziryayo's presence at Kabakobwa claiming Nteziryayo was not named or referred to in the Indictment with respect to Kabakobwa.<sup>3610</sup> The Chamber overruled this objection on the basis that the Nteziryayo Defence could cross-examine Witness FAM later to verify the veracity or return to the subject in its final submissions.<sup>3611</sup> The Nteziryayo Defence subsequently cross-examined Witness FAM the following day, 7 March 2002.

1501. The Chamber notes that Paragraph 6.53 alleges that between April and July 1994 Nsabimana, Nteziryayo, Kanyabashi and Nyiramasuhuko, individually or in the presence of one another, not only incited, but also aided and abetted the population to slaughter the Tutsis

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<sup>3604</sup> Kanyabashi Closing Brief, paras. 188-191.

<sup>3605</sup> Nteziryayo Closing Brief, paras. 616-639.

<sup>3606</sup> Nteziryayo Closing Brief, para. 640.

<sup>3607</sup> Nsabimana Closing Brief, paras. 1123-1150.

<sup>3608</sup> Nteziryayo Closing Brief, paras. 619, 765.

<sup>3609</sup> T. 6 March 2002 pp. 95-96, 102-103 (Witness TO).

<sup>3610</sup> T. 6 March 2002 pp. 83, 102-103 (Witness TO).

<sup>3611</sup> T. 6 March 2002 p. 105 (Witness TO).

in Butare *préfecture*. Such a broad allegation is insufficient to have put Nteziryayo on notice to prepare his defence in regard to the Kabakobwa incident. Further, the Chamber considers that Paragraph 6.49, which was not listed in support of counts and did not name Nteziryayo, did not provide Nteziryayo notice that he was being charged with this event. The Chamber therefore finds the Nsabimana and Nteziryayo Indictment defective in this respect.

1502. The summary of Prosecution Witness FAM's anticipated testimony included in the Appendix to the Prosecution Pre-Trial Brief states that Kanyabashi and Nteziryayo brought soldiers to kill the Tutsis gathered at Kabakobwa.<sup>3612</sup> The summary makes clear that Witness FAM was being brought to lead evidence with respect to Counts 1 to 9 against both Kanyabashi and Nteziryayo. In Witness FAM's statement of 24 February 2000, he states that Kanyabashi came back to Kabakobwa to check on the policemen he had left there the previous day, and to meet with Nteziryayo, who arrived at the same venue on board a white Pajero followed by a military truck full of soldiers. Witness FAM further states that the same Friday, the Tutsis who had gathered at Kabakobwa were killed by soldiers brought there by Kanyabashi and Nteziryayo.<sup>3613</sup>

1503. In the Chamber's view, the summary of Witness FAM's anticipated testimony included in the Pre-Trial Brief and Witness FAM's statement of 24 February 2000 provided timely, clear and consistent information to Nteziryayo that he was alleged to have been implicated in the Kabakobwa massacre by bringing soldiers to participate in the massacre. Accordingly, the Chamber finds that the defect in the Indictment for failing to mention Nteziryayo's involvement in the Kabakobwa massacre was cured and that the Nteziryayo Defence was given adequate notice that it would need to defend against this allegation.

#### *Kanyabashi's Alleged Involvement at Kabakobwa on 23 April 1994*

1504. The Kanyabashi Defence submits that the Prosecution wrongfully introduced evidence of events relating to Kabakobwa, which are alleged to have occurred on 23 and 24 April 1994, whereas the Indictment only mentions events having occurred on 21 and 22 April 1994.<sup>3614</sup> The Kanyabashi Defence first objected at trial to Witness FAM's testimony relating to events on Saturday 23 April 1994.<sup>3615</sup> The Chamber overruled the objection on the basis that the Kanyabashi Defence could cross-examine Witness FAM later to verify the veracity or return to the subject in its final submissions.<sup>3616</sup> The Kanyabashi Defence subsequently cross-examined Witness FAM over the two following sitting days, 7 and 11 March 2002.

1505. The Kanyabashi Defence also objected to Witness QCB's testimony about the Saturday burial on the basis that it was not part of the witness' prior disclosed statements.<sup>3617</sup> With respect to Witness QCB, the Chamber ruled that the objection raised was legitimate insofar as Witness QCB's testimony as to the burials was not mere information that came out in the

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<sup>3612</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>3613</sup> 24 February 2000, Statement of Witness FAM, disclosed 4 December 2000 and 1 October 2001.

<sup>3614</sup> Kanyabashi Closing Brief, para. 114.

<sup>3615</sup> T. 6 March 2002 pp. 89-93, 96-97, 99-102.

<sup>3616</sup> T. 6 March 2002 p. 105 (Witness FAM).

<sup>3617</sup> T. 21 March 2002 pp. 20-22, 26-28 (Witness QCB).

course of testifying.<sup>3618</sup> The Kanyabashi Defence cross-examined Witness QCB six days later, on 27 and 28 March 2002.

1506. The Chamber notes that the Kanyabashi Indictment specified that events relating to Kabakobwa occurred “[o]n 21 and 22 April 1994”.<sup>3619</sup> This language suggests that these are the only relevant dates in connection to the underlying allegation. Events related to Kabakobwa that occurred on 23 and 24 April 1994 are not pled in Paragraphs 6.32 and 6.33. The Chamber notes that although the Indictment only mentions 21 and 22 April 1994 with regard to the Kabakobwa massacre, Paragraph 6.33 of the Kanyabashi Indictment states that, “[s]ubsequently, Kanyabashi called in reinforcements from the Presidential Guard. On their arrival they took part in the attacks”.

1507. The Chamber considers that the introduction of the evidence in relation to the killings on 23 April 1994 did not expand the charges in the Indictment as it was consistent with the assertion that Kanyabashi “subsequently” called in reinforcements to further the killings. In addition, Witness FAM’s prior statement of 24 February 2000 provides that on Saturday after the Kabakobwa killings, he witnessed Kanyabashi coming back with policemen to finish off those who had survived and search the neighbourhood for children and elderly to kill, as he participated in the communal work of burying the bodies of the victims.<sup>3620</sup> In the Chamber’s view, the additional details provided in Witness FAM’s prior statement provided Kanyabashi with notice that he was also being charged with killing the survivors of the first Kabakobwa attack on the following day, 23 April 1994.

1508. With respect to burials that occurred on Saturday, 23 April 1994, the Chamber notes that there is no mention of this in either Paragraphs 6.32 or 6.33 relating to Kabakobwa. The summary of Witness FAM’s anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief states that Witness FAM witnessed the communal work of burying victims’ bodies, although it is not clear that this was linked in any way to the massacre at Kabakobwa.<sup>3621</sup> A plain reading of the summary of Witness FAM’s anticipated testimony gives the impression Witness FAM would testify generally on witnessing communal work. In the circumstances, the Chamber considers that evidence of the alleged burials on Saturday 23 April and Kanyabashi’s alleged involvement therein fall outside the scope of the Indictment.

*Alleged Defect in Paragraph 6.32 of the Kanyabashi Indictment Concerning the Identity of Kanyabashi’s Subordinates*

1509. The Kanyabashi Defence submits that following the Chamber’s Decision of 31 May 2000 ordering that subordinates be specified in the Kanyabashi Indictment, Paragraphs 6.32 and 6.33 were not amended to include the requisite information.<sup>3622</sup> Thus, it argues that

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<sup>3618</sup> T. 21 March 2002 pp. 32-33 (Witness QCB) (ruling that, “the issue raised by the Defence is legitimate. And we would expect, in future, that that kind of exchange of information shall be done in order to facilitate the proceedings and the search for justice ... That would be the ruling of the Trial Chamber on this matter.”).

<sup>3619</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

<sup>3620</sup> 24 February 2000, Statement of Witness FAM, disclosed 4 December 2000.

<sup>3621</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>3622</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

Kanyabashi cannot be held responsible pursuant to Article 6 (3) for acts allegedly committed at Kabakobwa by *responsables de cellule*.<sup>3623</sup>

1510. The Chamber recalls that the original Paragraph 6.29 set forth that Ngoma *commune* was the site of numerous massacres, in which Kanyabashi was either directly involved or in which his subordinates were implicated. The Chamber recalls that in its Decision of 31 May 2000, it ordered the Prosecution to specify the identity of the subordinates referred to in Paragraph 6.29 of the Amended Kanyabashi Indictment, filed 12 August 1999.<sup>3624</sup> The Prosecution amended Paragraph 6.29 of the Amended Kanyabashi Indictment, filed 29 June 2000, to state that Ngoma *commune* was the site of numerous massacres, in which Kanyabashi was either directly involved or in which his subordinates, as set out in Paragraph 6.32, were implicated. Paragraph 6.32 of the Amended Indictment states: Kanyabashi ordered his subordinates, notably *conseillers de secteur* and *commune* policemen, and asked certain members of the Hutu population to go to Kabakobwa *cellule* to eliminate the refugees.<sup>3625</sup>

1511. Although Amended Indictment Paragraphs 6.32 or 6.33 still do not include *responsables de cellule* as Kanyabashi's subordinates, the Chamber notes Paragraph 4.3 of the Kanyabashi Indictment states that Kanyabashi exercised authority over his subordinates in his capacity as *bourgmestre* of Ngoma *commune*. According to Paragraph 6.32 of the Kanyabashi Indictment, those subordinates include, but are not limited to, *conseillers de secteur* and *commune* policemen. The Indictment therefore envisages the existence of other categories of subordinates insofar as Kanyabashi is concerned. In light of the foregoing, the Chamber considers it possible to infer from reading the Indictment as a whole that other civil servants, such as *responsables de cellule*, were also Kanyabashi's alleged subordinates.

1512. The Chamber notes the summary of Witness FAM's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief sets forth that on the Sunday following the Kabakobwa massacre, Kanyabashi came to the *secteur* and held a meeting with the *conseiller* and the *responsables de cellule* asking them to tell the surviving Tutsis to come out of hiding. Witness FAM's previous statement of 24 February 2000 is consistent with the summary of his anticipated evidence as to the Sunday events, namely that Kanyabashi came to the *secteur* and held a meeting with the *conseiller* and the *responsables de cellule*, asking them to tell the surviving Tutsis to come out of hiding.<sup>3626</sup>

1513. This disclosure is timely, clear and consistent and put Kanyabashi on notice that the Prosecution intended to bring evidence of the *responsables de cellule*'s involvement with respect to the alleged 24 April 1994 meeting. Therefore, the Chamber considers the defect in the Indictment for failing to specify that Kanyabashi had authority over *responsables de cellule* is cured.

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<sup>3623</sup> Kanyabashi Closing Brief, para. 112.

<sup>3624</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

<sup>3625</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

<sup>3626</sup> 24 February 2000, Statement of Witness FAM, disclosed 4 December 2000 and 1 October 2001.

*Nsabimana's Alleged Involvement at Kabakobwa on 23 April 1994*

1514. In addition to submissions concerning the vagueness of Indictment Paragraphs 6.53 and 6.59 that allege Nsabimana aided and abetted the massacre of Tutsis,<sup>3627</sup> the Nsabimana Defence submits that it was not provided with any notice that Witness QCB, the sole Prosecution witness to implicate Nsabimana in the Kabakobwa events, would testify against Nsabimana.<sup>3628</sup> When Witness QCB testified about the Kabakobwa events and first testified about the presence of Nsabimana, the Nsabimana Defence objected on the basis of lack of notice.<sup>3629</sup> The Chamber ruled that the objection was legitimate insofar as Witness QCB's testimony was not mere information that came out in the course of testifying.<sup>3630</sup> The Nsabimana Defence cross-examined Witness QCB six days later, on 27 March 2002.

1515. The Chamber notes that Indictment Paragraphs 6.53 and 6.59 which allege that, *inter alia*, Nsabimana aided and abetted the massacre of Tutsis, fail to provide any details as to where or when the alleged acts of aiding and abetting occurred. Such a broad allegation is insufficient to have put Nsabimana on notice to adequately prepare his defence in regard to the Kabakobwa incident. For this reason, the Chamber agrees that Indictment Paragraphs 6.53 and 6.59 are defective in this respect.

1516. The Chamber further notes that while the summary of Prosecution Witness FAM's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief outlines how Kanyabashi and Nteziryayo allegedly contributed to the events at Kabakobwa, no mention is made of Nsabimana.<sup>3631</sup> In the circumstances, the Chamber considers the Prosecution did not provide the Nsabimana Defence with adequate notice that he was being charged with aiding and abetting in the massacre at Kabakobwa such that the Chamber will not make any finding against Nsabimana in this respect.

### **3.6.8.3 Evidence**

#### Prosecution Witness FAM

1517. Witness FAM, a Hutu and detainee at the time of his testimony,<sup>3632</sup> testified that Kanyabashi, in the company of Nsanzabahizi, came to Rango market, between 9.00 and 10.00 a.m. on a Thursday in April 1994.<sup>3633</sup> Kanyabashi told those present that roadblocks were to be erected in the various *cellules* and *secteurs* as protection against the enemy, and that Tutsis should not be allowed to leave Ngoma *commune*, but rather they should be guided to Kabakobwa where they could seek refuge.<sup>3634</sup>

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<sup>3627</sup> Nsabimana Closing Brief, paras. 44, 52.

<sup>3628</sup> Nsabimana Closing Brief, paras. 63-66, 1118-1122.

<sup>3629</sup> T. 21 March 2002 p. 26 (Witness QCB).

<sup>3630</sup> T. 21 March 2002 pp. 32-33 (Witness QCB).

<sup>3631</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>3632</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>3633</sup> T. 6 March 2002 p. 81; T. 7 March 2002 p. 46; T. 12 March 2002 p. 133 (Witness FAM).

<sup>3634</sup> T. 6 March 2002 p. 76; T. 7 March 2002 pp. 81-82; T. 12 March 2002 p. 133 (Witness FAM).

1518. Colonel Muvunyi and some soldiers also came to Rango market on that day, but he did not notice their arrival as he was focused on Kanyabashi's address.<sup>3635</sup> Kanyabashi arrived with some policemen.<sup>3636</sup> Only Kanyabashi spoke during the gathering at Rango market, which lasted about one hour and was attended by more than 100 people.<sup>3637</sup> After the meeting, people dispersed and roadblocks were set up in compliance with Kanyabashi's instructions.<sup>3638</sup>

1519. Witness FAM testified that he saw Kanyabashi on the following day, Friday, and that Kanyabashi told him and others to cover themselves in banana leaves and anoint the upper parts of their bodies with black colour. Kanyabashi was in the presence of many soldiers, as well as Nteziryayo, Muvunyi and Mathias Nsanzabahizi. Kanyabashi told Witness FAM to accompany him to Kabakobwa.<sup>3639</sup>

1520. Witness FAM testified that the soldiers, policemen and civilians all left the market at the same time to go to Kabakobwa.<sup>3640</sup> As a result of what they were told, the group went to Kabakobwa armed with traditional weapons, especially machetes, spears and clubs. Kanyabashi, Nteziryayo and the policemen gave them authorisation to be armed.<sup>3641</sup> When he arrived at Kabakobwa, many people were gathered there whom he was told were Tutsis. There were more than 2,500 people at Kabakobwa.<sup>3642</sup>

1521. Nteziryayo arrived at Kabakobwa in a military vehicle at about the same time the witness arrived,<sup>3643</sup> and in the company of soldiers.<sup>3644</sup> Witness FAM testified that when his group arrived at Kabakobwa, around 3.00 p.m.,<sup>3645</sup> soldiers and policemen surrounded those people, and asked Witness FAM and his group to attack the Tutsis using their traditional weapons.<sup>3646</sup> Those who were attacked were able to resist, so two minutes later the soldiers and policemen shot into the crowd.<sup>3647</sup> He saw weapons such as Kalashnikov rifles and grenades used against the crowd by the soldiers.<sup>3648</sup> *Commune* policemen, soldiers and civilians all killed.<sup>3649</sup> The civilians attacked first, followed two minutes later by the military.<sup>3650</sup> When they finished the massacre, they loaded livestock, motorcycles and other valuable items which they found onto military vehicles. When they finished the killing, they left between 4.00 and 5.00 p.m.<sup>3651</sup> Witness FAM later stated he left at 5.30 p.m.<sup>3652</sup>

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<sup>3635</sup> T. 12 March 2002 pp. 143-144 (Witness FAM).

<sup>3636</sup> T. 12 March 2002 p. 140 (Witness FAM).

<sup>3637</sup> T. 12 March 2002 pp. 153-154 (Witness FAM).

<sup>3638</sup> T. 6 March 2002 p. 81; T. 12 March 2002 p. 154 (Witness FAM).

<sup>3639</sup> T. 6 March 2002 pp. 82-85 (Witness FAM).

<sup>3640</sup> T. 13 March 2002 p. 56 (Witness FAM).

<sup>3641</sup> T. 6 March 2002 p. 84 (Witness FAM).

<sup>3642</sup> T. 6 March 2002 pp. 84-85 (Witness FAM).

<sup>3643</sup> T. 7 March 2002 pp. 76, 80 (Witness FAM).

<sup>3644</sup> T. 7 March 2002 p. 58; T. 13 March 2002 pp. 30-32 (Witness FAM).

<sup>3645</sup> T. 6 March 2002 p. 86; T. 7 March 2002 pp. 46, 48, 76; T. 13 March 2002 p. 27 (Witness FAM).

<sup>3646</sup> T. 6 March 2002 p. 85; T. 13 March 2002 p. 35 (Witness FAM).

<sup>3647</sup> T. 6 March 2002 pp. 84-85; T. 7 March 2002 pp. 48, 80 (Witness FAM).

<sup>3648</sup> T. 6 March 2002 pp. 84-85; T. 7 March 2002 p. 48 (Witness FAM).

<sup>3649</sup> T. 7 March 2002 pp. 75-75 (Witness FAM).

<sup>3650</sup> T. 13 March 2002 p. 57 (Witness FAM).

<sup>3651</sup> T. 7 March 2002 p. 85 (Witness FAM).

<sup>3652</sup> T. 13 March 2002 p. 58 (Witness FAM).

1522. Witness FAM testified that there were many other civilians at Kabakobwa dressed in banana leaves, but he did not remember the exact number.<sup>3653</sup> While the soldiers and policemen were shooting at the crowd at Kabakobwa, those dressed in banana leaves prevented anyone from escaping. Those dressed in banana leaves used traditional weapons to kill those people who tried to escape the gunfire.<sup>3654</sup>

1523. Witness FAM saw Kanyabashi at Kabakobwa standing next to a vehicle and observing the manner in which people were being massacred and how those who were trying to escape were being contained.<sup>3655</sup>

1524. The next day, Saturday [23 April 1994] at 8.00 a.m., Witness FAM returned to Kabakobwa on the authorisation of Kanyabashi to perform communal activities, known as *umuganda*.<sup>3656</sup> Kanyabashi told them to engage in *finissage*, or to massacre those who were not killed the day before.<sup>3657</sup> Witness FAM testified that they were asked to perform *umuganda* at 8.00 a.m. on that morning by both the *cellule* leaders and Kanyabashi.<sup>3658</sup> Kanyabashi was not at the meeting on Saturday morning when instructions on *umuganda* were given. However, since Kanyabashi was the *bourgmestre* of Ngoma *commune* at the time and nobody killed or performed *umuganda* without having received instructions, Kanyabashi was responsible.<sup>3659</sup>

1525. Witness FAM buried the bodies, a task which continued on Sunday when the killings ended.<sup>3660</sup> Kanyabashi, the *conseiller de secteur*, Kanywabahizi and Jean Semwiza were present.<sup>3661</sup> Witness FAM left Kabakobwa on Saturday around 10.30 or 11.00 a.m.<sup>3662</sup> He estimated there were more than 2,500 victims at Kabakobwa.<sup>3663</sup>

1526. Witness FAM explained that he did not mention Kanyabashi or Nteziryayo in his confession of 3 August 1998 because he was detained with members of Kanyabashi's and Nteziryayo's families and was concerned for his safety.<sup>3664</sup> Witness FAM testified that he pled guilty in a Rwandan court to genocide for crimes committed at a roadblock and during night patrols.<sup>3665</sup> He testified that when he was first apprehended he did not admit his culpability because there was not a working judiciary in Rwanda at the time.<sup>3666</sup> At the time of his testimony Witness FAM had not yet been sentenced and still did not know whether his

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<sup>3653</sup> T. 6 March 2002 p. 86 (Witness FAM).

<sup>3654</sup> T. 6 March 2002 p. 87 (Witness FAM).

<sup>3655</sup> T. 6 March 2002 p. 87; T. 13 March 2002 p. 58 (Witness FAM).

<sup>3656</sup> T. 6 March 2002 p. 88; T. 13 March 2002 pp. 61-62 (Witness FAM).

<sup>3657</sup> T. 6 March 2002 pp. 88, 109; T. 7 March 2002 p. 86 (Witness FAM).

<sup>3658</sup> T. 13 March 2002 pp. 61-62, 65 (Witness FAM).

<sup>3659</sup> T. 13 March 2002 p. 65 (Witness FAM).

<sup>3660</sup> T. 7 March 2002 p. 86 (Witness FAM).

<sup>3661</sup> T. 13 March 2002 pp. 72-73 (Witness FAM).

<sup>3662</sup> T. 13 March 2002 p. 77 (Witness FAM).

<sup>3663</sup> T. 7 March 2002 pp. 86, 104 (Witness FAM).

<sup>3664</sup> T. 12 March 2002 pp. 93-94, 106-107 (Witness FAM).

<sup>3665</sup> T. 7 March 2002 pp. 35-36 (Witness FAM).

<sup>3666</sup> T. 11 March 2002 p. 32 (Witness FAM).

confession had been accepted or rejected.<sup>3667</sup> He denied that his fate was conditioned upon the testimony he gave before this Tribunal.<sup>3668</sup>

1527. Witness FAM said that after confessing, he was separated from the other detainees and placed into a new detention house for those who were confessing, called “Arusha”.<sup>3669</sup> The confessors were moved to ensure their security, but he denied that conditions in the Arusha house were better than in the general wing.<sup>3670</sup> He testified that he confessed because he wanted to tell the truth about the death of innocent people, not to gain additional rations or better conditions in detention.<sup>3671</sup>

1528. Witness FAM testified that he was detained with Witness QCB in Karubanda prison and had also been detained with Witness QCB in Arusha for 5 to 6 months while they waited to give their testimony before this Tribunal.<sup>3672</sup> He stated that he attended *Gacaca* sessions in Karubanda prison that discussed events in their *secteur* with Witness QCB, but that they were each concerned with their own case.<sup>3673</sup>

1529. Witness FAM knew Kanyabashi since 1985<sup>3674</sup> and identified Kanyabashi in court.<sup>3675</sup> Witness FAM first saw Nteziryayo in the military barracks in Butare when he went there for arms training, in February 1994.<sup>3676</sup> Witness FAM last saw Nteziryayo in July 1994, while Nteziryayo was coming to collect the guns that had been distributed to those who were at roadblocks.<sup>3677</sup> Witness FAM identified Nteziryayo in court.<sup>3678</sup>

#### Prosecution Witness QAM

1530. Witness QAM, a Tutsi student,<sup>3679</sup> testified that on a Friday, the *Interahamwe* came to her house wielding spears and bludgeons.<sup>3680</sup> They went from house to house where they knew there were Tutsis, and told the Tutsis to go to Kabakobwa.<sup>3681</sup> The *Interahamwe* who came to her house told them the order came from the *conseiller*, and it appeared the *conseiller* received an order from the *bourgmestre* of Ngoma.<sup>3682</sup> She and her family proceeded to Kabakobwa immediately as ordered.<sup>3683</sup>

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<sup>3667</sup> T. 11 March 2002 pp. 48-49, 53, 61 (Witness FAM).

<sup>3668</sup> T. 11 March 2002 p. 49 (Witness FAM).

<sup>3669</sup> T. 12 March 2002 pp. 110-111 (Witness FAM).

<sup>3670</sup> T. 12 March 2002 pp. 111-112 (Witness FAM).

<sup>3671</sup> T. 12 March 2002 p. 112 (Witness FAM).

<sup>3672</sup> T. 13 March 2002 pp. 12-14 (ICS) (Witness FAM).

<sup>3673</sup> T. 13 March 2002 pp. 13-14 (ICS) (Witness FAM).

<sup>3674</sup> T. 6 March 2002 pp. 79-80 (Witness FAM).

<sup>3675</sup> T. 7 March 2002 pp. 14-15 (Witness FAM).

<sup>3676</sup> T. 7 March 2002 pp. 8, 41, 86, 106 (Witness FAM).

<sup>3677</sup> T. 7 March 2002 pp. 13-14 (Witness FAM).

<sup>3678</sup> T. 7 March 2002 p. 19 (Witness FAM).

<sup>3679</sup> T. 22 October 2001 p. 129 (ICS) (Witness QAM); Prosecution Exhibit 43 (Personal Particulars).

<sup>3680</sup> T. 22 October 2001 p. 59 (Witness QAM).

<sup>3681</sup> T. 22 October 2001 p. 59; T. 23 October 2001 pp. 16, 68-69 (Witness QAM).

<sup>3682</sup> T. 24 October 2001 p. 63 (Witness QAM).

<sup>3683</sup> T. 22 October 2001 p. 60; T. 23 October 2001 p. 66; T. 24 October 2001 p. 21 (Witness QAM).



1531. They met other Tutsis also walking in the direction of Kabakobwa and walked there together.<sup>3684</sup> It took about one hour.<sup>3685</sup> She knew the others were Tutsis because they said so.<sup>3686</sup> Many people were already at Kabakobwa when they arrived.<sup>3687</sup> Witness QAM testified she arrived at Kabakobwa around 5.00 or 6.00 a.m.<sup>3688</sup> From her arrival until the attack occurred at 2.00 p.m. Witness QAM remained at Kabakobwa, at the river which serves as a border between Ngoma and Nyaruhengeri *communes*.<sup>3689</sup>

1532. Witness QAM testified that around 11.00 a.m. on the same day she arrived at Kabakobwa, she saw the same group of *Interahamwe* who previously came to her home, but they left quickly, saying that “they were going to announce to the *bourgmestre* that people at Kabakobwa were sufficient in number”.<sup>3690</sup> The person identified in Defence Exhibit 3 made this statement.<sup>3691</sup> The *Interahamwe* said they would return to confront those in Kabakobwa.<sup>3692</sup>

1533. The *Interahamwe* later came back to Kabakobwa armed with machetes, spears and cudgels and accompanied by *commune* policemen carrying guns and grenades.<sup>3693</sup> In the early afternoon, the policemen surrounded the people gathered at Kabakobwa from all sides.<sup>3694</sup> They then opened fire on them while the *Interahamwe* started cutting to pieces those who had been wounded with the bullets.<sup>3695</sup> Grenades were also used.<sup>3696</sup> Those who survived the bullets ran away towards Nyaruhengeri when the *Interahamwe* started attacking with machetes.<sup>3697</sup>

1534. She was unable to estimate the number of policemen who attacked the group at Kabakobwa. The policemen wore green uniforms.<sup>3698</sup> The attack started around 2.00 p.m. and continued until 3.00 or 4.00 p.m.<sup>3699</sup> Almost all of the people who were at Kabakobwa were killed and less than 50 were able to survive.<sup>3700</sup> She estimated the number of persons who had been gathered at Kabakobwa to be between 5,000 and 10,000.<sup>3701</sup> Two of her family members were killed there.<sup>3702</sup>

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<sup>3684</sup> T. 22 October 2001 pp. 59-60 (Witness QAM).

<sup>3685</sup> T. 22 October 2001 p. 60 (Witness QAM).

<sup>3686</sup> T. 22 October 2001 pp. 60-61 (Witness QAM).

<sup>3687</sup> T. 22 October 2001 p. 61 (Witness QAM).

<sup>3688</sup> T. 23 October 2001 pp. 70, 95 (Witness QAM).

<sup>3689</sup> T. 23 October 2001 pp. 75, 78 (Witness QAM).

<sup>3690</sup> T. 22 October 2001 pp. 62, 64; T. 23 October 2001 p. 100 (Witness QAM).

<sup>3691</sup> T. 23 October 2001 pp. 100, 102-103 (Witness QAM); Defence Exhibit 3 (Kanyabashi) (Document with one hand-written name).

<sup>3692</sup> T. 22 October 2001 pp. 62, 64 (Witness QAM).

<sup>3693</sup> T. 22 October 2001 p. 65 (Witness QAM).

<sup>3694</sup> T. 23 October 2001 pp. 86, 90 (Witness QAM).

<sup>3695</sup> T. 22 October 2001 pp. 65-66; T. 24 October 2001 pp. 9-10 (Witness QAM).

<sup>3696</sup> T. 23 October 2001 pp. 91-92 (Witness QAM).

<sup>3697</sup> T. 23 October 2001 pp. 91-92, 108 (Witness QAM).

<sup>3698</sup> T. 23 October 2001 p. 86 (Witness QAM).

<sup>3699</sup> T. 23 October 2001 pp. 70, 91 (Witness QAM).

<sup>3700</sup> T. 24 October 2001 p. 67 (Witness QAM).

<sup>3701</sup> T. 24 October 2001 p. 65 (Witness QAM).

<sup>3702</sup> T. 22 October 2001 p. 66; T. 24 October 2001 p. 22 (Witness QAM).

1535. Witness QAM did not see soldiers, *gendarmes* or members of the Presidential Guard at Kabakobwa.<sup>3703</sup> There were only civilians and *commune* policemen.<sup>3704</sup> When put to Witness QAM that her statement of 22 May 1997 stated that Kanyabashi sent soldiers from the Presidential Guard to exterminate Tutsis, she said the investigators got it wrong and she had told them that Kanyabashi did not have authority over the soldiers.<sup>3705</sup> She further explained that she intended to use the word “policemen” and not “soldier” in her statement.<sup>3706</sup> When put to her that her statement did not mention *Interahamwe*, Witness QAM said that she used this word because those who came to her house described themselves as *Interahamwe*,<sup>3707</sup> although she did not know what political party those Hutus belonged to.<sup>3708</sup> The *Interahamwe* wore ordinary clothes and a banana leaf tied around their waist.<sup>3709</sup>

1536. Witness QAM identified Prosecution Exhibit 34A as a picture of Kabakobwa.<sup>3710</sup> Witness QAM saw *commune* police in the location she identified at the bottom left-hand corner and the middle portion of the right-hand side of Exhibit 34A.<sup>3711</sup>

1537. There were only Tutsis at Kabakobwa since every Hutu present left.<sup>3712</sup> Kanyabashi’s daughter had come to Kabakobwa with her husband, a Tutsi, but she was later taken home without her husband. This happened around 11.30 a.m. on the day of the massacre.<sup>3713</sup> Witness QAM identified Kanyabashi in court.<sup>3714</sup>

#### Prosecution Witness QCB

1538. Witness QCB, a Hutu married to a Tutsi woman,<sup>3715</sup> and detained witness awaiting sentencing in Rwanda at the time of his testimony,<sup>3716</sup> testified that he went to his place of work on the morning of [Thursday] 21 April 1994, at around 7.00 a.m.,<sup>3717</sup> was told that there was no assignment for him on that day, and so he immediately decided to return home.<sup>3718</sup> On his way home, at about 9.00 or 9.10 a.m., he stopped at the Rugira roadblock, where he saw people being loaded into vehicles and taken to the IRST.<sup>3719</sup> He left the IRST around 9.30

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<sup>3703</sup> T. 23 October 2001 p. 84 (Witness QAM).

<sup>3704</sup> T. 23 October 2001 p. 117; T. 24 October 2001 p. 36 (Witness QAM).

<sup>3705</sup> T. 23 October 2001 pp. 85, 118; T. 24 October 2001 p. 31 (Witness QAM); Defence Exhibit 4B (Kanyabashi) (20 May 1997, Statement of Witness QAM).

<sup>3706</sup> T. 24 October 2001 p. 33 (Witness QAM).

<sup>3707</sup> T. 24 October 2001 pp. 11, 13-14 (Witness QAM).

<sup>3708</sup> T. 24 October 2001 pp. 16-17 (Witness QAM).

<sup>3709</sup> T. 24 October 2001 p. 64 (Witness QAM).

<sup>3710</sup> T. 22 October 2001 p. 68 (Witness QAM).

<sup>3711</sup> T. 22 October 2001 p. 73 (Witness QAM).

<sup>3712</sup> T. 23 October 2001 p. 93 (Witness QAM).

<sup>3713</sup> T. 23 October 2001 pp. 95-96 (Witness QAM).

<sup>3714</sup> T. 22 October 2001 p. 76 (Witness QAM).

<sup>3715</sup> T. 28 March 2002 p. 138 (ICS) (Witness QCB).

<sup>3716</sup> T. 20 March 2002 pp. 36-37 (Witness QCB).

<sup>3717</sup> T. 20 March 2002 pp. 37-38 (Witness QCB).

<sup>3718</sup> T. 20 March 2002 p. 77 (Witness QCB).

<sup>3719</sup> T. 20 March 2002 pp. 78, 88 (Witness QCB).

a.m.<sup>3720</sup> and arrived at Rango market around 11.00 a.m., where he saw Kanyabashi and Muvunyi.<sup>3721</sup>

1539. Colonel Muvunyi was with five soldiers in a Land Rover and he beckoned the population to come near him. He asked an *Interahamwe* leader named Cyiza what the Tutsi refugees were doing at Kanyamanza in Tumba *secteur*, and stated that they must “leave that place”.<sup>3722</sup> Muvunyi told Cyiza to chase the refugees away but Kanyabashi said, “[n]o, let them go through to Kabakobwa”, but without their belongings.<sup>3723</sup> In cross-examination he added that Kanyabashi said, “no one should steal their property, and no one should touch them”. From this Witness QCB testified that he and the others understood that the security of the refugees would be guaranteed. However, at 6.00 p.m. that night a *responsable de cellule* came to tell them to surround the refugees and that none of them should escape.<sup>3724</sup>

1540. From the point where he stood, Witness QCB could see Kanyabashi clearly.<sup>3725</sup> Witness QCB marked the spot where he was standing on Prosecution Exhibit 53 as “Q2”.<sup>3726</sup> The presence of the 3,000 refugees in Kanyamanza was marked on Prosecution Exhibit 53 by drawing a circle around the words “*secteur* Tumba” in the upper right-hand corner.<sup>3727</sup>

1541. The refugees left for Kabakobwa without their possessions as Kanyabashi stated.<sup>3728</sup> These Tutsis had come from the school between Sahera and Nkubi *secteurs*. Witness QCB and others had taken the refugees from the school to Kanyamanza, near Rango market, and then to Kabakobwa. After the meeting at the market, Witness QCB again encountered Muvunyi down the road to Kansi. At that time, a truck passed which contained 10 dead bodies and some soldiers. Muvunyi told the soldiers to throw the bodies onto the ground and told Witness QCB and the others with him: “There you have an example of what you must do. You must kill the Tutsis.” Kanyabashi was not present at that moment.<sup>3729</sup> Witness QCB marked the spot where he was standing when he saw Muvunyi on Prosecution Exhibit 53 as “Q3”.<sup>3730</sup>

1542. Witness QCB testified that after this event, the same soldiers proceeded to Rukimbira’s house.<sup>3731</sup> He was not present during the killing of Rukimbira because he was still at Rango.<sup>3732</sup>

1543. Later that same day, [Thursday] 21 April 1994, at 6.00 p.m., Witness QCB testified that the *responsable de cellule* assembled the population along the road that goes to Kabakobwa and told them that Kanyabashi had ordered that all Tutsis should be watched and

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<sup>3720</sup> T. 20 March 2002 p. 95 (Witness QCB).

<sup>3721</sup> T. 20 March 2002 p. 96; T. 3 April 2002 pp. 7-8 (Witness QCB).

<sup>3722</sup> T. 20 March 2002 pp. 97-98; T. 28 March 2002 p. 112 (ICS); T. 3 April 2002 p. 12 (Witness QCB).

<sup>3723</sup> T. 20 March 2002 pp. 98-99; T. 28 March 2002 pp. 112-113 (ICS) (Witness QCB).

<sup>3724</sup> T. 28 March 2002 p. 113 (ICS) (Witness QCB).

<sup>3725</sup> T. 20 March 2002 pp. 99, 101-102 (Witness QCB).

<sup>3726</sup> T. 20 March 2002 pp. 101-102 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3727</sup> T. 20 March 2002 p. 109 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3728</sup> T. 20 March 2002 pp. 98, 100; T. 28 March 2002 p. 87 (ICS) (Witness QCB).

<sup>3729</sup> T. 20 March 2002 pp. 110-111 (Witness QCB).

<sup>3730</sup> T. 20 March 2002 p. 135 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3731</sup> T. 28 March 2002 p. 126 (ICS) (Witness QCB).

<sup>3732</sup> T. 3 April 2002 p. 104 (Witness QCB).

not allowed to return to their homes.<sup>3733</sup> They were told to watch the Tutsis until soldiers came to kill them.<sup>3734</sup> The *responsable de cellule* said those instructions came from the *bourgmestre*, Kanyabashi.<sup>3735</sup> For the remainder of the night, Witness QCB and others guarded the Tutsis.<sup>3736</sup> They did not sleep that night.<sup>3737</sup> About 3,000 Tutsis sought refuge in Kanyamanza, and by the time the refugees gathered at Kabakobwa they numbered 5,000.<sup>3738</sup> The meeting with the *responsable de cellule* took place at the spot marked “Q4” on Prosecution Exhibit 53.<sup>3739</sup>

1544. The next day, Friday 22 April 1994, at 10.00 a.m., Witness QCB saw soldiers come to Kabakobwa and approach the refugees to ask how many people were on the hill. The Tutsis told the soldiers that the Hutus had surrounded them and indicated their number to be 5,000. The leader of the soldiers then came to Witness QCB and other Hutus standing guard.<sup>3740</sup> The soldiers introduced themselves, said they were from the ESO camp in Butare and told the witness and others, “[d]o not think that we are *Inkotanyi*, we come from [the] ESO”.<sup>3741</sup> The leader of the soldiers said that they could not attack “them” with Kalashnikovs and that they were going to ask Muvunyi for more sophisticated weapons so that they could deal with the Tutsis.<sup>3742</sup> Witness QCB agreed that he did not include the soldiers’ words in his statement of 7 April 1999.<sup>3743</sup> His statement was incorrect insofar as it stated that the soldiers told the Hutus to go home.<sup>3744</sup>

1545. There were about 250 soldiers.<sup>3745</sup> The 250 soldiers included members of the “Rwandan Army” forces, who were wearing black berets and others from the *gendarmes* wearing red berets.<sup>3746</sup>

1546. Witness QCB testified that later that day, at about 3.00 p.m., he saw Mathias Nsanzabahizi, who worked both as Kanyabashi’s driver and as a policeman at the Ngoma *commune*, arrive at Kabakobwa where the Tutsis had been surrounded.<sup>3747</sup> Nsanzabahizi read a letter out loud, which stated that Kanyabashi asked the population to join the soldiers in attacking the Tutsis.<sup>3748</sup> Witness QCB saw the letter dated 22 April 1994, and said it bore the stamp of the *commune* and Kanyabashi’s signature.<sup>3749</sup> While Nsanzabahizi was reading the letter, the soldiers started shooting and Nsanzabahizi stopped reading. Nsanzabahizi told

<sup>3733</sup> T. 20 March 2002 pp. 111, 114; T. 28 March 2002 p. 113 (ICS) (Witness QCB).

<sup>3734</sup> T. 20 March 2002 pp. 111, 114 (Witness QCB).

<sup>3735</sup> T. 20 March 2002 pp. 111-113 (Witness QCB).

<sup>3736</sup> T. 20 March 2002 p. 114; T. 26 March 2002 pp. 116-117 (Witness QCB).

<sup>3737</sup> T. 28 March 2002 p. 137 (ICS) (Witness QCB).

<sup>3738</sup> T. 20 March 2002 p. 108 (Witness QCB).

<sup>3739</sup> T. 20 March 2002 p. 136 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3740</sup> T. 20 March 2002 pp. 116-117; T. 2 April 2002 pp. 6, 18-19 (Witness QCB).

<sup>3741</sup> T. 20 March 2002 p. 118 (Witness QCB).

<sup>3742</sup> T. 20 March 2002 pp. 116-117; T. 2 April 2002 pp. 6, 18-19 (Witness QCB).

<sup>3743</sup> T. 2 April 2002 p. 8 (Witness QCB); Defence Exhibit 29 (Ntahobali) (7 April 1999, Statement of Witness QCB).

<sup>3744</sup> T. 2 April 2002 p. 8 (Witness QCB).

<sup>3745</sup> T. 20 March 2002 p. 117 (Witness QCB).

<sup>3746</sup> T. 20 March 2002 p. 121 (Witness QCB).

<sup>3747</sup> T. 20 March 2002 pp. 121-122; T. 2 April 2002 pp. 6-7 (Witness QCB).

<sup>3748</sup> T. 20 March 2002 p. 123; T. 2 April 2002 pp. 10-11; T. 3 April 2002 p. 74 (Witness QCB).

<sup>3749</sup> T. 20 March 2002 pp. 123-124 (Witness QCB).

Witness QCB and others that they should join in the massacre.<sup>3750</sup> Nsanzabahizi was standing about one metre from Witness QCB.<sup>3751</sup> Witness QCB listened to Nsanzabahizi's words from the same spot marked on Prosecution Exhibit 53 as "Q4".<sup>3752</sup> Witness QCB acknowledged that in none of his seven previous statements to the Tribunal's investigators did he mention the letter from Kanyabashi that Nsanzabahizi read on the morning of 22 April 1994.<sup>3753</sup>

1547. Nsanzabahizi had a gun and a grenade, which he subsequently used to kill the Tutsis. According to Witness QCB, when his gun could not shoot anymore, Nsanzabahizi used his grenade against the Tutsis.<sup>3754</sup> Witness QCB saw the soldiers shoot the Tutsis, and saw the Hutu civilians kill those Tutsis that tried to escape.<sup>3755</sup> Witness QCB testified that the soldiers opened fire on the refugees first, followed by the Hutu population and policemen.<sup>3756</sup> The attack on the refugees started around 3.30 p.m.<sup>3757</sup>

1548. When it was put to Witness QCB that none of his several statements that were disclosed to the Defence,<sup>3758</sup> including his statement to Rwandan authorities dated 26 August 1999,<sup>3759</sup> implicated *commune* policemen other than Nsanzabahizi in the Kabakobwa attacks, Witness QCB said he started with Nsanzabahizi because he was the leader of the policemen.<sup>3760</sup> He also named several other *commune* policemen from Nkubi and Sahera *secteurs* who he claimed were with him and killed people "like thunder" in the attack.<sup>3761</sup>

1549. Witness QCB testified that about 2,000 people were killed in Kabakobwa.<sup>3762</sup> The presence of the Hutu civilians from various *secteurs* that surrounded Kabakobwa was marked on Prosecution Exhibit 53.<sup>3763</sup> The place where the refugees gathered at Kabakobwa was also marked on Prosecution Exhibit 53.<sup>3764</sup>

1550. On recall in 2009, Witness QCB was questioned as to his testimony before a Canadian Court in 2007,<sup>3765</sup> where he stated that his group of civilians arrived at Kabakobwa around

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<sup>3750</sup> T. 20 March 2002 p. 123 (Witness QCB).

<sup>3751</sup> T. 20 March 2002 pp. 126, 128-129; T. 2 April 2002 p. 19 (Witness QCB).

<sup>3752</sup> T. 20 March 2002 p. 133 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3753</sup> T. 2 April 2002 pp. 23-26 (Witness QCB).

<sup>3754</sup> T. 20 March 2002 p. 129 (Witness QCB).

<sup>3755</sup> T. 20 March 2002 p. 125 (Witness QCB).

<sup>3756</sup> T. 2 April 2002 p. 57 (Witness QCB).

<sup>3757</sup> T. 23 February 2009 p. 30 (ICS) (Witness QCB).

<sup>3758</sup> See Defence Exhibit 29 (Ntahobali) (7 April 1999, Statement of Witness QCB); Defence Exhibit 31 (Nsabimana) (19 April 1999, Witness QCB's Guilty Plea); Defence Exhibit 38B (Kanyabashi) (17 June 1999, Witness QCB's Confirmation of Confession); Defence Exhibit 26D (Nteziryayo) (16 August 2001, Statement of Witness QCB); Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB); Defence Exhibit 32 (Nsabimana) (27 August 1999, Record of Witness QCB's Rwandan Hearing); Defence Exhibit 41B (Kanyabashi) (3 January 2001, Request to the Rwandan Prosecutor by Witness QCB); Defence Exhibit 42 (Kanyabashi) (28 March 2001, Witness QCB's Confession).

<sup>3759</sup> See Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB).

<sup>3760</sup> T. 28 March 2002 p. 88; T. 2 April 2002 pp. 26-28, 53 (Witness QCB).

<sup>3761</sup> T. 2 April 2002 pp. 26-27 (Witness QCB).

<sup>3762</sup> T. 20 March 2002 p. 126; T. 2 April 2002 p. 58 (Witness QCB).

<sup>3763</sup> T. 20 March 2002 pp. 138, 140; T. 26 March 2002 pp. 105-106, 114 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3764</sup> T. 20 March 2002 p. 142 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3765</sup> T. 23 February 2009 pp. 8, 16 (ICS) (Witness QCB).

3.30 p.m. on [Friday] 22 April 1994,<sup>3766</sup> that they were led to Kabakobwa by *gendarmes*, and their leader was Major Rusigariye.<sup>3767</sup> Witness QCB clarified that while the *gendarmes* were led by Major Rusigariye, his group was led by *responsables de cellule*, and they were helping the *gendarmes*.<sup>3768</sup> When the *gendarmes* came to Kabakobwa however, they came with a policeman called Mathias Nsanzabahizi.<sup>3769</sup> He knew Major Rusigariye prior to the events at Kabakobwa even though he had testified before the Tribunal in 2002 that he had not known Rusigariye.<sup>3770</sup>

1551. Witness QCB testified that he did not mention the letter read out by Nsanzabahizi in his testimony before the Canadian Court because he was asked questions about other people, and not Kanyabashi.<sup>3771</sup> Nsanzabahizi arrived at Kabakobwa in the morning to read out Kanyabashi's letter at about 7.00 a.m.,<sup>3772</sup> although he testified in 2002 before the Court that Nsanzabahizi had arrived with the letter in the afternoon.<sup>3773</sup> Nsanzabahizi returned in the afternoon around 3.00 p.m. to fire on the refugees.<sup>3774</sup> From 7.00 a.m. until 3.30 p.m., the Hutus surrounded the refugees and awaited orders to kill them.<sup>3775</sup>

1552. Witness QCB testified that on [Saturday] 23 April 1994 he went back to Kabakobwa to bury the deceased. At 7.30 a.m. he saw there were two trucks and a bulldozer at the site of the massacre.<sup>3776</sup> That same morning, Kanyabashi and Nsabimana came to the site at about 9.00 a.m., arriving aboard separate vehicles, one right after the other.<sup>3777</sup> They walked around and Kanyabashi commended the villagers for the work they had done in burying the dead. They only stayed five minutes and then left.<sup>3778</sup> All the local population, minus women and children, was present when they arrived.<sup>3779</sup> Kanyabashi and Nsabimana stood only three steps from Witness QCB.<sup>3780</sup> The spot from where Kanyabashi and Muvunyi observed events at Kabakobwa was marked on Prosecution Exhibit 53.<sup>3781</sup> Witness QCB acknowledged he had not mentioned Kanyabashi's presence at the burial site in Kabakobwa on the morning of 23 April 1994 in any of his statements which the Prosecution disclosed to the Defence.<sup>3782</sup>

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<sup>3766</sup> T. 23 February 2009 p. 9 (ICS) (Witness QCB).

<sup>3767</sup> T. 23 February 2009 pp. 9-10, 12 (ICS) (Witness QCB).

<sup>3768</sup> T. 23 February 2009 pp. 9, 12, 16-17 (ICS) (Witness QCB).

<sup>3769</sup> T. 23 February 2009 pp. 12-13 (ICS) (Witness QCB).

<sup>3770</sup> T. 23 February 2009 p. 27 (ICS) (Witness QCB).

<sup>3771</sup> T. 23 February 2009 p. 19 (ICS) (Witness QCB).

<sup>3772</sup> T. 23 February 2009 p. 31 (ICS) (Witness QCB).

<sup>3773</sup> T. 23 February 2009 pp. 22-25 (ICS) (Witness QCB). See T. 20 March 2002 p. 122; T. 2 April 2002 pp. 6-7 (Witness QCB) (Nsanzabahizi arrived around 3.00 p.m.).

<sup>3774</sup> T. 23 February 2009 p. 25 (ICS) (Witness QCB).

<sup>3775</sup> T. 23 February 2009 p. 31 (ICS) (Witness QCB).

<sup>3776</sup> T. 21 March 2002 p. 6 (Witness QCB).

<sup>3777</sup> T. 21 March 2002 p. 16; T. 27 March 2002 p. 6 (Witness QCB).

<sup>3778</sup> T. 21 March 2002 p. 17 (Witness QCB).

<sup>3779</sup> T. 21 March 2002 p. 18 (Witness QCB).

<sup>3780</sup> T. 21 March 2002 p. 37; T. 2 April 2002 p. 20 (Witness QCB).

<sup>3781</sup> T. 21 March 2002 pp. 36-37 (Witness QCB); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>3782</sup> T. 2 April 2002 pp. 118-119 (Witness QCB). See Defence Exhibit 29 (Ntahobali) (7 April 1999, Statement of Witness QCB); Defence Exhibit 31 (Nsabimana) (19 April 1999, Witness QCB's Guilty Plea); Defence Exhibit 38B (Kanyabashi) (17 June 1999, Witness QCB's Confirmation of Confession); Defence Exhibit 26D (Nteziryayo) (16 August 2001, Statement of Witness QCB); Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB); Defence Exhibit 32 (Nsabimana) (27 August 1999, Record of

1553. Witness QCB was in detention and had not yet entered a guilty plea or been sentenced at the time of his testimony.<sup>3783</sup> He agreed that those classified as Category 1 prisoners may be subject to capital punishment, but those that confess are Category 2 prisoners and may have a reduced sentenced of imprisonment.<sup>3784</sup> Witness QCB learned that there were executions in April 1998 in Butare, but testified that his confession of June 1998 was not motivated by those events. Rather, he confessed because of the remorse he felt for the crimes that he committed.<sup>3785</sup>

1554. Witness QCB admitted that he was detained together with Witness FAM in Arusha pending his testimony before this Tribunal, and that they were detained in the same area in Rwanda. He noted that the prison in which they were detained contained 7,000 detainees.<sup>3786</sup>

### Prosecution Witness QP

1555. Witness QP, a female Tutsi aged 15 in 1994,<sup>3787</sup> testified that Kanyabashi was the *bourgmestre* of her *commune*, and that she had seen him before April 1994 because he would come for meetings.<sup>3788</sup> On a Thursday in April at about noon, at Rwinuma *cellule*, she saw Kanyabashi inside a moving vehicle accompanied by a man in a green uniform going towards Kabuga, in Sahera.<sup>3789</sup> Kanyabashi was speaking into a microphone and repeated three times, “[h]e who will burn the weeds must first gather them.”<sup>3790</sup> Witness QP said she was at home before noon and on hearing the announcements, she went up the road to get closer.<sup>3791</sup> The witness was about 20 metres away from Kanyabashi at that time.<sup>3792</sup> The car’s driver was a policeman she did not know.<sup>3793</sup> Approximately 15 minutes later, Kanyabashi and his companion returned from the direction of Kabuga still speaking into the microphone and uttering the same words.<sup>3794</sup> After the vehicle returned the second time, the witness went home and asked her father what those words meant.<sup>3795</sup> Her father explained that the Tutsis were to be killed.<sup>3796</sup> Witness QP could not recall the type or colour of the vehicle that Kanyabashi travelled in that day or what it looked like, stating that too much time had passed.<sup>3797</sup> Witness QP could not positively identify Kanyabashi in court.<sup>3798</sup>

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Witness QCB’s Rwandan Hearing); Defence Exhibit 41B (Kanyabashi) (3 January 2001, Request to the Rwandan Prosecutor by Witness QCB); Defence Exhibit 42 (Kanyabashi) (28 March 2001, Witness QCB’s Confession).

<sup>3783</sup> T. 27 March 2002 p. 158 (Witness QCB).

<sup>3784</sup> T. 27 March 2002 p. 142 (Witness QCB).

<sup>3785</sup> T. 27 March 2002 p. 161 (Witness QCB).

<sup>3786</sup> T. 28 March 2002 p. 42 (ICS) (Witness QCB).

<sup>3787</sup> T. 6 June 2002 pp. 35-36 (ICS) (Witness QP).

<sup>3788</sup> T. 5 June 2002 pp. 152-153 (Witness QP).

<sup>3789</sup> T. 5 June 2002 pp. 154, 158-159, 162 (Witness QP).

<sup>3790</sup> T. 5 June 2002 pp. 154-156, 158; T. 6 June 2002 pp. 76-77, 83, 94 (Witness QP).

<sup>3791</sup> T. 6 June 2002 pp. 79-80 (Witness QP).

<sup>3792</sup> T. 5 June 2002 p. 157 (estimated 30 metres); T. 6 June 2002 pp. 6-7 (Registry confirmed the measured distance was 20 metres) (Witness QP).

<sup>3793</sup> T. 6 June 2002 p. 88 (Witness QP).

<sup>3794</sup> T. 5 June 2002 p. 160 (Witness QP).

<sup>3795</sup> T. 5 June 2002 p. 160; T. 6 June 2002 p. 96 (Witness QP).

<sup>3796</sup> T. 5 June 2002 p. 161 (Witness QP).

<sup>3797</sup> T. 6 June 2002 pp. 80-81 (Witness QP).

<sup>3798</sup> T. 6 June 2002 p. 21 (Witness QP).

1556. Witness QP did not go to the market on Thursday morning, or hear of a pickup truck with soldiers that threw 10 dead bodies from the truck.<sup>3799</sup>

1557. Witness QP testified that later on the same day [Thursday] she saw Kanyabashi, she saw her *responsable de cellule* order Tutsi civilians to proceed to Kabakobwa to join the others.<sup>3800</sup> Witness QP, along with her parents, a sister and three brothers, walked to Kabakobwa on that Thursday, taking with them some of their cattle and household effects. They stayed there Thursday night.<sup>3801</sup> On arrival at Kabakobwa, she found so many Tutsi refugees that “one [could not] count them.”<sup>3802</sup> Apart from a few Hutu women who had followed their husbands, the rest of those seeking refuge were Tutsis.<sup>3803</sup> When put to Witness QP that in her statement of 24 June 1997 she stated that the *responsable de cellule* told the refugees to go to Kabakobwa for their safety, Witness QP testified that they were just told to go to Kabakobwa.<sup>3804</sup>

1558. Witness QP testified that on the Friday morning a man named Mathias, who was a Hutu from Gasharo *cellule* and an employee of Ngoma *commune*, arrived at Kabakobwa in a green Toyota vehicle belonging to Ngoma *commune*. Mathias came to Kabakobwa to fetch his sister, his Tutsi brother-in-law and their children who were among the Tutsi refugees at Kabakobwa.<sup>3805</sup> He came at 6.00 a.m. She was about 10 metres from the vehicle and saw his family members board it.<sup>3806</sup> She heard one of the refugees ask Mathias why he was taking these people away, and who would take care of those seeking refuge, to which Mathias responded, “[p]ray, because the hour of your death has come.”<sup>3807</sup>

1559. Witness QP testified that at approximately 2.00 p.m. on Friday 8 April 1994 (*sic*), soldiers attacked the refugees by throwing into the crowd things that “looked like small containers [that] exploded”, killing some refugees.<sup>3808</sup> The soldiers wore red berets, trousers and shirts with stains. The soldiers also had other weapons and shot at the refugees.<sup>3809</sup> There were also policemen and Hutu civilians among the attackers.<sup>3810</sup> The policemen were armed with guns.<sup>3811</sup> She could recognise policemen by their uniforms although she did not know their names.<sup>3812</sup> The civilians wore banana leaves and carried spears, swords, machetes, cudgels and hoes.<sup>3813</sup> They used their weapons on the civilians after the soldiers and policemen “had finished.” When they saw the civilian population attack with traditional arms, they

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<sup>3799</sup> T. 6 June 2002 pp. 102-103 (Witness QP).

<sup>3800</sup> T. 5 June 2002 pp. 161-162; T. 6 June 2002 p. 104 (Witness QP).

<sup>3801</sup> T. 5 June 2002 p. 163 (Witness QP).

<sup>3802</sup> T. 5 June 2002 p. 168; T. 6 June 2002 p. 114 (Witness QP).

<sup>3803</sup> T. 6 June 2002 p. 107 (Witness QP).

<sup>3804</sup> T. 6 June 2002 pp. 106-107 (Witness QP); Defence Exhibit 69 (Kanyabashi) (24 June 1997, Statement of Witness QP).

<sup>3805</sup> T. 5 June 2002 pp. 165-166 (Witness QP).

<sup>3806</sup> T. 6 June 2002 pp. 108, 111 (Witness QP).

<sup>3807</sup> T. 5 June 2002 p. 167 (Witness QP).

<sup>3808</sup> T. 6 June 2002 pp. 10-11 (Witness QP).

<sup>3809</sup> T. 6 June 2002 p. 11 (Witness QP).

<sup>3810</sup> T. 6 June 2002 p. 13 (Witness QP).

<sup>3811</sup> T. 6 June 2002 p. 17 (Witness QP).

<sup>3812</sup> T. 6 June 2002 p. 112 (Witness QP).

<sup>3813</sup> T. 6 June 2002 p. 13 (Witness QP).



fled.<sup>3814</sup> Witness QP lost a sister in the Kabakobwa killing.<sup>3815</sup> Witness QP did not mention the loss of her sister in her statement of 24 June 1997.<sup>3816</sup>

1560. Witness QP and Witness QW were not neighbours in their home *cellule*; the distance between their homes was quite far.<sup>3817</sup> Witness QP did not see Witness QW during the events at Kabakobwa.<sup>3818</sup> Witness QP did not discuss the events at Kabakobwa with Witness QW.<sup>3819</sup> Witness QP did not discuss the events at Kabakobwa during any other meetings.<sup>3820</sup> Witness QP also did not know a person by the same name as Witness QAM.<sup>3821</sup>

#### Prosecution Witness QW

1561. Witness QW, a female Tutsi who was 16 years old in 1994,<sup>3822</sup> testified that one Thursday in April 1994 the person in charge of her *cellule* told the Tutsis of his *cellule* that in furtherance of *Bourgmestre* Kanyabashi's orders, they were to seek refuge at Kabakobwa where they would find food and supplies.<sup>3823</sup> The *responsible de cellule* told the Tutsis that they would be protected in Kabakobwa, but that they must go there, and that they may be killed if they refused to go.<sup>3824</sup> They received the instructions in the morning and she and her family went to Kabakobwa in the afternoon.<sup>3825</sup> She did not know how Kanyabashi's instruction was conferred to her *cellule* leader.<sup>3826</sup> She recalled it was a Thursday because it was market day at Rango, although she did not go.<sup>3827</sup> She was at home that morning.<sup>3828</sup> She did not know whether a pickup full of soldiers passed through Rango market threatening Tutsis and telling them they would not get to use what they had purchased, nor had she heard of this incident.<sup>3829</sup>

1562. Witness QW testified that she went with her family to Kabakobwa. They arrived at Kabakobwa towards the end of the afternoon on Thursday, joining over 2,000 other refugees.<sup>3830</sup> Many of the refugees at Kabakobwa were fleeing massacres. While she was unable to determine where all the refugees had come from, she testified that some of them were coming from Gikongoro through Nyaruhengeri while acknowledging that the refugees might have come from other *secteurs* and *communes*.<sup>3831</sup> Those refugees told Witness QW that they too had been told by Kanyabashi to go to Kabakobwa to receive assistance and

<sup>3814</sup> T. 6 June 2002 p. 17 (Witness QP).

<sup>3815</sup> T. 6 June 2002 p. 18 (Witness QP).

<sup>3816</sup> T. 6 June 2002 pp. 41-42 (ICS) (Witness QP); Defence Exhibit 68 (Kanyabashi) (Alleged Omissions in Witness QP's Statement); Defence Exhibit 69 (Kanyabashi) (24 June 1997, Statement of Witness QP).

<sup>3817</sup> T. 6 June 2002 p. 47 (ICS) (Witness QP).

<sup>3818</sup> T. 6 June 2002 pp. 45-46 (ICS) (Witness QP).

<sup>3819</sup> T. 6 June 2002 p. 49 (ICS) (Witness QP).

<sup>3820</sup> T. 6 June 2002 p. 62 (ICS) (Witness QP).

<sup>3821</sup> T. 6 June 2002 pp. 59-60 (ICS) (Witness QP).

<sup>3822</sup> T. 6 June 2002 pp. 131-132 (Witness QW); Prosecution Exhibit 59 (Personal Particulars).

<sup>3823</sup> T. 6 June 2002 pp. 133-134; T. 6 June 2002 p. 148 (ICS) (Witness QW).

<sup>3824</sup> T. 6 June 2002 pp. 134, 136 (Witness QW).

<sup>3825</sup> T. 6 June 2002 p. 144 (Witness QW).

<sup>3826</sup> T. 10 June 2002 p. 62 (Witness QW).

<sup>3827</sup> T. 6 June 2002 p. 134; T. 10 June 2002 p. 12 (Witness QW).

<sup>3828</sup> T. 10 June 2002 p. 44 (ICS) (Witness QW).

<sup>3829</sup> T. 10 June 2002 pp. 13-14 (Witness QW).

<sup>3830</sup> T. 6 June 2002 pp. 136-137 (Witness QW).

<sup>3831</sup> T. 10 June 2002 pp. 15-16 (Witness QW).

protection.<sup>3832</sup> Witness QW denied that her and her family fled to Kabakobwa because of massacres in neighbouring *secteurs*.<sup>3833</sup>

1563. Witness QW testified that the next morning, between 10.00 and 11.00 a.m.,<sup>3834</sup> she saw a green vehicle bearing the inscription “Ngoma *commune*” arrive at Kabakobwa and recognised the driver, one Mathias, a *commune* employee.<sup>3835</sup> Upon his arrival at the site, Mathias told Witness QW and other refugees that he had come to Kabakobwa to collect his sister, one Marguerite who was among the refugees with her children.<sup>3836</sup> Witness QW was about three metres from Mathias’ car.<sup>3837</sup> When the refugees asked Mathias when the people supposed to protect the refugees would come, he told them, “[y]ou should believe in God because your fate has already been decided. Everything that was told to you previously was lies”, and “[y]our hour has come.”<sup>3838</sup> Witness QW saw Marguerite leave with her children.<sup>3839</sup> She was about 10 metres from the car at that point.<sup>3840</sup>

1564. Witness QW testified that the person she identified as Mathias came back towards the end of the afternoon on Friday accompanied by people in uniform, soldiers or policemen wearing green clothes with banana leaves and carrying guns, and members of the population wearing civilian clothes with banana leaves and carrying traditional weapons.<sup>3841</sup> The people in uniform went towards the refugees. The refugees moved towards them thinking that these people had come to ensure their safety. When they understood it was not the case, the refugees sat back down. The attackers then fired their guns at the refugees.<sup>3842</sup>

1565. Witness QW did not know whether those who fired the guns were soldiers or policemen but they were wearing banana leaves.<sup>3843</sup> Civilians carrying traditional weapons and wearing civilian clothes and banana leaves also attacked them.<sup>3844</sup> During the shooting, many refugees died, and those who did not die were later killed by the civilians.<sup>3845</sup> Those who were still alive fled to Kibilizi.<sup>3846</sup> Witness QW walked all night and arrived back at Kabakobwa the following morning, around 8.00 or 9.00 a.m.<sup>3847</sup> They were forced to return to Kabakobwa because wherever else they went there were massacres.<sup>3848</sup> Witness QW saw all the dead

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<sup>3832</sup> T. 10 June 2002 p. 16 (Witness QW).

<sup>3833</sup> T. 10 June 2002 pp. 17-18 (Witness QW).

<sup>3834</sup> T. 10 June 2002 p. 19 (Witness QW).

<sup>3835</sup> T. 6 June 2002 pp. 137-138 (Witness QW).

<sup>3836</sup> T. 6 June 2002 pp. 138-139 (Witness QW).

<sup>3837</sup> T. 10 June 2002 p. 25 (Witness QW).

<sup>3838</sup> T. 6 June 2002 p. 139; T. 10 June 2002 p. 25 (Witness QW).

<sup>3839</sup> T. 6 June 2002 p. 139; T. 10 June 2002 pp. 19, 26 (Witness QW).

<sup>3840</sup> T. 10 June 2002 pp. 27-28 (Witness QW).

<sup>3841</sup> T. 6 June 2002 p. 139 (Witness QW).

<sup>3842</sup> T. 6 June 2002 p. 140 (Witness QW).

<sup>3843</sup> T. 6 June 2002 p. 140 (Witness QW).

<sup>3844</sup> T. 6 June 2002 p. 141 (Witness QW).

<sup>3845</sup> T. 6 June 2002 pp. 141-142 (Witness QW).

<sup>3846</sup> T. 6 June 2002 p. 141 (Witness QW).

<sup>3847</sup> T. 6 June 2002 p. 143; T. 10 June 2002 p. 31 (Witness QW).

<sup>3848</sup> T. 10 June 2002 p. 29 (Witness QW).

bodies and left; she did not stay there long.<sup>3849</sup> She did not see any bulldozers there, and did not see any gathering of people with authorities.<sup>3850</sup>

1566. Witness QW agreed that she knew a girl by the same name as Witness QP and that they were in Arusha at the same time to give evidence.<sup>3851</sup> Witness QW did not see Witness QP at Kabakobwa but before she gave her statement to the Tribunal's investigators, she came to know that Witness QP was at Kabakobwa.<sup>3852</sup> She did not know that Witness QP had also given a statement to the Tribunal investigators.<sup>3853</sup> Witness QW also did not know a person by the same name as Witness QAM.<sup>3854</sup>

1567. Witness QW said she might have heard of an association called *Ibuka*, but she did not know what it did and she never received assistance from it.<sup>3855</sup> She had heard of a similar association called *Avega* but had never received assistance from it.<sup>3856</sup>

### Prosecution Witness QBV

1568. Witness QBV, a Hutu detainee who had participated in killings during the genocide,<sup>3857</sup> testified that, at about 2.00 p.m. on 22 April 1994, while at the Ramba *cellule* roadblock in Kibilizi *secteur*, Nteziryayo, accompanied by Colonel Muvunyi, arrived in a red double-cabin pickup.<sup>3858</sup> They arrived from the direction of Butare town.<sup>3859</sup> Colonel Muvunyi and the driver sat in the front, while Nteziryayo sat in the back.<sup>3860</sup> Nteziryayo, Colonel Muvunyi and their driver were in full military uniform.<sup>3861</sup> Since the witness was standing at the roadblock, he could see into the back of the pickup; he saw grenades, guns and other things.<sup>3862</sup> They were followed by another truck full of soldiers.<sup>3863</sup> They stayed at the roadblock for approximately one hour<sup>3864</sup> and left at 3.00 p.m.<sup>3865</sup>

1569. Witness QBV testified that when Nteziryayo and Colonel Muvunyi left the Ramba *cellule* roadblock, they drove to the Mugusa *commune* office.<sup>3866</sup> Witness QBV saw Nteziryayo and Colonel Muvunyi again at the Mugusa *commune* office at 4.00 p.m.<sup>3867</sup> When they arrived, the witness found a meeting underway.<sup>3868</sup> André Kabayiza, the Mugusa

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<sup>3849</sup> T. 6 June 2002 p. 143; T. 10 June 2002 p. 31 (Witness QW).

<sup>3850</sup> T. 10 June 2002 pp. 31-32 (Witness QW).

<sup>3851</sup> T. 10 June 2002 p. 34 (ICS) (Witness QW).

<sup>3852</sup> T. 10 June 2002 pp. 34-35, 38 (ICS) (Witness QW).

<sup>3853</sup> T. 10 June 2002 p. 35 (ICS) (Witness QW).

<sup>3854</sup> T. 10 June 2002 p. 40 (ICS) (Witness QW).

<sup>3855</sup> T. 10 June 2002 pp. 51-52 (Witness QW).

<sup>3856</sup> T. 10 June 2002 p. 56 (Witness QW).

<sup>3857</sup> T. 19 March 2002 pp. 110, 115; T. 19 March 2002 p. 103 (ICS) (Witness QBV).

<sup>3858</sup> T. 14 March 2002 pp. 12-13; T. 18 March 2002 p. 86 (Witness QBV).

<sup>3859</sup> T. 14 March 2002 p. 22 (Witness QBV).

<sup>3860</sup> T. 18 March 2002 pp. 86-87 (Witness QBV).

<sup>3861</sup> T. 14 March 2002 p. 13; T. 18 March 2002 p. 91 (Witness QBV).

<sup>3862</sup> T. 14 March 2002 pp. 13, 19; T. 18 March 2002 p. 89 (Witness QBV).

<sup>3863</sup> T. 14 March 2002 p. 13; T. 18 March 2002 pp. 90-92 (Witness QBV).

<sup>3864</sup> T. 14 March 2002 p. 21 (Witness QBV).

<sup>3865</sup> T. 19 March 2002 p. 36 (Witness QBV).

<sup>3866</sup> T. 14 March 2002 pp. 20-22; T. 19 March 2002 p. 28 (Witness QBV).

<sup>3867</sup> T. 14 March 2002 p. 23; T. 19 March 2002 p. 29 (Witness QBV).

<sup>3868</sup> T. 14 March 2002 p. 24 (Witness QBV).

*commune bourgmestre*, was addressing a crowd of over 200 people<sup>3869</sup> that had gathered at the office, after which both Nteziryayo and Colonel Muvunyi introduced themselves and spoke to the crowd.<sup>3870</sup> Nteziryayo and Colonel Muvunyi left the Mugusa *commune* office around 4.30 p.m.<sup>3871</sup>

1570. Witness QBV testified that he was detained with some of Nteziryayo's relatives, including one Nshimabarezi, Nteziryayo's brother-in-law, who pressured him not to give Tribunal investigators many details that would incriminate Nteziryayo.<sup>3872</sup>

#### Prosecution Expert Witness Alison Des Forges

1571. Alison Des Forges agreed that for those who wanted to flee to Burundi with their cattle, Kabakobwa would have been one of the few practical places to gather in Ngoma *commune*, and a good place to travel through.<sup>3873</sup>

#### Nyiramasuhuko Defence Witness WMKL

1572. Witness WMKL, a Hutu teacher,<sup>3874</sup> testified that he was at Rango market on Thursday 21 April 1994.<sup>3875</sup> At around 9.00 or 10.00 a.m., he heard gunshots from Tumba *secteur*.<sup>3876</sup> As a result, everyone at the market panicked and ran away either in the direction of Sahera or Nyaruhengeri. He did not see Kanyabashi at the market on that day.<sup>3877</sup> Witness WMKL did not go to Kabakobwa that day or subsequently.<sup>3878</sup> He did not hear of an order issued by Kanyabashi calling on people to go and assemble at Kabakobwa.<sup>3879</sup>

#### Kanyabashi Defence Witness D-2-5-I

1573. Witness D-2-5-I, a Hutu,<sup>3880</sup> testified as to a *commune* police meeting chaired by Kanyabashi at the Ngoma *commune* office on 18 or 19 April 1994. The witness expressed some uncertainty as to whether he was present at that meeting, recalling that he was at home awaiting night duty at the time of the meeting and was later informed of what happened at the meeting by his colleagues.<sup>3881</sup> Witness D-2-5-I later testified that he was present at the 18 or 19 April 1994 meeting and that he inadvertently testified otherwise in his earlier testimony.<sup>3882</sup>

1574. Witness D-2-5-I stated that Kanyabashi instructed the police to cooperate with the population to prevent attackers from entering Ngoma *commune* and carrying out killings and to

<sup>3869</sup> T. 14 March 2002 p. 28 (Witness QBV).

<sup>3870</sup> T. 14 March 2002 p. 25; T. 19 March 2002 pp. 29-31, 35-36, 39-40 (Witness QBV).

<sup>3871</sup> T. 20 March 2002 p. 10 (Witness QBV).

<sup>3872</sup> T. 19 March 2002 pp. 12-14; T. 19 March 2002 pp. 18, 20 (ICS) (Witness QBV).

<sup>3873</sup> T. 12 July 2004 p. 9 (Des Forges).

<sup>3874</sup> T. 6 April 2005 p. 18 (ICS) (Witness WMKL); Defence Exhibit 291 (Nyiramasuhuko) (Personal Particulars).

<sup>3875</sup> T. 7 April 2005 p. 77 (ICS) (Witness WMKL).

<sup>3876</sup> T. 7 April 2005 pp. 77-78 (ICS) (Witness WMKL).

<sup>3877</sup> T. 7 April 2005 p. 78 (ICS) (Witness WMKL).

<sup>3878</sup> T. 7 April 2005 p. 79 (ICS) (Witness WMKL).

<sup>3879</sup> T. 7 April 2005 p. 80 (ICS) (Witness WMKL).

<sup>3880</sup> Defence Exhibit 615 (Kanyabashi) (Personal Particulars).

<sup>3881</sup> T. 12 December 2007 p. 21 (ICS) (Witness D-2-5-I).

<sup>3882</sup> T. 23 January 2008 pp. 19, 21-22 (ICS); T. 30 January 2008 p. 56 (ICS) (Witness D-2-5-I).

protect persons who sought refuge in Ngoma *commune*.<sup>3883</sup> At the meeting of 18 or 19 April, the attacks at Mukura and at Matyazo in Huye *commune*, and at Buvumo in Sahera, were discussed. Kanyabashi assigned police to mount roadblocks to prevent attackers from entering into Ngoma *commune* from those areas.<sup>3884</sup>

1575. Witness D-2-5-I also testified that after the killings started around 18 or 19 April 1994, there were police meetings two times a week chaired by Kanyabashi.<sup>3885</sup> The witness was generally present at police officers' meetings chaired by Kanyabashi and knew what was discussed at those meetings.<sup>3886</sup> At each meeting Kanyabashi asked the police to ensure security of all members of the population, to refrain from looting or killing, to hide people who were attacked, and to provide other assistance if possible.<sup>3887</sup>

1576. Witness D-2-5-I testified that on Thursday, 21 April 1994, he arrived at the Rango market square at about 8.00 or 9.00 a.m.<sup>3888</sup> He later testified he arrived between 7.30 and 8.30 a.m.<sup>3889</sup> He came to Rango with one of his colleagues and a tax collector of the *commune*.<sup>3890</sup> Upon their arrival at the market, Witness D-2-5-I, his colleague and the tax collector noticed that the refugees who were in the market were getting ready to sell their cattle, but they were frightened.<sup>3891</sup> Between 9.00 and 10.00 a.m. he heard a grenade explosion from Mukura Bridge, which was on the tarmac road from Ngoma *commune* towards Gishamvu. There was lots of dust rising in the air, and he saw people running, so he went there to see what was happening.<sup>3892</sup> The distance between Rango market and Mukura Bridge could be covered in 10 to 20 minutes on foot.<sup>3893</sup> At Mukura Bridge, people, assisted by two policemen of Ngoma *commune*, were trying to counter an attack from Mubumbano and Gishamvu *communes*.<sup>3894</sup> There were also soldiers at the location who asked the policemen and the population to leave, as it was their duty to protect the area.<sup>3895</sup> He saw about eight to 10 soldiers at Mukura Bridge.<sup>3896</sup> Witness D-2-5-I spent five to 10 minutes at Mukura Bridge and then returned to the market place between 10.30 and 11.00 a.m.<sup>3897</sup>

1577. Upon arriving at the market he realised there was an air of insecurity and he saw displaced people from Tumba saying that they were trying to flee to Burundi where they might

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<sup>3883</sup> T. 12 December 2007 p. 21 (ICS) (Witness D-2-5-I).

<sup>3884</sup> T. 23 January 2008 pp. 47-48 (ICS); T. 29 January 2008 pp. 32-34 (ICS) (Witness D-2-5-I).

<sup>3885</sup> T. 22 January 2008 p. 19 (ICS) (Witness D-2-5-I).

<sup>3886</sup> T. 22 January 2008 pp. 21-22 (ICS) (Witness D-2-5-I).

<sup>3887</sup> T. 22 January 2008 p. 21 (ICS) (Witness D-2-5-I).

<sup>3888</sup> T. 12 December 2007 p. 25 (ICS); T. 30 January 2008 p. 65 (ICS); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I).

<sup>3889</sup> T. 21 January 2008 p. 7 (ICS) (Witness D-2-5-I).

<sup>3890</sup> T. 12 December 2007 p. 26 (ICS); T. 30 January 2008 p. 63 (ICS); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I).

<sup>3891</sup> T. 12 December 2007 p. 26 (ICS) (Witness D-2-5-I).

<sup>3892</sup> T. 12 December 2007 p. 25 (ICS); T. 21 January 2008 pp. 16-17 (ICS); T. 22 January 2008 p. 37 (ICS); T. 29 January 2008 p. 35 (ICS); T. 30 January 2008 p. 63 (ICS); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I).

<sup>3893</sup> T. 30 January 2008 p. 63 (ICS) (Witness D-2-5-I).

<sup>3894</sup> T. 21 January 2008 pp. 17-18 (ICS) (Witness D-2-5-I).

<sup>3895</sup> T. 21 January 2008 p. 17 (ICS); T. 22 January 2008 pp. 39-40 (ICS) (Witness D-2-5-I).

<sup>3896</sup> T. 23 January 2008 p. 45 (ICS); T. 29 January 2008 p. 38 (ICS) (Witness D-2-5-I).

<sup>3897</sup> T. 21 January 2008 p. 18 (ICS); T. 30 January 2008 p. 65 (ICS) (Witness D-2-5-I).

be safe.<sup>3898</sup> Witness D-2-5-I remained at Rango market until about 1.00 p.m. when he left with the brigadier of Ngoma *commune* to go visit the residences of the *conseillers* of Nkubi and Sahera *secteurs*.<sup>3899</sup> The brigadier relayed a message from *Bourgmestre* Kanyabashi to the two *conseillers* asking them to ensure the security of the population.<sup>3900</sup>

1578. On their way back to Rango, at the junction at the road that leads to Nyaruhengeri, Witness D-2-5-I and the brigadier found corpses by the road. People standing by the roadside told Witness D-2-5-I and his companions that a military vehicle had brought the corpses and thrown them there since the soldiers had told members of the population to kill Tutsis and loot their properties, and to know that the Tutsis were *Inkotanyi* accomplices.<sup>3901</sup> When the witness continued towards Rango he found people destroying the house that belonged to Déo, and heard gunshots fired in the direction of Tumba.<sup>3902</sup> Witness D-2-5-I estimated it was around 2.00 p.m.<sup>3903</sup> Witness D-2-5-I and the brigadier continued to Cyarwa *secteur* to meet the *conseillers* there.<sup>3904</sup> They returned to the *commune* office around 5.00 p.m.<sup>3905</sup> The witness went home at 7.00 p.m. on the night of 21 April 1994 and stayed there. During the night he heard gunshots.<sup>3906</sup> He testified that any witness who said that he was present at the *commune* office during the night of 21 April 1994 would be mistaken.<sup>3907</sup>

1579. Witness D-2-5-I did not see Kanyabashi at Rango market on 21 April 1994 during the period he was there.<sup>3908</sup> Witness D-2-5-I denied hearing any message by megaphone or loudspeaker from Kanyabashi while he was on duty at Rango market on 21 April 1994.<sup>3909</sup> He further denied hearing anyone talking about a message from Kanyabashi asking people to collect the weeds at Kabakobwa or inciting people to kill the enemy or the Tutsis.<sup>3910</sup> Witness D-2-5-I indicated that someone at either of the two markets in Rango could hear anything said from a megaphone on the passable road.<sup>3911</sup>

1580. Witness D-2-5-I knew that people died at Kabakobwa on 22 April 1994 but was positive that Kanyabashi did not go to Kabakobwa that day since he would have gone with a policeman and the witness would have known about it.<sup>3912</sup> No Ngoma *commune* police officer was involved in the killings either.<sup>3913</sup> Witness D-2-5-I testified that he followed some *Gacaca*

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<sup>3898</sup> T. 21 January 2008 p. 19 (ICS) (Witness D-2-5-I).

<sup>3899</sup> T. 21 January 2008 p. 24 (ICS) (Witness D-2-5-I).

<sup>3900</sup> T. 21 January 2008 p. 28 (ICS) (Witness D-2-5-I).

<sup>3901</sup> T. 21 January 2008 pp. 28-29 (ICS) (Witness D-2-5-I).

<sup>3902</sup> T. 21 January 2008 p. 29 (ICS) (Witness D-2-5-I).

<sup>3903</sup> T. 21 January 2008 p. 30 (ICS) (Witness D-2-5-I).

<sup>3904</sup> T. 21 January 2008 pp. 29-30 (ICS) (Witness D-2-5-I).

<sup>3905</sup> T. 21 January 2008 p. 32 (ICS); T. 23 January 2008 p. 57 (ICS) (Witness D-2-5-I).

<sup>3906</sup> T. 21 January 2008 p. 42 (ICS) (Witness D-2-5-I).

<sup>3907</sup> T. 23 January 2008 pp. 58-59 (ICS) (Witness D-2-5-I).

<sup>3908</sup> T. 21 January 2008 p. 35 (ICS) (Witness D-2-5-I).

<sup>3909</sup> T. 21 January 2008 p. 39 (ICS) (Witness D-2-5-I).

<sup>3910</sup> T. 21 January 2008 pp. 39-41 (ICS) (Witness D-2-5-I).

<sup>3911</sup> T. 21 January 2008 p. 15 (ICS) (Witness D-2-5-I).

<sup>3912</sup> T. 21 January 2008 pp. 53-54 (Witness D-2-5-I).

<sup>3913</sup> T. 21 January 2008 p. 55 (Witness D-2-5-I).

proceedings and no one there had implicated either Kanyabashi or Ngoma *commune* policemen in what happened in Kabakobwa.<sup>3914</sup>

1581. Witness D-2-5-I testified that when Kanyabashi visited various *secteurs* of his *commune*, he drove himself and was accompanied by a *commune* police officer, but he never travelled with *gendarmes* or soldiers.<sup>3915</sup> Witness D-2-5-I had personally accompanied Kanyabashi on several occasions, including on Saturday, 23 April 1994.<sup>3916</sup>

1582. Witness D-2-5-I did not go to Kabakobwa on Friday, 22 April 1994.<sup>3917</sup> Witness D-2-5-I heard gunshots coming from Nyaruhengeri hill during the day.<sup>3918</sup> Witness D-2-5-I spent Friday, 22 April 1994 at home and returned to the *commune* office around 5.00 p.m.<sup>3919</sup> He did not see Kanyabashi at work that day since Kanyabashi had gone home at 4.30 p.m.<sup>3920</sup> When he arrived at work his colleagues informed him of a meeting *Bourgmestre* Kanyabashi had convened that day.<sup>3921</sup> Witness D-2-5-I was on duty during the night of Friday, 22 April 1994 and on Saturday, 23 April 1994.<sup>3922</sup>

1583. Kanyabashi came to the *commune* office on Saturday, 23 April 1994 around 9.00 a.m. and left at 11.00 a.m.<sup>3923</sup> Kanyabashi returned to the *commune* office from his residence around 5.00 p.m. and asked Witness D-2-5-I to accompany him in taking Brigadier Gahamanyi to Rango.<sup>3924</sup> When they arrived at the Mukoni roadblock, Presidential Guard troops who were manning the roadblock stopped and searched them.<sup>3925</sup> The troops said that they had weapons in the vehicle, insulted them, said Kanyabashi was an accomplice and ordered the three of them to leave on foot in the direction they had come from.<sup>3926</sup> The brigadier returned to Rango by foot while the witness and Kanyabashi continued by car.<sup>3927</sup>

1584. Witness D-2-5-I testified that they consequently returned and on getting to the roadblock at Hotel Faucon, he together with Brigadier Gahamanyi and Kanyabashi were again stopped and searched. When they reached the *banque commerciale*, gunshots were fired at their car from behind but Kanyabashi, who was driving, accelerated and they survived. Later that day, Kanyabashi returned to his house having “lost his mind”. Witness D-2-5-I spent that night at Kanyabashi’s house because of the insecurity.<sup>3928</sup>

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<sup>3914</sup> T. 21 January 2008 pp. 54-55 (Witness D-2-5-I).

<sup>3915</sup> T. 21 January 2008 p. 56 (Witness D-2-5-I).

<sup>3916</sup> T. 21 January 2008 pp. 57-58; T. 30 January 2008 p. 56 (ICS) (Witness D-2-5-I).

<sup>3917</sup> T. 21 January 2008 p. 54; T. 31 January 2008 p. 15 (ICS) (Witness D-2-5-I).

<sup>3918</sup> T. 28 January 2008 p. 32 (ICS) (Witness D-2-5-I).

<sup>3919</sup> T. 21 January 2008 p. 48 (ICS); T. 28 January 2008 pp. 31-32 (ICS); T. 31 January 2008 p. 14 (ICS) (Witness D-2-5-I).

<sup>3920</sup> T. 21 January 2008 p. 42 (ICS) (Witness D-2-5-I).

<sup>3921</sup> T. 21 January 2008 p. 46 (ICS) (Witness D-2-5-I).

<sup>3922</sup> T. 21 January 2008 p. 48 (ICS) (Witness D-2-5-I).

<sup>3923</sup> T. 31 January 2008 p. 16 (ICS) (Witness D-2-5-I).

<sup>3924</sup> T. 21 January 2008 p. 50 (ICS); T. 31 January 2008 pp. 16-18 (ICS) (Witness D-2-5-I).

<sup>3925</sup> T. 21 January 2008 p. 50 (ICS); T. 31 January 2008 p. 19 (ICS) (Witness D-2-5-I).

<sup>3926</sup> T. 21 January 2008 p. 50 (ICS) (Witness D-2-5-I).

<sup>3927</sup> T. 21 January 2008 p. 51 (ICS); T. 31 January 2008 p. 19 (ICS) (Witness D-2-5-I).

<sup>3928</sup> T. 21 January 2008 p. 50 (ICS) (Witness D-2-5-I).

1585. Witness D-2-5-I denied that Mathias Nsanzabahizi might have read Kanyabashi's letter of April 1994 asking the population to join the soldiers who had gathered at Kabakobwa. He did not think such a letter existed.<sup>3929</sup> While Witness D-2-5-I was detained at Karubanda prison, Mathias Nsanzabahizi was detained at Rwandex Prison and they met sometimes at the *Gacaca* hearings.<sup>3930</sup>

1586. Witness D-2-5-I testified that during one *Gacaca* hearing, Nsanzabahizi admitted his role in the Kabakobwa killings.<sup>3931</sup> Nsanzabahizi said that he went to Kabakobwa in the company of soldiers and participated together with them in the killings. Nsanzabahizi also testified before the *Gacaca* court that he was in Kabakobwa at the request of the soldiers, pled guilty in respect of his role and confessed.<sup>3932</sup> He said Nsanzabahizi told him that he went to Kabakobwa in a military uniform and armed with a firearm.<sup>3933</sup> Witness D-2-5-I testified that in all the *Gacaca* sessions he attended to date, no one ever mentioned any role played by Kanyabashi in any killings.<sup>3934</sup> Nsanzabahizi said that the *bourgmestre* did not know anything about him going to Kabakobwa with the soldiers.<sup>3935</sup>

#### Kanyabashi Defence Witness D-2-10-Y

1587. Witness D-2-10-Y, a Tutsi gardener,<sup>3936</sup> testified that he and his family fled his father's residence on a Thursday, 20 or 21 April 1994, which was a market day at Rango, when he noticed that persons in his vicinity had been killed and houses were set ablaze near his own house.<sup>3937</sup> He left his home at around 1.00 or 2.00 p.m. and went to a school field in Rango, remaining there for about 30 minutes with other persons. Due to the prevailing insecurity, he and his family had decided to go into exile in Burundi.<sup>3938</sup>

1588. Witness D-2-10-Y testified that together with 30 to 50 persons, he then went to Nyaruhengeri *commune* office, but four *commune* policemen from Nyaruhengeri *commune* stopped them and sent them back.<sup>3939</sup> There was a roadblock at the office, which hindered the persons from passing by. Some of the people were beaten up.<sup>3940</sup> He and the other persons turned around at this point and spent the night in a bush located above Mukura belonging to an old man called Ndugu.<sup>3941</sup> Witness D-2-10-Y did not pass any other roadblocks while fleeing to Burundi.<sup>3942</sup>

1589. On the next day, Friday, [22 April 1994], Witness D-2-10-Y and the other refugees planned to reach Burundi on another route; from the bush at Mukura, they took a road to

<sup>3929</sup> T. 22 January 2008 p. 7 (ICS) (Witness D-2-5-I).

<sup>3930</sup> T. 22 January 2008 pp. 8-10 (ICS) (Witness D-2-5-I).

<sup>3931</sup> T. 22 January 2008 pp. 9-10 (ICS) (Witness D-2-5-I).

<sup>3932</sup> T. 22 January 2008 p. 10 (ICS) (Witness D-2-5-I).

<sup>3933</sup> T. 22 January 2008 p. 11 (ICS) (Witness D-2-5-I).

<sup>3934</sup> T. 22 January 2008 p. 10 (ICS) (Witness D-2-5-I).

<sup>3935</sup> T. 22 January 2008 p. 11 (ICS) (Witness D-2-5-I).

<sup>3936</sup> Defence Exhibit 649 (Kanyabashi) (Personal Particulars).

<sup>3937</sup> T. 28 April 2008 pp. 26-27 (Witness D-2-10-Y).

<sup>3938</sup> T. 28 April 2008 p. 37 (ICS) (Witness D-2-10-Y).

<sup>3939</sup> T. 28 April 2008 pp. 37-39 (ICS) (Witness D-2-10-Y).

<sup>3940</sup> T. 28 April 2008 p. 39 (ICS) (Witness D-2-10-Y).

<sup>3941</sup> T. 28 April 2008 p. 39 (ICS) (Witness D-2-10-Y).

<sup>3942</sup> T. 29 April 2008 p. 50 (Witness D-2-10-Y).



Kabuga in Sahera, and another road to Kabakobwa.<sup>3943</sup> They were a group of about 30 people. They reached Kabuga at around 7.00 or 8.00 a.m. and stopped for a while not far from the building called “OCAR for girls”, before continuing to Kabakobwa.<sup>3944</sup> At around 9.00<sup>3945</sup> or 10.00 a.m., they arrived at Kabakobwa where there were already about 600 persons present; later, more people arrived.<sup>3946</sup>

1590. Witness D-2-10-Y testified that on his arrival at Kabakobwa, attackers had gathered at Gasharu, at a distance of about 300 metres from the refugees.<sup>3947</sup> Other inhabitants were on Agasharu and Rwinuma Hills, dressed in banana leaves.<sup>3948</sup> The assailants were in groups of approximately 200 persons.<sup>3949</sup> The local inhabitants, wearing banana leaves, attacked the refugees during the morning hours and looted their cattle.<sup>3950</sup> The male refugees repelled the inhabitants’ attack by surrounding the other members of the population and throwing stones, which the witness and other children handed to them.<sup>3951</sup>

1591. Witness D-2-10-Y testified that at a certain point in time, people dressed in ordinary clothes mingled with the refugees and said that the Hutus among the refugees should leave the area. He did not know who made that announcement but he heard them speak, and learned from other persons that they were dressed in civilian clothes.<sup>3952</sup> Witness D-2-10-Y heard it said that one Mathias came to fetch his sister.<sup>3953</sup>

1592. Witness D-2-10-Y did not see any soldiers at Kabakobwa between 9.00 a.m. and 3.00 p.m.<sup>3954</sup> *Interahamwe* and soldiers arrived around 3.00 or 3.30 p.m. on foot<sup>3955</sup> and a few moments after their arrival they threw grenades and opened fire on the men who defended the refugees.<sup>3956</sup> The killings started around 3.00 or 3.30 p.m.<sup>3957</sup> Witness D-2-10-Y could not remember if grenades were thrown at the beginning of the attack or after guns were fired.<sup>3958</sup> After the men surrounding the refugees had been killed, the members of the population hit the refugees with machetes. The surviving refugees started running.<sup>3959</sup>

1593. Witness D-2-10-Y testified that the soldiers were standing approximately 200 metres from the refugees,<sup>3960</sup> and that he saw around 10 soldiers firing, but he did not know the number of *Interahamwe* at Kabakobwa.<sup>3961</sup> The soldiers wore camouflage uniforms, some

<sup>3943</sup> T. 28 April 2008 p. 40 (ICS) (Witness D-2-10-Y).

<sup>3944</sup> T. 1 May 2008 pp. 67-68 (Witness D-2-10-Y).

<sup>3945</sup> T. 1 May 2008 p. 68 (Witness D-2-10-Y).

<sup>3946</sup> T. 28 April 2008 pp. 40-41 (ICS); T. 28 April 2008 p. 42; T. 1 May 2008 p. 70 (ICS) (Witness D-2-10-Y).

<sup>3947</sup> T. 1 May 2008 p. 72; T. 5 May 2008 pp. 16, 26 (Witness D-2-10-Y).

<sup>3948</sup> T. 1 May 2008 p. 72; T. 5 May 2008 p. 16 (Witness D-2-10-Y).

<sup>3949</sup> T. 5 May 2008 p. 27 (Witness D-2-10-Y).

<sup>3950</sup> T. 28 April 2008 p. 44; T. 5 May 2008 p. 15 (Witness D-2-10-Y).

<sup>3951</sup> T. 28 April 2008 p. 44 (Witness D-2-10-Y).

<sup>3952</sup> T. 5 May 2008 p. 17 (Witness D-2-10-Y).

<sup>3953</sup> T. 5 May 2008 p. 18 (Witness D-2-10-Y).

<sup>3954</sup> T. 5 May 2008 pp. 25-26 (Witness D-2-10-Y).

<sup>3955</sup> T. 1 May 2008 pp. 71, 73 (Witness D-2-10-Y).

<sup>3956</sup> T. 28 April 2008 p. 44; T. 1 May 2008 pp. 73-74; T. 5 May 2008 p. 26 (Witness D-2-10-Y).

<sup>3957</sup> T. 28 April 2008 p. 43 (Witness D-2-10-Y).

<sup>3958</sup> T. 1 May 2008 p. 72 (Witness D-2-10-Y).

<sup>3959</sup> T. 28 April 2008 pp. 43-45 (Witness D-2-10-Y).

<sup>3960</sup> T. 1 May 2008 p. 71 (Witness D-2-10-Y).

<sup>3961</sup> T. 29 April 2008 pp. 61-62 (Witness D-2-10-Y).

*Interahamwe* wore army clothes and others were in civilian attire, while civilians wore dried banana leaves.<sup>3962</sup> *Interahamwe* carried grenades and firearms and therefore could be distinguished from civilians who did not carry such weaponry.<sup>3963</sup> *Interahamwe* included the youth of the MRND and the PSD, and all persons whose purpose was perpetrating killings irrespective of their political affiliation.<sup>3964</sup>

1594. Witness D-2-10-Y did not see any *commune* policemen,<sup>3965</sup> nor did he hear afterwards that they had participated in the attack at Kabakobwa.<sup>3966</sup> Between April and July 1994 *commune* police officers wore green uniforms with yellow berets.<sup>3967</sup> Witness D-2-10-Y saw persons wearing fatigues arriving at Kabakobwa, but he did not know if they were *gendarmes* or soldiers.<sup>3968</sup>

1595. Witness D-2-10-Y testified that his twin sister was killed during the attack and that he ran towards a valley and fled to a house in Tumba *secteur*.<sup>3969</sup> There, he learned that his family was still alive,<sup>3970</sup> and he got home after 8.00 p.m.<sup>3971</sup>

1596. Witness D-2-10-Y did not hear any instructions from Kanyabashi on either Thursday or Friday asking Tutsis not to go to their homes, nor did he learn about such an event later. He did not hear that Kanyabashi held a meeting at Kabakobwa on that Thursday, nor did he see Kanyabashi or hear that Kanyabashi was present at Kabakobwa on Friday.<sup>3972</sup> Witness D-2-10-Y did not hear instructions issued by any authorities, including Kanyabashi, the *conseiller* of his *secteur*, or *cellule* leaders, asking Tutsis to go to Kabakobwa, nor did he learn about such occurrences later.<sup>3973</sup> He did not hear of a message being disseminated through a megaphone by Kanyabashi asking people to gather the weeds in Kabakobwa on Thursday or inviting people to kill the Tutsis or the enemy.<sup>3974</sup>

#### Kanyabashi Defence Witness D-2-13-D

1597. Witness D-2-13-D, a Hutu detainee and business owner in April 1994,<sup>3975</sup> had a business located about 25 metres from Rango market.<sup>3976</sup> Sensing insecurity, on Wednesday 20 April 1994 the witness began closing down his business.<sup>3977</sup> On Thursday, 21 April 1994, between 9.00 and 10.00 a.m., he went to his workplace to collect the rest of some parts of his

<sup>3962</sup> T. 28 April 2008 p. 44; T. 29 April 2008 pp. 61-63, 65 (Witness D-2-10-Y).

<sup>3963</sup> T. 29 April 2008 p. 66 (Witness D-2-10-Y).

<sup>3964</sup> T. 1 May 2008 p. 21 (ICS) (Witness D-2-10-Y).

<sup>3965</sup> T. 28 April 2008 p. 45 (Witness D-2-10-Y).

<sup>3966</sup> T. 29 April 2008 p. 5 (Witness D-2-10-Y).

<sup>3967</sup> T. 29 April 2008 p. 5 (Witness D-2-10-Y).

<sup>3968</sup> T. 1 May 2008 p. 71 (Witness D-2-10-Y).

<sup>3969</sup> T. 28 April 2008 p. 45; T. 29 April 2008 p. 6 (Witness D-2-10-Y).

<sup>3970</sup> T. 29 April 2008 p. 55 (Witness D-2-10-Y).

<sup>3971</sup> T. 29 April 2008 p. 6 (Witness D-2-10-Y).

<sup>3972</sup> T. 29 April 2008 pp. 6-7 (Witness D-2-10-Y).

<sup>3973</sup> T. 29 April 2008 p. 7 (Witness D-2-10-Y).

<sup>3974</sup> T. 29 April 2008 p. 8 (Witness D-2-10-Y).

<sup>3975</sup> Defence Exhibit 560 (Kanyabashi) (Personal Particulars); T. 3 September 2007 p. ii (Extract) (Witness D-2-13-D).

<sup>3976</sup> T. 29 August 2007 p. 15 (ICS); T. 3 September 2007 p. 40 (ICS) (Witness D-2-13-D).

<sup>3977</sup> T. 29 August 2007 pp. 23-24 (ICS) (Witness D-2-13-D).

machines.<sup>3978</sup> While at Rango he heard explosions coming from two homes and saw people running. He completed disassembling his machine between noon and 1.00 p.m., and immediately left for his home,<sup>3979</sup> which was approximately 30 minutes walking distance from Rango market.<sup>3980</sup> Witness D-2-13-D did not attend any meeting,<sup>3981</sup> nor was he aware of any such meeting along the road to Kabakobwa on that Thursday.<sup>3982</sup> He did not hear anyone say that Kanyabashi came to Rango market or that Kanyabashi held a meeting there on that day.<sup>3983</sup>

1598. On that same day around 1.00 p.m. the witness, in the company of several refugees, saw soldiers in a Hilux vehicle throw several corpses onto the road.<sup>3984</sup> The bodies were dumped at the intersection of the road to Sahera and the road to Kibirizi in Agakera *cellule*, close by Rango.<sup>3985</sup> He did not see the soldiers speak to anyone.<sup>3986</sup> Witness D-2-13-D returned home around 2.00 or 3.00 p.m. and stayed home. He did not hear of any instructions from Kanyabashi telling the population to go to Kabakobwa.<sup>3987</sup>

1599. Witness D-2-13-D testified that at 10.00 a.m. on the Friday of the Kabakobwa killings, he and some others were at a friend's house when 10 soldiers arrived and descended from their vehicle.<sup>3988</sup> The soldiers had come to see their friend for assistance in launching an attack at Kabakobwa.<sup>3989</sup> The soldiers dressed the witness and his companions in banana leaves; about eight people put on banana leaves.<sup>3990</sup> Witness D-2-13-D was with six other members of the community whom he named. The soldiers wore black berets.<sup>3991</sup> The soldiers obliged the witness and the people he was with to go with them,<sup>3992</sup> and they left almost immediately<sup>3993</sup> towards Kabakobwa.<sup>3994</sup> The soldiers stood on Agasharu Hill,<sup>3995</sup> a hill adjacent to Kabakobwa or overlooking Kabakobwa, shot two bullets, then said they could not wage war against unarmed members of the population, and left.<sup>3996</sup> The point from where the soldiers shot the two bullets was about 60 metres from Witness D-2-14-D's house.<sup>3997</sup> The soldiers took them to the valley and they rubbed ash on their faces.<sup>3998</sup> From the time of the soldiers' arrival, their

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<sup>3978</sup> T. 29 August 2007 p. 24 (ICS); T. 3 September 2007 p. 45 (ICS) (Witness D-2-13-D).

<sup>3979</sup> T. 29 August 2007 p. 24 (ICS) (Witness D-2-13-D).

<sup>3980</sup> T. 29 August 2007 p. 38 (ICS) (Witness D-2-13-D).

<sup>3981</sup> T. 29 August 2007 p. 27 (ICS) (Witness D-2-13-D).

<sup>3982</sup> T. 29 August 2007 pp. 39-40 (ICS) (Witness D-2-13-D).

<sup>3983</sup> T. 29 August 2007 pp. 28, 30-31, 36 (ICS) (Witness D-2-13-D).

<sup>3984</sup> T. 29 August 2007 pp. 28-29 (ICS); T. 5 September 2007 pp. 67-68 (ICS) (Witness D-2-13-D).

<sup>3985</sup> T. 5 September 2007 pp. 67-68 (ICS) (Witness D-2-13-D).

<sup>3986</sup> T. 5 September 2007 p. 68 (ICS) (Witness D-2-13-D).

<sup>3987</sup> T. 29 August 2007 pp. 30, 32, 34-36 (ICS) (Witness D-2-13-D).

<sup>3988</sup> T. 29 August 2007 pp. 44-45 (ICS); T. 10 September 2007 p. 42 (ICS) (Witness D-2-13-D).

<sup>3989</sup> T. 29 August 2007 p. 73 (ICS) (Witness D-2-13-D).

<sup>3990</sup> T. 29 August 2007 pp. 73, 75, 77 (ICS) (Witness D-2-13-D).

<sup>3991</sup> T. 4 September 2007 p. 22 (ICS) (Witness D-2-13-D).

<sup>3992</sup> T. 29 August 2007 p. 45; T. 5 September 2007 p. 8 (ICS) (Witness D-2-13-D).

<sup>3993</sup> T. 5 September 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>3994</sup> T. 29 August 2007 pp. 44-45 (Witness D-2-13-D).

<sup>3995</sup> T. 5 September 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>3996</sup> T. 29 August 2007 p. 45; T. 4 September 2007 pp. 23, 25 (ICS) (Witness D-2-13-D).

<sup>3997</sup> T. 5 September 2007 p. 55 (ICS) (Witness D-2-13-D).

<sup>3998</sup> T. 29 August 2007 pp. 75-76 (ICS) (Witness D-2-13-D).

trip on foot to Agasharu Hill to fire two shots, return to the friend's house and departure for Rukimbira's, one and a half hours had elapsed.<sup>3999</sup>

1600. When put to Witness D-2-13-D that his statement did not refer to soldiers coming to his friend's house and taking them to fire upon refugees at Kabakobwa, the witness testified that maybe the investigator forgot to write it down.<sup>4000</sup>

1601. Witness D-2-13-D subsequently testified that it was approximately 3.00 p.m. when he and his group arrived at Kabakobwa.<sup>4001</sup> The soldiers present lined them up and told the Hutus who were at Kabakobwa to leave.<sup>4002</sup> The fighting then started immediately. The soldiers were firing at people, and the refugees were throwing stones back.<sup>4003</sup> A stone was even thrown at Mathias Nsanzabahizi, who dropped the gun he had been holding.<sup>4004</sup> The confrontation lasted from 3.00 to 6.00 p.m.<sup>4005</sup> Civilians present during the attack did not receive new instructions; they were only following instructions that they had been given earlier.<sup>4006</sup>

1602. Witness D-2-13-D testified that the group he was with went down into the valley and up again toward Kabakobwa where they assembled, which was not close to Nyaminani's or Nzabakurana's houses.<sup>4007</sup> The soldiers and civilians encircled Kabakobwa, but there was no one in the lower part of Kabakobwa in the direction of Nyaruhengeri. At the beginning of the attacks, he was on the Agasharu Hill, but he was on Kabakobwa Hill when the shooting started. He was a short distance away from Tutsis when the attack started, perhaps 50 metres away, because they were close enough that he could throw stones at them.<sup>4008</sup> Other inhabitants of Agasharu Hill remained on their side of the hill and watched the events but did not participate in the attack.<sup>4009</sup>

1603. Witness D-2-13-D testified that the soldiers only shot at those not wearing banana leaves. If they had not been wearing the banana leaves and ash on their faces he and his group would have been shot at.<sup>4010</sup> Thus, according to Witness D-2-13-D, all civilians who participated in the attacks wore banana leaves and had their faces covered in ash.<sup>4011</sup> There were about 200 civilians and 20 soldiers involved in the attack.<sup>4012</sup>

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<sup>3999</sup> T. 5 September 2007 p. 51 (ICS) (Witness D-2-13-D).

<sup>4000</sup> T. 4 September 2007 p. 39 (ICS); T. 5 September 2007 p. 54 (ICS) (Witness D-2-13-D). *See* Prosecution Exhibit 194B (17-20 June 2004, Statement of Witness D-2-13-D).

<sup>4001</sup> T. 10 September 2007 p. 49 (ICS) (Witness D-2-13-D).

<sup>4002</sup> T. 29 August 2007 p. 77 (ICS); T. 10 September 2007 p. 62 (ICS) (Witness D-2-13-D).

<sup>4003</sup> T. 29 August 2007 p. 77 (ICS); T. 10 September 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>4004</sup> T. 29 August 2007 p. 80 (ICS) (Witness D-2-13-D).

<sup>4005</sup> T. 29 August 2007 p. 82 (ICS) (Witness D-2-13-D).

<sup>4006</sup> T. 10 September 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>4007</sup> T. 5 September 2007 p. 59 (ICS) (Witness D-2-13-D).

<sup>4008</sup> T. 5 September 2007 pp. 60-61 (ICS) (Witness D-2-13-D).

<sup>4009</sup> T. 5 September 2007 p. 61 (ICS) (Witness D-2-13-D).

<sup>4010</sup> T. 5 September 2007 p. 62 (ICS) (Witness D-2-13-D).

<sup>4011</sup> T. 5 September 2007 p. 70 (ICS) (Witness D-2-13-D).

<sup>4012</sup> T. 29 August 2007 p. 78 (ICS); T. 5 September 2007 pp. 70-71 (ICS); T. 10 September 2007 p. 51 (ICS) (Witness D-2-13-D).

1604. Witness D-2-13-D estimated that there were about 600 to 700 Tutsis seeking refuge on Kabakobwa.<sup>4013</sup> He did not hear that the *Interahamwe* surrounded the hill to prevent refugees from escaping during the night; he testified that he only saw civilians carrying traditional weapons present on the adjacent hill when he arrived at Kabakobwa on Friday afternoon. The killings began when the soldiers opened fire. He had not heard of Kanyabashi giving any instructions to shoot.<sup>4014</sup>

1605. Witness D-2-13-D testified that he killed people at Kabakobwa because he was encouraged to do so by a man named Semwiza.<sup>4015</sup> Semwiza worked as a mason, was a member of the MDR party, and was the older brother of Mathias Nsanzabahizi.<sup>4016</sup> Prior to 1994, Semwiza had been a policeman.<sup>4017</sup> No one was behind Semwiza; he had declared himself to be in charge.<sup>4018</sup> On one occasion *Conseiller* Kanyabahizi told Semwiza that he must stop killing people or would have to answer for his conduct. Semwiza slapped Kanyabahizi for not performing his duties correctly.<sup>4019</sup> Semwiza and his group committed murders in other areas of the *secteur* outside Kabakobwa, despite Kanyabashi's call to the population not to kill anybody.<sup>4020</sup>

1606. Witness D-2-13-D testified that he did not see Kanyabashi at Kabakobwa, and that he would have seen Kanyabashi had he been there because the witness had criss-crossed the entire site. However, Witness D-2-13-D acknowledged that if Kanyabashi had been elsewhere in Kabakobwa, he might not have seen him.<sup>4021</sup> Witness D-2-13-D testified that he did not hear mention of the presence of any Ngoma *commune* policemen at Kabakobwa on that Friday. Even in prison and after his release, he did not hear of a police presence at Kabakobwa, nor did he see any.<sup>4022</sup>

1607. Although Witness D-2-13-D agreed that he could not have spoken with all 200 civilians at the hill, he testified that he had not heard anything about Kanyabashi giving instructions for Tutsis to gather at Kabakobwa Hill; if Kanyabashi had been addressing the refugees, the local inhabitants would have heard those instructions.<sup>4023</sup> Nsanzabahizi did not tell the witness that Kanyabashi had asked him to come to Kabakobwa.<sup>4024</sup> Witness D-2-13-D confirmed that he was at Kabakobwa when soldiers shot at people, and he and his group "finished off" those who were not dead, or who tried to escape. He confessed that he pelted people with stones and carried a stick, but denied he killed anyone. He saw the soldiers shooting, and people throwing stones, but did not see any refugees killed. He testified that there were civilians who killed people, but could not identify who they were.<sup>4025</sup> He did not

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<sup>4013</sup> T. 29 August 2007 p. 79 (ICS) (Witness D-2-13-D).

<sup>4014</sup> T. 10 September 2007 p. 48 (ICS) (Witness D-2-13-D).

<sup>4015</sup> T. 4 September 2007 p. 64 (ICS); T. 10 September 2007 (Extracted) p. i (Witness D-2-13-D).

<sup>4016</sup> T. 28 August 2007 p. 65 (ICS); T. 10 September 2007 p. 19 (ICS) (Witness D-2-13-D).

<sup>4017</sup> T. 6 September 2007 p. 56 (ICS) (Witness D-2-13-D).

<sup>4018</sup> T. 10 September 2007 p. 71 (ICS) (Witness D-2-13-D).

<sup>4019</sup> T. 30 August 2007 p. 54 (ICS); T. 6 September 2007 p. 58 (ICS) (Witness D-2-13-D).

<sup>4020</sup> T. 6 September 2007 p. 59 (ICS) (Witness D-2-13-D).

<sup>4021</sup> T. 30 August 2007 pp. 15-17 (ICS) (Witness D-2-13-D).

<sup>4022</sup> T. 30 August 2007 pp. 17-18 (ICS) (Witness D-2-13-D).

<sup>4023</sup> T. 10 September 2007 pp. 52-53 (ICS) (Witness D-2-13-D).

<sup>4024</sup> T. 30 August 2007 pp. 21-22 (ICS) (Witness D-2-13-D).

<sup>4025</sup> T. 4 September 2007 p. 40 (ICS); T. 5 September 2007 p. 4 (Witness D-2-13-D).

pay attention to whether people were dead or just wounded, but he saw a lot of bodies.<sup>4026</sup> Witness D-2-13-D testified that soldiers at Kabakobwa looted the belongings of the victims, but once the soldiers left, everyone else left as well.<sup>4027</sup> Witness D-2-13-D knew the other civilians who participated in the massacre at Kabakobwa.<sup>4028</sup> Nsanzabahizi was next to him but he arrived later. He also saw Alexis Habyarimana, Bosco Yirihahandi, Jonas Havugimana and Innocent Nbanguwiha.<sup>4029</sup>

1608. Witness D-2-13-D testified that he had seen Nsanzabahizi before, but met him for the first time when Nsanzabahizi arrived at Kabakobwa at 3.00 p.m., after the attack had already started.<sup>4030</sup> He had heard that Nsanzabahizi had come to take his sister from Kabakobwa, but did not see this.<sup>4031</sup> When Witness D-2-13-D later spoke to Nsanzabahizi he confirmed that he had taken his sister.<sup>4032</sup> He did not know how Nsanzabahizi had arrived at Kabakobwa.<sup>4033</sup> He only knew that Nsanzabahizi was told that soldiers had arrived at Kabakobwa, and Nsanzabahizi went to Kabakobwa. He learned this information from Nsanzabahizi one week after the events at Kabakobwa when the two met at someone's house.<sup>4034</sup>

1609. Witness D-2-13-D knew Nsanzabahizi was a driver rather than a policeman and saw him driving. He knew him well as they were neighbours and they were imprisoned together for several years. Nsanzabahizi was the president of the *Gacacas* in prison.<sup>4035</sup> When put to the witness that his statement of 28 November 2004 stated he saw the policeman Mathias come to Kabakobwa with soldiers, Witness D-2-13-D stated that he may have been mistaken about Mathias being a policeman but he did not say that Mathias had come aboard the trucks to Kabakobwa.<sup>4036</sup>

1610. Witness D-2-13-D did not return to Kabakobwa on Saturday although he knew that others went there to finish off those who were not dead and to search their bodies. He did not hear of any meeting taking place that day concerned with burying bodies.<sup>4037</sup>

1611. Witness D-2-13-D testified that after the Kabakobwa massacre but prior to 3 May 1994, Kanyabashi arrested Semwiza and several other men who were responsible for leading groups of killers in attacks at Kabakobwa.<sup>4038</sup> Nsanzabahizi, however, was not arrested.<sup>4039</sup>

1612. Witness D-2-13-D referred to Semwiza as an "authority" because Semwiza was in charge in the absence of the *conseiller* [Kanyabahizi].<sup>4040</sup> Witness D-2-13-D knew Nkubi

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<sup>4026</sup> T. 5 September 2007 p. 5 (Witness D-2-13-D).

<sup>4027</sup> T. 4 September 2007 p. 40 (ICS) (Witness D-2-13-D).

<sup>4028</sup> T. 5 September 2007 p. 70 (ICS) (Witness D-2-13-D).

<sup>4029</sup> T. 29 August 2007 p. 81 (ICS) (Witness D-2-13-D).

<sup>4030</sup> T. 10 September 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>4031</sup> T. 30 August 2007 p. 26 (ICS); T. 10 September 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>4032</sup> T. 30 August 2007 p. 26 (ICS) (Witness D-2-13-D).

<sup>4033</sup> T. 30 August 2007 pp. 26-27 (ICS) (Witness D-2-13-D).

<sup>4034</sup> T. 30 August 2007 p. 27 (ICS); T. 6 September 2007 p. 19 (ICS) (Witness D-2-13-D).

<sup>4035</sup> T. 3 September 2007 p. 56 (ICS) (Witness D-2-13-D).

<sup>4036</sup> T. 3 September 2007 p. 57 (ICS) (Witness D-2-13-D); Defence Exhibit 564 (Nyiramasuhuko) (17-20 June 2004, Statement of Witness D-2-13-D).

<sup>4037</sup> T. 30 August 2007 pp. 34, 38 (ICS); T. 6 September 2007 p. 5 (Witness D-2-13-D).

<sup>4038</sup> T. 4 September 2007 p. 65 (ICS); T. 6 September 2007 p. 60 (ICS) (Witness D-2-13-D).

<sup>4039</sup> T. 6 September 2007 p. 20 (ICS) (Witness D-2-13-D).

*secteur* was under Kanyabahizi's responsibility. In Nkubi there was only one *conseiller* who represented the *bourgmestre* at the *secteur* level. During the events, the *conseiller* [Kanyabahizi] did not issue orders; it was Semwiza who was issuing orders. When Semwiza was arrested, the *conseiller* [Kanyabahizi] was able to move about the *secteur*.<sup>4041</sup>

1613. Witness D-2-13-D testified that at the *Gacaca* sessions in prison, he noted the presence of Nsanzabahizi, Martin Nyandwi and a certain Phillip. Nsanzabahizi presided over the *Gacaca* sessions and was the first to give his testimony.<sup>4042</sup> Nsanzabahizi mentioned his involvement in what happened in Kabakobwa and confessed to having opened fire on people there.<sup>4043</sup> Witness D-2-13-D had spoken to Nsanzabahizi about the events at Kabakobwa.<sup>4044</sup>

1614. Witness D-2-13-D testified that at the *Gacaca* sessions outside prison, the events at Kabakobwa were discussed at length because there had been fierce fighting there. They discussed anyone who had been there, but Witness D-2-13-D did not hear mention of Kanyabashi's name in connection with the events at Kabakobwa.<sup>4045</sup> Witness D-2-13-D stated that he had not attended and had not heard of Kanyabashi being accused before any *Gacaca* proceeding.<sup>4046</sup>

1615. Witness D-2-13-D pled guilty to participating in the attacks at Kabakobwa and to his presence at Rukimbira's killing.<sup>4047</sup> Witness D-2-13-D testified that during his time at the Butare Prison there was a small group of people who were trying to incriminate Kanyabashi.<sup>4048</sup> The group included Witnesses FAM, QAH and QCB together with a certain Ruvugabigwi from Ruhengeri *commune*, and a certain Mageza from Gikongoro.<sup>4049</sup>

1616. According to Witness D-2-13-D, Witness FAC together with Witnesses QCB and FAM found Witness D-2-13-D in his cell and told him that they wanted to recruit him into their community. They said that there was a group that was going to testify against Kanyabashi in Arusha. Witness D-2-13-D testified that he told them that he did not know anything about Kanyabashi and asked them to leave.<sup>4050</sup>

1617. Witness D-2-13-D testified that a person by the same full name as Witness D-2-14-D was a neighbour in 1994 and at the time of their testimony.<sup>4051</sup> Witness D-2-13-D testified that he could see Witness D-2-14-D on Sundays after church but they did not have specific chats.<sup>4052</sup> Witness D-2-13-D testified that he did not see Witness D-2-14-D at Kabakobwa on the day of the attack.<sup>4053</sup> Witness D-2-13-D also testified that he was in prison with a person by

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<sup>4040</sup> T. 30 August 2007 p. 45 (ICS) (Witness D-2-13-D).

<sup>4041</sup> T. 10 September 2007 p. 70 (ICS) (Witness D-2-13-D).

<sup>4042</sup> T. 30 August 2007 p. 5; T. 30 August 2007 p. 9 (ICS) (Witness D-2-13-D).

<sup>4043</sup> T. 30 August 2007 p. 9 (ICS) (Witness D-2-13-D).

<sup>4044</sup> T. 30 August 2007 p. 4 (Witness D-2-13-D).

<sup>4045</sup> T. 30 August 2007 p. 15 (ICS) (Witness D-2-13-D).

<sup>4046</sup> T. 10 September 2007 p. 26 (ICS) (Witness D-2-13-D).

<sup>4047</sup> T. 28 August 2007 p. 62 (ICS); T. 4 September 2007 p. 55 (ICS) (Witness D-2-13-D).

<sup>4048</sup> T. 30 August 2007 p. 49 (ICS) (Witness D-2-13-D).

<sup>4049</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>4050</sup> T. 30 August 2007 pp. 50-51 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>4051</sup> T. 3 September 2007 p. 44 (ICS) (Witness D-2-13-D).

<sup>4052</sup> T. 10 September 2007 p. 29 (ICS) (Witness D-2-13-D).

<sup>4053</sup> T. 6 September 2007 p. 13 (ICS); T. 10 September 2007 p. 29 (ICS) (Witness D-2-13-D).

the same first name and from the same *secteur* as Witness D-2-14-D.<sup>4054</sup> That person helped Witness D-2-13-D draft his confession which was sent to the *Gacaca* courts and was given to Nkeshimana, the Kanyabashi Defence investigator.<sup>4055</sup> The day Witness D-2-13-D signed his statement to the Tribunal's investigators before Nkeshimana, Witness D-2-14-D was in the sitting room outside.<sup>4056</sup> Witness D-2-13-D did not attend Witness D-2-14-D's *Gacaca* trial.<sup>4057</sup> Witness D-2-13-D travelled together with Witness D-2-14-D to Arusha and they lived together while waiting to testify before this Tribunal.<sup>4058</sup> Witness D-2-13-D denied that he discussed either the events of 1994 or his testimony with Witness D-2-14-D while they were together in Arusha.<sup>4059</sup> They never discussed the Kabakobwa events because they had all learned about it during their *Gacaca* sessions.<sup>4060</sup>

#### Kanyabashi Defence Witness D-2-14-D

1618. Witness D-2-14-D, a Hutu farmer, cleaner and gardener,<sup>4061</sup> was in his house on 21 April 1994, when he saw many people fleeing.<sup>4062</sup> He saw approximately 200 people at Kabakobwa,<sup>4063</sup> who told the witness that they were fleeing from Runyinya and Gishamvu *communes*, and that the killings had begun in Rango market. Witness D-2-14-D remembered the date because it was Thursday, a market day in Rango.<sup>4064</sup> He showed the fleeing people how to reach Burundi by directing them to follow the path he followed to visit his sister, which led through Kabakobwa and Nyaruhengeri.<sup>4065</sup> Witness D-2-14-D testified that the people fleeing did not explain how or when exactly the killings occurred.<sup>4066</sup>

1619. Witness D-2-14-D testified that he did not hear Kanyabashi, or any other authority at the *secteur*, *cellule*, or Ngoma *commune* level, direct members of the population to go to Kabakobwa.<sup>4067</sup> The witness did not hear Kanyabashi say over a loudspeaker, "[t]hose who want to burn bad grass should, first of all, gather it". During the *Gacaca* sessions that he attended, he did not hear anyone claim that any authority had given instructions for refugees to go to Kabakobwa, to erect roadblocks to prevent refugees from leaving the *commune*, or that Tutsis should not return home.<sup>4068</sup> There were no refugees on the hill before 21 April 1994.<sup>4069</sup>

<sup>4054</sup> T. 28 August 2007 p. 68 (ICS) (Witness D-2-13-D).

<sup>4055</sup> T. 28 August 2007 pp. 68-69, 73 (ICS); T. 29 August 2007 p. 57 (ICS); T. 4 September 2007 pp. 56-57 (ICS); T. 5 September 2007 p. 9 (ICS) (Witness D-2-13-D).

<sup>4056</sup> T. 3 September 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>4057</sup> T. 3 September 2007 p. 64 (ICS) (Witness D-2-13-D).

<sup>4058</sup> T. 5 September 2007 p. 31 (ICS); T. 10 September 2007 p. 29 (ICS) (Witness D-2-13-D).

<sup>4059</sup> T. 5 September 2007 p. 33 (ICS) (Witness D-2-13-D).

<sup>4060</sup> T. 10 September 2007 pp. 29-30 (ICS) (Witness D-2-13-D).

<sup>4061</sup> Defence Exhibit 556 (Kanyabashi) (Personal Particulars); T. 20 August 2007 pp. 43-44 (ICS) (Witness D-2-14-D).

<sup>4062</sup> T. 21 August 2007 pp. 5-7 (Witness D-2-14-D).

<sup>4063</sup> T. 27 August 2007 p. 23 (ICS) (Witness D-2-14-D).

<sup>4064</sup> T. 21 August 2007 p. 6 (Witness D-2-14-D).

<sup>4065</sup> T. 21 August 2007 pp. 5-6 (Witness D-2-14-D).

<sup>4066</sup> T. 27 August 2007 p. 23 (ICS); T. 27 August 2007 pp. 60-61 (Witness D-2-14-D).

<sup>4067</sup> T. 21 August 2007 pp. 7, 10 (Witness D-2-14-D).

<sup>4068</sup> T. 21 August 2007 pp. 11-12 (Witness D-2-14-D).

<sup>4069</sup> T. 27 August 2007 p. 23 (ICS) (Witness D-2-14-D).



On 21 April 1994 he saw people at Kabakobwa, but did not “witness anything special” apart from people fleeing.<sup>4070</sup>

1620. Witness D-2-14-D testified that there were approximately 10 houses on Kabakobwa Hill, including the residence of a certain Nyamuhenda. He could see Kabakobwa Hill from his house, and could hear loud noises coming from the hill, but could not hear voices or call from his house to someone on the hill.<sup>4071</sup> Witness D-2-14-D indicated the location of his house relative to Kabakobwa Hill and Rango market on Defence Exhibit 557<sup>4072</sup> and marked the location of his house with the word “Urugo D-2-14-D”.<sup>4073</sup> In April 1994 he lived within view of, and a 10 minute walk from Kabakobwa.<sup>4074</sup> It was a 10 minute walk from the witness’ house to the nearest road, 40 minutes to walk from his house to Kibilizi, and 60 minutes to walk from his house to Rango market.<sup>4075</sup>

1621. Witness D-2-14-D testified that before noon on 22 April 1994, he saw a white, four-wheel-drive military vehicle arrive near Kabakobwa, with about five soldiers aboard.<sup>4076</sup> Witness D-2-14-D later testified, however, that he did not see soldiers arrive in a vehicle,<sup>4077</sup> and that the soldiers left on foot.<sup>4078</sup> The soldiers went to where the refugees were gathered and left five minutes later.<sup>4079</sup> The soldiers returned around 4.00 p.m. together with many members of the population, some of whom wore banana leaves, and this group of people surrounded Kabakobwa Hill.<sup>4080</sup> He was in his house at 4.00 p.m. when he heard gunshots, and went towards Kabakobwa.<sup>4081</sup> Witness D-2-14-D marked the location he went to after he heard gunshots in Kabakobwa in red with the letters “OA” on Defence Exhibit 558.<sup>4082</sup> He saw approximately 20 soldiers firing on the people at Kabakobwa, and his neighbours and others gathered and threw stones.<sup>4083</sup> Members of the population who were throwing stones were standing in front of the soldiers.<sup>4084</sup> The soldiers were shooting above the civilians in order to hit the refugees.<sup>4085</sup> There were approximately 700 refugees present.<sup>4086</sup> He estimated that 500 to 600 people were killed on Kabakobwa Hill.<sup>4087</sup>

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<sup>4070</sup> T. 21 August 2007 pp. 7, 12 (Witness D-2-14-D).

<sup>4071</sup> T. 27 August 2007 p. 20 (ICS) (Witness D-2-14-D).

<sup>4072</sup> T. 20 August 2007 pp. 58-59, 74 (ICS) (Witness D-2-14-D); Defence Exhibit 557 (Kanyabashi) (Copy of Prosecution Exhibit 53 as marked by Witness D-2-14-D).

<sup>4073</sup> T. 20 August 2007 pp. 61-62 (ICS) (Witness D-2-14-D).

<sup>4074</sup> T. 20 August 2007 p. 49 (ICS) (Witness D-2-14-D).

<sup>4075</sup> T. 20 August 2007 p. 51 (ICS) (Witness D-2-14-D).

<sup>4076</sup> T. 21 August 2007 p. 12 (Witness D-2-14-D).

<sup>4077</sup> T. 27 August 2007 p. 22 (ICS) (Witness D-2-14-D).

<sup>4078</sup> T. 27 August 2007 pp. 46-47 (Witness D-2-14-D).

<sup>4079</sup> T. 21 August 2007 pp. 12, 15 (Witness D-2-14-D).

<sup>4080</sup> T. 21 August 2007 p. 15 (Witness D-2-14-D).

<sup>4081</sup> T. 21 August 2007 pp. 36, 61-62, 67 (ICS) (Witness D-2-14-D).

<sup>4082</sup> T. 21 August 2007 p. 67 (ICS) (Witness D-2-14-D); Defence Exhibit 558 (Kanyabashi) (Copy of Defence Exhibit 557 as marked by Witness D-2-14-D).

<sup>4083</sup> T. 21 August 2007 pp. 36-38; T. 23 August 2007 p. 43 (ICS) (Witness D-2-14-D).

<sup>4084</sup> T. 21 August 2007 p. 37; T. 23 August 2007 p. 53 (ICS) (Witness D-2-14-D).

<sup>4085</sup> T. 23 August 2007 p. 53 (ICS) (Witness D-2-14-D).

<sup>4086</sup> T. 22 August 2007 p. 11 (ICS) (Witness D-2-14-D).

<sup>4087</sup> T. 21 August 2007 p. 37; T. 28 August 2007 p. 45 (ICS) (Witness D-2-14-D).

1622. The witness marked the location of the soldiers in red with the letters “S1” and “S2”, and the direction they attacked with red arrows, on Defence Exhibit 558.<sup>4088</sup> The witness marked the location where he saw the first group of civilians as he left his home after having heard gunshots with a “C1”.<sup>4089</sup> The witness marked the location where he saw the second group of civilians who were accompanying the soldiers with a “C2”.<sup>4090</sup> S1 and C1 moved towards the refugees during the attack.<sup>4091</sup> The witness marked the spot where the refugees were then attacked with a circle and an “R”.<sup>4092</sup>

1623. Witness D-2-14-D estimated that he was 200 metres from his house and 100 metres from one group of soldiers when he saw them firing.<sup>4093</sup> He saw only two groups of soldiers and two groups of civilians.<sup>4094</sup> Witness D-2-14-D was closest to a group of about 150 civilians and another group contained approximately 300 civilians. He estimated there were 20 soldiers who wore military attire.<sup>4095</sup> He did not know from which camp the soldiers came although they were part of the Rwandan Armed Forces.<sup>4096</sup> He did not know any of the soldiers, whereas of the 500 civilian attackers he knew maybe 30 to 50 people.<sup>4097</sup> The witness knew the close group of civilians because he had worked with them.<sup>4098</sup>

1624. Witness D-2-14-D estimated the distance between his house and the victims as approximately 1,200 metres,<sup>4099</sup> and 3,000 metres from his house to the second group of soldiers.<sup>4100</sup> He estimated that the distance from the victims to the bottom of the hill was 300 metres, and that the hill was 1,200 metres wide.<sup>4101</sup> The Ngoma *commune* office was approximately 15 kilometres from Kabakobwa and the trip would take approximately 20 minutes by vehicle.<sup>4102</sup>

1625. Witness D-2-14-D also testified that Nsanzabahizi was present at Kabakobwa on 22 April 1994.<sup>4103</sup> The witness marked the spot where he saw Nsanzabahizi during the attack with a circle and an “N”, and marked the spot where he was standing when he saw Nsanzabahizi with a circle and a “W”.<sup>4104</sup> He was standing approximately five metres from Nsanzabahizi.<sup>4105</sup> The witness explained that Nsanzabahizi had been a soldier prior to becoming a *commune* policeman and then the driver for the *commune*.<sup>4106</sup> He was dressed as a soldier when he fired

<sup>4088</sup> T. 21 August 2007 p. 68 (ICS); T. 22 August 2007 pp. 12-15 (ICS) (Witness D-2-14-D).

<sup>4089</sup> T. 21 August 2007 pp. 70-72 (ICS) (Witness D-2-14-D).

<sup>4090</sup> T. 21 August 2007 pp. 71-72 (ICS) (Witness D-2-14-D).

<sup>4091</sup> T. 22 August 2007 p. 14 (ICS) (Witness D-2-14-D).

<sup>4092</sup> T. 22 August 2007 p. 11 (ICS) (Witness D-2-14-D).

<sup>4093</sup> T. 22 August 2007 pp. 6-7 (ICS) (Witness D-2-14-D).

<sup>4094</sup> T. 21 August 2007 pp. 69, 72 (ICS) (Witness D-2-14-D).

<sup>4095</sup> T. 23 August 2007 p. 43 (ICS); T. 27 August 2007 p. 51 (ICS) (Witness D-2-14-D).

<sup>4096</sup> T. 27 August 2007 p. 62 (Witness D-2-14-D).

<sup>4097</sup> T. 23 August 2007 pp. 43-44 (ICS) (Witness D-2-14-D).

<sup>4098</sup> T. 27 August 2007 pp. 15-16 (ICS) (Witness D-2-14-D).

<sup>4099</sup> T. 23 August 2007 pp. 33, 37 (ICS); T. 27 August 2007 p. 19 (ICS) (Witness D-2-14-D).

<sup>4100</sup> T. 22 August 2007 p. 7 (ICS); T. 23 August 2007 pp. 36-37 (ICS) (Witness D-2-14-D).

<sup>4101</sup> T. 23 August 2007 pp. 37, 39-40 (ICS) (Witness D-2-14-D).

<sup>4102</sup> T. 27 August 2007 p. 61 (Witness D-2-14-D).

<sup>4103</sup> T. 21 August 2007 p. 25 (Witness D-2-14-D).

<sup>4104</sup> T. 22 August 2007 pp. 8-9 (ICS) (Witness D-2-14-D).

<sup>4105</sup> T. 22 August 2007 p. 10 (ICS) (Witness D-2-14-D).

<sup>4106</sup> T. 21 August 2007 p. 25; T. 23 August 2007 p. 69 (ICS) (Witness D-2-14-D).

upon the refugees, and not as a *commune* policeman, although he was not a soldier at the time.<sup>4107</sup> Semwiza and Nsanzabahizi were half-brothers but they did not get on.<sup>4108</sup>

1626. Witness D-2-14-D described the attack as “remarkable” and testified that his *conseiller* and Kanyabashi would have heard of it, considering Kabakobwa was within Ngoma *commune* and under Kanyabashi’s jurisdiction.<sup>4109</sup> Witness D-2-14-D did not see Kanyabashi take any actions after the attack because neither the *conseiller* of his *secteur*, nor *Bourgmestre* Kanyabashi had any authority to punish criminals in the *commune*, because it was the soldiers who gave the orders.<sup>4110</sup> Civilians were taking orders from the soldiers.<sup>4111</sup>

1627. Members of the population who participated in the attack were wearing banana leaves, but the witness did not wear banana leaves.<sup>4112</sup> He did not see any *Interahamwe* present at the Kabakobwa massacre.<sup>4113</sup> When confronted with his statement of 28 November 2004, in which he stated, “I was with the soldiers and the other *Interahamwe* at Kabakobwa”, the witness explained that he referred to ordinary civilians as *Interahamwe* even though they were not really *Interahamwe*.<sup>4114</sup> The soldiers left Kabakobwa at approximately 5.00 p.m., and the civilians left later, after having picked up the refugees’ belongings, but before nightfall.<sup>4115</sup>

1628. Witness D-2-14-D did not see Ngoma *commune* police or hear any messages from the Ngoma *commune* police during the attack.<sup>4116</sup> Although Witness D-2-14-D did not know many Ngoma *commune* policemen, he knew there were no police present during the attack, because he did not see anyone in police uniform, which at the time was green.<sup>4117</sup> Similarly, he did not hear anyone mention the presence of the Ngoma *commune* police at Kabakobwa during the massacre during any of the *Gacaca* sessions he attended.<sup>4118</sup>

1629. Witness D-2-14-D observed Nsanzabahizi’s confession in *Gacaca* proceedings in Huye Stadium in Butare in January 2003.<sup>4119</sup> Nsanzabahizi confessed to firing on defenceless people “without receiving any instructions or orders from anybody”.<sup>4120</sup> Nsanzabahizi never mentioned Kanyabashi’s name.<sup>4121</sup> Nsanzabahizi said he was personally responsible for what he had done.<sup>4122</sup> During Nsanzabahizi’s confession he did not mention any letter written by Kanyabashi.<sup>4123</sup>

<sup>4107</sup> T. 22 August 2007 p. 8 (ICS); T. 23 August 2007 pp. 31-32, 69 (ICS) (Witness D-2-14-D).

<sup>4108</sup> T. 27 August 2007 pp. 43-44 (Witness D-2-14-D).

<sup>4109</sup> T. 28 August 2007 p. 9 (Witness D-2-14-D).

<sup>4110</sup> T. 28 August 2007 p. 8 (Witness D-2-14-D).

<sup>4111</sup> T. 27 August 2007 p. 24 (ICS) (Witness D-2-14-D).

<sup>4112</sup> T. 21 August 2007 pp. 15, 36; T. 27 August 2007 p. 24 (ICS) (Witness D-2-14-D).

<sup>4113</sup> T. 27 August 2007 p. 76 (Witness D-2-14-D).

<sup>4114</sup> T. 27 August 2007 pp. 78-79 (Witness D-2-14-D); Prosecution Exhibit 193B (29 August 2004 (signed 28 November 2004), Statement of Witness D-2-14-D).

<sup>4115</sup> T. 21 August 2007 p. 37 (Witness D-2-14-D).

<sup>4116</sup> T. 21 August 2007 p. 38 (Witness D-2-14-D).

<sup>4117</sup> T. 23 August 2007 p. 47 (ICS) (Witness D-2-14-D).

<sup>4118</sup> T. 21 August 2007 p. 38 (Witness D-2-14-D).

<sup>4119</sup> T. 21 August 2007 pp. 25-27, 29 (Witness D-2-14-D).

<sup>4120</sup> T. 21 August 2007 p. 26 (Witness D-2-14-D).

<sup>4121</sup> T. 21 August 2007 p. 34 (Witness D-2-14-D).

<sup>4122</sup> T. 21 August 2007 pp. 25-26, 34, 36 (Witness D-2-14-D).

<sup>4123</sup> T. 21 August 2007 pp. 26, 36 (Witness D-2-14-D).

1630. Witness D-2-14-D testified that he did not hear during *Gacaca* that Kanyabashi told Tutsis not to go to their homes.<sup>4124</sup> Witness D-2-14-D did not see Kanyabashi at Kabakobwa on Friday, 22 April 1994 nor did he ever hear anyone state during the *Gacaca* sessions that Kanyabashi was present at Kabakobwa on Friday, 22 April 1994.<sup>4125</sup> He may have missed Kanyabashi if he had gone to Kabakobwa on foot.<sup>4126</sup> Witness D-2-14-D agreed that *Gacaca* sessions focused on the individual before them, and thus a *Gacaca* session not concerning Kanyabashi would likely not address him.<sup>4127</sup> He never heard anyone claim that Kanyabashi ordered people to go to Kabakobwa to search for and kill survivors.<sup>4128</sup> Nor did he hear anyone claim that Kanyabashi was responsible for the killings.<sup>4129</sup>

1631. The following day [23 April 1994], from the morning until noon people went back to Kabakobwa to plunder and loot the property of the victims, and to finish off those who had not died, under the supervision of Semwiza.<sup>4130</sup> While the witness was not involved in the looting during the morning, around 2.00 p.m. of the same day he was involved in the killing of one Rurangwa who had survived the Kabakobwa incident.<sup>4131</sup> Witness D-2-14-D subsequently said he did partake in the looting in the morning.<sup>4132</sup> Witness D-2-14-D became involved in the subsequent killings because of Semwiza, who was the person who directed the attacks and supervised the looting of people's bodies.<sup>4133</sup> Semwiza said the Tutsis were the enemy of the Hutus and that he knew Tutsis because he had fought them in 1959.<sup>4134</sup> The *conseiller* did not have a good relationship with Semwiza; rather Semwiza made himself into the *conseiller* and defied the former's authority.<sup>4135</sup> Semwiza once slapped the *conseiller* and told him that he was an accomplice of the Tutsis and that he hid them.<sup>4136</sup>

1632. Witness D-2-14-D did not know of Kanyabashi making any announcements for Tutsis to come out of their hiding places by megaphone.<sup>4137</sup>

1633. According to the witness, burials took place on Sunday, 24 April 1994.<sup>4138</sup> Witness D-2-14-D testified that Semwiza and three others were arrested two days after the Kabakobwa burials and placed in detention.<sup>4139</sup> Several members of the population who lived in Nkubi *secteur*, including Nsanzabahizi, wrote a letter seeking their release. Semwiza was released when the RPF took Butare, but had since died.<sup>4140</sup> Witness D-2-14-D signed the petition

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<sup>4124</sup> T. 21 August 2007 p. 12 (Witness D-2-14-D).

<sup>4125</sup> T. 21 August 2007 p. 39; T. 27 August 2007 p. 32 (Witness D-2-14-D).

<sup>4126</sup> T. 21 August 2007 p. 39 (Witness D-2-14-D).

<sup>4127</sup> T. 27 August 2007 p. 63 (Witness D-2-14-D).

<sup>4128</sup> T. 21 August 2007 p. 49 (ICS) (Witness D-2-14-D).

<sup>4129</sup> T. 21 August 2007 p. 40 (Witness D-2-14-D).

<sup>4130</sup> T. 21 August 2007 pp. 43, 47 (ICS) (Witness D-2-14-D).

<sup>4131</sup> T. 21 August 2007 pp. 43-44, 46 (ICS) (Witness D-2-14-D).

<sup>4132</sup> T. 27 August 2007 p. 47 (Witness D-2-14-D).

<sup>4133</sup> T. 21 August 2007 pp. 23, 43 (ICS); T. 23 August 2007 p. 53 (ICS) (Witness D-2-14-D).

<sup>4134</sup> T. 21 August 2007 p. 38 (Witness D-2-14-D).

<sup>4135</sup> T. 27 August 2007 p. 37 (Witness D-2-14-D).

<sup>4136</sup> T. 27 August 2007 p. 36 (Witness D-2-14-D).

<sup>4137</sup> T. 21 August 2007 p. 59 (ICS) (Witness D-2-14-D).

<sup>4138</sup> T. 21 August 2007 pp. 49, 52 (ICS); T. 27 August 2007 p. 29 (Witness D-2-14-D).

<sup>4139</sup> T. 22 August 2007 p. 22 (ICS); T. 27 August 2007 p. 38 (Witness D-2-14-D).

<sup>4140</sup> T. 28 August 2007 p. 32 (ICS) (Witness D-2-14-D).

calling for the release of the three remaining detainees on 29 May 1994 without knowing its purpose.<sup>4141</sup> Witness D-2-14-D did not know who carried out their arrests.<sup>4142</sup>

1634. Witness D-2-14-D knew Witness FAM and they were detained together in Karubanda.<sup>4143</sup> Witness D-2-14-D testified Witness FAM lived about four kilometres from Kabakobwa.<sup>4144</sup> Witness D-2-14-D testified Witness FAM was of bad character and was dismissed from his job for having stolen.<sup>4145</sup> In 1995 Witness FAM escaped from prison but was re-arrested. In prison Witness FAM stole from other detainees and was frequently held in isolation.<sup>4146</sup> After returning to Rwanda, Witness FAM told the other detainees that he had come to Arusha to testify against Kanyabashi.<sup>4147</sup> Witness D-2-14-D testified that Witness FAM gave false testimony.<sup>4148</sup> When Witness FAM confessed to his crimes committed at Kabakobwa during the *Gacaca* sessions in prison, he did not mention Kanyabashi was in Kabakobwa.<sup>4149</sup> Witness D-2-14-D testified that Witness FAM was inciting others in prison to falsely testify against Kanyabashi.<sup>4150</sup> No one approached Witness D-2-14-D to give false testimony before this Tribunal.<sup>4151</sup> Witness D-2-14-D was also detained in the “Arusha” block in Rwanda with Witness D-2-13-D and Witness QCB, who were both from his native *cellule*.<sup>4152</sup> Although Witness D-2-14-D lived together with Witness D-2-13-D in Arusha while waiting to testify before this Tribunal, he testified there would be both similarities and differences between their testimonies.<sup>4153</sup>

1635. Witness D-2-14-D further testified that he did not see Kanyabashi at Kabakobwa, or anywhere else, on 22, 23, or 24 April 1994.<sup>4154</sup> Witness D-2-14-D identified Kanyabashi in court.<sup>4155</sup>

1636. Witness D-2-14-D testified that Witness D-2-13-D came from the same home *cellule*.<sup>4156</sup> According to Witness D-2-14-D, Witness D-2-13-D was one of the civilians who remained on the hill after the soldiers left.<sup>4157</sup> Witness D-2-14-D marked the location of Witness D-2-13-D’s house on Defence Exhibit 559.<sup>4158</sup> Witness D-2-14-D testified that he saw Witness D-2-13-D at Kabakobwa and was thereafter detained together with Witness D-2-13-D

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<sup>4141</sup> T. 28 August 2007 p. 35 (ICS) (Witness D-2-14-D).

<sup>4142</sup> T. 28 August 2007 p. 43 (ICS) (Witness D-2-14-D).

<sup>4143</sup> T. 22 August 2007 pp. 24, 27-28 (ICS); T. 27 August 2007 p. 49 (ICS) (Witness D-2-14-D).

<sup>4144</sup> T. 27 August 2007 p. 51 (ICS) (Witness D-2-14-D).

<sup>4145</sup> T. 22 August 2007 p. 27 (ICS) (Witness D-2-14-D).

<sup>4146</sup> T. 22 August 2007 p. 28 (ICS) (Witness D-2-14-D).

<sup>4147</sup> T. 22 August 2007 p. 39 (ICS) (Witness D-2-14-D).

<sup>4148</sup> T. 22 August 2007 p. 40 (ICS) (Witness D-2-14-D).

<sup>4149</sup> T. 23 August 2007 pp. 10-11 (ICS) (Witness D-2-14-D).

<sup>4150</sup> T. 23 August 2007 p. 11 (ICS) (Witness D-2-14-D).

<sup>4151</sup> T. 22 August 2007 p. 40 (ICS) (Witness D-2-14-D).

<sup>4152</sup> T. 22 August 2007 pp. 66-67 (ICS); T. 23 August 2007 pp. 8-9 (ICS) (Witness D-2-14-D).

<sup>4153</sup> T. 23 August 2007 pp. 72-73 (ICS) (Witness D-2-14-D).

<sup>4154</sup> T. 21 August 2007 p. 39; T. 21 August 2007 pp. 48, 55-56 (ICS); T. 27 August 2007 p. 32 (Witness D-2-14-D).

<sup>4155</sup> T. 20 August 2007 p. 47 (Witness D-2-14-D).

<sup>4156</sup> T. 22 August 2007 pp. 56-57 (ICS) (Witness D-2-14-D).

<sup>4157</sup> T. 27 August 2007 p. 8 (ICS); T. 27 August 2007 p. 10 (HC) (Witness D-2-14-D) (French).

<sup>4158</sup> Defence Exhibit 559 (Ntahobali) (Copy of Defence Exhibit 558 as marked by Witness D-2-14-D); T. 27 August 2007 pp. 14-15 (ICS) (Witness D-2-14-D).

at Karubanda.<sup>4159</sup> Witness D-2-14-D testified that he met Nkeshimana, the Kanyabashi Defence investigator, at the same time as Witness D-2-13-D<sup>4160</sup> and Witness D-2-13-D was with him when he signed his statement before Nkeshimana.<sup>4161</sup> Witness D-2-14-D testified that he was staying with Witness D-2-13-D while in Arusha, but denied that they had discussed their testimony, saying that there are points of diversions between their versions of events.<sup>4162</sup>

#### Kanyabashi Defence Witness D-2-16-P

1637. Witness D-2-16-P, a Tutsi,<sup>4163</sup> testified that in the morning of Thursday, 21 April 1994, he along with other people, including three policemen from Ngoma *commune*, were at Mukura Bridge.<sup>4164</sup> On that morning, the *conseiller* for Mubumbano, Bumeyi, threw a grenade at people standing at the bridge, but no one was hurt.<sup>4165</sup> Bumeyi threw the grenade to scare away the population who was protecting the bridge and to allow the attackers to cross the bridge.<sup>4166</sup> After the grenade was thrown, soldiers arrived at the bridge where they found many members of the population, including the three policemen.<sup>4167</sup> There were 15 to 20 soldiers who arrived on board a vehicle.<sup>4168</sup> The soldiers asked the population what they were doing<sup>4169</sup> and one of the soldiers hit a policeman with the butt of his gun and told him, “[y]ou are supporting the *Inkotanyi* just like your *bourgmestre*, Kanyabashi”.<sup>4170</sup>

1638. After this incident, Witness D-2-16-P went home at around noon going through Kanyamanza Hill and Rango market, arriving home around 1.00 p.m.<sup>4171</sup> At Rango market, he saw a policeman, citizens and fleeing refugees.<sup>4172</sup> The distance between Mukura Bridge and Kanyamanza could be covered in 10 minutes on foot, and Rango market to Kanyamanza in 20 minutes on foot.<sup>4173</sup> It is a 40 minute walk to Kabakobwa from the witness’ house.<sup>4174</sup> He did not notice if Kanyabashi was present at Rango market on that day nor did he hear anyone say so.<sup>4175</sup>

1639. Witness D-2-16-P testified that on that Thursday [21 April 1994], security was shaky, as people were fleeing. Later that day, while at home, he heard gunshots following which he and his neighbours decided to pack their belongings and flee to Burundi. Since night was falling, they spent the night in Kabakobwa where they arrived between 5.00 and 6.00 p.m.<sup>4176</sup>

<sup>4159</sup> T. 23 August 2007 pp. 60, 63 (ICS) (Witness D-2-14-D).

<sup>4160</sup> T. 23 August 2007 pp. 23-24 (ICS) (Witness D-2-14-D).

<sup>4161</sup> T. 27 August 2007 p. 10 (ICS) (Witness D-2-14-D).

<sup>4162</sup> T. 23 August 2007 pp. 8, 72 (ICS) (Witness D-2-14-D).

<sup>4163</sup> T. 12 March 2008 p. 6 (Witness D-2-16-P); Defence Exhibit 639 (Kanyabashi) (Personal Particulars).

<sup>4164</sup> T. 12 March 2008 pp. 35, 37, 39; T. 13 March 2008 p. 12; T. 17 March 2008 p. 30 (Witness D-2-16-P).

<sup>4165</sup> T. 12 March 2008 p. 37; T. 17 March 2008 pp. 36-37, 44 (Witness D-2-16-P).

<sup>4166</sup> T. 17 March 2008 p. 37 (Witness D-2-16-P).

<sup>4167</sup> T. 12 March 2008 p. 39; T. 17 March 2008 pp. 34, 40 (Witness D-2-16-P).

<sup>4168</sup> T. 17 March 2008 p. 42 (Witness D-2-16-P).

<sup>4169</sup> T. 17 March 2008 p. 34 (Witness D-2-16-P).

<sup>4170</sup> T. 12 March 2008 p. 39; T. 17 March 2008 pp. 34, 41 (Witness D-2-16-P).

<sup>4171</sup> T. 12 March 2008 p. 40; T. 17 March 2008 p. 46 (Witness D-2-16-P).

<sup>4172</sup> T. 12 March 2008 pp. 40-41, 49 (Witness D-2-16-P).

<sup>4173</sup> T. 12 March 2008 p. 48 (Witness D-2-16-P).

<sup>4174</sup> T. 19 March 2008 p. 21 (Witness D-2-16-P).

<sup>4175</sup> T. 12 March 2008 p. 49 (Witness D-2-16-P).

<sup>4176</sup> T. 12 March 2008 pp. 50-51 (Witness D-2-16-P).

There were about 500 to 1,000 people at Kabakobwa.<sup>4177</sup> The people at Kabakobwa had come from Gishamvu, Runyinya and Huye *communes*, and Nyarugururu area; the witness and his family were from Ngoma *commune*.<sup>4178</sup> At 10.00 p.m. that night, some young men tried to cross the border to Burundi, but found a roadblock at a place called Ruhuha where they were attacked, seriously assaulted and killed, while the one boy who survived and returned to Kabakobwa was wounded in the head.<sup>4179</sup>

1640. No authority asked the people to go to Kabakobwa, and he never heard that authorities, be it Kanyabashi, *secteur conseillers* or *cellule* heads, gave directives on that Thursday that people should go to Kabakobwa.<sup>4180</sup> They stopped at Kabakobwa in order to prepare food for their children but their intention was to continue to Burundi the following day. They were not guarded that night.<sup>4181</sup> On Friday morning Witness D-2-16-P was unable to continue to Burundi because the young man who had been injured the night before told him that the roadblock was impassable.<sup>4182</sup> It was not until Friday at about 3.00 p.m. that they were surrounded by their attackers.<sup>4183</sup> Other civilians reached Kabakobwa in the morning and told the refugees who were there that Kabakobwa Hill was going to be attacked.<sup>4184</sup>

1641. That same Friday morning, one Mathias, a driver at the *commune* office, arrived on his motorcycle wearing a military uniform and a black beret to fetch his sister and her children.<sup>4185</sup> He arrived around 8.00 a.m.<sup>4186</sup> He later testified Mathias arrived around 10.00 a.m.<sup>4187</sup> Before being a driver, Mathias was a soldier in the army.<sup>4188</sup> Witness D-2-16-P did not know if Mathias had also been a policeman.<sup>4189</sup>

1642. After Mathias' arrival, *gendarmes* arrived on foot at Kabakobwa, called out for someone named "Africa" and asked him to assemble people so that a meeting could be held.<sup>4190</sup> He said that Africa told the *gendarmes* that the people would not obey his orders since they were sad and had lost family members, and the *gendarmes* left.<sup>4191</sup> The *gendarmes* wore camouflage uniforms, with red berets.<sup>4192</sup> Witness D-2-16-P did not see the *gendarmes* again after their departure.<sup>4193</sup>

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<sup>4177</sup> T. 12 March 2008 p. 50 (Witness D-2-16-P).

<sup>4178</sup> T. 12 March 2008 p. 53 (Witness D-2-16-P).

<sup>4179</sup> T. 12 March 2008 pp. 50-51; T. 18 March 2008 pp. 22-23; T. 19 March 2008 p. 37 (Witness D-2-16-P).

<sup>4180</sup> T. 12 March 2008 pp. 55-56; T. 19 March 2008 p. 37 (Witness D-2-16-P).

<sup>4181</sup> T. 19 March 2008 pp. 37-38 (Witness D-2-16-P).

<sup>4182</sup> T. 12 March 2008 p. 56 (Witness D-2-16-P).

<sup>4183</sup> T. 19 March 2008 pp. 37-38 (Witness D-2-16-P).

<sup>4184</sup> T. 19 March 2008 p. 39 (Witness D-2-16-P).

<sup>4185</sup> T. 12 March 2008 pp. 56-57; T. 17 March 2008 p. 55; T. 18 March 2008 pp. 17, 21; T. 19 March 2008 pp. 38, 49 (Witness D-2-16-P).

<sup>4186</sup> T. 19 March 2008 p. 38 (Witness D-2-16-P).

<sup>4187</sup> T. 19 March 2008 p. 49 (Witness D-2-16-P).

<sup>4188</sup> T. 12 March 2008 p. 57; T. 13 March 2008 pp. 53-54; T. 18 March 2008 p. 21 (Witness D-2-16-P).

<sup>4189</sup> T. 13 March 2008 p. 54; T. 17 March 2008 p. 71 (ICS); T. 18 March 2008 p. 21 (Witness D-2-16-P).

<sup>4190</sup> T. 12 March 2008 pp. 57-58; T. 18 March 2008 p. 27 (Witness D-2-16-P).

<sup>4191</sup> T. 12 March 2008 p. 58; T. 19 March 2008 pp. 51-52 (ICS) (Witness D-2-16-P).

<sup>4192</sup> T. 12 March 2008 p. 58 (Witness D-2-16-P).

<sup>4193</sup> T. 18 March 2008 p. 29 (Witness D-2-16-P).

1643. Later that Friday afternoon, between 2.00 and 3.00 p.m., soldiers came to Kabakobwa along with *Interahamwe* who wore banana leaves over their bodies and heads, and started shooting at people.<sup>4194</sup> He did not see how the soldiers arrived at Kabakobwa; he only saw them when they were standing at Agasharu *cellule* and were moving downwards towards them.<sup>4195</sup> The distance between the refugees at Kabakobwa and the attackers at Agasharu was about 500 metres, maybe more, while the distance to the attackers at Rwinuma was maybe 700 metres.<sup>4196</sup> The soldiers and *Interahamwe* surrounded them.<sup>4197</sup> The *Interahamwe* were walking behind the soldiers.<sup>4198</sup> The soldiers started firing while they were at Agasharu.<sup>4199</sup> He said the soldiers shot at people while the *Interahamwe* finished off those who had not been killed by bullets.<sup>4200</sup> Soldiers carried weapons and firearms, while the *Interahamwe* used traditional weapons like machetes.<sup>4201</sup> The gunfire lasted about 20 minutes and then a shell exploded. Witness D-2-16-P fled after the shell exploded.<sup>4202</sup> Witness D-2-16-P fled with his family and spent the night at Gikore in Nyaruhengeri *commune*.<sup>4203</sup> Since it was impossible to get to Burundi because the border crossings were blocked, the witness left Gikore the next morning [Saturday] at 10.00 a.m. and returned home, where he arrived around 4.00 or 5.00 p.m.<sup>4204</sup>

1644. Soldiers did not come to talk to the refugees earlier that day to tell them that Hutus and Tutsis needed to separate.<sup>4205</sup> During the period from April to July both Tutsis and some Hutus who were collaborating with Tutsis were killed.<sup>4206</sup>

1645. On Defence Exhibit 664, Witness D-2-16-P showed the location of the soldiers and *Interahamwe* dressed in banana leaves on Agasharu Hill when they started firing at the refugees, at a spot marked by a rectangle above the figure of a person.<sup>4207</sup> Witness D-2-16-P showed on Defence Exhibit 664 the location of the other group of attackers at Rwinuma Hill at a spot below the Butare-Kansi road.<sup>4208</sup> Witness D-2-16-P marked the location of Rango market with an “M” on Defence Exhibit 664.<sup>4209</sup> D-2-16-P marked the location of the soldiers and *Interahamwe* at Agasharu with an “MI”, and the location of the soldiers at Rwinuma with an “MI2” on Defence Exhibit 664.<sup>4210</sup>

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<sup>4194</sup> T. 12 March 2008 p. 63; T. 18 March 2008 pp. 20, 22, 24, 30 (Witness D-2-16-P).

<sup>4195</sup> T. 18 March 2008 p. 20; T. 19 March 2008 p. 40 (Witness D-2-16-P).

<sup>4196</sup> T. 18 March 2008 p. 30 (Witness D-2-16-P).

<sup>4197</sup> T. 18 March 2008 p. 22 (Witness D-2-16-P).

<sup>4198</sup> T. 18 March 2008 p. 32 (Witness D-2-16-P).

<sup>4199</sup> T. 18 March 2008 p. 31 (Witness D-2-16-P).

<sup>4200</sup> T. 12 March 2008 p. 63; T. 18 March 2008 p. 32 (Witness D-2-16-P).

<sup>4201</sup> T. 19 March 2008 p. 42 (Witness D-2-16-P).

<sup>4202</sup> T. 18 March 2008 pp. 18-20 (Witness D-2-16-P).

<sup>4203</sup> T. 12 March 2008 p. 64; T. 17 March 2008 p. 55; T. 19 March 2008 p. 44 (Witness D-2-16-P).

<sup>4204</sup> T. 19 March 2008 pp. 46, 48 (Witness D-2-16-P).

<sup>4205</sup> T. 18 March 2008 p. 31 (Witness D-2-16-P).

<sup>4206</sup> T. 19 March 2008 p. 55 (ICS) (Witness D-2-16-P).

<sup>4207</sup> T. 18 March 2008 p. 40 (Witness D-2-16-P); Defence Exhibit 646 (Ntahobali) (Copy of Defence Exhibit 35).

<sup>4208</sup> T. 18 March 2008 p. 41 (Witness D-2-16-P); Defence Exhibit 646 (Ntahobali) (Copy of Defence Exhibit 35).

<sup>4209</sup> T. 18 March 2008 p. 48 (ICS) (Witness D-2-16-P); Defence Exhibit 646 (Ntahobali) (Copy of Defence Exhibit 35).

<sup>4210</sup> T. 18 March 2008 p. 50 (ICS) (Witness D-2-16-P); Defence Exhibit 646 (Ntahobali) (Copy of Defence Exhibit 35).



1646. Witness D-2-16-P did not personally see Kanyabashi at Kabakobwa on that Friday.<sup>4211</sup> Witness D-2-16-P did not see any Ngoma *commune* police officers among the assailants, or hear anyone say so afterwards.<sup>4212</sup> In 1994 *commune* police officers wore green uniforms and yellow berets.<sup>4213</sup> He testified that he may not have recognised *commune* policemen if they were wearing something other than their usual attire.<sup>4214</sup> Witness D-2-16-P did not see or ever hear anyone say that Mathias was present at Kabakobwa on that Friday.<sup>4215</sup>

1647. After the events at Kabakobwa, the *conseiller* no longer had power. Semwiza had taken power. This was made clear from the fact that he had heard that at a meeting called by the *conseiller* to ask members of the public to co-exist peacefully, Semwiza slapped the *conseiller* and told the *conseiller* that what he was doing was not good.<sup>4216</sup> He did not personally see this, he only heard of it.<sup>4217</sup> Semwiza was one of the leaders of the attacks against the Tutsis in the witness' *secteur*.<sup>4218</sup> After the killings in Kabakobwa and before the beginning of July 1994, *gendarmes* arrested and detained Semwiza and other people who had been involved in the attack and killed the children of one Emmanuel who had sought refuge at the house of one Aloys.<sup>4219</sup> He did not personally see this, he only heard of it.<sup>4220</sup> He did not know who ordered those arrests.<sup>4221</sup> He did not know of Defence Exhibit 33, the document seeking the release of those arrested, although his name featured among those who signed it.<sup>4222</sup> Witness D-2-16-P testified that there are several people with his same first name in his *secteur* and one other person with his same first and family names, and it was that person who signed the petition.<sup>4223</sup>

1648. Witness D-2-16-P testified that from his home he could hear messages by megaphone from a vehicle on the road linking Nkubi and Sahera *secteurs*. Prior to April 1994, he could hear such messages delivered by megaphone, but he never heard such messages from April to early July 1994.<sup>4224</sup>

1649. Witness D-2-16-P attended all *Gacaca* proceedings in his home *secteur* including sessions where Kabakobwa events were mentioned; he never heard Kanyabashi or *commune* policemen mentioned in relation to the Kabakobwa events.<sup>4225</sup> Semwiza was mentioned at the *Gacaca* proceedings but never appeared there because he had died prior to the proceedings. Witness D-2-16-P also never heard, at *Gacaca* or elsewhere, of a letter read out by Kanyabashi calling on the public to join soldiers in order to kill people who had assembled at

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<sup>4211</sup> T. 12 March 2008 p. 65; T. 19 March 2008 p. 43 (Witness D-2-16-P).

<sup>4212</sup> T. 12 March 2008 p. 65 (Witness D-2-16-P).

<sup>4213</sup> T. 12 March 2008 p. 58; T. 19 March 2008 p. 41 (Witness D-2-16-P).

<sup>4214</sup> T. 18 March 2008 p. 20 (Witness D-2-16-P).

<sup>4215</sup> T. 17 March 2008 p. 55; T. 18 March 2008 p. 32 (Witness D-2-16-P).

<sup>4216</sup> T. 13 March 2008 p. 11 (ICS); T. 17 March 2008 pp. 71-72 (ICS); T. 18 March 2008 p. 52 (ICS) (Witness D-2-16-P).

<sup>4217</sup> T. 18 March 2008 p. 52 (ICS) (Witness D-2-16-P).

<sup>4218</sup> T. 19 March 2008 p. 16 (ICS) (Witness D-2-16-P).

<sup>4219</sup> T. 13 March 2008 p. 14; T. 18 March 2008 pp. 4-5; T. 19 March 2008 p. 7 (ICS) (Witness D-2-16-P).

<sup>4220</sup> T. 18 March 2008 pp. 4-5; T. 19 March 2008 p. 7 (ICS) (Witness D-2-16-P).

<sup>4221</sup> T. 18 March 2008 pp. 6-7 (Witness D-2-16-P).

<sup>4222</sup> T. 18 March 2008 p. 55; T. 18 March 2008 pp. 58-59 (ICS) (Witness D-2-16-P).

<sup>4223</sup> T. 19 March 2008 p. 7 (ICS) (Witness D-2-16-P).

<sup>4224</sup> T. 12 March 2008 pp. 9-10 (ICS); T. 17 March 2008 p. 63 (ICS) (Witness D-2-16-P).

<sup>4225</sup> T. 13 March 2008 p. 12 (ICS); T. 13 March 2008 p. 13 (Witness D-2-16-P).

Kabakobwa.<sup>4226</sup> Witness D-2-16-P also never heard Nsanzabahizi implicated in the Kabakobwa events at *Gacaca* proceedings.<sup>4227</sup> The witness later testified that Nsanzabahizi was often mentioned in relation to the Kabakobwa events at *Gacaca* proceedings.<sup>4228</sup>

1650. Witness D-2-16-P testified that *Ibuka* assists survivors of the genocide and provides them with advice to remain united. The association helps with rebuilding houses that were destroyed. At the *préfecture* level in Butare, the *Ibuka* leader was called Kabarega and he had assistants among members of the population.<sup>4229</sup> Witness D-2-16-P did not know if one Rutayisire definitely left *Ibuka*. He also denied knowing that one of *Ibuka*'s duties was to help train witnesses to give evidence in various trials.<sup>4230</sup> Witness D-2-16-P testified that *Ibuka* prohibits its members from testifying for the Defence because the association considers that it is those former authorities who caused the genocide in Rwanda.<sup>4231</sup>

#### Kanyabashi Defence Witness D-2-16-L

1651. Witness D-2-16-L, a Hutu and former army officer,<sup>4232</sup> testified that he knew a place called Kabakobwa located in Nkubi in Ngoma *commune*.<sup>4233</sup> He never heard that Kanyabashi asked refugees to go to Kanyamanza or that refugees went to Kabakobwa on Kanyabashi's request.<sup>4234</sup>

1652. Witness D-2-16-L started seeing killers from 21 April 1994.<sup>4235</sup> The shooting of the refugees at Kabakobwa started on 22 April 1994, and the people killed there were largely Tutsis though there were also some Hutus. Witness D-2-16-L first learned of the mass killings in Kabakobwa when he heard intense gunshots from Kabakobwa; however, he was afraid and did not go there. People ran from Rango and Gishamvu and those who passed through Kabakobwa were not lucky enough to survive.<sup>4236</sup>

1653. Witness D-2-16-L testified that Kanyabashi did not send *commune* police officers to Kabakobwa; people at Kabakobwa said that it was soldiers who killed people at Kabakobwa, not police officers.<sup>4237</sup> Witness D-2-16-L was aware that Semwiza participated in many acts of killing of the Tutsis and led such attacks acting like the commander of Nkubi *secteur*; on one occasion Semwiza even beat *Conseiller* Kanyabahizi.<sup>4238</sup> Semwiza masterminded the attacks

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<sup>4226</sup> T. 13 March 2008 p. 13 (Witness D-2-16-P).

<sup>4227</sup> T. 18 March 2008 p. 17 (Witness D-2-16-P).

<sup>4228</sup> T. 19 March 2008 p. 47 (Witness D-2-16-P).

<sup>4229</sup> T. 13 March 2008 p. 34 (Witness D-2-16-P).

<sup>4230</sup> T. 13 March 2008 p. 35; T. 13 March 2008 p. 39 (ICS) (Witness D-2-16-P).

<sup>4231</sup> T. 13 March 2008 pp. 39-40 (ICS) (Witness D-2-16-P).

<sup>4232</sup> T. 27 February 2008 p. 40; T. 28 February 2008 pp. 46, 60-61 (ICS) (Witness D-2-16-L); Defence Exhibit 632 (Kanyabashi) (Personal Particulars).

<sup>4233</sup> T. 27 February 2008 pp. 56-57 (Witness D-2-16-L).

<sup>4234</sup> T. 27 February 2008 pp. 57-58 (Witness D-2-16-L).

<sup>4235</sup> T. 28 February 2008 p. 71 (ICS) (Witness D-2-16-L).

<sup>4236</sup> T. 28 February 2008 p. 70 (ICS) (Witness D-2-16-L).

<sup>4237</sup> T. 27 February 2008 pp. 57-58 (ICS) (Witness D-2-16-L).

<sup>4238</sup> T. 3 March 2008 p. 5 (ICS) (Witness D-2-16-L).

and the forces carrying out the attacks were members of the MRND, including *Interahamwe* who were the youth wing of the MRND and MDR parties and that once he saw soldiers.<sup>4239</sup>

1654. Witness D-2-16-L was not present during Semwiza's arrest but learned of it after.<sup>4240</sup> While Witness D-2-16-L knew that Semwiza and his men committed crimes, he did not know if Semwiza was arrested for mass killings of Tutsis or for the death of one Mpakaniye (Sindikubwabo's brother-in-law), on the intervention of President Sindikubwabo.<sup>4241</sup> Witness D-2-16-L was unaware of anyone else who may have been arrested for the massacre of Tutsis in Nkubi *secteur* during the period April to July 1994.<sup>4242</sup>

1655. Witness D-2-16-L knew Mathias Nsanzabahizi was a driver for the *commune* police officers.<sup>4243</sup> He saw Nsanzabahizi drive *commune* policemen in the period prior to the genocide but not after 6 April 1994 when the genocide started.<sup>4244</sup> He knew Nsanzabahizi as a soldier and had known him for many years as they both served in the Rwandan army.<sup>4245</sup>

#### Kanyabashi Defence Witness D-2-YYYY

1656. Witness D-2-YYYY, a Hutu civil servant,<sup>4246</sup> testified that from 19 to 21 April 1994 he was at Mukura Bridge helping to prevent people from entering Ngoma.<sup>4247</sup> On the third day of being at Mukura Bridge, Thursday 21 April 1994, Witness D-2-YYYY went home while others guarded the bridge.<sup>4248</sup> There were skirmishes in the morning because *Conseiller* Bumeya of Mubumbano, in Gishamvu *commune*<sup>4249</sup> arrived with approximately 50 *Interahamwe* armed with traditional weapons<sup>4250</sup> trying to go to Tumba to get at the people taking refuge there. Witness D-2-YYYY received word of the skirmish and it took him 30 to 40 minutes to get to the bridge.<sup>4251</sup> As he headed back to the bridge, he heard an explosion in the direction of Rango market and people told him that Bumeya had shot a grenade at them.<sup>4252</sup> It was 8.00 or 9.00 a.m. when Witness D-2-YYYY returned to the bridge.<sup>4253</sup>

1657. Witness D-2-YYYY remained at the bridge and two and a half or three hours after the incident with Bumeya, a vehicle arrived at Mukura Bridge carrying about six soldiers.<sup>4254</sup> The soldiers asked what they were doing there and asked their ethnic identities. Witness D-2-YYYY answered that they were ensuring security on behalf of their *commune* and that they

<sup>4239</sup> T. 3 March 2008 pp. 6-7 (ICS) (Witness D-2-16-L).

<sup>4240</sup> T. 28 February 2008 p. 28 (ICS) (Witness D-2-16-L).

<sup>4241</sup> T. 3 March 2008 pp. 8-9 (ICS) (Witness D-2-16-L).

<sup>4242</sup> T. 3 March 2008 p. 9 (ICS) (Witness D-2-16-L).

<sup>4243</sup> T. 28 February 2008 pp. 29, 71 (ICS) (Witness D-2-16-L).

<sup>4244</sup> T. 28 February 2008 p. 30 (ICS) (Witness D-2-16-L).

<sup>4245</sup> T. 28 February 2008 pp. 45-46 (ICS) (Witness D-2-16-L).

<sup>4246</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>4247</sup> T. 27 November 2007 pp. 39-41, 44 (ICS); T. 3 December 2007 pp. 38-39 (ICS); T. 6 December 2007 pp. 34, 52-55 (ICS); T. 11 December 2007 p. 4 (ICS) (Witness D-2-YYYY).

<sup>4248</sup> T. 27 November 2007 pp. 45, 54 (ICS); T. 3 December 2007 p. 38 (ICS); T. 6 December 2007 pp. 52, 63-63 (ICS) (Witness D-2-YYYY).

<sup>4249</sup> T. 27 November 2007 pp. 45-46 (ICS) (Witness D-2-YYYY).

<sup>4250</sup> T. 3 December 2007 pp. 42-43 (ICS) (Witness D-2-YYYY).

<sup>4251</sup> T. 11 December 2007 p. 6 (ICS) (Witness D-2-YYYY).

<sup>4252</sup> T. 27 November 2007 p. 45 (ICS); T. 11 December 2007 p. 5 (ICS) (Witness D-2-YYYY).

<sup>4253</sup> T. 27 November 2007 p. 46 (ICS); T. 6 December 2007 p. 65 (ICS) (Witness D-2-YYYY).

<sup>4254</sup> T. 27 November 2007 p. 52 (ICS); T. 3 December 2007 p. 45 (ICS) (Witness D-2-YYYY).

were both Hutus and Tutsis, after which the soldier threatened them and called them accomplices of their boss and struck a *commune* police officer in the chest.<sup>4255</sup> The soldier asked where Bumeya was and they then continued on their way.<sup>4256</sup> Witness D-2-YYYY returned home via Rango market around noon or 12.30 p.m. because he was afraid after what the soldier had said.<sup>4257</sup> Witness D-2-YYYY lived between two and a half to three kilometres from Kabakobwa and it would take between 45 minutes to an hour to cover the distance by foot.<sup>4258</sup>

1658. At about 1.30 p.m. Witness D-2-YYYY saw approximately 50 people pass his house coming from Rango and heading towards Nkubi *secteur*. They said that a Tutsi named Athanase Karanganwa had just been killed.<sup>4259</sup> He remembered it was a Thursday [21 April 1994] because it was market day and at 8.00 a.m. his wife went to Rango market to sell a goat.<sup>4260</sup> When they met at home, the witness' wife did not talk of Kanyabashi's presence at the market on that day.<sup>4261</sup> At about 3.00 or 3.30 p.m., the *commune* vehicle came to pick the witness up to go to work.<sup>4262</sup> Witness D-2-YYYY did not hear from anyone that Kanyabashi was present at Rango on Thursday.<sup>4263</sup> Witness D-2-YYYY spent Thursday night at the *commune* office.<sup>4264</sup> When put to Witness D-2-YYYY that his statement of 19 November 2004 stated that he did not work on Thursday, 21 April 1994, in contradiction to his testimony, Witness D-2-YYYY explained it was a misunderstanding, as he had told the investigator that he had a rest day that day, not that he had rested that day.<sup>4265</sup>

1659. Witness D-2-YYYY testified that at 8.30 a.m. on Friday, 22 April 1994, a meeting was held in the conference room on the ground floor of the *commune* office that was chaired by Kanyabashi.<sup>4266</sup> Kanyabashi asked the brigadier about the situation in various *secteurs* and stated that he did not want the *commune* police to get involved in the Tutsi massacres. Kanyabashi said that anyone who behaved properly would be rewarded and Kanyabashi urged them to hide people seeking refuge in their homes. They told Kanyabashi about the situation with the soldiers and Kanyabashi said he would talk to his superiors and to the soldiers.<sup>4267</sup>

<sup>4255</sup> T. 27 November 2007 p. 47 (ICS); T. 3 December 2007 pp. 44-45 (ICS) (Witness D-2-YYYY).

<sup>4256</sup> T. 27 November 2007 p. 48 (ICS) (Witness D-2-YYYY).

<sup>4257</sup> T. 27 November 2007 p. 52 (ICS); T. 3 December 2007 p. 46 (ICS); T. 11 December 2007 p. 7 (ICS) (Witness D-2-YYYY).

<sup>4258</sup> T. 5 December 2007 p. 69 (ICS) (Witness D-2-YYYY).

<sup>4259</sup> T. 27 November 2007 pp. 53-54 (ICS); T. 4 December 2007 p. 31 (ICS) (Witness D-2-YYYY).

<sup>4260</sup> T. 27 November 2007 p. 54 (ICS); T. 11 December 2007 pp. 7-8 (ICS) (Witness D-2-YYYY).

<sup>4261</sup> T. 27 November 2007 p. 55 (ICS) (Witness D-2-YYYY).

<sup>4262</sup> T. 27 November 2007 p. 56 (ICS); T. 3 December 2007 p. 46 (ICS) (Witness D-2-YYYY).

<sup>4263</sup> T. 28 November 2007 p. 29 (ICS) (Witness D-2-YYYY).

<sup>4264</sup> T. 3 December 2007 p. 48 (ICS) (Witness D-2-YYYY).

<sup>4265</sup> T. 3 December 2007 pp. 41-42 (ICS) (Witness D-2-YYYY); Defence Exhibit 618B (Nyiramasuhuko) (19-20 May 2004, Statement of Witness D-2-YYYY).

<sup>4266</sup> T. 28 November 2007 p. 19 (ICS); T. 3 December 2007 pp. 49, 51-52 (ICS); T. 5 December 2007 p. 50 (ICS); T. 11 December 2007 pp. 16, 39 (ICS) (Witness D-2-YYYY).

<sup>4267</sup> T. 28 November 2007 p. 19 (ICS); T. 3 December 2007 pp. 51-52 (ICS); T. 11 December 2007 pp. 16, 26-28 (ICS) (Witness D-2-YYYY).

Witness D-2-YYYY testified that Kanyabashi told them not to get involved in the massacres because the police did not have the requisite capabilities to stop the killings.<sup>4268</sup>

1660. After the meeting, Kanyabashi remained at the *commune* office for the day although he went home between 1.30 and 3.30 p.m.<sup>4269</sup> Witness D-2-YYYY saw Kanyabashi leave in the direction of his home, but could not be sure whether Kanyabashi went anywhere other than his home.<sup>4270</sup> Witness D-2-YYYY estimated that it could take 20 or 30 minutes to reach Kabakobwa from the *commune* office, although he could not be sure because he had never covered that distance by car.<sup>4271</sup> Kanyabashi went home for the day at about 5.00 p.m.<sup>4272</sup> Although Witness D-2-YYYY spent Friday 22 April at the *commune* office he was aware that killings probably occurred at Kabakobwa because he could hear gunshots, and the events were subsequently discussed at *Gacaca* sessions.<sup>4273</sup> The killing of Tutsis was also discussed at that morning's meeting; the *bourgmestre* raised the issue and in turn the policemen reported what they had seen in relation to the killing of Tutsis, for example, the death of one Karanganwa at Mukura Bridge on 21 April.<sup>4274</sup> Witness D-2-YYYY testified that throughout that period he could hear gunshots in town, and there was "shooting all over the place", both during the day and at night.<sup>4275</sup>

1661. Witness D-2-YYYY spent Friday night,<sup>4276</sup> as well as all day Saturday at the *commune* office and did not see Kanyabashi there.<sup>4277</sup> Witness D-2-YYYY did not see Kanyabashi during the day on Saturday.<sup>4278</sup> He next saw Kanyabashi during the early evening on Saturday 23 April.<sup>4279</sup> At 5.00 p.m. Witness D-2-YYYY was at Kanyabashi's house, and at 6.00 p.m. Kanyabashi went out with Witness D-2-5-I. They returned around 7.00 or 7.30 p.m. and said they had been fired upon at the Hotel Faucon roadblock.<sup>4280</sup> Witness D-2-YYYY did not know where Kanyabashi went with Witness D-2-5-I.<sup>4281</sup> Witness D-2-YYYY spent Saturday night and Sunday at Kanyabashi's house.<sup>4282</sup> Kanyabashi spent all day Sunday at home and was visited by the *conseiller* of Matyazo and the brigadier.<sup>4283</sup>

1662. Witness D-2-YYYY never heard Kanyabashi, *conseillers* or *responsables de cellule* order Tutsis to go to Kabakobwa.<sup>4284</sup> At the *Gacaca* proceedings he attended, Witness D-2-

<sup>4268</sup> T. 3 December 2007 pp. 52-53 (ICS); T. 4 December 2007 p. 71 (ICS); T. 11 December 2007 p. 40 (ICS) (Witness D-2-YYYY).

<sup>4269</sup> T. 28 November 2007 p. 20 (ICS); T. 3 December 2007 pp. 49, 52 (ICS); T. 5 December 2007 p. 50 (ICS); T. 11 December 2007 p. 19 (ICS) (Witness D-2-YYYY).

<sup>4270</sup> T. 11 December 2007 p. 29 (ICS) (Witness D-2-YYYY).

<sup>4271</sup> T. 11 December 2007 pp. 29-30 (ICS) (Witness D-2-YYYY).

<sup>4272</sup> T. 28 November 2007 p. 21 (ICS); T. 3 December 2007 p. 49 (ICS); T. 4 December 2007 p. 27 (ICS); T. 11 December 2007 p. 29 (ICS) (Witness D-2-YYYY).

<sup>4273</sup> T. 11 December 2007 p. 25 (ICS) (Witness D-2-YYYY).

<sup>4274</sup> T. 11 December 2007 pp. 26-28 (ICS) (Witness D-2-YYYY).

<sup>4275</sup> T. 11 December 2007 p. 31 (ICS) (Witness D-2-YYYY).

<sup>4276</sup> T. 28 November 2007 p. 21 (ICS); T. 11 December 2007 p. 30 (ICS) (Witness D-2-YYYY).

<sup>4277</sup> T. 11 December 2007 p. 30 (ICS) (Witness D-2-YYYY).

<sup>4278</sup> T. 28 November 2007 p. 21 (ICS) (Witness D-2-YYYY).

<sup>4279</sup> T. 11 December 2007 p. 30 (ICS) (Witness D-2-YYYY).

<sup>4280</sup> T. 28 November 2007 pp. 21-22 (ICS); T. 3 December 2007 pp. 53-55 (ICS) (Witness D-2-YYYY).

<sup>4281</sup> T. 11 December 2007 p. 31 (ICS) (Witness D-2-YYYY).

<sup>4282</sup> T. 28 November 2007 pp. 23-24 (ICS) (Witness D-2-YYYY).

<sup>4283</sup> T. 28 November 2007 p. 24 (ICS); T. 4 December 2007 pp. 14-15 (ICS) (Witness D-2-YYYY).

<sup>4284</sup> T. 28 November 2007 p. 28 (Witness D-2-YYYY).

YYYY never heard Kanyabashi mentioned in relation to the murder of Tutsis at Kabakobwa, that Kanyabashi asked Tutsis to gather at Kabakobwa, that Kanyabashi ordered that Tutsis should not be able to return home, or anything about a message broadcast by megaphone at the behest of Kanyabashi.<sup>4285</sup> At the *Gacaca* sessions it was said that refugees from Rango and Tumba gathered at Kabakobwa only in order to continue their journey to Burundi.<sup>4286</sup> At the *Gacaca* sessions he attended, Witness D-2-YYYY also never heard any mention of Mathias Nsanzabahizi reading a letter from Kanyabashi asking people to participate in the Kabakobwa massacre, or that policemen from Ngoma *commune* were implicated in the massacre.<sup>4287</sup>

1663. Witness D-2-YYYY did not personally carry out an investigation of the Kabakobwa killings because during that period the police had no power.<sup>4288</sup> Ordinary citizens, incited by soldiers, were the ones responsible for attacking refugees at Kabakobwa, although it was the soldiers who first opened fire. He did not know from which camps the soldiers came, he only saw people wearing military uniforms.<sup>4289</sup>

1664. Witness D-2-YYYY confirmed that Nsanzabahizi was said to have participated in the Kabakobwa killings and was charged with this at the *Gacaca* proceedings in Nkubi.<sup>4290</sup> Nsanzabahizi had just finished military service when he was recruited as a *commune* police officer.<sup>4291</sup> Nsanzabahizi had been a *commune* policeman from 1987 or 1988 for two or three years after which he became a driver. Nsanzabahizi was a driver for Ngoma *commune* between January and July 1994.<sup>4292</sup> From April to July 1994, Nsanzabahizi spent most of his time transporting *commune* police officers.<sup>4293</sup> While Nsanzabahizi was a driver, he wore civilian clothes and Witness D-2-YYYY never saw him with a gun.<sup>4294</sup> *Commune* policemen wore green trousers and shirts, and yellow berets with an insignia.<sup>4295</sup> Nsanzabahizi did not wear this uniform between April and July 1994.<sup>4296</sup>

1665. Soldiers also wore boots and a camouflage uniform with black berets, while *gendarmes* wore red berets.<sup>4297</sup> *Interahamwe* wore military shirts and casual clothes.<sup>4298</sup> It was possible that Presidential Guards were around at the time since the President was in town.<sup>4299</sup> The

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<sup>4285</sup> T. 28 November 2007 pp. 27-28, 39, 32 (Witness D-2-YYYY).

<sup>4286</sup> T. 28 November 2007 p. 28 (Witness D-2-YYYY).

<sup>4287</sup> T. 28 November 2007 pp. 32-33 (Witness D-2-YYYY).

<sup>4288</sup> T. 5 December 2007 pp. 24-25 (ICS) (Witness D-2-YYYY).

<sup>4289</sup> T. 5 December 2007 p. 42 (ICS) (Witness D-2-YYYY).

<sup>4290</sup> T. 5 December 2007 pp. 22-23 (ICS) (Witness D-2-YYYY).

<sup>4291</sup> T. 28 November 2007 p. 48 (ICS) (Witness D-2-YYYY).

<sup>4292</sup> T. 28 November 2007 pp. 46-47 (ICS); T. 3 December 2007 p. 27 (ICS); T. 11 December 2007 p. 9 (ICS) (Witness D-2-YYYY).

<sup>4293</sup> T. 28 November 2007 p. 48 (ICS); T. 3 December 2007 pp. 27, 30-31 (ICS) (Witness D-2-YYYY).

<sup>4294</sup> T. 11 December 2007 p. 10 (ICS) (Witness D-2-YYYY).

<sup>4295</sup> T. 28 November 2007 p. 49 (ICS) (Witness D-2-YYYY).

<sup>4296</sup> T. 28 November 2007 pp. 49-50 (ICS) (Witness D-2-YYYY).

<sup>4297</sup> T. 28 November 2007 pp. 50, 52 (ICS); T. 5 December 2007 p. 43 (ICS) (Witness D-2-YYYY).

<sup>4298</sup> T. 28 November 2007 p. 52 (ICS) (Witness D-2-YYYY).

<sup>4299</sup> T. 5 December 2007 p. 45 (ICS) (Witness D-2-YYYY).

people listed in Defence Exhibit 613 were police officers as of 31 December 1993, and some were also former soldiers.<sup>4300</sup>

### Nsabimana

1666. Nsabimana never knew of the occurrence of massacres in Kabakobwa in 1994. The massacre of people at Kabakobwa Hill was never raised at any Security Council meeting.<sup>4301</sup>

### Nteziryayo

1667. Nteziryayo did not personally know the place Kabakobwa, had never been there, and had not heard about a massacre committed there in 1994.<sup>4302</sup> Nteziryayo testified that he was not approached by Kanyabashi to go to Kabakobwa nor did he ever go to Kabakobwa together with Colonel Muvunyi, Nsanzabahizi and soldiers on a Friday in April 1994 or any other time between April and July 1994.<sup>4303</sup> He was not present together with Kanyabashi and Colonel Muvunyi when persons who had sought refuge in Kabakobwa were being killed.<sup>4304</sup> He did not, together with Kanyabashi, order anybody to carry weapons to Kabakobwa. He did not know whether Kanyabashi went to Kabakobwa or authorised anyone to carry weapons in Kabakobwa.<sup>4305</sup>

### Prosecution Witness Ghandi Shukry

1668. Ghandi Shukry, a Prosecution investigator since 1996,<sup>4306</sup> testified that Prosecution Exhibits 34A-G and 35 concerned Kabakobwa.<sup>4307</sup> Exhibit 34A was the view of the road going to Kabakobwa Valley from the top. Exhibit 34B showed a view of an alleged mass grave located in Kabakobwa; the mass grave was the flat, green grass surrounded by trees. Exhibits 34C, 34D and 34E were views of the alleged mass grave from different angles, and Exhibit 34F represented a view of the road from the valley towards where the mass grave was located on the left side of the photo. Exhibit 34G was a view of the alleged mass grave from a cluster of the trees surrounding it.<sup>4308</sup> Exhibit 35 was the related video footage of the photos regarding Kabakobwa.<sup>4309</sup>

### **3.6.8.4 Deliberations**

1669. The following facts are not in dispute: on 22 April 1994, at least 500 and up to 10,000 mostly Tutsi refugees gathered at Kabakobwa Hill and were surrounded by 200 to 250 people from the surrounding *secteurs* dressed in banana leaves and armed with traditional

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<sup>4300</sup> T. 4 December 2007 pp. 33-38, 40-42 (ICS) (Witness D-2-YYYY); Defence Exhibit 613 (Ntahobali) (List of names - Under seal).

<sup>4301</sup> T. 21 November 2006 pp. 16-17 (Nsabimana).

<sup>4302</sup> T. 22 May 2007 p. 10 (Nteziryayo).

<sup>4303</sup> T. 22 May 2007 pp. 12-15 (Nteziryayo).

<sup>4304</sup> T. 22 May 2007 p. 15 (Nteziryayo).

<sup>4305</sup> T. 22 May 2007 pp. 16-17 (Nteziryayo).

<sup>4306</sup> T. 13 June 2001 p. 14 (Shukry).

<sup>4307</sup> T. 19 June 2001 pp. 39-40 (Shukry).

<sup>4308</sup> T. 19 June 2001 pp. 33-35 (Shukry).

<sup>4309</sup> T. 19 June 2001 pp. 39-43 (Shukry).

weapons;<sup>4310</sup> at around 2.00 or 3.00 p.m. about 20 soldiers fired their weapons into the refugees and civilians thereafter attacked the refugees with clubs, bludgeons and spears,<sup>4311</sup> and the attack resulted in the death of at least hundreds, and possibly thousands, of the refugees.<sup>4312</sup>

1670. What is in dispute is: (1) the reason why the refugees fled to Kabakobwa; (2) the identity of the attackers on Friday 22 April and Saturday 23 April 1994; and (3) who directed the attacks at Kabakobwa. Further, the Chamber must assess whether Kanyabashi and Nteziryayo were involved or present during these events, and the extent of their individual involvement.

#### 3.6.8.4.1 Evidence Regarding False Testimony

1671. The Kanyabashi Defence relied on the testimony of Witness D-2-21-T in support of the allegation that Witnesses QAM and QP were *Ibuka* members, who participated in three meetings during which they were coached to provide false testimony against Kanyabashi.<sup>4313</sup> According to Witness D-2-21-T, during the December 1995 *Ibuka* meeting, Witness QAM was handed a sheet of paper containing false accusations against Kanyabashi, that she read out to the audience.<sup>4314</sup> She allegedly read that Kanyabashi had incited killings at Kabakobwa, and that he incited the public via megaphone, saying, “assemble the Tutsi who are at Kabakobwa,

<sup>4310</sup> T. 6 March 2002 pp. 76, 81-85 (Witness FAM); T. 12 March 2002 p. 133 (Witness FAM); T. 22 October 2001 pp. 65-66 (Witness QAM); T. 23 October 2001 pp. 86, 90 (Witness QAM); T. 24 October 2001 p. 65 (Witness QAM); T. 20 March 2002 pp. 108, 114 (Witness QCB); T. 20 March 2002 pp. 122, 126 (Witness QCB); T. 5 June 2002 p. 168 (Witness QP); T. 6 June 2002 p. 137 (Witness QW); T. 28 April 2008 pp. 40-41 (ICS) (Witness D-2-10-Y); T. 28 April 2008 pp. 42, 44 (Witness D-2-10-Y); T. 1 May 2008 p. 70 (ICS) (Witness D-2-10-Y); T. 5 May 2008 p. 15 (Witness D-2-10-Y); T. 29 August 2007 pp. 73, 75, 77, 79 (ICS) (Witness D-2-13-D); T. 5 September 2007 p. 70 (ICS) (Witness D-2-13-D); T. 10 September 2007 p. 48 (ICS) (Witness D-2-13-D); T. 21 August 2007 pp. 7, 15, 36 (Witness D-2-14-D); T. 22 August 2007 p. 11 (ICS) (Witness D-2-14-D); T. 23 August 2007 p. 43 (ICS) (Witness D-2-14-D); T. 27 August 2007 pp. 23-24 (ICS) (Witness D-2-14-D); T. 12 March 2008 pp. 50-51 (Witness D-2-16-P); T. 18 March 2008 p. 22 (Witness D-2-16-P).

<sup>4311</sup> T. 6 March 2002 pp. 84-86 (Witness FAM); T. 12 March 2002 p. 35 (Witness FAM); T. 22 October 2001 pp. 65-66 (Witness QAM); T. 24 October 2001 pp. 9-10 (Witness QAM); T. 23 February 2009 p. 30 (ICS) (Witness QCB); T. 20 March 2002 p. 125 (Witness QCB); T. 6 June 2002 pp. 10-11, 13, 17 (Witness QP); T. 6 June 2002 pp. 139-141 (Witness QW); T. 28 April 2008 pp. 43-44 (Witness D-2-10-Y); T. 29 April 2008 p. 62 (Witness D-2-10-Y); T. 1 May 2008 pp. 73-74 (Witness D-2-10-Y); T. 5 May 2008 p. 26 (Witness D-2-10-Y); T. 29 August 2007 p. 77 (ICS) (Witness D-2-13-D); T. 4 September 2007 p. 40 (ICS) (Witness D-2-13-D); T. 5 September 2007 p. 4 (Witness D-2-13-D); T. 10 September 2007 p. 52 (ICS) (Witness D-2-13-D); T. 21 August 2007 pp. 36-38 (Witness D-2-14-D); T. 23 August 2007 p. 43 (ICS) (Witness D-2-14-D); T. 12 March 2008 p. 63 (Witness D-2-16-P); T. 18 March 2008 pp. 20, 22, 24, 30 (Witness D-2-16-P). The Chamber notes that Witness QCB estimated there were 250 soldiers, but he did not count soldiers and *Interahamwe* separately and may have included both in his count: T. 20 March 2002 p. 117 (Witness QCB). The 250 soldiers included members of the “Rwandan Army”, who were wearing black berets and others from the *gendarmes* wearing red berets: T. 20 March 2002 p. 121 (Witness QCB).

<sup>4312</sup> T. 7 March 2002 pp. 86, 104 (Witness FAM) (estimating there were more than 2,500 victims at Kabakobwa); T. 20 March 2002 p. 126 (Witness QCB); T. 2 April 2002 p. 58 (Witness QCB) (about 2,000 people were killed in Kabakobwa); T. 21 August 2007 p. 37 (Witness D-2-14-D); T. 28 August 2007 p. 45 (ICS) (Witness D-2-14-D) (estimating that 500 to 600 people were killed on Kabakobwa Hill); T. 21 January 2008 pp. 53-54 (Witness D-2-5-I) (witness knew that people died at Kabakobwa on 22 April 1994).

<sup>4313</sup> T. 3 November 2008 pp. 22, 59-60 (ICS) (testifying about Witness QAM’s and Witness QP’s involvement); T. 4 November 2008 p. 62 (ICS) (Witness D-2-21-T) (all three meetings were aimed at preparing accusations against Kanyabashi).

<sup>4314</sup> T. 3 November 2008 p. 50 (ICS) (Witness D-2-21-T).



since before burning the weeds, you have to first gather them”.<sup>4315</sup> Witness D-2-21-T testified that Witness QP similarly read that Kanyabashi incited killings at Kabakobwa, and that Kanyabashi used a megaphone and asked that Tutsis be assembled at Kabakobwa, stating that whoever wished to burn weeds must first gather them.<sup>4316</sup>

1672. The Chamber has taken into account Witness D-2-21-T’s testimony concerning details about the identity of Prosecution Witnesses QAM<sup>4317</sup> and QP.<sup>4318</sup> Nevertheless, given the Chamber’s finding that Witness D-2-21-T’s allegations regarding fabrication of testimony were neither credible nor reliable (), the Chamber finds that Witness D-2-21-T’s testimony does not undermine the credibility of Witnesses QAM and QP on events at Kabakobwa.

1673. The Kanyabashi Defence also relied on the testimony of Witness D-2-13-D in submitting that Prosecution Witnesses FAM and QCB, who testified on events at Kabakobwa, belonged to a pressure group in prison whose mission was to incriminate Kanyabashi.<sup>4319</sup> Witness D-2-13-D testified that Witnesses FAM and QCB were among a group of three people who approached him in jail and asked him to join their group in testifying against Kanyabashi.<sup>4320</sup> Witness D-2-13-D did not testify that the group members asked him to lie. In fact, when he asked them to leave him because he knew nothing about Kanyabashi’s alleged involvement, they apparently did so.<sup>4321</sup> Further, Witness D-2-13-D did not state why he thought the group was preparing to testify falsely against Kanyabashi. Therefore, the Chamber does not find that Witness D-2-13-D’s testimony undermines the testimony of Witnesses FAM and QCB. In sum, the Chamber finds that the testimony of Witnesses D-2-21-T and D-2-13-D does not undermine the credibility of Witnesses QP, QAM, FAM and QCB on events at Kabakobwa.

#### 3.6.8.4.2 Kanyabashi’s Alleged Role in Ordering the Tutsi Refugees to Go to Kabakobwa

1674. The Kanyabashi Indictment alleges that on 21 and 22 April 1994, fleeing Tutsis took refuge in a pasture in Kabakobwa *cellule* on the orders of Kanyabashi, who had promised to protect them. Kanyabashi ordered his subordinates, notably *conseillers*, *commune* policemen, and certain members of the Hutu population to go to Kabakobwa *cellule* to eliminate the refugees.<sup>4322</sup>

1675. The Prosecution presented evidence that: Kanyabashi addressed the population at Rango market on 21 April 1994 and directed them to move the Tutsi refugees to Kabakobwa; a *responsable de cellule* told the population that he had been directed by Kanyabashi to move the refugees to Kabakobwa; and on 21 April 1994, in Rwinuma *cellule*, Kanyabashi spoke into

<sup>4315</sup> T. 3 November 2008 p. 59 (ICS) (Witness D-2-21-T).

<sup>4316</sup> T. 3 November 2008 p. 60 (ICS) (Witness D-2-21-T).

<sup>4317</sup> T. 3 November 2008 p. 59 (ICS) (Witness D-2-21-T); Prosecution Exhibit 43 (Personal Particulars).

<sup>4318</sup> T. 3 November 2008 p. 60 (ICS) (Witness D-2-21-T); Prosecution Exhibit 58 (Personal Particulars); T. 6 June 2002 pp. 35-36 (ICS) (Witness QP) (as to her age and where she lived).

<sup>4319</sup> For submissions regarding Witnesses QCB, FAM and QAH, *see* Kanyabashi Closing Brief, paras. 11, 113.

<sup>4320</sup> T. 30 August 2007 p. 50 (ICS) (Witness D-2-13-D).

<sup>4321</sup> T. 30 August 2007 pp. 50-51 (ICS) (Witness D-2-13-D).

<sup>4322</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

a megaphone from a moving car, reciting a proverb that meant the Tutsis should be gathered and killed. The Chamber will address each of these allegations in turn.

*3.6.8.4.2.1 Kanyabashi's Alleged Presence at Rango Market on 21 April 1994*

1676. The Prosecution alleges that Kanyabashi gave a speech at Rango market during which he stated that Tutsis should be taken to Kabakobwa, and relies upon Witnesses FAM and QCB in this respect. Witnesses QCB and FAM both testified that they saw Kanyabashi and Muvunyi at Rango market on 21 April 1994, sometime between 9.00 and 11.00 a.m., telling a crowd that Tutsis should not be allowed to leave Ngoma and should be taken to Kabakobwa.<sup>4323</sup> Witness FAM stated that the meeting lasted about one hour and that over 100 people were present.<sup>4324</sup> Defence Witnesses D-2-5-I, D-2-13-D, D-2-16-P, D-2-YYYY and WMKL also testified that they were in the immediate vicinity of Rango market on the morning of 21 April 1994.<sup>4325</sup> In contrast to the evidence of Witnesses FAM and QCB however, they did not see Kanyabashi at the market giving a speech.<sup>4326</sup>

1677. The Chamber notes that three Defence witnesses who claimed that Kanyabashi was not present at Rango market on the morning of Thursday 21 April 1994, namely Witnesses D-2-5-I, D-2-YYYY and D-2-16-P, were at Mukura Bridge on the same morning.

1678. Witness D-2-5-I testified that he did not notice Kanyabashi at Rango market during the period he was there.<sup>4327</sup> However, Witness D-2-5-I also testified that he left Rango market for Mukura Bridge sometime around 9.00 or 10.00 a.m. when he heard a grenade explosion<sup>4328</sup> and only returned to Rango market between 10.30 and 11.00 a.m.<sup>4329</sup> Witness D-2-YYYY was also at Mukura Bridge on the same morning between 8.00 or 9.00 a.m.,<sup>4330</sup> until he headed home via Rango market around noon or 12.30 p.m.,<sup>4331</sup> as was Witness D-2-16-P during the morning in question,<sup>4332</sup> who only passed through Rango market again around noon.<sup>4333</sup> Accordingly,

<sup>4323</sup> T. 7 March 2002 pp. 46, 81-82 (Witness FAM); T. 12 March 2002 pp. 133, 152-153 (Witness FAM); T. 20 March 2002 pp. 96, 98-99 (Witness QCB); T. 28 March 2002 p. 112 (ICS) (Witness QCB); T. 3 April 2002 pp. 7-8 (Witness QCB).

<sup>4324</sup> T. 12 March 2002 pp. 153-154 (Witness FAM).

<sup>4325</sup> T. 7 April 2005 p. 77 (ICS) (Witness WMKL); T. 12 December 2007 p. 25 (ICS) (Witness D-2-5-I); T. 21 January 2008 p. 18 (ICS) (Witness D-2-5-I); T. 30 January 2008 p. 65 (ICS) (Witness D-2-5-I); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I); T. 29 August 2007 pp. 24, 38 (ICS) (Witness D-2-13-D); T. 3 September 2007 p. 45 (ICS) (Witness D-2-13-D); T. 12 March 2008 pp. 40-41, 49 (Witness D-2-16-P); T. 27 November 2007 p. 52 (ICS) (Witness D-2-YYYY); T. 3 December 2007 p. 46 (ICS) (Witness D-2-YYYY); T. 11 December 2007 p. 7 (ICS) (Witness D-2-YYYY).

<sup>4326</sup> T. 7 April 2005 p. 78 (ICS) (Witness WMKL); T. 21 January 2008 p. 35 (ICS) (Witness D-2-5-I); T. 29 August 2007 pp. 28, 30-31, 36 (ICS) (Witness D-2-13-D); T. 12 March 2008 p. 49 (Witness D-2-16-P); T. 28 November 2007 p. 29 (ICS) (Witness D-2-YYYY).

<sup>4327</sup> T. 12 December 2007 p. 25 (ICS) (Witness D-2-5-I); T. 21 January 2008 p. 35 (ICS) (Witness D-2-5-I); T. 30 January 2008 p. 65 (ICS) (Witness D-2-5-I); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I).

<sup>4328</sup> T. 12 December 2007 p. 25 (ICS) (Witness D-2-5-I); T. 21 January 2008 pp. 16-17 (ICS) (Witness D-2-5-I); T. 22 January 2008 p. 37 (ICS) (Witness D-2-5-I); T. 29 January 2008 p. 35 (ICS) (Witness D-2-5-I); T. 30 January 2008 p. 63 (ICS) (Witness D-2-5-I); T. 31 January 2008 p. 27 (ICS) (Witness D-2-5-I).

<sup>4329</sup> T. 21 January 2008 p. 18 (ICS); T. 30 January 2008 p. 65 (ICS) (Witness D-2-5-I).

<sup>4330</sup> T. 27 November 2007 p. 46 (ICS); T. 6 December 2007 p. 65 (ICS) (Witness D-2-YYYY).

<sup>4331</sup> T. 27 November 2007 p. 52 (ICS); T. 3 December 2007 p. 46 (ICS); T. 11 December 2007 p. 7 (ICS) (Witness D-2-YYYY).

<sup>4332</sup> T. 12 March 2008 pp. 35, 37, 39; T. 13 March 2008 p. 12; T. 17 March 2008 p. 30 (Witness D-2-16-P).

<sup>4333</sup> T. 12 March 2008 p. 40; T. 17 March 2008 p. 46 (Witness D-2-16-P).

the Chamber considers the testimony of Witnesses D-2-5-I, D-2-YYYY and D-2-16-P that they did not see Kanyabashi at Rango market does not contradict the testimony of Witnesses FAM and QCB who testified as to Kanyabashi's presence at the market between 9.00 and 11.00 a.m.

1679. Further, while Witness D-2-YYYY also testified that his wife went to Rango market at 8.00 a.m. on the morning of Thursday, 21 April 1994, but did not talk of Kanyabashi's presence at the market at home later that day,<sup>4334</sup> the Chamber does not consider this conclusive evidence that Kanyabashi was not at Rango market on the morning in question. Of the foregoing witnesses, the Chamber also recalls that both Witnesses D-2-5-I and D-2-YYYY worked closely with Kanyabashi during the events.<sup>4335</sup> For this reason, the Chamber considers these witnesses may have had an interest in defending Kanyabashi such that their testimony should be treated with appropriate caution.

1680. Similarly, while Witness D-2-13-D was in the immediate vicinity of Rango market<sup>4336</sup> between 9.00 a.m. and 1.00 p.m. on Thursday, 21 April 1994, he was busy on the premises of his nearby workplace<sup>4337</sup> and did not testify to having gone to Rango market. Further, the fact that Witness D-2-13-D did not hear anyone say that Kanyabashi came to Rango market on Thursday 21 April 1994 or that Kanyabashi held a meeting there on that day<sup>4338</sup> does not contradict evidence that Kanyabashi was present at Rango market on that day. The Chamber further recalls that Witness D-2-13-D was a detainee at the time of his testimony, for which reason his testimony should be treated with appropriate caution.

1681. Therefore, it is clear that Defence Witnesses D-2-5-I, D-2-YYYY, D-2-16-P and D-2-13-D were not present at Rango market on the morning of Thursday, 21 April 1994 between approximately 9.00 and 11.00 a.m., the period when Witnesses FAM and QCB testified Kanyabashi was present.

1682. Witness WMKL testified that he was at Rango market on Thursday, 21 April 1994, but that he did not see Kanyabashi at the market on that day.<sup>4339</sup> Even if the Chamber were to accept that Witness WMKL may have been present at Rango market on the morning in question, there is insufficient detail about Witness WMKL's movements and length of his visit at the market on that morning to be able to ascertain whether he would have crossed paths with Kanyabashi. For this reason, the Chamber similarly does not consider his testimony conclusive.

1683. In the circumstances, the Chamber considers that the foregoing testimony of the Defence witnesses, each of whom denied that Kanyabashi was present at Rango market on the morning of Thursday, 21 April 1994, does not contradict the testimony of the Prosecution witnesses as to the presence of Kanyabashi at Rango market sometime between 9.00 and 10.00 a.m.

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<sup>4334</sup> T. 27 November 2007 pp. 54-55 (ICS); T. 11 December 2007 pp. 7-8 (ICS) (Witness D-2-YYYY).

<sup>4335</sup> T. 30 January 2008 p. 12 (ICS) (Witness D-2-5-I); T. 26 November 2007 p. 62 (ICS) (Witness D-2-YYYY); T. 5 December 2007 p. 56 (ICS) (Witness D-2-YYYY).

<sup>4336</sup> T. 29 August 2007 p. 15 (ICS); T. 3 September 2007 p. 40 (ICS) (Witness D-2-13-D).

<sup>4337</sup> T. 29 August 2007 pp. 24, 38 (ICS); T. 3 September 2007 p. 45 (ICS) (Witness D-2-13-D).

<sup>4338</sup> T. 29 August 2007 pp. 28, 36 (ICS) (Witness D-2-13-D).

<sup>4339</sup> T. 7 April 2005 pp. 77-78 (ICS) (Witness WMKL).

3.6.8.4.2.2 *Kanyabashi's Alleged Speech at Rango Market on 21 April 1994*

1684. Regarding the speakers at the meeting, Witness QCB stated that Muvunyi, who was with five soldiers in a Land Rover, spoke to an *Interahamwe* leader named Cyiza at the market and told him to chase the refugees gathered at Kanyamanza (in Tumba *secteur*) away, whereupon Kanyabashi stated that the Tutsi refugees should be “allowed to go through” to Kabakobwa.<sup>4340</sup> Witness QCB testified that he and the others understood Kanyabashi's words to mean that the security of the refugees would be guaranteed.<sup>4341</sup>

1685. Witness FAM testified that only Kanyabashi spoke during the gathering at Rango market.<sup>4342</sup> Notwithstanding this minor difference, the Chamber notes both witnesses testified to the presence of Muvunyi at that time.<sup>4343</sup> While Witness FAM testified that he did not notice when Muvunyi arrived because he was focused entirely on Kanyabashi's speech, he was aware of Muvunyi's presence at the market.<sup>4344</sup> Further, Witness FAM testified that Kanyabashi said that roadblocks were to be erected in the various *cellules* and *secteurs* as a protection against the enemy, and that the Tutsis should be guided towards Kabakobwa as this was the only place where they could take refuge.<sup>4345</sup> The Chamber considers this corroborates the testimony of Witness QCB with respect to the content of Kanyabashi's speech. Having regard to the foregoing, the Chamber considers the testimony of Witnesses FAM and QCB to be mutually consistent.

1686. The Chamber recalls that Witnesses FAM and QCB were detained at the time of their testimony. Witness FAM personally killed a lot of people at Kabakobwa and Rango, had not yet been sentenced and did not know whether his confession had been accepted or rejected at the time of his testimony.<sup>4346</sup> Similarly, Witness QCB had not yet entered a guilty plea or been sentenced at the time of his testimony.<sup>4347</sup> Further, the Chamber has considered that these witnesses may be motivated by a desire to implicate Kanyabashi in order to receive a more favourable sentence in their own cases. For the foregoing reasons, the testimony of these witnesses has been considered with appropriate caution.

1687. The Chamber also notes that Witnesses FAM and QCB were detained together in Arusha for five to six months prior to their testimony in this case and that they were detained together in the Karubanda prison in Rwanda prior to that time.<sup>4348</sup> Witness FAM even stated that he and Witness QCB attended *Gacaca* sessions in Karubanda prison that discussed events in their *secteur*, although they were each concerned with their own case.<sup>4349</sup> Therefore, the Chamber acknowledges they may have had an opportunity to share information about the events at Kabakobwa.

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<sup>4340</sup> T. 20 March 2002 pp. 98-99; T. 28 March 2002 p. 112 (ICS) (Witness QCB).

<sup>4341</sup> T. 28 March 2002 p. 113 (ICS) (Witness QCB).

<sup>4342</sup> T. 12 March 2002 pp. 133, 153-154 (Witness FAM).

<sup>4343</sup> T. 12 March 2002 p. 143 (Witness FAM); T. 20 March 2002 p. 97 (Witness QCB).

<sup>4344</sup> T. 12 March 2002 pp. 143-144 (Witness FAM).

<sup>4345</sup> T. 12 March p. 133 (Witness FAM).

<sup>4346</sup> T. 11 March 2002 pp. 10-13, 48-49, 53, 61 (Witness FAM).

<sup>4347</sup> T. 27 March 2002 p. 158 (Witness QCB).

<sup>4348</sup> T. 13 March 2002 pp. 12-14 (ICS) (Witness FAM); T. 28 March 2002 p. 42 (ICS) (Witness QCB).

<sup>4349</sup> T. 13 March 2002 pp. 13-14 (ICS) (Witness FAM).

1688. Nonetheless, both witnesses were forthcoming about knowing one another and about their confessions before Rwandan authorities. Both testified that they were motivated to testify by their remorse and not in order to seek better treatment in detention.<sup>4350</sup> In fact, Witness FAM stated that he feared for his own safety in testifying against Kanyabashi and Nteziryayo because he had been detained with members of their families.<sup>4351</sup> Having regard to the foregoing, the Chamber considers the testimony of Witnesses QCB and FAM as to the events at Kabakobwa should not be discounted solely by reason of their detainee status or their prior personal knowledge of each other.

1689. The Chamber also notes that Defence witnesses corroborated the evidence of these witnesses. For example, Witness QCB also testified that the same day after the meeting at Rango market, he again encountered Muvunyi in a truck containing 10 dead bodies, and some soldiers. Muvunyi told the soldiers to throw the bodies onto the ground and made it clear that the Tutsi refugees must be killed.<sup>4352</sup> Witness QCB's testimony in this respect is corroborated by Defence Witnesses D-2-5-I and D-2-13-D who both testified to seeing corpses by the road which had been thrown there by soldiers passing by in a military vehicle.<sup>4353</sup> In the Chamber's view, the overall credibility of Witness QCB is strengthened by this corroboration.

1690. Having regard to the Chamber's view that the testimony of Witnesses FAM and QCB is reliable and mutually consistent, and the further corroboration of certain aspects of their evidence by Defence witnesses, the Chamber considers it established beyond a reasonable doubt that Kanyabashi gave a speech at Rango market on the morning of Thursday, 21 April 1994, during which he stated that Tutsis should be "allowed to go through" to Kabakobwa. The Chamber also accepts that these words led Witness QCB to believe that the safety of these refugees would be protected.

#### 3.6.8.4.2.3 Directives Attributed to Kanyabashi

1691. In addition to the direct evidence given by Witnesses FAM and QCB as to Kanyabashi's instructions at Rango market, three Tutsi Prosecution witnesses testified that they were told or ordered to go to Kabakobwa by various authorities, who in turn received instructions from Kanyabashi. Witness QP testified she saw Kanyabashi and a *responsable de cellule* order Tutsi civilians to proceed to Kabakobwa "to join the others".<sup>4354</sup> Witness QW testified that the person in charge of her *cellule*<sup>4355</sup> told the Tutsis within that *cellule* that in furtherance of *Bourgmestre* Kanyabashi's orders, they were to seek refuge at Kabakobwa where they would find food and supplies.<sup>4356</sup> Witness QW testified that fleeing refugees told her that they too had been told by Kanyabashi to go to Kabakobwa to receive assistance and protection.<sup>4357</sup> Witness QAM testified that her family was ordered to go to Kabakobwa by

<sup>4350</sup> T. 12 March 2002 p. 112 (Witness FAM); T. 27 March 2002 p. 161 (Witness QCB).

<sup>4351</sup> T. 12 March 2002 pp. 93-94, 106-107 (Witness FAM).

<sup>4352</sup> T. 20 March 2002 pp. 110-111 (Witness QCB).

<sup>4353</sup> T. 21 January 2008 pp. 28-29 (ICS) (Witness D-2-5-I); T. 29 August 2007 pp. 28-29 (ICS) (Witness D-2-13-D); T. 5 September 2007 pp. 67-68 (Witness D-2-13-D).

<sup>4354</sup> T. 5 June 2002 pp. 161-162; T. 6 June 2002 p. 104 (Witness QP).

<sup>4355</sup> T. 6 June 2002 p. 148 (ICS) (Witness QW).

<sup>4356</sup> T. 6 June 2002 pp. 133-134 (Witness QW).

<sup>4357</sup> T. 10 June 2002 p. 16 (Witness QW).

*Interahamwe* who came to her house,<sup>4358</sup> saying that the order came from the *conseiller*. She stated that it appeared that the *conseiller*, who was under the authority of the *bourgmestre*, received the order from Kanyabashi.<sup>4359</sup>

1692. As to the reason for this directive, Witness QW testified that the *responsable de cellule* told the Tutsis that they would be protected in Kabakobwa, but that they may be killed if they refused to go.<sup>4360</sup> When it was put to Witness QP that in her statement of 24 June 1997 she stated that the *responsable de cellule* told the refugees to go to Kabakobwa for their safety, Witness QP testified that they were just told to go to Kabakobwa.<sup>4361</sup> The Chamber also recalls the testimony of Witness FAM as to Kanyabashi's speech at Rango Marker earlier that day that Tutsis should be guided towards Kabakobwa as this was the only place where they could take refuge.<sup>4362</sup>

1693. Witness QCB, a Hutu who participated in the Kabakobwa attacks, testified that although Kanyabashi's words at Rango market had given him the impression the refugees would be protected at Kabakobwa, at 6.00 p.m. that night a *responsable de cellule* from Ngoma *commune* assembled the population along the road to Kabakobwa and told them that Kanyabashi had ordered all Tutsis be surrounded and prohibited from returning to their homes.<sup>4363</sup> Witness QCB was the sole Prosecution witness to testify about receiving these instructions.

1694. The Prosecution evidence shows that several local authorities told the various members of the population that they must go to Kabakobwa and that these instructions were attributed to Kanyabashi. This testimony was offered by both Tutsi Kabakobwa victims (Witnesses QP, QW and QAM), as well as Witness QCB, a Hutu who participated in the attacks. The Tutsi Prosecution witnesses consistently testified they were told to go to Kabakobwa for their protection, while Witness QCB was told to go to Kabakobwa to guard the Tutsis gathered there.

1695. Turning to the Defence evidence, Witness D-2-10-Y, also a Tutsi Kabakobwa victim, did not hear instructions issued by any authorities, including Kanyabashi, the *conseiller* of his *secteur*, or *cellule* leaders, asking Tutsis to go to Kabakobwa, nor did he learn about this later.<sup>4364</sup> The Chamber recalls the Defence theory, discussed below, that many refugees, such as Witness D-2-10-Y, were at Kabakobwa simply because they were en route to Burundi. While the Chamber accepts that Witness D-2-10-Y may not have heard instructions or been personally directed to go to Kabakobwa, it does not consider that his testimony is necessarily conclusive evidence that all the Tutsi refugees who found themselves at Kabakobwa ended up there fortuitously while en route to Burundi, rather than because they were directed to go to Kabakobwa.

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<sup>4358</sup> T. 22 October 2001 p. 59; T. 23 October 2001 pp. 16, 68-69 (Witness QAM).

<sup>4359</sup> T. 24 October 2001 p. 63 (Witness QAM).

<sup>4360</sup> T. 6 June 2002 pp. 134, 136 (Witness QW).

<sup>4361</sup> T. 6 June 2002 pp. 106-107 (Witness QP); Defence Exhibit 69 (Kanyabashi) (24 June 1997, Statement of Witness QP).

<sup>4362</sup> T. 12 March p. 133 (Witness FAM).

<sup>4363</sup> T. 20 March 2002 pp. 111-114 (Witness QCB).

<sup>4364</sup> T. 29 April 2008 p. 7 (Witness D-2-10-Y).

1696. Further, Witness D-2-13-D, a Hutu who participated in the attacks,<sup>4365</sup> also testified that he had not heard anything about Kanyabashi giving instructions for Tutsis to gather at Kabakobwa Hill and that if Kanyabashi had addressed the refugees, the local inhabitants would have heard those instructions.<sup>4366</sup> While the Chamber accepts that the local population may remember being directly addressed by Kanyabashi, the Chamber recalls that on the morning that these instructions were allegedly issued, Witness D-2-13-D was busy on the premises of his nearby workplace<sup>4367</sup> and did not testify to having gone to Rango market where he would have heard any such instructions.

1697. Lastly, while several Defence witnesses, namely Witnesses D-2-5-I, D-2-13-D and D-2-14-D, also testified that they never heard Kanyabashi implicated in the Kabakobwa events during *Gacaca* proceedings,<sup>4368</sup> the Chamber recalls the testimony of Witness D-2-14-D, who acknowledged that *Gacaca* sessions focused on the individual they were judging, and thus sessions which did not concern Kanyabashi would likely not address him.<sup>4369</sup> The Chamber therefore does not consider that the Defence evidence undermines the credibility of the Prosecution witnesses with respect to whether Kanyabashi ordered that Tutsis be directed towards Kabakobwa.

1698. Although the evidence led by Prosecution Witnesses QP, QW and QAM as to Kanyabashi's responsibility for instructing Tutsis to go to Kabakobwa is hearsay, it nevertheless corroborates the direct evidence of Witnesses FAM and QCB, who were present at Rango market, that it was Kanyabashi who initially directed Tutsis towards Kabakobwa.

1699. In the circumstances, the Chamber considers it established beyond a reasonable doubt that various local authorities, including a *conseiller* and a *responsable de cellule*, as well as members of the *Interahamwe* directed Tutsis to Kabakobwa, and that other individuals were directed to go to Kabakobwa to guard the Tutsis. Although the Chamber previously found that Kanyabashi gave a speech at Rango market during which he stated that Tutsis should be "allowed to go through" to Kabakobwa, the Chamber nevertheless does not find it established beyond a reasonable doubt that Kanyabashi ordered that his subordinates direct Tutsis towards Kabakobwa under the guise of protection.

#### 3.6.8.4.2.4 Allegation that Kanyabashi Recited a Kinyarwanda Proverb in Rwinuma Cellule

1700. Witness QP testified that on Thursday [21 April] at about noon, in Rwinuma *cellule*, she saw Kanyabashi inside a car reciting a Kinyarwanda proverb encouraging the population to expel Tutsis to a single location to be exterminated.<sup>4370</sup> Defence Witnesses D-2-5-I, D-2-10-Y and D-2-14-D all testified that they did not hear that Kanyabashi had circulated and announced inciting messages to the public.<sup>4371</sup> However, none of them were in Rwinuma *cellule* which,

<sup>4365</sup> T. 28 August 2007 p. 62 (ICS); T. 4 September 2007 p. 55 (ICS) (Witness D-2-13-D).

<sup>4366</sup> T. 10 September 2007 pp. 52-53 (ICS) (Witness D-2-13-D).

<sup>4367</sup> T. 29 August 2007 pp. 24, 38 (ICS); T. 3 September 2007 p. 45 (ICS) (Witness D-2-13-D).

<sup>4368</sup> T. 21 January 2008 pp. 54-55 (Witness D-2-5-I); T. 10 September 2007 p. 26 (ICS) (Witness D-2-13-D); T. 30 August 2007 p. 15 (ICS) (Witness D-2-13-D); T. 21 August 2007 p. 12 (Witness D-2-14-D).

<sup>4369</sup> T. 27 August 2007 p. 63 (Witness D-2-14-D).

<sup>4370</sup> T. 5 June 2002 pp. 154-156, 158-159, 162; T. 6 June 2002 pp. 76-77, 83, 94 (Witness QP).

<sup>4371</sup> T. 21 January 2008 pp. 39-41 (ICS) (Witness D-2-5-I); T. 29 April 2008 p. 8 (Witness D-2-10-Y); T. 21 August 2007 p. 11 (Witness D-2-14-D).

according to a map presented by Expert Witness Guichaoua,<sup>4372</sup> is some distance from Rango market and Mukura Bridge, where the Defence witnesses variously claimed to be on 21 April 1994.

1701. The Chamber notes this event is not corroborated by other witnesses. Even accepting that Kanyabashi would have had approximately one hour to reach Rwinuma from Rango market and may have been present in Rwinuma *cellule*, Witness QP could not recall the type or colour of the vehicle that Kanyabashi travelled in that day or what it had looked like.<sup>4373</sup> Further, Witness QP only saw the vehicle in question in passing and therefore did not have a good opportunity to view the occupants. Lastly, Witness QP could not recognise Kanyabashi in court even though she testified to having seen him on a number of occasions previous to the alleged event on 21 April 1994.<sup>4374</sup> Therefore, the Chamber finds the testimony of Witness QP is not sufficiently reliable to support a finding beyond a reasonable doubt that Kanyabashi recited proverbs from a vehicle in Rwinuma *cellule* on the afternoon of Thursday, 21 April 1994.

#### 3.6.8.4.2.5 Defence Theory that Refugees Were Travelling to Burundi

1702. The Defence presented evidence that the Tutsi refugees were at Kabakobwa because they were fleeing to Burundi and Kabakobwa was a geographically suitable location for them to rest *en route*. Witness D-2-10-Y testified that he and his family decided to flee to Burundi because houses were on fire near his home and people had been killed,<sup>4375</sup> and stopped at Kabakobwa while *en route*.<sup>4376</sup> Witness D-2-14-D also testified that on 21 April 1994 he saw many people who told him that they were fleeing from Runyinya and Gishamvu *communes*, and that he showed them how to reach Burundi by directing them to follow the path through Kabakobwa and Nyaruhengeri.<sup>4377</sup> Witness D-2-16-P also testified that he and his neighbours decided to pack their belongings and flee to Burundi on Thursday [21 April 1994] and that they eventually spent the night in Kabakobwa since night was falling.<sup>4378</sup> Expert Witness Des Forges corroborated this theory.<sup>4379</sup> Witness QW also corroborated this theory; she testified that many refugees at Kabakobwa were from neighbouring *secteurs* and *communes* and were fleeing other massacres.<sup>4380</sup>

1703. However, Witness QW denied that this was why she and her family fled,<sup>4381</sup> claiming instead they were instructed to go to Kabakobwa.<sup>4382</sup> Witness QAM also testified that she fled her home for Kabakobwa because the *Interahamwe* forced her.<sup>4383</sup> Witness QCB corroborated the fact that *Interahamwe* were involved in moving the Tutsi refugees to Kabakobwa.<sup>4384</sup>

<sup>4372</sup> Prosecution Exhibit 136A (Guichaoua Expert Report, Vol. 1) p. 10.

<sup>4373</sup> T. 6 June 2002 pp. 80-81 (Witness QP).

<sup>4374</sup> T. 6 June 2002 p. 21 (Witness QP).

<sup>4375</sup> T. 28 April 2008 p. 26; T. 28 April 2008 p. 37 (ICS) (Witness D-2-10-Y).

<sup>4376</sup> T. 28 April 2008 pp. 40-41 (ICS); T. 28 April 2008 p. 42 (Witness D-2-10-Y).

<sup>4377</sup> T. 21 August 2007 pp. 5-7; T. 27 August 2007 p. 23 (ICS) (Witness D-2-14-D).

<sup>4378</sup> T. 12 March 2008 pp. 50-51; T. 19 March 2008 p. 37 (Witness D-2-16-P).

<sup>4379</sup> T. 12 July 2004 p. 9 (Des Forges).

<sup>4380</sup> T. 10 June 2002 pp. 15-16 (Witness QW).

<sup>4381</sup> T. 10 June 2002 pp. 17-18 (Witness QW).

<sup>4382</sup> T. 6 June 2002 pp. 134, 136, 144 (Witness QW).

<sup>4383</sup> T. 22 October 2001 p. 59; T. 23 October 2001 pp. 16, 68-69 (Witness QAM).

<sup>4384</sup> T. 20 March 2002 pp. 97-99, 111, 114 (Witness QCB).



Moreover, the Chamber notes that Witness D-2-14-D testified that there were no refugees on Kabakobwa Hill before 21 April 1994,<sup>4385</sup> but 500 to 600 refugees were killed there the next day.<sup>4386</sup>

1704. While the Chamber considers it may be plausible that many refugees stopped at Kabakobwa by chance while *en route* to Burundi, it does not consider this the sole explanation for the presence of hundreds of refugees at Kabakobwa. Having accepted that various local authorities instructed the population to go to Kabakobwa, the Chamber finds that *Interahamwe* and other members of the population ordered certain refugees to go to Kabakobwa.

### 3.6.8.4.3 The Morning of 22 April 1994

#### 3.6.8.4.3.1 *Intention to Kill Tutsis*

1705. Although it was not disputed that the vast majority of the refugees at Kabakobwa were Tutsis, the Chamber notes several witnesses testified about deliberate separation of Hutus and Tutsis. First, Witness QAM, a Tutsi student,<sup>4387</sup> testified that on a Friday, the *Interahamwe* came to her house wielding spears and bludgeons. They went from house to house where they knew there were Tutsis, and told the Tutsis to go to Kabakobwa.<sup>4388</sup> Witness QAM further testified that there were only Tutsis at Kabakobwa since any Hutus present left.<sup>4389</sup> Kanyabashi's daughter had come to Kabakobwa with her husband, a Tutsi, but she was later taken home without her husband.<sup>4390</sup>

1706. Witness QAM's testimony that Hutu refugees left Kabakobwa was corroborated by Defence Witnesses D-2-10-Y and D-2-13-D. Witness D-2-10-Y testified that at a certain point in time, people dressed in ordinary clothes mingled with the refugees and said that the Hutus among the refugees should leave the area. He did not know who made that announcement but he heard them speak, and learned from other persons that they were dressed in civilian clothes.<sup>4391</sup> Witness D-2-13-D testified that when he and his group arrived at Kabakobwa the soldiers present lined them up and told the Hutus who were at Kabakobwa to leave.<sup>4392</sup>

1707. The witnesses variously identified soldiers, policemen and someone dressed in civilian clothes as the person responsible for telling Hutus to leave Kabakobwa. The Chamber does not consider this variance to be a discrepancy as to this account. Recalling there were hundreds, if not thousands of refugees gathered at Kabakobwa Hill, the Chamber considers that multiple people delivered this message among all those gathered at Kabakobwa Hill.

1708. Witness FAM, one of the Hutus who participated in the attack, testified that when his group arrived at Kabakobwa around 3.00 p.m.,<sup>4393</sup> soldiers and policemen surrounded those

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<sup>4385</sup> T. 27 August 2007 p. 23 (ICS) (Witness D-2-14-D).

<sup>4386</sup> T. 21 August 2007 p. 37; T. 28 August 2007 p. 45 (ICS) (Witness D-2-14-D).

<sup>4387</sup> T. 22 October 2001 p. 129 (ICS) (Witness QAM); Prosecution Exhibit 43 (Personal Particulars).

<sup>4388</sup> T. 22 October 2001 p. 59; T. 23 October 2001 pp. 16, 68-69 (Witness QAM).

<sup>4389</sup> T. 23 October 2001 p. 93 (Witness QAM).

<sup>4390</sup> T. 23 October 2001 pp. 95-96 (Witness QAM).

<sup>4391</sup> T. 5 May 2008 p. 17 (Witness D-2-10-Y).

<sup>4392</sup> T. 29 August 2007 p. 77 (ICS); T. 10 September 2007 p. 62 (ICS) (Witness D-2-13-D).

<sup>4393</sup> T. 6 March 2002 p. 86; T. 7 March 2002 pp. 46, 48, 76; T. 13 March 2002 p. 27 (Witness FAM).

people, and asked Witness FAM and his group to attack the Tutsis using their traditional weapons.<sup>4394</sup>

1709. Further, there was testimony establishing the assailants' intent to kill Tutsis. Witness QW testified that one Mathias, a *commune* employee, arrived at Kabakobwa to collect his sister, one Marguerite who was among the refugees with her children.<sup>4395</sup> When the refugees asked Mathias when the people supposed to protect the refugees would come, he told them, "[y]ou should believe in God because your fate has already been decided. Everything that was told to you previously was lies", and "[y]our hour has come."<sup>4396</sup> Witness QW was about three metres from Mathias' car.<sup>4397</sup> Witness QW's account was corroborated by Witness QP who heard one of the refugees ask Mathias why he was taking these people away, and who would take care of those seeking refuge, to which Mathias responded, "[p]ray, because the hour of your death has come."<sup>4398</sup>

1710. Although Witness QW agreed that she knew a girl by the same name as Witness QP and that they were in Arusha at the same time to give evidence,<sup>4399</sup> Witness QP testified that she did not discuss the events at Kabakobwa with Witness QW.<sup>4400</sup> Both witnesses claimed they did not see each other during the events at Kabakobwa.<sup>4401</sup> Further, although no other witnesses testified about these words, the Chamber notes that Witnesses QP's and QW's account of Mathias' visit was corroborated by the hearsay evidence of Defence Witnesses D-2-13-D and D-2-10-Y who both testified they had heard that Nsanzabahizi had come to take his sister from Kabakobwa.<sup>4402</sup> When Witness D-2-13-D later spoke to Nsanzabahizi he confirmed that he had taken his sister.<sup>4403</sup> Having regard to the corroboration of Witnesses QP's and QW's account as to Nsanzabahizi's visit, the Chamber also accepts that Nsanzabahizi told the refugees, "[y]ou should believe in God because your fate has already been decided. Everything that was told to you previously was lies", and "[y]our hour has come."<sup>4404</sup>

1711. Having regard to the totality of the evidence, the Chamber finds it established beyond a reasonable doubt that: Hutus present at Kabakobwa were told to leave; Nsanzabahizi told the refugees, "[y]ou should believe in God because your fate has already been decided. Everything that was told to you previously was lies", and "[y]our hour has come"; and that armed civilians were instructed to attack the Tutsi refugees.

#### 3.6.8.4.3.2 Preparation for the Attack

1712. On Witness D-2-13-D's own account, on the morning of 22 April 1994, soldiers came to a friend's house to ask their friend for assistance in launching an attack at Kabakobwa. The

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<sup>4394</sup> T. 6 March 2002 p. 85; T. 13 March 2002 p. 35 (Witness FAM).

<sup>4395</sup> T. 6 June 2002 pp. 137-139 (Witness QW).

<sup>4396</sup> T. 6 June 2002 p. 139; T. 10 June 2002 p. 25 (Witness QW).

<sup>4397</sup> T. 10 June 2002 p. 25 (Witness QW).

<sup>4398</sup> T. 5 June 2002 p. 167 (Witness QP).

<sup>4399</sup> T. 10 June 2002 p. 34 (ICS) (Witness QW).

<sup>4400</sup> T. 6 June 2002 p. 49 (ICS) (Witness QP).

<sup>4401</sup> T. 6 June 2002 pp. 45-46 (ICS) (Witness QP); T. 10 June 2002 pp. 34-35, 38 (ICS) (Witness QW).

<sup>4402</sup> T. 30 August 2007 p. 26 (ICS) (Witness D-2-13-D); T. 10 September 2007 p. 57 (ICS) (Witness D-2-13-D); T. 5 May 2008 p. 18 (Witness D-2-10-Y).

<sup>4403</sup> T. 30 August 2007 p. 26 (ICS) (Witness D-2-13-D).

<sup>4404</sup> T. 6 June 2002 p. 139; T. 10 June 2002 p. 25 (Witness QW).

soldiers found Witness D-2-13-D and his companions at the friend's house, dressed the witness and his companions in banana leaves,<sup>4405</sup> and obliged the witness and the people he was with to go with them towards Kabakobwa.<sup>4406</sup>

1713. Witness QAM testified that at around 11.00 a.m. on the same day she arrived at Kabakobwa, she saw the same group of *Interahamwe* who previously came to her home, but they left saying that "they were going to announce to the *bourgmestre* that people at Kabakobwa were sufficient in number".<sup>4407</sup> The person identified in Defence Exhibit 3 made this statement.<sup>4408</sup> The *Interahamwe* said they would return to confront those in Kabakobwa, and later returned to Kabakobwa armed and accompanied by *commune* policemen carrying guns and grenades.<sup>4409</sup>

1714. Witness QCB, a Hutu who participated in the attacks, similarly testified that he saw soldiers come to Kabakobwa and approach the refugees to ask how many people were on the hill. The Tutsis told the soldiers that the Hutus had surrounded them and indicated their number to be 5,000. The leader of the soldiers then came to Witness QCB and other Hutus standing guard, introduced themselves as coming from the ESO camp, and told the witness and others that they could not attack "them" with Kalashnikovs and that they were going to ask Muvunyi for more sophisticated weapons so that they could deal with the Tutsis.<sup>4410</sup>

1715. Witness QCB's account of soldiers was corroborated by Witness D-2-14-D, who testified that before noon on 22 April 1994, from his hill opposite Kabakobwa, he saw a white, four-wheel-drive military vehicle arrive near Kabakobwa, with about five soldiers aboard.<sup>4411</sup> Witness D-2-14-D later testified, however, that he did not see soldiers arrive in a vehicle,<sup>4412</sup> and that the soldiers left on foot.<sup>4413</sup> The soldiers went to where the refugees were gathered and left five minutes later.<sup>4414</sup> The soldiers returned around 4.00 p.m. together with many members of the population, some of whom wore banana leaves, and this group of people surrounded Kabakobwa Hill.<sup>4415</sup>

1716. Having regard to the totality of the evidence, the Chamber finds it established beyond a reasonable doubt that some time before noon on Friday, 22 April 1994 both *Interahamwe* and soldiers came to Kabakobwa, evaluated the number of refugees present, and left to inform their superiors, variously identified as Kanyabashi and Muvunyi, and to get reinforcements in preparation for the attack later that afternoon.

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<sup>4405</sup> T. 29 August 2007 pp. 73, 75, 77 (ICS) (Witness D-2-13-D).

<sup>4406</sup> T. 29 August 2007 pp. 44-45 (ICS); T. 5 September 2007 p. 8 (ICS) (Witness D-2-13-D).

<sup>4407</sup> T. 22 October 2001 pp. 62, 64; T. 23 October 2001 p. 100 (Witness QAM).

<sup>4408</sup> T. 23 October 2001 pp. 100, 102-103 (Witness QAM); Defence Exhibit 3 (Kanyabashi) (Document with one hand-written name).

<sup>4409</sup> T. 22 October 2001 pp. 62, 64-65 (Witness QAM).

<sup>4410</sup> T. 20 March 2002 pp. 116-118; T. 2 April 2002 pp. 6, 18-19 (Witness QCB).

<sup>4411</sup> T. 21 August 2007 p. 12 (Witness D-2-14-D).

<sup>4412</sup> T. 27 August 2007 p. 22 (ICS) (Witness D-2-14-D).

<sup>4413</sup> T. 27 August 2007 pp. 46-47 (Witness D-2-14-D).

<sup>4414</sup> T. 21 August 2007 pp. 12, 15 (Witness D-2-14-D).

<sup>4415</sup> T. 21 August 2007 p. 15 (Witness D-2-14-D).

#### 3.6.8.4.4 The Attack on 22 April 1994

##### 3.6.8.4.4.1 Kanyabashi's Presence and Alleged Role

1717. The Kanyabashi Indictment alleges that Kanyabashi ordered his subordinates, notably *conseillers*, *commune* policemen, and certain members of the Hutu population to go to Kabakobwa *cellule* to eliminate the refugees.<sup>4416</sup> The Parties dispute whether Kanyabashi was present at or ordered the attack at Kabakobwa on 22 April 1994.

1718. As to whether Kanyabashi ordered the Kabakobwa attack, Witness QCB testified that on the afternoon of Friday, 22 April 1994 Mathias Nsanzabahizi read out a letter from Kanyabashi which urged the population to join the soldiers in the killings.<sup>4417</sup> On recall in 2009, Witness QCB testified that it was Major Rusigariye with *gendarmes* who led the civilian attackers to Kabakobwa.<sup>4418</sup> However, the Chamber notes that Witness QCB originally testified that he did not know Major Rusigariye.<sup>4419</sup> Therefore, the Chamber does not find Witness QCB's initial testimony as to the alleged letter from Kanyabashi that Nsanzabahizi read out to be credible. Moreover, Witness QCB's account of this event is uncorroborated.

1719. As to Kanyabashi's presence during the Kabakobwa attack, Witness FAM testified that Kanyabashi was at Kabakobwa on Friday, 22 April 1994 and watched the attacks while standing next to a car.<sup>4420</sup> This testimony is not corroborated by any other Prosecution witness, although the Chamber notes Witnesses QAM, QCB and QP also previously knew Kanyabashi<sup>4421</sup> and Witnesses QAM and QCB identified him in court.<sup>4422</sup>

1720. As such, the Chamber does not consider the evidence led by the Prosecution established beyond a reasonable doubt that Kanyabashi either ordered or was present during the attack at Kabakobwa on 22 April 1994.

##### 3.6.8.4.4.2 Involvement of Ngoma Commune Police in the Kabakobwa Attack

1721. The Kanyabashi Indictment alleges that on 22 April 1994, at around 4.00 p.m., the *commune* policemen and *conseillers*, assisted by Hutu peasant farmers and militiamen,

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<sup>4416</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

<sup>4417</sup> T. 20 March 2002 p. 123; T. 2 April 2002 pp. 10-11; T. 3 April 2002 p. 74 (Witness QCB).

<sup>4418</sup> T. 23 February 2009 pp. 9-10 (ICS) (Witness QCB).

<sup>4419</sup> T. 23 February 2009 p. 27 (ICS) (Witness QCB).

<sup>4420</sup> T. 6 March 2002 p. 87; T. 13 March 2002 p. 58 (Witness FAM).

<sup>4421</sup> T. 22 October 2001 p. 47 (Witness QAM) (Witness QAM knew Kanyabashi was the *bourgmestre* of Ngoma *commune*); T. 23 October 2001 p. 43 (Witness QAM) (she saw Kanyabashi in her *secteur* on 20 April 1994, two days before the attack in question); T. 20 March 2002 p. 100 (Witness QCB) (Witness QCB knew Kanyabashi was the *bourgmestre* of Ngoma *commune* from 1974); T. 5 June 2002 pp. 153-154 (Witness QP) (she knew Kanyabashi well as she had seen him at meetings in her *secteur* on several occasions before and after the death of President Habyarimana on 6 April 1994).

<sup>4422</sup> T. 22 October 2001 p. 76 (Witness QAM); T. 21 March 2002 p. 80 (Witness QCB). The Chamber notes Witness QP was unable to positively identify Kanyabashi in court: T. 6 June 2002 p. 21 (Witness QP); while Witness QW was not asked to identify Kanyabashi in court.

attacked the refugees and that Kanyabashi subsequently called in reinforcements from the Presidential Guard who took part in the attacks.<sup>4423</sup>

1722. It is not contested that Mathias Nsanzabahizi was a driver for Ngoma *commune*, and former *commune* policeman,<sup>4424</sup> and that he participated in attacks at Kabakobwa by firing a gun on helpless people.<sup>4425</sup> The Parties dispute, however, whether other *commune* policemen participated in the attacks.

1723. Witness FAM, who participated in the attacks, testified that soldiers and policemen surrounded the people at Kabakobwa and attacked them.<sup>4426</sup> According to Witness FAM, *commune* policemen, soldiers and civilians all participated in the killings at Kabakobwa,<sup>4427</sup> while the soldiers and policemen were shooting at the crowd at Kabakobwa, those dressed in banana leaves prevented anyone from escaping.<sup>4428</sup>

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<sup>4423</sup> Para. 6.33 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) responsibility).

<sup>4424</sup> The witnesses agreed that Nsanzabahizi used to be a soldier before he became a *commune* policeman for Ngoma *commune* and finally a driver for Ngoma *commune*: T. 20 March 2002 pp. 121-122 (Witness QCB); T. 5 June 2002 pp. 165-167 (Witness QP); T. 3 September 2007 p. 56 (ICS) (Witness D-2-13-D); T. 21 August 2007 p. 25 (Witness D-2-14-D); T. 23 August 2007 p. 69 (ICS) (Witness D-2-14-D); T. 28 February 2008 pp. 29-30, 45-46, 71 (ICS) (Witness D-2-16-L); T. 28 November 2007 pp. 46-48 (ICS) (Witness D-2-YYYY); T. 3 December 2007 p. 27 (ICS) (Witness D-2-YYYY); T. 11 December 2007 p. 9 (ICS) (Witness D-2-YYYY). Witness QW testified he was employed by the *commune* as a driver: T. 6 June 2002 pp. 137-138 (Witness QW). Witness D-2-16-P knew he was a soldier, before being a driver: T. 12 March 2008 p. 57; T. 13 March 2008 pp. 53-54; T. 18 March 2008 p. 21 (Witness D-2-16-P), but did not know whether Mathias had been a policeman: T. 13 March 2008 p. 54; T. 17 March 2008 p. 71 (ICS); T. 18 March 2008 p. 21 (Witness D-2-16-P).

<sup>4425</sup> It is not disputed that Nsanzabahizi participated in the massacre at Kabakobwa by shooting and killing Tutsi refugees on 22 April 1994. Witness QCB testified that Nsanzabahizi arrived at Kabakobwa at 3.00 p.m. on the day of the massacre: T. 20 March 2002 pp. 121-122 (Witness QCB). This is corroborated by Witnesses D-2-5-I and D-2-13-D: T. 22 January 2008 pp. 9-10 (ICS) (Witness D-2-5-I); T. 10 September 2007 p. 57 (ICS) (Witness D-2-13-D); T. 21 August 2007 pp. 25-26 (Witness D-2-14-D); T. 22 August 2007 p. 8 (ICS) (Witness D-2-14-D); T. 23 August 2007 pp. 31-32, 69 (ICS) (Witness D-2-14-D). Witness QW testified that she saw Mathias driving a green vehicle inscribed with “Ngoma *commune*” to Kabakobwa on the morning of 22 April 1994: T. 6 June 2002 pp. 137-138 (Witness QW). Mathias told her that he had come to collect his sister and her children. Witnesses QP, QW, D-2-10-Y, D-2-13-D and D-2-16-P corroborated the fact that Mathias went to Kabakobwa to take his sister and her children away from Kabakobwa: T. 5 June 2002 p. 166 (Witness QP); T. 6 June 2002 pp. 138-139 (Witness QW); T. 5 May 2008 p. 18 (Witness D-2-10-Y); T. 30 August 2007 p. 26 (ICS) (Witness D-2-13-D); T. 10 September 2007 p. 57 (ICS) (Witness D-2-13-D); T. 12 March 2008 pp. 56-57 (Witness D-2-16-P); T. 17 March 2008 p. 55 (Witness D-2-16-P); T. 18 March 2008 pp. 17, 21 (Witness D-2-16-P); T. 19 March 2008 pp. 38, 49 (Witness D-2-16-P). Witness QW testified that Mathias told the refugees that their hour had come: T. 6 June 2002 p. 139 (Witness QW); T. 10 June 2002 p. 25 (Witness QW). Witness QP corroborated this account in testifying that Mathias told her to pray because the hour of her death had arrived: T. 5 June 2002 p. 167 (Witness QP). Witness QCB testified that Nsanzabahizi used both a gun and a grenade to fire upon people: T. 20 March 2002 p. 129 (Witness QCB); T. 23 February 2009 p. 25 (ICS) (Witness QCB). Finally, Witnesses D-2-5-I, D-2-13-D and D-2-14-D testified that Nsanzabahizi confessed before a *Gacaca* session that he had participated in killings at Kabakobwa and fired on defenceless persons at Kabakobwa: T. 22 January 2008 pp. 9-10 (ICS) (Witness D-2-5-I); T. 30 August 2007 p. 9 (ICS) (Witness D-2-13-D); T. 21 August 2007 pp. 25-26, 34 (Witness D-2-14-D).

<sup>4426</sup> T. 6 March 2002 p. 85; T. 13 March 2002 p. 35 (Witness FAM).

<sup>4427</sup> T. 7 March 2002 pp. 75-75 (Witness FAM).

<sup>4428</sup> T. 6 March 2002 p. 87 (Witness FAM).

1724. Witness QCB, a Hutu civilian who guarded Tutsis during the night of Thursday, 21 April,<sup>4429</sup> and also participated in the attacks at Kabakobwa on Friday, 22 April, testified that soldiers opened fire on the refugees first, followed by the Hutu population and policemen.<sup>4430</sup> When it was put to Witness QCB that none of his several statements that were disclosed to the Defence,<sup>4431</sup> including his statement to Rwandan authorities dated 26 August 1999,<sup>4432</sup> implicated *commune* policemen other than Nsanzabahizi in the Kabakobwa attacks, Witness QCB said he started with Nsanzabahizi because he was the leader of the policemen.<sup>4433</sup> He also named several other *commune* policemen from Nkubi and Sahera *secteurs* who he claimed were with him and killed people “like thunder” in the attack.<sup>4434</sup>

1725. Having reviewed Witness QCB’s letter to the Rwandan Prosecutor of 26 August 1999, which names one policeman as a leader of the attacks at Kabakobwa at the time,<sup>4435</sup> the Chamber considers there is no omission of the type alleged by the Defence. The Chamber notes that the one alleged policeman identified by Witness QCB in his letter to the Rwandan Prosecutor is also one of the persons Witness D-2-YYYY listed in Defence Exhibit 613 as being a police officer as of 31 December 1993.<sup>4436</sup> The three policemen that Witness QCB also identified at trial as participating in the Kabakobwa attack are also included in Defence Exhibit 613 as being police officers as of 31 December 1993.<sup>4437</sup> Witness QCB otherwise also testified that there were 250 soldiers at Kabakobwa which included both members of the “Rwandan Army”, and *gendarmes* wearing red berets.<sup>4438</sup>

1726. Witness QP, a Tutsi victim at Kabakobwa, also testified that policemen armed with guns were among the attackers<sup>4439</sup> and she could recognise the policemen by their uniforms.<sup>4440</sup> She also corroborated the testimony of Witnesses FAM and QCB as to the other attackers present insofar as she testified that soldiers attacked the refugees by throwing into the crowd things that “looked like small containers [that] exploded” killing some refugees,<sup>4441</sup> as

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<sup>4429</sup> T. 20 March 2002 p. 114; T. 26 March 2002 pp. 116-117 (Witness QCB).

<sup>4430</sup> T. 2 April 2002 p. 57 (Witness QCB).

<sup>4431</sup> See Defence Exhibit 29 (Ntahobali) (7 April 1999, Statement of Witness QCB); Defence Exhibit 31 (Nsabimana) (19 April 1999, Witness QCB’s Guilty Plea); Defence Exhibit 38B (Kanyabashi) (17 June 1999, Witness QCB’s Confirmation of Confession); Defence Exhibit 26D (Nteziryayo) (16 August 2001, Statement of Witness QCB); Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB); Defence Exhibit 32 (Nsabimana) (27 August 1999, Record of Witness QCB’s Rwandan Hearing); Defence Exhibit 41B (Kanyabashi) (3 January 2001, Request to the Rwandan Prosecutor by Witness QCB); Defence Exhibit 42 (Kanyabashi) (28 March 2001, Witness QCB’s Confession).

<sup>4432</sup> Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB).

<sup>4433</sup> T. 28 March 2002 p. 88; T. 2 April 2002 pp. 26-28, 53 (Witness QCB).

<sup>4434</sup> T. 2 April 2002 pp. 26-27 (Witness QCB).

<sup>4435</sup> Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB).

<sup>4436</sup> T. 4 December 2007 pp. 33-38, 40-42 (ICS) (Witness D-2-YYYY); Defence Exhibit 39B (Kanyabashi) (26 August 1999, Letter to Rwandan Prosecutor by Witness QCB); Defence Exhibit 613 (Ntahobali) (List of names - Under seal).

<sup>4437</sup> T. 2 April 2002 pp. 26-27 (Witness QCB); T. 4 December 2007 pp. 33-38, 40-42 (ICS) (Witness D-2-YYYY); Defence Exhibit 613 (Ntahobali) (List of names - Under seal).

<sup>4438</sup> T. 20 March 2002 pp. 117, 121 (Witness QCB).

<sup>4439</sup> T. 6 June 2002 pp. 13, 17 (Witness QP).

<sup>4440</sup> T. 6 June 2002 p. 112 (Witness QP).

<sup>4441</sup> T. 6 June 2002 pp. 10-11 (Witness QP).

did civilians wearing banana leaves who carried spears, swords, machetes, cudgels and hoes.<sup>4442</sup>

1727. Witness QW, also a Tutsi victim at Kabakobwa, testified that one Mathias came towards the end of the afternoon on Friday accompanied by people in uniform, soldiers or policemen wearing green clothes with banana leaves and carrying guns, and members of the population wearing civilian clothes with banana leaves and carrying traditional weapons.<sup>4443</sup> The Chamber notes that although Witness QW could not distinguish between the men in uniform, she distinguished between people in green clothes and others in civilian clothes. Recalling various witness testimony that policemen wore green uniforms,<sup>4444</sup> whereas soldiers wore camouflage uniforms,<sup>4445</sup> the Chamber accepts that Witness QW was testifying that policemen were among the attackers at Kabakobwa.

1728. Witness QAM, another Tutsi victim of Kabakobwa, did not see soldiers, *gendarmes* or members of the Presidential Guard at Kabakobwa;<sup>4446</sup> there were only civilians and *commune* policemen.<sup>4447</sup> Witness QAM testified that *Interahamwe* returned to Kabakobwa in the afternoon [of Friday 21 April] armed with machetes, spears and cudgels and accompanied by *commune* policemen carrying guns and grenades.<sup>4448</sup> In the early afternoon, the policemen surrounded the people gathered at Kabakobwa from all sides<sup>4449</sup> and opened fire on them while the *Interahamwe* cut to pieces those who had been wounded with the bullets.<sup>4450</sup> The policemen wore green uniforms.<sup>4451</sup> Although her statement of 22 May 1997 stated that Kanyabashi sent soldiers from the Presidential Guard to exterminate Tutsis, Witness QAM said she intended to use the word “policemen” and not “soldier” in her statement.<sup>4452</sup> Considering no Prosecution witness testified about knowing Witness QAM,<sup>4453</sup> the Chamber accepts that Witness QAM made a mistake at the time of giving her statement.

1729. In contrast, Defence Witnesses D-2-5-I and D-2-YYYY both testified that at police meetings Kanyabashi instructed *commune* policemen not to participate in killings or lootings

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<sup>4442</sup> T. 6 June 2002 p. 13 (Witness QP).

<sup>4443</sup> T. 6 June 2002 p. 139 (Witness QW).

<sup>4444</sup> T. 23 October 2001 p. 86 (Witness QAM); T. 29 April 2008 p. 5 (Witness D-2-10-Y) (between April and July 1994 *commune* police officers wore green uniforms with yellow berets); T. 23 August 2007 p. 47 (ICS) (Witness D-2-14-D) (police uniforms at the time were green); T. 28 November 2007 p. 49 (ICS) (Witness D-2-YYYY) (*commune* policemen wore green trousers and shirts, and yellow berets with an insignia); T. 12 March 2008 p. 58 (Witness D-2-16-P); T. 19 March 2008 p. 41 (Witness D-2-16-P) (in 1994 *commune* police officers wore green uniforms and yellow berets).

<sup>4445</sup> T. 28 April 2008 p. 43 (Witness D-2-10-Y); T. 29 April 2008 pp. 61-63, 65 (Witness D-2-10-Y) (soldiers wore camouflage uniforms, some *Interahamwe* wore army clothes and others were in civilian attire, while civilians wore dried banana leaves); T. 28 November 2007 pp. 50, 52 (ICS) (Witness D-2-YYYY) (soldiers wore boots and a camouflage uniform with black berets).

<sup>4446</sup> T. 23 October 2001 p. 84 (Witness QAM).

<sup>4447</sup> T. 23 October 2001 p. 117; T. 24 October 2001 p. 36 (Witness QAM).

<sup>4448</sup> T. 22 October 2001 p. 65 (Witness QAM).

<sup>4449</sup> T. 23 October 2001 pp. 86, 90 (Witness QAM).

<sup>4450</sup> T. 22 October 2001 pp. 65-66; T. 24 October 2001 pp. 9-10 (Witness QAM).

<sup>4451</sup> T. 23 October 2001 p. 86 (Witness QAM).

<sup>4452</sup> T. 24 October 2001 p. 33 (Witness QAM); Defence Exhibit 4B (Kanyabashi) (20 May 1997, Statement of Witness QAM).

<sup>4453</sup> T. 6 June 2002 pp. 59-60 (ICS) (Witness QP); T. 10 June 2002 p. 40 (ICS) (Witness QW). Witnesses FAM, QCB and QVB were not asked whether they knew Witness QAM.

during the period in question.<sup>4454</sup> The Chamber recalls that both Witnesses D-2-5-I and D-2-YYYY worked closely with Kanyabashi during the events.<sup>4455</sup> The Chamber considers that as a consequence of these relationships, Witnesses D-2-5-I and D-2-YYYY may have had an interest in defending Kanyabashi for which reason their testimony should be treated with appropriate caution. While Witness D-2-5-I testified that no Ngoma *commune* police officer was involved in the killings,<sup>4456</sup> the Chamber notes that Witness D-2-5-I did not go to Kabakobwa on Friday 22 April 1994.<sup>4457</sup> In the circumstances, the Chamber considers Witness D-2-5-I was in no position to testify as to whether *commune* police participated in the attacks at Kabakobwa. Further, insofar as both Defence Witnesses D-2-5-I and D-2-YYYY also testified that they had not heard anyone at *Gacaca* proceedings implicate Ngoma *commune* policemen in what happened in Kabakobwa,<sup>4458</sup> the Chamber does not accept this as conclusive evidence that *commune* policemen were not among the numerous attackers.

1730. Witnesses D-2-13-D, D-2-14-D, D-2-10-Y, D-2-16-P and D-2-16-L also testified that police were not involved in the Kabakobwa attacks.

1731. Witness D-2-13-D only testified about the participation of soldiers and civilians during the Kabakobwa attacks.<sup>4459</sup> Witness D-2-13-D testified that he did not hear of the presence of any Ngoma *commune* policemen at Kabakobwa on that Friday. Even in prison and after his release, he did not hear of a police presence at Kabakobwa, nor did he see any.<sup>4460</sup> Witness D-2-14-D similarly did not see Ngoma *commune* police or hear any messages from the Ngoma *commune* police during the attack.<sup>4461</sup>

1732. Witness D-2-14-D testified that in April 1994 he lived within view of, and a 10 minute walk from Kabakobwa and indicated the location of his house relative to Kabakobwa Hill and Rango market on Defence Exhibit 557.<sup>4462</sup> Witness D-2-14-D testified that Witness D-2-13-D came from the same home *cellule*.<sup>4463</sup> This was confirmed by Witness D-2-13-D who testified that a person with the same full name as Witness D-2-14-D was a neighbour in 1994 and was still at the time of their testimony.<sup>4464</sup> Witness D-2-13-D testified that he could see Witness D-

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<sup>4454</sup> T. 28 November 2007 p. 19 (ICS) (Witness D-2-YYYY); T. 3 December 2007 pp. 49, 51-53 (ICS) (Witness D-2-YYYY); T. 4 December 2007 p. 71 (ICS) (Witness D-2-YYYY); T. 11 December 2007 pp. 16, 26-28, 40 (ICS) (Witness D-2-YYYY); T. 12 December 2007 p. 21 (ICS) (Witness D-2-5-I); T. 22 January 2008 p. 21 (ICS) (Witness D-2-5-I).

<sup>4455</sup> T. 30 January 2008 p. 12 (ICS) (Witness D-2-5-I); T. 26 November 2007 p. 62 (ICS) (Witness D-2-YYYY); T. 5 December 2007 p. 56 (ICS) (Witness D-2-YYYY).

<sup>4456</sup> T. 21 January 2008 p. 55 (Witness D-2-5-I).

<sup>4457</sup> T. 21 January 2008 p. 54; T. 31 January 2008 p. 15 (ICS) (Witness D-2-5-I).

<sup>4458</sup> T. 21 January 2008 pp. 54-55 (Witness D-2-5-I); T. 28 November 2007 p. 33 (Witness D-2-YYYY).

<sup>4459</sup> T. 5 September 2007 p. 60 (ICS) (Witness D-2-13-D) (soldiers and civilians encircled Kabakobwa).

<sup>4460</sup> T. 30 August 2007 pp. 17-18 (ICS) (Witness D-2-13-D).

<sup>4461</sup> T. 21 August 2007 p. 38 (Witness D-2-14-D).

<sup>4462</sup> T. 20 August 2007 pp. 49, 58-59, 61-62, 74 (ICS) (Witness D-2-14-D); Defence Exhibit 557 (Kanyabashi) (Copy of Prosecution Exhibit 53 as marked by Witness D-2-14-D).

<sup>4463</sup> T. 22 August 2007 pp. 56-57 (ICS) (Witness D-2-14-D).

<sup>4464</sup> T. 3 September 2007 p. 44 (ICS) (Witness D-2-13-D).



2-14-D on Sundays after church but they did not have specific chats.<sup>4465</sup> Witness D-2-14-D marked the location of Witness D-2-13-D's house on Defence Exhibit 559.<sup>4466</sup>

1733. In addition to being neighbours, the Chamber notes both Witnesses D-2-13-D and D-2-14-D testified that they were imprisoned together in Karubanda prison in Rwanda,<sup>4467</sup> that they were together when they met and signed their statements to the Kanyabashi Defence investigator,<sup>4468</sup> that they came to Arusha to testify before this Tribunal together, and were detained together while awaiting to give their testimony before this Tribunal yet did not discuss their testimony.<sup>4469</sup> Witness D-2-13-D even testified that Witness D-2-14-D helped Witness D-2-13-D draft his confession which was sent to the *Gacaca* courts and was given to Nkeshimana, the Kanyabashi Defence investigator.<sup>4470</sup> The fact that both witnesses admitted to interacting with the Kanyabashi Defence investigator undermines their credibility. Further, in light of the close ties between these witnesses and the numerous opportunities which the Chamber considers they had to discuss their experiences, notwithstanding their detailed mutual corroboration, the Chamber considers the testimony of these witnesses is not reliable.<sup>4471</sup>

1734. Further, the Chamber recalls Witness D-2-14-D testified he was in his house at 4.00 p.m. when he heard gunshots, and went towards Kabakobwa.<sup>4472</sup> Witness D-2-14-D marked the location he went to after he heard gunshots in Kabakobwa in red with the letters "OA" on Defence Exhibit 558.<sup>4473</sup> Thereafter, the Chamber notes Witness D-2-14-D crossed the valley separating Agasharu and Kabakobwa Hills, because the witness marked the spot where he testified he saw Nsanzabahizi during the attack with a circle and an "N", and marked the spot where he was standing when he saw Nsanzabahizi with a circle and a "W".<sup>4474</sup> He was standing approximately five metres from Nsanzabahizi.<sup>4475</sup> The witness marked with a circle and an "R" the spot where the refugees were when attacked.<sup>4476</sup>

1735. Having reviewed Defence Exhibit 558, and even acknowledging that Witness D-2-14-D was a Hutu,<sup>4477</sup> the Chamber does not consider it plausible that Witness D-2-14-D left the safety of his house to go into the centre of an attack on Tutsis considering he was not participating in the attack, and all the more so considering Witness D-2-14-D's own testimony

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<sup>4465</sup> T. 10 September 2007 p. 29 (ICS) (Witness D-2-13-D).

<sup>4466</sup> Defence Exhibit 559 (Ntahobali) (Copy of Defence Exhibit 558 as marked by Witness D-2-14-D); T. 27 August 2007 pp. 14-15 (ICS) (Witness D-2-14-D).

<sup>4467</sup> T. 28 August 2007 p. 68 (ICS) (Witness D-2-13-D); T. 23 August 2007 pp. 60, 63 (ICS) (Witness D-2-14-D).

<sup>4468</sup> T. 3 September 2007 p. 57 (ICS) (Witness D-2-13-D); T. 23 August 2007 pp. 23-24 (ICS) (Witness D-2-14-D); T. 27 August 2007 p. 10 (ICS) (Witness D-2-14-D).

<sup>4469</sup> T. 5 September 2007 pp. 31, 33 (ICS) (Witness D-2-13-D); T. 10 September 2007 p. 29 (ICS) (Witness D-2-13-D); T. 23 August 2007 p. 72 (ICS) (Witness D-2-14-D).

<sup>4470</sup> T. 28 August 2007 pp. 68-69, 73 (ICS); T. 29 August 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>4471</sup> See *Kamuhanda*, Judgement (AC), para. 239.

<sup>4472</sup> T. 21 August 2007 pp. 36, 61-62, 67 (ICS) (Witness D-2-14-D).

<sup>4473</sup> T. 21 August 2007 p. 67 (ICS) (Witness D-2-14-D); Defence Exhibit 558 (Kanyabashi) (Copy of Defence Exhibit 557 as marked by Witness D-2-14-D).

<sup>4474</sup> T. 22 August 2007 pp. 8-9 (ICS) (Witness D-2-14-D).

<sup>4475</sup> T. 22 August 2007 p. 10 (ICS) (Witness D-2-14-D).

<sup>4476</sup> T. 22 August 2007 p. 11 (ICS) (Witness D-2-14-D).

<sup>4477</sup> Defence Exhibit 556 (Kanyabashi) (Personal Particulars); T. 20 August 2007 pp. 43-44 (ICS) (Witness D-2-14-D).

that he was not wearing banana leaves.<sup>4478</sup> The Chamber recalls that Witness D-2-13-D, a self-confessed participant in the Kabakobwa attacks, testified that the soldiers only shot at those not wearing banana leaves and if they had not been wearing the banana leaves and ash on their faces he and his group would have been shot at.<sup>4479</sup>

1736. In the circumstances, while accepting that Witness D-2-14-D observed the events in question from his hill, the Chamber does not accept as reliable Witness D-2-14-D's testimony that he did not see Ngoma *commune* police or hear any messages from the Ngoma *commune* police during the attack.<sup>4480</sup>

1737. While Witness D-2-10-Y, also a Tutsi Kabakobwa victim, first testified that he did not see any *commune* policemen,<sup>4481</sup> or hear afterwards that they had participated in the Kabakobwa attack,<sup>4482</sup> he also testified that he saw persons wearing fatigues arriving at Kabakobwa and did not know if they were *gendarmes* or soldiers.<sup>4483</sup> In the circumstances the Chamber does not consider Witness D-2-10-Y's testimony that policemen did not participate in the Kabakobwa attacks as conclusive.

1738. Witness D-2-16-P was equally a Tutsi victim at Kabakobwa. As a refugee who was fired upon, Witness D-2-16-P testified that the soldiers and *Interahamwe* surrounded them.<sup>4484</sup> By his own testimony, the distance between the refugees at Kabakobwa and the attackers at Agasharu was about 500 metres, maybe more, while the distance to the attackers at Rwinuma was maybe 700 metres.<sup>4485</sup> Although Witness D-2-16-P testified that he did not see any Ngoma *commune* police officers among the assailants,<sup>4486</sup> having regard to Defence Exhibit 646<sup>4487</sup> and noting Witness D-2-16-P's own testimony as to the distance between the attackers and the refugees, as well as the stressful conditions in which Witness D-2-16-P purportedly identified his attackers, the Chamber considers Witness D-2-16-P's identification of his attackers is not reliable.

1739. As for Witness D-2-16-L, the Chamber notes that he was afraid when he heard intense gunshots from Kabakobwa and testified he did not go there.<sup>4488</sup> As such, his testimony that there were no *commune* police at Kabakobwa is of limited value. Further, the Chamber does not consider his hearsay evidence that people at Kabakobwa said that it was soldiers who killed people at Kabakobwa<sup>4489</sup> to be inconsistent with the Prosecution evidence that policemen, alongside soldiers, killed people at Kabakobwa.

1740. Having regard to the corroborative and detailed evidence of Prosecution Witnesses FAM, QCB, QP, QW and QAM, the Chamber considers it established beyond a reasonable

<sup>4478</sup> T. 21 August 2007 pp. 15, 36; T. 27 August 2007 p. 24 (ICS) (Witness D-2-14-D).

<sup>4479</sup> T. 5 September 2007 p. 62 (ICS) (Witness D-2-13-D).

<sup>4480</sup> T. 21 August 2007 p. 38 (Witness D-2-14-D).

<sup>4481</sup> T. 28 April 2008 p. 45 (Witness D-2-10-Y).

<sup>4482</sup> T. 29 April 2008 p. 5 (Witness D-2-10-Y).

<sup>4483</sup> T. 1 May 2008 p. 71 (Witness D-2-10-Y).

<sup>4484</sup> T. 18 March 2008 p. 22 (Witness D-2-16-P).

<sup>4485</sup> T. 18 March 2008 p. 30 (Witness D-2-16-P).

<sup>4486</sup> T. 12 March 2008 p. 65 (Witness D-2-16-P).

<sup>4487</sup> Defence Exhibit 646 (Ntahobali) (Copy of Defence Exhibit 35).

<sup>4488</sup> T. 28 February 2008 p. 70 (ICS) (Witness D-2-16-L).

<sup>4489</sup> T. 27 February 2008 pp. 57-58 (ICS) (Witness D-2-16-L).

doubt that Ngoma *commune* police were present at and participated in the killings that occurred at Kabakobwa on Friday, 22 April 1994. The Chamber recalls that Nsanzabahizi, a *commune* driver and former *commune* policeman, was present and participated in killings at Kabakobwa. In light of this evidence, the Chamber also considers it established that at least one former Ngoma *commune* policeman participated in the attacks at Kabakobwa.

#### 3.6.8.4.4.3 *Involvement of Interahamwe*

1741. It is uncontested that civilians from surrounding *secteurs* were involved in attacking the refugees at Kabakobwa and that they wore banana leaves and had ash on their faces.<sup>4490</sup> There is however disagreement as to whether these attackers were part of the *Interahamwe*.<sup>4491</sup> The Chamber does not find it necessary to determine whether the civilian attackers at Kabakobwa were part of the official *Interahamwe*, namely the MRND's youth wing, although it is of the view that the term *Interahamwe* was used to refer to all civilians participating in the attack.<sup>4492</sup> In any event, regardless of whether the attackers were official *Interahamwe*, it is established that they were acting in concert with the attackers to kill Tutsi refugees.

#### 3.6.8.4.4.4 *Nteziryayo's Alleged Role*

1742. Witness FAM was the sole Prosecution witness to implicate Nteziryayo in the Kabakobwa events. Witness FAM was a detainee at the time of his testimony before this Tribunal in 2002,<sup>4493</sup> and was still waiting to appear before a Rwandan judge to be sentenced for his participation in events at Kabakobwa and Rango.<sup>4494</sup> As such, the Chamber has

<sup>4490</sup> T. 6 March 2002 pp. 86-87 (Witness FAM); T. 7 March 2002 pp. 75-75 (Witness FAM). There were civilians and *commune* police present: T. 23 October 2001 p. 117 (Witness QAM); T. 24 October 2001 p. 36 (Witness QAM); T. 6 June 2002 pp. 13, 17 (Witness QP); T. 6 June 2002 pp. 139, 141 (Witness QW); T. 28 April 2008 pp. 43-44 (Witness D-2-10-Y); T. 5 May 2008 p. 15 (Witness D-2-10-Y); T. 29 August 2007 pp. 73, 75, 77 (ICS) (Witness D-2-13-D); T. 5 September 2007 p. 70 (ICS) (Witness D-2-13-D); T. 21 August 2007 pp. 15, 24, 36 (ICS) (Witness D-2-14-D); T. 27 August 2007 p. 24 (ICS) (Witness D-2-14-D). Witness QCB marked the presence of the Hutu civilians from various *secteurs* that surrounded Kabakobwa with hash marks on Prosecution Exhibit 53 (Sketch by Witness QCB): T. 20 March 2002 pp. 138, 140 (Witness QCB); T. 26 March 2002 pp. 105-106, 114 (Witness QCB).

<sup>4491</sup> Witness FAM testified that the attackers were civilians as did Witnesses QP and QW: T. 6 March 2002 p. 87 (Witness FAM); T. 6 June 2002 pp. 13, 17 (Witness QP); T. 6 June 2002 pp. 139, 141-142 (Witness QW). In contrast, Witnesses QAM and D-2-10-Y testified that there were *Interahamwe* among the attackers at Kabakobwa: T. 1 May 2008 p. 71 (Witness D-2-10-Y); T. 22 October 2001 pp. 62, 65 (Witness QAM); (...and they wore ordinary clothes and a banana leaf around their waist): T. 24 October 2001 p. 64 (Witness QAM). Witness D-2-16-P testified that soldiers came to Kabakobwa along with *Interahamwe* who wore banana leaves over their bodies and heads: T. 12 March 2008 p. 63; T. 18 March 2008 pp. 20, 22, 24, 30 (Witness D-2-16-P).

<sup>4492</sup> See, e.g., Witness QAM who testified that she used the word "*Interahamwe*" because those who came to her house described themselves as *Interahamwe*: T. 24 October 2001 pp. 11, 13-14 (Witness QAM), although she did not know what political party those Hutus belonged to: T. 24 October 2001 pp. 16-17 (Witness QAM). Witness D-2-14-D also clarified that although he referred to the attackers in his prior statement as *Interahamwe*, they were not really *Interahamwe* and he was referring to ordinary civilians: T. 27 August 2007 pp. 76, 78-79 (Witness D-2-14-D). Witness D-2-10-Y testified that *Interahamwe* included the youth of MRND and the PSD, as well as all persons whose purpose was perpetrating killings irrespective of their political affiliation: T. 1 May 2008 p. 21 (ICS) (Witness D-2-10-Y). Witness D-2-16-L testified that those carrying out the attacks were members of the MRND, including *Interahamwe* who were the youth wing of the MRND and MDR parties and that once he saw soldiers: T. 3 March 2008 pp. 6-7 (ICS) (Witness D-2-16-L).

<sup>4493</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>4494</sup> T. 11 March 2002 pp. 10-13, 48-49, 53, 61 (Witness FAM).

considered that he may be motivated by a desire to implicate either or both Accused in order to receive a more favourable sentence for which reason his testimony should be considered with appropriate caution.

1743. Witness FAM testified that Kanyabashi, Nteziryayo and their policemen gave them authorisation to be armed. As a result of this authorisation, Witness FAM's group of civilians left the market for Kabakobwa armed with traditional weapons, especially machetes, spears and clubs.<sup>4495</sup> Witness FAM testified that Nteziryayo arrived at Kabakobwa in a military vehicle at about the same time the witness arrived,<sup>4496</sup> around 3.00 p.m.,<sup>4497</sup> and in the company of soldiers.<sup>4498</sup> Witness FAM testified that when his group arrived at Kabakobwa, soldiers and policemen surrounded all those people and asked Witness FAM and his group to attack the Tutsis using their traditional weapons.<sup>4499</sup>

1744. The Chamber recalls that Witness FAM did not mention Kanyabashi or Nteziryayo in his confession to Rwandan authorities of 3 August 1998 because he was detained with members of Kanyabashi's and Nteziryayo's families and was concerned for his safety.<sup>4500</sup> The Chamber has reviewed Witness FAM's confession to Rwandan authorities.<sup>4501</sup> The confession details the individual crimes in which Witness FAM participated, including the killing of several people and looting. While the confession details dates of the killings, and names Witness FAM's co-perpetrators, as well as how the murders occurred, the confession does not make any reference to Nteziryayo, Kanyabashi, or the context in which the killings occurred. As such, the Chamber considers the omission of this information from Witness FAM's confession to be significant, and undermines the credibility of his testimony with respect to Nteziryayo's alleged role in the Kabakobwa attacks.

1745. The Nteziryayo Defence submits that Witness FAM's testimony as to Nteziryayo's presence at Kabakobwa at 3.00 p.m. contradicts the testimony of Witness QBV, who testified Nteziryayo was at a roadblock in Kibilizi at 2.00 p.m. and a meeting at Mugusa *commune* office at 4.00 p.m.<sup>4502</sup>

1746. The Chamber refers to its findings as to the credibility of Witness QBV's testimony concerning the events at the Kibilizi roadblock on the Butare-Mugusa road on 22 April 1994. The Chamber found that there were numerous inconsistencies between Witness QBV's previous statements and his trial testimony which Witness QBV did not adequately explain, such that the Chamber did not find the testimony of Witness QBV adequate to establish beyond a reasonable doubt that Nteziryayo was at the roadblock in Kibilizi *secteur*, Mugusa *commune*, on or about 22 and 23 April 1994, as Witness QBV testified (). Notwithstanding this finding, the Chamber considers the Prosecution led contradictory evidence as to Nteziryayo's whereabouts on this occasion.

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<sup>4495</sup> T. 6 March 2002 p. 84 (Witness FAM).

<sup>4496</sup> T. 7 March 2002 pp. 76, 80 (Witness FAM).

<sup>4497</sup> T. 6 March 2002 p. 86; T. 7 March 2002 pp. 46, 48, 76; T. 13 March 2002 p. 27 (Witness FAM).

<sup>4498</sup> T. 7 March 2002 p. 58; T. 13 March 2002 pp. 30-32 (Witness FAM).

<sup>4499</sup> T. 6 March 2002 p. 85; T. 13 March 2002 p. 35 (Witness FAM).

<sup>4500</sup> T. 12 March 2002 pp. 93-94, 106-107 (Witness FAM); Defence Exhibit 15B (Kanyabashi) (3 August 1998, Confession of Witness FAM to Rwandan Authorities).

<sup>4501</sup> Defence Exhibit 15B (Kanyabashi) (3 August 1998, Confession of Witness FAM to Rwandan Authorities).

<sup>4502</sup> Nteziryayo Closing Brief, para. 629.

1747. Having had regard to the testimony of Witnesses QBV and FAM, the Chamber considers the evidence of these witnesses as to Nteziryayo's location during the afternoon of Friday, 22 April 1994 is inconsistent. Reconstructing the timeline of events for 22 April 1994, Witness QBV testified Nteziryayo was at a roadblock in Kibilizi on the Butare-Mugusa road at 2.00 p.m.<sup>4503</sup> They stayed at the roadblock for approximately one hour<sup>4504</sup> and left at 3.00 p.m.<sup>4505</sup> Witness FAM testified that Nteziryayo arrived at Kabakobwa at about the same time he did,<sup>4506</sup> around 3.00 p.m.<sup>4507</sup> Having regard to Prosecution Exhibit 1, the Chamber estimates the approximate distance between Kibilizi in Mugusa *commune* to Kabakobwa is around 15 kilometres.<sup>4508</sup> Although Witness FAM testified that the policemen, soldiers and civilians left Kabakobwa when they finished the killing between 4.00 and 5.00 p.m.<sup>4509</sup> he did not testify about how long Nteziryayo stayed at Kabakobwa, or when Nteziryayo left. Witness QBV testified that he next saw Nteziryayo at 4.00 p.m., at the Mugusa *commune* office with Muvunyi.<sup>4510</sup> Although Witness QBV's testimony does not account for Nteziryayo's presence between 3.00 and 4.00 p.m., given the Chamber's estimated distance between Kibilizi *secteur* and Kabakobwa Hill,<sup>4511</sup> the Chamber considers this one hour period was insufficient to allow Nteziryayo and Muvunyi to travel approximately 30 kilometres from the Kibilizi roadblock to Kabakobwa, before returning to Mugusa *commune* office which was located in Ramba *cellule*, Kibilizi *secteur*,<sup>4512</sup> by 4.00 p.m.

1748. Accordingly, notwithstanding the detailed and variously corroborated testimony of Witness FAM with respect to the events at Kabakobwa, considering Witness FAM's detainee status at the time of his testimony,<sup>4513</sup> his potential motivation to implicate either or both Accused in order to receive a more favourable sentence, and contradictory evidence as to Nteziryayo's whereabouts led through Witness QBV, absent any further corroboration on the issue, the Chamber does not consider the evidence led by the Prosecution sufficient to establish a finding of fact beyond a reasonable doubt that Nteziryayo was present at Kabakobwa when the attack began at around 3.00 p.m. on Friday, 21 April 1994, or that he brought soldiers to Kabakobwa to participate in the attack.

#### 3.6.8.4.5 The Killings on 23 April 1994

1749. Witness FAM testified that the day after the initial attack, Saturday [23 April 1994] at 8.00 a.m., he returned to Kabakobwa on the authorisation of Kanyabashi to perform communal activities, known as *umuganda*.<sup>4514</sup> Kanyabashi told them to engage in '*finissage*', or to massacre those who were not killed the day before.<sup>4515</sup> Witness FAM testified that they were asked to perform *umuganda* at 8.00 a.m. on that morning by both the *cellule* leaders and

<sup>4503</sup> T. 14 March 2002 pp. 10, 12-13, 19 (Witness QBV).

<sup>4504</sup> T. 14 March 2002 p. 21 (Witness QBV).

<sup>4505</sup> T. 19 March 2002 p. 36 (Witness QBV).

<sup>4506</sup> T. 7 March 2002 pp. 76, 80 (Witness FAM).

<sup>4507</sup> T. 6 March 2002 p. 86; T. 7 March 2002 pp. 46, 48, 76; T. 13 March 2002 p. 27 (Witness FAM).

<sup>4508</sup> See Prosecution Exhibit 1 (Map of Butare).

<sup>4509</sup> T. 7 March 2002 p. 85 (Witness FAM).

<sup>4510</sup> T. 14 March 2002 p. 23 (Witness QBV).

<sup>4511</sup> See Prosecution Exhibit 1 (Map of Butare); Prosecution Exhibit 53 (Sketch by Witness QCB).

<sup>4512</sup> T. 20 March 2002 p. 5 (Witness QBV).

<sup>4513</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>4514</sup> T. 6 March 2002 p. 88; T. 13 March 2002 pp. 61-62 (Witness FAM).

<sup>4515</sup> T. 6 March 2002 pp. 88, 109; T. 7 March 2002 p. 86 (Witness FAM).

Kanyabashi.<sup>4516</sup> Although Kanyabashi was not at the meeting on Saturday morning when instructions on *umuganda* were given, Kanyabashi was the *bourgmestre* of Ngoma *commune* at the time and nobody killed or performed *umuganda* without having received instructions, so Kanyabashi was responsible.<sup>4517</sup> Witness FAM subsequently testified that Kanyabashi, the *conseiller*, Kanywabahizi, and Jean Semwiza were present at Kabakobwa on Saturday 23 April 1994.<sup>4518</sup>

1750. Witness FAM's testimony was corroborated by Witness D-2-14-D, who had participated in the attack on Friday 22 April. Witness D-2-14-D testified that the following day [23 April 1994], from the morning until noon people went back to Kabakobwa to plunder and loot the property of the victims, and to finish off those who had not died, under the supervision of Semwiza.<sup>4519</sup> Witness D-2-14-D was present during the killing of one Rurangwa, a survivor of the previous Kabakobwa attack, around 2.00 p.m. that day.<sup>4520</sup> Witness D-2-14-D also testified that he was approximately 50 metres from one Daphrose<sup>4521</sup> when he witnessed one Phillip Ntawuhiganayo kill her at around 10.00 a.m., on 23 April 1994.<sup>4522</sup> With respect to Daphrose however, the Chamber notes that Witness D-2-14-D later testified that he arrived at Kabakobwa at 2.00 p.m. the day after the massacre,<sup>4523</sup> whereas the witness also confirmed that his written confession stated that he witnessed Ntawuhiganayo kill Daphrose at 9.00 a.m.<sup>4524</sup> In contrast to Witness FAM, Witness D-2-14-D testified that he did not see Kanyabashi at Kabakobwa, or anywhere else, on 23 April 1994, nor did he hear anyone say so at subsequent *Gacaca* sessions.<sup>4525</sup>

1751. Witness D-2-13-D testified he did not return to Kabakobwa on Saturday, but knew that others went there to finish off those who were not dead and to search their bodies.<sup>4526</sup> Although hearsay, Witness D-2-13-D's testimony also corroborates Witnesses FAM and D-2-14-D.

1752. In contrast to the foregoing witnesses, neither Witnesses QCB nor QW who were for various reasons at Kabakobwa Hill on the morning of Saturday, 23 April 1994, testified about further killings. Witness QCB testified that on [Saturday] 23 April 1994 he went back to Kabakobwa to bury the deceased and testified about the presence of bulldozers at Kabakobwa as early as 7.30 a.m.<sup>4527</sup> Although he provided detailed evidence as to the burial of the

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<sup>4516</sup> T. 13 March 2002 pp. 61-62, 65 (Witness FAM).

<sup>4517</sup> T. 13 March 2002 p. 65 (Witness FAM).

<sup>4518</sup> T. 13 March 2002 pp. 72-73 (Witness FAM).

<sup>4519</sup> T. 21 August 2007 pp. 43, 47 (ICS) (Witness D-2-14-D).

<sup>4520</sup> T. 21 August 2007 p. 43 (ICS) (Witness D-2-14-D).

<sup>4521</sup> T. 23 August 2007 p. 57 (ICS) (Witness D-2-14-D).

<sup>4522</sup> T. 21 August 2007 p. 47 (ICS) (Witness D-2-14-D).

<sup>4523</sup> T. 23 August 2007 p. 25 (ICS) (Witness D-2-14-D).

<sup>4524</sup> T. 23 August 2007 pp. 28-29 (ICS) (Witness D-2-14-D). See Defence Exhibit 561C (14 May 2002, Confession of Witness D-2-14-D to Rwandan authorities). Having reviewed the confession, the Chamber notes the confession actually states that Witness D-2-14-D went to feed the pigs at Kabakobwa at 9.00 a.m. but does not specify what time he witnessed the death of Daphrose.

<sup>4525</sup> T. 21 August 2007 p. 39; T. 21 August 2007 pp. 48, 55-56 (ICS); T. 27 August 2007 p. 32 (Witness D-2-14-D).

<sup>4526</sup> T. 30 August 2007 p. 34 (ICS); T. 10 September 2007 p. 54 (ICS) (Witness D-2-13-D).

<sup>4527</sup> T. 21 March 2002 p. 6 (Witness QCB).

victims,<sup>4528</sup> he did not testify about any further killings that occurred on Saturday, 23 April 1994. Witness QW testified that she escaped Kabakobwa and walked all night, arriving back at Kabakobwa the following morning around 8.00 or 9.00 a.m. She saw all the dead bodies and left; she did not stay there long.<sup>4529</sup> She did not see any bulldozers there, and did not see any gathering of people with authorities.<sup>4530</sup> Witness QW also did not testify about any killings that occurred that day.

1753. Given that the killings that occurred on Saturday, 23 April 1994 were intended to “finish off” the few survivors from the previous day’s attack, the Chamber considers the killings occurred on a significantly smaller scale than the attack of the previous day. As such, the Chamber does not consider it significant that neither Witness QCB nor Witness QW testified to witnessing any further killings at Kabakobwa on the morning of Saturday 23 April 1994.

1754. Therefore, having regard to the detailed testimony of Witness FAM, when read together with the corroborative testimony of Witness D-2-14-D and the hearsay testimony of Witness D-2-13-D, the Chamber considers it established beyond a reasonable doubt that some of the attackers who participated in the attacks on Friday, 22 April returned to Kabakobwa on Saturday, 23 April 1994 to finish off the survivors and loot their property. Notwithstanding this finding, the Chamber does not consider it established beyond a reasonable doubt on the basis of Witness FAM’s testimony alone that Kanyabashi was present at Kabakobwa on Saturday, 23 April 1994.

### 3.6.8.5 Conclusion

1755. In conclusion, the Chamber considers it established that Kanyabashi gave a speech at Rango market on the morning of Thursday, 21 April 1994, during which he stated that Tutsis should go to Kabakobwa. The Chamber also finds it established that local authorities directed Tutsi refugees to Kabakobwa. However, the Chamber does not find the Prosecution has proven that Kanyabashi instructed local authorities to move Tutsis to Kabakobwa. Consequently, the Chamber accepts that many refugees fleeing to Burundi may have found themselves at Kabakobwa per chance. The Chamber also does not consider it proven that Kanyabashi recited proverbs from a vehicle in Rwinuma *cellule* on the afternoon of Thursday, 21 April 1994.

1756. With respect to the Kabakobwa attack on 22 April 1994, the Chamber does not consider it established beyond a reasonable doubt that Kanyabashi was present during the attack. Nevertheless, it accepts that soldiers, members of the Ngoma *commune* police and civilians massacred Tutsi refugees there. As to Nteziryayo’s role, the Chamber does not consider it established beyond a reasonable doubt that Nteziryayo was present at Kabakobwa when the attack began at around 3.00 p.m. on Friday, 21 April 1994, and that he brought soldiers to Kabakobwa to participate in the attack. With respect to the subsequent killings at Kabakobwa on 23 April 1994, the Chamber considers it established beyond a reasonable doubt that further killings took place that aimed to “finish off” survivors from the previous day’s

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<sup>4528</sup> Having found that the issue of the burials fell outside the scope of the Kanyabashi Indictment, the Chamber did not set out Witness QCB’s testimony on this issue in the Evidence section.

<sup>4529</sup> T. 6 June 2002 p. 143; T. 10 June 2002 p. 31 (Witness QW).

<sup>4530</sup> T. 10 June 2002 pp. 31-32 (Witness QW).

attack, but does not consider it established beyond a reasonable doubt that Kanyabashi was present at Kabakobwa on Saturday, 23 April 1994.

### 3.6.9 Nkubi *Secteur* Office Meeting, 24 April 1994

#### 3.6.9.1 Introduction

1757. The Kanyabashi Indictment provides that on several occasions between 20 April and June 1994, Kanyabashi encouraged and instructed the soldiers and militiamen, and certain members of the civilian population, to search for the Tutsis who had escaped the massacres, in order to exterminate them. These instructions were given notably on 21 April in Butare, in late April in Save, and in June 1994 near Butare.<sup>4531</sup> The Kanyabashi Indictment also provides between April and July 1994, Kanyabashi not only called on, but aided and abetted the population in slaughtering the Tutsis in Butare *préfecture*.<sup>4532</sup>

1758. According to the Prosecution, Kanyabashi's role in the genocide conspiracy was to, *inter alia*, attend meetings, give instructions to kill Tutsis in hiding and use his position and power to incite the population to join in the killings.<sup>4533</sup> Kanyabashi directly participated in the massacres of Tutsis through his acts, conduct and utterances in Butare, between April and July 1994.<sup>4534</sup> The Prosecution submits that when Kanyabashi gave orders to the population they were obeyed.<sup>4535</sup> In this respect, the Prosecution submits that on 24 April 1994, Kanyabashi held a meeting at the Nkubi *secteur* office during which he urged Tutsis to come out of hiding. The Prosecution submits this was a plan to lure Tutsis out of hiding since those Tutsis who came out of hiding were subsequently killed.<sup>4536</sup> After this meeting, one Rukimbira was killed upon Kanyabashi's orders.<sup>4537</sup> The Prosecution relies upon the testimony of Witness FAM.

1759. The Kanyabashi Defence submits that the meeting of 24 April 1994 falls outside the scope of the Kanyabashi Indictment.<sup>4538</sup> It otherwise submits that Witness FAM's testimony was uncorroborated and lacking in details with respect to the killings that allegedly followed the meeting.<sup>4539</sup>

#### 3.6.9.2 Preliminary Issues

1760. In the context of the Kabakobwa attacks that occurred on 22 and 23 April 1994, the Prosecution introduced evidence related to an alleged Nkubi *secteur* meeting, held on Sunday where Kanyabashi and Nsanzabahizi told Tutsis to come out of hiding because security had been restored, after which those Tutsis who came out of their hiding places were killed.<sup>4540</sup> The

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<sup>4531</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>4532</sup> Para. 6.58 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>4533</sup> Prosecution Closing Brief, p. 388, para. 12.

<sup>4534</sup> Prosecution Closing Brief, p. 405, paras. 75-76.

<sup>4535</sup> Prosecution Closing Brief, p. 386, para. 4.

<sup>4536</sup> Prosecution Closing Brief, p. 244, para. 52; p. 395, para. 33; p. 424, para. 141.

<sup>4537</sup> Prosecution Closing Brief, p. 395, para. 34; p. 415, para. 109; p. 422, para. 134 (The Chamber addresses the allegation concerning the killing of Rukimbira in a separate section of this Judgement ()).

<sup>4538</sup> Kanyabashi Closing Brief, para. 114.

<sup>4539</sup> Kanyabashi Closing Brief, para. 142.

<sup>4540</sup> See T. 6 March 2002 pp. 110-118 (Witness FAM).



Kanyabashi Defence raised an objection to the introduction of this evidence on the basis that this meeting was not pled in the Indictment, which the Chamber overruled.<sup>4541</sup>

1761. The Chamber notes that this is a separate and distinct allegation that did not take place at Kabakobwa and occurred two days after the killings described in the Indictment. The Chamber is of the view that this allegation falls outside the scope of Paragraphs 6.32 and 6.33 of the Kanyabashi Indictment. Therefore, the Chamber will not consider the evidence as to the alleged 24 April 1994 *secteur* meeting with respect to these Indictment paragraphs. The Chamber will instead consider evidence led about this meeting under the relevant Indictment paragraphs pertaining to meetings where appropriate.

1762. Paragraph 6.45 of the Kanyabashi Indictment alleges that between April and June 1994, Kanyabashi encouraged and instructed soldiers and militiamen, and certain members of the civilian population to search for Tutsis who had escaped massacres, in order to exterminate them.<sup>4542</sup> Further, Paragraph 6.58 alleges that between April and July 1994, Kanyabashi and his co-Accused, individually or in the presence of one another, not only called on but also aided and abetted the population to slaughter Tutsis in Butare *préfecture*.<sup>4543</sup>

1763. Insofar as these paragraphs fail to specify 24 April 1994 as one occasion on which Kanyabashi called for the search of Tutsis and fail to identify the location where Kanyabashi is alleged to have incited the population to commit genocide, namely at the Nkubi *secteur* office, the Chamber finds these paragraphs defective for failing to put the Kanyabashi Defence on notice of this event.

1764. The Chamber notes the summary of Witness FAM's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief sets forth that on the Sunday following the Kabakobwa massacre, Kanyabashi came to the *secteur* and held a meeting with the *conseiller* and the *responsables de cellule*, asking them to tell the surviving Tutsis to come out of hiding, whereupon those Tutsis who came out of hiding were killed by the Hutu population.<sup>4544</sup>

1765. A review of Witness FAM's previous statement of 24 February 2000 shows that its content corresponds to the summary of information provided in the Prosecution Pre-Trial Brief. The statement however provides additional detail insofar as it specifies the *secteur* in issue, namely Nkubi *secteur*, and states that the message given at the meeting was subsequently disseminated by megaphone in a *commune* vehicle. Those Tutsis who did come out of hiding were killed by the Hutu population.<sup>4545</sup> Recalling that Witness FAM's statement was disclosed in 2000 and 2001, this disclosure to the Defence was timely, clear and consistent.

1766. Accordingly, the Chamber considers Kanyabashi was provided with adequate notice that the Prosecution intended to bring evidence of this alleged 24 April 1994 meeting as part of

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<sup>4541</sup> T. 6 March 2002 pp. 111-115, 117 (Witness FAM); *see also* Kanyabashi Closing Brief, paras. 114, 142, 196.

<sup>4542</sup> Para. 6.45 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (1) and 6 (3), and Count 4 pursuant to Article 6 (1) responsibility only).

<sup>4543</sup> Para. 6.58 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (1) and 6 (3) responsibility).

<sup>4544</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>4545</sup> 24 February 2000, Statement of Witness FAM, disclosed 4 December 2000.

its case against Kanyabashi, such that the defect in the Indictment is cured. Insofar as the Kanyabashi Defence also had the opportunity to cross-examine Witness FAM on this event over two sitting days, 7 and 11 March 2002, the Chamber considers no prejudice was caused to the Defence.

### **3.6.9.3 Evidence**

#### Prosecution Witness FAM

1767. Witness FAM, a Hutu and detainee at the time of his testimony,<sup>4546</sup> testified that there was a *secteur* meeting on Sunday, between 10.00 a.m. and 12.00 p.m., at the Nkubi *secteur* office.<sup>4547</sup> During the meeting, Kanyabashi told the population that security had been restored, and therefore the Tutsis should come out of their hiding places since no one was to be killed again in the *commune*. There were no Tutsis present at this meeting.<sup>4548</sup> Nsanzabahizi spoke after Kanyabashi and told the population that they must affect “*finissage*”, upon the Tutsis who came out from hiding to finish the extermination.<sup>4549</sup> This message was then spread throughout the *secteur* by Kanyabashi, who announced by megaphone as he went around in a vehicle that it was safe for those hiding to come out.<sup>4550</sup> In cross-examination, Witness FAM testified that the message was broadcast by a man aboard the vehicle who was doing so in the name of *Bourgmestre* Kanyabashi.<sup>4551</sup> As a result of that message some Tutsis came out of hiding and they were killed.<sup>4552</sup> Witness FAM could not recall precisely when he mentioned the *secteur* meeting or the megaphone incident prior to his statement of 25 February 2000.<sup>4553</sup>

#### Prosecution Witness QCB

1768. Witness QCB, a Hutu married to a Tutsi woman,<sup>4554</sup> and detained witness awaiting sentencing in Rwanda at the time of his testimony,<sup>4555</sup> testified that a *secteur* meeting was held on Sunday, 24 April 1994, but he did not attend.<sup>4556</sup>

#### Kanyabashi Defence Witness D-2-14-D

1769. Witness D-2-14-D, a Hutu farmer, cleaner and gardener,<sup>4557</sup> did not know of or attend any meeting convened by Kanyabashi where Kanyabashi said that security had been restored and that Tutsis could come out of their hiding places, or where Mathias Nsanzabahizi said that

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<sup>4546</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>4547</sup> T. 6 March 2002 p. 110; T. 13 March 2002 p. 78 (Witness FAM) (transcript erroneously refers to “Nkumbi” *secteur*).

<sup>4548</sup> T. 6 March 2002 p. 110 (Witness FAM).

<sup>4549</sup> T. 6 March 2002 p. 111 (Witness FAM).

<sup>4550</sup> T. 6 March 2002 p. 118 (Witness FAM).

<sup>4551</sup> T. 13 March 2002 p. 82 (Witness FAM).

<sup>4552</sup> T. 6 March 2002 p. 118; T. 13 March 2002 p. 83 (Witness FAM).

<sup>4553</sup> T. 13 March 2002 pp. 84-85 (Witness FAM); *see* Defence Exhibit 20B (Kanyabashi) (25 February 2000, Statement of Witness FAM).

<sup>4554</sup> T. 28 March 2002 p. 138 (ICS) (Witness QCB).

<sup>4555</sup> T. 20 March 2002 p. 37 (Witness QCB).

<sup>4556</sup> T. 2 April 2002 pp. 120-121 (Witness QCB).

<sup>4557</sup> Defence Exhibit 556 (Kanyabashi) (Personal Particulars); T. 20 August 2007 pp. 43-44 (ICS) (Witness D-2-14-D).

those Tutsis coming out of hiding should be finished off so that the extermination could be completed.<sup>4558</sup> He also did not know of Kanyabashi making any such announcements by megaphone.<sup>4559</sup>

#### Kanyabashi Defence Witness D-2-16-P

1770. Witness D-2-16-P, a Tutsi,<sup>4560</sup> testified that the only two meetings Kanyabashi held in April 1994 were on 18 and 19 April 1994. No meeting took place at the end of April in Rango, because if there was the witness would have heard of it and attended.<sup>4561</sup> Witness D-2-16-P testified that from his home he could hear messages by megaphone from a vehicle on the road linking Nkubi and Sahera *secteurs*.<sup>4562</sup> Prior to April 1994, he could hear such messages delivered by megaphone, but he never heard such messages from April to early July 1994.<sup>4563</sup>

#### Kanyabashi Defence Witness D-2-YYYY

1771. Witness D-2-YYYY, a Hutu civil servant in 1994,<sup>4564</sup> spent Saturday night and Sunday at Kanyabashi's house.<sup>4565</sup> Kanyabashi spent all day Sunday at home and was visited by the *conseiller* of Matyazo and the brigadier.<sup>4566</sup>

#### **3.6.9.4 Deliberations**

1772. Witness FAM was the sole Prosecution witness called who testified about the substance of what was said at a *secteur* meeting held on Sunday at the Nkubi *secteur* office.<sup>4567</sup> The Chamber notes Witness FAM's detainee status at the time of his testimony,<sup>4568</sup> and his potential motivation to implicate Kanyabashi in order to receive a more favourable sentence. The Chamber will therefore treat his testimony with appropriate caution. Witness FAM's testimony about the occurrence of a meeting was corroborated by Witness QCB, who testified that a *secteur* meeting was held on Sunday 24 April 1994. However, Witness QCB did not attend the meeting<sup>4569</sup> and did not provide any testimony as to the content of the meeting.

1773. While Witnesses D-2-14-D<sup>4570</sup> and D-2-16-P<sup>4571</sup> testified they did not know of or attend any meeting convened by Kanyabashi where Kanyabashi said that security had been restored and that Tutsis could come out of their hiding places, the Chamber does not consider this conclusive evidence that there was no meeting.

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<sup>4558</sup> T. 21 August 2007 p. 56 (ICS) (Witness D-2-14-D).

<sup>4559</sup> T. 21 August 2007 p. 59 (ICS) (Witness D-2-14-D).

<sup>4560</sup> T. 12 March 2008 p. 6 (Witness D-2-16-P); Defence Exhibit 639 (Kanyabashi) (Personal Particulars).

<sup>4561</sup> T. 17 March 2008 pp. 26-27 (Witness D-2-16-P).

<sup>4562</sup> T. 12 March 2008 p. 9 (ICS) (Witness D-2-16-P).

<sup>4563</sup> T. 12 March 2008 p. 10 (ICS); T. 17 March 2008 p. 63 (ICS) (Witness D-2-16-P).

<sup>4564</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>4565</sup> T. 28 November 2007 pp. 23-24 (ICS) (Witness D-2-YYYY).

<sup>4566</sup> T. 28 November 2007 p. 24 (ICS); T. 4 December 2007 pp. 14-15 (ICS) (Witness D-2-YYYY).

<sup>4567</sup> T. 6 March 2002 p. 110; T. 13 March 2002 p. 78 (Witness FAM).

<sup>4568</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>4569</sup> T. 2 April 2002 pp. 120-121 (Witness QCB).

<sup>4570</sup> T. 21 August 2007 p. 56 (ICS) (Witness D-2-14-D).

<sup>4571</sup> T. 17 March 2008 pp. 26-27 (Witness D-2-16-P).

1774. Further, Witness D-2-YYYY testified that he spent Saturday night and Sunday at Kanyabashi's house<sup>4572</sup> and that Kanyabashi spent all day Sunday at home where he was visited by the *conseiller* of Matyazo and the brigadier.<sup>4573</sup> Recalling the Chamber's views that Witness D-2-YYYY may have an interest in defending Kanyabashi by reason of having worked with Kanyabashi during the events,<sup>4574</sup> the Chamber considers his testimony does not raise a reasonable doubt as to Kanyabashi's presence at a meeting at Nkubi *secteur* on Sunday, 24 April 1994.

1775. In the circumstances, considering Witness FAM's detainee status at the time of his testimony,<sup>4575</sup> and his potential motivation to implicate Kanyabashi in order to receive a more favourable sentence, absent any more reliable corroboration as to the meeting, the Chamber does not consider the evidence led by the Prosecution sufficient to establish a finding beyond a reasonable doubt that a meeting was held on Sunday, 24 April 1994 at the Nkubi *secteur* office, at which Kanyabashi told the population that security had been restored, and urged Tutsis to come out of their hiding places. Because the Chamber has concluded that the Prosecution has failed to prove this allegation for independent reasons, it need not address the impact of Witness D-2-21-T's testimony on his credibility as regards this allegation.

### **3.6.10 Killing of Rukimbira, Around 22-24 April 1994**

#### **3.6.10.1 Introduction**

1776. Paragraph 6.45 of the Kanyabashi Indictment provides that on several occasions between 20 April and June 1994, Kanyabashi encouraged and instructed soldiers, militiamen and certain members of the civilian population to search for Tutsis who had escaped the massacres in order to exterminate them. These instructions were given notably on 21 April in Butare, in late April in Save, and in June 1994 near Butare.<sup>4576</sup>

1777. On the basis of the testimony of Witness FAM, the Prosecution asserts that on or around 24 April 1994, Kanyabashi ordered the killing of a Tutsi, Rukimbira.<sup>4577</sup>

1778. The Defence argues that during the testimony of Witness FAM, it objected to this witness' evidence relating to the killing of Rukimbira. The Defence maintains that this allegation is not pled in the Kanyabashi Indictment and that, as a consequence, Kanyabashi should not have to defend himself against this specific charge.<sup>4578</sup> In the alternative, the Defence asserts that the Prosecution evidence is not consistent as to this event. Another Prosecution witness, Witness QCB, testified that he learned Rukimbira was killed by soldiers on 21 April 1994. According to the Defence, Witness QCB's version of events does not correspond to that narrated by Witness FAM.<sup>4579</sup>

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<sup>4572</sup> T. 28 November 2007 pp. 23-24 (ICS) (Witness D-2-YYYY).

<sup>4573</sup> T. 28 November 2007 p. 24 (ICS); T. 4 December 2007 pp. 14-15 (ICS) (Witness D-2-YYYY).

<sup>4574</sup> T. 26 November 2007 p. 62 (ICS); T. 5 December 2007 p. 56 (ICS) (Witness D-2-YYYY).

<sup>4575</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM).

<sup>4576</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>4577</sup> Prosecution Closing Brief, p. 422, para. 134.

<sup>4578</sup> Kanyabashi Closing Brief, para. 114.

<sup>4579</sup> Kanyabashi Closing Brief, paras. 141-144.

1779. Relying upon the testimony of Defence Witness D-2-13-D, the Defence submits that Rukimbira was killed under different circumstances on 22 April 1994. Finally, the Defence asserts that Witness FAM was part of a group of detainees who induced inmates to falsely implicate Kanyabashi.<sup>4580</sup>

### 3.6.10.2 Preliminary issues

1780. As raised by the Defence, the Chamber observes that the killing of Rukimbira was not specifically pled in the Kanyabashi Indictment. The Indictment is therefore defective in this regard. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will proceed to determine whether this defect was cured through subsequent Prosecution disclosure.

1781. The Chamber has reviewed the Prosecution Pre-Trial Brief and its Appendix, and notes that the summary of Witness FAM indicates that he was expected to testify about the killing of a Tutsi driver, Rukimbira, in support of Counts 1 to 9 of the Kanyabashi Indictment.<sup>4581</sup> The Chamber further notes that Witness FAM's written statement dated 24 February 2000 and disclosed to the Defence on 1 October 2001 addresses this specific killing.<sup>4582</sup> Witness FAM started his testimony on 6 March 2002, allowing ample time for the Defence to prepare.

1782. Considering the above, the Chamber finds that Kanyabashi had timely, clear and consistent notice of the allegation that Kanyabashi ordered the killing of Rukimbira. Therefore, the Chamber considers that Paragraph 6.45 was cured of its defect through subsequent Prosecution disclosures, and no prejudice was caused to the Defence.

### 3.6.10.3 Evidence

#### Prosecution Witness FAM

1783. Witness FAM, a Hutu, was a detainee at the time of his testimony who had pled guilty to certain crimes including genocide.<sup>4583</sup> He took part in killings and lootings in his *secteur* throughout the war.<sup>4584</sup> He testified that he had yet to be brought before a judge in Rwanda to enter any plea of guilt. At the time of his testimony, he had yet to be informed whether the Rwandan Prosecutor accepted or rejected his confession.<sup>4585</sup>

1784. Witness FAM testified that he knew one Rukimbira who was a driver for the *préfecture*.<sup>4586</sup> The witness stated that he was informed that Rukimbira was a Tutsi.<sup>4587</sup> He

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<sup>4580</sup> Kanyabashi Closing Brief, para. 11.

<sup>4581</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>4582</sup> 24 February 2000, Statement of Witness FAM, disclosed 1 October 2001 (“The same Sunday, Kanyabashi asked a group of men to go and force a certain Rukimbira, a Tutsi who was a driver at the *préfecture*, out of his house. I was among the group. We told him that the man could be having grenades in his house. So, Kanyabashi returned to the *commune* and came back with four communal policemen, who forced Rukimbira out and killed him behind his house, in front of Kanyabashi.”).

<sup>4583</sup> T. 6 March 2002 p. 73 (Witness FAM).

<sup>4584</sup> T. 7 March 2002 p. 36 (Witness FAM).

<sup>4585</sup> T. 11 March 2002 pp. 48-49 (Witness FAM).

<sup>4586</sup> T. 6 March 2002 p. 118 (Witness FAM).

<sup>4587</sup> T. 6 March 2002 p. 126 (Witness FAM).

stated that Kanyabashi ordered policemen to take Rukimbira out of his house and hand him over to the population to be killed.<sup>4588</sup> Kanyabashi was in the compound of Rukimbira's house when he gave these orders.<sup>4589</sup> Kanyabashi was standing approximately one metre away from Rukimbira when he was killed.<sup>4590</sup> The witness saw the killing from a distance of three to five metres.<sup>4591</sup> The witness stated that he was at the scene on the orders of Kanyabashi.<sup>4592</sup> Rukimbira was killed at 10.00 a.m. on the Sunday following the Kabakobwa events.<sup>4593</sup> Witness FAM mentioned Mathias Nsanzabahizi, Master Élias Kiyobe, Yirirwahande, Jean-Bosco and several others as having been present at the killing of Rukimbira.<sup>4594</sup> Witness FAM identified Kanyabashi in court.<sup>4595</sup>

1785. Witness FAM made his confession on 3 August 1998.<sup>4596</sup> However, he did not mention the names of persons whom he killed nor that of Kanyabashi in this confession in order to safeguard his own security and that of his family.<sup>4597</sup> The witness further stated that he did not mention the killing of Rukimbira in this confession because the killers of Rukimbira were all dead and the person who handed Rukimbira over to the killers was in exile.<sup>4598</sup> The witness indicated that at the time of his confession, he was detained at the Karubanda prison as well as Kanyabashi's two sons: Patrice who was a doctor and Babu.<sup>4599</sup>

1786. Counsel for Kanyabashi confronted the witness with the record of Witness FAM's hearing before the Rwandan authorities, dated 18 August 1998, in which he alleged that soldiers were also present when Rukimbira was killed.<sup>4600</sup> The witness explained that the person who recorded his statements made a mistake because soldiers only arrived there after Rukimbira's burial.<sup>4601</sup>

### Prosecution Witness QCB

1787. Witness QCB, a Hutu driver in 1994 and a detainee at the time of his testimony, testified in cross-examination that Jean-Marie Rukimbira, whom the witness knew as the driver at the *préfecture*, was killed on 21 April 1994.<sup>4602</sup> After having thrown the dead bodies of Tutsis on the road not far from Rango market on that day, soldiers moved on to Jean-Marie Rukimbira's house, arrested him and handed him over to Martin Nzabamwita, who killed him

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<sup>4588</sup> T. 6 March 2002 p. 121 (Witness FAM).

<sup>4589</sup> T. 6 March 2002 p. 124 (Witness FAM).

<sup>4590</sup> T. 6 March 2002 pp. 124-125 (Witness FAM).

<sup>4591</sup> T. 6 March 2002 p. 120 (Witness FAM).

<sup>4592</sup> T. 6 March 2002 pp. 118-119 (Witness FAM).

<sup>4593</sup> T. 13 March 2002 pp. 85-86 (Witness FAM).

<sup>4594</sup> T. 6 March 2002 p. 121 (Witness FAM).

<sup>4595</sup> T. 7 March 2002 pp. 14-15 (Witness FAM).

<sup>4596</sup> T. 11 March 2002 p. 78 (Witness FAM); *see* Defence Exhibit 15B (Kanyabashi) (3 August 1998, Confession of Witness FAM to Rwandan Authorities).

<sup>4597</sup> T. 11 March 2002 p. 79 (Witness FAM).

<sup>4598</sup> T. 12 March 2002 p. 97 (Witness FAM).

<sup>4599</sup> T. 11 March 2002 p. 79; T. 12 March 2002 p. 95 (Witness FAM).

<sup>4600</sup> T. 13 March 2002 p. 93 (Witness FAM); *see* Defence Exhibit 18B (18 August 1998, Record of Witness FAM's hearing before Rwandan Authorities).

<sup>4601</sup> T. 13 March 2002 p. 95 (Witness FAM).

<sup>4602</sup> T. 28 March 2002 pp. 126-128 (ICS) (Witness QCB).

on the spot.<sup>4603</sup> The witness was not present when Jean-Marie Rukimbira was killed but he learned about it that same day.<sup>4604</sup> Jean-Marie Rukimbira was the first person to be killed in Ngoma *commune*.<sup>4605</sup>

#### Kanyabashi Defence Witness D-2-13-D

1788. Witness D-2-13-D, a Hutu, stated that at about 8.30 a.m. on Friday (22 April 1994) he saw two old blue minibuses known as “Combi” with about 10 soldiers stop at Alexis Habyarimana’s house.<sup>4606</sup> The soldiers alighted from the vehicles and called Alexis Habyarimana and then went toward Kabakobwa.<sup>4607</sup>

1789. The soldiers stood on Nkubi Hill adjacent to or overlooking Kabakobwa.<sup>4608</sup> They shot two bullets, said they could not wage war against unarmed members of the population and then left.<sup>4609</sup> The witness and Gashumba followed the soldiers because Alexis’ house was not far from Kabakobwa.<sup>4610</sup> Once at Alexis’ house, the soldiers compelled the witness and Gashumba to get in their vehicles with them.<sup>4611</sup>

1790. Six people got in the military vehicles with the soldiers.<sup>4612</sup> They proceeded to Rukimbira’s house, and the soldiers said, “[t]his is the *préfet’s* driver” and then stopped on the road.<sup>4613</sup> The soldiers said that Rukimbira was an accomplice of the *Inkotanyi*. The witness stated that he knew Rukimbira very well; Rukimbira lived in Agasharu and had been the *préfet’s* driver since about the 1980s.<sup>4614</sup> The last time he saw Rukimbira go to work was about a month before the events.<sup>4615</sup>

1791. Witness D-2-13-D stated that the soldiers alighted from their vehicles and knocked on the door of Rukimbira’s house.<sup>4616</sup> Rukimbira came out wearing a towel with his hands up.<sup>4617</sup> The witness stated that Rukimbira was home alone.<sup>4618</sup> A soldier called Athanase Kamana

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<sup>4603</sup> T. 28 March 2002 p. 126 (ICS) (Witness QCB).

<sup>4604</sup> T. 3 April 2002 p. 104 (Witness QCB).

<sup>4605</sup> T. 3 April 2002 p. 104 (Witness QCB).

<sup>4606</sup> T. 29 August 2007 pp. 44-45; T. 29 August 2007 p. i (Extract); T. 4 September 2007 p. 18 (ICS); T. 5 September 2007 p. 46 (ICS) (Witness D-2-13-D).

<sup>4607</sup> T. 29 August 2007 p. 44; T. 29 August 2007 p. i (Extract) (Witness D-2-13-D).

<sup>4608</sup> T. 4 September 2007 pp. 23-24 (ICS) (Witness D-2-13-D).

<sup>4609</sup> T. 29 August 2007 p. 45; T. 4 September 2007 pp. 23-24 (ICS) (Witness D-2-13-D).

<sup>4610</sup> T. 29 August 2007 p. 44; T. 29 August 2007 p. i (Extract); T. 4 September 2007 pp. 23-24 (ICS) (Witness D-2-13-D).

<sup>4611</sup> T. 29 August 2007 p. 45; T. 4 September 2007 p. 28 (ICS) (Witness D-2-13-D).

<sup>4612</sup> T. 29 August 2007 p. 45 (Witness D-2-13-D).

<sup>4613</sup> T. 29 August 2007 pp. 45, 48; T. 29 August 2007 p. i (Extract) (Witness D-2-13-D).

<sup>4614</sup> T. 4 September 2007 p. 32 (ICS); T. 10 September 2007 p. 8 (ICS) (Witness D-2-13-D).

<sup>4615</sup> T. 10 September 2007 p. 9 (ICS) (Witness D-2-13-D).

<sup>4616</sup> T. 29 August 2007 p. ii (Extract) (Witness D-2-13-D).

<sup>4617</sup> T. 29 August 2007 pp. 46-47; T. 29 August 2007 p. 65 (ICS); T. 29 August 2007 p. ii (Extract) (Witness D-2-13-D).

<sup>4618</sup> T. 10 September 2007 pp. 61-62 (ICS) (Witness D-2-13-D).

killed Rukimbira with a machete, and Martin Nzabamwita finished him off.<sup>4619</sup> Kamana and Nzabamwita were brothers and lived in Agasharu *cellule*.<sup>4620</sup>

1792. After Rukimbira's death, the soldiers got in their vehicle and left.<sup>4621</sup> The witness buried Rukimbira's body by the road near Rukimbira's house.<sup>4622</sup> Rukimbira was killed at about 10.20 or 10.30 a.m. on the morning of the Kabakobwa massacre.<sup>4623</sup>

1793. On cross-examination, Witness D-2-13-D confirmed to have said in his statement of 28 November 2004 that after going to Kabakobwa, the soldiers and *Interahamwe* went to Rukimbira's home, and that he was one of those *Interahamwe*. In this same statement, he confirmed to have said that Kamana, Kiyobe, Yirinwahandi and Bisesemi were also present.<sup>4624</sup> The witness however testified that he and Gashumba were not *Interahamwe* but mere members of the population; since they participated in the killing of Rukimbira, they also became *Interahamwe*.<sup>4625</sup>

1794. In the same statement, Witness D-2-13-D stated that after the Kabakobwa massacres the soldiers and *Interahamwe* went to Rukimbira's house and killed him. On cross-examination, he acknowledged making that statement but he insisted that Rukimbira was killed before noon and before the Kabakobwa massacres.<sup>4626</sup>

1795. Witness D-2-13-D did not see Semwiza at all on the day that Rukimbira was killed. He did not hear of Semwiza being involved at all in the death of Rukimbira.<sup>4627</sup>

1796. Witness D-2-13-D stated that he was tried twice by the *Gacaca* court. At the first trial in 2006, he pled guilty to the murder of Rukimbira and confessed that he was present at Rukimbira's death. He also confessed to killing Nyirabudondi and his child and being present at their deaths. He admitted to Babeya's wife and child being killed in his presence. He confessed to having looted the belongings of Paul Sekamana, an agronomist named Pierre and Daphrose Rwingwini.<sup>4628</sup>

1797. Witness D-2-13-D testified that during his time at the Butare prison, there was a small group of people who were trying to incriminate Kanyabashi.<sup>4629</sup> This group, including an individual with the same full name as Witness FAM, found Witness D-2-13-D in his cell and

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<sup>4619</sup> T. 29 August 2007 pp. 46-47; T. 29 August 2007 p. 65 (ICS); T. 29 August 2007 p. ii (Extract) (Witness D-2-13-D).

<sup>4620</sup> T. 29 August 2007 p. 49; T. 29 August 2007 pp. iv-v (Extract); T. 4 September 2007 p. 33 (ICS) (Witness D-2-13-D).

<sup>4621</sup> T. 29 August 2007 p. 48 (Witness D-2-13-D).

<sup>4622</sup> T. 29 August 2007 pp. 48, 50; T. 29 August 2007 pp. v-vi (Extract) (Witness D-2-13-D).

<sup>4623</sup> T. 5 September 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>4624</sup> T. 4 September 2007 p. 35 (ICS) (Witness D-2-13-D); Defence Exhibit 564 (17-20 June 2004, Statement of Witness D-2-13-D).

<sup>4625</sup> T. 4 September 2007 p. 38 (ICS) (Witness D-2-13-D).

<sup>4626</sup> T. 5 September 2007 pp. 53-54 (ICS) (Witness D-2-13-D); Defence Exhibit 564 (17-20 June 2004, Statement of Witness D-2-13-D).

<sup>4627</sup> T. 29 August 2007 p. 56 (ICS) (Witness D-2-13-D).

<sup>4628</sup> T. 28 August 2007 pp. 66-68 (ICS) (Witness D-2-13-D).

<sup>4629</sup> T. 30 August 2007 p. 49 (ICS) (Witness D-2-13-D).



told him they wanted to recruit him into their community.<sup>4630</sup> They said that there was a group that was going to testify against Kanyabashi in Arusha.<sup>4631</sup> The witness told them that he did not know anything about Kanyabashi and asked them to leave.<sup>4632</sup>

#### 3.6.10.4 Deliberations

1798. It is not disputed that Rukimbira, a Tutsi driver at the *préfecture*, was killed near his residence.<sup>4633</sup> The disputed issues are the time frame of Rukimbira's killing and the involvement of Kanyabashi in this event, if any.

1799. The Prosecution relies on the testimony of Witness FAM in support of its allegation that Rukimbira was killed on a Sunday that followed the Kabakobwa events, *i.e.* 24 April 1994, at 10.00 a.m.<sup>4634</sup> On that occasion, Kanyabashi ordered policemen to remove Rukimbira from his home and hand him over to the population who then killed him because he was Tutsi.<sup>4635</sup> Kanyabashi was present when Rukimbira was put to death.<sup>4636</sup>

1800. The Chamber underscores that Witness FAM, as a detained witness, may have had reason to testify against Kanyabashi in order to receive a more favourable sentence in his case. Accordingly, his evidence should be considered with appropriate caution.

1801. The testimony of Witness FAM is put into question by Witnesses QCB and D-2-13-D. The Chamber recalls that as discussed earlier in this Judgement, Witness D-2-13-D's testimony on fabrication of evidence against Kanyabashi does not undermine the testimony of Witness FAM ().

1802. Even though Witness QCB was not expected to testify about the killing of Rukimbira, he stated in cross-examination that Rukimbira was killed by Martin Nzabamwita on 21 April 1994 after his arrest by soldiers.<sup>4637</sup> Witness QCB however did not witness the killing himself; rather, he learned of it upon his return from Rango the same day.<sup>4638</sup>

1803. Witness D-2-13-D declared that Rukimbira was killed on the morning of the Kabakobwa massacre, *i.e.* Friday, 22 April 1994 at about 10.20 or 10.30 a.m.<sup>4639</sup> A soldier named Athanase Kamana killed Rukimbira with a machete and Martin Nzabamwita finished him off.<sup>4640</sup>

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<sup>4630</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>4631</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 pp. 63-64 (ICS) (Witness D-2-13-D).

<sup>4632</sup> T. 30 August 2007 pp. 50-51 (ICS) (Witness D-2-13-D).

<sup>4633</sup> T. 6 March 2002 pp. 124-125 (Witness FAM); T. 29 August 2007 p. 46 (Witness D-2-13-D); T. 28 March 2002 p. 126 (ICS) (Witness QCB).

<sup>4634</sup> T. 13 March 2002 pp. 85-86; T. 6 March 2002 pp. 124-125 (Witness FAM).

<sup>4635</sup> T. 6 March 2002 pp. 121-123 (Witness FAM).

<sup>4636</sup> T. 6 March 2002 pp. 124-125 (Witness FAM).

<sup>4637</sup> T. 28 March 2002 p. 126 (ICS) (Witness QCB).

<sup>4638</sup> T. 3 April 2002 p. 104 (Witness QCB).

<sup>4639</sup> T. 5 September 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>4640</sup> T. 29 August 2007 pp. 46-47; T. 29 August 2007 p. 65 (ICS); T. 29 August 2007 p. ii (Extract) (Witness D-2-13-D).

1804. In the Chamber's view, Witness D-2-13-D's testimony on the circumstances surrounding Rukimbira's death is not credible. The Chamber does not believe his account that he was compelled by soldiers to board their vehicles and to accompany them.<sup>4641</sup> The Chamber recalls that before this incident, the witness followed the soldiers' vehicles on his own initiative and by foot from Alexis Habyarimana's place to Nkubi Hill.<sup>4642</sup> The Chamber does not find any reason which may have justified the sudden change in the soldiers' behaviour to compel the witness, a civilian, to come with them.

1805. The Chamber observes discrepancies between the respective testimonies of Witnesses FAM and QCB, both Prosecution witnesses. First, the Chamber notes the discrepancy in the witnesses' testimony regarding the date of the incident. In and of itself, the Chamber considers this a minor discrepancy, especially taking into account the significant amount of time elapsed since the events and the fact that Witness QCB testified to a number of events which occurred in April 1994.

1806. However, other more significant discrepancies exist as well. Witness FAM testified that Rukimbira was taken out of his home by policemen in the presence of Kanyabashi, who then ordered his killing.<sup>4643</sup> Witness QCB heard that Rukimbira was arrested and killed by soldiers without any further details. Notably, he makes no mention of Kanyabashi's presence.<sup>4644</sup> Furthermore, Witness FAM's 3 August 1998 confession makes no mention of the order given by Kanyabashi to kill Rukimbira. When asked about this significant omission, the witness provided an unconvincing explanation.<sup>4645</sup>

1807. Taking into account these various discrepancies, the omission, and Witness FAM's status as a detainee at the time of his testimony, the Chamber concludes that it is not proven beyond a reasonable doubt that Kanyabashi ordered the killing of Rukimbira on around 24 April 1994. Because the Chamber has concluded that the Prosecution failed to prove this allegation for independent reasons, it need not address the impact of Witness D-2-21-T's testimony on his credibility as regards this allegation.

### **3.6.11 *Groupe Scolaire* Attacks, April 1994**

#### **3.6.11.1 *Introduction***

1808. Paragraph 6.29 of the Nsabimana and Nteziryayo Indictment alleges that in the days following the death of President Habyarimana, Nteziryayo went to Butare to take over his "new assignment". As the official in charge of civil defence for Butare *préfecture*, between April and June 1994 Nteziryayo supervised the training of militiamen and distributed weapons to them.<sup>4646</sup> Paragraph 6.35 of the Nsabimana and Nteziryayo Indictment alleges that from 20 April 1994 the massacres became widespread within the *préfecture*, and that Tutsis were killed

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<sup>4641</sup> T. 29 August 2007 p. 45; T. 4 September 2007 p. 28 (ICS) (Witness D-2-13-D).

<sup>4642</sup> T. 29 August 2007 p. 45 (Witness D-2-13-D).

<sup>4643</sup> T. 6 March 2002 p. 121 (Witness FAM).

<sup>4644</sup> T. 28 March 2002 p. 126 (ICS) (Witness QCB).

<sup>4645</sup> T. 11 March 2002 p. 79; T. 12 March 2002 p. 97 (Witness FAM); *See* Defence Exhibit 15B (Kanyabashi) (3 August 1998, Confession of Witness FAM to Rwandan Authorities).

<sup>4646</sup> Para. 6.29 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

where they had sought refuge thinking that the authorities would protect them.<sup>4647</sup> The Indictment alleges that Nsabimana and Nteziryayo knew that massacres of the civilian population were being committed and took no measures to stop them.<sup>4648</sup> It further alleges that, acting in their positions of authority, and in concert with others, they participated in the planning and preparation or execution of a common scheme, strategy or plan to commit these atrocities. The crimes were committed by them personally, by persons they assisted or by their subordinates, and with their knowledge or consent.<sup>4649</sup>

1809. The Prosecution submits that soldiers and *Interahamwe* beat and intimidated Tutsi refugees at the *Groupe Scolaire*.<sup>4650</sup> The Prosecution contends that, from April to June 1994 Nteziryayo was responsible for civil self-defence in Butare *préfecture* and as such exercised authority over the *Interahamwe* and certain civilians in the *préfecture*.<sup>4651</sup>

1810. Furthermore, the Prosecution submits that Nsabimana is responsible under Article 6 (3) of the Statute for the massacres which occurred during the time he was *préfet* of Butare, in 1994.<sup>4652</sup> Specifically, the Prosecution alleges that Nsabimana distributed weapons to his subordinates, the *bourgmestres*, to be used in civilian defence. These weapons were subsequently used to kill the Tutsi civilian population.<sup>4653</sup>

1811. In support of its submissions, the Prosecution relies on the testimony of Prosecution Witness TQ and Prosecution Expert Witness Alison Des Forges.

1812. The Nteziryayo and Nsabimana Defences make no specific submissions with regard to the attacks that took place at the *Groupe Scolaire*. The Nsabimana Defence, in particular, did not challenge the allegation.<sup>4654</sup>

### **3.6.11.2 Preliminary Issues**

1813. The Chamber notes that the allegation that there were attacks perpetrated at the *Groupe Scolaire* in April 1994 was not pled in the Nsabimana and Nteziryayo Indictment. Paragraphs 6.60 and 6.61 of the Nsabimana and Nteziryayo Indictment allege that Nsabimana and Nteziryayo knew that massacres were taking place; they took no measures to stop them and indeed consented to their occurrence. The Chamber notes, however, that these paragraphs are not pled in support of any counts against the Accused. Recalling the principles set out in the Preliminary Issues section of this Judgement (), the Chamber considers that the allegations contained in these paragraphs are not charged as crimes; a defect that cannot be cured by the provision of timely, clear and consistent Prosecution disclosures. The Chamber therefore declines to make a finding in this respect.

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<sup>4647</sup> Para. 6.35 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>4648</sup> Para. 6.60 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>4649</sup> Para. 6.61 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>4650</sup> Prosecution Closing Brief, p. 39, para. 40.

<sup>4651</sup> Prosecution Closing Brief, p. 306, para. 2.

<sup>4652</sup> Prosecution Closing Brief, p. 257, para. 90 (referring to Para. 4.3 of the Nsabimana and Nteziryayo Indictment (not in support of counts)).

<sup>4653</sup> Prosecution Closing Brief, p. 258, para. 91.

<sup>4654</sup> Nsabimana Closing Brief, paras. 1466, 1470.

1814. The Chamber notes that Paragraph 6.29 of the Nsabimana and Nteziryayo Indictment sets forth a clear allegation in relation to Nteziryayo's position within Butare *préfecture*. However, this paragraph does not refer to any attacks or killings, especially at the *Groupe Scolaire*. Paragraph 6.35 of the Nsabimana and Nteziryayo Indictment alleges that killings occurred, but does not substantiate Nsabimana or Nteziryayo's alleged role or participation in these killings and as such constitutes a failure to properly plead the modes of participation of the crimes alleged under Article 6 (1) of the Statute. The Chamber recalls that where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused that forms the basis for the charges in question (). Furthermore, there is no mention of any specific attacks at the *Groupe Scolaire* perpetrated by any alleged subordinates.

1815. The Chamber is of the view that the Prosecution's failure to refer to these specific attacks at the *Groupe Scolaire* constitutes a failure to properly plead this charge. Any decision to the contrary would be an impermissible expansion of the Indictment and a radical transformation of the charge as alleged in Paragraphs 6.29 and 6.35, which can only result in prejudice to the Accused.<sup>4655</sup> As a result the Chamber will not make a finding as to the attacks perpetrated at the *Groupe Scolaire* or as to Nsabimana and Nteziryayo's alleged involvement or participation therein.

### **3.6.12 Mugusa Commune Office Meeting, 22 April 1994**

#### **3.6.12.1 Introduction**

1816. Paragraph 5.8 of the Nsabimana and Nteziryayo Indictment alleges that from April to July 1994, Nteziryayo, among others, publicly incited the people to exterminate the Tutsi population and its "accomplices".<sup>4656</sup> The Prosecution submits that Nteziryayo made public statements inciting people to exterminate the Tutsi population not in his personal capacity, but as part of the genocidal plan of the Interim Government.<sup>4657</sup> Paragraph 6.59 of the Nsabimana and Nteziryayo Indictment further provides that military officers, members of the Interim Government and local authorities including Nteziryayo, aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and its "accomplices". Without the complicity of the local and national civil and military authorities, the principal massacres would not have occurred.<sup>4658</sup>

1817. The Prosecution relies on the testimony of Witness QBV to assert that around 22 April 1994, Nteziryayo attended a meeting held outside the Mugusa *commune* office during which Nteziryayo told the *bourgmestre* that all the other *communes* had already finished killing the Tutsis and their accomplices while in Mugusa and Muyaga, nothing had been done yet. Later on the same day and after Nteziryayo's departure, Tutsis who sought refuge at the *commune*

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<sup>4655</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 20.

<sup>4656</sup> Para. 5.8 of the Nteziryayo and Nsabimana Indictment.

<sup>4657</sup> Prosecution Closing Brief, p. 312, para. 24.

<sup>4658</sup> Para. 6.59 of the Nteziryayo and Nsabimana Indictment.

office were killed by, among others, soldiers who accompanied Nteziryayo during the earlier meeting.<sup>4659</sup>

1818. The Defence submits that allegations relating to the Mugusa incidents are not pled in the Indictment.<sup>4660</sup> In the alternative, the Defence challenges the credibility of Witness QBV.<sup>4661</sup> The Defence called Witness AND-5 to prove that Nteziryayo did not participate in nor hold any meeting in Mugusa *commune*. Most of the time Witness AND-5 accompanied the *bourgmestre* and, if Nteziryayo had come to Mugusa to chair a meeting, the witness would have known about it.<sup>4662</sup>

### **3.6.12.2 Preliminary Issues**

1819. The Chamber observes that the meeting allegedly held by Nteziryayo at the Mugusa *commune* office around 22 April 1994 and the subsequent killings of Tutsis refugees who settled there the same day are not specifically pled in the Nsabimana and Nteziryayo Indictment. The Indictment is therefore defective in this regard.

1820. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will proceed to determine whether this defect was cured through subsequent Prosecution disclosure.

1821. The Chamber has reviewed the Prosecution Pre-Trial Brief and its annexes filed on 10 April 2001 as well as the Prosecution opening statement of 12 June 2001 and observes that there is no specific mention of the material allegations at stake.<sup>4663</sup> Witness QBV gave three prior statements respectively dated 11 October 1999, 11 May 2000 and 30 March 2001, which do not refer to the Mugusa *commune* office meeting and the ensuing killings of Tutsis which allegedly took place on around 22 April 1994. The Chamber therefore concludes that the defect is not cured. As a result, the Chamber will not make any finding on these specific factual allegations.

## **3.6.13 Mutunda Stadium Meeting, 18-19 April 1994, and Killings, 25-27 April 1994**

### **3.6.13.1 Introduction**

1822. The Nyiramasuhuko and Ntahobali Indictment and the Nsabimana and Nteziryayo Indictment allege that from late 1990 to July 1994, Nyiramasuhuko and Nsabimana conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. In executing this plan they organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>4664</sup>

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<sup>4659</sup> Prosecution Closing Brief, p. 312, para. 25.

<sup>4660</sup> Nteziryayo Closing Argument, T. 27 April 2009 p. 61.

<sup>4661</sup> Nteziryayo Closing Brief, paras. 571-607.

<sup>4662</sup> Nteziryayo Closing Brief, paras. 614, 616.

<sup>4663</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBV (12).

<sup>4664</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko); Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-11 against Nyiramasuhuko); Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko); Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts

1823. The Prosecution submits that numerous meetings were held in Butare *préfecture* in which decisions were made to further the conspiracy to exterminate the Tutsis.<sup>4665</sup> Pursuant to the conspiracy, large-scale massacres ensued throughout Butare.<sup>4666</sup> According to the Prosecution, Nyiramasuhuko and Nsabimana took part in such a meeting at Mutunda Stadium,<sup>4667</sup> Mbazi *commune*, on or about 18 April 1994 after which killings of Tutsis took place.<sup>4668</sup>

1824. Nyiramasuhuko is charged with genocide pursuant to Article 6 (1) and 6 (3) in respect of massacres of Tutsis, or individuals who appeared to be Tutsis, committed by the military, *gendarmes*, Hutu militiamen and others in Butare *préfecture* from April to July 1994.<sup>4669</sup> The Prosecution alleges that the massacres perpetrated throughout Butare, including one at Mutunda Stadium on or about 19 April 1994, were the result of a strategy that Nyiramasuhuko planned, adhered to and elaborated.<sup>4670</sup> Nyiramasuhuko is also charged with extermination as a crime against humanity by reason of her participation in the massacre at Mutunda Stadium.<sup>4671</sup>

1825. Nsabimana is charged with murder and extermination as crimes against humanity pursuant to Article 6 (1) and 6 (3) of the Statute. The Prosecution submits that Nsabimana knew or ought to have known that widespread and systematic attacks against Tutsis were occurring throughout Butare, including Mbazi *commune*.<sup>4672</sup>

1826. In support of these allegations, the Prosecution relies upon the testimony of Prosecution Witness FAS.

1827. The Nyiramasuhuko Defence submits that Nyiramasuhuko had nothing to do with the attack on Tutsis who gathered at Mutunda Stadium and that she did not set foot there at any time between April and July 1994. In addition, the Nsabimana and Nyiramasuhuko Defence challenge Prosecution Witness FAS's credibility and submit that the alleged meeting at Mutunda Stadium did not take place.<sup>4673</sup> The Nyiramasuhuko Defence relies on Defence Witnesses WZNJC and LHC, and the Accused Nyiramasuhuko.

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against Nsabimana); Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 6.61 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>4665</sup> Prosecution Closing Brief, p. 231, para. 9.

<sup>4666</sup> Prosecution Closing Brief, p. 70, para. 137.

<sup>4667</sup> The Chamber notes that Mutunda Stadium is located in Mbazi *commune*. Witnesses FAS and LHC refer to the stadium as Mbazi Stadium, Witness LHC testified that Mutunda Stadium was located on Mutunda Hill, but that some called it Mbazi Stadium as it was in Mbazi *commune*: T. 15 February 2005 p. 70 (Witness LHC). The Chamber thus accepts that these witnesses are referring to the same place, namely Mutunda Stadium.

<sup>4668</sup> Prosecution Closing Brief, pp. 70-72, paras. 138-143 (referencing the Mutunda Stadium meeting of 18 April 1994 and involving both Nyiramasuhuko and Nsabimana).

<sup>4669</sup> Prosecution Closing Brief, p. 70, fn. 247 (citing Paras. 6.39, 6.49, 6.50, 6.51, 6.54 and 6.55 of the Nyiramasuhuko and Ntahobali Indictment), pp. 103-104, paras. 261, 264.

<sup>4670</sup> Prosecution Closing Brief, p. 70, para. 137 (Mutunda Stadium killing of 19 April 1994 only involves Nyiramasuhuko).

<sup>4671</sup> Prosecution Closing Brief, pp. 116-117, paras. 303, 305. Although the Prosecution Closing Brief refers to Mukunda Stadium, rather than Mutunda Stadium, the Prosecution recognised that Mukunda and Mutunda were the same place. Prosecution Closing Brief, p. 149, fn. 648.

<sup>4672</sup> Prosecution Closing Brief, pp. 278-282, paras. 161-162, 165-166, 169, 174, 177-178.

<sup>4673</sup> Nyiramasuhuko Closing Brief, paras. 278-284; Nsabimana Closing Brief, paras. 768-802.

### 3.6.13.2 Preliminary Issues

#### *Sufficiency of the Indictments*

1828. The Nyiramasuhuko Defence submits that the Nyiramasuhuko and Ntahobali Indictment is defective for failing to plead the meeting at Mbazi Stadium.<sup>4674</sup> The Nyiramasuhuko Defence also submits that Paragraphs 5.1, 6.52 and 6.56 of the Nyiramasuhuko and Ntahobali Indictment are impermissibly vague, even when read in the context of the Indictment as a whole.<sup>4675</sup>

1829. The Chamber notes that the material facts supporting a charge must be pled in the Indictment with sufficient precision to provide notice to the accused.<sup>4676</sup> The Chamber observes that the Nyiramasuhuko and Ntahobali Indictment contains three paragraphs which refer to Nyiramasuhuko's involvement in meetings.<sup>4677</sup> However, none of the three paragraphs in the Nyiramasuhuko and Ntahobali Indictment encompasses meetings held at or near Mutunda Stadium. In addition, the Prosecution did not specifically plead the Mutunda Stadium meeting in any of the Indictment paragraphs relating to conspiracy. The Chamber thus finds the Nyiramasuhuko and Ntahobali Indictment defective by reason of its failure to refer to the meeting held at Mutunda Stadium in Mbazi *commune* on 18 to 19 April 1994.

1830. The Nsabimana Defence submits that Paragraphs 5.1, 6.57 and 6.61 of the Nsabimana and Nteziryayo Indictment are vague insofar as they fail to identify any dates or locations where Nsabimana may have taken part in elaborating a plan to exterminate Tutsis.<sup>4678</sup> The Chamber observes that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment alleges that Nsabimana took part in meetings, however, the paragraph does not mention the Mutunda Stadium meeting. In addition, the Prosecution did not specifically plead the Mutunda Stadium meeting in any of the Indictment paragraphs relating to conspiracy. The Chamber thus finds the Nsabimana and Nteziryayo Indictment defective by reason of its failure to refer to the meeting held at Mutunda Stadium in Mbazi *commune* on 18 to 19 April 1994.

#### *Curing of the Indictment Defects*

1831. The Chamber will assess whether the Indictment defects were cured through subsequent Prosecution disclosures.

1832. The Chamber observes that the Appendix to the Prosecution Pre-Trial Brief states that on or about 18 April 1994, Witness FAS saw a meeting led by Nsabimana and Nyiramasuhuko at Mbazi Stadium at which it was decided to kill Tutsis and burn their houses. That night

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<sup>4674</sup> Ntahobali Closing Brief, para. 78 (vii).

<sup>4675</sup> Ntahobali Closing Brief, paras. 44, 55.

<sup>4676</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 18; *Nahimana et al.*, Judgement (AC), para. 322.

<sup>4677</sup> Para. 6.32 of the Nyiramasuhuko and Ntahobali Indictment contains a general allegation that numerous meetings were held at the Butare *préfecture* office involving various authorities of the *préfecture* and is cited in support of Counts 1-3, 5-6, 8-10 as to Nyiramasuhuko only. Para. 6.13 alleges that numerous Cabinet meetings were held which involved various ministers, including Nyiramasuhuko, and at which they were briefed on the massacres. Para. 6.14 alleges that directives and instructions intended to incite and aid and abet the perpetration of massacres were issued during these Cabinet meetings. Paras. 6.13 and 6.14 are cited in support of Counts 1-3, 5-6, 8, 10 as to Nyiramasuhuko only.

<sup>4678</sup> Nsabimana Closing Brief, paras. 126-131.

attacks started. Witness FAS participated in some killings of those fleeing the stadium and Nsabimana and Nyiramasuhuko gave orders to kill.<sup>4679</sup>

1833. Witness FAS' statement of 21 February 2001 indicated that on the evening of 18 April 1994 *Préfet* Nsabimana, Minister Nyiramasuhuko and the *bourgmestre* of Mbazi *commune*, Sibomana convened a meeting in Mutunda *secteur* at Mbazi Stadium. Although Witness FAS did not attend the meeting, Gerard Hategekimana, an MDR leader in his *cellule*, told him that he had attended a meeting where it was decided that Tutsis should be killed. The attacks started that night. The following day, 19 April 1994, Witness FAS saw Nyiramasuhuko at the stadium with *gendarmes*, although he was not close enough to her to hear what she was saying.<sup>4680</sup>

1834. The Chamber considers that the content of Witness FAS' previous statement was clear and consistent with the summary of his expected testimony in the Appendix to the Prosecution Pre-Trial Brief. Further, the Chamber notes Witness FAS' previous statement was disclosed on 14 March 2001, well before he commenced his testimony before the Tribunal in April 2004. For the foregoing reasons, the Chamber finds that the Nyiramasuhuko Defence and the Nsabimana Defence had adequate notice of the current allegation.

1835. Further, in the Prosecution Pre-Trial Brief, Witness FAS was listed in support of Counts 1 and 4 against Nsabimana and Counts 1 to 6 and 8 to 11 against Nyiramasuhuko.<sup>4681</sup> In these circumstances, the Chamber finds that Nsabimana and Nyiramasuhuko were on notice that the Prosecution would lead evidence from Witness FAS about the Mutunda Stadium meeting and subsequent killings with respect to the charge of conspiracy to commit genocide (Count 1 in both Indictments).

1836. For the foregoing reasons, the Chamber considers that the defects in the conspiracy-related paragraphs, namely Paragraphs 5.1, 6.52 and 6.56 of the Nyiramasuhuko and Ntahobali Indictment and Paragraphs 5.1, 6.57 and 6.61 of the Nsabimana and Nteziryayo Indictment were cured by the disclosure of timely, clear and consistent information.

#### *Notice of Responsibility for Killings*

1837. Paragraphs 6.38 and 6.47 of the Nyiramasuhuko and Ntahobali Indictment<sup>4682</sup> and Paragraphs 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment<sup>4683</sup> allege that between April and June 1994, Nyiramasuhuko and Nsabimana not only incited but aided and abetted the population in massacring the Tutsis in Butare *préfecture*.

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<sup>4679</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAS (30).

<sup>4680</sup> 21 February 2001, Statement of Witness FAS, disclosed 14 March 2001 and 7 June 2001.

<sup>4681</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAS (30).

<sup>4682</sup> Para. 6.38 of the Nyiramasuhuko and Ntahobali (in support of Counts 2-6, 8 and 10 pursuant to Article 6 (1) and 6 (3), except for Count 4 which charges Article 6 (1) responsibility alone against Nyiramasuhuko); Para. 6.47 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-6, 8 and 10 pursuant to Article 6 (1) and 6 (3), except for Count 4 which charges Article 6 (1) responsibility alone against Nyiramasuhuko).

<sup>4683</sup> Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-7 and 9 against Nsabimana); Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana).



1838. The Chamber notes these paragraphs fail to mention how the respective Accused aided and abetted in the massacres they are alleged to have participated in. These paragraphs also fail to mention any specific dates or locations of any massacres in which the Accused allegedly participated. Because of their vagueness, the Chamber considers these Indictment paragraphs defective.

1839. The Chamber must then determine whether these Indictment paragraphs were cured of their respective defects through subsequent Prosecution disclosures. The Chamber observes that the summary of anticipated evidence of Witness FAS in the Appendix to the Prosecution Pre-Trial Brief states that after the foregoing meeting held on or around 18 April 1994, attacks started and that Nsabimana and Nyiramasuhuko gave orders to kill during those attacks.<sup>4684</sup>

1840. In his previous statement of 21 February 2001, Witness FAS stated that the day after the meeting of 18 April 1994, he saw Nyiramasuhuko at the stadium with *gendarmes*, although he was not close enough to her to hear what she was saying. That afternoon, Witness FAS heard gunshots and grenades from which he understood the massacre of refugees had started. His statement concludes with “[t]his in short is the circumstance under which I saw Pauline and Sylvain. They came to give us order [*sic*] to kill Tutsis and we executed the orders.”<sup>4685</sup>

1841. Although Witness FAS’ statement does not outline how or what orders were given, the Chamber is of the view that the information contained in the statement is clear and consistent with the summary of the witness’ expected testimony in the Appendix to the Pre-Trial Brief. As already noted, the statement was disclosed in a timely manner, three years before he commenced his testimony. For the foregoing reasons, the Chamber finds that the Nyiramasuhuko Defence and the Nsabimana Defence had adequate notice that they would also be charged for their role in the killings which followed the 18 April 1994 meeting.

### 3.6.13.3 Evidence

#### Prosecution Witness FAS

1842. Witness FAS, a Hutu farmer and detainee from Mbazi *commune*,<sup>4686</sup> testified that around 18 April 1994, the *bourgmestre* of his *commune* asked the population via megaphone for assistance to counter the people from Maraba *commune* who had come and created disorder.<sup>4687</sup> In compliance with the *bourgmestre*’s instructions, a group of people, including Witness FAS, left his *cellule* for Gihindamuyaga, at 7.00 a.m. that day.<sup>4688</sup> The group was comprised of Hutus, Tutsis and Twas from Mbazi *commune*, and was armed with clubs, spears and machetes.<sup>4689</sup> There were also four *commune* policemen with green shirts and yellow berets who carried guns.<sup>4690</sup> Once in Gihindamuyaga, the Mbazi group went across a ditch through the stream that separated Mbazi from Huye *commune*. They were able to push back

<sup>4684</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAS (30).

<sup>4685</sup> 21 February 2001, Statement of Witness FAS, disclosed 14 March 2001.

<sup>4686</sup> T. 28 April 2004 p. 27; T. 29 April 2004 p. 39 (Witness FAS); Prosecution Exhibit 108 (Personal Particulars).

<sup>4687</sup> T. 28 April 2004 p. 29; T. 29 April 2004 p. 9 (Witness FAS).

<sup>4688</sup> T. 28 April 2004 pp. 29, 57-58 (Witness FAS).

<sup>4689</sup> T. 28 April 2004 pp. 30, 59 (Witness FAS).

<sup>4690</sup> T. 28 April 2004 p. 30; T. 29 April 2004 p. 12 (ICS) (Witness FAS).

the people from Maraba *commune* because they had policemen with rifles.<sup>4691</sup> The invaders from Maraba had no weapons and retreated behind the stream.<sup>4692</sup> The Mbazi group stayed at the ditch until noon.<sup>4693</sup>

1843. The Mbazi group was forced to leave the ditch area when two soldiers, known to Witness FAS, arrived from Butare aboard a red Hilux vehicle. These soldiers wore camouflage uniforms and black berets.<sup>4694</sup> The soldiers started shooting at the Mbazi group.<sup>4695</sup> The group scattered and went home through the forest.<sup>4696</sup>

1844. Witness FAS testified that on their way back from Gihindamuyaga, the Mbazi group saw Nyiramasuhuko, Nsabimana, the *commune* secretary Gérard Hategekimana and *Responsable de cellule* François Sinzabakwira on the road at Byiza, not far from Mutunda Stadium.<sup>4697</sup> Nyiramasuhuko, Nsabimana and the others stood next to Nyiramasuhuko's car, a white double-cabin Hilux, parked on the road.<sup>4698</sup> The *bourgmestre* of Mbazi *commune*, Antoine Sibomana, arrived shortly thereafter with his driver. Witness FAS heard the *bourgmestre* say that he had come from Butare.<sup>4699</sup>

1845. Witness FAS followed the five authorities, including Nyiramasuhuko and Nsabimana, as they walked to the stadium, where they proceeded to speak among themselves for some time.<sup>4700</sup> Byiza and Mutunda Stadium are very close to each other.<sup>4701</sup> The authorities stood inside the stadium.<sup>4702</sup> Inside the stadium there were seats, and the authorities stood at the fourth bench in the row, about four metres away from Witness FAS.<sup>4703</sup> Witness FAS stood outside the stadium fence and listened to what the authorities were saying.<sup>4704</sup> Witness FAS heard Nyiramasuhuko tell the *bourgmestre* to "let the people kill these snakes, the Tutsis and all those who looked like Tutsi."<sup>4705</sup> Nyiramasuhuko further stated that if they needed firearms, she would provide them with firearms.<sup>4706</sup> At that time, refugees had not yet gathered at the stadium.<sup>4707</sup>

1846. Witness FAS listened for only two minutes before heading home.<sup>4708</sup> When it was put to Witness FAS that his prior statement of 21 February 2001 stated that he remained outside the stadium and heard nothing that might have been said by the authorities, Witness FAS

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<sup>4691</sup> T. 28 April 2004 pp. 30, 59 (Witness FAS).

<sup>4692</sup> T. 29 April 2004 p. 12 (ICS) (Witness FAS).

<sup>4693</sup> T. 28 April 2004 p. 31 (Witness FAS).

<sup>4694</sup> T. 28 April 2004 p. 32 (Witness FAS).

<sup>4695</sup> T. 28 April 2004 p. 33; T. 29 April 2004 p. 12 (ICS) (Witness FAS).

<sup>4696</sup> T. 28 April 2004 p. 33 (Witness FAS).

<sup>4697</sup> T. 28 April 2004 pp. 33-34 (Witness FAS).

<sup>4698</sup> T. 28 April 2004 p. 34; T. 29 April 2004 p. 19 (Witness FAS).

<sup>4699</sup> T. 28 April 2004 p. 33; T. 29 April 2004 pp. 19, 21, 48 (Witness FAS).

<sup>4700</sup> T. 28 April 2004 pp. 34-35; T. 29 April 2004 pp. 22-23 (Witness FAS).

<sup>4701</sup> T. 29 April 2004 p. 53 (Witness FAS).

<sup>4702</sup> T. 29 April 2004 p. 22 (Witness FAS).

<sup>4703</sup> T. 28 April 2004 pp. 34-35; T. 29 April 2004 pp. 22, 53-54 (Witness FAS).

<sup>4704</sup> T. 29 April 2004 pp. 22, 53 (Witness FAS).

<sup>4705</sup> T. 28 April 2004 p. 34; T. 29 April 2004 p. 23 (Witness FAS).

<sup>4706</sup> T. 28 April 2004 p. 35; T. 29 April 2004 pp. 23-24 (Witness FAS).

<sup>4707</sup> T. 29 April 2004 pp. 22-23 (Witness FAS).

<sup>4708</sup> T. 28 April 2004 p. 35; T. 29 April 2004 pp. 23-24 (Witness FAS).

responded that he did not know the investigators were from the court and so he did not want them to discover that he had followed the authorities at that time.<sup>4709</sup>

1847. Later that afternoon [18 April 1994], Witness FAS met Gérard Hategekimana and Gasper Sabagirwa at a bar. Hategekimana told those present that he had just come back from a meeting held by Nyiramasuhuko, who had asked them to kill the Tutsis.<sup>4710</sup> Thereafter, Hategekimana ordered Witness FAS and others to go and look for drums. Upon his orders, Witness FAS and others obtained drums and beat them throughout the night. That night they visited Tutsis' homes to flush out and kill Tutsis, they looted their property and set their homes on fire.<sup>4711</sup> Only one person was killed that night. Witness FAS personally went to six Tutsi homes that night.<sup>4712</sup>

1848. Witness FAS later testified that these dates were estimates and he could not be sure whether his encounter with the authorities occurred on 18 or 19 April 1994.<sup>4713</sup> He did not know if the killings actually occurred on 25 April 1994.<sup>4714</sup> He later testified that it would not be right to say that the killings occurred on 25 April 1994.<sup>4715</sup>

1849. The following morning [19 April 1994], Witness FAS met the Mbazi *commune* secretary and *responsable de cellule*, François Sinzabakwira, at a bar.<sup>4716</sup> Sinzabakwira called upon Witness FAS and others to kill all Tutsis who had hidden at the *commune* secretary's house, which they did, killing 14 Tutsis.<sup>4717</sup> After being told by Sinzabakwira that other Tutsis had gone to the Mutunda Stadium in the morning, Witness FAS and others decided to go there as well.<sup>4718</sup> Witness FAS went there in the morning then immediately left and returned again in the evening with others.<sup>4719</sup> Witness FAS was armed with a club that morning.<sup>4720</sup> Witness FAS saw about 3,000 unarmed Tutsis had gathered at the Mutunda Stadium that morning.<sup>4721</sup> Witness FAS testified that the Tutsis at the stadium were killed during the day.<sup>4722</sup> However, the killings had not yet begun when Witness FAS left the stadium that morning.<sup>4723</sup> He did not see Nyiramasuhuko or any *commune* police at the stadium in the morning.<sup>4724</sup>

1850. Witness FAS testified that he returned to the stadium with others later that evening when he heard gunfire and explosions coming from the stadium.<sup>4725</sup> He later testified that he

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<sup>4709</sup> T. 29 April 2004 pp. 24-26 (Witness FAS).

<sup>4710</sup> T. 28 April 2004 p. 35 (Witness FAS).

<sup>4711</sup> T. 28 April 2004 pp. 35-36; T. 29 April 2004 pp. 29-30 (ICS) (Witness FAS).

<sup>4712</sup> T. 28 April 2004 p. 36 (Witness FAS).

<sup>4713</sup> T. 29 April 2004 pp. 34-35 (Witness FAS).

<sup>4714</sup> T. 29 April 2004 p. 35 (Witness FAS).

<sup>4715</sup> T. 29 April 2004 p. 51 (Witness FAS).

<sup>4716</sup> T. 28 April 2004 p. 36 (Witness FAS).

<sup>4717</sup> T. 28 April 2004 p. 37 (Witness FAS).

<sup>4718</sup> T. 28 April 2004 pp. 37-38; T. 29 April 2004 p. 30 (ICS) (Witness FAS).

<sup>4719</sup> T. 28 April 2004 p. 38; T. 29 April 2004 p. 31 (Witness FAS).

<sup>4720</sup> T. 29 April 2004 p. 31 (Witness FAS).

<sup>4721</sup> T. 28 April 2004 p. 38; T. 29 April 2004 p. 31 (Witness FAS).

<sup>4722</sup> T. 28 April 2004 p. 38 (Witness FAS).

<sup>4723</sup> T. 29 April 2004 pp. 31-32 (Witness FAS).

<sup>4724</sup> T. 29 April 2004 p. 31 (Witness FAS).

<sup>4725</sup> T. 28 April 2004 p. 38; T. 29 April 2004 pp. 31-32 (Witness FAS).

returned to the stadium in the afternoon.<sup>4726</sup> Upon their arrival at the stadium, Witness FAS saw Nyiramasuhuko, *gendarmes*, *commune* policemen and a soldier called Gatwaza from Gahenerezo. At that time, Nyiramasuhuko was moving among the dead bodies and she said something that Witness FAS could not hear given his distance from the authorities.<sup>4727</sup> Witness FAS heard from others that the *bourgmestre* organised the burial of the victims, but Witness FAS did not personally participate in their burial.<sup>4728</sup>

1851. When it was put to the witness that his statement of 21 February 2001 said he saw Nyiramasuhuko and other officials at the stadium in the morning, rather than the afternoon, Witness FAS testified that he saw Nyiramasuhuko and the others that day, and did not specify whether he saw her in the morning or afternoon. When it was put to the witness that his statement made no reference to the presence of a soldier, Witness FAS testified his statement was not re-read to him but he had spoken of the presence of a soldier, in addition to the *gendarmes*.<sup>4729</sup> When it was put to the witness that his statement made no reference to Nyiramasuhuko moving among the bodies of the refugees, Witness FAS repeated that his statement was not re-read to him.<sup>4730</sup>

1852. Witness FAS was unaware of any attack occurring at 5.30 a.m. or that soldiers ran out of ammunition around 7.30 a.m.<sup>4731</sup> Witness FAS was unaware of whether the *bourgmestre* of his *commune* asked the Tutsis to gather at Mutunda Stadium at three o'clock. Witness FAS denied that thousands of refugees had been at Mutunda Stadium for several days and that the authorities had stopped the water supplies to the stadium.<sup>4732</sup> Witness FAS was unaware of a meeting called by the *bourgmestre* on 21 April 1994 attended by all the people in the *commune*.<sup>4733</sup>

1853. Witness FAS testified that Hategekimana was responsible for supervising the killings at the *cellule* level. He did not know who was responsible at the *commune* level.<sup>4734</sup> Witness FAS was involved in the killing of about 50 Tutsis in his home *cellule*.<sup>4735</sup>

1854. Witness FAS denied having killed people at Mutunda Stadium.<sup>4736</sup> When it was put to him that his prior statement stated "we managed to stop those who attempted to flee and killed them with machetes and clubs", Witness FAS clarified that he and others killed three refugees fleeing from the stadium about two kilometres away from the stadium itself.<sup>4737</sup> He explained that when he heard shots coming from the stadium in the afternoon, he went to the valley

<sup>4726</sup> T. 29 April 2004 pp. 31-32 (Witness FAS).

<sup>4727</sup> T. 28 April 2004 p. 38; T. 29 April 2004 pp. 35-36 (Witness FAS).

<sup>4728</sup> T. 29 April 2004 p. 50 (Witness FAS).

<sup>4729</sup> T. 29 April 2004 pp. 35-37 (Witness FAS); Defence Exhibit 232 (Nsabimana) (21 February 2001, Statement of Witness FAS).

<sup>4730</sup> T. 29 April 2004 p. 38 (Witness FAS); Defence Exhibit 232 (Nsabimana) (21 February 2001, Statement of Witness FAS).

<sup>4731</sup> T. 29 April 2004 p. 32 (Witness FAS).

<sup>4732</sup> T. 29 April 2004 p. 34 (Witness FAS).

<sup>4733</sup> T. 29 April 2004 p. 50 (Witness FAS).

<sup>4734</sup> T. 28 April 2004 p. 43 (ICS); T. 29 April 2004 p. 29 (ICS) (Witness FAS).

<sup>4735</sup> T. 28 April 2004 p. 44 (ICS) (Witness FAS).

<sup>4736</sup> T. 28 April 2004 pp. 50, 55-56 (Witness FAS).

<sup>4737</sup> T. 28 April 2004 p. 56 (Witness FAS); Defence Exhibit 232 (Nsabimana) (21 February 2001, Statement of Witness FAS).

where he saw Tutsi refugees fleeing the stadium for the forest. This is where he killed them. He testified that he killed these people because of their Tutsi ethnicity and because he was told to.<sup>4738</sup> Witness FAS testified that he was not accusing Nsabimana of incitement to go and kill, he was only testifying that Nsabimana was present with Nyiramasuhuko at Byiza.<sup>4739</sup>

1855. Witness FAS testified that while Hutus and Tutsis together were defending their *secteur* at Gihindamuyaga, the situation changed after Nyiramasuhuko's meeting and after Hategekimana started sensitising people and exhorting them to kill Tutsis.<sup>4740</sup>

1856. Witness FAS identified Nyiramasuhuko and Nsabimana in court.<sup>4741</sup>

#### Prosecution Witness Ghandi Shukry

1857. Ghandi Shukry testified that Prosecution Exhibit 40 showed video footage of Mbazi *commune* office and stadium taken on 22 February 2001.<sup>4742</sup> As the screen displayed 11:03, the video showed the road leading to Mbazi *commune* office and the front side of Mbazi *commune* office. Shukry stated that Mbazi Stadium was located approximately 400 to 500 metres from the *commune* office.<sup>4743</sup> At time 11:20 the video showed the stadium entrance and at time 11:30 the video showed the opposite side of the stadium entrance.<sup>4744</sup> At time 11:47, the video showed a view of the stadium from a different angle. The alleged mass grave was located behind and under the building shown, 150 metres away from the playground.<sup>4745</sup>

#### Nyiramasuhuko Defence Witness WZNJC

1858. Witness WZNJC, a Hutu student from Mbazi *commune*,<sup>4746</sup> testified that two weeks after the death of President Habyarimana, houses were set ablaze in Huye and Maraba *communes*.<sup>4747</sup> Therefore, pursuant to instructions issued by radio, members of the population in Mbazi *commune*, irrespective of their ethnicity, organised themselves to prevent unrest from spilling over in their *commune* and to repel any possible attacks.<sup>4748</sup>

1859. Witness WZNJC stated that thereafter, Mbazi *commune* was attacked from all sides, including Huye and Maraba *communes*, so the members of the population split up into groups of 200 people. Each group went to places that were not secure. Along with others, Witness WZNJC went to the border between Maraba and Mbazi *communes* on two separate days.<sup>4749</sup>

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<sup>4738</sup> T. 28 April 2004 p. 56 (Witness FAS).

<sup>4739</sup> T. 29 April 2004 p. 51 (Witness FAS).

<sup>4740</sup> T. 29 April 2004 p. 55 (Witness FAS).

<sup>4741</sup> T. 28 April 2004 p. 45 (Witness FAS).

<sup>4742</sup> T. 19 June 2001 pp. 104, 111 (Shukry); Prosecution Exhibit 40 (Video of Mbazi *commune* office and Stadium).

<sup>4743</sup> T. 19 June 2001 p. 105 (Shukry).

<sup>4744</sup> T. 19 June 2001 p. 109 (Shukry).

<sup>4745</sup> T. 19 June 2001 p. 110 (Shukry).

<sup>4746</sup> T. 17 February 2005 pp. 5-6 (Witness WZNJC); Defence Exhibit 270 (Nyiramasuhuko) (Personal Particulars).

<sup>4747</sup> T. 17 February 2005 p. 10 (Witness WZNJC).

<sup>4748</sup> T. 17 February 2005 p. 10; T. 17 February 2005 pp. 70-71 (ICS) (Witness WZNJC).

<sup>4749</sup> T. 17 February 2005 p. 11 (Witness WZNJC).

1860. Witness WZNJC testified that the number of Tutsis who participated in the protection of Mbazi *commune* decreased as the days went by, and at some point, the Tutsis completely withdrew from the group.<sup>4750</sup> Thereafter, Tutsis left their houses and went to settle in various locations including churches and schools within the *commune*.<sup>4751</sup> Witness WZNJC did not know why the Tutsis ceased to take part in the protection of the *commune*.<sup>4752</sup>

1861. Witness WZNJC stated that Tutsis killed their Hutu neighbours in Mbazi; he knew certain Hutus who were killed in his area.<sup>4753</sup> Subsequently, about 500 Tutsis gathered at Mutunda Stadium.<sup>4754</sup> They were armed with the same weapons as other members of the population.<sup>4755</sup> Witness WZNJC testified that there was a confrontation between the Tutsis in the stadium and their attackers, a group of between 500 and 700 Hutus from the same *commune*.<sup>4756</sup> The stadium was not enclosed.<sup>4757</sup>

1862. From his home close by on a hill opposite the stadium,<sup>4758</sup> Witness WZNJC could see the stadium and, during the confrontation, he heard explosions, gunshots and screaming from the stadium.<sup>4759</sup> At around 2.00 p.m., Witness WZNJC went to the stadium to see what was happening; he stayed 100 metres away from the stadium from where he observed an exchange of insults between the people outside the stadium and those inside the stadium.<sup>4760</sup> After 20 minutes he returned home without having seen any fighting.<sup>4761</sup> He could not observe the stadium again from his home because it was early evening and it was no longer easy to see the stadium at night.<sup>4762</sup> Witness WZNJC subsequently learned that, later in the evening, fighting resumed at the stadium.<sup>4763</sup> When it was put to Witness WZNJC that he would not have been able to see Nyiramasuhuko if she was at the stadium in the afternoon, he testified that he would have subsequently heard of her arrival.<sup>4764</sup>

1863. When Witness WZNJC observed the stadium the next morning he no longer saw anyone at the stadium. He believed that some people had died, or were lying on the ground dead.<sup>4765</sup>

1864. Witness WZNJC lived close enough to the stadium to be able to hear loud noises from the stadium.<sup>4766</sup> Witness WZNJC did not hear any beating of drums on the eve or on the day of

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<sup>4750</sup> T. 17 February 2005 p. 12; T. 17 February 2005 p. 73 (ICS) (Witness WZNJC).

<sup>4751</sup> T. 17 February 2005 pp. 13, 39-40 (Witness WZNJC).

<sup>4752</sup> T. 17 February 2005 p. 13 (Witness WZNJC).

<sup>4753</sup> T. 17 February 2005 pp. 13-14; T. 17 February 2005 p. 74 (ICS); T. 21 February 2005 p. 4 (Witness WZNJC).

<sup>4754</sup> T. 17 February 2005 pp. 15-16 (Witness WZNJC).

<sup>4755</sup> T. 17 February 2005 p. 16 (Witness WZNJC).

<sup>4756</sup> T. 17 February 2005 p. 16; T. 17 February 2005 p. 78 (ICS) (Witness WZNJC).

<sup>4757</sup> T. 21 February 2005 p. 5 (Witness WZNJC).

<sup>4758</sup> T. 17 February 2005 p. 17; T. 17 February 2005 p. 77 (ICS) (Witness WZNJC).

<sup>4759</sup> T. 17 February 2005 p. 17; T. 21 February 2005 p. 6 (Witness WZNJC).

<sup>4760</sup> T. 17 February 2005 pp. 17-19, 81; T. 21 February 2005 pp. 14, 16 (Witness WZNJC).

<sup>4761</sup> T. 17 February 2005 pp. 19, 81-82 (Witness WZNJC).

<sup>4762</sup> T. 17 February 2005 p. 20 (Witness WZNJC).

<sup>4763</sup> T. 17 February 2005 p. 19 (Witness WZNJC).

<sup>4764</sup> T. 17 February 2005 p. 83 (Witness WZNJC).

<sup>4765</sup> T. 17 February 2005 p. 20 (Witness WZNJC).

<sup>4766</sup> T. 17 February 2005 p. 20; T. 17 February 2005 p. 77 (ICS) (Witness WZNJC).

the clash in Mutunda Stadium.<sup>4767</sup> He did not see anyone in military uniform, policemen or *Interahamwe*.<sup>4768</sup>

1865. Witness WZNJC never heard that Nyiramasuhuko and Nsabimana came to Gihandamuyaga *secteur* on 18 April 1994 or that they had a meeting where it was decided that Tutsis should be chased out of the *commune* and their houses burnt, or that Nyiramasuhuko promised to supply weapons.<sup>4769</sup> He also did not see Nyiramasuhuko at the stadium or in its vicinity on the day that he went to the stadium or at any other time between April and July 1994.<sup>4770</sup>

1866. When it was put to Witness WZNJC that the Tutsis at Mbazi Stadium were attacked by Hutus, Witness WZNJC testified that they may have been attacked because they had previously killed their Hutu neighbours in Mbazi.<sup>4771</sup>

1867. Witness WZNJC could not remember the dates of the events in question.<sup>4772</sup>

#### Nyiramasuhuko Defence Witness LHC

1868. Witness LHC, a Hutu teacher,<sup>4773</sup> stated that on 26 or 27 April 1994 approximately 500 Tutsis, from Mutunda Hill and other hills, gathered at Mutunda Stadium where they were attacked by Hutus from Huye *commune*.<sup>4774</sup> He could not be very sure of the precise date.<sup>4775</sup> Witness LHC testified that Mutunda Stadium was located on Mutunda Hill; some called it Mbazi Stadium as it was in Mbazi *commune*.<sup>4776</sup> The attack started at about 3.00 to 3.30 p.m. and ended at nightfall, around 6.00 to 6.30 p.m.<sup>4777</sup> Witness LHC was on the other side, opposite the Mutunda Stadium watching what was happening on Mutunda Hill.<sup>4778</sup> It appeared that the attack came from Huye *commune*.<sup>4779</sup> Of the small group of people who were in the stadium, some were armed with clubs and machetes.<sup>4780</sup>

1869. When it was put to Witness LHC that from his house, across another hill he could not see people meeting in the stadium, Witness LHC testified that he could see the stadium since there was no other hill between Mutunda Hill and the hill where he lived.<sup>4781</sup> When it was put to Witness LHC that Mbazi Stadium was surrounded by trees, Witness LHC disagreed.<sup>4782</sup>

<sup>4767</sup> T. 17 February 2005 p. 28; T. 17 February 2005 p. 70 (ICS) (Witness WZNJC).

<sup>4768</sup> T. 17 February 2005 pp. 17-18 (Witness WZNJC).

<sup>4769</sup> T. 17 February 2005 pp. 62-63, 75 (ICS); T. 21 February 2005 p. 16 (Witness WZNJC).

<sup>4770</sup> T. 17 February 2005 p. 28 (Witness WZNJC).

<sup>4771</sup> T. 21 February 2005 p. 12 (Witness WZNJC).

<sup>4772</sup> T. 17 February 2005 pp. 69-70 (ICS) (Witness WZNJC).

<sup>4773</sup> T. 15 February 2005 p. 41; T. 16 February 2005 p. 33 (Witness LHC); Prosecution Exhibit 269 (Personal Particulars).

<sup>4774</sup> T. 15 February 2005 pp. 71-72; T. 16 February 2005 pp. 58-59 (ICS); T. 21 February 2005 p. 43 (ICS) (Witness LHC).

<sup>4775</sup> T. 16 February 2005 pp. 58-59 (ICS) (Witness LHC).

<sup>4776</sup> T. 15 February 2005 p. 70 (Witness LHC).

<sup>4777</sup> T. 15 February 2005 p. 73 (Witness LHC).

<sup>4778</sup> T. 15 February 2005 p. 72; T. 16 February 2005 p. 58 (ICS) (Witness LHC).

<sup>4779</sup> T. 15 February 2005 p. 70 (Witness LHC).

<sup>4780</sup> T. 15 February 2005 p. 72 (Witness LHC).

<sup>4781</sup> T. 16 February 2005 p. 63 (ICS) (Witness LHC).

<sup>4782</sup> T. 16 February 2005 p. 59 (ICS); T. 21 February 2005 p. 43 (ICS) (Witness LHC).

When Witness LHC was shown Prosecution Exhibit 40 (videotape of Mbazi Stadium), he agreed that there were old trees at 11:22 of the video that would have existed in 1994.<sup>4783</sup>

1870. Witness LHC did not know of any instructions issued by the *bourgmestre* to assemble the local Tutsi population in the stadium.<sup>4784</sup> Witness LHC did not hear any beating of drums on the eve or on the day of the clash in Mutunda Stadium.<sup>4785</sup> Witness LHC testified that on the eve of the confrontation at Mutunda Stadium, he had not seen Nyiramasuhuko or the *bourgmestre* of Mbazi *commune*, Antoine Sibomana, at Byiza, an area adjacent to the stadium.<sup>4786</sup>

1871. He stated that no one in military uniform took part in the attack, which was undertaken only by people in civilian clothing.<sup>4787</sup> The day after the confrontation, Witness LHC saw dead bodies at the stadium.<sup>4788</sup> He subsequently heard that people had gone out to collect the dead bodies.<sup>4789</sup> Witness LHC did not see Nyiramasuhuko walking among the bodies the day after the confrontation.<sup>4790</sup>

### Innocent Rutayisire

1872. Innocent Rutayisire, a Hutu trader,<sup>4791</sup> testified that between 15 and 17 April 1994 *Bourgmestre* Sibomana asked both Hutu and Tutsi members of the population to defend the *commune's* border in order to repel attacks from Hutus from Maraba *commune* who wanted to cause insecurity in their *commune*.<sup>4792</sup>

1873. Between 21 and 25 April 1994, massacres started from Ndumyaga and Maraba in Mbazi *commune*, specifically at the Mbazi Stadium which was called Mutunda, located approximately five kilometres from the witness' house.<sup>4793</sup> They woke up in the morning to the explosion of grenades. They were later told by youth who had gone to the stadium that Gatwaza and soldiers of Ngoma camp had killed the Tutsis at the stadium. Those Tutsis were from various *secteurs* of Mbazi *commune* and had sought the protection of the *bourgmestre*.<sup>4794</sup> Gatwaza was a corporal who was working at Ngoma camp and lived in Gahenerezo, at the border between Ngoma and Huye *communes*.<sup>4795</sup>

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<sup>4783</sup> T. 21 February 2005 pp. 43-44 (ICS) (Witness LHC).

<sup>4784</sup> T. 16 February 2005 p. 62 (ICS) (Witness LHC).

<sup>4785</sup> T. 15 February 2005 p. 75 (Witness LHC).

<sup>4786</sup> T. 15 February 2005 p. 74; T. 16 February 2005 p. 32 (Witness LHC).

<sup>4787</sup> T. 15 February 2005 p. 73 (Witness LHC).

<sup>4788</sup> T. 15 February 2005 p. 74 (Witness LHC).

<sup>4789</sup> T. 15 February 2005 p. 75 (Witness LHC).

<sup>4790</sup> T. 15 February 2005 p. 74 (Witness LHC).

<sup>4791</sup> T. 2 October 2006 pp. 8-9 (Rutayisire); Defence Exhibit 478 (Nsabimana) (Personal Particulars) (Partially Under Seal: T. 2 October 2006 p. 83 (ICS)).

<sup>4792</sup> T. 2 October 2006 p. 22 (Rutayisire).

<sup>4793</sup> T. 2 October 2006 pp. 72-73; T. 3 October 2006 p. 61; T. 4 October 2006 p. 9 (Rutayisire).

<sup>4794</sup> T. 2 October 2006 p. 72 (Rutayisire).

<sup>4795</sup> T. 2 October 2006 p. 73 (Rutayisire).



1874. Rutayisire testified that he did not learn about a meeting which allegedly took place at the Mutunda Stadium between Nsabimana, Nyiramasuhuko and Sibomana.<sup>4796</sup> In the period 19 April to 1 May 1994 Rutayisire did not leave his *commune* because of ongoing killings.<sup>4797</sup>

### Nyiramasuhuko

1875. Nyiramasuhuko testified that she never went to Byiza, close to Mutunda Stadium in Mbazi, and never had a meeting with Nsabimana, Gérard Hategekimana, François Sinzabakwira and Antoine Sibomana to discuss the killing of Tutsi refugees at Mutunda Stadium or elsewhere. She never went to Mutunda Stadium where refugees were killed or walked over the bodies of the victims in April 1994.<sup>4798</sup>

### Nsabimana

1876. Nsabimana testified that from 6 April until 19 April 1994 he was at his home in Mbazi *commune* and did not leave his house until the morning of 19 April 1994 when he went to Butare which was about two kilometres away.<sup>4799</sup> Nsabimana testified that on 20 or 21 April 1994, while on his way to the *commune* office, he saw a lot of people running towards Mutunda Stadium although at that time no people were gathered at the stadium.<sup>4800</sup>

1877. Nsabimana testified that he saw the Mbazi *commune bourgmestre*, Sibomana, on 26 April 1994 around 7.00 or 8.00 p.m., at a bar in Mbazi.<sup>4801</sup> He later testified that the meeting occurred on the evening of 25 April 1994.<sup>4802</sup> He initially met with *Bourgmestre* Sibomana to discuss the provision of beans. However, while at the bar the *bourgmestre* told Nsabimana that he had spent the whole day organising the burial of people who had been killed at Mutunda on 25 or 26 April 1994.<sup>4803</sup> The *bourgmestre* did not tell him where the killings occurred, but Nsabimana understood he was referring to killings around the stadium.<sup>4804</sup> According to *Bourgmestre* Sibomana, at 5.00 a.m. on the day of the attack, a vehicle came from Dihindamuyaga<sup>4805</sup> and stopped 800 metres from the stadium at a place called Ndobogo. People came to the stadium and started to launch grenades on the refugees there.<sup>4806</sup> The *bourgmestre* told Nsabimana that a soldier called Gatwaza was responsible for the attack at Mutunda Stadium, together with some people living in Mutunda centre in Mbazi *commune*.<sup>4807</sup>

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<sup>4796</sup> T. 2 October 2006 p. 73; T. 3 October 2006 p. 9 (Rutayisire).

<sup>4797</sup> T. 3 October 2006 p. 37 (Rutayisire).

<sup>4798</sup> T. 29 September 2005 p. 50 (Nyiramasuhuko).

<sup>4799</sup> T. 6 November 2006 pp. 74-75; T. 22 November 2006 pp. 26, 38 (Nsabimana).

<sup>4800</sup> T. 28 November 2006 pp. 3-5 (Nsabimana).

<sup>4801</sup> T. 13 September 2006 p. 65; T. 14 September 2006 p. 5; T. 18 September 2006 pp. 14, 16; T. 6 November 2006 p. 74 (Nsabimana).

<sup>4802</sup> T. 28 November 2006 p. 5 (Nsabimana).

<sup>4803</sup> T. 18 September 2006 p. 16; T. 28 November 2006 p. 5 (Nsabimana).

<sup>4804</sup> T. 18 September 2006 p. 16 (Nsabimana).

<sup>4805</sup> This Judgement adopts the spelling “Dihindamuyaga” found in the English transcript. The Chamber notes, however, that the French transcript spells the same name “Gihindamuyaga”.

<sup>4806</sup> T. 18 September 2006 p. 17 (Nsabimana).

<sup>4807</sup> T. 18 September 2006 pp. 18-19 (Nsabimana).

The people in the stadium were refugees but he did not know why they had gathered there.<sup>4808</sup> He had no idea how many people were killed at the stadium.<sup>4809</sup>

1878. Nsabimana testified that he did not meet *Bourgmestre* Sibomana in Mbazi before these events, nor was there a meeting with Nyiramasuhuko, Sibomana and others around the stadium before the Mutunda killings.<sup>4810</sup>

### 3.6.13.4 Deliberations

1879. The Chamber notes that at the time of his testimony, Witness FAS was a detainee in Rwanda.<sup>4811</sup> He had been arrested on 15 February 1995 and released on 1 February 2003 pursuant to a decree of the President that those who had pled guilty and had served more than half their sentence should be freed.<sup>4812</sup> Pursuant to Rwandan law, Witness FAS spent three months in a solidarity camp and then went home on 5 May 2003.<sup>4813</sup> In December 2003, Witness FAS was re-arrested on the same charges, convicted and sentenced to 12 years in prison by a Rwandan court.<sup>4814</sup> In a judgement rendered by a Rwandan court on 4 December 2003, he was found guilty of the two killings committed in Cyayove *cellule* to which he had previously confessed but he was also convicted of killings to which he did not confess, including killings at Mutunda Stadium, looting and arson.<sup>4815</sup> Because of the fact that Witness FAS was detained again, this time by reason of his involvement in killings at Mutunda Stadium, the Chamber considers that he may have an incentive to implicate the Accused in order to diminish his own responsibility for the killings for which he was convicted. In fact, Witness FAS testified that he killed Tutsis because he was taught to.<sup>4816</sup> Therefore, his testimony will be treated with appropriate caution.

#### 3.6.13.4.1 Meeting at Mutunda Stadium, Around 18 April 1994

1880. Witness FAS was the sole witness to testify about a meeting between Nyiramasuhuko and Nsabimana held just prior to the Mutunda Stadium killings. Witness FAS alleged that from his position outside the stadium fence, he listened to the authorities and heard Nyiramasuhuko, in the presence of Nteziryayo, Gérard Hategekimana and François Sinzabakwira, tell the *bourgmestre* of Mbazi *commune*, Antoine Sibomana, to “let the people kill these snakes, the Tutsi and all those who looked like Tutsi”.<sup>4817</sup> Witness FAS stated that he was four metres away from Nyiramasuhuko, at that time.<sup>4818</sup> In contrast to his testimony, in his previous

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<sup>4808</sup> T. 18 September 2006 p. 19 (Nsabimana).

<sup>4809</sup> T. 28 November 2006 p. 5 (Nsabimana).

<sup>4810</sup> T. 18 September 2006 pp. 16-17; T. 19 September 2006 p. 33 (Nsabimana).

<sup>4811</sup> T. 28 April 2004 pp. 27-28; T. 29 April 2004 p. 39 (Witness FAS).

<sup>4812</sup> T. 28 April 2004 pp. 47-48 (Witness FAS).

<sup>4813</sup> T. 28 April 2004 p. 48 (Witness FAS).

<sup>4814</sup> T. 28 April 2004 p. 49; T. 29 April 2004 p. 53 (Witness FAS).

<sup>4815</sup> November 1999, Confession to Rwandan Authorities, disclosed 12 November 2001 in French and Kinyarwanda and 13 November 2001 in English; T. 28 April 2004 pp. 49-50 (Witness FAS).

<sup>4816</sup> T. 28 April 2004 p. 56 (Witness FAS).

<sup>4817</sup> T. 28 April 2004 pp. 34-35; T. 29 April 2004 pp. 22-23 (Witness FAS).

<sup>4818</sup> T. 28 April 2004 p. 35 (Witness FAS).

statement of 21 February 2001 Witness FAS stated that he remained outside the stadium and heard nothing that might have been said by the authorities.<sup>4819</sup>

1881. Asked about this discrepancy, Witness FAS testified that at the time, he did not want to tell the Prosecution investigators that he had been present because he did not want “those people” to know that he had been with those officials.<sup>4820</sup> The Chamber does not consider this to be a plausible explanation. This discrepancy between his earlier statement and his testimony is significant enough to render his evidence on this specific event unreliable.

1882. In addition, the Chamber is not convinced by Witness FAS’ account that he allegedly met the listed personalities on the road at Byiza, not far from Mutunda Stadium,<sup>4821</sup> or that he followed them to Mutunda Stadium where he overheard their discussions.<sup>4822</sup> Witness FAS’ testimony in this regard was vague, lacking in detail and strikes the Chamber as implausible.

1883. Having regard therefore to the significant discrepancy concerning Witness FAS’ overhearing of discussions that occurred at Mutunda Stadium, in addition to his implausible account as to how he met the authorities in question, the Prosecution has, therefore, failed to prove beyond a reasonable doubt that *inter alia*, Nyiramasuhuko and Nsabimana met at Mutunda Stadium, Mbazi *commune* on or around 18 April 1994 and held a meeting which furthered the alleged conspiracy to exterminate Tutsis.

#### 3.6.13.4.2 Killing of Tutsis at Mutunda Stadium, Around 25-27 April 1994

1884. The Chamber finds credible the testimonies of Witnesses FAS and WZNJC that around two weeks after the death of Habyarimana, unrest unfolded in Mbazi’s neighbouring *communes*, including Maraba.<sup>4823</sup> To ensure security within the *commune*, members of the population of Mbazi comprising Hutus, Tutsis and Twas, went to the border with Maraba to prevent assailants and wrongdoers [from Maraba] from entering Mbazi.<sup>4824</sup> The evidence also established that shortly after, Tutsis, mainly from Mbazi, went to settle at Mutunda Stadium in Mbazi *commune*.<sup>4825</sup> The presence of Tutsis at Mutunda Stadium was corroborated by Witness LHC.<sup>4826</sup>

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<sup>4819</sup> See Defence Exhibit 232 (Nsabimana) (21 February 2001, Statement of Witness FAS).

<sup>4820</sup> T. 29 April 2004 pp. 24-26 (Witness FAS).

<sup>4821</sup> T. 28 April 2004 pp. 33-34 (Witness FAS).

<sup>4822</sup> T. 28 April 2004 pp. 34-35; T. 29 April 2004 pp. 22-23 (Witness FAS).

<sup>4823</sup> T. 28 April 2004 p. 29 (Witness FAS); T. 29 April 2004 p. 9 (Witness FAS); T. 17 February 2005 p. 10 (Witness WZNJC).

<sup>4824</sup> T. 28 April 2004 pp. 29-30, 57-59 (Witness FAS); T. 17 February 2005 p. 10 (Witness WZNJC); T. 17 February 2005 pp. 70-71 (ICS) (Witness WZNJC); T. 2 October 2006 p. 22 (Rutayisire).

<sup>4825</sup> T. 17 February 2005 pp. 15-16 (Witness WZNJC); T. 28 April 2004 p. 38 (Witness FAS); T. 29 April 2004 p. 31 (Witness FAS).

<sup>4826</sup> T. 15 February 2005 pp. 71-72; T. 16 February 2005 pp. 58-59 (ICS); T. 21 February 2005 p. 43 (ICS) (Witness LHC).

1885. However, the evidence differs as to the number of Tutsis who gathered at the stadium. Witness FAS mentioned about 3,000 individuals, whereas Witnesses WZNJC and LHC estimated that there were around 500 people.<sup>4827</sup>

1886. The Chamber accepts that Witness FAS was present during the attacks and had first-hand knowledge of the event given that Witness FAS was convicted based upon his participation in the killings at Mutunda Stadium. Further, Defence witnesses corroborated aspects of Witness FAS' testimony about events at Mutunda Stadium. For example, Witness FAS' sighting of Gatwaza at Mutunda Stadium was corroborated by both Nsabimana's and Rutayisire's hearsay testimony claiming that a soldier by the name of Gatwaza was responsible for the attack at Mutunda Stadium.<sup>4828</sup> The Chamber thus accepts that Witness FAS was present at the stadium and for this reason finds his estimate that there were 3,000 Tutsis at the stadium credible. In contrast, both Witnesses WZNJC and LHC based their estimates on what they observed from a certain distance from Mutunda Stadium.<sup>4829</sup>

1887. Based on the evidence of Witnesses FAS, WZNJC, LHC and Nsabimana, it is not disputed that Tutsis who gathered at Mutunda Stadium were attacked in April 1994, resulting in the deaths of some members of the group.<sup>4830</sup> However, there is a discrepancy in respect of when the event occurred. While Witness FAS admitted he placed this event on 19 April 1994 in his written statement, he testified that these dates were estimates and he could not be sure whether his encounter with the authorities occurred on 18 or 19 April 1994.<sup>4831</sup> He also was not sure if the killings actually occurred on 25 April 1994, although he later testified that it would not be right to say that the killings occurred on 25 April 1994.<sup>4832</sup>

1888. While Witness WZNJC could not remember the dates of the events in question,<sup>4833</sup> a review of the timeline of events he recounted in his testimony makes clear that the Mutunda attacks occurred after the general unrest in the *commune*<sup>4834</sup> which he estimated occurred two weeks after the death of President Habyarimana.<sup>4835</sup> Thus, according to Witness WZNJC, the Mutunda attacks occurred some time after 18 April 1994. According to Rutayisire, massacres started in Mbazi *commune* and specifically at Mutunda Stadium between 21 and 25 April 1994,<sup>4836</sup> whereas Witnesses LHC and Nsabimana place it around 25 to 27 April 1994.<sup>4837</sup> In

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<sup>4827</sup> T. 28 April 2004 p. 38 (Witness FAS); T. 29 April 2004 p. 31 (Witness FAS); T. 15 February 2005 pp. 71-72 (Witness LHC); T. 17 February 2005 pp. 15-16 (Witness WZNJC).

<sup>4828</sup> T. 28 April 2004 p. 38 (Witness FAS); T. 2 October 2006 p. 72 (Rutayisire); T. 18 September 2006 pp. 18-19 (Nsabimana).

<sup>4829</sup> T. 17 February 2005 p. 17 (Witness WZNJC); T. 17 February 2005 p. 77 (ICS) (Witness WZNJC); T. 15 February 2005 p. 72 (Witness LHC); T. 16 February 2005 p. 58 (ICS) (Witness LHC).

<sup>4830</sup> T. 28 April 2004 p. 38 (Witness FAS); T. 17 February 2005 p. 16 (Witness WZNJC); T. 17 February 2005 p. 78 (ICS) (Witness WZNJC); T. 15 February 2005 pp. 71-72 (Witness LHC); T. 16 February 2005 pp. 58-59 (ICS) (Witness LHC); T. 18 September 2006 pp. 16-17 (Nsabimana).

<sup>4831</sup> T. 29 April 2004 pp. 34-35 (Witness FAS); Defence Exhibit 232 (Nsabimana) (21 February 2001, Statement of Witness FAS).

<sup>4832</sup> T. 29 April 2004 pp. 35, 50-51 (Witness FAS).

<sup>4833</sup> T. 17 February 2005 pp. 69-70 (ICS) (Witness WZNJC).

<sup>4834</sup> T. 17 February 2005 pp. 15-16 (Witness WZNJC).

<sup>4835</sup> T. 17 February 2005 p. 10 (Witness WZNJC).

<sup>4836</sup> T. 2 October 2006 pp. 72-73; T. 3 October 2006 p. 61; T. 4 October 2006 p. 9 (Rutayisire).

<sup>4837</sup> T. 16 February 2005 pp. 58-59 (ICS) (Witness LHC); T. 18 September 2006 p. 16 (Nsabimana); T. 28 November 2006 p. 5 (Nsabimana).

view of the corroborated evidence of Witnesses LHC, WZNJC, Rutayisire and Nsabimana, the Chamber considers that the killings of Tutsis at Mutunda Stadium occurred on or around 25-27 April 1994. In any case, the Chamber accepts Witness FAS' explanation that the date of 19 April 1994 that he put forward as the time of the killing of Tutsis at Mutunda Stadium was only an estimate and that the actual time frame of this attack is around 25 to 27 April 1994.<sup>4838</sup>

1889. With regard to Nyiramasuhuko's alleged presence during the killings, the Chamber notes that Witness FAS is the sole witness to claim to have seen Nyiramasuhuko at Mutunda Stadium on the evening of the attack. Witness FAS testified that at that time, Nyiramasuhuko was in the company of certain persons, including a soldier called Gatwaza, and that Nyiramasuhuko was moving among the dead bodies.<sup>4839</sup> Nyiramasuhuko denied her presence.<sup>4840</sup>

1890. The Chamber recalls the discrepancy between Witness FAS' testimony and his written statement concerning Nyiramasuhuko's presence. In his written statement Witness FAS stated that he saw Nyiramasuhuko at Mutunda Stadium when he went there on the morning of 19 April 1994 at which time she was walking among the refugees. At trial, Witness FAS testified that he did not see Nyiramasuhuko or any *commune* police at the stadium when he went in the morning.<sup>4841</sup> Rather, he saw Nyiramasuhuko, together with *gendarmes*, *commune* policemen and a soldier called Gatwaza from Gahenerezo when he returned to the stadium in the afternoon or evening of 19 April 1994.<sup>4842</sup> At that time, Nyiramasuhuko was moving among the dead bodies and she said something that Witness FAS could not hear given the distance between the authorities and Witness FAS himself.<sup>4843</sup>

1891. When this discrepancy was put to the witness, Witness FAS testified that he did not specify whether he saw Nyiramasuhuko at Mutunda Stadium in the morning or afternoon.<sup>4844</sup> The Chamber rejects this explanation considering it is clearly contradictory to the testimony just cited.

1892. Accordingly, notwithstanding the Chamber's view that the attack at Mutunda Stadium occurred and that Witness FAS was present at the stadium during the attack, the Chamber is of the opinion that Witness FAS' contradictory and uncorroborated evidence as to Nyiramasuhuko's presence is not sufficiently reliable to ground a finding of fact beyond a reasonable doubt. As such, it is not established beyond a reasonable doubt that Nyiramasuhuko was present at Mutunda Stadium on the evening of the attack.

1893. As concerns Nsabimana, Witness FAS never testified that Nsabimana was present during the killings at Mutunda Stadium. In fact, he testified that he was not accusing Nsabimana of incitement to kill, he was only testifying that Nsabimana was present with Nyiramasuhuko during the meeting at Byiza.<sup>4845</sup> Given that the Prosecution did not charge

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<sup>4838</sup> T. 29 April 2004 p. 35 (Witness FAS).

<sup>4839</sup> T. 28 April 2004 p. 38; T. 29 April 2004 pp. 35-36 (Witness FAS).

<sup>4840</sup> T. 29 September 2005 p. 50 (Nyiramasuhuko).

<sup>4841</sup> T. 29 April 2004 p. 31 (Witness FAS).

<sup>4842</sup> T. 28 April 2004 p. 38; T. 29 April 2004 pp. 31-32 (Witness FAS).

<sup>4843</sup> T. 28 April 2004 p. 38; T. 29 April 2004 pp. 35-36 (Witness FAS).

<sup>4844</sup> T. 29 April 2004 pp. 35-36 (Witness FAS).

<sup>4845</sup> T. 29 April 2004 p. 51 (Witness FAS).

Nsabimana for any alleged role in the killings that occurred at Mutunda Stadium pursuant to Article 6 (1), the Chamber is not presently required to make any finding in this respect.

### 3.6.14 Meetings After Security Committee Press Release, 26-28 April 1994

#### 3.6.14.1 Introduction

1894. The Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment allege that from late 1990 to July 1994, Nsabimana and Kanyabashi conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. Nsabimana and Kanyabashi, together with others, allegedly adhered to and executed this plan and in doing so, organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>4846</sup> The Nsabimana Indictment alleges that Nsabimana took part in meetings with his *bourgmestres*, including at least one convened by Nyiramasuhuko in April 1994, during which the progress of the massacres was discussed as well as the means by which to complete them.<sup>4847</sup> The Kanyabashi Indictment alleges that Kanyabashi held a meeting in Ngoma Parish in late April 1994 during which he gave assurances that the massacres were over. Tutsis who were fleeing the killings sought refuge in Ngoma Parish Church and were later killed.<sup>4848</sup>

1895. The Prosecution submits that Nsabimana participated in numerous meetings in Butare *préfecture* during which decisions were made to further the extermination of Tutsis. Nsabimana's role in the conspiracy to commit genocide was, *inter alia*, to convene and attend meetings to give effect to the plan. The Prosecution argues that Nsabimana reached an agreement with his co-conspirators to kill Tutsis in Butare.<sup>4849</sup> It submits that one aspect of Nsabimana's meeting activities involved implementing the Interim Government's campaign of pacification or restoring security.<sup>4850</sup> In this connection, the Prosecution points to a press release dated 25 April 1994 addressed to the inhabitants of Ngoma *commune* in which Nsabimana ordered security meetings to be held at Huye Stadium on 26 April 1994 for the inhabitants of Butare-ville *secteur*; at Ngoma Parish football field on 27 April 1994 for the inhabitants of Ngoma and Matyazo *secteurs*; and in Rango on 28 April 1994 for the inhabitants of Cyarwa, Nkubi and Sahera *secteurs*.<sup>4851</sup> The Prosecution claims that these meetings demonstrate that Nsabimana was aware of the killings of Tutsis in Butare *préfecture*. Nsabimana and Kanyabashi organised the meeting of 27 April 1994 at the Ngoma Parish football field where the attendees were informed that residents would be expected to participate in patrolling and guarding roadblocks.<sup>4852</sup> Another meeting was alleged to have taken place on 27 April 1994, during which President Sindikubwabo told the *préfecture* Security Committee to bring the killings under greater control.<sup>4853</sup> The Prosecution contends

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<sup>4846</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts); Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>4847</sup> Para. 6.28 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>4848</sup> Para. 6.35 of the Kanyabashi Indictment (in support of Counts 2-3, 5-9).

<sup>4849</sup> Prosecution Closing Brief, pp. 230-232, paras. 9, 14-15.

<sup>4850</sup> Prosecution Closing Brief, pp. 245-248, paras. 55-62.

<sup>4851</sup> Prosecution Closing Brief, p. 245, para. 57; Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *Commune*, 25 April 1994).

<sup>4852</sup> Prosecution Closing Brief, p. 246, paras. 57-58; p. 394, para. 29.

<sup>4853</sup> Prosecution Closing Brief, p. 246, para. 58.

that the aim of the press release issued after that meeting on 27 April 1994 was not to restore security but rather to involve as many people as possible in the killing of Tutsis.<sup>4854</sup>

1896. The Prosecution also submits that Kanyabashi's role in the genocide conspiracy was, *inter alia*, to attend meetings, give instructions to kill Tutsis in hiding and use his position and power to incite the population to join in the killings.<sup>4855</sup>

1897. In support of its submissions, the Prosecution relies on the testimony of Prosecution Expert Witness Alison Des Forges and Witnesses RL and QA.<sup>4856</sup> Ntahobali also gave evidence against Kanyabashi and Nsabimana.

1898. In addition to its submissions on vagueness of Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment, considered below, the Nsabimana Defence challenges the reliability of Alison Des Forges, contending that the press release dated 25 April 1994 was an initiative of the *préfet* of Butare to control the massacres and was not an instrument to implement directives of the Interim Government.<sup>4857</sup> According to the Nsabimana Defence, the aim of the meetings of 26, 27 and 28 April 1994 was to condemn the killings and appeal for calm.<sup>4858</sup> Furthermore, it asserts the press release dated 27 April 1994 made no distinction between Hutus and Tutsis and therefore could not be interpreted as encouraging the killing of Tutsis; on the contrary, its aim was to stop attacks on Tutsis.<sup>4859</sup>

1899. In addition to its submissions on the vagueness of the Kanyabashi Indictment, considered below, the Kanyabashi Defence submits that the Prosecution has failed to prove that meetings to plan the genocide took place or that Kanyabashi participated in any conspiracy.<sup>4860</sup> It asserts that Kanyabashi's character was such that he would not have involved himself in the planning of genocide.<sup>4861</sup>

1900. In support of their submissions, the Nsabimana Defence and Kanyabashi Defence rely on Kanyabashi Expert Witness Filip Reyntjens, Nyiramasuhuko Expert Witness Eugène Shimamungu, Kanyabashi Defence Witnesses D-2-14-W, D-2-5-I and D-2-13-D, Nsabimana Defence Witnesses BE and Charles Karemano and Nsabimana.<sup>4862</sup>

### **3.6.14.2 Preliminary Issues**

1901. The Nsabimana Defence submits that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is impermissibly vague because it does not give an indication of the meeting dates, venues, attendees or the number of meetings. It also argues that Paragraph 6.28 does not

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<sup>4854</sup> Prosecution Closing Brief, pp. 53-55, paras. 87, 92; p. 246, para. 58; Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994).

<sup>4855</sup> Prosecution Closing Brief, p. 388, para. 12.

<sup>4856</sup> Prosecution Closing Brief, pp. 394-395, paras. 29, 32.

<sup>4857</sup> Nsabimana Closing Brief, para. 727; Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *Commune*, 25 April 1994).

<sup>4858</sup> Nsabimana Closing Brief, paras. 1845-1856.

<sup>4859</sup> Nsabimana Closing Brief, paras. 747-748; Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994).

<sup>4860</sup> Kanyabashi Closing Brief, paras. 21, 41, 248-278.

<sup>4861</sup> Kanyabashi Closing Brief, para. 29.

<sup>4862</sup> Nsabimana Closing Brief, paras. 727-766, 1845-1856; Kanyabashi Closing Brief, paras. 43-56.

clearly state whether the progress of the massacres and the means by which to complete them was discussed during all of the meetings, or only at the meeting or meetings convened by Nyiramasuhuko.<sup>4863</sup>

1902. The Chamber notes that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment alleges that Nsabimana participated in other meetings with his *bourgmestres*, including one meeting called by Nyiramasuhuko, where the progress and means to complete the massacres were discussed. The Chamber observes that this paragraph fails to indicate the number and dates of the alleged meetings, although it specifies that the participants at such meetings are said to have been *bourgmestres*. As regards the purpose of the meetings, a plain reading of Paragraph 6.28 suggests that the progress of the massacres and how to complete them was only discussed at a single meeting which was convened by Nyiramasuhuko. However, Paragraph 6.28 refers to meetings in the plural. Accordingly, there is confusion as to how many meetings Nsabimana participated in, how many were convened by Nyiramasuhuko and what was discussed at the meetings. The Chamber therefore considers that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is defective. The Chamber must then determine whether Paragraph 6.28 was cured of its defects through subsequent Prosecution disclosures.

1903. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes: (1) In relation to the alleged meeting at Huye Stadium on 26 April 1994, no information was provided, either in the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief or in witnesses' prior statements. The Chamber thus finds that Nsabimana was not put on notice of this specific allegation; (2) In relation to the alleged meeting at Ngoma football field on 27 April 1994, the Chamber notes that in the summary for Witness FAR included in the Appendix to the Prosecution Pre-Trial Brief, it is alleged that on or about 20 April 1994, Nsabimana and Kanyabashi addressed a meeting at Ngoma football field, where Nsabimana spoke about erecting roadblocks and arming the population.<sup>4864</sup> Also the summary for Witness FAC makes reference, though more generally, to a meeting held in Ngoma *commune* on about 25 April 1994 and addressed by, *inter alia*, Nsabimana and Kanyabashi. During this meeting, Kanyabashi allegedly said that all the Tutsis who were hiding should come out because peace had been restored; however, as soon as they assembled at the *secteur* office, they were all killed.<sup>4865</sup> Witness FAC's previous statement of 23 February 2000 contains an account of a similar meeting, though it omits reference to the meeting's date or location.<sup>4866</sup> The Chamber notes that Witnesses FAR's and FAC's accounts on this issue are not entirely consistent; however, it takes into account the proximity in the dates and the location of the alleged meetings, and the consistency as to the identity of the alleged participants, and thus finds that Witness FAC's account is corroborative of Witness FAR's anticipated evidence on a meeting held at Ngoma football field. Also the summary of Witness RL's anticipated testimony refers to Kanyabashi addressing a crowd of *Interahamwe* around the end of April at Ngoma Church, thanking them for their work and urging them to look for and kill hidden Tutsis; however, it does not mention Nsabimana's presence at this event.<sup>4867</sup> The Chamber finds that combined information contained in Witnesses FAC's and FAR's

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<sup>4863</sup> Nsabimana Closing Brief, paras. 333-335.

<sup>4864</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAR (27).

<sup>4865</sup> Prosecution Pre-Trial Brief – Appendix. Witness FAC (15).

<sup>4866</sup> 23 February 2000, Statement of Witness FAC, disclosed 4 December 2000.

<sup>4867</sup> Prosecution Pre-Trial Brief – Appendix; Witness RL (70).



summaries included in the Appendix to the Prosecution Pre-Trial Brief were sufficient to give adequate notice to Nsabimana about his alleged participation at a meeting held on or about 27 April at the Ngoma football field, and he was able to prepare his defence. Therefore, the defects in the Indictment are cured with respect to this specific allegation; and (3) In relation to the alleged meeting at Rango on 28 April 1994, no information was provided, either in the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief or in witnesses' prior statements. The Chamber thus finds that Nsabimana was not put on notice of this specific allegation.

1904. The Kanyabashi Defence submits that besides the specific incidents mentioned in Paragraph 6.45 of the Kanyabashi Indictment, this paragraph is too general and fails to inform the Accused of the acts he is alleged to have committed.<sup>4868</sup> The Chamber notes that Paragraph 6.45 describes the alleged actions attributed to Kanyabashi, *i.e.* that he encouraged and instructed people to search for Tutsis and exterminate them. It also specifies the persons to whom such encouragement or instructions were directed, *i.e.* soldiers, militiamen and members of the public. However, it fails to provide any details of specific incidents that took place at the end of April 1994, the location of such incidents, what was said and the impact of such statements. The Chamber therefore considers Paragraph 6.45 to be defective. The Chamber must then determine whether Paragraph 6.45 was cured of its defects through subsequent Prosecution disclosures.

1905. The Chamber observes that in the Appendix to the Prosecution Pre-Trial Brief, Witness FAR was expected to testify as to a meeting in the latter half of April 1994, where Nsabimana and Kanyabashi addressed a crowd of 1,000 people at the Ngoma football field.<sup>4869</sup> Kanyabashi reportedly told the attendees to follow orders and not to confuse the enemy. In the same document, Witness QA's intended testimony included the allegation that Kanyabashi convened a meeting in Ngoma Parish during which he announced that the killings had stopped and that those in hiding had nothing to fear.<sup>4870</sup> The Chamber notes that Witness FAR's previous statement of 21 February 2001 is reasonably consistent with the summary of his expected testimony in the Appendix to the Pre-Trial Brief although he places the event as having occurred in May rather than April 1994.<sup>4871</sup> Similarly, Witness QA's previous statement of 14 May 1996 states that Kanyabashi convened a meeting at which he said that the killings had stopped and that those in hiding had nothing to fear. However, the witness contended that this meeting took place in May 1994.<sup>4872</sup>

1906. In light of the above, the Chamber considers that the Kanyabashi Defence received sufficient notice of the Prosecution's intention to lead evidence on a meeting at Ngoma Parish during which Kanyabashi addressed the crowd using words that, having regard to the Prosecution's overall case, could be regarded as inflammatory in Butare in 1994. Accordingly, the Chamber considers that the defects in Paragraph 6.45 of the Kanyabashi Indictment have been cured.

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<sup>4868</sup> Kanyabashi Closing Brief, para. 313.

<sup>4869</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAR (29).

<sup>4870</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAR (33).

<sup>4871</sup> 21 February 2001, Statement of Witness FAR, disclosed 14 March 2001.

<sup>4872</sup> 14 May 1996, Statement of Witness QA, disclosed 4 December 2000.

### 3.6.14.3 Evidence

#### Prosecution Witness QA

1907. Witness QA, a Hutu former member of the PSD party, testified that at the end of May 1994, a meeting was held at the *secteur* office in the courtyard of Ngoma Parish.<sup>4873</sup> In cross-examination, he clarified that the meeting was held on the football pitch next to Ngoma Church.<sup>4874</sup> Approximately 1,200 people from Ngoma and Matyazo *secteurs* were present.<sup>4875</sup> Kanyabashi and Nsabimana were in attendance.<sup>4876</sup> The meeting had been convened by Kanyabashi, who was first to take the floor.<sup>4877</sup> Kanyabashi announced that the killings had stopped and that no one was entitled to kill; anyone who did kill would be shot.<sup>4878</sup> Nsabimana spoke next, confirmed what had been said by Kanyabashi and added that things had to continue as planned, as the President had announced.<sup>4879</sup> The witness claimed that the audience did not understand Nsabimana's message as it conflicted with that of Kanyabashi.<sup>4880</sup>

1908. Witness QA testified that after the meeting, he came to realise that Nsabimana and Kanyabashi's address had a special meaning; their intention was for those who attended the meeting to finish the job they had started and flush people out.<sup>4881</sup> Nsabimana's speech was not a recommendation to stop the killings but rather code for saying that the killings had stopped but that things should continue as planned.<sup>4882</sup> That night, people who had taken refuge in Ngoma Church, which was located about 10 metres away, were killed.<sup>4883</sup>

1909. When recalled to testify, Witness QA confirmed that he had made a statement before a Canadian Rogatory Committee concerning Nsabimana's address to the attendees of the meeting that took place at the end of May 1994 at the Ngoma Parish football pitch.<sup>4884</sup> The witness told the committee that Nsabimana said that the killings that had taken place at the Ngoma Parish were the last and if anyone else was to be arrested for killing, he himself would be shot.<sup>4885</sup> Nsabimana also urged those in hiding to come out.<sup>4886</sup> The witness admitted that on the request of two named individuals, he gave false testimony to the Chamber in 2004, in which he stated that Nsabimana had also told the meeting attendees to continue with the scheduled programme, as announced by the President.<sup>4887</sup> He stated that only a few aspects of his original testimony were true; most of his original testimony was a lie.<sup>4888</sup>

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<sup>4873</sup> T. 22 March 2004 p. 7 (Witness QA).

<sup>4874</sup> T. 22 March 2004 p. 53 (Witness QA).

<sup>4875</sup> T. 22 March 2004 p. 61 (Witness QA) (French).

<sup>4876</sup> T. 22 March 2004 pp. 7-8 (Witness QA).

<sup>4877</sup> T. 22 March 2004 pp. 8, 73-74 (Witness QA).

<sup>4878</sup> T. 22 March 2004 p. 8 (Witness QA).

<sup>4879</sup> T. 22 March 2004 p. 8; T. 22 March 2004 p. 9 (Witness QA) (French).

<sup>4880</sup> T. 22 March 2004 p. 8 (Witness QA).

<sup>4881</sup> T. 22 March 2004 pp. 8-9 (Witness QA).

<sup>4882</sup> T. 22 March 2004 p. 74 (Witness QA).

<sup>4883</sup> T. 22 March 2004 p. 54 (Witness QA).

<sup>4884</sup> T. 30 October 2008 pp. 20-21 (Witness QA).

<sup>4885</sup> T. 30 October 2008 p. 21 (Witness QA).

<sup>4886</sup> T. 30 October 2008 p. 21 (Witness QA).

<sup>4887</sup> T. 30 October 2008 pp. 22-23; T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>4888</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

1910. Witness QA testified that he knew Nsabimana before the 1994 events as a member of his party, the PSD.<sup>4889</sup> He identified Nsabimana in court.<sup>4890</sup> He also testified that he knew Kanyabashi before 1994 and identified him in court.<sup>4891</sup>

### Prosecution Witness RL

1911. Witness RL, a Tutsi who was 13 years old in 1994, testified that between two weeks and a half and three weeks after the death of the President, in April 1994, he fled to Ngoma Church.<sup>4892</sup> When he arrived, there were not many Tutsi refugees, although the number later increased.<sup>4893</sup> Five or six days after his arrival, at the beginning of May 1994, the refugees were attacked and killed by soldiers and the *Interahamwe*.<sup>4894</sup>

1912. Between five days and one week after the attack, Kanyabashi held a meeting in the church grounds which was attended by approximately 1,000 *Interahamwe*.<sup>4895</sup> Witness RL was inside the church when the meeting took place and observed events through ventilation holes in the concrete walls of the church.<sup>4896</sup> He did not hear everything that Kanyabashi said during his address.<sup>4897</sup> The witness was shown a photograph of the interior of Ngoma Church. On the photograph, he identified a ventilation space between the roof of the church and the top of the right-hand side exterior wall, from which he said he witnessed the meeting.<sup>4898</sup> He explained that he climbed up to his viewing position using the blocks that protruded from the wall near the back of the church.<sup>4899</sup> Kanyabashi used a megaphone to address the crowd and urged the *Interahamwe* and the *conseiller* to spread the news that peace had returned and that there would be no more killings.<sup>4900</sup> On another photograph of the area of ground adjacent to the church with the church in the background, the witness identified where Kanyabashi stood when he delivered his speech and where the witness had observed the events.<sup>4901</sup>

1913. On cross-examination, the witness stated that he did not see or hear a new *préfet* being introduced to the crowd during the meeting nor did he hear Kanyabashi say that people should stop killing each other and should live in harmony.<sup>4902</sup> He also said that he did not see any meetings near the church prior to the attack during which he was injured.<sup>4903</sup>

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<sup>4889</sup> T. 22 March 2004 p. 9 (Witness QA).

<sup>4890</sup> T. 22 March 2004 p. 9 (Witness QA).

<sup>4891</sup> T. 18 March 2004 p. 79; T. 22 March 2004 p. 10 (Witness QA).

<sup>4892</sup> T. 25 March 2004 pp. 83-84 (Witness RL).

<sup>4893</sup> T. 25 March 2004 pp. 84-85 (Witness RL).

<sup>4894</sup> T. 25 March 2004 pp. 84, 86 (Witness RL).

<sup>4895</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>4896</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>4897</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>4898</sup> T. 29 March 2004 pp. 13-16 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church).

<sup>4899</sup> T. 29 March 2004 p. 17 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church).

<sup>4900</sup> T. 25 March 2004 pp. 87-88 (Witness RL).

<sup>4901</sup> T. 29 March 2004 pp. 19-20 (Witness RL); Prosecution Exhibit 97 (Photograph of the exterior of Ngoma Church and adjoining field).

<sup>4902</sup> T. 30 March 2004 p. 46 (Witness RL).

<sup>4903</sup> T. 30 March 2004 p. 40 (Witness RL).

1914. Witness RL testified that he knew Kanyabashi as the *bourgmestre* before 1994, but he did not know his first name.<sup>4904</sup> The witness had seen Kanyabashi on several occasions before and after President Habyarimana's death.<sup>4905</sup> Before the President's death, he saw Kanyabashi at the stadium and the *secteur* office when he convened meetings, along the road whenever he received authorities from other areas, and driving a Peugeot 305.<sup>4906</sup> The witness identified Kanyabashi in court.<sup>4907</sup> In cross-examination, the witness was confronted with the assertion that he may have mistaken Cyriaque Habyarabatuma for Kanyabashi at the scene of a massacre at Ngoma Church.<sup>4908</sup> Moreover, counsel contended that the witness' description of Habyarabatuma matched that of Kanyabashi in 1994.<sup>4909</sup> In response, the witness stated that in 1994 Kanyabashi had white hair and was wearing a suit and he could not say anything else about his appearance.<sup>4910</sup> In re-examination, the witness acknowledged that he had seen Habyarabatuma prior to the 1994 events.<sup>4911</sup> Habyarabatuma's complexion was darker than Kanyabashi's and he had a large head.<sup>4912</sup> The witness testified that there is "no way" he would mistake Habyarabatuma for Kanyabashi because he knew both of them.<sup>4913</sup> Even though he was still a child in 1994, Habyarabatuma and Kanyabashi held positions of authority – one used to come and hold meetings with the people and the other would be present whenever there was a search.<sup>4914</sup>

1915. Witness RL testified that he was not a member of any survivors' groups nor had he ever attended any trial in Rwanda concerning the events that occurred in Ngoma and Matyazo in 1994.<sup>4915</sup>

#### Prosecution Expert Witness Alison Des Forges

1916. Alison Des Forges testified that during a meeting of the Security Council on 23 April 1994, the Interim Government decided on its policy of pacification or restoration of security.<sup>4916</sup> This policy was officially communicated via the Prime Minister's Directive on restoring security, admitted as Prosecution Exhibit 118B.<sup>4917</sup> She testified that in response, Nsabimana issued a press release to the inhabitants of Ngoma *commune* on 25 April 1994 in which he directed three meetings to take place at particular venues on specified dates.<sup>4918</sup> In cross-examination, Des Forges was questioned as to how the press release issued by Nsabimana on 25 April 1994 could implement the Government's subsequent instruction on

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<sup>4904</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>4905</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>4906</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>4907</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>4908</sup> T. 30 March 2004 p. 39 (Witness RL).

<sup>4909</sup> T. 30 March 2004 p. 39 (Witness RL).

<sup>4910</sup> T. 30 March 2004 p. 40 (Witness RL).

<sup>4911</sup> T. 30 March 2004 p. 48 (Witness RL).

<sup>4912</sup> T. 30 March 2004 p. 48 (Witness RL).

<sup>4913</sup> T. 30 March 2004 pp. 49-50 (Witness RL).

<sup>4914</sup> T. 30 March 2004 p. 50 (Witness RL).

<sup>4915</sup> T. 29 March 2004 p. 63 (ICS) (Witness RL).

<sup>4916</sup> T. 9 June 2004 p. 19 (Des Forges).

<sup>4917</sup> T. 9 June 2004 p. 19 (Des Forges).

<sup>4918</sup> T. 9 June 2004 p. 19 (Des Forges).

pacification dated 27 April 1994.<sup>4919</sup> Des Forges explained that the press release of 25 April 1994 confirmed the earlier decision taken at the meeting of the Council of Ministers, on 23 April 1994, on the pacification policy.<sup>4920</sup> Des Forges responded that at the 23 April 1994 meeting, Nyiramasuhuko was assigned the responsibility of implementing the pacification campaign to Butare *préfecture* and she was often present there.<sup>4921</sup>

1917. Des Forges gave evidence on the minutes of a meeting held on 26 April 1994, which she obtained from the Butare *préfecture* office.<sup>4922</sup> She said that the meeting took place pursuant to the press release from Nsabimana of the previous day, and stated that it resulted in the detailed organisation of patrols and roadblocks in Butare-ville; the area was divided into zones and a person was assigned responsibility for each zone.<sup>4923</sup>

1918. On 27 April 1994, President Sindikubwabo came to Butare to check on the progress of the campaign to restore security.<sup>4924</sup> He held a meeting with the *préfecture* Security Committee at which he announced that the killings had to be brought under tighter control.<sup>4925</sup> This meeting resulted in Nsabimana issuing a message on the same day, aimed at restoring security in the *communes* of Butare.<sup>4926</sup> This message, containing five specific instructions directed at citizens, was admitted as Prosecution Exhibit 119B.<sup>4927</sup> Des Forges stated that the message also implemented the government's policy of pacification or restoring security.<sup>4928</sup> She interpreted the references to "restoring security" in that document as meaning eliminating the enemy threat, *i.e.* the Tutsis.<sup>4929</sup> With regard to the second instruction in the message, which stated that everyone must avoid harming others unless there was proof that they were an *Inkotanyi* accomplice, Des Forges opined that such proof was sometimes the identity card categorising the person as Tutsi.<sup>4930</sup> Des Forges considered that the message contained in

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<sup>4919</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 5 July 2004 pp. 63-64 (Des Forges).

<sup>4920</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 5 July 2004 pp. 63-64 (Des Forges).

<sup>4921</sup> T. 5 July 2004 p. 65 (Des Forges).

<sup>4922</sup> T. 9 June 2004 p. 43 (Des Forges); Prosecution Exhibit 110A (Des Forges Expert Report) p. 52; Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994). The transcripts indicate that the minutes of the meeting of 26 April 1994 were admitted as Prosecution Exhibit 126. However, this exhibit is an undated letter or a message addressed to all *conseillers* of Ngoma *commune* from Kanyabashi and Nsabimana. It does not correspond to the document to which Des Forges refers in this part of her testimony. The actual minutes of the meeting of 26 April 1994 are thought to be contained in Defence Exhibit 406C entitled "Report of the meeting of the inhabitants of Butare-ville *cellule* of 26 April 1994."

<sup>4923</sup> T. 9 June 2004 pp. 43-44 (Des Forges).

<sup>4924</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 48; T. 9 June 2004 p. 23 (Des Forges).

<sup>4925</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>4926</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>4927</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994).

<sup>4928</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 9 June 2004 p. 23 (Des Forges).

<sup>4929</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 9 June 2004 p. 23 (Des Forges).

<sup>4930</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 9 June 2004 pp. 23-24 (Des Forges).

Prosecution Exhibit 119B was an illustration of how national policy was being transmitted by the *préfets* to the *communes*.<sup>4931</sup>

1919. In her Report, Des Forges referred to a meeting that took place on 27 April 1994 on the football field next to Ngoma Church. Nearly 500 people who had survived the massacre at Matyazo Clinic or who had been forced to flee were sheltering in the church at the time. Two days later at 10.00 p.m. on 29 April 1994, militia and civilians attacked the church but those inside defended themselves with stones and prevented the attackers from entering. At around 10.00 a.m. the next morning, 22 soldiers arrived at the church and assured the crowd sheltering inside that they would not be killed but would instead be taken to prison. However, the military commander ordered civilians to kill those who had sought refuge in the church. Some victims were taken to be killed in the nearby woods.<sup>4932</sup>

#### Nsabimana Defence Witness BE

1920. Witness BE, a Rango resident of unspecified ethnicity who was a member of the clergy in 1994, testified that on 28 or 29 April 1994 at around 5.00 p.m., he saw between 80 and 100 people assembled close to Rango primary school.<sup>4933</sup> The witness saw the *préfet* addressing the crowd using a megaphone.<sup>4934</sup> He also recognised the *conseiller* of Nkubi *secteur*, Augustin Kanyawabahizi.<sup>4935</sup> He learned that the speaker was the *préfet* because towards the end of the meeting, people said that the *préfet* had spoken.<sup>4936</sup> The *préfet* encouraged the attendees to be patient and calm, and urged them “not to engage in acts of violence against others or attack their neighbours’ property.”<sup>4937</sup> The witness stated that he stayed until the end of the meeting and that no other speakers took the floor after the *préfet*.<sup>4938</sup> He did not notice any hostility towards the *préfet*.<sup>4939</sup> The following day, the witness perceived that the atmosphere had changed. People left their homes and the witness resumed his duties.<sup>4940</sup>

#### Nsabimana Defence Witness Charles Karemano

1921. Charles Karemano, a Hutu and secretary of the PSD party in 1994, testified that he attended a meeting at the Rango *secteur* office around 28 April 1994. He arrived before Nsabimana, but could not recall at what time.<sup>4941</sup> There were approximately 100 people there. Nsabimana did not speak for long and urged the attendees to try to live in harmony again and to go back to work.<sup>4942</sup> The witness could not recall seeing Kanyabashi at the meeting.<sup>4943</sup>

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<sup>4931</sup> T. 9 June 2004 p. 24 (Des Forges).

<sup>4932</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

<sup>4933</sup> T. 10 July 2006 p. 46; T. 10 July 2006 p. 44 (ICS) (Witness BE).

<sup>4934</sup> T. 10 July 2006 p. 46 (Witness BE).

<sup>4935</sup> T. 10 July 2006 p. 47 (Witness BE).

<sup>4936</sup> T. 10 July 2006 p. 46 (Witness BE).

<sup>4937</sup> T. 10 July 2006 p. 47 (Witness BE).

<sup>4938</sup> T. 10 July 2006 p. 47 (Witness BE).

<sup>4939</sup> T. 10 July 2006 p. 69 (ICS) (Witness BE).

<sup>4940</sup> T. 10 July 2006 p. 48; T. 10 July 2006 pp. 50-51 (ICS) (Witness BE).

<sup>4941</sup> T. 22 August 2006 p. 20 (Karemano).

<sup>4942</sup> T. 22 August 2006 p. 21 (Karemano).

<sup>4943</sup> T. 25 August 2006 p. 9 (Karemano).

Nsabimana

1922. Nsabimana identified Prosecution Exhibit 117C as the press release addressed to the population of Ngoma urban *commune* on 25 April 1994, signed by him in his capacity as chairman of the Butare *préfecture* Security Committee.<sup>4944</sup> The aim of this press release was to provide information on meetings that would take place in order to ask the population to remain calm.<sup>4945</sup> The press release was given to Kanyabashi who, as *bourgmestre*, took the necessary action to communicate its contents to the population.<sup>4946</sup>

1923. Nsabimana testified that the first meeting mentioned in the press release took place on 26 April 1994 at Huye Stadium in Butare-ville *secteur*, at 3.00 p.m. rather than 2.00 p.m., as specified in the press release.<sup>4947</sup> Not many people attended; the covered part of the stadium's stands were one third or half full and the attendees were concentrated in the centre part of the stands.<sup>4948</sup> Kanyabashi was already at the stadium when Nsabimana arrived.<sup>4949</sup> Nsabimana could not recall whether the other members of the Butare *préfecture* Security Committee were present.<sup>4950</sup> Kanyabashi introduced Nsabimana to the crowd and gave him the floor.<sup>4951</sup> Nsabimana stood facing the crowd with the football pitch to his back at a distance of two or three metres from the first row of the stands and addressed the crowd with a megaphone.<sup>4952</sup> He read the contents of the 25 April 1994 press release to the crowd and told them that what had happened was not human and that there had to be a return to order and security.<sup>4953</sup> He recalled that in April 1994, there had been killings and lootings over which they had no control; they therefore tried to take measures to stop such events.<sup>4954</sup> Nsabimana testified that the attendees asked questions about patrols and some indicated that they did not want to carry out patrols at night and wanted to be accompanied by soldiers.<sup>4955</sup> Nsabimana stated that he had no solution to propose to such issues.<sup>4956</sup> When Nsabimana left after approximately one hour, the crowd was still discussing the issues raised during the question session.<sup>4957</sup> No one took notes at this meeting.<sup>4958</sup>

1924. Around noon the following day, 27 April 1994, Nsabimana attended a meeting of the Security Council which was chaired by President Sindikubwabo at the latter's residence in Ngoma *commune*, Butare *préfecture*.<sup>4959</sup> The other attendees were Kanyabashi, *Sous-préfet*

<sup>4944</sup> Prosecution Exhibit 117C (Press Release to inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 19 September 2006 pp. 31-32 (Nsabimana).

<sup>4945</sup> T. 19 September 2006 p. 30 (Nsabimana).

<sup>4946</sup> T. 19 September 2006 pp. 33-34 (Nsabimana).

<sup>4947</sup> T. 19 September 2006 p. 33 (Nsabimana).

<sup>4948</sup> Defence Exhibit 437B (Nsabimana) (Photograph of Huye Stadium); T. 19 September 2006 pp. 34-37 (Nsabimana).

<sup>4949</sup> T. 19 September 2006 pp. 37-38 (Nsabimana).

<sup>4950</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>4951</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>4952</sup> T. 19 September 2006 pp. 37, 39 (Nsabimana).

<sup>4953</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>4954</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>4955</sup> T. 19 September 2006 p. 39 (Nsabimana).

<sup>4956</sup> T. 19 September 2006 p. 39 (Nsabimana).

<sup>4957</sup> T. 19 September 2006 p. 39 (Nsabimana).

<sup>4958</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>4959</sup> T. 19 September 2006 pp. 44-46 (Nsabimana).

Hakizamungu, Colonel Muvunyi, Vice-Rector Nshimumuremyi, Public Prosecutor Bushishi, Halindintwari of the intelligence services, and the President of the Court of First Instance, Ruzindaza.<sup>4960</sup> The President raised a number of issues at the meeting including why the killings were still ongoing in Butare and why his message had not been properly communicated.<sup>4961</sup> None of the attendees were able to answer the President's questions.<sup>4962</sup> After addressing the Council for about one hour, the President left and Nsabimana took over the chair. The attendees then discussed the unanswered questions the President had raised.<sup>4963</sup> They wanted to inform the population of the President's concerns and show them that the issues raised by the President were of concern to the Security Council; they therefore issued a *communiqué* to that effect, signed by Nsabimana and stating, in part, that "[t]he looting and massacres must cease immediately and the attackers who are armed with all sorts of weapons but who are not assigned to man any roadblock recognised by the authorities, must stop their activities."<sup>4964</sup> Nsabimana testified that no part of the *communiqué* incited the public to engage in killings.<sup>4965</sup> The Security Council also wanted to issue a second message to the people of Butare through the *bourgmestres*.<sup>4966</sup> Nsabimana identified Prosecution Exhibit 119B as that message.<sup>4967</sup>

1925. The second meeting mentioned in the press release of 25 April 1994 took place at the Ngoma Parish football field on 27 April 1994, around 2.00 p.m., after the Security Council meeting.<sup>4968</sup> Nsabimana testified that Kanyabashi was already at the meeting when he arrived although he could not recall if others were present.<sup>4969</sup> Nsabimana read the press release of 25 April 1994 to the crowd and told them that if there were any more killings, the perpetrators would be shot. He then left without taking questions from the floor.<sup>4970</sup>

1926. The third meeting referred to in the press release of 25 April 1994 took place in the centre of Rango on 28 April 1994 at 3.00 p.m.<sup>4971</sup> Kanyabashi was already present when Nsabimana arrived and he introduced the new *préfet* to the crowd.<sup>4972</sup> Nsabimana read the contents of the press release of 25 April 1994 to the crowd and asked them to restore order.<sup>4973</sup>

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<sup>4960</sup> T. 19 September 2006 p. 52 (Nsabimana).

<sup>4961</sup> T. 19 September 2006 p. 47 (Nsabimana).

<sup>4962</sup> T. 19 September 2006 p. 48 (Nsabimana).

<sup>4963</sup> T. 19 September 2006 p. 50 (Nsabimana).

<sup>4964</sup> Defence Exhibit 288 (Nteziryayo) (*Communiqué* broadcast on Radio Rwanda, 27 April 1994); T. 19 September 2006 pp. 50, 73 (Nsabimana).

<sup>4965</sup> T. 19 September 2006 p. 72 (Nsabimana).

<sup>4966</sup> T. 19 September 2006 p. 50 (Nsabimana).

<sup>4967</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 19 September 2006 pp. 68-69 (Nsabimana).

<sup>4968</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 19 September 2006 pp. 41-42 (Nsabimana).

<sup>4969</sup> T. 19 September 2006 p. 42 (Nsabimana).

<sup>4970</sup> T. 19 September 2006 p. 42 (Nsabimana).

<sup>4971</sup> T. 20 September 2006 p. 5 (Nsabimana).

<sup>4972</sup> T. 20 September 2006 pp. 5-6 (Nsabimana).

<sup>4973</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 20 September 2006 p. 6 (Nsabimana).



He could not recall whether Kanyabashi spoke at the meeting aside from introducing Nsabimana to the attendees.<sup>4974</sup> The meeting ended after 5.00 p.m.<sup>4975</sup>

1927. Nsabimana testified that he received the Prime Minister's Directive on restoring security of 27 April 1994 after that date.<sup>4976</sup> The *communiqué* that was issued as a result of the security meeting of 27 April 1994, and the message aimed at restoring security issued by Nsabimana, were therefore drafted without knowledge of the Prime Minister's instructions issued on the same day and accordingly did not implement those instructions.<sup>4977</sup> Had he been aware of the Prime Minister's instructions on restoring security, Nsabimana testified he would have reflected them in the messages he issued on 27 April 1994.<sup>4978</sup>

#### Nyiramasuhuko Expert Witness Eugène Shimamungu

1928. Eugène Shimamungu expressed the view that Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994) implemented the directives on restoring security, issued on the same day by the Prime Minister.<sup>4979</sup> The witness testified that the second instruction in Prosecution Exhibit 119B, which required a person not to be harmed unless there is proof that they are *Inkotanyi*, drew a distinction between Tutsis and the *Inkotanyi* so that only the latter were targeted.<sup>4980</sup> This instruction highlighted the importance that the authorities attached to the distinction between *Inkotanyi* and Tutsis.<sup>4981</sup> Shimamungu stated that the third instruction, which ordered citizens to avoid all forms of disturbances and looting, was addressed to all citizens regardless of ethnic group.<sup>4982</sup> The fourth instruction, which underlined the need to organise patrols and establish roadblocks, reflected the authorities' concern over the setting up of unauthorised roadblocks.<sup>4983</sup> The fifth instruction, which required those who were suspected of collusion with the *Inkotanyi* to be brought before the *commune* authorities, did not, in the witness' view, authorise killings.<sup>4984</sup> The witness opined that the objective of the message was to protect all Rwandans, regardless of ethnicity, because all ethnic groups were vulnerable to the chaos, Tutsis and Hutus alike. Nsabimana, who authored Prosecution Exhibit 119B, must have fully understood the Prime Minister's Directive on pacification contained in Prosecution Exhibit 118B.<sup>4985</sup>

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<sup>4974</sup> T. 20 September 2006 p. 9 (Nsabimana).

<sup>4975</sup> T. 20 September 2006 p. 9 (Nsabimana).

<sup>4976</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 20 September 2006 pp. 10-11 (Nsabimana).

<sup>4977</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); Defence Exhibit 288 (Nteziryayo) (*Communiqué* broadcast on Radio Rwanda, 27 April 1994); T. 20 September 2006 pp. 16-18, 20 (Nsabimana).

<sup>4978</sup> T. 20 September 2006 p. 18 (Nsabimana).

<sup>4979</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 23 March 2005 p. 25 (Shimamungu).

<sup>4980</sup> T. 23 April 2005 pp. 27-28 (Shimamungu).

<sup>4981</sup> T. 23 April 2005 pp. 27-28 (Shimamungu).

<sup>4982</sup> T. 23 April 2005 p. 28 (Shimamungu).

<sup>4983</sup> T. 23 April 2005 p. 28 (Shimamungu).

<sup>4984</sup> T. 23 April 2005 p. 29 (Shimamungu).

<sup>4985</sup> T. 23 April 2005 p. 31 (Shimamungu).

Kanyabashi Defence Witness D-2-14-W

1929. Witness D-2-14-W, a Hutu teacher who lived in Ngoma *commune*,<sup>4986</sup> Butare *préfecture*, in 1994, testified that he attended a meeting at Huye Stadium on 25 or 26 April 1994.<sup>4987</sup> The meeting started at 2.00 p.m. and lasted approximately two hours.<sup>4988</sup> The killings in Butare had started before that date.<sup>4989</sup> The witness arrived at the meeting three or four minutes after it had started and stayed until the end.<sup>4990</sup> There were between 200 and 300 persons present, none of whom were Tutsis.<sup>4991</sup>

1930. Kanyabashi introduced the newly appointed *préfet* of Butare, Nsabimana, to the public and at the same time condemned the killings that had occurred in Kabakobwa, Butare town, Buye and Matyazo and said that the perpetrators of those killings had to be punished.<sup>4992</sup> Thereafter, Nsabimana also took the floor and said that there was a need to ensure security which had to be discussed with the military authorities. Nsabimana also condemned the violence and killings in Butare.<sup>4993</sup> The speakers stood while they addressed the crowd and did not use a public address system or a megaphone.<sup>4994</sup> The organisation of night patrols and the erection of roadblocks were not discussed during the meeting.<sup>4995</sup> The witness stated that he did not see any other authorities at the meeting apart from Nsabimana and Kanyabashi, who were guarded by two *gendarmes* and a policeman, respectively.<sup>4996</sup> He knew Bernard Mutwewengabo, a university lecturer, but did not see him during the meeting. He did not see anyone who took notes during that meeting. The witness left the meeting after Kanyabashi and Nsabimana had left.<sup>4997</sup> Witness D-2-14-W knew Kanyabashi as the *bourgmestre* of his *commune*, Ngoma, and identified Kanyabashi in court.<sup>4998</sup>

Kanyabashi Defence Witness D-2-5-I

1931. Witness D-2-5-I, a Hutu, testified that he attended a meeting on 27 April 1994 on the football field adjacent to Ngoma Church.<sup>4999</sup> The meeting was attended by Kanyabashi, Nsabimana, the commander of Ngoma camp, *conseillers* and approximately 200 members of the public from Matyazo and Ngoma *secteurs*.<sup>5000</sup> The authorities sat in chairs facing the public, some of whom were sitting on the ground while others stood.<sup>5001</sup> The meeting was

<sup>4986</sup> T. 11 February 2008 pp. 7, 9 (ICS) (Witness D-2-14-W); Defence Exhibit 626 (Kanyabashi) (Personal Particulars).

<sup>4987</sup> T. 11 February 2008 p. 26 (Witness D-1-14-W).

<sup>4988</sup> T. 11 February 2008 pp. 26-27 (Witness D-1-14-W).

<sup>4989</sup> T. 11 February 2008 p. 27 (Witness D-1-14-W).

<sup>4990</sup> T. 11 February 2008 p. 27 (Witness D-1-14-W).

<sup>4991</sup> T. 11 February 2008 p. 27; T. 12 February 2008 p. 17 (Witness D-1-14-W).

<sup>4992</sup> T. 11 February 2008 p. 27 (Witness D-1-14-W).

<sup>4993</sup> T. 11 February 2008 p. 28 (Witness D-1-14-W).

<sup>4994</sup> T. 11 February 2008 p. 28; T. 12 February 2008 p. 43 (Witness D-1-14-W).

<sup>4995</sup> T. 11 February 2008 p. 40 (ICS) (Witness D-1-14-W).

<sup>4996</sup> T. 11 February 2008 p. 28; T. 12 February 2008 p. 16 (Witness D-1-14-W).

<sup>4997</sup> T. 11 February 2008 p. 29 (Witness D-1-14-W).

<sup>4998</sup> T. 11 February 2008 pp. 12-13 (Witness D-1-14-W).

<sup>4999</sup> T. 30 January 2008 p. 29 (Witness D-2-5-I).

<sup>5000</sup> T. 30 January 2008 pp. 29-30 (Witness D-2-5-I).

<sup>5001</sup> T. 30 January 2008 p. 31 (Witness D-2-5-I).

convened to discuss security issues in view of the killings that had been taking place.<sup>5002</sup> Kanyabashi took the floor first, followed by Nsabimana and the commander of Ngoma camp. The speakers used a microphone or a megaphone. The commander of Ngoma camp promised to do everything possible to restore security in the area.<sup>5003</sup> Kanyabashi and Nsabimana said that they would cooperate with the military commander but did not specify how they planned to restore security.<sup>5004</sup> They also urged the population to remain united and forbade them from participating in the killings.<sup>5005</sup> The witness interpreted this as meaning that the authorities would prosecute anyone who took part in the killings.<sup>5006</sup> Witness D-2-5-I testified that Kanyabashi had been *bourgmestre* of Ngoma *commune* since the witness was a child.<sup>5007</sup> He identified Kanyabashi in court.<sup>5008</sup>

#### Kanyabashi Defence Witness D-2-13-D

1932. Witness D-2-13-D, a Hutu who owned a mill in Rango, testified that he attended a meeting in the last week of April 1994 at Rango. He arrived after the meeting had started; Kanyabashi and *Préfet* Nsabimana were already present.<sup>5009</sup> Kanyabashi announced that he had come to introduce the new *préfet*.<sup>5010</sup> Kanyabashi ordered the attendees to put an end to the assaults and killings.<sup>5011</sup> He stated that those who had committed such crimes would be punished and urged the assembled members of the public to return to normality.<sup>5012</sup> No one else took the floor after Kanyabashi.<sup>5013</sup> The witness did not inquire as to whether, before he arrived at the meeting, anyone spoke before Kanyabashi.<sup>5014</sup> He did not know whether *Conseiller* Kanyawabahizi attended the second meeting.<sup>5015</sup> The witness testified that he had known Kanyabashi since 1974 or 1976.<sup>5016</sup> He identified Kanyabashi in court.<sup>5017</sup>

#### Kanyabashi Expert Witness Filip Reyntjens

1933. In his Expert Report, Filip Reyntjens referred to the minutes of the meeting among the inhabitants of Butare-ville, held on 26 April 1994.<sup>5018</sup> The third paragraph of those minutes stated that due to pressing business elsewhere, Kanyabashi, who was to have chaired the meeting, left and delegated his powers to Mutwewengabo, a university lecturer, and

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<sup>5002</sup> T. 30 January 2008 p. 30 (Witness D-2-5-I).

<sup>5003</sup> T. 30 January 2008 p. 32 (Witness D-2-5-I).

<sup>5004</sup> T. 30 January 2008 pp. 32-33 (Witness D-2-5-I).

<sup>5005</sup> T. 30 January 2008 pp. 33-34 (Witness D-2-5-I).

<sup>5006</sup> T. 30 January 2008 p. 34 (Witness D-2-5-I).

<sup>5007</sup> T. 11 December 2007 p. 59 (Witness D-2-5-I).

<sup>5008</sup> T. 11 December 2007 p. 60 (Witness D-2-5-I).

<sup>5009</sup> T. 30 August 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>5010</sup> T. 10 September 2007 p. 10 (ICS) (Witness D-2-13-D).

<sup>5011</sup> T. 30 August 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>5012</sup> T. 30 August 2007 pp. 47-48 (ICS) (Witness D-2-13-D).

<sup>5013</sup> T. 30 August 2007 p. 48 (ICS) (Witness D-2-13-D).

<sup>5014</sup> T. 10 September 2007 p. 10 (ICS) (Witness D-2-13-D).

<sup>5015</sup> T. 6 September 2007 p. 21 (ICS) (Witness D-2-13-D).

<sup>5016</sup> T. 29 August 2007 p. 11 (Witness D-2-13-D).

<sup>5017</sup> T. 29 August 2007 p. 12 (Witness D-2-13-D).

<sup>5018</sup> Defence Exhibit 406C (Ntahobali) (Report of the meeting of the inhabitants of Butare-ville *cellule*, 26 April 1994); Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 13.

Nzitabakuze.<sup>5019</sup> Reyntjens opined that this was an example of an attempt by Kanyabashi to distance himself from the killings and recalled that he had done the same thing, *i.e.* delegate his powers to Mutwewengabo, in a meeting of 7 June 1994.<sup>5020</sup> In the witness' view, it was impossible for Kanyabashi to oppose the genocide openly; he therefore refrained from engaging in activities related to the genocide.<sup>5021</sup> According to the witness, if Kanyabashi had been actively involved in the genocide, Kanyabashi would have chaired such meetings himself.<sup>5022</sup>

1934. Reyntjens also considered it probable that Kanyabashi was not present at the meeting.<sup>5023</sup> However, he acknowledged that page four of the minutes records the fact that Kanyabashi entered the meeting and, after giving security instructions and his opinion on some of the issues raised, he left. The witness stated that it was unclear whether or not Kanyabashi had been present at the meeting.<sup>5024</sup>

1935. Reyntjens considered it unlikely that Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994) put in place, in a general way, the instructions contained in Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994) of the same date, unless the instructions were broadcast by radio.<sup>5025</sup> He testified that Prosecution Exhibit 119B seemed to strengthen the content of Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994). With regard to the content of the second instruction in Prosecution Exhibit 119B—which stated that everyone must avoid harming others unless there is proof that they are an *Inkotanyi* accomplice—the witness declined to comment specifically on Nsabimana's choice of words. However, he did say that if Nsabimana had used double-speak, the references to accomplices and *Inkotanyi* could possibly be taken to mean Tutsis.<sup>5026</sup> The witness was also questioned on the fifth instruction, which states that anyone suspected of colluding with the *Inkotanyi* or caught looting must be brought before the *commune* authorities. He considered that anyone involved in such acts would have been killed on the spot rather than brought to the *commune* office.<sup>5027</sup>

### Ntahobali

1936. Ntahobali testified that he attended a meeting at Huye Stadium on 26 April 1994.<sup>5028</sup> The authorities who attended the meeting included Nsabimana, military officials, representatives of the *gendarmerie* and Kanyabashi who chaired the meeting.<sup>5029</sup> The meeting started at around 3.00 p.m. and ended at 6.00 p.m.<sup>5030</sup> There were between 500 and 800 people

<sup>5019</sup> Defence Exhibit 406C (Ntahobali) (Report of the meeting of the inhabitants of Butare-ville *cellule*, 26 April 1994) p. 1.

<sup>5020</sup> Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 13; T. 1 October 2007 p. 37 (Reyntjens).

<sup>5021</sup> T. 1 October 2007 p. 37 (Reyntjens).

<sup>5022</sup> T. 1 October 2007 pp. 37-38 (Reyntjens).

<sup>5023</sup> Defence Exhibit 571B (Kanyabashi) (Reyntjens Expert Report) p. 13.

<sup>5024</sup> T. 1 October 2007 p. 29 (Reyntjens).

<sup>5025</sup> T. 21 November 2007 p. 69 (Reyntjens).

<sup>5026</sup> T. 21 November 2007 pp. 70-71 (Reyntjens).

<sup>5027</sup> T. 21 November 2007 p. 71 (Reyntjens).

<sup>5028</sup> T. 24 April 2006 p. 37 (Ntahobali).

<sup>5029</sup> T. 24 April 2006 p. 43 (Ntahobali).

<sup>5030</sup> T. 24 April 2006 p. 44 (Ntahobali).

present.<sup>5031</sup> Ntahobali testified that Bernard Mutwewengabo, a university lecturer, was appointed to chair part of the meeting with the assistance of Jean-Bosco Nzitabakuze when Kanyabashi left to attend to other matters.<sup>5032</sup> Mutwewengabo was in charge of the minutes of the meeting.<sup>5033</sup> Ntahobali stated that Mutwewengabo dropped his notes during the meeting and Ntahobali picked them up and returned them.<sup>5034</sup> Ntahobali testified that he was acquainted with Mutwewengabo's handwriting even before the meeting of 26 April 1994.<sup>5035</sup> The minutes of the meeting were tendered by the Ntahobali Defence as evidence and admitted as Defence Exhibit 406C.<sup>5036</sup>

1937. Ntahobali sat in the middle of the stadium's covered stand, five metres away from the authorities.<sup>5037</sup> A megaphone was used during the meeting and it was handed around the attendees to enable them to take the floor.<sup>5038</sup> The aim of the meeting was to restore security and the issues discussed included erecting roadblocks and organising patrols.<sup>5039</sup> Ntahobali testified that authorities told the attendees that acts of violence had been perpetrated by thugs who were working for the enemy.<sup>5040</sup> They were requested to check the identity of people passing through roadblocks and during night patrols, to ask about their movements. Suspects were to be taken to the authorities, *i.e.* the *cellule* officer, *conseiller*, *bourgmestre* or judicial authorities.<sup>5041</sup> Kanyabashi took the floor three times: to give a speech and introduce Nsabimana; to introduce Muvunyi; and to speak again when the other authorities including Nsabimana had left.<sup>5042</sup> During one of his interventions, Kanyabashi stated that he would consider the issue of weapons training for the inhabitants.<sup>5043</sup> Nsabimana's speech lasted between five and 10 minutes, during which he talked about security and stated that the authorities were seeking ways to restore security.<sup>5044</sup>

### 3.6.14.4 Deliberations

#### 3.6.14.4.1 Implementation of the Interim Government's "Pacification" Policy Through the Issuance of Press Releases, 25 and 27 April 1994

1938. The Prosecution argues that Prosecution Exhibits 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994) and 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994) were issued by Nsabimana in implementation of the Interim Government's national policy on pacification.<sup>5045</sup> It also

<sup>5031</sup> T. 3 May 2006 p. 27 (Ntahobali).

<sup>5032</sup> T. 24 April 2006 pp. 44, 51 (Ntahobali).

<sup>5033</sup> T. 24 April 2006 p. 44 (Ntahobali).

<sup>5034</sup> T. 24 April 2006 p. 54 (Ntahobali).

<sup>5035</sup> T. 24 April 2006 p. 55 (Ntahobali).

<sup>5036</sup> Defence Exhibit 406C (Ntahobali) (Report of the meeting of the inhabitants of Butare-ville *cellule*, 26 April 1994).

<sup>5037</sup> T. 3 May 2006 pp. 44-45 (Ntahobali).

<sup>5038</sup> T. 3 May 2006 p. 47 (Ntahobali).

<sup>5039</sup> T. 24 April 2006 pp. 45-47 (Ntahobali).

<sup>5040</sup> T. 3 May 2006 p. 26 (Ntahobali).

<sup>5041</sup> T. 3 May 2006 p. 27 (Ntahobali).

<sup>5042</sup> T. 3 May 2006 p. 55 (Ntahobali).

<sup>5043</sup> T. 24 April 2006 p. 50 (Ntahobali).

<sup>5044</sup> T. 3 May 2006 p. 56 (Ntahobali).

<sup>5045</sup> Prosecution Closing Brief, pp. 245-248, paras. 55, 62.

contends that “pacification” was a policy of covertly continuing the genocide of Tutsis. The Chamber notes that Prosecution Exhibit 118B, the Prime Minister’s Directive on restoring security of 27 April 1994, was the official manifestation of that policy.<sup>5046</sup>

1939. In this regard, the Chamber recalls its findings on Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment. The Chamber found that the intention behind the Interim Government’s directives and instructions, including Prosecution Exhibit 118B, was to encourage the population to hunt down and take action against the enemy and its accomplices, terms which referred to Tutsis in general ().

1940. Des Forges testified that Prosecution Exhibit 117C, in which Nsabimana ordered the holding of security meetings and the opening of shops and markets, implemented the Interim Government’s policy of pacification.<sup>5047</sup> Des Forges asserted that even though Nsabimana’s press release of 25 April 1994 pre-dated the Prime Minister’s official Directive on restoring security issued on 27 April 1994, the former was a confirmation of the original decision on restoring security, which was taken by the Council of Ministers on 23 April 1994.<sup>5048</sup>

1941. Des Forges further explained the discrepancy between the dates by referring to Nyiramasuhuko’s appointment as the person in charge of implementing the pacification campaign in Butare.<sup>5049</sup> Des Forges seemed to suggest that Nyiramasuhuko, as the person responsible for pacification in Butare, transmitted the 23 April 1994 decision on restoring security to Nsabimana, who thereafter issued the press release of 25 April 1994.<sup>5050</sup>

1942. The Chamber again recalls its previous deliberations on Paragraph 6.14 of the Nyiramasuhuko and Ntahobali Indictment in the “Cabinet Meetings” section of this Judgement (). Paragraph 6.14 alleges, *inter alia*, that Nyiramasuhuko was responsible for pacification in Butare. In that section, the Chamber found that notwithstanding the evidence that Nyiramasuhuko attended Cabinet meetings at which the pacification programme was drawn up, the Prosecution had not established that Nyiramasuhuko was assigned responsibility for what was termed “pacification” in Butare, as alleged in Paragraph 6.14 ().

1943. The Chamber notes that no other evidence was adduced to show how the decision on restoring security or pacification of 23 April 1994 was transmitted to Nsabimana. As a consequence, the Chamber does not consider that the Prosecution has established that Nsabimana’s press release of 25 April 1994, admitted as Prosecution Exhibit 117C, implemented the Interim Government’s national policy on pacification as enshrined in the Prime Minister’s Directive on restoring security of 27 April 1994, admitted as Prosecution Exhibit 118B.<sup>5051</sup>

1944. Des Forges further testified that a Security Council meeting was held on 27 April 1994, at which the President announced that the killings had to be brought under tighter control.<sup>5052</sup>

<sup>5046</sup> T. 29 September 2005 pp. 30-31, 36 (Nyiramasuhuko).

<sup>5047</sup> T. 9 June 2004 p. 19 (Des Forges).

<sup>5048</sup> T. 5 July 2004 pp. 63-64 (Des Forges).

<sup>5049</sup> T. 5 July 2004 p. 65 (Des Forges).

<sup>5050</sup> T. 5 July 2004 p. 65 (Des Forges).

<sup>5051</sup> T. 29 September 2005 pp. 30-31, 36 (Nyiramasuhuko).

<sup>5052</sup> T. 9 June 2004 p. 23 (Des Forges).

Des Forges stated that this meeting resulted in Nsabimana, who had been present at the meeting, issuing a message on the same day to the public, aimed at restoring security, which was admitted as Prosecution Exhibit 119B.<sup>5053</sup>

1945. Des Forges claimed that this message also implemented the Interim Government's policy of pacification, contained in Prosecution Exhibit 118B.<sup>5054</sup> In particular, she testified that the references to "restoring security" were a code for eliminating Tutsis.<sup>5055</sup> Shimamungu opined that Nsabimana's message contained in Prosecution Exhibit 119B did implement the Prime Minister's Directive on restoring security, although he did not consider that the message could be interpreted as targeting Tutsis.<sup>5056</sup> Expert Witness Reyntjens considered it unlikely that Prosecution Exhibit 119B implemented the national policy on pacification, *i.e.* the Prime Minister's instructions on restoring security, unless it was broadcast by radio.<sup>5057</sup> Nsabimana testified that during the Security Council meeting of 27 April 1994, the President delivered a monologue and asked why the killings were continuing in Butare.<sup>5058</sup> After the President had left, Nsabimana issued a message to the people of Butare through the *bourgmestres*.<sup>5059</sup> Nsabimana stated that although the Prime Minister's Directive on restoring security was dated 27 April 1994, the same day as the Security Council meeting, he did not receive the Directive until after that date.<sup>5060</sup> His message to the people of Butare was therefore drafted and issued without knowledge of the Prime Minister's instructions and did not implement those instructions.<sup>5061</sup>

1946. The Chamber notes that only Des Forges testified that Nsabimana's message to the people of Butare of 27 April 1994 positively implemented the Interim Government's pacification policy. However, aside from Des Forges' assertion, the Prosecution presented no concrete evidence to establish that Nsabimana was aware of the Prime Minister's Directive of 27 April 1994 when he issued his message to the people of Butare on the same day. For instance, the Prosecution did not establish that Nsabimana physically received the Directive on 27 April 1994 or ought to have been aware of its contents via radio broadcast. Further, in relation to the President's announcement that the killings had to be brought under greater control, Des Forges explained that there was an effort by the authorities' channel to tighten control over the killing process. The doctrine of pacification or restoring security was a

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<sup>5053</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 9 June 2004 p. 23 (Des Forges).

<sup>5054</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 9 June 2004 pp. 23-24 (Des Forges).

<sup>5055</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>5056</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 23 March 2005 p. 25 (Shimamungu).

<sup>5057</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 21 November 2007 p. 69 (Reyntjens).

<sup>5058</sup> T. 19 September 2006 p. 47 (Nsabimana).

<sup>5059</sup> Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 19 September 2006 pp. 68-69 (Nsabimana).

<sup>5060</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 20 September 2006 pp. 10-11 (Nsabimana).

<sup>5061</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); T. 20 September 2006 pp. 16-18, 20 (Nsabimana).

theoretical manifestation of this effort, and its operational framework was the civilian self-defence system.<sup>5062</sup>

1947. The Chamber further notes that no other evidence was presented as to what happened during the Security Council meeting of 27 April 1994 in order to indicate that the resulting message implemented government policy. Although Shimamungu agreed that Nsabimana's message implemented the Prime Minister's Directive, his point of departure is very different from Des Forges', in that he did not think that "restoration of security" could have a nefarious double-meaning.<sup>5063</sup> For these reasons, the Chamber does not consider it to have been established that the purpose of Nsabimana's message to the people of Butare on 27 April 1994, admitted as Prosecution Exhibit 119B, was to implement the Interim Government's national policy on pacification.

#### 3.6.14.4.2 Meetings in Butare, 26, 27 and 28 April 1994

1948. The Chamber notes that the Nsabimana and Kanyabashi Defences do not dispute that the three meetings listed in Prosecution Exhibit 117C took place or that Nsabimana and Kanyabashi were present.<sup>5064</sup> The issue before the Chamber is whether Nsabimana and Kanyabashi used these meetings as an instrument to implement the genocide plan, organise killings or incite the population to kill Tutsis.

1949. The Chamber notes that the Prosecution did not lead evidence on the meeting at Huye Stadium on 26 April 1994. Ntahobali, however, testified that he attended this meeting.<sup>5065</sup> He stated that during the meeting, Kanyabashi said he would consider weapons training for civilians.<sup>5066</sup> He also stated that the erection of roadblocks and night patrols were discussed.<sup>5067</sup> Ntahobali produced what he believed to be the minutes of that meeting, which the Chamber notes contain detailed information on the establishment and organisation of patrols in various *cellules*.<sup>5068</sup> Ntahobali was able to identify the minutes because he recognised the handwriting as belonging to Bernard Mutwewengabo, who was designated to take notes at the meeting.<sup>5069</sup> Ntahobali claims that during the meeting, Mutwewengabo dropped his notes and Ntahobali picked them up.<sup>5070</sup> Witness D-2-14-W's testimony conflicted with Ntahobali's account. He testified that Kanyabashi introduced Nsabimana, that both condemned the killings and stated that night patrols and roadblocks were not discussed.<sup>5071</sup> He also denied that Mutwewengabo was present.<sup>5072</sup> Nsabimana testified that after being introduced by Kanyabashi, he read the

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<sup>5062</sup> T. 9 June 2004 p. 23 (Des Forges).

<sup>5063</sup> T. 23 March 2005 pp. 9-18 (Shimamungu).

<sup>5064</sup> Prosecution Exhibits 117C (Press release to the inhabitants of Ngoma Urban *commune*); T. 19 September 2006 pp. 10-11, 33, 41-42 (Nsabimana); T. 11 February 2008 p. 26 (Witness D-2-14-W); T. 30 January 2008 p. 29 (Witness D-2-5-I); T. 30 August 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>5065</sup> T. 24 April 2006 p. 37 (Ntahobali).

<sup>5066</sup> T. 24 April 2006 p. 50 (Ntahobali).

<sup>5067</sup> T. 24 April 2006 pp. 45-47 (Ntahobali).

<sup>5068</sup> Defence Exhibit 406C (Ntahobali) (Report of the meeting of the inhabitants of Butare-ville *cellule*, 26 April 1994).

<sup>5069</sup> T. 24 April 2006 pp. 44, 55 (Ntahobali).

<sup>5070</sup> T. 24 April 2006 p. 54 (Ntahobali).

<sup>5071</sup> T. 11 February 2008 pp. 27-28 (Witness D-2-14-W).

<sup>5072</sup> T. 11 February 2008 p. 29 (Witness D-2-14-W).



contents of the 25 April 1994 press release and condemned the killings.<sup>5073</sup> He denied that notes were taken during the meeting.<sup>5074</sup>

1950. Ntahobali's testimony, if considered credible, could implicate Nsabimana and Kanyabashi in the organisation of the massacres in Butare *préfecture*. As an Accused, the Chamber must weigh Ntahobali's testimony against two of his co-Accused with appropriate caution. The Chamber considers that Ntahobali may have been motivated by a desire to implicate Nsabimana and Kanyabashi in criminal acts in order to deflect liability from himself. The substance of Ntahobali's testimony on what was discussed during the meeting is based on the minutes of the meeting submitted by the Ntahobali Defence as Defence Exhibit 406C.

1951. The Chamber does not find Ntahobali's account of how he was able to recognise the minutes of the meeting to be plausible and further observes that the minutes are unsigned. The Chamber is therefore not convinced that Defence Exhibit 406C is a faithful record of the meeting of 26 April 1994. This, combined with Nsabimana's and Witness D-2-14-W's testimony that no one took notes at the meeting and that Mutwewengabo was not present there, further undermines Ntahobali's account. In short, the Chamber does not consider Ntahobali's testimony to be credible on this particular event and therefore is not satisfied that the roadblocks or patrols were discussed at the meeting of 26 April 1994.

1952. With regard to the alleged meeting held on 27 April 1994 at the Ngoma Parish football ground, Witness QA placed the meeting at the end of May 1994, rather than the end of April 1994.<sup>5075</sup> He claimed that around 1200 people were present from Ngoma and Matyazo *secteurs*. Witness QA claimed that Kanyabashi and Nsabimana delivered a coded message to the attendees: Kanyabashi stated that anyone who engaged in killings would be shot; Nsabimana concurred and added that things had to continue as planned, as the President had announced.<sup>5076</sup> The witness understood this to mean that the public should finish the job they had started and continue with the killings as planned.<sup>5077</sup> In contrast, Nsabimana testified that, as at the previous day's meeting, he read the contents of the 25 April 1994 press release and warned the attendees that if there were any more killings, the perpetrators would be shot.<sup>5078</sup> Witness D-2-5-I testified that there were approximately 200 people at the meeting.<sup>5079</sup> Nsabimana and Kanyabashi urged the population to remain united and forbade them from participating in the killings.<sup>5080</sup>

1953. The Chamber notes the existence of serious credibility issues surrounding the testimony of Witness QA. When he was recalled by the Chamber for further questioning in 2008, he admitted that his original testimony that Nsabimana ordered the attendees to continue

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<sup>5073</sup> Prosecution Exhibits 117C (Press release to the inhabitants of Ngoma Urban *commune*); T. 19 September 2006 p. 38 (Nsabimana).

<sup>5074</sup> T. 19 September 2006 p. 38 (Nsabimana).

<sup>5075</sup> T. 22 March 2004 p. 7 (Witness QA).

<sup>5076</sup> T. 22 March 2004 p. 8 (Witness QA).

<sup>5077</sup> T. 22 March 2004 pp. 8-9, 74 (Witness QA).

<sup>5078</sup> Prosecution Exhibits 117C (Press release to the inhabitants of Ngoma Urban *commune*); T. 19 September 2006 p. 42 (Nsabimana).

<sup>5079</sup> T. 30 January 2008 pp. 29-30 (Witness D-2-5-I).

<sup>5080</sup> T. 30 January 2008 p. 34 (Witness D-2-5-I).

with the killings as planned was a lie.<sup>5081</sup> Furthermore, he stated that only a few aspects of his original testimony were true; most of his original testimony was a lie.<sup>5082</sup>

1954. The Prosecution also led evidence through Witness RL on the meeting at Ngoma Church football field. The Chamber refers to its Considerations in the “Ngoma Church Massacre” section of this Judgment, in which the Chamber found Witness RL to be credible for the reasons set forth in that section (). The Chamber recalls that the witness provided an in-depth account of a meeting that took place some days after the attack at Ngoma Church, in particular on how he was able to observe the meeting from a vantage point inside the church, the presence of Kanyabashi and what was said during the meeting.<sup>5083</sup> Witness RL was able to describe both the location of his vantage point and of Kanyabashi on the football field by reference to photographs of these sites.<sup>5084</sup> He stated that Kanyabashi used a megaphone to address the crowd, which is consistent with Witness D-2-5-I’s testimony that the speakers at the meeting used a public address system.<sup>5085</sup>

1955. Witness RL further testified that Kanyabashi spoke during the meeting and urged the *Interahamwe* and the *conseiller* to disseminate the message that peace had returned and that there would be no more killings.<sup>5086</sup> In the Chamber’s view, the fact that Witness RL stated that he did not see or hear any reference to the new *préfet*, Nsabimana, does not detract from the credibility of his testimony or necessarily contradict the testimony of Witness D-2-5-I or Nsabimana, according to which Nsabimana was indeed present at the meeting.<sup>5087</sup> The Chamber considers that Witness RL may not have had an opportunity to see Nsabimana, noting that the witness admitted to not having heard everything that Kanyabashi said during his address.<sup>5088</sup>

1956. The Chamber does not find Witness QA’s account on the meeting to be reliable or credible. Further, while the Chamber considers Witness RL’s testimony to be credible on this issue, it observes that no evidence was led to suggest that the statements attributed to Kanyabashi on this occasion had a hidden meaning. The Chamber therefore finds that it has not been established that Kanyabashi or Nsabimana used coded messages to order the killing of Tutsis at this meeting.

1957. The Prosecution did not lead any evidence on the meeting of 28 April 1994 in Rango. However, Nsabimana testified that at that particular meeting, he was introduced by Kanyabashi; he read the contents of the 25 April 1994 press release and called for order to be

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<sup>5081</sup> T. 30 October 2008 pp. 22-23; T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>5082</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

<sup>5083</sup> T. 25 March 2004 pp. 87-88; T. 29 March 2004 p. 17 (Witness RL).

<sup>5084</sup> T. 29 March 2004 pp. 13-16, 19-21 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church); Prosecution Exhibit 96 (Photograph of the exterior of Ngoma Church and adjoining field).

<sup>5085</sup> T. 25 March 2004 pp. 87-88 (Witness RL); T. 30 January 2008 p. 32 (Witness D-2-5-I).

<sup>5086</sup> T. 25 March 2004 pp. 87-88 (Witness RL).

<sup>5087</sup> T. 30 March 2004 p. 46 (Witness RL); T. 30 January 2008 pp. 29-30 (Witness D-2-5-I); T. 19 September 2006 pp. 41-42 (Nsabimana).

<sup>5088</sup> T. 25 March 2004 p. 87 (Witness RL).

restored.<sup>5089</sup> Karemano testified that Nsabimana urged the attendees to try and live in harmony again.<sup>5090</sup> Witness D-2-13-D stated that Kanyabashi ordered an end to the killings.<sup>5091</sup>

1958. In view of all of the above, the Chamber does not consider that the Prosecution has established beyond a reasonable doubt that the meetings of 26, 27 and 28 April 1994 were held pursuant to the Interim Government's national policy on pacification as enshrined in the Prime Minister's Directive on restoring security of 27 April 1994, admitted as Prosecution Exhibit 118B.<sup>5092</sup> Furthermore, the Chamber does not consider that the Prosecution has established that these meetings formed part of the conspiracy to commit genocide.

### 3.6.15 Ngoma Parish Church Massacre, Late April 1994

#### 3.6.15.1 Introduction

1959. The Kanyabashi Indictment alleges that Kanyabashi held a meeting in Ngoma Parish in late April 1994 during which he gave assurances that the massacres were over. Tutsis who were fleeing the killings, sought refuge in Ngoma Parish Church. On the morning of 30 April 1994, soldiers and *Interahamwe* armed with traditional weapons arrived at the church. The refugees left the church after the soldiers promised to take them to safety. The refugees were subsequently attacked by the *Interahamwe* on the sports field beside the church and massacred.<sup>5093</sup>

1960. The Prosecution submits that on 27 April 1994, Kanyabashi and Nsabimana jointly organised a pacification meeting on the football field next to Ngoma Church during which they delivered a coded message that greater care had to be taken in killing Tutsis.<sup>5094</sup> On 30 April 1994, Tutsis at the church were attacked and killed or taken away to be killed.<sup>5095</sup> The Prosecution argues that Kanyabashi and his subordinates led the killings of Tutsis in Ngoma *commune*, and that he organised, planned and was often present at the massacres.<sup>5096</sup> His subordinates included *conseillers*, *commune* policemen and *responsables de cellule*,<sup>5097</sup> and the killers themselves included soldiers and *gendarmes*.<sup>5098</sup> Jacques Habimana, the *conseiller* of Ngoma *secteur* appointed by Kanyabashi in April 1994, was a notorious killer who participated in the Ngoma Church massacre.<sup>5099</sup> Notwithstanding Habimana's notoriety and involvement in killings, Kanyabashi maintained Habimana in his position as *conseiller* and issued instructions to him.<sup>5100</sup> The Prosecution submits that Kanyabashi was aware of the massacres in Ngoma *commune* and points out that he lived and worked a short distance from

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<sup>5089</sup> Prosecution Exhibits 117C (Press release to the inhabitants of Ngoma Urban *commune*); T. 20 September 2006 pp. 5-6 (Nsabimana).

<sup>5090</sup> T. 22 August 2006 p. 21 (Karemano).

<sup>5091</sup> T. 30 August 2007 p. 47 (ICS) (Witness D-2-13-D).

<sup>5092</sup> T. 29 September 2005 pp. 30-31, 36 (Nyiramasuhuko).

<sup>5093</sup> Para. 6.35 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute).

<sup>5094</sup> Prosecution Closing Brief, p. 394, para. 29; Prosecution Closing Argument, T. 21 April 2009 p. 26.

<sup>5095</sup> Prosecution Closing Brief, p. 394, para. 29; Prosecution Closing Argument, T. 21 April 2009 p. 26.

<sup>5096</sup> Prosecution Closing Brief, p. 405, para. 76.

<sup>5097</sup> Prosecution Closing Brief, p. 413, para. 102.

<sup>5098</sup> Prosecution Closing Brief, p. 431, para. 166.

<sup>5099</sup> Prosecution Closing Brief, p. 417, para. 114.

<sup>5100</sup> Prosecution Closing Brief, p. 417, para. 114.

the Ngoma Parish massacre site. The evidence adduced placed Kanyabashi at the massacre sites as the massacres unfolded or after they had taken place.<sup>5101</sup> In support of its allegations, the Prosecution relies on the testimony of Prosecution Witnesses RL and QA and Prosecution Expert Witness Alison Des Forges.

1961. In addition to its submissions on the vagueness of the Indictment<sup>5102</sup> considered below, the Kanyabashi Defence contends that Article 6 (3) responsibility cannot apply to the Accused because neither the subordinates nor the facts characterising an allegation of command responsibility are stipulated.<sup>5103</sup> Furthermore, there is no evidence that policemen or *conseillers* were involved in the attack.<sup>5104</sup> The Kanyabashi Defence asserts that the Prosecution failed to establish a link between the meeting held by Kanyabashi and the massacre of refugees, given that according to the Prosecution evidence, the meeting was after the attack.<sup>5105</sup> It further submits that the Prosecution evidence on what Kanyabashi said at the meeting is contradictory, which raises doubt as to the criminal objective of the meeting.<sup>5106</sup>

1962. The Defence argues that the death of Kanyabashi's relatives during the attack demonstrates Kanyabashi had no power over the attackers.<sup>5107</sup> The Kanyabashi Defence challenges the credibility of Prosecution Witness QA, who was recalled before the Chamber in 2008 and admitted lying about what Kanyabashi said during the meeting near Ngoma Church. He went on to confirm that the utterances at the meeting were in favour of peace and ending the killings.<sup>5108</sup> The Kanyabashi Defence submits that Prosecution Witnesses QA and RL, who testified on the massacre at Ngoma Church, attended meetings of the *Ibuka* association during which the falsification of testimony against Kanyabashi was discussed and they were incited to lie.<sup>5109</sup> The Kanyabashi Defence relies on the testimony of Witnesses D-2-21-T and D-2-18-O.<sup>5110</sup> The Kanyabashi Defence also questions the identification of Kanyabashi by Witness RL.<sup>5111</sup>

### 3.6.15.2 Preliminary Issues

#### *Vagueness of Paragraph 6.35 of the Kanyabashi Indictment*

1963. In its Closing Brief, the Kanyabashi Defence reiterates the arguments advanced in its Preliminary Motion filed on 9 October 1999 in which it submitted that Paragraph 6.35 of the Kanyabashi Indictment should be deleted because it is vague and fails to stipulate why

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<sup>5101</sup> Prosecution Closing Brief, p. 414, para. 106; Prosecution Closing Argument, T. 21 April 2009 p. 18.

<sup>5102</sup> Kanyabashi Closing Brief, para. 249.

<sup>5103</sup> Kanyabashi Closing Brief, para. 249; Kanyabashi Closing Argument, T. 28 April 2009 pp. 69-70.

<sup>5104</sup> Kanyabashi Closing Brief, para. 256.

<sup>5105</sup> Kanyabashi Closing Brief, para. 258; Kanyabashi Closing Argument, T. 28 April 2009 p. 70.

<sup>5106</sup> Kanyabashi Closing Brief, paras. 265, 268.

<sup>5107</sup> Kanyabashi Closing Brief, paras. 273, 277; Kanyabashi Closing Argument, T. 28 April 2009 p. 71.

<sup>5108</sup> Kanyabashi Closing Brief, para. 265.

<sup>5109</sup> Kanyabashi Closing Brief, paras. 267-268.

<sup>5110</sup> The Chamber notes that it has previously set out the evidence of Witnesses D-2-21-T and D-2-18-O as it relates to the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>5111</sup> Kanyabashi Closing Brief, paras. 252-255.

Kanyabashi should be held responsible for the allegations contained therein.<sup>5112</sup> With regard to Article 6 (3) liability, it further submits that Paragraph 6.35 does not identify the subordinates involved or the essential facts underpinning the allegation and thereby fails to meet the standards set down in the case law.<sup>5113</sup>

1964. The Chamber recalls its Decision of 31 May 2000 on Kanyabashi's Motion in which it considered it unnecessary to respond to the Defence's submissions concerning a number of paragraphs, including Paragraph 6.35, either because such paragraphs were sufficiently clear or because the factual precisions sought by the Defence bore on issues to be addressed during the trial on the merits, or because the requested precisions sought could be inferred from reading the Indictment as a whole.<sup>5114</sup>

1965. The Chamber considers that Kanyabashi's alleged involvement in and liability for the Ngoma Church massacre, as set out in Paragraph 6.35, is clear when read in the context of the Indictment as a whole.

1966. The key to Kanyabashi's liability lies in the fact that Paragraph 6.35 is cited in support of Article 6 (3) responsibility alone, as is clear from Section 7 of the Indictment entitled "CHARGES". Paragraph 6.35 of the Indictment describes how the Accused allegedly held a meeting at Ngoma Church during which he gave assurances that the massacres were over. On the basis of such assurances, Tutsi survivors sought refuge in the church. Soldiers promised to take the Tutsis to a place of safety and, when the refugees left the church, they were attacked by *Interahamwe* and massacred. In essence, therefore, Paragraph 6.35 attributes liability to Kanyabashi on the basis that he, as a superior, knew that his subordinates were committing criminal acts and failed to take steps to prevent such acts from occurring or to punish the perpetrators. Thus, the Kanyabashi Defence's submissions on the vagueness of Paragraph 6.35 and Article 6 (3) are closely linked and should therefore be considered together.

1967. The Chamber recalls the standards set forth in the case law which must be met if the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute.<sup>5115</sup> The Chamber notes that the soldiers and *Interahamwe* referred to in Paragraph 6.35 are not specifically described as being Kanyabashi's subordinates. The issue is therefore whether it can be inferred from reading the Indictment as a whole that the soldiers and *Interahamwe* referred to in Paragraph 6.35 were Kanyabashi's subordinates.

1968. In this connection, the Chamber notes that Paragraph 4.3 of the Kanyabashi Indictment states that Kanyabashi exercised authority over his subordinates in his capacity as *bourgmestre* of Ngoma *commune*. According to Paragraph 6.32 of the Kanyabashi Indictment, those subordinates include, but are not limited to, *conseillers* and *commune* policemen. The Indictment therefore envisages the existence of other categories of subordinates insofar as Kanyabashi is concerned. Paragraph 6.34, which is also cited in support of Article 6 (3)

<sup>5112</sup> Kanyabashi Closing Brief, para. 249; *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Preliminary Motion Based on Rule 72 B(ii) of the Rules of Procedure and Evidence, 9 October 1999, para. 42.

<sup>5113</sup> Kanyabashi Closing Brief, para. 249.

<sup>5114</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, para. 5.22.

<sup>5115</sup> *Nahimana et al.*, Judgement (AC), para. 323.

responsibility, refers to Kanyabashi giving orders to soldiers, which implies that the Accused held a position of authority *vis-à-vis* soldiers. Paragraphs 5.12 and 5.13 describe how Kanyabashi allegedly trained and distributed weapons to members of the civilian population and militiamen, which also suggests that the Accused exercised authority over such militia. In light of the foregoing, the Chamber considers it reasonable to infer, from reading the Indictment as a whole, that the soldiers and *Interahamwe* referred to in Paragraph 6.35 were Kanyabashi's alleged subordinates. The Chamber further observes that the alleged criminal conduct of the subordinates is specified, *i.e.* that the soldiers enticed the refugees out of the church and the *Interahamwe* subsequently attacked them. The Chamber therefore considers that reading the Indictment as a whole, the wording of Paragraph 6.35 is sufficiently specific to meet the standards set forth in the case law regarding Article 6 (3) responsibility.

1969. The Chamber notes that the allegation that in late April 1994, Kanyabashi held a meeting at the Ngoma Parish and that on the morning of 30 April 1994, there was a massacre led by soldiers and *Interahamwe* at the sports field beside the church, was directly pled in the Indictment. The Indictment is therefore not defective and consequently, Kanyabashi was reasonably able to understand the nature of the charges against him and suffered no prejudice in the preparation of his defence based on the Indictment.<sup>5116</sup>

### 3.6.15.3 Evidence

#### Prosecution Witness RL

1970. Witness RL, a Tutsi who was 13 years old in 1994,<sup>5117</sup> testified that after the death of the President, he saw Kanyabashi twice; once one-and-a-half to two weeks after the death of the President in April 1994, and then about five days after the first.<sup>5118</sup> He was at the Matyazo dispensary, and both times Kanyabashi was in a Toyota Stout vehicle.<sup>5119</sup> During the night of the second time Witness RL saw Kanyabashi, the witness fled to Ngoma Church. When he arrived, there were not many Tutsi refugees although the number later increased to the point that the refugees filled the whole church.<sup>5120</sup> There were people of all ages, both adults and children.<sup>5121</sup>

1971. Five or six days after his arrival, at the beginning of May 1994 the refugees were attacked and killed by soldiers, assisted by the *Interahamwe*.<sup>5122</sup> The killings started at around 10.00 a.m. and continued into the evening.<sup>5123</sup> They took place in a wooded area below the priests' residence.<sup>5124</sup> The attackers took the victims out of the church in small groups at a time, to prevent them from escaping, adults first followed by children.<sup>5125</sup> The witness testified

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<sup>5116</sup> See *Niyitegeka*, Judgement (AC), para. 197; *Kupreškić et al.*, Judgement (AC), paras. 119-121.

<sup>5117</sup> T. 25 March 2004 p. 76 (ICS) (Witness RL); Prosecution Exhibit 95 (Personal Particulars).

<sup>5118</sup> T. 25 March 2004 pp. 82-83 (Witness RL).

<sup>5119</sup> T. 25 March 2004 pp. 77-79, 83, 86 (Witness RL).

<sup>5120</sup> T. 25 March 2004 p. 84 (Witness RL).

<sup>5121</sup> T. 30 March 2004 p. 27 (Witness RL).

<sup>5122</sup> T. 25 March 2004 pp. 84-86 (Witness RL).

<sup>5123</sup> T. 25 March 2004 pp. 84-85 (Witness RL).

<sup>5124</sup> T. 25 March 2004 p. 84 (Witness RL).

<sup>5125</sup> T. 25 March 2004 p. 85; T. 30 March 2004 p. 27 (Witness RL).

that between noon and 1.00 p.m., he was among a group of five children who were taken from the church into the woods to be killed.<sup>5126</sup>

1972. He was hit hard with a club on the back of his head on at least three occasions and lost consciousness.<sup>5127</sup> When he regained consciousness at about 5.00 p.m., he saw *Interahamwe* finishing off those who were dying. He was surrounded by bodies and there were also bodies lying over his legs.<sup>5128</sup> He was two or three metres away from a road and on regaining consciousness, he heard the noise of a car engine and saw a Toyota Stout vehicle parked on the road. He raised his head and saw Kanyabashi get out of the vehicle to look around.<sup>5129</sup> It was beginning to get dark.<sup>5130</sup> He heard the engine of the car and saw it when it had stopped but could not raise his head for fear of being seen and killed.<sup>5131</sup> In cross-examination, the witness clarified on a number of occasions that he raised his head slowly in order to see Kanyabashi and then lowered it again.<sup>5132</sup> A short while later, Kanyabashi returned to his vehicle and left.<sup>5133</sup> In cross-examination, the witness stated that even though he had received a blow to the head during the attack, he did not go blind and could still see quite far.<sup>5134</sup> The witness was shown video footage of a woodland area close to Ngoma Church and identified it as being the area where the refugees were attacked.<sup>5135</sup>

1973. The witness was referred to his statement of 16 January 1997 in which he stated that he was about 10 metres away from Kanyabashi when he saw the Accused on the road, rather than three metres away as he stated during examination-in-chief.<sup>5136</sup> Witness RL explained that his perception of the distance was an estimate rather than an exact measurement, but that 10 metres was an overestimation in any event.<sup>5137</sup>

1974. After the attack, Witness RL left the woods and returned to Ngoma Church where he was received by a cook named Jean and Father Eulade Rudahunga.<sup>5138</sup> He remained there for about two and a half months. Approximately five days to one week after the attack, Kanyabashi held a meeting in the church grounds which was attended by approximately 1,000 *Interahamwe*.<sup>5139</sup> Witness RL was confronted with his statement of 11 July 1996 in which he stated that the meeting at Ngoma Church football field took place about four days after the killings, rather than between five days and one week thereafter as stated in his examination-in-chief.<sup>5140</sup> The witness underlined that these time frames were estimates.<sup>5141</sup>

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<sup>5126</sup> T. 25 March 2004 p. 85; T. 30 March 2004 p. 28 (Witness RL).

<sup>5127</sup> T. 25 March 2004 p. 85; T. 30 March 2004 p. 28 (Witness RL).

<sup>5128</sup> T. 25 March 2004 p. 85 (Witness RL).

<sup>5129</sup> T. 25 March 2004 pp. 85-86 (Witness RL).

<sup>5130</sup> T. 30 March 2004 p. 31 (Witness RL).

<sup>5131</sup> T. 25 March 2004 p. 86 (Witness RL).

<sup>5132</sup> T. 30 March 2004 pp. 33-34 (Witness RL).

<sup>5133</sup> T. 25 March 2004 p. 86 (Witness RL).

<sup>5134</sup> T. 30 March 2004 p. 37 (Witness RL).

<sup>5135</sup> T. 29 March 2004 p. 8 (Witness RL); Prosecution Exhibit 4 (Video of Ngoma Church).

<sup>5136</sup> T. 30 March 2004 p. 35 (Witness RL).

<sup>5137</sup> T. 30 March 2004 pp. 34-35 (Witness RL).

<sup>5138</sup> T. 25 March 2004 p. 87; T. 30 March 2004 p. 28 (Witness RL).

<sup>5139</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>5140</sup> T. 30 March 2004 pp. 40-43 (Witness RL).

<sup>5141</sup> T. 30 March 2004 p. 44 (Witness RL).

1975. The witness was inside the church when the meeting took place and observed events through ventilation holes in the concrete walls of the church.<sup>5142</sup> He was shown a photograph of the interior of Ngoma Church on which he identified the place from which he said he witnessed the meeting, being a ventilation space between the roof of the church and the top of the right-hand side exterior wall.<sup>5143</sup> He explained that he climbed up to his viewing position using the blocks that protruded from the wall near the back of the church.<sup>5144</sup>

1976. Kanyabashi used a megaphone which he held in his hand to address the crowd and urged the *Interahamwe* and the *conseiller* to spread the news that peace had returned and that there would be no more killings.<sup>5145</sup> The witness did not hear everything that Kanyabashi said during his address, but was able to hear the things that concerned him.<sup>5146</sup> On another photograph of the area of ground adjacent to the church, with the church in the background, the witness identified where he said Kanyabashi had been standing when he delivered his speech, by drawing a square on the photograph, and where the witness had observed events, indicated by a cross.<sup>5147</sup>

1977. Witness RL stated that he did not see or hear a new *préfet* being introduced to the crowd during the meeting. When asked if he heard Kanyabashi say that people should stop killing each other and should live in harmony, the witness responded that the Tutsis were already dead and had already been killed or were in hiding, how could they live together in harmony when they had already been killed?<sup>5148</sup> He also said that he did not see any meetings near the church prior to the attack during which he was injured.<sup>5149</sup>

1978. Witness RL testified that he knew Kanyabashi as the *bourgmestre* before 1994, but he did not know his first name.<sup>5150</sup> He had seen him on several occasions before and after President Habyarimana's death.<sup>5151</sup> Before the President's death, he saw Kanyabashi at the stadium and the Matyazo *secteur* office when he convened meetings, along the road whenever he received authorities from other areas and driving a Peugeot 305.<sup>5152</sup> The witness identified Kanyabashi in court.<sup>5153</sup>

1979. In cross-examination, the witness was confronted with the assertion that it was Cyriaque Habyarabatuma, rather than Kanyabashi, who was present at Ngoma Church when the attackers were delivering the final blows to the victims.<sup>5154</sup> Moreover, Counsel contended

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<sup>5142</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>5143</sup> T. 29 March 2004 pp. 13-16 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church).

<sup>5144</sup> T. 29 March 2004 p. 17 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church).

<sup>5145</sup> T. 25 March 2004 pp. 87-88 (Witness RL).

<sup>5146</sup> T. 25 March 2004 p. 87 (Witness RL).

<sup>5147</sup> T. 29 March 2004 pp. 19-20 (Witness RL); Prosecution Exhibit 97 (Photograph of the exterior of Ngoma Church and adjoining field).

<sup>5148</sup> T. 30 March 2004 pp. 46-47 (Witness RL).

<sup>5149</sup> T. 30 March 2004 pp. 40, 44 (Witness RL).

<sup>5150</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>5151</sup> T. 25 March 2004 pp. 76-77; T. 29 March 2004 pp. 5-6 (Witness RL).

<sup>5152</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>5153</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>5154</sup> T. 30 March 2004 p. 39 (Witness RL).



that the witness' description of Habyarabatuma matched that of Kanyabashi in 1994.<sup>5155</sup> In response, the witness stated that in 1994 Kanyabashi had white hair and was wearing a suit and could not say anything else about his appearance.<sup>5156</sup> In re-examination, the witness acknowledged that he had seen Habyarabatuma prior to the 1994 events. Habyarabatuma's complexion was darker than Kanyabashi's and he had a large head.<sup>5157</sup> The witness testified that there is "no way" he would mistake Habyarabatuma for Kanyabashi because he knew both of them.<sup>5158</sup> Even though he was still a child in 1994, Habyarabatuma and Kanyabashi held positions of authority – one used to come and hold meetings with the people and the other would be present whenever there was a search.<sup>5159</sup>

### Prosecution Witness QA

1980. Witness QA, a Hutu, testified that at the end of May 1994,<sup>5160</sup> a meeting was held at the *secteur* office in the courtyard of Ngoma Parish.<sup>5161</sup> The witness clarified that the meeting was held on the football field next to Ngoma Parish Church.<sup>5162</sup> He stated that it was possible that approximately 1,200 people from Ngoma and Matyazo *secteurs* were present.<sup>5163</sup> Kanyabashi and Nsabimana were in attendance.<sup>5164</sup> The meeting had been convened by Kanyabashi and he was first to take the floor.<sup>5165</sup> Kanyabashi announced: "The killings have stopped and from today onwards nobody has a right to kill anybody. Anybody who kills will be shot."<sup>5166</sup> Nsabimana spoke next, and confirmed what had been said by Kanyabashi. He said: "Indeed, what has just been said by your *bourgmestre*, that anybody who kills will be shot, is true. Any such person will be shot ... things must be such as they were programmed to be done, as was known by the President of the Republic."<sup>5167</sup> According to the witness, the audience did not understand Nsabimana's message as it conflicted with that of Kanyabashi. Kanyabashi said, "[w]hosoever shall kill shall be shot", whereas Nsabimana said, "[w]homsoever [*sic*] kills will be punished in an exemplary manner."<sup>5168</sup>

1981. Witness QA testified that after the meeting, he came to realise that Nsabimana and Kanyabashi's address had a special meaning; their intention was for those who attended the meeting to finish the job they had started and flush people out.<sup>5169</sup> Nsabimana's speech was not a recommendation to stop the killings but rather a secret manner of speaking, for saying that

<sup>5155</sup> T. 30 March 2004 p. 39 (Witness RL).

<sup>5156</sup> T. 30 March 2004 p. 40 (Witness RL).

<sup>5157</sup> T. 30 March 2004 p. 48 (Witness RL).

<sup>5158</sup> T. 30 March 2004 pp. 49-50 (Witness RL).

<sup>5159</sup> T. 30 March 2004 p. 50 (Witness RL).

<sup>5160</sup> Prosecution Exhibit 93 (Personal Particulars).

<sup>5161</sup> T. 22 March 2004 p. 7 (Witness QA).

<sup>5162</sup> T. 22 March 2004 p. 53 (Witness QA).

<sup>5163</sup> T. 22 March 2004 p. 54; T. 22 March 2004 p. 61 (ICS); the English transcript provides only a phonetic spelling of this *secteur* – "Machazu"; T. 22 March 2004 (Extract) (Witness QA).

<sup>5164</sup> T. 22 March 2004 pp. 7-8 (Witness QA).

<sup>5165</sup> T. 22 March 2004 pp. 8, 73-74 (Witness QA).

<sup>5166</sup> T. 22 March 2004 p. 8 (Witness QA).

<sup>5167</sup> T. 22 March 2004 pp. 8-9 (Witness QA); the English transcript of Nsabimana's words is inconsistent with the French version – the latter has been relied on here as it is the most consistent when viewed alongside the rest of Witness QA's testimony; T. 22 March p. 74 (Witness QA) (French).

<sup>5168</sup> T. 22 March 2004 pp. 8, 74 (Witness QA).

<sup>5169</sup> T. 22 March 2004 pp. 8-9 (Witness QA).

the killings had stopped but that things should continue as planned.<sup>5170</sup> That night, people who had taken refuge in Ngoma Church, which was located about 10 metres away, were killed.<sup>5171</sup>

1982. When recalled to testify, Witness QA confirmed that he had made a statement before a Canadian Rogatory Committee concerning Nsabimana's address to the attendees of the meeting that took place at the end of May 1994 at the Ngoma Parish football pitch.<sup>5172</sup> Nsabimana said that the killings that had taken place at the Ngoma Parish were the last and if anyone else were to be arrested for killing he himself would be shot.<sup>5173</sup> He also urged those in hiding to come out.<sup>5174</sup> The witness admitted that on the request of two named individuals he gave false testimony to the Chamber in 2004 in which he stated that Nsabimana had also told the meeting attendees to continue with the scheduled programme, as announced by the President.<sup>5175</sup>

1983. Witness QA testified that he knew Nsabimana before the 1994 events as a member of his party, the PSD. He identified Nsabimana in court.<sup>5176</sup> He also testified that he knew Kanyabashi before 1994 and identified him in court.<sup>5177</sup>

#### Prosecution Expert Witness Alison Des Forges

1984. Alison Des Forges testified that large-scale killings at Ngoma Parish, Matyazo and Kabakobwa occurred at the end of April 1994.<sup>5178</sup> In her Expert Report, the witness refers to a meeting that took place on 27 April 1994 on the football field next to Ngoma Church, this was a pacification meeting conducted jointly by Kanyabashi. Nearly 500 people who had survived the massacre at Matyazo health centre or who had been forced to flee their homes were sheltering in the church at the time. Two days later, at 10.00 p.m. on 29 April 1994, militia and local crowds attacked the church buildings, but those inside defended themselves with stones and prevented the attackers from entering. At around 10.00 a.m. the next morning, 22 soldiers arrived at the church under the command of Lieutenant Ildephonse Hategekimana, head of the Ngoma camp, and assured the crowd sheltering inside that they would not be killed but would instead be taken to prison. However, the military commander called for civilians to kill those who had sought refuge in the church. After an hour of attacks and killing, there was silence. Some victims were taken to be killed in the nearby woods and a number of the women were raped first. A *commune* policeman by the name of Marc Polepole sought out Kanyabashi's sister-in-law and her children, delivering them to the killers outside.<sup>5179</sup>

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<sup>5170</sup> T. 22 March 2004 p. 74 (Witness QA).

<sup>5171</sup> T. 22 March 2004 pp. 8, 54, 74 (Witness QA).

<sup>5172</sup> T. 30 October 2008 pp. 20-21 (Witness QA).

<sup>5173</sup> T. 30 October 2008 p. 21 (Witness QA).

<sup>5174</sup> T. 30 October 2008 p. 21 (Witness QA).

<sup>5175</sup> T. 30 October 2008 pp. 22-23; T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>5176</sup> T. 22 March 2004 p. 9 (Witness QA).

<sup>5177</sup> T. 18 March 2004 p. 79; T. 22 March 2004 p. 10 (Witness QA).

<sup>5178</sup> T. 17 June 2004 p. 24 (Des Forges).

<sup>5179</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

1985. It started raining in the late morning and by the time the rain stopped in the early afternoon, the killers came to finish off the wounded children who were still alive. A Ministry of Health vehicle arrived and several officials alighted.<sup>5180</sup>

#### Kanyabashi Defence Witness D-2-5-I

1986. Witness D-2-5-I, a Hutu civil servant,<sup>5181</sup> testified that he attended a meeting on 27 April 1994 on the football field adjacent to Ngoma Church.<sup>5182</sup> The meeting was attended by Kanyabashi, Nsabimana, the commander of Ngoma camp, *conseillers* and approximately 200 members of the public from Matyazo and Ngoma *secteurs*.<sup>5183</sup> The witness stated that he was not aware of the presence of refugees in Ngoma Church when the meeting took place nor did he know if refugees were present at the meeting, as he did not live at Ngoma Church. He simply went to the meeting and after the meeting returned home.<sup>5184</sup>

1987. The meeting started around 2.00 p.m. The authorities sat in chairs facing the public, some of whom were sitting on the ground while others stood.<sup>5185</sup> The meeting was convened to discuss security issues in view of the killings that had been taking place.<sup>5186</sup> Kanyabashi took the floor first, followed by Nsabimana and the commander of Ngoma camp, and then Nsabimana concluded the meeting.<sup>5187</sup> The witness could not recall what kind of microphone or megaphone was used, but confirmed that one was used.<sup>5188</sup> The commander of Ngoma camp promised to do everything possible to restore security in the area.<sup>5189</sup> Kanyabashi and Nsabimana said that they would cooperate with the commander but did not specify how they planned to restore security.<sup>5190</sup> They also urged the population to remain united and forbade them from participating in the killings.<sup>5191</sup> The witness interpreted this as meaning that the authorities would penalise anyone who took part in the killings.<sup>5192</sup> The witness confirmed that a few days after the meeting, refugees in Ngoma Church were massacred.<sup>5193</sup> Witness D-2-5-I testified that Kanyabashi had been *bourgmestre* of Ngoma *commune* since the witness was a child.<sup>5194</sup> He identified Kanyabashi in court.<sup>5195</sup>

#### Nsabimana

1988. Nsabimana identified Prosecution Exhibit 117 as the press release addressed to the population of Ngoma urban *commune* on 25 April 1994, signed by him in his capacity as

<sup>5180</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 45.

<sup>5181</sup> Defence Exhibit 615 (Kanyabashi) (Personal Particulars).

<sup>5182</sup> T. 30 January 2008 p. 29 (Witness D-2-5-I).

<sup>5183</sup> T. 30 January 2008 pp. 29-30 (Witness D-2-5-I).

<sup>5184</sup> T. 30 January 2008 p. 30 (Witness D-2-5-I).

<sup>5185</sup> T. 30 January 2008 p. 31 (Witness D-2-5-I).

<sup>5186</sup> T. 30 January 2008 p. 30 (Witness D-2-5-I).

<sup>5187</sup> T. 30 January 2008 p. 32 (Witness D-2-5-I).

<sup>5188</sup> T. 30 January 2008 pp. 31-32 (Witness D-2-5-I).

<sup>5189</sup> T. 30 January 2008 p. 32 (Witness D-2-5-I).

<sup>5190</sup> T. 30 January 2008 pp. 32-33 (Witness D-2-5-I).

<sup>5191</sup> T. 30 January 2008 pp. 33-34 (Witness D-2-5-I).

<sup>5192</sup> T. 30 January 2008 p. 34 (Witness D-2-5-I).

<sup>5193</sup> T. 30 January 2008 p. 35 (Witness D-2-5-I).

<sup>5194</sup> T. 11 December 2007 p. 59 (Witness D-2-5-I).

<sup>5195</sup> T. 11 December 2007 p. 60 (Witness D-2-5-I).

chairman of the Butare *préfecture* Security Council.<sup>5196</sup> The aim of this press release was to provide information on meetings that would take place in order to ask the population to remain calm.<sup>5197</sup> Nsabimana's testimony on the contents of this press release is dealt with more fully in the section of this Judgement relating to Nsabimana's participation in meetings between 26 to 28 April 1994, pursuant to the Butare *préfecture* Security Committee press release of 25 April 1994 ().

1989. In the press release, Nsabimana ordered three security meetings to be held, the second of which took place on 27 April 1994 around 2.00 p.m. at the Ngoma Parish football field.<sup>5198</sup> The *bourgmestre* of Ngoma *commune* informed the population that the meeting would be held.<sup>5199</sup> Nsabimana testified that Kanyabashi was already at that meeting when he arrived although he could not recall if other officials were present. Nsabimana read out the *communiqué* of 25 April 1994 to the crowd and told them that if there were any more killings, the perpetrators would be shot.<sup>5200</sup> Kanyabashi repeated this statement.<sup>5201</sup> Nsabimana then left without taking questions from the floor, but the *bourgmestre* stayed.<sup>5202</sup> The distance between where the meeting was held on the football field and Ngoma Church was around 60 metres.<sup>5203</sup>

1990. Nsabimana testified the *bourgmestre* of Ngoma *commune* did not inform him of the massacres that occurred in Ngoma *commune* at the end of April 1994. Had anyone else learned of such massacres, they would have been obliged to inform Nsabimana. Nsabimana did not hear about such massacres from any source. He only found out that such massacres had occurred through information he obtained during the trial. Kanyabashi only informed Nsabimana that members of his family had been killed during the massacres at Ngoma Church during his time in Arusha.<sup>5204</sup>

#### **3.6.15.4 Deliberations**

1991. The Prosecution adduced evidence from two factual witnesses and one expert witness in support of Paragraph 6.35 of the Kanyabashi Indictment. Paragraph 6.35 alleges that Kanyabashi is responsible for the Ngoma Church massacre that occurred at the end of April 1994. The massacre comprises two main elements, as described in Paragraph 6.35 of the Indictment: an initial meeting held by Kanyabashi on the football field adjacent to the church, followed by an attack by *Interahamwe* and soldiers on those who had sought refuge inside the church.<sup>5205</sup>

1992. Witness RL was the only Prosecution eyewitness to testify specifically on the killings of Tutsis at Ngoma Church. Notwithstanding the witness' young age in 1994, the Chamber

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<sup>5196</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 19 September 2006 pp. 31-32 (Nsabimana).

<sup>5197</sup> T. 19 September 2006 p. 31 (Nsabimana).

<sup>5198</sup> Prosecution Exhibit 117C (Press Release to the inhabitants of Ngoma Urban *commune*, 25 April 1994); T. 19 September 2006 pp. 41-42 (Nsabimana).

<sup>5199</sup> T. 19 September 2006 p. 41 (Nsabimana).

<sup>5200</sup> T. 19 September 2006 p. 42 (Nsabimana).

<sup>5201</sup> T. 21 November 2006 p. 46 (Nsabimana).

<sup>5202</sup> T. 19 September 2006 p. 42 (Nsabimana).

<sup>5203</sup> T. 21 November 2006 pp. 46-47 (Nsabimana).

<sup>5204</sup> T. 27 November 2006 p. 25 (Nsabimana).

<sup>5205</sup> Para. 6.35 of the Kanyabashi Indictment.

generally finds his testimony to be convincing and credible. He gave detailed evidence on when the massacre commenced, the methods and weapons used by the attackers, where he was attacked and what happened immediately afterwards.<sup>5206</sup> He testified that when he regained consciousness following a blow to the head, he heard the noise of a car engine and saw Kanyabashi emerge from a Toyota Stout vehicle.<sup>5207</sup> Kanyabashi allegedly surveyed the site very briefly, returned to his car and drove away.<sup>5208</sup>

1993. Even though the witness suffered a head injury during the attack which rendered him unconscious, the Chamber considers his identification of Kanyabashi to be reliable as he knew Kanyabashi before the events of April 1994 and also identified Kanyabashi as having been present at Matyazo Clinic on two occasions in the space of about a fortnight prior to the massacre at Ngoma Church.<sup>5209</sup> On both occasions, the witness testified that Kanyabashi had travelled in a Toyota Stout vehicle, which is consistent with his testimony concerning Kanyabashi's mode of transport to the site of the Ngoma Church massacre.<sup>5210</sup>

1994. The Chamber considers that Witness RL gave consistent and convincing testimony when confronted with the assertion that he may have mistaken Kanyabashi for another man, Major Cyriaque Habyarabatuma.<sup>5211</sup> The Chamber recalls that the witness insisted that there was "no way" he could have mistaken Habyarabatuma for Kanyabashi, despite his young age in 1994.<sup>5212</sup> The witness clearly distinguished the positions of authority held by these men, one of whom used to hold meetings and the other who used to be present whenever there was a search.<sup>5213</sup> In this regard, the Chamber also refers to its deliberations on Witness RL's identification of Kanyabashi in the "Matyazo Clinic" section of this Judgement ( ).

1995. The witness further provided an in-depth account of a meeting that took place some days after the attack, in particular on how he was able to observe the meeting from a vantage point inside the church, the presence of Kanyabashi and what was said during the meeting.<sup>5214</sup> The Chamber recalls that he was able to describe both the location of his vantage point and that of Kanyabashi on the football field, by reference to photographs of these sites.<sup>5215</sup> He stated that Kanyabashi used a megaphone to address the crowd, which is consistent with Witness D-2-5-I's testimony that the speakers at the meeting used a public address system.<sup>5216</sup> The witness testified that Kanyabashi spoke during the meeting and urged the *Interahamwe*

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<sup>5206</sup> T. 25 March 2004 pp. 84-86; T. 30 March 2004 pp. 27-31 (Witness RL).

<sup>5207</sup> T. 25 March 2004 pp. 85-86 (Witness RL).

<sup>5208</sup> T. 25 March 2004 p. 86 (Witness RL).

<sup>5209</sup> T. 25 March 2004 pp. 77-79, 83; T. 29 March 2004 p. 6 (Witness RL).

<sup>5210</sup> T. 25 March 2004 pp. 77-79, 83, 86 (Witness RL).

<sup>5211</sup> T. 30 March 2004 p. 49 (Witness RL); *see also* T. 30 March 2004 p. 55 (Witness RL); page 49 of the English version of the transcript refers to "Chrysologue" rather than "Cyriaque" – this is thought to be an error as the preceding pages of the English transcript refer to "Cyriaque" as being the person for whom Witness RL allegedly mistook Kanyabashi.

<sup>5212</sup> T. 30 March 2004 pp. 49-50 (Witness RL).

<sup>5213</sup> T. 30 March 2004 p. 50 (Witness RL).

<sup>5214</sup> T. 25 March 2004 pp. 87-88; T. 29 March 2004 pp. 17, 19-20; T. 30 March 2004 pp. 40, 46-47 (Witness RL).

<sup>5215</sup> T. 29 March 2004 pp. 13-16, 19-20 (Witness RL); Prosecution Exhibit 2 (Photograph number 2 of the interior of Ngoma Church); Prosecution Exhibit 96 (Photograph of the exterior of Ngoma Church and adjoining field).

<sup>5216</sup> T. 25 March 2004 pp. 87-88 (Witness RL); T. 30 January 2008 pp. 31-32 (Witness D-2-5-I).

and the *conseiller* to disseminate the message that peace had returned and that there would be no more killings.<sup>5217</sup>

1996. The Chamber notes that Witness RL testified in examination-in-chief that he had raised his head from the ground in order to see Kanyabashi but had then later stated that he could not raise his head for fear of being seen.<sup>5218</sup> In cross-examination, the witness clarified on a number of occasions that he raised his head slowly in order to see the Accused and then lowered it again.<sup>5219</sup> He underlined that he saw Kanyabashi at the massacre site and that even though he had suffered a head injury, he was not blind and could still see.<sup>5220</sup> The Chamber does not consider this discrepancy to be significant and notes that the witness' testimony on other aspects of the Ngoma Church events was clear and consistent under cross-examination, in particular as regards time frames, the order of events and the identification of Kanyabashi.<sup>5221</sup>

1997. Also in cross-examination, the witness was referred to his previous statement of 16 January 1997 in which he stated that he was about 10 metres away from Kanyabashi when he saw the Accused on the road, rather than three metres away as he stated during examination-in-chief.<sup>5222</sup> Witness RL explained that his perception of the distance was an estimate rather than exact measurement but that 10 metres was an overestimation in any event.<sup>5223</sup> The Chamber takes note of this inconsistency and the witness' explanation but considers that he could still have identified Kanyabashi even at a distance of 10 metres, especially in view of his previous knowledge of the Accused from before the 1994 events and Matyazo Clinic.

1998. Witness RL was also confronted with his statement of 11 July 1996 in which he stated that the meeting at the Ngoma Church football field took place about four days after the killings, rather than between five days and one week thereafter as stated in his examination-in-chief.<sup>5224</sup> The witness underlined that these time frames were estimates.<sup>5225</sup> Again, the Chamber does not consider this slight discrepancy to have an impact on the veracity of the witness' testimony and considers his explanation to be plausible. Lastly, the fact that Witness RL stated that he did not see or hear any reference to the new *préfet*, Nsabimana, does not detract from the credibility of his testimony or necessarily contradict the testimony of Witness D-2-5-I or Nsabimana, according to which Nsabimana was indeed present at the meeting.<sup>5226</sup> The Chamber considers that Witness RL may not have had an opportunity to see Nsabimana and notes that he admitted to not having heard everything that Kanyabashi said during his address.<sup>5227</sup> The Chamber considers Witness RL's testimony to be credible also in this regard.

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<sup>5217</sup> T. 25 March 2004 pp. 87-88 (Witness RL).

<sup>5218</sup> T. 25 March 2004 pp. 85-86 (Witness RL).

<sup>5219</sup> T. 30 March 2004 pp. 33-34 (Witness RL).

<sup>5220</sup> T. 30 March 2004 pp. 34, 37 (Witness RL).

<sup>5221</sup> T. 30 March 2004 pp. 27-31, 34, 38-40, 44 (Witness RL).

<sup>5222</sup> T. 30 March 2004 p. 35 (Witness RL).

<sup>5223</sup> T. 30 March 2004 pp. 34-35 (Witness RL).

<sup>5224</sup> T. 30 March 2004 pp. 40-43 (Witness RL).

<sup>5225</sup> T. 30 March 2004 p. 44 (Witness RL).

<sup>5226</sup> T. 30 March 2004 p. 46 (Witness RL); T. 30 January 2008 pp. 29-30 (Witness D-2-5-I); T. 19 September 2006 pp. 41-42 (Nsabimana).

<sup>5227</sup> T. 25 March 2004 p. 87 (Witness RL).

1999. As regards Witness QA, the Chamber recalls the existence of serious credibility issues surrounding the testimony of this witness. When he was recalled by the Chamber for further questioning in 2008, he admitted that his original testimony that Nsabimana ordered the attendees to continue with the killings as planned, was a lie.<sup>5228</sup> Accordingly, the Chamber does not find Witness QA's account of the meeting as a whole to be reliable or credible.

2000. In her Report, Des Forges stated that a meeting took place on 27 April 1994 at the Ngoma Church football field while almost 500 people were sheltering in the church building.<sup>5229</sup> Three days later, those who had been sheltering in the church were attacked by civilians and many died.<sup>5230</sup> The Chamber observes that Des Forges makes no mention of the presence of Kanyabashi at the meeting of 27 April or the subsequent attack. Nor does she suggest that these two events were linked in any way. The Chamber recalls its Oral Decision of 7 June 1994 in which it concluded that Des Forges was qualified to give expert testimony on the history of Rwanda up to and including the events of 1994 and on the analysis and research of the human rights situation in Rwanda up to and including the events of 1994.<sup>5231</sup> Although the Chamber cannot rely on her testimony to establish a fact, her evidence may be used to corroborate the testimony of another factual witness insofar as it relates to, *inter alia*, the events of 1994.

2001. In this regard, Des Forges corroborated Witness RL with regards to the attacks at Ngoma Church. Her account as to the timing of the attacks and the methods used by the attackers confirms the testimony of Witness RL.<sup>5232</sup>

2002. The Defence adduced evidence through Witnesses D-2-21-T to support assertions that Prosecution Witnesses RL and QA were *Ibuka* members who participated in meetings where they were asked to falsely accuse Kanyabashi regarding killings at Ngoma Parish and Matyazo. Witness D-2-21-T testified that a person whose full name matches that of Witness QA read aloud from his sheet of false accusations that he had seen Kanyabashi, *inter alia*, incite people to commit killings at Ngoma Church.<sup>5233</sup> Witness D-2-21-T also alleged that another participant whose first name matches that of Witness RL, read aloud that he had seen Kanyabashi incite people to perpetrate the killings in Ngoma and that Kanyabashi was with soldiers, policemen and *Interahamwe* in Ngoma. Witness D-2-21-T alleged that this person also read that Kanyabashi incited people to kill at the Matyazo health centre.<sup>5234</sup>

2003. As regards the identity of the Prosecution witnesses whom Witness D-2-21-T sought to implicate, the Chamber notes that Witness D-2-21-T provided the full name of Witness QA.<sup>5235</sup> While she only provided the first name of an individual who appears to be Prosecution

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<sup>5228</sup> T. 30 October 2008 pp. 22-23; T. 30 October 2008 p. 24 (ICS) (Witness QA).

<sup>5229</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

<sup>5230</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

<sup>5231</sup> T. 7 June 2004 pp. 58-59 (Des Forges).

<sup>5232</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

<sup>5233</sup> T. 3 November 2008 pp. 37, 54-55 (ICS) (Witness D-2-21-T).

<sup>5234</sup> T. 3 November 2008 pp. 54-55 (ICS) (Witness D-2-21-T).

<sup>5235</sup> T. 3 November 2008 pp. 54-55 (ICS) (Witness D-2-21-T).

Witness RL, she indicated additional identifying details such as estimated age, place of residence and profession, that match the profile of Witness RL.<sup>5236</sup>

2004. The Chamber has taken into account Witness D-2-21-T's ability to indicate details relating to the identity of Prosecution Witnesses RL and QA. Given the Chamber's finding that Witness D-2-21-T's allegations regarding fabrication of testimony were neither credible nor reliable (), the Chamber finds that Witness D-2-21-T's testimony does not undermine the credibility of Witness RL on events at Ngoma Church or at Matyazo health centre. As regards Witness QA, the Chamber finds that his testimony on the meeting at Ngoma Church football field was unreliable for different reasons, and therefore it need not make a finding on the impact of Witness D-2-21-T's testimony on his credibility.

2005. The Kanyabashi Defence led evidence through Defence Witness D-2-18-O to further support Witness D-2-21-T's assertions that Witness RL was an *Ibuka* member who "suggested" at *Ibuka* meetings that people should testify to having seen Kanyabashi in the company of soldiers at Ngoma *commune* and Matyazo Clinic.<sup>5237</sup> Witness D-2-18-O claimed that Witness RL told the meeting that it was necessary to place Kanyabashi at Ngoma Church even though Witness RL told them that he had not seen Kanyabashi there.<sup>5238</sup>

2006. Witness D-2-18-O testified that discussions at *Ibuka* meetings centred on giving evidence for the Prosecution, even if the accused person is innocent.<sup>5239</sup> The witness also stated that while some of the association's members speak the truth, others do not.<sup>5240</sup> The Chamber however does not consider the Defence evidence on this issue to raise a reasonable doubt about the truthfulness of Witness RL's testimony under oath or to call his credibility into question insofar as the events at Matyazo Clinic or Ngoma Parish are concerned. Even if true, Witness D-2-18-O's claim that Witness RL encouraged *Ibuka* members to implicate Kanyabashi does not necessarily lead to the conclusion that his testimony is false or unreliable. Further, Witness D-2-18-O suggests no reason why Witness RL would want to implicate Kanyabashi in criminal acts.

2007. The Chamber further notes that Witness D-2-18-O conceded that some members of the association speak the truth.<sup>5241</sup> Taking into account the foregoing, as well as the Chamber's position, discussed above that Witness D-2-18-O's testimony should be treated with appropriate caution (), the Chamber finds that Witness D-2-18-O's assertions about Witness RL do not undermine the veracity of Witness RL's testimony under oath.

2008. Witness D-2-5-I testified that he attended a meeting on 27 April 1994 on the football field adjacent to Ngoma Church during which, *inter alia*, Kanyabashi urged the population to remain united and forbade them from participating in the killings.<sup>5242</sup> The Chamber recalls that Witness D-2-5-I was one of Kanyabashi's subordinates, having previously worked as a *commune* policeman, and for that reason may have felt inclined to protect Kanyabashi when he

<sup>5236</sup> T. 3 November 2008 pp. 55-56 (ICS) (Witness D-2-21-T); *cf.* Prosecution Exhibit 95 (Personal Particulars).

<sup>5237</sup> T. 19 May 2008 p. 22 (ICS) (Witness D-2-18-O).

<sup>5238</sup> T. 19 May 2008 p. 24 (ICS) (Witness D-2-18-O).

<sup>5239</sup> T. 19 May 2008 pp. 28, 33 (ICS) (Witness D-2-18-O).

<sup>5240</sup> T. 19 May 2008 pp. 33-34 (ICS) (Witness D-2-18-O).

<sup>5241</sup> T. 19 May 2008 pp. 33-34 (ICS) (Witness D-2-18-O).

<sup>5242</sup> T. 30 January 2008 pp. 29, 33-34 (Witness D-2-5-I).



testified before the Chamber.<sup>5243</sup> His testimony should therefore be treated with appropriate caution.

2009. Having reviewed the entirety of the evidence adduced by both the Prosecution and the Defence in respect of Paragraph 6.35 of the Kanyabashi Indictment, the Chamber finds that Witness RL's testimony, while credible, is insufficient to prove beyond a reasonable doubt the allegations against Kanyabashi. Witness RL testified that the killings of refugees at Ngoma Church took place before Kanyabashi's meeting on the adjacent football field, which contrasts with Indictment Paragraph 6.35 which quite clearly states that the meeting preceded the killings.<sup>5244</sup> Witness RL also clearly explained that the killings took place in a wooded area below the priests' residence rather than on the sports field near the church, as described in Paragraph 6.35 of the Indictment.<sup>5245</sup> It also contradicts the order of events advanced by Des Forges in her Report.<sup>5246</sup>

2010. Furthermore, the Prosecution did not establish the existence of any link between the meeting and the killings, or *vice versa*. As regards the killings at Ngoma Church, Witness RL places Kanyabashi at the scene, but his presence was for a very short period of time after the killings had commenced when the *Interahamwe* were delivering the final blows to the remaining injured survivors.<sup>5247</sup> No evidence was led to show that when the *Interahamwe* commenced the attack, they were acting under the orders of Kanyabashi. Thus, in view of the inconsistencies between the Prosecution's evidence on this event and the Indictment paragraph – in terms of the order of events, the absence of any link between the meeting and the massacre and the absence of evidence on the involvement of soldiers, the Chamber finds that the Prosecution has failed to establish criminal liability under Article 6 (3) of the Statute for the massacre.

2011. As for the meeting on the Ngoma Church football field, the Prosecution led no evidence to suggest that Kanyabashi's address was in fact a coded message to kill Tutsis. In this connection, the Chamber refers to its previous finding that it was not convinced that the planning or organisation of the genocide was discussed at the meeting at Ngoma Church football field at the end of April 1994 or that the population was incited to kill Tutsis during that meeting (). For all of the reasons set forth above, the Chamber finds that the Prosecution has failed to prove Paragraph 6.35 of the Kanyabashi Indictment beyond a reasonable doubt.

### **3.6.16 Matyazo Clinic, Late April 1994**

#### **3.6.16.1 Introduction**

2012. Paragraph 6.34 of the Kanyabashi Indictment alleges that in late April 1994, Tutsis who were fleeing the massacres sought refuge at Matyazo Clinic in Ngoma *commune*. After an initial attack carried out by soldiers and militiamen, Kanyabashi went to the clinic and asked

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<sup>5243</sup> T. 30 January 2008 p. 12 (ICS) (Witness D-2-5-I).

<sup>5244</sup> T. 25 March 2004 p. 87; T. 30 March 2004 pp. 40, 44 (Witness RL).

<sup>5245</sup> T. 25 March 2004 pp. 84-85 (Witness RL).

<sup>5246</sup> Prosecution Exhibit 110A (Des Forges Expert Report) pp. 44-45.

<sup>5247</sup> T. 25 March 2004 p. 85 (Witness RL).

the Tutsis to remain there for their own safety. Shortly thereafter, Kanyabashi ordered soldiers to open fire on the refugees, resulting in several people being killed.<sup>5248</sup>

2013. The Prosecution submits that not only did Kanyabashi know of the gathering at Matyazo Clinic, he actually directed Tutsis to assemble in that location and thereafter observed the ensuing massacres or arranged for killings to take place. The Prosecution claims that Kanyabashi knew about the killing of the refugees but did nothing to punish the perpetrators of the massacres because he was a key player in the killing of Tutsis.<sup>5249</sup> The Prosecution further asserts that the role Kanyabashi played between April and July 1994 *vis-à-vis* soldiers and the *Interahamwe*, coupled with the influence he exercised as *bourgmestre*, meant that he had effective control over *conseillers*, *commune* police, soldiers, *Interahamwe* and others and is therefore liable under Article 6 (3) of the Statute. The Prosecution contends that, notwithstanding Kanyabashi's alibi evidence, it has proved that Kanyabashi was at Matyazo during the relevant time period.<sup>5250</sup>

2014. In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses QI and RL.

2015. In addition to its submission on defects in the Indictment, considered below, the Kanyabashi Defence submits that there were two massacres in Matyazo, one at Matyazo School on 21 April 1994 and another at Matyazo Clinic on 22 April 1994, the latter referred to in Paragraph 6.34 of the Kanyabashi Indictment.<sup>5251</sup>

2016. The Kanyabashi Defence refutes the allegation that Kanyabashi went to the clinic after an initial attack and asked the Tutsis to remain there and claims that Kanyabashi was not present at the clinic on the day of the attack.<sup>5252</sup> It denies that Kanyabashi ordered soldiers to shoot at Tutsis.<sup>5253</sup> The Kanyabashi Defence agrees that Tutsis were sheltering at Matyazo Clinic toward the end of April 1994.<sup>5254</sup> When people from Huye tried to attack the clinic, *Conseiller* Athanase Nshimiyimana asked Kanyabashi to intervene and provide assistance. Kanyabashi came to the clinic and arranged for reinforcements, which involved securing the border between Ngoma and Huye *communes* and erecting a blockade. Hutus and Tutsis, with the assistance of policemen, resisted the attackers from Huye before being overwhelmed by soldiers.<sup>5255</sup> The Kanyabashi Defence claims that soldiers were responsible for the massacres at Matyazo. They attacked Matyazo Primary School late in the afternoon of 21 April 1994 and then attacked Matyazo Clinic in the morning of 22 April 1994.<sup>5256</sup> Kanyabashi had no authority over soldiers, who were not his subordinates. In fact, the soldiers considered

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<sup>5248</sup> Para. 6.34 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3)).

<sup>5249</sup> Prosecution Closing Brief, pp. 408-409, 414, paras. 85, 87, 106.

<sup>5250</sup> Prosecution Closing Brief, pp. 432-437, 449, paras. 169, 171-187, 228.

<sup>5251</sup> Kanyabashi Closing Brief, para. 203.

<sup>5252</sup> Kanyabashi Closing Brief, paras. 213-218, 229.

<sup>5253</sup> Kanyabashi Closing Brief, paras. 219-235.

<sup>5254</sup> Kanyabashi Closing Brief, para. 212.

<sup>5255</sup> Kanyabashi Closing Brief, para. 212.

<sup>5256</sup> Kanyabashi Closing Brief, paras. 212, 231, 236.

Kanyabashi to be an RPF accomplice. None of Kanyabashi's subordinates, namely policemen and *conseillers*, participated in the attacks.<sup>5257</sup>

2017. The Kanyabashi Defence submits that of the two massacres in Matyazo, only the second, at the clinic, is referred to in Paragraph 6.34 of the Kanyabashi Indictment. The Kanyabashi Defence submits that where witnesses did not clearly establish this distinction, their accounts should not be considered personal experiences.<sup>5258</sup>

2018. The Kanyabashi Defence also asserts that Prosecution Witnesses QI and RL, who testified on the massacre at Matyazo Clinic, were members of the *Ibuka* association, an organisation whose objective is to falsify testimony against Kanyabashi.<sup>5259</sup> According to the Kanyabashi Defence, the testimony of Witnesses QI and RL is false.<sup>5260</sup>

2019. In support of its submissions, the Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witnesses D-2-18-O, D-2-5-W, D-9-U, D-2-YYYY, D-2-5-I and D-2-21-T.

### 3.6.16.2 Preliminary Issues

2020. The Kanyabashi Defence submits that the Prosecution has failed to properly plead superior responsibility pursuant to Article 6 (3) of the Statute in respect of Paragraph 6.34 of the Kanyabashi Indictment.<sup>5261</sup> However, it does not advance any additional arguments in support of this submission. The Chamber notes that if the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the indictment should plead the following: (i) that the accused is the superior of subordinates sufficiently identified, over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible; (ii) the criminal conduct of those others for whom he is alleged to be responsible; (iii) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (iv) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>5262</sup> A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.<sup>5263</sup>

2021. The Chamber notes that the soldiers referred to in Paragraph 6.34 are not specifically described as being Kanyabashi's subordinates. The issue is therefore whether it can be inferred from reading the Indictment as a whole that the soldiers referred to in Paragraph 6.34 were

<sup>5257</sup> Kanyabashi Closing Brief, paras. 238, 240.

<sup>5258</sup> Kanyabashi Closing Brief, para. 203.

<sup>5259</sup> Kanyabashi Closing Brief, paras. 10-12; The Chamber notes that it has previously set out the evidence of Witness D-2-21-T and D-2-18-O as it relates to the alleged fabrication claim (i). The Chamber will take this evidence into account in the Deliberations section.

<sup>5260</sup> Kanyabashi Closing Brief, para. 207.

<sup>5261</sup> Kanyabashi Closing Brief, para. 201; Para. 6.34 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3)).

<sup>5262</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>5263</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 55.

Kanyabashi's subordinates. The Chamber notes that Paragraph 4.3 of the Kanyabashi Indictment states that Kanyabashi exercised authority over his subordinates in his capacity as *bourgmestre* of Ngoma *commune*. According to Paragraph 6.32 of the Kanyabashi Indictment, those subordinates include, but are not limited to, *conseillers de secteur* and *commune* policemen. The Indictment therefore envisages the existence of other categories of subordinates insofar as Kanyabashi is concerned. Paragraph 6.34 refers to Kanyabashi giving orders to soldiers, which implies that the Accused held a position of authority *vis-à-vis* soldiers, regardless of the existence of a formal superior-subordinate relationship.<sup>5264</sup> In light of the foregoing, the Chamber considers it established from reading the Indictment as a whole that the soldiers referred to in Paragraph 6.34 were Kanyabashi's alleged subordinates. The Chamber further observes that the alleged criminal conduct of the subordinates is the shooting and killing of those who had sought refuge at the clinic. Lastly, Paragraph 6.65 alleges that Kanyabashi had knowledge that massacres of the civilian population were being committed, but took no measures to stop them. The Chamber therefore considers that when reading the Indictment as a whole, the wording of Paragraph 6.34 is sufficiently specific to meet the standards set forth in the case law regarding Article 6 (3) liability.

### 3.6.16.3 Evidence

#### Prosecution Witness QI

2022. Witness QI, a Tutsi, testified that due to insecurity because of the war, his employer advised him to return to his home *secteur* in Huye *commune*.<sup>5265</sup> He followed his employer's advice and went to a relative's house in his home *secteur* about five days after the announcement of the President's death but did not remain there for the duration of the war.<sup>5266</sup> He spent two weeks at his relative's house and thereafter proceeded to the *Notre Dame* Dispensary in Matyazo *secteur*, Ngoma *commune*, arriving there between 3.00 p.m. and 4.00 p.m.<sup>5267</sup> On his way to Matyazo he encountered six soldiers very close to the gate of the clinic, near the road.<sup>5268</sup> They stopped the witness and asked to see his identity card.<sup>5269</sup> On learning that the witness was Tutsi, they asked him for 5,000 Rwandan francs, which he paid them, before they allowed him to proceed.<sup>5270</sup> The soldiers informed the witness that he would be killed further down the road in any event.<sup>5271</sup> In cross-examination he said that the soldiers told him that in any event he would die in front of the clinic.<sup>5272</sup> Witness QI thought the soldiers were ordinary soldiers, and not part of the Presidential Guard.<sup>5273</sup> When put to him that his statement of 11 June 1996 only stated that he crossed one soldier, Witness QI testified that he

<sup>5264</sup> *Semanza*, Judgement (AC), paras. 361-362.

<sup>5265</sup> T. 23 March 2004 pp. 42-43 (ICS) (Witness QI).

<sup>5266</sup> T. 23 March 2004 p. 43 (ICS); T. 24 March 2004 p. 31 (Witness QI).

<sup>5267</sup> T. 23 March 2004 pp. 44-45, 49; T. 24 March 2004 p. 33 (ICS) (Witness QI).

<sup>5268</sup> T. 24 March 2004 p. 48 (ICS) (Witness QI).

<sup>5269</sup> T. 23 March 2004 p. 44 (Witness QI).

<sup>5270</sup> T. 23 March 2004 p. 44; T. 24 March 2004 pp. 48-49 (ICS) (Witness QI).

<sup>5271</sup> T. 23 March 2004 p. 44 (Witness QI).

<sup>5272</sup> T. 24 March 2004 p. 48 (ICS) (Witness QI).

<sup>5273</sup> T. 24 March 2004 p. 46 (ICS) (Witness QI).

only spoke with one of the six soldiers he crossed.<sup>5274</sup> Witness QI confirmed that in his statement he claimed the soldiers belonged to the Presidential Guard.<sup>5275</sup>

2023. Witness QI testified that when he got to the clinic, he did not go inside because he saw approximately 500 Tutsis there and thought that they would be killed.<sup>5276</sup> He concluded they would be killed because on his way to the clinic, he saw Tutsis being targeted and killed.<sup>5277</sup> However, in cross-examination the witness stated that he did not personally see people who had been killed on his way to Matyazo Clinic, although he had been told by others that people from Runyinya *commune* had been killed.<sup>5278</sup>

2024. Instead of entering the clinic, the witness hid in a bush on the opposite side of the road from the clinic, just beyond the Electrogaz buildings.<sup>5279</sup> In cross-examination he testified that he walked a little up the road and veered off the main road to hide in a bush just past several Electrogaz buildings.<sup>5280</sup> He did not flee immediately because it was still daylight and Hutu civilians were still moving about the roads.<sup>5281</sup>

2025. Witness QI testified that from his hiding place he could see the red door of the clinic, which was about 50 paces away.<sup>5282</sup> The road separating his hiding place and the dispensary was four paces wide and the distance between the edge of the road and the clinic was about two and a half paces or metres.<sup>5283</sup> In cross-examination, the witness stated that because he had to walk around some buildings, his hiding place was about 500 metres from the clinic.<sup>5284</sup> When asked to explain this discrepancy, Witness QI testified that while his route around the Electrogaz buildings covered a distance of about 500 metres, it took him to a position about 50 metres from the clinic.<sup>5285</sup> The ground on which he hid was lower than the ground level of the clinic.<sup>5286</sup>

2026. As soon as Witness QI arrived at his hideout, he saw Kanyabashi arrive in a Peugeot 305 vehicle.<sup>5287</sup> Kanyabashi was driving the vehicle and was accompanied by two soldiers with guns.<sup>5288</sup> He was wearing khaki trousers and a white shirt.<sup>5289</sup> Witness QI stated that he saw Kanyabashi enter the clinic's premises and heard him address the Tutsis.<sup>5290</sup> Kanyabashi told them to remain there, that their safety would be ensured and that they had nothing to

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<sup>5274</sup> T. 24 March 2004 p. 50 (Witness QI).

<sup>5275</sup> T. 24 March 2004 p. 51 (Witness QI).

<sup>5276</sup> T. 23 March 2004 pp. 44-45, 49, 52 (Witness QI).

<sup>5277</sup> T. 23 March 2004 p. 44 (Witness QI).

<sup>5278</sup> T. 24 March 2004 pp. 47-48 (ICS) (Witness QI).

<sup>5279</sup> T. 23 March 2004 pp. 44-45, 47; T. 24 March 2004 pp. 53-54 (Witness QI).

<sup>5280</sup> T. 24 March 2004 pp. 53-54 (Witness QI).

<sup>5281</sup> T. 24 March 2004 p. 54 (Witness QI).

<sup>5282</sup> T. 23 March 2004 pp. 45, 47-48; T. 25 March 2004 p. 65 (ICS) (Witness QI).

<sup>5283</sup> T. 23 March 2004 pp. 47, 49; T. 25 March 2004 p. 65 (ICS) (Witness QI).

<sup>5284</sup> T. 24 March 2004 p. 55 (Witness QI).

<sup>5285</sup> T. 25 March 2004 p. 62 (ICS) (Witness QI).

<sup>5286</sup> T. 24 March 2004 p. 55 (Witness QI).

<sup>5287</sup> T. 23 March 2004 p. 51 (Witness QI).

<sup>5288</sup> T. 23 March 2004 p. 51; T. 24 March 2004 pp. 55-56 (Witness QI).

<sup>5289</sup> T. 23 March 2004 p. 62 (ICS) (Witness QI).

<sup>5290</sup> T. 23 March 2004 pp. 51-52 (Witness QI).

fear.<sup>5291</sup> The witness testified that this address lasted one to two minutes.<sup>5292</sup> After speaking to the Tutsis, Kanyabashi came out of the clinic with six soldiers armed with G3 guns and told them that when he left they should “begin the job in collaboration with other civilians.”<sup>5293</sup> The six soldiers Kanyabashi instructed were the same six soldiers who Witness QI had encountered on his way to the clinic.<sup>5294</sup>

2027. There were about 30 Hutu civilians present wearing ordinary clothes and hats that covered their faces.<sup>5295</sup> They also carried traditional weapons, including machetes, clubs embedded with knives and small hoes.<sup>5296</sup> He recognised two people, *Conseiller* Atanazia Kizenga, and a regular citizen called Dodos Mbirizi.<sup>5297</sup> Both were from Matyazo.<sup>5298</sup> The witness understood Kanyabashi’s direction to mean that the Tutsis present in the clinic would have to die.<sup>5299</sup> After speaking to the soldiers and civilians, Kanyabashi immediately left in his vehicle.<sup>5300</sup> Witness QI did not see any *commune* policemen present.<sup>5301</sup> When put to Witness QI that he could not have recognised the *conseiller* and Mbirizi because they were masked, Witness QI testified that he saw the *conseiller* leave and come back in his vehicle with children.<sup>5302</sup> The witness heard that thereafter the *conseiller* took these children to the church where they were killed.<sup>5303</sup>

2028. Witness QI testified that between 20 and 50 seconds after Kanyabashi’s departure, the Hutu civilians rushed at the Tutsis, attacking them with machetes, and the soldiers started to shoot.<sup>5304</sup> The attack started at around 6.00 p.m. when it was dark, although there was some light in the clinic.<sup>5305</sup> The witness asserted that no one survived the attack, although he did not personally verify whether that was indeed the case.<sup>5306</sup> He learned from others that there were no survivors.<sup>5307</sup>

2029. Witness QI stated that he left his hiding place at around 8.00 p.m. on the same day he arrived and walked throughout the night, returning to his employer’s house in Huye *commune*.<sup>5308</sup> In cross-examination, the witness was confronted with his statement of 11 June 1996 in which he said that he had spent two days hiding near the *Notre Dame* Dispensary.<sup>5309</sup> The witness explained that he was in a very difficult situation at the time and that one second

<sup>5291</sup> T. 23 March 2004 pp. 51-52; T. 24 March 2004 p. 57 (Witness QI).

<sup>5292</sup> T. 24 March 2004 p. 57 (Witness QI).

<sup>5293</sup> T. 23 March 2004 pp. 52-53; T. 24 March 2004 pp. 57-58 (Witness QI).

<sup>5294</sup> T. 24 March 2004 p. 46 (ICS) (Witness QI).

<sup>5295</sup> T. 23 March 2004 p. 54 (Witness QI).

<sup>5296</sup> T. 23 March 2004 p. 57 (Witness QI).

<sup>5297</sup> T. 23 March 2004 p. 54; T. 24 March 2004 p. 63 (Witness QI).

<sup>5298</sup> T. 23 March 2004 p. 54 (Witness QI).

<sup>5299</sup> T. 23 March 2004 p. 52 (Witness QI).

<sup>5300</sup> T. 23 March 2004 p. 52; T. 24 March 2004 p. 58 (Witness QI).

<sup>5301</sup> T. 24 March 2004 p. 56; *see also* T. 24 March 2004 p. 65 (Witness QI) (French).

<sup>5302</sup> T. 24 March 2004 p. 64 (Witness QI).

<sup>5303</sup> T. 24 March 2004 pp. 64-67 (Witness QI).

<sup>5304</sup> T. 23 March 2004 p. 57; T. 24 March 2004 p. 58 (Witness QI).

<sup>5305</sup> T. 24 March 2004 pp. 58-59 (Witness QI).

<sup>5306</sup> T. 23 March 2004 p. 57; T. 24 March 2004 p. 59 (Witness QI).

<sup>5307</sup> T. 24 March 2004 p. 59 (Witness QI).

<sup>5308</sup> T. 23 March 2004 pp. 49-50, 57; T. 24 March 2004 p. 58 (Witness QI).

<sup>5309</sup> T. 24 March 2004 p. 60 (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

could have been a week.<sup>5310</sup> In cross-examination Witness QI was questioned about his statement which said that the attack occurred in two stages.<sup>5311</sup> Witness QI stated that he did not speak of two separate attacks; he said that Kanyabashi left orders with the soldiers to kill the refugees and that after his departure people began to be killed in the night hours.<sup>5312</sup>

2030. When put to Witness QI that the attack began at 9.30 a.m. when soldiers with grenades burst onto the compound, that people fleeing were killed by civilians with machetes and the attack ended around noon, Witness QI stated that each person can recount the version that he heard or saw. When put to Witness QI that he was unjustly incriminating Kanyabashi and that Kanyabashi was never present at Matyazo, Witness QI stated that he saw Kanyabashi on the day of the attack; he was a leader and did nothing to stop the soldiers or policemen over whom he had authority.<sup>5313</sup>

2031. Witness QI learned from others that Kanyabashi had police officers at his disposal and that soldiers lived at his house.<sup>5314</sup> Witness QI identified Kanyabashi in court and stated that he knew Kanyabashi as the *bourgmestre* of Ngoma *commune*.<sup>5315</sup>

2032. Witness QI testified that he knew a person with the same family name as Witness RL who came from Matyazo; that person had told Witness QI that he had been clubbed over the head during the war and survived by crawling to the nearby church where he had since lived with a priest in Ngoma *secteur*.<sup>5316</sup> Witness QI and this person had seen each other after the war.<sup>5317</sup>

#### Prosecution Witness RL

2033. Witness RL, a Tutsi who was 13 years old in 1994, testified that he lived in the vicinity of Matyazo Clinic in April 1994.<sup>5318</sup> The clinic was surrounded by barbed-wire fencing and was accessed via a gate leading into the clinic compound.<sup>5319</sup> After the President's death in April 1994, Witness RL saw Kanyabashi on two occasions.<sup>5320</sup>

2034. The first occasion was a week and a half to two weeks after the death of the President one day before noon at Matyazo Clinic.<sup>5321</sup> Witness RL testified in cross-examination that this sighting occurred in the days that followed Habyarimana's death, if not the first week.<sup>5322</sup>

<sup>5310</sup> T. 24 March 2004 pp. 60-61 (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

<sup>5311</sup> T. 24 March 2004 pp. 62-63 (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI) (states: "the soldiers and some Hutu civilians started shooting at the refugees ... Around 16.00 on the same day, Kanyabashi came to the Matyazo dispensary ... I saw and heard Kanyabashi ordering the soldiers who were there to shoot at the refugees ....").

<sup>5312</sup> T. 24 March 2004 p. 63 (Witness QI).

<sup>5313</sup> T. 24 March 2004 p. 66 (Witness QI).

<sup>5314</sup> T. 24 March 2004 pp. 56-57 (Witness QI).

<sup>5315</sup> T. 23 March 2004 pp. 52, 69; T. 23 March 2004 p. 42 (ICS) (Witness QI).

<sup>5316</sup> T. 25 March 2004 pp. 14-15 (ICS) (Witness QI).

<sup>5317</sup> T. 25 March 2004 p. 15 (ICS) (Witness QI).

<sup>5318</sup> T. 25 March 2004 p. 76 (ICS) (Witness RL).

<sup>5319</sup> T. 25 March 2004 p. 78 (Witness RL).

<sup>5320</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>5321</sup> T. 25 March 2004 pp. 77-78 (Witness RL).

<sup>5322</sup> T. 30 March 2004 pp. 3-4 (Witness RL).

Kanyabashi arrived in a Toyota Stout vehicle and was accompanied by about six soldiers in camouflage uniform.<sup>5323</sup> There were between 1,500 and 2,000 people present outside the clinic compound.<sup>5324</sup> They had arrived the previous day at around 3.00 p.m. from Gikongoro *préfecture* with their livestock and had spent the night outside the grounds of the clinic.<sup>5325</sup>

2035. Kanyabashi addressed the refugees but the witness only heard a short portion of his address, maybe 5 minutes, after which he left.<sup>5326</sup> Kanyabashi subsequently asked the guards for the keys and let the refugees into the compound.<sup>5327</sup> After the gate was unlocked, Kanyabashi handed the keys to the soldiers.<sup>5328</sup> In cross-examination, the witness stated that there was a watchman at the dispensary who opened the gate on the orders of Kanyabashi to let the refugees in.<sup>5329</sup> When put to Witness RL that he did not witness the handing over of the key, he testified that the key was handed over during the period of 5 minutes that Witness RL was present.<sup>5330</sup> The witness was about 20 to 25 metres from Kanyabashi at that point.<sup>5331</sup> In cross-examination, he testified that he could not remember how far he stood from Kanyabashi at that point, maybe a few metres.<sup>5332</sup> After 30 minutes to one hour, Kanyabashi left the clinic and the six soldiers stayed behind.<sup>5333</sup> When it was put to Witness RL that his statement of 16 January 1997 stated that three soldiers stayed behind, Witness RL testified that some soldiers stayed behind, but he could not be sure of how many.<sup>5334</sup>

2036. The witness testified that once inside the clinic compound, the refugees were not allowed to leave. A young man who tried to leave the compound was shot and killed by the soldiers.<sup>5335</sup> Although Witness RL personally witnessed this, he conceded that he had not mentioned this incident in any of the statements he gave to Prosecution investigators prior to his testimony.<sup>5336</sup>

2037. Witness RL testified that about five days after he first saw Kanyabashi at the clinic, Kanyabashi returned in a Toyota Stout vehicle with the words “*Commune* Urban Ngoma, Ngoma *Commune*” written on it.<sup>5337</sup> It was late in the afternoon and Kanyabashi was accompanied by two or three soldiers.<sup>5338</sup> On cross-examination, the witness stated that Kanyabashi was accompanied by three or four soldiers and that there were eight soldiers in total at the clinic.<sup>5339</sup> When put to him that his statement of 11 July 1996 stated that

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<sup>5323</sup> T. 25 March 2004 pp. 77-79; T. 29 March 2004 p. 63 (ICS) (Witness RL).

<sup>5324</sup> T. 25 March 2004 p. 78; T. 29 March 2004 pp. 39, 41, 47 (ICS) (Witness RL).

<sup>5325</sup> T. 29 March 2004 pp. 39-41, 46, 48 (ICS) (Witness RL).

<sup>5326</sup> T. 29 March 2004 pp. 67-68 (Witness RL).

<sup>5327</sup> T. 25 March 2004 p. 78; T. 29 March 2004 pp. 46-47 (ICS) (Witness RL).

<sup>5328</sup> T. 25 March 2004 p. 78; T. 29 March 2004 p. 73 (Witness RL).

<sup>5329</sup> T. 29 March 2004 p. 71 (Witness RL).

<sup>5330</sup> T. 29 March 2004 pp. 71, 73 (Witness RL).

<sup>5331</sup> T. 25 March 2004 pp. 78-79 (Witness RL).

<sup>5332</sup> T. 29 March 2004 pp. 71-72 (Witness RL).

<sup>5333</sup> T. 29 March 2004 pp. 56, 63 (ICS) (Witness RL).

<sup>5334</sup> T. 29 March 2004 p. 64 (ICS) (Witness RL).

<sup>5335</sup> T. 29 March 2004 p. 74 (Witness RL).

<sup>5336</sup> T. 29 March 2004 pp. 74-76 (Witness RL).

<sup>5337</sup> T. 25 March 2004 p. 83 (Witness RL).

<sup>5338</sup> T. 25 March 2004 p. 84; T. 30 March 2004 p. 15 (ICS) (Witness RL).

<sup>5339</sup> T. 30 March 2004 pp. 16-17 (ICS) (Witness RL).



Kanyabashi arrived with eight soldiers aboard the Toyota Stout, Witness RL clarified that he meant there were eight soldiers at the clinic.<sup>5340</sup>

2038. Witness RL saw Kanyabashi standing in front of the clinic speaking to the soldiers, but could not hear what was being said. He estimated that there were 2,500 to 3,000 people in the clinic at the time.<sup>5341</sup> After seeing Kanyabashi leave, the witness returned home.<sup>5342</sup> About an hour later, towards nightfall, he heard gunshots coming from the direction of the clinic and saw fire in the air.<sup>5343</sup> He decided to flee, spending the night in a bean farm, and the next day headed to Ngoma Parish.<sup>5344</sup>

2039. Witness RL thought the attack occurred on a Thursday.<sup>5345</sup> Witness RL denied the attack started at 9.30 a.m. on Friday, 22 April 1994.<sup>5346</sup> Witness RL testified that he knew Kanyabashi as the *bourgmestre* before 1994, but he did not know his first name.<sup>5347</sup> He had seen him on several occasions before and after President Habyarimana's death.<sup>5348</sup> Before the President's death, he saw Kanyabashi at the stadium and the *secteur* office when he convened meetings, along the road whenever he received authorities from other areas and driving a Peugeot 305.<sup>5349</sup> The witness identified Kanyabashi in court.<sup>5350</sup>

2040. The witness acknowledged that he knew what Major Cyriaque Habyarabatuma looked like and knew he was a leader.<sup>5351</sup> Habyarabatuma was of average height and had a dark complexion and a round face.<sup>5352</sup> Witness RL testified that he did not see Habyarabatuma during Kanyabashi's first visit to Matyazo Clinic.<sup>5353</sup> When Witness RL was being cross-examined and re-examined about the Ngoma Church massacre that took place following the events at Matyazo, he stated that there was "no way" he could have mistaken Habyarabatuma for Kanyabashi because he knew both of them.<sup>5354</sup> Even though he was still a child in 1994, Habyarabatuma and Kanyabashi held positions of authority – one used to come and hold meetings with the people and the other would be present whenever there was a search.<sup>5355</sup>

2041. Witness RL testified that he was not a member of any survivors' group nor had he ever attended any trial in Rwanda concerning the events that occurred in Ngoma and Matyazo in 1994.<sup>5356</sup>

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<sup>5340</sup> T. 30 March 2004 p. 17 (ICS) (Witness RL).

<sup>5341</sup> T. 25 March 2004 p. 83 (Witness RL).

<sup>5342</sup> T. 25 March 2004 pp. 83-84 (Witness RL).

<sup>5343</sup> T. 25 March 2004 p. 84; T. 30 March 2004 pp. 18-20, 22 (ICS) (Witness RL).

<sup>5344</sup> T. 25 March 2004 p. 84 (Witness RL).

<sup>5345</sup> T. 30 March 2004 p. 22 (ICS) (Witness RL).

<sup>5346</sup> T. 30 March 2004 p. 23 (ICS) (Witness RL).

<sup>5347</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>5348</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>5349</sup> T. 25 March 2004 p. 77 (Witness RL).

<sup>5350</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>5351</sup> T. 29 March 2004 pp. 56-57 (ICS) (Witness RL).

<sup>5352</sup> T. 29 March 2004 p. 57 (ICS) (Witness RL).

<sup>5353</sup> T. 29 March 2004 pp. 57, 61 (ICS) (Witness RL).

<sup>5354</sup> T. 30 March 2004 pp. 49-50 (Witness RL).

<sup>5355</sup> T. 30 March 2004 p. 50 (Witness RL).

<sup>5356</sup> T. 29 March 2004 pp. 62-63 (ICS) (Witness RL).

2042. Witness RL testified that he knew a person with the same surname as Witness QI.<sup>5357</sup> However, Witness RL testified that he never had any opportunity to discuss the events of April to July 1994 with that person.<sup>5358</sup> When it was put to Witness RL that Witness QI stated he knew a person by the same surname as Witness RL who was living with a priest, who had been hit on the head with a club and who had survived the Ngoma Church attack, Witness RL insisted he did not discuss the events of April to July 1994 with that person.<sup>5359</sup> Witness RL testified that he was hit very hard on the head with a club on at least three occasions at Ngoma Church.<sup>5360</sup>

#### Prosecution Witness Ghandi Shukry

2043. Ghandi Shukry testified that photo numbers 28, 29, 30 and 31 admitted as Prosecution Exhibits 13A, 13B, 13C and 13D respectively dealt with the *Sponsor Notre Dame de la Route* or the Matyazo Clinic. The first three photographs showed the front side of the clinic from different angles while photo number 31 indicated the backside, outside the clinic itself and where the alleged mass grave was.<sup>5361</sup> The sketch marked S2 and admitted as Prosecution Exhibit 14 described the Matyazo Clinic compound.<sup>5362</sup> The witness testified that the video admitted as Prosecution Exhibit 15 showed, among others, the ceiling of the clinic in which refugees allegedly hid and two sites where clothes were buried still within the compound.<sup>5363</sup>

#### Kanyabashi Defence Witness D-2-18-O

2044. Witness D-2-18-O, a Tutsi who was a 16-year-old student in 1994, testified that in April 1994, one week after the death of the President, people sought refuge at Matyazo Clinic and Matyazo Primary School.<sup>5364</sup> It was said those refugees came from Gikongoro *préfecture*.<sup>5365</sup> The clinic was located near the Matyazo Market, approximately 15 to 20 minutes walk from Witness D-2-18-O's residence; the school was situated next to the Matyazo Pentecostal Church, about 15 minutes' walk from the witness' home.<sup>5366</sup> The clinic was opposite Electrogaz buildings and was surrounded by a 2.15 metre high barbed wire fence.<sup>5367</sup>

2045. Witness D-2-18-O testified that he met the people who ultimately took refuge in Matyazo Clinic when they were on the road heading towards the clinic.<sup>5368</sup> They told him that they had fled because assailants were burning down their homes and telling them they would be killed if they did not flee.<sup>5369</sup> The witness stated that he saw these people at Matyazo Clinic

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<sup>5357</sup> T. 29 March 2004 p. 61 (ICS) (Witness RL).

<sup>5358</sup> T. 29 March 2004 pp. 61-62, 64 (ICS); T. 30 March 2004 pp. 17, 23-24 (ICS) (Witness RL).

<sup>5359</sup> T. 30 March 2004 pp. 23-24 (ICS) (Witness RL).

<sup>5360</sup> T. 30 March 2004 p. 28 (Witness RL).

<sup>5361</sup> T. 14 June 2001 p. 105 (Shukry).

<sup>5362</sup> T. 14 June 2001 p. 109 (Shukry).

<sup>5363</sup> T. 14 June 2001 p. 122 (Shukry).

<sup>5364</sup> T. 15 May 2008 pp. 17-18 (Witness D-2-18-O).

<sup>5365</sup> T. 15 May 2008 p. 17 (Witness D-2-18-O).

<sup>5366</sup> T. 15 May 2008 p. 14 (ICS) (Witness D-2-18-O).

<sup>5367</sup> T. 19 May 2008 p. 63 (Witness D-2-18-O).

<sup>5368</sup> T. 15 May 2008 p. 18 (Witness D-2-18-O).

<sup>5369</sup> T. 15 May 2008 pp. 18-19 (Witness D-2-18-O).

on a daily basis.<sup>5370</sup> They were unguarded.<sup>5371</sup> Some of them would go to the village to beg for food and others would tend to their cattle.<sup>5372</sup>

2046. Witness D-2-18-O stated that he learned from his brother that people were sheltering at Matyazo Primary School but did not see them personally and did not know how long they remained there.<sup>5373</sup> During the night of 21 April 1994, Witness D-2-18-O passed by Matyazo Primary School on his way to seek refuge at Matyazo Clinic.<sup>5374</sup> People were being killed at the school.<sup>5375</sup>

2047. The witness testified that he arrived at Matyazo Clinic between 3.00 and 4.00 a.m. on the morning of 22 April 1994.<sup>5376</sup> He met others who were sheltering there.<sup>5377</sup> The clinic was unguarded and people could come and go as they pleased.<sup>5378</sup> There were about 500 or 1,000 refugees.<sup>5379</sup> The refugees were both Hutus and Tutsis and refugees were inside both the yard and the buildings of the dispensary.<sup>5380</sup>

2048. *Interahamwe* and other soldiers arrived between 6.00 and 7.00 a.m. on the same day. They pelted the refugees in the clinic with stones and the witness was hit on the head.<sup>5381</sup> A member of the *Interahamwe* and a soldier stood at the door and required people to produce their identity cards before leaving.<sup>5382</sup> The witness stated that he and some other children queued behind people with Hutu identification cards and managed to leave, although the witness did not have an identity card. About 30 people left the clinic, most of them young children. After the witness left the clinic, the soldiers and *Interahamwe* opened fire on those who remained. This attack lasted until approximately 12.00 noon. He denied that the attack occurred at nighttime.<sup>5383</sup>

2049. Witness D-2-18-O described how he left the dispensary and hid in a house with four girls.<sup>5384</sup> The house was located about four or five minutes walk from the clinic.<sup>5385</sup> The fence of the clinic was visible from the house and he could hear gunshots from where he was hiding. He spent two days hiding in the house.<sup>5386</sup>

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<sup>5370</sup> T. 15 May 2008 p. 19 (Witness D-2-18-O).

<sup>5371</sup> T. 15 May 2008 pp. 20, 28 (Witness D-2-18-O).

<sup>5372</sup> T. 15 May 2008 pp. 19-20 (Witness D-2-18-O).

<sup>5373</sup> T. 15 May 2008 pp. 20, 29 (Witness D-2-18-O).

<sup>5374</sup> T. 15 May 2008 pp. 34, 37 (Witness D-2-18-O).

<sup>5375</sup> T. 15 May 2008 p. 37 (Witness D-2-18-O).

<sup>5376</sup> T. 15 May 2008 pp. 36-37 (Witness D-2-18-O).

<sup>5377</sup> T. 15 May 2008 p. 41 (Witness D-2-18-O).

<sup>5378</sup> T. 15 May 2008 p. 37; T. 19 May 2008 pp. 62-63 (Witness D-2-18-O).

<sup>5379</sup> T. 19 May 2004 p. 65 (Witness D-2-18-O).

<sup>5380</sup> T. 19 May 2004 p. 64 (Witness D-2-18-O).

<sup>5381</sup> T. 15 May 2008 p. 41 (Witness D-2-18-O).

<sup>5382</sup> T. 15 May 2008 p. 41; T. 19 May 2004 p. 65 (Witness D-2-18-O).

<sup>5383</sup> T. 15 May 2008 p. 44 (Witness D-2-18-O).

<sup>5384</sup> T. 15 May 2008 p. 38 (Extract) p. i; T. 15 May 2008 p. 41; T. 15 May 2008 p. 42 (ICS); T. 19 May 2004 p. 65; T. 19 May 2004 p. iii (Extract) (Witness D-2-18-O).

<sup>5385</sup> T. 15 May 2008 p. 42 (ICS) (Witness D-2-18-O).

<sup>5386</sup> T. 15 May 2008 p. 43 (ICS) (Witness D-2-18-O).

2050. Witness D-2-18-O never saw Kanyabashi or the *conseiller* of Matyazo *secteur* at Matyazo Clinic during the time he spent there.<sup>5387</sup> He did see Kanyabashi in Matyazo *secteur* in April 1994.<sup>5388</sup> Witness D-2-18-O never saw any Ngoma *commune* policeman at or close to the clinic.<sup>5389</sup>

2051. The witness stated that he once saw some refugees being pursued by assailants dressed in banana leaves. Kanyabashi subsequently came to the area and said that the refugees had to be provided with shelter and protected from the *Interahamwe*.<sup>5390</sup> He also claimed that a female friend told him that she saw survivors from the attack at Matyazo Clinic being taken to Butare Hospital by the former *conseiller* of Matyazo *secteur* aboard a *commune* vehicle.<sup>5391</sup> That female friend was also one of the surviving refugees.<sup>5392</sup>

2052. When it was put to Witness D-2-18-O that the judgement of the *Gacaca* court<sup>5393</sup> concluded that he was not present at Matyazo Clinic, Witness D-2-18-O stated that he was present at the clinic during the time of the killings and he participated in the killings during the night of 21-22 April 1994.<sup>5394</sup> The people he killed were Tutsis.<sup>5395</sup>

#### Kanyabashi Defence Witness D-2-5-W

2053. Witness D-2-5-W, a Hutu who was a teacher in 1994, testified that he pled guilty to, *inter alia*, having participated in massacres at Matyazo Primary School and Matyazo Clinic.<sup>5396</sup> At the time of his testimony, he was in detention and his appeal was still pending.<sup>5397</sup>

2054. Referring to Defence Exhibit 568, a map of Matyazo sketched by Witness D-2-5-W,<sup>5398</sup> the witness testified that Matyazo Clinic and Matyazo Primary School were both located close to the main road.<sup>5399</sup> The witness testified that on Defence Exhibit 568, “21” marked the location of the clinic<sup>5400</sup> and “38” marked the location of Matyazo Primary School.<sup>5401</sup> On the

<sup>5387</sup> T. 15 May 2008 p. 44 (Witness D-2-18-O).

<sup>5388</sup> T. 15 May 2008 p. 24 (Witness D-2-18-O).

<sup>5389</sup> T. 19 May 2008 p. 62 (Witness D-2-10-O).

<sup>5390</sup> T. 15 May 2008 p. 17 (Witness D-2-18-O).

<sup>5391</sup> T. 19 May 2008 p. 12 (Witness D-2-18-O).

<sup>5392</sup> T. 19 May 2008 pp. 17, 50 (ICS) (Witness D-2-18-O).

<sup>5393</sup> T. 19 May 2008 pp. 81-83 (ICS) (Witness D-2-18-O); Prosecution Exhibit 199 (*Gacaca* Court Judgement for Witness D-2-18-O). To avoid risk of identification of the witness, the Judgement date is not mentioned here.

<sup>5394</sup> T. 20 May 2008 pp. 10-11 (ICS) (Witness D-2-18-O).

<sup>5395</sup> T. 20 May 2008 p. 19 (ICS) (Witness D-2-18-O).

<sup>5396</sup> T. 11 September 2007 p. 20 (ICS) (Witness D-2-5-W).

<sup>5397</sup> T. 11 September 2007 p. 19 (ICS) (Witness D-2-5-W).

<sup>5398</sup> T. 12 September 2007 p. 8 (ICS) (Witness D-2-5-W); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

<sup>5399</sup> T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

<sup>5400</sup> T. 11 September 2007 p. 68 (ICS); T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W).

<sup>5401</sup> T. 11 September 2007 p. 69 (ICS); T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W).

road between the clinic and the primary school there was a Pepsi kiosk, and near to the school was another landmark identified by the witness.<sup>5402</sup>

2055. On Defence Exhibit 568, the witness indicated that the number “30” represented the location of the Pepsi kiosk roadblock.<sup>5403</sup> This other landmark was approximately 100 metres across the road from the school and about 250 to 300 metres along the road from the Pepsi kiosk; the Pepsi kiosk was roughly 120 metres from the clinic.<sup>5404</sup> The clinic was about 400 to 500 metres from Ngoma Military Camp.<sup>5405</sup> The witness testified that Matyazo *secteur* was located within the dotted line marked on Defence Exhibit 568.<sup>5406</sup> On Defence Exhibit 568, the number “18” represented Matyazo market square<sup>5407</sup> and “37” marked the location of the Pentecostal Church.<sup>5408</sup>

2056. Witness D-2-5-W testified that from 10 April 1994, people from Gikongoro *préfecture* and the *communes* of Maraba, Huye and Runyinya in Butare *préfecture* came to Matyazo *secteur* in Ngoma *commune*, Butare *préfecture*.<sup>5409</sup> They were fleeing from insecurity in their home areas and took refuge at Matyazo Primary School, Matyazo Pentecostal Church and Matyazo Clinic.<sup>5410</sup> The witness stated that on three occasions, the last of which was on 18 April 1994, he provided assistance to those who had gathered at Matyazo Clinic, including bringing water, firewood and food.<sup>5411</sup> Matyazo Clinic was surrounded by a fence and entry was gained by a small door.<sup>5412</sup> At no time during his visits did the witness notice soldiers or policemen guarding the clinic; people could come and go as they pleased.<sup>5413</sup>

2057. Witness D-2-5-W testified that on the afternoon of 21 April 1994, around 4.00 p.m. he was present at the Pepsi kiosk in Matyazo *secteur* with other members of the public.<sup>5414</sup> A group of around 12 soldiers arrived in a Toyota pickup vehicle and called the civilians over to them.<sup>5415</sup> It was a green Toyota pickup with MINITRAP written on it with yellow registration plates, meaning it was an official vehicle and not a military vehicle.<sup>5416</sup> One of the soldiers, Second Lieutenant Niyonteze, explained that they had come to Matyazo as they had received information that there were many RPF accomplices in the *secteur*.<sup>5417</sup> Niyonteze claimed that it was likely that RPF soldiers would come to hide in Matyazo and pass themselves off as

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<sup>5402</sup> T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

<sup>5403</sup> T. 11 September 2007 p. 50 (ICS) (Witness D-2-5-W).

<sup>5404</sup> T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

<sup>5405</sup> T. 12 September 2007 p. 7 (ICS) (Witness D-2-5-W).

<sup>5406</sup> T. 11 September 2007 p. 49 (ICS) (Witness D-2-5-W).

<sup>5407</sup> T. 11 September 2007 p. 69 (ICS) (Witness D-2-5-W).

<sup>5408</sup> T. 11 September 2007 p. 69 (ICS); T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W).

<sup>5409</sup> T. 12 September 2007 p. 12 (Witness D-2-5-W).

<sup>5410</sup> T. 12 September 2007 pp. 12, 14; T. 17 September 2007 p. 15 (ICS) (Witness D-2-5-W).

<sup>5411</sup> T. 12 September 2007 pp. 12, 14; T. 17 September 2007 p. 15 (ICS); T. 3 October 2007 pp. 42-43 (ICS); T. 4 October 2007 p. 42 (ICS) (Witness D-2-5-W).

<sup>5412</sup> T. 12 September 2007 p. 14 (Witness D-2-5-W).

<sup>5413</sup> T. 12 September 2007 p. 14; T. 17 September 2007 p. 16 (ICS) (Witness D-2-5-W).

<sup>5414</sup> T. 12 September 2007 p. 21 (Witness D-2-5-W).

<sup>5415</sup> T. 12 September 2007 p. 21; T. 17 September 2007 p. 22 (ICS) (Witness D-2-5-W).

<sup>5416</sup> T. 12 September 2007 p. 22 (Witness D-2-5-W).

<sup>5417</sup> T. 12 September 2007 pp. 21, 23; T. 17 September 2007 p. 39 (ICS) (Witness D-2-5-W).

refugees.<sup>5418</sup> He asked the civilians for their assistance in checking whether there were RPF soldiers or accomplices hiding among the refugees who had come to Matyazo, starting first with Matyazo Primary School.<sup>5419</sup> Witness D-2-5-W's attitude towards the Tutsi refugees changed after Niyonteze's speech.<sup>5420</sup>

2058. When put to Witness D-2-5-W that his statement of 23 May 1997 to Rwandan authorities made no mention of RPF combatants hiding in Matyazo as refugees, Witness D-2-5-W stated that his statement was incomplete.<sup>5421</sup> When put to Witness D-2-5-W that there was no mention of this event in his confession of 3 June 1997 to Rwandan authorities, Witness D-2-5-W stated that he omitted many details from that confession.<sup>5422</sup> With reference to the omission from his statement to the Rwandan Prosecutor dated 12 November 1997, Witness D-2-5-W stated that he wrote it quickly and under pressure in the Prosecutor's office.<sup>5423</sup> He did include this information in his fourth statement to Rwandan authorities of 4 June 1999,<sup>5424</sup> in his statement to the Kanyabashi Defence team dated 26, 28 and 29 October 2004,<sup>5425</sup> and his confession to the President of the *Gacaca* court.<sup>5426</sup>

2059. Witness D-2-5-W testified that the group of soldiers and civilians reached Matyazo Primary School at around 5.00 p.m. on 21 April 1994, where they found a large number of people gathered in the school's classrooms.<sup>5427</sup> The soldiers asked the civilians, including the witness, to check the identity cards of those gathered in the classrooms and to let Hutus and people they knew from Matyazo leave and return home.<sup>5428</sup> After this exercise had been carried out, only Tutsis remained. The soldiers then asked the civilians to surround the school complex so that no one could escape.<sup>5429</sup> As it was beginning to get dark, the witness went home to collect a torch.<sup>5430</sup> On returning to the school, the soldiers told the witness to stand in front of the classrooms in order to provide illumination with the torch.<sup>5431</sup> Witness D-2-5-W was a civilian at the time and participated in the attack.<sup>5432</sup> The soldiers opened fire on the Tutsis sheltering inside the classrooms.<sup>5433</sup> The witness recalled that in one classroom, young Tutsis had gathered and were trying to defend themselves.<sup>5434</sup> The soldiers threw petrol inside and on the roof of the classroom and set it alight; those inside died from the effects of the flames and fumes.<sup>5435</sup> The witness testified that the killings started at around 6.00 or 6.30 p.m.

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<sup>5418</sup> T. 12 September 2007 pp. 22-23; T. 17 September 2007 pp. 23-24 (ICS); T. 4 October 2007 p. 42 (ICS) (Witness D-2-5-W).

<sup>5419</sup> T. 12 September 2007 pp. 22-23 (Witness D-2-5-W).

<sup>5420</sup> T. 3 October 2007 p. 43 (ICS) (Witness D-2-5-W).

<sup>5421</sup> T. 17 September 2007 pp. 39-40 (ICS) (Witness D-2-5-W).

<sup>5422</sup> T. 17 September 2007 pp. 45-46 (ICS) (Witness D-2-5-W).

<sup>5423</sup> T. 17 September 2007 p. 49 (ICS) (Witness D-2-5-W).

<sup>5424</sup> T. 2 October 2007 pp. 61-62 (ICS) (Witness D-2-5-W).

<sup>5425</sup> T. 2 October 2007 pp. 63, 65 (ICS) (Witness D-2-5-W).

<sup>5426</sup> T. 2 October 2007 pp. 68, 72 (ICS) (Witness D-2-5-W).

<sup>5427</sup> T. 12 September 2007 pp. 23-24 (Witness D-2-5-W).

<sup>5428</sup> T. 12 September 2007 p. 24; T. 4 October 2007 p. 10 (ICS) (Witness D-2-5-W).

<sup>5429</sup> T. 12 September 2007 p. 24 (Witness D-2-5-W).

<sup>5430</sup> T. 12 September 2007 p. 24 (Extract) p. i; T. 4 October 2007 p. 8 (ICS) (Witness D-2-5-W).

<sup>5431</sup> T. 12 September 2007 p. 24 (Extract) p. i; T. 2 October 2007 p. 78 (ICS) (Witness D-2-5-W).

<sup>5432</sup> T. 2 October 2007 pp. 82-83 (ICS) (Witness D-2-5-W).

<sup>5433</sup> T. 12 September 2007 p. 24; T. 4 October 2007 p. 10 (ICS) (Witness D-2-5-W).

<sup>5434</sup> T. 12 September 2007 pp. 24-25 (Witness D-2-5-W).

<sup>5435</sup> T. 12 September 2007 p. 25; T. 4 October 2007 p. 36 (ICS) (Witness D-2-5-W).

and lasted until sunrise, between 4.00 a.m. and 5.00 a.m.<sup>5436</sup> Between 250 and 300 people were killed.<sup>5437</sup> He stated that he did not see Kanyabashi, *Conseiller* Athanase Nshimiyimana, or *commune* policemen at Matyazo Primary School during the attack.<sup>5438</sup>

2060. Witness D-2-5-W testified that after the attack, the soldiers became angry when they realised the *conseiller de secteur* had not been present during the attack to fight the enemy.<sup>5439</sup> The soldiers claimed that the *conseiller* and *Bourgmestre* Kanyabashi, nicknamed *Kanyabatutsi*, were working together to protect Tutsis and accomplices.<sup>5440</sup> Before the attack on the clinic, Niyonteze said that the *conseiller* of Matyazo and Kanyabashi should be put on a shortlist of RPF supporters.<sup>5441</sup> In cross-examination Witness D-2-5-W testified that Niyonteze made this statement on 21 April 1994 and thereafter repeated it in the following days.<sup>5442</sup> Soldiers often said Kanyabashi was an RPF accomplice too.<sup>5443</sup>

2061. When put to Witness D-2-5-W that Niyonteze's statement was not included in his statement of 23 May 1997 to Rwandan authorities, Witness D-2-5-W stated that he had not had enough time to elaborate and could not remember all the details at the time of making the statement.<sup>5444</sup> Witness D-2-5-W agreed that he also omitted this from his statements to the Rwandan Prosecutor dated 12 November 1997 and 4 June 1998 because he only discussed salient points.<sup>5445</sup> This incident was also missing from his statement to the Kanyabashi Defence team dated 26, 28 and 29 October 2004, although Witness D-2-5-W testified that he told them about it.<sup>5446</sup> It was also not mentioned in his confession to the President of the *Gacaca* court because he could not mention every detail.<sup>5447</sup>

2062. Witness D-2-5-W testified that he later saw that it was true that Kanyabashi was protecting Tutsis because he passed the *commune* office at the end of May, and in mid-June 1994 and saw Tutsis concealed there.<sup>5448</sup>

2063. Witness D-2-5-W testified that the same group of soldiers and civilians which had participated in the attack on Matyazo Primary School proceeded to Matyazo Clinic and, on the way, were joined by other members of the public.<sup>5449</sup> The group arrived at the clinic, which was unguarded, between 6.00 a.m. and 7.00 a.m. on 22 April 1994.<sup>5450</sup> The refugees at the dispensary could come and go as they wished.<sup>5451</sup> Just as they had done at Matyazo Primary

<sup>5436</sup> T. 12 September 2007 pp. 25, 28-29; T. 4 October 2007 p. 11 (ICS) (Witness D-2-5-W).

<sup>5437</sup> T. 12 September 2007 p. 28; T. 2 October 2007 p. 78 (ICS); T. 3 October 2007 p. 22 (ICS) (Witness D-2-5-W).

<sup>5438</sup> T. 12 September 2007 pp. 28-29 (Witness D-2-5-W).

<sup>5439</sup> T. 12 September 2007 p. 29 (Witness D-2-5-W).

<sup>5440</sup> T. 12 September 2007 pp. 29-30; T. 4 October 2007 p. 12 (ICS) (Witness D-2-5-W).

<sup>5441</sup> T. 12 September 2007 pp. 55-56 (ICS); T. 17 September 2007 p. 24 (ICS) (Witness D-2-5-W).

<sup>5442</sup> T. 3 October 2007 pp. 54, 60 (ICS) (Witness D-2-5-W).

<sup>5443</sup> T. 3 October 2007 pp. 58-60 (ICS) (Witness D-2-5-W).

<sup>5444</sup> T. 17 September 2007 pp. 36-37 (ICS) (Witness D-2-5-W).

<sup>5445</sup> T. 2 October 2007 pp. 58, 61-62 (ICS) (Witness D-2-5-W).

<sup>5446</sup> T. 2 October 2007 pp. 67-68 (ICS) (Witness D-2-5-W).

<sup>5447</sup> T. 2 October 2007 pp. 68, 72 (ICS) (Witness D-2-5-W).

<sup>5448</sup> T. 3 October 2007 pp. 52-53, 62-63 (ICS); T. 4 October 2007 p. 34 (ICS) (Witness D-2-5-W).

<sup>5449</sup> T. 12 September 2007 p. 30; T. 4 October 2007 p. 12 (ICS) (Witness D-2-5-W).

<sup>5450</sup> T. 12 September 2007 pp. 30-31; T. 3 October 2007 p. 68 (ICS) (Witness D-2-5-W).

<sup>5451</sup> T. 12 September 2007 p. 38 (Witness D-2-5-W).

School, they checked the identity cards of people sheltering in the clinic; the Hutus returned home leaving the Tutsis.<sup>5452</sup> From the opposite side of the road, in front of the Electrogaz workers housing, the soldiers opened fire and threw grenades at the Tutsis sheltering in the clinic.<sup>5453</sup> The attack started between 7.20 a.m. and 7.30 a.m. and ended at 10.30 a.m.<sup>5454</sup> The attack did not take place between 6.00 p.m. and 8.00 p.m.<sup>5455</sup> Between 200 and 250 people were killed.<sup>5456</sup>

2064. Witness D-2-5-W testified that Kanyabashi, *Conseiller* Athanase Nshimiyimana and *commune* policemen were not present on the day of the attack on the clinic.<sup>5457</sup> Kanyabashi did not play any role in those killings.<sup>5458</sup> Even if Kanyabashi, the *conseiller* or the *commune* policemen had been present during the primary school and clinic attacks, they would not have been able to prevent those soldiers from killing because the soldiers were well prepared for the attack.<sup>5459</sup> At the time, soldiers held the power and civilian authorities were afraid.<sup>5460</sup> The civilian authorities would nevertheless have heard of the massacres.<sup>5461</sup>

2065. Witness D-2-5-W was tried together with *Conseiller* Nshimiyimana in Rwandan court.<sup>5462</sup> When it was put to Witness D-2-5-W that in their trial before the Rwandan court *Conseiller* Nshimiyimana testified that he called Kanyabashi on 22 April 1994 to inform him of the catastrophic situation in Matyazo and Kanyabashi replied that he could not do anything, Witness D-2-5-W stated that he could not confirm this without re-reading the relevant Rwandan judgment.<sup>5463</sup> He testified that the said judgment was still awaiting the result of an appeal to rectify its shortcomings.<sup>5464</sup> At the time of his testimony Witness D-2-5-W was detained with *Conseiller* Nshimiyimana at Karubanda prison.<sup>5465</sup>

2066. In *Gacaca* proceedings Witness D-2-5-W learned that *Conseiller* Nshimiyimana admitted he went to the clinic in the afternoon after the killings had taken place and took some children he found who were not dead to a presbytery and others to the hospital.<sup>5466</sup> Witness D-2-5-W testified that if Second Lieutenant Niyonteze had not been at Matyazo, the killings would not have occurred there.<sup>5467</sup>

<sup>5452</sup> T. 12 September 2007 p. 30; T. 4 October 2007 p. 13 (ICS) (Witness D-2-5-W).

<sup>5453</sup> T. 12 September 2007 p. 30 (Witness D-2-5-W).

<sup>5454</sup> T. 12 September 2007 pp. 31, 39, 45; T. 3 October 2007 pp. 68-69 (ICS); T. 4 October 2007 p. 13 (ICS) (Witness D-2-5-W).

<sup>5455</sup> T. 12 September 2007 pp. 44, 46 (Witness D-2-5-W).

<sup>5456</sup> T. 12 September 2007 p. 39; T. 3 October 2007 p. 23 (ICS) (Witness D-2-5-W).

<sup>5457</sup> T. 12 September 2007 pp. 39, 45-47; T. 13 September 2007 p. 41 (ICS) (Witness D-2-5-W) (referring to the absence of *commune* police only).

<sup>5458</sup> T. 13 September 2007 p. 76 (ICS) (Witness D-2-5-W).

<sup>5459</sup> T. 12 September 2007 pp. 29, 50-51; T. 13 September 2007 p. 65 (ICS) (Witness D-2-5-W).

<sup>5460</sup> T. 3 October 2007 pp. 57-58 (ICS) (Witness D-2-5-W).

<sup>5461</sup> T. 4 October 2007 p. 20 (ICS) (Witness D-2-5-W).

<sup>5462</sup> T. 13 September 2007 pp. 13, 19-20, 31-32 (ICS) (Witness D-2-5-W).

<sup>5463</sup> T. 13 September 2007 pp. 62-63 (ICS) (Witness D-2-5-W); Defence Exhibit 586 (Kanyabashi) (*Gacaca* Judgement relating to Witness D-2-5-W); Defence Exhibit 587B (Ntahobali) (Final Findings in the Case of Witness D-2-5-W); T. 4 October 2007 pp. 43, 45 (ICS) (Witness D-2-5-W).

<sup>5464</sup> T. 13 September 2007 p. 64 (ICS) (Witness D-2-5-W).

<sup>5465</sup> T. 13 September 2007 p. 70 (ICS) (Witness D-2-5-W).

<sup>5466</sup> T. 12 September 2007 p. 39 (Witness D-2-5-W).

<sup>5467</sup> T. 12 September 2007 p. 57 (ICS) (Witness D-2-5-W).



2067. In *Gacaca* proceedings, no one mentioned Kanyabashi's name in relation to the attacks at the dispensary, the primary school or the church in Matyazo.<sup>5468</sup> He also never heard anyone say that Ngoma *commune* police officers participated in the Matyazo massacres.<sup>5469</sup>

#### Kanyabashi Defence Witness D-9-U

2068. Witness D-9-U, a female Hutu farmer, testified that Matyazo Clinic is located on the main road between Butare and Gikongoro.<sup>5470</sup> The clinic is directly opposite the Matyazo market and one could walk between the two places in one minute.<sup>5471</sup> The witness identified another landmark, which she situated on a secondary road, five minutes' walk from Matyazo Primary School and 10 minutes' walk from the clinic.<sup>5472</sup>

2069. Two weeks after the death of Habyarimana, people from Huye *commune* and Gikongoro *préfecture* sought refuge at Matyazo Clinic and Matyazo Primary School.<sup>5473</sup> They arrived around midday.<sup>5474</sup> The *conseiller de secteur* called on the public to provide assistance to these people.<sup>5475</sup> This was on the same day the refugees arrived.<sup>5476</sup> Following the *conseiller's* announcement, the witness went to the clinic and helped those who had gathered there by supplying beans, potatoes and water.<sup>5477</sup> There were more than 1,000 men, women and children present in the clinic and they had come with their cattle.<sup>5478</sup> The witness visited the clinic on three occasions.<sup>5479</sup> The occupants were not guarded and could move about freely; some left the clinic to sell their cattle or ask for food from neighbouring houses.<sup>5480</sup> They remained in the clinic for one week.<sup>5481</sup>

2070. In cross-examination Witness D-9-U testified that the refugees arrived at the clinic approximately one week after Habyarimana's death.<sup>5482</sup> They remained at the clinic for one week and were then killed two weeks after Habyarimana's death.<sup>5483</sup> When put to the witness that her statement of 29 November 2004 stated the refugees arrived at the clinic two weeks after Habyarimana's death, Witness D-9-U testified that it must have been recorded wrong. When put to the witness that her statement of 29 November 2004 also stated that she went to the clinic to see the refugees out of curiosity, rather than because the *conseiller* asked them to assist, Witness D-9-U testified that her statement was taken down wrong.<sup>5484</sup>

<sup>5468</sup> T. 12 September 2007 p. 40 (Witness D-2-5-W).

<sup>5469</sup> T. 13 September 2007 p. 41 (ICS) (Witness D-2-5-W).

<sup>5470</sup> T. 31 January 2008 pp. 41-43, 48-53 (ICS) (Witness D-9-U).

<sup>5471</sup> T. 31 January 2008 p. 53 (ICS) (Witness D-9-U).

<sup>5472</sup> T. 31 January 2008 pp. 52-53 (ICS) (Witness D-9-U).

<sup>5473</sup> T. 4 February 2008 pp. 19-20, 55 (ICS) (Witness D-9-U).

<sup>5474</sup> T. 4 February 2008 p. 56 (ICS) (Witness D-9-U).

<sup>5475</sup> T. 4 February 2008 p. 21 (ICS); T. 5 February 2008 pp. 17-18 (ICS) (Witness D-9-U).

<sup>5476</sup> T. 7 February 2008 p. 35 (ICS) (Witness D-9-U).

<sup>5477</sup> T. 4 February 2008 p. 21 (ICS); T. 5 February 2008 p. 32 (Witness D-9-U).

<sup>5478</sup> T. 4 February 2008 pp. 21, 58 (ICS); T. 7 February 2008 p. 37 (ICS) (Witness D-9-U).

<sup>5479</sup> T. 4 February 2008 p. 22 (ICS) (Witness D-9-U).

<sup>5480</sup> T. 4 February 2008 pp. 22-23 (ICS); T. 5 February 2008 p. 48 (Witness D-9-U).

<sup>5481</sup> T. 4 February 2008 p. 22 (ICS) (Witness D-9-U).

<sup>5482</sup> T. 5 February 2008 p. 32; T. 7 February 2008 p. 30 (Extract) p. i (Witness D-9-U).

<sup>5483</sup> T. 5 February 2008 p. 35 (ICS) (Witness D-9-U).

<sup>5484</sup> T. 5 February 2008 p. 36 (ICS) (Witness D-9-U).

2071. Witness D-9-U testified that Kanyabashi was not present at the clinic the day the refugees arrived, but she admitted that she could not see the dispensary from her home.<sup>5485</sup> On their way to the clinic from Gikongoro along the main road, the refugees had to pass two roadblocks.<sup>5486</sup>

2072. Witness D-9-U testified that the *conseiller de secteur* thereafter held a meeting in the two weeks following Habyarimana's death which encouraged members of the public to take action to prevent assailants from Huye *commune* from entering Matyazo *secteur*.<sup>5487</sup> The *conseiller* said that he was calling on people to protect the *commune's* borders because Kanyabashi had instructed that assailants should not enter the *commune* to kill the refugees.<sup>5488</sup> At the time, some people said that Kanyabashi was an accomplice because he had ordered that the assailants be prevented from pursuing and killing the refugees.<sup>5489</sup> Assailants on the other side of the *commune's* border shouted that Kanyabashi had prevented the killing of Tutsi refugees and should thus also be killed.<sup>5490</sup> The meeting took place after the refugees arrived at the clinic.<sup>5491</sup> Between 500 and 1,000 people attended the meeting, including the witness.<sup>5492</sup> In cross-examination he said that more than 1,000 people attended the meeting.<sup>5493</sup> Following that meeting, members of the public and *commune* police officers went to the *secteur* border to hold back the assailants and they remained there for three days.<sup>5494</sup>

2073. Witness D-9-U testified that around 8.00 p.m. on the third day of the police and civilians' defence of the Matyazo *secteur* border, she heard gunshots coming from Matyazo Primary School, located close to her home, which lasted until 5.00 a.m. the following day.<sup>5495</sup> That morning the witness saw corpses at the school and concluded that the soldiers had killed the people who had been sheltering in the school.<sup>5496</sup> She also heard people say that soldiers and civilians had been responsible for the attack.<sup>5497</sup> At 9.00 a.m. or 10.00 a.m. the same day, the witness heard shots being fired from Matyazo Clinic, which lasted until 2.00 p.m. or 3.00 p.m.<sup>5498</sup> People were saying that the refugees at the dispensary were being massacred.<sup>5499</sup> The following day the witness saw corpses at the clinic.<sup>5500</sup>

<sup>5485</sup> T. 4 February 2008 p. 56 (ICS) (Witness D-9-U).

<sup>5486</sup> T. 4 February 2008 pp. 57-58 (ICS) (Witness D-9-U).

<sup>5487</sup> T. 4 February 2008 p. 26; T. 5 February 2008 pp. 17-18 (ICS) (Witness D-9-U).

<sup>5488</sup> T. 4 February 2008 p. 28; T. 5 February 2008 p. 18 (ICS) (Witness D-9-U).

<sup>5489</sup> T. 4 February 2008 p. 26; T. 4 February 2008 pp. 29-30, 36 (ICS) (Witness D-9-U).

<sup>5490</sup> T. 4 February 2008 p. 26 (Witness D-9-U).

<sup>5491</sup> T. 4 February 2008 p. 28 (Extract p. ii); T. 5 February 2008 pp. 17-19 (ICS) (Witness D-9-U).

<sup>5492</sup> T. 4 February 2008 p. 28 (Witness D-9-U) (referring to first meeting).

<sup>5493</sup> T. 5 February 2008 p. 17 (ICS) (Witness D-9-U).

<sup>5494</sup> T. 4 February 2008 p. 26; T. 4 February 2008 p. 29 (ICS) (Witness D-9-U).

<sup>5495</sup> T. 4 February 2008 pp. 30, 34 (ICS); T. 5 February 2008 p. 48 (Witness D-9-U).

<sup>5496</sup> T. 4 February 2008 p. 34 (ICS) (Witness D-9-U).

<sup>5497</sup> T. 5 February 2008 p. 57 (Witness D-9-U).

<sup>5498</sup> T. 4 February 2008 pp. 30, 34 (ICS); T. 5 February 2008 p. 48; T. 5 February 2008 p. 71 (ICS) (Witness D-9-U).

<sup>5499</sup> T. 4 February 2008 pp. 30, 34 (ICS); T. 5 February 2008 p. 59 (Witness D-9-U).

<sup>5500</sup> T. 4 February 2008 pp. 34-35 (ICS) (Witness D-9-U).

2074. Witness D-9-U denied that the clinic attack occurred between 6.00 and 8.00 p.m.<sup>5501</sup> or that the attack ended at 10.00 a.m.<sup>5502</sup> The witness agreed that there were many RPF members and followers among the Tutsi population of Matyazo.<sup>5503</sup>

2075. Witness D-9-U identified locations throughout Matyazo with reference to Defence Exhibit 568 (Sketch by Witness D-2-5-W), which was admitted as Defence Exhibit 624.<sup>5504</sup>

#### Kanyabashi Defence Witness D-2-YYYY

2076. Witness D-2-YYYY, a Hutu civil servant in 1994,<sup>5505</sup> testified that from 19 to 21 April 1994, he had been assigned to guard one of Ngoma *commune*'s border areas at Mukura bridge on the border between Ngoma and Gishamvu *communes*.<sup>5506</sup> On 21 April 1994, the witness intended to stay at home but on receiving a message from a colleague, he went to Mukura bridge at 8.30 or 9.00 a.m.<sup>5507</sup> He went home around noon.<sup>5508</sup> When put to Witness D-2-YYYY that his statement of 19 November 2004 stated that he did not work on Thursday 21 April 1994, in contradiction to his testimony, Witness D-2-YYYY explained it was a misunderstanding, as he had told the investigator that he had a rest day, not that he had rested that day.<sup>5509</sup>

2077. Witness D-2-YYYY stated that on 22 April 1994 Kanyabashi chaired a meeting at the *commune* office, which started at 8.30 a.m.<sup>5510</sup> After the meeting, Kanyabashi remained at the *commune* office until 1.30 p.m. and then went home for two hours, until 3.30 p.m.<sup>5511</sup> Kanyabashi returned to the *commune* office at 3.30 p.m. and went home for the day at about 5.00 p.m.<sup>5512</sup> The witness went to Kanyabashi's house from 3.30 p.m. to 5.00 p.m. before returning to the *commune* office where he spent the night.<sup>5513</sup>

2078. Witness D-2-YYYY remained at the *commune* office until 5.00 p.m. the following day, [Saturday] 23 April 1994.<sup>5514</sup> After 5.00 p.m., he was posted to guard Kanyabashi's residence with Witness D-2-5-I and spent the night there.<sup>5515</sup> Kanyabashi left his home with Witness D-

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<sup>5501</sup> T. 4 February 2008 p. 35 (ICS) (Witness D-9-U).

<sup>5502</sup> T. 5 February 2008 p. 71 (ICS) (Witness D-9-U).

<sup>5503</sup> T. 5 February 2008 p. 24 (ICS) (Witness D-9-U).

<sup>5504</sup> T. 6 February 2008 p. 72 (ICS) (Witness D-9-U).

<sup>5505</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>5506</sup> T. 27 November 2007 pp. 39-42, 44 (ICS); T. 3 December 2007 pp. 38-39 (ICS); T. 6 December 2007 pp. 34, 52-55 (ICS); T. 11 December 2007 p. 4 (ICS) (Witness D-2-YYYY).

<sup>5507</sup> T. 27 November 2007 p. 46 (ICS); T. 6 December 2007 pp. 65-67 (ICS) (Witness D-2-YYYY).

<sup>5508</sup> T. 27 November 2007 p. 52 (ICS); T. 3 December 2007 p. 46 (ICS); T. 11 December 2007 p. 7 (ICS) (Witness D-2-YYYY).

<sup>5509</sup> T. 3 December 2007 pp. 41-42 (ICS) (Witness D-2-YYYY).

<sup>5510</sup> T. 28 November 2007 p. 19 (ICS); T. 3 December 2007 p. 49 (ICS); T. 5 December 2007 p. 50 (ICS); T. 11 December 2007 pp. 16, 38-39 (ICS) (Witness D-2-YYYY).

<sup>5511</sup> T. 28 November 2007 p. 20 (ICS); T. 3 December 2007 p. 49 (ICS); T. 5 December 2007 p. 50 (ICS); T. 11 December 2007 p. 19 (ICS) (Witness D-2-YYYY).

<sup>5512</sup> T. 28 November 2007 p. 21 (ICS); T. 3 December 2007 p. 49 (ICS); T. 4 December 2007 p. 27 (ICS); T. 11 December 2007 p. 29 (ICS) (Witness D-2-YYYY).

<sup>5513</sup> T. 28 November 2007 p. 21 (ICS); T. 11 December 2007 pp. 29-30 (ICS) (Witness D-2-YYYY).

<sup>5514</sup> T. 28 November 2007 p. 21 (ICS); T. 11 December 2007 p. 30 (ICS) (Witness D-2-YYYY).

<sup>5515</sup> T. 28 November 2007 pp. 21, 23-24 (ICS); T. 3 December 2007 p. 53 (ICS) (Witness D-2-YYYY).

2-5-I at 6.00 p.m. and returned around 7.00 p.m. or 7.30 p.m.<sup>5516</sup> He did not go out again.<sup>5517</sup> On [Sunday] 24 April 1994, Witness D-2-YYYY was on guard at Kanyabashi's house until 5.00 p.m.<sup>5518</sup> Kanyabashi did not go out that day.<sup>5519</sup> Witness D-2-YYYY testified that he remembered what happened between 21 and 24 April 1994 because it was the first time in his life he had experienced such events.<sup>5520</sup>

#### Kanyabashi Defence Witness D-2-5-I

2079. Witness D-2-5-I, a Hutu civil servant in 1994, testified that on 22 April 1994 he rested at home until 5.00 p.m. when he reported for work at the *commune* office where he spent the night.<sup>5521</sup> On 23 April 1994, the witness remained at the *commune* office.<sup>5522</sup> At 5.00 p.m. Kanyabashi arrived and asked the witness to accompany him.<sup>5523</sup> Kanyabashi, the witness and another person drove to Mukoni and the Hotel Faucon, where they were shot at.<sup>5524</sup> In view of the prevailing insecurity, the witness spent the night at Kanyabashi's house.<sup>5525</sup> While he denied being on duty with Witness D-2-YYYY at Kanyabashi's residence on 23 April 1994,<sup>5526</sup> he testified that Witness D-2-YYYY was at Kanyabashi's residence on the night of 23 April 1994.<sup>5527</sup>

#### **3.6.16.4 Deliberations**

2080. Both Parties agree that massacres were carried out in Matyazo at the end of April. Further, Kanyabashi's presence on the site, at some point in time during the massacres, is not contested. The issue of contention is the role Kanyabashi played in this event and whether he had authority over the perpetrators of these massacres.

2081. The Defence presented an alibi through Witnesses D-2-YYYY and D-2-5-I. The Chamber recalls that an accused does not bear the burden of proving his alibi beyond a reasonable doubt.<sup>5528</sup> Rather, "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime",<sup>5529</sup> or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case".<sup>5530</sup> The Chamber notes that the testimony of Witness D-2-YYYY, if believed, would provide Kanyabashi with an alibi for the

<sup>5516</sup> T. 28 November 2007 p. 22 (ICS); T. 3 December 2007 pp. 53-54 (ICS) (Witness D-2-YYYY).

<sup>5517</sup> T. 28 November 2007 p. 22 (ICS) (Witness D-2-YYYY).

<sup>5518</sup> T. 28 November 2007 pp. 23-24 (ICS) (Witness D-2-YYYY).

<sup>5519</sup> T. 28 November 2007 p. 24 (ICS); T. 4 December 2007 pp. 14-15 (ICS) (Witness D-2-YYYY).

<sup>5520</sup> T. 28 November 2007 p. 24 (ICS) (Witness D-2-YYYY).

<sup>5521</sup> T. 21 January 2008 p. 48 (ICS); T. 28 January 2008 pp. 31-32 (ICS); T. 31 January 2008 pp. 14-16 (ICS) (Witness D-2-5-I).

<sup>5522</sup> T. 21 January 2008 p. 48 (ICS) (Witness D-2-5-I).

<sup>5523</sup> T. 21 January 2008 p. 50 (ICS); T. 31 January 2008 pp. 16-18 (ICS) (Witness D-2-5-I).

<sup>5524</sup> T. 21 January 2008 p. 50 (ICS) (Witness D-2-5-I).

<sup>5525</sup> T. 21 January 2008 p. 50 (ICS); T. 23 January 2008 p. 67 (ICS) (Witness D-2-5-I).

<sup>5526</sup> T. 23 January 2008 p. 59 (ICS) (Witness D-2-5-I).

<sup>5527</sup> T. 23 January 2008 pp. 64-65 (ICS) (Witness D-2-5-I).

<sup>5528</sup> *Nahimana et al.*, Judgement (AC), para. 414; *Simba*, Judgement (AC), para. 184; *Karera*, Judgement (AC), para. 331; *Musema*, Judgement (AC), para. 202; *Kayishema & Ruzindana*, Judgement (AC), para. 107; *Zigiranyirazo*, Judgement (AC), para. 17.

<sup>5529</sup> *Musema*, Judgement (AC), para. 202; *Zigiranyirazo*, Judgement (AC), para. 17.

<sup>5530</sup> *Karera*, Judgement (AC), para. 331; *Simba*, Judgement (AC), para. 184; *Kajelijeli*, Judgement (AC), para. 42; *Niyitegeka*, Judgement (AC), para. 60; *Zigiranyirazo*, Judgement (AC), para. 17.

following periods: 8.30 a.m.-1.30 p.m. and 3.30 to 5.00 p.m. on 22 April 1994;<sup>5531</sup> 5.00 to 6.00 p.m. and 7.00/7.30 p.m.-midnight on 23 April 1994;<sup>5532</sup> and until 5.00 p.m. on 24 April 1994.<sup>5533</sup> Similarly, the testimony of Witness D-2-5-I, if believed, would provide Kanyabashi with an alibi for the entire evening of 23 April 1994 from 5.00 p.m.<sup>5534</sup> The Prosecution evidence places the commission of the crime at between 21 and 25 April 1994, at 6.00 p.m./nightfall at Matyazo Clinic. Accordingly, the alibi evidence would account for Kanyabashi's activities for only part of the relevant time frame advanced by the Prosecution. In particular, it does not cover 21 and 25 April 1994. Further, as regards 22 and 24 April 1994, the alibi evidence covers most of the day up to 5.00 p.m., the time when Witness D-2-YYYY left Kanyabashi at the *commune* office and his home respectively. The Chamber estimates that the distance between the Ngoma *commune* office and Kanyabashi's house on the one hand and Matyazo Clinic on the other is no more than two kilometres,<sup>5535</sup> which could easily be covered in a few minutes by car. In this connection, the Chamber recalls that according to Prosecution Witnesses QI and RL, Kanyabashi travelled to Matyazo Clinic by car.<sup>5536</sup> The Chamber will now assess whether the Prosecution has eliminated the reasonable possibility that the alibi is true.<sup>5537</sup>

2082. The Chamber notes that Witness D-2-YYYY was recruited by Kanyabashi and served under him for 15 years.<sup>5538</sup> The Chamber considers that as a consequence of this long-standing relationship of subordination, he may have had an interest in defending Kanyabashi. The Chamber further observes that apart from the evening of 23 April 1994, Witness D-2-YYYY's alibi evidence is uncorroborated. As for Witness D-2-5-I, the Chamber notes that he was another of Kanyabashi's subordinates<sup>5539</sup> and for that reason may have felt inclined to protect Kanyabashi. The Chamber also notes that the Kanyabashi Defence failed to enter a notice of alibi under Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence, which further detracts from the credibility of the alibi. When viewed as a whole, the Chamber does not find that the evidence adduced in support of Kanyabashi's alibi for the attack at Matyazo Clinic raises a reasonable doubt in the Prosecution evidence placing him at the scene of the crime between 21 and 25 April 1994.

2083. The Chamber has considered the evidence relating to the geography of Matyazo. In particular, the Chamber has taken account of the map, photos and videotape produced by Ghandi Shukry,<sup>5540</sup> as well as the sketch maps produced by Kanyabashi Defence Witness D-2-5-W<sup>5541</sup> and Witness D-9-U.<sup>5542</sup> The Chamber notes that no objections were made to the

<sup>5531</sup> T. 28 November 2007 pp. 19-21 (ICS) (Witness D-2-YYYY).

<sup>5532</sup> T. 28 November 2007 pp. 21-22 (ICS) (Witness D-2-YYYY).

<sup>5533</sup> T. 28 November 2007 p. 24 (ICS) (Witness D-2-YYYY).

<sup>5534</sup> T. 21 January 2008 pp. 48, 50 (ICS) (Witness D-2-5-I).

<sup>5535</sup> Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds); T. 28 November 2007 pp. 18-19 (ICS) (Witness D-2-YYYY).

<sup>5536</sup> T. 23 March 2004 p. 51 (Witness QI); T. 25 March 2004 pp. 77-79, 83 (Witness RL).

<sup>5537</sup> *Kajelijeli*, Judgement (AC), para. 41; *Kayishema & Ruzindana*, Judgement (AC), para. 106; *Zigiranyirazo*, Judgement (AC), para. 18.

<sup>5538</sup> T. 26 November 2007 p. 62 (ICS); T. 5 December 2007 p. 56 (ICS) (Witness D-2-YYYY).

<sup>5539</sup> T. 30 January 2008 p. 12 (ICS) (Witness D-2-5-I).

<sup>5540</sup> Prosecution Exhibit 13A-D (Photos of Matyazo Clinic, Butare); Prosecution Exhibit 14 (Sketch Map of Matyazo Clinic, by Shukry); Prosecution Exhibit 15 (Videotape of Matyazo Clinic, Butare).

<sup>5541</sup> Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

admission into evidence of these various documents.<sup>5543</sup> Moreover, the maps are consistent both with each other and with the testimony of each witness recalled above.

2084. The Chamber observes that there are a number of consistencies with respect to the events at Matyazo between the evidence of Prosecution Witnesses QI and RL. In particular, the Chamber notes that both witnesses testified to having seen Kanyabashi arrive at the clinic,<sup>5544</sup> address the Tutsis who were sheltering inside<sup>5545</sup> and leave shortly thereafter.<sup>5546</sup> Both witnesses testified to the presence of soldiers in or near the clinic and further testified that Kanyabashi was accompanied by soldiers during his visit.<sup>5547</sup> In this connection, the Chamber recalls Witness QI's testimony that he saw six soldiers close to the gate of the clinic and an additional two soldiers accompanying Kanyabashi.<sup>5548</sup> Witness RL similarly testified to the presence of a total of eight soldiers at the clinic, three or four of whom had arrived with Kanyabashi.<sup>5549</sup> Both witnesses testified that Kanyabashi spoke to the soldiers and Witness QI described how he saw the Accused tell the soldiers to "begin the job".<sup>5550</sup> Moreover, both witnesses testified that the attack involved shots being fired.<sup>5551</sup> Witness QI stated that the attack on the clinic started at around 6.00 p.m. and Witness RL testified that the attack took place around nightfall.<sup>5552</sup> Neither witness testified to an attack on Matyazo School. As regards time frames, Witness QI's testimony places the date of the attack about two weeks and five days after the death of the President, *i.e.* around 25 April 1994.<sup>5553</sup> Witness RL's estimation of the date of the attack is similar, being between 15 and 19 days after the President's death, namely between 21 and 25 April 1994.<sup>5554</sup> In any event, the Chamber does not consider the minor margin of difference as to time frames to be significant, especially in view of the time that has elapsed since the events.

2085. The Kanyabashi Defence questioned the identification testimony of Witness RL. It notes that Witness RL was 13 years old at the time, recalls his admission that he neither knew the Accused's first name nor the number of times he saw Kanyabashi before the events, and suggests that Witness RL mistakenly identified another man, Major Cyriaque Habyarabatura,

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<sup>5542</sup> Defence Exhibit 624 (Ntahobali) (Copy of Defence Exhibit 568 marked by Witness D-9-U).

<sup>5543</sup> T. 14 June 2001 pp. 108-109, 119-122 (Shukry); T. 12 September 2007 p. 7 (ICS) (Witness D-2-5-W); T. 6 February 2008 pp. 71-72 (ICS) (Witness D-9-U).

<sup>5544</sup> T. 23 March 2004 p. 51 (Witness QI); T. 25 March 2004 pp. 82-83 (Witness RL).

<sup>5545</sup> T. 23 March 2004 p. 52; T. 24 March 2004 p. 57 (Witness QI); T. 29 March 2004 pp. 67-68 (Witness RL).

<sup>5546</sup> T. 23 March 2004 p. 52; T. 24 March 2004 p. 57 (Witness QI); T. 25 March 2004 p. 78; T. 29 March 2004 p. 56 (ICS) (Witness RL).

<sup>5547</sup> T. 24 March 2004 p. 48 (ICS); T. 23 March 2004 p. 51 (Witness QI); T. 30 March 2004 pp. 16-17 (ICS) (Witness RL).

<sup>5548</sup> T. 23 March 2004 p. 51; T. 24 March 2004 p. 48 (ICS); T. 24 March 2004 pp. 55-56 (Witness QI).

<sup>5549</sup> T. 30 March 2004 pp. 16-17 (ICS) (Witness RL).

<sup>5550</sup> T. 23 March 2004 pp. 52-53; T. 24 March 2004 pp. 57-58 (Witness QI).

<sup>5551</sup> T. 23 March 2004 p. 57 (Witness QI); T. 24 March 2004 p. 58 (Witness QI); T. 25 March 2004 p. 84 (Witness RL); T. 30 March 2004 pp. 18, 22 (ICS) (Witness RL).

<sup>5552</sup> T. 24 March 2004 pp. 58-59 (Witness QI); T. 25 March 2004 p. 84 (Witness RL).

<sup>5553</sup> Witness QI testified that his employer asked them to leave due to insecurity: T. 23 March 2004 p. 43 (ICS) (Witness QI). This was 5 days after the death of the President; T. 24 March 2004 p. 31 (Witness QI). He went to his uncle's house where he stayed for 2 weeks: T. 24 March 2004 pp. 32-33 (ICS) (Witness QI), after this he proceeded to the Matyazo Clinic: T. 23 March 2004 p. 44 (Witness QI).

<sup>5554</sup> T. 25 March 2004 pp. 77-78, 83 (Witness RL) (first occasion he saw Kanyabashi at the clinic was a week and a half to two weeks after the death of the President and second occasion was five days later).

as Kanyabashi.<sup>5555</sup> In respect of Witness RL's identification of Kanyabashi in 1994, the Chamber considers that, even considering the young age of the witness during the events of 1994, his testimony that he knew Kanyabashi to be *bourgmestre* and saw him in his locality before April 1994<sup>5556</sup> is credible in light of the fact that Kanyabashi was a public authority in Witness RL's home *commune* of Ngoma. The Chamber finds that by April 1994, the witness was capable of identifying Kanyabashi at Matyazo based on his previous experiences. Witness RL's courtroom identification of Kanyabashi,<sup>5557</sup> while of limited value, supports this finding. The Chamber further finds that Witness RL gave consistent and convincing testimony when confronted with the assertion that he may have mistaken Kanyabashi for another man, Major Cyriaque Habyarabatuma.<sup>5558</sup> The Chamber recalls that the witness insisted that there was "no way" he could have mistaken Habyarabatuma for Kanyabashi, despite his young age in 1994.<sup>5559</sup> The witness clearly distinguished the positions of authority held by these men, one of whom used to hold meetings and the other who used to be present whenever there was a search.<sup>5560</sup>

2086. Witness QI identified Kanyabashi in court and stated that he knew Kanyabashi as the *bourgmestre* of Ngoma *commune*.<sup>5561</sup> The Defence did not question Witness QI's ability to identify Kanyabashi, other than by questioning the witness' testimony in relation to seeing him at the Matyazo Clinic. The Kanyabashi Defence pointed to an apparent inconsistency between Witness QI's testimony during examination-in-chief that his hiding place was 50 paces from the clinic and his statement under cross-examination that he hid about 500 metres from the clinic.<sup>5562</sup> The Chamber does, however, accept the witness' explanation of the discrepancies in his testimony, *i.e.* that he travelled a total distance of 500 metres to arrive at a hiding place that was approximately 50 paces from the clinic.<sup>5563</sup> The Chamber does not agree with the Kanyabashi Defence's submission that even from a distance of 50 metres it would have been virtually impossible for Witness QI to clearly hear the words of an address attributed to Kanyabashi.<sup>5564</sup>

2087. The Chamber's attention has been drawn to the existence of inconsistencies in the Prosecution evidence and issues that may adversely impact upon the credibility of the witnesses. With regard to inconsistencies between the accounts on this event, the Chamber recalls that Witness QI stated that there were approximately 500 Tutsis at the clinic before the attack while Witness RL estimated there to have been between 2,500 and 3,000.<sup>5565</sup> However, the witnesses may not have had the same opportunities to observe the number of Tutsis who had gathered at the clinic. In particular, the Chamber notes that Witness QI did not actually enter the clinic building and was in hiding, in a bush approximately 50 metres away.<sup>5566</sup> In

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<sup>5555</sup> Kanyabashi Closing Brief, paras. 218, 252-255.

<sup>5556</sup> T. 29 March 2004 pp. 5-6 (Witness RL).

<sup>5557</sup> T. 29 March 2004 p. 6 (Witness RL).

<sup>5558</sup> T. 30 March 2004 pp. 48-50 (Witness RL).

<sup>5559</sup> T. 30 March 2004 pp. 49-50 (Witness RL).

<sup>5560</sup> T. 30 March 2004 p. 50 (Witness RL).

<sup>5561</sup> T. 23 March 2004 p. 42 (ICS); T. 23 March 2004 pp. 52, 69 (Witness QI).

<sup>5562</sup> Kanyabashi Closing Brief, para. 227; T. 23 March 2004 pp. 45, 47-48; T. 24 March 2004 p. 55 (Witness QI).

<sup>5563</sup> T. 25 March 2004 p. 62 (ICS) (Witness QI).

<sup>5564</sup> Kanyabashi Closing Brief, para. 227.

<sup>5565</sup> T. 23 March 2004 p. 52 (Witness QI); T. 25 March 2004 p. 83 (Witness RL).

<sup>5566</sup> T. 23 March 2004 pp. 44-45, 47, 52; T. 25 March 2004 p. 62 (ICS) (Witness QI).

contrast, Witness RL was free to move about and testified to being on the road in front of the clinic when he saw the Accused for the second time.<sup>5567</sup> Accordingly, the Chamber does not consider this inconsistency to be significant.

2088. The witnesses also disagreed as to the type of vehicle that transported Kanyabashi to Matyazo Clinic: Witness QI claimed it was a Peugeot 305 while Witness RL stated that it was a Toyota stout.<sup>5568</sup> The Chamber considers this discrepancy to concern a detail of minor importance that does not impact on the credibility of the witnesses' testimony as a whole. In addition, the Chamber notes that in their previous statements, Witness QI stated that the vehicle was white and Witness RL said that the vehicle was green.<sup>5569</sup> The Chamber considers this discrepancy to concern a detail of minor importance that does not impact on the credibility of the witnesses' testimony as a whole.

2089. The witnesses' testimony also differs as to the length of time that elapsed between Kanyabashi's departure and the witnesses' realisation that an attack was underway: between 20 to 50 seconds on the one hand<sup>5570</sup> and one hour on the other.<sup>5571</sup> The Chamber recalls, however, that Witness RL left the clinic after Kanyabashi's departure.<sup>5572</sup> He did not see the start of the attack; rather, he heard gunshots from the direction of the clinic approximately one hour later.<sup>5573</sup> Witness QI testified that the refugees were attacked with machetes and shot at.<sup>5574</sup> In the Chamber's view, it is possible that there were two stages to the attack; the first involving machetes shortly after Kanyabashi left and the second involving guns one hour later. This would explain why Witness RL only heard shots one hour after his departure from the clinic. It is also possible that Witness RL simply did not hear the attack until later. For these reasons, the Chamber does not regard this difference to be materially important to the assessment of the witnesses' credibility.

2090. In his statement given to Prosecution investigators on 11 June 1996, Witness QI stated that he spent two days hiding near the clinic<sup>5575</sup> rather than four or five hours as he testified.<sup>5576</sup> In his statement he also claimed that he arrived at his relative's house in his home *secteur* in Huye *commune* around 18 April 1994,<sup>5577</sup> rather than five days after the President's death, which reflects his testimony.<sup>5578</sup> In relation to the attack itself, the witness' statement

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<sup>5567</sup> T. 30 March 2004 pp. 10-11 (Witness RL).

<sup>5568</sup> T. 23 March 2004 p. 51 (Witness QI); T. 25 March 2004 p. 83 (Witness RL).

<sup>5569</sup> Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI); Defence Exhibit 202 (Kanyabashi) (List of Alleged Omissions; 11 July 1996, 16 January 1997 and 8 May 1998, Statements of Witness RL).

<sup>5570</sup> T. 24 March 2004 p. 58 (Witness QI).

<sup>5571</sup> T. 30 March 2004 p. 18 (ICS) (Witness RL).

<sup>5572</sup> T. 25 March 2004 pp. 83-84 (Witness RL).

<sup>5573</sup> T. 25 March 2004 p. 84; T. 30 March 2004 pp. 18, 20, 22 (ICS) (Witness RL).

<sup>5574</sup> T. 23 March 2004 p. 57; T. 24 March 2004 p. 58 (Witness QI).

<sup>5575</sup> T. 24 March 2004 p. 60 (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

<sup>5576</sup> T. 23 March 2004 p. 49 (Witness QI) (Witness QI arrived at the clinic around 3.00 or 4.00 p.m.); T. 23 March 2004 pp. 50, 57; T. 24 March 2004 p. 58 (Witness QI) (Witness QI left his hiding place at around 8.00 p.m. on the same day he arrived).

<sup>5577</sup> T. 24 March 2004 pp. 36-37 (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

<sup>5578</sup> T. 23 March 2004 p. 43 (ICS); T. 24 March 2004 p. 31 (Witness QI).



suggested that there were two attacks, one before and one after Kanyabashi's visit,<sup>5579</sup> whereas according to his testimony the attack started after Kanyabashi left.<sup>5580</sup> The Chamber does not consider these inconsistencies to be sufficiently serious as to undermine Witness QI's credibility; the inconsistencies between his testimony and previous statement of 11 June 1996 do not go to the root of his account and concern details the clarity of which may be affected by the passage of time. The Chamber finds Witness QI's account of events at Matyazo to be generally robust and credible.

2091. As regards Witness RL, when it was put to him that his statements of 11 July 1996 and 16 January 1997 stated that the refugees were already in the clinic compound when Kanyabashi arrived,<sup>5581</sup> in contrast to his testimony that they were outside the clinic,<sup>5582</sup> the witness suggested that the statements had been taken down incorrectly and maintained the account he gave in examination-in-chief.<sup>5583</sup> In the same statements, the witness also stated that Kanyabashi first came to the clinic on 23 April 1994,<sup>5584</sup> rather than a week and a half to two weeks after the President's death, as mentioned during his testimony.<sup>5585</sup> After the events at Matyazo, Witness RL stated that he went to Ngoma Parish where he witnessed another attack.<sup>5586</sup> However, in his statement of 8 May 1998, he said he was present in Ngoma Parish between 13 and 20 April 1994,<sup>5587</sup> which conflicts with the dates on which he claimed to be in Matyazo as given in his testimony and other statements. In cross-examination, the witness underlined that the dates he gave in his statements were approximate and referred to the difficult conditions in which he was living at the time and his desire to survive.<sup>5588</sup>

2092. The Chamber considers these discrepancies to be of a minor nature. Furthermore, in the Chamber's view, the witness was able to provide plausible explanations for these inconsistencies and recalls that his young age during the events, the time that has elapsed since and the trauma he may have experienced may explain the date discrepancies. The Chamber does therefore not consider such discrepancies to have a material impact on the veracity of the witness' account or on his credibility, and is of the view that his testimony is generally clear and consistent.

2093. The Defence adduced evidence through Witness D-2-21-T to support assertions that Prosecution Witnesses RL and QI were *Ibuka* members who participated in meetings where they were asked to falsely accuse Kanyabashi regarding killings at Ngoma Parish and Matyazo. Witness D-2-21-T alleged that a participant whose first name matches that of

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<sup>5579</sup> T. 24 March 2004 pp. 62-63 (Witness QI); Defence Exhibit 201(Kanyabashi) (11 June 1996, Statement of Witness QI).

<sup>5580</sup> T. 23 March 2004 p. 57; T. 24 March 2004 p. 58 (Witness QI).

<sup>5581</sup> T. 29 March 2004 pp. 46-47 (ICS) (Witness RL); Defence Exhibit 203 (Kanyabashi) (16 January 1997, 11 July 1996, 8 May 1998, Statements of Witness RL).

<sup>5582</sup> T. 25 March 2004 p. 78; T. 29 March 2004 pp. 40-41 (ICS) (Witness RL).

<sup>5583</sup> T. 29 March 2004 pp. 43, 46-47 (ICS) (Witness RL); Defence Exhibit 203 (Kanyabashi) (16 January 1997, 11 July 1996, 8 May 1998, Statements of Witness RL).

<sup>5584</sup> T. 30 March 2004 pp. 5-6 (Witness RL).

<sup>5585</sup> T. 25 March 2004 pp. 77-78 (Witness RL); Defence Exhibit 203 (Kanyabashi) (16 January 1997, 11 July 1996, 8 May 1998, Statements of Witness RL).

<sup>5586</sup> T. 25 March 2004 p. 84 (Witness RL); Defence Exhibit 203 (Kanyabashi) (16 January 1997, 11 July 1996, 8 May 1998, Statements of Witness RL).

<sup>5587</sup> Defence Exhibit 203 (Kanyabashi) (16 January 1997, 11 July 1996, 8 May 1998, Statements of Witness RL).

<sup>5588</sup> T. 30 March 2004 pp. 5-7 (Witness RL).

Witness RL, read aloud that he had seen Kanyabashi incite people to perpetrate the killings in Ngoma and that Kanyabashi was with soldiers, policemen and *Interahamwe* in Ngoma.<sup>5589</sup> Witness D-2-21-T alleged that this person also read that Kanyabashi incited people to kill at the Matyazo health centre.<sup>5590</sup> Witness D-2-21-T also testified that a participant whose full name matched that of Witness QI read from his sheet of false accusations that he saw Kanyabashi with soldiers and policemen at Matyazo, inciting people to kill.<sup>5591</sup>

2094. As regards the identity of the Prosecution witnesses whom Witness D-2-21-T seeks to implicate, the Chamber notes that although Witness D-2-21-T only provided the first names of individuals who appear to be Prosecution Witnesses RL and QI, she indicated additional identifying details that match the profile of Witness RL<sup>5592</sup> and Witness QI.<sup>5593</sup> Witness D-2-21-T stated that the person with Witness RL's first name was around 15 years old in 1995 and came from Matyazo.<sup>5594</sup> Witness D-2-21-T stated that the person with Witness QI's first name was between 30 and 35 in 1995.<sup>5595</sup>

2095. The Chamber has taken into account Witness D-2-21-T's ability to indicate details relating to the identity of Prosecution Witnesses RL and QI. Given the Chamber's finding that Witness D-2-21-T's allegations regarding fabrication of testimony were neither credible nor reliable (), the Chamber finds that Witness D-2-21-T's testimony does not undermine the credibility of Witnesses RL and QI on events at Ngoma Church or at Matyazo health centre.

2096. The Kanyabashi Defence led evidence through Witness D-2-18-O to further support Witness D-2-21-T's assertions that Witnesses QI and RL were *Ibuka* members who "suggested" at *Ibuka* meetings that people should testify to having seen Kanyabashi in the company of soldiers at Ngoma *commune* and Matyazo Clinic.<sup>5596</sup> Witness D-2-18-O claimed that Witness RL told the meeting that it was necessary to place Kanyabashi at Ngoma Church even though Witness RL told them that he had not seen Kanyabashi there.<sup>5597</sup>

2097. Witness D-2-18-O testified that discussions at *Ibuka* meetings centred on giving evidence for the Prosecution, even if the accused person was innocent.<sup>5598</sup> The witness also stated that while some of the association's members speak the truth, others did not.<sup>5599</sup> The Chamber does not consider the Defence evidence on this issue, even if believed, to be sufficiently strong to raise a doubt about the truthfulness of Witnesses QI and RL's testimony under oath or to call their credibility into question insofar as the events at Matyazo Clinic or Ngoma Parish are concerned. Even if true, Witness D-2-18-O's claim that Witnesses QI and RL encouraged *Ibuka* members to give evidence against Kanyabashi does not necessarily lead to the conclusion that their testimony is false or unreliable.

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<sup>5589</sup> T. 3 November 2008 pp. 54-55 (ICS) (Witness D-2-21-T).

<sup>5590</sup> T. 3 November 2008 pp. 54-55 (ICS) (Witness D-2-21-T).

<sup>5591</sup> T. 3 November 2008 p. 53 (ICS) (Witness D-2-21-T).

<sup>5592</sup> Prosecution Exhibit 95 (Personal Particulars).

<sup>5593</sup> T. 3 November 2008 pp. 52-53 (ICS) (Witness D-2-21-T).

<sup>5594</sup> T. 3 November 2008 pp. 55-56 (ICS) (Witness D-2-21-T).

<sup>5595</sup> T. 3 November 2008 pp. 52-53 (ICS) (Witness D-2-21-T).

<sup>5596</sup> T. 19 May 2008 pp. 22-26 (ICS) (Witness D-2-18-O).

<sup>5597</sup> T. 19 May 2008 p. 24 (ICS) (Witness D-2-18-O).

<sup>5598</sup> T. 19 May 2008 pp. 28, 31 (ICS) (Witness D-2-10-O).

<sup>5599</sup> T. 19 May 2008 pp. 33-34 (ICS) (Witness D-2-18-O).

2098. Witness D-2-18-O suggests no reason why Witnesses QI or RL would want to implicate Kanyabashi in criminal acts. The Chamber notes that Witness D-2-18-O did not allege that Witnesses QI and RL indicated that Kanyabashi was innocent and yet encouraged others to testify against him.

2099. The Chamber further notes that Witness D-2-18-O conceded that some members of the association speak the truth. Taking into account the foregoing, as well as the Chamber's position, discussed above that Witness D-2-18-O's testimony should be treated with appropriate caution (), the Chamber finds that Witness D-2-18-O's assertions about Witnesses QI and RL do not undermine the veracity of Witnesses QI and RL's testimony under oath.

2100. Turning now to the Defence evidence on the attacks at Matyazo, the Chamber observes that, as with the Prosecution's witnesses, there are similarities between the testimony of Defence Witnesses D-2-18-O, D-2-5-W and D-9-U. In this regard, the Chamber recalls that all three witnesses testified that there were two separate attacks in Matyazo: Matyazo Primary School was attacked in the evening of 21 April or thereabouts<sup>5600</sup> and Matyazo Clinic was attacked early the following morning.<sup>5601</sup> The attack on the clinic involved shots being fired.<sup>5602</sup> The assailants included soldiers.<sup>5603</sup> Two witnesses further testified that they did not see Kanyabashi at the clinic.<sup>5604</sup>

2101. The Chamber also recalls that all three witnesses testified that the refugees who had gathered at the clinic were free to move around and were unguarded.<sup>5605</sup> The Chamber regards this aspect of the witnesses' testimony as lacking credibility in view of the existence of a roadblock approximately 120 metres from the clinic.<sup>5606</sup> Except for the testimony of Witnesses D-2-5-W and D-9-U that the refugees were free to move around, and without accepting the other aspects of their testimony as fact, the Chamber notes that the Defence provided a reasonably plausible and consistent account of events through Witnesses D-2-5-W and D-9-U. While Witness D-2-18-O's evidence also supports that account, the Chamber underlines that there are serious credibility issues surrounding his role in the events of 1994, as discussed above.

2102. Having considered the details of the attacks described by both the Prosecution and Defence, in particular the dates and times, the Chamber considers that the Defence's version of events could plausibly exist alongside the version advanced by the Prosecution. It is possible that Matyazo Clinic was subject to two separate attacks; one on or around 22 April 1994 which took place in the morning and another towards the end of April 1994 which took place at night.

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<sup>5600</sup> T. 15 May 2008 p. 37 (Witness D-2-18-O); T. 12 September 2007 pp. 28-29 (Witness D-2-5-W); T. 4 February 2008 pp. 30, 34 (ICS) (Witness D-9-U).

<sup>5601</sup> T. 15 May 2008 p. 41 (Witness D-2-18-O); T. 12 September 2007 pp. 31, 39, 45 (Witness D-2-5-W); T. 4 February 2008 pp. 30, 34 (ICS) (Witness D-9-U).

<sup>5602</sup> T. 15 May 2008 p. 41 (Witness D-2-18-O); T. 12 September 2007 p. 30 (Witness D-2-5-W); T. 4 February 2008 pp. 30, 34 (ICS) (Witness D-9-U).

<sup>5603</sup> T. 15 May 2008 p. 41 (Witness D-2-18-O); T. 12 September 2007 p. 30 (Witness D-2-5-W); T. 5 February 2008 p. 57 (Witness D-9-U).

<sup>5604</sup> T. 15 May 2008 p. 44 (Witness D-2-18-O); T. 12 September 2007 pp. 39, 45-47 (Witness D-2-5-W).

<sup>5605</sup> T. 15 May 2008 p. 44 (Witness D-2-18-O); T. 12 September 2007 p. 14 (Witness D-2-5-W); T. 4 February 2008 pp. 22-23 (ICS) (Witness D-9-U).

<sup>5606</sup> T. 12 September 2007 p. 36 (ICS) (Witness D-2-5-W); Defence Exhibit 568 (Kanyabashi) (Sketch Map of Matyazo *secteur* and immediate surrounds).

Indeed, the Chamber notes that this is consistent with Paragraph 6.34 of the Kanyabashi Indictment, which alleges that an initial attack took place at the clinic before the massacre with which Kanyabashi stands charged.

2103. In light of all of the foregoing, having assessed the totality of the evidence, the Chamber finds that the Prosecution has established beyond a reasonable doubt that in late April 1994, following an initial attack by soldiers, Kanyabashi went to Matyazo Clinic. The Chamber further finds it is established beyond a reasonable doubt that Kanyabashi addressed the Tutsis who were sheltering in the clinic at that time and thereafter ordered soldiers to open fire on the Tutsis, resulting in many deaths, as alleged in Paragraph 6.34 of the Kanyabashi Indictment.

### **3.6.17 Butare University Hospital, April – May 1994**

#### **3.6.17.1 Introduction**

2104. The Nyiramasuhuko and Ntahobali Indictment alleges that in April and May 1994, Ntahobali, Kanyabashi and André Rwamakuba, accompanied by soldiers or militiamen of unknown identity acting under their orders, went to Butare University Hospital in Ngoma *commune* to select, kidnap and kill Tutsis who had sought treatment or refuge there.<sup>5607</sup>

2105. The Prosecution submits that Ntahobali led an attack at Butare University Hospital with a certain Doctor Gatera. It claims that this attack was part of a pattern of attacks led by soldiers and *Interahamwe*, including Ntahobali, throughout Butare *préfecture*.<sup>5608</sup> The Prosecution claims that Ntahobali and Doctor Gatera prevented Tutsi civilians at Butare University Hospital from getting medical treatment by specifically targeting the sick on the basis of their Tutsi ethnicity. The Prosecution asserts that Doctor Gatera was Ntahobali's accomplice and told nurses not to treat Tutsi patients. The Prosecution submits that in this regard, Ntahobali and Doctor Gatera knew or ought to have known that their actions could increase the pain and suffering of ill or injured Tutsi civilians.<sup>5609</sup>

2106. The Prosecution submits that in addition to participating in the commission of genocide as a direct perpetrator, Ntahobali also directly provoked, prompted or otherwise induced *Interahamwe* and soldiers to commit genocide. It submits that Ntahobali's presence at Butare University Hospital, where corpses were loaded into a vehicle while the Accused stood watching, was sufficient to instigate others to commit genocide.<sup>5610</sup>

2107. In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses QY, RE, SS, FAP and SD.

2108. The Ntahobali Defence submits that of the five Prosecution witnesses called to testify to the events that took place at Butare University Hospital, only one, Witness QY, incriminated Ntahobali. The Ntahobali Defence further submits that Witness QY's testimony cannot be

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<sup>5607</sup> Para. 6.34 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against Ntahobali only).

<sup>5608</sup> Prosecution Closing Brief, pp. 188, 190, paras. 81-86.

<sup>5609</sup> Prosecution Closing Brief, p. 203, para. 129.

<sup>5610</sup> Prosecution Closing Brief, p. 184, para. 71.

relied upon because it was uncorroborated and based on hearsay, in particular with regard to the identity of Ntahobali.<sup>5611</sup> In support of its submissions, the Ntahobali Defence relies on the testimony of Nsabimana Defence Witness Alexandre Bararwandika and Ntahobali Defence Witnesses H1B6 and WCNMC.

### 3.6.17.2 Preliminary Issues

2109. The Ntahobali Defence submits that the Prosecution has failed to provide adequate specificity in pleading superior responsibility pursuant to Article 6 (3) of the Statute in respect of Paragraph 6.34 of the Nyiramasuhuko and Ntahobali Indictment. Specifically, the Ntahobali Defence asserts that the identification of the individuals who allegedly acted under Ntahobali's authority as "soldiers *or* militiamen" is not clear and consistent information about persons or groups of persons over whom Ntahobali allegedly exercised control.<sup>5612</sup> In the Ntahobali Defence's view, the Nyiramasuhuko and Ntahobali Indictment was therefore defective and these defects were not cured.<sup>5613</sup>

2110. Recalling the requirements for adequately pleading Article 6 (3) responsibility, the Chamber considers that, if the wording of Paragraph 6.34 of the Nyiramasuhuko and Ntahobali Indictment is read in light of the Indictment as a whole, all the requisite elements pursuant to Article 6 (3) are provided. In Paragraph 6.34, the subordinates are identified by reference to a class or category of individuals, *i.e.* militiamen or soldiers. Although this paragraph does not specify particular militiamen or soldiers or address the issue of effective control, Paragraphs 4.4 and 4.5 assert that Ntahobali led the MRND militiamen and exercised authority over the *Interahamwe* in Butare. The Ntahobali Defence concedes that the designations "MRND militiamen" and "*Interahamwe*" are very clear and precise.<sup>5614</sup> Thus, the Indictment sets forth that these individuals were under the orders of Ntahobali. Further, the Indictment informed Ntahobali of the alleged criminal conduct in stating that he was present with the said individuals when Tutsis were selected, kidnapped and killed. Paragraph 6.34 specifies the criminal conduct alleged to have been committed by the subordinates, namely the kidnapping and killing of Tutsis and, furthermore, describes the subordinates as having acted under Ntahobali's orders. In addition, Paragraph 6.55 alleges that Ntahobali took no steps to halt the massacres. Therefore, the Indictment identified: Ntahobali's subordinates, specifying that Ntahobali had effective control over them; the alleged criminal conduct of his subordinates; Ntahobali's knowledge of the criminal conduct; and Ntahobali's failure to take necessary and reasonable measures to prevent or punish such acts.

2111. Accordingly, the Chamber concludes that the Nyiramasuhuko and Ntahobali Indictment is not defective and the Prosecution has adequately pled superior responsibility under Article 6 (3). Further, there was no prejudice to Ntahobali in the preparation of his defence case.

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<sup>5611</sup> Ntahobali Closing Brief, para. 372; Ntahobali Closing Argument, T. 23 April 2009 p. 15.

<sup>5612</sup> Ntahobali Closing Brief, paras. 26-27 (emphasis added).

<sup>5613</sup> Ntahobali Closing Brief, paras. 31, 60-61.

<sup>5614</sup> Ntahobali Closing Brief, para. 27.

### 3.6.17.3 Evidence

#### Prosecution Witness QY

2112. Witness QY, a Tutsi who was 17 years old and unemployed in 1994, testified that she was present in Butare after the death of the President.<sup>5615</sup> She claimed that she sustained a head injury at Matyazo Primary School which resulted in her being admitted to Butare University Hospital.<sup>5616</sup> She arrived at the hospital in the afternoon and was taken to the operating theatre. When a nurse was about to suture her wound, a man named Doctor Gatera arrived and said to the nurse, “Rwandan soldiers are dying and you are treating people who will not heal?” The witness took this to mean that Tutsis should not be treated because they should die.<sup>5617</sup> Following Doctor Gatera’s statement, the witness received no further treatment.<sup>5618</sup> She moved to the maternity ward opposite the operating room where she remained for a number of days.<sup>5619</sup>

2113. Witness QY testified that during her stay in the hospital, she witnessed an attack one late afternoon by Doctor Gatera and another man who was later identified to her as Shalom, the son of Nyiramasuhuko.<sup>5620</sup> The witness stated that she saw Shalom with her own eyes, although she could not remember whether his attire was civilian or military.<sup>5621</sup> The witness was about 14.5 metres away from Shalom at the time.<sup>5622</sup> She learned from a woman with whom she later fled, that the man’s name was Shalom.<sup>5623</sup>

2114. Witness QY stated that she could not describe exactly what happened during the attack because she fled immediately with the woman who had identified Shalom to her, although she witnessed the assailants removing patients’ blankets in order to check their identity. The women hid in the woods in front of the maternity ward. In the evening, they both returned to the hospital as they had nowhere else to go. When they arrived, a woman informed them that those who had not fled had been abducted by the assailants and advised the witness and her companion to go back to where they had come from.<sup>5624</sup>

2115. Witness QY stated she did not know where the abducted patients had been taken, but the next day she saw many corpses being loaded into a vehicle next to the hospital in the presence of the man she knew as Shalom. She stated that she stayed at the hospital until she was chased away.<sup>5625</sup>

2116. Witness QY described the man identified to her as Shalom as a young man of average height, neither dark nor fair and added that she had not seen him since the events of 1994. She testified that she did not know any other person whose name was Shalom either during the war

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<sup>5615</sup> T. 19 March 2003 p. 7 (Witness QY).

<sup>5616</sup> T. 19 March 2003 pp. 8, 12 (Witness QY).

<sup>5617</sup> T. 19 March 2003 p. 12 (Witness QY).

<sup>5618</sup> T. 19 March 2003 p. 13 (Witness QY).

<sup>5619</sup> T. 19 March 2003 pp. 13, 15 (Witness QY).

<sup>5620</sup> T. 19 March 2003 p. 13 (Witness QY).

<sup>5621</sup> T. 19 March 2003 p. 13; T. 25 March 2003 pp. 13, 17 (Witness QY).

<sup>5622</sup> T. 19 March 2003 pp. 21-22 (Witness QY).

<sup>5623</sup> T. 19 March 2003 pp. 13-14 (Witness QY).

<sup>5624</sup> T. 19 March 2003 pp. 13-14 (Witness QY).

<sup>5625</sup> T. 19 March 2003 p. 14 (Witness QY).

or at the time of her testimony. Witness QY indicated that she would be unable to recognise that man. Because of the circumstances in which they found themselves, she was not able to observe Shalom closely.<sup>5626</sup>

#### Prosecution Witness RE

2117. Witness RE, a Tutsi who was 16 years old in 1994, testified that after the death of the President she left Gikongoro and sought refuge in Butare with other unidentified individuals.<sup>5627</sup> They first went to Butare University Hospital where they spent one week.<sup>5628</sup> During her stay at the hospital, she saw many wounded people inside the hospital buildings and outside, where plastic sheeting had been erected to provide temporary shelter.<sup>5629</sup>

2118. Witness RE stated that she was chased away from the hospital after one week by someone named Doctor Gatera, who told the witness and her companions to go to the Butare *préfecture* office.<sup>5630</sup> She did not know why Doctor Gatera took that decision.<sup>5631</sup> The witness testified that she did not check to see whether Doctor Gatera was accompanied by others when he told them to leave. Witness RE stated that those who were told to leave were not escorted to the *préfecture* office, although they were beaten by soldiers who told them to vacate the hospital. They left the hospital and travelled to the *préfecture* office on foot; no vehicles were provided.<sup>5632</sup> Those who remained at the hospital were taken away to be killed.<sup>5633</sup>

#### Prosecution Witness SS

2119. Witness SS, a Tutsi, testified that she went to Butare University Hospital in April 1994 and stayed there until 27 May 1994.<sup>5634</sup> Three days after her arrival at the hospital, she went to a tent set up by the Red Cross where she received medical treatment on two occasions.<sup>5635</sup> However, she was unable to complete her treatment because the director of the hospital, Doctor Gatera, prevented the Red Cross from treating Tutsis by taking away their medication.<sup>5636</sup> Witness SS testified that the Red Cross had pitched two tents in front of the hospital and stated that there were also other tents for Burundian refugees.<sup>5637</sup>

2120. Witness SS stated that she left the hospital on 27 May 1994, though she did not leave voluntarily.<sup>5638</sup> She testified that she was asked to leave by Doctor Gatera and the tents were

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<sup>5626</sup> T. 19 March 2003 p. 65 (Witness QY).

<sup>5627</sup> T. 24 February 2003 pp. 9, 32, 43 (Witness RE).

<sup>5628</sup> T. 24 February 2003 p. 9 (Witness RE).

<sup>5629</sup> T. 25 February 2003 p. 14 (Witness RE).

<sup>5630</sup> T. 24 February 2003 p. 9 (Witness RE).

<sup>5631</sup> T. 26 February 2003 p. 40 (Witness RE).

<sup>5632</sup> T. 26 February 2003 p. 6 (ICS) (Witness RE).

<sup>5633</sup> T. 25 February 2003 p. 14 (Witness RE).

<sup>5634</sup> T. 3 March 2003 p. 24 (Witness SS).

<sup>5635</sup> T. 3 March 2003 pp. 24-25 (Witness SS).

<sup>5636</sup> T. 3 March 2003 p. 25 (Witness SS).

<sup>5637</sup> T. 4 March 2003 p. 45 (Witness SS).

<sup>5638</sup> T. 3 March 2003 p. 26 (Witness SS).

destroyed soon after.<sup>5639</sup> She left with a group of Tutsis and together they travelled on foot to the Butare *préfecture* office. They were accompanied by four soldiers.<sup>5640</sup>

#### Prosecution Witness FAP

2121. Witness FAP, a Tutsi who was a farmer in 1994, testified that she went to the children's ward of Butare University Hospital in April 1994 with one of her sons.<sup>5641</sup> She went there because she thought she had family there but could not find them.<sup>5642</sup> On arriving at the hospital she encountered approximately 60 patients being treated by the Red Cross in three tents pitched in front of the hospital.<sup>5643</sup> Two tents were occupied by wounded Tutsis and the third tent housed refugees from Burundi.<sup>5644</sup> She met four soldiers who beat her up on discovering that she was Tutsi.<sup>5645</sup>

2122. Witness FAP testified that the Red Cross was providing treatment at the hospital, although soldiers later took the Red Cross' medication away and the patients who were receiving treatment were killed. The soldiers subsequently informed Witness FAP that the makeshift shelter of plastic sheeting under which she had taken refuge had to be destroyed because of *Inkotanyi* infiltrators and those sheltering there had to go to the Butare *préfecture* office.<sup>5646</sup> There were between 15 and 50 people in the group that left the makeshift shelter.<sup>5647</sup> The group travelled to the *préfecture* office on foot and were accompanied by four soldiers.<sup>5648</sup> Witness FAP could not remember exactly how long she stayed in the hospital but on cross-examination stated that she spent around two weeks there.<sup>5649</sup>

#### Prosecution Witness SD

2123. Witness SD, a Tutsi, testified that after the death of the President on 6 April 1994, she left her home in Gikongoro *préfecture* with her children and went to Butare *préfecture*, first staying in Runyinya *commune* for three days and then moving to Butare University Hospital.<sup>5650</sup> She arrived at the hospital around 17 or 18 April 1994.<sup>5651</sup> While at the hospital, she stayed in a tent north of the paediatric wing. She saw two tents adjacent to where *Médecins Sans Frontières* ("MSF") was providing medicine. The witness stated that there were wounded refugees at the hospital but could not provide an approximate figure.<sup>5652</sup> People were allowed to move about freely but the witness did not because she was looking after a sick child.<sup>5653</sup>

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<sup>5639</sup> T. 4 March 2003 p. 45 (Witness SS).

<sup>5640</sup> T. 3 March 2003 p. 26 (Witness SS).

<sup>5641</sup> T. 11 March 2003 p. 40; T. 13 March 2003 p. 23 (ICS) (Witness FAP).

<sup>5642</sup> T. 11 March 2003 p. 40 (Witness FAP).

<sup>5643</sup> T. 12 March 2003 pp. 35-36 (Witness FAP).

<sup>5644</sup> T. 12 March 2003 p. 36 (Witness FAP).

<sup>5645</sup> T. 11 March 2003 p. 40; T. 12 March 2003 p. 35 (Witness FAP).

<sup>5646</sup> T. 11 March 2003 p. 41 (Witness FAP).

<sup>5647</sup> T. 11 March 2003 p. 41; T. 12 March 2003 p. 37 (Witness FAP).

<sup>5648</sup> T. 11 March 2003 p. 41 (Witness FAP).

<sup>5649</sup> T. 11 March 2003 p. 40; T. 12 March p. 35 (Witness FAP).

<sup>5650</sup> T. 17 March 2003 p. 6 (Witness SD).

<sup>5651</sup> T. 17 March 2003 pp. 32-33 (ICS) (Witness SD).

<sup>5652</sup> T. 17 March 2003 p. 38 (Witness SD).

<sup>5653</sup> T. 17 March 2003 pp. 38-39 (Witness SD).



There were no Hutus sheltering at the hospital although there were some Burundian refugees whose ethnic origin was unknown to the witness.<sup>5654</sup>

2124. Witness SD testified that she and her children spent one week at the hospital and were then transferred by the hospital director, Doctor Gatera, to the Butare *préfecture* office.<sup>5655</sup> The witness stated that many other people were transported with her to the Butare *préfecture* office in a red Toyota vehicle that belonged to the hospital and was driven by a member of the hospital staff.<sup>5656</sup> A soldier accompanied the vehicle during the trip. Only those who refused to get into the vehicle were subjected to acts of violence.<sup>5657</sup>

Nsabimana Defence Witness Alexandre Bararwandika

2125. Alexandre Bararwandika, a Hutu doctor from Burundi, testified that after the death of the President, he briefly worked as a volunteer for the Belgian Red Cross until it left Butare on 13 or 14 April 1994.<sup>5658</sup> Given that various NGOs were withdrawing from the area, the witness, together with others, established an association to assist those in need.<sup>5659</sup> This association operated out of premises at Butare University Hospital and commenced its activities in the third week of April 1994.<sup>5660</sup> The director of the hospital at the time was Doctor Jothan Nshimyumukiza.<sup>5661</sup> The witness stayed at the hospital until 3 July 1994.<sup>5662</sup>

2126. Bararwandika stated that the association treated wounded men, women, children and some soldiers. The association's role in treating the wounded enabled it to care for others who had been abandoned, mostly Tutsis.<sup>5663</sup> The wounded arrived at the hospital in *gendarmérie* and Red Cross vehicles. The hospital only had 300 beds and at a certain point, all the wards were full. In order to address the problem of overcrowding, tents were erected outside.<sup>5664</sup>

2127. With regard to the issue of security at the hospital, Bararwandika testified that some patients disappeared during the night and stated that they could have left of their own volition or have been abducted. He knew that some patients had been abducted because other patients had seen the abductions and reported these events back to the witness, as well as identifying the perpetrators of the abductions as militia.<sup>5665</sup> The victims of the abductions were Tutsis.<sup>5666</sup> The witness testified that the patients who spoke to him about the abductions told him the attackers were *Interahamwe* and *abicanyi*, the latter word meaning "killers" in Kinyarwanda.<sup>5667</sup>

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<sup>5654</sup> T. 17 March 2003 p. 39 (Witness SD).

<sup>5655</sup> T. 17 March 2003 pp. 7, 39 (Witness SD).

<sup>5656</sup> T. 17 March 2003 pp. 39-40 (Witness SD).

<sup>5657</sup> T. 17 March 2003 p. 40 (Witness SD).

<sup>5658</sup> T. 3 July 2006 pp. 26-27 (Bararwandika).

<sup>5659</sup> T. 3 July 2006 pp. 27-28 (Bararwandika).

<sup>5660</sup> T. 3 July 2006 p. 28 (Bararwandika).

<sup>5661</sup> T. 3 July 2006 p. 32 (Bararwandika).

<sup>5662</sup> T. 4 July 2006 p. 33 (Bararwandika).

<sup>5663</sup> T. 3 July 2006 pp. 29, 32 (Bararwandika).

<sup>5664</sup> T. 3 July 2006 p. 33 (Bararwandika).

<sup>5665</sup> T. 3 July 2006 p. 34 (Bararwandika).

<sup>5666</sup> T. 4 July 2006 p. 53 (Bararwandika).

<sup>5667</sup> T. 4 July 2006 p. 55 (Bararwandika).

2128. Bararwandika testified that even though the hospital was guarded by soldiers and wounded persons with arms, abductions still took place. According to the witness, this was because there was collusion between some soldiers and militia.<sup>5668</sup> As a consequence of the prevailing insecurity at the hospital, many people hid in different rooms.<sup>5669</sup> In some cases, the doctors tried to extend patients' treatment time by exaggerating their illnesses, making their condition look more serious than was actually the case or by putting them in locked wards.<sup>5670</sup> In the witness' view, these measures worked because the abductions stopped and patients were still alive on 3 July 1994, when he left the hospital for good.<sup>5671</sup> The witness conceded that he never personally saw militia or anyone else carry out killings at the hospital.<sup>5672</sup> He worked at the hospital five or six days per week, but never worked at night.<sup>5673</sup>

2129. Bararwandika testified that some patients were moved to the Butare *préfecture* office and the EER primary school in mid-May 1994 following the issuance of a hospital directive to that effect.<sup>5674</sup>

#### Ntahobali Defence Witness H1B6

2130. Witness H1B6, a Hutu, testified that he lived and worked at Butare University Hospital between April and mid-June 1994. Following the death of the President, only a few of the hospital's staff reported for work.<sup>5675</sup> The first casualty of the war was admitted to the hospital on 8 or 9 April 1994.<sup>5676</sup> *Médecins Sans Frontières* arrived at the hospital around 10 April 1994 and erected a transit tent close to the paediatrics unit for patients who had left the hospital and were waiting to return to their homes.<sup>5677</sup> Three MSF officers brought medicines and equipment and worked alongside the few hospital staff who had reported for duty.<sup>5678</sup> The witness knew that they were MSF staff because of the MSF symbols on their tents and uniforms.<sup>5679</sup> The MSF staff left a little less than two weeks after their arrival.<sup>5680</sup> Witness H1B6 learned of their departure from a radio report stating that the MSF doctors had left because some of their patients had been taken from the hospital and killed.<sup>5681</sup> The witness said that he never witnessed the abduction or killings of patients.<sup>5682</sup> Patients were evacuated from the hospital for hygienic reasons, but not abducted.<sup>5683</sup>

2131. Witness H1B6 stated that Burundian refugees were also present at the hospital before the death of the President. On the day of the President's death, a tent was erected to house the

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<sup>5668</sup> T. 3 July 2006 p. 34 (Bararwandika).

<sup>5669</sup> T. 3 July 2006 p. 36 (Bararwandika).

<sup>5670</sup> T. 3 July 2006 pp. 36-37 (Bararwandika).

<sup>5671</sup> T. 3 July 2006 p. 37 (Bararwandika).

<sup>5672</sup> T. 4 July 2006 p. 42 (Bararwandika).

<sup>5673</sup> T. 4 July 2006 pp. 42, 46 (Bararwandika).

<sup>5674</sup> T. 3 July 2006 pp. 37-39 (Bararwandika).

<sup>5675</sup> T. 1 December 2005 p. 7 (ICS) (Witness H1B6).

<sup>5676</sup> T. 1 December 2005 p. 51 (Witness H1B6).

<sup>5677</sup> T. 1 December 2005 pp. 11-12, 42 (Witness H1B6).

<sup>5678</sup> T. 1 December 2005 pp. 42-43 (Witness H1B6).

<sup>5679</sup> T. 1 December 2005 p. 43 (Witness H1B6).

<sup>5680</sup> T. 1 December 2005 p. 45 (Witness H1B6).

<sup>5681</sup> T. 1 December 2005 p. 45; T. 1 December 2005 p. 48 (ICS) (Witness H1B6).

<sup>5682</sup> T. 1 December 2005 p. 47 (ICS) (Witness H1B6).

<sup>5683</sup> T. 1 December 2005 p. 49 (ICS) (Witness H1B6).

Burundian refugees who were waiting to be resettled in refugee camps.<sup>5684</sup> By 10 April 1994, the Burundian refugees left the hospital bound for refugee camps located in Butare *préfecture*.<sup>5685</sup>

2132. Witness H1B6 testified that a total of three tents were erected near the paediatrics unit.<sup>5686</sup> The tents accommodated about 50 to 60 people and the number of patients later increased.<sup>5687</sup> As the number of patients grew and the hospital became increasingly overcrowded, patients who were convalescing returned to their homes and only those who were seriously ill remained at the hospital.<sup>5688</sup> As a consequence of overcrowding, the hospital administration sought assistance from civilian authorities around mid-May. Those who were sheltering in the tents and who did not require to be admitted were moved to the Episcopal Church of Rwanda and thereafter to the Butare *préfecture* office.<sup>5689</sup>

2133. The witness stated that students of the *École des Sous Officiers* (“ESO”) were in charge of security at the hospital.<sup>5690</sup> A system was in place whereby anyone present on the hospital premises was required to have a ticket stating that he or she was a patient or attending to a patient. The ESO students checked the tickets and anyone not in possession of a ticket was asked to leave the premises.<sup>5691</sup> Witness H1B6 testified that between April and July 1994, he never saw Ntahobali at the hospital nor did he ever hear that Ntahobali had been seen there.<sup>5692</sup>

2134. In April 1994, the director of the University Hospital was Doctor Zetam Nshimyumukiza, who often reported for duty, and the dean of the faculty of medicine was Karemera, an ophthalmologist, whom the witness did not see.<sup>5693</sup> Due to the security situation, most doctors preferred to stay at home.<sup>5694</sup> However some doctors, mainly surgeons, came when needed including Drs. Munyemana, Kageruka, Twagirayezu, Gatera, Viateur and Mwigimba.<sup>5695</sup>

#### Ntahobali Defence Witness WCNMC

2135. Witness WCNMC, a Hutu who was 19 years old in 1994, testified that she visited Butare University Hospital on approximately six occasions to visit her father who was a patient there between 4 and 25 April 1994.<sup>5696</sup> Her father was admitted to the wards located behind the paediatric unit.<sup>5697</sup>

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<sup>5684</sup> T. 1 December 2005 p. 10 (Witness H1B6).

<sup>5685</sup> T. 1 December 2005 p. 11 (Witness H1B6).

<sup>5686</sup> T. 1 December 2005 p. 12 (Witness H1B6).

<sup>5687</sup> T. 1 December 2005 p. 43 (Witness H1B6).

<sup>5688</sup> T. 1 December 2005 p. 47 (ICS) (Witness H1B6).

<sup>5689</sup> T. 1 December 2005 pp. 51-52 (Witness H1B6).

<sup>5690</sup> T. 1 December 2005 p. 53 (Witness H1B6).

<sup>5691</sup> T. 1 December 2005 p. 54 (Witness H1B6).

<sup>5692</sup> T. 1 December 2005 p. 55 (Witness H1B6).

<sup>5693</sup> T. 1 December 2005 pp. 9-10 (Witness H1B6).

<sup>5694</sup> T. 1 December 2005 p. 54 (Witness H1B6).

<sup>5695</sup> T. 1 December 2005 p. 54; T. 1 December 2005 p. 65 (Witness H1B6) (French) (for spelling of “Viateur”).

<sup>5696</sup> T. 29 November 2005 pp. 28-29, 47 (Witness WCNMC).

<sup>5697</sup> T. 29 November 2005 p. 28 (Witness WCNMC).

2136. The witness stated that she did not see anyone carrying weapons during her visits although there were soldiers in charge of protecting as well as guarding patients. In describing the security system in place at the hospital, the witness explained that caretakers were issued with a document attesting to the fact that the bearer of the document, whose name was written on it, was taking care of a patient. Failure to produce this document upon request would result in access to the area where the patients were located being denied. During one of the witness' visits to the hospital, three women were expelled from her father's ward by the soldiers in charge of security as they did not have the required documentation. The soldiers escorted them to a courtyard in front of the paediatric unit. There were about 20 to 40 people and three tents in the courtyard at the time.<sup>5698</sup>

2137. Witness WCNMC testified that during her visits to the hospital, she never saw Ntahobali nor did her father ever tell her that he had seen him.<sup>5699</sup> Moreover, she never heard that Ntahobali had come to the hospital to kill or abduct people, nor did she ever hear anyone asserting that people had been abducted or killed at that location between April and July 1994.<sup>5700</sup>

#### **3.6.17.4 Deliberations**

2138. It is uncontested that the Red Cross and MSF were providing healthcare to patients in tents placed in front of Butare University Hospital. Both Prosecution and Defence witnesses gave consistent evidence in this regard.<sup>5701</sup> In particular, the Chamber recalls the testimony of Nsabimana Defence Witness Alexandre Bararwandika, a Hutu who provided health care to refugees at the hospital during the genocide, who confirmed that there were hundreds of wounded persons, mainly Tutsis, who had been abandoned and who sought treatment at the hospital.<sup>5702</sup> The Chamber finds this witness generally credible. The issues before the Chamber are whether these Tutsi refugees who were sheltering at the hospital were then kidnapped and killed, and what role, if any, Ntahobali played in this event, as alleged in the Indictment against him.

2139. With regard to the Prosecution's assertion that Ntahobali was assisted by a certain Doctor Gatera, the Chamber observes that Doctor Gatera's presence at Butare University Hospital and the fact that he asked Tutsi patients to leave the hospital was corroborated by numerous witnesses.<sup>5703</sup> In particular, Ntahobali Defence Witness H1B6 confirmed that Doctor Gatera was present at the hospital during the time period under consideration.<sup>5704</sup> Witness QY also testified that Doctor Gatera was present at the hospital and ordered a nurse to cease giving her treatment because she was Tutsi.<sup>5705</sup> This account is reinforced by the evidence of several

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<sup>5698</sup> T. 29 November 2005 pp. 29-30 (Witness WCNMC).

<sup>5699</sup> T. 29 November 2005 p. 30 (Witness WCNMC).

<sup>5700</sup> T. 29 November 2005 p. 31 (Witness WCNMC).

<sup>5701</sup> T. 25 February 2003 p. 14 (Witness RE); T. 4 March 2003 p. 45 (Witness SS); T. 12 March 2003 pp. 35-36 (Witness FAP); T. 17 March 2003 p. 38 (Witness SD); T. 3 July 2006 p. 33 (Bararwandika); T. 1 December 2005 p. 12 (Witness H1B6); T. 29 November 2005 pp. 29-30 (Witness WCNMC).

<sup>5702</sup> T. 3 July 2006 pp. 29, 32-33 (Bararwandika).

<sup>5703</sup> T. 19 March 2003 p. 12 (Witness QY); T. 24 February 2003 p. 9 (Witness RE); T. 3 March 2003 p. 25 (Witness SS); T. 17 March 2003 pp. 7, 39 (Witness SD); T. 1 December 2005 p. 54 (Witness H1B6).

<sup>5704</sup> T. 1 December 2005 p. 54 (Witness H1B6).

<sup>5705</sup> T. 19 March 2003 p. 12 (Witness QY).

Prosecution witnesses, who testified that they were deprived of necessary medical treatment because of their Tutsi ethnicity. For instance, Witness SS, a Tutsi, testified that she initially received treatment at the hospital but that Doctor Gatera prevented the Red Cross from treating Tutsis by taking away their medicine.<sup>5706</sup> Witness FAP corroborated the fact that the Red Cross' medication was taken away.<sup>5707</sup>

2140. Witness QY testified that she saw Doctor Gatera and Ntahobali removing blankets from patients to check their identity.<sup>5708</sup> The witness stated that she fled, but that upon her return to the hospital the next day, she observed Ntahobali standing next to a vehicle as it was loaded with corpses.<sup>5709</sup> Witness RE confirmed that those who refused to go to the Butare *préfecture* office on the orders of Doctor Gatera were taken away to be killed.<sup>5710</sup> However, Witness RE did not provide any details of the killings, nor did she assert that she witnessed this. In any event, Bararwandika also observed that some patients disappeared during the night and that other patients had observed abductions by *Interahamwe*.<sup>5711</sup>

2141. The Chamber notes that Witness QY is the only Prosecution witness to implicate Ntahobali in the events at Butare University Hospital. Witness QY did not know Ntahobali prior to the events and only based her identification of him on the hearsay statement of a fellow refugee after the incident. Furthermore, she was unable to identify Ntahobali in court.<sup>5712</sup> The Chamber recognises that the time period between the events at the hospital and the witness' testimony was significant and could account for her inability to identify Ntahobali in court. However, in the view of the Chamber, the hearsay nature of Witness QY's identification of Ntahobali coupled with the lack of any corroboration to the presence of Ntahobali at Butare University Hospital raises a doubt as to whether he was, in fact, present.

2142. In light of the foregoing, and having assessed the totality of the evidence, the Chamber finds that the Prosecution has failed to discharge its burden of proof in relation to the allegations contained in Paragraph 6.34 of the Nyiramasuhuko and Ntahobali Indictment, related to Ntahobali. It has not been established beyond a reasonable doubt that in April and May 1994, Ntahobali went to Butare University Hospital with a view to select, kidnap and kill Tutsis that had sought treatment or refuge there.

### **3.6.18 Butare University Hospital – Kanyabashi**

#### **3.6.18.1 Introduction**

2143. Paragraph 6.37 of the Kanyabashi Indictment alleges that in early May 1994, Hutus from the region of Mare went to Butare University Hospital to collect Tutsis from their region and take them home. Kanyabashi allegedly promised to protect the Tutsis and provide them with a military escort in view of their fear of returning home. The Kanyabashi Indictment

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<sup>5706</sup> T. 3 March 2003 p. 25 (Witness SS).

<sup>5707</sup> T. 11 March 2003 p. 41 (Witness FAP).

<sup>5708</sup> T. 19 March 2003 p. 13 (Witness QY).

<sup>5709</sup> T. 19 March 2003 p. 14 (Witness QY).

<sup>5710</sup> T. 25 February 2003 p. 14 (Witness RE).

<sup>5711</sup> T. 3 July 2006 p. 34; T. 4 July 2006 pp. 53, 55 (Bararwandika).

<sup>5712</sup> T. 19 March 2003 pp. 13, 65 (Witness QY).

further alleges that Kanyabashi led the convoy of refugees from the hospital and that the refugees were subsequently killed rather than being escorted home.<sup>5713</sup>

2144. Paragraph 6.38 of the Kanyabashi Indictment alleges that on 15 May 1994, Kanyabashi and soldiers checked the identity cards of patients at Butare University Hospital in order to identify Tutsis. Patients identified as Tutsis were allegedly abducted by the soldiers in the presence of Kanyabashi and later killed.<sup>5714</sup> The Chamber recalls that in its Decision on Defence Motions for Acquittal under Rule 98 *bis* dated 14 December 2004, it acquitted Kanyabashi of the charges insofar as they were based on this paragraph.<sup>5715</sup> Accordingly, Paragraph 6.38 of the Kanyabashi Indictment will not be considered in the present section under review.

2145. In support of its submissions, the Prosecution relies on the Expert Report of Alison Des Forges.

### **3.6.18.2 Preliminary Issues**

2146. The Kanyabashi Defence raised several issues regarding alleged defects in the Indictment, including alleged defects in Paragraph 6.37.<sup>5716</sup> In its 31 May 2000 Decision, the Chamber held that, with the exception of a minor clarification, Paragraph 6.37 provided adequate notice of the charges against Kanyabashi and, consequently, dismissed the Kanyabashi Defence's request to set aside that paragraph of the Indictment.<sup>5717</sup> The Chamber need not revisit the Kanyabashi Defence's assertions regarding alleged defects in the Indictment.<sup>5718</sup>

### **3.6.18.3 Evidence**

#### Prosecution Expert Witness Alison Des Forges

2147. Alison Des Forges stated in her Expert Report that the *bourgmestre* of Ngoma *commune* helped persuade Tutsis from Huye *commune* who had sought refuge at Butare University Hospital to leave the hospital. The *bourgmestre* was also said to have returned on a number of occasions, twice in the company of soldiers, to see that other Tutsis be removed from the hospital. Some of the Tutsis who had been expelled were killed at a roadblock, a short distance away from the hospital.<sup>5719</sup> Des Forges did not give further evidence in relation to this issue.

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<sup>5713</sup> Para. 6.37 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>5714</sup> Para. 6.38 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>5715</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 178.

<sup>5716</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Preliminary Motion Based on Rule 72 B(ii) of the Rules of Procedure and Evidence, 9 October 1999, para. 42; Kanyabashi Closing Brief, para. 431.

<sup>5717</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, para. 5.21.

<sup>5718</sup> Kanyabashi Closing Brief, para. 431.

<sup>5719</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 39.

### 3.6.18.4 Deliberations

2148. The Chamber observes that Paragraph 6.37 of the Kanyabashi Indictment is only cited in support of Article 6 (3) responsibility. In this regard, the Chamber notes that the only evidence proffered by the Prosecution regarding Kanyabashi's alleged activities at Butare University Hospital was a reference to page 39 of Des Forges' Report. The Prosecution led no evidence from its factual witnesses as to Kanyabashi's involvement in the events at Butare University Hospital as alleged in Paragraph 6.37 of the Indictment. None of the Prosecution witnesses placed Kanyabashi at the hospital or otherwise suggested that he may have been involved in transferring patients from the hospital to the Butare *préfecture* office. Furthermore, the Prosecution led no evidence establishing that Kanyabashi had effective control over the assailants, knew about the alleged criminal acts at Butare University Hospital, or that he failed to take reasonable or necessary measures to prevent the criminal acts. For these reasons, the Chamber finds that the Prosecution has failed to discharge its burden of proof in relation to the allegations contained in Paragraph 6.37 of the Kanyabashi Indictment. It has not been established beyond a reasonable doubt that in early May 1994, Kanyabashi went to Butare University Hospital where he collected the Tutsis under the false promise to protect them, and instead he subsequently killed them.

### 3.6.19 Butare Préfecture Office ("BPO"), April – June 1994

#### 3.6.19.1 Introduction

2149. The Nyiramasuhuko and Ntahobali Indictment alleges that between 19 April 1994 and late June 1994, Nyiramasuhuko and Ntahobali, accompanied by *Interahamwe* such as Jumapili, Nsengiyumva, and soldiers went to the BPO to abduct Tutsi refugees. Tutsis that attempted to resist were assaulted and sometimes killed. Nyiramasuhuko and Ntahobali often forced the Tutsis to undress completely before forcing them into vehicles that took them to their death.<sup>5720</sup>

2150. The Nyiramasuhuko and Ntahobali Indictment further alleges that aside from his attacks on members of the Tutsi population during this period, Ntahobali, assisted by unknown accomplices, participated in kidnapping and raping of Tutsi women.<sup>5721</sup> It is alleged that during the events referred to in the Indictment, rapes, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Rwanda. These crimes were perpetrated by, among others, soldiers, militiamen and *gendarmes* against the Tutsi population, in particular women and girls.<sup>5722</sup> Finally, the Nyiramasuhuko and Ntahobali Indictment alleges that Ntahobali exercised control over the *Interahamwe* militiamen in Butare *préfecture*.<sup>5723</sup>

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<sup>5720</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against both Nyiramasuhuko and Ntahobali); Para. 6.31 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-11 against both Nyiramasuhuko and Ntahobali).

<sup>5721</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 7 and 11 against both Nyiramasuhuko and Ntahobali).

<sup>5722</sup> Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-11 against both Nyiramasuhuko and Ntahobali).

<sup>5723</sup> Para. 4.5 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts).

2151. The Prosecution submits that Nyiramasuhuko ordered, instructed and incited soldiers and *Interahamwe* at the BPO to commit horrendous crimes, including rape and killings, and that her orders were obeyed.<sup>5724</sup> It further submits that Ntahobali terrorised Tutsi refugees at the BPO by attacking them with machetes, threatening and raping women, and forcibly removing refugees to be killed elsewhere.<sup>5725</sup>

2152. In support of these allegations, the Prosecution relies on the testimony of Witnesses TA, QJ, QCB, TK, SJ, SU, QBP, RE, SS, FAP, SD, QY, QBQ and Expert Witness Alison Des Forges. In addition, Witnesses FA, TG, TQ and Kanyabashi Defence Witnesses D-2-13-O and D-13-D provided evidence relevant to these events.

2153. The Nyiramasuhuko Defence asserts that ordering killings and rapes was contrary to Nyiramasuhuko's character as she had worked her entire life to help the women of Rwanda. The Nyiramasuhuko Defence submits that the Prosecution witnesses are not credible and suggests they fabricated evidence of her involvement in rapes.<sup>5726</sup> The Nyiramasuhuko Defence also presents a series of alibis to account for her time from 6 April 1994 until 4 July 1994, claiming she was first in Murambi in Gitarama *préfecture* and she then moved to Muramba in Gisenyi *préfecture* when the RPF took Gitarama town. She admits to travelling to Butare town to visit her family on certain weekends, but she spent most of her time at the Hotel Ihuliro visiting her family. In one case, she says she was sick with malaria, and therefore could not have ordered that Tutsis be killed or raped at the BPO.<sup>5727</sup>

2154. In support of her alibi, Nyiramasuhuko relies on Nyiramasuhuko Defence Witnesses Denise Ntahobali, WZJM, Céline Nyiraneza, WBUC, Maurice Ntahobali, WZNA, WTMP and Edmond Babin and Nyiramasuhuko, Ntahobali and Nsabimana.

2155. The Ntahobali Defence asserts that Witnesses TA, FAP, QBP, SS, QY, SJ and TK provided contradictory evidence regarding Ntahobali's alleged involvement in rapes and, therefore, they were not credible.<sup>5728</sup> It asserts that the Prosecution identification evidence was flawed in that it failed to place Ntahobali at the BPO. The Ntahobali Defence further claims that the identification witnesses either did not know Ntahobali previously or did not know his family name.<sup>5729</sup> It also argues that Ntahobali could not have driven the Toyota Hilux which several Prosecution witnesses described as transporting *Interahamwe* to the BPO because he did not have a driver's licence and did not know how to drive a vehicle.<sup>5730</sup> Ntahobali also relies on a series of alibis, asserting that from 28 April 1994 until 5 May 1994 he was sick in bed with malaria in Butare town and that from 27 May 1994 until 5 June 1994 he was in Cyangugu town.<sup>5731</sup> Finally, the Ntahobali Defence asserts that Ntahobali could not have

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<sup>5724</sup> Prosecution Closing Brief, pp. 29, 72-91, paras. 8, 144-211.

<sup>5725</sup> Prosecution Closing Brief, pp. 158-164, 174-175, paras. 10-23, 48-51.

<sup>5726</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 5.

<sup>5727</sup> Nyiramasuhuko Closing Brief, paras. 617, 696, 698, 725, 796, 834, 857.

<sup>5728</sup> Ntahobali Closing Argument, T. 22 April 2009 pp. 60-61; Ntahobali Closing Argument, T. 23 April 2009 pp. 6, 8, 18-20; Ntahobali Closing Brief, paras. 193-269.

<sup>5729</sup> Ntahobali Closing Brief, paras. 97-98, 106, 147-160.

<sup>5730</sup> Ntahobali Closing Brief, Appendix 3, para. 68.

<sup>5731</sup> Ntahobali Closing Brief, paras. 88-89.



abducted, killed and raped refugees at the BPO at night because he was responsible for turning the generator on and off at the Hotel Ihuliro.<sup>5732</sup>

2156. The Ntahobali Defence relies on Nyiramasuhuko Defence Witnesses Denise Ntahobali, WZNA, CEM, Clarisse Ntahobali, Céline Nyiraneza, WBUC, Maurice Ntahobali, Ntahobali Defence Witnesses Béatrice Munyenyezi, WDUSA, WUNJN, WUNHE, WMCZ and WUNHF and Ntahobali.

### 3.6.19.2 Preliminary Issues

#### *Prima Facie Case*

2157. On behalf of Nyiramasuhuko, the Ntahobali Defence asserts that the Chamber permitted the amendment of the Indictment to add the count of rape against Nyiramasuhuko without performing the requisite evaluation of the existence of *prima facie* evidence to support such a charge.<sup>5733</sup> In this regard, the Chamber recalls that on 10 August 1999, it granted leave to the Prosecutor to add a count of rape as a crime against humanity and to add Article 6 (3) responsibility to certain counts against Nyiramasuhuko.<sup>5734</sup> The Chamber recalls that in 1999, Rule 50 did not require the Chamber to make a *prima facie* determination in considering a motion to amend the indictment.<sup>5735</sup> This *prima facie* requirement was added to Rule 50 in 2004. Therefore, the Chamber was not required to make a *prima facie* determination in considering the Prosecution's Motion to add a count of rape against Nyiramasuhuko in 1999. Furthermore, the Nyiramasuhuko Defence did not appeal the Chamber's decision to grant leave to amend the Indictment or seek reconsideration by the Trial Chamber. Finally, after the completion of the Prosecution's case, the Chamber found that the Prosecution presented sufficient evidence that could sustain a conviction for the crime of rape against Nyiramasuhuko based on Article 6 (3).<sup>5736</sup> Therefore, the Chamber finds that Ntahobali's assertion on behalf of Nyiramasuhuko is unfounded, untimely and moot.

#### *Superior-Subordinate Relationship*

2158. The Ntahobali Defence also asserts, on behalf of Nyiramasuhuko,<sup>5737</sup> that the Indictment was defective for failing to specifically plead a superior-subordinate relationship to support the charge of rape under Article 6 (3) against Nyiramasuhuko. It asserts the Prosecution failed to state whether Ntahobali was alleged to be Nyiramasuhuko's

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<sup>5732</sup> Ntahobali Closing Brief, Appendix 3, para. 43.

<sup>5733</sup> Ntahobali Closing Brief, para. 64.

<sup>5734</sup> *Nyiramasuhuko & Ntahobali*, Decision on the Prosecutor's Request for Leave to Amend the Indictment (TC), 10 August 1999.

<sup>5735</sup> See Rule 50 of the Rules of Procedure and Evidence, Consolidated Texts (1 July 1999). Rule 50 was amended on 24 April 2004 to include subsection (A)(ii) which provides, "(ii) In deciding whether to grant leave to amend the indictment, the Trial Chamber or, where applicable, a Judge shall, *mutatis mutandis*, follow the procedures and apply the standards set out in Sub-Rules 47 (E) and (F) in addition to considering any other relevant factors."

<sup>5736</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 92.

<sup>5737</sup> The Chamber notes that Ntahobali made no effort to establish his *locus standi* to make legal argument, on behalf of the co-Accused, Nyiramasuhuko. Nonetheless, in the interest of providing each of the Accused a full opportunity to ventilate their arguments, the Chamber considers Ntahobali's arguments on behalf of Nyiramasuhuko.

subordinate.<sup>5738</sup> The Chamber recalls that the indictment should plead that the accused is the superior of subordinates sufficiently identified, over whom she had effective control and for whose acts she is alleged to be responsible. Nonetheless, a superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes, in order to incur liability under Article 6 (3) of the Statute.<sup>5739</sup> In this regard, Paragraph 6.54 of the Indictment asserts that Nyiramasuhuko, among others, aided and abetted her subordinates in carrying out the massacres of the Tutsi population. However, the Indictment does not identify her subordinates. With regard to the attacks at the BPO, the Nyiramasuhuko and Ntahobali Indictment states that Nyiramasuhuko and Ntahobali were accompanied by *Interahamwe* militiamen and soldiers to abduct Tutsi refugees, assault and kill them.<sup>5740</sup> Paragraph 6.30 does not specify that Nyiramasuhuko was superior to the *Interahamwe* or soldiers or that she directed them in the BPO attacks. Therefore, the Indictment was defective for failing to specify that Nyiramasuhuko was superior to the *Interahamwe* or soldiers.

2159. The Chamber notes that a holistic reading of the Indictment demonstrates that numerous paragraphs pled in support of Article 6 (3) responsibility identify Nyiramasuhuko's alleged subordinates. These paragraphs provide that Nyiramasuhuko is alleged to be superior to *Interahamwe*, including Ntahobali, soldiers, *commune* police and civilians.<sup>5741</sup> Even were this not the case, the Chamber notes that the Prosecution Pre-Trial Brief, filed after the operative Indictment,<sup>5742</sup> specifically alleges that Nyiramasuhuko supervised *Interahamwe*, militiamen and soldiers.<sup>5743</sup> Similarly, the witness summaries appended to the Pre-Trial Brief confirm that Nyiramasuhuko was an alleged superior to Ntahobali, *Interahamwe* and the *commune* police.<sup>5744</sup> The Prosecution Pre-Trial Brief included the summaries of 14 witnesses, each of whom asserted that Nyiramasuhuko ordered *Interahamwe* and soldiers to rape and kill Tutsis at the BPO.<sup>5745</sup> Furthermore, the witness statements of Witnesses SS, SU, TA and TK,

<sup>5738</sup> Ntahobali Closing Brief, para. 64.

<sup>5739</sup> See, e.g., *Muvunyi I*, Judgement (AC), paras. 19, 55.

<sup>5740</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>5741</sup> Paras. 6.20, 6.27, 6.30, 6.37, 6.38, 6.47, 6.50, 6.51, 6.53 of the Nyiramasuhuko and Ntahobali Indictment; see also Paras. 5.1, 6.39, 6.49, 6.52, 6.54, 6.55, 6.56 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>5742</sup> The Prosecution filed the Nyiramasuhuko Indictment on 1 March 2001, and filed its Pre-Trial Brief on 10 April 2001. For the preference of post-indictment submissions when conducting a curing analysis, see generally *Ntawukulilyayo*, Judgement (TC), para. 47.

<sup>5743</sup> Prosecution Pre-Trial Brief, paras. 21 (“From 19 April to July 1994, *Interahamwe* militiamen and soldiers, at times under Pauline Nyiramasuhuko’s supervision ... took advantage of this [situation at the BPO] and repeatedly went to the *préfecture* office to attack, kidnap and kill the refugees.”), 29 (“During the events referred to in their indictments, rapes, sexual assaults and other crimes of a sexual nature ... were perpetrated on the Tutsi population ... by among others, soldiers, militiamen and gendarmes.... Pauline Nyiramasuhuko [and others] committed, ordered, aided and abetted their subordinates and others in the carrying out of rapes, sexual assaults and massacres of the Tutsi population.”); see also Prosecution Pre-Trial Brief, paras. 30-31.

<sup>5744</sup> See, e.g., Prosecution Pre-Trial Brief – Appendix; Witness TA (3) cited in support of all counts against Nyiramasuhuko and Counts 1-3, 5-11 against Ntahobali (“Nyiramasuhuko was superior to Ntahobali”); Witness QBQ (45), cited in support of all counts against Nyiramasuhuko, and Counts 1-3 against Kanyabashi (“Nyiramasuhuko came to the Prefecture office with *Interahamwe* and communal police. Nyiramasuhuko ordered them to kill men and rape women before killing them.”); Witness RB (63) cited in support of Counts 1-2, 5 against Nyiramasuhuko, Counts 1-3 against Ntahobali, and Counts 1-3, 5-9 against Kanyabashi (“RB learned that Ntahobali murdered on behalf of Nyiramasuhuko.”).

<sup>5745</sup> Prosecution Pre-Trial Brief – Appendix; Witness TA (3); Witness SJ (9); Witness FAE (17); Witness FAP (27); Witness QBP (44); Witness QBQ (45); Witness RD (64); Witness QZ (62); Witness RF (66); Witness RJ (68); Witness RN (72); Witness SR (83); Witness SS (84); Witness SU (86).

disclosed on 4 November 1998, each stated that Nyiramasuhuko gave orders to the *Interahamwe* in the attacks at the BPO or that she was their superior.<sup>5746</sup> The statements of Witnesses QBP and QBQ, disclosed on 1 December 1999, contained similar information.<sup>5747</sup> Under these circumstances, the Chamber considers that Nyiramasuhuko received sufficient notice that she was charged with superior responsibility for the alleged acts of the following persons: *Interahamwe*, Ntahobali, militiamen, soldiers and *commune* police.

#### *Failure to Plead Crimes of Abduction, Killing and Rape*

2160. On behalf of Ntahobali and Nyiramasuhuko, the Ntahobali Defence asserts that the Indictment failed to plead factual allegations directly implicating them and that, as a matter of law, such failure cannot be cured by subsequent disclosures.<sup>5748</sup>

2161. The Chamber applies the settled principles of pleading in evaluating whether the Indictments were defective for failing to plead material facts and whether such defects were cured.<sup>5749</sup> The Chamber recalls 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>5750</sup>

2162. As to the abduction of persons at the BPO, the Nyiramasuhuko and Ntahobali Indictment alleges that Nyiramasuhuko and Ntahobali were accompanied by *Interahamwe* and

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<sup>5746</sup> 20 November 1996, Statement of Witness SU, disclosed 4 November 1998 (she “heard Pauline give an order to the *Interahamwe* and the soldiers who were at the *préfecture* to look for young boys and children. The order was respected and carried out ....”); 20 November 1996, Statement of Witness SS, disclosed 4 November 1998 (“Pauline was together with *Interahamwe* who took people and led away in the van ... I also heard her saying, ‘take young boy-children away too. Don’t leave anybody behind.’ The young boys were taken away and killed ... My impression is that Pauline was one of the people who were in charge of the killings and organized the transportation of the people to be killed.”); 19 November 1997, Statement of Witness TA, disclosed 4 November 1998 (“Pauline was definitely present several times at the *Préfecture* when Shalom and his men were raping girls.... Pauline was the most important person – she was even superior to Shalom. She is the one who spoke to the *Préfet* and she also chose people to be killed and issued commands to the men with her and Shalom.”); 22-23 April 1998, Statement of Witness TK, disclosed 4 November 1998 (“I do not know who was the Chief of the *Interahamwe* in the daytime but in the night time from my observations it was Pauline Nyiramasuhuko and her son Shalom (Ntahobali). Both would give orders to the other *Interahamwe* with comments like ‘Not to spare anyone.’ Also I believe they were the leaders because they (Pauline & Shalome) brought vehicles and they transported those to be killed. They also transported their *Interahamwe*.”).

<sup>5747</sup> 5 May 1999, Statement of Witness QBP, disclosed 1 December 1999 (during the attacks at the BPO, “some people were put in a big van on the orders of Pauline and taken away to a place called Kabutare to be killed ... Pauline did nothing to save the situation at the material time even though she had the power to do so”); 6 May 1999, Statement of Witness QBQ, disclosed 1 December 1999 (“Pauline again came in the ‘Pickup’ ... When she arrived she promptly ordered the *Interahamwe* to select some people from the crowd of refugees. Her orders were carried out to the letter.”).

<sup>5748</sup> Ntahobali Closing Brief, paras. 76-79.

<sup>5749</sup> The Ntahobali Defence suggests the Chamber follow the approach in the *Kalimanzira* Decision of 24 June 2008, in which Trial Chamber III held that the failure to mention particular killings which were susceptible of supporting a separate charge of murder, could not be cured by subsequent timely, clear and consistent disclosures. See Ntahobali Closing Brief, para. 76; *Kalimanzira*, Decision on Defence Motion to Exclude Prosecution Witnesses BWM, BWN, BXB, BXC, BXD and BXL (TC), 24 June 2008, para. 10. The 24 June 2008 Decision was limited to the particular circumstances of that case. Moreover, Trial Chamber III did not cite any Appeals Chamber decision to support the proposition that *no* amount of subsequent disclosures could cure the defects in the indictment. Therefore, the Chamber declines to follow the approach in the *Kalimanzira* Decision.

<sup>5750</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 470.

soldiers when they went to the BPO to abduct Tutsi refugees. Those who resisted were assaulted and sometimes killed outright at locations such as the EER woods. The Indictment provides that Nyiramasuhuko and Ntahobali often made the refugees undress before forcing them onto vehicles and taking them to their deaths.<sup>5751</sup> Therefore, the crimes of abduction and killing at the BPO were clearly pled in the Indictment.

2163. As to the crime of rape, Paragraph 6.37 of the Nyiramasuhuko and Ntahobali indictment states that aside from the attacks on Tutsis, Ntahobali was assisted by accomplices in kidnapping and raping Tutsi women. The Chamber recalls that an indictment paragraph should be read in conjunction with the entire indictment as a whole. Read in this way, the crimes of kidnapping and rape were separately pled to the attacks occurring throughout the rest of the *préfecture*, including the attacks and abductions at the BPO. Nonetheless, the information in Paragraph 6.37 lacked necessary details, including specific dates, locations and the names of victims, to put Ntahobali and Nyiramasuhuko on notice that they were being charged with raping women or were responsible as a superior for rapes occurring at the BPO. The Indictment was therefore defective in this regard.

2164. The Chamber notes the Prosecution set forth in its Pre-Trial Brief that members of the Interim Government (such as Pauline Nyiramasuhuko) and Ntahobali committed, ordered, and aided and abetted their subordinates and others in the carrying out of rapes, sexual assaults and massacres of the Tutsi population.<sup>5752</sup> The Appendix to the Pre-Trial Brief included the summaries of numerous witnesses who were to testify as to rape allegations against Ntahobali and Nyiramasuhuko occurring at the BPO, including Witnesses TA, FAP, QBP, QBQ, QZ, RE, RF, RJ and SW.<sup>5753</sup>

2165. In its opening statement, the Prosecution reiterated allegations that Nyiramasuhuko was responsible for numerous rapes.<sup>5754</sup>

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<sup>5751</sup> Para. 6.30 and 6.31 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>5752</sup> Prosecution Pre-Trial Brief, para. 29.

<sup>5753</sup> Prosecution Pre-Trial Brief – Appendix; Witness TA (3); Witness FAP (27); Witness QBP (44); Witness QBQ (45); Witness QZ (62); Witness RE (65); Witness RF (66); Witness RG (67); Witness RJ (68); Witness SW (87); for example, Witnesses TA, FAP, QBP, QBQ and RJ indicated that Nyiramasuhuko ordered Ntahobali and *Interahamwe* to rape. Other witness summaries indicated that Ntahobali selected young women to rape at the BPO.

<sup>5754</sup> Prosecution Opening Statement, T. 12 June 2001 p. 92 (“A woman from the Rwandan society, a woman who is a minister, who is a member of parliament. A woman who lost all her civil nature: People being raped before their parents; watching her children being raped. She had lost her civil nature because in her presence, the most serious rape under the cruelest conditions were applauded. She encouraged even her son to do as much. She put everything she had to the point that she was dressed in military gear to play her role of a militant minister. A woman who had lost every sense of feeling, Pauline Nyiramasuhuko.”). Moreover, although not a basis for this ruling, the Chamber notes the Supporting Materials attached to the Amended Indictment of 10 August 1999, and in support of the amended charge in Para. 6.37, the Prosecution cited the statement of Witness QZ which indicated that Shalom and four *Interahamwe* raped a young girl at the *préfecture* office and that Shalom later stood on her legs saying Tutsis are very proud and were too proud to marry Hutus in the past. Witness QZ’s statement also included an allegation that she herself was raped by Shalom and four *Interahamwe*. It stated that Pauline was present at the *préfecture* observing the rapes: Indictment Supporting Material, Attachment B, 18 August 1999, pp. 118-119; *see also* Attachment A to the Prosecutor’s Request for Leave to Amend Indictment, 18 August 1999, pp. 180-181. This information was provided to Nyiramasuhuko and Ntahobali within 30 days of their first appearance on the amended charges in 1999: T. 10 August 1999 p. 3.

2166. Based upon the large volume of timely, clear and consistent materials disclosed to Nyiramasuhuko and Ntahobali indicating that they participated in rapes at the BPO, the Chamber finds they had adequate notice to prepare a defence. The Chamber, therefore, finds this defect in the Indictment was cured. Moreover, the Accused suffered no prejudice as a result of the defect in the Indictment.

*Pleading Facts Regarding Particular Victims*

2167. On behalf of Nyiramasuhuko and Ntahobali, the Ntahobali Defence argues that the Prosecution failed to plead multiple factual allegations in the Indictment. As to the allegations against Nyiramasuhuko at the BPO, it argues that the Prosecution failed to plead that she: (1) ordered the abduction of Mbasha's wife and her children; (2) ordered that a woman named Trifina be killed; (3) abducted two persons named Semanyezi and Annonciata in order to kill them; and (4) ordered *Interahamwe* or soldiers to rape Tutsi girls and women at night. As to the allegations against Ntahobali at the BPO, the Ntahobali Defence argues that the Prosecution failed to plead that he: (1) abducted Mbasha's wife and her children in order to kill them; (2) raped and killed Tutsi refugees at a specific place with soldiers or *Interahamwe*; and (3) raped and killed a Tutsi woman named Immaculée.<sup>5755</sup>

2168. The Appeals Chamber has recognised that there may be instances where the sheer scale of the crimes alleged makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of crimes.<sup>5756</sup> However, "[t]he Prosecution cannot simultaneously argue that the accused killed a named individual yet claim that the 'sheer scale' of the crime made it impossible to identify that individual in the indictment."<sup>5757</sup> The Appeals Chamber has held that the identification of a particular *location* itself refutes the argument that identifying it was somehow impracticable.<sup>5758</sup> The same logic would apply to the identification of a particular *victim*. Further, the Appeals Chamber has advised that, "[s]ince the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so."<sup>5759</sup> A failure to plead the names of particular victims where they are known may render the indictment defective on that charge. Such a defect may be remedied by the provision of clear, consistent and timely disclosures.<sup>5760</sup>

2169. In the present case, the Indictment was not clear as to how many Tutsis were raped, abducted and killed at the BPO.<sup>5761</sup> However, the Pre-Trial Brief and witness statements disclosed to the Defence clearly set forth the Prosecution's case: that there were between several hundred and several thousand Tutsis seeking refuge at the BPO; that these persons were taken away by *Interahamwe*, soldiers and the Accused by repeatedly loading pickup trucks; and that the refugees were killed elsewhere. The Chamber considers that in view of the sheer scale of the attacks, rapes and killings alleged to have taken place at the BPO, it is impractical to require the Prosecution to name each of the alleged victims of this course of

<sup>5755</sup> Ntahobali Closing Brief, paras. 76-79.

<sup>5756</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 58.

<sup>5757</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 74, 76.

<sup>5758</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 75.

<sup>5759</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 25; *Kupreškić et al.*, Judgement (AC), para. 90.

<sup>5760</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 33, 41.

<sup>5761</sup> Para. 6.29 of the Nyiramasuhuko and Ntahobali Indictment.

conduct. Therefore, there was no defect in the Indictment for failing to name each of the alleged victims at the BPO.

2170. However, the Chamber also notes that the names Immaculée, Mbasha, Trifina, Caritas, Semanyenzi and Annonciata did not appear in the Indictment even though this information was available to the Prosecution in the witness statements of Witnesses TA and TK. The Prosecution was under an obligation to disclose this information to the Defence. The question is whether the Defence was prejudiced by any delay in disclosing the names of these alleged victims.

2171. The witness statements of Witnesses TA and TK were disclosed on 4 November 1998 and 1 December 1999. These statements provided additional information underpinning the specific allegations as to the location, sequence of events and the Accused involved. The names of the relevant victims were redacted in those disclosures to the Defence. However, the Prosecution disclosed the unredacted witness statements of Witnesses TA and TK, which provided notice of the specific named victims, on 23 April 2001.<sup>5762</sup> This was six months prior to the beginning of Witness TA's testimony on 24 October 2001 and one year prior to the testimony of Witness TK which began on 20 May 2002. In addition, the Prosecution Pre-Trial Brief listed the first 12 witnesses the Prosecution intended to call to testify, which included Witnesses TA and TK.

2172. Nonetheless, the victims' names did not appear in the Indictment, the Pre-Trial Brief, its Appendix or the Prosecution opening statement. The disclosure of the victims' names in four witness statements occurred less than two months prior to trial and without any further indication to the Defence that this new information was being provided to them. Therefore, the Chamber finds the late disclosure of these victims' names accorded bias to the Defence in preparing its case. The Chamber will not convict the Accused, if established by the evidence, for alleged crimes against Trifina, Mrs. Mbasha, Annonciata, Semanyenzi, Caritas or Immaculée. Nonetheless, the Chamber will consider the evidence of these named individuals for other permissible purposes (for example, as background information, circumstantial evidence in support of other allegations, to demonstrate a special knowledge, opportunity, or identification of the accused).<sup>5763</sup> The other abductions, rapes and killings occurring at the BPO will be considered by the Chamber in support of counts as the Defence had adequate notice of these allegations of large-scale criminal conduct.

*Ntahobali's Recorded Interview of 24 and 26 July 1997*

2173. The Prosecution cross-examined Ntahobali based upon a recorded interview with the Prosecution investigator after his arrest on 24 and 26 July 1997. The proper use of this

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<sup>5762</sup> The names of Immaculée Mukagatara and Caritas were disclosed to the Defence in Witness TA's unredacted statement of 19 November 1997. This disclosure occurred six months prior to the start of Witness TA's testimony. The names of Trifina, Mrs. Mbasha, Annonciata and Immaculée were disclosed to the Defence in Witness TK's unredacted statements of 12 November 1996, 17 December 1996 and 23 April 1998 more than one year prior to the start of Witness TK's testimony.

<sup>5763</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15; *Kupreškić et al.*, Judgement (AC), paras. 321-323, 336.

recorded interview was contested by the Parties.<sup>5764</sup> The Chamber recalls its Decision of 15 May 2006 in which it held that Ntahobali's recorded interview was admissible and relevant to the proceedings. In that Decision, the Chamber also held that the mention of the word "inaudible" in the transcripts did not affect the reliability or substance of the information contained therein. The Chamber, however, restricted the use of Ntahobali's prior statement by the Prosecution to issues pertaining to his credibility. The Chamber held that "since the Prosecution did not seek to use the interviews as evidence during the presentation of its case, it is precluded from using their substance at this stage of the proceedings."<sup>5765</sup> The Chamber therefore considers the recorded statement only to evaluate Ntahobali's credibility as a witness.

### 3.6.19.3 Evidence

#### 3.6.19.3.1 Prosecution Evidence

##### Prosecution Witness TA

2174. Witness TA, a Tutsi, testified that she was staying in her uncle's home when it was attacked by *Interahamwe*.<sup>5766</sup> She said that 80 family members, including 12 brothers and sisters and two parents, were killed in Butare in 1994.<sup>5767</sup> One of her brothers was killed at Kabutare.<sup>5768</sup> Her parents were killed.<sup>5769</sup> She later testified that her father was killed in 1987 and her mother died in April 1994.<sup>5770</sup> Many people were thrown into a latrine along with Witness TA.<sup>5771</sup> She escaped from the latrine and walked one hour to seek refuge at the home of her eldest sister where she stayed for four days.<sup>5772</sup> She was raped at that location.<sup>5773</sup> Around 20 April 1994, she sought refuge alone because her brothers had been killed.<sup>5774</sup> Passers-by told her that there were other Tutsis at the EER and BPO so she went there.<sup>5775</sup> She fled to the EER where she spent about one week until the pastor told them to leave.<sup>5776</sup> She then sought refuge at the BPO towards the end of April 1994.<sup>5777</sup> The refugees were always together, either at the BPO or at the EER.<sup>5778</sup> She saw more than 10,000 dead bodies on the

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<sup>5764</sup> *Ndayambaje et al.*, Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali Using Ntahobali's Statements to Prosecution Investigators in July 1997 (TC), 15 May 2006.

<sup>5765</sup> *Ndayambaje et al.*, Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali Using Ntahobali's Statements to Prosecution Investigators in July 1997 (TC), 15 May 2006, paras. 61, 64.

<sup>5766</sup> T. 30 October 2001 p. 74 (ICS); T. 1 November 2001 p. 10 (ICS) (Witness TA).

<sup>5767</sup> T. 29 October 2001 pp. 109-110 (Witness TA).

<sup>5768</sup> T. 30 October 2001 pp. 64-65 (ICS) (Witness TA).

<sup>5769</sup> T. 24 October 2001 p. 96; T. 29 October 2001 p. 110 (Witness TA).

<sup>5770</sup> T. 30 October 2001 p. 58 (ICS) (Witness TA).

<sup>5771</sup> T. 1 November 2001 pp. 10-11 (ICS) (Witness TA).

<sup>5772</sup> T. 30 October 2001 pp. 66, 68-69 (ICS); T. 6 November 2001 p. 81 (Witness TA).

<sup>5773</sup> T. 30 October 2001 p. 72 (ICS) (Witness TA).

<sup>5774</sup> T. 6 November 2001 p. 79 (Witness TA).

<sup>5775</sup> T. 7 November 2001 p. 50 (ICS) (Witness TA).

<sup>5776</sup> T. 30 October 2001 pp. 70-71 (ICS); T. 5 November 2001 p. 114 (ICS); T. 6 November 2001 p. 81 (Witness TA).

<sup>5777</sup> T. 24 October 2001 p. 94; T. 30 October 2001 p. 70 (ICS) (Witness TA).

<sup>5778</sup> T. 30 October 2001 p. 70 (ICS) (Witness TA).

path between her home and the BPO.<sup>5779</sup> Apart from her sister, she did not stay with any other relatives during the period she sought refuge.<sup>5780</sup>

2175. Witness TA estimated that there were 6,000 Tutsi refugees at the BPO when she arrived and people told her that their spouses and children had been killed and thrown into latrines.<sup>5781</sup> They lay on the grass but soon it was spoiled because people had been sleeping on it at night.<sup>5782</sup> They could not use the pit latrines because they had been filled with people.<sup>5783</sup> She saw no person of authority giving aid or assistance to the refugees during her stay at the BPO.<sup>5784</sup> She testified that no person of authority took action to stop or punish those responsible for crimes that occurred at the BPO during her stay.<sup>5785</sup> In cross-examination she testified there were between 3,000 and 6,000 refugees at the BPO.<sup>5786</sup>

2176. Witness TA stayed at the BPO for one month and a half and went to Rango around 20 June 1994.<sup>5787</sup> She estimated that 5,000 refugees were killed at the BPO during her stay.<sup>5788</sup> She knew no other refugees when she left the BPO.<sup>5789</sup> On cross-examination she stated she did not know Annonciata Mukagashaysia, who was at the BPO at the same time.<sup>5790</sup> She also did not know persons by the same name as Witnesses SJ or QJ.<sup>5791</sup> She stayed in the courtyard at night, but moved to the back of the BPO during the day because *Interahamwe*, under the orders of the *préfet*, had told them to move and stay out of the front courtyard during the day.<sup>5792</sup>

2177. After about one week at the BPO, Witness TA saw Nyiramasuhuko leaving the *préfecture* office at 3.00 p.m.<sup>5793</sup> Nyiramasuhuko said the dirt should be removed.<sup>5794</sup> By dirt, Nyiramasuhuko meant the Tutsi refugees who were staying at the BPO.<sup>5795</sup> On that occasion, Nyiramasuhuko left in a vehicle with a refugee named Donat and another male refugee; these men were killed.<sup>5796</sup>

2178. Witness TA testified that she later saw Nyiramasuhuko during one night in mid-May 1994.<sup>5797</sup> Nyiramasuhuko was accompanied by 10 *Interahamwe*, including her son,

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<sup>5779</sup> T. 29 October 2001 p. 100 (Witness TA).

<sup>5780</sup> T. 30 October 2001 p. 73 (ICS) (Witness TA).

<sup>5781</sup> T. 24 October 2001 pp. 95-96; T. 29 October 2001 p. 58; T. 5 November 2001 p. 37 (Witness TA).

<sup>5782</sup> T. 30 October 2001 p. 106 (Witness TA).

<sup>5783</sup> T. 7 November 2001 p. 98 (Witness TA).

<sup>5784</sup> T. 29 October 2001 pp. 58-59 (Witness TA).

<sup>5785</sup> T. 29 October 2001 p. 61 (Witness TA).

<sup>5786</sup> T. 5 November 2001 pp. 37-38, 40-41 (Witness TA).

<sup>5787</sup> T. 24 October 2001 p. 96; T. 29 October 2001 pp. 61-62; T. 30 October 2001 p. 25; T. 6 November 2001 pp. 68, 107 (Witness TA).

<sup>5788</sup> T. 29 October 2001 pp. 57-58 (Witness TA).

<sup>5789</sup> T. 7 November 2001 p. 109 (Witness TA).

<sup>5790</sup> T. 7 November 2001 p. 120 (ICS) (Witness TA).

<sup>5791</sup> T. 7 November 2001 pp. 113-114 (ICS) (Witness TA).

<sup>5792</sup> T. 30 October 2001 pp. 24-27, 36 (Witness TA).

<sup>5793</sup> T. 24 October 2001 p. 103; T. 6 November 2001 p. 83 (Witness TA).

<sup>5794</sup> T. 24 October 2001 p. 109; T. 6 November 2001 p. 83 (Witness TA).

<sup>5795</sup> T. 25 October 2001 p. 28 (Witness TA).

<sup>5796</sup> T. 24 October 2001 pp. 110-113 (Witness TA).

<sup>5797</sup> T. 25 October 2001 p. 29; T. 29 October 2001 pp. 51-52 (Witness TA).



Shalom.<sup>5798</sup> This was the first time Witness TA saw Shalom.<sup>5799</sup> Nyiramasuhuko and Ntahobali arrived together in the same Hilux pickup and told the *Interahamwe* who should be forced to board the bed of the pickup.<sup>5800</sup> Nyiramasuhuko wore a *kitenge* cloth.<sup>5801</sup> The truck's lights were illuminated.<sup>5802</sup> Nyiramasuhuko was standing in the courtyard of the BPO pointing out Tutsi refugees to the *Interahamwe*, saying as she pointed, "[t]his is another one, and another one and another one, and why are you leaving that one?"<sup>5803</sup> Those Tutsis were beaten up and forced onto the pickup.<sup>5804</sup> Witness TA testified that it appeared to her that Nyiramasuhuko and her son were in charge of the *Interahamwe* and leading the attacks at the BPO because Nyiramasuhuko pointed out people who were then taken away, whereas when Ntahobali said "stop", the *Interahamwe* took their car and left.<sup>5805</sup> For example, Shalom ordered the *Interahamwe* to stop killing refugees, as the number of dead people was in excess of what could be loaded in the vehicle.<sup>5806</sup> Although Witness TA testified that Nyiramasuhuko and Ntahobali seemed to lead the attack together, because they arrived with the same vehicle, she thought Nyiramasuhuko was superior to Ntahobali.<sup>5807</sup> She thought this because Nyiramasuhuko pointed at three refugees who had been cut up and ordered that they be loaded onto the vehicle.<sup>5808</sup>

2179. *Interahamwe* held sticks. Ntahobali held a machete covered in blood and had a hammer on his belt.<sup>5809</sup> Ntahobali moved through the refugees cutting and slashing people with his machete.<sup>5810</sup> Witness TA was unable to estimate how many people Ntahobali cut up that day because he was cutting up people very quickly and she was worried that he would slit her throat.<sup>5811</sup>

2180. Witness TA testified that he took her by the hand and hit her on the arm and hand with his machete.<sup>5812</sup> He wore trousers and a shirt made of *kitenge*.<sup>5813</sup> He picked her up from the ground and pulled her towards the ORINFOR building (Information Agency of the Rwandan Government), behind the BPO.<sup>5814</sup> Ntahobali removed Witness TA's clothes saying he would kill her if she refused.<sup>5815</sup> He removed her *kitenge* wrap and underwear, laid her on the ground

<sup>5798</sup> T. 25 October 2001 pp. 29-30, 33, 36; T. 31 October 2001 pp. 41, 43 (Witness TA).

<sup>5799</sup> T. 30 October 2001 p. 96; T. 6 November 2001 p. 57 (Witness TA).

<sup>5800</sup> T. 25 October 2001 p. 28; T. 29 October 2001 pp. 46-47 (Witness TA).

<sup>5801</sup> T. 25 October 2001 p. 40 (Witness TA).

<sup>5802</sup> T. 8 November 2001 p. 13 (Witness TA).

<sup>5803</sup> T. 25 October 2001 pp. 28, 40-42; T. 29 October 2001 pp. 46, 48; T. 31 October 2001 p. 54; T. 6 November 2001 p. 56; T. 7 November 2001 pp. 148-149 (Witness TA).

<sup>5804</sup> T. 25 October 2001 p. 46; T. 29 October 2001 p. 46; T. 6 November 2001 p. 56 (Witness TA).

<sup>5805</sup> T. 25 October 2001 pp. 66-67; T. 29 October 2001 pp. 46-47 (Witness TA).

<sup>5806</sup> T. 29 October 2001 pp. 46, 49-51 (Witness TA).

<sup>5807</sup> T. 29 October 2001 p. 47 (Witness TA).

<sup>5808</sup> T. 29 October 2001 p. 48; T. 6 November 2001 p. 56; T. 8 November 2001 p. 43 (Witness TA).

<sup>5809</sup> T. 25 October 2001 p. 47 (Witness TA).

<sup>5810</sup> T. 25 October 2001 p. 47; T. 30 October 2001 p. 98; T. 31 October 2001 pp. 31, 37, 50-51 (Witness TA).

<sup>5811</sup> T. 31 October 2001 pp. 50-51 (Witness TA).

<sup>5812</sup> T. 25 October 2001 p. 46; T. 31 October 2001 pp. 33-35, 52 (Witness TA).

<sup>5813</sup> T. 31 October 2001 p. 36 (Witness TA).

<sup>5814</sup> T. 25 October 2001 p. 48; T. 29 October 2001 p. 8; T. 31 October 2001 pp. 53, 55; T. 6 November 2001 p. 47 (Witness TA).

<sup>5815</sup> T. 25 October 2001 pp. 48, 52, 55; T. 31 October 2001 p. 55 (Witness TA).

and raped her.<sup>5816</sup> There was moonlight behind the BPO.<sup>5817</sup> In addition, some public lighting from the lamp posts occasionally reached the area from the other side of the road near *Chez Venant*.<sup>5818</sup> Ntahobali invited some eight other *Interahamwe* to rape Witness TA, including one named Ngoma, which they did.<sup>5819</sup> Ngoma and another person named Ntujenjeke remained at the BPO to oversee the refugees when they were asleep, but assisted the *Interahamwe* during the attacks.<sup>5820</sup> One of the *Interahamwe* that raped her put his machete on her leg, telling her that if she moved he would kill her.<sup>5821</sup> Witness TA was confronted with a prior statement in which she said she had also been anally raped. In response, she maintained that she had not been anally raped.<sup>5822</sup> While she was being raped, Witness TA saw two other women nearby who were also being raped by the *Interahamwe*.<sup>5823</sup>

2181. At the end of the attack, Witness TA saw Nyiramasuhuko, Ntahobali and the *Interahamwe* board the same white Hilux pickup truck.<sup>5824</sup> They drove away with the bodies of wounded or killed Tutsi refugees in the rear section of the pickup.<sup>5825</sup>

2182. Seven days later, during the night, the *Interahamwe* arrived at the BPO in the same vehicle and started beating, cutting with machetes and killing people.<sup>5826</sup> There was also moonlight on this occasion.<sup>5827</sup> Ntahobali woke up Witness TA, dragged and pushed her behind the BPO and raped her.<sup>5828</sup> He hit her with a hammer, causing her head to swell.<sup>5829</sup> Witness TA was confronted with a prior statement in which she said she was in view of the other refugees when she was raped on this occasion and that he only showed her the hammer as a threat. She maintained in her testimony that she was taken behind the BPO and that he actually hit her with the hammer.<sup>5830</sup> At the same time, the *Interahamwe* took six other women and raped them near her.<sup>5831</sup> There would have been less than 5,000 refugees at the BPO the second time Ntahobali came since the *Interahamwe* killed refugees every day.<sup>5832</sup>

2183. Four days later, at night, a group of eight *Interahamwe* including Shalom arrived in the same vehicle and started beating and cutting up people at the BPO.<sup>5833</sup> Shalom came to the BPO and gave Witness TA to a group of seven *Interahamwe* who dragged her to the same

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<sup>5816</sup> T. 25 October 2001 p. 52; T. 31 October 2001 pp. 55-59; T. 6 November 2001 pp. 47-48; *see also* T. 25 October 2001 p. 60 (Witness TA) (French) (“*Il m’a enlevé le pagne.*”).

<sup>5817</sup> T. 30 October 2001 p. 109; T. 31 October 2001 pp. 12, 68 (Witness TA).

<sup>5818</sup> T. 30 October 2001 p. 109; T. 8 November 2001 pp. 12-13 (Witness TA).

<sup>5819</sup> T. 25 October 2001 pp. 52, 56; T. 31 October 2001 pp. 72-73 (Witness TA).

<sup>5820</sup> T. 30 October 2001 p. 24; T. 31 October 2001 p. 112 (Witness TA).

<sup>5821</sup> T. 25 October 2001 p. 55 (Witness TA).

<sup>5822</sup> Defence Exhibit 7B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA); T. 6 November 2001 pp. 53-55 (Witness TA).

<sup>5823</sup> T. 25 October 2001 p. 65 (Witness TA).

<sup>5824</sup> T. 25 October 2001 pp. 56, 66; T. 31 October 2001 p. 84 (Witness TA).

<sup>5825</sup> T. 25 October 2001 p. 66; T. 31 October 2001 p. 81 (Witness TA).

<sup>5826</sup> T. 25 October 2001 pp. 67-68; T. 31 October 2001 pp. 86-87, 90-91 (Witness TA).

<sup>5827</sup> T. 31 October 2001 pp. 90-91 (Witness TA).

<sup>5828</sup> T. 25 October 2001 pp. 67, 69, 77; T. 31 October 2001 pp. 93-97 (Witness TA).

<sup>5829</sup> T. 25 October 2001 p. 67; T. 31 October 2001 p. 96; T. 5 November 2001 pp. 129-130 (Witness TA).

<sup>5830</sup> T. 5 November 2001 pp. 125-130 (Witness TA); Defence Exhibit 7B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA).

<sup>5831</sup> T. 25 October 2001 p. 71; T. 31 October 2001 p. 101 (Witness TA).

<sup>5832</sup> T. 31 October 2001 p. 93 (Witness TA).

<sup>5833</sup> T. 25 October 2001 pp. 76-77; T. 31 October 2001 pp. 106-107 (Witness TA).

location, removed her clothes and raped her.<sup>5834</sup> He told them to do it quickly and return to the roadblock so that the *Inkotanyi* would not get to the roadblock first.<sup>5835</sup> These men were armed with machetes, hammers, clubs, big sticks and Rwandan clubs (clubs with nails in them).<sup>5836</sup> While she was being raped, she saw Shalom raping a girl named Caritas who was being raped about five to six metres away from her.<sup>5837</sup> There was also moonlight on this occasion.<sup>5838</sup>

2184. Another seven to 10 days later, a group of eight *Interahamwe*, including Shalom arrived at the BPO in the same vehicle.<sup>5839</sup> They attacked the refugees with machetes, hammers, Rwandan clubs and sticks.<sup>5840</sup> They killed some, wounded others and threw the dead and wounded into their vehicle.<sup>5841</sup> On this occasion, Shalom again handed Witness TA over to the *Interahamwe*.<sup>5842</sup> She was dragged and pushed to behind the ORINFOR building.<sup>5843</sup> Shalom told the *Interahamwe* to be quick and that he was on his way out, after which seven *Interahamwe* raped her.<sup>5844</sup> They were armed with weapons but put them down when they were raping her. The others stood around ready to hit her if she attempted to get up.<sup>5845</sup>

2185. When she returned to where she usually slept at the BPO, she watched Shalom take another Tutsi refugee woman, named Immaculée, to rape her.<sup>5846</sup> Immaculée had three children with her, including a child who was about one and a half to two years old that was still being breast fed.<sup>5847</sup> Immaculée tried to fight Shalom and asked him to let her go back to her children.<sup>5848</sup> Before raping Immaculée, Shalom took the youngest child from her arms and threw the child to the side.<sup>5849</sup> Witness TA picked up the child and consoled it to keep it quiet.<sup>5850</sup> After raping Immaculée, Shalom placed two heavy logs on her legs, one above the knee and one below knee. Immaculée later told Witness TA that Shalom said at that time, “[I]et’s see if you can get out of that”.<sup>5851</sup> After Immaculée had been raped, she asked Witness TA to help remove the logs.<sup>5852</sup> Witness TA testified that she went to visit Immaculée at a hospital and Immaculée told Witness TA that she had contracted AIDS during the 1994 events. Immaculée died in January 2001.<sup>5853</sup> She later testified that the rape of Immaculée occurred on

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<sup>5834</sup> T. 25 October 2001 pp. 75-76, 79; T. 31 October 2001 pp. 105, 111; T. 6 November 2001 pp. 9, 12-13 (Witness TA).

<sup>5835</sup> T. 25 October 2001 p. 76 (Witness TA).

<sup>5836</sup> T. 25 October 2001 p. 78 (Witness TA).

<sup>5837</sup> T. 25 October 2001 pp. 81, 83 (Witness TA).

<sup>5838</sup> T. 31 October 2001 p. 107 (Witness TA).

<sup>5839</sup> T. 29 October 2001 p. 7; T. 1 November 2001 pp. 36-37 (Witness TA).

<sup>5840</sup> T. 29 October 2001 p. 8; T. 1 November 2001 p. 38 (Witness TA).

<sup>5841</sup> T. 29 October 2001 pp. 7-9 (Witness TA).

<sup>5842</sup> T. 29 October 2001 p. 8; T. 1 November 2001 p. 39 (Witness TA).

<sup>5843</sup> T. 29 October 2001 p. 8 (Witness TA).

<sup>5844</sup> T. 29 October 2001 pp. 10-11; T. 1 November 2001 p. 40 (Witness TA).

<sup>5845</sup> T. 29 October 2001 p. 13 (Witness TA).

<sup>5846</sup> T. 29 October 2001 pp. 15, 25; *see* T. 1 November 2001 p. 48 (Witness TA) (French) (for spelling of “Immaculée”).

<sup>5847</sup> T. 29 October 2001 pp. 16-17 (Witness TA).

<sup>5848</sup> T. 29 October 2001 p. 16 (Witness TA).

<sup>5849</sup> T. 29 October 2001 pp. 16-18; T. 1 November 2001 p. 44 (Witness TA).

<sup>5850</sup> T. 29 October 2001 p. 17; T. 1 November 2001 pp. 44, 48 (Witness TA).

<sup>5851</sup> T. 29 October 2001 pp. 24-27; T. 1 November 2001 pp. 45, 47-48 (Witness TA).

<sup>5852</sup> T. 29 October 2001 pp. 24-25; T. 1 November 2001 pp. 44-45 (Witness TA).

<sup>5853</sup> T. 29 October 2001 pp. 116-117 (ICS) (Witness TA).

the fifth occasion that Ntahobali visited the BPO, on which occasion Witness TA was not personally raped.<sup>5854</sup>

2186. On a subsequent night, Shalom came to the BPO wearing ordinary clothes.<sup>5855</sup> On that occasion, Shalom ordered the *Interahamwe* accompanying him to take women and girls and to do what they wanted with them before taking them away and killing them.<sup>5856</sup>

2187. On a later date, Shalom again came by vehicle with the *Interahamwe* but Witness TA could not remember how many.<sup>5857</sup> She did not observe any rapes that night, but saw many people being killed.<sup>5858</sup>

2188. During a later attack, they came by foot; no one was raped, but people were killed.<sup>5859</sup> Shalom came on other occasions as well, usually with *Interahamwe*. When he came during the day, he took people away to be killed.<sup>5860</sup>

2189. Witness TA testified that on the fourth occasion Shalom appeared to be the leader because he was in front of the *Interahamwe* as they attacked people.<sup>5861</sup> Furthermore, Witness TA had observed Shalom carrying a weapon and leading the *Interahamwe* in training exercises near the BPO on the road leading to the market.<sup>5862</sup> One morning in June,<sup>5863</sup> she observed Shalom and no more than 12 *Interahamwe* jogging and singing, “[i]t is over for the *Inyenzi*, where will they seek refuge, where will they go this time around?”<sup>5864</sup> She testified that *Inyenzi* meant *Inkotanyi* and that *Inkotanyi* meant refugees.<sup>5865</sup> After the exercise, some of the *Interahamwe* went back to the roadblocks that they kept. Ntahobali acted like the chief or leader of the *Interahamwe*.<sup>5866</sup>

2190. Witness TA learned from other refugees that Nyiramasuhuko was Shalom’s mother. She did not know Shalom’s family name but stated he was Nyiramasuhuko’s son.<sup>5867</sup> She also identified Nyiramasuhuko as the Minister of Women’s Affairs.<sup>5868</sup> Witness TA testified that she saw soldiers at the BPO.<sup>5869</sup> They would usually come with *Interahamwe*. Witness TA distinguished soldiers from *Interahamwe* by the clothes they were wearing: soldiers were

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<sup>5854</sup> T. 1 November 2001 pp. 42-43 (Witness TA).

<sup>5855</sup> T. 1 November 2001 p. 49 (Witness TA).

<sup>5856</sup> T. 1 November 2001 pp. 49-50; T. 8 November 2001 p. 16 (Witness TA).

<sup>5857</sup> T. 1 November 2001 pp. 50-51 (Witness TA).

<sup>5858</sup> T. 1 November 2001 p. 51 (Witness TA).

<sup>5859</sup> T. 1 November 2001 p. 51 (Witness TA).

<sup>5860</sup> T. 1 November 2001 p. 53; T. 8 November 2001 p. 17 (Witness TA).

<sup>5861</sup> T. 29 October 2001 p. 28; T. 1 November 2001 p. 40 (Witness TA).

<sup>5862</sup> T. 29 October 2001 pp. 29-30, 40-41 (Witness TA).

<sup>5863</sup> T. 29 October 2001 p. 32 (Witness TA).

<sup>5864</sup> T. 29 October 2001 pp. 28-30 (Witness TA) (they sang, “*Ak’inyenzi kashobotse ese mama ziragana he.*”).

<sup>5865</sup> T. 29 October 2001 p. 29 (Witness TA).

<sup>5866</sup> T. 29 October 2001 p. 31 (Witness TA).

<sup>5867</sup> T. 29 October 2001 p. 45 (Witness TA).

<sup>5868</sup> T. 24 October 2001 pp. 97-98 (Witness TA).

<sup>5869</sup> T. 29 October 2001 p. 53 (Witness TA).

wearing military uniforms, and those called *Interahamwe* were in ordinary attire.<sup>5870</sup> The *Interahamwe* would also wear banana leaves very often.<sup>5871</sup>

2191. She testified that the soldiers would grab Tutsis seeking refuge at the BPO, and take them next to a pear tree in the rear section of the BPO to kill them, saying “[I]et’s get rid of these *Inyenzi*”.<sup>5872</sup> She understood *Inyenzi* to mean the same thing as *Inkotanyi* which is what they were called.<sup>5873</sup> Witness TA did not witness the killings at the pear tree herself, but she saw the dead bodies by the tree.<sup>5874</sup> She saw the bodies of Tutsis who had been killed in a pit behind in the gardens of the BPO. The number of bodies increased during her stay.<sup>5875</sup> Some of the bodies were decomposing, and later a bulldozer came to take the bodies further away from the BPO.<sup>5876</sup>

2192. Witness TA testified that Tutsi refugees were not allowed to go to the hospital because if a doctor were to give drugs to a Tutsi, the *Interahamwe* would kill the doctor as he would be considered to be an accomplice.<sup>5877</sup>

2193. Witness TA testified that she saw Ntahobali more than eight times at the BPO.<sup>5878</sup> She saw Nyiramasuhuko two times at the BPO.<sup>5879</sup> In addition, others told her when Nyiramasuhuko was in the courtyard of the BPO, while *Interahamwe* and soldiers were committing killings.<sup>5880</sup> She saw them once together at the BPO.<sup>5881</sup> Witness TA identified Ntahobali and Nyiramasuhuko in court.<sup>5882</sup>

#### Prosecution Witness QJ

2194. Witness QJ, a Tutsi hotel worker in Butare town, testified that he had falsified his identity card to indicate that he was a Hutu. He did this prior to the start of the killings because it made it easier to move about freely and to acquire employment.<sup>5883</sup> He had a forged identity card because the authorities made a mistake and lightly crossed out the word Tutsi on his card. He deepened the crossing out of Tutsi on the identity card.<sup>5884</sup> The authorities also crossed out Hutu but they had not crossed it out properly.<sup>5885</sup> After the killings started, Witness QJ continued to travel freely around Butare town on account of his identity card. No one knew that he was a Tutsi because he was not from Butare.<sup>5886</sup> He could not return to his home

<sup>5870</sup> T. 29 October 2001 p. 57 (Witness TA).

<sup>5871</sup> T. 31 October 2001 pp. 107-108 (Witness TA).

<sup>5872</sup> T. 29 October 2001 pp. 53-54, 56-57; T. 7 November 2001 pp. 87-90, 153 (Witness TA).

<sup>5873</sup> T. 7 November 2001 pp. 105-106 (Witness TA).

<sup>5874</sup> T. 7 November 2001 p. 89 (Witness TA).

<sup>5875</sup> T. 8 November 2001 pp. 24-26 (Witness TA).

<sup>5876</sup> T. 8 November 2001 p. 24 (Witness TA).

<sup>5877</sup> T. 7 November 2001 pp. 95-96 (Witness TA).

<sup>5878</sup> T. 24 October 2001 p. 102; T. 25 October 2001 p. 75 (Witness TA).

<sup>5879</sup> T. 24 October 2001 p. 97; T. 29 October 2001 p. 123; T. 5 November 2001 pp. 25, 31-32 (Witness TA).

<sup>5880</sup> T. 5 November 2001 p. 32; T. 7 November 2001 p. 143 (Witness TA).

<sup>5881</sup> T. 29 October 2001 p. 45 (Witness TA).

<sup>5882</sup> T. 29 October 2001 pp. 102-104; T. 7 November 2001 p. 134 (Witness TA).

<sup>5883</sup> T. 8 November 2001 p. 138 (ICS) (Witness QJ).

<sup>5884</sup> T. 8 November 2001 p. 138 (ICS); T. 13 November 2001 p. 30 (ICS) (Witness QJ).

<sup>5885</sup> T. 13 November 2001 p. 31 (ICS) (Witness QJ).

<sup>5886</sup> T. 13 November 2001 p. 54 (Witness QJ).

*commune* because the identity card could not be used there.<sup>5887</sup> He later added that possession of an identity card indicating Hutu ethnicity meant that “no one could arrest [him]”.<sup>5888</sup> Witness QJ later conceded that many of those in or around Hotel Faucon knew or suspected that he was in fact a Tutsi.<sup>5889</sup>

2195. He testified that he went to the BPO to seek information and to find out whether any of the persons he knew were among the refugees.<sup>5890</sup> The refugees were normally in the courtyard of the BPO, but would seek shelter from the rain and sun on the veranda.<sup>5891</sup> There were bodies visible everywhere in the streets of Butare and at the BPO.<sup>5892</sup>

2196. One evening at the end of May 1994,<sup>5893</sup> Nyiramasuhuko arrived at the BPO in a white Toyota pickup truck that was full of *Interahamwe*.<sup>5894</sup> Mbasha’s wife was sleeping on the veranda of the BPO with her three daughters.<sup>5895</sup> The *Interahamwe* stepped from the vehicle and forced Mbasha’s wife and three children into the vehicle. Witness QJ stated that Nyiramasuhuko and her *Interahamwe* took the family to Kabutare forest; “[t]hey were screaming until I lost sight of them.”<sup>5896</sup> Three people were in the cabin of the truck and the Mbashas were in the rear.<sup>5897</sup> Mbasha’s wife was wearing a *kitenge* wrap and a pullover.<sup>5898</sup> He estimated that he saw them at 4.00 p.m.<sup>5899</sup> He testified that he has not seen any of the Mbasha family since then.<sup>5900</sup> The abduction occurred in the evening, when the BPO was closed, and the *préfet*, Sylvain Nsabimana, had already left his office.<sup>5901</sup> Witness QJ positively identified Nyiramasuhuko in court.<sup>5902</sup>

2197. Mbasha was a customer at the hotel where Witness QJ used to work.<sup>5903</sup> Sometimes Mbasha’s wife and children would also come.<sup>5904</sup> Mbasha’s wife used to work in a pharmacy and Witness QJ estimated that she was 35 years old in 1994.<sup>5905</sup> He estimated that the eldest child was in the first year of primary school, around seven years old, and that all three of Mbasha’s daughters were one year apart.<sup>5906</sup>

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<sup>5887</sup> T. 13 November 2001 p. 59 (Witness QJ).

<sup>5888</sup> T. 13 November 2001 p. 54 (Witness QJ).

<sup>5889</sup> T. 13 November 2001 pp. 136-139 (ICS); T. 14 November 2001 pp. 14-16, 18-19 (ICS) (Witness QJ).

<sup>5890</sup> T. 12 November 2001 p. 96 (ICS) (Witness QJ).

<sup>5891</sup> T. 12 November 2001 pp. 118-119 (Witness QJ).

<sup>5892</sup> T. 12 November 2001 p. 24 (Witness QJ).

<sup>5893</sup> T. 8 November 2001 pp. 158, 162; T. 12 November 2001 p. 123 (Witness QJ).

<sup>5894</sup> T. 8 November 2001 pp. 146-147 (Witness QJ).

<sup>5895</sup> T. 8 November 2001 pp. 146, 153; T. 12 November 2001 p. 93 (ICS) (Witness QJ).

<sup>5896</sup> T. 8 November 2001 pp. 154-155 (Witness QJ).

<sup>5897</sup> T. 12 November 2001 p. 122 (Witness QJ).

<sup>5898</sup> T. 12 November 2001 p. 93 (ICS) (Witness QJ).

<sup>5899</sup> T. 12 November 2001 p. 96 (ICS) (Witness QJ).

<sup>5900</sup> T. 8 November 2001 p. 155 (Witness QJ).

<sup>5901</sup> T. 13 November 2001 pp. 53, 122 (Witness QJ).

<sup>5902</sup> T. 12 November 2001 p. 38 (Witness QJ).

<sup>5903</sup> T. 12 November 2001 p. 69 (ICS) (Witness QJ).

<sup>5904</sup> T. 12 November 2001 p. 71 (ICS) (Witness QJ).

<sup>5905</sup> T. 12 November 2001 pp. 71, 89 (ICS) (Witness QJ).

<sup>5906</sup> T. 12 November 2001 pp. 90, 92-93 (ICS) (Witness QJ).

Prosecution Witness QCB

2198. Witness QCB, a Hutu driver in 1994 and detained witness at the time of testimony,<sup>5907</sup> testified that he went to the BPO on 28 April 1994 at about 9.00 a.m.<sup>5908</sup> Witness QCB witnessed numerous Tutsi refugee women and children in the courtyard.<sup>5909</sup> There were also refugee men who were incarcerated in the brigade of the BPO.<sup>5910</sup> They had sought refuge at the BPO, believing the *préfet* had a responsibility to protect them.<sup>5911</sup> When he arrived at the BPO, Witness QCB saw *Préfet* Nsabimana sitting next to a driver named Musoni in a Mitsubishi Pajero with the inscription, “*Région Sanitaire*” on the side.<sup>5912</sup> The *préfet* had requisitioned this vehicle from the *Région Sanitaire* even prior to the war.<sup>5913</sup> Musoni was the son of Kamonyo Kambayi.<sup>5914</sup> The *préfet*’s former driver, Rukambira, had been killed.<sup>5915</sup>

2199. Shalom Ntahobali arrived at the BPO in a Peugeot 505 accompanied by *Interahamwe*.<sup>5916</sup> A Daihatsu, driven by Désiré, the son of Munyagaseheke, also arrived with Shalom.<sup>5917</sup> Shalom leaned up against Nsabimana’s vehicle and had a conversation with the *préfet*.<sup>5918</sup> The *Interahamwe* forced about 30 Tutsi refugees who were staying at the BPO to board the Daihatsu at gunpoint as Shalom watched.<sup>5919</sup> Shalom then told the driver, “[l]et’s go.” Witness QCB testified that Shalom was in charge because he was the one issuing orders.<sup>5920</sup> As the Daihatsu was loaded, Nsabimana watched from his vehicle about 10 steps away.<sup>5921</sup> The Daihatsu and Peugeot left towards the *Groupe Scolaire*. Nsabimana’s vehicle then left in the direction of the *Quartier Arabe*.<sup>5922</sup> About 25 minutes later, Witness QCB stood at the *Chez Bihira* roadblock. Some people who had passed by the *Groupe Scolaire* told him that Shalom and the *Interahamwe* were in the process of killing the Tutsis who had been loaded into Munyagaseheke’s vehicle.<sup>5923</sup>

2200. Witness QCB testified that he met Ntahobali a long time prior to the events when he visited Ntahobali’s home with the driver of Ntahobali’s father.<sup>5924</sup> He positively identified Ntahobali in court.<sup>5925</sup>

<sup>5907</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).

<sup>5908</sup> T. 21 March 2002 p. 50 (Witness QCB).

<sup>5909</sup> T. 27 March 2002 pp. 42, 44 (Witness QCB).

<sup>5910</sup> T. 27 March 2002 p. 44 (Witness QCB).

<sup>5911</sup> T. 27 March 2002 p. 42 (Witness QCB).

<sup>5912</sup> T. 21 March 2002 pp. 50-51; T. 21 March 2002 p. 57 (Witness QCB) (French) (for spelling of “*Région Sanitaire*”).

<sup>5913</sup> T. 27 March 2002 p. 32 (Witness QCB).

<sup>5914</sup> T. 27 March 2002 p. 30 (Witness QCB).

<sup>5915</sup> T. 27 March 2002 p. 31 (Witness QCB).

<sup>5916</sup> T. 21 March 2002 pp. 52, 54 (Witness QCB).

<sup>5917</sup> T. 21 March 2002 p. 52 (Witness QCB).

<sup>5918</sup> T. 21 March 2002 pp. 51-52 (Witness QCB).

<sup>5919</sup> T. 21 March 2002 pp. 54-55; T. 27 March 2002 p. 53 (Witness QCB).

<sup>5920</sup> T. 21 March 2002 p. 55 (Witness QCB).

<sup>5921</sup> T. 21 March 2002 pp. 55, 65 (Witness QCB).

<sup>5922</sup> T. 21 March 2002 p. 64; T. 21 March 2002 p. 72 (Witness QCB) (French) (for spelling of “*Quartier Arabe*”).

<sup>5923</sup> T. 21 March 2002 p. 67; T. 27 March 2002 p. 52 (Witness QCB).

<sup>5924</sup> T. 25 March 2002 p. 46 (ICS) (Witness QCB).

<sup>5925</sup> T. 21 March 2002 p. 82 (Witness QCB).

Prosecution Witness TK

2201. Witness TK, a Tutsi teacher, testified that after the death of President Habyarimana she fled with her family to Butare town where they first hid in a parish. Witness TK then telephoned her sister who said that killings had not yet started in Butare.<sup>5926</sup> Her sister, accompanied by two soldiers whom she paid, went to fetch Witness TK and other family members from the parish in a pickup truck belonging to the Benedictine convent and brought them to Butare town.<sup>5927</sup> In Butare town they hid in a convent, adjacent to the *économat* and bursar buildings.<sup>5928</sup> The situation was calm and she could move around the convent but two days later, the situation changed. A plane landed, and the next day gunshots and bombs exploded in town.<sup>5929</sup> Following a megaphone announcement, searches were conducted everywhere to find those in hiding. As a result, six soldiers discovered her on a date between the end of May 1994 and the beginning of June 1994.<sup>5930</sup>

2202. Sisters at the convent prevented the soldiers from killing the group of people she had been hiding with.<sup>5931</sup> Members of the group were asked to show identity cards. Those who had them showed their cards. The soldiers were armed with rifles. They forced the young men to kneel, tied them up and beat them. The soldiers locked up the members of the group, and stated that they would bring *Interahamwe* to kill them that evening. However, the next morning the soldiers took them to the BPO.<sup>5932</sup> There were many, many people at the BPO, but Witness TK was not able to estimate the number.<sup>5933</sup>

2203. Witness TK arrived at the BPO in the morning sometime towards the end of May or beginning of June and left when the refugees were taken to Rango.<sup>5934</sup> She said that she spent two to three weeks at the BPO.<sup>5935</sup> She did not see President Sindikubwabo at the BPO, but she did see a man named Kazungu who was the *Interahamwe* escort to one of the *préfets*.<sup>5936</sup> Kazungu was a young man of light complexion.<sup>5937</sup> At some point he started to wear a military uniform; those at the BPO thought that the uniform was a reward for the work he had done as an *Interahamwe*.<sup>5938</sup>

2204. The *Interahamwe* split the refugees into several groups: men on one side, old people on another, women on another.<sup>5939</sup> It was the *Interahamwe*'s job to know who had just arrived and to know who had to be killed.<sup>5940</sup> The Tutsis were shifted to one side, and they started taking

<sup>5926</sup> T. 23 May 2002 pp. 56-57 (Witness TK).

<sup>5927</sup> T. 23 May 2002 pp. 57-58; T. 23 May 2002 p. 77 (ICS) (Witness TK).

<sup>5928</sup> T. 20 May 2002 p. 26; T. 22 May 2002 p. 37; T. 27 May 2002 p. 87 (Witness TK).

<sup>5929</sup> T. 27 May 2002 p. 88 (Witness TK).

<sup>5930</sup> T. 20 May 2002 pp. 27-28; T. 27 May 2002 p. 107 (Witness TK).

<sup>5931</sup> T. 20 May 2002 pp. 28, 30 (Witness TK).

<sup>5932</sup> T. 20 May 2002 pp. 28-29 (Witness TK).

<sup>5933</sup> T. 20 May 2002 p. 36 (Witness TK).

<sup>5934</sup> T. 20 May 2002 pp. 28-29, 101; T. 21 May 2002 pp. 121-122 (ICS); T. 22 May 2002 p. 120 (Witness TK).

<sup>5935</sup> T. 21 May 2002 p. 121 (ICS) (Witness TK).

<sup>5936</sup> T. 23 May 2002 p. 83 (Witness TK).

<sup>5937</sup> T. 23 May 2002 p. 84 (Witness TK).

<sup>5938</sup> T. 23 May 2002 pp. 83, 85 (Witness TK).

<sup>5939</sup> T. 20 May 2002 pp. 75-76; T. 22 May 2002 p. 119 (Witness TK).

<sup>5940</sup> T. 22 May 2002 p. 119 (Witness TK).



the men.<sup>5941</sup> If someone was educated, they were also taken away. Any Tutsis had to be killed.<sup>5942</sup> The *Interahamwe* generally carried out the selection and Shalom was very often with them.<sup>5943</sup>

2205. In addition, some authorities came out of the BPO to take a look at the refugees.<sup>5944</sup> Other women pointed out *Préfet* Nsabimana and Nyiramasuhuko to Witness TK.<sup>5945</sup> The refugee women were surprised to see Pauline there and used her first name to identify her.<sup>5946</sup> The authorities, including Pauline, stood on the veranda of the BPO.<sup>5947</sup> Although Witness TK later testified that Nsabimana did not come out of the BPO when they arrived, she clarified that she saw him but did not know his name at the time.<sup>5948</sup> Two things led her to say that Nsabimana was there: (1) there were many people outside the BPO and the *préfet* was the head; and (2) it was during office hours.<sup>5949</sup> The authorities looked very surprised and one of them said, “[i]n Butare, there are still some ... *Inyenzi!*”<sup>5950</sup> Witness TK explained that Tutsis were called “*Inyenzi*” during that period.<sup>5951</sup> The authorities said that this time around nobody would survive.<sup>5952</sup>

2206. That same morning, the soldiers picked up a boy named Pierre and killed him.<sup>5953</sup> The other males in Witness TK’s group were taken to an old building behind the *préfecture* where the *Interahamwe* tortured, beat and insulted them.<sup>5954</sup> In the evening, around 5.00 p.m., those males were killed at the BPO by the *Interahamwe*.<sup>5955</sup> The group killed included a refugee who was working as a driver for Caritas.<sup>5956</sup> He was taken away in the evening and killed behind the BPO.<sup>5957</sup>

2207. She watched very closely because her brother was among the group of men.<sup>5958</sup> She went to the back of the BPO in the afternoon to speak with her brother, encouraging him to make an effort and saying she too was waiting to die.<sup>5959</sup> On the following morning, Witness TK saw an *Interahamwe* wearing her brother’s jacket.<sup>5960</sup> She looked around and discovered her brother’s body along with two others near a tree behind the BPO.<sup>5961</sup> Her brother’s legs had

<sup>5941</sup> T. 22 May 2002 pp. 122-123 (Witness TK).

<sup>5942</sup> T. 22 May 2002 p. 123 (Witness TK).

<sup>5943</sup> T. 28 May 2002 p. 53 (Witness TK).

<sup>5944</sup> T. 20 May 2002 p. 41; T. 23 May 2002 p. 157 (Witness TK).

<sup>5945</sup> T. 20 May 2002 p. 40 (Witness TK).

<sup>5946</sup> T. 22 May 2002 pp. 52, 59-60 (Witness TK).

<sup>5947</sup> T. 20 May 2002 p. 55; T. 22 May 2002 pp. 51-52 (Witness TK); Prosecution Exhibit 23C (Photograph of the BPO).

<sup>5948</sup> T. 23 May 2002 pp. 157, 162 (Witness TK).

<sup>5949</sup> T. 23 May 2002 p. 156 (Witness TK).

<sup>5950</sup> T. 20 May 2002 p. 41 (Witness TK).

<sup>5951</sup> T. 20 May 2002 p. 42 (Witness TK).

<sup>5952</sup> T. 20 May 2002 p. 41 (Witness TK).

<sup>5953</sup> T. 20 May 2002 p. 36; T. 22 May 2002 pp. 44-45, 59; T. 23 May 2002 pp. 144-145 (Witness TK).

<sup>5954</sup> T. 20 May 2002 p. 44 (Witness TK).

<sup>5955</sup> T. 20 May 2002 pp. 38, 42 (Witness TK).

<sup>5956</sup> T. 20 May 2002 p. 72 (Witness TK).

<sup>5957</sup> T. 20 May 2002 pp. 72-73; T. 22 May 2002 p. 40 (Witness TK).

<sup>5958</sup> T. 20 May 2002 p. 45; T. 22 May 2002 p. 40; T. 23 May 2002 p. 61 (ICS) (Witness TK).

<sup>5959</sup> T. 20 May 2002 p. 45; T. 23 May 2002 pp. 61-64 (ICS) (Witness TK).

<sup>5960</sup> T. 20 May 2002 p. 39 (Witness TK).

<sup>5961</sup> T. 20 May 2002 pp. 39, 50 (Witness TK).

been cut off and a dog was feeding upon his corpse.<sup>5962</sup> At that time, there were still some men left in the group of refugees, but they were subsequently taken away during the night.<sup>5963</sup>

2208. A soldier who killed Pierre brought his identification card back to Witness TK.<sup>5964</sup> She had started to walk away from the guava tree where she had been staying when a soldier approached her with the identification.<sup>5965</sup> They asked her to read the identification to see if she could read and to see if she and Pierre were related.<sup>5966</sup> Witness TK testified that since she and Pierre had walked to the BPO together, the *Interahamwe* must have thought they were brother and sister whereas she did not know him.<sup>5967</sup> Pierre was a university student who had survived the massacres at the university.<sup>5968</sup> She said this fact was omitted from her prior statement because the statement was concise.<sup>5969</sup>

2209. The same morning Pierre was killed, Witness TK saw a young refugee named Alphonse run around the flag pole in front of the BPO, towards Nsabimana's office.<sup>5970</sup> She knew Alphonse because they had sought refuge at the same places together and Witness TK had arrived at the BPO with Alphonse.<sup>5971</sup> As he ran, Alphonse called for help.<sup>5972</sup> He entered the office but was forced out a few moments later; Witness TK did not know whether the man was forced out by Nsabimana or by a soldier.<sup>5973</sup> Outside the *préfet's* office, a man approached Alphonse with a club and Alphonse attempted to run away.<sup>5974</sup> He was caught by three young men and taken away by *Interahamwe* in the direction of the market, with his hands tied behind his back.<sup>5975</sup> Alphonse never came back to the BPO and Witness TK concluded that he had been killed.<sup>5976</sup> Nsabimana was present at the BPO when all of the men who had been hiding at the convent, including Pierre, were taken away.<sup>5977</sup> Nsabimana and Nyiramasuhuko did not offer assistance to the refugees.<sup>5978</sup> She later said that Alphonse was pushed out of the office in the afternoon of that day.<sup>5979</sup>

2210. As a result of the search for Tutsis occurring on that day, refugees continued to arrive at the BPO.<sup>5980</sup> Later the same day that Pierre and Alphonse had been killed, another group of

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<sup>5962</sup> T. 20 May 2002 p. 39 (Witness TK).

<sup>5963</sup> T. 20 May 2002 p. 47 (Witness TK).

<sup>5964</sup> T. 20 May 2002 p. 36; T. 22 May 2002 pp. 63-64 (Witness TK).

<sup>5965</sup> T. 27 May 2002 p. 7 (Witness TK).

<sup>5966</sup> T. 20 May 2002 p. 36; T. 27 May 2002 p. 8 (Witness TK).

<sup>5967</sup> T. 27 May 2002 p. 8 (Witness TK).

<sup>5968</sup> T. 20 May 2002 p. 37; T. 27 May 2002 p. 8 (Witness TK).

<sup>5969</sup> T. 22 May 2002 p. 70 (Witness TK); Defence Exhibit 43 (Nyiramasuhuko) (List of Alleged Omissions by Witness TK) para. 13; Defence Exhibit 47 (Nyiramasuhuko and Ntahobali) (22-23 April 1998, Statement of Witness TK).

<sup>5970</sup> T. 20 May 2002 pp. 60-61; T. 27 May 2002 p. 9 (Witness TK).

<sup>5971</sup> T. 20 May 2002 p. 60; T. 27 May 2002 pp. 18, 31-32 (Witness TK).

<sup>5972</sup> T. 20 May 2002 p. 61 (Witness TK).

<sup>5973</sup> T. 20 May 2002 p. 61; T. 27 May 2002 p. 18 (Witness TK).

<sup>5974</sup> T. 27 May 2002 p. 19 (Witness TK).

<sup>5975</sup> T. 20 May 2002 pp. 61-62; T. 27 May 2002 p. 19 (Witness TK).

<sup>5976</sup> T. 20 May 2002 p. 62 (Witness TK).

<sup>5977</sup> T. 20 May 2002 p. 42 (Witness TK).

<sup>5978</sup> T. 20 May 2002 p. 46 (Witness TK).

<sup>5979</sup> T. 27 May 2002 p. 28 (Witness TK).

<sup>5980</sup> T. 20 May 2002 pp. 62, 65 (Witness TK).

refugees arrived at the BPO.<sup>5981</sup> This group had been hiding in a building next door to where the witness had been hiding before *Interahamwe* discovered her.<sup>5982</sup> This group of refugees included a bald, fair-coloured, tall man who arrived with his family.<sup>5983</sup> Other refugees at the BPO and some officials who were in front of the BPO called the man Mbasha.<sup>5984</sup> Mbasha was led directly in front of the BPO where he greeted some individuals the witness could not identify.<sup>5985</sup> The *préfet* and Pauline were in front of the BPO at this time as it appeared there had been a meeting. Later, Mbasha was put into a Hiace minibus taxi and escorted away by two *gendarmes*, one drove and the other sat next to Mbasha in the vehicle.<sup>5986</sup> She never saw him again.<sup>5987</sup>

2211. Witness TK testified that on that same night at around 7.00 or 7.30 p.m.,<sup>5988</sup> soldiers and *Interahamwe* arrived in a small truck.<sup>5989</sup> The truck had an open back, but because the event occurred at night she could not determine the make or colour of the vehicle.<sup>5990</sup> Shalom drove the vehicle. Pauline and some *Interahamwe* were also inside. The vehicle was in front of the BPO on one side of the national flag pole.<sup>5991</sup> She knew Shalom was driving because the people at the BPO had said his name.<sup>5992</sup> The *Interahamwe* that arrived in the vehicle carried weapons such as machetes, clubs and daggers.<sup>5993</sup>

2212. After descending from the vehicle, Shalom and some of the *Interahamwe* exclaimed that nobody should be spared or treated leniently.<sup>5994</sup> Shalom told the *Interahamwe* to do their work seriously.<sup>5995</sup> *Interahamwe* attacked the group of refugees and chose people to be taken away to be killed.<sup>5996</sup> *Interahamwe* started stripping people lying on the ground.<sup>5997</sup> Witness TK believed that Shalom was the leader of the *Interahamwe*.<sup>5998</sup>

2213. Shalom approached Mbasha's wife and asked her if she knew him. She answered: "Yes, I do know you. You are Shalom. You are the one that was usually sent to the pharmacy to buy drugs and I was in the same school, the same bench as your mother, Pauline."<sup>5999</sup> Shalom asked Mbasha's wife which of the two children who accompanied her was the girl, and that he would make the child his wife. Mbasha's wife answered, "no, that's out of question

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<sup>5981</sup> T. 20 May 2002 pp. 62, 64 (Witness TK).

<sup>5982</sup> T. 20 May 2002 p. 64 (Witness TK).

<sup>5983</sup> T. 20 May 2002 pp. 62-63; T. 23 May 2002 pp. 21-22 (Witness TK).

<sup>5984</sup> T. 20 May 2002 p. 63 (Witness TK).

<sup>5985</sup> T. 20 May 2002 p. 64 (Witness TK).

<sup>5986</sup> T. 20 May 2002 p. 65 (Witness TK).

<sup>5987</sup> T. 20 May 2002 p. 65 (Witness TK); T. 21 May 2002 p. 140 (Witness TK).

<sup>5988</sup> T. 23 May 2002 p. 44 (Witness TK).

<sup>5989</sup> T. 20 May 2002 p. 73 (Witness TK).

<sup>5990</sup> T. 23 May 2002 p. 47 (Witness TK).

<sup>5991</sup> T. 20 May 2002 pp. 73-74; T. 23 May 2002 p. 48 (Witness TK).

<sup>5992</sup> T. 20 May 2002 p. 74; T. 23 May 2002 p. 87 (Witness TK).

<sup>5993</sup> T. 20 May 2002 p. 75 (Witness TK).

<sup>5994</sup> T. 20 May 2002 p. 89 (Witness TK).

<sup>5995</sup> T. 20 May 2002 p. 88 (Witness TK).

<sup>5996</sup> T. 20 May 2002 p. 75 (Witness TK).

<sup>5997</sup> T. 20 May 2002 p. 76 (Witness TK).

<sup>5998</sup> T. 20 May 2002 p. 88 (Witness TK).

<sup>5999</sup> T. 20 May 2002 pp. 76-77 (Witness TK).

because these are still children”.<sup>6000</sup> Then Shalom asked Mbasha’s wife to go to the truck, telling her not to be afraid and that nothing bad would happen to her.<sup>6001</sup>

2214. At the same time *Interahamwe* approached from the other side of the BPO and started to beat people.<sup>6002</sup> Mbasha’s wife was stripped of her *kitenge* wrap by *Interahamwe*, leaving it on the ground.<sup>6003</sup> Mbasha’s wife was loaded onto the truck with her two children.<sup>6004</sup> As the *Interahamwe* threw the children upon Mbasha’s wife, she pleaded for her children, stating, “[p]lease pity my children, you can take me. Spare my children, please.”<sup>6005</sup> It was the first time Witness TK saw Mbasha’s wife.<sup>6006</sup> Nyiramasuhuko was by the truck when Mbasha’s wife and children were loaded on it, but Witness TK could not recall what Nyiramasuhuko was wearing.<sup>6007</sup> The *Interahamwe* loaded other refugees into the truck with Mbasha’s wife and her children.<sup>6008</sup> Most had also been stripped of their clothes by soldiers and *Interahamwe*.<sup>6009</sup> While the other refugees were being loaded into the vehicle, the witness was standing near the front of the BPO, hiding behind the trees and was able to see all that the *Interahamwe* did.<sup>6010</sup>

2215. While the refugees were stripped and loaded on the truck, at around 7.00 or 7.30 p.m., a refugee girl named Trifina started shouting.<sup>6011</sup> Nyiramasuhuko said that noise should be stopped and those who were shouting should be set aside.<sup>6012</sup> Trifina was attacked by *Interahamwe* with daggers and her shoulder was wounded.<sup>6013</sup> She shouted even louder.<sup>6014</sup> *Interahamwe* then slit her throat, almost cutting her head off, and threw her dead body into the vehicle.<sup>6015</sup> When the vehicle was full of people Ntahobali drove it away with Nyiramasuhuko as a passenger. The truck left behind certain *Interahamwe* to select those who were to be loaded on the next trip.<sup>6016</sup> The truck returned another two times that night and loaded more refugees who were then quickly taken away.<sup>6017</sup> Ntahobali and Nyiramasuhuko were on board on each trip.<sup>6018</sup>

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<sup>6000</sup> T. 20 May 2002 p. 81 (Witness TK).

<sup>6001</sup> T. 20 May 2002 p. 83 (Witness TK).

<sup>6002</sup> T. 20 May 2002 p. 83 (Witness TK).

<sup>6003</sup> T. 20 May 2002 p. 85; T. 23 May 2002 p. 23 (Witness TK).

<sup>6004</sup> T. 20 May 2002 pp. 85-86; T. 23 May 2002 pp. 31-32 (Witness TK).

<sup>6005</sup> T. 20 May 2002 p. 86 (Witness TK).

<sup>6006</sup> T. 20 May 2002 p. 80 (Witness TK).

<sup>6007</sup> T. 20 May 2002 p. 86; T. 23 May 2002 p. 45 (Witness TK).

<sup>6008</sup> T. 20 May 2002 p. 87; T. 23 May 2002 p. 37 (Witness TK).

<sup>6009</sup> T. 20 May 2002 pp. 87-88 (Witness TK).

<sup>6010</sup> T. 20 May 2002 p. 90 (Witness TK).

<sup>6011</sup> T. 20 May 2002 p. 90; T. 22 May 2002 p. 95; T. 20 May 2002 p. 98 (Witness TK) (French) (for spelling of “Trifina”).

<sup>6012</sup> T. 20 May 2002 pp. 90, 92-93; T. 22 May 2002 pp. 103, 108-109 (Witness TK).

<sup>6013</sup> T. 20 May 2002 p. 91; T. 22 May 2002 pp. 73, 77 (Witness TK).

<sup>6014</sup> T. 20 May 2002 p. 91 (Witness TK).

<sup>6015</sup> T. 20 May 2002 p. 91; T. 22 May 2002 pp. 73, 77 (Witness TK).

<sup>6016</sup> T. 20 May 2002 p. 95 (Witness TK).

<sup>6017</sup> T. 20 May 2002 p. 96 (Witness TK).

<sup>6018</sup> T. 20 May 2002 p. 98 (Witness TK).

2216. Witness TK testified that she saw Ntahobali hit Tutsi refugees and encouraged others to do the same.<sup>6019</sup> Witness TK confirmed that the events concerning Mr. Mbasha, Pierre, the Caritas driver, Mrs. Mbasha and her children and Trifina all occurred on the same day.<sup>6020</sup>

2217. On that day there were more than 10 *Interahamwe* at the BPO, including some who were staying there.<sup>6021</sup> Witness TK said she knew the *Interahamwe* who accompanied Shalom well because they stayed with them until she was taken to Rango. She named several as Ribanje, Cyabubare, who usually carried a machete on his belt, Ngoma, who was often armed with a club, and Mbote, who was an ethnic Twa.<sup>6022</sup> They would speak their names loudly and clearly and would brag about their exploits because to be an *Interahamwe* was a point of pride.<sup>6023</sup> Witness TK testified that she did not notice what the *Interahamwe* were wearing. When it was put to her that her prior statement stated the *Interahamwe* were wearing pants and coats of the same colour, she said that her prior statement was likely correct because it was taken in 1996, much closer in time to the events.<sup>6024</sup>

2218. Apart from the night when she arrived at the BPO, Witness TK saw Shalom very often at the BPO.<sup>6025</sup> He came on a number of evenings, accompanied by *Interahamwe* or disabled soldiers who were staying at the *Groupe Scolaire*.<sup>6026</sup> Those soldiers hit people with their crutches.<sup>6027</sup> Shalom came to mock the refugees.<sup>6028</sup> On some occasions, he abducted women who were then raped.<sup>6029</sup> She did not see Pauline when the rapes occurred.<sup>6030</sup> Shalom also came to determine whether there were any men left, who were then taken away to be killed. Shalom committed crimes on each evening he came to the BPO.<sup>6031</sup> He would say to the *Interahamwe*, “be firm in your actions”, when he meant, “kill all of them.”<sup>6032</sup> The *Interahamwe* surrounded Ntahobali and called him “*Shalom, chef*.”<sup>6033</sup> Witness TK also saw Shalom at the BPO on a few occasions during the day.<sup>6034</sup> Nyiramasuhuko came alone to the BPO on other occasions.<sup>6035</sup>

2219. Witness TK testified that at some point there were approximately 300 people at the BPO, including refugees, *Interahamwe* and street children.<sup>6036</sup> Almost all of the refugees were abducted at some point.<sup>6037</sup> There were a few Hutu refugees at the BPO, but most of them were

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<sup>6019</sup> T. 22 May 2002 p. 130 (Witness TK).

<sup>6020</sup> T. 22 May 2002 p. 95 (Witness TK).

<sup>6021</sup> T. 22 May 2002 p. 97 (Witness TK).

<sup>6022</sup> T. 22 May 2002 p. 98 (Witness TK).

<sup>6023</sup> T. 22 May 2002 p. 99 (Witness TK).

<sup>6024</sup> T. 22 May 2002 pp. 98-101 (Witness TK); Defence Exhibit 48 (Nyiramasuhuko) (12 November 1996, Statement of Witness TK).

<sup>6025</sup> T. 20 May 2002 p. 100; T. 23 May 2002 p. 88 (Witness TK).

<sup>6026</sup> T. 20 May 2002 p. 100; T. 23 May 2002 p. 126 (Witness TK).

<sup>6027</sup> T. 23 May 2002 p. 126 (Witness TK).

<sup>6028</sup> T. 20 May 2002 p. 100 (Witness TK).

<sup>6029</sup> T. 20 May 2002 p. 100; T. 23 May 2002 p. 126 (Witness TK).

<sup>6030</sup> T. 28 May 2002 p. 53 (Witness TK).

<sup>6031</sup> T. 20 May 2002 p. 100 (Witness TK).

<sup>6032</sup> T. 22 May 2002 p. 109 (Witness TK).

<sup>6033</sup> T. 23 May 2002 p. 93 (Witness TK).

<sup>6034</sup> T. 23 May 2002 pp. 89-90 (Witness TK).

<sup>6035</sup> T. 28 May 2002 p. 53 (Witness TK).

<sup>6036</sup> T. 21 May 2002 pp. 116-117 (ICS); T. 23 May 2002 p. 7 (Witness TK).

<sup>6037</sup> T. 27 May 2002 p. 37 (Witness TK).

evacuated to Mubumbano when they arrived at the BPO.<sup>6038</sup> By the time the Tutsi refugees were transferred to Rango, there were only about 75 left; their numbers were visibly reduced.<sup>6039</sup>

2220. A woman named Immaculée gave birth to a baby at the BPO on 18 June 1994.<sup>6040</sup> Immaculée was at the BPO when the witness arrived. At that time, refugees at the BPO had already been sent to Nyange on buses to be killed and later returned.<sup>6041</sup> Witness TK left for Rango with Immaculée a few days after the baby was born.<sup>6042</sup>

2221. Witness TK said that while at the BPO, the refugees sent a boy to a creek to fetch water and her sister sometimes sent her food from the convent. She did not know how her sister obtained the food. Others at the BPO died of hunger and because living conditions were difficult.<sup>6043</sup> She did not see the Red Cross distribute food at the BPO, but a group of white people visited the BPO one time to look around.<sup>6044</sup> During that visit, Nsabimana walked very close to her and she recognised him.<sup>6045</sup>

2222. The offices at the BPO continued to function during her presence. Employees and drivers came to the BPO, including one driver of a bulldozer who buried the dead. He parked the bulldozer at the BPO.<sup>6046</sup>

2223. Witness TK did not know Ntahobali prior to the events, and had not seen him again after the war.<sup>6047</sup> She identified Ntahobali in court.<sup>6048</sup> She said Ntahobali did not have a rich beard in 1994 and that he had become an adult since then but she immediately recognised him because his face had not changed significantly.<sup>6049</sup> She said she was 100 percent certain that the person she had identified in court was in fact Ntahobali.<sup>6050</sup>

2224. Witness TK said that people at the BPO identified Pauline Nyiramasuhuko, the *préfet* and other important persons for her that she had not known before: Pauline Nyiramasuhuko was a woman of medium height, and the *préfet* had a little belly and a scar on his face. She had heard that his name was Sylvain. The more time she spent at the BPO, the more she knew people's names.<sup>6051</sup> Witness TK identified Nsabimana and Nyiramasuhuko in court.<sup>6052</sup>

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<sup>6038</sup> T. 23 May 2002 p. 9 (Witness TK).

<sup>6039</sup> T. 28 May 2002 p. 57 (Witness TK).

<sup>6040</sup> T. 21 May 2002 pp. 117-118 (ICS) (Witness TK).

<sup>6041</sup> T. 23 May 2002 pp. 51-52; *see* T. 23 May 2002 p. 62 (Witness TK) (French) (for spelling of “Nyange”).

<sup>6042</sup> T. 23 May 2002 p. 54; T. 28 May 2002 p. 35 (Witness TK).

<sup>6043</sup> T. 27 May 2002 pp. 38-39 (Witness TK).

<sup>6044</sup> T. 27 May 2002 pp. 39-40, 46 (Witness TK).

<sup>6045</sup> T. 27 May 2002 p. 46 (Witness TK).

<sup>6046</sup> T. 28 May 2002 p. 32 (Witness TK).

<sup>6047</sup> T. 20 May 2002 p. 115 (Witness TK).

<sup>6048</sup> T. 20 May 2002 pp. 115-116 (Witness TK).

<sup>6049</sup> T. 23 May 2002 pp. 91-92 (Witness TK).

<sup>6050</sup> T. 23 May 2002 p. 115 (Witness TK).

<sup>6051</sup> T. 20 May 2002 pp. 40-41, 61-62; T. 23 May 2002 p. 153 (Witness TK).

<sup>6052</sup> T. 20 May 2002 pp. 112-114 (Witness TK).

Prosecution Witness SJ

2225. Witness SJ, a Tutsi from Mbazi *commune*, testified she sought shelter at the BPO on a Sunday in April 1994 at 6.15 a.m.<sup>6053</sup> She left her *secteur* when her house was burned down. She hid in forests and millet fields for two weeks before she went to the BPO, travelling via side roads across the valleys in order to avoid roadblocks on the main road.<sup>6054</sup>

2226. She stayed at the BPO for about two weeks.<sup>6055</sup> During the first two weeks at the BPO, she was arrested and taken to the police brigade.<sup>6056</sup> She also went to the EER during these two weeks.<sup>6057</sup> She was arrested the same day that the first bus left for Nyange.<sup>6058</sup> She later testified that she was arrested the day after the first two buses left for Nyange, but could not remember if it was before or after.<sup>6059</sup> She stayed at the BPO for about another week before being taken to Rango.<sup>6060</sup> Witness SJ testified that refugees were taken to Nyange at the end of April or beginning of May 1994, but that it may have been before or after that period.<sup>6061</sup> She said she was sent to Rango and stayed there for two weeks, but could not remember when she was released by the national army.<sup>6062</sup>

2227. Witness SJ testified that there was no security where she was from so she went to where the authorities were located, hoping she would be protected there.<sup>6063</sup> She estimated that about 1,500 Tutsi refugees were at the BPO when she got there, but some people left and some arrived as time went on.<sup>6064</sup>

2228. Refugees at the BPO were not provided with food, water, or shelter; they did not have access to sanitary facilities and there was no medical care available.<sup>6065</sup> Children were sometimes sent to fetch water in a valley where there were springs and were killed.<sup>6066</sup> One day, the refugees received maize flour and beans, but three days later these were taken away.<sup>6067</sup> Someone gave them a spoonful of flour a day to survive.<sup>6068</sup> The toilets at the BPO were locked.<sup>6069</sup> The refugees were in a very poor state of health and bore various types of wounds caused by machetes, axes, hammers and clubs.<sup>6070</sup> Some had lost limbs, or had wounds on their legs, arms and neck.<sup>6071</sup> She heard refugees discuss how others were killed or their houses were burned down because they were Tutsis which led her to conclude that the

<sup>6053</sup> T. 28 May 2002 p. 112; T. 30 May 2002 p. 70 (ICS); T. 5 June 2002 p. 18 (Witness SJ).

<sup>6054</sup> T. 30 May 2002 pp. 65-66, 69-70 (ICS); T. 3 June 2002 pp. 49-50, 54-56 (ICS) (Witness SJ).

<sup>6055</sup> T. 3 June 2002 p. 120 (Witness SJ).

<sup>6056</sup> T. 30 May 2002 p. 76 (Witness SJ).

<sup>6057</sup> T. 30 May 2002 p. 78 (Witness SJ).

<sup>6058</sup> T. 30 May 2002 pp. 76-77 (Witness SJ).

<sup>6059</sup> T. 4 June 2002 pp. 146-147 (ICS) (Witness SJ).

<sup>6060</sup> T. 30 May 2002 p. 80 (Witness SJ).

<sup>6061</sup> T. 29 May 2002 pp. 65, 68; T. 4 June 2002 p. 84 (Witness SJ).

<sup>6062</sup> T. 29 May 2002 pp. 117, 120, 123 (Witness SJ).

<sup>6063</sup> T. 28 May 2002 p. 112 (Witness SJ).

<sup>6064</sup> T. 28 May 2002 p. 113; T. 30 May 2002 pp. 151-153; T. 4 June 2002 pp. 82-83 (Witness SJ).

<sup>6065</sup> T. 28 May 2002 pp. 148-150; T. 5 June 2002 pp. 35-36, 43-44 (Witness SJ).

<sup>6066</sup> T. 28 May 2002 p. 149; T. 5 June 2002 p. 41 (Witness SJ).

<sup>6067</sup> T. 5 June 2002 pp. 43-44; T. 5 June 2002 p. 53 (Witness SJ) (French) (for the inclusion of "flour").

<sup>6068</sup> T. 5 June 2002 pp. 44-45 (Witness SJ).

<sup>6069</sup> T. 28 May 2002 p. 151 (Witness SJ).

<sup>6070</sup> T. 28 May 2002 p. 113 (Witness SJ).

<sup>6071</sup> T. 28 May 2002 pp. 150-151 (Witness SJ).

refugees at the BPO were Tutsis.<sup>6072</sup> A lot of refugees at the BPO died because of hunger, the poor living conditions, or because they were killed.<sup>6073</sup> Witness SJ testified that on one occasion two white people came to inspect the refugees; this occurred prior to their departure to Nyange.<sup>6074</sup>

2229. There were no Hutu refugees at the BPO. While some other refugees arrived with cattle and their pots and pans to prepare food, they were told not to mix with the *Inyenzi* and to go instead to the stadium.<sup>6075</sup> She did not mix or mingle with these Hutu refugees because they were immediately taken to the stadium with their belongings. No Hutu refugees remained at the BPO.<sup>6076</sup>

2230. Witness SJ testified that during her first two weeks at the BPO she saw *Préfet* Sylvain, Kanyabashi and Nyiramasuhuko, as well as a number of other personalities.<sup>6077</sup> The day after she arrived at the BPO, she saw *Préfet* Sylvain on the veranda speaking with Nyiramasuhuko.<sup>6078</sup> She saw Nyiramasuhuko four times at the BPO, though she heard that Nyiramasuhuko came to the BPO on other occasions.<sup>6079</sup>

2231. The night of the meeting between the *préfet* and Nyiramasuhuko, Witness SJ saw Ntahobali arrive at the BPO on board a white Peugeot pickup covered with cow dung.<sup>6080</sup> There was no light at the BPO but the moon was full that night.<sup>6081</sup> Ntahobali was accompanied by at least 10 *Interahamwe* who were armed.<sup>6082</sup> The *Interahamwe* carried machetes and clubs, known as *ntapongano*, and knives. Shalom carried a firearm and had a knife attached to his belt.<sup>6083</sup> Ntahobali appeared to be in charge of the *Interahamwe*, as they called him “chief” and asked for his permission before acting.<sup>6084</sup> Witness SJ testified that she could not determine whether Ntahobali was driving or whether he had exited the driver’s side of the vehicle when he arrived.<sup>6085</sup>

2232. During the first attack, a woman was seated with her two children, one boy and one girl, less than one metre from Witness SJ. They were sharing bedding on the veranda with Witness SJ, when some *Interahamwe* tried to take away the woman.<sup>6086</sup> This woman had arrived that same day at the BPO with a large group of people from the parish. They were accompanied by religious sisters.<sup>6087</sup> During the attack, Ntahobali was accompanied by several

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<sup>6072</sup> T. 28 May 2002 pp. 113-114 (Witness SJ).

<sup>6073</sup> T. 28 May 2002 p. 149 (Witness SJ).

<sup>6074</sup> T. 5 June 2002 pp. 95-96 (Witness SJ).

<sup>6075</sup> T. 30 May 2002 p. 154 (Witness SJ).

<sup>6076</sup> T. 30 May 2002 pp. 153-154; T. 5 June 2002 p. 39 (Witness SJ).

<sup>6077</sup> T. 28 May 2002 pp. 115-116; T. 3 June 2002 pp. 121, 123 (Witness SJ).

<sup>6078</sup> T. 5 June 2002 pp. 17-19 (Witness SJ).

<sup>6079</sup> T. 3 June 2002 p. 121; T. 5 June 2002 p. 121 (Witness SJ).

<sup>6080</sup> T. 29 May 2002 pp. 19-20; T. 3 June 2002 p. 125 (Witness SJ).

<sup>6081</sup> T. 30 May 2002 pp. 150-151 (Witness SJ).

<sup>6082</sup> T. 29 May 2002 pp. 20-21 (Witness SJ). The Chamber estimates that, in light of the testimony, this incident happened in early June 1994.

<sup>6083</sup> T. 29 May 2002 p. 21 (Witness SJ).

<sup>6084</sup> T. 29 May 2002 pp. 23-24 (Witness SJ).

<sup>6085</sup> T. 30 May 2002 pp. 156, 158 (Witness SJ).

<sup>6086</sup> T. 29 May 2002 pp. 26, 34-35; T. 3 June 2002 pp. 20, 24 (Witness SJ).

<sup>6087</sup> T. 3 June 2002 p. 18 (Witness SJ).



people to his left and right and was looking for important people, asking, “[w]hat did you study?” and “[d]o you work?”<sup>6088</sup> Ntahobali approached the woman with her two children and told the *Interahamwe* that he would take care of her himself.<sup>6089</sup>

2233. Ntahobali asked the seated woman, “[d]o you know me?” The woman replied, “[y]es, I know you.” Shalom asked her, “[w]here do you know me from?” and the woman replied, “[y]ou are the son of Nyiramasuhuko, and I was in the same school with your mother.” Ntahobali replied, “[y]es, you do know me, it is true – what you have said is the truth.”<sup>6090</sup> Ntahobali promised the woman to bring her and her children to a safe place if she accepted that her 12-year-old daughter became his wife.<sup>6091</sup> Ntahobali was sitting on the veranda and had placed his foot on Witness SJ.<sup>6092</sup> Witness SJ testified that Ntahobali then took the woman and her children in the vehicle and drove away with them.<sup>6093</sup> The woman was seated in the cabin of the vehicle.<sup>6094</sup> Some other people were in the rear of the vehicle.<sup>6095</sup> Witness SJ testified that was the last time she saw the woman and her children, as they were not on board when the vehicle came back to the BPO.<sup>6096</sup> She said that when the truck returned, she heard the *Interahamwe* say that the woman was stupid to think that Shalom would save her because she was sitting in the cabin of the vehicle.<sup>6097</sup>

2234. Before leaving with the woman and her two children, Ntahobali pointed out people to the *Interahamwe* who were in the BPO courtyard.<sup>6098</sup> Those people were beaten and attacked with machetes. They were thrown into the vehicle by the *Interahamwe*.<sup>6099</sup> The refugees were jammed into the back, some were sitting and some were standing.<sup>6100</sup> The people loaded into the vehicle never returned.<sup>6101</sup>

2235. That same night, approximately 30 minutes after the vehicle had first left,<sup>6102</sup> the vehicle came back with Shalom and the *Interahamwe*.<sup>6103</sup> Ntahobali told the *Interahamwe* that they had to “go all the way” and that they should “spare no one.”<sup>6104</sup> The *Interahamwe* acted promptly and hit the refugees with sticks, machetes and other arms before throwing them on board the pickup and taking them away.<sup>6105</sup>

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<sup>6088</sup> T. 3 June 2002 pp. 19-20 (Witness SJ).

<sup>6089</sup> T. 29 May 2002 pp. 23, 26 (Witness SJ).

<sup>6090</sup> T. 29 May 2002 pp. 27-28; T. 3 June 2002 pp. 8-9 (Witness SJ).

<sup>6091</sup> T. 29 May 2002 pp. 30-31 (Witness SJ).

<sup>6092</sup> T. 29 May 2002 p. 31 (Witness SJ).

<sup>6093</sup> T. 29 May 2002 p. 36 (Witness SJ).

<sup>6094</sup> T. 29 May 2002 p. 37; T. 3 June 2002 p. 31 (Witness SJ).

<sup>6095</sup> T. 3 June 2002 pp. 31-32 (Witness SJ). It is unclear whether those people were *Interahamwe* or Tutsi refugees.

<sup>6096</sup> T. 29 May 2002 pp. 37, 39 (Witness SJ).

<sup>6097</sup> T. 29 May 2002 pp. 39-40 (Witness SJ).

<sup>6098</sup> T. 29 May 2002 pp. 35-36 (Witness SJ).

<sup>6099</sup> T. 29 May 2002 p. 36 (Witness SJ).

<sup>6100</sup> T. 29 May 2002 p. 45 (Witness SJ).

<sup>6101</sup> T. 29 May 2002 p. 39 (Witness SJ).

<sup>6102</sup> T. 29 May 2002 p. 55 (Witness SJ).

<sup>6103</sup> T. 29 May 2002 p. 57 (Witness SJ).

<sup>6104</sup> T. 29 May 2002 pp. 53-54 (Witness SJ). Ntahobali said “*ntugengeke*” which means “have no pity”.

<sup>6105</sup> T. 29 May 2002 pp. 53, 55 (Witness SJ).

2236. That same night, Witness SJ heard that the vehicle made a third trip to Kabutare.<sup>6106</sup> She did not witness this third incident herself as she was hiding in the container of a truck near the MINITRAP office behind the BPO.<sup>6107</sup> She heard about this third trip from young refugee women who stayed at the BPO and from the two survivors of the first trip who witnessed the attack in Kabutare.<sup>6108</sup> Fewer refugees were taken on this trip, as the others had been informed and ran to hide in the forest.<sup>6109</sup>

2237. The morning after the attack, two refugees who had been abducted on the first trip returned to the BPO.<sup>6110</sup> One of the two survivors, a woman named Annonciata,<sup>6111</sup> said that people had been taken to a place called Kabutare.<sup>6112</sup> She explained that once in Kabutare, refugees were beaten and thrown into a hole, sometimes alive. She said she was raped by a group of persons.<sup>6113</sup> The other survivor, a young man named Semanyezi,<sup>6114</sup> explained that when they arrived at Kabutare, he saw people being beaten, killed and thrown into a mass grave. People tried to run, but they were surrounded on all sides.<sup>6115</sup> He was able to crawl out and escape. He crawled through the forest and arrived at the BPO on the next morning, wearing only short trousers.<sup>6116</sup> The witness also heard *Interahamwe* say the people were taken to Kabutare.<sup>6117</sup>

2238. The day of a meeting between Nyiramasuhuko, Nsabimana and the *bourgmestres* at the MRND Palace, Witness SJ saw two refugee men taken away to be killed, in a vehicle belonging to the Red Cross. One of the men was from Kigali and his wife had just given birth to twins.<sup>6118</sup> After taking away the men to be killed, the driver of the Red Cross vehicle collected Nyiramasuhuko from the MRND Palace.<sup>6119</sup>

2239. Witness SJ testified that she knew Nyiramasuhuko before 1994<sup>6120</sup> when Nyiramasuhuko lived with her husband, Maurice Ntahobali, in the same *secteur* as Witness SJ.<sup>6121</sup> She used to see Mr. and Mrs. Ntahobali when they were on their way to work or when they were visiting their neighbour.<sup>6122</sup> She described Nyiramasuhuko as somewhat fat with a dark complexion.<sup>6123</sup> The first time she saw Nyiramasuhuko, she was wearing a lengthy skirt and a whitish blouse.<sup>6124</sup> Nyiramasuhuko changed cars very often, but on the day that she

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<sup>6106</sup> T. 29 May 2002 pp. 20, 59 (Witness SJ).

<sup>6107</sup> T. 29 May 2002 pp. 20, 60 (Witness SJ).

<sup>6108</sup> T. 29 May 2002 p. 64 (Witness SJ).

<sup>6109</sup> T. 29 May 2002 p. 65 (Witness SJ).

<sup>6110</sup> T. 29 May 2002 pp. 41, 45-46 (Witness SJ).

<sup>6111</sup> T. 29 May 2002 p. 133 (ICS); T. 29 May 2002 p. 151 (HC) (Witness SJ) (French) (for spelling of "Annonciata").

<sup>6112</sup> T. 29 May 2002 p. 46 (Witness SJ).

<sup>6113</sup> T. 29 May 2002 p. 47 (Witness SJ).

<sup>6114</sup> T. 29 May 2002 p. 134 (ICS) (Witness SJ).

<sup>6115</sup> T. 29 May 2002 pp. 49-50 (Witness SJ).

<sup>6116</sup> T. 29 May 2002 p. 50 (Witness SJ).

<sup>6117</sup> T. 29 May 2002 p. 46 (Witness SJ).

<sup>6118</sup> T. 4 June 2002 p. 20 (Witness SJ).

<sup>6119</sup> T. 4 June 2002 pp. 20, 28-30 (Witness SJ).

<sup>6120</sup> T. 28 May 2002 pp. 116-117; T. 29 May 2002 p. 126 (ICS) (Witness SJ).

<sup>6121</sup> T. 29 May 2002 pp. 126-130 (ICS) (Witness SJ).

<sup>6122</sup> T. 3 June 2002 p. 6 (Witness SJ).

<sup>6123</sup> T. 28 May 2002 pp. 117, 121 (Witness SJ).

<sup>6124</sup> T. 28 May 2002 p. 121 (Witness SJ).

arrived to meet with Nsabimana, prior to the attacks, Nyiramasuhuko was in a blue car with a driver.<sup>6125</sup> Witness SJ positively identified Nyiramasuhuko in court.<sup>6126</sup> Witness SJ said “they [Nyiramasuhuko and Ntahobali] were my neighbours and they were good people. So I do not understand how they come to change.”<sup>6127</sup>

2240. Witness SJ did not know Shalom Ntahobali before the 1994 events. She had heard people talk about him and indicate who he was. She saw him up close for the first time during the 1994 attacks.<sup>6128</sup> She said he was the son of Nyiramasuhuko and Maurice Ntahobali and was a young man. She did not know whether he was in the military but he wore a military uniform.<sup>6129</sup> She said she was not able to observe him attentively or to describe his physical features because it was dark during the attacks and she was afraid.<sup>6130</sup> She did not know any other Rwandan named Shalom, but she knew many persons named “Salom.”<sup>6131</sup> Witness SJ positively identified Ntahobali in court.<sup>6132</sup>

2241. Witness SJ testified that Nsabimana was usually at the *préfecture* every day, and that it was hence not the first time she saw him.<sup>6133</sup> She said she knew Nsabimana from before the 1994 events.<sup>6134</sup> Although she never spoke to him before the events, she saw Nsabimana a few times at a bar located in Mukabuga in the Gihindamuyaga *secteur* in Mbazi *commune*.<sup>6135</sup> Witness SJ positively identified Nsabimana in court.<sup>6136</sup>

#### Prosecution Witness SU

2242. Witness SU, whose father was Tutsi and whose mother was Hutu,<sup>6137</sup> testified that people in her *commune* of Huye began to feel insecure after 17 April 1994.<sup>6138</sup> Her family, children and husband were killed on 22 April 1994.<sup>6139</sup> On 27 May 1994, Witness SU obtained an affidavit which indicated she was Hutu.<sup>6140</sup> The document was later destroyed by the rain.<sup>6141</sup> She went to the University Hospital that day and to the BPO the next day. She arrived at the BPO around 28 May 1994 at 7.00 a.m.<sup>6142</sup> She stayed at the BPO for a little less than one

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<sup>6125</sup> T. 3 June 2002 pp. 136-137, 139 (Witness SJ).

<sup>6126</sup> T. 29 May 2002 p. 138 (Witness SJ).

<sup>6127</sup> T. 29 May 2002 p. 130 (ICS) (Witness SJ).

<sup>6128</sup> T. 3 June 2002 p. 8 (Witness SJ).

<sup>6129</sup> T. 29 May 2002 p. 22 (Witness SJ).

<sup>6130</sup> T. 29 May 2002 p. 23 (Witness SJ).

<sup>6131</sup> T. 29 May 2002 p. 24; T. 3 June 2002 p. 48 (ICS) (Witness SJ).

<sup>6132</sup> T. 29 May 2002 pp. 140-141 (Witness SJ).

<sup>6133</sup> T. 28 May 2002 p. 132; T. 5 June 2002 p. 45 (Witness SJ).

<sup>6134</sup> T. 28 May 2002 p. 139; T. 29 May 2002 pp. 130-131 (ICS) (Witness SJ).

<sup>6135</sup> T. 29 May 2002 p. 132 (ICS) (Witness SJ).

<sup>6136</sup> T. 29 May 2002 p. 139 (Witness SJ).

<sup>6137</sup> T. 15 October 2002 p. 15 (ICS) (Witness SU).

<sup>6138</sup> T. 21 October 2002 pp. 65, 88 (ICS) (Witness SU).

<sup>6139</sup> T. 21 October 2002 p. 89 (ICS) (Witness SU).

<sup>6140</sup> T. 15 October 2002 pp. 18-19 (ICS); T. 22 October 2002 p. 85 (Witness SU).

<sup>6141</sup> T. 22 October 2002 pp. 83-84 (Witness SU).

<sup>6142</sup> T. 14 October 2002 p. 8; T. 15 October 2002 p. 73; T. 21 October 2002 p. 96 (ICS); T. 22 October 2002 pp. 83-85 (Witness SU).

month.<sup>6143</sup> She went to Nyange towards the beginning of June 1994 and went to Rango towards the end of June 1994.<sup>6144</sup>

2243. She went to the BPO because there was insecurity where she lived; by insecurity she meant Hutus were killing Tutsis. Her five children and husband had been killed.<sup>6145</sup> Witness SU and her three-year-old child were attacked by a person bearing a knife, during which the child was killed and Witness SU was injured.<sup>6146</sup> She was taken for dead and buried under dirt.<sup>6147</sup> She decided to go to the BPO because she thought the authorities there would help her.<sup>6148</sup>

2244. Men were working in the offices of the BPO at that time, including the *préfet's* secretary, Munyenzaga, the messenger, Muhayankaka, and a *sous-préfet* who was from Mubumbano.<sup>6149</sup> During two meetings at the BPO, Witness SU was forced to go behind the BPO, but she refused to go to that location on any other occasion.<sup>6150</sup>

2245. Witness SU spent the days under a guava tree along with a woman whose ears had been cut.<sup>6151</sup> Witness SU met her sister, Witness SS, at the BPO on 27 May 1994 and they stayed together until the arrival of the RPF.<sup>6152</sup> The two sisters lived in different *secteurs* prior to and after the war.<sup>6153</sup> At night, she and her sister slept between two trees near the BPO, but would not stay on the veranda.<sup>6154</sup> There were no lights at the BPO except for the lights of vehicles and the torches of *Interahamwe*.<sup>6155</sup>

2246. The number of refugees reached 600 at one point, but each day some were killed and others arrived.<sup>6156</sup> Of the refugees, some were orphans and widows, there were people that had nothing, some were wounded and others were practically lifeless.<sup>6157</sup> While at the BPO, the refugees did not have access to water or toilets.<sup>6158</sup> Many refugees were sick, wounded or were suffering from various diseases.<sup>6159</sup> Some of the pregnant women gave birth but lost their babies because of the cold. The refugees did not receive any medical attention.<sup>6160</sup> Some

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<sup>6143</sup> T. 14 October 2002 p. 11 (Witness SU).

<sup>6144</sup> T. 21 October 2002 p. 35 (Witness SU).

<sup>6145</sup> T. 14 October 2002 pp. 9, 11 (Witness SU).

<sup>6146</sup> T. 14 October 2002 pp. 10-11 (Witness SU).

<sup>6147</sup> T. 14 October 2002 p. 11 (Witness SU).

<sup>6148</sup> T. 14 October 2002 p. 9 (Witness SU).

<sup>6149</sup> T. 15 October 2002 p. 74; T. 22 October 2002 p. 38 (Witness SU).

<sup>6150</sup> T. 23 October 2002 pp. 43, 46 (Witness SU).

<sup>6151</sup> T. 17 October 2002 pp. 65-66, 81; T. 21 October 2002 p. 53 (ICS) (Witness SU); *see* Prosecution Exhibit 23C *ter* (Photograph of the front of the BPO); Prosecution Exhibit 27 (Video of BPO, EER and Ruins of Nyiramasuhuko's House) at 1:56.

<sup>6152</sup> T. 15 October 2002 pp. 15-16 (ICS); T. 15 October 2002 p. 82; T. 15 October 2002 p. 157 (Witness SU) (French) (gives the date when she saw her sister as 28 May 1994).

<sup>6153</sup> T. 15 October 2002 p. 83 (Witness SU); *see also* Prosecution Exhibit 60 (Personal Particulars); Prosecution Exhibit 65 (Personal Particulars).

<sup>6154</sup> T. 17 October 2002 pp. 52, 81, 92; T. 22 October 2002 p. 54 (Witness SU).

<sup>6155</sup> T. 17 October 2002 p. 91 (Witness SU).

<sup>6156</sup> T. 14 October 2002 p. 12; T. 15 October 2002 p. 70 (Witness SU).

<sup>6157</sup> T. 14 October 2002 p. 10 (Witness SU).

<sup>6158</sup> T. 14 October 2002 p. 84 (Witness SU).

<sup>6159</sup> T. 14 October 2002 p. 84; T. 22 October 2002 p. 32 (Witness SU).

<sup>6160</sup> T. 14 October 2002 p. 84 (Witness SU).

refugees went to the garbage dump to find scraps of food to eat.<sup>6161</sup> It was said that a man named Grégoire was responsible for the refugees at the BPO, but he distributed food only to the wives of soldiers.<sup>6162</sup> One day the Red Cross came to the BPO and distributed food to the refugees. When they left, the *Interahamwe* took the food away.<sup>6163</sup> There were not many Hutu women among the refugees.<sup>6164</sup>

2247. Some refugees risked going to the market, but *Interahamwe* forced them back to the BPO and beat them.<sup>6165</sup> Witness SU stated that she had a *laissez-passer* that she used to go to the Ngoma convent and to Mbazi after she had returned from Nyange.<sup>6166</sup> Witness SU received some food from a convent.<sup>6167</sup> On the trip to the convent, she was asked to show identification, which she did; a young man with her however was taken to the forest because he did not have identification.<sup>6168</sup>

2248. Witness SU saw Pauline Nyiramasuhuko, *Préfet* Nsabimana and *Bourgmestre* Kanyabashi frequently at the BPO but they did not extend any assistance to the refugees.<sup>6169</sup>

2249. About three days after Witness SU arrived at the BPO, a meeting took place at the BPO between Nyiramasuhuko, Nsabimana, Kanyabashi, Emmanuel Rekeraho and other authorities.<sup>6170</sup> During that meeting, people were killed and the meeting continued.<sup>6171</sup> A pit had been dug near the office where they threw people who had just been killed.<sup>6172</sup> She saw 13 refugees killed before the very eyes of the authorities.<sup>6173</sup>

2250. Witness SU saw a lady with twins when they brought her from the *économat*, i.e. bursar's office, along with other people that same day.<sup>6174</sup> Witness SU estimated the twins were between 10 and 14 years old. She said the twins wore dresses, but that since the situation was dangerous at that time even some boys had to wear dresses.<sup>6175</sup> The lady was an intellectual of a good position as she appeared to live well.<sup>6176</sup> She was wearing a *libaya* blouse and had a good hair style.<sup>6177</sup> She arrived at the BPO with a tall, balding man of light complexion.<sup>6178</sup> Soldiers bearing guns took this man back to the road leading to the *économat*.<sup>6179</sup>

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<sup>6161</sup> T. 22 October 2002 p. 46 (Witness SU).

<sup>6162</sup> T. 22 October 2002 p. 52 (Witness SU).

<sup>6163</sup> T. 15 October 2002 p. 76; T. 22 October 2002 pp. 47-48 (Witness SU).

<sup>6164</sup> T. 15 October 2002 p. 77 (Witness SU).

<sup>6165</sup> T. 15 October 2002 p. 80 (Witness SU).

<sup>6166</sup> T. 15 October 2002 pp. 79-80; T. 24 October 2002 p. 5 (Witness SU).

<sup>6167</sup> T. 22 October 2002 p. 46 (Witness SU).

<sup>6168</sup> T. 22 October 2002 p. 62 (Witness SU).

<sup>6169</sup> T. 14 October 2002 pp. 12-13, 82-83, 86; T. 22 October 2002 pp. 48-49 (Witness SU).

<sup>6170</sup> T. 14 October 2002 pp. 15-16, 28 (Witness SU).

<sup>6171</sup> T. 14 October 2002 p. 28 (Witness SU).

<sup>6172</sup> T. 14 October 2002 pp. 28-29 (Witness SU).

<sup>6173</sup> T. 14 October 2002 p. 82 (Witness SU).

<sup>6174</sup> T. 14 October 2002 pp. 32, 35; T. 14 October 2002 p. 60 (Witness SU) (French) (for spelling of “*économat*”).

<sup>6175</sup> T. 17 October 2002 p. 41 (Witness SU).

<sup>6176</sup> T. 17 October 2002 pp. 54-55 (Witness SU).

<sup>6177</sup> T. 17 October 2002 p. 55 (Witness SU).

<sup>6178</sup> T. 14 October 2002 p. 35; T. 17 October 2002 p. 59 (Witness SU).

<sup>6179</sup> T. 17 October 2002 pp. 61-62 (Witness SU).

2251. She testified that around 10.00 p.m. one Friday, Warrant Officer Emmanuel Rekeraho drove an ambulance from the Sovu health centre to the BPO before leaving.<sup>6180</sup> She then saw Nyiramasuhuko arrive aboard a Toyota Hilux pickup that was covered in cow dung or some kind of dark grease.<sup>6181</sup> The vehicle belonged to a man named Rwamukwaya. She was accompanied by a driver and a security guard who was wearing a military uniform and carrying a gun.<sup>6182</sup> Upon arriving, Nyiramasuhuko summoned the *Interahamwe* at the BPO who were armed with machetes, grenades and knives and ordered them to load both refugee men and women onto the Hilux.<sup>6183</sup> Nyiramasuhuko said, “[s]tart from this side where the refugees are lying. Take men and women and load them aboard the vehicle”, and was pointing out refugees at the same time.<sup>6184</sup> She was referring to the Tutsi refugees who had sought refuge at the BPO.<sup>6185</sup>

2252. The *Interahamwe* immediately took the lady with twins, dragged her and her children and put them on board the vehicle.<sup>6186</sup> The mother pleaded that her babies not be killed as they were still young.<sup>6187</sup> The woman was struck across the neck with a machete and Nyiramasuhuko told her, “[s]o, breast-feed the babies!”<sup>6188</sup> Other people were loaded onto the vehicle on top of the woman and it departed accompanied by Nyiramasuhuko and the *Interahamwe*.<sup>6189</sup> The refugees had their clothes on, but those who were later taken to Nyange had their clothes taken away.<sup>6190</sup> Those that resisted had their throats cut.<sup>6191</sup> She estimated she was six metres away from the vehicle and Nyiramasuhuko as people were being loaded.<sup>6192</sup>

2253. Around 11.00 p.m. that same night, Nyiramasuhuko, her driver, her guard, and some *Interahamwe* returned in the same vehicle.<sup>6193</sup> Nyiramasuhuko repeated her instructions to the *Interahamwe* to start on one side and to take men and women and load them in the vehicle.<sup>6194</sup> The *Interahamwe* were armed; they woke people up and loaded them in the back of the vehicle.<sup>6195</sup> Two young men who were taken on the Hilux on the second trip escaped from the *Interahamwe* and returned to the BPO the next day.<sup>6196</sup> Witness SU testified that they said they had been taken to the IRST where there was a mass grave and that everyone else had been

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<sup>6180</sup> T. 14 October 2002 p. 30 (Witness SU).

<sup>6181</sup> T. 14 October 2002 pp. 31, 39, 52; T. 15 October 2002 p. 86; T. 17 October 2002 pp. 26-27 (Witness SU).

<sup>6182</sup> T. 14 October 2002 p. 31 (Witness SU).

<sup>6183</sup> T. 14 October 2002 pp. 32, 43 (Witness SU).

<sup>6184</sup> T. 14 October 2002 pp. 32-33; T. 17 October 2002 p. 76 (Witness SU).

<sup>6185</sup> T. 14 October 2002 p. 40 (Witness SU).

<sup>6186</sup> T. 14 October 2002 p. 32; T. 17 October 2002 p. 33 (Witness SU).

<sup>6187</sup> T. 14 October 2002 p. 37; T. 17 October 2002 pp. 33-34 (Witness SU).

<sup>6188</sup> T. 14 October 2002 p. 37; T. 14 October 2002 p. 69 (Witness SU) (French) (“*Alors, allaite tes enfants!*”).

<sup>6189</sup> T. 14 October 2002 pp. 37, 41 (Witness SU).

<sup>6190</sup> T. 17 October 2002 p. 73 (Witness SU).

<sup>6191</sup> T. 14 October 2002 p. 40 (Witness SU).

<sup>6192</sup> T. 17 October 2002 p. 43 (Witness SU).

<sup>6193</sup> T. 14 October 2002 p. 42; T. 17 October 2002 p. 71 (Witness SU).

<sup>6194</sup> T. 14 October 2002 p. 44 (Witness SU).

<sup>6195</sup> T. 14 October 2002 p. 43 (Witness SU).

<sup>6196</sup> T. 14 October 2002 pp. 43-44; T. 15 October 2002 p. 16 (ICS); T. 17 October 2002 pp. 34-35; T. 21 October 2002 p. 18 (Witness SU).

killed.<sup>6197</sup> The refugees were surprised that the Minister of the Family was taking them to their death rather than ensuring their security.<sup>6198</sup>

2254. On a second occasion, Witness SU saw a Volkswagen driven by Emmanuel Rekeraho arrive at the BPO at around 10.00 p.m.<sup>6199</sup> Rekeraho got out of the Volkswagen and into the SOVU ambulance at the BPO.<sup>6200</sup> Nyiramasuhuko then arrived at the BPO in the same Hilux vehicle. This time she wore a military shirt and a *kitenge*.<sup>6201</sup> Nyiramasuhuko summoned the *Interahamwe* present at the BPO. She told them to load people onto the vehicle.<sup>6202</sup> She also shouted at the *Interahamwe* to “choose the young girls and the women that are still useful.”<sup>6203</sup> She ordered that the women be raped because they refused to marry Hutus and then to be loaded onto the Hilux to be killed.<sup>6204</sup> Witness SU was about nine metres away from Nyiramasuhuko.<sup>6205</sup>

2255. Immediately following Nyiramasuhuko’s instruction, after the vehicle had left, the *Interahamwe* told women to stand next to the vehicle and chose whom to rape.<sup>6206</sup> The *Interahamwe* shined a torch on Witness SU. Witness SU showed them her aged breasts to discourage the men from raping her as she was very thin.<sup>6207</sup> The *Interahamwe* then raped the women and girls they had chosen behind the ORINFOR and in abandoned vehicles.<sup>6208</sup> One of the *Interahamwe* named Muzungu took and raped a girl whom the witness knew.<sup>6209</sup> At the same time, another *Interahamwe* whom the witness identified as Ruhengeri raped a girl in Witness SU’s presence.<sup>6210</sup> Witness SU also identified Ngoma, Ribanza and Mbote as *Interahamwe* who committed rapes.<sup>6211</sup> Witness SU testified that the *Interahamwe* became animals and raped women. There was no respect of human beings at that time.<sup>6212</sup>

2256. During that night people were loaded on the Hilux and killed. None of them came back. Nyiramasuhuko was leaning against the vehicle when it was being loaded with Tutsi refugees. Nyiramasuhuko left with the vehicle. Thereafter, refugees tried to run away, some to the back of the BPO, some climbing up trees and others hiding under wrecked cars. The refugees only returned from hiding the next day.<sup>6213</sup>

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<sup>6197</sup> T. 14 October 2002 pp. 36, 41, 46; T. 21 October 2002 pp. 25-27 (Witness SU).

<sup>6198</sup> T. 14 October 2002 pp. 45-46 (Witness SU).

<sup>6199</sup> T. 14 October 2002 pp. 51-52; T. 17 October 2002 p. 79 (Witness SU).

<sup>6200</sup> T. 14 October 2002 p. 52; T. 17 October 2002 p. 79 (Witness SU).

<sup>6201</sup> T. 14 October 2002 p. 52; T. 14 October 2002 p. 98 (Witness SU) (French) (“*elle était venue en tenue militaire et elle avait mis un pagne*”).

<sup>6202</sup> T. 14 October 2002 pp. 53, 57, 64; T. 17 October 2002 pp. 83-84 (Witness SU).

<sup>6203</sup> T. 14 October 2002 pp. 57, 68; T. 17 October 2002 p. 84 (Witness SU).

<sup>6204</sup> T. 14 October 2002 pp. 53-54, 57 (Witness SU).

<sup>6205</sup> T. 14 October 2002 pp. 59-60 (Witness SU).

<sup>6206</sup> T. 14 October 2002 pp. 60-61, 65-66 (Witness SU).

<sup>6207</sup> T. 14 October 2002 pp. 60-61; T. 17 October 2002 p. 93 (Witness SU).

<sup>6208</sup> T. 14 October 2002 p. 62 (Witness SU).

<sup>6209</sup> T. 14 October 2002 pp. 63, 65-66; T. 15 October 2002 pp. 16-17 (ICS) (Witness SU).

<sup>6210</sup> T. 14 October 2002 p. 63; T. 15 October 2002 pp. 16-17 (ICS) (Witness SU).

<sup>6211</sup> T. 14 October 2002 p. 63; T. 24 October 2002 p. 41 (Witness SU).

<sup>6212</sup> T. 14 October 2002 p. 62 (Witness SU).

<sup>6213</sup> T. 14 October 2002 p. 67 (Witness SU).

2257. There were two groups of *Interahamwe*: those within the BPO premises, and those who manned the roadblock in front of the BPO.<sup>6214</sup> Some *Interahamwe* slept at the BPO, including Muzungu and Ruhengeri.<sup>6215</sup> Other *Interahamwe* were close by the *préfecture* at a roadblock near the homes of Venant, Mahenga and Zikaramwe. The *Interahamwe* who manned a roadblock in front of the BPO were armed with guns and other weapons.<sup>6216</sup> Those *Interahamwe* who manned the roadblock had undergone military training prior to the events of 1994 and were armed with guns. The *Interahamwe* who were staying at the BPO were not wearing military uniforms.<sup>6217</sup> At 5.00 a.m. and 6.00 p.m. the *Interahamwe* who were staying at the BPO took people away and killed them with machetes.<sup>6218</sup>

2258. On another date, Witness SU saw Nyiramasuhuko arrive at the BPO with her security officer.<sup>6219</sup> Nyiramasuhuko wore a white dress.<sup>6220</sup> Nyiramasuhuko ordered the *Interahamwe* to seek out 40 young Tutsi boys and take them to the *gendarmerie*.<sup>6221</sup> She spoke loudly and intelligibly, without attempting to conceal anything.<sup>6222</sup> The *Interahamwe* lined up 40 young boys of between five and 12 years old and marched them in the direction of the *gendarmerie*.<sup>6223</sup> The witness never saw the boys after that.<sup>6224</sup>

2259. Witness SU testified that during June 1994, she watched a pit being dug behind the office of the *préfet*, close to the uncompleted ORINFOR building.<sup>6225</sup> A pit was located behind the house of Munyagashekye.<sup>6226</sup> Refugees who were killed were thrown into this pit. Before the pit was dug, bodies were “thrown here and there.”<sup>6227</sup> She testified that in the year 2000, several bodies were exhumed before the construction of a new building on the site of the pit.<sup>6228</sup>

2260. In the middle of June 1994, another group of refugees from Bugesera was accommodated separately from Witness SU’s group. The Bugesera refugees were told that Witness SU’s group would be killed during the course of the night. The Bugesera refugees had their belongings and were with their families.<sup>6229</sup> They were taken to Mubumbano in Gishamvu *commune* the next day.<sup>6230</sup> In addition, some men detained in Karubanda prison from Byumba and Huye *communes* came to the BPO.<sup>6231</sup>

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<sup>6214</sup> T. 17 October 2002 p. 83 (Witness SU).

<sup>6215</sup> T. 14 October 2002 p. 64 (Witness SU).

<sup>6216</sup> T. 17 October 2002 p. 36; T. 21 October 2002 p. 11 (Witness SU).

<sup>6217</sup> T. 17 October 2002 p. 39 (Witness SU).

<sup>6218</sup> T. 17 October 2002 p. 88; T. 23 October 2002 p. 58 (Witness SU).

<sup>6219</sup> T. 14 October 2002 p. 69; T. 17 October 2002 p. 78; T. 21 October 2002 p. 5 (Witness SU).

<sup>6220</sup> T. 21 October 2002 p. 5 (Witness SU).

<sup>6221</sup> T. 14 October 2002 p. 69; T. 17 October 2002 p. 72 (Witness SU).

<sup>6222</sup> T. 14 October 2002 p. 69 (Witness SU).

<sup>6223</sup> T. 14 October 2002 pp. 70, 72; T. 17 October 2002 p. 72 (Witness SU).

<sup>6224</sup> T. 14 October 2002 p. 72 (Witness SU).

<sup>6225</sup> T. 14 October 2002 pp. 80-81 (Witness SU).

<sup>6226</sup> T. 23 October 2002 p. 59 (Witness SU).

<sup>6227</sup> T. 14 October 2002 p. 80 (Witness SU).

<sup>6228</sup> T. 14 October 2002 p. 80; T. 23 October 2002 p. 59 (Witness SU).

<sup>6229</sup> T. 15 October 2002 pp. 76-78; T. 22 October 2002 pp. 32-33 (Witness SU).

<sup>6230</sup> T. 15 October 2002 pp. 76-77; T. 22 October 2002 pp. 32, 34 (Witness SU).

<sup>6231</sup> T. 15 October 2002 p. 71 (Witness SU).



2261. Witness SU testified that Nsabimana did nothing to stop the killings at the BPO.<sup>6232</sup> After attacks on the refugees at the BPO, three women went to see Nsabimana on behalf of the surviving refugees. Nsabimana told them he was not aware of the situation and that he would provide *gendarmes* to protect the refugees or, alternatively, he would come and spend the night himself with them.<sup>6233</sup> Nsabimana called the *gendarmes* who came to guard the refugees towards the end of June 1994.<sup>6234</sup> At first, the *gendarmes* told them: “If anyone wants to get up, two or three people should accompany that person. And if someone is being raped, you must shout.” From that point on, no one was abducted or raped.<sup>6235</sup> It was only later that the *gendarmes* realised they were guarding Tutsis, and later told the refugees that before the RPF would come, the *gendarmes* would kill the refugees first.<sup>6236</sup> Witness SU positively identified Nsabimana in court.<sup>6237</sup>

2262. At one time some white people came to the BPO to take pictures of the refugees and to ask Nsabimana where the refugees were sleeping at night.<sup>6238</sup> A man named Donat from Mpare *secteur* translated for them. Donat was later killed by the soldiers who drove Nsabimana’s car, tearing away the man’s Bible.<sup>6239</sup> He was taken behind the BPO and killed during a meeting in the *préfet’s* office.<sup>6240</sup> In addition, a young man called Pierre, son of Muhangaraza, was abducted from the *préfecture* office and killed.<sup>6241</sup>

2263. Witness SU testified that she knew Nyiramasuhuko prior to the events of 1994 because she often walked past Nyiramasuhuko’s home in Ndora *commune* when she went to visit relatives.<sup>6242</sup> She said that Nyiramasuhuko had four children; three girls and one boy.<sup>6243</sup> She also said that Nyiramasuhuko’s husband was a professor at the university.<sup>6244</sup> Nyiramasuhuko’s husband was Maurice Ntahobali.<sup>6245</sup> She positively identified Nyiramasuhuko in court.<sup>6246</sup>

#### Prosecution Witness QBP

2264. Witness QBP, a Tutsi farmer, testified that she attended a meeting in her area in April 1994 in which President Sindikubwabo told the Hutu population to kill Tutsis.<sup>6247</sup> Two days later, there was a second meeting in her area attended by her *bourgmestre*, at which a soldier told the population to start to work.<sup>6248</sup> If they did not, he warned that everyone would be

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<sup>6232</sup> T. 14 October 2002 pp. 82-83 (Witness SU).

<sup>6233</sup> T. 14 October 2002 p. 83; T. 22 October 2002 p. 49 (Witness SU).

<sup>6234</sup> T. 17 October 2002 p. 89; T. 21 October 2002 pp. 38-40, 42; T. 22 October 2002 p. 49 (Witness SU).

<sup>6235</sup> T. 21 October 2002 p. 38 (Witness SU).

<sup>6236</sup> T. 21 October 2002 pp. 39-40 (Witness SU).

<sup>6237</sup> T. 15 October 2002 p. 24 (Witness SU).

<sup>6238</sup> T. 17 October 2002 p. 6; T. 22 October 2002 pp. 41-42 (Witness SU).

<sup>6239</sup> T. 17 October 2002 pp. 7, 9 (Witness SU).

<sup>6240</sup> T. 17 October 2002 p. 10; T. 22 October 2002 p. 40 (Witness SU).

<sup>6241</sup> T. 21 October 2002 p. 53 (ICS) (Witness SU).

<sup>6242</sup> T. 14 October 2002 p. 14; T. 15 October 2002 pp. 98-99; T. 21 October 2002 p. 61 (ICS) (Witness SU).

<sup>6243</sup> T. 16 October 2002 p. 7 (Witness SU).

<sup>6244</sup> T. 16 October 2002 p. 10 (Witness SU).

<sup>6245</sup> T. 14 October 2002 p. 14 (Witness SU).

<sup>6246</sup> T. 15 October 2002 pp. 23-24 (Witness SU).

<sup>6247</sup> T. 24 October 2002 p. 68 (Witness QBP).

<sup>6248</sup> T. 24 October 2002 p. 77; T. 28 October 2002 pp. 33-34 (Witness QBP).

killed, because he did not know who was Hutu and who was Tutsi. About one week later the killings started in her area.<sup>6249</sup>

2265. She hid in the home of an old man for one to two weeks.<sup>6250</sup> When asked about her statement of 5 May 1999 which said she spent three weeks at the old man's house, she said that she could not distinguish between dates and weeks because it was a long time ago.<sup>6251</sup> She then went to another area where she hid for one week.<sup>6252</sup> She returned to her *secteur* where she stayed only one day.<sup>6253</sup> When she had nowhere else to hide in mid-April 1994, she decided to flee her home to seek shelter in Butare town.<sup>6254</sup> She went to the BPO because the authorities were there with the hope of being protected.<sup>6255</sup> She found about 300 Hutu refugees from Bugesera at the BPO. She asked one refugee where to find the Tutsi refugees and he responded, "[d]o you believe we can stay with a Tutsi, these people are at the EER."<sup>6256</sup> Therefore, she decided to go to the EER where she was told that the Tutsi refugees were staying.<sup>6257</sup> She stayed at the EER for about one to two weeks.<sup>6258</sup> After that time, the pastor at the EER told the refugees to go to the BPO. She left the EER, and went to the BPO with her children and the other Tutsi refugees.<sup>6259</sup> When she went back to the BPO, the refugees from Bugesera were no longer there.<sup>6260</sup> They stayed at the BPO for two to three days before going to Nyange.<sup>6261</sup>

2266. A few days after she returned to the BPO from Nyange, Witness QBP saw Nyiramasuhuko coming to the BPO.<sup>6262</sup> Nyiramasuhuko arrived one night on board a camouflaged vehicle that Witness QBP heard was smeared with old motor oil or cow dung.<sup>6263</sup> The vehicle was closed on all sides.<sup>6264</sup> Nyiramasuhuko wore a military shirt and a skirt or *kitenge*.<sup>6265</sup> Witness QBP also saw *Interahamwe* and soldiers coming to the BPO in a double-cabin Toyota pickup that followed Nyiramasuhuko's vehicle.<sup>6266</sup>

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<sup>6249</sup> T. 24 October 2002 p. 77 (Witness QBP).

<sup>6250</sup> T. 24 October 2002 p. 78; T. 28 October 2002 pp. 16-17 (Witness QBP).

<sup>6251</sup> T. 28 October 2002 p. 28 (ICS) (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>6252</sup> T. 28 October 2002 pp. 17-18 (Witness QBP).

<sup>6253</sup> T. 28 October 2002 p. 18 (Witness QBP).

<sup>6254</sup> T. 24 October 2002 p. 79; T. 28 October 2002 p. 19; T. 29 October 2002 pp. 32, 82-83 (ICS) (Witness QBP).

<sup>6255</sup> T. 29 October 2002 p. 84 (ICS) (Witness QBP).

<sup>6256</sup> T. 24 October 2002 p. 80; T. 28 October 2002 p. 48; T. 30 October 2002 pp. 4-5 (Witness QBP).

<sup>6257</sup> T. 24 October 2002 p. 80; T. 28 October 2002 pp. 18, 48; T. 30 October 2002 pp. 4-6 (Witness QBP).

<sup>6258</sup> T. 24 October 2002 p. 80; T. 28 October 2002 p. 18 (Witness QBP).

<sup>6259</sup> T. 24 October 2002 p. 80; T. 28 October 2002 pp. 46, 52 (Witness QBP).

<sup>6260</sup> T. 28 October 2002 p. 49 (Witness QBP).

<sup>6261</sup> T. 24 October 2002 p. 81; T. 28 October 2002 p. 54 (Witness QBP).

<sup>6262</sup> T. 24 October 2002 p. 84; T. 28 October 2002 pp. 71, 74 (Witness QBP).

<sup>6263</sup> T. 24 October 2002 p. 85; T. 28 October 2002 pp. 79-80, 82, 86 (Witness QBP).

<sup>6264</sup> T. 28 October 2002 pp. 80-81 (Witness QBP).

<sup>6265</sup> T. 24 October 2002 p. 94 ("she was wearing a blouse of military style and on the lower part of her board [*sic*], I don't know whether she was wearing a skirt or a piece of clothing, but I was able to realise that it wasn't trousers or shorts"); T. 24 October 2002 p. 177 (Witness QBP) (French) ("*je ne sais pas si elle portait une jupe ou un pagne*").

<sup>6266</sup> T. 24 October 2002 p. 84; T. 28 October 2002 pp. 80, 82; T. 29 October 2002 pp. 16-17 (Witness QBP).

2267. Witness QBP was sitting on a patch of grass under a guava tree where there were no lights when the vehicles arrived.<sup>6267</sup> There was not sufficient light to see who accompanied Nyiramasuhuko.<sup>6268</sup> Lamp-light came from the houses surrounding the BPO.<sup>6269</sup> Witness QBP said “lamps” were lit at night.<sup>6270</sup> There was also some light from the neighbouring administrative buildings.<sup>6271</sup> At one point, the lights went off, and Witness QBP took advantage of this to seek shelter in the bush behind the BPO.<sup>6272</sup>

2268. Witness QBP testified that Nyiramasuhuko descended from the vehicle and went to the veranda of the BPO. Nyiramasuhuko told the soldiers and *Interahamwe* “these are the accomplices who are here ... there’s still a lot of dirt at the BPO, such as these Tutsi women, who previously were arrogant and did not want to marry Hutu men. Now it’s up to you [the Hutus] to do whatever you want with them.”<sup>6273</sup> Nyiramasuhuko left and the lights went out.<sup>6274</sup> The soldiers and *Interahamwe* started dragging some refugee women to the back of the BPO and loaded other refugees aboard a double-cabin Toyota pickup that had accompanied Nyiramasuhuko’s vehicle to the BPO.<sup>6275</sup>

2269. Witness QBP named four women who had been raped.<sup>6276</sup> Two of the women died after the war.<sup>6277</sup> She acknowledged she was not an eyewitness to the rapes in the rear of the BPO, as there was not any light.<sup>6278</sup> However, she asserted that Nyiramasuhuko had just encouraged the *Interahamwe* and soldiers to do something specific to these Tutsi women and only a child would not understand what was going to happen to these women.<sup>6279</sup>

2270. The following day, Witness QBP learned from people coming back from the market that the refugees boarded on the Toyota had been taken to Kabutare to be killed.<sup>6280</sup> A few days after the attack, she was taken to Rango.<sup>6281</sup> She estimated that it was in the last week in June 1994.<sup>6282</sup>

2271. She testified that white people came to the BPO to take pictures of the refugees and one refugee attempted to speak with them.<sup>6283</sup> The same refugee was later killed.<sup>6284</sup> The Red Cross

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<sup>6267</sup> T. 28 October 2002 pp. 81, 86-87 (Witness QBP).

<sup>6268</sup> T. 24 October 2002 p. 85; T. 28 October 2002 p. 81 (Witness QBP).

<sup>6269</sup> T. 24 October 2002 p. 85; T. 28 October 2002 pp. 86-87; T. 30 October 2002 p. 22 (Witness QBP).

<sup>6270</sup> T. 28 October 2002 p. 86; T. 30 October 2002 pp. 22-23 (Witness QBP).

<sup>6271</sup> T. 30 October 2002 p. 21 (Witness QBP).

<sup>6272</sup> T. 24 October 2002 pp. 85-86 (Witness QBP).

<sup>6273</sup> T. 24 October 2002 p. 85; T. 28 October 2002 pp. 81, 88, 99; T. 29 October 2002 p. 21 (Witness QBP).

<sup>6274</sup> T. 29 October 2002 pp. 5-6 (Witness QBP).

<sup>6275</sup> T. 24 October 2002 pp. 85, 88, 97-99; T. 28 October 2002 p. 80; T. 29 October 2002 pp. 10, 12 (Witness QBP).

<sup>6276</sup> T. 24 October 2002 p. 107 (ICS); T. 24 October 2002 p. 204 (HC) (Witness QBP) (French).

<sup>6277</sup> T. 24 October 2002 pp. 107-108 (ICS) (Witness QBP).

<sup>6278</sup> T. 29 October 2002 pp. 13-14 (Witness QBP).

<sup>6279</sup> T. 29 October 2002 p. 14 (Witness QBP).

<sup>6280</sup> T. 24 October 2002 p. 88; T. 28 October 2002 p. 82; T. 29 October 2002 pp. 22-23 (Witness QBP).

<sup>6281</sup> T. 24 October 2002 p. 88; T. 29 October 2002 p. 24 (Witness QBP).

<sup>6282</sup> T. 24 October 2002 p. 91 (Witness QBP).

<sup>6283</sup> T. 30 October 2002 pp. 27-28, 31, 47 (Witness QBP).

<sup>6284</sup> T. 30 October 2002 pp. 31, 47 (Witness QBP).

also came and distributed food items on one occasion but they did not get to eat these items because *Interahamwe* came at night and took the food from them.<sup>6285</sup>

2272. Witness QBP testified that once, an *Interahamwe* attacked a woman with a knife and wounded her on the ear. The woman complained to the *préfet*, but he did nothing for her.<sup>6286</sup> Witness QBP testified that the *préfet* must have known about the living conditions of the refugees at the BPO because he was the chief of the *préfecture*, yet he did nothing to defend them.<sup>6287</sup> She never heard the *préfet* issue any order, nor was she able to hear what was said during the meetings at the BPO.<sup>6288</sup>

2273. Witness QBP testified that she knew Nyiramasuhuko because they lived in the same *commune* until Nyiramasuhuko got married and moved to Butare. She was aware that Nyiramasuhuko had been appointed minister.<sup>6289</sup> She identified Nyiramasuhuko in court.<sup>6290</sup>

### Prosecution Witness RE

2274. Witness RE, a Tutsi who was 16 years old in 1994, testified that she fled her home *préfecture* of Gikongoro for Butare *préfecture* in April 1994, the day after the President died.<sup>6291</sup> When she arrived at the BPO, she saw many other refugees from Butare *préfecture*. She also saw the *préfet* who was called Sylvain.<sup>6292</sup> Sylvain set up a table in the BPO courtyard and ordered the refugees to divide into two groups: one group of refugees from Butare *préfecture* and another group of refugees from other *préfectures*.<sup>6293</sup> Afterwards, the *préfet* of Butare brought together the *bourgmestres* of Butare's *communes* and asked them to evacuate the refugees back to their *communes* of origin.<sup>6294</sup> The next day, Witness RE and other refugees were asked to go to the EER.<sup>6295</sup> She acknowledged that her prior statement of 5 December 1996 indicated she stayed at the BPO for 3 days before being sent to the EER.<sup>6296</sup> She stayed at the EER for one week.<sup>6297</sup> When she returned to the BPO, soldiers approached the refugees and told them not to approach the Hutu refugees who had fled the advance of the *Inkotanyi*.<sup>6298</sup> The Hutu refugees were later sent to Mubumbano.<sup>6299</sup> The following day, three buses came to take the Tutsi refugees to Nyange.<sup>6300</sup> They were later transferred to Rango.<sup>6301</sup>

<sup>6285</sup> T. 30 October 2002 p. 24 (Witness QBP).

<sup>6286</sup> T. 30 October 2002 p. 48 (Witness QBP).

<sup>6287</sup> T. 30 October 2002 p. 6 (Witness QBP).

<sup>6288</sup> T. 30 October 2002 pp. 7, 11 (Witness QBP).

<sup>6289</sup> T. 24 October 2002 p. 84; T. 28 October 2002 pp. 70-71 (Witness QBP).

<sup>6290</sup> T. 24 October 2002 p. 103 (Witness QBP).

<sup>6291</sup> T. 24 February 2003 pp. 9, 43; T. 25 February 2003 pp. 3-4 (Witness RE).

<sup>6292</sup> T. 24 February 2003 p. 10 (Witness RE).

<sup>6293</sup> T. 24 February 2003 p. 10; T. 26 February 2003 p. 53 (Witness RE).

<sup>6294</sup> T. 24 February 2003 p. 10; T. 26 February 2003 pp. 49, 52-53 (Witness RE).

<sup>6295</sup> T. 24 February 2003 pp. 10-11 (Witness RE).

<sup>6296</sup> T. 25 February 2003 p. 23; T. 27 February 2003 p. 33 (Witness RE); Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE).

<sup>6297</sup> T. 24 February 2003 p. 12 (Witness RE).

<sup>6298</sup> T. 24 February 2003 pp. 13-14 (Witness RE).

<sup>6299</sup> T. 24 February 2003 p. 14; T. 26 February 2003 p. 54; T. 27 February 2003 p. 5 (Witness RE).

<sup>6300</sup> T. 24 February 2003 p. 14; T. 25 February 2003 pp. 30, 32; T. 27 February 2003 p. 5 (Witness RE).

<sup>6301</sup> T. 24 February 2003 pp. 17, 31 (Witness RE).

2275. During her stay at the BPO, in the morning, the refugees were taken behind the *préfecture* offices. In the evenings the refugees would stay in the courtyard of the *préfecture* or on the veranda.<sup>6302</sup>

2276. After the refugees returned from Nyange, but before the refugees were transferred to Rango, Pauline Nyiramasuhuko came to the BPO.<sup>6303</sup> With President Sindikubwabo present, Pauline said, “[t]his dirt is still here. In Butare they have not worked.” The President then added, “[n]o, these people will be killed during Habyarimana’s funeral.” Habyarimana was to be buried on “the 5<sup>th</sup>”. Nyiramasuhuko added that these people should be killed and the women and young girls among them should be raped.<sup>6304</sup> Soldiers and *Interahamwe* came day and night to take away women and young girls and rape them. Those who refused to be raped were killed, and those who survived came back to speak about it.<sup>6305</sup>

2277. Witness RE testified that before she was transferred to Rango, she saw Nyiramasuhuko, Shalom and *Interahamwe*, including one named Kazungu, come to the BPO three times in one night.<sup>6306</sup> Pauline remained aboard the vehicle.<sup>6307</sup> They came aboard a Toyota vehicle covered with mud and cow dung and without a frame in the back.<sup>6308</sup> It was driven by Shalom.<sup>6309</sup> Shalom wore a military uniform.<sup>6310</sup> They started waking people and beating them up.<sup>6311</sup> They were shining torches in people’s faces.<sup>6312</sup> One woman was sleeping on the BPO veranda with her three children and resisted.<sup>6313</sup> Her three children were of primary school age.<sup>6314</sup> Shalom told her: “We’re not going to kill you. We rather wanted to take you to Pauline who is in the vehicle so she can go and hide you.”<sup>6315</sup> Based on this comment, Witness RE surmised that Nyiramasuhuko was at the BPO, although she did not see her.<sup>6316</sup> Witness RE was lying on the veranda.<sup>6317</sup> Witness RE did not know whether this woman was called Mbasha.<sup>6318</sup>

2278. The *Interahamwe* asked the awoken refugees to remove their clothes and took them in their vehicles to a place named Rwabayanga. They almost strangled to death a young woman named Trifina because she refused to go.<sup>6319</sup> Shalom continued to drive the Toyota and led the *Interahamwe*.<sup>6320</sup> A young man and a young woman who had been taken to Rwabayanga

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<sup>6302</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>6303</sup> T. 25 February 2003 p. 39; T. 27 February 2003 p. 5 (Witness RE).

<sup>6304</sup> T. 24 February 2003 p. 18; T. 25 February 2003 p. 44 (Witness RE).

<sup>6305</sup> T. 24 February 2003 p. 19 (Witness RE).

<sup>6306</sup> T. 24 February 2003 pp. 19, 21; T. 25 February 2003 pp. 46, 48 (Witness RE).

<sup>6307</sup> T. 24 February 2003 p. 39; T. 25 February 2003 p. 47 (Witness RE).

<sup>6308</sup> T. 24 February 2003 pp. 19, 21 (Witness RE).

<sup>6309</sup> T. 24 February 2003 p. 21 (Witness RE).

<sup>6310</sup> T. 26 February 2003 p. 25 (Witness RE).

<sup>6311</sup> T. 24 February 2003 p. 21 (Witness RE).

<sup>6312</sup> T. 26 February 2003 p. 22 (Witness RE).

<sup>6313</sup> T. 24 February 2003 p. 19; T. 26 February 2003 pp. 27, 30 (Witness RE).

<sup>6314</sup> T. 26 February 2003 p. 32 (Witness RE).

<sup>6315</sup> T. 24 February 2003 p. 19; T. 25 February 2003 pp. 46-47; T. 26 February 2003 pp. 30-31 (Witness RE).

<sup>6316</sup> T. 24 February 2003 p. 19; T. 25 February 2003 p. 47 (Witness RE).

<sup>6317</sup> T. 24 February 2003 p. 28 (Witness RE).

<sup>6318</sup> T. 26 February 2003 p. 33 (Witness RE).

<sup>6319</sup> T. 24 February 2003 p. 21 (Witness RE).

<sup>6320</sup> T. 24 February 2003 p. 22 (Witness RE).

managed to escape and told the refugees that people led there had been killed with clubs and machetes.<sup>6321</sup> The *Interahamwe* made the people undress.<sup>6322</sup> The pickup made three trips that night.<sup>6323</sup> She knew that Shalom was driving from the survivors who returned.<sup>6324</sup>

2279. On one occasion a young man and woman went to Nsabimana's office to tell him the refugees were being killed and to ask for his help.<sup>6325</sup> Witness RE watched as the two refugees came out of the *préfet's* office. The young woman was beaten on her shoulders and said they had just met with the *préfet*. The young man was tall and had a cloth bandage on his head where he had been injured.<sup>6326</sup> He was dragged and pulled away by a soldier and never came back. The young woman told the other refugees including Witness RE that they had gone to the *préfet* to tell him that the refugees were being killed and to ask for his help.<sup>6327</sup>

2280. Witness RE testified that she did not know Nyiramasuhuko prior to seeing her at the BPO.<sup>6328</sup> She saw Nyiramasuhuko between 10.00 and 11.00 a.m. at the BPO from a distance of about 15 steps; Witness RE was under a Guava tree and Nyiramasuhuko was downhill from the BPO.<sup>6329</sup> She positively identified Nyiramasuhuko in court.<sup>6330</sup> Witness RE said she did not know Ntahobali prior to the war in 1994.<sup>6331</sup> When asked in court to identify Ntahobali, Witness RE pointed to Nteziryayo.<sup>6332</sup>

### Prosecution Witness SS

2281. Witness SS, a woman with a Tutsi father and a Hutu mother,<sup>6333</sup> testified that she went to the Matyazo primary school in April 1994 with her husband and infant daughter.<sup>6334</sup> Prior to 18 April 1994, the situation had already deteriorated in her home *commune*.<sup>6335</sup> Her mother was killed by Hutus in Huye *commune*.<sup>6336</sup> On 21 April 1994, *Interahamwe* attacked the school.<sup>6337</sup> On that day her husband and baby were shot and killed and she received a gunshot wound on her arm.<sup>6338</sup> On 22 April 1994, she was attacked with other family members in Huye *commune*.<sup>6339</sup> Thereafter, she went to the BPO on two occasions. Upon arriving at the BPO the first time, she saw people being loaded onto a bus.<sup>6340</sup> She could not remember the date of the

<sup>6321</sup> T. 24 February 2003 p. 22; T. 25 February 2003 pp. 51-54 (Witness RE).

<sup>6322</sup> T. 24 February 2003 p. 22; T. 25 February 2003 pp. 51, 53; T. 26 February 2003 p. 31 (Witness RE).

<sup>6323</sup> T. 24 February 2003 p. 22 (Witness RE).

<sup>6324</sup> T. 26 February 2003 pp. 23-24 (Witness RE).

<sup>6325</sup> T. 27 February 2003 pp. 5-6 (Witness RE).

<sup>6326</sup> T. 27 February 2003 p. 7 (Witness RE).

<sup>6327</sup> T. 27 February 2003 pp. 5-6 (Witness RE).

<sup>6328</sup> T. 24 February 2003 p. 35; T. 25 February 2003 p. 40 (Witness RE).

<sup>6329</sup> T. 24 February 2003 p. 36 (Witness RE).

<sup>6330</sup> T. 24 February 2003 p. 37 (Witness RE).

<sup>6331</sup> T. 24 February 2003 p. 38 (Witness RE).

<sup>6332</sup> T. 24 February 2003 p. 41; T. 27 February 2003 p. 44 (Witness RE).

<sup>6333</sup> T. 3 March 2003 pp. 72-73 (ICS) (Witness SS).

<sup>6334</sup> T. 3 March 2003 pp. 22-23 (Witness SS).

<sup>6335</sup> T. 10 March 2003 p. 7 (ICS) (Witness SS).

<sup>6336</sup> T. 3 March 2003 p. 23 (Witness SS).

<sup>6337</sup> T. 3 March 2003 p. 23; T. 4 March 2003 p. 51 (Witness SS).

<sup>6338</sup> T. 3 March 2003 p. 23 (Witness SS).

<sup>6339</sup> T. 3 March 2003 p. 24 (Witness SS).

<sup>6340</sup> T. 11 March 2003 p. 14 (Witness SS).

first occasion.<sup>6341</sup> Witness SS went to the BPO a second time on 27 May 1994. Four soldiers escorted her and other Tutsi refugees from Butare University Hospital to the BPO.<sup>6342</sup> The next day, 28 May 1994, Witness SS encountered her eldest sister, Witness SU, at the BPO.<sup>6343</sup> At night the sisters stayed together, but during the day they were separated.<sup>6344</sup>

2282. She estimated that there were about 1,000 refugees when she arrived at the BPO around 27 May 1994.<sup>6345</sup> Witness SS identified the people as refugees because some of them were injured and most of them were Tutsis. She explained that she had been severely traumatised; she lost track of time and could not distinguish one day or one month from the other.<sup>6346</sup> Immediately upon arriving at the BPO, she suffered from dysentery.<sup>6347</sup> Tutsi and Hutu refugees were separated from each other at the BPO. Hutu refugees from Bugesera and Gitarama were segregated into a different group. The Hutus had come with their families and their possessions. They were sheltered when it rained and were later taken away by buses.<sup>6348</sup> The Hutu refugees left the BPO before the Tutsi refugees were transferred to Rango.<sup>6349</sup> Witness SS did not know where they were taken.<sup>6350</sup> At nightfall, young men who were staying there helped *Interahamwe* to board people onto vehicles.<sup>6351</sup> These included Alexis and Fidel.<sup>6352</sup> There were lights at the police brigade near the BPO, but the lights did not shine into the courtyard where the refugees stayed at night.<sup>6353</sup>

2283. At night, Witness SS and her sister slept in the same place. In the daytime Witness SS and her sister separated in order to see if one or the other could survive the attacks.<sup>6354</sup> They stayed on opposite sides of the same guava tree during the day which was located near the perimeter of the BPO near the fence.<sup>6355</sup> Other refugees spent the day behind the BPO.<sup>6356</sup> She and her sister stayed together during the night on the grass in front of the BPO.<sup>6357</sup> Another group of refugees spent the night on the BPO veranda.<sup>6358</sup> She and her sister had not discussed her sister's 2002 testimony.<sup>6359</sup>

2284. The same day that Witness SS saw Nyiramasuhuko at the BPO, Nyiramasuhuko returned to the BPO in the evening.<sup>6360</sup> In the course of that night, Witness SS saw

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<sup>6341</sup> T. 10 March 2003 p. 28 (Witness SS).

<sup>6342</sup> T. 3 March 2003 pp. 24, 26, 37; T. 10 March 2003 p. 28 (Witness SS).

<sup>6343</sup> T. 3 March 2003 p. 38 (Witness SS). The Chamber notes that while the English Transcript says this was 2 May 1994, the French Transcript says 28 May 1994: T. 3 March 2003 p. 42 (Witness SS) (French).

<sup>6344</sup> T. 3 March 2003 p. 38 (Witness SS).

<sup>6345</sup> T. 3 March 2003 p. 38 (Witness SS).

<sup>6346</sup> T. 3 March 2003 p. 37 (Witness SS).

<sup>6347</sup> T. 4 March 2003 pp. 19-20, 31 (Witness SS).

<sup>6348</sup> T. 3 March 2003 p. 38 (Witness SS).

<sup>6349</sup> T. 4 March 2003 p. 21 (Witness SS).

<sup>6350</sup> T. 3 March 2003 p. 38 (Witness SS).

<sup>6351</sup> T. 4 March 2003 p. 18 (Witness SS).

<sup>6352</sup> T. 10 March 2003 pp. 43-44; T. 10 March 2003 p. 50 (Witness SS) (French) (for spelling of "Alexis").

<sup>6353</sup> T. 4 March 2003 p. 41 (Witness SS).

<sup>6354</sup> T. 3 March 2003 p. 38 (Witness SS).

<sup>6355</sup> T. 4 March 2003 p. 37; T. 5 March 2003 p. 7 (ICS); T. 5 March 2003 p. 63 (Witness SS).

<sup>6356</sup> T. 10 March 2003 p. 30 (Witness SS).

<sup>6357</sup> T. 3 March 2003 p. 38; T. 5 March 2003 pp. 10-11 (ICS) (Witness SS).

<sup>6358</sup> T. 10 March 2003 p. 30 (Witness SS).

<sup>6359</sup> T. 4 March 2003 p. 61 (ICS); T. 10 March 2003 pp. 13-14 (ICS) (Witness SS).

<sup>6360</sup> T. 3 March 2003 p. 47 (Witness SS).

Nyiramasuhuko three times.<sup>6361</sup> Witness SS saw Nyiramasuhuko arrive at the BPO in a pickup belonging to Rwamukwaya, covered with mud and black paint, and without a metal frame at the back.<sup>6362</sup> Nyiramasuhuko came with a soldier named Kazungu and a driver who was an *Interahamwe*.<sup>6363</sup> Others later identified the *Interahamwe* driver as Shalom whom she heard was Nyiramasuhuko's son; at the date of her testimony Witness SS still did not know him.<sup>6364</sup> The *Interahamwe* carried clubs, machetes and axes and wore civilian clothes. Witness SS was unable to see whether they wore hats because of the darkness.<sup>6365</sup> Nyiramasuhuko wore a military shirt and a *kitenge* that night.<sup>6366</sup> Witness SS also saw a Sovo ambulance which Warrant Officer Rekeraho came in.<sup>6367</sup> While she stood by the door of the car, Nyiramasuhuko told the *Interahamwe* and soldiers who were carrying weapons to "start from one side and take the young girls and women and go and rape them because they refused to marry you."<sup>6368</sup> Witness SS said that Nyiramasuhuko was in charge of the attacks committed against Tutsi refugees at the BPO.<sup>6369</sup>

2285. After Nyiramasuhuko spoke, the *Interahamwe* and soldiers got out of the vehicle. Witness SS heard a woman say, "[p]lease do not take my child, he is still young." The *Interahamwe* answered that if it was the case, she should breastfeed him.<sup>6370</sup> Asked how she could hear the *Interahamwe* if she was under the guava tree across the BPO courtyard, Witness SS stated she was only under the guava tree during the day and that the lady was shouting a lot.<sup>6371</sup> This woman had arrived at the BPO with a man who was no longer present.<sup>6372</sup> She did not know whether the man was balding.<sup>6373</sup> The soldiers and *Interahamwe* threw the woman into the back of the vehicle.<sup>6374</sup> Because she could no longer hear the woman cry, Witness SS concluded that the woman was dead. Other persons were loaded in the pickup.<sup>6375</sup> The women and girls had been undressed and they were only wearing their undergarments. Witness SS was unable to tell whether the men had kept their clothes, but she heard a woman say, "now you're even taking away our clothes".<sup>6376</sup> While people were being loaded onto the pickup, Nyiramasuhuko was standing next to it.<sup>6377</sup>

2286. Witness SS testified that while some women were taken away in a vehicle, others were beaten and taken to the back of the BPO to be abused.<sup>6378</sup> Other young girls and women were

<sup>6361</sup> T. 3 March 2003 p. 48; T. 4 March 2003 p. 3 (Witness SS).

<sup>6362</sup> T. 3 March 2003 p. 48; T. 5 March 2003 p. 77 (Witness SS).

<sup>6363</sup> T. 3 March 2003 p. 49; T. 5 March 2003 p. 62 (Witness SS).

<sup>6364</sup> T. 3 March 2003 pp. 48-49 (Witness SS).

<sup>6365</sup> T. 5 March 2003 p. 62 (Witness SS).

<sup>6366</sup> T. 5 March 2003 p. 69 ("she was wearing a military shirt with a cloth"); T. 5 March 2003 p. 75 (Witness SS) (French) ("*elle portait une chemise militaire avec un pagne*").

<sup>6367</sup> T. 3 March 2003 p. 51 (Witness SS).

<sup>6368</sup> T. 3 March 2003 pp. 52, 54; T. 5 March 2003 pp. 70-71 (Witness SS).

<sup>6369</sup> T. 3 March 2003 p. 60 (Witness SS).

<sup>6370</sup> T. 3 March 2003 p. 56; T. 5 March 2003 pp. 62-63 (Witness SS).

<sup>6371</sup> T. 5 March 2003 pp. 63, 65 (Witness SS).

<sup>6372</sup> T. 3 March 2003 p. 57 (Witness SS).

<sup>6373</sup> T. 5 March 2003 p. 69 (Witness SS).

<sup>6374</sup> T. 3 March 2003 pp. 56-57; T. 5 March 2003 p. 69 (Witness SS).

<sup>6375</sup> T. 3 March 2003 p. 57; T. 5 March 2003 p. 65 (Witness SS).

<sup>6376</sup> T. 5 March 2003 p. 70 (Witness SS).

<sup>6377</sup> T. 3 March 2003 p. 58 (Witness SS).

<sup>6378</sup> T. 3 March 2003 pp. 57-58 (Witness SS).



taken away and would return to the BPO two or three days later. Witness SS told them she thought they had been killed to which they replied, “[w]hat they subjected us to was worse than death. Imagine if six persons had a turn each on you!”<sup>6379</sup> Witness SS understood that these women had been raped.<sup>6380</sup> She did not know the names of the women who were raped.<sup>6381</sup>

2287. Witness SS testified that Nyiramasuhuko returned to the BPO in the same vehicle, with the driver, soldiers and *Interahamwe* on two more occasions. Witness SS was able to identify one soldier, named Kazungu.<sup>6382</sup> After the vehicle was parked, Nyiramasuhuko got out of the vehicle, and said to bring the young boys and not leave anyone behind.<sup>6383</sup> The persons who came with Nyiramasuhuko took torches and started waking people. The *Interahamwe* took the young boys, but as they were not many, they also took women and girls.<sup>6384</sup> While some refugees were loaded onto the pickup, the soldiers and *Interahamwe* attacked them with weapons. When the vehicle left, Nyiramasuhuko, the *Interahamwe*, the driver, and the soldier named Kazungu were on board.<sup>6385</sup> Witness SS later saw two of the boys again who were about 20 or 21 years old.<sup>6386</sup> She spoke with one of them the next day under the guava tree. He said they had been taken to the IRST and thrown into a pit and that he was lucky to have escaped.<sup>6387</sup>

2288. Witness SS noted that a man named Muzungu stayed with the refugees.<sup>6388</sup> This was a different person than the soldier Kazungu.<sup>6389</sup>

2289. On the last attack that same night, Witness SS testified that she saw Nyiramasuhuko, the driver, the *Interahamwe* and the soldier named Kazungu come back to the BPO on board the vehicle.<sup>6390</sup> She heard Nyiramasuhuko say, “[p]ut everyone on board, old women, old men, put everybody on board.”<sup>6391</sup> The *Interahamwe* got out of the vehicle, put out the light, took their torches and weapons, and woke up everybody. They had traditional weapons such as machetes and clubs, and the soldier had a gun. They loaded refugees onto the vehicle. When the vehicle left, Nyiramasuhuko, *Interahamwe*, the driver and the soldier named Kazungu were on board. In the back of the pickup were *Interahamwe* and the refugees who had been loaded onto the vehicle.<sup>6392</sup>

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<sup>6379</sup> T. 3 March 2003 p. 58 (“There is nothing worse than what we had to undergo. Imagine if six persons have to go on top of you.”); T. 3 March 2003 p. 62 (Witness SS) (French) (“*Il n’y a pas plus atroce que la mort ou ce qu’on nous a fait subir. Imaginez-vous si six personnes devaient faire le tour, toutes sur vous!*”).

<sup>6380</sup> T. 3 March 2003 p. 58 (Witness SS).

<sup>6381</sup> T. 5 March 2003 pp. 13-14 (ICS) (Witness SS).

<sup>6382</sup> T. 3 March 2003 p. 58 (Witness SS).

<sup>6383</sup> T. 3 March 2003 p. 59; T. 5 March 2003 p. 76 (Witness SS).

<sup>6384</sup> T. 3 March 2003 p. 59; T. 5 March 2003 p. 77 (Witness SS).

<sup>6385</sup> T. 3 March 2003 p. 59 (Witness SS).

<sup>6386</sup> T. 5 March 2003 p. 77; T. 11 March 2003 p. 20 (ICS) (Witness SS).

<sup>6387</sup> T. 11 March 2003 p. 18 (Witness SS).

<sup>6388</sup> T. 10 March 2003 p. 41 (Witness SS).

<sup>6389</sup> T. 10 March 2003 pp. 41-42 (Witness SS).

<sup>6390</sup> T. 3 March 2003 p. 59 (Witness SS).

<sup>6391</sup> T. 3 March 2003 pp. 59-60 (Witness SS).

<sup>6392</sup> T. 3 March 2003 p. 60 (Witness SS).

2290. On a different night, an *Interahamwe* hit her sister, Witness SU, with a machete between the shoulders. On another night, an *Interahamwe* woke her sister up; Witness SS' sister removed her clothes, showed him her breasts and told him, "[p]lease, don't take me with you, I'm an old lady and my breasts are falling."<sup>6393</sup> On cross-examination, Witness SU testified that they were not always together because one day her sister left the BPO, returning two days later.<sup>6394</sup>

2291. On another occasion a vehicle came to the BPO to abduct people, but a group of soldiers chased it away. The soldiers told the refugees they should alert them whenever these people came so that the soldiers could react.<sup>6395</sup> The attacks nonetheless continued after this incident.<sup>6396</sup>

2292. Witness SS testified that she had seen corpses at the BPO next to the avocado trees where there were pits.<sup>6397</sup>

2293. Witness SS testified that Nsabimana was in charge of the BPO and that she used to see him every day at the BPO.<sup>6398</sup> She saw him speak to the refugees at the BPO.<sup>6399</sup> The witness testified that the refugees were not given any assistance at the BPO.<sup>6400</sup> There were problems every day at the BPO and Nsabimana was informed. He told the refugees to stay there and that he would take care of them. He was told that refugees were taken away.<sup>6401</sup>

2294. She said that on one occasion a group of white people brought the refugees some food and took some pictures of them. The *Interahamwe* came and took all the provisions the white people had brought to the refugees.<sup>6402</sup> All of the refugees used one pit behind the BPO as a toilet.<sup>6403</sup> Witness SS testified that Nyiramasuhuko, Nsabimana and Kanyabashi must have known about the poor conditions at the BPO since they were there, but they did not take any action to stop or punish the perpetrators of crimes committed at the BPO.<sup>6404</sup>

2295. Witness SS testified that she was at the BPO when three women entered Nsabimana's office to advise him of the security problem at the BPO. One of those women had just had her shoulder broken in the early morning of that day. Their security concerns were not solved by Nsabimana.<sup>6405</sup>

2296. Witness SS knew Nyiramasuhuko prior to 1994 because she used to pass by on the road in front of her house. She estimated that she saw her three times, including at the Hotel Ihuliro in 1990 and Huye Stadium when Nyiramasuhuko was introduced to the public as a

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<sup>6393</sup> T. 3 March 2003 p. 74 (ICS) (Witness SS).

<sup>6394</sup> T. 4 March 2003 p. 37 (Witness SS).

<sup>6395</sup> T. 10 March 2003 pp. 34-35 (Witness SS).

<sup>6396</sup> T. 10 March 2003 p. 35 (Witness SS).

<sup>6397</sup> T. 3 March 2003 p. 65 (Witness SS).

<sup>6398</sup> T. 3 March 2003 p. 43 (Witness SS).

<sup>6399</sup> T. 10 March 2003 p. 24 (Witness SS).

<sup>6400</sup> T. 3 March 2003 p. 65; T. 10 March 2003 p. 23 (Witness SS).

<sup>6401</sup> T. 10 March 2003 p. 23 (Witness SS).

<sup>6402</sup> T. 3 March 2003 p. 65 (Witness SS).

<sup>6403</sup> T. 10 March 2003 p. 32 (Witness SS).

<sup>6404</sup> T. 3 March 2003 p. 67 (Witness SS).

<sup>6405</sup> T. 10 March 2003 p. 15 (ICS) (Witness SS).

minister.<sup>6406</sup> During the genocide, she encountered Nyiramasuhuko at a roadblock prior to seeing her at the BPO.<sup>6407</sup> Witness SS positively identified Nyiramasuhuko and Nsabimana in court.<sup>6408</sup>

### Prosecution Witness FAP

2297. Witness FAP, a Tutsi farmer, testified that she learned of the President's death on 7 April 1994 after which time people started to burn Tutsi houses.<sup>6409</sup> In April 1994,<sup>6410</sup> Tutsis were told to go to Nyakibanda seminary in Gishamvu *commune* and she went there with her husband and two sons.<sup>6411</sup> She estimated that there were 20,000 refugees at the seminary.<sup>6412</sup> They were taken there by force and told that Tutsis must leave Rwanda to go live in Ethiopia.<sup>6413</sup> One week after she had left her home, on a Friday, Hutu women who were staying with the Tutsis in Nyakibanda seminary were asked to leave. Some left and others stayed to die with their Tutsi husbands.<sup>6414</sup> Tutsis were then attacked, starting with the intellectuals, including some staff members of the University.<sup>6415</sup> The attacks started between 13 and 20 April 1994.<sup>6416</sup> She was wounded and five days later left the seminary with her two children.<sup>6417</sup> She subsequently testified she left with only one child.<sup>6418</sup> They went to a person's home, where one of her sons was killed by *Interahamwe*.<sup>6419</sup>

2298. Witness FAP learned that some of her family members were at Butare University Hospital and she travelled there with her surviving son.<sup>6420</sup> She spent about two weeks at the hospital.<sup>6421</sup> Soldiers told her the *Inkotanyi* had infiltrated and that she must go to the BPO.<sup>6422</sup> Between 15 and 50 refugees left the hospital to go to the BPO. When she was questioned as to a prior statement in which she said that 15 refugees were at the hospital, she explained that there were between 15 and 50; the number was not limited to 15.<sup>6423</sup> She was forced to walk to the BPO on foot and was accompanied by four soldiers who beat the refugees along the way.<sup>6424</sup>

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<sup>6406</sup> T. 3 March 2003 pp. 34-35, 60; T. 4 March 2003 pp. 14-15, 17 (Witness SS).

<sup>6407</sup> T. 3 March 2003 pp. 26, 28; T. 5 March 2003 p. 16 (Witness SS).

<sup>6408</sup> T. 3 March 2003 pp. 78-79 (Witness SS).

<sup>6409</sup> T. 11 March 2003 p. 35 (Witness FAP).

<sup>6410</sup> T. 12 March 2003 p. 28 (Witness FAP).

<sup>6411</sup> T. 11 March 2003 pp. 36, 39-40; T. 13 March 2003 p. 64 (ICS) (Witness FAP).

<sup>6412</sup> T. 11 March 2003 p. 45 (Witness FAP).

<sup>6413</sup> T. 11 March 2003 p. 36 (Witness FAP).

<sup>6414</sup> T. 11 March 2003 pp. 37-38 (Witness FAP).

<sup>6415</sup> T. 11 March 2003 p. 38 (Witness FAP).

<sup>6416</sup> T. 12 March 2003 p. 28 (Witness FAP).

<sup>6417</sup> T. 11 March 2003 p. 39 (Witness FAP).

<sup>6418</sup> T. 12 March 2003 p. 32 (Witness FAP).

<sup>6419</sup> T. 12 March 2003 pp. 32-35 (Witness FAP).

<sup>6420</sup> T. 11 March 2003 p. 40 (Witness FAP).

<sup>6421</sup> T. 12 March 2003 p. 35 (Witness FAP).

<sup>6422</sup> T. 11 March 2003 p. 41 (Witness FAP).

<sup>6423</sup> T. 11 March 2003 p. 41; T. 12 March 2003 pp. 37-38 (Witness FAP); Defence Exhibit 100 (Nyiramasuhuko) (6 May 1999, Statement of Witness FAP).

<sup>6424</sup> T. 11 March 2003 p. 41 (Witness FAP).

2299. She arrived at the BPO in May 1994.<sup>6425</sup> She did not know how long she stayed at the BPO, but she was still there in the last two weeks of May.<sup>6426</sup> Nsabimana was the *préfet* when she arrived.<sup>6427</sup> She stayed at the BPO until she was sent to Rango after a military *préfet* had been appointed to office.<sup>6428</sup> On cross-examination, she stated she was at the BPO less than one month.<sup>6429</sup>

2300. When she arrived at the BPO, there were also Hutu refugees who had come from Bugesera and Gitarama.<sup>6430</sup> The Hutu refugees stayed in a house, prepared food and the next day were transferred to Mubumbano.<sup>6431</sup> After a few days, some Tutsi refugees had been killed, and there were about 350 Tutsi refugees left at the BPO, consisting of women and children.<sup>6432</sup>

2301. Witness FAP stated that while at the BPO, Hutus who had married Tutsis could send their children to the market to buy food. Tutsis could not leave to get food.<sup>6433</sup> She and the other sick refugees spent their days under the shade of a guava tree at the back of the BPO. The refugees were not allowed to stay on the BPO veranda during the day because the office was open.<sup>6434</sup> She stated that the only person who she knew at the BPO was her sister.<sup>6435</sup> She spent the day under a guava tree and at night would approach the veranda of the BPO, although she did not sleep on it.<sup>6436</sup>

2302. On the third day after her arrival at the BPO, at about 8.00 p.m., a black camouflage coloured vehicle covered with mud arrived at the BPO.<sup>6437</sup> On board the vehicle were *Interahamwe*, a soldier carrying a gun, the woman minister for family affairs and women's Promotion, Nyiramasuhuko, and the woman's son, named Shalom.<sup>6438</sup> She saw both of them.<sup>6439</sup> Shalom was driving the vehicle.<sup>6440</sup> She was no more than 10 metres from the vehicle.<sup>6441</sup> The *Interahamwe* were armed with traditional weapons and some wore papyrus or banana leaf hats but were otherwise normally dressed.<sup>6442</sup> Nyiramasuhuko, Ntahobali and the *Interahamwe* got out of the vehicle immediately and the refugees shouted that since Pauline

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<sup>6425</sup> T. 12 March 2003 p. 42 (Witness FAP).

<sup>6426</sup> T. 11 March 2003 p. 46; T. 12 March 2003 p. 42 (Witness FAP).

<sup>6427</sup> T. 11 March 2003 p. 46 (Witness FAP).

<sup>6428</sup> T. 11 March 2003 p. 63 (Witness FAP).

<sup>6429</sup> T. 12 March 2003 p. 51 (Witness FAP).

<sup>6430</sup> T. 11 March 2003 p. 45 (Witness FAP).

<sup>6431</sup> T. 11 March 2003 p. 45; T. 12 March 2003 pp. 7, 46 (Witness FAP).

<sup>6432</sup> T. 11 March 2003 p. 45; T. 12 March 2003 p. 47 (Witness FAP).

<sup>6433</sup> T. 11 March 2003 p. 65 (Witness FAP).

<sup>6434</sup> T. 12 March 2003 p. 46 (Witness FAP).

<sup>6435</sup> T. 13 March 2003 p. 19 (ICS) (Witness FAP).

<sup>6436</sup> T. 12 March 2003 p. 46 (Witness FAP).

<sup>6437</sup> T. 11 March 2003 p. 48; T. 12 March 2003 p. 51 (Witness FAP).

<sup>6438</sup> T. 11 March 2003 pp. 48, 56 (Witness FAP).

<sup>6439</sup> T. 13 March 2003 pp. 5-6 (Witness FAP).

<sup>6440</sup> T. 11 March 2003 p. 48; T. 12 March 2003 p. 52 (Witness FAP).

<sup>6441</sup> T. 11 March 2003 pp. 50, 55 (Witness FAP).

<sup>6442</sup> T. 11 March 2003 p. 50; T. 12 March 2003 p. 56 (Witness FAP).

and her son Shalom had arrived, they would not survive.<sup>6443</sup> Witness FAP stated that she saw Nyiramasuhuko less than a week after her arrival.<sup>6444</sup>

2303. The vehicle arrived three times the same evening, each time with Pauline Nyiramasuhuko and her son Shalom Ntahobali, and each time taking away many refugees who never returned.<sup>6445</sup> The three times Witness FAP saw Nyiramasuhuko on that evening were the only times that she saw Nyiramasuhuko during her stay at the BPO.<sup>6446</sup> It was the first time Witness FAP saw Ntahobali.<sup>6447</sup>

2304. On the first occasion, Nyiramasuhuko wore a military uniform. Witness FAP was lying on the ground and thus could only see Nyiramasuhuko's top.<sup>6448</sup> Nyiramasuhuko stood by the vehicle and told the *Interahamwe* to take the young girls and the women who were not old, and to rape and kill them because they had refused to marry Hutus.<sup>6449</sup> Ntahobali and the *Interahamwe* appeared to be looking for someone in particular among the refugees. When they did not find who they were looking for, they moved toward the veranda.<sup>6450</sup> The *Interahamwe* approached one mother of two children. The woman's daughter was below the marrying age and the other child was a son.<sup>6451</sup> Ntahobali tried to make the woman feel safe by saying that his mother had sent for her.<sup>6452</sup> The children told the *Interahamwe* not to rape them because they were too young; but instead to take their mother if necessary.<sup>6453</sup> Ntahobali tried to reassure the girl who cried out by telling her that he was taking her mother.<sup>6454</sup> The mother cried out and refused to be raped in public. The *Interahamwe* killed her on the ground.<sup>6455</sup> Ntahobali and the *Interahamwe* killed the mother with knives and dumped her body in the vehicle. They took her children who had been beaten and drove away.<sup>6456</sup>

2305. The woman had arrived the day before, accompanied by a man. The family spent the night next to Witness FAP.<sup>6457</sup> The morning after the family had arrived, the man was killed by the *Interahamwe* who were staying at the BPO with the refugees. They took away the man's money and made him dig his own grave behind the BPO where there were other corpses. Witness FAP did not know the names or ages of the man and woman. The man had a fair complexion and was tall.<sup>6458</sup>

2306. Witness FAP testified that Nyiramasuhuko's orders to rape given on her first trip to the BPO were carried out; Tutsi women and girls were raped behind the BPO under the avocado

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<sup>6443</sup> T. 11 March 2003 p. 50; T. 12 March 2003 pp. 13, 53 (Witness FAP).

<sup>6444</sup> T. 12 March 2003 p. 51 (Witness FAP).

<sup>6445</sup> T. 12 March 2003 pp. 13, 16, 52 (Witness FAP).

<sup>6446</sup> T. 12 March 2003 p. 52 (Witness FAP).

<sup>6447</sup> T. 12 March 2003 p. 16 (Witness FAP).

<sup>6448</sup> T. 11 March 2003 p. 54; T. 13 March 2003 p. 5 (Witness FAP).

<sup>6449</sup> T. 11 March 2003 p. 54; T. 12 March 2003 p. 53 (Witness FAP).

<sup>6450</sup> T. 11 March 2003 p. 54; T. 12 March 2003 pp. 56-57 (Witness FAP).

<sup>6451</sup> T. 12 March 2003 pp. 57-58 (Witness FAP).

<sup>6452</sup> T. 11 March 2003 p. 55; T. 12 March 2003 p. 16 (Witness FAP).

<sup>6453</sup> T. 11 March 2003 p. 54; T. 12 March 2003 p. 62 (Witness FAP).

<sup>6454</sup> T. 12 March 2003 pp. 62-63 (Witness FAP).

<sup>6455</sup> T. 11 March 2003 p. 54; T. 12 March 2003 p. 62 (Witness FAP).

<sup>6456</sup> T. 11 March 2003 pp. 54-55; 12 March 2003 p. 58 (Witness FAP).

<sup>6457</sup> T. 12 March 2003 pp. 58, 61 (Witness FAP).

<sup>6458</sup> T. 12 March 2003 p. 61 (Witness FAP).

trees. Upon returning to the courtyard of the BPO, one of these girls said that it was better to be killed than to be raped by four or more men.<sup>6459</sup>

2307. On a second trip that night, Nyiramasuhuko and Ntahobali, the *Interahamwe* and a soldier returned in the vehicle. Nyiramasuhuko instructed the *Interahamwe* to load the Tutsi refugees into the vehicle.<sup>6460</sup> It was the same pickup she had previously seen covered in something that looked black and like chocolate.<sup>6461</sup> The *Interahamwe* herded young Tutsi men, women and children into the vehicle by beating them; there were no longer any grown men at the BPO. The refugees' clothes were removed and given to the Hutu refugees from Gitarama and Bugesera.<sup>6462</sup> Of the group that was taken away, she only knew of one person, Semanyenzi, who managed to return to the BPO after the third trip. Semanyenzi was unable to talk that night, but the next day he told them that those who were taken away with him in the vehicle had been killed.<sup>6463</sup> He did not say where they had been killed.<sup>6464</sup>

2308. After the vehicle left, the soldiers asked people their origins. Witness FAP told the soldiers that she was from Bugesera and her mother was Tutsi, but that she was Hutu.<sup>6465</sup> The soldiers therefore allowed her to shelter with the Hutus. At that moment, the pickup-like vehicle returned for the third time that night. The *Interahamwe* made the Tutsi women, children and adolescents board the vehicle.<sup>6466</sup> Nyiramasuhuko instructed Ntahobali and the *Interahamwe* to systematically select young women and young girls and to rape and kill them. This time, they were not raped, but were thrown onto the vehicle and the *Interahamwe* drove away with them.<sup>6467</sup> She knew that the refugees had been killed because each time the vehicle returned to the BPO, only the *Interahamwe* were on board in the baggage section.<sup>6468</sup> Witness FAP joined the Hutu group, but when she was asked to show her identity card she had to rejoin the "serpents".<sup>6469</sup>

2309. A few days after these attacks, on a weekend, a soldier took Witness FAP and the others underneath the guava tree, and said he was taking them to a stadium where there were other refugees.<sup>6470</sup> Two other soldiers chased them, took them back to the BPO and told them that the first soldier was taking them to Rwabayanga in order to kill them.<sup>6471</sup> The two soldiers said that it would be better that he kills them at the BPO so that when the *préfet* comes the next day, he finds their corpses there.<sup>6472</sup> A soldier had told some of the refugees that even if they permitted themselves to be raped, they would be killed; so he told them not to relent.<sup>6473</sup> Asked why she did not mention being kidnapped from the BPO by a soldier, Witness FAP explained:

<sup>6459</sup> T. 11 March 2003 p. 60 (Witness FAP).

<sup>6460</sup> T. 11 March 2003 pp. 56-57 (Witness FAP).

<sup>6461</sup> T. 11 March 2003 p. 60 (Witness FAP).

<sup>6462</sup> T. 11 March 2003 p. 57 (Witness FAP).

<sup>6463</sup> T. 11 March 2003 pp. 57, 60; T. 13 March 2003 pp. 6, 36-37 (Witness FAP).

<sup>6464</sup> T. 13 March 2003 p. 6 (Witness FAP).

<sup>6465</sup> T. 11 March 2003 p. 60 (Witness FAP).

<sup>6466</sup> T. 11 March 2003 p. 60; T. 12 March 2003 p. 6 (Witness FAP).

<sup>6467</sup> T. 11 March 2003 pp. 60-61; T. 13 March 2003 p. 9 (Witness FAP).

<sup>6468</sup> T. 11 March 2003 p. 62 (Witness FAP).

<sup>6469</sup> T. 11 March 2003 p. 62; T. 13 March 2003 p. 12 (Witness FAP).

<sup>6470</sup> T. 12 March 2003 p. 63; T. 13 March 2003 p. 13 (Witness FAP).

<sup>6471</sup> T. 12 March 2003 p. 64 (Witness FAP).

<sup>6472</sup> T. 12 March 2003 p. 64; T. 13 March 2003 pp. 12-13 (Witness FAP).

<sup>6473</sup> T. 11 March 2003 p. 54 (Witness FAP).

“You must understand that when you make a statement, you can’t say everything, but when you know that you will testify before the Trial Chamber, that is when you begin to marshal your thoughts and your memories in your head and these are events I lived through, they are not things that have been told to me.”<sup>6474</sup>

2310. A refugee who was staying at the BPO told Witness FAP that prior to Witness FAP’s arrival, a group of white persons came to count the refugees. This refugee told Witness FAP that he had translated for the white people and also told her how many refugees were staying at the BPO.<sup>6475</sup> *Interahamwe* later put the translator on board a vehicle along with another person who was taking care of an orphan and they were killed.<sup>6476</sup> The translator carried a bible and waved to the refugees as he left.<sup>6477</sup>

2311. The Chamber ruled that there was an insufficient foundation to ask Witness FAP whether she recognised Nyiramasuhuko in court.<sup>6478</sup> Witness FAP said that she would not be able to identify Shalom or the military *préfet* in court.<sup>6479</sup> Witness FAP identified Nsabimana in court.<sup>6480</sup>

#### Prosecution Witness SD

2312. Witness SD, a Tutsi, testified that after the President’s death on 6 April 1994 she fled Gikongoro *préfecture* with her seven children and travelled to Runyinya *commune* where she stayed for three days.<sup>6481</sup> She then travelled to Matyazo where she spent several days before going to Butare University Hospital.<sup>6482</sup> She spent one week at the hospital.<sup>6483</sup> The director of the hospital then forced the refugees to go to the BPO.<sup>6484</sup> She spent one week at the BPO before she was forced to go to the EER where she spent another week before being brought back to the BPO.<sup>6485</sup> After returning from the EER, she was taken to Nyange and to Rango in June 1994.<sup>6486</sup> In total, she spent about one month at the BPO.<sup>6487</sup>

2313. Doctor Gatera, the director of the hospital, asked them to leave the hospital for the BPO because the authorities were found at the BPO. She was transferred from the hospital to the BPO in a red Toyota Mark vehicle. She was accompanied by several others and by a soldier. She travelled on the second of multiple trips between the hospital and the BPO. No lists were

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<sup>6474</sup> T. 13 March 2003 p. 14 (Witness FAP).

<sup>6475</sup> T. 11 March 2003 p. 45; T. 12 March 2003 pp. 48-49 (Witness FAP).

<sup>6476</sup> T. 11 March 2003 pp. 45-46 (Witness FAP).

<sup>6477</sup> T. 12 March 2003 p. 49 (Witness FAP).

<sup>6478</sup> T. 12 March 2003 p. 15 (Witness FAP).

<sup>6479</sup> T. 12 March 2003 pp. 16-17 (Witness FAP).

<sup>6480</sup> T. 12 March 2003 p. 20 (Witness FAP).

<sup>6481</sup> T. 17 March 2003 p. 6 (Witness SD).

<sup>6482</sup> T. 17 March 2003 pp. 32-33 (ICS) (Witness SD).

<sup>6483</sup> T. 17 March 2003 pp. 6-7 (Witness SD).

<sup>6484</sup> T. 17 March 2003 p. 7 (Witness SD).

<sup>6485</sup> T. 17 March 2003 pp. 7-8; T. 17 March 2003 p. 37 (ICS) (Witness SD).

<sup>6486</sup> T. 17 March 2003 pp. 10-12; T. 17 March 2003 p. 37 (ICS); T. 18 March 2003 p. 32 (Witness SD).

<sup>6487</sup> T. 17 March 2003 p. 42 (Witness SD).

made of the refugees because they were too many in number. Some refugees remained at the hospital.<sup>6488</sup> Burundian refugees at the hospital were not transferred to the BPO.<sup>6489</sup>

2314. She was not able to specify the exact date, but stated that President Sindikubwabo came to Butare and that Nsabimana had been sworn-in prior to her arrival at the BPO.<sup>6490</sup> When she arrived at the BPO, several Tutsi refugees from the urban *commune* were already there.<sup>6491</sup> There were a large number of refugees at the BPO, but their numbers constantly decreased as people were taken away to be killed.<sup>6492</sup> She could not estimate the number of refugees but they filled the courtyard.<sup>6493</sup> In addition there were small groups of Hutu refugees in transit to Mubumbano.<sup>6494</sup> There were also *Interahamwe* who stayed at the BPO with the refugees, including Ngoma and Mabula, in addition to a *conseiller*.<sup>6495</sup>

2315. During the day she would stay to the side of the BPO and at night she would seek shelter under the veranda.<sup>6496</sup> At one point she stayed under a guava tree.<sup>6497</sup> Street children would bring her water from Kwa Kaguru.<sup>6498</sup> She testified that she stayed at the BPO courtyard for about one month.<sup>6499</sup>

2316. When she arrived at the BPO she saw *Préfet* Nsabimana standing on the veranda and stating that those staying at the BPO must have identity documents.<sup>6500</sup> Witness SD did not have identity documents, but purchased some for 100 francs.<sup>6501</sup> The document bore her name as well as her *commune* of origin. She did not know the purpose of the document.<sup>6502</sup> Some of the refugees stayed at the BPO, others were taken away to be killed. A *bourgmestre* evacuated another group.<sup>6503</sup> Witness SD used to see Nsabimana at the BPO; she identified Nteziryayo as Nsabimana in court.<sup>6504</sup> Witness SD testified that Nsabimana would arrive at work at the BPO around eight in the morning and leave in the evening at around 5.00 p.m.<sup>6505</sup>

2317. While Witness SD stayed at the BPO, each night a vehicle covered with mud would come to fetch people. Witness SD was told that Shalom, the son of Nyiramasuhuko, drove the vehicle, although she did not see him.<sup>6506</sup> The *Interahamwe* who were present and who took people to vehicles told them that if Shalom were to come he would deliver them to their

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<sup>6488</sup> T. 17 March 2003 pp. 39-40 (Witness SD).

<sup>6489</sup> T. 17 March 2003 p. 41 (Witness SD).

<sup>6490</sup> T. 17 March 2003 pp. 33, 36 (ICS) (Witness SD).

<sup>6491</sup> T. 17 March 2003 pp. 7, 9 (Witness SD).

<sup>6492</sup> T. 17 March 2003 p. 63; T. 18 March 2003 p. 18 (Witness SD).

<sup>6493</sup> T. 17 March 2003 p. 60 (Witness SD).

<sup>6494</sup> T. 17 March 2003 p. 7 (Witness SD).

<sup>6495</sup> T. 17 March 2003 p. 7; T. 18 March 2003 pp. 17-18 (Witness SD).

<sup>6496</sup> T. 17 March 2003 pp. 46-47 (Witness SD).

<sup>6497</sup> T. 18 March 2003 p. 17 (Witness SD).

<sup>6498</sup> T. 17 March 2003 p. 59 (Witness SD).

<sup>6499</sup> T. 17 March 2003 p. 42 (Witness SD).

<sup>6500</sup> T. 17 March 2003 pp. 7, 47 (Witness SD).

<sup>6501</sup> T. 17 March 2003 pp. 7, 62 (Witness SD).

<sup>6502</sup> T. 17 March 2003 pp. 62-63 (Witness SD).

<sup>6503</sup> T. 17 March 2003 p. 7 (Witness SD).

<sup>6504</sup> T. 17 March 2003 pp. 19-20 (Witness SD).

<sup>6505</sup> T. 17 March 2003 pp. 48-49 (Witness SD).

<sup>6506</sup> T. 17 March 2003 pp. 9-10 (Witness SD).



death.<sup>6507</sup> Girls and women were taken away to be raped and other people were taken away and never seen again.<sup>6508</sup>

2318. Witness SD said she recognised Nyiramasuhuko at the BPO because she had seen Nyiramasuhuko in the *Imvaho* newspaper which identified Nyiramasuhuko as the minister in charge of gender issues.<sup>6509</sup> Witness SD was not asked to identify Nyiramasuhuko in court.<sup>6510</sup>

#### Prosecution Witness QY

2319. Witness QY, a Tutsi aged 17 in 1994, was in Butare *préfecture* when the President's plane was shot down.<sup>6511</sup> She went to Matyazo primary school one or two days after the plane was shot down and was attacked there the same night.<sup>6512</sup> Three days later, she was taken to someone's house, which was also attacked.<sup>6513</sup> The next day a Red Cross vehicle picked her up and took her to the hospital.<sup>6514</sup> She could not recall how many days she spent at the hospital.<sup>6515</sup> Her statement of 18 September 1997 provided that she stayed at the hospital for three days.<sup>6516</sup> She was chased away from the hospital and left on foot.<sup>6517</sup> A woman along the road suggested that Witness QY go to the BPO.<sup>6518</sup> She arrived in the evening and saw a large number of persons seeking refuge filling the courtyard of the BPO.<sup>6519</sup> She spent one month at the BPO.<sup>6520</sup>

2320. When she arrived at the BPO, she saw a Daihatsu vehicle that was loading Hutus to be taken back to their home *communes*.<sup>6521</sup> After the departure of this vehicle, at around 9.00 p.m., she saw a different Daihatsu vehicle driven by someone named Shalom arrive at the BPO.<sup>6522</sup> Shalom was accompanied by about 10 *Interahamwe* who carried traditional weapons such as machetes and clubs.<sup>6523</sup> The Daihatsu was small, did not have a back frame, and was covered with mud, making it difficult to discern the vehicle's colour.<sup>6524</sup>

2321. When the vehicle arrived, the refugees moved like red ants away from the veranda.<sup>6525</sup> Very often a refugee might be with someone and *Interahamwe* would take away that person

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<sup>6507</sup> T. 17 March 2003 pp. 9, 18 (Witness SD).

<sup>6508</sup> T. 17 March 2003 p. 10 (Witness SD).

<sup>6509</sup> T. 17 March 2003 p. 8 (Witness SD).

<sup>6510</sup> T. 17 March 2003 p. 20 (Witness SD).

<sup>6511</sup> T. 19 March 2003 p. 7 (Witness QY).

<sup>6512</sup> T. 19 March 2003 pp. 7-8 (Witness QY).

<sup>6513</sup> T. 19 March 2003 p. 11 (Witness QY).

<sup>6514</sup> T. 19 March 2003 pp. 11-12 (Witness QY).

<sup>6515</sup> T. 19 March 2003 pp. 13, 15; T. 25 March 2003 p. 31 (ICS) (Witness QY).

<sup>6516</sup> T. 20 March 2003 p. 26 (Witness QY); Defence Exhibit 113 (Nyiramasuhuko) (18 September 1997, Statement of Witness QY).

<sup>6517</sup> T. 19 March 2003 pp. 14-15 (Witness QY).

<sup>6518</sup> T. 19 March 2003 p. 15; T. 20 March 2003 p. 38 (Witness QY).

<sup>6519</sup> T. 19 March 2003 p. 16; T. 20 March 2003 p. 41 (Witness QY).

<sup>6520</sup> T. 20 March 2003 p. 32 (Witness QY).

<sup>6521</sup> T. 19 March 2003 p. 16; T. 25 March 2003 pp. 20, 44 (Witness QY).

<sup>6522</sup> T. 19 March 2003 pp. 22-24; T. 20 March 2003 p. 41 (Witness QY).

<sup>6523</sup> T. 19 March 2003 p. 24; T. 20 March 2003 p. 42 (Witness QY).

<sup>6524</sup> T. 19 March 2003 pp. 22-23 (Witness QY).

<sup>6525</sup> T. 20 March 2003 p. 67; T. 24 March 2003 p. 12 (Witness QY).

and the other one was spared.<sup>6526</sup> Shalom and *Interahamwe* alighted from the vehicle to select young men and force them to board the vehicle.<sup>6527</sup> She recognised Shalom because she had seen him previously at the Butare hospital, but she did not look at the faces of the other *Interahamwe*.<sup>6528</sup> She was about seven metres away from Shalom.<sup>6529</sup> They took girls by force and raped them either behind the BPO next to a house or in the surrounding woods.<sup>6530</sup> This was done in the process of loading people to take them to their home *communes* and *préfectures*.<sup>6531</sup> When the vehicle was full, it left the BPO and travelled towards the road leading to Rwabayanga, taking the occupants to their death.<sup>6532</sup>

2322. Rwabayanga was located near a forest. After the war, a pit was discovered at Rwabayanga into which bodies had been placed.<sup>6533</sup> None of the refugees taken to Rwabayanga came back to the BPO.<sup>6534</sup> Witness QY learned about Rwabayanga from a woman named Annonciata who had been taken there but who was later saved by a person who looked like a white man, named Muzungu, who later took her as his wife.<sup>6535</sup> Witness QY stated that she knew a man named Kazungu and a man named Muzungu during the war.<sup>6536</sup> The man named Muzungu raped Annonciata and saved her from Rwabayanga.<sup>6537</sup>

2323. On the second night, at around 7.00 or 8.00 p.m. Shalom drove the same vehicle to the BPO.<sup>6538</sup> Nyiramasuhuko, her bodyguard, Kazungu and *Interahamwe* were also in the vehicle.<sup>6539</sup> They stopped and forced people to board the vehicle.<sup>6540</sup> Witness QY stated that she hid among the group of refugees when the vehicle arrived at the BPO and returned when the vehicle left.<sup>6541</sup> Asked how she could see Nyiramasuhuko if she was hiding, Witness QY stated that she did not leave the BPO to hide. Rather, she would hide among the many refugees who were staying at the BPO and could still see what was happening.<sup>6542</sup>

2324. The vehicle returned several times that evening with about a two hour interval between trips, and each time it returned the same thing was done.<sup>6543</sup> On the second trip that second night, Shalom alighted from the vehicle and approached the veranda of the BPO. He walked among the refugees, kicking and forcing some of them to get into the vehicle.<sup>6544</sup> The *Interahamwe* carried torches and flashed them in the direction of the refugees.<sup>6545</sup> Witness QY

<sup>6526</sup> T. 24 March 2003 pp. 12-13 (Witness QY).

<sup>6527</sup> T. 19 March 2003 pp. 24-25 (Witness QY).

<sup>6528</sup> T. 19 March 2003 p. 25 (Witness QY).

<sup>6529</sup> T. 19 March 2003 p. 26 (Witness QY).

<sup>6530</sup> T. 19 March 2003 pp. 24, 27 (Witness QY).

<sup>6531</sup> T. 19 March 2003 p. 16 (Witness QY).

<sup>6532</sup> T. 19 March 2003 pp. 22, 24-25 (Witness QY).

<sup>6533</sup> T. 19 March 2003 p. 42 (Witness QY).

<sup>6534</sup> T. 19 March 2003 p. 47; T. 24 March 2003 p. 30 (Witness QY).

<sup>6535</sup> T. 19 March 2003 p. 70; T. 19 March 2003 p. 71 (Witness QY) (French) (for spelling of “Annonciata”).

<sup>6536</sup> T. 19 March 2003 p. 70 (Witness QY).

<sup>6537</sup> T. 24 March 2003 p. 28; T. 24 March 2003 p. 26 (Witness QY) (French) (for spelling of “Annonciata”).

<sup>6538</sup> T. 19 March 2003 p. 27 (Witness QY).

<sup>6539</sup> T. 19 March 2003 pp. 27, 31; T. 24 March 2003 p. 24 (Witness QY).

<sup>6540</sup> T. 19 March 2003 p. 31 (Witness QY).

<sup>6541</sup> T. 24 March 2003 pp. 5-6, 12-13 (Witness QY).

<sup>6542</sup> T. 24 March 2003 p. 6 (Witness QY).

<sup>6543</sup> T. 19 March 2003 pp. 33, 40; T. 20 March 2003 p. 44; T. 24 March 2003 pp. 24-25 (Witness QY).

<sup>6544</sup> T. 19 March 2003 p. 33 (Witness QY).

<sup>6545</sup> T. 19 March 2003 p. 41; T. 24 March 2003 p. 30 (Witness QY).

did not see electric light at the BPO.<sup>6546</sup> The refugees would try to flee scattering like ants to be protected from the *Interahamwe*.<sup>6547</sup> Those in the vehicle, namely Shalom, Nyiramasuhuko, her bodyguard and the *Interahamwe* with the refugees in the back, again set off towards Rwabayanga.<sup>6548</sup> She did not know which direction the vehicle turned to go to Rwabayanga.<sup>6549</sup> The vehicle came back a third time that same night to collect more refugees.<sup>6550</sup> The refugees were driven away to be killed and the vehicle did not come back as it was now daylight.<sup>6551</sup> Witness QY could not specify at what time the vehicle arrived at the BPO on each trip.<sup>6552</sup> To her knowledge, the *préfet* was not informed of these abductions.<sup>6553</sup>

2325. On the third day Shalom drove the vehicle back again at about 7.00 or 8.00 p.m.<sup>6554</sup> Witness QY did not see Nyiramasuhuko this time.<sup>6555</sup> Witness QY subsequently testified that she saw Shalom, Nyiramasuhuko, Kazungu and *Interahamwe* in the vehicle on the third night.<sup>6556</sup> She then corrected her testimony stating that Nyiramasuhuko was not present on the fourth night.<sup>6557</sup> Again people were made to board the vehicle while others were raped; prior to boarding the vehicle the refugees were forced to undress.<sup>6558</sup>

2326. At night, the *Interahamwe* beat up the refugees at the BPO.<sup>6559</sup> At one time, white people came and discussed with the *préfet* the conditions of the refugees. The *préfet* answered that he would provide beans, rice and blankets and that they would spend the nights in a building, but the witness said that none of this occurred. Refugees slept on the BPO veranda, or under the trees.<sup>6560</sup> Refugees saw beans arrive at the BPO, but they were never distributed.<sup>6561</sup> Witness QY stated that the discussion between the *préfet* and the white men was translated to her by a refugee. The translator was taken away that same night and she did not see him again.<sup>6562</sup>

2327. Witness QY did not know Nyiramasuhuko before the events. She met her for the first time during her second night at the BPO, and never saw her again after the war.<sup>6563</sup> Witness QY was not able to recognise Nyiramasuhuko in court and could only give a description of her as small. Witness QY stated that she did not know anyone else in Butare named Shalom. Witness QY was not asked to identify Shalom.<sup>6564</sup>

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<sup>6546</sup> T. 24 March 2003 p. 30; T. 25 March 2003 p. 43 (Witness QY).

<sup>6547</sup> T. 19 March 2003 pp. 33, 41 (Witness QY).

<sup>6548</sup> T. 19 March 2003 pp. 34-35 (Witness QY).

<sup>6549</sup> T. 24 March 2003 pp. 31-32 (Witness QY).

<sup>6550</sup> T. 19 March 2003 pp. 35-36 (Witness QY).

<sup>6551</sup> T. 19 March 2003 p. 39 (Witness QY).

<sup>6552</sup> T. 19 March 2003 p. 40 (Witness QY).

<sup>6553</sup> T. 25 March 2003 p. 45 (Witness QY).

<sup>6554</sup> T. 19 March 2003 pp. 41-42 (Witness QY).

<sup>6555</sup> T. 19 March 2003 p. 41 (Witness QY).

<sup>6556</sup> T. 19 March 2003 p. 44 (Witness QY).

<sup>6557</sup> T. 19 March 2003 p. 46 (Witness QY).

<sup>6558</sup> T. 19 March 2003 pp. 41-42 (Witness QY).

<sup>6559</sup> T. 19 March 2003 p. 60 (Witness QY).

<sup>6560</sup> T. 19 March 2003 p. 61 (Witness QY).

<sup>6561</sup> T. 19 March 2003 p. 61; T. 25 March 2003 pp. 47-48 (Witness QY).

<sup>6562</sup> T. 25 March 2003 pp. 46-47 (Witness QY).

<sup>6563</sup> T. 19 March 2003 p. 65; T. 24 March 2003 pp. 24-25 (Witness QY).

<sup>6564</sup> T. 19 March 2003 p. 65 (Witness QY).

Prosecution Witness QBQ

2328. Witness QBQ, a Tutsi housemaid, testified that around the end of April 1994, she was driven to the BPO in a vehicle belonging to a sergeant at the ESO.<sup>6565</sup> The sergeant told them that he was going to take them to the BPO where other refugees were located.<sup>6566</sup> Witness QBQ testified that she brought her employer's two-year-old child with her to the BPO. The child's mother had been killed and the child had received a gunshot in his neck.<sup>6567</sup> After obtaining treatment from the baby's aunt, the child survived.<sup>6568</sup> The witness stayed at the BPO approximately one month.<sup>6569</sup> They arrived at the BPO in the evening towards nightfall.<sup>6570</sup> She stated that there were about 2,000 Tutsi refugees from Kigali, Gikongoro and other *préfectures*.<sup>6571</sup> That night, she stayed on the veranda and the next morning she moved to the lawn.<sup>6572</sup>

2329. Three days after she arrived at the BPO, she saw Nyiramasuhuko and Nsabimana walk to the BPO in the morning.<sup>6573</sup> People at the BPO identified Nyiramasuhuko for her.<sup>6574</sup> The *préfet* had a bulging forehead.<sup>6575</sup> Witness QBQ was 2.5 metres from Nyiramasuhuko.<sup>6576</sup>

2330. That same evening around nightfall, Nyiramasuhuko returned aboard a white-coloured Toyota pickup covered with mud.<sup>6577</sup> Nyiramasuhuko sat in the cabin of the vehicle and Shalom drove.<sup>6578</sup> Members of *Interahamwe* accompanied them.<sup>6579</sup> Shalom had been identified to her by people at the BPO. The vehicle was about 4.5 metres away from her as she sat on the veranda.<sup>6580</sup> It was not so dark as to prevent Witness QBQ from seeing Nyiramasuhuko's face.<sup>6581</sup> Night had not yet fallen.<sup>6582</sup>

2331. Witness QBQ testified that Nyiramasuhuko and the *Interahamwe* got out of the vehicle, the *Interahamwe* went close to her, and Nyiramasuhuko ordered them to "[r]ape the women and the girls and kill the rest."<sup>6583</sup> The *Interahamwe* wore ordinary civilian clothes and used flashlights to find people.<sup>6584</sup> Nyiramasuhuko was standing next to the vehicle.<sup>6585</sup> The *Interahamwe* immediately attacked the people on the veranda and took them away by pulling

<sup>6565</sup> T. 3 February 2004 pp. 6-7; T. 3 February 2004 p. 88 (ICS) (Witness QBQ).

<sup>6566</sup> T. 4 February 2004 pp. 4-6 (Witness QBQ).

<sup>6567</sup> T. 3 February 2004 p. 89; T. 4 February 2004 p. 6 (Witness QBQ).

<sup>6568</sup> T. 3 February 2004 p. 89; T. 4 February 2004 pp. 6-7; T. 4 February 2004 p. 19 (ICS) (Witness QBQ).

<sup>6569</sup> T. 3 February 2004 p. 52; T. 4 February 2004 p. 8 (Witness QBQ).

<sup>6570</sup> T. 3 February 2004 pp. 7, 38 (Witness QBQ).

<sup>6571</sup> T. 3 February 2004 pp. 7, 38-39, 50 (Witness QBQ).

<sup>6572</sup> T. 3 February 2004 p. 40 (Witness QBQ).

<sup>6573</sup> T. 3 February 2004 pp. 7-8, 52-53 (Witness QBQ).

<sup>6574</sup> T. 3 February 2004 pp. 7, 53 (Witness QBQ).

<sup>6575</sup> T. 3 February 2004 pp. 8, 23 (Witness QBQ).

<sup>6576</sup> T. 3 February 2004 pp. 8-10 (Witness QBQ).

<sup>6577</sup> T. 3 February 2004 pp. 10, 20, 53, 55, 58 (Witness QBQ).

<sup>6578</sup> T. 3 February 2004 pp. 10, 90 (Witness QBQ).

<sup>6579</sup> T. 3 February 2004 p. 10 (Witness QBQ).

<sup>6580</sup> T. 3 February 2004 p. 11 (Witness QBQ).

<sup>6581</sup> T. 3 February 2004 p. 58 (Witness QBQ).

<sup>6582</sup> T. 3 February 2004 p. 59 (Witness QBQ).

<sup>6583</sup> T. 3 February 2004 pp. 10, 12, 61 (Witness QBQ).

<sup>6584</sup> T. 3 February 2004 pp. 59-60 (Witness QBQ).

<sup>6585</sup> T. 3 February 2004 pp. 20, 58, 61 (Witness QBQ).

them by their noses.<sup>6586</sup> The *Interahamwe* used a club to hit one woman who refused to comply. She died in front of the vehicle.<sup>6587</sup> Many women were raped while Nyiramasuhuko was still on the spot.<sup>6588</sup> The *Interahamwe*, Nyiramasuhuko and Shalom subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped in a ditch there.<sup>6589</sup> The attackers infected Witness QBQ with HIV/AIDS.<sup>6590</sup>

2332. The vehicle, again driven by Shalom, came back after having unloaded its cargo and then took other people away to Kumukoni.<sup>6591</sup> The assailants woke up Witness QBQ and set her aside to be taken aboard the vehicle; however she managed to escape when she went to see her mistress' crying baby and lay down beside him.<sup>6592</sup>

2333. Witness QBQ testified that Semanyenzi was among the abducted refugees in the second group, but managed to escape after he was dumped in a pit at Mukoni.<sup>6593</sup> Semanyenzi came back alone the same night, told the others refugees at the BPO what had happened to him, and then left.<sup>6594</sup> Witness QBQ stated that Mukoni, Kabutare and Rwabayanga are three different places.<sup>6595</sup>

2334. Witness QBQ testified that the vehicle came back the next evening. Nyiramasuhuko, Shalom and *Interahamwe* selected some Tutsi refugees as they did previously and took them to Mukoni for the same purpose.<sup>6596</sup> Witness QBQ testified that she was not in a position to identify Ntahobali or Nyiramasuhuko since the events took place a very long time ago.<sup>6597</sup> No one reported the abductions of refugees from the BPO to Nsabimana. It was happening in front of his office so she said he knew what was going on.<sup>6598</sup> While at the BPO she was taken to Nyange and returned to the BPO on the same day, and the following day went to the EER where she spent one week.<sup>6599</sup> The day after they returned to the BPO from the EER, she went to Rango.<sup>6600</sup>

#### Prosecution Witness TQ

2335. Witness TQ, a Hutu employee of the Belgian Red Cross, testified that around 29 or 30 April 1994, he had a meeting with Nsabimana in which he asked if he could collect and bury

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<sup>6586</sup> T. 3 February 2004 pp. 20-21, 62 (Witness QBQ).

<sup>6587</sup> T. 3 February 2004 pp. 20-21 (Witness QBQ).

<sup>6588</sup> T. 3 February 2004 pp. 62-63 (Witness QBQ).

<sup>6589</sup> T. 3 February 2004 pp. 20-21, 63 (Witness QBQ).

<sup>6590</sup> T. 3 February 2004 p. 28 (Witness QBQ).

<sup>6591</sup> T. 3 February 2004 pp. 21-22 (Witness QBQ).

<sup>6592</sup> T. 3 February 2004 pp. 22, 89 (Witness QBQ).

<sup>6593</sup> T. 3 February 2004 pp. 63, 70-71 (Witness QBQ).

<sup>6594</sup> T. 3 February 2004 p. 70 (Witness QBQ).

<sup>6595</sup> T. 3 February 2004 p. 72 (Witness QBQ).

<sup>6596</sup> T. 3 February 2004 p. 22 (Witness QBQ).

<sup>6597</sup> T. 3 February 2004 pp. 22, 24, 89-90 (Witness QBQ).

<sup>6598</sup> T. 4 February 2004 p. 14 (Witness QBQ).

<sup>6599</sup> T. 3 February 2004 pp. 22-23 (Witness QBQ).

<sup>6600</sup> T. 3 February 2004 p. 24 (Witness QBQ).

the bodies of orphans that had been killed at the school complex. Nsabimana told Witness TQ that he was a madman and that Nsabimana did not have time for that.<sup>6601</sup>

2336. On 3 May 1994 Witness TQ went to the BPO to talk to *Sous-préfet* Rutayisire, and noticed refugees at the premises behind the *préfet's* office. Witness TQ found them in very poor conditions. It was during the rainy season and the women wore clothes that were torn and smelling. The witness got the impression that the people were abandoned. The refugees told Witness TQ, who wore Red Cross attire, about their living conditions and asked him for some food and clothing and other small things.<sup>6602</sup>

2337. In relation to the situation of the refugees at the *préfecture* office around 20 to 21 June 1994, Witness TQ stated that there were no longer refugees there, and there was a Peugeot pickup truck that belonged to a man named Rwamukwaya, who was killed during the genocide and was Nyiramasuhuko's neighbour. Shalom was driving his mother, Nyiramasuhuko, in this vehicle.<sup>6603</sup>

#### Prosecution Expert Witness Alison Des Forges

2338. Alison Des Forges testified as to the content of two interviews she conducted with Nsabimana in 1996 regarding the events at the BPO.<sup>6604</sup> Nsabimana told her the BPO had been a problem for him, that it had gotten worse after Tutsis had been forced to leave Butare University Hospital, where some of them had taken shelter. He said he was essentially left alone with this problem and that he was the only person in charge of this situation. He indicated that there were no guards to take care of the refugees at night and that people were taken away at night. He did not know how many were taken away, but that he did know that it was happening.<sup>6605</sup>

2339. Nsabimana also told her that Callixte Kalimanzira was a great presence in Butare throughout this period as a leading MRND political figure. Kalimanzira, who was the Interim Minister of the Interior, had told Nsabimana that it looked bad to have the refugees in front of the BPO, and the *préfecture* Security Council objected to having the refugees there. The refugees were sent away to the nearby school, and remained there for about 10 days. The authorities in charge of EER sent them back to the BPO. Nsabimana told Des Forges that during this time, soldiers and others were coming to take away women to rape them and other people were being selected to be killed.<sup>6606</sup>

2340. The Prosecution introduced two Exhibits through Des Forges which included statements allegedly made by Nsabimana. Prosecution Exhibit 113 was written by Nsabimana and entitled, *The Truth About the Massacres in Butare*. In that document, Nsabimana made the following statements:

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<sup>6601</sup> T. 8 September 2004 pp. 41-42 (ICS) (Witness TQ).

<sup>6602</sup> T. 6 September 2004 pp. 61-62 (ICS) (Witness TQ).

<sup>6603</sup> T. 9 September 2004 p. 33 (ICS) (Witness TQ).

<sup>6604</sup> T. 9 June 2004 pp. 49, 51 (Des Forges).

<sup>6605</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>6606</sup> T. 9 June 2004 p. 51 (Des Forges).

[S]ince there were some sick soldiers passing through and some unknown soldiers at the camps in Butare, there were a few isolated cases of disappearances at night.

...

I saw refugees in the Prefecture. When I asked these burgomasters to come and collect their people, many of them did whatever they could to avoid it.

...

At the end of April Tutsi refugees – women, children and old people came to the Prefecture from all over to seek refuge. When the University hospital became congested with injured soldiers, civilian patients, the majority of whom were Tutsi, were turned away. Even the prisons refused to accept convicts because of shortage of food.

...

I decided to protect all the refugees in the Prefectorial office despite pressure from all sides. I asked the Red Cross to give them food, and every morning I asked them if anyone had threatened them. At the Prefecture, the brigade did not have any gendarmes. The government reprimanded me for not finding gendarmes to guard the Prefecture, yet I was able to find gendarmes to protect Tutsis.<sup>6607</sup>

2341. The Prosecution also introduced Prosecution Exhibit 114 through Des Forges. It contains a 1 October 1994 interview with Nsabimana. The exhibit included the following questions and responses by Nsabimana:

Q: How were you managing in that position at the time? You were telling people not to leave, but were they safe? Were you safe?

SN: Myself, I was not safe. I was not protected. I had two gendarmes with me possibly to protect me, possibly to get info on me. I didn't know which .... The problem was that the people who came to kill had guns. They were the military in civilian clothes. They were the *Interahamwe* with guns. How can you counter these people? Mainly, it was never to give information about people's whereabouts. That was the kind of protection we could give.

...

Q: Can you say with confidence that you protected people, that your presence helped?

...

SN: From the beginning there were people living at the office [the BPO]. How they came was very simple. First, there were about 20 women with children and nothing to eat. That day they were given some beans to eat. The next day there were more and then more again. Sometimes, there were people with wounds, other times people from the hospital. Injured military personnel were moved from Kigali to Butare so the

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<sup>6607</sup> Prosecution Exhibit 113 (*The Truth About the Massacres in Butare*, by Nsabimana) pp. K0016627, K0016629-K0016631.

civilians at the hospital were put out. They had nowhere to go, no papers, no identity card, no possibilities, so the hospital's director put them in his car and brought them to my office. I asked them if they wanted to go back, they said no we want to stay here. They too had nothing to eat. I went to see an NGO priest and got food for them. Some *Interahamwe* came in the early days to see who was there. I told them never to come back, that these people were protected. We did a list of the people living there so that every morning when I was around I could check to see if they were there or not or if there were any problems. Sometimes they reported to me that some *Interahamwe* came and looked and left. Around the end of June it was very hard, before the 15<sup>th</sup> of June, the RPF was not far from Butare and many of the *Interahamwe* wanted to kill these people very fast. I was given 12 soldiers by a certain colonel to protect them. Those Tutsi people were living at my office for 2-3 months and when I was there they were protected. Then I was replaced.<sup>6608</sup>

2342. Des Forges testified that RPF troops took the centre part of Rwanda in the early days of June 1994. This caused the government authorities to flee directly west and to settle in Gisenyi temporarily.<sup>6609</sup> Her Expert Report stated that as the RPF took Kabgayi and moved towards Gitarama, the Interim Government called on civilian self-defence forces to launch a counter-offensive on 6 June 1994. It failed and several days later, the Interim Government fled from Gitarama heading first to Kibuye and then to Gisenyi. The RPF took Gitarama on 13 June 1994.<sup>6610</sup>

#### Prosecution Expert Witness André Guichaoua

2343. André Guichaoua testified that the RPF captured Kabgayi on 2 June 1994 and that the Interim Government transferred to Gitarama on 10 June 1994.<sup>6611</sup> He testified that Kibuye was captured on 2 June 1994 and that on 10 June 1994, the Interim Government partially withdrew to Gisenyi. On 13 June 1994 the RPF captured Gitarama.<sup>6612</sup>

2344. The Nyiramasuhuko Defence confronted Guichaoua with prior testimony in the *Semanza* case in which he stated that the Interim Government left Kigali on 11 April 1994 and went to Murambi; that its seat was in Murambi until 29 May 1994 and thereafter it moved to Gisenyi. Guichaoua stated that he was testifying off the cuff as he had indicated in that case, and that he had verified that the dates he gave in his testimony in the present case were accurate.<sup>6613</sup>

#### Prosecution Witness FA

2345. Witness FA, a Hutu, testified that she saw Ntahobali driving a white vehicle described by others as a Hilux that was stained with mud and had no metal bars at the rear for the

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<sup>6608</sup> Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994) pp. K0120069-K0120070.

<sup>6609</sup> T. 6 July 2004 p. 44 (Des Forges).

<sup>6610</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 73.

<sup>6611</sup> T. 28 September 2004 pp. 58-59 (Guichaoua).

<sup>6612</sup> T. 29 September 2004 p. 4 (Guichaoua).

<sup>6613</sup> T. 29 September 2004 p. 5 (Guichaoua).



tarpaulin.<sup>6614</sup> She saw Ntahobali on several other occasions because “it [the car] was working every day”, and Ntahobali was always the one driving the vehicle.<sup>6615</sup>

2346. Witness FA clarified that in describing the vehicle as “a white vehicle described by others as a Hilux”, she intended that people referred to this type of a vehicle as a Hilux, and not that people told her so.<sup>6616</sup>

#### Prosecution Witness TG

2347. Witness TG, a Tutsi accountant in 1994, testified that from 26 April 1994, he was in hiding at businessman Martin Uwariraye’s compound, until 2 July 1994 when *Interahamwe* invaded the compound.<sup>6617</sup> From the compound’s bakery, the witness often saw Ntahobali passing on the main road. Ntahobali was driving a Peugeot pickup 504 that was originally white but was soiled on the side in a kind of camouflage.<sup>6618</sup> Witness TG had seen that vehicle before April 1994 and knew it had belonged to a businessman called Rwamukwaya who was Tutsi.<sup>6619</sup>

#### 3.6.19.3.2 Defence Evidence

#### Nyiramasuhuko Defence Witness WKKTD

2348. Witness WKKTD, a Hutu teacher, testified that he knew Nyiramasuhuko because everybody knew each other in Butare. He used to see her at her workplace, and sometimes asked her for favours.<sup>6620</sup>

2349. Witness WKKTD testified he knew a man named Mr. Mbasha since 1988 and knew him very well. They were neighbours and their families spent significant time together.<sup>6621</sup> Mbasha was from Cyangugu, was married and had two daughters, one aged 7 and the other aged 10 or 11 in 1994. Before his marriage, Mbasha had been a Jesuit brother in Burundi. Both Mbasha and his wife were Tutsis. The witness recalled that Mbasha was a tall, strong, muscular man, who was bald and who had lost one of his upper teeth. Mbasha’s family and Witness WKKTD’s family had become friends after Mbasha had moved into Witness WKKTD’s neighbourhood. The families visited each other, lent their vehicles to one another, and Witness WKKTD had learned to drive in the driving school where Mbasha was a trainer.<sup>6622</sup> Witness WKKTD testified that from 1988 to 1994 Mbasha worked at the same establishment as the witness.<sup>6623</sup> In 1994, Mbasha’s wife worked at the Bupharma pharmacy in

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<sup>6614</sup> T. 30 June 2004 p. 60 (ICS); T. 1 July 2004 p. 46 (Witness FA).

<sup>6615</sup> T. 30 June 2004 pp. 62-63 (ICS) (Witness FA).

<sup>6616</sup> T. 1 July 2004 p. 47 (Witness FA).

<sup>6617</sup> T. 30 March 2004 pp. 63, 65; T. 31 March 2004 pp. 20, 22, 64; T. 31 March 2004 p. 75 (ICS) (Witness TG).

<sup>6618</sup> T. 30 March 2004 p. 63 (Witness TG).

<sup>6619</sup> T. 30 March 2004 pp. 63-64 (Witness TG).

<sup>6620</sup> T. 7 February 2005 p. 56 (Witness WKKTD).

<sup>6621</sup> T. 7 February 2005 pp. 37-38; T. 7 February 2005 pp. 39-41 (ICS) (Witness WKKTD).

<sup>6622</sup> T. 7 February 2005 pp. 37-38; T. 7 February 2005 p. 39 (ICS) (Witness WKKTD).

<sup>6623</sup> T. 7 February 2005 pp. 39-40 (ICS) (Witness WKKTD).

Butare town.<sup>6624</sup> Mbasha and his family lived in the neighbourhood referred to as Ngoma, in Ngoma *secteur*, near the *préfet's* residence.<sup>6625</sup>

2350. Witness WKKTD learned of the fate of Mbasha's wife and child from the wife of François Murwanashyaka, the *sous-bourgmestre*.<sup>6626</sup> He learned that Mbasha's wife and her younger daughter had been arrested by *gendarmes*. They were taken to the university campus called IPN, and then led to the roadblock between the university laboratory and IRST. The witness heard that Mbasha's wife and her child had been tortured at the roadblock for three days and had both died on the third day.<sup>6627</sup> Murwanashyaka told Witness WKKTD that while she was being tortured, Mbasha's wife had cried out: "Don't you know me? I was working at this or that place. I was providing you with medicines."<sup>6628</sup> The witness said he did not intervene to save Mbasha's wife or child because no one could move around town at that time.<sup>6629</sup>

2351. Witness WKKTD testified that he worked for UNAMIR between July 1994 and March 1996 in Cyanguu.<sup>6630</sup> Around April 1995, after Easter, his wife told him that she and their second daughter<sup>6631</sup> had seen Mbasha's eldest daughter, Yvette.<sup>6632</sup> The witness explained that his wife and daughter had been travelling in a minibus or taxi from Cyanguu to Butare. As they neared Butare town, and reached the junction between Bujumbura, Kigali and Butare, the witness' daughter saw Yvette walking in the distance, and pointed her out to her mother, who also recognised her.<sup>6633</sup> Witness WKKTD testified that his wife and daughter could not greet Yvette because their vehicle moved on.<sup>6634</sup>

#### Nyiramasuhuko Defence Witness Denise Ntahobali

2352. Denise Ntahobali, Shalom Ntahobali's sister and Nyiramasuhuko's daughter, testified that Ntahobali did not possess a driver's licence nor did she ever see him driving a vehicle.<sup>6635</sup> She testified that she was unaware that her brother's vehicle was impounded in 1993 because her brother had never owned a vehicle. She denied protecting her brother when she said he did not possess a driver's licence nor did he know how to drive.<sup>6636</sup>

#### Nyiramasuhuko Defence Witness Clarisse Ntahobali

2353. Clarisse Ntahobali, Ntahobali's sister and Nyiramasuhuko's daughter, testified that between April and July 1994, Ntahobali worked at the shop at the Hotel Ihuliro and worked

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<sup>6624</sup> T. 7 February 2005 p. 37 (Witness WKKTD).

<sup>6625</sup> T. 7 February 2005 pp. 40-41 (ICS) (Witness WKKTD).

<sup>6626</sup> T. 8 February 2005 p. 15 (ICS) (Witness WKKTD).

<sup>6627</sup> T. 7 February 2005 p. 76 (Witness WKKTD).

<sup>6628</sup> T. 7 February 2005 p. 76; T. 8 February 2005 p. 4 (Witness WKKTD).

<sup>6629</sup> T. 7 February 2005 p. 76 (Witness WKKTD).

<sup>6630</sup> T. 7 February 2005 pp. 78-79 (Witness WKKTD).

<sup>6631</sup> T. 7 February 2005 p. 80; T. 8 February 2005 pp. 10, 59 (ICS) (Witness WKKTD).

<sup>6632</sup> T. 7 February 2005 pp. 79-80; T. 8 February 2005 p. 58 (ICS) (Witness WKKTD); T. 8 February 2005 p. 12 (HC) (Witness WKKTD) (French) (for the spelling of "Yvette").

<sup>6633</sup> T. 7 February 2005 p. 79 (Witness WKKTD).

<sup>6634</sup> T. 7 February 2005 pp. 79-80; T. 8 February 2005 p. 58 (ICS) (Witness WKKTD).

<sup>6635</sup> T. 13 June 2005 p. 15 (Denise Ntahobali).

<sup>6636</sup> T. 13 June 2005 pp. 35-36 (Denise Ntahobali).

behind the bar. He bought alcoholic beverages and went to purchase alcohol in the environs of Butare. At a certain point there were not any alcoholic drinks in Butare, so he went to the Burundi border to purchase Amstel beers. Clarisse Ntahobali testified that Shalom used their father's driver and official vehicle or asked others to take him where he needed to go. She never saw Shalom drive a vehicle. He did not have a vehicle or a driver's licence.<sup>6637</sup>

2354. Clarisse Ntahobali testified that she and over 64 other persons left Butare on 3 July 1994 around noon. They reached Gikongoro around 1.00 p.m. The same day at 4.00 or 5.00 p.m., they left Gikongoro, and reached Muramba in Gisenyi *préfecture* on 4 July 1994 at about 3.00 or 4.00 p.m.<sup>6638</sup>

#### Nyiramasuhuko Defence Witness Céline Nyiraneza's

2355. Céline Nyiraneza, Ntahobali's aunt and Nyiramasuhuko's sister, testified that Shalom never owned a vehicle.<sup>6639</sup>

#### Ntahobali

2356. Ntahobali testified that he sometimes travelled to Akanyaru on the Burundi-Rwanda border to purchase beer for resale in Butare town.<sup>6640</sup> He asserted that he did not drive himself to purchase the beer because he did not know how to drive.<sup>6641</sup>

2357. Ntahobali was confronted with a prior statement recorded on 24 and 26 July 1997 in which he agreed that he sometimes went to fetch the crates of beer himself and that other times, drivers went. Ntahobali asserted that this was a misreading of the prior statement, that the audio recording of the statement was poor, and that he never claimed to have driven himself.<sup>6642</sup> Ntahobali claimed that he had asserted in the 24 and 26 July 1997 statement that he did not know how to drive, but that such assertions must be in the portions of the audio tape that were marked as inaudible by the transcriber.<sup>6643</sup>

2358. In cross-examination, the Prosecution referred Ntahobali to the recorded interview of 24 and 26 July 1997 in which he allegedly stated that he sometimes used vehicles belonging to friends, including a Daihatsu pickup or light truck with a loading platform behind.<sup>6644</sup> Ntahobali testified that the transcription of the audio recording did not reflect the truth.<sup>6645</sup> He further stated that what was contained in the audio tape did not correspond to what was written in the transcript of the interview.<sup>6646</sup>

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<sup>6637</sup> T. 10 February 2005 p. 12 (Clarisse Ntahobali).

<sup>6638</sup> T. 9 February 2005 p. 65 (Clarisse Ntahobali).

<sup>6639</sup> T. 28 February 2005 p. 16 (Céline Nyiraneza).

<sup>6640</sup> T. 21 June 2006 pp. 59, 66 (Ntahobali).

<sup>6641</sup> T. 21 June 2006 pp. 68-69 (Ntahobali).

<sup>6642</sup> T. 21 June 2006 pp. 59-60, 62, 66, 69, 71 (Ntahobali).

<sup>6643</sup> T. 26 June 2006 p. 39 (Ntahobali).

<sup>6644</sup> T. 21 June 2006 pp. 70-72 (Ntahobali).

<sup>6645</sup> T. 21 June 2006 pp. 71, 73-75 (Ntahobali).

<sup>6646</sup> T. 21 June 2006 p. 75 (Ntahobali).

Ntahobali Defence Witness WUNJN

2359. Witness WUNJN, a Hutu member of the PSD political party, testified that he knew Witness TA because he was neighbours with Witness TA's father.<sup>6647</sup> He testified that Witness TA was a Tutsi.<sup>6648</sup> Witness TA's family had been attacked during the first week after the President's death and she sought refuge at the house of her uncle.<sup>6649</sup> He testified that Witness TA's uncle sold sorghum beer and banana wine from his house and Witness WUNJN went to drink at the house four times a week.<sup>6650</sup> Witness TA sometimes served him drinks.<sup>6651</sup> Witness WUNJN testified that one cannot get drunk from sorghum beer, but only from banana wine.<sup>6652</sup>

2360. Witness WUNJN testified that he knew Witness QBP. She was one year younger than him and they grew up together.<sup>6653</sup> He remembered two of her daughters.<sup>6654</sup> He said Witness QBP was a Hutu and moved away from the *commune* with her husband.<sup>6655</sup> In 1994, her husband died, and she returned to live with her brother, which neighboured her parents' home.<sup>6656</sup> Witness QBP's parents' home was a 15 minute walk from Witness WUNJN's home. Witness WUNJN said that after 6 April 1994 he went to a friend's drinking place where he could see Witness QBP's parents' home and saw Witness QBP there.<sup>6657</sup> From the end of May 1994, he went farming with Witness QBP.<sup>6658</sup> He also went to mass with Witness QBP.<sup>6659</sup>

2361. Witness WUNJN testified that Witness QBP was living with Witness TA's uncle. He then corrected himself saying that he was confusing Witnesses QBP and TA.<sup>6660</sup> Witnesses QBP and TA were not seeking refuge in Butare town during April, May and June 1994.<sup>6661</sup> In addition, no Tutsis were killed in his *secteur* because all of the Tutsis, like Witness TA's brother, had moved away.<sup>6662</sup>

2362. Witness WUNJN testified that the information contained in his identification sheet was correct, including his name.<sup>6663</sup> However, the witness' prior statements contained a different family name and *cellule* of origin.<sup>6664</sup> The witness explained that his mother and father gave him one family name, but the other family name was given to him by his grandfather.<sup>6665</sup> He

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<sup>6647</sup> T. 6 February 2006 p. 12 (ICS); T. 7 February 2006 pp. 24, 37 (ICS) (Witness WUNJN).

<sup>6648</sup> T. 6 February 2006 p. 17 (ICS); T. 7 February 2006 p. 21 (ICS) (Witness WUNJN).

<sup>6649</sup> T. 6 February 2006 pp. 18, 20-21 (ICS); T. 7 February 2006 pp. 21, 24 (ICS) (Witness WUNJN).

<sup>6650</sup> T. 6 February 2006 p. 21 (ICS) (Witness WUNJN).

<sup>6651</sup> T. 6 February 2006 p. 21 (ICS); T. 7 February 2006 p. 23 (ICS) (Witness WUNJN).

<sup>6652</sup> T. 7 February 2006 pp. 22-23 (ICS) (Witness WUNJN).

<sup>6653</sup> T. 6 February 2006 p. 13 (ICS) (Witness WUNJN).

<sup>6654</sup> T. 6 February 2006 pp. 24-25 (ICS) (Witness WUNJN).

<sup>6655</sup> T. 6 February 2006 pp. 16-18 (ICS) (Witness WUNJN).

<sup>6656</sup> T. 6 February 2006 pp. 16-17, 22 (ICS) (Witness WUNJN).

<sup>6657</sup> T. 6 February 2006 p. 22 (ICS) (Witness WUNJN).

<sup>6658</sup> T. 6 February 2006 p. 24 (ICS) (Witness WUNJN).

<sup>6659</sup> T. 6 February 2006 p. 25 (ICS) (Witness WUNJN).

<sup>6660</sup> T. 7 February 2006 p. 12 (ICS) (Witness WUNJN).

<sup>6661</sup> T. 7 February 2006 pp. 20, 24 (ICS) (Witness WUNJN).

<sup>6662</sup> T. 6 February 2006 p. 41 (ICS); T. 7 February 2006 p. 10 (ICS) (Witness WUNJN).

<sup>6663</sup> T. 30 January 2006 p. 19 (ICS) (Witness WUNJN).

<sup>6664</sup> T. 30 January 2006 p. 22 (ICS) (Witness WUNJN).

<sup>6665</sup> T. 30 January 2006 p. 23 (ICS); T. 6 February 2006 p. 6 (ICS) (Witness WUNJN).

said he did not correct the identification sheet because he answered to both names.<sup>6666</sup> He testified that his grandfather's family name was the one that appeared on his identity card.<sup>6667</sup> However, he noted his travel documents bore his parents' family name because his wife had registered them for him.<sup>6668</sup> The Defence amended the *cellule* name on the identification sheet on the first day of Witness WUNJN's testimony.<sup>6669</sup>

#### Ntahobali Defence Witness WUNHE

2363. Witness WUNHE, a farmer, testified that he went to the same school as Witness TA.<sup>6670</sup> Witness TA worked as a seamstress.<sup>6671</sup> Witness WUNHE testified that after President Habyarimana's death, Witness TA no longer stayed at her parents' house; she moved to the house of her uncle, where she served sorghum beer.<sup>6672</sup> Witness WUNHE had seen the destruction of Witness TA's family home which forced her to leave in April 1994.<sup>6673</sup> Her uncle's place was about 20 minutes away from her parents' house on foot.<sup>6674</sup> He saw her at least twice a week. Witness WUNHE's sister and her husband would sometimes give Witness WUNHE some pieces of land where they could grow some potatoes. When he came down to that farm, Witness WUNHE would find Witness TA there harvesting potatoes.<sup>6675</sup> She did not hide at her brothers' homes as they were in the same situation as her. He did not know where her brothers sought refuge.<sup>6676</sup> The witness testified that he last saw Witness TA at her uncle's place one or two weeks after President Habyarimana's death; he saw her in April and towards the end of May 1994.<sup>6677</sup> He did not speak with Witness TA during April or May 1994,<sup>6678</sup> and did not see Witness TA again during that time.<sup>6679</sup>

#### Nyiramasuhuko Defence Witness WMCZ

2364. Witness WMCZ, a Hutu engineer who had a Tutsi wife, testified that after the President's plane was shot down, soldiers who had deserted the battlefield and who no longer respected orders from their commanders began to attack, plunder and kill people.<sup>6680</sup> Around 22 or 23 April 1994, a group of six bandits, one of whom had been a servant in his home, came to Witness WMCZ's home looking for his wife. They said if they could not find her, they would kill Witness WMCZ, although they said he could pay for his life. After he paid them

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<sup>6666</sup> T. 6 February 2006 p. 6 (ICS) (Witness WUNJN).

<sup>6667</sup> T. 7 February 2006 pp. 26, 28 (ICS) (Witness WUNJN).

<sup>6668</sup> T. 7 February 2006 p. 29 (ICS) (Witness WUNJN).

<sup>6669</sup> T. 30 January 2006 p. 22 (ICS) (Witness WUNJN).

<sup>6670</sup> T. 8 December 2005 p. 54 (ICS) (Witness WUNHE).

<sup>6671</sup> T. 8 December 2005 p. 55 (ICS) (Witness WUNHE).

<sup>6672</sup> T. 8 December 2005 pp. 65-66 (ICS) (Witness WUNHE).

<sup>6673</sup> T. 12 December 2005 p. 34 (ICS) (Witness WUNHE).

<sup>6674</sup> T. 12 December 2005 p. 33 (ICS) (Witness WUNHE).

<sup>6675</sup> T. 8 December 2005 p. 67 (ICS) (Witness WUNHE).

<sup>6676</sup> T. 12 December 2005 p. 43 (ICS) (Witness WUNHE).

<sup>6677</sup> T. 8 December 2005 pp. 69-70 (ICS); T. 12 December 2005 p. 21 (ICS) (Witness WUNHE).

<sup>6678</sup> T. 12 December 2005 p. 21 (ICS) (Witness WUNHE).

<sup>6679</sup> T. 8 December 2005 p. 70 (ICS) (Witness WUNHE).

<sup>6680</sup> T. 2 February 2005 p. 30 (Witness WMCZ).

10,000 francs, they left.<sup>6681</sup> Witness WMCZ was subject to multiple attacks and he paid the attackers on multiple occasions.<sup>6682</sup>

2365. Witness WMCZ testified that on his way to the bank in Butare town in mid-May 1994, he saw about 1,000 people in the courtyard in front of the BPO, guarded by about four soldiers.<sup>6683</sup> He recognised members of four Tutsi families there including Witness QBP, her children, and the brother of Witness TA.<sup>6684</sup> Witness WMCZ said that of this group, only Witness QBP survived, the others had died in mid-May 1994.<sup>6685</sup>

2366. When he walked on the road past the BPO, he spoke with Witness QBP. She said she had gone to the BPO for purposes of security. She was in good health, but asked Witness WMCZ for some money for food.<sup>6686</sup> Witness QBP gave 50 francs to Witness TA's brother to give to Witness QBP because he did not want to be noticed, as the area was guarded.<sup>6687</sup>

2367. Witness WMCZ testified that people decided to go to the BPO because it was a secure place. From where he lived, he could see people going towards the BPO. He did not see bandits pursuing those people.<sup>6688</sup> Witness WMCZ testified that there had been no anarchy in Butare town, and that he never witnessed any crime being committed. On his way home after visiting the bank, he did not notice any disorder or unrest in town, but the population was frightened.<sup>6689</sup> He rarely observed people walking down the street and in general everybody stayed at home. He had seen no bodies on any of his trips to Butare.<sup>6690</sup>

2368. Witness WMCZ testified that he saw Witness QBP again in early June 1994.<sup>6691</sup> She came to visit her younger sister at Witness WMCZ's brother's house, located 200 metres from the witness' home.<sup>6692</sup> The witness testified that on that occasion Witness QBP was very sad because one of her children had disappeared. He met Witness QBP on three more occasions in June 1994, once at his house, and twice at his older brother's house. He also saw her on one occasion at her own house, before she had left for Butare.<sup>6693</sup> The witness did not see Witness QBP after June 1994.<sup>6694</sup>

2369. Between 1996 and 1999, Witness QBP came to look for Witness WMCZ at his house on two occasions.<sup>6695</sup> She told him that her missing child had died, but her other children had survived. She also told him that she was looking for the people who had looted her house. She

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<sup>6681</sup> T. 2 February 2005 p. 31 (Witness WMCZ).

<sup>6682</sup> T. 2 February 2005 p. 32 (Witness WMCZ).

<sup>6683</sup> T. 2 February 2005 pp. 33, 60 (Witness WMCZ).

<sup>6684</sup> T. 2 February 2005 pp. 34, 36; T. 2 February 2005 pp. 53-54 (ICS); T. 7 February 2005 pp. 23-24, 28 (ICS) (Witness WMCZ).

<sup>6685</sup> T. 3 February 2005 p. 39 (ICS) (Witness WMCZ).

<sup>6686</sup> T. 2 February 2005 p. 34 (Witness WMCZ).

<sup>6687</sup> T. 2 February 2005 p. 35; T. 2 February 2005 p. 53 (ICS) (Witness WMCZ).

<sup>6688</sup> T. 7 February 2005 p. 29 (ICS) (Witness WMCZ).

<sup>6689</sup> T. 7 February 2005 p. 18 (ICS) (Witness WMCZ).

<sup>6690</sup> T. 3 February 2005 p. 61 (ICS) (Witness WMCZ).

<sup>6691</sup> T. 2 February 2005 p. 36 (Witness WMCZ).

<sup>6692</sup> T. 7 February 2005 p. 24 (ICS) (Witness WMCZ).

<sup>6693</sup> T. 2 February 2005 p. 37 (Witness WMCZ).

<sup>6694</sup> T. 2 February 2005 p. 38 (Witness WMCZ).

<sup>6695</sup> T. 2 February 2005 p. 50 (Witness WMCZ).

was a member of an association called *Ibuka* which had promised to pay her about 1,000,000 Rwandan francs in order to find people responsible for looting.<sup>6696</sup> Witness WMCZ did not see Witness TA from 1996 to 1999, but learned where she was staying. Witness WMCZ stated that Witnesses QBP and TA knew one another.<sup>6697</sup>

2370. Witness WMCZ testified that he knew Witness TA, as her parents were his neighbours; Witness TA was about 12 years old in 1994.<sup>6698</sup> He did not see Witness TA between April and July 1994, but Witness WMCZ's cousin told him that Witness TA was staying with him in Ndora *commune* between early May and late June 1994.<sup>6699</sup>

#### Ntahobali Defence Witness WUNHF

2371. Witness WUNHF, a member of the PSD party, grew up with Witness QBP. He considered her as a sister, and they were neighbours until she married.<sup>6700</sup> Witness QBP's father was Hutu and her mother was Tutsi.<sup>6701</sup>

2372. Witness QBP was Hutu and her father died between 1968 and 1970.<sup>6702</sup> Witness QBP got married and moved away.<sup>6703</sup> She had four children, three daughters and a son.<sup>6704</sup> Witness WUNHF saw Witness QBP twice a week up until Easter 1994.<sup>6705</sup> In April 1994, he saw Witness QBP on almost a daily basis.<sup>6706</sup> In April, her husband died of diabetes and she moved in with her mother.<sup>6707</sup> He saw her again several times in May 1994. They had farms in the valley and would harvest their sorghum together; Witness QBP was there with her brother who would transport the harvested sorghum on his bicycle.<sup>6708</sup>

2373. During five to seven days in May 1994, Witness WUNHF did not see Witness QBP and wondered whether she had gone elsewhere. He thought that she may have gone to Nyange to see her brothers and sisters.<sup>6709</sup> After that they again had ordinary and daily meetings. In June 1994, Witness WUNHF's wife miscarried and Witness QBP came to visit his family on two or more occasions to encourage them. During June, she was always present and Witness WUNHF saw her quite often working on the farms. Witness QBP was always in the company of her mother-in-law and her sister-in-law.<sup>6710</sup>

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<sup>6696</sup> T. 2 February 2005 p. 51; T. 3 February 2005 p. 67 (ICS) (Witness WMCZ).

<sup>6697</sup> T. 2 February 2005 p. 51 (Witness WMCZ).

<sup>6698</sup> T. 2 February 2005 p. 12 (ICS) (Witness WMCZ).

<sup>6699</sup> T. 2 February 2005 pp. 38, 46 (Witness WMCZ); T. 2 February 2005 p. 54 (Witness WMCZ) (French).

<sup>6700</sup> T. 26 January 2006 p. 12 (ICS) (Witness WUNHF).

<sup>6701</sup> T. 26 January 2006 p. 26 (ICS) (Witness WUNHF).

<sup>6702</sup> T. 26 January 2006 pp. 25-26 (ICS) (Witness WUNHF).

<sup>6703</sup> T. 26 January 2006 p. 16 (ICS) (Witness WUNHF).

<sup>6704</sup> T. 26 January 2006 p. 25 (ICS) (Witness WUNHF).

<sup>6705</sup> T. 26 January 2006 p. 16 (ICS) (Witness WUNHF).

<sup>6706</sup> T. 26 January 2006 pp. 18-19 (ICS) (Witness WUNHF).

<sup>6707</sup> T. 26 January 2006 pp. 18-19, 28 (ICS) (Witness WUNHF).

<sup>6708</sup> T. 26 January 2006 p. 19 (ICS) (Witness WUNHF).

<sup>6709</sup> T. 26 January 2006 pp. 20, 56 (ICS) (Witness WUNHF).

<sup>6710</sup> T. 26 January 2006 p. 20 (ICS) (Witness WUNHF).

Kanyabashi Defence Witness D-2-13-O

2374. Witness D-2-13-O, a Hutu driver in 1994,<sup>6711</sup> testified that around May 1994 there was a roadblock opposite the Butare garage, between the *Avenue de l'Université* (which came down from Hotel Ibis and Hotel Faucon towards the university) and a road that branched off towards the ESO.<sup>6712</sup>

2375. The witness knew Rwamukwaya owned a Peugeot because Butare was a small town and everyone knew who owns what.<sup>6713</sup> After seeing the corpses of the Rwamukwaya family, he saw the vehicle in question more than once between April and July 1994, and stated it was a vehicle in which Shalom, the son of “popular person” Maurice Ntahobali, moved about.<sup>6714</sup> The witness saw Ntahobali personally driving the Peugeot 504 in question on several occasions during the period his wife was in the hospital,<sup>6715</sup> namely a few days before 20 April 1994, when he brought his wife to the hospital,<sup>6716</sup> and May 1994, when they left.<sup>6717</sup>

2376. The witness did not know the registration number of Rwamukwaya’s Peugeot 504 and was not aware if Rwamukwaya may also have owned a Toyota Hilux. The only vehicle the witness associated with Rwamukwaya was a Peugeot 504.<sup>6718</sup>

Kanyabashi Defence Witness D-13-D

2377. Witness D-13-D, a Hutu driver, testified that Rwamukwaya used to sell shoes on the road leading from downtown to the university, opposite the Protestant school known as EER. After he resumed his work at the end of April or early May 1994, he did not see Rwamukwaya again.<sup>6719</sup>

2378. Witness D-13-D saw Ntahobali on numerous occasions when the witness drove his car through Butare town between April and July 1994.<sup>6720</sup> He saw Ntahobali moving about Butare town driving a Peugeot 504 pickup that belonged to Rwamukwaya, who sold shoes.<sup>6721</sup> The vehicle was like the Peugeot 504 he drove, except it was covered with grease mixed with dust which gave it a camouflage colour.<sup>6722</sup> He knew the vehicle belonged to Rwamukwaya because he knew Rwamukwaya’s vehicle. Being also “very keen on vehicles”, the witness always remembered the cars of his acquaintances.<sup>6723</sup>

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<sup>6711</sup> T. 5 November 2007 pp. 18-19 (ICS) (Witness D-2-13-O); Defence Exhibit 600 (Kanyabashi) (Personal Particulars).

<sup>6712</sup> T. 5 November 2007 p. 48 (Witness D-2-13-O).

<sup>6713</sup> T. 5 November 2007 pp. 57-59 (Witness D-2-13-O).

<sup>6714</sup> T. 5 November 2007 pp. 57, 59-60; T. 12 November 2007 p. 53 (Witness D-2-13-O).

<sup>6715</sup> T. 12 November 2007 p. 53 (Witness D-2-13-O).

<sup>6716</sup> T. 5 November 2007 pp. 37-39 (ICS) (Witness D-2-13-O).

<sup>6717</sup> T. 5 November 2007 p. 38 (ICS) (Witness D-2-13-O).

<sup>6718</sup> T. 8 November 2007 p. 27 (ICS) (Witness D-2-13-O).

<sup>6719</sup> T. 14 February 2008 p. 65 (Witness D-13-D).

<sup>6720</sup> T. 14 February 2008 p. 64 (Witness D-13-D).

<sup>6721</sup> T. 14 February 2008 p. 65 (Witness D-13-D).

<sup>6722</sup> T. 14 February 2008 p. 65; T. 14 February 2008 p. 80 (Witness D-13-D) (French) (“*J’ai constaté qu’on avait enduit ce véhicule de graisse, la graisse mêlée à la poussière.*”).

<sup>6723</sup> T. 14 February 2008 p. 65 (Witness D-13-D).



Nsabimana Defence Witness Alexandre Bararwandika

2379. Alexandre Bararwandika, a Hutu doctor working with the Red Cross in Burundi, worked at Butare University Hospital during the genocide.<sup>6724</sup> While initially the medication and equipment was adequate, there was a depletion of medication until around mid-May 1994. At that time, there was a new influx of medication that arrived from NGO stocks that had been abandoned, some of which came through the office of the *préfet*.<sup>6725</sup>

2380. Bararwandika testified that he went to the *préfet's* office with a Rwandan man from Kigali who was a driver at the Belgian Red Cross branch.<sup>6726</sup> The witness said that Nsabimana encouraged them to continue their relief activities and, if possible, to expand their work to the rest of the *préfecture*. Bararwandika testified that, given their numbers, they were going to limit themselves to the Ngoma urban *commune*, and more specifically to the University Teaching Hospital. *Préfet* Nsabimana sent the *sous-préfet* responsible for social welfare activities to speak with the witness. Bararwandika testified that he spoke with the *sous-préfet* at length about the NGO's needs. The *sous-préfet* then referred the witness to *Bourgmestre* Kanyabashi, who gave them the authorisation to continue their work.<sup>6727</sup>

2381. Bararwandika testified that after the refugees were moved to the BPO, he saw them in dirty clothes under the avocado trees; some were ill and lying down, and others were cooking.<sup>6728</sup> The witness also testified that at some point, his NGO gave the refugees at the BPO some food. On one occasion, he saw a vehicle transporting water to the BPO, which he believed was for the refugees.<sup>6729</sup> The witness did not see this water being distributed to the refugees, because when he saw the truck there, he was in a hurry.<sup>6730</sup>

2382. Bararwandika did not know if the BPO opened up to the refugees who were there. When he went to the BPO, he did not see refugees enter the BPO.<sup>6731</sup> The witness testified that when he saw the refugees at the BPO, there was no shelter whereas the period between March and April 1994, when the refugees were at the BPO, is usually a rainy season in Rwanda.<sup>6732</sup> When he went to the BPO, the Tutsis there were emaciated, wore torn clothes and were obviously refugees.<sup>6733</sup>

2383. Bararwandika testified that *Préfet* Nsabimana saved people where possible. He said that Nsabimana: supported Bararwandika's relief unit at the university hospital; created health zones at the Butare bishopric and the nuns' convent; authorised the work of the NGO *Terre des Hommes*, which established a camp in Karubanda where people were well-protected; and later transferred children from *Groupe Scolaire* in Karubanda to a foreign country. As a result

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<sup>6724</sup> T. 3 July 2006 pp. 20, 28, 35 (Bararwandika).

<sup>6725</sup> T. 3 July 2006 p. 37 (Bararwandika).

<sup>6726</sup> T. 4 July 2006 pp. 35-36 (ICS) (Bararwandika).

<sup>6727</sup> T. 3 July 2006 p. 35 (Bararwandika).

<sup>6728</sup> T. 3 July 2006 p. 43 (Bararwandika).

<sup>6729</sup> T. 3 July 2006 p. 44 (Bararwandika).

<sup>6730</sup> T. 5 July 2006 p. 11 (Bararwandika).

<sup>6731</sup> T. 5 July 2006 p. 11 (Bararwandika).

<sup>6732</sup> T. 5 July 2006 p. 12 (Bararwandika).

<sup>6733</sup> T. 4 July 2006 p. 71 (Bararwandika).

of the creation of these safe zones, the witness transferred four children who were hidden in Tumba and then in Rango.<sup>6734</sup>

Nsabimana Defence Witness Patrick Fergal Keane

2384. Patrick Fergal Keane, a reporter for the BBC, visited Rwanda on assignment and, as part of that trip, went to Butare *préfecture* around 15 June 1994.<sup>6735</sup> He visited the BPO and interviewed Nsabimana at that time.<sup>6736</sup> The video from that interview was introduced as Defence Exhibit 473A and a transcript of portions of that interview was introduced as Defence Exhibit 473B.<sup>6737</sup>

2385. Keane observed, and the videographer recorded, the presence of refugees at the BPO.<sup>6738</sup> Nsabimana stated in the interview that in his capacity as an authority, he would protect the refugees.<sup>6739</sup> In addition, Nsabimana said that he had posted *gendarmes* to ensure the refugees' safety.<sup>6740</sup> Nsabimana stated that he was looking for a more secure place to take the refugees by bus, but the refugees were reticent to leave the BPO without assurances as to their safety. In the interview, Nsabimana estimated that there were over 200 refugees at the BPO. Keane testified that there were about 500 refugees at the BPO.<sup>6741</sup> Keane testified that he attempted to visit the BPO at night with his camera crew, but they were turned away at a roadblock not far from the *préfet's* office.<sup>6742</sup> He stated that they may have returned to the BPO at night because someone told him that armed civilians had attacked refugees at the BPO when they had gone to fetch water.<sup>6743</sup>

Nyiramasuhuko Defence Witness WNMN

2386. Witness WNMN, a Hutu teacher, testified that in early June 1994 he passed by the BPO and there were about 30 to 50 refugees there, including men, women and children of various ethnic groups.<sup>6744</sup> He did not see whether there were more refugees inside or behind the office.<sup>6745</sup> Security was guaranteed and there were no killings at that time in Butare.<sup>6746</sup> There were some *gendarmes* on the side of the brigade. The entrance to the *préfecture* office was not guarded. Rather, "very close to the brigade there were stores and they could see people passing without any problem".<sup>6747</sup>

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<sup>6734</sup> T. 3 July 2006 p. 62 (Bararwandika).

<sup>6735</sup> T. 25 September 2006 p. 10 (Keane).

<sup>6736</sup> T. 25 September 2006 p. 40 (Keane).

<sup>6737</sup> T. 25 September 2006 pp. 41, 74, 84 (Keane).

<sup>6738</sup> T. 25 September 2006 p. 55 (Keane).

<sup>6739</sup> T. 25 September 2006 pp. 46-47 (Keane).

<sup>6740</sup> T. 25 September 2006 p. 47; T. 28 September 2006 p. 21 (Keane).

<sup>6741</sup> T. 25 September 2006 p. 47; T. 28 September 2006 p. 53 (Keane).

<sup>6742</sup> T. 28 September 2006 p. 20 (Keane).

<sup>6743</sup> T. 28 September 2006 pp. 20-21 (Keane).

<sup>6744</sup> T. 14 June 2005 pp. 45-46 (ICS); T. 15 June 2005 p. 31 (Witness WNMN).

<sup>6745</sup> T. 15 June 2005 p. 34 (Witness WNMN).

<sup>6746</sup> T. 15 June 2005 pp. 31-32 (Witness WNMN).

<sup>6747</sup> T. 14 June 2005 pp. 46-47 (ICS) (Witness WNMN).

Nyiramasuhuko Defence Witness WZNA

2387. Witness WZNA, an employee at a food mill, testified that between April and July 1994, he passed in front of the BPO on two occasions: once between 16 and 18 April 1994 and the second time in early July 1994.<sup>6748</sup> He said that the first time he passed there he estimated that he saw approximately 50 to 60 civilians in front of the MINITRAP office.<sup>6749</sup> He said that the second time he passed by in early July 1994 he did not see any civilians.<sup>6750</sup> He passed in front of the BPO because certain soldiers had needed rice urgently and came to see him at his home to place an order.<sup>6751</sup> He said he and the soldiers were moving towards ESO.<sup>6752</sup> The witness thought the soldiers were based at ESO.<sup>6753</sup> He also said that he knew one of the soldiers as Ndibwami Eugène, a lieutenant.<sup>6754</sup>

Nyiramasuhuko Defence Witness WTRT

2388. Witness WTRT, a Hutu soldier assigned to ESO,<sup>6755</sup> testified that he went to the BPO one morning towards the end of April or early May 1994 and noticed the presence of about 100 refugees who were scattered in front of and beside the BPO.<sup>6756</sup> The BPO was not fenced but there were a few trees planted around. He did not see any armed civilians or soldiers at the BPO. He noticed people in their offices who were working. He did not talk to any of the refugees.<sup>6757</sup>

Nyiramasuhuko Defence Witness WMKL

2389. Witness WMKL, a Hutu teacher, testified that he went to the BPO at the end of the week following the death of President Habyarimana. On that occasion, he saw between 100 and 150 refugees gathered there.<sup>6758</sup> The refugees were to the left, in the back, very close to the *préfet's* office.<sup>6759</sup> Witness WMKL testified that the refugees could move around as there was no fence in the premises of the BPO.<sup>6760</sup> The refugees had access to the shops and some of them had bread with them.<sup>6761</sup> Most of the refugees behind the BPO were preparing food.<sup>6762</sup> He saw neither people in uniform nor armed civilians preventing the refugees from moving around freely at the BPO.<sup>6763</sup>

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<sup>6748</sup> T. 4 April 2005 pp. 51-52, 55-56 (Witness WZNA).

<sup>6749</sup> T. 4 April 2005 pp. 54-55 (Witness WZNA).

<sup>6750</sup> T. 4 April 2005 pp. 56-57 (Witness WZNA).

<sup>6751</sup> T. 4 April 2005 pp. 52-53; T. 5 April 2005 pp. 25-26 (ICS) (Witness WZNA).

<sup>6752</sup> T. 4 April 2005 pp. 52-53, 56 (Witness WZNA).

<sup>6753</sup> T. 4 April 2005 p. 53 (Witness WZNA).

<sup>6754</sup> T. 4 April 2005 p. 54 (Witness WZNA).

<sup>6755</sup> T. 9 March 2005 pp. 34, 64 (ICS) (Witness WTRT).

<sup>6756</sup> T. 9 March 2005 p. 51 (Witness WTRT).

<sup>6757</sup> T. 9 March 2005 p. 52 (Witness WTRT).

<sup>6758</sup> T. 6 April 2005 pp. 48-50; T. 11 April 2005 p. 37 (Witness WMKL).

<sup>6759</sup> T. 6 April 2005 pp. 54, 57 (Witness WMKL).

<sup>6760</sup> T. 6 April 2005 pp. 51-52 (Witness WMKL).

<sup>6761</sup> T. 6 April 2005 p. 51 (Witness WMKL).

<sup>6762</sup> T. 6 April 2005 p. 59 (Witness WMKL).

<sup>6763</sup> T. 6 April 2005 p. 52 (Witness WMKL).

2390. Witness WMKL testified that he talked with three refugees who told him that they had had problems of security because of their neighbours. They came to be close to the administration because they felt that their security would be protected there.<sup>6764</sup> He talked with refugees at least three times around the end of April 1994 and also in early May 1994.<sup>6765</sup> The refugees did not tell him that they had been threatened. The refugees said that they felt secure from the moment they arrived at the BPO.<sup>6766</sup> He knew the three refugees he talked with and named them.<sup>6767</sup>

2391. Witness WMKL testified that *Sous-préfet* Faustin Rutayisire also told him that these refugees were people who had felt threatened where they were living and had decided to come to the BPO because they trusted the administration there.<sup>6768</sup> The *sous-préfet* did not mention anything about kidnapping, murder or rape perpetrated at the BPO.<sup>6769</sup> He said that he did not see any refugees at the BPO when he passed again during the first week of June 1994.<sup>6770</sup>

### Nsabimana

2392. Nsabimana testified that from 21 April 1994, when he arrived at the BPO, people sought *laissez-passers* at the BPO, but they were not considered refugees. On the first day, the *laissez-passers* were free of charge, but on the second day, they started charging 100 francs for the document.<sup>6771</sup> From 21 April 1994, there were people at the BPO, but they would move about; one would not know who would come and go and who would stay at the BPO.<sup>6772</sup>

2393. Nsabimana testified that he did not count the number of people at the BPO, but there were many people coming. Throughout the months of April and May 1994 the numbers of people varied on a daily basis.<sup>6773</sup> Around the second week of May 1994, or as early as 5 May 1994, they knew that people were coming from Gikongoro *préfecture*, and Runyinya and Byumba *communes*, because these people asked for *laissez-passers*.<sup>6774</sup> It was only at the end of May 1994 that it was clear that there was a big group of people staying at the BPO.<sup>6775</sup> People came in droves in mid-May 1994 from the east of the country as they were pushed by the RPF.<sup>6776</sup> People were coming to the BPO for protection and his mission was to protect them.<sup>6777</sup>

2394. Nsabimana testified that convalescing patients were sent from Butare University Hospital to the BPO on 2 May 1994.<sup>6778</sup> As indicated by a letter of 25 April 1994, introduced

<sup>6764</sup> T. 6 April 2005 p. 59 (Witness WMKL).

<sup>6765</sup> T. 6 April 2005 p. 59; T. 11 April 2005 p. 37 (Witness WMKL).

<sup>6766</sup> T. 6 April 2005 p. 59 (Witness WMKL).

<sup>6767</sup> T. 11 April 2005 p. 37; T. 11 April 2005 p. 39 (ICS) (Witness WMKL).

<sup>6768</sup> T. 6 April 2005 p. 59 (Witness WMKL).

<sup>6769</sup> T. 6 April 2005 pp. 59-60 (Witness WMKL).

<sup>6770</sup> T. 6 April 2005 p. 70 (Witness WMKL).

<sup>6771</sup> T. 9 October 2006 p. 17 (Nsabimana).

<sup>6772</sup> T. 9 October 2006 p. 19 (Nsabimana).

<sup>6773</sup> T. 9 October 2006 p. 18 (Nsabimana).

<sup>6774</sup> T. 9 October 2006 p. 19 (Nsabimana).

<sup>6775</sup> T. 9 October 2006 p. 18 (Nsabimana).

<sup>6776</sup> T. 9 October 2006 p. 58 (Nsabimana).

<sup>6777</sup> T. 10 October 2006 p. 30 (Nsabimana).

<sup>6778</sup> T. 9 October 2006 pp. 32-33 (Nsabimana).

as Defence Exhibit 479B, the hospital was overcrowded with patients and the hospital vice-rector asked Nsabimana to evacuate persons who were staying at the hospital.<sup>6779</sup> These persons included Burundian refugees, displaced Rwandans, mild cases, and improved-health patients. Nsabimana testified that he responded by letter of 2 May 1994, introduced as Defence Exhibit 480B, in which he stated the administration was making arrangements with the Rwandan Red Cross to find accommodation for the persons.<sup>6780</sup> That same day, the persons arrived at the BPO from the University Hospital.<sup>6781</sup> When the people arrived they were split in different places.<sup>6782</sup>

2395. Nsabimana testified that there were people who came from the hospital who were ill and convalescing, or had bandages on. There were also people who had already been at the BPO for some time, and still others were arriving. He could not estimate the number of persons who were staying in the courtyard of the BPO. The persons stayed anywhere at the BPO, but at a certain point, the Security Council decided that during the day, in order to avoid movement to and from the offices, people could go behind the BPO where there was a lot of space whereas during the night people could stay on the veranda. No place was off-limits to those people.<sup>6783</sup>

2396. Nsabimana testified that there was no food for the prisoners at Karubanda prison and, therefore, the Security Council decided to release people who had small sentences or who were about to complete their prison terms. The prison contained 3,000 people, and a sizeable number came to the BPO, but Nsabimana did not know how many.<sup>6784</sup>

2397. He testified that there was no measure taken to solve the problem of the refugees at the BPO because they did not discuss the issue at any specific meeting.<sup>6785</sup> In the first two weeks of May 1994, he saw the maximum number of refugees who were staying at the BPO and they were around 100 to 200 or more.<sup>6786</sup> He estimated that on 31 May 1994, there were about 200 refugees at the BPO.<sup>6787</sup> He did not doubt that many of the refugees were Tutsis.<sup>6788</sup>

2398. Nsabimana stated that he did not make a decision to separate Hutus from Tutsis. He testified that in 1993 Hutu and Tutsi refugees from Burundi were taken to a camp in Saga, but there were problems among the two groups within the camp. Therefore, the UNHCR, along with the *préfecture* and local authorities, had decided in 1993 to set up a camp for Tutsis alone in Nyange and to leave the Hutu camp in Saga.<sup>6789</sup> Nsabimana testified that the Mubumbano refugee camp was set up gradually from mid-May 1994 and the number of refugees there kept

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<sup>6779</sup> T. 9 October 2006 pp. 32-33 (Nsabimana); Defence Exhibit 479B (Nsabimana) (Letter from Vice-Rector of National University of Rwanda, 25 April 1994).

<sup>6780</sup> Defence Exhibit 480B (Nsabimana) (Letter from Nsabimana to Deputy Vice-Chancellor, 2 May 1994); T. 9 October 2006 p. 35 (Nsabimana).

<sup>6781</sup> T. 9 October 2006 p. 32 (Nsabimana).

<sup>6782</sup> T. 9 October 2006 p. 34 (Nsabimana).

<sup>6783</sup> T. 9 October 2006 p. 42 (Nsabimana).

<sup>6784</sup> T. 9 October 2006 p. 59 (Nsabimana).

<sup>6785</sup> T. 14 September 2006 p. 44 (Nsabimana).

<sup>6786</sup> T. 9 October 2006 p. 61 (Nsabimana).

<sup>6787</sup> T. 9 October 2006 p. 60 (Nsabimana).

<sup>6788</sup> T. 10 October 2006 p. 21 (Nsabimana).

<sup>6789</sup> T. 10 October 2006 pp. 20-21 (Nsabimana).

increasing as people arrived from the east of the country.<sup>6790</sup> This camp had many Hutus and even if they were Tutsis, they would not admit to it.<sup>6791</sup> Nsabimana said the only persons left in the hills were Hutus and the Tutsis were either in hiding or had been killed. So when the RPF came from the east of the country, the people who fled were Hutus, and these persons ended up in Mubumbano without a decision being made that Tutsis and Hutus should be divided.<sup>6792</sup>

2399. Nsabimana testified that some members of the Security Council including Kalimanzira, Bushishi, the new commander of Ngoma camp, Ntambabazi, and people at the roadblocks, were asking him why the refugees were at the BPO.<sup>6793</sup> Nsabimana testified that after he found out that massacres were still carried out during the day and night “in a closed structure” he was not at peace with himself because he went home fearing that he may not find the refugees in the morning.<sup>6794</sup>

2400. Nsabimana testified that he did not object to the introduction of Prosecution Exhibit 114 because what was contained in that document was not 100 percent different from his own way of seeing things or his own writing on certain issues.<sup>6795</sup>

2401. Nsabimana denied Prosecution Witnesses TK’s and SJ’s evidence that people were killed at the BPO. He also denied that there were mass graves behind the office containing the bodies of people who had been killed.<sup>6796</sup> Nsabimana denied being informed of abductions of people from the BPO during the day. Nsabimana denied Prosecution Witnesses SJ’s and TK’s testimony that he made a young man leave his office, who was then arrested, tied down and taken to be killed since he never came back. Nsabimana testified that he never went to the BPO at night and denied that 40 children were killed at the BPO.<sup>6797</sup>

2402. Nsabimana testified that people who committed crimes were arrested and usually convened immediately during the security meetings. He gave the example of one Emmanuel Rekeraho, an ex-warrant officer from Huye *commune* who appeared before the security meeting, and one taxi driver who never returned.<sup>6798</sup>

2403. Because several bishops had been killed in Kabayi around 5 June 1994, Nsabimana was concerned with reprisal killings. Nsabimana testified that in early June 1994, he observed a soldier moving among the refugees and he asked his bodyguards to call the soldier into his office.<sup>6799</sup> The soldier said he was looking for one of his friends, but Nsabimana did not believe him. Therefore, he met with Colonels Munyengango and Mugemanyi who suggested

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<sup>6790</sup> T. 9 October 2006 p. 58; T. 10 October 2006 p. 19 (Nsabimana).

<sup>6791</sup> T. 10 October 2006 p. 20 (Nsabimana).

<sup>6792</sup> T. 10 October 2006 p. 21 (Nsabimana).

<sup>6793</sup> T. 9 October 2006 pp. 77-78, 80 (Nsabimana).

<sup>6794</sup> T. 9 October 2006 pp. 80-81 (Nsabimana).

<sup>6795</sup> T. 13 November 2006 p. 14 (Nsabimana); Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994).

<sup>6796</sup> T. 10 October 2006 p. 23 (Nsabimana).

<sup>6797</sup> T. 10 October 2006 p. 24 (Nsabimana).

<sup>6798</sup> T. 18 September 2006 p. 47 (Nsabimana).

<sup>6799</sup> T. 10 October 2006 pp. 13, 15 (Nsabimana).

that some soldiers be brought in to protect the refugees at the BPO. The colonels seconded five or six soldiers under the leadership of a female lieutenant to guard the people at the BPO.<sup>6800</sup>

2404. Around 15 June 1994, one lady refugee went to Nsabimana's office and complained about the insecurity caused by the soldier moving about the refugees.<sup>6801</sup> Nsabimana denied the assertion that refugees told him that they were being attacked at the BPO.<sup>6802</sup>

2405. In a telephone conversation with Des Forges in March 1996, Nsabimana stated that he saw a disguised Peugeot 504 pickup in town owned by somebody that he knew.<sup>6803</sup> Nsabimana saw the vehicle from behind, and one would say there was mud on it. The back part of the pickup was in a square form.<sup>6804</sup> There were two people within the front part of the cabin, and two red containers of either petrol or gas oil in the back part of the pickup.<sup>6805</sup> His driver, Manase, told him one of the men was Ntahobali.<sup>6806</sup> Manase did not specify whether the driver or the passenger was Ntahobali.<sup>6807</sup> Nsabimana testified that when he told Des Forges that he knew the owner of the Peugeot 504 was one Rwamukwaya, he did not ask himself who the pickup belonged to.<sup>6808</sup> He was not saying that the Peugeot 504 he saw Ntahobali driving in April 1994 belonged to somebody else. Rather, he testified that there had been an error.<sup>6809</sup>

### 3.6.19.3.2.1 *Alibi Evidence – Nyiramasuhuko*

#### Nyiramasuhuko

2406. Nyiramasuhuko testified that she was in Kigali until 12 April 1994 when the Interim Government fled to Murambi in Gitarama *préfecture*.<sup>6810</sup> She travelled to Butare on 14 April 1994.<sup>6811</sup> On that date, Nyiramasuhuko testified that she and the Minister of Finance, Ndindabahizi, visited the Butare accountant, Alexis Durasinze. She went to the BPO with Alexis, where he and the Minister of Finance dealt with their assignment.<sup>6812</sup> She was given the pickup with *gendarmes* who accompanied her home to the Hotel Ihuliro.<sup>6813</sup>

2407. Nyiramasuhuko stated that she spent the night at Hotel Ihuliro and returned to Gitarama the next morning with Straton, another minister. She did not leave the hotel before that.<sup>6814</sup> She went back to Murambi on 15 April 1994, because a Cabinet meeting had been scheduled for that day. She did not go back to Butare often in April 1994 because she did not have access to

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<sup>6800</sup> T. 10 October 2006 p. 13 (Nsabimana).

<sup>6801</sup> T. 10 October 2006 pp. 15-16 (Nsabimana).

<sup>6802</sup> T. 10 October 2006 p. 16 (Nsabimana).

<sup>6803</sup> T. 28 November 2006 pp. 11-12 (Nsabimana); Prosecution Exhibit 185B (Telephone conversation between Des Forges and Nsabimana, March 1996) p. 3.

<sup>6804</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>6805</sup> T. 28 November 2006 p. 13 (Nsabimana).

<sup>6806</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>6807</sup> T. 28 November 2006 p. 14 (Nsabimana).

<sup>6808</sup> T. 28 November 2006 pp. 11-13 (Nsabimana).

<sup>6809</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>6810</sup> T. 27 September 2005 pp. 62, 64 (Nyiramasuhuko).

<sup>6811</sup> T. 28 September 2005 p. 28 (Nyiramasuhuko).

<sup>6812</sup> T. 22 November 2005 pp. 33-34 (Nyiramasuhuko).

<sup>6813</sup> T. 28 September 2005 p. 33 (Nyiramasuhuko).

<sup>6814</sup> T. 28 September 2005 pp. 33-34 (Nyiramasuhuko).

a vehicle.<sup>6815</sup> Nyiramasuhuko stated that she did not leave Murambi between 14 and 18 April 1994.<sup>6816</sup>

2408. Nyiramasuhuko testified that the entry in her diary dated 10 February referred to the swearing-in ceremony of the new *préfet* of Butare (see also Table 4 of Guichaoua's report). The notes state: "Meeting to introduce the new *préfet*, presence of the Preerep and the Prime Minister". Apart from herself, the Prime Minister and the President, other members of the Government were present, including ministers of all political parties.<sup>6817</sup>

2409. Nyiramasuhuko testified that when Nsabimana was installed, she went to Butare with Minister Mugiraneza. The ministers went in a convoy from Murambi to Butare and arrived in the morning on 19 April 1994. When she and Minister Mugiraneza arrived at the multi-purpose hall, the former alighted and Nyiramasuhuko went to visit her family at the Hotel Ihuliro.<sup>6818</sup> She did not remain there for a long time. The children took some of the items that she had brought from the vehicle while she went to see her husband who was not well and in bed. She then left and attended the swearing-in ceremony which ended around 2.00 p.m. She explained that she could not stay with her family on that date because she did not have her own means of transportation and had not previously made up her mind to spend the night in Butare. Further, she was to travel later to Ruhengeri for the swearing-in of the *préfet*. Nyiramasuhuko decided to return to Murambi on 19 April 1994 with Mugiraneza because she did not know whether there was going to be a meeting on the next day.<sup>6819</sup>

2410. A meeting occurred in Murambi on 20 April 1994 but Nyiramasuhuko did not take notes. She did take notes during the meeting held on 21 April 1994, which appear in her diary at the entries for 11 February.<sup>6820</sup> On 21 April 1994, *Préfet* Dusabumugisha of Ruhengeri was sworn in and she attended this ceremony.<sup>6821</sup>

2411. Nyiramasuhuko testified that she did not go to Butare between 21 and 28 April 1994. She again went to Butare on 28 April 1994, after the meeting that finalised the Prime Minister's directives. Nyiramasuhuko went to Butare on that date because she could travel with the chairman of the PSD party, Ndungutse, and return the next day.<sup>6822</sup> They left Murambi at around 2.00 p.m. and arrived at Butare in the late afternoon, around 5.00 or 6.00 p.m.<sup>6823</sup> She went to Hotel Ihuliro, where her family was and spent the night there. She did not leave the hotel and was with the members of her family. Her granddaughter was celebrating her first birthday.<sup>6824</sup> She and Ndungutse left the following day, at around 10.00 a.m.<sup>6825</sup>

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<sup>6815</sup> T. 28 September 2005 p. 36 (Nyiramasuhuko).

<sup>6816</sup> T. 28 September 2005 p. 63 (Nyiramasuhuko).

<sup>6817</sup> T. 28 September 2005 p. 63 (Nyiramasuhuko).

<sup>6818</sup> T. 28 September 2005 p. 65 (Nyiramasuhuko).

<sup>6819</sup> T. 28 September 2005 p. 66 (Nyiramasuhuko).

<sup>6820</sup> T. 29 September 2005 p. 9 (Nyiramasuhuko).

<sup>6821</sup> T. 29 September 2005 p. 11 (Nyiramasuhuko).

<sup>6822</sup> T. 29 September 2005 p. 48 (Nyiramasuhuko).

<sup>6823</sup> T. 29 September 2005 pp. 48-49 (Nyiramasuhuko).

<sup>6824</sup> T. 29 September 2005 p. 49 (Nyiramasuhuko).

<sup>6825</sup> T. 29 September 2005 pp. 49-50 (Nyiramasuhuko).



2412. Nyiramasuhuko took notes at a Cabinet meeting that lasted two days on 7 and 8 May 1994.<sup>6826</sup> Nyiramasuhuko confirmed that on 10 May 1994 she attended a meeting with youths of all parties in Butare. The meeting was organised by the Butare authorities. The purpose of the meeting was to educate youths about peaceful co-existence, so that they would not fight each other or engage in acts of provocation. Kalimanzira informed her that the meeting was going to take place, and that it was organised by the *préfet* and *bourgmestre* of Ngoma urban *commune*. Kalimanzira said he would go there to ensure that the meeting had gone well. Nyiramasuhuko asked him for a ride.<sup>6827</sup> Kalimanzira told her that he had an appointment, and so they left and returned to Murambi on the same day. She stated that Nsabimana came at the end of the meeting. She did not recall if he made a speech. The meeting was followed by another meeting at the office of the *bourgmestre* of the urban *commune* and a reception.<sup>6828</sup>

2413. Nyiramasuhuko did not go to Hotel Ihuliro on 10 May 1994, because Kalimanzira was in a hurry to get back and she had no other means of transportation to return to Murambi. They left during the reception. Apart from Kamena Stadium and the reception, she did not go anywhere else in Butare that day.<sup>6829</sup>

2414. On 14 May 1994, she left Murambi for the weekend to go home in the company of Kalimanzira, who was going to Butare.<sup>6830</sup> She left Gitarama after noon.<sup>6831</sup> She remembered that she returned to Butare on 14 May, because on that day she saw a letter which had been drafted by Kalimanzira which bore the date of 14 May 1994. That letter reminded her that the notes which she had taken down were in connection with that time because they mention exactly what happened on 14 May 1994.<sup>6832</sup>

2415. Nyiramasuhuko testified that on 14 May 1994, she went to see her family while Kalimanzira stayed with Kanyabashi. The vehicle took her to Hotel Ihuliro where she arrived towards 6.00 p.m. She asked her family why they were still staying at the hotel, because she had asked them earlier to leave Butare town. Her family was not even thinking of leaving, although the situation was bad and war had reached more areas.<sup>6833</sup>

2416. Nyiramasuhuko testified that she stayed in Butare on the weekend of 14 and 15 May 1994 since she was not well, and therefore was not in a hurry to return the next day. On 15 May 1994 she remained in bed at home and on 16 May 1994 she felt better and left Butare for Gitarama in the morning. She did not leave the hotel during these days.<sup>6834</sup>

2417. On 16 May 1994, before 10.00 a.m., Nyiramasuhuko went to the BPO to pay a courtesy call to *Préfet* Nsabimana. She also wanted to find out about developments in the town

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<sup>6826</sup> T. 3 October 2005 pp. 23-24 (Nyiramasuhuko).

<sup>6827</sup> T. 3 October 2005 p. 43 (Kalimanzira went to ensure “whether the meeting actually took place”); T. 3 October 2005 p. 55 (Nyiramasuhuko) (French) (Kalimanzira “*se rendait à Butare pour voir si la réunion s’était bien déroulée*”).

<sup>6828</sup> T. 26 October 2005 p. 7 (Nyiramasuhuko).

<sup>6829</sup> T. 3 October 2005 p. 61 (Nyiramasuhuko).

<sup>6830</sup> T. 3 October 2005 pp. 60-61 (Nyiramasuhuko).

<sup>6831</sup> T. 26 October 2005 p. 19; T. 26 October 2005 p. 21 (Nyiramasuhuko) (French).

<sup>6832</sup> T. 3 October 2005 p. 62 (Nyiramasuhuko).

<sup>6833</sup> T. 4 October 2005 p. 7 (Nyiramasuhuko).

<sup>6834</sup> T. 4 October 2005 p. 8 (Nyiramasuhuko).

and the state of security in Butare.<sup>6835</sup> She went in her husband's Peugeot 505, a sedan, adding that she did not have a vehicle and was ill.<sup>6836</sup> She wanted to know whether it was necessary for her to move her family, and also to gather information to share with other ministers. Nsabimana told her that members of the population continued to flee from Mayaga in great numbers, and that if she wanted to know exactly what the security situation of Butare was, she could come and attend a Security Council meeting of the BPO.<sup>6837</sup> It was not necessary for her to report to the Cabinet about the situation in Butare after 16 May 1994, as the others already knew what she learned.<sup>6838</sup>

2418. Nyiramasuhuko stated that she saw many people at the BPO but that she did not know who was a refugee and who was not because Butare was at a crossroads and everybody passed through Butare while fleeing from the war. While some people at the BPO wanted to obtain travel documents or fuel vouchers, others came to look for members of their family. She estimated that there were about a hundred people at the BPO.<sup>6839</sup>

2419. Nyiramasuhuko stated that she attended the meeting of the Security Council on 16 May 1994 at the multi-purpose hall. She first went to the hotel and told her family that she was going to attend the meeting. She again used the Peugeot 505 to go to the hall. She confirmed that she took notes during the meeting and that they were contained in the entries for 30 and 31 January in her diary.<sup>6840</sup>

2420. She testified that on 16 May 1994, she did not wait for the end of the meeting of the Security Council and returned to Murambi in her husband's Peugeot 505 with her husband's driver, Ngarambe.<sup>6841</sup> Her own driver was called Muvunyi.<sup>6842</sup> She testified that she did not have a driver and bodyguard named Kazungu who moved around with her between April and July 1994.<sup>6843</sup> She did not leave Murambi after her return on 16 May 1994.<sup>6844</sup>

2421. Towards the end of May 1994, the Minister of Transport, Ntagerura, signed a request to allot a car from the Minister of Foreign Affairs to Nyiramasuhuko.<sup>6845</sup> This was a Hyundai sedan which was used by the Ministry of Foreign Affairs to drive around distinguished guests. She believed that she got the car around 25 May 1994.<sup>6846</sup> Until that time, she did not have a car at her disposal.

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<sup>6835</sup> T. 4 October 2005 p. 9; T. 26 October 2005 p. 32 (Nyiramasuhuko).

<sup>6836</sup> T. 4 October 2005 p. 17 (Nyiramasuhuko).

<sup>6837</sup> T. 26 October 2005 p. 33 (Nyiramasuhuko) (refers to Nyanza); *see* T. 26 October 2005 p. 38 (Nyiramasuhuko) (French) (refers to Mayaga).

<sup>6838</sup> T. 26 October 2005 p. 33 (Nyiramasuhuko).

<sup>6839</sup> T. 4 October 2005 p. 17 (Nyiramasuhuko).

<sup>6840</sup> T. 4 October 2005 p. 17 (Nyiramasuhuko).

<sup>6841</sup> T. 4 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>6842</sup> T. 4 October 2005 p. 48 (Nyiramasuhuko).

<sup>6843</sup> T. 4 October 2005 p. 44 (Nyiramasuhuko).

<sup>6844</sup> T. 4 October 2005 p. 49 (Nyiramasuhuko).

<sup>6845</sup> T. 27 September 2005 pp. 16-17 (Nyiramasuhuko).

<sup>6846</sup> T. 5 October 2005 p. 11 (Nyiramasuhuko); Defence Exhibit 348B (Nyiramasuhuko) (Letter from Minister of Transportation).

2422. Nyiramasuhuko testified that she left Murambi for Butare on 30 May 1994 between 9.00 and 10.00 a.m. to evacuate members of her family.<sup>6847</sup> She received information that the fighting was getting closer. Gitarama was hemmed between the two fronts, the *Inkotanyi* were fighting their way out of Kigali, while others had gone to the Mayaga area.<sup>6848</sup>

2423. She went to the Hotel Ihuliro.<sup>6849</sup> She arrived in the afternoon, before 6.00 p.m. As soon as she arrived, she talked with members of her family. She was surprised because they were celebrating her niece's birthday, while she had come to evacuate them. On the evening of 30 May 1994, she remained at Hotel Ihuliro.<sup>6850</sup>

2424. When she reached Butare on 30 May 1994, her vehicle was hit by another car driven by a *gendarme*. The *gendarme* told Nyiramasuhuko that he would see his commanding officer, in order to requisition another vehicle for her.<sup>6851</sup> A car belonging to the ISAR was then requisitioned and put at her disposal.<sup>6852</sup> It was a Mazda double-cabin pickup, which belonged to the ISAR forestry.<sup>6853</sup> "ISAR Ruhande" was written on the side of the car and could be read from a distance of five or 10 metres.<sup>6854</sup> She stated that she went to Butare to visit her family on that day.<sup>6855</sup> The commanding officer authorised her to obtain the vehicle.<sup>6856</sup>

2425. Nyiramasuhuko testified that in the morning of 31 May 1994, while the children were getting ready to leave, she decided that she should attend the meeting taking place in the multi-purpose hall.<sup>6857</sup> It took her between five and seven minutes to walk there from the hotel.<sup>6858</sup> She spent one hour at the meeting and left as soon as she was told that a vehicle had been made available.<sup>6859</sup> At that point, the meeting had not yet ended.<sup>6860</sup> She left Butare immediately, because the children she was going to evacuate were already in the car.<sup>6861</sup> The situation in Gitarama was very dangerous and the RPF took over the town.<sup>6862</sup> Nyiramasuhuko stated that she left Butare before noon with Denise and her granddaughter.<sup>6863</sup> They reached Murambi around 2.00 p.m.<sup>6864</sup>

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<sup>6847</sup> T. 5 October 2005 pp. 11, 13-14 (Nyiramasuhuko).

<sup>6848</sup> T. 5 October 2005 p. 11 (Nyiramasuhuko).

<sup>6849</sup> T. 5 October 2005 pp. 15-16 (Nyiramasuhuko).

<sup>6850</sup> T. 5 October 2005 p. 16 (Nyiramasuhuko).

<sup>6851</sup> T. 16 November 2005 p. 28 (Nyiramasuhuko).

<sup>6852</sup> T. 16 November 2005 pp. 29-30 (Nyiramasuhuko).

<sup>6853</sup> T. 5 October 2005 p. 29 (Nyiramasuhuko).

<sup>6854</sup> T. 5 October 2005 pp. 29-30 (Nyiramasuhuko).

<sup>6855</sup> T. 16 November 2005 p. 29 (Nyiramasuhuko).

<sup>6856</sup> T. 10 November 2005 p. 4 (Nyiramasuhuko).

<sup>6857</sup> T. 5 October 2005 p. 18 (Nyiramasuhuko).

<sup>6858</sup> T. 5 October 2005 p. 19 (Nyiramasuhuko).

<sup>6859</sup> T. 5 October 2005 p. 27; T. 26 October 2005 p. 46 (Nyiramasuhuko).

<sup>6860</sup> T. 5 October 2005 pp. 27-28 (Nyiramasuhuko).

<sup>6861</sup> T. 5 October 2005 p. 28 (Nyiramasuhuko).

<sup>6862</sup> T. 6 September 2005 p. 27 (Nyiramasuhuko).

<sup>6863</sup> T. 5 October 2005 p. 31 (Nyiramasuhuko).

<sup>6864</sup> T. 5 October 2005 p. 32 (Nyiramasuhuko).

2426. Nyiramasuhuko testified that on 1 June 1994 she was not in Butare. She was in Murambi, Gitarama *préfecture*, and on her way to Muramba, Gisenyi *préfecture*. She returned to Butare a fortnight later.<sup>6865</sup>

2427. Nyiramasuhuko testified as to the notes in her diary from 1 to 3 June 1994. She said there was a Cabinet meeting in Murambi on 1 June 1994. Regarding her diary notes on 1 to 3 June 1994, she was at first unsure whether they all related to the 1 June 1994 Cabinet meeting in Murambi.<sup>6866</sup> Upon further questioning, she testified that the notes appearing on the page for 3 June 1994 relate to a different Cabinet meeting that took place in Muramba on 4 June 1994.<sup>6867</sup>

2428. Nyiramasuhuko testified that after the Cabinet meeting on 1 June 1994, at about 2.00 p.m., the Chief of Staff for the Prime Minister told them they must leave as they were under attack.<sup>6868</sup> She left Murambi in the direction of Gisenyi. She went to Muramba<sup>6869</sup> on 1 June, because it was said that the seat of government would be there. She clarified that the seat of government was in Gisenyi, where the President of the Republic stayed.<sup>6870</sup> She referred to Muramba<sup>6871</sup> as the government office, because there were some offices and services there.<sup>6872</sup> During the first days of June 1994, Cabinet meetings were held in Muramba.<sup>6873</sup> Ministers left Gisenyi and shuttled to Muramba during the entire month of June 1994. She settled there because Cabinet meetings were held there and because her grandchild was with her. She explained that it was not easy for her to move around all the time with her grandchild.<sup>6874</sup>

2429. She said the diary entry appearing on 3 June 1994 was an indication of the various areas where the ministers were staying at that time.<sup>6875</sup> The first several lines of the entry for 3 June 1994 state:

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<sup>6865</sup> T. 6 September 2005 p. 27 (Nyiramasuhuko).

<sup>6866</sup> T. 5 October 2005 p. 33 (Nyiramasuhuko).

<sup>6867</sup> T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>6868</sup> T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>6869</sup> T. 5 October 2005 p. 36 (Nyiramasuhuko). The English translation (“Murambi”) is erroneous; *see* T. 5 October 2005 p. 45 (Nyiramasuhuko) (French).

<sup>6870</sup> T. 5 October 2005 p. 36 (Nyiramasuhuko).

<sup>6871</sup> T. 5 October 2005 p. 36 (Nyiramasuhuko). The English translation (“Murambi”) is erroneous; *see* T. 5 October 2005 pp. 45-46 (Nyiramasuhuko) (French).

<sup>6872</sup> T. 5 October 2005 pp. 36-37 (Nyiramasuhuko).

<sup>6873</sup> T. 5 October 2005 p. 37 (Nyiramasuhuko). The English translation (“Murambi”) is erroneous; *see* T. 5 October 2005 p. 46 (Nyiramasuhuko) (French).

<sup>6874</sup> T. 11 October 2005 p. 3 (Nyiramasuhuko). The English translation (“that young girl”) is erroneous; *see* T. 11 October 2005 p. 5 (Nyiramasuhuko) (French).

<sup>6875</sup> T. 5 October 2005 pp. 33-34 (Nyiramasuhuko).

Gitarama: MINIFOPE

Mijeuma → Nyabikenke

Gisenyi: MINIPLAN + MINITRASO

MINETO → Popul<sup>n</sup> + Civil Defence

MINIPRISEC → office in Gisenyi

MIFAPROFE → Muramba and Butare and looking towards Gikongoro.<sup>6876</sup>

2430. She testified that at the time of the 4 June 1994 meeting, most ministers were in Gisenyi where several ministries were based, but there were two ministries in Nyabikenke, Gitarama *préfecture*: MINIFOP and MIJEUMA. Nyiramasuhuko was the only minister that did not live in Gisenyi.<sup>6877</sup>

2431. She testified that she was staying in Muramba. When she travelled to Butare on the weekends, she went through Gikongoro because that was the only way to get to Butare at that time.<sup>6878</sup>

2432. She said that a series of government decisions appearing in the 4 June 1994 entry in her diary related to the same 4 June 1994 Cabinet meeting.<sup>6879</sup> She testified that at the 4 June meeting, the government decided to replace the *préfet* of Gitarama with Major Ukulikiyeyezu.<sup>6880</sup>

2433. She testified that Cabinet meetings were held in Muramba on 6 June and 10 June 1994.<sup>6881</sup> She also said that on 8 June 1994 the RPF had killed bishops that were her neighbours in Gitarama. The Cabinet learned about the killings from newspapers and the radio on 10 June 1994 and discussed it at the Cabinet meeting that day.<sup>6882</sup>

2434. She did not travel to Butare between 31 May and 11 June 1994 as she was in Muramba.<sup>6883</sup> She did not leave Muramba between 12 and 17 June 1994. During that time, Cabinet meetings were held almost every day. She stated that entries in her diary for 17 June, 18 May and 19th (no month indicated) 1994 related to a Cabinet meeting.<sup>6884</sup>

2435. Nyiramasuhuko testified that she went to Butare on Saturday, 11 June 1994.<sup>6885</sup> She said this was the only trip she took to Butare in the month of June 1994 after a Cabinet

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<sup>6876</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 56-57.

<sup>6877</sup> T. 5 October 2005 p. 40 (Nyiramasuhuko) (refers to Muserama); see T. 5 October 2005 p. 49 (French) (Nyiramasuhuko) (refers to MIJEUMA).

<sup>6878</sup> T. 5 October 2005 p. 40 (Nyiramasuhuko).

<sup>6879</sup> T. 5 October 2005 p. 38 (Nyiramasuhuko).

<sup>6880</sup> T. 5 October 2005 p. 39 (Nyiramasuhuko).

<sup>6881</sup> T. 5 October 2005 pp. 40-41 (Nyiramasuhuko).

<sup>6882</sup> T. 5 October 2005 pp. 41-43 (Nyiramasuhuko).

<sup>6883</sup> T. 22 November 2005 p. 5 (Nyiramasuhuko).

<sup>6884</sup> T. 6 October 2005 p. 9 (Nyiramasuhuko).

<sup>6885</sup> T. 6 September 2005 p. 32; T. 5 October 2005 pp. 45-46 (Nyiramasuhuko).

meeting.<sup>6886</sup> Her daughter Denise, her granddaughter and three *gendarmes*, one of whom was a driver, accompanied her to Butare. She travelled in a dirty, white Mazda pickup, which was in her possession for two days.<sup>6887</sup> They left very early in the morning and arrived at Butare around 6.00 p.m.<sup>6888</sup> She was afraid for her family and had asked them to flee but they refused. So she returned to try again.<sup>6889</sup> People were waiting for the arrival of Cardinal Etchegarray.<sup>6890</sup>

2436. Nyiramasuhuko testified that she went straight to Hotel Ihuliro where her family was located, including her children and husband.<sup>6891</sup> Her family did not understand the prevailing situation in Rwanda, thinking they were in a peaceful country. She told the people who were at the hotel that they had to leave.<sup>6892</sup> She spent the night at the hotel and did not go anywhere else.<sup>6893</sup>

2437. She said that it might take about three hours to travel from Gisenyi to Kigali and then another two hours from Kigali to Butare. In times of war, another two to three additional hours must be added to these five hours. The duration of the trip would depend on the itinerary used. She also said the distance between Muramba and Butare might be covered in an hour less than the distance between Gisenyi and Butare.<sup>6894</sup> Further, the distance between Gisenyi and Muramba might be covered in about an hour.<sup>6895</sup>

2438. Nyiramasuhuko testified that she never went to Muganza. She confirmed that on 10 June 1994 there was a Cabinet meeting at Muramba, but not on 11 June 1994.<sup>6896</sup> The following morning [12 June 1994], she left for Muramba at around 10.00 a.m.<sup>6897</sup> They reached Gisenyi *commune* at around 9.00 p.m.<sup>6898</sup>

2439. In relation to the diary entry for 18 June 1994 which was followed by arrows and the words, “[f]or two hundred thousand francs, I must withdraw an envelope for civil defence in Gisenyi,” Nyiramasuhuko said these were notes she took based on a message she received from the minister of public service. She did not go to Gisenyi on 18 June 1994 to withdraw an envelope for civil defence. On that date, she was in Muramba.<sup>6899</sup>

2440. Nyiramasuhuko testified that on 21 June 1994, she attended meetings at RTLM and at Kigali *préfecture*.<sup>6900</sup> She stayed at *Hotel des Diplomates* in Kigali. Her programme was to tell

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<sup>6886</sup> T. 11 October 2005 pp. 3-4 (Nyiramasuhuko).

<sup>6887</sup> T. 6 September 2005 pp. 34-36 (Nyiramasuhuko).

<sup>6888</sup> T. 6 September 2005 pp. 38-39 (Nyiramasuhuko).

<sup>6889</sup> T. 6 September 2005 p. 32 (Nyiramasuhuko).

<sup>6890</sup> T. 6 September 2005 p. 51 (Nyiramasuhuko).

<sup>6891</sup> T. 6 September 2005 pp. 39, 41 (Nyiramasuhuko).

<sup>6892</sup> T. 6 September 2005 pp. 41-42 (Nyiramasuhuko).

<sup>6893</sup> T. 6 September 2005 p. 42 (Nyiramasuhuko).

<sup>6894</sup> T. 11 October 2005 p. 4 (Nyiramasuhuko).

<sup>6895</sup> T. 11 October 2005 pp. 4-5 (Nyiramasuhuko).

<sup>6896</sup> T. 11 October 2005 p. 6 (Nyiramasuhuko).

<sup>6897</sup> T. 6 September 2005 p. 42 (Nyiramasuhuko).

<sup>6898</sup> T. 6 September 2005 p. 50 (Nyiramasuhuko).

<sup>6899</sup> T. 6 October 2005 p. 12 (Nyiramasuhuko).

<sup>6900</sup> T. 6 October 2005 p. 13 (Nyiramasuhuko).

the women to do all in their power to end the war. She then said that there was no meeting at RTLM; rather an RTLM journalist came and met her at the hotel.<sup>6901</sup>

2441. Nyiramasuhuko confirmed that she went to Butare when Cardinal Etchegararray visited on 24 June 1994 as a government envoy. She was a member of a government delegation, consisting of staff of the foreign ministry and a journalist. They left Muramba at 4.00 a.m. and reached Butare at about 11.00 a.m. She went to Hotel Ihuliro and spent a very brief time there, just to exchange greetings and ask for news, before leaving. Nyiramasuhuko testified that she tried to follow the programme that had been set for the cardinal's visit. She left Butare at about 8.00 p.m.<sup>6902</sup>

2442. Nyiramasuhuko stated that between 12 and 24 June 1994, she did not go to Butare and did not return there until after 24 June 1994. She did not attend the assumption of office by Ndayambaje as a *bourgmestre*. Nyiramasuhuko denied that on 24 June 1994 she went anywhere in Butare to abduct Tutsis or that she ordered the abduction, rape, or execution of Tutsis.<sup>6903</sup> Nyiramasuhuko testified that she returned to Butare in July 1994, having left Muramba after the Cabinet meeting on 2 July 1994. She left with the *gendarmes*, who were her bodyguards.<sup>6904</sup>

#### Nyiramasuhuko Defence Witness Denise Ntahobali

2443. Denise Ntahobali testified that about one week after the death of Habyarimana, she and her sister Clarisse went to Hotel Ihuliro to find out about their father and brother, Shalom Ntahobali.<sup>6905</sup> Denise Ntahobali testified that Nyiramasuhuko came to the hotel a few days after Denise Ntahobali's arrival around 6.00 p.m. with two *gendarmes*.<sup>6906</sup> Her mother, Nyiramasuhuko, left the next day, returning to Murambi to work.<sup>6907</sup>

2444. On 28 April 1994, the first birthday of Clarisse's child, Nyiramasuhuko came for the second time to Hotel Ihuliro.<sup>6908</sup> Nyiramasuhuko asked them to leave Butare because of the progress of the RPF.<sup>6909</sup> The next day, her mother went back to her place of work in Murambi.<sup>6910</sup>

2445. Denise Ntahobali testified that at the end of May her mother came again to Hotel Ihuliro for the birthday party of her cousin, Witness WBUC.<sup>6911</sup> On cross-examination she agreed that the birthday was on 30 May 1994.<sup>6912</sup> This time her mother again asked them to leave and go to Cyangugu because the RPF was approaching Butare.<sup>6913</sup> The family members

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<sup>6901</sup> T. 6 October 2005 p. 14 (Nyiramasuhuko).

<sup>6902</sup> T. 6 October 2005 p. 25 (Nyiramasuhuko).

<sup>6903</sup> T. 6 October 2005 p. 27 (Nyiramasuhuko).

<sup>6904</sup> T. 6 October 2005 p. 29 (Nyiramasuhuko).

<sup>6905</sup> T. 9 June 2005 pp. 21-22 (Denise Ntahobali).

<sup>6906</sup> T. 9 June 2005 pp. 24-26 (Denise Ntahobali).

<sup>6907</sup> T. 9 June 2005 p. 26 (Denise Ntahobali).

<sup>6908</sup> T. 9 June 2005 p. 26 (Denise Ntahobali).

<sup>6909</sup> T. 13 June 2005 p. 22 (Denise Ntahobali).

<sup>6910</sup> T. 9 June 2005 p. 26 (Denise Ntahobali).

<sup>6911</sup> T. 9 June 2005 p. 28 (Denise Ntahobali).

<sup>6912</sup> T. 13 June 2005 pp. 14, 18 (Denise Ntahobali).

<sup>6913</sup> T. 9 June 2005 p. 28; T. 13 June 2005 pp. 20, 22 (Denise Ntahobali).

refused because it would have been difficult to move the large number of people residing at Hotel Ihuliro. Those people had come to the hotel because the massacres had not yet commenced in Butare.<sup>6914</sup> Nyiramasuhuko became annoyed and decided to leave with her granddaughter and Denise Ntahobali. Denise was amenable to leaving because she felt that staying at the hotel was dangerous and because she wanted to support Nyiramasuhuko during those difficult times.<sup>6915</sup> She looked after her niece throughout the period of the events. When they left for Murambi and then for Muramba, they stayed together until they returned to Butare.<sup>6916</sup>

2446. On 31 May 1994, Denise Ntahobali, her niece and Nyiramasuhuko left the hotel and went to Murambi.<sup>6917</sup> Two *gendarmes*, the escort of Nyiramasuhuko, accompanied them.<sup>6918</sup> They left for Murambi before noon because they had to pack for the child before they could start their journey.<sup>6919</sup> The distance from Butare to Murambi was about 30 kilometres. It took them one and a half hours to go from Hotel Ihuliro to Murambi.<sup>6920</sup>

2447. The day after arriving in Murambi, Nyiramasuhuko attended a Cabinet meeting. In the afternoon she ran back to their room as if she had lost her mind, telling them that they must flee because the *Inkotanyi* were nearby.<sup>6921</sup> They collected the belongings they could and Denise Ntahobali, Pauline Nyiramasuhuko, the baby and the *gendarmes* boarded a vehicle.<sup>6922</sup> They went towards Gisenyi *préfecture* along the Ngororero road, part of which was paved. They were accompanied by a large number of *gendarmes* placed at the front and back of a convoy of 20 vehicles. They arrived in Muramba in the late evening. Muramba is not far from Ngororero.<sup>6923</sup>

2448. When they were in Muramba, Nyiramasuhuko often went to attend meetings in Muramba or Gisenyi.<sup>6924</sup> Nyiramasuhuko would leave to attend meetings during the day and return each evening.<sup>6925</sup> Denise Ntahobali testified that she knew her mother went to these places because each morning Nyiramasuhuko would tell her where she was going and when she travelled to Gisenyi, Denise Ntahobali watched Nyiramasuhuko get into her vehicle.<sup>6926</sup>

2449. They stayed in Muramba for one week and then went to Butare to see how the people they left behind were doing. She travelled with her mother, her niece and two *gendarmes*.<sup>6927</sup> The trip to Hotel Ihuliro took them between eight and 10 hours.<sup>6928</sup> The following day, she, her

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<sup>6914</sup> T. 9 June 2005 p. 28 (Denise Ntahobali).

<sup>6915</sup> T. 9 June 2005 p. 29 (Denise Ntahobali).

<sup>6916</sup> T. 13 June 2005 p. 37 (Denise Ntahobali).

<sup>6917</sup> T. 13 June 2005 pp. 18, 22, 29 (Denise Ntahobali).

<sup>6918</sup> T. 9 June 2005 pp. 29-30 (Denise Ntahobali).

<sup>6919</sup> T. 13 June 2005 p. 26 (Denise Ntahobali).

<sup>6920</sup> T. 9 June 2005 p. 32 (Denise Ntahobali).

<sup>6921</sup> T. 9 June 2005 pp. 43-44; T. 13 June 2005 p. 30 (Denise Ntahobali).

<sup>6922</sup> T. 9 June 2005 p. 44 (Denise Ntahobali).

<sup>6923</sup> T. 9 June 2005 pp. 44-45 (Denise Ntahobali).

<sup>6924</sup> T. 9 June 2005 pp. 47-48 (Denise Ntahobali).

<sup>6925</sup> T. 9 June 2005 p. 48 (Denise Ntahobali).

<sup>6926</sup> T. 13 June 2005 p. 23 (Denise Ntahobali).

<sup>6927</sup> T. 9 June 2005 p. 48 (Denise Ntahobali).

<sup>6928</sup> T. 9 June 2005 p. 50 (Denise Ntahobali).



mother, niece and the two *gendarmes* left Hotel Ihuliro and went back to Muramba because Nyiramasuhuko had to return to her place of work.<sup>6929</sup>

2450. When it was put to her that Nyiramasuhuko attended a Cabinet meeting on 10 June 1994 in Murambi, Denise responded: “I know that we left the next day, after the day we arrived. I see 10<sup>th</sup> of June here [in the diary], but on that date, we were at Muramba. I don’t see where this Cabinet meeting might have taken place.”<sup>6930</sup>

2451. During June 1994, Denise Ntahobali testified that she did not leave Muramba. She said that Nyiramasuhuko went to meetings in Muramba and Gisenyi but always returned to spend the night with them. Nyiramasuhuko also went to Butare once to meet the apostolic nuncio, Etchegarray, and returned in the middle of the night to Muramba.<sup>6931</sup> When it was suggested to Denise Ntahobali that her mother did not return to Muramba in the middle of the night as she had testified, she stood by her testimony adding, “[t]here is nothing that proves that she was still at Butare. I noticed that there were things that were entered on other dates which were not on the day when she made the entry in the diary.”<sup>6932</sup> Denise Ntahobali testified that her mother used a white open-backed pickup.<sup>6933</sup>

#### Nyiramasuhuko Defence Witness WZJM

2452. Witness WZJM, a Hutu, testified to seeing Nyiramasuhuko in Muramba more than 10 times during June 1994.<sup>6934</sup> In early June 1994, people were saying that the Interim Government had moved to Muramba.<sup>6935</sup> At that time, Witness WZJM observed a woman walking very near him with a one-year-old child. A nun to whom he was speaking identified the woman as Nyiramasuhuko, the Minister in charge of women and family affairs. Nyiramasuhuko wore civilian attire.<sup>6936</sup> It was the first time in his life he had seen Nyiramasuhuko.<sup>6937</sup> She was never escorted by any soldiers.<sup>6938</sup>

2453. Witness WZJM explained that he saw Nyiramasuhuko a second time when she was in a white double-cabin Toyota pickup, with her driver and one-year-old child.<sup>6939</sup> Nyiramasuhuko was exiting the vehicle near a store close to a school.<sup>6940</sup> He explained that when he went to church or to the market, he would see the white vehicle he described, carrying Nyiramasuhuko, the child and the driver.<sup>6941</sup> Nyiramasuhuko sat in the back seat carrying the child and the driver sat in the front.<sup>6942</sup> In total, he saw them about 10 times in the month of June 1994.<sup>6943</sup>

<sup>6929</sup> T. 9 June 2005 p. 51 (Denise Ntahobali).

<sup>6930</sup> T. 13 June 2005 p. 30 (Denise Ntahobali).

<sup>6931</sup> T. 9 June 2005 pp. 51-52 (Denise Ntahobali).

<sup>6932</sup> T. 13 June 2005 p. 34 (Denise Ntahobali).

<sup>6933</sup> T. 13 June 2005 p. 43 (Denise Ntahobali).

<sup>6934</sup> T. 21 February 2005 pp. 79-80 (Witness WZJM).

<sup>6935</sup> T. 21 February 2005 p. 77; T. 22 February 2005 pp. 12-13 (Witness WZJM).

<sup>6936</sup> T. 21 February 2005 p. 78; T. 22 February 2005 p. 14 (Witness WZJM).

<sup>6937</sup> T. 22 February 2005 pp. 14, 24 (Witness WZJM).

<sup>6938</sup> T. 22 February 2005 p. 16 (Witness WZJM).

<sup>6939</sup> T. 21 February 2005 pp. 79-80; T. 22 February 2005 p. 14 (Witness WZJM).

<sup>6940</sup> T. 21 February 2005 p. 79 (Witness WZJM).

<sup>6941</sup> T. 21 February 2005 p. 80 (Witness WZJM).

<sup>6942</sup> T. 22 February 2005 p. 15 (Witness WZJM).

<sup>6943</sup> T. 21 February 2005 pp. 79-80; T. 22 February 2005 p. 15 (Witness WZJM).

Apart from the first time when he saw Nyiramasuhuko walking, he only saw Nyiramasuhuko in the vehicle he described.<sup>6944</sup>

2454. Witness WZJM testified that he was unable to determine whether there were strained relations between Hutus and Tutsis in 1990 because he did not know who was Hutu and who was Tutsi.<sup>6945</sup>

Nyiramasuhuko Defence Witness Edmond Babin

2455. Edmond Babin, an investigator for the Nyiramasuhuko Defence, recorded video and took photographs of numerous locations in Butare *préfecture* that were discussed in the Indictments.<sup>6946</sup> He testified that the total distance from Butare to Gisenyi was 317 kilometres which was covered in 8 hours and 4 minutes along the DRC border with the exception of the stopover at Kibuye.<sup>6947</sup> He testified that the trip from Gitarama to Butare was 83 kilometres and took 1 hour and 10 minutes to travel the tarred road.<sup>6948</sup>

Nyiramasuhuko Defence Witness Clarisse Ntahobali

2456. Clarisse Ntahobali, Nyiramasuhuko's daughter and Ntahobali's sister, testified that she left Rwanda in August 1991 for Canada to pursue her higher education at the University of Sherbrooke, in the province of Quebec.<sup>6949</sup> She returned to Rwanda in February 1994 and remained there until 18 July 1994.<sup>6950</sup>

2457. When Clarisse Ntahobali returned to Rwanda, she worked at Hotel Ihuliro, her family's hotel.<sup>6951</sup> Clarisse Ntahobali testified that when she returned to Rwanda in February 1994, Nyiramasuhuko resided in Kigali, in Kimihurura, while her father was in Buye, although Nyiramasuhuko came home every weekend.<sup>6952</sup>

2458. Clarisse Ntahobali went to Hotel Ihuliro about one week after the plane crash.<sup>6953</sup> Nyiramasuhuko was not at Hotel Ihuliro when Clarisse Ntahobali arrived.<sup>6954</sup> Clarisse Ntahobali testified that Nyiramasuhuko arrived at Hotel Ihuliro in the evening, two days after her own arrival. She was accompanied by four bodyguards, and told her family that the government had moved to Murambi from where she came.<sup>6955</sup> Nyiramasuhuko spent one or two nights in Butare before going back to Murambi, very early in the morning.<sup>6956</sup>

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<sup>6944</sup> T. 21 February 2005 p. 80 (Witness WZJM).

<sup>6945</sup> T. 22 February 2005 p. 5 (Witness WZJM).

<sup>6946</sup> T. 18 April 2005 p. 21 (Babin).

<sup>6947</sup> T. 25 April 2005 pp. 9-10 (Babin).

<sup>6948</sup> T. 25 April 2005 p. 11 (Babin); Defence Exhibit 309 (Nyiramasuhuko and Ntahobali) (Travel Map of Rwanda).

<sup>6949</sup> T. 9 February 2005 p. 8 (Clarisse Ntahobali).

<sup>6950</sup> T. 9 February 2005 p. 11 (Clarisse Ntahobali).

<sup>6951</sup> T. 9 February 2005 p. 33 (Clarisse Ntahobali).

<sup>6952</sup> T. 9 February 2005 p. 34 (Clarisse Ntahobali).

<sup>6953</sup> T. 9 February 2005 pp. 41-42 (Clarisse Ntahobali).

<sup>6954</sup> T. 9 February 2005 p. 48 (Clarisse Ntahobali).

<sup>6955</sup> T. 9 February 2005 p. 49 (Clarisse Ntahobali).

<sup>6956</sup> T. 9 February 2005 p. 50 (Clarisse Ntahobali).

2459. Clarisse Ntahobali testified that on 19 April 1994, she met Nyiramasuhuko as she was going to the Matyazo market square. Nyiramasuhuko told her that she had come for the swearing-in of the new *préfet* of Butare. Nyiramasuhuko was bringing the family some food.<sup>6957</sup> When she returned from the market, Clarisse did not find Nyiramasuhuko at Hotel Ihuliro.<sup>6958</sup>

2460. Clarisse Ntahobali saw Nyiramasuhuko again on 28 April 1994, the birthday of Clarisse Ntahobali's first child. Nyiramasuhuko came in the evening, spent the night at the hotel, and left the next morning. There were about 40 people at the hotel on that date, mostly extended family members, and it became increasingly difficult to have food for everybody.<sup>6959</sup>

2461. Clarisse Ntahobali testified that Nyiramasuhuko came back to Hotel Ihuliro in mid-May 1994 on which occasion Nyiramasuhuko was sick and spent two to three days at the hotel.<sup>6960</sup> She had not seen her mother since 29 April 1994, and she did not learn of her presence in Butare from 29 April until mid-May 1994.<sup>6961</sup>

2462. Clarisse Ntahobali testified that she saw Nyiramasuhuko again at Hotel Ihuliro at the end of May 1994 when Nyiramasuhuko had come to look for Clarisse Ntahobali's young child and younger sister because she wanted everyone to leave Butare due to the prevailing security situation in the country. Nyiramasuhuko knew that the RPF was advancing towards Butare, but did not explain that to the family at that time. The family told her that they could not leave immediately because they were too numerous. Nyiramasuhuko replied that she could take those who were ready to leave and took Denise and Clarisse Ntahobali's baby, who was one and a half years old at the time.<sup>6962</sup> Nyiramasuhuko said she was going to Murambi in Gitarama *préfecture* where the government was located.<sup>6963</sup>

2463. Clarisse Ntahobali testified that Nyiramasuhuko returned with Denise and the baby two or three days and one week later. Nyiramasuhuko told them that they had just left Gitarama and that she was going to settle or stay at Muramba in Gisenyi *préfecture* where the government had decided to "set up shop" since the RPF had captured Gitarama.<sup>6964</sup> Nyiramasuhuko spent the night and left the next day, saying the trip to Muramba was going to be a long one.<sup>6965</sup>

2464. Clarisse Ntahobali learned that Nyiramasuhuko came back to Butare once during the period where she lived in Muramba, on 24 June 1994, as part of the delegation of Bishop Etchegarray. Clarisse Ntahobali did not see her at that time.<sup>6966</sup>

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<sup>6957</sup> T. 9 February 2005 pp. 50-51 (Clarisse Ntahobali).

<sup>6958</sup> T. 9 February 2005 p. 51 (Clarisse Ntahobali).

<sup>6959</sup> T. 9 February 2005 p. 52 (Clarisse Ntahobali).

<sup>6960</sup> T. 9 February 2005 p. 57; T. 10 February 2005 p. 26 (Clarisse Ntahobali).

<sup>6961</sup> T. 9 February 2005 p. 57 (Clarisse Ntahobali).

<sup>6962</sup> T. 9 February 2005 p. 58 (Clarisse Ntahobali).

<sup>6963</sup> T. 9 February 2005 p. 61 (Clarisse Ntahobali).

<sup>6964</sup> T. 9 February 2005 p. 61; T. 10 February 2005 p. 23 (Clarisse Ntahobali).

<sup>6965</sup> T. 9 February 2005 p. 62 (Clarisse Ntahobali).

<sup>6966</sup> T. 9 February 2005 p. 63 (Clarisse Ntahobali).

Nyiramasuhuko Defence Witness Céline Nyiraneza

2465. Céline Nyiraneza, Nyiramasuhuko's sister and Ntahobali's aunt, testified that Nyiramasuhuko lived alone in Kigali from the time she was appointed Minister of Family and Women's Affairs until 6 April 1994.<sup>6967</sup> She only had a Tutsi night watchman called Lionel Mushyitsyi to ensure her protection.<sup>6968</sup>

2466. A few days or weeks after 6 April 1994, Nyiraneza went to Kinyamakara, her husband's native *commune* in Gikongoro *préfecture*, to apply for identification papers for her children. During her absence, Nyiramasuhuko came to Hotel Ihuliro for the first time.<sup>6969</sup> Nyiraneza later corrected herself and stated that she saw Nyiramasuhuko for the first time after 6 April 1994 in the first days following her own arrival at Hotel Ihuliro. She stated that Nyiramasuhuko came one night when she was there to spend the night. Nyiraneza and Nyiramasuhuko did not speak before Nyiramasuhuko left very early the next morning.<sup>6970</sup>

2467. Nyiramasuhuko informed her that the *Inkotanyi* had attacked the seat of government in Kigali and that the entire government had moved to Gitarama and set up in a school in Murambi. Since Nyiramasuhuko was a member of government, Nyiraneza understood that Nyiramasuhuko had also settled in that area.<sup>6971</sup> She testified that she knew that the government had set up its seat in Gitarama on 12 April 1994.<sup>6972</sup>

2468. Nyiraneza testified that a few days after her return from Gikongoro, Nyiramasuhuko came again to Hotel Ihuliro. Nyiramasuhuko had come from where the seat of government was located, Gitarama. Nyiramasuhuko was suffering from malaria and spent three to four days at home.<sup>6973</sup>

2469. After her second trip to Gikongoro towards the end of May or early June 1994, Nyiraneza noticed that Shalom's wife, her family, and driver were no longer at Hotel Ihuliro.<sup>6974</sup> Nyiramasuhuko had also left Hotel Ihuliro the day before Nyiraneza returned from Gikongoro. She heard that Nyiramasuhuko took Denise and Clarisse's child with her, travelling in the direction of Muramba, but she believed they were still staying in Gitarama.<sup>6975</sup>

Nyiramasuhuko Defence Witness WBUC

2470. Witness WBUC, the niece of Nyiramasuhuko and the cousin of Ntahobali,<sup>6976</sup> lived with Ntahobali at Hotel Ihuliro and saw Nyiramasuhuko on several occasions during the events.<sup>6977</sup> She testified that her husband was an investigator for the Ntahobali Defence until he

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<sup>6967</sup> T. 23 February 2005 p. 72; T. 24 February 2005 p. 26 (Céline Nyiraneza).

<sup>6968</sup> T. 24 February 2005 p. 27 (Céline Nyiraneza).

<sup>6969</sup> T. 24 February 2005 p. 37 (Céline Nyiraneza).

<sup>6970</sup> T. 24 February 2005 p. 38 (Céline Nyiraneza).

<sup>6971</sup> T. 24 February 2005 p. 38 (Céline Nyiraneza).

<sup>6972</sup> T. 28 February 2005 p. 43 (Céline Nyiraneza).

<sup>6973</sup> T. 24 February 2005 pp. 43-44 (Céline Nyiraneza).

<sup>6974</sup> T. 24 February 2005 p. 46 (Céline Nyiraneza).

<sup>6975</sup> T. 24 February 2005 pp. 46-47 (Céline Nyiraneza).

<sup>6976</sup> T. 31 May 2005 p. 84 (ICS) (Witness WBUC).

<sup>6977</sup> T. 2 June 2005 p. 39 (ICS) (Witness WBUC).

was dismissed from his position on 16 July 2001.<sup>6978</sup> Witness WBUC testified that she lived with her aunt Nyiramasuhuko from the age of three or four years old until she returned to Ndora *commune* to go to primary school in 1966.<sup>6979</sup> From 1978 until 1980 she again lived with Nyiramasuhuko and Shalom Ntahobali in Taba, Buye.<sup>6980</sup> Witness WBUC testified that Nyiramasuhuko educated her starting from her childhood and she therefore considers Nyiramasuhuko like a mother.<sup>6981</sup>

2471. Witness WBUC testified that a week after 6 April 1994, she and her family left from Kigali for Butare because of the fragile security situation.<sup>6982</sup> Witness WBUC testified that upon her arrival at Hotel Ihuliro, she found about 20 members of Nyiramasuhuko's family and three UNAMIR soldiers there. The soldiers resided at the hotel and left after a few days.<sup>6983</sup> She did not see Nyiramasuhuko at the hotel at that time and nobody had news about her.<sup>6984</sup>

2472. A few days later, Nyiramasuhuko arrived at Hotel Ihuliro with two soldiers and a driver.<sup>6985</sup> Nyiramasuhuko told Witness WBUC that she had come from Gitarama where the government had been set up, that she had experienced some difficulties contacting them and that she had sought refuge in the embassy in Gitarama.<sup>6986</sup> Nyiramasuhuko stayed with them one night and then went back to work in Murambi in Gitarama *préfecture*.<sup>6987</sup> The two soldiers who accompanied Nyiramasuhuko were in fact *gendarmes* in uniform and she arrived in an official vehicle.<sup>6988</sup>

2473. Witness WBUC testified that Nyiramasuhuko came back to Butare after the installation of the new *préfet*.<sup>6989</sup> On this occasion, Nyiramasuhuko did not stay long; she made only a very brief visit at Hotel Ihuliro and left immediately. Witness WBUC did not see her.<sup>6990</sup> In cross-examination she clarified that she saw Nyiramasuhuko, but from far away, from the courtyard. She saw Nyiramasuhuko stop with the vehicle and deliver food that she had brought. Witness WBUC greeted Nyiramasuhuko but they did not chat for a long time. When asked why she did not raise this in examination-in-chief, Witness WBUC explained that in her culture, if you see someone for a very brief time, it is as if you did not see that person.<sup>6991</sup> Nyiramasuhuko did not sleep at Hotel Ihuliro that night.<sup>6992</sup> At that time, Nyiramasuhuko was coming from Murambi, Gitarama.<sup>6993</sup>

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<sup>6978</sup> T. 6 June 2005 p. 41 (ICS) (Witness WBUC).

<sup>6979</sup> T. 31 May 2005 p. 84 (ICS) (Witness WBUC).

<sup>6980</sup> T. 2 June 2005 p. 87 (ICS) (Witness WBUC).

<sup>6981</sup> T. 31 May 2005 p. 84 (ICS); T. 6 June 2005 pp. 12-13 (ICS) (Witness WBUC).

<sup>6982</sup> T. 1 June 2005 pp. 54, 56 (Witness WBUC).

<sup>6983</sup> T. 1 June 2005 p. 56 (Witness WBUC).

<sup>6984</sup> T. 1 June 2005 pp. 56-57 (Witness WBUC).

<sup>6985</sup> T. 1 June 2005 p. 57 (Witness WBUC).

<sup>6986</sup> T. 1 June 2005 p. 58 (Witness WBUC).

<sup>6987</sup> T. 1 June 2005 pp. 58-59 (Witness WBUC).

<sup>6988</sup> T. 6 June 2005 p. 22 (ICS) (Witness WBUC).

<sup>6989</sup> T. 1 June 2005 p. 58 (Witness WBUC).

<sup>6990</sup> T. 1 June 2005 p. 59; T. 6 June 2005 pp. 22-23 (ICS) (Witness WBUC).

<sup>6991</sup> T. 6 June 2005 p. 23 (ICS) (Witness WBUC).

<sup>6992</sup> T. 6 June 2005 p. 35 (ICS) (Witness WBUC).

<sup>6993</sup> T. 6 June 2005 p. 52 (ICS) (Witness WBUC).

2474. Witness WBUC testified that thereafter Nyiramasuhuko came to Hotel Ihuliro towards the end of April 1994, at the time of the birthday of her granddaughter. She spent a night there and left the next morning.<sup>6994</sup>

2475. In the middle of the month of May 1994, she saw Nyiramasuhuko again at Hotel Ihuliro. She stayed for a few days because she had malaria. Due to her illness, Nyiramasuhuko was unable to go outside.<sup>6995</sup>

2476. Witness WBUC testified that on 30 May 1994, her birthday, Nyiramasuhuko came back to Hotel Ihuliro.<sup>6996</sup> She testified that Nyiramasuhuko was worried and wanted them to go to Cyangugu. Nyiramasuhuko left the next day to go to the seat of government in Murambi and took Denise and her granddaughter with her.<sup>6997</sup>

2477. Witness WBUC testified that a week after her departure on 30 May 1994 [6 to 7 June], Nyiramasuhuko came back with her daughter and granddaughter from Muramba, in Gisenyi. The government had moved there because the *Inkotanyi* were about to take Gitarama.<sup>6998</sup> Nyiramasuhuko again told them to leave and the next day headed back to Muramba with Denise.<sup>6999</sup>

2478. Witness WBUC testified that Nyiramasuhuko returned on another occasion alone and did not sleep at Hotel Ihuliro. She came in the course of the visit of the apostolic nuncio named Etchegarray.<sup>7000</sup> She saw Nyiramasuhuko on that occasion, at Hotel Ihuliro.<sup>7001</sup>

#### Nyiramasuhuko Defence Witness Maurice Ntahobali

2479. Maurice Ntahobali, Nyiramasuhuko's husband and Ntahobali's father, testified that in January 1994, the family residence in Butare was situated in Buye, in a government building called UNR 15. Clarisse and Arsène had their own residences elsewhere.<sup>7002</sup> Towards the end of the first fortnight in April 1994, Nyiramasuhuko was able to visit him. Before that visit, he had been reassured of her well-being when the Kambanda government took office on 9 April 1994.<sup>7003</sup>

2480. Nyiramasuhuko left Kigali for Murambi, Gitarama *préfecture*, on 12 April 1994.<sup>7004</sup> Nyiramasuhuko never stayed permanently at Hotel Ihuliro. She came to Hotel Ihuliro when she was passing by, but would return to where she was required to be for official reasons. In mid-May 1994, however, she stayed at the hotel for three or four days because she had contracted malaria.<sup>7005</sup> She did not have to stay in bed or in her room.<sup>7006</sup> Her sister, a nurse,

<sup>6994</sup> T. 1 June 2005 pp. 59-61 (Witness WBUC).

<sup>6995</sup> T. 1 June 2005 p. 63 (Witness WBUC).

<sup>6996</sup> T. 1 June 2005 pp. 63, 68 (Witness WBUC).

<sup>6997</sup> T. 2 June 2005 p. 6; T. 2 June 2005 p. 13 (ICS) (Witness WBUC).

<sup>6998</sup> T. 2 June 2005 p. 7 (Witness WBUC).

<sup>6999</sup> T. 2 June 2005 p. 8 (Witness WBUC).

<sup>7000</sup> T. 2 June 2005 pp. 8-9; T. 6 June 2005 p. 35 (ICS) (Witness WBUC).

<sup>7001</sup> T. 6 June 2005 p. 35 (ICS) (Witness WBUC).

<sup>7002</sup> T. 12 September 2005 p. 73 (Maurice Ntahobali).

<sup>7003</sup> T. 13 September 2005 pp. 14-15 (Maurice Ntahobali).

<sup>7004</sup> T. 13 September 2005 p. 15 (Maurice Ntahobali).

<sup>7005</sup> T. 13 September 2005 pp. 19-20; T. 14 September 2005 p. 38 (Maurice Ntahobali).

took care of her. She was in fact moving around, and at one point in time, Maurice Ntahobali's service vehicle was put at her disposal.<sup>7007</sup> Maurice Ntahobali never asked his wife to account for the activities that formed part of her duties.<sup>7008</sup>

2481. Maurice Ntahobali testified that he saw Nyiramasuhuko again very briefly at Hotel Ihuliro in mid-April 1994, when she came to attend the installation of the new *préfet*. He did not attend the ceremony.<sup>7009</sup>

2482. Maurice Ntahobali testified that Nyiramasuhuko received a lift from Murambi to Hotel Ihuliro around 14 May 1994. She was alone when she came into his room.<sup>7010</sup> She left Hotel Ihuliro the following day for Murambi.<sup>7011</sup> She obtained a lift.<sup>7012</sup> He thought Doctor Straton Nshyimyumukunzi, minister of agriculture and stock breeding, drove her to Butare and back to Murambi, since she did not have a car.<sup>7013</sup>

2483. Maurice Ntahobali confirmed the presence of Nyiramasuhuko at Hotel Ihuliro around mid-May, including 14 May 1994. Nyiramasuhuko stayed for three to four days. He said it was possible that she was in Butare on 16 May 1994 to attend a Security Council meeting. She left for Gitarama on 16 May, in the afternoon, and he thought it likely that she attended a meeting of ministers on 17 May 1994<sup>7014</sup> at Murambi.<sup>7015</sup>

2484. Maurice Ntahobali stated that his wife came from Murambi for a day at the end of May, but left the next day. Her main purpose was to convince Maurice Ntahobali to come with her and join the ministers' spouses, which the witness refused.<sup>7016</sup> Nyiramasuhuko urged Maurice Ntahobali to go to Cyangugu, because Gitarama was about to be captured by the RPF and Butare would be next. He refused because he had a responsibility towards his family to inform them of his move and he did not want to leave them behind in danger.<sup>7017</sup> However, two children, Denise and the witness' granddaughter, responded to her appeal and left with her to Gitarama.<sup>7018</sup>

2485. Maurice Ntahobali testified that within the first half of June 1994, the Kambanda government moved to Muramba, in Gisenyi *préfecture*. Nyiramasuhuko, his daughter and granddaughter moved with the government from Murambi to Muramba, Gisenyi *préfecture*, in

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<sup>7006</sup> T. 14 September 2005 p. 38; T. 16 September 2005 p. 61 (Maurice Ntahobali). The Chamber notes the English translation ("she had to stay in bed") is erroneous; see T. 14 September 2005 p. 43 (Maurice Ntahobali) (French) ("*Q: Vous avez dit également qu'à la suite ... elle a dû garder la chambre pendant trois ou quatre jours ...? R: Non, qu'elle est restée à Butare à garder la chambre ou garder le lit, non.*").

<sup>7007</sup> T. 14 September 2005 p. 38; T. 16 September 2005 p. 61 (Maurice Ntahobali).

<sup>7008</sup> T. 14 September 2005 p. 39 (Maurice Ntahobali).

<sup>7009</sup> T. 13 September 2005 pp. 15, 18 (Maurice Ntahobali).

<sup>7010</sup> T. 13 September 2005 p. 18; T. 16 September 2005 pp. 61-62 (Maurice Ntahobali).

<sup>7011</sup> T. 13 September 2005 p. 18 (Maurice Ntahobali).

<sup>7012</sup> T. 13 September 2005 p. 17; T. 14 September 2005 p. 35; T. 16 September 2005 p. 61 (Maurice Ntahobali).

<sup>7013</sup> T. 13 September 2005 p. 17; T. 16 September 2005 p. 61 (Maurice Ntahobali).

<sup>7014</sup> T. 16 September 2005 p. 59 (Maurice Ntahobali); see T. 16 September 2005 p. 68 (Maurice Ntahobali) (French) ("*le fait qu'elle soit au Conseil du Gouvernement le 17 mai me semble être fort probable*").

<sup>7015</sup> T. 16 September 2005 pp. 58-59 (Maurice Ntahobali).

<sup>7016</sup> T. 13 September 2005 pp. 19-20 (Maurice Ntahobali).

<sup>7017</sup> T. 13 September 2005 p. 22 (ICS) (Maurice Ntahobali).

<sup>7018</sup> T. 13 September 2005 pp. 19-20; T. 13 September 2005 p. 21 (ICS) (Maurice Ntahobali).

the first fortnight of June 1994. He learned this information from Radio Rwanda which covered the move of the Interim Government.<sup>7019</sup> Maurice Ntahobali stated that Nyiramasuhuko and the two children came to Hotel Ihuliro in June 1994. They came from Muramba and went back there the next day. His wife passed by very briefly at the end of June, being part of the government delegation receiving Cardinal Etchegarray. The cardinal visited Rwanda and came through Butare on the road from Burundi.<sup>7020</sup> Pauline did not stay at the hotel but went back the next day.<sup>7021</sup>

### Ntahobali

2486. Ntahobali testified that his mother came to Hotel Ihuliro on 28 April 1994. It was the birthday of one of his sister's children.<sup>7022</sup> Ntahobali testified that Nyiramasuhuko came to Hotel Ihuliro again in the middle of May 1994. She was not feeling well and stayed there for two or three days.<sup>7023</sup> He was told that his mother again came to Hotel Ihuliro when he was staying in Cyangugu.<sup>7024</sup> He testified that the driver who took him to Cyangugu was different from the one who accompanied him in Gisagara on 25 June 1994.<sup>7025</sup>

2487. Ntahobali testified that he met his mother in June 1994,<sup>7026</sup> on two other occasions.<sup>7027</sup> The first time was three, four or five days after his return from Cyangugu.<sup>7028</sup> He was told that Nyiramasuhuko had come to Hotel Ihuliro to take with her one of his sisters and a child of another sister of his.<sup>7029</sup> The second time was between 20 and 30 June 1994 during a religious official's visit.<sup>7030</sup> Nyiramasuhuko spent a night at Hotel Ihuliro when she came three to five days after Ntahobali's return from Cyangugu, and on the second occasion, she did not.<sup>7031</sup>

### Nyiramasuhuko Defence Witness WZNA

2488. Witness WZNA stated that he only saw Nyiramasuhuko once in early July 1994 when he was on his way back from ESO. He saw her in front of the building her family owned in Butare.<sup>7032</sup>

### Nsabimana

2489. Nsabimana testified that on 10 May 1994 he attended the youth meeting in Ngoma *commune* around 1.00 p.m., after the meeting with *préfecture* staff.<sup>7033</sup> He said that

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<sup>7019</sup> T. 13 September 2005 p. 26 (Maurice Ntahobali).

<sup>7020</sup> T. 13 September 2005 p. 29 (Maurice Ntahobali).

<sup>7021</sup> T. 13 September 2005 p. 30 (Maurice Ntahobali).

<sup>7022</sup> T. 25 April 2006 p. 35; T. 1 June 2006 p. 68 (Ntahobali).

<sup>7023</sup> T. 25 April 2006 p. 57; T. 1 June 2006 p. 68 (Ntahobali).

<sup>7024</sup> T. 1 June 2006 p. 68 (Ntahobali).

<sup>7025</sup> T. 21 June 2006 p. 4 (Ntahobali).

<sup>7026</sup> T. 26 April 2006 p. 14 (Ntahobali).

<sup>7027</sup> T. 26 April 2006 p. 35 (Ntahobali).

<sup>7028</sup> T. 26 April 2006 p. 35 (Ntahobali).

<sup>7029</sup> T. 26 April 2006 p. 14 (Ntahobali).

<sup>7030</sup> T. 26 April 2006 p. 35; T. 1 June 2006 p. 69 (Ntahobali).

<sup>7031</sup> T. 1 June 2006 p. 69 (Ntahobali).

<sup>7032</sup> T. 4 April 2005 pp. 57-58 (Witness WZNA).

<sup>7033</sup> T. 21 September 2006 p. 7 (Nsabimana).



Kanyabashi told him there were young people at the meeting and this interested Nsabimana.<sup>7034</sup> He said that the young people were members of different political parties. Other people at the meeting included Nteziryayo, Nyiramasuhuko, Kalimanzira and Kanyabashi.<sup>7035</sup>

2490. Nsabimana testified that when he got to the meeting, Kalimanzira briefed him that they were discussing ways in which the city of Butare could be protected, just as Kigali had been protected. Kalimanzira also told him that the youth had to be involved in the protection of Butare.<sup>7036</sup> Nsabimana testified that he told Kalimanzira that the system he was talking about could not work in Butare unless Kalimanzira took charge of it himself. Kalimanzira did not take this kindly and the meeting ended abruptly.<sup>7037</sup> Nsabimana testified that Nyiramasuhuko lied when she said Nsabimana went to the 10 May 1994 youth meeting just as it was about to end.<sup>7038</sup>

2491. Nsabimana denied having chaired a meeting on 16 May 1994 as testified by Nyiramasuhuko, saying he did not know of such a meeting.<sup>7039</sup> After reading of a Security Council meeting on 16 May 1994 in Prosecution Exhibit 144A (Nyiramasuhuko Diary, 1994) as testified by Prosecution Expert Witness Guichaoua, Nsabimana reaffirmed that he did not hold any such meeting in the presence of Nyiramasuhuko.<sup>7040</sup> Nsabimana denied Nyiramasuhuko's testimony that she attended a Security Council meeting of 31 May 1994. He also denied that he talked about the state of progress in the establishment of civilian defence at this meeting.<sup>7041</sup>

#### Nyiramasuhuko Defence Witness WTMP

2492. Witness WTMP, a Hutu, testified that she travelled to Muramba around 6 July 1994 and encountered Nyiramasuhuko. Nyiramasuhuko was accompanied by a small child.<sup>7042</sup>

#### Nyiramasuhuko Defence Witness CEM

2493. Witness CEM testified that she did not visit Hotel Ihuliro in June 1994. She went there in late May or early June 1994 in search of Denise Ntahobali, but was told that Denise had left with her mother. She was not told where they had gone.<sup>7043</sup>

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<sup>7034</sup> T. 21 September 2006 p. 12 (Nsabimana).

<sup>7035</sup> T. 21 September 2006 p. 13 (Nsabimana).

<sup>7036</sup> T. 21 September 2006 p. 15 (Nsabimana).

<sup>7037</sup> T. 21 September 2006 p. 15 (Nsabimana).

<sup>7038</sup> T. 21 September 2006 p. 37 (Nsabimana).

<sup>7039</sup> T. 20 September 2006 p. 42 (Nsabimana).

<sup>7040</sup> T. 20 September 2006 p. 45 (Nsabimana).

<sup>7041</sup> T. 21 September 2006 pp. 60-61 (Nsabimana).

<sup>7042</sup> T. 22 February 2005 pp. 67, 69 (ICS) (Witness WTMP).

<sup>7043</sup> T. 14 February 2005 pp. 59-60 (Witness CEM).

3.6.19.3.2.2 *Alibi Evidence – Ntahobali*

Ntahobali

2494. Ntahobali testified that he was told that his mother came to Hotel Ihuliro for a short time on 19 April 1994; they did not meet as he had travelled to Akanyaru.<sup>7044</sup>

2495. Ntahobali first testified that he went to the BPO on one occasion between 6 April and 3 July 1994, sometime after 26 June 1994, he went there to withdraw a *laissez-passer* or documents for a vehicle that his father used.<sup>7045</sup> He later testified that he went to the BPO two times during the events. The first time he went to the BPO to withdraw documents for the vehicle and the second time he went to the compound of the BPO during Cardinal Etchegarray's visit.<sup>7046</sup> Ntahobali again clarified his testimony as to the number of visits he made to the BPO. He added that he visited the BPO compound three times; in addition to the two foregoing occasions, on around 11 April 1994, he went to the public works department located within the BPO premises to collect fuel.<sup>7047</sup>

2496. Ntahobali testified that his mother came to Hotel Ihuliro on 28 April 1994 which was the birthday of his sister's child. He stated that he got malaria on 28 April 1994 and spent a week in convalescence after having received Quinimax injections. He was treated by one of his aunts, a nurse who stayed with them at Hotel Ihuliro.<sup>7048</sup>

2497. He stated that his friend Déo Munyaneza came to Hotel Ihuliro to pick up his daughter in mid-May 1994. Munyaneza told Ntahobali that he was coming back from the [war]front and they conversed for a short while.<sup>7049</sup>

2498. Ntahobali testified that he travelled to Cyangugu on 26 or 27 May 1994. On 26 or 27 May, at around 10.30 or 11.00 a.m., he noticed that his wife and his wife's elder sister's family members were no longer at Hotel Ihuliro. He was told that they had left for Cyangugu so Ntahobali decided to follow his wife there.<sup>7050</sup> His father's driver, Jean-Baptiste Habimana, accompanied him. They took a blue sedan Peugeot 305 vehicle and left Butare between 11.30 a.m. and 12.30 p.m. and arrived in Cyangugu between 7.30 and 8.00 p.m. the same day. It was the first time Ntahobali went to Cyangugu but his driver knew the area well.<sup>7051</sup>

2499. He stated that his wife's family members had already planned to leave Hotel Ihuliro because of security reasons. They got scared and the war was getting closer to Butare.<sup>7052</sup> He managed to find out his wife's whereabouts at around 8.30 or 9.00 p.m.<sup>7053</sup> He testified that he met his wife, his child and those who had left with them, at a friend's house.<sup>7054</sup> The following

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<sup>7044</sup> T. 24 April 2006 p. 27 (Ntahobali).

<sup>7045</sup> T. 3 May 2006 p. 23 (Ntahobali).

<sup>7046</sup> T. 1 June 2006 p. 47 (Ntahobali).

<sup>7047</sup> T. 26 June 2006 p. 35 (Ntahobali).

<sup>7048</sup> T. 25 April 2006 p. 35; T. 25 April 2006 p. 59 (ICS) (Ntahobali).

<sup>7049</sup> T. 25 April 2006 pp. 59-60 (ICS) (Ntahobali).

<sup>7050</sup> T. 26 April 2006 pp. 7-8 (Ntahobali).

<sup>7051</sup> T. 26 April 2006 p. 8; T. 21 June 2006 pp. 3-5 (Ntahobali).

<sup>7052</sup> T. 26 April 2006 p. 7 (Ntahobali).

<sup>7053</sup> T. 26 April 2006 p. 8 (Ntahobali).

<sup>7054</sup> T. 21 June 2006 p. 8 (Ntahobali).

day, they moved into another house, about one kilometre away near the bishopric.<sup>7055</sup> They lived in that house until their return to Butare. The house belonged to an Indian man named Harjit Singh.<sup>7056</sup>

2500. They returned to Butare after a stay in Cyangugu of more than one week.<sup>7057</sup> The atmosphere in Cyangugu was calm.<sup>7058</sup> During his stay in Cyangugu, Ntahobali went to a particular restaurant on two occasions. Almost every day he went to different bars.<sup>7059</sup> He stated that he met Witness WDUSA in one bar by chance.<sup>7060</sup> Ntahobali was always accompanied by his brother-in-law's family members and his wife each time he met Witness WDUSA.<sup>7061</sup> He testified that he met Witness WDUSA in bars on three occasions during his stay in Cyangugu and they met again in Nairobi later on between 1994 and 1997 when Ntahobali was in exile.<sup>7062</sup> For a few months, Ntahobali and Witness WDUSA lived in the same complex in Nairobi.<sup>7063</sup> Witness WDUSA was a friend of his wife's older sister's family.<sup>7064</sup>

2501. He was told that his mother came to Hotel Ihuliro when he was staying in Cyangugu.<sup>7065</sup> He testified that the driver who took him to Cyangugu was different from the one who accompanied him in Gisagara on 25 June 1994.<sup>7066</sup> Ntahobali testified that they left Cyangugu on 5 June 1994 and arrived in Butare on the same day at around 6.00 or 7.00 p.m. He was with his wife, his child, the driver and their maid.<sup>7067</sup>

2502. Ntahobali testified that he met his mother on two other occasions in June 1994.<sup>7068</sup> The first time was three, four or five days after his return from Cyangugu and the second time between 20 and 30 June 1994 during Cardinal Etchegarray's visit.<sup>7069</sup> He was told that Nyiramasuhuko came to Hotel Ihuliro to take with her one of his sisters and a child of his another sister.<sup>7070</sup> He testified that Nyiramasuhuko spent a night at Hotel Ihuliro when she came three to five days after Ntahobali returned from Cyangugu. On the second occasion, she did not spend the night.<sup>7071</sup>

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<sup>7055</sup> T. 21 June 2006 p. 10 (Ntahobali).

<sup>7056</sup> T. 26 April 2006 p. 8; T. 21 June 2006 pp. 16, 18 (Ntahobali).

<sup>7057</sup> T. 26 April 2006 p. 8 (Ntahobali).

<sup>7058</sup> T. 26 April 2006 p. 9 (Ntahobali).

<sup>7059</sup> T. 21 June 2006 p. 16 (Ntahobali).

<sup>7060</sup> T. 21 June 2006 p. 28 (Ntahobali).

<sup>7061</sup> T. 21 June 2006 p. 29 (Ntahobali).

<sup>7062</sup> T. 26 April 2006 p. 10 (ICS) (Ntahobali).

<sup>7063</sup> T. 21 June 2006 p. 52 (ICS) (Ntahobali).

<sup>7064</sup> T. 1 June 2006 p. 43 (ICS) (Ntahobali).

<sup>7065</sup> T. 1 June 2006 p. 68 (Ntahobali).

<sup>7066</sup> T. 21 June 2006 p. 4 (Ntahobali).

<sup>7067</sup> T. 26 April 2006 pp. 12-13; T. 21 June 2006 p. 14 (Ntahobali).

<sup>7068</sup> T. 26 April 2006 pp. 14, 35 (Ntahobali).

<sup>7069</sup> T. 26 April 2006 p. 35; T. 1 June 2006 p. 47 (Ntahobali).

<sup>7070</sup> T. 26 April 2006 p. 14 (Ntahobali).

<sup>7071</sup> T. 1 June 2006 p. 69 (Ntahobali).

Nyiramasuhuko Defence Witness Denise Ntahobali

2503. Denise Ntahobali's husband worked as an investigator for the Nyiramasuhuko Defence from August 1999 to the beginning of 2005, but she denied ever discussing the case with him. Her brother-in-law worked for the Nyiramasuhuko Defence at the time of trial; she testified that while she had discussed the trial proceedings with her brother-in-law, she denied having discussed the Defence's strategy with him.<sup>7072</sup>

2504. Denise Ntahobali testified that about one week after the death of Habyarimana, she and her sister, Clarisse, went to Hotel Ihuliro to find out about their father and brother Ntahobali. At the hotel, they found about five UNAMIR soldiers whom she recognised because of their uniforms.<sup>7073</sup> These soldiers left Hotel Ihuliro about one week after her arrival there.<sup>7074</sup>

2505. Denise Ntahobali testified that from the time when she and her sister arrived at Hotel Ihuliro she did not leave. She stayed at home doing domestic chores such as cooking and taking care of Clarisse's child.<sup>7075</sup> Denise Ntahobali testified that when they got to Hotel Ihuliro, Ntahobali was there with his wife and child. At the request of their father, they stayed at Hotel Ihuliro because it was safe. Clarisse's husband and her one-year-old child also joined them.<sup>7076</sup> She later testified that everyone moved to Hotel Ihuliro because there was more space there.<sup>7077</sup>

2506. Denise Ntahobali testified that on 30 May 1994, Ntahobali and his family were not at Hotel Ihuliro.<sup>7078</sup> Denise Ntahobali and Ntahobali's wife Béatrice argued. Béatrice then left the hotel to go back to Cyangugu.<sup>7079</sup> Ntahobali was not present during the argument, but when he returned and discovered Béatrice's absence, he went to look for her.<sup>7080</sup> Ntahobali had been gone for about one or two days before their mother arrived.<sup>7081</sup> On 30 May 1994, Shalom and his wife had not returned to Hotel Ihuliro nor had they been back when Denise, her mother and niece left for Murambi.<sup>7082</sup>

2507. Denise Ntahobali testified that she never heard of killings in Butare between April and the end of May 1994.<sup>7083</sup> She also testified that during the war of 1994 Tutsis were not targeted; rather, in the war zone, the entire population was targeted.<sup>7084</sup>

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<sup>7072</sup> T. 13 June 2005 pp. 36-37 (Denise Ntahobali).

<sup>7073</sup> T. 9 June 2005 pp. 22-23 (Denise Ntahobali).

<sup>7074</sup> T. 13 June 2005 p. 17 (Denise Ntahobali).

<sup>7075</sup> T. 9 June 2005 p. 27 (Denise Ntahobali).

<sup>7076</sup> T. 9 June 2005 p. 23 (Denise Ntahobali).

<sup>7077</sup> T. 13 June 2005 p. 44 (Denise Ntahobali).

<sup>7078</sup> T. 9 June 2005 p. 29 (Denise Ntahobali). The Chamber notes that while the question in the English transcript refers to "the end of April 1994", see T. 9 June 2005 p. 32 (Denise Ntahobali) (French) (*Q*: "*est-ce que votre frère et sa famille étaient présents à Ihuliro le 30 mai 1994?*").

<sup>7079</sup> T. 9 June 2005 p. 29; T. 13 June 2005 p. 14 (Denise Ntahobali).

<sup>7080</sup> T. 13 June 2005 p. 14 (Denise Ntahobali).

<sup>7081</sup> T. 9 June 2005 p. 29 (Denise Ntahobali).

<sup>7082</sup> T. 13 June 2005 p. 14 (Denise Ntahobali).

<sup>7083</sup> T. 13 June 2005 p. 39 (Denise Ntahobali).

<sup>7084</sup> T. 13 June 2005 p. 38 (Denise Ntahobali).

Nyiramasuhuko Defence Witness WZNA

2508. Witness WZNA, a Hutu factory worker at the time of the genocide, said that sometime in early June 1994, while on his way to work, he once saw Shalom Ntahobali standing in front of the building known as the *Palais du MRND* with another young man. He said that he did not speak with Ntahobali on this occasion. The witness testified that the *Palais du MRND* later became known as *La Salle polyvalente de la préfecture* during the period of multi-party politics in Rwanda.<sup>7085</sup>

Nyiramasuhuko Defence Witness CEM

2509. Witness CEM, a Hutu teacher, testified that Ntahobali could not have killed anyone because every time she went to his house, he was present. She testified that Ntahobali was living at the hotel during the months that she went there.<sup>7086</sup> She also testified that she did not see any “authorities”, “leaders”, people in uniform or *Interahamwe* at the hotel in April 1994. Witness CEM went to the hotel on three occasions in May 1994, and by then the number of people staying at the hotel had increased to a little more than 50.<sup>7087</sup>

2510. Witness CEM testified that when she visited Hotel Ihuliro between April and June 1994, some people had already been killed in her *commune* and *secteur*. She did not know if people had already been arrested or if many Tutsis had already fled their homes.<sup>7088</sup> She also testified that she knew that both Hutus and Tutsis were killed in May 1994. She did not observe any problems at Hotel Ihuliro from April to June 1994. She had no knowledge about whether the hotel remained calm because it was owned by Maurice Ntahobali whose wife was Pauline Nyiramasuhuko.<sup>7089</sup> She never asked any questions to try to ascertain why things were calm there.<sup>7090</sup>

Nyiramasuhuko Defence Witness Clarisse Ntahobali

2511. Clarisse Ntahobali testified she left Rwanda in August 1991 for Canada to pursue her higher education at the University of Sherbrooke, in the province of Quebec.<sup>7091</sup> She returned to Rwanda in February 1994 and remained there until 18 July 1994.<sup>7092</sup>

2512. Clarisse Ntahobali testified that on 27 May 1994, her sister-in-law, along with her elder sister’s entire family, left Hotel Ihuliro following a dispute.<sup>7093</sup> Ten people left the hotel for Cyangugu although her sister-in-law and her child came back to Hotel Ihuliro three or four days later and Shalom Ntahobali went to pick them up.<sup>7094</sup> She testified that Shalom was not

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<sup>7085</sup> T. 5 April 2005 pp. 6-7 (Witness WZNA).

<sup>7086</sup> T. 15 February 2005 pp. 17-19 (Witness CEM).

<sup>7087</sup> T. 14 February 2005 pp. 47-48 (Witness CEM).

<sup>7088</sup> T. 15 February 2005 pp. 15-16 (Witness CEM).

<sup>7089</sup> T. 15 February 2005 p. 16 (Witness CEM).

<sup>7090</sup> T. 15 February 2005 p. 17 (Witness CEM).

<sup>7091</sup> T. 9 February 2005 pp. 8, 10 (Clarisse Ntahobali).

<sup>7092</sup> T. 9 February 2005 p. 11 (Clarisse Ntahobali).

<sup>7093</sup> T. 9 February 2005 pp. 59-60 (Clarisse Ntahobali).

<sup>7094</sup> T. 9 February 2005 p. 60; T. 10 February 2005 p. 7 (Clarisse Ntahobali).

present when his wife left and “[w]hen he found that his wife was not there, he decided immediately to go.”<sup>7095</sup> At that time, Shalom’s wife was two or three months pregnant.<sup>7096</sup>

2513. Clarisse Ntahobali testified that between April and July 1994 there was a curfew. Initially, the curfew required that businesses close by 2.00 a.m. Later, the curfew required that all businesses close by 8.00 p.m. At Hotel Ihuliro, Shalom turned on the generator at 7.00 p.m. and shut it down at 10.00 p.m., at which time they all retired to their respective rooms and slept until the morning. She emphasised that it would never have been possible for Shalom to go out at night without anybody within the hotel being aware of it, given the manner in which the house was built because in order to go out, one needed to open several noisy doors.<sup>7097</sup>

Nyiramasuhuko Defence Witness Céline Nyiraneza

2514. Céline Nyiraneza testified that when she arrived at Hotel Ihuliro a few days after the President’s plane crash, she saw Clarisse Ntahobali, Shalom Ntahobali and his wife there.<sup>7098</sup>

2515. Céline Nyiraneza testified that she left Hotel Ihuliro for Gikongoro *préfecture*, towards the end of May or early June 1994, where she stayed for two or three days. On her return, she noticed that Shalom’s wife, her family, and driver were no longer at Hotel Ihuliro.<sup>7099</sup> She testified that Shalom’s wife left the hotel for Cyangugu because of a heated argument she had with her sisters-in-law. Shalom was not present when his wife left and only got back two or three hours later.<sup>7100</sup> Her children told her that Shalom left for Cyangugu in his friend’s vehicle. Nyiraneza left for Gikongoro one or two days after Shalom left to look for his wife in Cyangugu, and returned to the hotel one day earlier than Shalom, his wife and child.<sup>7101</sup>

2516. Between April and July 1994, Shalom was in charge of supplies. He would fetch food and drinks for the bar and in the evenings he would run the bar. Shalom was also in charge of switching on the generator in the evenings, and he would switch off the generator after they had finished cooking and eating.<sup>7102</sup> She testified that Shalom never owned a vehicle.<sup>7103</sup>

Nyiramasuhuko Defence Witness WBUC

2517. Witness WBUC knew Shalom Ntahobali very well because it was as if they grew up together.<sup>7104</sup> She considers Shalom Ntahobali to be like a brother.<sup>7105</sup> Witness WBUC testified that after 6 April 1994, she saw Shalom Ntahobali at Hotel Ihuliro where they lived together. At that time Shalom Ntahobali was in charge of the bar at Hotel Ihuliro and was serving

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<sup>7095</sup> T. 10 February 2005 p. 7 (Clarisse Ntahobali).

<sup>7096</sup> T. 10 February 2005 p. 8 (Clarisse Ntahobali).

<sup>7097</sup> T. 10 February 2005 pp. 12-13 (Clarisse Ntahobali).

<sup>7098</sup> T. 24 February 2005 p. 36 (Céline Nyiraneza).

<sup>7099</sup> T. 24 February 2005 pp. 45-46 (Céline Nyiraneza).

<sup>7100</sup> T. 28 February 2005 pp. 13-14 (Céline Nyiraneza).

<sup>7101</sup> T. 28 February 2005 p. 15 (Céline Nyiraneza).

<sup>7102</sup> T. 28 February 2005 pp. 15-16 (Céline Nyiraneza).

<sup>7103</sup> T. 28 February 2005 p. 16 (Céline Nyiraneza).

<sup>7104</sup> T. 31 May 2005 p. 82 (ICS) (Witness WBUC).

<sup>7105</sup> T. 31 May 2005 p. 84 (ICS) (Witness WBUC).

drinks. She never saw Shalom Ntahobali driving a vehicle and did not believe that he had a driving licence.<sup>7106</sup>

2518. Shalom's sister, Denise, had a heated discussion with Shalom's wife, Béatrice Munyenyezi.<sup>7107</sup> They almost came to blows and following this event, Béatrice left the hotel with the baby and other members of her family to go to Cyangugu.<sup>7108</sup> Witness WBUC testified: "My birthday was on the 30th. And I think it was about four or five days later [that they left]. I do not remember very clearly, but I know it was some days after my birthday when she [Munyenyezi] left."<sup>7109</sup> Witness WBUC testified that when his wife, Béatrice and the baby left, Ntahobali went to fetch them and they returned together to the hotel about one week after having left.<sup>7110</sup>

#### Nyiramasuhuko Defence Witness Maurice Ntahobali

2519. Maurice Ntahobali, Ntahobali's father, testified that until around the end of April 1994, there was electricity in Butare. Maurice Ntahobali bought a generator for Hotel Ihuliro, which was operated by himself and Ntahobali. As Maurice was not well, most often Ntahobali switched it on and off; nobody else was doing this. The generator was turned on at 6.00 or 6.30 p.m., when it got dark, and switched off at 10.00 p.m. Everyone was then expected to go to their room.<sup>7111</sup> Maurice Ntahobali stated he could see outside from Hotel Ihuliro, but that from 21 April to late May, he did not hear gunshots or people who were crying or screaming from Hotel Ihuliro.<sup>7112</sup>

2520. When Pauline came to Hotel Ihuliro at the end of May, Shalom was not there, having left to bring back his wife after a minor dispute with her sister-in-law. Shalom came back after Nyiramasuhuko had left with the children.<sup>7113</sup>

2521. Maurice Ntahobali denied that Ntahobali left Hotel Ihuliro with Nyiramasuhuko in the evenings to abduct people and kill them at the BPO. The occupants of Hotel Ihuliro did not leave the hotel after the beginning of the curfew from April to July 1994.<sup>7114</sup>

#### Ntahobali Defence Witness Béatrice Munyenyezi

2522. Béatrice Munyenyezi, Ntahobali's wife, testified that she never saw Ntahobali wearing a military uniform or carrying a firearm or grenades during the period from April to July 1994; Ntahobali was a non-violent person and had never killed anyone.<sup>7115</sup> She testified that her husband could never have committed crimes at the BPO without her knowing about it.<sup>7116</sup> She said that around 20 or 21 April 1994, she was at home at Hotel Ihuliro and Ntahobali never left

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<sup>7106</sup> T. 2 June 2005 p. 39 (ICS) (Witness WBUC).

<sup>7107</sup> T. 1 June 2005 p. 73 (ICS) (Witness WBUC).

<sup>7108</sup> T. 1 June 2005 p. 73 (ICS); T. 2 June 2005 p. 44 (ICS) (Witness WBUC).

<sup>7109</sup> T. 2 June 2005 p. 44 (ICS) (Witness WBUC).

<sup>7110</sup> T. 2 June 2005 p. 44 (ICS); T. 2 June 2005 p. 55 (Witness WBUC).

<sup>7111</sup> T. 14 September 2005 pp. 32-33 (Maurice Ntahobali).

<sup>7112</sup> T. 13 September 2005 p. 25; T. 16 September 2005 pp. 79, 81 (Maurice Ntahobali).

<sup>7113</sup> T. 13 September 2005 p. 25 (Maurice Ntahobali).

<sup>7114</sup> T. 14 September 2005 pp. 33-34 (Maurice Ntahobali).

<sup>7115</sup> T. 27 February 2006 pp. 8-9 (Béatrice Munyenyezi).

<sup>7116</sup> T. 27 February 2006 pp. 9-10 (Béatrice Munyenyezi).

her; her husband never left the house after the curfew.<sup>7117</sup> She stated that it would take about 15 to 20 minutes to walk from Hotel Ihuliro to the BPO.<sup>7118</sup> She testified that Ntahobali was not an unfaithful husband, but she was only jealous because she loved him.<sup>7119</sup>

2523. Munyenyezi explained that Ntahobali had huge responsibilities at home, with the baby and the generator in the hotel; in particular, he had to shut off the generator every day after dinner.<sup>7120</sup> She testified that in June 1994 Ntahobali left Hotel Ihuliro to go to the bank and ended up visiting Kajuga because people had told him Kajuga was sick.<sup>7121</sup> She also testified that Ntahobali left Hotel Ihuliro once or twice a week to buy food for the occupants.<sup>7122</sup> She said Ntahobali was not at home on 27 or 28 May 1994 when she left for Cyangugu because his father had sent Ntahobali to the bank to get money.<sup>7123</sup>

2524. Munyenyezi testified that her husband got malaria at the end of April, two or three days before his niece's birthday on 28 April 1994. She stated that he had malaria for at least a week and that he stayed home. His aunt Godlive, who was a nurse, took care of him.<sup>7124</sup> She denied that this was a fabricated story.<sup>7125</sup>

2525. Munyenyezi testified that she heard over the radio on 19 or 20 April 1994 that Nteziryayo had been appointed *préfet*.<sup>7126</sup> She never heard her husband or anyone else speak of Nteziryayo.<sup>7127</sup>

2526. Munyenyezi testified that she left Butare after a disagreement with her sister-in-law Denise to go to Cyangugu with her sister.<sup>7128</sup> They left in two vehicles, filled by her child, baby sitter, sister and her sister's husband, her three sons, her elder sister and another driver and his wife and two kids, and also her nephew and sister-in-law.<sup>7129</sup>

2527. Munyenyezi thought they left on 27 or 28 May 1994 and stayed a week or so.<sup>7130</sup> When she left Hotel Ihuliro, Ntahobali was not at home.<sup>7131</sup> Ntahobali followed her to Cyangugu; he came with a driver the same day as she and her sister, and stayed with her for one week in Cyangugu, before her husband, their baby and the baby sitter returned to Butare on 5 June

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<sup>7117</sup> T. 27 February 2006 p. 10 (Béatrice Munyenyezi).

<sup>7118</sup> T. 27 February 2006 p. 49 (Béatrice Munyenyezi).

<sup>7119</sup> T. 24 February 2006 p. 32 (Béatrice Munyenyezi) (states "Shalom was not a faithful husband"); see T. 24 February 2006 p. 34 (Béatrice Munyenyezi) (French) ("*Cela ne signifie pas que Shalom n'était pas un époux fidèle.*").

<sup>7120</sup> T. 27 February 2006 pp. 16, 18, 62-63 (Béatrice Munyenyezi).

<sup>7121</sup> T. 28 February 2006 pp. 48-49, 67 (Béatrice Munyenyezi).

<sup>7122</sup> T. 28 February 2006 pp. 63-64 (Béatrice Munyenyezi).

<sup>7123</sup> T. 28 February 2006 p. 69 (Béatrice Munyenyezi).

<sup>7124</sup> T. 27 February 2006 pp. 8, 54 (Béatrice Munyenyezi).

<sup>7125</sup> T. 27 February 2006 p. 56 (Béatrice Munyenyezi).

<sup>7126</sup> T. 27 February 2006 pp. 47-48 (Béatrice Munyenyezi).

<sup>7127</sup> T. 27 February 2006 p. 51 (Béatrice Munyenyezi).

<sup>7128</sup> T. 27 February 2006 pp. 10-11; T. 27 February 2006 p. 37 (ICS) (Béatrice Munyenyezi).

<sup>7129</sup> T. 27 February 2006 p. 11 (Béatrice Munyenyezi).

<sup>7130</sup> T. 27 February 2006 pp. 11-12 (Béatrice Munyenyezi).

<sup>7131</sup> T. 27 February 2006 p. 11 (Béatrice Munyenyezi).



1994.<sup>7132</sup> She and Ntahobali did not attend her sister's birthday party because they were not in Butare at the time.<sup>7133</sup>

2528. Munyenyezi testified that she had heard about a businessman in Butare by the name of Rwamukwaya. She had never seen any kind of Peugeot in Ntahobali's hands, and her husband did not kill Rwamukwaya. She added that her husband did not have to kill anyone to get a car since he could afford to buy one.<sup>7134</sup>

2529. Munyenyezi testified that she did not hear that the killings between April and July 1994 were ethnically motivated since both Hutus and Tutsis were killing each other. She denied that the Tutsi ethnic group was being targeted between April and July 1994.<sup>7135</sup> However she agreed that it was dangerous to be seen with Tutsis during the events of 1994.<sup>7136</sup> Although she had not heard of Tutsi extremist groups from others, she believed that they existed and had killed members of her family between April and July 1994.<sup>7137</sup>

2530. Munyenyezi testified that there were roadblocks from Gikongoro to Cyangugu, but she did not see any major violence in May 1994 in Butare.<sup>7138</sup> She stated that there may have been some violence and looting, since she used to see people with chairs, televisions and bicycles that were probably taken from people's houses, but she did not see people fighting each other or any shooting or killing.<sup>7139</sup> She did not know which ethnic group the looters belonged to.<sup>7140</sup> She could not see any weapons on them.<sup>7141</sup> She testified that she did not hear about or see any massive killings in Butare after 19 April 1994 and never saw dead bodies in Butare after 19 April 1994.<sup>7142</sup>

#### Ntahobali Defence Witness WDUSA

2531. Witness WDUSA, a Hutu engineer, testified that he saw Ntahobali three times over two or three days or four to five days towards the end of May, beginning of June 1994 at the Ituze Hotel in Cyangugu, at around 5.00 p.m.<sup>7143</sup>

2532. Witness WDUSA learned from Prudence Munyemana, Béatrice's older sister, that Ntahobali's family was living at the home of Ntahobali's brother-in-law. On 25 or 26 May 1994, Witness WDUSA went to visit Ntahobali's brother-in-law's home.<sup>7144</sup>

2533. Witness WDUSA clarified that during the first of the three occasions he saw Ntahobali, the latter had gone with his family and his brother-in-law's family to have a drink and eat

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<sup>7132</sup> T. 27 February 2006 pp. 12-13; T. 28 February 2006 p. 47 (Béatrice Munyenyezi).

<sup>7133</sup> T. 27 February 2006 p. 12 (Béatrice Munyenyezi).

<sup>7134</sup> T. 27 February 2006 p. 18; T. 28 February 2006 p. 56 (Béatrice Munyenyezi).

<sup>7135</sup> T. 27 February 2006 pp. 49, 73-74 (Béatrice Munyenyezi).

<sup>7136</sup> T. 28 February 2006 pp. 11-12, 60 (Béatrice Munyenyezi).

<sup>7137</sup> T. 27 February 2006 p. 72 (Béatrice Munyenyezi).

<sup>7138</sup> T. 27 February 2006 pp. 74-75 (Béatrice Munyenyezi).

<sup>7139</sup> T. 27 February 2006 pp. 74-75, 77 (Béatrice Munyenyezi).

<sup>7140</sup> T. 27 February 2006 p. 76 (Béatrice Munyenyezi).

<sup>7141</sup> T. 27 February 2006 p. 77 (Béatrice Munyenyezi).

<sup>7142</sup> T. 27 February 2006 pp. 49, 75 (Béatrice Munyenyezi).

<sup>7143</sup> T. 3 April 2006 pp. 57-58 (ICS); T. 4 April 2006 pp. 25, 28 (ICS) (Witness WDUSA).

<sup>7144</sup> T. 4 April 2006 pp. 25-26 (ICS) (Witness WDUSA).

brochettes.<sup>7145</sup> He and Ntahobali had a snack together.<sup>7146</sup> Two or three days later, he saw Ntahobali at the Ituze Hotel, still with his sister-in-law's family, with his brother-in-law's younger brother and someone else who worked at the immigration office in Cyangugu, as well as his spouse and his child.<sup>7147</sup> During the third occasion, the witness saw Ntahobali in the afternoon at the Ituze Hotel with his wife Béatrice and his brother-in-law's family.<sup>7148</sup> Witness WDUSA believed this occurred in the first week of June, but was not able to recall the exact date.<sup>7149</sup> He indicated that it must have been at the end of the month because he had received his pay.<sup>7150</sup>

2534. Witness WDUSA confirmed that on all three occasions, he saw Ntahobali at the hotel for one to two hours towards the end of the afternoon, always accompanied by the same family members.<sup>7151</sup> The witness did not talk with Ntahobali about the latter's upcoming birthday, because in Rwanda, one did not celebrate birthdays between families. The witness "personally never celebrated any birthday".<sup>7152</sup>

### 3.6.19.4 Deliberations

2535. In order to provide a comprehensive picture of the numerous allegations against Nyiramasuhuko and Ntahobali regarding the events at the BPO, the Chamber will complete a three-step analysis. First, the Chamber will examine the alibi evidence presented by Nyiramasuhuko and Ntahobali and determine whether these alibis are reasonably possibly true. Second, the Chamber will set forth a general overview of the Prosecution evidence against the Accused. Finally, the Chamber will examine each of the specific allegations against the Accused, proceeding chronologically and evaluating the totality of the evidence and issues of credibility and corroboration with respect to each distinct allegation.

#### 3.6.19.4.1 Nyiramasuhuko's Alibis

2536. The Chamber notes that Nyiramasuhuko provided a belated notice of alibi pursuant to Rule 67. On 1 March 2005, almost four months after the close of the Prosecution's case, the Nyiramasuhuko Defence had yet to provide a notice of alibi. The Chamber ordered the Nyiramasuhuko Defence to immediately provide notice of its alibi to the Prosecution.<sup>7153</sup> The Prosecution received a notice of alibi around 4 March 2005.<sup>7154</sup> As noted by the Prosecution in its closing argument, the notice of alibi indicated that Nyiramasuhuko was in Murambi, Gitarama *préfecture*, from the end of May to around 3 June 1994 and that she was in Muramba, Gisenyi *préfecture*, from around 4 June 1994 to early July 1994.<sup>7155</sup> As will be examined below, this notice of alibi conflicts with Nyiramasuhuko's evidence at trial that she

<sup>7145</sup> T. 3 April 2006 p. 57 (ICS) (Witness WDUSA).

<sup>7146</sup> T. 4 April 2006 p. 27 (ICS) (Witness WDUSA).

<sup>7147</sup> T. 3 April 2006 p. 57 (ICS); T. 4 April 2006 p. 28 (ICS) (Witness WDUSA).

<sup>7148</sup> T. 3 April 2006 p. 58 (ICS); T. 4 April 2006 p. 28 (ICS) (Witness WDUSA).

<sup>7149</sup> T. 4 April 2006 p. 30 (ICS) (Witness WDUSA).

<sup>7150</sup> T. 3 April 2006 p. 57 (ICS) (Witness WDUSA).

<sup>7151</sup> T. 3 April 2006 p. 58 (ICS) (Witness WDUSA).

<sup>7152</sup> T. 4 April 2006 p. 30 (ICS) (Witness WDUSA).

<sup>7153</sup> *Ndayambaje et al.*, Decision on the Confidential Prosecutor's Motion To Be Served With Particulars of Alibi Pursuant to Rule 67(A)(ii)(a) (TC), 1 March 2005, paras. 27, 29.

<sup>7154</sup> T. 9 June 2005 pp. 33, 35-36, 38, 41; Prosecution Closing Argument, T. 20 April 2009 p. 32.

<sup>7155</sup> Prosecution Closing Argument, T. 20 April 2009 p. 32.

left Gitarama on 1 June 1994.<sup>7156</sup> As a preliminary observation, the Chamber notes that a late notice of alibi may suggest that the alibis are fabricated, tailored to answer the Prosecution's case.<sup>7157</sup>

2537. The Chamber acknowledges the Nyiramasuhuko Defence disclosed to the Prosecution in January and February 2005 the will-say statements of Clarisse Ntahobali,<sup>7158</sup> Denise Ntahobali,<sup>7159</sup> and Witness WZJM,<sup>7160</sup> indicating they would testify as to Nyiramasuhuko's whereabouts on certain dates between April and July 1994. These will-say statements, however, are no substitute for a notice of alibi required by Rule 67 (A). None of these documents indicate they relate to an alibi for Nyiramasuhuko. Moreover, these documents were disclosed in January and February 2005, two to three months after the close of the Prosecution case on 4 November 2004. Therefore, the documents did not indicate they were related to Nyiramasuhuko's various alibis and were belated.

2538. Notwithstanding the late-filed notice of alibi, the Accused has a right to present an alibi at trial and to have it considered by the Trial Chamber.<sup>7161</sup> There can be no conviction for an allegation which takes place during an alibi that is reasonably possibly true.<sup>7162</sup> The onus remains on the Prosecution to prove that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence.<sup>7163</sup>

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<sup>7156</sup> T. 6 September 2005 p. 27; T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>7157</sup> *Kalimanzira*, Judgement (AC), para. 56; *Kalimanzira*, Consolidated Decision on Prosecution Motion Concerning Defence Compliance With Rule 73ter and Defence Motions to Vary Witness List (TC), 13 November 2008, para. 7.

<sup>7158</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, *Liste de l'ordre de présentation et willsay et fiche d'identification*, 18 January 2005 (The will-say indicated Clarisse Ntahobali would testify that while staying at Hotel Ihuliro: (1) she saw her mother on 19 April 1994; (2) she saw her mother on 28 April 1994 for a short period; (3) her mother returned in mid-May 1994 for two or three days; (4) at the beginning of June 1994, she saw her mother, her sister Denise and her own daughter, leaving for Muramba; (5) during the month of June 1994 she saw her mother and her daughter for a very short visit).

<sup>7159</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-97-21-T, *Divulgence de fiche d'identification de témoin, will say, et liste de présentation de l'ordre de témoins*, 24 January 2005 (The will-say indicated that Denise Ntahobali would testify that her mother was in Butare Town at Hotel Ihuliro: (1) in the days after Denise Ntahobali arrived in Butare; (2) at the end of April 1994; and (3) at the end of May 1994. The will-say also provided that Denise Ntahobali accompanied her mother and niece to Gitarama at the end of May 1994, and stayed in Gitarama one or two days before fleeing to Muramba around the beginning of June 1994. After a first week in Muramba, she returned to Butare with her mother and niece, returning to Muramba the next day. At the end of June 1994, it provided her mother again travelled to Butare from Muramba for the visit of the bishop and returned immediately to Muramba. Finally, in July 1994 her mother left Muramba for Butare to bring her family to Gitarama).

<sup>7160</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, *Divulgence concernant le témoin WZJM*, 21 February 2005 (The will-say indicated the witness would testify that he lived in Muramba five minutes away from the seat of government starting at the beginning of June 1994 and that he saw a woman identified to him as Nyiramasuhuko around 10 times at or around the school in the days that followed).

<sup>7161</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 of Procedure and Evidence ("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>7162</sup> *Musema*, Judgement (AC), paras. 205-206 (quoting *Musema*, Judgement (TC), para. 108: "If an alibi is reasonably possibly true, it must be successful."); *Musema*, Judgement (AC), para. 202 (the Chamber may reject an alibi only if the Prosecution establishes "beyond a reasonable doubt that, despite the alibi, the facts alleged are nevertheless true").

<sup>7163</sup> *Musema*, Judgement (AC), para. 205 (quoting *Musema*, Judgement (TC), para. 108).

2539. Finally, the Chamber notes Nyiramasuhuko's suggestion that certain entries in her diary corroborated the fact that she attended Cabinet meetings in Muramba, Gisenyi *préfecture*, from 1 to 19 June 1994.<sup>7164</sup> She said that she always carried her handbag with her which contained her diary.<sup>7165</sup> Only in a few instances did she record events in her diary under the correspondingly dated diary entry; where events were noted on non-corresponding diary pages, she tried to indicate in the diary entry the actual date of the event.<sup>7166</sup> The Chamber is cautious in evaluating the testimony of Nyiramasuhuko as she has an obvious motive to exculpate herself from any criminal conduct. However, the Chamber finds Nyiramasuhuko's diary useful in evaluating consistencies and inconsistencies in Nyiramasuhuko's testimony.

2540. As to the specifics of her alibis, Nyiramasuhuko claims to have moved with the Interim Government to Murambi, Gitarama *préfecture*, on 12 April 1994 and stayed there until the government moved to Muramba, Gisenyi *préfecture*, on 1 June 1994.<sup>7167</sup> She stayed in Muramba from 2 June 1994 until she fled Rwanda.<sup>7168</sup> Although she was moving around the country frequently and made many trips to Butare town to participate in meetings and to visit her family, she claims that she never left Hotel Ihuliro at night when in Butare town.

#### 3.6.19.4.1.1 12 April to Early June 1994 – Murambi

2541. It was uncontested that the distance between Murambi, in Gitarama *préfecture*, and Butare town was about 80 kilometres and could be travelled in one or two hours in May 1994. Murambi was about a 10 minute drive from Gitarama town.<sup>7169</sup> Alexis Briquet travelled from Butare town to Gitarama several times between 25 May and 28 May 1994 in order to acquire authorisation of the Interim Government to evacuate several groups of orphans to Bujumbura.<sup>7170</sup> Briquet estimated that the journey from Butare to Gitarama along the main road took about two hours considering the roadblocks they had to pass along the way.<sup>7171</sup> Nyiramasuhuko investigator Edmond Babin testified that the distance from Gitarama to Butare is 83 kilometres and could be travelled in one hour and 10 minutes in peacetime.<sup>7172</sup> Denise Ntahobali's recollection was that on 31 May 1994, it took one and a half hours to travel from Butare to Murambi, but she estimated that it was only 30 kilometres.<sup>7173</sup> Likewise, Defence Exhibit 309, a Travel Map of Rwanda published in 1998, indicates the distance from Gitarama

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<sup>7164</sup> The Chamber recalls that Nyiramasuhuko accepted ownership of the diary in her Closing Brief, her oral submissions and at trial during her testimony. See Nyiramasuhuko Closing Brief, paras. 369, 457-458, 469, 495, 498, 520, 548-549, 553, 561-563; Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 58, 60, 68; Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 52; T. 21 September 2005 p. 34 (Nyiramasuhuko); T. 12 October 2005 pp. 34-37, 55-56 (Nyiramasuhuko); T. 25 October 2005 p. 58 (Nyiramasuhuko).

<sup>7165</sup> T. 12 October 2005 p. 34 (Nyiramasuhuko).

<sup>7166</sup> T. 12 October 2005 p. 37 (Nyiramasuhuko).

<sup>7167</sup> T. 6 September 2005 p. 27; T. 27 September 2005 pp. 62, 64; T. 5 October 2005 p. 36. The English translation ("Murambi") is erroneous; see T. 5 October 2005 p. 45 (Nyiramasuhuko) (French).

<sup>7168</sup> T. 6 October 2005 pp. 29, 31 (Nyiramasuhuko).

<sup>7169</sup> T. 9 June 2005 pp. 31-32 (Denise Ntahobali); T. 29 September 2005 pp. 48-49 (Nyiramasuhuko); see also T. 26 October 2005 p. 17 (Nyiramasuhuko) (Murambi to Kabgaye was about three to four kilometres); T. 5 October 2005 p. 42 (Nyiramasuhuko) (Murambi to where the bishops were killed, *i.e.* Kabgaye, was between six and eight kilometres); Defence Exhibit 309 (Nyiramasuhuko and Ntahobali) (Travel Map of Rwanda) (Kabgaye is less than 10 kilometres from Gitarama town).

<sup>7170</sup> T. 28 August 2006 pp. 29-30 (Briquet).

<sup>7171</sup> T. 31 August 2006 pp. 54-55 (Briquet).

<sup>7172</sup> T. 25 April 2005 p. 11 (Babin).

<sup>7173</sup> T. 9 June 2005 p. 32 (Denise Ntahobali).

town to Butare town to be 82 kilometres.<sup>7174</sup> When suggested to Nyiramasuhuko that the distance from Murambi to Butare was 75 kilometres, she responded that it was closer to 80 kilometres but agreed that it was possible to make a return trip in one day in 1994 if one took the paved road.<sup>7175</sup> The Chamber accepts the distance between Gitarama and Butare was about 80 kilometres and it took between one and two hours to travel between the two towns from 6 April until June 1994. The Chamber considers that a return trip of such a distance could easily be accomplished in a single day by car, as was acknowledged by Nyiramasuhuko.

2542. Furthermore, the Chamber is not convinced that Nyiramasuhuko did not have access to a car until 25 May 1994, as she claimed. Nyiramasuhuko admitted she travelled to Butare with Ndindabahizi on 14 April 1994 and that he gave her the car to go to Hotel Ihuliro upon arriving in Butare.<sup>7176</sup> She also testified that on 28 April 1994 she travelled to Butare with Ndungutse.<sup>7177</sup> On 10 May 1994 and 14 May 1994, she rode with Kalimanzira to Butare.<sup>7178</sup> On the 14 May 1994 trip, Kalimanzira's car took her to Hotel Ihuliro.<sup>7179</sup> On that same trip, Nyiramasuhuko testified that she used her husband's Peugeot 505 to go back to Murambi.<sup>7180</sup> Finally, she testified that a car was requisitioned for her on 25 May 1994 and she had access to a vehicle from that point forward.<sup>7181</sup> Based on this evidence, it is clear that Nyiramasuhuko had means of transport to Butare *préfecture* from Murambi from 12 April until the Interim Government moved to Gisenyi *préfecture*. In addition, she had her own vehicle starting 25 May 1994. This vehicle was involved in an accident on 30 May 1994, but a replacement vehicle, a Mazda double-cabin pickup, was provided to her the next day on 31 May 1994.<sup>7182</sup>

2543. Therefore, the fact that Nyiramasuhuko may have been staying in Murambi from 12 April to early June 1994 in and of itself, does not raise a reasonable doubt that she was present at the BPO between mid-May and early June 1994, especially considering she admittedly travelled so frequently to Butare town to visit her family.

#### 3.6.19.4.1.2 Admitted Presence in Butare – Hotel Ihuliro

2544. Nyiramasuhuko admits to being in Butare town on a number of occasions including the following dates between mid-April and the end of June 1994: 14 to 15 April 1994; 19 April 1994; 28 to 29 April 1994; 10 May 1994; 14 to 16 May 1994; 30 to 31 May 1994; 11 to 12 June 1994; 24 June 1994; and 3 July 1994.<sup>7183</sup> She testified that each time she visited Butare

<sup>7174</sup> Defence Exhibit 309 (Nyiramasuhuko and Ntahobali) (Travel Map of Rwanda).

<sup>7175</sup> T. 22 November 2005 p. 52 (Nyiramasuhuko).

<sup>7176</sup> T. 28 September 2005 p. 33 (Nyiramasuhuko).

<sup>7177</sup> T. 29 September 2005 p. 48 (Nyiramasuhuko).

<sup>7178</sup> T. 3 October 2005 pp. 43, 60-61 (Nyiramasuhuko).

<sup>7179</sup> T. 4 October 2005 p. 7 (Nyiramasuhuko).

<sup>7180</sup> T. 4 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>7181</sup> T. 5 October 2005 p. 11 (Nyiramasuhuko); Defence Exhibit 348B (Nyiramasuhuko) (Letter from Minister of Transportation).

<sup>7182</sup> T. 5 October 2005 p. 29; T. 16 November 2005 pp. 28-30 (Nyiramasuhuko).

<sup>7183</sup> T. 6 September 2005 p. 32; T. 28 September 2005 pp. 29, 63; T. 29 September 2005 p. 48; T. 3 October 2005 pp. 43, 60-61; T. 4 October 2005 pp. 48-49; T. 5 October 2005 p. 16; T. 6 October 2005 pp. 25, 29 (Nyiramasuhuko).

town she went directly to the Hotel Ihuliro to visit family and that she never went into town at night.<sup>7184</sup>

2545. Her alibi for the dates when she admitted to being in Butare town is that she stayed at home while attacks may have been on-going at the BPO. The Chamber notes that Béatrice Munyenyezi testified that it only took 15 to 20 minutes to walk from Hotel Ihuliro to the BPO.<sup>7185</sup> Nsabimana said the distance from the BPO to the EER was 100 to 200 metres by foot and that the EER was next to Hotel Ihuliro.<sup>7186</sup> Therefore, whenever Nyiramasuhuko was at Hotel Ihuliro, she was in very close proximity to the BPO.

2546. The Chamber also notes that the only witnesses to testify in support of Nyiramasuhuko's alibi were her family members who may have had a motive to exculpate her. Therefore, the Chamber examines this testimony with appropriate caution.<sup>7187</sup>

2547. The Chamber notes there was conflicting evidence as to whether Nyiramasuhuko stayed at Hotel Ihuliro during her visits to Butare. Nyiramasuhuko claims to have been bed-ridden during her 14 to 16 May 1994 stay in Butare.<sup>7188</sup> Her daughter, Clarisse Ntahobali testified that Nyiramasuhuko stayed at the hotel two to three days, but she did not state that she was bed-ridden.<sup>7189</sup> Nyiramasuhuko's sister, Céline Nyiraneza, stated that Nyiramasuhuko came to Hotel Ihuliro in the middle of May and spent three or four days at home with malaria.<sup>7190</sup> Her niece, Witness WBUC, said that Nyiramasuhuko was unable to go outside because of her illness.<sup>7191</sup> Ntahobali also testified that Nyiramasuhuko was not feeling well and she stayed at home for two or three days.<sup>7192</sup>

2548. Her husband, Maurice Ntahobali, confirmed that Nyiramasuhuko had malaria in mid-May 1994 while staying at Hotel Ihuliro and that she was receiving treatment from her sister. He nevertheless also stated that she was moving around at one point and borrowed his service vehicle during her visit, although she did not tell him where she went.<sup>7193</sup> Therefore, Nyiramasuhuko was not confined to her bed according to her husband.

2549. Nyiramasuhuko indicated that she felt better on 16 May 1994 and in the morning she went to the BPO to check on security.<sup>7194</sup> She returned home to tell her family about an

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<sup>7184</sup> T. 6 September 2005 p. 42 (with respect to the evening of 11 June 1994); T. 28 September 2005 p. 34 (with respect to the evening of 14 April 1994); T. 29 September 2005 p. 49 (with respect to the evening of 28 April 1994); T. 4 October 2005 p. 8 (with respect to the evenings of 15 to 16 May 1994); T. 5 October 2005 p. 16 (Nyiramasuhuko) (with respect to the evening of 30 May 1994).

<sup>7185</sup> T. 27 February 2006 p. 49 (Béatrice Munyenyezi).

<sup>7186</sup> T. 9 October 2006 p. 71 (Nsabimana).

<sup>7187</sup> *Semanza*, Judgement (AC), paras. 119-120 (“the Trial Chamber rightly considered the relationship between a witness and the Appellant as a relevant element in the assessment of the witness’s credibility...”).

<sup>7188</sup> T. 4 October 2005 p. 8 (Nyiramasuhuko).

<sup>7189</sup> T. 9 February 2005 p. 57; T. 10 February 2005 p. 26 (Clarisse Ntahobali).

<sup>7190</sup> T. 24 February 2005 pp. 43-44 (Céline Nyiraneza).

<sup>7191</sup> T. 1 June 2005 p. 63 (Witness WBUC).

<sup>7192</sup> T. 25 April 2006 p. 57; T. 1 June 2006 p. 68 (Ntahobali).

<sup>7193</sup> T. 14 September 2005 pp. 38-39; T. 16 September 2005 p. 61; T. 14 September 2005 p. 43 (Maurice Ntahobali) (French).

<sup>7194</sup> T. 4 October 2005 p. 9; T. 26 October 2005 p. 32 (Nyiramasuhuko).

afternoon meeting and then travelled back to attend the meeting.<sup>7195</sup> Finally, she said she did not wait for the end of the Security Council meeting and returned to Murambi.<sup>7196</sup> The Chamber does not find it credible that Nyiramasuhuko was bed-ridden on 14 to 16 May 1994.

2550. Based on the conflicting testimony as to whether Nyiramasuhuko was bed-ridden, the failure to provide any notice of alibi prior to the testimony of Clarisse Ntahobali in February 2005, and the fact that only Nyiramasuhuko's family members testified in support of this alibi, the Chamber does not consider Nyiramasuhuko's alibi for 14 to 16 May 1994 at the Hotel Ihuliro to be reasonably possibly true.

### 3.6.19.4.1.3 Early June to 11 June 1994 – Flight from Gitarama to Gisenyi

#### 3.6.19.4.1.3.1 1-3 June 1994

2551. Nyiramasuhuko testified that she left Murambi for Butare on 30 May 1994 between 9.00 and 10.00 a.m. to evacuate members of her family.<sup>7197</sup> Nyiramasuhuko stated that she left Butare before noon on 31 May 1994 reaching Murambi around 2.00 p.m.<sup>7198</sup> She said she attended a Cabinet meeting in Murambi, Gitarama *préfecture*, on 1 June 1994.<sup>7199</sup>

2552. Nyiramasuhuko testified that during the 1 June meeting the Prime Minister's Chief of Staff told them they were under attack and must leave immediately.<sup>7200</sup> Denise Ntahobali testified that she was staying with Nyiramasuhuko in Murambi on 1 June 1994 when Nyiramasuhuko came back running into their room telling them with great urgency that they must leave because the *Inkotanyi* were nearby.<sup>7201</sup> They left for Muramba with the Interim Government that day, *i.e.* 1 June 1994.<sup>7202</sup> She said she was the last minister to leave Murambi.<sup>7203</sup> Nyiramasuhuko said she left Murambi on 1 June 1994 and arrived in Muramba that same day.<sup>7204</sup> However, according to Nyiramasuhuko, the Interim Government did not hold any meetings in Muramba on 1, 2 and 3 June 1994.<sup>7205</sup> The first Cabinet meeting in Muramba was on 4 June 1994.<sup>7206</sup>

2553. This information was inconsistent with the notice of alibi given to the Prosecution. The notice indicated that Nyiramasuhuko was in Murambi, Gitarama *préfecture* from the end of May to around 3 June 1994 and that she was in Muramba, Gisenyi *préfecture* from around 4 June 1994 to early July 1994. It also indicated that only Denise Ntahobali would testify in

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<sup>7195</sup> T. 4 October 2005 p. 17 (Nyiramasuhuko).

<sup>7196</sup> T. 4 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>7197</sup> T. 5 October 2005 pp. 11, 13-14 (Nyiramasuhuko).

<sup>7198</sup> T. 5 October 2005 pp. 31-32 (Nyiramasuhuko).

<sup>7199</sup> T. 5 October 2005 p. 33 (Nyiramasuhuko).

<sup>7200</sup> T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>7201</sup> T. 9 June 2005 pp. 43-44; T. 13 June 2005 p. 30 (Denise Ntahobali).

<sup>7202</sup> T. 5 October 2005 p. 36; *see* T. 5 October 2005 p. 45 (Nyiramasuhuko) (French) (refers to Muramba); T. 9 June 2005 pp. 44-45 (Denise Ntahobali).

<sup>7203</sup> T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>7204</sup> T. 5 October 2005 p. 36; *see* T. 5 October 2005 p. 45 (Nyiramasuhuko) (French) (refers to Muramba, not Murambi).

<sup>7205</sup> T. 5 October 2005 p. 33 (Nyiramasuhuko).

<sup>7206</sup> T. 5 October 2005 pp. 37-40 (Nyiramasuhuko).

support of this alibi.<sup>7207</sup> In fact, both Denise Ntahobali and Clarisse Ntahobali testified in support of this alibi.

2554. Denise Ntahobali testified that she left Murambi with Nyiramasuhuko in a large convoy of 20 vehicles and that they continued along the road directly to Muramba, arriving late that evening on 1 June 1994.<sup>7208</sup> For the following reasons, the Chamber does not find her to be credible. First, her testimony on other issues was not credible. The Chamber recalls its finding that Denise Ntahobali was not truthful with the Chamber with regard to whether Ntahobali owned a car or knew how to drive. Denise Ntahobali also testified that killings only started in Butare in late May, which is inconsistent with the evidence before the Chamber. Second, she had very close relationships with members of the Nyiramasuhuko Defence. Denise Ntahobali's husband worked as an investigator for Nyiramasuhuko from August 1999 to the beginning of 2005.<sup>7209</sup> Denise Ntahobali's brother-in-law was working for Nyiramasuhuko at the time of the trial. She admitted that she had discussed the trial proceedings with her brother-in-law, but not the Defence's strategy.<sup>7210</sup> These relationships show a particularly strong connection between this witness and the Nyiramasuhuko Defence. Third, she claimed to have left Murambi in a large convoy, whereas Nyiramasuhuko did not mention the convoy and, in fact, testified that she had been left by a minister she asked to wait for her and was the very last minister to leave Murambi.<sup>7211</sup> In sum, Denise Ntahobali lacked credibility on this issue.

2555. More importantly, Clarisse Ntahobali contradicted Nyiramasuhuko and Denise Ntahobali's testimony that they went directly to Gisenyi *préfecture*. Clarisse Ntahobali said Nyiramasuhuko returned to Butare town with Denise and Clarisse's daughter two to three days after 31 May 1994, that is on 2 or 3 June 1994.<sup>7212</sup> She said that Nyiramasuhuko explained to her that the Interim Government had fled Gitarama because it had fallen to the RPF and that she was on her way to Muramba in Gisenyi *préfecture*.<sup>7213</sup> Clarisse Ntahobali's testimony places Nyiramasuhuko in Butare town on 2 or 3 June 1994, when Nyiramasuhuko said she was in Muramba.

2556. Witness WZJM, Maurice Ntahobali and Céline Nyiraneza testified that Nyiramasuhuko was in Muramba in June 1994, but their testimony was not sufficiently specific to corroborate Nyiramasuhuko's assertion that it was on 1, 2 and 3 June 1994.<sup>7214</sup>

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<sup>7207</sup> Prosecution Closing Argument, T. 20 April 2009 p. 32.

<sup>7208</sup> T. 9 June 2005 pp. 44-45 (Denise Ntahobali).

<sup>7209</sup> T. 13 June 2005 pp. 36-37 (Denise Ntahobali).

<sup>7210</sup> T. 13 June 2005 pp. 36-37 (Denise Ntahobali).

<sup>7211</sup> T. 5 October 2005 p. 34 (Nyiramasuhuko).

<sup>7212</sup> T. 9 February 2005 p. 61; T. 10 February 2005 p. 23 (Clarisse Ntahobali).

<sup>7213</sup> T. 9 February 2005 p. 61 (Clarisse Ntahobali).

<sup>7214</sup> T. 21 February 2005 pp. 79-80 (Witness WZJM) (saw Nyiramasuhuko repeatedly in Muramba from early June, but did not say the precise date); T. 13 September 2005 p. 26 (Maurice Ntahobali) (Maurice Ntahobali was not able to say when Nyiramasuhuko fled Murambi. He said that he learned about the Interim Government's move on Radio Rwanda in the first fortnight of June 1994); T. 24 February 2005 pp. 46-47 (Céline Nyiraneza) (Céline Nyiraneza's testimony was inconsistent. She said that she last heard Nyiramasuhuko left Butare with Denise and Clarisse's child and she believed they were going to Gitarama. She also said they were heading to Muramba, which is in Gisenyi *préfecture*, and that she could not actually remember).



2557. Based on the evidence of Clarisse Ntahobali placing Nyiramasuhuko in Butare town on 2 or 3 June 1994, the inconsistencies between the alibi evidence and the notice of alibi pertaining to 1, 2 and 3 June 1994, and Denise Ntahobali's lack of credibility, the Chamber does not find Nyiramasuhuko's alibi that she was in Muramba on 1, 2 and 3 June 1994 to be credible.

*3.6.19.4.1.3.2 4-6 June 1994*

2558. Nyiramasuhuko testified that she attended a Cabinet meeting of the Interim Government on 4 June 1994 in Muramba.<sup>7215</sup> She pointed to her diary entry of 3 June 1994 which she said was recorded during the Cabinet meeting of 4 June 1994 in Muramba.<sup>7216</sup> Nyiramasuhuko confirmed that the diary entry for 4 June 1994<sup>7217</sup> contained notes from the 17 June 1994 meeting as many appointments were made on that date.<sup>7218</sup> However, she relies on three short notes that also appear in the diary entry for 4 June 1994. The title merely states "Cabinet Meeting Decisions." These notes do not indicate the date or location of the meeting during which they were recorded. Although the notes are found in the diary entry for 4 June 1994, Nyiramasuhuko stated that only in a few instances were events recorded in the dated entry corresponding to when the event occurred. The Chamber considers this diary entry provides little support for Nyiramasuhuko's contention that she attended a Cabinet meeting in Muramba on 4 June 1994.

2559. Likewise, the diary entry for 5 June 1994, by Nyiramasuhuko's own testimony and according to hand-written notes within the entry, indicate that it relates to a meeting that occurred on 6 June 1994. Therefore, the diary does not provide any support to Nyiramasuhuko's testimony that there was a Cabinet meeting in Muramba on 4 June 1994.

2560. Guichaoua indicated in his Report that Nyiramasuhuko was in Gikongoro and parts of Butare *préfecture* from 3 to 8 June based upon her diary entries of 28 and 29 May 1994.<sup>7219</sup> Those entries indicated dates followed by locations:

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<sup>7215</sup> T. 5 October 2005 pp. 37-38 (Nyiramasuhuko).

<sup>7216</sup> T. 5 October 2005 pp. 33-34 (Nyiramasuhuko).

<sup>7217</sup> T. 6 October 2005 p. 10 (Nyiramasuhuko).

<sup>7218</sup> T. 11 October 2005 pp. 10-11 (Nyiramasuhuko).

<sup>7219</sup> Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) pp. 26-27 (Table Nos. 4 & 5).

The 3<sup>rd</sup> in Gikongoro Mubuga SP Munini

The 4<sup>th</sup> in Mbazi Mwulire – workshop

The 5<sup>th</sup> in Mugusa – population under military action: consignment without cartridges

...

On the six, some persons were [*sic*] killed and others beaten up at the home of Semwaga.

On the 7<sup>th</sup> Ndora and Nyaruhengeri

Rwangombwa

MINITRASO file: *Terre des Hommes* and the Red Cross took away children to South Kivu. The supervisors are youth who are more numerous than the children.

It is RPF recruitment in disguise: 3 buses

On 8<sup>th</sup> – The Bg and the *sous-prefets*

Mobilisation of the population and utilisation of traditional weapons.<sup>7220</sup>

2561. Nyiramasuhuko testified that these entries related to the 31 May 1994 meeting in Butare and reflected information that she recorded there.<sup>7221</sup> The Chamber hesitates to rely on the diary and Guichaoua's testimony alone to establish Nyiramasuhuko's presence in any of the locations cited in the 28 and 29 May 1994 diary entries.

2562. Nonetheless, the discrepancies identified above, along with the absence of notes indicating Nyiramasuhuko was in meetings in Muramba from 1 to 5 June 1994, the lack of credibility of witnesses called in support of this alibi, and the late and incorrect notice of alibi render Nyiramasuhuko's alibi for 1 to 5 June 1994 not credible.

2563. As to the diary entries for 5 and 6 June 1994, Nyiramasuhuko asserts she took notes under these entries during a Cabinet meeting in Muramba, Gisenyi *préfecture* on 6 June 1994.<sup>7222</sup> A notation in the diary entry for 5 June 1994 supports this testimony as hand-written notes indicate, "Meeting of 6/6/94."<sup>7223</sup> Although no location is indicated, the Prosecution did not contest that the Interim Government moved its base to Gisenyi *préfecture* around 6 June 1994.<sup>7224</sup> Therefore, Nyiramasuhuko has raised a reasonable doubt as to her presence in Butare on 6 June 1994.

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<sup>7220</sup> Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 76.

<sup>7221</sup> T. 6 October 2005 p. 4 (Nyiramasuhuko).

<sup>7222</sup> T. 5 October 2005 p. 40 (Nyiramasuhuko).

<sup>7223</sup> Prosecution Exhibit 144D (Nyiramasuhuko Diary, 1994) p. 80 ("*conseil du 6/6/94*").

<sup>7224</sup> T. 6 July 2004 p. 44 (Des Forges) (RPF troops took the centre part of Rwanda in the early days of June causing the government to flee to Gisenyi); T. 28 September 2004 p. 58 (Guichaoua) (RPF captured Kabagayi on 2 June 1994 and the Interim Government transferred to Gisenyi *préfecture* on 10 June 1994); Prosecution Exhibit 110A (Des Forges Expert Report) p. 73 (several days after 6 June 1994, the Interim Government moved to Kibuye and then to Gisenyi).

3.6.19.4.1.3.3 7-10 June 1994

2564. Nyiramasuhuko testified there was a Cabinet meeting in Muramba, Gisenyi *préfecture* on 10 June 1994.<sup>7225</sup> Notes from that meeting appear in the diary entries for 30 to 31 May 1994. The diary entries on those dates contain a hand-written notation, “Cabinet Meeting of 10 June 1994.”<sup>7226</sup> Therefore, the diary entry supports Nyiramasuhuko’s testimony that she was in Muramba on 10 June 1994. Based on this analysis, the Chamber finds there is a reasonable possibility that Nyiramasuhuko was in Muramba on 10 June 1994.

2565. However, there were not any notes in her diary to support her presence in Muramba from 7 to 9 June 1994. The diary entry for 9 June 1994 contained notes from meetings on 31 May 1994 and 17 June 1994.<sup>7227</sup> There were no other notes for any Cabinet meeting on 9 June 1994 and Nyiramasuhuko did not claim that any such meeting occurred on that day. Furthermore, the diary entries for 7 and 8 June 1994 were removed from the diary and did not appear in evidence.<sup>7228</sup> Therefore, the diary does not provide any support for Nyiramasuhuko’s assertion that there were Cabinet meetings in Muramba from 7 to 9 June 1994.

2566. Furthermore, Denise Ntahobali and Shalom Ntahobali estimated that Nyiramasuhuko was in Butare between 7 and 9 June 1994. Denise Ntahobali said she stayed with Nyiramasuhuko in Muramba for one week after they fled from Murambi on 1 June 1994. They then went to Butare to see how the people they left behind were doing, *i.e.* seven days after 1 June, around 8 June 1994.<sup>7229</sup> The following day, she, her mother, niece and the two *gendarmes* left Hotel Ihuliro and went back to Muramba.<sup>7230</sup> This places Nyiramasuhuko in Butare around 8 June 1994 and conflicts with Nyiramasuhuko’s testimony that she only travelled to Butare on 11 June 1994.

2567. Shalom Ntahobali testified that Nyiramasuhuko spent a night at Hotel Ihuliro when she came three to five days after Ntahobali returned from Cyangu.<sup>7231</sup> He testified that he returned to Butare around 5 June 1994.<sup>7232</sup> This places Nyiramasuhuko in Butare around 8 or 10 June 1994. This testimony also contradicts Nyiramasuhuko’s testimony that she only went to Butare on 11 June 1994.<sup>7233</sup>

2568. The Nyiramasuhuko Defence argued that it was difficult and time-intensive to travel from Muramba to Butare due to the necessity of driving on secondary roads to avoid the RPF. Insofar as there is a reasonable possibility that Nyiramasuhuko was in Muramba on 6 June and 10 June 1994 (as found above), whether Nyiramasuhuko was able to have been in Butare from

<sup>7225</sup> T. 5 October 2005 pp. 40-41; T. 11 October 2005 p. 6 (Nyiramasuhuko).

<sup>7226</sup> Prosecution Exhibits 144A-D (Nyiramasuhuko Diary, 1994) p. 77.

<sup>7227</sup> T. 11 October 2005 pp. 5-6, 10-11 (Nyiramasuhuko).

<sup>7228</sup> The Chamber makes no adverse inference based upon the absence of these pages, but merely notes that Nyiramasuhuko’s assertion that there were meetings was not corroborated by her diary: Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) p. 81.

<sup>7229</sup> T. 9 June 2005 pp. 44-45, 48 (Denise Ntahobali).

<sup>7230</sup> T. 9 June 2005 pp. 48, 51 (Denise Ntahobali).

<sup>7231</sup> T. 1 June 2006 pp. 68-69 (Ntahobali).

<sup>7232</sup> T. 26 April 2006 pp. 12-13; T. 21 June 2006 p. 14 (Ntahobali).

<sup>7233</sup> Maurice Ntahobali testified that Nyiramasuhuko and the two children came to Hotel Ihuliro in June 1994. He did not specify when in June. Therefore, it neither confirms nor contradicts Nyiramasuhuko’s testimony as to when she was in Butare.

7 to 9 June 1994 would depend upon her ability to travel between the two destinations. On this point, Defence Exhibit 309, a Travel Map of Rwanda, indicates the distance from Muramba (near Ngororero) to Butare is about 130 kilometres on the main road, including 80 kilometres from Butare to Murambi and around 50 kilometres from Murambi to Muramba.<sup>7234</sup> The Chamber has accepted the evidence that it would have taken 1 hour to 1.5 hours to travel 80 kilometres from Butare to Murambi in Gitarama *préfecture* using the main road. The only evidence as to the time necessary to travel from Butare or Murambi to Muramba in June 1994 was provided by Nyiramasuhuko and Denise Ntahobali.<sup>7235</sup>

2569. It is not contested that the RPF had captured Kabgayi along the main road from Gitarama to Butare around 2 June 1994.<sup>7236</sup> Therefore, it is reasonable to conclude that Nyiramasuhuko would have been forced to travel on secondary roads to reach Butare town from Muramba, as she asserted in her testimony. Denise Ntahobali corroborated this assertion, stating that on 1 June 1994, the trip from Butare to Muramba took from 8 to 10 hours on these secondary roads.<sup>7237</sup> Even if the travel time between Muramba to Butare was between 8 and 11 hours at the beginning of June 1994, Nyiramasuhuko admitted that she travelled to Butare on 11 June 1994 and returned the very next day on 12 June 1994.<sup>7238</sup> Therefore, the fact that Nyiramasuhuko may have been in Muramba on 6 and 10 June 1994 means that she could not have been in Butare between 7 and 9 June 1994.

2570. In short, the Chamber finds that Nyiramasuhuko has raised a reasonable doubt as to her presence in Butare on 6 and 10 June 1994, but she has not raised a doubt as to her presence in Butare between 7 and 9 June 1994.

#### 3.6.19.4.1.4 11-19 June 1994

2571. Nyiramasuhuko testified that she travelled to Butare on 11 June 1994.<sup>7239</sup> On cross-examination, she said she travelled to Butare after a Cabinet meeting held on that date.<sup>7240</sup> But on direct, she said that she did not see that there was any Cabinet meeting by reference to her diary.<sup>7241</sup> Regardless of whether she attended a Cabinet meeting on 11 June 1994 in Gitarama, she was in Butare *préfecture* that same day.<sup>7242</sup>

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<sup>7234</sup> Defence Exhibit 309 (Nyiramasuhuko and Ntahobali) (Travel Map of Rwanda); T. 9 June 2005 p. 45 (Denise Ntahobali) (they went to Gisenyi via the Ngororero road).

<sup>7235</sup> T. 11 October 2005 pp. 4-5 (Nyiramasuhuko) (distance between Muramba and Butare might be covered in about four hours although in times of war, another two to three additional hours must be added); T. 9 June 2005 p. 50 (Denise Ntahobali) (trip from Hotel Ihuliro to Muramba took them between 8 and 10 hours).

<sup>7236</sup> T. 6 July 2004 p. 44 (Des Forges) (RPF troops took the centre part of Rwanda in the early days of June. This caused the government to flee to Gisenyi); T. 28 September 2004 p. 58 (Guichaoua) (RPF captured Kabagayi on 2 June 1994 and the Interim Government transferred to Gisenyi *préfecture* on 10 June 1994); Prosecution Exhibit 110A (Des Forges Expert Report) p. 73 (several days after 6 June 1994, the Interim Government moved to Kibuye and then to Gisenyi).

<sup>7237</sup> T. 9 June 2005 p. 50 (Denise Ntahobali).

<sup>7238</sup> T. 6 September 2005 pp. 32, 42 (Nyiramasuhuko).

<sup>7239</sup> T. 6 September 2005 p. 32; T. 5 October 2005 pp. 45-46 (Nyiramasuhuko).

<sup>7240</sup> T. 11 October 2005 pp. 3-4 (Nyiramasuhuko).

<sup>7241</sup> T. 5 October 2005 p. 45 (Nyiramasuhuko).

<sup>7242</sup> T. 5 October 2005 pp. 45-46; T. 6 September 2005 p. 32 (Nyiramasuhuko).

2572. She said the following morning, 12 June 1994, she left for Muramba at around 10.00 a.m. and reached Gisenyi *préfecture* at around 9.00 p.m.<sup>7243</sup> She said this was the only trip she took to Butare in June 1994 after a Cabinet meeting.<sup>7244</sup> However she also admitted travelling to Butare on 24 June 1994.<sup>7245</sup>

2573. As noted above, Denise Ntahobali, Shalom Ntahobali and Maurice Ntahobali testified that Nyiramasuhuko came to Hotel Ihuliro in June 1994. They testified that Nyiramasuhuko only stayed one night and returned to Muramba the next day. However, as discussed, Denise and Shalom Ntahobali estimated that Nyiramasuhuko was in Butare around 8 or 10 June 1994 and not on 11 and 12 June 1994.

2574. Nyiramasuhuko suggested her diary corroborated her testimony that she was in Muramba after her 11 to 12 June 1994 visit to Butare. She said that there were Cabinet meetings in Muramba almost every day from 12 to 19 June 1994 and that she took notes from meetings in her diary. In particular, she identified the diary entries for 17 June and 18 to 19 May 1994.<sup>7246</sup> The Chamber notes the diary entries for 18 to 19 May 1994 contain handwritten notes in blue ink “Cabinet Meeting of Friday 17 June 1994.” Therefore, the diary entry is consistent with Nyiramasuhuko’s testimony that she attended a meeting on 17 June 1994 in Muramba. However, according to Nyiramasuhuko, the handwritten notations in the diary under 14 and 15 June 1994 relate to meetings Nyiramasuhuko attended in Kigali on 20 to 21 June 1994.<sup>7247</sup> Further, there are no notes in her diary for supposed meetings in the diary entries for 12 to 16 June. The Chamber considers the diary provides no support for Nyiramasuhuko’s testimony that she attended meetings in Muramba from 12 to 16 June 1994. There is however a reasonable possibility she was there on 17 June 1994.

2575. As to 18 to 19 June 1994, Guichaoua said that Nyiramasuhuko was in Gikongoro, Musange *commune* on 18 June 1994. This is supported by Nyiramasuhuko’s diary entry for this date. Nyiramasuhuko only stated that she was supposed to send a message to Musange, but did not do so in the end.<sup>7248</sup> As to 19 June 1994, there were no notes in her diary. Therefore, Nyiramasuhuko’s testimony that she was in Muramba on 18 and 19 June 1994 was not corroborated by her diary and the Chamber does not consider this alibi to be reasonably possibly true.

#### 3.6.19.4.1.5 20-21 June 1994 – Kigali

2576. Nyiramasuhuko testified that she travelled to Kigali on 20 June 1994 from 4.00 a.m. with the Prime Minister’s convoy. She was there on 21 June 1994 for an interview on RTL M which was led into evidence as Defence Exhibit 284.<sup>7249</sup> The notice of alibi provided to the Prosecution did not indicate that Nyiramasuhuko was in Kigali on 21 April 1994. Nonetheless,

<sup>7243</sup> T. 6 September 2005 pp. 42, 50 (Nyiramasuhuko).

<sup>7244</sup> T. 11 October 2005 pp. 3-4 (Nyiramasuhuko).

<sup>7245</sup> T. 6 October 2005 p. 25 (Nyiramasuhuko).

<sup>7246</sup> T. 6 October 2005 p. 9 (Nyiramasuhuko); Prosecution Exhibit 137B (Guichaoua Expert Report, Vol. 2) p. 27 (Table 5).

<sup>7247</sup> T. 6 October 2005 p. 17 (Nyiramasuhuko).

<sup>7248</sup> T. 6 October 2005 p. 12 (Nyiramasuhuko).

<sup>7249</sup> T. 6 October 2005 pp. 13-14 (Nyiramasuhuko); Defence Exhibit 284C (Nyiramasuhuko) (Interview with Nyiramasuhuko by RTL M, 21 June 1994).

based upon the RTLTM cassette and the consistency between Nyiramasuhuko's testimony and the entries in her diary, the Chamber finds there is a reasonable possibility that Nyiramasuhuko was in Kigali on 20 and 21 June 1994.

#### 3.6.19.4.1.6 Summary of Nyiramasuhuko Alibi Evaluation

2577. In sum, the Chamber finds: (1) 12 April to 5 June 1994: regardless of whether Nyiramasuhuko was staying in Murambi, Gitarama *préfecture*, the short distance between Butare and Murambi would have permitted Nyiramasuhuko to be present in Butare town during the night when attacks occurred at the BPO; (2) 6 June 1994: there is a reasonable possibility that Nyiramasuhuko was in Muramba, Gisenyi *préfecture* on this date.; (3) 7 to 9 June 1994: it is not reasonably possibly true that Nyiramasuhuko was in Muramba at this time; (4) 10 June 1994: there is a reasonable possibility that Nyiramasuhuko was in Muramba, Gisenyi *préfecture* on this date; (5) 12 to 16 June: the alibi placing Nyiramasuhuko in Muramba, Gisenyi *préfecture* during this time period is not reasonably possibly true; (6) 17 June 1994: there is a reasonable possibility that Nyiramasuhuko remained in Muramba on this date; (7) 18 to 19 June 1994: it is not reasonably possibly true that Nyiramasuhuko was in Muramba, Gisenyi *préfecture* during this time period; (8) 20 to 21 June: there is a reasonable possibility that Nyiramasuhuko was in Kigali during this time period. The Chamber further notes that Nyiramasuhuko admitted to being present in Butare on the nights of 14, 15 and 30 May 1994 and 11 June 1994. The Chamber does not find it credible that Nyiramasuhuko stayed throughout the night at Hotel Ihuliro during these visits.

#### 3.6.19.4.2 Ntahobali's Alibis

2578. The Chamber notes that Ntahobali did not provide a notice of his alibis until 29 September 2005, more than four years after the beginning of the Prosecution case and eight months after the beginning of the presentation of evidence by the Nyiramasuhuko Defence.<sup>7250</sup> In this case, Ntahobali relies on the testimony of five Nyiramasuhuko Defence witnesses who testified prior to his providing notice of an alibi.<sup>7251</sup> The Prosecution would not have known prior to the testimony of these witnesses that Ntahobali intended to rely on them in support of an alibi. In addition, the Ntahobali Defence moved to add alibi Witness WDUSA four and a half years after the commencement of trial.<sup>7252</sup> In the Chamber's view, the circumstances of

<sup>7250</sup> On 29 September 2005, the Ntahobali Defence filed a Notice of intent to enter a defence of alibi for two time periods: (1) that Ntahobali was in Cyangugu for about one week from 28 May 1994 until 4 June 1994; and (2) according to his wife, he was bed-ridden at the Hotel Ihuliro for a few days, or nearly a week, between late April and early May 1994: see Memorandum to Coordinator, Trial Chamber II re: Notice of Intent to enter a defence of alibi, 29 September 2005. A supplemental notice informed the Prosecutor that between 28 May 1994 and 2 June 1994, the Ntahobali family stayed at a residence owned by Mr. Harjit Singh.

<sup>7251</sup> Clarisse Ntahobali (testified 8 to 10 February 2005); Céline Nyiraneza (testified 23 to 24, 28 February 2005); Denise Ntahobali (testified 8 to 9, 13 June 2005); Nyiramasuhuko (testified, *in part*, 31 August 2005, 1, 5 to 8, 19 to 22, 26 to 29 September 2005, 3 to 6, 10 to 13, 25 to 27, 31 October 2005, 1 to 2, 7 to 10, 14 to 17, 22 to 24 November 2005); Maurice Ntahobali (testified 12 to 14, 16 September 2005).

<sup>7252</sup> See *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" (TC), 27 January 2006; see also *Nyiramasuhuko & Ntahobali*, Corrigendum to the Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" Dated 27 January 2006 (TC), 6 February 2006.

this late disclosure adversely affect the credibility of the alibi and raises the possibility that it was fabricated.<sup>7253</sup>

2579. The Chamber further notes that all of Ntahobali's alibi witnesses, but for Witness WDUSA, were family relations. This does not, without more, undermine the credibility of these witnesses. However, the Chamber examines this evidence with appropriate caution.

#### 3.6.19.4.2.1 Late April and Early May 1994 Alibi

2580. Ntahobali testified that he had malaria and was convalescing at Hotel Ihuliro for an entire week around the end of April and beginning of May 1994. Ntahobali claimed to remember very clearly that it was 28 April 1994 that he felt the symptoms because (1) it was his niece's birthday; (2) he saw his mother, Nyiramasuhuko, who he had not seen since 14 April 1994; and (3) he felt very ill and had to go lie down.<sup>7254</sup> He said his aunt was a nurse and was providing him injections of medicine.<sup>7255</sup>

2581. The Chamber recalls that Nyiramasuhuko, Denise Ntahobali, Clarisse Ntahobali and Witness WBUC all testified that they attended the birthday party of Clarisse Ntahobali's daughter at Hotel Ihuliro on 28 April 1994.<sup>7256</sup> None of these witnesses corroborated Ntahobali's testimony that he had malaria at the end of April into the beginning of May and was forced to remain in bed.

2582. Ntahobali's wife, Béatrice Munyenyezi, was the only witness to corroborate Ntahobali's alibi that he was suffering from malaria at the end of April. She stated that he had malaria for at least a week, that he stayed home, and his aunt who was a nurse took care of him.<sup>7257</sup> However, contrary to Ntahobali's testimony, Béatrice Munyenyezi recalled that Ntahobali's illness began two or three days *before* his niece's birthday, *i.e.* on 25 or 26 April 1994.<sup>7258</sup> Furthermore, there were serious credibility issues with her testimony. She testified that she did not hear that the killings between April 1994 and July 1994 were ethnically motivated, and stated that people were killing each other, whether they were Hutus or Tutsis.<sup>7259</sup> She also testified that she did not hear about or see any massive killings in Butare after 19 April 1994 and never saw any dead bodies.<sup>7260</sup> Considering all of the killings that were occurring throughout Butare *préfecture*, including at locations within a very short distance of Hotel Ihuliro such as the EER, and the roadblock in front of Hotel Ihuliro, the Chamber does

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<sup>7253</sup> *Semanza*, Judgement (AC), para. 93; *Kamuhanda*, Judgement (TC), para. 82; *Kajelijeli*, Judgement (TC), para. 164; *Kayishema & Ruzindana*, Judgement (TC), para. 237.

<sup>7254</sup> T. 25 April 2006 p. 35; T. 25 April 2006 p. 59 (ICS) (Ntahobali).

<sup>7255</sup> T. 25 April 2006 p. 35 (Ntahobali).

<sup>7256</sup> T. 29 September 2005 p. 48 (Nyiramasuhuko) (Nyiramasuhuko was in Butare on 28 April 1994); T. 29 September 2005 p. 49 (Nyiramasuhuko) (granddaughter was celebrating her first birthday); T. 9 February 2005 p. 52 (Clarisse Ntahobali) (Nyiramasuhuko attended the birthday of Clarisse Ntahobali's first child on 28 April 1994. Nyiramasuhuko came in the evening, spent the night at the hotel, and left the next morning); T. 9 June 2005 p. 26 (Denise Ntahobali) (On 28 April 1994, the first birthday of Clarisse's child, Nyiramasuhuko came for the second time to the Hotel Ihuliro.); T. 1 June 2005 pp. 59-61 (Witness WBUC) (Nyiramasuhuko came to Hotel Ihuliro towards the end of April 1994, at the time of the birthday of her granddaughter).

<sup>7257</sup> T. 27 February 2006 pp. 8, 54 (Béatrice Munyenyezi).

<sup>7258</sup> T. 27 February 2006 p. 8 (Béatrice Munyenyezi).

<sup>7259</sup> T. 27 February 2006 pp. 49, 73-74 (Béatrice Munyenyezi).

<sup>7260</sup> T. 27 February 2006 pp. 49, 75 (Béatrice Munyenyezi).

not find it credible that Béatrice Munyenyezi did not observe any killings and did not know that Tutsis were being targeted. This renders in doubt her credibility as a whole.

2583. Based on Béatrice Munyenyezi's lack of credibility, the lack of corroboration from other testifying witnesses who should have had knowledge of Ntahobali's illness, and the late notice of alibi, the Chamber does not find Ntahobali's alibi that he was sick in bed with malaria from late April to early May 1994 to be credible.

#### 3.6.19.4.2.2 *Alibi Starting 26 or 27 May 1994*

2584. Ntahobali stated that he went to Cyangugu on 26 or 27 May 1994 and returned to Butare on 5 June 1994.<sup>7261</sup> The Chamber notes that Ntahobali made no mention of this alibi prior to 29 September 2005. The Ntahobali Defence did not mention the alibi in its Pre-Trial Brief, opening statement or in its cross-examination of any of the Prosecution witnesses.

2585. Furthermore, Ntahobali admitted during his testimony that he failed to assert that he travelled to Cyangugu to follow his wife during the recorded 1997 interview with the Prosecution investigator.<sup>7262</sup> During the interview, Ntahobali asserted, "Oh! I once went to Cyangugu. Once."; he said that the purpose of his trip was to see his sick brother-in-law.<sup>7263</sup> However, in 2006, Ntahobali testified that he actually travelled to Cyangugu on two occasions. The first visit was to collect his wife and the second visit was to see his ailing brother-in-law.<sup>7264</sup> He stated that he visited his brother-in-law from Gisenyi, just before leaving Rwanda, because Butare had already fallen to the RPF.<sup>7265</sup> Ntahobali said he made a mistake in his interview in stating that he had only been to Cyangugu once in order to visit his sick brother-in-law because he was treated poorly while under interrogation.<sup>7266</sup> He claimed the subject was not broached during his interview with Prosecution officials.<sup>7267</sup>

2586. The Chamber does not find Ntahobali's explanation of his prior inconsistent statement to be convincing. Ntahobali mentioned Cyangugu in the context of a visit from Gisenyi to his ailing brother-in-law that occurred just prior to his leaving Rwanda in July 1994.<sup>7268</sup> Therefore, the alibi he did mention to the investigator during the 1997 interview indicated that he was in Cyangugu having travelled from a different location (Gisenyi), at a different time (the end of the war) and for a different reason (to visit an ailing brother-in-law). He made no mention of a trip to Cyangugu from Butare at the end of May to follow his wife.

2587. Ntahobali attempted to explain that he did not testify regarding the argument between his wife and his sister during his examination-in-chief because this was a personal problem that he did not want to raise before the Chamber.<sup>7269</sup> The Chamber notes that by the time Ntahobali testified, at least seven other witnesses had described the alleged fight in question,

<sup>7261</sup> T. 26 April 2006 pp. 7-8, 12-13 (Ntahobali).

<sup>7262</sup> T. 24 May 2006 pp. 29, 32; T. 21 June 2006 p. 25 (Ntahobali).

<sup>7263</sup> Defence Exhibit 423B (Ntahobali) (Ntahobali Interview, 24-26 July 1997) p. K0144849.

<sup>7264</sup> T. 24 May 2006 p. 29; T. 21 June 2006 pp. 24-26 (Ntahobali).

<sup>7265</sup> T. 21 June 2006 p. 26 (Ntahobali).

<sup>7266</sup> T. 21 June 2006 p. 25 (Ntahobali): *see* T. 21 June 2006 p. 25 (Ntahobali) (French) ("*Je me suis donc trompé à cause des actes de mauvais traitements que j'avais subis.*").

<sup>7267</sup> T. 21 June 2006 p. 25 (Ntahobali).

<sup>7268</sup> T. 24 May 2006 p. 29 (Ntahobali).

<sup>7269</sup> T. 24 May 2006 p. 32 (Ntahobali).



including the alleged participants of the fight. Therefore, this reasoning is not convincing either.

2588. Furthermore, Ntahobali's claim that he contradicted himself because he was poorly treated has no merit. The Chamber has ruled that Ntahobali's interviews fully complied with the requirements of Article 20 of the Statute and Rules 42, 43 and 63 of the Rules, namely: Ntahobali was clearly informed of his rights; there was no evidence that the questioning during the interview may have been oppressive; and no promises, threats or pressure were put on Ntahobali during the interview.<sup>7270</sup> This was affirmed by the Appeals Chamber.<sup>7271</sup>

2589. In support of this alibi, several Ntahobali Defence witnesses presented evidence that Ntahobali travelled to Cyangugu to follow his wife and spent about a week at that location around the end of May to the beginning of June 1994.

2590. Munyenyezi, Denise Ntahobali and Clarisse Ntahobali testified that Munyenyezi had an argument with Denise Ntahobali before the visit of Nyiramasuhuko to Hotel Ihuliro on 30 and 31 May 1994 and left for Cyangugu.<sup>7272</sup> For their part, Nyiramasuhuko and Maurice Ntahobali, Shalom Ntahobali's parents, stated that during Nyiramasuhuko's visit of 30 to 31 May 1994, Ntahobali was not at Hotel Ihuliro.<sup>7273</sup> Céline Nyiraneza corroborated this account, testifying her children told her that Ntahobali left Hotel Ihuliro for Cyangugu to follow Munyenyezi around the end of May or beginning of June.<sup>7274</sup> As relatives of Ntahobali, the Chamber considers they would have a motive to exculpate Ntahobali. Therefore the Chamber views their testimony with appropriate caution.

2591. However, one crucial Defence witness contradicted the timing of the alibi. Witness WBUC testified that she remembered it was *after* her birthday when Munyenyezi and Shalom Ntahobali's sister had the fight at issue which precipitated Munyenyezi's flight from Hotel Ihuliro and Ntahobali's pursuit of her to Cyangugu. Although she was not certain of the date of Ntahobali's departure for Cyangugu she was clear that he departed several days *after* her birthday on 30 May 1994<sup>7275</sup> and not 26 or 27 May 1994 as was asserted by Ntahobali. This would place the trip to Cyangugu around early June 1994.

2592. Witness WDUSA contended that he spent time with Ntahobali in Cyangugu over the course of one week from around 27 May 1994 to the end of the first week in June. He was imprecise as to the exact dates. He stated he saw Ntahobali three times over two or three days or four to five days towards the end of May or the beginning of June and claimed to have met with Ntahobali and Munyenyezi at Hotel Ituze.<sup>7276</sup> In contrast, Munyenyezi claimed the

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<sup>7270</sup> *Ndayambaje et al.*, Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali Using Ntahobali's Statements to Prosecution Investigators in July 1997 (TC), 15 May 2006, paras. 70, 72, 75, 80.

<sup>7271</sup> *Ntahobali & Nyiramasuhuko*, Decision on "Appeal of Accused Arsène Shalom Ntahobali Against the Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali Using Ntahobali's Statements to Prosecution Investigators in July 1997" (AC), 27 October 2006, paras. 17-18.

<sup>7272</sup> T. 27 February 2006 pp. 10-11 (Béatrice Munyenyezi); T. 9 June 2005 p. 29 (Denise Ntahobali); T. 13 June 2005 p. 14 (Denise Ntahobali); T. 9 February 2005 pp. 59-60 (Clarisse Ntahobali).

<sup>7273</sup> T. 5 October 2005 p. 28 (Nyiramasuhuko); T. 13 September 2005 p. 25 (Maurice Ntahobali).

<sup>7274</sup> T. 24 February 2005 pp. 45-46; T. 28 February 2005 pp. 13-15 (Céline Nyiraneza).

<sup>7275</sup> T. 2 June 2005 p. 44 (ICS) (Witness WBUC).

<sup>7276</sup> T. 3 April 2006 pp. 57-58 (ICS); T. 4 April 2006 pp. 25, 27-28, 30, 43 (ICS) (Witness WDUSA).

meetings were at Hotel Chute, and Ntahobali could not recall the name of any hotel.<sup>7277</sup> Witness WDUSA was a friend of Ntahobali, having lived with him in Nairobi when both were in exile<sup>7278</sup> and therefore may have had an incentive to absolve Ntahobali of responsibility. Considering the ambiguity in the dates given, the contradictions in the name of the hotel where Witness WDUSA allegedly met with Ntahobali and Munyenyezi on multiple occasions, and his relationship with Ntahobali, the Chamber does not find Witness WDUSA to be credible.

2593. Moreover, Ntahobali's alibi witnesses disagreed as to when Ntahobali returned to Butare from Cyangugu. Munyenyezi and Ntahobali testified that they left Cyangugu on 5 June 1994.<sup>7279</sup> Clarisse Ntahobali testified that the dispute causing her sister-in-law to flee occurred on 27 May 1994 and that her sister-in-law and her child came back to Hotel Ihuliro three or four days after they left,<sup>7280</sup> namely 31 May 1994, and therefore five days before Ntahobali claimed to have returned to Butare. Witness WDUSA only said that he saw Ntahobali in Cyangugu the first week in June. He did not specify a date when Ntahobali returned to Butare.<sup>7281</sup>

2594. When Ntahobali allegedly returned from Cyangugu was also unclear from Ntahobali's belated notices of alibi. The first notice of alibi stated that Ntahobali left Cyangugu on 4 June 1994.<sup>7282</sup> However, a supplemental notice of alibi provided that he stayed in the house of Mr. Harjit Singh in Cyangugu until 2 June 1994, several days less than he claimed in the original notice and in his testimony.<sup>7283</sup> These contradictions further erode the alibi's credibility.

2595. In sum, Witness WBUC's testimony directly contradicted the account of Ntahobali's sisters and wife as to when Ntahobali went to Cyangugu. Witness WBUC remembered with certainty that Ntahobali only left Hotel Ihuliro *after* 30 May 1994, her birthday. When viewed in conjunction with the late, and incorrect, notice of alibi, and the potential bias of the witnesses in favour of Ntahobali, the Chamber does not find Ntahobali's alibi that he was in Cyangugu between 26 May and 5 June 1994 to be credible.

#### 3.6.19.4.2.3 Alibi – Nighttime Spent at Hotel Ihuliro (Generator)

2596. Clarisse Ntahobali, Céline Nyiraneza, Maurice Ntahobali and Béatrice Munyenyezi all testified that Ntahobali had the responsibility of ensuring that the generator at Hotel Ihuliro was turned on and shut off every evening.<sup>7284</sup> The Defence asserts therefore that Ntahobali

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<sup>7277</sup> T. 27 February 2006 p. 13 (Béatrice Munyenyezi); T. 26 April 2006 p. 10 (ICS) (Ntahobali).

<sup>7278</sup> T. 26 April 2006 p. 10 (ICS); T. 21 June 2006 p. 52 (ICS) (Ntahobali).

<sup>7279</sup> T. 27 February 2006 pp. 13-14 (Béatrice Munyenyezi); T. 28 February 2006 p. 47 (Béatrice Munyenyezi); T. 26 April 2006 pp. 12-13 (Ntahobali); T. 21 June 2006 p. 14 (Ntahobali).

<sup>7280</sup> T. 9 February 2005 pp. 59-60; T. 10 February 2005 p. 8 (Clarisse Ntahobali).

<sup>7281</sup> T. 4 April 2006 p. 30 (ICS) (Witness WDUSA). Denise Ntahobali was in Muramba when Ntahobali returned to the hotel and did not provide testimony as to when he returned: T. 9 June 2005 pp. 51-52 (Denise Ntahobali).

<sup>7282</sup> See Memorandum to Coordinator, Trial Chamber II re: Notice of Intent to enter a defence of alibi, 29 September 2005.

<sup>7283</sup> Memorandum to Coordinator, Trial Chamber II re: Supplementary Alibi-information, 28 November 2005. The Chamber does not treat this notice of alibi as a prior inconsistent statement, but merely points to this discrepancy to show the inadequacy of the notice of alibi that was also severely belated.

<sup>7284</sup> T. 27 February 2006 pp. 18, 62-63 (Béatrice Munyenyezi); T. 14 September 2005 pp. 32-34 (Maurice Ntahobali); T. 28 February 2005 p. 16 (Céline Nyiraneza); T. 10 February 2005 pp. 13, 18 (Clarisse Ntahobali).

could not have committed the alleged crimes at the BPO because he was tied to Hotel Ihuliro all evening.

2597. The Chamber finds this argument unconvincing. First, as noted above, Hotel Ihuliro was in close proximity to the BPO. It was uncontested that Hotel Ihuliro housed many other people, both young and old, between 19 April and late June 1994. For example, Clarisse Ntahobali said that 20 people were staying at the hotel when she arrived in mid-April 1994.<sup>7285</sup> By 19 April there were 30 people staying there and at one point 64 persons lived at the hotel.<sup>7286</sup> Witness CEM testified that in May 1994 there were a little more than 50 people staying at Hotel Ihuliro.<sup>7287</sup> It is difficult to believe that Ntahobali was the only one, apart from his sick father, staying at Hotel Ihuliro with sufficient expertise to operate the generator and that such a responsibility would preclude him from leaving the premises for any length of time.

2598. Munyenyezi claimed that no one else was capable of turning off the generator. Yet she claimed that Ntahobali was in Cyangugu for over one week and did not know who turned off the generator during that time.<sup>7288</sup> Even if no one else turned it off but Ntahobali, the event of turning a generator on and off would take several minutes, and would not preclude Ntahobali from making trips to the BPO. Munyenyezi testified that Ntahobali never left her side over the course of her entire time at Hotel Ihuliro.<sup>7289</sup> She testified, however, that she was not with Ntahobali: when he was asked to go to the Ihuliro roadblock and during his time at the roadblock;<sup>7290</sup> when he visited Kajuga at Hotel Ibis in June 1994;<sup>7291</sup> when he left Hotel Ihuliro once or twice a week to buy food for the occupants;<sup>7292</sup> and when she left for Cyangugu.<sup>7293</sup> These admissions contradict her earlier assertion that she was always with him. Therefore, the Chamber does not find her testimony to be credible and finds the assertion that Ntahobali had the responsibility of turning off the generator does not create a reasonable doubt as to his presence at the BPO at night.

2599. In sum, Ntahobali's alibis for late April/early May 1994 and late May/early June 1994 are not reasonably possibly true. Likewise, his argument that he never left Hotel Ihuliro at night throughout these events is not believable.

2600. Having examined each of the alibis relevant to the events at the BPO, the Chamber now evaluates the Prosecution case bearing in mind those aspects of the alibis that were deemed reasonably possibly true.

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<sup>7285</sup> T. 9 February 2005 p. 42 (Clarisse Ntahobali).

<sup>7286</sup> T. 9 February 2005 pp. 50, 62 (Clarisse Ntahobali).

<sup>7287</sup> T. 14 February 2005 p. 48 (Witness CEM).

<sup>7288</sup> T. 27 February 2006 pp. 62-63 (Béatrice Munyenyezi).

<sup>7289</sup> T. 27 February 2006 pp. 10, 18 (Béatrice Munyenyezi).

<sup>7290</sup> T. 27 February 2006 p. 16 (Béatrice Munyenyezi).

<sup>7291</sup> T. 28 February 2006 pp. 48-49, 67 (Béatrice Munyenyezi).

<sup>7292</sup> T. 28 February 2006 pp. 63-64 (Béatrice Munyenyezi).

<sup>7293</sup> T. 28 February 2006 p. 69 (Béatrice Munyenyezi).

### 3.6.19.4.3 General Overview of Evidence

2601. Considering the amount of evidence summarised above, the Chamber considers it useful to provide a brief overview of the salient issues and points of contention related to the alleged events at the BPO.

2602. The Prosecution presented evidence to support its contention that: from 19 April until late June 1994, Nyiramasuhuko, Ntahobali, *Interahamwe* and soldiers went to the BPO to abduct Tutsi refugees; Tutsi refugees were physically assaulted, raped and sometimes killed; and those refugees who were abducted were taken to their deaths.

2603. The Prosecution presented evidence that the assailants arrived at the BPO on a truck with an open-top rear cargo area (a “pickup truck”),<sup>7294</sup> and that the pickup was camouflaged in mud, cow dung or grease.<sup>7295</sup> The assailants were *Interahamwe*, including one named Kazungu and one named Ngoma.<sup>7296</sup>

2604. There was evidence that the *Interahamwe* were armed with machetes, knives and “Rwandan clubs” and upon arriving at the BPO they beat the Tutsi refugees with these

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<sup>7294</sup> T. 29 October 2001 pp. 46-47 (Witness TA); T. 8 November 2001 p. 146 (Witness QJ); T. 3 February 2004 pp. 10, 53, 55 (Witness QBQ); T. 23 May 2002 p. 47 (Witness TK); T. 24 October 2002 p. 84 (Witness QBP); T. 28 October 2002 pp. 80, 82 (Witness QBP); T. 29 October 2002 p. 17 (Witness QBP); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 19 March 2003 pp. 22-23 (Witness QY); T. 29 May 2002 pp. 19-20 (Witness SJ); T. 3 June 2002 p. 125 (Witness SJ); T. 3 March 2003 p. 48 (Witness SS); T. 5 March 2003 p. 77 (Witness SS).

<sup>7295</sup> T. 3 February 2004 pp. 10, 53, 55 (Witness QBQ); T. 24 October 2002 p. 85 (Witness QBP); T. 28 October 2002 pp. 79-80, 82 (Witness QBP); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 11 March 2003 p. 48 (Witness FAP); T. 12 March 2003 p. 51 (Witness FAP); T. 17 March 2003 p. 9 (Witness SD); T. 19 March 2003 pp. 22-23 (Witness QY); T. 29 May 2002 pp. 19-20 (Witness SJ); T. 3 June 2002 p. 125 (Witness SJ); T. 3 March 2003 p. 48 (Witness SS); T. 5 March 2003 p. 77 (Witness SS); T. 14 October 2002 pp. 31, 39, 52 (Witness SU); T. 15 October 2002 p. 86 (Witness SU); T. 17 October 2002 pp. 26-27 (Witness SU).

<sup>7296</sup> Witnesses TK, RE, SS, and QY each identified an *Interahamwe* named Kazungu as accompanying Nyiramasuhuko during the attacks: T. 23 May 2002 pp. 83-85 (Witness TK); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 25 February 2003 pp. 46-47 (Witness RE); T. 3 March 2003 pp. 48-49, 58-60 (Witness SS); T. 19 March 2003 pp. 31, 36, 44, 46 (Witness QY). Although there was some disagreement as to whether Kazungu was a soldier or an *Interahamwe*, the evidence was consistent that he wore a uniform, accompanied the other *Interahamwe* and took orders from Nyiramasuhuko and Ntahobali: T. 23 May 2002 p. 83 (Witness TK) (Witness TK said he was an *Interahamwe* escort to one of the *préfets*); T. 23 May 2002 pp. 84-85 (Witness TK) (He later wore a military uniform which she thought had been given to him as a reward for the work he had done as an *Interahamwe*); T. 24 February 2003 pp. 19, 21 (Witness RE) (Witness RE also identified Kazungu as an *Interahamwe*); T. 3 March 2003 pp. 49, 58 (Witness SS) (Witness SS described Kazungu as a soldier); T. 19 March 2003 pp. 31, 36 (Witness QY) (Witness QY said Kazungu was Nyiramasuhuko’s bodyguard).

Likewise, Witness TA, TK, SU, and SD each identified a number of other *Interahamwe*, including one named Ngoma who stayed at the BPO: T. 30 October 2001 p. 24 (Witness TA); T. 31 October 2001 p. 112 (Witness TA) (Witness TA said Ngoma and another person named Ntujenjeke remained at the BPO to oversee the refugees when they were asleep, but assisted the *Interahamwe* during the attacks); T. 22 May 2002 p. 98 (Witness TK) (Witness TK said she knew the *Interahamwe* who accompanied Shalom well because they stayed with them until she was taken to Rango. She named several as Ribanje, Cyabubare, who usually carried a machete on his belt, Ngoma, who was often armed with a club, and Mbote, who was an ethnic Twa); T. 14 October 2002 p. 63 (Witness SU); T. 24 October 2002 p. 41 (Witness SU) (Witness SU also identified Ngoma, Ribanza, and Mbote as *Interahamwe* who committed rapes); T. 17 March 2003 p. 7 (Witness SD); T. 18 March 2003 p. 17 (Witness SD) (Witness SD said there were also *Interahamwe* who stayed at the BPO with the refugees, including Ngoma, Mabula, and a *conseiller*).

weapons.<sup>7297</sup> There was evidence that Nyiramasuhuko ordered the *Interahamwe* to force the Tutsi refugees onto the truck. The *Interahamwe* loaded the refugees onto the bed of the truck<sup>7298</sup> and the refugees were taken away and not seen again.<sup>7299</sup> The assailants returned to

<sup>7297</sup> T. 25 October 2001 p. 47 (Witness TA) (*Interahamwe* held sticks. Ntahobali held a machete covered in blood and had a hammer on his belt); T. 25 October 2001 p. 47 (Witness TA); T. 30 October 2001 p. 98 (Witness TA); T. 31 October 2001 pp. 31, 37, 50-51 (Witness TA) (Ntahobali moved through the refugees cutting and slashing people with his machete); T. 20 May 2002 p. 75 (Witness TK) (the *Interahamwe* that arrived in the vehicle carried weapons such as machetes, clubs and daggers); T. 29 May 2002 pp. 20-21 (Witness SJ) (Ntahobali was accompanied by at least 10 *Interahamwe* who were armed. The *Interahamwe* carried machetes and clubs, known as *ntapongano*, and knives. Shalom carried a firearm and had a knife attached to his belt); T. 14 October 2002 pp. 32, 43 (Witness SU) (the *Interahamwe* at the BPO were armed with machetes, grenades, and knives); T. 5 March 2003 p. 62 (Witness SS) (The *Interahamwe* carried clubs, machetes and axes and wore civilian clothes); T. 11 March 2003 p. 50 (Witness FAP); T. 12 March 2003 p. 56 (Witness FAP) (the *Interahamwe* were armed with traditional weapons); T. 20 May 2002 pp. 75-76 (Witness TK) (*Interahamwe* attacked the group of refugees and chose people to be taken away to be killed. *Interahamwe* started stripping people lying on the ground); T. 22 May 2002 p. 130 (Witness TK) (Ntahobali hit Tutsi refugees and encouraged others to do the same); T. 29 May 2002 p. 36 (Witness SJ) (refugees were beaten and attacked with machetes); T. 14 October 2002 p. 40 (Witness SU) (those that resisted had their throats cut); T. 24 February 2003 p. 21 (Witness RE) (they started waking people and beating them up); T. 3 March 2003 p. 59 (Witness SS) (while some refugees were loaded on to the pickup, the soldiers and *Interahamwe* attacked them with weapons); T. 3 February 2004 pp. 20-21, 62 (Witness QBQ) (the *Interahamwe* immediately attacked the people on the veranda and took them away by pulling them by their noses. The *Interahamwe* used a club to hit one woman who refused to comply; she died in front of the vehicle).

<sup>7298</sup> T. 25 October 2001 pp. 28, 40-42 (Witness TA); T. 29 October 2001 pp. 46, 48 (Witness TA); T. 31 October 2001 p. 54 (Witness TA); T. 6 November 2001 p. 56 (Witness TA); T. 7 November 2001 pp. 148-149 (Witness TA) (Nyiramasuhuko was standing in the courtyard of the BPO pointing out Tutsi refugees to the *Interahamwe*, saying as she pointed, “This is another one, and another one and another one, and why are you leaving that one?”); T. 25 October 2001 p. 46 (Witness TA); T. 29 October 2001 p. 46 (Witness TA); T. 6 November 2001 p. 56 (Witness TA) (those Tutsis were beaten up and forced onto the pickup); T. 6 November 2001 p. 56 (Witness TA); T. 8 November 2001 p. 43 (Witness TA) (she pointed at three refugees who had been cut up and ordered that they be loaded onto the vehicle); T. 29 October 2001 pp. 46, 49-51 (Witness TA) (Shalom ordered the *Interahamwe* to stop killing refugees, as the number of dead people were in excess as to what could be loaded in the vehicle); T. 20 May 2002 p. 89 (Witness TK) (Shalom and some of the *Interahamwe* exclaimed that nobody should be spared or treated leniently); T. 20 May 2002 p. 88 (Witness TK) (Shalom told the *Interahamwe* to do their work seriously); T. 20 May 2002 p. 87 (Witness TK); T. 23 May 2002 p. 37 (Witness TK) (the *Interahamwe* loaded other refugees into the truck with Mbasha’s wife and her children); T. 29 May 2002 p. 36 (Witness SJ) (they were thrown into the vehicle by the *Interahamwe*); T. 29 May 2002 p. 45 (Witness SJ) (the refugees were jammed into the back and some were standing); T. 29 May 2002 p. 39 (Witness SJ) (the people loaded into the vehicle never returned); T. 14 October 2002 pp. 32-33 (Witness SU); T. 17 October 2002 p. 76 (Witness SU) (Nyiramasuhuko said, “Start from this side where the refugees are lying. Take men and women and load them aboard the vehicle”); T. 14 October 2002 pp. 53, 57, 64 (Witness SU); T. 17 October 2002 pp. 83-84 (Witness SU) (Nyiramasuhuko told them to load people onto the vehicle); T. 24 October 2002 pp. 85, 88, 97-98 (Witness QBP); T. 28 October 2002 p. 80 (Witness QBP); T. 29 October 2002 pp. 10, 12 (Witness QBP) (the soldiers and *Interahamwe* started dragging some refugee women to the back of the BPO and loaded other refugees aboard a double-cabin Toyota pickup that had accompanied Nyiramasuhuko’s vehicle to the BPO); T. 19 March 2003 pp. 24-25 (Witness QY) (Shalom and *Interahamwe* alighted from the vehicle to select young men and force them to board the vehicle); T. 19 March 2003 p. 16 (Witness QY) (this was done in the process of loading people to take them to their home *communes* and *préfectures*); T. 3 February 2004 pp. 20-21, 63 (Witness QBQ) (the *Interahamwe*, Nyiramasuhuko, and Shalom, subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped into a ditch there).

<sup>7299</sup> T. 29 May 2002 pp. 46-47 (Witness SJ) (one of the two survivors, a woman named Annonciata said that people had been taken to a place called Kabutare where they were beaten and thrown into a hole, sometimes alive); T. 14 October 2002 p. 67 (Witness SU) (during that night people were loaded on the Hilux and killed. None of them came back); T. 24 February 2003 pp. 21-22 (Witness RE) (the *Interahamwe* asked the awoken refugees to remove their clothes and took them in their vehicles to a place named Rwabayanga. A young man named Semanyenzi and a young woman named Annonciata who had been taken to Rwabayanga, managed to

the BPO on numerous occasions between 19 April 1994 and the end of June 1994, attacking the refugees and forcibly removing them.<sup>7300</sup>

2605. The Prosecution also presented evidence that during the attacks, Nyiramasuhuko ordered that Tutsi women and girls be raped.<sup>7301</sup> Upon hearing these orders, Shalom and *Interahamwe* raped women at the BPO.<sup>7302</sup>

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escape and told to the refugees that people led there had been killed with clubs and machetes); T. 11 March 2003 p. 18 (Witness SS) (Semanyenzi said they had been taken to the IRST and thrown into a pit and that he was lucky to have escaped); T. 17 March 2003 p. 10 (Witness SD) (other people were taken away and never seen again); T. 19 March 2003 pp. 22, 24-25 (Witness QY) (the truck travelled towards the road leading to Rwabayanga, taking the occupants to their death); T. 19 March 2003 p. 42 (Witness QY) (after the war, a pit was discovered at Rwabayanga into which bodies had been placed); T. 19 March 2003 p. 47 (Witness QY); T. 24 March 2003 p. 30 (Witness QY) (none of the refugees taken to Rwabayanga came back to the BPO); T. 3 February 2004 pp. 20-21, 63 (Witness QBQ) (the *Interahamwe*, Nyiramasuhuko, and Shalom, subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped into a ditch there).

<sup>7300</sup> T. 20 May 2002 pp. 95-96 (Witness TK) (the truck left behind certain *Interahamwe* to select those who were to be loaded on the next trip. The truck returned another two times that night and loaded more refugees who were then quickly taken away); T. 29 May 2002 p. 57 (Witness SJ) (that same night, approximately 30 minutes after the vehicle had left, the vehicle came back with Shalom and the *Interahamwe*); T. 29 May 2002 pp. 53, 55 (Witness SJ) (other refugees were beaten and taken away on board the vehicle); T. 14 October 2002 p. 42 (Witness SU); T. 17 October 2002 p. 71 (Witness SU) (around 11.00 p.m. that same night, Nyiramasuhuko, her driver, her guard, and some *Interahamwe* returned in the same vehicle); T. 3 March 2003 p. 48 (Witness SS); T. 4 March 2003 p. 3 (Witness SS) (in the course of that night, Witness SS saw Nyiramasuhuko three times); T. 3 March 2003 p. 58 (Witness SS) (Witness SS testified that Nyiramasuhuko returned to the BPO in the same vehicle, with the driver, soldiers and *Interahamwe* on two more occasions); T. 12 March 2003 pp. 13, 16 (Witness FAP); T. 12 March 2003 p. 52 (Witness FAP) (the vehicle arrived three times the same evening, each time with Pauline Nyiramasuhuko and her son Shalom Ntahobali, and each time taking away many refugees who never returned); T. 12 March 2003 p. 52 (Witness FAP) (the three times the witness saw Nyiramasuhuko on that evening were the only times that she saw Nyiramasuhuko during her stay at the BPO); T. 3 February 2004 pp. 21-22 (Witness QBQ) (the vehicle came back, again driven by Shalom, after having unloaded their cargo and then took other people away to Kumukoni); T. 3 February 2004 pp. 22, 89 (Witness QBQ) (the assailants woke up Witness QBQ and set her aside to be taken aboard the vehicle; however she managed to escape when she went to see her mistress' crying baby and laid down beside him); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 25 February 2003 pp. 46, 48 (Witness RE) (Witness RE testified that before she was transferred to Rango, she saw Nyiramasuhuko, Shalom and *Interahamwe*, including one named Kazungu, come to the BPO three times in one night).

<sup>7301</sup> T. 14 October 2002 pp. 53-54, 57, 68 (Witness SU) (Nyiramasuhuko ordered that the refugee women be raped because they refused to marry Hutus and then to be loaded onto the Hilux to be killed); T. 24 October 2002 p. 85 (Witness QBP); T. 28 October 2002 pp. 81, 88, 99 (Witness QBP); T. 29 October 2002 p. 21 (Witness QBP) (Nyiramasuhuko told the soldiers and *Interahamwe* that "there's still a lot of dirt at the *préfecture*, such as these Tutsi women, who previously were arrogant and did not want to marry Hutu men. Now it's up to you to do whatever you want with them"); T. 3 March 2003 pp. 52, 54 (Witness SS); T. 5 March 2003 pp. 70-71 (Witness SS) (Nyiramasuhuko told the *Interahamwe* and soldiers who were carrying weapons to "start from one side and take the young girls and women and go and rape them because they refused to marry you."); T. 11 March 2003 p. 54 (Witness FAP); T. 12 March 2003 p. 53 (Witness FAP) (Nyiramasuhuko stood by the vehicle and told the *Interahamwe* to take the young girls and the women who are not old, to rape them before killing them because they had refused to marry Hutus); T. 3 February 2004 pp. 10, 12, 61 (Witness QBQ) (Nyiramasuhuko ordered the *Interahamwe*, "[r]ape the women and the girls and kill the rest.");

<sup>7302</sup> T. 25 October 2001 pp. 48, 52, 55-56, 67, 69, 71, 75-77, 79 (Witness TA); T. 29 October 2001 pp. 10-11 (Witness TA); T. 31 October 2001 pp. 55, 58-59, 72-73, 93-97, 101, 105, 111 (Witness TA); T. 1 November 2001 p. 40 (Witness TA); T. 6 November 2001 pp. 9, 12-13, 47-48 (Witness TA); T. 20 May 2002 p. 100 (Witness TK); T. 23 May 2002 p. 126 (Witness TK); T. 14 October 2002 pp. 60-63, 65-66 (Witness SU); T. 15 October 2002 pp. 16-17 (ICS) (Witness SU); T. 24 October 2002 p. 41 (Witness SU); T. 24 October 2002 pp. 107-108

2606. The Nyiramasuhuko Defence presented evidence that she was not in Butare town much of the time period from 19 April until late June 1994 and that when she was in Butare town she spent evenings at Hotel Ihuliro ().

2607. The Ntahobali Defence presented evidence that Ntahobali was not in Butare during portions of the time period from 19 April until late June 1994 (). He presented evidence that he did not know how to drive a vehicle and that when he was in Butare town he did not leave Hotel Ihuliro during the evenings or at night.<sup>7303</sup>

2608. The Chamber now examines the specific allegations chronologically to determine whether the allegations were proven beyond a reasonable doubt.

#### 3.6.19.4.4 28 April 1994 – Abduction of 30 Tutsi Refugees

2609. Witness QCB testified that he went to the BPO on 28 April 1994 at about 9.00 a.m.<sup>7304</sup> Ntahobali arrived at the BPO in a Peugeot 505 accompanied by *Interahamwe*.<sup>7305</sup> A Daihatsu, driven by Désiré, the son of Munyagaseheke also arrived with Shalom.<sup>7306</sup> The *Interahamwe* forced about 30 Tutsi refugees who were staying at the BPO to board the Daihatsu at gunpoint as Shalom watched, after which Shalom told the driver, “[I]et’s go.”<sup>7307</sup> Witness QCB testified that Shalom was in charge because he was the one issuing orders.<sup>7308</sup> He added that Nsabimana watched from his own vehicle as the Daihatsu was loaded about 10 steps away.<sup>7309</sup> The Daihatsu and Peugeot left towards the *Groupe Scolaire*, after which Nsabimana’s vehicle then left in the direction of the *Quartier Arabe*.<sup>7310</sup> About 25 minutes later, Witness QCB stood at the *Chez Bihira* roadblock. Some people who had passed by the *Groupe Scolaire* told him that Shalom and the *Interahamwe* were in the process of killing the Tutsis who had been loaded into Munyagaseheke’s vehicle.<sup>7311</sup>

2610. Witness QCB testified that he met Ntahobali a long time prior to the events when he visited Ntahobali’s home with the driver of Ntahobali’s father.<sup>7312</sup>

2611. The Chamber recalls that Witness QCB was a detained witness and therefore exercises appropriate caution in evaluating his credibility. At the time of his testimony he had confessed to participating in the killings at Kabakobwa during April 1994.<sup>7313</sup> Witness QCB was not

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(ICS) (Witness QBP); T. 24 February 2003 p. 19 (Witness RE); T. 3 March 2003 p. 58 (Witness SS); T. 11 March 2003 p. 60 (Witness FAP); T. 17 March 2003 p. 10 (Witness SD); T. 19 March 2003 pp. 24, 27 (Witness QY); T. 3 February 2004 pp. 62-63 (Witness QBQ); T. 9 June 2004 p. 51 (Des Forges).

<sup>7303</sup> T. 21 June 2006 p. 69 (Ntahobali); T. 22 June 2006 pp. 42-43 (Ntahobali); T. 22 June 2006 pp. 45, 47 (ICS) (Ntahobali); T. 13 June 2005 pp. 15, 35-36 (Denise Ntahobali); T. 12 October 2005 p. 19 (Nyiramasuhuko); T. 10 February 2005 p. 12 (Clarisse Ntahobali); T. 28 February 2005 p. 16 (Clarisse Ntahobali); T. 2 June 2005 p. 39 (ICS) (Witness WBUC).

<sup>7304</sup> T. 21 March 2002 p. 50 (Witness QCB).

<sup>7305</sup> T. 21 March 2002 pp. 52, 54 (Witness QCB).

<sup>7306</sup> T. 21 March 2002 p. 52 (Witness QCB).

<sup>7307</sup> T. 21 March 2002 pp. 54-55; T. 27 March 2002 p. 53 (Witness QCB).

<sup>7308</sup> T. 21 March 2002 p. 55 (Witness QCB).

<sup>7309</sup> T. 21 March 2002 pp. 55, 65 (Witness QCB).

<sup>7310</sup> T. 21 March 2002 p. 64; T. 21 March 2002 p. 72 (Witness QCB) (French) (for spelling of “*Quartier Arabe*”).

<sup>7311</sup> T. 21 March 2002 p. 67; T. 27 March 2002 p. 52 (Witness QCB).

<sup>7312</sup> T. 25 March 2002 p. 46 (ICS) (Witness QCB).

<sup>7313</sup> T. 20 March 2002 pp. 36-37; T. 27 March 2002 p. 161 (Witness QCB).

implicated by any witness, and had not confessed to any involvement in abductions and killings at the BPO. It was not established that he had an incentive to displace blame to Ntahobali and Nsabimana. The Chamber is aware that it may rely upon a single witness' uncorroborated evidence for proof of a material fact, however, in this instance the Chamber is not satisfied, in the absence of corroboration, that Witness QCB's evidence is sufficiently reliable to base a finding of fact beyond a reasonable doubt. While the Chamber accepts that attacks at the BPO began at the end of April, the Chamber finds that the Prosecution failed to prove beyond a reasonable doubt that Ntahobali abducted 30 Tutsi refugees from the BPO on 28 April 1994.

#### 3.6.19.4.5 End of April or Early May 1994 – Witness QY

2612. Witness QY testified that she observed three to four consecutive nights during which Shalom, Nyiramasuhuko and *Interahamwe* attacked the Tutsi refugees at the BPO.<sup>7314</sup>

2613. At the end of April or early May 1994, when she first arrived at the BPO, Witness QY saw Shalom come to the BPO in a Daihatsu, accompanied by about 10 *Interahamwe*, who carried traditional weapons such as machetes and clubs.<sup>7315</sup> The Daihatsu did not have a back frame, and was covered with mud, making it difficult to discern the vehicle's colour.<sup>7316</sup> Shalom and *Interahamwe* alighted from the vehicle to select young men and force them to board the vehicle.<sup>7317</sup> They took girls by force to rape them behind the BPO where there was a house or in the surrounding woods.<sup>7318</sup>

2614. She later testified that young women were also forced onto the vehicle. When the witness was confronted with her statement of 15 January 1997 in which she described those who were forced on the vehicle as "intellectuals", she maintained that the prior statement was consistent with her testimony as the intellectuals could have been among the men and women selected.<sup>7319</sup> The Chamber considers this a minor discrepancy.

2615. Witness QY said that she was able to identify Shalom because she had seen him previously at the Butare hospital and she was about seven metres away from him.<sup>7320</sup> However, the reliability of this identification was brought into question due to Witness QY's inability to recognise locations at the BPO. She was unable to locate within Prosecution Exhibits 23(c) *ter* or 23(d) (Photographs of the BPO) where the Daihatsu had parked, but said it was difficult to locate on the photographs because at that time there was a lawn and people around the BPO, unlike in the photographs.<sup>7321</sup>

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<sup>7314</sup> T. 19 March 2003 p. 27 (Witness QY).

<sup>7315</sup> T. 19 March 2003 p. 24; T. 20 March 2003 pp. 41-42 (Witness QY).

<sup>7316</sup> T. 19 March 2003 pp. 22-23 (Witness QY).

<sup>7317</sup> T. 19 March 2003 pp. 24-25 (Witness QY).

<sup>7318</sup> T. 19 March 2003 pp. 24, 27 (Witness QY).

<sup>7319</sup> T. 20 March 2003 pp. 42-43 (Witness QY); Defence Exhibit 112 (Nyiramasuhuko) (15 January 1997, Statement of Witness QY).

<sup>7320</sup> T. 19 March 2003 pp. 25-26 (Witness QY).

<sup>7321</sup> T. 20 March 2003 p. 66; T. 24 March 2003 pp. 10-11 (Witness QY).



2616. In addition, Witness QY was not able to locate within Prosecution Exhibit 27 (Video of BPO, EER and Ruins of Nyiramasuhuko's House) the plot of the BPO complex.<sup>7322</sup> She explained that she was young at the time and that even now she has difficulty looking at the BPO when she passes it because of the events that occurred there.<sup>7323</sup> Although Witness QY recognised the video of the veranda where she slept at the BPO,<sup>7324</sup> her inability to recognise the BPO complex where these events allegedly occurred call into question the reliability of her identification of Ntahobali and Nyiramasuhuko.

2617. Witness QY said on her second night at the BPO, she saw Shalom, Nyiramasuhuko, her bodyguard, Kazungu and *Interahamwe* arrive in the same vehicle.<sup>7325</sup> Although there were no lights,<sup>7326</sup> the *Interahamwe* carried torches and flashed them in the direction of the refugees.<sup>7327</sup> They stopped and forced people to board the vehicle.<sup>7328</sup> Although she claimed to have hid during the attack,<sup>7329</sup> she explained that she identified the assailants because she was hiding among the many refugees who were staying at the BPO.<sup>7330</sup>

2618. The vehicle returned several times that evening with about a two hour interval between trips, and each time it returned the same thing was done.<sup>7331</sup> Again, the vehicle set off towards Rwabayanga,<sup>7332</sup> although she did not know which direction the vehicle turned to go to Rwabayanga.<sup>7333</sup> The vehicle came back a third time that same night to collect more refugees.<sup>7334</sup>

2619. This particular night of three attacks bore many similarities to the events described by Witnesses SS, SU and TK at the BPO. However, the latter witnesses said that a night of three attacks took place at the end of May or early June 1994. Witness QY clearly stated that this event occurred on her second night at the BPO<sup>7335</sup> which was in late April or early May, almost one month earlier. Therefore, according to her testimony she was talking about a different night of attacks.

2620. Witness QY testified that the third day at the BPO, Shalom drove the vehicle back again.<sup>7336</sup> She initially said that Nyiramasuhuko was not present during this trip,<sup>7337</sup> but later said Shalom, Nyiramasuhuko, Kazungu and *Interahamwe* were in the vehicle on the third

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<sup>7322</sup> T. 24 March 2003 pp. 10-11 (Witness QY); Prosecution Exhibit 27 (Video of BPO, EER and Ruins of Nyiramasuhuko's House) at 16:21.

<sup>7323</sup> T. 24 March 2003 p. 10 (Witness QY).

<sup>7324</sup> T. 24 March 2003 p. 12 (Witness QY).

<sup>7325</sup> T. 19 March 2003 pp. 27, 31; T. 24 March 2003 p. 24 (Witness QY).

<sup>7326</sup> T. 24 March 2003 p. 30; T. 25 March 2003 p. 43 (Witness QY).

<sup>7327</sup> T. 19 March 2003 p. 41; T. 24 March 2003 p. 30 (Witness QY).

<sup>7328</sup> T. 19 March 2003 p. 31 (Witness QY).

<sup>7329</sup> T. 24 March 2003 pp. 5-6, 12-13 (Witness QY).

<sup>7330</sup> T. 24 March 2003 p. 6 (Witness QY).

<sup>7331</sup> T. 19 March 2003 pp. 33, 40; T. 20 March 2003 p. 44; T. 24 March 2003 pp. 24-25 (Witness QY).

<sup>7332</sup> T. 19 March 2003 pp. 34-35 (Witness QY).

<sup>7333</sup> T. 24 March 2003 pp. 31-32 (Witness QY).

<sup>7334</sup> T. 19 March 2003 pp. 35-36 (Witness QY).

<sup>7335</sup> T. 19 March 2003 p. 27 (Witness QY).

<sup>7336</sup> T. 19 March 2003 pp. 41-42 (Witness QY).

<sup>7337</sup> T. 19 March 2003 p. 41 (Witness QY).

night.<sup>7338</sup> She then corrected herself again, stating that on the fourth night Nyiramasuhuko was not present.<sup>7339</sup> The identification of Nyiramasuhuko at the BPO on the third or fourth nights cannot be considered reliable based upon Witness QY's uncertainty as to when Nyiramasuhuko was present. Witness SD provided some corroboration, testifying that during her stay at the BPO Nyiramasuhuko arrived each night on a vehicle covered with mud to fetch people.<sup>7340</sup> However, Witness SD's testimony was devoid of any specific details.

2621. Moreover, Witness QY's credibility was brought into serious question based upon inconsistencies with prior statements and her admission that she had lied to the Chamber as to knowing other Prosecution witnesses.<sup>7341</sup>

2622. In particular, the Chamber notes that Witness QY contradicted a significant portion of her statement of 24 July 2000, stating everything that was said about a purported trip to Kibeho was not true.<sup>7342</sup> She said the prior statement did not recite the events as she had described them.<sup>7343</sup> That statement provided that Witness QY was at a friend's house in Kibeho, in Gikongoro *préfecture* when the President died. Witness QY denied that statement and replied that her sister came from Kigali some days after the President died and they went to Kibeho together.<sup>7344</sup> They returned to Butare the same day.<sup>7345</sup> She stated that she did not recognise what was said in the 24 July 2000 statement and that she did not spend the night in Kibeho.<sup>7346</sup> Therefore, she rejected a large portion of her prior statement as untrue.

2623. When recalled to testify three years later, Witness QY was asked about her testimony in the *Muvunyi* trial in which she stated that she had never gone to Kibeho; the witness said that what happened in Kibeho did not concern what happened in Butare.<sup>7347</sup>

2624. In view of her testimony that the Daihatsu truck was filled on each trip with refugees, she was asked about her statement of 18 September 1997 in which she stated, two or three people were taken away to be killed on the second day at the BPO. She testified that she had never stated anything of the sort.<sup>7348</sup>

2625. In addition to these contradictions, Witness QY admitted that she had lied to the Chamber regarding her knowledge of other Prosecution witnesses. On recall in 2009, Witness QY stated that during her previous appearance before the Chamber in 2003, she denied knowing Witnesses QBQ and SJ at the direction of a Prosecution representative and

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<sup>7338</sup> T. 19 March 2003 p. 44 (Witness QY).

<sup>7339</sup> T. 19 March 2003 p. 46 (Witness QY).

<sup>7340</sup> T. 17 March 2003 pp. 9-10 (Witness SD).

<sup>7341</sup> T. 23 February 2009 pp. 51-52 (ICS) (Witness QY).

<sup>7342</sup> T. 24 March 2003 pp. 71-73 (ICS); T. 25 March 2003 p. 42 (ICS); T. 10 April 2006 pp. 12-13, 16 (ICS) (Witness QY).

<sup>7343</sup> T. 25 March 2003 p. 42 (ICS) (Witness QY).

<sup>7344</sup> T. 19 March 2003 p. 7; T. 24 March 2003 pp. 70-71 (ICS) (Witness QY).

<sup>7345</sup> T. 24 March 2003 p. 71 (ICS) (Witness QY).

<sup>7346</sup> T. 24 March 2003 pp. 73, 75 (ICS) (Witness QY).

<sup>7347</sup> T. 10 April 2006 pp. 20-29 (ICS) (Witness QY).

<sup>7348</sup> T. 24 March 2003 p. 25 (Witness QY); Defence Exhibit 113 (Nyiramasuhuko) (18 September 1997, Statement of Witness QY).

interpreter.<sup>7349</sup> She also testified that she had previously denied knowing Witness TK because she only knew that witness' nickname and not her proper name.<sup>7350</sup>

2626. Given the discrepancies in her testimony regarding these events, the unreliable nature of her identification evidence, and her admission that she had lied about knowing Witnesses QBQ and SJ, the Chamber finds Witness QY's testimony regarding alleged events at the BPO between late April or early May 1994 were not proven beyond a reasonable doubt.

#### 3.6.19.4.6 Mid- to End of May 1994 – Rape and Abduction of Refugees by Ntahobali, Nyiramasuhuko, *Interahamwe* and Soldiers

2627. As a preliminary matter, the Chamber notes it is not disputed that there were a large number of refugees at the BPO compound between April and June 1994. These people consisted mainly of women and children in poor physical condition; many of them had visible skin ailments and were malnourished.<sup>7351</sup> The Chamber recalls the testimony of Alexandre Bararwandika, a doctor working for the Belgian Red Cross, who described the persons around the BPO as ill, emaciated and wearing torn clothing.<sup>7352</sup> Witness TQ described the conditions at the BPO as very poor, noted the refugees wore torn, smelling clothes and were apparently abandoned.<sup>7353</sup> The Chamber notes that the evidence was clear and consistent that these people had fled other *communes* and *préfectures* to escape violence and the threat of death.<sup>7354</sup> The Chamber also notes that all of the Prosecution witnesses who testified as to their experiences at the BPO were Tutsis.<sup>7355</sup>

2628. Witness TA testified that she saw Nyiramasuhuko during one night in mid-May 1994.<sup>7356</sup> Nyiramasuhuko was accompanied by 10 *Interahamwe*, including her son, Shalom.<sup>7357</sup> This was the first time Witness TA saw Shalom.<sup>7358</sup> Nyiramasuhuko and Shalom arrived together in the same Hilux pickup and told the *Interahamwe* who should be forced to

<sup>7349</sup> T. 23 February 2009 pp. 41, 45-46, 49-52 (ICS) (Witness QY).

<sup>7350</sup> T. 23 February 2009 p. 60 (ICS) (Witness QY).

<sup>7351</sup> T. 24 October 2001 p. 95 (Witness TA); T. 28 May 2002 p. 113 (Witness SJ); T. 11 March 2003 p. 45 (Witness FAP); T. 12 March 2003 p. 47 (Witness FAP); T. 6 September 2004 pp. 61-62 (ICS) (Witness TQ); T. 3 July 2006 p. 43 (Bararwandika); T. 4 July 2006 p. 71 (Bararwandika).

<sup>7352</sup> T. 4 July 2006 p. 71 (Bararwandika).

<sup>7353</sup> T. 6 September 2004 pp. 61-62 (ICS) (Witness TQ).

<sup>7354</sup> See, e.g., T. 29 October 2001 pp. 90, 109-110 (Witness TA); T. 6 November 2001 p. 79 (Witness TA) (Witness TA testified that her parents had been killed and she therefore fled her home *commune* to seek refuge at the BPO); T. 23 May 2002 p. 77 (ICS) (Witness TK) (Witness TK fled from Gikongoro to Butare); T. 14 October 2002 pp. 9, 11 (Witness SU); T. 21 October 2002 pp. 65, 88-89 (ICS) (Witness SU) (There was trouble in her home *commune* and Witness SU's husband and five children were killed. She was also injured and fled her native *commune* to seek assistance from the authorities at the BPO); T. 24 February 2003 pp. 9, 43 (Witness RE); T. 25 February 2003 pp. 3-4 (Witness RE) (Witness RE also fled her native *préfecture* of Gikongoro).

<sup>7355</sup> T. 24 October 2001 p. 93 (Witness TA); T. 20 May 2002 p. 26 (Witness TK); T. 28 May 2002 p. 111 (Witness SJ); T. 24 October 2002 p. 78 (Witness QBP); T. 11 March 2003 p. 35 (Witness FAP); Prosecution Exhibit 64 (Personal Particulars) (for Witness RE); Prosecution Exhibit 67 (Personal Particulars) (for Witness SD); Prosecution Exhibit 71 (Personal Particulars) (for Witness QBQ); T. 14 October 2002 p. 7 (Witness SU); T. 15 October 2002 p. 15 (ICS) (Witness SU) (Witness SU's father was Tutsi and mother was Hutu but she self-identified as a Tutsi); T. 3 March 2003 pp. 72-73 (ICS) (Witness SS); T. 3 March 2003 p. 21 (Witness SS) (Witness SS' father was Tutsi and mother was Hutu but she self-identified as a Tutsi).

<sup>7356</sup> T. 25 October 2001 p. 29; T. 29 October 2001 pp. 51-52 (Witness TA).

<sup>7357</sup> T. 25 October 2001 pp. 29, 33, 36; T. 31 October 2001 pp. 41, 43 (Witness TA).

<sup>7358</sup> T. 30 October 2001 p. 96; T. 31 October 2001 p. 36; T. 6 November 2001 p. 57 (Witness TA).

board the bed of the pickup.<sup>7359</sup> Nyiramasuhuko wore a *kitenge* cloth.<sup>7360</sup> The truck's lights were illuminated.<sup>7361</sup> Nyiramasuhuko was standing in the courtyard of the BPO pointing out Tutsi refugees to the *Interahamwe*, saying as she pointed, "[t]his is another one, and another one and another one, and why are you leaving that one?"<sup>7362</sup> Those Tutsis were refugees.<sup>7363</sup> Witness TA testified that those Tutsis were beaten up and forced onto the pickup.<sup>7364</sup> Nyiramasuhuko pointed at three refugees who had been cut up and ordered that they be loaded onto the vehicle.<sup>7365</sup> Shalom ordered the *Interahamwe* to stop killing refugees, as the number of dead people was in excess as to what could be loaded in the vehicle.<sup>7366</sup>

2629. Witness TA described Nyiramasuhuko's clothing and quoted her as ordering the *Interahamwe* to attack certain individuals. Therefore, Witness TA was close enough to hear what Nyiramasuhuko was saying and identified her as the mother of Shalom. For these reasons, the Chamber finds this identification to be reliable.

2630. Witness TA said Shalom and other *Interahamwe* raped her. Nyiramasuhuko and her son arrived together in the same Hilux pickup and indicated to the *Interahamwe* who to force to board the bed of the pickup.<sup>7367</sup> Shalom was wearing trousers and a shirt made of *kitenge*.<sup>7368</sup> Over the course of the events, Witness TA saw Shalom on more than eight occasions at the BPO.<sup>7369</sup> Further, she stated that Shalom raped her on two occasions and took her by the arm to *Interahamwe* in order to be raped on multiple occasions.<sup>7370</sup> Therefore, Witness TA had numerous opportunities to view Shalom up close. Although the attacks at the BPO occurred at night, Witness TA stated there was moonlight behind the BPO on several of those occasions.<sup>7371</sup> In addition, there was occasionally some public lighting from the lamp posts that reached the area from the other side of the road near *Chez Venant*.<sup>7372</sup> Witness TA did not describe the truck as being camouflaged. However, she was never questioned on this issue. In addition, Witness FAP testified that Shalom came in a black camouflage-coloured vehicle.<sup>7373</sup> The Chamber considers these to be minor discrepancies. Of particular importance, Witness TA testified that she observed Shalom leading an *Interahamwe* training exercise one morning in June 1994.<sup>7374</sup> Therefore, she saw Shalom during broad daylight.

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<sup>7359</sup> T. 29 October 2001 pp. 46-47 (Witness TA).

<sup>7360</sup> T. 25 October 2001 p. 40 (Witness TA).

<sup>7361</sup> T. 8 November 2001 p. 13 (Witness TA).

<sup>7362</sup> T. 25 October 2001 pp. 28, 40-42; T. 29 October 2001 pp. 46, 48; T. 31 October 2001 p. 54; T. 6 November 2001 p. 56; T. 7 November 2001 pp. 148-149 (Witness TA).

<sup>7363</sup> T. 3 July 2006 p. 43; T. 4 July 2006 p. 71 (Bararwandika).

<sup>7364</sup> T. 25 October 2001 p. 46; T. 29 October 2001 p. 46; T. 6 November 2001 p. 56 (Witness TA).

<sup>7365</sup> T. 29 October 2001 p. 48; T. 6 November 2001 p. 56; T. 8 November 2001 p. 43 (Witness TA).

<sup>7366</sup> T. 29 October 2001 pp. 46, 49-51 (Witness TA).

<sup>7367</sup> T. 29 October 2001 pp. 46-47 (Witness TA).

<sup>7368</sup> T. 31 October 2001 p. 36 (Witness TA).

<sup>7369</sup> T. 24 October 2001 p. 102; T. 25 October 2001 p. 75 (Witness TA).

<sup>7370</sup> T. 25 October 2001 pp. 52, 56, 67, 69, 75-77, 79; T. 29 October 2001 pp. 8, 10-11; T. 31 October 2001 pp. 55-59, 72-73, 93-97, 105, 111; T. 1 November 2001 pp. 39-40; T. 6 November 2001 pp. 9, 12-13, 47-48 (Witness TA).

<sup>7371</sup> T. 30 October 2001 p. 109; T. 31 October 2001 pp. 12, 68, 90-91, 107 (Witness TA).

<sup>7372</sup> T. 30 October 2001 p. 109; T. 8 November 2001 pp. 12-13 (Witness TA).

<sup>7373</sup> T. 11 March 2003 p. 48; T. 12 March 2003 p. 51 (Witness FAP).

<sup>7374</sup> T. 29 October 2001 pp. 29-30, 32, 40-41 (Witness TA).

2631. Witness TA provided substantial detail regarding the events of the rape. She stated that Shalom moved through the refugees cutting and slashing people with his machete.<sup>7375</sup> She said that when Shalom got to where she was, he took her by the hand and hit her with his machete on the arm and hand.<sup>7376</sup> She said Shalom picked her up from the ground and pulled her towards the ORINFOR, behind the BPO buildings.<sup>7377</sup> Shalom removed Witness TA's clothes saying he would kill her if she refused.<sup>7378</sup> He removed her underwear, laid her on the ground and raped her.<sup>7379</sup> Then he invited some eight other *Interahamwe* to rape her, including one named Ngoma.<sup>7380</sup> Ngoma remained at the BPO to oversee the refugees when they were asleep, but assisted the *Interahamwe* during the attacks.<sup>7381</sup> One of the *Interahamwe* that raped her put his machete on her leg, telling her that if she moved he would kill her.<sup>7382</sup>

2632. While being raped, Witness TA saw two other women nearby who were also being raped by the *Interahamwe*.<sup>7383</sup> Nsabimana provided a statement to Des Forges which was consistent with Witness TA's testimony, remarking to Des Forges that during this time, soldiers and others were coming to take away women to rape them and other people were being selected to be killed.<sup>7384</sup>

2633. Witness TA was not acquainted with Shalom prior to encountering him at the BPO. She only knew Ntahobali's given name, Shalom.<sup>7385</sup> However, this does not detract from the reliability of her identification. She learned of the familial relationship between Nyiramasuhuko and Ntahobali from other refugees.<sup>7386</sup> She did not merely identify the Accused as "Shalom," as suggested by the Ntahobali Defence. She identified him as Shalom, the son of Pauline Nyiramasuhuko, who was the Minister of Women's Affairs.<sup>7387</sup> The Chamber is convinced that Witness TA was referring to Shalom Ntahobali throughout her testimony when she referred to "Shalom."

2634. Witness TA also stated that the *Interahamwe* arriving on the Toyota Hilux were holding sticks, while Ntahobali was holding a machete covered in blood and had a hammer on his belt.<sup>7388</sup> Witnesses TK, RE, FAP, QY and QBQ corroborated the fact that the *Interahamwe* arriving with Ntahobali at the BPO were carrying traditional weapons such as machetes, clubs and knives.<sup>7389</sup>

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<sup>7375</sup> T. 25 October 2001 p. 47; T. 30 October 2001 p. 98; T. 31 October 2001 pp. 31, 37, 50-51 (Witness TA).

<sup>7376</sup> T. 25 October 2001 p. 46; T. 31 October 2001 pp. 33-35, 52 (Witness TA).

<sup>7377</sup> T. 25 October 2001 p. 48; T. 31 October 2001 pp. 53, 55; T. 6 November 2001 p. 47 (Witness TA).

<sup>7378</sup> T. 25 October 2001 pp. 48, 52, 55; T. 31 October 2001 p. 55 (Witness TA).

<sup>7379</sup> T. 25 October 2001 p. 52; T. 31 October 2001 pp. 55-59; T. 6 November 2001 pp. 47-48 (Witness TA).

<sup>7380</sup> T. 25 October 2001 pp. 52, 56; T. 31 October 2001 pp. 72-73 (Witness TA).

<sup>7381</sup> T. 31 October 2001 p. 112 (Witness TA).

<sup>7382</sup> T. 25 October 2001 p. 55 (Witness TA).

<sup>7383</sup> T. 25 October 2001 p. 65 (Witness TA).

<sup>7384</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>7385</sup> T. 29 October 2001 p. 45 (Witness TA).

<sup>7386</sup> T. 29 October 2001 p. 45 (Witness TA).

<sup>7387</sup> T. 24 October 2001 pp. 97-98; T. 29 October 2001 p. 45 (Witness TA).

<sup>7388</sup> T. 25 October 2001 p. 47 (Witness TA).

<sup>7389</sup> T. 20 May 2002 p. 75 (Witness TK) (*Interahamwe* carried machetes, clubs and daggers); T. 29 May 2002 p. 21 (Witness SJ) (*Interahamwe* were well armed and carried machetes, clubs with nails in them, known as *ntapongano*, and knives); T. 11 March 2003 p. 50 (Witness FAP) (*Interahamwe* were carrying traditional

2635. The Chamber recalls some apparent inconsistencies in the testimony of Witness TA in relation to her prior statement. Witness TA stated in testimony that she had not been raped anally.<sup>7390</sup> However, she was cross-examined on a prior statement in which she stated that she was raped in her anus as well as her vagina.<sup>7391</sup> The Chamber considers that based upon the obvious intensity of experiencing multiple gang rapes at the hands of *Interahamwe*, this discrepancy is understandable and does not adversely affect the Chamber's credibility assessment of the witness.

2636. Witness TA was very precise in her testimony that on two occasions, there were eight *Interahamwe* who arrived at the BPO with Ntahobali.<sup>7392</sup> She later testified that she could not recall the number of *Interahamwe* accompanying Ntahobali on the fifth and sixth occasions he came to the BPO.<sup>7393</sup> The Chamber accepts that it would have been difficult to count and remember the exact number of assailants at the BPO on each night. Therefore, the Chamber finds her estimate of eight *Interahamwe* on two occasions to be credible.

2637. Witness TA testified that she reported to the authorities in her home *préfecture* that she had been raped by other assailants but did not report the rape by Shalom because he had fled and was out of the country.<sup>7394</sup> Considering the trauma and potential shame associated with these events, the Chamber also accepts this testimony.

2638. The Chamber notes that it may accept hearsay as the basis of knowing Ntahobali's identity.<sup>7395</sup> In addition, the Chamber finds Witness TA's identification of Ntahobali during this event reliable for the following reasons: (1) at times, there was some public lighting from lamp posts that reached the area from the other side of the road; (2) there was moonlight behind the BPO where Witness TA said she was raped by Ntahobali; (3) *Interahamwe* used torches to search through the refugees; and (4) Witness TA provided significant details as to what Ntahobali was carrying, stated what he was wearing, and Ntahobali was in close proximity to Witness TA when he grabbed her hand and raped her. Further, she had also previously seen him in daylight.

2639. Defence Witnesses WUNJN and WUNHE testified that Witness TA could not have been at the BPO during this time period. Witness TA testified that her father died in 1987 and she was therefore living in the home of her uncle when the uncle's home was attacked. She

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weapons: bludgeons, small hoes, knives and machetes); T. 19 March 2003 p. 24 (Witness QY) (*Interahamwe* carried traditional weapons such as machetes and clubs and other weapons); T. 3 February 2004 p. 20 (Witness QBQ) (*Interahamwe* used clubs to attack); T. 3 March 2003 p. 60 (Witness SS) (they had traditional weapons such as machetes and clubs); T. 5 March 2003 p. 62 (Witness SS) (*Interahamwe* carried clubs, machetes and axes and wore civilian clothes); T. 14 October 2002 p. 43 (Witness SU) (*Interahamwe* were armed with machetes, grenades and knives).

<sup>7390</sup> T. 6 November p. 55 (Witness TA).

<sup>7391</sup> Defence Exhibit 7B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA); T. 6 November 2001 p. 53 (Witness TA).

<sup>7392</sup> T. 25 October 2001 pp. 76-77; T. 31 October 2001 pp. 106-107 (Witness TA) (as to the first occasion); T. 29 October 2001 p. 7; T. 1 November 2001 pp. 36-37 (Witness TA) (as to the second occasion).

<sup>7393</sup> T. 1 November 2001 pp. 42, 50-51 (Witness TA).

<sup>7394</sup> T. 31 October 2001 pp. 74-75; T. 1 November 2001 pp. 64, 66 (Witness TA).

<sup>7395</sup> See *Kamuhanda*, Judgement (AC), paras. 232-241.

said that she was then forced to move in with her elder sister.<sup>7396</sup> Witnesses WUNJN and WUNHE testified that Witness TA was living in her parents' home when it was attacked and she was forced to seek refuge in the house of an uncle. However, they named a different person whom they said was her uncle and said she was serving alcoholic drinks at his home.<sup>7397</sup> The Chamber is not convinced that after having narrowly escaped death at the home of her uncle, a fact agreed to by Witnesses WUNJN and WUNHE, Witness TA would present herself at a drinking establishment at night during the events of April to July 1994.

2640. Witness WUNJN also admitted that he confused Witnesses QBP and TA in answering a question as to where Witness QBP had lived.<sup>7398</sup> This renders in doubt the reliability of his memory concerning the crucial issue of Witness TA's location from April to July 1994. In addition, Witness WUNJN's claim that no Tutsis were killed in his *secteur* during the April to July 1994 events is not believable in light of the fact that killing was widespread throughout Butare *préfecture*.<sup>7399</sup> In fact, Witness AND-30 who lived in the same *secteur* as Witness WUNJN<sup>7400</sup> contradicted Witness WUNJN on this point, stating there were killings and the destruction of homes in the *secteur* from late April to mid-May 1994.<sup>7401</sup> Witness WUNJN claimed to have two different family names, one which was on his prior statements and identification card, and a different family name on his travel documents.<sup>7402</sup> Although he explained that he responded to both names, the witness' failure to earlier correct the inaccuracies or incomplete information on his identification sheet further undermines his credibility. For all of these reasons, the Chamber does not find Witness WUNJN to be credible.

2641. Witness WUNHE testified that he saw Witness TA in April and towards the end of May 1994, but did not speak with her.<sup>7403</sup> He acknowledged watching the destruction of her family's home,<sup>7404</sup> but he did not see her after sometime towards the end of May 1994.<sup>7405</sup> Witness WUNHE, who lived in the same *secteur* as Witnesses WUNJN and AND-30, likewise claimed that he never saw any killing of Tutsis in his *secteur* – although he had heard of it and admitted there was insecurity in his home *secteur*.<sup>7406</sup> The Chamber notes that it was never put to Witness TA that the person named by Witnesses WUNJN and WUNHE was her uncle. The Chamber does not consider that Witnesses WUNJN and WUNHE's testimony undermines the credibility of Witness TA.

2642. In addition, Witness WMCZ testified that Witness TA was hiding at Witness WMCZ's cousin's house between early May and late June 1994.<sup>7407</sup> The Chamber notes that Witness

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<sup>7396</sup> T. 29 October 2001 pp. 109-110; T. 30 October 2001 pp. 57-58, 68-69, 73-74 (ICS); T. 1 November 2001 p. 10 (ICS); T. 6 November 2001 p. 81 (Witness TA).

<sup>7397</sup> T. 6 February 2006 pp. 18, 20 (ICS) (Witness WUNJN); T. 7 February 2006 pp. 21, 24 (ICS) (Witness WUNJN); T. 8 December 2005 pp. 65-66 (ICS) (Witness WUNHE).

<sup>7398</sup> T. 7 February 2006 p. 12 (ICS) (Witness WUNJN).

<sup>7399</sup> T. 6 February 2006 p. 41 (ICS); T. 7 February 2006 p. 10 (ICS) (Witness WUNJN).

<sup>7400</sup> T. 21 February 2007 p. 8 (ICS) (Witness AND-30); T. 6 February 2006 pp. 9-11 (ICS) (Witness WUNJN).

<sup>7401</sup> T. 22 February 2007 pp. 5, 57 (Witness AND-30).

<sup>7402</sup> T. 30 January 2006 pp. 22-23 (ICS); T. 7 February 2006 p. 29 (ICS) (Witness WUNJN).

<sup>7403</sup> T. 8 December 2005 p. 69 (ICS); T. 12 December 2005 p. 21 (ICS) (Witness WUNHE).

<sup>7404</sup> T. 12 December 2005 p. 34 (ICS) (Witness WUNHE).

<sup>7405</sup> T. 8 December 2005 pp. 69-70 (ICS); T. 12 December 2005 p. 21 (ICS) (Witness WUNHE).

<sup>7406</sup> T. 12 December 2005 pp. 33-34 (ICS) (Witness WUNHE).

<sup>7407</sup> T. 2 February 2005 pp. 38, 46; *see* T. 2 February 2005 p. 54 (Witness WMCZ) (French).

WMCZ did not see Witness TA during this time period and his knowledge was based upon hearsay. Further, this hearsay was uncorroborated as Witness WMCZ's cousin was not the same person in whose home Witnesses WUNJN and WUNHE suggested Witness TA had sheltered between April and the end of May 1994. Moreover, during Witness TA's cross-examination, it was never put to her that she was not at the BPO when she had claimed to be there. Therefore, the Chamber does not consider Witness WMCZ's testimony to undermine Witness TA's credibility as to her experiences at the BPO.

2643. The Chamber recalls its analysis of the Accused's alibis for mid-May 1994. The Chamber found that even if true, Nyiramasuhuko's assertion that she was in Murambi until 1 June 1994 for government meetings does not raise a reasonable doubt as to Nyiramasuhuko's presence in Butare due to the relatively close proximity of Murambi to Butare. Furthermore, Nyiramasuhuko admitted to being present in Butare on 14 to 16 May 1994. She claimed to be bed-ridden with malaria, although the Chamber did not find her credible in this respect. Ntahobali's alibi for this time period was that he stayed at Hotel Ihuliro operating the generator at Hotel Ihuliro. The Chamber did not find this alibi to be credible. Therefore, neither alibi raises a reasonable doubt as to the culpability of the Accused for crimes at the BPO around mid-May 1994.

2644. The Chamber finds the Prosecution has proven beyond a reasonable doubt through the testimony of Witness TA that one night in mid-May 1994, Nyiramasuhuko, Ntahobali and about 10 *Interahamwe* came to the BPO aboard a camouflaged pickup. Nyiramasuhuko ordered the *Interahamwe* to force Tutsi refugees onto the pickup. Ntahobali and about eight other *Interahamwe* raped Witness TA. Some of the *Interahamwe* raped two other Tutsi women. The pickup left the BPO, abducting Tutsi refugees in the process, some of whom were forced to undress as alleged in Paragraphs 6.30 and 6.31 of the Nyiramasuhuko and Ntahobali Indictment.

#### 3.6.19.4.6.1 Attacks 7 and 11 Days Later

2645. In addition to the above incident, Witness TA testified that seven days after the first attack, which corresponds with the third week of May 1994, the *Interahamwe* arrived at the BPO in the same vehicle and started beating, cutting with machetes and killing people.<sup>7408</sup> Ntahobali woke up Witness TA, dragged and pushed her behind the BPO and raped her.<sup>7409</sup> He hit her with a hammer, causing her head to swell.<sup>7410</sup> By this time, Witness TA had previously seen Ntahobali. Furthermore, she was close enough to Ntahobali to identify him as they were in direct contact.<sup>7411</sup>

2646. Witness TA was confronted with a prior statement in which she said she was in view of the other refugees when she was raped on this occasion. She maintained in her testimony that she was taken behind the BPO.<sup>7412</sup> At the same time, the *Interahamwe* took six other women

<sup>7408</sup> T. 25 October 2001 pp. 67-68; T. 31 October 2001 pp. 86-87, 90-91 (Witness TA).

<sup>7409</sup> T. 25 October 2001 pp. 67, 69, 77; T. 31 October 2001 pp. 93-97 (Witness TA).

<sup>7410</sup> T. 25 October 2001 p. 67; T. 31 October 2001 p. 96; T. 5 November 2001 pp. 129-130 (Witness TA).

<sup>7411</sup> *Niyitegeka*, Judgement (AC), paras. 100-101.

<sup>7412</sup> T. 5 November 2001 pp. 125-129 (Witness TA); Defence Exhibit 7B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA).



and raped them near her.<sup>7413</sup> She stated that the number of refugees had been reduced by this time due to the daily killings by the *Interahamwe*.<sup>7414</sup>

2647. Witness TA testified that during one of the rapes, Ntahobali hit her on the face with a hammer.<sup>7415</sup> In a prior statement, she said that Ntahobali only showed her the hammer and did not hit her. She acknowledged in testimony that the prior statement was incorrect and that she did in fact suffer a blow from the hammer. She said that the investigator taking the statement may have misunderstood her and thought that she did not suffer a blow since the injury was minor.<sup>7416</sup> The Chamber considers that this is a minor discrepancy.

2648. Four days later, at night, a group of eight *Interahamwe* including Shalom arrived in the same vehicle and started beating and cutting up people at the BPO.<sup>7417</sup> Shalom came to the BPO and gave Witness TA to a group of seven *Interahamwe* who dragged her to the same location, removed her clothes and raped her.<sup>7418</sup> He told them to do it quickly so that the *Inkotanyi* would not get to a roadblock first.<sup>7419</sup> While she was being raped, she saw Shalom raping a girl named Caritas who was being raped about five to six metres away from her.<sup>7420</sup> These men were armed with machetes, hammers, clubs, big sticks and Rwandan clubs (clubs with nails in them).<sup>7421</sup> Although the Chamber will not convict Ntahobali for the rape of Caritas, the details of her rape provide circumstantial evidence to support the fact that *Interahamwe* and Ntahobali raped many women, including Witness TA at the BPO.

2649. By this time, Witness TA had already suffered the same treatment at the hands of Ntahobali. Witness TA was again in contact with Ntahobali as he handed her over to a group of *Interahamwe*. Therefore, the Chamber considers this identification to be reliable.<sup>7422</sup>

2650. Witness SD corroborated important aspects of each of these attacks. She testified that during her stay at the BPO, each night a vehicle covered with mud would come to fetch people.<sup>7423</sup> Witness SD was told that Shalom, the son of Nyiramasuhuko, drove the vehicle, although she did not see him.<sup>7424</sup> The *Interahamwe* who were present and who took people to vehicles told them that if Shalom were to come he would deliver them to their death.<sup>7425</sup> Girls and women were taken away to be raped and other people were taken away and never seen again.<sup>7426</sup>

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<sup>7413</sup> T. 25 October 2001 p. 71; T. 31 October 2001 p. 101 (Witness TA).

<sup>7414</sup> T. 31 October 2001 p. 93 (Witness TA).

<sup>7415</sup> T. 25 October 2001 p. 67; T. 31 October 2001 p. 96; T. 5 November 2001 p. 128 (Witness TA).

<sup>7416</sup> T. 5 November 2001 pp. 128-130 (Witness TA); Defence Exhibit 7B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA).

<sup>7417</sup> T. 25 October 2001 pp. 76-77; T. 31 October 2001 p. 106 (Witness TA).

<sup>7418</sup> T. 25 October 2001 pp. 75-76, 79; T. 31 October 2001 pp. 105, 111; T. 6 November 2001 pp. 9, 12-13 (Witness TA).

<sup>7419</sup> T. 25 October 2001 p. 76 (Witness TA).

<sup>7420</sup> T. 25 October 2001 pp. 81, 83 (Witness TA).

<sup>7421</sup> T. 25 October 2001 p. 78 (Witness TA).

<sup>7422</sup> *Niyitegeka*, Judgement (AC), paras. 100-101.

<sup>7423</sup> T. 17 March 2003 pp. 9-10 (Witness SD).

<sup>7424</sup> T. 17 March 2003 pp. 9-10 (Witness SD).

<sup>7425</sup> T. 17 March 2003 pp. 9, 18 (Witness SD).

<sup>7426</sup> T. 17 March 2003 p. 10 (Witness SD).

2651. Witness SD said before she left towards Kibilizi, Shalom attacked the BPO, and when she got back from Kibilizi, the attacks continued.<sup>7427</sup> Kibilizi *secteur* is on the road to Nyange *secteur* in Nyaruhengeri *commune*.<sup>7428</sup> Therefore, Witness SD testified that there were attacks by Shalom both prior to and after the transfer to Nyange in early June 1994. The Chamber is convinced that Witness SD was at the BPO prior to the Nyange transfer in early June 1994. While her testimony was not specific as to what occurred during each attack, she identified the distinctive features of the vehicle, namely that it was covered in mud and contained Nyiramasuhuko, Ntahobali and *Interahamwe*. Therefore, her testimony provides corroboration for Witness TA's testimony as to the attacks by Ntahobali.

2652. Ntahobali's alibi for this time period was that he stayed at Hotel Ihuliro operating the generator at Hotel Ihuliro. The Chamber did not find this alibi to be credible. Therefore, Ntahobali's alibi does not raise a reasonable doubt as to his presence at the BPO around 7 and 11 days after the first attack in mid-May 1994.

2653. The Chamber finds the Prosecution has proven beyond a reasonable doubt that around 7 and 11 days after the first attack in mid-May 1994, Ntahobali and *Interahamwe* came to the BPO on two more occasions. Ntahobali violently raped Witness TA, hitting her on the head with a hammer. *Interahamwe*, following the orders of Ntahobali, raped six other women. In a subsequent attack during this same time period, Ntahobali ordered about seven other *Interahamwe* to rape Witness TA.

#### 3.6.19.4.7 End of May to Early June 1994 – Night of Three Attacks

##### 3.6.19.4.7.1 Testimony Relevant to This Time Period

2654. As a preliminary matter, the Chamber notes that Witnesses TK, SU, RE, SS, FAP, QBP, QBQ and SJ provided testimony relevant to the time period from the end of May to the beginning of June 1994.

2655. Witnesses SS, SU and TK testified that they arrived at the BPO towards the end of May 1994 and they left the BPO when they were transferred to Rango.<sup>7429</sup> Witness TK testified that she arrived at the BPO after the attempted transfer of Tutsi refugees to Nyange.<sup>7430</sup> Therefore all of her testimony pertains to events from the beginning of June 1994. Witness SU also testified the first attack she observed started on a Friday after she had arrived at the BPO.<sup>7431</sup> This would place the date in June 1994. In addition, Witness QJ testified as to the abduction of Mbasha's wife which he said occurred at the end of May 1994.<sup>7432</sup>

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<sup>7427</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>7428</sup> Prosecution Exhibit 1 (Map of Butare).

<sup>7429</sup> T. 20 May 2002 pp. 28-29, 101 (Witness TK); T. 21 May 2002 pp. 121-122 (ICS) (Witness TK); T. 22 May 2002 p. 120 (Witness TK); T. 14 October 2002 p. 8 (Witness SU); T. 15 October 2002 p. 73 (Witness SU); T. 21 October 2002 p. 35 (Witness SU); T. 22 October 2002 pp. 83-85 (Witness SU); T. 3 March 2003 pp. 24, 26, 36-37, 67 (Witness SS); T. 10 March 2003 p. 28 (Witness SS).

<sup>7430</sup> T. 23 May 2002 pp. 51-52; T. 23 May 2002 p. 62 (Witness TK) (French) (for spelling of "Nyange").

<sup>7431</sup> T. 14 October 2002 p. 30 (Witness SU).

<sup>7432</sup> T. 8 November 2001 pp. 158, 162; T. 12 November 2001 p. 123 (Witness QJ).

2656. Witness FAP testified that she arrived at the BPO in May.<sup>7433</sup> However, she only testified as to one night of attacks that occurred at the BPO and this was the only night she saw Nyiramasuhuko.<sup>7434</sup> The details of her testimony were corroborated in relevant part by Witnesses SS, SU and TK regarding a night of three attacks, including the survival of a refugee named Semanyenzi.<sup>7435</sup> Therefore, the Chamber considers Witness FAP's testimony pertained to this same attack.

2657. Furthermore, Witnesses RE and QBP testified that the attacks led by Nyiramasuhuko and Ntahobali occurred *after* the attempted transfer to Nyange.<sup>7436</sup> Although Witnesses RE and QBP both said that they arrived in Butare in April 1994,<sup>7437</sup> this night after Nyange was the only attack they described in testimony. The Chamber is convinced they were referring to the same night of three attacks as described by Witnesses SS, SU and TK.

2658. Moreover, the only attack at the BPO described by Witness QBQ involved the abduction and escape of Semanyenzi.<sup>7438</sup> Witnesses RE, SS, SU and FAP each testified that a man named Semanyenzi was abducted on the night of three attacks at the BPO which occurred around the beginning of June 1994.<sup>7439</sup> Therefore, the Chamber is convinced that Witness QBQ's testimony also pertains to this event at the beginning of June 1994.

2659. Finally, Witness SJ testified that the attacks started at the BPO around the end of April or beginning of May 1994. She estimated that she stayed at the BPO only 3 weeks before the departure to Rango, and that the transfer to Nyange occurred at the end of April or beginning of May 1994.<sup>7440</sup> These estimations were inaccurate on two counts: (1) the refugees were transferred to Rango sometime in June 1994 (), which was two months after Witness SJ said she had arrived at the BPO, not three weeks as she estimated; (2) the transfer to Nyange occurred in June 1994 (), one month after she said that it occurred. Therefore, her estimation of the dates of these events was not reliable. Nonetheless, Witness SJ testified as to a night in which three attacks occurred at the BPO. She described the abduction of a woman and her children and the abduction and survival of two refugees named Annonciata and Semanyenzi.<sup>7441</sup> These events were also described by Witnesses TK, QJ, SS, SU and FAP. Each of these witnesses said this attack occurred around the end of May or early June 1994. Therefore, the Chamber is convinced that this portion of Witness SJ's testimony pertained to this same attack.

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<sup>7433</sup> T. 12 March 2003 p. 42 (Witness FAP).

<sup>7434</sup> T. 12 March 2003 p. 52 (Witness FAP).

<sup>7435</sup> T. 11 March 2003 pp. 57, 60; T. 13 March 2003 pp. 6, 36-37 (Witness FAP).

<sup>7436</sup> T. 24 October 2002 p. 84 (Witness QBP); T. 28 October 2002 pp. 71, 74 (Witness QBP); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 25 February 2003 p. 39 (Witness RE); T. 27 February 2003 p. 5 (Witness RE).

<sup>7437</sup> T. 29 October 2002 pp. 31-32, 82-83 (ICS) (Witness QBP); T. 24 February 2003 p. 9 (Witness RE); T. 25 February 2003 pp. 3-4 (Witness RE).

<sup>7438</sup> T. 3 February 2004 pp. 63, 70-71 (Witness QBQ).

<sup>7439</sup> T. 24 February 2003 p. 22 (Witness RE); T. 25 February 2003 pp. 51-54 (Witness RE); T. 5 March 2003 p. 77 (Witness SS); T. 11 March 2003 pp. 18, 20 (ICS) (Witness SS); T. 11 March 2003 p. 18 (Witness SS); T. 14 October 2002 pp. 36, 41, 43-44, 46 (Witness SU); T. 15 October 2002 p. 16 (ICS) (Witness SU); T. 17 October 2002 pp. 34-35 (Witness SU); T. 21 October 2002 pp. 18, 25-26 (Witness SU); T. 11 March 2003 pp. 57, 60 (Witness FAP); T. 13 March 2003 pp. 6, 36-37 (Witness FAP).

<sup>7440</sup> T. 29 May 2002 pp. 65, 68; T. 4 June 2002 p. 84 (Witness SJ).

<sup>7441</sup> T. 29 May 2002 pp. 26, 34-36; T. 29 May 2002 pp. 133-134 (ICS); T. 3 June 2002 pp. 20, 24 (Witness SJ); *see* T. 29 May 2002 p. 151 (HC) (Witness SJ) (French) (for spelling of "Annonciata").

2660. Witnesses TK, SJ, SU, RE, SS, FAP and QBQ testified that Ntahobali, Nyiramasuhuko and *Interahamwe* attacked the BPO on multiple occasions in a single night.<sup>7442</sup> Although Witnesses SU and QBQ testified that they had observed only two attacks,<sup>7443</sup> a number of refugees had fled the immediate environs of the BPO after the first two attacks.<sup>7444</sup> Based on the other significant corroborative details (discussed below), the Chamber is convinced that Witnesses SU and QBQ were also referring to the same night at the BPO in which three attacks were perpetrated.

2661. Witnesses TK, QJ, SU, SS and FAP provided a similar timeline as to the date of the attacks.<sup>7445</sup> Based upon this testimony, the Chamber is convinced that this particular night of three attacks, including the attack on Mbasha's wife and her children, occurred around the end of May or beginning of June 1994.

#### 3.6.19.4.7.2 Identification of Ntahobali

2662. As to the events of this night, the Chamber finds Witness TK's testimony particularly convincing. Witness TK testified that on this evening at around 7.00 p.m. or 7.30 p.m.,<sup>7446</sup> Ntahobali and Nyiramasuhuko came to the BPO on three occasions aboard a camouflaged Toyota Hilux with an open back.<sup>7447</sup> It was driven by Shalom and parked on one side of the national flag pole at the BPO.<sup>7448</sup> She knew it was Shalom because the people at the BPO had said his name.<sup>7449</sup> *Interahamwe* carried weapons such as machetes, clubs and daggers.<sup>7450</sup> The *Interahamwe* forced refugees to board the Hilux truck and killed some of them on the spot.<sup>7451</sup>

2663. Witnesses TA, QJ, QBQ, QBP and RE each described the pickup as a Toyota or a Toyota Hilux.<sup>7452</sup> Witnesses TK, QBP, FAP and SD did not describe the model of the vehicle,

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<sup>7442</sup> T. 20 May 2002 p. 96 (Witness TK); T. 29 May 2002 pp. 55, 57, 59 (Witness SJ); T. 17 October 2002 p. 71 (Witness SU); T. 24 February 2003 pp. 19-22 (Witness RE); T. 25 February 2003 pp. 46, 48 (Witness RE); T. 3 March 2003 p. 48 (Witness SS); T. 4 March 2003 p. 3 (Witness SS); T. 12 March 2003 pp. 13, 16, 52 (Witness FAP); T. 3 February 2004 pp. 21-22 (Witness QBQ).

<sup>7443</sup> T. 14 October 2002 p. 42 (Witness SU); T. 3 February 2004 pp. 21-22 (Witness QBQ).

<sup>7444</sup> See, e.g., T. 14 October 2002 p. 67 (Witness SU) (Witness SU testified that refugees tried to run away to the back of the BPO, some climbing up trees and other hiding under wrecked cars. The refugees only returned from hiding the next day).

<sup>7445</sup> T. 8 November 2001 pp. 158, 162; T. 12 November 2001 p. 123 (Witness QJ) (occurred at the end of May); T. 14 October 2002 pp. 8, 30 (Witness SU) (occurred on a Friday after 28 May 1994); T. 3 March 2003 pp. 36-37 (Witness SS) (occurred after she arrived at the BPO on 27 May 1994); T. 11 March 2003 pp. 46, 48 (Witness FAP) (estimated it occurred around the end of May); T. 20 May 2002 pp. 83-86, 96 (Witness TK) (night of three attacks was the same night that Mbasha's wife and children were abducted from the BPO around the end of May 1994). Witnesses QY and QBQ did not testify as to the abduction of Mbasha's wife and children. This is not surprising since they did not admit to knowing her.

<sup>7446</sup> T. 23 May 2002 p. 44 (Witness TK).

<sup>7447</sup> T. 20 May 2002 pp. 73-74; T. 23 May 2002 p. 47 (Witness TK).

<sup>7448</sup> T. 20 May 2002 pp. 73-74; T. 23 May 2002 p. 48 (Witness TK).

<sup>7449</sup> T. 20 May 2002 p. 74; T. 23 May 2002 p. 87 (Witness TK).

<sup>7450</sup> T. 20 May 2002 p. 75 (Witness TK).

<sup>7451</sup> T. 20 May 2002 p. 91; T. 22 May 2002 pp. 73, 77 (Witness TK).

<sup>7452</sup> T. 29 October 2001 pp. 46-47 (Witness TA) (assailants arrived in a Hilux pickup); T. 8 November 2001 pp. 146-147 (Witness QJ) (it was a white Toyota pickup truck); T. 3 February 2004 pp. 10, 20, 53, 55 (Witness QBQ) (it was a white-coloured Toyota pickup); T. 24 October 2002 pp. 84-85, 88, 97-99 (Witness QBP); T. 28 October 2002 pp. 80, 82 (Witness QBP); T. 29 October 2002 pp. 10-12, 16-17 (Witness QBP) (double-cabin Toyota

but nonetheless corroborated the accounts that the vehicle was a pickup with an open back and was camouflaged.<sup>7453</sup> Several other witnesses described a pickup of a different make. Witnesses SJ and SS described a Peugeot pickup and Witnesses SS and SU testified that the pickup belonged to a man named Rwamukwaya.<sup>7454</sup> Nonetheless, the description of the vehicle as a pickup that was camouflaged was largely consistent between all of these witnesses. Therefore, the Chamber does not consider the description of several different pickups makes which were used in the perpetration of these crimes to be contradictory.

2664. Witnesses TK, RE, SS, FAP, SD, QY and QBQ testified that Ntahobali was driving the vehicle.<sup>7455</sup> Ntahobali stated that he did not have a driver's licence and did not know how to drive a car.<sup>7456</sup> He claims therefore that the Prosecution witnesses could not have seen him driving the camouflaged Hilux.<sup>7457</sup> Denise Ntahobali, Nyiramasuhuko, Clarisse Ntahobali, Céline Nyiraneza and Witness WBUC all testified as to Ntahobali's inability to drive and his lack of a vehicle.<sup>7458</sup>

2665. The evidence presented that Ntahobali never owned a car<sup>7459</sup> was contradicted at trial. Ntahobali testified that he purchased a vehicle in 1993 with another person at an auction and that it was registered in Ntahobali's name.<sup>7460</sup> He admitted that he went to the Butare border to

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pickup followed Nyiramasuhuko's vehicle); T. 24 February 2003 pp. 19, 21 (Witness RE) (they came aboard a Toyota vehicle covered with mud and cow dung and without a frame in the back).

<sup>7453</sup> T. 23 May 2002 p. 47 (Witness TK) (truck had an open back, but because the event occurred at night she could not determine the make or colour of the vehicle); T. 24 October 2002 p. 85 (Witness QBP); T. 28 October 2002 pp. 79-80, 82, 86 (Witness QBP) (Nyiramasuhuko arrived one night on board a camouflaged vehicle that Witness QBP heard was smeared with old motor oil or cow dung); T. 28 October 2002 pp. 80-81 (Witness QBP) (vehicle was closed on all sides); T. 11 March 2003 pp. 48, 60 (Witness FAP); T. 12 March 2003 p. 51 (Witness FAP) (it was a black camouflage coloured vehicle covered with mud or something that looked black and like chocolate); T. 17 March 2003 pp. 9-10 (Witness SD) (it was a vehicle covered with mud).

<sup>7454</sup> T. 29 May 2002 pp. 19-20 (Witness SJ); T. 3 June 2002 p. 125 (Witness SJ) (describing a white Peugeot pickup covered with cow dung); T. 3 March 2003 p. 48 (Witness SS); T. 5 March 2003 p. 77 (Witness SS) (saw Nyiramasuhuko arrive at the BPO in a pickup belonging to Rwamukwaya, covered with mud and black paint, and without a metal frame at the back); T. 14 October 2002 pp. 31, 39, 52 (Witness SU); T. 15 October 2002 p. 86 (Witness SU); T. 17 October 2002 pp. 26-27 (Witness SU) (saw Nyiramasuhuko arrive aboard a Toyota Hilux pickup that was covered in cow dung or some kind of dark grease); T. 14 October 2002 p. 31 (Witness SU) (vehicle belonged to a man named Rwamukwaya).

<sup>7455</sup> T. 20 May 2002 pp. 74, 95 (Witness TK) (Shalom drove the vehicle); T. 24 February 2003 p. 21 (Witness RE) (it was driven by Shalom); T. 3 March 2003 pp. 48-49 (Witness SS) (driver was an *Interahamwe* who others identified as Shalom); T. 11 March 2003 p. 48 (Witness FAP); T. 12 March 2003 p. 52 (Witness FAP) (Shalom was driving the vehicle); T. 17 March 2003 pp. 9-10 (Witness SD) (Witness SD was told that Shalom, the son of Nyiramasuhuko, drove the vehicle, although she did not see him); T. 19 March 2003 pp. 22-24 (Witness QY); T. 20 March 2003 p. 41 (Witness QY) (saw a vehicle driven by someone named Shalom arrive at the BPO); T. 3 February 2004 pp. 10, 21-22, 90 (Witness QBQ) (Nyiramasuhuko sat in the cabin of the vehicle and Shalom drove; the vehicle later returned, driven by Shalom).

<sup>7456</sup> T. 21 June 2006 pp. 68-69; T. 22 June 2006 pp. 42-43; T. 22 June 2006 pp. 45, 47 (ICS) (Ntahobali).

<sup>7457</sup> Ntahobali Closing Brief, Appendix 3, para. 68.

<sup>7458</sup> T. 13 June 2005 pp. 15, 35-36 (Denise Ntahobali); T. 12 October 2005 p. 19 (Nyiramasuhuko) (The English translation ("drove her in a car in 1993 and 1994") is erroneous; see T. 12 October 2005 p. 24 (Nyiramasuhuko) (French) (*Q: Est-ce qu'à votre connaissance ... Ntahobali savait conduire une automobile en 94 et en 93?*)); T. 10 February 2005 p. 12 (Clarisse Ntahobali); T. 28 February 2005 p. 16 (Céline Nyiraneza); T. 2 June 2005 p. 39 (ICS) (Witness WBUC).

<sup>7459</sup> T. 28 February 2005 p. 16 (Céline Nyiraneza).

<sup>7460</sup> T. 21 June 2006 pp. 56-57 (Ntahobali); see also Prosecution Exhibit 179 (Ntahobali Interview with the Prosecution, 24-26 July 1997) pp. 15-16.

purchase Amstel beer.<sup>7461</sup> In addition, based on Ntahobali's recorded interview of 24 and 27 July 1997, the Prosecution asked Ntahobali whether he owned a Daihatsu pickup that was white in colour.<sup>7462</sup> Ntahobali repeatedly pointed to errors in other areas of the transcript of the statement, asked to hear the tape several times, and pointed to errors in translation unrelated to the type and colour of the vehicle.<sup>7463</sup> In the end, he did not answer whether his prior statement that the vehicle was a white Daihatsu pickup was correct. The Chamber finds this evasiveness to undercut his credibility on this issue. Furthermore, the fact that Denise Ntahobali, Clarisse Ntahobali and Céline Nyiraneza all testified that Ntahobali did not own a vehicle was refuted by Ntahobali himself shows their testimony to be unreliable on this point.

2666. Not only was Ntahobali seen driving a pickup to the BPO, Ntahobali was also seen driving on multiple occasions throughout the rest of Ngoma town. Witness FA saw Ntahobali on several occasions driving a white vehicle described by others as a Hilux that was stained with mud and had no metal bars at the rear for the tarpaulin.<sup>7464</sup> Witness TG saw Ntahobali driving a Peugeot 504 pickup that was originally white but was soiled on the side in a kind of camouflage. Witness TG had seen that vehicle before April 1994 and knew it had belonged to a businessman called Rwamukwaya who was Tutsi.<sup>7465</sup> Witness TQ saw Shalom driving his mother, Pauline Nyiramasuhuko, in a Peugeot pickup truck that belonged to a man named Rwamukwaya.<sup>7466</sup> Likewise, Witness D-2-13-O saw Shalom, the son of Maurice Ntahobali, move about town on several occasions in a Rwamukwaya-owned Peugeot 504.<sup>7467</sup> Finally, Witness D-13-D saw Ntahobali on numerous occasions when the witness drove his car through Butare town between April and July 1994.<sup>7468</sup> He saw Ntahobali moving about Butare town driving a Peugeot 504 pickup that belonged to Rwamukwaya.<sup>7469</sup> The Peugeot 504 was covered with grease and dust which gave it a camouflage colour.<sup>7470</sup> This substantial evidence rebuts Ntahobali's claim that he did not know how to drive and that it could not have been him driving the pickup to the BPO.

2667. Although Witness TK did not know Ntahobali prior to the April to July 1994 events, she based her identification of Ntahobali at the BPO on a conversation she observed between Ntahobali and Mbasha's wife. Witness TK had not known Mbasha's wife until that day.<sup>7471</sup> She learned this woman's identity when a group of refugees arrived at the BPO, including a bald, fair-coloured, tall man and his family.<sup>7472</sup> Other refugees at the BPO and some officials who were in front of the BPO called the man Mbasha.<sup>7473</sup>

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<sup>7461</sup> T. 21 June 2006 pp. 59, 66 (Ntahobali).

<sup>7462</sup> T. 21 June 2006 pp. 70-73 (Ntahobali); Prosecution Exhibit 179 (Ntahobali Interview with the Prosecution, 24-26 July 1997).

<sup>7463</sup> T. 21 June 2006 pp. 71, 73-75 (Ntahobali).

<sup>7464</sup> T. 30 June 2004 pp. 60, 62-63 (ICS) (Witness FA).

<sup>7465</sup> T. 30 March 2004 pp. 63-64 (Witness TG).

<sup>7466</sup> T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>7467</sup> T. 5 November 2007 pp. 58-60; T. 12 November 2007 p. 53 (Witness D-2-13-O).

<sup>7468</sup> T. 14 February 2008 p. 64 (Witness D-13-D).

<sup>7469</sup> T. 14 February 2008 pp. 64-65 (Witness D-13-D).

<sup>7470</sup> T. 14 February 2008 p. 65 (Witness D-13-D); *see also* Defence Exhibit 477 (Nsabimana) (BBC Footage) at 24:56 (illustrating a Peugeot 504); T. 27 September 2006 p. 89 (Keane) (stating such a vehicle was a pickup).

<sup>7471</sup> T. 20 May 2002 p. 80 (Witness TK).

<sup>7472</sup> T. 20 May 2002 pp. 62-63; T. 23 May 2002 pp. 21-22 (Witness TK).

<sup>7473</sup> T. 20 May 2002 p. 63 (Witness TK).

2668. Witness TK said that upon arriving at the BPO during the first attack, Shalom approached Mbasha's wife and asked her if she knew him. She answered: "Yes, I do know you. You are Shalom. You are the one that was usually sent to the pharmacy to buy drugs and I was in the same school, the same bench as your mother, Pauline."<sup>7474</sup> Shalom asked Mbasha's wife which of the two children who accompanied her was the girl and said that he would make the child his wife, to which Mbasha's wife answered, "no, that's out of question [*sic*] because these are still children"<sup>7475</sup> Then Shalom asked Mbasha's wife to go to the truck, telling her not to be afraid and that nothing bad would happen to her.<sup>7476</sup> Witness TK also said the *Interahamwe* surrounded Ntahobali and called him "*Shalom, chef*."<sup>7477</sup> Witness TK did not hear the surnames of the Accused. Nonetheless, the Accused were identified in relation to one another as mother and son named Pauline and Shalom. Other women at the BPO had pointed out Nyiramasuhuko to Witness TK during a daytime meeting.<sup>7478</sup> The refugee women were surprised to see Pauline there and used her first name to identify her.<sup>7479</sup>

2669. Witness TK said that she wore glasses since 1987, but that she was not wearing her glasses during her time at the BPO.<sup>7480</sup> She said her near-sightedness was not so bad as to prevent her from identifying people in the courtroom even without her glasses.<sup>7481</sup> While the refugees, including Mbasha's wife and children, were being loaded into the vehicle, Witness TK was standing near the front of the BPO, hiding behind the trees and was able to see all that the *Interahamwe* did.<sup>7482</sup> For this reason, the Chamber considers she was close enough to identify Ntahobali even without her glasses.

2670. Asked why she had not mentioned Professor Mbasha in her prior statements, Witness TK stated that she mentioned Mbasha but that she had not known previously that he was a professor.<sup>7483</sup> If Mr. Mbasha had not been discussed in a prior statement it was because that issue was not raised in the course of the interview.<sup>7484</sup> If she realised Mr. Mbasha had not appeared in her prior statements, she would have raised the issue earlier.<sup>7485</sup> Witness TK gave more information in her testimony as to Mrs. Mbasha because she spent more time with her. She saw Mrs. Mbasha suffer a great deal.<sup>7486</sup>

2671. The Chamber notes that in Witness TK's statement of 12 November 1996, she described in detail the conversation between Mbasha's wife and Shalom, and described the abduction of Mbasha's children.<sup>7487</sup> Although Witness TK did not mention Professor Mbasha in this statement, she only discussed him in testimony when asked how she knew Mbasha's

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<sup>7474</sup> T. 20 May 2002 pp. 76-77 (Witness TK).

<sup>7475</sup> T. 20 May 2002 p. 81 (Witness TK).

<sup>7476</sup> T. 20 May 2002 p. 83 (Witness TK).

<sup>7477</sup> T. 23 May 2002 p. 93 (Witness TK).

<sup>7478</sup> T. 20 May 2002 p. 40 (Witness TK).

<sup>7479</sup> T. 22 May 2002 pp. 52, 59-60 (Witness TK).

<sup>7480</sup> T. 27 May 2002 pp. 41-42 (Witness TK).

<sup>7481</sup> T. 27 May 2002 p. 43 (Witness TK).

<sup>7482</sup> T. 20 May 2002 p. 90 (Witness TK).

<sup>7483</sup> T. 21 May 2002 p. 131 (Witness TK).

<sup>7484</sup> T. 22 May 2002 pp. 15-17, 21 (Witness TK).

<sup>7485</sup> T. 22 May 2002 p. 23 (Witness TK).

<sup>7486</sup> T. 22 May 2002 p. 25 (Witness TK).

<sup>7487</sup> Defence Exhibit 44 (Nyiramasuhuko and Ntahobali) (12 November 1996, Statement of Witness TK).

wife. The Chamber accepts Witness TK's explanation of this apparent omission from her prior statement.

2672. In addition, Witnesses QJ, SJ, RE and WKKTD corroborated some of the details of the conversation between Mbasha's wife and Ntahobali.

2673. Witnesses SJ and RE corroborated the occurrence of the conversation between Ntahobali and a woman who was seated on the veranda. Witness SJ testified that Ntahobali asked the woman, "[d]o you know me?", to which the woman replied, "[y]es, I know you .... You are the son of Nyiramasuhuko, and I was in the same school as your mother." Witness SJ said that Ntahobali acknowledged that the woman was correct, *i.e.* that he was in fact Ntahobali, and promised the woman to bring her and her children to a safe place if she accepted that her 12-year-old daughter became his wife.<sup>7488</sup> Ntahobali was sitting on the veranda and had placed his foot on Witness SJ.<sup>7489</sup> Witness SJ said the woman and her children had arrived with religious sisters from the parish the same day she was abducted, but she did not mention a tall, bald man.<sup>7490</sup>

2674. Witness RE corroborated that a woman was sleeping on the BPO veranda with her children and resisted the assailants.<sup>7491</sup> Shalom told her: "We're not going to kill you. We, rather, wanted to take you to Pauline who is in the vehicle so she can go and hide you."<sup>7492</sup> Although Witness RE also did not mention a tall, bald man, the other details she provided were similar to those recounted by Witnesses SJ and TK.

2675. Witness QJ corroborated the occurrence of the abduction.<sup>7493</sup> Moreover, he testified that he knew the Mbasha family because Mbasha was a customer at Hotel Faucon and would sometimes bring his wife and children.<sup>7494</sup> Witness QJ said that Mbasha's wife used to work in a pharmacy and estimated that she was 35 years old in 1994.<sup>7495</sup> Witness WKKTD testified that he knew the Mbashas and that in 1994, Mbasha's wife worked at the Bupharma pharmacy in Butare town.<sup>7496</sup> Therefore, two other witnesses verified that Mbasha's wife worked at a pharmacy, lending credence to the veracity of Witness TK's account that Mbasha's wife said she knew Ntahobali because he was sent to the pharmacy to buy drugs.

2676. Each of the witnesses was on the BPO veranda observing these events in close proximity. Even if the lighting conditions were not ideal, the witnesses did not need light to hear the conversation between Mbasha's wife and Ntahobali. In any event, Witness SJ said there was a full moon that night.<sup>7497</sup> Further, Witness TK testified that she had also seen Ntahobali during the day on a few occasions.<sup>7498</sup>

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<sup>7488</sup> T. 29 May 2002 pp. 27-28, 30-31 (Witness SJ).

<sup>7489</sup> T. 29 May 2002 p. 31 (Witness SJ).

<sup>7490</sup> T. 3 June 2002 p. 18 (Witness SJ).

<sup>7491</sup> T. 24 February 2003 p. 19; T. 26 February 2003 pp. 27, 30 (Witness RE).

<sup>7492</sup> T. 24 February 2003 p. 19; T. 25 February 2003 pp. 46-47; T. 26 February 2003 pp. 30-31 (Witness RE).

<sup>7493</sup> T. 8 November 2001 pp. 154-155 (Witness QJ).

<sup>7494</sup> T. 12 November 2001 pp. 69, 71 (ICS) (Witness QJ).

<sup>7495</sup> T. 12 November 2001 pp. 71, 89 (ICS) (Witness QJ).

<sup>7496</sup> T. 7 February 2005 p. 37 (Witness WKKTD).

<sup>7497</sup> T. 30 May 2002 pp. 150-151 (Witness SJ).

<sup>7498</sup> T. 23 May 2002 pp. 89-90 (Witness TK).



2677. Witness TK's husband is Witness QJ whom she met and married after the war.<sup>7499</sup> She testified that they never discussed their testimony before the Tribunal because it would not have helped them in any way.<sup>7500</sup> When asked whether she described Mbasha's wife's clothing based on discussions with her husband, Witness TK stated she did not know whether her husband had even seen Mbasha's wife because they did not discuss it.<sup>7501</sup> The Chamber does not find it credible that Witness TK did not discuss with her husband the events of 1994 or the fact that she was coming to testify in Arusha. Nonetheless, based on the significantly detailed nature of her testimony and the corroboration of numerous elements of her testimony by other witnesses, the Chamber does not find this issue to undermine Witness TK's credibility as a whole.

2678. The Ntahobali Defence asserts that the identification evidence of Ntahobali at the BPO was not reliable, in part, because it was based on hearsay.<sup>7502</sup>

2679. The Chamber recalls as a matter of law that the identification of an accused at the scene of a crime may be based on hearsay evidence.<sup>7503</sup> In *Kamuhanda*, multiple prosecution witnesses heard other refugees shouting the name of the Accused during an attack and the Trial Chamber inferred that the Accused was in fact present at the scene of the crime. This finding was affirmed by the Appeals Chamber.<sup>7504</sup> Furthermore, in *Rukundo*, two witnesses overheard the Accused boasting of his role in abductions in a similar fashion. The Appeals Chamber concluded that this was a reasonable basis upon which to identify the Accused.<sup>7505</sup>

2680. In this case, the Chamber finds the hearsay identification of Ntahobali to be reliable. Witness TK heard Mbasha's wife identify Ntahobali, stating she knew Ntahobali when he came to the pharmacy where she worked in response to which Ntahobali acknowledged his own identity. Further, Witness WKKTD corroborated aspects of this identification in verifying that Mbasha's wife in fact worked at a pharmacy. Therefore, the Chamber is convinced that Witnesses TK, QJ, SJ and RE had an adequate basis upon which to identify Ntahobali at the BPO despite not knowing him prior to the April to July 1994 events.

2681. Witness TK testified that upon arriving at the BPO, Shalom and some of the *Interahamwe* exclaimed that nobody should be spared or treated leniently.<sup>7506</sup> He told the *Interahamwe* to do their work seriously.<sup>7507</sup> *Interahamwe* attacked the group of refugees and chose people to be taken away to be killed.<sup>7508</sup> *Interahamwe* started stripping people lying on the ground.<sup>7509</sup> The truck left behind certain *Interahamwe* to select those who were to be loaded on the next trip.<sup>7510</sup> The truck returned another two times that night and loaded more

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<sup>7499</sup> T. 23 May 2002 p. 48 (Witness TK).

<sup>7500</sup> T. 21 May 2002 pp. 102-103, 107 (ICS) (Witness TK).

<sup>7501</sup> T. 23 May 2002 pp. 30-31 (Witness TK).

<sup>7502</sup> Ntahobali Closing Brief, paras. 96-190.

<sup>7503</sup> *Kamuhanda*, Judgement (AC), paras. 241, 300; *Rukundo*, Judgement (AC), paras. 196-198.

<sup>7504</sup> *Kamuhanda*, Judgement (AC), para. 241; *see also Rukundo*, Judgement (AC), para. 198.

<sup>7505</sup> *Rukundo*, Judgement (AC), para. 197.

<sup>7506</sup> T. 20 May 2002 p. 89 (Witness TK).

<sup>7507</sup> T. 20 May 2002 p. 88 (Witness TK).

<sup>7508</sup> T. 20 May 2002 p. 75 (Witness TK).

<sup>7509</sup> T. 20 May 2002 p. 76 (Witness TK).

<sup>7510</sup> T. 20 May 2002 p. 95 (Witness TK).

refugees who were quickly taken away.<sup>7511</sup> Ntahobali and Nyiramasuhuko were on board on each trip.<sup>7512</sup>

2682. Ntahobali's alibi for the end of May and beginning of June 1994 was that he had travelled to Cyangugu to fetch his wife. The Chamber has found this alibi was not credible. Therefore, based upon the consistency and corroboration of the substantive evidence, the Chamber finds that Ntahobali was in fact present at the BPO during the attacks around the end of May or beginning of June 1994.

#### 3.6.19.4.7.3 Identification of Nyiramasuhuko and Orders to Rape

2683. Asked why she had not mentioned Pauline's presence at the BPO in her prior statement of 12 November 1996, Witness TK replied that she had limited time with the investigators and so she only mentioned things that came to mind.<sup>7513</sup> There were certain omissions in the statement because of her mood at the time or because of her availability at that time of the questioning.<sup>7514</sup> The Chamber accepts this explanation.

2684. She was also questioned as to her statement of 12 November 1996 in which she stated that she did not see Ntahobali hit anyone; rather she only heard him threatening people. Witness TK responded that seeing Ntahobali in court reminded her of what actually happened.<sup>7515</sup> The Chamber considers this a minor discrepancy since the essence of both Witness TK's prior statement and her testimony was that Ntahobali attacked and abducted people at the BPO.

2685. The Defence also questioned Witness TK as to whether she knew other Prosecution witnesses in this case. Witness TK testified that she came to Arusha on an airplane several days prior to testifying. She only recognised one person on the plane whom she had met after leaving Rango.<sup>7516</sup> She did not know whether this person had experienced the events at the BPO.<sup>7517</sup> She testified that she gave her statements to investigators in private and that she did not know whether her sister also gave a statement to investigators.<sup>7518</sup> The Chamber does not consider these associations to raise any credibility concerns.<sup>7519</sup>

2686. In addition to Witnesses TK and QJ, Witnesses SS, QBQ, RE, FAP and SJ identified Nyiramasuhuko during this night of three attacks at the BPO.

2687. Witness SS testified that Nyiramasuhuko came to the BPO this night with a soldier named Kazungu and *Interahamwe*.<sup>7520</sup> Witnesses RE and QY corroborated that an

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<sup>7511</sup> T. 20 May 2002 p. 96 (Witness TK).

<sup>7512</sup> T. 20 May 2002 p. 98 (Witness TK).

<sup>7513</sup> T. 22 May 2002 pp. 53-54 (Witness TK).

<sup>7514</sup> T. 23 May 2002 p. 20 (Witness TK).

<sup>7515</sup> T. 22 May 2002 p. 131 (Witness TK); Defence Exhibit 48 (Nyiramasuhuko) (12 November 1996, Statement of Witness TK).

<sup>7516</sup> T. 21 May 2002 pp. 83, 85 (ICS) (Witness TK).

<sup>7517</sup> T. 23 May 2002 p. 54 (Witness TK).

<sup>7518</sup> T. 21 May 2002 p. 60 (Witness TK).

<sup>7519</sup> The Chamber has taken into account allegations of fabricated testimony in *Ibuka* meetings ().

<sup>7520</sup> T. 3 March 2003 p. 49; T. 5 March 2003 p. 62 (Witness SS).

*Interahamwe* named Kazungu accompanied Nyiramasuhuko during the attacks.<sup>7521</sup> Witness TK knew a man named Kazungu who was the *Interahamwe* escort to one of the *préfets*.<sup>7522</sup> Although there was some disagreement as to whether Kazungu was a soldier or an *Interahamwe*, the evidence was consistent that he wore a uniform, accompanied the other *Interahamwe* and took orders from Nyiramasuhuko and Ntahobali.<sup>7523</sup>

2688. While Nyiramasuhuko stood by the door of the car, she told the *Interahamwe* and soldiers who were carrying weapons to “start from one side and take the young girls and women and go and rape them because they refused to marry you.”<sup>7524</sup> Witness SS said that Nyiramasuhuko was in charge of the attacks committed against Tutsi refugees at the BPO.<sup>7525</sup> After Nyiramasuhuko spoke, the *Interahamwe* and soldiers got out of the vehicle and raped Tutsi women. They approached the Tutsi refugees and loaded them on the pickup.<sup>7526</sup> While people were being loaded onto the pickup, Nyiramasuhuko was standing next to it.<sup>7527</sup>

2689. Witness SS said Nyiramasuhuko wore a military shirt and a *kitenge* that night.<sup>7528</sup> Witness SS knew Nyiramasuhuko prior to 1994 because she used to pass by on the road in front of her house. She estimated that she saw her three times prior to the April to July 1994 events.<sup>7529</sup> During the events of April to July 1994, she had also encountered Nyiramasuhuko at a roadblock.<sup>7530</sup> She said Nyiramasuhuko was the “prime minister who was in charge of gender issues”, and that Nyiramasuhuko wore a military shirt top and a cloth around her waist when she saw her at the BPO.<sup>7531</sup> Because Nyiramasuhuko was an official, the soldiers saluted her.<sup>7532</sup> Witness SS was less than three metres away from Nyiramasuhuko when she spoke to the soldiers.<sup>7533</sup> Therefore, Witness SS observed Nyiramasuhuko during the day as she stood near her.

2690. Because of the multiple opportunities Witness SS had to observe the Accused, and the witness’ opportunity to observe Nyiramasuhuko in daylight and prior to the genocide, the Chamber finds Witness SS’ identification of Nyiramasuhuko to be both reliable and credible.

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<sup>7521</sup> T. 24 February 2003 pp. 19, 21 (Witness RE); T. 19 March 2003 pp. 27, 31, 44 (Witness QY).

<sup>7522</sup> T. 23 May 2002 p. 83 (Witness TK).

<sup>7523</sup> T. 23 May 2002 p. 83 (Witness TK) (Witness TK said he was an *Interahamwe* escort to one of the *préfet*); T. 23 May 2002 pp. 83, 85 (Witness TK) (He later wore a military uniform which she thought had been given to him as a reward for the work he had done as an *Interahamwe*); T. 24 February 2003 pp. 19, 21 (Witness RE) (Witness RE also identified Kazungu as an *Interahamwe*); T. 24 February 2003 p. 31 (Witness RE) (Witness RE later also identified Kazungu as one of Nteziryayo’s bodyguards); T. 3 March 2003 pp. 49, 58 (Witness SS) (However, Witness SS described him as a soldier); T. 19 March 2003 pp. 27, 31, 36, 44 (Witness QY) (Witness QY said Kazungu was Nyiramasuhuko’s bodyguard).

<sup>7524</sup> T. 3 March 2003 pp. 52, 54; T. 5 March 2003 pp. 70-71 (Witness SS).

<sup>7525</sup> T. 3 March 2003 p. 60 (Witness SS).

<sup>7526</sup> T. 3 March 2003 pp. 56-58 (Witness SS).

<sup>7527</sup> T. 3 March 2003 p. 58 (Witness SS).

<sup>7528</sup> T. 5 March 2003 p. 69 (“she was wearing a military shirt with a cloth”); T. 5 March 2003 p. 75 (Witness SS) (French) (“*elle portait une chemise militaire avec un pagne*”).

<sup>7529</sup> T. 3 March 2003 pp. 34-35, 60 (Witness SS).

<sup>7530</sup> T. 3 March 2003 pp. 26, 28; T. 5 March 2003 p. 16 (Witness SS).

<sup>7531</sup> T. 3 March 2003 pp. 26, 31 (Witness SS).

<sup>7532</sup> T. 3 March 2003 p. 28 (Witness SS).

<sup>7533</sup> T. 3 March 2003 pp. 29, 34 (Witness SS).

2691. Witness QBQ also identified Nyiramasuhuko when she arrived aboard a white-coloured Toyota pickup covered with mud at the BPO.<sup>7534</sup> Nyiramasuhuko sat in the cabin of the vehicle and Shalom drove.<sup>7535</sup> Members of the *Interahamwe* accompanied them.<sup>7536</sup> The vehicle was about 4.5 metres away from her as she sat on the veranda.<sup>7537</sup> It was not so dark as to prevent Witness QBQ from seeing Nyiramasuhuko's face.<sup>7538</sup> Night had not yet fallen.<sup>7539</sup>

2692. Witness QBQ had seen Nyiramasuhuko at the BPO prior to this night. Three days after her arrival she saw Nyiramasuhuko arrive on foot accompanied by *Préfet* Nsabimana in the morning.<sup>7540</sup> Witness QBQ was 2.5 metres from Nyiramasuhuko on this occasion.<sup>7541</sup> Therefore, Witness QBQ had an opportunity to identify Nyiramasuhuko from close proximity.

2693. Witness QBQ testified that Nyiramasuhuko and the *Interahamwe* got out of the vehicle. She corroborated Witness SS' observation that Nyiramasuhuko stood next to the vehicle and gave orders to the *Interahamwe* to "[r]ape the women and the girls and kill the rest."<sup>7542</sup> The *Interahamwe* wore ordinary civilian clothes and used flashlights to find people.<sup>7543</sup> The *Interahamwe* were close to Nyiramasuhuko when she gave her orders.<sup>7544</sup>

2694. Witness RE said that Shalom and *Interahamwe* came to the BPO on three occasions in a Toyota vehicle without a frame in the back and which was covered with mud and cow dung.<sup>7545</sup> Ntahobali promised to protect and hide Mbasha's wife, saying he would take her to Pauline who was in the vehicle.<sup>7546</sup> Based on this comment, Witness RE surmised that Nyiramasuhuko was at the BPO, although she did not see her.<sup>7547</sup> This hearsay provides additional support to the identification of Nyiramasuhuko at the BPO.<sup>7548</sup>

2695. Witness RE's testimony also lended support to Witnesses SS' and QBQ's testimony that Nyiramasuhuko was giving orders to rape in this time period. She testified that Nyiramasuhuko came to the BPO with President Sindikubwabo one day. During this visit, Nyiramasuhuko said, the people should be killed and the young girls among them raped.<sup>7549</sup> Although given at a different time than the event now in question, this evidence shows a level of planning and intent on Nyiramasuhuko's part.

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<sup>7534</sup> T. 3 February 2004 pp. 10, 20, 53, 55, 58 (Witness QBQ).

<sup>7535</sup> T. 3 February 2004 pp. 10, 90 (Witness QBQ).

<sup>7536</sup> T. 3 February 2004 p. 10 (Witness QBQ).

<sup>7537</sup> T. 3 February 2004 p. 11 (Witness QBQ).

<sup>7538</sup> T. 3 February 2004 p. 58 (Witness QBQ).

<sup>7539</sup> T. 3 February 2004 p. 59 (Witness QBQ).

<sup>7540</sup> T. 3 February 2004 pp. 7-8, 52-53 (Witness QBQ).

<sup>7541</sup> T. 3 February 2004 pp. 8-10 (Witness QBQ).

<sup>7542</sup> T. 3 February 2004 pp. 10, 12, 20, 61 (Witness QBQ).

<sup>7543</sup> T. 3 February 2004 pp. 59-60 (Witness QBQ).

<sup>7544</sup> T. 3 February 2004 p. 10 (Witness QBQ).

<sup>7545</sup> T. 24 February 2003 pp. 19, 21 (Witness RE).

<sup>7546</sup> T. 24 February 2003 p. 19; T. 25 February 2003 pp. 46-47; T. 26 February 2003 pp. 30-31 (Witness RE).

<sup>7547</sup> T. 24 February 2003 p. 19; T. 25 February 2003 p. 47 (Witness RE).

<sup>7548</sup> In court Witness RE mistook Nteziryayo for Ntahobali: T. 24 February 2003 p. 41; T. 27 February 2003 p. 44 (Witness RE). The Chamber does not consider her misidentification of Ntahobali to be probative.

<sup>7549</sup> T. 24 February 2003 pp. 17-18, 36; T. 25 February 2003 p. 44 (Witness RE).

2696. Witness FAP testified that during the first attack Nyiramasuhuko wore a military uniform. Witness FAP was lying on the ground and thus could only see Nyiramasuhuko's top.<sup>7550</sup> Nyiramasuhuko stood by the vehicle and told the *Interahamwe* to take the young girls and the women who were not old, and to rape and kill them because they had refused to marry Hutus.<sup>7551</sup>

2697. Witness SJ testified to knowing Nyiramasuhuko before 1994<sup>7552</sup> as the Accused used to live with her husband, Maurice Ntahobali, in the same *secteur* as Witness SJ.<sup>7553</sup> She used to see Mr. and Mrs. Ntahobali when they were on their way to work or when they were visiting their neighbour.<sup>7554</sup> She described Nyiramasuhuko as somewhat fat with a dark complexion.<sup>7555</sup> The first time she saw Nyiramasuhuko, she was wearing a lengthy skirt and a whitish blouse.<sup>7556</sup> Nyiramasuhuko changed cars very often.<sup>7557</sup> Witness SJ said, "they [Nyiramasuhuko and Ntahobali] were my neighbours and they were good people. So I do not understand how they come to change."<sup>7558</sup>

2698. In sum, several witnesses knew Nyiramasuhuko before the April to July 1994 events including Witnesses SU, SD, SS and SJ. They had an opportunity to identify her in the conditions of calm prior to the commencement of large-scale violence. Nyiramasuhuko was widely known as the Minister in charge of Women's Affairs and therefore would likely be recognisable. Several other witnesses had an adequate opportunity to observe Nyiramasuhuko at the BPO from close proximity, including Witnesses TA, QJ, TK, RE, FAP, QY and QBQ. Furthermore, numerous witnesses maintained that she was wearing a military shirt and *kitenge* cloth skirt or just a military shirt.<sup>7559</sup> The Chamber is therefore convinced that Nyiramasuhuko was at the BPO during this attack, ordered *Interahamwe* and soldiers to rape Tutsi women, and to kill other refugees.

2699. Witness QBQ testified that upon hearing Nyiramasuhuko's order, the *Interahamwe* immediately attacked the people on the veranda and took them away by pulling them by their noses.<sup>7560</sup> Many women were raped while Nyiramasuhuko was still on the spot.<sup>7561</sup> The

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<sup>7550</sup> T. 11 March 2003 p. 54; T. 13 March 2003 p. 5 (Witness FAP).

<sup>7551</sup> T. 11 March 2003 p. 54; T. 12 March 2003 p. 53 (Witness FAP).

<sup>7552</sup> T. 28 May 2002 pp. 116-117; T. 29 May 2002 p. 126 (ICS) (Witness SJ).

<sup>7553</sup> T. 29 May 2002 pp. 126-130 (ICS) (Witness SJ).

<sup>7554</sup> T. 3 June 2002 p. 6 (Witness SJ).

<sup>7555</sup> T. 28 May 2002 pp. 117, 121 (Witness SJ).

<sup>7556</sup> T. 28 May 2002 p. 121 (Witness SJ).

<sup>7557</sup> T. 3 June 2002 pp. 136-137 (Witness SJ).

<sup>7558</sup> T. 29 May 2002 p. 130 (ICS) (Witness SJ).

<sup>7559</sup> T. 25 October 2001 p. 40 (Witness TA); T. 14 October 2002 p. 52 (Witness SU); T. 14 October 2002 p. 98 (Witness SU) (French) ("*elle était venue en tenue militaire et elle avait mis un pagne.*"); T. 24 October 2002 p. 94 (Witness QBQ); T. 24 October 2002 p. 177 (Witness QBQ) (French) ("*je ne sais pas si elle portait une jupe ou un pagne.*"); T. 5 March 2003 p. 69 (Witness SS); T. 5 March 2003 p. 75 (Witness SS) (French) ("*elle portait une chemise militaire avec un pagne*"). The Chamber notes *kitenge* is a type of cloth worn in East Africa while *pagne* is a French word used in some parts of Francophone Africa to refer to *kitenge*.

<sup>7560</sup> T. 3 February 2004 pp. 20-21, 62 (Witness QBQ).

<sup>7561</sup> T. 3 February 2004 pp. 62-63 (Witness QBQ).

*Interahamwe*, Nyiramasuhuko and Shalom subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped into a ditch there.<sup>7562</sup>

2700. This was corroborated by Witness FAP who testified that Nyiramasuhuko's orders to rape given on her first trip to the BPO were carried out; during the first visit of Nyiramasuhuko and Ntahobali, Tutsi women and girls were raped behind the BPO under the avocado trees. Upon return to the courtyard of the BPO, one of these girls said that it was better to be killed than to be raped by four or more men.<sup>7563</sup>

2701. Likewise, Witness SS testified that while some women were beaten and taken away in a vehicle, others were beaten and taken to the back of the BPO to be abused.<sup>7564</sup> The women and girls had been undressed and they were only wearing their undergarments.<sup>7565</sup> Other young girls and women were taken away and would return to the BPO two or three days later. Witness SS told them she thought they had been killed to which they replied, "[w]hat they subjected us to was worse than death. Imagine if six persons had a turn each on you!"<sup>7566</sup> Witness SS understood that these women had been raped.<sup>7567</sup> She did not know the names of the women who were raped.<sup>7568</sup>

2702. Nyiramasuhuko's alibi for this time period was that she was either in Murambi or Muramba attending Interim Government meetings. She admitted to being in Butare on 31 May 1994, but she claimed not to leave Hotel Ihuriro that night. The Chamber found that this alibi was not reasonably possibly true. Therefore, based upon the consistency and corroboration of the substantive evidence, the Chamber finds that Nyiramasuhuko was in fact present at the BPO during this attack. She ordered *Interahamwe* to rape refugees because they were Tutsis. The *Interahamwe* beat, abused and raped many Tutsi women.

#### 3.6.19.4.7.4 Abductions

2703. Witnesses TK, SU, RE, SS, FAP, QBQ and SJ testified that the *Interahamwe* loaded the refugees onto the bed of the truck<sup>7569</sup> and the refugees were taken away and not seen again.<sup>7570</sup>

<sup>7562</sup> T. 3 February 2004 pp. 20-21, 63 (Witness QBQ).

<sup>7563</sup> T. 11 March 2003 p. 60 (Witness FAP).

<sup>7564</sup> T. 3 March 2003 pp. 57-58 (Witness SS).

<sup>7565</sup> T. 5 March 2003 p. 70 (Witness SS).

<sup>7566</sup> T. 3 March 2003 p. 58 ("There is nothing worse than what we had to undergo. Imagine if six persons have to go on top of you"); T. 3 March 2003 p. 62 (Witness SS) (French) ("*Il n'y a pas plus atroce que la mort ou ce qu'on nous a fait subir. Imaginez-vous si six personnes devaient faire le tour, toutes sur vous!*").

<sup>7567</sup> T. 3 March 2003 p. 58 (Witness SS).

<sup>7568</sup> T. 5 March 2003 pp. 13-14 (ICS) (Witness SS).

<sup>7569</sup> T. 20 May 2002 p. 89 (Witness TK) (Shalom and some of the *Interahamwe* exclaimed that nobody should be spared or treated leniently); T. 20 May 2002 p. 88 (Witness TK) (Shalom told the *Interahamwe* to do their work seriously); T. 20 May 2002 p. 87 (Witness TK); T. 23 May 2002 p. 37 (Witness TK) (*Interahamwe* loaded other refugees into the truck with Mbasha's wife and her children); T. 29 May 2002 p. 36 (Witness SJ) (refugees were thrown into the vehicle by the *Interahamwe*); T. 29 May 2002 p. 45 (Witness SJ) (refugees were jammed into the back; some were sitting and some were standing); T. 14 October 2002 pp. 32-33 (Witness SU); T. 17 October 2002 p. 76 (Witness SU) (Nyiramasuhuko said, "Start from this side where the refugees are lying. Take men and women and load them aboard the vehicle"); T. 14 October 2002 pp. 32, 64 (Witness SU); T. 17 October 2002 p. 84 (Witness SU) (Nyiramasuhuko told them to load people onto the vehicle); T. 3 February 2004 pp. 20-21, 63

2704. Witness TK testified that after the first trip that same night, the Hilux pickup returned another two times that night, loading more refugees who were quickly taken away.<sup>7571</sup> Witness TK said the truck left behind certain *Interahamwe* to select those who were to be loaded on the next trip.<sup>7572</sup> Ntahobali and Nyiramasuhuko were on board on each trip.<sup>7573</sup>

2705. Witness SJ also stated that same night, approximately 30 minutes after the vehicle had left, the vehicle came back with Shalom and the *Interahamwe*.<sup>7574</sup> Ntahobali told the *Interahamwe* that they had to “go all the way” and that they should “spare no one.”<sup>7575</sup> The *Interahamwe* acted promptly and beat the refugees before throwing them on board the pickup and taking them away.<sup>7576</sup> A third trip was made but she did not see it because she was hiding.<sup>7577</sup>

2706. Witness SU said that around 11.00 p.m. the same night Mbasha’s wife and children were abducted, Nyiramasuhuko, her driver, her guard and some *Interahamwe* returned in the same vehicle.<sup>7578</sup> Nyiramasuhuko repeated her instructions to the *Interahamwe* to start on one side and to take men and women.<sup>7579</sup> On a second occasion, Nyiramasuhuko arrived at the BPO in the same Hilux vehicle.<sup>7580</sup> Nyiramasuhuko summoned the *Interahamwe* present at the BPO and told them to load people onto the vehicle.<sup>7581</sup> Nyiramasuhuko was leaning against the vehicle when it was being loaded with Tutsi refugees and left with the same vehicle.<sup>7582</sup>

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(Witness QBQ) (*Interahamwe*, Nyiramasuhuko, and Shalom, subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped into a ditch there).

<sup>7570</sup> T. 29 May 2002 p. 39 (Witness SJ) (people loaded into the vehicle never returned); T. 29 May 2002 pp. 46-47, 49-50 (Witness SJ) (one of the two survivors, a woman named Annonciata said that people had been taken to a place called Kabutare where they were beaten and thrown into a hole, sometimes alive); T. 14 October 2002 p. 67 (Witness SU) (During that night people were loaded on the Hilux and killed. None of them came back); T. 24 February 2003 p. 21 (Witness RE) (*Interahamwe* asked the awoken refugees to remove their clothes and took them in their vehicles to a place named Rwabayanga); T. 24 February 2003 p. 22 (Witness RE); T. 25 February 2003 pp. 51-54 (Witness RE) (a young man named Semanyenzi and a young woman named Annonciata who had been taken to Rwabayanga, managed to escape and told to the refugees that people led there had been killed with clubs and machetes); T. 11 March 2003 p. 18 (Witness SS) (said they had been taken to the IRST and thrown into a pit and that he was lucky to have escaped); T. 3 February 2004 pp. 20-21, 63 (Witness QBQ) (*Interahamwe*, Nyiramasuhuko, and Shalom, subsequently loaded the Tutsi refugees onto the vehicle and took them to Kumukoni to be killed and dumped into a ditch there).

<sup>7571</sup> T. 20 May 2002 p. 96 (Witness TK).

<sup>7572</sup> T. 20 May 2002 p. 95 (Witness TK).

<sup>7573</sup> T. 20 May 2002 p. 98 (Witness TK).

<sup>7574</sup> T. 29 May 2002 pp. 55, 57 (Witness SJ).

<sup>7575</sup> T. 29 May 2002 pp. 53-54 (Witness SJ). Ntahobali said “*ntugengeke*” in Kinyarwanda which means “have no pity”.

<sup>7576</sup> T. 29 May 2002 pp. 53, 55 (Witness SJ).

<sup>7577</sup> T. 29 May 2002 pp. 20, 59-60, 64-65 (Witness SJ).

<sup>7578</sup> T. 14 October 2002 p. 42; T. 17 October 2002 p. 71 (Witness SU).

<sup>7579</sup> T. 14 October 2002 p. 44 (Witness SU).

<sup>7580</sup> T. 14 October 2002 p. 52 (Witness SU).

<sup>7581</sup> T. 14 October 2002 pp. 53, 57, 64; T. 17 October 2002 pp. 83-84 (Witness SU).

<sup>7582</sup> T. 14 October 2002 p. 67 (Witness SU).

2707. Witness RE and SS corroborated the presence of Nyiramasuhuko, Shalom and *Interahamwe*, including one named Kazungu, at the BPO three times in one night.<sup>7583</sup>

2708. Witness SS testified that Nyiramasuhuko got out of the vehicle, and said to also bring the young boys and not to leave anyone behind.<sup>7584</sup> The persons who came with Nyiramasuhuko took torches and started waking people. The *Interahamwe* took the young boys, but as they were not many, they also took women and girls.<sup>7585</sup> While some refugees were loaded onto the pickup, the soldiers and *Interahamwe* attacked them with weapons. When the vehicle left, Nyiramasuhuko, the *Interahamwe*, the driver and the soldier named Kazungu were on board.<sup>7586</sup>

2709. On the third attack that same night, Witness SS testified that she saw Nyiramasuhuko, the driver, the *Interahamwe* and the soldier named Kazungu come back to the BPO on board the vehicle.<sup>7587</sup> She heard Nyiramasuhuko say, “[p]ut everyone on board, old women, old men, put everybody on board.”<sup>7588</sup> The *Interahamwe* got out of the vehicle, put out the light, took their torches and weapons, and woke up everybody. They had traditional weapons such as machetes and clubs, and the soldier had a gun. They loaded refugees onto the vehicle. When the vehicle left, Nyiramasuhuko, *Interahamwe*, the driver and the soldier named Kazungu were on board. In the back of the pickup were *Interahamwe* and the refugees who had been loaded onto the vehicle.<sup>7589</sup>

2710. Likewise, Witness FAP testified the vehicle arrived three times the same evening, each time with Pauline Nyiramasuhuko and her son Shalom Ntahobali, and each time taking away many refugees who never returned.<sup>7590</sup>

2711. On a second trip that night, Nyiramasuhuko and Ntahobali, the *Interahamwe* and a soldier returned in the vehicle. Nyiramasuhuko instructed the *Interahamwe* to load the Tutsi refugees into the vehicle.<sup>7591</sup> The *Interahamwe* herded young Tutsi men, women and children into the vehicle by beating them; there were no longer any grown men at the BPO. The refugees’ clothes were removed and given to the Hutu refugees from Gitarama and Bugesera.<sup>7592</sup>

2712. After the vehicle left, the soldiers asked people their origins. Witness FAP told the soldiers that she was from Bugesera and her mother was Tutsi, but that she was Hutu.<sup>7593</sup> The soldiers therefore allowed her to shelter with the Hutus. At that moment, the pickup-like vehicle returned for the third time that night. The *Interahamwe* made the Tutsi women,

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<sup>7583</sup> T. 24 February 2003 pp. 19, 21-22 (Witness RE); T. 25 February 2003 pp. 46, 48 (Witness RE); T. 3 March 2003 pp. 48, 58-59 (Witness SS); T. 4 March 2003 p. 3 (Witness SS).

<sup>7584</sup> T. 3 March 2003 p. 59; T. 5 March 2003 p. 76 (Witness SS).

<sup>7585</sup> T. 3 March 2003 p. 59; T. 5 March 2003 p. 77 (Witness SS).

<sup>7586</sup> T. 3 March 2003 p. 59 (Witness SS).

<sup>7587</sup> T. 3 March 2003 p. 59 (Witness SS).

<sup>7588</sup> T. 3 March 2003 pp. 59-60 (Witness SS).

<sup>7589</sup> T. 3 March 2003 p. 60 (Witness SS).

<sup>7590</sup> T. 12 March 2003 pp. 13, 16, 52 (Witness FAP).

<sup>7591</sup> T. 11 March 2003 pp. 56-57 (Witness FAP).

<sup>7592</sup> T. 11 March 2003 p. 57 (Witness FAP).

<sup>7593</sup> T. 11 March 2003 p. 60 (Witness FAP).



children and adolescents board the vehicle.<sup>7594</sup> Nyiramasuhuko instructed Ntahobali and the *Interahamwe* to systematically select young women and young girls and to rape and kill them. This time, they were not raped, but were thrown onto the vehicle and the *Interahamwe* drove away with them.<sup>7595</sup> She knew that the refugees had been killed because each time the vehicle returned to the BPO, only the *Interahamwe* were on board in the baggage section.<sup>7596</sup> Witness FAP joined the Hutu group, but when she was asked to show her identity card she had to rejoin the “serpents”.<sup>7597</sup>

2713. Witness QY testified that the vehicle returned several times that evening with about two hour intervals between trips, and each time it returned the same thing was done.<sup>7598</sup> On the second trip that second night, Shalom alighted from the vehicle and approached the veranda of the BPO. He walked among the refugees, kicking and forcing some of them to get into the vehicle.<sup>7599</sup> The *Interahamwe* carried torches and flashed them in the direction of the refugees.<sup>7600</sup> The refugees would try to flee, scattering like ants to be protected from the *Interahamwe*.<sup>7601</sup> Those in the vehicle again set off towards Rwabayanga.<sup>7602</sup> She did not know which direction the vehicle turned to go to Rwabayanga.<sup>7603</sup> The vehicle came back a third time that same night to collect more refugees.<sup>7604</sup> The refugees were driven away to be killed and the vehicle did not come back as it was now daylight.<sup>7605</sup> Witness QY could not specify at what time the vehicle arrived at the BPO on each trip.<sup>7606</sup>

2714. Witness QBQ testified that the vehicle came back to the BPO a second time after having unloaded its cargo, again driven by Shalom, and again took other people away to Kumukoni.<sup>7607</sup> The assailants woke Witness QBQ up and set her aside to be taken aboard the vehicle; however she managed to escape when she went to see her mistress’ crying baby and laid down beside him.<sup>7608</sup>

2715. Based on this substantial corroborated testimony, the Chamber finds beyond a reasonable doubt that Ntahobali, Nyiramasuhuko and *Interahamwe* came to the BPO three times abducting Tutsi refugees on each occasion on this night.

#### 3.6.19.4.7.4.1 Three Specific Abductions – Mbasha’s Wife, Trifina and Unnamed Woman

2716. The Prosecution witnesses provided at least three specific examples of individuals or groups who were abducted from the BPO on the night of three attacks at the end of May or

<sup>7594</sup> T. 11 March 2003 p. 60; T. 12 March 2003 p. 6 (Witness FAP).

<sup>7595</sup> T. 11 March 2003 pp. 60-61; T. 13 March 2003 p. 9 (Witness FAP).

<sup>7596</sup> T. 11 March 2003 p. 62 (Witness FAP).

<sup>7597</sup> T. 11 March 2003 p. 62; T. 13 March 2003 p. 12 (Witness FAP).

<sup>7598</sup> T. 19 March 2003 pp. 33, 40; T. 20 March 2003 p. 44; T. 24 March 2003 pp. 24-25 (Witness QY).

<sup>7599</sup> T. 19 March 2003 p. 33 (Witness QY).

<sup>7600</sup> T. 19 March 2003 p. 41; T. 24 March 2003 p. 30 (Witness QY).

<sup>7601</sup> T. 19 March 2003 pp. 33, 41 (Witness QY).

<sup>7602</sup> T. 19 March 2003 pp. 34-35 (Witness QY).

<sup>7603</sup> T. 24 March 2003 p. 32 (Witness QY).

<sup>7604</sup> T. 19 March 2003 pp. 35-36 (Witness QY).

<sup>7605</sup> T. 19 March 2003 p. 39 (Witness QY).

<sup>7606</sup> T. 19 March 2003 p. 40 (Witness QY).

<sup>7607</sup> T. 3 February 2004 pp. 21-22 (Witness QBQ).

<sup>7608</sup> T. 3 February 2004 pp. 22, 89 (Witness QBQ).

beginning of June 1994. These include Mbasha's wife and children, a woman named Trifina and an unnamed woman. The Chamber recalls its finding in the preliminary issues segment of this section of the Judgement that the Defence did not have notice of the allegations that Ntahobali and Nyiramasuhuko abducted Mbasha's wife and children and a woman named Trifina (). Nonetheless, the Chamber finds it useful to examine the specific evidence regarding these alleged abductions as circumstantial evidence of what happened to other Tutsi refugees who were staying at the BPO.

#### 3.6.19.4.7.4.2 Abduction of Mbasha's Wife

2717. Witness TK testified that after she observed a conversation between Ntahobali and Mbasha's wife, Mbasha's wife was stripped of her *kitenge* wrap by *Interahamwe*, leaving it on the ground.<sup>7609</sup> Mbasha's wife was loaded onto the truck with her two children.<sup>7610</sup> As the *Interahamwe* threw the children upon Mbasha's wife, she pleaded for her children, stating: "Please pity my children, you can take me. Spare my children, please."<sup>7611</sup> Nyiramasuhuko was by the truck when Mbasha's wife and her children were loaded on it, along with the other refugees that had arrived that day.<sup>7612</sup>

2718. Witness QJ provided a similar account. He said that after Mbasha's wife was put in the vehicle with her children, Witness QJ said Nyiramasuhuko and her *Interahamwe* took the family to Kabutare Forest. He said, "[t]hey were screaming until I lost sight of them."<sup>7613</sup> Mbasha's wife was wearing a *kitenge* wrap and a pullover.<sup>7614</sup> He estimated that he saw them at 4.00 p.m. while it was still light out.<sup>7615</sup> He testified that he has not seen any of the Mbasha family since then.<sup>7616</sup>

2719. Witness RE partially corroborated Witness TK's account of the abduction. Witness RE was lying on the veranda.<sup>7617</sup> She said that a woman who was sleeping on the BPO veranda with her three children resisted the *Interahamwe* attack that night.<sup>7618</sup> Shalom told her: "We're not going to kill you. We, rather, wanted to take you to Pauline who is in the vehicle so she can go and hide you."<sup>7619</sup> Based on this comment, Witness RE surmised that Nyiramasuhuko was at the BPO, although she did not see her.<sup>7620</sup>

2720. Upon cross-examination, Witness RE admitted that she knew several other witnesses in the case. Witness RE's older sister was Witness TK's sister-in-law.<sup>7621</sup> Witness RE did not inform Witness TK that she was to testify in Arusha.<sup>7622</sup> Witness RE also said that she was

<sup>7609</sup> T. 20 May 2002 p. 85; T. 23 May 2002 p. 23 (Witness TK).

<sup>7610</sup> T. 20 May 2002 pp. 85-86; T. 23 May 2002 pp. 31-32 (Witness TK).

<sup>7611</sup> T. 20 May 2002 p. 86 (Witness TK).

<sup>7612</sup> T. 20 May 2002 pp. 86-87; T. 23 May 2002 p. 37 (Witness TK).

<sup>7613</sup> T. 8 November 2001 pp. 154-155 (Witness QJ).

<sup>7614</sup> T. 12 November 2001 p. 93 (ICS) (Witness QJ).

<sup>7615</sup> T. 12 November 2001 p. 96 (ICS) (Witness QJ).

<sup>7616</sup> T. 8 November 2001 p. 155 (Witness QJ).

<sup>7617</sup> T. 24 February 2003 p. 28 (Witness RE).

<sup>7618</sup> T. 24 February 2003 p. 19; T. 26 February 2003 pp. 27, 30 (Witness RE).

<sup>7619</sup> T. 24 February 2003 p. 19; T. 25 February 2003 pp. 46-47; T. 26 February 2003 pp. 30-31 (Witness RE).

<sup>7620</sup> T. 24 February 2003 p. 19; T. 25 February 2003 p. 47 (Witness RE).

<sup>7621</sup> T. 24 February 2003 p. 54 (ICS) (Witness RE).

<sup>7622</sup> T. 24 February 2003 p. 58 (ICS) (Witness RE).

with Witness SJ at the BPO.<sup>7623</sup> Witness RE met Witness QJ one time after the war in Save and knew that Witness QJ was Witness TK's husband.<sup>7624</sup> The Chamber has already considered whether Witness RE was encouraged to provide false testimony by the *Ibuka* Association (). Further, the Chamber does not find that Witness RE's relationship with Witness TK or her contact with Witness QJ on a single occasion renders her credibility in doubt.

2721. Witness SJ corroborated Witness TK's testimony that Ntahobali took the woman and her children in the vehicle and drove away with them.<sup>7625</sup> However, she testified the woman was seated in the cabin of the vehicle whereas some other people were in the rear of the vehicle.<sup>7626</sup> She said that when the truck returned, she heard the *Interahamwe* say that the woman was stupid to think that Shalom would save her because she was sitting in the cabin of the vehicle.<sup>7627</sup>

2722. However, Witness SJ's credibility was brought into question for several reasons. On cross-examination, she was asked about a prior statement of 3 December 1996, in which she stated that Ntahobali's younger brother drove the vehicle away from the BPO.<sup>7628</sup> The witness denied having referred to Ntahobali's younger brother because she did not know Ntahobali's family or his siblings. She explained that there may have been confusion in the taking of the statement.<sup>7629</sup> The Chamber accepts this explanation.

2723. Moreover, Witness SJ was recalled to testify in 2009. She admitted that she had not told the truth in her original testimony in 2002,<sup>7630</sup> and upon the instructions of a Prosecution translator, she denied knowing Prosecution Witnesses TK, TA and QJ.<sup>7631</sup> For these reasons, the Chamber does not accept Witness SJ's testimony as to this event.

2724. In addition, there were some discrepancies as to the number and gender of Mbasha's children. Witness TK testified that the wife of Mbasha was accompanied by one boy and one girl.<sup>7632</sup> Witness WKKTD testified that Mbasha had two children aged 7 and 10 or 11, but he said they were both girls.<sup>7633</sup> In contrast, Witnesses RE and QJ testified that there were three children.<sup>7634</sup>

2725. Considering Witness WKKTD had known the Mbasha family for six years prior to 1994 and that they were close family friends, the Chamber finds his testimony reliable that the Mbasha's had two daughters. Nonetheless, this is not necessarily inconsistent with the

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<sup>7623</sup> T. 24 February 2003 p. 56 (ICS) (Witness RE).

<sup>7624</sup> T. 24 February 2003 pp. 56-57 (ICS) (Witness RE).

<sup>7625</sup> T. 29 May 2002 p. 36 (Witness SJ).

<sup>7626</sup> T. 29 May 2002 p. 37; T. 3 June 2002 pp. 31-32 (Witness SJ). It is however unclear from Witness SJ's testimony whether those people were *Interahamwe* or Tutsi refugees.

<sup>7627</sup> T. 29 May 2002 pp. 39-40 (Witness SJ).

<sup>7628</sup> T. 3 June 2002 pp. 12-13, 15-16 (Witness SJ); Defence Exhibit 62 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>7629</sup> T. 3 June 2002 p. 17 (Witness SJ).

<sup>7630</sup> T. 24 February 2009 p. 20 (ICS) (Witness SJ).

<sup>7631</sup> T. 23 February 2009 pp. 82-83 (ICS); T. 24 February 2009 pp. 19-20 (ICS) (Witness SJ).

<sup>7632</sup> T. 20 May 2002 p. 82 (Witness TK).

<sup>7633</sup> T. 7 February 2005 p. 37; T. 7 February 2005 p. 39 (ICS) (Witness WKKTD).

<sup>7634</sup> T. 24 February 2003 p. 19 (Witness RE); T. 26 February 2003 pp. 27, 30, 32 (Witness RE); T. 8 November 2001 p. 146 (Witness QJ).

testimony of Witness TK. Witness TK said that Ntahobali asked which of the children was a girl.<sup>7635</sup> Since Ntahobali was not able to identify the gender of the children, both of the children could have been girls. In addition, Witness WKKTD corroborated that one of Mbasha's children was about 10 or 11 years old. Although Witnesses RE and QJ said there were three children, considering the passage of time between this event and their testimony, the Chamber does not consider this difference between the testimonies to be significant.

2726. Witness WKKTD provided an alternative explanation for the disappearance of Mbasha's wife and her children. He learned from the wife of a *sous-bourgmestre* that *gendarmes* had arrested Mbasha's wife and one of her children and that they had been tortured and killed at the roadblock.<sup>7636</sup> This hearsay was not corroborated by any other witness. In addition, Witness WKKTD's wife told him that Mbasha's eldest daughter actually survived the April to July 1994 events and that his wife saw the daughter in passing. Witness WKKTD's wife only had a brief opportunity to identify Mbasha's eldest daughter as his wife was riding in a minibus at the time and she only saw her from a distance.<sup>7637</sup> Therefore, not only was this hearsay not corroborated, there were indications that it was not reliable and the Chamber is not convinced by this testimony.

2727. The Chamber concludes based on this evidence that Ntahobali and *Interahamwe* abducted Mbasha's wife and children around the end of May or beginning of June 1994. As noted previously, the Chamber will not convict Ntahobali for the abduction of Mbasha's wife because he did not have notice as to the identity of this specific individual. However, the credible and consistent information with regard to this event provides circumstantial support for the Chamber's findings regarding the abduction of other unnamed Tutsi refugees from the BPO.<sup>7638</sup>

#### 3.6.19.4.7.4.3 Killing of a Woman Named Trifina

2728. Witness TK provided evidence that during the same attack by *Interahamwe* on Mbasha's wife [during which refugees were stripped and loaded on the truck at around 7.00 p.m. or 7.30 p.m.], a refugee girl named Trifina started shouting.<sup>7639</sup> Nyiramasuhuko said that noise should be stopped and those who were shouting should be set aside.<sup>7640</sup> Trifina was attacked with daggers and her shoulder was wounded,<sup>7641</sup> but she shouted even louder.<sup>7642</sup> *Interahamwe* then slit her throat, almost cutting her head off, and threw her dead body into the

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<sup>7635</sup> T. 20 May 2002 p. 81 (Witness TK).

<sup>7636</sup> T. 7 February 2005 p. 76; T. 8 February 2005 p. 15 (ICS) (Witness WKKTD).

<sup>7637</sup> T. 7 February 2005 pp. 79-80; T. 8 February 2005 p. 58 (ICS) (Witness WKKTD).

<sup>7638</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15; *Kupreškić et al.*, Judgement (AC), paras. 321-323, 336.

<sup>7639</sup> T. 20 May 2002 p. 90; T. 22 May 2002 p. 95; T. 20 May 2002 p. 98 (Witness TK) (French) (for spelling of "Trifina").

<sup>7640</sup> T. 20 May 2002 pp. 90, 92-93; T. 22 May 2002 pp. 103, 108-109 (Witness TK).

<sup>7641</sup> T. 20 May 2002 p. 91; T. 22 May 2002 pp. 73, 77 (Witness TK).

<sup>7642</sup> T. 20 May 2002 p. 91 (Witness TK).

vehicle.<sup>7643</sup> When the vehicle was full of people Ntahobali drove it away with Nyiramasuhuko as a passenger.<sup>7644</sup>

2729. Witness TK's account was corroborated by Witnesses QBQ and RE. Witness QBQ said the *Interahamwe* heard Nyiramasuhuko give an order and immediately attacked the people on the veranda, pulling them by their noses.<sup>7645</sup> The *Interahamwe* used a club to hit one woman who refused to comply and she died in front of the vehicle.<sup>7646</sup> Witness RE also stated that the *Interahamwe* strangled to death a young woman named Trifina because she refused to go.<sup>7647</sup>

2730. The Chamber finds Witness TK to be credible regarding this event and therefore concludes that a woman named Trifina was assaulted and killed by *Interahamwe* on the orders of Nyiramasuhuko at the BPO. As noted previously, the Chamber will not convict Nyiramasuhuko for the death of Trifina because she did not have notice as to the identity of this specific individual. However, the credible and consistent information with regard to this event provides circumstantial support for the Chamber's findings regarding the abduction and killing of other unnamed Tutsi refugees from the BPO.<sup>7648</sup>

#### 3.6.19.4.7.4.4 Other Abductions at the BPO

2731. Witnesses SU, SS and FAP provided testimony as to other abductions and killings at the BPO on the night of multiple attacks.

2732. Witness SU testified that she saw a lady with two children arrive at the BPO in a group including a tall man of light complexion who was balding.<sup>7649</sup> The lady was an intellectual of a good position as she appeared to live well.<sup>7650</sup> Witness SU said the *Interahamwe* dragged the lady and her children violently from the veranda and put them on board the vehicle.<sup>7651</sup> The mother pleaded that her babies not be killed as they were still young.<sup>7652</sup> Witness SU testified that this woman was struck across the neck with a machete and Nyiramasuhuko told her, "[s]o, breast-feed the babies!"<sup>7653</sup> Other people were loaded onto the vehicle on top of the woman and it departed accompanied by Nyiramasuhuko and the *Interahamwe*.<sup>7654</sup>

2733. Witness SS gave a similar account to Witness SU of a woman pleading for her young child who had arrived at the BPO with a man who was no longer present.<sup>7655</sup> She did not know whether he was balding.<sup>7656</sup> Other persons were loaded in the pickup.<sup>7657</sup> Witness SS also

<sup>7643</sup> T. 20 May 2002 p. 91; T. 22 May 2002 pp. 73, 77 (Witness TK).

<sup>7644</sup> T. 20 May 2002 p. 95 (Witness TK).

<sup>7645</sup> T. 3 February 2004 pp. 20-21, 62 (Witness QBQ).

<sup>7646</sup> T. 3 February 2004 pp. 20-21 (Witness QBQ).

<sup>7647</sup> T. 24 February 2003 p. 21 (Witness RE).

<sup>7648</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15; *Kupreškić et al.*, Judgement (AC), paras. 321-323, 336.

<sup>7649</sup> T. 14 October 2002 pp. 32, 35; T. 17 October 2002 p. 59 (Witness SU).

<sup>7650</sup> T. 17 October 2002 pp. 54-55 (Witness SU).

<sup>7651</sup> T. 14 October 2002 p. 32; T. 17 October 2002 p. 33 (Witness SU).

<sup>7652</sup> T. 14 October 2002 p. 37; T. 17 October 2002 pp. 33-34 (Witness SU).

<sup>7653</sup> T. 14 October 2002 p. 37; T. 14 October 2002 p. 69 (Witness SU) (French) ("*Alors, allaite tes enfants!*").

<sup>7654</sup> T. 14 October 2002 pp. 37, 41 (Witness SU).

<sup>7655</sup> T. 3 March 2003 p. 57 (Witness SS).

<sup>7656</sup> T. 5 March 2003 p. 69 (Witness SS).

testified the soldiers and *Interahamwe* threw the woman into the back of the vehicle.<sup>7658</sup> Since she could no longer hear the woman cry, Witness SS concluded that the woman was dead.<sup>7659</sup>

2734. Witness FAP testified that the *Interahamwe* approached a mother of two children who was spending the night on the veranda next to her.<sup>7660</sup> The woman's daughter was below the marrying age and the other child was a son.<sup>7661</sup> The woman had arrived the day before, accompanied by a man who had a fair complexion and was tall.<sup>7662</sup> Ntahobali tried to make the woman feel safe by saying that his mother had sent for her.<sup>7663</sup> Ntahobali also tried to reassure the girl who cried out by telling her that he was taking her to his mother.<sup>7664</sup> Again, Witness FAP here corroborates numerous details of Witness TK's testimony regarding the abduction of Mbasha's wife and children.

2735. However, Witness FAP added the children told the *Interahamwe* not to rape them because they were too young; but instead to take their mother if necessary. The mother also cried out and refused to be raped in public and so the *Interahamwe* killed her on the ground.<sup>7665</sup> Witness FAP said Ntahobali and the *Interahamwe* killed the mother with knives and dumped her body in the vehicle. They also took her children who had been beaten and drove away.<sup>7666</sup>

2736. Witnesses SU, SS and FAP each described these events in significant detail. However, due to the differences in their testimonies, the Chamber is convinced that Witnesses SU, SS and FAP were describing attacks on different individuals among the group which was abducted from the BPO on the night of three attacks. Nonetheless, the Chamber is convinced beyond a reasonable doubt that Ntahobali and *Interahamwe* attacked many different women and children at the BPO, assaulted them and forced them aboard the pickup. It further finds that Nyiramasuhuko gave orders to the *Interahamwe* to commit these crimes. The women and children were taken away from the BPO and killed elsewhere.

2737. As specified above, the Chamber does not find Nyiramasuhuko's or Ntahobali's alibis raise a reasonable doubt as to their presence at the BPO at the end of May or beginning of June 1994.

2738. Therefore, based upon the evidence of Witnesses TK, QBQ, RE, SS, SU and FAP, including the specific evidence as to the abduction of Mbasha's wife and children, the assault of a woman named Trifina and the assault of an unnamed woman and her children, the Chamber finds it established beyond a reasonable doubt that at the end of May or beginning of June 1994, Nyiramasuhuko, Ntahobali and about 10 *Interahamwe* came to the BPO aboard a camouflaged pickup. Nyiramasuhuko ordered the *Interahamwe* to force Tutsi refugees onto the

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<sup>7657</sup> T. 3 March 2003 p. 57; T. 5 March 2003 p. 65 (Witness SS).

<sup>7658</sup> T. 3 March 2003 pp. 56-57; T. 5 March 2003 p. 69 (Witness SS).

<sup>7659</sup> T. 3 March 2003 p. 57; T. 5 March 2003 p. 65 (Witness SS).

<sup>7660</sup> T. 12 March 2003 pp. 57-58, 61 (Witness FAP).

<sup>7661</sup> T. 12 March 2003 pp. 57-58 (Witness FAP).

<sup>7662</sup> T. 12 March 2003 pp. 58, 61 (Witness FAP).

<sup>7663</sup> T. 11 March 2003 p. 55; T. 12 March 2003 p. 16 (Witness FAP).

<sup>7664</sup> T. 12 March 2003 pp. 62-63 (Witness FAP).

<sup>7665</sup> T. 11 March 2003 p. 54; T. 12 March 2003 p. 62 (Witness FAP).

<sup>7666</sup> T. 11 March 2003 pp. 54-55; 12 March 2003 p. 58 (Witness FAP).

pickup. The pickup left the BPO, abducting Tutsi refugees in the process, some of whom were forced to undress.

#### 3.6.19.4.8 Mid-May Through June 1994 – Abducted Refugees Were Killed

2739. Apart from those refugees such as Trifina who were killed on the premises of the BPO, there was no direct evidence that the refugees abducted from the BPO from mid-May through June 1994 were killed elsewhere. However, there was circumstantial evidence to support this conclusion.

2740. First, the evidence established that Tutsi refugees were being killed at the BPO. Witness TA testified that Tutsi refugees were killed on the premises of the BPO and buried in pits behind the BPO. While she did not personally see the killings at the pear tree behind the BPO, she saw dead bodies by the tree.<sup>7667</sup> She also saw the bodies of Tutsis who had been killed in a pit behind in the gardens of the BPO the number of which increased during her stay.<sup>7668</sup> Some of the bodies were decomposing, and later a bulldozer came to take the bodies further away from the BPO.<sup>7669</sup>

2741. Witness SU corroborated this testimony. Witness SU testified that at 5.00 a.m. and 6.00 p.m., the *Interahamwe* at the BPO took people away and killed them with machetes.<sup>7670</sup> During the month of June 1994, she watched a pit being dug behind the office of the *préfet*, close to the uncompleted ORINFOR building with a yellow bulldozer.<sup>7671</sup> In addition, there was a pit behind the house of Munyagasheke behind an avocado tree.<sup>7672</sup> Refugees that were killed were thrown into this pit. Before the pit was dug, bodies were “thrown here and there.”<sup>7673</sup> A pit had been dug near the office where they threw people who had just been killed.<sup>7674</sup> Witness SU saw 13 refugees killed before the very eyes of the authorities.<sup>7675</sup> She testified that in the year 2000, several bodies were exhumed before the construction of a new building on the site of the pit.<sup>7676</sup>

2742. Witness SS also testified that she saw corpses at the BPO next to the avocado trees and that there were pits.<sup>7677</sup> Likewise, Witness TK testified that her brother was killed at the BPO and that she saw an *Interahamwe* wearing her brother’s jacket.<sup>7678</sup> She discovered her brother’s body along with two others near a tree behind the BPO. Her brother’s legs had been cut off and a dog was feeding upon his corpse.<sup>7679</sup> At that time, there were still some men left in the group of refugees, but they were subsequently taken away during the night.<sup>7680</sup> Prosecution

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<sup>7667</sup> T. 7 November 2001 p. 89 (Witness TA).

<sup>7668</sup> T. 8 November 2001 pp. 24-26 (Witness TA).

<sup>7669</sup> T. 8 November 2001 p. 24 (Witness TA).

<sup>7670</sup> T. 17 October 2002 p. 88; T. 23 October 2002 p. 58 (Witness SU).

<sup>7671</sup> T. 14 October 2002 pp. 80-81 (Witness SU).

<sup>7672</sup> T. 23 October 2002 p. 59 (Witness SU).

<sup>7673</sup> T. 14 October 2002 p. 80 (Witness SU).

<sup>7674</sup> T. 14 October 2002 pp. 28-29 (Witness SU).

<sup>7675</sup> T. 14 October 2002 p. 82 (Witness SU).

<sup>7676</sup> T. 14 October 2002 p. 80; T. 23 October 2002 p. 59 (Witness SU).

<sup>7677</sup> T. 3 March 2003 p. 65 (Witness SS).

<sup>7678</sup> T. 20 May 2002 p. 39 (Witness TK).

<sup>7679</sup> T. 20 May 2002 pp. 39, 50 (Witness TK).

<sup>7680</sup> T. 20 May 2002 p. 47 (Witness TK).

Investigator Shukry testified there were mass graves at the University Hospital, University Laboratory, Matyazo Clinic, Cyarwa Sumo *secteur*, Kabakobwa valley, Kabuye Hill and the Mbazi *commune* office. He did not testify that there was a mass grave at the BPO.<sup>7681</sup> Nonetheless, the Chamber is convinced that during the attacks at the BPO, Tutsi refugees were killed and thrown into pits. It further finds that a bulldozer later came to the BPO to bury the corpses.

2743. Second, there was substantial evidence that the Tutsi refugees who were abducted from the BPO were never seen again.<sup>7682</sup> This supports an inference that these Tutsis were in fact killed.<sup>7683</sup>

2744. Third, Tutsi refugees were killed in the EER woods (). Tutsis were targeted and killed at roadblocks throughout Butare town (). Furthermore, bodies of Tutsis were seen throughout Butare town, including at the Hotel Faucon roadblock (). When considered together, the Chamber finds that the only reasonable inference is that the refugees who were abducted from the BPO were killed.

2745. Several witnesses also testified as to the statements of three people who allegedly survived the attacks at the BPO, including Semanyenzi, Annonciata and Fidel (or Fidelis). Semanyenzi, Annonciata and Fidel did not testify as to their experiences. Therefore, all of the Prosecution evidence in this respect was hearsay and the Chamber views it with caution.

2746. Witnesses SJ, RE, FAP and SU testified that one or more refugees (named Semanyenzi, Annonciata or Fidele) who had been abducted, escaped their captors, returned to the BPO, and told the remaining refugees that those who had been abducted were killed.

2747. The Chamber notes that Witnesses SJ, QY, RE, FAP and QBQ provided inconsistent testimony as to where an escaped refugee named Semanyenzi had been taken, although he allegedly told each of them how and from where he escaped. Witness SJ said the Mbashas, Annonciata and Semanyenzi were all taken to the same place and that she later learned from Annonciata and *Interahamwe* that the location of the killings was Kabutare.<sup>7684</sup> Witness QY said that she learned from Annonciata that the refugees had been taken to Rwabayanga to be killed.<sup>7685</sup> Witness RE also learned from Semanyenzi and Annonciata that the people were killed. She said the refugees were killed at Rwabayanga.<sup>7686</sup> Witness FAP did not indicate where Semanyenzi had been taken, but testified that certain soldiers warned her that *Interahamwe* were taking people to Rwabayanga.<sup>7687</sup> Finally, Witness QBQ testified that Semanyenzi had survived at Mukoni.<sup>7688</sup> Given that each of these witnesses had learned from

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<sup>7681</sup> T. 14 June 2001 pp. 48-49, 67, 69, 71, 73, 83, 105; T. 19 June 2001 pp. 25-26, 33, 101, 109-110 (Shukry).

<sup>7682</sup> T. 14 October 2002 p. 67 (Witness SU); T. 17 March 2003 p. 10 (Witness SD); T. 19 March 2003 p. 47 (Witness QY); T. 24 March 2003 p. 30 (Witness QY); T. 12 March 2003 p. 49 (Witness FAP); T. 29 May 2002 p. 39 (Witness SJ).

<sup>7683</sup> *Rukundo*, Judgement (AC), paras. 190-191.

<sup>7684</sup> T. 29 May 2002 pp. 46, 50, 64 (Witness SJ).

<sup>7685</sup> T. 19 March 2003 p. 70 (Witness QY).

<sup>7686</sup> T. 24 February 2003 pp. 21-22; T. 25 February 2003 pp. 51-54 (Witness RE).

<sup>7687</sup> T. 12 March 2003 p. 64; T. 13 March 2003 pp. 6, 13 (Witness FAP).

<sup>7688</sup> T. 3 February 2004 pp. 63, 70-71 (Witness QBQ).



Semanyenzi and Annonciata where the killings had occurred, it might be expected that each would identify the same location.<sup>7689</sup>

2748. The Chamber notes that Rwabayanga is located behind the ESO which is in the opposite direction from Kabutare when departing from the BPO.<sup>7690</sup> It further notes that Witness QBQ testified that Mukoni was near the IRST.<sup>7691</sup> The IRST is located further down the same road as the ESO. Nonetheless, the Chamber observes that the ESO, Kabutare, and the IRST were all sites of massacres or mass graves<sup>7692</sup> and it accepts that different groups of refugees could have been taken to these locations on different occasions, particularly considering that Ntahobali, Nyiramasuhuko and the *Interahamwe* mounted multiple attacks at the BPO.

2749. Regardless of whether the refugees were taken to Rwabayanga, Kabutare, Mukoni or the IRST, the only reasonable inference is that the refugees were abducted from the BPO in order to kill them.<sup>7693</sup> The Chamber finds beyond a reasonable doubt that Ntahobali and Nyiramasuhuko participated in the abduction of multiple truckloads of Tutsi refugees from the BPO and that these refugees were killed.

#### 3.6.19.4.9 First Half of June 1994 – Additional Killings and Rape, Including Rape of Witness TA

##### 3.6.19.4.9.1 Testimony Relevant to This Time Period

2750. The Chamber notes that Witness TA testified that Immaculée Mukagatare was raped at the BPO during the fourth attack Witness TA observed at the BPO. This corresponds with the first or second week of June 1994.<sup>7694</sup> Witness QBP likewise testified that during the attack by Nyiramasuhuko, she observed the rape of a woman named Immaculée Mukagatare who died

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<sup>7689</sup> The Chamber notes that Witnesses QJ and QBP did not attribute their knowledge of the location of the killings to Semanyenzi or Annonciata: T. 24 October 2001 p. 88 (Witness QBP); T. 28 October 2002 p. 82 (Witness QBP); T. 29 October 2002 pp. 22-23 (Witness QBP) (said she learned killings occurred in Kabutare from people who had gone to the market the next day); T. 8 November 2001 pp. 154-155 (Witness QJ) (Witness QJ did not indicate her source of information that the refugees were killed in Kabutare). The Chamber recognises that these two witnesses may have been referring to different attacks than the other witnesses and therefore, the information they provided does not necessarily contradict that certain refugees were killed at Rwabayanga or Mukoni.

<sup>7690</sup> Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites); Prosecution Exhibit 110A (Des Forges Expert Report) p. 57.

<sup>7691</sup> T. 3 February 2004 pp. 72-73 (Witness QBQ); see Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites). The Chamber notes that "INRS" is the French acronym for the National Institute of Scientific Research, IRST).

<sup>7692</sup> Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *commune* – Genocide Sites).

<sup>7693</sup> *Ntagerura et al.*, Judgement (AC), paras. 304, 306; *Bikindi*, Judgement (TC), para. 30.

<sup>7694</sup> T. 25 October 2001 p. 29; T. 29 October 2001 pp. 51-52 (Witness TA testified that she saw Nyiramasuhuko during one night in mid-May 1994); T. 25 October 2001 p. 67; T. 31 October 2001 pp. 86-87 (seven days later at night, the *Interahamwe* arrived in the same Hilux vehicle and started beating people, cutting them with machetes, and killing some at the BPO); T. 25 October 2001 p. 76 (four days later at night, a group of eight *Interahamwe* including Shalom arrived in the same vehicle and started beating and cutting up people at the BPO); T. 29 October 2001 p. 7 (another 7 to 10 days later, a group of 8 *Interahamwe*, including Shalom arrived at the BPO in the same vehicle); T. 29 October 2001 pp. 15, 25 (during this fourth attack, Witness TA watched Shalom take another Tutsi refugee woman, named Immaculée to rape her); T. 29 October 2001 pp. 116-117 (ICS) (Witness TA) (Immaculée died of AIDS in January 2001).

after the war.<sup>7695</sup> Therefore, the Chamber is convinced that Witness TA's evidence of this attack corresponds with the attack described by Witness QBP which allegedly occurred in June 1994.

2751. Witness SU testified that one night after the three attacks, she again saw Nyiramasuhuko come to the BPO on a pickup and order *Interahamwe* to rape Tutsi women.<sup>7696</sup> Witness SS corroborated this account. Insofar as Witness SU stated this event occurred after the night of three attacks, and the refugees were transferred to Rango around 17 June 1994, the Chamber finds it established that these additional attacks occurred in the first half of June 1994.

#### 3.6.19.4.9.2 First Half of June 1994 – Nyiramasuhuko's Order to Rape

2752. Witnesses QBP and SU testified that Nyiramasuhuko returned to the BPO a subsequent night and ordered that Tutsi women be raped.

2753. One night after the night of three attacks, Witness SU saw a Volkswagen driven by Emmanuel Rekeraho arrive at the BPO at around 10.00 p.m. Rekeraho got out of the Volkswagen and into the Sovu ambulance at the BPO.<sup>7697</sup> Nyiramasuhuko then arrived at the BPO in the same Hilux vehicle, this time wearing a military shirt and a *kitenge*.<sup>7698</sup> When Witness SU was questioned as to her statement of 3 December 1996, in which she said that Pauline came in a white van painted with green colours rather than a Hilux vehicle, she testified that Rekeraho arrived in a van belonging to the Sovu Health Centre, but that Nyiramasuhuko arrived in a Hilux.<sup>7699</sup>

2754. Nyiramasuhuko summoned the *Interahamwe* present at the BPO. She told them to load people onto the vehicle.<sup>7700</sup> She also shouted at the *Interahamwe* to “choose the young girls and the women that are still useful.”<sup>7701</sup> She ordered that the women be raped because they refused to marry Hutus and then to be loaded onto the Hilux to be killed.<sup>7702</sup> Witness SU was about nine metres away from Nyiramasuhuko.<sup>7703</sup>

2755. Immediately following Nyiramasuhuko's instruction, after the vehicle had left, one of the *Interahamwe* named Muzungu took and raped a girl whom the witness knew.<sup>7704</sup> Witness SU testified that the *Interahamwe* became animals and raped women. There was no respect of human beings at that time.<sup>7705</sup> At the same time, another *Interahamwe* whom the witness

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<sup>7695</sup> T. 24 October 2002 p. 107 (ICS); T. 24 October 2002 p. 204 (HC) (Witness QBP) (French).

<sup>7696</sup> T. 14 October 2002 pp. 52, 57, 68; T. 17 October 2002 pp. 79, 84 (Witness SU).

<sup>7697</sup> T. 14 October 2002 pp. 51-52; T. 17 October 2002 p. 79 (Witness SU).

<sup>7698</sup> T. 14 October 2002 p. 52 (Witness SU) (“she came in military uniform and she had put on a cloth.”); see T. 14 October 2002 p. 98 (Witness SU) (French) (“elle était venue en tenue militaire et elle avait mis un pagne.”).

<sup>7699</sup> T. 17 October 2002 pp. 27-29 (Witness SU); Defence Exhibit 71 (Nyiramasuhuko) (20 November 1996, Statement of Witness TK).

<sup>7700</sup> T. 14 October 2002 pp. 53, 57, 64; T. 17 October 2002 pp. 83-84 (Witness SU).

<sup>7701</sup> T. 14 October 2002 pp. 57, 68; T. 17 October 2002 p. 84 (Witness SU).

<sup>7702</sup> T. 14 October 2002 pp. 53-54, 57 (Witness SU).

<sup>7703</sup> T. 14 October 2002 pp. 59-60 (Witness SU).

<sup>7704</sup> T. 14 October 2002 pp. 63, 65-66; T. 15 October 2002 pp. 16-17 (ICS) (Witness SU).

<sup>7705</sup> T. 14 October 2002 p. 62 (Witness SU).

identified as Ruhengeri raped a girl in the presence of the witness.<sup>7706</sup> Witness SU also identified Ngoma, Ribanza and Mbote as *Interahamwe* who committed rapes.<sup>7707</sup>

2756. The *Interahamwe* lined up women next to the vehicle to choose whom to rape, including Witness SU. The *Interahamwe* shined a torch on Witness SU. Witness SU showed them her aged breasts to discourage the men from raping her as she was very thin.<sup>7708</sup> The *Interahamwe* then took the women and girls they had chosen behind the ORINFOR and into abandoned vehicles to rape them.<sup>7709</sup>

2757. Witness SS corroborated this account, stating an *Interahamwe* hit her sister, Witness SU, with a machete between the shoulders. One night, an *Interahamwe* woke up Witness SU who removed her clothes, showed him her breasts and told him, “[p]lease, don’t take me with you, I’m an old lady and my breasts are falling.”<sup>7710</sup>

2758. Witness SU’s identification of Nyiramasuhuko was based on prior knowledge; she knew Nyiramasuhuko because Witness SU often walked past Nyiramasuhuko’s home in Ndora *commune* when Witness SU went to visit relatives.<sup>7711</sup> Witness SU arrived at the BPO on or about 28 May 1994<sup>7712</sup> and had several opportunities to observe Nyiramasuhuko in broad daylight and from close range; on the first occasion, Nyiramasuhuko, was four metres away from the witness<sup>7713</sup> whereas on the second occasion Witness SU saw Nyiramasuhuko arrive at the BPO, Witness SU was nine metres away.<sup>7714</sup> Witness SU saw Nyiramasuhuko summon the *Interahamwe* present at the BPO and order them to select young Tutsi women and girls to be loaded on the vehicles, raped and then killed.<sup>7715</sup> The Chamber finds Witness SU’s identification of Nyiramasuhuko reliable considering she previously knew Nyiramasuhuko, and she saw her at the BPO during the day from close proximity.

2759. Witness SU testified that she did not have any clothes therefore she could not approach Nyiramasuhuko. She later clarified that she was only wearing clothes that had been given to her and she was not dressed to the same standard as Nyiramasuhuko.<sup>7716</sup>

2760. Asked why she stayed at the BPO despite having a signed affidavit indicating that she was Hutu,<sup>7717</sup> Witness SU stated that she attempted to seek shelter with some nuns, but once they saw she was injured it was determined that it would not be safe such that she was obliged to go to the BPO.<sup>7718</sup> It was also dangerous in case she ran into someone who knew her.<sup>7719</sup>

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<sup>7706</sup> T. 14 October 2002 p. 63; T. 15 October 2002 p. 17 (ICS) (Witness SU).

<sup>7707</sup> T. 14 October 2002 p. 63; T. 24 October 2002 p. 41 (Witness SU).

<sup>7708</sup> T. 14 October 2002 pp. 60-61; T. 17 October 2002 p. 93 (Witness SU).

<sup>7709</sup> T. 14 October 2002 p. 62 (Witness SU).

<sup>7710</sup> T. 3 March 2003 p. 74 (ICS) (Witness SS).

<sup>7711</sup> T. 14 October 2002 p. 14; T. 15 October 2002 pp. 98-99; T. 21 October 2002 p. 61 (ICS) (Witness SU).

<sup>7712</sup> T. 14 October 2002 p. 8 (Witness SU).

<sup>7713</sup> T. 14 October 2002 pp. 15-16, 20, 23, 65 (Witness SU).

<sup>7714</sup> T. 14 October 2002 pp. 59-60 (Witness SU).

<sup>7715</sup> T. 14 October 2002 pp. 53, 57, 67; T. 17 October 2002 pp. 83-84 (Witness SU).

<sup>7716</sup> T. 17 October 2002 pp. 22-23 (Witness SU).

<sup>7717</sup> See T. 15 October 2002 pp. 18-19 (ICS); T. 22 October 2002 p. 85 (Witness SU) (On 27 May 1994, Witness SU obtained an affidavit which indicated she was Hutu).

<sup>7718</sup> T. 21 October 2002 pp. 32, 34 (Witness SU).

2761. At the time of her testimony Witness SU was not living with her sister, although they visited one another.<sup>7720</sup> She never discussed the events of 1994 or the events at the BPO with her sister.<sup>7721</sup> She also met a woman with the same first name as Witness QBP at the BPO.<sup>7722</sup> After the war she chanced upon Witness QBP's sister at the *commune* office where they were searching for their identity documents. They exchanged greetings but did not discuss the events of 1994 at the BPO.<sup>7723</sup>

2762. Witness SU said that she had problems with her eyes and needed eyeglasses.<sup>7724</sup> At the time of the war she could see without any problems. After the war she had eyesight problems because of an illness.<sup>7725</sup> She was not able to recognise what was shown in Prosecution Exhibit 23A as the photo was projected on a screen.<sup>7726</sup> The Chamber considers Witness SU's vision problems at the time of her testimony did not adversely affect her ability to identify Ntahobali during the events in 1994.

2763. Witness QBP named four women who had been raped, two of whom died after the war.<sup>7727</sup> She admitted not witnessing with her own eyes the alleged rapes in the rear of the BPO as there was no longer any light.<sup>7728</sup> However, she asserted that the *Interahamwe* and soldiers had just been encouraged to do something specific to these Tutsi women by Nyiramasuhuko and only a child would not understand what was going to happen to these women.<sup>7729</sup>

2764. Witness QBP testified during the night in which she observed the rape of Immaculée Mukagatare, "Nyiramasuhuko told the soldiers and *Interahamwe* that there's still a lot of dirt at the *préfecture*, such as these Tutsi women, who previously were arrogant and did not want to marry Hutu men. Now it's up to you to do whatever you want with them."<sup>7730</sup>

2765. Witness QBP testified that she knew Nyiramasuhuko because they lived in the same *commune* until Nyiramasuhuko got married and moved to Butare. She was aware that Nyiramasuhuko had been appointed Minister.<sup>7731</sup> After the witness returned from Nyange [early June], she saw Nyiramasuhuko coming to the BPO on board a camouflaged vehicle that she heard was smeared with old motor oil or cow dung.<sup>7732</sup> She was accompanied by *Interahamwe* and soldiers.<sup>7733</sup> Nyiramasuhuko was wearing a military shirt and a skirt and

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<sup>7719</sup> T. 22 October 2002 p. 62 (Witness SU).

<sup>7720</sup> T. 21 October 2002 pp. 47-48 (ICS) (Witness SU).

<sup>7721</sup> T. 21 October 2002 p. 50 (ICS) (Witness SU).

<sup>7722</sup> T. 21 October 2002 p. 53 (ICS); T. 23 October 2002 p. 6 (ICS) (Witness SU).

<sup>7723</sup> T. 23 October 2002 p. 6 (ICS) (Witness SU).

<sup>7724</sup> T. 14 October 2002 p. 7; T. 15 October 2002 p. 22; T. 24 October 2002 p. 18 (Witness SU).

<sup>7725</sup> T. 24 October 2002 p. 45 (Witness SU).

<sup>7726</sup> T. 21 October 2002 pp. 15-16 (Witness SU).

<sup>7727</sup> T. 24 October 2002 pp. 107-108 (ICS) (Witness QBP).

<sup>7728</sup> T. 29 October 2002 pp. 13-14 (Witness QBP).

<sup>7729</sup> T. 29 October 2002 p. 14 (Witness QBP).

<sup>7730</sup> T. 24 October 2002 p. 85; T. 28 October 2002 pp. 81, 88, 99; T. 29 October 2002 p. 21 (Witness QBP).

<sup>7731</sup> T. 24 October 2002 p. 84; T. 28 October 2002 pp. 70-71 (Witness QBP).

<sup>7732</sup> T. 24 October 2002 pp. 84-85; T. 28 October 2002 pp. 79-80, 82, 86 (Witness QBP) (refers to "mud" and "grease"); see T. 24 October 2002 p. 163 (Witness QBP) (French) (refers to "cow dung" and "old motor oil").

<sup>7733</sup> T. 24 October 2002 p. 84; T. 28 October 2002 pp. 80, 82; T. 29 October 2002 pp. 16-17 (Witness QBP).

spoke to the soldiers and *Interahamwe* when the witness was nearby.<sup>7734</sup> Witness QBP said she was able to see clearly because there were lights coming from the houses surrounding the BPO.<sup>7735</sup> Therefore, Witness QBP's evidence corroborates that Nyiramasuhuko was wearing a mix of military and civilian clothing and arrived at the BPO in a mud-covered vehicle. Although she observed Nyiramasuhuko at night, the view was enhanced by surrounding lights. Based on these factors, the Chamber finds Witness QBP's identification of Nyiramasuhuko to be both credible and reliable.

2766. Although Witness QBP did not observe the rapes,<sup>7736</sup> she saw Nyiramasuhuko give the orders and watched the *Interahamwe* choose women to drag behind the BPO before the lights went out and she hid herself.<sup>7737</sup> Witness QBP also saw soldiers and *Interahamwe* dragging refugee women to the back of the BPO and loading other refugees aboard a double-cabin Toyota pickup that had accompanied Nyiramasuhuko's vehicle to the BPO.<sup>7738</sup> Witness QBP managed to hide in the bushes in the rear of the BPO when the lights went off.<sup>7739</sup> Witness QBP's testimony that she was at the BPO during mid-May 1994 was corroborated by Nyiramasuhuko Defence Witness WMCZ; he saw Witness QBP at the BPO among 1,000 refugees and she asked him for money.<sup>7740</sup> One of her children had disappeared and he later learned that child had died.<sup>7741</sup>

2767. On cross-examination, it was put to Witness SU that she had not been at the BPO during the time she said and that she was instead at someone's house from 27 May 1994 until the end of the war. Witness SU said that six people had been discovered at that man's house and were killed as was the man himself. Therefore, she only spent three days in his home.<sup>7742</sup>

2768. Witness QBP's credibility was brought into question by Witnesses WUNJN and WUNHF. Witness WUNJN testified that he saw Witness QBP from a drinking establishment; she was at her parent's home.<sup>7743</sup> For the reasons stated above, the Chamber does not find Witness WUNJN's testimony to be credible. As to Witness WUNHF, he notes that Witness QBP disappeared for five to seven days during May and, rather than worry about her safety, he speculated that she had travelled to Nyange to farm.<sup>7744</sup> The Chamber notes that it was uncontested that the number of roadblocks in Butare in May was considerable, restricting ease of movement. Yet Witness WUNHF suggests that Witness QBP continued to farm through May and June 1994.<sup>7745</sup> The picture created by WUNHF, that Witness QBP and others were free to move about and farm during the genocide, was not at all believable. Therefore, the

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<sup>7734</sup> T. 24 October 2002 pp. 94-97 (Witness QBP).

<sup>7735</sup> T. 24 October 2002 p. 85; T. 28 October 2002 p. 87; T. 30 October 2002 p. 22 (Witness QBP).

<sup>7736</sup> T. 29 October 2002 pp. 13-14 (Witness QBP).

<sup>7737</sup> T. 24 October 2002 pp. 85-86 (Witness QBP).

<sup>7738</sup> T. 24 October 2002 pp. 85, 88, 97-99; T. 28 October 2002 p. 80; T. 29 October 2002 pp. 10, 12 (Witness QBP).

<sup>7739</sup> T. 24 October 2002 pp. 85-86; T. 29 October 2002 p. 6 (Witness QBP).

<sup>7740</sup> T. 2 February 2005 pp. 34, 36, 60; T. 2 February 2005 pp. 53-54 (ICS); T. 7 February 2005 pp. 23-24, 28 (ICS) (Witness WMCZ).

<sup>7741</sup> T. 2 February 2005 pp. 37, 51; T. 3 February 2005 p. 67 (ICS) (Witness WMCZ).

<sup>7742</sup> T. 21 October 2002 pp. 69-70, 77 (ICS) (Witness SU).

<sup>7743</sup> T. 6 February 2006 p. 22 (ICS) (Witness WUNJN).

<sup>7744</sup> T. 26 January 2006 pp. 20, 56 (ICS) (Witness WUNHF).

<sup>7745</sup> T. 26 January 2006 pp. 19-20 (ICS) (Witness WUNHF).

Chamber does not find his testimony to undermine Witness QBP's credibility regarding abductions at the BPO.

2769. Witness QBP testified that on the night when Immaculée Mukagatare was raped, Nyiramasuhuko had given the order to attack Tutsi refugees.<sup>7746</sup> She testified that Immaculée Mukagatare was raped at the BPO and later died.<sup>7747</sup> Witness QBP admitted not witnessing with her own eyes the alleged rapes in the rear of the BPO, but this rape allegedly occurred in the open.<sup>7748</sup>

2770. Witness TA testified that she was also an eyewitness to the rape of Immaculée Mukagatare.<sup>7749</sup> Eighteen to 20 days after the first attack, a group of eight *Interahamwe*, including Shalom arrived at the BPO in the same vehicle and attacked the refugees with machetes, hammers, Rwandan clubs and sticks.<sup>7750</sup> On this occasion, Shalom again handed Witness TA over to the *Interahamwe* and told them to be quick, after which seven *Interahamwe* raped her.<sup>7751</sup> When Witness TA returned to where she usually slept at the BPO after being raped, she watched Ntahobali take another Tutsi refugee woman named Immaculée to rape her.<sup>7752</sup> Immaculée had three children with her, including a child of about one and a half to two years old that was still being breast fed.<sup>7753</sup> Immaculée tried to fight Shalom and asked him to let her go back to her children.<sup>7754</sup> Ntahobali took the youngest child from Immaculée's arms and threw the child to the side, before raping Immaculée.<sup>7755</sup> Witness TA picked up the child and consoled it to keep it quiet.<sup>7756</sup> After raping Immaculée, Shalom placed two heavy logs on her legs, one above the knee and one below knee, and, according to Immaculée, Shalom said, "[I]et's see if you can get out of that."<sup>7757</sup> After Immaculée had been raped, she asked Witness TA to help remove the logs.<sup>7758</sup> Witness TA testified that she went to visit Immaculée at a hospital and Immaculée told Witness TA that she had contracted AIDS during the 1994 events. Immaculée died in January 2001.<sup>7759</sup> Witness TA later testified that the rape of Immaculée occurred on the fifth occasion that Ntahobali visited the BPO, on which occasion Witness TA was not personally raped.<sup>7760</sup> Given the traumatic nature of the incident, and the amount of time that has passed since this rape, the Chamber does not consider this discrepancy to be serious or such as to undermine Witness TA's overall credibility as to this account.

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<sup>7746</sup> T. 24 October 2002 p. 85; T. 28 October 2002 pp. 81, 88, 99; T. 29 October 2002 p. 21 (Witness QBP).

<sup>7747</sup> T. 24 October 2002 pp. 107-108 (ICS) (Witness QBP); for correct spelling, see T. 24 October 2002 p. 204 (Witness QBP) (French).

<sup>7748</sup> T. 29 October 2002 pp. 13-14 (Witness QBP).

<sup>7749</sup> T. 29 October 2001 pp. 15, 25 (Witness TA).

<sup>7750</sup> T. 29 October 2001 pp. 7-8; T. 1 November 2001 pp. 36-38 (Witness TA).

<sup>7751</sup> T. 29 October 2001 pp. 8, 10-11; T. 1 November 2001 pp. 39-40 (Witness TA).

<sup>7752</sup> T. 29 October 2001 pp. 15, 25 (Witness TA).

<sup>7753</sup> T. 29 October 2001 pp. 16-17 (Witness TA).

<sup>7754</sup> T. 29 October 2001 p. 16 (Witness TA).

<sup>7755</sup> T. 29 October 2001 pp. 16-18; T. 1 November 2001 p. 44 (Witness TA).

<sup>7756</sup> T. 29 October 2001 p. 17; T. 1 November 2001 pp. 44, 48 (Witness TA).

<sup>7757</sup> T. 29 October 2001 pp. 24-27; T. 1 November 2001 pp. 45, 47-48 (Witness TA).

<sup>7758</sup> T. 29 October 2001 pp. 24-25; T. 1 November 2001 pp. 44-45 (Witness TA).

<sup>7759</sup> T. 29 October 2001 pp. 116-117 (ICS) (Witness TA).

<sup>7760</sup> T. 1 November 2001 pp. 42-43 (Witness TA).

2771. Witness TK also corroborated Witness TA's testimony regarding additional attacks. Apart from the night of three attacks, Witness TK testified that she saw Shalom very often at the BPO.<sup>7761</sup> He came on a number of evenings, accompanied by *Interahamwe* or disabled soldiers who were staying at the *Groupe Scolaire*.<sup>7762</sup> Those soldiers hit people with their crutches.<sup>7763</sup> He came to mock the refugees.<sup>7764</sup> On some occasions, he abducted women who were then raped.<sup>7765</sup> He also came to determine whether there were any men left, who were then taken away to be killed. She testified that Shalom committed crimes on each evening he came to the BPO.<sup>7766</sup> He would say to the *Interahamwe*, "[b]e firm in your actions," when he meant, "kill all of them."<sup>7767</sup> The *Interahamwe* surrounded Ntahobali and called him "*Shalom, chef*."<sup>7768</sup> Witness TK also saw Shalom at the BPO on a few occasions during the day.<sup>7769</sup> Nyiramasuhuko came alone to the BPO on other occasions, but she did not see Pauline when these rapes occurred.<sup>7770</sup> The Chamber finds Witness TK's description of Ntahobali coming to the BPO along with soldiers from the *Groupe Scolaire* to be credible.

2772. The Chamber recalls Ntahobali's proffered alibi for June 1994 that he never left Hotel Ihuliro at night. The Chamber has found that this alibi was not reasonably possibly true. The Chamber also recalls Nyiramasuhuko's alibi that she was in Muramba attending Interim Government meetings on 6 and 10 June 1994 which the Chamber found to be reasonably possibly true. Nonetheless, her alibis for 7 to 9 June 1994 and from 11 to 19 June 1994 were not credible. Further, she admitted to being in Butare Town on the night of 11 June 1994. Although she claimed she did not leave Hotel Ihuliro that night, the Chamber found this not reasonably possibly true.

2773. Therefore, the Chamber finds it established beyond a reasonable doubt, based on the testimony of Witnesses TA, QBP and TK that, in addition to those attacks described above, Ntahobali, injured soldiers and *Interahamwe* came to the BPO in June 1994 to rape women and abduct refugees. During one of these attacks Ntahobali again handed Witness TA over to about seven *Interahamwe* to rape Witness TA. It further finds that in June 1994, Nyiramasuhuko ordered *Interahamwe* to rape Tutsi women at the BPO and that as a result, numerous women were raped at that location. Although Nyiramasuhuko could not have been present on 6 and 10 June 1994, she had ample opportunity to perpetrate these crimes on 7 to 9 June and 11 to 19 June 1994.

#### 3.6.19.4.10 Number of Refugees Abducted and Killed

2774. Few Prosecution witnesses were able to estimate the number of refugees who had been abducted and killed. For example, Witness TA was unable to estimate how many people

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<sup>7761</sup> T. 20 May 2002 p. 100; T. 23 May 2002 p. 88 (Witness TK).

<sup>7762</sup> T. 20 May 2002 p. 100 (Witness TK); T. 23 May 2002 p. 126 (Witness TK).

<sup>7763</sup> T. 23 May 2002 p. 126 (Witness TK).

<sup>7764</sup> T. 20 May 2002 p. 100 (Witness TK).

<sup>7765</sup> T. 20 May 2002 p. 100; T. 23 May 2002 p. 126 (Witness TK).

<sup>7766</sup> T. 20 May 2002 p. 100 (Witness TK).

<sup>7767</sup> T. 22 May 2002 p. 109 (Witness TK).

<sup>7768</sup> T. 23 May 2002 p. 93 (Witness TK); see T. 23 May 2002 p. 111 (Witness TK) (French) (referring to "*Shalom, chef*").

<sup>7769</sup> T. 23 May 2002 pp. 89-90 (Witness TK).

<sup>7770</sup> T. 28 May 2002 p. 53 (Witness TK).

Ntahobali cut up on the night he came to the BPO in mid-May because he was cutting up people very quickly and she was worried that he would slit her throat.<sup>7771</sup> Likewise, Des Forges testified that Nsabimana told her he did not know how many refugees were taken away from the BPO, but that he did know that it was happening.<sup>7772</sup>

2775. The parties did not dispute that the refugees who stayed at the BPO were Tutsis.<sup>7773</sup> Any Hutu refugees at the BPO only stayed for a short time and were later taken to Mubumbano *secteur*.<sup>7774</sup> As to the number of refugees, Nsabimana testified that throughout the months of April and May the numbers varied on a daily basis, but that by the end of May it was clear that a big group of people was staying there.<sup>7775</sup> Nsabimana stated in Prosecution Exhibit 114 that initially, a small group of 20 refugees was at the BPO, but as time progressed more and more refugees came to the BPO.<sup>7776</sup> Witness SD also testified that the number of refugees changed, but she explained that it was because the refugees were being taken away to be killed and therefore their numbers decreased day by day.<sup>7777</sup> Witnesses TA, SJ, SU, SS, TK and FAP corroborated Witness SD's testimony on this point.<sup>7778</sup>

2776. It was also clear that the number of refugees diminished from 19 April until the refugees were taken to Rango in mid-June 1994. A number of refugees testified that towards the end of April, the refugees at the BPO numbered in the thousands: Witness TA stated there were 6,000 at the end of April;<sup>7779</sup> Witness SJ stated there were 1,500 in April;<sup>7780</sup> and Witness QBQ said there were 2,000 at the end of April.<sup>7781</sup> Other witnesses arrived at the end of May and testified that there were somewhat fewer refugees: Witness SU said there were about 600 on 28 May;<sup>7782</sup> Witness SS said there were 1,000 on 27 May;<sup>7783</sup> Witness FAP said that after

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<sup>7771</sup> T. 31 October 2001 pp. 50-51 (Witness TA).

<sup>7772</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>7773</sup> T. 24 October 2001 pp. 94-96 (Witness TA); T. 29 October 2001 p. 58 (Witness TA); T. 20 May 2002 p. 35 (Witness TK); T. 28 May 2002 p. 113 (Witness SJ); T. 30 May 2002 pp. 151-153 (Witness SJ); T. 4 June 2002 pp. 82-83 (Witness SJ); T. 24 October 2002 p. 80 (Witness QBP); T. 28 October 2002 pp. 46, 52 (Witness QBP); T. 3 March 2003 pp. 37-38 (Witness SS); T. 17 March 2003 pp. 7, 9 (Witness SD); T. 3 February 2004 pp. 7, 21, 22 (Witness QBQ); T. 4 July 2006 p. 71 (Bararwandika); T. 2 February 2005 pp. 34, 36 (Witness WMCZ); T. 2 February 2005 pp. 53-54 (ICS) (Witness WMCZ); T. 7 February 2005 pp. 23-24, 28 (ICS) (Witness WMCZ); T. 10 October 2006 p. 21 (Nsabimana) (did not doubt that many of the refugees were Tutsis).

<sup>7774</sup> T. 23 May 2002 p. 9 (Witness TK); T. 15 October 2002 pp. 76-77 (Witness SU); T. 22 October 2002 pp. 32, 34 (Witness SU); T. 28 October 2002 pp. 48-49 (Witness QBP); T. 24 February 2003 p. 14 (Witness RE); T. 26 February 2003 p. 54 (Witness RE); T. 27 February 2003 p. 5 (Witness RE); T. 11 March 2003 p. 45 (Witness FAP); T. 17 March 2003 p. 7 (Witness SD); T. 10 October 2006 pp. 20-21 (Nsabimana).

<sup>7775</sup> T. 9 October 2006 p. 18 (Nsabimana).

<sup>7776</sup> Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994); *see also* T. 9 October 2006 p. 18 (Nsabimana).

<sup>7777</sup> T. 17 March 2003 p. 63 (Witness SD); T. 18 March 2003 p. 18 (Witness SD).

<sup>7778</sup> T. 24 October 2001 pp. 95-96 (Witness TA); T. 29 October 2001 pp. 58, 87 (Witness TA); T. 11 March 2003 p. 45 (Witness FAP); T. 28 May 2002 p. 113 (Witness SJ); T. 30 May 2002 pp. 151-153 (Witness SJ); T. 4 June 2002 pp. 82-83 (Witness SJ); T. 3 March 2003 p. 38 (Witness SS); T. 28 May 2002 p. 57 (Witness TK); T. 14 October 2002 p. 12 (Witness SU); T. 15 October 2002 p. 70 (Witness SU).

<sup>7779</sup> T. 24 October 2001 p. 95; T. 29 October 2001 p. 58; T. 5 November 2001 p. 37 (Witness TA).

<sup>7780</sup> T. 28 May 2002 p. 113; T. 30 May 2002 pp. 151-152; T. 4 June 2002 pp. 82-83 (Witness SJ).

<sup>7781</sup> T. 3 February 2004 pp. 7, 38-39, 50 (Witness QBQ).

<sup>7782</sup> T. 14 October 2002 p. 12; T. 15 October 2002 pp. 69-70 (Witness SU) (she testified this was at the time she arrived).

<sup>7783</sup> T. 3 March 2003 p. 38 (Witness SS).



some people had already been killed in May there were 350 refugees at the BPO.<sup>7784</sup> In his testimony, Nsabimana estimated that at the end of May there were 200 refugees, but in a video interview taken on 15 June 1994, Nsabimana estimated there were about 200 refugees at that time as well.<sup>7785</sup> Of course, Nsabimana had an incentive to minimise the number of refugees who were at the BPO to limit his culpability. Patrick Fergal Keane testified that on 15 June 1994 there were about 200 refugees, but in a book published closer to the genocide he estimated that there were 500 refugees at the BPO.<sup>7786</sup> Witness TK, who provided detailed and credible testimony in other respects, testified that by the time the Tutsi refugees were transferred to Rango, there were only about 75 left; their numbers were visibly reduced.<sup>7787</sup>

2777. Several Defence witnesses also provided testimony that was consistent with this trend. Witness WZNA testified that between 16 and 18 April 1994 he saw 50 to 60 refugees at the BPO.<sup>7788</sup> The Chamber notes that this was before the swearing-in ceremony of Nsabimana when the majority of killings started in Butare *préfecture* and therefore is not inconsistent with the Prosecution's case. Witness WMKL also testified that there were 100 to 150 refugees at the BPO the week after the President's plane crash, *i.e.* around 13 April 1994.<sup>7789</sup> Again, this was prior to Nsabimana's swearing-in and therefore is consistent with the Prosecution's case. Witness WZNA also testified that by early July 1994, there were no longer any refugees at the BPO.<sup>7790</sup> This is also consistent with the testimony that the refugees were taken to Rango after 15 June 1994.

2778. Other Defence witnesses provided testimony that was inconsistent with the Prosecution's case. Witness WNMN stated that in early June there were only 30 to 50 refugees at the BPO.<sup>7791</sup> However, Witness WNMN only saw the BPO in passing and was unable to state whether there were more refugees that were staying behind the BPO,<sup>7792</sup> where it was uncontested the refugees stayed during the day. Therefore, his testimony was based upon his own vantage point which did not permit him to have an overview of the number of refugees at the BPO. Therefore, his testimony is of limited value. Witness WTRT testified that there were only about 100 refugees at the BPO at the end of April or beginning of May.<sup>7793</sup> However, Witness WTRT was a Hutu soldier from the ESO<sup>7794</sup> and the Chamber does not find his testimony on this point to be credible.

2779. The Chamber notes that it was also difficult to estimate the number of refugees who were forced to board the pickup on each occasion when refugees were abducted from the BPO. It was clear that the vehicle was full on each occasion. Witness TA testified that during one attack Ntahobali ordered the *Interahamwe* to stop killing refugees, as the number of dead

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<sup>7784</sup> T. 11 March 2003 p. 45; T. 12 March 2003 pp. 47-48 (Witness FAP).

<sup>7785</sup> T. 25 September 2006 p. 47 (Keane); T. 28 September 2006 p. 53 (Keane); T. 9 October 2006 p. 60 (Nsabimana); T. 18 October 2006 p. 51 (Nsabimana).

<sup>7786</sup> T. 28 September 2006 p. 53 (Keane).

<sup>7787</sup> T. 28 May 2002 p. 57 (Witness TK).

<sup>7788</sup> T. 4 April 2005 pp. 52, 55 (Witness WZNA).

<sup>7789</sup> T. 6 April 2005 pp. 48-50; T. 11 April 2005 p. 37 (Witness WMKL).

<sup>7790</sup> T. 4 April 2005 pp. 56-57 (Witness WZNA).

<sup>7791</sup> T. 14 June 2005 pp. 45-46 (ICS); T. 15 June 2005 p. 31 (Witness WNMN).

<sup>7792</sup> T. 15 June 2005 p. 34 (Witness WNMN).

<sup>7793</sup> T. 9 March 2005 p. 51 (Witness WTRT).

<sup>7794</sup> T. 9 March 2005 pp. 34, 64 (ICS) (Witness WTRT).

people were in excess to the number of people who could be loaded in the vehicle.<sup>7795</sup> In addition, the Chamber has found that between mid-May and mid-June 1994, Nyiramasuhuko and Ntahobali came to the BPO with the pickup on at least seven occasions (once in mid-May; two additional times from mid-May to the beginning of June; three attacks during one night at the end of May or beginning of June; and another attack in June). Considering the pickup was nearly full on at least seven occasions, the Chamber is convinced beyond a reasonable doubt that hundreds of Tutsi refugees were abducted from the BPO and killed.

#### 3.6.19.4.11 Summary of Findings

2780. In sum, having fully considered the alibis of Nyiramasuhuko and Ntahobali and the evidence adduced against them with regard to the allegations of criminal conduct occurring at the BPO between 19 April 1994 and the end of June 1994, the Chamber makes the following factual findings.

2781. The Chamber finds the Prosecution has proven beyond a reasonable doubt that: between 19 April and late June 1994 Nyiramasuhuko, Ntahobali, *Interahamwe* and soldiers went to the BPO to abduct hundreds of Tutsis; the Tutsi refugees were physically assaulted and raped; and the Tutsi refugees were killed in various locations throughout Ngoma *commune*, including the following specific incidents:

- i. In mid-May 1994, Nyiramasuhuko, Ntahobali and about 10 *Interahamwe* came to the BPO aboard a camouflaged pickup. Nyiramasuhuko ordered the *Interahamwe* to force Tutsi refugees onto the pickup. Ntahobali and about eight other *Interahamwe* raped Witness TA. Some of the *Interahamwe* raped two other Tutsi women. The pickup left the BPO, abducting Tutsi refugees in the process, some of whom were forced to undress.
- ii. During the last half of May 1994, Ntahobali and *Interahamwe* came to the BPO on two more occasions. Ntahobali violently raped Witness TA, hitting her on the head. *Interahamwe* following the orders of Ntahobali raped six other women. In a subsequent attack during this same time period, Ntahobali ordered about seven other *Interahamwe* to rape Witness TA.
- iii. Around the end of May to the beginning of June 1994, Ntahobali, Nyiramasuhuko and *Interahamwe* came to the BPO on board a camouflaged pickup three times in one night. They abducted Tutsi refugees each time, some of whom were forced to undress, taking them to other sites in Butare *préfecture* to be killed. Nyiramasuhuko ordered *Interahamwe* to rape refugees because they were Tutsi. The *Interahamwe* beat, abused and raped many Tutsi women.
- iv. Throughout these attacks from 19 April to the end of June 1994, regardless of whether the refugees were taken to Rwabayanga, Kabutare, Mukoni or the IRST, hundreds of refugees were abducted from the BPO and never seen again, including Mbasha's wife and children, Trifina and other women and children. The only reasonable inference is that these refugees were killed.

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<sup>7795</sup> T. 29 October 2001 pp. 46, 49-51 (Witness TA).

v. In the first half of June 1994, Nyiramasuhuko ordered *Interahamwe* to rape Tutsi women at the BPO and that as a result numerous women were raped at that location. Ntahobali, injured soldiers and *Interahamwe* came to the BPO to rape women and abduct refugees. During at least one of these attacks Ntahobali again handed Witness TA over to about seven *Interahamwe* to rape Witness TA.

2782. The Prosecution did not prove the following allegations beyond a reasonable doubt: (1) Ntahobali abducted 30 Tutsi refugees on 28 April 1994; and (2) based on the evidence of Witness QY, Ntahobali and Nyiramasuhuko abducted, raped and killed Tutsi refugees at the BPO in late April or early May 1994. Likewise, the Chamber does not enter any conviction for the abduction, killing and/or rape of the following persons due to the notice violation of the Prosecution: Mbasha's wife and children, Trifina, Immaculée, Semanyenzi, Caritas and Annonciata.

### 3.6.20 Butare Préfecture Office – Nsabimana

#### 3.6.20.1 Introduction

2783. The Nsabimana and Nteziryayo Indictment alleges Nsabimana was present and going about his daily business at the BPO from 19 April 1994 when *Interahamwe* and soldiers assaulted, abducted and killed those seeking refuge at the BPO. Some of the refugees asked Nsabimana for protection, but Nsabimana did nothing to put an end to the attacks.<sup>7796</sup> The Prosecution submits that refugees were abducted, raped and killed on the grounds of the BPO when they should have been under the care of Nsabimana.<sup>7797</sup> The Prosecution also argued that the BPO had become “a concentration camp, a place where a huge number of refugees were assembled, brought together, and sent gradually on a daily basis to various sites to be executed, to be killed”.<sup>7798</sup> In support of this allegation, the Prosecution relies on the evidence of Witnesses TA, TK, SU, QBP, RE, SS, FAP, SD, QBQ, TQ and Expert Witness Alison Des Forges. It also points to the evidence of Nsabimana Defence Witness Alexandre Bararwandika.

2784. The Nsabimana Defence argues that the Indictment limits Nsabimana's responsibility to crimes that occurred when Nsabimana was in his office at the BPO attending to business. As such, the Defence argues the Indictment excludes crimes that occurred at night when he was not present at the BPO.<sup>7799</sup> It further argues that when Nsabimana found out about abductions, he posted *gendarmes* at the BPO to stop them.<sup>7800</sup> Finally, the Defence argues that the Indictment failed to plead superior responsibility or that Nsabimana participated directly in the attacks by planning, ordering, inciting or committing. Therefore, the Prosecution's case is limited to aiding and abetting.<sup>7801</sup> As to attacks that took place during the day at the BPO, the Defence argues that the Prosecution evidence was inadequate to establish that Nsabimana was

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<sup>7796</sup> Para. 6.36 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana only).

<sup>7797</sup> Prosecution Closing Brief, pp. 248, 264-268, 279, 296, paras. 63, 109-123, 164, 229.

<sup>7798</sup> Prosecution Opening Statement, T. 12 June 2001 p. 87.

<sup>7799</sup> Nsabimana Closing Brief, paras. 1209-1210.

<sup>7800</sup> Nsabimana Closing Brief, paras. 1476-1484.

<sup>7801</sup> Nsabimana Closing Brief, paras. 1211-1212, 1219.

in fact in his office during the attacks.<sup>7802</sup> It relies on the testimony of Nsabimana Defence Witnesses Patrick Fergal Keane and Alexandre Bararwandika, Nyiramasuhuko Defence Witnesses WMKL and WKKTD and Nsabimana.

### 3.6.20.2 Preliminary Issues

#### *Adequate Pleading of Article 6 (3) Responsibility*

2785. The Chamber notes that the Prosecution alleges that Nsabimana is responsible as a superior for the *Interahamwe*'s perpetration of abductions, killings and rapes at the BPO at night.<sup>7803</sup> In this regard, the Chamber recalls the pleading requirements as to superior responsibility set forth in the Preliminary Issues section (). Paragraph 6.36 of the Nsabimana and Nteziryayo Indictment alleges that Nsabimana was present at the BPO while attacks were being perpetrated at that location and that he failed to stop them. Therefore it clearly sets forth the criminal acts, the reason why Nsabimana would be aware of that criminal conduct, and why Nsabimana would be held responsible. Paragraph 6.36, however, fails to allege a superior-subordinate relationship. It asserts that militiamen and soldiers attacked refugees at the BPO but does not allege that Nsabimana was their superior or that he had effective control over them.

2786. An Indictment must be read as a whole. Paragraph 6.59 of the Nsabimana and Nteziryayo Indictment asserts that local authorities, including Nsabimana, aided and abetted their subordinates in carrying out the massacres of the Tutsi population. That paragraph does not indicate the identity of Nsabimana's subordinates.<sup>7804</sup> Paragraphs 3.3 and 3.4 assert that the *préfet*'s authority covers the entire *préfecture* and that in the discharge of his policing duties, the *préfet* may request the intervention of the army and of the *Gendarmerie Nationale*.<sup>7805</sup> Therefore, the Chamber finds that Paragraph 6.36, when read in conjunction with Paragraphs 3.3, 3.4 and 6.59 of the Indictment, made it clear to the Nsabimana Defence that the Prosecution alleged that Nsabimana had authority over soldiers within the army and *gendarmes* within the *Gendarmerie Nationale*.

2787. The Chamber notes the Indictment alleged that Nteziryayo, as director of civil defence, exercised authority over the *Interahamwe* militiamen and certain civilians.<sup>7806</sup> In contrasting Paragraphs 4.3 and 4.6 of the Indictment, the only allegation against Nsabimana was that he exercised authority over unspecified subordinates. Unlike with Nteziryayo, no paragraph alleges that Nsabimana had authority over *Interahamwe* militiamen. Therefore, it is the Chamber's view that the Indictment failed to charge Nsabimana with Article 6 (3) responsibility for attacks by *Interahamwe* at the BPO.

2788. The Chamber notes the Prosecution opening statement, which set forth the Prosecution case against Nsabimana, stated that he summoned the *bourgmestres* in order to organise the killings.<sup>7807</sup> None of the witness summaries in the Appendix to the Pre-Trial Brief state that

<sup>7802</sup> Nsabimana Closing Brief, paras. 1500, 1518-1519, 1523, 1537, 1539.

<sup>7803</sup> Prosecution Closing Brief, p. 282, para. 176.

<sup>7804</sup> Para. 6.59 of the Nsabimana and Nteziryayo Indictment.

<sup>7805</sup> Paras. 3.3 and 3.4 of the Nsabimana and Nteziryayo Indictment.

<sup>7806</sup> Paras. 4.3 and 4.6 of the Nsabimana and Nteziryayo Indictment.

<sup>7807</sup> Prosecution Opening Statement, T. 12 June 2001 p. 76.

Nsabimana was the superior of the *Interahamwe*. Therefore, the Chamber finds that the Prosecution did not cure the defect in the Indictment for failing to plead a superior-subordinate relationship between Nsabimana and the *Interahamwe* and will not consider whether Nsabimana was responsible as a superior for acts by *Interahamwe*.

### *Scope of Paragraph 6.36*

2789. The Nsabimana Defence argues that Paragraph 6.36 of the Indictment excludes atrocities committed when Nsabimana was not present at the BPO.<sup>7808</sup> Paragraph 6.36 alleges, “[t]he attacks took place while *Préfet* Sylvain Nsabimana was present and going about his daily business at the [BPO].” The Chamber notes that this sentence could mean either: (1) that Nsabimana would go to his office during the time period in which the attacks occurred at the BPO; or (2) that the attacks occurred while Nsabimana was sitting in his office at the BPO. Even if the language limits the allegation to attacks while Nsabimana was sitting in his office, Paragraph 6.36 must be read in conjunction with Paragraph 6.42 which provides that: “The entire *préfecture* of Butare was the scene of massacres of the Tutsi population.... These massacres occurred while Sylvain Nsabimana was exercising his authority as *Préfet* of Butare.” In addition, Paragraph 6.36 was pled in support of both Article 6 (1) and Article 6 (3) responsibility, neither of which require the accused to be present to be held accountable. The Chamber considers that it is clear that the Prosecution sought to prove that Nsabimana, as *préfet*, was responsible for attacks occurring throughout Butare *préfecture* including those occurring at the BPO, whether or not he was physically present.

### *Notice of the Specifics of the Attacks and Requests for Assistance*

2790. The Nsabimana Defence argues that there is ambiguity with regard to the nature of the attacks, the number of attacks, identity and origin of the soldiers, the commanding officers, the end date of the attacks, the type of attacks and the specifics with regard to the requests for assistance, including the *préfet's* reactions.<sup>7809</sup> Paragraph 6.36 of the Nsabimana and Nteziryayo Indictment specifies the attacks included the forcible abduction, assault and killing of refugees. It also specified that these attacks occurred when Nsabimana was at the BPO going about his daily business. As to the time period, the Chamber notes that Paragraph 6.21 states that Nsabimana was sworn in as *préfet* on 19 April 1994 and that Paragraph 6.34 states that Nteziryayo replaced Nsabimana on 17 June 1994. When read in conjunction with Paragraph 6.36, it was clear the alleged requests for assistance to Nsabimana took place between these two dates during the day when Nsabimana was going about his daily business at the BPO. 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>7810</sup> In the Chamber’s view, details such as the attitude and reactions of the *préfet*, and the form of the requests for assistance constitute evidence by which the Prosecution may prove the charge in Paragraph 6.36. Therefore, the Chamber finds that Paragraph 6.36, when read with the Indictment as a whole, adequately pled these details.

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<sup>7808</sup> Nsabimana Closing Brief, paras. 1209-1210.

<sup>7809</sup> Nsabimana Closing Brief, paras. 1491-1494.

<sup>7810</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 470.

*Notice of Particular Victims*

2791. The Nsabimana Defence further argues that it did not have notice of the alleged abductions of refugees named Donat, Mr. Mbasha and Pierre from the BPO.<sup>7811</sup> The Chamber notes that the names Donat, Mr. Mbasha and Pierre did not appear in the Indictment.

2792. The Chamber recalls that there may be circumstances where the sheer scale of killing prevents the Prosecution from providing a high level of specificity with regard to details such as the names of victims.<sup>7812</sup> The Chamber has ruled that some of the killings at the BPO from 19 April to late June 1994 involved dozens if not hundreds of victims and did not require the Prosecution to specify each of the victim's names. However, the abductions of Donat, Mr. Mbasha and Pierre each involved only a single victim (or in the case of Donat two victims). Although these alleged attacks took place at the BPO during the same time period as the large-scale attacks, *i.e.* from 19 April to late June 1994, the abductions of Donat, Mr. Mbasha and Pierre took place during the day and were evidentially distinct from the attacks at night involving the pickup and 10 *Interahamwe*. As such, the Chamber finds that it was not impracticable to name these three individual victims due to the sheer scale of the attacks at the BPO occurring at night.

2793. As to Donat, neither the Pre-Trial Brief nor its Appendix mentioned his name. Furthermore, Witness SU's statement of 20 November 1996 stated that soldiers and *Interahamwe* picked young boys and men at the BPO to be killed.<sup>7813</sup> The statement does not mention Donat or Nsabimana in connection with the abduction and killing of these boys and men. Similarly, Witness TA's statement of 19 November 1997 makes no mention of one Donat or even the abduction of men. The Chamber therefore finds that Nsabimana did not have notice that he was being charged with the abduction and killing of a man named Donat and will not convict Nsabimana for his abduction and killing.

2794. As to Mr. Mbasha,<sup>7814</sup> neither the Pre-Trial Brief nor its Appendix cited to the abduction of Mbasha. Witness TK's statement of 12 November 1996 mentioned Nyiramasuhuko's interaction with a woman named Mbasha and the subsequent abduction of Mbasha's children.<sup>7815</sup> However, the statement made no mention of Nsabimana or a man named Mbasha. Furthermore, Witness TK's statement of 22 and 23 April 1998 did not mention Nsabimana or Mbasha.<sup>7816</sup> The Chamber therefore finds that Nsabimana did not have notice that he was being charged with the abduction of a man named Mbasha and will not convict Nsabimana for his abduction and killing.

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<sup>7811</sup> Nsabimana Closing Brief, paras. 1495-1509, 1538-1541.

<sup>7812</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 58.

<sup>7813</sup> 20 November 1996, Statement of Witness SU, disclosed 4 November 1998, 4 December 2000, 15 June 2001, and 1 October 2001.

<sup>7814</sup> The Prosecution does not submit in its Closing Brief that Nsabimana was responsible for the killing of Mbasha's wife and children. Therefore, the Chamber does not address notice as to the alleged killing of Mbasha's family.

<sup>7815</sup> 12 November 1996, Statement of Witness TK, disclosed 23 April 2001.

<sup>7816</sup> 22-23 April 1998, Statement of Witness TK, disclosed 4 November 1998.

2795. As to Pierre, the Prosecution disclosed his name on 23 April 2001 in the statement of Witness TK, more than one year prior to the witness testifying.<sup>7817</sup> In addition, the Prosecution filed the list of witnesses it intended to call to testify on 6 April 2001, including the order in which it intended to call its first 12 witnesses. Among these first 12 witnesses, was Witness TK. However, Witness TK was not listed as a witness who would provide testimony against Nsabimana. The Chamber finds that a single witness statement among many cannot cure the defect in the Indictment for failing to name this particular victim. Therefore, the Chamber finds the defect was not cured and will not convict Nsabimana for his abduction and killing.

2796. The Chamber also notes that Prosecution Witness TK testified as to the killing of her brother at the BPO when Nsabimana was present during the day. This allegation does not appear in the Indictment or in the summary of Witness TK's testimony in the Pre-Trial Brief. Witness TK did mention her brothers in her prior statements. In her statement of 12 November 1996, she stated that she was hiding at a nunnery with her brothers and their children, but that they were killed. In her statement of 17 December 1996 (signed 22 January 1997), she stated that her brother was killed during the massacres. Finally, in her statement of 23 April 1998, she stated that she had three brothers and that one of her brothers was later killed. She also stated that none of her brothers or their children was killed at the convent, but one brother was killed later at the BPO. She further stated that attacks occurred at the BPO in the daytime. In her statements, Witness TK names Nyiramasuhuko, Ntahobali and Kanyabashi, but she does not name Nsabimana. Likewise, she does not assert that her brother was killed during the daytime when Nsabimana or a *préfet* was at the BPO. There was no information as to Nsabimana's involvement. Therefore, the Chamber considers that this information was not clear and consistent and did not cure the defect in the Indictment related to Witness TK's brother, such that it will not convict Nsabimana for his killing.

2797. The Nsabimana Defence also asserts that it did not have notice of the abduction of a young man named Alphonse, who had asked for assistance from Nsabimana, as Witness RE testified.<sup>7818</sup> The Chamber notes Paragraph 6.36 of the Indictment sets forth that refugees who were being attacked at the BPO asked Nsabimana to protect them from the violent acts of militiamen and soldiers. Nonetheless, the Nsabimana Defence argues that it would be unfair to rely on Witness RE's evidence because it did not have notice that she would be testifying as to this allegation. The Chamber notes that the testimony regarding Alphonse arose for the first time on cross-examination by counsel for Nsabimana.<sup>7819</sup> The Chamber recalls that where evidence is introduced that was not in the possession of the Prosecution prior to trial, it is unfair to base a conviction thereon. The rationale for this rule is that the Prosecution has ample opportunity to obtain more specific information from a witness prior to trial, and should not benefit from pleading broad generalities.<sup>7820</sup> Here, the Prosecution pled in Paragraph 6.36 that refugees asked for assistance. The Prosecution had an opportunity to ask Witness RE about the specifics of any requests to Nsabimana for assistance. Its failure to do so rendered the notice to Nsabimana inadequate. Therefore, the Chamber will not convict Nsabimana for the events

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<sup>7817</sup> 12 November 1996, Statement of Witness TK, unredacted versions disclosed 23 April 2001 and 1 October 2001.

<sup>7818</sup> Nsabimana Closing Brief, paras. 1526-1531.

<sup>7819</sup> T. 27 February 2003 pp. 5-6 (Witness RE).

<sup>7820</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 78-79.

related to a refugee named Alphonse. Nonetheless, the Chamber may consider the evidence of the abduction of Alphonse for other permissible purposes.<sup>7821</sup>

### *Allegation Regarding Care of Refugees*

2798. The Prosecution argues that Nsabimana is guilty of extermination and persecution for failing to provide the refugees with food, water and soap.<sup>7822</sup> It also argued that the BPO had become a concentration camp where Tutsi refugees were assembled and taken elsewhere to be killed.<sup>7823</sup> Paragraph 6.36 does not include reference to the failure to provide these provisions to refugees; rather it specifies that Nsabimana was responsible for abductions, assaults and killings. Nsabimana could not know that he was being charged for failing to provide food, water and soap to refugees at the BPO because there was no mention of it in the Indictment. Such an allegation is distinct from the charge of abduction, assaults and killings and is capable of supporting a separate charge. Accordingly, the Chamber finds this to be an impermissible expansion of an existing charge against Nsabimana and therefore will not consider this charge against Nsabimana.

### *Prosecution Exhibits 113 and 114*

2799. The Nsabimana Defence argues that Prosecution Exhibits 113 (*The Truth About the Massacres in Butare*, by Nsabimana) and 114 (Interview with Nsabimana dated 1 October 1994), said by Expert Witness Des Forges to have been sent to her by Nsabimana, were accepted for the sole purpose of establishing the basis for Des Forges' opinions. The Defence asserts that these documents were to be used only to establish contradictions, if necessary.<sup>7824</sup>

2800. The Chamber recalls its oral ruling of 8 June 2004 in which it held that Prosecution Exhibits 113 and 114 were admissible as one of the sources relied upon by Expert Witness Des Forges in formulating her expert opinion. The Chamber ruled that the weight and probative value of the expert opinion would be evaluated at the end of the trial. The Chamber did not rule that Prosecution Exhibits 113 and 114 could only be used to establish contradictions; rather the exhibits were admitted to help substantiate Des Forges' opinion.<sup>7825</sup> The Chamber's deliberations on these matters necessarily implicate the weight and probative value to be attributed to Des Forges' opinion as well as the materials upon which she relied. The Chamber also notes that Nsabimana did not object to the admissibility or contest the authenticity of these documents. In fact, Nsabimana acknowledged that Prosecution Exhibit 113 was his own, including all that it entails, but that he preferred to rely on the French version of the document introduced as Defence Exhibit 494.<sup>7826</sup> Nsabimana stated that Prosecution Exhibit 114 reflected his own views.<sup>7827</sup> It was his impression that Prosecution Exhibit 114 originated from

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<sup>7821</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15; *Kupreškic et al.*, Judgement (AC), paras. 321-323, 336.

<sup>7822</sup> Prosecution Closing Brief, pp. 281, 284, paras. 173, 184; Prosecution Closing Argument, T. 20 April 2009 p. 64; Defence Exhibit 473A (Nsabimana) (BBC Footage) at 36:00-36:17.

<sup>7823</sup> Prosecution Opening Statement, T. 12 June 2001 p. 87.

<sup>7824</sup> Nsabimana Closing Brief, paras. 203-204.

<sup>7825</sup> T. 8 June 2004 pp. 47-49, 62 (Des Forges).

<sup>7826</sup> T. 22 November 2006 pp. 39-40 (Nsabimana).

<sup>7827</sup> T. 13 November 2006 p. 14 (Nsabimana).



BBC reporter Greg Barrow at the YMCA and his friend James Stanley. Nsabimana had given the two an interview in which he spoke English, thereby explaining the apparently broken English in the transcript.<sup>7828</sup> Based upon Nsabimana's acknowledgement that these documents were authentic, the Chamber will evaluate their weight and probative value in light of the other evidence, considering in due course the opinion of Expert Witness Des Forges and Nsabimana's assertions regarding these documents.

### 3.6.20.3 *Deliberations – Nsabimana*

#### 3.6.20.3.1 Refugee Situation at the BPO

2801. Nsabimana testified that he did not make a decision to separate the Hutu and Tutsi refugees from one another. Rather, he said the decision to create separate camps for Hutu and Tutsi refugees was made in 1993 by the UNHCR and *préfecture* and local authorities.<sup>7829</sup> The Chamber considers this to be a reasonable explanation. Furthermore, the fact that Nsabimana did not order the refugees divided by ethnicity was supported by the testimony of Witnesses RE and TK.<sup>7830</sup> Therefore, the Chamber does not find that Nsabimana intentionally divided the refugees into groups based on their ethnicity. Nonetheless, Nsabimana admitted that he knew that the refugees at the BPO were Tutsis.<sup>7831</sup>

#### 3.6.20.3.2 Nsabimana's Knowledge of Attacks at the BPO

2802. The Chamber notes that Expert Witness Des Forges testified that she received Prosecution Exhibits 113 and 114 from Nsabimana.<sup>7832</sup> Prosecution Exhibit 113 was signed on every page. Although Nsabimana did not testify as to whether the signature was his own, Nsabimana made no objection to the admissibility or authenticity of Prosecution Exhibits 113 and 114. He explained in his testimony that he did not object to Prosecution Exhibit 114 because the views expressed therein were not 100 percent different from his own.<sup>7833</sup> Based upon all of the foregoing, the Chamber considers that Prosecution Exhibits 113 and 114 contain the writings of Nsabimana. The Chamber notes that some of the statements therein were against Nsabimana's interest and that such statements carry significant probative weight. The Chamber also notes, however, that Nsabimana had an incentive to minimise his involvement in the genocide and the documents will be viewed in light of these considerations.

2803. It was not disputed that Nsabimana was working at the BPO from the time that he was sworn in as *préfet* until around 17 June 1994, when Nteziryayo took over as *préfet* of Butare. Nsabimana argues that he did not know that attacks were occurring at the BPO during this time period.<sup>7834</sup> The Prosecution alleges that refugees came to Nsabimana with requests for

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<sup>7828</sup> T. 22 November 2006 p. 45 (Nsabimana).

<sup>7829</sup> T. 10 October 2006 pp. 20-21 (Nsabimana).

<sup>7830</sup> T. 24 February 2003 p. 10; T. 26 February 2003 p. 53 (Witness RE) (Nsabimana ordered the refugees to divide into two groups: one group of refugees from Butare *préfecture* and another group of refugees from other *préfectures* in order that *bourgmestres* of Butare's *communes* would evacuate the refugees back to their *communes* of origin); T. 20 May 2002 pp. 75-76 (Witness TK) (the *Interahamwe* split the refugees into several groups: men on one side, old people on another, women on another).

<sup>7831</sup> T. 10 October 2006 p. 21 (Nsabimana).

<sup>7832</sup> T. 8 June 2004 pp. 35-36 (Des Forges).

<sup>7833</sup> T. 13 November 2006 p. 14 (Nsabimana).

<sup>7834</sup> T. 10 October 2006 pp. 16, 24 (Nsabimana).

assistance and he refused to provide protection. The testimony of Witnesses TK, SU, SS, QBP and RE appear to relate to several different incidents of this nature. In addition, Nsabimana provided testimony as to his knowledge of similar incidents.

2804. First, the Chamber recalls the testimony of Witness TK regarding the abduction of a refugee named Alphonse. The Chamber has held that the Nsabimana Defence did not have notice that the abduction of this alleged victim would form part of the Prosecution case against Nsabimana. However, the Chamber considers this evidence relevant to the issue of whether Nsabimana was aware that attacks of Tutsis were occurring at the BPO at night and will consider it for this limited purpose.<sup>7835</sup> Witness TK testified that around the end of May or beginning of June, a young refugee man named Alphonse ran towards the BPO to the office of Nsabimana.<sup>7836</sup> Witness TK knew the young man as she had arrived at the BPO with him.<sup>7837</sup> He entered the office but was forced out a few moments later.<sup>7838</sup> Outside the *préfet's* office, a man approached Alphonse with a club and Alphonse attempted to run away.<sup>7839</sup> He was caught by three young men and taken away by *Interahamwe* in the direction of the market, with his hands tied behind his back.<sup>7840</sup> Witness TK stated that Alphonse never came back and she concluded that he had been killed.<sup>7841</sup> The Nsabimana Defence cross-examined Witness TK as to a prior statement in which she asserted that Alphonse asked for the help of the military *préfet*. She explained that the prior statement was incorrect and, in her testimony, she never wavered that Nsabimana was the *préfet* at the time of this incident.<sup>7842</sup> She described the *préfet* who was present as a man with a small tummy, not too tall and with a scar on his face; his name was Sylvain and he was replaced by another *préfet* later on.<sup>7843</sup> Witness TK knew Alphonse personally and provided significant details about the incident, including the fact that Alphonse ran around a flag pole prior to arriving at the *préfet's* office, he called out for help and he was pushed out of the *préfet's* office. She was unable to say whether the *préfet* pushed out Alphonse or whether soldiers did so.<sup>7844</sup> Based on these factors, the Chamber finds Witness TK to be credible as to this event and finds that a man named Alphonse ran to Nsabimana's office to ask him for help while Nsabimana was in his office around the end of May or beginning of June 1994.

2805. Witness RE testified in significant detail about a young man and woman who went to Nsabimana's office looking for help. She said she saw the two leaving the *préfet's* office and watched as the young man was dragged away by soldiers. The young woman who accompanied the young man told the other refugees, including Witness RE, that she and the young man had just seen the *préfet*, who was Nsabimana at the time, and that the young man

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<sup>7835</sup> *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-15; *Kupreškic et al.*, Judgement (AC), paras. 321-323, 336.

<sup>7836</sup> T. 20 May 2002 pp. 60-61 (Witness TK).

<sup>7837</sup> T. 20 May 2002 p. 60; T. 27 May 2002 pp. 18, 31-32 (Witness TK).

<sup>7838</sup> T. 20 May 2002 p. 61; T. 27 May 2002 p. 18 (Witness TK).

<sup>7839</sup> T. 27 May 2002 p. 19 (Witness TK).

<sup>7840</sup> T. 20 May 2002 pp. 61-62; T. 27 May 2002 p. 19 (Witness TK).

<sup>7841</sup> T. 20 May 2002 p. 62 (Witness TK).

<sup>7842</sup> T. 27 May 2002 pp. 29-32, 35 (Witness TK); Defence Exhibit 46 (Nyiramasuhuko and Ntahobali) (14 November 1997, Statement of Witness TK).

<sup>7843</sup> T. 20 May 2002 pp. 61-62 (Witness TK).

<sup>7844</sup> T. 20 May 2002 pp. 60-61; T. 27 May 2002 pp. 18-19, 31-32 (Witness TK).

was now being dragged away.<sup>7845</sup> Based on the detail and consistency of her testimony, the Chamber finds Witness RE's testimony credible on this point and establishes that a young man and young woman went to Nsabimana's office looking for help in early June 1994.

2806. Witnesses SU and SS both testified that in a separate incident after attacks occurred at the BPO, three women went to see Nsabimana on behalf of the other refugees.<sup>7846</sup> Although neither was present at the meeting, they were told that Nsabimana denied knowledge of the attacks and said he would post *gendarmes* to protect them.<sup>7847</sup>

2807. The Chamber notes that Nsabimana admitted in his testimony that a woman came to his office seeking assistance around 15 June 1994.<sup>7848</sup> However, Nsabimana testified that he responded to the refugees' requests for assistance by posting soldiers at the BPO around 5 June 1994.<sup>7849</sup> This calls into question Nsabimana's credibility as to when he knew about the night-time attacks at the BPO because he could not have responded to their requests before he received them. In addition, Nsabimana admitted in Prosecution Exhibit 113 that there were isolated cases of disappearances at night which he attributed to unknown soldiers and hooligans.<sup>7850</sup> Further, in Prosecution Exhibit 114, Nsabimana stated that he made a list of people living at the BPO so that he could check if there had been problems the night before.<sup>7851</sup> More importantly, Nsabimana admitted during his testimony that he was not at peace with himself when he went home from the BPO during this period because he feared that he may not find the refugees when he returned in the morning.<sup>7852</sup> Based on all of the above, the Chamber is convinced that Nsabimana was aware of the night-time attacks at the BPO and he was presented with multiple requests for assistance from Tutsi refugees starting, at least, around the end of May 1994.<sup>7853</sup> Based upon Nsabimana's own admissions and the open and notorious nature of the attacks, the Chamber is convinced that Nsabimana was actually aware of the attacks even earlier.

### 3.6.20.3.3 Posting of *Gendarmes* or Soldiers

2808. Nsabimana testified that he posted five or six soldiers at the BPO around 5 June 1994.<sup>7854</sup> In his interview, admitted as Prosecution Exhibit 114, Nsabimana stated that *Interahamwe* came to the BPO and wanted to kill the refugees and that he was given 12 soldiers by a certain colonel to protect them.<sup>7855</sup> He also stated in Prosecution Exhibit 113 that he provided *gendarmes* to protect the refugees.<sup>7856</sup> In testimony, Nsabimana stated that he asked Colonels Munyengango and Mugemanyi to second soldiers to the BPO to protect the

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<sup>7845</sup> T. 27 February 2003 pp. 5-6 (Witness RE).

<sup>7846</sup> T. 14 October 2002 p. 83 (Witness SU); T. 22 October 2002 p. 49 (Witness SU); T. 10 March 2003 p. 15 (ICS) (Witness SS).

<sup>7847</sup> T. 14 October 2002 p. 83; T. 22 October 2002 p. 49 (Witness SU).

<sup>7848</sup> T. 10 October 2006 pp. 15-16 (Nsabimana).

<sup>7849</sup> T. 10 October 2006 p. 13 (Nsabimana).

<sup>7850</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016627.

<sup>7851</sup> Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994) p. K0120070.

<sup>7852</sup> T. 9 October 2006 pp. 80-81 (Nsabimana).

<sup>7853</sup> T. 20 May 2002 pp. 60-61 (Witness TK).

<sup>7854</sup> T. 10 October 2006 p. 13 (Nsabimana).

<sup>7855</sup> Prosecution Exhibit 114A (Interview with Nsabimana, 1 October 1994) p. K0120070.

<sup>7856</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016631.

refugees.<sup>7857</sup> This is consistent with Nsabimana's statement to Keane around 15 June 1994 that he had posted soldiers at the BPO to protect the refugees.<sup>7858</sup> Moreover, Witness SU corroborated Nsabimana's account, in part, testifying that persons in uniform came to guard the refugees.<sup>7859</sup> However, she estimated that Nsabimana only posted guards at the BPO towards the end of June 1994. Although Witness SU said that Nsabimana only posted guards towards the end of June 1994, she stated that the dates she provided were only estimates.<sup>7860</sup>

2809. According to Witness SU, Nsabimana told the refugees that he was not aware of the attacks at the BPO and that he would provide *gendarmes* to protect them or, alternatively, he would come and spend the night with the refugees himself.<sup>7861</sup> She said that Nsabimana called the *gendarmes* who came to guard the refugees towards the end of June.<sup>7862</sup> At first, the *gendarmes* told them: "If anyone wants to get up, two or three people should accompany that person. And if someone is being raped, you must shout." From that point on, no one was abducted or raped.<sup>7863</sup> It was only later however that the *gendarmes* realised they were guarding Tutsis, and they later told the refugees that if the RPF came, the *gendarmes* would kill all of the refugees before they could be rescued.<sup>7864</sup>

2810. In contrast, Witnesses SS and QBP asserted that Nsabimana refused to help the refugees. Witness SS claimed that Nsabimana did nothing for those who asked for help and said the attacks continued after this incident and their security concerns were not solved.<sup>7865</sup> Witness QBP testified that a woman was attacked and wounded on her ear by an *Interahamwe*. The woman went to complain to Nsabimana, but he did nothing for her.<sup>7866</sup> Furthermore, Des Forges also testified that Nsabimana told her there were no guards to take care of the refugees at night.<sup>7867</sup>

2811. The Chamber considers that Witness SU had no motive to lie about the presence of *gendarmes* being posted by Nsabimana. Her description of the *gendarmes* as initially protecting the refugees but later making threatening comments was believable. Likewise, Witness SS corroborated aspects of Witness SU's testimony in stating that a group of soldiers chased away a vehicle that came to the BPO to abduct people. She said the soldiers told the refugees they should alert them whenever these people came so that the soldiers could react.<sup>7868</sup>

2812. Considering all of the above, the Chamber is convinced that Nsabimana eventually posted *gendarmes* or soldiers at the BPO sometime between 5 June and 15 June 1994.

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<sup>7857</sup> T. 10 October 2006 p. 13 (Nsabimana).

<sup>7858</sup> T. 25 September 2006 p. 47; T. 28 September 2006 p. 21 (Keane).

<sup>7859</sup> T. 21 October 2002 pp. 38-39 (Witness SU).

<sup>7860</sup> T. 17 October 2002 p. 89; T. 21 October 2002 pp. 38-40, 42; T. 22 October 2002 p. 49 (Witness SU).

<sup>7861</sup> T. 14 October 2002 p. 83; T. 22 October 2002 p. 49 (Witness SU).

<sup>7862</sup> T. 17 October 2002 p. 89; T. 21 October 2002 pp. 38-40, 42; T. 22 October 2002 p. 49 (Witness SU).

<sup>7863</sup> T. 21 October 2002 p. 38 (Witness SU).

<sup>7864</sup> T. 21 October 2002 pp. 39-40 (Witness SU).

<sup>7865</sup> T. 10 March 2003 p. 15 (ICS); T. 10 March 2003 p. 35 (Witness SS).

<sup>7866</sup> T. 30 October 2002 p. 48 (Witness QBP).

<sup>7867</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>7868</sup> T. 10 March 2003 pp. 34-35 (Witness SS).

However, the Chamber is also convinced that there was a significant time period during which Nsabimana knew about the attacks and did not act to protect the refugees.

2813. There was a discrepancy as to whether the persons assigned to the BPO were soldiers or *gendarmes*. Witness SU referred to the guards as *gendarmes* but she did not testify as to how she distinguished between soldiers and *gendarmes*. Nsabimana stated they were soldiers seconded to the BPO. Regardless of whether there were soldiers or *gendarmes*, there was no dispute that they had been requisitioned by Nsabimana.

2814. Finally, Witness WMKL testified that the refugees at the BPO felt secure and did not fear for their lives.<sup>7869</sup> While it is plausible that the refugees came to the BPO to seek protection, the Prosecution evidence and Nsabimana's admissions clearly showed that the refugees were not in fact safe and were aware of their precarious situation.

2815. As to the purpose of the soldiers' assignment, Witness SU stated that the *gendarmes* were not made aware that they were to protect the refugees and that they made threats that they would kill all of the refugees before they were rescued.<sup>7870</sup> Nonetheless, Witness SU did not testify that the *gendarmes* attempted to harm the refugees in any way. Therefore, the evidence does not support an inference that Nsabimana requisitioned the soldiers and/or *gendarmes* to harm the refugees insofar as it relates to Paragraph 6.36 of the Indictment.

### 3.6.21 Meetings at the Butare *Préfecture* Office, April – June 1994

#### 3.6.21.1 Introduction

2816. The Nyiramasuhuko and Ntahobali Indictment,<sup>7871</sup> the Nsabimana and Nteziryayo Indictment<sup>7872</sup> and the Kanyabashi Indictment<sup>7873</sup> allege that from late 1990 to July 1994, authorities including Nyiramasuhuko, Nsabimana, Nteziryayo and Kanyabashi, “conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power.” In executing this plan the Accused organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>7874</sup> It is also alleged that Nsabimana, Nteziryayo and Kanyabashi, among others, aided and abetted in the massacres of Tutsis.<sup>7875</sup>

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<sup>7869</sup> T. 6 April 2005 p. 59 (Witness WMKL).

<sup>7870</sup> T. 21 October 2002 pp. 39-40 (Witness SU).

<sup>7871</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko).

<sup>7872</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Para. 6.6 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>7873</sup> Para. 5.1 of the Kanyabashi Indictment (in support of all counts); Para. 6.62 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>7874</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko); Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>7875</sup> Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Paras. 6.53 and 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Paras. 6.58 and 6.64 of the Kanyabashi Indictment (in support of all counts).

2817. The Nyiramasuhuko and Ntahobali Indictment further alleges that the BPO was “the site of numerous meetings between the authorities of the *préfecture*.”<sup>7876</sup> The Kanyabashi Indictment alleges that there were meetings between the main authorities of the *préfecture* and their subordinates at the BPO.<sup>7877</sup>

2818. The Prosecution submits that Nsabimana, Nteziryayo and Kanyabashi are all responsible pursuant to Article 6 (1) by means of their direct participation in these meetings.<sup>7878</sup> Nsabimana is also responsible pursuant to Article 6 (3) for instructing *bourgmestres*, who were his subordinates, to kill Tutsi civilians and for distributing weapons to those *bourgmestres*.<sup>7879</sup> Nteziryayo is responsible pursuant to Article 6 (3) for instructing *Interahamwe*, who were his subordinates, to kill Tutsi civilians.<sup>7880</sup>

2819. The Prosecution asserts that numerous witnesses testified to seeing Nyiramasuhuko attend meetings at the BPO but that specific dates were not always given.<sup>7881</sup> Nonetheless, it submits that Nyiramasuhuko met with local authorities such as Nsabimana, Kanyabashi and various others, including President Sindikubwabo, to plan the killing of Tutsis.<sup>7882</sup> The Prosecution further submits that it was obvious that Nyiramasuhuko and other authorities, including Nsabimana and Kanyabashi were discussing the massacres because killings followed the meetings.<sup>7883</sup> As part of its case against Nsabimana in respect of the charge of conspiracy to commit genocide, the Prosecution submits that Nsabimana participated in numerous meetings with local authorities in Butare *préfecture* during which decisions were made to further the extermination of Tutsis.<sup>7884</sup> During one of these meetings at which Nsabimana was present, Nyiramasuhuko exited the room and stated that refugees ought to be killed and exterminated.<sup>7885</sup>

2820. Specifically, the Nyiramasuhuko and Ntahobali Indictment and the Nsabimana and Nteziryayo Indictment allege that Nyiramasuhuko called one meeting in April 1994, which Nsabimana attended and at which the progress and the means to complete the massacres were discussed.<sup>7886</sup>

2821. As to a second meeting, the Nyiramasuhuko and Ntahobali Indictment and the Nsabimana and Nteziryayo Indictment allege that around 10 June 1994, Nsabimana met with Interim President Sindikubwabo and Nyiramasuhuko at the BPO at which time

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<sup>7876</sup> Para. 6.32 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-10 against Nyiramasuhuko).

<sup>7877</sup> Para. 6.43 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>7878</sup> Prosecution Closing Brief, p. 257, para. 89; p. 337, para. 101; p. 403, para. 66.

<sup>7879</sup> Para. 6.28 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 pursuant to both Article 6 (1) and 6 (3)); Prosecution Closing Brief, pp. 257-258, para. 90-91.

<sup>7880</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 pursuant to both Article 6 (1) and 6 (3)); Prosecution Closing Brief, p. 338, paras. 104-106.

<sup>7881</sup> Prosecution Closing Brief, pp. 60-61, para. 109.

<sup>7882</sup> Prosecution Closing Brief, pp. 60-63, 92, paras. 109-116, 211.

<sup>7883</sup> Prosecution Closing Brief, p. 62, para. 114; p. 250, para. 68; p. 395, para. 31.

<sup>7884</sup> Prosecution Closing Brief, pp. 231-232, 235, paras. 9, 14-15, 22.

<sup>7885</sup> Prosecution Closing Brief, pp. 248-250, paras. 64-66; pp. 394-395, paras. 30-31.

<sup>7886</sup> Para. 6.32 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-10 against Nyiramasuhuko); Para. 6.28 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

Nyiramasuhuko asked why Tutsis at the BPO had not been killed.<sup>7887</sup> The Nsabimana and Nteziryayo Indictment further alleges that at another meeting at around the same time, Kanyabashi and Minister André Rwamakuba told Nsabimana that Tutsi refugees at the BPO must be exterminated and that Nsabimana never dissociated himself from these calls to kill Tutsis.<sup>7888</sup> Likewise, the Kanyabashi Indictment alleges that in June 1994, Kanyabashi told Nsabimana that the Tutsi refugees at the BPO must be exterminated.<sup>7889</sup>

2822. In support of these allegations, the Prosecution relies on the evidence of Prosecution Witnesses SU, SS, SJ, QBQ, RE and evidence elicited from Nyiramasuhuko.

2823. The Prosecution refers to a fourth meeting at the BPO, allegedly held around the beginning of June 1994 and presided over by Nsabimana, and attended by *bourgmestres*, *sous-préfets* and military officials, including Nteziryayo, Muvunyi and Kanyabashi.<sup>7890</sup> Nsabimana allegedly declared the purpose of this meeting was to assess implementation in the *communes* of the government's programme of killing Tutsis, who had been determined to be RPF accomplices.<sup>7891</sup> At this meeting Kanyabashi urged the population and young men who had undergone military training to flush out those hidden in the forest near Ngoma and appealed for the training of youth to be extended to more *communes*.<sup>7892</sup> The Prosecution submits that Nsabimana actively assisted in the training of youth by supplying petrol.<sup>7893</sup> Further, at the end of the meeting Nsabimana asked *bourgmestres* to look for youths to be sent for training and asked Colonels Muvunyi and Nteziryayo to assist two *bourgmestres* who allegedly requested assistance with killing Tutsis who were coming through their *communes* en route to Burundi.<sup>7894</sup> In turn, Nteziryayo ordered *Ibisumizi* to assist the Kibayi Hutus in killing Tutsis.<sup>7895</sup> In this regard, The Nteziryayo Indictment also alleges that in May and June 1994 Nteziryayo ordered the *Interahamwe* to search for Tutsis and kill them.<sup>7896</sup> In support of this allegation, the Prosecution relies on the evidence of Prosecution Witness FAI. In this regard, the Prosecution further submits that Kanyabashi's role in the genocide conspiracy was, *inter alia*, to attend meetings and, using his authority as *bourgmestre* of Ngoma *commune*, to instruct the population to join in the killing of Tutsis.<sup>7897</sup> Kanyabashi was heavily involved in planning the killings and meeting with his administrative subordinates and others to provoke them into action.<sup>7898</sup>

2824. The Nyiramasuhuko Defence asserts that any meetings she participated in at the BPO did not involve a conspiracy to commit genocide, but instead, were convened to discuss

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<sup>7887</sup> Para. 6.37 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana); Para. 6.33 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10 against Nyiramasuhuko).

<sup>7888</sup> Para. 6.37 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>7889</sup> Para. 6.43 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>7890</sup> Prosecution Closing Brief, pp. 246-247, paras. 59-60; pp. 328-329, paras. 77-78; pp. 393, 420, paras. 26, 125; Prosecution Closing Argument, T. 21 April 2009 p. 17.

<sup>7891</sup> Prosecution Closing Brief, pp. 246-247, para. 59; Prosecution Closing Argument, T. 21 April 2009 p. 17.

<sup>7892</sup> Prosecution Closing Brief, p. 393, para. 26; Prosecution Closing Argument, T. 21 April 2009 p. 17.

<sup>7893</sup> Prosecution Closing Brief, pp. 261-262, paras. 99-100.

<sup>7894</sup> Prosecution Closing Brief, pp. 246-247, paras. 59-60.

<sup>7895</sup> Prosecution Closing Brief, pp. 328-329, paras. 77-78.

<sup>7896</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>7897</sup> Prosecution Closing Brief, pp. 388, 403, paras. 12, 66.

<sup>7898</sup> Prosecution Closing Brief, pp. 390-391, para. 20.

strategy to prevent the advancement of RPF troops.<sup>7899</sup> It further argues she could not have been at the BPO every day, as suggested by Witness SU, because she was in Cabinet meetings with the Interim Government in Kigali, Gitarama, Gisenyi and Ruhengeri.<sup>7900</sup>

2825. The Nsabimana Defence submits that while Nsabimana held meetings with his *bourgmestres* in his office at the BPO, those meetings were not devoted to discussing the progress of massacres in the *préfecture*.<sup>7901</sup> The Nsabimana Defence asserts that there was no evidence adduced as to the statements of *Bourgmestre* Kanyabashi to Nsabimana at a meeting around 10 June 1994, that Tutsi refugees were to be exterminated, and that Nsabimana was not present at the other meeting with Interim President Sindikubwabo and Nyiramasuhuko.<sup>7902</sup> It asserts Nsabimana met with Kanyabashi in an effort to put an end to the ongoing events.<sup>7903</sup> It further submits there was no eyewitness testimony of the meetings between Nyiramasuhuko, Nsabimana and Interim President Sindikubwabo and, even if there were, it is impermissible to infer the content of that meeting from witnesses who merely testified as to the participants.<sup>7904</sup> In relation to the fourth alleged meeting held at the beginning of June 1994, the Nsabimana Defence denies that Nsabimana provided petrol to the *bourgmestres* in order to assist in the training of youth militia and submits that Witness FAI's testimony is not credible.<sup>7905</sup> In support of these submissions, the Nsabimana Defence relies on Nsabimana's testimony.

2826. The Kanyabashi Defence asserts there was a doubt as to Kanyabashi's presence in the proximity of the BPO around 10 June and as to whether he heard the comments allegedly made by Nyiramasuhuko as to the need to exterminate the Tutsis.<sup>7906</sup> Apart from preliminary issues relating to notice, discussed below, the Kanyabashi Defence also submits that Witness FAI did not attend the fourth alleged meeting, held at the beginning of June, and that Witness FAI's testimony is not credible.<sup>7907</sup>

2827. Apart from preliminary issues relating to notice and the exclusion of evidence, discussed below, the Nteziryayo Defence also submits that Witness FAI's testimony in relation to the fourth alleged meeting, held at the beginning of June 1994, is not credible.<sup>7908</sup>

### 3.6.21.2 Preliminary Issues

#### *Nyiramasuhuko Indictment*

##### *Paragraph 6.32 – “Numerous Meetings”*

2828. The Chamber notes that the first sentence of Paragraph 6.32 alleges the BPO was the site of numerous meetings between the authorities of the *préfecture*. It is the Chamber's view that this sentence lacks sufficient specificity to put Nyiramasuhuko on notice of any particular

<sup>7899</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 68-69.

<sup>7900</sup> Nyiramasuhuko Closing Brief, paras. 548-565.

<sup>7901</sup> Nsabimana Closing Brief, para. 356.

<sup>7902</sup> Nsabimana Closing Brief, paras. 1587, 1602-1603; Nsabimana Closing Argument, T. 24 April 2009 p. 17.

<sup>7903</sup> Nsabimana Closing Argument, T. 24 April 2009 p. 18.

<sup>7904</sup> Nsabimana Closing Argument, T. 24 April 2009 pp. 19, 31.

<sup>7905</sup> Nsabimana Closing Brief, paras. 354-406, 1049-1059.

<sup>7906</sup> Kanyabashi Closing Argument, T. 28 April 2009 pp. 72-73.

<sup>7907</sup> Kanyabashi Closing Brief, paras. 578-587.

<sup>7908</sup> Nteziryayo Closing Brief, paras. 553-557.



allegation, as it does not state the content or a time frame for the alleged “numerous meetings”, except for one meeting referred to in the second sentence of this paragraph, allegedly called by Nyiramasuhuko in April 1994. The Chamber thus finds the Indictment is defective in relation to the general allegation concerning “numerous meetings” set forth in the first sentence of Paragraph 6.32.

2829. The Chamber must then determine whether the Nyiramasuhuko Indictment was cured of its defects through subsequent Prosecution disclosures. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists two witnesses who were expected to testify that there were numerous meetings between the authorities of the *préfecture*.<sup>7909</sup>

2830. Witnesses SS and SU were expected to testify that there were meetings attended by authorities. The summary of Witness SS’ anticipated testimony stated that at the BPO, there were many meetings chaired by the *préfet* and attended by the *conseillers* and *bourgmestres*.<sup>7910</sup> The prior statement of Witness SS, dated 20 November 1996, and disclosed to the Defence on 4 November 1998,<sup>7911</sup> confirmed this information. Although the location of these meetings is clearly spelled out, no time frame is offered in this regard.

2831. The summary of Witness SU’s anticipated testimony stated that there was a meeting in Butare, attended by Nyiramasuhuko, Kanyabashi and others.<sup>7912</sup> The prior statement of Witness SU, dated 20 November 1996, and disclosed to the Defence on 4 November 1998,<sup>7913</sup> stated that leaders held meetings on Mondays and Fridays at the BPO which were attended by important people, including Nyiramasuhuko, Kanyabashi, Ruremesha, Munyengango, Sibomana, Rekeraho, Muganga, Banyangiriki and Rusanganwa. The witness described another occasion when there was a meeting, after which Nyiramasuhuko found a piece of cloth and said it belonged to the RPF. Again, although a location was specified in Witness SU’s statement, no date is included.

2832. The Chamber therefore considers that the Nyiramasuhuko Defence did not receive proper notice of the Prosecution’s intention to lead evidence that Nyiramasuhuko took part in “numerous meetings” at the BPO, and finds that the defects in the first sentence of Paragraph 6.32 of the Nyiramasuhuko Indictment were not cured by subsequent Prosecution disclosures. Accordingly, the Chamber will not consider such a general charge against Nyiramasuhuko.

#### *Paragraph 6.32 – Meeting in April 1994*

2833. The Ntahobali Defence argues, in relation to the case against Nyiramasuhuko, that the Prosecution transformed the charge set forth in the second sentence of Paragraph 6.32 by stating in its Pre-Trial Brief that Nyiramasuhuko publicly and directly called for the elimination of the remaining survivors in Butare *préfecture*. It argues the witness statements disclosed to the Defence did not specify that Nyiramasuhuko convened a meeting at the BPO

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<sup>7909</sup> Prosecution Pre-Trial Brief – Appendix; Witness SS (84); Witness SU (86).

<sup>7910</sup> Prosecution Pre-Trial Brief – Appendix; Witness SS (84).

<sup>7911</sup> 20 November 1996, Statement of Witness SS, disclosed 4 November 1998.

<sup>7912</sup> Prosecution Pre-Trial Brief – Appendix; Witness SU (86).

<sup>7913</sup> 20 November 1996, Statement of Witness SU, disclosed 4 November 1998.

in which Nsabimana participated, the content of said meeting in April 1994, or whether the progress of the massacres or the means by which to complete them was discussed.<sup>7914</sup>

2834. The Chamber notes that Paragraph 6.32 alleges that Nyiramasuhuko called a meeting at the BPO in April 1994, attended by Nsabimana, at which the progress of the massacres was discussed, and that Paragraph 6.33 alleges that Nyiramasuhuko met with Nsabimana and Sindikubwabo at the BPO and that Nyiramasuhuko asked why the Tutsi refugees had not been killed. Nyiramasuhuko's participation at BPO meetings during which the massacres were discussed is therefore clearly addressed in the Indictment. The Prosecution's case that Nyiramasuhuko publicly and directly called for the elimination of the remaining survivors is consistent with the allegations in the mentioned paragraphs of the Indictment.

2835. Furthermore, the Nyiramasuhuko Defence had adequate notice that Nyiramasuhuko was being charged with direct and public incitement from the Prosecution Pre-Trial Brief. In this regard, the Chamber notes the Appendix to the Pre-Trial Brief states: "SJ saw Nyiramasuhuko holding meetings with Nsabimana at the *préfecture* office. Upon leaving the meeting, SJ heard Nyiramasuhuko saying, 'this place is dirty', meaning that she did not want that the Tutsi refugees stay at the *préfectures* Office."<sup>7915</sup> The Chamber further notes the prior statements of Witnesses SU, SS and SJ. In her statement of 20 November 1996, Witness SU stated that Nyiramasuhuko said at the BPO "the dirt is only here at the *pr[é]fecture*", and that elsewhere people have finished the job.<sup>7916</sup> Likewise, Witness SS' statement of 20 November 1996 provided that after a meeting at the BPO, Nyiramasuhuko exited and said, "I do not understand what these dirty people are doing here at the *Pr[é]fecture*, the dirt has been cleaned elsewhere."<sup>7917</sup> Finally, Witness SJ's statement of 3 December 1996 provided that the witness saw Nyiramasuhuko leaving a meeting at the BPO and heard her say, "[t]his place is dirty," which to her meant that "Pauline didn't want all the refugee people to stay on the *Pr[é]fecture's* place."<sup>7918</sup> These statements were disclosed on 4 November 1998, well in advance of these witnesses' testimony at trial on 14 October 2002, 3 March 2003 and 28 May 2002, respectively.

2836. Therefore, the Chamber finds that the Prosecution Pre-Trial Brief did not transform the Indictment in alleging that Nyiramasuhuko publicly and directly called for the elimination of the remaining survivors in Butare *préfecture*. Consequently, Nyiramasuhuko was in a position to understand the nature of the charges against her and there was no prejudice in the preparation of her defence case.

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<sup>7914</sup> Ntahobali Closing Brief, para. 52.

<sup>7915</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9).

<sup>7916</sup> 20 November 1996, Statement of Witness SU, disclosed 4 November 1998.

<sup>7917</sup> 20 November 1996, Statement of Witness SS, disclosed 4 November 1998.

<sup>7918</sup> 3 December 1996, Statement of Witness SJ, disclosed 4 November 1998.

*Nsabimana*

*Paragraphs 5.1, 6.57, 6.61 and 6.62*

2837. The Nsabimana Defence submits that Paragraphs 5.1 and 6.57 of the Nsabimana and Nteziryayo Indictment are vague insofar as they fail to identify any dates or locations where Nsabimana may have taken part in elaborating a plan to exterminate Tutsis.<sup>7919</sup>

2838. The Chamber notes that the meetings in question were not specifically pled in the Nsabimana and Nteziryayo Indictment or the Kanyabashi Indictment, and as such, the Chamber finds that Paragraph 5.1 of each Indictment is defective. Further, the Chamber also finds the related conspiracy paragraphs, namely Paragraphs 6.57 and 6.61 of the Nsabimana and Nteziryayo Indictment and Paragraph 6.62 of the Kanyabashi Indictment, defective by reason of their failure to identify any meetings held in furtherance of the conspiracy alleged. The Chamber will consider these defects together with the specific allegations concerning meetings, as pled in the Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment.

*Paragraph 6.28 – Distribution of Fuel*

2839. The Nsabimana Defence submits that Paragraph 6.28 of the Nsabimana Indictment, which alleges that Nsabimana took part in meetings with his *bourgmestres*, is impermissibly vague; this paragraph fails to specify the dates or locations of Nsabimana's alleged meetings with *bourgmestres*.<sup>7920</sup> The Nsabimana Defence further submits that the Prosecution did not mention the distribution of fuel in the Nsabimana and Nteziryayo Indictment.<sup>7921</sup>

2840. The Chamber notes that while Paragraph 6.28 alleges Nsabimana participated in meetings, plural, a plain reading of Paragraph 6.28 suggests that the progress of the massacres and how to complete them was only discussed at a single meeting which was convened by Nyiramasuhuko. Accordingly, Paragraph 6.28 fails to specify the purpose of the *other* meetings that Nsabimana allegedly participated in with his *bourgmestres*. Given that Paragraph 6.28 of the Nsabimana Indictment fails to state how many meetings Nsabimana had with his *bourgmestres*, and the precise date, location and content of those meetings, the Chamber considers Paragraph 6.28 of the Nsabimana Indictment to be defective.

2841. The Chamber also observes that the allegation that Nsabimana distributed fuel is not pled in the Nsabimana and Nteziryayo Indictment as one of the means by which Nsabimana allegedly participated in the massacres of Tutsis as pled in Paragraphs 5.1, 6.32, 6.53 and 6.59.

2842. Accordingly, the Chamber must determine if the defects in the Nsabimana and Nteziryayo Indictment were cured by the subsequent disclosure of timely, clear and consistent information detailing the factual basis underpinning the charge.

2843. The Chamber recalls that the Prosecution relies solely on Witness FAI with respect to the alleged content of the meeting presided over by Nsabimana at the BPO at the beginning of

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<sup>7919</sup> Nsabimana Closing Brief, paras. 126-131.

<sup>7920</sup> Nsabimana Closing Brief, paras. 42, 44.

<sup>7921</sup> Nsabimana Closing Brief, para. 1051.

June 1994, and Nsabimana's alleged words and actions at the meeting, including his words in relation to the distribution of fuel.<sup>7922</sup>

2844. The Chamber notes that the summary of Witness FAI's anticipated testimony, as set forth in the Appendix to the Prosecution Pre-Trial Brief states:

FAI witnessed the killing of several Tutsi at Nyamure health center in Ntyazo. In June 1994, FAI attended a meeting in Butare at which all the *bourgmestres* reported on how many Tutsis had been exterminated in their communes. The *bourgmestres* of Kibayi and Kigembe, where the Tutsis had not been eliminated completely, asked for military reinforcements, which was [*sic*] provided later. In a meeting on 22 May 1994, Nteziryayo and Nsabimana urged people of Ntyazo to search for and kill all surviving Tutsi. They asked young Hutus to register and join the army en masse. Nsabimana urged the *bourgmestre* to sensitize the youth to join the army, at the same time ordering Nteziryayo and Muvunyi to provide the reinforcement requested by the *bourgmestres*. Nsabimana promised to give forty litres of fuel to each *bourgmestre* every week. In June 1994, Nteziryayo sent soldiers to kill fifty Tutsi women who had assembled in a room behind the Butare *prefecture* office.<sup>7923</sup>

2845. Although the Prosecution Pre-Trial Brief lists Witness FAI in support of the conspiracy charge against Nsabimana and Nteziryayo, the Chamber notes that the portion of the summary of Witness FAI's testimony concerning this June 1994 meeting does not mention Nsabimana's, Nteziryayo's or Kanyabashi's presence or respective roles at the meeting. Nsabimana is only mentioned with respect to the 22 May 1994 Ntyazo meeting at which it is alleged that Nsabimana ordered Nteziryayo to provide reinforcements and promised fuel. As concerns the June meeting, the Chamber considers the information in the summary of Witness FAI's testimony regarding the meeting date ("June 1994"), location ("Butare") and participants ("*bourgmestres*") to be insufficiently precise to cure the defects in the Indictment.

2846. The Chamber also considers Witness FAI's previous statements. Witness FAI's first statement of 24 February 2000, disclosed on 15 November 2000, refers to a meeting chaired by Nsabimana in June 1994, in Butare, and attended by all the *bourgmestres*, Muvunyi, Nteziryayo, and close allies of Nsabimana, including the *Sous-préfet* Évariste and Rutayisire. It further states that Nsabimana ordered Nteziryayo and Muvunyi to provide the reinforcements requested by the *bourgmestres* of Kibayi and Kigembe *communes*, urged *bourgmestres* to sensitise the youth to join the army and promised to give 40 litres of fuel to each *bourgmestre* every week.<sup>7924</sup> However, the statement remains vague with respect to the time and place of the meeting.

2847. The Chamber considers that a combined reading of Witness FAI's previous statements and the summary of his anticipated testimony included in the Prosecution Pre-Trial Brief alleges that Nsabimana chaired a meeting, during which he ordered Nteziryayo and Muvunyi to provide the reinforcement requested by the *bourgmestres*, urged *bourgmestres* to sensitise the youth to join the army and promised to give 40 litres of fuel to each *bourgmestre* every week. However, the Chamber observes that there is confusion in relation to the time and place

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<sup>7922</sup> Prosecution Closing Brief, p. 246, para. 59; Prosecution Closing Argument, T. 21 April 2009 p. 17.

<sup>7923</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAI (21).

<sup>7924</sup> 24 February 2000, Statement of Witness FAI, disclosed 15 November 2000.

of the alleged meeting. In the summary of Witness FAI's evidence, Nsabimana's actions with respect to ordering reinforcements are mentioned in relation to the 22 May 1994 meeting, in Ntyazo, whereas Witness FAI's statement places Nsabimana's alleged actions at an early June meeting, in Butare.

2848. Accordingly, the Chamber considers the Nsabimana Defence was not provided with timely, clear and consistent details as to the alleged meeting, or to Nsabimana's role and actions in it. The Chamber therefore finds the defect in Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment was not cured by subsequent Prosecution disclosures in respect of this allegation *vis-à-vis* Nsabimana. Accordingly, the Chamber will not proceed to make findings on this allegation against Nsabimana. In any event, the Chamber notes that this allegation has not been proven beyond a reasonable doubt.

*Paragraph 6.37*

2849. In relation to the alleged meeting between Nsabimana, the Interim President Sindikubwabo and Nyiramasuhuko around 10 June, during which Nyiramasuhuko asked Nsabimana why Tutsis at the BPO had not yet been killed, the Nsabimana Defence argues Paragraph 6.37 failed to allege the criminal act committed by Nsabimana following such a conversation that would support a charge of conspiracy.<sup>7925</sup>

2850. The Chamber notes that the concerted or coordinated action of a group of individuals can constitute evidence of an agreement in support of the charge of conspiracy. A conspiracy can be proved by evidence of meetings to plan genocide, but it can also be inferred from other evidence.<sup>7926</sup> Paragraph 6.37 of the Nsabimana and Nteziryayo Indictment makes clear that the subject of the statements by Nyiramasuhuko and Kanyabashi was the Tutsi refugees at the BPO and why they had not been killed or exterminated. Further, Paragraphs 6.38 to 6.42 of the Indictment allege criminal conduct relating to attempts to kill or exterminate the Tutsi refugees at the BPO. Reading Paragraphs 6.37 to 6.42 together, it is clear the Prosecution's case is that Nsabimana was involved in meetings at the BPO at which the participants discussed how to kill Tutsi refugees and that the killings of these same refugees were perpetrated through a series of methods described thereafter in the Indictment. Therefore, the Chamber concludes that when read as a whole, the Nsabimana and Nteziryayo Indictment sets forth material facts in support of a conspiracy and the Nsabimana and Nteziryayo Indictment was not defective in this respect.

2851. The Nsabimana Defence further argues that the Indictment failed to plead several material facts, including the time, location and identity of the persons to whom Nyiramasuhuko's declarations at the BPO were targeted, and the consequences of such declarations.<sup>7927</sup> The Chamber notes that Paragraph 6.37 states that around 10 June 1994 at the BPO, Nyiramasuhuko asked Nsabimana what the Tutsi refugees were doing at the BPO. Therefore, each of these material facts were set forth and the Indictment is not defective in that respect.

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<sup>7925</sup> Nsabimana Closing Brief, para. 1589.

<sup>7926</sup> *Nahimana et al.*, Judgement (AC), para. 897.

<sup>7927</sup> Nsabimana Closing Brief, para. 1590.

*Evidence Used by an Accused Against Another Accused*

2852. Finally, the Nsabimana Defence argues the only evidence against Nsabimana as to the meeting around 10 June was led by the Nyiramasuhuko Defence on cross-examination of Prosecution Witness RE. It therefore submits that relying on such evidence would violate the principle of equality of accused persons stipulated in Rule 82 (A) of the Rules, by permitting one accused to lead evidence against another. The Nyiramasuhuko Defence should not have been allowed to cross-examine on this issue because it was not a subject matter of the examination-in-chief or a matter affecting the credibility of the witness, in contravention of Rule 90 (G) of the Rules.<sup>7928</sup>

2853. In this regard, the Chamber notes that the Prosecution led evidence from Witness RE regarding a meeting the witness observed between Nyiramasuhuko and Sindikubwabo.<sup>7929</sup> Although the witness did not mention Nsabimana in the examination-in-chief, Rule 90 (G) permits the Nyiramasuhuko Defence to bring out apparent inconsistencies in Witness RE's testimony and prior witness statements. Here, Witness RE's prior statement mentioned Nsabimana, but the witness failed to mention Nsabimana in her testimony.<sup>7930</sup> This apparent inconsistency was raised by the Nyiramasuhuko Defence in cross-examination, as it may have affected Witness RE's credibility. Therefore, the Chamber finds that the Nyiramasuhuko Defence properly raised this issue. The Chamber will consider the weight to be accorded to this evidence in the Deliberations section, below.

*Nteziryayo*

2854. The Nteziryayo Defence submits that the allegation that subsequent to the June meeting with Nsabimana, Nteziryayo trained *Ibisumizi* or sent trained youths to Kibayi to kill Tutsis was not pled in the Nsabimana and Nteziryayo Indictment.<sup>7931</sup>

2855. The Chamber notes that Paragraph 6.30 of the Nsabimana and Nteziryayo Indictment alleges that in May and June 1994 Nteziryayo ordered the *Interahamwe* to search for Tutsis and kill them.<sup>7932</sup> Insofar as Paragraph 6.30 of the Indictment fails to identify: (1) Nteziryayo's alleged subordinates, the *Ibisumizi*; and (2) any location where such orders occurred, or that Nteziryayo allegedly sent trained youths to Kibayi to kill Tutsis, the Chamber finds the Nsabimana and Nteziryayo Indictment is defective *vis-à-vis* Nteziryayo. The Chamber recalls that the Prosecution relies solely on Witness FAI with respect to the alleged words and actions of Nteziryayo during and after the meeting chaired by Nsabimana at the BPO in early June 1994.<sup>7933</sup>

2856. In so far as Nteziryayo is concerned, Witness FAI's statement made clear that Nteziryayo was allegedly present at the meeting about which Witness FAI would testify.<sup>7934</sup> While Witness FAI's statement also stated that Nsabimana ordered Nteziryayo and Muvunyi

<sup>7928</sup> Nsabimana Closing Brief, paras. 1598-1601.

<sup>7929</sup> T. 24 February 2003 pp. 17-18 (Witness RE).

<sup>7930</sup> 5 December 1996, Statement of Witness RE, disclosed 4 November 1998.

<sup>7931</sup> Nteziryayo Closing Brief, para. 557; Nteziryayo Closing Argument, T. 28 April 2009 p. 8.

<sup>7932</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>7933</sup> Prosecution Closing Brief, pp. 328-329, paras. 77-78.

<sup>7934</sup> 24 February 2000, Statement of Witness FAI, disclosed 15 November 2000.

to provide the *bourgmestres* with military reinforcement, there is nothing in Witness FAI's statement that refers to either *Ibisumizi* or Nteziryayo's actions after receiving Nsabimana's orders.

2857. In the circumstances, the Chamber considers the Nteziryayo Defence was not provided with adequate notice of any allegation against Nteziryayo concerning his role in training *Ibisumizi* or ordering them to go to Kibayi to kill Tutsis. For this reason, the Chamber will not make any finding against Nteziryayo with respect to this allegation. In any event, the Chamber notes that the evidence brought by the Prosecution is not sufficient to establish beyond a reasonable doubt that Nteziryayo trained *Ibisumizi* or ordered them to go to Kibayi to kill Tutsis after the BPO meeting in early June 1994.

#### *Request for Exclusion of Witness FAI's Evidence*

2858. The Nteziryayo Defence further submits that at the time of the filing of its Closing Brief, its motion requesting the exclusion of portions of evidence of several Prosecution witnesses, including that of Witness FAI relating to the sending of *Ibisumizi* to Kibayi, filed on 23 January 2009, was still pending.<sup>7935</sup> The Chamber observes that in its Decision of 25 February 2009 it denied that motion in its entirety. The Chamber chose to decide such issues in its final deliberations since it considered it inappropriate to deal with the motion during trial.<sup>7936</sup>

2859. Having regard to the Chamber's previous finding that the Nteziryayo Defence did not receive adequate notice of this allegation such that the relevant Indictment paragraphs were not cured, the Chamber will not consider the evidence led concerning Nteziryayo's alleged actions at or after the BPO meeting in early June 1994 against Indictment Paragraph 6.30 (against Nteziryayo only) relating to ordering *Interahamwe* to kill Tutsis.

2860. The Chamber nevertheless considers that evidence of acts that took place at this ceremony may be relevant to the proof of any other allegation pled in the Indictment<sup>7937</sup> and for this reason declines the Nteziryayo Defence's request to exclude the evidence led concerning Nteziryayo's alleged training of *Ibisumizi* or sending of *Ibisumizi* to Kibayi at Nsabimana's request, pursuant to the early June 1994 meeting.

#### *Kanyabashi Indictment*

##### *Paragraph 6.43*

2861. The Kanyabashi Defence argues Paragraph 6.43 cannot warrant a conviction because it does not state the elements of a criminal act and identifiable criminal conduct of

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<sup>7935</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009; Nteziryayo Closing Brief, para. 765.

<sup>7936</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>7937</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006; *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15; *Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 12.

Kanyabashi.<sup>7938</sup> Paragraph 6.43 relates to meetings that took place at the BPO between some of the *préfecture's* main authorities on unspecified dates, and one meeting that took place between Kanyabashi and Nsabimana in June 1994 at which Kanyabashi allegedly told the *préfet* that the Tutsi refugees at the *préfecture* had to be exterminated. The Chamber recalls its Decision of 16 December 2004 regarding the Defence motions for acquittal, in which it noted that no evidence was adduced by the Prosecution in support of the allegation that Kanyabashi told the *préfet* that Tutsi refugees at the BPO had to be exterminated. Nonetheless, the Chamber did not acquit Kanyabashi under Paragraph 6.43 because there was evidence that Kanyabashi attended meetings at the *préfecture* office.<sup>7939</sup> The Chamber considers that the portion of Paragraph 6.43 that was not dismissed in its Decision of 16 December 2004 merely alleges that Kanyabashi attended meetings at the BPO, yet fails to allege that the meetings were for the purpose of perpetrating crimes or that Kanyabashi made statements illustrating his intent to commit crimes.

2862. However, the Chamber notes that Paragraph 6.43 is pled in support of, *inter alia*, Counts 1 to 3 (genocide-related charges) against Kanyabashi. In light of the jurisprudence of the Tribunal, the Chamber is of the view that Paragraph 6.43 properly pleads the elements required for an allegation of conspiracy pursuant to Article 2 (3)(b) of the Statute () and, when read together with Paragraphs 5.1 and 6.62, the crime charged is evident, for which reason the Chamber rejects the submission of the Kanyabashi Defence.

2863. In spite of the foregoing, the Chamber considers the reference to the time period of the said meeting alleged in Paragraph 6.43 of the Indictment, namely the entire month of June 1994, is vague. In the circumstances, the Chamber finds the Indictment defective in this regard.

2864. Accordingly, the Chamber must then determine whether the Kanyabashi Indictment was cured of its defect through subsequent Prosecution disclosures. The Chamber recalls that the Prosecution relies solely on Witness FAI with respect to the alleged content of the meeting at the BPO and the alleged words and actions of Kanyabashi.<sup>7940</sup>

2865. The Kanyabashi Defence submits that Prosecution Witness FAI was not expected to testify against Kanyabashi in so far as the summary of Witness FAI's testimony in the Appendix to the Prosecution Pre-Trial Brief does not mention Kanyabashi and none of Witness FAI's prior witness statements indicate that Kanyabashi had an active role in this meeting. Furthermore, the Kanyabashi Defence submits that it only learned of the allegation concerning Kanyabashi's alleged words at this meeting by the will-say disclosed to them on 24 October 2002.<sup>7941</sup>

2866. While the Chamber accepts that Witness FAI's intention to testify against Kanyabashi is not mentioned in the summary of his anticipated evidence as outlined in the Prosecution Pre-Trial Brief, it notes that the Kanyabashi Defence was first informed of this through Witness

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<sup>7938</sup> Kanyabashi Closing Brief, para. 437.

<sup>7939</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 183.

<sup>7940</sup> Prosecution Closing Brief, p. 393, para. 26; p. 420, para. 125; Prosecution Closing Argument, T. 21 April 2009 p. 17.

<sup>7941</sup> Kanyabashi Closing Argument, T. 29 April 2009 p. 21; Kanyabashi Closing Brief, para. 583.



FAI's third statement of 28 January 2001, disclosed to the Defence on 5 June 2002. The Chamber observes that this statement indicates that in May and June 1994, Witness FAI participated in several meetings with military and civilian authorities to plan the genocide and stated that Kanyabashi had fully participated in the genocide and extermination of Tutsis along with other officers, including Muvunyi and Hategekimana.<sup>7942</sup>

2867. On 12 June 2002 the Kanyabashi Defence filed a motion seeking the exclusion of Witness FAI's evidence, claiming Witness FAI's third statement was the first time Witness FAI had implicated Kanyabashi in meetings in furtherance of the genocide.<sup>7943</sup> In its subsequent Decision of 6 July 2002, the Chamber ruled that the information regarding Kanyabashi was additional information discovered during the course of further investigations by the Prosecution. The Chamber observed that while the Prosecution had made late disclosure of Witness FAI's 28 January 2001 statement, it considered that the Kanyabashi Defence had three months to prepare for cross-examination of Witness FAI, which was adequate notice for Kanyabashi to prepare a defence, such that he therefore suffered no prejudice from the late disclosure of Witness FAI's third statement.<sup>7944</sup>

2868. Notwithstanding the foregoing, the Chamber considers the information contained in Witness FAI's statement is too vague and does not add any detail in relation to the meeting alleged at Paragraph 6.43 of the Indictment, or in relation to any other meeting. Therefore, the Chamber finds the defect in the Indictment was not cured and it will not consider this allegation in relation to Kanyabashi. In any event, the Chamber notes that the allegation in relation to the meeting at the beginning of June about which Witness FAI gave evidence has not been proven beyond a reasonable doubt.

*Additional Testimony of Witnesses TA and TK*

2869. The Chamber notes that Prosecution Witnesses TA and TK testified as to a meeting at the BPO after which Nyiramasuhuko referred to the Tutsi refugees as "dirt". However, the Prosecution did not provide notice to the Nyiramasuhuko or Nsabimana Defence that these witnesses would testify as to this meeting and these words attributed to Nyiramasuhuko. The witness summaries for Witnesses TA and TK in the Appendix to the Prosecution Pre-Trial Brief and the prior statements of Witnesses TA and TK did not include any reference to these allegations.<sup>7945</sup> In any event, the Prosecution, in its Closing Brief, does not rely on Witnesses TA and TK to support this allegation. Therefore, the Chamber will not consider the evidence of Witnesses TA and TK in support of this allegation.

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<sup>7942</sup> 28 January 2001, Statement of Witness FAI, disclosed 5 June 2002.

<sup>7943</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Joseph Kanyabashi's Urgent Motion to Exclude Witness FAI's Testimony Against Him, 12 June 2002.

<sup>7944</sup> *Kanyabashi et al.*, Decision on Kanyabashi's Motion to Exclude Witness "FAI"'s Testimony Against Him Pursuant to Rules 54 and 73 of the Rules (TC), 6 July 2002, para. 14.

<sup>7945</sup> 19 November 1997, Statement of Witness TA, disclosed 4 November 1998; 22 and 23 April 1998, Statement of Witness TA, disclosed 4 November 1998; 12 November 1996, Statement of Witness TA, disclosed 15 November 2000; 17 December 1996, Statement of Witness TQ, disclosed 4 December 2000.

### 3.6.21.3 Evidence

#### Prosecution Witness SU

2870. Witness SU, a Tutsi and the sister of Witness SS,<sup>7946</sup> testified that there were often meetings held on Mondays and Fridays at the BPO, to prepare the killings.<sup>7947</sup> The persons attending the meetings included Chief Warrant Officer Emmanuel Rekeraho, Nyiramasuhuko; *Bourgmestre* Kanyabashi and at least six others.<sup>7948</sup> She said there were *bourgmestres* from the *communes* of Butare *préfecture*, high-ranking *conseillers* and high-ranking officials of some companies, such as the director of prisons. On 17 or 18 May 1994, she went to see the *conseiller* of her *secteur* who told her he was on his way to a meeting at the BPO.<sup>7949</sup> In addition, there were often all sorts of cars outside of the BPO.<sup>7950</sup>

2871. Witness SU testified that two or three days after arriving at the BPO on 28 May 1994,<sup>7951</sup> she saw Nyiramasuhuko come out of the first of such meetings at around 11.00 a.m. Nyiramasuhuko was wearing a brown *boubou* (an African dress) and a necklace.<sup>7952</sup> Witness SU heard Nyiramasuhuko say to Nsabimana and Kanyabashi: “[I]t is here at the *préfecture* that the dirt is left. Who are these little people? Elsewhere in the *communes* we are finished.” They said that in Mbazi, Ndora and Huye *communes* the work had already been finished. Witness SU said the “dirt” referred to by Nyiramasuhuko was those who found refuge at the BPO.<sup>7953</sup> She understood that Nyiramasuhuko meant that the killings should be completed as had been done elsewhere.<sup>7954</sup> She estimated that the distance between herself and Nyiramasuhuko was about four metres.<sup>7955</sup>

2872. On another occasion, after she observed attacks at the BPO, Witness SU saw Nyiramasuhuko coming out of a meeting with Nsabimana, Kanyabashi and many others, some of whom she did not know.<sup>7956</sup> As she stood opposite the *préfet’s* office, Nyiramasuhuko picked up a piece of cloth the size of a handkerchief and light blue in colour with white spots, and said the cloth was an RPF ornament.<sup>7957</sup> Nyiramasuhuko said to the participants of the meeting that the refugees had brought the cloth and therefore the *Inkotanyi* accomplices had infiltrated.<sup>7958</sup> Everyone had left the meeting by this time, but Nyiramasuhuko called them

<sup>7946</sup> T. 21 October 2002 pp. 44-45 (ICS) (Witness SU).

<sup>7947</sup> T. 14 October 2002 p. 13; T. 16 October 2002 p. 21; T. 22 October 2002 p. 11 (ICS) (Witness SU).

<sup>7948</sup> T. 14 October 2002 pp. 12-13 (Witness SU) (She also named Jonathan Ruremesha, Colonel François Munyengango, Doctor Cyprien Sibomana, former warrant officer Emmanuel Rekeraho, *adjutant-chef* Joseph Muganga, Zacharie Banyangiriki (MP), and Gasper Rusanganwa, assistant *bourgmestre* of Ngoma *commune* and an artist).

<sup>7949</sup> T. 22 October 2002 p. 7 (ICS) (Witness SU).

<sup>7950</sup> T. 16 October 2002 p. 27 (Witness SU).

<sup>7951</sup> T. 14 October 2002 p. 8 (Witness SU).

<sup>7952</sup> T. 14 October 2002 p. 15; T. 16 October 2002 p. 13; T. 17 October 2002 p. 4 (Witness SU).

<sup>7953</sup> T. 14 October 2002 p. 16 (Witness SU).

<sup>7954</sup> T. 14 October 2002 p. 19 (Witness SU).

<sup>7955</sup> T. 14 October 2002 pp. 22-23 (Witness SU).

<sup>7956</sup> T. 14 October 2002 pp. 49-50 (Witness SU); T. 16 October 2002 p. 30 (Witness SU) (Those persons included, Zaeharia Banyangiriki, Gaspard Rusanganwa, Colonel François Munyengango, Emmanuel Rekeraho, Joseph Muganga, Jonathas Ruremesha who was a *bourgmestre* and Cyprien Sibomana).

<sup>7957</sup> T. 14 October 2002 p. 50; T. 16 October 2002 pp. 25, 32-33 (Witness SU).

<sup>7958</sup> T. 14 October 2002 p. 50; T. 16 October 2002 pp. 27, 35 (Witness SU).

back to hold an extra meeting.<sup>7959</sup> After the extended meeting, it was said that there were RPF accomplices among the refugees.<sup>7960</sup>

2873. The witness said she knew Nyiramasuhuko well before 1994 and walked past Nyiramasuhuko's home in Ndora *commune* often when she went to visit relatives.<sup>7961</sup> Witness SU identified Nyiramasuhuko in court.<sup>7962</sup> Witness SU did not know Nsabimana before 1994, but "got to know [Nsabimana] at the time of the misfortune that befell [her]."<sup>7963</sup> Witness SU identified him in court.<sup>7964</sup> Witness SU had known Kanyabashi from the 1970s. She also knew Kanyabashi's family, including his two sisters that attended primary school with the witness.<sup>7965</sup> Witness SU identified Kanyabashi in court.<sup>7966</sup>

2874. Witness SU was asked during cross-examination whether she knew an association of victims of the events of 1994, named *Ibuka*. She testified that she heard people talk about this association. She was asked whether she knew an association of victims of the events of 1994, named *Avega*. She stated that people talked about *Avega*, but she did not know it. When asked whether she was a member of either association or a similar association, she testified that she was "between these two associations," but was not a member of either and not involved with them.<sup>7967</sup>

#### Prosecution Witness SS

2875. Witness SS, whose father was Tutsi and whose mother was Hutu,<sup>7968</sup> testified that she left Butare University Hospital on 27 May 1994 to go to the BPO.<sup>7969</sup> At the *préfecture*, she saw Nsabimana, the officer-in-charge of the place, Kanyabashi, Nyiramasuhuko and several other *bourgmestres* and authorities.<sup>7970</sup> She testified that these authorities came to attend meetings held at the *préfecture* every Monday and every Friday during her stay.<sup>7971</sup> Kanyabashi and Nyiramasuhuko attended all the meetings that took place at the BPO when Witness SS was present.<sup>7972</sup> She left the BPO for Rango shortly after Nteziryayo was installed as *préfet*, although she testified as to not knowing who he was.<sup>7973</sup> The meetings took place for the entire period of her stay at the BPO.<sup>7974</sup> She did not know how many meetings were held in total.<sup>7975</sup>

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<sup>7959</sup> T. 14 October 2002 p. 50; T. 16 October 2002 pp. 25, 30 (Witness SU).

<sup>7960</sup> T. 16 October 2002 p. 25 (Witness SU).

<sup>7961</sup> T. 14 October 2002 p. 14 (Witness SU).

<sup>7962</sup> T. 15 October 2002 pp. 22-24 (Witness SU).

<sup>7963</sup> T. 14 October 2002 p. 89 (Witness SU).

<sup>7964</sup> T. 15 October 2002 p. 24 (Witness SU).

<sup>7965</sup> T. 15 October 2002 pp. 17-18 (ICS) (Witness SU).

<sup>7966</sup> T. 15 October 2002 p. 25 (Witness SU).

<sup>7967</sup> T. 22 October 2002 pp. 88-89; T. 22 October 2002 pp. 92-93 (ICS) (Witness SU).

<sup>7968</sup> T. 3 March 2003 pp. 72-73 (ICS) (Witness SS).

<sup>7969</sup> T. 3 March 2003 pp. 24, 26 (Witness SS).

<sup>7970</sup> T. 3 March 2003 pp. 39-42; T. 5 March 2003 p. 38 (Witness SS).

<sup>7971</sup> T. 3 March 2003 p. 42; T. 5 March 2003 p. 40; T. 10 March 2003 pp. 19-20 (Witness SS).

<sup>7972</sup> T. 10 March 2003 p. 70; T. 5 March 2003 p. 40 (Witness SS).

<sup>7973</sup> T. 3 March 2003 p. 37 (Witness SS).

<sup>7974</sup> T. 3 March 2003 p. 42 (Witness SS).

<sup>7975</sup> T. 10 March 2003 p. 19 (Witness SS).

2876. Witness SS testified that Nsabimana was in charge of the *préfecture* and that she used to see him every day at the BPO.<sup>7976</sup> She also saw him speak to the refugees at the BPO.<sup>7977</sup>

2877. Witness SS testified that the first time she heard Nyiramasuhuko talk was a morning after a meeting Nyiramasuhuko came to attend.<sup>7978</sup> Nyiramasuhuko wore a *boubou*.<sup>7979</sup> Witness SS was about five and a half metres from Nyiramasuhuko, based on the distance between the witness stand and the west wall of the courtroom.<sup>7980</sup> Nyiramasuhuko stood in front of the *préfet's* door, near the steps and said, "I don't understand how this dirt is still here at the *préfecture*, whereas elsewhere the job is finished."<sup>7981</sup> Witness SS understood "dirt" to refer to Tutsis.<sup>7982</sup> Witness SS testified that each time Nyiramasuhuko got out of the meeting at the BPO and saw the refugees under the guava tree she said that "anywhere else there is no more dirt; the dirt is only here."<sup>7983</sup>

2878. On another occasion, Witness SS saw Nyiramasuhuko at what might have been noon, after a meeting Nyiramasuhuko attended at the BPO. Nyiramasuhuko picked up a piece of cloth and said: "I don't understand, it's these refugees here who threw this cloth. These refugees are the accomplices of the *Inkotanyi*." She was speaking in a loud voice to the authorities but as she was talking, she was facing the refugees. The authorities present included Nsabimana, Kanyabashi, the deputy *bourgmestre* of Runyinya *commune*, Zacharie Banyangeriki, Déo Hategekimana, *Adjudant-Chef* Emmanuel Rekeraho and many others.<sup>7984</sup> After Nyiramasuhuko spoke these words, the authorities went back inside for another meeting.<sup>7985</sup> Witness SS said that after this meeting, Nyiramasuhuko returned to the BPO at night and led attacks on the refugees.<sup>7986</sup>

2879. Witness SS identified Nyiramasuhuko in court.<sup>7987</sup> In her testimony, she referred to the Accused as Pauline, the Minister in charge of gender issues and the promotion of womanhood and of the family in 1994.<sup>7988</sup> She saw Nyiramasuhuko three times passing in front of her house.<sup>7989</sup> The witness identified Nsabimana in court.<sup>7990</sup> She admitted to not knowing him prior to May 1994 when she sought refuge at the BPO.<sup>7991</sup> Witness SS identified Kanyabashi

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<sup>7976</sup> T. 3 March 2003 pp. 42-43 (Witness SS).

<sup>7977</sup> T. 10 March 2003 pp. 23-24 (Witness SS).

<sup>7978</sup> T. 3 March 2003 pp. 43-44 (Witness SS).

<sup>7979</sup> T. 5 March 2003 p. 35 (Witness SS).

<sup>7980</sup> T. 3 March 2003 pp. 44-45 (Witness SS).

<sup>7981</sup> T. 3 March 2003 p. 43 (Witness SS).

<sup>7982</sup> T. 3 March 2003 p. 44 (Witness SS).

<sup>7983</sup> T. 5 March 2003 p. 32 (Witness SS).

<sup>7984</sup> T. 3 March 2003 p. 46 (Witness SS).

<sup>7985</sup> T. 3 March 2003 p. 47 (Witness SS).

<sup>7986</sup> T. 3 March 2003 pp. 47-50 (Witness SS).

<sup>7987</sup> T. 3 March 2003 pp. 77-78 (Witness SS).

<sup>7988</sup> T. 3 March 2003 pp. 26, 34 (Witness SS).

<sup>7989</sup> T. 3 March 2003 p. 35 (Witness SS).

<sup>7990</sup> T. 3 March 2003 p. 79 (Witness SS).

<sup>7991</sup> T. 3 March 2003 p. 43 (Witness SS).

in court.<sup>7992</sup> She saw him at the BPO when he attended meetings there, on Mondays and Fridays, as well as when he accompanied the refugees to Rango.<sup>7993</sup>

### Prosecution Witness SJ

2880. Witness SJ, a Tutsi, testified that she went to the BPO in April 1994, but could not recall the exact date.<sup>7994</sup> During her first two weeks at the BPO, she saw *Bourgmestre* Kanyabashi, *Préfet* Nsabimana and Nyiramasuhuko. She also saw a number of other persons of authority but did not know their names.<sup>7995</sup>

2881. One day during the witness' first two weeks at the BPO, Nyiramasuhuko arrived between 11.00 a.m. and noon.<sup>7996</sup> Nyiramasuhuko went to the office of *Préfet* Sylvain and stayed for about 15 minutes. Nyiramasuhuko was wearing a very lengthy skirt that was dark brown and a white shirt, with black shoes. As she walked down the stairs outside of Nsabimana's office, Nyiramasuhuko scratched her head and said in a loud and angry voice: "This place is dirty. This place stinks; there is dirt here and it must be taken away. I do not want to see it here." Witness SJ understood Nyiramasuhuko to be referring to the Tutsi refugees on the premises in the courtyard when talking about "dirt".<sup>7997</sup> Nsabimana then asked the *Interahamwe* and the soldiers to move the refugees from the front of the BPO, to the back of the BPO, compelling the refugees to remain in the rear of the BPO during daytime.<sup>7998</sup> Witness SJ testified that refugees at the BPO were beaten up.<sup>7999</sup>

2882. Nyiramasuhuko came back to the BPO on another occasion. Nyiramasuhuko asked Nsabimana to convene a meeting of the *bourgmestres* of Butare *préfecture* so to ask the *bourgmestres* to come and evacuate the refugees at the BPO back to their respective home *communes*.<sup>8000</sup> At that time, Witness SJ stood next to a window of the other hall that served as the office of the *préfet* and could follow what Nyiramasuhuko was saying.<sup>8001</sup> Nyiramasuhuko and Nsabimana were speaking in loud and clear voices, discussing their work, which allowed everyone in the immediate vicinity to hear their conversation.<sup>8002</sup> Nyiramasuhuko left the BPO with her driver and her bodyguard, Kazungu.<sup>8003</sup>

2883. Witness SJ testified that on the same day that Nyiramasuhuko requested the meeting, she witnessed a meeting of many of the *bourgmestres* of Butare *préfecture*.<sup>8004</sup> She later testified that, if her memory was correct, the meeting with the *bourgmestres* was on a different day than the day when Nyiramasuhuko requested the meeting.<sup>8005</sup> She saw the *bourgmestre* of

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<sup>7992</sup> T. 3 March 2003 p. 85 (Witness SS).

<sup>7993</sup> T. 3 March 2003 p. 83 (ICS) (Witness SS).

<sup>7994</sup> T. 28 May 2002 p. 112 (Witness SJ).

<sup>7995</sup> T. 28 May 2002 p. 116 (Witness SJ).

<sup>7996</sup> T. 28 May 2002 p. 116 (Witness SJ).

<sup>7997</sup> T. 28 May 2002 pp. 121-122; T. 4 June 2002 pp. 33-37, 39-40 (Witness SJ).

<sup>7998</sup> T. 28 May 2002 pp. 132-133, 138 (Witness SJ).

<sup>7999</sup> T. 4 June 2002 p. 58 (Witness SJ).

<sup>8000</sup> T. 28 May 2002 p. 140 (Witness SJ).

<sup>8001</sup> T. 3 June 2002 pp. 149-150 (Witness SJ).

<sup>8002</sup> T. 5 June 2002 pp. 31-32 (Witness SJ).

<sup>8003</sup> T. 28 May 2002 p. 144 (Witness SJ).

<sup>8004</sup> T. 28 May 2002 pp. 146-147; T. 3 June 2002 p. 125 (Witness SJ).

<sup>8005</sup> T. 3 June 2002 p. 131 (Witness SJ).

Mbazi *commune*, Sibomana, in addition to many other *bourgmestres* at the BPO who had come to attend the meeting.<sup>8006</sup> After the meeting, she saw Kanyabashi, Nsabimana and Nyiramasuhuko speaking to one another, but she could not hear what they were saying.<sup>8007</sup> One time, Nyiramasuhuko left in a white vehicle that belonged to the Red Cross.<sup>8008</sup> Witness SJ added that Nyiramasuhuko had several vehicles at her disposal.<sup>8009</sup>

2884. Witness SJ heard from others, that Nyiramasuhuko had said in the meeting that the *bourgmestres* should take the refugees from the BPO back to their home *communes*. This order was implemented and she testified that those who were evacuated were killed.<sup>8010</sup>

2885. Witness SJ testified that the meeting of *bourgmestres* took place at the *Palais du MRND* which is now known as the *Salle Polyvalente*; it was not held at the BPO.<sup>8011</sup> However, Witness SJ's prior statement provided: "She [Pauline] ordered a meeting with every [*bourgmestre*] at this *Pr[é]fecture* place. After this meeting I saw Pauline leaving this *pr[é]fecture's* place." Witness SJ testified that the translator must have made a mistake because the meeting was held at the *Salle Polyvalente*.<sup>8012</sup> She testified that there were a lot of *bourgmestres* at the BPO that day, who were to take part in the meeting.<sup>8013</sup>

2886. On another occasion, Witness SJ said that she saw Nyiramasuhuko arrive at the BPO at around 9.00 or 10.00 a.m., at the time when the workers had already reported for duty. Nyiramasuhuko went into the office of the *préfet* and then left in a blue car with her driver.<sup>8014</sup> She did not hear Nyiramasuhuko or Nsabimana say anything.<sup>8015</sup> Likewise, Nyiramasuhuko and Nsabimana did not say anything to the refugees.<sup>8016</sup> That same night, a white pickup came to the BPO with *Interahamwe* to take refugees away from the BPO.<sup>8017</sup>

2887. Witness SJ said she knew Nsabimana from before the genocide.<sup>8018</sup> Although she never spoke to him before the events, Witness SJ testified to seeing Nsabimana a few times at a bar located in Mukabuga in Gihindamuyaga *secteur* in Mbazi *commune*.<sup>8019</sup> The witness knew Nyiramasuhuko before 1994,<sup>8020</sup> as Nyiramasuhuko used to live with her husband, Maurice Ntahobali, in the same *secteur* as Witness SJ.<sup>8021</sup> She identified Nyiramasuhuko in court.<sup>8022</sup>

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<sup>8006</sup> T. 28 May 2002 pp. 146-147 (Witness SJ).

<sup>8007</sup> T. 28 May 2002 pp. 147-148 (Witness SJ).

<sup>8008</sup> T. 4 June 2002 p. 20 (Witness SJ).

<sup>8009</sup> T. 4 June 2002 pp. 20, 47 (Witness SJ).

<sup>8010</sup> T. 4 June 2002 pp. 17-18 (Witness SJ).

<sup>8011</sup> T. 3 June 2002 pp. 160-161; T. 4 June 2002 p. 14 (Witness SJ).

<sup>8012</sup> T. 3 June 2002 p. 167 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>8013</sup> T. 3 June 2002 p. 168 (Witness SJ).

<sup>8014</sup> T. 28 May 2002 pp. 147-148; T. 3 June 2002 pp. 133, 136-137, 139 (Witness SJ).

<sup>8015</sup> T. 3 June 2002 pp. 133-134 (Witness SJ).

<sup>8016</sup> T. 3 June 2002 p. 134 (Witness SJ).

<sup>8017</sup> T. 29 May 2002 p. 20 (Witness SJ).

<sup>8018</sup> T. 28 May 2002 p. 139; T. 29 May 2002 p. 130 (ICS) (Witness SJ).

<sup>8019</sup> T. 29 May 2002 p. 132 (ICS) (Witness SJ).

<sup>8020</sup> T. 28 May 2002 pp. 116-117; T. 29 May 2002 p. 126 (ICS) (Witness SJ).

<sup>8021</sup> T. 29 May 2002 pp. 126-130 (ICS) (Witness SJ).

<sup>8022</sup> T. 29 May 2002 pp. 137-138 (Witness SJ).

### Prosecution Witness QBQ

2888. Witness QBQ, a Tutsi, testified that three days after her arrival at the BPO, towards the end of April 1994, she saw Nyiramasuhuko approaching in the morning on foot accompanied by *Préfet* Nsabimana.<sup>8023</sup> She was told by others that the woman was called Nyiramasuhuko and that the man was the *préfet*.<sup>8024</sup> Nyiramasuhuko was dressed with a cloth around her waist and another around her shoulders.<sup>8025</sup> She put her hands on her hips and said: “What are these snakes still doing here? It is necessary to clear this filth from this place.”<sup>8026</sup> Nyiramasuhuko and the *préfet* left the BPO right after Nyiramasuhuko spoke.<sup>8027</sup> Witness QBQ described the *préfet* as having a bulging forehead.<sup>8028</sup>

2889. Witness QBQ identified Nsabimana in court though she testified that she had not seen him since 1994. She described the *préfet* as a dark-coloured person, average height and had a sort of a bump on his forehead. She testified that she was not in a position to identify Nyiramasuhuko since the events took place a very long time ago. She had not seen her since 1994.<sup>8029</sup>

### Prosecution Witness RE

2890. Witness RE, a Tutsi, testified that after having been chased from the EER she went back to the BPO and saw Nyiramasuhuko come to the BPO with President Sindikubwabo.<sup>8030</sup> During the visit, Nyiramasuhuko said, “[i]s that dirt still here? In Butare they have not worked.” Then President Sindikubwabo said, “[n]o, these people will be killed during Habyarimana’s funeral.” Pauline Nyiramasuhuko also said the people should be killed and the young girls among them raped.<sup>8031</sup>

2891. Witness RE was confronted with her statement, dated 5 December 1996, in which she said that Nyiramasuhuko said: “What are these people doing here. Why don’t they kill them?” However, Witness RE did not mention in that prior statement that Nyiramasuhuko said, “[i]s that dirt still here?” or that Nyiramasuhuko said that people should be killed and young girls raped. Witness RE said that the statement was a summary and therefore did not include all of the details of her conversation with the investigator.<sup>8032</sup>

2892. Witness RE identified Nsabimana in court.<sup>8033</sup> She described Nsabimana as he was in 1994 as “large but short...quite rotund...wore glasses”.<sup>8034</sup> Throughout her testimony the witness referred to him as *Préfet* Sylvain. The witness identified Nyiramasuhuko in court.<sup>8035</sup>

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<sup>8023</sup> T. 3 February 2004 pp. 6-8, 52-53 (Witness QBQ).

<sup>8024</sup> T. 3 February 2004 p. 7 (Witness QBQ).

<sup>8025</sup> T. 4 February 2004 p. 20 (ICS) (Witness QBQ).

<sup>8026</sup> T. 3 February 2004 p. 7 (Witness QBQ).

<sup>8027</sup> T. 3 February 2004 p. 10 (Witness QBQ).

<sup>8028</sup> T. 3 February 2004 p. 8 (Witness QBQ).

<sup>8029</sup> T. 3 February 2004 pp. 23-24 (Witness QBQ).

<sup>8030</sup> T. 24 February 2003 pp. 13, 17-18 (Witness RE).

<sup>8031</sup> T. 24 February 2003 p. 18 (Witness RE).

<sup>8032</sup> T. 25 February 2003 pp. 45-46 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>8033</sup> T. 24 February 2003 pp. 37-38 (Witness RE).

Nsabimana

2893. Nsabimana denied that he called Witness FAI back to Butare or that he and Colonel Muvunyi together saw Witness FAI at the BPO around 2 June 1994 and accused him of abandoning his post. Nsabimana also denied that he saw Witness FAI on the following Monday and informed him of a meeting to take place on that day.<sup>8036</sup> Nsabimana recalled however that he saw Witness FAI and the *bourgmestre* of Rusatira, Rukeribuga, at the BPO through his office window during the restricted Security Council meeting on 31 May 1994, which was taking place in his office.<sup>8037</sup> Witness FAI came from a *commune* that was under occupation at that time and, according to Nsabimana, Witness FAI was at the *préfecture* because he was a refugee who was passing through the town.<sup>8038</sup> Nsabimana asked Witness FAI and the Rusatira *bourgmestre* to come in to the meeting to inform the Security Council about the manner in which their home *communes* were handling the displacement of refugees.<sup>8039</sup> Nsabimana asked Witness FAI and the *bourgmestre* of Rusatira how people were advancing, they answered the questions put to them, and then the two men left the meeting.<sup>8040</sup>

2894. As for a meeting that may have taken place on the Monday following 2 June 1994, namely 6 June 1994, Nsabimana denied that he presided over a subsequent meeting in his office, claiming that three quarters of all the *bourgmestres* Witness FAI alleged were in attendance, would not fit in his office, and denied that Witness FAI participated in that meeting. The only occasion Nsabimana recalled seeing Witness FAI was with respect to the meeting that took place in Nsabimana's office and to which Witness FAI was not invited, although he temporarily attended to provide some information.<sup>8041</sup>

2895. Nsabimana refuted Witness FAI's allegation that this meeting included a review of the government's programme of killing Tutsis. Nsabimana testified that the issue of fuel was discussed during the 20 April 1994 meeting that he held with *bourgmestres*. On that day, Nsabimana decided that in view of the fuel shortage, each *bourgmestre* would be supplied with 40 litres of fuel per week for the official vehicle to facilitate movement and communication. Nsabimana indicated that it was his predecessor, Jean-Baptiste Habyalimana, who first raised this fuel issue during a meeting that took place a few days before.<sup>8042</sup>

2896. Nsabimana stated that he never heard Kanyabashi appeal to the population to flush out enemies from Ngoma nor did Nsabimana ever hear Kanyabashi appeal for youth to undergo military training. Nsabimana denied Witness FAI's testimony that the Kibaye and Kigembe *bourgmestres* requested assistance with killing Tutsis who were passing through their

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<sup>8034</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>8035</sup> T. 24 February 2003 p. 37 (Witness RE).

<sup>8036</sup> T. 20 November 2006 p. 58 (ICS) (Nsabimana).

<sup>8037</sup> T. 21 September 2006 p. 64 (ICS); T. 16 November 2006 p. 56 (ICS); T. 20 November 2006 p. 37; T. 20 November 2006 p. 58 (ICS) (Nsabimana).

<sup>8038</sup> T. 21 September 2006 p. 69 (ICS) (Nsabimana).

<sup>8039</sup> T. 21 September 2006 pp. 63-64 (ICS); T. 20 November 2006 p. 58 (ICS) (Nsabimana).

<sup>8040</sup> T. 21 September 2006 p. 66 (ICS) (Nsabimana).

<sup>8041</sup> T. 20 November 2006 p. 59 (ICS) (Nsabimana).

<sup>8042</sup> T. 20 November 2006 pp. 59-60 (ICS) (Nsabimana).



*communes* en route to Burundi, that Nsabimana subsequently asked Nteziryayo and Muvunyi to find a solution to this situation, and that Nteziryayo offered assistance.<sup>8043</sup>

### Nteziryayo

2897. Nteziryayo testified that, contrary to Witness FAI's testimony, he did not attend a *bourgmestre* meeting in the BPO between 25 May and early June 1994 and Nsabimana did not request him to send reinforcements to Kibayi and Kigembe *communes*.<sup>8044</sup> Nteziryayo testified that during this period of time he was not an official of Butare *préfecture* and not under the orders of the *préfet* of Butare, Nsabimana.<sup>8045</sup> Nteziryayo denied knowing any organisation or group known as *Ibisumizi*, or having had any *Ibisumizi* at his disposal.<sup>8046</sup>

#### **3.6.21.4 Deliberations**

2898. As noted in the preliminary issues section to these allegations, the Chamber will not consider the general assertion that there were "numerous meetings" at the BPO (). However, the Chamber notes that from a combined reading of the Nyiramasuhuko and Ntahobali Indictment, the Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment<sup>8047</sup> together with the Prosecution Pre-Trial Brief as outlined above in the Introduction, three specific meetings are alleged to have taken place at the BPO, namely: (1) a meeting in April 1994 called by Nyiramasuhuko and attended by Nsabimana at which the progress of the massacres was discussed and the means by which to complete them; (2) a meeting around 10 June 1994, attended by Nsabimana, Nyiramasuhuko and Interim President Sindikubwabo at which Nyiramasuhuko asked why Tutsis at the BPO had not been killed; and (3) a second meeting around 10 June 1994, attended by Kanyabashi and Minister Rwamakuba where either Kanyabashi or both men told Nsabimana that the Tutsi refugees at the BPO must be exterminated.

#### *Meeting Between Nsabimana and Nyiramasuhuko, April 1994*

2899. The Chamber recalls the evidence of Witness SJ who said that she arrived at the BPO in April 1994 and that within the first two weeks of her stay, she saw Nyiramasuhuko go into the office of the *préfet* to attend a meeting.<sup>8048</sup> When Nyiramasuhuko exited she said "this place is dirty", and Nsabimana ordered the *Interahamwe* to move the refugees to the back of the BPO.<sup>8049</sup> Witness QBQ also provided testimony as to a meeting that took place three days after her arrival at the BPO, towards the end of April 1994.<sup>8050</sup> She said that Nyiramasuhuko

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<sup>8043</sup> T. 20 November 2006 pp. 60-61 (ICS) (Nsabimana).

<sup>8044</sup> T. 22 May 2007 pp. 7, 17-18 (Nteziryayo).

<sup>8045</sup> T. 22 May 2007 pp. 5, 17-18 (Nteziryayo).

<sup>8046</sup> T. 22 May 2007 p. 18 (Nteziryayo).

<sup>8047</sup> Paras. 6.32 and 6.33 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8-10 against Nyiramasuhuko); Paras. 6.28 and 6.37 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana); Para. 6.43 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>8048</sup> T. 28 May 2002 pp. 112, 116, 122; T. 4 June 2002 p. 33 (Witness SJ).

<sup>8049</sup> T. 28 May 2002 pp. 122, 132-133, 138; T. 4 June 2002 pp. 33-34, 39-40 (Witness SJ).

<sup>8050</sup> T. 3 February 2004 pp. 6-8, 52-53 (Witness QBQ).

approached the BPO on foot accompanied by Nsabimana and said to clear the filth from the BPO.<sup>8051</sup>

2900. Based on the evidence of Witnesses SJ and QBQ, the Chamber is satisfied that a meeting took place between Nyiramasuhuko and Nsabimana around the end of April 1994, at the BPO. The Chamber however notes that no evidence was led as to the content of the said meeting. Therefore the Chamber finds that the Prosecution failed to establish beyond a reasonable doubt that Nyiramasuhuko and Nsabimana held a meeting at which the progress of the massacres and the means by which to complete them were discussed in April 1994 at the BPO.

*Meeting of Nsabimana, Nyiramasuhuko and President Sindikubwabo, Around 10 June 1994*

2901. Witness RE gave evidence about the alleged meeting between Nsabimana, Nyiramasuhuko and President Sindikubwabo. She testified that she saw Nyiramasuhuko arrive at the BPO with Sindikubwabo and said to him, “[i]s that dirt still here? In Butare they have not worked.”<sup>8052</sup> The Chamber notes an inconsistency between Witness RE’s testimony and her prior statement. The witness did not mention in her statement that Nyiramasuhuko referred to the refugees as dirt or that Nyiramasuhuko said that young girls should be raped.<sup>8053</sup> Witness RE’s statement indicates that Nyiramasuhuko asked “[w]hat are these people doing here and why don’t they kill them?”<sup>8054</sup> Further, the Chamber considers Witness RE’s testimony was not sufficiently detailed. For example, she did not give any precise time frame about this event, she failed to mention Nyiramasuhuko and Sindikubwabo’s form of transport, and she could not recall the time of day of the visit to the BPO.

2902. In light of the foregoing, the Chamber finds this evidence insufficient to establish that around 10 June 1994, Nsabimana met with Interim President Sindikubwabo and Nyiramasuhuko at the BPO at which time Nyiramasuhuko asked why Tutsis at the BPO had not been killed. Thus, the Chamber finds this allegation has not been proven beyond a reasonable doubt.

*Meeting of Kanyabashi, Nsabimana and Minister Rwamakuba, Around 10 June 1994*

2903. As to the third alleged meeting, the Chamber recalls its Decision of 16 December 2004 in which it held there was no evidence that Kanyabashi told Nsabimana that the Tutsi refugees at the BPO must be exterminated.<sup>8055</sup> Accordingly, Nsabimana could not have failed to dissociate himself from comments that were never made by Kanyabashi. The Chamber also notes that the Prosecution led no evidence that André Rwamakuba told Nsabimana to kill Tutsis. Considering that there is no evidence to support the allegation that Nsabimana failed to

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<sup>8051</sup> T. 3 February 2004 p. 7 (Witness QBQ).

<sup>8052</sup> T. 24 February 2003 pp. 13, 17-18 (Witness RE).

<sup>8053</sup> T. 25 February 2003 pp. 45-46 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>8054</sup> T. 25 February 2003 pp. 45-46 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>8055</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 bis (TC), 16 December 2004, para. 183.

distance himself from the comments of Kanyabashi and Rwamakuba, the Chamber finds these allegations have not been proven beyond a reasonable doubt.

### 3.6.22 Muganza Meetings, April – June 1994

#### 3.6.22.1 Introduction

2904. The Ndayambaje Indictment alleges that from late 1990 to July 1994, Ndayambaje conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. The plan was alleged to consist of, *inter alia*, encouraging hatred and incitement to violence, the training of militia and the preparation of lists of Tutsis to be killed. The Ndayambaje Indictment alleges that Ndayambaje, together with others, adhered to and executed this plan and in doing so organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>8056</sup>

2905. In support of Count 1 (conspiracy to commit genocide) the Prosecution submits that between January and April 1994, Ndayambaje participated in meetings related to the planning of the genocide. More specifically, it submits that secret meetings were held at Ndayambaje's home and in other locations between January and April 1994, which were attended by persons holding positions of authority. The Prosecution also argues that before the death of President Habyarimana, Ndayambaje organised meetings on the hills in Muganza *commune* on Saturdays, which Hutus attended. The Prosecution alleged another meeting took place after the death of the President at the compound of the Muganza *commune* office, attended by *Bourgmestre* Chrysologue Bimenyimana, Ndayambaje, *conseillers* and *cellule* members. More than 200 people were present. The Prosecution contends that Ndayambaje spoke at this meeting and told attendees to strengthen patrols as the *Inyenzi* could come at any time.<sup>8057</sup> After this meeting, Tutsis were allegedly killed.<sup>8058</sup> In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAQ, QAR, FAU, EV, QBZ and RV.

2906. The Ndayambaje Defence argues that the Prosecution's evidence in this regard should not be considered because it was not pled in the Indictment. Furthermore, it submits that the Prosecution failed to adduce any evidence that Ndayambaje met with any of the co-Accused to establish a genocide plan.<sup>8059</sup> The evidence that such meetings took place is based on hearsay and lacks detail including as to the number of meetings held, their location, date, the identity and number of attendees, the items on the agenda and the identification of the speakers.<sup>8060</sup> The Defence asserts that Ndayambaje never convened or chaired any such meetings, nor did he hold secret meetings in his home.<sup>8061</sup>

2907. In support of its submissions, the Ndayambaje Defence relies on the testimony of Ndayambaje and Ndayambaje Defence Witnesses KEPİR, BOZAN, MARVA, GABON, JEVAN and Father Tiziano.

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<sup>8056</sup> Para. 5.1 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).

<sup>8057</sup> Prosecution Closing Brief, p. 465, para. 56; Prosecution Closing Argument, T. 21 April 2009 p. 39.

<sup>8058</sup> Prosecution Closing Brief, pp. 463-466, paras. 52-59; Prosecution Closing Argument, T. 21 April 2009 p. 39.

<sup>8059</sup> Ndayambaje Closing Argument, T. 29 April 2009 p. 54.

<sup>8060</sup> Ndayambaje Closing Brief, para. 868; Ndayambaje Closing Argument, T. 29 April 2009 p. 65.

<sup>8061</sup> Ndayambaje Closing Brief, paras. 941-942.

### 3.6.22.2 Preliminary Issues

2908. The Ndayambaje Defence requests that the Chamber not consider the testimony of Prosecution Witnesses QBZ, QAR and QAA in order to demonstrate that the Accused participated in meetings, as they concern material facts not contained in the Indictment. The Indictment is therefore defective and such defects have not been cured.<sup>8062</sup> The Defence recalls that it previously raised objections in its motions on the defects in the form of the Indictment,<sup>8063</sup> on acquittal on the basis of Rule 98 *bis* of the Rules<sup>8064</sup> and on exclusion of evidence.<sup>8065</sup>

2909. The Chamber notes that Ndayambaje's Preliminary Motion, filed outside the prescribed time limit on 6 February 2001, alleged that Paragraph 5.1 of the Ndayambaje Indictment lacked clarity and precision, including that the time frame was too imprecise, there was no specific mention of the identities of those with whom the Accused allegedly conspired or the capacity in which he acted, and there was no specification as to the components of the conspiracy.<sup>8066</sup> The Chamber dismissed the motion on the basis that the Defence failed to show good cause warranting waiver of the time-bar and did not consider the merits of the application.<sup>8067</sup> As regards Ndayambaje's Motion for acquittal under Rule 98 *bis*, the Defence submitted, *inter alia*, that Ndayambaje should be acquitted of conspiracy to commit genocide because the Prosecution failed to adduce evidence that Ndayambaje met, discussed or even knew his alleged co-conspirators.<sup>8068</sup> The Chamber dismissed Ndayambaje's motion on this point as it considered that the evidence adduced, if believed, could be sufficient for a reasonable trier of fact to find Ndayambaje's responsibility beyond a reasonable doubt on the facts pled in Paragraph 5.1 of the Indictment.<sup>8069</sup> Lastly, in Ndayambaje's Motion on exclusion of evidence, the Defence sought the exclusion of the testimony or parts of testimony of 14 Prosecution witnesses because they concerned facts or elements not pled in the Indictment and because it did not have timely notification of those allegations.<sup>8070</sup> The Chamber denied the motion in its entirety, but observed that some of the matters raised could be considered at a

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<sup>8062</sup> Ndayambaje Closing Brief, paras. 115-118.

<sup>8063</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Preliminary Motion (Amendment and Harmonisation of the Indictment) Pursuant to Rule 72 B(ii) of the Rules of Procedure and Evidence, 6 February 2001.

<sup>8064</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête d'Élie Ndayambaje aux fins d'acquiescement en application de l'article 98 bis du règlement de procédure et de preuve*, 25 October 2004, para. 55.

<sup>8065</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Élie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006.

<sup>8066</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Preliminary Motion (Amendment and Harmonisation of the Indictment) Pursuant to Rule 72 B(ii) of the Rules of Procedure and Evidence, 6 February 2001, para. 22.

<sup>8067</sup> *Ndayambaje*, Decision on the Defence Motion for the Amendment and for the Harmonization of the Accused's Indictment (TC), 25 April 2001.

<sup>8068</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête d'Élie Ndayambaje aux fins d'acquiescement en application de l'article 98 bis du règlement de procédure et de preuve*, 25 October 2004, para. 29.

<sup>8069</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 202.

<sup>8070</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Élie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006 (concerning witnesses QAR, TO, QAA, QAF, FAL, TP, TW, QAL, RV, FAU, EV, RT, QBZ and FAG).

later stage of the proceedings, and issues relating to the credibility and evaluation of testimony should be considered with the totality of the evidence.<sup>8071</sup>

2910. The Chamber notes that in the three motions referred to above, the Ndayambaje Defence did not specifically object to the Prosecution's allegations that Ndayambaje participated in meetings in Muganza *commune*; the first and second motions addressed defects in the Ndayambaje Indictment in a general sense, *i.e.* they alleged that the Indictment was imprecise, while the testimonies referred to in the third motion concerned evidence unrelated to meetings. However, the Chamber retains the right to exclude evidence even though the Defence did not raise any objection at the time of presentation.<sup>8072</sup>

2911. The Prosecution allegation that Ndayambaje participated in meetings relating to the planning of the genocide, forms part of its case in relation to the count of conspiracy to commit genocide. The Ndayambaje Indictment does not allege that Ndayambaje attended, chaired, convened or in any other way participated in meetings during which the planning of the genocide was discussed. Nor does the Indictment set forth any facts or circumstances from which it could be inferred that Ndayambaje was involved in meetings of any kind. The Chamber considers Ndayambaje's alleged participation in meetings to be material to the count of conspiracy to commit genocide because it constitutes the means by which the alleged conspiracy was committed and is a key element of the conduct imputed to the Accused, which forms the basis of the conspiracy charge. For these reasons, the Chamber considers that the Ndayambaje Indictment is defective.

2912. The Chamber is of the view that the Prosecution's failure to refer to Ndayambaje's alleged participation in meetings constitutes a failure to properly plead the mode of participation of the crime of conspiracy to commit genocide under Article 6 (1) of the Statute. The Chamber recalls that where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused that forms the basis for the charges in question.<sup>8073</sup> In the Chamber's opinion, information that the Prosecution intended to lead evidence on Ndayambaje's alleged participation in meetings to support the charge of conspiracy to commit genocide should have been contained in the Indictment because it is an essential ingredient of the charge. The Chamber is of the view that the subsequent inclusion of such information in the Appendix to the Prosecution Pre-Trial Brief therefore constitutes a radical transformation of the Prosecution case which can only result in prejudice to the Accused.<sup>8074</sup> As a result the Chamber will not make a finding on Ndayambaje's alleged involvement in meetings between January and April 1994. In any event, the Chamber notes that the evidence was not sufficient to prove these allegations beyond a reasonable doubt.

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<sup>8071</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006.

<sup>8072</sup> *Bikindi*, Decision on the Defence *Requête en Exclusion des Éléments de Preuve Produits par l'Accusation pour Etablir des Faits Non Contenus dans l'Acte d'Accusation* (TC), 26 June 2007, para. 30.

<sup>8073</sup> *Ntagerura et al.*, Judgement (AC), para. 25.

<sup>8074</sup> *See, e.g., Muvunyi I*, Judgement (AC), para. 20.

### 3.6.23 Hotel Ihuliro – Meetings and Roadblock, April 1994

#### 3.6.23.1 Introduction

2913. The Nyiramasuhuko and Ntahobali Indictment alleges that between April and July 1994, a roadblock was erected near the residence of Nyiramasuhuko and Ntahobali in Butare town (“Hotel Ihuliro”),<sup>8075</sup> and that Nyiramasuhuko and Ntahobali manned this roadblock.<sup>8076</sup> The Prosecution further submits that after the death of President Habyarimana and prior to the mounting of the roadblock, meetings were held at Hotel Ihuliro between Nyiramasuhuko and the *Interahamwe*, during which the implementation of the genocide in Butare was discussed.<sup>8077</sup> The Prosecution submits that the roadblock was erected after the second of these meetings.<sup>8078</sup> The Prosecution submits that Ntahobali also resided at the Hotel Ihuliro following the death of the President and, as a consequence, he must have been aware of such meetings and the issues discussed.<sup>8079</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Witness FA.

2914. The Prosecution also submits that between April and July 1994, Nyiramasuhuko and Ntahobali, with the assistance of soldiers, *Interahamwe* and other unknown persons, utilised the roadblock to identify, abduct and kill members of the Tutsi population.<sup>8080</sup> Among these crimes was the alleged killing of Léopold Ruvurajabo, a Tutsi, on 21 April 1994, who was killed at the roadblock near the Hotel Ihuliro, under Ntahobali’s instructions.<sup>8081</sup>

2915. As part of the general allegation that during the events referred to in the Indictment, rapes and sexual assaults were widely and notoriously committed throughout Rwanda against the Tutsi population by, among others, soldiers, militiamen and *gendarmes*,<sup>8082</sup> the Nyiramasuhuko and Ntahobali Indictment alleges that Ntahobali, assisted by unknown accomplices, participated in the kidnapping and raping of Tutsi women.<sup>8083</sup> Specifically, the Prosecution alleges that Ntahobali and other *Interahamwe*—including Jean-Pierre, Kazunga and Lambert—abducted Tutsi women to rape them before killing them, and that the roadblock at Hotel Ihuliro was part of a coordinated effort to round up and slaughter the Tutsi population

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<sup>8075</sup> The residence of Nyiramasuhuko and Ntahobali is referred to in evidence by various names. For the purposes of this Judgement, the Chamber refers to the Hotel Ihuliro.

<sup>8076</sup> Para. 6.27 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against Nyiramasuhuko and Ntahobali).

<sup>8077</sup> Prosecution Closing Brief, pp. 93-94, paras. 218-219; p. 180, paras. 59-60; Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>8078</sup> Prosecution Closing Brief, p. 93, para. 218; p. 180, para. 60; Prosecution Closing Argument, T. 20 April 2009 p. 39.

<sup>8079</sup> Prosecution Closing Brief, p. 180, para. 60; Prosecution Closing Argument, T. 20 April 2009 p. 39.

<sup>8080</sup> Prosecution Closing Brief, p. 92, paras. 214-215.

<sup>8081</sup> Prosecution Closing Brief, p. 168, para. 35. The Chamber notes that in para. 35, the Prosecution offers two different spellings of Ruvurajabo, including Ruvujabaro and Ruvarajabo. The Chamber will use “Ruvurajabo”, taken from the transcripts, as the determinative spelling.

<sup>8082</sup> Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-11 against Nyiramasuhuko and Ntahobali).

<sup>8083</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 7 and 11 against Nyiramasuhuko and Ntahobali).

in and around Butare town.<sup>8084</sup> In support of these allegations, the Prosecution relies on Witnesses FA, SS, SX, TB, TG, TQ, QI and QCB.

2916. One of the victims of these alleged rapes was Witness TN. The Prosecution relies on the testimony of Witness TN to establish that during the Indictment period, Ntahobali and his subordinates raped many Tutsi girls and that these girls were singled out because they were Tutsis.<sup>8085</sup>

2917. The Nyiramasuhuko Defence submits that no meetings were held at Hotel Ihuliro between April and July 1994.<sup>8086</sup> It questions how Witness FA could have been unaware that the house she identified as Nyiramasuhuko's was also used as a hotel, and disputes the witness' assertion that she saw Nyiramasuhuko's three daughters before and during the period between April and July 1994 on a regular basis given that they were living elsewhere.<sup>8087</sup> The Nyiramasuhuko Defence submits that Witness FA's testimony is contradictory and inconsistent with a statement she gave to Prosecution investigators in 1996.<sup>8088</sup>

2918. The Ntahobali Defence also submits that the Prosecution's reliance on the testimony of Witness FA to infer that Ntahobali must have known of the meetings fails to reach the requisite standard of proof.<sup>8089</sup> The Ntahobali Defence also argues that Witness FA's testimony is not credible.<sup>8090</sup>

2919. In support of their submissions as to the alleged meetings, the Nyiramasuhuko and Ntahobali Defences rely on the testimony of Nyiramasuhuko Defence Witnesses Maurice Ntahobali, Clarisse Ntahobali, Denise Ntahobali, WBNC, Nyiramasuhuko, Ntahobali Defence Witnesses CEM and NMBMP and Ntahobali.

2920. The Nyiramasuhuko and Ntahobali Defences further submit that the alleged crimes did not take place, and that the roadblock in question was not mounted until the end of May 1994. It is therefore impossible for the crimes alleged before this date to have occurred.<sup>8091</sup> In support of this submission, the Nyiramasuhuko and Ntahobali Defence rely on Maurice Ntahobali, Denise Ntahobali, Clarisse Ntahobali, the Accused Ntahobali, Ntahobali Defence Witness H1B6 and Nyiramasuhuko Defence Witness WBNC. In addition, Nsabimana Defence Witnesses Fergal Keane, Charles Karemano, Alexandre Bararwandika, Nyiramasuhuko Defence Witnesses WMKL, WBUC, WBTT, CEM, WZNA, WKNKI, Ntahobali Defence Witnesses WUNBJ, WCUJM, NMBMP, WCMNC, WCNJ, WCMNA, WCKJ, Kanyabashi Defence Witnesses D-2-YYYY, D-2-13-O, D-2-13-D, D-2-5-I, D-13-D, and Bernadette Kamanzi gave evidence relevant to this issue. The Defence for Nyiramasuhuko and Ntahobali

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<sup>8084</sup> Prosecution Closing Brief, pp. 166-167, paras. 30-31.

<sup>8085</sup> Prosecution Closing Brief, p. 176, para. 54.

<sup>8086</sup> Nyiramasuhuko Closing Brief, para. 298.

<sup>8087</sup> Prosecution Closing Argument, T. 22 April 2009 p. 49.

<sup>8088</sup> Nyiramasuhuko Closing Brief, paras. 294-295.

<sup>8089</sup> Ntahobali Closing Argument, T. 22 April 2009 p. 60.

<sup>8090</sup> Ntahobali Closing Brief, paras. 684-696.

<sup>8091</sup> Nyiramasuhuko Closing Brief, paras. 274-276, 306-320, 717, 742, 791, 830; Ntahobali Closing Brief, paras. 735-738, Appendix 1, para. 11.

also challenges the credibility and reliability of Prosecution Witnesses FA, TB, TG, TN, TQ, QCB, SS and SX.<sup>8092</sup>

2921. As part of the preliminary issues outlined below, the Ntahobali Defence also submits that certain specific allegations regarding Ntahobali's conduct at the roadblock were not pled in the Indictment and therefore cannot be used against him to prove the various counts of the Indictment. The Prosecution's failure to include these allegations in the Nyiramasuhuko and Ntahobali Indictment cannot be cured by subsequent disclosure.<sup>8093</sup>

2922. The Ntahobali Defence further submits that Ntahobali got malaria on 28 April 1994 and invokes an alibi, claiming that he spent a week in convalescence after having received Quinimax injections.<sup>8094</sup>

### 3.6.23.2 Preliminary Issues

#### *Lack of Notice in Relation to Witness FA*

2923. The Ntahobali Defence requests the exclusion of Prosecution Witness FA's testimony in its entirety on the grounds that it did not receive sufficient notice of that testimony, and asks the Chamber to find that Nyiramasuhuko and Ntahobali's right to prepare their defence has been violated. Witness FA did not appear on the Prosecution's list of intended witnesses in the Appendix to the Prosecution Pre-Trial Brief and was added to the witness list on 30 March 2004, almost at the end of the Prosecution case, even though the Prosecution had been in possession of Witness FA's statement since 26 November 1996.<sup>8095</sup>

2924. The Chamber recalls its Decision of 30 March 2004 in which it, *inter alia*, granted the Prosecution's motion to add three new witnesses, including Witness FA, to its witness list. In that Decision, the Chamber also ordered the disclosure of the non-redacted statements of the new witnesses to the Defence teams, with a view to avoiding any delay that could prejudice the Defence in its preparation. The Chamber also directed the Prosecution to call such witnesses at the end of its case in order to provide the Defence with sufficient time to prepare for the cross-examination of the new witnesses.<sup>8096</sup>

2925. The Chamber accepted that the evidence of the proposed factual witnesses could address specific factual circumstances relevant to the case and that it would be in the interests of justice to add such witnesses to the Prosecution witness list.<sup>8097</sup> The Chamber noted that the Prosecution disclosed the redacted statements of Witness FA on 12 January 2004 and now

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<sup>8092</sup> Nyiramasuhuko Closing Brief, paras. 274-276, 306-320, 570; Ntahobali Closing Brief, paras. 130-143.

<sup>8093</sup> Ntahobali's Closing Brief, paras. 74, 76.

<sup>8094</sup> Ntahobali Closing Argument, T. 23 April 2009 p. 35; *see* Memorandum to Coordinator, Trial Chamber II, Notice of Intent to enter a defence of alibi, 29 September 2005; T. 25 April 2006 p. 35 (Ntahobali).

<sup>8095</sup> Ntahobali Closing Brief, paras. 80-81.

<sup>8096</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004.

<sup>8097</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004, paras. 32-33.



recalls that the witness' identity was disclosed on 1 April 2004.<sup>8098</sup> It further notes that Witness FA was not called until the end of the Prosecution case.<sup>8099</sup>

2926. In view of the foregoing and the fact that the Ntahobali Defence has not established the existence of prejudice as a result of Witness FA being permitted to testify<sup>8100</sup> the Chamber finds no reason to reconsider its earlier ruling.

*Defect Relating to the Identity of Co-Perpetrators*

2927. The Ntahobali Defence submits that the allegation that he, together with a certain Jean-Pierre, Lambert and Kazungu, carried out abductions, murders or rapes at a roadblock near his parents' residence is not pled in the Indictment.<sup>8101</sup> Moreover, the Defence submits that the name "Kazungu" does not appear in the Indictment, Prosecution Pre-Trial Brief or any of the witnesses' statements.<sup>8102</sup>

2928. The Chamber notes that Paragraph 6.27 of the Nyiramasuhuko and Ntahobali Indictment provides the location of the roadblock, gives an adequate description of the time frame involved, and alleges that Nyiramasuhuko and Ntahobali made use of the roadblock with the assistance of others to identify, abduct and kill Tutsis. It is not necessary that the Indictment provide the exact identity of the alleged co-perpetrators. Therefore the Chamber finds that Paragraph 6.27 was not defective as to the allegation that Nyiramasuhuko and Ntahobali made use of a roadblock near their home to identify, abduct and kill Tutsis.

*Defect Relating to Victim Léopold Ruvurajabo*

2929. The Ntahobali Defence further submits that the allegation that Ntahobali ordered *Interahamwe* and civilians wearing military uniforms to kill a Tutsi man called Léopold Ruvurajabo at a roadblock located in front of his parents' residence is not pled in the Indictment.<sup>8103</sup>

2930. The Chamber recalls that where the Prosecution alleges that an accused personally committed criminal acts, it must plead the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed with the greatest precision (). It is clear from Witness QCB's previous statement of 7 April 1999, disclosed on 1 December 1999,<sup>8104</sup> taken approximately five months before the Amended Indictment was filed in August 1999, that the Prosecution was aware of the identity of the alleged victim Léopold Ruvurajabo, yet failed to include that information in the Amended Indictment. The Indictment is thus defective in this respect. The Chamber will now address the

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<sup>8098</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004, para. 31; T. 30 April 2004 p. 4 (ICS) (Status Conference). Witness FA began her evidence on 30 June 2004.

<sup>8099</sup> T. 30 April 2004 p. 4 (ICS) (Status Conference). Witness FA began her evidence on 30 June 2004.

<sup>8100</sup> See *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. 35.

<sup>8101</sup> Ntahobali Closing Brief, para. 78 (xii).

<sup>8102</sup> Ntahobali Closing Argument, T. 22 April 2009 p. 71.

<sup>8103</sup> Ntahobali Closing Brief, para. 78 (xi).

<sup>8104</sup> 7 April 1999, Statement of Witness QCB, disclosed 1 December 1999. The Chamber notes that while this statement redacted any mention of Ruvurajabo, the subsequent disclosure on 15 November 2000, clearly mentioned Ruvurajabo's name.

question of whether the defect in the Indictment was cured by subsequent Prosecution disclosures.

2931. In the summary of Witness QCB's anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief it is stated, without specifying a time frame, that Witness QCB went to Butare with a "Tutsi acquaintance" and they went through three roadblocks. At the third roadblock, which was located opposite Ntahobali's parents' house and was supervised by Ntahobali, the *Interahamwe* and civilians wearing military vests were checking cards, allowing Hutus through while segregating Tutsis and putting them by the roadside. Witness QCB's acquaintance refused to join the Tutsi group and he was immediately killed, on Ntahobali's orders.<sup>8105</sup> Witness QCB's previous statement of 7 April 1999, disclosed on 15 November 2000, one year and four months before the witness was called to testify on 20 March 2002, is consistent with this account and adds further details as to the identity of the said acquaintance. In the statement, Witness QCB states he was with Léopold Ruvurajabo when they approached a roadblock in front of the Ntahobali residence, and that when they arrived at the roadblock, Ruvurajabo refused to join a group of Tutsis gathered by the roadside, at which point Ntahobali ordered him to be killed.<sup>8106</sup>

2932. In sum, the Prosecution's subsequent disclosure regarding the murder of Léopold Ruvurajabo was timely, clear and consistent. The Chamber therefore finds that the defect in the Indictment as to the murder of Léopold Ruvurajabo was cured, and did not prejudice the Defence in the preparation of its case with regard to this allegation.

*Lack of Notice in Relation to Rapes*

2933. Lastly, the Ntahobali Defence submits that the allegations that between 21 and 25 April 1994, Ntahobali abducted and confined seven Tutsi girls in his house, including Witness TN, in order to rape them, and that around 28 April 1994, Ntahobali arrested and sexually assaulted a Tutsi girl near the EER were not pled in the Indictment.<sup>8107</sup>

2934. The Chamber notes that Paragraph 6.27 of the Nyiramasuhuko and Ntahobali Indictment does not mention rape with respect to crimes alleged to have taken place at the roadblock at the Ntahobali residence, nor is Paragraph 6.27 listed in support of the count of rape in the Nyiramasuhuko and Ntahobali Indictment. However, Paragraphs 6.37 and 6.53 of the Indictment, which are listed in support of the charge of rape against Ntahobali, state that Ntahobali, assisted by unknown accomplices, participated in the kidnapping and raping of Tutsi women. Further, it is alleged that during the events referred to in the Indictment, rapes and sexual assaults were widely and notoriously committed throughout Rwanda. The Chamber finds these paragraphs unduly vague and not sufficient to put Ntahobali on notice of the Prosecution's intention to adduce evidence that Ntahobali abducted a Tutsi girl at the roadblock and raped her at the EER; nor do they specifically point to Ntahobali's abduction and raping of Witness TN and other Tutsi girls in his house, in April 1994. Thus, the Indictment was defective in this respect. The Chamber will now consider whether this defect was cured by subsequent Prosecution disclosures.

<sup>8105</sup> Prosecution Pre-Trial Brief – Appendix; Witness QCB (52).

<sup>8106</sup> 7 April 1999, Unredacted Statement of Witness QCB, disclosed 15 November 2000.

<sup>8107</sup> Ntahobali Closing Brief, paras. 77-78 (ix, xiii).

2935. The Prosecution Pre-Trial Brief reiterates the language from Paragraph 6.53 of the Indictment, and adds that Nyiramasuhuko and Ntahobali committed, ordered, aided and abetted their subordinates and others in the carrying out of rapes and sexual assaults of Tutsis.<sup>8108</sup> The Chamber also notes that the Prosecution opening statement mentioned rape being used as a tool against Tutsi women. In particular in relation to rape, the Prosecution submitted that Nyiramasuhuko encouraged her son, Ntahobali, to rape Tutsi women.<sup>8109</sup>

*Alleged Rape of Seven Tutsi Girls, Including Witness TN*

2936. Furthermore, the summary of Prosecution Witness TN's expected evidence contained in the Appendix to the Prosecution Pre-Trial Brief, states that the witness was raped by Ntahobali; that Hutu soldiers penetrated women's vaginas with sticks; that Ntahobali authorised the soldiers to kill anyone they wanted; and that one soldier called Alex took Witness TN as his wife and they fled to Burundi.<sup>8110</sup>

2937. Witness TN's prior statement of 11-12 March 1998 is consistent with this account.<sup>8111</sup> The witness described that on 21 April 1994 Ntahobali, after ordering that six girls—including Witness TN and Philippe's daughter Lillian Umubyeyi—had to go to his house, raped them, one by one. The same night, Witness TN was forced to have sex with soldiers. A few days later, she was raped again by Ntahobali, this time using a handle stick. During the five days the girls were kept in the house, they were repeatedly raped. On 25 April 1994, Shalom told the soldiers they could choose the girls to be their wives, or they were allowed to kill them. Each of the soldiers chose a girl to be his wife. A soldier named Alexis took Witness TN and forced her to go to a refugee camp in Burundi, saying the RPF soldiers were coming. Witness TN described Ntahobali as black, fat and not very tall. She added that he was heavy when he laid on her. The witness explained that she probably could not recognise Shalom if she saw him again, but confirmed Shalom was the person in charge of their hostage while at the house and he ordered their rapes.

2938. The Chamber has carefully analysed all the above material and notes that the Prosecution was in receipt of Witness TN's prior statement of 11-12 March 1998 at the time of the Amended Indictment, on 1 March 2001. The Chamber considers that the Prosecution should have been more diligent and included in the Nyiramasuhuko and Ntahobali Indictment the specific details regarding Ntahobali's involvement in the abduction and rape of girls in his compound and house.

2939. Nonetheless, the Chamber considers that the evidence contained in Witness TN's summary in the Appendix to the Pre-Trial Brief and in Witness TN's prior statement, which was disclosed in redacted and unredacted forms on 4 November 1998 and 23 April 2001 respectively, provided timely, clear and consistent information and resolved any ambiguity or vagueness in the Indictment. It was also disclosed on 23 May 2001. The Chamber considers that this information did not amount to an expansion of the charges against Ntahobali and

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<sup>8108</sup> Prosecution Pre-Trial Brief, para. 29.

<sup>8109</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 88, 91-92.

<sup>8110</sup> Prosecution Pre-Trial Brief – Appendix; Witness TN (10).

<sup>8111</sup> 11-12 March 1998, Statement of Witness TN, disclosed 4 November 1998; Unredacted Statement of Witness TN, disclosed 23 April 2001.

provided sufficient notice to enable the Ntahobali Defence to prepare his defence without prejudice, in regard to this allegation.

2940. The Chamber therefore finds the defect in the Nyiramasuhuko and Ntahobali Indictment was cured with respect to the allegation that Ntahobali abducted, confined and raped seven Tutsi girls in his house, including Witness TN.

*Alleged Rape of a Tutsi Girl Near the Roadblock*

2941. In addition, the witness summaries for Prosecution Witnesses SX and TB contained in the Appendix to the Prosecution Pre-Trial Brief set forth allegations that Ntahobali raped Tutsi women at the roadblock in front of his parents' residence.<sup>8112</sup> Specifically, the summary of Witness SX's anticipated testimony states that Ntahobali took a girl from the roadblock near his mother's house and raped her about 10 metres away from the EER building. Witness SX provided similar information in his statement of 2 December 1997, disclosed on 4 November 1998, nearly six years before the witness was called to testify.<sup>8113</sup>

2942. The summary provided for Witness TB in the Appendix to the Prosecution Pre-Trial Brief, sets forth that on about 28 April 1994, Witness TB saw Ntahobali and two soldiers take a girl into the forest near the EER, rape and kill her.<sup>8114</sup> In Witness TB's previous statement of 5 December 1997, disclosed to the Defence on 15 November 2000, over three years before the witness was called to testify, Witness TB provided a similar, detailed account of this event.<sup>8115</sup>

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<sup>8112</sup> Prosecution Pre-Trial Brief – Appendix; Witness SX (88); Witness TB (90).

<sup>8113</sup> 2 December 1997, Statement of Witness SX, disclosed 4 November 1998 (The statement said that around 4.00 pm on the day the barrier was erected, which he estimates to have been approximately two weeks after he learned of President Habyarimana's death on Radio Rwanda, several girls were being beaten by three men, including Ntahobali, who singled out two of the girls and made them go through a water drainage ditch. Ntahobali then gave one of the girls to a soldier and Ntahobali took the other girl towards the place where Witness SX was hiding. Witness SX states that he and nine other people witnessed Ntahobali rape the girl, and then hit her on the head with a club. According to Witness SX's statement Ntahobali then ran towards the barrier telling the other *Interahamwe* that he had killed the girl; the *Interahamwe* responded singing, "Power! Power! We have finished the *Inyenzi!*").

<sup>8114</sup> Prosecution Pre-Trial Brief – Appendix; Witness TB (90) (stated that the witness first saw Ntahobali about 28 April 1994 when the witness saw a Daihatsu pickup drive past the EER building. When Ntahobali stopped the car, he and two soldiers asked everyone to get out and to hand over their identification cards. Ntahobali told all the occupants of the car, except for one girl, whom he identified as an *Inyenzi*, to pass. His men then began kicking and hitting the girl with rifles, while tearing at her clothes and pushing her in the direction of the forest until she was left wearing only her underwear. Ntahobali was observing this and before they were at the forest he ordered his men to return with the girl whose underwear he tried tearing off while leading her into the forest. Witness TB could not see Ntahobali and the girl in the forest but Witness TB could hear the girl screaming: "I'm dying, I'm dying". After about 30 minutes, Witness TB saw Ntahobali leave the forest and order the soldiers to return to work. Witness TB returned to the forest, in an attempt to try to save the girl, but she was dead. Witness TB saw blood and wounds on her chest, on both sides of her chest were cross marks that had been made with a sharp object. Her vagina also was covered with cuts and she was completely naked.)

<sup>8115</sup> 5 December 1997, Statement of Witness TB, disclosed 15 November 2000 (stated that sometime in the afternoon of 28 April 1994, TB saw a yellow Daihatsu pass by the EER where Witness TB was staying, and that Ntahobali stopped the vehicle. There were three females in the car; one of the three was singled out by Ntahobali who identified her as an *Inyenzi*. Ntahobali allowed the others in the car to pass by, but Ntahobali's men took the girl singled out and pushed her towards the forest, hitting her with their rifles, and tearing away her clothing until she was wearing only her underclothes. When the soldiers were almost to the forest, Ntahobali called the soldiers to come back, which they did. Ntahobali then went to where the girl was and took her to the forest while tearing at

The information provided by Witnesses SX and TB's summaries contained in the Appendix to the Prosecution Pre-Trial Brief, together with their previous statements, sufficiently put the Ntahobali Defence on notice with respect to the allegation that Ntahobali abducted a Tutsi girl at the roadblock and raped her near the EER. In addition, the Chamber finds these Prosecution disclosures were timely, clear and consistent. In light of the foregoing, the Chamber concludes that the defect in the Nyiramasuhuko and Ntahobali Indictment as to this allegation was cured and did not prejudice the Defence in the preparation of its case.

### 3.6.23.3 Evidence

#### Prosecution Witness FA

2943. Witness FA, a Hutu married to a Tutsi,<sup>8116</sup> testified that Nyiramasuhuko lived with her husband, three daughters and son, Ntahobali, in a large building with two or three storeys in Butare-Ville *cellule*, Ngoma *commune*, Butare *préfecture*.<sup>8117</sup> The witness was shown a photograph in which she identified a garage known as the MSM garage and stated that it was very close.<sup>8118</sup>

2944. Witness FA testified that there was a roadblock in front of Nyiramasuhuko's residence.<sup>8119</sup> Witness FA was living with Kazungu.<sup>8120</sup> Kazungu allowed her to live with him because she had told him that her husband died, though in reality he was hiding in the ceiling. She could live there safely because Kazungu intervened on her behalf, since she was a Hutu.<sup>8121</sup> From her house, Witness FA had a clear view of people coming and going from Nyiramasuhuko's house.<sup>8122</sup> There were "white people", purportedly working for the UN, who had rented a wing of Nyiramasuhuko's residence.<sup>8123</sup> On cross-examination, Witness FA testified that the foreigners left at a certain point, but they were still there when the roadblock in front of Nyiramasuhuko's residence was erected.<sup>8124</sup> The witness first came to know Nyiramasuhuko's family when she moved into a house in Ngoma *commune*, six months before April 1994.<sup>8125</sup>

2945. Witness FA testified that over a two-week period after President Habyarimana's death, she saw people going to and leaving three meetings at Nyiramasuhuko's house.<sup>8126</sup> The meetings took place in April 1994 although she was unable to specify precise dates.<sup>8127</sup> Some

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her clothes. Witness SX could not see the girl any longer but stated that she heard the girl screaming; "I am dying!" After approximately 30 minutes Ntahobali left the forest and went to where the soldiers were on the roadside, telling them to go and do the work. Witness SX's previous statement further sets forth that Witness SX later went into the forest where she found the girl dead, and covered in wounds.).

<sup>8116</sup> T. 30 June 2004 p. 48 (ICS) (Witness FA); Prosecution Exhibit 155 (Personal Particulars).

<sup>8117</sup> T. 30 June 2004 p. 45; T. 30 June pp. 48-49 (ICS); T. 1 July 2004 pp. 6, 12 (ICS) (Witness FA).

<sup>8118</sup> T. 30 June 2004 p. 47 (ICS); T. 1 July 2004 p. 8 (ICS) (Witness FA); Defence Exhibit 233 (Ntahobali) (Photograph showing MSM Garage).

<sup>8119</sup> T. 30 June 2004 p. 51; T. 30 June p. 53 (ICS) (Witness FA).

<sup>8120</sup> T. 1 July 2004 p. 66 (ICS) (Witness FA).

<sup>8121</sup> T. 1 July 2004 pp. 64-66 (ICS) (Witness FA).

<sup>8122</sup> T. 30 June 2004 pp. 47-49 (ICS) (Witness FA).

<sup>8123</sup> T. 30 June 2004 p. 48 (ICS) (Witness FA).

<sup>8124</sup> T. 1 July 2004 pp. 49, 60, 69 (ICS) (Witness FA).

<sup>8125</sup> T. 30 June 2004 p. 65 (ICS); T. 1 July 2004 pp. 12-13, 58 (ICS) (Witness FA).

<sup>8126</sup> T. 30 June 2004 pp. 45, 48-49 (ICS); T. 1 July 2004 p. 34 (Witness FA).

<sup>8127</sup> T. 30 June 2004 p. 50 (Witness FA).

of those who attended the meetings wore civilian clothes although a few were dressed in military uniform.<sup>8128</sup> All were members of the MRND Party and the *Interahamwe*.<sup>8129</sup> Besides the occupants of the house, the attendees included the head of MINITRAP, the director of INADES and a person named Kone.<sup>8130</sup> Under cross-examination, she stated that her brother-in-law had also attended MRND meetings in Nyiramasuhuko's house but she did not know his surname.<sup>8131</sup> Although she did not testify to having been present at the meetings, she stated that she never saw Nyiramasuhuko at any of the meetings.<sup>8132</sup>

2946. Witness FA testified that a man who lived in her compound attended the meetings at Nyiramasuhuko's house.<sup>8133</sup> On returning from the second meeting, he came to the witness' home, and informed her and her husband that instructions had been issued during the meeting concerning the killing of Tutsis and that there had been discussions on the issue of identity cards.<sup>8134</sup> Witness FA claimed that the man told her that he was an important *Interahamwe* and that Tutsis living in the compound should leave and find shelter elsewhere because he did not want to kill them.<sup>8135</sup> The man wore a military uniform and was carrying grenades, hatchets and a sword.<sup>8136</sup> After he left, Witness FA testified that her Tutsi husband hid in the ceiling of their home.<sup>8137</sup>

2947. Witness FA confirmed that she only knew of the meetings at Nyiramasuhuko's house because her neighbour had informed her of them following the second meeting.<sup>8138</sup> She also confirmed that in her statement to Prosecution investigators in November 1996, she did not mention that her neighbour had told her about the killings of Tutsis or his warning that Tutsis would have to leave the compound.<sup>8139</sup> Witness FA further testified that until her neighbour's visit, she had not been aware that her husband was Tutsi.<sup>8140</sup>

2948. Witness FA testified that part of the house she identified as Nyiramasuhuko's was rented out to several tenants and the Nyiramasuhuko family lived in a separate wing.<sup>8141</sup> The witness stated that there were other businesses on the premises where the house was located and that she used to go there to buy vegetables. She was not aware of the existence of a hotel as such.<sup>8142</sup> When questioned as to how she knew whether people entering Nyiramasuhuko's house were attending meetings, Witness FA responded that this was because her neighbour was among those people.<sup>8143</sup>

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<sup>8128</sup> T. 30 June 2004 pp. 50-51 (Witness FA).

<sup>8129</sup> T. 30 June 2004 p. 65 (ICS) (Witness FA).

<sup>8130</sup> T. 1 July 2004 p. 43 (Witness FA).

<sup>8131</sup> T. 1 July 2004 pp. 67, 72 (ICS) (Witness FA).

<sup>8132</sup> T. 1 July 2004 p. 67 (ICS) (Witness FA).

<sup>8133</sup> T. 30 June 2004 p. 48 (ICS) (Witness FA).

<sup>8134</sup> T. 30 June 2004 pp. 48-49 (ICS); T. 1 July 2004 p. 42 (Witness FA).

<sup>8135</sup> T. 30 June 2004 p. 48 (ICS); T. 1 July 2004 p. 42 (Witness FA).

<sup>8136</sup> T. 30 June 2004 p. 50 (Witness FA).

<sup>8137</sup> T. 30 June 2004 p. 49 (ICS) (Witness FA).

<sup>8138</sup> T. 1 July 2004 p. 42 (Witness FA).

<sup>8139</sup> T. 1 July 2004 pp. 42-43 (Witness FA).

<sup>8140</sup> T. 1 July 2004 p. 62 (ICS) (Witness FA).

<sup>8141</sup> T. 30 June 2004 p. 48; T. 1 July 2004 p. 60 (Witness FA).

<sup>8142</sup> T. 1 July 2004 p. 43; T. 1 July p. 12 (ICS) (Witness FA).

<sup>8143</sup> T. 1 July 2004 p. 44 (Witness FA).

2949. Witness FA testified that people were killed at the roadblock from April until June 1994, and that Nyiramasuhuko was in control of the roadblock. Ntahobali often manned the roadblock; he usually wore pants, a jacket and a military belt and he carried an axe, grenades, often a sword, and sometimes a gun.<sup>8144</sup> Witness FA acknowledged that in her 1996 statement she did not mention Ntahobali carrying a sword.<sup>8145</sup> Witness FA testified that members of the *Interahamwe* were present at the roadblock carrying various weapons.<sup>8146</sup> Kazungu was also present, wearing a camouflage uniform and a helmet like a soldier on the war front.<sup>8147</sup> Witness FA had to cross the roadblock sometimes to go to the market. People at the roadblock let her through because they knew who she was.<sup>8148</sup>

2950. On the day after the roadblock was set up, a group of university students passed the roadblock on their way home from campus. Some of the students were killed with small axes while others were allowed to pass through the roadblock. She saw Ntahobali grab a girl with long hair and hit her with an axe; the girl died immediately.<sup>8149</sup>

2951. Several days after the incident with the students, but still in April 1994, she saw Ntahobali order a man out of his car, and ask for his identity card. Ntahobali tore up the man's identity card.<sup>8150</sup> Ntahobali then struck the man with an axe and handed him to Kazungu so that he would be killed. The man was then brought to the EER and killed. She did not see the man killed, but when Kazungu returned to the roadblock he told her that the man had been killed.<sup>8151</sup> Witness FA testified that Nyiramasuhuko was present at the roadblock. Nyiramasuhuko wore a uniform but did not carry any weapons; she then stated that Nyiramasuhuko carried a gun. The witness could not say if this was the first time she had seen Nyiramasuhuko at the roadblock.<sup>8152</sup>

2952. Witness FA testified that at around 11.00 p.m. on that same day, she was at home when she heard someone scream, "Shalom is killing me, Shalom is killing me." The man screamed in agony from a distance for more than five minutes.<sup>8153</sup>

2953. Witness FA testified that one afternoon, several days after the incident with the man being taken away by Kazungu, but still in April 1994, she saw Ntahobali stop a soldier who had come to the roadblock from ESO military camp.<sup>8154</sup> Ntahobali pulled the soldier from his red double-cabin vehicle, hit him with an axe and then handed him over to the *Interahamwe* to be killed.<sup>8155</sup> The *Interahamwe* took away the soldier's gun. Ntahobali then took the gun and the soldier's vehicle to Nyiramasuhuko's place.<sup>8156</sup> Witness FA acknowledged that her 1996

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<sup>8144</sup> T. 30 June 2004 pp. 53-54, 64 (ICS); T. 1 July 2004 p. 45 (Witness FA).

<sup>8145</sup> T. 1 July 2008 p. 45 (Witness FA).

<sup>8146</sup> T. 30 June 2003 p. 65 (ICS) (Witness FA).

<sup>8147</sup> T. 1 July 2004 p. 25 (Witness FA).

<sup>8148</sup> T. 1 July 2004 pp. 64, 66 (ICS) (Witness FA).

<sup>8149</sup> T. 30 June 2004 pp. 53-54 (ICS); T. 1 July 2004 p. 27 (Witness FA).

<sup>8150</sup> T. 30 June 2004 pp. 55-56 (ICS); T. 1 July 2004 p. 26 (Witness FA).

<sup>8151</sup> T. 30 June 2004 pp. 55-56 (ICS); T. 1 July 2004 p. 28 (Witness FA).

<sup>8152</sup> T. 30 June 2004 pp. 56-57 (ICS) (Witness FA).

<sup>8153</sup> T. 30 June 2004 p. 59 (ICS) (Witness FA).

<sup>8154</sup> T. 30 June 2004 p. 58 (ICS); 1 July 2004 pp. 26, 31; T. 1 July p. 73 (ICS) (Witness FA).

<sup>8155</sup> T. 30 June 2004 p. 58 (ICS); 1 July 2004 pp. 26, 29, 31-32 (Witness FA).

<sup>8156</sup> T. 30 June 2004 p. 58 (ICS); 1 July 2004 pp. 31-32 (Witness FA).

statement did not mention that Ntahobali hit the soldier with an axe, but did include that Ntahobali went with the *Interahamwe* to kill the soldier.<sup>8157</sup>

2954. Witness FA testified that Nyiramasuhuko was present during the incident with the soldier.<sup>8158</sup> Nyiramasuhuko was buying vegetables with her daughter near the road on the side of the EER.<sup>8159</sup> The soldier asked Nyiramasuhuko to intervene on his behalf, saying, “[p]lease help me, Shalom could kill me.” Nyiramasuhuko did not answer.<sup>8160</sup> Witness FA did not see the soldier being killed.<sup>8161</sup> The soldier wore a military uniform but she could not be sure whether he was a *gendarme*, a Presidential Guard or a regular soldier.<sup>8162</sup> Later that same day, a soldier from ESO came by and threatened to destroy Nyiramasuhuko’s house, because his friend had been killed even though he was not a Tutsi. Ntahobali and his father escaped and spent the night at Mbazi.<sup>8163</sup>

2955. Nyiramasuhuko lived with her husband, her son Ntahobali, Ntahobali’s wife, Nyiramasuhuko’s three daughters and a house servant.<sup>8164</sup> When it was put to Witness FA by the Ntahobali Defence that one of Nyiramasuhuko’s three daughters had been abroad in 1994, the witness stated that she saw all three daughters often between April and July 1994; she did not know their names but she described them as being heavily built.<sup>8165</sup>

2956. Witness FA was unable to identify Nyiramasuhuko in court, testifying only that a certain woman in the courtroom “resembled” Nyiramasuhuko. The witness stated that it had been nearly 10 years since the last time she saw Nyiramasuhuko. Witness FA was unable to identify the person she called Shalom in court.<sup>8166</sup>

#### Prosecution Witness QCB

2957. Witness QCB, a Hutu driver in 1994 and detainee at the time of his testimony,<sup>8167</sup> testified that a roadblock was located in front of the home of Maurice Ntahobali, the father of Shalom Ntahobali.<sup>8168</sup> Witness QCB arrived at this roadblock in the morning of 21 April 1994 with Léopold Ruvurajabo, a Tutsi.<sup>8169</sup> From a distance of approximately nine metres, the witness saw Ntahobali at the roadblock. Ntahobali was holding the door of a Peugeot 505 carrying grenades and a Kalashnikov rifle.<sup>8170</sup> The Peugeot 505 had civilian number plates and

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<sup>8157</sup> T. 1 July 2004 pp. 32-33 (Witness FA).

<sup>8158</sup> T. 30 June 2004 p. 58 (ICS) (Witness FA).

<sup>8159</sup> T. 30 June 2004 p. 58 (ICS); T. 1 July 2004 p. 74 (Witness FA).

<sup>8160</sup> T. 30 June 2004 p. 58 (ICS) (Witness FA).

<sup>8161</sup> T. 30 June 2004 p. 58 (ICS); I July 2004 p. 78 (ICS) (Witness FA).

<sup>8162</sup> T. 1 July 2004 pp. 29-30 (Witness FA).

<sup>8163</sup> T. 1 July 2004 pp. 78-79 (ICS) (Witness FA).

<sup>8164</sup> T. 30 June 2004 p. 48 (ICS); T. 1 July 2004 p. 12 (ICS) (Witness FA).

<sup>8165</sup> T. 30 June 2004 p. 48 (ICS); T. 1 July 2004 pp. 12, 59 (ICS) (Witness FA).

<sup>8166</sup> T. 30 June 2004 p. 66 (ICS) (Witness FA).

<sup>8167</sup> T. 20 March 2002 pp. 36-37 (Witness QCB).

<sup>8168</sup> T. 20 March 2002 pp. 60, 70 (Witness QCB).

<sup>8169</sup> T. 20 March 2002 p. 61 (Witness QCB).

<sup>8170</sup> T. 20 March 2002 pp. 70-72 (Witness QCB).



was not to be confused with Ntahobali's father's white Peugeot 504, which had yellow state number plates.<sup>8171</sup> Ntahobali wore ordinary trousers and a sleeveless military jacket.<sup>8172</sup>

2958. The witness testified that this was the first time he had seen Ntahobali, but he also testified that he met him in 1989, when he visited Ntahobali's home in the company of Maurice Ntahobali's driver, when Witness QCB worked for Butare University.<sup>8173</sup> Witness QCB also saw Ntahobali arrive at the BPO on the morning of 28 April 1994, in a Peugeot 505 vehicle.<sup>8174</sup> Witness QCB positively identified Ntahobali in court.<sup>8175</sup>

2959. Witness QCB testified that Léopold Ruvurajabo was asked to produce his identification and refused. Léopold was requested to go to a nearby school, but he refused.<sup>8176</sup> The *Interahamwe* then asked Shalom Ntahobali "what shall we do with this man", to which Ntahobali replied, "[k]ill him."<sup>8177</sup> The *Interahamwe* killed Léopold with knives and his body was thrown to the lower part of the road.<sup>8178</sup> The witness had known Léopold for a long time, and testified that Léopold was a Tutsi.<sup>8179</sup> In cross-examination, Witness QCB stated that he met Léopold Ruvurajabo at the roadblock,<sup>8180</sup> however this contradicted his statements made to ICTR investigators on 7 April 1999, where he declared that he had left his home together with Ruvurajabo.<sup>8181</sup>

### Prosecution Witness SS

2960. Witness SS, a Tutsi woman,<sup>8182</sup> testified that on 27 May 1994, soldiers escorted her and other Tutsi refugees from the Butare University Hospital to the *préfecture* office.<sup>8183</sup> She testified as to a roadblock in front of Nyiramasuhuko's house.<sup>8184</sup> The roadblock was made up of two logs placed across the road.<sup>8185</sup> At the roadblock, the witness saw Nyiramasuhuko, members of the *Interahamwe*, and one soldier called Kazungu, who was carrying a weapon.<sup>8186</sup> Nyiramasuhuko was wearing a military shirt and a *kitenge*, *kanga* cloth around her waist.<sup>8187</sup> Witness SS later rectified her testimony and stated that she saw Kazungu at the *préfecture* office, but not at the roadblock; she did not know the soldier who was with Nyiramasuhuko at the roadblock.<sup>8188</sup>

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<sup>8171</sup> T. 25 March 2002 pp. 60-61, 65 (ICS) (Witness QCB).

<sup>8172</sup> T. 20 March 2002 p. 71 (Witness QCB).

<sup>8173</sup> T. 20 March 2002 p. 71; T. 25 March 2002 pp. 46-47 (ICS) (Witness QCB).

<sup>8174</sup> T. 21 March 2002 pp. 50-52 (Witness QCB).

<sup>8175</sup> T. 21 March 2002 p. 82 (Witness QCB).

<sup>8176</sup> T. 20 March 2002 pp. 62, 65 (Witness QCB).

<sup>8177</sup> T. 20 March 2002 p. 65 (Witness QCB).

<sup>8178</sup> T. 20 March 2002 pp. 62, 66 (Witness QCB).

<sup>8179</sup> T. 20 March 2002 p. 68 (Witness QCB).

<sup>8180</sup> T. 20 March 2002 p. 61 (Witness QCB).

<sup>8181</sup> T. 26 March 2002 p. 36 (Witness QCB).

<sup>8182</sup> T. 3 March 2003 p. 21 (Witness SS).

<sup>8183</sup> T. 3 March 2003 p. 26; T. 10 March 2003 p. 28 (Witness SS).

<sup>8184</sup> T. 3 March 2003 p. 26 (Witness SS).

<sup>8185</sup> T. 3 March 2003 pp. 26, 31 (Witness SS).

<sup>8186</sup> T. 3 March 2003 pp. 26, 28; T. 5 March 2003 p. 16 (Witness SS).

<sup>8187</sup> T. 3 March 2003 p. 31 (Witness SS).

<sup>8188</sup> T. 5 March 2003 p. 16 (Witness SS).

2961. According to Witness SS, the person who appeared to be in charge of the roadblock at that time was Nyiramasuhuko, because she was the foremost authority there.<sup>8189</sup> Nyiramasuhuko stopped the soldiers escorting the group of Tutsi refugees.<sup>8190</sup> After conversing with her, the soldiers and the refugees went through the roadblock.<sup>8191</sup> Witness SS positively identified Nyiramasuhuko in court.<sup>8192</sup> The witness had already seen Nyiramasuhuko before 1994, so she was able to recognise Nyiramasuhuko at the roadblock.<sup>8193</sup>

#### Prosecution Witness SX

2962. Witness SX, a Tutsi carpenter in 1994,<sup>8194</sup> testified that prior to the events of 1994, he did not know Ntahobali; however, when Tutsis were killed at the roadblock in front of Nyiramasuhuko's house, Ntahobali was pointed out to the witness by Gasana, a friend who worked for Mr. Mujeri.<sup>8195</sup> The witness positively identified Ntahobali in court.<sup>8196</sup>

2963. Witness SX testified that about two weeks after the death of President Habyarimana, he saw a roadblock erected near the EER in front of the house of Nyiramasuhuko where identity cards were checked, and massacres took place. The witness was able to identify Ntahobali as being present at the roadblock.<sup>8197</sup> Ntahobali wore civilian clothing. Witness SX did not know where Ntahobali lived, or where he had been going, but testified that he often saw him pass by. The witness did not have personal knowledge of Ntahobali's family, but was told that the house near the roadblock in question belonged to Ntahobali's family.<sup>8198</sup>

2964. On cross-examination, Witness SX testified that when he returned from his *commune* to Butare after the President's death at approximately 1.00 p.m., before the killings started, the roadblock in front of Nyiramasuhuko's house was not yet in place. There were some roadblocks which had been set up immediately before the President's death but the one in front of Nyiramasuhuko's house was set up on the day of the President's death.<sup>8199</sup>

2965. On cross-examination, Witness SX stated that he recognised the Presidential Guards at the roadblock by their military uniforms which were different than regular military uniforms in terms of their size and their spots.<sup>8200</sup> He stated that he did not see any white people at the roadblock.<sup>8201</sup> He later stated that Ntahobali was at the roadblock while the Presidential Guard and other soldiers were deployed along the road all the way to the non-commission officers'

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<sup>8189</sup> T. 3 March 2003 p. 33 (Witness SS).

<sup>8190</sup> T. 3 March 2003 p. 26 (Witness SS).

<sup>8191</sup> T. 3 March 2003 pp. 28-31 (Witness SS).

<sup>8192</sup> T. 3 March 2003 pp. 77-78 (Witness SS).

<sup>8193</sup> T. 3 March 2003 pp. 34-35, 77-78 (Witness SS).

<sup>8194</sup> T. 27 January 2004 p. 7 (ICS) (Witness SX); Prosecution Exhibit 69 (Personal Particulars).

<sup>8195</sup> T. 27 January 2004 p. 16; T. 27 January p. 53 (ICS); T. 30 January 2004 p. 25; T. 30 January p. 15 (ICS) (Witness SX).

<sup>8196</sup> T. 27 January 2004 p. 37 (Witness SX).

<sup>8197</sup> T. 27 January 2003 p. 16 (Witness SX).

<sup>8198</sup> T. 27 January 2003 p. 16 (Witness SX).

<sup>8199</sup> T. 30 January 2004 p. 28 (Witness SX).

<sup>8200</sup> T. 30 January 2004 pp. 23-24 (Witness SX).

<sup>8201</sup> T. 30 January 2004 p. 27 (Witness SX).

school.<sup>8202</sup> The witness stated that he was hiding at Mungeri's, from where he could not see the road leading to the non-commission officers' school. All he could see was that the road was strewn with bodies as they were dragged away from the roadblock to load them onto vehicles that arrived. He could not see the dead bodies from his vantage point, but saw them when he crossed the road.<sup>8203</sup> He did not know from which direction the people who were killed at the roadblock came. He recognised a few of the people killed at the roadblock but did not know their names.<sup>8204</sup>

2966. Witness SX was able to identify the building in which he was hiding in Prosecution Exhibit 70A, as well as the roadblock and Nyiramasuhuko's house in Prosecution Exhibit 70B.<sup>8205</sup> The building in which Ntahobali lived was a storied building that was a mixed commercial and residential building.<sup>8206</sup>

2967. On the day the roadblock was erected, Witness SX spent two or three hours watching the roadblock from a distance of approximately 100 metres, and he saw Ntahobali questioning people and asking to see their identity cards. He further stated that many people were killed at the roadblock, and that Ntahobali was one of the killers.<sup>8207</sup> He estimated about 500 people were killed.<sup>8208</sup>

2968. Witness SX saw several young ladies at the roadblock on this day. One of the ladies arrived at the roadblock in a yellow Daihatsu. When she arrived, the group she was with were killed after showing their identity cards, but Ntahobali took the young lady in question aside.<sup>8209</sup> Ntahobali and a man identified by the witness as Jean-Pierre took the lady to the vicinity near where the witness was hiding. The witness watched Ntahobali and Jean-Pierre hit the young lady and force her to cross back and forth through a gutter on her stomach.<sup>8210</sup>

2969. Witness SX testified that eventually, the killings at the roadblock slowed down and he left his hiding place and went back towards a workshop near the EER.<sup>8211</sup> Upon returning to his hiding place, Witness SX again saw Ntahobali with the young lady from the incident described above. He was very near them, maybe 20 metres away, and was able to see them through a hole in the wall, which he described as more or less like a window.<sup>8212</sup> It was getting dark, but was not yet dark enough not to see what was happening outside. The witness saw Ntahobali rape the young lady while she was crying out. After he raped her he immediately struck her with a small hatchet in the forehead, killing her.<sup>8213</sup>

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<sup>8202</sup> T. 30 January 2004 p. 60 (Witness SX).

<sup>8203</sup> T. 30 January 2004 p. 61 (Witness SX).

<sup>8204</sup> T. 30 January 2004 pp. 67-69 (Witness SX).

<sup>8205</sup> T. 27 January 2004 pp. 34-35; Prosecution Exhibits 70A, 70B (Photographs).

<sup>8206</sup> T. 30 January 2004 pp. 25-26 (Witness SX).

<sup>8207</sup> T. 27 January 2004 pp. 17-18; T. 30 January 2004 p. 36 (Witness SX).

<sup>8208</sup> T. 30 January 2004 p. 37 (Witness SX).

<sup>8209</sup> T. 27 January 2004 p. 20 (Witness SX).

<sup>8210</sup> T. 27 January 2004 pp. 20-21 (Witness SX).

<sup>8211</sup> T. 27 January 2004 p. 21 (Witness SX).

<sup>8212</sup> T. 27 January 2004 pp. 22-23 (Witness SX).

<sup>8213</sup> T. 27 January 2004 pp. 22-24; T. 30 January 2004 pp. 73-75, 82 (ICS) (Witness SX).

2970. Witness SX testified that five people in total, including two men named Rindiro and Munyaneza, were hiding with him and also witnessed the rape.<sup>8214</sup> The last time the witness saw Rindiro and Munyaneza was at the end of the war, when Munyaneza had fled and Rindiro had joined the Rwandan army. At the time of his testimony, Witness SX believed that Munyaneza was still alive but the others were dead, because he had seen them taken away to be killed.<sup>8215</sup>

2971. A short time after Ntahobali departed, Witness SX went to see the body of the young lady; she had a lump at her temple and one on her side and she was covered in blood.<sup>8216</sup> Later that night, he and another person whom the witness did not identify by name, went back and covered her body with grass.<sup>8217</sup> About four days after her death, he and some others went back and buried her body in a wooded lot.<sup>8218</sup>

### Prosecution Witness TB

2972. Witness TB, a Tutsi teacher from Butare town,<sup>8219</sup> testified that she knew Ntahobali and his parents, Maurice Ntahobali and Pauline Nyiramasuhuko. She met Ntahobali on several occasions during the events of 1994, including when Ntahobali visited the place where the witness lived, on his way to Pastor Ndamage.<sup>8220</sup> Although she had not seen Ntahobali since 1994, Witness TB was able to positively identify him in court.<sup>8221</sup>

2973. Witness TB testified that a roadblock was set up near the residence of Maurice Ntahobali about four days after the killings had begun, on 21 April 1994.<sup>8222</sup> The roadblock was erected in front of Nyiramasuhuko's house, near the road that goes to the *Quartier Arabe*, and close to a triangular sign board which stated "Danger".<sup>8223</sup> Witness TB had a clear view of the road from the building where she was staying, in a compound near the Ntahobali's residence.<sup>8224</sup>

2974. The witness testified that there were soldiers and civilians at the roadblock, including Ntahobali, and that she heard Ntahobali tell the soldiers to "work", which she understood to mean to kill people.<sup>8225</sup> From the building where she was staying, the witness had a clear view of the roadblock, and saw people there being beaten to death and being taken away to the EER where they were killed in the forest.<sup>8226</sup>

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<sup>8214</sup> T. 30 January 2004 pp. 72-73 (ICS) (Witness SX).

<sup>8215</sup> T. 30 January 2004 pp. 73, 80-82 (ICS) (Witness SX).

<sup>8216</sup> T. 27 January 2004 p. 24 (Witness SX).

<sup>8217</sup> T. 27 January 2004 p. 25 (Witness SX).

<sup>8218</sup> T. 27 January 2004 pp. 24-25 (Witness SX).

<sup>8219</sup> T. 4 February 2004 p. 25 (Witness TB); Prosecution Exhibit 72 (Personal Particulars).

<sup>8220</sup> T. 4 February 2004 p. 42 (Witness TB).

<sup>8221</sup> T. 4 February 2004 p. 54 (Witness TB).

<sup>8222</sup> T. 4 February 2004 pp. 41-42; T. 5 February 2004 p. 12 (ICS) (Witness TB).

<sup>8223</sup> T. 4 February 2004 pp. 41-42, 51-52 (Witness TB); Prosecution Exhibit 25E (Photograph of the Butare main road).

<sup>8224</sup> T. 4 February 2004 pp. 51-52 (Witness TB).

<sup>8225</sup> T. 4 February 2004 pp. 41-42, 44-45, 48-49 (Witness TB).

<sup>8226</sup> T. 4 February 2004 pp. 41, 48; T. 4 February 66, 69, 71-73, 97-98 (ICS); T. 5 February 2004 p. 25; T. 5 February p. 13 (ICS) (Witness TB).

2975. On one occasion Witness TB saw people approach the roadblock in front of the Ntahobali residence in a yellow Daihatsu.<sup>8227</sup> The vehicle was stopped on the orders of Ntahobali who was with a man identified as Jean-Pierre, and the people in the vehicle were made to show their identity cards. Some of the people were allowed to continue on, and some were detained.<sup>8228</sup> Ntahobali dragged a girl with braids, who had been in the vehicle, down a path between some classroom buildings into the woods.<sup>8229</sup> She saw Ntahobali come back alone and tell the soldiers at the roadblock to keep working, which she understood to mean, keep killing people.<sup>8230</sup> The witness saw the girl with the braids again that evening, on the ground next to a tree, dead and badly beaten.<sup>8231</sup> Witness TB specified that the girl's vagina was full of blood.<sup>8232</sup> The girl's body was later buried by three people, one of whom she identified as Witness SX.<sup>8233</sup>

2976. Witness TB testified that she did not know Witness SX at the time of the alleged incident with the girl in the yellow Daihatsu, but that she recognised him as she often saw him pass by the EER. Witness TB stated that she saw Witness SX after the genocide, but they would only greet each other when passing. Witness TB testified that she had last seen Witness SX in 1998 or 2000.<sup>8234</sup>

#### Prosecution Witness TG

2977. Witness TG, a Tutsi accountant in 1994,<sup>8235</sup> testified that he knew the Accused Ntahobali, because they had attended *Groupe Scolaire* together. He and Ntahobali were not in the same class; when the witness was in the sixth year, Ntahobali was in the first year.<sup>8236</sup> In his statement of 4 December 1996, Witness TG said that he and Ntahobali were friends, but in court he testified that they would greet each other but were not friends.<sup>8237</sup> The witness positively identified Ntahobali in court.<sup>8238</sup>

2978. Witness TG testified that from 26 April 1994, he was in hiding at businessman Martin Uwariraye's compound, until 2 July 1994 when *Interahamwe* invaded the compound.<sup>8239</sup> The compound was located on the main road to Bujumbura, leading to the university on the left and to the centre of Butare town on the right.<sup>8240</sup> The compound consisted of several buildings,

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<sup>8227</sup> T. 4 February 2004 p. 42; T. 5 February 2004 p. 18 (Witness TB).

<sup>8228</sup> T. 4 February 2004 p. 42 (Witness TB).

<sup>8229</sup> T. 4 February 2004 pp. 45, 48; T. 5 February 2004 pp. 23-24 (Witness TB); Prosecution Exhibit 25D (Photograph of the Classrooms of the School taken from different angle).

<sup>8230</sup> T. 4 February 2004 p. 48; T. 5 February 2004 pp. 19, 23-25 (Witness TB).

<sup>8231</sup> T. 4 February 2004 p. 48 (Witness TB).

<sup>8232</sup> T. 4 February 2004 p. 49 (Witness TB).

<sup>8233</sup> T. 4 February 2004 pp. 41-50; T. 4 February p. 55 (ICS) (Witness TB).

<sup>8234</sup> T. 4 February 2004 p. 57 (ICS) (Witness TB).

<sup>8235</sup> T. 30 March 2004 p. 55; T. 30 March p. 26 (ICS) (Witness TG); Prosecution Exhibit 98 (Personal Particulars).

<sup>8236</sup> T. 31 March 2004 p. 24 (Witness TG).

<sup>8237</sup> T. 31 March 2004 p. 26 (Witness TG).

<sup>8238</sup> T. 30 March 2004 p. 64 (Witness TG).

<sup>8239</sup> T. 30 March 2004 pp. 63, 65; T. 30 March pp. 58-59 (ICS); T. 31 March 2004 pp. 20, 22, 64; T. 31 March p. 75 (ICS) (Witness TG).

<sup>8240</sup> T. 30 March 2004 p. 63 (Witness TG).

including a bakery.<sup>8241</sup> The bakery was located in the lowest part of the compound near a mosque.<sup>8242</sup> The wall of the bakery which ran perpendicular to the road had two oval shaped vents and a window which was 1.6 metres by 0.6 metres.<sup>8243</sup> The vents and the window were located above the oven.<sup>8244</sup> While he could not see the main road from the room in which he was hiding, he could see the road from the bakery.<sup>8245</sup> The compound was located approximately 700-800 metres from Ntahobali's family home. From this compound, the witness could see Ntahobali's family home and also a roadblock.<sup>8246</sup>

2979. The witness was shown a photograph, in which he identified the junction of the road going towards the *Quartier Arabe* and the main road, with the university to the left and the centre of Butare to the right. The witness indicated where Ntahobali's house was in 1994 and where the roadblock had been mounted.<sup>8247</sup> Witness TG was unsure of the exact date when the roadblock was mounted, but testified that it must have been by the end of April 1994, because he saw the roadblock when he moved into the bakery.<sup>8248</sup> During the time he was hiding at the bakery, the witness saw people being beaten at the roadblock, some to death, and others being taken to the forest by the EER and killed.<sup>8249</sup> He could hear the sound of gunshots and people being beaten and screaming from the direction of the EER and Ntahobali's home.<sup>8250</sup>

2980. From the compound's bakery, the witness often saw Ntahobali passing on the main road. Ntahobali was driving a Peugeot pickup 504 that was originally white but was soiled on the side in a kind of camouflage.<sup>8251</sup> Witness TG had seen that vehicle before April 1994 and knew it had belonged to a businessman called Rwamukwaya, who was Tutsi.<sup>8252</sup>

2981. In cross-examination, Witness TG agreed that it may be impossible to distinguish the characteristics of an unknown person coming in a vehicle on the main road, considering the distance of 25 to 35 metres between the oven and a vehicle passing on the road, the metallic bars on the windows which prevented him passing his head through the window, and the sisal sacks which obscured the windows in order to prevent them from being seen from the outside. He stated it would nevertheless be easy to distinguish a person that you already knew.<sup>8253</sup>

#### Prosecution Witness TQ

2982. Witness TQ, a Hutu, testified that a roadblock was erected in front of Ntahobali's house and was named after Shalom.<sup>8254</sup> Sometime after 12 April 1994, he and a Tutsi woman,

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<sup>8241</sup> T. 30 March 2004 p. 57; T. 31 March 2004 p. 84 (Witness TG).

<sup>8242</sup> T. 31 March 2004 p. 43 (ICS) (Witness TG).

<sup>8243</sup> T. 31 March 2004 pp. 43-47 (ICS) (Witness TG).

<sup>8244</sup> T. 31 March 2004 p. 46 (ICS) (Witness TG).

<sup>8245</sup> T. 30 March 2004 p. 63 (Witness TG).

<sup>8246</sup> T. 30 March 2004 pp. 69-70; T. 31 March 2004 pp. 49-50 (Witness TG).

<sup>8247</sup> T. 31 March 2004 pp. 59-61 (Witness TG); Defence Exhibit 198 (Ntahobali) (Photograph depicting area of the Roadblock).

<sup>8248</sup> T. 31 March 2004 p. 26 (Witness TG).

<sup>8249</sup> T. 30 March 2004 p. 70 (Witness TG).

<sup>8250</sup> T. 30 March 2004 pp. 70-71 (Witness TG).

<sup>8251</sup> T. 30 March 2004 p. 63 (Witness TG).

<sup>8252</sup> T. 30 March 2004 pp. 63-64 (Witness TG).

<sup>8253</sup> T. 31 March 2004 pp. 47-50 (ICS) (Witness TG).

<sup>8254</sup> T. 7 September 2004 pp. 10-11 (ICS) (Witness TQ).

whom he was transporting in a Red Cross vehicle, were stopped at the roadblock by Ntahobali.<sup>8255</sup> On cross-examination, Witness TQ later testified that the event took place after 21 April 1994, after Sindikubwabo's visit to Butare.<sup>8256</sup> The witness, who knew the woman to be a Tutsi, instructed her not to show her identity card. Although Ntahobali insisted she was Tutsi, the witness maintained that she was a relative of his. He convinced Ntahobali to allow them to continue on their way. If the woman had been identified as Tutsi, she could not have gone beyond that roadblock.<sup>8257</sup>

2983. Witness TQ further testified that from his vehicle, before approaching the roadblock, he saw Ntahobali and others lifting a corpse downhill from the road and then throwing it into a ditch.<sup>8258</sup> The witness was approximately 31 metres from Ntahobali when he observed this incident.<sup>8259</sup> There were no fewer than 10 corpses already piled in the ditch.<sup>8260</sup>

2984. Witness TQ was shown a photograph and recognised the location as being near Ntahobali's residence.<sup>8261</sup> He pointed out the MSM garage in the photograph and confirmed that to the right of the garage there was an empty spot, and that the roadblock had been erected at this spot.<sup>8262</sup>

2985. On cross-examination, it was put to the witness that in his statement of 28 and 29 July 1998, and in the 133 page hand-written judgment rendered by the Rwandan National Court in January 2003, the witness had not mentioned that he allegedly saw Ntahobali at the roadblock.<sup>8263</sup> The witness responded that in his statement he had not said everything that he knew with respect to Ntahobali.<sup>8264</sup>

2986. Witness TQ identified Ntahobali in court.<sup>8265</sup> The witness said that he knew Ntahobali since childhood because they had attended the same school in Butare.<sup>8266</sup>

#### Prosecution Witness QI

2987. Witness QI, a Tutsi, testified that Maurice Ntahobali's house was located on the main road leading to Tumba, in the direction of Butare town.<sup>8267</sup> The witness stated that during the war, two UNAMIR soldiers were stationed at Ntahobali's house. After the UNAMIR soldiers left, a roadblock was set up which was manned by civilians, soldiers and *Interahamwe*. The

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<sup>8255</sup> T. 7 September 2004 pp. 11, 62-63 (ICS) (Witness TQ).

<sup>8256</sup> T. 7 September 2004 p. 63 (ICS) (Witness TQ).

<sup>8257</sup> T. 7 September 2004 p. 11 (ICS) (Witness TQ).

<sup>8258</sup> T. 7 September 2004 pp. 11, 13-14, 62 (ICS) (Witness TQ).

<sup>8259</sup> T. 7 September 2004 p. 13 (ICS) (Witness TQ).

<sup>8260</sup> T. 7 September 2004 p. 14 (ICS) (Witness TQ).

<sup>8261</sup> T. 7 September 2004 p. 64 (ICS) (Witness TQ); Defence Exhibit 198 (Ntahobali) (Photograph depicting area of the Roadblock).

<sup>8262</sup> T. 7 September 2004 pp. 65-69 (ICS) (Witness TQ).

<sup>8263</sup> T. 7 September 2004 p. 32 (ICS); T. 9 September 2004 p. 37 (ICS) (Witness TQ).

<sup>8264</sup> T. 7 September 2004 p. 32 (ICS) (Witness TQ).

<sup>8265</sup> T. 7 September 2004 p. 19 (ICS) (Witness TQ).

<sup>8266</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ).

<sup>8267</sup> T. 25 March 2004 pp. 42-44 (ICS) (Witness QI).

witness was told that someone called Kazungu was at that roadblock and lived at Ntahobali's house.<sup>8268</sup>

### Prosecution Witness TN

2988. Witness TN, a Tutsi aged about 19 in 1994,<sup>8269</sup> testified that in April 1994 she was arrested at her house by Shalom and some soldiers, who ordered her to go to the *secteur* office.<sup>8270</sup> Other Tutsis were brought to the *secteur* office, where they were being guarded by Shalom.<sup>8271</sup> At around 2.00 p.m. on 21 April 1994, and only 2 to 3 minutes after they got to the *conseiller's* house, she and six other girls were taken to Ntahobali's house in a vehicle.<sup>8272</sup> Witness TN identified one of the girls as Lilian Umubyeyi.<sup>8273</sup>

2989. Witness TN testified to going through a roadblock in Butare, located at Mukoni on the lower side of the University, on the way from the *conseiller's* house to Ntahobali's house.<sup>8274</sup>

2990. Once at his house, Ntahobali locked Witness TN and the other girls inside. He threatened and ordered them to have sex with him.<sup>8275</sup> Ntahobali came in with soldiers and they first took out one girl and then another one. Witness TN could hear the girls scream.<sup>8276</sup> Ntahobali then took out Witness TN and asked her to take off her clothes.<sup>8277</sup> She refused and Ntahobali started to cut up her skirt with a bayonet.<sup>8278</sup> Witness TN stated that she was scared and undressed herself, and Ntahobali then "engaged in sex".<sup>8279</sup> Ntahobali then introduced the handle of a brush into Witness TN's vagina.<sup>8280</sup>

2991. After Ntahobali raped her, Witness TN went back inside the house. She was later asked to come out again.<sup>8281</sup> Ntahobali ordered the soldiers to have sex with Witness TN.<sup>8282</sup> She was raped by three soldiers, among whom she identified one soldier named Alexis.<sup>8283</sup> After they raped her, the soldiers also used handles on her.<sup>8284</sup>

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<sup>8268</sup> T. 25 March 2004 p. 46 (ICS); T. 25 March 2004 pp. 47-49 (ICS) (Witness QI) (confirmed that he did not mention the roadblock or Kazungu in his 11 June 1996 statement).

<sup>8269</sup> T. 3 April 2002 p. 132 (Witness TN); Prosecution Exhibit 55 (Personal Particulars).

<sup>8270</sup> T. 3 April 2002 p. 133 (Witness TN).

<sup>8271</sup> T. 3 April 2002 pp. 138-140 (Witness TN).

<sup>8272</sup> T. 3 April 2002 pp. 141-142; T. 3 April p. 149 (ICS) (Witness TN).

<sup>8273</sup> T. 3 April 2002 p. 142 (Witness TN).

<sup>8274</sup> T. 3 April 2002 p. 145; T. 3 April pp. 148, 150 (ICS) (Witness TN).

<sup>8275</sup> T. 3 April 2002 p. 151 (Witness TN).

<sup>8276</sup> T. 3 April 2002 pp. 153-154 (Witness TN).

<sup>8277</sup> T. 3 April 2002 p. 155 (Witness TN).

<sup>8278</sup> T. 3 April 2002 pp. 155-156 (Witness TN).

<sup>8279</sup> T. 3 April 2002 p. 156 (Witness TN).

<sup>8280</sup> T. 3 April 2002 pp. 156-158 (Witness TN).

<sup>8281</sup> T. 3 April 2002 p. 157 (Witness TN).

<sup>8282</sup> T. 3 April 2002 pp. 157-158 (Witness TN).

<sup>8283</sup> T. 3 April 2002 p. 159 (Witness TN).

<sup>8284</sup> T. 3 April 2002 p. 158 (Witness TN).



2992. Witness TN testified as to staying in Ntahobali's house for five days, from 21 to 25 April 1994.<sup>8285</sup> She said that Ntahobali ordered the soldiers to have sex with the seven Tutsi girls.<sup>8286</sup> They were raped every day until 25 April 1994.<sup>8287</sup>

2993. Witness TN testified that she was raped for the second time by Ntahobali on 25 April 1994. Ntahobali also used a handle after having raped her.<sup>8288</sup> That day, Witness TN testified that Ntahobali raped her while the other soldiers were raping the other six girls.<sup>8289</sup>

2994. Witness TN also testified that Ntahobali told the soldiers to take the girls away and make them their wives.<sup>8290</sup> One of the soldiers, Alexis, took her to a refugee camp in Burundi.<sup>8291</sup> After having told her that he owned her body, Alexis ordered Witness TN to have sex with three Hutu soldiers.<sup>8292</sup> After seeking refuge at the UNHCR office in the refugee camp, Witness TN was returned to Rwanda.<sup>8293</sup>

2995. When asked whether she was able to identify the person she refers to as Ntahobali in her testimony, Witness TN pointed to one of the security officers.<sup>8294</sup> She explained that her ability to positively identify the Accused was impaired by the circumstances under which she saw Ntahobali and also by the time that had elapsed since she last saw Ntahobali.<sup>8295</sup> Witness TN had previously described the person she referred to as Ntahobali in her testimony to be of average height, average size but not that fat, black and of dark skin.<sup>8296</sup> She did not remember whether he was wearing a beard at that time, but testified that he was not wearing spectacles.<sup>8297</sup>

#### Nsabimana Defence Witness Patrick Fergal Keane

2996. Patrick Fergal Keane was a BBC correspondent who arrived in Butare on 15 June 1994.<sup>8298</sup> The other members of his group were Mr. Middleton, Mr. Harrison and Madam Rizu Hamid.<sup>8299</sup> He stayed at what he claimed was "the city's last functioning hotel".<sup>8300</sup> Keane acknowledged that in his book *Season of Blood*, introduced as Prosecution Exhibit 184, he wrote that this hotel was owned by the rector of the University of Butare whose vast extended

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<sup>8285</sup> T. 3 April 2002 pp. 159-160 (Witness TN).

<sup>8286</sup> T. 3 April 2002 p. 159 (Witness TN).

<sup>8287</sup> T. 3 April 2002 pp. 160-161 (Witness TN).

<sup>8288</sup> T. 3 April 2002 p. 160 (Witness TN).

<sup>8289</sup> T. 3 April 2002 p. 161 (Witness TN).

<sup>8290</sup> T. 3 April 2002 p. 161 (Witness TN).

<sup>8291</sup> T. 3 April 2002 p. 162 (Witness TN).

<sup>8292</sup> T. 3 April 2002 pp. 163-164 (Witness TN).

<sup>8293</sup> T. 3 April 2002 p. 164 (Witness TN).

<sup>8294</sup> T. 3 April 2002 p. 171 (Witness TN).

<sup>8295</sup> T. 3 April 2002 pp. 171-172 (Witness TN).

<sup>8296</sup> T. 3 April 2002 pp. 168, 174; T. 4 April 2002 p. 8 (Witness TN).

<sup>8297</sup> T. 4 April 2002 p. 8 (Witness TN).

<sup>8298</sup> T. 25 September 2006 pp. 5, 10 (Keane).

<sup>8299</sup> T. 28 Sep 2006 p. 5 (Keane).

<sup>8300</sup> Prosecution Exhibit 184 (Prosecution's List of References for Witness Fergal Keane – including the book *Season of Blood*, and *All of these People - a Memoir*, Chapter 19) p. 169.

family had arrived from all over Rwanda and colonised the building.<sup>8301</sup> There were many children and other people at the hotel.<sup>8302</sup> Keane was welcomed by someone who he took to be the rector's wife.<sup>8303</sup>

2997. At the hotel, Keane met two men: one introduced himself as the rector and the other as the vice-rector of the local university. The witness testified that he formed the impression that the rector was living at the hotel and the vice-rector had come to visit him. During a conversation, the vice-rector gave his views of the situation in Rwanda, saying that the trouble started with the shooting down of the President's plane by the RPF, and that this event sparked off a war in which large numbers of people had been killed.<sup>8304</sup>

2998. The main gate of the hotel was guarded by a corporal from the Presidential Guard, wearing a purple or mauve beret. Just across the road, one could easily see from the bedroom windows that there was a roadblock commanded by a "particularly officious militiaman", wearing a purple or mauve beret, who "seemed to constantly move and shout orders to the other *Interahamwe*".<sup>8305</sup> Military cars were stopped and questioned at the roadblock. Keane agreed that the roadblock was very close to the hotel, so much so that, from Rizu Hamid's bedroom he could see a fire that the *Interahamwe* had lit at the roadblock and could hear them when they laughed.<sup>8306</sup>

2999. Keane testified there were a number of civilians manning the roadblock near the hotel and he would not be in a position to identify any of them.<sup>8307</sup>

#### Nsabimana Defence Witness Charles Karemano

3000. Charles Karemano, national secretary of the PSD party until April 1994 and author of *Beyond the Barriers: in the maze of the Rwandan tragedy*, testified that he travelled through Butare town, from Cyarwa to the *préfecture* office, on 30 April 1994.<sup>8308</sup> There was a roadblock between the EER school and the Hotel Ihuliro.<sup>8309</sup> Karemano testified that it was manned by hoodlums; the witness was not sure whether they were civilians and he did not recall if they were wearing uniforms, he believed the roadblock was made of stones or a tree trunk.<sup>8310</sup> The witness testified that killings took place at roadblocks and were instigated by the leaders at the roadblocks.<sup>8311</sup> Karemano was stopped at roadblocks by *Interahamwe*, and asked

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<sup>8301</sup> Prosecution Exhibit 184 (Prosecution's List of References for Witness Fergal Keane – including the book *Season of Blood*, and *All of these People - a Memoir*, Chapter 19) pp. 169-170; T. 28 September 2006 pp. 10, 32 (Keane).

<sup>8302</sup> T. 25 September 2006 pp. 36-37 (Keane).

<sup>8303</sup> T. 26 September 2006 p. 53 (Keane).

<sup>8304</sup> **T. 25 September 2006 p. 37 (Keane).**

<sup>8305</sup> Prosecution Exhibit 184 (Prosecution's List of References for Witness Fergal Keane – including the book *Season of Blood*, and *All of these People - a Memoir*, Chapter 19) p. 170; T. 28 September 2006 p. 33 (Keane).

<sup>8306</sup> T. 28 September 2006 pp. 33-35 (Keane).

<sup>8307</sup> **T. 28 September 2006 p. 37 (Keane).**

<sup>8308</sup> T. 22 August 2006 p. 13 (Karemano).

<sup>8309</sup> T. 22 August 2006 p. 14 (Karemano).

<sup>8310</sup> T. 5 September 2006 p. 47 (Karemano).

<sup>8311</sup> T. 22 August 2006 p. 19 (Karemano).

to show his identity card. He saw other people stopped at roadblocks, particularly on the University road.<sup>8312</sup> He stated that the rogues and bandits manning the roadblocks were not people appointed by the *bourgmestre*, *préfet*, or head of *secteur*; they were taking power into their own hands.<sup>8313</sup>

3001. Karemano confirmed what he wrote in his book that “[t]he roadblock is a location where one kills. One goes there to exercise one’s capacity to harm in order to track down runaways, to plan assassinations and harm victims. Generally, the killings do not take place on site. The person who is condemned is dragged further down, led far from the barrage, is cut up with machetes and then left for dead or almost dead in a mass grave.” He further stated that this description applies to what prevailed in Butare between April and July 1994.<sup>8314</sup>

3002. In May 1994, Karemano approached the roadblock between the Anglican school and the Hotel Ihuliro.<sup>8315</sup> At the roadblock, the witness recognised Kagwene, the nephew of his friend, and companion in exile, Augustin.<sup>8316</sup> When Kagwene saw him he told the witness, “[o]ld man you have to save me otherwise I will denounce you”. The witness told those manning the roadblock that he knew the young man and that Kagwene was not an enemy. Those manning the roadblock ordered the witness to wait for their leader, Shalom.<sup>8317</sup> Shalom came and recognised Karemano as a high official of the Habyarimana administration and the founder of the MRND, to which Ntahobali himself, and his parents, belonged. Shalom did not know that the witness had been accused of being an RPF sympathiser, probably the denunciation to which Kagwene was referring.<sup>8318</sup> Shalom let Kagwene go and the witness took him home with the aid of an escort.<sup>8319</sup> Shalom’s order saved Kagwene’s life.<sup>8320</sup>

3003. When directed to page 146 of his book, in which there is reference to a certain “Sharoon” as being in charge of the roadblock, the witness first stated that he did not hear the name properly and that it may be a difficulty with Rwandan pronunciation.<sup>8321</sup> The witness further testified that he did not know this person but knew that he was the son of Maurice Ntahobali and Pauline Nyiramasuhuko and was called Shalom or Sharon. The witness positively identified Ntahobali in court.<sup>8322</sup>

#### Nsabimana Defence Witness Alexandre Bararwandika

3004. Alexandre Bararwandika testified that between April and July 1994, he lived in the Kabutare neighbourhood. In order to get to work at the university hospital using the route from the *préfecture* office, *Quartier Arabe*, he would go through a roadblock between *Groupe Scolaire*, *économat général* and the ESO. When he used the route through the *Rectorat*, at

<sup>8312</sup> T. 21 August 2006 p. 54 (Karemano).

<sup>8313</sup> T. 22 August 2006 p. 14 (Karemano).

<sup>8314</sup> T. 5 September 2006 pp. 47-48 (Karemano) (quoting *Beyond the Barriers: in the maze of the Rwandan tragedy*, p. 45).

<sup>8315</sup> T. 5 September 2006 pp. 47-48 (Karemano).

<sup>8316</sup> T. 5 September 2006 p. 48 (Karemano).

<sup>8317</sup> T. 21 August 2006 p. 55; T. 5 September 2006 pp. 48-49 (Karemano).

<sup>8318</sup> T. 5 September 2006 p. 49 (Karemano).

<sup>8319</sup> T. 21 August 2006 p. 55 (Karemano).

<sup>8320</sup> T. 5 September 2006 p. 49 (Karemano).

<sup>8321</sup> T. 24 August 2006 p. 22 (Karemano).

<sup>8322</sup> T. 25 August 2006 p. 35 (Karemano).

times there was a roadblock by the *Rectorat*, but at some point in time it was no longer there. There was another roadblock behind the MSM garage; and also one by the university library, the Uwariraye roadblock.<sup>8323</sup> Bararwandika testified that, at about 50 or 100 metres from the MSM garage roadblock was a building belonging to Nyiramasuhuko, but he did not know if that was her residence.<sup>8324</sup>

3005. Bararwandika testified that the roadblocks were set up during the very tense period in April 1994, some immediately after the death of the President, although he could not recall exactly when.<sup>8325</sup> The witness testified that officially, the roadblocks were set-up to prevent infiltration from RPF fighters.<sup>8326</sup> However, he stated that he could not refute that, unofficially, the roadblocks were used to determine ethnicity.<sup>8327</sup>

3006. Bararwandika testified that soldiers manned the roadblock at *Groupe Scolaire*. Soldiers and a few civilians manned the roadblock in front of the *Rectorat*. The witness said he had problems to determining who manned the roadblock behind the MSM Garage, since there were people who were half civilians and half soldiers, taking their attire into account. At this roadblock, sometimes people wore sorts of military uniform, for example a military jacket for the top, but the rest would be civilian clothes, or the other way round. Sometimes, those who manned this roadblock would have a gun or a simple grenade. The roadblock at Uwariraye's place was manned by people who looked like those at the MSM garage roadblock, and there too, one would not know whether they were civilians or soldiers.<sup>8328</sup>

3007. Bararwandika saw a corpse of a man next to a roadblock behind the MSM garage, near a mechanic shop, and four corpses of women in the compound of the primary school.<sup>8329</sup> The witness also saw people being arrested at the roadblocks.<sup>8330</sup>

3008. Bararwandika testified that he presented his UNHCR identification card at the roadblocks. He stated that it was highly likely that his UNHCR identification card indicated his nationality as Burundian; it satisfied the people at the roadblocks that his ethnicity was Hutu. At roadblocks, Rwandans had to show identification cards that displayed their ethnicity.<sup>8331</sup>

### Nsabimana

3009. In Prosecution Exhibit 113, Nsabimana stated, that “[i]n town, there were some killings at the roadblocks. Some roadblocks were manned by soldiers, others by the *Interahamwe*, or both at the same time. Among the most formidable roadblocks was the one in front of the house of the University Rector, Ntahobari, whose son Sharom was in charge of it...”<sup>8332</sup>

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<sup>8323</sup> T. 3 July 2006 p. 44 (Bararwandika).

<sup>8324</sup> T. 4 July 2006 pp. 64-65 (Bararwandika).

<sup>8325</sup> T. 3 July 2006 p. 44 (Bararwandika).

<sup>8326</sup> T. 3 July 2006 p. 45; T. 4 July 2006 p. 57 (Bararwandika).

<sup>8327</sup> T. 4 July 2006 p. 57 (Bararwandika).

<sup>8328</sup> T. 3 July 2006 p. 45 (Bararwandika).

<sup>8329</sup> T. 3 July 2006 p. 52; T. 5 July 2006 p. 14 (Bararwandika).

<sup>8330</sup> T. 3 July 2006 p. 47 (Bararwandika).

<sup>8331</sup> T. 4 July 2006 p. 56 (Bararwandika).

<sup>8332</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016630.

Ntahobali Defence Witness WUNBJ

3010. Witness WUNBJ, a Hutu civil servant in 1994 living in Ngoma *commune*,<sup>8333</sup> testified that within a month of President Habyarimana's death, at the end of May 1994, a roadblock was established in Butare city centre, between the EER Protestant School and the building of Ndimba's son. The roadblock was near Ntahobali's house, the MSM garage and the houses belonging to Mujeri, Ndimba and Mwami. The roadblock was not far from the Hotel Rebero, which belonged to Maurice Ntahobali.<sup>8334</sup> Witness WUNBJ was able to identify the house as Maurice Ntahobali's because he saw a sign in front of the house. The name "Maurice" was on that sign.<sup>8335</sup> The witness clarified that Ntahobali's house was visible from the road of ESO. It was located on the university site, at the outside limits of the EER school, with the MSM garage on its left. After Ntahobali's house, was Mujeri's house, Ndimba's house and Mwami's house.<sup>8336</sup> There was quite a distance between the EER church and Hotel Ihuliro.<sup>8337</sup>

3011. Witness WUNBJ passed through the roadblock often on his way to work.<sup>8338</sup> The roadblock consisted of a log laid across the road.<sup>8339</sup> Many people who lived nearby manned the roadblocks.<sup>8340</sup> The roadblock was set up there because there were a lot of refugees who had come to settle in Butare. They were coming from Bugesera and Mayaga, on their way to Mubumbano and Gikongoro.<sup>8341</sup> Witness WUNBJ never witnessed any killings, or any crimes taking place at the roadblock.<sup>8342</sup> He never saw Ntahobali at the roadblock.<sup>8343</sup>

3012. Witness WUNBJ knew Ntahobali as the son of Maurice Ntahobali and Pauline Nyiramasuhuko. He saw Ntahobali "everywhere in Butare",<sup>8344</sup> he saw him during football matches in Huye Stadium quite often as well as when he was going to concerts "at the multipurpose hall, at the MRND party."<sup>8345</sup> He greeted Ntahobali when he saw him, but never conversed with him. Ntahobali did not wear glasses before 1994 and had an average physical appearance. The witness identified Ntahobali in court.<sup>8346</sup>

3013. Witness WUNBJ knew Nyiramasuhuko between April and June 1994, because he worked with her at the *préfecture*. Nyiramasuhuko studied in the university and was appointed minister after having worked at the *préfecture* office.<sup>8347</sup>

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<sup>8333</sup> T. 8 March 2006 p. 11; T. 8 March pp. 13-14 (ICS) (Witness WUNBJ); Defence Exhibit 391 (Ntahobali) (Personal Particulars).

<sup>8334</sup> T. 8 March 2006 pp. 29-33 (ICS); T. 5 April 2006 p. 22 (ICS) (Witness WUNBJ).

<sup>8335</sup> T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>8336</sup> T. 8 March 2006 p. 33 (ICS) (Witness WUNBJ).

<sup>8337</sup> T. 5 April 2006 p. 59 (ICS) (Witness WUNBJ).

<sup>8338</sup> T. 8 March 2006 p. 32 (ICS) (Witness WUNBJ).

<sup>8339</sup> T. 8 March 2006 p. 31 (ICS); T. 5 April 2006 p. 40 (ICS) (Witness WUNBJ).

<sup>8340</sup> T. 8 March 2006 p. 31 (ICS) (Witness WUNBJ).

<sup>8341</sup> T. 8 March 2006 p. 31 (ICS); T. 5 April 2006 p. 41 (ICS) (Witness WUNBJ).

<sup>8342</sup> T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>8343</sup> T. 8 March 2006 p. 32 (ICS) (Witness WUNBJ).

<sup>8344</sup> T. 8 March 2006 p. 18 (ICS); T. 5 April 2006 p. 38 (ICS) (Witness WUNBJ).

<sup>8345</sup> T. 8 March 2006 p. 18 (ICS) (Witness WUNBJ).

<sup>8346</sup> T. 5 April 2006 p. 38 (ICS) (Witness WUNBJ).

<sup>8347</sup> T. 3 April 2006 p. 16 (Witness WUNBJ).

Ntahobali Defence Witness WCUJM

3014. Witness WCUJM testified that he went to Butare between May and June 1994. He went down to Mukoni where he saw a roadblock. There were two other roadblocks in that area, one close to the University and another one between the Ndimba and Mujeri residences.<sup>8348</sup> Civilians manned the roadblock between Ndimba and Mujeri's houses. The witness did not see any weapons.<sup>8349</sup> He did not stop at the roadblock, but just went through.<sup>8350</sup>

Ntahobali Defence Witness H1B6

3015. Witness H1B6, a Hutu, stated that in April 1994 he knew a place called Hotel Ihuliro which belonged to Maurice Ntahobali, father of the Accused Ntahobali.<sup>8351</sup> The witness averred that he did not know Ntahobali's family that much and that throughout April to July 1994, he never saw Shalom's mother in Butare town.<sup>8352</sup> Towards the end of May 1994 and the beginning of June 1994, a roadblock was erected not far from Hotel Ihuliro. Witness H1B6 testified that it was said that this roadblock was set up for civilian self-defence and that it was manned by civilians.<sup>8353</sup> Identification cards were checked at this roadblock.<sup>8354</sup>

3016. On cross-examination, Witness H1B6 was shown a diagram of Butare town, which he recognised. The witness agreed that the shortest itinerary from his residence to the Butare market, especially in 1994, was from the University Hospital Centre, through ESO, through the *Quartier Arabe*, and then right up to the market centre. As a result, Kanyabashi's Defence Counsel challenged Witness H1B6's evidence that he used the road going between Hotel Ihuliro and the EER.<sup>8355</sup>

Ntahobali Defence Witness NMBMP

3017. Witness NMBMP testified that on 6 April 1994 she was in Kigali.<sup>8356</sup> On 12 April 1994 she decided to join her sister in Butare. Her sister lived at the Hotel Ihuliro at that time. Witness NMBMP was accompanied on her trip to Butare by her husband, her children, her sister-in-law, a neighbour with his two children and two other neighbours. They arrived at Hotel Ihuliro on the same day, towards the evening.<sup>8357</sup> Three of the people who accompanied

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<sup>8348</sup> T. 14 February 2006 p. 20 (Witness WCUJM).

<sup>8349</sup> T. 14 February 2006 pp. 43-44 (Witness WCUJM).

<sup>8350</sup> T. 14 February 2006 p. 44 (Witness WCUJM).

<sup>8351</sup> T. 1 December 2005 p. 57 (ICS) (Witness H1B6).

<sup>8352</sup> T. 1 December 2005 pp. 57-58 (ICS) (Witness H1B6).

<sup>8353</sup> T. 1 December 2005 pp. 56, 59; T. 5 December 2005 p. 58 (ICS) (Witness H1B6).

<sup>8354</sup> T. 1 December 2005 p. 59 (Witness H1B6).

<sup>8355</sup> T. 5 December 2005 pp. 56-57 (ICS) (Witness H1B6); Defence Exhibit 302 (Nyiramasuhuko and Ntahobali) (Sketch 1).

<sup>8356</sup> T. 22 April 2008 p. 15 (Witness NMBMP).

<sup>8357</sup> T. 22 April 2008 p. 19 (ICS) (Witness NMBMP).

her were Tutsis: a driver with his two children.<sup>8358</sup> The rest were Hutus.<sup>8359</sup> These Tutsis were not known by Ntahobali's family, but they were welcomed and treated well.<sup>8360</sup>

3018. Witness NMBMP testified that there were around 30 to 40 people at Hotel Ihuliro when she and the others arrived there.<sup>8361</sup> She noted the presence of five UNAMIR peacekeepers who left towards the end of April 1994. The people who accompanied her from Kigali stayed at Hotel Ihuliro, apart from her husband who left for Gitarama on the day following their arrival.<sup>8362</sup> Her husband left for Gitarama on 12 April 1994 or the following day, as he worked there. The witness' husband visited Hotel Ihuliro about three times during her stay at the hotel.<sup>8363</sup> Witness NMBMP did not see any political or *Interahamwe* meetings being held at Hotel Ihuliro during her stay.<sup>8364</sup>

#### Ntahobali Defence Witness WCNMC

3019. Witness WCNMC testified that some time in April 1994, when she went to the market, she took the Mukoni road. Instead of going through the ESO road, she went through the EER school and used the road which passed by the residence of one Mironko, leading to the *préfecture* office. She did not notice any roadblocks on the way.<sup>8365</sup> In late May or early June 1994, when Witness WCNMC went again to the market, she used the footpath through the *préfecture* office.<sup>8366</sup> She testified there was an atmosphere of fear.<sup>8367</sup> On this visit to the market, the witness saw a roadblock which had been erected on the main road just above the EER school, opposite a building belonging to a certain Ndimba.<sup>8368</sup> This roadblock was manned by members of the population who did not appear to be carrying any weapons, and none of whom Witness WCNMC recognised.<sup>8369</sup> At that roadblock, people would be stopped, show their identity card and then be allowed to continue.<sup>8370</sup>

#### Ntahobali Defence Witness WCNJ

3020. Witness WCNJ testified that towards the end of May 1994, he went through a roadblock mounted in front of the EER, close to two storey buildings, one of which belonged to one Ndimba.<sup>8371</sup> On cross-examination, the witness stated that he no longer recalled who the owner of the second house was, but the roadblock was almost exactly in between the two

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<sup>8358</sup> T. 22 April 2008 pp. 21-22 (ICS) (Witness NMBMP).

<sup>8359</sup> T. 22 April 2008 p. 21 (ICS) (Witness NMBMP).

<sup>8360</sup> T. 22 April 2008 p. 22 (ICS) (Witness NMBMP).

<sup>8361</sup> T. 22 April 2008 p. 20 (ICS) (Witness NMBMP).

<sup>8362</sup> T. 22 April 2008 p. 21 (ICS) (Witness NMBMP).

<sup>8363</sup> T. 24 April 2008 p. 7 (ICS) (Witness NMBMP).

<sup>8364</sup> T. 22 April 2008 p. 27 (ICS) (Witness NMBMP).

<sup>8365</sup> T. 29 November 2005 pp. 36, 48 (Witness WCNMC).

<sup>8366</sup> T. 29 November 2005 p. 36 (Witness WCNMC).

<sup>8367</sup> T. 29 November 2005 p. 50 (ICS) (Witness WCNMC).

<sup>8368</sup> T. 29 November 2005 p. 36 (Witness WCNMC).

<sup>8369</sup> T. 29 November 2005 pp. 36-37 (Witness WCNMC).

<sup>8370</sup> T. 29 November 2005 p. 37 (Witness WCNMC).

<sup>8371</sup> T. 2 February 2006 p. 7 (Witness WCNJ).

buildings.<sup>8372</sup> Civilians manned this roadblock. The witness alleged that he never met Shalom Ntahobali at any roadblock nor did he see any roadblock at Hotel Ihuliro.<sup>8373</sup>

3021. The roadblocks were made up of tree trunks that were placed on the road and could be removed at any time. The civilians who manned those roadblocks did not carry any firearms, but only traditional weapons like clubs or sticks.<sup>8374</sup>

#### Ntahobali Defence Witness WCMNA

3022. Witness WCMNA testified that there was a roadblock located not far from the Episcopal church, about 50-70 metres up the road from Mr. Ntahobali's house. As a reference, the witness mentioned a road leaving from the *Quartier Arabe*, going towards the university. The witness further testified that there was a roadblock about 50 metres from the junction between the road coming from the *Rectorat*, the *Avenue de l'Université*, and the road coming from the *Quartier Arabe*. The roadblock was on the left of that junction.<sup>8375</sup>

3023. Witness WCMNA stated that Ntahobali's house was on the road towards the *Rectorat*. After the MSM garage, to the left of the road, past the primary school of the Rwanda Episcopal Church and three other houses. The roadblock was located just after the garage, but before the third of the mentioned houses.<sup>8376</sup>

3024. Witness WCMNA added that the next house after Ntahobali's was a petrol station, followed by business premises which the witness thought were called ENOSOL and dealt with solar energy. After the ENOSOL buildings, Mr. Uwariraye's house was about 600 to 700 metres away, however he could not recall whether there was a mosque in between. After Uwariraye's house, was Rusina Amandem's house, followed by the premises of the *Université Nationale du Rwanda*. He estimated a distance of approximately 600 to 800 metres between Uwariraye's house and the junction where Ntahobali's house was.<sup>8377</sup> The witness testified that he knew precisely where Uwariraye's house was, since he used to pass that way from time to time. It was in a rather isolated compound and anybody passing by could see it. When questioned about the position of the mosque in relation to that house, the witness stated that the mosque was before Uwariraye's house, that is, between the petrol station and the next house; and approximately 600 metres from the junction of the university road.<sup>8378</sup>

#### Ntahobali Defence Witness WCKJ

3025. When questioned during cross-examination about his knowledge of a roadblock close to Hotel Ihuliro during the period from April to July 1994, Witness WCKJ testified that around 20 May 1994, when he was going to attend the funeral of the wife of a colleague, on the way to the hospital he passed by Hotel Ihuliro, using the road which would go through the market

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<sup>8372</sup> T. 2 February 2006 p. 26 (ICS) (Witness WCNJ).

<sup>8373</sup> T. 2 February 2006 pp. 7-8 (Witness WCNJ).

<sup>8374</sup> T. 2 February 2006 p. 31 (Witness WCNJ).

<sup>8375</sup> T. 21 February 2006 p. 25 (ICS) (Witness WCMNA).

<sup>8376</sup> T. 21 February 2006 p. 26 (ICS) (Witness WCMNA).

<sup>8377</sup> T. 21 February 2006 p. 26 (ICS) (Witness WCMNA).

<sup>8378</sup> T. 21 February 2006 p. 74 (Witness WCMNA).



and the *Quartier Arabe*. The witness did not know that a roadblock existed in that area and did not see any roadblock.<sup>8379</sup>

#### Ntahobali Defence Witness Béatrice Munyenyezi

3026. Béatrice Munyenyezi, wife of Ntahobali during the alleged events,<sup>8380</sup> testified that the first UNAMIR staff arrived at Hotel Ihuliro in 1994, however she could not recall the date or month.<sup>8381</sup> In cross-examination, she testified that a lot of UNAMIR staff members came in January 1994. Most of them found houses downtown, and after 19 April 1994, she thought that there were four UNAMIR soldiers left in the hotel.<sup>8382</sup> She recalled that one of them was Colonel Berena.<sup>8383</sup> By 25 April 1994, there was only one UNAMIR soldier left in the hotel. The witness recalled that the first name of the soldier was Peter, that he was probably from Austria, and he left Hotel Ihuliro on 25 April 1994.<sup>8384</sup>

3027. Munyenyezi testified that her husband got malaria at the end of April 1994.<sup>8385</sup> She stated that he had malaria for at least a week and that he stayed home. His aunt took care of him.<sup>8386</sup> The witness denied that this was a fabricated story.<sup>8387</sup>

#### Ntahobali

3028. Ntahobali testified that Hotel Ihuliro was located in Mamba *cellule*, Butare-Town *secteur*, Ngoma *commune*, Butare *préfecture*.<sup>8388</sup> The ground floor of the hotel provided access to the hotel's restaurant, bar and reception, and to a separate grocery shop and pharmacy.<sup>8389</sup> Eight rooms were located on the first floor.<sup>8390</sup> His room was on the ground floor behind the pharmacy.<sup>8391</sup>

3029. Ntahobali testified that after President Habyarimana's death, UNAMIR soldiers stationed in other *préfectures* came to join those who were in Butare at Hotel Ihuliro. The UNAMIR soldiers did not stay for long; most of them left in a vehicle on 10 April 1994, and moved to Kigali. The remaining UNAMIR soldiers left on 20 April 1994.<sup>8392</sup>

3030. Ntahobali testified that on 14 April 1994, Nyiramasuhuko spent the night at Hotel Ihuliro and left early in the morning the following day.<sup>8393</sup> Ntahobali was told that Nyiramasuhuko had come to Hotel Ihuliro for a short time on 19 April 1994, although he did

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<sup>8379</sup> T. 31 January 2006 p. 70 (Witness WCKJ).

<sup>8380</sup> T. 24 February 2006 p. 9 (Béatrice Munyenyezi).

<sup>8381</sup> T. 24 February 2006 p. 35 (Béatrice Munyenyezi).

<sup>8382</sup> T. 27 February 2006 pp. 79, 81 (Béatrice Munyenyezi).

<sup>8383</sup> T. 27 February 2006 p. 79 (Béatrice Munyenyezi).

<sup>8384</sup> T. 27 February 2006 pp. 77-78 (Béatrice Munyenyezi).

<sup>8385</sup> T. 27 February 2006 p. 8 (Béatrice Munyenyezi).

<sup>8386</sup> T. 27 February 2006 pp. 8, 54 (Béatrice Munyenyezi).

<sup>8387</sup> T. 27 February 2006 p. 56 (Béatrice Munyenyezi).

<sup>8388</sup> T. 10 April 2006 pp. 79-80 (Ntahobali).

<sup>8389</sup> T. 19 April 2006 pp. 44, 46 (Ntahobali).

<sup>8390</sup> T. 19 April 2006 p. 47 (Ntahobali).

<sup>8391</sup> T. 19 April 2006 p. 49 (Ntahobali).

<sup>8392</sup> T. 24 April 2006 pp. 34-35 (Ntahobali).

<sup>8393</sup> T. 24 April 2006 p. 10; T. 1 June 2006 p. 68 (Ntahobali).

not meet her.<sup>8394</sup> Ntahobali testified that his mother came to Hotel Ihuliro on 28 April 1994, the birthday of his sister's child. He stated that he got malaria on 28 April 1994 and spent a week in convalescence after having received Quinimax injections. He was treated by one of his aunts, a nurse who stayed with them at Hotel Ihuliro.<sup>8395</sup>

3031. Ntahobali testified that he travelled to Cyangugu on 26 or 27 May 1994 after he noticed that his wife was no longer at Hotel Ihuliro.<sup>8396</sup> He was able to locate his wife, and they stayed in Cyangugu for over a week.<sup>8397</sup> He left Cyangugu on 5 June 1994 and arrived in Butare on the same day around 6.00 or 7.00 p.m.<sup>8398</sup>

3032. Ntahobali testified that he first noticed a roadblock close to the building belonging to a certain Ndimba, a few metres from Hotel Ihuliro, on the same day he returned from Cyangugu, 5 June 1994, but that he later learned it was erected on 28 May 1994.<sup>8399</sup> When he first approached this roadblock, Ntahobali was asked to present his identity card and was then allowed to pass through.<sup>8400</sup> Ntahobali further testified that this roadblock was actually set up after members of the population received weapons handling training and were provided with weapons.<sup>8401</sup> He stated that when he got back from Cyangugu, the people manning that roadblock informed him about the training which was thereafter confirmed by the *conseiller de secteur*.<sup>8402</sup> He further testified that he did not see any soldier on patrol around the area of Hotel Ihuliro on the *Avenue de l'Université* during the events.<sup>8403</sup>

3033. Ntahobali testified that he knew persons who had received training in firearms handling and who were at the roadblock. They had been provided with a firearm to be used in manning the roadblock. Ntahobali mentioned Grégoire, Nyarwaya, Kabalisa, Lambert and Jean-Pierre who lived near Mironko's place at a house belonging to Pascal Habyarimana, the *conseiller* of Sahera *secteur*. He stressed that only those who were trained to handle firearms were allowed to carry the gun used at this roadblock.<sup>8404</sup>

3034. Ntahobali testified that on 7 June 1994, he went to man the roadblock near Ndimba's house from 6.00 a.m. to 6.00 p.m., following his conversation with *Conseiller* Venuste Uwizeye.<sup>8405</sup> Ntahobali stated that there were four or more people at the roadblock on that day: himself, his neighbours Grégoire Ngendahimana, Sokode and Camille. Those who manned the roadblock worked in two shifts, one group worked from 6.00 a.m. to 6.00 p.m. and another worked from 6.00 p.m. to 6.00 a.m.<sup>8406</sup> On that day, many members of the population coming from Bugesera and heading for Mubumbano passed through the roadblock. Another group

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<sup>8394</sup> T. 24 April 2006 p. 27 (Ntahobali).

<sup>8395</sup> T. 25 April 2006 p. 35 (Ntahobali).

<sup>8396</sup> T. 26 April 2006 pp. 7-8 (Ntahobali).

<sup>8397</sup> T. 26 April 2006 p. 8 (Ntahobali).

<sup>8398</sup> T. 26 April 2006 pp. 12-13 (Ntahobali).

<sup>8399</sup> T. 18 April 2006 p. 47; T. 26 April 2006 p. 13 (Ntahobali).

<sup>8400</sup> T. 26 April 2006 pp. 13-14 (Ntahobali).

<sup>8401</sup> T. 25 April 2006 pp. 24, 61 (Ntahobali).

<sup>8402</sup> T. 25 April 2006 p. 61; T. 26 April 2006 pp. 14-15 (Ntahobali).

<sup>8403</sup> T. 25 April 2006 p. 25 (Ntahobali).

<sup>8404</sup> T. 26 April 2006 p. 15 (Ntahobali).

<sup>8405</sup> T. 26 April 2006 pp. 19-20 (Ntahobali).

<sup>8406</sup> T. 26 April 2006 p. 20 (Ntahobali).

followed three or four hours later. There were not many vehicles. Ntahobali stated that he did not pay attention to the ethnicity of the refugees who passed through.<sup>8407</sup>

3035. Ntahobali testified that he returned to the roadblock on two other occasions: the first time, one week after 7 June 1994; and the second time, probably on the night between 1 and 2 July 1994, which was the night preceding the day they went to seek refuge at Nyakibanda.<sup>8408</sup> On the first occasion, he went to the roadblock at 6.00 a.m. and stayed there for two to three hours awaiting his watchman to come and replace him.<sup>8409</sup>

3036. Ntahobali testified that no major incidents happened at the roadblock near Ndimba's house from 6 June 1994 to the time they went in exile.<sup>8410</sup> He never saw soldiers posted at this roadblock,<sup>8411</sup> but in case of a problem, ESO soldiers could intervene upon request by the civilian who manned it; however, this never happened.<sup>8412</sup> In cross-examination, Ntahobali testified that he never participated in a night patrol.<sup>8413</sup> He further stated that they had two guards during the day and two at night.<sup>8414</sup> Ntahobali further testified that at this roadblock, there was no iron bar or other kind of material which could have come from the army or the *gendarmerie*. There were only tree trunks, which were used to block off the road.<sup>8415</sup> Ntahobali stated that those who manned that roadblock carried traditional weapons and a single gun. He added that to his knowledge there were no Tutsis among them.<sup>8416</sup> He further stated nobody was detained at that roadblock.<sup>8417</sup>

3037. Ntahobali testified that the persons who manned the roadblock near Ndimba's house from 6 June 1994 to the time they left Butare were Padiri, who was the person in charge of it, his deputy Grégoire, Aloys Nyarowaya, *conseiller* Pascal Habyarimana, Jean-Pierre, Lambert, two young men (both nicknamed Kazungu and one of whom was a motorcycle taxi driver), Vernant Gakwaya alias Sokode, Camille Nzabonimana alias Enesol, Jean-Marie, Célestin, Ntabobwa and other night watchmen of the shops located not far away.<sup>8418</sup>

#### Nyiramasuhuko Defence Witness WMKL

3038. Witness WMKL, a Hutu teacher from Rango *commune*,<sup>8419</sup> testified that in late May 1994 a roadblock was erected on the University road near the MSM garage, and Mujeri's house.<sup>8420</sup> The roadblock was between Ndimba's house and a white house.<sup>8421</sup> There was a

<sup>8407</sup> T. 26 April 2006 p. 21 (Ntahobali).

<sup>8408</sup> T. 26 April 2006 pp. 22-23 (Ntahobali).

<sup>8409</sup> T. 26 April 2006 p. 22 (Ntahobali).

<sup>8410</sup> T. 26 April 2006 p. 24 (Ntahobali).

<sup>8411</sup> T. 26 April 2006 p. 24 (Ntahobali).

<sup>8412</sup> T. 24 May 2006 p. 36 (Ntahobali).

<sup>8413</sup> T. 3 May 2006 p. 28 (Ntahobali).

<sup>8414</sup> T. 24 May 2006 p. 20 (Ntahobali).

<sup>8415</sup> T. 24 May 2006 p. 35 (Ntahobali).

<sup>8416</sup> T. 1 June 2006 p. 38 (Ntahobali).

<sup>8417</sup> T. 20 June 2006 p. 32 (Ntahobali).

<sup>8418</sup> T. 26 April 2006 pp. 15, 24-25, 28 (Ntahobali).

<sup>8419</sup> T. 6 April 2005 pp. 5-6 (Witness WMKL); Defence Exhibit 291 (Nyiramasuhuko) (Personal Particulars).

<sup>8420</sup> T. 6 April 2005 pp. 60-61, 67, 69 (Witness WMKL).

<sup>8421</sup> T. 6 April 2005 pp. 61, 67 (Witness WMKL).

distance of 50 to 100 metres between the MSM garage and the roadblock.<sup>8422</sup> The roadblock was manned by ordinary unarmed civilians, not *Interahamwe*.<sup>8423</sup> The witness passed through the roadblock four times between April and July 1994.<sup>8424</sup> No one was detained at that roadblock.<sup>8425</sup>

3039. Witness WMKL knew the trader Martin Uwariraye and where he lived.<sup>8426</sup> There was a distance of 500 to 1,000 metres between Uwariraye's house and Ntahobali and Nyiramasuhuko's house.<sup>8427</sup> It would not be possible to recognise a person at the roadblock from this distance.<sup>8428</sup> On being referred to Prosecution Exhibit 54 (Sketch of Butare town by Witness QCB), the witness did not agree that there was a roadblock outside Nyiramasuhuko's residence.<sup>8429</sup>

3040. Witness WMKL did not see any dead bodies in Butare *préfecture* between April and July 1994.<sup>8430</sup> He did not hear of Tutsi civilians being detained or killed at roadblocks between April and July 1994.<sup>8431</sup> He heard that people might have taken advantage of the prevailing insecurity to loot the properties of others.<sup>8432</sup>

#### Nyiramasuhuko Defence Witness WBUC

3041. Witness WBUC testified that in 1987 she moved to Kigali and lived there until April 1994.<sup>8433</sup> Around 14 April 1994, she and her family moved to Butare, where they stayed at Hotel Ihuliro.<sup>8434</sup> She left Butare at the beginning of July 1994.<sup>8435</sup> Upon their arrival in Butare, around 14 April 1994, there was no insecurity there and no gunshots. This situation lasted until the beginning of July 1994, when they decided to leave Butare.<sup>8436</sup>

3042. When they arrived in Butare, they first went to the rector's [Maurice Ntahobali's] residence, which was at a house below Gicanda's, in Buye,<sup>8437</sup> and then to Hotel Ihuliro, where they met Ntahobali and his family.<sup>8438</sup>

3043. Witness WBUC testified that the first time she ever went to Hotel Ihuliro was for Ntahobali's wedding in 1993;<sup>8439</sup> the second time was when she fled Kigali after the death of

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<sup>8422</sup> T. 6 April 2005 p. 67 (Witness WMKL).

<sup>8423</sup> T. 7 April 2005 pp. 22-23; T. 11 April 2005 p. 47 (Witness WMKL).

<sup>8424</sup> T. 11 April 2005 p. 46 (Witness WMKL).

<sup>8425</sup> T. 11 April 2005 p. 47 (Witness WMKL).

<sup>8426</sup> T. 6 April 2005 p. 67; T. 7 April 2005 p. 4 (Witness WMKL).

<sup>8427</sup> T. 7 April 2005 p. 4 (Witness WMKL).

<sup>8428</sup> T. 7 April 2005 pp. 4-5 (Witness WMKL).

<sup>8429</sup> T. 11 April 2005 pp. 23-24 (Witness WMKL); Prosecution Exhibit 54 (Sketch of Butare town by Witness QCB).

<sup>8430</sup> T. 11 April 2005 p. 32 (Witness WMKL).

<sup>8431</sup> T. 11 April 2005 p. 48 (Witness WMKL).

<sup>8432</sup> T. 11 April 2005 p. 32 (Witness WMKL).

<sup>8433</sup> T. 1 June 2005 pp. 29-30 (ICS) (Witness WBUC).

<sup>8434</sup> T. 1 June 2005 pp. 54, 56 (Witness WBUC).

<sup>8435</sup> T. 2 June 2005 p. 10 (Witness WBUC).

<sup>8436</sup> T. 6 June 2005 p. 21 (ICS) (Witness WBUC).

<sup>8437</sup> T. 1 June 2005 pp. 55-56; T. 2 June 2005 pp. 89-90 (ICS) (Witness WBUC).

<sup>8438</sup> T. 1 June 2005 pp. 55-56 (Witness WBUC).

<sup>8439</sup> T. 2 June 2005 pp. 31, 35 (Witness WBUC).

President Habyarimana.<sup>8440</sup> Witness WBUC testified that Hotel Ihuliro was still under construction and that the building was not completed when they left the hotel in July 1994.<sup>8441</sup> During her stay at Hotel Ihuliro, in the period from April to June 1994, no one guarded the hotel outside.<sup>8442</sup> During May 1994, there were Hutus as well as Tutsi family members and friends at Hotel Ihuliro.<sup>8443</sup>

3044. Upon her arrival at Hotel Ihuliro, she found about 20 members of Nyiramasuhuko's family and three UNAMIR soldiers there. The soldiers resided at the hotel and left after a few days.<sup>8444</sup> Among the people who stayed at Hotel Ihuliro, there was a Tutsi named Xavier, who was the husband of Leocadie, the sister of Shalom Ntahobali's wife. Xavier arrived at Hotel Ihuliro together with his spouse and children.<sup>8445</sup>

3045. Witness WBUC testified that on one occasion when she went to the market in Butare, on 30 May 1994, she came across two roadblocks. The first one was located close to Hotel Ihuliro and the EER classrooms. Across from the hotel there was a garage and the roadblock was located between the two buildings after the MSM garage. The owner of the first of these two buildings was someone named Mujeri; the owner of the second building was the son of someone named Ndimba.<sup>8446</sup> Witness WBUC testified that this roadblock was about 150 or 200 metres away from Hotel Ihuliro and that it was possible to see the roadblock from the first floor of the hotel. The roadblock was mounted during the last days of May 1994.<sup>8447</sup> On cross-examination, Witness WBUC testified that she started counting the 150 to 200 metres from the road right outside the hotel entrance, on the side facing the EER; this measurement was only an approximation.<sup>8448</sup>

3046. Witness WBUC testified that she never saw Shalom Ntahobali at the roadblock close to Hotel Ihuliro.<sup>8449</sup> The roadblock had to be manned by people from the area. Given that Shalom Ntahobali's father was an elder person and was often unwell, and since Shalom Ntahobali resided in that area, it was possible that Shalom Ntahobali had to go and man the roadblocks as well.<sup>8450</sup>

#### Nyiramasuhuko Defence Witness WBNC

3047. Witness WBNC, a Hutu, testified that a few days after the assassination of the President, she sought refuge at Hotel Ihuliro.<sup>8451</sup> At the time, she was accompanied by her three children, her husband's niece and members of the family with whom she had previously sought refuge.<sup>8452</sup> There was a board bearing the name of the hotel in capital letters, although

<sup>8440</sup> T. 2 June 2005 p. 90 (ICS) (Witness WBUC).

<sup>8441</sup> T. 2 June 2005 p. 90 (ICS) (Witness WBUC).

<sup>8442</sup> T. 6 June 2005 pp. 10-11 (ICS) (Witness WBUC).

<sup>8443</sup> T. 1 June 2005 p. 64; T. 6 June 2005 p. 16 (ICS) (Witness WBUC).

<sup>8444</sup> T. 1 June 2005 p. 56 (Witness WBUC).

<sup>8445</sup> T. 1 June 2005 p. 74 (ICS) (Witness WBUC).

<sup>8446</sup> T. 1 June 2005 p. 76 (Witness WBUC).

<sup>8447</sup> T. 1 June 2005 p. 77 (Witness WBUC).

<sup>8448</sup> T. 6 June 2005 pp. 9-10 (ICS) (Witness WBUC).

<sup>8449</sup> T. 2 June 2005 p. 41 (ICS); T. 6 June 2005 pp. 30, 39 (ICS) (Witness WBUC).

<sup>8450</sup> T. 6 June 2005 pp. 30, 39 (ICS) (Witness WBUC).

<sup>8451</sup> T. 24 February 2005 p. 34 (Witness WBNC).

<sup>8452</sup> T. 24 February 2005 pp. 34-35 (Witness WBNC).

she could not specify the size of the board.<sup>8453</sup> On cross-examination, the witness testified that they decided to move to Butare because there was no fighting there, and there was enough space for them to seek refuge.<sup>8454</sup>

3048. When she arrived at the hotel, there were about 20 people there including Maurice Ntahobali, Clarisse Ntahobali, Denise Ntahobali, Ntahobali and Ntahobali's family, but not Nyiramasuhuko.<sup>8455</sup> Among the customers, she identified two UNAMIR soldiers, a black person who spoke English and a white man from Austria.<sup>8456</sup>

3049. Witness WBNC did not see Nyiramasuhuko until a number of weeks after her arrival at the hotel, but later corrected herself and said that she saw Nyiramasuhuko a few days after arriving.<sup>8457</sup> Between April and July 1994, she saw Nyiramasuhuko at Hotel Ihuliro on three occasions.<sup>8458</sup> Witness WBNC testified that the youngest of the Ntahobali children, Brigitte, was in Germany in April 1994.<sup>8459</sup>

3050. Witness WBNC testified that a roadblock was established near Hotel Ihuliro towards the end of May and beginning of June 1994.<sup>8460</sup>

#### Nyiramasuhuko Defence Witness WBTT

3051. Witness WBTT, a foreigner married to a Hutu, testified that she left Rwanda on 20 April 1994.<sup>8461</sup> She called one Captain Perena who came to fetch her, with a jeep belonging to UNAMIR.<sup>8462</sup> After leaving the rector's office, they went downwards and passed right in front of Hotel Ihuliro. She did not notice any roadblock at Hotel Ihuliro or nearby. There was another roadblock at the entrance to the University. She stated that as they were not stopped at that roadblock, they proceeded on their way.<sup>8463</sup>

3052. Witness WBTT left Rwanda for Nairobi on the evening of 20 April 1994. When she got to the UNAMIR residence, the UNAMIR soldiers said they had to leave on that day as well, but they could not take civilians with them. Captain Perena told the witness that he needed to seek authorisation in order to allow civilians to leave with UNAMIR.<sup>8464</sup>

#### Nyiramasuhuko Defence Witness Maurice Ntahobali

3053. Maurice Ntahobali, a Hutu, Nyiramasuhuko's husband and father of Shalom Ntahobali,<sup>8465</sup> testified that Hotel Ihuliro was located in Mamba *cellule* in Butare-Ville *secteur*,

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<sup>8453</sup> T. 24 February 2005 p. 34 (Witness WBNC).

<sup>8454</sup> T. 28 February 2005 p. 41 (Witness WBNC).

<sup>8455</sup> T. 24 February 2005 pp. 35-36, 41 (Witness WBNC).

<sup>8456</sup> T. 24 February 2005 p. 35 (Witness WBNC).

<sup>8457</sup> T. 24 February 2005 pp. 37-38 (Witness WBNC).

<sup>8458</sup> T. 24 February 2005 p. 48 (Witness WBNC).

<sup>8459</sup> T. 24 February 2005 p. 30; T. 24 February 2005 p. 7 (Witness WBNC) (French) (for spelling of "Brigitte").

<sup>8460</sup> T. 24 February 2005 p. 46 (Witness WBNC).

<sup>8461</sup> T. 31 May 2005 p. 43 (ICS) (Witness WBTT).

<sup>8462</sup> T. 31 May 2005 pp. 43, 45-46 (ICS) (Witness WBTT).

<sup>8463</sup> T. 31 May 2005 p. 47 (ICS) (Witness WBTT).

<sup>8464</sup> T. 31 May 2005 pp. 47-48 (ICS) (Witness WBTT).

<sup>8465</sup> T. 12 September 2005 p. 16 (Maurice Ntahobali).

in Butare.<sup>8466</sup> He acknowledged that the hotel was located in the vicinity of a garage known as the MSM garage.<sup>8467</sup> He owned Hotel Ihuliro.<sup>8468</sup> In February 1994, repairs were being undertaken in his home and he therefore went to live in the hotel where he remained until July 1994. In February and March 1994, his son, Shalom Ntahobali, along with Shalom's wife and daughter, also lived at the hotel.<sup>8469</sup>

3054. The witness was at the hotel when President Habyarimana was killed on 6 April 1994. His wife, Nyiramasuhuko, was in Kimihurura neighbourhood in Kigali where she lived alone.<sup>8470</sup> He stated that he remained in the hotel in the days immediately following the President's assassination. Besides his son, Ntahobali, and his son's family, his daughters Clarisse and Denise also came to live at Hotel Ihuliro after 6 April 1994. His daughter Brigitte was not present as she was pursuing her education in Europe at the time.<sup>8471</sup> He testified that there were 50 to 60 people between April and July 1994 at the hotel.<sup>8472</sup>

3055. The witness had no recollection of any political meetings being held at Hotel Ihuliro between the end of 1993 and June 1994 and, as the owner and person in charge of Hotel Ihuliro, he would have been aware of any political meetings or rallies held there.<sup>8473</sup>

3056. Maurice Ntahobali testified that in February 1994, members of UNAMIR were staying at the hotel as guests. UNAMIR soldiers made arrangements to leave Hotel Ihuliro after 6 April 1994, but they left gradually, the last one leaving one or two weeks after 6 April 1994.<sup>8474</sup>

3057. Maurice Ntahobali testified that at no time did Nyiramasuhuko permanently reside at Hotel Ihuliro. He testified that she did visit the hotel in April, May, June and July 1994.<sup>8475</sup>

3058. At the end of May 1994, a roadblock was mounted about 100 metres from Hotel Ihuliro on the right-hand side, looking at the hotel, and facing the hospital.<sup>8476</sup> He explained that on the right-hand side of Hotel Ihuliro, there was a plot belonging to the EER. The witness testified that he was certain the roadblock was erected at that particular point in time, because when Nyiramasuhuko came to the residence at the end of May 1994, Shalom Ntahobali was not there, having gone sometime to retrieve his wife who had left after a dispute with her sister-in-law. When Shalom Ntahobali departed, the roadblock was not there, but rather was mounted in his absence. Shalom Ntahobali returned a couple of days after Nyiramasuhuko had left with two children of their family.<sup>8477</sup>

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<sup>8466</sup> T. 13 September 2005 pp. 81-82 (Maurice Ntahobali).

<sup>8467</sup> T. 16 September 2005 p. 5 (Maurice Ntahobali); Defence Exhibit 304 (Nyiramasuhuko) (Sketch 3).

<sup>8468</sup> T. 16 September 2005 p. 69 (Maurice Ntahobali).

<sup>8469</sup> T. 13 September 2005 pp. 4-5 (Maurice Ntahobali).

<sup>8470</sup> T. 13 September 2005 pp. 14-15 (Maurice Ntahobali).

<sup>8471</sup> T. 13 September 2005 pp. 15-17 (Maurice Ntahobali).

<sup>8472</sup> T. 13 September 2005 p. 19 (Maurice Ntahobali).

<sup>8473</sup> T. 16 September 2005 pp. 66, 69 (Maurice Ntahobali).

<sup>8474</sup> T. 13 September 2005 pp. 6-7, 18; T. 16 September 2005 pp. 64-67 (Maurice Ntahobali).

<sup>8475</sup> T. 13 September 2005 pp. 19-20; T. 13 September p. 27 (Extract); T. 14 September 2005 p. 38 (Maurice Ntahobali).

<sup>8476</sup> T. 13 September 2005 pp. 24-25 (Maurice Ntahobali).

<sup>8477</sup> T. 13 September 2005 p. 25 (Maurice Ntahobali).

3059. Maurice Ntahobali further testified that this roadblock was set up within the framework of civilian defence. He described the position of the roadblock: “Well, if you go through toward the workshop and there was a piece of land where there was a garage, and then there was a store or warehouse and a few metres from the third plot is the point at which the roadblock was located”. Asked about the context of this roadblock’s installation, the witness replied that he was not the one setting it up.<sup>8478</sup> He further testified that the roadblock was manned by people from Mamba neighbourhood who would take turns, according to an agreed scheduling.<sup>8479</sup> When the Ntahobali family’s turn came, Shalom Ntahobali went to the roadblock as a representative.<sup>8480</sup> The witness could not give a precise time frame for this.<sup>8481</sup>

3060. Maurice Ntahobali testified that at Hotel Ihuliro, from 21 April 1994 to late May 1994, he did not hear gunshots and people who were crying or screaming, either inside or outside.<sup>8482</sup> He stated that from Hotel Ihuliro, he could see outside, and he could see the roadblock. This roadblock was “set up with some logs, pieces of timber that were interlocking”, so that one could not move between the logs without having to jump over. They were positioned across the road. The roadblock could have been moved, but he never saw it elsewhere. He insisted that if the roadblock had been moved during the day and reinstated during the night, he would have been in a position to see it.<sup>8483</sup> He clarified that the logs were laid on the ground, making it impossible for a vehicle to drive through the roadblock.<sup>8484</sup> It was necessary for the logs to be moved in order to open the roadblock for vehicles to go through. However, it was possible to work through the logs in a zigzag manner for pedestrians.<sup>8485</sup>

3061. The witness further testified that, apart from checking where the people who wanted to pass came from, he was not aware of any other activities going on at the roadblock close to Hotel Ihuliro.<sup>8486</sup> Maurice Ntahobali testified that he owned a Peugeot 505.<sup>8487</sup>

#### Nyiramasuhuko Defence Witness Denise Ntahobali

3062. Denise Ntahobali, a Hutu and one of Nyiramasuhuko’s daughters,<sup>8488</sup> testified that Hotel Ihuliro belonged to her parents.<sup>8489</sup> The hotel contained a restaurant, a pharmacy and a shop.<sup>8490</sup> There was a large billboard sign bearing the words “Hotel Ihuliro”.<sup>8491</sup>

3063. Denise Ntahobali testified that in early 1994, her brother, Ntahobali, lived with his wife and child at Hotel Ihuliro.<sup>8492</sup> About one week after the death of Habyarimana she and her

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<sup>8478</sup> T. 14 September 2005 pp. 16-17 (Maurice Ntahobali).

<sup>8479</sup> T. 16 September 2005 p. 82 (Maurice Ntahobali).

<sup>8480</sup> T. 16 September 2005 p. 83 (Maurice Ntahobali).

<sup>8481</sup> T. 16 September 2005 pp. 82-83 (Maurice Ntahobali).

<sup>8482</sup> T. 16 September 2005 pp. 79-81 (Maurice Ntahobali).

<sup>8483</sup> T. 16 September 2005 p. 81 (Maurice Ntahobali).

<sup>8484</sup> T. 16 September 2005 p. 82 (Maurice Ntahobali).

<sup>8485</sup> T. 16 September 2005 pp. 82-83 (Maurice Ntahobali).

<sup>8486</sup> T. 16 September 2005 p. 96 (Maurice Ntahobali).

<sup>8487</sup> T. 16 September 2005 pp. 61, 65 (Maurice Ntahobali).

<sup>8488</sup> T. 8 June 2005 p. 82 (Denise Ntahobali).

<sup>8489</sup> T. 9 June 2005 p. 15 (Denise Ntahobali).

<sup>8490</sup> T. 13 June 2005 p. 15 (Denise Ntahobali).

<sup>8491</sup> T. 9 June 2005 p. 16 (Denise Ntahobali).

<sup>8492</sup> T. 9 June 2005 p. 18; T. 13 June 2005 p. 44 (Denise Ntahobali).



sister, Clarisse Ntahobali, left Cyarwa and went to Hotel Ihuliro.<sup>8493</sup> She stated that on arriving at the Hotel Ihuliro, she saw her father, Maurice Ntahobali, her brother, Ntahobali, and her brother's wife and child.<sup>8494</sup> She and her sister decided to stay at the Hotel Ihuliro because it was safe and they were later joined by Clarisse Ntahobali's husband and child.<sup>8495</sup>

3064. At the hotel, they found about five UNAMIR soldiers whom she recognised because of their uniforms. The soldiers were from West Africa and one of them was a white man. She did not talk to them.<sup>8496</sup> In her recollection, the UNAMIR soldiers left Hotel Ihuliro about one week after her arrival there.<sup>8497</sup>

3065. Denise Ntahobali testified that there was no roadblock near Hotel Ihuliro at the end of April 1994.<sup>8498</sup> From her room, she could see the main road linking Mukoni and the city centre and what was happening on it; she stated that she did not see any roadblocks on this road.<sup>8499</sup> The witness explained that before 31 May 1994, she could not see the road that linked the main road and the ESO because she did not leave the hotel, but even when she left the hotel on 31 May 1994, she did not see any roadblock on this road.<sup>8500</sup> Since the time when she and her sister arrived at Hotel Ihuliro she did not leave the place. She stayed at home doing domestic chores such as cooking and taking care of Clarisse's child.<sup>8501</sup>

3066. Denise Ntahobali testified that her mother, Nyiramasuhuko, came to the hotel a few days after her arrival, in the early evening.<sup>8502</sup> At that time, about 30 people were living at the hotel including the witness' aunt and her family.<sup>8503</sup> On 31 May 1994, the witness left Hotel Ihuliro with her mother, Nyiramasuhuko, and niece, and they returned to Murambi.<sup>8504</sup> On the way, they encountered a roadblock between the first and second buildings of the EER, covering the two ends of the road. The roadblock was about 100 to 150 metres from Hotel Ihuliro.<sup>8505</sup> In her opinion, the roadblock must have been set up about one or two days before, because when her sister-in-law left,<sup>8506</sup> the roadblock had not been set up yet.<sup>8507</sup> The witness testified that this roadblock was manned by members of the public, and when they passed through, they were not asked anything because the *gendarmes* talked to the people manning the roadblock.<sup>8508</sup> On cross-examination by the Kanyabashi Defence, the witness did not agree to the proposition that the roadblock was located on the main road linking Mukoni and Butare city centre, at the junction between the road that leads to ESO and the university hospital, close

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<sup>8493</sup> T. 9 June 2005 pp. 21-22 (Denise Ntahobali).

<sup>8494</sup> T. 9 June 2005 pp. 22-23 (Denise Ntahobali).

<sup>8495</sup> T. 9 June 2005 p. 23 (Denise Ntahobali).

<sup>8496</sup> T. 9 June 2005 p. 23 (Denise Ntahobali).

<sup>8497</sup> T. 13 June 2005 p. 17 (Denise Ntahobali).

<sup>8498</sup> T. 9 June 2005 p. 27; T. 13 June 2005 p. 18 (Denise Ntahobali).

<sup>8499</sup> T. 13 June 2005 p. 18 (Denise Ntahobali).

<sup>8500</sup> T. 13 June 2005 pp. 18-19 (Denise Ntahobali).

<sup>8501</sup> T. 9 June 2005 p. 27 (Denise Ntahobali).

<sup>8502</sup> T. 9 June 2005 pp. 24-25 (Denise Ntahobali).

<sup>8503</sup> T. 9 June 2005 p. 25 (Denise Ntahobali).

<sup>8504</sup> T. 9 June 2005 pp. 28-29; T. 13 June 2005 p. 18 (Denise Ntahobali).

<sup>8505</sup> T. 9 June 2005 p. 30 (Denise Ntahobali).

<sup>8506</sup> T. 9 June 2005 p. 32 (Denise Ntahobali) (French).

<sup>8507</sup> T. 9 June 2005 pp. 29-30 (Denise Ntahobali).

<sup>8508</sup> T. 9 June 2005 p. 30 (Denise Ntahobali).

to Hotel Ihuliro, and testified, “[a]ll I know is that that roadblock was located on the road that leads to the rectory and on to the university.”<sup>8509</sup>

Nyiramasuhuko Defence Witness Clarisse Ntahobali

3067. Clarisse Ntahobali, a Hutu and one of Nyiramasuhuko’s daughters,<sup>8510</sup> testified that she left Rwanda in August 1991 for Canada to pursue higher education; she returned in February 1994 and remained in Rwanda until 18 July 1994.<sup>8511</sup> Her sister, Brigitte, left Rwanda in August 1993 to study in Germany and had never returned to Rwanda.<sup>8512</sup>

3068. Clarisse Ntahobali testified that her parents owned the Hotel Ihuliro.<sup>8513</sup> The hotel had a basement, lobby and upper floor and the building also contained a bar, restaurant, pharmacy and store.<sup>8514</sup> There was a sign on a high wall in the hotel covering five to six metres, which indicated that the building was a hotel.<sup>8515</sup>

3069. The witness testified that she was present at Hotel Ihuliro in February and April 1994, where she worked, although on her return to Rwanda in February 1994 she resided in Cyarwa in Ngoma *commune*, approximately one kilometre and a half from Hotel Ihuliro. Five staff members worked at the hotel, two Tutsis and three Hutus. Until 6 April 1994, these persons remained employees there. The witness and Shalom Ntahobali had supervisory roles at the hotel.<sup>8516</sup>

3070. After the death of the President, she remained at home for about a week in Cyarwa.<sup>8517</sup> She subsequently left Cyarwa in the company of her younger sister, Denise, and together they went to Hotel Ihuliro to meet the other members of their family.<sup>8518</sup> On the day she arrived, about 20 people were staying at Hotel Ihuliro, including Ntahobali, his wife and child, and Maurice Ntahobali, who usually lived there, as well as her father and members of the family of Shalom’s wife’s older sister, and these members of that family had come from Kigali. She added that these people had fled Kigali because war had started there, and there were killings being perpetrated by the RPF.<sup>8519</sup> Nyiramasuhuko was not at Hotel Ihuliro when she arrived.<sup>8520</sup> On 6 April 1994, Nyiramasuhuko was living alone in Kimihurura, Kigali.<sup>8521</sup>

3071. The only people living in the hotel apart from the witness’ family members were UNAMIR personnel.<sup>8522</sup> In mid-February 1994, there were about five UNAMIR members who

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<sup>8509</sup> T. 13 June 2005 p. 21 (Denise Ntahobali).

<sup>8510</sup> T. 8 February 2005 p. 87 (Clarisse Ntahobali).

<sup>8511</sup> T. 9 February 2005 pp. 8, 11 (Clarisse Ntahobali).

<sup>8512</sup> T. 9 February 2005 p. 11; T. 9 February 2005 p. 13 (Clarisse Ntahobali) (French) (for the spelling of “Brigitte”).

<sup>8513</sup> T. 9 February 2005 p. 23 (Clarisse Ntahobali).

<sup>8514</sup> T. 9 February 2005 p. 33 (Clarisse Ntahobali).

<sup>8515</sup> T. 9 February 2005 p. 62 (Clarisse Ntahobali).

<sup>8516</sup> T. 9 February 2005 p. 34 (Clarisse Ntahobali).

<sup>8517</sup> T. 9 February 2005 p. 40 (Clarisse Ntahobali).

<sup>8518</sup> T. 9 February 2005 pp. 41-42 (Clarisse Ntahobali).

<sup>8519</sup> T. 9 February 2005 p. 42 (Clarisse Ntahobali).

<sup>8520</sup> T. 9 February 2005 p. 48 (Clarisse Ntahobali).

<sup>8521</sup> T. 9 February 2005 pp. 34, 39-40 (Clarisse Ntahobali).

<sup>8522</sup> T. 9 February 2005 p. 48 (Clarisse Ntahobali).

were living at Hotel Ihuliro. They included one Egyptian, one Austrian called Peter, a Zimbabwean and a Togolese. The last one to leave was Peter, who left when the UNAMIR forces departed from Butare once and for all, towards the end of April 1994.<sup>8523</sup>

3072. The witness testified that Nyiramasuhuko visited Hotel Ihuliro two days after her own arrival, spending one or two nights there before leaving for Murambi early in the morning.<sup>8524</sup> She stated that around the same time, more relatives arrived at the hotel, including her maternal aunt; as a result, there were 30 people staying at the hotel.<sup>8525</sup>

3073. Clarisse Ntahobali testified that as of 28 April 1994, there was no roadblock near the hotel.<sup>8526</sup> When Nyiramasuhuko came to Butare, at the end of May 1994, there was a roadblock “quite close to Hotel Ihuliro”.<sup>8527</sup> It had been set up on 27 May 1994 and was located to the right of the hotel, in front of the house of a certain Ndimba.<sup>8528</sup> People in civilian attire manned the roadblock. The witness further testified that she went across that roadblock, and was asked to show her identity card.<sup>8529</sup> The witness testified that she recognised one of the residents of the neighbourhood, one Jean-Pierre, manning the roadblock. She declared that she never saw Shalom Ntahobali at this roadblock.<sup>8530</sup>

#### Nyiramasuhuko Defence Witness CEM

3074. Witness CEM, a Hutu, testified that Hotel Ihuliro was identified as such in writing, on the exterior of the building, and consisted of a ground floor and a top floor, although the top floor had not been completed in April 1994.<sup>8531</sup> She first went to the hotel one to two weeks after the President’s death, then two or three times in the second week of April 1994 and once or twice in the fourth week.<sup>8532</sup> There were about 30 people in the hotel during the month of April 1994, some of whom she knew.<sup>8533</sup> She did not see Nyiramasuhuko or Brigitte Ntahobali<sup>8534</sup> at the hotel during her visits in April 1994, but did see Shalom, Denise, Clarisse and Maurice Ntahobali.<sup>8535</sup>

3075. Witness CEM testified that she went to Hotel Ihuliro on three occasions in May 1994, and that by then the number of people staying at the hotel had increased to a little more than 50. On her way to Hotel Ihuliro, she passed through the roadblock at the Hotel Faucon and the one near the school complex. Towards the end of May 1994, a new roadblock manned by civilians had been erected below the EER. She passed through this roadblock, where she was asked for her identity card, and then she was permitted to go on her way.<sup>8536</sup> The witness did

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<sup>8523</sup> T. 9 February 2005 p. 36 (Clarisse Ntahobali).

<sup>8524</sup> T. 9 February 2005 pp. 49-50 (Clarisse Ntahobali).

<sup>8525</sup> T. 9 February 2005 p. 50 (Clarisse Ntahobali).

<sup>8526</sup> T. 9 February 2005 p. 53 (Clarisse Ntahobali).

<sup>8527</sup> T. 9 February 2005 pp. 58-59 (Clarisse Ntahobali).

<sup>8528</sup> T. 9 February 2005 p. 59 (Clarisse Ntahobali).

<sup>8529</sup> T. 9 February 2005 pp. 60-61 (Clarisse Ntahobali).

<sup>8530</sup> T. 10 February 2005 p. 8 (Clarisse Ntahobali).

<sup>8531</sup> T. 14 February 2005 pp. 43-44 (Witness CEM).

<sup>8532</sup> T. 14 February 2005 p. 44 (Witness CEM).

<sup>8533</sup> T. 14 February 2005 p. 45 (Witness CEM).

<sup>8534</sup> T. 14 February 2005 p. 53 (Witness CEM) (French) (for the spelling of “Brigitte”).

<sup>8535</sup> T. 14 February 2005 pp. 45-46 (Witness CEM).

<sup>8536</sup> T. 14 February 2005 p. 48 (Witness CEM).

not see Shalom Ntahobali at this roadblock.<sup>8537</sup> Witness CEM testified that during her visits to the hotel she did not witness any meetings being held nor did she see any authorities, leaders, people in uniform or *Interahamwe*.<sup>8538</sup>

3076. Witness CEM disagreed with the Prosecution's suggestions that Shalom Ntahobali was an *Interahamwe* during April to June 1994, that he was well respected among the *Interahamwe* as a leader, and that he manned the roadblock that was close to Hotel Ihuliro.<sup>8539</sup> Witness CEM also testified that Shalom Ntahobali did not take part in the killings. The witness often went to Hotel Ihuliro, where he was living, and stated "every time I went there I saw him [Ntahobali] busy doing other things."<sup>8540</sup> The witness testified that she never visited the hotel at night and agreed that she was unable to provide any information about what Shalom Ntahobali did at night.<sup>8541</sup>

#### Nyiramasuhuko Defence Witness WZNA

3077. Witness WZNA, a Hutu factory worker, testified that in early June 1994, he saw a roadblock near Maurice Ntahobali's building,<sup>8542</sup> which was on the *Avenue de l'Université* opposite the ESO camp.<sup>8543</sup> The witness did not see soldiers or Nyiramasuhuko at the roadblock, but only civilians.<sup>8544</sup>

#### Nyiramasuhuko Defence Witness WKNKI

3078. Witness WKNKI, a Hutu student, testified that he saw a roadblock around Maurice Ntahobali's building, close to a building belonging to Ndimba's son.<sup>8545</sup> That roadblock was mounted by the end of May 1994, for the purposes of civilian defence.<sup>8546</sup> Witness WKNKI never saw Nyiramasuhuko or any member of her family, when he went through that roadblock.<sup>8547</sup>

#### Nyiramasuhuko

3079. Nyiramasuhuko admitted to being in Butare on the following dates: 14-15 April 1994; 28-29 April 1994; 10 May 1994; 14-16 May 1994; 30-31 May 1994; 11-12 June 1994; 24 June 1994; and 2 July 1994.<sup>8548</sup>

3080. Nyiramasuhuko testified that most of the observers left Rwanda after 6 April 1994 and very few remained, even though "we" begged them to remain.<sup>8549</sup> UNAMIR and Roger Booh-

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<sup>8537</sup> T. 15 February 2005 p. 18 (Witness CEM).

<sup>8538</sup> T. 14 February 2005 pp. 47-48; T. 15 February 2005 p. 14 (Witness CEM).

<sup>8539</sup> T. 15 February 2005 p. 18 (Witness CEM).

<sup>8540</sup> T. 15 February 2005 p. 19 (Witness CEM).

<sup>8541</sup> T. 15 February 2005 p. 20 (Witness CEM).

<sup>8542</sup> T. 4 April 2005 p. 58 (Witness WZNA).

<sup>8543</sup> T. 5 April 2005 p. 8 (Witness WZNA).

<sup>8544</sup> T. 4 April 2005 pp. 57-58 (Witness WZNA).

<sup>8545</sup> T. 2 March 2005 pp. 6-7 (Witness WKNKI).

<sup>8546</sup> T. 2 March 2005 pp. 8-9 (Witness WKNKI).

<sup>8547</sup> T. 2 March 2005 p. 9 (Witness WKNKI).

<sup>8548</sup> T. 6 September 2005 p. 32; T. 28 September 2005 p. 48; T. 3 October 2005 pp. 43, 60-61; T. 5 October 2005 p. 16; T. 6 October 2005 pp. 25, 29 (Nyiramasuhuko).

Booh did stay on for some time after 6 April 1994, but not for long. A number of Belgian soldiers left.<sup>8550</sup> In cross-examination, Nyiramasuhuko added that she was not present at the *préfecture* Security Council meeting held on 20 April 1994 in Butare, and that even before that day, around 13 or 15 April 1994, “we” learned that Belgium had prepared a document addressed to the Security Council, asking for the withdrawal of its troops from the country.<sup>8551</sup> Other soldiers remained, who left after 20 April 1994. Belgium had the greatest number of people in Rwanda.<sup>8552</sup>

3081. Nyiramasuhuko testified that on 30 May 1994, on the way from Gikongoro to Butare town, she drove on a tarred road. Starting at the entrance of Butare town, the number of roadblocks had increased since 14 May 1994. Civilians guarded those roadblocks which had been added. On 30 May 1994, Nyiramasuhuko saw a roadblock close to Hotel Ihuliro, which had been mounted in front of the stalls and the Protestant school (EER). She testified there was another roadblock in town, which was manned by civilians and which she had not seen previously. It was located on the road to the airport after the social welfare school. She believed that it must have been mounted because of the refugee problems. On her way to Butare, Nyiramasuhuko slowed down, but did not stop at the roadblock leading to the airport because it was not set up on the main road. She stopped at the roadblock close to the shops and the EER.<sup>8553</sup> The roadblock was across the road, close to the EER on one side, while the shops were on the other side.<sup>8554</sup>

3082. When Nyiramasuhuko stopped at the roadblock, she was stopped by the people manning it; when they realised who she was, they let her through. She recognised one of the civilians guarding the roadblock. He was the son of one Misigaro Thaddée who had a store in town.<sup>8555</sup> After passing the roadblock, Nyiramasuhuko went to Hotel Ihuliro, where her family was.<sup>8556</sup> She reached Hotel Ihuliro in the afternoon, before 6.00 p.m. As soon as she arrived, Nyiramasuhuko talked with members of her family, who were celebrating her niece’s birthday; but she told them she had come to evacuate them. Nyiramasuhuko stated: “Given the war situation which was prevailing, and since people were fleeing, I did not find that fair. I said to myself that they should be preparing their luggage.”<sup>8557</sup>

3083. In cross-examination, Nyiramasuhuko testified that she crossed two roadblocks between Hotel Ihuliro and the multi-purpose hall of the *préfecture* on 31 May 1994. One of them, where she was asked to stop, was located near Bihira.<sup>8558</sup>

3084. Nyiramasuhuko was questioned if she knew that MRND meetings had taken place at the Hotel Ihuliro in 1993 or 1994. She stated that meetings could not take place without the permission of the *bourgmestre* who was duty-bound to draft a report on any meetings that took

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<sup>8549</sup> T. 10 October 2005 p. 15 (Nyiramasuhuko).

<sup>8550</sup> T. 10 October 2005 p. 16 (Nyiramasuhuko).

<sup>8551</sup> T. 10 October 2005 pp. 42-43 (Nyiramasuhuko).

<sup>8552</sup> T. 10 October 2005 p. 43 (Nyiramasuhuko).

<sup>8553</sup> T. 5 October 2005 p. 14 (Nyiramasuhuko).

<sup>8554</sup> T. 5 October 2005 p. 15 (Nyiramasuhuko).

<sup>8555</sup> T. 5 October 2005 p. 15 (Nyiramasuhuko).

<sup>8556</sup> T. 5 October 2005 pp. 15-16 (Nyiramasuhuko).

<sup>8557</sup> T. 5 October 2005 p. 16 (Nyiramasuhuko).

<sup>8558</sup> T. 22 November 2005 p. 54 (Nyiramasuhuko).

place. Nyiramasuhuko testified that no such meetings ever took place, nor did the *bourgmestre* ever talk about such meetings.<sup>8559</sup> She stated she had been living in Kigali during that period of time.<sup>8560</sup>

Kanyabashi Defence Witness D-2-YYYY

3085. Witness D-2-YYYY testified that the roadblock at the Butare garage was located across the road from Maurice Ntahobali's house.<sup>8561</sup> The witness noticed this roadblock for the first time on 21 April 1994 and testified that it was manned by armed soldiers in camouflage uniforms and black berets, and *Interahamwe* wearing military shirts and casual clothes.<sup>8562</sup> He did not know who was in charge of the roadblock, however, he heard mention of Shalom Ntahobali being in charge of it.<sup>8563</sup>

Kanyabashi Defence Witness D-2-13-D

3086. Witness D-2-13-D, a Hutu detainee and business owner in April 1994, stated that around 10 April 1994, at the Butare MSM garage roadblock the *Interahamwe* asked for his identification papers.<sup>8564</sup> He saw other people crossing the roadblocks, having their identity documents checked.<sup>8565</sup>

3087. Witness D-2-13-D was shown Defence Exhibit 41.<sup>8566</sup> He confirmed that there was a BP station located on the other side of the road from Hotel Faucon, and a Shell petrol station between Hotel Faucon and Hotel Ibis.<sup>8567</sup> He stated he might have been confused between BP and Shell because he could not read.<sup>8568</sup>

3088. Witness D-2-13-D confirmed that neither Nyiramasuhuko nor Maurice Ntahobali lived in the house he referred to as "Nyiramasuhuko's residence". He stated that this house was in fact the headquarters of UNAMIR, because he saw UNAMIR members there and he also heard people say so.<sup>8569</sup> The roadblock was near the MSM garage opposite "Nyiramasuhuko's house", though not directly at it.<sup>8570</sup> The witness stated that he had never claimed that Nyiramasuhuko controlled the roadblock.<sup>8571</sup>

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<sup>8559</sup> T. 27 October 2005 p. 43 (Nyiramasuhuko).

<sup>8560</sup> T. 27 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>8561</sup> T. 28 November 2007 pp. 17-18 (ICS) (Witness D-2-YYYY).

<sup>8562</sup> T. 28 November 2007 pp. 17-18, 52 (ICS); T. 5 December 2007 pp. 15, 21-22, 55 (ICS) (Witness D-2-YYYY).

<sup>8563</sup> T. 11 December 2007 p. 12 (ICS) (Witness D-2-YYYY).

<sup>8564</sup> T. 10 September 2007 p. 23 (ICS) (Witness D-2-13-D).

<sup>8565</sup> T. 30 August 2007 p. 58 (ICS) (Witness D-2-13-D).

<sup>8566</sup> T. 6 September 2007 p. 33 (ICS) (Witness D-2-13-D); Defence Exhibit 441 (Nsabimana) (Photograph of Buildings and Shops).

<sup>8567</sup> T. 6 September 2007 p. 38 (ICS) (Witness D-2-13-D).

<sup>8568</sup> T. 6 September 2007 pp. 31, 39 (ICS) (Witness D-2-13-D).

<sup>8569</sup> T. 6 September 2007 p. 26 (ICS) (Witness D-2-13-D).

<sup>8570</sup> T. 6 September 2007 pp. 27-28 (ICS) (Witness D-2-13-D).

<sup>8571</sup> T. 6 September 2007 p. 27 (ICS) (Witness D-2-13-D).

Kanyabashi Defence Witness D-2-11-D

3089. Witness D-2-11-D, a Hutu farmer, testified that there was a roadblock located on the road leading to Burundi, between the garage and Ntahobali's home, very close to the junction or the road that went up to ESO.<sup>8572</sup> It was manned by soldiers and *Interahamwe* armed with Kalashnikovs; by *Interahamwe*, he meant people wearing military uniform on their top and civilian clothing on the other half below. The witness encountered no difficulty at that roadblock and was allowed to move on.<sup>8573</sup>

Kanyabashi Defence Witness D-2-5-I

3090. Witness D-2-5-I testified that during the period between April and July 1994, there was a roadblock at MSM garage manned by soldiers and *Interahamwe*. He said that the soldiers were in command of this roadblock and he later heard that Shalom Ntahobali was in charge of it.<sup>8574</sup>

Kanyabashi Defence Witness Bernadette Kamanzi

3091. Bernadette Kamanzi, the wife of Kanyabashi, testified that she crossed a roadblock located close to Pauline Nyiramasuhuko's residence, manned by armed soldiers and *Interahamwe* who conducted a thorough search. The witness and those who accompanied her were asked to get down from the vehicle. The witness stated that the roadblock was precisely located on the road from the Hotel Faucon which led to the university campus, and it was very close to the intersection of the ESO. The witness could only recognise Shalom Ntahobali among the people present at that roadblock. Ntahobali wore a camouflage pair of trousers and a shirt of another colour, and he was carrying a gun.<sup>8575</sup>

3092. Kamanzi testified that during her last visit to Mpare, on 1 July 1994, gunshots could be heard from the town. The witness was with Kanyabashi, her sister-in-law Goretti and the latter's child; they crossed roadblocks at Hotel Faucon, at Bihira's house and at Ntahobali's house on that day. Ntahobali repeatedly said to them that they were accomplices.<sup>8576</sup>

Kanyabashi Defence Witness D-13-D

3093. Witness D-13-D, a Hutu driver,<sup>8577</sup> testified that at the end of April 1994, he noticed a roadblock below the MSM Garage, situated between two roads, one going from the university to Hotel Ibis, the other leading to ESO, above Ntahobali's residence.<sup>8578</sup> The witness further explained that next to the MSM garage, there was a storey building that belonged to Sindikubwabo's son-in-law, Mujere, and another house that belonged to Ndimba's son,

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<sup>8572</sup> T. 23 October 2007 pp. 12-13 (ICS); T. 24 October 2007 p. 7 (ICS) (Witness D-2-11-D).

<sup>8573</sup> T. 23 October 2007 p. 12 (ICS) (Witness D-2-11-D).

<sup>8574</sup> T. 30 January 2008 pp. 36-37 (Witness D-2-5-I).

<sup>8575</sup> T. 19 November 2007 p. 43 (Bernadette Kamanzi).

<sup>8576</sup> T. 19 November 2007 p. 44 (Bernadette Kamanzi).

<sup>8577</sup> T. 14 February 2008 pp. 30-31 (Witness D-13-D); Defence Exhibit 627 (Kanyabashi) (Personal Particulars).

<sup>8578</sup> T. 14 February 2008 pp. 54-56 (Witness D-13-D).

Venuste. This roadblock was just next to the garage's fence and was also located near a culvert or gutter used for drawing water from the *Quartier Arabe* to Busenyi.<sup>8579</sup>

3094. Witness D-13-D testified that on the road leading from the university to Hotel Faucon and Hotel Ibis, opposite the MSM Garage, there was also a petrol station called SGP, followed by Ntahobali's residence.<sup>8580</sup> On the same side of the road was the Protestant centre (EER), then the National Pedagogic Institute (IPN).<sup>8581</sup>

3095. Witness D-13-D testified that the roadblock near the MSM Garage was always at the same place.<sup>8582</sup> Between the end of April and early July 1994, he did not see another roadblock in the direction of the Hotel Ibis and Hotel Faucon, between the MSM roadblock and the one at the junction near the church (at Bihira's place).<sup>8583</sup>

3096. Whenever he crossed the roadblock at the MSM garage, Witness D-13-D was stopped and had to show a document which had been signed by Colonel Gatsinzi.<sup>8584</sup> The witness testified that he passed by that roadblock regularly, sometimes every day.<sup>8585</sup> He saw young people manning the roadblock, who were taking turns.<sup>8586</sup> Some of them wore half military and half civilian clothes; some carried firearms.<sup>8587</sup> In cross-examination, the witness added that it was manned by *Interahamwe*.<sup>8588</sup>

3097. At the beginning of May 1994, but before 10 May 1994, he saw Ntahobali, whom he knew well, at the roadblock.<sup>8589</sup> In total, he saw Ntahobali between five to 10 times at the MSM garage. Ntahobali was wearing a military, camouflage vest.<sup>8590</sup> The witness knew the other people at that roadblock, who were taking turns; however, he heard this was "Shalom's roadblock".<sup>8591</sup>

3098. Witness D-13-D testified that on one occasion, Ntahobali stopped him, searched him and asked him to open the bonnet of his vehicle, looking for ammunition. The witness had to open the booth, but two persons—called Grégoire and Eugène—who were present, told Ntahobali that they knew the witness and that he was allowed to pass through the roadblock. From then on, the witness was not searched anymore.<sup>8592</sup>

3099. During cross-examination by the Ntahobali Defence, it was put to Witness D-13-D that he fabricated charges against Ntahobali; the witness answered that everybody in Butare knew

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<sup>8579</sup> T. 14 February 2008 pp. 55-56 (Witness D-13-D).

<sup>8580</sup> T. 14 February 2008 p. 58 (Witness D-13-D).

<sup>8581</sup> T. 14 February 2008 pp. 58, 65 (Witness D-13-D).

<sup>8582</sup> T. 14 February 2008 p. 60 (Witness D-13-D).

<sup>8583</sup> T. 14 February 2008 pp. 60-61 (Witness D-13-D).

<sup>8584</sup> T. 14 February 2008 p. 63 (Witness D-13-D).

<sup>8585</sup> T. 14 February 2008 p. 59 (Witness D-13-D).

<sup>8586</sup> T. 14 February 2008 pp. 58-59, 64 (Witness D-13-D).

<sup>8587</sup> T. 14 February 2008 pp. 58-59 (Witness D-13-D).

<sup>8588</sup> T. 19 February 2008 p. 54 (ICS) (Witness D-13-D).

<sup>8589</sup> T. 14 February 2008 p. 64 (Witness D-13-D).

<sup>8590</sup> T. 14 February 2008 p. 62 (Witness D-13-D).

<sup>8591</sup> T. 14 February 2008 p. 64 (Witness D-13-D).

<sup>8592</sup> T. 14 February 2008 p. 63 (Witness D-13-D).



Ntahobali as an evil doer.<sup>8593</sup> Ntahobali and the witness knew each other.<sup>8594</sup> The witness identified Ntahobali in court.<sup>8595</sup>

### 3.6.23.4 *Deliberations*

#### 3.6.23.4.1 Meetings at Hotel Ihuliro

3100. The Prosecution relies exclusively on Prosecution Witness FA to establish that meetings were held at Hotel Ihuliro between 7 and 14 April 1994 and that during such meetings, the issue of how to implement the genocide was discussed.<sup>8596</sup> The Chamber notes that Witness FA's testimony on this issue is hearsay, uncorroborated and was contradicted by Defence witnesses, notably Nyiramasuhuko Defence Witnesses Maurice Ntahobali and CEM,<sup>8597</sup> and Ntahobali Defence Witness NMBMP.<sup>8598</sup> Nyiramasuhuko also denied this allegation.<sup>8599</sup>

3101. The Chamber further notes that many of the Nyiramasuhuko and Ntahobali Defence witnesses are related to or have close ties with Nyiramasuhuko and Ntahobali and, as such, may have an interest in protecting them. The Chamber is mindful of the fact that in these circumstances, appropriate caution must be exercised when evaluating the Defence evidence. That being said, the Chamber finds the Defence evidence on this particular allegation to be consistent and credible in a number of important respects including the layout of Hotel Ihuliro,<sup>8600</sup> the number of people residing there in April 1994,<sup>8601</sup> and the presence or otherwise of Nyiramasuhuko.<sup>8602</sup>

3102. The Prosecution led no evidence to support Witness FA's account that meetings were held between 7 and 14 April 1994 at Hotel Ihuliro or that Nyiramasuhuko resided there. Three

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<sup>8593</sup> T. 21 February 2008 p. 14 (ICS) (Witness D-13-D).

<sup>8594</sup> T. 14 February 2008 p. 62 (Witness D-13-D).

<sup>8595</sup> T. 14 February 2008 p. 66 (Witness D-13-D).

<sup>8596</sup> T. 30 June 2004 p. 50; T. 30 June pp. 45, 48-49 (ICS); T. 1 July 2004 pp. 34, 42 (Witness FA).

<sup>8597</sup> T. 16 September 2005 pp. 66, 69 (Maurice Ntahobali); T. 14 February 2005 pp. 47-48 (Witness CEM); T. 15 February 2005 p. 14 (Witness CEM).

<sup>8598</sup> T. 22 April 2008 p. 27 (ICS) (Witness NMBMP).

<sup>8599</sup> T. 27 October 2005 p. 43 (Nyiramasuhuko).

<sup>8600</sup> T. 10 April 2006 pp. 79-80 (Ntahobali); T. 19 April 2006 pp. 44, 46-47 (Ntahobali); T. 2 June 2005 p. 90 (ICS) (Witness WBUC); T. 24 February 2005 p. 34 (Witness WBNC); T. 9 June 2005 p. 16 (Denise Ntahobali); T. 13 June 2005 p. 15 (Denise Ntahobali); T. 9 February 2005 pp. 33, 62 (Clarisse Ntahobali); T. 14 February 2005 pp. 43-44 (Witness CEM).

<sup>8601</sup> T. 22 April 2008 pp. 20-21 (ICS) (Witness NMBMP); T. 24 February 2006 p. 35 (Béatrice Munyenyezi); T. 27 February 2006 pp. 79, 81 (Béatrice Munyenyezi); T. 24 April 2006 pp. 34-35 (Ntahobali); T. 1 June 2005 p. 56 (Witness WBUC); T. 1 June p. 74 (ICS) (Witness WBUC); T. 24 February 2005 pp. 35-36, 41 (Witness WBNC); T. 13 September 2005 pp. 4-7, 15-19 (Maurice Ntahobali); T. 16 September 2005 pp. 64-67 (Maurice Ntahobali); T. 9 June 2005 pp. 22-23, 25 (Denise Ntahobali); T. 13 June 2005 p. 17 (Denise Ntahobali); T. 9 February 2005 pp. 36, 42, 48, 50 (Clarisse Ntahobali); T. 14 February 2005 p. 45 (Witness CEM); T. 14 February 2005 p. 48 (Witness CEM).

<sup>8602</sup> T. 24 April 2006 pp. 10, 27 (Ntahobali); T. 25 April 2006 p. 35 (Ntahobali); T. 1 June 2006 p. 68 (Ntahobali); T. 24 February 2005 pp. 35-38, 41, 48 (Witness WBNC); T. 13 September 2005 pp. 14-15 (Maurice Ntahobali); T. 9 June 2005 pp. 24-25 (Denise Ntahobali); T. 9 February 2005 pp. 34, 39-40, 48-50 (Clarisse Ntahobali); T. 14 February 2005 p. 53 (Witness CEM); T. 6 September 2005 p. 32 (Nyiramasuhuko); T. 28 September 2005 p. 29 (Nyiramasuhuko); T. 29 September 2005 p. 48 (Nyiramasuhuko); T. 3 October 2005 pp. 43, 60-61 (Nyiramasuhuko); T. 5 October 2005 p. 16 (Nyiramasuhuko); T. 6 October 2005 pp. 25, 29 (Nyiramasuhuko).

Defence witnesses testified that no political or *Interahamwe* meetings took place at Hotel Ihuliro.<sup>8603</sup> Maurice Ntahobali, corroborating Nyiramasuhuko's testimony, specifically stated that his wife did not live at Hotel Ihuliro in April 1994.<sup>8604</sup> Four other witnesses testified that Nyiramasuhuko visited rather than resided at the hotel in April 1994.<sup>8605</sup>

3103. In addition to the lack of corroboration of Witness FA's testimony, the Chamber is also of the view that certain aspects of the Defence evidence cast doubt on the veracity of Witness FA's account on this issue. For instance Witness FA asserted that she knew that the people who entered Nyiramasuhuko's house were attending meetings because her neighbour was among those attending.<sup>8606</sup> The Chamber finds this explanation implausible, noting the evidence that at least 30 people were present at Hotel Ihuliro in April 1994 and that part of the hotel contained a grocery shop and a pharmacy.<sup>8607</sup> The Chamber considers that the human activity in the vicinity of the hotel could have been a consequence of the normal comings and goings of those staying or shopping there.

3104. Further, the Chamber notes that Witness FA's testimony contains a number of internal inconsistencies. The witness admitted that in her statement to Prosecution investigators in 1996, she did not mention that her neighbour had spoken to her about instructions to kill Tutsis having been issued at the meeting or his warning that Tutsis should leave the compound.<sup>8608</sup> Instead, her statement was limited to her neighbour's comments on identity cards.<sup>8609</sup> The Chamber considers it unlikely that issues having such a direct impact on the personal security of Witness FA and her Tutsi husband could have been forgotten or regarded as less important than that of identity cards when she gave her statement in 1996. A further inconsistency was brought to light in cross-examination when Witness FA admitted that she only knew of the meetings at Nyiramasuhuko's house because her neighbour had informed her of them following the second meeting.<sup>8610</sup> This directly contradicts her evidence-in-chief that she was an eyewitness to events and saw people going to and leaving three separate meetings at the house she identified as Nyiramasuhuko's.<sup>8611</sup> In addition, while during her evidence-in-chief Witness FA could not recall the dates of the alleged meetings,<sup>8612</sup> in cross-examination she was confronted with the fact that in her statement to Prosecution investigators dated 26 November 1996, she said that the meetings had occurred between 7 and 14 April 1994. She confirmed that to be the case.<sup>8613</sup>

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<sup>8603</sup> T. 16 September 2005 pp. 66, 69 (Maurice Ntahobali); T. 14 February 2005 pp. 47-48 (Witness CEM); T. 15 February 2005 p. 14 (Witness CEM); T. 22 April 2008 p. 27 (ICS) (Witness NMBMP).

<sup>8604</sup> T. 13 September 2005 p. 19 (Maurice Ntahobali); T. 27 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>8605</sup> T. 9 February 2005 pp. 49-50 (Clarisse Ntahobali); T. 9 June 2005 pp. 24-25 (Denise Ntahobali); T. 24 April 2006 pp. 10, 27 (Ntahobali); T. 24 February 2005 pp. 37-38, 48 (Witness WBNC).

<sup>8606</sup> T. 1 July 2004 p. 42 (Witness FA).

<sup>8607</sup> T. 9 February 2005 p. 33 (Clarisse Ntahobali); T. 13 June 2005 p. 15 (Denise Ntahobali); T. 19 April 2006 pp. 44, 46 (Ntahobali).

<sup>8608</sup> T. 1 July 2004 pp. 42-43 (Witness FA).

<sup>8609</sup> T. 1 July 2004 p. 42 (Witness FA).

<sup>8610</sup> T. 1 July 2004 p. 42 (Witness FA).

<sup>8611</sup> T. 30 June 2004 pp. 45, 48-49 (ICS); T. 1 July 2004 p. 34 (Witness FA).

<sup>8612</sup> T. 30 June 2004 p. 50 (Witness FA).

<sup>8613</sup> T. 30 June 2004 pp. 51, 53 (ICS); T. 1 July 2004 p. 37 (Witness FA).

3105. Lastly, Witness FA insisted that Nyiramasuhuko's three daughters resided with her and she provided a physical description of them;<sup>8614</sup> yet, three Defence witnesses and Ntahobali testified that one of Nyiramasuhuko's three daughters, Brigitte, left Rwanda in 1993 and never returned.<sup>8615</sup> The Chamber considers this is a minor and acceptable mistake, because Witness FA did not claim to know the daughters well, she did not claim even to know their names, and thus given the large number of women residing at the Nyiramasuhuko and Ntahobali residence, it is understandable that Witness FA could believe all three of Nyiramasuhuko's daughters to have been residing there during the relevant time. However, the Chamber finds this incorrect account adds doubts to the overall reliability of the witness' testimony in relation to events connected to Hotel Ihuliro.

3106. In view of the foregoing, the Chamber does not consider Witness FA's testimony to be convincing or credible in relation to this allegation. Thus, the Chamber does not find that the Prosecution has proven that meetings took place at Hotel Ihuliro in April 1994 or that Nyiramasuhuko lived in the hotel during that period. It is therefore not necessary to discuss Nyiramasuhuko or Ntahobali's knowledge of or involvement in such meetings. Accordingly, the Prosecution has not proven beyond a reasonable doubt that Nyiramasuhuko held meetings with the *Interahamwe* at Hotel Ihuliro during which the subject of how to implement the genocide in Butare was discussed.

#### 3.6.23.4.2 Mounting of the Roadblock Near Hotel Ihuliro

3107. It is not contested that Maurice Ntahobali owned Hotel Ihuliro and that it was used both as a residence for the Ntahobali family and as a boarding house. What is contested is whether a roadblock was erected between April and July 1994 close to Hotel Ihuliro and what role, if any, Nyiramasuhuko and Ntahobali had at the roadblock. Only Ntahobali Defence Witnesses WCNJ and WCKJ testified they had never seen a roadblock in that area.<sup>8616</sup> However, in light of the totality of the evidence the Chamber finds this does not raise a reasonable doubt as to whether a roadblock did exist near Nyiramasuhuko and Ntahobali's house.

3108. As to the exact location of the roadblock, the Chamber has heard consistent testimony from Prosecution and Defence witnesses to the effect that the roadblock was located in the proximity of the EER and the MSM garage, and very close to Hotel Ihuliro.<sup>8617</sup> More specifically, Witness FA testified that the roadblock was in front of Nyiramasuhuko's

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<sup>8614</sup> T. 30 June 2004 p. 48 (ICS); 1 July 2004 pp. 12, 59 (ICS) (Witness FA).

<sup>8615</sup> T. 13 September 2005 pp. 15-17 (Maurice Ntahobali); T. 9 February 2005 p. 11 (Clarisse Ntahobali); T. 24 February 2005 p. 30 (Witness WBNC).

<sup>8616</sup> T. 2 February 2006 pp. 7-8 (Witness WCNJ); T. 31 January 2006 p. 70 (Witness WCKJ).

<sup>8617</sup> T. 30 June 2004 pp. 51, 53 (ICS) (Witness FA); T. 20 March 2002 pp. 60, 70 (Witness QCB); T. 3 March 2003 p. 26 (Witness SS); T. 27 January 2003 pp. 15-16 (Witness SX); T. 4 February 2004 pp. 51-52 (Witness TB); T. 4 February p. 26 (ICS) (Witness TB); T. 31 March 2004 pp. 59-61 (Witness TG); T. 7 September 2004 p. 10 (ICS) (Witness TQ); T. 25 September 2006 pp. 34, 37 (Keane); T. 28 September 2006 p. 33 (Keane); T. 22 August 2006 p. 14 (Karemano); T. 4 July 2006 pp. 64-65 (Barawandika); T. 8 March 2006 p. 33 (ICS) (Witness WUNBJ); T. 5 December 2005 pp. 56-57 (ICS) (Witness H1B6); T. 29 November 2005 p. 36 (Witness WCNMC); T. 21 February 2006 p. 25 (ICS) (Witness WCMNA); T. 6 April 2005 p. 67 (Witness WMKL); T. 1 June 2005 pp. 76-77 (Witness WBUC); T. 24 February 2005 p. 46 (Witness WBNC); T. 31 May 2005 p. 47 (ICS) (Witness WBTT); T. 13 September 2005 pp. 24-25 (Maurice Ntahobali); T. 28 November 2007 pp. 17-18, 52 (ICS) (Witness D-2-YYYY); T. 5 December 2007 pp. 15-16, 21-22, 55 (ICS) (Witness D-2-YYYY); T. 30 January 2008 p. 36 (Witness D-2-5-I); T. 14 February 2008 pp. 54-56 (Witness D-13-D).

residence; Nsabimana Defence Witness Bararwandika testified that Nyiramasuhuko's house was about 50 to 100 metres from the roadblock; Ntahobali Defence Witness WCMNA testified that the roadblock was about 50 to 70 metres from Ntahobali's house.<sup>8618</sup> This account is supported by the Accused Ntahobali's testimony, who himself testified that the roadblock was erected "a few metres" from Hotel Ihuliro.<sup>8619</sup> Nyiramasuhuko Defence Witness WMKL also testified that between the MSM garage and the roadblock there was a distance of about 50 to 100 metres.<sup>8620</sup> The Chamber finds the discrepancy among these witnesses' testimonies concerning the distance of the roadblock from Hotel Ihuliro is minor. Accordingly, the Chamber finds this evidence credible and is satisfied that the roadblock was located at a distance of approximately 50 to 100 metres from Hotel Ihuliro.

3109. There is also a considerable amount of consistent evidence indicating that the roadblock was mounted towards the end of April 1994. Prosecution Witnesses FA, SX, TB, TG, TQ, QCB, Nsabimana Defence Witnesses Charles Karemano and Alexandre Bararwandika, Kanyabashi Defence Witnesses D-2-YYYY, D-2-13-D, D-2-5-I and D-13-D all gave testimony supporting this assertion.<sup>8621</sup> The Chamber recalls some credibility issues with respect to Prosecution Witness FA, as outlined above in the context of the allegation concerning meetings at Nyiramasuhuko and Ntahobali's house (). Similarly, Prosecution Witness QCB was a detained person at the time of his testimony and therefore the Chamber will treat his testimony with appropriate caution. Nevertheless, the Chamber finds Witnesses FA and QCB credible concerning the mounting of the roadblock, in light of all the other evidence.

3110. This account is contradicted by Ntahobali Defence Witnesses Maurice Ntahobali, Clarisse Ntahobali, Denise Ntahobali, Nyiramasuhuko Defence Witnesses WBNC, WMKL, H1B6, WUNBJ, WCNMC, WBUC, WCUJM, the Accused Ntahobali and Nyiramasuhuko. According to these witnesses, the roadblock was established not earlier than May 1994.<sup>8622</sup> The Chamber considers that among these witnesses are relatives of the Accused, such as Maurice, Clarisse and Denise Ntahobali who are, respectively, the father and sisters of Ntahobali, and therefore may have had an incentive to absolve him of responsibility for crimes committed at the roadblocks. While their relationship to the Accused does not automatically discredit the testimony of these witnesses, the Chamber will treat their testimony with appropriate caution.

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<sup>8618</sup> T. 30 June 2004 p. 51; T. 30 June p. 53 (ICS) (Witness FA); T. 4 July 2006 pp. 64-65 (Bararwandika); T. 21 February 2006 p. 25 (ICS) (Witness WCMNA).

<sup>8619</sup> T. 26 April 2006 p. 13 (Ntahobali).

<sup>8620</sup> T. 6 April 2005 p. 67 (Witness WMKL).

<sup>8621</sup> T. 30 June 2004 p. 51 (Witness FA); T. 30 June 2004 53 (ICS) (Witness FA); T. 27 January 2003 pp. 15-16 (Witness SX); T. 4 February 2004 pp. 41-42 (Witness TB); T. 5 February 2004 p. 12 (ICS) (Witness TB); T. 31 March 2004 p. 26 (Witness TG); T. 7 September 2004 p. 63 (ICS) (Witness TQ); T. 20 March 2002 p. 60 (Witness QCB); T. 22 August 2006 pp. 13-14 (Karemano); T. 3 July 2006 p. 44 (Bararwandika); T. 28 November 2007 pp. 17-18, 52 (ICS) (Witness D-2-YYYY); T. 5 December 2007 pp. 15, 21-22, 55 (ICS) (Witness D-2-YYYY); T. 10 September 2007 p. 23 (ICS) (Witness D-2-13-D); T. 30 January 2008 p. 36 (Witness D-2-5-I); T. 14 February 2008 pp. 54-55 (Witness D-13-D).

<sup>8622</sup> T. 13 September 2005 pp. 24-25 (Maurice Ntahobali); T. 9 February 2005 pp. 58-59 (Clarisse Ntahobali); T. 9 June 2005 p. 27 (Denise Ntahobali); T. 13 June 2005 p. 18 (Denise Ntahobali); T. 24 February 2005 p. 46 (Witness WBNC); T. 6 April 2005 pp. 60, 69 (Witness WMKL); T. 5 December 2005 p. 58 (ICS) (Witness H1B6); T. 8 March 2006 p. 33 (ICS) (Witness WUNBJ); T. 29 November 2005 p. 36 (Witness WCNMC); T. 1 June 2005 p. 77 (Witness WBUC); T. 14 February 2006 p. 20 (Witness WCUJM); T. 26 April 2006 p. 13 (Ntahobali).

3111. In light of the considerable amount of evidence indicating that the roadblock was mounted at the end of April 1994, the Chamber finds the mentioned testimony of the Ntahobali and Nyiramasuhuko Defence witnesses fails to raise a reasonable doubt as to the allegation that the roadblock near Hotel Ihuliro was in existence by the end of April 1994.

3112. Furthermore, the Chamber recalls that Prosecution Witness QI also testified that the roadblock was set up after the UNAMIR soldiers left the hotel.<sup>8623</sup> Defence Witnesses WBTT, WBUC, NMBMP, Béatrice Munyenyezi, Denise Ntahobali, Clarisse Ntahobali and Nyiramasuhuko and Ntahobali gave evidence indicating that, by the end of April 1994 the UNAMIR soldiers had already left Hotel Ihuliro.<sup>8624</sup> The Chamber believes that a roadblock could have been mounted in less than a day, and therefore considers that these testimonies, if read in conjunction with the testimony of Witness QI, support the assertion that the roadblock was set up during the last days of April 1994.

3113. Having considered all the evidence, the Chamber finds it established beyond a reasonable doubt that in late April 1994 a roadblock was erected near Hotel Ihuliro in Butare town.

#### 3.6.23.4.3 Ntahobali's Role at the Roadblock

3114. The Chamber notes that Ntahobali and his wife, Béatrice Munyenyezi, testified that he had malaria and was convalescing at the Hotel Ihuliro for an entire week around the end of April and beginning of May 1994.<sup>8625</sup> She remembered this happened two or three days before his niece's birthday which was on 28 April 1994.<sup>8626</sup> Ntahobali also claimed to remember very clearly that it was 28 April 1994 that he felt the symptoms because on that day it was his niece's birthday; he saw his mother, Nyiramasuhuko, who he had not seen since 14 April 1994; and he felt very ill and had to go lie down.<sup>8627</sup>

3115. Ntahobali and his wife claimed that he received malarial treatments from an aunt who was trained in giving injections.<sup>8628</sup> This relative was not called to testify to corroborate their account. Furthermore, none of Ntahobali's sisters and other relatives who were at the Hotel Ihuliro during this time period provided testimony to corroborate Ntahobali's testimony that he had malaria at the end of April into the beginning of May 1994.

3116. The Chamber recalls there are credibility issues regarding Munyenyezi and it will therefore view her testimony with appropriate caution (). First, as Ntahobali's wife, the Chamber considers she would have a motive to exculpate him. Furthermore, Munyenyezi testified that she did not hear that the killings between April 1994 and July 1994 were ethnically motivated. She stated that people were killing each other, whether they were Hutus

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<sup>8623</sup> T. 25 March 2004 p. 46 (Witness QI).

<sup>8624</sup> T. 31 May 2005 p. 47 (ICS) (Witness WBTT); T. 1 June 2005 p. 56 (Witness WBUC); T. 22 April 2008 p. 21 (ICS) (Witness NMBMP); T. 27 February 2006 pp. 77-78 (Béatrice Munyenyezi); T. 13 June 2005 p. 17 (Denise Ntahobali); T. 9 February 2005 p. 36 (Clarisse Ntahobali); T. 10 October 2005 p. 16 (Nyiramasuhuko); T. 24 April 2006 pp. 34-35 (Ntahobali).

<sup>8625</sup> T. 27 February 2006 p. 8 (Béatrice Munyenyezi); T. 25 April 2006 p. 35 (Ntahobali).

<sup>8626</sup> T. 27 February 2006 p. 8 (Béatrice Munyenyezi).

<sup>8627</sup> T. 25 April 2006 p. 35 (Ntahobali).

<sup>8628</sup> T. 25 April 2006 p. 35 (Ntahobali); T. 27 February 2006 pp. 8, 54 (Béatrice Munyenyezi).

or Tutsis. She further stated that the ethnic group being targeted between April and July 1994 was not Tutsi.<sup>8629</sup> She testified that she did not hear about or see any massive killings in Butare after 19 April 1994.<sup>8630</sup> She added that she never saw dead bodies in Butare after 19 April 1994.<sup>8631</sup> Munyenyezi further stated that she did not see any serious violence in Butare.<sup>8632</sup> In light of the Chamber's findings concerning all of the killings that were occurring throughout Butare *préfecture*, including at locations within a very short distance of the Hotel Ihuliro, such as the EER, and the roadblock in front of the hotel itself, it is incredible that Béatrice Munyenyezi would not have seen any killings or known that Tutsis were being targeted. The Chamber does not find her testimony to be credible.

3117. Based on Munyenyezi's lack of credibility and the absence of corroboration from any other testifying witnesses who should have had knowledge of Ntahobali's illness, and the late disclosure of the alibi,<sup>8633</sup> the Chamber does not find this alibi evidence to be credible.

3118. Prosecution Witnesses FA, QCB, SX, TB, TG and TQ testified to having seen Ntahobali at the roadblock outside Hotel Ihuliro, where he ordered and directly participated in the commission of crimes. Witness FA testified that Ntahobali often manned the roadblock outside Nyiramasuhuko's house.<sup>8634</sup> Witness FA gave eyewitness testimony that Ntahobali used an axe to kill a girl with long hair,<sup>8635</sup> that Ntahobali hit a man with an axe and handed him over to Kazungu to be killed,<sup>8636</sup> and that he hit a soldier from ESO military with an axe before handing him over to the *Interahamwe* to be killed.<sup>8637</sup> Witnesses QCB and SX gave eyewitness testimony that Ntahobali questioned people, checked their identity cards and participated in the killing of people at this roadblock.<sup>8638</sup>

3119. Witness TB gave eyewitness testimony that during April 1994, she heard Ntahobali tell the soldiers gathered at the roadblock to "work", which she understood to mean to kill people.<sup>8639</sup> She saw people being beaten to death at the roadblock and being taken away to be killed.<sup>8640</sup> Witness TG gave eyewitness testimony that Ntahobali was present at the roadblock and saw people being beaten at the roadblock, some to death, and others being taken to the forest by the EER and killed.<sup>8641</sup> The witness could hear the sound of gunshots and people being beaten and screaming from the direction of the EER and Ntahobali's home.<sup>8642</sup>

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<sup>8629</sup> T. 27 February 2006 pp. 72-73 (Béatrice Munyenyezi).

<sup>8630</sup> T. 27 February 2006 pp. 72-73 (Béatrice Munyenyezi).

<sup>8631</sup> T. 27 February 2006 pp. 73-75 (Béatrice Munyenyezi).

<sup>8632</sup> T. 27 February 2006 pp. 73-75 (Béatrice Munyenyezi).

<sup>8633</sup> See Memorandum to Coordinator, Trial Chamber II, re: Notice of Intent to enter a defence of alibi, 29 September 2005.

<sup>8634</sup> T. 30 June 2004 pp. 53-54, 64 (ICS); T. 1 July 2004 p. 45 (Witness FA).

<sup>8635</sup> T. 30 June 2004 p. 54 (ICS); 1 July 2004 p. 27 (Witness FA).

<sup>8636</sup> T. 30 June 2004 pp. 55-56 (ICS); 1 July 2004 p. 28 (Witness FA).

<sup>8637</sup> T. 30 June 2004 p. 58 (ICS); 1 July 2004 pp. 26, 29, 31-32; T. 1 July 2004 p. 73 (ICS) (Witness FA).

<sup>8638</sup> T. 20 March 2002 pp. 62-65 (Witness QCB); T. 27 January 2003 pp. 17-18 (Witness SX).

<sup>8639</sup> T. 4 February 2004 pp. 41-42, 44-45, 48-49 (Witness TB).

<sup>8640</sup> T. 4 February 2004 pp. 41, 46, 48; T. 4 February 66, 69, 71-73, 97-98 (ICS); T. 5 February 2004 pp. 22-23, 25; T. 5 February p. 13 (ICS) (Witness TB).

<sup>8641</sup> T. 30 March 2004 p. 70 (Witness TG).

<sup>8642</sup> T. 30 March 2004 p. 71 (Witness TG).

3120. Witness TQ gave eyewitness testimony that he saw Ntahobali and others lifting a corpse downhill from the road near the roadblock in front of Nyiramasuhuko's house, and throwing it into a ditch. There were at least 10 other corpses in the ditch.<sup>8643</sup>

3121. Nsabimana Defence Witness Charles Karemano gave eyewitness testimony that Ntahobali was in charge of the roadblock and that, as the leader of the "hoodlums" positioned there, he was able to spare Kagwene's life.<sup>8644</sup>

3122. In addition, Witness SX identified Ntahobali in court, and testified that he had seen him often in Butare near the EER.<sup>8645</sup> Witness SX further testified that he watched the roadblock for two to three hours from a distance of 100 metres, during which time he saw people killed and that he saw Ntahobali there.<sup>8646</sup> Witness TB also testified that she knew Ntahobali well and she was able to identify him in court.<sup>8647</sup> She said that she could see the roadblock clearly from her compound and that she saw Ntahobali there manning the roadblock in late April 1994.<sup>8648</sup> Witness TG testified that he knew Ntahobali well because they had attended *Groupe Scolaire* together, and he was able to identify Ntahobali in court.<sup>8649</sup> He further testified to witnessing Ntahobali passing by the roadblock on several occasions in late April 1994.<sup>8650</sup> Witness TQ testified that Ntahobali was manning the roadblock when he was stopped there in late April 1994.<sup>8651</sup> While Witness TQ admitted that he did not mention Ntahobali's presence at the roadblock in his statement of 28 July 1998, the Chamber is satisfied with his explanation that he did not include in that statement everything he knew about Ntahobali.<sup>8652</sup> The statement does not mention any events having occurred at the roadblock in front of Nyiramasuhuko's house, but rather provides information on separate incidents.

3123. In addition to Witness FA's credibility issues already addressed, the Chamber notes another inconsistency in her testimony concerning the roadblock outside Hotel Ihuliro. Witness FA altered her description of what arms Ntahobali and Nyiramasuhuko carried at various points in time. In her testimony about the soldier alleged to have been killed at the roadblock, Witness FA stated that Ntahobali hit him with an axe before handing him over to be killed; in her previous statement, she failed to mention that he hit him before handing him over.<sup>8653</sup> Although the Chamber considers this is a minor discrepancy in light of what is stated above, in the context of Witness FA's credibility, and considering that this account is not corroborated, the Chamber will not rely on Witness FA's testimony on this issue.

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<sup>8643</sup> T. 7 September 2004 pp. 11-14, 62-63 (ICS) (Witness TQ).

<sup>8644</sup> T. 5 September 2006 p. 49 (Karemano).

<sup>8645</sup> T. 27 January 2004 pp. 16, 37; T. 27 January p. 53 (ICS); T. 30 January 2004 p. 25; T. 30 January p. 15 (ICS) (Witness SX).

<sup>8646</sup> T. 27 January 2004 p. 16; T. 27 January p. 53 (ICS); T. 30 January 2004 p. 25; T. 30 January p. 15 (ICS) (Witness SX).

<sup>8647</sup> T. 4 February 2004 p. 54 (Witness TB).

<sup>8648</sup> T. 4 February 2004 pp. 41-42, 44-45, 48-49, 54 (Witness TB).

<sup>8649</sup> T. 30 March 2004 p. 64; T. 31 March 2004 p. 24 (Witness TG).

<sup>8650</sup> T. 30 March 2004 pp. 63-64; T. 31 March 2004 pp. 24-26 (Witness TG).

<sup>8651</sup> T. 7 September 2004 pp. 11, 62-63 (ICS) (Witness TQ).

<sup>8652</sup> T. 7 September 2004 p. 32 (ICS) (Witness TQ); Defence Exhibit 257 (Ntahobali) (List of alleged omissions; 28-29 July 1998, Statement of Witness TQ).

<sup>8653</sup> T. 1 July 2008 pp. 45-46 (Witness FA); Defence Exhibit 250 (Ntahobali) (List of alleged omissions; 26 November 1996, Statement of Witness FA).

3124. The Chamber observes that Witnesses QCB, SX, TB, TG, TQ and Karemano were able to provide detailed testimony corroborating the claims of the other. Given the high degree of consistency among the testimony of these witnesses, and the fact they were all eyewitnesses, the Chamber finds their accounts credible.

3125. The Chamber further notes that Kanyabashi Defence Witnesses D-2-5-I and D-13-D testified that they heard that Ntahobali was in charge of the roadblock,<sup>8654</sup> and Witnesses Bernadette Kamanzi and D-13-D further stated that they recognised Ntahobali among the people present at the roadblock, wearing a camouflage pair of trousers and carrying a gun.<sup>8655</sup>

3126. Defence Witnesses WUNBJ, WBUC and WCNJ contradicted this evidence, testifying that they had never seen Ntahobali at the roadblock.<sup>8656</sup> Also Nyiramasuhuko Defence Witness CEM denied that Ntahobali manned the roadblock.<sup>8657</sup> However, the Chamber notes that these witnesses were not permanently posted at the roadblock, from its setting up, but just happened to pass by on certain occasions and therefore might have missed the times when Ntahobali was at the roadblock. In any event, the Chamber recalls that Maurice Ntahobali confirmed that Ntahobali went to the roadblock when it was his family's turn;<sup>8658</sup> also Witness WBUC conceded that it was possible that Ntahobali went to man the roadblock, on occasion;<sup>8659</sup> the Accused Ntahobali himself indicated that, at some point in time, he was present at the roadblock.<sup>8660</sup> The Chamber finds the testimony of Witnesses WUNBJ, WBUC, WCNJ and CEM does not raise a reasonable doubt as to whether Ntahobali was present at the roadblock during the relevant time.

3127. The Chamber also recalls the testimony of Nsabimana, who testified that there was a roadblock in front of the house of "Ntahobari", which was manned by a certain "Sharom".<sup>8661</sup> Recalling its finding above concerning the existence of a roadblock near Hotel Ihuliro in late April 1994, and in light of all the other, relevant evidence, the Chamber is satisfied that "Ntahobari" referred to "Maurice Ntahobali" and "Sharom" is a reference to the Accused Shalom Ntahobali.

3128. Having considered all the evidence before it, the Chamber finds the Prosecution has established beyond a reasonable doubt that during the relevant time period, Ntahobali manned the roadblock in front of his parents' residence and utilised the roadblock with the assistance of soldiers and other unknown persons to abduct and kill members of the Tutsi population.

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<sup>8654</sup> T. 30 January 2008 pp. 36-37 (Witness D-2-5-I); T. 14 February 2008 p. 64 (Witness D-13-D).

<sup>8655</sup> T. 19 November 2007 p. 43 (Bernadette Kamanzi); T. 14 February 2008 pp. 62, 64 (Witness D-13-D).

<sup>8656</sup> T. 8 March 2006 p. 32 (ICS) (Witness WUNBJ); T. 2 June 2005 p. 41 (ICS) (Witness WBUC); T. 2 February 2006 pp. 7-8 (Witness WCNJ).

<sup>8657</sup> T. 15 February 2005 p. 18 (Witness CEM).

<sup>8658</sup> T. 16 September 2005 pp. 82-83 (Maurice Ntahobali).

<sup>8659</sup> T. 6 June 2005 pp. 30, 39 (ICS) (Witness WBUC).

<sup>8660</sup> T. 26 April 2006 pp. 15, 19-20, 22-23 (Ntahobali).

<sup>8661</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016630.



3.6.23.4.4 Abduction, Confinement and Rape of Seven Tutsi Girls, Including Witness TN, 21 and 25 April 1994

3129. The Chamber observes that Witness TN is the only witness who implicates Ntahobali in the abduction and rape of seven Tutsi girls in his house and compound. The Chamber is mindful that Witness TN is a single witness and exercises caution in its analysis of her testimony. The Chamber considers that Witness TN, although a single witness on this event, was a truthful witness, who was brave enough to attend court and give a detailed account of the horrendous rape and abduction allegedly inflicted on her and the other girls by Ntahobali and said soldiers. In the Chamber's view, it is clear from the witness' testimony that these girls were raped by soldiers. What is for the Chamber to determine is whether it was established that Ntahobali played a role in this incident.

3130. The witness testified that she and the other girls were abducted from the *secteur* office, where they were guarded by Shalom, and were taken to his house.<sup>8662</sup> The witness did not give any further detail concerning the location or the description of the house. As to the identification of Ntahobali, the Chamber notes that in her prior statement, Witness TN explained that on the day of the rape, her abductor was identified by others as "Shalom".<sup>8663</sup> In the statement, she described Shalom as being of average height, average size, black and of dark skin. The witness however explained that she would not be able to identify Ntahobali if she saw him again, given the circumstances of her encounter with him. Accordingly, when asked to identify Ntahobali in court, Witness TN pointed to a security guard.<sup>8664</sup> Although in the Chamber's view Ntahobali's said features could not have changed in any extreme way between 1994, between the time of the alleged rape, and 2002, the time of the witness' testimony in court, it is nevertheless understandable that, after nearly eight years from the abduction and rape, Witness TN was not able to identify Ntahobali in court. In any event, the Chamber notes that the security officer that the witness mistakenly identified as Ntahobali had similar features as those of Ntahobali.<sup>8665</sup>

3131. Taking all the above circumstances into account, although the Chamber does not discredit Witness TN's testimony, particularly in light of the detailed description of her traumatic experience, it nevertheless finds the evidence insufficient to establish beyond a reasonable doubt that the perpetrator of the alleged abduction and rape was Ntahobali or that the rape actually occurred at Ntahobali's house. The Chamber therefore considers that the Prosecution has not discharged its burden of proof beyond a reasonable doubt in regard to the allegation that Ntahobali abducted seven Tutsi girls to his house in April 1994; that Ntahobali raped at least four of these Tutsi girls personally and instructed and caused the rape of the seven girls by soldiers.

3.6.23.4.5 Rape and Murder of a Tutsi Girl Near the Roadblock, Around 28 April 1994

3132. The Chamber considers that the testimony provided by Prosecution Witness SX with regard to the rape and murder of a Tutsi girl at the roadblock is detailed and believable.

<sup>8662</sup> T. 3 April 2002 pp. 138-142; T. 3 April p. 149 (ICS) (Witness TN).

<sup>8663</sup> 11-12 March 1998, Statement of Witness TN, disclosed 4 November 1998; Unredacted Statement of Witness TN, disclosed 23 April 2001.

<sup>8664</sup> T. 3 April 2002 pp. 171-172 (Witness TN).

<sup>8665</sup> T. 3 April 2002 p. 178 (Witness TN).

Further, it was corroborated by Prosecution Witness TB's testimony which was equally detailed. Both witnesses testified that the girl arrived in a yellow Daihatsu, and that a certain Jean-Pierre was with Ntahobali at the time of the incident.<sup>8666</sup> They also stated that the car was stopped at the roadblock and the people inside the car were asked to show their identity cards.<sup>8667</sup>

3133. Witness TB further testified that she saw Ntahobali drag a girl with braids, who had been in the vehicle, into the woods from her vantage point on the main road near the roadblock, and subsequently saw her dead body with vaginal injuries near a tree in the woods, later that evening.<sup>8668</sup> Witness SX also witnessed the rape from his hiding place, about 20 metres away from Ntahobali and the victim.<sup>8669</sup> The witnesses' descriptions regarding the subsequent burial of the body are also consistent. Witness SX testified that about four days after the girl's death he and some others buried her body in a wooded lot.<sup>8670</sup> Similarly, Witness TB testified that the girl's body was later buried by three people, one of whom she identified as Witness SX.<sup>8671</sup>

3134. As to the time period when this crime allegedly occurred, both Witnesses SX and TB refer to a few days after the roadblock in front of Hotel Ihuliro was erected.<sup>8672</sup> In this regard, the Chamber recalls its previous finding that the roadblock was mounted at the end of April 1994.

3135. In light of all of the foregoing, the Chamber finds Witnesses TB and SX credible with respect to this allegation, and finds the evidence establishes beyond a reasonable doubt that Ntahobali raped and murdered the young woman who arrived at the roadblock in a yellow Daihatsu, around the end of April 1994.

#### 3.6.23.4.6 Order to Kill Léopold Ruvurajabo at the Roadblock, 21 April 1994

3136. The Chamber notes that the Prosecution relies solely on Witness QCB, a detained witness, to establish that on 21 April 1994, Ntahobali instructed the *Interahamwe* to kill a certain Léopold Ruvurajabo, and thus the Chamber must treat his testimony with an appropriate caution.

3137. Nevertheless, as to the identification of Ntahobali, the Chamber observes that Witness QCB already knew Ntahobali, a long time before the alleged crimes occurred.<sup>8673</sup> Thus, the Chamber finds his testimony reliable to the extent that the person that Witness QCB saw at the roadblock on the present occasion was, in fact, Ntahobali.

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<sup>8666</sup> T. 27 January 2004 pp. 20-21 (Witness SX); T. 4 February 2004 pp. 41-42; T. 5 February 2004 pp. 17-18 (Witness TB).

<sup>8667</sup> T. 27 January 2007 pp. 20-21 (Witness SX); T. 4 February 2004 pp. 41-50, 55 (ICS) (Witness TB).

<sup>8668</sup> T. 4 February 2004 pp. 41-50, 55 (ICS) (Witness TB).

<sup>8669</sup> T. 27 January 2004 pp. 22-25 (Witness SX).

<sup>8670</sup> T. 27 January 2004 pp. 24-25 (Witness SX).

<sup>8671</sup> T. 4 February 2004 pp. 41-50; T. 4 February p. 55 (ICS) (Witness TB).

<sup>8672</sup> T. 27 January 2004 pp. 20, 22-24 (ICS) (Witness SX); T. 30 January 2004 pp. 73, 81-82 (ICS) (Witness SX); T. 4 February 2004 pp. 41-50 (Witness TB).

<sup>8673</sup> T. 20 March 2002 p. 71; T. 25 March 2002 pp. 46-47 (ICS) (Witness QCB).

3138. Further, the Chamber notes that while Witness QCB admitted he was implicated in other killings, such as in the attacks that took place at Kabakobwa (), he played no role in the present incident; his evidence is that of an eyewitness. Therefore, the Chamber does not consider Witness QCB might have had any personal interest in lying about the facts or inculpating Ntahobali.

3139. The Chamber further observes that Witness QCB's testimony was detailed. The Chamber has noted a minor inconsistency between the witness' testimony and his previous statement, namely the exact location where the witness met with Ruvurajabo on the day he is alleged to have been killed.<sup>8674</sup> The Chamber considers this inconsistency does not relate to a material fact and finds Witness QCB credible with respect to this incident.

3140. In light of the above, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that on 21 April 1994, Ntahobali instructed the *Interahamwe* to kill a certain Léopold Ruvurajabo, a Tutsi, at the roadblock near Hotel Ihuliro.

#### 3.6.23.4.7 Crimes Committed at the Roadblock

3141. The Chamber was presented with compelling evidence indicating that at the roadblock outside Hotel Ihuliro crimes were committed against Tutsis by the *Interahamwe*. The testimonies of Prosecution Witnesses FA, QCB, SX, TB and TG support the allegation that people were beaten and killed at the roadblock.<sup>8675</sup> Further, Witnesses TN, SX and TB also gave evidence of rapes being carried out in the vicinity of the roadblock.<sup>8676</sup> The Chamber observes that these were all eyewitnesses.

3142. The Chamber further recalls the testimony of Nsabimana Defence Witness Bararwandika, that he saw a corpse at the roadblock.<sup>8677</sup> This testimony supports the Prosecution assertion that crimes were committed at the roadblock.

3143. In *The Truth About the Massacres in Butare*, Nsabimana wrote about killings being regularly committed at roadblocks, and described the roadblock close to Hotel Ihuliro as being "one of the most formidable".<sup>8678</sup> The Chamber notes that Nsabimana's account on this issue is corroborated by that of other witnesses, as outlined above, and it will therefore rely on his testimony.

3144. Having considered all the evidence before it, the Chamber finds it has been established beyond a reasonable doubt that crimes, in particular beatings, rapes and killings, were carried out against mostly Tutsis, at the roadblock outside Hotel Ihuliro.

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<sup>8674</sup> T. 26 March 2002 p. 36 (Witness QCB); Defence Exhibit 29 (Ntahobali) (7 April 1999, Statement of Witness QCB).

<sup>8675</sup> T. 30 June 2004 pp. 53, 64 (ICS) (Witness FA); T. 20 March 2002 p. 62 (Witness QCB); T. 27 January 2004 pp. 15-18 (Witness SX); T. 4 February 2004 pp. 41-42, 44-45, 48-49 (Witness TB); T. 30 March 2004 pp. 70-71 (Witness TG); T. 14 October 2002 pp. 31, 37 (Witness SU).

<sup>8676</sup> T. 3 April 2002 pp. 141-145, 148, 150-161 (Witness TN); T. 27 January 2004 pp. 16, 22-24, 53 (ICS) (Witness SX); T. 30 January 2004 p. 52 (Witness SX); T. 30 January pp. 15, 72-73 (ICS) (Witness SX); T. 4 February 2004 pp. 41-50, 55, 57 (ICS) (Witness TB).

<sup>8677</sup> T. 3 July 2006 p. 47; T. 5 July 2006 p. 14 (Bararwandika).

<sup>8678</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016630.

#### 3.6.23.4.8 Nyiramasuhuko's Role at the Roadblock

3145. Witness FA testified that people were killed at the roadblock from April until June 1994, and that Nyiramasuhuko was in control of the roadblock.<sup>8679</sup> Witness FA testified that Nyiramasuhuko was present at the roadblock when a man was ordered from his car and taken away by Kazungu to be killed.<sup>8680</sup> She also testified that several days later a soldier was handed over to the *Interahamwe* to be killed, and Nyiramasuhuko refused to intervene.<sup>8681</sup>

3146. Witness SS testified that Nyiramasuhuko appeared to be in charge of the roadblock in front of Nyiramasuhuko's house; she was the foremost authority there.<sup>8682</sup> She testified that on 27 May 1994, Nyiramasuhuko stopped soldiers escorting a group of Tutsi refugees which included the witness herself.<sup>8683</sup> After conversing with her, the soldiers and the refugees went through the roadblock.<sup>8684</sup>

3147. While Witness SS was able to identify Nyiramasuhuko in the courtroom at the time of her testimony, Witness FA was unable to do so, but could only testify that a certain woman in the courtroom "resembled" Nyiramasuhuko.<sup>8685</sup> However, the Chamber is mindful that nearly 10 years had passed since Witness FA last saw the Accused, and therefore, the witness might not have had a clear recollection, as she also stated in court.<sup>8686</sup>

3148. Witnesses FA and SS gave first-hand eyewitness testimony regarding the sighting of Nyiramasuhuko at the roadblock on different occasions.<sup>8687</sup> The Chamber also notes that a number of Defence witnesses maintained that Nyiramasuhuko did not reside at Hotel Ihuliro, but that Nyiramasuhuko visited the hotel on a number of occasions in April, May and June 1994 (). The Chamber is satisfied that the evidence presented establishes beyond a reasonable doubt that Nyiramasuhuko was present at the roadblock, on occasions during the relevant time.

3149. However, the Chamber notes that only Witness SS testified to the extent that Nyiramasuhuko was exercising authority at the roadblock.<sup>8688</sup> Witness FA only stated that Nyiramasuhuko was present during a few incidents. Moreover, the Chamber recalls that Witness FA's testimony suffers from a number of contradictions and therefore it must exercise caution in its assessment.

3150. The Chamber considers Witness SS' testimony to be uncorroborated, since no other witness testified as to Nyiramasuhuko's role of authority at the roadblock, and further observes that Nyiramasuhuko's presence at the roadblock on certain occasions does not, as such, entail that she was giving orders or supervising the commission of any crime. Thus, in considering the totality of the evidence, the Chamber finds that, although the Prosecution has established that Nyiramasuhuko was present at the roadblock in question during occasions in the relevant

<sup>8679</sup> T. 30 June 2004 pp. 53, 64 (ICS) (Witness FA).

<sup>8680</sup> T. 30 June 2004 pp. 56-57 (ICS) (Witness FA).

<sup>8681</sup> T. 30 June 2004 p. 58 (ICS); T. 1 July 2004 p. 29; T. 1 July pp. 74, 78 (ICS) (Witness FA).

<sup>8682</sup> T. 3 March 2003 p. 33 (Witness SS).

<sup>8683</sup> T. 3 March 2003 p. 26 (Witness SS).

<sup>8684</sup> T. 3 March 2003 pp. 28-31 (Witness SS).

<sup>8685</sup> T. 3 March 2003 pp. 34-35, 77-78 (Witness SS); T. 30 June 2004 p. 66 (ICS) (Witness FA).

<sup>8686</sup> T. 30 June 2004 p. 66 (ICS) (Witness FA).

<sup>8687</sup> T. 30 June 2004 pp. 53, 64 (ICS) (Witness FA); T. 3 March 2003 pp. 26, 28, 31, 33 (Witness SS).

<sup>8688</sup> T. 3 March 2003 pp. 26, 28, 33 (Witness SS).

time period, it has not been proven beyond a reasonable doubt that Nyiramasuhuko also manned that roadblock. Nor is the Chamber satisfied that the Prosecution has proven beyond a reasonable doubt that during the relevant time period, Nyiramasuhuko utilised the roadblock with the assistance of soldiers and other unknown persons, to abduct and kill members of the Tutsi population.

### **3.6.24 Killing of Rwamukwaya Family, April 1994**

#### **3.6.24.1 Introduction**

3151. The Nyiramasuhuko and Ntahobali Indictment alleges that from April to July 1994, Ntahobali travelled throughout Butare *préfecture* searching for Tutsis. When the Tutsis were located, Ntahobali abducted them and took them to various locations, where they were executed.<sup>8689</sup> The Prosecution specifically alleges that Ntahobali is responsible for killing the Rwamukwaya family.<sup>8690</sup> In support of its submission, it relies on Prosecution Witnesses FA, TG, SJ, SU, SS, TQ, QCB, TE, RN, QF, ST, TF and Expert Witness André Guichaoua and Kanyabashi Defence Witnesses D-2-13-O, D-2-14-W and D-13-D.

3152. The Ntahobali Defence denies Ntahobali's involvement in the killing of the Rwamukwaya family, and any subsequent looting or taking of the deceased's car.<sup>8691</sup> It further suggests that the Rwamukwaya family was still alive in mid-May 1994.<sup>8692</sup> In support of its submissions, the Defence relies on Witnesses WQJMP, Innocent Rutayisire, Béatrice Munyenyezi, Nsabimana, Shalom Ntahobali and Nyiramasuhuko.

3153. Ntahobali also relies on an alibi, asserting that from 28 April 1994 until 5 May 1994 he was sick in bed with malaria.<sup>8693</sup>

#### **3.6.24.2 Preliminary Issues**

##### *Failure to Plead Killing of the Rwamukwaya Family*

3154. The Ntahobali Defence submits that the specific allegation concerning the killing of the Rwamukwaya family, and looting and use of their vehicle, was not pled in the Indictment and should therefore be disregarded.<sup>8694</sup> Paragraph 6.35 of the Nyiramasuhuko and Ntahobali Indictment alleges that from April to July 1994, Ntahobali travelled throughout Butare *préfecture* locating, abducting and executing Tutsis. In addition, Paragraph 6.39 generally alleges that the entire *préfecture* of Butare was the scene of massacres of the Tutsi population

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<sup>8689</sup> Para. 6.35 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against Ntahobali).

<sup>8690</sup> Prosecution Closing Brief, pp. 169, 182, 194, 220, paras. 36, 66, 98, 181; p. 265, para. 113; Prosecution Closing Argument, T. 20 April 2009 p. 42.

<sup>8691</sup> Ntahobali Closing Brief, paras. 405-412, 706; Appendix 2, para. 31; Appendix 3, para. 96.

<sup>8692</sup> Ntahobali Closing Argument, T. 23 April 2009 pp. 37-38; Ntahobali Closing Brief, para. 710.

<sup>8693</sup> Ntahobali Closing Brief, paras. 88-89.

<sup>8694</sup> Ntahobali Closing Brief, paras. 78-79.

involving, among others, Ntahobali.<sup>8695</sup> However, the Chamber notes that the Indictment does not mention the murder of the Rwamukwaya family.

3155. The Chamber recalls that where the Prosecution alleges that an accused personally committed criminal acts, it must plead with the greatest precision the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed (). The Nyiramasuhuko and Ntahobali Indictment provides no such information with respect to the killing of the Rwamukwaya family although, having regard to the dates of the statements of Witnesses TE, RN, QF, ST, TF, FA and TG, it is clear the Prosecution was aware of the details of the killing in November and December 1996, well before the filing of the Amended Indictment on 1 March 2001.<sup>8696</sup> Such information should have been contained in the Indictment and the Chamber finds that its absence renders the Indictment defective in this respect. The Chamber will now consider whether this defect was cured through subsequent disclosure by the Prosecution of timely, clear and consistent information.

3156. The Appendix to the Prosecution Pre-Trial Brief outlines that the Prosecution intended to rely on Witnesses TE and RN to testify in relation to this event.<sup>8697</sup>

3157. Witness TE's summary indicates that he would testify that Ntahobali went to the Rwamukwaya house. The witness heard that the dead bodies of the Rwamukwaya family were found not far from Nyiramasuhuko's house, near the laboratory, and heard that Ntahobali drove around in Rwamukwaya's car.<sup>8698</sup> Witness TE's previous statement was disclosed to the Defence on 4 November 1998, two years and eight months prior to the commencement of the trial on 11 June 2001.<sup>8699</sup> The Chamber notes that the victim's name, Rwamukwaya, is only revealed in the French version of Witness TE's statement, disclosed on 4 November 1998. The victim's name is redacted in the English version of Witness TE's statement, disclosed on 4 November 1998.

3158. Witness RN's summary in the Prosecution Pre-Trial Brief indicates that he would testify as to Ntahobali killing a certain Mr. Rwamukwaya and confiscating his white Peugeot 504.<sup>8700</sup> Witness RN's previous statement indicates that Ntahobali killed Rwamukwaya during the early part of the genocide in Butare, after which he confiscated his white Peugeot. The disclosure of Witness RN's prior statement on 30 March 1999, two years and two months

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<sup>8695</sup> Para. 6.39 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8, 10 against Nyiramasuhuko and Ntahobali).

<sup>8696</sup> 21 November 1996, Statement of Witness TE, disclosed 4 November 1998; 20 November 1996, Statement of Witness RN, disclosed 30 March 1999; 17 December 1996, Statement of Witness QF, disclosed 4 November 1998; 14 November 1996, Statement of Witness ST, disclosed 4 November 1998; 13 November 1996, Statement of Witness TF, disclosed 4 November 1998; 26 November 1996, Statement of Witness FA, disclosed 4 November 1998; 4 December 1996, Statement of Witness TG, disclosed 4 November 1998.

<sup>8697</sup> Prosecution Pre-Trial Brief – Appendix; Witness RN (72); Witness TE (91) (summary for Witness RN refers to “Rwanukwaya”, and summary for Witness TE refers to “Rwamukwaya”. The Chamber considers this discrepancy is only a typographical error).

<sup>8698</sup> Prosecution Pre-Trial Brief – Appendix; Witness TE (91).

<sup>8699</sup> 21 November 1996, Statement of Witness TE, disclosed 4 November 1998. The Chamber notes that Witness TE did not testify at trial.

<sup>8700</sup> Prosecution Pre-Trial Brief – Appendix; Witness RN (72).

before the commencement of trial on 11 June 2001,<sup>8701</sup> was consistent with the summary of Witness RN's evidence in the Prosecution Pre-Trial Brief.

3159. The Chamber observes that four other witness statements, namely those belonging to Witnesses QF, ST, TF and TG, disclosed to the Ntahobali Defence on 4 November 1998, provide information concerning the killing of the Rwamukwaya family.<sup>8702</sup> Witness QF's statement states that the witness saw Nyiramasuhuko and Ntahobali leaning against a white Peugeot pickup, parked on the side of the road. She knew this car was not their own, and recognised it as belonging to the Rwamukwaya family.<sup>8703</sup> Witness ST's statement states the witness was told by the Rwamukwaya family's neighbours that they had seen the Rwamukwaya family being taken away by Ntahobali. She subsequently saw Ntahobali at an event in Ngoma driving a white Peugeot pickup.<sup>8704</sup> In Witness TF's statement it is written that when the witness returned to Butare, she heard a lot of disgusting stories from friends and surviving family members about Ntahobali killing people, including members of the Rwamukwaya family.<sup>8705</sup> Witness TG's statement states that Ntahobali killed a certain Mr. Rwamukwaya, stole his Peugeot 504 pickup and used it for his subsequent genocidal activities.<sup>8706</sup>

3160. Although neither Witness RN nor Witness TE testified at trial, and the disclosure of Witness TE's statement was redacted, the Chamber considers that the information contained in Witnesses RN and TE's summaries in the Appendix to the Prosecution Pre-Trial Brief, was both clear and consistent with the information contained in their respective statements. Further, the statements were disclosed in a timely manner thus providing adequate notice of this allegation before the beginning of the Prosecution case. With respect to the statements of Witnesses QF, ST, TF and TG, the Chamber notes they were disclosed to the Defence on 4 November 1998, and further observes that when considered in conjunction with the statements of Witnesses RN and TE, provided the Defence with additional information with respect to this allegation.

3161. By reason of the information contained in Witnesses RN and TE's summaries in the Appendix to the Prosecution Pre-Trial Brief, as outlined above, along with the statements of Witnesses QF, ST, TF and TG, the Chamber considers the Defence was provided with clear, timely and consistent information, which sufficiently put Ntahobali on notice of the allegation against him concerning the killing of the Rwamukwaya family, and there was no prejudice in the preparation of his defence case.<sup>8707</sup>

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<sup>8701</sup> 20 November 1996, Statement of Witness RN, disclosed 30 March 1999. The Chamber notes that Witness RN did not testify at trial.

<sup>8702</sup> 17 December 1996, Statement of Witness QF, disclosed 4 November 1998; 14 November 1996, Statement of Witness ST, disclosed 4 November 1998; 13 November 1996, Statement of Witness TF, disclosed 4 November 1998; 4 December 1996, Statement of Witness TG, disclosed 4 November 1998.

<sup>8703</sup> 17 December 1996, Statement of Witness QF, disclosed 4 November 1998.

<sup>8704</sup> 14 November 1996, Statement of Witness ST, disclosed 4 November 1998.

<sup>8705</sup> 13 November 1996, Statement of Witness TF, disclosed 4 November 1998.

<sup>8706</sup> 4 December 1996, Statement of Witness TG, disclosed 4 November 1998.

<sup>8707</sup> See, e.g., *Niyitegeka*, Judgement (AC), para. 197; *Kupreškić et al.*, Judgement (AC), paras. 119-121.

3162. As additional information, the Chamber notes that when the Prosecution Motion to Drop and Add Witnesses was filed on 12 January 2004,<sup>8708</sup> the Prosecution sought to add, *inter alia*, Witness FA who was intended to testify to several events occurring at the roadblock near Hotel Ihuliro. The summary of Witness FA's prospective evidence contained in the Prosecution motion indicates the witness was intended to testify as to hearing Ntahobali say to an *Interahamwe* named Kazungu: "Get up Kazungu. Let's go. Today we will start with killing [a Tutsi named] Rwamukwaya".<sup>8709</sup> The Prosecution disclosed the redacted statement of Witness FA on 12 January 2004, the same day as it filed its motion.<sup>8710</sup> The Chamber observes that the summary of Witness FA's prospective evidence was consistent with her written statement. Further, it was consistent with the previously disclosed statements of Witnesses RN and TE.<sup>8711</sup> For that reason, although the Chamber considers that the Defence was already provided with sufficient notice that the allegation of Ntahobali killing one Rwamukwaya and looting his vehicle, was clearly in issue by reason of the inclusion of Witnesses RN and TE in the Prosecution Pre-Trial Brief, the Defence was provided with additional notice concerning this allegation, when Witness FA was permitted to testify, on 30 June 2004.

3163. The Chamber further recalls that the Ntahobali and Nyiramasuhuko Defence requested the exclusion of Prosecution Witness FA's testimony, on the grounds that they did not receive sufficient notice of that testimony, and asked the Chamber to find that Nyiramasuhuko and Ntahobali's right to prepare their defence had been violated.<sup>8712</sup> The Chamber has already ruled upon this issue in its Decision of 30 March 2004 which, *inter alia*, granted the Prosecution's motion to add three new witnesses, including Witness FA, to its witness list.<sup>8713</sup> For the reasons already outlined in a separate section of this Judgement, the Chamber finds no reason to reconsider its earlier ruling ().

### 3.6.24.3 Evidence

#### Prosecution Witness FA

3164. Witness FA, a Hutu, testified that on one occasion, she saw Ntahobali talking to a man named Kazungu at the roadblock close to Hotel Ihuliro, telling him that they were going to go kill, and they were going to start with Rwamukwaya's family.<sup>8714</sup> She testified that, in the period from April until June 1994 people were killed at this roadblock, which was often manned by Ntahobali.<sup>8715</sup> Witness FA subsequently saw Ntahobali come to talk to Kazungu, who lived in Witness FA's compound, while she was at home.<sup>8716</sup> It was then that Ntahobali told Kazungu: "What are you still doing here? We have to go and kill, and we have to start

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<sup>8708</sup> *Prosecutor v. Ndayambaje et al.*, ICTR-98-42-T, Prosecutor's Motion to Drop and Add Witnesses, 12 January 2004.

<sup>8709</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004, para. 4.

<sup>8710</sup> 26 November 1996, Statement of Witness FA, disclosed 12 January 2004.

<sup>8711</sup> 20 November 1996, Statement of Witness RN, disclosed 30 March 1999; 21 November 1996, Statement of Witness TE, disclosed 4 November 1998.

<sup>8712</sup> Ntahobali Closing Brief, paras. 80-81.

<sup>8713</sup> *Ndayambaje et al.*, Decision on Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004.

<sup>8714</sup> T. 30 June 2004 pp. 57-58 (ICS) (Witness FA).

<sup>8715</sup> T. 30 June 2004 pp. 53, 64 (ICS) (Witness FA).

<sup>8716</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA).



with the Rwamukwaya family”, and left.<sup>8717</sup> The next time the witness saw Ntahobali, Ntahobali was in the driver’s seat of a white vehicle described by others as a Hilux, which was stained with mud and had no metal bars at the rear for the tarpaulin.<sup>8718</sup> Witness FA saw Ntahobali on several other occasions because the car “was working every day”, and Ntahobali was always the one driving the vehicle.<sup>8719</sup> Witness FA could not identify Ntahobali in court.<sup>8720</sup>

3165. When confronted with the assertion that her description of the vehicle as contained in her written statement as being a “Hilux” was hearsay, Witness FA clarified that in explaining the vehicle as “a white vehicle described by others as a ‘Hilux’”, she intended to portray that people referred to this type of a vehicle as a “Hilux”, and not that people told her so.<sup>8721</sup>

3166. Witness FA testified that the Rwamukwaya family was Tutsi<sup>8722</sup> and lived somewhere after the MSM garage.<sup>8723</sup> While she did not know the names of the members of the Rwamukwaya family, the witness could recognise them.<sup>8724</sup>

3167. Witness FA testified that although she did not know the exact date when the members of the Rwamukwaya family died, it happened on the same day that Ntahobali told Kazungu that they had to go kill, starting with the Rwamukwaya family.<sup>8725</sup> Witness FA subsequently stated that Kazungu allegedly killed the Rwamukwaya family.<sup>8726</sup> Kazungu told the witness that the family members died, after which Kazungu brought some of their clothes to his own wife, Rachel.<sup>8727</sup>

#### Prosecution Witness SS

3168. Witness SS, a Tutsi, arrived at the *préfecture* office with other Tutsis on 27 May 1994.<sup>8728</sup> She testified that Nyiramasuhuko arrived at the *préfecture* office in a pickup, covered with something like mud and black paint and had no metal frame at the back, together with Kazungu and a driver. She heard that Ntahobali was driving and that the vehicle belonged to Rwamukwaya.<sup>8729</sup>

#### Prosecution Witness TG

3169. Witness TG, a Tutsi accountant in 1994,<sup>8730</sup> testified that from 26 April 1994, he was in hiding at businessman Martin Uwariraye’s compound, until 2 July 1994 when *Interahamwe*

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<sup>8717</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA).

<sup>8718</sup> T. 30 June 2004 p. 60 (ICS); T. 1 July 2004 p. 46 (Witness FA).

<sup>8719</sup> T. 30 June 2004 pp. 62-63 (ICS) (Witness FA).

<sup>8720</sup> T. 30 June 2004 p. 66 (ICS) (Witness FA).

<sup>8721</sup> T. 1 July 2004 p. 47 (Witness FA).

<sup>8722</sup> T. 1 July 2004 p. 85 (ICS) (Witness FA).

<sup>8723</sup> T. 1 July 2004 p. 45; T. 1 July 2004 p. 47 (Witness FA) (French) (for spelling of “MSM”).

<sup>8724</sup> T. 1 July 2004 pp. 45-46 (Witness FA).

<sup>8725</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA).

<sup>8726</sup> T. 1 July 2004 p. 46 (Witness FA).

<sup>8727</sup> T. 1 July 2004 pp. 45-46 (Witness FA).

<sup>8728</sup> T. 3 March 2003 pp. 26, 36-37 (Witness SS).

<sup>8729</sup> T. 3 March 2003 pp. 48-49 (Witness SS).

<sup>8730</sup> T. 30 March 2004 p. 55 (Witness TG); Prosecution Exhibit 98 (Personal Particulars).

invaded it.<sup>8731</sup> From the compound's bakery, the witness often saw Ntahobali passing on the main road. Ntahobali was driving a Peugeot 504 that was originally white but was soiled on the side in a kind of camouflage.<sup>8732</sup> Witness TG had seen that vehicle before April 1994 and knew it had belonged to a businessman called Rwamukwaya, who was Tutsi.<sup>8733</sup> The compound was located approximately 700 to 800 metres from Ntahobali's family home.<sup>8734</sup> From this compound, the witness could see Ntahobali's family home and also a roadblock.<sup>8735</sup>

#### Prosecution Witness TQ

3170. Witness TQ, a Hutu, testified that around 20 to 21 June 1994, there were no longer refugees at the *préfecture* office, and there was a Peugeot pickup truck that belonged to a man named Rwamukwaya, who was killed during the genocide and who was a neighbour of Nyiramasuhuko. Shalom was driving his mother, Pauline Nyiramasuhuko, in this vehicle.<sup>8736</sup>

#### Prosecution Witness SJ

3171. Witness SJ, a Tutsi seeking refuge at the *préfecture* office as of April 1994, testified to attacks on the refugees at the *préfecture* office during June 1994.<sup>8737</sup> She testified that Ntahobali arrived at the *préfecture* office on board a white Peugeot pickup that was open at the back and covered with cow dung, such that it resembled a military vehicle.<sup>8738</sup> Ntahobali was accompanied by more than 10 *Interahamwe* who were armed.<sup>8739</sup> Witness SJ was unable to remember the exact time at which they arrived.<sup>8740</sup>

#### Prosecution Witness SU

3172. Witness SU, a Tutsi homemaker in 1994, arrived at the Butare *préfecture* office on 28 May 1994.<sup>8741</sup> She testified that at around 10.00 p.m. one Friday evening, Nyiramasuhuko arrived at the *préfecture* office accompanied by her uniformed security guard and an armed driver aboard a camouflaged dark-coloured Toyota Hilux.<sup>8742</sup> The Hilux did not have a hood over it and those present said it belonged to one Rwamukwaya, who had been killed.<sup>8743</sup> It was said that Ntahobali took this vehicle from one Rwamukwaya when he was killed.<sup>8744</sup>

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<sup>8731</sup> T. 30 March 2004 pp. 63, 65; T. 31 March 2004 pp. 20, 22, 64; T. 31 March 2004 p. 75 (ICS) (Witness TG).

<sup>8732</sup> T. 30 March 2004 p. 63 (Witness TG).

<sup>8733</sup> T. 30 March 2004 pp. 63-64 (Witness TG).

<sup>8734</sup> T. 30 March 2004 pp. 69-70; T. 31 March 2004 pp. 49-50 (ICS) (Witness TG).

<sup>8735</sup> T. 30 March 2004 pp. 63, 70; T. 31 March 2004 pp. 49-50 (ICS) (Witness TG).

<sup>8736</sup> T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>8737</sup> T. 28 May 2002 p. 112 (Witness SJ).

<sup>8738</sup> T. 29 May 2002 pp. 19-20 (Witness SJ).

<sup>8739</sup> T. 29 May 2002 pp. 20-21; T. 29 May 2002 p. 22 (Witness SJ) (French) (only the French version mentions the number (10) of *Interahamwe*).

<sup>8740</sup> T. 30 May 2002 p. 150 (Witness SJ).

<sup>8741</sup> T. 14 October 2002 p. 8 (Witness SU).

<sup>8742</sup> T. 14 October 2002 pp. 30-31 (Witness SU).

<sup>8743</sup> T. 14 October 2002 p. 31 (Witness SU).

<sup>8744</sup> T. 14 October 2002 p. 37; T. 17 October 2002 p. 26 (Witness SU).

### Prosecution Witness QCB

3173. Witness QCB arrived at the roadblock close to Hotel Ihuliro on the morning of 21 April 1994, with Léopold Ruvurajabo, a Tutsi.<sup>8745</sup> From a distance of approximately nine metres, the witness saw Ntahobali at the roadblock.<sup>8746</sup> Ntahobali was holding the door of a Peugeot 505 carrying grenades and a Kalashnikov.<sup>8747</sup> The Peugeot 505 had civilian number plates.<sup>8748</sup> The witness specified that this Peugeot was a different vehicle from Ntahobali's father's white Peugeot 504.<sup>8749</sup>

### Prosecution Expert Witness André Guichaoua

3174. André Guichaoua's Expert Report made reference to the arrival of the Ntahobali family at Bukavu on 18 July 1994, with a fleet of heavily laden vehicles, including a Peugeot 504 driven by Ntahobali. The Peugeot 504 had been owned by Rwamukwaya, an assassinated Tutsi businessman from Butare, whose family subsequently requested the restitution of this unduly appropriated property.<sup>8750</sup>

### Nsabimana Defence Witness Innocent Rutayisire

3175. Innocent Rutayisire, a trader,<sup>8751</sup> ran a restaurant located opposite Hotel Ibis.<sup>8752</sup> He testified that there were many pickup trucks, including Peugeot 504 pickups, in Butare town.<sup>8753</sup> When shown two Defence Exhibits of video footage shot by the BBC, he identified a white Peugeot and testified that the DGB (Coffee Pilot Project) project also had many white Peugeot 504 pickup trucks.<sup>8754</sup> The *conseiller* of Sahera, Pascal Habyarimana, also owned a white Peugeot 504 pickup.<sup>8755</sup>

### Nsabimana

3176. Nsabimana testified that there were a number of Peugeot 504 vehicles in Butare town at the time.<sup>8756</sup> The DGB (Coffee Pilot Project), of which he was director,<sup>8757</sup> had similar Peugeot 504 vehicles which no one else in Butare had. The main difference between the two vehicles concerned the vehicle's rear: the Peugeot 504s that DGB owned were newer and their rear corner frames were straight.<sup>8758</sup> By comparison, the older Peugeot 504s, seen in town, had

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<sup>8745</sup> T. 20 March 2002 p. 61 (Witness QCB).

<sup>8746</sup> T. 20 March 2002 pp. 70-71 (Witness QCB).

<sup>8747</sup> T. 20 March 2002 pp. 70, 72-73 (Witness QCB).

<sup>8748</sup> T. 25 March 2002 p. 61 (ICS) (Witness QCB).

<sup>8749</sup> T. 25 March 2002 pp. 60-61, 65 (ICS) (Witness QCB).

<sup>8750</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45; T. 30 June 2004 p. 32 (Guichaoua).

<sup>8751</sup> T. 2 October 2006 p. 8 (Rutayisire); Prosecution Exhibit 478 (Personal Particulars).

<sup>8752</sup> T. 2 October 2006 p. 10 (Rutayisire).

<sup>8753</sup> T. 3 October 2006 p. 23 (ICS) (Rutayisire).

<sup>8754</sup> T. 3 October 2006 pp. 27, 29-30 (ICS) (Rutayisire); Defence Exhibit 477 (Nsabimana) (BBC Footage) at 25:43; Defence Exhibit 473A (Nsabimana) (BBC Footage) at 16:43.

<sup>8755</sup> T. 3 October 2006 p. 30 (ICS) (Rutayisire).

<sup>8756</sup> T. 18 October 2006 pp. 43-44 (Nsabimana).

<sup>8757</sup> T. 11 September 2006 pp. 33-34 (Nsabimana).

<sup>8758</sup> T. 18 October 2006 pp. 43-44 (Nsabimana).

rounded rear frames. Nsabimana bought himself one of the DGB-style Peugeot 504s while working with the DGB.<sup>8759</sup>

3177. In cross-examination, Nsabimana testified that he only found out about the death of Rwamukwaya during the course of these proceedings; he did not know of Rwamukwaya's death in April 1994.<sup>8760</sup>

3178. Nsabimana acknowledged that in a telephone conversation with Alison Des Forges in March 1996, he stated that he saw a disguised Peugeot 504 pickup in town owned by somebody that he knew.<sup>8761</sup> Nsabimana further testified that he saw the vehicle from behind, and one would say there was mud on it. The back part of the pickup was in a square form.<sup>8762</sup> There were two people within the front part of the cabin, and two red containers of either petrol or gas oil in the back part of the pickup.<sup>8763</sup> When he asked his driver, Manase, who it was, he learned that it was Ntahobali.<sup>8764</sup> Manase did not specify whether the driver or the passenger was Ntahobali.<sup>8765</sup>

3179. Nsabimana saw the Peugeot 504 pickup in question at the beginning of April 1994, most probably before 25 April 1994. Nsabimana was already *préfet* at the time of this sighting, and was on his way to work. Nsabimana was coming from Mbazi, and had just gone through a roadblock at Karubunda, when the Peugeot 504 was going down at high speed towards ERP, where people got petrol. Since the two cars were travelling in opposite directions, at one point the two vehicles were face to face.<sup>8766</sup>

3180. Nsabimana thought the car he saw belonged to a trader who lived in a neighbourhood towards the EER, where he believed shoes were sold. While he could not initially recall the name of the car's owner, when it was suggested to him, he agreed it was Rwamukwaya. The Peugeot 504 owned by Rwamukwaya did not have a square back; the back of that pickup had rounded corners. Nsabimana did not see Rwamukwaya after 25 April 1994.<sup>8767</sup>

3181. In cross-examination, Nsabimana testified that he was mistaken when he told Des Forges that the owner of the Peugeot 504 in which he saw Ntahobali, was Rwamukwaya. Nsabimana clarified that he actually saw Ntahobali in a Peugeot 504 with square rear frames, whereas Rwamukwaya's vehicle had rounded rear frames.<sup>8768</sup>

#### Ntahobali Defence Witness Béatrice Munyenyezi

3182. Béatrice Munyenyezi, wife of Ntahobali during the alleged events, testified that she had heard about a businessman in Butare by the name of Rwamukwaya, but had never seen

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<sup>8759</sup> T. 18 October 2006 p. 43 (Nsabimana).

<sup>8760</sup> T. 28 November 2006 p. 13 (Nsabimana).

<sup>8761</sup> Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996); T. 28 November 2006 p. 11 (Nsabimana).

<sup>8762</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>8763</sup> T. 28 November 2006 p. 13 (Nsabimana).

<sup>8764</sup> T. 28 November 2006 p. 11; T. 28 November 2006 p. 12 (Nsabimana) (French) (for spelling of "Manase").

<sup>8765</sup> T. 28 November 2006 p. 14 (Nsabimana).

<sup>8766</sup> T. 28 November 2006 pp. 11-14 (Nsabimana).

<sup>8767</sup> T. 28 November 2006 pp. 11-13 (Nsabimana).

<sup>8768</sup> T. 28 November 2006 pp. 11-13 (Nsabimana).

him in person.<sup>8769</sup> She had never seen any kind of Peugeot in Ntahobali's hands, and stated her husband did not kill Rwamukwaya. She further stated that her husband did not have to kill anyone to get a car because he could afford to buy his own car. She never saw a Peugeot 504 pickup among the convoy leaving Hotel Ihuliro during their flight from Butare on 3 July 1994.<sup>8770</sup>

#### Ntahobali Defence Witness WQMJP

3183. Witness WQMJP testified that he worked in a building located on *Avenue de l'Université*, in the proximity of Rwamukwaya's house. Therefore, he knew the Rwamukwaya family. Rwamukwaya lived in a residential building located behind the commercial building, a part of which Witness WQMJP occupied, but within the same compound.<sup>8771</sup> Witness WQMJP testified that Rwamukwaya lived with his wife, four daughters and a son called Hermann, who was over 10 years old, a young man who was probably still in secondary school. Rwamukwaya owned a white Peugeot pickup with two doors.<sup>8772</sup>

3184. Witness WQMJP worked as a sales representative selling leather items in Butare in 1994. He picked up supplies from the factory in Nyamirambo in Kigali once every two weeks, sometimes even every week.<sup>8773</sup> He arrived in Kigali to place new orders and replenish his stock of items on 6 April 1994, the day the President's plane was brought down.<sup>8774</sup> As a result of the downing of the President's plane, Witness WQMJP was unable to immediately bring the supplies he had collected in Kigali, back to Butare.<sup>8775</sup>

3185. Witness WQMJP returned to Butare three times after the downing of the President's plane in the period April to mid-May 1994.<sup>8776</sup> His second trip was around 10 May 1994.<sup>8777</sup> During this second trip back, he spoke to Rwamukwaya for about 10 minutes about his first trip,<sup>8778</sup> in the inside courtyard of the compound.<sup>8779</sup>

3186. Rwamukwaya told Witness WQMJP that the situation was difficult and that it was hard to obtain foodstuffs.<sup>8780</sup> The witness told Rwamukwaya that he had experienced difficulties moving around outside.<sup>8781</sup> This was the last time that Witness WQMJP saw Rwamukwaya.<sup>8782</sup>

3187. Witness WQMJP's third trip to Butare occurred around 19 or 20 May 1994.<sup>8783</sup> On this occasion, the witness did not go to his place of work.<sup>8784</sup> When he and a friend, Munyeshuli,

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<sup>8769</sup> T. 24 February 2006 p. 9; T. 27 February 2006 p. 18 (Béatrice Munyenyezi).

<sup>8770</sup> T. 27 February 2006 p. 18 (Béatrice Munyenyezi).

<sup>8771</sup> T. 25 January 2006 pp. 14-15 (ICS) (Witness WQMJP).

<sup>8772</sup> T. 25 January 2006 p. 37 (ICS) (Witness WQMJP).

<sup>8773</sup> T. 25 January 2006 p. 15 (ICS) (Witness WQMJP).

<sup>8774</sup> T. 25 January 2006 p. 17 (ICS) (Witness WQMJP).

<sup>8775</sup> T. 25 January 2006 p. 37 (ICS) (Witness WQMJP).

<sup>8776</sup> T. 25 January 2006 pp. 20-24 (ICS) (Witness WQMJP).

<sup>8777</sup> T. 25 January 2006 pp. 30-31 (ICS) (Witness WQMJP).

<sup>8778</sup> T. 25 January 2006 p. 23 (ICS) (Witness WQMJP).

<sup>8779</sup> T. 25 January 2006 p. 42 (ICS) (Witness WQMJP).

<sup>8780</sup> T. 25 January 2006 p. 23 (ICS) (Witness WQMJP).

<sup>8781</sup> T. 25 January 2006 p. 23 (ICS) (Witness WQMJP).

<sup>8782</sup> T. 25 January 2006 p. 28 (ICS) (Witness WQMJP).

<sup>8783</sup> T. 25 January 2006 p. 31 (ICS) (Witness WQMJP).

were on University Avenue, on their way to the town centre, they passed by Rwamukwaya's where they saw soldiers and civilians standing at the road.<sup>8785</sup> They did not stop because the witness was afraid he could be the subject of looting.<sup>8786</sup> They therefore continued down the street and instead stopped at the house of a friend named Rufuku.<sup>8787</sup> Rufuku informed Witness WQMJP that Rwamukwaya's son, Hermann, had been killed by soldiers.<sup>8788</sup> Rufuku said that Rwamukwaya himself was still alive and at his home.<sup>8789</sup>

3188. Witness WQMJP stated he did not offer his condolences to his landlord Rwamukwaya for losing his son because he would have first had to open up his own place of work in order to get to Rwamukwaya's house. As there was a lot of looting going on, Witness WQMJP was afraid that his shop would become the subject of looting, and consequently he did not even consider going to Rwamukwaya's house. In cross-examination by the Prosecution, Witness WQMJP testified that he was unaware that Rwamukwaya himself and his family had been killed – he was told that Hermann had been killed by soldiers, but Rwamukwaya was still alive. He testified that he only learning at the time of his testimony of the death of the Rwamukwaya family. The witness subsequently stated that he learned of Rwamukwaya's death when he arrived in Canada. He first testified that the wife of Sokode Gakwaya had told him, and then stated that it was Sokode's daughter, Honorine Gakwaya, who told him of his landlord's death.<sup>8790</sup>

### Ntahobali

3189. Ntahobali testified that he never attacked any members of the Rwamukwaya family.<sup>8791</sup> According to Ntahobali, Rwamukwaya was killed by his business colleagues, because he had a carpentry workshop and there was competition between him and his collaborators or associates.<sup>8792</sup> Ntahobali denied that Venant Gakwaya, alias Sekode Gakwaya, intervened to prevent the Accused from killing Rwamukwaya, his wife and six children who were neighbours of Mr. Gakwaya.<sup>8793</sup> He testified that he knew nothing about the claim that Rwamukwaya and his family were subsequently killed the night after Mr. Gakwaya's alleged intervention.<sup>8794</sup>

3190. Since Rwamukwaya was Ntahobali's neighbour, Ntahobali saw Rwamukwaya's cars and he believed Rwamukwaya owned more than one vehicle.<sup>8795</sup> Ntahobali testified he had never been in Rwamukwaya's vehicle.<sup>8796</sup> There was no Peugeot 504 pickup vehicle that allegedly belonged to Rwamukwaya in the convoy which left Hotel Ihuliro on 3 July 1994.<sup>8797</sup>

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<sup>8784</sup> T. 25 January 2006 p. 23 (ICS) (Witness WQMJP).

<sup>8785</sup> T. 25 January 2006 pp. 23-24 (ICS) (Witness WQMJP).

<sup>8786</sup> T. 25 January 2006 p. 24 (ICS) (Witness WQMJP).

<sup>8787</sup> T. 25 January 2006 p. 24 (ICS) (Witness WQMJP).

<sup>8788</sup> T. 25 January 2006 pp. 24, 28 (ICS) (Witness WQMJP).

<sup>8789</sup> T. 25 January 2006 p. 28 (ICS) (Witness WQMJP).

<sup>8790</sup> T. 25 January 2006 pp. 38-40 (ICS) (Witness WQMJP).

<sup>8791</sup> T. 2 May 2006 p. 32; T. 22 June 2006 pp. 41-42 (Ntahobali).

<sup>8792</sup> T. 22 June 2006 pp. 41-42 (Ntahobali).

<sup>8793</sup> T. 29 May 2006 p. 17 (Ntahobali).

<sup>8794</sup> T. 29 May 2006 p. 17 (Ntahobali).

<sup>8795</sup> T. 27 April 2006 p. 52 (Ntahobali).

<sup>8796</sup> T. 27 April 2006 p. 52 (Ntahobali).

<sup>8797</sup> T. 26 April 2006 p. 48 (Ntahobali).

With respect to the allegation of stealing Rwamukwaya's vehicle and using it to convey Tutsis, Ntahobali testified that he did not know how to drive a vehicle.<sup>8798</sup>

Nyiramasuhuko

3191. Nyiramasuhuko denied that her family owned a white Peugeot pickup 504 which was driven by her son, Ntahobali, and was said to have belonged to one Rwamukwaya Gaeten.<sup>8799</sup>

Kanyabashi Defence Witness D-2-13-O

3192. Witness D-2-13-O, a driver from Gishamvu,<sup>8800</sup> testified that in April 1994 he saw six corpses below the IRST roadblock.<sup>8801</sup> Although unable to give a precise date, he saw the corpses approximately one week after he went to take care of his injured nephew, Théophile, which he did two or three days after the killings in Butare started, around 20 April 1994.<sup>8802</sup> Witness D-2-13-O identified the corpses at the IRST roadblock as belonging to the family of Rwamukwaya, a Butare businessman who owned a shop that was on the road leading to the University, opposite the Protestant school, between the school and the church, and below Mironko's house.<sup>8803</sup>

3193. Witness D-2-13-O clarified that the corpses were in a pit approximately 10 metres from the road, below the roadblock, alongside the fence separating the IRST and the university laboratory.<sup>8804</sup> The witness was going from his house to the hospital when he saw the corpses.<sup>8805</sup>

3194. The witness knew Rwamukwaya's wife, Jeanne, who worked in Rwamukwaya's shop selling sandals because she came from his home *secteur*; but he did not personally know Rwamukwaya's children.<sup>8806</sup>

3195. The witness knew Rwamukwaya owned a Peugeot because Butare was a small town, and everyone knew who owned what.<sup>8807</sup> After seeing the corpses of the Rwamukwaya family, Witness D-2-13-O saw the vehicle in question more than once in the period between April and July 1994, and stated it was a vehicle in which Shalom, the son of "popular person" Maurice Ntahobali, moved about.<sup>8808</sup> The witness saw Ntahobali personally driving the Peugeot 504 in

<sup>8798</sup> T. 22 June 2006 pp. 42-43 (Ntahobali).

<sup>8799</sup> T. 16 November 2005 pp. 57-58 (Nyiramasuhuko).

<sup>8800</sup> T. 5 November 2007 pp. 9-10 (Witness D-2-13-O); Defence Exhibit 600 (Kanyabashi) (Personal Particulars).

<sup>8801</sup> T. 5 November 2007 pp. 57-58 (Witness D-2-13-O).

<sup>8802</sup> T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O).

<sup>8803</sup> T. 5 November 2007 pp. 57-58 (Witness D-2-13-O).

<sup>8804</sup> T. 8 November 2007 p. 57 (ICS) (Witness D-2-13-O); Defence Exhibit 601 (Ntahobali) (Sketch Map). The Chamber notes that the Index to the English transcript for 8 November 2007 states that "Witness D-10-13-0" gave evidence in cross-examination on the day in question. Noting there is no Witness D-10-13-0 in the current proceedings, and having regard to the testimony of Witness D-2-13-O on the preceding and subsequent days, and the French transcript for 8 November 2007, the Chamber is of the view the English transcript intends to make reference to Witness D-2-13-O, and ascribes the testimony given on this day to this witness.

<sup>8805</sup> T. 8 November 2007 p. 25 (ICS) (Witness D-2-13-O).

<sup>8806</sup> T. 5 November 2007 p. i (Extract); T. 5 November 2007 p. 58; T. 5 November 2007 p. 68 (French) (for spelling of "Jeanne"); T. 8 November 2007 p. 24 (ICS) (Witness D-2-13-O).

<sup>8807</sup> T. 5 November 2007 p. 59 (Witness D-2-13-O).

<sup>8808</sup> T. 5 November 2007 pp. 59-60 (Witness D-2-13-O).

question on several occasions during the period the witness' wife was in the hospital, namely a few days before 20 April 1994, when he brought his wife to the hospital and in May 1994 when they left.<sup>8809</sup>

3196. The witness did not know the registration number of Rwamukwaya's Peugeot 504 and was not aware if Rwamukwaya may also have owned a Toyota Hilux. The only vehicle the witness associated with Rwamukwaya was a Peugeot 504.<sup>8810</sup>

#### Kanyabashi Defence Witness D-13-D

3197. Witness D-13-D, a Hutu driver,<sup>8811</sup> testified that Rwamukwaya used to sell shoes on the road leading from downtown to the university, opposite the Protestant school known as the EER. After he resumed his work at the end of April to early May 1994, the witness did not see Rwamukwaya again.<sup>8812</sup>

3198. Witness D-13-D saw Ntahobali on numerous occasions when the witness drove his car through Butare town between April and July 1994. He saw Ntahobali moving about Butare town driving a Peugeot 504 pickup that belonged to Rwamukwaya. The vehicle was like the Peugeot 504 the witness drove, except it was covered with "fat" combined with dust, which gave it a camouflage colour. He knew the vehicle belonged to Rwamukwaya because he recognised it. Being also "very keen on vehicles", the witness always remembered the cars of his acquaintances.<sup>8813</sup>

3199. Witness D-13-D agreed with the Ntahobali Defence's proposition, that there were many Peugeot cars in Butare town in 1994 and confirmed that a certain Pierre Nsonera also owned a Peugeot 504 at that time.<sup>8814</sup>

#### Kanyabashi Defence Witness D-2-14-W

3200. Witness D-2-14-W, a Hutu teacher,<sup>8815</sup> testified that he was told that Ntahobali was involved in the acts of violence which led to the death of Rwamukwaya, a Tutsi businessman operating a shoe shop in Butare town. He learned this information between April and July 1994. He could no longer remember who told him, although many people talked about that incident at the time, namely the male adults in his neighbourhood.<sup>8816</sup>

3201. Witness D-2-14-W heard that Ntahobali had seized Rwamukwaya's vehicle after his death.<sup>8817</sup>

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<sup>8809</sup> T. 5 November 2007 pp. 37-39 (ICS); T. 12 November 2007 p. 53 (Witness D-2-13-O).

<sup>8810</sup> T. 8 November 2007 p. 27 (ICS) (Witness D-2-13-O).

<sup>8811</sup> T. 14 February 2008 p. 31 (Witness D-13-D); Defence Exhibit 627 (Kanyabashi) (Personal Particulars).

<sup>8812</sup> T. 14 February 2008 p. 65 (Witness D-13-D).

<sup>8813</sup> T. 14 February 2008 pp. 64-65 (Witness D-13-D).

<sup>8814</sup> T. 20 February 2008 pp. 27-28 (ICS) (Witness D-13-D).

<sup>8815</sup> T. 11 February 2008 pp. 7, 9 (ICS) (Witness D-2-14-W); Defence Exhibit 626 (Kanyabashi) (Personal Particulars).

<sup>8816</sup> T. 13 February 2008 pp. 50-51 (Witness D-2-14-W).

<sup>8817</sup> T. 13 February 2008 p. 50 (Witness D-2-14-W).



### 3.6.24.4 Deliberations

3202. It is not contested that Rwamukwaya was killed.<sup>8818</sup> Ntahobali acknowledged this in his testimony.<sup>8819</sup> The issues for the Chamber to determine are: whether the other members of the Rwamukwaya family were also killed and whether Ntahobali played a role in this killing.

#### *Killing of the Rwamukwaya Family*

3203. Witness FA testified to hearing Ntahobali tell Kazungu, “[w]e have to go and kill, and we have to start with the Rwamukwaya family.”<sup>8820</sup> She testified that the Rwamukwaya family died on the day that Ntahobali told Kazungu that they had to go kill, starting with the Rwamukwaya family, and that Kazungu told her that the family members died.<sup>8821</sup>

3204. The Chamber notes some credibility issues concerning Witness FA. In cross-examination, Witness FA confirmed that she did not make reference in her previous written statement to the death of the Rwamukwaya family, nor did she mention that Kazungu returned from the Rwamukwaya home with their clothes for his wife.<sup>8822</sup> The Chamber considers that the failure of Witness FA to refer specifically to the death of Rwamukwaya’s family in her statement, as opposed to only Mr. Rwamukwaya, does not of itself cast doubt on Witness FA’s credibility as to the deaths. Witness FA explained that she did not mention the death of the Rwamukwaya family because she tried to be brief in her statement.<sup>8823</sup> The Chamber finds this to be a plausible and believable explanation.

3205. The Chamber also observes that Witness FA was not an eyewitness to the death of the Rwamukwaya family, and her conclusion that the Rwamukwaya family was dead is based on hearsay. Nevertheless, the Chamber observes that Witness FA’s account is corroborated by the testimony of Prosecution Witnesses TQ, SU and Guichaoua, Nsabimana, Ntahobali Defence Witness WQMJP, Ntahobali, Kanyabashi Defence Witnesses D-2-13-O, D-2-14-W and D-13-D.<sup>8824</sup>

3206. Witness TQ testified that a man named Rwamukwaya was killed during the genocide.<sup>8825</sup> Witnesses SU and D-2-14-W testified to people speaking of the killing of Rwamukwaya.<sup>8826</sup> Witness D-2-13-O testified to identifying six corpses below the IRST

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<sup>8818</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA); T. 9 September 2004 p. 33 (ICS) (Witness TQ); T. 14 October 2002 p. 31 (Witness SU); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45; T. 30 June 2004 p. 32 (Guichaoua); T. 28 November 2006 p. 13 (Nsabimana); T. 25 January 2006 p. 39 (ICS) (Witness WQMJP); T. 5 November 2007 pp. 57-58 (Witness D-2-13-O); T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O); T. 13 February 2008 p. 50 (Witness D-2-14-W).

<sup>8819</sup> T. 22 June 2006 pp. 41-42 (Ntahobali).

<sup>8820</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA).

<sup>8821</sup> T. 30 June 2004 p. 60 (ICS); T. 1 July 2004 pp. 45-46 (Witness FA).

<sup>8822</sup> T. 1 July 2004 p. 46 (Witness FA) (referring to Witness FA’s 26 November 1996 statement).

<sup>8823</sup> T. 1 July 2004 p. 46 (Witness FA).

<sup>8824</sup> T. 9 September 2004 p. 33 (ICS) (Witness TQ); T. 14 October 2002 p. 31 (Witness SU); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45; T. 30 June 2004 p. 32 (Guichaoua); T. 28 November 2006 p. 13 (Nsabimana); T. 25 January 2006 pp. 24, 28, 39-40 (ICS) (Witness WQMJP); T. 29 May 2006 p. 17 (Ntahobali); T. 22 June 2006 pp. 41-42 (Ntahobali); T. 5 November 2007 pp. 57-58 (Witness D-2-13-O); T. 13 February 2008 p. 50 (Witness D-2-14-W).

<sup>8825</sup> T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>8826</sup> T. 14 October 2002 p. 31 (Witness SU); T. 13 February 2008 p. 50 (Witness D-2-14-W).

roadblock as belonging to the family of Rwamukwaya in April 1994, approximately nine days after the killings in Butare started, around 20 April 1994.<sup>8827</sup> The Chamber observes the witness knew Rwamukwaya and his wife Jeanne by name.<sup>8828</sup> Although the Chamber notes that the evidence of Prosecution Witness SU and Defence Witness D-2-14-W is hearsay, it considers their account consistent with the testimony of Witnesses FA, TQ and D-2-13-O. Guichaoua also described Rwamukwaya as an assassinated Tutsi businessman from Butare.<sup>8829</sup>

3207. Witness WQMJP testified to an encounter with Rwamukwaya on the occasion of his second trip to Butare, and finding out about the death of Rwamukwaya's son on his third trip to Butare.<sup>8830</sup> The Chamber considers that Witness WQMJP's evidence with respect to his knowledge of Rwamukwaya was detailed and internally consistent upon cross-examination. With respect to the death of the Rwamukwaya family, the Chamber recalls that Witness WQMJP testified to conversing with Rwamukwaya during his second trip to Butare, around 10 May 1994 and that around 19 or 20 May 1994, the time of his third trip to Butare, Rufuku informed him that Rwamukwaya's son, Hermann, had been killed by soldiers, but that Rwamukwaya himself was still alive and at his home.<sup>8831</sup> The Chamber notes that Witness WQMJP's conclusion that Rwamukwaya was alive is based on hearsay. When weighed against the combined corroborative testimony of Prosecution Witnesses FA, SU, TQ, Guichaoua, Kanyabashi Defence Witnesses D-2-13-O, D-2-14-W and D-13-D, the Chamber considers it does not raise a reasonable doubt as to Rwamukwaya's death. In light of the foregoing, the Chamber finds that the Prosecution has established beyond a reasonable doubt that Rwamukwaya and his family were killed.

#### *Ntahobali's Role*

3208. The Chamber notes that Ntahobali and his wife, Béatrice Munyenyezi, testified that he had malaria and was convalescing at the Hotel Ihuliro for an entire week around the end of April and beginning of May 1994.<sup>8832</sup> For the reasons set out in the Hotel Ihuliro roadblock section of this Judgement the Chamber does not find this alibi evidence to be credible ().

3209. Witness FA testified to several killings which occurred at the roadblock outside Hotel Ihuliro, from April 1994 until June 1994.<sup>8833</sup> Witness FA did not give any dates as to when she heard Ntahobali's spoken threat to kill the Rwamukwaya family, or when the Rwamukwaya family died, but stated the latter event occurred on the day Ntahobali told Kazungu that they had to go kill, starting with the Rwamukwaya family.<sup>8834</sup>

3210. Defence Witness D-2-13-O estimated he identified six corpses as belonging to the Rwamukwaya family,<sup>8835</sup> approximately one week after he took care of his nephew. This was

<sup>8827</sup> T. 5 November 2007 pp. 57-58; T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O).

<sup>8828</sup> T. 5 November 2007 p. 58; T. 5 November 2007 p. 68 (Witness D-2-13-O) (French) (for spelling of "Jeanne").

<sup>8829</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45.

<sup>8830</sup> T. 25 January 2006 pp. 23-24, 28 (ICS) (Witness WQMJP).

<sup>8831</sup> T. 25 January 2006 pp. 23-24, 28, 31 (ICS) (Witness WQMJP).

<sup>8832</sup> T. 27 February 2006 p. 8 (Béatrice Munyenyezi); T. 25 April 2006 p. 35 (Ntahobali).

<sup>8833</sup> T. 30 June 2004 p. 53 (ICS) (Witness FA).

<sup>8834</sup> T. 30 June 2004 p. 60 (ICS) (Witness FA).

<sup>8835</sup> T. 5 November 2007 pp. 57-58 (Witness D-2-13-O).

two or three days after the killings in Butare started, on 20 April 1994.<sup>8836</sup> Based on his testimony, the Chamber concludes his sighting occurred on 29 or 30 April 1994. This is consistent with Witness FA's evidence as to the timing of the establishment of the roadblock, and with the Chamber's previous finding that a roadblock was erected near Hotel Ihuliro by the end of April 1994 (). Further, Witness FA testified that she saw Ntahobali and Kazungu talking about the killing of the Rwamukwaya family at that roadblock.<sup>8837</sup> In these circumstances, the Chamber finds Witness FA's account on this issue credible, and estimates the threat to kill the Rwamukwaya family occurred towards the end of April 1994.

3211. No witness testified as to personally seeing the killing of the Rwamukwaya family. Apart from Witness FA's evidence concerning Ntahobali's threat, only Witness D-2-14-W testified as to being told that Ntahobali was involved in the acts of violence which led to the death of Rwamukwaya and that everyone was talking about this between April and July 1994.<sup>8838</sup> Witnesses SU, TQ and D-2-13-O do not link his death to Ntahobali. Witness D-13-D refers to Ntahobali being an evil-doer, but does not attribute responsibility for the Rwamukwaya family's deaths to Ntahobali. As such, little direct evidence supports the allegation that Ntahobali was responsible for the deaths of the Rwamukwaya family.

3212. Nevertheless, significant circumstantial evidence supports the Prosecution case.<sup>8839</sup> In particular, the Chamber recalls that Witness FA heard Ntahobali announce his intention to kill the Rwamukwaya family sometime in April 1994, and that Witness D-2-13-O saw their six corpses around 29 or 30 April 1994.<sup>8840</sup>

3213. Furthermore, the Chamber has considered the evidence of numerous witnesses who testified to seeing Ntahobali in possession of Rwamukwaya's vehicle. Prosecution Witnesses TG, TQ, Guichaoua, Kanyabashi Defence Witnesses D-2-13-O, D-13-D and Nsabimana all testified that Rwamukwaya owned a Peugeot 504 pickup.<sup>8841</sup> Prosecution Witnesses TG, SS, TQ, Guichaoua and Kanyabashi Defence Witness D-2-13-O also testified to subsequently seeing or hearing of Ntahobali's use of Rwamukwaya's Peugeot 504.<sup>8842</sup> Witness TG testified he often saw Ntahobali passing on the main road in Rwamukwaya's Peugeot 504, during the

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<sup>8836</sup> T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O).

<sup>8837</sup> T. 30 June 2004 pp. 57-58 (ICS) (Witness FA).

<sup>8838</sup> T. 13 February 2008 p. 50 (Witness D-2-14-W).

<sup>8839</sup> See *Seromba*, Judgement (AC), para. 221; *Nahimana et al.*, Judgement (AC), para. 524; *Ntagerura et al.*, Judgement (AC), paras. 304, 306; *Delalić et al.*, Judgement (AC), para. 458 (Chamber may draw inferences from circumstantial evidence. In order to do so the inference drawn must be the only reasonable conclusion based on the totality of the evidence); *Ntagerura et al.*, Judgement (AC), para. 306 (if there is another conclusion which is also reasonably open from that evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond a reasonable doubt cannot be drawn, and the accused must be acquitted).

<sup>8840</sup> T. 30 June 2004 pp. 57-58, 60 (ICS) (Witness FA); T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O).

<sup>8841</sup> T. 30 March 2004 pp. 63-64 (Witness TG); T. 9 September 2004 p. 33 (ICS) (Witness TQ); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45; T. 30 June 2004 p. 32 (Guichaoua); T. 5 November 2007 p. 59 (Witness D-2-13-O); T. 5 November pp. 37-39 (ICS) (Witness D-2-13-O); T. 8 November 2007 p. 27 (ICS) (Witness D-2-13-O); T. 12 November 2007 p. 53 (Witness D-2-13-O); T. 13 February 2008 p. 51 (Witness D-13-D); T. 14 February 2008 p. 65 (Witness D-13-D); T. 28 November 2006 p. 11 (Nsabimana).

<sup>8842</sup> T. 30 March 2004 pp. 63-64 (Witness TG); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45; T. 3 March 2003 pp. 48-49 (Witness SS); T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ); T. 5 November 2007 pp. 59-60 (Witness D-2-13-O).

time he was hiding at a compound, between 26 April 1994 and 2 July 1994.<sup>8843</sup> Witnesses SS and SU placed Nyiramasuhuko and Ntahobali in a vehicle which people said belonged to Rwamukwaya, at the Butare *préfecture* office around 27 and 28 May 1994.<sup>8844</sup> Guichaoua similarly placed Ntahobali in possession of a Peugeot 504 belonging to the deceased Rwamukwaya as of 18 July 1994.<sup>8845</sup> Witness TQ stated that Ntahobali was driving Rwamukwaya's Peugeot 504, in June 1994.<sup>8846</sup> Witness D-2-13-O stated that he saw Ntahobali personally driving Rwamukwaya's Peugeot 504 on several occasions between the end of April and the end of May 1994.<sup>8847</sup> Witness D-13-D testified that he also saw Ntahobali on numerous occasions between the end of April and July 1994, moving about Butare town in a Peugeot 504 pickup that belonged to Rwamukwaya.<sup>8848</sup>

3214. Nsabimana also testified to seeing Ntahobali in a Peugeot 504 in April 1994.<sup>8849</sup> Nsabimana stated his sighting could easily have been before 25 April 1994.<sup>8850</sup> In a telephone conversation with Alison Des Forges in March 1996, Nsabimana stated that he saw a disguised Peugeot 504 pickup in town owned by somebody that he knew.<sup>8851</sup> Nsabimana thought the car in question belonged to a trader who lived in a neighbourhood towards the EER where he believed shoes were sold.<sup>8852</sup> While he could not initially recall the name of the car's owner, when it was suggested to him, he agreed it was Rwamukwaya.<sup>8853</sup> Further, Nsabimana's driver told him Ntahobali was driving the car.<sup>8854</sup> In contrast, at trial Nsabimana testified he was mistaken when he told Des Forges he saw Ntahobali driving Rwamukwaya's vehicle, but stated that he actually saw Ntahobali in a different Peugeot 504.<sup>8855</sup> The Chamber considers that while Nsabimana does not stand to benefit directly from claiming to have mistakenly identified Ntahobali, he may nevertheless have departed from his prior statement in an attempt to protect Ntahobali. Further, in light of the consistency among the above-mentioned testimonies, the Chamber is satisfied that the Peugeot 504 in which Nsabimana saw Ntahobali is the one belonging to Rwamukwaya.

3215. In light of all the foregoing, the Chamber notes that the sightings of Ntahobali with Rwamukwaya's vehicle occurred parallel to or shortly after the time when the Rwamukwaya family was allegedly killed.<sup>8856</sup> In the Chamber's view, the proximity between the killing of the Rwamukwaya family and the sightings of Ntahobali in Rwamukwaya's vehicle establishes a link between the killing and the circumstances in which Ntahobali came into possession of the vehicle.

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<sup>8843</sup> T. 30 March 2004 pp. 63, 65; T. 31 March 2004 pp. 20, 22, 64; T. 31 March 2004 p. 75 (ICS) (Witness TG).

<sup>8844</sup> T. 3 March 2003 pp. 48-49 (Witness SS); T. 14 October 2002 pp. 8, 31 (Witness SU).

<sup>8845</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 32, fn. 45.

<sup>8846</sup> T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>8847</sup> T. 5 November 2007 pp. 59-60; T. 5 November 2007 pp. 37-39 (ICS) (Witness D-2-13-O).

<sup>8848</sup> T. 14 February 2008 pp. 64-65 (Witness D-13-D).

<sup>8849</sup> T. 28 November 2006 p. 12 (Nsabimana).

<sup>8850</sup> T. 28 November 2006 p. 12 (Nsabimana).

<sup>8851</sup> T. 28 November 2006 p. 11 (Nsabimana); Prosecution Exhibit 185 (Telephone conversation between Des Forges and Nsabimana, March 1996).

<sup>8852</sup> T. 28 November 2006 pp. 11-12 (Nsabimana).

<sup>8853</sup> T. 28 November 2006 pp. 11-12 (Nsabimana).

<sup>8854</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>8855</sup> T. 28 November 2006 p. 11 (Nsabimana).

<sup>8856</sup> T. 5 November 2007 pp. 57-60 (Witness D-2-13-O); T. 30 June 2004 p. 60 (ICS) (Witness FA).

3216. The Chamber notes that in testifying that they saw Ntahobali in the vehicle which belonged to the recently deceased Rwamukwaya family, Kanyabashi Defence witnesses may have had a motive to deflect liability from Kanyabashi. The Chamber thus treats their evidence with appropriate caution. Nevertheless, in light of all the other evidence before it, the Chamber considers that Witness D-2-13-O's account in this particular instance was reliable and finds him credible for the present purposes.

3217. The Chamber further observes that, in rebuttal to the Prosecution's case, Ntahobali testified that he does not know how to drive a vehicle.<sup>8857</sup> The Chamber has previously addressed Ntahobali's claim that he is unable to drive, in its consideration of allegations arising from certain events which took place at the BPO. In that context, the Chamber has found that Ntahobali's defence was based on testimony lacking credibility and therefore did not raise a reasonable doubt as to whether he drove a white pickup vehicle to the BPO ().

3218. The Defence otherwise led evidence through three witnesses, namely Nsabimana, Nsabimana Defence Witness Rutayisire and Kanyabashi Defence Witness D-13-D, that there were many Peugeot cars in Butare town in 1994, thereby raising the possibility that the witnesses did not see Ntahobali in the vehicle belonging to Rwamukwaya.<sup>8858</sup> Even accepting the evidence of the Defence as to the popularity of this vehicle in Butare town in 1994, in the circumstances and in light of the totality of the evidence, the Chamber is of the view that the evidence led by the Ntahobali Defence does not raise a reasonable doubt as to the allegation concerning Ntahobali's involvement in the killing of the Rwamukwaya family and in the looting of their vehicle.

3219. The Chamber considers that Witness FA heard Ntahobali announce his intention to kill the Rwamukwaya family sometime in April 1994.<sup>8859</sup> Furthermore, Witness D-2-13-O estimated seeing the six corpses of the Rwamukwaya family around 29 or 30 April 1994.<sup>8860</sup> Subsequently, as set out above, numerous witnesses testified to seeing Ntahobali in Rwamukwaya's Peugeot. Given the narrow time frames involved between Ntahobali's threat pronounced against the Rwamukwaya family, the sighting of their bodies, and the first sightings of Ntahobali in a vehicle known to have belonged to Rwamukwaya, the Chamber is of the view that the inference drawn as to Ntahobali's responsibility in the killing of the Rwamukwaya family is the only reasonable conclusion based on the totality of the evidence.<sup>8861</sup> Therefore, the Chamber finds the Prosecution has proven beyond a reasonable doubt that Ntahobali is responsible for killing the Rwamukwaya family, on or about 29 or 30 April 1994.

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<sup>8857</sup> T. 22 June 2006 pp. 42-43 (Ntahobali).

<sup>8858</sup> T. 18 October 2006 pp. 43-44 (Nsabimana); T. 3 October 2006 p. 23 (ICS) (Rutayisire); T. 20 February 2008 pp. 27-28 (ICS) (Witness D-13-D).

<sup>8859</sup> T. 30 June 2004 pp. 57-58, 60 (ICS) (Witness FA).

<sup>8860</sup> T. 8 November 2007 pp. 23-24 (ICS) (Witness D-2-13-O).

<sup>8861</sup> *Seromba*, Judgement (AC), para. 221; *Nahimana et al.*, Judgement (AC), para. 524; *Ntagerura et al.*, Judgement (AC), paras. 304, 306; *Delalić et al.*, Judgement (AC), para. 458.

### 3.6.25 Actions at Roadblocks – Kanyabashi and Ndayambaje, April 1994

#### 3.6.25.1 Introduction

3220. Paragraph 6.45 of the Kanyabashi Indictment alleges that on several occasions between 20 April and June 1994, Kanyabashi encouraged and instructed soldiers, militiamen and certain members of the civilian population to search for Tutsis who had escaped the massacres, in order to exterminate them. These instructions were given notably on 21 April in Butare, in late April in Save, and in June 1994 near Butare.<sup>8862</sup>

3221. Paragraph 5.8 of the Ndayambaje Indictment alleges that from April to July 1994, incitement to hatred and violence was propagated by various prominent persons, including members of the Government and local authorities. Ndayambaje and others publicly incited the people to exterminate the Tutsi population and its “accomplices.”<sup>8863</sup> The Indictment also alleges that in June 1994, Ndayambaje incited the population to kill Tutsis.<sup>8864</sup>

3222. All of the Indictments further allege that on 27 April 1994, the Interim Government ordered that roadblocks be set up, knowing that they were being used to identify the Tutsis and their “accomplices” for the purpose of eliminating them.<sup>8865</sup>

3223. The Prosecution submits that Kanyabashi and Ndayambaje knew of the plan to use roadblocks to control people’s movements and to capture and kill Tutsis.<sup>8866</sup> It asserts that Kanyabashi and Ndayambaje were instrumental in ensuring that persons at the roadblocks understood their role and implemented the plan.<sup>8867</sup> It further submits that Kanyabashi reminded persons manning roadblocks to be careful and ensure that no enemy went through.<sup>8868</sup> As to its case against Kanyabashi, the Prosecution relies on the testimony of Witnesses TA, FAM and QJ.<sup>8869</sup> Witness RK also testified as to Kanyabashi’s involvement at a roadblock in Save.<sup>8870</sup> As to its case against Ndayambaje, the Prosecution relies on the testimony of Witness FAU.<sup>8871</sup> Witness FAL also testified as to Ndayambaje’s ordering the erection of roadblocks in Bishya.<sup>8872</sup>

3224. Apart from the preliminary issues considered below, the Kanyabashi Defence asserts that there is no credible evidence to indicate that Kanyabashi was responsible for setting up roadblocks where Tutsis were allegedly murdered.<sup>8873</sup>

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<sup>8862</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>8863</sup> Para. 5.8 of the Ndayambaje Indictment (in support of all counts).

<sup>8864</sup> Para. 6.33 of the Ndayambaje Indictment (in support all counts).

<sup>8865</sup> Para. 6.15 of all the Indictments (not in support of counts against any of the Accused).

<sup>8866</sup> Prosecution Closing Brief, pp. 392, 401-402, 406-408, paras. 24, 57-61, 78, 83-84; pp. 462, 465, paras. 47, 56-57.

<sup>8867</sup> Prosecution Closing Brief, p. 401, para. 57; p. 462, para. 49.

<sup>8868</sup> Prosecution Closing Brief, p. 406, para. 78.

<sup>8869</sup> Prosecution Closing Brief, pp. 401-402, paras. 58-60.

<sup>8870</sup> Prosecution Pre-Trial Brief – Appendix; Witness RK (69).

<sup>8871</sup> Prosecution Closing Brief, pp. 463, 465, paras. 50, 56-57.

<sup>8872</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAL (24).

<sup>8873</sup> Kanyabashi Closing Brief, paras. 70-93.

3225. The Ndayambaje Defence questions the credibility of the Prosecution witnesses who testified that Ndayambaje ordered that roadblocks be erected or asked those manning the roadblocks to hunt down Tutsis.<sup>8874</sup>

### 3.6.25.2 Preliminary Issues

#### *Kanyabashi Indictment*

3226. The Kanyabashi Defence asserts that Kanyabashi was not charged with criminal conduct at roadblocks and that the issue of roadblocks was not mentioned in any paragraph of the Kanyabashi Indictment in support of counts.<sup>8875</sup>

3227. The Chamber recalls the principle set forth in the Preliminary Issues section of this Judgement, that the omission of a count or charge from an indictment cannot be cured (). The Chamber notes that Paragraph 6.15 of the Kanyabashi Indictment alleging the Interim Government's involvement in the setting up of roadblocks to search for and kill Tutsis was not pled in support of any counts. In any event, this Paragraph does not name Kanyabashi and does not indicate that he was responsible for ordering roadblocks or inciting those persons who manned the roadblocks.<sup>8876</sup>

3228. However, the Chamber notes that Paragraph 6.45 of the Kanyabashi Indictment, which was pled in support of Counts 1-9 against Kanyabashi, asserts that Kanyabashi encouraged and instructed soldiers, militiamen, and certain civilians to search for and exterminate Tutsis who had escaped. It provides that Kanyabashi gave these instructions notably on 21 April in Butare, in late April in Save, and in June 1994 near Butare.<sup>8877</sup> The alleged purpose of roadblocks – to search for and exterminate Tutsis – was alleged in that paragraph. Nonetheless, the Prosecution did not include an assertion that roadblocks were a location where instructions were given to search out Tutsis. For this reason, the Chamber finds Paragraph 6.45 to be defective.

3229. The Chamber has reviewed the Prosecution Pre-Trial Brief and prior witness statements disclosed to the Defence. Witness RK's witness summary in the Appendix to the Prosecution Pre-Trial Brief states that Kanyabashi came to a roadblock at Save with one soldier, spoke to a group of about 10 people saying there were people whose bodies had not been found, including a specific person whom Kanyabashi wanted found. It also states that Kanyabashi said that anyone who found these bodies would be rewarded.<sup>8878</sup>

3230. Furthermore, Witness RK's unredacted statement of 19 June 1995, disclosed on 14 December 2001, repeats that Witness RK saw Kanyabashi at Save market in April 1994. It names the person Kanyabashi was looking for and provides that the witness hid the person in his home.<sup>8879</sup> Witness RK's statement of 4 July 1996, disclosed on 12 February 2002, also

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<sup>8874</sup> Ndayambaje Closing Brief, paras. 954-967.

<sup>8875</sup> Kanyabashi Closing Brief, paras. 45-46.

<sup>8876</sup> Para. 6.15 of the Kanyabashi Indictment (not in support of counts).

<sup>8877</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>8878</sup> Prosecution Pre-Trial Brief – Appendix; Witness RK (69).

<sup>8879</sup> 19 June 1995, Statement of Witness RK, disclosed 14 December 2001.

named the person allegedly sought by Kanyabashi, and provides that Kanyabashi came to one of the Save roadblocks in his white Peugeot and offered a reward.<sup>8880</sup>

3231. The Chamber notes Witness RK testified starting on 15 April 2004, over 2 years after the disclosure of the above-mentioned statements. In addition, the information contained in these statements was clear and consistent to the extent that the Prosecution alleged that Kanyabashi came to the Save roadblock, was looking for a man and offered a reward. The Chamber concludes that the information as to this allegation was provided in timely, clear and consistent disclosures and falls under Paragraph 6.45 of the Kanyabashi Indictment, which was pled in support of counts. Therefore, the Chamber finds the defect in the Indictment was cured.

### *Ndayambaje Indictment*

3232. The Ndayambaje Defence asserts that there is no reference to Ndayambaje's involvement in roadblocks in the Ndayambaje Indictment. It further submits that Paragraphs 5.8 and 6.33 of the Indictment, which allege that Ndayambaje incited the people to exterminate Tutsis and which are pled in support of counts, are too general to provide notice of this allegation. Therefore, the Ndayambaje Defence asserts these Paragraphs of the Indictment were defective and were not cured through subsequent disclosures.<sup>8881</sup>

3233. The Chamber notes that the paragraphs of the Ndayambaje Indictment that refer to roadblocks do not name Ndayambaje, nor do they allege that he was responsible for ordering roadblocks or inciting those persons who manned the roadblocks.<sup>8882</sup> Furthermore, Paragraph 6.33 of the Ndayambaje Indictment merely states that Ndayambaje incited the population to kill Tutsis. There is no mention of roadblocks or orders to search for and exterminate Tutsis. The allegations that Ndayambaje ordered that roadblocks be erected and encouraged those at roadblocks to search for and kill Tutsis are therefore new charges which would have required an amendment of the Indictment.<sup>8883</sup> The Chamber considers that Paragraphs 5.8 and 6.33 of the Ndayambaje Indictment cannot be cured by subsequent disclosures. Thus, the Chamber need not analyse subsequent disclosures to determine whether the Indictment was cured.

### **3.6.25.3 Evidence**

#### Prosecution Witness RK

3234. Witness RK, a Hutu farmer,<sup>8884</sup> stated that in early April 1994 Tutsis were being sought and killed by Hutus. There were four roadblocks in his *secteur*. Two had been erected when the *Inkotanyi* attacked and the other two were erected after the President was killed.<sup>8885</sup> The witness testified that on one occasion he saw four soldiers at a roadblock in Save.<sup>8886</sup> Tutsis

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<sup>8880</sup> 4 July 1996, Statement of Witness RK, disclosed 12 February 2002.

<sup>8881</sup> Ndayambaje Closing Brief, paras. 111-114.

<sup>8882</sup> Para. 6.15 of the Ndayambaje Indictment (not in support of counts).

<sup>8883</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 20; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>8884</sup> T. 15 April 2004 p. 51 (Witness TK); Prosecution Exhibit 104 (Personal Particulars).

<sup>8885</sup> T. 15 April 2004 p. 55 (Witness RK).

<sup>8886</sup> T. 15 April 2004 p. 54 (Witness RK).



were arrested and killed the next day at Rwabuye.<sup>8887</sup> He later referred to that location as Rwagumbuye.<sup>8888</sup>

3235. On or about the same day that he saw the four soldiers at the roadblock in Save, Witness RK hid eight Tutsi neighbours in his home, all of whom belonged to the same religious group.<sup>8889</sup> These included a Tutsi university lecturer, his wife and five children, and another unrelated woman.<sup>8890</sup> These people were previously hiding in the house of another man but Witness RK went to fetch them when it appeared that house would be searched.<sup>8891</sup> Initially, the witness stated that these Tutsis remained hidden in his house for three weeks.<sup>8892</sup> Later he stated that they remained there for a period of approximately six weeks.<sup>8893</sup> He was extremely afraid because if he was discovered sheltering Tutsis, he could have been killed along with the people he was hiding.<sup>8894</sup>

3236. After the beginning of April 1994, Witness RK sometimes went to the Save roadblock on Gatoki Road.<sup>8895</sup> The roadblock was near the market.<sup>8896</sup> On one such visit, about three weeks after the soldiers had visited the roadblock, he saw Kanyabashi drive up to the roadblock in a white Peugeot vehicle, accompanied by a soldier.<sup>8897</sup> He heard Kanyabashi tell the dozen people manning the Save roadblock: "I think there is someone hiding in this area since we haven't found his body among the bodies that we had seen. I am looking for him. And anyone who finds him will get a reward."<sup>8898</sup> Witness RK later estimated that there were less than 10 people manning the roadblock and named four of them.<sup>8899</sup> The Tutsis were not found in Witness RK's home because no house-to-house search was carried out in the area. It was believed that the fugitives were around the hill area.<sup>8900</sup>

3237. On cross-examination, Witness RK was asked why in earlier statements he had not said that Kanyabashi had given a speech at the market in Save, but spoke only about Kanyabashi's appearance at a roadblock.<sup>8901</sup> The witness responded that the speech he had referred to in his earlier statements was the speech given at the roadblock, but that the roadblock was between 20 and 30 metres from the market.<sup>8902</sup>

3238. Also on cross-examination, the witness stated that he was aware of a disagreement between Kanyabashi and the university lecturer before the war because Kanyabashi would not

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<sup>8887</sup> T. 15 April 2004 p. 55; T. 15 April p. 70 (ICS) (Witness RK).

<sup>8888</sup> T. 15 April 2004 p. 70 (ICS) (Witness RK).

<sup>8889</sup> T. 15 April 2004 p. 54; T. 15 April pp. 56, 71 (ICS) (Witness RK).

<sup>8890</sup> T. 15 April 2004 p. 56 (ICS) (Witness RK).

<sup>8891</sup> T. 15 April 2004 pp. 56-57 (ICS) (Witness RK).

<sup>8892</sup> T. 15 April 2004 p. 54 (Witness RK).

<sup>8893</sup> T. 15 April 2004 p. 71 (ICS) (Witness RK).

<sup>8894</sup> T. 15 April 2004 p. 54 (Witness RK).

<sup>8895</sup> T. 15 April 2004 p. 52; T. 19 April 2004 p. 15 (ICS) (Witness RK).

<sup>8896</sup> T. 19 April 2004 pp. 15, 19, 27, 29 (ICS) (Witness RK).

<sup>8897</sup> T. 15 April 2004 pp. 53-55; T. 19 April 2004 p. 16 (ICS) (Witness RK).

<sup>8898</sup> T. 15 April 2004 p. 53 (Witness RK).

<sup>8899</sup> T. 19 April 2004 pp. 19, 26 (ICS) (Witness RK).

<sup>8900</sup> T. 19 April 2004 p. 12 (ICS) (Witness RK).

<sup>8901</sup> T. 19 April 2004 p. 19 (ICS) (Witness RK).

<sup>8902</sup> T. 19 April 2004 pp. 19, 29 (ICS) (Witness RK).

allow the university lecturer to brew fruit juice.<sup>8903</sup> The Kanyabashi Defence asserted that Witness RK had come to testify against Kanyabashi as requested by the university lecturer because the lecturer was unhappy that Kanyabashi did not give him a permit to make juice and would not allow him to practice his religion.<sup>8904</sup> Witness RK answered that the university lecturer had no interest in Witness RK appearing in court. He further stated that Tutsis were dying for nothing, that he hid the university lecturer in his home because he pitied him and that he was not paid to protect the lecturer.<sup>8905</sup>

3239. Witness RK testified that although Kanyabashi was the *bourgmestre* of Ngoma *commune* and had no jurisdiction over Shyanda *commune*, during the war anyone in authority could search for people in any area without seeking permission of the relevant *bourgmestre*. Asked whether the Shyanda *bourgmestre* ordered the killing of Tutsis, Witness RK stated that, to the contrary, the Shyanda *bourgmestre* saved Tutsis, including some Tutsi women who were going to be killed. There had been an announcement over the radio that Tutsis were not to be killed, and those women were not killed. In addition, the Shyanda *bourgmestre* brought about 20 Tutsis to the RPF when they took over.<sup>8906</sup>

3240. Witness RK said that when Kanyabashi spoke to those at the roadblock in Save, it was the first time that he had seen Kanyabashi in Save, although he had previously seen Kanyabashi in Butare.<sup>8907</sup> Witness RK identified Kanyabashi in court.<sup>8908</sup>

#### Prosecution Witness TA

3241. Witness TA, a Tutsi, gave evidence pertaining to the existence of numerous roadblocks in Butare and the surrounding *communes*.<sup>8909</sup> There were roadblocks more or less everywhere.<sup>8910</sup> She was sometimes beaten at the roadblocks despite the fact that she said she was Hutu.<sup>8911</sup> There was a roadblock near the residence of the President of the Republic.<sup>8912</sup>

#### Nsabimana Defence Witness Alexandre Bararwandika

3242. Alexandre Bararwandika, a Burundian Hutu relief worker,<sup>8913</sup> testified that he met the *bourgmestre* of Ngoma *commune*, Kanyabashi, on a few occasions.<sup>8914</sup> On one such occasion, Kanyabashi encouraged him and others by giving them documents that enabled them to transport a girl to safety through roadblocks to a family in Karubanda.<sup>8915</sup> Bararwandika also remembered Kanyabashi personally filling in the required forms to facilitate the safe

<sup>8903</sup> T. 19 April 2004 p. 9 (ICS) (Witness RK).

<sup>8904</sup> T. 19 April 2004 pp. 21-22 (ICS) (Witness RK).

<sup>8905</sup> T. 19 April 2004 p. 22 (ICS) (Witness RK).

<sup>8906</sup> T. 19 April 2004 pp. 27-28 (ICS) (Witness RK).

<sup>8907</sup> T. 15 April 2004 p. 53; T. 19 April 2004 p. 18 (ICS) (Witness RK).

<sup>8908</sup> T. 15 April 2004 p. 58 (Witness RK).

<sup>8909</sup> T. 29 October 2001 pp. 94-99; T. 6 November 2001 pp. 34, 38-40; T. 7 November 2001 pp. 62-63; T. 7 November p. 54 (ICS) (Witness TA).

<sup>8910</sup> T. 29 October 2001 p. 95 (Witness TA).

<sup>8911</sup> T. 29 October 2001 p. 94 (Witness TA).

<sup>8912</sup> T. 7 November 2001 pp. 62-63; T. 7 November p. 54 (ICS) (Witness TA).

<sup>8913</sup> T. 3 July 2006 p. 20 (Bararwandika).

<sup>8914</sup> T. 4 July 2006 p. 43 (Bararwandika).

<sup>8915</sup> T. 4 July 2006 pp. 44-45 (Bararwandika).

movement of four Tutsi children that the witness had picked up from Rango through the roadblocks in Cyarwa, Tumba, Mukoni and at the MSM garage.<sup>8916</sup>

#### 3.6.25.4 Deliberations

3243. Witness RK testified that while he was hiding eight Tutsis in his home, including a Tutsi university lecturer, he encountered Kanyabashi at a roadblock.<sup>8917</sup> Kanyabashi asked the population's help to find this Tutsi university lecturer and offered a reward to anyone who found him.<sup>8918</sup> Witness RK provided a substantial number of significant details as to this incident, including the fact that Kanyabashi was driving a white Peugeot, that there was a soldier in the back seat, and he also named four of the persons who were manning the roadblock.<sup>8919</sup> In the Chamber's view, these details buttress the credibility of the witness.

3244. The Chamber notes that Witness RK testified that Kanyabashi said he had not found the body of the Tutsi university lecturer among the bodies he had seen.<sup>8920</sup> The clear implication of this language is that Kanyabashi expected the man to be dead. If the man were found not to be dead, he would offer a reward for whoever found him.

3245. Witness RK was confronted with his prior statement of June 1995 in which he said that Kanyabashi addressed a crowd at the Save market and did not mention the Save roadblock. Witness RK explained that the Save roadblock was 20 to 30 metres away from the market and he therefore was referring to the same location and incident in both his prior statement and his testimony.<sup>8921</sup> The Chamber finds that this is a minor discrepancy and accepts Witness RK's explanation.

3246. Witness RK also said that Kanyabashi had a disagreement with the Tutsi university lecturer, due to disputes about the man's religion and a permit to produce juice.<sup>8922</sup> Although these disagreements might have given the Tutsi university lecturer some motive to implicate Kanyabashi, the Chamber considers this would not give Witness RK any motive to lie since he was not a party to the dispute. Furthermore, the Chamber is convinced by Witness RK's testimony that he took several Tutsis into his home because Tutsis were being killed for no reason and he pitied them.<sup>8923</sup> The witness did not accept money to protect these Tutsis and the Chamber believes his testimony that he did not agree to lie for the Tutsi university lecturer.<sup>8924</sup>

3247. Furthermore, when given the opportunity to implicate another *bourgmestre* in the killing of Tutsis, Witness RK defended him, stating the *bourgmestre* of Shyanda *commune* did not participate in any killings, and in fact, protected about 20 Tutsis until the arrival of the RPF.<sup>8925</sup> Therefore, it was clear that Witness RK was not simply attempting to implicate any or all authority figures. The Chamber also notes that it may rely on uncorroborated testimony to

<sup>8916</sup> T. 4 July 2006 p. 45 (Bararwandika).

<sup>8917</sup> T. 15 April 2004 pp. 53-54; T. 15 April pp. 28, 56, 71 (ICS); T. 19 April 2004 p. 16 (ICS) (Witness RK).

<sup>8918</sup> T. 15 April 2004 p. 53 (Witness RK).

<sup>8919</sup> T. 15 April 2004 pp. 53-54; T. 19 April 2004 pp. 16, 19, 26 (ICS) (Witness RK).

<sup>8920</sup> T. 15 April 2004 p. 53 (Witness RK).

<sup>8921</sup> T. 19 April 2004 pp. 19, 29 (ICS) (Witness RK).

<sup>8922</sup> T. 19 April 2004 p. 22 (ICS) (Witness RK).

<sup>8923</sup> T. 19 April 2004 p. 22 (ICS) (Witness RK).

<sup>8924</sup> T. 19 April 2004 p. 22 (ICS) (Witness RK).

<sup>8925</sup> T. 19 April 2004 p. 28 (ICS) (Witness RK).

prove a material fact.<sup>8926</sup> In sum, the Chamber finds Witness RK's testimony to be credible on the issue under consideration.

3248. Bararwandika testified that Kanyabashi helped him save several Tutsis by providing travel documents that allowed him to take the Tutsis through roadblocks, unharmed.<sup>8927</sup> Should this account be true, it does not directly impact the Chamber's analysis of the evidence regarding this particular incident. It may nevertheless be a mitigating factor for the Chamber to consider in relation to sentencing, in the event of a conviction.

3249. In sum, the Chamber finds beyond a reasonable doubt that Kanyabashi drove to a roadblock in Save, asked the 10 to 12 people manning the roadblock to search for a Tutsi university lecturer with whom he had a dispute and offered a reward for his capture.

### 3.6.26 Actions at Roadblocks – Nsabimana and Nteziryayo, Late April 1994

#### 3.6.26.1 Introduction

3250. All of the Indictments allege that on 27 April 1994, the Interim Government ordered that roadblocks be set up, knowing that the roadblocks were being used to identify the Tutsis and their "accomplices", for the purpose of eliminating them.<sup>8928</sup> All of the Indictments further allege that the incitement to ethnic hatred and violence was a fundamental part of the plan put in place. The Indictments allege that the incitement was articulated before and during the genocide by members of the Government and local authorities.<sup>8929</sup> The Nsabimana and Nteziryayo Indictment alleges that from April to July 1994, Nsabimana and Nteziryayo propagated incitement to hatred and violence.<sup>8930</sup> The Indictment further alleges that between April and June 1994, Nteziryayo and Nsabimana both incited and also aided and abetted the population to slaughter the Tutsis in Butare *préfecture*.<sup>8931</sup>

3251. The Prosecution submits that Nsabimana incited the population to commit genocide at the roadblocks put in place.<sup>8932</sup> The Prosecution submits that Nsabimana gave instructions to those manning a roadblock at Hotel Faucon not to let any *Inyenzi*, meaning Tutsi, pass through the roadblock.<sup>8933</sup> The Prosecution relies on Witness QJ in support of its submissions.

3252. The Prosecution submits that Nteziryayo incited the population to commit genocide at roadblocks for which reason he is responsible pursuant to both Article 6 (1) and 6 (3) of the

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<sup>8926</sup> *Kajelijeli*, Judgement (AC), para. 170.

<sup>8927</sup> T. 4 July 2006 pp. 44-45 (Bararwandika).

<sup>8928</sup> Para. 6.15 of the Kanyabashi Indictment (not in support of counts); Para. 6.15 of the Ndayambaje Indictment (not in support of counts); Para. 6.15 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Para. 6.15 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>8929</sup> Para. 5.3 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>8930</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo pursuant to Article 6 (1) and 6 (3)).

<sup>8931</sup> Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo pursuant to both Article 6 (1) and 6 (3), except for Count 4 which is pursuant to Article 6 (1) only); Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana pursuant to both Article 6 (1) and 6 (3), except for Count 4 which is pursuant to Article 6 (1) only); Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo pursuant to both Article 6 (1) and 6 (3)).

<sup>8932</sup> Prosecution Closing Brief, p. 275, para. 150.

<sup>8933</sup> Prosecution Closing Brief, pp. 275, 278-279, paras. 150, 163.

Statute.<sup>8934</sup> The Prosecution submits that Nteziryayo incited people at a roadblock in Kibilizi *secteur* of Mugusa *commune* on two separate occasions on 22 and 23 April 1994.<sup>8935</sup> The Prosecution relies on Witness QBV in support of this submission.

3253. The Nsabimana Defence submits that it did not receive adequate notice in the Indictment regarding the allegation of incitement, in general, and at the Hotel Faucon roadblock specifically.<sup>8936</sup> The Nsabimana Defence submits that the Indictment was impermissibly vague.<sup>8937</sup> As to the substance of the allegations, the Nsabimana Defence submits that Witness QJ did not testify credibly. The Nsabimana Defence also submits that Witness QJ was a member of *Ibuka* and that as such, he falsified his trial testimony.<sup>8938</sup>

3254. The Nteziryayo Defence submits that it did not receive adequate notice in the Indictment regarding the allegations of incitement at the roadblocks in Mugusa *commune*.<sup>8939</sup> As to the substance of the allegations, the Nteziryayo Defence submits that Witness QBV did not testify credibly.<sup>8940</sup> The Nteziryayo Defence relies on Witness AND-16 in support of this submission.<sup>8941</sup>

### 3.6.26.2 Preliminary Issues

#### *Nsabimana Indictment*

3255. Paragraphs 5.8, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment all relate to allegations of incitement. These paragraphs generally allege that Nsabimana incited the population to kill Tutsis and further indicate that the incitement occurred in Butare *préfecture*. While Paragraphs 5.8, 6.32 and 6.53 allege that Nsabimana publicly incited people to exterminate Tutsis over a four-month period in Butare *préfecture*, these paragraphs fail to provide any details of specific incidents of incitement. In particular, no reference is made to incitement occurring at the Hotel Faucon roadblock, or to any killings that allegedly resulted from the incitement. The Chamber therefore finds each of these paragraphs to be defective.

3256. The Chamber must then determine whether Paragraphs 5.8, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment relating to incitement were cured of their respective defects through subsequent Prosecution disclosures.

3257. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists three witnesses, Witnesses QJ, FAR and SJ, who refer to the activities of Nsabimana at roadblocks.<sup>8942</sup> The summary for Witness QJ indicates: “Nsabimana ordered *laissez-passers* to be issued to ensure peoples safety, but this was a hoax. Refugees were arrested and

<sup>8934</sup> Prosecution Closing Brief, pp. 337-338, paras. 101, 106.

<sup>8935</sup> Prosecution Closing Brief, pp. 319, 340, 344, 353, 367, paras. 49, 111, 123-124, 155-157, 199.

<sup>8936</sup> Nsabimana Closing Brief, paras. 44, 1073-1075.

<sup>8937</sup> Nsabimana Closing Brief, paras. 44, 722.

<sup>8938</sup> Nsabimana Closing Brief, paras. 1076-1106.

<sup>8939</sup> Nteziryayo Closing Brief, para. 571.

<sup>8940</sup> Nteziryayo Closing Brief, paras. 574-584, 598-600.

<sup>8941</sup> Nteziryayo Closing Brief, paras. 610-611.

<sup>8942</sup> Prosecution Pre-Trial Brief – Appendix; Witness QJ (4); Witness FAR (29); Witness SJ (9).

killed.<sup>8943</sup> The summary for Witness FAR indicates that on or about 20 April 1994, he saw Nsabimana and Kanyabashi address a meeting of 1,000 people at the Ngoma football field, and that Nsabimana spoke of erecting roadblocks, arming the population, and enemy infiltration. The summary states that the word “enemy” meant Tutsi. This summary further states that Nsabimana and Kanyabashi spoke at a *secteur* meeting days later, where they discussed military training, and that killings started soon after.<sup>8944</sup> The summary for Witness SJ states that the witness saw the *préfet* give a letter to the soldiers and heard the *préfet* say that the letter would allow them to pass through the roadblocks. Witness SJ saw the buses return empty.<sup>8945</sup> The Chamber notes that only the summary for Witness FAR refers to alleged statements made by Nsabimana about roadblocks. However, this summary refers only to incitement which took place at the Ngoma football field, not at the Hotel Faucon roadblock.

3258. The Chamber next considers the prior statements of the witnesses. In his first statement of 8 May 1996, Witness QJ discussed various roadblocks including the roadblock erected opposite the Hotel Faucon.<sup>8946</sup> This first statement makes no mention of Nsabimana. Witness QJ’s second and third statements of 21 November 1996 and 22 January 1997 respectively also make no mention of Nsabimana.<sup>8947</sup> In his final statement dated 28 October 1997, Witness QJ states that “in mid-April, perhaps the 20<sup>th</sup>” he personally heard Nsabimana giving orders to people manning the Hotel Faucon roadblock not to let any *Inyenzi* through.<sup>8948</sup> The statement recounts another incident as well. Witness QJ stated that in late April 1994, he went to the *préfecture* offices and saw a *sous-préfet* telling people who had taken refuge in the offices that Nsabimana had given orders that *laissez-passeurs* were to be issued to them so that they could return home safely. Witness QJ stated that the people were systematically arrested at roadblocks and killed.<sup>8949</sup>

3259. In her prior statement of 3 December 1996, Witness SJ told investigators that she heard Nsabimana tell refugees boarding buses that a letter which had been given to them would allow them to pass through roadblocks.<sup>8950</sup> Witness SJ makes no mention of the Hotel Faucon roadblock. In his prior statement of 21 February 2001, Witness FAR told investigators about statements made by Nsabimana at the Ngoma football field but makes no mention of the Hotel Faucon roadblock.<sup>8951</sup>

3260. Witness QJ’s fourth statement of 28 October 1997 was the only disclosure which outlined alleged statements made by Nsabimana at the Hotel Faucon roadblock, namely that Nsabimana gave orders to people manning the Hotel Faucon roadblock not to let any *Inyenzi* through.<sup>8952</sup> The Prosecution disclosed this statement to the Defence on 15 June 1999. However, this disclosure was not consistent with the summary of Witness QJ’s anticipated

<sup>8943</sup> Prosecution Pre-Trial Brief – Appendix; Witness QJ (4).

<sup>8944</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAR (95).

<sup>8945</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9).

<sup>8946</sup> 8 May 1996, Statement of Witness QJ, disclosed 4 November 1998.

<sup>8947</sup> 21 November 1996, Statement of Witness QJ, disclosed 15 June 1999; 22 January 1997, Statement of Witness QJ, disclosed 15 June 1999.

<sup>8948</sup> 17 October 1997, Statement of Witness QJ, disclosed 15 June 1999.

<sup>8949</sup> 28 October 1997, Statement of Witness QJ, disclosed 15 June 1999.

<sup>8950</sup> 3 December 1996, Statement of Witness SJ, disclosed 4 November 1998.

<sup>8951</sup> 23 February 2001, Statement of Witness FAR, disclosed 14 March 2001.

<sup>8952</sup> 17 October 1997, Statement of Witness QJ, disclosed 23 April 2001.

evidence contained in the Appendix to the Prosecution Pre-Trial Brief which made no mention of these alleged statements made by Nsabimana at the Hotel Faucon; the summary made clear that the only matter about which Witness QJ was expected to testify with respect to Nsabimana was about the issuance of false *laissez-passers* after which refugees were arrested and killed, which the Chamber recalls was also contained in Witness QJ's fourth statement. The Chamber recalls that the mere service of witness statements by the Prosecution pursuant to the disclosure requirements of the Rules does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial.<sup>8953</sup> Therefore, this disclosure was not sufficient to put Nsabimana on notice of this allegation.

3261. The Chamber thus considers that with regard to this specific allegation, Paragraphs 5.8, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment were not cured of their defects, such that the Chamber therefore declines to make any finding in respect of the allegation that Nsabimana gave instructions to those manning a roadblock at Hotel Faucon not to let any *Inyenzi* pass through the roadblock.

#### *Nteziryayo Indictment*

3262. The Nteziryayo Defence submits that the Indictment is unduly vague and did not adequately inform Nteziryayo of the material facts of the allegations brought against him.<sup>8954</sup> The Nteziryayo Defence further submits that the testimony of Prosecution Witness QBV on the issue of Nteziryayo's alleged incitement at the Mugusa *commune* roadblock falls outside the scope of the Nsabimana and Nteziryayo Indictment such that it should be excluded.<sup>8955</sup> The Chamber recalls that in its Decision of 25 February 2009, it denied Nteziryayo's Motion for Exclusion of Evidence and stated that it would address issues relating to alleged defects in the Indictment, vagueness, credibility and evaluation of evidence in its final deliberations.<sup>8956</sup>

3263. The Chamber notes that Paragraphs 5.8, 6.31 and 6.53 of the Nsabimana and Nteziryayo Indictment all allege that Nteziryayo incited the population to kill Tutsis in Butare *préfecture* between April and June or July 1994. While Paragraphs 5.8, 6.31 and 6.53 allege that Nteziryayo publicly incited people to exterminate Tutsis over a three to four month period in Butare *préfecture*, these paragraphs fail to provide any details of specific incidents of incitement. In particular, no reference is made to any incitement occurring at a roadblock in Kibilizi *secteur*, Mugusa *commune*, or to any killings that allegedly resulted from the incitement. The Chamber therefore finds each of these paragraphs to be defective.

3264. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that in its opening statement the Prosecution stated that part of its case against Nteziryayo was that he engaged in incitement of the population "on several occasions, in several places ... during public rallies."<sup>8957</sup> Although the Prosecution only specifically identified the occasion of Ndayambaje's swearing-in, the Prosecution's opening words clearly

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<sup>8953</sup> See, e.g., *Naletilić & Martinović*, Judgement (AC), para. 27.

<sup>8954</sup> Nteziryayo Closing Brief, para. 571.

<sup>8955</sup> Nteziryayo Closing Brief, para. 765.

<sup>8956</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009, para. 28.

<sup>8957</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 78-79.

state that Nteziryayo's incitement at public rallies would be relied on as part of the Prosecution case.

3265. The Chamber further observes that the summary of Witness QBV's anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief includes reference to statements made by Nteziryayo. The witness summary for Witness QBV states that Tutsis from Shyanda were pursued by Hutus and took refuge in Mugusa *commune*. Witness QBV and others were protecting the Tutsis. On about 23 April 1994, Nteziryayo and Colonel Muvunyi passed through the *commune* when some asked Nteziryayo what to do about the attack on the Tutsis from Shyanda, by Hutus. According to the witness summary, Nteziryayo replied: "Don't you know how to kill? Kill them and eat their cows. I am going now, if I discover tomorrow that you have not started to kill, I will bring in soldiers who will kill you systematically with bullets. You are the ones who know your Tutsi neighbours." Nteziryayo then asked: "If a snake twirls itself around your favorite small gourd, do you ignore it or you kill the snake and break the gourd? You kill the snake and break the gourd." The witness summary goes on to state that Muvunyi then "handed over about 20 grenades. The killings started the following morning. Witness QBV was one of the attackers. They exterminated all the Tutsis in the *secteur* in two days of extensive work. Witness QBV and others almost finished the work. Nteziryayo asked them to complete the good work quickly."<sup>8958</sup> Witness QBV was listed in the Prosecution Pre-Trial Brief as a witness against Nteziryayo on the count of direct and public incitement to commit genocide, and subsequently testified at trial.

3266. The Chamber notes that Witness QBV's first statement of 11 October 1999 provides a similar account to that set forth in the Appendix to the Pre-Trial Brief. The statement indicates the same date and same location for the alleged incident, and recounts similar words attributed to Nteziryayo at the roadblock. The 11 October 1999 statement also indicates that the following day, Nteziryayo and Muvunyi returned and Nteziryayo told Witness QBV and the others "to complete the good 'work' quickly."<sup>8959</sup> This statement was first disclosed in redacted form on 1 December 1999, well before Witness QBV was called to testify on 14 March 2002.

3267. In addition, the Chamber notes that Witness QBV's second statement of 11 May 2000, which supplemented his earlier statement, states that on 23 April 1994, Nteziryayo was at the Mugusa *commune* roadblock and said "[d]on't you know how to kill? Kill them and eat all their cattle", and that he was referring to Tutsis.<sup>8960</sup> This statement was first disclosed on 15 November 2000, again well before Witness QBV was called to testify.

3268. The Chamber notes that the information contained in the summary of anticipated evidence annexed to the Pre-Trial Brief and Witness QBV's prior statements is clear and consistent. The summary of anticipated evidence makes clear that the Prosecution intended to lead evidence through Witness QBV of inciting statements made by Nteziryayo, in Mugusa *commune*, on or about 23 April 1994 in support of Counts 1 and 4.

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<sup>8958</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBV (12).

<sup>8959</sup> 11 October 1998, Statement of Witness QBV, disclosed 1 December 1999.

<sup>8960</sup> 11 May 2000, Statement of Witness QBV, disclosed 15 November 2000.



3269. For the reasons stated above, the Chamber considers the defect in Paragraphs 5.8, 6.31 and 6.53 of the Nsabimana and Nteziryayo Indictment, read in the context of the Indictment as a whole, was cured by subsequent Prosecution disclosures. The information contained in the summary of Witness QBV's anticipated evidence annexed to the Pre-Trial Brief, along with the disclosure of his prior witness statements, provided timely, clear and consistent details on the allegation that Nteziryayo incited the population in Butare *préfecture* to kill Tutsis between April and June 1994.

### 3.6.26.3 Evidence

#### Prosecution Witness QBV

3270. Witness QBV, a Hutu farmer<sup>8961</sup> from Mugusa *commune* and detainee who had confessed but not yet been sentenced at the time of his testimony,<sup>8962</sup> testified that on 22 April 1994, Colonel Nteziryayo arrived at a roadblock on the Butare-Mugusa road in Kibilizi *secteur* at about 2.00 p.m.<sup>8963</sup> Witness QBV was in charge of the roadblock and opened it for Nteziryayo's vehicle.<sup>8964</sup> Nteziryayo was travelling with Colonel Muvunyi and a driver in a red double-cabin pickup, carrying guns, grenades and other tools in the back.<sup>8965</sup> They were close enough to the vehicle to be able to see into the back.<sup>8966</sup> They were all wearing military uniform.<sup>8967</sup> The vehicle stopped and Muvunyi and Nteziryayo stepped down from the car.<sup>8968</sup> Nteziryayo asked the *secteur* President of the MRND Party who these people were gathered around.<sup>8969</sup> Witness QBV was two to three metres from Nteziryayo when he introduced himself and Muvunyi to the crowd of approximately 200 people who were assembled at the roadblock.<sup>8970</sup>

3271. Nteziryayo saw Witness QBV was carrying an axe and asked the witness his ethnicity and how he came to be in possession of the axe. Witness QBV told him that it had been given to him by soldiers from the Gikonko barracks.<sup>8971</sup> The *conseiller*, Gasana, told Nteziryayo that Witness QBV had previously undergone weapons training.<sup>8972</sup> Witness QBV testified that Nteziryayo then asked him, along with a *conseiller*, a businessman, and the president of the *Interahamwe*, to lead attacks to eliminate Tutsis and promised that if the work was well done, he would get jobs for them and that the land belonging to Tutsis would be given to them. Witness QBV understood "work" meant "hunt for the Tutsis and kill them."<sup>8973</sup>

<sup>8961</sup> T. 14 March 2002 pp. 10, 133 (Witness QBV).

<sup>8962</sup> T. 14 March 2002 p. 10 (Witness QBV).

<sup>8963</sup> T. 14 March 2002 pp. 12, 19; T. 18 March 2002 p. 87; T. 19 March 2002 p. 36 (Witness QBV).

<sup>8964</sup> T. 14 March 2002 pp. 12, 15; T. 18 March 2002 pp. 88, 94; T. 18 March 2002 p. 115 (ICS) (Witness QBV).

<sup>8965</sup> T. 14 March 2002 pp. 12-13, 19; T. 18 March 2002 pp. 88-89 (Witness QBV).

<sup>8966</sup> T. 18 March 2002 p. 89 (Witness QBV).

<sup>8967</sup> T. 14 March 2002 p. 13 (Witness QBV).

<sup>8968</sup> T. 14 March 2002 p. 14 (Witness QBV).

<sup>8969</sup> T. 18 March 2002 p. 102 (Witness QBV).

<sup>8970</sup> T. 14 March 2002 pp. 14, 18-19; T. 18 March 2002 pp. 87-88 (Witness QBV).

<sup>8971</sup> T. 14 March 2002 pp. 14-15; T. 18 March 2002 pp. 99-100 (Witness QBV).

<sup>8972</sup> T. 14 March 2002 pp. 14-15; T. 14 March 125 (ICS) (Witness QBV).

<sup>8973</sup> T. 14 March 2002 p. 15 (Witness QBV).

3272. Witness QBV testified that after speaking to them, Nteziryayo made a statement to the crowd gathered at the roadblock.<sup>8974</sup> Witness QBV testified that he was standing two to three metres from Nteziryayo<sup>8975</sup> and clearly heard Nteziryayo say: “You know the enemy we’re fighting. It is the Tutsis. You have to hunt for them and kill them particularly as they are your neighbours.”<sup>8976</sup> Witness QBV further testified that Nteziryayo told the audience: “If I come back tomorrow and I notice that you have not killed, I will return with soldiers and there will be no discrimination between Hutu and Tutsi and they will kill you all. If a snake twists itself around your gourd, do you ignore it, or are you going to kill the snake and spare the gourd or break both of them, kill both of them?”<sup>8977</sup>

3273. After making these remarks, Nteziryayo explained what he meant by these words, “that there were Hutus who had married Tutsis and the Hutus want to hang on to the Tutsis and considered them as their in-laws ... the Hutus, should be considered as enemies and they too have to parish [*sic*].”<sup>8978</sup>

3274. Witness QBV testified that after Nteziryayo addressed the crowd, Muvunyi went to the back of the red pickup vehicle, picked three rifles, two Kalashnikovs and one M16 which he gave to Nteziryayo. Nteziryayo in turn handed the weapons to the *conseiller*. Colonel Muvunyi gave a cartridge box to Nteziryayo, which he then gave to the *conseiller*. Muvunyi then gave a box of 30 Chinese-type grenades to Nteziryayo which he gave to the businessman.<sup>8979</sup> Muvunyi gave a carton of matches to Nteziryayo who handed them over to Leodomir Mwimpanzu, the *secteur* President of the MRND Party.<sup>8980</sup> After distributing the arms, Nteziryayo told Witness QBV, the *conseiller*, the businessman and the MRND *secteur* president, that they would need these weapons “to kill the Tutsis, and those who do not have these weapons should use traditional weapons. With respect to the matches, you will need them to burn the houses of the Tutsis, and if you need petrol, then you can go and get it ... at the Mugusa *commune* office.”<sup>8981</sup> According to Witness QBV, Nteziryayo also said that he had noticed that some places did not have roadblocks, that more roadblocks should be constructed, and that they would come back the following day to make sure that they had started to kill the Tutsis.<sup>8982</sup>

3275. In cross-examination, Witness QBV agreed that he went to the ISAR on 20 April 1994, but subsequently said this was in May or June 1994; he denied that on this occasion he received grenades from Kabalira and Colonel Gasarabwe.<sup>8983</sup> In cross-examination, the Nteziryayo Defence referred Witness QBV to his previous statement of 16 August 2001.<sup>8984</sup>

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<sup>8974</sup> T. 14 March 2002 p. 15 (Witness QBV).

<sup>8975</sup> T. 14 March 2002 pp. 16-18 (Witness QBV).

<sup>8976</sup> T. 14 March 2002 pp. 15-16 (Witness QBV).

<sup>8977</sup> T. 14 March 2002 p. 16 (Witness QBV).

<sup>8978</sup> T. 14 March 2002 p. 16 (Witness QBV).

<sup>8979</sup> T. 14 March 2002 pp. 19-20; T. 14 March 2002 p. 126 (ICS) (Witness QBV).

<sup>8980</sup> T. 14 March 2002 p. 19; T. 14 March 2002 pp. 124-125 (ICS) (Witness QBV).

<sup>8981</sup> T. 14 March 2002 pp. 19-20 (Witness QBV).

<sup>8982</sup> T. 14 March 2002 p. 20; T. 18 March 2002 p. 109 (Witness QBV).

<sup>8983</sup> T. 19 March 2002 pp. 91-92 (ICS); T. March 2002 pp. 12-13 (Witness QBV).

<sup>8984</sup> T. 19 March 2002 pp. 92-94 (ICS) (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

That statement claimed that on 20 April 1994, Witness QBV was at the ISAIR (*sic*) in Rubona where:

Colonel Gasarabwe took the floor and said that the Tutsis were RPF accomplices. He urged the youth not to spare a Tutsi woman in order to rape or hide them ... it was necessary to sweep the dead, to wash it outside, and not towards the inside. In other words, the idea was not to kill only the men and spare the woman, but to kill everyone without exception. Martin Kabalira was the next to speak and said, “if a snake coils up around a calabash, we must not save the calabash, because, as the snake has to be killed, the calabash has to be broken. I believe he was alluding to the inter-ethnic marriages involving Tutsi women, meaning that the marriages were to be broken. At the end of the meeting, when Martin Kabilira realised that not all the youth were armed, he personally distributed Chinese-made grenades and hatches [*sic*], and the colonel also distributed some guns.<sup>8985</sup>

3276. When it was put to Witness QBV that his oral testimony that he did not receive any weapons from Kabalira contradicted his statement which states that he did receive weapons from Kabalira, Witness QBV testified that his statements were being confused: Kabalira was at ISAR but Nteziryayo distributed weapons on 22 April 1994.<sup>8986</sup>

3277. Witness QBV testified that prior to 22 April 1994 there were only three roadblocks in Kibilizi *secteur*: the first was mounted at Ramba on the Butare-Mugusa Road; the second at Gafumba towards Banbajure Market; and the third outside the house of the MRND leader. These roadblocks were erected at sites chosen by the *conseiller*, who supervised their construction.<sup>8987</sup> After Nteziryayo complained that there were very few roadblocks in the area, two more roadblocks were constructed.<sup>8988</sup>

3278. Nteziryayo stayed at the roadblock for approximately one hour and left with Muvunyi in the red pickup.<sup>8989</sup> Witness QBV testified that when Nteziryayo and Colonel Muvunyi left the Kibilizi *secteur* roadblock, they drove to the Mugusa *commune* office.<sup>8990</sup> The witness told the court that he and the *conseiller* rented bicycles and followed the two colonels<sup>8991</sup> “for the purpose of seeking information on the people involved in the massacre.”<sup>8992</sup> On arrival at the Mugusa *commune* office around 4.00 p.m.,<sup>8993</sup> the witness found Andre Kabayiza the *bourgmestre* of Mugusa *commune* addressing a crowd of over 200 people that had gathered in front of the Mugusa *commune* office, after which both Nteziryayo and Colonel Muvunyi introduced themselves to the crowd.<sup>8994</sup>

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<sup>8985</sup> T. 19 March 2002 pp. 92-94 (ICS) (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>8986</sup> T. 19 March 2002 pp. 95-96 (ICS) (Witness QBV).

<sup>8987</sup> T. 14 March 2002 pp. 12, 19-20; T. 18 March 2002 pp. 115-117 (ICS) (Witness QBV).

<sup>8988</sup> T. 14 March 2002 pp. 20-21 (Witness QBV).

<sup>8989</sup> T. 14 March 2002 pp. 21-22 (Witness QBV).

<sup>8990</sup> T. 14 March 2002 p. 22; T. 19 March 2002 p. 28 (Witness QBV).

<sup>8991</sup> T. 14 March 2002 p. 23 (Witness QBV).

<sup>8992</sup> T. 19 March 2002 p. 39 (Witness QBV).

<sup>8993</sup> T. 14 March 2002 p. 23; T. 19 March 2002 pp. 29, 36 (Witness QBV).

<sup>8994</sup> T. 19 March 2002 pp. 29-31, 39 (Witness QBV).

3279. Witness QBV told the Tribunal that at the meeting at the Mugusa *commune* office, he noted that Nteziryayo wielded a lot of power and influence on the community.<sup>8995</sup> According to the witness, after the introductions were made, the *bourgmestre* sought Nteziryayo's advice on what to do with the Tutsi refugees who had sought shelter for themselves and their livestock in Mugusa *commune*. In answer to this, Nteziryayo expressed his displeasure at the foot-dragging by the Hutus of Mugusa *commune*. Nteziryayo said that in other *communes*, people had already finished killing the Tutsis and "here you continue to protect them". He said he was going to Muyaga to hold another meeting.<sup>8996</sup> Nteziryayo and Colonel Muvunyi then left in the red dual cabin pickup truck.<sup>8997</sup>

3280. Witness QBV testified that the killing of Tutsis began in Mugusa *commune* later that day after the visit by Nteziryayo. According to the witness, when Nteziryayo and Colonel Muvunyi left the Mugusa *commune* office, they left behind some soldiers. At about 7.00 p.m., the soldiers, together with some policemen, shot and killed Tutsi refugees who had sought shelter at the Mugusa *commune* office. Witness QBV testified that after the shooting, bodies of the Tutsi victims were scattered everywhere at the *commune* office.<sup>8998</sup> He saw the shooting with his own eyes.<sup>8999</sup> He left the *commune* office at 7.00 p.m.<sup>9000</sup>

3281. Witness QBV testified that he started attacking after he was instructed to do so by Nteziryayo and Muvunyi on 22 April 1994.<sup>9001</sup> In Kibilizi *secteur*, *Interahamwe* commenced attacks on the Tutsis by burning 100 houses on the evening of 22 April 1994.<sup>9002</sup> According to the witness, the killings started early the following morning, 23 April 1994.<sup>9003</sup> Witness QBV took the initiative in leading the killings because he killed the first two people.<sup>9004</sup> He gave the names of the first and second persons he killed.<sup>9005</sup> Witness QBV told the Tribunal that he also hit a third person on the head and left him for dead. That person recovered and went to his home where he was later attacked on 25 April 1994 by the *Interahamwe* and finally killed.<sup>9006</sup> Witness QBV felt responsible for the death of this third person because he was the one who led the attacks.<sup>9007</sup> When it was put to Witness QBV that his confession of 22 February 1999 stated that the attacks occurred on 25 April 1994, Witness QBV testified this was a mistake and the attack occurred on 23 April 1994.<sup>9008</sup> When it was put to him that his confession of 22 February 1999 also failed to mention Nteziryayo's role in the attacks, despite listing other

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<sup>8995</sup> T. 14 March 2002 p. 30 (Witness QBV).

<sup>8996</sup> T. 14 March 2002 pp. 25, 27, 29; T. 19 March 2002 p. 40 (Witness QBV).

<sup>8997</sup> T. 14 March 2002 p. 29 (Witness QBV).

<sup>8998</sup> T. 14 March 2002 pp. 29-30; T. 19 March 2002 p. 54 (Witness QBV).

<sup>8999</sup> T. 14 March 2002 p. 30 (Witness QBV).

<sup>9000</sup> T. 19 March 2002 pp. 47-48, 51 (Witness QBV).

<sup>9001</sup> T. 19 March 2002 p. 105; T. 19 March 2002 p. 103 (ICS); (Witness QBV).

<sup>9002</sup> T. 14 March 2002 pp. 31, 35; T. 19 March 2002 p. 105 (Witness QBV).

<sup>9003</sup> T. 19 March 2002 pp. 105, 121; T. 19 March 2002 p. 103 (ICS); T. 20 March 2002 p. 26 (ICS) (Witness QBV).

<sup>9004</sup> T. 19 March 2002 p. 105 (Witness QBV).

<sup>9005</sup> T. 14 March 2002 p. 126 (ICS) (Witness QBV).

<sup>9006</sup> T. 19 March 2002 pp. 130-131 (ICS); T. 20 March 2002 pp. 26-27 (ICS) (Witness QBV).

<sup>9007</sup> T. 20 March 2002 pp. 27-28 (ICS) (Witness QBV).

<sup>9008</sup> T. 19 March 2002 pp. 123, 125-126; T. 19 March 2002 pp. 129-130 (ICS) (Witness QBV); Defence Exhibit 22B (Nteziryayo) (22 February 1999, Confession of Witness QBV to Rwandan Authorities).

perpetrators and ringleaders, Witness QBV testified that he was not asked to talk about Nteziryayo.<sup>9009</sup>

3282. Witness QBV testified that he and the *Interahamwe* used the arms distributed to them by Nteziryayo and Colonel Muvunyi to attack the Tutsis, and used matches to burn their houses.<sup>9010</sup> Witness QBV testified that he killed the first and second persons in the *commune*, using a club; he killed them because Nteziryayo and Muvunyi had told them to hunt for the Tutsis and kill them because they were “our enemies.”<sup>9011</sup> They followed his orders because they came from a high ranking officer.<sup>9012</sup>

3283. Witness QBV testified that at around 1.00 p.m. on 23 April 1994, as he was manning the Kibilizi roadblock, Nteziryayo and Colonel Muvunyi returned in a military jeep from the direction of Muyaga.<sup>9013</sup> Witness QBV testified that the *Interahamwe* had already killed 50 Tutsis and thrown their bodies in the gullies on the lower side next to the road. Nteziryayo commended the *Interahamwe* for a job well done, and encouraged them to continue with the work. He told them that it was not proper to leave the dead bodies strewn on the road because there were satellites that could show pictures of the bodies to white men, and ordered them to put the corpses in latrines that were at the centre.<sup>9014</sup> Witness QBV testified that Nteziryayo urged them to destroy the shells of the houses that they had burnt, and in their place, “plant banana trees or potatoes” so that no traces of the houses remained “because there were whites sent by the United Nations, who were going to visit the country.”<sup>9015</sup>

3284. In cross-examination, when it was put to Witness QBV that a portion of his statement of 16 August 2001 stated that after the attack on ISAR on 20 April 1994, Martin Kabalira recommended “quickly bury[ing] the bodies and ... plant[ing] banana trees where the destroyed houses once stood in order to conceal any traces thereof, so as not to be seen by foreigners”,<sup>9016</sup> Witness QBV testified that it was Nteziryayo and not Kabalira who gave such instructions.<sup>9017</sup>

3285. According to Witness QBV, during the killings, the *Interahamwe* spared the lives of Tutsi women and girls. On learning this, Nteziryayo warned the *Interahamwe* of the danger inherent in not exterminating the Tutsis in their entirety. According to the witness, Nteziryayo told the gathering, “[t]hose people you have spared ... [are] the same people who are going to create problems for us later on.” Nteziryayo further counselled the *Interahamwe* “to sweep everything and move the rubbish out of the house”, rather than “sweeping the house but moving the dirt within the house”, as they were doing. Witness QBV told the Tribunal that he understood the words “to move the rubbish” to mean to kill “those people [the Tutsi women

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<sup>9009</sup> T. 19 March 2002 pp. 135-136 (ICS) (Witness QBV).

<sup>9010</sup> T. 14 March 2002 pp. 21, 34-36; T. 18 March 2002 p. 127 (Witness QBV).

<sup>9011</sup> T. 14 March 2002 p. 34 (Witness QBV).

<sup>9012</sup> T. 14 March 2002 p. 31 (Witness QBV).

<sup>9013</sup> T. 14 March 2002 p. 31 (Witness QBV).

<sup>9014</sup> T. 14 March 2002 pp. 31-33; T. 19 March 2002 p. 131 (ICS) (Witness QBV).

<sup>9015</sup> T. 14 March 2002 p. 32 (Witness QBV).

<sup>9016</sup> T. 19 March 2002 pp. 92, 95 (ICS) (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9017</sup> T. 19 March 2002 pp. 92-93, 96-97 (ICS) (Witness QBV).

and girls].”<sup>9018</sup> Witness QBV testified that he was less than a step from Nteziryayo as he said these words.<sup>9019</sup>

3286. Witness QBV testified that he subsequently came to learn that approximately 22,000 people died in Mugusa *commune* in 1994.<sup>9020</sup>

3287. Witness QBV testified that this was the first time he had met Nteziryayo.<sup>9021</sup> He knew it was Nteziryayo because Nteziryayo had introduced himself.<sup>9022</sup> Witness QBV subsequently met Nteziryayo on many other occasions,<sup>9023</sup> including at the Mugusa *commune* office.<sup>9024</sup> Witness QBV positively identified Nteziryayo in court.<sup>9025</sup>

#### Nteziryayo Defence Witness AND-16

3288. Witness AND-16, a Hutu trader from Mugusa *commune*, testified that several new roadblocks were erected in his *commune* around 21 or 22 April 1994, on the orders of the new *conseiller*, Gasana.<sup>9026</sup> The main roadblock was the Sakindi roadblock in Kibilizi *secteur*, and it was under the responsibility of Witness QBV.<sup>9027</sup> Witness QBV controlled that roadblock.<sup>9028</sup>

3289. Witness AND-16 testified that he went to the Sakindi roadblock at either 2.00 or 3.00 p.m. on 22 April 1994 and saw corpses. The witness said he got information about the corpses and was told it was Witness QBV who stopped those people and killed them after having asked them to show them their identification cards.<sup>9029</sup> Weapons were not distributed at the roadblock manned by Witness QBV on 22 April 1994, or prior to this date in the *secteur*.<sup>9030</sup> Those present at the roadblock had traditional weapons including clubs, and those that had weapons had obtained them from elsewhere.<sup>9031</sup> People killed at the roadblock were killed with traditional weapons such as clubs and hoes, and not with guns or other modern weapons.<sup>9032</sup>

3290. Witness AND-16 testified that Nteziryayo did not go to Mugusa *commune* between April and June 1994, and that he never met Nteziryayo in this time period in either Kibilizi *secteur* or Mugusa *commune*.<sup>9033</sup> Witness AND-16 further testified that he did not hear anyone mention that Nteziryayo was in Mugusa *commune* during this period of time.<sup>9034</sup> Witness

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<sup>9018</sup> T. 14 March 2002 p. 32 (Witness QBV).

<sup>9019</sup> T. 14 March 2002 p. 33 (Witness QBV).

<sup>9020</sup> T. 14 March 2002 p. 33 (Witness QBV).

<sup>9021</sup> T. 14 March 2002 p. 19 (Witness QBV).

<sup>9022</sup> T. 14 March 2002 pp. 18-19 (Witness QBV).

<sup>9023</sup> T. 14 March 2002 pp. 48-51 (Witness QBV).

<sup>9024</sup> T. 14 March 2002 p. 23 (Witness QBV).

<sup>9025</sup> T. 14 March 2002 p. 53 (Witness QBV).

<sup>9026</sup> T. 22 January 2007 pp. 34-35 (ICS); T. 24 January 2007 pp. 14, 16 (ICS) (Witness AND-16).

<sup>9027</sup> T. 22 January 2007 p. 35 (ICS) (Witness AND-16).

<sup>9028</sup> T. 24 January 2007 p. 31 (ICS) (Witness AND-16).

<sup>9029</sup> T. 24 January 2007 p. 18 (ICS); T. 25 January 2007 p. 33 (ICS) (Witness AND-16).

<sup>9030</sup> T. 22 January 2007 p. 37 (ICS) (Witness AND-16).

<sup>9031</sup> T. 22 January 2007 pp. 36-37 (ICS) (Witness AND-16).

<sup>9032</sup> T. 22 January 2007 p. 37 (ICS) (Witness AND-16).

<sup>9033</sup> T. 22 January 2007 p. 36 (ICS) (Witness AND-16).

<sup>9034</sup> T. 23 January 2007 p. 24 (ICS) (Witness AND-16).

AND-16 did not know Nteziryayo at the time and therefore did not know anything about him.<sup>9035</sup>

3291. Witness AND-16 also testified that weapons were not distributed by Nteziryayo at the Kibilizi *secteur* roadblock on 22 April 1994. Witness AND-16 testified that no one at the roadblock was killed with modern weapons. Witness AND-16 also testified that Nteziryayo did not order that the number of roadblocks be increased in Mugusa *commune*. According to Witness AND-16, no new roadblocks were erected.<sup>9036</sup>

#### 3.6.26.4 Deliberations

3292. Witness QBV was the only witness to testify that Nteziryayo incited the population at a roadblock in Kibilizi *secteur*, Mugusa *commune*, on 22 April 1994. Witness QBV testified that on 22 April 1994, at a roadblock on the Butare-Mugusa road in Kibilizi *secteur* at about 2.00 p.m.<sup>9037</sup> Nteziryayo made a statement to the crowd gathered at the roadblock.<sup>9038</sup> The statement encouraged the crowd to hunt for and kill Tutsis.<sup>9039</sup> Nteziryayo told the audience “[i]f a snake twists itself around your gourd, do you ignore it, or are you going to kill the snake and spare the gourd or break both of them, kill both of them?”<sup>9040</sup> Nteziryayo explained what he meant by these words: “That there were Hutus who had married Tutsis and the Hutus want to hang on to the Tutsis and considered them as their in-laws ... the Hutus, should be considered as enemies and they too have to parish [*sic*].”<sup>9041</sup> Thereafter Muvunyi took various weapons from the back of the vehicle in which they arrived and gave them to Nteziryayo, and Nteziryayo in turn distributed these weapons among the *conseiller*, a businessman,<sup>9042</sup> and the *secteur* President of the MRND Party.<sup>9043</sup>

3293. The Chamber notes that Witness QBV was a detainee in Rwanda at the time of his testimony and that he had confessed but had not yet been sentenced for crimes committed during the genocide.<sup>9044</sup> The Chamber will therefore approach his testimony with appropriate caution as he may have had an incentive to implicate or enhance Nteziryayo’s role in the crimes in order to benefit from a less severe sentence in his own case before the Rwandan judicial system.

3294. The Chamber notes that there were several discrepancies between Witness QBV’s previous statements and his trial testimony. First, on cross-examination, the Nteziryayo Defence referred Witness QBV to his previous statement of 16 August 2001 which outlined Witness QBV’s account of events at the ISAR in Rubona on 20 April 1994.<sup>9045</sup> According to the statement:

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<sup>9035</sup> T. 24 January 2007 p. 57 (ICS) (Witness AND-16).

<sup>9036</sup> T. 22 January 2007 p. 37 (ICS) (Witness AND-16).

<sup>9037</sup> T. 14 March 2002 pp. 12, 19; T. 18 March 2002 p. 87; T. 19 March 2002 p. 36 (Witness QBV).

<sup>9038</sup> T. 14 March 2002 p. 15 (Witness QBV).

<sup>9039</sup> T. 14 March 2002 pp. 15-16 (Witness QBV).

<sup>9040</sup> T. 14 March 2002 p. 16 (Witness QBV).

<sup>9041</sup> T. 14 March 2002 p. 16 (Witness QBV).

<sup>9042</sup> T. 14 March 2002 pp. 19-20; T. 14 March 2002 p. 126 (ICS) (Witness QBV).

<sup>9043</sup> T. 14 March 2002 p. 19; T. 14 March 2002 pp. 124-125 (ICS) (Witness QBV).

<sup>9044</sup> T. 14 March 2002 p. 10 (Witness QBV).

<sup>9045</sup> Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

Colonel Gasarabwe took the floor and said that the Tutsis were RPF accomplices, he urged youth not to spare a Tutsi woman in order to rape or hide them and said that it was necessary to sweep the dead and wash it outside, not inside. Martin Kabalira was the next to speak and said, “if a snake coils up around a calabash, we must not save the calabash, because, as the snake has to be killed, the calabash has to be broken. I believe he was alluding to the inter-ethnic marriages involving Tutsi women, meaning that they were to be broken up. At the end of the meeting, when Martin Kabilira realised that not all the youth were armed, he personally distributed Chinese-made grenades and hatches [*sic*], and the colonel also distributed some guns.<sup>9046</sup>

3295. While Witness QBV’s prior statement outlines almost identical statements to those that Witness QBV attributed to Nteziryayo at the roadblock on 22 April 1994 in his testimony before this Tribunal, his written statement ascribed such statements to one Colonel Gasarabwe and one Martin Kabalira at ISAR. Further, Witness QBV’s prior statement stated that Martin Kabilira personally distributed Chinese-made grenades and hatches (*sic*), and the colonel also distributed some guns.<sup>9047</sup> This was almost identical to Witness QBV’s oral testimony before this Tribunal as to distribution of weapons at the roadblock on 22 April 1994, which he nevertheless attributed to Nteziryayo.<sup>9048</sup>

3296. Further, Witness QBV’s prior statement of 16 August 2001 also stated that “one last recommendation of Martin Kabalira was to quickly bury the bodies and to plant banana trees where the destroyed house once stood in order to conceal any traces thereof, so as not to be seen by foreigners.”<sup>9049</sup> This contrasted with Witness QBV’s testimony that Nteziryayo urged them to destroy the shells of the houses that they had burnt, and “plant banana trees or sweet potatoes” so that no traces of the houses remained “because there were whites sent by the United Nations, who were going to visit the country.”<sup>9050</sup>

3297. Witness QBV responded that his statements were being confused: Kabalira was at ISAR but Nteziryayo distributed weapons on 22 April 1994.<sup>9051</sup> Witness QBV further testified that it was Nteziryayo and not Kabalira who gave such instructions to conceal traces of the attacks.<sup>9052</sup>

3298. Other inconsistencies between Witness QBV’s previous statements and his trial testimony emerged as well. The Nteziryayo Defence referred Witness QBV to his statements of 11 October 1999 and 11 May 2000 both of which outlined that Muvunyi distributed grenades to the youths who had undergone training on 23 April 1994.<sup>9053</sup> In contrast, Witness QBV testified at trial that the distribution of weapons took place on 22 April 1994 and not 23

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<sup>9046</sup> T. 19 March 2002 pp. 92-94 (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9047</sup> T. 19 March 2002 pp. 92-94 (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9048</sup> T. 14 March 2002 pp. 19-20; T. 14 March 2002 pp. 124-126 (ICS) (Witness QBV).

<sup>9049</sup> T. 19 March 2002 pp. 92, 95 (ICS) (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9050</sup> T. 14 March 2002 p. 32 (Witness QBV).

<sup>9051</sup> T. 19 March 2002 pp. 95-96 (Witness QBV).

<sup>9052</sup> T. 19 March 2002 pp. 92-93, 96-97 (ICS) (Witness QBV).

<sup>9053</sup> Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV).



April 1994. Witness QBV further testified that when the Tribunal's investigators read his previous statement back to him, he noticed the date was wrongly recorded and pointed out to the Tribunal investigators the possible translation error.<sup>9054</sup>

3299. Furthermore, Witness QBV testified that he had participated in weapons training on 7 April 1994 at the Mugusa *commune* office.<sup>9055</sup> On cross-examination the Nteziryayo Defence pointed out that in his previous statement of 11 October 1999, Witness QBV stated that he was not given grenades because he had not previously undergone weapons training.<sup>9056</sup> Further, in his previous statements of 11 May 2000 and 30 March 2001, he did not mention that he had undergone training, despite describing the training that others had undergone in his latter statement.<sup>9057</sup>

3300. On cross-examination the Nteziryayo Defence pointed out that no mention was made in his previous statements regarding the distribution of rifles, Kalashnikovs, an M16 and a box of cartridges at the roadblock on 23 April 1994.<sup>9058</sup> Witness QBV testified that he did not tell the whole truth in his statements to the Tribunal's investigators because he was detained with relatives of Nteziryayo, including Nteziryayo's brother-in-law and he was afraid for his safety.<sup>9059</sup> Witness QBV testified that Nteziryayo's relatives put pressure on him to talk about events in a way which did not incriminate Nteziryayo; to deny having seen Nteziryayo and to testify before the Tribunal that Muvunyi, and not Nteziryayo, distributed weapons.<sup>9060</sup> Witness QBV testified that he informed the Prosecutor's office of the pressure he was being put under and these individuals were transferred to another prison yard. The witness explained that in his subsequent statements, he gave further details and that he told the whole truth in his testimony before the Tribunal.<sup>9061</sup>

3301. The Chamber accepts that Witness QBV may have been under pressure from his co-detainees not to testify against Nteziryayo. Witness QBV testified that the pressure began upon his arrival in prison in February 1999.<sup>9062</sup> This pressure continued, and letters were written to him telling him that he should implicate Muvunyi before the Tribunal and testify that he never saw Nteziryayo in Mugusa *commune*. Witness QBV testified that when he swore to tell the truth before the Tribunal "that was when I started telling the whole truth on the events."<sup>9063</sup>

3302. The Chamber observes that this pressure does not explain the inconsistencies between Witness QBV's previous statements and his trial testimony. The Chamber recalls in particular that while Witness QBV's statement of 16 August 2001 provides a nearly identical recitation of allegedly inciting statements about which Witness QBV testified before this Tribunal, there

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<sup>9054</sup> T. 18 March 2002 p. 36 (Witness QBV).

<sup>9055</sup> T. 14 March 2002 pp. 10-11 (Witness QBV).

<sup>9056</sup> T. 18 March 2002 pp. 128-129 (Witness QBV); Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV).

<sup>9057</sup> T. 18 March 2002 pp. 131-132 (Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV); Defence Exhibit 25B (Nteziryayo) (30 March 2001, Statement of Witness QBV).

<sup>9058</sup> T. 18 March 2002 p. 135 (Witness QBV).

<sup>9059</sup> T. 19 March 2002 pp. 12-14; T. 19 March 2002 pp. 18, 20 (ICS) (Witness QBV).

<sup>9060</sup> T. 19 March 2002 pp. 13-14 (Witness QBV).

<sup>9061</sup> T. 19 March 2002 p. 13 (Witness QBV).

<sup>9062</sup> T. 19 March 2002 p. 17 (ICS) (Witness QBV).

<sup>9063</sup> T. 19 March 2002 p. 18 (ICS) (Witness QBV).

are discrepancies between his statement and his testimony as to where and when these statements occurred, and who pronounced the statements in question; in his testimony, the inflammatory statements in issue were spoken by Nteziryayo on 22 April 1994 at the Kibilizi roadblock, whereas in his 16 August 2001 statement the same words are attributed to Kabalira at the ISAR on 20 April 1994.<sup>9064</sup> Furthermore, Witness QBV testified at trial that Nteziryayo distributed weapons, including “Chinese made grenades” after his speech,<sup>9065</sup> in contrast to his prior statement of 16 August 2001 where Witness QBV stated that Kabalira distributed “Chinese-made grenades.”<sup>9066</sup>

3303. The Chamber considers that while the pressure exerted upon Witness QBV in prison to implicate Muvunyi alone may explain his implication of Muvunyi, it does not explain why Witness QBV gave a statement placing the exact same events on a different day, in a different location, and implicating different people.

3304. As the Chamber has observed above, there are credibility issues relating to this witness. Witness QBV was detained and had not been sentenced for crimes committed during the genocide at the time of his trial testimony.<sup>9067</sup> He confessed to killing a large number of Tutsis the day after the alleged distribution of weapons at the roadblock.<sup>9068</sup> Accordingly, he may have been motivated to attribute responsibility to Nteziryayo in order to obtain a more lenient sentence.

3305. Furthermore, Witness QBV’s testimony regarding the alleged inciting statements of Nteziryayo is contradicted by the testimony of Witness AND-16. Witness AND-16 testified that he was at the Kibilizi *secteur* roadblock on the day Nteziryayo allegedly made the inciting statements<sup>9069</sup> and denied Nteziryayo’s presence.<sup>9070</sup> Witness QBV himself corroborated Witness AND-16’s testimony, testifying that Witness AND-16 was present on 22 April 1994.<sup>9071</sup>

3306. Given the differences between Witness QBV’s trial testimony and his previous statements, and given his status as a detained witness awaiting sentencing at the time of his testimony, the Chamber finds that absent additional corroboration, the Prosecution has not proven beyond a reasonable doubt that Nteziryayo incited the population to kill Tutsis at the roadblock in Kibilizi *secteur*, Mugusa *commune*, on or about 22 and 23 April 1994.

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<sup>9064</sup> T. 14 March 2002 pp. 15-19 (Witness QBV); *cf.* T. 19 March 2002 pp. 92-94 (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9065</sup> T. 14 March 2002 p. 19; T. 14 March 2002 pp. 124-126 (ICS) (Witness QBV).

<sup>9066</sup> T. 19 March 2002 pp. 95-96 (Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>9067</sup> T. 14 March 2002 p. 10 (Witness QBV).

<sup>9068</sup> T. 19 March 2002 p. 105 (Witness QBV); *see also* Defence Exhibit 22B (Nteziryayo) (22 February 1999, Confession of Witness QBV to Rwandan Authorities); Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV).

<sup>9069</sup> T. 24 January 2007 p. 18 (ICS); T. 25 January 2007 p. 33 (ICS) (Witness AND-16).

<sup>9070</sup> T. 22 January 2007 pp. 24, 36 (ICS) (Witness AND-16).

<sup>9071</sup> T. 14 March 2002 p. 126 (ICS); T. 18 March 2002 p. 126 (Witness QBV).

### 3.6.27 Tumba Secteur Killings, Late April 1994

#### 3.6.27.1 Introduction

3307. The Kanyabashi Indictment alleges that from 20 April 1994, massacres became widespread within Butare *préfecture*, and Tutsis were killed where they had sought refuge, thinking that authorities would protect them.<sup>9072</sup> Between April and July 1994, to ensure that the massacres were carried out in an efficient and unflagging manner, Kanyabashi not only incited the population, but he also aided and abetted the population in the slaughter of Tutsis in Butare.<sup>9073</sup>

3308. The Prosecution submits that Kanyabashi, in his role as Ngoma *bourgmestre*, pursued a strategy in collaboration with other authorities, whereby Tutsi refugees were made to believe that they would find refuge in communal places, and when Tutsis assembled in those places to seek sanctuary, they were attacked. The Prosecution contends that Kanyabashi played a crucial role in furthering massacres in several *secteurs* of Ngoma *commune*, including Tumba *secteur*.<sup>9074</sup> Specifically, the Prosecution relies on Prosecution Witness FAC in support of the submission that in late April 1994, Kanyabashi told people in Ngoma *commune* to inform Tutsis who were hiding that the war was over and they could return to normal life. Tutsis who believed this message came out of hiding and were taken to the Tumba *secteur* office. When Tutsis arrived at the Tumba *secteur* office, the acting *conseiller* of the *secteur* instructed *Interahamwe* and soldiers to detain and kill them.<sup>9075</sup>

3309. In addition to submissions on the vagueness of Paragraph 6.58 of the Kanyabashi Indictment, considered below, the Kanyabashi Defence submits that evidence adduced by the Prosecution does not clearly establish a link between Kanyabashi and the deaths of Tutsis at the Tumba *secteur* office. The Kanyabashi Defence asserts that the acting *conseiller* was responsible for ordering killings at the Tumba *secteur* office. The Kanyabashi Defence avers that Kanyabashi was not present at the Tumba *secteur* office when people were killed there.<sup>9076</sup>

3310. The Kanyabashi Defence further submits that the massacres that took place in Ngoma *commune* at the end of April 1994 were carried out by soldiers, over whom Kanyabashi had no power.<sup>9077</sup> The Kanyabashi Defence also contends that Prosecution Witness FAC was a member of a group whose mission was to incriminate Kanyabashi.<sup>9078</sup> In support of these submissions, the Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witnesses D-2-YYYY, D-2-5-I and D-2-13-D.

#### 3.6.27.2 Preliminary Issues

3311. The Kanyabashi Defence submits that Paragraph 6.58 of the Kanyabashi Indictment, which alleges that between April and July 1994, Kanyabashi aided and abetted the slaughter of

<sup>9072</sup> Para. 6.27 of the Kanyabashi Indictment (not in support of counts).

<sup>9073</sup> Para. 6.58 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9); *see also* Para. 6.64 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9074</sup> Prosecution Opening Argument, T. 12 June 2001 pp. 80-83.

<sup>9075</sup> Prosecution Closing Brief, p. 275, para. 151; p. 397, para. 40.

<sup>9076</sup> Kanyabashi Closing Brief, paras. 318-329.

<sup>9077</sup> Kanyabashi Closing Argument, T. 28 April 2009 p. 42.

<sup>9078</sup> Kanyabashi Closing Brief, para. 322.

Tutsis in Butare, is impermissibly vague, and as a result, the Accused was unable to prepare his defence. The Kanyabashi Defence contends that this paragraph fails to indicate a specific time frame or location, nor does it indicate how Kanyabashi allegedly aided and abetted the population in killing Tutsis. The Kanyabashi Defence avers that Paragraph 6.58 does not refer to any particular killings or identify any victims.<sup>9079</sup>

3312. The Kanyabashi Defence further submits that Paragraph 6.58 charges Kanyabashi with responsibility under Article 6 (1) and (3) of the Statute, without identifying Kanyabashi's subordinates, their actions or what Kanyabashi purportedly knew of those actions.<sup>9080</sup>

3313. The Chamber observes that Paragraph 6.58 does not identify Kanyabashi's subordinates. Nevertheless, the Chamber considers that Kanyabashi's subordinates can be inferred from reading Paragraph 6.58 alongside other relevant paragraphs in the Kanyabashi Indictment. The Chamber notes that Paragraph 4.3 of the Kanyabashi Indictment states that Kanyabashi exercised authority over his subordinates in his capacity as *bourgmestre* of Ngoma *commune*. Paragraph 6.29 of the Kanyabashi Indictment further states that Ngoma *commune* was the site of numerous massacres in which Kanyabashi was either directly involved or in which his subordinates, as set out in Paragraph 6.32, were implicated. According to Paragraph 6.32 of the Kanyabashi Indictment, those subordinates include "*conseillers de secteur*."<sup>9081</sup>

3314. The Chamber recalls that in its Decision of 31 May 2000,<sup>9082</sup> it ordered the Prosecution to specify the identity of the subordinates referred to in Paragraph 6.29 of the Amended Kanyabashi Indictment, filed on 12 August 1999. The Prosecution amended Paragraph 6.29 of the Amended Kanyabashi Indictment, filed on 29 June 2000, to state that Ngoma *commune* was the site of numerous massacres, in which Kanyabashi was either directly involved or in which his subordinates, as set out in Paragraph 6.32 below, were implicated. Paragraph 6.32 of the Amended Indictment states that Kanyabashi ordered his subordinates, notably *conseillers de secteur* and *commune* policemen, to go to Kabakobwa *cellule* to eliminate refugees.

3315. The Chamber therefore does not agree with the Kanyabashi Defence that Paragraph 6.58 failed to identify Kanyabashi's subordinates. The Chamber considers that it can be inferred from reading Paragraph 6.58, in the context of the Indictment as a whole, that Kanyabashi is accused of being responsible for the actions of *conseillers de secteurs*. In this instance, the Prosecution's submission in respect of Article 6 (3) of the Statute is that Kanyabashi should be held responsible for the actions of the *conseiller* of Tumba *secteur*, who allegedly oversaw the killings of Tutsis at Tumba *secteur* office in late April 1994.

3316. However, the Chamber agrees with the Kanyabashi Defence that Paragraph 6.58 of the Kanyabashi Indictment is impermissibly vague with regard to the time and location of this allegation. Paragraph 6.58 of the Kanyabashi Indictment is therefore defective, it could not have put Kanyabashi on notice that the Prosecution would lead evidence on a specific incident in late April 1994 whereby Kanyabashi allegedly encouraged Tutsis to come out of hiding and

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<sup>9079</sup> Kanyabashi Closing Brief, paras. 318-320.

<sup>9080</sup> Kanyabashi Closing Brief, para. 319.

<sup>9081</sup> Para. 6.32 of the Kanyabashi Indictment.

<sup>9082</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

as a result, they were killed at the Tumba *secteur* office. Recalling the principles of notice previously articulated in this Judgement (), the Chamber will proceed to determine whether this defect was cured through subsequent disclosure.

3317. The Chamber observes that the Appendix to the Prosecution Pre-Trial Brief lists a single witness, Prosecution Witness FAC, who was expected to testify that around 25 April 1994 he attended a meeting at Tumba *secteur*, where Kanyabashi stated that Tutsis should come out of hiding because peace had been restored. The summary of Witness FAC's expected testimony further states that Tutsis came out of hiding, assembled at the *secteur* office, and were killed by armed attackers.<sup>9083</sup> The Chamber notes that Witness FAC is listed in the Prosecution Pre-Trial Brief as a witness against Kanyabashi on the count of conspiracy to commit genocide and direct and public incitement to commit genocide.

3318. The Chamber notes that Witness FAC's 23 February 2000 statement avers that about one week after the genocide started, Kanyabashi came to Tumba *secteur* and stated that Tutsis who were hiding should come out because peace had been restored. This statement indicates that as soon as Tutsis came out of their hiding places, they assembled at the Tumba *secteur* office to receive information about the return of peace, however they were killed by armed soldiers and youth.<sup>9084</sup> The Chamber notes that the Kanyabashi Defence had several years to investigate this allegation. Witness FAC's 23 February 2000 statement was disclosed to the Defence in December 2000, well before his testimony on 3 March 2004, and the commencement of the Kanyabashi Defence case in July 2007.

3319. The Chamber therefore considers that the defect in Paragraph 6.58 of the Kanyabashi Indictment was cured by subsequent Prosecution disclosures. The information contained in the summary of Witnesses FAC's testimony in the Appendix to the Prosecution Pre-Trial Brief and Witness FAC's 23 February 2000 statement provided timely, clear and sufficiently consistent details on the allegation that around 23 April 1994, Kanyabashi came to Tumba *secteur*, stated that Tutsis who were hiding should come out because peace had been restored, and when Tutsis came out and convened at the Tumba *secteur* office, they were killed there by armed soldiers and *Interahamwe*. Consequently, Kanyabashi was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence.

### **3.6.27.3 Evidence**

#### Prosecution Witness FAC

3320. Witness FAC, a Hutu and detainee at the time of his testimony,<sup>9085</sup> testified that during the genocide, he often went to a local bar in a small house in Tumba *secteur*.<sup>9086</sup> The bar was situated on the road that led to the Tumba *secteur* office.<sup>9087</sup> Witness FAC stated that there was no movement during that period; one could not go beyond one's house. However, Witness FAC was able to go to that bar at any time. On two occasions, when he was drinking with

<sup>9083</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAC (15).

<sup>9084</sup> 23 February 2000, Statement of Witness FAC, disclosed 15 November 2000 and 4 December 2000.

<sup>9085</sup> Prosecution Exhibit 84 (Personal Particulars); T. 3 March 2004 p. 62 (ICS) (Witness FAC).

<sup>9086</sup> T. 4 March 2004 pp. 6-7 (Witness FAC).

<sup>9087</sup> T. 3 March 2004 p. 64 (ICS); T. 4 March 2004 pp. 5, 27-28; T. 8 March 2004 p. 5 (ICS) (Witness FAC).

friends at that bar, Witness FAC encountered Kanyabashi. One of those encounters took place in April 1994 and the other took place approximately one month later.<sup>9088</sup>

3321. Witness FAC testified that approximately three days after the genocide erupted, on or about 23 April 1994, Kanyabashi came by the bar between 10.00 and 10.30 a.m.<sup>9089</sup> Kanyabashi was in a white saloon vehicle and was driving in the direction of Tumba *secteur*. There was no one else in the vehicle, other than Kanyabashi and the driver.<sup>9090</sup> There were more than 10 people at the bar.<sup>9091</sup> Kanyabashi parked his car, spoke to them from his vehicle, and then left. Kanyabashi told them that the war was over, and they should tell all Tutsis, especially those hiding in houses and in sorghum fields, that they could go back to normal life.<sup>9092</sup>

3322. Witness FAC testified that he had hidden two Tutsis in his home.<sup>9093</sup> On account of what Kanyabashi said, Witness FAC and others went to get Tutsis they had hidden, and took them to the *secteur* office. Witness FAC brought two Tutsis who he had been hiding to the *secteur* office.<sup>9094</sup> Witness FAC testified that they were all convinced that the war was over; when they took Tutsis to the Tumba *secteur* office, they thought these Tutsis would receive “exemplary punishment.”<sup>9095</sup>

3323. However, upon their arrival at the office, a man named Sostene Munyemana, who was running the *secteur*, asked the *Interahamwe* to kill the Tutsis.<sup>9096</sup> Munyemana assembled people in the compound, in front of the office. When the number of people had grown, he asked that they be killed. The *Interahamwe*, under the supervision of two soldiers, killed the Tutsis who had been brought to the office. The soldiers were Munyemana’s guards.<sup>9097</sup> Witness FAC testified that he begged the attackers to spare the two people he had brought to the office, and the soldiers asked him to pay 3,000 francs in return. Since Witness FAC did not have the money, the two Tutsis were killed in his presence.<sup>9098</sup>

3324. Witness FAC testified that he was about three metres away from the area outside the *secteur* office where people were killed. Approximately 80 people were killed in the compound in front of the office, and approximately 70 people were killed inside the *secteur* office.<sup>9099</sup> People who were killed outside the *secteur* office were made to lie on the ground. Young people used clubs and various other instruments to kill.<sup>9100</sup> Witness FAC estimated that there were between 30 and 40 attackers.<sup>9101</sup> Soldiers shot those who attempted to run away. In this manner, the soldiers killed four people who attempted to run away, while the other people

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<sup>9088</sup> T. 4 March 2004 p. 30 (Witness FAC).

<sup>9089</sup> T. 3 March 2004 pp. 62, 64 (ICS); T. 4 March 2004 p. 25 (Witness FAC).

<sup>9090</sup> T. 3 March 2004 pp. 62-65 (ICS) (Witness FAC).

<sup>9091</sup> T. 4 March 2004 p. 27 (Witness FAC).

<sup>9092</sup> T. 3 March 2004 pp. 64-65 (ICS) (Witness FAC).

<sup>9093</sup> T. 3 March 2004 pp. 64-65 (ICS) (Witness FAC).

<sup>9094</sup> T. 3 March 2004 p. 65 (ICS); T. 4 March 2004 p. 25 (Witness FAC).

<sup>9095</sup> T. 4 March 2004 p. 26 (Witness FAC).

<sup>9096</sup> T. 3 March 2004 pp. 64-65 (ICS) (Witness FAC).

<sup>9097</sup> T. 3 March 2004 pp. 65-66 (ICS) (Witness FAC).

<sup>9098</sup> T. 4 March 2004 p. 35 (Witness FAC).

<sup>9099</sup> T. 3 March 2004 pp. 65-66 (ICS) (Witness FAC).

<sup>9100</sup> T. 3 March 2004 p. 66 (ICS) (Witness FAC).

<sup>9101</sup> T. 4 March 2004 p. 36 (Witness FAC).

were killed by youth. The killings lasted for approximately 40 minutes, as people continued to bring Tutsis to the *secteur* office.<sup>9102</sup> Witness FAC testified that afterward, they were asked to remove the bodies of the victims in the *secteur* office, and he saw injections in their arms.<sup>9103</sup>

3325. Witness FAC testified that Kanyabashi was not present at the *secteur* office.<sup>9104</sup> Witness FAC testified that he knew Kanyabashi very well. Kanyabashi was a friend of his when Witness FAC was studying. He used to meet Kanyabashi every day. Witness FAC identified Kanyabashi in court.<sup>9105</sup>

3326. Witness FAC testified that he was subsequently detained in Rwanda for the role he played in bringing the two Tutsis from his house to the *secteur* office where they were killed.<sup>9106</sup> According to Witness FAC, the Rwandan judicial system provides that whoever is present where killings are carried out is implicated in the crime. He was held responsible for conniving against the two people he took to the *secteur* office.<sup>9107</sup> Witness FAC testified that he did not personally kill anyone, but he was present during the killings. Witness FAC stated that he could not dissociate himself from the group of killers. He supported them.<sup>9108</sup>

3327. Witness FAC testified that he did not believe he did anything wrong, because he acted in accordance with instructions he had been given. When he led the two Tutsis to the *secteur* office, he did not think they would be killed there.<sup>9109</sup> He thought those Tutsis would live, and that he would be compensated for having hidden them. He believed there was shared responsibility for the death of those two people. He stated, “[o]ne could not have refused to obey the orders of the boss.”<sup>9110</sup> Witness FAC testified that he first denied that he was responsible for the death of those people. After four years of detention, he confessed to having committed those acts.<sup>9111</sup>

3328. Witness FAC testified that he had long-running problems with his eyes. Witness FAC conceded that he was in frail health, and that he had health problems subsequent to a car accident. When asked if he was sane, Witness FAC stated: “I cannot say that I am insane, but I cannot say that I am normal just like anybody else. All I can tell you is that I am narrating things to you that I experienced myself and things I saw myself.”<sup>9112</sup>

#### Kanyabashi Defence Witness D-2-YYYY

3329. Witness D-2-YYYY, a Hutu former civil servant,<sup>9113</sup> testified that from 19 to 21 April 1994, he had been assigned to guard one of Ngoma *commune*'s border areas at Mukura bridge

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<sup>9102</sup> T. 3 March 2004 p. 66 (ICS) (Witness FAC).

<sup>9103</sup> T. 4 March 2004 p. 40 (Witness FAC).

<sup>9104</sup> T. 3 March 2004 p. 66 (ICS) (Witness FAC).

<sup>9105</sup> T. 3 March 2004 pp. 70-71 (Witness FAC).

<sup>9106</sup> T. 3 March 2004 pp. 62-65 (ICS) (Witness FAC).

<sup>9107</sup> T. 4 March 2004 pp. 14, 23 (ICS) (Witness FAC).

<sup>9108</sup> T. 4 March 2004 p. 14 (ICS) (Witness FAC).

<sup>9109</sup> T. 4 March 2004 p. 26 (Witness FAC).

<sup>9110</sup> T. 4 March 2004 p. 33 (Witness FAC).

<sup>9111</sup> T. 4 March 2004 p. 25 (Witness FAC).

<sup>9112</sup> T. 8 March 2004 p. 8 (Witness FAC).

<sup>9113</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

on the border between Ngoma and Gishamvu *communes*.<sup>9114</sup> On 21 April 1994, the witness intended to stay at home but on receiving a message from a colleague, he went to Mukura bridge at 8.30 or 9.00 a.m.<sup>9115</sup> He went home around noon.<sup>9116</sup> In cross-examination the witness was confronted with his previous statement of 19 November 2004 in which he stated that he did not work on 21 April 1994. The witness explained this contradiction by saying that he had told the investigator that he had a rest day that day, not that he had rested that day.<sup>9117</sup>

3330. Witness D-2-YYYY stated that on 22 April 1994, Kanyabashi chaired a meeting at the *commune* office, which started at 8.30 a.m. After the meeting, Kanyabashi remained at the *commune* office until 1.30 p.m. and then went home for two hours.<sup>9118</sup> He returned to the *commune* office at 3.30 p.m. and went home for the day at about 5.00 p.m.<sup>9119</sup> The witness ate at Kanyabashi's house from 3.30 to 5.00 p.m. before returning to the *commune* office where he stayed the night.<sup>9120</sup>

3331. Witness D-2-YYYY remained at the *commune* office until 5 p.m. the following day, 23 April 1994.<sup>9121</sup> After 5.00 p.m., he was posted to guard Kanyabashi's residence with Witness D-2-5-I and spent the night there. Kanyabashi left his home with Witness D-2-5-I at 6.00 p.m. and returned around 7.00 or 7.30 p.m. He did not go out again.<sup>9122</sup>

3332. On 24 April 1994, Witness D-2-YYYY was on guard at Kanyabashi's house until 5.00 p.m. Kanyabashi did not go out that day. Witness D-2-YYY testified that he remembered what happened between 21 and 24 April 1994 because it was the first time in his life he had experienced such events.<sup>9123</sup>

#### Kanyabashi Defence Witness D-2-5-I

3333. Witness D-2-5-I, a Hutu civil servant, testified that on 22 April 1994, he rested at home until 5.00 p.m. when he reported for work at the *commune* office where he spent the night.<sup>9124</sup> On 23 April 1994, the witness remained at the *commune* office; at 5.00 p.m. Kanyabashi arrived and asked the witness to accompany him.<sup>9125</sup> Kanyabashi, the witness and another person drove to Mukoni and the Hotel Faucon, where they were shot at. In view of the prevailing insecurity, the witness spent the night at Kanyabashi's house.<sup>9126</sup> He denied being on duty with Witness D-2-YYYY on 23 April 1994.<sup>9127</sup>

<sup>9114</sup> T. 27 November 2007 pp. 39-41, 44 (ICS); T. 3 December 2007 p. 39 (ICS); T. 6 December 2007 pp. 52-55 (ICS) (Witness D-2-YYYY).

<sup>9115</sup> T. 27 November 2007 p. 46 (ICS); T. 6 December 2007 pp. 65-67 (ICS) (Witness D-2-YYYY).

<sup>9116</sup> T. 27 November 2007 p. 52 (ICS); T. 11 December 2007 p. 7 (ICS) (Witness D-2-YYYY).

<sup>9117</sup> T. 3 December 2007 pp. 41-42 (ICS) (Witness D-2-YYYY).

<sup>9118</sup> T. 28 November 2007 p. 19 (ICS) (Witness D-2-YYYY).

<sup>9119</sup> T. 28 November 2007 pp. 20-21 (ICS) (Witness D-2-YYYY).

<sup>9120</sup> T. 28 November 2007 p. 21 (ICS) (Witness D-2-YYYY).

<sup>9121</sup> T. 28 November 2007 p. 21 (ICS) (Witness D-2-YYYY).

<sup>9122</sup> T. 28 November 2007 p. 22 (ICS) (Witness D-2-YYYY).

<sup>9123</sup> T. 28 November 2007 p. 24 (ICS) (Witness D-2-YYYY).

<sup>9124</sup> T. 21 January 2008 pp. 14-16 (ICS) (Witness D-2-5-I).

<sup>9125</sup> T. 21 January 2008 pp. 48, 50 (ICS) (Witness D-2-5-I).

<sup>9126</sup> T. 21 January 2008 p. 50 (ICS) (Witness D-2-5-I).

<sup>9127</sup> T. 23 January 2008 pp. 59-67 (ICS) (Witness D-2-5-I).



Kanyabashi Defence Witness D-2-13-D

3334. Witness D-2-13-D, a Hutu detainee, testified that Witness FAC was a member of a group of people in Butare prison who were trying to incriminate Kanyabashi. Witness D-2-13-D contended that Witness FAC and others came to his cell in prison and attempted to recruit him to testify against Kanyabashi.<sup>9128</sup>

**3.6.27.4 Deliberations**

3335. The Prosecution adduced evidence from a single factual witness, Prosecution Witness FAC, in support of the contention that Kanyabashi is responsible for conspiring to bring about the massacre of Tutsis at the Tumba *secteur* office around 23 April 1994. Specifically, the Prosecution asserts that Kanyabashi told people gathered at a bar in Butare town, including Prosecution Witness FAC, that they should inform Tutsis who were hiding that it was safe to come out. Allegedly, on account of Kanyabashi's words, Witness FAC led two Tutsis who had been hiding in his home to the Tumba *secteur* office, where they were subsequently killed on the instructions of the acting *conseiller* of the *secteur*, who was overseeing *Interahamwe* and two soldiers in killing Tutsis there.<sup>9129</sup>

3336. The Chamber observes that the Kanyabashi Defence does not appear to contest that Tutsis were killed at Tumba *secteur* office around 23 April 1994.<sup>9130</sup> The Chamber further notes that it is not contested that Kanyabashi was absent from the Tumba *secteur* office when Witness FAC allegedly witnessed Tutsis being killed there.<sup>9131</sup>

3337. The issues of contention are whether, around 23 April 1994, Kanyabashi told Prosecution Witness FAC to take Tutsis who had come out of hiding to the Tumba *secteur* office, and if so, whether Kanyabashi was acting in concert with or had control over the actions of the *conseiller* of the *secteur*, who purportedly oversaw the *Interahamwe* and soldiers killing Tutsis at the Tumba *secteur* office.

3338. The Chamber accepts Witness FAC's testimony that he knew Kanyabashi very well. Witness FAC testified that Kanyabashi was his friend when Witness FAC was studying, and that he used to meet Kanyabashi every day.<sup>9132</sup> The Chamber notes that Witness FAC knew Kanyabashi as the *bourgmestre* of Ngoma *commune*, and he identified Kanyabashi in court.<sup>9133</sup> Although Witness FAC testified that he had poor eyesight,<sup>9134</sup> the Chamber considers his identification of Kanyabashi in 1994 to be reliable in light of the above factors, as well as Witness FAC's testimony that Kanyabashi spoke directly to his group when Kanyabashi stated that peace had returned.

3339. The Chamber recalls that Witness FAC testified that his encounter with Kanyabashi at the bar, where Kanyabashi allegedly stated that Tutsis should come out of hiding, took place

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<sup>9128</sup> T. 30 August 2007 pp. 49-50 (ICS) (Witness D-2-13-D).

<sup>9129</sup> Prosecution Closing Brief, p. 275, para. 151; p. 397, para. 40.

<sup>9130</sup> Kanyabashi Closing Brief, paras. 327-329.

<sup>9131</sup> See T. 3 March 2004 p. 66 (ICS) (Witness FAC); Kanyabashi Closing Brief, para. 327.

<sup>9132</sup> T. 3 March 2004 pp. 70-71 (Witness FAC).

<sup>9133</sup> T. 3 March 2004 pp. 70-71 (Witness FAC).

<sup>9134</sup> T. 4 March 2004 p. 8 (Witness FAC).

around 10.00 a.m., on or about 23 April 1994.<sup>9135</sup> The Chamber notes that the Kanyabashi Defence led alibi evidence through Kanyabashi Defence Witnesses D-2-YYYY and D-2-5-I, that if believed, would provide Kanyabashi with an alibi for several periods of time between 22 and 24 April 1994. The Chamber further notes that the testimony of Witness D-2-YYYY, if believed, would provide Kanyabashi with an alibi for the following periods: between 8.30 a.m. and 1.30 p.m. and 3.30 and 5.00 p.m. on 22 April 1994;<sup>9136</sup> between 5.00 and 6.00 p.m. and between 7.00 p.m. and 12.00 midnight on 23 April 1994;<sup>9137</sup> and until 5.00 p.m. on 24 April 1994.<sup>9138</sup> Similarly, the testimony of Witness D-2-5-I, if believed, would provide Kanyabashi with an alibi for the entire evening of 23 April 1994, from 5.00 p.m.<sup>9139</sup> Further, as regards 22 and 24 April 1994, the alibi evidence covers most of the day up to 5.00 p.m., the time when Witness D-2-YYYY left Kanyabashi at the *commune* office and his home respectively. The Chamber observes that the alibi evidence of Witnesses D-2-YYYY and D-2-5-I, even if believed, does not cover the morning of 23 April 1994. Regardless, the Chamber considers that there is no need, in the instant case, to assess whether the Prosecution has eliminated the reasonable possibility that the alibi is true.<sup>9140</sup>

3340. The Chamber notes that Witness FAC provided a detailed account of killings he witnessed at the Tumba *secteur* office. Nevertheless, in the Chamber's view, the Prosecution has failed to adduce sufficient evidence to establish that Kanyabashi told Witness FAC to bring Tutsis who had been hiding to the *secteur* office.

3341. The Chamber notes that Witness FAC's testimony consistently imputes responsibility on Kanyabashi for the fate that befell the two Tutsis that Witness FAC took to the *secteur* office, but his testimony was ambiguous regarding whether Kanyabashi explicitly told people to escort Tutsis who had come out of hiding to the Tumba *secteur* office. The Chamber observes that when Witness FAC was asked which authorities instructed them to take Tutsis to the *secteur* office, Witness FAC responded, "[a]s regards the fact of leading people to the *secteur* office, it was communal administration that gave us those instructions and that administration was represented by Kanyabashi."<sup>9141</sup> Similarly, when Witness FAC testified that Kanyabashi was the authority who gave them "those instructions",<sup>9142</sup> it is unclear whether Witness FAC meant to say that Kanyabashi told them that Tutsis should come out of hiding or that Kanyabashi said that Tutsis should come out of hiding and assemble at the *secteur* office.

3342. The Chamber observes that Witness FAC gave contradictory evidence on this point. On several occasions, Witness FAC testified that the only thing Kanyabashi said at the bar in late April 1994 was: "Come over. I want to tell you something. Now, there's peace. Tell the Tutsis in your house [and] that are hiding in the sorghum fields to come out."<sup>9143</sup> However, Witness

<sup>9135</sup> T. 3 March 2004 pp. 62-65 (ICS) (Witness FAC).

<sup>9136</sup> T. 28 November 2007 pp. 19, 21 (ICS) (Witness D-2-YYYY).

<sup>9137</sup> T. 28 November 2007 pp. 21-22 (ICS) (Witness D-2-YYYY).

<sup>9138</sup> T. 28 November 2007 p. 24 (ICS) (Witness D-2-YYYY).

<sup>9139</sup> T. 21 January 2008 pp. 48, 50 (ICS) (Witness D-2-5-I).

<sup>9140</sup> *Kajelijeli*, Judgement (AC), para. 41; *Kayishema & Ruzindana*, Judgement (AC), para. 106; *Zigiranyirazo*, Judgement (AC), para. 18.

<sup>9141</sup> T. 4 March 2004 p. 27 (Witness FAC).

<sup>9142</sup> T. 4 March 2004 p. 27 (Witness FAC).

<sup>9143</sup> T. 4 March 2004 p. 33 (Witness FAC).

FAC also appeared to testify that Kanyabashi instructed them to take Tutsis to the *secteur* office.<sup>9144</sup>

3343. Furthermore, the Chamber notes that concerns were raised by the Kanyabashi Defence regarding the credibility of Witness FAC's evidence on the events at issue.<sup>9145</sup> Witness FAC was a detained accomplice witness at the time of his testimony. Accordingly, he may have had an incentive to testify against an Accused before the Tribunal to deflect potential liability from himself, and gain favour with Rwandan authorities.<sup>9146</sup> The Chamber notes that reliance upon the evidence of accomplice witnesses *per se* does not constitute a legal error.<sup>9147</sup> Nevertheless, when weighing the probative value of such evidence, the Chamber is bound to carefully consider the totality of circumstances in which it was tendered.<sup>9148</sup> In particular, consideration should be given to circumstances showing that accomplice witnesses may have incentives to implicate the Accused or to lie.<sup>9149</sup> In this particular instance, Witness FAC may have been motivated to blame Kanyabashi for the death of Tutsis at the Tumba *secteur* office in late April 1994, in order to exonerate himself. The Chamber considers it significant that Witness FAC testified that he hoped to be released from prison for admitting a certain level of responsibility for the deaths of these two people.<sup>9150</sup> Additionally, the Chamber observes that this witness had previously demonstrated a willingness to tailor his evidence to serve his interests. Witness FAC testified that he first denied that he was responsible for the death of those people, but after four years of detention, he confessed to having committed those acts.<sup>9151</sup>

3344. In light of all of the foregoing, the Chamber considers that the Prosecution has failed to adduce sufficient evidence to establish that Kanyabashi was acting in concert with the individual who was overseeing the *Interahamwe* and soldiers in killing Tutsis at the Tumba *secteur* office. Witness FAC's evidence did not clearly establish that the individual in charge of the *secteur* office when Witness FAC arrived was a properly appointed *conseiller*, over whom Kanyabashi had effective control. The Chamber also considers that the Prosecution failed to adduce sufficient evidence to establish that Kanyabashi exercised control over the *Interahamwe* and soldiers who were killing people at the Tumba *secteur* office.

3345. Taking into account the gaps in the evidence led, the fact that Witness FAC was an uncorroborated witness on this allegation, and considering Witness FAC's status as a detained accomplice witness, the Chamber finds that the Prosecution has failed to prove beyond a reasonable doubt that Kanyabashi told Hutus to lead Tutsis to their death at the Tumba *secteur* office or that Kanyabashi authorised or had control over the actions of the *Interahamwe*, soldiers and civilians who killed Tutsis at the Tumba *secteur* office, around 23 April 1994.

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<sup>9144</sup> T. 4 March 2004 p. 33 (Witness FAC).

<sup>9145</sup> Kanyabashi Closing Brief, paras. 321-347.

<sup>9146</sup> Kanyabashi Closing Brief, paras. 321-347.

<sup>9147</sup> *Muvunyi I*, Judgement (AC), para. 128; *Niyitegeka*, Judgement (AC), para. 98; *see also Ntagerura et al.*, Judgement (AC), para. 204.

<sup>9148</sup> *Muvunyi I*, Judgement (AC), para. 128; *Niyitegeka*, Judgement (AC), para. 98; *see also Ntagerura et al.*, Judgement (AC), paras. 204, 206.

<sup>9149</sup> *Nchamihigo*, Judgement (AC), para. 305; *Ntagerura et al.*, Judgement (AC), paras. 204, 206.

<sup>9150</sup> T. 4 March 2004 pp. 33-34 (Witness FAC).

<sup>9151</sup> T. 4 March 2004 p. 25 (Witness FAC).

### 3.6.28 Bishya Trading Centre, Late April 1994

#### 3.6.28.1 Introduction

3346. Paragraph 5.8 of the Ndayambaje Indictment alleges that from April to July 1994, prominent figures of authority propagated incitement to hatred and violence. Ndayambaje and others publicly incited people to exterminate Tutsis and their “accomplices”.<sup>9152</sup> The Prosecution submits that by making public statements calling for the extermination of the Tutsi population, Ndayambaje gave effect to the Interim Government’s plan to commit genocide. The public took heed of Ndayambaje’s statements and Tutsis were killed as a result. Ndayambaje was an influential figure in Muganza *commune* during the time frame covered by Paragraph 5.8 of the Indictment; he was the former *bourgmestre* of Muganza *commune* and was reappointed to that position in June 1994. He used his position of authority to rally the public into killing Tutsis. In this connection, the Prosecution alleges that in April 1994, Ndayambaje incited members of the public at the Bishya trading centre to attack Tutsis who had gathered on Kabuye Hill.<sup>9153</sup> In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses FAU and FAG.

3347. In addition to its submission on defects in the Indictment, considered below, the Ndayambaje Defence submits that the Prosecution evidence lacks credibility and cannot be relied on.<sup>9154</sup>

#### 3.6.28.2 Preliminary Issues

3348. The Ndayambaje Defence submits that Paragraph 5.8 of the Ndayambaje Indictment is impermissibly vague; it does not provide any specific examples of public incitement by Ndayambaje. In particular, Paragraph 5.8 does not contain any information on when or where such incitement took place, the target audience, the nature and content of the inflammatory utterances or the link between the incitement and any crime.<sup>9155</sup>

3349. Paragraph 5.8 is general in nature and, aside from alleging that Ndayambaje publicly incited people to exterminate Tutsis over a four-month period, it fails to provide any details of specific incidents of incitement. The Chamber therefore considers it to be defective. The Chamber must then determine whether Paragraph 5.8 was cured of its defects through subsequent Prosecution disclosures.

3350. The allegation that Ndayambaje incited members of the public to kill Tutsis at the Bishya trading centre does not feature in the summaries of Witnesses FAG and FAU’s expected testimony in the Appendix to the Prosecution Pre-Trial Brief.<sup>9156</sup> Witnesses FAG and FAU were the only Prosecution witnesses who testified on this particular incident of alleged incitement involving Ndayambaje.

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<sup>9152</sup> Para. 5.8 of the Ndayambaje Indictment (in support of all counts).

<sup>9153</sup> Prosecution Closing Brief, p. 460, paras. 37, 39-40.

<sup>9154</sup> Ndayambaje Closing Brief, paras. 409, 445.

<sup>9155</sup> Ndayambaje Closing Brief, para. 48.

<sup>9156</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAG (19); Witness FAU (32).

3351. The summary of Witness FAG's expected testimony states that Kanyenzi ordered the witness to go to Kabuye Hill with Burundian refugees to exterminate Tutsi survivors. No reference is made to Ndayambaje's involvement in the issuance of this order nor does the witness suggest that Ndayambaje incited people to join in the killings at Kabuye Hill. Witness FAU's expected testimony states that Ndayambaje and Nteziryayo incited a 1,000-person crowd to kill Tutsis in May 1994. This does not relate to the allegation at Bishya, which allegedly took place in April 1994 and involved a much smaller audience. The Prosecution did not include any additional information in the Pre-Trial Brief relating to this allegation, and did not reference this event in its opening statement.

3352. The Chamber concludes that the Ndayambaje Defence did not receive proper notice of the Prosecution's intention to lead evidence as to this allegation. Subsequent Prosecution disclosures failed to cure the Indictment's defects. Accordingly, the Chamber will not consider the Prosecution evidence insofar as it relates to this allegation.

### **3.6.29 Replacement of *Conseillers*, Late April 1994**

#### **3.6.29.1 Introduction**

3353. The Kanyabashi Indictment alleges that following 20 April 1994, Kanyabashi was responsible for the dismissal of civil servants and political appointees who did not approve of or participate in the killing of Tutsis with enough zeal.<sup>9157</sup> The Indictment further alleges that around late April 1994, Kanyabashi removed certain *conseillers de secteur* in his *commune* and replaced them with people who were known to have taken part in, or shown approval of, the murdering of Tutsis.<sup>9158</sup>

3354. In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses FAL and QA, and Prosecution Expert Witnesses André Guichaoua and Alison Des Forges.<sup>9159</sup>

3355. In addition to its submissions on defects in the Kanyabashi Indictment considered below, the Kanyabashi Defence submits that the Prosecution failed to adduce sufficient evidence showing that Kanyabashi was responsible for replacing certain officials. The Defence also asserts that Witness QA failed to testify truthfully at trial. Finally, the Defence asserts that the testimony of the Prosecution expert witnesses was insufficient to prove that Kanyabashi replaced certain officials.<sup>9160</sup> The Kanyabashi Defence relies on Defence Witness D-2-21-T.<sup>9161</sup>

#### **3.6.29.2 Preliminary Issues**

3356. The Kanyabashi Defence submits that the allegations against Kanyabashi are unduly vague and were not sufficiently pled in the Indictment. It asserts that the Indictment failed to

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<sup>9157</sup> Para. 6.26 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9158</sup> Para. 6.30 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9159</sup> Prosecution Closing Brief, p. 399, para. 48; *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 52.

<sup>9160</sup> Kanyabashi Closing Brief, paras. 618-626.

<sup>9161</sup> Kanyabashi Closing Brief, paras. 620.

include “essential facts” which would allow it to prepare Kanyabashi’s defence, notably the identity of the *conseillers* whom Kanyabashi allegedly replaced.<sup>9162</sup>

3357. The Chamber notes the Prosecution’s allegation that Kanyabashi replaced *conseillers* with people in favour of killing Tutsis forms part of its case in eight of the nine counts brought against Kanyabashi. The Chamber considers the identity of the replaced officials to be material to these counts. Paragraph 6.26 of the Kanyabashi Indictment does not put forth the identities of the officials who Kanyabashi is alleged to have replaced. Paragraph 6.30 provides additional detail, specifying the approximate date and geographic location where the alleged replacements occurred; however this paragraph also does not indicate the identity of the replaced officials. In omitting the material facts regarding the replacement of which officials were to be at issue, the Chamber finds that the information contained in Paragraphs 6.26 and 6.30 of the Indictment did not provide adequate details to enable Kanyabashi to prepare his defence. The Chamber concludes that Paragraphs 6.26 and 6.30 of the Kanyabashi Indictment are unduly vague and are therefore defective.

3358. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will determine whether Paragraphs 6.26 and 6.30 of the Indictment were cured of their defects through subsequent disclosure.

3359. The Chamber notes that the summary of the anticipated testimony of Witness QA contained in the Appendix to the Prosecution Pre-Trial Brief does not mention Kanyabashi’s replacement of officials, nor provide additional facts. However, the Prosecution later disclosed Witness QA’s prior statements of 14 May 1996 and 20 June 1995. Witness QA’s 14 May 1996 statement, disclosed originally to the Kanyabashi Defence on 4 December 2000, indicates that Kanyabashi appointed a man named Jacques Habimana to replace a *conseiller*.<sup>9163</sup> This disclosure was made to the Defence well in advance of Witness QA’s testimony, 18 March 2004. Furthermore, Witness QA’s statement of 20 June 1995, disclosed to the Kanyabashi Defence originally on 22 January 2004, indicates that a *conseiller* named Jacques replaced a *conseiller* who had been murdered.<sup>9164</sup>

3360. In addition, the Chamber observes that further information regarding the circumstances of Kanyabashi’s role in replacing *conseillers* with people in favour of killing Tutsis is contained in the Appendix to the Prosecution Pre-Trial Brief. The witness summaries contained in the Appendix provided notice that Kanyabashi would be accused of replacing

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<sup>9162</sup> Kanyabashi Closing Brief, para. 616. The Kanyabashi Defence previously raised this issue in a Preliminary Motion arguing that Paras. 6.26 and 6.30, among others, be deleted from the Indictment because of their vagueness and imprecision. The Defence argued that, in the allegedly deficient paragraphs, “[s]pecific mention is not made of those who were dismissed nor at what point in time their dismissal took place... [i]n brief, this text is so vague and ambiguous that it must be set aside.” *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Preliminary Motion Based on Rule 72 B(ii) of the Rules of Procedure and Evidence, 9 October 1999, para. 42. In its Decision, the Chamber dismissed the Defence’s request to set aside the Indictment but held that that “the Prosecution must clearly distinguish the acts for which the Accused incurs criminal responsibility under Article 6 (1) of the Statute from those for which he incurs criminal responsibility under Article 6 (3).” *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, p. 8.

<sup>9163</sup> 14 May 1996, Statement of QA, disclosed 4 December 2000.

<sup>9164</sup> 20 June 1995, Statement of QA, disclosed 22 January 2004 (in Kinyarwanda) and 23 February 2004 (in English and French).

*conseillers* through the summaries of anticipated evidence of two witnesses who did not testify at trial, Prosecution Witnesses QC and QE.

3361. Witness QC's summary in the Pre-Trial Brief states that Kanyabashi "appointed a notorious extremist, Jacques Habimana of the MDR-PAWA party."<sup>9165</sup> Witness QE's summary in the Pre-Trial Brief states that "[i]n the case of the Conseiller who was killed, Kanyabashi replaced him with Jacques Habimana, an extremist."<sup>9166</sup> The summary further states that Witness QE heard Habimana giving instructions to killers. The information contained in the summaries of anticipated evidence of Witnesses QC and QE is consistent with that provided in Witness QA's previous statements.

3362. The Chamber considers that the information contained in the Prosecution Pre-Trial Brief, combined with the disclosures of Witness QA's previous statements, gave the Defence notice that Kanyabashi was accused of replacing *conseillers* with people in favour of killing Tutsis. Kanyabashi was thereby informed of the material facts that the Prosecution intended to prove at trial, he was able to prepare his defence, and the defect in the Kanyabashi Indictment was thereby cured. Accordingly, the Chamber will proceed to consider the evidence brought in respect of this allegation.

### **3.6.29.3 Evidence**

#### Prosecution Witness QA

3363. Witness QA, a Hutu worker in 1994, identified Kanyabashi in court.<sup>9167</sup> Witness QA stated that he knew Kanyabashi before the events,<sup>9168</sup> and averred that Kanyabashi was very respected by everyone, including Tutsis, and that he was loved by the population.<sup>9169</sup> He stated that Kanyabashi was the authority to whom the population listened most.<sup>9170</sup>

3364. Witness QA testified that during April 1994, Sayidi Munanyankumburwa was the *secteur conseiller* of Ngoma *commune*. Witness QA further testified that in April 1994, Munanyankumburwa had disappeared and had left with the stamp from the *secteur* office. Kanyabashi organised a meeting in Ngoma *commune*, the purpose of which was to ask Munanyankumburwa for the stamp of the *commune*. Witness QA testified that he heard Kanyabashi speak with a close relative of *conseiller* Sayidi Munyankumburwa.<sup>9171</sup> Witness QA testified that Kanyabashi stated to the relative: "I need to get that stamp of the *secteur* back. So, Mr. Hussein, I am asking you to go with Sayidi – go to Sayidi, tell him that there will be no problem. I will ensure his safety."<sup>9172</sup> This discussion was held in public.<sup>9173</sup>

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<sup>9165</sup> Prosecution Pre-Trial Brief – Appendix; Witness QC (50).

<sup>9166</sup> Prosecution Pre-Trial Brief – Appendix; Witness QE (53).

<sup>9167</sup> T. 22 March 2004 p. 10 (Witness QA).

<sup>9168</sup> T. 18 March 2004 p. 79 (Witness QA).

<sup>9169</sup> T. 22 March 2004 pp. 9, 58; T. 23 March 2004 p. 34 (Witness QA).

<sup>9170</sup> T. 23 March 2004 p. 4 (Witness QA).

<sup>9171</sup> T. 18 March 2004 p. 88; T. 18 March 2004 p. 86 (ICS) (Witness QA).

<sup>9172</sup> T. 22 March 2004 p. 7; T. 18 March 2004 p. 88 (Witness QA).

<sup>9173</sup> T. 22 March 2004 p. 52 (Witness QA).

3365. Witness QA testified that in early May, he attended another meeting convened and chaired by the *conseiller* at the Ngoma *secteur* office, who told the people that Kanyabashi had ordered him to hold the meeting. Witness QA testified that when the *conseiller* entered the venue, soldiers took the *conseiller* away and killed him.<sup>9174</sup> The witness explained that the soldiers targeted the *conseiller* because he was investigating the death of a young man named Bosco, son of Gasinya.<sup>9175</sup> Witness QA testified that the soldiers said that the *conseiller* was an accomplice of the Tutsis because he wanted to investigate Bosco's death.<sup>9176</sup> Witness QA further testified that the *conseiller's* death was not investigated.<sup>9177</sup>

3366. Witness QA stated that Kanyabashi appointed a man named "Jacque" to replace Munyankumburwa as the *conseiller*. Witness QA described "Jacque" as a very influential person during the events at issue.<sup>9178</sup> Witness QA testified that "Jacque Habimana" was the person who led the massacres in his area.<sup>9179</sup>

#### Prosecution Expert Witness André Guichaoua

3367. In his Expert Report, André Guichaoua identified Jacques Habimana as a store-keeper turned private journalist. The Report indicated that Kanyabashi appointed Habimana as *conseiller* of Ngoma *secteur*, to replace Said Munyankumburwa who had been assassinated. The Report described Habimana as "notorious" and indicated that his "killing zeal was demonstrated on 29 April 1994, during the attack on Ngoma Church."<sup>9180</sup>

#### Prosecution Expert Witness Alison Des Forges

3368. In her Expert Report, Alison Des Forges indicated that Jacques Habimana "exploited his connections with militia to attack Tutsi as well as to build a personal base of power that got him installed as councilor of Ngoma sector."<sup>9181</sup>

#### **3.6.29.4 Deliberations**

3369. The Prosecution adduced evidence from one factual witness and two expert witnesses in support of Paragraphs 6.26 and 6.30 of the Kanyabashi Indictment. These Indictment Paragraphs seek to attribute responsibility to Kanyabashi for replacing *conseillers* with people in support of killing Tutsis.

3370. The Chamber notes that the Prosecution Closing Brief states that "Witness FAL testified that Joseph Kanyabashi said that Ndayambaje was being appointed as Burgomaster because Christologue who had been Burgomaster of Muganza *commune* had not been sufficiently active."<sup>9182</sup> The Chamber observes that Witness FAL gave no such testimony.

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<sup>9174</sup> T. 22 March 2004 p. 7 (Witness QA).

<sup>9175</sup> T. 22 March 2004 pp. 7, 52 (Witness QA).

<sup>9176</sup> T. 22 March 2004 p. 53 (Witness QA).

<sup>9177</sup> T. 22 March 2004 p. 7 (Witness QA).

<sup>9178</sup> T. 23 March 2004 p. 8 (ICS) (Witness QA).

<sup>9179</sup> T. 23 March 2004 p. 15 (ICS) (Witness QA).

<sup>9180</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 111.

<sup>9181</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 32.

<sup>9182</sup> Prosecution Closing Brief, p. 399, para. 48.



Rather, Witness FAL testified that Nteziryayo said he came to install Ndayambaje because Chrisologue was not active enough.<sup>9183</sup>

3371. As regards Witness QA, the Chamber recalls the existence of serious credibility issues surrounding his testimony. When recalled by the Chamber for further questioning in 2008, Witness QA admitted that regarding his original testimony in 2004 “in everything that I said, there are only a few things that are truthful. For the most part, my testimony was lies.”<sup>9184</sup> Although Witness QA did not specifically admit that his 2004 testimony regarding Kanyabashi’s appointment of *conseillers* was false, his admission of lying under oath regarding most of his testimony undermines his credibility as a witness. Accordingly, the Chamber does not find Witness QA’s account of the meeting as a whole to be reliable or credible.

3372. Guichaoua and Des Forges also provided evidence of Kanyabashi’s replacing *conseillers* with people in favour of killing Tutsis. Guichaoua’s Report indicates that Kanyabashi appointed Jacques Habimana as *conseiller* and that Habimana showed a zeal for killing Tutsis.<sup>9185</sup> Des Forges’ Report states Habimana was installed as *conseiller* of Ngoma *secteur* based in part upon his attacks upon Tutsis.<sup>9186</sup>

3373. The Kanyabashi Defence asserts that these Reports are insufficient, in and of themselves, to prove the material facts of the allegation at hand. It argues that as Expert Witnesses, Des Forges and Guichaoua could not testify as to facts, but instead were limited in their testimony to offering their expert opinion.<sup>9187</sup>

3374. The Chamber recalls that in its 24 June 2004 Decision, the contents of Guichaoua’s Report, Prosecution Exhibit 136, were admitted into evidence, over Defence objections.<sup>9188</sup> Furthermore the Chamber recalls that in its 7 June 2004 Decision, the contents of Des Forges’ Report, Prosecution Exhibit 110, were accepted into evidence over Defence objections.<sup>9189</sup>

3375. The Chamber notes that as previously set out in the Preliminary Issues section of this Judgement (), “while the report and testimony of an expert witness may be based on facts narrated by ordinary witnesses or facts from other evidence, an expert witness cannot, in principle, testify himself or herself on the acts and conduct of accused persons without having been called to testify also as a factual witness and without his or her statement having been disclosed in accordance with the applicable rules concerning factual witnesses.” Furthermore, “the role of expert witnesses is to assist the Trial Chamber in its assessment of the evidence before it, and not to testify on disputed facts as would ordinary witnesses.”

3376. In the instant case, given Witness QA’s lack of credibility, the only evidence introduced supporting the allegation that Kanyabashi replaced *conseillers* with people who were in favour of killing Tutsis comes in the form of the Expert Reports accepted into

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<sup>9183</sup> T. 9 February 2004 p. 38; T. 9 February 2004 p. 44 (Witness FAL) (French) (for spelling of “Chrysologue”).

<sup>9184</sup> T. 30 October 2008 p. 49 (ICS) (Witness QA).

<sup>9185</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 111.

<sup>9186</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 32.

<sup>9187</sup> Kanyabashi Closing Brief, paras. 622-625.

<sup>9188</sup> T. 24 June 2004 p. 16 (Guichaoua).

<sup>9189</sup> T. 7 June 2004 p. 69 (Des Forges).

evidence. Absent additional corroborating evidence from witnesses testifying to the material facts of the case, the Chamber finds that the Prosecution has not proven this allegation beyond a reasonable doubt.<sup>9190</sup> Because the Chamber has concluded that Witness QA's testimony is unreliable for independent reasons, it need not address the impact of Witness D-2-21-T's testimony on his credibility.

### 3.6.30 Meetings with *Interahamwe*, 7 and 12 May 1994

#### 3.6.30.1 Introduction

3377. The Nyiramasuhuko and Ntahobali Indictment alleges that from late 1990 to July 1994, members of the government, political leaders and others conspired to devise a plan to exterminate the civilian Tutsi population and members of the opposition.<sup>9191</sup> Nyiramasuhuko and others allegedly developed, adhered to and executed this genocidal plan by organising, ordering and participating in massacres of Tutsis and moderate Hutus.<sup>9192</sup> The Nyiramasuhuko and Ntahobali Indictment alleges that between 9 April and 14 July 1994, numerous Cabinet meetings were held in Kigali, Gitarama and Gisenyi. During this period, ministers, including Nyiramasuhuko, were regularly briefed on massacres of the civilian population.<sup>9193</sup> The Nyiramasuhuko and Ntahobali Indictment contends that Interim Government Cabinet members supported and implemented the extermination plan,<sup>9194</sup> and MRND leaders chose to provide support to *Interahamwe* members.<sup>9195</sup>

3378. The Prosecution submits that Nyiramasuhuko was an active member of the Interim Government, a member of the MRND and an influential figure in Butare throughout the period of April to July 1994.<sup>9196</sup> According to the Prosecution, the Interim Government continued to function between 9 April and 14 July 1994 – it was able to hold regular meetings, make political appointments, and issue directives and instructions, which were then carried out.<sup>9197</sup> The Prosecution avers that Government Cabinet meetings were held concurrently with meetings of MRND Ministers, and Nyiramasuhuko participated in most of these meetings.<sup>9198</sup> Nyiramasuhuko supported the Interim Government's plans and objectives, and did her part to ensure these objectives were carried out.<sup>9199</sup>

3379. The Prosecution contends that Nyiramasuhuko was fully and actively in agreement with the Interim Government's objective to commit genocide.<sup>9200</sup> Nyiramasuhuko played an

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<sup>9190</sup> See *Nahimana et al.*, Judgement (AC), para. 509.

<sup>9191</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko and Counts 1-3, 5-6, 8, 10-11 against Ntahobali).

<sup>9192</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko and Counts 1-3, 5-6, 8, 10-11 against Ntahobali); see also Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko and Ntahobali).

<sup>9193</sup> Para. 6.13 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8, 10 against Nyiramasuhuko only).

<sup>9194</sup> Para. 6.10 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts).

<sup>9195</sup> Para. 5.11 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts).

<sup>9196</sup> Prosecution Closing Brief, pp. 27, 31, paras. 4, 15; Prosecution Closing Argument, T. 20 April 2009 p. 14.

<sup>9197</sup> Prosecution Closing Brief, p. 35, para. 25; Prosecution Closing Argument, T. 20 April 2009 p. 16.

<sup>9198</sup> Prosecution Closing Brief, pp. 32-33, para. 17.

<sup>9199</sup> Prosecution Closing Brief, p. 27, para. 4; see also Para. 6.10 of the Nyiramasuhuko and Ntahobali Indictment (not in support of any counts).

<sup>9200</sup> Prosecution Closing Argument, T. 20 April 2009 pp. 21, 24; Prosecution Closing Brief, p. 31, para. 15.

active role in ensuring the Interim Government's agreement to commit genocide was elaborated, adhered to and executed in Butare *préfecture*.<sup>9201</sup> The Prosecution submits that the Interim Government's meetings and directives reveal that between 9 April and 14 July 1994 the Interim Government agreed, and engaged in concerted and coordinated action, to commit genocide, and to incite, aid and abet massacres of Tutsi and Hutu moderates.<sup>9202</sup>

3380. The Prosecution submits that Nyiramasuhuko's notes of meetings demonstrate coordination between the Interim Government and *Interahamwe*,<sup>9203</sup> who committed many atrocities in Butare.<sup>9204</sup> Nyiramasuhuko's meetings with the *Interahamwe* show that Nyiramasuhuko had a relationship with the *Interahamwe*, which entailed the *Interahamwe* following Nyiramasuhuko's orders.<sup>9205</sup> MRND leaders, in collaboration with others, provided support to those *Interahamwe* members most devoted to their cause.<sup>9206</sup> The Prosecution contends that members of this "organised militia" were led and financed by prominent figures from the President's entourage, and transported in public administration vehicles.<sup>9207</sup>

3381. Specifically, the Prosecution submits that on 7 May 1994 in Murambi, Gitarama *préfecture*, Nyiramasuhuko attended a Cabinet meeting which had civil defence on its agenda.<sup>9208</sup> The Prosecution posits that the Interim Government's "civil defence" programme was a component of its genocidal strategy.<sup>9209</sup> On the same day, Nyiramasuhuko met with the national Chairman of the *Interahamwe*, Robert Kajuga, and other members of the *Interahamwe* national committee.<sup>9210</sup> The Prosecution submits that this meeting was one of a series of important mobilisation meetings.<sup>9211</sup> Nyiramasuhuko discussed with Kajuga how the situation was under the *Interahamwe*'s control, and the *Interahamwe*'s need for *laissez-passeurs* for their vehicles.<sup>9212</sup> The Prosecution puts forth that the *Interahamwe*'s presence in a corner during the 7 May 1994 Interim Government Cabinet meeting, Kajuga's remark that the situation was under the *Interahamwe*'s control, and Nyiramasuhuko's discussion on government assistance to the *Interahamwe*, all demonstrate collaboration between the Interim Government and the *Interahamwe* in the midst of wide-scale massacres against the Tutsis.<sup>9213</sup>

3382. The Prosecution further contends that on 12 May 1994, Nyiramasuhuko attended an MRND Political Bureau meeting for MRND Ministers, which lasted until 13 May 1994. Civil defence was again slated as an agenda item. At that meeting, Nyiramasuhuko discussed

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<sup>9201</sup> Prosecution Closing Brief, p. 31, para. 15.

<sup>9202</sup> Prosecution Closing Brief, p. 36, para. 27.

<sup>9203</sup> Prosecution Closing Brief, p. 29, para. 7; *see also* Paras. 1.15, 1.17 and 3.10 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts) (defining the *Interahamwe* as the youth wing or youth organisation of the MRND).

<sup>9204</sup> Paras. 1.17, 5.15 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>9205</sup> Prosecution Closing Argument, T. 20 April 2009 pp. 23-24.

<sup>9206</sup> Para. 5.11 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts).

<sup>9207</sup> Paras. 1.17, 5.15 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>9208</sup> Prosecution Closing Brief, p. 57, para. 99.

<sup>9209</sup> Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>9210</sup> Prosecution Closing Brief, p. 57, para. 99; Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>9211</sup> Prosecution Closing Brief, p. 63, para. 117.

<sup>9212</sup> Prosecution Closing Argument, T. 20 April 2009 p. 23; Prosecution Closing Brief, p. 57, para. 99.

<sup>9213</sup> Prosecution Closing Brief, pp. 58-59, paras. 101, 105.

assistance for the *Interahamwe*. Her notes on this meeting indicate, *inter alia*, that the *Interahamwe* would contribute to civil defence, and that there were wounded *Interahamwe* who needed treatment, food, means of communication and a command post.<sup>9214</sup>

3383. The Prosecution submits that the 7 May 1994 and 12 May 1994 meetings between Nyiramasuhuko and the *Interahamwe* are linked. At the former, Nyiramasuhuko discussed the *Interahamwe's* need for food, treatment and *laissez-passeurs*. Five days later, she formally met with the *Interahamwe* and MRND politicians for further discussion on this issue.<sup>9215</sup> In support of its submissions, the Prosecution relies on Prosecution Expert Witnesses André Guichaoua and on Nyiramasuhuko's testimony.

3384. The Nyiramasuhuko Defence does not contest the Prosecution's assertion, in Paragraph 6.13 of the Nyiramasuhuko and Ntahobali Indictment, that "numerous Cabinet meetings were held successively in Kigali, Gitarama and Gisenyi." However, it rejects the allegation that between 9 April and 14 July 1994, ministers, including Nyiramasuhuko, received "regular briefings" on the situation with regard to civilian massacres.<sup>9216</sup>

3385. The Nyiramasuhuko Defence does not contest that on 7 May 1994 Nyiramasuhuko attended a Cabinet meeting in Murambi,<sup>9217</sup> and that she spoke with Kajuga around the time of this Cabinet meeting. It submits, however, that Prosecution Expert Witness Guichaoua incorrectly characterised the 7 May 1994 encounter between Nyiramasuhuko and members of the *Interahamwe* national committee as a formal meeting. The Nyiramasuhuko Defence argues that Nyiramasuhuko encountered Kajuga by chance during a break in the meeting.<sup>9218</sup> The Defence rejects the Prosecution's assertion that this meeting is evidence of collaboration between the Interim Government and the *Interahamwe*.<sup>9219</sup>

3386. The Nyiramasuhuko Defence does not contest that from 12-13 May 1994 Nyiramasuhuko attended an MRND Political Bureau meeting. The Defence submits that it was only at this 12 May 1994 meeting that Nyiramasuhuko understood that Kajuga and other *Interahamwe* members had come to Murambi on 7 May 1994 to meet MRND leaders.<sup>9220</sup> The Nyiramasuhuko Defence argues that her notes from the 12 May 1994 MRND Political Bureau meeting indicate that a decision was taken at the 12 May 1994 meeting, that the *Interahamwe's* requests for food, healthcare, and means of communication as well as the *Interahamwe's* contribution to civil defence, would be conditional on identifying the "real" *Interahamwe*, as opposed to "killers" who proclaimed to be *Interahamwe*.<sup>9221</sup> The Defence submits that Nyiramasuhuko's notes indicate that MRND Ministers did not discuss the extermination of Tutsis, but rather talked about whether they had a reasonable chance of winning the war.<sup>9222</sup> In

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<sup>9214</sup> Prosecution Closing Brief, p. 58, para. 103.

<sup>9215</sup> Prosecution Closing Brief, p. 59, para. 104.

<sup>9216</sup> Nyiramasuhuko Closing Brief, para. 539.

<sup>9217</sup> Nyiramasuhuko Closing Brief, para. 551.

<sup>9218</sup> Nyiramasuhuko Closing Brief, para. 497; Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 60-62.

<sup>9219</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 60.

<sup>9220</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 62.

<sup>9221</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 62-63 (*stating that the "real" Interahamwe had been infiltrated by RPF elements*).

<sup>9222</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 65.

support of these submissions, the Nyiramasuhuko Defence relies on Nyiramasuhuko's testimony.<sup>9223</sup>

### 3.6.30.2 Preliminary Issues

3387. The Ntahobali Defence submits that Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment is impermissibly vague,<sup>9224</sup> even when read in the context of the Indictment as a whole.<sup>9225</sup> This paragraph fails to specify the elements of the crime of conspiracy to commit genocide.<sup>9226</sup>

3388. The Chamber recalls its 1 November 2000 Decision, whereby the Chamber stated that Paragraph 5.1 adequately sets out sufficient particulars to enable the Accused to understand the conspiracy charge.<sup>9227</sup> Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment alleges an agreement with genocidal intent, identifies Nyiramasuhuko as a conspirator, specifies alleged co-conspirators, sets out components of the agreement, and describes modes by which named participants participated in executing the plan. The Chamber thus finds that Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment was not defective for failing to elaborate on the elements of the crime of conspiracy to commit genocide.

3389. The Ntahobali Defence, on behalf of Nyiramasuhuko, submits that Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment fails to allege a criminal act by Nyiramasuhuko.<sup>9228</sup> The Chamber recalls that conspiracy to commit genocide is a crime under Article 2 (3)(b) of the Statute. This crime requires "an agreement between two or more persons to commit the crime of genocide" (). As such, the Prosecution must allege the existence of such an agreement, which it did in Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment. The Chamber thus finds that Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment was not defective for failing to allege that Nyiramasuhuko committed a criminal act.

3390. Nevertheless, the Chamber notes that the material facts supporting a charge must be pled in the Indictment with sufficient precision to provide notice to the Accused.<sup>9229</sup> The Prosecution's theory is that Nyiramasuhuko's meetings with the *Interahamwe* provide evidence of concerted and coordinated action between the Interim Government and the *Interahamwe*. This collaboration reveals an agreement to commit genocide in Butare, which was thereafter perpetrated through methods elaborated in the Indictment.<sup>9230</sup>

3391. The question remains as to whether Nyiramasuhuko had adequate notice that the Prosecution would lead evidence on her participation in these two particular meetings in support of the conspiracy charge. The Chamber notes that neither the 7 May 1994 meeting

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<sup>9223</sup> T. 3 October 2005 pp. 31-32, 45-52 (Nyiramasuhuko).

<sup>9224</sup> Ntahobali Closing Brief, para. 44.

<sup>9225</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-11 against Nyiramasuhuko and Ntahobali); Para. 6.56 (in support of Counts 1-3, 5-11 against Nyiramasuhuko and Ntahobali).

<sup>9226</sup> Ntahobali Closing Brief, para. 18.

<sup>9227</sup> *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000, para. 29.

<sup>9228</sup> Ntahobali Closing Brief, para. 20.

<sup>9229</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 18; *Nahimana et al.*, Judgement (AC), para. 322.

<sup>9230</sup> Prosecution Closing Brief, pp. 29-31, paras. 8, 13-15.

between Nyiramasuhuko and the *Interahamwe* nor the 12 May 1994 MRND meeting is specifically pled in the Nyiramasuhuko and Ntahobali Indictment. The Chamber thus finds the Nyiramasuhuko and Ntahobali Indictment defective. Recalling the principles of notice previously articulated in this Judgement (), the Chamber will proceed to determine whether this defect was cured through the disclosure of timely, clear and consistent information.

3392. The Chamber has reviewed the Prosecution Pre-Trial Brief and its Appendix, as well as the Prosecution opening statement. The Chamber observes that there is no specific mention of the 7 May 1994 or the 12 May 1994 meetings in these potentially curing materials. The Chamber concludes that the defect in the Indictment was not cured in the instant case. As such, the Chamber declines to make a finding as to these two meetings.

### 3.6.31 Kamena Stadium Meeting, 10 May 1994

#### 3.6.31.1 Introduction

3393. Each Indictment alleges that from late 1990 to July 1994, Nyiramasuhuko, Nsabimana and Kanyabashi conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. They, together with others, allegedly adhered to and executed this plan and in doing so organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>9231</sup> The Indictments further allege that the massacres and assaults perpetrated in Butare *préfecture* were the result of a strategy adopted by figures of authority, including Nyiramasuhuko, Nsabimana and Kanyabashi, who conspired to exterminate the Tutsi population.<sup>9232</sup> Moreover, the Indictments of Nyiramasuhuko and Ntahobali, and Nsabimana and Nteziryayo allege that Nyiramasuhuko, Nsabimana and Kanyabashi, in their positions of authority and acting in concert with others, participated in a common scheme to massacre the Tutsi population.<sup>9233</sup> The Nsabimana Indictment alleges that Nsabimana took part in meetings with his *bourgmestres*, including at least one convened by Nyiramasuhuko in April 1994 during which the progress of the massacres was discussed as well as the means by which to complete them.<sup>9234</sup>

3394. As part of its case against Nyiramasuhuko in respect of the charge of conspiracy to commit genocide, the Prosecution submits that Nyiramasuhuko attended formal and informal meetings at the Butare *préfecture* office and other locations which were also attended by local authorities.<sup>9235</sup> It further submits that Nsabimana participated in numerous meetings in Butare *préfecture* during which decisions were made to further the extermination of Tutsis.<sup>9236</sup> With regard to Kanyabashi, the Prosecution submits that his role in the genocide conspiracy was,

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<sup>9231</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko); Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>9232</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-11 against Nyiramasuhuko); Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all Counts against Nsabimana); Para. 6.62 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9233</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko); Para. 6.61 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>9234</sup> Para. 6.28 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>9235</sup> Prosecution Closing Brief, pp. 60-61, para. 109.

<sup>9236</sup> Prosecution Closing Brief, p. 231, para. 9.

*inter alia*, to attend meetings, give instructions to kill Tutsis in hiding and use his position and power to incite the population to join in the killings.<sup>9237</sup>

3395. The Prosecution contends that on 10 May 1994, Nyiramasuhuko met with the youth wing of all parties in Butare. Relying on the testimony of Nyiramasuhuko and Expert Witness Guichaoua, the Prosecution argues that the meeting of 10 May 1994 was an important mobilisation meeting that was also attended by Nsabimana and Kanyabashi.<sup>9238</sup> The Prosecution cites this particular meeting as one of a series of meetings in support of the specific count of conspiracy to commit genocide.<sup>9239</sup>

3396. The Nyiramasuhuko Defence does not dispute that on 10 May 1994, Nyiramasuhuko attended a meeting with the youths of all the parties in Kamena Stadium in Butare.<sup>9240</sup> It denies that the meeting or the subsequent reception attended by Nsabimana and Kanyabashi was part of a conspiracy to commit genocide.<sup>9241</sup> The Kanyabashi Defence submits that Kanyabashi was not involved in the meeting of 10 May 1994.<sup>9242</sup> The Nsabimana Defence makes no specific submissions in relation to this allegation. The Defence teams rely on the testimony of Nyiramasuhuko and Nsabimana.

### **3.6.31.2 Preliminary Issues**

#### *Nyiramasuhuko*

3397. The Chamber notes the Prosecution's allegation that Nyiramasuhuko participated in a number of meetings. This allegation forms part of the Prosecution's case in relation to the count of conspiracy to commit genocide. Besides specific allegations concerning Nyiramasuhuko's involvement in Cabinet meetings<sup>9243</sup> and meetings at the *préfecture* office, the Nyiramasuhuko and Ntahobali Indictment does not allege that Nyiramasuhuko attended, chaired, convened or in any other way participated in meetings during which the planning of the genocide was discussed. Nor are there any facts or circumstances set forth in the Indictment from which it could be inferred that Nyiramasuhuko was involved in other meetings of this kind. The Chamber considers Nyiramasuhuko's alleged participation in meetings to be material to the count of conspiracy to commit genocide. It constitutes one of the means by which the alleged conspiracy was committed and is a key element of the conduct imputed to the Accused. For these reasons, the Chamber considers that the Nyiramasuhuko and Ntahobali Indictment is defective in this respect *vis-à-vis* Nyiramasuhuko.

3398. The Chamber must then determine whether the Nyiramasuhuko and Ntahobali Indictment is cured of its defects through subsequent Prosecution disclosures. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber observes that the Appendix to the Prosecution Pre-Trial Brief contains reference to three witnesses (Witnesses FAS, QBP and QF) who were expected to testify that Nyiramasuhuko participated

<sup>9237</sup> Prosecution Closing Brief, p. 388, para. 12.

<sup>9238</sup> Prosecution Closing Brief, pp. 63-64, paras. 117-118; p. 234, paras. 20-21.

<sup>9239</sup> Prosecution Closing Brief, pp. 30-68, paras. 13-133.

<sup>9240</sup> Nyiramasuhuko Closing Brief, para. 552.

<sup>9241</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 68.

<sup>9242</sup> Kanyabashi Closing Brief, para. 60.

<sup>9243</sup> See Paras. 6.13 and 6.14 of the Nyiramasuhuko and Ntahobali Indictment.

in or addressed meetings or rallies in locations including Mbazi Stadium and Cyarwa in April and May 1994.<sup>9244</sup> In view of the fact that the specific meeting at Kamena Stadium is not mentioned in any disclosures subsequent to the Indictment, the Chamber finds that the Nyiramasuhuko Defence did not have sufficient notice of this meeting. Thus, the Chamber considers that the defect in the Indictment has not been cured and declines to make a finding in respect of this allegation.

#### *Nsabimana*

3399. The Nsabimana Defence submits that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is impermissibly vague because it does not give an indication of the meeting dates, venues, attendees or the number of meetings. It also argues that Paragraph 6.28 does not clearly state whether the progress of the massacres and how to complete them was discussed at every meeting, or only those convened by Nyiramasuhuko.<sup>9245</sup>

3400. The Indictment does not mention a meeting at Kamena Stadium or specify that Nsabimana and Kanyabashi were present at such a meeting. The Chamber therefore considers that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is defective.

3401. The Chamber must then determine whether Paragraph 6.28 was cured of its defects through subsequent Prosecution disclosures. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists seven witnesses who were expected to testify that Nsabimana participated in meetings, five of whom eventually gave evidence at trial.<sup>9246</sup> The alleged meetings described in the witness summary grid cover the period from April to June 1994 and are said to have taken place in various venues in Butare including the *préfecture* office, Ngoma football field, Ngoma Parish, Mbazi Stadium and MRND Headquarters. Those involved in such meetings included Nyiramasuhuko, Kanyabashi, *bourgmestres* and members of the public.

3402. In view of the fact that the specific meeting at Kamena Stadium is not mentioned in any of the prior Prosecution disclosures, the Chamber finds that the Nsabimana Defence did not have sufficient notice of this meeting. Thus, the Chamber considers that the defects in the Indictment have not been cured and therefore declines to make a finding in respect of this allegation.

#### *Kanyabashi*

3403. The Kanyabashi Defence submits that the youth meeting of 10 May 1994 was not part of the Prosecution's evidence until Nyiramasuhuko gave evidence about it in 2005.<sup>9247</sup> The Chamber notes that the Kanyabashi Indictment contains four paragraphs that deal with Kanyabashi's involvement in meetings: Paragraph 5.8 concerns meetings in May 1994 in Cyarwa *secteur*, Ngoma *commune* during which Kanyabashi allegedly incited residents to kill

<sup>9244</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAS (30); Witness QBP (44); and Witness QF (54).

<sup>9245</sup> Nsabimana Closing Brief, paras. 333-335.

<sup>9246</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9); Witness FAC (15); Witness FAI (21); Witness FAR (29); Witness FAS (30); Witness QA (33); and Witness ST (85).

<sup>9247</sup> Kanyabashi Closing Brief, para. 57.



Tutsis; Paragraph 6.35 describes a specific meeting on the football field adjacent to Ngoma Church at the end of April 1994; Paragraph 6.43 relates to meetings that took place at the Butare *préfecture* office on unspecified dates; and the first sentence of Paragraph 6.44 covers meetings between 20 April and June 1994 at unspecified locations involving, *inter alia*, Nyiramasuhuko, Nsabimana and Kanyabashi, during which the evolution of the massacres was discussed, among other topics.

3404. The Chamber considers that the first sentence of Paragraph 6.44 may be sufficiently broad to encompass the Prosecution's allegation that Kanyabashi attended a meeting at Kamena Stadium on 10 May 1994 with Nyiramasuhuko and Nsabimana. However, this paragraph fails to identify a specific location. For this reason, the Chamber finds that Paragraph 6.44 of the Kanyabashi Indictment is defective.

3405. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will now consider whether the defects have been cured. The Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists six witnesses who were expected to testify that Kanyabashi participated in meetings other than those that could reasonably be covered by Paragraphs 5.8, 6.35 or 6.43 exclusively.<sup>9248</sup> All of these witnesses were listed in support of the count of conspiracy to commit genocide. The alleged meetings described in the witness summary grid are said to have taken place in April 1994 at various locations, including Tumba *secteur* in Ngoma *commune* and Kabuga.

3406. In view of the fact that the specific meeting at Kamena Stadium is not mentioned in any of the Prosecution disclosures, the Chamber finds that the Kanyabashi Defence did not have sufficient notice of this meeting. The Chamber considers that the defects in the Indictment have not been cured and therefore declines to make a finding in respect of this allegation.

3407. The Chamber notes that in any event, even if the defects in the Indictments were found to have been cured as regards Kanyabashi and Nsabimana, the evidence brought by the Prosecution was not sufficient to establish that Kanyabashi and Nsabimana participated in the meeting at Kamena Stadium.

### **3.6.32 Security Council Meetings, 16 and 31 May 1994**

#### **3.6.32.1 Introduction**

3408. Relying on evidence led by the Defence, the Prosecution Closing Brief alleges that Nyiramasuhuko, Nsabimana and Kanyabashi took part in two Security Council meetings in furtherance of the general conspiracy to commit genocide. The meetings took place on 16 and 31 May 1994. The Prosecution pled the alleged conspiracy in the Nyiramasuhuko and Ntahobali Indictment,<sup>9249</sup> the Nsabimana and Nteziryayo Indictment<sup>9250</sup> and the Kanyabashi Indictment.<sup>9251</sup>

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<sup>9248</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAR (29); Witness FAT (31); Witness QBM (43); Witness QE (53); Witness QG (55); and Witness RO (73).

<sup>9249</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko); Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-11

3409. The Prosecution submits that Nyiramasuhuko conspired with influential figures, including Nsabimana and Kanyabashi, to carry out genocide in Butare.<sup>9252</sup> She attended formal and informal meetings at the BPO and other locations which were also attended by local authorities.<sup>9253</sup> The Prosecution contends that on 16 May 1994, Nyiramasuhuko attended a Security Council meeting at the BPO, at which participants discussed aspects of civilian defence including organising night patrols, establishing more roadblocks and training people how to handle weapons.<sup>9254</sup> The Prosecution further submits that Nyiramasuhuko attended a Security Council meeting on 31 May 1994, chaired by Nsabimana, where civil defence, “clearing the forest”, *bourgmestres*’ requests for guns and machetes, recruitment of youth, roadblocks, and the evacuation of orphans were discussed.<sup>9255</sup>

3410. The Prosecution submits that Nsabimana participated in numerous meetings with local authorities in Butare *préfecture*, including Minister Nyiramasuhuko and *Bourgmestre* Kanyabashi,<sup>9256</sup> during which decisions were made to further the extermination of Tutsis.<sup>9257</sup> In this respect, the Prosecution contends that Nsabimana chaired two *préfecture* Security Council meetings held at the MRND Palace on 16 May 1994<sup>9258</sup> and 31 May 1994<sup>9259</sup> which furthered the agreement to kill Tutsis. The Prosecution also submits that in addition to Nsabimana’s direct participation in these meetings, Nsabimana is responsible pursuant to Article 6 (3) for instructing *bourgmestres*, who were his subordinates, to kill Tutsi civilians and for distributing weapons to those *bourgmestres*.<sup>9260</sup>

3411. The Prosecution submits that Kanyabashi’s role in the genocide conspiracy was, *inter alia*, to attend meetings and, using his authority as *bourgmestre* of Ngoma *commune*, to instruct the population to clear the bushes, fully aware this phrase was double-speak for killing Tutsis in hiding.<sup>9261</sup> Kanyabashi was heavily involved in planning the killings, and meeting with his administrative subordinates and others to provoke them into action.<sup>9262</sup> He attended Security Council meetings with Nyiramasuhuko, Nsabimana and other authorities in Butare,<sup>9263</sup> and used his position and power to incite the population to kill.<sup>9264</sup>

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against Nyiramasuhuko); and Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko).

<sup>9250</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 6.61 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>9251</sup> Para. 5.1 of the Kanyabashi Indictment (in support of all counts); Para. 6.62 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9252</sup> Prosecution Closing Brief, p. 31, para. 15.

<sup>9253</sup> Prosecution Closing Brief, pp. 60-61, para. 109.

<sup>9254</sup> Prosecution Closing Brief, pp. 64-65, paras. 119-122.

<sup>9255</sup> Prosecution Closing Brief, pp. 65-66, para. 123, p. 242, para. 45.

<sup>9256</sup> Prosecution Closing Brief, p. 250, para. 69.

<sup>9257</sup> Prosecution Closing Brief, p. 231, para. 9.

<sup>9258</sup> Prosecution Closing Brief, p. 64, para. 119; p. 238, para. 35.

<sup>9259</sup> Prosecution Closing Brief, pp. 65-66, para. 123; pp. 242-243, paras. 45-47.

<sup>9260</sup> Prosecution Closing Brief, pp. 242, 258, paras. 46, 91.

<sup>9261</sup> Prosecution Closing Brief, pp. 388, 406, 442, paras. 12, 79, 205.

<sup>9262</sup> Prosecution Closing Brief, p. 390, para. 204.

<sup>9263</sup> Prosecution Closing Brief, pp. 64-66, paras. 119, 123; p. 242, para. 45; p. 443, para. 208.

<sup>9264</sup> Prosecution Closing Brief, p. 388, para. 12.

3412. The Prosecution relies on the testimonies of Expert Witness Guichaoua, as well as Nyiramasuhuko and Nsabimana.

3413. Apart from its submissions on the vagueness of the Nyiramasuhuko and Ntahobali Indictment, the Nyiramasuhuko Defence does not dispute that she attended the two Security Council meetings of 16 and 31 May 1994 at the MRND Palace. The Nyiramasuhuko Defence claims she only observed the 16 May 1994 meeting,<sup>9265</sup> and the 31 May 1994 meeting had nothing to do with a conspiracy to commit genocide.<sup>9266</sup> The Butare Security Council was not concerned with perpetrating massacres, but was focused on collaboration between civilians and soldiers to restore peace and security in Butare.<sup>9267</sup> The Nyiramasuhuko Defence relies on Nyiramasuhuko's testimony.

3414. In addition to its submissions on the vagueness of the Nsabimana and Nteziryayo Indictment, the Nsabimana Defence submits that Nsabimana was not involved in the 16 May 1994 meeting.<sup>9268</sup> The Nsabimana Defence also challenges Nyiramasuhuko's purported attendance at the 16 May 1994 meeting.<sup>9269</sup> The Nsabimana Defence does not dispute that Nsabimana presided over the Security Council meeting of 31 May 1994,<sup>9270</sup> but submits that Nyiramasuhuko did not attend this meeting and Nsabimana did not subsequently learn of Nyiramasuhuko's participation in that meeting. The Nsabimana Defence proposes that on 31 May 1994, Nyiramasuhuko took part in another, concurrent Security Council meeting. Further, Nsabimana did not promote civil defence at that meeting.<sup>9271</sup> The Defence relies on the testimony of Nsabimana and Expert Witness Guichaoua.

3415. In addition to its submissions on the vagueness of the Kanyabashi Indictment the Kanyabashi Defence submits that the Prosecution failed to prove that Kanyabashi participated in a conspiracy or that meetings to plan the genocide took place.<sup>9272</sup> Nyiramasuhuko's notes on the 16 and 31 May 1994 Security Council meetings do not indicate that Kanyabashi took the floor at either meeting, or that Kanyabashi had control over what was happening in his *commune*.<sup>9273</sup> Further, the Kanyabashi Defence submits that "clearing bushes" is not criminal conduct *per se*.<sup>9274</sup> The Kanyabashi Defence relies on Kanyabashi Defence Expert Witness Filip Reyntjens.

### 3.6.32.2 Preliminary Issues

#### *Sufficiency of the Indictment as to Conspiracy and Meetings in Furtherance of the Conspiracy*

3416. The Chamber notes the Prosecution's allegation that Nyiramasuhuko, Nsabimana and Kanyabashi participated in a number of meetings, including the Security Council meetings of

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<sup>9265</sup> Nyiramasuhuko Closing Brief, paras. 493, 498, 558.

<sup>9266</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 69.

<sup>9267</sup> Nyiramasuhuko Closing Brief, para. 493.

<sup>9268</sup> Nsabimana Closing Brief, paras. 607, 614.

<sup>9269</sup> Nsabimana Closing Brief, paras. 636-640.

<sup>9270</sup> Nsabimana Closing Brief, paras. 672, 693.

<sup>9271</sup> Nsabimana Closing Brief, paras. 684-687, 689.

<sup>9272</sup> Kanyabashi Closing Brief, paras. 21, 41.

<sup>9273</sup> Kanyabashi Closing Brief, paras. 63-64.

<sup>9274</sup> Kanyabashi Closing Brief, para. 342.

16 and 31 May 1994, forms part of the Prosecution's case against each Accused in relation to the count of conspiracy to commit genocide.

3417. Each Indictment contains paragraphs pertinent to the Prosecution's conspiracy charge: namely Paragraphs 5.1, 6.52 and 6.56 of the Nyiramasuhuko and Ntahobali Indictment; Paragraphs 5.1, 6.57 and 6.61 of the Nsabimana and Nteziryayo Indictment; and Paragraphs 5.1 and 6.62 of the Kanyabashi Indictment. The Chamber will address these paragraphs together.

3418. Paragraph 5.1 of each Indictment alleges a conspiracy existed between, *inter alia*, Nyiramasuhuko, Nsabimana and Kanyabashi, to exterminate the civilian Tutsi population; the Accused executed the plan by organising, ordering and participating in massacres of Tutsis and moderate Hutus.<sup>9275</sup> Each Indictment also alleges that, *inter alia*, Nyiramasuhuko, Nsabimana and Kanyabashi, adopted a strategy at the national and local level that resulted in massacres and assaults,<sup>9276</sup> and that in their positions of authority, the Accused participated in a common scheme to massacre the Tutsi population.<sup>9277</sup>

3419. The Nyiramasuhuko Defence submits that Paragraph 5.1 is impermissibly vague,<sup>9278</sup> even when read in the context of the Indictment as a whole.<sup>9279</sup> In particular, the Indictment paragraphs fail to specify the elements of the crime of conspiracy to commit genocide.<sup>9280</sup>

3420. The Chamber recalls its 1 November 2000 Decision, whereby the Chamber stated that Paragraph 5.1 adequately sets out sufficient particulars to enable the Accused to understand the conspiracy charge.<sup>9281</sup> The Chamber thus finds that Paragraph 5.1 was not defective for failing to elaborate on the elements of the crime of conspiracy to commit genocide. This finding applies equally to Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment.

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<sup>9275</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko); Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>9276</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8-11 against Nyiramasuhuko); Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); and Para. 6.62 of the Kanyabashi Indictment (in support of all counts).

<sup>9277</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko); Para. 6.61 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Para. 6.64 of the Kanyabashi Indictment (in support of Counts 1-3, 5-11).

<sup>9278</sup> Nyiramasuhuko Closing Brief, para. 1; Ntahobali Closing Brief, para. 44.

<sup>9279</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-9, 11 against Nyiramasuhuko only) and Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko only).

<sup>9280</sup> Nyiramasuhuko Closing Brief, para. 1; Ntahobali Closing Brief, para. 18.

<sup>9281</sup> *Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000, para. 29. Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment alleges an agreement with genocidal intent, identifies Nyiramasuhuko as a conspirator, specifies alleged co-conspirators, sets out components of the agreement, and describes modes by which named participants participated in executing the plan. The Chamber notes the Nyiramasuhuko Defence did not allege that Indictment Paras. 6.52 and 6.56 were vague in this Motion.

3421. The Nyiramasuhuko Defence also submits that Paragraph 5.1 fails to allege a criminal act by Nyiramasuhuko.<sup>9282</sup> The Chamber recalls that conspiracy to commit genocide is a crime under Article 2 (3)(b) of the Statute. This crime requires “an agreement between two or more persons to commit the crime of genocide” (). The Prosecution alleged the existence of such an agreement in Paragraph 5.1. The Chamber thus finds that Paragraph 5.1 of the Nyiramasuhuko and Ntahobali Indictment was not defective for failing to allege that Nyiramasuhuko committed a criminal act. This finding applies equally to Paragraphs 5.1 of the Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment.

3422. The Nyiramasuhuko Defence submits that Paragraphs 6.52 and 6.56 of the Nyiramasuhuko and Ntahobali Indictment are impermissibly vague.<sup>9283</sup> The Nyiramasuhuko Defence asserts that the Prosecution did not plead the elements constituting the conspiracy charge in the Indictment or the Prosecution Pre-Trial Brief, but only alleged these elements after Prosecution Expert Witness Guichaoua obtained Nyiramasuhuko’s diary. Nyiramasuhuko’s Defence submits that even if the Chamber were to conclude that the 16 May 1994 and 31 May 1994 Security Council meetings provide evidence of the existence of a genocide conspiracy, the Chamber cannot convict Nyiramasuhuko on this evidence because the Prosecution failed to notify Nyiramasuhuko of its intention to lead evidence on these meetings in support of the conspiracy charge.<sup>9284</sup>

3423. The Nsabimana Defence submits that Paragraphs 5.1 and 6.57 of the Nsabimana and Nteziryayo Indictment are vague, as they fail to identify dates or locations where Nsabimana may have taken part in elaborating a plan to exterminate Tutsis.<sup>9285</sup>

3424. The Kanyabashi Defence submits that the 16 and 31 May 1994 meetings were not pled in the Kanyabashi Indictment.<sup>9286</sup>

3425. The Chamber notes that the material facts supporting a charge must be pled in the Indictment with sufficient precision to provide notice to the Accused.<sup>9287</sup> Here, the Prosecution did not specifically plead the 16 and 31 May 1994 May Security Council meetings in any of the Indictment paragraphs relating to conspiracy against any of the Accused.

3426. The Chamber further observes that Paragraph 6.32 of the Nyiramasuhuko and Ntahobali Indictment alleges that Nyiramasuhuko took part in numerous meetings at the *préfecture* office. Other than the one meeting pled that Nyiramasuhuko allegedly called in April 1994, Paragraph 6.32 does not allege the manner of Nyiramasuhuko’s involvement in other meetings. The paragraph does not specify whether she attended, chaired, convened or in any other way participated in other meetings, at the BPO or elsewhere, during which the planning of the genocide was allegedly discussed. The Chamber considers Nyiramasuhuko’s alleged participation in meetings to be material to the count of conspiracy to commit genocide. It constitutes one of the means by which the alleged conspiracy was committed and is a key element of the conduct imputed to Nyiramasuhuko which forms the basis of the conspiracy

<sup>9282</sup> Nyiramasuhuko Closing Brief, para. 1; Ntahobali Closing Brief, para. 20.

<sup>9283</sup> Nyiramasuhuko Closing Brief, para. 1; Ntahobali Closing Brief, para. 55.

<sup>9284</sup> Nyiramasuhuko Closing Argument, T. 21 April 2009 pp. 67-69.

<sup>9285</sup> Nsabimana Closing Brief, paras. 126-131.

<sup>9286</sup> Kanyabashi Closing Brief, para. 62, fn. 243.

<sup>9287</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 18; *Nahimana et al.*, Judgement (AC), para. 322.

charge. The Chamber thus concludes that the Prosecution's failure to plead either the 16 or 31 May 1994 Security Council meetings renders the Nyiramasuhuko and Ntahobali Indictment defective *vis-à-vis* Nyiramasuhuko.

3427. The Chamber further observes that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment alleges that Nsabimana took part in meetings with his *bourgmestres* at which the progress of the massacres and the means by which to complete them was discussed. Only one meeting is specified, *i.e.* the April 1994 meeting allegedly convened by Nyiramasuhuko. The Chamber notes that other than one meeting in April 1994, Paragraph 6.28 fails to specify the dates or location of the other alleged meetings, or how many meetings took place. The Chamber considers Nsabimana's alleged participation in meetings to be material to the count of conspiracy to commit genocide. It constitutes one of the means by which the alleged conspiracy was committed and is a key element of the conduct imputed to Nsabimana which forms the basis of the conspiracy charge. The Chamber thus concludes that the Prosecution's failure to plead either the 16 or 31 May 1994 Security Council meetings renders the Nsabimana and Nteziryayo Indictment defective *vis-à-vis* Nsabimana.

3428. Lastly, the Chamber observes that Paragraph 6.43 of the Kanyabashi Indictment relates to meetings that took place at the BPO between some of the *préfecture's* main authorities on unspecified dates as well as one meeting that took place between Kanyabashi and Nsabimana in June 1994. Notwithstanding the reference in Paragraph 6.43 to a meeting that occurred in June 1994 at the BPO, the paragraph fails to include any time period with respect to the other meetings. Further, Paragraph 6.44 pleads a series of meetings between the authorities at which the massacres were discussed, but fails to identify either the time or location of the meetings. Insofar as the Indictment does not mention either the 16 or 31 May 1994 Security Council meetings, it is therefore defective.

3429. Having regard to the foregoing, the Chamber finds the Nyiramasuhuko and Ntahobali Indictment, the Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment defective by reason of the failure of any of these paragraphs to refer to the Security Council meetings held on 16 and 31 May 1994 at the MRND Palace.

3430. The Chamber notes as well that it cannot convict on the basis of Paragraph 6.61 since this Paragraph was not pled in support of any counts against Nsabimana.<sup>9288</sup>

3431. The Chamber must next determine whether each of the Indictments is cured of its respective defects through subsequent Prosecution disclosures.

#### *Nyiramasuhuko and Ntahobali Indictment*

3432. The Appendix to the Prosecution Pre-Trial Brief states that Witnesses FAS, QF, RD, SJ, SU and SS were all expected to testify that Nyiramasuhuko participated in or addressed meetings or rallies in various locations. The Prosecution listed Witnesses SJ, SU, SS and RD as expected to testify to Nyiramasuhuko's participation in meetings at the BPO, where other

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<sup>9288</sup> Nsabimana Closing Brief, paras. 1831-1832.

*préfecture* authorities such as Nsabimana or Kanyabashi were present.<sup>9289</sup> The Prosecution listed Witnesses QF and FAS as testifying to Nyiramasuhuko's participation in meetings at Cyarwa and Mbazi Stadium respectively. These witnesses were listed in support of the count of conspiracy to commit genocide, and all but Witnesses QF and RD testified at trial.

3433. The Chamber notes that the Nyiramasuhuko Chapter of the Prosecution Closing Brief claims the Security Council meetings took place at the BPO,<sup>9290</sup> although the Nsabimana Chapter of the Prosecution Closing Brief alleges the meetings took place at the MRND Palace.<sup>9291</sup> Indeed, the Nyiramasuhuko Defence did not dispute that Nyiramasuhuko attended the two Security Council meetings of 16 and 31 May 1994 and states they took place at the MRND Palace.<sup>9292</sup> Accordingly, the Chamber considers any information in the Pre-Trial Brief and witness statements that refer to Nyiramasuhuko's participation at meetings at the BPO did not suffice to put her on notice of the two MRND meetings.

3434. The Prosecution failed to refer to the alleged 16 and 31 May 1994 meetings at the MRND Palace in its Pre-Trial Brief and its opening statement. In light of the lack of any reference to the specific meeting at the MRND Palace of 16 or 31 May 1994 in the Prosecution Pre-Trial Brief or its opening statement, the Chamber concludes that Paragraph 6.32 was not cured of its defects through subsequent Prosecution disclosures. In addition, the Defence did not have sufficient notice that the Prosecution would lead evidence on Nyiramasuhuko's participation in either the 16 or 31 May 1994 Security Council meeting in support of the conspiracy charge alleged under Paragraphs 5.1, 6.52 and 6.56. The Chamber thus declines to make any finding as to Nyiramasuhuko's responsibility with respect to either the 16 or 31 May 1994 Security Council meetings. The Chamber nevertheless considers that evidence led with respect to the content of these meetings may be assessed, where relevant, against other allegations.

#### *Nsabimana and Nteziryayo Indictment*

3435. The witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists seven witnesses, Witnesses FAC, FAI, FAR, FAS, QA, SJ and ST, who were expected to testify that Nsabimana participated in meetings.<sup>9293</sup> The meetings referred to cover the period from April to June 1994 and are said to have taken place in various venues in Butare including the BPO, Ngoma football field, Ngoma Parish, Mbazi Stadium and MRND Headquarters. The individuals involved in these meetings included Nyiramasuhuko, Kanyabashi, *bourgmestres* and members of the public.

3436. Witness ST's statement of 20 November 1997 states he saw Nsabimana at a meeting at MRND Headquarters about 19 or 20 April 1994 with *bourgmestres*, military heads and

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<sup>9289</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9); Witness FAS (30); Witness QBP (44); Witness QF (54); Witness RD (64); Witness SS (84); and Witness SU (86).

<sup>9290</sup> Prosecution Closing Brief, p. 64, para. 119.

<sup>9291</sup> Prosecution Closing Brief, pp. 238, 242, paras. 35, 45-46.

<sup>9292</sup> Nyiramasuhuko Closing Brief, paras. 493, 498, 558.

<sup>9293</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9); Witness FAC (15); Witness FAI (21); Witness FAR (29); Witness FAS (30); Witness QA (33); and Witness ST (85).

political leaders.<sup>9294</sup> In view of the specified dates, this witness does not refer to the meetings in question which occurred on 16 and 31 May 1994.

3437. Witness SJ's statement of 3 December 1996 indicated that he saw Nyiramasuhuko holding meetings with Nsabimana at the *préfecture* office in April 1994 and that Nyiramasuhuko organised one meeting with all of the *bourgmestres* in the BPO courtyard.<sup>9295</sup> The Chamber notes that the approximate date of this alleged meeting was April 1994. No date is provided with respect to the second "*bourgmestres*" meeting. In the Chamber's view, this summary fails to refer to the May 1994 Security Council meetings in question.

3438. The remaining five witnesses included by the Prosecution in the Appendix to the Prosecution Pre-Trial Brief,<sup>9296</sup> did not identify a meeting involving Nsabimana on or around 16 or 31 May 1994 occurring at the MRND Palace.

3439. As such, the Prosecution failed to refer to the alleged 16 and 31 May 1994 meetings at the MRND Palace in its Pre-Trial Brief and its opening statement. Accordingly the Chamber finds that the Nsabimana Defence did not have sufficient notice that the Prosecution would lead evidence on Nsabimana's participation in either the 16 or 31 May 1994 Security Council meetings in support of the conspiracy charge alleged under Paragraphs 5.1, 6.57 and 6.61. The Chamber declines to make any finding as to Nsabimana's responsibility with respect to either the 16 or 31 May 1994 Security Council meetings. Nevertheless, evidence led with respect to the content of these meetings may be assessed, where relevant, against other allegations.

3440. The Chamber also notes that the evidence brought by the Prosecution is not sufficient to establish that the participants at the 16 and 31 May 1994 Security Council meetings at the MRND Palace discussed matters in furtherance of an agreement between Nyiramasuhuko and Nsabimana to commit genocide.

### *Kanyabashi Indictment*

3441. In the Prosecution Pre-Trial Brief, only the summary of Witness SU refers to an unspecified meeting in Butare, attended by Nyiramasuhuko, Kanyabashi and others.<sup>9297</sup> Witness SU's prior statement of 20 November 1996 stated that leaders held meetings on Mondays and Fridays at the BPO which were attended by Nyiramasuhuko, Kanyabashi, Sibomana, Rekeraho and *bourgmestres*, including those of Huye and Ngoma *communes*.<sup>9298</sup> The Chamber notes that this lacks specificity, allowing for meetings on nine days in the month of May 1994. Further, neither the summary of anticipated evidence nor Witness SU's previous statement mentions meetings on 16 and/or 31 May 1994.

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<sup>9294</sup> 20 November 1997, Statement of Witness ST, disclosed 15 November 2000.

<sup>9295</sup> 3 December 1996, Statement of Witness SJ, disclosed 4 December 2000.

<sup>9296</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9); Witness FAC (15); Witness FAI (21); Witness FAR (29); Witness FAS (30); Witness QA (33); and Witness ST (85).

<sup>9297</sup> Prosecution Pre-Trial Brief – Appendix; Witness SU (86).

<sup>9298</sup> 20 November 1996, Statement of Witness SU, disclosed 4 November 1998.



3442. Recalling that the Security Council meetings took place at the MRND Palace,<sup>9299</sup> the Chamber considers any information in the Pre-Trial Brief and witness statements that refers to Kanyabashi's participation at meetings at the BPO does not suffice to put Kanyabashi on notice of the two meetings he allegedly attended at the MRND.

3443. The Prosecution failed to refer to the alleged 16 and 31 May 1994 meetings at the MRND Palace in its Pre-Trial Brief and its opening statement. Accordingly, the Kanyabashi Defence did not have sufficient notice of these meetings or that the Prosecution would lead evidence on Kanyabashi's participation in either the 16 or 31 May 1994 Security Council meeting in support of the conspiracy charge alleged under Paragraphs 5.1 and 6.62. The Chamber thus declines to make any finding as to Kanyabashi's responsibility with respect to either the 16 or 31 May 1994 Security Council meetings. Nevertheless, evidence led with respect to the content of these meetings may be assessed, where relevant, against other allegations.

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<sup>9299</sup> Prosecution Closing Brief, pp. 238, 242, paras. 35, 45-46; Nyiramasuhuko Closing Brief, paras. 493, 498, 558.

### 3.6.33 Security Council Meeting, 20 May 1994

#### 3.6.33.1 Introduction

3444. Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment alleges that from late 1990 to July 1994, Nsabimana and Nteziryayo conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. They allegedly developed, adhered to and executed this genocidal plan by organising, ordering and participating in massacres of Tutsis and moderate Hutus.<sup>9300</sup> Paragraphs 6.31 and 6.32 of the Indictment allege that between April and June 1994, Nteziryayo, the official in charge of civil defence for Butare *préfecture*, incited the population to slaughter the Tutsis in Butare *préfecture*, and Nsabimana incited and aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>9301</sup> Finally, Paragraphs 6.53 and 6.59 allege that between April and July 1994, Nsabimana and Nteziryayo not only incited, but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>9302</sup>

3445. The Prosecution submits that by attending the Security Council meeting of 20 May 1994, Nteziryayo was involved in the planning of genocide. Nteziryayo attended this meeting in his capacity as the person responsible for the civil defence programme in Butare. The agenda of this meeting was to extend the genocidal plan to the border *communes*. Nteziryayo's decision to speak on the issue of guerrilla warfare and the RPF tactics during subsequent border *commune* meetings showed that he was involved in the planning stage of these meetings.<sup>9303</sup> The Prosecution did not call any witnesses to testify on this allegation.

3446. Although the Prosecution did not make any submissions in respect to Nsabimana's alleged role in the 20 May 1994 Security Council meeting, the Nsabimana Defence submits that this specific meeting is not alleged in the Nsabimana and Nteziryayo Indictment, nor the Prosecution Pre-Trial Brief or subsequent disclosures by the Prosecution.<sup>9304</sup>

3447. In the alternative, the Nsabimana and Nteziryayo Defences do not dispute that Nsabimana and Nteziryayo attended the Security Council meeting on 20 May 1994. What is contested is that the meeting was held in pursuance of a genocidal plan.<sup>9305</sup> The Nsabimana Defence further asserts that the minutes of this meeting made no reference to a resolution on the extermination of Tutsis as alleged by the Prosecution.<sup>9306</sup>

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<sup>9300</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>9301</sup> Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana).

<sup>9302</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>9303</sup> Prosecution Closing Brief, p. 322, paras. 57-59.

<sup>9304</sup> Nsabimana Closing Brief, para. 711.

<sup>9305</sup> T. 20 September 2006 p. 33 (Nsabimana); T. 23 May 2007 p. 21 (Nteziryayo); T. 5 June 2007 p. 8 (Nteziryayo).

<sup>9306</sup> Nsabimana Closing Brief, para. 714; Defence Exhibit 542 (Nteziryayo) (Notes on the Security Council Meeting of 20 May 1994).

### 3.6.33.2 Preliminary Issues

3448. The Chamber observes that the Security Council meeting of 20 May 1994 is not specifically pled in the Nsabimana and Nteziryayo Indictment. The Indictment is therefore defective in this regard.

3449. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will examine whether the defect was cured through subsequent Prosecution disclosures. Having considered the Prosecution opening statement and the Prosecution Pre-Trial Brief and its Appendix, the Chamber finds that no reference was made to the Security Council meeting of 20 May 1994 in any of these potentially curative documents. As a result, the Chamber considers that the defect in the Indictment has not been cured. In any event, no witnesses were called by the Prosecution to testify about this alleged meeting of 20 May 1994. Thus the Chamber will not make any finding on this allegation.

### 3.6.34 The Tour of Meetings in the Border *Communes*, May – June 1994

#### 3.6.34.1 Introduction

3450. Paragraph 5.8 of the Nsabimana and Nteziryayo Indictment provides that from April to July 1994, incitement to hatred and violence was propagated by various prominent persons, including Nsabimana and Nteziryayo, who publicly incited the people to exterminate the Tutsi population and its “accomplices”.<sup>9307</sup> Paragraphs 6.53 and 6.59 of the Indictment allege that between April and June 1994, Nsabimana and Nteziryayo not only incited but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>9308</sup> Paragraph 6.31 of the Indictment further provides that between April and June 1994, Nteziryayo, the official in charge of civil defence for Butare *préfecture* incited the population to slaughter the Tutsis in Butare *préfecture*.<sup>9309</sup> Finally, Paragraph 6.32 of the Indictment alleges that between April and June 1994, Nsabimana not only incited but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>9310</sup>

3451. Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment alleges that Nsabimana took part in meetings with his *bourgmestres*, including at least one convened by Nyiramasuhuko in April 1994 during which the progress of the massacres was discussed as well as the means by which to complete them.<sup>9311</sup> The Prosecution submits that Nsabimana participated in numerous meetings in Butare *préfecture* during which decisions were made to further the extermination of Tutsis. Nsabimana’s role in the conspiracy to commit genocide was, *inter alia*, to convene and attend meetings to give effect to the plan.<sup>9312</sup>

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<sup>9307</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>9308</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>9309</sup> Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>9310</sup> Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana).

<sup>9311</sup> Para. 6.28 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana).

<sup>9312</sup> Prosecution Closing Brief, pp. 230-232, paras. 9, 14-15.

3452. The Prosecution submits that the genocide was planned, extended and put into effect at a series of meetings chaired and organised by Nsabimana in Rwanda's *communes* bordering Burundi in May and June 1994 and to which Nsabimana invited Nteziryayo to speak on military matters. At these meetings, Nsabimana and Nteziryayo promoted the campaign of genocide and incited the population to kill infiltrators and the accomplices of the RPF.<sup>9313</sup> Nteziryayo, as the main speaker in these meetings, used words such as "infiltrators" and "accomplices" in order to extend the plan of the Interim Government to incite the population to kill Tutsi civilians.<sup>9314</sup> The Prosecution further submits that Nteziryayo made public statements inciting people to exterminate the Tutsi population not in his personal capacity, but as part of the genocidal plan of the Interim Government.<sup>9315</sup>

3453. The Prosecution specifies meetings that took place in: (1) Nyakizu and Kigembe *communes* on 21 May 1994; (2) Muyira and Ntyazo *communes* on 22 May 1994; (3) Kirarambogo, Muganza *commune*, in the afternoon of 23 May 1994; (4) Gikore *secteur*, Nyaruhengeri *commune*, in the morning of 24 May 1994; (5) around mid-June 1994 in Muyaga *commune* and (6) in mid- to late June 1994 in Kibayi *commune*. The Prosecution relies upon the testimonies of Prosecution Witnesses FAI, RV, FAH, FAB, QBY, QBU and FAK, as well as Prosecution Expert Witnesses Des Forges and Ntakirutimana.

3454. The Nsabimana Defence does not dispute that Nsabimana attended meetings at Nyakizu and Kigembe in May 1994 or that Nsabimana spoke, but disputes the purpose of these meetings. Nsabimana's speeches during the Nyakizu and Kigembe meetings were a call for peace and to restore calm.<sup>9316</sup> In this regard, the Nsabimana Defence relies on the testimony of Nsabimana Defence Witnesses AGWA and TWW and Nsabimana.<sup>9317</sup>

3455. The Nsabimana Defence made no submissions with respect to the alleged meeting in Muyira *commune* on 22 May 1994. With respect to the afternoon meeting of the same day in Ntyazo *commune*, the Nsabimana Defence does not dispute that Nsabimana attended the swearing-in ceremony of the *bourgmestre* of Ntyazo *commune* on 22 May 1994, but contests the words attributed to Nsabimana. Nsabimana did not incite the population to kill Tutsis. Rather, he asked the population to be vigilant because they were living in an area where fighting was going on, not to be surprised by the *Inkotanyi* who were not far away, and to flee on the arrival of the *Inkotanyi*.<sup>9318</sup> Nsabimana asked the population to unite, not to stoop to killing and stated that nobody had the right of life and death over his neighbour.<sup>9319</sup> The Nsabimana Defence relies on the testimony of Nsabimana Defence Witness AND-75, Nsabimana and Nteziryayo.<sup>9320</sup>

3456. The Nsabimana Defence specifies that none of the Prosecution witnesses who testified on the border *commune* meetings held in Muyira, Muyaga, Muganza, Nyaruhengeri and Kibayi

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<sup>9313</sup> Prosecution Closing Brief, p. 234, para. 22.

<sup>9314</sup> Prosecution Closing Brief, p. 323, para. 61.

<sup>9315</sup> Prosecution Closing Brief, pp. 312, 352-353, paras. 24, 153-154.

<sup>9316</sup> T. 20 September 2006 p. 41 (Nsabimana); Nsabimana Closing Brief, para. 1860.

<sup>9317</sup> Nsabimana Closing Brief, paras. 1857-1860.

<sup>9318</sup> Nsabimana Closing Brief, paras. 858, 865.

<sup>9319</sup> Nsabimana Closing Brief, para. 868.

<sup>9320</sup> Nsabimana Closing Brief, para. 863.

*communes* mentioned the presence and/or participation of Nsabimana in these meetings.<sup>9321</sup> It was rather Defence witnesses, especially those of Nteziryayo, who placed and involved Nsabimana in these meetings.<sup>9322</sup>

3457. The Nteziryayo Defence made no submissions with respect to the meetings in Nyakizu and Kigembe *communes* on 21 May 1994, or Muyira *commune* on 22 May 1994. With respect to the afternoon meeting of the same day in Ntyazo *commune*, the Nteziryayo Defence does not dispute that Nteziryayo attended the swearing-in ceremony of the *bourgmestre* of Ntyazo *commune* on 22 May 1994, but contests the words attributed to Nteziryayo.<sup>9323</sup> Nteziryayo spoke at this meeting to urge the population to condemn all troublemakers and to encourage peace.<sup>9324</sup> He warned the population about the fighting and infiltration tactics of the RPF troops.<sup>9325</sup> Neither Nteziryayo, nor Nsabimana, incited the population to kill Tutsis.<sup>9326</sup>

3458. Apart from alleging lack of notice with respect to the meeting in Gikore *secteur*, Nyaruhengeri *commune*,<sup>9327</sup> the Nteziryayo Defence contends the meeting in Gikore *secteur* discussed peace and security.<sup>9328</sup> The Nteziryayo Defence does not contest that Nteziryayo attended a meeting in Mamba *secteur*, Muyaga *commune*, but submitted the meeting occurred on 23 May 1994, and its purpose was the restoration of peace, not incitement.<sup>9329</sup> The Nteziryayo Defence does not contest that Nteziryayo attended a meeting in Kibayi *commune*, but contends it was held on 24 May 1994 at a football pitch near Kibayi *commune* office. It was the only meeting he attended in Kibayi *commune* and the only time he went there together with Nsabimana between April 1994 and July 1994.<sup>9330</sup> The Defence points out that Nteziryayo's speeches during the border *commune* meetings related to guerrilla warfare and the use of explosives, and did not incite the population to kill Tutsis, as alleged by the Prosecution.<sup>9331</sup>

3459. The Nteziryayo Defence relies upon the testimony of Nteziryayo Defence Witnesses AND-75, AND-11, AND-53, AND-64, AND-41, AND-59, AND-73, AND-29, AND-60, Ntahobali Defence Witness H1B6 and the Accused Nsabimana and Nteziryayo.

### 3.6.34.2 Preliminary Issues

#### *Nsabimana*

3460. The Nsabimana Defence submits that Paragraphs 5.8, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment are unduly vague and did not permit Nsabimana to adequately prepare his defence since they fail to specify how, when and in what way, Nsabimana

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<sup>9321</sup> Nsabimana Closing Argument, T. 27 April 2009 p. 19; Nsabimana Closing Brief, paras. 958, 965, 978.

<sup>9322</sup> Nsabimana Closing Argument, T. 27 April 2009 p. 19; Nsabimana Closing Brief, para. 925.

<sup>9323</sup> Nteziryayo Closing Brief, paras. 545-546.

<sup>9324</sup> T. 5 June 2007 pp. 19-20 (Nteziryayo).

<sup>9325</sup> T. 5 July 2007 p. 21 (Nteziryayo).

<sup>9326</sup> Nteziryayo Closing Brief, paras. 546, 548.

<sup>9327</sup> Nteziryayo Closing Brief, para. 137.

<sup>9328</sup> Nteziryayo Closing Brief, paras. 173-180.

<sup>9329</sup> Nteziryayo Closing Brief, paras. 216-221.

<sup>9330</sup> T. 5 June 2007 pp. 61-63 (Nteziryayo).

<sup>9331</sup> T. 5 June 2007 p. 5 (Nteziryayo).

allegedly incited the population to commit genocide.<sup>9332</sup> Similarly, Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment relating to meetings is impermissibly vague because it does not give an indication of the dates, venues, attendees or the number of meetings. The Nsabimana Defence also argues that Paragraph 6.28 does not clearly state whether the progress of the massacres and how to complete them was discussed at all of the meetings, or only the meeting or meetings convened by Nyiramasuhuko.<sup>9333</sup>

3461. The Nsabimana Defence asserts that evidence brought by Nteziryayo Defence witnesses against Nsabimana with regard to the meetings in Muganza, Nyaruhengeri and Muyaga *communes* should be excluded as they do not form part of the Prosecution case against Nsabimana.<sup>9334</sup> The Prosecution's reliance upon these meetings is an attempt to bring additional charges against Nsabimana and is therefore unfair.<sup>9335</sup>

3462. The Chamber observes that Paragraphs 5.8, 6.32, 6.53 and 6.59 fail to specify the times and places at which both Nsabimana and Nteziryayo are alleged to have incited the population to commit genocide and are therefore defective. The Chamber further finds that Paragraph 6.31 also failed to specify the locations and dates where Nteziryayo, in his role as official in charge of civil defence for Butare *préfecture*, incited the population to slaughter the Tutsis in Butare *préfecture*, and is therefore defective.

3463. With regard to Paragraph 6.28, the Chamber observes that this paragraph fails to specify the number and dates of the alleged meetings with *bourgmestres*. Concerning the purpose of the meetings, a plain reading of Paragraph 6.28 suggests that the progress of the massacres and how to complete them was only discussed at a single meeting which was convened by Nyiramasuhuko. However, Paragraph 6.28 refers to meetings in the plural. Accordingly, there is confusion as to how many meetings Nsabimana participated in, how many were convened by Nyiramasuhuko and what was discussed at the meetings. The Chamber therefore considers that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is also defective.

3464. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will examine whether the defects were cured through subsequent Prosecution disclosures.

*Nyakizu and Kigembe Commune Meetings, 21 May 1994 and Muyira Commune Meeting, 22 May 1994*

3465. The Chamber notes that no mention was made of Nsabimana's alleged incitement to kill Tutsis at the meetings at Nyakizu and Kigembe *communes* on 21 May 1994, or at Muyira *commune* on 22 May 1994 in the Prosecution Pre-Trial Brief, nor in the Prosecution opening statement. The Chamber therefore considers that Paragraphs 5.8, 6.32 and 6.53 were not cured of their defects with respect to these meetings.

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<sup>9332</sup> Nsabimana Closing Brief, paras. 35-36, 719-722.

<sup>9333</sup> Nsabimana Closing Brief, paras. 333-335.

<sup>9334</sup> Nsabimana Closing Brief, paras. 931-933.

<sup>9335</sup> Nsabimana Closing Argument, T. 27 April 2009 p. 19.

3466. As regards Paragraph 6.28, the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists seven witnesses who were expected to testify that Nsabimana participated in multiple meetings, described in the witness summary grid as taking place between April and June 1994 in various venues in Butare, including the *préfecture* office, Ngoma football field, Ngoma Parish, Mbazi Stadium and MRND Headquarters.<sup>9336</sup>

3467. The Chamber observes however that no mention was made of the meetings at Nyakizu and Kigembe *communes* on 21 May 1994, or at Muyira *commune* on 22 May 1994, in the Prosecution Pre-Trial Brief, nor in the Prosecution opening statement. The Chamber thus concludes that Paragraph 6.28 was not cured of its defects.

*Ntyazo Commune Meeting, 22 May 1994*

3468. The summary of Witness FAI's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief stated that in a meeting on 22 May 1994, Nteziryayo and Nsabimana urged people of Ntyazo to search for and kill all surviving Tutsis. They asked young Hutus to register and join the army *en masse*. Nsabimana urged the *bourgmestre* to sensitise the youth to join the army, at the same time ordering Nteziryayo and Muvunyi to provide the reinforcement requested by the *bourgmestres*.<sup>9337</sup>

3469. In his previous statement of 24 February 2000, Witness FAI stated that Nsabimana spoke at a meeting attended by Nteziryayo, Muvunyi and Simba, in which he urged the people of Ntyazo to search for and kill all remaining Tutsis and for young Hutus to join the army *en masse*. Nteziryayo reiterated what Nsabimana had said and pointed out that young Hutus could go to the Ntyazo *commune* office, Nyanza *sous-préfecture* office and Butare *préfecture* office to register. The statement did not specify the date of the meeting but it is clear that it took place before 25 May 1994 when Witness FAI fled Ntyazo *commune*.<sup>9338</sup> In a redacted version of his previous statement of 22 October 2000, Witness FAI stated that around late May 1994, the genocide was all but over in the Ntyazo area and that Nsabimana and Nteziryayo made speeches urging the Hutus to continue the genocide.<sup>9339</sup>

3470. Considering the information contained in the summary of Witness FAI's anticipated testimony in the Appendix to the Pre-Trial Brief and the contents of his previous statements, the Chamber finds that the Nsabimana and Nteziryayo Defence had clear, timely and consistent notice of the allegation that Nsabimana and Nteziryayo incited the population to kill Tutsis at a meeting on 22 May 1994, in Ntyazo *commune*. The Chamber therefore concludes that Paragraphs 5.8, 6.28, 6.31, 6.32, 6.53 and 6.59 were cured of their defects through subsequent Prosecution disclosures in relation to the allegation that Nsabimana and Nteziryayo incited the population to kill Tutsis at a meeting in Ntyazo *commune* on 22 May 1994.

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<sup>9336</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9); Witness FAC (15); Witness FAI (21); Witness FAR (29); Witness FAS (30); Witness QA (33); and Witness ST (85). Witnesses SJ, FAC, FAI, FAS and QA testified at trial.

<sup>9337</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAI (21).

<sup>9338</sup> 24 February 2000, Statement of Witness FAI, disclosed 15 November 2000.

<sup>9339</sup> 22 October 2000, Statement of Witness FAI, disclosed 23 May 2001.

*Muganza, Nyaruhengeri, Muyaga and Kibayi Commune Meetings*

3471. The Chamber observes that no mention was made of Nsabimana's alleged incitement to kill Tutsis at the meetings of Muganza *commune* on 23 May 1994, at Gikore in Nyaruhengeri *commune* on 24 May 1994, in Kibayi *commune* around mid-June 1994, or in Muyaga *commune* around mid-June 1994 in the Prosecution Pre-Trial Brief, nor in the Prosecution opening statement. Therefore, the Chamber considers that Paragraphs 5.8, 6.32, 6.53 and 6.59 were not cured of their defects through subsequent Prosecution disclosures. As a result, the Chamber declines to make findings in respect of these allegations against Nsabimana. The Nsabimana Defence request for exclusion of evidence is therefore moot.

*Nteziryayo*

3472. The Nteziryayo Defence requests that the Prosecution evidence regarding inciting speeches that Nteziryayo allegedly made in the *communes* of Muyaga, Nyaruhengeri (Gikore) and Muganza (Kirarambogo), as well as the alleged ensuing killings, be excluded as they fall outside the scope of the Indictment.<sup>9340</sup>

3473. As indicated earlier, the Chamber observes that Paragraphs 5.8, 6.32, 6.53 and 6.59 are defective. The Chamber further finds that Paragraph 6.31 also failed to specify the locations and dates where Nteziryayo, in his role as official in charge of civil defence for Butare *préfecture*, incited the population to slaughter the Tutsis in Butare *préfecture* and is therefore defective.

3474. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will examine whether the defect was cured through subsequent Prosecution disclosures.

*Nyakizu and Kigembe Commune Meetings, 21 May 1994 and Muyira Commune Meeting, 22 May 1994*

3475. The Chamber recalls that no mention was made of the meetings at Nyakizu and Kigembe *communes* on 21 May 1994, or at Muyira *commune* on 22 May 1994 in the Prosecution Pre-Trial Brief, nor in the Prosecution opening statement. The Chamber therefore considers that Paragraphs 5.8, 6.32, 6.53 and 6.59 were not cured of their defects with respect to these meetings.

*Kirarambogo, Muganza Commune Meeting, 23 May 1994*

3476. The Chamber recalls that a defect in an indictment could be cured through a Prosecution motion for addition of a witness, provided any possible prejudice to the Defence was alleviated by, for example, an adjournment to allow the Defence time to prepare for cross-examination of the witness.<sup>9341</sup>

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<sup>9340</sup> Nteziryayo Closing Brief, para. 765.

<sup>9341</sup> See *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. 35.



3477. In the instant case, the Chamber notes that on 16 May 2001 the Prosecution filed its “Supplemental Motion for the Transfer of Detained Witnesses Under Rule 90 *bis*” by which the Prosecution sought to add four detained witnesses, including Prosecution Witness RV, who by oversight had been excluded from the Prosecution’s list of intended witnesses included in the Prosecution Pre-Trial Brief filed on 12 April 2001.<sup>9342</sup>

3478. In its Decision of 24 July 2001 the Chamber, noting that the statements of Witness RV had been disclosed to the Defence on 14 March 2001, found the Defence would not be prejudiced by the addition of Witness RV to the Prosecution’s witness list, and granted leave for Witness RV to be added.<sup>9343</sup> In one of these statements dated 2 October 1997, Witness RV refers to a meeting held in May 1994 at Kararambogo during which Nteziryayo incited the population to eliminate all the Tutsis, and after which killings were reported.<sup>9344</sup>

3479. In the Chamber’s view, this put the Nteziryayo Defence on notice that the Prosecution intended to lead evidence of various meetings, including the Kirarambogo meeting, in support of its allegation that Nteziryayo incited the population, as alleged in Paragraphs 5.8, 6.31 and 6.53 of the Nsabimana and Nteziryayo Indictment. In addition, Witness RV only started his testimony on 16 February 2004, allowing ample time for the Nteziryayo Defence to prepare its defence.

*Nyaruhengeri Commune Meeting, 24 May 1994*

3480. The Chamber observes that the Prosecution Pre-Trial Brief makes no reference to a meeting held at Gikore *secteur*, Nyaruhengeri *commune*. The Chamber notes that the Prosecution relies upon the testimony of Witness FAH with respect to this allegation.<sup>9345</sup>

3481. The Chamber observes that the summary of the intended evidence of Witness FAH provided in the Prosecution Pre-Trial Brief refers to an inciting speech given by Nteziryayo but fails to give any information as to the time and location of the alleged incident of incitement.<sup>9346</sup> These details only appear in Witness FAH’s statement of 7 April 1999, disclosed on 15 November 2000. In this statement, Witness FAH declared that towards the end of April 1994, the *conseiller* of Gikore *secteur* informed the population of a meeting with the *bourgmestre* and the *préfet* at the Gikore Centre in Nyarunazi *cellule*. Among others, *Préfet* Nteziryayo, Colonel Muvunyi, the President of the Court of First Instance, Ruzindaza, and the *bourgmestre* of Nyaruhengeri were in attendance. *Préfet* Nteziryayo spoke about the security situation and invited the population to fight together to stop the *Inkotanyi* who were already in Butare *préfecture*. Nteziryayo further asked those who could not go to the front to post

<sup>9342</sup> *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-I, Prosecutor’s Supplemental Motion for the Transfer of Detained Witnesses Under Rule 90 *bis*, 16 May 2001.

<sup>9343</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001, para. 14.

<sup>9344</sup> 2 October 1997, Statement of Witness RV, disclosed 14 March 2001.

<sup>9345</sup> Prosecution Closing Brief, p. 357, para. 167.

<sup>9346</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAH (20) (Witness FAH was intended to testify that Nteziryayo and Muvunyi made a speech inviting people to fight together to stop the enemy; urging those who could not go to the frontline, to post themselves at roadblocks and conduct a thorough search of the Tutsis, and kill them because the Tutsis are “a bad race, a race of snakes”).

themselves at the roadblocks, conduct a thorough search of the Tutsis and kill them because the Tutsis are “a bad race, a race of serpents”.<sup>9347</sup>

3482. In the Chamber’s view, the details regarding the location and the time of the alleged incident of incitement equally amount to material information that should have been mentioned in the Prosecution Pre-Trial Brief. In the absence of such details, the Chamber finds that Nteziryayo was not served with clear and consistent information allowing him to properly understand the charges brought against him in the instant case. Therefore, the defect in the Indictment is not cured and the Chamber will not make any finding in respect of this meeting.

*Muyaga Commune Meeting, Around Mid-June 1994*

3483. Witnesses QBY and FAB’s anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief stated that around 5 June 1994, Nteziryayo attended a meeting in *Muyaga commune* during which Nteziryayo made a speech asking the population to kill the Tutsis.<sup>9348</sup> In his prior statement of 3 November 1999, disclosed on 10 December 1999, Witness QBY stated that between 4 and 5 June 1994, Nteziryayo spoke during a meeting held at *Muyaga commune* office; Nteziryayo addressed the population saying, “[h]unt down the Tutsis who are still alive, kill them and kill those who are hiding them”.<sup>9349</sup> The Chamber observes that the information contained in his previous statement is consistent with the information contained in the Prosecution Pre-Trial Brief. In addition, Witness FAB, through his prior statement of 11 April 1999, disclosed on 15 November 2000, stated that sometime between 3 and 5 June 1994, Nteziryayo, among others, came to *Mamba secteur*, *Muyaga* to hold a meeting. In his speech, Nteziryayo stated that the *Inkotanyi* were not far away in *Ntyazo* and the Hutus should kill all the Tutsis and not spare anyone.<sup>9350</sup>

3484. Witness QBY started his testimony on 19 April 2004 and Witness FAB started his testimony on 5 April 2004, over three years after the above disclosures, thereby allowing sufficient time for the Defence to prepare.

3485. Considering the above, the Chamber finds that Nteziryayo had clear, timely and consistent notice of the allegation that Nteziryayo incited the population to kill Tutsis at a meeting held in *Muyaga commune*. Therefore, the Chamber considers that Paragraphs 5.8, 6.31, 6.53 and 6.59 were cured of their defects through subsequent Prosecution disclosures.

*Kibayi Commune Meeting, Around Mid- to Late June 1994*

3486. The Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists two witnesses, Witnesses FAK and QBU, who were expected to testify that at a meeting in May 1994 Nteziryayo incited people to kill Tutsis by stating that when cleaning one’s home “you must remove the garbage”.<sup>9351</sup> The Chamber notes that the summaries of Witness FAK’s and Witness QBU’s intended evidence fail to give any details as to the location of the alleged incitement or the subsequent effect.

<sup>9347</sup> 7 April 1999 (signed 8 October 1999), Statement of Witness FAH, disclosed 15 November 2000.

<sup>9348</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAB (14); Witness QBY (48).

<sup>9349</sup> 3 November 1999, Statement of Witness QBY, disclosed 10 December 1999.

<sup>9350</sup> 11 April 1999, Statement of Witness FAB, disclosed 15 November 2000.

<sup>9351</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAK (23); Witness QBU (47).

3487. Witness FAK's statement of 24 February 2000 stated that the witness attended a meeting in May 1994 held in the courtyard of the Kibayi *commune* office which was attended by *Préfet* Nteziryayo among others. At this meeting *Préfet* Nteziryayo told the people to kill Tutsis, including Tutsi girls protected by young Hutus. Nteziryayo said, "[w]hen you are cleaning your home, you gather the ashes around the cauldron, collect it and throw it away". Everyone returned to their respective areas to carry out the instructions of *Préfet* Nteziryayo particularly concerning the search for and elimination of the young girls and women protected by young Hutus. This operation continued until June 1994.<sup>9352</sup>

3488. Witness FAK's statement of 3 May 2000 also refers to a meeting at the Kibayi *commune* office where Nteziryayo repeated similar words.<sup>9353</sup> Witness FAK's statement says he personally participated in killing two Tutsis, a woman and child, on the orders of *Conseiller* Jean-Bosco Ndagijimana.

3489. Witness QBU's statement of 10 October 1999 discusses events in Kibayi *commune* in April 1994. It also stated that in May 1994, a meeting was held on the football field near the *commune* office. It was led by Colonel Nteziryayo, the new *préfet*, Colonel Muvunyi and *Bourgmestre* Kajyambere, and attended by the population and all the *secteur* and *cellule* officials. The new *préfet*, Nteziryayo, stated, "when you sweep your house, you must remove the garbage", meaning that all the Tutsis survivors were to be found and killed. He went on to say that all the Tutsi girls, women and children were also to be killed. The *préfet* and the *bourgmestre* both emphasised that the Tutsis' houses were to be destroyed and that a thorough search of the houses and the surrounding forest was to be conducted. After the delegation had left, the people resumed searching the houses and the surrounding bushes for survivors to kill them.<sup>9354</sup>

3490. The Chamber thus finds that the substance of Witness FAK's and QBU's previous statements with respect to the meeting held on the football pitch next to the Kibayi *commune* office at which Nteziryayo allegedly incited the population is consistent with the summary of their anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief.

3491. Although the summary of Witness FAK's and QBU's expected testimony contained in the Appendix to the Prosecution Pre-Trial Brief failed to mention the location of the meeting in question, the Chamber considers that the omission of this detail alone was remedied by information contained in their respective witness statements, which identified the meeting as taking place at or next to the Kibayi *commune* office. As such the Chamber considers that the summary of anticipated evidence of Witnesses FAK and QBU in the Prosecution Pre-Trial Brief, when read together with their respective statements, provided the Nteziryayo Defence with additional detail about this meeting.

3492. With respect to the timing of the meeting in question, the Chamber observes that both the summary of anticipated testimony in the Prosecution Pre-Trial Brief and the prior witness statements of Witnesses FAK and QBU place the meeting in May 1994. Nevertheless, the

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<sup>9352</sup> 24 February 2000, Statement of Witness FAK, disclosed 15 November 2000 in French and 4 December 2000 in English.

<sup>9353</sup> 3 May 2000, Statement of Witness FAK, disclosed 4 December 2000 in French and 23 May 2001 in English.

<sup>9354</sup> 10 October 1999, Statement of Witness QBU, disclosed 1 December 1999.

Chamber notes that the witnesses' statements both refer to "*Préfet Nteziryayo*" or "the new *Préfet Nteziryayo*" being present at the meeting. In the Chamber's view therefore, the meeting about which these witnesses were intended to testify must have taken place after 21 June 1994, the date on which Nteziryayo took office as *préfet*. This was born out by the witnesses' evidence at trial; Witness FAK testified that the meeting was probably around 18 or 19 June 1994,<sup>9355</sup> and both Witnesses FAK and QBU testified that Nteziryayo told them that he had just been appointed *préfet*.<sup>9356</sup>

3493. Therefore, having regard to the content of Witness FAK's and QBU's statements which refer to Nteziryayo as *préfet* at the time of the meeting, the Chamber is of the view that the Nteziryayo Defence was on notice that the meeting about which these witnesses would testify must have occurred in late June 1994. The Chamber considers this discrepancy concerning dates minor and not such as to violate the right of the Accused to adequate notice. In the circumstances the Chamber is of the view that the Nteziryayo Defence was on notice that it would need to defend itself against the allegation that Nteziryayo incited the population by speeches he gave at a meeting at or near the Kibayi *commune* office sometime after Nteziryayo assumed office as *préfet*.

3494. With respect to the killings which allegedly took place after the meeting, as previously noted, no mention is made of these killings in the respective summaries of Witness FAK and QBU's expected evidence in the Prosecution Pre-Trial Brief. While Witness FAK's second witness statement says he personally participated in killing two Tutsis, a woman and child, on the orders of *Conseiller Jean-Bosco Ndagijimana*,<sup>9357</sup> the prior statement of Witness QBU only refers generally to people carrying out searches in order to kill Tutsis.<sup>9358</sup> In the circumstances, the Chamber considers that the Nteziryayo Defence was not provided with adequate notice that the Prosecution intended to plead resultant killings as part of its case against Nteziryayo.

3495. The Prosecution witnesses' statements were disclosed to the Defence in December 1999 and December 2000, well before the witnesses commenced giving their evidence in April 2004. For the foregoing reasons, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement, as well as Paragraphs 6.53 and 6.59 relating to aiding and abetting were cured by the disclosure of clear, consistent and timely information. Furthermore, the Chamber considers the Defence did not suffer any prejudice and that the Defence's right to prepare its case was not violated.

#### *Nteziryayo's Request for Exclusion of Evidence*

3496. The Nteziryayo Defence submits that at the time of filing the Nteziryayo Closing Brief its motion requesting the exclusion of portions of evidence of several Prosecution witnesses, including Witnesses FAH, RV, QBY, FAB, FAK and QBU filed on 23 January 2009,<sup>9359</sup> was

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<sup>9355</sup> T. 15 April 2004 pp. 19, 24, 27-28 (ICS) (Witness FAK).

<sup>9356</sup> T. 15 April 2004 p. 29 (ICS) (Witness FAK); T. 13 April 2004 p. 9 (Witness QBU); T. 13 April 2004 pp. 36-37, 56-58 (ICS) (Witness QBU); T. 14 April 2004 pp. 7-8 (Witness QBU).

<sup>9357</sup> 3 May 2000, Statement of Witness FAK, disclosed 4 December 2000.

<sup>9358</sup> 10 October 1999, Statement of Witness QBU, disclosed 10 December 1999.

<sup>9359</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009.

pending.<sup>9360</sup> The Chamber observes that on 25 February 2009 the Chamber denied that motion in its entirety. The Chamber considered it was inappropriate to deal with the motion during trial and chose to decide such issues in its final deliberations.<sup>9361</sup>

3497. Having regard to the Chamber's finding that the Nteziryayo Defence received sufficient notice of the specific allegation regarding the meetings in Muganza and Muyaga *communes*, the Chamber considers there is no reason to exclude the evidence of Witnesses RV, QBY and FAB who testified to these meetings. Therefore, the Defence request is dismissed.

3498. For similar reasons, Chamber considers there is no reason to exclude the evidence of Witnesses FAK and QBU on this point.

3499. As for the Defence request for exclusion of the evidence of Witness FAH on the Nyaruhengeri meeting, the Chamber finds it moot on the ground that the defect in the Indictment is not cured in this regard.

### **3.6.34.3 Evidence**

#### 3.6.34.3.1 Ntyazo *Commune* Meeting, 22 May 1994

##### Prosecution Witness FAI

3500. Witness FAI, a Hutu civil servant in 1994, detained in Rwanda at the time of his testimony for crimes committed during the genocide following a guilty plea,<sup>9362</sup> testified that in the afternoon of 22 May 1994, he attended the swearing-in ceremony of Mathieu Ndahimana, the new *bourgmestre* of Ntyazo *commune*.<sup>9363</sup>

3501. The ceremony lasted between one and two hours.<sup>9364</sup> It was held outside in the courtyard of a school at Nyakayaga, in Buye *secteur*, less than three kilometres from the Burundian border.<sup>9365</sup> It was attended by *Préfet* Nsabimana, Lieutenant Colonel Nteziryayo, Colonel Muvunyi, Colonel Simba, the Vice-Rector of the National University of Rwanda, the President of the Court of First Instance in Butare and Chief Warrant Officer Rekeraho. His relative, Nteziryayo Defence Witness AND-75 was also present.<sup>9366</sup> *Préfet* Nsabimana chaired the ceremony. Nsabimana welcomed the visitors, reminded the audience that the country was at war and asked the people not to sleep and rather be vigilant in order to fight the enemy and his accomplices.<sup>9367</sup> Witness FAI understood the "enemy" to mean the RPF and "accomplices" to mean all Tutsis. Even a small child would have understood it in this way.<sup>9368</sup>

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<sup>9360</sup> Nteziryayo Closing Brief, para. 765.

<sup>9361</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>9362</sup> Prosecution Exhibit 62 (Personal Particulars); T. 30 October 2002 pp. 96-97; T. 31 October 2002 p. 10 (ICS) (Witness FAI).

<sup>9363</sup> T. 31 October 2002 pp. 10-11 (ICS); T. 5 November 2002 pp. 31-32 (ICS) (Witness FAI).

<sup>9364</sup> T. 5 November 2002 p. 32 (ICS) (Witness FAI).

<sup>9365</sup> T. 31 October 2002 pp. 13-14 (ICS); T. 5 November 2002 p. 32 (ICS) (Witness FAI).

<sup>9366</sup> T. 31 October 2002 pp. 11-12 (ICS); T. 5 November 2002 p. 34 (ICS) (Witness FAI); Defence Exhibit 535 (Nteziryayo) (Personal Particulars).

<sup>9367</sup> T. 31 October 2002 p. 12 (ICS) (Witness FAI).

<sup>9368</sup> T. 31 October 2002 p. 12 (ICS); T. 5 November 2002 pp. 33-34 (ICS) (Witness FAI).

3502. Nteziryayo was introduced as the person responsible for civil defence.<sup>9369</sup> He also spoke at the ceremony, echoing what the *préfet* had said.<sup>9370</sup> Nteziryayo said that the *préfet* was experiencing difficulties since there was a war and asked the people to be even more vigilant so as to fight the enemy and his accomplices, which the witness understood to mean the Tutsis.<sup>9371</sup> Nteziryayo's speech was long. He encouraged the youths present to receive military training at the army's military camp.<sup>9372</sup>

3503. The meeting was followed by massacres of Tutsis.<sup>9373</sup> Witness FAI fled Butare with his family on 25 May 1994 due to the advance of the RPF. Many people were fleeing at this time.<sup>9374</sup>

#### Nteziryayo Defence Witness AND-75

3504. Witness AND-75, a Hutu farmer living in Ntyazo *commune* in 1994,<sup>9375</sup> testified that he attended Mathieu Ndahimana's swearing-in ceremony in the afternoon of 22 May 1994.<sup>9376</sup> The meeting took place at the football pitch of Nyakayaga in Ntyazo *commune*.<sup>9377</sup> About 200 people attended.<sup>9378</sup> The majority of the population who attended the meeting were Hutus, since most Tutsis had already fled.<sup>9379</sup>

3505. Nsabimana presided over the meeting. He introduced Nteziryayo, Simba and Muvunyi as senior army officers.<sup>9380</sup> The three of them wore military uniform. The witness did not recall mention of the Vice-Rector of the National University of Rwanda during the introduction of the dignitaries, but stated that the President of the Court of First Instance of Butare was announced.<sup>9381</sup>

3506. After the swearing-in ceremony, the *préfet* addressed the new *bourgmestre* and stated that he was appointed to ensure security; he further called upon the population to be vigilant because they were living in an area that was close to where the fighting was going on.<sup>9382</sup>

3507. Nsabimana condemned the killings.<sup>9383</sup> Everybody who attended the meeting could hear what he said.<sup>9384</sup> The witness understood that when *Préfet* Nsabimana told the population

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<sup>9369</sup> T. 31 October 2002 pp. 12-13 (ICS) (Witness FAI).

<sup>9370</sup> T. 31 October 2002 p. 12 (ICS); T. 5 November 2002 pp. 33-34 (ICS) (Witness FAI).

<sup>9371</sup> T. 31 October 2002 pp. 12-13 (ICS) (Witness FAI).

<sup>9372</sup> T. 31 October 2002 p. 13 (ICS) (Witness FAI).

<sup>9373</sup> T. 31 October 2002 p. 13 (ICS) (Witness FAI).

<sup>9374</sup> T. 5 November 2002 pp. 6-8, 39 (ICS) (Witness FAI).

<sup>9375</sup> Defence Exhibit 535 (Nteziryayo) (Personal Particulars); T. 7 May 2007 p. 16 (Witness AND-75).

<sup>9376</sup> T. 7 May 2007 pp. 18-19 (ICS); T. 7 May 2007 p. 22 (Witness AND-75).

<sup>9377</sup> T. 7 May 2007 p. 21 (Witness AND-75).

<sup>9378</sup> T. 7 May 2007 p. 23 (Witness AND-75).

<sup>9379</sup> T. 7 May 2007 p. 72 (Witness AND-75).

<sup>9380</sup> T. 7 May 2007 pp. 26-27, 72-73; T. 8 May 2007 p. 4 (Witness AND-75).

<sup>9381</sup> T. 7 May 2007 p. 73 (Witness AND-75).

<sup>9382</sup> T. 7 May 2007 p. 27 (Witness AND-75).

<sup>9383</sup> T. 7 May 2007 p. 50 (Witness AND-75).

<sup>9384</sup> T. 7 May 2007 p. 51 (Witness AND-75).

to remain vigilant, he meant that if ever the *Inkotanyi* arrived in their area, they should take flight.<sup>9385</sup>

3508. Muvunyi spoke at the meeting to warn the population to be vigilant because they could be attacked from Bugesera or Burundi.<sup>9386</sup> Muvunyi further stated that the members of the population had to flee because *Inkotanyi* were killing everyone they found. They were the enemies, not the Tutsis.<sup>9387</sup>

3509. Witness AND-75 testified that Nteziryayo took over and informed the population about the fighting tactics of RPF troops. Nteziryayo stated that the RPF concealed guns and ammunitions in baskets and once in the forests, they took them out and fired at the fleeing population before taking control of the area. He further stated that the RPF disguised themselves as missionaries or Muslims to avoid being identified, and set deadly traps everywhere. Nteziryayo urged the population to stay away from suspect objects which might be mines and to report any location where they would find any such object. Nteziryayo did not call for the massacre of Tutsis by labelling them accomplices.<sup>9388</sup>

3510. After Nteziryayo, Colonel Simba took the floor and stated that he was the person in charge of the civilian defence in Butare and Gikongoro *préfectures*.<sup>9389</sup> He introduced his assistant for this task, Emmanuel Rekeraho.<sup>9390</sup> Simba did not introduce Nteziryayo as his assistant during this meeting.<sup>9391</sup> Simba did not call upon the Hutu population to hunt down and kill Tutsis.<sup>9392</sup> Simba stated that he was going to help the population to set up vigilante groups for self-defence.<sup>9393</sup> Mathieu Ndahimana then thanked the *préfet* and the population that came to support him. The meeting ended between 3.00 and 4.00 p.m. In spite of gunshots that could be heard not far away from the venue of the meeting, members of the population felt re-assured because of what the authorities had just told them.<sup>9394</sup>

3511. Witness AND-75 testified that no killings took place after the meeting.<sup>9395</sup> The RPF took control of the northern part of Ntyazo *commune* three days after the swearing-in ceremony.<sup>9396</sup>

### Nteziryayo

3512. Nteziryayo testified that in the afternoon of 22 May 1994, he attended a meeting at a football pitch in Mbuye *secteur*, Ntyazo *commune* to swear in the new *bourgmestre* of Ntyazo *commune*, Mathieu Ndahimana.<sup>9397</sup> Attendees included: Nsabimana; Tharcisse Muvunyi, the

<sup>9385</sup> T. 8 May 2007 p. 8 (Witness AND-75).

<sup>9386</sup> T. 7 May 2007 p. 27 (Witness AND-75).

<sup>9387</sup> T. 7 May 2007 pp. 27, 29 (Witness AND-75).

<sup>9388</sup> T. 7 May 2007 pp. 28-29 (Witness AND-75).

<sup>9389</sup> T. 7 May 2007 p. 28 (Witness AND-75).

<sup>9390</sup> T. 7 May 2007 pp. 28-29 (Witness AND-75).

<sup>9391</sup> T. 7 May 2007 pp. 28-29 (Witness AND-75).

<sup>9392</sup> T. 7 May 2007 p. 29 (Witness AND-75).

<sup>9393</sup> T. 7 May 2007 p. 28 (Witness AND-75).

<sup>9394</sup> T. 7 May 2007 p. 30 (Witness AND-75).

<sup>9395</sup> T. 7 May 2007 p. 30 (Witness AND-75).

<sup>9396</sup> T. 7 May 2007 pp. 31-32 (Witness AND-75).

<sup>9397</sup> T. 5 June 2007 pp. 13, 17 (Nteziryayo).

area commander; Mathias Bushishi, the Public Prosecutor; Sylvain Harindintwari, the person in charge of the intelligence in the *préfecture*; Ruzindaza, President of the Butare Court of First Instance; Nshimyumuremyi the Vice-Rector; Cyprien Musabirema, the person in charge of ORINFOR, the Rwandan information agency; Warrant Officer Rekeraho; and Aloys Simba, who was in charge of the civil defence for Butare and Gikongoro.<sup>9398</sup>

3513. Due to its proximity to the war front, only about 200 to 250 people attended. One could hear the detonation of weapons during the meeting.<sup>9399</sup>

3514. Nteziryayo testified that after the swearing-in of Ndahimana, Nsabimana delivered a speech condemning violence in all forms, expressing regret over what had happened in Ntyazo *commune*, and encouraging the people to work towards peace. He also called on the new *bourgmestre* to strive to seek peace and fight all troublemakers. He reminded the population that they had to go about their daily activities, in particular, farming and trade, in order to fight hunger. Finally he talked about information regarding possible attacks by the RPF from Burundi.<sup>9400</sup>

3515. Nteziryayo testified that Lieutenant Colonel Muvunyi spoke in his capacity as area commander, and that he gave the population information on the state of the war and security advice. He urged the young people to join the army or to enlist in the Rwandan Armed Forces.<sup>9401</sup>

3516. Nteziryayo testified that Ruzindaza, the President of the Court of First Instance spoke at the meeting. In his speech, Ruzindaza underscored the issues of patriotism and bravery, and urged the young people to join forces and not be afraid to die for their country. He also spoke on the issue of abiding the law.<sup>9402</sup>

3517. Nteziryayo testified that Colonel Simba introduced himself as the officer in charge of civil defence for the Gikongoro and Butare *préfectures*, explained to the population that civil defence had just been established and that the population would be trained in weapons-handling and basic military tactics. Simba pointed out that the goal of civil defence was to confront any infiltration by the RPF.<sup>9403</sup>

3518. Nteziryayo testified that when it was his turn to speak he condemned all troublemakers and encouraged peace. He spoke about guerrilla warfare and its devastating consequences, especially in the northern *préfectures* of Byumba, Ruhengeri and Kibungo. He explained that those involved in guerrilla warfare were hard to detect. Small groups of people, *i.e.* groups of two or three, would infiltrate the population and do everything to look like the local people, by adjusting to their clothes and daily conduct. The infiltrators would study the customs and attitudes of the region and take this opportunity to traffic weapons or set traps against the

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<sup>9398</sup> T. 5 June 2007 pp. 14, 24 (Nteziryayo).

<sup>9399</sup> T. 5 June 2007 pp. 16-17 (Nteziryayo).

<sup>9400</sup> T. 5 June 2007 pp. 17-18 (Nteziryayo).

<sup>9401</sup> T. 5 June 2007 p. 18 (Nteziryayo).

<sup>9402</sup> T. 5 June 2007 pp. 18-19 (Nteziryayo).

<sup>9403</sup> T. 5 June 2007 p. 19 (Nteziryayo).



population. They would move from one activity to the other and would “change colours like chameleons”.<sup>9404</sup>

3519. Nteziryayo agreed that he told the population: about the fighting tactics of the RPF troops and how they were camouflaged; that the *Inkotanyi* were carrying guns and ammunition in baskets; that the RPF would then take over the evacuated location; that the *Inkotanyi* would disguise themselves as missionaries, Muslims or farmers to avoid being identified and to collect money; and that the RPF would set deadly traps all over the place. He warned the population to avoid getting close to any mines and to report the locations of such metals and mines.<sup>9405</sup> Nteziryayo pointed out that he did not say that these *Inkotanyi* were actually present in the *commune*, but that he was speaking in general terms.<sup>9406</sup> Nteziryayo also talked about explosives, especially about grenades that the infiltrators buried in public places causing massive destruction.<sup>9407</sup>

3520. Nteziryayo did not call on the youth to join the army and the *gendarmerie*, or to report at their camps to receive military training with the purpose of turning them into combatants to fight the RPF and continue killing the Tutsis. He was not in a position to give instructions for training, especially training on the manipulation of weapons.<sup>9408</sup>

3521. At no time did Nteziryayo incite the population to exterminate or to murder the Tutsis or seek to incite the murder or killing of women, children or anyone else. He did not hear anybody make statements inciting the population to use violence or to exterminate the Tutsis. He further testified that he did not hear Nsabimana ask the audience to fight the accomplices of the enemy – referring to the Tutsis – or Lieutenant Colonel Simba call the Hutus to attack the Tutsi population.<sup>9409</sup>

### Nsabimana

3522. Nsabimana testified that he swore in the new *bourgmestre* of Ntyazo *commune* on 22 May 1994.<sup>9410</sup> The ceremony took place at about 3.00 or 4.00 p.m. on a football field.<sup>9411</sup> Nteziryayo, Colonel Simba, *Sous-préfet* Hakizamungu and Rekeraho were present but Muvunyi, Vice-Rector Nshimyumuremyi and Ruzindaza, the President of the Court of First Instance in Butare, did not attend the meeting.<sup>9412</sup>

3523. The sound of shelling by the RPF could be heard nearby so he was in a hurry to leave. The meeting did not last more than one hour. Nsabimana spoke for between five and 10

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<sup>9404</sup> T. 5 June 2007 pp. 19-20; T. 5 June 2007 p. 21 (Nteziryayo) (French).

<sup>9405</sup> T. 4 July 2007 p. 67 (Nteziryayo).

<sup>9406</sup> T. 5 July 2007 pp. 21-22 (Nteziryayo).

<sup>9407</sup> T. 5 June 2007 p. 20 (Nteziryayo).

<sup>9408</sup> T. 5 June 2007 p. 24 (Nteziryayo).

<sup>9409</sup> T. 5 June 2007 p. 21 (Nteziryayo).

<sup>9410</sup> T. 21 September 2006 p. 4 (Nsabimana).

<sup>9411</sup> T. 21 September 2006 p. 39; T. 20 November 2006 pp. 50, 52 (ICS) (Nsabimana).

<sup>9412</sup> T. 20 November 2006 pp. 50-52 (ICS) (Nsabimana).

minutes.<sup>9413</sup> He introduced himself, reminded the population that they needed to live in peace, and told the new *bourgmestre* that he was now in charge of a family.<sup>9414</sup>

3524. He could not remember if Nteziryayo spoke at the meeting. Colonel Simba gave the military salute, which elicited applause from the audience. Simba talked about infiltration, attacks and recruitment into the army. He did not incite those present to kill Tutsis.<sup>9415</sup>

3525. Nsabimana denied that during his speech at the swearing-in ceremony at Ntyazo, he asked the population not to go to sleep, to be vigilant in order to fight the enemy who was the RPF and its Tutsi accomplices, and to seek out and kill surviving Tutsis.<sup>9416</sup> Witness FAI's testimony that Nteziryayo repeated the same message is not true.<sup>9417</sup>

### 3.6.34.3.2 Kirarambogo, Muganza *Commune* Meeting, 23 May 1994

#### Prosecution Witness RV

3526. Witness RV, a Hutu and former civil servant, was a detainee in Rwanda at the time of his testimony.<sup>9418</sup> The witness testified that he made a written confession to the government authorities in Rwanda in 2001.<sup>9419</sup> He confessed that he participated in meetings organised by the administration in 1994, that he organised meetings in *secteurs*, and that he played a role in abductions and murders. He also admitted selling properties belonging to Tutsis who had been killed or had fled. At the time of his testimony, he did not know whether his confession had been accepted or whether he would have to appear before the Rwandan judicial system.<sup>9420</sup>

3527. The witness testified that he took part in three meetings in Kirarambogo between April and June 1994.<sup>9421</sup> One of these meetings was chaired by Nteziryayo on around 25 May 1994.<sup>9422</sup> The meeting was attended by, among others, Colonel Muvunyi, the Butare commander, Jean-Baptiste Ruzindaza, chairman of the First Instance Tribunal in Butare, and the *sous-préfet* of Gisagara *sous-préfecture*.<sup>9423</sup> The witness testified that during this period, Nteziryayo was the chairman of the civil defence committee in Butare *préfecture*.<sup>9424</sup>

3528. The witness testified that during the meeting, Dominique Ntawukulilyayo first introduced the visitors to the local population. Then Nteziryayo took the floor, followed by Jean-Baptiste Ruzindaza and Ambrors who was in charge of immigration and emigration in the *préfecture*.<sup>9425</sup> Nteziryayo explained that he was responsible for instructing the population on

<sup>9413</sup> T. 21 September 2006 pp. 39-40 (Nsabimana).

<sup>9414</sup> T. 21 September 2006 p. 40 (Nsabimana).

<sup>9415</sup> T. 21 September 2006 p. 40; T. 20 November 2006 pp. 52-54 (ICS) (Nsabimana).

<sup>9416</sup> T. 21 September 2006 pp. 40-41 (Nsabimana).

<sup>9417</sup> T. 21 September 2006 pp. 41-42 (Nsabimana).

<sup>9418</sup> T. 17 February 2004 p. 8 (ICS) (Witness RV); Prosecution Exhibit 78 (Personal Particulars).

<sup>9419</sup> T. 17 February 2004 p. 35 (ICS) (Witness RV).

<sup>9420</sup> T. 17 February 2004 p. 36 (ICS) (Witness RV).

<sup>9421</sup> T. 16 February 2004 p. 48 (ICS) (Witness RV).

<sup>9422</sup> T. 16 February 2004 p. 48 (ICS); T. 16 February 2004 p. 55 (HC) (Witness RV) (French). The Chamber notes that the English transcript indicates 5 May, while the French indicates 25 May 1994.

<sup>9423</sup> T. 16 February 2004 pp. 48-49 (ICS); T. 19 February 2004 p. 31 (ICS) (Witness RV).

<sup>9424</sup> T. 16 February 2004 p. 49 (ICS) (Witness RV).

<sup>9425</sup> T. 19 February 2004 p. 31 (ICS) (Witness RV).

how to use traditional weapons such as bows and arrows and spears. Nteziryayo added that he was also responsible for instructing the youth to join the army. Nteziryayo also told the attendees that they should exterminate all the accomplices so that when the Tutsis returned from exile there would not be any witnesses to tell them what had happened.<sup>9426</sup> Finally, Nteziryayo said that the population should not hide accomplices.<sup>9427</sup>

3529. The witness stated that prior to the meeting in Kirarambogo, there had been a lull in the killings. After the meeting, many people who had survived previous massacres were killed, especially women.<sup>9428</sup>

3530. The witness indicated that he did not remember the exact date of the meeting; he asked someone who lost his wife after what was said at that meeting, and that person told him that his wife was killed on 25 May 1994, but the witness could not confirm whether the Kirarambogo meeting actually took place on 25 May 1994.<sup>9429</sup>

### Nteziryayo Defence Witness AND-73

3531. Witness AND-73, a Hutu teacher from Muganza *commune*,<sup>9430</sup> testified that on 23 May 1994 at approximately 3.00 p.m., a meeting was held in his *secteur*, led by the *préfecture* officials.<sup>9431</sup> The witness arrived at the meeting venue at 11.00 a.m., because the meeting was originally supposed to have been held at 10.00 a.m.<sup>9432</sup> The meeting took place in the Kirarambogo locality, which is located between Muganza and Kibayi *communes*, at the market square of Nyabitare.<sup>9433</sup> At the time, the witness understood that the *préfet* would preside over the meeting, but he did not know who else was going to attend.<sup>9434</sup>

3532. The *préfecture* officials arrived at the meeting late, around 3.30 p.m., and excused themselves by saying that they had held another meeting in another *commune*.<sup>9435</sup> These officials included: the *bourgmestre* of Muganza, Chrysologue Bimenyimana, *Préfet* Nsabimana; the vice-rector of the University of Butare; a Public Prosecutor; Colonel Nteziryayo; Colonel Muvunyi; and *Sous-préfet* Dominique Ntawukulilyayo.<sup>9436</sup> When asked during cross-examination whether *Bourgmestre* Bimenyimana was actually at the meeting before the other officials arrived, the witness maintained that he arrived with the other officials.<sup>9437</sup> About 300 people attended the meeting altogether.<sup>9438</sup>

<sup>9426</sup> T. 16 February 2004 p. 49 (ICS) (Witness RV).

<sup>9427</sup> T. 19 February 2004 pp. 31-32 (ICS) (Witness RV).

<sup>9428</sup> T. 16 February 2004 p. 50 (ICS) (Witness RV).

<sup>9429</sup> T. 19 February 2004 p. 32 (ICS) (Witness RV).

<sup>9430</sup> Defence Exhibit 511 (Nteziryayo) (Personal Particulars).

<sup>9431</sup> T. 8 February 2007 pp. 9-10 (Witness AND-73).

<sup>9432</sup> T. 8 February 2007 p. 11 (Witness AND-73).

<sup>9433</sup> T. 8 February 2007 p. 20 (ICS) (Witness AND-73).

<sup>9434</sup> T. 8 February 2007 p. 12 (Witness AND-73).

<sup>9435</sup> T. 8 February 2007 p. 16; T. 8 February 2007 p. 55 (ICS) (Witness AND-73).

<sup>9436</sup> T. 8 February 2007 p. 17; T. 8 February 2007 pp. 21, 64 (ICS) (Witness AND-73).

<sup>9437</sup> T. 8 February 2007 p. 55 (ICS) (Witness AND-73).

<sup>9438</sup> T. 8 February 2007 p. 17 (Witness AND-73).

3533. Five people spoke at the meeting.<sup>9439</sup> *Bourgmestre* Chrysologue Bimenyimana, opened the meeting, and was followed by *Préfet* Nsabimana, then by the Butare area commander, Colonel Muvunyi, then by Nteziryayo, and finally a man named Ruzindaza.<sup>9440</sup> No public address system was used,<sup>9441</sup> and it appeared to the witness that not even the *bourgmestre* knew the meeting's agenda before it began.<sup>9442</sup> *Bourgmestre* Bimenyimana thanked the attendees for waiting, and introduced the *préfet* to preside over the meeting.<sup>9443</sup> Nsabimana then told the inhabitants that they were in a period of insecurity, asked them to avoid involvement in acts of violence, and to refrain from killing because he believed that all people had a right to life. Nsabimana thereafter asked the people to go back to work, stressing the need to develop agriculture in the area. He finished by asking the members of the population to fight "troublemakers", and asked the "troublemakers" to stop their evil acts.<sup>9444</sup>

3534. Colonel Muvunyi took the floor after Nsabimana. Muvunyi told the crowd that the war was close to them, in neighbouring *communes* such as Mugusa and Muyira. He asked the inhabitants to stay vigilant and to ensure their own safety. If the inhabitants heard gunshots, Muvunyi instructed them not to flee until they determined where the enemy was so they could flee in the opposite direction. At this moment, the witness observed the soldiers accompanying Colonel Muvunyi shoot their guns into the air before the Colonel had finished his speech.<sup>9445</sup> The gunshots frightened the people attending the meeting, including the witness, and they began to disperse, but did not know which way to go.<sup>9446</sup> Colonel Muvunyi called the people back and said: "If it had been a real attack, do not act like you have just reacted. First of all, you need to locate the enemy so that you can flee in the opposite direction away from the enemy."<sup>9447</sup>

3535. Subsequently Nteziryayo took the floor. Nteziryayo stressed the fact that the community was experiencing a difficult war period. However, Nteziryayo did not believe that there would be a large-scale attack because the RPF had adopted guerrilla tactics, and he explained to the crowd what guerrilla warfare consisted of. Nteziryayo explained that the RPF would infiltrate a region in order to obtain information as to how those inhabitants lived. Such information could include their habits, religious customs, religious membership, and when market days and religious services were held. The enemy would then use this information to supply accomplices with weapons without being noticed, perhaps by transporting weapons in baskets with produce that they would sell on market days.<sup>9448</sup>

3536. Nteziryayo told the inhabitants that the infiltrators could do manual work such as tilling the land, or own a small business such as selling clothing, shoes, milk or drinks. He told the population that they should report unknown people in the area to the authorities. Nteziryayo then warned people of the risk of mines in fields and on the hills, and told them to be careful if

<sup>9439</sup> T. 8 February 2007 p. 68 (ICS) (Witness AND-73).

<sup>9440</sup> T. 8 February 2007 pp. 68-69 (ICS) (Witness AND-73).

<sup>9441</sup> T. 8 February 2007 p. 63 (ICS) (Witness AND-73).

<sup>9442</sup> T. 8 February 2007 p. 66 (ICS) (Witness AND-73).

<sup>9443</sup> T. 8 February 2007 p. 24 (ICS) (Witness AND-73).

<sup>9444</sup> T. 8 February 2007 p. 25 (ICS) (Witness AND-73).

<sup>9445</sup> T. 8 February 2007 p. 25 (ICS) (Witness AND-73).

<sup>9446</sup> T. 8 February 2007 pp. 25-26 (ICS) (Witness AND-73).

<sup>9447</sup> T. 8 February 2007 p. 25 (ICS) (Witness AND-73).

<sup>9448</sup> T. 8 February 2007 p. 29 (ICS) (Witness AND-73).

they came across something that they did not recognise. He reminded the people that they resided in a border area, where an attack from Burundi could take place, and asked the people to report to the local authorities if any such attack were to occur. The witness believed that the purpose of Nteziryayo's speech was to warn the inhabitants of potential dangers and to remind them to remain vigilant. He also estimated that the border of Burundi was seven kilometres away.<sup>9449</sup>

3537. The last person to speak was Ruzindaza, the President of the Butare Court of First Instance.<sup>9450</sup> *Sous-préfet* Dominique Ntawukulilyayo did not take the floor at the meeting.<sup>9451</sup>

3538. The witness listened closely to all of the speeches, and testified that neither Nteziryayo, nor any other speaker, said anything concerning the killing of Tutsis, or anything that could be considered incitement.<sup>9452</sup> The witness would have noticed such remarks because he had people to protect who were living at his house.<sup>9453</sup> According to the witness, anyone who testified that such remarks were made would be lying, and no "unfortunate incidents" occurred after the speeches were made.<sup>9454</sup> When it was put to him that Witness RV stated that Nteziryayo during his speech reminded the population that it had to exterminate all accomplices so that the Tutsis in exile would not have any witnesses, the witness replied that he never heard such a statement, and that the statement was a lie.<sup>9455</sup> When told that Witness RV testified that after the meeting many people were killed, the witness responded that he did not witness, nor hear anyone speak of, such events.<sup>9456</sup> The witness also stated that no one present at the meeting followed it better than him. He clarified this to mean that he followed the meeting "attentively".<sup>9457</sup>

3539. At the end of the meeting, the dignitaries left using the same road that they arrived from.<sup>9458</sup> None of the speakers spoke for more than 20 minutes, and some spoke for less than 15 minutes. The entire meeting lasted an hour and a half, and around 5.00 p.m., the witness was on his way home.<sup>9459</sup> Pierre Canisius Kagyambere, the *bourgmestre* of Kibayi *commune*, did not attend the meeting.<sup>9460</sup>

3540. The witness testified that after the meeting on 23 May 1994, he did not witness killings and massacres in the Kirarambogo area, and that, in fact, the security situation improved.<sup>9461</sup>

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<sup>9449</sup> T. 8 February 2007 pp. 29-30 (ICS) (Witness AND-73).

<sup>9450</sup> T. 8 February 2007 pp. 30, 69 (ICS) (Witness AND-73).

<sup>9451</sup> T. 8 February 2007 p. 68 (ICS) (Witness AND-73).

<sup>9452</sup> T. 8 February 2007 pp. 30-31 (ICS) (Witness AND-73).

<sup>9453</sup> T. 8 February 2007 p. 30 (ICS) (Witness AND-73).

<sup>9454</sup> T. 8 February 2007 p. 31 (ICS) (Witness AND-73).

<sup>9455</sup> T. 8 February 2007 p. 36 (ICS) (Witness AND-73).

<sup>9456</sup> T. 8 February 2007 pp. 36-37 (ICS) (Witness AND-73).

<sup>9457</sup> T. 8 February 2007 p. 71 (ICS) (Witness AND-73).

<sup>9458</sup> T. 12 February 2007 p. 6 (ICS) (Witness AND-73).

<sup>9459</sup> T. 8 February 2007 p. 64 (ICS) (Witness AND-73).

<sup>9460</sup> T. 8 February 2007 pp. 64-65 (ICS) (Witness AND-73).

<sup>9461</sup> T. 8 February 2007 p. 33 (ICS) (Witness AND-73).

Peace was restored in the area after the aforementioned meeting,<sup>9462</sup> and no other meetings took place during May or June 1994 in Kirarambogo.<sup>9463</sup>

#### Nteziryayo Defence Witness AND-29

3541. Witness AND-29, a Hutu trader from Muganza *commune*,<sup>9464</sup> testified that a meeting was held in Nyabitare Market Square on 23 May 1994.<sup>9465</sup> Between 200 and 300 people attended it. The meeting was intended to start at 10.00 a.m. but it actually started at 3.00 p.m.<sup>9466</sup> The meeting started late because another meeting was being held in Muyaga *commune*.<sup>9467</sup> The witness left his shop and arrived at the meeting a few minutes before 3.00 p.m.<sup>9468</sup> The witness sat some 15 metres from the dignitaries.<sup>9469</sup>

3542. The dignitaries arrived in vehicles, which they parked about a hundred metres from the venue of the meeting. Among the dignitaries, he recognised Chrysologue Bimenyimana, the *bourgmestre* of Muganza *commune*, Nteziryayo, *Préfet* Nsabimana, Colonel Muvunyi and someone called Ruzindaza.<sup>9470</sup> There were also between five and six soldiers who looked like they were escorting Muvunyi as they followed him when he left. The soldiers wore camouflage attire and black berets.<sup>9471</sup> There were also two *gendarmes* in camouflage attire and red berets who were escorting *Préfet* Nsabimana.<sup>9472</sup>

3543. The first person who took the floor was the *commune bourgmestre*. He thanked members of the population who had been patient, because the meeting had started late, but he announced that the dignitaries had informed him that they had already started by holding another meeting at another location. He started by introducing the *préfet*, saying, “[t]his is our *préfet*, Mr. Nsabimana.” The *bourgmestre* was brief in his message, and at the end of his message he sat down.<sup>9473</sup>

3544. *Préfet* Nsabimana took the floor, thanked the inhabitants and introduced the dignitaries who came with him. They got up and everyone applauded them. Nsabimana then said that, among the dignitaries who had accompanied him, there were three who would speak about the theme of the meeting. Nsabimana said that the first would be Colonel Muvunyi, and that the next would be Nteziryayo, who everyone already knew, because he was a native of Kibayi *commune*. Nsabimana mentioned Mr. Ruzindaza, who some knew because he was the President of the Court of First Instance in Butare. Then the *préfet* denounced those people who had involved themselves in killings. He asked all the inhabitants to continue with their day-to-day activities, be they agriculture or trade. Nsabimana mentioned Rwamiko *secteur* as an example because the shops were open as he passed by. Nsabimana urged that even schools

<sup>9462</sup> T. 8 February 2007 p. 33 (ICS) (Witness AND-73).

<sup>9463</sup> T. 12 February 2007 p. 35 (ICS) (Witness AND-73).

<sup>9464</sup> Defence Exhibit 513 (Nteziryayo) (Personal Particulars).

<sup>9465</sup> T. 19 February 2007 p. 50 (ICS); T. 20 February 2007 p. 13 (Witness AND-29).

<sup>9466</sup> T. 19 February 2007 p. 52 (Witness AND-29).

<sup>9467</sup> T. 19 February 2007 pp. 52-53 (Witness AND-29).

<sup>9468</sup> T. 19 February 2007 p. 53 (Witness AND-29).

<sup>9469</sup> T. 20 February 2007 p. 18 (Witness AND-29).

<sup>9470</sup> T. 19 February 2007 p. 57 (ICS); T. 19 February 2007 p. 58 (Witness AND-29).

<sup>9471</sup> T. 19 February 2007 p. 58 (Witness AND-29).

<sup>9472</sup> T. 19 February 2007 pp. 58-59 (Witness AND-29).

<sup>9473</sup> T. 19 February 2007 p. 65 (Witness AND-29).

should be opened. Nsabimana said that the purpose of the meeting was to restore the normal times that reigned before.<sup>9474</sup>

3545. After *Préfet* Nsabimana, Colonel Muvunyi took the floor and thanked the local inhabitants. Muvunyi stated that fighting was going on in Ntyazo *commune*, and he requested the youths to respond positively when asked to join the army. Muvunyi said when the inhabitants were to hear gunshots they should not flee before they knew exactly where the person who was shooting was standing. A moment later there was gunfire, and the crowd dispersed. Muvunyi called the population back because it had dispersed in disorder, and said that this was just an example so that they would be aware of what gunfire sounded like. Muvunyi said that they needed to know exactly from where the gunshots were coming before they started to flee.<sup>9475</sup>

3546. Thereafter Nteziryayo took the floor and repeated what the earlier speakers had said. Nteziryayo said that fighting was ongoing in Ntyazo *commune* and Muhira *commune* and warned the inhabitants to avoid picking up any metal objects they may find because they could be explosives. Nteziryayo said that whenever the population saw such objects, they should ask for the assistance of the authorities. Nteziryayo said that since the war was ongoing in the form of guerrilla tactics, it was being waged by small groups of people who would be disguised as pastors or they would be in attire which was “a bit special”. There would be people who would be carrying baggage or baskets, and in those baskets, there could be firearms. If such a person came into the crowd, they would shoot and would kill members of the population; that is how the RPF would take over areas which had been left by members of the local population.<sup>9476</sup>

3547. Nteziryayo wore a khaki military uniform at the meeting. The main objective of his speech was to address the issue of security, as was the objective of all the speeches. The witness was present throughout the entire meeting. Nteziryayo did not say anything about exterminating Tutsis. The meeting lasted about one and a half hours.<sup>9477</sup>

3548. Ruzindaza, who had been introduced as President of the Court, spoke after Nteziryayo.<sup>9478</sup> At the beginning of his speech Ruzindaza greeted the local inhabitants; then he said that no one was above the law, and that, as had already been mentioned by the *préfet*, anyone caught breaking the law and being involved in reprehensible acts would be punished. He said that youths should not be afraid of joining the army, and mentioned a Rwandan proverb, “[i]f you refuse to spill your blood for your hill or for your territory, the dogs will drink that blood easily”.<sup>9479</sup> The witness said these words were intended for those who were afraid to join the army because they were afraid of death. The witness said Ruzindaza was referring to youths or young men who were afraid of being enrolled into the army.<sup>9480</sup>

3549. The *bourgmestre* closed the meeting by thanking again the members of the population for having followed the meeting attentively. He also asked members of the population to go

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<sup>9474</sup> T. 19 February 2007 p. 65 (Witness AND-29).

<sup>9475</sup> T. 19 February 2007 p. 66 (Witness AND-29).

<sup>9476</sup> T. 19 February 2007 p. 66 (Witness AND-29).

<sup>9477</sup> T. 19 February 2007 p. 67 (Witness AND-29).

<sup>9478</sup> T. 19 February 2007 p. 67 (Witness AND-29).

<sup>9479</sup> T. 19 February 2007 pp. 67-68 (Witness AND-29).

<sup>9480</sup> T. 19 February 2007 p. 68 (Witness AND-29).

and inform the others about what had transpired at the meeting. He said that those present should go and tell those at home that it was a security meeting.<sup>9481</sup>

### Nteziryayo

3550. Nteziryayo testified that the delegation arrived at Kirarambogo in Nyirakanwero *cellule*, Nyabitare *secteur*, in Muganza *commune* between 3.00 and 3.30 p.m. on 23 May 1994.<sup>9482</sup> About 250 to 300 persons attended the meeting.<sup>9483</sup>

3551. Nteziryayo testified that the delegation comprised the same members as the morning's meeting, including Nsabimana.<sup>9484</sup> Nteziryayo was present throughout that meeting.<sup>9485</sup> *Bourgmestre* Chrysologue Bimenyimana made the opening remarks.<sup>9486</sup> The speakers were Nsabimana, who chaired the meeting, Muvunyi, Ruzindaza and Nteziryayo. Everyone delivered the same speeches as in the meeting held that morning.<sup>9487</sup>

3552. Nteziryayo testified he spoke on guerrilla warfare and explosives, but did not, as Witness RV alleged, "sensitise" anyone to undergo training in the handling of traditional weapons and other weapons. He was not in charge of sensitising the youth so that they could join the army and did not remind the population to exterminate all accomplices in order to prevent witnesses from speaking about the events in Rwanda upon their return to the country. He did not speak about civil defence, and did not ask the population not to hide accomplices.<sup>9488</sup>

3553. In cross-examination, Nteziryayo confirmed that he had said in his speech in Kirarambogo that the RPF had changed its tactics so that there would not be a large-scale attack, now that they had adopted guerrilla tactics, and that he had explained that the enemy would infiltrate a region in order to get information about how the locals lived.<sup>9489</sup> He also agreed that when he told the population of Kirarambogo that the enemy infiltrated an area, he meant that the RPF was blending in with the local population; Nteziryayo denied that when he said that the infiltrators would get in touch with accomplices they have in that area, he was in fact, informing the population that the mostly Tutsi RPF guerrilla fighters would get in touch with mostly Tutsi supporters within the area, who would give them supplies.<sup>9490</sup>

3554. Nteziryayo testified that his message did not incite members of the population to exterminate or to kill the Tutsis and none of the speakers present at Kirarambogo uttered any words inciting members of the population to carry out acts of violence.<sup>9491</sup> In cross-examination, Nteziryayo admitted that he did not personally investigate the cases he had heard broadcasted on the radio and in the press about RPF accomplices having weapons and

<sup>9481</sup> T. 19 February 2007 p. 69 (Witness AND-29).

<sup>9482</sup> T. 5 June 2007 pp. 33-34 (Nteziryayo).

<sup>9483</sup> T. 5 July 2007 p. 11 (Nteziryayo).

<sup>9484</sup> T. 5 June 2007 pp. 34, 39-40 (Nteziryayo).

<sup>9485</sup> T. 5 June 2007 p. 38 (Nteziryayo).

<sup>9486</sup> T. 5 June 2007 pp. 34, 37 (Nteziryayo).

<sup>9487</sup> T. 5 June 2007 pp. 35, 37-38 (Nteziryayo).

<sup>9488</sup> T. 5 June 2007 p. 38 (Nteziryayo).

<sup>9489</sup> T. 5 July 2007 p. 12 (Nteziryayo).

<sup>9490</sup> T. 5 July 2007 p. 5 (Nteziryayo).

<sup>9491</sup> T. 5 June 2007 p. 39 (Nteziryayo).



ammunition.<sup>9492</sup> He further admitted that he did not have any specific information about the existence of RPF guerrilla infiltrators and armed accomplices in Muganza *commune* on 23 May 1994, but he stated that in his speech he did not make such allegation but that he only warned about the danger in general terms and asked the population to be careful, to seek information, and to watch those people crossing the border to and from Burundi.<sup>9493</sup>

3555. Nteziryayo testified that he did not attend any other meeting in the Kirarambogo region between April and July 1994,<sup>9494</sup> but that this was not the only time he went to Muganza *commune*.<sup>9495</sup> Contrary to Witness RV's testimony, Nteziryayo did not chair or even attend any meeting around 25 May 1994 at Kirarambogo.<sup>9496</sup>

3556. Nteziryayo testified that after the end of the Kirarambogo meeting late in the evening, the delegation returned to Butare town.<sup>9497</sup> In the days after the meeting the situation in Muganza *commune* was relatively calm until the population fled following the outbreak of fighting in that region between the Government forces and the RPF.<sup>9498</sup>

### 3.6.34.3.3 Muyaga *Commune* Meeting, Around Mid-June 1994

#### Prosecution Witness QBY

3557. Witness QBY, a Hutu farmer from Muyaga *commune* and a detainee at the time of his testimony,<sup>9499</sup> testified that he attended a meeting at the Mamba *secteur* office one morning at about 9.00 or 10.00 a.m. between late May and the early part of June 1994; he clarified that it occurred around either 5 May or 5 June 1994.<sup>9500</sup> The meeting was attended by over 2,000 people.<sup>9501</sup> The officials in attendance included Colonel Muvunyi; Nteziryayo; Kalimanzira; Martin Kabalira; Dominique Ntawukulilyayo, the *sous-préfet*; the witness' *bourgmestre*, Fidèle Nzamwita; and the president of the court, Ruzindaza.<sup>9502</sup> The officials arrived at the meeting in vehicles where they found members of the population sitting on the ground awaiting them. There were officials who came from Butare and they all took the floor and spoke using a loudspeaker.<sup>9503</sup>

3558. Colonel Muvunyi spoke while standing on a table which was about six steps or about 6.4 metres away from where the witness was. Muvunyi said that he had come to show them how three *Inkotanyi* could take over a *commune*.<sup>9504</sup> The witness testified that after Muvunyi said this, he heard gunshots, although he did not know where they came from. As a result of

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<sup>9492</sup> T. 5 July 2007 pp. 13-14, 19 (Nteziryayo).

<sup>9493</sup> T. 5 July 2007 pp. 14-15, 18 (Nteziryayo).

<sup>9494</sup> T. 5 June 2007 p. 40 (Nteziryayo).

<sup>9495</sup> T. 5 June 2007 p. 43 (Nteziryayo).

<sup>9496</sup> T. 5 June 2007 p. 35 (Nteziryayo).

<sup>9497</sup> T. 5 June 2007 p. 43 (Nteziryayo).

<sup>9498</sup> T. 5 June 2007 p. 39 (Nteziryayo).

<sup>9499</sup> Prosecution Exhibit 105 (Personal Particulars).

<sup>9500</sup> T. 19 April 2004 p. 52; T. 20 April 2004 pp. 8, 11-12; T. 20 April 2004 pp. 33, 37 (ICS) (Witness QBY).

<sup>9501</sup> T. 19 April 2004 p. 52 (Witness QBY).

<sup>9502</sup> T. 19 April 2004 pp. 52-54, 56-57; T. 20 April 2004 pp. 12, 15 (Witness QBY).

<sup>9503</sup> T. 20 April 2004 p. 13 (Witness QBY).

<sup>9504</sup> T. 19 April 2004 pp. 52-53; T. 20 April 2004 pp. 13-14 (Witness QBY).

the sound of gunfire, there was pandemonium among the crowd, and people fell one on top of another.<sup>9505</sup> In total, Muvunyi spoke for about four minutes.<sup>9506</sup>

3559. After the gunshots, Muvunyi introduced Nteziryayo as the new *préfet* of Butare.<sup>9507</sup> The new *préfet* also climbed on top of the table. Nteziryayo introduced himself as an officer based in Ruhengeri. The witness described Nteziryayo as a tall, black man with sideburns and a receding hairline.<sup>9508</sup> He was wearing khaki-coloured attire, with a short-sleeved white shirt. He wore no hat or spectacles. The witness had never seen him before this day.<sup>9509</sup> Nteziryayo arrived with Muvunyi in a military jeep the colour of military uniforms like plantain leaves and was with a bodyguard.<sup>9510</sup>

3560. Nteziryayo spoke to the crowd for about 10 minutes saying: “You Rwandans sometimes have lice. These are eggs between – inside of which there are small lice or tiny lice.”<sup>9511</sup> The witness understood this to mean that when the lice were killed, the eggs also had to be destroyed.<sup>9512</sup> When both Nteziryayo and Muvunyi spoke, they mounted the table which was about 85 centimetres high.<sup>9513</sup> Nteziryayo did not talk of security matters. The witness testified that Nteziryayo only told the population to kill those who looked like Tutsis and never talked about killing the *Inkotanyi*. According to the witness’ testimony, Nteziryayo said that they should flush out the Tutsis and kill them along with their offspring.<sup>9514</sup>

3561. Apart from Muvunyi and Nteziryayo, other people who spoke at the meeting included the President of the Court, Ruzindaza,<sup>9515</sup> *Sous-préfet* Dominique Ntawukulilyayo; Martin Kabilira; Callixte Kalimanzira; and the *bourgmestre* of their *commune*, Nzamwita. Each of these officials, except for Nzamwita, incited the population to kill the Tutsis.<sup>9516</sup> The meeting ended between 12.30 and 1.00 p.m. Muvunyi and Nteziryayo told the people that they were going to deliver the same message to the people of Mugusa *commune*.<sup>9517</sup>

3562. After the meeting, Tutsi children were removed from Tutsi women married to Hutus, and they were killed. The witness testified that the killings took place at the clinic and at the parish compound, although he was not present.<sup>9518</sup> The witness testified that his paternal uncle, who was in charge of the killers’ patrols, informed him of the killings and told him that approximately 180 to 200 people were killed.<sup>9519</sup> After the meeting, the witness went to the Burundian refugee camp to sell them alcoholic drinks. At the camp, the witness saw officials,

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<sup>9505</sup> T. 19 April 2004 p. 53 (Witness QBY).

<sup>9506</sup> T. 20 April 2004 p. 15 (Witness QBY).

<sup>9507</sup> T. 19 April 2004 p. 54 (Witness QBY).

<sup>9508</sup> T. 19 April 2004 pp. 54-55; T. 19 April 2004 pp. 58-59 (Witness QBY) (French) (as to Nteziryayo introducing himself).

<sup>9509</sup> T. 19 April 2004 p. 54; T. 20 April 2004 p. 16 (Witness QBY).

<sup>9510</sup> T. 20 April 2004 p. 19 (Witness QBY).

<sup>9511</sup> T. 19 April 2004 p. 54; T. 20 April 2004 p. 16 (Witness QBY).

<sup>9512</sup> T. 19 April 2004 pp. 54-55 (Witness QBY).

<sup>9513</sup> T. 20 April 2004 pp. 19-20 (Witness QBY).

<sup>9514</sup> T. 20 April 2004 p. 23 (Witness QBY).

<sup>9515</sup> T. 19 April 2004 p. 56 (Witness QBY).

<sup>9516</sup> T. 19 April 2004 pp. 56-57; T. 20 April 2004 p. 15 (Witness QBY).

<sup>9517</sup> T. 19 April 2004 p. 58 (Witness QBY).

<sup>9518</sup> T. 19 April 2004 p. 58 (Witness QBY).

<sup>9519</sup> T. 19 April 2004 pp. 59, 61; T. 19 April 2004 p. 60 (ICS) (Witness QBY).

including Ntawuhiganayo, whom he had seen at the first meeting, encouraging people to go to places where survivors were to be found and to arrest them.<sup>9520</sup>

3563. The witness testified that he got to know Nteziryayo from the second meeting he attended in Butare. The witness testified that he did not know what *commune* Nteziryayo came from nor did he know what position he held in 1994. The witness testified that he knew Nteziryayo was a soldier working in Ruhengeri because Nteziryayo said so himself.<sup>9521</sup> He did not see Nteziryayo after the war, because they all fled.<sup>9522</sup>

3564. The witness did not know when Nteziryayo was appointed *préfet* but when Nteziryayo came to their area, he introduced himself as the new *préfet* of Butare. The witness testified that he again saw Nteziryayo when the Tutsis were being killed, and had not seen him since the war ended.<sup>9523</sup> He was not asked to identify Nteziryayo in court.

#### Prosecution Witness FAB

3565. Witness FAB, a Hutu farmer living in Muyaga *commune* in 1994,<sup>9524</sup> testified that in June 1994, between about 11.00 a.m. and noon,<sup>9525</sup> he attended a meeting that was held at the Mamba *secteur* office, in Muyaga *commune*. The witness knew about the meeting from public announcements and posters that were put up by the *commune* authorities.<sup>9526</sup> Nteziryayo arrived in a dark sedan vehicle with the *sous-préfet* a few minutes after 11.00 a.m., after a meeting with the *commune* authorities in the *commune* buildings.<sup>9527</sup> The purpose of the meeting was to introduce the new *préfet*, Nteziryayo. The witness testified that almost the entire population of the *commune*, approximately 3,000 people, except children, attended the meeting. Many government officials were also present including Fidèle Nzamwita who was the *bourgmestre* of Muyaga *commune*, Colonel Muvunyi, Ruzindaza who was president of the Butare Tribunal, the *sous-préfet* of Busoro, all the *commune* officers and the new *préfet*, Nteziryayo.<sup>9528</sup> The witness testified that the Tutsi population in his *commune* did not participate in this meeting even though some of them were alive. After the meeting the Tutsis who were alive were killed.<sup>9529</sup> All the speakers stood on a table during their speeches and used a microphone.<sup>9530</sup>

3566. The *bourgmestre* introduced Nteziryayo as the new *préfet*.<sup>9531</sup> Nteziryayo made a speech during which he said that they were about to win the war against the RPF and the *Inkotanyi*, and asked for the “contribution” of the people. The “contribution” that Nteziryayo asked for was that the population arrest and kill “without any mercy” the Tutsis and the

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<sup>9520</sup> T. 19 April 2004 pp. 58-59 (Witness QBY).

<sup>9521</sup> T. 20 April 2004 pp. 3-4 (Witness QBY).

<sup>9522</sup> T. 20 April 2004 p. 4 (Witness QBY).

<sup>9523</sup> T. 20 April 2004 pp. 3-4 (Witness QBY).

<sup>9524</sup> Prosecution Exhibit 100 (Personal Particulars).

<sup>9525</sup> T. 5 April 2004 p. 23 (Witness FAB).

<sup>9526</sup> T. 5 April 2004 pp. 22, 38, 42 (Witness FAB).

<sup>9527</sup> T. 5 April 2004 pp. 46-47 (Witness FAB).

<sup>9528</sup> T. 5 April 2004 pp. 22-24, 48 (Witness FAB).

<sup>9529</sup> T. 5 April 2004 p. 48; T. 5 April 2004 p. 54 (ICS) (Witness FAB).

<sup>9530</sup> T. 5 April 2004 pp. 26-27 (Witness FAB).

<sup>9531</sup> T. 5 April 2004 p. 24 (Witness FAB).

*Inkotanyi*.<sup>9532</sup> Nteziryayo asked the crowd to arrest the children, women and old people and to kill them all. According to the witness, Nteziryayo spoke about Tutsi women and Hutu women who were married to Tutsis. He asked them to disembowel them if they were pregnant. Nteziryayo further told those at the meeting that “if you want to destroy lice, you must also kill the eggs”. The witness said this meant that if they were to kill Tutsi elders, they also needed to kill the children.<sup>9533</sup> The witness recalled that Nteziryayo stood about 7.4 metres from the witness when he spoke.<sup>9534</sup>

3567. After Nteziryayo, Muvunyi and Ruzindaza spoke respectively and called upon the people to kill the Tutsis. Muvunyi asked them to teach their children how to kill. He further asked them to kill, and to exterminate all survivors. Ruzindaza held a bible during his speech and asked the crowd not to go for confessions because they were in difficult times; he said they had to kill and that they would confess after the war.<sup>9535</sup> After Ruzindaza spoke, Muvunyi took the floor again.<sup>9536</sup> After the meeting the crowd dispersed and, upon return to their respective homes, started killing the surviving Tutsi population. The witness testified that the majority of the Tutsis who were killed were his neighbours and that the next morning he saw the bodies of two female Tutsis.<sup>9537</sup>

3568. The witness clarified that the meeting was held sometime in mid-June 1994, and not between 3 or 5 June 1994 as indicated in his previous statement of 11 April 1999. He conceded that he might have made a mistake about the date of the meeting when he gave his statement, but that he realised his mistake during the *Gacaca* sessions.<sup>9538</sup>

3569. The witness testified that he would not be able to recognise Nteziryayo because he only saw him on one occasion in 1994 and had not seen him since.<sup>9539</sup>

#### Nteziryayo Defence Witness AND-60

3570. Witness AND-60, a Hutu accountant from Muyaga *commune*,<sup>9540</sup> testified that he attended a meeting held on 23 May 1994 in Mamba *secteur*, Rugunga *cellule*, in a small eucalyptus forest or woods.<sup>9541</sup> The meeting started at approximately 11.15 a.m.<sup>9542</sup> The witness estimated that there were 600 to 800 people at the meeting.<sup>9543</sup>

3571. *Préfet* Nsabimana, Colonel Muvunyi, Colonel Nteziryayo, Ruzindaza who was the President of the Court of First Instance, the *sous-préfet* of Gisagara *sous-préfecture* and four

<sup>9532</sup> T. 5 April 2004 p. 25 (Witness FAB).

<sup>9533</sup> T. 5 April 2004 p. 26 (Witness FAB).

<sup>9534</sup> T. 5 April 2004 pp. 24-25, 43 (Witness FAB).

<sup>9535</sup> T. 5 April 2004 p. 26 (Witness FAB).

<sup>9536</sup> T. 5 April 2004 p. 27 (Witness FAB).

<sup>9537</sup> T. 5 April 2004 p. 28 (Witness FAB).

<sup>9538</sup> T. 5 April 2004 pp. 42-43 (Witness FAB); Defence Exhibit 217 (Nteziryayo) (11 April 1999, Statement of Witness FAB) pp. 4, 8.

<sup>9539</sup> T. 5 April 2004 p. 30 (Witness FAB).

<sup>9540</sup> Defence Exhibit 525 (Nteziryayo) (Personal Particulars).

<sup>9541</sup> T. 13 March 2007 pp. 3-4 (Witness AND-60).

<sup>9542</sup> T. 13 March 2007 p. 4 (Witness AND-60).

<sup>9543</sup> T. 13 March 2007 p. 6 (Witness AND-60).

other men were the authority figures at the meeting.<sup>9544</sup> On cross-examination, the witness also stated that he saw Dominique Ntawukulilyayo at the meeting.<sup>9545</sup> The meeting was chaired by *Préfet* Nsabimana.<sup>9546</sup>

3572. The agronomist of the *commune* told them to stand up and greet the arriving officials. Then, the former spoke for roughly one minute before passing the microphone to the *bourgmestre* of the *commune*, who thanked the local inhabitants and dignitaries for attending, before handing over the microphone to *Préfet* Nsabimana to preside over the meeting.<sup>9547</sup> The *bourgmestre* took the opportunity to introduce the inhabitants to the new *préfet*, Nsabimana, as this was the first meeting Nsabimana presided over after his appointment. Nsabimana told the attendees that Nteziryayo was a civil servant in the Ministry of the Interior and that he was dealing with matters pertaining to the police.<sup>9548</sup>

3573. Nsabimana said in his speech that the local inhabitants were saddened by the tragedy that had befallen the country, and asked the population to be courageous and strong. Nsabimana further said that disturbances had occurred throughout the country following the President's death and in that very *commune*. Nsabimana added that he was saddened by the fact that wrongdoers had looted and set fire to the *commune* office and killed refugees there. Nsabimana asked the population to remain calm within the area without discriminating ethnically and to remain vigilant with regard to the restoration of peace as they could not trust their Burundian neighbours. Nsabimana reminded the population that five out of eight *secteurs* of the *commune* bordered Burundi and that attacks from Burundi could threaten the peace. Finally, Nsabimana said that the population should not attack one another because it would enable the enemy to commit certain acts and then accuse the population of having committed them against fellow citizens.<sup>9549</sup>

3574. Colonel Muvunyi, who was the area commander of Butare, spoke next. He spoke of how the war developed, and said that the army was fighting against the enemy and was in a good position to conquer them. Muvunyi stated that the war was taking place in Ntyazo *commune*, a neighbouring *commune*, and in the Bugesera area, but that the population should not be frightened.<sup>9550</sup> Muvunyi then told the population to be careful when they heard gunfire and not to flee without knowing where they were going otherwise they could flee right into the hands of the enemy. Immediately after, gunshots were fired by the soldiers and the audience all ran, before Colonel Muvunyi signalled them to return to their seats. Colonel Muvunyi then told the population that they had not done what they had been told to do and that next time they heard gunshots they should not run into the hands of the enemy.<sup>9551</sup>

3575. Ruzindaza spoke next, but only for a very short time. The witness stated that Ruzindaza spoke of evil-doers in the *commune* and asked the *bourgmestre* to continue his investigations so that these people could be found guilty and punished. Ruzindaza said that the country had

<sup>9544</sup> T. 13 March 2007 p. 6; T. 13 March 2007 p. 8 (Witness AND-60) (French).

<sup>9545</sup> T. 14 March 2007 p. 27 (Witness AND-60).

<sup>9546</sup> T. 13 March 2007 p. 7 (Witness AND-60).

<sup>9547</sup> T. 13 March 2007 p. 8 (Witness AND-60).

<sup>9548</sup> T. 13 March 2007 p. 10 (Witness AND-60).

<sup>9549</sup> T. 13 March 2007 p. 8 (Witness AND-60).

<sup>9550</sup> T. 13 March 2007 p. 8 (Witness AND-60).

<sup>9551</sup> T. 13 March 2007 p. 9 (Witness AND-60).

been attacked, but that it should not be abandoned and that everyone should stand ready to defend it, especially those who were young and physically capable. The witness stated that Ruzindaza then mentioned the proverb, “[i]f you refuse to spill your blood for the country, dogs will come and drink that blood readily”. The witness testified that after Ruzindaza had spoken, the *bourgmestre* gave a vote of thanks to the officials and reminded the local inhabitants to transmit the message which had been issued to other local inhabitants to ensure that people worked together to maintain peace and security.<sup>9552</sup>

3576. Nteziryayo also took the floor and spoke about guerrilla warfare, which he said was being used as a tactic of the enemy. Nteziryayo told the local inhabitants that they thought that the *Inkotanyi* were many in number and that they would make a lot of noise and cause a lot of damage when they attacked. Nteziryayo stated that the *Inkotanyi* had changed their tactics and that they could send only two to three individuals, who could be disguised in monk’s clothing or as someone going to the market, and that they would be carrying baskets with food. Nteziryayo further said that the *Inkotanyi* could target their actions in order to kill people and the authorities, so that they could control the location they were in. Nteziryayo went on to say that if the inhabitants saw any unknown people in the community then those people should be taken to the nearest authority to be questioned. Finally, Nteziryayo warned the inhabitants not to pick up anything that they saw on the road, because the object may explode. Nteziryayo’s speech lasted approximately 15 minutes.<sup>9553</sup> Nteziryayo did not use any proverb referencing the elimination of lice, or incite the killing of children, women and old people.<sup>9554</sup> Nteziryayo wore military uniform.<sup>9555</sup>

3577. There was no question and answer session at the end of the meeting, and the meeting ended at about 1.00 p.m. The witness was present for the entirety of the meeting and maintained that its purpose was the restoration of security. According to the witness he did not hear any words at the meeting inciting people to kill. The witness stated that the atmosphere at the end of the meeting was one of calm, with less fear, and that no killings took place after the meeting.<sup>9556</sup>

### Nteziryayo

3578. Nteziryayo testified that on 23 May 1994 at about 10.00 a.m. the delegation arrived in Mamba *secteur*, Muyaga *commune*. The delegation included Nteziryayo; Nsabimana; the area commander, Tharcisse Muvunyi; the Vice-Rector of the National University of Rwanda’s Butare campus, Jean Berchmans Nshimyumuremyi; the Prosecutor General, Mathias Peter Bushishi; the head of the intelligence service at the *préfecture*, Sylvain Halingintwari; the head of the Rwandan information authority, Musabirema; and the president of the Court of First Instance of Butare, Ruzindaza.<sup>9557</sup> Some *sous-préfets* were also present including the *sous-préfet* of Gisagara, Dominique Ntawukulilyayo. Contrary to Witness QBY’s testimony,

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<sup>9552</sup> T. 13 March 2007 p. 9 (Witness AND-60).

<sup>9553</sup> T. 13 March 2007 p. 10 (Witness AND-60).

<sup>9554</sup> T. 13 March 2007 p. 15 (Witness AND-60).

<sup>9555</sup> T. 13 March 2007 pp. 7-8 (Witness AND-60).

<sup>9556</sup> T. 13 March 2007 p. 10 (Witness AND-60).

<sup>9557</sup> T. 5 June 2007 p. 25 (Nteziryayo).

Nteziryayo was not *préfet* on 23 May 1994, when the meeting took place.<sup>9558</sup> He also was not an army officer from Ruhengeri.<sup>9559</sup>

3579. About 500-600 persons attended the meeting which was chaired by *Préfet* Nsabimana. The *bourgmestre* of Muyaga *commune* took the floor welcoming the delegation.<sup>9560</sup> Each of the speakers addressed the same subjects they had spoken about in the other *communes*.<sup>9561</sup> Contrary to what Witness QBY testified, Ruzindaza did not say that a Hutu student must kill a Tutsi student or that an old Hutu person must kill an old Tutsi person, or that when you are a coffee farmer, you must know how to pick the good coffee from the bad coffee and this is how the distinction has to be between a Hutu and a Tutsi.<sup>9562</sup>

3580. Nteziryayo made a speech identical to the one he made the day before in Ntyazo *commune*. He did not say that everyone had to kill those that looked like a Tutsi, as Witness QBY alleged. He did not make statements that were likely to incite the population to exterminate or to kill Tutsis, or to kill women and children of any ethnic group whatsoever. According to the Accused, none of the speakers at Muyaga invited the population to resort to any kind of violence.<sup>9563</sup> Neither Martin Kabalira nor Callixte Kalimanzira was at that meeting. Therefore, contrary to the assertions of Witness QBY, Kabalira did not tell the population that they should kill the enemy, and only thereafter they could recite their prayers; and Kalimanzira did not say during the meeting that one weeds out the weeds from the rice, implying that it was, therefore, necessary to separate the Tutsis from the Hutus.<sup>9564</sup>

3581. At the end of the meeting, there was a small reception organised by the *bourgmestre* of Muyaga *commune*. Nteziryayo did not take part in other meetings in Muyaga *commune* or go to Muyaga *commune* any other time between April and July 1994.<sup>9565</sup>

3582. Nteziryayo did not get any information on the prevailing security status in Muyaga *commune* after that meeting was organised, or if the local population killed anyone. He only received information on the fighting between the RPF and Government forces which had reached the Muyaga government after Ntyazo, forcing the population to migrate.<sup>9566</sup>

#### 3.6.34.3.4 Kibayi *Commune* Meeting, Mid- to Late June 1994

##### Prosecution Witness FAK

3583. Witness FAK, a Hutu farmer from Kibayi *commune* was detained at the time of his testimony.<sup>9567</sup> After confession, he was transferred to the Arusha wing of the prison after

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<sup>9558</sup> T. 5 June 2007 p. 26 (Nteziryayo).

<sup>9559</sup> T. 5 June 2007 pp. 30-31 (Nteziryayo).

<sup>9560</sup> T. 5 June 2007 pp. 26-27 (Nteziryayo).

<sup>9561</sup> T. 5 June 2007 p. 27 (Nteziryayo).

<sup>9562</sup> T. 5 June 2007 pp. 28-29; T. 5 June 2007 p. 31 (Nteziryayo) (French).

<sup>9563</sup> T. 5 June 2007 p. 29 (Nteziryayo).

<sup>9564</sup> T. 5 June 2007 p. 32 (Nteziryayo).

<sup>9565</sup> T. 5 June 2007 p. 33 (Nteziryayo).

<sup>9566</sup> T. 5 June 2007 p. 30 (Nteziryayo).

<sup>9567</sup> T. 14 April 2004 p. 54; T. 15 April 2004 p. 44 (ICS) (Witness FAK); Prosecution Exhibit 103 (Personal Particulars).

having pled guilty to killing three persons.<sup>9568</sup> He testified that a series of meetings were held between April and July 1994.<sup>9569</sup> Witness FAK attended only one meeting during this time at the Kibayi *commune* office,<sup>9570</sup> since the others were only for authorities, and not the general population.<sup>9571</sup>

3584. The meeting Witness FAK attended was held on a football pitch located in front of the Kibayi *commune* office and was chaired by Nteziryayo.<sup>9572</sup> The purpose of the meeting was to introduce Nteziryayo as the new *préfet*.<sup>9573</sup> On cross-examination, the witness testified that even though his statement said the meeting occurred in May 1994, it actually took place in June 1994; however, he could not remember the particular date given the time that has elapsed since then.<sup>9574</sup> He specified that the meeting could have been held on 18 or 19 June 1994.<sup>9575</sup> Nteziryayo was *préfet* as he told them that he had just been appointed.<sup>9576</sup> When it was put to the witness that Nteziryayo was appointed *préfet* on 17 June 1994, the witness claimed Nteziryayo was a *préfet* when he came to Kibayi.<sup>9577</sup>

3585. The *bourgmestre* of Kibayi informed the *secteur's* population of the meeting; the meeting was intended for the entire population of Kibayi *commune*.<sup>9578</sup> He later stated that he had been informed of the meeting by the *responsable*, Jérémie Ndaribumbye.<sup>9579</sup> The witness' statement of 24 February 2000 that stated he was informed of the meeting by *Conseiller* Ndagijimana was incorrectly recorded.<sup>9580</sup>

3586. Authorities present at the meeting included, *inter alia*, the Kibayi *bourgmestre*, Canisius Kajyambere, the only *bourgmestre* present,<sup>9581</sup> who introduced the speakers; Muvunyi, Nteziryayo, the *secteur conseillers* and the *responsables de cellule*.<sup>9582</sup> The meeting started between 9.00 a.m., the scheduled time, and 10.00 a.m., and ended at about 2.00 p.m.<sup>9583</sup> It was attended by more than 1,000 people.<sup>9584</sup> The witness went to the meeting on time and was present from the beginning to the end.<sup>9585</sup>

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<sup>9568</sup> T. 14 April 2004 p. 54; T. 15 April 2004 p. 44 (ICS) (Witness FAK).

<sup>9569</sup> T. 14 April 2004 p. 17 (Witness FAK).

<sup>9570</sup> T. 14 April 2004 pp. 17, 66 (Witness FAK).

<sup>9571</sup> T. 14 April 2004 p. 66 (Witness FAK).

<sup>9572</sup> T. 14 April 2004 pp. 17-18 (Witness FAK).

<sup>9573</sup> T. 14 April 2004 p. 18 (Witness FAK).

<sup>9574</sup> T. 15 April 2004 pp. 19, 27 (ICS) (Witness FAK); Defence Exhibit 220 (Nteziryayo) (24 February 2000 and 3 May 2000, Statements of Witness FAK) pp. 4, 8.

<sup>9575</sup> T. 15 April 2004 p. 24 (ICS) (Witness FAK).

<sup>9576</sup> T. 15 April 2004 p. 29 (ICS) (Witness FAK).

<sup>9577</sup> T. 15 April 2004 pp. 29-30 (ICS) (Witness FAK).

<sup>9578</sup> T. 14 April 2004 p. 18 (Witness FAK).

<sup>9579</sup> T. 15 April 2004 p. 19 (ICS) (Witness FAK).

<sup>9580</sup> T. 15 April 2004 p. 21 (ICS) (Witness FAK); Defence Exhibit 220 (Nteziryayo) (24 February 2000 and 3 May 2000, Statements of Witness FAK) pp. 4, 8.

<sup>9581</sup> T. 15 April 2004 p. 47 (Witness FAK).

<sup>9582</sup> T. 14 April 2004 pp. 18-19 (Witness FAK).

<sup>9583</sup> T. 14 April 2004 p. 18 (Witness FAK).

<sup>9584</sup> T. 14 April 2004 p. 19; T. 15 April 2004 pp. 20, 22 (ICS) (Witness FAK).

<sup>9585</sup> T. 14 April 2004 p. 18 (Witness FAK).



3587. The first speaker at the Kibayi meeting was the *bourgmestre* of Kibayi *commune*, who introduced Nteziryayo and Muvunyi.<sup>9586</sup> Nteziryayo took the floor and introduced himself as the new *préfet*.<sup>9587</sup> He thanked them for having killed Tutsis. Nteziryayo also instructed the population as to how to conduct its work in killing Tutsis; the attendees were to kill Tutsi children who were to be found at their grandparents' houses.<sup>9588</sup> Nteziryayo also asked the attendees to abduct and kill the Tutsi women who were illegally taken as wives by young Hutu men in an effort to save their lives.<sup>9589</sup> The attendees were also instructed to kill any Hutu men who refused to let them take their wives.<sup>9590</sup> However, the attendees were told to spare any Tutsi women who were legally married to Hutu men prior to the war and who had children with those same Hutu men<sup>9591</sup> because these Tutsi women were praying to a Hutu god and not a Tutsi god.<sup>9592</sup> Witness FAK explained that there was no mention of the last statement in his previous statement because they were not all "true reflections".<sup>9593</sup> Nteziryayo did not mention the impending attacks of the RPF.<sup>9594</sup> Witness FAK was approximately 4.6 metres away from Nteziryayo at the meeting.<sup>9595</sup>

3588. When Nteziryayo was finished, Muvunyi took the floor. It was the first time the witness saw Muvunyi.<sup>9596</sup> Muvunyi asked the audience how they would conduct themselves when the *Inkotanyi* arrived. As a test-case, *gendarmes* located downhill from the meeting venue fired shots in the air, causing the audience to scatter. The audience was called back by the security personnel and Muvunyi told them not to flee. They were asked: "You are to behave in this manner the day the *Inkotanyi* fire? If you are not able to confront or to face the fighting, you had better run away to Gikongoro or to Zaire".<sup>9597</sup> Muvunyi told them, "[y]ou are refusing to spill your blood for your country and the dogs will drink it for free".<sup>9598</sup> The witness considered that President Ruzindaza of the Court of First Instance did not make this statement.<sup>9599</sup> Muvunyi stated that there were some *Inyenzi* in the rice plantation in Ntyazo and said that he was going to bring youngsters to flush out those *Inyenzi*.<sup>9600</sup> Despite Muvunyi's words, the speakers made no mention that the attackers were the RPF.<sup>9601</sup>

3589. After Colonel Muvunyi, Kibayi *Bourgmestre* Kajyambere took the floor to end the meeting and asked the audience to put the instructions they had been given into practice.<sup>9602</sup> After this meeting, the audience dispersed to their respective *secteurs* and went home to

<sup>9586</sup> T. 14 April 2004 p. 19 (Witness FAK).

<sup>9587</sup> T. 14 April 2004 p. 19; T. 15 April 2004 p. 29 (ICS) (Witness FAK).

<sup>9588</sup> T. 14 April 2004 p. 20 (Witness FAK).

<sup>9589</sup> T. 14 April 2004 pp. 20-22 (Witness FAK).

<sup>9590</sup> T. 14 April 2004 p. 21 (Witness FAK).

<sup>9591</sup> T. 14 April 2004 p. 22 (Witness FAK).

<sup>9592</sup> T. 14 April 2004 p. 24 (Witness FAK).

<sup>9593</sup> T. 15 April 2004 p. 34 (ICS) (Witness FAK).

<sup>9594</sup> T. 15 April 2004 p. 23 (ICS) (Witness FAK).

<sup>9595</sup> T. 14 April 2004 pp. 33-35 (ICS) (Witness FAK).

<sup>9596</sup> T. 14 April 2004 p. 24 (Witness FAK).

<sup>9597</sup> T. 14 April 2004 pp. 24-25 (Witness FAK).

<sup>9598</sup> T. 14 April 2004 p. 26; T. 15 April 2004 p. 23 (ICS) (Witness FAK).

<sup>9599</sup> T. 15 April 2004 pp. 23-24 (ICS) (Witness FAK).

<sup>9600</sup> T. 15 April 2004 p. 23 (ICS) (Witness FAK).

<sup>9601</sup> T. 15 April 2004 pp. 23-24 (ICS) (Witness FAK).

<sup>9602</sup> T. 14 April 2004 p. 14 (ICS); T. 14 April 2004 p. 26 (Witness FAK).

comply with the instructions they had received.<sup>9603</sup> After the Kibayi meeting, people who had hidden Tutsis in their houses killed them as “they had to proceed to the extermination of the survivors.”<sup>9604</sup> The day after the meeting Witness FAK personally killed a Tutsi.<sup>9605</sup>

3590. The day after the Kibayi meeting, Witness FAK went to the Gatundo<sup>9606</sup>/Gatuna roadblock along with Augustin Rwabuhungu and one Laurent where they found the *conseiller*. At the roadblock, Augustin Rwabuhungu said that he had a Tutsi girl hidden in his house.<sup>9607</sup> Accordingly, the *conseiller* asked Rwabuhungu to bring her but he refused to follow the *conseiller's* instructions, asking the *conseiller* to ask someone else.<sup>9608</sup> The *conseiller* said to him, “[y]ou have taken the goods, destroyed the houses and yet you are still keeping these people. You better go and bring her.”<sup>9609</sup>

3591. Witness FAK and others went and found the Tutsi girl at Karoti Yoronimu’s residence and later killed her upon the *conseiller's* instructions at the roadblock.<sup>9610</sup> The witness hit her with a club, and Laurent finished her off.<sup>9611</sup> The Tutsi woman had a child with her who was killed by Rwabuhungu on the same day.<sup>9612</sup>

3592. Witness FAK identified Nteziryayo in court.<sup>9613</sup> He had seen Nteziryayo four times before 1994 when Nteziryayo visited his workplace<sup>9614</sup> and also in a white Pajero vehicle at the Kibayi *commune* office.<sup>9615</sup>

3593. Witness FAK knew Witness QBU for a brief period in prison but they did not share a cell in prison.<sup>9616</sup>

#### Prosecution Witness QBU

3594. Witness QBU, a Hutu farmer from Kibayi who had pled guilty to participating in the killings in 1994 and was a detainee at the time of his testimony,<sup>9617</sup> testified that around the end of May or early June 1994, a meeting to incite those present to commit killings was convened by Nteziryayo and attended by inhabitants of the *commune*.<sup>9618</sup> The meeting was held at a football field in Nyabisagara *cellule*, Mukindo *secteur*.<sup>9619</sup> The meeting started around

<sup>9603</sup> T. 14 April 2004 p. 26 (Witness FAK).

<sup>9604</sup> T. 14 April 2004 p. 32 (ICS) (Witness FAK).

<sup>9605</sup> T. 14 April 2004 p. 26; T. 14 April 2004 pp. 28-29, 32 (ICS) (Witness FAK).

<sup>9606</sup> T. 14 April 2004 p. 26 (Witness FAK).

<sup>9607</sup> T. 14 April 2004 pp. 29, 32 (ICS) (Witness FAK).

<sup>9608</sup> T. 14 April 2004 pp. 26-27 (Witness FAK).

<sup>9609</sup> T. 14 April 2004 p. 30 (ICS) (Witness FAK).

<sup>9610</sup> T. 14 April 2004 pp. 30-32 (ICS) (Witness FAK).

<sup>9611</sup> T. 14 April 2004 pp. 31-32 (ICS) (Witness FAK).

<sup>9612</sup> T. 14 April 2004 p. 32 (ICS) (Witness FAK).

<sup>9613</sup> T. 14 April 2004 pp. 38-39 (Witness FAK).

<sup>9614</sup> T. 14 April 2004 p. 36 (ICS); T. 14 April 2004 p. 38; T. 15 April 2004 p. 9; T. 15 April 2004 pp. 13-16 (ICS) (Witness FAK).

<sup>9615</sup> T. 15 April 2004 pp. 12, 17 (ICS) (Witness FAK).

<sup>9616</sup> T. 14 April 2004 p. 64 (ICS) (Witness FAK).

<sup>9617</sup> T. 13 April 2004 p. 7; T. 13 April 2004 pp. 23-24 (ICS) (Witness QBU); Prosecution Exhibit 102 (Personal Particulars).

<sup>9618</sup> T. 13 April 2004 p. 8; T. 13 April 2004 pp. 37, 54-55, 58 (ICS); T. 14 April 2004 p. 3 (Witness QBU).

<sup>9619</sup> T. 13 April 2004 p. 8; T. 13 April 2004 p. 58 (ICS) (Witness QBU).

11.00 a.m. and finished around 2.30 p.m.<sup>9620</sup> *Bourgmestre* Kajyambere opened the meeting and spoke briefly before introducing Nteziryayo who said he was now the *préfet*.<sup>9621</sup> Jean-Baptiste Habyarimana was replaced by Nteziryayo as *préfet*; Nteziryayo was the only other *préfet* Witness QBU saw.<sup>9622</sup> Nteziryayo was wearing a short sleeved green suit at the meeting.<sup>9623</sup> Muvunyi was also present.<sup>9624</sup>

3595. When the witness was shown the official letter of appointment showing Nteziryayo took up duties as the *préfet* of Butare on 21 June 1994,<sup>9625</sup> Witness QBU contested the validity of the letter stating that “it is giving ... the date of [Nteziryayo’s] appointment ... as much later than the actual appointment.”<sup>9626</sup>

3596. Nteziryayo told the meeting to hold fast in their struggle against the enemy and added that the enemy was no other than the Tutsi.<sup>9627</sup> Nteziryayo said that “young men are taking Tutsi girls as their girlfriends whereas those girlfriends should die” and “[g]randparents [who] had hidden their grandchildren ... should [also] die.”<sup>9628</sup> Nteziryayo told the meeting that “any Hutu hiding a Tutsi or who resisted in his attempt to hide a Tutsi, ... had to die.”<sup>9629</sup> Nteziryayo told the people present that “the Tutsis were snakes that we were keeping in our houses.”<sup>9630</sup> Nteziryayo said “[i]f you remember that when you clear, when you sweep ashes, you take it out of the house, you do not keep it inside the house.”<sup>9631</sup> Nteziryayo told those present at the meeting that they had to search everywhere and that the issue had to be resolved by the next day.<sup>9632</sup> From these words, the witness and the rest of the population understood that they needed to “fish out the Tutsis from their grandparents [and] there [*sic*] uncles”.<sup>9633</sup>

3597. Muvunyi was the last speaker.<sup>9634</sup> Muvunyi said the *Inkotanyi* were at Ntyazo and asked the population to be ready to face them.<sup>9635</sup>

3598. The people at the meeting, including himself, followed Nteziryayo’s instructions and “resolved that issue” the following day.<sup>9636</sup> The “work” he spoke about was rounding up Tutsi children and killing them. They started this work on the same day that Nteziryayo gave them instructions; they rounded up 14 Tutsi children from neighbouring families but since it was

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<sup>9620</sup> T. 13 April 2004 p. 8 (Witness QBU).

<sup>9621</sup> T. 13 April 2004 p. 9; T. 13 April 2004 pp. 36-37, 56-58 (ICS); T. 14 April 2004 pp. 7-8 (Witness QBU).

<sup>9622</sup> T. 13 April 2004 pp. 36-37 (ICS) (Witness QBU).

<sup>9623</sup> T. 13 April 2004 p. 59 (ICS) (Witness QBU).

<sup>9624</sup> T. 13 April 2004 p. 8 (Witness QBU).

<sup>9625</sup> T. 13 April 2004 p. 57 (ICS) (Witness QBU); Defence Exhibit 5 (Nteziryayo) (Nteziryayo’s Letter of Appointment).

<sup>9626</sup> T. 13 April 2004 p. 58 (ICS) (Witness QBU).

<sup>9627</sup> T. 13 April 2004 p. 9 (Witness QBU).

<sup>9628</sup> T. 13 April 2004 p. 9; T. 13 April 2004 pp. 72-73 (ICS) (Witness QBU).

<sup>9629</sup> T. 13 April 2004 p. 64 (ICS) (Witness QBU).

<sup>9630</sup> T. 14 April 2004 p. 7 (Witness QBU).

<sup>9631</sup> T. 13 April 2004 p. 9 (Witness QBU).

<sup>9632</sup> T. 13 April 2004 p. 9; T. 13 April 2004 p. 64 (ICS) (Witness QBU).

<sup>9633</sup> T. 13 April 2004 p. 10 (Witness QBU).

<sup>9634</sup> T. 14 April 2004 p. 7 (Witness QBU).

<sup>9635</sup> T. 13 April 2004 p. 63 (ICS) (Witness QBU).

<sup>9636</sup> T. 13 April 2004 p. 9; T. 13 April 2004 p. 12 (ICS) (Witness QBU).

getting late they returned the children to their homes and re-collected them again the next day, when they drowned the children in the Akanyaru River.<sup>9637</sup>

3599. Witness QBU and others carried out these killings because they felt that they were fighting the enemy, namely the Tutsi as Nteziryayo informed them.<sup>9638</sup> Members of the RPF had not yet infiltrated Kibayi at the time.<sup>9639</sup>

3600. Although Witness QBU had seen Nteziryayo on several occasions during the war in 1994, he had not seen him since the war ended.<sup>9640</sup> Witness QBU positively identified Nteziryayo in court.<sup>9641</sup>

3601. Witness QBU was detained and attended *Gacaca* proceedings with other detainees from his home *commune*,<sup>9642</sup> but he did not take part in the same *Gacaca* sessions as Prosecution Witness FAK.<sup>9643</sup>

#### Prosecution Expert Witness Evariste Ntakirutimana

3602. Evariste Ntakirutimana testified as an expert in the fields of social linguistics, discourse analysis, lexicology, semantics and language planning.<sup>9644</sup> Ntakirutimana's Expert Report, tendered as Prosecution Exhibit 158, analyses the use of numerous proverbs and phrases in Rwanda during the events in 1994.<sup>9645</sup> Ntakirutimana explained that references to removing lice convey the image of parasites getting into ones clothing. Since old mothers and fathers in villages pick lice from their clothes, thus eliminating them, one can extrapolate the proverb to mean that one needed to eliminate anything that can disturb one's life or situation.<sup>9646</sup>

#### Nsabimana

3603. Nsabimana testified that he went to Kibayi<sup>9647</sup> with Nteziryayo for an impromptu civilian defence meeting sometime after mid-May 1994, arriving around 3.00 p.m.<sup>9648</sup> The meeting was at a football field approximately 500 metres from the *commune* office and not many people were present. *Bourgmestre* Pierre Kajyambere, Nsabimana, Nteziryayo and Kalimanzira were present.<sup>9649</sup>

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<sup>9637</sup> T. 13 April 2004 p. 11 (ICS) (Witness QBU).

<sup>9638</sup> T. 13 April 2004 p. 12 (ICS) (Witness QBU).

<sup>9639</sup> T. 13 April 2004 p. 40 (ICS) (Witness QBU).

<sup>9640</sup> T. 13 April 2004 p. 13; T. 13 April 2004 p. 55 (ICS) (Witness QBU).

<sup>9641</sup> T. 13 April 2004 pp. 13-14 (Witness QBU).

<sup>9642</sup> T. 13 April 2004 pp. 27-28 (ICS) (Witness QBU).

<sup>9643</sup> T. 13 April 2004 pp. 32-33 (ICS) (Witness QBU).

<sup>9644</sup> T. 13 September 2004 p. 30 (Ntakirutimana).

<sup>9645</sup> T. 13 September 2004 p. 32 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana).

<sup>9646</sup> T. 13 September 2004 p. 70 (Ntakirutimana).

<sup>9647</sup> T. 20 September 2006 pp. 68-69 (Nsabimana) (French). The following day Nsabimana stated that Kabgayi was also known as Kabwayi, and is a Catholic mission in Gitarama *préfecture*: T. 21 Sept 2006 pp. 76-77 (Nsabimana).

<sup>9648</sup> T. 20 September 2006 p. 64 (Nsabimana).

<sup>9649</sup> T. 20 September 2006 p. 65 (Nsabimana).

3604. Nsabimana was introduced as the new *préfet* and spoke from the back of Kalimanzira's pickup. Nsabimana and Kalimanzira spoke about the arrival of the RPF in the area – they said fleeing would not be useful, that it would be better to stay and die at home. Nteziryayo spoke about explosives saying that one had to be careful and the theme was the RPF had arrived.<sup>9650</sup> Nsabimana believed the meeting in Kibayi with Nteziryayo and Kalimanzira was in fact the initiation or launching of the civilian defence programme.<sup>9651</sup>

### Nteziryayo

3605. Nteziryayo testified that in accordance with the timetable agreed at a Security Council meeting of 20 May 1994, a tour of meetings took place in Butare's southern *communes* between 22 and 26 May 1994.<sup>9652</sup> In the context of this tour, meetings were scheduled in Kibayi *commune* on the morning of 24 May 1994 and in the afternoon in Gikore *secteur* in Nyaruhengeri *commune*.<sup>9653</sup> Apart from Lieutenant Colonel Simba, all the members who spoke at each meeting during the tour always addressed the same topics, including Nteziryayo.<sup>9654</sup>

3606. The meeting on 24 May 1994 was the only meeting he attended in Kibayi *commune* and the only time he went there together with Nsabimana between April 1994 and July 1994.<sup>9655</sup> Nteziryayo was dressed in military uniform.<sup>9656</sup>

3607. The meeting was held on a football pitch near Kibayi *commune* office, in Mukindo *secteur*, Kibayi *commune* on 24 May 1994 in the morning.<sup>9657</sup> Between 400 and 500 persons attended the meeting, but not a thousand or more as asserted by Witness FAK.<sup>9658</sup> In cross-examination he stated about 500 to 700 persons attended the meeting.<sup>9659</sup>

3608. The delegation was led by Nsabimana and consisted of Muvunyi,<sup>9660</sup> Ruzindaza, Bushishi, Nshimuyamuremye, Harinditwari and Cyprien Musariba, who was in charge of the Rwandan information authority, and the Accused.<sup>9661</sup> Nteziryayo stated that the *sous-préfet* of Gisagara *préfecture*, Dominique Ntawukulilyayo and another *sous-préfet* also attended the meeting.<sup>9662</sup> After the *bourgmestre* opened the meeting, Nsabimana spoke in his function as *préfet*, followed by Muvunyi, Ruzindaza and Nteziryayo.<sup>9663</sup> Nteziryayo did not chair the meeting; Nsabimana did.<sup>9664</sup>

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<sup>9650</sup> T. 20 September 2006 p. 66 (Nsabimana).

<sup>9651</sup> T. 20 September 2006 pp. 67-68 (Nsabimana).

<sup>9652</sup> T. 23 May 2007 pp. 21, 23-24, 39-40 (Nteziryayo).

<sup>9653</sup> T. 23 May 2007 pp. 39-40 (Nteziryayo).

<sup>9654</sup> T. 23 May 2007 pp. 54, 58; T. 5 June 2007 pp. 5-6 (Nteziryayo).

<sup>9655</sup> T. 5 June 2007 pp. 61-63 (Nteziryayo).

<sup>9656</sup> T. 5 July 2007 p. 6 (Nteziryayo).

<sup>9657</sup> T. 5 June 2007 p. 44 (Nteziryayo).

<sup>9658</sup> T. 5 June 2007 p. 45 (Nteziryayo).

<sup>9659</sup> T. 5 July 2007 p. 5 (Nteziryayo).

<sup>9660</sup> T. 5 July 2007 p. 6 (Nteziryayo).

<sup>9661</sup> T. 5 June 2007 p. 44 (Nteziryayo).

<sup>9662</sup> T. 5 June 2007 p. 44; T. 5 June 2007 p. 29 (Nteziryayo) (French).

<sup>9663</sup> T. 5 June 2007 p. 47 (Nteziryayo).

<sup>9664</sup> T. 5 June 2007 p. 46 (Nteziryayo).

3609. The purpose of the meeting was not to introduce himself as the new *préfet* and Nteziryayo did not introduce himself in this way. The meeting was to discuss the restoration of peace. The meeting's themes, as with the previous meetings, was the development of the *commune*, its freedom from the "hunger campaign", the problem of the flight of the populations from RPF attacks from Burundi and the encouragement of striving for peace.<sup>9665</sup>

3610. Nteziryayo visited the southern *communes*, including Kibayi *commune* not on his own initiative, but at the invitation of the *préfecture* authorities – he was convinced that he was going to contribute to the activities aimed at calming the population and helping them prevent the dangers awaiting them. It was in this spirit that he advised them about infiltrators and how to protect themselves.<sup>9666</sup>

3611. Nteziryayo talked again about guerrilla warfare, the use of explosives and informed the population of possible attacks by the RPF from Burundi.<sup>9667</sup> When he told the population that the enemy would infiltrate an area, he was referring to the RPF blending in with the local population.<sup>9668</sup> Insofar as Witness AND-73 testified that Nteziryayo told the population that the "infiltrators ... would get in touch with [their] accomplices in [the] area", Nteziryayo denied that he meant that the "mostly Tutsi RPF guerilla fighters" would get in touch with their Tutsis supporters within the area.<sup>9669</sup> Nteziryayo did not personally undertake any investigations about the RPF's accomplices but it was public information that the RPF's accomplices were moving around with weapons and ammunition; it had been broadcast over the radio and reported by the press.<sup>9670</sup>

3612. He did not, as alleged by Witness FAK, instruct the population to kill Tutsis; thank them for having killed Tutsis; encourage them to kill Tutsi children living in the homes of their grandparents; ask the population to abduct and kill Tutsi girls married to Hutus and everyone who refused to hand them over, but spare "legally married" Tutsi women who had borne children with Hutus. He did not speak on ethnic issues but asked them to strive for peace.<sup>9671</sup>

3613. Contrary to the evidence of Witness QBU, he did not say that people should be steadfast in the fight against the Tutsis and that if youngsters had taken Tutsi girls as their concubines, these concubines had to die; or that grandparents and uncles who had hidden their grandchildren should die, on the day of the meeting.<sup>9672</sup> He also did not say people should search homes and the Makwaza forest and if a Hutu hiding a Tutsi tried to protect the Tutsi, the Hutu had to die along with the Tutsi.<sup>9673</sup> Contrary to the evidence of Witness QBU, at the

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<sup>9665</sup> T. 5 June 2007 p. 46 (Nteziryayo).

<sup>9666</sup> T. 5 July 2007 p. 5 (Nteziryayo).

<sup>9667</sup> T. 5 June 2007 pp. 47, 51 (Nteziryayo).

<sup>9668</sup> T. 5 July 2007 p. 5 (Nteziryayo). The Chamber notes that while addressing the meeting of 24 May 1994 at Kibayi, the Prosecution mistakenly put to Nteziryayo Witness AND-73's testimony as to the content of Nteziryayo's speech at the 23 May 1994 meeting at Kirarambogo concerning the RPF and guerrilla warfare: T. 5 July 2007 pp. 7-12 (Nteziryayo). Insofar as Nteziryayo testified that he discussed the same themes at each meeting and that he also discussed the RPF and guerrilla warfare at the 24 May 1994 meeting in Kibayi *commune*, the Chamber considers his testimony is equally relevant here.

<sup>9669</sup> T. 5 July 2007 p. 7 (Nteziryayo).

<sup>9670</sup> T. 5 July 2007 pp. 14-15 (Nteziryayo).

<sup>9671</sup> T. 5 June 2007 pp. 51-53 (Nteziryayo).

<sup>9672</sup> T. 5 June 2007 pp. 55-56, 59 (Nteziryayo).

<sup>9673</sup> T. 5 June 2007 p. 57 (Nteziryayo).

time of the meeting on 24 May 1994, Nteziryayo was not an army major, but a lieutenant-colonel.<sup>9674</sup>

3614. Nteziryayo was present throughout the meeting and at no time did he or any of the other speakers issue orders that women and children, Tutsis or otherwise, should be killed.<sup>9675</sup> Muvunyi, in his capacity as area commander, gave the population information on the progress of the war. He explained to the population that the fighting was not very far away; he urged the young people to join the army; he advised what people should do when they heard gunshots and warned they should not run blindly or panic; they should only flee after locating from where the gunshots were fired.<sup>9676</sup>

3615. Contrary to the evidence of Witness FAK, it was Ruzindaza and not Muvunyi who stated, “[y]ou are refusing to shade [*sic*] your blood for your country, whereas the dogs are drinking the said blood for free.”<sup>9677</sup> Contrary to Witness FAK, he did not hear Muvunyi say during his speech that *Inyenzi* were hiding in the rice plantation in Ntyazo and that he was going to bring youngsters to flush out those *Inyenzi*. Moreover, given the distance between Ntyazo and Kibayi he would not be expected to utter such words in Kibayi *commune*.<sup>9678</sup>

3616. No one in the audience asked the speakers any questions at the end of the meeting; as such, no one asked Nteziryayo whether legally married Tutsi women had to die and Nteziryayo equally did not answer that the illegally married and youngsters who had taken Tutsi girls for their mistresses had to hand the women over so they could be killed.<sup>9679</sup>

3617. After the meeting, there was peace in Kibayi *commune* that lasted until there were clashes between the RPF and Government forces forcing the population to flee to neighbouring countries.<sup>9680</sup>

#### Nteziryayo Defence Witness AND-11

3618. Witness AND-11, a civil servant from Ndora *commune*,<sup>9681</sup> testified that he was informed by the *bourgmestre* of Kibayi *commune* three days prior to the meeting on 24 May 1994 that the meeting was to take place.<sup>9682</sup> The meeting was held on a football pitch in Nyabisagara *cellule*, Mukindo *secteur*, Kibayi *commune*.<sup>9683</sup>

3619. The meeting started between 10.30 a.m. and 11.00 a.m.<sup>9684</sup> and about 300 or 400 civilians attended the meeting.<sup>9685</sup> The *bourgmestre* informed them that the meeting was not

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<sup>9674</sup> T. 5 June 2007 p. 59 (Nteziryayo).

<sup>9675</sup> T. 5 June 2007 p. 57 (Nteziryayo).

<sup>9676</sup> T. 5 June 2007 p. 18 (Nteziryayo).

<sup>9677</sup> T. 5 June 2007 p. 47 (Nteziryayo).

<sup>9678</sup> T. 5 June 2007 p. 49 (Nteziryayo).

<sup>9679</sup> T. 5 June 2007 p. 59 (Nteziryayo).

<sup>9680</sup> T. 5 June 2007 pp. 57-58 (Nteziryayo).

<sup>9681</sup> T. 7 February 2007 p. 16 (ICS) (Witness AND-11).

<sup>9682</sup> T. 1 February 2007 p. 10 (ICS); T. 5 February 2007 p. 36 (Witness AND-11).

<sup>9683</sup> T. 1 February 2007 p. 9 (ICS) (Witness AND-11).

<sup>9684</sup> T. 1 February 2007 pp. 10, 13 (ICS) (Witness AND-11).

<sup>9685</sup> T. 1 February 2007 p. 10 (ICS) (Witness AND-11).

going to be long, because the authorities were scheduled to hold another meeting at Gikore.<sup>9686</sup> The meeting on 24 May 1994 was the only meeting chaired by *Préfet* Nsabimana in the said *commune* after 6 April 1994; no other meetings chaired by any figure of authority from Butare were held.<sup>9687</sup> As a civil servant he was always informed of the holding of meetings.<sup>9688</sup> In the period between 7 April 1994 and 7 July 1994, the witness attended only one (restricted committee) meeting that was convened and chaired by the Kibayi *bourgmestre* and only one meeting convened and chaired by *Préfet* Nsabimana, namely the one of 24 May 1994.<sup>9689</sup>

3620. The dignitaries arrived in three vehicles at 10.30 a.m.<sup>9690</sup> They met the *bourgmestre* at the *commune* office upon arrival and then walked with the *bourgmestre* to the field where the meeting was to take place.<sup>9691</sup> The dignitaries sat on metal chairs facing SERAI or the road that leads to Juma *secteur*. In front of the dignitaries were tables. Behind the dignitaries were the benches where the population sat. Some of the population chose to stand in the field not far from there in a location shown to them by a *commune* policeman.<sup>9692</sup>

3621. The Kibayi *bourgmestre*, Kajyambere, sat in the centre, to his left was *Préfet* Nsabimana, and to his right were Colonels Muvunyi and Nteziryayo, and beyond them the other guests, such as Sabilema and Ruzindaza. To Nsabimana's left was the *sous-préfet* of Gisagara.<sup>9693</sup> To the left of the *sous-préfet* were three *conseillers*.<sup>9694</sup> The witness was present for the entire meeting.<sup>9695</sup>

3622. A master of ceremonies gave the floor to the Kibayi *bourgmestre* who made the opening remarks at the meeting and then introduced the dignitaries who were going to speak.<sup>9696</sup> He first introduced Colonel Muvunyi and then Nteziryayo who he introduced as a colonel in the Rwandan army.<sup>9697</sup> He invited members of the population to listen to the proceedings of the meeting very attentively, saying it was a special meeting to deal with security matters.<sup>9698</sup>

3623. The *bourgmestre* gave the floor to *Préfet* Nsabimana who chaired the meeting.<sup>9699</sup> This was the first and only occasion the witness saw *Préfet* Nsabimana.<sup>9700</sup> *Préfet* Nsabimana asked all members of the population to strive for peace in their areas, and in the entire *commune*; to stop the killings, if there were any being committed; and not to follow the example of anyone who wanted to incite them to commit killings.<sup>9701</sup> He said the population should preserve

<sup>9686</sup> T. 5 February 2007 pp. 57-58 (Witness AND-11).

<sup>9687</sup> T. 5 February 2007 p. 59; T. 5 February 2007 pp. 62-63 (ICS) (Witness AND-11).

<sup>9688</sup> T. 7 February 2007 pp. 7-8 (ICS) (Witness AND-11).

<sup>9689</sup> T. 6 February 2007 pp. 61-62 (ICS) (Witness AND-11).

<sup>9690</sup> T. 1 February 2007 p. 13 (ICS); T. 5 February 2007 p. 42 (Witness AND-11).

<sup>9691</sup> T. 1 February 2007 p. 13 (ICS); T. 5 February 2007 p. 43 (Witness AND-11).

<sup>9692</sup> T. 1 February 2007 p. 11 (ICS) (Witness AND-11).

<sup>9693</sup> T. 1 February 2007 p. 15 (ICS) (Witness AND-11).

<sup>9694</sup> T. 1 February 2007 p. 15 (ICS); T. 5 February 2007 p. 53 (Witness AND-11).

<sup>9695</sup> T. 5 February 2007 p. 56 (Witness AND-11).

<sup>9696</sup> T. 1 February 2007 p. 17 (ICS); T. 7 February 2007 p. 29 (ICS) (Witness AND-11).

<sup>9697</sup> T. 7 February 2007 p. 29 (ICS) (Witness AND-11).

<sup>9698</sup> T. 1 February 2007 p. 17 (ICS) (Witness AND-11).

<sup>9699</sup> T. 1 February 2007 pp. 19, 28; T. 5 February 2007 pp. 53-54 (Witness AND-11).

<sup>9700</sup> T. 5 February 2007 pp. 54-55 (Witness AND-11).

<sup>9701</sup> T. 1 February 2007 p. 19 (Witness AND-11).



security by reinforcing and conducting night rounds in their homes and in the entire *commune*.<sup>9702</sup> Nsabimana did not incite the population to kill.<sup>9703</sup> Nsabimana's speech lasted 15 to 20 minutes.<sup>9704</sup>

3624. After Nsabimana, Colonel Muvunyi took the floor. He also asked the population to reinforce security and restore peace in the *commune*; he asked the youth to be ready to heed the call of the army, and not to hide; he also broached the issue of guerrilla warfare. His message lasted five to 10 minutes.<sup>9705</sup>

3625. Colonel Nteziryayo spoke after Colonel Muvunyi.<sup>9706</sup> Nteziryayo spoke along the same lines as the previous speakers: he invited the population to remain united and to work towards peace with their neighbours by avoiding or by not listening to those who would incite them to commit killings. Furthermore, he said that the people should not attack anyone on the grounds of their ethnicity or because of their property, because everyone was the son or daughter of Rwanda. He revisited the issue of explosives and guerrilla warfare.<sup>9707</sup> He then asked members of the population to keep striving towards maintaining the security of the population.<sup>9708</sup> Nteziryayo did not incite the population to kill,<sup>9709</sup> and idiomatic expressions and proverbs referring to Tutsis as "ash" that needed to be "cleaned up" and thrown out were not used that day.<sup>9710</sup> When Nteziryayo referred to the accomplices of the RPF guerrillas, he was not necessarily only referring to Tutsis since even Hutus sent their children to the front.<sup>9711</sup> His speech was not very long.<sup>9712</sup> Nteziryayo was not *préfet* at the time of the meeting.<sup>9713</sup> The only time Nteziryayo came to Kibayi *commune* was the occasion of this meeting.<sup>9714</sup>

3626. After Nteziryayo, the *bourgmestre* took the floor to thank members of the population and encourage them to strengthen peace. He asked them to return to their homes and convey the message of the meeting to those who lived in their respective *cellules*.<sup>9715</sup> The population came away from the meeting resolved to ensure peace; there were no further killings or massacres after the meeting of 24 May 1994.<sup>9716</sup>

3627. Contrary to the evidence of the Prosecution witnesses, roadblocks were not mounted after the meeting, and the meeting's purpose was not to incite people.<sup>9717</sup> There was no question/answer session at the end of the meeting; as such, no one asked Nteziryayo whether

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<sup>9702</sup> T. 1 February 2007 p. 19; T. 7 February 2007 p. 39 (ICS) (Witness AND-11).

<sup>9703</sup> T. 1 February 2007 p. 20 (Witness AND-11).

<sup>9704</sup> T. 1 February 2007 p. 21 (Witness AND-11).

<sup>9705</sup> T. 1 February 2007 p. 21 (Witness AND-11).

<sup>9706</sup> T. 1 February 2007 p. 22 (Witness AND-11).

<sup>9707</sup> T. 1 February 2007 p. 22; T. 7 February 2007 p. 40 (ICS) (Witness AND-11).

<sup>9708</sup> T. 1 February 2007 p. 22 (Witness AND-11).

<sup>9709</sup> T. 1 February 2007 pp. 23, 29 (Witness AND-11).

<sup>9710</sup> T. 1 February 2007 p. 29 (Witness AND-11).

<sup>9711</sup> T. 7 February 2007 p. 44 (ICS) (Witness AND-11).

<sup>9712</sup> T. 1 February 2007 p. 23 (Witness AND-11).

<sup>9713</sup> T. 1 February 2007 p. 28 (Witness AND-11).

<sup>9714</sup> T. 7 February 2007 p. 11 (ICS) (Witness AND-11).

<sup>9715</sup> T. 1 February 2007 p. 23 (Witness AND-11).

<sup>9716</sup> T. 1 February 2007 pp. 30, 35; T. 1 February 2007 pp. 41-42 (ICS) (Witness AND-11).

<sup>9717</sup> T. 1 February 2007 pp. 23, 28 (Witness AND-11).

legally married Tutsi women had to die.<sup>9718</sup> Contrary to the evidence of Witness H1B6,<sup>9719</sup> Ruzindaza did not take the floor during the meeting.<sup>9720</sup> Contrary to the evidence of the Prosecution witnesses, the meeting involving the Kibayi *bourgmestre*, Nteziryayo and Colonel Muvunyi did not occur in June 1994.<sup>9721</sup>

### Nteziryayo Defence Witness AND-53

3628. Witness AND-53, a Hutu farmer from Kibayi *commune*,<sup>9722</sup> attended a meeting held in Kibayi *commune* on 24 May 1994.<sup>9723</sup> He was certain of this date because the meeting was so important.<sup>9724</sup> The meeting was convened by *Préfet* Nsabimana. *Bourgmestre* Kajyambere announced that a meeting chaired by the *préfet* would be held and asked the *conseillers* to inform members of the population.<sup>9725</sup> The *responsable de cellule* in the *secteur*,<sup>9726</sup> appointed a man with a whistle to go around and announce the meeting.<sup>9727</sup>

3629. Witness AND-53 went to the meeting on foot, a distance of about 5 to 6 kilometres.<sup>9728</sup> He set off for the meeting at 9.30 a.m. and arrived at the meeting's venue a few minutes before 11.00 a.m. when the meeting began.<sup>9729</sup> The meeting took place on the football field of Kibayi *commune*, which was about 150 metres downhill from the *commune* office.<sup>9730</sup> On arriving at the meeting he saw seating arrangements had been made for the authorities and the ordinary attendees, but there was no dais.<sup>9731</sup> The witness sat on the football pitch about 20 metres from the speakers.<sup>9732</sup> Between 500 and 700 people attended the meeting,<sup>9733</sup> but there were no Tutsis as they had not yet come out of hiding.<sup>9734</sup> He knew one person at the meeting who was of Twa ethnicity, but the rest of the attendees were Hutus.<sup>9735</sup>

3630. He saw the authorities arrive at the *commune* office in their vehicles.<sup>9736</sup> There were five or six vehicles,<sup>9737</sup> only one of which was a military vehicle.<sup>9738</sup> The witness could not see

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<sup>9718</sup> T. 1 February 2007 p. 29 (Witness AND-11).

<sup>9719</sup> T. 5 December 2005 p. 20 (Witness H1B6).

<sup>9720</sup> T. 5 February 2007 p. 56; T. 6 February 2007 p. 53 (ICS) (Witness AND-11).

<sup>9721</sup> T. 5 February 2007 pp. 66-68 (ICS) (Witness AND-11).

<sup>9722</sup> T. 14 February 2007 p. 45 (ICS); T. 15 February 2007 pp. 60-61 (Witness AND-53).

<sup>9723</sup> T. 14 February 2007 p. 55 (Witness AND-53).

<sup>9724</sup> T. 15 February 2007 pp. 43-44 (Witness AND-53).

<sup>9725</sup> T. 14 February 2007 p. 55 (Witness AND-53).

<sup>9726</sup> T. 14 February 2007 p. 55 (Witness AND-53).

<sup>9727</sup> T. 15 February 2007 pp. 45, 71 (Witness AND-53).

<sup>9728</sup> T. 14 February 2007 p. 56 (Witness AND-53).

<sup>9729</sup> T. 14 February 2007 p. 57; T. 15 February 2007 p. 46 (Witness AND-53).

<sup>9730</sup> T. 14 February 2007 pp. 55-56 (Witness AND-53).

<sup>9731</sup> T. 14 February 2007 p. 57 (Witness AND-53).

<sup>9732</sup> T. 14 February 2007 p. 72; T. 15 February 2007 p. 72 (Witness AND-53).

<sup>9733</sup> T. 14 February 2007 p. 62 (Witness AND-53).

<sup>9734</sup> T. 15 February 2007 p. 74 (Witness AND-53).

<sup>9735</sup> T. 19 February 2007 p. 14 (Witness AND-53).

<sup>9736</sup> T. 15 February 2007 p. 49 (Witness AND-53).

<sup>9737</sup> T. 15 February 2007 p. 50 (Witness AND-53).

<sup>9738</sup> T. 19 February 2007 p. 5 (Witness AND-53).

what the authorities did at the *commune* office, but five to 10 minutes after their arrival, they all moved down to the football pitch to start the meeting.<sup>9739</sup>

3631. Witness AND-53 recognised the *bourgmestre* of Kibayi *commune* Pierre Canisius Kajyambere, *Préfet* Nsabimana and Colonel Nteziryayo.<sup>9740</sup> While unable to describe the exact seating arrangements, Nteziryayo sat at the high table or grand stand with the other dignitaries in the same row as the *préfet* and the *bourgmestre*.<sup>9741</sup>

3632. The first speaker at the meeting was Pierre Canisius Kajyambere.<sup>9742</sup> Kajyambere thanked the population for attending before asking the audience to listen carefully as it was an important meeting, as the security situation was going to be discussed.<sup>9743</sup> Kajyambere then passed the floor to Nsabimana to chair the meeting,<sup>9744</sup> who then announced the order of the speakers.<sup>9745</sup> Kajyambere's speech lasted roughly five minutes.<sup>9746</sup>

3633. Nsabimana began by introducing the other authorities that had come to the meeting; he introduced Colonel Muvunyi as commander of the ESO; Nteziryayo as a high ranking officer and native of the *commune*; Ruzindaza as the President of the Court of First Instance of Butare; and finally Dominique Ntawukulilyayo as the *sous-préfet* of Gisagara *sous-préfecture*. Nteziryayo was introduced as a colonel.<sup>9747</sup> Nsabimana invited the remaining members of the delegation to stand and greet the audience, who got to their feet and applauded.<sup>9748</sup>

3634. Nsabimana talked about the problem of security. Nsabimana asked the population to ensure that there was security, to live in harmony and not to engage in killings.<sup>9749</sup> Nsabimana asked the population to go about their day-to-day activities, and to assist those who were at the war front.<sup>9750</sup> Nsabimana asked the population for more security, as infiltrators could filter in from Burundi as the *commune* was on the border.<sup>9751</sup> These were the only subjects Nsabimana addressed in his speech.<sup>9752</sup> In cross-examination the witness said that Nsabimana asked the local inhabitants to participate in night patrols and man roadblocks.<sup>9753</sup> Nsabimana's speech lasted between 50 and 60 minutes.<sup>9754</sup>

3635. Colonel Muvunyi spoke next. Colonel Muvunyi invited the population to live in peace and harmony and said that the battlefield had advanced to Ntyazo and Muyira *communes*, and to around Ntyazo Hill. Kibayi *commune* was about to be attacked, and therefore the population

<sup>9739</sup> T. 14 February 2007 p. 59 (Witness AND-53).

<sup>9740</sup> T. 14 February 2007 p. 59 (Witness AND-53).

<sup>9741</sup> T. 15 February 2007 p. 51 (Witness AND-53).

<sup>9742</sup> T. 14 February 2007 p. 62 (Witness AND-53).

<sup>9743</sup> T. 14 February 2007 p. 69 (Witness AND-53).

<sup>9744</sup> T. 14 February 2007 p. 69; T. 15 February 2007 pp. 52, 59 (Witness AND-53).

<sup>9745</sup> T. 15 February 2007 p. 52 (Witness AND-53).

<sup>9746</sup> T. 15 February 2007 p. 72 (Witness AND-53).

<sup>9747</sup> T. 15 February 2007 p. 70 (Witness AND-53).

<sup>9748</sup> T. 14 February 2007 p. 70; T. 15 February 2007 p. 53 (Witness AND-53).

<sup>9749</sup> T. 14 February 2007 p. 70 (Witness AND-53).

<sup>9750</sup> T. 19 February 2007 pp. 7-8 (Witness AND-53).

<sup>9751</sup> T. 14 February 2007 p. 70 (Witness AND-53).

<sup>9752</sup> T. 14 February 2007 p. 71 (Witness AND-53).

<sup>9753</sup> T. 15 February 2007 p. 54 (Witness AND-53).

<sup>9754</sup> T. 15 February 2007 p. 72 (Witness AND-53).

had to be vigilant, to guard roadblocks well, to carry out night patrols and to hand over to the local authorities anyone identified as an unknown person in the region. Colonel Muvunyi called upon the youngsters to join the army in order to safeguard the sovereignty of the country and asked the population not to flee at the time the RPF were entering the region, until they had first identified the location from which the shooting was coming from. Colonel Muvunyi then staged a demonstration where shots were fired, and afterwards told the crowd that they had not responded well and that they should not have started fleeing until they had identified where the gunshots were coming from.<sup>9755</sup> Colonel Muvunyi did not mention anything about guerrilla tactics.<sup>9756</sup> Colonel Muvunyi's speech lasted 40 minutes.<sup>9757</sup>

3636. Nteziryayo spoke to the crowd after Colonel Muvunyi.<sup>9758</sup> Nteziryayo reiterated the comments of the previous speakers on security. He asked the population to co-exist peacefully and to avoid killings, and talked about the guerrilla war the RPF were fighting; how a group of two or three people could infiltrate the population, and could be dressed as clergymen, Muslims or Reverend Fathers. Nteziryayo said that the infiltrators could be carrying guns in baskets on top of their heads as if they were going to the market, when actually they were going to use the guns to kill people in places like the *commune* office. Nteziryayo told the population to be attentive to unknown objects as these could be mines laid by the infiltrators. Nteziryayo commented on the shooting demonstration and talked about the suffering those in the north of the country had experienced during the war.<sup>9759</sup> Nteziryayo never made any statements that would incite Hutus to kill the Tutsis,<sup>9760</sup> or told the audience that he was their *préfet*.<sup>9761</sup> Nteziryayo's speech lasted about 25 minutes.<sup>9762</sup>

3637. Ruzindaza then took the floor.<sup>9763</sup> Ruzindaza said that all people were equal before the law and that those who were killing people were going to be prosecuted. Ruzindaza invited young people to join the army and used the proverb, "[y]ou are refusing to give your blood to the country or to the nation and the dogs are drinking this blood for free".<sup>9764</sup> He did not hear Ruzindaza refer to any biblical speech or text, or see a Bible in Ruzindaza's hands.<sup>9765</sup> Ruzindaza's speech lasted not more than 20 minutes.<sup>9766</sup>

3638. *Bourgmestre* Kajyambere closed the meeting. After thanking the population for attending, he closed by saying that the guests were in a hurry as they had to attend another meeting in Gikore.<sup>9767</sup> He asked the population to go and implement what was heard at the meeting.<sup>9768</sup> The meeting finished at 2.00 p.m.<sup>9769</sup>

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<sup>9755</sup> T. 14 February 2007 p. 71 (Witness AND-53).

<sup>9756</sup> T. 15 February 2007 p. 54 (Witness AND-53).

<sup>9757</sup> T. 15 February 2007 p. 72 (Witness AND-53).

<sup>9758</sup> T. 14 February 2007 p. 71 (Witness AND-53).

<sup>9759</sup> T. 14 February 2007 p. 72 (Witness AND-53).

<sup>9760</sup> T. 14 February 2007 p. 72 (Witness AND-53).

<sup>9761</sup> T. 15 February 2007 p. 8 (Witness AND-53).

<sup>9762</sup> T. 15 February 2007 p. 72 (Witness AND-53).

<sup>9763</sup> T. 14 February 2007 p. 72 (Witness AND-53).

<sup>9764</sup> T. 14 February 2007 p. 73 (Witness AND-53).

<sup>9765</sup> T. 15 February 2007 p. 55 (Witness AND-53).

<sup>9766</sup> T. 15 February 2007 p. 73 (Witness AND-53).

<sup>9767</sup> T. 14 February 2007 p. 73 (Witness AND-53).

<sup>9768</sup> T. 14 February 2007 p. 73; T. 15 February 2007 p. 4 (Witness AND-53).

3639. The only two speakers to talk about the RPF “*Inkotanyi*” or enemy were Colonel Muvunyi and Nteziryayo.<sup>9770</sup> He stated that none of the speeches made at the meeting incited the local population to commit killings.<sup>9771</sup> The witness did not hear any speaker say “[w]hen you gather ashes, you don’t keep them inside the house, you send them outside the house”,<sup>9772</sup> nor did he hear Nteziryayo instruct the audience to kill illegally married Tutsis, but spare legally married Tutsis.<sup>9773</sup>

3640. The atmosphere at the end of the meeting was relatively calm,<sup>9774</sup> there were no further killings<sup>9775</sup> and peace was restored.<sup>9776</sup> After the meeting, the population resumed their ordinary day-to-day lives in the *commune*,<sup>9777</sup> and Tutsis that had survived could come out of hiding as it was safe and secure.<sup>9778</sup> Up until July 1994, when the witness fled to Burundi he did not encounter any more problems.<sup>9779</sup>

3641. Between 6 April 1994 and the end of May 1994 the witness was not aware of any other meeting held at the Kibayi *commune* office.<sup>9780</sup> The meeting on 24 May 1994 was the only meeting that took place in Kibayi *commune*.<sup>9781</sup>

#### Nteziryayo Defence Witness AND-64

3642. Witness AND-64, a Hutu farmer from Kibayi *commune*,<sup>9782</sup> testified that he attended a security meeting held in Kibayi *commune* on a football pitch on 24 May 1994.<sup>9783</sup> He remembered four persons among the dignitaries who attended the meeting: Nsabimana, Nteziryayo, Ruzindaza and Muvunyi.<sup>9784</sup> The *responsable de cellule* informed members of the population about the meeting and its purpose the evening before.<sup>9785</sup> The meeting was to be about pacification and security within the *commune*.<sup>9786</sup>

3643. Witness AND-64 left home for the meeting at around 9.30 a.m.<sup>9787</sup> He saw the dignitaries’ arrival at 10.50 a.m.; they stopped over at the *commune* office for a few minutes

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<sup>9769</sup> T. 15 February 2007 p. 72 (Witness AND-53).

<sup>9770</sup> T. 19 February 2007 p. 8 (Witness AND-53).

<sup>9771</sup> T. 15 February 2007 p. 4 (Witness AND-53).

<sup>9772</sup> T. 15 February 2007 p. 9 (Witness AND-53).

<sup>9773</sup> T. 15 February 2007 pp. 10-11 (Witness AND-53).

<sup>9774</sup> T. 14 February 2007 p. 73 (Witness AND-53).

<sup>9775</sup> T. 15 February 2007 p. 9 (Witness AND-53).

<sup>9776</sup> T. 15 February 2007 pp. 44, 55 (Witness AND-53).

<sup>9777</sup> T. 14 February 2007 p. 73 (Witness AND-53).

<sup>9778</sup> T. 15 February 2007 p. 64 (Witness AND-53).

<sup>9779</sup> T. 14 February 2007 p. 73 (Witness AND-53).

<sup>9780</sup> T. 15 February 2007 pp. 25, 43 (Witness AND-53).

<sup>9781</sup> T. 15 February 2007 pp. 43, 59 (Witness AND-53).

<sup>9782</sup> T. 7 March 2007 p. 74 (ICS); T. 8 March 2007 p. 6 (ICS) (Witness AND-64).

<sup>9783</sup> T. 8 March 2007 pp. 25-27; T. 8 March 2007 p. 69 (ICS) (Witness AND-64).

<sup>9784</sup> T. 8 March 2007 p. 26 (Witness AND-64).

<sup>9785</sup> T. 8 March 2007 p. 27; T. 12 March 2007 p. 8 (Witness AND-64).

<sup>9786</sup> T. 8 March 2007 p. 29; T. 12 March 2007 p. 8 (Witness AND-64).

<sup>9787</sup> T. 8 March 2007 p. 72 (ICS) (Witness AND-64).

before heading to the venue of the meeting, accompanied by the *bourgmestre*.<sup>9788</sup> The meeting started at 11.00 a.m. and ended at 1.00 p.m., and approximately 500 people attended.<sup>9789</sup>

3644. There were two rows of chairs reserved for the dignitaries but only some of them were occupied and the rest were used by members of the population.<sup>9790</sup> Nteziryayo sat in the front row.<sup>9791</sup> *Préfet* Nsabimana sat next to the Kibayi *bourgmestre*, Canisius Kajyambere.<sup>9792</sup> Witness AND-64 sat 42 metres away from where the dignitaries sat during the meeting.<sup>9793</sup> He followed the meeting from the beginning to the end and followed all the speeches which were made.<sup>9794</sup>

3645. Witness AND-64 testified that the *commune's* agronomist named Masima took the floor first for less than three minutes,<sup>9795</sup> he asked the attendants to welcome the dignitaries, to sit down and follow the meeting calmly, then gave the floor to the *bourgmestre* who, in turn, thanked the population and introduced the dignitaries including Nsabimana as the new *préfet*.<sup>9796</sup> The witness did not know Nsabimana before then.<sup>9797</sup> Nsabimana had been appointed as the new *préfet* around the end of April 1994.<sup>9798</sup> The *bourgmestre* asked the *préfet* to preside over the meeting and gave him the floor.<sup>9799</sup> In his address, Nsabimana condemned the killings and acts of violence which were purportedly perpetrated in the *commune*, and urged members of the population to assist the *bourgmestre* and local authorities to combat those acts. Finally he asked members of the population to remain vigilant in order to counter any attacks from abroad.<sup>9800</sup> Nsabimana's speech was concerned with the return of security and safety to Kibayi.<sup>9801</sup>

3646. The witness disagreed with the evidence of Witness AND-11 as to who introduced the dignitaries; it was the *bourgmestre* who gave the floor to the *préfet* who in turn introduced the dignitaries.<sup>9802</sup> Nsabimana condemned the killings of Tutsis.<sup>9803</sup> He could not remember the duration of Nsabimana's speech.<sup>9804</sup>

3647. Muvunyi addressed the crowd after Nsabimana. He stated that the fighting was going on in *communes* neighbouring Kibayi. Gunshots were fired in the air causing the population to disperse; Muvunyi told the population that in the event of gunshots they needed to ensure where the gunfire was coming from so as to avoid running towards the attackers. Muvunyi told

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<sup>9788</sup> T. 8 March 2007 p. 28 (Witness AND-64).

<sup>9789</sup> T. 8 March 2007 p. 27 (Witness AND-64).

<sup>9790</sup> T. 12 March 2007 p. 48 (Witness AND-64).

<sup>9791</sup> T. 12 March 2007 pp. 10, 48 (Witness AND-64).

<sup>9792</sup> T. 8 March 2007 p. 28 (Witness AND-64).

<sup>9793</sup> T. 12 March 2007 p. 11 (Witness AND-64).

<sup>9794</sup> T. 8 March 2007 p. 41 (Witness AND-64).

<sup>9795</sup> T. 8 March 2007 pp. 28-29; T. 12 March 2007 pp. 12, 49 (Witness AND-64).

<sup>9796</sup> T. 8 March 2007 p. 30; T. 12 March 2007 pp. 15-16 (Witness AND-64).

<sup>9797</sup> T. 8 March 2007 p. 30 (Witness AND-64).

<sup>9798</sup> T. 12 March 2007 p. 17 (Witness AND-64).

<sup>9799</sup> T. 8 March 2007 p. 31; T. 12 March 2007 p. 16 (Witness AND-64).

<sup>9800</sup> T. 8 March 2007 p. 31 (Witness AND-64).

<sup>9801</sup> T. 8 March 2007 p. 33 (Witness AND-64).

<sup>9802</sup> T. 12 March 2007 pp. 15-16 (Witness AND-64).

<sup>9803</sup> T. 12 March 2007 p. 49 (Witness AND-64).

<sup>9804</sup> T. 8 March 2007 p. 31 (Witness AND-64).

them that the RPF were on Kibayi's doorstep – they were already occupying some of the *communes* of Butare *préfecture*, namely, Muyira, Ntyazo and Muyaga.<sup>9805</sup>

3648. After Muvunyi, Nteziryayo took the floor.<sup>9806</sup> Nteziryayo attended the meeting in his capacity as colonel, not *préfet*.<sup>9807</sup> Nteziryayo did not introduce himself as *préfet* when he took the floor.<sup>9808</sup> Nteziryayo wore a khaki military uniform, he stated that *Inkotanyi* had changed strategy and they were now engaged in guerrilla warfare; he asked members of the population to take care of their own security and check on unknown people who were entering the *commune's* territory. He also said that the RPF had the habit of planting bombs or explosives in areas that were frequented by large numbers of people such as market squares, places of worship or bars, and, therefore, the population needed to avoid picking up any metal objects that they were unable to identify.<sup>9809</sup> Nteziryayo's speech concerned the building of the country and the safety of property and people; he did not utter any inciting words.<sup>9810</sup>

3649. Ruzindaza spoke next and said, “[y]ou are refusing to spill your blood for your nation and dogs can freely drink your blood.” After Ruzindaza's address, the *bourgmestre* closed the meeting because the dignitaries had to go for other meetings held elsewhere.<sup>9811</sup> None of the speakers during the meeting incited or called upon people to commit any act of violence.<sup>9812</sup>

3650. After the 24 May 1994 meeting, no further killings occurred in Kibayi *commune*.<sup>9813</sup> Tutsi people who had been in hiding were able to come out and go to the market place, and children were able to go back to school<sup>9814</sup> and the population was in a jubilant mood because they were no longer afraid.<sup>9815</sup> Peace and calm were restored, and this lasted until the witness fled on 18 July 1994.<sup>9816</sup>

3651. Contrary to the evidence of the Prosecution witnesses, roadblocks were not mounted after the meeting,<sup>9817</sup> and the meeting's purpose was not to incite people.<sup>9818</sup> Witness AND-64 disagreed with Witness QBU's testimony with respect to the start and end times of the meeting, the number of people who attended, the *bourgmestre's* introduction of Nteziryayo as *préfet*, as well as the content of Nteziryayo's speech – he did not use idiomatic expressions concerning the clearing of ashes or give instructions to kill Tutsi girls.<sup>9819</sup>

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<sup>9805</sup> T. 8 March 2007 p. 33; T. 8 March 2007 p. 39 (Witness AND-64) (French).

<sup>9806</sup> T. 8 March 2007 p. 34 (Witness AND-64).

<sup>9807</sup> T. 12 March 2007 pp. 16-17 (Witness AND-64).

<sup>9808</sup> T. 12 March 2007 p. 19 (Witness AND-64).

<sup>9809</sup> T. 8 March 2007 pp. 34-35 (Witness AND-64).

<sup>9810</sup> T. 8 March 2007 p. 35 (Witness AND-64).

<sup>9811</sup> T. 8 March 2007 p. 35 (Witness AND-64).

<sup>9812</sup> T. 8 March 2007 p. 40; T. 12 March 2007 pp. 50, 52 (Witness AND-64).

<sup>9813</sup> T. 8 March 2007 pp. 35, 46 (Witness AND-64).

<sup>9814</sup> T. 8 March 2007 pp. 35-36 (Witness AND-64).

<sup>9815</sup> T. 8 March 2007 p. 40 (Witness AND-64).

<sup>9816</sup> T. 8 March 2007 p. 51 (Witness AND-64).

<sup>9817</sup> T. 8 March 2007 p. 41 (Witness AND-64).

<sup>9818</sup> T. 8 March 2007 p. 42; T. 12 March 2007 p. 50 (Witness AND-64).

<sup>9819</sup> T. 8 March 2007 pp. 43-44, 48 (Witness AND-64).

Ntahobali Defence Witness H1B6

3652. Witness H1B6, a Hutu student in 1994, testified that he attended two meetings organised by *préfecture* authorities five or six days before the end of May 1994.<sup>9820</sup> The first meeting took place in Kibayi *commune*<sup>9821</sup> and the second was in Gikore *secteur* on the afternoon of the same day.<sup>9822</sup> The Kibayi meeting was part of a tour in the *communes* to restore security.<sup>9823</sup> Witness H1B6 did not deliberately go to Kibayi to take part in the meeting.<sup>9824</sup>

3653. Witness H1B6 left the Butare *préfecture* office on the morning of the meetings at around 9.30 a.m. and arrived at Kibayi's *commune* office around 10.00 a.m. or 10.30 a.m.<sup>9825</sup> The meeting started around half or one hour later.<sup>9826</sup> It took place on the football field near the *commune* office.<sup>9827</sup> There were about 200 attendants at the Kibayi meeting.<sup>9828</sup> Four speakers took the floor at that meeting, namely the Kibayi *bourgmestre*, Pierre Kajyambere, who welcomed the guests,<sup>9829</sup> Nteziryayo, Nsabimana, Ruzindaza and Colonel Muvunyi.<sup>9830</sup> Nsabimana told the attendants that there have been killings and that was unfortunate but that nobody should engage in revenge or reprisals. He also asked the population to be vigilant and be ready to fight the enemy, *i.e.* the RPF *Inkotanyi*.<sup>9831</sup>

3654. The second speaker was Nteziryayo.<sup>9832</sup> Nteziryayo attended the meeting in his capacity as a high ranking soldier in the *commune* in charge of policing at the Ministry of the Interior – he had come to assist to restore security in the *préfecture*.<sup>9833</sup> He said it was unfortunate that killings took place and that he himself lost some relatives. He invited the attendants to be courageous and advised them on how to avoid traps set by the *Inkotanyi*, namely they should hand over to authorities any new individual who arrived in the *commune* but not kill them and they should not get close to unusual equipment and suspicious metallic objects they had not seen before.<sup>9834</sup>

3655. Colonel Muvunyi dealt with military issues; he explained the guerrilla warfare in which the *Inkotanyi* were engaged and told the audience how to behave in case they heard shots fired. He advised them to lie on the ground and wait, and not to scatter all over and run towards the enemy.<sup>9835</sup>

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<sup>9820</sup> T. 5 December 2005 p. 14 (ICS) (Witness H1B6).

<sup>9821</sup> T. 5 December 2005 p. 18 (Witness H1B6).

<sup>9822</sup> T. 5 December 2005 p. 21 (Witness H1B6).

<sup>9823</sup> T. 6 December 2005 p. 12 (Witness H1B6).

<sup>9824</sup> T. 6 December 2005 p. 33 (Witness H1B6).

<sup>9825</sup> T. 5 December 2005 p. 16 (ICS); T. 6 December 2005 p. 13 (Witness H1B6).

<sup>9826</sup> T. 5 December 2005 p. 16 (Witness H1B6).

<sup>9827</sup> T. 5 December 2005 pp. 18-19 (Witness H1B6).

<sup>9828</sup> T. 5 December 2005 p. 20 (Witness H1B6).

<sup>9829</sup> T. 5 December 2005 p. 19 (Witness H1B6).

<sup>9830</sup> T. 5 December 2005 p. 18; T. 6 December 2005 p. 15 (Witness H1B6).

<sup>9831</sup> T. 5 December 2005 p. 19 (Witness H1B6).

<sup>9832</sup> T. 5 December 2005 p. 19 (Witness H1B6).

<sup>9833</sup> T. 6 December 2005 p. 15 (Witness H1B6).

<sup>9834</sup> T. 5 December 2005 p. 19 (Witness H1B6).

<sup>9835</sup> T. 5 December 2005 pp. 19-20 (Witness H1B6).



3656. Ruzindaza told the population that the enemy was powerful and was coming from the north. Quoting a Bible verse, he explained that whoever was afraid to go to the battlefield would spill his blood and his blood would be drunk by dogs.<sup>9836</sup>

3657. The last person to speak was the *bourgmestre* who brought the meeting to an end, after which the convoy headed to Gikore.<sup>9837</sup> The Kibayi meeting ended around 1.00 p.m. or 1.30 p.m. None of the speakers called on the population to kill Tutsis; rather, they said that the killings had come to an end and urged people to resume their activities. The population was calm and worried, and thereafter everybody went home.<sup>9838</sup>

#### 3.6.34.4 *Deliberations*

3658. It is not disputed that (1) both Nsabimana and Nteziryayo made speeches during the swearing-in ceremony of the Ntyazo *bourgmestre* and (2) Nteziryayo spoke at meetings held in Kirarambogo, Muganza *commune*; Muyaga and Kibayi *communes*. The issue in contention is the content and the consequences of the speeches made by the Accused during these meetings.

##### 3.6.34.4.1 Ntyazo *Commune* Meeting, 22 May 1994

3659. Prosecution Witness FAI, Defence Witness AND-75, Nsabimana and Nteziryayo all testified that they attended the swearing-in ceremony of Mathieu Ndahimana, *bourgmestre* of Ntyazo *commune*, on 22 May 1994. Witness FAI testified that the ceremony took place in the courtyard of a school in Nyakayaga, Buye *secteur*,<sup>9839</sup> while Witness AND-75, Nsabimana and Nteziryayo testified that it took place on a football pitch.<sup>9840</sup> In addition, Nsabimana's testimony differed from that of Witnesses FAI, AND-75 and Nteziryayo with respect to the length of the meeting and the attendees present.<sup>9841</sup> The Chamber does not consider these discrepancies to be important. The witnesses are consistent on the salient features of the meeting: that it was the swearing-in ceremony of Mathieu Ndahimana, that the meeting took place in the afternoon of 22 May 1994, that shelling could be heard during the ceremony and that both Nsabimana and Nteziryayo spoke at the meeting. The Chamber therefore finds that the witnesses testified to the same event.

3660. Witness FAI was the Prosecution's only witness to testify in respect of the swearing-in ceremony of the *bourgmestre* of Ntyazo *commune* on 22 May 1994. Witness FAI testified that Nsabimana and Nteziryayo spoke at the swearing-in ceremony asking those present at the meeting not to sleep and to be vigilant in order to fight the enemy and his accomplices, by which he meant the RPF and the Tutsis.<sup>9842</sup> The Chamber notes that Witness FAI's testimony on this point is uncorroborated.

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<sup>9836</sup> T. 5 December 2005 p. 20 (Witness H1B6).

<sup>9837</sup> T. 5 December 2005 p. 15 (ICS); T. 5 December 2005 pp. 20-21 (Witness H1B6).

<sup>9838</sup> T. 5 December 2005 p. 21 (Witness H1B6).

<sup>9839</sup> T. 5 November 2002 p. 32 (ICS) (Witness FAI).

<sup>9840</sup> T. 7 May 2007 p. 21 (Witness AND-75); T. 5 June 2007 pp. 13, 17 (Nteziryayo); T. 20 November 2006 pp. 50, 52 (ICS) (Nsabimana).

<sup>9841</sup> T. 21 September 2006 pp. 39-40 (Nsabimana); T. 20 November 2006 pp. 50-52 (ICS) (Nsabimana); T. 5 June 2007 pp. 16-19 (Nteziryayo).

<sup>9842</sup> T. 31 October 2002 pp. 12-13 (ICS); T. 5 November 2002 pp. 33-34 (ICS) (Witness FAI).

3661. The Chamber recalls that Witness FAI was a detained witness at the time of his testimony and therefore his testimony should be viewed with appropriate caution. Witness FAI pled guilty to genocide in Rwanda in 1997 and had not been sentenced at the time of his testimony.<sup>9843</sup> Witness FAI downplayed his role in the genocide before the Tribunal, stating that the accusations brought against him by the authorities related to associating with offenders, rather than his own participation.<sup>9844</sup> Furthermore, he may have an interest in attributing responsibility for acts he committed during the genocide as being authorised by the authorities and therefore officially sanctioned in order to potentially reduce his sentence. These aspects affect the credibility of this witness.

3662. The Chamber recalls that in his previous statement of 24 February 2000, Witness FAI stated that Nsabimana incited the inhabitants of Ntyazo to track down and kill any possible Tutsi survivors. Witness FAI denied that there was any difference between this statement and his testimony at trial that Nsabimana asked the population to remain vigilant and to combat the enemy and its accomplices.<sup>9845</sup> The Chamber takes the view that this is not a significant discrepancy between the two versions of Nsabimana's speech; the witness testified that he understood the language used by Nsabimana to mean that Tutsis should be killed.<sup>9846</sup>

3663. Witness FAI's testimony is contradicted by Witness AND-75 who testified that Nsabimana spoke at the meeting to condemn the killings.<sup>9847</sup> Nsabimana asked the population to be vigilant because they were living in an area that was close to the fighting and stated that if ever the *Inkotanyi* arrived in their area, they should flee.<sup>9848</sup> Witness AND-75 testified that Nteziryayo spoke about the fighting and infiltration tactics of RPF troops and warned them about landmines.<sup>9849</sup> Nteziryayo did not call for the massacre of Tutsis by labelling them accomplices (of the RPF).<sup>9850</sup> Witness AND-75 testified that those who attended the meeting felt reassured by the authorities.<sup>9851</sup>

3664. In light of the contradicting testimony of Witness AND-75, whose presence at the swearing-in ceremony of Mathieu Ndahimana was confirmed by Witness FAI, and the status of Witness FAI as accomplice,<sup>9852</sup> the Chamber finds it necessary to seek corroboration of Witness FAI's testimony in respect of this allegation. In the absence of any corroborating evidence brought by the Prosecution, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Nsabimana and/or Nteziryayo told the population to fight the "enemy" and its "accomplices", meaning Tutsis, at the public swearing-in ceremony of the *bourgmestre* of Ntyazo *commune* on 22 May 1994.

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<sup>9843</sup> T. 30 October 2002 pp. 96-97 (Witness FAI).

<sup>9844</sup> T. 4 November 2002 p. 11 (ICS) (Witness FAI).

<sup>9845</sup> T. 4 November 2002 pp. 97-98 (ICS) (Witness FAI).

<sup>9846</sup> T. 31 October 2002 p. 12 (ICS); T. 5 November 2002 pp. 33-34 (ICS) (Witness FAI).

<sup>9847</sup> T. 7 May 2007 p. 50 (Witness AND-75).

<sup>9848</sup> T. 7 May 2007 p. 27; T. 8 May 2007 p. 8 (Witness AND-75).

<sup>9849</sup> T. 7 May 2007 p. 28 (Witness AND-75).

<sup>9850</sup> T. 7 May 2007 p. 29 (Witness AND-75).

<sup>9851</sup> T. 7 May 2007 p. 30 (Witness AND-75).

<sup>9852</sup> T. 31 October 2002 pp. 11-12 (ICS); T. 5 November 2002 p. 34 (ICS) (Witness FAI); Defence Exhibit 535 (Nteziryayo) (Personal Particulars).

#### 3.6.34.4.2 Kirarambogo, Muganza *Commune* Meeting, 23 May 1994

3665. The Prosecution relies on the testimony of a single witness, Witness RV, in support of its allegation that Nteziryayo made an inciting speech during a meeting at Kirarambogo around 25 May 1994.<sup>9853</sup>

3666. The Chamber considers that because of his status as a detainee and also an accomplice, Witness RV may have had an incentive to implicate Nteziryayo or enhance Nteziryayo's role in the crimes in order to benefit from better treatment in connection with his own case, which was pending before the Rwandan judicial authorities when he testified in 2004.<sup>9854</sup> Consequently, his testimony will be treated with appropriate caution.

3667. Witness RV testified that, in his speech, Nteziryayo stated that he was responsible for instructing: (1) the population about how to use traditional weapons such as bows and arrows and spears; and (2) the youth to join the army. Nteziryayo also asked those who attended the meeting to exterminate all Tutsi accomplices.<sup>9855</sup> Witness RV further testified that after the meeting many people who survived previous massacres were killed, especially Tutsi women.<sup>9856</sup>

3668. The Chamber notes Witness RV's testimony to the effect that he took part in three meetings in Kirarambogo between April and June 1994.<sup>9857</sup> One of these meetings was chaired by Nteziryayo on around 25 May 1994 but he could not remember the exact date.<sup>9858</sup> The Chamber observes that Witness RV was a figure of authority at the time the meeting was alleged to have taken place. He affirmed that he convened and organised the meeting at issue.<sup>9859</sup> The Chamber thus considers that the ambiguity of his testimony as to the date of the meeting undermines his credibility.

3669. Nevertheless and in light of Witness RV's status as an accomplice witness as elaborated above, and in light of the credibility problems arising from his testimony, the Chamber finds it necessary to assess the existence of corroborating evidence with respect to this meeting. Noting the absence of any corroborating evidence brought by the Prosecution, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Nteziryayo incited the population to kill Tutsis at a public meeting in Kirarambogo, Muganza *commune* on 23 May 1994.

#### 3.6.34.4.3 Muyaga *Commune* Meeting, Around Mid-June 1994

3670. The Prosecution relies on the testimony of Witnesses FAB and QBY. The Chamber notes that Witness QBY was a detainee at the time of his testimony and that he may have had a

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<sup>9853</sup> T. 16 February 2004 pp. 48-49 (ICS); T. 19 February 2004 pp. 31-32 (ICS) (Witness RV).

<sup>9854</sup> T. 17 February 2004 pp. 35-36 (ICS); T. 18 February 2004 pp. 50-52 (ICS) (Witness RV).

<sup>9855</sup> T. 19 February 2004 pp. 31-32 (ICS) (Witness RV).

<sup>9856</sup> T. 16 February 2004 p. 50 (ICS) (Witness RV).

<sup>9857</sup> T. 16 February 2004 p. 48 (ICS) (Witness RV).

<sup>9858</sup> T. 16 February 2004 p. 48 (ICS); T. 16 February 2004 p. 55 (HC) (French); T. 19 February 2004 p. 32 (ICS) (Witness RV).

<sup>9859</sup> T. 19 February 2004 p. 30 (ICS) (Witness RV).

motive to implicate the Accused or enhance the Accused's role in the crimes. As a result, Witness QBY's testimony will be assessed with appropriate caution.

3671. The Chamber observes that Witness QBY's testimony corroborates that of Witness FAB in that Nteziryayo stood on a table while addressing the population during this meeting. Nteziryayo urged the audience to hunt down, flush out and kill Tutsis without any distinction.<sup>9860</sup> In addition, both witnesses testified that Nteziryayo used the words "lice" and "eggs" in his speech, which the witnesses understood to mean Tutsis and their offspring that needed to be killed.<sup>9861</sup> Ntakirutimana corroborated their understanding that proverbs referring to killing lice conveyed the idea that one needed to eliminate anything that disturbed one's life or situation.<sup>9862</sup> Witnesses FAB and QBY indicated that Nteziryayo made his speech after having been introduced as the new *préfet* of Butare.<sup>9863</sup> Both Witnesses QBY and FAB further testified that they attended the meeting from start to end and that after the meeting, killings of Tutsis occurred.<sup>9864</sup>

3672. Witness QBY placed the meeting around either 5 May 1994 or 5 June 1994 whereas Witness FAB referred to mid-June 1994.<sup>9865</sup> The Chamber considers that these are both estimates which do not automatically cast doubt on the witnesses' credibility, given the length of time that had elapsed since the event. The Chamber notes that Witnesses QBY and FAB are adamant that on the day of the meeting, Nteziryayo already held his position as *préfet* of Butare.<sup>9866</sup> Witness FAB even testified that the purpose of the meeting was to introduce Nteziryayo as the new *préfet*.<sup>9867</sup> Flowing from that, it appears that the meeting may have occurred on or after 21 June 1994, as Nteziryayo was appointed *préfet* of Butare on or around 17 June 1994, and his swearing-in ceremony took place on 21 June 1994.

3673. The Defence brought evidence regarding a meeting on 23 May 1994 in Mamba *secteur*, Muyaga *commune*, which contained similarities to the meeting testified to by Witnesses QBY and FAB.<sup>9868</sup> The Chamber does not exclude the possibility that this other meeting, as asserted by the Defence, actually occurred, however this evidence has no bearing upon the Chamber's assessment of the evidence related to the June 1994 meeting testified to by Witnesses QBY and FAB.

3674. The Chamber observes that there are discrepancies between the testimonies of Witnesses QBY and FAB with regard to the identity of the officials present at the meeting, the number of people who spoke and the order of the speeches made on that day.<sup>9869</sup> However, the Chamber finds that these discrepancies are minor and do not materially affect the credibility of

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<sup>9860</sup> T. 20 April 2004 pp. 20-21, 23-24 (Witness QBY); T. 5 April 2004 p. 26 (Witness FAB).

<sup>9861</sup> T. 19 April 2004 pp. 54-55 (Witness QBY); T. 5 April 2004 p. 26 (Witness FAB).

<sup>9862</sup> T. 13 September 2004 p. 70 (Ntakirutimana).

<sup>9863</sup> T. 5 April 2004 p. 24 (Witness FAB); T. 19 April 2004 p. 54 (Witness QBY).

<sup>9864</sup> T. 19 April 2004 pp. 52, 54, 57-58 (Witness QBY); T. 20 April 2004 p. 15 (Witness QBY); T. 5 April 2004 pp. 23-24, 26, 46-47 (Witness FAB).

<sup>9865</sup> T. 5 April 2004 p. 43 (Witness FAB); T. 20 April 2004 pp. 8, 11, 33, 37 (Witness QBY).

<sup>9866</sup> T. 5 April 2004 p. 24 (Witness FAB); T. 19 April 2004 p. 54 (Witness QBY).

<sup>9867</sup> T. 5 April 2004 pp. 23-24, 28 (Witness FAB).

<sup>9868</sup> T. 13 March 2007 pp. 4, 8-9 (Witness AND-60).

<sup>9869</sup> T. 5 April 2004 pp. 23-24, 48 (Witness FAB); T. 19 April 2004 pp. 52-56; T. 20 April 2004 pp. 12, 15 (Witness QBY).

the witnesses. The witnesses corroborated each other as to Nteziryayo's actions and words during the course of the meeting, and to the fact that killings of Tutsis occurred after the meeting. In the Chamber's view, the two witnesses provided specific and convincing evidence as elaborated above to establish beyond a reasonable doubt that during a meeting held in Muyaga *commune* around mid-June 1994, Nteziryayo incited people to kill Tutsis. The Chamber further finds this meeting was public and attended by the general population.<sup>9870</sup>

#### 3.6.34.4.4 Kibayi *Commune* Meeting, Mid- to Late June 1994

3675. All of the witnesses testified to attending a meeting held at a football field next to the Kibayi *commune* office in 1994.<sup>9871</sup> Prosecution Witnesses FAK and QBU gave conflicting evidence as to whether the meeting in question occurred in May or June 1994. While the previous statement of Witness FAK said the meeting occurred in May 1994, he testified that it actually took place in early June and estimated around 18 or 19 June 1994.<sup>9872</sup> Similarly, Witness QBU testified about a meeting that occurred around the end of May or early June 1994.<sup>9873</sup>

3676. According to both Prosecution witnesses, Nteziryayo was *préfet* at the time of the meeting and had just been appointed.<sup>9874</sup> When it was put to each Prosecution witness that the meeting to which they testified must have been in June 1994 since Nteziryayo took up duties as the *préfet* of Butare after 21 June 1994, Witness FAK maintained Nteziryayo was a *préfet* when he came in May 1994,<sup>9875</sup> while Witness QBU contested the validity of Nteziryayo's letter of appointment (Defence Exhibit 5), stating that it misstates Nteziryayo's date of appointment "as much later than the actual appointment."<sup>9876</sup>

3677. In addition to Defence Exhibit 5,<sup>9877</sup> the Chamber recalls Nteziryayo's testimony that the Interim Government decided to appoint him *préfet* of Butare on 17 June 1994<sup>9878</sup> and that his appointment as *préfet* was made public on 18 June 1994.<sup>9879</sup> Witness TQ testified that news of Nteziryayo's appointment as *préfet* was announced by radio broadcast on 18 June 1994.<sup>9880</sup> Witness RV testified that he attended Nteziryayo's swearing-in ceremony as *préfet* on the

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<sup>9870</sup> T. 19 April 2004 p. 52 (Witness QBY) (The meeting was attended by over 2,000 people); T. 5 April 2004 pp. 22, 38, 42 (Witness FAB) (Witness FAB knew about the meeting from public announcements and posters that were put up by the *commune* authorities); T. 5 April 2004 pp. 22-24, 48 (Witness FAB) (Witness FAB testified that almost the entire population of the *commune*, approximately 3,000 people, except children attended the meeting).

<sup>9871</sup> T. 14 April 2004 pp. 17-18 (Witness FAK); T. 13 April 2004 p. 8 (Witness QBU); T. 13 April 2004 p. 58 (ICS) (Witness QBU); T. 20 September 2006 p. 65 (Nsabimana); T. 5 June 2007 p. 44 (Nteziryayo); T. 1 February 2007 p. 9 (ICS) (Witness AND-11); T. 14 February 2007 pp. 55-56 (Witness AND-53); T. 8 March 2007 pp. 25-27 (Witness AND-64); T. 8 March 2007 p. 69 (ICS) (Witness AND-64); T. 5 December 2005 pp. 18-19 (Witness H1B6).

<sup>9872</sup> T. 15 April 2004 p. 24 (ICS) (Witness FAK).

<sup>9873</sup> T. 13 April 2004 p. 8; T. 13 April 2004 pp. 37, 54-55, 58 (ICS); T. 14 April 2004 p. 3 (Witness QBU).

<sup>9874</sup> T. 15 April 2004 p. 29 (ICS) (Witness FAK); T. 13 April 2004 p. 9; T. 13 April 2004 pp. 36-37, 56-58 (ICS); T. 14 April 2004 pp. 7-8 (Witness QBU).

<sup>9875</sup> T. 15 April 2004 pp. 29-30 (ICS) (Witness FAK).

<sup>9876</sup> T. 13 April 2004 p. 58 (ICS) (Witness QBU).

<sup>9877</sup> T. 7 June 2007 p. 15 (Nteziryayo); Defence Exhibit 5 (Nteziryayo) (Nteziryayo's Letter of Appointment).

<sup>9878</sup> T. 7 June 2007 p. 7 (Nteziryayo).

<sup>9879</sup> T. 21 June 2007 p. 50 (Nteziryayo).

<sup>9880</sup> T. 7 September 2004 pp. 18-19 (ICS); T. 9 September 2004 p. 33 (ICS) (Witness TQ).

morning of 19 June 1994,<sup>9881</sup> although Nteziryayo testified that the swearing-in ceremony took place on 21 June 1994.<sup>9882</sup> Having regard to the foregoing testimony, the Chamber is of the view that the meeting about which Witnesses FAK and QBU testified must have taken place after Nteziryayo assumed office as *préfet*.

3678. The Defence seeks to discredit the Prosecution witnesses not only on the basis that they confessed to committing crimes during the genocide and were detained together,<sup>9883</sup> but also because of the alleged inconsistency in their testimony, namely that Nteziryayo was *préfet* in May 1994 although he was not appointed to this post until the following month.<sup>9884</sup> In reply to the Prosecution's case, the Nteziryayo Defence led evidence from Nteziryayo as well as Defence Witnesses AND-11, AND-53, AND-64 and H1B6 about a meeting that occurred on 24 May 1994. Nteziryayo testified the meeting he attended at Kibayi was part of the tour of meetings that took place in Butare's southern *communes* between 22 and 26 May 1994, in accordance with the timetable agreed at the Security Council meeting of 20 May 1994.<sup>9885</sup>

3679. The Chamber considers the testimony of Nteziryayo and Witnesses AND-11, AND-53, AND-64 and H1B6 as to the meeting that occurred on 24 May 1994 to be mutually consistent. In particular, the testimonies were consistent with respect to such significant features as the arrival of the dignitaries at the meeting, the speakers who attended the meeting, the order in which they spoke, the purpose of the meeting and the content of the speakers' respective speeches. Most notably, Nteziryayo, as well as Defence Witnesses AND-11, AND-53, AND-64 and H1B6, all testified that Nsabimana chaired the meeting in his role as the *préfet* of Butare, while Nteziryayo attended in his capacity as a colonel.<sup>9886</sup>

3680. The Chamber is mindful that there are also some similarities common to both the Prosecution and the Defence's evidence. For example, all the witnesses testified that the meeting they attended occurred in the same venue, namely the football pitch next to the Kibayi *commune* office,<sup>9887</sup> at more or less approximately the same time, namely the morning;<sup>9888</sup> all

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<sup>9881</sup> T. 17 February 2004 p. 6 (ICS); T. 19 February 2004 pp. 32, 33 (ICS) (Witness RV).

<sup>9882</sup> T. 7 June 2007 pp. 25, 30 (Nteziryayo).

<sup>9883</sup> Nteziryayo Closing Brief, para. 226.

<sup>9884</sup> Nteziryayo Closing Brief, paras. 223-249.

<sup>9885</sup> T. 23 May 2007 pp. 21, 23-24, 39-40 (Nteziryayo).

<sup>9886</sup> T. 5 June 2007 pp. 46-47, 59 (Nteziryayo); T. 1 February 2007 pp. 21, 28 (Witness AND-11); T. 5 February 2007 pp. 53-54 (Witness AND-11); T. 14 February 2007 pp. 55, 59 (Witness AND-53); T. 15 February 2007 p. 70 (Witness AND-53); T. 8 March 2007 p. 30 (Witness AND-64); T. 12 March 2007 pp. 15-17 (Witness AND-64); T. 6 December 2005 p. 15 (Witness H1B6).

<sup>9887</sup> T. 14 April 2004 pp. 17-18 (Witness FAK); T. 13 April 2004 p. 8 (Witness QBU); T. 13 April 2004 p. 58 (ICS) (Witness QBU); T. 5 June 2007 p. 44 (Nteziryayo); T. 1 February 2007 p. 9 (ICS) (Witness AND-11); T. 14 February 2007 pp. 55-56 (Witness AND-53); T. 8 March 2007 pp. 25-27 (Witness AND-64); T. 8 March 2007 p. 69 (ICS) (Witness AND-64); T. 5 December 2005 pp. 18-19 (Witness H1B6).

<sup>9888</sup> T. 14 April 2004 p. 18 (Witness FAK) (meeting started between 9.00 a.m. and 10.00 a.m., and ended at about 2.00 p.m.); T. 13 April 2004 p. 8 (Witness QBU) (meeting started around 11.00 a.m. and finished around 2.30 p.m.); T. 1 February 2007 pp. 10, 13 (ICS) (Witness AND-11) (meeting started between 10.30 a.m. and 11.00 a.m.); T. 14 February 2007 p. 57 (Witness AND-53); T. 15 February 2007 p. 46 (Witness AND-53) (meeting began at 11.00 a.m.); T. 8 March 2007 p. 27 (Witness AND-64) (meeting started at 11.00 a.m. and ended at 1.00 p.m.); T. 5 December 2005 pp. 16, 21 (Witness H1B6) (meeting started around 10.30 or 11.00 a.m. and ended around 1.00 p.m. or 1.30 p.m.).

the witnesses also testified to the presence of the Kibayi *bourgmestre*;<sup>9889</sup> with the exception of Prosecution Witness QBU and Defence Witness AND-11, all the witnesses testified about Colonel Muvunyi's speech and the firing of gunshots as a test for the population.<sup>9890</sup> However the Chamber considers these similarities are fortuitous. The Chamber considers that meetings held in the *commune* involving senior government figures would likely take place at or near the Kibayi *commune* office, and be attended by the Kibayi *bourgmestre*. As for the content of Colonel Muvunyi's speech, it is not unlikely that he gave the same or similar speeches on multiple occasions.

3681. The Chamber also notes the patent differences between the opposing parties' evidence. The most salient difference between the Prosecution and Defence evidence concerns Nteziryayo's alleged position at the time of the meeting; according to the Prosecution witnesses, Nteziryayo was *préfet* at the time of the meeting, whereas the Defence maintains Nsabimana was *préfet*. Noting that both Prosecution witnesses knew Nteziryayo during 1994<sup>9891</sup> and both positively identified Nteziryayo in court,<sup>9892</sup> the Chamber considers this significant discrepancy cannot be attributed to a case of misidentification. Additionally, while the Prosecution witnesses testify to the presence of only three speakers at the meeting, the Defence witnesses make reference to the attendance of other significant dignitaries, including, *inter alia*, Nsabimana and Ruzindaza.<sup>9893</sup>

3682. Having had regard to the totality of the evidence before it, the Chamber considers the evidence led by the parties refers to two different meetings.

3683. Even if the Chamber were to accept Nsabimana's testimony to the effect that there was a round of meetings held in the border *communes* between 22 and 26 May 1994, of which one meeting may have been held in Kibayi *commune* around 24 May 1994, the Chamber does not consider that the Prosecution relied on that meeting as part of its case against Nteziryayo. While the summary of anticipated evidence of Witness FAQ in the Prosecution Pre-Trial Brief showed that Witness FAQ would testify about a meeting held on 25 or 26 May 1994 at the Kibayi *commune* office, Witness FAQ did not ultimately testify at trial. The Prosecution did not lead other evidence as to a meeting held at or near the Kibayi *commune* office on or around 25 or 26 May 1994.

3684. The Chamber observes that Nteziryayo testified that the meeting on 24 May 1994 was the only meeting he attended in Kibayi *commune* between April and July 1994.<sup>9894</sup> Defence Witnesses AND-11 and AND-53 similarly testified that the meeting on 24 May 1994 was the

<sup>9889</sup> T. 14 April 2004 pp. 18-19 (Witness FAK); T. 15 April 2004 p. 47 (Witness FAK); T. 13 April 2004 p. 56 (ICS) (Witness QBU); T. 5 June 2007 p. 47 (Nteziryayo); T. 1 February 2007 p. 17 (ICS) (Witness AND-11); T. 7 February 2007 p. 29 (ICS) (Witness AND-11); T. 14 February 2007 pp. 59, 62 (Witness AND-53); T. 8 March 2007 p. 28 (Witness AND-64); T. 5 December 2005 pp. 18-19 (Witness H1B6).

<sup>9890</sup> T. 14 April 2004 pp. 24-25 (Witness FAK); T. 5 June 2007 p. 18 (Nteziryayo); T. 14 February 2007 p. 71 (Witness AND-53); T. 8 March 2007 p. 33 (Witness AND-64); T. 5 December 2005 pp. 19-20 (Witness H1B6).

<sup>9891</sup> T. 13 April 2004 p. 13 (Witness QBU); T. 13 April 2004 p. 55 (ICS) (Witness QBU); T. 14 April 2004 p. 36 (ICS); T. 14 April 2004 p. 38 (Witness FAK); T. 15 April 2004 pp. 9, 13-16 (Witness FAK).

<sup>9892</sup> T. 13 April 2004 pp. 13-14 (Witness QBU); T. 14 April 2004 pp. 38-39 (Witness FAK).

<sup>9893</sup> T. 1 February 2007 p. 15 (ICS) (Witness AND-11); T. 14 February 2007 p. 70 (Witness AND-53); T. 8 March 2007 p. 26 (Witness AND-64); T. 5 December 2005 p. 18 (Witness H1B6); T. 6 December 2005 p. 15 (Witness H1B6).

<sup>9894</sup> T. 5 June 2007 pp. 61-63 (Nteziryayo).

only meeting that took place in Kibayi *commune*.<sup>9895</sup> In contrast, Prosecution Witness FAK testified that a series of meetings were held between April and July 1994 at the Kibayi *commune* office, only one of which Witness FAK attended since the others were only for authorities, and not the general population.<sup>9896</sup> Nsabimana also testified to an occasion where he visited Kibayi *commune* together with Nteziryayo, which Nteziryayo refuted.<sup>9897</sup> In the circumstances, while the Chamber considers that a meeting may have taken place on 24 May 1994, as the Defence contends, the Chamber finds a second meeting took place in Kibayi *commune* around mid to late June 1994 when Nteziryayo was *préfet* and which is the subject of present consideration. Accordingly, the Chamber considers that the evidence led by the Defence is not relevant.

3685. Having established that the Defence evidence does not rebut the Prosecution evidence with respect to the meeting at the Kibayi *commune* office where Nteziryayo was *préfet*, the Chamber will now consider the Prosecution evidence with respect to the allegation of incitement at the later Kibayi meeting.

3686. The Chamber notes Witnesses FAK and QBU are the Prosecution's only witnesses to testify in respect of this meeting. The Chamber recalls that Witnesses FAK and QBU had both pled guilty to genocide in Rwanda in 1999 and 2000 respectively and were detained witnesses at the time of their respective testimony.<sup>9898</sup> Both were still awaiting trial in Rwanda at the time of their testimony before this Tribunal.<sup>9899</sup> As such, the Chamber considers that these witnesses may have an interest in attributing responsibility for acts they committed during the genocide as being authorised by the authorities and therefore officially sanctioned in order to potentially reduce their respective sentences. The foregoing aspects affect the reliability of these witnesses' evidence and their testimony should therefore be viewed with appropriate caution.

3687. The Chamber accepts that while in detention, Prosecution Witnesses QBU and FAK did not attend the same *Gacaca* proceedings.<sup>9900</sup> They met briefly in prison but did not share a cell.<sup>9901</sup> In the circumstances, the Chamber is satisfied that the witnesses did not discuss their experiences while detained together.

3688. The Chamber considers the evidence of Prosecution Witnesses FAK and QBU was mutually consistent. Both witnesses testified that the meeting was held at a football pitch located in front of the Kibayi *commune* office;<sup>9902</sup> Nteziryayo was either *préfet* or being introduced as *préfet* at that meeting.<sup>9903</sup>

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<sup>9895</sup> T. 5 February 2007 pp. 59, 62-63 (Witness AND-11); T. 15 February 2007 pp. 43, 59 (Witness AND-53).

<sup>9896</sup> T. 14 April 2004 pp. 17, 66 (Witness FAK).

<sup>9897</sup> T. 20 September 2006 p. 64 (Nsabimana); T. 5 June 2007 pp. 61-63 (Nteziryayo).

<sup>9898</sup> T. 14 April 2004 pp. 53-54 (Witness FAK); T. 15 April 2004 p. 44 (ICS) (Witness FAK); T. 13 April 2004 p. 7 (Witness QBU).

<sup>9899</sup> T. 14 April 2004 p. 54 (Witness FAK); T. 13 April 2004 pp. 24-25 (ICS) (Witness QBU).

<sup>9900</sup> T. 13 April 2004 pp. 32-33 (ICS) (Witness QBU).

<sup>9901</sup> T. 14 April 2004 p. 64 (ICS) (Witness FAK).

<sup>9902</sup> T. 14 April 2004 pp. 17-18 (Witness FAK); T. 13 April 2004 p. 8 (Witness QBU); T. 13 April 2004 p. 58 (ICS) (Witness QBU).

<sup>9903</sup> T. 15 April 2004 p. 29 (ICS) (Witness FAK); T. 13 April 2004 pp. 9, 36-37 (Witness QBU); T. 13 April 2004 pp. 56-58 (ICS) (Witness QBU); T. 14 April 2004 pp. 7-8 (Witness QBU).



3689. During this meeting, Nteziryayo made inflammatory statements calling upon the population to abduct and kill Tutsi women married to Hutus, as well as their Hutu husbands, if they refused to be separated from their wives.<sup>9904</sup> Nteziryayo further instructed the population to flush out Tutsi children from their grandparents' houses and kill them.<sup>9905</sup> Finally, both witnesses testified to the presence of the same speakers at the meeting (the Kibayi *bourgmestre*, Nteziryayo and Muvunyi<sup>9906</sup>) and to the ensuing killings following Nteziryayo's speech.<sup>9907</sup>

3690. The Chamber notes discrepancies between Witness FAK's statement of 24 February 2000 and his testimony. For example, in his statement Witness FAK declared that the meeting took place in May 1994 and that it was *conseiller* Ndagijimana who informed him about it.<sup>9908</sup> In his testimony, Witness FAK testified that it was the *bourgmestre* of Kibayi who informed the *secteur's* population of the meeting.<sup>9909</sup> He further rectified, in cross-examination, that he had been informed of the meeting by the *responsable*, Jérémie Ndaribumbye.<sup>9910</sup> In addition, he testified that the meeting actually took place in early June 1994.<sup>9911</sup> In the Chamber's view, the aforementioned discrepancies are minor and do not undermine Witness FAK's credibility.

3691. Having regard to the detailed and consistent nature of the evidence of Witnesses FAK and QBU, both internally and *vis-à-vis* each other's evidence, the Chamber considers it established that Nteziryayo, in his capacity as *préfet*, attended a public meeting on a football pitch next to the Kibayi *commune* office in Nyabisigara *cellule*, Mukindo *secteur*, Kibayi *commune*, which was intended for the population of that *commune*<sup>9912</sup> and at which he incited the population to flush out and kill the remaining Tutsi survivors in the *commune*. As a result of this incitement, members of the population carried out searches and killed surviving Tutsis.

### 3.6.35 Megaphone Announcements and Directives, Late May and June 1994

#### 3.6.35.1 Introduction

3692. The Kanyabashi Indictment and the Nsabimana and Nteziryayo Indictment allege that from April to July 1994 prominent persons, including Nsabimana and Kanyabashi engaged in incitement to hatred and violence.<sup>9913</sup> Kanyabashi "not only called on, but aided and abetted

<sup>9904</sup> T. 14 April 2004 pp. 20-22, 24 (Witness FAK); T. 13 April 2004 p. 9 (Witness QBU); T. 13 April 2004 pp. 64, 72-73 (ICS) (Witness QBU).

<sup>9905</sup> T. 14 April 2004 p. 20 (Witness FAK); T. 13 April 2004 p. 9 (Witness QBU); T. 13 April 2004 pp. 72-73 (ICS) (Witness QBU).

<sup>9906</sup> T. 14 April 2004 pp. 18-19 (Witness FAK); T. 13 April 2004 p. 8 (Witness QBU); T. 13 April 2004 p. 56 (ICS) (Witness QBU).

<sup>9907</sup> T. 14 April 2004 p. 32 (ICS) (Witness FAK); T. 13 April 2004 p. 9 (Witness QBU); T. 13 April 2004 pp. 11-12 (ICS) (Witness QBU).

<sup>9908</sup> Defence Exhibit 220 (Nteziryayo) (24 February 2000, Statement of Witness FAK).

<sup>9909</sup> T. 14 April 2004 p. 18 (Witness FAK).

<sup>9910</sup> T. 15 April 2004 p. 19 (ICS) (Witness FAK).

<sup>9911</sup> T. 15 April 2004 pp. 19, 27 (ICS) (Witness FAK).

<sup>9912</sup> T. 14 April 2004 p. 18 (Witness FAK) (*bourgmestre* of Kibayi informed the *secteur's* population of the meeting; the meeting was intended for the entire population of Kibayi *commune*); T. 14 April 2004 p. 19; T. 15 April 2004 pp. 20, 22 (Witness FAK) (meeting attended by more than 1,000 people).

<sup>9913</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts); Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts).

the population to slaughter Tutsi in Butare *préfecture*.<sup>9914</sup> The Nsabimana and Nteziryayo Indictment similarly alleges that Nsabimana “not only incited, but aided and abetted the population in massacring the Tutsi in Butare *préfecture*.”<sup>9915</sup>

3693. The Kanyabashi Indictment also alleges that on several occasions between 20 April and June 1994, notably in June 1994 near Butare town, Kanyabashi “encouraged and instructed soldiers and militiamen, and certain members of the civilian population, to search for the Tutsis who had escaped the massacres, in order to exterminate them.”<sup>9916</sup> Further, the Kanyabashi Indictment alleges that in or around late May 1994, on at least one occasion, Kanyabashi drove through Butare town and used a megaphone to encourage the population to systematically search for the enemy as a result of which, immediately afterwards, more Tutsis were killed in Ngoma *commune*.<sup>9917</sup> During this period, the search for and elimination of Tutsis took place throughout Butare.<sup>9918</sup>

3694. According to the Prosecution, Kanyabashi’s role in the genocide conspiracy was to, *inter alia*, attend meetings, give instructions to kill Tutsis in hiding and use his position and power to incite the population to join in the killings.<sup>9919</sup> The Prosecution submits that Kanyabashi directly participated in the massacres of Tutsis through his acts, conduct and utterances in Butare, between April and July 1994.<sup>9920</sup> The Prosecution contends that Kanyabashi was a deeply influential figure in Ngoma *commune*, whose orders to the population were obeyed. The population obeyed Kanyabashi because he represented the State, and they deemed the orders to be morally legitimate.<sup>9921</sup>

3695. In April, May and June 1994 Kanyabashi allegedly incited the population of Butare town to search for and exterminate Tutsis.<sup>9922</sup> The Prosecution submits that Kanyabashi used his authority as Ngoma *bourgmestre* to order inhabitants to clear the bushes with their work implements, which was double-speak for eliminating the hiding places of Tutsis and killing Tutsis found there.<sup>9923</sup> The Prosecution contends that Kanyabashi issued the 24 May 1994 Directive on *umuganda*,<sup>9924</sup> and that pursuant to this Directive, *umuganda* to search for and kill Tutsis was carried out.<sup>9925</sup> The Prosecution cites these submissions in support of the count of genocide against Kanyabashi.<sup>9926</sup> The Prosecution further submits that Nsabimana participated in numerous meetings in Butare *préfecture*, including the same meeting at the cemetery next to the University of Butare in June 1994 attended by Kanyabashi, during which decisions were

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<sup>9914</sup> Para. 6.58 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>9915</sup> Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana); Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana).

<sup>9916</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>9917</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts).

<sup>9918</sup> Para. 6.53 of the Kanyabashi Indictment (not in support of counts).

<sup>9919</sup> Prosecution Closing Brief, p. 388, para. 12.

<sup>9920</sup> Prosecution Closing Brief, p. 405, paras. 75-76.

<sup>9921</sup> Prosecution Closing Brief, pp. 385-387, 406, paras. 4, 7, 79.

<sup>9922</sup> Prosecution Closing Brief, pp. 396-398, 407, 420-421, paras. 35-39, 47, 81-82, 126-128.

<sup>9923</sup> Prosecution Closing Brief, pp. 406, 411-412, 442, paras. 79, 98, 205; *see also* Prosecution Closing Argument, T. 21 April 2009 pp. 17-18, 21; Prosecution Closing Brief, pp. 3, 65, 129-130, 133, paras. 9, 122, 354-355, 365.

<sup>9924</sup> Prosecution Closing Brief, p. 442, para. 205 (citing Prosecution Exhibit 132C (Kanyabashi’s Letter to *conseillers* of Ngoma *commune* entitled *Community Work of 27 May 1994*, 24 May 1994)).

<sup>9925</sup> Prosecution Closing Brief, pp. 406-407, paras. 79, 82.

<sup>9926</sup> Prosecution Closing Brief, p. 406, para. 79.

made to further the extermination of Tutsis.<sup>9927</sup> Nsabimana's role in the conspiracy to commit genocide was, *inter alia*, to convene and attend meetings to give effect to the plan.<sup>9928</sup> The Prosecution relies upon the testimony of Prosecution Witness FAC and Expert Witness Ntakirutimana.

3696. Further, the Prosecution submits that around late May 1994 and in mid-June 1994, Kanyabashi drove through Butare town and used a megaphone to incite the population to search for the "enemy", at a time when Tutsis were considered "enemies". Immediately after this announcement, searches were conducted under the guise of communal work. Tutsis who were hiding were flushed out and killed. The Prosecution contends that after Kanyabashi's megaphone announcement in June 1994, Tutsis who had been hiding in a mosque were killed.<sup>9929</sup> In support of these submissions, the Prosecution relies on the evidence of Prosecution Witnesses QI, QJ and TK and Expert Witness Ntakirutimana.

3697. In addition to its submissions on the vagueness of Paragraph 6.45 of the Kanyabashi Indictment considered below, the Kanyabashi Defence submits that only circumstantial evidence supports the contention that Kanyabashi intended for Tutsis to be killed when he issued orders to clear bushes. Clearing bushes is not *per se* criminal conduct and could have been aimed at preventing the RPF from advancing.<sup>9930</sup> The Kanyabashi Defence submits that there is no conclusive evidence that Tutsis were found or killed as a result of the clearing operation carried out pursuant to Kanyabashi's 24 May 1994 Directive on *umuganda*.<sup>9931</sup> As concerns the subsequent cemetery meeting, the Kanyabashi Defence submits Kanyabashi was not present. The Kanyabashi Defence also submits the purpose of the bush-clearing was not to kill civilians, but to prevent the impending approach of the RPF. As such, no criminal consequence is alleged.<sup>9932</sup> Lastly, the Kanyabashi Defence challenges the credibility of Witness FAC who was a detainee and part of a group that fabricated false testimony against Kanyabashi.<sup>9933</sup> The Defence relies upon the testimony of Nsabimana.

3698. Further, the Kanyabashi Defence contends that Kanyabashi never incited the population with a megaphone, and submits that Prosecution Witnesses QJ, TK and QI's evidence on this allegation is vague, inconsistent and lacks credibility. The Defence submits that there is no conclusive evidence that Tutsis were killed as a result of the megaphone announcement.<sup>9934</sup>

3699. The Kanyabashi Defence also submits that Prosecution Witnesses QJ, QI and TK attended meetings of the *Ibuka* association where they were asked to falsely accuse Kanyabashi of using a megaphone from a moving vehicle to incite people to kill Tutsis.<sup>9935</sup> The Kanyabashi Defence relies on the testimony of Kanyabashi Defence Witnesses D-2-14-W,

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<sup>9927</sup> Prosecution Closing Brief, pp. 231, 275, paras. 9-10, 148.

<sup>9928</sup> Prosecution Closing Brief, p. 232, paras. 14-15.

<sup>9929</sup> Prosecution Closing Brief, pp. 396-397, 407, paras. 36, 38-39, 81-82.

<sup>9930</sup> Kanyabashi Closing Brief, paras. 67-69, 342; Kanyabashi Closing Argument, T. 29 April 2009 p. 13.

<sup>9931</sup> Kanyabashi Closing Brief, para. 69 (citing Prosecution Exhibit 132C (Kanyabashi's Letter to *conseillers* of Ngoma commune entitled *Community Work of 27 May 1994*, 24 May 1994)).

<sup>9932</sup> Kanyabashi Closing Brief, paras. 339, 342-344.

<sup>9933</sup> Kanyabashi Closing Brief, para. 73.

<sup>9934</sup> Kanyabashi Closing Brief, paras. 286, 296, 300-302, 309-311.

<sup>9935</sup> Kanyabashi Closing Brief, paras. 280, 302.

D-2-18-O, D-2-5-I, D-2-13-O, D-13-D, D-2-YYYY, D-21-B and D-2-21-T, Nyiramasuhuko Defence Witnesses WKKTD and WMKL and Nteziryayo Defence Witness AND-17.<sup>9936</sup>

3700. Regarding Nsabimana, in addition to its submissions on the defective nature of the Nsabimana and Nteziryayo Indictment with respect to this allegation, considered below, the Nsabimana Defence denies that Nsabimana was present at the cemetery meeting in question and submits Witness FAC's testimony is false.<sup>9937</sup> In support of these contentions, the Nsabimana Defence relies upon the testimony of Nsabimana.

### 3.6.35.2 Preliminary Issues

#### *Paragraphs 6.45 and 6.58 of the Kanyabashi Indictment*

3701. The Kanyabashi Defence submits that Paragraph 6.45 of the Kanyabashi Indictment alleging that Kanyabashi instructed searches of Tutsis is impermissibly vague insofar as it fails to specify the material facts underpinning this allegation, such as an identifiable crime or specific incident, such that Kanyabashi was unable to prepare his defence.<sup>9938</sup> The Kanyabashi Defence also submits that Paragraph 6.58 of the Kanyabashi Indictment alleging that Kanyabashi aided and abetted the killing of Tutsis throughout Butare *préfecture* is vague for failing to provide a specific time or location of any such incidents, failing to outline any specific actions of Kanyabashi's, and failing to identify any victims. The Kanyabashi Defence also argues that the meeting about which Prosecution Witness FAC testified is not mentioned in the Kanyabashi Indictment and that the Indictment is therefore defective.<sup>9939</sup>

3702. Paragraph 6.45 of the Kanyabashi Indictment states that between 20 April and June 1994, Kanyabashi encouraged and instructed soldiers, militiamen and civilians to search for Tutsis in order to exterminate them. Although the time frame of "20 April to June 1994" is broad, the Chamber notes that the same paragraph alleges that these instructions were notably given on three specific occasions, including 21 April in Butare, in late April in Save and in June 1994 near Butare [town].<sup>9940</sup> Paragraph 6.58 states that between April and July 1994, Kanyabashi "not only called on, but aided and abetted the population in massacring the Tutsi in Butare *préfecture*."

3703. The Chamber notes that the Prosecution alleged at trial that Kanyabashi ordered *umuganda* or searches for Tutsis on 27 May 1994, in order to kill them.<sup>9941</sup> The Prosecution also alleged Kanyabashi gave orders sometime in June 1994 at a meeting held at the cemetery next to Butare University where authorities, including Kanyabashi, incited people to continue the searches, carry out patrols and set up roadblocks.<sup>9942</sup>

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<sup>9936</sup> The Chamber notes that it has previously set out the evidence of Witness D-2-21-T as it relates to the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>9937</sup> Nsabimana Closing Brief, paras. 815, 818; T. 21 September 2006 p. 76 (Nsabimana).

<sup>9938</sup> Kanyabashi Closing Brief, para. 313.

<sup>9939</sup> Kanyabashi Closing Brief, paras. 319-320.

<sup>9940</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

<sup>9941</sup> Prosecution Closing Brief, pp. 406-407, paras. 79, 82.

<sup>9942</sup> Prosecution Closing Brief, p. 275, para. 148; T. 3 March 2004 p. 69 (Witness FAC).

3704. Furthermore, the Chamber notes that neither Paragraph 6.45 nor 6.58 make any reference to any orders given in May 1994, or to Kanyabashi's alleged May 1994 Directive for *umuganda*, for which reason the Chamber finds the Indictment defective in this regard.

3705. The Chamber has reviewed the Prosecution Pre-Trial Brief and its Appendix, and the Prosecution opening statement, neither of which make any reference to Kanyabashi's alleged orders or to the May 1994 Directive for *umuganda* to search for and kill Tutsis. The Chamber concludes that the defects in Paragraphs 6.45 and 6.58 of the Kanyabashi Indictment were not cured with reference to the allegation that Kanyabashi ordered *umuganda* or searches for Tutsis on 27 May 1994, in order to kill them. As such, the Chamber declines to make a finding on the allegation concerning the issuance of a directive in May 1994 calling for *umuganda*. In any event, the Chamber considers that the evidence led by the Prosecution was not sufficient to establish beyond a reasonable doubt that Kanyabashi ordered the population to kill Tutsis in late-May 1994.

3706. With reference to orders for searches given at a cemetery meeting in June 1994, Paragraph 6.45 refers to one event which occurred in June 1994 near Butare, when instructions were given. However, the Chamber considers the reference to both the time period and location is vague. While the Chamber is mindful that it is not always possible to provide a precise date, the reference also fails to adequately identify with any precision the location as to where Kanyabashi is alleged to have incited the population to commit genocide.<sup>9943</sup> Paragraph 6.58 similarly fails to provide any instances of aiding and abetting by Kanyabashi. The Chamber thus finds that Paragraphs 6.45 and 6.58 of the Kanyabashi Indictment are defective for failing to provide Kanyabashi with adequate notice that he would be held responsible for issuing specific orders to the population at a cemetery meeting to search for Tutsis at particular locations within and around Butare town in June 1994. The Chamber will consider below whether the Indictment is cured of its defects.

*Paragraphs 6.28, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment*

3707. The Prosecution, relying on Witness FAC, also alleges that Nsabimana was present with Kanyabashi at the cemetery meeting in June 1994.<sup>9944</sup> However, the Nsabimana Defence submits that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment alleging Nsabimana's involvement in meetings is impermissibly vague because it does not give an indication of the meeting dates, venues, attendees or the number of meetings.<sup>9945</sup> The Nsabimana Defence also submits that Paragraphs 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment alleging Nsabimana incited and aided and abetted genocide are impermissibly vague because they fail to specify how and when Nsabimana incited and aided and abetted.<sup>9946</sup>

3708. Paragraph 6.28 alleges that Nsabimana took part in meetings with his *bourgmestres* at which the progress of the massacres and the means by which to complete them was discussed. Insofar as the cemetery meeting's participants are said to have been *bourgmestres* and in light

<sup>9943</sup> See *Muvunyi I*, Judgement (AC), paras. 121-122.

<sup>9944</sup> Prosecution Closing Brief, p. 275, para. 148; T. 3 March 2004 p. 69 (Witness FAC).

<sup>9945</sup> Nsabimana Closing Brief, paras. 333-334.

<sup>9946</sup> Nsabimana Closing Brief, paras. 35-44.

of the alleged presence of, *inter alia*, *Bourgmestre* Kanyabashi at the cemetery meeting, the Chamber considers the June meeting in question can be characterised as a meeting among *bourgmestres*. However, the Chamber notes that Paragraph 6.28 only specifies one meeting, namely one convened by Nyiramasuhuko in April 1994, but fails to specify the number, dates or location of other alleged meetings. With respect to Paragraphs 6.32 and 6.53, the Chamber agrees these paragraphs are vague as they fail to provide any details of incidents upon which the Prosecution would rely.

3709. Insofar as Paragraphs 6.28, 6.32 and 6.53 do not refer to any meeting held in June 1994 in the cemetery next to Butare University, the Chamber finds these paragraphs of the Nsabimana and Nteziryayo Indictment defective.

#### *Curing of Indictment Defects*

3710. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness FAC, who was expected to testify with respect to both Kanyabashi's and Nsabimana's role at the meeting at the cemetery next to the University of Butare in June 1994. Witness FAC was expected to testify that Kanyabashi convened a rally held in the cemetery next to Butare University, and both *Préfet* Nsabimana and *Bourgmestre* Kanyabashi stated that any Hutus sheltering Tutsis should be eliminated. Following the meeting, the population killed many Tutsis and understood that they could kill with impunity.<sup>9947</sup>

3711. Witness FAC's statement of 23 February 2000 indicated that in early June 1994, he attended a rally held in the cemetery next to Butare University and convened by Kanyabashi, at which *Préfet* Nsabimana and Minister of Interior Kalimanzira were also present. Two thousand persons attended the rally which lasted about one and a half hours. *Préfet* Nsabimana said any Hutus that sheltered a Tutsi should be eliminated. Kanyabashi spoke along the same lines.<sup>9948</sup>

3712. The Chamber observes that Witness FAC's previous statement is consistent with the summary of his expected testimony contained in the Appendix to the Pre-Trial Brief. Witness FAC's previous statement was disclosed to the Defence in December 2000, well before the commencement of Witness FAC's testimony in March 2004. The Chamber therefore finds that both Defence teams received sufficient notice of the Prosecution's intention to lead evidence with respect to the allegation in support of Counts 1 and 4 of the Kanyabashi Indictment and the Nsabimana and Nteziryayo Indictment.

3713. For the foregoing reasons, the Chamber considers that the defect in Paragraphs 6.45 and 6.58 of the Kanyabashi Indictment, as well as Paragraphs 6.28, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment, were cured by the disclosure of timely, clear and consistent information and the Defence did not suffer prejudice in the preparation of its case.

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<sup>9947</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAC (15).

<sup>9948</sup> 23 February 2000, Statement of Witness FAC, disclosed 15 November 2000.

*Paragraph 5.8 of the Kanyabashi Indictment*

3714. The Kanyabashi Defence submits that Paragraph 5.8 of the Kanyabashi Indictment, alleging that Kanyabashi incited the population of Butare town with a megaphone in or around late May 1994, is impermissibly vague insofar as it fails to specify a precise date or place for this incident, and does not identify a victim. The Kanyabashi Defence submits that, as such, Kanyabashi was unable to prepare his defence.<sup>9949</sup>

3715. Paragraph 5.8 alleges that from April to July 1994, prominent figures of authority propagated incitement to hatred and violence, that Kanyabashi and others publicly incited people to exterminate Tutsis and their “accomplices”, and that in or around late May 1994, on at least one occasion, Kanyabashi drove through Butare town and used a megaphone to encourage the population to systematically search for the enemy as a result of which, immediately afterwards, more Tutsis were killed in Ngoma *commune*.<sup>9950</sup> The Chamber observes that the latter sentences in Paragraph 5.8 concerning the megaphone announcements identify the alleged perpetrator (Kanyabashi), the alleged crime (incitement), the location of this incident (Butare town), the approximate time of the allegation (on at least one occasion in or around late May 1994), and the means by which it was committed (by megaphone while driving through town). The Chamber finds that Paragraph 5.8 was sufficiently precise to provide notice to Kanyabashi of the Prosecution’s intention to lead evidence on this allegation with respect to an incident of incitement by megaphone occurring around late May 1994.

3716. Insofar as the Prosecution also relied upon Prosecution Witness QI, who testified about a megaphone announcement made by Kanyabashi in mid-June 1994,<sup>9951</sup> the Chamber observes that Paragraph 5.8 states that Kanyabashi incited the population with a megaphone from a vehicle “on at least one occasion”. As such, evidence led in support of this allegation may relate to more than one incident of incitement via megaphone in Butare town during the said period. The Chamber considers that evidence about a megaphone announcement by Kanyabashi in mid-June 1994 falls within the scope of Paragraph 5.8 of the Kanyabashi Indictment.

3717. In respect of the instructions issued by megaphone in June 1994, the Chamber also notes that one of the three occasions identified in Paragraph 6.45 on which the Prosecution alleged Kanyabashi encouraged and instructed searches of Tutsis occurred in June 1994 near Butare [town].<sup>9952</sup> In addition to specifying an approximate period of time during which the alleged orders were given (in June 1994), Paragraph 6.45 of the Kanyabashi Indictment also identifies the alleged perpetrator (Kanyabashi), the alleged crime (ordering his subordinates to search for Tutsis in order to exterminate them), the identity of his alleged subordinates (soldiers, militiamen and members of the civilian population), and the location of Kanyabashi’s alleged instructions (Butare town). While the Prosecution could have employed precise legal terms to indicate the alleged criminal conduct, in the Chamber’s view, it is nevertheless clear that where Paragraph 6.45 refers to Kanyabashi *instructing* soldiers, militiamen and civilians to search for Tutsis, this sentence is alleging that Kanyabashi *ordered*

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<sup>9949</sup> Kanyabashi Closing Brief, para. 301.

<sup>9950</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts).

<sup>9951</sup> T. 23 March 2004 pp. 59-62 (ICS); T. 24 March 2004 p. 70 (ICS) (Witness QI).

<sup>9952</sup> Para. 6.45 of the Kanyabashi Indictment (in support of all counts).

these groups to search for Tutsis in order to exterminate them. In light of the foregoing, the Chamber finds that Paragraph 6.45 was sufficiently precise to provide notice to Kanyabashi of the Prosecution's intention to lead evidence in relation to an incident of incitement by megaphone occurring in June 1994.

3718. In any event, the Chamber notes the Kanyabashi Defence did not object to the testimony of Witness QI with respect to the megaphone incident of mid-June 1994 at trial.

*Notice of Alleged Mosque Killings and the Killing of Tutsi Boys at the BPO*

3719. Paragraph 5.8 of the Kanyabashi Indictment alleges that immediately after Kanyabashi's megaphone announcement in Butare town, more Tutsis were killed in Ngoma *commune*.<sup>9953</sup> The Prosecution relied on Witness QI in submitting that two watchmen were killed at a mosque following Kanyabashi's alleged announcement. The Prosecution also led evidence through Witness TK that after Kanyabashi's announcement soldiers found her and other Tutsis at the convent where they were seeking refuge, and took the Tutsi boys to the BPO where they were subsequently killed.<sup>9954</sup>

3720. Paragraph 5.8 does not indicate that the Prosecution would lead evidence on either the death of two particular individuals at a mosque or the taking of Tutsi men from the convent where Witness TK was hiding and their subsequent killing at the BPO following Kanyabashi's announcement, and is therefore defective. Recalling the principles of notice previously articulated in this Judgement (), the Chamber will determine whether these defects were cured through the disclosure of timely, clear and consistent information.

3721. The Chamber notes that the mosque killings at issue were not mentioned in the Prosecution Pre-Trial Brief, its Appendix or in the Prosecution opening statement. These alleged killings were mentioned in Witness QI's 11 June 1996 statement, which provides that from his hiding place he saw Kanyabashi's megaphone announcement and the killings of the two watchmen.<sup>9955</sup> Nevertheless, the disclosure of this statement alone was insufficient to cure this defect.<sup>9956</sup> In any event, Witness QI's statement does not indicate that the killings took place immediately after the said announcement, nor does it mention a link between Kanyabashi's megaphone announcement and the mosque killings.

3722. The Chamber notes that the finding of Tutsis boys at a convent and their subsequent killing at the BPO was not mentioned in the Prosecution Pre-Trial Brief, its Appendix or the Prosecution opening statement. Further, the summary of Witness TK's anticipated evidence makes no mention of Kanyabashi, and Witness TK was not listed as being brought in support of any counts against Kanyabashi. The taking of five boys from the convent and their subsequent disappearance were mentioned for the first time in Witness TK's statements of 14

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<sup>9953</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts).

<sup>9954</sup> Prosecution Closing Brief, pp. 396-397, paras. 36, 38-39.

<sup>9955</sup> 11 June 1996, Statement of Witness QI, disclosed 4 November 1998. Witness QI was called to testify in March 2004.

<sup>9956</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 27; *Niyitegeka*, Judgement (AC), paras. 197, 221.



November 1997 and 23 April 1998. Nevertheless, disclosure of those statements alone was insufficient to cure this defect in the Indictment.<sup>9957</sup>

3723. The Chamber thus finds the defects in Paragraph 5.8 of the Kanyabashi Indictment have not been cured and will not consider evidence led in support of either allegation.

### **3.6.35.3 Cemetery Meeting – Kanyabashi and Nsabimana, Late May to Early June 1994**

#### 3.6.35.3.1 Evidence

##### Prosecution Witness FAC

3724. Witness FAC, a Hutu detainee from Ngoma *commune* awaiting trial in Rwanda at the time of his testimony,<sup>9958</sup> testified that he saw Kanyabashi on two occasions in the same bar.<sup>9959</sup> One of the encounters took place in April 1994 and the other took place approximately one month later.<sup>9960</sup> On the first occasion, Kanyabashi spoke about leading people to the *secteur* office, and on the second occasion, he talked about searches.<sup>9961</sup>

3725. The witness later testified he saw Kanyabashi for the first time in early June,<sup>9962</sup> perhaps around 5 June 1994<sup>9963</sup> at the bar.<sup>9964</sup> Witness FAC arrived at the bar at 8.00 a.m. and Kanyabashi arrived between two and two and half hours later.<sup>9965</sup> Kanyabashi arrived at about 10.00 or 10.30 a.m. in his car with his driver.<sup>9966</sup> When the witness and others saw Kanyabashi's vehicle arrive, Kanyabashi signalled for them to come out of the bar because he wanted to talk to a large number of people and fixed an appointment for later that morning which he wanted people to prepare for and attend on time. Kanyabashi stayed for two minutes.<sup>9967</sup>

3726. In cross-examination Witness FAC testified there were a good number of people present, not very many, but more than one person at least gathered to hear Kanyabashi.<sup>9968</sup> He later clarified there were around 12 to 13 people around Kanyabashi's car.<sup>9969</sup> Kanyabashi stopped his vehicle to speak to people, without alighting from the car.<sup>9970</sup> Kanyabashi informed

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<sup>9957</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 27; *Niyitegeka*, Judgement (AC), paras. 197, 221.

<sup>9958</sup> Prosecution Exhibit 84 (Personal Particulars); T. 3 March 2004 p. 64 (ICS) (Witness FAC); T. 3 March 2004 pp. 76-78; T. 8 March 2004 p. 30 (ICS) (Witness FAC).

<sup>9959</sup> T. 4 March 2004 pp. 28, 30 (Witness FAC).

<sup>9960</sup> T. 4 March 2004 pp. 25, 30 (Witness FAC).

<sup>9961</sup> T. 4 March 2004 p. 31 (Witness FAC).

<sup>9962</sup> T. 3 March 2004 p. 68 (Witness FAC).

<sup>9963</sup> T. 8 March 2004 p. 38 (Witness FAC).

<sup>9964</sup> T. 3 March 2004 p. 64 (ICS); T. 4 March 2004 p. 5; T. 8 March 2004 p. 5 (ICS) (Witness FAC).

<sup>9965</sup> T. 4 March 2004 pp. 5-6 (Witness FAC).

<sup>9966</sup> T. 3 March 2004 pp. 64-65 (ICS); T. 4 March 2004 p. 32 (Witness FAC).

<sup>9967</sup> T. 4 March 2004 p. 7 (Witness FAC).

<sup>9968</sup> T. 4 March 2004 pp. 7-8 (Witness FAC).

<sup>9969</sup> T. 4 March 2004 p. 8 (Witness FAC).

<sup>9970</sup> T. 4 March 2004 pp. 27, 31; T. 8 March 2004 p. 10 (Witness FAC).

them peace had returned and gave instructions for them to lead people to the *secteur* office.<sup>9971</sup> After speaking to people, Kanyabashi left for Cyarwa-Sumo *secteur*.<sup>9972</sup>

3727. After hearing Kanyabashi's words, Witness FAC returned home to get the two Tutsis he was hiding, in order to bring them to the *secteur* office. A person at the *secteur* office took the two Tutsis and requested that the *Interahamwe* kill them.<sup>9973</sup> Responsibility for the death of the two Tutsis was a shared responsibility and Witness FAC was not trying to exculpate himself by blaming Kanyabashi.<sup>9974</sup> Witness FAC took the two Tutsis to the *secteur* office because Kanyabashi had said that peace had been restored and they were all convinced that the war was over.<sup>9975</sup> In cross-examination, Witness FAC said he had already taken the two Tutsis to the *secteur* office well before Kanyabashi's visit of 23 or 24 April, approximately four weeks before.<sup>9976</sup>

3728. Witness FAC testified that he saw Kanyabashi at the beginning of the month of June. Kanyabashi was passing through the road of Ntumba going towards the *secteur* office; he was with his driver, and he told the witness and his friends that the Tutsis should come out of hiding because the war was about to end.<sup>9977</sup> Kanyabashi asked the population to search the neighbouring woods. Kanyabashi said he had sought the assistance of the population of three other *communes* and asked them to go and meet them to help them search the neighbouring bushes or woods, in order to determine whether RPF soldiers had infiltrated or Tutsis had sought refuge therein.<sup>9978</sup> They were supposed to search to make sure no one was hiding nearby.<sup>9979</sup> Kanyabashi was accompanied by other authorities, namely Kalimanzira and Nsabimana. Kanyabashi asked whether *Inkotanyi* soldiers were hiding.<sup>9980</sup>

3729. On cross-examination, he stated that he arrived at the bar at 8.30 a.m. and Kanyabashi passed by two hours later.<sup>9981</sup> Kanyabashi slowed down and spoke from his vehicle: "The war is almost over. We are going to search in the woods surrounding the town to find out whether the *Inkotanyi*, that is RPF soldiers, have infiltrated their ranks or whether the Tutsi who had sought refuge therein." Kanyabashi added that he had convened the inhabitants of three *communes* and that they were going to search three sites and meet thereafter in the cemetery next to the University.<sup>9982</sup> Kanyabashi stayed only about one or two minutes and then hurried towards other *secteurs*.<sup>9983</sup>

3730. After Kanyabashi's speech, at about 8.30 a.m., Witness FAC and two friends returned home to fetch machetes and traditional weapons.<sup>9984</sup> Then the witness went into the woods

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<sup>9971</sup> T. 4 March 2004 pp. 27, 32-33 (Witness FAC).

<sup>9972</sup> T. 3 March 2004 p. 65 (ICS) (Witness FAC).

<sup>9973</sup> T. 3 March 2004 p. 65 (ICS) (Witness FAC).

<sup>9974</sup> T. 4 March 2004 p. 34 (Witness FAC).

<sup>9975</sup> T. 4 March 2004 pp. 25-26 (Witness FAC).

<sup>9976</sup> T. 4 March 2004 pp. 25, 29-30 (Witness FAC) (French).

<sup>9977</sup> T. 3 March 2004 p. 62 (ICS) (Witness FAC).

<sup>9978</sup> T. 3 March 2004 p. 68; T. 4 March 2004 pp. 8, 14; T. 8 March 2004 p. 10 (Witness FAC).

<sup>9979</sup> T. 4 March 2004 p. 15 (Witness FAC).

<sup>9980</sup> T. 3 March 2004 pp. 68-69 (Witness FAC).

<sup>9981</sup> T. 8 March 2004 p. 5 (ICS) (Witness FAC).

<sup>9982</sup> T. 3 March 2004 p. 68; T. 8 March 2004 p. 10 (Witness FAC).

<sup>9983</sup> T. 8 March 2004 pp. 8-9 (Witness FAC).

<sup>9984</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 16 (Witness FAC).

with some friends.<sup>9985</sup> The woods were about 20 minutes away from his house.<sup>9986</sup> At about 10.00 a.m. everyone was in the woods and the searches had started.<sup>9987</sup> Witness FAC participated in the ensuing search operation. Witness FAC confirmed that he was referring to the exercise that took place on 27 May 1994, where inhabitants of several *secteurs* of his *commune* were called upon to clear bushes on the road leading to the National University.<sup>9988</sup> People from Shyanda, Huye and Mbazi *communes* also came to help them work; including people from Ngoma *commune*, people from four *communes* participated in the search in the bushes and woods. They also searched for Tutsis in caves, as they were determined to kill all of them.<sup>9989</sup>

3731. Witness FAC testified that they were unable to clear all the bushes; they began on the stretch of road between Curbhamatera and the laboratory, and were told to continue elsewhere, including rivers. They were told to flush people out of river banks.<sup>9990</sup> They searched Mukoni and the woods before it, as well as the woods called Arboretum, near the match factory and the hospital. The whole search lasted about two hours and then they all went to the cemetery.<sup>9991</sup>

3732. Witness FAC testified that they arrived at the cemetery between 10.30 and 11.30. a.m. The meeting took place in a broad space with no trees.<sup>9992</sup> There they met Kanyabashi and other authorities, namely Kalimanzira, *Préfet* Nsabimana and Colonel Nteziryayo.<sup>9993</sup> Approximately 2,000 people attended, including people from other *communes*.<sup>9994</sup> The authorities asked them if they had found any Tutsis or RPF soldiers and they answered that they had not found anything but three bodies. Then the authorities made speeches to thank those who participated in the search. Kalimanzira spoke first for about 10 to 15 minutes, then Nsabimana and Kanyabashi spoke.<sup>9995</sup>

3733. In their speeches, Kalimanzira, Nsabimana and Kanyabashi repeated the same thing, namely that they should continue to maintain the security of the region by carrying out patrols, setting up roadblocks and searching for those still in hiding. Nsabimana added that people who were hiding Tutsis should be killed as well as the Tutsis themselves.<sup>9996</sup> They also spoke about the organisation of night patrols in order to prevent the RPF from infiltrating.<sup>9997</sup> People asked some questions. Regarding a question about Tutsi children, Kanyabashi answered that they should not be killed or chased away because they could be used as house-help. Regarding a question about those who married Tutsis, Kalimanzira answered that the population should

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<sup>9985</sup> T. 8 March 2004 p. 16; T. 8 March 2004 p. 19 (ICS) (Witness FAC).

<sup>9986</sup> T. 8 March 2004 p. 17 (Witness FAC).

<sup>9987</sup> T. 8 March 2004 p. 16 (Witness FAC).

<sup>9988</sup> T. 8 March 2004 p. 26 (Witness FAC).

<sup>9989</sup> T. 4 March 2004 pp. 8, 14 (Witness FAC).

<sup>9990</sup> T. 8 March 2004 p. 26 (Witness FAC).

<sup>9991</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 22 (Witness FAC).

<sup>9992</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 22 (Witness FAC).

<sup>9993</sup> T. 3 March 2004 pp. 68, 69; T. 4 March 2004 p. 15; T. 8 March 2004 pp. 38, 62 (Witness FAC).

<sup>9994</sup> T. 8 March 2004 p. 39 (Witness FAC).

<sup>9995</sup> T. 3 March 2004 p. 69; T. 8 March 2004 p. 22 (Witness FAC).

<sup>9996</sup> T. 3 March 2004 pp. 69-70 (Witness FAC).

<sup>9997</sup> T. 8 March 2004 p. 23 (Witness FAC).

decide against those people because when the RPF took over the country, they would tell their secrets.<sup>9998</sup> Nteziryayo did not speak.<sup>9999</sup>

3734. Witness FAC agreed that Rwanda was in a situation of war and was about to fall into the hands of the RPF at the time of this meeting but denied that the searches were conducted solely to counter the advance of the RPF and that there was a question of killing Tutsis.<sup>10000</sup> The searches were to ensure that there were no Tutsis in hiding who could return to attack Hutu children at a later date.<sup>10001</sup>

3735. The whole meeting lasted approximately an hour<sup>10002</sup> and ended at about 12.30 p.m.<sup>10003</sup> After the meeting ended, the population was happy and hopeful that the war had ended.<sup>10004</sup> After the meeting, the population went back to their hills and tried to do as instructed by the authorities, in particular as Kanyabashi instructed, since he was very much loved by the population,<sup>10005</sup> even more so than the *préfet*.<sup>10006</sup> They therefore began to arrest people at roadblocks.<sup>10007</sup> After the meeting the looting began, and lasted for two weeks. On the day of the meeting, the witness looted until approximately 2.00 p.m. before returning home.<sup>10008</sup> They carried out the searches in order to ensure that there was nobody left to disturb them.<sup>10009</sup>

3736. Witness FAC identified Kanyabashi in court.<sup>10010</sup> He had known Kanyabashi as the *bourgmestre* of Ngoma since 1993 when the witness went to Butare to study with the “Brothers of Charity” and met Kanyabashi there. They prayed together and he considered Kanyabashi to be one of his friends.<sup>10011</sup>

3737. Witness FAC failed to identify Nsabimana in court, but instead pointed out Nteziryayo.<sup>10012</sup> The witness justified this by explaining that he did not see very well, a problem he had had since his childhood.<sup>10013</sup> Witness FAC testified that he did not know Nsabimana very well, having seen him only three times; he never met him again after the events.<sup>10014</sup> He described Nsabimana as a middle-aged man, not very fair in complexion, very tall with a broad chest and a scar on his forehead; he testified that Nsabimana was the *préfet* of Butare.<sup>10015</sup>

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<sup>9998</sup> T. 8 March 2004 pp. 39-40 (Witness FAC).

<sup>9999</sup> T. 8 March 2004 pp. 38, 62 (Witness FAC).

<sup>10000</sup> T. 8 March 2004 p. 23 (Witness FAC).

<sup>10001</sup> T. 8 March 2004 p. 69 (ICS) (Witness FAC).

<sup>10002</sup> T. 8 March 2004 p. 38 (Witness FAC).

<sup>10003</sup> T. 4 March 2004 p. 16 (Witness FAC).

<sup>10004</sup> T. 8 March 2004 p. 41 (Witness FAC).

<sup>10005</sup> T. 3 March 2004 pp. 69-70; T. 3 March 2004 p. 88 (ICS) (Witness FAC).

<sup>10006</sup> T. 4 March 2004 p. 19 (Witness FAC).

<sup>10007</sup> T. 3 March 2004 p. 70 (Witness FAC).

<sup>10008</sup> T. 4 March 2004 p. 16 (Witness FAC).

<sup>10009</sup> T. 8 March 2004 p. 41 (Witness FAC).

<sup>10010</sup> T. 3 March 2004 p. 72 (Witness FAC).

<sup>10011</sup> T. 3 March 2004 p. 70 (Witness FAC).

<sup>10012</sup> T. 3 March 2004 p. 73 (Witness FAC).

<sup>10013</sup> T. 3 March 2004 p. 74 (Witness FAC).

<sup>10014</sup> T. 3 March 2004 p. 72; T. 8 March 2004 p. 43 (Witness FAC).

<sup>10015</sup> T. 3 March 2004 p. 69 (Witness FAC).

3738. When it was put to Witness FAC that neither his confession of 28 November 1999 nor his statement of 23 February 2000 mentioned a meeting with Kanyabashi at the bar before the cemetery meeting, he testified that his sighting was mentioned on the first page of his confession of 30 November 1999.<sup>10016</sup>

3739. Witness FAC was subsequently detained in Rwanda for the role he played in bringing two Tutsis to the *secteur* office where they were killed.<sup>10017</sup> According to Witness FAC, the Rwandan judicial system provides that whoever is present where killings are carried out is implicated in the crime. He was held responsible for conniving against the two people he took to the *secteur* office. Witness FAC testified that he did not personally kill anyone, but he was present during the killings. Witness FAC stated that he could not dissociate himself from the group of killers. He supported them.<sup>10018</sup>

3740. He conceded that he was in frail health, and had health problems subsequent to a car accident. When asked if he was sane, Witness FAC stated: “I cannot say that I am insane, but I cannot say that I am normal just like anybody else. All I can tell you is that I am narrating things to you that I experienced myself and things I saw myself.”<sup>10019</sup>

#### Nsabimana

3741. Nsabimana denied the evidence of Witness FAC and testified that he never attended a meeting convened by Kanyabashi at the cemetery<sup>10020</sup> of the National University of Rwanda.<sup>10021</sup> Nsabimana referred to a Prosecution witness, whose pseudonym he could not recall, who testified to searches and “talked about something at the university cemetery”.<sup>10022</sup> Nsabimana went to see the director of Cabinet at that very cemetery and saw him quarrelling with the population that had just conducted searches in the Arboretum forest. Nsabimana did not stay there long. He did not take the floor, and left immediately.<sup>10023</sup>

#### Nteziryayo

3742. Nteziryayo denied he ever took part in a meeting at the cemetery located near the National University of Rwanda in Butare together with Kalimanzira, Kanyabashi and Nsabimana on 5 June 1994 or on any other time between April and July 1994, as alleged by Witness FAC.<sup>10024</sup>

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<sup>10016</sup> T. 8 March 2004 pp. 11, 13-16 (Witness FAC).

<sup>10017</sup> T. 3 March 2004 pp. 62, 64-65 (ICS) (Witness FAC).

<sup>10018</sup> T. 4 March 2004 p. 14 (Witness FAC).

<sup>10019</sup> T. 8 March 2004 p. 8 (Witness FAC).

<sup>10020</sup> The Chamber notes that the English transcript refers to a “seminary”, whereas the French transcript refers to a “cemetery”: T. 21 September 2006 p. 76; T. 21 September 2006 p. 80 (Nsabimana) (French).

<sup>10021</sup> T. 21 September 2006 p. 76 (Nsabimana); Nsabimana Closing Statement, T. 27 April 2009 pp. 9-10; Nsabimana Closing Brief, para. 815.

<sup>10022</sup> T. 27 November 2006 pp. 54-55 (Nsabimana).

<sup>10023</sup> T. 27 November 2006 p. 55 (Nsabimana).

<sup>10024</sup> T. 6 June 2007 p. 39 (Nteziryayo).

### 3.6.35.3.2 Deliberations

3743. The issue in question is whether a meeting took place at the cemetery next to the University of Butare, at which Kanyabashi and Nsabimana incited the population to search for and kill Tutsis.

3744. Witness FAC testified that Kanyabashi passed by a bar he frequented in early June and informed the people it was necessary to search the woods surrounding the town for *Inkotanyi* infiltrators (RPF soldiers) or Tutsis who were hiding. Kanyabashi informed them he had convened the inhabitants of three *communes* and that they were going to search three sites and meet thereafter in the cemetery next to the University.<sup>10025</sup> Kanyabashi stayed only about one or two minutes before hurrying on to inform other *secteurs*.<sup>10026</sup> After carrying out searches in Mukoni, Arboretum and the surrounding woods near the match factory and the hospital for a period of about two hours, Witness FAC and his companions all went to the cemetery, where they arrived sometime between 10.30 a.m. and 11.30 a.m.<sup>10027</sup> There they met Kanyabashi, Kalimanzira, *Préfet* Nsabimana and Colonel Nteziryayo.<sup>10028</sup> Approximately 2,000 people attended, including people from other *communes*.<sup>10029</sup>

3745. In contrast to Witness FAC's evidence, Nsabimana,<sup>10030</sup> Nteziryayo<sup>10031</sup> and Kanyabashi<sup>10032</sup> deny having ever attended a meeting convened by Kanyabashi at the cemetery<sup>10033</sup> next to Butare University. Despite this unanimous denial, the Chamber notes that in cross-examination Nsabimana referred to a Prosecution witness whose pseudonym he could not recall, who testified to searches and "talked about something at the university cemetery".<sup>10034</sup> Without specifying any dates, Nsabimana testified that he went to see the Director of Cabinet at that very cemetery and saw him quarrelling with the population that had just conducted searches in the Arboretum forest. Nsabimana did not stay there long; he did not take the floor and left immediately.<sup>10035</sup>

3746. Noting that the Director of Cabinet at the time was Kalimanzira, who Witness FAC also identified as being present at the meeting in the cemetery, and that both Nsabimana and Witness FAC referred to searches in Arboretum forest, the Chamber is of the view that Nsabimana's evidence on cross-examination is consistent with the account of Witness FAC as to the occurrence of a meeting in the cemetery next to Butare University. For this reason, the Chamber finds that Nsabimana's testimony that he never attended a meeting convened by Kanyabashi at the cemetery of Butare University is not credible.

<sup>10025</sup> T. 3 March 2004 p. 68; T. 8 March 2004 p. 10 (Witness FAC).

<sup>10026</sup> T. 8 March 2004 pp. 8-9 (Witness FAC).

<sup>10027</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 22 (Witness FAC).

<sup>10028</sup> T. 3 March 2004 pp. 68-69; T. 4 March 2004 p. 15; T. 8 March 2004 pp. 38, 62 (Witness FAC).

<sup>10029</sup> T. 8 March 2004 p. 39 (Witness FAC).

<sup>10030</sup> T. 21 September 2006 p. 76 (Nsabimana); T. 21 September 2006 p. 80 (Nsabimana) (French); Nsabimana Closing Statement, T. 27 April 2009 pp. 9-10; Nsabimana Closing Brief, para. 815.

<sup>10031</sup> T. 6 June 2007 p. 39 (Nteziryayo).

<sup>10032</sup> Kanyabashi Closing Brief, para. 339.

<sup>10033</sup> With respect to Nsabimana, the Chamber notes that while the English transcript refers to a "seminary", the French transcript refers to a "cemetery": T. 21 September 2006 p. 76 (Nsabimana); T. 21 September 2006 p. 80 (Nsabimana) (French).

<sup>10034</sup> T. 27 November 2006 pp. 54-55 (Nsabimana).

<sup>10035</sup> T. 27 November 2006 p. 55 (Nsabimana).

3747. Witness FAC's evidence as to the purpose of the meeting and the speeches by Kanyabashi and Nsabimana makes clear that the security of the region was the major issue. The authorities advocated establishing patrols and roadblocks and searching for those still in hiding.<sup>10036</sup> While Witness FAC agreed Rwanda was in a situation of war and was about to fall into the hands of the RPF at the time of this meeting, he denied that the purpose of the searches was to counter the RPF advance.<sup>10037</sup> The searches were to ensure that there were no Tutsis in hiding who could return to attack Hutu children at a later date.<sup>10038</sup> After the meeting, the population went back to their hills and did as instructed by the authorities.<sup>10039</sup> They therefore began to arrest people at roadblocks<sup>10040</sup> and looting began, which lasted for two weeks.<sup>10041</sup>

3748. Witness FAC was the Prosecution's only witness to testify in respect of this meeting at the cemetery next to Butare University.<sup>10042</sup> The Chamber notes that Witness FAC's testimony on this meeting is uncorroborated despite his evidence that 2,000 people purportedly attended the meeting in question.<sup>10043</sup> Witness FAC was a detained accomplice witness at the time of his testimony for the role he played in bringing two Tutsis to the *secteur* office, allegedly pursuant to Kanyabashi's orders, where they were killed.<sup>10044</sup> Accordingly, the Chamber agrees with the Kanyabashi Defence submissions that he may have had an incentive to testify against an Accused before this Tribunal to deflect his own potential liability and gain favour with Rwandan authorities.<sup>10045</sup> The Chamber considers it significant that Witness FAC acknowledged that the only manner for him to get out of prison was to admit a certain level of responsibility.<sup>10046</sup> Additionally, the Chamber observes that this witness acknowledged that he first denied responsibility for killing two people, but later confessed to the killings after four years of detention.<sup>10047</sup> Witness FAC said he confessed in part because he wanted to be pardoned.<sup>10048</sup> The Chamber will therefore consider Witness FAC's testimony with appropriate caution.

3749. The Chamber considers Witness FAC frequently confused his accounts of his two encounters with Kanyabashi, the first which occurred around 23 April 1994 when Kanyabashi came to the *secteur* asking the population to tell all the Tutsis in hiding to come out because peace had been restored,<sup>10049</sup> and the second which occurred in June on the morning of the meeting at the cemetery next to Butare University when Kanyabashi talked about searches.<sup>10050</sup>

3750. Witness FAC's testimony of both encounters otherwise bears several similarities: Witness FAC testified that both meetings were purportedly preceded by Kanyabashi passing

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<sup>10036</sup> T. 3 March 2004 p. 69 (Witness FAC).

<sup>10037</sup> T. 8 March 2004 p. 23 (Witness FAC).

<sup>10038</sup> T. 8 March 2004 p. 69 (ICS) (Witness FAC).

<sup>10039</sup> T. 3 March 2004 p. 70; T. 3 March 2004 p. 88 (ICS) (Witness FAC).

<sup>10040</sup> T. 3 March 2004 p. 70 (Witness FAC).

<sup>10041</sup> T. 4 March 2004 p. 16 (Witness FAC).

<sup>10042</sup> Prosecution Closing Brief, p. 275, para. 148.

<sup>10043</sup> T. 8 March 2004 p. 39 (Witness FAC).

<sup>10044</sup> T. 3 March 2004 pp. 62-65 (ICS) (Witness FAC).

<sup>10045</sup> Kanyabashi Closing Brief, paras. 321-347.

<sup>10046</sup> T. 4 March 2004 pp. 33-34 (Witness FAC).

<sup>10047</sup> T. 4 March 2004 p. 25 (Witness FAC).

<sup>10048</sup> T. 4 March 2004 p. 11 (ICS) (Witness FAC).

<sup>10049</sup> T. 4 March 2004 pp. 25, 27, 32-33 (Witness FAC).

<sup>10050</sup> T. 3 March 2004 p. 68; T. 4 March 2004 p. 31 (Witness FAC).

by the witness' local bar in the morning at similar times.<sup>10051</sup> However, when it was put to Witness FAC that he did not mention a meeting with Kanyabashi at the bar before the cemetery meeting in either his confession of 28 November 1999 or his statement of 23 February 2000, Witness FAC answered that his sighting of Kanyabashi was mentioned on the first page of his confession of 30 November 1999.<sup>10052</sup> Having reviewed the witness' confession, the Chamber notes that Witness FAC mentions Kanyabashi stopping at the bar only before the first meeting in April, but there is no reference to the bar encounter prior to the second meeting in June.<sup>10053</sup>

3751. Further, on both occasions Kanyabashi convened a meeting for later the same day, he stayed only a few minutes at both encounters,<sup>10054</sup> and similar people appear to have been present at both meetings.<sup>10055</sup> With respect to this last point, the Chamber accepts Witness FAC's explanation that the same businessmen were always at the bar because the town was a small place.<sup>10056</sup>

3752. The Chamber further notes that the witness' account is also internally inconsistent. Witness FAC contradicted himself insofar as he first testified that Kanyabashi was with Nsabimana and Kalimanzira when he came by the bar in June,<sup>10057</sup> whereas he later testified that Kanyabashi was alone when he instructed people at the bar to participate in a clearing exercise and that he did not see any *préfet*.<sup>10058</sup> Further, Witness FAC stated he went to Arboretum forest on the same day he first met Kanyabashi at the bar,<sup>10059</sup> but later testified that they searched the woods after the second occasion that he met Kanyabashi at the bar.<sup>10060</sup> Witness FAC's inability to clearly differentiate between his encounters with Kanyabashi casts doubt on the veracity of his testimony. Further, while Witness FAC testified that Kanyabashi arrived at the bar at about 10.00 a.m. or 10.30 a.m. in his car with his driver,<sup>10061</sup> this also contradicts his later testimony that the second time he saw Kanyabashi, Kanyabashi came very early in the morning, at dawn.<sup>10062</sup> Moreover, this is inconsistent with his testimony that after Kanyabashi's departure, the witness returned home to fetch weapons at 8.30 a.m.,<sup>10063</sup> conducted searches which lasted two hours,<sup>10064</sup> and arrived at the cemetery sometime between

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<sup>10051</sup> T. 4 March 2004 pp. 28, 30 (Witness FAC).

<sup>10052</sup> T. 8 March 2004 pp. 11, 13-16 (Witness FAC); Defence Exhibit 222 (Kanyabashi) (List of Alleged Omissions; 23 February 2000, Statement of Witness FAC; 30 November 1999, Confession of Witness FAC to Rwandan Authorities).

<sup>10053</sup> Defence Exhibit 222 (Kanyabashi) (List of Alleged Omissions; 23 February 2000, Statement of Witness FAC; 30 November 1999, Confession of Witness FAC to Rwandan Authorities); T. 8 March 2004 p. 15 (Witness FAC).

<sup>10054</sup> T. 8 March 2004 p. 10 (Witness FAC).

<sup>10055</sup> T. 8 March 2004 pp. 6-7 (ICS) (Witness FAC).

<sup>10056</sup> T. 8 March 2004 p. 7 (ICS) (Witness FAC).

<sup>10057</sup> T. 3 March 2004 p. 68 (Witness FAC).

<sup>10058</sup> T. 8 March 2004 p. 17 (Witness FAC).

<sup>10059</sup> T. 4 March 2004 pp. 14-15 (Witness FAC).

<sup>10060</sup> T. 4 March 2004 p. 31 (Witness FAC).

<sup>10061</sup> T. 3 March 2004 pp. 64-65 (ICS) (Witness FAC).

<sup>10062</sup> T. 4 March 2004 p. 30 (Witness FAC).

<sup>10063</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 16 (Witness FAC).

<sup>10064</sup> T. 4 March 2004 p. 15; T. 8 March 2004 p. 22 (Witness FAC).



10.30 a.m. and 11.30 a.m.<sup>10065</sup> In light of the foregoing inconsistencies, the Chamber finds that Witness FAC is not credible with respect to his account of the meeting in June 1994.

3753. In light of the conflicting and often confused evidence of Witness FAC, and the lack of any corroborative testimony to support Witness FAC's account of what was said at the cemetery meeting in June 1994, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Nsabimana and Kanyabashi instructed the population to search for and kill Tutsis in hiding at a meeting held in June 1994 at the cemetery next to Butare University in furtherance of a plan to exterminate Tutsis.

### **3.6.35.4 Megaphone Announcements – Kanyabashi, May and June 1994**

#### 3.6.35.4.1 Evidence

##### Prosecution Witness QJ

3754. Witness QJ, a Tutsi waiter in 1994,<sup>10066</sup> testified that in May 1994 he saw Kanyabashi at the Hotel Faucon roadblock.<sup>10067</sup> Kanyabashi was seated in the passenger seat of a Toyota pickup truck, between two individuals. On one side of Kanyabashi was the driver, and on the other side was someone holding a megaphone.<sup>10068</sup> Kanyabashi made announcements from the vehicle, using a megaphone, stating, “[t]he *bourgmestre* of Ngoma *commune* is informing people of Ngoma that the enemies are among us and you are requested to seek them everywhere.”<sup>10069</sup> This announcement was repeated several times.<sup>10070</sup> Witness QJ testified that when Kanyabashi used the word “enemy”, it meant Tutsis.<sup>10071</sup>

3755. Witness QJ saw Kanyabashi make this announcement on two occasions.<sup>10072</sup> He later stated that he saw Kanyabashi make this announcement himself once.<sup>10073</sup> Witness QJ identified Kanyabashi in court.<sup>10074</sup> Similar announcements from a vehicle were made elsewhere by people other than Kanyabashi. These announcements were made very frequently.<sup>10075</sup> As a result of this announcement, searches were carried out in the bush around the city and in various houses.<sup>10076</sup> The search was called *umuganda*, or communal work.<sup>10077</sup> This “work” entailed seeking out people in hiding.<sup>10078</sup> Among the people conducting the search were people carrying whistles and others carrying guns, which they would fire in the air

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<sup>10065</sup> T. 4 March 2004 p. 15; T. 8 March 2004 pp. 16, 22 (Witness FAC).

<sup>10066</sup> T. 8 November 2001 p. 96 (ICS) (Witness QJ); Prosecution Exhibit 47 (Personal Particulars).

<sup>10067</sup> T. 12 November 2001 p. 25 (Witness QJ).

<sup>10068</sup> T. 12 November 2001 p. 30; T. 15 November 2001 p. 16 (ICS) (Witness QJ).

<sup>10069</sup> T. 12 November 2001 p. 26 (Witness QJ).

<sup>10070</sup> T. 12 November 2001 p. 26; T. 14 November 2001 pp. 100-101 (Witness QJ).

<sup>10071</sup> T. 12 November 2001 p. 33 (Witness QJ).

<sup>10072</sup> T. 12 November 2001 p. 26 (Witness QJ).

<sup>10073</sup> T. 12 November 2001 p. 32 (Witness QJ).

<sup>10074</sup> T. 12 November 2001 p. 38 (Witness QJ).

<sup>10075</sup> T. 12 November 2001 p. 32 (Witness QJ).

<sup>10076</sup> T. 12 November 2001 pp. 30-31 (Witness QJ).

<sup>10077</sup> T. 12 November 2001 p. 31 (Witness QJ).

<sup>10078</sup> T. 14 November 2001 pp. 101-105 (Witness QJ).

in an attempt to seek out those hiding in the bush. Anyone found in the bush was killed immediately.<sup>10079</sup>

3756. Witness QJ was married to Witness TK.<sup>10080</sup> Witness QJ stated that they did not discuss the events of April to July 1994.<sup>10081</sup> He testified that he did not know of his wife's plans to testify before this Tribunal.<sup>10082</sup>

### Prosecution Witness TK

3757. Witness TK, a Tutsi teacher,<sup>10083</sup> testified that after the death of President Habyarimana she fled with her family to Butare town where they hid in a convent, in a storage room.<sup>10084</sup> The place they hid was in the middle of town.<sup>10085</sup> She hid with over 10 other Tutsis beneath a pile of wood.<sup>10086</sup> She was separated from a nearby road by a wall and buildings.<sup>10087</sup> At the end of May 1994, while hiding, she heard an announcement by someone in a vehicle.<sup>10088</sup> The announcement was made with a megaphone.<sup>10089</sup> The speaker was not Kanyabashi, but a messenger.<sup>10090</sup> The message delivered was that the *bourgmestre* of Ngoma *commune* wished to inform the population that the enemy was still among them, the enemy was hiding in their midst, and they had to find the enemy wherever they were hiding.<sup>10091</sup>

3758. Witness TK testified that the announcement affected the safety of her and those hiding with her.<sup>10092</sup> Although the conditions in which they were hiding in the convent were not the best, the announcement made their situation critical.<sup>10093</sup> Witness TK testified that after this announcement, an order was issued whereby each household, including the convent, had to select one person to participate in the final search. At that time, a young man was selected at the convent to participate in the final search.<sup>10094</sup> The morning after that young man left, people came to the convent.<sup>10095</sup> Searches were conducted everywhere to find those who were hiding.<sup>10096</sup> As a result, six soldiers discovered the witness sometime between the end of May 1994 and the beginning of June 1994.<sup>10097</sup> Sisters at the convent prevented the soldiers from killing the group of people she had been hiding with.<sup>10098</sup> Members of the group were asked to show identity cards, and those who had them showed their cards. The soldiers were armed with

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<sup>10079</sup> T. 12 November 2001 p. 31 (Witness QJ).

<sup>10080</sup> T. 12 November 2001 p. 59 (ICS) (Witness QJ).

<sup>10081</sup> T. 12 November 2001 p. 56 (ICS) (Witness QJ).

<sup>10082</sup> T. 12 November 2001 pp. 59-60 (ICS) (Witness QJ).

<sup>10083</sup> T. 21 May 2002 p. 109 (ICS) (Witness TK); Prosecution Exhibit 56 (Personal Particulars).

<sup>10084</sup> T. 20 May 2002 p. 26 (Witness TK).

<sup>10085</sup> T. 28 May 2002 p. 27 (Witness TK).

<sup>10086</sup> T. 20 May 2002 p. 26; T. 27 May 2002 pp. 94, 97 (Witness TK).

<sup>10087</sup> T. 27 May 2002 pp. 88-89 (Witness TK).

<sup>10088</sup> T. 20 May 2002 p. 27; T. 27 May 2002 pp. 147-148 (ICS) (Witness TK).

<sup>10089</sup> T. 28 May 2002 p. 27 (Witness TK).

<sup>10090</sup> T. 27 May 2002 pp. 147-148 (ICS) (Witness TK).

<sup>10091</sup> T. 20 May 2002 p. 27 (Witness TK).

<sup>10092</sup> T. 28 May 2002 pp. 16-17 (Witness TK).

<sup>10093</sup> T. 28 May 2002 p. 18 (Witness TK).

<sup>10094</sup> T. 28 May 2002 p. 17 (Witness TK).

<sup>10095</sup> T. 28 May 2002 p. 18 (Witness TK).

<sup>10096</sup> T. 20 May 2002 pp. 27-28 (Witness TK).

<sup>10097</sup> T. 20 May 2002 pp. 28, 30; T. 27 May 2002 p. 107 (Witness TK).

<sup>10098</sup> T. 20 May 2002 pp. 28,30 (Witness TK).

rifles. They forced the young men to kneel, tied them up and beat them.<sup>10099</sup> The soldiers locked up the members of the group, and stated that they would bring *Interahamwe* to kill them that evening. However, the next morning the soldiers took them to the *préfecture*, where the young men were killed.<sup>10100</sup>

3759. In 1995, Witness TK married Witness QJ. Witness TK testified that they did not discuss the events that took place between April to July 1994.<sup>10101</sup> Witness TK stated that her husband never told her that he testified before this Tribunal in 2001. She told her husband that she was going to Arusha, but did not tell him that she was going to Arusha as a witness in this case.<sup>10102</sup>

### Prosecution Witness QI

3760. Witness QI, a Tutsi and former cook,<sup>10103</sup> testified that his employer lived in a compound comprised of five houses. From April to July 1994 Witness QI hid in a shed at his employer's house, above a bread-baking oven.<sup>10104</sup> The oven had a window through which one could see what was happening on a nearby road.<sup>10105</sup> Witness QI could open the window to hear what was being said outside.<sup>10106</sup> Both the wall of the oven building and the wall of the compound's fence had little openings.<sup>10107</sup> Through the openings in a fence between Witness QI's hiding place and the road, he could see everything that happened on the road.<sup>10108</sup> There was a distance of approximately 50 metres between Witness QI's hiding place and the road.<sup>10109</sup> Witness QI knew Kanyabashi as the *bourgmestre* of Ngoma *commune* and he identified Kanyabashi in court.<sup>10110</sup>

3761. Witness QI testified that one day in mid-June 1994 he was hiding above the oven with a child.<sup>10111</sup> At around 2.00 p.m. he saw Kanyabashi driving alone in his white Peugeot 305 vehicle.<sup>10112</sup> Witness QI testified that Kanyabashi wore a blue shirt, black trousers and a black jacket.<sup>10113</sup> Kanyabashi stepped out of his vehicle, stood on the road and spoke into a hand-held megaphone. Kanyabashi stated that the *bourgmestre* of Ngoma *commune* wanted the population of Ngoma and inhabitants of neighbouring areas to come early in the morning to clear the bushes along the road, so the *Inkotanyi* would not find anywhere to hide.<sup>10114</sup> Witness QI explained that he understood *Inkotanyi*, in that context, to mean Tutsis hiding in the

<sup>10099</sup> T. 20 May 2002 pp. 28-29 (Witness TK).

<sup>10100</sup> T. 20 May 2002 pp. 28-30 (Witness TK).

<sup>10101</sup> T. 21 May 2002 pp. 44-48, 92-93, 102-104 (ICS) (Witness TK).

<sup>10102</sup> T. 21 May 2002 pp. 103-107 (ICS) (Witness TK).

<sup>10103</sup> T. 23 March 2004 p. 42 (ICS) (Witness QI); Prosecution Exhibit 94 (Personal Particulars).

<sup>10104</sup> T. 24 March 2004 pp. 25, 75 (ICS) (Witness QI).

<sup>10105</sup> T. 24 March 2004 p. 70 (ICS) (Witness QI).

<sup>10106</sup> T. 24 March 2004 p. 72 (ICS) (Witness QI).

<sup>10107</sup> T. 24 March 2004 p. 73 (ICS) (Witness QI).

<sup>10108</sup> T. 24 March 2004 pp. 72-75 (ICS) (Witness QI).

<sup>10109</sup> T. 24 March 2004 pp. 72-73 (ICS) (Witness QI) (approximately 50 metres from the road to the compound's fence, and 1 metre between the compound's fence and the oven).

<sup>10110</sup> T. 23 March 2004 p. 42 (ICS); T. 23 March 2004 p. 69 (Witness QI).

<sup>10111</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 pp. 69-70 (ICS) (Witness QI).

<sup>10112</sup> T. 23 March 2004 pp. 59, 61-62 (ICS); T. 24 March 2004 pp. 69, 77, 79-80 (ICS) (Witness QI).

<sup>10113</sup> T. 23 March 2004 p. 62 (ICS) (Witness QI).

<sup>10114</sup> T. 23 March 2004 pp. 59-60 (ICS); T. 24 March 2004 pp. 76, 78, 80 (ICS) (Witness QI).

bushes.<sup>10115</sup> Kanyabashi stated that everybody should die, including children, old men and women. Kanyabashi stated that Kagame ran away when he was a child, and then returned in 1994 to attack the country.<sup>10116</sup> Witness QI identified Kanyabashi by his voice, since Kanyabashi used a megaphone, and by sight.<sup>10117</sup> The distance between Witness QI's hiding place and Kanyabashi was about 200 metres.<sup>10118</sup>

3762. Witness QI stated that there is a difference between an announcement to clear the bush and an announcement stating that people should be killed.<sup>10119</sup> On cross-examination, Witness QI testified that he saw Kanyabashi making announcements from his vehicle on two different occasions.<sup>10120</sup>

3763. Witness QI testified that Kanyabashi's instructions were carried out the next day.<sup>10121</sup> Everything that was said about flushing people out was implemented near the house, and so he saw the orders being implemented.<sup>10122</sup> Witness QI testified that he saw people clearing the woods, hacking those caught hiding with machetes, and throwing grenades into the bushes to flush out people who were hiding in them.<sup>10123</sup> The killers were Hutus and they were looking for Tutsis.<sup>10124</sup> In cross-examination Witness QI testified that he learned after the event about grenades being thrown at those in hiding.<sup>10125</sup>

3764. Witness QI testified that attackers and soldiers looked for people in the valley and in a nearby cemetery.<sup>10126</sup> Attackers killed people who had spent the night in a nearby mosque. While clearing the bushes, attackers found two elderly watchmen who worked at the mosque and took them away.<sup>10127</sup> Witness QI stated that he personally witnessed what happened at the mosque because it was opposite his hiding place.<sup>10128</sup> Approximately 100 metres separated the house where Witness QI was hiding and the mosque.<sup>10129</sup>

3765. Witness QI conceded that he relied on someone to tell him whether it was safe to leave the hiding place or whether there were killers outside, because he did not have a clear sight of what was happening outside.<sup>10130</sup> Witness QI did not hear megaphones mentioned at any of the trials he attended.<sup>10131</sup>

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<sup>10115</sup> T. 23 March 2004 p. 60 (ICS) (Witness QI).

<sup>10116</sup> T. 23 March 2004 p. 61 (ICS) (Witness QI).

<sup>10117</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 pp. 76-77 (ICS) (Witness QI).

<sup>10118</sup> T. 23 March 2004 p. 61 (ICS) (Witness QI).

<sup>10119</sup> T. 25 March 2004 pp. 8-9 (ICS) (Witness QI).

<sup>10120</sup> T. 24 March 2004 p. 78 (ICS) (Witness QI).

<sup>10121</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10122</sup> T. 24 March 2004 p. 76 (ICS) (Witness QI).

<sup>10123</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10124</sup> T. 23 March 2004 p. 68 (ICS) (Witness QI).

<sup>10125</sup> T. 25 March 2004 p. 4 (ICS) (Witness QI).

<sup>10126</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10127</sup> T. 23 March 2004 pp. 63, 66-67 (ICS); T. 25 March 2004 pp. 4-6 (ICS) (Witness QI).

<sup>10128</sup> T. 25 March 2004 pp. 4-6 (ICS) (Witness QI).

<sup>10129</sup> T. 25 March 2004 p. 6 (ICS) (Witness QI).

<sup>10130</sup> T. 24 March 2004 p. 75 (ICS) (Witness QI).

<sup>10131</sup> T. 24 March 2004 p. 79 (ICS) (Witness QI).

### Prosecution Witness FAM

3766. Witness FAM, a Hutu and detainee at the time of his testimony,<sup>10132</sup> testified that in April 1994 he saw Kanyabashi in a white vehicle, from which a message was broadcast by megaphone. A man on board the vehicle made an announcement in the name of *Bourgmestre* Kanyabashi.<sup>10133</sup> As a result of the announcement, some Tutsis came out of hiding.<sup>10134</sup>

### Prosecution Witness QP

3767. Witness QP, a 15-year-old Tutsi in 1994,<sup>10135</sup> testified that Kanyabashi was the *bourgmestre* of her *commune*, and that she would see him when he came for meetings.<sup>10136</sup> Witness QP stated that on a Thursday in April 1994 at about noon, she was at her home when she heard an announcement being broadcast by megaphone. She went to the road in order to hear the message clearly, and saw Kanyabashi inside a moving vehicle. A man in green uniform drove the car.<sup>10137</sup> Kanyabashi was speaking into a microphone and repeated three times, “[h]e who will burn the weeds must first gather them.”<sup>10138</sup> Witness QP was about 30 metres away from Kanyabashi at that time.<sup>10139</sup> After approximately 15 minutes, the vehicle transporting Kanyabashi and his companion returned, this time in the opposite direction. Kanyabashi was still using the megaphone, repeating, “[t]hose that should kill the weeds shall first of all assemble them.”<sup>10140</sup> Witness QP went home and asked her father what those words meant. Her father explained that Tutsis were to be killed.<sup>10141</sup>

### Prosecution Expert Witness Évariste Ntakirutimana

3768. Évariste Ntakirutimana testified as an expert in the fields of social linguistics, discourse analysis, lexicology, semantics and language planning.<sup>10142</sup> Ntakirutimana’s Expert Report, tendered as Prosecution Exhibit 158, analyses the use of numerous proverbs and phrases in Rwanda during the events in 1994.<sup>10143</sup>

3769. Ntakirutimana testified that the word “enemy” in the context of the 1994 conflict in Rwanda referred to the group who was attacking.<sup>10144</sup> *Inkotanyi* were the people that attacked Rwanda from abroad in 1994; they were Rwandans who wanted to come back to Rwanda.<sup>10145</sup> *Inyenzi* in many cases equals *Inkotanyi*. Neutrally speaking, *Inkotanyi* simply meant the

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<sup>10132</sup> T. 6 March 2002 p. 73; T. 7 March 2002 p. 35; T. 11 March 2002 p. 15 (Witness FAM); Prosecution Exhibit 50 (Personal Particulars).

<sup>10133</sup> T. 6 March 2002 p. 118; T. 13 March 2002 pp. 81-82 (Witness FAM).

<sup>10134</sup> T. 6 March 2002 p. 118 (Witness FAM).

<sup>10135</sup> T. 6 June 2002 pp. 35-36 (ICS) (Witness QP).

<sup>10136</sup> T. 5 June 2002 pp. 152-154 (Witness QP).

<sup>10137</sup> T. 5 June 2002 pp. 154, 156, 158-159, 161, 163; T. 6 June 2002 pp. 79-80, 87 (Witness QP).

<sup>10138</sup> T. 5 June 2002 pp. 155-156, 158 (Witness QP).

<sup>10139</sup> T. 5 June 2002 pp. 157-158 (Witness QP).

<sup>10140</sup> T. 5 June 2002 p. 160 (Witness QP).

<sup>10141</sup> T. 5 June 2002 pp. 160-161 (Witness QP).

<sup>10142</sup> T. 13 September 2004 pp. 17, 30 (Ntakirutimana).

<sup>10143</sup> T. 13 September 2004 pp. 32, 38 (Ntakirutimana).

<sup>10144</sup> T. 13 September 2004 p. 64 (Ntakirutimana).

<sup>10145</sup> T. 13 September 2004 p. 55 (Ntakirutimana).

attacking group.<sup>10146</sup> Ntakirutimana declined to identify “Tutsis” as the enemy but admitted that generally speaking one could deduce that the Hutus were attacked and the Tutsis were the attackers.<sup>10147</sup> In his Report, Ntakirutimana reported that in daily Rwandan culture the “enemy” was understood to be Tutsis,<sup>10148</sup> and outlined numerous examples of its usage during the conflict and proverbs referring to “the enemy”.<sup>10149</sup>

3770. Ntakirutimana testified that *gukora* has several meanings in Kinyarwanda, including to do something bad, to work arduously and thank you.<sup>10150</sup> In his Report, Ntakirutimana wrote that “*gukora*” was synonymous with to work, to kill, to remove, to clean, communal work, *umuganda*, finish the job, rape, take away.<sup>10151</sup> To work could be going to destroy someone’s house, or to raid and steal from someone.<sup>10152</sup> In the context of the 1994 conflict, “to work” meant “to kill”. You must work with a weapon, and what you do with the weapon is quite clear. If you do work, you will get the Tutsi land.<sup>10153</sup> The operation to eliminate the enemy or the snake was a euphemism for “work”.<sup>10154</sup>

3771. Ntakirutimana testified that the original concept of *umuganda* in the countryside meant assisting somebody or lending a helping hand in a building project for example. In the Second Republic, *umuganda* referred to communal work for the purposes of development where all people were expected to make their contribution to developing Rwanda. In the context of 1994 however, the concept of assisting or lending a helping hand was an invitation for everyone to take part in the war.<sup>10155</sup> In his Report Ntakirutimana wrote that the term “*umuganda*” in the context of 1990 to 1994 meant mobilising the Hutu majority for the need of the cause.<sup>10156</sup>

3772. Ntakirutimana explained that couch grass are weeds that invade farms quickly and are difficult to destroy.<sup>10157</sup> Since weeds always come after the good grain has been planted, such proverbs recall the relationship between good and bad.<sup>10158</sup> Speakers employing proverbs which refer to couch grass or weeds bridged the communication gap with peasants since such metaphors put the peasant in his daily context; peasants directly understood they had to fight the couch grass with all means at their disposal and that such weeds must be cast aside.<sup>10159</sup>

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<sup>10146</sup> T. 13 September 2004 pp. 59, 66 (Ntakirutimana).

<sup>10147</sup> T. 13 September 2004 pp. 59, 65 (Ntakirutimana).

<sup>10148</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 29-30.

<sup>10149</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 26-27, 29-30.

<sup>10150</sup> T. 13 September 2004 pp. 47, 68-69 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 34.

<sup>10151</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 34.

<sup>10152</sup> T. 13 September 2004 p. 68 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 34.

<sup>10153</sup> T. 13 September 2004 p. 68 (Ntakirutimana).

<sup>10154</sup> T. 13 September 2004 pp. 68-69 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 32.

<sup>10155</sup> T. 13 September 2004 pp. 69-70 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 35.

<sup>10156</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 35.

<sup>10157</sup> T. 13 September 2004 p. 62 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 23.

<sup>10158</sup> T. 13 September 2004 p. 62 (Ntakirutimana).

<sup>10159</sup> T. 13 September 2004 pp. 62-63 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 23.

Kanyabashi Defence Witness D-2-5-I

3773. Witness D-2-5-I, a Hutu civil servant,<sup>10160</sup> testified that he never heard Kanyabashi broadcast messages by megaphone.<sup>10161</sup> Witness D-2-5-I named three drivers of Ngoma *commune*, and stated that one of these drivers, Shinani, often used a loudspeaker or megaphone to broadcast messages in the *commune*.<sup>10162</sup>

Kanyabashi Defence Witness D-2-YYYY

3774. Witness D-2-YYYY, a Hutu civil servant,<sup>10163</sup> testified that between April and July 1994 he resided 50 metres from a road that ran from Butare town to Tumba *secteur*. There was a nun's residence between his house and that road.<sup>10164</sup> From his house, he would be able to hear a message delivered via megaphone from a vehicle on the road. Anyone at his house at the time could clearly hear the voices of people on the road, and someone standing in his house could clearly see what was happening on the road.<sup>10165</sup>

3775. Witness D-2-YYYY testified that between April and July 1994, Kanyabashi drove himself.<sup>10166</sup> During this period, Witness D-2-YYYY saw Kanyabashi driving himself on several occasions.<sup>10167</sup> Between April and July 1994 he did not hear any message being broadcast using a megaphone from a vehicle on that road.<sup>10168</sup> Witness D-2-YYYY stated that prior to 6 April 1994, when there was an urgent message for the population of Ngoma *commune*, the university public address system was placed on a vehicle and *commune* staff would drive around the *secteurs* of Ngoma *commune*, transmitting the message.<sup>10169</sup> Between January and July 1994, Mathias Nsanzabahizi and Cyrille were drivers for Ngoma *commune*.<sup>10170</sup> At some point, the latter went into hiding.<sup>10171</sup> Witness D-2-YYYY testified that after 6 April 1994, the system for conveying messages from the *commune* to the population changed; vehicles were no longer used to carry messages.<sup>10172</sup>

Kanyabashi Defence Witness D-2-14-W

3776. Witness D-2-14-W, a Hutu teacher who resided in Butare town,<sup>10173</sup> Ngoma *commune* in April 1994,<sup>10174</sup> testified that he never heard Kanyabashi speak over a megaphone from a moving vehicle, nor did he ever hear anyone discuss such a message. Any message that was

<sup>10160</sup> T. 11 December 2007 p. 51 (ICS); T. 21 January 2008 p. 62 (ICS) (Witness D-2-5-I); Defence Exhibit 615 (Kanyabashi) (Personal Particulars).

<sup>10161</sup> T. 22 January 2008 p. 25 (ICS) (Witness D-2-5-I).

<sup>10162</sup> T. 22 January 2008 p. 24 (ICS) (Witness D-2-5-I).

<sup>10163</sup> T. 26 November 2007 p. 62 (Witness D-2-YYYY); Defence Exhibit 612 (Kanyabashi) (Personal Particulars).

<sup>10164</sup> T. 28 November 2007 p. 44 (ICS) (Witness D-2-YYYY).

<sup>10165</sup> T. 28 November 2007 pp. 44-45 (ICS) (Witness D-2-YYYY).

<sup>10166</sup> T. 28 November 2007 p. 51 (ICS) (Witness D-2-YYYY).

<sup>10167</sup> T. 28 November 2007 pp. 51-52 (ICS) (Witness D-2-YYYY).

<sup>10168</sup> T. 28 November 2007 p. 45 (ICS) (Witness D-2-YYYY).

<sup>10169</sup> T. 28 November 2007 p. 60 (ICS) (Witness D-2-YYYY).

<sup>10170</sup> T. 28 November 2007 pp. 46, 48 (ICS) (Witness D-2-YYYY).

<sup>10171</sup> T. 28 November 2007 p. 48 (ICS) (Witness D-2-YYYY).

<sup>10172</sup> T. 28 November 2007 p. 62 (ICS) (Witness D-2-YYYY).

<sup>10173</sup> T. 11 February 2008 pp. 7, 9 (ICS) (Witness D-2-14-W); Defence Exhibit 626 (Kanyabashi) (Personal Particulars).

<sup>10174</sup> T. 11 February 2008 pp. 7, 9, 32 (ICS) (Witness D-2-14-W).

publicly broadcast would have come to his attention. If an announcement had been made he would have learned of it. At that time people shared information easily, so news circulated rapidly within the population. Between April and July 1994 Witness D-2-14-W never heard Kanyabashi ask the population to commit criminal acts, nor did he subsequently learn of Kanyabashi doing so.<sup>10175</sup>

#### Kanyabashi Defence Witness D-2-13-O

3777. Witness D-2-13-O, a Hutu driver,<sup>10176</sup> testified that he never heard Kanyabashi speaking with a megaphone nor did he ever hear that Kanyabashi used a megaphone to address the population.<sup>10177</sup> Witness D-2-13-O's village was not far from Butare town.<sup>10178</sup> If such a message had been spread using a megaphone, he would have heard it.<sup>10179</sup> Witness D-2-13-O stated that before the war a *préfecture* vehicle would go around town announcing that there was community labour. That vehicle did not travel around town delivering that message during the war.<sup>10180</sup> Witness D-2-13-O underscored that Kanyabashi had a Tutsi wife, and several people who knew Kanyabashi said that he was an accomplice. In Witness D-2-13-O's opinion, the same Kanyabashi who assisted many Tutsis could not have asked members of the population to kill Tutsis.<sup>10181</sup>

#### Nyiramasuhuko Defence Witness WKKTD

3778. Witness WKKTD, a Hutu teacher who resided in Ngoma *secteur*, Ngoma *commune*,<sup>10182</sup> testified that between April and June 1994 he did not see or hear of anyone moving around town broadcasting messages with a megaphone.<sup>10183</sup>

#### Nyiramasuhuko Defence Witness WMKL

3779. Witness WMKL, a Hutu teacher,<sup>10184</sup> testified that in 1994 he did not hear any messages being broadcast by megaphone in Butare town.<sup>10185</sup> From April to July 1994 he did not hear messages from Kanyabashi being disseminated with a megaphone.<sup>10186</sup>

#### Nteziryayo Defence Witness AND-17

3780. Witness AND-17, a Hutu gardener,<sup>10187</sup> worked at the same business establishment as Witness QJ from April to July 1994.<sup>10188</sup> Witness AND-17 testified that Witness QJ could not

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<sup>10175</sup> T. 11 February 2008 pp. 41-42 (ICS) (Witness D-2-14-W).

<sup>10176</sup> T. 5 November 2007 pp. 18-19 (ICS) (Witness D-2-13-O); Defence Exhibit 600 (Kanyabashi) (Personal Particulars).

<sup>10177</sup> T. 6 November 2007 p. 24 (Witness D-2-13-O).

<sup>10178</sup> T. 5 November 2007 pp. 12, 17 (ICS); T. 6 November 2007 p. 25 (Witness D-2-13-O).

<sup>10179</sup> T. 6 November 2007 pp. 24-25 (Witness D-2-13-O).

<sup>10180</sup> T. 6 November 2007 pp. 25-26 (Witness D-2-13-O).

<sup>10181</sup> T. 6 November 2007 p. 26 (Witness D-2-13-O).

<sup>10182</sup> T. 7 February 2005 pp. 39-41 (ICS) (Witness WKKTD); Defence Exhibit 265 (Nyiramasuhuko) (Personal Particulars).

<sup>10183</sup> T. 8 February 2005 p. 20 (Witness WKKTD).

<sup>10184</sup> T. 6 April 2005 p. 18 (ICS) (Witness WMKL); Defence Exhibit 291 (Nyiramasuhuko) (Personal Particulars).

<sup>10185</sup> T. 11 April 2005 p. 12 (Witness WMKL).

<sup>10186</sup> T. 7 April 2005 pp. 64-65 (ICS) (Witness WMKL).



go out alone.<sup>10189</sup> Witness AND-17 stated that Witness QJ was hiding in a room at the back of their place of work because he feared that he would be killed, given that he did not have an identity card.<sup>10190</sup> Witness AND-17 testified that at that time, he viewed Witness QJ as a Hutu. Fellow workers at the hotel also viewed Witness QJ as a Hutu. They did not know that Witness QJ was a Tutsi.<sup>10191</sup>

3781. Witness AND-17 testified that from the room occupied by Witness QJ, he would not have been able to see what was happening on the main road<sup>10192</sup> and that apart from when he left the business premises to visit his parents in April 1994, he was with Witness QJ every minute of the day between April and June 1994.<sup>10193</sup> Witness AND-17 testified that he visited Witness QJ's room for a daily beer and cigarette. After approximately 30 minutes Witness AND-17 would return to his place of work within the business' premises.<sup>10194</sup> Witness AND-17 testified that between April and June 1994, Witness QJ would go for walks, alone, in the garden in front of his room.<sup>10195</sup> Witness QJ was not obliged to tell Witness AND-17 about his movements.<sup>10196</sup>

#### Kanyabashi Defence Witness D-21-B

3782. Witness D-21-B, a Hutu,<sup>10197</sup> testified that she knew the owner of the property where Witness QI hid.<sup>10198</sup> The entrance to this compound faced the road that ran from Butare town to the university. A brick wall surrounded the compound on three sides, on the left, right and behind. Along the left and right sides of the compound, student rooms were built into the outer wall. There were ventilation holes in the wall alongside the kitchen.<sup>10199</sup>

3783. Witness D-21-B testified that there was an oven on the premises, which was approximately two by three metres.<sup>10200</sup> If you stood in front of the entrance to the property, the oven was at the rear, after the student rooms, attached to the wall on the left-hand side.<sup>10201</sup> The oven had an external wall without any openings, while the front-facing wall of the oven had openings.<sup>10202</sup> Witness D-21-B testified that there was a mosque to the left of this property.<sup>10203</sup>

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<sup>10187</sup> T. 30 January 2007 p. 7 (ICS) (Witness AND-17); Defence Exhibit 509 (Nteziryayo) (Personal Particulars).

<sup>10188</sup> T. 30 January 2007 pp. 9-11, 31-37 (ICS) (Witness AND-17).

<sup>10189</sup> T. 30 January 2007 pp. 35-37 (ICS) (Witness AND-17).

<sup>10190</sup> T. 30 January 2007 pp. 36-37 (ICS); T. 31 January 2007 p. 18 (ICS) (Witness AND-17).

<sup>10191</sup> T. 30 January 2007 p. 47 (ICS); T. 31 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10192</sup> T. 31 January 2007 pp. 18-19 (ICS) (Witness AND-17).

<sup>10193</sup> T. 31 January 2007 pp. 13, 32 (ICS) (Witness AND-17).

<sup>10194</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10195</sup> T. 31 January 2007 p. 33 (ICS) (Witness AND-17).

<sup>10196</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10197</sup> T. 12 May 2008 p. 67 (ICS); T. 7 February 2008 pp. 62, 64-69 (ICS) (Witness D-21-B).

<sup>10198</sup> T. 7 February 2008 p. 64 (ICS) (Witness D-21-B).

<sup>10199</sup> T. 7 February 2008 pp. 72-73 (ICS) (Witness D-21-B).

<sup>10200</sup> T. 7 February 2008 pp. 73-75 (ICS) (Witness D-21-B).

<sup>10201</sup> T. 7 February 2008 p. 75 (ICS) (Witness D-21-B).

<sup>10202</sup> T. 7 February 2008 pp. 73-74 (ICS) (Witness D-21-B).

<sup>10203</sup> T. 7 February 2008 p. 75 (ICS) (Witness D-21-B).

Kanyabashi Defence Witness D-2-13-D

3784. Witness D-2-13-D, a Hutu detainee who pled guilty to participating in attacks at Kabakobwa,<sup>10204</sup> testified that he knew of three vehicles that belonged to the *commune* office in 1994: a white station wagon which he saw Kanyabashi driving, a green Toyota which he saw Nsanzabahizi driving, and a truck. He saw these vehicles in circulation before the war.<sup>10205</sup>

Kanyabashi Defence Witness D-2-17-I

3785. Witness D-2-17-I, a Hutu who worked at a convent in Ngoma *commune* from April to July 1994,<sup>10206</sup> testified that while he was at the convent, between 7 April and July 1994, he never heard any message from Kanyabashi saying that the enemy was hiding among the population and that they should look for the enemy everywhere.<sup>10207</sup> During this period he left the convent to return to his home on four occasions.<sup>10208</sup>

3786. Witness D-2-17-I testified that approximately 13 people hid at the convent under stacks of wood. These people were discovered and removed by soldiers around May 1994. Around four soldiers arrived at the convent at about 1.00 p.m. and asked that pieces of wood be removed to ensure that there was no one hiding beneath. The soldiers removed the wood and those found hiding there were “flushed out”. The soldiers asked the people who had been discovered to show their identity cards, and subsequently evacuated them.<sup>10209</sup>

Kanyabashi Defence Witness D-13-D

3787. Witness D-13-D, a Hutu who resided in Huye *commune* from April to July 1994,<sup>10210</sup> testified that at no point while he was in Butare town did he hear megaphone messages from Kanyabashi, asking the population to carry out community work. He never heard other members of the population discuss any such message.<sup>10211</sup> Before April 1994 he never heard of a megaphone being used to make announcements in Ngoma *commune*. He stated that if someone used a megaphone to make an announcement in Ngoma *commune*, and he was in Huye *commune* where he lived, he would not have been able to hear it.<sup>10212</sup>

3788. Witness D-13-D testified that he was detained at the Huye *commune* jail for three months and after that, he was held at Rwandex prison.<sup>10213</sup> While he was detained, members of an association called *Ibuka* tried to incite him to give false evidence against three individuals,

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<sup>10204</sup> T. 28 August 2007 p. 62 (ICS); T. 4 September 2007 pp. 23-24, 54-55 (ICS) (Witness D-2-13-D); Defence Exhibit 560 (Kanyabashi) (Personal Particulars).

<sup>10205</sup> T. 30 August 2007 pp. 23-24 (ICS) (Witness D-2-13-D).

<sup>10206</sup> T. 25 February 2008 p. 47 (ICS); T. 27 February 2008 pp. 11, 14 (ICS) (Witness D-2-17-I); Defence Exhibit 631 (Kanyabashi) (Personal Particulars).

<sup>10207</sup> T. 27 February 2008 p. 14 (ICS) (Witness D-2-17-I).

<sup>10208</sup> T. 27 February 2008 p. 18 (ICS) (Witness D-2-17-I).

<sup>10209</sup> T. 26 February 2008 pp. 64-69 (ICS) (Witness D-2-17-I).

<sup>10210</sup> T. 14 February 2008 p. 38 (ICS) (Witness D-13-D); Defence Exhibit 627 (Kanyabashi) (Personal Particulars).

<sup>10211</sup> T. 21 February 2008 p. 45 (ICS) (Witness D-13-D).

<sup>10212</sup> T. 25 February 2008 p. 21 (ICS) (Witness D-13-D).

<sup>10213</sup> T. 19 February 2008 pp. 12-13, 24, 26 (ICS) (Witness D-13-D).

including Kanyabashi.<sup>10214</sup> Witness D-13-D stated he was tried and acquitted, but not released. He was asked to implicate these three people as a precondition for his release.<sup>10215</sup> He testified that he was also a victim of this group. His cousins, who were members of *Ibuka*, told him what was discussed at their meetings, including plans to put him in prison. He contended that he was imprisoned although he never participated in killings.<sup>10216</sup> Witness D-13-D testified that while he was in prison, during the course of *Gacaca* proceedings, he learned that two women, who were influential *Ibuka* members, falsely accused many people who they did not know.<sup>10217</sup> Witness D-13-D stated, regarding one of these women in particular that as long as you had a broad nose it was sufficient to implicate you.<sup>10218</sup>

### Nyiramasuhuko Defence Expert Witness Eugène Shimamungu

3789. In his Expert Report and at trial Eugène Shimamungu opined that *Inyenzi* was a *nom de guerre* coined by one Alloys Ndurumbe, the leader of a Tutsi incursion group which sought to destabilise the Rwandan government in the 1960s.<sup>10219</sup> His Report claimed that it was surprising to hear sensation seekers claim that this term was used to denigrate Tutsis.<sup>10220</sup> At trial Shimamungu testified that this word was used throughout the 1960s in Rwanda to identify all Tutsi incursions into Rwanda, and the term reappeared in the 1990s because the conflicts were led by people who had the same claims as those in the 1960s.<sup>10221</sup> Shimamungu denied that the term was used historically by those who did not like Rwandan Tutsis.<sup>10222</sup>

3790. Shimamungu testified that the word *Inkotanyi*, dating from the 19<sup>th</sup> century, was revived by the RPF in 1990 who became known as the RPF-*Inkotanyi* and occasionally, *Inyenzi-Inkotanyi*. The word *Inkotanyi* meant die-hard combatant and its Kinyarwanda root word, *jukota*, meant “to devour” and thus also carried an extreme meaning so that if a group is so called, it is feared.<sup>10223</sup>

3791. In the context of Sindikubwabo’s speech, Shimamungu opined that people identified as belonging to “enemy circles” included social groups from which members of the RPF were enlisted and recruited: mainly Tutsi refugees who are members of the NRA; Tutsis within the country; Hutus dissatisfied with the current regime; the unemployed within Rwanda and abroad; foreigners married to Tutsi women; Nilo-Hamitic tribes in the region and criminals at large.<sup>10224</sup>

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<sup>10214</sup> T. 19 February 2008 pp. 13, 24-25 (ICS) (Witness D-13-D).

<sup>10215</sup> T. 19 February 2008 p. 25 (ICS) (Witness D-13-D).

<sup>10216</sup> T. 19 February 2008 p. 14 (ICS) (Witness D-13-D).

<sup>10217</sup> T. 19 February 2008 p. 20 (ICS) (Witness D-13-D).

<sup>10218</sup> T. 19 February 2008 p. 21 (ICS) (Witness D-13-D).

<sup>10219</sup> T. 16 March 2005 p. 49 (Shimamungu); Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 36.

<sup>10220</sup> Defence Exhibit 278B (Nyiramasuhuko) (Shimamungu Expert Report) p. 36.

<sup>10221</sup> T. 16 March 2005 p. 49 (Shimamungu).

<sup>10222</sup> T. 16 March 2005 pp. 50-51 (Shimamungu).

<sup>10223</sup> T. 16 March 2005 p. 50; T. 22 March 2005 p. 68 (Shimamungu).

<sup>10224</sup> T. 1 April 2005 p. 48 (Shimamungu).

#### 3.6.35.4.2 Deliberations

3792. The Chamber will consider two issues: (1) whether Kanyabashi drove through Butare town with a megaphone around late May 1994 and in mid-June 1994, inciting the population to search for the enemy; and (2) whether Tutsis were killed immediately after Kanyabashi's megaphone announcements.

3793. As a preliminary matter, the Chamber notes that the Defence asserts that Prosecution Witnesses QI, TK and QJ were *Ibuka* members who were induced to falsely testify as to this allegation against Kanyabashi. For the reasons set out elsewhere in this Judgement, the Chamber finds that the testimony of Defence Witnesses D-2-21-T, D-13-D and D-2-18-O as to the alleged *Ibuka* membership of Witnesses QI, TK and QJ does not undermine the credibility of these Prosecution witnesses ().

##### 3.6.35.4.2.1 Megaphone Announcement in Butare Town, Late May 1994

3794. The Prosecution adduced evidence from Witnesses QJ and TK in support of the allegation that around late May 1994, Kanyabashi drove through Butare town and used a megaphone to incite the population to search for the enemy.

3795. The Chamber recalls that Witness QJ testified that he is married to Witness TK, which was confirmed by Witness TK.<sup>10225</sup> Both witnesses also testified that they had never discussed the events of April to July 1994 together, and did not know of each other's plans to testify before this Tribunal.<sup>10226</sup> The Chamber recalls its previous finding that while it does not believe that these witnesses never discussed the events at issue in this case, or their plans to testify before this Tribunal, this alone does not undermine Witness TK or Witness QJ's credibility ().

3796. Witness QJ testified that in May 1994 he saw Kanyabashi make an announcement from a Toyota pickup, at the Hotel Faucon roadblock.<sup>10227</sup> Witness QJ recounted that Kanyabashi stated, "[t]he *bourgmestre* of Ngoma *commune* is informing people of Ngoma that the enemies are among us and you are requested to seek them everywhere."<sup>10228</sup> Witness QJ testified that as used by Kanyabashi, the word "enemy" meant Tutsis.<sup>10229</sup> Similar announcements were made very frequently, including by people other than Kanyabashi,<sup>10230</sup> and on one occasion in May 1994 Witness QJ saw Kanyabashi make this announcement himself.<sup>10231</sup> Witness QJ's testimony that Kanyabashi was in a Toyota pickup is corroborated by Witness D-2-13-D's testimony that the Ngoma *commune* office owned such a vehicle.<sup>10232</sup>

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<sup>10225</sup> T. 12 November 2001 p. 59 (ICS) (Witness QJ); T. 21 May 2002 pp. 101-102 (ICS) (Witness TK).

<sup>10226</sup> T. 12 November 2001 pp. 56, 59-60 (ICS) (Witness QJ); T. 21 May 2002 pp. 44-48, 92-93, 102-106 (ICS) (Witness TK).

<sup>10227</sup> T. 12 November 2001 pp. 25-26; T. 14 November 2001 pp. 100-101; T. 15 November 2001 p. 16 (ICS) (Witness QJ).

<sup>10228</sup> T. 12 November 2001 pp. 25-26, 29-30; T. 14 November 2001 pp. 100-101 (Witness QJ).

<sup>10229</sup> T. 12 November 2001 p. 33 (Witness QJ).

<sup>10230</sup> T. 12 November 2001 pp. 26, 32 (Witness QJ).

<sup>10231</sup> T. 12 November 2001 pp. 25-26, 32 (Witness QJ).

<sup>10232</sup> T. 30 August 2007 p. 23 (ICS) (Witness D-2-13-D).

3797. The Kanyabashi Defence relied on the testimony of Nteziryayo Defence Witness AND-17 to submit that Witness QJ could not have witnessed Kanyabashi make megaphone announcements at the Hotel Faucon roadblock in May 1994.<sup>10233</sup> Witness AND-17 worked at the same business establishment as Witness QJ during the period at issue.<sup>10234</sup> He stated that Witness QJ was hiding in a room at the back of the business premises, and Witness QJ could not leave his room because he did not have an identity card.<sup>10235</sup> Witness AND-17 further contended that Witness QJ would not have been able to see what was happening on the main road from the room he occupied.<sup>10236</sup> Witness AND-17 testified that he was with Witness QJ every minute of the day between 7 April and the end of June 1994, except for a short period on 20 April 1994, when Witness AND-17 left the business premises to visit his parents.<sup>10237</sup>

3798. The Chamber considers Witness AND-17's testimony unpersuasive for several reasons. It is implausible that Witness AND-17 was with Witness QJ every minute from 7 April 1994 to the end of June 1994. By the witness' own admission, he was not continuously with Witness QJ during the period at issue. Witness AND-17 conceded that Witness QJ would go for walks, alone, in the garden in front of his room.<sup>10238</sup> Witness AND-17 also testified that he was formally employed in a specific location of the business premises, and Witness QJ was not working.<sup>10239</sup> Witness AND-17 visited Witness QJ's room for a daily beer and cigarette lasting approximately 30 minutes, and would then return to his place of work within the premises.<sup>10240</sup> Witness AND-17 also acknowledged that Witness QJ was not obligated to tell Witness AND-17 about all his movements.<sup>10241</sup> Significantly, Witness AND-17 testified that at that time, he and his colleagues viewed Witness QJ as a Hutu, and did not know that Witness QJ was a Tutsi.<sup>10242</sup> As such, there would have been no reason for Witness AND-17 or others to monitor Witness QJ's every movement. This evidence belies Witness AND-17's assertion that he was with Witness QJ continuously during the period at issue.

3799. The credibility of Witness AND-17's testimony is further undermined by the fact that he made several implausible statements under oath. He testified that between 7 April 1994 and the end of June 1994, he never heard of roadblocks in Butare town, he never heard that people had to show identity cards at roadblocks, and that when he travelled to and from the hotel during this period he did not see any dead bodies anywhere.<sup>10243</sup> The Chamber finds Witness AND-17's testimony regarding Witness QJ's account of Kanyabashi's megaphone announcement to be neither credible, nor reliable. As such, Witness AND-17's testimony does not affect the Chamber's assessment of Witness QJ's testimony on this issue.

3800. Turning to Witness QJ's identification of Kanyabashi, the Chamber notes Witness QJ testified that he knew Kanyabashi because Kanyabashi was a senior public official in Ngoma

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<sup>10233</sup> Kanyabashi Closing Brief, para. 316.

<sup>10234</sup> T. 30 January 2007 pp. 9-11, 31-37 (ICS) (Witness AND-17).

<sup>10235</sup> T. 30 January 2007 pp. 35-37 (ICS); T. 31 January 2007 p. 18 (ICS) (Witness AND-17).

<sup>10236</sup> T. 31 January 2007 pp. 18-19 (ICS) (Witness AND-17).

<sup>10237</sup> T. 31 January 2007 pp. 13, 32 (ICS) (Witness AND-17).

<sup>10238</sup> T. 31 January 2007 p. 33 (ICS) (Witness AND-17).

<sup>10239</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10240</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10241</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10242</sup> T. 31 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10243</sup> T. 31 January 2007 pp. 17, 31 (ICS) (Witness AND-17).

*commune* where the witness was living in 1994.<sup>10244</sup> Witness QJ testified that Kanyabashi lived nearby and typically drove past the hotel.<sup>10245</sup> Further, Witness QJ saw Kanyabashi several times driving around the city in his own car, on which occasions Kanyabashi was obliged to stop at the roadblocks.<sup>10246</sup> Witness QJ also frequently saw Kanyabashi stop to speak to those manning the roadblock at the Hotel Faucon.<sup>10247</sup> Lastly, Witness QJ had previously seen Kanyabashi attend a meeting at the MRND Palace in Butare sometime between 17 and 21 April 1994.<sup>10248</sup> In light of the number of occasions on which Witness QJ had previously seen Kanyabashi, and Witness QJ's positive identification of Kanyabashi in court,<sup>10249</sup> the Chamber is persuaded that Witness QJ's identification of Kanyabashi at the Hotel Faucon roadblock in May 1994 was reliable.

3801. The Kanyabashi Defence also points to an apparent inconsistency in Witness QJ's account of Kanyabashi's megaphone announcement.<sup>10250</sup> Witness QJ initially testified that he saw Kanyabashi make the megaphone announcement himself, at the Hotel Faucon roadblock, on two occasions.<sup>10251</sup> Witness QJ then said he witnessed Kanyabashi make this announcement himself on only one occasion, in May 1994.<sup>10252</sup> The Chamber does not consider this to be a significant discrepancy, particularly when viewed in the context of the passage of time between the events at issue and Witness QJ's testimony. The Chamber notes that Witness QJ's testimony was clear that the message was repeatedly broadcast around Butare town, and on at least one occasion in late May 1994, he saw Kanyabashi make this announcement at the Hotel Faucon roadblock.

3802. Witness QJ's eyewitness testimony was corroborated in part by Witness TK's testimony. Witness TK testified that at the end of May 1994 while she was in hiding in a convent in Butare she heard a vehicle drive past, broadcasting an announcement with a megaphone.<sup>10253</sup> The message delivered was that the Ngoma *bourgmestre* wished to inform the population that the enemy was still among them, the enemy was hiding in their midst, and they had to find the enemy.<sup>10254</sup> She testified that she heard this message when she was hiding beneath a stack of wood in a storage room.<sup>10255</sup> The Chamber notes that Witness TK's testimony indicates that she was not in a position to see and identify the speaker. However, her testimony supports Witness QJ's account with regard to the content of the message, the method by which it was disseminated, and the approximate time and place of the announcement.

<sup>10244</sup> T. 12 November 2001 pp. 24-25 (Witness QJ).

<sup>10245</sup> T. 12 November 2001 pp. 25, 33 (Witness QJ).

<sup>10246</sup> T. 12 November 2001 pp. 32-33 (Witness QJ).

<sup>10247</sup> T. 12 November 2001 pp. 25, 33 (Witness QJ).

<sup>10248</sup> T. 8 November 2001 pp. 108-109 (ICS); T. 12 November 2001 p. 25 (Witness QJ).

<sup>10249</sup> T. 12 November 2001 p. 38 (Witness QJ).

<sup>10250</sup> Kanyabashi Closing Brief, para. 282.

<sup>10251</sup> T. 12 November 2001 p. 26 (Witness QJ).

<sup>10252</sup> T. 12 November 2001 p. 32 (Witness QJ).

<sup>10253</sup> T. 20 May 2002 pp. 26-27 (Witness TK); T. 27 May 2002 pp. 147-148 (ICS) (Witness TK); T. 12 November 2001 pp. 25-30 (Witness QJ); T. 14 November 2001 pp. 100-101 (Witness QJ).

<sup>10254</sup> T. 20 May 2002 p. 27 (Witness TK).

<sup>10255</sup> T. 20 May 2002 p. 26; T. 27 May 2002 pp. 94, 97 (Witness TK).

3803. Witness TK testified that the voice she heard disseminating the announcement<sup>10256</sup> was not Kanyabashi's voice.<sup>10257</sup> The Kanyabashi Defence points to this testimony as an inconsistency between the testimonies of Witnesses QJ and TK.<sup>10258</sup> The Chamber recalls that the wording of this allegation in Paragraph 5.8 of the Kanyabashi Indictment potentially incriminates Kanyabashi in more than one incident of this nature in Butare town, stating that Kanyabashi incited the population with a megaphone from a vehicle "on at least one occasion" within the period at issue.<sup>10259</sup>

3804. The Chamber recalls Witness QJ testified that announcements from a vehicle were made by people other than Kanyabashi.<sup>10260</sup> Furthermore, Witness QJ testified that these announcements were repeated frequently.<sup>10261</sup> In the Chamber's view, although testifying about similar announcements during the same period in question, Witnesses TK and QJ are not testifying about one and the same announcement by Kanyabashi in mid-May 1994. Nevertheless, the Chamber considers that various details given by Witness TK, such as the manner in which the announcements were made and the content of the announcements, corroborates the testimony of Witness QJ.

3805. The Kanyabashi Defence relies on the testimony of Witnesses D-2-YYYY and D-2-17-I to submit that Witness TK could not have heard this megaphone announcement in late May 1994.<sup>10262</sup> Witness D-2-YYYY testified that between April and July 1994 he resided 50 metres from a road that ran from Butare town to Tumba *secteur*, close to the convent where Witness TK hid.<sup>10263</sup> He stated that from his house, he would have been able to see and hear any message delivered via megaphone from a vehicle on that road,<sup>10264</sup> and did not hear any such message during this period.<sup>10265</sup> Witness D-2-17-I testified that he worked at the same convent where Witness TK hid from April through May 1994, but never heard any message from Kanyabashi saying that they should look for the enemy.<sup>10266</sup>

3806. Witnesses D-2-YYYY and D-2-17-I's testimony does not contradict Witness TK's evidence, as neither was continuously present at the convent during Witness TK's stay there. Taking into account Witness D-2-YYYY's profession at the time,<sup>10267</sup> the Chamber considers

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<sup>10256</sup> T. 20 May 2002 p. 27; T. 27 May 2002 pp. 147-148 (ICS) (Witness TK).

<sup>10257</sup> T. 27 May 2002 pp. 147-148 (ICS) (Witness TK).

<sup>10258</sup> Kanyabashi Closing Brief, para. 310.

<sup>10259</sup> Para. 5.8 of the Kanyabashi Indictment (in support of all counts).

<sup>10260</sup> T. 12 November 2001 p. 32 (Witness QJ).

<sup>10261</sup> T. 12 November 2001 p. 32 (Witness QJ).

<sup>10262</sup> Kanyabashi Closing Brief, para. 305.

<sup>10263</sup> T. 28 November 2007 p. 44 (ICS) (Witness D-2-YYYY).

<sup>10264</sup> T. 28 November 2007 pp. 44-45 (ICS) (Witness D-2-YYYY).

<sup>10265</sup> T. 28 November 2007 p. 45 (ICS) (Witness D-2-YYYY).

<sup>10266</sup> T. 25 February 2008 p. 47 (ICS) (Witness D-2-17-I); T. 27 February 2008 pp. 11, 14 (ICS) (Witness D-2-17-I) (worked at the convent from April to July 1994); T. 20 May 2002 pp. 26, 28 (Witness TK) (fled with her family to this convent in Butare town after the death of President Habyarimana in April 1994, and remained there until a date between the end of May 1994 and the beginning of June 1994).

<sup>10267</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 62 (ICS); T. 3 December 2007 pp. 7-8 (ICS) (Witness D-2-YYYY).

he would have been away from his home during this period. Witness D-2-17-I testified that during this period, he left the convent to return to his home on four occasions.<sup>10268</sup>

3807. The Chamber notes that Witness D-2-17-I actually corroborated Witness TK's evidence in several key respects. Witness TK testified that in April 1994 she went into hiding in a storage room at a convent,<sup>10269</sup> and that she hid with over 10 other Tutsis beneath a pile of wood.<sup>10270</sup> She stated that they were discovered by soldiers on a date between the end of May 1994 and the beginning of June 1994, and the soldiers took them to the BPO.<sup>10271</sup> Witness D-2-17-I testified that approximately 13 people hid at the convent under stacks of wood, and these people were discovered and removed by soldiers around May 1994.<sup>10272</sup>

3808. Having considered all of the available evidence, the Chamber considers Witness TK's testimony on the announcement she heard in late May 1994 to be credible and convincing.

3809. The Defence presented eight witnesses who testified that they never heard Kanyabashi make a megaphone announcement from a moving vehicle, and did not subsequently hear about such an announcement. The Chamber considers the testimony of Witnesses D-2-17-I, D-2-YYYY, D-2-5-I, D-2-14-W, D-2-13-O, D-13-D, WKKTD and WMKL on the megaphone announcement in Butare town in late May 1994 to be of limited weight because the Kanyabashi Defence did not establish that any of these Defence witnesses were continuously present in Butare town throughout late May 1994. Notably, Witness D-13-D testified that if he was at his home in Huye *commune*, he would not have been able to hear a megaphone announcement in Ngoma *commune*.<sup>10273</sup> Witness D-2-13-O's testimony does not indicate that he was actually in Butare town in late May 1994; this witness claimed that if such a message had been spread using a megaphone in Butare town, he would have heard about it,<sup>10274</sup> because he resided in a village that was not far from Butare town.<sup>10275</sup>

3810. Furthermore, five of these eight Defence witnesses were closely connected to Kanyabashi in 1994, and as such, may have had an interest in defending him. Witnesses D-2-5-I,<sup>10276</sup> D-2-YYYY<sup>10277</sup> and D-2-14-W<sup>10278</sup> had close professional ties to Kanyabashi, and Witnesses D-13-D<sup>10279</sup> and D-2-13-O<sup>10280</sup> testified to close personal ties with Kanyabashi.

3811. The testimony of Witness QJ is further corroborated by evidence which established that during the period from April through June 1994 megaphone announcements from a moving vehicle were part of the method by which Ngoma *commune* messages were disseminated to the

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<sup>10268</sup> T. 27 February 2008 p. 18 (ICS) (Witness D-2-17-I).

<sup>10269</sup> T. 20 May 2002 p. 26 (Witness TK).

<sup>10270</sup> T. 20 May 2002 p. 26; T. 27 May 2002 pp. 94, 97 (Witness TK).

<sup>10271</sup> T. 20 May 2002 pp. 26-30; T. 27 May 2002 p. 107 (Witness TK).

<sup>10272</sup> T. 26 February 2008 pp. 64-66 (ICS) (Witness D-2-17-I).

<sup>10273</sup> T. 25 February 2008 p. 21 (ICS) (Witness D-13-D).

<sup>10274</sup> T. 6 November 2007 pp. 24-25 (Witness D-2-13-O).

<sup>10275</sup> T. 5 November 2007 pp. 12, 17 (ICS); T. 6 November 2007 p. 25 (Witness D-2-13-O).

<sup>10276</sup> T. 11 December 2007 p. 51 (ICS); T. 21 January 2008 pp. 60-62 (ICS) (Witness D-2-5-I).

<sup>10277</sup> T. 26 November 2007 p. 62 (ICS); T. 3 December 2007 pp. 7-8 (ICS); T. 5 December 2007 p. 56 (ICS) (Witness D-2-YYYY); Defence Exhibit 612 (Kanyabashi) (Personal Particulars).

<sup>10278</sup> T. 11 February 2008 pp. 7, 9 (ICS) (Witness D-2-14-W).

<sup>10279</sup> Defence Exhibit 627 (Kanyabashi) (Personal Particulars); T. 14 February 2008 pp. 31, 35 (Witness D-13-D).

<sup>10280</sup> T. 5 November 2007 pp. 12, 16-17 (ICS) (Witness D-2-13-O).



population. As noted, Witness D-2-5-I, a former civil servant in Ngoma, testified that messages were often broadcast in Ngoma *commune* by a driver using a loudspeaker or megaphone.<sup>10281</sup> Witness D-2-13-O testified that a *préfecture* vehicle would go around town announcing community labour.<sup>10282</sup> Witness D-2-YYYY testified that, prior to 6 April 1994, urgent messages for the population of Ngoma *commune* were transmitted by placing the university public address system on a vehicle, and *commune* staff drove around the *secteurs* of the *commune* relaying the message.<sup>10283</sup> Witnesses D-2-13-O and D-2-YYYY both stated that this practice of transmitting *préfecture* messages stopped in April 1994, without offering an explanation as to why.<sup>10284</sup> In the absence of such an explanation, the Chamber is not persuaded that this system of public announcements was discontinued during this period.

3812. The evidence of Witnesses TK, D-2-5-I, D-2-13-O and D-2-YYYY thus establishes that megaphone announcements from a moving vehicle were part of the *modus operandi* by which messages from *Bourgmestre* Kanyabashi were delivered to the population of Ngoma *commune* in the period from April through June 1994.

3813. The Chamber has previously held Witness QJ's testimony about this incident to be detailed and consistent, and it thus finds Witness QJ's identification of Kanyabashi to be reliable. Insofar as Witness QJ's account was also corroborated and complemented by evidence establishing a pattern of *préfecture* announcements being disseminated from a vehicle with a public address system, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that around late May 1994 Kanyabashi drove through Butare town with a megaphone and instructed the population to search for the enemy among them.

3814. Witness QJ testified that when Kanyabashi used the word "enemy", it meant Tutsis.<sup>10285</sup> Ntakirutimana testified that the word "enemy" in the context of the 1994 conflict in Rwanda referred to the group who was attacking.<sup>10286</sup> In his Expert Report, Ntakirutimana stated that in daily Rwandan culture the "enemy" was understood to be Tutsis.<sup>10287</sup> Defence Expert Witness Shimamungu opined that people identified as belonging to enemy circles included, *inter alia*, Tutsis within the country.<sup>10288</sup> In line with its previous finding in this Judgement the Chamber concludes that the term "enemy", when used by Kanyabashi, referred to Tutsis in general ().

#### 3.6.35.4.2.2 Megaphone Announcement in Butare Town, June 1994

3815. The Prosecution adduced evidence from Witness QI in support of the allegation that in mid-June 1994 Kanyabashi drove through Butare town and used a megaphone to incite the population to search for the enemy. Witness QI testified that one day in mid-June 1994, he was hiding above a bread-baking oven at his employer's house when he saw Kanyabashi in a white

<sup>10281</sup> T. 22 January 2008 pp. 23-24 (ICS) (Witness D-2-5-I).

<sup>10282</sup> T. 6 November 2007 pp. 25-26 (Witness D-2-13-O).

<sup>10283</sup> T. 28 November 2007 p. 60 (ICS) (Witness D-2-YYYY).

<sup>10284</sup> T. 6 November 2007 pp. 25-26 (Witness D-2-13-O); T. 28 November 2007 p. 62 (ICS) (Witness D-2-YYYY).

<sup>10285</sup> T. 12 November 2001 p. 33 (Witness QJ).

<sup>10286</sup> T. 13 September 2004 p. 64 (Ntakirutimana).

<sup>10287</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 29-30.

<sup>10288</sup> T. 1 April 2005 p. 48 (Shimamungu).

Peugeot 305 vehicle.<sup>10289</sup> Kanyabashi stopped his vehicle, stepped out onto the road,<sup>10290</sup> and through a hand-held megaphone stated that the *bourgmestre* of Ngoma *commune* wanted the population of Ngoma *commune* to come early in the morning to clear the bushes along the road, so the *Inkotanyi* would not find anywhere to hide.<sup>10291</sup> Witness QI testified that Kanyabashi said they should flush out people hiding in the bushes, and everybody found in those bushes should die, including children, old men and women.<sup>10292</sup> Witness QI understood *Inkotanyi*, in that context, to mean Tutsis hiding in the bushes.<sup>10293</sup>

3816. According to Witness QI, the oven had a window through which one could see what was happening on the nearby road, and he could open the window to hear what was being said outside.<sup>10294</sup> He testified that although there was a fence between his hiding place and the road, he could see everything that happened on the road through the openings in the fence.<sup>10295</sup>

3817. Witness QI testified that he was able to identify Kanyabashi by his voice and by sight.<sup>10296</sup> He stated that he knew Kanyabashi as the *bourgmestre* of Ngoma *commune*.<sup>10297</sup> He further testified that Kanyabashi was in a vehicle which he knew to be Kanyabashi's.<sup>10298</sup> He purportedly saw an individual whom he recognised as Kanyabashi get out of the vehicle, and heard a voice he knew to be Kanyabashi's being amplified by megaphone.<sup>10299</sup> Additionally, the content of the message attributed the announcement to Kanyabashi.<sup>10300</sup> Lastly, Witness QI identified Kanyabashi in court.<sup>10301</sup>

3818. The Kanyabashi Defence challenges Witness QI's identification of Kanyabashi during this incident, pointing to the fact that Witness QI was confined to an oven and 200 metres away from the individual he identified as Kanyabashi.<sup>10302</sup> The Kanyabashi Defence asserts that Witness D-21-B's testimony contradicts Witness QI's testimony regarding his ability to see the alleged incident.<sup>10303</sup> Witness D-21-B, who once resided at the property where Witness QI hid,<sup>10304</sup> described the layout of the compound,<sup>10305</sup> stating that the entrance to this compound faced the road that ran from Butare town to the university.<sup>10306</sup> He explained that a brick wall surrounded the compound on three sides, on the left, right and behind. Along the left and right sides of the compound, student rooms were built into the outer wall, and where the

<sup>10289</sup> T. 23 March 2004 pp. 59-62 (ICS); T. 24 March 2004 pp. 69-70, 77, 79-80 (ICS) (Witness QI).

<sup>10290</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 p. 78 (ICS) (Witness QI).

<sup>10291</sup> T. 23 March 2004 pp. 59-60 (ICS); T. 24 March 2004 pp. 76-78, 80 (ICS) (Witness QI).

<sup>10292</sup> T. 23 March 2004 p. 61 (ICS) (Witness QI).

<sup>10293</sup> T. 23 March 2004 pp. 59-60 (ICS) (Witness QI).

<sup>10294</sup> T. 24 March 2004 pp. 25, 70, 72, 75 (ICS) (Witness QI).

<sup>10295</sup> T. 24 March 2004 pp. 72-75 (ICS) (Witness QI).

<sup>10296</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 pp. 76-78 (ICS) (Witness QI).

<sup>10297</sup> T. 23 March 2004 p. 42 (ICS) (Witness QI).

<sup>10298</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 p. 78 (ICS) (Witness QI).

<sup>10299</sup> T. 23 March 2004 p. 59 (ICS); T. 24 March 2004 pp. 76-77 (ICS) (Witness QI).

<sup>10300</sup> T. 23 March 2004 pp. 59-61 (ICS) (Witness QI).

<sup>10301</sup> T. 23 March 2004 p. 69 (Witness QI).

<sup>10302</sup> Kanyabashi Closing Brief, paras. 298-299.

<sup>10303</sup> Kanyabashi Closing Brief, para. 298; T. 24 March 2004 p. 70 (ICS) (Witness QI).

<sup>10304</sup> T. 7 February 2008 pp. 64-69 (ICS) (Witness D-21-B).

<sup>10305</sup> T. 7 February 2008 pp. 64-65, 72-75 (ICS) (Witness D-21-B).

<sup>10306</sup> T. 7 February 2008 p. 72 (ICS) (Witness D-21-B).

wall ran alongside the kitchen, there were ventilation holes in the wall.<sup>10307</sup> Witness D-21-B acknowledged there was an oven on the premises, which was approximately two by three metres.<sup>10308</sup> According to Witness D-21-B, if you stood in front of the entrance to the property, the oven was at the rear, after the student rooms, attached to the wall on the left-hand side.<sup>10309</sup> The oven had an external wall without any openings, while the front-facing wall of the oven had openings.<sup>10310</sup>

3819. Rather than contradicting Witness QI, Witness D-21-B in fact corroborated Witness QI's evidence in several respects. Witness D-21-B's testimony that there was an oven on the premises, which was approximately two by three metres, corroborates Witness QI's account that he hid above an oven. Further, Witness D-21-B testified that the entrance of the compound faced the road that ran from Butare town to the university, and that the brick wall surrounding the compound did not cover the front.<sup>10311</sup> Witness D-21-B's assertion that the front-facing wall of the oven had openings corresponds with Witness QI's claim that the oven had a window through which he could see what was happening on the nearby road.<sup>10312</sup>

3820. The Kanyabashi Defence also submits that from a distance of 200 metres it would have been virtually impossible for Witness QI to recognise Kanyabashi with certainty.<sup>10313</sup> In addition to Witness QI's audio and visual identification of Kanyabashi, discussed above, Witness QI gave a detailed description of Kanyabashi's vehicle and appearance on that occasion, stating that Kanyabashi was driving a white, four-door Peugeot 305,<sup>10314</sup> and Kanyabashi was wearing a blue shirt, black trousers and a black jacket.<sup>10315</sup> The Chamber also recalls Witness QI previously observed Kanyabashi from a distance of 50 paces when hiding opposite Matyazo Clinic on 22 April 1994.<sup>10316</sup> The identification was not challenged by the Kanyabashi Defence.

3821. Thus, notwithstanding the conditions in which Witness QI found himself at the time of observing Kanyabashi's megaphone announcement, and taking into account not only the content of the announcement, but also that Witness QI was already familiar with Kanyabashi, the Chamber finds Witness QI's identification of Kanyabashi on that day in June 1994 to be reliable.

3822. At trial, the Kanyabashi Defence confronted Witness QI with his 11 June 1996 witness statement, taken shortly after the events at issue, which provided that he could not recall the date of Kanyabashi's alleged megaphone announcement.<sup>10317</sup> The Chamber accepts Witness

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<sup>10307</sup> T. 7 February 2008 pp. 72-73 (ICS) (Witness D-21-B).

<sup>10308</sup> T. 7 February 2008 pp. 73-75 (ICS) (Witness D-21-B).

<sup>10309</sup> T. 7 February 2008 p. 75 (ICS) (Witness D-21-B).

<sup>10310</sup> T. 7 February 2008 pp. 73-75 (ICS) (Witness D-21-B).

<sup>10311</sup> T. 7 February 2008 pp. 72-73 (ICS) (Witness D-21-B).

<sup>10312</sup> T. 24 March 2004 p. 70 (ICS) (Witness QI); T. 7 February 2008 pp. 73-74 (ICS) (Witness D-21-B).

<sup>10313</sup> Kanyabashi Closing Brief, paras. 298-299.

<sup>10314</sup> T. 23 March 2004 pp. 59-62 (ICS); T. 24 March 2004 pp. 77, 79-80 (ICS) (Witness QI).

<sup>10315</sup> T. 23 March 2004 p. 62 (ICS) (Witness QI).

<sup>10316</sup> T. 23 March 2004 pp. 44-45, 47-48, 51; T. 25 March 2004 p. 65 (ICS) (Witness QI) (from his hiding place he could see the clinic, which was about 50 paces away); T. 23 March 2004 p. 51 (Witness QI) (as soon as Witness QI arrived at his hideout, he saw Kanyabashi arrive in a "305" vehicle).

<sup>10317</sup> T. 24 March 2004 pp. 77-78 (ICS) (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

QI's explanation that he forgot the precise date of this incident and subsequently gave an approximate date at trial.<sup>10318</sup> He explained the omission of a date in his witness statement by stating that several Prosecution investigators questioned him at a time when he was not psychologically well, and that he did not remember the dates very well. He stated that the month of June was used as a reference when he was questioned. He explained that he was asked to give an estimate, and in that context, he gave an approximate date.<sup>10319</sup> The Chamber notes that Witness QI stressed that although the date he gave was an estimate, he was certain of the words Kanyabashi spoke.<sup>10320</sup>

3823. The Kanyabashi Defence cites another apparent inconsistency between Witness QI's trial testimony and previous statement.<sup>10321</sup> Witness QI testified that Kanyabashi was alone in his white Peugeot 305 vehicle when he delivered the announcement.<sup>10322</sup> However, his June 1996 statement indicated that Kanyabashi was with two soldiers when he drove past Witness QI's hiding place, speaking into the megaphone.<sup>10323</sup> The Chamber notes this inconsistency, but does not consider this discrepancy to be sufficiently serious to undermine Witness QI's credibility; the presence of soldiers in the vehicle with Kanyabashi does not go to the root of Witness QI's testimony regarding the announcement made by Kanyabashi and the content of the message.

3824. In sum, the Chamber considers Witness QI's testimony on Kanyabashi's megaphone announcement in mid-June 1994 to be credible, reliable and convincing. His testimony is also supported by evidence cited above which establishes that megaphone announcements from a moving vehicle were part of the *modus operandi* by which messages from the *bourgmestre* were disseminated to the population of Ngoma *commune*. Accordingly, the Chamber finds that around mid-June 1994 Kanyabashi used a megaphone to tell the population to clear bushes along the road in order to remove potential hiding places for the *Inkotanyi*, to flush out people who were hiding in the bushes, and to kill those found there, including children, old men and women.

3825. Witness QI testified that he understood *Inkotanyi*, in the context of Kanyabashi's instructions to mean Tutsis hiding in the bushes.<sup>10324</sup> Prosecution Expert Witness Ntakirutimana testified that *Inkotanyi* simply meant the attacking group; while Ntakirutimana declined to identify "Tutsis" as the enemy, he admitted that generally speaking one could deduce that the Hutus were attacked and the Tutsis were the attackers.<sup>10325</sup> In his Expert Report, Ntakirutimana stated that in daily Rwandan culture, the "enemy" was understood to be Tutsis.<sup>10326</sup>

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<sup>10318</sup> T. 24 March 2004 pp. 77-79 (ICS) (Witness QI).

<sup>10319</sup> T. 24 March 2004 pp. 77-79 (ICS) (Witness QI).

<sup>10320</sup> T. 24 March 2004 pp. 77-79 (ICS) (Witness QI).

<sup>10321</sup> Kanyabashi Closing Brief, para. 295 (contending that Witness QI's version of events kept changing).

<sup>10322</sup> T. 23 March 2004 pp. 59-62 (ICS); T. 24 March 2004 pp. 69, 77, 79-80 (ICS) (Witness QI).

<sup>10323</sup> T. 24 March 2004 pp. 77-80 (ICS) (Witness QI); Defence Exhibit 201 (Kanyabashi) (11 June 1996, Statement of Witness QI).

<sup>10324</sup> T. 23 March 2004 pp. 59-60 (ICS) (Witness QI).

<sup>10325</sup> T. 13 September 2004 pp. 59, 65-66 (Ntakirutimana).

<sup>10326</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 29-30.

3826. Accordingly, having regard to Witness QI's own testimony, which is corroborated by Ntakirutimana as to the meaning of *Inkotanyi* in the context of 1994, the Chamber accepts that Witness QI understood *Inkotanyi*, in that context, to mean Tutsis hiding in the bushes.

3.6.35.4.2.3 *Killings After the Megaphone Announcements, May and June 1994*

3827. Witnesses QJ, TK and QI testified that following Kanyabashi's megaphone announcements in mid-May and mid-June 1994, searches were conducted in Butare town and Tutsis were flushed out of hiding and killed. Witness QJ stated that after the May 1994 announcement searches were conducted around the city and in various houses, and these searches entailed seeking out people in hiding.<sup>10327</sup> Witness QJ testified that anyone found in the bush was killed immediately.<sup>10328</sup> As a Tutsi in hiding,<sup>10329</sup> Witness TK testified that the announcement affected her safety and those hiding with her, and made their situation critical.<sup>10330</sup> After the May 1994 megaphone announcement, an order was issued requiring each household to select one person to participate in a final search.<sup>10331</sup> Witness TK stated that following the announcement, searches were conducted everywhere to find those who were hiding.<sup>10332</sup> Six soldiers discovered her around the end of May 1994, and asked her to show an identity card.<sup>10333</sup> In the Chamber's view, this indicates that the soldiers were looking for Tutsis. Witness TK further testified that the armed soldiers wanted to kill them and were restrained from doing so by sisters at the convent.<sup>10334</sup> These soldiers assaulted members of the group and threatened the group with death.<sup>10335</sup>

3828. The Chamber notes that Witness D-2-17-I worked at the same convent where Witness TK hid from April through May 1994,<sup>10336</sup> and corroborated Witness TK's account that in May 1994 a group of soldiers discovered people who had been hiding at the convent, under stacks of wood.<sup>10337</sup> Witness D-2-17-I further confirmed Witness TK's testimony that the soldiers asked the people they found to show identity cards and subsequently evacuated them from the convent.<sup>10338</sup>

3829. The Defence led evidence through Witness D-2-17-I to counter Witness TK's assertion that she was discovered by these soldiers as a result of the megaphone announcement.<sup>10339</sup> Witness D-2-17-I, who was present when Witness TK was discovered, did not testify that the people hiding at the convent were found as a result of the megaphone announcement.<sup>10340</sup>

<sup>10327</sup> T. 12 November 2001 pp. 30-31; T. 14 November 2001 pp. 100-101, 104-105 (Witness QJ).

<sup>10328</sup> T. 12 November 2001 p. 31 (Witness QJ).

<sup>10329</sup> T. 20 May 2002 p. 26 (Witness TK).

<sup>10330</sup> T. 28 May 2002 pp. 16, 18 (Witness TK).

<sup>10331</sup> T. 28 May 2002 p. 17 (Witness TK).

<sup>10332</sup> T. 20 May 2002 pp. 27-28 (Witness TK).

<sup>10333</sup> T. 20 May 2002 pp. 28-30; T. 27 May 2002 p. 107 (Witness TK).

<sup>10334</sup> T. 20 May 2002 pp. 28-30 (Witness TK).

<sup>10335</sup> T. 20 May 2002 p. 28 (Witness TK).

<sup>10336</sup> T. 25 February 2008 p. 47 (ICS) (Witness D-2-17-I); T. 27 February 2008 pp. 11, 14 (ICS) (Witness D-2-17-I); T. 20 May 2002 pp. 26, 28 (Witness TK).

<sup>10337</sup> T. 26 February 2008 pp. 64-69 (ICS) (Witness D-2-17-I); T. 20 May 2002 pp. 28-30 (Witness TK).

<sup>10338</sup> T. 26 February 2008 pp. 64-69 (ICS) (Witness D-2-17-I); T. 20 May 2002 pp. 28, 30 (Witness TK).

<sup>10339</sup> Kanyabashi Closing Brief, para. 289.

<sup>10340</sup> T. 26 February 2008 pp. 64-69 (ICS) (Witness D-2-17-I).

However, Witness D-2-17-I repeatedly stated that they were “flushed out”.<sup>10341</sup> This language mirrors that of the May 1994 megaphone announcement, wherein the population was asked to find the enemy wherever they were hiding.

3830. Following her testimony that the convent was searched by soldiers after the megaphone announcement,<sup>10342</sup> the Kanyabashi Defence confronted Witness TK with her previous statement of 23 April 1998, which appeared to indicate that soldiers came to the convent because they were retreating towards Butare after the RPF took Gitarama.<sup>10343</sup> In response, Witness TK reiterated that those at the convent were found pursuant to the megaphone announcement, which called upon people to search.<sup>10344</sup> The Chamber does not find that the information contained in Witness TK’s previous statement necessarily contradicts her in-court testimony. The Chamber considers Witness TK’s testimony on searches after the May 1994 megaphone announcement to be clear and consistent. In sum, the Chamber considers Witnesses QJ and TK’s testimony to be credible and convincing regarding searches being conducted after Kanyabashi’s megaphone announcement in late May 1994.

3831. Regarding the aftermath of the June 1994 megaphone announcement, Witness QI testified that Kanyabashi’s instructions were carried out the following day.<sup>10345</sup> Witness QI witnessed implementation of this announcement in the area near the house where he was hiding.<sup>10346</sup> Witness QI testified that he saw people clearing the woods, hacking those caught hiding with machetes, and throwing grenades into the bushes to flush out people who were hiding in them.<sup>10347</sup> Witness QI testified that attackers and soldiers looked for people in the valley and in a nearby cemetery.<sup>10348</sup> Witness QI asserted that the killers were Hutus and they were looking for Tutsis.<sup>10349</sup> In cross-examination, however, Witness QI acknowledged that he learned of the grenades being thrown at those in hiding after the event.<sup>10350</sup> Although Witness QI’s knowledge of the use of grenades is hearsay, Witness QI was an eyewitness to the bush-clearing. Notwithstanding this minor discrepancy in his oral testimony, the Chamber nonetheless considers Witness QI’s testimony to be detailed, credible and convincing regarding searches being conducted after Kanyabashi’s megaphone announcement in June 1994.

3832. The Chamber thus finds that the Prosecution has proven beyond a reasonable doubt that following Kanyabashi’s megaphone announcements in mid-May 1994 and in June 1994, searches were conducted for Tutsis and consequently more Tutsis were killed.

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<sup>10341</sup> T. 26 February 2008 pp. 65, 67 (ICS) (Witness D-2-17-I).

<sup>10342</sup> T. 20 May 2002 pp. 27-28 (Witness TK).

<sup>10343</sup> T. 27 May 2002 pp. 103-107 (Witness TK); Defence Exhibit 60 (Kanyabashi) (22 and 23 April 1998, Statement of Witness TK).

<sup>10344</sup> T. 27 May 2002 pp. 106-107 (Witness TK).

<sup>10345</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10346</sup> T. 24 March 2004 p. 76 (ICS) (Witness QI).

<sup>10347</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10348</sup> T. 23 March 2004 p. 63 (ICS) (Witness QI).

<sup>10349</sup> T. 23 March 2004 p. 68 (ICS) (Witness QI).

<sup>10350</sup> T. 25 March 2004 p. 4 (ICS) (Witness QI).

### 3.6.36 *École Évangéliste du Rwanda* (“EER”), Mid-May to Early June 1994

#### 3.6.36.1 Introduction

3833. The Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment allege that between mid-May and mid-June 1994, Kanyabashi and soldiers selected refugees and forcibly led them to the woods neighbouring the *École Évangéliste du Rwanda* (“EER”); some of them were never seen again.<sup>10351</sup> The Nsabimana and Nteziryayo Indictment further alleges that in May and June 1994, Nsabimana ordered that refugees be transferred by soldiers from the BPO to the EER, and that some of the refugees were beaten or killed by soldiers, and others were taken to the neighbouring woods where a great many were executed.<sup>10352</sup> The Prosecution submits that Nsabimana instructed that Tutsi refugees be loaded onto buses to be taken to the EER.<sup>10353</sup> It submits that Kanyabashi knew or had reason to know that massacres of Tutsis were being committed at the BPO, the EER and other locations in Ngoma *commune*.<sup>10354</sup>

3834. The Nyiramasuhuko and Ntahobali Indictment alleges that after Nyiramasuhuko and Ntahobali attacked the refugees at the BPO between 19 April and late June 1994, the surviving refugees were taken to various locations in the *préfecture* to be executed, notably in the woods next to the EER.<sup>10355</sup> The Prosecution submits that *Interahamwe*, acting under the direction and supervision of Nyiramasuhuko and Ntahobali, forcibly removed Tutsi refugees from the BPO to be killed around the EER. It submits that Ntahobali participated in the killing and mistreatment of Tutsis at the EER.<sup>10356</sup>

3835. In support of these allegations, the Prosecution relies on the testimony of Prosecution Witnesses RE, TA, TB, TG, QY, QI, SJ, SX, QBQ and Expert Witness Alison Des Forges.

3836. The Nsabimana Defence relies on the legal points addressed in the preliminary issues below.

3837. The Kanyabashi Defence asserts that there is no evidence that Kanyabashi, be it on his own or with the assistance of soldiers, selected refugees for transfer to the EER forest. It also asserts that there was no evidence to demonstrate Kanyabashi’s alleged knowledge that crimes were being committed at the EER.<sup>10357</sup>

3838. The Ntahobali Defence asserts that the Prosecution evidence as to Ntahobali’s involvement at the EER was weak and, in particular, attacks the reliability of the identification evidence.<sup>10358</sup> It further asserted in closing argument that only two Prosecution witnesses testified as to serious and visible offences committed by Ntahobali at the EER, and that neither

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<sup>10351</sup> Para. 6.38 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana); Para. 6.41 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>10352</sup> Para. 6.39 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>10353</sup> Prosecution Closing Brief, p. 269, paras. 124-125.

<sup>10354</sup> Prosecution Closing Brief, pp. 414, 424, paras. 106, 141.

<sup>10355</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against both Nyiramasuhuko and Ntahobali).

<sup>10356</sup> Prosecution Closing Brief, pp. 159-160, 164-166, 176, paras. 11-15, 24-29, 52.

<sup>10357</sup> Kanyabashi Closing Argument, T. 29 April 2009 p. 6; Kanyabashi Closing Brief, para. 472.

<sup>10358</sup> Ntahobali Closing Brief, paras. 113-129.

of these witnesses was credible. Further, none of the witnesses addressing this issue identified Ntahobali in court.<sup>10359</sup>

3839. The Nyiramasuhuko Defence asserts that no Prosecution witness linked Nyiramasuhuko to the events at the EER.<sup>10360</sup>

### 3.6.36.2 Preliminary Issues

#### *Nsabimana Indictment*

3840. The Nsabimana Defence argues that Paragraph 6.39 of the Indictment is not pled in support of any counts against Nsabimana and therefore cannot be the basis of any conviction.<sup>10361</sup> The Chamber considers this a serious omission by the Prosecution. Bearing in mind the principles set forth in the Preliminary Issues section (), the Chamber shall not consider the evidence concerning the allegation in Paragraph 6.39 of the Indictment.<sup>10362</sup>

3841. Additionally, the Nsabimana Defence notes that while Paragraph 6.38 of the Indictment is pled in support of counts, the portion of this paragraph related to the EER sets forth the alleged criminal conduct of Kanyabashi and soldiers, but does not name Nsabimana.<sup>10363</sup> As pertains to the EER, Paragraph 6.38 merely states that Kanyabashi and soldiers selected refugees and forcibly led them to the woods neighbouring the EER. The Chamber notes, however, that Nsabimana was also charged with exercising his authority as *préfet* over his subordinates pursuant to Article 6 (3).<sup>10364</sup> Insofar as Kanyabashi was a *bourgmestre* of a *commune* in Butare *préfecture* he was under the authority of Nsabimana. The Chamber therefore finds that Nsabimana was charged with Article 6 (3) responsibility for the criminal acts of Kanyabashi and other subordinates. Accordingly, although the Chamber will not consider the conduct set forth in Paragraph 6.39 alleging Article 6 (1) responsibility, as it was not charged in support of counts, the Chamber nevertheless considers that evidence with respect to Nsabimana's alleged personal knowledge of or involvement in the transfer of refugees from the BPO to the EER may be considered where relevant for the purposes of Nsabimana's responsibility under Article 6 (3).

#### *Ntahobali Indictment*

3842. The Ntahobali Defence asserts that the allegation that Ntahobali abducted, raped and killed Tutsi refugees on unspecified dates at the EER together with Presidential Guard soldiers, and/or soldiers and/or *Interahamwe* was not pled in the Indictment.<sup>10365</sup>

3843. The Chamber notes that the Prosecution led evidence through Witness QY at trial that she was raped by soldiers at the EER. Paragraph 6.30 of the Nyiramasuhuko and Ntahobali Indictment alleges that after Nyiramasuhuko and Ntahobali attacked the refugees at the BPO

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<sup>10359</sup> Ntahobali Closing Argument, T. 23 April 2009 p. 27.

<sup>10360</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 pp. 47-48.

<sup>10361</sup> Nsabimana Closing Brief, paras. 1799-1805.

<sup>10362</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 156; *Ntagerura et al.*, Judgement (AC), para. 32.

<sup>10363</sup> Nsabimana Closing Brief, paras. 1610, 1725.

<sup>10364</sup> Para. 4.3 of the Nsabimana and Nteziryayo Indictment.

<sup>10365</sup> Ntahobali Closing Brief, para. 78(x).



between 19 April and late June 1994, the surviving refugees were taken to various locations in the *préfecture* to be executed, notably in the woods next to the EER.<sup>10366</sup> Significantly there is no mention of Ntahobali's involvement in or responsibility for rapes at or near the EER.

3844. However, Paragraph 6.37 of the Nyiramasuhuko and Ntahobali Indictment alleges that Ntahobali, assisted by unknown "accomplices", participated in kidnapping and raping Tutsi women.<sup>10367</sup> Insofar as Paragraph 6.37 fails to include any details as to where or when Ntahobali was allegedly involved in such rapes, the Chamber finds this paragraph defective.

3845. The Chamber notes that the summary of anticipated evidence for Witness QY in the Appendix to the Prosecution Pre-Trial Brief states only that Witness QY saw Ntahobali beat people and appoint soldiers to take away five people at the EER.<sup>10368</sup> It makes no reference to her being raped at the EER by soldiers nor does it outline any role that Ntahobali may have played. Accordingly, the Chamber will not make any finding as to Ntahobali's alleged role in the rape of Witness QY at or near the EER.

#### *Kanyabashi Indictment*

3846. The Kanyabashi Defence asserts that no evidence directly implicated Kanyabashi for crimes committed at the EER and points to the Chamber's Decision of 16 December 2004 pursuant to Rule 98 *bis*.<sup>10369</sup> In that Decision, the Chamber noted, "no direct evidence was adduced of Joseph Kanyabashi's participation in the abduction of people from the [*préfecture*] office to the woods next to the EER."<sup>10370</sup> Nonetheless, the Chamber also noted the evidence of Witness QI that a policeman abducted refugees from the EER and took them to the neighbouring woods and therefore reasoned that this evidence, if believed, could implicate Kanyabashi pursuant to Article 6 (3).<sup>10371</sup>

3847. The Kanyabashi Defence asserts that Witness QI's evidence implicating Kanyabashi was not led by the Prosecution, and only came to light upon a question put to the witness by the Chamber. It argues that it would be unfair to rely on this evidence because it did not have notice that Witness QI would testify as to this allegation.<sup>10372</sup>

3848. In questioning Witness QI, the Kanyabashi Defence suggested that Kanyabashi would not have used soldiers to help him, because he had policemen at his disposal. In response, Witness QI testified as to a policeman at the EER.<sup>10373</sup> Although the Chamber asked a follow-up question the next day, the Kanyabashi Defence originally evoked the substance of the contested evidence. The Kanyabashi Defence cannot complain about evidence that it solicited.

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<sup>10366</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against both Nyiramasuhuko and Ntahobali).

<sup>10367</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment (in support of Count 7 against Ntahobali).

<sup>10368</sup> Prosecution Pre-Trial Brief – Appendix; Witness QY (61).

<sup>10369</sup> Kanyabashi Closing Brief, paras. 472-473.

<sup>10370</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 180.

<sup>10371</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 181.

<sup>10372</sup> Kanyabashi Closing Brief, paras. 475-477.

<sup>10373</sup> T. 24 March 2004 p. 56 (Witness QI).

3849. Moreover, the Kanyabashi Defence asserts that Paragraph 6.41 of the Indictment did not adequately plead Article 6 (3) responsibility, although the Defence does not specify which pleading requirement was not met.<sup>10374</sup> The Chamber recalls that the Indictment must sufficiently identify, *inter alia*, the subordinates over which the Accused had effective control.<sup>10375</sup>

3850. The Chamber notes that Kanyabashi was charged with exercising his authority as *bourgmestre* of Ngoma *commune* over his subordinates pursuant to Article 6 (3).<sup>10376</sup> In his position as *bourgmestre*, Kanyabashi had authority over the civil servants posted in his *commune*.<sup>10377</sup> By virtue of Paragraph 3.5 the Chamber considers Kanyabashi had authority over *commune* civil servants and policemen during the events in question. The Chamber however notes that the Prosecution distinguished between soldiers and policemen in the Indictment, and where implicated, policemen were specifically identified by the relevant Indictment paragraph.<sup>10378</sup>

3851. Paragraph 6.41 of the Indictment asserts that Kanyabashi and soldiers participated in these crimes. This paragraph does not identify policemen as having participated in the crimes committed at the EER. In this instance, the Prosecution failed to specify that Kanyabashi was to be held responsible for acts of a *commune* policeman at the EER. Notwithstanding Paragraphs 3.5 and 4.3, the Chamber is of the view that the particular wording of Paragraph 6.41 circumscribes Kanyabashi's responsibility with respect to the events in question to soldiers and not policemen. Therefore, by reason of its failure to identify policemen as the subordinates over whom Kanyabashi had control during the events at the EER, the Chamber finds the Indictment to be defective and will consider whether the defect was cured by subsequent Prosecution disclosures.

3852. The Appendix to the Prosecution Pre-Trial Brief noted that Witness RM would testify that Kanyabashi and soldiers selected men at the BPO to be killed in the forest owned by the EER.<sup>10379</sup> His statement of 13 June 1996 provided that Kanyabashi and soldiers walked around the BPO selecting men to be taken away to the EER. The statement refers to policemen in reference to the events at Nyange and Rango, but does not mention them with regard to the EER.<sup>10380</sup> Though these disclosures were consistent with the information in the Prosecution Pre-Trial Brief, they did not provide Kanyabashi with notice that he was being charged with the actions of policemen at the EER. Therefore the defect was not cured and the Chamber will not consider the allegation that Kanyabashi was responsible for the crimes of policemen at the EER.

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<sup>10374</sup> Kanyabashi Closing Brief, para. 474.

<sup>10375</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>10376</sup> Para. 4.3 of the Kanyabashi Indictment (not in support of counts).

<sup>10377</sup> Para. 3.5 of the Kanyabashi Indictment (not in support of counts).

<sup>10378</sup> See, e.g., Para. 6.32 of the Kanyabashi Indictment (relating to events at Kabakobwa).

<sup>10379</sup> Prosecution Pre-Trial Brief – Appendix; Witness RM (71) (cited in support of all counts against Kanyabashi).

<sup>10380</sup> 13 June 1996, Statement of Witness RM, disclosed 11 April 1998, unredacted statement disclosed 28 October 2003.

### 3.6.36.3 Evidence

#### Prosecution Witness RE

3853. Witness RE, a Tutsi who was 16 years old in 1994,<sup>10381</sup> testified that she fled her home in Gikongoro *préfecture* for Butare *préfecture* in April 1994.<sup>10382</sup> When she arrived in Butare, she went to the university teaching hospital where she stayed for one week. After one week somebody called Gatera asked her to leave the hospital and to go to the *préfecture* office.<sup>10383</sup> She testified to seeing Sylvain Nsabimana at the BPO, where she sought shelter with many other refugees. When she arrived *Préfet* Nsabimana asked the refugees to divide into two groups: one group of refugees from Butare *préfecture* and another group of refugees from other regions.<sup>10384</sup>

3854. *Préfet* Nsabimana said that refugees from Butare should wait for their *bourgmestres* to accompany them back to their *communes*.<sup>10385</sup> Those from other *préfectures* were to go to the EER.<sup>10386</sup> The *bourgmestre* of Runyinya *commune* refused to take his people home because he said that those who stayed in his *commune* had been killed.<sup>10387</sup> In addition, refugees from other *préfectures* hid themselves from their own *bourgmestres*. Therefore, people from other *préfectures* as well as those from Butare and Runyinya *commune* went to the EER.<sup>10388</sup> She was with her sister at both the BPO and the EER.<sup>10389</sup>

3855. Witness RE spent only one night at the BPO.<sup>10390</sup> The following day, around 5.30 p.m., *Préfet* Nsabimana ordered the refugees from other regions, including the witness, to leave the BPO and to proceed to a nearby Protestant institution called EER.<sup>10391</sup> Soldiers forced the refugees to leave the BPO and beat them along the way to the EER. At the BPO, Nsabimana referred to the refugees as dirt.<sup>10392</sup> The witness later testified, however, that they were called dirt when they were going to Rango.<sup>10393</sup>

3856. It was less than a five minute walk to the EER.<sup>10394</sup> After they arrived at the EER, there was a torrential rain and the refugees sought shelter on the veranda as the building was locked.<sup>10395</sup> Witness RE testified that the people who settled on the veranda of the EER were Tutsis.<sup>10396</sup> As the rain abated, the soldiers came to the EER and beat the refugees.<sup>10397</sup> These

<sup>10381</sup> Prosecution Exhibit 64 (Personal Particulars); T. 24 February 2003 p. 43 (Witness RE).

<sup>10382</sup> T. 24 February 2003 p. 9 (Witness RE).

<sup>10383</sup> T. 24 February 2003 pp. 9-10 (Witness RE).

<sup>10384</sup> T. 24 February 2003 p. 10 (Witness RE).

<sup>10385</sup> T. 26 February 2003 p. 52 (Witness RE).

<sup>10386</sup> T. 26 February 2003 p. 57 (Witness RE).

<sup>10387</sup> T. 26 February 2003 p. 53 (ICS) (Witness RE).

<sup>10388</sup> T. 25 February 2003 p. 19 (Witness RE).

<sup>10389</sup> T. 24 February 2003 p. 53 (Witness RE).

<sup>10390</sup> T. 24 February 2003 p. 11 (Witness RE).

<sup>10391</sup> T. 24 February 2003 pp. 10-11 (Witness RE).

<sup>10392</sup> T. 24 February 2003 p. 11 (Witness RE).

<sup>10393</sup> T. 25 February 2003 p. 20 (Witness RE).

<sup>10394</sup> T. 24 February 2003 p. 11 (Witness RE).

<sup>10395</sup> T. 26 February 2003 p. 8 (Witness RE).

<sup>10396</sup> T. 24 February 2003 p. 13 (Witness RE).

<sup>10397</sup> T. 24 February 2003 p. 11; T. 26 February 2003 pp. 8-9 (Witness RE).

soldiers were a mix of ordinary soldiers and some from the Presidential Guard.<sup>10398</sup> They were accompanied by an *Interahamwe* called Shalom.<sup>10399</sup> They were saying it was over for the Tutsis.<sup>10400</sup> They took away men and boys to a nearby forest; she believed they had been executed because they never came back.<sup>10401</sup> However, she did not watch the killings, nor did she hear any gun shots; she learned they had been killed with bludgeons.<sup>10402</sup> She did not know Shalom, but others from Butare identified him for her.<sup>10403</sup> He wore an ordinary soldier's uniform.<sup>10404</sup> She only saw Shalom on that night.<sup>10405</sup> She was on the school veranda when she saw Shalom.<sup>10406</sup> The next day, the pastor arrived and unlocked the workshop where he said they should stay at night.<sup>10407</sup>

3857. On cross-examination, the witness was referred to her previous statement of 5 December 1996 which stated that the Presidential Guard returned to the EER the day after the rain to abduct persons but made no mention of ordinary soldiers.<sup>10408</sup> She explained that she had mentioned both Presidential Guard and ordinary soldiers to the investigator, but it was left out of her statement.<sup>10409</sup> She also explained that even though her statement only referred to people being taken away the day after the rain, the abductions occurred every day, including on the day of the rain.<sup>10410</sup>

3858. The witness testified that the *Interahamwe* came during the days to take away people and kill them. She recognised them as being *Interahamwe* because they wore banana leaves and carried clubs and machetes.<sup>10411</sup> The leader of the *Interahamwe* was Shalom.<sup>10412</sup>

3859. Some people managed to escape and returned to the EER. These people informed the others that those taken away had been killed with clubs and machetes and that this had been done while they were naked.<sup>10413</sup> Witness RE testified that young girls were also arrested and taken from the EER to be raped and the returned escapees told them that those that refused to be raped were killed.<sup>10414</sup>

3860. Witness RE testified that she spent one week at the EER.<sup>10415</sup> She could not leave because there were roadblocks outside at which they would be killed.<sup>10416</sup> There were toilets at

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<sup>10398</sup> T. 24 February 2003 p. 10 (Witness RE).

<sup>10399</sup> T. 24 February 2003 p. 11 (Witness RE).

<sup>10400</sup> T. 26 February 2003 p. 60 (Witness RE).

<sup>10401</sup> T. 24 February 2003 p. 12 (Witness RE).

<sup>10402</sup> T. 26 February 2003 p. 18 (Witness RE).

<sup>10403</sup> T. 26 February 2003 p. 9 (Witness RE).

<sup>10404</sup> T. 26 February 2003 p. 12 (Witness RE).

<sup>10405</sup> T. 26 February 2003 pp. 9-10 (Witness RE).

<sup>10406</sup> T. 24 February 2003 p. 38 (Witness RE).

<sup>10407</sup> T. 26 February 2003 p. 60 (Witness RE).

<sup>10408</sup> Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE); T. 26 February 2003 pp. 11-12 (Witness RE).

<sup>10409</sup> T. 26 February 2003 pp. 11-12, 18 (Witness RE).

<sup>10410</sup> T. 24 February 2003 p. 12; T. 26 February 2003 pp. 13-14 (Witness RE).

<sup>10411</sup> T. 24 February 2003 p. 12 (Witness RE).

<sup>10412</sup> T. 24 February 2003 p. 13 (Witness RE).

<sup>10413</sup> T. 24 February 2003 pp. 12-13 (Witness RE).

<sup>10414</sup> T. 24 February 2003 p. 13 (Witness RE).

<sup>10415</sup> T. 24 February 2003 pp. 12-13; T. 24 February 2003 p. 56 (ICS) (Witness RE).

<sup>10416</sup> T. 26 February 2003 p. 17 (Witness RE).

the primary school, but she could not recall whether there was a water tap.<sup>10417</sup> The pastor told them to go back to the *préfet* who had sent them to the EER because they were making the place dirty.<sup>10418</sup> The day after they returned to the BPO, refugees were sent to Nyange.<sup>10419</sup>

3861. The witness was referred to a prior statement of 5 December 1996 in which she stated that she stayed at the BPO for about one and a half months and that one day during this time she saw two buses which drove the refugees to Nyaruhengeri.<sup>10420</sup> The witness maintained that she had only stayed at the BPO for one day before being driven to Nyange.<sup>10421</sup> When put to her that in her prior statement she estimated there were 4,000 refugees at the EER,<sup>10422</sup> whereas her testimony said that there were more than 300 refugees at the EER, she explained that she never gave a figure in prior statements, but only indicated that the refugees were many in number.<sup>10423</sup>

3862. Witness RE incorrectly identified Nteziryayo as Ntahobali in court.<sup>10424</sup>

### Prosecution Witness TG

3863. Witness TG, a Tutsi accountant in 1994,<sup>10425</sup> testified that he knew Ntahobali, because they had attended the *Groupe Scolaire* together. The witness positively identified Ntahobali in court.<sup>10426</sup>

3864. Witness TG was in hiding at Martin Uwariraye's compound from 26 April 1994 until 2 July 1994.<sup>10427</sup> The distance between the compound and Ntahobali's family home was 700 to 800 metres on a curved road.<sup>10428</sup> If one were to draw a straight line from the compound to Shalom's building, the distance would be a little shorter.<sup>10429</sup> In cross-examination, Witness TG denied that the distance was between 1 and 1.5 kilometres by the road, or 800 metres in a straight line.<sup>10430</sup> The compound consisted of several buildings, including a bakery.<sup>10431</sup> Witness TG testified that from the top of the bakery he could see Ntahobali's family home and a roadblock close to it.<sup>10432</sup> There were vents and a window located above the oven.<sup>10433</sup> The windows had metallic bars which prevented him passing his head through the window,<sup>10434</sup> and

<sup>10417</sup> T. 26 February 2003 p. 18 (Witness RE).

<sup>10418</sup> T. 24 February 2003 pp. 12-13; T. 26 February 2003 p. 18 (Witness RE).

<sup>10419</sup> T. 24 February 2003 p. 14; T. 27 February 2003 p. 5 (Witness RE).

<sup>10420</sup> Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE).

<sup>10421</sup> T. 24 February 2003 p. 14; T. 27 February 2003 pp. 49-50 (Witness RE).

<sup>10422</sup> Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE).

<sup>10423</sup> T. 25 February 2003 p. 27 (Witness RE).

<sup>10424</sup> T. 24 February 2003 pp. 40-41 (Witness RE).

<sup>10425</sup> Prosecution Exhibit 98 (Personal Particulars).

<sup>10426</sup> T. 30 March 2004 p. 64 (Witness TG).

<sup>10427</sup> T. 30 March 2004 pp. 63, 65; T. 31 March 2004 pp. 20, 22, 64; T. 31 March 2004 p. 75 (ICS) (Witness TG).

<sup>10428</sup> T. 30 March 2004 p. 69; T. 31 March 2004 pp. 49-50 (ICS) (Witness TG); *see also* Defence Exhibit 302 (Nyiramasuhuko and Ntahobali) (Sketch 1); Defence Exhibit 307 (Nyiramasuhuko and Ntahobali) (Sketch 6) (indicating distance between Uwariraye's compound and Hotel Ihuliro).

<sup>10429</sup> T. 30 March 2004 p. 70 (Witness TG).

<sup>10430</sup> T. 31 March 2004 pp. 49-50 (ICS) (Witness TG).

<sup>10431</sup> T. 31 March 2004 p. 84 (Witness TG).

<sup>10432</sup> T. 30 March 2004 p. 70 (Witness TG).

<sup>10433</sup> T. 31 March 2004 pp. 43-44 (ICS) (Witness TG).

<sup>10434</sup> T. 31 March 2004 p. 47 (ICS) (Witness TG).

there were sisal sacks which obscured the windows in order to prevent them from being seen from the outside.<sup>10435</sup> In cross-examination, Witness TG agreed that it may be impossible to distinguish the characteristics of an unknown person but it would nevertheless be easy to distinguish a person that you already knew.<sup>10436</sup> The witness stated that from this distance he could recognise people at Shalom Ntahobali's home and, although he could not distinguish a conversation between people at Shalom's house, he could hear the sound of screams.<sup>10437</sup>

3865. From the bakery, Witness TG saw some people taken from the roadblock to the EER primary school buildings and killed in the forest near there.<sup>10438</sup> Also, he could hear gunshots, people screaming and the sound of people being beaten from the direction of the EER and Shalom Ntahobali's home.<sup>10439</sup>

### Prosecution Witness QY

3866. Witness QY, a 17 year-old Tutsi during the time of the events,<sup>10440</sup> testified that she sought refuge at the BPO at some point after the death of the President.<sup>10441</sup> After a meeting at the BPO, Nsabimana ordered the refugees to go to the EER.<sup>10442</sup> Soldiers escorted the refugees from the BPO and beat them all the way to the EER. They reached the EER in the evening; *Interahamwe* watched in the vicinity and it was raining.<sup>10443</sup> Some of the classrooms were locked and the refugees sought shelter on the veranda.<sup>10444</sup> Some refugees stayed on the field while others were in the classroom or on the veranda.<sup>10445</sup> The soldiers and *Interahamwe* began to threaten them but then went back to the BPO.<sup>10446</sup>

3867. She saw Shalom there on two occasions.<sup>10447</sup> The first time, during an afternoon,<sup>10448</sup> Shalom came alone,<sup>10449</sup> observed for a while, then left without doing anything.<sup>10450</sup> She later testified that she saw Shalom come to the EER for the first time in the evening of the very day

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<sup>10435</sup> T. 31 March 2004 pp. 48-49 (ICS) (Witness TG).

<sup>10436</sup> T. 31 March 2004 p. 50 (ICS) (Witness TG).

<sup>10437</sup> T. 30 March 2004 p. 71; T. 31 March 2004 p. 50 (ICS) (Witness TG).

<sup>10438</sup> T. 30 March 2004 p. 70 (Witness TG).

<sup>10439</sup> T. 30 March 2004 p. 71 (Witness TG).

<sup>10440</sup> Prosecution Exhibit 68 (Personal Particulars).

<sup>10441</sup> T. 19 March 2003 p. 7 (Witness QY).

<sup>10442</sup> T. 19 March 2003 pp. 35-36-b (Witness QY). The Chamber notes that in the English transcript of 19 March 2003 there is an error in pagination. After pages 1 to 47, the ensuing pages are numbered 32 to 40, followed by 57 and onwards. As a result, the English transcript contains two sets of pages numbered 32 to 40. As such, the Chamber will refer to the first set of pages 32 to 40 as pp. 32-40-a, and the second set as pp. 32-40-b in its footnotes.

<sup>10443</sup> T. 19 March 2003 p. 36-b; T. 24 March 2003 pp. 34, 52 (Witness QY).

<sup>10444</sup> T. 24 March 2003 p. 34 (Witness QY).

<sup>10445</sup> T. 24 March 2003 p. 35 (Witness QY).

<sup>10446</sup> T. 19 March 2003 pp. 33-37-b (Witness QY).

<sup>10447</sup> T. 19 March 2003 pp. 57, 59 (Witness QY).

<sup>10448</sup> T. 19 March 2003 p. 58 (Witness QY).

<sup>10449</sup> T. 19 March 2003 p. 60 (Witness QY).

<sup>10450</sup> T. 19 March 2003 p. 57 (Witness QY).

of her arrival there.<sup>10451</sup> That same day, soldiers and *Interahamwe* came back at night without Shalom and started beating the refugees.<sup>10452</sup>

3868. On the second occasion, Shalom came in a group with people in military uniforms and others in civilian clothes.<sup>10453</sup> The soldiers were not led by anyone.<sup>10454</sup> The soldiers arrived in the afternoon, maybe around 6.00 p.m. when it was still light outside, not quite evening.<sup>10455</sup> They selected young men, then the girls, and took them to the woods opposite the university.<sup>10456</sup> The soldiers in military uniform and civilian clothes took the young people, but Shalom directed the attack.<sup>10457</sup> Some soldiers remained behind and selected girls, among them Witness QY.<sup>10458</sup> She was taken to the woods and raped by one corporal whom she identified by name. She said he threatened her and forced her to remove her clothes. After he raped her, he gave her a pack of gum and said that he would not kill her since their blood had mixed.<sup>10459</sup> She then returned to be with the refugees at the EER.<sup>10460</sup>

3869. The other refugees suffered the same fate, including two men who subsequently committed suicide because they were also mistreated. She testified that it was the first sexual experience of her life.<sup>10461</sup> It was the only time she was raped at the EER.<sup>10462</sup>

3870. When she was confronted with her prior statement of 24 July 2000 in which she said she had been raped on another occasion at Kibeho in Gikongoro *préfecture*, she declined to answer whether she had been previously raped.<sup>10463</sup> She disowned the content of that statement<sup>10464</sup> and later testified that she was not raped at Kibeho.<sup>10465</sup> In contrast to her statement of 24 July 2000, she was also confronted with two prior statements of 18 September 1997 and 11 and 13 March 1998 in which she had not mentioned the Kibeho rape, in addition to her testimony in the Rwandan trial of the corporal in question, where she did not allege he raped her at the EER.<sup>10466</sup> She explained that she did not have the courage to speak on the issue and had not been asked about it by the investigators.<sup>10467</sup>

3871. When recalled to testify three years after her initial testimony Witness QY said that, contrary to her statement of 24 July 2000 and her testimony of 24 March 2003 before this

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<sup>10451</sup> T. 24 March 2003 p. 35 (Witness QY).

<sup>10452</sup> T. 19 March 2003 pp. 58-59; T. 24 March 2003 p. 35 (Witness QY).

<sup>10453</sup> T. 19 March 2003 p. 38-b (Witness QY).

<sup>10454</sup> T. 19 March 2003 pp. 38-b, 57 (Witness QY).

<sup>10455</sup> T. 24 March 2003 p. 37 (Witness QY).

<sup>10456</sup> T. 19 March 2003 pp. 38-b, 57; T. 24 March 2003 pp. 36-37 (Witness QY).

<sup>10457</sup> T. 19 March 2003 p. 57 (Witness QY).

<sup>10458</sup> T. 19 March 2003 pp. 38-b, 57; T. 24 March 2003 pp. 37-38 (Witness QY).

<sup>10459</sup> T. 19 March 2003 pp. 38-39-b; T. 24 March 2003 p. 40 (Witness QY).

<sup>10460</sup> T. 19 March 2003 p. 39-b (Witness QY).

<sup>10461</sup> T. 19 March 2003 p. 39-b (Witness QY).

<sup>10462</sup> T. 24 March 2003 p. 20 (Witness QY).

<sup>10463</sup> T. 24 March 2003 pp. 39-40 (Witness QY); Defence Exhibit 120 (Ntahobali) (24 July 2000, Statement of Witness QY).

<sup>10464</sup> T. 24 March 2003 pp. 70-73 (ICS); T. 10 April 2006 pp. 12-13, 16, 31, 50-51 (ICS) (Witness QY).

<sup>10465</sup> T. 10 April 2006 p. 19 (ICS) (Witness QY).

<sup>10466</sup> T. 24 March 2003 pp. 52-53; T. 24 March 2003 pp. 60, 64 (ICS) (Witness QY); Defence Exhibit 113 (Nyiramasuhuko) (18 September 1997, Statement of Witness QY); Defence Exhibit 114 (Nyiramasuhuko) (11-13 March 1998, Statement of Witness QY).

<sup>10467</sup> T. 24 March 2003 pp. 52-53 (Witness QY).

Tribunal, the soldier who had raped her at the EER was not the corporal.<sup>10468</sup> When confronted with her prior testimony from the *Muvunyi I* trial where she said the corporal had raped her at the BPO and not at the EER,<sup>10469</sup> she testified that she could distinguish between the BPO and the EER although the two places were almost the same site.<sup>10470</sup> It would take two minutes to reach the EER from the BPO on foot.<sup>10471</sup> She stated that she was raped by several soldiers at the EER and that she was raped by several people throughout the war at the EER and the BPO, but not at Rango.<sup>10472</sup>

3872. Witness QY explained that, at one point in time, refugees were told by a clergyman that classes were about to restart in the EER and they must go back to the BPO. They returned to the BPO on their own.<sup>10473</sup>

3873. Witness QY testified that she was later also raped within the premises of the *préfecture* office.<sup>10474</sup> When it was put to her that this was not mentioned in any of her four prior statements, she testified that she did not have the courage to tell the investigators at the time of making her statements.<sup>10475</sup> She testified that on one occasion an *Interahamwe* told her he wanted to have a sexual relationship with her, but first gave her oil, soap and rice before he raped her.<sup>10476</sup>

3874. Witness QY was unable to estimate how long she was at the EER.<sup>10477</sup> When confronted with her prior statements of 15 January 1997 and 11 and 13 March 1998 in which she said she spent about one month at the EER, she explained it was only an estimate and that sometimes one day could feel like one month.<sup>10478</sup>

3875. Witness QY testified that she did not know Ntahobali before the events, and she saw him only during the attack at Butare Hospital, when a woman pointed him out to her as Shalom while they were fleeing.<sup>10479</sup> She saw him another time at a tap and some corpses were nearby.<sup>10480</sup> Witness QY denied that none of her four statements mentioned having seen the person she named Shalom near a place where there were corpses, or at the hospital.<sup>10481</sup> Witness QY testified that she did not know any other person in Butare whose name was

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<sup>10468</sup> T. 10 April 2006 pp. 53, 60, 62, 65 (ICS) (Witness QY).

<sup>10469</sup> T. 10 April 2006 pp. 43-45, 58-59 (ICS) (Witness QY).

<sup>10470</sup> T. 10 April 2006 pp. 56-57 (ICS) (Witness QY).

<sup>10471</sup> T. 10 April 2006 p. 71 (ICS) (Witness QY).

<sup>10472</sup> T. 10 April 2006 pp. 53-54, 59, 65 (ICS) (Witness QY).

<sup>10473</sup> T. 19 March 2003 p. 60; T. 24 March 2003 pp. 33-34 (Witness QY).

<sup>10474</sup> T. 24 March 2003 pp. 16-17, 24 (Witness QY).

<sup>10475</sup> T. 24 March 2003 pp. 16-17 (Witness QY).

<sup>10476</sup> T. 24 March 2003 pp. 17-18 (Witness QY).

<sup>10477</sup> T. 19 March 2003 p. 37-b; T. 20 March 1993 p. 27 (Witness QY).

<sup>10478</sup> T. 20 March 2003 pp. 29-30 (Witness QY); Defence Exhibit 112 (Nyiramasuhuko) (15 January 1997, Statement of Witness QY); Defence Exhibit 114 (Nyiramasuhuko) (11-13 March 1998, Statement of Witness QY).

<sup>10479</sup> T. 25 March 2003 pp. 16-17; T. 25 March 2003 p. 35 (ICS) (Witness QY).

<sup>10480</sup> T. 25 March 2003 p. 35 (ICS) (Witness QY).

<sup>10481</sup> T. 25 March 2003 p. 37 (ICS) (Witness QY).



Shalom either during the war or at the time of her testimony. Witness QY stated she would not be able to identify the person she knew as Shalom in court.<sup>10482</sup>

3876. She also testified in the Munyaneza trial in Canada in March and April 2007.<sup>10483</sup> When it was put to her that at the Munyaneza trial she testified that she saw Witness QBQ and Witness SJ on two occasions, whereas she had denied knowing these people before this Tribunal on 23 and 25 March 2003 respectively, Witness QY said the interpreter who was helping her prepare her testimony [for this Court] told her to say so, however in reality she knew both witnesses very well because they had lived together at the EER.<sup>10484</sup> She later clarified that it was the Prosecutor through the interpreter, who told her to lie about knowing these people.<sup>10485</sup>

### Prosecution Witness SX

3877. Witness SX, a Tutsi tradesman,<sup>10486</sup> testified that he was living at the EER two weeks after the President's plane crash in 1994.<sup>10487</sup> Witness SX stated that a short while after the killing of the Tutsis at the roadblock in front of Nyiramasuhuko's house, many sought refuge at the EER buildings.<sup>10488</sup> Prior to that, there were no refugees at the EER.<sup>10489</sup> Witness SX stated that during April 1994, he stayed at a neighbour's house or in a workshop at the EER.<sup>10490</sup> When searches were carried out he stayed with refugees in classrooms.<sup>10491</sup> Upon his arrival in Butare from his *commune*, he went directly to his house.<sup>10492</sup> The refugees arrived at the EER in great numbers; he estimated that between 500 and 1,000 refugees came to the EER. The refugees spent some time at the EER and after about a month or two, towards the end of the war, they moved on.<sup>10493</sup> He could not remember precisely when the refugees appeared but estimated it was one to two weeks after his arrival in Butare.<sup>10494</sup> He stated that at a certain point the refugees were evacuated to the BPO.<sup>10495</sup>

3878. Witness SX saw Shalom come to the EER a number of times with *Interahamwe* at night; Shalom arrived in a Hilux pickup truck belonging to someone else.<sup>10496</sup> The *Interahamwe* feared Shalom and obeyed him.<sup>10497</sup> The witness stated that Shalom continued to come and take away refugees from the moment the refugees arrived at the EER until they left the complex and he usually came at night. Witness SX sought refuge at the EER because initially it was said that the government had brought the refugees to the EER complex to

<sup>10482</sup> T. 19 March 2003 p. 65 (Witness QY).

<sup>10483</sup> T. 23 February 2009 p. 36 (ICS) (Witness QY).

<sup>10484</sup> T. 23 February 2009 pp. 39-43 (ICS) (Witness QY).

<sup>10485</sup> T. 23 February 2009 pp. 45-46, 49-52 (ICS) (Witness QY).

<sup>10486</sup> Prosecution Exhibit 69 (Personal Particulars).

<sup>10487</sup> T. 27 January 2004 p. 15 (Witness SX).

<sup>10488</sup> T. 27 January 2004 pp. 25, 36; T. 30 January 2004 p. 50 (ICS) (Witness SX).

<sup>10489</sup> T. 30 January 2004 p. 49 (ICS) (Witness SX).

<sup>10490</sup> T. 27 January 2004 p. 25; T. 27 January 2004 p. 41 (ICS) (Witness SX).

<sup>10491</sup> T. 27 January 2004 p. 25 (Witness SX).

<sup>10492</sup> T. 30 January 2004 pp. 32-34, 38-39; T. 30 January 2004 p. 1 (Extract) (Witness SX).

<sup>10493</sup> T. 30 January 2004 p. 52 (Witness SX).

<sup>10494</sup> T. 30 January 2004 p. 50 (ICS) (Witness SX).

<sup>10495</sup> T. 30 January 2004 p. 55 (Witness SX).

<sup>10496</sup> T. 27 January 2004 pp. 25-26, 36; T. 30 January 2004 pp. 55-56 (Witness SX).

<sup>10497</sup> T. 27 January 2004 p. 26 (Witness SX).

prevent them from being killed. When Witness SX noticed that the refugees were being killed at that place he decided to return to where he lived, although he returned to spend his nights at the EER school. There were young people who knew when and which buildings in the complex would be attacked and the witness stayed in different places accordingly.<sup>10498</sup> On the first night that Shalom came to take the refugees, some of them were staying inside the EER buildings, while others were outside.<sup>10499</sup> That first night, he selected five people from among the adults and took them away with him.<sup>10500</sup>

3879. Witness SX stated that the EER consisted of three buildings containing classrooms and a workshop next to the classrooms.<sup>10501</sup> There was lighting at the EER school itself, though not in the classrooms; in addition, there were taps at the school where they collected water, in addition to toilets.<sup>10502</sup>

3880. Witness SX testified that he did not know Shalom prior to the events of 1994, however, when Tutsis were killed at the roadblock in front of Nyiramasuhuko's house, a friend pointed Shalom out to the witness.<sup>10503</sup> Witness SX observed the roadblock from approximately 2.00 p.m. for two to three hours on that first day from a building located only one house away from the roadblock.<sup>10504</sup> At the time Witness SX left the position from where he was observing the roadblock, Shalom was leaving the roadblock with three women and a soldier.<sup>10505</sup> The witness positively identified the person he called Shalom as Ntahobali in court.<sup>10506</sup>

#### Prosecution Witness TB

3881. Witness TB, a Tutsi teacher,<sup>10507</sup> testified that she met Shalom on several occasions during the events of 1994 including when he visited the place that the witness lived. From where she was staying, Witness TB saw Shalom pass by to see Pastor Ndamage. He was accompanied by Pastor Kabalira and in front of the EER church were Jean-Pierre and Kazungu. Shalom joined Jean-Pierre and Kazungu and Witness TB saw them take a woman whose name was Immaculée, in the direction of Shalom's house.<sup>10508</sup> Immaculée was working at SORAS, an insurance company with offices in the Bihira building.<sup>10509</sup> Witness TB testified that she did not see Immaculée after that, but learned after the war that she had been raped and killed.<sup>10510</sup> Witness TB testified that she did not know the name of the young man who informed her about the subsequent rape and killing of Immaculée. This young man worked for SOCODE and he only met with the witness after the war.<sup>10511</sup>

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<sup>10498</sup> T. 30 January 2004 p. 56 (Witness SX).

<sup>10499</sup> T. 30 January 2004 p. 57 (Witness SX).

<sup>10500</sup> T. 30 January 2004 p. 56 (Witness SX).

<sup>10501</sup> T. 30 January 2004 p. 40 (Witness SX).

<sup>10502</sup> T. 30 January 2004 pp. 49-50 (ICS) (Witness SX).

<sup>10503</sup> T. 27 January 2004 p. 16; T. 27 January 2004 pp. 39-40 (ICS); T. 30 January 2004 p. 25 (Witness SX).

<sup>10504</sup> T. 27 January 2004 pp. 16-17 (Witness SX).

<sup>10505</sup> T. 27 January 2004 p. 18 (Witness SX).

<sup>10506</sup> T. 27 January 2004 p. 37 (Witness SX).

<sup>10507</sup> Prosecution Exhibit 72 (Personal Particulars).

<sup>10508</sup> T. 4 February 2004 p. 50 (Witness TB).

<sup>10509</sup> T. 4 February 2004 p. 50 (Witness TB); T. 5 February 2004 p. 31 (Witness TB).

<sup>10510</sup> T. 4 February 2004 p. 50 (Witness TB).

<sup>10511</sup> T. 5 February 2004 p. 32 (Witness TB).

3882. She also learned that Immaculée was buried by Pastor Kabalira and Witness SX, whom she recognised but did not know personally.<sup>10512</sup> Other than when she appeared to testify, Witness TB saw Witness SX at the airport in Rwanda around 22 January 2004, and she stayed with Witness SX in Arusha for about two days before he left.<sup>10513</sup> She said they did not discuss their testimony or the events of 1994.<sup>10514</sup>

3883. Shalom was the child of Maurice Ntahobali and Pauline Nyiramasuhuko.<sup>10515</sup> She positively identified the person she called Shalom as Ntahobali in court.<sup>10516</sup>

#### Prosecution Witness SJ

3884. Witness SJ, a Tutsi,<sup>10517</sup> testified that she sought shelter at the BPO on a Sunday in April 1994 at 6.15 a.m.<sup>10518</sup> She stayed at the BPO for about two weeks.<sup>10519</sup> During the time she was at the BPO, she went to the EER school, which was situated between the house of Nyiramasuhuko and the Protestant church.<sup>10520</sup> She went to the EER on three or four separate days,<sup>10521</sup> although they were not successive.<sup>10522</sup> She could not recall the month or dates of her visits to the EER.<sup>10523</sup> When it was put to her that her statement of 3 December 1996 stated that she spent one week at the EER before soldiers took the refugees back to the BPO, Witness SJ testified she did not remember saying so, but that they stayed only a short time at the EER.<sup>10524</sup>

3885. From the EER, she could see Nyiramasuhuko's residence.<sup>10525</sup> There was a vocational school and a primary school at the EER complex.<sup>10526</sup> Witness SJ testified that refugees came to the EER from the bush and from some other buildings where they were hiding.<sup>10527</sup> There were about 2,000 refugees at one point.<sup>10528</sup> There was no water, but they had access to toilets.<sup>10529</sup> The day of the refugees' arrival they spent the night outside, because they refused to open the doors to the buildings.<sup>10530</sup> It rained a lot that evening. The next day the pastor opened some premises for the refugees.<sup>10531</sup> The pastor also opened the water taps for the

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<sup>10512</sup> T. 4 February 2004 pp. 55, 64 (ICS) (Witness TB).

<sup>10513</sup> T. 4 February 2004 pp. 65-66 (ICS) (Witness TB).

<sup>10514</sup> T. 4 February 2004 p. 66 (ICS) (Witness TB).

<sup>10515</sup> T. 4 February 2004 p. 42 (Witness TB).

<sup>10516</sup> T. 4 February 2004 p. 54 (Witness TB).

<sup>10517</sup> Prosecution Exhibit 57 (Personal Particulars).

<sup>10518</sup> T. 28 May 2002 p. 112; T. 30 May 2002 p. 70 (ICS); T. 5 June 2002 p. 18 (Witness SJ).

<sup>10519</sup> T. 30 May 2002 pp. 75-76 (Witness SJ).

<sup>10520</sup> T. 30 May 2002 pp. 75, 115 (Witness SJ).

<sup>10521</sup> T. 30 May 2002 p. 95; T. 4 June 2002 pp. 63-64 (Witness SJ); *see also* T. 30 May 2002 pp. 78, 91 (Witness SJ).

<sup>10522</sup> T. 30 May 2002 pp. 78, 91 (Witness SJ).

<sup>10523</sup> T. 30 May 2002 pp. 87-88, 91-92, 108-109 (Witness SJ).

<sup>10524</sup> T. 30 May 2002 pp. 106-107 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ); *see also* T. 4 June 2002 pp. 65-68 (Witness SJ).

<sup>10525</sup> T. 29 May 2002 p. 105 (Witness SJ).

<sup>10526</sup> T. 30 May 2002 p. 115 (Witness SJ).

<sup>10527</sup> T. 29 May 2002 p. 103 (Witness SJ).

<sup>10528</sup> T. 29 May 2002 pp. 102-103; T. 4 June 2002 pp. 76, 83 (Witness SJ).

<sup>10529</sup> T. 29 May 2002 p. 113 (Witness SJ).

<sup>10530</sup> T. 29 May 2002 pp. 110, 112; T. 30 May 2002 p. 119 (Witness SJ).

<sup>10531</sup> T. 29 May 2002 p. 112; T. 30 May 2002 p. 119 (Witness SJ).

refugees and offered them maize, but the soldiers quickly closed the taps, took away the food and threatened the pastor not to do it again.<sup>10532</sup>

3886. Witness SJ said that soldiers and *Interahamwe* were there virtually all the time.<sup>10533</sup> The soldiers came from the ESO military barracks, from the roadblock in front of the Nyiramasuhuko residence and from the upper floors of the Nyiramasuhuko residence.<sup>10534</sup> The soldiers all wore the same uniform although Witness SJ did not know if they were soldiers or *gendarmes*.<sup>10535</sup> When it was put to her that her statement of 3 December 1996 referred only to the presence of soldiers at the EER, but not *Interahamwe*, Witness SJ said it was the same thing since both soldiers and *Interahamwe* wore uniforms.<sup>10536</sup> She named several *Interahamwe* who wore “*Interahamwe*” civilian attire by night and military uniform by day, including one Ribanza and one Cyawuperi.<sup>10537</sup> She also explained that if she forgot to mention the presence of *Interahamwe* at the EER when giving her statement, it was because of the lack of available time.<sup>10538</sup>

3887. From behind the school building where Witness SJ and others hid at the time, one could see Nyiramasuhuko’s residence and the refugees would shout, “here they come to kill us.”<sup>10539</sup> The soldiers insulted and vituperated the refugees; they showed the refugees grenades and called them *Inyenzi*.<sup>10540</sup> They lied to the male refugees, persuading them to help dig trenches for fighting. They gave them hoes from the vocational school. The soldiers would take away 10 or 12 men at a time. They took people away from the EER at night and killed them.<sup>10541</sup> Afterwards, they sent back one of the men for him to say what happened.<sup>10542</sup> When put to her that this did not appear in her statement of 3 December 1996, Witness SJ stated that it was possible she forgot to add certain things.<sup>10543</sup> Witness SJ estimated that the soldiers came on three occasions.<sup>10544</sup> The soldiers appeared to be working in shifts because there were different soldiers in the day and at night.<sup>10545</sup>

3888. Witness SJ testified that persons taken from the EER compound were killed in the nearby forest.<sup>10546</sup> Witness SJ did not personally see the refugees being killed.<sup>10547</sup> At times however, the refugees would seek respite from the soldiers and flee into the surrounding

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<sup>10532</sup> T. 29 May 2002 p. 114 (Witness SJ).

<sup>10533</sup> T. 29 May 2002 p. 103 (Witness SJ).

<sup>10534</sup> T. 29 May 2002 pp. 103-104; T. 30 May 2002 p. 140; T. 4 June 2002 p. 108 (Witness SJ).

<sup>10535</sup> T. 30 May 2002 p. 141 (Witness SJ).

<sup>10536</sup> T. 4 June 2002 pp. 68-69 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>10537</sup> T. 4 June 2002 p. 70 (Witness SJ).

<sup>10538</sup> T. 4 June 2002 pp. 71-72 (Witness SJ).

<sup>10539</sup> T. 30 May 2002 pp. 120-122 (Witness SJ).

<sup>10540</sup> T. 29 May 2002 pp. 104, 109 (Witness SJ).

<sup>10541</sup> T. 29 May 2002 p. 109; T. 4 June 2002 pp. 87-88 (Witness SJ).

<sup>10542</sup> T. 29 May 2002 pp. 109-110 (Witness SJ).

<sup>10543</sup> T. 4 June 2002 pp. 88-89 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>10544</sup> T. 29 May 2002 p. 113 (Witness SJ).

<sup>10545</sup> T. 29 May 2002 p. 114 (Witness SJ).

<sup>10546</sup> T. 4 June 2002 pp. 95-96 (Witness SJ).

<sup>10547</sup> T. 4 June 2002 pp. 96, 98 (Witness SJ).

woods to rest without being seen.<sup>10548</sup> While in the woods they saw skulls here and there in addition to a hole that had been dug; in these narrow holes they sometimes saw bodies with bloated stomachs or that were decapitated.<sup>10549</sup> When it was put to her that she never mentioned finding skulls and headless bodies in her statement of 3 December 1996, she explained that the investigators taking down her statement were in a hurry.<sup>10550</sup> At the end of their stay at the EER, soldiers drove the refugees like cattle back to the BPO.<sup>10551</sup>

3889. In cross-examination Witness SJ agreed there was a field between the EER and Nyiramasuhuko's house, although she could not clearly remember whether there were also trees.<sup>10552</sup> Witness SJ agreed that a person with the same first name as Witness RE was with her at the BPO, Nyange and the EER.<sup>10553</sup>

#### Prosecution Witness QBQ

3890. Witness QBQ, a Tutsi housemaid,<sup>10554</sup> testified that she went to the BPO towards the end of April 1994.<sup>10555</sup> The day after returning from Nyange, Nsabimana told the refugees to go to the EER.<sup>10556</sup> They went on foot since it was not far away and they arrived there at around midday.<sup>10557</sup> She testified that there were already other refugees at the EER when they got there.<sup>10558</sup>

3891. Witness QBQ testified that they stayed at the EER for a week.<sup>10559</sup> They lived in terrible circumstances; soldiers from the ESO came and beat the refugees, raped and killed some of them. Furthermore, the refugees slept outside in the rain.<sup>10560</sup> The conditions were so bad that after a one-week stay at the EER, they took the initiative to go back to the BPO even if it meant suicide.<sup>10561</sup>

#### Prosecution Witness QI

3892. Witness QI, a Tutsi cook,<sup>10562</sup> testified that from his hiding place in the bakery of Martin Uwariraye's compound, one day in mid-May 1994, at about 3.00 p.m., he saw Marc going to the EER with a gun, choosing young men and taking them to the forest below Butare cathedral to be killed.<sup>10563</sup> He knew Marc well as they were neighbours; Marc had worked at a

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<sup>10548</sup> T. 29 May 2002 pp. 110-111 (Witness SJ).

<sup>10549</sup> T. 29 May 2002 p. 111 (Witness SJ).

<sup>10550</sup> T. 4 June 2002 pp. 91-93 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>10551</sup> T. 29 May 2002 p. 115 (Witness SJ).

<sup>10552</sup> T. 30 May 2002 pp. 143-144 (Witness SJ).

<sup>10553</sup> T. 4 June 2002 p. 145 (ICS) (Witness SJ).

<sup>10554</sup> Prosecution Exhibit 71 (Personal Particulars).

<sup>10555</sup> T. 3 February 2004 p. 6 (Witness QBQ).

<sup>10556</sup> T. 3 February 2004 pp. 23, 78; T. 4 February 2004 p. 16 (Witness QBQ).

<sup>10557</sup> T. 3 February 2004 pp. 23, 78 (Witness QBQ).

<sup>10558</sup> T. 3 February 2004 p. 79 (Witness QBQ).

<sup>10559</sup> T. 3 February 2004 p. 23 (Witness QBQ).

<sup>10560</sup> T. 3 February 2004 pp. 23, 79 (Witness QBQ).

<sup>10561</sup> T. 3 February 2004 pp. 23-24, 79 (Witness QBQ).

<sup>10562</sup> Prosecution Exhibit 94 (Personal Particulars).

<sup>10563</sup> T. 25 March 2004 pp. 66, 68-69, 71; T. 25 March 2004 pp. 64, 68-71 (ICS) (Witness QI).

factory before he became a *commune* policeman.<sup>10564</sup> Witness QI testified that Marc Pole Pole was now deceased.<sup>10565</sup> Witness QI agreed that he never mentioned this incident placing Marc Pole Pole at the EER in his statement; he explained that he only mentioned it at trial because he was asked a question about policemen.<sup>10566</sup>

#### Prosecution Witness TA

3893. Witness TA, a Tutsi woman,<sup>10567</sup> testified that she went to the EER where there was a Protestant school prior to going to the BPO.<sup>10568</sup> She did not spend more than one week there.<sup>10569</sup> When Witness TA was asked why she did not mention this in her written statement of 19 November 1997 she said that she mentioned it, but that it was not recorded in her statement.<sup>10570</sup> In cross-examination she subsequently testified that she stayed there for more than one week.<sup>10571</sup> When it was put to her that she previously said she had remained at the EER for less than one week, Witness TA stated that she had just agreed with counsel's question.<sup>10572</sup>

3894. Witness TA testified that there was a roadblock situated in front of Nyiramasuhuko's house, near the EER.<sup>10573</sup> When the *Interahamwe* at this roadblock finished killing at that location, they attacked the refugees at the EER, killing them in the bush and near lavatories where a pit had been dug.<sup>10574</sup> Witness TA and the other refugees fled to the BPO because the pastor was told to send the refugees away.<sup>10575</sup> Witness TA never saw Kanyabashi at the EER.<sup>10576</sup>

#### Prosecution Expert Witness Alison Des Forges

3895. Alison Des Forges testified that during her interview with Nsabimana on 3 April 1996, Nsabimana told her that Callixte Kalimanzira, the *de facto* interim Minister of the Interior, told Nsabimana "it looked bad" to have Tutsis at the *préfecture* office. On a separate occasion Nsabimana told Des Forges that it was the *préfecture* Security Council who objected to the presence of the refugees at the BPO.<sup>10577</sup> Tutsis were taken from the office to the EER school and sent back to the office after about 10 days. During those 10 days, soldiers and others raped women and took away people to be killed.<sup>10578</sup>

<sup>10564</sup> T. 25 March 2004 p. 69 (ICS) (Witness QI).

<sup>10565</sup> T. 25 March 2004 pp. 68-69 (ICS) (Witness QI).

<sup>10566</sup> T. 25 March 2004 p. 68 (ICS) (Witness QI); Defence Exhibit 200 (Kanyabashi) (List of Alleged Omissions); 11 June 1996, Statement of Witness QI).

<sup>10567</sup> Prosecution Exhibit 45 (Personal Particulars).

<sup>10568</sup> T. 30 October 2001 p. 70 (ICS); T. 5 November 2001 p. 114 (ICS) (Witness TA).

<sup>10569</sup> T. 30 October 2001 pp. 70-71 (ICS) (Witness TA).

<sup>10570</sup> T. 5 November 2001 p. 119 (ICS) (Witness TA); Defence Exhibit 6B (Nyiramasuhuko) (19 November 1997, Statement of Witness TA).

<sup>10571</sup> T. 6 November 2001 p. 32 (Witness TA).

<sup>10572</sup> T. 6 November 2001 p. 33 (Witness TA).

<sup>10573</sup> T. 6 November 2001 pp. 36-37; T. 8 November 2001 p. 20 (Witness TA).

<sup>10574</sup> T. 6 November 2001 pp. 37-38; T. 8 November 2001 pp. 19-20 (Witness TA).

<sup>10575</sup> T. 30 October 2001 p. 70 (ICS); T. 7 November 2001 pp. 67-68 (Witness TA).

<sup>10576</sup> T. 7 November 2001 p. 123 (Witness TA).

<sup>10577</sup> T. 9 June 2004 p. 51; T. 6 July 2004 p. 9 (Des Forges).

<sup>10578</sup> T. 9 June 2004 p. 51 (Des Forges).

3896. On the basis of Security Council notes and witnesses' narratives, Des Forges estimated that the refugees were moved from the BPO to the EER around mid-May, and stayed at the EER for approximately one week before they were moved back to the BPO.<sup>10579</sup> She confirmed they would have stayed at the EER between one week and 10 days.<sup>10580</sup>

3897. Des Forges stated in her Expert Report that in early May Kalimanzira and others on the *préfecture* Security Council decided that the group of refugees must be moved away from the *préfecture* office to some place less visible. They were probably implementing a policy determined at the national level, where authorities were becoming increasingly concerned to hide evidence of the genocide from foreigners whose visits were expected in the near future. Butare authorities moved the Tutsis from the *préfecture* office to a nearby complex of buildings belonging to the Episcopal church where they continued to suffer from abductions, killings and rapes that had taken place at the *préfecture* office. According to information gathered by Human Rights Watch, Shalom himself came to seize men for killing on at least two occasions. Church authorities sent the displaced back to the *préfecture* office after 10 days but Kalimanzira and the others insisted they leave again, so the *préfet* sent them to Nyange.<sup>10581</sup>

#### Kanyabashi Defence Witness Bernadette Kamanzi

3898. Bernadette Kamanzi, Kanyabashi's wife,<sup>10582</sup> testified that her nephew, Aloys Rubayiza, went to see Kanyabashi at the *commune* office to ask him for a Hutu identity card on 18 May 1994, but Kanyabashi refused to issue him such a card.<sup>10583</sup> Kanyabashi told her that he had sent her nephew where other Tutsis had taken refuge, namely at the EER, with the intention of evacuating him in the evening.<sup>10584</sup> However, when Kanyabashi went to collect Aloys in the evening, he was no longer there.<sup>10585</sup>

#### Ntahobali Defence Witness Alexandre Bararwandika

3899. Alexandre Bararwandika, a Hutu doctor from Burundi,<sup>10586</sup> testified that after the death of the President, he briefly worked as a volunteer for the Belgian Red Cross until it left Butare on 13 or 14 April 1994.<sup>10587</sup> He testified that refugees were moved from the Butare University Hospital to the nearby EER primary school, and later on to the BPO, around mid-May 1994.<sup>10588</sup> He testified that the transfer did not happen in one single day; one group of people went first to the EER and then to the BPO; other refugees who were already at the EER went straight to the BPO; and some people left the hospital directly for the BPO. In one day, 26 patients of his ward left the hospital for the EER.<sup>10589</sup> While some patients left the hospital

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<sup>10579</sup> T. 17 June 2004 p. 15 (Des Forges).

<sup>10580</sup> T. 17 June 2004 p. 16 (Des Forges).

<sup>10581</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 57.

<sup>10582</sup> Defence Exhibit 609 (Kanyabashi) (Personal Particulars).

<sup>10583</sup> T. 20 November 2007 pp. 14, 19 (Bernadette Kamanzi).

<sup>10584</sup> T. 20 November 2007 p. 14; T. 26 November 2007 p. 33 (Bernadette Kamanzi).

<sup>10585</sup> T. 20 November 2007 pp. 14-15 (Bernadette Kamanzi).

<sup>10586</sup> Defence Exhibit 451 (Nsabimana) (Personal Particulars); T. 3 July 2006 pp. 20-21 (Bararwandika).

<sup>10587</sup> T. 3 July 2006 pp. 26-27 (Bararwandika).

<sup>10588</sup> T. 3 July 2006 p. 39; T. 4 July 2006 p. 10 (Bararwandika).

<sup>10589</sup> T. 4 July 2006 p. 10 (Bararwandika).

unaccompanied, others were taken by people who resembled either militiamen or soldiers.<sup>10590</sup> Bararwandika did not know who ordered the transfer.<sup>10591</sup>

### Ntahobali Defence Witness H1B6

3900. Witness H1B6, a Hutu,<sup>10592</sup> testified that he was often at the Butare University Hospital between April and mid-June 1994.<sup>10593</sup> He stated that the hospital administration sought assistance from civilian authorities to address overcrowding at the hospital. Around mid-May, those who were living in tents at the hospital and who did not require admission were moved to the EER and subsequently to the BPO.<sup>10594</sup> The intention was to make space at the hospital for those who needed care, and not to expel people.<sup>10595</sup>

3901. A few days later, he saw those people at the EER; they were not guarded. He spoke to one of them who recognised him when he was on his way to town. The person from EER told him that they were going through difficult times because they had nothing to eat and that nobody was interested in their problems.<sup>10596</sup> The person did not complain about violence, theft or killings taking place at the EER.<sup>10597</sup>

3902. Witness H1B6 said that security escorted people from the hospital to the EER, but did not stay to guard them.<sup>10598</sup> This security group consisted of soldiers from ESO.<sup>10599</sup> He personally did not witness the departure of people who were evacuated to the EER; he only noticed that they were at the EER three days later.<sup>10600</sup> He later testified that he saw them leaving.<sup>10601</sup> The number of people at the EER was a little less than at the BPO and he estimated there were between 100 and 120 people in the courtyard of the BPO.<sup>10602</sup> He estimated that the subsequent transfer of people from the EER to the BPO must have taken place in early or mid-June.<sup>10603</sup> When it was put to him that the evacuation of people from the hospital to the EER must have been around 2 or 3 May 1994, such that the refugees were at the EER around 4 or 5 May 1994, Witness H1B6 disagreed saying this was too early.<sup>10604</sup>

3903. At the time the refugees were transferred from the hospital to the EER there was no roadblock outside the Hotel Ihuliro.<sup>10605</sup> Having regard to Defence Exhibit 302, Witness H1B6

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<sup>10590</sup> T. 4 July 2006 p. 11 (Bararwandika).

<sup>10591</sup> T. 4 July 2006 p. 12 (Bararwandika).

<sup>10592</sup> Defence Exhibit 376 (Ntahobali) (Personal Particulars).

<sup>10593</sup> T. 1 December 2005 p. 7 (ICS) (Witness H1B6).

<sup>10594</sup> T. 1 December 2005 pp. 51-52; T. 5 December 2005 pp. 7-8, 29; T. 6 December 2005 p. 31 (ICS) (Witness H1B6).

<sup>10595</sup> T. 1 December 2005 pp. 71-72 (Witness H1B6).

<sup>10596</sup> T. 1 December 2005 p. 52 (Witness H1B6).

<sup>10597</sup> T. 1 December 2005 p. 53 (Witness H1B6).

<sup>10598</sup> T. 1 December 2005 p. 71 (Witness H1B6).

<sup>10599</sup> T. 6 December 2005 p. 45 (ICS) (Witness H1B6).

<sup>10600</sup> T. 5 December 2005 p. 29 (Witness H1B6).

<sup>10601</sup> T. 6 December 2005 p. 31 (ICS) (Witness H1B6).

<sup>10602</sup> T. 1 December 2005 p. 63 (Witness H1B6).

<sup>10603</sup> T. 5 December 2005 pp. 8, 29 (Witness H1B6).

<sup>10604</sup> T. 6 December 2005 p. 32 (ICS) (Witness H1B6).

<sup>10605</sup> T. 5 December 2005 p. 40 (Witness H1B6).



testified that the EER School, the Church and Ntahobali's residence were correctly marked on the map.<sup>10606</sup>

Ntahobali Defence Witness Béatrice Munyenyezi

3904. Béatrice Munyenyezi, Ntahobali's wife,<sup>10607</sup> stated that the EER school was about a 10 minute walk from the Hotel Ihuliro. It was possible to observe the EER from the balconies at the hotel. She testified that she had seen a few people around the EER, maybe 20, at least outside; she could not tell whether they were males, females, civilians or soldiers, though she knew they were refugees.<sup>10608</sup>

Ntahobali Defence Witness NMBMP

3905. Witness NMBMP, a relative of Béatrice Munyenyezi,<sup>10609</sup> testified that in May 1994 she saw from her room at the Hotel Ihuliro about 50 people at the EER buildings.<sup>10610</sup> Those people stayed there for one week.<sup>10611</sup> They were not victims of any attacks during their stay there.<sup>10612</sup>

Ntahobali Defence Witness WCMNA

3906. Witness WCMNA, a Hutu church worker in 1994,<sup>10613</sup> stated that on one occasion he was going through the roadblock close to the EER and his identification papers and car documents were being checked.<sup>10614</sup> He looked at the primary school and was surprised to see smoke coming out of two classrooms and people within those classrooms.<sup>10615</sup> He approximated that there were 30 to 40 persons in the classrooms.<sup>10616</sup> There were no people in the courtyard or premises near the school.<sup>10617</sup> He could not be specific as to when this sighting occurred.<sup>10618</sup>

Ntahobali Defence Witness WCNJ

3907. Witness WCNJ, a Hutu student in 1994,<sup>10619</sup> estimated that towards the end of May 1994, on a number of occasions, there were over a hundred people at the EER School. He never saw any armed persons with or going towards the refugees.<sup>10620</sup>

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<sup>10606</sup> T. 5 December 2005 p. 53 (Witness H1B6); Defence Exhibit 302 (Nyiramasuhuko and Ntahobali) (Sketch 1).

<sup>10607</sup> Defence Exhibit 390 (Ntahobali) (Personal Particulars).

<sup>10608</sup> T. 27 February 2006 p. 50 (Béatrice Munyenyezi).

<sup>10609</sup> Defence Exhibit 648 (Ntahobali) (Personal Particulars); T. 22 April 2008 p. 13 (ICS) (Witness NMBMP).

<sup>10610</sup> T. 22 April 2008 pp. 36-37 (ICS); T. 28 April 2008 p. 48 (Witness NMBMP).

<sup>10611</sup> T. 22 April 2008 p. 36 (ICS); T. 28 April 2008 p. 49 (Witness NMBMP).

<sup>10612</sup> T. 22 April 2008 pp. 36-37 (ICS) (Witness NMBMP).

<sup>10613</sup> Defence Exhibit 389 (Ntahobali) (Personal Particulars).

<sup>10614</sup> T. 21 February 2006 pp. 31-32 (ICS); T. 21 February 2006 p. 74 (Witness WCMNA).

<sup>10615</sup> T. 21 February 2006 pp. 31-32, 53-54 (ICS); T. 21 February 2006 p. 74 (Witness WCMNA).

<sup>10616</sup> T. 21 February 2006 p. 32 (ICS) (Witness WCMNA).

<sup>10617</sup> T. 21 February 2006 p. 54 (ICS) (Witness WCMNA).

<sup>10618</sup> T. 21 February 2006 pp. 32-33 (ICS) (Witness WCMNA).

<sup>10619</sup> Defence Exhibit 386 (Ntahobali) (Personal Particulars).

<sup>10620</sup> T. 2 February 2006 p. 10 (Witness WCNJ).

Ntahobali Defence Witness WCNMC

3908. Witness WCNMC, a Hutu,<sup>10621</sup> knew Ntahobali because Ntahobali went to school with her brother.<sup>10622</sup> Witness WCNMC stated that on her third visit to Butare market she noticed between 40 to 60 persons within the premises of the EER school; as they were all inside, and she was on the road, she was unable to recognise anyone.<sup>10623</sup> Her third visit to Butare market occurred in late May or early June.<sup>10624</sup> She was sure that her third visit occurred around late May or early June and not between 1 and 20 May 1994 because her third visit was some time after her father was released from hospital, on 25 April 1994.<sup>10625</sup>

Ntahobali Defence Witness WCUJM

3909. Witness WCUJM, a bicycle taxi-driver in 1994 from Ngoma *commune*,<sup>10626</sup> testified that he once went by the EER, towards the end of May 1994. He saw about 50 people assembled at the EER.<sup>10627</sup> He subsequently testified that he went to Butare on three occasions, and passed the EER on both the second and third occasions.<sup>10628</sup>

Ntahobali Defence Witness WUNBJ

3910. Witness WUNBJ, an employee at the BPO in 1994,<sup>10629</sup> testified that he saw 50 to 100 refugees at the Protestant school, known as EER when he got to the BPO.<sup>10630</sup> The refugees stayed there for two or three weeks around the middle or towards the end of May; he subsequently stated he saw them during June 1994.<sup>10631</sup> He later stated that he had no clear recollection of the time frame.<sup>10632</sup>

3911. Witness WUNBJ told his superior that he had seen that the workshop was open and thereafter returned to the EER because he was asked to check if there were teachers among the refugees since it was time to pay salaries.<sup>10633</sup> Upon returning to the EER while standing on the road at the workshop door of the EER, he recognised two teachers among the refugees whom he knew very well.<sup>10634</sup> He subsequently testified he did not know whether they were Tutsis or

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<sup>10621</sup> Defence Exhibit 374 (Ntahobali) (Personal Particulars).

<sup>10622</sup> T. 29 November 2005 p. 26 (Witness WCNMC).

<sup>10623</sup> T. 29 November 2005 pp. 38, 48-49 (Witness WCNMC).

<sup>10624</sup> T. 29 November 2005 pp. 36, 48-49 (Witness WCNMC).

<sup>10625</sup> T. 29 November 2005 pp. 52-53 (Witness WCNMC).

<sup>10626</sup> Defence Exhibit 388 (Ntahobali) (Personal Particulars).

<sup>10627</sup> T. 14 February 2006 p. 21 (Witness WCUJM).

<sup>10628</sup> T. 14 February 2006 pp. 40-41 (Witness WCUJM).

<sup>10629</sup> Defence Exhibit 391 (Ntahobali) (Personal Particulars); T. 8 March 2006 pp. 13, 15-16 (ICS); T. 3 April 2006 p. 18 (ICS); T. 5 April 2006 pp. 29-30 (ICS) (Witness WUNBJ).

<sup>10630</sup> T. 8 March 2006 p. 43 (ICS); T. 8 March 2006 pp. 48-49; T. 5 April 2006 pp. 18, 32, 37 (ICS) (Witness WUNBJ).

<sup>10631</sup> T. 8 March 2006 p. 48; T. 5 April 2006 pp. 24, 33-34 (ICS) (Witness WUNBJ).

<sup>10632</sup> T. 5 April 2006 p. 35 (ICS) (Witness WUNBJ).

<sup>10633</sup> T. 8 March 2006 pp. 41-42 (ICS); T. 8 March 2006 pp. 48-49; T. 5 April 2006 pp. 30, 32-33 (ICS) (Witness WUNBJ).

<sup>10634</sup> T. 5 April 2006 pp. 18, 32-33 (ICS) (Witness WUNBJ).

Hutus and he did not know their names, although they came from Cyarwa in Ngoma *commune* and had fled because of their individual problems.<sup>10635</sup>

3912. The witness did not enter the premises of the EER.<sup>10636</sup> He told the teachers to go to the MRND Palace to collect their salaries but he did not know whether they actually did, as he went back to his office.<sup>10637</sup> The teachers did not mention any problems they might have faced at EER.<sup>10638</sup> Between April and July 1994 the witness did not observe any “particular events” at the EER premises.<sup>10639</sup> The refugees were free to move between the BPO and the EER.<sup>10640</sup>

#### Nyiramasuhuko Defence Witness CEM

3913. Witness CEM, a Hutu teacher from Ngoma *commune*,<sup>10641</sup> testified that on her way to Denise Ntahobali’s home at the beginning of May 1994, she saw refugees at the Adventist school also known as the EER.<sup>10642</sup> She testified that there were about 100 refugees, who were outside in the courtyard and behind the classrooms, and that there were many women and children and a few men.<sup>10643</sup> While she did not know the exact length of time that the refugees remained at the EER, she did not see them when she went by that road again at the end of May.<sup>10644</sup> She did not know the ethnicity of the refugees at the EER, but stated that the refugees were “moving around” in the area behind the classrooms when she saw them.<sup>10645</sup> The refugees had left at the time the school was going to resume, so as to enable the pupils to get back to their classrooms; she was not aware that they had been killed.<sup>10646</sup> The people at the EER were not being guarded, and Witness CEM did not see any armed civilians, or people wearing military or *Interahamwe* uniforms.<sup>10647</sup>

#### Nyiramasuhuko Defence Witness Denise Ntahobali

3914. Denise Ntahobali, Shalom Ntahobali’s sister, testified that while she was on the first floor of the hotel, she saw about 100 refugees in the middle of the courtyard at the entrance of the classrooms of the EER, although she could not recall what month she saw them.<sup>10648</sup> When she saw the refugees at the EER, she did not hear loud screams or gunshots.<sup>10649</sup> The refugees were civilian women who were cooking while children played in the courtyard in front of one

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<sup>10635</sup> T. 5 April 2006 pp. 33, 67 (ICS) (Witness WUNBJ).

<sup>10636</sup> T. 8 March 2006 p. 48; T. 5 April 2006 pp. 19, 32 (ICS) (Witness WUNBJ).

<sup>10637</sup> T. 5 April 2006 pp. 33, 35 (ICS) (Witness WUNBJ).

<sup>10638</sup> T. 8 March 2006 p. 49 (Witness WUNBJ).

<sup>10639</sup> T. 8 March 2006 p. 53 (ICS) (Witness WUNBJ).

<sup>10640</sup> T. 3 April 2006 pp. 38-39 (ICS) (Witness WUNBJ).

<sup>10641</sup> Defence Exhibit 268 (Nyiramasuhuko) (Personal Particulars).

<sup>10642</sup> T. 14 February 2005 pp. 50-51 (Witness CEM); *see also* T. 15 February 2005 pp. 16, 25-26 (Witness CEM).

<sup>10643</sup> T. 14 February 2005 p. 51 (Witness CEM).

<sup>10644</sup> T. 14 February 2005 p. 51; T. 15 February 2005 p. 26 (Witness CEM).

<sup>10645</sup> T. 15 February 2005 p. 25 (Witness CEM).

<sup>10646</sup> T. 15 February 2005 p. 26 (Witness CEM).

<sup>10647</sup> T. 14 February 2005 p. 51 (Witness CEM).

<sup>10648</sup> T. 9 June 2005 p. 27; T. 13 June 2005 p. 23 (Denise Ntahobali).

<sup>10649</sup> T. 9 June 2005 p. 28 (Denise Ntahobali).

of the classrooms.<sup>10650</sup> There was about 100 metres between the Hotel Ihuliro and the EER.<sup>10651</sup>

Nyiramasuhuko Defence Witness Maurice Ntahobali

3915. Maurice Ntahobali, Shalom Ntahobali's father, stated that between April and July 1994, there were refugees at the EER, but not for a long time; he saw them only once, and less than a week later they were not there anymore.<sup>10652</sup> This occasion where he saw them was at the end of May 1994.<sup>10653</sup> He did not hear gunfire or screams from people being attacked or assaulted coming from that spot.<sup>10654</sup>

3916. Maurice Ntahobali testified he saw refugees at the EER on one occasion at the end of May 1994; he could see them from the hotel balcony because the EER was adjacent to the Hotel Ihuliro. The witness did not know why they had come there or why they were moved out; it was difficult for him to estimate the number of refugees because he only saw those who were outside the classrooms, strolling about the courtyard.<sup>10655</sup>

Nyiramasuhuko Defence Witness Céline Nyiraneza

3917. Céline Nyiraneza, Ntahobali's aunt and Nyiramasuhuko's sister, testified that she saw about 100 refugees within the EER premises; they were cooking outside and could move around.<sup>10656</sup> She could not give an exact date as to when she saw the refugees at the EER.<sup>10657</sup> The EER consisted of at least six buildings, and was located 200 metres away from the Hotel Ihuliro.<sup>10658</sup> She subsequently said that EER was between 100 and 200 metres away from the Hotel Ihuliro.<sup>10659</sup> The witness further testified that refugees stayed there for about two weeks; she never heard gunshots from EER.<sup>10660</sup> She could see people moving around at the EER from the balcony of her room; the refugees would come to the Hotel Ihuliro to find out if there was beer before returning to the EER.<sup>10661</sup> She did not know the ethnicity of the refugees who gathered at the EER.<sup>10662</sup>

Nyiramasuhuko Defence Witness WBUC

3918. Witness WBUC, a relative of Nyiramasuhuko, indicated that she knew Shalom Ntahobali very well because it was as if they grew up together.<sup>10663</sup> She testified that while she was staying at the Hotel Ihuliro in Butare, in April or May 1994, she could see about 30

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<sup>10650</sup> T. 9 June 2005 p. 27; T. 13 June 2005 p. 23 (Denise Ntahobali).

<sup>10651</sup> T. 9 June 2005 p. 15 (Denise Ntahobali).

<sup>10652</sup> T. 13 September 2005 p. 25; T. 16 September 2005 p. 94 (Maurice Ntahobali).

<sup>10653</sup> T. 16 September 2005 p. 94 (Maurice Ntahobali).

<sup>10654</sup> T. 13 September 2005 p. 25 (Maurice Ntahobali).

<sup>10655</sup> T. 16 September 2005 p. 94 (Maurice Ntahobali).

<sup>10656</sup> T. 24 February 2005 p. 42; T. 28 February 2005 p. 56 (Céline Nyiraneza).

<sup>10657</sup> T. 24 February 2005 p. 42 (Céline Nyiraneza).

<sup>10658</sup> T. 24 February 2005 pp. 41-42 (Céline Nyiraneza).

<sup>10659</sup> T. 28 February 2005 pp. 22-23 (Céline Nyiraneza).

<sup>10660</sup> T. 24 February 2005 pp. 42-43 (Céline Nyiraneza).

<sup>10661</sup> T. 28 February 2005 p. 22 (Céline Nyiraneza).

<sup>10662</sup> T. 28 February 2005 p. 55 (Céline Nyiraneza).

<sup>10663</sup> T. 31 May 2005 p. 82 (ICS) (Witness WBUC).

refugees cooking outside at the EER; she did not know whether there were more refugees that she could not see inside the EER's buildings.<sup>10664</sup> The refugees were cooking in front of the classrooms, on the side facing the university, and not towards the main road.<sup>10665</sup> She did not hear any shots or shouts coming from that place.<sup>10666</sup> She recognised a Tutsi lady at the EER who was from her *commune*.<sup>10667</sup> The woman was in a crowd and Witness WBUC did not have much time to talk to this person; the woman told Witness WBUC that she had been at the EER and was being told to return to her home. That lady did not say anything about abductions or killings at the EER.<sup>10668</sup>

3919. She was aware that refugees had fled their homes for the EER because of insecurity.<sup>10669</sup> She did not see any refugees when she went to mass at the EER church in April 1994.<sup>10670</sup>

### Nsabimana

3920. Nsabimana testified that around 15 to 20 May 1994, the Security Council decided to move the refugees and displaced persons from the BPO to somewhere else to enable the proper functioning of the office, since, at the time, there was the impression that life was returning to normal. Nsabimana asked *Sous-préfet* Rutayisire to find a safer place for them.<sup>10671</sup> After first proposing a Catholic girls primary school, Rutayisire proposed the EER school.<sup>10672</sup> Unlike the BPO, the EER had many buildings where the refugees could stay, such as empty classrooms, and had more facilities like furniture, water and toilets.<sup>10673</sup> From the BPO, the EER's closest building was 100 metres, and its farthest building was 200 metres from the BPO.<sup>10674</sup> The EER school and Hotel Ihuliro could both be seen from University Road.<sup>10675</sup> The EER was located on University Road.<sup>10676</sup>

3921. Nsabimana testified that the transfer of refugees to the EER school was accepted by the Security Council.<sup>10677</sup> Although he did not know the actual date the refugees were transferred, it must have been between 15 and 20 May 1994.<sup>10678</sup>

3922. The people who were transferred to the EER were asked to leave, they took a few items and left. They were not escorted to the EER. Nsabimana did not receive any information from his *sous-préfet* as to how the people settled in at the EER, but knew that the refugees settled

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<sup>10664</sup> T. 1 June 2005 p. 67; T. 6 June 2005 pp. 33-34 (ICS) (Witness WBUC).

<sup>10665</sup> T. 6 June 2005 pp. 34, 50-51, 53 (ICS) (Witness WBUC).

<sup>10666</sup> T. 1 June 2005 p. 67 (Witness WBUC).

<sup>10667</sup> T. 1 June 2005 p. 67; T. 6 June 2005 pp. 32-33 (ICS) (Witness WBUC).

<sup>10668</sup> T. 1 June 2005 p. 68 (Witness WBUC).

<sup>10669</sup> T. 6 June 2005 pp. 21-22 (ICS) (Witness WBUC).

<sup>10670</sup> T. 6 June 2005 p. 34 (ICS) (Witness WBUC).

<sup>10671</sup> T. 9 October 2006 p. 69 (Nsabimana).

<sup>10672</sup> T. 9 October 2006 pp. 69-70 (Nsabimana).

<sup>10673</sup> T. 9 October 2006 p. 70 (Nsabimana).

<sup>10674</sup> T. 9 October 2006 p. 71 (Nsabimana).

<sup>10675</sup> T. 9 October 2006 pp. 71-72 (Nsabimana).

<sup>10676</sup> T. 9 October 2006 p. 71 (Nsabimana).

<sup>10677</sup> T. 9 October 2006 p. 70 (Nsabimana).

<sup>10678</sup> T. 9 October 2006 pp. 71, 73; T. 10 October 2006 p. 24 (Nsabimana).

into the classrooms that were empty because of the holiday period.<sup>10679</sup> A pastor who lived in Cyarwa in Tumba informed Nsabimana that he gave the refugees food while they were at the EER school, and that this was independent of what they received from other sources.<sup>10680</sup> Nsabimana did not know the pastor's name but knew he worked at the EER.<sup>10681</sup>

3923. The refugees remained at the EER for one or two weeks.<sup>10682</sup> After that, they returned to the BPO.<sup>10683</sup> They returned to the BPO in the last days of May, around 31 May 1994.<sup>10684</sup> When Nsabimana enquired why the refugees had returned to the BPO, *Sous-préfet* Rutayisire informed him that it was because the EER students had already resumed school and *Monseigneur* Ndandari, an Anglican bishop who owned the school, told them to leave.<sup>10685</sup> *Monseigneur* Ndandari did not tell him of the decision to return the refugees, Nsabimana just saw them return to the BPO via the rear quarters.<sup>10686</sup> He estimated 100 to 200 refugees returned.<sup>10687</sup> None of the returning refugees told Nsabimana about anything that took place while at the EER schools premises.<sup>10688</sup>

3924. About three days after their return from the EER, different people including soldiers, some members of the Security Council like Kalimanzira and Bushishi, as well as the new commander of Ngoma camp, Ntambabazi, and people at the roadblocks asked why the refugees were at the *préfecture* office and not elsewhere.<sup>10689</sup> Once Nsabimana became aware that massacres took place, and that there were risks “even in closed structures”, during both the day and night, he was not at peace with himself because he went home fearing that he may not find the refugees in the morning.<sup>10690</sup>

3925. Nsabimana testified that Kalimanzira was in the BPO every two or three days.<sup>10691</sup> Nsabimana signed authorisation for the BBC crew to move about in town and gave them Musabirema Cyprien as a guide to take them around.<sup>10692</sup> He testified that Kalimanzira entered his office while the BBC crew was there and was visibly against Nsabimana signing the authorisation, saying journalists produced pro-RPF and anti-Government propaganda.<sup>10693</sup>

3926. Nsabimana admitted that he had written *The Truth About the Massacres in Butare*.<sup>10694</sup> In that document, he stated:

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<sup>10679</sup> T. 9 October 2006 p. 73 (Nsabimana).

<sup>10680</sup> T. 9 October 2006 p. 74 (Nsabimana).

<sup>10681</sup> T. 9 October 2006 pp. 74-75 (Nsabimana).

<sup>10682</sup> T. 9 October 2006 pp. 73-74 (Nsabimana).

<sup>10683</sup> T. 9 October 2006 p. 73 (Nsabimana).

<sup>10684</sup> T. 9 October 2006 p. 75 (Nsabimana).

<sup>10685</sup> T. 9 October 2006 pp. 75-76 (Nsabimana).

<sup>10686</sup> T. 9 October 2006 p. 76 (Nsabimana).

<sup>10687</sup> T. 9 October 2006 pp. 76-77 (Nsabimana).

<sup>10688</sup> T. 9 October 2006 p. 76 (Nsabimana).

<sup>10689</sup> T. 9 October 2006 pp. 77-79 (Nsabimana).

<sup>10690</sup> T. 9 October 2006 pp. 80-81 (Nsabimana).

<sup>10691</sup> T. 11 October 2006 pp. 26, 29 (Nsabimana).

<sup>10692</sup> T. 10 October 2006 pp. 41-42; T. 11 October 2006 p. 35 (Nsabimana).

<sup>10693</sup> T. 10 October 2006 p. 43; T. 11 October 2006 pp. 34-35 (Nsabimana).

<sup>10694</sup> T. 17 October 2006 pp. 34-35 (Nsabimana); Prosecution Exhibit 113 (*The Truth About the Massacres in Butare*, by Nsabimana).

I needed to find a place to accommodate these people [refugees at the BPO]. Finally I found [the] EER school. The government authorities complained saying that the people should be sent elsewhere. This was not possible because they would have been killed by others. Even at [the] EER, there was some insecurity which forced the refugees to return to my office.<sup>10695</sup>

### Ntahobali

3927. Ntahobali testified that he saw refugees at the EER; he saw them after his bout of malaria and before he left for Cyanguu, meaning between 7 and 17 May 1994.<sup>10696</sup> He approximated seeing 50 to 60 people, who remained at the EER for about one week.<sup>10697</sup> He saw they were both inside and outside the classrooms. Some of the refugees walked to the Hotel Ihuliro to buy lemonade and other articles.<sup>10698</sup> Between April and July 1994, he never went inside the EER complex, although it was quite close to his house, because he had no reason to go there.<sup>10699</sup> He denied committing any crimes at the EER between April and July 1994.<sup>10700</sup>

### Nyiramasuhuko

3928. Nyiramasuhuko testified that the EER was a Protestant school.<sup>10701</sup> She knew that there were refugees at the EER and trusted that the Red Cross was rendering assistance to the refugees at the EER.<sup>10702</sup>

### **3.6.36.4 Deliberations**

3929. The Nsabimana and Nteziryayo Indictment alleges that in May and June 1994, on the orders of Nsabimana, refugees were transferred by soldiers from the *préfecture* offices to the EER. Some of them were either beaten or killed by soldiers, while others were taken to the neighbouring woods where a great many were executed.<sup>10703</sup>

3930. It is not disputed that the refugees who had been staying at the BPO were sent by Nsabimana to the EER school complex.<sup>10704</sup> The Parties dispute, however, the reason for the transfer and whether the refugees were attacked at the EER complex. The Parties also dispute the number of refugees who were present.

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<sup>10695</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016630.

<sup>10696</sup> T. 25 April 2006 p. 38 (Ntahobali).

<sup>10697</sup> T. 25 April 2006 pp. 38-39 (Ntahobali).

<sup>10698</sup> T. 25 April 2006 p. 39 (Ntahobali).

<sup>10699</sup> T. 2 May 2006 pp. 23, 28 (Ntahobali).

<sup>10700</sup> T. 2 May 2006 p. 51 (Ntahobali).

<sup>10701</sup> T. 5 October 2005 p. 15 (Nyiramasuhuko).

<sup>10702</sup> T. 24 November 2005 p. 28 (Nyiramasuhuko).

<sup>10703</sup> Para. 6.39 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>10704</sup> T. 26 February 2003 p. 57 (Witness RE); T. 19 March 2003 p. 36-b (Witness QY); T. 3 February 2004 p. 23 (Witness QBQ); T. 9 June 2004 p. 51 (Des Forges); T. 9 October 2006 pp. 69-72 (Nsabimana).

### 3.6.36.4.1 Timing and Reason for the Transfer of Refugees to the EER

3931. Des Forges testified that Nsabimana told her the transfer was precipitated by Kalimanziira because it looked bad to have refugees in front of the BPO.<sup>10705</sup> In her opinion, the movement of refugees was an effort to hide evidence of the genocide from foreigners who would be visiting in the near future.<sup>10706</sup>

3932. Nsabimana claimed that the Security Council decided to move refugees to enable the proper functioning of the BPO and that *Sous-préfet* Rutayisire proposed the EER school as a safer place for them.<sup>10707</sup> He claimed the refugees were given food and had access to water at the EER.<sup>10708</sup> Witness SX corroborated that the refugees had access to water.<sup>10709</sup> Witnesses QY, SX and SJ testified that at least some refugees were permitted in sheltered classrooms at the EER.<sup>10710</sup> However, Witness SJ testified that the soldiers closed the water taps opened by the pastor, and threatened him, and that the soldiers took away the food the pastor gave them.<sup>10711</sup> Witness SX testified that he thought the refugees had been brought to the EER to be protected and that is why he sought refuge there, although killings nonetheless took place at that location.<sup>10712</sup>

3933. Nsabimana also testified that members of the Security Council like Kalimanziira and Bushishi inquired as to the reason for the presence of the refugees at the BPO and that he therefore feared for their safety.<sup>10713</sup> Nsabimana testified that Kalimanziira was hostile to the BBC film crew.<sup>10714</sup> The Chamber notes that the EER school complex was located below the road known as University Road,<sup>10715</sup> and surrounded by forest.<sup>10716</sup> Unlike the courtyard of the BPO which was in plain view of the main road, the EER courtyard was protected from view by the EER buildings that constituted the classrooms.<sup>10717</sup> The buildings with the classrooms were nevertheless visible from the road. The Chamber accepts Nsabimana's testimony that the Security Council decided to move the refugees and displaced persons from the BPO to somewhere else to enable the proper functioning of the office.<sup>10718</sup> The Chamber agrees with Des Forges' opinion that the Security Council and Kalimanziira may have taken the decision to move the refugees from the BPO to hide evidence of killing and displacement of refugees.<sup>10719</sup> In this respect the Chamber recalls the testimony of Nsabimana to the effect that while

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<sup>10705</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>10706</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 57.

<sup>10707</sup> T. 9 October 2006 pp. 69-70 (Nsabimana).

<sup>10708</sup> T. 9 October 2006 pp. 70, 74 (Nsabimana).

<sup>10709</sup> T. 30 January 2004 p. 49 (ICS) (Witness SX).

<sup>10710</sup> T. 24 March 2003 p. 35 (Witness QY); T. 27 January 2004 p. 25 (Witness SX); T. 29 May 2002 p. 112 (Witness SJ).

<sup>10711</sup> T. 29 May 2002 p. 114 (Witness SJ).

<sup>10712</sup> T. 30 January 2004 p. 56 (Witness SX).

<sup>10713</sup> T. 9 October 2006 pp. 77-78, 80-81 (Nsabimana).

<sup>10714</sup> T. 10 October 2006 p. 43; T. 11 October 2006 pp. 34-35 (Nsabimana).

<sup>10715</sup> T. 9 October 2006 p. 71 (Nsabimana). See Defence Exhibit 305 (Nyiramasuhuko and Ntahobali) (Sketch 4) (depicting slope of the land on which the EER was built *vis-à-vis* the level of the road).

<sup>10716</sup> See Prosecution Exhibit 25 (Photographs of EER school complex) and Prosecution Exhibit 27 (Video of BPO, EER and Ruins of Nyiramasuhuko's House) at 16:51 and 17:30.

<sup>10717</sup> See Defence Exhibit 304 (Nyiramasuhuko and Ntahobali) (Sketch 3).

<sup>10718</sup> T. 9 October 2006 p. 69 (Nsabimana).

<sup>10719</sup> See Prosecution Exhibit 110A (Des Forges Expert Report) p. 57.



Nsabimana granted the BBC crew permission to move about in town,<sup>10720</sup> Kalimanzira was visibly against Nsabimana signing the authorisation, saying journalists produced pro-RPF and anti-government propaganda.<sup>10721</sup> In the Chamber's view, Nsabimana's testimony as to Kalimanzira's discomfort with the presence of journalists is corroborated by Des Forges' opinion. The Chamber is also of the view that upon the direction of Kalimanzira and the Security Council, the refugees were ordered to go to the EER school complex to prevent their discovery by foreigners.

3934. As to the timing of the transfer, the Chamber accepts Nsabimana's estimation that the refugees at the BPO were transferred to the EER between 15 and 20 May 1994 and stayed there until approximately 31 May 1994 when they returned to the BPO.<sup>10722</sup> This was corroborated by the evidence given by Witnesses RE, SX, Bararwandika and H1B6, discussed below.

#### 3.6.36.4.2 Number and Ethnicity of Refugees Affected at the EER

3935. Witness RE estimated there were more than 300 refugees at the EER, in contrast to her prior statement which set the number at 4,000 refugees.<sup>10723</sup> This estimate was based on the one week that Witness RE testified she spent at the EER.<sup>10724</sup> The Chamber recalls that Witness RE fled Gikongoro *préfecture* for Butare *préfecture* in April 1994,<sup>10725</sup> went to the university teaching hospital where she stayed for one week, before being asked to move to the *préfecture* office;<sup>10726</sup> she spent only one night at the BPO and the following day *Préfet* Nsabimana ordered the refugees from the BPO to the EER.<sup>10727</sup> Witness H1B6, who was at Butare University Hospital between April and mid-June 1994,<sup>10728</sup> stated that people present at the hospital who did not require admission were moved to the EER and subsequently to the BPO around mid-May 1994.<sup>10729</sup> This was corroborated by Alexandre Bararwandika.<sup>10730</sup> Accordingly, on the basis of Witness RE's testimony as to her movements during this period as well as the corroborative testimony of Bararwandika and Witness H1B6, the Chamber considers Witness RE was at the EER sometime around mid-May 1994.

3936. Witness SJ said the number of refugees at the EER was about 2,000 at one point.<sup>10731</sup> Witness SJ could not recall the month or dates of her visits to the EER.<sup>10732</sup> However, Witnesses SJ and RE provided similar testimony regarding the conditions upon their arrival at

<sup>10720</sup> T. 10 October 2006 pp. 41-42; T. 11 October 2006 p. 35 (Nsabimana).

<sup>10721</sup> T. 10 October 2006 p. 43; T. 11 October 2006 pp. 34-35 (Nsabimana).

<sup>10722</sup> T. 9 October 2006 pp. 71, 73, 75 (Nsabimana).

<sup>10723</sup> T. 25 February 2003 p. 27 (Witness RE); Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE).

<sup>10724</sup> T. 24 February 2003 pp. 12-13; T. 24 February 2003 p. 56 (ICS) (Witness RE).

<sup>10725</sup> T. 24 February 2003 p. 9 (Witness RE).

<sup>10726</sup> T. 24 February 2003 pp. 9-10 (Witness RE).

<sup>10727</sup> T. 24 February 2003 pp. 10-11 (Witness RE).

<sup>10728</sup> T. 1 December 2005 p. 7 (ICS) (Witness H1B6).

<sup>10729</sup> T. 1 December 2005 pp. 51-52; T. 5 December 2005 pp. 7-8, 29; T. 6 December 2005 p. 31 (ICS) (Witness H1B6).

<sup>10730</sup> T. 3 July 2006 p. 39; T. 4 July 2006 p. 10 (Bararwandika) (refugees were moved from Butare University Hospital to the nearby EER primary school, and later to the BPO around mid-May 1994).

<sup>10731</sup> T. 29 May 2002 pp. 102-103 (Witness SJ).

<sup>10732</sup> T. 30 May 2002 pp. 87-88, 91-92, 108-109 (Witness SJ).

the EER (arriving in the rain and being locked outside) and their return to the BPO. The Chamber thus considers that Witnesses SJ and RE testified regarding approximately the same time period, *i.e.* mid-May 1994. Witness SX estimated between 500 and 1,000 refugees came to the EER,<sup>10733</sup> and estimated they started arriving one to two weeks after his arrival in Butare,<sup>10734</sup> which was about two weeks after the President's plane crash in 1994.<sup>10735</sup> Accordingly, the Chamber considers the refugees must have started arriving at the EER around the start or middle of May 1994. Having regard to Witness SX's testimony that the refugees spent about a month or two at the EER before being moved on towards the end of the war,<sup>10736</sup> the Chamber considers Witness SX's estimate was based on a much longer period of time than either Witness RE's or SJ's estimates. Other Prosecution witnesses did not estimate the number of refugees present at the EER.

3937. The Chamber recalls that Nsabimana estimated that about 200 refugees returned to the BPO from the EER<sup>10737</sup> in the last days of May, around 31 May 1994.<sup>10738</sup> The Chamber considers that insofar as Nsabimana's estimate only refers to those refugees who returned to the BPO, it is not necessarily inconsistent with the testimony of the Prosecution witnesses who variously estimated the number of refugees present at the EER as more than 300, 1,000 and 2,000 during various periods of time. In contrast to Nsabimana, the Defence witnesses variously estimated there were between 30 and over 100 refugees at the EER.<sup>10739</sup> However, these witnesses observed the refugees from the Hotel Ihuliro and the owner of that hotel, Maurice Ntahobali, admitted that he could only see those refugees who were in the courtyard.<sup>10740</sup> Many refugees crowded into classrooms when they were unlocked after the first day.<sup>10741</sup>

3938. The Chamber also recalls Prosecution Exhibit 27, a video recording of the refugees at the BPO around 15 June 1994 after they had returned from the EER. At that time the number of refugees may have been around 200, but having regard to the Chamber's previous findings that many dozens if not hundreds of the refugees had been killed before that time at the BPO (), the Chamber is therefore convinced that the number of refugees at the EER during late-May 1994 well exceeded 200.

3939. As to the ethnicity of the refugees, Witness RE testified that the people who settled on the veranda of the EER were Tutsis and that soldiers and *Interahamwe* who came to the EER were saying it was over for the Tutsis.<sup>10742</sup> Bernadette Kamanzi, Kanyabashi's wife, testified

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<sup>10733</sup> T. 30 January 2004 p. 52 (Witness SX).

<sup>10734</sup> T. 30 January 2004 p. 50 (ICS) (Witness SX).

<sup>10735</sup> T. 27 January 2004 p. 15 (Witness SX).

<sup>10736</sup> T. 30 January 2004 p. 52 (Witness SX).

<sup>10737</sup> T. 9 October 2006 pp. 76-77 (Nsabimana).

<sup>10738</sup> T. 9 October 2006 p. 75 (Nsabimana).

<sup>10739</sup> T. 22 April 2008 p. 36 (ICS) (Witness NMBMP) (about 50 people); T. 2 February 2006 p. 10 (Witness WCNJ) (over a hundred people); T. 29 November 2005 p. 38 (Witness WCNMC) (between 40 to 60 persons); T. 14 February 2006 p. 21 (Witness WCUJM) (about 50 people); T. 8 March 2006 p. 49 (Witness WUNBJ) (50-100 refugees); T. 14 February 2005 p. 51 (Witness CEM) (about 100 refugees); T. 9 June 2005 p. 27 (Denise Ntahobali) (about 100 refugees); T. 24 February 2005 p. 42 (Céline Nyiraneza) (about 100 refugees); T. 1 June 2005 p. 67 (Witness WBUC) (about 30 refugees).

<sup>10740</sup> T. 16 September 2005 p. 94 (Maurice Ntahobali).

<sup>10741</sup> See T. 29 May 2002 p. 112 (Witness SJ); T. 24 March 2003 p. 34 (Witness QY).

<sup>10742</sup> T. 24 February 2003 p. 13; T. 26 February 2003 p. 60 (Witness RE).

that Kanyabashi told her that he had sent her nephew where other Tutsis had taken refuge, namely at the EER,<sup>10743</sup> with the intention of evacuating him in the evening.<sup>10744</sup> Lastly, Des Forges testified that during her interview with Nsabimana on 3 April 1996 Nsabimana told her that Callixte Kalimanzira, the *de facto* interim Minister of the Interior, told Nsabimana “it looked bad” to have Tutsis at the *préfecture* office.<sup>10745</sup>

3940. Based on the aforementioned, the Chamber is therefore convinced that those who took refuge at the EER were predominantly Tutsis.

### 3.6.36.4.3 Events at the EER

#### 3.6.36.4.3.1 Ntahobali's Alibi

3941. The Chamber recalls Ntahobali's testimony that he went to Cyangugu on 26 or 27 May 1994 and returned to Butare on 5 June 1994,<sup>10746</sup> as well as the testimony of Clarisse Ntahobali, Céline Nyiraneza, Maurice Ntahobali and Béatrice Munyenyezi that Ntahobali had the responsibility of ensuring that the generator at the Hotel Ihuliro was turned on and shut down every evening<sup>10747</sup> such that he could not have been elsewhere. The Chamber previously found neither of these alibis raised a reasonable doubt as to Ntahobali's presence at the BPO during the period of late May to early June 1994 ().

3942. Considering the Chamber's earlier finding that the refugees were at the EER between 15/20 May and 31 May 1994, approximately the same time period the Chamber previously considered with respect to the BPO, the Chamber equally considers that Ntahobali's alibis for late May/early June 1994 are not reasonably possibly true as to his presence at the EER.

#### 3.6.36.4.3.2 Involvement of Interahamwe and Ntahobali

3943. The Chamber recalls that it found Witness RE was at the EER sometime around mid-May 1994. Witness RE gave eyewitness testimony that the refugees were attacked at the EER complex the first night they arrived and during the subsequent days.<sup>10748</sup> The Chamber notes that Witness RE provided numerous details about the day the refugees arrived, including the fact that when the refugees arrived, the doors of the classroom were locked and the refugees were forced to seek shelter from a torrential rain on the veranda.<sup>10749</sup> Details referring to the rain,<sup>10750</sup> some classroom doors being locked and seeking shelter on the veranda<sup>10751</sup> and the

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<sup>10743</sup> T. 26 November 2007 p. 33 (Bernadette Kamanzi).

<sup>10744</sup> T. 20 November 2007 p. 14 (Bernadette Kamanzi).

<sup>10745</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>10746</sup> T. 26 April 2006 pp. 7, 12-13 (Ntahobali).

<sup>10747</sup> T. 27 February 2006 pp. 9-10, 62-63 (Béatrice Munyenyezi); T. 14 September 2005 pp. 32-34 (Maurice Ntahobali); T. 28 February 2005 p. 16 (Céline Nyiraneza); T. 10 February 2005 p. 13 (Clarisse Ntahobali).

<sup>10748</sup> T. 24 February 2003 pp. 11-12 (Witness RE).

<sup>10749</sup> T. 26 February 2003 p. 8 (Witness RE).

<sup>10750</sup> T. 19 March 2003 p. 36-b (Witness QY); T. 24 March 2003 pp. 34, 52 (Witness QY); T. 29 May 2002 p. 112 (Witness SJ); T. 30 May 2002 p. 119 (Witness SJ); T. 3 February 2004 p. 23 (Witness QBQ).

<sup>10751</sup> T. 24 March 2003 pp. 34-35 (Witness QY); T. 29 May 2002 pp. 110, 112 (Witness SJ); T. 30 May 2002 p. 119 (Witness SJ).

attack on the first night<sup>10752</sup> were variously corroborated by Witnesses QY, SJ and QBQ. Based on these details and corroboration, the Chamber finds Witness RE to be credible.

3944. Witness RE stated that *Interahamwe*, including their leader named Shalom, came to the EER, picked out young men and took them to the nearby forest to be killed.<sup>10753</sup> That refugees were taken to a nearby forest to be killed was also corroborated by Witnesses TG, QY, SJ and TA.<sup>10754</sup> Witness SJ said that she hid from the *Interahamwe* in the woods where she came across the bloated and decapitated bodies of persons who had been killed.<sup>10755</sup> The Chamber is cognisant of Witness SJ's admission upon recall in 2009 that she did not disclose knowing other witnesses who testified before the Tribunal.<sup>10756</sup> Nonetheless, the Chamber finds Witness SJ's testimony on this element to be credible in that it was corroborated by other witnesses and is consistent with the other evidence before the Chamber.

3945. The Prosecution presented evidence that the *Interahamwe* committed attacks at the EER. Witness RE testified that the *Interahamwe* came during the days to take away people and kill them.<sup>10757</sup> Witness SJ testified that the soldiers all wore the same uniform although Witness SJ did not know if they were soldiers or *gendarmes*.<sup>10758</sup> When put to her that her statement of 3 December 1996 referred only to the presence of soldiers at the EER, but not *Interahamwe*, Witness SJ said it was the same thing since both soldiers and *Interahamwe* wore uniforms.<sup>10759</sup> She named several *Interahamwe* who wore "*Interahamwe*" civilian attire by night and military uniform by day.<sup>10760</sup> Witness TA also testified that *Interahamwe* from the roadblock near Nyiramasuhuko's home came to attack the refugees at the EER, killing them in the bush and near lavatories where a pit had been dug.<sup>10761</sup> The Chamber accepts that at the time of giving her statements, soldiers and *Interahamwe* may have been interchangeable to Witness SJ insofar as they both wore uniforms. However, in light of Witness SJ's detailed testimony which names specific *Interahamwe* allegedly present during the attacks, when coupled with the corroborative evidence of Witness RE concerning the presence of *Interahamwe* at the EER, the Chamber accepts that *Interahamwe* committed attacks at the EER.

3946. As to the involvement of Ntahobali, Witnesses RE, QY, SX and TB testified that he was present at the EER.<sup>10762</sup> The Chamber notes that throughout her testimony, Witness RE referred to Ntahobali as Shalom; Witness RE did not know Ntahobali prior to the events, but

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<sup>10752</sup> T. 19 March 2003 p. 58; T. 24 March 2003 p. 35 (Witness QY).

<sup>10753</sup> T. 24 February 2003 pp. 11-13; T. 26 February 2003 p. 60 (Witness RE).

<sup>10754</sup> T. 30 March 2004 p. 70 (Witness TG); T. 19 March 2003 pp. 38-b, 57 (Witness QY); T. 24 March 2003 pp. 37-38 (Witness QY); T. 29 May 2002 p. 111 (Witness SJ); T. 4 June 2002 pp. 95-96 (Witness SJ); T. 6 October 2001 pp. 37-38 (Witness TA); T. 8 November 2001 pp. 19-20 (Witness TA).

<sup>10755</sup> T. 29 May 2002 p. 111 (Witness SJ).

<sup>10756</sup> T. 24 February 2009 pp. 19-20 (ICS) (Witness SJ) (concerning her knowledge of Witness TA); T. 23 February 2009 p. 85 (ICS) (Witness SJ) (concerning her knowledge of Witness QBQ).

<sup>10757</sup> T. 24 February 2003 p. 12 (Witness RE).

<sup>10758</sup> T. 30 May 2002 p. 141 (Witness SJ).

<sup>10759</sup> T. 4 June 2002 pp. 68-69 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>10760</sup> T. 4 June 2002 p. 70 (Witness SJ).

<sup>10761</sup> T. 6 November 2001 pp. 37-38; T. 8 November 2001 pp. 19-20 (Witness TA).

<sup>10762</sup> T. 24 February 2003 p. 11 (Witness RE); T. 26 February 2003 pp. 9-10 (Witness RE); T. 19 March 2003 pp. 57, 59 (Witness QY); T. 27 January 2004 pp. 25-26, 36 (Witness SX); T. 30 January 2004 p. 55 (Witness SX).

said others had identified him for her.<sup>10763</sup> Despite being hearsay evidence, this testimony is nevertheless corroborative of the identification of Ntahobali.<sup>10764</sup> She said he was wearing an ordinary soldier's uniform.<sup>10765</sup> Witness RE only saw Shalom on that night<sup>10766</sup> and she was on the school veranda when she saw him.<sup>10767</sup> The Chamber recalls the testimony of Witness SX that there was lighting at the EER school itself, though not in the classrooms.<sup>10768</sup> In the circumstances, the Chamber considers Witness RE had adequate conditions in which to observe and identify Ntahobali.

3947. Witness QY testified that she saw Ntahobali at the EER on two occasions.<sup>10769</sup> Witness QY had seen Ntahobali at Butare University Hospital<sup>10770</sup> and the BPO<sup>10771</sup> prior to seeing him at the EER. Therefore, by the time the refugees were transferred from the BPO to the EER in mid-May 1994, Witness QY had seen Ntahobali on two prior occasions.

3948. The Chamber notes that Witness RE misidentified Ntahobali in court<sup>10772</sup> and that Witness QY stated she would not be able to identify Ntahobali in court.<sup>10773</sup> However, the Chamber also notes that by the time of their testimony nearly nine years had passed since the events of 1994. Therefore, the Chamber does not consider that either Witness RE's misidentification of Ntahobali or Witness QY's inability to identify Ntahobali in court undermines the credibility of these witnesses or the reliability of their identification that the man who attacked the refugees was Ntahobali, especially having regard to the detailed and consistent nature of their overall testimony concerning this event.

3949. The Chamber further notes Witness SX said that Ntahobali came to the EER a number of times with *Interahamwe* at night in a Hilux pickup truck belonging to someone else<sup>10774</sup> and on the first night took away five adults.<sup>10775</sup> Like Witness RE, Witness SX also learned Ntahobali's identity through a third person when they were at the roadblock in front of Nyiramasuhuko's house.<sup>10776</sup> Considering Witness SX had several opportunities to observe Ntahobali, and recalling the lighting conditions at the EER,<sup>10777</sup> the Chamber considers Witness SX's testimony to be reliable and corroborative of Ntahobali's involvement in the EER attacks.

3950. Although Witness TB was not at the EER, she further corroborated the presence of Ntahobali at the EER, insofar as she testified to seeing Ntahobali at the EER church compound

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<sup>10763</sup> T. 26 February 2003 p. 9 (Witness RE).

<sup>10764</sup> See *Kamuhanda*, Judgement (AC), para. 300.

<sup>10765</sup> T. 26 February 2003 p. 12 (Witness RE).

<sup>10766</sup> T. 26 February 2003 pp. 9-10 (Witness RE).

<sup>10767</sup> T. 24 February 2003 p. 38 (Witness RE).

<sup>10768</sup> T. 30 January 2004 p. 49 (ICS) (Witness SX).

<sup>10769</sup> T. 19 March 2003 pp. 57, 59 (Witness QY).

<sup>10770</sup> T. 19 March 2003 p. 13; T. 25 March 2003 p. 17 (Witness QY).

<sup>10771</sup> T. 19 March 2003 pp. 22-23 (Witness QY).

<sup>10772</sup> T. 24 February 2003 pp. 40-41 (Witness RE).

<sup>10773</sup> T. 19 March 2003 p. 65 (Witness QY).

<sup>10774</sup> T. 27 January 2004 pp. 25-26, 36; T. 30 January 2004 pp. 55-56 (Witness SX).

<sup>10775</sup> T. 30 January 2004 p. 56 (Witness SX).

<sup>10776</sup> T. 27 January 2004 p. 16; T. 30 January 2004 p. 25 (Witness SX).

<sup>10777</sup> T. 30 January 2004 p. 49 (ICS) (Witness SX).

along with a man named Kazungu.<sup>10778</sup> Although Witness TB did not testify as to when this sighting occurred, her testimony nonetheless contradicts Ntahobali's testimony that he never entered the EER complex even though it was quite close to his home.<sup>10779</sup>

3951. The Prosecution also presented evidence that the *Interahamwe* were led by Ntahobali. In particular the Chamber notes the testimony of Witnesses RE and SX that Shalom was the leader of the *Interahamwe* and that they feared and obeyed him.<sup>10780</sup> Witness QY testified that it was the soldiers who were in military uniform and civilian clothes who took the young people, but it was Shalom who directed the attack.<sup>10781</sup> The Chamber recalls Witness QY testified that she did not know any other person in Butare whose name was Shalom either during the war or at the time of her testimony.<sup>10782</sup> In light of the foregoing, the Chamber accepts that the *Interahamwe* were led by Ntahobali.

#### 3.6.36.4.3.3 *Involvement of Soldiers*

3952. In addition to *Interahamwe*, several Prosecution witnesses testified that soldiers were involved in both the transfer to and the attacks at the EER. Prosecution Witnesses RE and QY testified that soldiers escorted them to the EER and beat them along the way.<sup>10783</sup> Witnesses RE, QY, SJ and QBQ also testified that, apart from *Interahamwe*, soldiers came to the EER and variously abducted and killed the refugees.<sup>10784</sup>

3953. Witness RE said that soldiers involved in the attacks comprised a mix of ordinary soldiers and some from the Presidential Guard.<sup>10785</sup> When it was put to Witness RE that her previous statement of 5 December 1996 stated only that the Presidential Guard returned to the EER to abduct persons, but made no mention of ordinary soldiers, she explained that she had mentioned both Presidential Guard and ordinary soldiers to the investigator, but it was left out of her statement.<sup>10786</sup> The Chamber considers this discrepancy to be minor. Recalling the Chamber's finding that Witness RE's testimony about her arrival at the EER was detailed and corroborated, the Chamber finds Witness RE's account as to this event to be credible.

3954. Witness SJ testified that soldiers came from the ESO military barracks, from the Hotel Ihuliro roadblock and the Hotel Ihuliro itself.<sup>10787</sup> She said the soldiers showed the refugees grenades and threatened them.<sup>10788</sup> The soldiers would take away 10 or 12 men at a time from the EER at night and kill them.<sup>10789</sup> Afterwards, they sent back one of the men for him to say

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<sup>10778</sup> T. 4 February 2004 p. 50 (Witness TB).

<sup>10779</sup> T. 2 May 2006 pp. 23, 28 (Ntahobali).

<sup>10780</sup> T. 24 February 2003 p. 13 (Witness RE); T. 27 January 2004 p. 26 (Witness SX).

<sup>10781</sup> T. 19 March 2003 p. 57 (Witness QY).

<sup>10782</sup> T. 19 March 2003 p. 65 (Witness QY).

<sup>10783</sup> T. 24 February 2003 p. 11 (Witness RE); T. 19 March 2003 p. 36-b (Witness QY).

<sup>10784</sup> T. 24 February 2003 p. 11 (Witness RE); T. 19 March 2003 pp. 38-b, 58 (Witness QY); T. 29 May 2002 pp. 103-104, 109-114 (Witness SJ); T. 3 February 2004 pp. 23, 79 (Witness QBQ).

<sup>10785</sup> T. 24 February 2003 p. 11 (Witness RE).

<sup>10786</sup> T. 26 February 2003 pp. 11-12 (Witness RE); Defence Exhibit 87 (Ntahobali) (5 December 1996, Statement of Witness RE).

<sup>10787</sup> T. 29 May 2002 pp. 103-104; T. 30 May 2002 p. 140; T. 4 June 2002 p. 108 (Witness SJ).

<sup>10788</sup> T. 29 May 2002 pp. 104, 109 (Witness SJ).

<sup>10789</sup> T. 29 May 2002 p. 109; T. 4 June 2002 pp. 87-88 (Witness SJ).

what happened.<sup>10790</sup> When put to her that this last event did not appear in her statement of 3 December 1996, Witness SJ stated that it was possible she forgot to add certain things.<sup>10791</sup> The Chamber has reviewed Witness SJ's statement of 3 December 1996 and notes that it outlines in detail the role of the soldiers at the EER. Although it does not mention that soldiers sent one man back to the EER to inform the other refugees of what happened when refugees were taken away, the Chamber does not consider this omission goes to the root of her account, or undermines the credibility of her account as to the actions of soldiers at the EER. Notwithstanding this omission, the Chamber finds Witness SJ's testimony on this element to be credible in that it was corroborated by other witnesses and consistent with the other evidence before the Chamber about the abductions of refugees.

3955. Witness SJ estimated that the soldiers came on three occasions.<sup>10792</sup> The soldiers appeared to be working in shifts because there were different soldiers in the day and at night.<sup>10793</sup> She saw soldiers coming from the Hotel Ihuliro.<sup>10794</sup> She was able to observe the soldiers coming to the EER because the Hotel Ihuliro, Nyiramasuhuko's residence, was visible from the EER.<sup>10795</sup> This last fact was corroborated by several Defence witnesses who testified to seeing refugees at the EER from the balconies of the Hotel Ihuliro which was adjacent to the EER complex.<sup>10796</sup> Ntahobali's sister Denise and his aunt Céline Nyiraneza both testified that the EER schools were about 100 metres from the Hotel Ihuliro and Ntahobali testified that the EER was quite close to his house.<sup>10797</sup>

#### 3.6.36.4.3.4 Killings at the EER

3956. No Prosecution witness personally saw the killing of the abducted refugees. Witness RE believed the men and boys that the *Interahamwe* took to a nearby forest had been executed because they never came back.<sup>10798</sup> While she did not personally see any killings of abducted refugees, she learned they had been killed with bludgeons.<sup>10799</sup> Witness RE also testified that some people who managed to escape and returned to the EER informed the others that those taken away had been killed with clubs and machetes and that this had been done while they were naked.<sup>10800</sup>

3957. Witness SJ also testified that persons taken from the EER compound were killed in the nearby forest.<sup>10801</sup> While Witness SJ also did not personally see the refugees being killed,<sup>10802</sup>

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<sup>10790</sup> T. 29 May 2002 pp. 109-110 (Witness SJ).

<sup>10791</sup> T. 4 June 2002 pp. 88-89 (Witness SJ); Defence Exhibit 61 (Ntahobali) (3 December 1996, Statement of Witness SJ).

<sup>10792</sup> T. 29 May 2002 p. 113 (Witness SJ).

<sup>10793</sup> T. 29 May 2002 p. 114 (Witness SJ).

<sup>10794</sup> T. 30 May 2002 p. 140 (Witness SJ).

<sup>10795</sup> T. 29 May 2002 p. 105; T. 30 May 2002 p. 121 (Witness SJ).

<sup>10796</sup> T. 27 February 2006 p. 50 (Béatrice Munyenyezi); T. 22 April 2008 pp. 36-37 (ICS) (Witness NMBMP); T. 9 June 2005 p. 27 (Denise Ntahobali); T. 28 February 2005 p. 22 (Céline Nyiraneza); T. 1 June 2005 p. 67 (Witness WBUC); T. 6 June 2005 p. 33 (ICS) (Witness WBUC).

<sup>10797</sup> T. 9 June 2005 p. 15 (Denise Ntahobali); T. 28 February 2005 p. 23 (Céline Nyiraneza) (the EER was between 100 and 200 metres away from the Hotel Ihuliro); T. 2 May 2006 p. 23 (Ntahobali).

<sup>10798</sup> T. 24 February 2003 p. 12 (Witness RE).

<sup>10799</sup> T. 26 February 2003 p. 12 (Witness RE).

<sup>10800</sup> T. 24 February 2003 pp. 12-13 (Witness RE).

<sup>10801</sup> T. 4 June 2002 pp. 95-96 (Witness SJ).

she testified that while seeking respite from the conditions at the EER in the woods, they saw skulls in addition to a hole that had been dug; in these narrow holes they sometimes saw bodies with bloated stomachs or that were decapitated.<sup>10803</sup>

3958. The Chamber considers these testimonies to be mutually consistent and thus finds that the only reasonable conclusion available from the evidence is that the refugees abducted from the EER were killed in the nearby woods. The Chamber also accepts the hearsay evidence of Witness RE that the abducted refugees were killed with clubs and machetes while they were naked,<sup>10804</sup> and the direct evidence of Witness SJ that some bodies were decapitated.<sup>10805</sup>

#### 3.6.36.4.3.5 Rapes at the EER

3959. With respect to allegations of rape, Witness QY testified that one night, after soldiers and *Interahamwe* selected young men and girls, and took them to the woods,<sup>10806</sup> some soldiers remained behind and selected girls, among them Witness QY.<sup>10807</sup> Witness QY provided compelling and detailed testimony that she was raped at the EER by a corporal.<sup>10808</sup> Although corroboration of Witness QY's testimony concerning her rape is not required,<sup>10809</sup> Witness RE's testimony provided corroboration that young girls were raped at the EER and that those who refused to be raped were killed.<sup>10810</sup> Witness QBQ also testified that refugees were raped by soldiers from the ESO at the EER.<sup>10811</sup> Although Des Forges was called as an expert witness and not a witness of fact,<sup>10812</sup> her testimony recounting her interviews with Nsabimana nevertheless corroborates that rapes occurred at the EER.<sup>10813</sup>

3960. The Chamber notes Witness QY did not mention her rape in her first or second statements.<sup>10814</sup> When it was put to her that she first mentioned being raped at the EER by a soldier in May 1994 in her third statement of 11/13 March 1998,<sup>10815</sup> Witness QY explained that she did not previously have the courage to discuss such crimes, nor had she been asked about it by the investigators.<sup>10816</sup>

3961. The Chamber notes that Witness QY gave her first statement in January 1997 whereas Ntahobali was only later charged with rape in the Indictment issued on 16 May 1997. Accordingly, the Chamber accepts Witness QY's explanation that she was not asked about rapes by the investigators at the time of her first statement. Insofar as her second statement

<sup>10802</sup> T. 4 June 2002 pp. 96, 98 (Witness SJ).

<sup>10803</sup> T. 29 May 2002 pp. 110-111 (Witness SJ).

<sup>10804</sup> T. 24 February 2003 pp. 12-13 (Witness RE).

<sup>10805</sup> T. 29 May 2002 p. 111 (Witness SJ).

<sup>10806</sup> T. 19 March 2003 p. 57 (Witness QY).

<sup>10807</sup> T. 19 March 2003 p. 38-b; T. 24 March 2003 pp. 37-38 (Witness QY).

<sup>10808</sup> T. 19 March 2003 pp. 38-39-b; T. 24 March 2003 pp. 37-40 (Witness QY).

<sup>10809</sup> Rule 96 (i) of the Rules; *see Muvunyi I*, Judgement (TC), para. 11.

<sup>10810</sup> T. 24 February 2003 p. 13 (Witness RE).

<sup>10811</sup> T. 3 February 2004 pp. 23, 79 (Witness QBQ).

<sup>10812</sup> *See Zigiranyirazo*, Judgement (TC), para. 148.

<sup>10813</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>10814</sup> T. 24 March 2003 p. 52 (Witness QY); *see* Defence Exhibit 466 (Ntahobali) (15 January 1997, 18 September 1997 and 11-13 March 1998, Statements of Witness QY).

<sup>10815</sup> T. 24 March 2003 p. 52 (Witness QY); *see* Defence Exhibit 466 (Ntahobali) (15 January 1997, 18 September 1997 and 11-13 March 1998, Statements of Witness QY).

<sup>10816</sup> T. 24 March 2003 pp. 52-53 (Witness QY).



given in September 1997 also failed to mention any account of rape, although by this time Ntahobali had been charged with rape in the Indictment of 16 May 1997, the Chamber accepts her explanation that she did not have the courage to discuss such crimes with the Tribunal investigators. In view of the fact that the Chamber considers Witness QY's testimony with respect to the transfer to the EER and the attacks to have been largely consistent with the testimony of other Prosecution witnesses, and therefore credible, the Chamber accepts Witness QY's explanation for failing to discuss her rape at the time of giving her first and second statements.

3962. When Witness QY was also questioned as to why she had not confronted her attacker during his trial in Rwandan courts,<sup>10817</sup> Witness QY was unable to give any explanation. Witness QY also testified that her rape at the EER was her first sexual experience<sup>10818</sup> and the only time she was raped at the EER.<sup>10819</sup> When it was put to her that her fourth prior statement of 24 July 2000 said she had been previously raped by two soldiers in April 1994 near Kibeho Parish, she declined to answer whether she had been previously raped.<sup>10820</sup> She subsequently disowned the content of that statement<sup>10821</sup> and later testified that she was not raped at Kibeho.<sup>10822</sup> Accordingly, the Chamber does not accept Witness QY's testimony as to the Kibeho rape. Nevertheless, the Chamber considers Witness QY's contradictory account about the Kibeho rape does not undermine the reliability of her testimony with respect to her rape at the EER.

3963. Witness QY was cross-examined about the details of her rape at the EER. It was put to Witness QY that her third statement said that a soldier found her in an EER classroom at night and raped her at the compound of the EER school after taking her skirt, whereas her testimony was that soldiers took her from the veranda around 6.00 p.m. and took her to woods nearby where they forced her to completely undress.<sup>10823</sup> The Chamber has had regard to these alleged inconsistencies and does not consider they go to the root of her account such as to undermine the credibility of her overall account that she was a victim of rape.

3964. As to the testimony presented by the Defence that no attacks occurred at the EER, the Chamber finds this testimony to be not credible. The Chamber has found the Prosecution evidence as to the attacks at the EER to be both credible and reliable. Further, most of the Defence witnesses who testified in this respect were either relatives or friends of Ntahobali such that they were residing in the hotel belonging to Maurice Ntahobali during the events between April and July 1994, for which reason the Chamber considers these witnesses may have had a motive to lie.

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<sup>10817</sup> T. 24 March 2003 pp. 57-58, 60-61, 63-64 (ICS) (Witness QY); Defence Exhibit 113 (Nyiramasuhuko) (18 September 1997, Statement of Witness QY); Defence Exhibit 114 (Nyiramasuhuko) (11-13 March 1998, Statement of Witness QY).

<sup>10818</sup> T. 19 March 2003 p. 39-b (Witness QY).

<sup>10819</sup> T. 24 March 2003 p. 20 (Witness QY).

<sup>10820</sup> T. 24 March 2003 p. 40 (Witness QY); Defence Exhibit 120 (Ntahobali) (24 July 2000, Statement of Witness QY).

<sup>10821</sup> T. 24 March 2003 pp. 70-73 (ICS); T. 10 April 2006 pp. 12-13, 16, 31, 50-51 (ICS) (Witness QY).

<sup>10822</sup> T. 10 April 2006 p. 19 (ICS) (Witness QY).

<sup>10823</sup> T. 24 March 2003 pp. 37-39 (Witness QY).

### 3.6.36.4.3.6 Conclusion

3965. Having regard to the foregoing, the Chamber finds it established beyond a reasonable doubt that between mid-May and the beginning of June 1994: soldiers escorted and beat the refugees on the way to the EER; Ntahobali was involved in and led *Interahamwe* in attacks against, and abductions of, Tutsi refugees during their stay at the EER; soldiers, both alone and accompanied by Ntahobali, came to the EER and were also involved in abductions of refugees during the same period; soldiers raped women and young girls at or near the EER school; Ntahobali, *Interahamwe* and soldiers killed the abducted Tutsi refugees in the woods near the EER school complex. However, the Chamber does not find it established beyond a reasonable doubt that Ntahobali led the soldiers to the EER.

#### 3.6.36.4.4 Nsabimana's Involvement in the EER Events

3966. Nsabimana claimed that the Security Council decided to move refugees to enable the proper functioning of the BPO and that *Sous-préfet* Rutayisire proposed the EER school as a safer place for them.<sup>10824</sup> He believed the refugees were given food and had access to water at the EER.<sup>10825</sup>

3967. Witnesses RE, QY and QBQ all were Tutsis seeking refuge at the BPO at the time of the transfer to the EER. As such they provided eyewitness accounts of events at the BPO on the day of the transfer. Witnesses RE, QY and QBQ testified that Nsabimana ordered the transfer of the refugees to the EER.<sup>10826</sup> Nsabimana testified that the transfer of refugees from the BPO to the EER school was carried out pursuant to a decision of the Security Council.<sup>10827</sup> To this end, the Chamber recalls Nsabimana's testimony that upon a Directive of the Security Council, he made an application to the National Bank in Kigali to open a Security Council account in the name of civilian defence.<sup>10828</sup> The Chamber also recalls that with respect to the Nyange transfer the Security Council meeting took place in Nsabimana's office at the BPO,<sup>10829</sup> and in the hours after the meeting, Nsabimana, as the only person who could requisition the vehicles, found one bus to transport the refugees to Nyange.<sup>10830</sup> Accordingly, as a natural corollary of Witnesses RE, QY and QBQ's testimonies that Nsabimana ordered the transfer of the refugees, the Chamber considers it was Nsabimana, in his role as serving *préfet*, who put the Security Council decision into effect. This is consistent with Nsabimana's own testimony, that the decision to transfer the refugees was made by the Security Council.

3968. As to the motivation for moving the refugees from the BPO to the EER, the Chamber recalls that it accepted that the Security Council moved the refugees from the BPO to somewhere else to enable the proper functioning of the office,<sup>10831</sup> but also that the Security

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<sup>10824</sup> T. 9 October 2006 pp. 69-70 (Nsabimana).

<sup>10825</sup> T. 9 October 2006 pp. 70, 74 (Nsabimana).

<sup>10826</sup> T. 24 February 2003 pp. 10-11 (Witness RE); T. 19 March 2003 p. 36-b (Witness QY); T. 3 February 2004 p. 23 (Witness QBQ).

<sup>10827</sup> T. 9 October 2006 pp. 69-70 (Nsabimana).

<sup>10828</sup> T. 12 October 2006 p. 11 (Nsabimana); Defence Exhibit 484 (Nsabimana) (Letter from Nsabimana to the National Bank of Kigali, 15 June 1994).

<sup>10829</sup> T. 9 October 2006 pp. 80-83 (Nsabimana).

<sup>10830</sup> T. 9 October 2006 pp. 82-83 (Nsabimana).

<sup>10831</sup> T. 9 October 2006 p. 69 (Nsabimana).

Council and Kalimanzira may have taken the decision to move the refugees from the BPO to hide evidence of the killing and displacement of refugees.<sup>10832</sup>

3969. The events which occurred after the transfer to the EER further contradicts Nsabimana's testimony that the transfer was intended for the refugees' protection. The Chamber recalls its previous findings that Ntahobali was involved in and led soldiers and *Interahamwe* in attacks at the EER against Tutsi refugees between mid-May and the beginning of June 1994, that *Interahamwe* and soldiers abducted and killed refugees in the woods near the EER school complex, and that women and young girls were raped by soldiers at or near the EER school complex.

3970. In the circumstances, the Chamber finds it established beyond a reasonable doubt that *Préfet* Nsabimana ordered the refugees be taken from the BPO to the EER pursuant to a Security Council decision, and rejects that the reason for the transfer was to protect the refugees.

3971. However, the Chamber recalls that Paragraph 6.39 was not pled in support of counts against Nsabimana for which reason the Chamber will make no finding as to Nsabimana's responsibility pursuant to Article 6 (1). The Chamber will however consider the extent of Nsabimana's responsibility pursuant to Article 6 (3) for the alleged criminal acts of Kanyabashi and other subordinates whom the Chamber found were involved in attacks at the EER.

#### 3.6.36.4.5 Nyiramasuhuko's Involvement in the EER Events

3972. Although Paragraph 6.30 of the Nyiramasuhuko and Ntahobali Indictment was also pled in support of Counts 2-3, 5-7, 9-10 against Nyiramasuhuko, the Chamber notes no evidence was led with respect to Nyiramasuhuko's involvement in events at the EER.<sup>10833</sup> In the circumstances, the Chamber finds Nyiramasuhuko's involvement in these events has not been established beyond a reasonable doubt.

#### 3.6.36.4.6 Kanyabashi's Involvement in the EER Events

3973. Although Paragraph 6.41 of the Kanyabashi Indictment was pled in support of all counts against Kanyabashi, the Chamber notes no evidence was led with respect to Kanyabashi's involvement in events at the EER. In the circumstances, the Chamber finds Kanyabashi's involvement in these events has not been established beyond a reasonable doubt.

### 3.6.37 Gitarama Meeting, Late May 1994

#### 3.6.37.1 Introduction

3974. The Nsabimana and Nteziryayo Indictment alleges that from late 1990 until July 1994, military personnel, members of the government, political leaders, civil servants and other personalities conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they

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<sup>10832</sup> See Prosecution Exhibit 110A (Des Forges Expert Report) p. 57.

<sup>10833</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 47.

could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organised, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutus. Sylvain Nsabimana, Alphonse Nteziryayo, Pauline Nyiramasuhuko, André Rwamakuba, Joseph Kanyabashi, Élie Ndayambaje, Ladislas Ntaganzwa and Shalom Arsène Ntahobali elaborated, adhered to and executed this plan.<sup>10834</sup>

3975. The Prosecution submits that Nsabimana's role in the conspiracy to commit genocide against the Tutsi population was to convene and attend meetings, assist the civil self-defence effort, supply fuel to help transport youths, distribute weapons to the *communes*, encourage youths to join the army, and encourage others to join in the genocidal effort to kill the Tutsis.<sup>10835</sup>

3976. Among the meetings attended by Nsabimana for conspiracy purposes, the Prosecution singles out that of 28 May 1994 held in Gitarama *préfecture*, which was chaired by Prime Minister Kambanda.<sup>10836</sup> The Prosecution did not call any witness in support of this specific allegation, nor tender any exhibit in this regard. The Prosecution instead refers to the testimony of Nsabimana himself and submits that in his address during this meeting, Nsabimana asked for *gendarmes* to control the refugees and keep them together. According to the Prosecution this assertion contradicts Nsabimana's subsequent testimony that he did not know that he could use *gendarmes*.<sup>10837</sup>

3977. The Nsabimana Defence submits that, contrary to what is alleged by the Prosecution, Nsabimana did not ask the *gendarmes* to intervene in order to control and gather together the refugees during this meeting. The Defence submits that the Prosecution's deduction misrepresents Nsabimana's testimony.<sup>10838</sup>

3978. Nyiramasuhuko also testified about this meeting.

### **3.6.37.2 Preliminary Issues**

3979. The Chamber notes that the Gitarama meeting of 28 May 1994 is not specifically pled in the Nsabimana and Nteziryayo Indictment, which is therefore rendered defective.

3980. The Chamber must then determine whether the Indictment is cured of its defects through subsequent Prosecution disclosures. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber observes that the Appendix to the Prosecution Pre-Trial Brief made no reference to any witness who might have been expected to testify on this event. In addition, no witness statement was disclosed in this respect. Therefore, the defect has not been cured and the Chamber declines to make a finding in respect of this allegation. In any event, no Prosecution witness was called to testify on this particular meeting during the trial.

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<sup>10834</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts).

<sup>10835</sup> Prosecution Closing Brief, p. 232, para. 14.

<sup>10836</sup> Prosecution Closing Brief, pp. 240-241, para. 42.

<sup>10837</sup> Prosecution Closing Brief, pp. 230, 241, paras. 7, 42.

<sup>10838</sup> Nsabimana Closing Argument, T. 24 April 2009 p. 9.

3981. The Chamber however notes that the Defence did not dispute the fact that Nsabimana attended the meeting of 28 May 1994 in Gitarama which was intended for all *préfets*.<sup>10839</sup>

### 3.6.38 Hotel Ibis and Hotel Faucon Killings, May and June 1994

#### 3.6.38.1 Introduction

3982. The Nteziryayo and Nsabimana Indictment alleges that in May and June 1994, Nteziryayo, who was staying at the same hotel as Robert Kajuga in Butare, ordered the *Interahamwe* to search for Tutsis and kill them.<sup>10840</sup> The Prosecution submits that Nteziryayo ordered his subordinates to kill a Tutsi man in the forest behind the Hotel Ibis.<sup>10841</sup> It also submits that Nteziryayo's subordinates, the *Interahamwe* members, took a group of Tutsis to "the hotel" where they were killed.<sup>10842</sup> In support of this allegation, the Prosecution relies on the evidence of Prosecution Witness QJ.

3983. In addition to the notice challenges set forth below, the Nteziryayo Defence challenges the credibility of Prosecution Witness QJ. It also submits that Kajuga's arrival at Hotel Ibis was unrelated to the fact that Nteziryayo was living there. It states that Nteziryayo was precluded from being a member of the *Interahamwe* by virtue of his age and status as a soldier, and questions whether the President of Rwanda would dismiss Nteziryayo from the army only then to accept him as a member of the *Interahamwe*.<sup>10843</sup> It asserts the Prosecution did not set out a precise date for the alleged presence of Nteziryayo, the identity of the *Interahamwe* concerned, the identity of the supposed victim at the Hotel Ibis, or any evidence that this man was killed other than testimony that he did not return.<sup>10844</sup> It submits that the Prosecution did not set out a precise date for the alleged massacre at the Hotel Faucon or substantiate their claims that Nteziryayo was in charge of the *Interahamwe*.<sup>10845</sup> The Nteziryayo Defence relies on the testimony of Nteziryayo Defence Witnesses AND-17, AND-36, AND-59 and Nteziryayo.<sup>10846</sup>

#### 3.6.38.2 Preliminary Issues

##### *Hotel Ibis Allegation*

3984. The Nteziryayo Defence submits that Prosecution Witness QJ's testimony in respect of the abduction and killing of a Tutsi at Hotel Ibis is outside the scope of the Nsabimana and Nteziryayo Indictment and should therefore be excluded.<sup>10847</sup> The Chamber notes that while

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<sup>10839</sup> T. 21 September 2006 p. 42 (Nsabimana).

<sup>10840</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>10841</sup> Prosecution Closing Brief, pp. 339, 364, 370, paras. 109, 190, 208.

<sup>10842</sup> Prosecution Closing Brief, pp. 366-367, paras. 197-198.

<sup>10843</sup> Nteziryayo Closing Argument, T. 27 April 2009 p. 80.

<sup>10844</sup> Nteziryayo Closing Argument, T. 27 April 2009 p. 80; T. 27 April 2009 p. 83 (French).

<sup>10845</sup> Nteziryayo Closing Brief, paras. 669, 681.

<sup>10846</sup> Nteziryayo Closing Brief, paras. 701, 704-705.

<sup>10847</sup> Nteziryayo Closing Brief, para. 765 (*reiterating Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009, para. 39). In its Decision of 25 February 2009, the Chamber ruled that it would consider issues relating to certain alleged defects in the indictment, vagueness and lack of notice in its final deliberations. See *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

Paragraph 6.30 of the Nsabimana and Nteziryayo Indictment makes a general accusation that Nteziryayo ordered the *Interahamwe* to kill Tutsis and mentions that Nteziryayo was staying at the same hotel in Butare as Robert Kajuga, this paragraph does not indicate the location of the alleged killing. Therefore, Paragraph 6.30 is defective.

3985. The summary of Witness QJ's anticipated testimony included in the Appendix to the Prosecution Pre-Trial Brief states that Nteziryayo and the *Interahamwe* president murdered; that Nteziryayo lived in the Hotel Ibis; and that around late May, Nteziryayo gave an order to "get rid of the dirt."<sup>10848</sup> Prosecution Witness QJ's statement of 8 May 1996, disclosed on 4 December 2000, provided that: in early May, when the *Interahamwe* arrived in Butare from Kigali "that Colonel sent them to search for people to kill"; and that Witness QJ heard Nteziryayo give orders to *Interahamwe* to go and look for someone who was hiding in the Hotel Ibis, stating "get rid of that dirt."<sup>10849</sup> The Indictment clearly alleges that Nteziryayo was staying with Robert Kajuga.<sup>10850</sup> Nteziryayo testified that it was public knowledge that Kajuga was the president of the *Interahamwe*.<sup>10851</sup> The Prosecution Pre-Trial Brief further clarified that Nteziryayo and Kajuga were staying at the Hotel Ibis and participated in murder.<sup>10852</sup> Furthermore, these subsequent disclosures clearly set forth the Hotel Ibis as the location where the man was allegedly ordered killed by Nteziryayo. Therefore, the Chamber finds that the defect in the Indictment was cured.

#### *Hotel Faucon Allegation*

3986. The Nteziryayo Defence submits that Witness QJ's testimony regarding killings at the Hotel Faucon is also outside the scope of the Nsabimana and Nteziryayo Indictment and should thus be excluded.<sup>10853</sup> The Chamber notes that Paragraph 6.30 of the Nsabimana and Nteziryayo Indictment does not allege that Nteziryayo was responsible for killings at the Hotel Faucon. Therefore, the Chamber finds that Paragraph 6.30 was defective in this respect.

3987. The Chamber observes that the summary of Witness QJ's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief states that Witness QJ saw Nteziryayo and the *Interahamwe* president murder. It also states that Nteziryayo lived at the Hotel Ibis in Butare and that Witness QJ saw Nteziryayo lead a group of men dressed in both military and civilian clothes, armed with rifles, hand grenades, machetes, clubs and hoes.<sup>10854</sup> There is no mention in the summary of Witness QJ's anticipated testimony of any killings at the Hotel Faucon.

3988. In his statement of 8 May 1996, Witness QJ testified that in early June 1994, he witnessed the killings of Bosco, Gibert and Verdaste, among others.<sup>10855</sup> The *Interahamwe*,

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<sup>10848</sup> Prosecution Pre-Trial Brief – Appendix; Witness QJ (4) ("QJ saw Nteziryayo and the *Interahamwe* president murder. QJ survived because of his Hutu identification card. QJ states that Nteziryayo lived at the hotel Ibis in Butare. QJ saw Nteziryayo lead a group of men dressed in both military and civilian clothes, armed with rifles, hand grenades, machetes, clubs, and hoes. Around late May, QJ heard Nteziryayo giving an order to 'get rid of the dirt.'").

<sup>10849</sup> 8 May 1996, Statement of Witness QJ, disclosed 4 December 2000.

<sup>10850</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>10851</sup> T. 5 July 2007 p. 35 (Nteziryayo).

<sup>10852</sup> Prosecution Pre-Trial Brief – Appendix; Witness QJ (4).

<sup>10853</sup> Nteziryayo Closing Brief, para. 765.

<sup>10854</sup> Prosecution Pre-Trial Brief – Appendix; Witness QJ (4).

<sup>10855</sup> 8 May 1996, Statement of Witness QJ, disclosed 4 December 2000.

who were staying at the Hotel Ibis with their president, Robert Kajuga, and Nteziryayo, found them where they were hidden at the Hotel Faucon and killed them all with clubs. All the victims were Tutsis. In his statement of 28 October 1997, Witness QJ mentioned the killings of Bosco and Safari at the Hotel Faucon but did not mention Nteziryayo's alleged involvement in these events.<sup>10856</sup>

3989. The 8 May 1996 statement mentions Nteziryayo's alleged role in the killings at the Hotel Faucon. This allegation was not contained in the Prosecution Pre-Trial Brief or its Appendix. The Chamber finds that the Defence was not sufficiently informed of the material facts that the Prosecution intended to prove at trial, and the defect in the Nsabimana and Nteziryayo Indictment was not cured. Accordingly, the Chamber will not base a conviction on the allegation that Nteziryayo authorised killings at the Hotel Faucon. The Chamber will only consider the allegation that Nteziryayo ordered his subordinates to kill a Tutsi in the vicinity of the Hotel Ibis.

### 3.6.38.3 Evidence

#### Prosecution Witness QJ

3990. Witness QJ, a Tutsi hotel worker in Butare town, testified that he had falsified his identity card to indicate that he was Hutu. He did this prior to the start of the killings because it made it easier to move about freely and to acquire employment. He had a forged identity card because the authorities made a mistake and lightly crossed out the word Tutsi on his card. He deepened the crossing out of Tutsi on the identity card.<sup>10857</sup> The authorities had also crossed out Hutu but they had not crossed it out properly.<sup>10858</sup> After the killings started, Witness QJ continued to travel freely around Butare town on account of his identity card. No one knew that he was a Tutsi because he was not from Butare. He could not return to his home *commune* because the identity card could not be used there.<sup>10859</sup> He testified that possession of an identity card indicating Hutu ethnicity meant that "no one could arrest [him]".<sup>10860</sup> Witness QJ later conceded that many of those in or around Hotel Faucon knew or suspected that he was in fact Tutsi.<sup>10861</sup>

3991. Witness QJ knew Nteziryayo well as Nteziryayo was a resident guest at the hotel where Witness QJ worked around 10 April 1994.<sup>10862</sup> When the hotel closed because of the deteriorating security situation in Butare town, Nteziryayo moved to the Hotel Ibis, where he lived with Robert Kajuga, president of the *Interahamwe*, until Nteziryayo went into exile.<sup>10863</sup> Nteziryayo did not come to the hotel where Witness QJ worked between its closure in mid-April 1994 and the end of June 1994.<sup>10864</sup>

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<sup>10856</sup> 28 October 1997, Statement of Witness QJ, disclosed 4 December 2000.

<sup>10857</sup> T. 8 November 2001 p. 138 (ICS) (Witness QJ).

<sup>10858</sup> T. 13 November 2001 p. 31 (ICS) (Witness QJ).

<sup>10859</sup> T. 13 November 2001 pp. 54, 59 (Witness QJ).

<sup>10860</sup> T. 13 November 2001 p. 54 (Witness QJ).

<sup>10861</sup> T. 13 November 2001 pp. 136-139 (ICS) (Witness QJ).

<sup>10862</sup> T. 14 November 2001 p. 66 (Witness QJ).

<sup>10863</sup> T. 13 November 2001 p. 21 (ICS); T. 14 November 2001 pp. 65-66, 74-75 (Witness QJ).

<sup>10864</sup> T. 14 November 2001 p. 46 (ICS) (Witness QJ).

3992. The hotel closed around 16, 17 or 20 April 1994, when the owner left the hotel and went into exile.<sup>10865</sup> About 10 people remained in the hotel.<sup>10866</sup> Although the hotel was closed, it was unlocked and some soldiers from ESO who were stationed on the road outside came to the hotel for food and to shelter from the sun.<sup>10867</sup> A soldier known to the witness, Jean-Baptiste, was among them.<sup>10868</sup>

3993. Witness QJ testified he went to the Hotel Ibis regularly between April and the end of June 1994 to fetch water.<sup>10869</sup> He saw Nteziryayo there on several occasions.<sup>10870</sup> Witness QJ testified that Nteziryayo lived at the hotel and often went to its bar for a drink.<sup>10871</sup> Witness QJ said that around this time he saw Nteziryayo every day.<sup>10872</sup> The *Interahamwe* were guarding Robert Kajuga at the Hotel Ibis. Witness QJ testified that he realised that Nteziryayo was a deputy to Robert Kajuga when he once heard Nteziryayo give orders to the *Interahamwe*.<sup>10873</sup>

3994. Witness QJ testified that at the Hotel Ibis bar one day, while having a drink with friends, he saw Nteziryayo order the *Interahamwe* to take away a Tutsi man who had claimed to be of a different ethnicity and who was hiding at Hotel Ibis.<sup>10874</sup> Nteziryayo told the *Interahamwe*, who had found and beaten the Tutsi man at the Hotel Ibis to take him and kill him near the forest, stating, “[t]ake this gentleman and go and kill him on the hill instead of killing him here in the Hotel Ibis.”<sup>10875</sup> Witness QJ testified that this order was carried out by the *Interahamwe*.<sup>10876</sup> The *Interahamwe* took the Tutsi man away and the man did not return.<sup>10877</sup>

3995. Witness QJ stated that the *Interahamwe* were under the orders of their leaders, Robert Kajuga, who was their president, and Nteziryayo, who lived with and was deputy to Kajuga.<sup>10878</sup> The witness identified Nteziryayo in court.<sup>10879</sup>

3996. Witness QJ initially stated that the Tutsi man was taken away and not seen again but on cross-examination testified that the *Interahamwe* did carry out the order to execute the man.<sup>10880</sup> Witness QJ testified that he could not remember the names of the friends with whom he was drinking in the Hotel Ibis bar and that he could not say how many *Interahamwe* were involved in abducting the Tutsi man from that bar.<sup>10881</sup> Witness QJ also conceded that he had merely heard from others that Kajuga was national president of the *Interahamwe*, that he did

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<sup>10865</sup> T. 14 November 2001 pp. 21-22 (ICS) (Witness QJ).

<sup>10866</sup> T. 14 November 2001 p. 37 (ICS) (Witness QJ).

<sup>10867</sup> T. 14 November 2001 pp. 38, 41 (ICS) (Witness QJ).

<sup>10868</sup> T. 14 November 2001 p. 39 (ICS) (Witness QJ).

<sup>10869</sup> T. 8 November 2001 p. 124 (ICS); T. 14 November 2001 p. 67 (Witness QJ).

<sup>10870</sup> T. 14 November 2001 p. 67 (Witness QJ).

<sup>10871</sup> T. 8 November 2001 pp. 123-124 (ICS) (Witness QJ).

<sup>10872</sup> T. 8 November 2001 p. 126 (ICS) (Witness QJ).

<sup>10873</sup> T. 14 November 2001 pp. 74-75 (Witness QJ).

<sup>10874</sup> T. 8 November 2001 pp. 124-126 (ICS) (Witness QJ).

<sup>10875</sup> T. 8 November 2001 pp. 124-126 (ICS); T. 12 November 2001 pp. 9-10 (Witness QJ).

<sup>10876</sup> T. 12 November 2001 p. 10 (Witness QJ).

<sup>10877</sup> T. 8 November 2001 p. 125 (ICS) (Witness QJ).

<sup>10878</sup> T. 8 November 2001 pp. 113-115, 117 (ICS) (Witness QJ).

<sup>10879</sup> T. 12 November 2001 p. 36 (Witness QJ).

<sup>10880</sup> T. 8 November 2001 p. 125 (ICS); T. 12 November 2001 pp. 9-10 (Witness QJ).

<sup>10881</sup> T. 14 November 2001 pp. 76-78 (Witness QJ).



not know whether Kajuga was Tutsi, and that Kajuga was either bed-ridden or merely present and “not doing anything” at the bar when Witness QJ saw him.<sup>10882</sup> He did not know whether Kajuga and Nteziryayo lived in the same building within Hotel Ibis and did not see them together.<sup>10883</sup>

3997. Witness QJ testified that one morning towards the end of May or early June 1994 Witness AND-17 was among the attackers who killed Tutsis who were staying at the Hotel Faucon. He led a soldier named Jean-Baptiste to the hotel cellar where the Tutsis were hiding.<sup>10884</sup>

#### Nteziryayo Defence Witness AND-17

3998. Witness AND-17, a Hutu, testified that he had known Witness QJ since 1986 and was with him at all times between April and June 1994.<sup>10885</sup> He testified that Witness QJ did not go to Hotel Ibis at any time and, therefore, would not have witnessed anything that happened there.<sup>10886</sup>

3999. In cross-examination, the witness admitted that he did not share a room with Witness QJ, they did not stay in the same room at night, he did not accompany Witness QJ during his walks in the garden, and did not spend all day with Witness QJ in his room.<sup>10887</sup> Witness AND-17 testified that Witness QJ did not assist him in his work between 7.00 and 11.00 a.m. each day.<sup>10888</sup> Except for one day, Witness QJ did not accompany the witness to purchase cigarettes.<sup>10889</sup> The witness further testified that Witness QJ was under no obligation to report to the witness concerning his whereabouts,<sup>10890</sup> and that he did not know what Witness QJ did on 20 April 1994 while Witness AND-17 was visiting his parents.<sup>10891</sup>

4000. At the end of May, a soldier named Jean-Baptiste entered the Hotel Faucon.<sup>10892</sup> Jean-Baptiste asked Witness AND-17 to show him where he had hidden the *Inyenzi* in the hotel. Witness AND-17 explained that he had not hidden *Inyenzi*, only the hotel staff.<sup>10893</sup> They left the kitchen and met Witness QJ. Jean-Baptiste told Witness QJ that he knew where the staff members were hidden, and went to the basement room below the owner’s house. The door was smashed in and those inside were asked to come out.<sup>10894</sup>

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<sup>10882</sup> T. 14 November 2001 pp. 73-74 (Witness QJ).

<sup>10883</sup> T. 14 November 2001 p. 75 (Witness QJ).

<sup>10884</sup> T. 8 November 2001 p. 158; T. 8 November 2001 p. 113 (ICS); T. 14 November 2001 pp. 47, 54-55 (ICS) (Witness QJ).

<sup>10885</sup> T. 30 January 2007 pp. 9-10 (ICS) (Witness AND-17).

<sup>10886</sup> T. 30 January 2007 pp. 36-37 (ICS) (Witness AND-17).

<sup>10887</sup> T. 31 January 2007 p. 33 (ICS) (Witness AND-17).

<sup>10888</sup> T. 31 January 2007 p. 35 (ICS) (Witness AND-17).

<sup>10889</sup> T. 31 January 2007 p. 36 (ICS) (Witness AND-17).

<sup>10890</sup> T. 31 January 2007 p. 34 (ICS) (Witness AND-17).

<sup>10891</sup> T. 31 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10892</sup> T. 31 January 2007 p. 52 (ICS) (Witness AND-17).

<sup>10893</sup> T. 30 January 2007 pp. 31-32 (ICS) (Witness AND-17).

<sup>10894</sup> T. 30 January 2007 p. 32 (ICS) (Witness AND-17).

4001. Jean-Baptiste told Witness AND-17 to kill two of the Tutsis with a hoe, but the witness responded that he could not.<sup>10895</sup> A group of *Interahamwe* came to the Hotel Faucon, but they did not have a leader.<sup>10896</sup> One of the bandits, named Michel, took the hoe and used it to kill the two Tutsis.<sup>10897</sup>

4002. After the two were killed, Witness AND-17 was ordered to open all the hotel rooms. The following day, Witness AND-17, Witness QJ and another colleague buried the two bodies in the hotel garden.<sup>10898</sup>

4003. Witness AND-17 testified that Witness QJ did not possess an identity card which said that he was Hutu and he did not travel around town freely.<sup>10899</sup> Witness QJ did not have an identity card at all and had to pay killers not to kill him on a number of occasions.<sup>10900</sup> Jean-Baptiste asked to see Witness QJ's identity card.<sup>10901</sup> After Witness QJ told Jean-Baptiste that he did not have a card, Jean-Baptiste told him he would be killed, ascertaining that he was Tutsi.<sup>10902</sup> Witness QJ then offered Jean-Baptiste money to spare his life, and Jean-Baptiste asked Witness QJ and the witness where the other hotel workers were.<sup>10903</sup>

4004. Witness AND-17 testified that Nteziryayo had nothing to do with the youths who called themselves "*Interahamwe*". The witness never observed him among these youths.<sup>10904</sup>

#### Nteziryayo Defence Witness AND-59

4005. Witness AND-59, a Hutu student in 1994,<sup>10905</sup> testified that Prosecution Witness QJ was a member of *Ibuka* and that this association was engaged in the coaching of witnesses to influence testimonies given before this Tribunal.<sup>10906</sup>

#### Ntahobali Defence Witness WCKJ

4006. Witness WCKJ, a Hutu educator,<sup>10907</sup> testified that after the President died a roadblock was erected at the Hotel Ibis. He stated that these roadblocks were manned by people wearing military uniform.<sup>10908</sup> Witness WCKJ testified that though he had made reference to a roadblock at Hotel Ibis and one at Hotel Faucon, there was only a roadblock at Hotel Faucon.<sup>10909</sup>

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<sup>10895</sup> T. 30 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10896</sup> T. 30 January 2007 p. 33 (ICS); T. 31 January 2007 p. 21 (ICS) (Witness AND-17).

<sup>10897</sup> T. 30 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10898</sup> T. 30 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10899</sup> T. 31 January 2007 p. 41 (ICS) (Witness AND-17).

<sup>10900</sup> T. 30 January 2007 p. 36 (ICS) (Witness AND-17).

<sup>10901</sup> T. 30 January 2007 p. 31 (ICS) (Witness AND-17).

<sup>10902</sup> T. 30 January 2007 p. 31 (ICS); T. 31 January 2007 p. 15 (ICS) (Witness AND-17).

<sup>10903</sup> T. 30 January 2007 pp. 31-32 (ICS) (Witness AND-17).

<sup>10904</sup> T. 31 January 2007 p. 57 (ICS) (Witness AND-17).

<sup>10905</sup> Defence Exhibit 533 (Nteziryayo) (Personal Particulars).

<sup>10906</sup> T. 3 November 2008 pp. 50-51 (ICS) (Witness AND-59).

<sup>10907</sup> Defence Exhibit 385 (Ntahobali) (Personal Particulars).

<sup>10908</sup> T. 31 January 2006 p. 22 (Witness WCKJ).

<sup>10909</sup> T. 31 January 2006 p. 40 (Witness WCKJ).

Kanyabashi Defence Witness D-2-13-D

4007. Witness D-2-13-D, a Hutu detainee, testified that there was a small roadblock by the Hotel Ibis manned by *Interahamwe* who wore regular civilian trousers and camouflage shirts.<sup>10910</sup> The witness heard that Kajuga, the head of the *Interahamwe*, was staying at the Hotel Ibis and that was why there was a small roadblock at the entrance of the courtyard to the Hotel Ibis. He did not hear of a soldier named Alphonse Nteziryayo staying at the Hotel Ibis with Kajuga nor did he know of such a soldier.<sup>10911</sup>

Kanyabashi Defence Witness D-2-YYYY

4008. Witness D-2-YYYY, a Hutu civil servant,<sup>10912</sup> stated that Robert Kajuga was the national leader of the *Interahamwe*.<sup>10913</sup> He believed that Kajuga arrived in Ngoma *commune* in late April or early May 1994 and during the time he spent in Ngoma, he stayed in the rear courtyard of Hotel Ibis. Kajuga was accompanied by approximately 30 *Interahamwe* who he had heard arrived in two vehicles.<sup>10914</sup> Approximately four *Interahamwe* were at the entrance to the rear courtyard guarding Kajuga, where they had erected a roadblock behind the metal gate made of two trees trunks and cloth.<sup>10915</sup> The *Interahamwe* wore half-military, half-civilian clothing (of *kitenge* cloth) and carried Kalashnikov guns. The witness never saw Kajuga himself.<sup>10916</sup> He did not know anything regarding Kajuga's activities while he was at the hotel.<sup>10917</sup> The witness passed the roadblock almost every morning and evening but never stopped to talk to the *Interahamwe* there.<sup>10918</sup>

Kanyabashi Defence Witness D-2-5-I

4009. Witness D-2-5-I, a Hutu civil servant, testified that because of the security situation, there was a police post at the Kigali Bank, near Hotel Ibis, from where they could see the happenings at the hotel.<sup>10919</sup> Not far from the main entrance near the rear courtyard of the Hotel Ibis, the *Interahamwe* carrying Kalashnikov guns set up a roadblock to prevent anyone from accessing the hotel. The witness said it could be noticed that the *Interahamwe* were watching or manning something there.<sup>10920</sup>

4010. Witness D-2-5-I testified that on 26 or 27 April, he learned that the leader of the *Interahamwe* was at the Hotel Ibis.<sup>10921</sup> He said the *Interahamwe* stayed at Hotel Ibis until

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<sup>10910</sup> T. 30 August 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>10911</sup> T. 10 September 2007 pp. 23, 56-57 (ICS) (Witness D-2-13-D).

<sup>10912</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>10913</sup> T. 28 November 2007 pp. 63-64 (ICS) (Witness D-2-YYYY).

<sup>10914</sup> T. 28 November 2007 pp. 63-64 (ICS) (Witness D-2-YYYY).

<sup>10915</sup> T. 28 November 2007 pp. 63-64 (ICS); T. 5 December 2007 p. 69 (ICS); T. 6 December 2007 pp. 4, 8 (Witness D-2-YYYY).

<sup>10916</sup> T. 29 November 2007 p. 6; T. 5 December 2007 pp. 70-72 (ICS); T. 6 December 2007 pp. 7-8 (Witness D-2-YYYY).

<sup>10917</sup> T. 6 December 2007 p. 9 (Witness D-2-YYYY).

<sup>10918</sup> T. 5 December 2007 p. 73 (ICS); T. 6 December 2007 p. 4 (Witness D-2-YYYY).

<sup>10919</sup> T. 22 January 2008 pp. 35, 37 (ICS) (Witness D-2-5-I).

<sup>10920</sup> T. 22 January 2008 p. 35 (ICS) (Witness D-2-5-I).

<sup>10921</sup> T. 22 January 2008 pp. 37-38 (ICS) (Witness D-2-5-I).

people started leaving Butare town in great numbers.<sup>10922</sup> The witness testified that these *Interahamwe* were involved in killings.<sup>10923</sup> He denied having ever been an *Interahamwe* himself.<sup>10924</sup>

### Ntahobali

4011. Ntahobali testified that he knew Robert Kajuga and they met twice before President Habyarimana's death. The first time they met was in 1993 and the second was towards the end of 1993 or early 1994 during a family function.<sup>10925</sup> On that second occasion, Ntahobali got to know that Robert Kajuga was a member of the MRND party or more precisely "one of the leading figures of the MRND youth wing."<sup>10926</sup>

4012. Ntahobali testified that he met Robert Kajuga again at Hotel Ibis in Butare around 15 June 1994.<sup>10927</sup> Ntahobali was informed that Kajuga was sick and stayed at that hotel. He paid Kajuga a brief visit for three to five minutes. Two days later, he saw Kajuga's vehicle drive past but he did not know if Kajuga was in or not. He stated that he no longer met Kajuga after this short encounter at the Hotel Ibis.<sup>10928</sup>

4013. Ntahobali testified that he learned from Georges Rutaganda that Robert Kajuga arrived at Butare on 24 May 1994, accompanied by many people.<sup>10929</sup> He stated: "Rutaganda was coming back from Cyangugu, and when he passed through Butare on that same day, he met Robert Kajuga on the way and the latter told him that he was going to Butare for treatment at the university hospital".<sup>10930</sup> Ntahobali testified that Robert Kajuga was bed-ridden when he visited him at the Hotel Ibis and that his room was towards the rear where the rooms of the hotel were.<sup>10931</sup> Kajuga came to Butare in the company of armed young men referred to as *Interahamwe*.<sup>10932</sup> Ntahobali testified that Alexis Kamana and Cekeli were among the people who accompanied Kajuga when they met at the Hotel Ibis.<sup>10933</sup> Ntahobali and the two aforementioned persons went to the same primary school.<sup>10934</sup> Dieudonné was also with Kajuga on that day.<sup>10935</sup>

### Nteziryayo

4014. Nteziryayo denied ordering the *Interahamwe* to kill a Tutsi man at Hotel Ibis. He claimed that he was not the chief of the *Interahamwe* and that he did not have authority to issue orders to them. He stated that there were other known Tutsis staying at Hotel Ibis that

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<sup>10922</sup> T. 22 January 2008 p. 38 (ICS) (Witness D-2-5-I).

<sup>10923</sup> T. 29 January 2008 p. 68 (ICS) (Witness D-2-5-I).

<sup>10924</sup> T. 23 January 2008 p. 10 (ICS) (Witness D-2-5-I).

<sup>10925</sup> T. 25 April 2006 p. 62 (Ntahobali).

<sup>10926</sup> T. 25 April 2006 p. 63 (Ntahobali).

<sup>10927</sup> T. 25 April 2006 pp. 64-65 (Ntahobali).

<sup>10928</sup> T. 25 April 2006 p. 65 (Ntahobali).

<sup>10929</sup> T. 25 April 2006 pp. 65, 67 (Ntahobali).

<sup>10930</sup> T. 25 April 2006 p. 67 (Ntahobali).

<sup>10931</sup> T. 3 May 2006 p. 30 (Ntahobali).

<sup>10932</sup> T. 22 May 2006 p. 65 (Ntahobali).

<sup>10933</sup> T. 22 June 2006 p. 61 (Ntahobali).

<sup>10934</sup> T. 22 June 2006 p. 63 (ICS) (Ntahobali).

<sup>10935</sup> T. 22 June 2006 pp. 62-63 (ICS) (Ntahobali).

were not killed by any *Interahamwe*.<sup>10936</sup> He testified that from 15 April 1994 to 3 July 1994, the duration of his stay at Hotel Ibis, no murder was committed in his presence at Hotel Ibis and he heard no reports of such a killing.<sup>10937</sup>

4015. Nteziryayo testified that Robert Kajuga arrived at the Hotel Ibis on either 24 or 25 May 1994, but that he was not in the hotel on 1 and 2 May 1994.<sup>10938</sup> Nteziryayo did not know in advance that Kajuga was coming to the hotel.<sup>10939</sup> In cross-examination, Nteziryayo contested the proposition that Kajuga arrived with armed *Interahamwe* in late April 1994 at Hotel Ibis.<sup>10940</sup> Nteziryayo denied that he was staying at Hotel Ibis because that was where he and Robert Kajuga had set up the *Interahamwe* headquarters.<sup>10941</sup> He denied that his residence at Hotel Ibis and his participation in the border *commune* meetings in May 1994 were in connection with his involvement in the civilian self-defence programme from April to July 1994 in Butare *préfecture*.<sup>10942</sup>

4016. Nteziryayo testified that he knew Kajuga casually in 1978 or 1979 when they both worked in Kigali.<sup>10943</sup> He met Kajuga in the context of his work at the *gendarmérie* but they never visited each other in their homes.<sup>10944</sup> He knew that in May 1994 Robert Kajuga was the president of the national *Interahamwe*, which was public knowledge in Rwanda.<sup>10945</sup> Nteziryayo estimated that in 1994, Kajuga was between 25 and 30 years old.<sup>10946</sup> Nteziryayo testified that he spoke to Kajuga while they were staying in the Hotel Ibis.<sup>10947</sup>

4017. Kajuga arrived in the company of his *fiancé* and with probably less than 10 guards, who were young people aged between 18 and 25 years.<sup>10948</sup> Sometimes they appeared in civilian attire. Some of them wore a mixture of civilian and military attire. The clothes were often well-used and the military trousers and jackets were often not matching.<sup>10949</sup> Nteziryayo testified that among the 10 persons, two or three of them were protecting Robert Kajuga and were carrying Kalashnikovs.<sup>10950</sup> These were the only armed persons Nteziryayo noticed at the Hotel Ibis between 15 April and 3 July 1994.<sup>10951</sup>

4018. Nteziryayo testified that Déodone Niyitegeka, a member of the national committee of the *Interahamwe*, and a man called Sokolov, whom Nteziryayo knew to be *Interahamwe*, arrived together with Robert Kajuga.<sup>10952</sup> Nteziryayo knew Niyitegeka before April 1994 when

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<sup>10936</sup> T. 16 May 2007 p. 38 (Nteziryayo).

<sup>10937</sup> T. 16 May 2007 pp. 37-38 (Nteziryayo).

<sup>10938</sup> T. 16 May 2007 pp. 18-21 (Nteziryayo).

<sup>10939</sup> T. 16 May 2007 p. 24 (Nteziryayo).

<sup>10940</sup> T. 28 June 2007 pp. 34-35 (Nteziryayo).

<sup>10941</sup> T. 5 July 2007 p. 40 (Nteziryayo).

<sup>10942</sup> T. 9 July 2007 p. 60 (Nteziryayo).

<sup>10943</sup> T. 16 May 2007 pp. 19, 21 (Nteziryayo).

<sup>10944</sup> T. 5 July 2007 pp. 33-34 (Nteziryayo).

<sup>10945</sup> T. 5 July 2007 p. 35 (Nteziryayo).

<sup>10946</sup> T. 5 July 2007 p. 34 (Nteziryayo).

<sup>10947</sup> T. 16 May 2007 p. 22 (Nteziryayo).

<sup>10948</sup> T. 16 May 2007 pp. 21-22 (Nteziryayo).

<sup>10949</sup> T. 16 May 2007 p. 22 (Nteziryayo).

<sup>10950</sup> T. 21 June 2007 p. 16; T. 28 June 2007 pp. 30-31 (Nteziryayo).

<sup>10951</sup> T. 28 June 2007 p. 30 (Nteziryayo).

<sup>10952</sup> T. 16 May 2007 p. 21; T. 28 June 2007 p. 31 (Nteziryayo).

he worked in the company known as Inter-freight.<sup>10953</sup> He estimated Niyitegeka to be in his 30s in 1994.<sup>10954</sup> Niyitegeka was regularly at the Hotel Ibis during Kajuga's stay in late May and June 1994 and Sokolov was one of Kajuga's companions. Nteziryayo said that he knew them and spoke with them.<sup>10955</sup> He also stated that he visited Kajuga from time to time.<sup>10956</sup>

4019. Nteziryayo testified that for about a month, Kajuga and his companions were lodged at the Hotel Ibis until they left the hotel around late June 1994, when the RPF was advancing on the town.<sup>10957</sup> Kajuga stayed most of the time in his room as he was bed-ridden. Nteziryayo did not see Kajuga receive people when he was in his room.<sup>10958</sup> Kajuga stayed at the Hotel Ibis because it was the only hotel open at that time in Butare and because he had no family in Butare.<sup>10959</sup> Nteziryayo stated that this was the only period during which he saw Kajuga in Butare.<sup>10960</sup>

4020. Kajuga had a room where most of the lodgings were, in a building behind the main Hotel Ibis building; therefore it was impossible to see Kajuga's room from the main road passing in front of Hotel Ibis. *Interahamwe* guarded the entrance to the road leading to the rooms, where Kajuga stayed, but Nteziryayo contested that they prevented anybody from going in or that they closed the entrance of the Hotel Ibis. He added that *Interahamwe* watched where the people who entered the hotel were going.<sup>10961</sup>

4021. Nteziryayo testified that on his arrival at the Hotel Ibis, Kajuga was seriously ill.<sup>10962</sup> The physicians attending Kajuga were concerned about his health condition. He was permanently attended to by two nurses and he often received drips or intravenous fluid.<sup>10963</sup> He did not know why Kajuga did not go to hospital but remained at Hotel Ibis for about a month, despite his serious illness.<sup>10964</sup> Nteziryayo testified that Kajuga died around September or October 1994.<sup>10965</sup>

4022. Nteziryayo had not heard that there were *Interahamwe* in Butare town before the arrival of Kajuga at the Hotel Ibis.<sup>10966</sup> He also denied having heard at that time that the persons who accompanied Kajuga to Hotel Ibis had killed people in Butare town.<sup>10967</sup> Nteziryayo testified that the presence of Kajuga and himself did not transform the Hotel Ibis into the unofficial military headquarters of the campaign to commit genocide. He had never worked with Kajuga and he arrived at the Hotel Ibis over one month before Kajuga came to the hotel. Nteziryayo stated that he was not connected to *Interahamwe* and stayed by himself at the

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<sup>10953</sup> T. 5 July 2007 p. 32 (Nteziryayo).

<sup>10954</sup> T. 5 July 2007 pp. 34-35 (Nteziryayo).

<sup>10955</sup> T. 16 May 2007 p. 35; T. 28 June 2007 p. 33; T. 5 July 2007 p. 35 (Nteziryayo).

<sup>10956</sup> T. 16 May 2007 p. 24 (Nteziryayo).

<sup>10957</sup> T. 28 June 2007 p. 31 (Nteziryayo).

<sup>10958</sup> T. 16 May 2007 p. 23 (Nteziryayo).

<sup>10959</sup> T. 16 May 2007 pp. 18, 24 (Nteziryayo).

<sup>10960</sup> T. 13 June 2007 p. 64 (Nteziryayo).

<sup>10961</sup> T. 28 June 2007 pp. 33-34 (Nteziryayo).

<sup>10962</sup> T. 16 May 2007 p. 22 (Nteziryayo).

<sup>10963</sup> T. 16 May 2007 p. 23 (Nteziryayo).

<sup>10964</sup> T. 28 June 2007 p. 34 (Nteziryayo).

<sup>10965</sup> T. 16 May 2007 p. 28 (Nteziryayo).

<sup>10966</sup> T. 5 July 2007 p. 32 (Nteziryayo).

<sup>10967</sup> T. 28 June 2007 p. 33 (Nteziryayo).

hotel.<sup>10968</sup> Nteziryayo testified that he had no authority to exercise over the persons accompanying Kajuga.<sup>10969</sup>

4023. Nteziryayo testified that between 6 April 1994 and 3 July 1994, he heard that the *Interahamwe* had been involved in violent acts in Rwanda, before he met Kajuga at Hotel Ibis.<sup>10970</sup> He denied having heard that they had been involved in acts of rape.<sup>10971</sup> Nteziryayo alleged that there were also criminal youths who were disguised as the youth wings of the various political parties.<sup>10972</sup> Nteziryayo testified that between 15 April and July 1994, there were no roadblocks in front of Hotel Ibis.<sup>10973</sup> Nteziryayo confirmed that civilians were stopped at the roadblocks and that their identification and bags were checked in Butare *préfecture* from 16 April to 3 July 1994. Nteziryayo stated that he was stopped and checked at roadblocks, particularly between the *Rectorat* and the Hotel Ibis, in the days after he arrived in Butare.<sup>10974</sup> Nteziryayo stated that the *Banque de Kigali* building and the Hotel Ibis were between 10 to 15 metres apart.<sup>10975</sup>

### 3.6.38.4 Deliberations

4024. It is not contested that Robert Kajuga was the president of the national *Interahamwe* in Rwanda,<sup>10976</sup> and that he was staying at the Hotel Ibis with *Interahamwe* when he arrived in Butare town.<sup>10977</sup> The Parties do not contest that Nteziryayo was also staying at the Hotel Ibis from 15 April until 3 July 1994.<sup>10978</sup> What is contested is Nteziryayo's role and authority with regard to the *Interahamwe*, and whether the *Interahamwe* killed a Tutsi man at the Hotel Ibis on the orders of Nteziryayo.

4025. Witness QJ was the only witness to testify as to the killing of a Tutsi man at the Hotel Ibis by *Interahamwe* on the orders of Nteziryayo. Although staying at another hotel, Witness QJ stated that he went to the Hotel Ibis regularly between April and June 1994. During one such visit he saw Nteziryayo tell the *Interahamwe*, who had already beaten a Tutsi man at the Hotel Ibis, to take him and kill him near the forest.<sup>10979</sup>

<sup>10968</sup> T. 16 May 2007 p. 25 (Nteziryayo).

<sup>10969</sup> T. 21 June 2007 p. 16 (Nteziryayo).

<sup>10970</sup> T. 5 July 2007 pp. 35-36 (Nteziryayo).

<sup>10971</sup> T. 5 July 2007 p. 36 (Nteziryayo).

<sup>10972</sup> T. 5 July 2007 pp. 36-37 (Nteziryayo).

<sup>10973</sup> T. 13 June 2007 p. 64 (Nteziryayo).

<sup>10974</sup> T. 4 July 2007 pp. 59-60 (Nteziryayo).

<sup>10975</sup> T. 13 June 2007 p. 66; T. 14 June 2007 p. 13 (Nteziryayo).

<sup>10976</sup> T. 5 July 2007 p. 35 (Nteziryayo); T. 14 November 2001 p. 73 (Witness QJ); T. 10 September 2007 pp. 23, 56 (ICS) (Witness D-2-13-D); T. 28 November 2007 p. 63 (ICS) (Witness D-2-YYYY).

<sup>10977</sup> T. 14 November 2001 pp. 74-75 (Witness QJ); T. 28 November 2007 pp. 63-64 (ICS) (Witness D-2-YYYY); T. 5 December 2007 pp. 69-70 (ICS) (Witness D-2-YYYY); T. 6 December 2007 p. 8 (Witness D-2-YYYY); T. 22 May 2006 p. 65 (Ntahobali); T. 16 May 2007 pp. 21-22 (Nteziryayo).

<sup>10978</sup> T. 16 May 2007 p. 37 (Nteziryayo).

<sup>10979</sup> T. 8 November 2001 pp. 124-126 (ICS); T. 12 November 2001 pp. 9-10 (Witness QJ).

4026. The two hotels were very near one another.<sup>10980</sup> Witness QJ testified that he was familiar with the soldiers manning the Hotel Faucon roadblock.<sup>10981</sup> Therefore, this would not have prevented Witness QJ from walking to the Hotel Ibis from April to June 1994.

4027. Further, Witness QJ testified that he had an identification card from before the war that indicated his ethnicity as being Hutu and that he was not from Ngoma *commune* and therefore was not known as a Tutsi in this locale.<sup>10982</sup> He was living openly without being targeted as a Tutsi, although some people suspected him of being Tutsi.<sup>10983</sup>

4028. Witness AND-17 questioned Witness QJ's account, stating Witness QJ was always at the same hotel as he was, and therefore would not have had an opportunity to go to the Hotel Ibis to witness the alleged event.<sup>10984</sup> However, Witness AND-17 admitted that he did not share a room with Witness QJ, he did not accompany Witness QJ during his walks in the garden, and did not spend all day with Witness QJ in his room.<sup>10985</sup> Witness QJ did not normally accompany Witness AND-17 to purchase cigarettes.<sup>10986</sup> From this evidence, the Chamber concludes that Witness AND-17 was not always aware of Witness QJ's whereabouts.

4029. Witness AND-17 further testified that Witness QJ did not have an identification card. This testimony was apparently based upon Witness QJ's response to the soldier Jean-Baptiste who demanded Witness QJ's identification just prior to killing several Tutsis who were hiding at the Hotel Faucon.<sup>10987</sup> Witness QJ testified that Witness AND-17 showed Jean-Baptiste the location of the Tutsis hiding at the Hotel Faucon before they were killed and participated in the attacks.<sup>10988</sup> Witness AND-17 denied his involvement stating Jean-Baptiste already knew the location of the Tutsis who were hiding and that he declined Jean-Baptiste's order to kill the Tutsis.<sup>10989</sup> Witness QJ was not cross-examined as to Witness AND-17's involvement in the killings. The Chamber observes that Witness AND-17 had been implicated in these killings, and therefore considers it is not surprising that Witness AND-17 would attempt to limit his alleged involvement by asserting Jean-Baptiste acted on his own information and that Witness AND-17 refused to participate in the killings. In sum, the Chamber does not find this witness credible in relation to these events.

4030. Nteziryayo denied that he had ordered the killing of a Tutsi man at the Hotel Ibis. He testified that from 15 April 1994 to 3 July 1994, the duration of his stay at Hotel Ibis, no murder was committed in his presence at Hotel Ibis and he heard no reports of such a killing.<sup>10990</sup> However, the Chamber finds Nteziryayo was not credible on this issue. He claimed

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<sup>10980</sup> Defence Exhibit 438 (Nsabimana) (Photograph of Hotel Faucon); Defence Exhibit 439 (Nsabimana) (Photograph of Hotel Ibis); T. 28 June 2006 pp. 20-24 (Ramadhan); Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites).

<sup>10981</sup> T. 14 November 2001 pp. 38-39 (ICS) (Witness QJ).

<sup>10982</sup> T. 13 November 2001 pp. 54, 59 (Witness QJ).

<sup>10983</sup> T. 13 November 2001 p. 54; T. 13 November 2001 p. 139 (ICS); T. 14 November 2001 pp. 14-19 (ICS) (Witness QJ).

<sup>10984</sup> T. 30 January 2007 pp. 36-37 (ICS); T. 31 January 2007 p. 13 (ICS) (Witness AND-17).

<sup>10985</sup> T. 31 January 2007 p. 33 (ICS) (Witness AND-17).

<sup>10986</sup> T. 31 January 2007 p. 36 (ICS) (Witness AND-17).

<sup>10987</sup> T. 30 January 2007 pp. 31-32 (ICS); T. 31 January 2007 p. 15 (ICS) (Witness AND-17).

<sup>10988</sup> T. 8 November 2001 pp. 111-113 (ICS); T. 14 November 2001 p. 47 (ICS) (Witness QJ).

<sup>10989</sup> T. 30 January 2007 p. 32 (ICS) (Witness AND-17).

<sup>10990</sup> T. 16 May 2007 pp. 37-38 (Nteziryayo).



that there was no roadblock at the Hotel Ibis.<sup>10991</sup> This point was contradicted by Defence Witnesses D-2-13-D, D-2-YYYY, D-2-5-I, and WCKJ. Witness D-2-13-D testified that the *Interahamwe* manned a small roadblock by the Hotel Ibis.<sup>10992</sup> Witness D-2-YYYY said that four *Interahamwe* set up a roadblock guarding the entrance to the Hotel Ibis roadblock to protect Kajuga and that he passed the roadblock almost every morning.<sup>10993</sup> Witness D-2-5-I provided a consistent account, saying the *Interahamwe* carried Kalashnikov guns and set up a roadblock to prevent anyone from accessing the hotel.<sup>10994</sup> Witness D-2-5-I further testified that these *Interahamwe* were involved in massacres.<sup>10995</sup> Witness WCKJ also stated that there was a roadblock at the Hotel Ibis, but later reversed his position, stating there was only a roadblock at the Hotel Faucon.<sup>10996</sup> The Chamber refers to its finding that roadblocks were used to target and kill Tutsis (). Further, Nteziryayo acknowledged that between 6 April 1994 and 3 July 1994, he heard that the *Interahamwe* had been involved in violent acts in Rwanda, prior to Kajuga's arrival at the Hotel Ibis.<sup>10997</sup> Therefore, it is not surprising that Nteziryayo would attempt to dissociate himself and his residence from a roadblock manned by *Interahamwe*.

4031. The Chamber notes that the *Interahamwe* was one of the major militia groups in Rwanda and its president, Robert Kajuga, was residing at the same location as Nteziryayo. Nteziryayo acknowledged speaking with Kajuga from time to time, but denied that they discussed anything of substance.<sup>10998</sup> Kajuga was apparently very ill. Nteziryayo testified that he knew and spoke with two of Kajuga's *Interahamwe*, named Niyitegeka and Sokolov, who were staying at the hotel.<sup>10999</sup> In the Chamber's view however, the mere fact that Nteziryayo and Kajuga both stayed at the Hotel Ibis does not support Nteziryayo's culpability for crimes committed at the Hotel Ibis.

4032. Witness QJ testified that he knew that Nteziryayo had authority over the *Interahamwe* because he gave them orders and they were obeyed.<sup>11000</sup> The *Interahamwe* took away the Tutsi man at the Hotel Ibis and that man did not return.<sup>11001</sup> The allegation that his orders were obeyed by the *Interahamwe* at the Hotel Ibis is supported by the fact that Kajuga was very sick and apparently unable to provide direct leadership, and by the fact that Nteziryayo was experienced in training and organising militiamen, thereby lending credence to Witness QJ's testimony that Nteziryayo gave orders to these *Interahamwe*.

4033. Nonetheless, the Chamber notes that Witness QJ was the only witness to testify that Nteziryayo ordered *Interahamwe* to kill a Tutsi man. Witness QJ initially stated that the Tutsi

<sup>10991</sup> T. 13 June 2007 p. 64 (Nteziryayo).

<sup>10992</sup> T. 30 August 2007 p. 57 (ICS) (Witness D-2-13-D).

<sup>10993</sup> T. 28 November 2007 pp. 63-64 (ICS); T. 5 December 2007 pp. 69, 73 (ICS); T. 6 December 2007 pp. 4-5 (Witness D-2-YYYY).

<sup>10994</sup> T. 22 January 2008 p. 35 (ICS) (Witness D-2-5-I).

<sup>10995</sup> T. 29 January 2008 p. 68 (ICS) (Witness D-2-5-I).

<sup>10996</sup> T. 31 January 2006 pp. 22, 40 (Witness WCKJ).

<sup>10997</sup> T. 5 July 2007 pp. 35-36 (Nteziryayo).

<sup>10998</sup> T. 16 May 2007 p. 22 (Nteziryayo).

<sup>10999</sup> T. 16 May 2007 p. 21; T. 28 June 2007 p. 31 (Nteziryayo).

<sup>11000</sup> T. 14 November 2001 pp. 74-75 (Witness QJ).

<sup>11001</sup> T. 8 November 2001 pp. 124-125 (ICS) (Witness QJ).

man was taken away and not seen again.<sup>11002</sup> He did not explicitly say that the man was killed, but on cross-examination he clarified that the *Interahamwe* did carry out the order to execute the man.<sup>11003</sup> However, there was no evidence that Witness QJ saw the man killed or saw the body of the man outside the Hotel Ibis. In these circumstances, absent corroboration of Witness QJ's version of events, the Chamber finds the Prosecution has not proven this allegation beyond a reasonable doubt.

### 3.6.39 Killing of Former *Conseiller* Vincent Nkulikiyinka, May and June 1994

#### 3.6.39.1 Introduction

4034. Paragraph 6.30 of the Nsabimana and Nteziryayo Indictment alleges that in May and June 1994, Nteziryayo ordered the *Interahamwe* to search for Tutsis and kill them.<sup>11004</sup>

4035. The Prosecution submits that during a meeting held at the *commune* office, when Nteziryayo was already *préfet*, he was told there was a *conseiller* who had sought refuge in the *commune* office, named Kofi Musinya.<sup>11005</sup> Nteziryayo gave orders to kill this man, if he was still hiding there and that no communal property should be destroyed.<sup>11006</sup> The Prosecution relies upon the testimony of Witness QBV.

4036. The Nteziryayo Defence submits that allegations relating to Mugusa *commune*, including the killing of Vincent Nkulikiyinka, are not pled in the Indictment<sup>11007</sup> and should therefore be excluded from the evidence.<sup>11008</sup> In the alternative, the Nteziryayo Defence contends that Nteziryayo was not involved in the death of Vincent Nkulikiyinka and relies on Nteziryayo Defence Witnesses AND-14, AND-5, AND-16 and AND-72 in this regard.<sup>11009</sup>

#### 3.6.39.2 Preliminary Issues

4037. The Chamber observes that the killing of Vincent Nkulikiyinka is not specifically pled in the Nsabimana and Nteziryayo Indictment such that the Indictment is defective. The Chamber must then determine whether the Indictment has been cured of these defects through subsequent Prosecution disclosures.

4038. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that neither in the Pre-Trial Brief and its Appendix, nor the Prosecution opening statement, is there information as to the killing of Vincent Nkulikiyinka. The event appears for the first time in Witness QBV's prior statement of 30 March 2001 in which the witness does not impute the killing of Vincent Nkulikiyinka to any of the Accused in this

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<sup>11002</sup> T. 8 November 2001 p. 125 (ICS) (Witness QJ).

<sup>11003</sup> T. 12 November 2001 pp. 9-10 (Witness QJ).

<sup>11004</sup> Para. 6.30 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>11005</sup> The Chamber notes that the Prosecution Closing Brief, citing the English transcripts of Witness QBV's evidence, submits that Nteziryayo ordered the killing of "Kofi Musinya". However, the French transcript shows the *conseiller's* name was Vincent Nkulikiyinka: T. 14 March 2002 p. 43; T. 14 March 2002 pp. 100-101 (Witness QBV) (French).

<sup>11006</sup> Prosecution Closing Brief, p. 364, para. 188.

<sup>11007</sup> Nteziryayo Closing Brief, para. 571; Nteziryayo Closing Argument, T. 27 April 2009 p. 61.

<sup>11008</sup> Nteziryayo Closing Brief, para. 765.

<sup>11009</sup> Nteziryayo Closing Brief, paras. 608-616.

case.<sup>11010</sup> The Chamber therefore finds that the defect is not cured and it will not make any finding with respect to this allegation. The Defence request for exclusion of evidence is therefore moot. In any event, the Chamber notes that the evidence brought by the Prosecution is not sufficient to establish that Nteziryayo ordered the killing of Vincent Nkulikiyinka.

### 3.6.40 Transfer of Refugees to Nyange, Early June 1994

#### 3.6.40.1 Introduction

4039. The Nsabimana and Nteziryayo Indictment and the Kanyabashi Indictment allege that between mid-May and mid-June 1994, Nsabimana and Kanyabashi gave the order that refugees at the BPO be transferred to Nyange *secteur* in Nyaruhengeri *commune*, and that refugees were transported to Nyange aboard ONATRACOM buses where they were attacked, and many were killed, by individuals armed with traditional weapons.<sup>11011</sup> The Prosecution submits that Nsabimana ordered, supervised, and provided buses for the transfer of Tutsi refugees from the BPO to Nyange where the refugees were attacked and killed.<sup>11012</sup> The Prosecution further submits the transfer of 200 refugees in a single bus amounts to evidence of both persecution and inhumane acts as a crime against humanity.<sup>11013</sup> The Prosecution charges Nsabimana with responsibility under both Article 6 (1) and 6 (3).<sup>11014</sup> The Chamber notes the Prosecution did not make any submissions concerning Kanyabashi's role in the Nyange transfer in the Prosecution Closing Brief or its closing arguments. The Prosecution relies on Witnesses QBP, QBQ, QY, RE, SD SJ, SU, TA and Expert Witness Des Forges.

4040. The Nsabimana Defence does not challenge that Nsabimana sent refugees to Nyange, a former Burundian refugee camp, but asserts that neither criminal intent nor collusion with the assailants was established.<sup>11015</sup> It asserts that Nsabimana sent refugees from the BPO to Nyange because living conditions were better there than at the BPO. It also asserts that the Prosecution has failed to establish that Nsabimana had any authority over the *Interahamwe* or soldiers.<sup>11016</sup> The Nsabimana Defence relies on Witnesses QBP, QBQ, QY, RE, SD, SJ, SU, TA and Nsabimana.

4041. The Kanyabashi Defence asserts the Prosecution did not adduce evidence about the making of the decision relating to the transfer. According to the Defence, the power to make such a decision lay with the *préfet*, who was responsible for the refugees and who had authority in another *commune* involved in the transfer. It also asserts that only one witness testified that Kanyabashi was present and ordered refugees to board the bus to Nyange and that

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<sup>11010</sup> 30 March 2001, Statement of Witness QBV, disclosed 1 October 2001.

<sup>11011</sup> Para. 6.38 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana pursuant to both Article 6 (1) and 6 (3)); Para. 6.41 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to both Article 6 (1) and 6 (3)).

<sup>11012</sup> Prosecution Closing Brief, pp. 268, 281, paras. 122, 173.

<sup>11013</sup> Prosecution Closing Brief, pp. 283, 285-286, paras. 183, 192; Prosecution Closing Argument, T. 20 April 2009 p. 64.

<sup>11014</sup> Para. 6.38 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nsabimana pursuant to both Article 6 (1) and 6 (3)); Prosecution Closing Brief, p. 282, paras. 177-178.

<sup>11015</sup> Nsabimana Closing Brief, paras. 1610, 1612-1613.

<sup>11016</sup> Nsabimana Closing Argument, T. 27 April 2009 pp. 15-16.

witness was unable to identify Kanyabashi in court.<sup>11017</sup> The Kanyabashi Defence relies on Witnesses QBP, QBQ, QY, RE, SD, SJ, SU and TA.

### 3.6.40.2 Preliminary Issues

#### *Notice of the Allegation Concerning the Nyange Transfer*

4042. The Nsabimana Defence argues that Paragraph 6.38 of the Nsabimana Indictment is defective for failing to state several material facts, namely: where the order was issued; the identity of the person who ordered the individuals armed with traditional weapons to attack; the number of buses used in the displacement; the number of days during which the trip or trips were made; the time of departure; the ethnic origin of the refugees; the criminal intention of the transfer to Nyange; and details about the survivors and their return to the BPO.<sup>11018</sup> The Nsabimana Defence asserts that the Prosecution failed to remedy these defects in subsequent disclosures.<sup>11019</sup>

4043. With regard to the ethnic origin of the refugees and the criminal intent of the transfer, the Chamber recalls that paragraphs of an indictment are to be read as a whole and not in isolation.<sup>11020</sup> In this regard, Paragraph 6.32 alleges that Nsabimana incited, aided and abetted the population in massacring the Tutsis, and Paragraph 6.36 alleges that Tutsis who sought refuge at the BPO were forcibly abducted, assaulted and sometimes killed outright and that Nsabimana did nothing to put a definite end to the attacks. Further, Paragraph 6.37 alleges that Nyiramasuhuko instructed Nsabimana to kill the Tutsi refugees remaining at the BPO. Paragraph 6.38 alleges that Nsabimana ordered the transport of the refugees to Nyange where they were attacked and killed. Read in conjunction with the previous paragraphs, the Chamber considers that Paragraph 6.38 makes it clear that the refugees transferred were Tutsis, and that the alleged purpose of the transfer was to kill those Tutsis.

4044. With regard to the remaining alleged deficiencies, the Chamber recalls that the “Prosecutor must state the material facts underpinning the charges in the indictment, but not the evidence by which such facts are to be proved.”<sup>11021</sup> The Chamber is of the opinion that the Nsabimana Defence had adequate notice of the material facts of this allegation and that each of the remaining facts, such as the identity of the person who ordered the attacks, the number of buses, the number of days during which the trip or trips were made, and the time of departure constitute evidence by which the allegation would be proven. Therefore, the Chamber does not find Paragraph 6.38 to be defective. In any event, the Nsabimana Defence had adequate notice of these facts through the summaries of anticipated evidence outlined in the Prosecution Pre-Trial Brief<sup>11022</sup> and prior statements of Witnesses SD,<sup>11023</sup> SJ,<sup>11024</sup> SL<sup>11025</sup> and RM.<sup>11026</sup>

<sup>11017</sup> Kanyabashi Closing Argument, T. 29 April 2009 pp. 3-5.

<sup>11018</sup> Nsabimana Closing Brief, paras. 1613, 1729-1731.

<sup>11019</sup> Nsabimana Closing Brief, paras. 1735-1737.

<sup>11020</sup> See, e.g., *Gacumbitsi*, Judgement (AC), para. 123.

<sup>11021</sup> *Nahimana et al.*, Judgement (AC), para. 322.

<sup>11022</sup> Prosecution Pre-Trial Brief – Appendix; Witness SJ (9) (SJ heard the *Sous-Préfet* saying that all Tutsi refugees were to be brought to Nyange. There were two buses for the refugees. Soldiers were beating those who did not want to board the buses. SJ saw the *Préfet* give a letter to the soldiers. SJ clearly heard the *Préfet* saying that the letter would enable them to pass the roadblocks. SJ saw the buses return empty. SJ later was herded on to a bus); Witness QY (61) (QY states that Nsabimana sent two buses filled with refugees to Nyaruhengeri and that

4045. The Kanyabashi Defence argues that Paragraph 6.41 of the Kanyabashi Indictment does not plead any crime against which Kanyabashi may defend himself: it does not accuse Kanyabashi as having prior knowledge that the refugees were going to be killed nor does it specify that he ordered the transfer for that purpose.<sup>11027</sup>

4046. The Chamber notes that Paragraph 6.43 alleges that in June 1994, Kanyabashi told the *préfet* that the Tutsi refugees at the BPO had to be eliminated. In this context, the Kanyabashi Defence had notice that Paragraph 6.41 describes an event in which Kanyabashi was allegedly implicated in furtherance of the elimination of the refugees who were at the BPO in mid-May to mid-June 1994. Therefore, the Chamber finds that Paragraph 6.41 is not defective.

4047. Moreover, the Kanyabashi Defence asserts that Paragraph 6.41 of the Indictment did not adequately plead Article 6 (3) responsibility, although the Defence did not specify which pleading requirement was not met.<sup>11028</sup> The Chamber recalls that the Indictment must sufficiently identify, *inter alia*, the subordinates over which the Accused had effective control.<sup>11029</sup>

4048. The Chamber notes that Paragraph 6.41 charges Kanyabashi with responsibility for the Nyange transfer pursuant to both Article 6 (1) and 6 (3) of the Statute.<sup>11030</sup> Other than alleging Kanyabashi's role in the Nyange transfer, Paragraph 6.41 of the Indictment identifies that refugees transported to Nyange were attacked by "individuals armed with traditional weapons". In the Chamber's view, the description of the assailants as armed individuals is vague. Insofar as the "individuals" to whom criminal conduct is attributed are not identified as either subordinates, or even policemen, the Chamber is of the view that Kanyabashi's responsibility pursuant to Article 6 (3) of the Statute was not adequately pled. Accordingly, the Chamber finds the Indictment to be defective in this regard.

4049. The Chamber will consider whether the defect was cured by subsequent Prosecution disclosures. As an alleged Nyange survivor, the only witness at trial who testified about the

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these two buses, in the presence of Kanyabashi. QY was meant to board a third bus but did not want to after she heard that the people on the other two buses were killed. QY states that Kanyabashi said that all the snakes had to die anyway. Nsabimana said that if any killing had to be done there, on the spot, they would be taken back to the *Préfecture*. QY was forced to take the bus, but the bus went back because the villagers refused to continue the killings if the old corpses weren't taken away to from whence they came); Witness RM (71) (Kanyabashi asked RM and other refugees to board the bus going to Nyange *cellule*. Kanyabashi, the *Préfet*, and the communal policemen escorted the refugees); Witness SD (76) (SD states that a few days after the installation of the new prefect, Nsabimana brought three ONATRACOM buses filled with Tutsis. The buses left for Nyange in Ruhengeri, but neither bus nor passengers came back); Witness SL (78) (SL sought refuge at *Préfecture* office where Nsabimana, together with the *Sous-Préfet*, told the refugees they were to be taken to Nyange. Two buses arrived. The *Sous-Préfet* took down the names of the people present and gave the list to a communal police officer that accompanied them. Nsabimana was present and witnessed everything).

<sup>11023</sup> 18 September 1997, Statement of Witness SD, disclosed 4 November 1998.

<sup>11024</sup> 3 December 1996, Statement of Witness SJ, disclosed 4 November 1998.

<sup>11025</sup> 1 October 1997, First Statement of Witness SL, disclosed 4 November 1998; *see also* 30 January 2001, Second Statement of Witness SL, disclosed 15 April 2002 and 16 May 2002.

<sup>11026</sup> 18 June 1996, Statement of Witness RM, disclosed 4 November 1998.

<sup>11027</sup> Kanyabashi Closing Brief, para. 457.

<sup>11028</sup> Kanyabashi Closing Brief, para. 457.

<sup>11029</sup> *See, e.g., Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>11030</sup> Para. 6.41 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (1) and 6 (3)).

criminal acts executed at Nyange was Witness QBP. As discussed below, the summary of anticipated evidence for Witness QBP makes no mention that this witness would testify about the Nyange transfer or implicate either Nsabimana or Kanyabashi therein.<sup>11031</sup> Witness QBP's prior statement discusses the transfer of refugees to Kabogobogo in Nyaruhengeri *commune*. In that statement Witness QBP stated an armed policeman was present at Nyange, but that it was *Interahamwe* armed with clubs, spears and other traditional weapons that attacked the refugees.<sup>11032</sup> Considering the identification of the attackers was only identified in one sole witness statement, the Chamber considers this disclosure was not sufficient to inform the Kanyabashi Defence of the material facts which the Prosecution intended to prove at trial.<sup>11033</sup>

4050. The Appendix to the Prosecution Pre-Trial Brief otherwise includes two other witnesses, Witnesses QBQ and RM, expected to testify about the involvement of policemen in their transfer to Nyaruhengeri.<sup>11034</sup> While both summaries of anticipated evidence state that these witnesses would testify that policemen escorted them to Nyange aboard buses, they fail to identify any criminal conduct in which these policemen engaged at Nyange itself.

4051. The prior statements of Witness RM<sup>11035</sup> and Witness QBQ<sup>11036</sup> are consistent with the summaries of anticipated evidence in the Pre-Trial Brief, stating that policemen escorted refugees to Nyange aboard the buses. The statement of Witness RM goes further and states that the *commune* policemen remained with the Tutsis at Nyange, and at night time called on Twa citizens to come kill Tutsis, after which Tutsis were killed and injured and several escaped returning to the BPO.<sup>11037</sup> Again, considering the relevant criminal conduct of the police is only identified in one sole witness statement, the Chamber considers this disclosure was not sufficient to inform the Kanyabashi Defence of the material facts which the Prosecution intended to prove at trial.<sup>11038</sup> Further, insofar as the prior statement identifies criminal conduct not included in the summary of anticipated evidence, it is also not consistent with the information contained in the Pre-Trial Brief.

4052. Therefore, these disclosures did not provide Kanyabashi with clear and consistent notice of the criminal acts allegedly committed by policemen at Nyange with which Kanyabashi was being charged. Thus the defect was not cured and the Chamber will not make any finding as to whether Kanyabashi was responsible for the crimes of policemen, or other assailants, at Nyange pursuant to Article 6 (3) of the Statute.

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<sup>11031</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBP (44).

<sup>11032</sup> 5 May 1999 (signed 10 June 1999), Statement of Witness QBP, disclosed 3 December 1999.

<sup>11033</sup> See *Niyitegeka*, Judgement (AC), para. 221.

<sup>11034</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBQ (45) (would testify that bus driver was a policeman); Witness RM (71) (would testify he saw Kanyabashi arrive at the BPO with the *préfet* of Butare, *commune* police and two big buses, after which Kanyabashi asked RM and other refugees to board the bus for Nyange *cellule*, and the *commune* policemen escorted the refugees).

<sup>11035</sup> 18 June 1996 (reconfirmed 23 December 1999), Statement of Witness RM, disclosed 28 October 2003.

<sup>11036</sup> 6 May 1999, Statement of Witness QBQ, disclosed 3 December 1999.

<sup>11037</sup> 18 June 1996 (reconfirmed 23 December 1999), Statement of Witness RM, disclosed 4 November 1998.

<sup>11038</sup> See *Niyitegeka*, Judgement (AC), para. 221.

*Request for the Exclusion of Evidence*

4053. The Nsabimana Defence submits that the evidence of several Prosecution witnesses, including Witnesses QBP, RE, SU and TA, insofar as they relate to Nsabimana, should be excluded on the basis that the Nsabimana Defence had no notice that these witnesses would be called to testify about Nsabimana.<sup>11039</sup> The Chamber will consider the merits of this request equally *vis-à-vis* Kanyabashi.

4054. The Chamber accepts that the summary of anticipated evidence in the Prosecution Pre-Trial Brief for Witnesses QBP, SU and TA make no mention that these witnesses would testify about the Nyange transfer or implicate either Nsabimana or Kanyabashi therein.<sup>11040</sup> Further, while the summary of anticipated evidence for Witness RE states that Witness RE would testify, *inter alia*, that he was ordered to board a bus at the BPO, and that the *Interahamwe* at Nyaruhengeri “refused the buses” because mass graves were full, such that the refugees were returned to the BPO, Witness RE implicated neither Nsabimana nor Kanyabashi, and was not listed as being brought to testify about either Accused.<sup>11041</sup>

4055. Witness TA testified in late October and early November 2001. Witness TA’s testimony with respect to Nyange came out in response to a question posed in cross-examination by the Nyiramasuhuko Defence about Witness TA’s transfer from the BPO to Rango.<sup>11042</sup> There was no objection at the time of Witness TA’s testimony on the topic. In any event, both the Nsabimana and Kanyabashi Defence had the opportunity to cross-examine Witness TA.<sup>11043</sup> Consequently, the Chamber considers neither the Nsabimana Defence nor the Kanyabashi Defence suffered any prejudice as a result of Witness TA’s testimony that warrants excluding her evidence as to matters falling within the scope of Paragraph 6.38 of the Nsabimana and Nteziryayo Indictment, or Paragraph 6.41 of the Kanyabashi Indictment at this late stage of trial. The Chamber accordingly denies the request.

4056. Witnesses QBP and SU testified about Nyange in October 2002 in their examination-in-chief. No objection was raised by either Defence at the time or subsequent to the leading of their evidence concerning Nyange by the Prosecution.<sup>11044</sup> The Nsabimana Defence requests the exclusion of Witness QBP’s and SU’s evidence for the first time in its Closing Brief.<sup>11045</sup> It offers no explanation for failing to object to this evidence at the time it was admitted or at a later point during the trial. The Chamber finds that there is no reasonable explanation for the Defence’s lack of objections at an earlier stage in the trial. In any event, both the Nsabimana Defence and the Kanyabashi Defence had the opportunity to cross-examine Witnesses QBP and SU. Consequently, the Chamber considers neither the Nsabimana Defence nor the Kanyabashi Defence suffered any prejudice as a result of Witness QBP’s or SU’s testimony that warrants excluding their evidence as to matters falling within the scope of Paragraph 6.38 of the Nsabimana and Nteziryayo Indictment, or Paragraph 6.41 of the Kanyabashi Indictment at this late stage of trial. The Chamber accordingly denies the request.

<sup>11039</sup> Nsabimana Closing Brief, paras. 63-66.

<sup>11040</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBP (44); Witness SU (86); Witness TA (3).

<sup>11041</sup> Prosecution Pre-Trial Brief – Appendix; Witness RE (65).

<sup>11042</sup> T. 6 November 2001 p. 62 (Witness TA).

<sup>11043</sup> See T. 7 November 2001 (Witness TA).

<sup>11044</sup> T. 14-17, 21-24 October 2002 (Witness SU); T. 24, 28-30 October 2002 (Witness QBP).

<sup>11045</sup> Nsabimana Closing Brief, paras. 58-66.

4057. However, with respect to Witness QBP's testimony regarding rapes at Nyange, the Chamber notes that neither Paragraph 6.38 of the Nsabimana and Nteziryayo Indictment, nor Paragraph 6.41 of the Kanyabashi Indictment which concern the allegation of the refugees' transfer to Nyange, mention rape as one of the acts carried out upon refugees at Nyange. In the Chamber's view, to base a finding on the evidence of Witness QBP's testimony would amount to an expansion of charges against the Accused which would prejudice the Accused.<sup>11046</sup> As such, the Chamber considers the matter of rapes at Nyange falls outside the scope of the Indictments and will not make any finding in this respect.

4058. Witness RE testified about Nyange in February 2003. At the time, the Kanyabashi Defence objected to this testimony on the basis that they had been given no notice that Witness RE would testify about Kanyabashi.<sup>11047</sup> In an oral ruling, the Chamber held that Witness RE should be limited to testifying about matters that were earlier disclosed in his previous statements.<sup>11048</sup> The Chamber notes Witness RE's prior statement of 5 December 1996 refers to the transfer to Nyaruhengeri and states the orders came from the *préfet*; the statement does not implicate Kanyabashi in the Nyange transfer.<sup>11049</sup> Consequently, the Chamber will not rely on any evidence led through Witness RE to make any finding against Kanyabashi. As concerns Nsabimana, the Nsabimana Defence raised no objection at the time of Witness RE's testimony, making this request for the first time again only in its Closing Brief. Considering again that there is no reasonable explanation for the Defence's lack of objections at an earlier stage in the trial, and that the Nsabimana Defence had the opportunity to cross-examine Witness RE, the Chamber considers the Nsabimana Defence did not suffer any prejudice as a result of Witness RE's testimony that warrants excluding Witness RE's evidence at this late stage of trial.

### 3.6.40.3 Evidence

#### Prosecution Witness QBP

4059. Witness QBP,<sup>11050</sup> a Tutsi farmer with a Hutu identity card during the events, testified that two or three days after she arrived at the *préfecture*, the refugees at the BPO were transported in three buses to Nyange, in Nyaruhengeri *commune*.<sup>11051</sup> She was sure there were three buses.<sup>11052</sup> The buses belonged to the government but were used by the ONATRACOM company.<sup>11053</sup>

4060. Witness QBP testified that the *préfet*, whose name she did not know, told all the refugees to board the buses.<sup>11054</sup> He also said that they were going to provide the refugees with assistance.<sup>11055</sup> The buses were brought by the *bourgmestre*,<sup>11056</sup> and he remained present

<sup>11046</sup> See *Muvunyi I*, Judgement (AC), para. 20 (with respect to curing a defective notice by new material facts which lead to a radical transformation of the case).

<sup>11047</sup> T. 24 February 2003 pp. 3-4, 6 (Witness RE).

<sup>11048</sup> T. 24 February 2003 p. 6 (Witness RE).

<sup>11049</sup> 5 December 1996, Statement of Witness RE, disclosed 11 April 1998.

<sup>11050</sup> T. 24 October 2002 p. 67 (Witness QBP); Prosecution Exhibit 61 (Personal Particulars).

<sup>11051</sup> T. 24 October 2002 p. 81; T. 28 October 2002 p. 54 (Witness QBP).

<sup>11052</sup> T. 30 October 2002 p. 38 (Witness QBP).

<sup>11053</sup> T. 30 October 2002 p. 41 (Witness QBP).

<sup>11054</sup> T. 24 October 2002 p. 81 (Witness QBP).

<sup>11055</sup> T. 30 October 2002 p. 35 (Witness QBP).

<sup>11056</sup> T. 30 October 2002 p. 35 (Witness QBP).



while the refugees boarded the buses.<sup>11057</sup> She later testified that she did not say that Kanyabashi brought the buses.<sup>11058</sup> When put to Witness QBP that she did not mention Kanyabashi being present at Nyange in her prior written statement, Witness QBP explained that the ICTR investigators must have forgotten to take note of it.<sup>11059</sup> She further said that Kanyabashi played no role in their departure other than that the refugees were in his *commune* and he was present.<sup>11060</sup> She did not know whether Kanyabashi was acting on the orders of the *préfet* or if they were acting in tandem.<sup>11061</sup>

4061. Witness QBP testified that while the refugees boarded three buses, she was in the second one.<sup>11062</sup> Once the refugees boarded the buses, no one remained behind in the BPO.<sup>11063</sup> The refugees were escorted on the bus by a man armed with a gun and wearing a uniform; she did not know whether he was a policeman or a soldier. She did not know whether each bus had an escort, or just hers.<sup>11064</sup> Witness QBP testified that only the first and second buses made it to Nyange because the third one broke down.<sup>11065</sup>

4062. They arrived in Nyange in the afternoon,<sup>11066</sup> or rather, at the end of the afternoon, although it was still light.<sup>11067</sup> Upon arriving at Nyange, the bus drivers and *Interahamwe* threw the passengers out of the bus like “dirt”.<sup>11068</sup> They met a lot of killers accompanied by a policeman with a gun, all of whom started taking the refugees’ property and clothes.<sup>11069</sup> She testified that there appeared to be a plan because there was an armed *commune* policeman on the spot, although there was nothing for him to guard, and that immediately after the buses arrived, people came from everywhere shouting, “[p]ower! Power!” and proceeded to strip the refugees of their clothes and items.<sup>11070</sup>

4063. Witness QBP testified that the killing and raping of the refugees began at nightfall.<sup>11071</sup> No more than 10 people survived those events.<sup>11072</sup> She testified that she was raped by a man.<sup>11073</sup> In her written statement, Witness QBP said that the *Interahamwe* starting raping women “without wasting much time [after they arrived at Nyange]”.<sup>11074</sup> When confronted with this statement, she testified that it was not until night when the *Interahamwe* started

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<sup>11057</sup> T. 24 October 2002 p. 81; T. 30 October 2002 pp. 35, 41, 81-82, 88 (Witness QBP).

<sup>11058</sup> T. 30 October 2002 p. 82 (Witness QBP).

<sup>11059</sup> T. 30 October 2002 pp. 81-84 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11060</sup> T. 30 October 2002 p. 81 (Witness QBP).

<sup>11061</sup> T. 30 October 2002 p. 82 (Witness QBP).

<sup>11062</sup> T. 30 October 2002 p. 38 (Witness QBP).

<sup>11063</sup> T. 28 October 2002 p. 55 (Witness QBP).

<sup>11064</sup> T. 30 October 2002 p. 42 (Witness QBP).

<sup>11065</sup> T. 24 October 2002 p. 81; T. 28 October 2002 p. 55 (Witness QBP).

<sup>11066</sup> T. 28 October 2002 p. 55 (Witness QBP).

<sup>11067</sup> T. 30 October 2002 p. 44 (Witness QBP).

<sup>11068</sup> T. 30 October 2002 pp. 43-44 (Witness QBP).

<sup>11069</sup> T. 24 October 2002 p. 81; T. 28 October 2002 pp. 56-57 (Witness QBP).

<sup>11070</sup> T. 28 October 2002 pp. 56-57; T. 30 October 2002 pp. 43-44 (Witness QBP).

<sup>11071</sup> T. 24 October 2002 p. 82; T. 30 October 2002 p. 44 (Witness QBP).

<sup>11072</sup> T. 24 October 2002 p. 82; T. 28 October 2002 p. 58 (Witness QBP).

<sup>11073</sup> T. 24 October 2002 p. 82; T. 28 October 2002 p. 57; T. 29 October 2002 p. 88 (ICS) (Witness QBP).

<sup>11074</sup> T. 28 October 2002 p. 57 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

raping people.<sup>11075</sup> When she referred to *Interahamwe*, she meant those who killed others or roamed with weapons.<sup>11076</sup>

4064. Witness QBP said that near Nyange, there was a refugee camp providing shelter to Burundian refugees.<sup>11077</sup> She described it as not being a camp *per se*, but rather an uninhabited hill with huts and torn mats where the Burundian refugees were sheltered.<sup>11078</sup> They were informed that Burundian refugees had previously occupied these huts, although there were no refugees there when they arrived. The camp was neither well-prepared nor properly constructed and there were no buildings, such as in a school compound.<sup>11079</sup> The camp was about 15 minutes walk from Kabogobogo river.<sup>11080</sup> When it was put to her that her prior statement said the refugees were taken aboard three buses to Kabogobogo, not Nyange, she clarified that they were taken to a hill upstream from Kabogobogo river.<sup>11081</sup> Kabogobogo is in Nyange.<sup>11082</sup>

4065. Witness QBP testified that she left Nyange at dawn the following day<sup>11083</sup> for the BPO with two of her four children.<sup>11084</sup> She was also accompanied by a young refugee man from Gikoro who was introduced to her by the man who had raped her, so that the refugee man would carry her child.<sup>11085</sup> Witness QBP was questioned as to her prior written statement, in which she stated she was taken back to Butare by the *Interahamwe* who had raped her.<sup>11086</sup> Witness QBP explained that the *Interahamwe* who had raped her accompanied her from the hill to the road and then showed her a young refugee man who was supposed to help her with carrying one of her children.<sup>11087</sup>

4066. Witness QBP arrived at the BPO half-naked.<sup>11088</sup> She entered the BPO by the rear of the compound, where there was a building belonging to Mironko.<sup>11089</sup> The only refugees that were at the BPO at that moment were those who escaped Nyange with her and the refugees who were loaded in the third bus.<sup>11090</sup> It was when she returned to the BPO that she learned from refugees that the third bus had broken down near Nkubi and had returned to the BPO.<sup>11091</sup>

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<sup>11075</sup> T. 28 October 2002 pp. 56, 58 (Witness QBP).

<sup>11076</sup> T. 28 October 2002 p. 58 (Witness QBP).

<sup>11077</sup> T. 29 October 2002 p. 58; T. 29 October 2002 pp. 89-90 (ICS) (Witness QBP).

<sup>11078</sup> T. 29 October 2002 pp. 90-91 (ICS); T. 30 October 2002 p. 36 (Witness QBP).

<sup>11079</sup> T. 29 October 2002 p. 91 (ICS) (Witness QBP).

<sup>11080</sup> T. 29 October 2002 p. 92 (ICS) (Witness QBP).

<sup>11081</sup> T. 30 October 2002 p. 51 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11082</sup> T. 30 October 2002 p. 52 (Witness QBP).

<sup>11083</sup> T. 28 October 2002 p. 64; T. 30 October 2002 p. 39 (Witness QBP).

<sup>11084</sup> T. 28 October 2002 p. 61 (Witness QBP).

<sup>11085</sup> T. 28 October 2002 pp. 59-60; T. 30 October 2002 p. 55 (Witness QBP).

<sup>11086</sup> T. 28 October 2002 p. 59; T. 30 October 2002 p. 55 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11087</sup> T. 28 October 2002 p. 60; T. 30 October 2002 p. 55 (Witness QBP).

<sup>11088</sup> T. 28 October 2002 p. 59; T. 30 October 2002 p. 55 (Witness QBP).

<sup>11089</sup> T. 28 October 2002 pp. 59, 68; T. 30 October 2002 p. 33 (Witness QBP).

<sup>11090</sup> T. 28 October 2002 p. 71 (Witness QBP).

<sup>11091</sup> T. 30 October 2002 pp. 38-39 (Witness QBP).

4067. Witness QBP testified that when she returned to the BPO, the *préfet* said, “[w]here do these mad women come from?”<sup>11092</sup> The refugees replied that they were not mad but were part of the group that had gone to Nyange and that some of the group had been killed.<sup>11093</sup> Among the young survivors, there was also a physically handicapped woman who came away from the dead bodies.<sup>11094</sup> When it was put to her that in her statement she had said that they were met at the BPO by the *sous-préfet*, and not the *préfet*, Witness QBP said that when her statement was re-read to her she did not challenge the reference to the *sous-préfet*, she knew the difference between the *préfet* and the *sous-préfet* and it was the *préfet* they saw at the BPO.<sup>11095</sup>

4068. Witness QBP clarified that the *préfet* she referred to was the same *préfet* she described as being short and light in complexion.<sup>11096</sup> In her written statement, Witness QBP described him as a military *préfet*, although in her testimony she said this was an error.<sup>11097</sup> She was not asked to identify Nsabimana in court. She identified Kanyabashi in court.<sup>11098</sup>

4069. Witness QBP denied being a member of the *Abasa* association, or to having created an association which collaborated with the *Ibuka* association, along with, *inter alia*, Prosecution Witness TA.<sup>11099</sup> Witness QBP told the Tribunal that pain was the only thing she shared with the list of women put to her by Defence Counsel regarding *Ibuka*, and that they never constituted an association.<sup>11100</sup>

4070. Witness QBP testified that she did not know a person by the same name as Witness RE,<sup>11101</sup> or Witness SU.<sup>11102</sup>

#### Prosecution Witness QBQ

4071. Witness QBQ, a Tutsi housemaid who was 24 years old in 1994, testified that she first arrived at the BPO at the end of April 1994 and at that time there were approximately 2,000 refugees on the premises.<sup>11103</sup> While she was at the BPO, *Préfet* Nsabimana told the refugees to move on to Nyaruhengeri where they could stay, receive assistance and remain alive.<sup>11104</sup>

4072. Witness QBQ testified that three buses went to Nyaruhengeri. Two buses came to transport the refugees to Nyaruhengeri: the first two buses left when they were full and one of

<sup>11092</sup> T. 28 October 2002 p. 75 (Witness QBP).

<sup>11093</sup> T. 28 October 2002 pp. 75, 79 (Witness QBP).

<sup>11094</sup> T. 29 October 2002 p. 89 (Witness QBP).

<sup>11095</sup> T. 30 October 2002 pp. 52-54 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11096</sup> T. 30 October 2002 p. 92 (ICS) (Witness QBP).

<sup>11097</sup> T. 28 October 2002 p. 53; T. 30 October 2002 p. 49 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11098</sup> T. 24 October 2002 p. 104 (Witness QBP).

<sup>11099</sup> T. 29 October 2002 pp. 47-49 (ICS) (Witness QBP); T. 29 October 2002 pp. 89, 91-92 (HC) (Witness QBP) (French).

<sup>11100</sup> T. 29 October 2002 p. 50 (ICS) (Witness QBP).

<sup>11101</sup> T. 29 October 2002 p. 53 (ICS) (Witness QBP).

<sup>11102</sup> T. 29 October 2002 pp. 57-58 (ICS) (Witness QBP).

<sup>11103</sup> T. 3 February 2004 pp. 38-40, 51 (Witness QBQ).

<sup>11104</sup> T. 3 February 2004 p. 22; T. 4 February 2004 pp. 14-15 (Witness QBQ) (*préfet* spoke of putting the refugees somewhere with “good conditions”).

the buses came back to transport people for a third trip on the same day.<sup>11105</sup> Witness QBQ caught the third bus.<sup>11106</sup> Witness QBQ agreed with the information contained in her previous statement, that the buses were from ONATRACOM.<sup>11107</sup> People who were transported on the first two buses had been killed.<sup>11108</sup> She explained that some people, such as one Semanyenzi, escaped and returned to the BPO that afternoon on foot to warn the remaining refugees not to go there.<sup>11109</sup> However, Semanyenzi had returned from Mukoni and did not speak to them about having gone to Nyaruhengeri.<sup>11110</sup> She could not recall how many refugees returned to the BPO,<sup>11111</sup> what time the first two buses left for Nyaruhengeri, or at what time she arrived at Nyaruhengeri.<sup>11112</sup>

4073. Witness QBQ testified that those who boarded the bus on the third trip were forced to do so.<sup>11113</sup> She boarded this bus after it returned to the BPO and it was the last to leave.<sup>11114</sup> Before the bus left, a policeman spoke with *Préfet* Nsabimana but she could not hear what they spoke about. She did not notice any list of the refugees being drawn up as they boarded the buses.<sup>11115</sup>

4074. Witness QBQ testified that before getting to Nyaruhengeri, the bus passed some roadblocks. The policemen who accompanied them on the bus showed a piece of paper to those who manned the roadblocks and accordingly they were let through. She did not remember how many roadblocks they crossed before getting to the one at Nyaruhengeri.<sup>11116</sup> When they arrived at Nyaruhengeri, the *Interahamwe* who were manning the last roadblock refused to let them pass and sent them back. The *Interahamwe* said they were tired of killing and had had enough of the decaying body stench.<sup>11117</sup> The driver told the *Interahamwe*, “[w]ell, allow me to execute the orders of the *préfet*”, to which the *Interahamwe* responded, “if that is what you are saying, we are going to burn all of you up, including you, yourself”.<sup>11118</sup>

4075. Witness QBQ testified that the police officer driving the bus turned the bus around and drove back to the BPO.<sup>11119</sup> The third bus did not break down and return to the BPO.<sup>11120</sup> When they arrived back at the BPO, they remained in the bus while the police officers went to talk to the *préfet*. She did not hear what they were saying to each other.<sup>11121</sup> In the evening,

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<sup>11105</sup> T. 3 February 2004 p. 75 (Witness QBQ).

<sup>11106</sup> T. 3 February 2004 pp. 23, 75 (Witness QBQ).

<sup>11107</sup> T. 3 February 2004 p. 76 (Witness QBQ); Defence Exhibit 147 (Nsabimana) (6 May 1999, Statement of Witness QBQ).

<sup>11108</sup> T. 3 February 2004 pp. 70, 75 (Witness QBQ).

<sup>11109</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11110</sup> T. 3 February 2004 pp. 70-71 (Witness QBQ).

<sup>11111</sup> T. 3 February 2004 p. 78 (Witness QBQ).

<sup>11112</sup> T. 3 February 2004 p. 77 (Witness QBQ).

<sup>11113</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11114</sup> T. 3 February 2004 pp. 23, 75 (Witness QBQ).

<sup>11115</sup> T. 4 February 2004 p. 16 (Witness QBQ).

<sup>11116</sup> T. 4 February 2004 p. 16 (Witness QBQ).

<sup>11117</sup> T. 3 February 2004 p. 23 (Witness QBQ).

<sup>11118</sup> T. 3 February 2004 pp. 23, 77 (Witness QBQ).

<sup>11119</sup> T. 3 February 2004 pp. 23, 77 (Witness QBQ).

<sup>11120</sup> T. 3 February 2004 pp. 77-78 (Witness QBQ).

<sup>11121</sup> T. 3 February 2004 p. 23; T. 4 February 2004 p. 16 (Witness QBQ).

they were told to disembark from the bus and they spent the night at the BPO.<sup>11122</sup> The following day they went to the EER. Witness QBQ denied that the trip to Nyaruhengeri occurred one week after the witness returned from the EER.<sup>11123</sup> She went to Nyaruhengeri before she went to the EER.<sup>11124</sup>

4076. Witness QBQ described the *préfet* as a dark-coloured person, average height and had a sort of a bump on his forehead.<sup>11125</sup> She identified Nsabimana as the *préfet* to which she referred in her testimony.<sup>11126</sup> When it was put to her that her written statement referred to a military *préfet*, she explained that the interpreter must have noted her description incorrectly.<sup>11127</sup>

#### Prosecution Witness QY

4077. Witness QY, a Tutsi woman who was 17 years old in 1994, testified that she was at the BPO when the *préfet* told the refugees he was going to take them to Nyaruhengeri where there would be tents to accommodate them and where they could live peacefully.<sup>11128</sup> In the evening, two buses came to take the refugees to Nyaruhengeri but she was unable to board either as they were full. She, among others, remained at the BPO for the night.<sup>11129</sup> Early the following morning, a young boy who had boarded one of the buses the previous day came back.<sup>11130</sup> He warned them that the refugees who had boarded the buses had been killed.<sup>11131</sup> She was unable to recall the boy's age or whether she saw any injuries on him.<sup>11132</sup>

4078. Witness QY testified that later that morning, the refugees at the BPO were told to board a bus.<sup>11133</sup> Witness QY was questioned as to her prior statement which stated that one day two buses came to the *préfecture* and left on the first day, both of which returned empty the next day and then left together.<sup>11134</sup> Witness QY explained that only one bus left the following day and that the people recording her statement must have made a mistake.<sup>11135</sup>

4079. Witness QY testified that Kanyabashi, the *bourgmestre* of Ngoma town, and other *préfecture* authorities who she did not know, were present that morning at the BPO.<sup>11136</sup> She testified that Kanyabashi insulted the refugees by saying, “[b]oard the bus, your hour has

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<sup>11122</sup> T. 3 February 2004 p. 23 (Witness QBQ).

<sup>11123</sup> T. 3 February 2004 pp. 78-80 (Witness QBQ).

<sup>11124</sup> T. 4 February 2004 p. 16 (Witness QBQ).

<sup>11125</sup> T. 3 February 2004 p. 23 (Witness QBQ).

<sup>11126</sup> T. 3 February 2004 pp. 25-26 (Witness QBQ).

<sup>11127</sup> T. 3 February 2004 pp. 76-77 (Witness QBQ); Defence Exhibit 147 (Nsabimana) (6 May 1999, Statement of Witness QBQ).

<sup>11128</sup> T. 19 March 2003 p. 61 (Witness QY).

<sup>11129</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11130</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 52 (Witness QY).

<sup>11131</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11132</sup> T. 25 March 2003 p. 52 (Witness QY).

<sup>11133</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11134</sup> T. 25 March 2003 p. 51 (Witness QY); Defence Exhibit 112 (Nyiramasuhuko) (15 January 1997, Statement of Witness QY).

<sup>11135</sup> T. 25 March 2003 p. 52 (Witness QY).

<sup>11136</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 60 (Witness QY).

struck”.<sup>11137</sup> She stood approximately 3.2 metres from Kanyabashi when he said this.<sup>11138</sup> Kanyabashi then brought soldiers and policemen who forced the refugees on board.<sup>11139</sup>

4080. Witness QY testified that the refugees refused to board the third bus and expressed their concerns about the killings at Nyange to the *préfet*. In response, the *préfet* said he would check if the people who had left in the buses the day before were actually dead and instructed the driver to bring the refugees back if it was the case.<sup>11140</sup> Witness QY was unsure if the *préfet* did, in fact, check to see if the refugees had been killed.<sup>11141</sup> Witness QY later testified that the refugees felt reassured after the *préfet* said those words and they boarded the bus without being forced.<sup>11142</sup>

4081. Witness QY testified that two *gendarmes* accompanied the refugees in the bus.<sup>11143</sup> The bus left in the morning, before noon.<sup>11144</sup> On their way to Nyaruhengeri, the bus crossed various roadblocks, including one at Mukoni, but she could not remember the number of roadblocks, or whether those manning them were civilians or soldiers.<sup>11145</sup> When the bus arrived in Nyaruhengeri, it stopped in front of a roadblock.<sup>11146</sup> It was her first time in Nyaruhengeri.<sup>11147</sup>

4082. She testified that the people manning the Nyaruhengeri roadblock told the passengers that the people who had arrived the day before had all been killed and that they were tired of killing.<sup>11148</sup> They told her they would kill those on the bus, but that the bodies would have to be taken back in the bus to where they came from. The *gendarmes* aboard the bus objected, saying that the *préfet* had to check first whether the people taken the night before had not been killed.<sup>11149</sup>

4083. Witness QY testified that one man in the bus opened the door and ran, trying to escape, fearing that he would be killed; he was chased by people with traditional weapons such as machetes. She never saw the man again and guessed he was killed.<sup>11150</sup> People manning the roadblock at Nyaruhengeri were civilians but she was not sure if there were also soldiers.<sup>11151</sup>

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<sup>11137</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 64 (Witness QY) (on 19 March 2003 Witness QY quoted Kanyabashi as stating “[b]oard the buses”, whereas on 25 March 2003 Witness QY testified that Kanyabashi ordered them to “[b]oard the bus” in the singular).

<sup>11138</sup> T. 25 March 2003 p. 65 (Witness QY).

<sup>11139</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11140</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11141</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 58 (Witness QY).

<sup>11142</sup> T. 25 March 2003 p. 61 (Witness QY).

<sup>11143</sup> T. 25 March 2003 p. 55 (Witness QY).

<sup>11144</sup> T. 25 March 2003 p. 58 (Witness QY).

<sup>11145</sup> T. 25 March 2003 p. 53 (Witness QY).

<sup>11146</sup> T. 19 March 2003 p. 62; T. 25 March 2003 pp. 52-53 (Witness QY).

<sup>11147</sup> T. 25 March 2003 p. 56 (Witness QY).

<sup>11148</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11149</sup> T. 25 March 2003 p. 55 (Witness QY).

<sup>11150</sup> T. 25 March 2003 p. 61 (Witness QY).

<sup>11151</sup> T. 25 March 2003 p. 53 (Witness QY).

She later testified that there were only civilians and no soldiers at the roadblock.<sup>11152</sup> There were also *Interahamwe* who were people from the populace at the roadblock.<sup>11153</sup>

4084. Witness QY testified that the driver drove back to the BPO and told the *préfet*, “[h]ere is your cross”, to which the *préfet* replied, “[d]rop them over there. When the time comes, I will take a decision in respect of these people”.<sup>11154</sup> Witness QY later testified that Nsabimana replied, “[l]eave them there, I will deal with them myself.” They got off the bus immediately.<sup>11155</sup>

4085. After she returned to the BPO, the *préfet* issued an order that no one should kill them, and that they would be killed on 5 July 1994. Witness QY testified that she remained at the BPO for a week before she and other refugees were transferred to Rango.<sup>11156</sup> She saw Nsabimana at the BPO on the day they left for Rango but testified that she would not be in a position to identify Nsabimana in court since she had not seen him since 1994.<sup>11157</sup>

4086. Witness QY testified that she met Kanyabashi at the *préfecture* on the day of her departure to Nyaruhengeri.<sup>11158</sup> She never saw Kanyabashi again after the war and said she would not be able to recognise him or describe him.<sup>11159</sup>

4087. On recall in 2009, when it was put to Witness QY that in her testimony in the Munyaneza trial in Canada she admitted to knowing a person by the same name as Witness QBQ, Witness QY agreed.<sup>11160</sup> Witness QY testified that she was together with Witness QBQ on the bus to the EER, to Nyaruhengeri and to Rango.<sup>11161</sup>

4088. Witness QY stated that during her previous appearance before the Chamber in 2003, she denied knowing Witness QBQ<sup>11162</sup> because the interpreter told her to do so.<sup>11163</sup> When it was put to Witness QY that she told the Canadian court she had denied knowing Witness QBY because the Prosecutor told her to do so, rather than an interpreter,<sup>11164</sup> Witness QY stated that it was not the Prosecutor who asked her to lie, it was the interpreter<sup>11165</sup> because the Prosecutor did not speak her language.<sup>11166</sup> She explained she told the Canadian court it was the Prosecutor because the interpreter was only passing on the Prosecutor’s words.<sup>11167</sup>

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<sup>11152</sup> T. 25 March 2003 p. 55 (Witness QY).

<sup>11153</sup> T. 25 March 2003 p. 56 (Witness QY).

<sup>11154</sup> T. 19 March 2003 p. 63 (Witness QY).

<sup>11155</sup> T. 25 March 2003 p. 57 (Witness QY).

<sup>11156</sup> T. 19 March 2003 p. 64 (Witness QY).

<sup>11157</sup> T. 19 March 2003 p. 65 (Witness QY).

<sup>11158</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11159</sup> T. 19 March 2003 p. 64 (Witness QY).

<sup>11160</sup> T. 23 February 2009 pp. 37-39 (ICS) (Witness QY).

<sup>11161</sup> T. 23 February 2009 p. 40 (ICS) (Witness QY).

<sup>11162</sup> T. 25 March 2003 p. 10 (ICS) (Witness QY).

<sup>11163</sup> T. 23 February 2009 pp. 41-43, 49 (ICS) (Witness QY).

<sup>11164</sup> T. 23 February 2003 pp. 43-45 (ICS) (Witness QY).

<sup>11165</sup> T. 23 February 2003 p. 43 (ICS) (Witness QY).

<sup>11166</sup> T. 23 February 2003 pp. 46, 48 (ICS) (Witness QY).

<sup>11167</sup> T. 23 February 2003 pp. 46-47 (ICS) (Witness QY).

4089. On recall in 2009, when it was put to Witness QY that in her testimony in the Munyaneza trial in Canada she admitted to knowing a person by the same name as Witness SJ, Witness QY agreed. Witness QY agreed that she told the Canadian court she had been with a person by the same name as Witness SJ on the bus to the EER, to Nyaruhengeri and to Rango.<sup>11168</sup> Witness QY agreed that during her previous appearance before the Chamber in 2003 she denied knowing Witness SJ,<sup>11169</sup> but did so because she had been asked to lie.<sup>11170</sup>

#### Prosecution Witness RE

4090. Witness RE, a Tutsi from Gikongoro *préfecture* who was 16 years old in 1994, testified that she and the other refugees returned to the BPO, after having been chased from EER.<sup>11171</sup> Upon her return to the BPO, *Préfet* Nsabimana told them that he would find a place where they could settle.<sup>11172</sup> The *préfet* ordered that some refugees be transported to Nyange and others to Mubumbano.<sup>11173</sup> Those leaving for Mubumbano left in the morning, and those going to Nyange left in the evening.<sup>11174</sup> The *préfet* told the refugees at the BPO to wait for the buses that were to take them in the evening to Nyange.<sup>11175</sup>

4091. She testified that the day after she returned to the BPO from the EER,<sup>11176</sup> three buses arrived at the BPO and the refugees were asked to board.<sup>11177</sup> Witness RE did not board any of the buses on that day, but those who did board were taken to Nyange and did not return.<sup>11178</sup> The buses that returned the next day to the BPO were empty and she was boarded on a bus.<sup>11179</sup> She later testified that she did not see the three buses come back and that she only saw one bus come back to take her group the following morning.<sup>11180</sup>

4092. Witness RE testified that a child who survived Nyange came back the following morning to tell them that all the people taken on the buses had been killed.<sup>11181</sup> Witness RE was questioned as to her prior statement of 5 December 1996, in which she did not mention the forced transfer of refugees to Nyange in three buses, or the child survivor.<sup>11182</sup> She explained that her written statement was only a summary and that she was able to provide more detailed testimony in person before the Tribunal.<sup>11183</sup>

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<sup>11168</sup> T. 23 February 2009 p. 49 (ICS) (Witness QY).

<sup>11169</sup> T. 25 March 2003 pp. 9-10 (ICS) (Witness QY).

<sup>11170</sup> T. 23 February 2009 pp. 51-52 (ICS) (Witness QY).

<sup>11171</sup> T. 24 February 2003 p. 13 (Witness RE).

<sup>11172</sup> T. 24 February 2003 p. 14 (Witness RE).

<sup>11173</sup> T. 26 February 2003 p. 56 (Witness RE).

<sup>11174</sup> T. 26 February 2003 pp. 56-57 (Witness RE).

<sup>11175</sup> T. 26 February 2003 p. 56 (Witness RE).

<sup>11176</sup> T. 25 February 2003 p. 30; T. 27 February 2003 pp. 4, 41 (Witness RE).

<sup>11177</sup> T. 24 February 2003 p. 14 (Witness RE).

<sup>11178</sup> T. 24 February 2003 pp. 14-15; T. 26 February 2003 p. 54 (Witness RE).

<sup>11179</sup> T. 24 February 2003 p. 17; T. 25 February 2003 p. 32 (Witness RE).

<sup>11180</sup> T. 27 February 2003 p. 24 (Witness RE).

<sup>11181</sup> T. 24 February 2003 p. 15; T. 25 February 2003 p. 32; T. 26 February 2003 pp. 45-46 (ICS); T. 27 February 2003 p. 24 (Witness RE).

<sup>11182</sup> T. 25 February 2003 p. 33; T. 27 February 2003 pp. 31-32 (Witness RE); Defence Exhibit 90 (Nsabimana) (List of Alleged Omissions; 5 December 1996, Statement of Witness RE).

<sup>11183</sup> T. 25 February 2003 p. 33 (Witness RE).



4093. Witness RE testified that the day after, she and the remaining refugees were forced to board the buses to Nyaruhengeri.<sup>11184</sup> Witness RE was questioned as to a prior written statement in which she only referred to one bus, in the singular, that went to Nyange.<sup>11185</sup> She explained that this was a mistake on the part of the investigator writing the statement and clarified that during the first trip three buses went to Nyange and that during the second trip there was only one bus which was stopped at Nyaruhengeri.<sup>11186</sup> When it was put to her that her statement of 5 December 1996 stated that two buses left for and returned from Nyaruhengeri, she testified that her statement was misreported because three buses left for Nyaruhengeri.<sup>11187</sup>

4094. Witness RE testified that the refugees initially refused to board, but a *gendarme* struck them and forced them aboard.<sup>11188</sup> Witness RE understood that they were being transported so that the *Interahamwe* could execute them.<sup>11189</sup>

4095. Witness RE testified that upon their arrival in Nyaruhengeri, which was before Nyange, the *Interahamwe* refused to execute the refugees because the graves were full.<sup>11190</sup> The *Interahamwe* said that they should be returned to the BPO and killed by the *préfet* himself.<sup>11191</sup> The *Interahamwe* also said that they could kill the refugees but on the condition that the bodies were returned to the BPO and the *préfet* himself take care of the burial.<sup>11192</sup> Witness RE admitted that she did not include the *Interahamwe's* words that the *préfet* should kill them in her statement of December 1996, but this was only because her statement was intended to be a summary.<sup>11193</sup> After the *Interahamwe* refused to kill them, the driver turned around and took them back to the BPO.<sup>11194</sup>

4096. Witness RE identified Nsabimana in court.<sup>11195</sup> She also described Nsabimana as he was in 1994 as “large but short”, “quite rotund”, and wearing glasses.<sup>11196</sup> Throughout her testimony the witness referred to Nsabimana as “*Préfet Sylvain*”. She did not testify to having known Nsabimana prior to the events related.

4097. Witness RE testified that she did not know people bearing the same names as Witnesses SD, SU or QBP.<sup>11197</sup>

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<sup>11184</sup> T. 24 February 2003 p. 15; T. 27 February 2003 p. 25 (Witness RE).

<sup>11185</sup> T. 27 February 2003 pp. 34-35 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>11186</sup> T. 25 February 2003 p. 35; T. 27 February 2003 p. 35 (Witness RE).

<sup>11187</sup> T. 25 February 2003 p. 36 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>11188</sup> T. 25 February 2003 p. 33; T. 26 February 2003 p. 46 (ICS) (Witness RE).

<sup>11189</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>11190</sup> T. 24 February 2003 p. 17 (Witness RE).

<sup>11191</sup> T. 24 February 2003 p. 15; T. 25 February 2003 pp. 37-38 (Witness RE).

<sup>11192</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>11193</sup> T. 25 February 2003 pp. 38-39; T. 27 February 2003 p. 32 (Witness RE); Defence Exhibit 90 (Nsabimana) (List of Alleged Omissions; 5 December 1996, Statement of Witness RE).

<sup>11194</sup> T. 24 February 2003 p. 17; T. 25 February 2003 p. 32 (Witness RE).

<sup>11195</sup> T. 24 February 2003 pp. 37-38 (Witness RE).

<sup>11196</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>11197</sup> T. 24 February 2003 pp. 59-60 (ICS) (Witness RE).

Prosecution Witness SD

4098. Witness SD, a Tutsi mother of seven, testified that one evening, while she was at the BPO, she saw three ONATRACOM buses arrive.<sup>11198</sup> These buses arrived approximately a week before her departure to Rango Forest in June 1994.<sup>11199</sup> She stated that *Préfet* Nsabimana normally left the office for the day at about 5.00 p.m., but that he was still at the office when the buses arrived at 6.00 p.m.<sup>11200</sup> Nsabimana told the Tutsi refugees to board two of the buses.<sup>11201</sup> Nsabimana was standing outside his office when the first two buses were loaded.<sup>11202</sup> Witness SD was about 10 steps from Nsabimana.<sup>11203</sup> Six of her children boarded one of these buses accompanied by a paternal uncle and she has not seen them since. The refugees were taken to Nyange in Nyaruhengeri.<sup>11204</sup>

4099. Witness SD testified that the morning after the first group of refugees was bussed to Nyange, a boy about 13 to 15 years old who was bleeding from his naked torso, returned to the BPO at about 7.00 a.m. and found them behind the BPO.<sup>11205</sup> This boy told her not to board the bus because those who had gone on the buses the day before were killed.<sup>11206</sup> This child was the only person to come back to the BPO after the first two trips to Nyange.<sup>11207</sup>

4100. Witness SD testified that the third bus returned to the BPO about 10.00 a.m. the next morning.<sup>11208</sup> Contrary to what was written in her prior statement of 18 September 1997, the third bus did not stay at the *préfecture* office overnight.<sup>11209</sup> Nsabimana was present when the bus returned.<sup>11210</sup> When the refugees were asked to board the bus they refused to go, saying that those who had gone before had died.<sup>11211</sup> Nsabimana said he would check into it and took a vehicle to check what had happened.<sup>11212</sup> She testified that Nsabimana went to Nyange, Nyaruhengeri.<sup>11213</sup> Upon Nsabimana's return, he told the refugees, "[g]et into the bus, you can leave. I have just checked. What this child is saying has no basis". Witness SD boarded this third bus to Nyange.<sup>11214</sup> Those who refused to board the bus were beaten by a *gendarme*.<sup>11215</sup> Prior to their departure, the *préfet* had given documents to the five policemen to take them away.<sup>11216</sup> The bus left the BPO at about 10.00 a.m.<sup>11217</sup>

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<sup>11198</sup> T. 17 March 2003 p. 10 (Witness SD).

<sup>11199</sup> T. 17 March 2003 p. 11; T. 17 March 2003 p. 37 (ICS) (Witness SD).

<sup>11200</sup> T. 17 March 2003 p. 65 (Witness SD).

<sup>11201</sup> T. 17 March 2003 pp. 10-11 (Witness SD).

<sup>11202</sup> T. 17 March 2003 pp. 49-50 (Witness SD).

<sup>11203</sup> T. 17 March 2003 p. 50 (Witness SD).

<sup>11204</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>11205</sup> T. 17 March 2003 pp. 41, 50, 68 (Witness SD).

<sup>11206</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>11207</sup> T. 17 March 2003 pp. 41, 46 (Witness SD).

<sup>11208</sup> T. 17 March 2003 pp. 11, 67 (Witness SD).

<sup>11209</sup> T. 17 March 2003 p. 66 (Witness SD); Defence Exhibit 106 (Nsabimana) (18 September 1997, Statement of Witness SD).

<sup>11210</sup> T. 17 March 2003 p. 67 (Witness SD).

<sup>11211</sup> T. 17 March 2003 p. 50 (Witness SD).

<sup>11212</sup> T. 17 March 2003 p. 67 (Witness SD).

<sup>11213</sup> T. 17 March 2003 p. 68 (Witness SD).

<sup>11214</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>11215</sup> T. 18 March 2003 p. 43 (Witness SD).

<sup>11216</sup> T. 17 March 2003 p. 69 (Witness SD).

4101. The bus passed through roadblocks at the University Laboratory, at Mukoni and at Cyarwa, all of which were manned by *Interahamwe*.<sup>11218</sup> Although she could not recall how long it took to reach Kibilizi, she estimated they reached Kibilizi between 10.30 and 11.00 a.m.<sup>11219</sup>

4102. When the bus arrived at the Kibilizi roadblock, the policeman showed the documents to those who manned the roadblock and said, “[o]pen up! It is the *préfet* who has given me authorisation to take these people.” Witness SD testified that at the Kibilizi roadblock, the bus was stopped opposite a school.<sup>11220</sup> The *Interahamwe* manning the Kibilizi roadblock refused to let them through, saying that enough blood had been shed in their area and that “[i]f those people were unable to kill these people, let them get out of the bus, we are going to kill them here and put the bodies back into the bus so that the person who sent them can go and bury them himself”.<sup>11221</sup> The local inhabitants came to watch.<sup>11222</sup> When it was put to Witness SD that her prior written statement stated that the “local population” refused to let the bus pass, Witness SD stated that it was, in fact, the *Interahamwe* that had stopped the bus at Kibilizi and refused to lift the roadblock.<sup>11223</sup> They spent about an hour at the Kibilizi roadblock.<sup>11224</sup> The bus then turned around and returned to the BPO.<sup>11225</sup> She did not know what time they reached the BPO.<sup>11226</sup>

4103. After arriving at the BPO, the driver and policeman went to speak to the *préfet*, and the passengers stayed on the bus.<sup>11227</sup> The policeman and the driver informed the *préfet*, and the *préfet* said, “[l]et them get down, put them there to one side. At the appropriate moment, when the time comes, we shall examine their case.”<sup>11228</sup> She said the *préfet* came out of his office and directed the driver to open the doors of the bus and indicated where the refugees should stay.<sup>11229</sup>

4104. Witness SD testified that Nsabimana was the *préfet* at the BPO and described him as a short, big man.<sup>11230</sup> In court, she identified Nteziryayo as Nsabimana.<sup>11231</sup> She explained that although she had seen Nsabimana close up on several occasions, too much time had elapsed since then.<sup>11232</sup>

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<sup>11217</sup> T. 17 March 2003 p. 70 (Witness SD).

<sup>11218</sup> T. 17 March 2003 pp. 69-70 (Witness SD).

<sup>11219</sup> T. 17 March 2003 pp. 70-71 (Witness SD).

<sup>11220</sup> T. 17 March 2003 pp. 69-70 (Witness SD).

<sup>11221</sup> T. 17 March 2003 p. 11; T. 18 March 2003 p. 14 (Witness SD).

<sup>11222</sup> T. 17 March 2003 p. 70 (Witness SD).

<sup>11223</sup> T. 18 March 2003 pp. 13-14 (Witness SD); Defence Exhibit 106 (Nsabimana) (18 September 1997, Statement of Witness SD).

<sup>11224</sup> T. 17 March 2003 p. 70 (Witness SD).

<sup>11225</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>11226</sup> T. 18 March 2003 p. 14 (Witness SD).

<sup>11227</sup> T. 18 March 2003 pp. 14, 17 (Witness SD).

<sup>11228</sup> T. 17 March 2003 p. 11 (Witness SD).

<sup>11229</sup> T. 18 March 2003 p. 17 (Witness SD).

<sup>11230</sup> T. 17 March 2003 p. 7 (Witness SD).

<sup>11231</sup> T. 17 March 2003 p. 20 (Witness SD).

<sup>11232</sup> T. 17 March 2003 p. 51 (Witness SD).

4105. Witness SD testified that Kanyabashi, who she identified as the *bourgmestre* for Ngoma *commune*, was not present when they boarded the bus to Kibilizi, nor was he present when the first two buses departed the day before.<sup>11233</sup>

4106. Witness SD did not know persons bearing the same names as Witnesses RE, QBQ, SJ or TA.<sup>11234</sup>

#### Prosecution Witness SJ

4107. Witness SJ, a Tutsi woman, testified that while she was at the BPO she witnessed Tutsi refugees being forced to board two green ONATRACOM buses in front of the BPO.<sup>11235</sup> The refugees were beaten and prodded with sticks to board the buses.<sup>11236</sup> There were approximately 1,500 Tutsi refugees at the BPO at that time.<sup>11237</sup> It was towards the end of April or the beginning of May 1994.<sup>11238</sup> The buses left between 11.00 a.m. and 12.00 p.m.<sup>11239</sup> When it was put to Witness SJ that her prior written statement said the buses left at 4.00 p.m., she explained that her statement had not been properly recorded and that the buses actually returned at 4.00 p.m.<sup>11240</sup>

4108. She testified that these two buses were stacked with people, some of whom sat on top of each other.<sup>11241</sup> She saw *Préfet* Nsabimana give *laissez-passer* documents to a police officer to allow the buses to pass through the roadblocks, and the police officer gave these documents to the bus driver.<sup>11242</sup> The buses came back but without the refugees.<sup>11243</sup>

4109. Witness SJ testified that the next morning, four survivors, three women and one man, made their way back to the BPO.<sup>11244</sup> Witness SJ spoke with the survivors between 10.00 and 11.00 a.m.<sup>11245</sup> The survivors were in a pitiful state when they got back, one woman being half naked.<sup>11246</sup> The survivors told her that the refugees had been “jammed into a classroom” at Nyange which was guarded by *Interahamwe*. That night two groups of people broke into the classroom and attacked the refugees with small hoes, clubs, machetes and stones. The survivors said that the attackers killed the refugees in the classroom and killed those refugees who had tried to escape through a broken window in the school yard.<sup>11247</sup> Witness SJ learned

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<sup>11233</sup> T. 18 March 2003 pp. 43-44 (Witness SD).

<sup>11234</sup> T. 17 March 2003 p. 30 (ICS) (Witness SD).

<sup>11235</sup> T. 29 May 2002 pp. 65-66, 68 (Witness SJ).

<sup>11236</sup> T. 29 May 2002 p. 68 (Witness SJ).

<sup>11237</sup> T. 28 May 2002 p. 113; T. 4 June 2002 pp. 82-84; T. 5 June 2002 p. 35; T. 30 May 2002 pp. 151-152 (Witness SJ).

<sup>11238</sup> T. 29 May 2002 p. 68 (Witness SJ).

<sup>11239</sup> T. 4 June 2002 p. 146 (ICS) (Witness SJ).

<sup>11240</sup> T. 4 June 2002 p. 147 (ICS) (Witness SJ); Defence Exhibit 67 (Nyiramasuhuko) (3 December 1996, Statement of Witness SJ).

<sup>11241</sup> T. 29 May 2002 p. 69; T. 5 June 2002 p. 54 (Witness SJ).

<sup>11242</sup> T. 29 May 2002 pp. 69, 72, 89; T. 5 June 2002 pp. 67-68 (Witness SJ).

<sup>11243</sup> T. 29 May 2002 p. 72 (Witness SJ).

<sup>11244</sup> T. 29 May 2002 p. 72 (Witness SJ); T. 4 June 2002 p. 139 (ICS) (Witness SJ); *see also* T. 29 May 2002 pp. 134-135 (ICS) (Witness SJ) (regarding identity of the survivors).

<sup>11245</sup> T. 29 May 2002 p. 72 (Witness SJ).

<sup>11246</sup> T. 29 May 2002 pp. 78-79 (Witness SJ).

<sup>11247</sup> T. 29 May 2002 p. 79 (Witness SJ).

from these survivors that the buses had taken the refugees to Nyange.<sup>11248</sup> She testified that these four were the only ones to survive.<sup>11249</sup>

4110. When it was put to Witness SJ that her prior written statement did not mention the survivors, she explained that the investigators only asked questions on certain points and she was not questioned on all the details.<sup>11250</sup> When it was put to Witness SJ that her prior written statement stated that she did not know where the buses took the refugees, Witness SJ stated that she did not know at the time where the buses were going, although they subsequently found out.<sup>11251</sup>

4111. Witness SJ testified that the morning after the first two buses departed, the police and the *Interahamwe* forced her and the remaining refugees to board the bus destined for Nyange by hitting them with rifle butts and sticks.<sup>11252</sup> This occurred between 11.00 a.m. and 12.00 p.m.<sup>11253</sup> The bus was full of refugees seated on top of each other.<sup>11254</sup> Apart from some girls, there were no refugees remaining at the BPO after the third bus left.<sup>11255</sup> There were three policemen aboard her bus to Nyange.<sup>11256</sup> She indicated where the bus was located on Prosecution Exhibit 23(c) *ter*.<sup>11257</sup> The first two buses were parked in the same place.<sup>11258</sup>

4112. They left the BPO around 12.00 or 12.30 p.m. and returned to the BPO by around 3.00 p.m.<sup>11259</sup> Prior to their departure, Witness SJ testified that a *laissez-passer* document was given to the driver by a soldier while Nsabimana was standing in front of his office door.<sup>11260</sup> She identified the location of the door to Nsabimana's office on Prosecution Exhibit 23(c) *ter*.<sup>11261</sup> The fact that it had been issued by Nsabimana was later confirmed by one of the policemen on the bus.<sup>11262</sup> She saw Nsabimana give the document to a soldier who in turn gave it to the driver.<sup>11263</sup>

4113. Witness SJ testified that there were three roadblocks up to Rango, but she did not remember the number of roadblocks from Nyange to Rango because she did not know that area.<sup>11264</sup> Witness SJ, who was seated in the row behind the driver,<sup>11265</sup> testified that at the roadblocks the bus driver presented some documents which he explained authorised their trip

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<sup>11248</sup> T. 29 May 2002 pp. 68-69 (Witness SJ).

<sup>11249</sup> T. 29 May 2002 p. 80 (Witness SJ).

<sup>11250</sup> T. 4 June 2002 pp. 141-142 (ICS) (Witness SJ); Defence Exhibit 67 (Nyiramasuhuko) (3 December 1996, Statement of Witness SJ); Defence Exhibit 66 (List of Omissions from the Statement of Witness SJ).

<sup>11251</sup> T. 4 June 2002 pp. 135-137 (ICS) (Witness SJ); Defence Exhibit 67 (Nyiramasuhuko) (3 December 1996, Statement of Witness SJ).

<sup>11252</sup> T. 29 May 2002 pp. 80-82; T. 4 June 2002 p. 62; T. 4 June 2002 p. 149 (ICS) (Witness SJ).

<sup>11253</sup> T. 5 June 2002 p. 52 (Witness SJ).

<sup>11254</sup> T. 5 June 2002 p. 54 (Witness SJ).

<sup>11255</sup> T. 5 June 2002 p. 55 (Witness SJ).

<sup>11256</sup> T. 29 May 2002 p. 91 (Witness SJ).

<sup>11257</sup> T. 5 June 2002 p. 60 (Witness SJ).

<sup>11258</sup> T. 5 June 2002 pp. 63-64 (Witness SJ).

<sup>11259</sup> T. 5 June 2002 p. 79 (Witness SJ).

<sup>11260</sup> T. 5 June 2002 p. 58 (Witness SJ).

<sup>11261</sup> T. 28 May 2002 p. 123 (Witness SJ).

<sup>11262</sup> T. 29 May 2002 pp. 89-90 (Witness SJ).

<sup>11263</sup> T. 5 June 2002 p. 58 (Witness SJ).

<sup>11264</sup> T. 29 May 2002 p. 88; T. 4 June 2002 pp. 127-128 (Witness SJ).

<sup>11265</sup> T. 5 June 2002 p. 57 (Witness SJ).

to Nyange.<sup>11266</sup> Those documents were issued by Nsabimana, because he was the only person with the authority to allow the refugees at the BPO to travel to any other location; without his authorisation, the departure of the buses would have been “impossible”.<sup>11267</sup> She saw the signature of Nsabimana and the stamp of the *préfecture* on the document when she looked over the driver’s shoulder.<sup>11268</sup> In cross-examination she testified that she did not know what the *préfecture* stamp looked like, but she did see a stamp on the document.<sup>11269</sup> She also did not know what Nsabimana’s signature looked like.<sup>11270</sup> When it was put to her that the document may have come from ONATRACOM, she testified that it was nevertheless handed over to the soldier by Nsabimana.<sup>11271</sup>

4114. She recalled there was a roadblock located at Nyange.<sup>11272</sup> When the bus arrived in Nyange, the *Interahamwe* refused to let the bus pass the roadblock despite the papers shown to them by the driver.<sup>11273</sup> The *Interahamwe* told the bus driver: “Take these people back to Pauline and the *préfet*, they have their own soldiers. We are tired and no salary or reward has been given to us, we do not want those persons”.<sup>11274</sup> When the bus was stopped at the Nyange roadblock, she observed a long school building in the forest and identified the classrooms which appeared in Prosecution Exhibit 25C and 25D as the building.<sup>11275</sup> She did not see any dead bodies at or near the Nyange school from where they were in the bus at the roadblock; she explained that the roadblock was far away from the school building and was obscured by trees.<sup>11276</sup>

4115. Witness SJ testified that they went back to the BPO at around 3.00 p.m.<sup>11277</sup> Nsabimana asked, “[h]ow is it that these persons have returned?”<sup>11278</sup> The police officer repeated what the *Interahamwe* had said, namely that Pauline had her own *Interahamwe* and soldiers and that they should kill them and bury them themselves.<sup>11279</sup> She could hear their conversation because Nsabimana had come out of his office.<sup>11280</sup> Thereafter, Nsabimana went into his office, picked up a firearm, took three soldiers with him, and left.<sup>11281</sup> Witness SJ remained at the BPO for a week before being moved to Rango.<sup>11282</sup> There were no other refugees in the

<sup>11266</sup> T. 29 May 2002 pp. 88-89; T. 5 June 2002 p. 58 (Witness SJ).

<sup>11267</sup> T. 29 May 2002 pp. 89-90; T. 5 June 2002 p. 72 (Witness SJ).

<sup>11268</sup> T. 29 May 2002 p. 90; T. 5 June 2002 pp. 68-69 (Witness SJ).

<sup>11269</sup> T. 5 June 2002 pp. 70-71 (Witness SJ).

<sup>11270</sup> T. 5 June 2002 p. 71 (Witness SJ).

<sup>11271</sup> T. 5 June 2002 pp. 70-73 (Witness SJ).

<sup>11272</sup> T. 4 June 2002 p. 128 (Witness SJ).

<sup>11273</sup> T. 29 May 2002 pp. 80-81, 87 (Witness SJ).

<sup>11274</sup> T. 29 May 2002 pp. 80-81, 93 (Witness SJ).

<sup>11275</sup> T. 29 May 2002 pp. 100-101; T. 30 May 2002 pp. 128-129; T. 5 June 2002 p. 74 (Witness SJ). See Prosecution Exhibit 25 (Photographs of the EER); Prosecution Exhibit 25C (Photograph of the Classrooms of the School); Prosecution Exhibit 25D (Photograph of the Classrooms of the School taken from a different angle).

<sup>11276</sup> T. 5 June 2002 pp. 74-76 (Witness SJ).

<sup>11277</sup> T. 5 June 2002 p. 79 (Witness SJ).

<sup>11278</sup> T. 29 May 2002 pp. 81, 96 (Witness SJ).

<sup>11279</sup> T. 29 May 2002 p. 96; T. 5 June 2002 p. 85 (Witness SJ).

<sup>11280</sup> T. 5 June 2002 pp. 84-85, 88 (Witness SJ).

<sup>11281</sup> T. 29 May 2002 p. 96 (Witness SJ).

<sup>11282</sup> T. 30 May 2002 pp. 80, 82, 85-86 (Witness SJ).

BPO courtyard when they arrived.<sup>11283</sup> Witness SJ positively identified Nsabimana in court.<sup>11284</sup>

4116. Upon recall in 2009, Prosecution Witness SJ testified that interpreters Evelyne and Uwimana instructed her to lie about knowing two people bearing the same names as Prosecution Witnesses TK and QJ.<sup>11285</sup> Witness SJ subsequently rectified that it was only one interpreter who instructed her to deny knowing persons bearing the same names as Witnesses TK and QJ and she was called either Evelyne Uwimana or Uwimana Evelyne.<sup>11286</sup> Uwimana was accompanied by a white man during the time she instructed the witness to tell lie. Witness SJ did not remember whether it was the same white man who examined her in court.<sup>11287</sup>

4117. Witness SJ stated that she was with persons bearing the same first name as Witnesses TK, QJ and TA when she received instructions to lie.<sup>11288</sup> Witness SJ then testified that she was alone with the interpreter when she received instructions to lie.<sup>11289</sup>

4118. Witness SJ stated that she denied knowing Prosecution Witness TA during her testimony in 2002,<sup>11290</sup> although she and Witness TA were at the *préfecture* together during the events.<sup>11291</sup> Witness SJ subsequently testified that Witness TA was with her at the time in the safe house in Arusha, but Witness SJ had not said that they received instructions to lie at the same time; Witness SJ did not know whether Witness TA had also received instructions to lie.<sup>11292</sup> Witness SJ also agreed she knew a person bearing the same name as Witness QBQ, but had never discussed with this person whether they had also received instructions to lie.<sup>11293</sup>

#### Prosecution Witness SU

4119. Witness SU, a Tutsi mother of five, testified that one day after her arrival at the BPO on 28 May 1994,<sup>11294</sup> three buses arrived at the BPO.<sup>11295</sup> Witness SU stated this event occurred at the beginning of June 1994.<sup>11296</sup> Witness SU boarded the third bus.<sup>11297</sup> The third bus departed right after the first two buses, on the same day.<sup>11298</sup> This third bus was not full but had a mechanical problem and therefore did not arrive at Nyange with the first two buses.<sup>11299</sup>

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<sup>11283</sup> T. 5 June 2002 pp. 94-95 (Witness SJ).

<sup>11284</sup> T. 29 May 2002 pp. 138-139 (Witness SJ).

<sup>11285</sup> T. 23 February 2009 pp. 82-83, 85 (ICS) (Witness SJ).

<sup>11286</sup> T. 24 February 2009 p. 12 (ICS) (Witness SJ).

<sup>11287</sup> T. 24 February 2009 p. 15 (ICS) (Witness SJ).

<sup>11288</sup> T. 23 February 2009 p. 84 (ICS); T. 24 February 2009 pp. 19, 22 (ICS) (Witness SJ).

<sup>11289</sup> T. 24 February 2009 pp. 19, 21 (ICS) (Witness SJ).

<sup>11290</sup> T. 30 May 2002 p. 46 (ICS) (Witness SJ).

<sup>11291</sup> T. 24 February 2009 pp. 19-20 (ICS) (Witness SJ).

<sup>11292</sup> T. 24 February 2009 p. 19 (ICS) (Witness SJ).

<sup>11293</sup> T. 23 February 2009 p. 85 (ICS) (Witness SJ).

<sup>11294</sup> T. 15 October 2002 pp. 73-74 (Witness SU).

<sup>11295</sup> T. 14 October 2002 p. 87 (Witness SU).

<sup>11296</sup> T. 21 October 2002 p. 35 (Witness SU).

<sup>11297</sup> T. 14 October 2002 p. 87 (Witness SU); T. 22 October 2002 p. 68 (Witness SU).

<sup>11298</sup> T. 14 October 2002 p. 87; T. 22 October 2002 p. 68; T. 22 October 2002 p. 77 (ICS) (Witness SU).

<sup>11299</sup> T. 22 October 2002 p. 68 (Witness SU).

4120. Witness SU testified that the third bus stopped at a place, maybe at Rango or Huye, where she saw a school.<sup>11300</sup> Before her bus reached Nyange, a child appeared, signalled for the driver to stop, and told him “[i]t’s better not to go on, because those that went there were killed.”<sup>11301</sup> Witness SU was unsure if the child was a survivor of the first group or whether the child ran to their bus from a nearby hillside.<sup>11302</sup> She believed the place they stopped was probably Rango or Huye, although she was not familiar with the region’s hills.<sup>11303</sup> The bus stopped just after Rango and it may have stopped at Sahera or Nkubi.<sup>11304</sup>

4121. Witness SU testified that the third bus never reached Nyange.<sup>11305</sup> The bus driver turned the bus around, drove back to the BPO, and said to Nsabimana, who was present when they returned, “come take your cross”.<sup>11306</sup> Witness SU testified that as she was disembarking, Nsabimana was standing in front of his office, and she heard Nsabimana tell the bus driver, “[I]eave them where they are, I will give the appropriate orders.”<sup>11307</sup> On the side of the bus was written “God is great”.<sup>11308</sup> Witness SU testified that she did not know Nsabimana before 1994 and that she “got to know Nsabimana at the time of the misfortune that befell [her]”.<sup>11309</sup> She positively identified Nsabimana in court.<sup>11310</sup>

4122. Witness SU testified that some survivors returned to the BPO the following day without any belongings.<sup>11311</sup> Witness SU learned from other refugees that when the first two buses arrived in Nyange the *Interahamwe*, who had prepared ahead of time, proceeded to kill the passengers when they disembarked.<sup>11312</sup> A physically disabled woman who had boarded one of the first two buses, had survived and, after falling into a ditch and being covered with bodies, returned to the BPO without clothes the following day. That lady told Witness SU that when the buses stopped, the refugees got out of the buses and were cut up by people with weapons.<sup>11313</sup> Witness SU spoke with this lady the day after.<sup>11314</sup> When it was put to Witness SU that her prior statement did not mention Nyange, she explained the omission must have been the fault of the person taking her statement, since many things she said had not been included in her statement.<sup>11315</sup>

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<sup>11300</sup> T. 14 October 2002 p. 87 (Witness SU); see T. 14 October 2002 pp. 160-161 (Witness SU) (French) (for spelling of “Huye”).

<sup>11301</sup> T. 14 October 2002 p. 88; T. 22 October 2002 p. 69; T. 22 October 2002 p. 80 (ICS) (Witness SU).

<sup>11302</sup> T. 22 October 2002 p. 80 (ICS) (Witness SU).

<sup>11303</sup> T. 14 October 2002 p. 87; T. 22 October 2002 pp. 80-81 (ICS) (Witness SU).

<sup>11304</sup> T. 22 October 2002 p. 81 (ICS) (Witness SU).

<sup>11305</sup> T. 21 October 2002 p. 35; T. 22 October 2002 p. 67 (Witness SU).

<sup>11306</sup> T. 14 October 2002 p. 88; T. 22 October 2002 p. 69 (Witness SU).

<sup>11307</sup> T. 14 October 2002 p. 88 (Witness SU).

<sup>11308</sup> T. 14 October 2002 p. 88; T. 22 October 2002 p. 68 (Witness SU).

<sup>11309</sup> T. 14 October 2002 pp. 88-89 (Witness SU).

<sup>11310</sup> T. 15 October 2002 p. 24 (Witness SU).

<sup>11311</sup> T. 22 October 2002 p. 69 (Witness SU).

<sup>11312</sup> T. 14 October 2002 p. 87; T. 22 October 2002 pp. 77-78 (ICS) (Witness SU).

<sup>11313</sup> T. 22 October 2002 p. 69; T. 22 October 2002 p. 78 (ICS) (Witness SU).

<sup>11314</sup> T. 24 October 2002 p. 5 (Witness SU).

<sup>11315</sup> T. 21 October 2002 pp. 35-36; T. 22 October 2002 pp. 66-67 (Witness SU); Defence Exhibit 75A (Nsabimana) (20 November 1996, Statement of Witness SU); Defence Exhibit 75B (Nsabimana) (List of Omissions from the Statement of Witness SU).



4123. Witness SU did not know Witnesses RE and SJ.<sup>11316</sup> Witness SU came to Arusha with another Rwandan lady with the same first name as Witness QBP, whom she recognised but did not know personally. They lived together in Arusha while they waited to testify before this court, but she denied that they had discussed their testimony.<sup>11317</sup> Witness SU denied being part of either *Ibuka* or *Avega* or any other association of survivors.<sup>11318</sup>

#### Prosecution Witness TA

4124. Witness TA, a 20-year-old Tutsi in 1994,<sup>11319</sup> was at the BPO prior to her transfer to Rango Forest in June.<sup>11320</sup> When it was put to Witness TA that her prior statement stated that she left the BPO at the end of May and spent the entire month of June at Rango, she explained that she actually left the BPO for Rango in mid-June, where she remained for about three weeks.<sup>11321</sup>

4125. Witness TA testified that during her stay at the BPO she and other refugees were picked up by buses and vehicles used for rubbish collection and driven to Nyange.<sup>11322</sup> She boarded a truck and not a bus. The truck was turned back at a roadblock at Kansi before it reached its destination, while the bus in the same convoy passed through the roadblock and continued on its way. She did not see any soldiers or *Interahamwe* in the truck in which she travelled.<sup>11323</sup> She explained that they did not spend the night at Nyange because “most of the refugees had been killed”.<sup>11324</sup> Instead, they returned to the BPO.<sup>11325</sup> When put to Witness TA that she had never before mentioned having been sent to Nyange before Rango, Witness TA agreed she had not mentioned this in her testimony.<sup>11326</sup>

4126. Witness TA testified that she did not know Witness SJ.<sup>11327</sup> Witness TA did not see Kanyabashi at the BPO during the time she was there.<sup>11328</sup>

#### Prosecution Expert Witness Alison Des Forges

4127. Alison Des Forges testified that she found a *laissez-passer* document at the BPO signed by *Sous-préfet* Faustin Rutayisire for *Préfet* Nsabimana. The document granted permission for the “peasants” named in an attached list to be transported from Ngoma *commune* to the

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<sup>11316</sup> T. 21 October 2002 p. 58 (ICS) (Witness SU).

<sup>11317</sup> T. 21 October 2002 pp. 56-58 (ICS) (Witness SU).

<sup>11318</sup> T. 22 October 2002 pp. 93-94 (ICS) (Witness SU).

<sup>11319</sup> T. 24 October 2001 p. 93 (Witness TA).

<sup>11320</sup> T. 6 November 2001 pp. 62, 68 (Witness TA).

<sup>11321</sup> T. 6 November 2001 pp. 63-68 (Witness TA); Defence Exhibit 7 (Nyiramasuhuko) (19 November 1997, Statement of Witness TA).

<sup>11322</sup> T. 6 November 2001 p. 62 (Witness TA).

<sup>11323</sup> T. 7 November 2001 p. 25 (Witness TA).

<sup>11324</sup> T. 6 November 2001 p. 63 (Witness TA).

<sup>11325</sup> T. 7 November 2001 p. 26 (Witness TA).

<sup>11326</sup> T. 6 November 2001 p. 63 (Witness TA).

<sup>11327</sup> T. 7 November 2001 p. 114 (ICS) (Witness TA).

<sup>11328</sup> T. 7 November 2001 pp. 122-123 (Witness TA).

Nyange refugee camp in Nyaruhengeri *commune*.<sup>11329</sup> Des Forges did not see the list attached to the document when she obtained it from the BPO.<sup>11330</sup>

4128. Des Forges testified that while Nsabimana was *préfet*, a number of refugees left the BPO for Nyange and almost immediately thereafter congregated again. She believed that there was only one transfer to Nyange. Based on her research, she estimated the transfer occurred between one and two weeks before the Rango transfer. Des Forges considered it unlikely, although not impossible, that the witnesses who were transferred both to Nyange and then Rango confused their accounts of the respective transfers.<sup>11331</sup>

4129. Des Forges introduced Prosecution Exhibit 113, a document written by Nsabimana entitled *The Truth About the Massacres in Butare*,<sup>11332</sup> in which he wrote: “I suggested that I take [the refugees] to a camp in Nyaruhengeri *commune*. However, on the way to Nyaruhengeri, the *Interahamwe* at the roadblocks near the President’s house forced the buses that were transporting the refugees to turn back; they only allowed one pickup to reach its destination”.<sup>11333</sup>

#### Kanyabashi Defence Witness D-2-10-Y

4130. Witness D-2-10-Y, a 17-year-old Tutsi gardener in 1994, testified that before he came to the *préfecture* office, some persons had been transported from EER at Butare to Nyange.<sup>11334</sup> He was at home when he saw buses transporting persons towards Nyange.<sup>11335</sup> In cross-examination, he testified that he saw three buses going from EER to Nyange, one followed by the other, several moments apart.<sup>11336</sup> Although he did not have an opportunity to take a good look since the buses did not stop, he recalled that some of the passengers were standing.<sup>11337</sup> The witness first said that the buses drove past some time during daylight,<sup>11338</sup> and later stated that he did not remember clearly what time of the day it was.<sup>11339</sup> He then said it was not night time.<sup>11340</sup> He could not recall whether anything was written on the buses although he recalled they were ONATRACOM buses.<sup>11341</sup>

4131. Witness D-2-10-Y testified that he went to the BPO at the end of May 1994.<sup>11342</sup> At the BPO he spoke with three young girls who were around 18 years old and said they had been on

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<sup>11329</sup> T. 9 June 2004 p. 52 (Des Forges); Prosecution Exhibit 127 (*Permis de sortie*).

<sup>11330</sup> T. 9 June 2004 p. 53 (Des Forges).

<sup>11331</sup> T. 7 July 2004 pp. 8-9 (Des Forges).

<sup>11332</sup> T. 8 June 2004 pp. 53-54 (Des Forges); Prosecution Exhibit 113 (*The Truth About the Massacres in Butare*, by Nsabimana).

<sup>11333</sup> T. 5 July 2004 p. 60 (Des Forges); Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) pp. K0016630-K0016631.

<sup>11334</sup> T. 29 April 2008 p. 26 (Witness D-2-10-Y).

<sup>11335</sup> T. 29 April 2008 pp. 27-28, 67 (Witness D-2-10-Y).

<sup>11336</sup> T. 29 April 2008 pp. 67-68 (Witness D-2-10-Y).

<sup>11337</sup> T. 1 May 2008 pp. 5-6 (Witness D-2-10-Y).

<sup>11338</sup> T. 29 April 2008 p. 67 (Witness D-2-10-Y).

<sup>11339</sup> T. 1 May 2008 p. 6; T. 5 May 2008 p. 35 (Witness D-2-10-Y).

<sup>11340</sup> T. 5 May 2008 p. 35 (Witness D-2-10-Y).

<sup>11341</sup> T. 5 May 2008 p. 35 (Witness D-2-10-Y).

<sup>11342</sup> T. 1 May 2008 p. 8; T. 5 May 2008 pp. 58-59 (Witness D-2-10-Y).

the first two buses to Nyange.<sup>11343</sup> They told him that the first two buses went to Nyange, while the third bus “did not go where the killers were”.<sup>11344</sup> The girls returned to the BPO aboard those same two buses.<sup>11345</sup> The young girls told Witness D-2-10-Y that the buses that had taken them did not go right up to where people were being killed.<sup>11346</sup> The survivors told Witness D-2-10-Y that those on board the first two buses had been killed, and the survivors from the first two buses met the third bus on their way back [to the BPO].<sup>11347</sup>

4132. Witness D-2-10-Y first met the girls when he went to the *préfecture* office.<sup>11348</sup> Later he stated that he met them while he stayed at the *préfecture* office, after having been at the *préfecture* for three days at the most.<sup>11349</sup> He assumed that the girls talked about the same buses which he had seen previously because they were the only buses he saw during that period.<sup>11350</sup> The survivors at the BPO told him that the buses had left from the EER,<sup>11351</sup> and not from the BPO.<sup>11352</sup>

4133. He knew about the Nyange transfer before he reached the BPO, but was also later told about it by a Nyange survivor who was at the BPO.<sup>11353</sup> Witness D-2-10-Y testified that he could not remember when he saw the buses, had never been to Nyange, and that everything he knew about Nyange was heard from other persons.<sup>11354</sup>

4134. Witness D-2-10-Y could not recall how long after he saw the buses pass his house he went to the BPO.<sup>11355</sup> However he got to the BPO a few days after the refugees returned from Nyange.<sup>11356</sup> Witness D-2-10-Y testified that the refugees were not taken to Rango one week after they returned from Nyange, because the transfer from Nyange had taken place before the witness arrived at the BPO, and he stayed at the BPO for two weeks before being transferred to Rango.<sup>11357</sup>

### Nsabimana

4135. Nsabimana testified that since 1993 there were Burundian refugees throughout several of Butare’s *communes*, including in Nyange.<sup>11358</sup> Nsabimana testified that in the first few days of June 1994<sup>11359</sup> *Sous-préfet* Bicamumpaka, who was in charge of social affairs, proposed at a Security Council meeting that the refugees be moved from the BPO to the refugee camp in

<sup>11343</sup> T. 1 May 2008 pp. 7-8, 16; T. 5 May 2008 p. 37 (Witness D-2-10-Y).

<sup>11344</sup> T. 1 May 2008 p. 6 (Witness D-2-10-Y).

<sup>11345</sup> T. 5 May 2008 p. 37 (Witness D-2-10-Y).

<sup>11346</sup> T. 5 May 2008 p. 41 (Witness D-2-10-Y).

<sup>11347</sup> T. 29 April 2008 p. 68; T. 29 April 2008 p. 71 (French); T. 1 May 2008 p. 6 (Witness D-2-10-Y).

<sup>11348</sup> T. 1 May 2008 p. 7 (Witness D-2-10-Y).

<sup>11349</sup> T. 1 May 2008 pp. 8, 11 (Witness D-2-10-Y).

<sup>11350</sup> T. 5 May 2008 p. 41 (Witness D-2-10-Y).

<sup>11351</sup> T. 29 April 2008 pp. 26, 68 (Witness D-2-10-Y).

<sup>11352</sup> T. 1 May 2008 p. 13 (Witness D-2-10-Y).

<sup>11353</sup> T. 29 April 2008 pp. 26-68; T. 1 May 2008 p. 16 (Witness D-2-10-Y).

<sup>11354</sup> T. 6 May 2008 pp. 8, 16-17 (Witness D-2-10-Y).

<sup>11355</sup> T. 29 April 2008 p. 69; T. 1 May 2008 p. 8 (Witness D-2-10-Y).

<sup>11356</sup> T. 1 May 2008 p. 12 (Witness D-2-10-Y).

<sup>11357</sup> T. 1 May 2008 pp. 12-13 (Witness D-2-10-Y).

<sup>11358</sup> T. 19 September 2006 p. 62 (Nsabimana).

<sup>11359</sup> T. 9 October 2006 p. 81; T. 10 October 2006 pp. 8-9 (Nsabimana).

Nyange, Nyaruhengeri *commune*, which was a camp with Burundian Tutsi refugees.<sup>11360</sup> Nsabimana estimated that Nyange camp was 15-20 kilometres southeast of Butare town.<sup>11361</sup> It was not raised at the Security Council meeting whether Nyange camp had tents or water. However, Nsabimana believed that Nyange camp, which had already housed people, would have much better facilities than those available at the BPO.<sup>11362</sup>

4136. The Security Council meeting took place in Nsabimana's office at the BPO before noon; maybe at 10.00 or 11.00 a.m.<sup>11363</sup> Nsabimana testified that in the hours following the Security Council meeting, as the only person who could requisition the vehicles, he found one ONATRACOM bus to transport the refugees.<sup>11364</sup> During this time and prior to the arrival of the bus, Rutayisire counted the refugees and prepared a list of the officials responsible for families and the number of children.<sup>11365</sup> Nsabimana testified that at the BPO the bus stopped at the lawn near the MINITRAP houses.<sup>11366</sup> Nsabimana identified the location where the bus stopped on Prosecution Exhibit 23(c) *ter*.<sup>11367</sup>

4137. Nsabimana testified that he accepted Kanyabashi's proposal to provide two *commune* police officers. Nsabimana felt they needed to put *commune* policemen on the bus in order to "guarantee that the people [on the bus] would be able to pass" [the roadblocks].<sup>11368</sup> The two *commune* police officers, carrying weapons, boarded the bus.<sup>11369</sup>

4138. Nsabimana estimated there were 200 people on the bus.<sup>11370</sup> Nsabimana based his estimate on the number of people who were in the bus, not by the list that was prepared.<sup>11371</sup> The people were not sitting comfortably; they were all packed in tightly.<sup>11372</sup> He testified that it was hard to fit about 200 people on the bus.<sup>11373</sup> The people boarded with difficulty as they were carrying small parcels and clothes. They even attempted to put people in the luggage compartment of the bus.<sup>11374</sup> In the end, people were required to leave their effects behind.<sup>11375</sup> The refugees were asked to board and did so voluntarily.<sup>11376</sup> He was present during the operation from the time the people started boarding the bus until the bus actually left.<sup>11377</sup> Nsabimana accepted that a bus may only have between 60 and 80 seats, but testified that the normal concept of space did not apply in difficult times.<sup>11378</sup>

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<sup>11360</sup> T. 9 October 2006 p. 81 (Nsabimana).

<sup>11361</sup> T. 9 October 2006 p. 82 (Nsabimana).

<sup>11362</sup> T. 9 October 2006 pp. 81-82 (Nsabimana).

<sup>11363</sup> T. 9 October 2006 pp. 81-83 (Nsabimana).

<sup>11364</sup> T. 9 October 2006 pp. 82-83 (Nsabimana).

<sup>11365</sup> T. 9 October 2006 pp. 83-84 (Nsabimana).

<sup>11366</sup> T. 9 October 2006 p. 84 (Nsabimana).

<sup>11367</sup> T. 9 October 2006 p. 85 (Nsabimana).

<sup>11368</sup> T. 9 October 2006 p. 84 (Nsabimana).

<sup>11369</sup> T. 9 October 2006 p. 84; T. 10 October 2006 p. 5; T. 18 October 2006 p. 32 (Nsabimana).

<sup>11370</sup> T. 10 October 2006 pp. 4-6; T. 21 November 2006 p. 25; T. 28 November 2006 pp. 28-29 (Nsabimana).

<sup>11371</sup> T. 10 October 2006 pp. 4-5 (Nsabimana).

<sup>11372</sup> T. 10 October 2006 p. 6; T. 21 November 2006 p. 25 (Nsabimana).

<sup>11373</sup> T. 9 October 2006 p. 84 (Nsabimana).

<sup>11374</sup> T. 9 October 2006 p. 84; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11375</sup> T. 9 October 2006 p. 84; T. 21 November 2006 p. 26; T. 28 November 2006 p. 29 (Nsabimana).

<sup>11376</sup> T. 10 October 2006 p. 4; T. 21 November 2006 p. 25 (Nsabimana).

<sup>11377</sup> T. 10 October 2006 p. 5; T. 21 November 2006 p. 25 (Nsabimana).

<sup>11378</sup> T. 28 November 2006 p. 29 (Nsabimana).

4139. Depending on one's car and the road, Nyange was about 45 minutes to one hour away from the BPO.<sup>11379</sup> Nsabimana testified that it was not possible to take the refugees to Nyange in two separate trips because if the first bus left the BPO at 3.00 p.m., then the second trip would have had to have taken place that night, or the following morning. However, leaving the following day was not possible because of "the whole disorder that occurred".<sup>11380</sup>

4140. Nsabimana testified that Kanyabashi was present when the bus arrived, but not when the people were boarding the bus.<sup>11381</sup> The bus left full to capacity for Nyange at approximately 3.00 or 4.00 p.m.<sup>11382</sup> Nsabimana testified that *Sous-préfet* Rutayisire signed a *laissez-passer* document.<sup>11383</sup> Nsabimana did not know the document existed.<sup>11384</sup> The *sous-préfet* was empowered, under Nsabimana's order, to sign *laissez-passer* documents for people to travel within the *préfecture*.<sup>11385</sup> Nsabimana denied having seen the *laissez-passer* paper himself.<sup>11386</sup>

4141. Nsabimana testified that the bus never reached Nyange; 30-45 minutes after the bus left, it returned to the BPO with the people and police officers on board.<sup>11387</sup> The *commune* policeman told him that they had been stopped by Presidential Guard at a roadblock at Mukoni, but was not told why.<sup>11388</sup> Nsabimana testified that he then asked the refugees to get off the bus and directed them to an area in front of the BPO.<sup>11389</sup>

4142. This event occurred in the first few days or even the first week of June 1994.<sup>11390</sup> He later testified it could even be the end of May 1994. It occurred less than one week after the refugees returned to the BPO from the EER.<sup>11391</sup> Nsabimana testified that no other trips or attempted trips to Nyange were made after this.<sup>11392</sup>

4143. Nsabimana testified that at the same time they were seeking transport for the refugees to get to Nyange, one Burundian Tutsi called Jean Ntirulihamwe had asked Nsabimana for some petrol to go to Saga. Nsabimana agreed to give him the petrol if Ntirulihamwe would also drive some of the refugees towards Nyange in his pickup truck. This occurred around 1.00 p.m. Ntirulihamwe left later that day, although Nsabimana was not sure whether he took any refugees with him. The day after the bus returned to the BPO, Nsabimana wondered whether Ntirulihamwe took any refugees with him, and headed to Nyange to check. He did not reach

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<sup>11379</sup> T. 28 November 2006 p. 28 (Nsabimana).

<sup>11380</sup> T. 28 November 2006 pp. 29-30 (Nsabimana).

<sup>11381</sup> T. 10 October 2006 p. 5 (Nsabimana).

<sup>11382</sup> T. 9 October 2006 p. 84; T. 10 October 2006 pp. 5, 7 (Nsabimana).

<sup>11383</sup> T. 10 October 2006 p. 6 (Nsabimana).

<sup>11384</sup> T. 10 October 2006 pp. 6-7 (Nsabimana).

<sup>11385</sup> T. 10 October 2006 p. 6 (Nsabimana).

<sup>11386</sup> T. 10 October 2006 p. 7 (Nsabimana).

<sup>11387</sup> T. 10 October 2006 p. 7; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11388</sup> T. 10 October 2006 pp. 7-8 (Nsabimana).

<sup>11389</sup> T. 10 October 2006 pp. 8-9 (Nsabimana).

<sup>11390</sup> T. 10 October 2006 p. 9 (Nsabimana).

<sup>11391</sup> T. 21 November 2006 p. 25 (Nsabimana).

<sup>11392</sup> T. 10 October 2006 p. 9; T. 21 November 2006 p. 26 (Nsabimana).

Nyange because he ran into five to 10 people seeking hiding, who Nsabimana left in the care of Nkubi *conseiller*, Kanywabahizi.<sup>11393</sup>

4144. Nsabimana denied the testimony of Prosecution Witnesses SJ, SU and TK that three buses left one afternoon, and another left the following morning; that some of the buses had arrived in Nyange where the refugees were told to get off the buses, and were then attacked and killed in the night; and that other refugees returned to the BPO by their own means.<sup>11394</sup> Nsabimana denied Prosecution evidence that soldiers at the Mukoni roadblock sent the refugees' bus back to the BPO saying, "[g]o back to the *préfecture*, we are tired of killing, they should do their own work".<sup>11395</sup>

4145. Nsabimana also denied Prosecution evidence that on seeing the refugees return to the *préfecture* office, he jumped into his vehicle saying he was going to get information on what had occurred. Nsabimana denied knowledge of the evidence of Prosecution Witness SJ that among the refugees who returned was one Semanyenzi who was severely wounded; the first time Nsabimana heard of Semanyenzi was in court.<sup>11396</sup>

#### Nsabimana Defence Witness Khamis Ramadhan

4146. Khamis Ramadhan, an investigator for the Nsabimana Defence team since 2002,<sup>11397</sup> explained that refugees from Burundi had been staying at Nyange in Nyaruhengeri. He took six photographs of Nyange in December 2004. Nyange was about a one hour drive from Butare town. To reach Nyange from Butare town, one would go past Rango from Mukoni, turn left and go to Nyaruhengeri. Nyange is towards the south of Butare *préfecture*.<sup>11398</sup> The six pictures Ramadhan took of Nyange were admitted into evidence as Defence Exhibit 447A-F.<sup>11399</sup>

4147. Defence Exhibit 447A showed a section of the refugee camp, including grass and some terraces. Defence Exhibit 447B depicted a section of the former camp, where a cleared area as well as some bushes and trees were visible.<sup>11400</sup> Ramadhan confirmed that Defence Exhibit 447B showed a forest in Nyange, which was situated between 45 minutes and one hour's drive from Butare town.<sup>11401</sup> He saw the remnants of the refugee camp that had been there, meaning a place that had been cleared and had indications that there were people staying there at some point.<sup>11402</sup> Ramadhan testified that Defence Exhibit 447C showed the northern edge of the former camp, beyond which no refugees had stayed. He was told this by a person who approached him while he was taking pictures and said that he was the caretaker.<sup>11403</sup> Defence Exhibit 447D also showed a cleared area in about half of the photograph. On the right were

<sup>11393</sup> T. 10 October 2006 pp. 16-17; T. 21 November 2006 p. 27 (Nsabimana).

<sup>11394</sup> T. 10 October 2006 p. 9 (Nsabimana).

<sup>11395</sup> T. 10 October 2006 p. 8 (Nsabimana).

<sup>11396</sup> T. 10 October 2006 p. 10 (Nsabimana).

<sup>11397</sup> T. 27 June 2006 p. 11; T. 29 June 2006 pp. 9-10 (Ramadhan).

<sup>11398</sup> T. 28 June 2006 p. 39 (Ramadhan).

<sup>11399</sup> T. 28 June 2006 pp. 49-50 (Ramadhan); Defence Exhibit 448 (Nsabimana) (CD-ROM containing photographs).

<sup>11400</sup> T. 28 June 2006 p. 40 (Ramadhan).

<sup>11401</sup> T. 28 June 2006 p. 39 (Ramadhan).

<sup>11402</sup> T. 29 June 2006 p. 36 (Ramadhan).

<sup>11403</sup> T. 28 June 2006 p. 41 (Ramadhan).

bushes and three stones, which could be used for cooking.<sup>11404</sup> Defence Exhibit 447E showed one of the places where there had been structures, in this case, a house. Farther away, another open space was visible, where there had been another house.<sup>11405</sup> Defence Exhibit 447F showed another cleared place and a hole, as well as some trees. There was a valley and a road, which on the left would go to Nyaruhengeri. The hole was manmade and had been used as a garbage dump by the refugees.<sup>11406</sup>

4148. When carrying out his investigation at Nyange, Ramadhan was approached by a person who introduced himself as the caretaker and to whom Ramadhan asked questions.<sup>11407</sup> The caretaker did not append his signature to the summary Ramadhan had prepared for the Nsabimana Defence team. Ramadhan had asked the caretaker whether people had been killed in the area in 1994 and the caretaker had denied that this was the case.<sup>11408</sup>

### 3.6.40.4 Deliberations

4149. The Prosecution alleges that Nsabimana ordered the transfer of refugees from the BPO to Nyange in order that they be killed and that this transfer occurred over a two day period using several buses. The Nsabimana Defence submits that Nsabimana organised only one transfer to Nyange<sup>11409</sup> which consisted of one bus,<sup>11410</sup> and that the purpose of the transfer was to ameliorate the refugees' living conditions.<sup>11411</sup> That bus and its passengers did not reach Nyange because it was denied passage at a roadblock, after which it returned to the BPO, where it arrived without any of its occupants being killed.<sup>11412</sup> The Kanyabashi Defence asserts the power to decide to transfer the refugees to Nyange lay with the *préfet*.<sup>11413</sup> It also asserts that only one witness testified that Kanyabashi was present and ordered refugees to board the bus to Nyange and that witness was unable to identify Kanyabashi in court.<sup>11414</sup>

4150. The issues for the Chamber to determine are: when the transfer to Nyange occurred; the number of buses involved in the transfer; and whether criminal acts were perpetrated against the refugees throughout and/or as a consequence of the transfer. Further, the Chamber must assess whether Nsabimana and Kanyabashi were involved in the transfer, and the extent of their individual involvement.

#### 3.6.40.4.1 Time Period of the Transfer

4151. The Indictment alleges that the transfer of refugees to Nyange took place between mid-May and mid-June 1994.<sup>11415</sup> Nsabimana conceded that he arranged the transfer of refugees to

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<sup>11404</sup> T. 28 June 2006 p. 42 (Ramadhan).

<sup>11405</sup> T. 28 June 2006 p. 43 (Ramadhan).

<sup>11406</sup> T. 28 June 2006 pp. 43-44 (Ramadhan).

<sup>11407</sup> T. 28 June 2006 pp. 48-49 (Ramadhan).

<sup>11408</sup> T. 29 June 2006 p. 37 (Ramadhan).

<sup>11409</sup> T. 10 October 2006 p. 9; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11410</sup> T. 9 October 2006 pp. 81-82 (Nsabimana).

<sup>11411</sup> Nsabimana Closing Argument, T. 27 April 2009 p. 16.

<sup>11412</sup> T. 10 October 2006 pp. 7-8 (Nsabimana).

<sup>11413</sup> Kanyabashi Closing Argument, T. 29 April 2009 p. 3.

<sup>11414</sup> Kanyabashi Closing Argument, T. 29 April 2009 pp. 4-5.

<sup>11415</sup> Para. 6.38 of the Nsabimana and Nteziyayo Indictment; Para. 6.41 of the Kanyabashi Indictment.

Nyange during this time frame, specifically in the first few days or week of June 1994,<sup>11416</sup> or perhaps even the end of May 1994.<sup>11417</sup> Witness SU corroborated this time frame, stating that the incident occurred either in the last few days of May or at the beginning of June 1994,<sup>11418</sup> while Witness SD testified that the Nyange transfer occurred approximately a week before her departure to Rango forest in June 1994.<sup>11419</sup> Des Forges estimated that, based on her research, the transfer occurred between one and two weeks before the Rango transfer.<sup>11420</sup>

4152. Witness SJ was the only witness to estimate that the event took place around late April or early May 1994.<sup>11421</sup> Having regard to Witness SJ's own admission that she could not recall the month in which the event occurred,<sup>11422</sup> the Chamber considers Witness SJ's testimony, as an estimate, does not contradict the testimony of the other witnesses as to the date of the transfer.

4153. The Chamber recalls Nsabimana also testified the transfer occurred less than one week after the refugees returned to the BPO from the EER.<sup>11423</sup> Recalling its previous finding that the refugees returned to the BPO from the EER at the very end of May 1994 (), the Chamber finds that the subsequent transfer to Nyange occurred within the first few days or week of June 1994. Accordingly, the Chamber finds that the bus transfers to Nyange occurred within the time frame alleged in the Indictments, namely mid-May and mid-June 1994.<sup>11424</sup>

#### 3.6.40.4.2 Number of Buses and Sequence of Events Relating to the Transfer

4154. The Nsabimana and Kanyabashi Indictments allege that the refugees were transported to Nyange in ONATRACOM buses upon Nsabimana and Kanyabashi's orders. The Prosecution led evidence through Witnesses QBP, SD, QY, SJ and RE that there was more than one bus used in the transfer.<sup>11425</sup>

4155. Witness QBP testified that three buses arrived at the BPO one evening ("day one") to transport refugees to Nyange and that she boarded the second one. The first and second buses reached Nyange but the third bus had a mechanical problem before reaching Nyange and returned to the BPO.<sup>11426</sup> Witness SU corroborated this account, stating that three buses arrived at the BPO<sup>11427</sup> and that she left in the third bus<sup>11428</sup> that departed on the same day.<sup>11429</sup>

<sup>11416</sup> T. 9 October 2006 p. 81; T. 10 October 2006 p. 9 (Nsabimana).

<sup>11417</sup> T. 21 November 2006 p. 25 (Nsabimana).

<sup>11418</sup> T. 14 October 2002 p. 87; T. 15 October 2002 pp. 73-74; T. 21 October 2002 p. 35 (Witness SU).

<sup>11419</sup> T. 17 March 2003 p. 11; T. 17 March 2003 p. 37 (ICS) (Witness SD).

<sup>11420</sup> T. 7 July 2004 p. 8 (Des Forges).

<sup>11421</sup> T. 29 May 2002 p. 68 (Witness SJ).

<sup>11422</sup> T. 29 May 2002 p. 68 (Witness SJ).

<sup>11423</sup> T. 21 November 2006 p. 25 (Nsabimana).

<sup>11424</sup> Para. 6.38 of the Nsabimana and Nteziryayo Indictment; Para. 6.41 of the Kanyabashi Indictment.

<sup>11425</sup> With the exception of Des Forges and Witness TA, the remaining Prosecution witnesses all testified to the departure of multiple buses. The Chamber notes Des Forges was neither qualified nor asked to testify about this issue, and Witness TA only testified about Nyange during cross-examination. Witness TA had not mentioned the bus trip to Nyange in her witness statement and the Prosecution did not question her about this event during examination-in-chief.

<sup>11426</sup> T. 24 October 2002 p. 81; T. 28 October 2002 pp. 54-55; T. 30 October 2002 pp. 38-39 (Witness QBP).

<sup>11427</sup> T. 14 October 2002 p. 87 (Witness SU).

<sup>11428</sup> T. 14 October 2002 p. 87; T. 22 October 2002 p. 68 (Witness SU).

<sup>11429</sup> T. 14 October 2002 p. 87; T. 22 October 2002 p. 68; T. 22 October 2002 p. 77 (ICS) (Witness SU).



However, the third bus had a mechanical problem and therefore did not arrive at Nyange with the first two buses.<sup>11430</sup>

4156. The Chamber notes that Witness SU did not mention Nyange in her prior statement.<sup>11431</sup> Further, Witness SU came to Arusha with a Rwandan lady with the same first name as Witness QBP, whom she testified she recognised but did not know personally. They lived together in Arusha while they waited to testify before this court, but Witness SU denied that they had discussed their testimony.<sup>11432</sup> Witness QBP also testified that she did not know Witness SU.<sup>11433</sup>

4157. Although the Chamber considers the omission of the Nyange event from Witness SU's prior statement to be significant, the Chamber does not consider the omission of this event from Witness SU's prior statement raises doubts as to the reliability of Witness SU's testimony before the court.<sup>11434</sup> The Chamber considered her testimony before the court to be detailed and reliable. Further, having regard to Witness SU's denial as to having discussed her testimony with Witness QBP while they were housed together, which was corroborated by Witness QBP, who testified that she did not know Witness SU,<sup>11435</sup> the Chamber considers the testimony of Witness SU is reliable and corroborates Witness QBP.

4158. Both accounts were also corroborated by Witness SD, who testified that on day one three ONATRACOM buses arrived at the BPO and that Tutsi refugees, including six of her children, boarded two of the buses and were taken to Nyange.<sup>11436</sup> Witness RE similarly testified that on day one, three buses arrived at the BPO to transport refugees to Nyange, although she did not board any of these buses.<sup>11437</sup> When it was put to Witness RE that her prior statement of 5 December 1996 did not mention the forced transfer of refugees to Nyange in three buses on day one,<sup>11438</sup> Witness RE explained that her written statement was only a summary and that she was able to provide more detailed testimony in person before the court.<sup>11439</sup>

4159. The Chamber is mindful that prior consistent statements cannot be used to bolster credibility, but may be used to rebut a charge of recent fabrication.<sup>11440</sup> The Chamber has reviewed the prior statement of Witness RE dated 5 December 1996<sup>11441</sup> and considers there is no omission of the nature indicated by the Defence in their cross-examination of Witness RE. The statement explicitly refers to the arrival of two buses at the BPO, that Witness RE was

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<sup>11430</sup> T. 22 October 2002 p. 68 (Witness SU).

<sup>11431</sup> T. 21 October 2002 p. 36; T. 22 October 2002 pp. 66-67 (Witness SU); Defence Exhibit 75A (Nsabimana) (20 November 1996, Statement of Witness SU); Defence Exhibit 75B (Nsabimana) (List of Omissions from the Statement of Witness SU).

<sup>11432</sup> T. 21 October 2002 pp. 56-58 (ICS) (Witness SU).

<sup>11433</sup> T. 29 October 2002 p. 58 (Witness QBP).

<sup>11434</sup> *Muhimana*, Judgement (AC), para. 152.

<sup>11435</sup> T. 29 October 2002 p. 58 (Witness QBP).

<sup>11436</sup> T. 17 March 2003 pp. 10-11 (Witness SD).

<sup>11437</sup> T. 24 February 2003 p. 14 (Witness RE).

<sup>11438</sup> T. 25 February 2003 p. 33; T. 27 February 2003 pp. 31-32 (Witness RE); Defence Exhibit 90 (Nsabimana) (List of Alleged Omissions; 5 December 1996, Statement of Witness RE).

<sup>11439</sup> T. 25 February 2003 p. 33 (Witness RE).

<sup>11440</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 147-148, 155.

<sup>11441</sup> Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

forced to board one bus, and that they were taken to Nyaruhengeri. The statement further outlines that this was the second trip with the buses, because the first trip the buses made failed after being turned back at Nyaruhengeri. Although her statement referred to Nyaruhengeri rather than Nyange, Nyange is in Nyaruhengeri *commune*.<sup>11442</sup> The Chamber considers that witnesses such as Witnesses QBQ<sup>11443</sup> and QY<sup>11444</sup> who testified about the transfer to Nyaruhengeri, rather than Nyange, nevertheless testified about the same transfer. Having regard to this outline of events, the Chamber considers that Witness RE did mention the Nyange transfer in her statement and accordingly, there is no omission in this respect.

4160. With respect to the number of buses that left the BPO, based on the following sentence in Witness RE's prior statement, "[t]he first one [trip] failed ... because the bus was send [*sic*] back at the moment it arrived at Nyaruhengeri", it was put to Witness RE that she only referred to one bus leaving on day one for Nyaruhengeri.<sup>11445</sup> Witness RE explained that this was a mistake on the part of the investigator; she clarified that during the first trip three buses went to Nyange and that during the second trip there was only one bus which was stopped at Nyaruhengeri.<sup>11446</sup> However, having reviewed the prior statement of Witness RE, the Chamber considers there is no inconsistency of the nature indicated by the Defence in their cross-examination of Witness RE. The statement reads: "It was the second trip with these busses [*sic*]. The first one [*i.e.* trip] failed ... because the bus was send [*sic*] back at the moment it arrived at Nyaruhengeri."<sup>11447</sup> A plain reading of Witness RE's statement shows that multiple buses left for Nyaruhengeri, whereas one was apparently sent back. In the Chamber's view, there is no inconsistency between Witness RE's oral testimony that three buses left the BPO, and her written statement which refers to the departure of "buses" in the plural on day one.

4161. Having reviewed Witness RE's prior statements, the Chamber rejects the suggestion that Witness RE's account of the Nyange transfer at trial was a fabrication.

4162. The testimony of Witnesses QBP, SU and SD corroborates Witness RE's testimony. The Chamber notes that Witnesses SD,<sup>11448</sup> SU<sup>11449</sup> and QBP<sup>11450</sup> testified that they did not know Witness RE, a fact confirmed by Witness RE.<sup>11451</sup> In the circumstances, the Chamber considers the testimony of Witness RE is credible.

4163. In contrast to Witnesses QBP, SD, SU and RE, Witness QBQ testified that on day one, two buses came to transport the refugees to Nyaruhengeri, and that one bus returned to

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<sup>11442</sup> T. 24 October 2002 p. 81 (Witness QBP) (refugees transported in three buses to Nyange, in Nyaruhengeri *commune*); T. 17 March 2003 p. 11 (Witness SD) (refugees taken to Nyange in Nyaruhengeri); T. 9 June 2004 p. 52 (Des Forges) (testifying about a document that granted permission for named "peasants" to be transported to the Nyange refugee camp in Nyaruhengeri *commune*); T. 9 October 2006 p. 81 (Nsabimana) (testifying that Security Council meeting decided to move refugees to refugee camp in Nyange, Nyaruhengeri *commune*).

<sup>11443</sup> T. 3 February 2004 p. 75 (Witness QBQ) (three buses went to Nyaruhengeri).

<sup>11444</sup> T. 19 March 2003 p. 61 (Witness QY) (*préfet* told refugees he was going to take them to Nyaruhengeri).

<sup>11445</sup> T. 27 February 2003 pp. 34-35 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>11446</sup> T. 25 February 2003 p. 35; T. 27 February 2003 p. 35 (Witness RE).

<sup>11447</sup> Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>11448</sup> T. 17 March 2003 p. 30 (ICS) (Witness SD).

<sup>11449</sup> T. 21 October 2002 p. 58 (ICS) (Witness SU).

<sup>11450</sup> T. 29 October 2002 p. 53 (ICS) (Witness QBP).

<sup>11451</sup> T. 24 February 2003 pp. 59-60 (ICS) (Witness RE).

transport the remaining refugees on the same day.<sup>11452</sup> The Chamber notes that Witness QBQ testified that the third bus left after survivors from the first two buses had returned to the BPO and warned her and others not to go.<sup>11453</sup> Having regard to the testimony of other Prosecution witnesses that the survivors from the first two buses returned to the BPO the following morning,<sup>11454</sup> and not the same day, day one, the Chamber finds Witness QBQ to be mistaken regarding the departure time of the third bus.

4164. Lastly, Witnesses QY and SJ both testified that on day one, only two buses arrived at the BPO to take refugees to Nyange,<sup>11455</sup> and a third bus left the following day (“day two”). Both Witnesses QY<sup>11456</sup> and SJ<sup>11457</sup> were aboard the bus that left the BPO on day two and both witnesses testified this bus never reached Nyange because it was refused passage at a roadblock and returned to the BPO.<sup>11458</sup> In contrast to her testimony, Witness QY stated in a prior statement that two buses left the BPO together on day two and were returned to the BPO.<sup>11459</sup> Witness QY clarified in testimony that only one bus left on day two and explained that the people recording her statement must have made a mistake.<sup>11460</sup> The Chamber notes that this discrepancy about whether one or two buses left on day two is not significant and does not undermine the credibility of Witness QY’s testimony about the departure of two buses on day one. The Chamber finds the evidence of these two witnesses to be mutually consistent and reliable as to this sequence of events. The Chamber also notes that the evidence of Witnesses QY and SJ about the further departure on day two of one bus is corroborated by Witnesses SD<sup>11461</sup> and RE.<sup>11462</sup>

4165. Notwithstanding that Witnesses QY and SJ testified that two buses left the BPO on day one, whereas Witnesses QBP, SD, SU and RE testified that three buses left the BPO on day one, the Chamber does not consider these testimonies to be mutually inconsistent. Having regard to the amount of time that has passed since the events in question, the Chamber considers the variance in testimony between these witnesses is not significant. The Chamber further notes that even Witness D-2-10-Y testified that he saw three buses going from EER to Nyange, one followed by the other, several moments apart.<sup>11463</sup> He also gave hearsay evidence from three girls at the BPO that they had been on the first two buses to Nyange,<sup>11464</sup> and that

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<sup>11452</sup> T. 3 February 2004 pp. 75-76 (Witness QBQ).

<sup>11453</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11454</sup> T. 28 October 2002 p. 64 (Witness QBP); T. 30 October 2002 p. 39 (Witness QBP); T. 25 March 2003 p. 52 (Witness QY); T. 24 February 2003 p. 15 (Witness RE); T. 25 February 2003 p. 32 (Witness RE); T. 26 February 2003 pp. 45-46 (ICS) (Witness RE); T. 27 February 2003 p. 24 (Witness RE); T. 17 March 2003 pp. 41, 50, 68 (Witness SD); T. 29 May 2002 p. 72 (Witness SJ); T. 4 June 2002 p. 139 (ICS) (Witness SJ).

<sup>11455</sup> T. 19 March 2003 p. 62 (Witness QY); T. 29 May 2002 pp. 65-66, 68, 72 (Witness SJ).

<sup>11456</sup> T. 25 March 2003 p. 51 (Witness QY).

<sup>11457</sup> T. 29 May 2002 pp. 80-82; T. 4 June 2002 p. 62; T. 4 June 2002 p. 149 (ICS); T. 5 June 2002 p. 52 (Witness SJ).

<sup>11458</sup> T. 19 March 2003 pp. 62-63 (Witness QY); T. 29 May 2002 pp. 80-81; T. 5 June 2002 p. 79 (Witness SJ).

<sup>11459</sup> T. 25 March 2003 p. 51 (Witness QY); Defence Exhibit 112 (Nyiramasuhuko) (15 January 1997, Statement of Witness QY) pp. 4-5.

<sup>11460</sup> T. 25 March 2003 p. 52 (Witness QY).

<sup>11461</sup> T. 17 March 2003 pp. 11, 67, 70 (Witness SD).

<sup>11462</sup> T. 24 February 2003 pp. 15, 17; T. 25 February 2003 p. 32; T. 27 February 2003 p. 25 (Witness RE).

<sup>11463</sup> T. 29 April 2008 pp. 67-68 (Witness D-2-10-Y).

<sup>11464</sup> T. 1 May 2008 pp. 6-8, 16; T. 5 May 2008 p. 37 (Witness D-2-10-Y).

there was a third bus that “did not go where the killers were”.<sup>11465</sup> Although the Chamber considers his direct evidence about this sighting of the three buses was confused and often lacking in detail, the hearsay evidence he presented, as relayed to him by the three girls at the BPO, nevertheless corroborates the Prosecution evidence as to the number of buses that went to Nyange.

4166. Nsabimana is the only witness to testify that there was only one bus used to transport refugees to Nyange.<sup>11466</sup> He admitted to arranging for a single bus to transport refugees to Nyange,<sup>11467</sup> but stated that the bus never reached its destination because it was refused passage at a roadblock.<sup>11468</sup> However, in Nsabimana’s written account, *The Truth About the Massacres in Butare*, he refers to multiple buses when discussing the transfer of refugees from the BPO to Nyaruhengeri: “the *Interahamwe* at the roadblocks forced the buses that were transporting the refugees to turn back; they only allowed one pickup to reach its destination”.<sup>11469</sup> Due to these inconsistencies, the Chamber finds that Nsabimana’s testimony that he only arranged for one bus to take refugees to Nyange not credible.

4167. Based on the foregoing evidence, the Chamber finds it established beyond a reasonable doubt that Tutsi refugees at the BPO boarded at least two ONATRACOM buses on day one that went to Nyange. In addition, the Chamber finds that a third bus departed on day two, but did not reach Nyange and returned to the BPO with its passengers on board.

#### 3.6.40.4.3 Ethnicity of Refugees Allegedly Transferred to Nyange

4168. As to the ethnicity of the refugees, Witness SD testified that Nsabimana told the Tutsi refugees to board two of the buses.<sup>11470</sup> Witness SJ similarly testified that while at the BPO she witnessed Tutsi refugees being forced to board two green ONATRACOM buses in front of the BPO<sup>11471</sup> and that there were approximately 1,500 Tutsi refugees at the BPO at that time.<sup>11472</sup>

4169. Considering the prevailing situation at the BPO at the time, the Chamber’s prior finding that hundreds of Tutsi refugees were abducted from the BPO while they sought refuge there (), as well as the Chamber’s prior finding that those who took refuge at the EER were predominantly Tutsis (), and returned to the BPO around 31 May 1994 (), the Chamber finds it proven beyond a reasonable doubt that the refugees who were thereafter allegedly transferred from the BPO to Nyange, were also Tutsis.

#### 3.6.40.4.4 Forced Boarding of the Buses

4170. Several Prosecution witnesses testified that they were beaten by policemen or *gendarmes* and forced to board the buses to Nyange. While Witness QBP, a survivor of the

<sup>11465</sup> T. 1 May 2008 p. 6 (Witness D-2-10-Y).

<sup>11466</sup> T. 10 October 2006 p. 9; T. 21 November 2006 pp. 25-26 (Nsabimana).

<sup>11467</sup> T. 9 October 2006 pp. 82-83 (Nsabimana).

<sup>11468</sup> T. 10 October 2006 p. 7; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11469</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) pp. K0016630-K0016631.

<sup>11470</sup> T. 17 March 2003 pp. 10-11 (Witness SD).

<sup>11471</sup> T. 29 May 2002 pp. 65-66, 68 (Witness SJ).

<sup>11472</sup> T. 28 May 2002 p. 113; T. 30 May 2002 pp. 151-152; T. 4 June 2002 pp. 80-84; T. 5 June 2002 p. 35 (Witness SJ).

transfer on the first day, did not make any mention of being beaten or forced to board the buses, Witness SJ, a Tutsi woman at the BPO testifying about the transfer of day one, testified that she witnessed Tutsi refugees being forced to board two green ONATRACOM buses in front of the BPO,<sup>11473</sup> and that the refugees were beaten and prodded with sticks to board the buses.<sup>11474</sup>

4171. As to the transfer on day two, Witness QBQ testified that those who boarded the bus on the third trip were forced to do so.<sup>11475</sup> However Witness QY testified that the refugees refused to board the third bus and expressed their concerns about the killings at Nyange to the *préfet*, who said he would check.<sup>11476</sup> Witness QY later testified that the refugees felt reassured by the *préfet* once he returned and they boarded the bus without being forced.<sup>11477</sup> Witness QY's account was closely corroborated by Witness SD.<sup>11478</sup> Witness SD nevertheless testified that those who refused to board the bus, even after being assuaged by Nsabimana's words, were beaten by a *gendarme*.<sup>11479</sup>

4172. Witnesses RE testified that on day two, she and the remaining refugees were forced to board the buses to Nyaruhengeri,<sup>11480</sup> and that when the refugees initially refused to board a *gendarme* stuck them and forced them aboard.<sup>11481</sup> Witness RE understood that they were being transported so that the *Interahamwe* could execute them.<sup>11482</sup> Witness SJ corroborated this when she testified that on day two, police and the *Interahamwe* forced her and the remaining refugees to board the bus destined for Nyange by hitting them with rifle butts and sticks.<sup>11483</sup> The bus was full of refugees seated on top of each other.<sup>11484</sup>

4173. Witnesses SD and RE were the only witnesses to identify their assailants as *gendarmes*. The Chamber recalls Nsabimana's testimony that he accepted Kanyabashi's proposal to provide two *commune* police officers to accompany the refugees on the third bus.<sup>11485</sup> Although the Chamber recalls Nsabimana testified about the bus that was stopped at the roadblock and returned to the BPO safely with its passengers, the Chamber recalls its finding that Nsabimana was not truthful about the extent of his involvement in organising the transfer, and nevertheless accepts his testimony as proof that *commune* policemen were present during the boarding of the buses and accompanied the refugees to Nyange. This is consistent with the

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<sup>11473</sup> T. 29 May 2002 pp. 65-66, 68 (Witness SJ).

<sup>11474</sup> T. 29 May 2002 p. 68 (Witness SJ).

<sup>11475</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11476</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11477</sup> T. 25 March 2003 p. 61 (Witness QY).

<sup>11478</sup> T. 17 March 2003 p. 50 (refugees initially refused to board the bus [on day two], saying those who had gone before had died); T. 17 March 2003 p. 67 (after which Nsabimana said he would check into it); T. 17 March 2003 p. 11 (Witness SD) (Nsabimana returned to tell refugees that the child survivor's warning were baseless, such that Witness SD boarded this third bus to Nyange).

<sup>11479</sup> T. 18 March 2003 p. 43 (Witness SD).

<sup>11480</sup> T. 24 February 2003 p. 15; T. 27 February 2003 p. 25 (Witness RE).

<sup>11481</sup> T. 25 February 2003 p. 33; T. 26 February 2003 p. 46 (ICS) (Witness RE).

<sup>11482</sup> T. 24 February 2003 p. 15 (Witness RE).

<sup>11483</sup> T. 29 May 2002 pp. 80-82; T. 4 June 2002 p. 62; T. 4 June 2002 p. 149 (ICS) (Witness SJ).

<sup>11484</sup> T. 5 June 2002 p. 54 (Witness SJ).

<sup>11485</sup> T. 9 October 2006 p. 84; T. 10 October 2006 p. 5 (Nsabimana).

evidence of Witnesses QBQ,<sup>11486</sup> SD,<sup>11487</sup> and SJ<sup>11488</sup> that policemen accompanied the refugees aboard the bus to Nyange.

4174. Although Witnesses SD and RE referred to *gendarmes*, rather than policemen, the Chamber considers that their erroneous identification of their assailants as *gendarmes* is attributable to the stressful situation in which they found themselves at the time, as well as the passage of time since the events in question. Notwithstanding this misidentification, the Chamber considers the foregoing testimony to be corroborated and mutually consistent.

4175. As such, the Chamber finds it proven beyond a reasonable doubt that the refugees were forced to board the buses by *commune* policemen who beat the refugees during boarding and accompanied them on the bus to Nyange.

#### 3.6.40.4.5 Tutsi Refugees Attacked and Killed at Nyange on Day One

##### 3.6.40.4.5.1 Witness QBP's Presence at Nyange

4176. Witness QBP, who boarded the second bus on day one, is the only witness whose bus reached Nyange.<sup>11489</sup> Witness QBP testified that the refugees who boarded the first two buses were killed,<sup>11490</sup> that less than 10 people survived the Nyange trip,<sup>11491</sup> and that a group of survivors returned to the BPO together.<sup>11492</sup> Witness QBP's account of the survivors was corroborated by the hearsay evidence of Witnesses QBQ, SU, SD, QY, RE and SJ regarding their encounters with returning survivors of the first two buses.

4177. Witness QBQ corroborates Witness QBP. Witness QBQ testified that some people from the first and second buses had escaped from Nyange and returned to the BPO on foot to tell the remaining refugees not to go.<sup>11493</sup> Although Witness QBQ did not specify how many survivors returned, her testimony makes clear there were several survivors. While several Prosecution witnesses, namely Witnesses SD,<sup>11494</sup> QY,<sup>11495</sup> and RE<sup>11496</sup> testified about a single young male survivor who returned from Nyange to warn them not to board later buses heading to Nyange, Witness SJ testified that four survivors, three women and one man, returned to the BPO on day two between 10.00 and 11.00 a.m.,<sup>11497</sup> and that these four were the only ones to

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<sup>11486</sup> T. 4 February 2004 p. 16 (policemen accompanied them on the bus); T. 3 February 2004 pp. 23, 77 (Witness QBQ) (police officer drove the bus and drove them back to the BPO);

<sup>11487</sup> T. 17 March 2003 p. 69 (Witness SD) (at Kibilizi roadblock, policeman showed the documents to those who manned the roadblock).

<sup>11488</sup> T. 29 May 2002 p. 91 (Witness SJ) (three policemen aboard her bus to Nyange).

<sup>11489</sup> T. 28 October 2002 p. 55; T. 30 October 2002 p. 44 (Witness QBP).

<sup>11490</sup> T. 28 October 2002 pp. 75-76, 79 (Witness QBP).

<sup>11491</sup> T. 24 October 2002 p. 82; T. 28 October 2002 p. 58 (Witness QBP).

<sup>11492</sup> T. 28 October 2002 pp. 75-76, 79 (Witness QBP).

<sup>11493</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11494</sup> T. 17 March 2003 pp. 11, 41, 50, 68 (Witness SD).

<sup>11495</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 52 (Witness QY).

<sup>11496</sup> T. 24 February 2003 p. 15; T. 25 February 2003 p. 32; T. 26 February 2003 pp. 45-46 (ICS); T. 27 February 2003 p. 24 (Witness RE).

<sup>11497</sup> T. 29 May 2002 p. 72; T. 29 May 2002 pp. 134-135 (ICS); T. 4 June 2002 p. 139 (ICS) (Witness SJ).

survive.<sup>11498</sup> Witness SU also testified about the return to the BPO of at least three survivors, including 2 young men and a physically disabled woman.<sup>11499</sup>

4178. Witness SU also testified about being warned not to proceed to Nyange by a child.<sup>11500</sup> However, her account shows that the bus was already *en route* to Nyange when the child survivor signalled for their bus to stop and warned them not to continue to Nyange.<sup>11501</sup> In contrast, Witnesses SD, QY and RE testified they were warned by a child survivor before their bus left the BPO.<sup>11502</sup> Considering, however, that Witness SU was unsure if the child was a survivor of the first group of transferred refugees or whether the child ran to their bus from a nearby hillside,<sup>11503</sup> the Chamber accepts it is possible that Witness SU was referring to a different child. For that reason, the Chamber does not find Witness SU's testimony either contradicts or undermines the testimony of Witnesses SD, QY or RE as to this event.

4179. The Chamber notes that Witness RE did not mention the child survivor in her prior written statement.<sup>11504</sup> The Chamber considers that despite the omission of this event from her written statement, Witness RE's testimony is nevertheless corroborated by Witnesses SD and QY, and therefore has other indicia of credibility.<sup>11505</sup> Considering both Witnesses SD<sup>11506</sup> and QY<sup>11507</sup> testified that they did not know Witness RE, the Chamber accepts Witness RE's testimony as credible.

4180. As for the number of returning survivors, the Chamber considers the evidence is consistent and corroborated insofar as Witnesses SD, QY and RE testify about the same male survivor,<sup>11508</sup> while Witness SJ's description of one woman being half naked,<sup>11509</sup> corresponds both with Witness QBP's description of herself when she returned to the BPO<sup>11510</sup> and corroborates Witness QBP's testimony that refugees were stripped of their clothes and items after reaching Nyange.<sup>11511</sup> Insofar as the testimony concerning the number of survivors is varied, the Chamber considers that this variance can be attributed to the location of the various witnesses throughout the BPO on the morning the various survivors returned. In any event, the Chamber does not consider the differences in testimony as to the number of survivors who returned to the BPO to be significant.

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<sup>11498</sup> T. 29 May 2002 p. 80 (Witness SJ).

<sup>11499</sup> T. 22 October 2002 p. 69; T. 15 October 2002 p. 16 (ICS); T. 22 October 2002 pp. 77-78 (ICS) (Witness SU).

<sup>11500</sup> T. 22 October 2002 p. 69 (Witness SU).

<sup>11501</sup> T. 14 October 2002 p. 88; T. 22 October 2002 p. 69; T. 22 October 2002 p. 80 (ICS) (Witness SU).

<sup>11502</sup> T. 17 March 2003 pp. 11, 41, 50, 68 (Witness SD); T. 19 March 2003 p. 62 (Witness QY); T. 25 March 2003 p. 52 (Witness QY); T. 24 February 2003 p. 15 (Witness RE); T. 25 February 2003 p. 32 (Witness RE); T. 26 February 2003 pp. 45-46 (ICS) (Witness RE); T. 27 February 2003 p. 24 (Witness RE).

<sup>11503</sup> T. 22 October 2002 p. 80 (ICS) (Witness SU).

<sup>11504</sup> T. 25 February 2003 p. 33; T. 27 February 2003 pp. 31-32 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

<sup>11505</sup> See *Muhimana*, Judgement (AC), para. 152.

<sup>11506</sup> T. 17 March 2003 p. 30 (ICS) (Witness SD).

<sup>11507</sup> T. 20 March 2003 p. 22 (ICS) (Witness QY).

<sup>11508</sup> T. 15 October 2002 p. 16 (ICS) (Witness SU).

<sup>11509</sup> T. 29 May 2002 pp. 78-79 (Witness SJ).

<sup>11510</sup> T. 28 October 2002 pp. 56, 59 (Witness QBP).

<sup>11511</sup> T. 28 October 2002 pp. 56-57; T. 30 October 2002 pp. 43-44 (Witness QBP).

4181. Accordingly, Witness QBP's account of survivors escaping Nyange and returning to the BPO was corroborated by other witnesses, such that the Chamber accepts that Witness QBP both reached and escaped from Nyange.

4182. The Chamber recalls that Ntahobali Defence Witness WUNHF testified that he saw Witness QBP in her home *secteur* throughout May and June 1994,<sup>11512</sup> as did Witness WUNJN.<sup>11513</sup> The Chamber recalls its finding that the testimony of Witnesses WUNHF and WUNJN was not plausible and did not undermine the credibility of Witness QBP's testimony as to her presence at the BPO (), and similarly finds that this testimony does not undermine the credibility of Witness QBP's testimony as to the Nyange transfer or create a reasonable doubt as to Witness QBP's presence at Nyange.

#### 3.6.40.4.5.2 Events at Nyange

4183. Witness QBP is the sole Prosecution witness to testify first-hand about events at Nyange. Witness QBP testified that upon arriving at Nyange in the afternoon, the bus drivers and *Interahamwe* threw the passengers out of the bus like "dirt".<sup>11514</sup> She testified that there seemed to be a plan because there was an armed *commune* policeman on the spot with nothing to guard and that immediately after they arrived, people came from everywhere shouting, "[p]ower! Power!" and proceeded to strip the refugees of their clothes and belongings.<sup>11515</sup> Witness QBP testified that at nightfall the *Interahamwe* started killing and raping the refugees, and she was also raped.<sup>11516</sup>

4184. With respect to rapes at Nyange, Witness QBP testified that the *Interahamwe* started killing and raping the refugees at nightfall.<sup>11517</sup> In cross-examination, Witness QBP was asked about her prior statement where Witness QBP said that the *Interahamwe* started raping women without wasting much time after they arrived at Nyange.<sup>11518</sup> The Chamber considers that Witness QBP's testimony that attacks and rapes at Nyange commenced at nightfall is consistent with her testimony that they arrived at Nyange "at the end of the afternoon".<sup>11519</sup> This further corresponds with the testimony of Witness SD who said that the buses arrived at the BPO at 6.00 p.m.,<sup>11520</sup> as well as the testimony of Prosecution Witnesses QY and RE that they left the BPO and arrived at Nyange in the early evening.<sup>11521</sup> Therefore, the Chamber finds Witness QBP's testimony is credible. Nonetheless, recalling the Chamber's previous finding that rapes at Nyange falls outside the scope of Paragraph 6.38 of the Nsabimana and Nteziryayo Indictment, and Paragraph 6.41 of the Kanyabashi Indictment which concern the

<sup>11512</sup> T. 26 January 2006 pp. 19-20 (ICS) (Witness WUNHF).

<sup>11513</sup> T. 6 February 2006 pp. 24-25, 27 (ICS) (Witness WUNJN).

<sup>11514</sup> T. 30 October 2002 pp. 43-44 (Witness QBP).

<sup>11515</sup> T. 28 October 2002 pp. 56-57; T. 30 October 2002 pp. 43-44 (Witness QBP).

<sup>11516</sup> T. 24 October 2002 p. 82; T. 28 October 2002 pp. 56-58; T. 30 October 2002 p. 44; T. 29 October 2002 p. 88 (ICS) (Witness QBP).

<sup>11517</sup> T. 24 October 2002 p. 82; T. 28 October 2002 pp. 56, 58; T. 30 October 2002 p. 44 (Witness QBP).

<sup>11518</sup> T. 28 October 2002 p. 57 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11519</sup> T. 30 October 2002 p. 44 (Witness QBP).

<sup>11520</sup> T. 17 March 2003 p. 65 (Witness SD).

<sup>11521</sup> T. 19 March 2003 p. 62 (Witness QY) (two buses came to the BPO to take the refugees to Nyaruhengeri in the evening); T. 26 February 2003 p. 56 (Witness RE) (testifying that Nsabimana said the buses going to Nyange left in the evening).



allegation of the refugees' transfer to Nyange, the Chamber will not make any finding in this respect.

4185. Witness QBP was also questioned as to her prior written statement, in which she stated she was taken back to Butare by the *Interahamwe* who had raped her.<sup>11522</sup> Witness QBP explained that the *Interahamwe* who had raped her accompanied her from the hill to the road and then showed her a young refugee man who was supposed to help her with carrying one of her children.<sup>11523</sup> The Chamber finds this explanation credible.

4186. In addition to Witness QBP's eyewitness testimony, Witness SJ provided hearsay evidence as to the events at Nyange. Survivors told Witness SJ that the refugees on board the first buses has been "jammed into a classroom" at Nyange which was guarded by the *Interahamwe*.<sup>11524</sup> The survivors told her that during the night people broke into the classroom and attacked the refugees with small hoes, clubs, machetes and stones. The survivors told her that the attackers killed the refugees in the classroom as well as those who tried to escape.<sup>11525</sup>

4187. The Chamber notes that Witness QBP spent the night at Nyange<sup>11526</sup> and did not testify about having been locked in a classroom. In fact, Witness QBP testified that the refugee camp at Nyange was in reality an uninhabited hill with huts and torn mats<sup>11527</sup> that had no buildings, such as in a school compound.<sup>11528</sup> The Chamber recalls Defence Exhibit 447E which Nsabimana Defence Witness Ramadhan testified showed places where two houses had been.<sup>11529</sup> The Chamber notes that the photos were taken 10 years after the time when the camp existed, and thus does not consider that Defence Exhibit 447E offers conclusive evidence that structures existed at Nyange camp in 1994. In any event, despite the Prosecution case that the refugees were destined for Nyange refugee camp, the Chamber notes Witness QBP's testimony that Nyange refugee camp was "near the location where they were".<sup>11530</sup> On the basis of Witness QBP's testimony, the Chamber considers that while the buses went to Nyange, they did not bring the refugees to the Nyange refugee camp itself.

4188. Although Witness QBP made no mention of being locked in a classroom or school building, the Chamber notes several witnesses testified about a school at the Nyange roadblock. Witness SJ testified that when the bus was stopped at the Nyange roadblock, she observed a long school building in the forest and thought they were the classrooms that appeared in Prosecution Exhibit 25C and 25D.<sup>11531</sup> Witness SJ did not see any dead bodies at or near the Nyange school, from where they were in the bus at the Nyange roadblock and

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<sup>11522</sup> T. 28 October 2002 p. 59; T. 30 October 2002 p. 55 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11523</sup> T. 28 October 2002 p. 60; T. 30 October 2002 p. 55 (Witness QBP).

<sup>11524</sup> T. 29 May 2002 pp. 78-79 (Witness SJ).

<sup>11525</sup> T. 29 May 2002 p. 79 (Witness SJ).

<sup>11526</sup> T. 28 October 2002 p. 64; T. 30 October 2002 p. 39 (Witness QBP) (Witness QBP left Nyange in the morning the following day).

<sup>11527</sup> T. 29 October 2002 pp. 90-91 (ICS); T. 30 October 2002 p. 36 (Witness QBP).

<sup>11528</sup> T. 29 October 2002 p. 91 (ICS) (Witness QBP).

<sup>11529</sup> T. 28 June 2006 pp. 39, 43 (Ramadhan).

<sup>11530</sup> T. 29 October 2002 pp. 90-91 (ICS); T. 30 October 2002 p. 36 (Witness QBP).

<sup>11531</sup> T. 29 May 2002 pp. 100-101; T. 30 May 2002 pp. 128-129; T. 5 June 2002 p. 74 (Witness SJ).

explained that the roadblock was far away from the school building and was obscured by trees.<sup>11532</sup> The Chamber considers this explanation plausible.

4189. Notwithstanding Witness SJ wrongly identified the EER buildings in Prosecution Exhibit 25C and 25D as the school she testified she saw while at the Nyange roadblock,<sup>11533</sup> the Chamber accepts Witness SJ's testimony as to seeing a school from that roadblock. The Chamber notes Witness SU similarly testified that she saw a school while the third bus was stopped at a roadblock.<sup>11534</sup> Witness SD also testified that at the Kibilizi roadblock the bus was stopped opposite a school.<sup>11535</sup> Although Witness SD referred to the Kibilizi roadblock while other witnesses identified it as the Nyange roadblock, given the consistency between the accounts of Witness SD and other Prosecution witnesses as to being stopped at the roadblock and the words of the *Interahamwe*, the Chamber considers Witness SD was testifying about events at the same roadblock.

4190. In the circumstances, having regard to the foregoing corroborated testimony, the Chamber accepts that there was a school at or near the Nyange roadblock, and, on the basis of Witness SJ's hearsay testimony, finds that killings occurred at the school. Further, the Chamber finds that Witness QBP's eyewitness account of the killings at Nyange was strongly corroborated by the hearsay testimony of Witnesses SD, QY and RE concerning the child survivor who returned to the BPO.

4191. Lastly, several witnesses, namely Witnesses RE, SD, QBQ and QY, who boarded the third bus on day two also testified about comments made by the *Interahamwe* at the last roadblock to the effect that they refused to kill because "all the graves were full",<sup>11536</sup> enough blood had been shed in their area,<sup>11537</sup> they were tired of killing and had had enough of the decaying body stench,<sup>11538</sup> and the people who had arrived the day before had all been killed and that they were tired of killing.<sup>11539</sup> Although this evidence is hearsay, the Chamber considers these comments corroborate the testimony of Witnesses QBY and SJ that the refugees who arrived at Nyange aboard the buses on day one were killed.

4192. In light of the foregoing evidence, the Chamber finds it established beyond a reasonable doubt that the refugees who left the BPO by bus on day one were attacked and raped by *Interahamwe* at Nyange and all but a handful of those refugees were killed.

#### 3.6.40.4.6 Number of Refugees Killed at Nyange

4193. Witness QY testified that she did not manage to board either of the two buses that came to take the refugees to Nyaruhengeri on day one as they were full.<sup>11540</sup> This was confirmed by Witness SJ, who testified that these two buses were stacked with people, some of whom sat on

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<sup>11532</sup> T. 5 June 2002 pp. 75-76 (Witness SJ).

<sup>11533</sup> T. 30 May 2002 pp. 128-130 (Witness SJ).

<sup>11534</sup> T. 14 October 2002 p. 87 (Witness SU).

<sup>11535</sup> T. 17 March 2003 pp. 69-70 (Witness SD).

<sup>11536</sup> T. 24 February 2003 p. 15; T. 25 February 2003 pp. 37-38 (Witness RE).

<sup>11537</sup> T. 17 March 2003 p. 11; T. 18 March 2003 p. 13 (Witness SD).

<sup>11538</sup> T. 3 February 2004 p. 23 (Witness QBQ).

<sup>11539</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11540</sup> T. 19 March 2003 p. 62 (Witness QY).

top of each other<sup>11541</sup> and Witness D-2-10-Y, who testified that although he did not have an opportunity to take a good look at the passing buses, he recalled that some of the passengers were standing.<sup>11542</sup>

4194. Nsabimana estimated there were 200 people on the bus.<sup>11543</sup> Although the Chamber recalls Nsabimana testified about the bus that was stopped at the roadblock and returned to the BPO safely with its passengers, the Chamber nevertheless accepts this testimony as proof of the capacity of a bus during these times. Nsabimana testified that he based his estimate on the number of people who were in the bus, not by the list that was prepared.<sup>11544</sup> Nsabimana's own testimony was that the people were not sitting comfortably; they were all packed in tightly,<sup>11545</sup> and it was hard to fit about 200 people on the bus.<sup>11546</sup> Nsabimana accepted that a bus may only have between 60 and 80 seats, but testified that the normal concept of space did not apply in difficult times.<sup>11547</sup>

4195. The Chamber recalls its prior finding that the refugees who left on the first two buses on day one were killed, and only a handful survived. Thus, on the basis of Nsabimana's own estimate, the Chamber considers it established that approximately 400 refugees were transferred to and killed at Nyange. The Chamber considers this to be consistent with the hearsay testimony of the witnesses that the *Interahamwe* refused to continue with the killings because the graves were full and because they were tired of killing.

#### 3.6.40.4.7 Nsabimana's Involvement

4196. Nsabimana admitted he arranged for the attempted transfer of one bus full of refugees to the Nyange refugee camp.<sup>11548</sup> He testified that the purpose of this transfer was to provide the refugees with better facilities than were available at the BPO.<sup>11549</sup> This is consistent with the Prosecution evidence as to what Nsabimana told the refugees before instructing them to board the buses: Witness QY testified that Nsabimana announced that there would be tents to accommodate them there and that it would be peaceful,<sup>11550</sup> Witness QBP testified that the *préfet* told all the refugees to board the buses and that they were going to provide the refugees with assistance,<sup>11551</sup> Witness QBQ also stated that Nsabimana told the refugees to move on to Nyaruhengeri where they could stay, receive assistance and remain alive.<sup>11552</sup> Therefore, evidence exists that Nsabimana informed the refugees that the purpose of the transfer was to assist them.

4197. Yet other evidence undermines the veracity of Nsabimana's claim that the transfer was designed to better accommodate the refugees. First, Nsabimana did not know whether Nyange

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<sup>11541</sup> T. 29 May 2002 p. 69; T. 5 June 2002 p. 54 (Witness SJ).

<sup>11542</sup> T. 1 May 2008 pp. 5-6 (Witness D-2-10-Y).

<sup>11543</sup> T. 10 October 2006 pp. 4-5, 5-6; T. 21 November 2006 p. 25; T. 28 November 2006 pp. 28-29 (Nsabimana).

<sup>11544</sup> T. 10 October 2006 pp. 4-5 (Nsabimana).

<sup>11545</sup> T. 10 October 2006 p. 6; T. 21 November 2006 p. 25 (Nsabimana).

<sup>11546</sup> T. 9 October 2006 p. 84 (Nsabimana).

<sup>11547</sup> T. 28 November 2006 p. 29 (Nsabimana).

<sup>11548</sup> T. 9 October 2006 pp. 82-83 (Nsabimana).

<sup>11549</sup> T. 9 October 2006 pp. 81-82 (Witness QBP).

<sup>11550</sup> T. 19 March 2003 p. 61 (Witness QY).

<sup>11551</sup> T. 30 October 2002 p. 35 (Witness QBP).

<sup>11552</sup> T. 3 February 2004 p. 22; T. 4 February 2004 pp. 14-15 (Witness QBQ).

camp had tents and water before he instructed the refugees to board the buses, nor was the matter even raised at the Security Council meeting.<sup>11553</sup> According to Witness QBP, Nyange was not a camp *per se*; rather, it was an uninhabited hill with huts and torn mats<sup>11554</sup> and it was neither well-prepared nor properly constructed.<sup>11555</sup>

4198. Second, Nsabimana admitted to forcing, with difficulty, 200 people onto one bus.<sup>11556</sup> In their efforts to fill the bus, he oversaw an attempt to put the refugees into the luggage compartment,<sup>11557</sup> rather than making a second trip to the BPO which he claimed was not feasible without providing any reason as to why.<sup>11558</sup> The Chamber does not consider that the manner in which the transfer was carried out evidences strong concern for the amelioration of the refugees' conditions or treatment.

4199. Further, several Prosecution witnesses testified that they were physically forced on board. Although Witness QY testified that the refugees felt reassured enough by the *préfet's* words to board the bus without being forced,<sup>11559</sup> Kanyabashi subsequently brought soldiers and policemen who forced them to board.<sup>11560</sup> Witness RE testified that a *gendarme* struck them and forced them aboard,<sup>11561</sup> as did Witness QBQ who testified that those who boarded the third bus were forced to do so.<sup>11562</sup> Based on the corroborated testimony of these witnesses as to the treatment of the refugees, the Chamber does not find it credible that Nsabimana intended to transfer the refugees to Nyange to ameliorate their accommodation and well-being.

4200. Nsabimana's credibility is further undermined by the fact that he denied sending more than one bus to Nyange, in contrast not only to Prosecution evidence, but also the testimony of Defence Witness D-2-10-Y.<sup>11563</sup> The Chamber recalls it concluded beyond a reasonable doubt that Nsabimana arranged for at least two buses to transfer the refugees to Nyange. As such, the Chamber notes that Nsabimana was not forthcoming about the extent of his involvement in the transfer.

4201. As to whether Nsabimana ordered the killings, Witness QBQ testified that at the roadblock the bus driver told the *Interahamwe*, "allow me to execute the orders of the *préfet*".<sup>11564</sup> Witness RE testified that the *Interahamwe* who refused to let them pass the roadblock told the driver that the refugees should be returned to the BPO and killed by the *préfet* himself.<sup>11565</sup> While the Chamber considers the omission of the *Interahamwe's* words from Witness RE's prior written statement of December 1996<sup>11566</sup> raises a question as to the

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<sup>11553</sup> T. 9 October 2006 p. 81 (Nsabimana).

<sup>11554</sup> T. 29 October 2002 pp. 90-91 (ICS); T. 30 October 2002 p. 36 (Witness QBP).

<sup>11555</sup> T. 29 October 2002 p. 91 (ICS) (Witness QBP).

<sup>11556</sup> T. 9 October 2006 p. 84 (Nsabimana).

<sup>11557</sup> T. 9 October 2006 p. 84; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11558</sup> T. 28 November 2006 pp. 29-30 (Nsabimana).

<sup>11559</sup> T. 25 March 2003 p. 61 (Witness QY).

<sup>11560</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11561</sup> T. 25 February 2003 p. 33; T. 26 February 2003 p. 46 (ICS) (Witness RE).

<sup>11562</sup> T. 3 February 2004 pp. 70, 78 (Witness QBQ).

<sup>11563</sup> T. 29 April 2008 pp. 67-68 (Witness D-2-10-Y).

<sup>11564</sup> T. 3 February 2004 pp. 23, 77 (Witness QBQ).

<sup>11565</sup> T. 24 February 2003 p. 15; T. 25 February 2003 pp. 37-38 (Witness RE).

<sup>11566</sup> T. 25 February 2003 pp. 38-39; T. 27 February 2003 p. 32 (Witness RE); Defence Exhibit 89 (Nsabimana) (5 December 1996, Statement of Witness RE).

credibility of Witness RE's evidence on this point, Witness RE's account is nevertheless corroborated by Witnesses SD and SJ.

4202. Witness SD testified that the *Interahamwe* manning the roadblock said that “[i]f those people were unable to kill these people ... we are going to kill them here and put the bodies back into the bus so that the person who sent them can go and bury them himself”.<sup>11567</sup> In the Chamber's view, both Witness SD's and Witness RE's testimony as to the *Interahamwe*'s words indicate that refugees had been expressly sent to Nyange by the *préfet* to be killed by the *Interahamwe* or soldiers there.

4203. Witness SJ testified that the *Interahamwe* said that Pauline had her own *Interahamwe* and soldiers, and that they should kill them and bury the refugees themselves.<sup>11568</sup> While the testimony of Witness SJ implicates Nyiramasuhuko, rather than Nsabimana, the Chamber considers it nevertheless corroborates the testimony of Witnesses RE and SD insofar as it is clear there was a plan and orders to send the refugees to Nyange to be killed.

4204. Nsabimana denied the evidence that the soldiers at the Mukoni roadblock sent the refugees' bus back to the *préfecture* so that the authorities could “do their own work”.<sup>11569</sup> First, the Chamber notes that the evidence of the Prosecution witnesses shows that their bus made it past the Mukoni roadblock<sup>11570</sup> and was actually turned back at a roadblock between Kibilizi and Nyange *secteurs* in Nyaruhengeri *commune*.<sup>11571</sup> In any event, the Chamber notes there is no evidence that Nsabimana was at the roadblock where the bus was refused passage or was otherwise in a position to have heard whether or not these comments were said. Indeed, Nsabimana himself testified he was not told why the bus was returned.<sup>11572</sup> As such, the Chamber does not find Nsabimana credible on this point.

4205. The Chamber therefore, accepts the testimony of Witnesses RE, QBQ and SD and finds that, despite the *laissez-passer*, the *Interahamwe* refused to let the bus through a roadblock between Kibilizi and Nyange *secteurs* in order to kill the refugees because they did not want to bury any more dead bodies.

4206. However, the Prosecution has failed to adduce sufficient evidence to establish beyond a reasonable doubt that Nsabimana ordered the killings or colluded with the *Interahamwe* to kill Tutsis brought to Nyange from the BPO. Witness QBQ provides evidence of Nsabimana's orders,<sup>11573</sup> but the orders in question could equally refer to Nsabimana's order to transfer the refugees to Nyange, as the *laissez-passer* required. Further, the Chamber considers the evidence of Witnesses RE and SD as to the *Interahamwes*' words an insufficient basis upon which to ground a finding beyond a reasonable doubt. The Chamber is thus unable to conclude

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<sup>11567</sup> T. 17 March 2003 p. 11; T. 18 March 2003 p. 14 (Witness SD).

<sup>11568</sup> T. 29 May 2002 p. 96; T. 5 June 2002 p. 85 (Witness SJ).

<sup>11569</sup> T. 10 October 2006 p. 8 (Nsabimana).

<sup>11570</sup> T. 25 March 2003 p. 53 (Witness QY); T. 17 March 2003 pp. 69-70 (Witness SD).

<sup>11571</sup> T. 3 February 2004 p. 23 (Witness QBQ); T. 19 March 2003 p. 62 (Witness QY); T. 25 March 2003 pp. 52-53 (Witness QY); T. 24 February 2003 p. 17 (Witness RE); T. 17 March 2003 p. 69 (Witness SD); T. 4 June 2002 p. 128 (Witness SJ).

<sup>11572</sup> T. 10 October 2006 pp. 7-8 (Nsabimana).

<sup>11573</sup> T. 3 February 2004 pp. 23, 77 (Witness QBQ) (bus driver told *Interahamwe*, “allow me to execute the orders of the *préfet*”).

beyond a reasonable doubt that Nsabimana gave an order to kill the refugees on board the buses.

#### 3.6.40.4.8 Kanyabashi's Involvement

4207. Three witnesses gave evidence about Kanyabashi's involvement in the transfer of refugees from the BPO to Nyange: Nsabimana, Witness QBP and Witness QY.

4208. Nsabimana testified that he accepted Kanyabashi's proposal to provide two armed *commune* policemen to accompany the refugees onboard the third bus.<sup>11574</sup> Nsabimana described the difficulty that "they" had in fitting 200 refugees on board one bus.<sup>11575</sup> The Chamber understood this to mean that the *commune* police officers took an active role in the boarding process. This evidence is corroborated by Witness QY who testified that Kanyabashi brought soldiers and policemen who forced the refugees on board the bus.<sup>11576</sup>

4209. Nsabimana testified that Kanyabashi was only present when the bus arrived and not when the refugees actually boarded the bus.<sup>11577</sup> Witness QBP testified that Kanyabashi was present while the refugees boarded.<sup>11578</sup> However, in the Chamber's view, Witness QBP's credibility on this point was impeached during cross-examination. Witness QBP did not mention Kanyabashi's presence in relation to the Nyange events in her prior written statement.<sup>11579</sup> Witness QBP's testimony also suffered from internal inconsistencies as to whether Kanyabashi was involved in bringing the buses to the BPO. She first testified that the buses were brought by the *bourgmestre*,<sup>11580</sup> but later testified that she did not say that Kanyabashi brought the buses.<sup>11581</sup> In the circumstances, the Chamber does not consider Witness QBP's testimony with respect to Kanyabashi's involvement in the Nyange transfer to be reliable.

4210. Witness QY also gave evidence that Kanyabashi was present when she boarded a bus on the second morning,<sup>11582</sup> and that he instructed them to board and insulted them saying, "[b]oard the buses, your hour has struck".<sup>11583</sup> The Chamber notes that no corroborating evidence exists on this point. For example, Witness SU, who knew Kanyabashi since the 1970s,<sup>11584</sup> did not mention Kanyabashi's presence or involvement in the Nyange transfer, although she testified against him in relation to other events. Further, Witness SD, who also already knew Kanyabashi,<sup>11585</sup> testified that he was not present when they boarded the bus to Kibilizi, nor was he present when the first two buses departed the day before.<sup>11586</sup> Noting that

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<sup>11574</sup> T. 9 October 2006 p. 84; T. 10 October 2006 p. 5 (Nsabimana).

<sup>11575</sup> T. 9 October 2006 p. 84; T. 21 November 2006 p. 26 (Nsabimana).

<sup>11576</sup> T. 19 March 2003 p. 62 (Witness QY).

<sup>11577</sup> T. 10 October 2006 p. 5 (Nsabimana).

<sup>11578</sup> T. 24 October 2002 p. 81; T. 30 October 2002 pp. 35, 41, 82, 88 (Witness QBP).

<sup>11579</sup> T. 30 October 2002 pp. 81-84 (Witness QBP); Defence Exhibit 77 (Nyiramasuhuko) (5 May 1999, Statement of Witness QBP).

<sup>11580</sup> T. 30 October 2002 p. 35 (Witness QBP).

<sup>11581</sup> T. 30 October 2002 p. 82 (Witness QBP).

<sup>11582</sup> T. 19 March 2003 p. 62; T. 25 March 2003 pp. 59-60 (Witness QY).

<sup>11583</sup> T. 19 March 2003 p. 62; T. 25 March 2003 p. 64 (Witness QY).

<sup>11584</sup> T. 15 October 2002 pp. 17-18 (ICS) (Witness SU).

<sup>11585</sup> T. 17 March 2003 pp. 8, 18 (Witness SD).

<sup>11586</sup> T. 18 March 2003 pp. 43-44 (Witness SD).

Witness QY stated she met Kanyabashi at the *préfecture* on the day of her departure to Nyaruhengeri and that she never saw Kanyabashi again after the war,<sup>11587</sup> that she was not able to recognise him, nor describe him in court,<sup>11588</sup> the Chamber does not accept Witness QY's testimony on this point.

4211. Based on the foregoing evidence, the Chamber accepts that Kanyabashi arranged for armed police officers to force the refugees aboard a bus and to escort its passengers to Nyange but was not present during the boarding of the buses. However, the Prosecution has failed to adduce sufficient evidence for the Chamber to conclude beyond a reasonable doubt that Kanyabashi ordered the transport of the refugees to Nyange, or that he was aware that the refugees would be killed at Nyange.

4212. With respect to the actions of those policemen involved in the transfer or at Nyange, the Chamber recalls its previous finding that the defect in the Kanyabashi Indictment concerning the pleading of Article 6 (3) responsibility was not cured, such that the Chamber will not make any finding as to whether Kanyabashi was responsible for the crimes of policemen at Nyange pursuant to Article 6 (3) of the Statute.

### 3.6.41 Gisagara Speech, 17 June 1994

#### 3.6.41.1 Introduction

4213. Paragraph 5.8 of the Nsabimana and Nteziryayo Indictment alleges that from April to July 1994, both Nsabimana and Nteziryayo publicly incited the population to slaughter the Tutsis and its "accomplices."<sup>11589</sup> Paragraph 6.31 of the Nsabimana and Nteziryayo also alleges that Nteziryayo, as official in charge of civil defence for Butare *préfecture*, incited the population to slaughter the Tutsis in Butare *préfecture*. Paragraph 6.32 alleges that Nsabimana incited and aided and abetted massacres of the population.

4214. Paragraphs 6.53 and 6.59 allege that between April and June 1994, both Nsabimana and Nteziryayo not only incited, but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>11590</sup>

4215. The Prosecution submits that Nteziryayo made public statements inciting people to exterminate the Tutsi population as part of the genocidal plan of the Interim Government.<sup>11591</sup> To this end, Nteziryayo gave a speech at a meeting in Gisagara around May or June 1994 where he thanked the population for their "good behaviour". Nteziryayo also encouraged the population to "[f]lush out all of the areas to expose the enemy" and not to flee when they hear that the *Inkotanyi* have attacked. The Prosecution submits that Nteziryayo made such speeches knowing that they would be understood as a call to kill Tutsis.<sup>11592</sup> After this meeting people

<sup>11587</sup> T. 19 March 2003 pp. 62, 64 (Witness QY).

<sup>11588</sup> T. 19 March 2003 p. 64 (Witness QY).

<sup>11589</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>11590</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Nsabimana and Nteziryayo).

<sup>11591</sup> Prosecution Closing Brief, pp. 312, 352-353, paras. 24, 153-154.

<sup>11592</sup> Prosecution Closing Brief, p. 358, para. 170.

allegedly sought to flush out Tutsis from hiding in order to kill them.<sup>11593</sup> The Prosecution relies upon the testimony of Witness QG.

4216. The Prosecution submits that Nsabimana was present at this meeting in Gisagara where Nteziryayo, with alleged knowledge of the genocide plan, incited the population, and did not disagree with what Nteziryayo said.<sup>11594</sup> The Prosecution further submits that Nsabimana is guilty of incitement by reason of several speeches he made throughout Butare *préfecture*, including the meeting in Gisagara.<sup>11595</sup>

4217. Apart from issues concerning notice, addressed below, the Nteziryayo Defence does not dispute that Nteziryayo attended a meeting on a football pitch in Gisagara *secteur*. In dispute however is the purpose of the meeting. The Nteziryayo Defence submits that the meeting's main purpose, apart from swearing-in the new Ndora *bourgmestre*, Fidèle Uwizeye, was to make the population aware of the need to ensure security and to forget the hard times they had just experienced.<sup>11596</sup> No inciting speeches were made at this meeting. This was the only meeting held in the *commune* in June and July 1994.<sup>11597</sup>

4218. The Nteziryayo Defence relies upon the testimony of Nteziryayo and Nteziryayo Defence Witness AND-31.

4219. In addition to its submissions on the defective nature of the Indictment paragraphs in the Nsabimana and Nteziryayo Indictment relating to incitement<sup>11598</sup> and meetings,<sup>11599</sup> considered below, the Nsabimana Defence challenges the credibility of Witness QG.<sup>11600</sup> The Nsabimana Defence submits that the meeting about which Witness QG testified was the swearing-in of the new *bourgmestre* of Ndora on 22 June 1994, but that Witness QG did not attend that meeting.<sup>11601</sup>

4220. The Nsabimana Defence relies upon the testimony of Nsabimana, Nteziryayo and Nteziryayo Defence Witnesses AND-30 and AND-31.

### **3.6.41.2 Preliminary Issues**

#### *Failure to Plead Gisagara Meeting*

4221. The Nteziryayo Defence submits that the Nsabimana and Nteziryayo Indictment is defective for failing to plead the Gisagara meeting at issue.<sup>11602</sup>

4222. Similarly, the Nsabimana Defence submits that Paragraphs 5.8, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment were too vague to permit Nsabimana to adequately

<sup>11593</sup> Prosecution Closing Brief, pp. 355-356, para. 163.

<sup>11594</sup> Prosecution Closing Brief, pp. 244-245, paras. 53-54.

<sup>11595</sup> Prosecution Closing Brief, p. 277, paras. 157-158.

<sup>11596</sup> Nteziryayo Closing Brief, paras. 288, 294; T. 21 February 2007 p. 53 (Witness AND-31).

<sup>11597</sup> Nteziryayo Closing Brief, paras. 290, 292; T. 21 February 2007 p. 53 (Witness AND-31).

<sup>11598</sup> Nsabimana Closing Brief, paras. 35-36, 719-722.

<sup>11599</sup> Nsabimana Closing Brief, paras. 333-336.

<sup>11600</sup> Nsabimana Closing Brief, paras. 830, 836-849; Nsabimana Closing Argument, T. 24 April 2009 p. 33.

<sup>11601</sup> Nsabimana Closing Brief, paras. 830-835.

<sup>11602</sup> Nteziryayo Closing Argument, T. 28 April 2009 pp. 3-4.



prepare his defence since these paragraphs fail to specify the time and the manner in which Nsabimana allegedly incited the population to commit genocide.<sup>11603</sup> Paragraph 6.59 alleging aiding and abetting is similarly vague by reason of its failure to identify the subordinates over whom Nsabimana exercised control or the nature of the aid provided.<sup>11604</sup> Further, the Nsabimana Defence submits that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment relating to meetings is impermissibly vague because it does not give an indication of the dates, venues, attendees or the number of meetings. Lastly, it argues that Paragraph 6.28 does not clearly state whether the progress of the massacres and how to complete them was discussed at all of the meetings, or only the meeting or meetings convened by Nyiramasuhuko.<sup>11605</sup>

4223. The Chamber notes that Paragraphs 5.8 (against both Nsabimana and Nteziryayo) and 6.31 (against Nteziryayo only) relating to incitement, as well as Paragraphs 6.32 (against Nsabimana only), 6.53 and 6.59 (against both Nsabimana and Nteziryayo) relating to aiding and abetting, are very general in nature. Aside from alleging that Nsabimana and Nteziryayo, either together or separately, publicly incited as well as aided and abetted people to exterminate Tutsis over a four-month period, these paragraphs fail to provide any details of specific incidents of incitement or aiding and abetting. In particular, no reference is made to any meeting in Gisagara.

4224. The Chamber observes that Paragraph 6.28 fails to specify the number and dates of the alleged meetings. Contrary to the contention of the Nsabimana Defence regarding the purpose of the meetings, a plain reading of Paragraph 6.28 suggests that the progress of the massacres and how to complete them was only discussed at a single meeting, which was convened by Nyiramasuhuko. However, Paragraph 6.28 refers to meetings in the plural. Accordingly, there is confusion as to how many meetings Nsabimana participated in, how many were convened by Nyiramasuhuko, and what was discussed at the meetings. The Chamber therefore considers that Paragraph 6.28 of the Nsabimana and Nteziryayo Indictment is defective. Again, the Chamber observes no reference is made to any meeting in Gisagara. The Chamber therefore considers all of the foregoing paragraphs to be defective.

4225. The Chamber must then determine whether Paragraphs 5.8 (against both Nsabimana and Nteziryayo) and 6.31 (against Nteziryayo only) relating to incitement, Paragraphs 6.32 (against Nsabimana only), 6.53 and 6.59 (against both Nsabimana and Nteziryayo) relating to aiding and abetting, as well as Paragraph 6.28 relating to meetings, were cured of their respective defects through subsequent Prosecution disclosures.

4226. Noting that the Prosecution relies upon the testimony of Witness QG with respect to this allegation<sup>11606</sup> and that the Nteziryayo Defence submits that the Nsabimana and Nteziryayo Indictment is defective for failing to plead the Gisagara meeting about which Witness QG testified,<sup>11607</sup> the Chamber has reviewed the Appendix to the Prosecution Pre-Trial Brief concerning Witness QG.

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<sup>11603</sup> Nsabimana Closing Brief, paras. 35-36, 719-722.

<sup>11604</sup> Nsabimana Closing Brief, para. 52.

<sup>11605</sup> Nsabimana Closing Brief, paras. 333-335.

<sup>11606</sup> Prosecution Closing Brief, pp. 355-356, para. 163.

<sup>11607</sup> Nteziryayo Closing Argument, T. 28 April 2009 pp. 3-4.

4227. The witness summary grid shows Witness QG would testify that Nteziryayo and Nsabimana came to Ndora *commune*, where Nteziryayo told the crowd to seek out the enemy and not to hesitate to shoot them down. Nteziryayo added that people needed to get weapons because the enemy had to be eliminated and that he was going to provide people with arms.<sup>11608</sup> The Chamber notes that the summary of intended evidence of Witness QG fails to reference when or where the meeting took place within Ndora *commune*. It similarly fails to specify any conduct by Nsabimana on this occasion.

4228. Witness QG's statement of 25 August 1997<sup>11609</sup> refers to a meeting held in Ndora *commune*, where Nteziryayo talked about the population running away at the sound of the *Inkotanyi's* gun shots. Nteziryayo told them they should seek out the enemy and not hesitate to shoot them down, and that the enemy needed to be eliminated. Nteziryayo noted they needed weapons, and added he was going to provide arms for the people to defend themselves.<sup>11610</sup> Nsabimana was present at the meeting. Having regard to the foregoing, the Chamber is of the view that the summary of Witness QG's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief is consistent with the content of Witness QG's second statement.

4229. Although the summary of anticipated evidence of Witness QG fails to identify when this meeting occurred, Witness QG's statement places the meeting as occurring "shortly after" Nteziryayo's appointment as *préfet*. In the circumstances, the Chamber considers the meeting occurred shortly after 17 June 1994 and that the omission of this detail in the Indictment as to when the alleged event occurred was cured by information contained in Witness QG's second statement.

4230. However, insofar as both the summary of Witness QG's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief and Witness QG's second statement of 25 August 1997 fail to identify a location more specific than "Ndora *commune*", the Chamber considers that it cannot be said that either the Nteziryayo Defence or the Nsabimana Defence were provided with adequate notice of the Prosecution's intention to lead evidence of a specific meeting held at Gisagara in Ndora *commune*.

4231. Having regard to the foregoing, the inclusion of the summary of Witness QG's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief did not provide adequate notice to either the Nteziryayo Defence or the Nsabimana Defence about the specific Gisagara meeting on which the Prosecution relies and at which Nteziryayo allegedly thanked the population for their "good behaviour" and encouraged them to "[f]lush out all of the areas to expose the enemy". As such, it did not cure the defective Indictment *vis-à-vis* either Nteziryayo or Nsabimana.

4232. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists another witness, Witness FAO, who was expected to testify about a Gisagara

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<sup>11608</sup> Prosecution Pre-Trial Brief – Appendix; Witness QG (55).

<sup>11609</sup> The Chamber notes there is no reference to any meeting in Witness QG's Statement of 12 June 1996, also disclosed 4 December 2000 and 13 December 2001.

<sup>11610</sup> 25 August 1997, Statement of Witness QG, disclosed 4 November 1998, 4 December 2000 and 13 December 2001.

meeting. The summary for Witness FAO shows that Witness FAO was intended to testify that Nteziryayo chaired a meeting at Gisagara and said: “When you sweep you don’t leave the dirt aside [*sic*] your house and that all Tutsis including girls and children were to be exterminated because that was the country’s programme. After the speech, the Hutus conducted systematic searches and killed a large number of Tutsis. FAO took part in the search.”<sup>11611</sup> The Chamber notes that Witness FAO did not ultimately testify at trial.

4233. The Gisagara meeting referred to in the summary of anticipated evidence of Witness FAO in the Appendix to the Prosecution Pre-Trial Brief is found in Witness FAO’s statement of 11 October 1999. Witness FAO’s first statement refers to a meeting that Nteziryayo allegedly chaired at Gisagara market where he told the population to “sweep the dirt” and referred to the extermination of Tutsis as “the country’s program” and after which Hutus conducted systematic searches and killed a large number of Tutsis.<sup>11612</sup> Witness FAO’s first statement says this meeting took place “[a] few days after the Caterpillar was brought in.” The Chamber notes that while the summary of Witness FAO’s anticipated evidence gives no estimation as to when this meeting took place, by reading the preceding paragraphs in Witness FAO’s statement and following the timeline of events outlined in that statement concerning attacks at Kabuye Hill, it can be deduced that the Gisagara meeting to which Witness FAO refers must have taken place around mid-May 1994.<sup>11613</sup>

4234. Having compared the statements of Witnesses QG and FAO, the Chamber considers the witnesses are not referring to the same meeting. First, the statement of Witness FAO refers to a meeting which must have taken place around mid-May 1994, while the statement of Witness QG refers to a Ndora *commune* meeting which occurred “shortly after” Nteziryayo’s appointment and therefore sometime after 17 June 1994. Further, while Witness QG’s statement claims Nteziryayo talked about the population running away at the sound of the *Inkotanyi*’s gun shots, seeking out and eliminating the enemy and the need for him to provide weapons in order that the people could defend themselves,<sup>11614</sup> Witness FAO’s statement claims Nteziryayo’s speech concerned sweeping the dirt and the country’s programme of exterminating Tutsis including girls and children.<sup>11615</sup>

4235. Having regard to the difference between both witness statements, the Chamber concludes the witnesses were referring to two separate meetings. In the circumstances, the inclusion of the anticipated testimony of Witness FAO in the Appendix to the Prosecution Pre-Trial Brief did not provide the Nteziryayo Defence with adequate notice of the Gisagara meeting about which Witness QG ultimately testified.

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<sup>11611</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAO (26).

<sup>11612</sup> 11 October 1999, Statement of Witness FAO, disclosed 15 November 2000.

<sup>11613</sup> 11 October 1999, Statement of Witness FAO (refers to events at Kabuye Hill which took place on Sunday 1 May 1994. He then refers to events that take place “the next day”, *i.e.* 2 May 1994. He then states that “a Caterpillar arrived 2 weeks later to bury all the dead corpses”, *i.e.* around 16 May 1994. The witness clarifies that Nteziryayo chaired a meeting at Gisagara market “a few days after the Caterpillar was brought in”, which the Chamber deduces must be around 16-20 May 1994. The statement then refers to June 1994 where Shalom came with the *Interahamwe* to take away and kill several Tutsi girls).

<sup>11614</sup> 25 August 1997, Statement of Witness QG, disclosed 4 November 1998, 4 December 2000 and 13 December 2001.

<sup>11615</sup> 11 October 1999, Statement of Witness FAO, disclosed 15 November 2000.

4236. The Chamber observes that Witness FAO's second statement of 16 August 2001 also refers to a second meeting which "Préfet Nteziryayo" held at Ndora shopping centre, "maybe in early June", and also attended by *Sous-préfet* Fidel and Kalimanzira. The statement says that *Préfet* Nteziryayo said that if the people did not respect the instructions given by other authorities at the meeting, they would see their *communes* captured by the RPF within a very short period. He appealed to them to go and eliminate all Tutsis as soon as possible.<sup>11616</sup> Given that Witness FAO claimed *Préfet* Nteziryayo held this meeting, the Chamber considers it took place sometime after 17 June 1994.

4237. However, in circumstances where the summary of Witness FAO's anticipated testimony in the Prosecution Pre-Trial Brief did not make any reference to this second meeting at Ndora shopping centre included in Witness FAO's second statement, the Chamber is of the view that its mere inclusion in Witness FAO's second statement does not suffice to put the Nteziryayo Defence on notice of the Prosecution's intention to lead evidence about this second meeting, or to rely on it as part of its case against Nteziryayo.

4238. Having regard to the foregoing, the summary of Witness FAO's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief did not provide notice to the Nteziryayo Defence about the Gisagara meeting about which Witness QG testified and upon which the Prosecution relies, and thus did not cure the defective Indictment *vis-à-vis* Nteziryayo.

4239. Regarding Nsabimana, the Chamber notes that neither the summary of Witness FAO's anticipated testimony in the Appendix to the Pre-Trial Brief, nor Witness FAO's first statement refer to Nsabimana. Further, the Appendix to the Pre-Trial Brief does not indicate that Witness FAO's evidence would be led in support of charges against Nsabimana.

4240. In the circumstances, even if the Chamber were to consider that Witnesses FAO and QG were referring to the same meeting, the Chamber nonetheless finds that the inclusion of the summary of Witness FAO's anticipated testimony in the Appendix to the Pre-Trial Brief would not serve as notice to the Nsabimana Defence of the Prosecution's intention to rely on this meeting as part of its case against Nsabimana.

4241. Having regard to the foregoing, the Chamber will not make any findings against either Nsabimana or Nteziryayo with respect to the current allegation.

4242. With respect to Nsabimana, the Chamber further notes that although the Prosecution submits that Nsabimana is guilty of incitement by reason of several speeches he made throughout Butare *préfecture*, including the meeting in Gisagara,<sup>11617</sup> no evidence was led in relation to any speeches allegedly made by Nsabimana at this Gisagara meeting.

#### *Exclusion of the Evidence of Gisagara Meeting and Subsequent Killings*

4243. The Nteziryayo Defence submits that at the time of filing the Nteziryayo Closing Brief, its motion requesting the exclusion of Prosecution evidence concerning inciting speeches and

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<sup>11616</sup> 16 August 2001, Statement of Witness FAO, disclosed 5 June 2002 (redacted) and 27 February 2004 (unredacted).

<sup>11617</sup> Prosecution Closing Brief, p. 277, paras. 157-158.

subsequent killings at Gisagara, Ndora, filed on 23 January 2009,<sup>11618</sup> was pending.<sup>11619</sup> The Chamber observes that on 25 February 2009 the Chamber denied that motion in its entirety. The Chamber considered it was inappropriate to deal with the motion during trial, and chose to decide such issues in its final deliberations.<sup>11620</sup>

4244. Having regard to the Chamber's previous finding that neither the Nteziryayo Defence nor the Nsabimana Defence received adequate notice of this allegation such that the relevant Indictment paragraphs were not cured, the Chamber will not consider the evidence led concerning inciting speeches allegedly made by Nteziryayo or Nsabimana at a meeting in Gisagara around mid-May 1994, or any subsequent killings against Indictment Paragraphs 5.8 (against both Nsabimana and Nteziryayo) and 6.31 (against Nteziryayo only) relating to incitement, as well as Paragraphs 6.32 (against Nsabimana only), 6.53 and 6.59 (against both Nsabimana and Nteziryayo) relating to aiding and abetting.

4245. The Chamber nevertheless considers that evidence of acts that took place at this ceremony may be relevant to the proof of any other allegation pled in the Indictment,<sup>11621</sup> and for this reason declines the Nteziryayo Defence's request to exclude the evidence led concerning Nteziryayo's allegedly inciting speeches at a meeting in Gisagara around mid-May 1994, and any subsequent killings.

### 3.6.42 Nteziryayo's Swearing-in Ceremony, 21 June 1994

#### 3.6.42.1 Introduction

4246. Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment alleges that Nteziryayo was appointed *préfet* of Butare by the Interim Government, replacing Sylvain Nsabimana, on 17 June 1994. After the handing over of office on 21 June 1994, *Préfet* Nteziryayo continued to incite the population to "finish off" the enemy and its "accomplices", most notably during the swearing-in ceremony of the Muganza *bourgmestre*, Élie Ndayambaje.<sup>11622</sup> The Chamber notes Paragraph 6.34 is not pled in support of any counts against Nteziryayo.

4247. The Prosecution case is that Nteziryayo was responsible for the civil defence programme in Butare from April to July 1994 because he had both *de facto* authority in his role as colonel, and *de jure* authority after he was appointed *préfet* of Butare.<sup>11623</sup> The Prosecution submits that Nteziryayo was appointed *préfet* of Butare because he had promoted the civil defence programme so successfully that the Interim Government believed he could carry out its plan to exterminate Tutsis in Butare.<sup>11624</sup> The Prosecution submits that Nteziryayo

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<sup>11618</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009.

<sup>11619</sup> Nteziryayo Closing Brief, para. 765.

<sup>11620</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>11621</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006; *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15; *Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 12.

<sup>11622</sup> Para. 6.34 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>11623</sup> Prosecution Closing Brief, pp. 306-308, paras. 2-3, 6, 9.

<sup>11624</sup> Prosecution Closing Brief, p. 334, para. 92.

furthered the genocidal plan of the Interim Government because on the occasion of his swearing-in ceremony at the BPO on 21 June 1994, he stated that he would continue the work of the outgoing *préfet*, Nsabimana, in searching for RPF accomplices, namely Tutsis,<sup>11625</sup> and on the evening of his swearing-in, Nteziryayo gave orders for the Tutsi women who had taken refuge at the BPO to be killed by soldiers.<sup>11626</sup> The Prosecution relies upon the testimony of Prosecution Witnesses FAI, RV and Expert Witness Guichaoua.

4248. Apart from its request to exclude the evidence of Witness FAI,<sup>11627</sup> considered below, the Nsabimana and Nteziryayo Defence does not make any particular submissions in its Closing Brief as to what happened at Nteziryayo's swearing-in ceremony. Nteziryayo testified that he promised to work in the interest of the population of Butare.<sup>11628</sup> He denied making a commitment to continue looking for RPF accomplices, namely Tutsis,<sup>11629</sup> or that he heard anyone incite people to kill Tutsis during his swearing-in ceremony, or afterwards by radio broadcast.<sup>11630</sup> The Defence also denies that Nteziryayo was appointed because the government wanted him to "complete the task". Rather, it contends Nteziryayo was appointed because of his military experience.<sup>11631</sup> Further, the Defence submits that Witness RV did not attend Nteziryayo's swearing-in ceremony.<sup>11632</sup>

### 3.6.42.2 Preliminary Issues

4249. The Chamber notes that Paragraph 6.34 of the Indictment refers to the appointment of Nteziryayo as the *préfet* of Butare on 17 June 1994 and his swearing-in ceremony of 21 June 1994.

4250. Although not raised by the Nteziryayo Defence in its Closing Brief, the Chamber notes Paragraph 6.34 is not specifically pled in support of any counts against Nteziryayo. Recalling the principles set out in the Preliminary Issues section of this Judgement (), the Chamber will not make any finding against Nteziryayo with respect to Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment.

4251. The Chamber recognises that the Prosecution's failure to expressly state that a paragraph in the Indictment supports a particular count in the Indictment is indicative that the allegation is not charged as a crime,<sup>11633</sup> but considers this does not definitively dispose of the current allegation in the present circumstances.

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<sup>11625</sup> Prosecution Closing Brief, p. 253, para. 75; pp. 320-321, 335, paras. 53, 95.

<sup>11626</sup> Prosecution Closing Brief, p. 253, para. 75; T. 31 October 2002 p. 51 (Witness FAI).

<sup>11627</sup> Nteziryayo Closing Brief, para. 765.

<sup>11628</sup> T. 7 June 2007 p. 33 (Nteziryayo).

<sup>11629</sup> T. 7 June 2007 p. 38 (Nteziryayo).

<sup>11630</sup> T. 25 June 2007 p. 25 (Nteziryayo).

<sup>11631</sup> T. 7 June 2007 pp. 8-9; T. 21 June 2007 p. 61 (Nteziryayo).

<sup>11632</sup> Nteziryayo Closing Brief, para. 444.

<sup>11633</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 156 (citing *Muvunyi*, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005, para. 33 ("The Appeals Chamber is satisfied that the allegation of the Accused's involvement in the detention and disappearance of Habyalimana could constitute a new charge against the Accused. In the current indictment, the relevant paragraph is contained in the section titled 'Concise Statement of Facts' and not in the section of specific allegations against the Accused. Further, the Prosecution does not reference this paragraph of the current indictment as a material

4252. The Chamber is also aware that while a vague or ambiguous indictment can be cured by the provision of timely, clear and consistent information, the omission of a count or charge from an indictment cannot be cured in this way.<sup>11634</sup> Rather, omitted charges can be incorporated into the indictment only by formal amendment under Rule 50 of the Rules.<sup>11635</sup>

4253. In the present circumstances, the Chamber considers that the alleged inciting speeches given by Nteziryayo at his swearing-in ceremony do not amount to a separate charge which was not pled. Rather, the Chamber considers this event qualifies as a material fact that supports a charge of incitement, which the Chamber recalls is pled in Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment. These paragraphs generally allege that Nteziryayo incited the population to kill Tutsis. In the present circumstances, reading the Indictment as a whole, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment which allege that Nteziryayo incited the population to kill Tutsis, and which were pled in support of all counts against Nteziryayo, encompass the allegation that Nteziryayo incited the population at his swearing-in ceremony.

4254. As previously noted, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement are very general in nature. While Paragraphs 5.8 and 6.31 allege that Nteziryayo publicly incited people to exterminate Tutsis over a four-month period in both his capacity as *préfet*, and the official in charge of civil defence respectively, these paragraphs fail to provide any details of specific incidents of incitement. In particular, no reference is made to any incitement on the occasion of Nteziryayo's swearing-in ceremony, or to any killings that allegedly resulted from such incitement. The Chamber therefore finds both paragraphs to be defective.

4255. The Chamber must then determine whether Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment were cured of their respective defects relating to incitement through subsequent Prosecution disclosures.

4256. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that in the Prosecution opening statement, the Prosecution stated that part of its case against Nteziryayo was that he engaged in incitement of the population in several places, namely, "public rallies and swearing-in ceremonies" and more specifically Ndayambaje's swearing-in as *bourgmestre* of Muganza.<sup>11636</sup> Even though the Prosecution only specifically identified the occasion of Ndayambaje's swearing-in, the Prosecution's opening words make it clear that Nteziryayo's actions at several swearing-in ceremonies would be relied on as part of the Prosecution case.

4257. To this end, the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists two witnesses, Witnesses SW and TQ, who refer to

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fact *underpinning any of the charges made in the indictment*. If the proposed amendment is allowed, it is presumed that the Prosecution would include this allegation under Counts 1 and 2 of the indictment, in support of the charges of genocide, or alternatively complicity to genocide. But this does not change the fact that this fresh allegation could support a separate charge against the Accused." (emphasis added).

<sup>11634</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 156; *Nahimana et al.*, Judgement (AC), para. 325.

<sup>11635</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 325.

<sup>11636</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 78-79.

Nteziryayo's swearing-in ceremony.<sup>11637</sup> However, both witnesses refer to this ceremony only as a temporal reference. The summary for Witness SW states that the witness "remained [at the BPO] for a few days until the appointment of Nteziryayo, who ordered the refugees out of the yard." The summary for Witness TQ states that the witness learned that the night after Nteziryayo's appointment, Nteziryayo ordered the removal of some people who had taken refuge in the BPO, saying that he was removing the filth. The Chamber notes neither summary refers to any events, and more specifically to any alleged incitement, that took place during Nteziryayo's swearing-in ceremony. The prior statements of both Witness SW<sup>11638</sup> and Witness TQ<sup>11639</sup> also do not refer to events that took place during Nteziryayo's swearing-in ceremony.

4258. In the circumstances, despite the Prosecution's announced intention, in its opening statement, to rely on Nteziryayo's actions at several swearing-in ceremonies as part of its case against Nteziryayo, the Chamber considers the Pre-Trial Brief failed to provide the Nteziryayo Defence with clear or consistent information as to the events that allegedly occurred at Nteziryayo's swearing-in ceremony. Having regard to the foregoing, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment were not cured of their defects through subsequent Prosecution disclosures and therefore the Chamber declines to make any finding in respect of this allegation against Nteziryayo.

4259. In any event, the Chamber notes that the evidence brought by the Prosecution is not sufficient to establish that Nteziryayo incited the population present at his swearing-in ceremony to kill Tutsis.

### **3.6.43 Ndayambaje's Swearing-in Ceremony and Subsequent Killings**

#### **3.6.43.1 Introduction**

4260. The Nsabimana and Nteziryayo Indictment alleges that Nteziryayo was appointed *préfet* of Butare by the Interim Government, replacing Sylvain Nsabimana, on 17 June 1994. After the handing-over of office on 21 June 1994, *Préfet* Nteziryayo continued to incite the population to "finish off" the enemy and its "accomplices", most notably during the swearing-in ceremony of the Muganza *bourgmestre*, Élie Ndayambaje.<sup>11640</sup> The Nsabimana and Nteziryayo Indictment alleges that from April to July 1994, Nteziryayo incited the population to slaughter the Tutsis in Butare *préfecture*.<sup>11641</sup>

4261. The Ndayambaje Indictment states that Élie Ndayambaje was appointed *bourgmestre* of Muganza on 20 June 1994 by the Interim Government led by Jean Kambanda.<sup>11642</sup> The

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<sup>11637</sup> Prosecution Pre-Trial Brief – Appendix; Witness SW (87); Witness TQ (95).

<sup>11638</sup> 17 November 1995, Statement of Witness SW, disclosed 11 April 1998; 21 February 2001, Statement of Witness SW, disclosed 27 February 2004.

<sup>11639</sup> 28-29 July 1998, Statement of Witness TQ, disclosed 11 April 1998.

<sup>11640</sup> Para. 6.34 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>11641</sup> Paras. 5.8, 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>11642</sup> Para. 6.38 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).



Ndayambaje Indictment also alleges that Ndayambaje incited the population to kill Tutsis during the period April to July 1994,<sup>11643</sup> and more specifically in June 1994.<sup>11644</sup>

4262. The Prosecution submits that on the occasion of Ndayambaje's swearing-in ceremony, both Nteziryayo and Ndayambaje recounted fables referring to "dirt" which needed to be cleared and lice which needed to be killed. After these speeches, the Prosecution submits the population carried out killings of the surviving Tutsis. The Prosecution submits that the words used by Ndayambaje and Nteziryayo in their public speeches were imbued with genocidal intent.<sup>11645</sup>

4263. In support of the foregoing allegations, the Prosecution relies upon the evidence of Prosecution Witnesses FAG, FAL, FAU, QAF, QAL, QAQ, QAR, RV, TO and TP and Prosecution Expert Witness Ntakirutimana.

4264. In addition to the preliminary issues addressed below, the Nteziryayo Defence challenges the credibility of the Prosecution witnesses.<sup>11646</sup>

4265. In addition to the preliminary issues addressed below and challenges to the credibility of the Prosecution witnesses,<sup>11647</sup> the Ndayambaje Defence submits Prosecution Witnesses FAG, FAU, QAF, QAQ, QAR and TP lied and never attended Ndayambaje's swearing-in ceremony.<sup>11648</sup>

### **3.6.43.2 Preliminary Issues**

#### *Notice of Ndayambaje's Swearing-in Ceremony*

##### *Nteziryayo and Notice*

4266. The Chamber notes Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment is the only paragraph which refers to the allegation that *Préfet* Nteziryayo incited the population to "finish off" the enemy and its "accomplices" during the swearing-in ceremony of the Muganza *bourgmestre*, Élie Ndayambaje.

4267. Although not raised by the Nteziryayo Defence in its Closing Brief, the Chamber notes Paragraph 6.34 is not specifically pled in support of any count against Nteziryayo. The Chamber recognises that the Prosecution's failure to expressly state that a paragraph in the Indictment supports a particular count is indicative that the allegation is not charged as a

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<sup>11643</sup> Para. 5.8 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).

<sup>11644</sup> Para. 6.33 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 against Ndayambaje).

<sup>11645</sup> Prosecution Closing Brief, pp. 358-361, paras. 170-178; pp. 467-468, 480-492, paras. 62-64, 66, 113, 115, 118, 121, 123, 126-127, 130-131, 134, 138, 140.

<sup>11646</sup> Nteziryayo Closing Brief, paras. 319-540.

<sup>11647</sup> Ndayambaje Closing Brief, paras. 653, 657, 661, 666, 668, 674, 683, 687, 695, 703-704, 717, 719, 731, 734, 738, 742, 749, 754.

<sup>11648</sup> Ndayambaje Closing Brief, paras. 629-630, 646.

crime,<sup>11649</sup> but considers this does not definitively dispose of the current allegation in the present circumstances.

4268. For the purposes of Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment, the Chamber considers that the alleged inciting speeches given by Nteziryayo at Ndayambaje's swearing-in ceremony should not be qualified as a separate charge which was not pled. Rather, the Chamber considers this event qualifies as a material fact that supports the charge of incitement, which the Chamber recalls is pled in Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment. These paragraphs very generally allege that Nteziryayo incited the population to kill Tutsis. In the present circumstances, reading the Indictment as a whole, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment, which were pled in support of all counts against Nteziryayo, encompass the allegation that Nteziryayo incited the population at Ndayambaje's swearing-in ceremony.

4269. While Paragraphs 5.8 and 6.31 allege that Nteziryayo publicly incited people to exterminate Tutsis over a four-month period in his capacity both as *préfet*, and official in charge of civil defence respectively, these paragraphs fail to provide any details of specific incidents of incitement. No reference is made to incitement on the occasion of Ndayambaje's swearing-in ceremony, or to any killings that allegedly resulted from the incitement. The Chamber therefore finds each of these paragraphs to be defective.

4270. The Chamber must then determine whether Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement were cured of their respective defects through subsequent Prosecution disclosures.

4271. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that in its opening statement, the Prosecution stated that part of its case against Nteziryayo was that he engaged in incitement of the population in several places, namely, "public rallies" and "swearing-in ceremonies", and, more specifically, Ndayambaje's swearing-in as *bourgmestre* of Muganza.<sup>11650</sup> The Prosecution's opening words make it clear that Nteziryayo's actions at Ndayambaje's swearing-in ceremony would be relied on as part of the Prosecution case.

4272. The Chamber observes that the Appendix to the Prosecution Pre-Trial Brief also lists two witnesses, Witnesses FAG and TO, who expressly refer to Ndayambaje's swearing-in ceremony.<sup>11651</sup> The summary for Witness FAG states that "in June 1994, during Ndayambaje's inauguration, Nteziryayo induced and caused Hutu to kill Tutsi".<sup>11652</sup> The Appendix to the Prosecution Pre-Trial Brief shows Witness FAG would be relied on in support of Count 1 (conspiracy to commit genocide) and Count 4 (direct and public incitement to commit genocide) against Nteziryayo.

4273. The summary for Witness FAG is consistent with the content of his statement, dated 23 February 2000, in which Witness FAG claimed that during Ndayambaje's inauguration in June

<sup>11649</sup> *Muvunyi I*, Judgement (AC), para. 156 (citing *Muvunyi*, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005, para. 33).

<sup>11650</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 78-79.

<sup>11651</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6); Witness FAG (19).

<sup>11652</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAG (19).

1994, Nteziryayo “enjoined the Hutus to kill all the Tutsis [and] not to spare any of them” after which Hutus immediately “went after the Tutsis in their houses and in the forest. They were killed everywhere they were found”<sup>11653</sup>.

4274. The summary of Witness TO’s anticipated evidence contained in the Appendix to the Prosecution Pre-Trial Brief also refers to Ndayambaje’s swearing-in ceremony. The Appendix to the Prosecution Pre-Trial Brief shows Witness TO would be relied on in support of Count 1 (conspiracy to commit genocide), Count 3 (complicity in genocide) and Count 4 (direct and public incitement to commit genocide) against both Nteziryayo and Ndayambaje. Witness TO’s summary states that the witness attended Ndayambaje’s swearing-in ceremony in May 1994 where Nteziryayo, as the Butare *préfet* at the time, addressed the crowd, reproaching the former *bourgmestre* for not doing his job properly and assuring people that he was bringing in Ndayambaje, “a brave man”, whom he requested discharge his duties effectively. According to the instructions of the *préfet*, “they had to do as they had been taught and sweep out the dirt”<sup>11654</sup>.

4275. Witness TO’s first statement of 11 June 1997, states that he attended Ndayambaje’s swearing-in ceremony in May 1994 at the *commune* office in Remera *secteur* at which *Préfet* Nteziryayo introduced the new *bourgmestre*, Ndayambaje. This statement mirrors the summary of Witness TO’s anticipated testimony in the Pre-Trial Brief with respect to the content of Nteziryayo’s speech. It further states, “[t]he thrust of the *Préfet*’s speech was ‘cleaning up’”<sup>11655</sup>.

4276. Moreover, the summary of the anticipated testimony of Witness QAQ contained in the Appendix to the Prosecution Pre-Trial Brief refers to a meeting towards the end of May or early June where both Nteziryayo and Ndayambaje were the main speakers and made inciting speeches urging the populace to get rid of all the dirt, referring to the Tutsis in hiding. A few days after the speeches, young girls and Tutsis in hiding were found and killed by the Hutus.<sup>11656</sup> The Appendix to the Prosecution Pre-Trial Brief shows Witness QAQ would be relied on in support of Count 1 (conspiracy to commit genocide) and Count 4 (direct and public incitement to commit genocide) against Nteziryayo and all counts against Ndayambaje.

4277. Witness QAQ’s prior statement of 14 May 1997 states that the meeting that took place towards the end of May or early June 1994 occurred in the yard of the Muganza *commune* and during this meeting *Préfet* Nteziryayo sacked *Bourgmestre* Bimenyimana and replaced him with Ndayambaje. Among other things said, both *Préfet* Nteziryayo and the newly appointed *bourgmestre*, Ndayambaje, referred to the need to get rid of “dirt” hiding in the home and killings subsequently occurred.<sup>11657</sup>

4278. Accordingly, the Chamber considers the information contained in the summary of Witnesses FAG’s, TO’s and QAQ’s anticipated testimony in the Appendix to the Pre-Trial Brief and the contents of their respective previous statements, provided the Nteziryayo

<sup>11653</sup> 23 February 2000, Statement of Witness FAG, disclosed 15 November 2000 and 4 December 2000.

<sup>11654</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6).

<sup>11655</sup> 11 June 1997, Statement of Witness TO, disclosed 25 March 1999, 23 April 2001 and 1 October 2001.

<sup>11656</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAQ (11).

<sup>11657</sup> 14 May 1997, Statement of Witness QAQ, disclosed 4 November 1998, 17 June 1999, 15 November 2000, 4 December 2000 and 1 October 2001.

Defence with clear and consistent notice that the allegation that Nteziryayo incited the population to kill Tutsis at Ndayambaje's swearing-in ceremony in June 1994 was part of the Prosecution's case.

4279. Although the summary of Witness TO's anticipated testimony and Witness TO's first statement refer to this ceremony as occurring in May 1994, the Chamber is of the view that the description of the event as "Ndayambaje's swearing-in ceremony" and the reference to Nteziryayo being the *préfet* of Butare at the time of the meeting, sufficed to put the Nteziryayo Defence on notice that the "meeting" in question concerned Ndayambaje's swearing-in ceremony, which occurred in June 1994. Moreover, in the Chamber's view, although Witness QAQ's prior statement does not expressly refer to Ndayambaje's swearing-in ceremony, the Nteziryayo Defence would have been aware that the meeting Witness QAQ referred to was Ndayambaje's swearing-in ceremony since the additional detail provided in Witness QAQ's statement stated that during this meeting *Préfet* Nteziryayo sacked *Bourgmestre* Bimenyimana and replaced him with Ndayambaje.

4280. The Chamber notes that the witness statements of Prosecution Witnesses FAG, TO and QAQ were disclosed to the Defence between November 1998 and October 2001, the last relevant disclosure thus occurring shortly after the beginning of trial in June 2001, and well before the commencement of the testimony of Witness TO in March 2002, Witness QAQ in November 2002 and Witness FAG in March 2004. The Chamber thus considers Nteziryayo had timely notice of the Prosecution's intention to lead evidence through these witnesses of his acts on the occasion of Ndayambaje's swearing-in ceremony as part of its case against him with respect to the incitement charge.

4281. As additional information, the Chamber also notes that on 16 May 2001 the Prosecution filed its "Supplemental Motion for the Transfer of Detained Witnesses Under Rule 90 *bis*" by which the Prosecution sought to add four detained witnesses, including Prosecution Witness RV, who by oversight had been excluded from the Prosecution's list of intended witnesses included in the Prosecution Pre-Trial Brief filed on 12 April 2001.<sup>11658</sup>

4282. In its decision of 24 July 2001, the Chamber, noting that the statements of Witness RV had been disclosed to the Defence on 14 March 2001, found the Defence would not be prejudiced by the addition of Witness RV to the Prosecution's witness list, and granted leave for Witness RV to be added.<sup>11659</sup> Witness RV's statements of 15 January 1997 and 2 October 1997 refer to Ndayambaje's swearing-in ceremony. The first statement states that in May 1994, when Ndayambaje reclaimed his position as Muganza *bourgmestre*, he held a meeting near the *commune* office at which Ndayambaje stressed that Tutsis were enemies that needed to be exterminated, using metaphors relating to cleaning the house.<sup>11660</sup> Witness RV's second statement states that during Ndayambaje's swearing-in ceremony both Ndayambaje and Nteziryayo acted in concert and incited people to eliminate Tutsis.<sup>11661</sup> Accordingly, the

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<sup>11658</sup> See *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-I, Prosecutor's Supplemental Motion for the Transfer of Detained Witnesses Under Rule 90 *bis*, 16 May 2001.

<sup>11659</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001, paras. 13-14.

<sup>11660</sup> 15 January 1997, Statement of Witness RV, disclosed 14 March 2001.

<sup>11661</sup> 2 October 1997, Statement of Witness RV, disclosed 14 March 2001.

Chamber considers the Nteziryayo Defence was provided with additional notice of this allegation in July 2001, when the Chamber granted the Prosecution leave to add Witness RV to its list of intended witnesses.<sup>11662</sup>

4283. For the foregoing reasons, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement were cured by the disclosure of clear, consistent and timely information and no prejudice was caused to Nteziryayo with respect to this allegation.

*Ndayambaje and Notice*

4284. The Ndayambaje Defence asserts that Paragraph 6.38 of the Ndayambaje Indictment was defective because it does not allege that Ndayambaje incited the public on the occasion of his swearing-in ceremony.<sup>11663</sup> The Ndayambaje Defence otherwise submits that Ndayambaje's own swearing-in ceremony cannot be considered by reference to Paragraphs 5.8 and 6.33 of the Ndayambaje Indictment, which it alleges is vague and general in nature, and provide no link to the swearing-in ceremony.<sup>11664</sup> It thus requests the exclusion of the Prosecution witnesses' evidence with respect to Ndayambaje's utterances during his swearing-in in June 1994 and the alleged consequences of the ceremony,<sup>11665</sup> discussed separately below.

4285. First, the Chamber notes that Paragraph 6.38 is the only paragraph in the Ndayambaje Indictment that refers to the appointment of Ndayambaje. That paragraph reads "[d]espite these crimes, Élie Ndayambaje was appointed *Bourgmestre* of Muganza on 20 June 1994 by the Interim Government led by Jean Kambanda". Paragraph 6.38 is pled in support of all counts against Ndayambaje, although it does not refer to the ceremony during which Ndayambaje was sworn-in as *bourgmestre* or to any criminal conduct by Ndayambaje.

4286. However, the Chamber recalls that Paragraph 5.8 of the Ndayambaje Indictment alleges that Ndayambaje incited the population to kill Tutsis over a four-month period, while Paragraph 6.33 more specifically alleges incitement by Ndayambaje in the month of June 1994. In the present circumstances, reading the Indictment as a whole, the Chamber considers that Paragraphs 5.8 and 6.33 of the Ndayambaje Indictment, which allege that Ndayambaje incited the population to kill Tutsis, and which were both pled in support of all counts against Ndayambaje, encompass the allegation that Ndayambaje incited the population at his swearing-in ceremony.

4287. As previously noted, the Chamber considers that Paragraph 5.8 of the Ndayambaje Indictment relating to incitement, insofar as it is identical to Paragraph 5.8 of the Nsabimana and Nteziryayo Indictment, is very general in nature and, for this reason, defective. With respect to Paragraph 6.33, the Chamber finds that while it provides a narrower temporal period

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<sup>11662</sup> See also *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. 35.

<sup>11663</sup> Ndayambaje Closing Brief, paras. 97, 755; Ndayambaje Closing Argument, T. 30 April 2009 pp. 31-32 (ICS).

<sup>11664</sup> Ndayambaje Closing Brief, paras. 48, 58, 97.

<sup>11665</sup> Ndayambaje Closing Brief, paras. 99, 772, 774.

than Paragraph 5.8, namely the month of June 1994, this paragraph also fails to provide any details of specific incidents of incitement. In particular, no reference is made to any incitement on the occasion of Ndayambaje's own swearing-in ceremony. The Chamber therefore finds each of these paragraphs defective.

4288. The Chamber must then determine whether Paragraphs 5.8 and 6.33 of the Ndayambaje Indictment relating to incitement were cured of their respective defects through subsequent Prosecution disclosures. The Chamber notes the Prosecution did not mention Ndayambaje inciting on the occasion of Ndayambaje's swearing-in in the Prosecution opening statement.

4289. As already noted, the Appendix to the Prosecution Pre-Trial Brief lists two witnesses, Witnesses FAG and TO, who expressly refer to Ndayambaje's swearing-in ceremony.<sup>11666</sup> Neither the summary of Witness FAG's anticipated evidence<sup>11667</sup> nor Witness FAG's statement<sup>11668</sup> outline any inciting speeches made by Ndayambaje on this occasion.

4290. The summary of Witness TO's forthcoming testimony in the Appendix to the Prosecution Pre-Trial Brief states that the witness attended Ndayambaje's swearing-in ceremony in May 1994, where Ndayambaje spoke after Nteziryayo, citing examples of the Kivomo *secteur* where Hutu inhabitants hid Tutsi neighbours, emphasising that it was necessary to clean out the houses of these Hutus hiding Tutsis. Ndayambaje added that the Tutsis who were hiding "had to be cleaned out".<sup>11669</sup>

4291. Witness TO's first statement of 11 June 1997, indicates that Witness TO attended Ndayambaje's swearing-in ceremony in May 1994 at the *commune* office in Remera *secteur* at which *Préfet* Nteziryayo introduced the new *bourgmestre*, Ndayambaje. The content of Witness TO's statement with respect to Ndayambaje is consistent with the information included in the summary, stating that Ndayambaje used the example of Kivomo *secteur* and emphasised that it was necessary to clean out the houses of Hutus hiding Tutsis. Ndayambaje used the example of a woman who sweeps dirt inside her house rather than outside, only to end up overpowered by dirt in her bed. He added that Tutsis in hiding had to be cleaned out.<sup>11670</sup>

4292. The Chamber also recalls that the summary of anticipated testimony of Witness QAQ contained in the Appendix to the Prosecution Pre-Trial Brief refers to a meeting towards the end of May or early June, where both Nteziryayo and Ndayambaje were the main speakers and made inciting speeches urging the populace to get rid of all the dirt, referring to the Tutsis in hiding. A few days after the speeches, young girls and Tutsis in hiding were found and killed by the Hutus.<sup>11671</sup> Witness QAQ's prior statement of 14 May 1997 states that the meeting that took place towards the end of May or early June 1994 occurred in the yard of the Muganza *commune* and during this meeting *Préfet* Nteziryayo sacked *Bourgmestre* Bimenyimana and

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<sup>11666</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6) (cited in support of Counts 1, 3-4 against Ndayambaje and Nteziryayo); Witness FAG (19) (cited in support of Counts 1 and 4 against Nteziryayo).

<sup>11667</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAG (19) (cited in support of Counts 1 and 4 against Nteziryayo).

<sup>11668</sup> 23 February 2000, Statement of Witness FAG, disclosed 15 November 2000 and 4 December 2000.

<sup>11669</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6).

<sup>11670</sup> 11 June 1997, Statement of Witness TO, disclosed 25 March 1999 and 23 April 2001.

<sup>11671</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAQ (11).

replaced him with Ndayambaje. The statement was otherwise consistent with the summary of anticipated testimony as to the content of Ndayambaje's speech.<sup>11672</sup>

4293. The Chamber thus considers that Witnesses TO's and QAQ's summaries in the Appendix to the Prosecution Pre-Trial Brief and their corresponding witness statements provided the Ndayambaje Defence with clear and consistent notice that the allegation that Ndayambaje incited the population to kill Tutsis at his own swearing-in ceremony in June 1994 was part of the Prosecution's case.

4294. As noted with respect to Nteziryayo, notwithstanding that the summary of Witness TO's anticipated testimony and Witness TO's first statement refer to this ceremony as occurring in May 1994, the Chamber is of the view that the description of the event as "Ndayambaje's swearing-in ceremony" and the reference to Nteziryayo being the *préfet* of Butare at the time of the meeting, sufficed to put the Ndayambaje Defence on notice that the "meeting" in question concerned Ndayambaje's swearing-in ceremony which occurred in June 1994. Equally, as was the case with Nteziryayo, although Witness QAQ's prior statement refers only to "a meeting in May", the Ndayambaje Defence would have been aware that the meeting Witness QAQ referred to was Ndayambaje's swearing-in ceremony since the additional detail provided in Witness QAQ's statement stated that during this meeting *Préfet* Nteziryayo sacked *Bourgmestre* Bimenyimana and replaced him with Ndayambaje.

4295. The Chamber notes that the witness statements of Prosecution Witnesses FAG, TO and QAQ were disclosed to the Defence between November 1998 and October 2001, the last relevant disclosure thus occurring shortly after the beginning of trial in June 2001, and well before the commencement of the testimony of Witness TO in March 2002, Witness QAQ in November 2002 and Witness FAG in March 2004. The Chamber thus considers that the Ndayambaje Defence had timely notice of the Prosecution's intention to lead evidence through these witnesses of Ndayambaje's acts on the occasion of his swearing-in ceremony as part of its case with respect to the incitement charge.

4296. As discussed above with respect to Nteziryayo, the Chamber equally considers that the subsequent addition of Witness RV to the Prosecution's witness list in July 2001 served to put the Ndayambaje Defence on notice of this allegation.<sup>11673</sup>

4297. For the foregoing reasons, the Chamber considers that Paragraphs 5.8, 6.33 and 6.38 of the Ndayambaje Indictment relating to incitement were cured by the disclosure of clear, consistent and timely information, and no prejudice was caused to Ndayambaje with respect to this allegation.

#### *Notice of Killings*

4298. The Ndayambaje Defence submits that in addition to the Indictment's failure to plead Ndayambaje's swearing-in ceremony of 22 June 1994, the Indictment also fails to plead the

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<sup>11672</sup> 14 May 1997, Statement of Witness QAQ, disclosed 4 November 1998 and 17 June 1999.

<sup>11673</sup> See also *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. 35.

killings which the Prosecution alleges followed the meeting.<sup>11674</sup> The Nteziryayo Defence makes no submissions in this respect.

4299. Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment and Paragraph 6.46 of the Ndayambaje Indictment allege that the search for and elimination of Tutsis took place throughout the entire *préfecture* between April and July 1994.<sup>11675</sup> Paragraph 6.51 is pled in support of all counts against Nteziryayo.

4300. Paragraph 6.37 of the Ndayambaje Indictment also alleges that as from 20 April, in Muganza *commune* and the surrounding area, Ndayambaje ordered, supervised and participated in massacres of the Tutsi population, committed by militiamen, soldiers, *commune* policemen and *commune* authorities.<sup>11676</sup> Paragraph 6.37 is pled in support of all counts against Ndayambaje.

4301. Although Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment is pled in support of all counts against Nteziryayo, the Chamber notes that Paragraph 6.51 does not refer to Nteziryayo. Other than referring to the roadblock allegedly located outside the Nyiramasuhuko/Ntahobali household as a means of identifying Tutsis, the paragraph otherwise fails to provide any specific examples or circumstances in which searches were carried out in this period. Thus, having regard to the vague nature of the allegation contained in Paragraph 6.51 *vis-à-vis* Nteziryayo, the Chamber considers the paragraph is defective.

4302. With respect to Paragraph 6.37 of the Ndayambaje Indictment, the Chamber notes the paragraph does not refer to any specific crimes which Ndayambaje allegedly ordered, supervised or participated in. As a result, the Chamber considers this paragraph defective.

4303. The Chamber must then determine whether Paragraph 6.37 of the Ndayambaje Indictment and Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment were cured of their respective defects through subsequent Prosecution disclosures.

4304. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the summary of anticipated testimony for Witnesses FAG, TO and QAQ in the Appendix to the Prosecution Pre-Trial Brief claims that after the incitement at Ndayambaje's swearing-in ceremony, searches and killings of Tutsis occurred. The Prosecution Pre-Trial Brief shows that in addition to Count 1 (conspiracy) and Count 4 (incitement) against both Accused, Witnesses FAG and QAQ would also be brought in support of all remaining counts against Ndayambaje. Further, Witness TO was additionally listed in support of Count 3 (complicity in genocide) against both Nteziryayo and Ndayambaje.

4305. The Chamber recalls that Witness TO's second statement of 16 October 1997 stated that after inciting speeches by the new *bourgmestre*, Ndayambaje, in late June 1994 at the *commune* office, Tutsi women and girls who had survived were hunted down and killed. Among the victims were two of the witness' cousins.<sup>11677</sup> Witness FAG's statement of 23

<sup>11674</sup> Ndayambaje Closing Brief, para. 100.

<sup>11675</sup> Para. 6.51 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.46 of the Ndayambaje Indictment (not in support of counts).

<sup>11676</sup> Para. 6.37 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).

<sup>11677</sup> 16 October 1997, Statement of Witness TO, disclosed 4 November 1998.



February 2000 also stated that after incitement at Ndayambaje's inauguration by Nteziryayo, Hutus immediately "went after the Tutsis in their houses and in the forest. They were killed everywhere they were found".<sup>11678</sup> Witness QAQ's prior statement of 14 May 1997 states that after a meeting towards the end of May or early June 1994 in the yard of the Muganza *commune* during which both *Préfet* Nteziryayo and the newly appointed *bourgmestre*, Ndayambaje, incited the population, killings subsequently occurred.<sup>11679</sup>

4306. Having regard to the foregoing, the Chamber is of the view that the information contained in the relevant witness statements was consistent with the information in the Appendix to the Prosecution Pre-Trial Brief, and provided the Defence with clear notice that searches and ensuing killings of Tutsis as a result of incitement at Ndayambaje's swearing-in ceremony were part of its case against both Nteziryayo and Ndayambaje. Lastly, as considered above with respect to the disclosure of these witness statements to the Defence, the Chamber considers this was done in a timely manner.

4307. The Chamber therefore considers the defect in Paragraph 6.37 of the Ndayambaje Indictment is cured *vis-à-vis* Ndayambaje and Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment is cured *vis-à-vis* Nteziryayo with respect to the general allegation of searches and killings.

4308. However, in contrast to the anticipated evidence concerning general ensuing killings, only the summary of anticipated testimony of Witness TP refers to a specific killing. As noted, the summary of anticipated testimony of Witness TP states that after inciting speeches made by both Nteziryayo and Ndayambaje at a security meeting in Muganza *commune* on 24 June 1994, killers took her son away saying Nteziryayo had said that no snake should remain on earth.<sup>11680</sup> Witness TP's statement of 16 October 1997 contains identical information with respect to the taking of Witness TP's son,<sup>11681</sup> for which reason the Chamber considers the subsequent disclosure both clear and consistent. Insofar as the taking of Witness TP's son was described as taking place a few days after Ndayambaje's swearing-in and because "Nteziryayo had said that no snake should remain on earth", the Chamber considers both Nteziryayo and Ndayambaje were provided with adequate notice that the taking of Witness TP's son would form part of the Prosecution's case that killings followed the incitement.

4309. Witness TP's statement was disclosed to the Defence in November 1998, well before the witness gave her testimony in February 2004, for which reason the Chamber considers the subsequent disclosure timely. In the circumstances, the Chamber considers Nteziryayo and Ndayambaje were provided with adequate notice that the taking of Witness TP's son would form part of the Prosecution's case with respect to both Accused and against all counts.

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<sup>11678</sup> 23 February 2000, Statement of Witness FAG, disclosed 15 November 2000 in French and 4 December 2000 in English.

<sup>11679</sup> 14 May 1997, Statement of Witness QAQ, disclosed 4 November 1998 in French and 17 June 1999 in English.

<sup>11680</sup> Prosecution Pre-Trial Brief – Appendix; Witness TP (94).

<sup>11681</sup> 16 October 1997, Statement of Witness TP, disclosed 4 November 1998. The Chamber notes that the Statement of Witness TP dated 16 October 1997 places the meeting referred to as occurring on 27 June 1994, not 24 June 1994.

4310. The Chamber has also considered the summary of anticipated testimony of the other Prosecution witnesses who were expected to testify about either Ndayambaje's swearing-in or a meeting at the Muganza *commune* office. With the exception of the summaries for Witnesses QAF and QAR that outline the abduction of several Tutsi girls that took place after a meeting where Ndayambaje and Nteziryayo incited the population,<sup>11682</sup> no mention of the killings of any specific individuals is made in any other summary of anticipated testimony of the other Prosecution witnesses who were expected to testify about either Ndayambaje's swearing-in or a meeting at Muganza *commune* office.<sup>11683</sup> For this reason, the Chamber considers the Defence was not provided with the details of any other specific killings against which they could be expected to defend themselves at trial. Accordingly, the Chamber declines to make any findings with respect to any evidence that came forth at trial concerning the deaths of specific individuals in relation to this allegation.<sup>11684</sup>

### *Defence Requests for the Exclusion of Prosecution Evidence*

#### *Ndayambaje Request for Exclusion of Evidence*

4311. The Ndayambaje Defence submits that in light of the lack of notice with respect to this allegation, the testimonies of Witnesses QAR, TO, QAQ, QAF, FAL, TP, RV, QAL, FAG and FAU should be excluded insofar as they relate to Ndayambaje's alleged speeches at his swearing-in ceremony and the alleged consequences which resulted from his incitement.<sup>11685</sup>

4312. The Chamber recalls that the Defence's request for the exclusion of the evidence of these 10 Prosecution witnesses has already been the subject of separate judicial decisions by this Chamber.<sup>11686</sup> In a Decision of 1 September 2006, the Chamber denied a motion to exclude the evidence of 14 Prosecution witnesses, which included, *inter alia*, the aforementioned 10 witnesses, on the grounds that there was no basis for exclusion.<sup>11687</sup>

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<sup>11682</sup> See Prosecution Pre-Trial Brief – Appendix; Witness QAF (35); Witness QAR (5).

<sup>11683</sup> See Prosecution Pre-Trial Brief – Appendix, Witness FAG (19); Witness FAL (24); Witness QAL (40); Witness QAQ (11); Witness TO (6); Witness TP (94).

<sup>11684</sup> For example, T. 25 February 2004 p. 12 (Witness QAL) (testified about the killing of her husband); T. 1 March 2004 p. 34 (Witness FAG) (testified about the killing of one Josepha); T. 4 March 2002 p. 116 (ICS) (Witness TO) (testified about the killing of his two cousins).

<sup>11685</sup> Ndayambaje Closing Brief, para. 104.

<sup>11686</sup> On 31 May 2006, the Ndayambaje Defence objected to the admission of evidence of 14 Prosecution witnesses, which included, *inter alia*, the aforementioned 10 witnesses, on the grounds that their testimonies concerned facts or elements not pled in the Indictment and of which the Defence claimed it did not have timely notification: *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006. The Motion concerned the testimony of Prosecution Witnesses EV, FAG, FAL, FAU, QAF, QAL, QAQ, QAR, QBZ, RT, RV, TO, TP, and TW.

<sup>11687</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006, para. 25. Having regard to the particular circumstances of this case, as well as the interests of justice, the Chamber was not satisfied that there was a basis to exclude the concerned testimonies at that stage. The Chamber stressed that some of the matters raised by the Ndayambaje Defence in its Motion may be considered at a later stage of the proceedings.

4313. Ndayambaje moved the Chamber for certification to appeal this decision, and the Chamber denied that motion on 5 October 2006.<sup>11688</sup> On 2 November 2006, the Chamber dismissed another motion filed by the Ndayambaje Defence,<sup>11689</sup> noting that it was not in the interest of judicial economy to relitigate issues the Chamber had already decided on.<sup>11690</sup>

4314. The Chamber recalls its previous finding that Nteziryayo and Ndayambaje were provided with adequate notice of the Prosecution's intention to rely upon evidence about speeches given at Ndayambaje's swearing-in ceremony, as well as evidence of general killings that followed from the alleged incitement of the population at the ceremony, as part of its case against both Accused, although there was no notice of specific killings. The Chamber thus considers that the evidence of the aforementioned 10 Prosecution witnesses relating to general events which occurred at and as a result of Ndayambaje's swearing-in ceremony need not be excluded. Further, while the Chamber declines to make findings based on the evidence of these Prosecution witnesses with respect to specific killings, it considers this evidence may be relevant to the proof of other allegations pled in the Indictment.<sup>11691</sup> Accordingly, the Chamber finds no reason to reconsider its prior decisions of 1 September 2006, 5 October 2006 and 2 November 2006 and declines the Ndayambaje Defence's request to exclude the evidence of the mentioned Prosecution witnesses.

4315. Further, the Chamber notes that the Prosecution disclosed the prior statements of the 10 Prosecution witnesses throughout the period 1998 to 2002. The Chamber notes Witness QAR was the first Prosecution witness called with respect to this allegation and gave evidence in November 2001. Witness QAR's statements were disclosed to the Defence several times over a three-year period from November 1998 until October 2001.<sup>11692</sup> The last disclosure of October 2001 provided the Defence with the witness' statements that had already been disclosed on two earlier occasions, namely 4 December 2000 and 23 April 2001.

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<sup>11688</sup> The Chamber found the Defence had "generally revisited the thrust of its previous arguments rather than demonstrating the conditions required for the Chamber to grant certification to appeal". *Ndayambaje et al.*, Decision on Elie Ndayambaje's Motion for Certification to Appeal the Decision on Ndayambaje's Motion for Exclusion of Evidence Issued on 1<sup>st</sup> September 2006 (TC), 5 October 2006, para. 15.

<sup>11689</sup> *Prosecution v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête d'Élie Ndayambaje aux fins de reconsidération de la décision intitulée : Decision on Ndayambaje's Motion for Exclusion of Evidence» du 1<sup>er</sup> septembre 2006*, 16 October 2006, para. 7. The Ndayambaje Defence asked the Chamber to reconsider both earlier decisions in light of an Appeals Chamber decision rendered on 18 September 2006 in the *Bagosora et al.* case regarding the exclusion of evidence. See generally *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.

<sup>11690</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Reconsideration of the Chamber's Decision to Deny Certification to Appeal Its Decision on the Motion for Exclusion of Evidence (TC), 2 November 2006, paras. 7-8. The Chamber found that the Appeals Chamber decision in *Bagosora et al.* contained no new elements affecting this Chamber's previous decisions, also found that the requirements for reconsideration of this Chamber's decisions had not been met, and dismissed the Motion.

<sup>11691</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006; *Ntahobali & Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15; *Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 12.

<sup>11692</sup> The Statement of Witness QAR dated 20 May 1997 was disclosed on 4 November 1998, 4 December 2000, 23 April 2001 and 1 October 2001. The Statement of Witness QAR dated 14 October 1997 was disclosed on 17 June 1999, 10 December 1999, 4 December 2000, 23 April 2001 and 1 October 2001.

4316. Insofar as the Prosecution disclosed to the Defence the confessions of Witnesses FAG, FAU and RV, made to Rwandan authorities between April and July 2004, the Chamber notes that after each of these witnesses had finished giving their evidence, Witness FAG was recalled and further cross-examined on 6 September 2004, whereas there was no such request on the behalf of the Defence with respect to the remaining two witnesses.

4317. In the circumstances, the Chamber considers that the disclosure was timely, it provided the Defence with sufficient time to prepare its case, and the Accused did not suffer any prejudice.

*Nteziryayo Request for Exclusion of Evidence*

4318. The Nteziryayo Defence submits that the testimonies of Witnesses FAG, FAL, QAF and QAL with respect to meetings and inciting speeches made in Muganza between April and early June 1994 should be excluded since they fall outside the scope of the Nsabimana and Nteziryayo Indictment.<sup>11693</sup>

4319. Having regard to the Chamber's previous finding that the Nteziryayo Defence was provided with adequate notice of this allegation, the Chamber considers there is no reason to exclude the evidence of Witnesses FAG, FAL, QAF and QAL.

4320. In addition to the evidence of Witnesses FAG, FAL, QAF and QAL being provided in a clear, consistent and timely manner, the witnesses gave their respective evidence in February and March 2004. Further, the Chamber notes that the statements of Witnesses FAG, FAL, QAF and QAL were disclosed between November 2000 and May 2002, whereas all these witnesses gave their evidence approximately two years later in February and March 2004. For this reason, the Chamber considers the Defence had sufficient time to prepare Nteziryayo's defence with regard to this allegation. Insofar as the Prosecution disclosed to the Defence Witness FAG's confession to the Rwandan authorities in April 2004, after Witness FAG had finished giving his evidence, the Chamber notes Witness FAG was recalled and further cross-examined on 6 September 2004, for which reason the Chamber considers no prejudice arose.<sup>11694</sup>

4321. In light of the foregoing, the Chamber considers the Defence was provided with sufficient time to prepare its case and the Accused did not suffer any prejudice. Accordingly, the Chamber declines the Defence's request to exclude the evidence of Witnesses FAG, FAL, QAF and QAL insofar as it relates to either events occurring at Ndayambaje's swearing-in ceremony or as a result of speeches given at the ceremony.

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<sup>11693</sup> Nteziryayo Closing Brief, para. 765, sub-para. 9.

<sup>11694</sup> See 23 February 2000, Statement of Witness FAG, disclosed 15 November 2000 and 4 December 2000; 8 October 1999, Statement of Witness FAL, disclosed 15 October 2000; 14 October 1997, Statement of Witness QAF, disclosed 4 December 2000; 17 October 1997, Statement of Witness QAL, disclosed 4 December 2000.

### 3.6.43.3 Evidence

#### Prosecution Witness FAG

4322. Witness FAG, a Hutu farmer<sup>11695</sup> who had confessed to having participated in the genocide, testified that sometime in late May or early June 1994, he learned by word of mouth about a meeting that was to be held where a new *bourgmestre* would be appointed to replace Chrysologue.<sup>11696</sup>

4323. As *préfet* of Butare *préfecture*, Nteziryayo presided over this ceremony, which occurred between May and June 1994, behind the Remera *commune* office.<sup>11697</sup> It took place in a clearing in small eucalyptus bushes approximately 100 metres from the *commune* office and located below the road leading to the *commune* office in the direction of Mugombwa.<sup>11698</sup> On this occasion, the witness saw Ndayambaje, who was the person being sworn in as *bourgmestre*.<sup>11699</sup>

4324. The ceremony started around 10.00 or 11.00 a.m. and lasted until 1.00 p.m.<sup>11700</sup> The witness arrived around 10.00 a.m., after the meeting had started, together with three friends.<sup>11701</sup> When he arrived he saw VIPs sitting on chairs and a lot of the *commune*'s population. He estimated that there were about 1,000 people at the meeting and did not see any Tutsis present. He saw *commune* police officers who guaranteed order and the soldiers who came with Nteziryayo. He sat about 21 metres from the speakers, who used a megaphone.<sup>11702</sup>

4325. Witness FAG did not hear any gunshots or artillery fire while at the meeting.<sup>11703</sup> The population was not armed; the witness did not hear either Nteziryayo or Ndayambaje ask the population to show their weapons during the meeting, although he admitted he might not have been present when this occurred.<sup>11704</sup>

4326. The witness did not pay attention to the order in which the speakers spoke.<sup>11705</sup> He only remembered three people taking the floor, Nteziryayo, Ndayambaje and the secretary Célestin.<sup>11706</sup>

4327. At the ceremony, Célestin introduced the speakers and gave each of them the floor.<sup>11707</sup> The witness heard both Nteziryayo and Ndayambaje address the crowd in parables through a megaphone.<sup>11708</sup> Ndayambaje said, “[w]hen a house is cleaned, the dirt is not piled up behind

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<sup>11695</sup> Prosecution Exhibit 83 (Personal Particulars).

<sup>11696</sup> T. 1 March 2004 p. 33; T. 3 March 2004 pp. 21, 47 (Witness FAG).

<sup>11697</sup> T. 1 March 2004 p. 33 (Witness FAG).

<sup>11698</sup> T. 3 March 2004 pp. 19-20 (Witness FAG).

<sup>11699</sup> T. 1 March 2004 p. 33 (Witness FAG).

<sup>11700</sup> T. 1 March 2004 p. 33; T. 3 March 2004 p. 23 (Witness FAG).

<sup>11701</sup> T. 3 March 2004 p. 43 (ICS); T. 3 March 2004 p. 22 (Witness FAG).

<sup>11702</sup> T. 3 March 2004 pp. 21-24 (Witness FAG).

<sup>11703</sup> T. 3 March 2004 p. 27 (Witness FAG).

<sup>11704</sup> T. 3 March 2004 p. 50 (Witness FAG).

<sup>11705</sup> T. 3 March 2004 p. 24 (Witness FAG).

<sup>11706</sup> T. 3 March 2004 p. 48 (Witness FAG).

<sup>11707</sup> T. 3 March 2004 p. 48 (Witness FAG).

<sup>11708</sup> T. 1 March 2004 p. 33; T. 3 March 2004 p. 23 (Witness FAG).

the house, but it is taken out and thrown in the ditch”.<sup>11709</sup> Witness FAG testified that both Nteziryayo and Ndayambaje explained the parable as follows: “You are continuing to hide those Tutsi women and children. Those same people will harm you, they will put you at risk. So when you clean the house, you do not pile up the dirt behind the house. So if you start killing, you must complete it. And make sure no Tutsi survives.”<sup>11710</sup>

4328. This was the first time the witness heard that proverb.<sup>11711</sup> Ndayambaje did not speak for long.<sup>11712</sup> Nteziryayo repeated practically the same thing as Ndayambaje, and did not speak for long.<sup>11713</sup> Witness FAG did not pay attention to whether Nteziryayo’s speech addressed the advance of the RPF. Witness FAG stated that the terms “Tutsi” and “*Inyenzi*” meant the same thing and was sure Nteziryayo used both terms. The term was used to refer to all Tutsis.<sup>11714</sup>

4329. Nteziryayo wore military fatigues on the occasion of Ndayambaje’s re-installation ceremony.<sup>11715</sup> Ndayambaje wore a suit and a scarf with the national colours which was the former flag.<sup>11716</sup> The witness did not see the *préfet* arrive or leave the meeting. Chrysologue Bimenyimana was present at the meeting.<sup>11717</sup>

4330. Witness FAG did not believe that any of the participants spoke or asked questions, nor did he recall any reference being made to rats or snakes.<sup>11718</sup> The witness did not personally see the swearing-in of the *bourgmestre* nor did he see Ndayambaje climb on a chair or table during the ceremony.<sup>11719</sup>

4331. When it was put to the witness that his confession to Rwandan authorities of 18 November 1999 did not make reference to Ndayambaje taking the floor at the meeting or explaining the parable, the witness stated it was difficult to remember everything when giving statements and, depending on the number of statements given, it was hard to always repeat the same things.<sup>11720</sup> When it was put to the witness that his statement of 23 February 2000 also failed to mention that Ndayambaje took the floor, the witness replied that he was questioned about Nteziryayo, and not Ndayambaje, and thus did not talk to the investigators about Ndayambaje.<sup>11721</sup>

4332. Nteziryayo’s and Ndayambaje’s statements to the crowd resulted in further attacks against Tutsis; after hearing the parable, people tracked down and killed Tutsi women and girls who had survived the massacres; people went into the hills, the valleys and the bush to track

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<sup>11709</sup> T. 1 March 2004 p. 33; T. 3 March 2004 pp. 24-25 (Witness FAG).

<sup>11710</sup> T. 1 March 2004 p. 33; T. 3 March 2004 p. 25 (Witness FAG).

<sup>11711</sup> T. 3 March 2004 p. 27 (Witness FAG).

<sup>11712</sup> T. 3 March 2004 pp. 25, 49 (Witness FAG).

<sup>11713</sup> T. 1 March 2004 p. 33; T. 3 March 2004 p. 49 (Witness FAG).

<sup>11714</sup> T. 3 March 2004 p. 49 (Witness FAG).

<sup>11715</sup> T. 1 March 2004 p. 40 (Witness FAG).

<sup>11716</sup> T. 3 March 2004 p. 24 (Witness FAG).

<sup>11717</sup> T. 3 March 2004 pp. 46-47 (Witness FAG).

<sup>11718</sup> T. 3 March 2004 pp. 25-26 (Witness FAG).

<sup>11719</sup> T. 3 March 2004 p. 47 (Witness FAG).

<sup>11720</sup> T. 3 March 2004 pp. 35-36 (Witness FAG); Defence Exhibit 188 (Ndayambaje) (18 November 1999, Confession of Witness FAG to Rwandan Authorities).

<sup>11721</sup> T. 3 March 2004 pp. 36-37 (Witness FAG); Defence Exhibit 189 (Ndayambaje) (23 February 2000, Statement of Witness FAG).

down the hiding survivors. The cattle, cows and sheep of those who were hiding the survivors were also attacked.<sup>11722</sup>

4333. The witness personally knew a girl called Josepha who was killed after the statements.<sup>11723</sup> Witness FAG estimated that Josepha died in May 1994. He was present during her death, but denied that Théodore Ntama, Gituza Dyoniziyo or Sebiyoba's sons were also present during her death.<sup>11724</sup>

4334. Witness FAG testified that in his 11 August 1998 confession he admitted to having participated in the murder of several children.<sup>11725</sup> When it was put to him that he previously denied having committed other crimes than the ones he mentioned, Witness FAG conceded that in his previous testimony before the Chamber, he did not mention that he participated in the killings of these persons, but that he would have admitted to these events if asked about them.<sup>11726</sup> Witness FAG conceded that he had testified before this Chamber that the confessions of August 1998 and of November 1999 contained the same facts, except that the November 1999 confession did not mention his participation in the above-mentioned killings.<sup>11727</sup>

4335. Witness FAG testified that he made a distinction between events in which he had participated and for which he could be punished, and events which did not concern him personally and for which he could not be punished. He stated the killings of these children did not concern him personally.<sup>11728</sup>

4336. Witness FAG testified that the swearing-in ceremony was not often discussed during *Gacaca* meetings; they talked rather about events that had occurred in the areas they were, and the ceremony was not held in their area.<sup>11729</sup>

4337. Witness FAG testified that this was the only meeting he attended in Muganza *commune* in the period from April to July 1994 and he did not know whether any other meetings may have taken place subsequently.<sup>11730</sup>

4338. Witness FAG estimated he saw Ndayambaje approximately 10 times before the events in 1994.<sup>11731</sup> Ndayambaje vacated his position as *bourgmestre* of Muganza in 1993 to further his studies at the University of Butare.<sup>11732</sup> Ndayambaje was re-installed as *bourgmestre* of Muganza *commune* between the end of May and early June 1994 by the then *préfet* of Butare, Nteziryayo.<sup>11733</sup> The witness identified Ndayambaje in court.<sup>11734</sup>

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<sup>11722</sup> T. 1 March 2004 pp. 33-34; T. 3 March 2004 p. 25 (Witness FAG).

<sup>11723</sup> T. 1 March 2004 p. 34 (Witness FAG).

<sup>11724</sup> T. 6 September 2004 pp. 8-9 (ICS) (Witness FAG); 6 September 2004 p. 10 (HC) (Witness FAG) (French).

<sup>11725</sup> T. 6 September 2004 p. 10 (ICS) (Witness FAG).

<sup>11726</sup> T. 6 September 2004 pp. 12-14 (ICS) (Witness FAG).

<sup>11727</sup> T. 6 September 2004 p. 14 (ICS) (Witness FAG).

<sup>11728</sup> T. 6 September 2004 pp. 15-16 (ICS) (Witness FAG).

<sup>11729</sup> T. 3 March 2004 pp. 43-44 (ICS) (Witness FAG).

<sup>11730</sup> T. 3 March 2004 p. 50 (Witness FAG).

<sup>11731</sup> T. 1 March 2004 pp. 36-37 (Witness FAG).

<sup>11732</sup> T. 1 March 2004 p. 6 (ICS); T. 2 March 2004 p. 15 (Witness FAG).

<sup>11733</sup> T. 1 March 2004 p. 33 (Witness FAG).

4339. Witness FAG had never seen Nteziryayo before the war; he had only ever seen him on the occasion of Ndayambaje's swearing-in. He stated he would not be able to identify Nteziryayo because of the lapse of time since he had seen Nteziryayo at Ndayambaje's installation ceremony in 1994.<sup>11735</sup>

Prosecution Witness FAL

4340. Witness FAL, a Hutu farmer and detainee,<sup>11736</sup> testified that in May or June 1994 the population was summoned to a security meeting held in a little bush near the Muganza *commune* office that started around 10.30 a.m.,<sup>11737</sup> and ended at about 11.30 a.m.<sup>11738</sup> Bow-and-arrow shooting exercises took place on the football field near the venue of the meeting, but not on the same day as the meeting.<sup>11739</sup>

4341. Witness FAL testified more than 5,000 people attended the meeting. The witness sat three metres from the speakers, and the speakers used megaphones.<sup>11740</sup> They were summoned by the *commune* staff on the same morning of the meeting and were asked to come with their traditional weapons, namely, spears and clubs; the witness went with a club and a spear.<sup>11741</sup> Everyone brought their arms with them.<sup>11742</sup> The witness arrived after the start of the meeting. He later clarified that he arrived around 9.30 a.m., but then testified that he actually arrived around 10.00 a.m., waited for half an hour before the meeting started, and that at 10.30 a.m. he was at the meeting venue; so, he had to wait for about half an hour for the meeting to start.<sup>11743</sup>

4342. Witness FAL testified that at the meeting, there was a table which had been placed in the middle of the grass area. The only dignitaries Witness FAL remembered were Nteziryayo and Ndayambaje as well as soldiers. Ndayambaje, Nteziryayo and Tharcisse Muvunyi were present. When the witness arrived at the meeting, Nteziryayo took the floor first and told the crowd that he had come to install Ndayambaje as *bourgmestre* because Chrysologue was not sufficiently active, insofar as he had not done much in relation to the war that was raging, was incapable of governing the *commune* and had proved incapable of hunting down and killing Tutsis, *Abatusi* and *Inkotanyi*.<sup>11744</sup>

4343. Witness FAL stated that Nteziryayo told Ndayambaje to climb on a table, put on a sash bearing the national colours and asked him to take an oath of office to the effect that he, Ndayambaje, was going to accomplish what had not been done. After being sworn in Ndayambaje said, "I swear on the flag of the Rwandan Republic and to the President of the Republic that I will loyally discharge my duties". In response, the witness heard Nteziryayo

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<sup>11734</sup> T. 1 March 2004 p. 39 (Witness FAG).

<sup>11735</sup> T. 1 March 2004 pp. 39-40; T. 3 March 2004 p. 51 (Witness FAG).

<sup>11736</sup> Prosecution Exhibit 75 (Personal Particulars); T. 9 February 2004 p. 33 (ICS) (Witness FAL).

<sup>11737</sup> T. 9 February 2004 p. 37 (Witness FAL).

<sup>11738</sup> T. 9 February 2004 p. 56 (Witness FAL).

<sup>11739</sup> T. 9 February 2004 pp. 67-68 (Witness FAL).

<sup>11740</sup> T. 9 February 2004 pp. 76-77 (ICS) (Witness FAL).

<sup>11741</sup> T. 9 February 2004 p. 55 (Witness FAL).

<sup>11742</sup> T. 9 February 2004 p. 81 (ICS) (Witness FAL).

<sup>11743</sup> T. 9 February 2004 pp. 37, 56 (Witness FAL).

<sup>11744</sup> T. 9 February 2004 pp. 37-38, 57-59, 75 (Witness FAL).



say that Ndayambaje would be able to do what had not yet been done.<sup>11745</sup> The swearing-in of Ndayambaje took place right at the beginning of the meeting and was very quick.<sup>11746</sup>

4344. Witness FAL stated that Nteziryayo did not mention the word “genocide”, however he talked about killing Tutsis. Nteziryayo said the enemy had to be fought, the enemy was Tutsi, and that all *Inkotanyi* were Tutsis. *Inkotanyi* was translated as Tutsis or invaders. The *Inyenzi* were the *Inkotanyi* rebels, *i.e.* those who helped the invaders, while *Ibyitso* referred to Tutsis or some Hutus within the country. Witness FAL testified that no distinction was drawn between the Tutsis inside the country and the Tutsis who attacked the country; all Tutsis were considered to be the enemy.<sup>11747</sup>

4345. After the swearing-in part of the meeting, Nteziryayo and Ndayambaje said: “Dirt is not swept by putting it behind the fireplace. Dirt is swept away from the house.”<sup>11748</sup> Ndayambaje explained the meaning of this proverb, which meant that they had to go and bring all the Tutsis still hiding in houses and destroy the houses where Tutsis were hiding.<sup>11749</sup> Both Ndayambaje and Nteziryayo referred to the “dirt” parable insofar as Ndayambaje underlined what Nteziryayo had said.<sup>11750</sup> No one among the audience dared contradict the speech, no one spoke, and no one asked questions.<sup>11751</sup>

4346. It was the first time the witness heard the proverb. Ndayambaje explained the proverb, saying that when someone sweeps dirt he does not pile it up next to the hearth, but puts it outside, which meant that it was necessary to chase out the Tutsis still hiding, particularly the Tutsi women and girls hiding in houses, and asked people to destroy the houses where these young Tutsi girls were hiding.<sup>11752</sup>

4347. When Ndayambaje took the floor he said, “I am posted to this *commune* but I understood that the people have not worked well in this *commune*”, and then repeated what he had previously said about sweeping the dirt.<sup>11753</sup> Witness FAL did not remember whether any other person addressed the meeting; between Ndayambaje and Nteziryayo, Nteziryayo spoke longer.<sup>11754</sup>

4348. At some point during the meeting, there was a commotion. A small number of those present defended Chrysologue because he was not a bad leader and they wanted him to continue being *bourgmestre*. The protesters did not make a lot of noise, but this demonstration of discontent was nevertheless noticed.<sup>11755</sup>

4349. The witness did not hear the Prime Minister’s announcement referring to the restoration of peace, or anything about snakes, rats, baby rats or female rats being pregnant, or

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<sup>11745</sup> T. 9 February 2004 p. 38 (Witness FAL).

<sup>11746</sup> T. 9 February 2004 p. 81 (ICS) (Witness FAL).

<sup>11747</sup> T. 9 February 2004 pp. 55, 58-59 (Witness FAL).

<sup>11748</sup> T. 9 February 2004 pp. 38, 59; T. 9 February 2004 p. 77 (ICS) (Witness FAL).

<sup>11749</sup> T. 9 February 2004 pp. 38, 64; T. 9 February 2004 p. 78 (ICS) (Witness FAL).

<sup>11750</sup> T. 9 February 2004 p. 60 (Witness FAL).

<sup>11751</sup> T. 9 February 2004 p. 77 (ICS) (Witness FAL).

<sup>11752</sup> T. 9 February 2004 pp. 77-78 (ICS) (Witness FAL).

<sup>11753</sup> T. 9 February 2004 p. 77 (ICS) (Witness FAL).

<sup>11754</sup> T. 9 February 2004 p. 56 (Witness FAL).

<sup>11755</sup> T. 9 February 2004 pp. 56, 59 (Witness FAL).

the distinction between wheat and chaff.<sup>11756</sup> He did not know whether a white religious person was present.<sup>11757</sup> The witness could hear gunshots from Ndora *commune* during the meeting.<sup>11758</sup>

4350. Witness FAL testified that the population carried out Ndayambaje's and Nteziryayo's orders.<sup>11759</sup> The witness heard Sebukeye, who was like Ndayambaje's spokesman, tell the crowd that it had to implement the orders that were given during the meeting.<sup>11760</sup> After the meeting, some people went and sought out the Tutsis hiding in houses and killed them.<sup>11761</sup>

4351. Witness FAL returned home after the meeting; he did not kill anybody else after the meeting, because he was afraid and had already committed too many murders. He did take part in destroying Tutsi houses.<sup>11762</sup>

4352. Witness FAL stated that he had known Ndayambaje in Muganza, at Chumba, since childhood at the Byiza school when Ndayambaje lived in Mugombwa; the witness also met Ndayambaje when he was *bourgmestre*. He positively identified Ndayambaje in court. Witness FAL stated he would be unable to identify Nteziryayo in court since Nteziryayo did not go to Kibuye often, such that the witness was not asked to identify Nteziryayo in court.<sup>11763</sup>

#### Prosecution Witness QAF

4353. Witness QAF, a Hutu farmer,<sup>11764</sup> testified that he attended a public safety meeting chaired by *Préfet* Nteziryayo,<sup>11765</sup> held in eucalyptus woods about 30 metres away from the Muganza *commune* office in Remera *secteur*. The meeting was held close to the road but since it was held in the woods, those who were on the road could not see the meeting's speakers. The bush was a large area, about the size of a football field.<sup>11766</sup>

4354. Witness QAF could not state specifically when the meeting was held, but recalled that the killings started in April 1994, then there was a lull, after which point the meeting was held and then the killing of Tutsi girls who had survived resumed after the meeting.<sup>11767</sup> The witness estimated that maybe two weeks after the meeting he fled for Burundi.<sup>11768</sup>

4355. Witness QAF was informed of the meeting by both the *responsable de cellule*, and his *conseiller de secteur*, who said he had to go and that those who did not attend the meeting

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<sup>11756</sup> T. 9 February 2004 pp. 58, 60; T. 9 February 2004 p. 78 (ICS) (Witness FAL).

<sup>11757</sup> T. 9 February 2004 p. 60 (Witness FAL).

<sup>11758</sup> T. 9 February 2004 p. 79 (ICS) (Witness FAL).

<sup>11759</sup> T. 9 February 2004 p. 38 (Witness FAL).

<sup>11760</sup> T. 9 February 2004 p. 48 (ICS); T. 9 February 2004 p. 63 (Witness FAL).

<sup>11761</sup> T. 9 February 2004 pp. 61, 64 (Witness FAL).

<sup>11762</sup> T. 9 February 2004 p. 48 (ICS); T. 9 February 2004 pp. 60-61 (Witness FAL).

<sup>11763</sup> T. 9 February 2004 pp. 36, 40-41 (Witness FAL).

<sup>11764</sup> Prosecution Exhibit 74 (Personal Particulars); T. 5 February 2004 p. 75; T. 9 February 2004 p. 10 (Witness QAF).

<sup>11765</sup> T. 6 February 2004 p. 8 (Witness QAF).

<sup>11766</sup> T. 5 February 2004 pp. 65, 85-86; T. 9 February 2004 pp. 8-9 (Witness QAF).

<sup>11767</sup> T. 5 February 2004 p. 69; T. 6 February 2004 p. 11; T. 6 February 2004 pp. 36-37 (ICS); T. 9 February 2004 p. 7 (Witness QAF).

<sup>11768</sup> T. 9 February 2004 p. 26 (ICS) (Witness QAF).

would be considered an enemy.<sup>11769</sup> The *conseiller* did not ask the witness to attend the meeting with a weapon; the witness understood it was a security meeting, although in the course of the meeting Hutus decided to kill Tutsis. Since the meeting was held in a period of relative calm, no one at the meeting was armed.<sup>11770</sup>

4356. The witness went to the meeting alone.<sup>11771</sup> The witness arrived in the morning, late for the start of the meeting. Ndayambaje was appointed *bourgmestre* of Muganza *commune* on that day; Ndayambaje had already been installed as *bourgmestre* by the time the witness arrived.<sup>11772</sup>

4357. The surviving members of the population of Muganza *commune* were present, except for those Tutsis who had already been killed.<sup>11773</sup> Witness QAF was unable to estimate how many people were present at the meeting. From where he sat, he could both hear the speakers since they were using megaphones, as well as see them.<sup>11774</sup>

4358. At the meeting the witness saw Nteziryayo, who was the *préfet* of Butare at the time, Ndayambaje, Chrysologue Bimenyimana, Callixte Kalimanzira and a white priest who lived in Mugombwa. The *conseiller*, the members of the *cellule* committees, members of the population and soldiers who accompanied the *préfet* were also present. The soldiers wore camouflage uniforms and carried rifles. He stated that it was not unusual to see soldiers accompany the *préfet* to a meeting. Ndayambaje was wearing a black suit and a tie, but the witness did not pay any attention as to whether Ndayambaje wore any distinctive emblem.<sup>11775</sup>

4359. There was no podium for the speakers. There was a table with a microphone. There were benches by the table for the *conseiller* and the *responsables de cellule*, while the population sat on the grass in the woods.<sup>11776</sup> Approximately 10 dignitaries were sitting at the table, including the white man. He did not see any *bourgmestres* from other *communes* at the meeting. The witness could not recall in which order the speakers spoke.<sup>11777</sup>

4360. *Préfet* Nteziryayo wore a military uniform at the meeting. Nteziryayo addressed the meeting, saying:

Citizens of Muganza *commune*, your authorities have told me that you worked well. I, in turn, congratulate you for having worked well. However, I was told that there was yet a serious problem. And the problem is that there are people who have taken as their mistresses young Tutsi girls. I have also been told that those people have said that whoever comes to seek to kill the young girls will be killed in turn. I would like to tell you that these young Tutsi girls are not your wives. If you kill the father or the mother of someone, you cannot claim that that person is your wife. I am, therefore, telling you that it is necessary for you to get rid of those young girls without difficulties. Whoever

<sup>11769</sup> T. 5 February 2004 pp. 65, 85; T. 9 February 2004 pp. 14-15 (Witness QAF).

<sup>11770</sup> T. 9 February 2004 pp. 15-16 (Witness QAF).

<sup>11771</sup> T. 9 February 2004 p. 7 (Witness QAF).

<sup>11772</sup> T. 5 February 2004 pp. 66, 68; T. 6 February 2004 pp. 4, 6-7; T. 9 February 2004 p. 12 (Witness QAF).

<sup>11773</sup> T. 5 February 2004 pp. 85-86; T. 6 February 2004 p. 6 (Witness QAF).

<sup>11774</sup> T. 9 February 2004 pp. 12, 14 (Witness QAF).

<sup>11775</sup> T. 5 February 2004 p. 66; T. 6 February 2004 p. 5; T. 9 February 2004 pp. 15-16, 21-23, 28 (Witness QAF).

<sup>11776</sup> T. 5 February 2004 p. 86; T. 9 February 2004 pp. 7, 12, 22 (Witness QAF).

<sup>11777</sup> T. 9 February 2004 pp. 22-23; T. 9 February 2004 p. 25 (ICS) (Witness QAF).

refuses to get rid of the young girls will be killed at the same time as the young Tutsi girls and to hand them over to the killers.<sup>11778</sup>

4361. Nteziryayo thanked members of the population for working well, which the witness understood as him congratulating those who killed Tutsis.<sup>11779</sup> Nteziryayo did not say anything worthwhile or good. The population got worried because he was speaking of killing while things had calmed down, and before long the killings started again.<sup>11780</sup>

4362. After his speech, Nteziryayo asked the white man to stand up.<sup>11781</sup> He introduced him as a Belgian priest known as “Brother Stanny”.<sup>11782</sup> Nteziryayo stated that Brother Stan had told him that people had sought to kill him because he was Belgian and had stayed when the other Belgians had left. Nteziryayo stated that Brother Stan was not an enemy. Nteziryayo stated, “[i]f you do not want him, tell me so, and I’m going to take him away”.<sup>11783</sup> The witness testified that he knew Brother Stan well as he would see him at the Mugombwa Church where the witness used to pray regularly.<sup>11784</sup>

4363. The witness heard Ndayambaje tell the public: “When dirt is cleaned, it is taken out of the house because if the dirt is swept back into the house, under the fire side, you may find yourself with that dirt in the bedroom, and you may have to abandon your house because of that dirt. I am, therefore, asking you to sweep the dirt outside the house”.<sup>11785</sup> Witness QAF understood Ndayambaje’s speech to have the same meaning as Nteziryayo’s speech, namely that those young Tutsis still alive were to be killed.<sup>11786</sup>

4364. The witness heard that proverb for the first time in the meeting; he had not heard such a proverb before. No one explained what the proverb meant and people wondered what was meant by the term “sweep”. They deduced that it referred to the extermination of the survivors, because Nteziryayo had previously said that the people had to be taken out and killed.<sup>11787</sup>

4365. No questions were put at the end of the meeting; the witness left immediately at the end of the meeting, and could not say who closed the meeting. The witness did not hear either bombs or gunshots during the meeting. He also did not hear any speeches referring either to rats, or the need to separate genuine seed from false seed.<sup>11788</sup>

4366. The day after the security meeting at the Muganza *commune* office in Remera, young Tutsi girls were flushed out and killed.<sup>11789</sup> The witness subsequently said that this occurred “not much time” after the meeting.<sup>11790</sup> The witness knew of the killing of three girls the day

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<sup>11778</sup> T. 5 February 2004 pp. 66-68; T. 6 February 2004 p. 7 (Witness QAF).

<sup>11779</sup> T. 5 February 2004 p. 68 (Witness QAF).

<sup>11780</sup> T. 6 February 2004 p. 6 (Witness QAF).

<sup>11781</sup> T. 5 February 2004 p. 68 (Witness QAF).

<sup>11782</sup> T. 6 February 2004 p. 8 (Witness QAF).

<sup>11783</sup> T. 5 February 2004 p. 68 (Witness QAF).

<sup>11784</sup> T. 6 February 2004 p. 8; T. 9 February 2004 p. 11 (Witness QAF).

<sup>11785</sup> T. 5 February 2004 p. 68; T. 9 February 2004 p. 16 (Witness QAF).

<sup>11786</sup> T. 5 February 2004 p. 68 (Witness QAF).

<sup>11787</sup> T. 9 February 2004 p. 19 (Witness QAF).

<sup>11788</sup> T. 6 February 2004 p. 6; T. 9 February 2004 pp. 8, 18-20 (Witness QAF).

<sup>11789</sup> T. 5 February 2004 p. 68; T. 6 February 2004 p. 16 (Witness QAF).

<sup>11790</sup> T. 6 February 2004 pp. 29-30 (ICS) (Witness QAF).

after the meeting by a group assailants led by Jean Baptiste Mukundihere, who had been sheltering the three girls. One of the girls was the daughter of Nyarunani, another the daughter of a certain Melchior, and the last one was the daughter of a certain Pascal.<sup>11791</sup> The abduction took place early in the morning; the witness saw killers armed with traditional weapons, including machetes and clubs as well as spears. He heard a noise and saw a large group of people who were leading the girls away.<sup>11792</sup> He did not see the girls being killed but Mukundihere told him he participated in the burial of the girls. The witness agreed that the abduction of these girls was the only event he personally witnessed after the meeting.<sup>11793</sup> The killings continued until he left Rwanda.<sup>11794</sup>

4367. Witness QAF saw Nteziryayo in the area where his aunt lived and on several occasions when Nteziryayo was a soldier. The witness positively identified Nteziryayo in court. Witness QAF knew Ndayambaje well because they had attended the same primary school, Ndayambaje had served for many years, and he later saw Ndayambaje when he became the *bourgmestre* who replaced Chrysologue Bimenyimana. The witness positively identified Ndayambaje in court.<sup>11795</sup>

#### Prosecution Witness RV

4368. Witness RV, a Hutu civil servant and detainee,<sup>11796</sup> testified that on 18 June 1994, it was announced on the radio that Ndayambaje would become *bourgmestre* of Muganza *commune*. Several other *bourgmestres* were replaced the same day and it was claimed that they were incapable of maintaining public security.<sup>11797</sup>

4369. Witness RV stated that Ndayambaje was installed into office at a ceremony held at about 10.00 or 11.00 a.m. on Tuesday 21 June 1994 in the woods, some 50 yards from the *commune* office. Nteziryayo had to swear in the Ndora *bourgmestre* before he came to Muganza.<sup>11798</sup>

4370. Among other officials, Nyiramasuhuko, Nsabimana,<sup>11799</sup> Dominique Ntawukulilyayo (the former *sous-préfet* of Gisagara *sous-préfecture*), Callixte Kalimanzira (Cabinet Director of the Ministry of the Interior) and the *bourgmestre* of Nyaruhengeri attended the ceremony. There were also local inhabitants who were armed with traditional weapons; approximately 1,000 people attended.<sup>11800</sup>

4371. Nteziryayo was the chairman of the meeting. He could not recall what Nteziryayo said or if he was present for the entirety of Nteziryayo's speech. He believed Nteziryayo spoke

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<sup>11791</sup> T. 5 February 2004 p. 73 (ICS); T. 6 February 2004 pp. 16, 19, 29-30 (ICS) (Witness QAF).

<sup>11792</sup> T. 6 February 2004 pp. 18-19, 30 (ICS) (Witness QAF).

<sup>11793</sup> T. 6 February 2004 pp. 40, 42 (ICS) (Witness QAF).

<sup>11794</sup> T. 6 February 2004 p. 29 (ICS) (Witness QAF).

<sup>11795</sup> T. 5 February 2004 pp. 69-70, 72; T. 9 February 2004 p. 5 (Witness QAF).

<sup>11796</sup> T. 17 February 2004 p. 8 (ICS) (Witness RV).

<sup>11797</sup> T. 17 February 2004 pp. 4-5 (ICS); T. 18 February 2004 p. 45 (Witness RV).

<sup>11798</sup> T. 17 February 2004 pp. 5-6 (ICS); T. 18 February 2004 p. 43 (ICS); 19 February 2004 pp. 33-34 (ICS) (Witness RV).

<sup>11799</sup> See also T. 19 February 2004 p. 42 (ICS) (Witness RV).

<sup>11800</sup> T. 17 February 2004 pp. 6-7 (ICS) (Witness RV).

twice because he spoke again after Ndayambaje's speech. Nteziryayo handed Ndayambaje a sash with the national colours.<sup>11801</sup>

4372. Ndayambaje was probably the last to speak, although the witness was not present for the entirety of the ceremony.<sup>11802</sup> He recalled that Ndayambaje said that "[w]hen someone wants to sweep his house properly, he doesn't pile the rubbish up behind the hearth". The witness understood this to mean that Ndayambaje was encouraging the population to kill all the Tutsis who were in hiding.<sup>11803</sup>

4373. When it was put to the witness that he only claimed Nteziryayo spoke twice because he previously said he left the ceremony while Nteziryayo was speaking, such that he couldn't have heard Ndayambaje speaking, the witness confirmed that he heard Ndayambaje and explained that the events occurred a long time ago. He clarified that he must have left the ceremony while Nteziryayo was speaking on the second occasion.<sup>11804</sup> After the meeting, Tutsis who had survived the massacres were immediately killed.<sup>11805</sup>

#### Prosecution Witness TO

4374. Witness TO, a Hutu farmer and traditional dancer,<sup>11806</sup> testified that in June 1994 Ndayambaje was reappointed *bourgmestre* of Muganza *commune* by *Préfet* Nteziryayo. In June 1994, the population was convened in order to introduce the new *préfet*, Nteziryayo and the new *bourgmestre*, Ndayambaje.<sup>11807</sup> He had not seen Ndayambaje for a long time prior to the swearing-in ceremony.<sup>11808</sup>

4375. Although his statement referred to the swearing-in as occurring in May 1994, and then referred to another meeting at the end of June in Muganza *commune* where he saw Nteziryayo, the witness was not in a position to provide exact dates, since this was of little concern to him.<sup>11809</sup> He later estimated that the meeting about which he testified occurred in June 1994.<sup>11810</sup> Witness TO could not remember other gatherings in his *commune* before the swearing-in ceremony.<sup>11811</sup>

4376. The ceremony was held in a small bush<sup>11812</sup> close to the *commune* office in Remera *secteur*,<sup>11813</sup> on the other side of the road that leads to Mugombwa.<sup>11814</sup> It did not take place in the football field, which was an estimated 120 metres away.<sup>11815</sup> It started between 10.00 and

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<sup>11801</sup> T. 17 February 2004 pp. 5, 7 (ICS); T. 18 February 2004 pp. 43-44 (ICS) (Witness RV).

<sup>11802</sup> T. 18 February 2004 p. 43 (ICS) (Witness RV).

<sup>11803</sup> T. 17 February 2004 p. 7 (ICS) (Witness RV).

<sup>11804</sup> T. 18 February 2004 pp. 44-45 (ICS) (Witness RV).

<sup>11805</sup> T. 17 February 2004 pp. 7-8 (ICS) (Witness RV).

<sup>11806</sup> T. 4 March 2002 p. 42 (Witness TO).

<sup>11807</sup> T. 4 March 2002 pp. 10-12 (Witness TO).

<sup>11808</sup> T. 6 March 2002 pp. 18-19 (Witness TO).

<sup>11809</sup> T. 5 March 2002 pp. 28-30, 38, 43; T. 6 March 2002 pp. 28-30 (Witness TO).

<sup>11810</sup> T. 6 March 2002 pp. 58-59 (Witness TO).

<sup>11811</sup> T. 6 March 2002 pp. 19-20 (Witness TO).

<sup>11812</sup> T. 4 March 2002 p. 30; T. 5 March 2002 p. 50; T. 6 March 2001 p. 7 (Witness TO).

<sup>11813</sup> T. 4 March 2002 p. 12; T. 5 March 2002 p. 47 (Witness TO).

<sup>11814</sup> T. 4 March 2002 p. 30; T. 6 March 2001 p. 7 (Witness TO).

<sup>11815</sup> T. 6 March 2002 pp. 8-9 (Witness TO).

11.00 a.m. Witness TO could not recall precisely when the meeting ended, but estimated he left the ceremony at around 2.30 p.m.<sup>11816</sup> During the meeting the *préfet* wore military uniform and was escorted by soldiers, with whom he arrived.<sup>11817</sup>

4377. The master of ceremonies was named Habiyambere.<sup>11818</sup> After the outgoing *bourgmestre* took the floor, welcoming the people who came, *Préfet* Nteziryayo introduced himself and Ndayambaje to the population, and asked the population to cooperate with Ndayambaje. Nteziryayo criticised the outgoing *bourgmestre* for not having achieved much, as well as members of the population who had been hiding Tutsis.<sup>11819</sup> Witness TO agreed that there was a European man who was seated with the authorities during the swearing-in ceremony.<sup>11820</sup>

4378. Nteziryayo told the following fable when addressing the population: “There was a woman who was cleaning her house, and instead of shifting the dirt towards the outside ... where it was supposed to be, she took it into the house ... And the only consequence of that act ... was for lice and other insects to grow from that dirt and exterminate her children”.<sup>11821</sup> While Nteziryayo did not mention the word “Tutsis” in his speeches, the witness stated that the fable Nteziryayo recounted made clear the meaning of his message.<sup>11822</sup> It was the first time the witness heard the fable.<sup>11823</sup> No one explained the fable to him; its meaning was made clear by subsequent events.<sup>11824</sup>

4379. Nteziryayo was not interrupted nor were questions posed during his speech; the witness was present for the entirety of his speech.<sup>11825</sup> The witness was approximately 20 metres from Nteziryayo during the speech. There was no rostrum at this meeting, although a microphone was used.<sup>11826</sup>

4380. When it was put to him that his first account of the fable said the dirt killed the children, while his second account stated the lice that grew from the dirt, the witness stated it was understood that Tutsi women and children were considered as dirt, and that if they were not swept out, then they may eventually attack the population.<sup>11827</sup>

4381. When it was put to him that his statement of October 1995 referred to a woman sweeping the dirt, whereas his statement of June 1997 referred to “cleaning up”, the witness stated the meaning of “cleaning up” was very clear, considering that the *commune*’s previous leaders were blamed for not having done away with the women and children; further, the

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<sup>11816</sup> T. 5 March 2002 pp. 113-115, 117 (Witness TO).

<sup>11817</sup> T. 5 March 2002 pp. 24, 48, 50 (Witness TO).

<sup>11818</sup> T. 5 March 2002 p. 55; T. 5 March 2002 p. 63 (Witness TO) (French) (for the spelling of “Habiyambere”).

<sup>11819</sup> T. 4 March 2002 pp. 13-14 (Witness TO).

<sup>11820</sup> T. 6 March 2002 pp. 10-11 (Witness TO).

<sup>11821</sup> T. 4 March 2002 pp. 15, 20-21 (Witness TO).

<sup>11822</sup> T. 5 March 2002 pp. 56-57 (Witness TO).

<sup>11823</sup> T. 6 March 2002 p. 14 (Witness TO).

<sup>11824</sup> T. 6 March 2002 pp. 32-33 (Witness TO).

<sup>11825</sup> T. 6 March 2002 pp. 13-14 (Witness TO).

<sup>11826</sup> T. 4 March 2002 p. 24; T. 5 March 2002 pp. 53, 55 (Witness TO).

<sup>11827</sup> T. 5 March 2002 pp. 34-35 (Witness TO).

witness testified he quoted the fable in his statement and did not know why the investigators summarised this fable in his statement as “cleaning up”.<sup>11828</sup>

4382. After the *préfet*'s speech, Ndayambaje took the floor and explained the fable to the population; he referred to people who were hiding Tutsis, while Tutsis were being sought after. Ndayambaje did not say much to the population other than to assure them of his cooperation with them.<sup>11829</sup> Ndayambaje was already clad in the national flag when he took the floor after the *préfet*.<sup>11830</sup> The witness could not otherwise recall what Ndayambaje was wearing.<sup>11831</sup>

4383. Prior to the swearing-in ceremony, the population practiced shooting of bows and arrows<sup>11832</sup> in the playground located behind the *commune* office.<sup>11833</sup> Witness TO did not remember how many people were engaged in such practice. The witness claimed they practiced because Nteziryayo had earlier explained that people had to continue with such exercises and to strengthen their night rounds in order to be ready to face the *Inkotanyi*.<sup>11834</sup> Nteziryayo urged the people of the *commune* to equip themselves with weapons, to protect themselves against the *Inkotanyi*. Nteziryayo urged the people to be vigilant since the *Inkotanyi* had arrived at Muyaga Hill and Muyaga *commune*. Nteziryayo not only asked the population to fight against the *Inkotanyi*, but also told the population that it should not forget to embark on the cleansing.<sup>11835</sup>

4384. After the meeting, “some scoundrels and a few thieves engaged in flushing out women and children and [engaged] in looting”, in compliance with Nteziryayo's instructions; the population was not otherwise involved in the massacres.<sup>11836</sup> The witness saw bandits looting and killing. He identified some of the “bandits” who went through his compound and attacked him, and all belonged to the Twa ethnic group.<sup>11837</sup> The witness' two cousins were killed three days after the meeting presided over by Ndayambaje, when houses supposedly hiding Tutsis were searched.<sup>11838</sup>

4385. Witness TO identified Nteziryayo and Ndayambaje in court. Witness TO knew Ndayambaje from the first time Ndayambaje was *bourgmestre*.<sup>11839</sup> Witness TO testified that he was jailed for tax evasion in Muganza *commune* during Ndayambaje's first term as *bourgmestre* prior to March 1994.<sup>11840</sup>

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<sup>11828</sup> T. 5 March 2002 pp. 30-31, 33-34 (Witness TO); Defence Exhibit 13 (Nteziryayo) (8 October 1995 and 11 June 1997, Statements of Witness TO).

<sup>11829</sup> T. 4 March 2002 pp. 25-26 (Witness TO).

<sup>11830</sup> T. 6 March 2002 pp. 12-13 (Witness TO).

<sup>11831</sup> T. 6 March 2002 p. 22 (Witness TO).

<sup>11832</sup> T. 4 March 2002 p. 30; T. 6 March 2002 p. 22 (Witness TO).

<sup>11833</sup> T. 5 March 2002 p. 50; T. 6 March 2002 pp. 23-24 (Witness TO).

<sup>11834</sup> T. 4 March 2002 p. 30; T. 6 March 2002 pp. 25-26 (Witness TO). Witness TO understood “*Inkotanyi*” to refer to the Tutsis who had been driven away out of the country, and that they were considered as enemies. T. 6 March 2002 pp. 15-16 (Witness TO).

<sup>11835</sup> T. 6 March 2002 pp. 26-27, 31 (Witness TO).

<sup>11836</sup> T. 4 March 2002 pp. 26-27; T. 6 March 2002 pp. 46, 60-61 (Witness TO).

<sup>11837</sup> T. 6 March 2002 pp. 46-47, 49 (Witness TO).

<sup>11838</sup> T. 4 March 2002 p. 116 (ICS) (Witness TO).

<sup>11839</sup> T. 4 March 2002 pp. 44-47 (Witness TO).

<sup>11840</sup> T. 5 March 2002 pp. 77-78 (Witness TO).



Prosecution Witness TP

4386. Witness TP, a Hutu farmer in Muganza *commune* married to a Tutsi, testified that while she was hiding at her uncle's house, she attended a meeting at the Muganza *commune* office around 26 or 28 June 1994.<sup>11841</sup> On cross-examination, she stated she was not sure of the date because she was hiding in the bush; the meeting involving the *préfet* and Ndayambaje may have occurred in early May, and another meeting she referred to in her witness statement called solely by Ndayambaje may have occurred on 28 June 1994.<sup>11842</sup>

4387. The witness was informed of the meeting by Numbacumbe, a member of the *cellule* committee, who told her the meeting would deal with land disputes. Land was not discussed at the meeting. Although she had nothing to do with real estate or land problems, she went to the meeting anyway, witnessed the swearing-in of the *bourgmestre* and the introduction of the *préfet* and heard their speeches. She later stated that the purpose of the meeting was for *Préfet* Nteziryayo's installation, that perhaps the new *préfet* had been previously introduced to the whole *préfecture* and that this meeting was the time for the *préfet* to be introduced to their *secteur* or *commune*.<sup>11843</sup>

4388. The meeting took place outside the *commune* office, in the courtyard, and began around 9.00 a.m.; Witness TP was there for the start of the meeting.<sup>11844</sup> She later stated that she arrived at about 9.30 a.m. before the meeting started, and left around 10.00 a.m. or 12.00 p.m., although she could not precisely remember.<sup>11845</sup> Several authorities attended the meeting including the *préfet*, *Bourgmestre* Ndayambaje, *conseillers* of the *commune* and other *commune* staff.<sup>11846</sup> Members of the population carried clubs, axes, hoes or machetes. No special demonstration was held before the start of the meeting.<sup>11847</sup>

4389. Dignitaries were seated around the table at the front; the dignitaries did not have to use megaphones because the participants were not very many, as the majority of Remera's inhabitants were Tutsis and had almost all been exterminated. There were four dignitaries seated at the head table: Ndayambaje, Nteziryayo and two others she did not recognise. She was unsure whether Chrysologue Bimenyimana was present. Witness TP sat approximately 12 metres from the dignitaries.<sup>11848</sup>

4390. Witness TP saw Ndayambaje take the floor and speak for a few minutes. Ndayambaje wore a sash that represented the flag of Rwanda, which he always wore when he chaired a meeting.<sup>11849</sup> Ndayambaje first thanked the population for the work it had been doing. The witness understood that he was thanking Hutus for killing Tutsis. Ndayambaje told the population to continue its work, but to spare the young girls who were with their mothers; boys

<sup>11841</sup> T. 11 February 2004 p. 25 (Witness TP); T. 11 February 2004 p. 6 (ICS) (Witness TP); Prosecution Exhibit 77 (Personal Particulars).

<sup>11842</sup> T. 12 February 2004 p. 33; T. 12 February 2004 p. 36 (ICS) (Witness TP).

<sup>11843</sup> T. 12 February 2004 pp. 38, 40, 43 (Witness TP).

<sup>11844</sup> T. 11 February 2004 p. 25 (Witness TP).

<sup>11845</sup> T. 12 February 2004 p. 39 (Witness TP).

<sup>11846</sup> T. 11 February 2004 p. 25 (Witness TP).

<sup>11847</sup> T. 12 February 2004 p. 38 (Witness TP).

<sup>11848</sup> T. 12 February 2004 pp. 39, 41, 43 (Witness TP).

<sup>11849</sup> T. 12 February 2004 p. 40 (Witness TP).

and men were to be killed. Ndayambaje then introduced Nteziryayo as the recently appointed *préfet* of Butare. The witness did not know what had happened to the former *préfet*.<sup>11850</sup>

4391. After his introduction, Nteziryayo took the floor. He first thanked the population for what it had done, but said it should not relax because there was a lot yet to be done.<sup>11851</sup> Nteziryayo also said, “[w]hen you want to kill a snake you even dig a hole in which the snake was. You also destroy the snake’s eggs.”<sup>11852</sup> The witness understood that Nteziryayo was encouraging the killing of surviving children. Nteziryayo also added: “When you sweep the house, you sweep from all the corners and you take out the dirt. If you ever keep the dirt inside the house, it may add fire, and imagine what it would look like to have fire in your house.”<sup>11853</sup>

4392. Nteziryayo did not discuss security issues; at the time of the meeting, the RPF had not yet arrived in the area. In his speech, Nteziryayo did not pronounce the words “Tutsi” or “*Inkotanyi*”.<sup>11854</sup>

4393. Witness TP saw no other person take the floor. Witness TP left after Nteziryayo’s words but the meeting carried on.<sup>11855</sup> Later she heard that after she left people asked whether the children could be spared and Ndayambaje answered: “You musn’t mention that, because if a child grows, he’ll grow with that same ethnic group. Apart from the children you must also kill the women.”<sup>11856</sup> She did not hear any reference to a parable about rats or fleas, although Hutu villagers also spoke of separating the wheat from the chaff. She did not hear reference to any religious person.<sup>11857</sup>

4394. After the meeting, members of the population went in search of Tutsis and killed them. People told her to hand over the children. She witnessed the killing of her three-and-a-half-year-old son who was taken the following night and someone helped her bury him. Her brother-in-law’s children were also killed on the day Nteziryayo spoke those words. She saw their bodies from about 21 metres. The children of Tutsi neighbours were also taken away and killed.<sup>11858</sup>

4395. Witness TP was not able to identify Nteziryayo in court since it had been a long time and she could not remember his face.<sup>11859</sup> She testified that although she did not know Nteziryayo before the events, she saw him pass by in her *commune* every three months or so in a white vehicle and people had told her that he was Nteziryayo, son of Ntagara.<sup>11860</sup>

4396. In February or March 1994, Ndayambaje left the *commune* to return to his studies and was replaced by Chrysologue; however he came back as *bourgmestre* shortly before the

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<sup>11850</sup> T. 11 February 2004 pp. 26, 32-34; T. 12 February 2004 p. 33 (Witness TP).

<sup>11851</sup> T. 11 February 2004 pp. 28, 32-33; T. 12 February 2004 p. 43 (Witness TP).

<sup>11852</sup> T. 11 February 2004 pp. 28, 33; T. 12 February 2004 p. 43 (Witness TP).

<sup>11853</sup> T. 11 February 2004 pp. 28-29, 33; T. 12 February 2004 p. 43 (Witness TP).

<sup>11854</sup> T. 12 February 2004 pp. 43-44 (Witness TP).

<sup>11855</sup> T. 11 February 2004 pp. 28-29, 33; T. 12 February 2004 pp. 40, 44 (Witness TP).

<sup>11856</sup> T. 12 February 2004 p. 44 (Witness TP).

<sup>11857</sup> T. 12 February 2004 pp. 44-45 (Witness TP).

<sup>11858</sup> T. 11 February 2004 pp. 28-32 (Witness TP).

<sup>11859</sup> T. 11 February 2004 p. 35 (Witness TP).

<sup>11860</sup> T. 11 February 2004 pp. 26-28; T. 12 February 2004 pp. 26-27 (Witness TP).

beginning of the war.<sup>11861</sup> Witness TP had seen Ndayambaje on several occasions. However, she was unable to identify Ndayambaje in court.<sup>11862</sup>

### Prosecution Witness FAU

4397. Witness FAU, a Hutu farmer and detainee,<sup>11863</sup> stated that the day after the killings at Kabuye Hill, on a Sunday, he met his neighbour, an 18-year-old Tutsi girl called Nambaje and a five-year-old girl, who had survived the Kabuye killings. He met them in Kivumo *secteur*, brought them to his grandfather's house, and then to his home to spend the night.<sup>11864</sup> He had passed by Nambaje's parents' home, which had been destroyed, and they asked him for help.<sup>11865</sup> Witness FAU kept Nambaje and the five-year-old girl at his house for just over one month, perhaps from April until the end of the month of May or early June, when assailants came to take Nambaje away and kill her.<sup>11866</sup>

4398. When the assailants came to the witness' house, the leader of the three assailants, Casien Ngona, told the witness that there had been a meeting at which Nteziryayo and Ndayambaje had said, "when you clean a house, you do not keep the dirt inside the house, but you take it outside of the house and if anyone is protecting a girl, he or she must hand her over to the assailants; otherwise, he will be killed by the assailants".<sup>11867</sup> The assailants said if a person hiding a Tutsi refused to hand that Tutsi over to the killers, that person would also be killed because the people hiding Tutsis in their homes were going to cause subsequent problems.<sup>11868</sup>

4399. Witness FAU did not take part in the meeting which Nteziryayo and Ndayambaje attended; those who participated in that meeting, namely the *conseiller* and other persons who were leading attacks all over, had attended and returned from that meeting and spoke about it.<sup>11869</sup> The *conseillers de secteur* had informed the leaders and members of the *cellule* that there would be a meeting at the *commune* office but Witness FAU did not take part in that meeting because he was protecting Nambaje and the five-year-old child, and he wanted to avoid them being taken away. All the inhabitants of the *secteur*, including the *conseillers*, were aware that he was hiding Nambaje.<sup>11870</sup>

4400. The meeting about which Witness FAU testified when Nteziryayo and Ndayambaje took the floor was for the purpose of swearing in Ndayambaje.<sup>11871</sup> Those who returned from

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<sup>11861</sup> T. 11 February 2004 p. 36; T. 12 February 2004 pp. 78-79 (Witness TP).

<sup>11862</sup> T. 11 February 2004 pp. 36-38 (Witness TP).

<sup>11863</sup> Prosecution Exhibit 85 (Personal Particulars).

<sup>11864</sup> T. 4 March 2004 p. 74; T. 8 March 2004 p. 80; T. 9 March 2004 pp. 28-29 (Witness FAU).

<sup>11865</sup> T. 10 March 2004 p. 41 (Witness FAU).

<sup>11866</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 8 March 2004 pp. 83-84 (ICS) (Witness FAU).

<sup>11867</sup> T. 4 March 2004 p. 75; T. 8 March 2004 pp. 80, 90; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>11868</sup> T. 4 March 2004 p. 76 (Witness FAU).

<sup>11869</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 90 (ICS) (Witness FAU).

<sup>11870</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>11871</sup> T. 8 March 2004 pp. 93-94 (ICS) (Witness FAU).

the meeting said that it was said at the meeting that the dirt should be swept and be thrown out of the house and that Ndayambaje was sworn in during the meeting.<sup>11872</sup>

4401. The meeting ended between 5.00 and 6.00 p.m. and the three assailants then came to his house. The three assailants, Cassien Ngona, Nyambindi and Rutabana, were accompanied by a crowd who remained outside his house. The crowd said that they were just told that when a house is swept dirt is thrown outside, and that it was, therefore, necessary to look for anyone hiding and the people started saying that someone was hiding in his house.<sup>11873</sup> The three assailants took the Tutsi girls the witness was hiding and killed them in the home of another Tutsi called Kinyagi.<sup>11874</sup>

4402. After this meeting held by Nteziryayo and Ndayambaje at the *commune* office killings started; on that day and in the following days, “whenever an individual was located somewhere, that person was taken out and killed”.<sup>11875</sup>

4403. When it was put to the witness that his statement of October 1999 said the meeting took place before the killings at Mugombwa Church and Kabuye Hill, the witness clarified that the meeting actually took place after the events of Mugombwa and Kabuye.<sup>11876</sup>

4404. When it was put to Witness FAU that his statement of February 2001 outlined the content of Ndayambaje’s and Nteziryayo’s speeches and said “I was very close to him [Nteziryayo] and heard what he was saying”, Witness FAU stated he knew Nteziryayo’s words because those returning from the meeting told him so; he would ask the assailants, “[d]id you hear those words?”. and they would tell him, “[y]es, we heard that”.<sup>11877</sup>

4405. Witness FAU attended *Gacaca* meetings during his detention at which almost everyone talked about this meeting and the words pronounced there were often repeated among the detainees. When it was put to Witness FAU that he could recount what had happened at the swearing-in because its events were so often discussed in detention, Witness FAU testified that he was not merely repeating what was said at *Gacaca*; he first said these words when he made his confession, whereas the *Gacaca* meetings started only a few months prior to Witness FAU giving his testimony such that there was no connection between the two events. While he could not recall when he made his confession, he testified *Gacaca* began four years after he made his confession.<sup>11878</sup>

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<sup>11872</sup> T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>11873</sup> T. 9 March 2004 pp. 21-22 (ICS); T. 9 March 2004 p. 27 (HC) (Witness FAU) (French) (for the spelling of the assailants’ names).

<sup>11874</sup> T. 4 March 2004 pp. 75, 77; T. 10 March 2004 p. 5 (Witness FAU).

<sup>11875</sup> T. 10 March 2004 p. 24 (Witness FAU).

<sup>11876</sup> T. 10 March 2004 pp. 26-27 (Witness FAU); Defence Exhibit 192 (Ndayambaje) (9 October 1999, Statement of Witness FAU).

<sup>11877</sup> T. 9 March 2004 pp. 23-24 (ICS) (Witness FAU); Defence Exhibit 195 (Ndayambaje) (22 February 2001, Statement of Witness FAU).

<sup>11878</sup> T. 9 March 2004 pp. 24-25 (ICS) (Witness FAU); *see also* Defence Exhibit 193 (Ndayambaje) (29 December 1999, Confession of Witness FAU to Rwandan Authorities).

4406. Witness FAU admitted that he sexually abused Nambaje during the period he hid her, and took her as his wife. He thought that if he took her as his wife, she would not be harmed.<sup>11879</sup>

4407. Witness FAU knew Ndayambaje, but not Nteziryayo. Although Witness FAU did not personally know Nteziryayo, he heard Nteziryayo was a *préfet* and chaired the ceremony in which the *bourgmestre* was sworn in. The witness stated that Nteziryayo held the meeting, but he did not attend.<sup>11880</sup> When confronted with his statement to the Rwandan Prosecutor that said he saw Nteziryayo at a meeting in his *commune*, Witness FAU stated his statement must have been taken down mistakenly because while he talked about that meeting, he did not attend it.<sup>11881</sup> Witness FAU was not asked to identify Nteziryayo in court.

4408. Witness FAU identified Ndayambaje in court.<sup>11882</sup> Throughout his testimony the witness referred to Ndayambaje as *bourgmestre* of Muganza *commune*.<sup>11883</sup> The witness saw Ndayambaje three times: the first time at a meeting convened by *Bourgmestre* Chrysologue at Mugombwa;<sup>11884</sup> the second time when they went together to Kibuye; and the last time when he joined the army at a place called “Foyer”, in Ngoma, on which occasion, he and Ndayambaje both travelled in the same vehicle. He did not see Ndayambaje again after he arrived at the Foyer.<sup>11885</sup>

#### Prosecution Witness QAQ

4409. Witness QAQ, a Tutsi civil servant from Muganza *commune*,<sup>11886</sup> testified that he was informed of a meeting scheduled to take place the following morning at the Muganza *commune* office, which both *Préfet* Nteziryayo and the newly reappointed *bourgmestre*, Ndayambaje, were expected to chair.<sup>11887</sup>

4410. The witness believed this meeting took place between the end of May and the end of June 1994, but could not be more specific because he was already in hiding at that time. However, after having regard to Nteziryayo’s letter of appointment, the witness said it was possible that the meeting was held between 20 and 22 June 1994.<sup>11888</sup> The witness was told that Nteziryayo had been appointed *préfet* and Ndayambaje reappointed *bourgmestre* and that they were going to introduce themselves to the inhabitants for the first time during this meeting.<sup>11889</sup> He could not say whether it was Ndayambaje’s swearing-in ceremony because he did not listen to the content of all the speeches, nor could he recall all the statements that were

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<sup>11879</sup> T. 8 March 2004 p. 88 (ICS); T. 10 March 2004 p. 41 (Witness FAU).

<sup>11880</sup> T. 4 March 2004 p. 76; T. 8 March 2004 p. 90 (ICS) (Witness FAU).

<sup>11881</sup> T. 9 March 2004 p. 20 (ICS) (Witness FAU); Defence Exhibit 193 (Ndayambaje) (29 December 1999, Confession of Witness FAU to Rwandan Authorities).

<sup>11882</sup> T. 4 March 2004 p. 79 (Witness FAU).

<sup>11883</sup> T. 9 March 2004 p. 32 (Witness FAU).

<sup>11884</sup> T. 9 March 2004 pp. 62-63 (Witness FAU).

<sup>11885</sup> T. 4 March 2004 pp. 77-79; T. 9 March 2004 p. 63 (Witness FAU).

<sup>11886</sup> Prosecution Exhibit 63 (Personal Particulars).

<sup>11887</sup> T. 11 November 2002 pp. 38-39, 52 (ICS) (Witness QAQ).

<sup>11888</sup> T. 11 November 2002 pp. 52-53 (ICS) (Witness QAQ); Defence Exhibit 5 (Nteziryayo) (Nteziryayo’s letter of appointment).

<sup>11889</sup> T. 11 November 2002 pp. 52-54 (ICS) (Witness QAQ).

made; in his opinion, the ceremony was intended to introduce the *bourgmestre* to the people.<sup>11890</sup>

4411. The witness decided to attend the meeting so he could see Ndayambaje and Nteziryayo, both of whom he knew well.<sup>11891</sup> He did not intend to follow the meeting; he only intended to come out at the end of the meeting.<sup>11892</sup>

4412. He set out for the meeting at about 1.00 a.m. and walked all night in order to get to the *commune* bureau; he hid in a sorghum field close to the bureau such that when the meeting began, he was already in the field close to the *commune* office.<sup>11893</sup> More precisely, he hid under some bushes in an anti-erosion ridge.<sup>11894</sup> From the road which passes by the *commune* office in the direction of Bishya, the sorghum field was located to the right. The field was adjacent to the road. He was in the ridge while the speeches he heard were being made, approximately 30 metres from the road.<sup>11895</sup> He hid in the sorghum field because, as a Tutsi, he could not show himself to the public for fear of being killed.<sup>11896</sup> He was approximately 100 metres away from the meeting venue.<sup>11897</sup>

4413. The meeting took place in a bush which was downstream from the *commune* office, on the left-hand side of the main road he referred to and behind the IGA building, although the witness was not able to get close enough to see it for himself.<sup>11898</sup> There was a small road which separated the witness from the members of the public who were attending the meeting.<sup>11899</sup> The meeting started after 10.00 or 11.00 a.m.<sup>11900</sup> The meeting ended in the afternoon, maybe around 3.00 p.m.<sup>11901</sup>

4414. Nteziryayo spoke first, followed by Ndayambaje. The speakers were using a megaphone. Nteziryayo said that the fighting in Nyanza was difficult because the Tutsis were hidden. When asked whether Nteziryayo used the word “Tutsi” rather than “*Inyenzi*”, “*Inkontanyi*” or enemy, Witness QAQ said he did not have a clear recollection of the precise word used.<sup>11902</sup> Nteziryayo also asked, “when the *Inkontanyi* come, will they be singing in the praises of the Hutu or the Tutsi?”<sup>11903</sup> He could not recall everything Nteziryayo said during the meeting because he was more concerned about his own survival.<sup>11904</sup>

4415. Witness QAQ heard Ndayambaje say, “[t]hat dirt that you are keeping at the entrance to your houses might invade the inside”. The witness understood “dirt” to refer to Tutsis. He

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<sup>11890</sup> T. 11 November 2002 p. 83 (Witness QAQ).

<sup>11891</sup> T. 11 November 2002 pp. 39-40, 55-56 (ICS) (Witness QAQ).

<sup>11892</sup> T. 11 November 2002 pp. 65, 83 (Witness QAQ).

<sup>11893</sup> T. 11 November 2002 p. 60; T. 11 November 2002 p. 39 (ICS) (Witness QAQ).

<sup>11894</sup> T. 11 November 2002 p. 65 (Witness QAQ).

<sup>11895</sup> T. 11 November 2002 pp. 73-76 (Witness QAQ).

<sup>11896</sup> T. 11 November 2002 pp. 39, 57 (ICS) (Witness QAQ).

<sup>11897</sup> T. 11 November 2002 p. 65 (Witness QAQ).

<sup>11898</sup> T. 11 November 2002 p. 81 (Witness QAQ).

<sup>11899</sup> T. 11 November 2002 p. 40 (ICS) (Witness QAQ).

<sup>11900</sup> T. 11 November 2002 p. 62 (Witness QAQ).

<sup>11901</sup> T. 11 November 2002 p. 66 (Witness QAQ).

<sup>11902</sup> T. 11 November 2002 pp. 40-41 (ICS); T. 11 November 2002 pp. 62-65 (Witness QAQ).

<sup>11903</sup> T. 11 November 2002 p. 41 (ICS) (Witness QAQ).

<sup>11904</sup> T. 11 November 2002 p. 64 (Witness QAQ).

was frightened to hear these words, and they led him to believe what he had been previously told about Ndayambaje. Hearing these words made the witness change his opinion about Ndayambaje.<sup>11905</sup> Upon hearing those words, the witness moved further away from the meeting still using the ridges that he referred to.<sup>11906</sup>

4416. A megaphone was being used at the meeting and the master of ceremonies mentioned Nteziryayo and Ndayambaje, which is how the witness knew that they were present. While he could not see the VIPs addressing the meeting, he could hear Ndayambaje and Nteziryayo from where he was located.<sup>11907</sup> He could not identify Ndayambaje and Nteziryayo by their voices because their voices were modified by the megaphone; he could identify them because their names were mentioned before they addressed the meeting. The witness agreed that part of the speeches he heard were often incomplete or unclear; there were statements he could not hear and he only paid attention when the names of the persons that he was able to identify were mentioned.<sup>11908</sup>

4417. Witness QAQ could not say how long Nteziryayo and Ndayambaje spoke, or what else they said, but testified that he remembered the parts of the speech that concerned him.<sup>11909</sup>

4418. According to Witness QAQ, Nteziryayo had not previously made racist statements, and the witness was surprised to hear Nteziryayo and Ndayambaje make those statements at the meeting.<sup>11910</sup>

4419. The day after the meeting, towns-people in Mbaziro killed young Tutsi women who had been hiding or forced into marriage, and it was these women they were referring to when they spoke of “dirt”. The witness personally saw the killings because they took place in the courtyard of the building in which he was hiding, which was his place of work.<sup>11911</sup>

4420. Witness QAQ knew Ndayambaje from when the Accused was in his sixth year of primary school. Until the events of 1994, the witness was friends with Ndayambaje and they regularly visited each other’s homes.<sup>11912</sup> Witness QAQ knew Nteziryayo since before 1966; they were friends and had common friends who were both Tutsis and Hutus.<sup>11913</sup> He identified Nteziryayo in court.<sup>11914</sup>

#### Prosecution Witness QAL

4421. Witness QAL, a female Hutu farmer married to a Tutsi, testified that she attended a meeting in the woods below the *commune* office in Remera at around 10.00 a.m.<sup>11915</sup> The

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<sup>11905</sup> T. 11 November 2002 p. 41 (ICS) (Witness QAQ).

<sup>11906</sup> T. 11 November 2002 pp. 61, 65 (Witness QAQ).

<sup>11907</sup> T. 11 November 2002 p. 40 (ICS); T. 11 November 2002 pp. 61-63, 84 (Witness QAQ).

<sup>11908</sup> T. 11 November 2002 p. 84 (Witness QAQ).

<sup>11909</sup> T. 11 November 2002 pp. 85-86, 89 (Witness QAQ).

<sup>11910</sup> T. 11 November 2002 p. 67 (Witness QAQ).

<sup>11911</sup> T. 11 November 2002 pp. 42-44 (ICS) (Witness QAQ).

<sup>11912</sup> T. 11 November 2002 p. 46 (ICS); T. 12 November 2002 p. 28 (Witness QAQ).

<sup>11913</sup> T. 11 November 2002 pp. 69-70 (ICS) (Witness QAQ).

<sup>11914</sup> T. 11 November 2002 pp. 47-48 (ICS) (Witness QAQ).

<sup>11915</sup> T. 25 February 2004 pp. 10, 18; T. 25 February 2004 pp. 40-41, 50 (ICS) (Witness QAL); Prosecution Exhibit 81 (Personal Particulars).

witness subsequently stated she did not arrive at 10.00 a.m. She arrived late, after the meeting had already commenced. The meeting was scheduled to start at 10.00 a.m. Ndayambaje was ending his speech when the witness arrived.<sup>11916</sup> Inhabitants from three *secteurs*, Remera, Kivomo and Kyumba, were present; she estimated 200 people attended, of which none were Tutsis, as the Tutsis had been killed, and some attendees were armed with traditional weapons. The field where the meeting was held was on the left of the *commune* office when you face the office, below the road that goes to Mugombwa.<sup>11917</sup>

4422. Witness QAL did not remember the date of the meeting, but recalled it was held shortly before the RPF invasion of Muganza that occurred at the end of June or beginning of July.<sup>11918</sup> The witness could not recall for how long Nteziryayo had been *préfet* at the time of the meeting.<sup>11919</sup> The witness was unsure but thought that Bimenyimana was replaced by Ndayambaje as *bourgmestre* in April 1994.<sup>11920</sup> Ndayambaje was the *bourgmestre* of Muganza *commune* at the time of the meeting.<sup>11921</sup> She thought that Ndayambaje may have been appointed *bourgmestre* the previous day.<sup>11922</sup> She later stated that she was unsure of how long Ndayambaje had been *bourgmestre* before the meeting.<sup>11923</sup>

4423. Members of the *cellule* committee had announced that meeting.<sup>11924</sup> They were not told the purpose of the meeting, but they were told that everyone had to arm themselves with a club, a stake and other weapons.<sup>11925</sup>

4424. The dignitaries, including Ndayambaje and Nteziryayo, sat in chairs, with tables in front of them, facing the population which was sitting on the lawn. The witness did not see Chrysologue Bimenyimana at the meeting.<sup>11926</sup>

4425. The witness went with three other people.<sup>11927</sup> The witness did not see the speakers use megaphones or other equipment at the meeting.<sup>11928</sup> When she arrived at the meeting, Ndayambaje was ending his speech.<sup>11929</sup> Ndayambaje addressed the population stating: “You have understood what I told you and now it is Alphonse who is going to take the floor. All that I’ve told you, all that I’m saying is the enemy is the Tutsi, you should therefore identify it, seek it out and separate the wheat from the chaff. The white man here, don’t worry about him because he is one of us.”<sup>11930</sup>

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<sup>11916</sup> T. 25 February 2004 pp. 18, 37; T. 25 February 2004 p. 46 (ICS) (Witness QAL).

<sup>11917</sup> T. 25 February 2004 p. 11; T. 25 February 2004 pp. 41-42 (ICS) (Witness QAQ).

<sup>11918</sup> T. 25 February 2004 p. 13; T. 25 February 2004 p. 25 (ICS) (Witness QAL).

<sup>11919</sup> T. 25 February 2004 p. 21 (Witness QAL).

<sup>11920</sup> T. 25 February 2004 p. 27 (ICS) (Witness QAL).

<sup>11921</sup> T. 25 February 2004 pp. 41-42 (ICS) (Witness QAL).

<sup>11922</sup> T. 25 February 2004 pp. 20-21 (Witness QAL).

<sup>11923</sup> T. 25 February 2004 p. 42 (ICS) (Witness QAL).

<sup>11924</sup> T. 25 February 2004 p. 10 (Witness QAL).

<sup>11925</sup> T. 25 February 2004 p. 20 (Witness QAL).

<sup>11926</sup> T. 25 February 2004 pp. 17-18 (Witness QAL).

<sup>11927</sup> T. 25 February 2004 p. 19; T. 25 February 2004 pp. 24, 39 (ICS) (Witness QAL).

<sup>11928</sup> T. 25 February 2004 p. 43 (ICS) (Witness QAL).

<sup>11929</sup> T. 25 February 2004 p. 37 (Witness QAL).

<sup>11930</sup> T. 25 February 2004 pp. 10-11, 20; T. 25 February 2004 p. 46 (ICS) (Witness QAL).



4426. Apart from what she heard, the witness was also told that Ndayambaje told the population to clean up and put the dirt out, to the extent that they should be able to find a needle in that heap of dirt.<sup>11931</sup> It was a common proverb in Rwanda and Witness QAL understood it to mean that good and bad people should be separated and people who were undesirables should be killed.<sup>11932</sup> The witness was told by a friend what Ndayambaje had said after she arrived at the meeting and Ndayambaje finished his speech.<sup>11933</sup>

4427. Nteziryayo took the floor after Ndayambaje. Since there was no interval between Ndayambaje's speech and Nteziryayo's speech, she listened to both her friend and Nteziryayo simultaneously. Nteziryayo greeted the people and asked if they had carried out the instructions given to them; people answered that they had. Nteziryayo asked those who brought spears to raise their hands and told them to sharpen them so that when they were hurled at the enemy, they would be streaked with blood. Nteziryayo also asked those who had clubs to raise their hands and told them they should embed nails on their clubs; he further asked those who had machetes to raise their hands. Nteziryayo asked people who had married Tutsis and had children to kill all Tutsis as he did not want any Tutsis around anymore.<sup>11934</sup>

4428. Ndayambaje spoke for about 15 minutes. Ndayambaje was wearing a suit and wearing a ribbon with the national colours. Nteziryayo spoke for about 30 minutes. He was dressed in military uniform.<sup>11935</sup>

4429. Witness QAL did not hear either Nteziryayo or Ndayambaje speak about the RPF arriving, nor use the words "*Inkotanyi*" or "*Ibyitso*"; they rather spoke about Tutsis. Nteziryayo did not invite the people present to fight the *Inkotanyi*, nor did he tell them what to do in the event of an attack. Nteziryayo spoke in clear language, and did not recount fables or parables, nor speak of serpents, rats or lice. No one asked questions.<sup>11936</sup>

4430. A man called Célestin also spoke; he supplemented what the other two had said by saying that they had forgotten to tell people to also kill babies.<sup>11937</sup> Célestin spoke last.<sup>11938</sup> A white man was also present at the meeting.<sup>11939</sup> The witness did not know him. The white man wore ordinary clothes and did not have much hair and no glasses. The white man did not take the floor but he did stand up, greet the population with a gesture of his hands and sit down.<sup>11940</sup>

4431. Witness QAL left at the end of the meeting, at about 1.00 p.m.<sup>11941</sup> After the meeting, the population started searching for Tutsis. The same day as the meeting, people came to her home and took her five-year-old daughter and took her to Muganza. There, the witness' brother paid 15,000 Rwandan Francs to those who had abducted her daughter and she was

<sup>11931</sup> T. 25 February 2004 p. 11 (Witness QAL).

<sup>11932</sup> T. 25 February 2004 p. 46 (ICS) (Witness QAL).

<sup>11933</sup> T. 25 February 2004 p. 23 (ICS) (Witness QAL).

<sup>11934</sup> T. 25 February 2004 pp. 11-12, 19-20; T. 25 February 2004 p. 23 (ICS) (Witness QAL).

<sup>11935</sup> T. 25 February 2004 pp. 17, 20 (Witness QAL).

<sup>11936</sup> T. 25 February 2004 pp. 19-20 (Witness QAL).

<sup>11937</sup> T. 25 February 2004 p. 17; T. 25 February 2004 pp. 20-21, 23 (French) (Witness QAL) (for spelling of "Célestin").

<sup>11938</sup> T. 25 February 2004 p. 20 (Witness QAL).

<sup>11939</sup> T. 25 February 2004 p. 11 (Witness QAL).

<sup>11940</sup> T. 25 February 2004 pp. 43-45 (ICS) (Witness QAL).

<sup>11941</sup> T. 25 February 2004 p. 18 (Witness QAL).

released, although the other children were taken away. The following day, the witness' husband, who was Tutsi, was killed.<sup>11942</sup>

4432. Witness QAL identified Ndayambaje in court. She knew him even before because she lived not far from him. She remembered having seen him for the first time in 1985 or 1986 when he was introduced to the population as being the *bourgmestre* at the *commune* office. Witness QAL saw Nteziryayo on one occasion in a vehicle in Muganza *secteur*, on another occasion where he spoke at a meeting held in a wood near the Muganza *commune* office and on a third occasion when he was in a vehicle, wearing military dress and looking at people firing at banana trees at Remera. Witness QAL said that she would not be able to recognise Nteziryayo.<sup>11943</sup>

4433. Witness QAL returned to her parents' house between April and July 1994.<sup>11944</sup>

#### Prosecution Witness QAR

4434. Witness QAR, a Tutsi,<sup>11945</sup> testified that before 6 April 1994 she attended several meetings convened by *Bourgmestre* Ndayambaje at the *commune* office at Remera in Muganza *commune*. Those meetings in Muganza *commune* took place both before and after the war. There was approximately one meeting per month. After the death of the President, there were meetings almost every day.<sup>11946</sup>

4435. In June 1994, Witness QAR attended a meeting at Muganza *commune* which was held behind the courtyard of the *commune* office, in the field which serves as playground in Remera. The meeting started at about 8.30 a.m. and was attended by the population of Muganza *commune*.<sup>11947</sup> The witness estimated she arrived at the meeting around 9.00 a.m. When she arrived people were already sitting, although she was unsure if the meeting had already started. A huge segment of the population was present at the meeting because they came to see the new *préfet* who had been appointed. The witness sat on the ground.<sup>11948</sup> While she could not see the speakers,<sup>11949</sup> she could hear them because they were using a microphone.<sup>11950</sup>

4436. In cross-examination, the witness estimated the meeting took place in mid-June, because following that meeting children were taken to be killed, and this occurred on 18 June 1994. The population was informed of the meeting by the local Mugombwa *conseiller*, Viateur Singirankabo.<sup>11951</sup>

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<sup>11942</sup> T. 25 February 2004 p. 12; T. 25 February 2004 pp. 23-24 (ICS) (Witness QAL).

<sup>11943</sup> T. 25 February 2004 pp. 13-14, 16; T. 25 February 2004 pp. 27-28 (ICS) (Witness QAL).

<sup>11944</sup> T. 25 February 2004 p. 25 (ICS) (Witness QAL).

<sup>11945</sup> T. 15 November 2001 p. 139 (Witness QAR).

<sup>11946</sup> T. 15 November 2001 pp. 139, 141-143; T. 20 November 2001 pp. 69-71 (Witness QAR).

<sup>11947</sup> T. 19 November 2001 p. 55; T. 20 November 2001 p. 77; T. 21 November 2001 p. 78 (Witness QAR).

<sup>11948</sup> T. 21 November 2001 pp. 77-78, 81-82 (Witness QAR).

<sup>11949</sup> T. 21 November 2001 pp. 133-134 (Witness QAR).

<sup>11950</sup> T. 21 November 2001 pp. 81-82 (Witness QAR).

<sup>11951</sup> T. 21 November 2001 pp. 75-76 (Witness QAR).

4437. Witness QAR heard people say that the meeting was chaired by the *préfet* of Butare, Nteziryayo.<sup>11952</sup> There were two speakers at the meeting, both of whom wore civilian attire, not military uniforms.<sup>11953</sup> The *conseiller* of Mugombwa was also present. The witness could not recall seeing any white people, the parish priests or soldiers at the meeting, although *commune* policemen were present.<sup>11954</sup>

4438. *Préfet* Nteziryayo asked *Bourgmestre* Ndayambaje “how far they went with the job or the work.” Ndayambaje replied that “they had killed, they had exterminated all the snakes, except the women and the children, because [they] had no ethnicity but all the vipers had been exterminated”.<sup>11955</sup> In turn, *Préfet* Nteziryayo told *Bourgmestre* Ndayambaje, “you have not done anything because when you sweep the house and you put the dirt next to the fireplace, for example, the dirt will accumulate and then the people in the house will have to go”. Nteziryayo further told Ndayambaje, “[y]ou have to get the dirt out”.<sup>11956</sup>

4439. After the *préfet* said these things to the *bourgmestre*, the people applauded with much pleasure. After hearing these words from the *préfet*, the witness was frightened and went directly home. Later on she heard those who came out of the meeting saying that they had decided “to sweep out everything”. Witness QAR specified that “to sweep out everything” meant “taking care of all those who were still alive”, “that is the women and girls that were [previously] spared”. These women and children were to be killed.<sup>11957</sup>

4440. The search for women started the following day, which the witness estimated was 18 June 1994. The witness remembered that date because she was also called to be taken away with the other women, but was lucky to have escaped.<sup>11958</sup>

4441. Witness QAR testified that a group of attackers came to take the girls that had been spared and took them away to a place called Magasenyi where there were furnaces to kill them.<sup>11959</sup> Initially, there was a disagreement among the attackers about what to do with the women and girls, which took place next to the Statue of the Virgin Mary.<sup>11960</sup> The leader of the attackers, Masima, asked the others to wait for instructions from the “chief” and said they would do whatever the chief said.<sup>11961</sup> When Ndayambaje arrived, the leader of the attackers asked Ndayambaje what they should do with the women and girls. Without descending from his vehicle,<sup>11962</sup> Ndayambaje replied “[d]o whatever you want to do”.<sup>11963</sup> After this was said, the leader of the attackers told the women and girls to stand up and they were taken away to be killed. Witness QAR saw these people take away the eight girls with her own eyes.<sup>11964</sup> Contrary to what was stated in the witness’ statement to the Belgian authorities in June 1995,

<sup>11952</sup> T. 19 November 2001 p. 55 (Witness QAR).

<sup>11953</sup> T. 19 November 2001 p. 119 (Witness QAR).

<sup>11954</sup> T. 21 November 2001 pp. 85-86, 90-91 (Witness QAR).

<sup>11955</sup> T. 19 November 2001 p. 56; T. 21 November 2001 p. 93 (Witness QAR).

<sup>11956</sup> T. 19 November 2001 p. 56 (Witness QAR).

<sup>11957</sup> T. 19 November 2001 p. 57 (Witness QAR).

<sup>11958</sup> T. 21 November 2001 p. 96 (Witness QAR).

<sup>11959</sup> T. 19 November 2001 pp. 57-58 (Witness QAR).

<sup>11960</sup> T. 19 November 2001 p. 60; T. 21 November 2001 p. 97 (Witness QAR).

<sup>11961</sup> T. 19 November 2001 pp. 60, 97 (Witness QAR).

<sup>11962</sup> T. 21 November 2001 p. 100 (Witness QAR).

<sup>11963</sup> T. 19 November 2001 p. 60 (Witness QAR).

<sup>11964</sup> T. 19 November 2001 pp. 60-61; T. 21 November 2001 p. 97 (Witness QAR).

the girls were not killed “on the spot” at the Statue of the Virgin Mary.<sup>11965</sup> The girls were taken to a valley between Mugombwa and Chibaye, called Gasenyi, where there were furnaces, and where their bodies were piled because the ditch was full.<sup>11966</sup>

4442. Although the witness’ statement of 14 October 1997 referred to only four girls and a teacher being taken, she explained that eight girls were in fact taken.<sup>11967</sup>

4443. Witness QAR had known Ndayambaje since they were children and identified Ndayambaje in court. Witness QAR only saw Nteziryayo once, wearing a military uniform at Mugombwa. She later said she saw him again at the Remera *commune* meeting, on which occasion he was in civilian dress, not military uniform.<sup>11968</sup> Since Nteziryayo’s speech on the latter occasion frightened her such that she returned home, she could not be sure of “this or that person.”<sup>11969</sup> The witness did not sufficiently know Nteziryayo to be able to identify him in court.<sup>11970</sup>

#### Prosecution Expert Witness André Guichaoua

4444. In his Report, André Guichaoua wrote that on the occasion of Ndayambaje’s swearing-in ceremony, Nteziryayo told the audience to “[k]ill the Tutsis and then go and confess to the priest and God will forgive you”. People reacted to these words both locally and nationally and caused people to categorise Nteziryayo as an “ultra genocidaire” alongside Nyiramasuhuko.<sup>11971</sup>

4445. The swearing-in ceremonies of Nteziryayo as *préfet* and Ndayambaje as *bourgmestre* corresponded to the launching of the last phase of the killings in Butare *préfecture*, which was aimed at “finishing the work”.<sup>11972</sup>

#### Prosecution Expert Witness Evariste Ntakirutimana

4446. Evariste Ntakirutimana testified as an expert in the fields of social linguistics, discourse analysis, lexicology, semantics and language planning.<sup>11973</sup> Ntakirutimana’s Expert Report, tendered as Prosecution Exhibit 158, analyses the use of numerous proverbs and phrases in Rwanda during the events in 1994.<sup>11974</sup>

4447. Ntakirutimana testified that the word “enemy” in the context of the 1994 conflict in Rwanda referred to the group who was attacking. “*Inkotanyi*” were the people that attacked Rwanda from abroad in 1994; they were Rwandans who wanted to come back to Rwanda.

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<sup>11965</sup> T. 21 November 2001 pp. 111-112 (Witness QAR); Defence Exhibit 11 (Ndayambaje) (20 June 1995, Statement of Witness QAR to Belgian Authorities).

<sup>11966</sup> T. 21 November 2001 p. 101 (Witness QAR).

<sup>11967</sup> T. 21 November 2001 pp. 104-106 (Witness QAR); Defence Exhibit 11 (Ndayambaje) (14 October 1997, Statement of Witness QAR).

<sup>11968</sup> T. 19 November 2001 pp. 102-104, 108-109 (ICS) (Witness QAR).

<sup>11969</sup> T. 19 November 2001 p. 109 (ICS) (Witness QAR).

<sup>11970</sup> T. 19 November 2001 pp. 111-112 (ICS) (Witness QAR).

<sup>11971</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 130.

<sup>11972</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 130; T. 29 June 2004 p. 62 (Guichaoua).

<sup>11973</sup> T. 13 September 2004 pp. 17, 30 (Ntakirutimana).

<sup>11974</sup> T. 13 September 2004 p. 32 (Ntakirutimana).

“*Inyenzi*” in many cases equals “*Inkotanyi*”. Neutrally speaking “*Inkotanyi*” simply meant the attacking group. Ntakirutimana declined to identify “Tutsis” as the enemy, but admitted that, generally speaking, one could deduce that the Hutus were attacked and the Tutsis were the attackers.<sup>11975</sup> In his Expert Report, Ntakirutimana reported that in daily Rwandan culture, the “enemy” was understood to be Tutsis, and outlined numerous examples of proverbs referring to “the enemy”.<sup>11976</sup>

4448. Ntakirutimana testified that “*gukora*” has several meanings in Kinyarwanda, including to do something bad, to work arduously and thank you. In his Expert Report, Ntakirutimana wrote that “*gukora*” was synonymous with to work, to kill, to remove, to clean, communal work, *umuganda*, finish the job, rape and take away. “To work” could be going to destroy someone’s house, or to raid and steal from someone. In the context of the 1994 conflict, “to work” meant “to kill”. Ntakirutimana testified: “You must work with a weapon, and what you do with the weapon, that’s quite clear ... if you do work, you are going to get the Tutsi land.” All those who did not wish to work should be set aside. The operation to eliminate the enemy or the snake was a euphemism for “work”.<sup>11977</sup>

4449. According to Ntakirutimana, proverbs referring to the sweeping outside of dirt were truisms which could be easily understood. In the context of the war, such a proverb should be understood to mean that the people who attacked Rwanda and came from outside needed to be thrown out of the country. References in proverbs to “garbage” and “rubbish” fell into the same semantic field as the word “dirt”.<sup>11978</sup>

4450. Ntakirutimana explained that references to removing lice convey the image of parasites getting into ones clothing. Since old mothers and fathers in villages pick lice from their clothes, thus eliminating them, one can extrapolate the proverb to mean that one needed to eliminate anything that can disturb one’s life or situation.<sup>11979</sup>

4451. Proverbs referring to the need to separate good grains from chaff denote the relationship between the attacking group, which is bad, and the group that is attacked, which is considered good. Since weeds always come after the good grain has been planted, the context of good and bad should be understood. Speakers employing such proverbs bridged the communication gap with peasants since such metaphors put the peasant in his daily context; peasants directly understood the need to separate and throw away the bad grain.<sup>11980</sup>

#### Ndayambaje Defence Witness BOZAN

4452. Witness BOZAN, a Hutu civil servant in 1994,<sup>11981</sup> testified that Ndayambaje became *bourgmestre* of Muganza *commune* again towards the end of June 1994. Around 20 June 1994,

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<sup>11975</sup> T. 13 September 2004 pp. 54, 59, 64-66 (Ntakirutimana).

<sup>11976</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 26-27, 29-30.

<sup>11977</sup> T. 13 September 2004 pp. 47, 68-69 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) pp. 32, 34.

<sup>11978</sup> T. 13 September 2004 pp. 51-53 (Ntakirutimana).

<sup>11979</sup> T. 13 September 2004 p. 70 (Ntakirutimana).

<sup>11980</sup> T. 13 September 2004 pp. 61-62 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 22.

<sup>11981</sup> T. 16 September 2008 p. 12 (ICS) (Witness BOZAN).

a meeting was convened at the Remera *commune* office to introduce Ndayambaje as the new *bourgmestre*. According to the *conseiller*, the meeting would start at 2.00 p.m. The witness left his house to attend the meeting at 1.30 p.m. and got there between 2.00 and 2.30 p.m.<sup>11982</sup>

4453. Witness BOZAN went straight to the *commune* office where he saw two or three vehicles arrive on Wednesday 22 June 1994. However, the policeman who was guarding the *commune* office told the witness and others to move to a wooded area nearby, at approximately 30 or 40 metres from the *commune* office, where the meeting was supposed to take place. Aboard the three vehicles were Nteziryayo, Ndayambaje, a lady MP, *Sous-préfet* Dominique and other people that the witness did not know.<sup>11983</sup>

4454. Witness BOZAN testified that he sat down amid the population present and a few moments later Nteziryayo, Bimenyimana and Ndayambaje arrived. The population was scattered and the officials were seated on chairs in front of the table. The meeting began a few minutes after 3.00 p.m. A megaphone was used during the meeting, although it did not work well. There were 500 people in attendance and the witness was sitting on a bench close to the officials. The witness recognised Bimenyimana, Ndayambaje, Nteziryayo, a female member of Parliament and a *sous-préfet* among the officials.<sup>11984</sup> The witness testified that Kalimanzira, Nyiramasuhuko and Colonel Muvunyi were not present at that meeting.<sup>11985</sup>

4455. A man named Célestin opened the meeting, followed by Bimenyimana. Bimenyimana welcomed and introduced the officials and said that the reason for the meeting was the introduction of the new *bourgmestre*. Thereafter, Bimenyimana wished good luck to his successor Ndayambaje before giving the floor to Nteziryayo. Bimenyimana spoke for about five minutes.<sup>11986</sup> Bimenyimana did not introduce Brother Stan.<sup>11987</sup>

4456. After Bimenyimana, *Préfet* Nteziryayo spoke. He thanked the outgoing *bourgmestre*, Bimenyimana, and the public for their presence. Nteziryayo then asked the incoming *bourgmestre* to ensure security and to strengthen the level of security. Nteziryayo asked the public not to pick up objects that they found lying around since they could be bullets. Nteziryayo also thanked Brother Stan for having stood by the Muganza *commune* at a time when the other expatriates had left. Brother Stan was sitting among the dignitaries who were present.<sup>11988</sup>

4457. At the end of his speech, Nteziryayo led Ndayambaje in the solemn oath of office. Ndayambaje stood up, raised his right hand and held onto the flag with his other hand as he took the oath. After that, Nteziryayo adorned him with a sash bearing the national colours and

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<sup>11982</sup> T. 16 September 2008 pp. 23-24 (Witness BOZAN).

<sup>11983</sup> T. 16 September 2008 pp. 24-25; 17 September 2008 pp. 55, 58 (Witness BOZAN).

<sup>11984</sup> T. 16 September 2008 pp. 26, 28; T. 17 September 2008 p. 60 (Witness BOZAN).

<sup>11985</sup> T. 16 September 2008 pp. 29, 33-34 (Witness BOZAN).

<sup>11986</sup> T. 16 September 2008 pp. 32, 35; 16 September 2008 pp 36, 42 (Witness BOZAN) (French) (for spelling of “Célestin”).

<sup>11987</sup> T. 17 September 2008 p. 63 (Witness BOZAN).

<sup>11988</sup> T. 16 September 2008 p. 35; T. 17 September 2008 pp. 60-61, 64 (Witness BOZAN).

the public broke into applause. Ndayambaje was standing below the podium. Nteziryayo took the floor once, for about 30 minutes.<sup>11989</sup>

4458. Witness BOZAN knew that Nteziryayo was a soldier but it was only during Ndayambaje's swearing-in ceremony after the introduction by Bimenyimana that he was aware that Nteziryayo was the new *préfet*. During the ceremony, Nteziryayo wore a military uniform. The witness stated that he was five metres away from Nteziryayo on that day. The witness testified that there was no sorghum farm or *sitariya* plants close to the venue where the swearing-in ceremony was held. The witness did not hear Nteziryayo speak about getting rid of the *Inyenzi* or Tutsis. Nteziryayo did not tell the participants to go and kill Tutsis and thereafter confess to God,<sup>11990</sup> as mentioned in Guichaoua's Report.<sup>11991</sup> The witness testified that Nteziryayo did not put the following question to the attendees, "When *Inkotanyi* come, will they be singing praises of the Hutus or of the Tutsis?" The witness heard no inciting words from Nteziryayo on this occasion.<sup>11992</sup>

4459. After his swearing-in, Ndayambaje went up on the podium and made a speech for about 20 minutes. Ndayambaje first thanked the new *préfet* who was giving him the floor, the outgoing *bourgmestre* and the public that attended the meeting. Ndayambaje asked the public not to harm or attack other members of the public and called upon the plunderers to surrender all the property they had looted. Ndayambaje asked everyone to return to his or her daily activities, and called upon all those who had participated in the killings to be arrested and punished.<sup>11993</sup>

4460. After Ndayambaje's speech, Célestin took the floor again and announced the end of the swearing-in ceremony. The public then returned to their homes. Bimenyimana was still there; he was present from the beginning until the end of the meeting, contrary to Prosecution Witness RV's testimony.<sup>11994</sup> On cross-examination, the witness testified that he knew Bimenyimana was still there at the end of the meeting because it was he and not Célestin who opened the meeting, and then thanked the population for attending. At the end of the meeting, Bimenyimana was sitting among the dignitaries who were present.<sup>11995</sup>

4461. None of the speakers used proverbs or incited people to flush out Tutsis. The witness disagreed that Célestin took the floor and told Nteziryayo and Ndayambaje that they had forgotten to ask the population not to spare women and children in their respective speeches.<sup>11996</sup>

4462. Members of the population did not carry anything during the meeting nor did the witness. There was no shooting in the air during the meeting.<sup>11997</sup> The witness did not notice

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<sup>11989</sup> T. 16 September 2008 pp. 35-36, 49 (Witness BOZAN).

<sup>11990</sup> T. 16 September 2008 pp. 50-53 (Witness BOZAN).

<sup>11991</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 130.

<sup>11992</sup> T. 16 September 2008 pp. 53-54 (Witness BOZAN).

<sup>11993</sup> T. 16 September 2008 pp. 36-37 (Witness BOZAN).

<sup>11994</sup> T. 16 September 2008 p. 37 (Witness BOZAN).

<sup>11995</sup> T. 16 September 2008 pp. 62-64 (ICS) (Witness BOZAN).

<sup>11996</sup> T. 16 September 2008 pp. 37-39 (Witness BOZAN).

<sup>11997</sup> T. 16 September 2008 pp. 30-32 (Witness BOZAN).

any dissatisfaction from the population following the replacement of Bimenyimana with Ndayambaje during the meeting.<sup>11998</sup>

4463. Witness BOZAN knew Augustin Sebukeye who, according to Witness BOZAN, was at least 65 years old in June 1994. The witness testified that Sebukeye did not attend the meeting and none of the speakers made reference to him during their respective speeches.<sup>11999</sup>

4464. The meeting ended between 4.00 and 5.30 p.m. After the meeting, the security situation was calm, there were no killings even though people were fleeing to Burundi. The witness disagreed with the Prosecution's assertion that another meeting convened by Ndayambaje took place at Remera *commune* office two weeks after his swearing-in.<sup>12000</sup>

4465. Witness BOZAN disagreed that the abduction and killing of three Tutsi girls by Masima from Jean Mukundirehe's home occurred the day after the swearing-in ceremony in June 1994. According to the witness, this happened in May 1994.<sup>12001</sup>

Ndayambaje Defence Witness Constant Julius Goetschalckx a.k.a. Brother Stan

4466. Brother Stan, a Belgian monk of the Catholic priesthood,<sup>12002</sup> testified that Ndayambaje's swearing-in ceremony took place in a woodland area near the Muganza *commune* office, just before the football pitch of Muganza, on 22 June 1994. The witness disagreed with Prosecution Witness QAR's testimony that the swearing-in ceremony of Ndayambaje took place on the football pitch of the *commune* office.<sup>12003</sup>

4467. The meeting was scheduled to start at 2.00 p.m., but since a member of Parliament named Bernadette who was invited was not yet present, it started towards 2.30 p.m.<sup>12004</sup>

4468. The swearing-in ceremony lasted about one and a half hours, until around 4.00 p.m., after which people returned to their homes. Approximately 200 to 300, but no more than 400, people attended the ceremony. No one carried traditional or other weapons except four *commune* policemen with very old guns. Célestin was the master of ceremonies. The outgoing *bourgmestre*, Bimenyimana, spoke first and introduced Nteziryayo, who had recently been appointed *préfet* of Butare. Nteziryayo spoke briefly, and swore in Ndayambaje as the new *bourgmestre*. Nteziryayo placed the sash bearing the national colours on Ndayambaje. Ndayambaje then took the oath before those in attendance, and was received with applause. Nteziryayo then introduced the witness to the audience; Ndayambaje spoke afterwards.<sup>12005</sup>

4469. Brother Stan did not remember any opposition to the swearing-in of Ndayambaje and denied Prosecution evidence that there was any disagreement during the ceremony.<sup>12006</sup>

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<sup>11998</sup> T. 16 September 2008 p. 40 (Witness BOZAN).

<sup>11999</sup> T. 16 September 2008 p. 40 (Witness BOZAN).

<sup>12000</sup> T. 16 September 2008 pp. 41-42 (Witness BOZAN).

<sup>12001</sup> T. 16 September 2008 p. 45 (ICS) (Witness BOZAN).

<sup>12002</sup> T. 18 September 2008 pp. 23-24 (Brother Stan).

<sup>12003</sup> T. 18 September 2008 pp. 50-51 (Brother Stan).

<sup>12004</sup> T. 18 September 2008 p. 51; T. 22 September 2008 p. 25 (Brother Stan).

<sup>12005</sup> T. 18 September 2008 pp. 52-54 (Brother Stan).

<sup>12006</sup> T. 18 September 2008 p. 54 (Brother Stan).



4470. The member of Parliament named Bernadette was the only female guest at the rostrum during Ndayambaje's swearing-in ceremony.<sup>12007</sup> No other members of Parliament were present at the meeting of 22 June 1994.<sup>12008</sup> The witness never heard that a lady minister called Nyiramasuhuko was present.<sup>12009</sup>

4471. Brother Stan did not know all the people attending the swearing-in ceremony. He denied that *Bourgmestre* Ndayambaje introduced *Préfet* Nteziryayo at the meeting of 22 June 1994.<sup>12010</sup>

4472. Nteziryayo was dressed in an army uniform camouflaged with spots. The witness denied that Bimenyimana left the meeting to prepare for the reception and only returned at the end of the meeting.<sup>12011</sup>

4473. Nteziryayo took the floor once during the swearing-in. He denied that Nteziryayo took the floor twice. Brother Stan also denied that Nteziryayo said that he was coming to install Ndayambaje because Bimenyimana had not been sufficiently active.<sup>12012</sup> Brother Stan never heard Nteziryayo make statements arousing people to massacre Tutsis as a matter of hatred, particularly targeting women and children. The thrust of Nteziryayo's speech was restoring order and security and supporting the new *bourgmestre*.<sup>12013</sup> He denied Prosecution evidence that Nteziryayo said to the population, "get rid of this *Inyenzi*".<sup>12014</sup>

4474. Brother Stan denied that Nteziryayo substantially congratulated the population for having worked well, and called upon the young Hutus to get rid of young Tutsi girls that they had married and hand them over to the killers. The witness denied that Nteziryayo told Ndayambaje to take the oath saying that he was going to accomplish what had not yet been done.<sup>12015</sup>

4475. Brother Stan denied that Ndayambaje and Nteziryayo referred to the need to "sweep out the dirt" and to chase out all those persons hidden in their homes and to destroy those homes, or that Nteziryayo referred to the need to kill snakes and "crush its eggs". He also denied that Nteziryayo asked the population whether they had accomplished the mission he had assigned, to which the population allegedly answered, yes. Brother Stan denied that Nteziryayo instructed the population to "go and kill everybody, because he did not want any more Tutsis." He also denied that Nteziryayo made a speech referring to those who had brought spears or clubs or machetes.<sup>12016</sup>

4476. Brother Stan denied that Nteziryayo said that "[i]n Nyanza the fighting was difficult because the Tutsis had been hidden". He denied that Nteziryayo asked "[w]hen the *Inkotanyi*

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<sup>12007</sup> T. 22 September 2008 p. 26 (Brother Stan).

<sup>12008</sup> T. 22 September 2008 p. 55 (Brother Stan).

<sup>12009</sup> T. 22 September 2008 p. 27 (Brother Stan).

<sup>12010</sup> T. 22 September 2008 pp. 52, 55 (Brother Stan).

<sup>12011</sup> T. 22 September 2008 p. 57 (Brother Stan).

<sup>12012</sup> T. 22 September 2008 p. 57 (Brother Stan).

<sup>12013</sup> T. 22 September 2008 pp. 57-59 (Brother Stan).

<sup>12014</sup> T. 22 September 2008 p. 60 (Brother Stan).

<sup>12015</sup> T. 22 September 2008 p. 60 (Brother Stan).

<sup>12016</sup> T. 22 September 2008 pp. 60-62 (Brother Stan).

show up, will they be singing the praise of Hutus or the praise of Tutsis?” He also denied that Nteziryayo criticised the outgoing *bourgmestre* Bimenyimana and the population.<sup>12017</sup>

4477. Brother Stan denied that members of the population were carrying out artillery exercises on the football pitch of Muganza *commune*. He denied that Nteziryayo made statements inciting the population to hunt and massacre Tutsi children and Tutsi women married to Hutu men, or that Nteziryayo said, “[k]ill the Tutsis and go to confess your sins, you will be absolved”.<sup>12018</sup>

4478. Brother Stan remembered that the salient points in Ndayambaje’s speech mainly concerned the restoration of order within the *commune* because it was a situation of chaos. The main points were the return to order, the influx of refugees from the neighbouring *communes* and the need to ensure security and hospitality. Ndayambaje also called on people to return looted property from schools and the PAMU (*Projet Agricole de Muganza*) project. There was also mention of the *Zone Turquoise* and the arrival of the French.<sup>12019</sup>

4479. Ndayambaje did not call on people to indulge in acts of violence, and there was no language that the witness could refer to as “indirect”; instead, “direct language” was used, calling on the population to return to normalcy and order in the *commune*. Brother Stan did not hear Ndayambaje use a parable referring to cleaning “filth”, or the need to separate “good grains from the chaff”.<sup>12020</sup>

4480. Brother Stan denied Ndayambaje said that “[y]ou keep on hiding those Tutsi women and those children. Those are the same people who will attract danger to you.” He also denied that, in response to an utterance by Nteziryayo, Ndayambaje said, “they had annihilated all the serpents except the women and children because women and children do not have any ethnicity, but that all the serpents had been annihilated”.<sup>12021</sup>

4481. Brother Stan denied that Ndayambaje thanked the population for the work done, referring to killings, saying that the Hutus had killed the Tutsis. Brother Stan further denied that Ndayambaje told the population to continue their work, but that they should spare the children who were with their mothers or that the population should not become weary or tired, but continue the work with the same intensity.<sup>12022</sup>

4482. Brother Stan further denied that, during the swearing-in the speakers said that the enemy was the Tutsi. The witness also denied that Ndayambaje asked one Sebukeye to destroy houses.<sup>12023</sup>

4483. Brother Stan denied that towards the end of the swearing-in, the master of ceremonies told Ndayambaje, “you forgot to mention that babies should also be killed”. The witness had

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<sup>12017</sup> T. 22 September 2008 pp. 62-63 (Brother Stan).

<sup>12018</sup> T. 22 September 2008 pp. 63-64 (Brother Stan).

<sup>12019</sup> T. 18 September 2008 p. 55 (Brother Stan).

<sup>12020</sup> T. 18 September 2008 pp. 56-57 (Brother Stan).

<sup>12021</sup> T. 18 September 2008 pp. 56-57 (Brother Stan).

<sup>12022</sup> T. 18 September 2008 pp. 57-58 (Brother Stan).

<sup>12023</sup> T. 18 September 2008 p. 58 (Brother Stan).

no recollection of former *Bourgmestre* Bimenyimana or any other guest leaving the ceremony before it ended, adding that Bimenyimana was seated with the guests in the front.<sup>12024</sup>

4484. Brother Stan denied that there were massacres or any other acts of violence occurring in Muganza *commune* after Ndayambaje's swearing-in, except for groups of thugs stealing from people who were fleeing towards Muganza *commune*.<sup>12025</sup> Brother Stan stated that this issue of "disorder" within the *commune* was mentioned at the meeting in a bid to put an end to the disorder reigning in the *commune*, but that no direct measures were taken by Ndayambaje after the swearing-in.<sup>12026</sup>

4485. When it was put to Brother Stan that his statement of 24 November 1995 said that Ndayambaje talked about "restoring order in the house", Brother Stan testified he could not recall any statement about putting order in the house, but only about "putting order in ... Muganza *commune*"; insofar as his statement included a reference to "the dust behind the fireplace", Brother Stan stated that the Judge who had taken his statement in other proceedings may have added that expression to his statement.<sup>12027</sup>

4486. Brother Stan denied that as a consequence of the various speeches at the swearing-in, those people who had so far survived were killed.<sup>12028</sup>

4487. There were no other public meetings in Muganza *commune* in June or July 1994, after Ndayambaje's swearing-in ceremony. If there were any other meetings, he would have known as he was located around Muganza *commune*.<sup>12029</sup>

#### Ndayambaje Defence Witness GABON

4488. Witness GABON, a Hutu civil servant in 1994,<sup>12030</sup> testified that Ndayambaje became *bourgmestre* of Muganza *commune* towards the end of June 1994. Ndayambaje's swearing-in ceremony took place near the residence of a certain Kayaku, in a eucalyptus wood located near the *commune* office.<sup>12031</sup>

4489. Witness GABON was working that day. The ceremony was chaired by *Préfet* Nteziryayo. Since the witness was working nearby he could hear people speaking and see what was going on during the ceremony; he was only 50 to 60 metres away from the meeting.<sup>12032</sup> He later stated that there were only 50 paces between the woods and the *commune* office.<sup>12033</sup>

4490. No public address system was used on that day so the witness could not hear what was said at the meeting.<sup>12034</sup> About 300 metres separated the football field and the place where the

<sup>12024</sup> T. 18 September 2008 pp. 58-59 (Brother Stan).

<sup>12025</sup> T. 18 September 2008 p. 60 (Brother Stan).

<sup>12026</sup> T. 23 September 2008 p. 11 (Brother Stan).

<sup>12027</sup> T. 23 September 2008 pp. 42-43 (Brother Stan).

<sup>12028</sup> T. 18 September 2008 p. 60 (Brother Stan).

<sup>12029</sup> T. 18 September 2008 p. 60 (Brother Stan).

<sup>12030</sup> T. 28 August 2008 p. 38 (ICS) (Witness GABON).

<sup>12031</sup> T. 1 September 2008 p. 56 (ICS); T. 3 September 2008 pp. 44, 48 (Witness GABON).

<sup>12032</sup> T. 1 September 2008 pp. 56, 60 (ICS); T. 2 September 2008 p. 10 (ICS) (Witness GABON).

<sup>12033</sup> T. 3 September 2008 p. 44 (ICS) (Witness GABON).

<sup>12034</sup> T. 1 September 2008 p. 60 (ICS) (Witness GABON).

ceremony was held.<sup>12035</sup> Witness GABON disagreed with the testimony of Siborurema (Defence Witness NAVIC)<sup>12036</sup> that a public address system was used during the meeting.<sup>12037</sup>

4491. Witness GABON testified there were no sorghum farms located very close to the entry of the *commune* office at the time of Ndayambaje's swearing-in ceremony.<sup>12038</sup> Further, he stated that the *sitariya* plant was not present in the vicinity of the *commune* office. The ceremony did not take place on a football pitch. Before the swearing-in ceremony, no archery training took place on the football pitch.<sup>12039</sup> He did not hear any gunshot before the meeting started.<sup>12040</sup>

4492. The meeting was held in the afternoon around 3.00 p.m. Kalimanzira and Nyiramasuhuko did not attend the swearing-in ceremony. Members of the population who attended the meeting were not armed with traditional weapons including clubs and machetes.<sup>12041</sup>

4493. The swearing-in ceremony ended at 4.00 p.m. After the ceremony, the guests went to the IGA hall of the *commune* and had some refreshments before going home. The outgoing *bourgmestre*, Bimenyimana, who was present since the beginning of the ceremony, went with the others to take refreshments after the ceremony was over. A teacher called Daniela, together with Célestin Habiymbere, arranged the reception.<sup>12042</sup> Witness GABON testified that former *Préfet* Nsabimana also attended the ceremony.<sup>12043</sup>

4494. At the time of Ndayambaje's swearing-in, the killings had diminished in intensity; during the first week of his tenure, killings had virtually ended and people were fleeing.<sup>12044</sup> The witness stated that while he did not refute the fact that Tutsis were abducted at the *commune* office, it was beyond their power or capacity to protect them and although he did his utmost, he could not save them.<sup>12045</sup>

4495. Witness QAL's husband was abducted and killed towards the end of April, when Bimenyimana was still *bourgmestre*, and therefore this event was far removed from Ndayambaje's swearing-in. Witness GABON did not hear of the abduction or payment of ransom for Witness QAL's daughter.<sup>12046</sup>

4496. Witness GABON disagreed that any other meeting took place after Ndayambaje's swearing-in, convened by Ndayambaje or anyone else.<sup>12047</sup>

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<sup>12035</sup> T. 2 September 2008 p. 7 (ICS) (Witness GABON).

<sup>12036</sup> T. 26 August 2008 p. 34 (Witness NAVIC) (French).

<sup>12037</sup> T. 2 September 2008 p. 52 (ICS) (Witness GABON).

<sup>12038</sup> T. 1 September 2008 pp. 61-62 (ICS); T. 2 September 2008 p. 5 (ICS) (Witness GABON).

<sup>12039</sup> T. 2 September 2008 pp. 6-7 (ICS) (Witness GABON).

<sup>12040</sup> T. 2 September 2008 p. 13 (ICS) (Witness GABON).

<sup>12041</sup> T. 2 September 2008 pp. 8, 10-12 (ICS) (Witness GABON).

<sup>12042</sup> T. 2 September 2008 pp. 14, 16-17 (ICS) (Witness GABON).

<sup>12043</sup> T. 3 September 2008 pp. 31-32 (ICS) (Witness GABON).

<sup>12044</sup> T. 2 September 2008 pp. 21, 45 (ICS) (Witness GABON).

<sup>12045</sup> T. 3 September 2008 pp. 39-40 (ICS) (Witness GABON).

<sup>12046</sup> T. 2 September 2008 pp. 18-20 (ICS) (Witness GABON).

<sup>12047</sup> T. 2 September 2008 p. 22 (ICS) (Witness GABON).

Ndayambaje Defence Witness KEPIR

4497. Witness KEPIR, a Hutu agronomist with a Tutsi mother, testified that around 18 or 19 June 1994, he learned from Radio Rwanda that Ndayambaje was appointed *bourgmestre* of Muganza *commune*. The witness then went to Ndayambaje's house to congratulate him. During their discussion, Ndayambaje said he was quite surprised by his appointment.<sup>12048</sup> *Bourgmestre* Bimenyimana informed Witness KEPIR about Ndayambaje's swearing-in ceremony on the day before it took place, 22 June 1994.<sup>12049</sup>

4498. Witness KEPIR attended Ndayambaje's swearing-in ceremony; it took place in a wooded area near the entrance of the *commune* office, not behind the IGA building. He did not see any archery exercises, nor did he hear anyone say that an archery exercise took place on the football pitch close to the *commune* office before the ceremony. The witness arrived at the venue at 2.30 p.m., when the ceremony started. A public address system was used during the ceremony.<sup>12050</sup> The witness attended the entire meeting.<sup>12051</sup>

4499. About 400 to 500 people were in attendance and seated on the lawn while others, including the witness, were seated on the benches that had been provided at the venue.<sup>12052</sup> Officials at the meeting included the *préfet*, the incoming *bourgmestre* and the outgoing *bourgmestre*, the *sous-préfet*, a lady member of Parliament, as well as *conseillers*, and the rest of the staff of the *commune*. Callixte Kalimanzira was not present during that meeting. Witness KEPIR disagreed that there was another lady apart from the MP who was introduced to the public on that day, namely Nyiramasuhuko. Colonel Muvunyi did not attend the ceremony.<sup>12053</sup>

4500. None of the members of the population who attended the ceremony carried traditional weapons as calm had been restored. Further, no shooting in the air occurred on that day, otherwise nobody would have stayed on the spot.<sup>12054</sup>

4501. Célestin Habyambere opened the floor. He asked the entire populace to stand up to greet the visitors and then announced the opening of the meeting. Thereafter, Habyambere gave the floor to *Bourgmestre* Chrysologue, who thanked the *préfet* for coming to the *commune* and the people for having come to the meeting place. *Bourgmestre* Chrysologue spoke briefly about what he had achieved and deplored the events that had occurred in April 1994, and further stated that the reason of the meeting was to carry out the investiture of the new *bourgmestre*, Ndayambaje. *Bourgmestre* Chrysologue also introduced the invitees who were present, beginning with the *préfet* and a lady female member of Parliament,<sup>12055</sup>

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<sup>12048</sup> T. 11 September 2008 pp. 10-12; T. 15 September 2008 p. 50 (Witness KEPIR).

<sup>12049</sup> T. 11 September 2008 pp. 13, 56 (Witness KEPIR).

<sup>12050</sup> T. 11 September 2008 pp. 18, 20-23 (Witness KEPIR).

<sup>12051</sup> T. 11 September 2008 p. 32 (Witness KEPIR).

<sup>12052</sup> T. 11 September 2008 p. 23; T. 15 September 2008 p. 34 (Witness KEPIR).

<sup>12053</sup> T. 11 September 2008 pp. 23-25 (Witness KEPIR).

<sup>12054</sup> T. 11 September 2008 pp. 27-28 (Witness KEPIR).

<sup>12055</sup> T. 11 September 2008 p. 28 (Witness KEPIR).

introduced as Bernadette Mukarurangwa.<sup>12056</sup> *Bourgmestre* Chrysologue spoke for between five and 10 minutes.<sup>12057</sup>

4502. The floor was then given to the *préfet* who thanked the public for having followed the invitation to the meeting, thanked the outgoing *bourgmestre* and introduced the new *bourgmestre*, asking him to take his oath. The *préfet* called on wrongdoers to stop their activities; he also spoke of the probable arrival of a French army and introduced a Brother who was there.<sup>12058</sup>

4503. Nteziryayo then swore in the new *bourgmestre*.<sup>12059</sup> The witness saw the new *bourgmestre* Ndayambaje stand up before a table and place his hand on the flag. Ndayambaje raised his right arm and took his oath. Thereafter, Ndayambaje was adorned with a sash with the colours of the flag and sat down, followed by public ovation. Witness KEPIR did not notice Ndayambaje climb on a table during the ceremony.<sup>12060</sup> Ndayambaje did not address the public before he was sworn in.<sup>12061</sup>

4504. The *préfet* took the floor on only one occasion, which lasted between 30 to 45 minutes, until the end of the swearing-in ceremony. The witness did not agree that the *préfet* stated that *Bourgmestre* Chrysologue had not been active enough and that was why he had to be replaced by Ndayambaje.<sup>12062</sup>

4505. *Préfet* Nteziryayo wore a military uniform.<sup>12063</sup> Witness KEPIR did not hear Nteziryayo tell the participants to go and kill Tutsis and thereafter confess to God,<sup>12064</sup> as mentioned in Guichaoua's Report.<sup>12065</sup> Nteziryayo did not say that the fight was difficult in Nyanza because Tutsis were hiding; nor did he ask the audience "[w]hen *Inkotanyi* come, will they be singing praises of the Hutus or of the Tutsis?"<sup>12066</sup> *Préfet* Nteziryayo did not talk about the killings of Tutsis which occurred between April and 22 June 1994 in his speech or say that he was going to punish the perpetrators of those killings.<sup>12067</sup>

4506. Ndayambaje took the floor after the *préfet*. Ndayambaje urged everyone to return to their activities and to restore peace. Thereafter, Ndayambaje called on those who had looted health centres, schools and churches to return what they had stolen and also thanked the outgoing *bourgmestre* as well as the *préfet*. Ndayambaje's speech lasted between 15 and 20 minutes. Célestin Habiyaambere closed the meeting and invited the guests to a reception for a drink. *Bourgmestre* Chrysologue did not leave his seat throughout the whole meeting.<sup>12068</sup> Witness KEPIR did not remember Nteziryayo speaking about any steps to be taken against

<sup>12056</sup> T. 11 September 2008 p. 41 (Witness KEPIR).

<sup>12057</sup> T. 11 September 2008 p. 29 (Witness KEPIR).

<sup>12058</sup> T. 11 September 2008 pp. 30, 71 (Witness KEPIR).

<sup>12059</sup> T. 15 September 2008 p. 34 (Witness KEPIR).

<sup>12060</sup> T. 11 September 2008 pp. 30-31 (Witness KEPIR).

<sup>12061</sup> T. 11 September 2008 p. 65 (Witness KEPIR).

<sup>12062</sup> T. 11 September 2008 pp. 31, 34 (Witness KEPIR).

<sup>12063</sup> T. 11 September 2008 p. 61 (Witness KEPIR).

<sup>12064</sup> T. 11 September 2008 pp. 66, 68 (Witness KEPIR).

<sup>12065</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 130.

<sup>12066</sup> T. 11 September 2008 p. 68 (Witness KEPIR).

<sup>12067</sup> T. 11 September 2008 p. 72 (Witness KEPIR).

<sup>12068</sup> T. 11 September 2008 pp. 31-32, 36 (Witness KEPIR).

*commune* staff who may have perpetrated crimes between April and July 1994 in Muganza *commune*.<sup>12069</sup>

4507. None of the speakers, in particular *Préfet* Nteziryayo and Ndayambaje, used proverbs or parables during their respective speeches. Célestin did not take the floor to tell both Nteziryayo and Ndayambaje that they had forgotten to ask the population to equally kill women and children in their respective speeches. Witness KEPIR did not notice any expression of dissatisfaction from the population following the replacement of Bimenyimana with Ndayambaje during the meeting.<sup>12070</sup>

4508. Witness KEPIR knew Augustin Sebukeye in 1994, but did not see him at the meeting; he further stated that neither Ndayambaje nor *Préfet* Nteziryayo made reference to Sebukeye during their speeches. Witness KEPIR saw Witness GABON at the meeting on 22 June 1994.<sup>12071</sup>

4509. The swearing-in ceremony was held during the dry season and there was no vegetation, including sorghum or *sitariya*, at the venue. Sorghum had already been harvested at that time. No other meeting convened by Ndayambaje took place at Remera *commune* office two weeks after his swearing-in.<sup>12072</sup>

4510. Witness KEPIR knew Brother Stan in 1994 and saw him for the last time during Ndayambaje's swearing-in ceremony, on 22 June 1994. Witness KEPIR and his family fled Rwanda with the families of Ndayambaje and Bosco, in July 1994.<sup>12073</sup>

Ndayambaje Defence Witness Evariste Emmanuel Siborurema (a.k.a NAVIC)

4511. Emmanuel Siborurema, a Hutu student in 1994,<sup>12074</sup> testified that around the last week of June 1994, he attended Ndayambaje's swearing-in as *bourgmestre* of Muganza *commune* at the Muganza *commune* office.<sup>12075</sup>

4512. Nteziryayo was in military attire, but Siborurema did not see any soldiers with Nteziryayo. Nteziryayo addressed the population; first Nteziryayo raised the flag for the new *bourgmestre*, then Nteziryayo said that "one should not pick up all and sundry out of the streets because one might pick up mines", and Nteziryayo requested that the population "rely on competent individuals in order to avoid risks of setting off landmines".<sup>12076</sup> A microphone shaped like a funnel was used.<sup>12077</sup>

4513. After the swearing-in ceremony, Siborurema went to a friend's home and informed Witness QAQ that, as Witness QAQ had earlier requested, Siborurema had handed his

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<sup>12069</sup> T. 11 September 2008 pp. 76-77 (Witness KEPIR).

<sup>12070</sup> T. 11 September 2008 pp. 33-35 (Witness KEPIR).

<sup>12071</sup> T. 11 September 2008 pp. 36, 39; T. 11 September 2008 pp. 59-60 (ICS) (Witness KEPIR).

<sup>12072</sup> T. 11 September 2008 pp. 37-39 (Witness KEPIR).

<sup>12073</sup> T. 15 September 2008 pp. 48, 52 (Witness KEPIR).

<sup>12074</sup> T. 25 August 2008 p. 8 (Siborurema).

<sup>12075</sup> T. 25 August 2008 p. 62 (ICS) (Siborurema).

<sup>12076</sup> T. 26 August 2008 p. 24 (Siborurema).

<sup>12077</sup> T. 26 August 2008 p. 51 (ICS) (Siborurema).

daughter to Ndayambaje for protection; Witness QAQ was appreciative. Witness QAQ told Siborurema that with Ndayambaje's re-institution, peace was going to be restored. Witness QAQ did not tell Siborurema whether he had personally attended any part of the swearing-in ceremony but it was Siborurema who told Witness QAQ about what had happened at the meeting. Siborurema told Witness QAQ that the authorities had told the population to go about their usual activities in order to face the then prevailing famine and Witness QAQ was pleased.<sup>12078</sup>

4514. Siborurema testified it was false that Witness QAQ was in hiding at the Nyabinyenga school centre at the time.<sup>12079</sup> Siborurema also disagreed that Witness QAQ followed the meeting from a hiding place close to the woods, because he would have been seen since the woods were regularly pruned.<sup>12080</sup>

### Ndayambaje

4515. Ndayambaje testified that he was reappointed *bourgmestre* of Muganza *commune* on 18 June 1994. He learned of his appointment over the radio, during a Government *communiqué* at the end of a Cabinet meeting that took place the day before, on 17 June 1994. Ndayambaje stated that prior to this radio *communiqué*, he never received any information concerning his eventual reappointment as *bourgmestre*. He accepted the reappointment as his contribution towards the reconstruction of the country, which was witnessing a very critical period. He did not accept because of his ambition to become *préfet* of Butare.<sup>12081</sup>

4516. Ndayambaje strongly denied his membership of an alleged quartet comprised of Callixte Kalimanzira, Nyiramasuhuko, Nteziryayo and himself who, according to Guichaoua,<sup>12082</sup> were at the head of political and administrative matters of Butare *préfecture*. He denied that he was reappointed as a reward for his efforts in perpetrating killings and massacres in his area post-April 1994.<sup>12083</sup>

4517. He was appointed at the same time as the *préfet*, Nteziryayo, who was replacing Nsabimana. He did not attend Nteziryayo's swearing-in ceremony as he was not aware of it. Ndayambaje received his official appointment one or two days prior to his swearing-in ceremony, which took place on 22 June 1994, and not in May or early June 1994.<sup>12084</sup>

4518. Ndayambaje testified that his swearing-in ceremony took place at Remera close to the Muganza *commune* office. It was held during a market day, on Wednesday. Everything was organised by the outgoing *bourgmestre*, Chrysologue Bimenyimana, who drew up the list of invitees and convened the members of the population to attend the ceremony. Among those present were *Préfet* Nteziryayo, *Sous-préfet* Dominique Ntawukulilyayo, a lady member of

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<sup>12078</sup> T. 25 August 2008 pp. 62-63 (ICS); T. 26 August 2008 p. 42 (ICS) (Siborurema).

<sup>12079</sup> T. 25 August 2008 p. 64 (ICS) (Siborurema).

<sup>12080</sup> T. 25 August 2008 pp. 42-43 (ICS); T. 26 August 2008 p. 52 (ICS) (Siborurema).

<sup>12081</sup> T. 10 November 2008 pp. 12, 14-15; T. 2 December 2008 p. 4 (Ndayambaje).

<sup>12082</sup> T. 28 September 2004 p. 6 (Guichaoua).

<sup>12083</sup> T. 10 November 2008 pp. 16-17 (Ndayambaje).

<sup>12084</sup> T. 10 November 2008 pp. 18-19; T. 2 December 2008 p. 6 (Ndayambaje).



Parliament called Bernadette from Ndora *commune*, *conseillers* and staff of the *commune* and the population,<sup>12085</sup> as well as Nsabimana.<sup>12086</sup>

4519. The ceremony took place in the afternoon, in a small woods close to the entrance of the *commune* office on the right of the road leading to Mugombwa, and not on the football pitch. To his knowledge, it was the first time that any meeting was held at such place; normally meetings took place either on the football pitch, or in another deteriorating wood on the plot of the *commune*.<sup>12087</sup> Public assemblies or ceremonies would take place on the football pitch during the day when the sun was not too high up; due to the sun, meetings organised later in the day would be held in shady areas, as was the case for the swearing-in meeting.<sup>12088</sup> The ceremony started around 3.00 p.m. and ended at around 4.00 p.m. The master of ceremonies was Célestin Habiyambere. 400 to 500 members of the population were present.<sup>12089</sup> Ndayambaje testified that Bernadette was the only MP who attended his swearing-in ceremony.<sup>12090</sup>

4520. Contrary to Prosecution Witnesses TO and QAL, Ndayambaje did not notice any military activities or shooting practice before the swearing-in ceremony.<sup>12091</sup> Ndayambaje did not see any people bearing weapons during his swearing-in ceremony.<sup>12092</sup>

4521. The personalities were seated at the table of honour towards the front of the stage, facing the members of the population. *Bourgmestre* Chrysologue Bimenyimana was present throughout the swearing-in ceremony and seated at the table of honour. Brother Stan also attended the ceremony and was the only white person who remained in the region during the entire crisis. Brother Stan was introduced to the population and was thanked for having come and for having remained with the population during that difficult period.<sup>12093</sup> Contrary to Prosecution Witness RV's testimony, Nyiramasuhuko was not present at the swearing-in ceremony, and neither were Callixte Kalimanzira nor Colonel Muvunyi.<sup>12094</sup> Ndayambaje denied Prosecution Witness QAL's testimony that the ceremony of 22 June 1994 was not about his swearing-in as *bourgmestre* because he was appointed in April 1994.<sup>12095</sup>

4522. Célestin Habiyambere, the master of ceremony, opened the floor and announced to the population the sequence of events. The outgoing *bourgmestre*, Chrysologue Bimenyimana, then took over and thanked the public for having responded to his invitation to the ceremony and reassured his successor of close collaboration in the days ahead. Bimenyimana's speech was brief; thereafter he introduced the officials and the distinguished guests that were present

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<sup>12085</sup> T. 10 November 2008 p. 21; T. 2 December 2008 p. 6 (Ndayambaje).

<sup>12086</sup> T. 19 November 2008 p. 48 (Ndayambaje).

<sup>12087</sup> T. 10 November 2008 pp. 22-23, 25-26 (Ndayambaje).

<sup>12088</sup> T. 2 December 2008 p. 26 (Ndayambaje).

<sup>12089</sup> T. 10 November 2008 pp. 31-34 (Ndayambaje).

<sup>12090</sup> T. 19 November 2008 p. 73 (Ndayambaje).

<sup>12091</sup> T. 4 March 2002 pp. 28-31 (Witness TO); T. 25 February 2004 p. 14 (Witness QAL); T. 10 November 2008 p. 31 (Ndayambaje).

<sup>12092</sup> T. 10 November 2008 p. 35; T. 2 December 2008 p. 8 (Ndayambaje).

<sup>12093</sup> T. 10 November 2008 pp. 35-36 (Ndayambaje).

<sup>12094</sup> T. 10 November 2008 pp. 37-39 (Ndayambaje).

<sup>12095</sup> T. 13 November 2008 pp. 14-15 (Ndayambaje).

at the ceremony. After his speech, Bimenyimana remained with the other personalities at the table of honour until the end of the ceremony.<sup>12096</sup>

4523. After Bimenyimana, *Préfet* Nteziryayo took the floor. The *préfet* first introduced Ndayambaje before swearing him in. The *préfet* then addressed the population by referring to the problems of security and the situation at the front; he also invited the population to ensure its own security and safety within the locality. *Préfet* Nteziryayo also introduced Brother Stan to the public.<sup>12097</sup>

4524. Ndayambaje testified that the swearing-in part of the ceremony consisted of holding the national flag and committing oneself to serve the nation and the interest of the Rwandan people. After the oath, the new *bourgmestre* received from the head of the ceremony a scarf or sash bearing the national colours of the flag, and wore it around his waist or belt. Ndayambaje stated that during the swearing-in, he stood on the ground, and not on a chair or table.<sup>12098</sup>

4525. *Préfet* Nteziryayo did not use proverbs or parables during his address.<sup>12099</sup> Ndayambaje testified that he knew Augustin Sebukeye who, in 1994, was quite advanced in age. He did not know whether Sebukeye attended his swearing-in ceremony. Ndayambaje did not hear Nteziryayo speak to Sebukeye calling upon him to destroy houses. Contrary to Prosecution Witness QAF's testimony, Nteziryayo did not talk about the need to kill those Tutsi girls or women who were forcefully taken as mistresses by Hutu men or the need to sweep dirt outside. Nteziryayo also did not mention traditional weapons, such as machetes, clubs or spears, or ask people to go kill.<sup>12100</sup>

4526. *Préfet* Nteziryayo only took the floor once.<sup>12101</sup> It was put to Ndayambaje whether it could be said that Nteziryayo took the floor twice considering Nteziryayo introduced him and read him the oath, after which Ndayambaje carried out the ceremony with the sash and then Nteziryayo spoke again. Ndayambaje stated that the swearing-in part of the installation was only one event and that Nteziryayo could be considered to have taken the floor thereafter.<sup>12102</sup>

4527. Contrary to Prosecution Witness TO's testimony, Nteziryayo did not castigate the outgoing *bourgmestre* Bimenyimana.<sup>12103</sup> On cross-examination, Ndayambaje testified that Nteziryayo wore a military uniform. Nteziryayo did not talk about getting rid of *Inyenzi* in his speech, or about the difficulty of fighting in Nyanza because of Tutsis, nor about the *Inkotanyi's* praise of Tutsis. Nteziryayo did not criticise the population by saying that it had rendered itself of no use in attempting to hide the Tutsis.<sup>12104</sup>

4528. Ndayambaje testified that after taking his oath administered by Nteziryayo, he took the floor. He thanked the dignitaries present and expressed gratitude to the public and to his

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<sup>12096</sup> T. 10 November 2008 pp. 39-40; T. 13 November 2008 p. 12 (Ndayambaje).

<sup>12097</sup> T. 10 November 2008 p. 41; T. 2 December 2008 pp. 9, 11-12 (Ndayambaje).

<sup>12098</sup> T. 10 November 2008 pp. 42-43; T. 2 December 2008 p. 9 (Ndayambaje).

<sup>12099</sup> T. 13 November 2008 pp. 7-8; T. 2 December 2008 p. 12 (Ndayambaje).

<sup>12100</sup> T. 13 November 2008 pp. 10-11, 15 (Ndayambaje).

<sup>12101</sup> T. 13 November 2008 p. 19 (ICS); T. 2 December 2008 p. 10 (Ndayambaje).

<sup>12102</sup> T. 2 December 2008 p. 8 (Ndayambaje).

<sup>12103</sup> T. 13 November 2008 p. 17 (Ndayambaje).

<sup>12104</sup> T. 19 November 2008 pp. 74-76 (Ndayambaje).

predecessor. He expressed some appreciation, respect and compassion towards the families that were bereaved following the unrest. He castigated the persons who were “perpetrating all the evil” and took the opportunity to urge the population or the public to collaborate in efforts to restore peace and stability, particularly denouncing all those who played a key role in the massacres, and asked them to do all to reconstruct the society that had destroyed itself.<sup>12105</sup>

4529. When it was put to Ndayambaje that recommendations to be vigilant in the neighbourhood were a message to watch out for infiltrators and a direction to kill Tutsis who may be infiltrators, Ndayambaje stated that no such message to kill Tutsi infiltrators from the RPF was given; the message was solely intended to denounce the advance of the RPF.<sup>12106</sup>

4530. Ndayambaje asked his *commune* to welcome the displaced persons from neighbouring *communes*, including Ndora, Muyaga and Ntyazo, and made it known that he intended to visit the various parts of the *secteur* to propagate his message of peace and stability, despite the onslaught of the RPF. Ndayambaje did not use proverbs or parables in his messages to the public. To the contrary, it was necessary to have a clear message to bring about peace-building among the public at the time. After he was sworn in, the public cheered.<sup>12107</sup>

4531. Ndayambaje stated he never defined the enemy as, or deemed the enemy to be the Tutsi.<sup>12108</sup> Nteziryayo did not take the floor again after Ndayambaje.<sup>12109</sup>

4532. After his speech, the guests went to a small reception organised within the IGA hall, which lasted less than one hour. It was short because the *préfet* was in a hurry. Members of the public were not invited. After the brief reception, in the company of the outgoing *bourgmestre* and the *sous-préfet*, Ndayambaje took possession of the premises and the keys of the building. Ndayambaje denied that, over the hours or the days following the swearing-in ceremony, massacres were carried out by the local population in Muganza *commune*, although he stated there was news of people being chased by the RPF in the northeast of the region.<sup>12110</sup> Contrary to Prosecution Witness FAL’s testimony, Ndayambaje testified that neither he nor Nteziryayo instructed people to destroy houses in their respective speeches.<sup>12111</sup>

4533. Ndayambaje stated that two weeks after his swearing-in ceremony, he left the country and thus could not have held another meeting in the weeks after his appointment.<sup>12112</sup>

4534. Ndayambaje was aware of the abduction of three girls from the house of one Jean Mukundirehe by Masima’s group, but stated that this event occurred in May 1994. Contrary to Prosecution Witnesses TO’s and RV’s testimony, Ndayambaje testified that the bulk of

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<sup>12105</sup> T. 13 November 2008 pp. 7, 21 (Ndayambaje).

<sup>12106</sup> T. 2 December 2008 p. 13 (Ndayambaje).

<sup>12107</sup> T. 13 November 2008 pp. 7-10, 14-15, 21-22; T. 2 December 2008 p. 12 (Ndayambaje).

<sup>12108</sup> T. 13 November 2008 p. 14 (Ndayambaje).

<sup>12109</sup> T. 19 November 2008 p. 71 (Ndayambaje).

<sup>12110</sup> T. 13 November 2008 pp. 21-24; T. 17 November 2008 p. 4 (Ndayambaje).

<sup>12111</sup> T. 13 November 2008 p. 24 (Ndayambaje).

<sup>12112</sup> T. 13 November 2008 p. 18; T. 17 November 2008 pp. 7-8 (Ndayambaje).

massacres took place in the month of April 1994 and not following his swearing-in ceremony.<sup>12113</sup>

4535. Ndayambaje did not know about the death of either Josepha or Nambaje after his swearing-in ceremony until the current proceedings,<sup>12114</sup> or about the abduction of eight girls from Mugombwa *secteur* on 18 June 1994.<sup>12115</sup>

#### Nteziryayo Defence Witness AND-11

4536. Witness AND-11, an accountant,<sup>12116</sup> testified that a new *bourgmestre* was appointed at a meeting on 22 June 1994, held in the afternoon or evening, which the witness attended.<sup>12117</sup> The meeting was held near the Muganza *commune* office, in a forest close to the office; from the *commune* office in Kibayi, it was “to the right, downhill in a wooded area”.<sup>12118</sup> The witness attended the meeting in his capacity as an ordinary member of the population. The purpose of the meeting was to install the new *bourgmestre* Ndayambaje and Colonel Nteziryayo, the *préfet* who chaired the meeting, had a message to deliver to the population.<sup>12119</sup>

4537. About 500 to 600 people attended the meeting. Witness AND-11 went from work to the meeting by motorbike. He arrived around 2.40 or 2.45 p.m. and sat about five paces from where the dignitaries were seated. He could see the following dignitaries at the meeting: Chrysologue, the outgoing *bourgmestre*; Ndayambaje, who had to be sworn in to replace Chrysologue; *Préfet* Nteziryayo; *Sous-préfet* Dominic Ntawukulilyayo of Gisagara *sous-préfecture*; a white brother, Stan; and MP Bernadette Mukarurangwa.<sup>12120</sup> He did not see any soldiers present and neither Nyiramasuhuko nor Kalimanzira were present.<sup>12121</sup>

4538. When Witness AND-11 arrived, the outgoing *bourgmestre*, Bimenyimana, was rounding up his message, which consisted of introducing guests and handing over the microphone to the next speaker. He gave the floor to *Préfet* Nteziryayo, who was dressed in his military uniform.<sup>12122</sup>

4539. Nteziryayo greeted the public, thanked the outgoing *bourgmestre* Chrysologue for having served Muganza *commune*, told the public that he was going to give them a new *bourgmestre*, Ndayambaje, and then performed the swearing-in ceremony. He introduced Ndayambaje to the public, took the national flag in his left hand, raised his right hand and pronounced the oath. Nteziryayo made Ndayambaje wear the tri-colour scarf, which was the insignia for the national authorities. After Nteziryayo put the scarf on the new *bourgmestre*,

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<sup>12113</sup> T. 13 November 2008 pp. 37, 39-40 (Ndayambaje).

<sup>12114</sup> T. 13 November 2008 pp. 24-27 (Ndayambaje).

<sup>12115</sup> T. 13 November 2008 pp. 38-39 (Ndayambaje).

<sup>12116</sup> T. 31 January 2007 p. 77 (ICS) (Witness AND-11).

<sup>12117</sup> T. 1 February 2007 p. 44 (ICS) (Witness AND-11).

<sup>12118</sup> T. 1 February 2007 pp. 45-46 (ICS) (Witness AND-11).

<sup>12119</sup> T. 1 February 2007 p. 46 (ICS) (Witness AND-11).

<sup>12120</sup> T. 1 February 2007 pp. 46-47 (ICS) (Witness AND-11).

<sup>12121</sup> T. 1 February 2007 p. 72 (ICS); T. 5 February 2007 p. 5; T. 6 February 2007 p. 30 (ICS) (Witness AND-11).

<sup>12122</sup> T. 1 February 2007 p. 48 (ICS) (Witness AND-11).

Nteziryayo continued giving the message he had intended for the people of Muganza.<sup>12123</sup> Ndayambaje did not climb on top of the table when making the solemn declaration.<sup>12124</sup>

4540. Nteziryayo asked the people to continue peace-building and to return looted goods to their rightful owners. Nteziryayo introduced Brother Stan and asked the population to help ensure his security. Nteziryayo said they needed to encourage themselves so that they could ensure their own safety and security. He asked the population to continue with their ordinary activities so that they could continue to develop and enable the *commune* to develop.<sup>12125</sup>

4541. Witness AND-11 followed the whole speech because he was sitting close to the podium; he didn't move throughout the time that Nteziryayo was speaking. The witness understood the objective of the speech was to restore peace in the *commune*, to restore goods that had been looted to the rightful owners and to stop looting. The speech also asked people to remain calm and continue with their day-to-day activities because some members of the population had become bandits and were living off the proceeds of their looting activities.<sup>12126</sup>

4542. After being sworn-in and Nteziryayo's speech, the new *bourgmestre*, Ndayambaje, took the floor. He first thanked his predecessor, Chrysologue, and the *préfet*. He spoke to the audience and asked them to work towards consolidating peace, as the *préfet* had requested; he asked the public to continue with their day-to-day activities and stop looting and vagabondry and asked them to support him in order to promote the *commune's* development. Everything Ndayambaje said was very clear; he did not use any idiomatic expressions or proverbs. The meeting was a security meeting held with a view to restoring peace everywhere in the *commune* and there was no incitement to commit killings in the speeches delivered.<sup>12127</sup>

4543. Célestin was the last one to take the floor. He told members of the population who were present that there was no question and answer session and told the invitees to go to the IGA room to have a short meeting. The atmosphere was cordial but people started asking questions about the bombings in Bugesera-Mayaga region. The meeting ended at about 4.00 p.m.<sup>12128</sup>

4544. At the end of the meeting Witness AND-11 went to greet the authorities because he knew practically all of them. They talked all the way to the IGA hall, the venue of the reception where they had a drink and congratulated one another.<sup>12129</sup>

4545. There were four speakers in total, namely the outgoing *bourgmestre*, the incoming *bourgmestre*, the *préfet* and the master of ceremonies.<sup>12130</sup>

4546. Nteziryayo did not ask Ndayambaje about his progress with "the job" or make any speeches referring to sweeping dirt. There were no consequences following the speeches

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<sup>12123</sup> T. 1 February 2007 p. 51 (Witness AND-11).

<sup>12124</sup> T. 6 February 2007 p. 32 (ICS)(Witness AND-11).

<sup>12125</sup> T. 1 February 2007 p. 51 (Witness AND-11).

<sup>12126</sup> T. 1 February 2007 pp. 51-52 (Witness AND-11).

<sup>12127</sup> T. 1 February 2007 p. 56 (Witness AND-11).

<sup>12128</sup> T. 1 February 2007 pp. 52, 57; T. 1 February 2007 p. 64 (Witness AND-11) (French).

<sup>12129</sup> T. 1 February 2007 p. 57 (Witness AND-11).

<sup>12130</sup> T. 1 February 2007 p. 62 (ICS) (Witness AND-11).

delivered in June; there were no further killings in the entire *commune*, only some looting.<sup>12131</sup> Ndayambaje also made no references to sweeping dirt or separating good grain from the husks.<sup>12132</sup>

4547. Those who did not attend that meeting did not suffer any consequences for their non-attendance and were not considered “the enemy”.<sup>12133</sup>

4548. Witness AND-11 did not see anyone carrying any kind of weapon either when he arrived at the venue of the meeting or when he left.<sup>12134</sup>

4549. The speakers did use a megaphone or some sound equipment so that the public could hear the speeches.<sup>12135</sup>

4550. Contrary to the evidence of multiple Prosecution witnesses, Witness AND-11 testified that the meeting was held in the afternoon.<sup>12136</sup>

4551. Witness AND-11 was not aware of the abduction or killings of the 12 individuals the various Prosecution witnesses testified about, namely Nambaje’s abduction, the abduction and murder of Josepha, the abduction and money paid for Witness QAL’s daughter’s life, or the death of Witness QAL’s husband.<sup>12137</sup>

#### Nteziryayo Defence Witness AND-73

4552. Witness AND-73, a Hutu headmaster and former detainee,<sup>12138</sup> attended a meeting that brought together officials from the *préfecture* at the Muganza *commune* office, on 22 June 1994, and its purpose was to swear in Ndayambaje as the new *bourgmestre*.<sup>12139</sup> At the time Ndayambaje was appointed *bourgmestre*, no other candidates existed, and there was no election. Ndayambaje was *bourgmestre* until he fled Rwanda in July 1994.<sup>12140</sup>

4553. The *cellule* officials informed the witness of the meeting, which took place at 2.30 p.m. at the Muganza *commune* office and ended at 4.00 p.m. Prosecution witnesses who testified that the meeting occurred between 8.30 and 11.00 a.m. were not speaking the truth because at that time there was a similar ceremony in the neighbouring *commune* of Ndora.<sup>12141</sup>

4554. Witness AND-73 arrived at 1.00 p.m. and waited at the *commune* office for the ceremony to begin. The ceremony was conducted in a grove of eucalyptus trees on the road towards Mugombwa Parish, about 50 metres from the IGA building. The ceremony was not

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<sup>12131</sup> T. 1 February 2007 pp. 62, 64, 72 (ICS) (Witness AND-11).

<sup>12132</sup> T. 6 February 2007 p. 27 (ICS) (Witness AND-11).

<sup>12133</sup> T. 1 February 2007 p. 65 (ICS) (Witness AND-11).

<sup>12134</sup> T. 1 February 2007 p. 70 (ICS) (Witness AND-11).

<sup>12135</sup> T. 1 February 2007 p. 74 (ICS) (Witness AND-11).

<sup>12136</sup> T. 6 February 2007 pp. 26-27 (ICS) (Witness AND-11).

<sup>12137</sup> T. 6 February 2007 pp. 43-47 (ICS) (Witness AND-11).

<sup>12138</sup> T. 13 February 2007 p. 53; T. 13 February 2007 pp. 62, 64-65 (ICS) (Witness AND-73).

<sup>12139</sup> T. 8 February 2007 p. 35 (ICS); T. 8 February 2007 p. 38; T. 12 February 2007 p. 12; T. 12 February 2007 p. 35 (ICS) (Witness AND-73).

<sup>12140</sup> T. 13 February 2007 p. 41 (Witness AND-73).

<sup>12141</sup> T. 12 February 2007 pp. 35-37 (ICS) (Witness AND-73).

held at the plantation behind the IGA building, or at the football pitch opposite the *commune* office.<sup>12142</sup> The witness was not personally asked to bring weapons to the ceremony, and did not observe that the other people present were armed. He did not see any archery training session taking place near the *commune* office before the beginning of the swearing-in ceremony.<sup>12143</sup>

4555. Célestin Habiyambere acted as the master of ceremonies, and the various speakers used a public address system. Witness AND-73 was no more than 10 metres from the speakers.<sup>12144</sup> Not including the master of ceremonies, three people spoke at the meeting, in the following order: the outgoing *bourgmestre*, Bimenyimana; then *Préfet* Nteziryayo; and finally the new *bourgmestre*, Ndayambaje, who closed the meeting.<sup>12145</sup> The national flag flew over the ceremony and was also placed in front of the table.<sup>12146</sup>

4556. The outgoing *bourgmestre's* speech lasted no longer than 10 minutes.<sup>12147</sup> After his speech, the outgoing *bourgmestre* did not leave the venue of the meeting; he remained until the meeting's end.<sup>12148</sup>

4557. Nteziryayo gave a speech and had Ndayambaje take the oath in the middle of the speech. In his speech, Nteziryayo stated that he was a government envoy and it was his job to introduce the new *bourgmestre* to the people. The swearing-in involved the *préfet* asking Ndayambaje to stand up and approach the national flag; Ndayambaje raised his right hand and took the oath, after which Nteziryayo made Ndayambaje wear a scarf made from the colours of the national flag. Ndayambaje did not stand on a table at any point during the ceremony.<sup>12149</sup>

4558. After administering the oath to Ndayambaje, Nteziryayo spoke to the people about security. He told the people that the French would ensure security in Butare, and that the "*Inkotanyi*" were not far from the *préfecture*. Then Nteziryayo introduced a white reverend who lived in the area and said that the man was close to the Rwandans and should be taken in as a friend. Witness AND-73 did not hear Nteziryayo encourage violence against Tutsis; he interpreted the speech as forbidding people from committing such crimes. Nteziryayo did not reproach the outgoing *bourgmestre* for not having achieved much. Nteziryayo took the floor only once.<sup>12150</sup>

4559. Ndayambaje asked the members of the population to support him in his new duties, to maintain peace and security and to avoid killings. He asked the people to return looted property to its rightful owner and to resume their activities and contribute to communal agricultural development. Ndayambaje did not say anything inciting or encouraging violence against the Tutsi people. Ndayambaje took the floor only once after he was sworn in. Neither Nteziryayo nor Ndayambaje used proverbs or idiomatic expressions, involving dirt, wheat and

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<sup>12142</sup> T. 12 February 2007 pp. 36-37, 43-44, 48 (ICS); T. 12 February 2007 p. 47 (Witness AND-73).

<sup>12143</sup> T. 12 February 2007 pp. 48-49, 62 (Witness AND-73).

<sup>12144</sup> T. 12 February 2007 p. 50 (Witness AND-73).

<sup>12145</sup> T. 12 February 2007 p. 12 (ICS) (Witness AND-73).

<sup>12146</sup> T. 12 February 2007 p. 54 (Witness AND-73).

<sup>12147</sup> T. 12 February 2007 p. 54 (Witness AND-73).

<sup>12148</sup> T. 12 February 2007 p. 67 (Witness AND-73).

<sup>12149</sup> T. 12 February 2007 pp. 54-55 (Witness AND-73).

<sup>12150</sup> T. 12 February 2007 pp. 55, 57, 60-63, 66 (Witness AND-73).

chaff or serpents and their eggs. Additionally, no one in the audience addressed the speakers or asked questions during the ceremony.<sup>12151</sup>

4560. Once the ceremony concluded, a reception was held at the IGA complex, which between 400-500 people attended.<sup>12152</sup>

4561. The witness did not see Nyiramasuhuko at that meeting, but he also did not know her at that time.<sup>12153</sup> Bernadette Mukarangwa was present.<sup>12154</sup> Witness AND-73 knew Kalimanzira well, as the *Directeur du Cabinet*, although he was not present at the ceremony.<sup>12155</sup> The witness did not see Augustin Sebukeye at the ceremony.<sup>12156</sup>

4562. Witness AND-73 never heard anyone express dissatisfaction regarding Bimenyimana's replacement by Ndayambaje; rather, when the *préfet* introduced the new *bourgmestre* people applauded, which showed they were happy.<sup>12157</sup>

4563. In the hours and days following Ndayambaje's swearing-in ceremony, Witness AND-73 did not personally see nor was he aware that in Muganza *commune*, women or girls of Tutsi origin were abducted and killed. Witness AND-73 disagreed that Tutsi girls were killed in the courtyard of the school, in front of the headmaster's office.<sup>12158</sup>

#### Nteziryayo

4564. Nteziryayo testified that on 22 June 1994 he attended the swearing-in of two new *bourgmestres* for the *communes* of Ndora (Fidele Uwizeye<sup>12159</sup>) and Muganza, at which he gave speeches.<sup>12160</sup> By a decision of the President of the Republic, Ndayambaje replaced Chrysologue Bimenyimana in Muganza *commune*. Nteziryayo was not involved in the decision to replace the *bourgmestres* and did not relieve Bimenyimana of his duties as *bourgmestre*, as Guichaoua alleged.<sup>12161</sup> He did not propose or influence the decision to appoint Ndayambaje as *bourgmestre* of Muganza *commune* in June 1994, contrary to Guichaoua's assertions. He also contested having belonged to any group that would influence the appointment of authorities in Butare *préfecture* in 1994. He stated that there never existed an influential group of four men, to which he belonged in addition to Ndayambaje, Kalimanzira and the *bourgmestre* of Kibayi, as Guichaoua alleged.<sup>12162</sup>

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<sup>12151</sup> T. 12 February 2007 pp. 55-57, 63-67 (Witness AND-73).

<sup>12152</sup> T. 12 February 2007 pp. 47-48, 57; T. 13 February 2007 p. 13 (Witness AND-73).

<sup>12153</sup> T. 8 February 2007 pp. 38-39 (Witness AND-73).

<sup>12154</sup> T. 8 February 2007 p. 39 (Witness AND-73).

<sup>12155</sup> T. 12 February 2007 p. 52; T. 13 February 2007 p. 50 (ICS) (Witness AND-73).

<sup>12156</sup> T. 12 February 2007 p. 58 (Witness AND-73).

<sup>12157</sup> T. 12 February 2007 p. 58 (Witness AND-73).

<sup>12158</sup> T. 13 February 2007 pp. 10-11 (ICS); T. 13 February 2007 p. 13 (Witness AND-73).

<sup>12159</sup> T. 11 June 2007 p. 7 (Nteziryayo).

<sup>12160</sup> T. 5 June 2007 p. 6; T. 7 June 2007 pp. 25, 46; T. 11 June 2007 p. 11; T. 25 June 2007 p. 48; T. 28 June 2007 pp. 37-38 (Nteziryayo).

<sup>12161</sup> T. 11 June 2007 p. 6; T. 26 June 2007 p. 18 (ICS) (Nteziryayo).

<sup>12162</sup> T. 2 July 2007 pp. 37-39 (Nteziryayo).



4565. Nteziryayo did not have any contact with Ndayambaje in 1994 before Ndayambaje's swearing-in ceremony via telephone, intermediary or otherwise.<sup>12163</sup> Nteziryayo did not see Ndayambaje from 1 January until 21 June 1994, the day before Ndayambaje's inauguration.<sup>12164</sup> He also did not communicate with Ndayambaje to make preparations for the ceremony before going to Muganza *commune* to install Ndayambaje, since this was the task of the *préfecture* services.<sup>12165</sup> In the weeks following 22 June 1994, Nteziryayo did not see or communicate with Ndayambaje again; Nteziryayo next saw Ndayambaje at the detention facility in Arusha, in 1998.<sup>12166</sup>

4566. Nteziryayo presided over the installation of *Bourgmestre* Ndayambaje that took place in a small forest located about 30 metres from the *commune* office building of Muganza, at about 2.30 p.m. to 3.00 p.m. on 22 June 1994.<sup>12167</sup> The swearing-in ceremony started about 3.00 p.m. and ended about 5.00 p.m. During the morning of that same day, Nteziryayo was either on his way to Ndora *commune*, to attend a swearing-in ceremony or had at least not yet arrived in Muganza *commune*.<sup>12168</sup>

4567. Nteziryayo was not accompanied by armed soldiers and had no other escort at the swearing-in ceremony in Muganza. However, *gendarmes* were usually stationed at the Muganza *commune* office and Nteziryayo was also accompanied by Nsabimana, who always had a small escort.<sup>12169</sup>

4568. The meeting was attended by Ndayambaje, the outgoing *bourgmestre* Chrysologue Bimenyimana, *Sous-préfet* Dominique Ntawukulilyayo of Gisagara, MP Bernadette Mukarurangwa,<sup>12170</sup> Brother Stan, a Belgian clergyman, and some *conseillers*. Callixte Kalimanzira, Nyiramasuhuko and Laurent Baravuga were not present.<sup>12171</sup> The outgoing *bourgmestre* Chrysologue Bimenyimana was present throughout the meeting; he did not leave in advance as Witness RV alleged.<sup>12172</sup> Nsabimana was also present.<sup>12173</sup> The outgoing *bourgmestre* introduced Nsabimana to the crowd during the ceremony and Nsabimana greeted people.<sup>12174</sup>

4569. Nteziryayo testified that he did not see Augustin Sebukeye, whom he knew, at Ndayambaje's swearing-in ceremony and that he and Ndayambaje did not order Sebukeye to destroy houses, as Witness FAL alleged.<sup>12175</sup>

4570. Nteziryayo was present throughout the meeting. The ceremony commenced with remarks by the outgoing *bourgmestre*, who thanked the population and introduced the new

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<sup>12163</sup> T. 28 June 2007 p. 38 (Nteziryayo).

<sup>12164</sup> T. 9 July 2007 pp. 26-27 (Nteziryayo).

<sup>12165</sup> T. 28 June 2007 p. 38 (Nteziryayo).

<sup>12166</sup> T. 2 July 2007 p. 34 (Nteziryayo).

<sup>12167</sup> T. 11 June 2007 pp. 11-12 (Nteziryayo).

<sup>12168</sup> T. 28 June 2007 pp. 41-44; T. 28 June 2007 p. 45 (ICS) (Nteziryayo).

<sup>12169</sup> T. 11 June 2007 p. 18 (Nteziryayo).

<sup>12170</sup> T. 19 June 2007 p. 58 (Nteziryayo).

<sup>12171</sup> T. 11 June 2007 pp. 12-13 (Nteziryayo).

<sup>12172</sup> T. 11 June 2007 p. 25 (ICS) (Nteziryayo).

<sup>12173</sup> T. 11 June 2007 pp. 18-19; T. 19 June 2007 p. 58; T. 28 June 2007 p. 39 (Nteziryayo).

<sup>12174</sup> T. 28 June 2007 p. 39 (Nteziryayo).

<sup>12175</sup> T. 2 July 2007 p. 33 (Nteziryayo).

*préfet* to whom he gave the floor. Nteziryayo immediately called on Ndayambaje to take his declaration after which Nteziryayo delivered his speech.<sup>12176</sup> Nteziryayo stated that he spoke only once, not twice, during the meeting.<sup>12177</sup>

4571. Nteziryayo announced the change of the *bourgmestre* and informed the population about the fighting not far from their *commune*; he encouraged the population to foster peace and to develop the economic situation in the *commune* even during the war. Nteziryayo asked the population to protect the white Belgian, Brother Stan.<sup>12178</sup> Nteziryayo said that Brother Stan was a Reverend Brother of the charity order, and was neither a civilian nor a military authority.<sup>12179</sup>

4572. In his speech, Nteziryayo urged the population to assist everyone in the *commune* who had to endure violence in the past. He talked about the possibility of the *commune* becoming part of the *Zone Turquoise* and exhorted everyone to look out for looters and thieves.<sup>12180</sup>

4573. Nteziryayo delivered his speech in plain language and did not use proverbs. He did not incite members of the population to exterminate or to kill Tutsis, to carry out acts of violence or to kill children and women, regardless of their ethnic origins. On the contrary, he invited members of the population to uphold peace and refrain from all forms of violence.<sup>12181</sup>

4574. Ndayambaje was the next to speak to the population. Ndayambaje conveyed a message similar to Nteziryayo's, namely to strive for peace, to abandon all forms of violence, to retrieve the property belonging to people in the region that had been looted by wrongdoers, to identify all wrongdoers in order that they may be punished and to assist those members of their *commune* who have endured the hardships of war. He promised to engage in development activities in order to assist members of the population to be self-sufficient and to combat famine.<sup>12182</sup>

4575. None of the speakers at the ceremony encouraged the population to use violence against others or incited them to kill and to exterminate the Tutsis. Neither Nteziryayo nor Ndayambaje said anything about not losing strength and continuing to "work". Ndayambaje did not say that girls in the company of their mother should be spared, but the boys and men who were still in hiding should be killed, as Witness TP testified.<sup>12183</sup>

4576. Nteziryayo denied having made several statements during his speech. He did not ask whether the population had accomplished the mission he had assigned to them to kill the Tutsis. He did not ask the population to sharpen their spears, to attach the nails firmly to the clubs, or ask if they carried machetes. He did not say, "[t]he fighting was difficult at Nyanza because the Tutsi had been hidden". He did not ask "when the *Inkotanyi* will come, shall they be singing the praises of the Hutus or of the Tutsis". He did not say that they had to choose the

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<sup>12176</sup> T. 11 June 2007 pp. 13-14 (Nteziryayo).

<sup>12177</sup> T. 11 June 2007 p. 26 (ICS) (Nteziryayo).

<sup>12178</sup> T. 11 June 2007 pp. 13-14 (Nteziryayo).

<sup>12179</sup> T. 28 June 2007 p. 39 (Nteziryayo).

<sup>12180</sup> T. 11 June 2007 pp. 13-14 (Nteziryayo).

<sup>12181</sup> T. 11 June 2007 p. 14 (Nteziryayo).

<sup>12182</sup> T. 11 June 2007 pp. 13-15 (Nteziryayo).

<sup>12183</sup> T. 11 June 2007 pp. 15, 19 (Nteziryayo).

good grains from the bad ones. Neither he nor Ndayambaje stated that rubbish should be taken out of the house instead of kept within a house by the fire. Neither Ndayambaje nor Nteziryayo said, “[y]ou continue to hide the Tutsi women and children. Those are the same people who attract danger to you.” He did not say “when a person wants to kill a snake, you even dig the hole in which the snake would be found. Its eggs are also destroyed.” Ndayambaje did not say that the enemy was the Tutsi.<sup>12184</sup>

4577. Nteziryayo denied saying during the swearing-in ceremony that the outgoing *bourgmestre*, Bimenyimana, had not been active in the discharge of his duties, as Witness FAL alleged. Contrary to the testimony of Witness FAL, Nteziryayo did not notice that the attendees displayed their disagreement with Bimenyimana’s replacement by Ndayambaje, saying that Bimenyimana was not a poor administrator and that it was not fair for him to be relieved of his duties.<sup>12185</sup>

4578. The members of the population who attended the ceremony were not armed. No survivors were killed after the swearing-in of Ndayambaje.<sup>12186</sup>

4579. At the end of the swearing-in ceremony, there was a small reception organised in the IGA building, after which Nteziryayo returned to Butare town.<sup>12187</sup> At the reception, Ndayambaje told him that he had accepted the position of *bourgmestre*, but that at the beginning of the academic year he intended to return to the university to pursue his studies.<sup>12188</sup>

4580. During or after the speeches, no questions were asked, nor were comments made by the attending population.<sup>12189</sup>

4581. Contrary to the testimony of Witness FAL, Ndayambaje did not climb onto a table during the swearing-in ceremony.<sup>12190</sup>

4582. Nteziryayo did not take part in a firing exercise in Muganza at the swearing-in ceremony or at any other time in 1994. He did not take part in bow-and-arrow or gun shooting as preparation to face the “*Inkotanyi*” before the swearing-in ceremony in Muganza.<sup>12191</sup>

4583. Nteziryayo testified that Muganza *commune* office in 1994 looked like many other *commune* offices in Rwanda, because all had been built according to the same plan. He said the building was longer than it was wide. It was located next to other buildings within the premises of the *commune* compound and just at the entrance to the *commune* office was a small building, the *commune* jail. Opposite the office were a flag pole, buildings which served

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<sup>12184</sup> T. 11 June 2007 pp. 20-23 (Nteziryayo).

<sup>12185</sup> T. 28 June 2007 pp. 40-41 (Nteziryayo).

<sup>12186</sup> T. 11 June 2007 pp. 15-17 (Nteziryayo).

<sup>12187</sup> T. 11 June 2007 p. 27; T. 2 July 2007 p. 19 (Nteziryayo).

<sup>12188</sup> T. 2 July 2007 p. 34 (Nteziryayo).

<sup>12189</sup> T. 28 June 2007 p. 39 (Nteziryayo).

<sup>12190</sup> T. 28 June 2007 p. 40 (Nteziryayo).

<sup>12191</sup> T. 11 June 2007 pp. 27-28 (Nteziryayo).

as training centres for members of the public, known as IGA, and other buildings used as workshops.<sup>12192</sup>

4584. Outside the *commune* office compound there was a road leading in the direction of Mugombwa Parish, passing in front of the *commune* office compound bypassing the IGA buildings, and taking the direction of the Gisagara parish in Ndora *commune*. At the entrance of the *commune* office compound was a small wooded area, where Ndayambaje's swearing-in ceremony took place.<sup>12193</sup>

4585. In front of the *bourgmestre's* office, towards the west, was a small road that bypassed the *commune* office compound and linked up with the road coming from Mugombwa Parish; and at the exit towards that direction to Gisagara was a playground commonly referred to as a football arena.<sup>12194</sup>

#### Ndayambaje Defence Witness MACHO

4586. Witness MACHO testified that she spent the day of Ndayambaje's swearing-in ceremony in the company of Witness QAL visiting Witness MACHO's godmother. Neither Witness QAL nor Witness MACHO attended the swearing-in of Ndayambaje, contrary to Prosecution Witness QAL's testimony. Witness MACHO disagreed that Witness QAL's husband was killed the day after Ndayambaje was sworn in as *bourgmestre*.<sup>12195</sup>

4587. Witness MACHO did not witness the alleged abduction of Witness QAL's daughter, since on the night of the abduction the daughter was still at the godmother's house. On that day, the child stayed with Witness MACHO; his mother picked up the child in the evening. Witness MACHO saw the child again the next day.<sup>12196</sup>

#### Nyiramasuhuko Defence Expert Witness Eugène Shimamungu

4588. Eugène Shimamungu testified that the word "*gukora*" carries various meanings, the most commonly used and positive of its meanings being: do, work, act and to be occupied with. As a lexicographer, he testified it is necessary to look at the use of the term in the context of a sentence, and in most cases the meaning of a word may mutate. The negative meanings given to the term, which are only ascribed in context, are: to cunningly mislead, to destroy somebody's dwelling, to rob everything, and to leave nothing behind. Other meanings ascribed to the term include to pass a trial or test.<sup>12197</sup>

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<sup>12192</sup> T. 28 June 2007 pp. 48-49 (Nteziryayo).

<sup>12193</sup> T. 28 June 2007 pp. 48-49 (Nteziryayo).

<sup>12194</sup> T. 28 June 2007 p. 49 (Nteziryayo); *see also* Prosecution Exhibit 38 (Video of Muganza *commune* office); Defence Exhibits 553A-G (Ndayambaje) (Photographs extracted from Prosecution Exhibit 38); Defence Exhibit 554 (Ndayambaje) (Sketch of Muganza *commune* office, by Nteziryayo).

<sup>12195</sup> T. 2 July 2008 pp. 50-51 (ICS) (Witness MACHO).

<sup>12196</sup> T. 2 July 2008 pp. 51-52 (ICS) (Witness MACHO).

<sup>12197</sup> T. 16 March 2005 pp. 56-57 (Shimamungu).

### 3.6.43.4 Deliberations

4589. The Chamber notes the Prosecution relied on 10 factual witnesses with respect to the events that transpired at Ndayambaje's swearing-in ceremony, namely Witnesses FAG,<sup>12198</sup> FAL,<sup>12199</sup> FAU,<sup>12200</sup> QAF,<sup>12201</sup> QAL,<sup>12202</sup> QAQ,<sup>12203</sup> QAR,<sup>12204</sup> RV,<sup>12205</sup> TO,<sup>12206</sup> and TP.<sup>12207</sup>

4590. Prosecution Witnesses FAG,<sup>12208</sup> RV,<sup>12209</sup> and TO<sup>12210</sup> testified to attending the swearing-in ceremony of Ndayambaje as *bourgmestre* of Muganza *commune*, which they respectively stated took place on various dates in June 1994.

4591. Prosecution Witnesses FAL, QAF and TP also testified to attending a meeting at Muganza *commune* on or around 22 June 1994, which they respectively described as a "security meeting",<sup>12211</sup> a "public safety meeting",<sup>12212</sup> and a meeting concerning land disputes.<sup>12213</sup>

4592. Notwithstanding their different descriptions of the meeting in question, the Chamber notes the testimony of Witnesses FAL, QAF and TP showed that during the course of the meeting they allegedly attended, Ndayambaje was reappointed *bourgmestre*. While Witnesses FAL<sup>12214</sup> and TP<sup>12215</sup> personally witnessed the installation, Witness QAF arrived late and missed the swearing-in, but was told it took place.<sup>12216</sup> Apart from discrepancies between the testimony of the Prosecution witnesses as to the precise date of the ceremony, which the Chamber considers minor and moreover, understandable, in light of the time which had passed between the events in question and the time the witnesses testified, the Chamber finds Witnesses FAL, QAF and TP are referring to the same event, namely Ndayambaje's swearing-in ceremony.

4593. In addition to claiming they witnessed or knew of the appointment of Ndayambaje at the meeting on that day, Witnesses FAL, QAF and TP are consistent with respect to the timing

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<sup>12198</sup> Prosecution Closing Brief, p. 359, para. 173; pp. 483-485, paras. 119-123.

<sup>12199</sup> Prosecution Closing Brief, p. 360, para. 175; pp. 485-487, paras. 124-127.

<sup>12200</sup> Prosecution Closing Brief, pp. 489-490, paras. 133-134.

<sup>12201</sup> Prosecution Closing Brief, p. 360, para. 176; pp. 487-489, paras. 128-132.

<sup>12202</sup> Prosecution Closing Brief, pp. 324-325, paras. 64-66; pp. 359, 361, paras. 172, 178; pp. 481-482, paras. 115-116.

<sup>12203</sup> Prosecution Closing Brief, pp. 325-326, para. 67; pp. 466-467, paras. 61-62; pp. 482-483, paras. 117-118.

<sup>12204</sup> Prosecution Closing Brief, pp. 360-361, paras. 177; pp. 490-491, paras. 135-136.

<sup>12205</sup> Prosecution Closing Brief, p. 361, para. 178; p. 480, paras. 112-113.

<sup>12206</sup> Prosecution Closing Brief, p. 359, para. 174.

<sup>12207</sup> Prosecution Closing Brief, pp. 491-492, paras. 138-139.

<sup>12208</sup> T. 1 March 2004 p. 33 (Witness FAG) (held early June 1994).

<sup>12209</sup> T. 17 February 2004 pp. 5-6 (ICS) (Witness RV) (on 21 June 1994).

<sup>12210</sup> T. 4 March 2002 pp. 11-12 (Witness TO) (held in June 1994).

<sup>12211</sup> T. 9 February 2004 p. 37 (Witness FAL).

<sup>12212</sup> T. 5 February 2004 pp. 65, 85; T. 9 February 2004 p. 8 (Witness QAF).

<sup>12213</sup> T. 12 February 2004 p. 38 (Witness TP).

<sup>12214</sup> T. 9 February 2004 p. 38; T. 9 February 2004 p. 81 (ICS) (Witness FAL).

<sup>12215</sup> T. 12 February 2004 pp. 38-39 (Witness TP).

<sup>12216</sup> T. 5 February 2004 pp. 65-66; T. 6 February 2004 pp. 6-7 (Witness QAF).

of the meeting (which the Prosecution witnesses identify as taking place in the morning),<sup>12217</sup> the location of the meeting (largely identified as taking place in the small woods near the Muganza *commune* office),<sup>12218</sup> and the officials present at the meeting (largely agreed to be *Préfet* Nteziryayo, incoming *Bourgmestre* Ndayambaje, outgoing *Bourgmestre* Bimenyimana, and on occasions one Célestin).<sup>12219</sup>

4594. The remaining Prosecution Witnesses QAQ, QAL and QAR testified to attending a meeting near the Muganza *commune* office around May or June 1994.<sup>12220</sup>

4595. Although Witnesses QAQ, QAL and QAR could not remember the precise date of the meeting,<sup>12221</sup> and Witness QAQ did not know whether the meeting was for Ndayambaje's

<sup>12217</sup> T. 1 March 2004 p. 33 (Witness FAG); T. 3 March 2004 p. 23 (Witness FAG) (ceremony started around 10.00 or 11.00 a.m. and lasted until 1.00 p.m.); T. 9 February 2004 p. 37 (Witness FAL) (meeting started around 10.30 a.m.); T. 9 February 2004 p. 56 (Witness FAL) (meeting ended at about 11.30 a.m.); T. 5 February 2004 pp. 65-66 (Witness QAF); T. 6 February 2004 p. 4 (Witness QAF); T. 9 February 2004 pp. 7, 12 (Witness QAF) (witness arrived in the morning, a little late for the meeting which had already started); T. 18 February 2004 p. 43 (ICS) (Witness RV) (held at about 10.00 a.m.); T. 19 February 2004 p. 34 (ICS) (Witness RV) (or 11.00 a.m.); T. 5 March 2002 p. 113 (Witness TO) (started between 10.00 and 11.00 a.m.); T. 5 March 2002 pp. 114-115 (Witness TO) (could not recall precisely when the meeting ended); T. 5 March 2002 p. 117 (Witness TO) (estimated he left the ceremony at around 2.30 p.m.); T. 11 February 2004 p. 25 (Witness TP) (meeting began around 9.00 a.m.); T. 12 February 2004 p. 39 (Witness TP) (she later stated that she arrived at about 9.30 a.m. before the meeting started and left about 10.00 a.m. or 12.00 p.m.).

<sup>12218</sup> T. 3 March 2004 pp. 19-20 (Witness FAG) (meeting took place in a clearing in small eucalyptus bush approximately 100 metres from the *commune* office and located below the road leading to the *commune* office in the direction of Mugombwa); T. 9 February 2004 p. 37 (Witness FAL) (held in a little bush near the Muganza *commune* office); T. 5 February 2004 pp. 65, 85 (Witness QAF); T. 9 February 2004 p. 8 (Witness QAF) (held in some eucalyptus woods about 30 metres away from the Muganza *commune* office in Remera *secteur*); T. 17 February 2004 pp. 5-6 (ICS) (Witness RV) (in the woods, some 50 yards from the *commune* office); T. 4 March 2002 pp. 12, 30 (Witness TO); T. 5 March 2002 pp. 47, 50 (Witness TO); T. 6 March 2001 p. 7 (Witness TO) (ceremony was held in a small bush close to the *commune* office in Remera *secteur* on the other side of the road that leads to Mugombwa).

<sup>12219</sup> T. 3 March 2004 p. 48 (Witness FAG) (witness only remembered three people taking the floor, Ndayambaje, Nteziryayo and the secretary Célestin); T. 9 February 2004 pp. 37, 75 (Witness FAL) (in addition to Ndayambaje, Nteziryayo, the witness claimed Tharcisse Muvunyi was present); T. 5 February 2004 p. 66 (Witness QAF); T. 6 February 2004 p. 5 (Witness QAF); T. 9 February 2004 pp. 21-23 (Witness QAF) (witness saw *Préfet* Nteziryayo, Ndayambaje, Bimenyimana, Kalimanzira, and a white priest who lived in Mugombwa); T. 17 February 2004 pp. 5-7 (ICS) (Witness RV); T. 19 February 2004 p. 42 (ICS) (Witness RV) (in addition to Ndayambaje and Nteziryayo, other officials included Nyiramasuhuko, Nsabimana, Dominique Ntawukuliyayo, the former *sous-préfet* of Gisagara *sous-préfecture*, Kalimanzira, and the *bourgmestre* of Nyaruhengeri attended the ceremony); T. 4 March 2002 p. 14 (Witness TO); T. 5 March 2002 p. 55 (Witness TO) (the master of ceremonies Célestin Habiyambere, the outgoing *bourgmestre*, *Préfet* Nteziryayo and Ndayambaje); T. 11 February 2004 p. 25 (Witness TP) (several authorities attended including the *préfet*, *bourgmestre* Ndayambaje, *conseillers* of the *commune* and other *commune* staff).

<sup>12220</sup> T. 11 November 2002 pp. 38-39, 52 (ICS) (Witness QAQ); T. 25 February 2004 pp. 10, 18 (Witness QAL); T. 25 February 2004 pp. 40-41 (ICS) (Witness QAL); T. 19 November 2001 p. 55 (Witness QAR); T. 20 November 2001 p. 77 (Witness QAR).

<sup>12221</sup> T. 11 November 2002 p. 52 (ICS) (Witness QAQ) (meeting took place between the end of May and the end of June 1994, but could not be more specific because witness was already in hiding); T. 25 February 2004 pp. 13, 25, 41-42 (ICS) (Witness QAL) (did not remember the date of the meeting, but recalled it was held shortly before the RPF invasion of Muganza that occurred at the end of June or beginning of July. Ndayambaje was the *bourgmestre* of Muganza *commune* at the time of the meeting); T. 21 November 2001 pp. 75-76 (Witness QAR) (meeting took place in mid-June, because following that meeting children were taken to be killed, and this occurred on 18 June 1994).

swearing-in ceremony,<sup>12222</sup> they nevertheless testified to the attendance of *Préfet* Nteziryayo and/or *Bourgmestre* Ndayambaje<sup>12223</sup> for which reason the Chamber considers the meeting about which they testified took place on or after 22 June 1994. The Chamber also notes the testimonies of Witnesses QAQ, QAL and QAR are consistent with the evidence of the other witnesses with respect to the time of the meeting (morning),<sup>12224</sup> and location of the meeting (near the *commune* office).<sup>12225</sup>

4596. The Chamber also notes that certain key aspects of the evidence of Prosecution Witnesses QAQ, QAL and QAR accords with the testimony of Prosecution and Defence witnesses alike. For example, Witness QAL testified that Ndayambaje was wearing a suit and wearing a ribbon with the national colours, which is corroborated by the testimony of Prosecution Witnesses FAG, FAL, RV, TO and TP; Ndayambaje Defence Witnesses BOZAN, Brother Stan and KEPIR; Ndayambaje; and Nteziryayo Defence Witnesses AND-11 and AND-73.<sup>12226</sup> Further, Witness QAL testified that a white man was present at the meeting, as did Witnesses BOZAN, Ndayambaje, AND-11 and Nteziryayo.<sup>12227</sup> Lastly, Witness QAL's testimony that some of the population was armed is corroborated by the testimony of Witness FAL and TP.<sup>12228</sup> In light of these corroborative elements, the Chamber considers that the meeting Witness QAL testified about was Ndayambaje's swearing-in ceremony.

4597. The Chamber nevertheless notes there were also several inconsistencies between Witness QAL's account of this meeting *vis-à-vis* the other Prosecution witnesses. For example, Witness QAL testified that when he arrived at the meeting Ndayambaje was ending his speech,<sup>12229</sup> and that Nteziryayo thereafter took the floor,<sup>12230</sup> in contrast to the testimony of the other witnesses that Nteziryayo spoke first, followed by Ndayambaje. Further, Witness QAL was the only Prosecution witness to testify that: Ndayambaje spoke about the need to

<sup>12222</sup> T. 11 November 2002 p. 83 (Witness QAQ).

<sup>12223</sup> T. 11 November 2002 pp. 38-39, 52 (ICS) (Witness QAQ); T. 25 February 2004 pp. 41-42 (ICS) (Witness QAL); T. 19 November 2001 p. 55 (Witness QAR).

<sup>12224</sup> T. 11 November 2002 p. 62 (Witness QAQ) (meeting started after 10.00 or 11.00 a.m.); T. 11 November 2002 p. 66 (Witness QAQ) (meeting ended in the afternoon, maybe around 3.00 p.m.); T. 25 February 2004 p. 37 (Witness QAL) (meeting was scheduled to start at 10.00 a.m.).

<sup>12225</sup> T. 11 November 2002 p. 81 (Witness QAQ) (meeting took place in a bush which was downstream from the *commune* office, on the left-hand side of the main road he referred to and behind the IGA building); T. 25 February 2004 pp. 10, 18 (Witness QAL); T. 25 February 2004 pp. 40-41 (ICS) (Witness QAL) (meeting took place in the woods below the *commune* office in Remera at around 10.00 a.m.); T. 19 November 2001 p. 55 (Witness QAR); T. 20 November 2001 p. 77 (Witness QAR) (attended a meeting that took place at Muganza *commune*, held behind the courtyard of the *commune* office); T. 21 November 2001 p. 78 (Witness QAR) (meeting held in field which serves as playground in Remera).

<sup>12226</sup> T. 25 February 2004 p. 20 (Witness QAL); *see* T. 3 March 2004 p. 24 (Witness FAG); T. 9 February 2004 p. 38 (Witness FAL); T. 18 February 2004 p. 43 (ICS) (Witness RV); T. 6 March 2002 pp. 12-13 (Witness TO); T. 12 February 2004 p. 40 (Witness TP); T. 16 September 2008 p. 36 (Witness BOZAN); T. 18 September 2008 p. 54 (Brother Stan); T. 11 September 2008 p. 30 (Witness KEPIR); T. 10 November 2008 p. 42 (Ndayambaje); T. 2 December 2008 p. 9 (Ndayambaje); T. 1 February 2007 p. 51 (Witness AND-11); T. 12 February 2007 p. 54 (Witness AND-73).

<sup>12227</sup> T. 25 February 2004 p. 11 (Witness QAL); *see* T. 17 September 2008 pp. 60-61 (Witness BOZAN); T. 10 November 2008 p. 36 (Ndayambaje); T. 1 February 2007 p. 47 (ICS) (Witness AND-11); T. 11 June 2007 pp. 12-14 (Nteziryayo); T. 28 June 2007 p. 39 (Nteziryayo).

<sup>12228</sup> T. 25 February 2004 pp. 11-12 (Witness QAL); T. 25 February 2004 p. 42 (ICS) (Witness QAL); *see* T. 9 February 2004 p. 81 (ICS) (Witness FAL); T. 12 February 2004 p. 38 (Witness TP).

<sup>12229</sup> T. 25 February 2004 p. 37; T. 25 February 2004 p. 46 (Witness QAL).

<sup>12230</sup> T. 25 February 2004 p. 11 (Witness QAL).

separate the wheat from the chaff;<sup>12231</sup> it was Ndayambaje, rather than Nteziryayo, who introduced the white man;<sup>12232</sup> Célestin told Nteziryayo and Ndayambaje that they had forgotten to tell people to also kill babies.<sup>12233</sup>

4598. The Chamber considers the foregoing discrepancies do not go to the root of the witness' account of the meeting. The order of the speakers and who presented the white man and the precise words spoken at the ceremony are less significant details, the clarity of which can be affected by the passage of time. The Chamber does not consider these discrepancies undermine the overall credibility of Witness QAL. Accordingly, notwithstanding the foregoing discrepancies, the Chamber considers the meeting about which Witness QAL testified, was Ndayambaje's swearing in ceremony.

4599. Witness QAL's attendance at the swearing-in ceremony was challenged by Witness MACHO. Witness MACHO testified that Witness QAL spent the day together with Witness MACHO at Witness MACHO's godmother's house.<sup>12234</sup> While Witness QAL was cross-examined by the Ndayambaje Defence in February 2004 when she testified, it was never put to her that she did not attend the swearing-in or may have been elsewhere on the day in question.<sup>12235</sup> That Witness QAL allegedly did not attend the swearing-in ceremony only arose when Witness MACHO testified in July 2008, four years after Witness QAL. In the circumstances, Witness QAL never had the opportunity to controvert Witness MACHO's testimony.

4600. The Chamber considers Witness QAL gave detailed and credible evidence about the swearing-in ceremony, including such details as who she went to the meeting with.<sup>12236</sup> Further, the fact that certain aspects of Witness QAL's testimony are consistent with the testimony of the other Prosecution witnesses whose presence at the meeting was not contested, leads the Chamber to reject the testimony of Witness MACHO that Witness QAL spent the day visiting Witness MACHO's godmother.<sup>12237</sup> In the circumstances, the Chamber considers that Witness MACHO's testimony does not raise a reasonable doubt as to whether Witness QAL attended Ndayambaje's swearing-in ceremony.

4601. Turning to Witness QAR, Witness QAR testified that in June 1994 she attended a meeting at Muganza *commune*<sup>12238</sup> where *Préfet* Nteziryayo asked *Bourgmestre* Ndayambaje "how far they went with the job or the work", and proceeded to discuss the need to "sweep the house of dirt".<sup>12239</sup> After hearing these words from the *préfet*, Witness QAR testified she was

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<sup>12231</sup> T. 25 February 2004 pp. 10-11; T. 25 February 2004 pp. 20, 46 (ICS) (Witness QAL).

<sup>12232</sup> T. 25 February 2004 pp. 10-11; T. 25 February 2004 pp. 20, 46 (ICS) (Witness QAL).

<sup>12233</sup> T. 25 February 2004 p. 17 (Witness QAL).

<sup>12234</sup> T. 2 July 2008 p. 51 (ICS) (Witness MACHO).

<sup>12235</sup> See Ndayambaje cross-examination, T. 25 February 2004 pp. 14-22; T. 25 February 2004 pp. 23-25 (ICS) (Witness QAL).

<sup>12236</sup> T. 25 February 2004 p. 19; T. 25 February 2004 pp. 24, 39 (ICS) (Witness QAL) (witness went with three other people, including her brother-in-law).

<sup>12237</sup> T. 2 July 2008 p. 51 (ICS) (Witness MACHO).

<sup>12238</sup> T. 19 November 2001 p. 55; T. 20 November 2001 p. 77 (Witness QAR).

<sup>12239</sup> T. 19 November 2001 p. 56; T. 21 November 2001 p. 93 (Witness QAR).



frightened and went directly home.<sup>12240</sup> She later heard from those who came out of the meeting that they had decided “to sweep out everything”.<sup>12241</sup>

4602. Recalling that Witness QAR is a Tutsi,<sup>12242</sup> and that Witness QAR survived the Mugombwa massacre (), the Chamber does not consider it plausible that Witness QAR attended the meeting in question. Even if the Chamber were to accept that she may have initially arrived at the meeting, the Chamber is of the view that Witness QAR left that meeting scared, and her testimony as to what occurred at the meeting is hearsay evidence based upon what she subsequently gleaned from others.

4603. The Chamber is strengthened in its view having regard to several inconsistencies between Witness QAR’s testimony when compared to the other Prosecution witnesses. For example, Witness QAR testified the meeting was held behind the courtyard of the *commune* office,<sup>12243</sup> in the field which serves as a playground in Remera,<sup>12244</sup> which is at odds with the evidence of the majority of the other Prosecution witnesses who testified the meeting took place in woods located on the other side of the *commune* office.<sup>12245</sup> Witness QAR also testified that both Nteziryayo and Ndayambaje wore civilian attire, not military uniform,<sup>12246</sup> in contrast to the testimony of the other witnesses who testified Nteziryayo wore military uniform.<sup>12247</sup> Witness QAR did not recall seeing any white men at the meeting.<sup>12248</sup> Further, Witness QAR testified that Nteziryayo allegedly asked *Bourgmestre* Ndayambaje “how far they went with the job or the work”,<sup>12249</sup> testimony that no other witness gave. Noting also the absence of any testimony concerning the actual oath-taking by Ndayambaje, the Chamber considers that Witness QAR did not attend Ndayambaje’s swearing-in ceremony.

4604. Challenging Witness QAR’s testimony, Defence Witness JAMES testified that in June 1994 Witness QAR lived in the home of Witness JAMES’ grandfather located in Mugombwa

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<sup>12240</sup> T. 19 November 2001 p. 57 (Witness QAR).

<sup>12241</sup> T. 19 November 2001 p. 57 (Witness QAR).

<sup>12242</sup> T. 15 November 2001 p. 139 (Witness QAR).

<sup>12243</sup> T. 19 November 2001 p. 55; T. 20 November 2001 p. 77 (Witness QAR).

<sup>12244</sup> T. 21 November 2001 p. 78 (Witness QAR).

<sup>12245</sup> T. 3 March 2004 pp. 19-20 (Witness FAG) (took place in a clearing in small eucalyptus bush approximately 100 metres from the *commune* office and located below the road leading to the *commune* office in the direction of Mugombwa); T. 9 February 2004 p. 37 (Witness FAL) (held in a little bush near the Muganza *commune* office); T. 5 February 2004 pp. 65, 85 (Witness QAF); T. 9 February 2004 p. 8 (Witness QAF) (held in some eucalyptus woods about 30 metres away from the Muganza *commune* office in Remera *secteur*); T. 17 February 2004 pp. 5-6 (ICS) (Witness RV) (in the woods, some 50 yards from the *commune* office); T. 4 March 2002 pp. 12, 30 (Witness TO); T. 5 March 2002 pp. 47, 50 (Witness TO); T. 6 March 2001 p. 7 (Witness TO) (ceremony held in a small bush close to the *commune* office in Remera *secteur* on the other side of the road that leads to Mugombwa); *see also* Prosecution Exhibit 38 (Video of Muganza *commune* office), Defence Exhibit 554 (Ndayambaje) (Sketch of Muganza *commune* office, by Nteziryayo) and Defence Exhibit 694 (Ndayambaje) (Sketch Map, by Ndayambaje).

<sup>12246</sup> T. 19 November 2001 p. 119 (Witness QAR).

<sup>12247</sup> T. 1 March 2004 p. 40 (Witness FAG); T. 5 February 2004 p. 68 (Witness QAF); T. 4 March 2002 p. 24 (Witness TO); T. 19 November 2008 p. 74 (Ndayambaje); T. 16 September 2008 p. 51 (Witness BOZAN); T. 11 September 2008 p. 61 (Witness KEPIR); T. 1 February 2007 p. 48 (ICS) (Witness AND-11); T. 26 August 2008 p. 24 (Siborurema).

<sup>12248</sup> T. 21 November 2001 p. 90 (Witness QAR).

<sup>12249</sup> T. 19 November 2001 p. 56 (Witness QAR); T. 21 November 2001 p. 93 (Witness QAR).

*secteur*, during which time Witness QAR never left her home.<sup>12250</sup> Witness JAMES was never told by his mother, with whom Witness QAR lived in the grandfather's home, or anyone else, that Witness QAR went to the Muganza *commune* office in Remera, which Witness JAMES estimated was one and a half hours from his grandfather's house by foot.<sup>12251</sup>

4605. Notwithstanding the Chamber's view that Witness QAR did not personally attend Ndayambaje's swearing-in ceremony, the Chamber rejects the testimony of Witness JAMES as to Witness QAR's whereabouts on the day in question. First, while the Chamber accepts that Witness QAR lived in the same *cellule* as Witness JAMES' grandfather,<sup>12252</sup> Witness QAR did not testify about whom she lived with. Further, even if the Chamber were to accept that Witness QAR was living with Witness JAMES' grandfather, Witness JAMES was not said to be living at his grandfather's house with Witness QAR, for which reason the Chamber considers he had no reason to know of her whereabouts at all times. Lastly, the Chamber does not consider the fact that Witness JAMES was never told by his mother, with whom Witness QAR allegedly lived in the grandfather's home, or anyone else that Witness QAR went to the Muganza *commune* office in Remera<sup>12253</sup> to be conclusive evidence of Witness QAR's whereabouts.

4606. Lastly, with respect to Witness QAQ, Witness QAQ testified that he decided to attend a meeting at the Muganza *commune* office, that he estimated may have been held between 20 and 22 June 1994, so he could see Ndayambaje and Nteziryayo, both of whom he knew well.<sup>12254</sup> He did not intend to follow the meeting; he only intended to come out at the end of the meeting.<sup>12255</sup> Witness QAQ set out for the meeting at about 1.00 a.m.<sup>12256</sup> and walked all night in order to get to the *commune* office; he hid in a sorghum field close to the bureau such that when the meeting began, he was already in the field close to the office.<sup>12257</sup>

4607. The Chamber does not consider several aspects of Witness QAQ's account to be plausible. First, the Chamber does not consider credible that he walked all night to get to the meeting just to see Ndayambaje and Nteziryayo. More significantly, the Chamber recalls that Witness QAQ was a Tutsi civil servant from Muganza *commune*. As such, the Chamber considers it doubtful that Witness QAQ would have chosen to attend the meeting given the prevailing circumstances. Further, notwithstanding Witness QAQ's alleged friendship with Ndayambaje and Nteziryayo, Witness QAQ felt it necessary to hide throughout this meeting, even before he heard the allegedly inciting statements pronounced by Ndayambaje.<sup>12258</sup> The Chamber is of the view that these aspects of Witness QAQ's testimony weaken the credibility of his account.

4608. In any event, even if the Chamber were to accept that Witness QAQ observed Ndayambaje's swearing-in ceremony, the Chamber notes Witness QAQ was hiding some 100

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<sup>12250</sup> T. 2 June 2008 p. 60 (ICS) (Witness JAMES).

<sup>12251</sup> T. 2 June 2008 pp. 60-61 (ICS) (Witness JAMES).

<sup>12252</sup> See T. 19 November 2001 p. 102 (ICS) (Witness QAR); T. 2 June 2008 p. 60 (ICS) (Witness JAMES).

<sup>12253</sup> T. 2 June 2008 pp. 60-61 (ICS) (Witness JAMES); T. 19 November 2001 p. 55 (Witness QAR).

<sup>12254</sup> T. 11 November 2002 pp. 39-40, 53, 55-56 (ICS) (Witness QAQ).

<sup>12255</sup> T. 11 November 2002 pp. 65, 83 (Witness QAQ).

<sup>12256</sup> T. 11 November 2002 p. 60 (Witness QAQ).

<sup>12257</sup> T. 11 November 2002 p. 39 (ICS) (Witness QAQ).

<sup>12258</sup> T. 11 November 2002 p. 41 (ICS) (Witness QAQ).

metres from the meeting's venue,<sup>12259</sup> for which reason he admitted that he could not see the speakers.<sup>12260</sup> He nevertheless testified he could hear Ndayambaje and Nteziryayo from where he was located<sup>12261</sup> because a megaphone was being used at the meeting<sup>12262</sup> and he knew when they spoke because their names were mentioned before they addressed the meeting.<sup>12263</sup> Nonetheless, Witness QAQ agreed that the speeches he heard were often incomplete or unclear; there were statements he could not hear and he only paid attention when the names of the persons that he was able to identify were mentioned.<sup>12264</sup> Therefore, even accepting that Witness QAQ observed Ndayambaje's swearing-in, in the circumstances, the Chamber considers that any probative weight to be accorded to the testimony of Witness QAQ is minimal.

4609. Turning to the Defence evidence, the Defence witnesses consistently testified about having attended Ndayambaje's swearing-in ceremony.<sup>12265</sup> The Chamber notes the testimony of the Defence witnesses with respect to the details of the swearing-in corroborates that of the Prosecution witnesses with respect to the ceremony's location<sup>12266</sup> and the principal attendees.<sup>12267</sup> The Chamber also notes that several Defence witnesses testified to the presence

<sup>12259</sup> T. 11 November 2002 p. 65 (Witness QAQ).

<sup>12260</sup> T. 11 November 2002 pp. 61-62, 84 (Witness QAQ).

<sup>12261</sup> T. 11 November 2002 pp. 40, 61 (ICS) (Witness QAQ).

<sup>12262</sup> T. 11 November 2002 p. 40 (ICS); T. 11 November 2002 p. 63 (Witness QAQ).

<sup>12263</sup> T. 11 November 2002 p. 84 (Witness QAQ).

<sup>12264</sup> T. 11 November 2002 p. 84 (Witness QAQ).

<sup>12265</sup> T. 10 November 2008 p. 21 (Ndayambaje); T. 2 December 2008 p. 6 (Ndayambaje); T. 11 June 2007 pp. 11-12 (Nteziryayo); T. 16 September 2008 pp. 23, 55 (Witness BOZAN); T. 18 September 2008 p. 50 (Brother Stan); T. 11 September 2008 p. 17 (ICS) (Witness KEPIR); T. 1 February 2007 p. 44 (ICS) (Witness AND-11); T. 8 February 2007 p. 38 (Witness AND-73); T. 12 February 2007 p. 12 (Witness AND-73); T. 12 February 2007 p. 35 (ICS) (Witness AND-73); T. 25 August 2008 p. 62 (ICS) (Siborurema).

<sup>12266</sup> T. 10 November 2008 pp. 22-23 (Ndayambaje) (ceremony took place in a small wood close to the entrance of the *commune* office on the right of the road leading to Mugombwa); T. 11 June 2007 pp. 11-12 (Nteziryayo) (took place in a small forest located at about 30 metres from the *commune* office building of Muganza at about 2.30 p.m. to 3.00 p.m. 22 June 1994); T. 16 September 2008 pp. 24-25 (Witness BOZAN) (took place in a wood located 30 or 40 metres from the *commune* office); T. 18 September 2008 p. 50 (Brother Stan) (took place in a woodland area near the Muganza *commune* office, just before the football pitch of Muganza); T. 1 September 2008 p. 56 (ICS) (Witness GABON); T. 3 September 2008 pp. 44, 48 (Witness GABON) (took place near Kayaku's residence in a eucalyptus wood, located near the *commune* office); T. 11 September 2008 p. 18 (Witness KEPIR) (took place in a wooded area near the entrance of the *commune* office, not behind the IGA building); T. 1 February 2007 p. 45 (ICS) (Witness AND-11) (held in a forest close to the Muganza *commune* office); T. 12 February 2007 pp. 37, 44 (ICS) (Witness AND-73) (ceremony conducted in a grove of eucalyptus trees on the road towards Mugombwa Parish about 50 metres from the IGA building).

<sup>12267</sup> T. 10 November 2008 p. 33 (Ndayambaje) (master of ceremonies was Célestin Habiyambere); T. 16 September 2008 p. 26 (Witness BOZAN) (Nteziryayo, Bimenyimana and Ndayambaje arrived); T. 16 September 2008 p. 32 (Witness BOZAN) (Célestin opened the floor followed by Bimenyimana); T. 18 September 2008 p. 54 (Brother Stan) (the outgoing *bourgmestre* Bimenyimana spoke first and introduced Nteziryayo who swore in Ndayambaje); T. 11 September 2008 pp. 28, 30-31 (Witness KEPIR) (Célestin Habiyambere opened the floor then gave the floor to *bourgmestre* Chrisologue, and then the *préfet* and Ndayambaje in turn); T. 1 February 2007 p. 62 (ICS) (Witness AND-11) (four speakers in total, namely the outgoing *bourgmestre*, the incoming *bourgmestre*, the *préfet*, and the master of ceremonies); T. 12 February 2007 p. 50 (Witness AND-73) (Habiyambere acted as the Master of Ceremonies); T. 12 February 2007 p. 12 (ICS) (Witness AND-73) (not including the Master of Ceremonies, three people spoke and in the following order: the outgoing *bourgmestre* Bimenyimana; then *Préfet* Nteziryayo; and finally the new *bourgmestre*, Ndayambaje).

of Brother Stan, which was corroborated by the testimony of Prosecution Witnesses QAF, QAL and TO.<sup>12268</sup>

4610. Notwithstanding these consistencies with respect to the time and location of the meeting in question, several discrepancies between the Prosecution and Defence evidence are discernable. For instance, Prosecution Witnesses FAL, QAF and RV testified to the presence of additional officials such as Muvunyi<sup>12269</sup> and Kalimanzira,<sup>12270</sup> which was disputed by several Defence witnesses.<sup>12271</sup> Further, Witnesses TP, RV, FAL and QAL also testified that the population brought traditional arms with them,<sup>12272</sup> in contrast to Witnesses FAG, QAF, Nteziryayo and Defence Witnesses GABON, KEPIR, AND-11, AND-73 who all testified that the population was not armed.<sup>12273</sup> Witnesses TP and Witness QAL testified that Nteziryayo took the floor after Ndayambaje,<sup>12274</sup> in contrast to the evidence of the other witnesses.

4611. Since the Chamber considers that it is not required to make any finding as to the presence of either Muvunyi or Kalimanzira or whether the audience was armed at the swearing-in ceremony, it is not necessary to rely on the foregoing testimony of these Prosecution witnesses. In any event, however, the Chamber considers the discrepancy with respect to the identity of these additional officials is not significant. As to whether the population was armed, the Chamber notes the testimony of the witnesses shows that between 1,000 and 5,000 people were present.<sup>12275</sup> In the circumstances, the Chamber considers it possible that while some people may have come bearing machetes and other instruments which may double as traditional weapons, others did not, which may account for the discrepancy in the witnesses' evidence. In any event, the Chamber does not regard as significant either the discrepancy as to whether the population was armed, or Witness TP's and Witness QAL's testimony regarding the order of the speakers.

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<sup>12268</sup> T. 5 February 2004 pp. 66, 68 (Witness QAF); T. 6 February 2004 pp. 5, 8 (Witness QAF); T. 9 February 2004 p. 23 (Witness QAF); T. 25 February 2004 p. 11 (Witness QAL); T. 6 March 2002 pp. 10-11 (Witness TO).

<sup>12269</sup> T. 9 February 2004 pp. 37, 75 (Witness FAL) (in addition to Ndayambaje and Nteziryayo, claimed Tharcisse Muvunyi was present).

<sup>12270</sup> T. 9 February 2004 pp. 21-22 (Witness QAF) (included Kalimanzira); T. 17 February 2004 pp. 6-7 (ICS) (Witness RV) (included Kalimanzira).

<sup>12271</sup> T. 11 June 2007 pp. 12-13 (Nteziryayo) (Kalimanzira, Nyiramasuhuko and Laurent Baravuga were not present); T. 2 September 2008 pp. 10-12 (ICS) (Witness GABON) (Witness GABON disagreed that Kalimanzira and Nyiramasuhuko were present); T. 11 September 2008 pp. 24-25 (Witness KEPIR) (Neither Kalimanzira nor Colonel Muvunyi were present); T. 5 February 2007 p. 5 (Witness AND-11) (Nyiramasuhuko not present); T. 6 February 2007 p. 30 (ICS) (Witness AND-11) (Kalimanzira not present); T. 8 February 2007 p. 39 (Witness AND-73) and T. 12 February 2007 p. 52 (Witness AND-73) (Neither Nyiramasuhuko nor Kalimanzira was present).

<sup>12272</sup> T. 12 February 2004 p. 38 (Witness TP); T. 17 February 2004 p. 7 (ICS) (Witness RV); T. 9 February 2004 p. 55 (Witness FAL); T. 9 February 2004 p. 81 (ICS) (Witness FAL); T. 25 February 2004 pp. 11-12 (Witness QAL); T. 25 February 2004 p. 42 (ICS) (Witness QAL).

<sup>12273</sup> T. 3 March 2004 p. 50 (Witness FAG); T. 9 February 2004 p. 16 (Witness QAF); T. 11 June 2007 p. 16 (Nteziryayo); T. 2 September 2008 p. 12 (ICS) (Witness GABON); T. 11 September 2008 p. 27 (Witness KEPIR); T. 1 February 2007 p. 70 (ICS) (Witness AND-11); T. 12 February 2007 pp. 49, 62 (Witness AND-73).

<sup>12274</sup> T. 11 February 2004 pp. 26, 34 (Witness TP); T. 12 February 2004 p. 33 (Witness TP); T. 25 February 2004 pp. 11, 37, 46 (Witness QAL).

<sup>12275</sup> T. 3 March 2004 pp. 22-23 (Witness FAG) (estimated there were about 1,000 people at the meeting); T. 9 February 2004 pp. 76-77 (ICS) (Witness FAL) (testified more than 5,000 people attended); T. 9 February 2004 p. 12 (Witness QAF) (unable to estimate how many people were present at the meeting); T. 17 February 2004 p. 7 (ICS) (Witness RV) (approximately 1,000 people present in total).

4612. The Chamber further notes Witness RV was the sole witness to testify to the presence of Nyiramasuhuko.<sup>12276</sup> While Nteziryayo, Ndayambaje and Defence Witnesses KEPIR and AND-11 corroborated the testimony of Witness RV with respect to the presence of certain other dignitaries, such as Nsabimana and former *Sous-préfet* Ntawukulilyayo,<sup>12277</sup> they and others denied the presence of Nyiramasuhuko.<sup>12278</sup> Considering all the Defence witnesses testified to the presence of another female Minister, Bernadette Mukarurangwa,<sup>12279</sup> whose presence Witness RV did not testify about, the Chamber considers it possible that this discrepancy is a mistake. In any event, while the Chamber is not convinced that Nyiramasuhuko was present, this discrepancy alone does not weaken the credibility of Witness RV's testimony with respect to more significant aspects of the swearing-in ceremony.

4613. Moreover, in contrast to all the Prosecution and Defence evidence that the meeting took place in the woods near the *commune* office, Witness TP testified the meeting took place outside the *commune* office in the courtyard.<sup>12280</sup> Brother Stan also described the venue as a woodland area near the Muganza *commune* office, just before the football pitch,<sup>12281</sup> which the Chamber notes is on the opposite side of the Muganza *commune* office from the woods.<sup>12282</sup> Having regard to the testimony of the various witnesses as to the relative proximity of the woods where the meeting actually took place *vis-à-vis* the *commune* office and the football field, where Witness TP and Brother Stan respectively testified the meeting took place, variously described as between 30 and 100 metres, the Chamber does not consider the discrepancies in these witnesses' testimony significant.

4614. Most significantly, in contrast to all the Prosecution evidence, the Defence witnesses testified that the swearing-in ceremony took place in the afternoon of 22 June 1994,<sup>12283</sup>

<sup>12276</sup> T. 17 February 2004 pp. 6-7 (ICS) (Witness RV).

<sup>12277</sup> T. 11 June 2007 pp. 12-13 (Nteziryayo); T. 19 June 2007 p. 58 (Nteziryayo); T. 10 November 2008 p. 21 (Ndayambaje); T. 2 December 2008 p. 6 (Ndayambaje); T. 11 September 2008 pp. 23-24 (Witness KEPIR); T. 1 February 2007 p. 47 (ICS) (Witness AND-11).

<sup>12278</sup> T. 10 November 2008 p. 37 (Ndayambaje); T. 11 June 2007 pp. 12-13 (Nteziryayo); T. 16 September 2008 p. 33 (Witness BOZAN); T. 22 September 2008 p. 27 (Brother Stan); T. 2 September 2008 pp. 10-12 (ICS) (Witness GABON); T. 11 September 2008 p. 24 (Witness KEPIR); T. 5 February 2007 p. 5 (Witness AND-11); T. 8 February 2007 p. 39 (Witness AND-73).

<sup>12279</sup> T. 10 November 2008 p. 21; T. 2 December 2008 p. 6 (Ndayambaje); T. 19 June 2007 p. 58 (Nteziryayo); T. 16 September 2008 p. 28; T. 17 September 2008 p. 60 (Witness BOZAN); T. 22 September 2008 pp. 25-26 (Brother Stan); T. 11 September 2008 pp. 23-24, 41 (Witness KEPIR); T. 1 February 2007 p. 47 (ICS) (Witness AND-11); T. 8 February 2007 p. 39 (Witness AND-73).

<sup>12280</sup> T. 11 February 2004 p. 25 (Witness TP).

<sup>12281</sup> T. 18 September 2008 p. 50 (Brother Stan).

<sup>12282</sup> See Prosecution Exhibit 38 (Video of Muganza *commune* office), Defence Exhibit 554 (Ndayambaje) (Sketch of Muganza *commune* office, by Nteziryayo) and Defence Exhibit 694 (Ndayambaje) (Sketch Map, by Ndayambaje).

<sup>12283</sup> T. 10 November 2008 pp. 31-33 (Ndayambaje) (ceremony started around 3.00 p.m. and ended around 4.00 p.m.); T. 11 June 2007 pp. 11-12 (Nteziryayo) (took place at about 2.30 p.m. to 3.00 p.m. on 22 June 1994) and T. 28 June 2007 pp. 41-45 (Nteziryayo) (swearing-in ceremony started about 3.00 p.m. and ended about 5.00 p.m.); T. 16 September 2008 p. 23 (Witness BOZAN) (according to the *conseiller* the meeting would start at 2.00 p.m.), T. 16 September 2008 p. 26 (Witness BOZAN) (meeting began a few minutes after 3.00 p.m.) and T. 16 September 2008 p. 41 (Witness BOZAN) (meeting ended between 4.00 and 5.30 p.m.); T. 18 September 2008 pp. 51-52 (Brother Stan) (meeting scheduled to start at 2.00 p.m., but started towards 2.30 p.m. and ended towards 4.00 p.m.); T. 2 September 2008 p. 9 (ICS) (Witness GABON) (held in the afternoon around 3.00 pm) and T. 2 September 2008 p. 14 (ICS) (Witness GABON) (ended at 4.00 p.m.); T. 11 September 2008 pp. 21-23 (Witness KEPIR) (witness arrived at the venue at 2.30 p.m., when the ceremony started); T. 1 February 2007 pp. 46, 48

because Nteziryayo was occupied with the swearing-in ceremony for the new *bourgmestre* of Ndora *commune*, Fidèle Uwizeye, on the morning of 22 June 1994. The Chamber notes Witness RV corroborated that Nteziryayo had to swear in the new Ndora *bourgmestre* before he came to Muganza,<sup>12284</sup> yet still testified that Ndayambaje was installed into office at a ceremony held at about 10.00<sup>12285</sup> or 11.00 a.m.<sup>12286</sup>

4615. The Chamber recalls that the Prosecution witnesses variously testified between November 2001 and March 2004, in contrast to the Defence witnesses, who testified in February 2007 and November 2008. The Chamber notes that at the time of cross-examining the Prosecution witnesses, it was never put to them that they may be mistaken as to the timing of the swearing-in. It was not until the Defence cases opened that testimony was led that the meeting occurred in the afternoon. In the circumstances, the Prosecution witnesses never had the opportunity to refute the testimony of the Defence witnesses.

4616. In any event, the Chamber does not consider this discrepancy to be important considering the Prosecution and Defence witnesses are consistent on the significant features of the meeting, namely that it was the swearing-in ceremony of Ndayambaje, that the meeting took place on or around 22 June 1994, that the meeting was held in the woods near the Muganza *commune* office, and that Ndayambaje and Nteziryayo spoke at the meeting.

4617. The Chamber therefore accepts that the foregoing witnesses all testified to the same event, namely Ndayambaje's swearing-in ceremony of 22 June 1994.

4618. The last Prosecution witness to testify about this event was Witness FAU. Witness FAU did not take part in that day's ceremony.<sup>12287</sup> He was informed by assailants who came to his house to abduct Nambaje, the Tutsi girl Witness FAU was hiding, that they had attended a meeting on the same day,<sup>12288</sup> and the meeting's purpose was to swear in Ndayambaje.<sup>12289</sup> The assailants told Witness FAU that at the meeting they attended, Nteziryayo and Ndayambaje had referred to the need to clean a house, and throw the dirt out, and that those protecting Tutsi girls must hand them over to the assailants or be killed.<sup>12290</sup>

4619. The Ndayambaje Defence, relying on Witness KWEPO, contends that on 22 June 1994 Witness FAU was no longer in his home *secteur* because he had joined the army in May 1994, after the killing of his wife Nambaje, after which he did not return to Muganza *commune*.<sup>12291</sup>

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(ICS) (Witness AND-11) (arrived around 2.40 or 2.45 p.m. at which time the outgoing *bourgmestre* Bimenyimana, was rounding up his message) and T. 1 February 2007 p. 57 (Witness AND-11) (meeting ended at about 4.00 p.m.); T. 12 February 2007 pp. 36-37 (ICS) (Witness AND-73) (meeting took place at 2.30 p.m. and ended at 4.00 p.m.).

<sup>12284</sup> T. 19 February 2004 pp. 33-34 (ICS) (Witness RV).

<sup>12285</sup> T. 18 February 2004 p. 43 (ICS) (Witness RV).

<sup>12286</sup> T. 19 February 2004 p. 34 (ICS) (Witness RV).

<sup>12287</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 90 (ICS) (Witness FAU).

<sup>12288</sup> T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>12289</sup> T. 8 March 2004 pp. 93-94 (ICS) (Witness FAU).

<sup>12290</sup> T. 4 March 2004 pp. 75-76; T. 8 March 2004 pp. 80, 90; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12291</sup> Ndayambaje Closing Brief, paras. 750-754.

4620. Witness FAU first testified that he joined the army and stayed in Ngoma *commune* at the end of May or beginning of June 1994.<sup>12292</sup> The Chamber considers this testimony accords with Witness FAU's testimony that he took in Nambaje the day after the killings at Kabuye Hill,<sup>12293</sup> which the Chamber notes occurred between 22 to 24 April 1994 (), kept Nambaje at his house for one month, perhaps from April until the end of the month of May or early June 1994, when assailants came to take Nambaje away and kill her.<sup>12294</sup> However, Witness FAU later testified that he joined the army approximately one week after Nambaje was killed, towards the end of June 1994.<sup>12295</sup> The training took 12 days, but was not completed because the country fell to the RPF.<sup>12296</sup> The Chamber considers that Witness FAU's testimony as to the timeline of the events appears confused. Nevertheless, having also considered the Prosecution evidence with respect to the abduction of eight Tutsi girls after Ndayambaje's swearing-in ceremony, the Chamber accepts Witness FAU's testimony that Nambaje was taken from FAU's house after this ceremony. The Chamber therefore rejects the testimony of Witness KWEPO as to Witness FAU's whereabouts on 22 June 1994.

4621. Having regard to the foregoing, the Chamber will only consider the evidence of the remaining Prosecution witnesses, namely Witnesses FAG, FAL, FAU, QAF, QAL, RV, TO and TP, as well as the Defence witnesses with respect to this allegation.

4622. Turning to the content of the speeches made at the swearing-in ceremony, the Chamber notes that there is varied agreement among the Prosecution witnesses with respect to the content of Nteziryayo's and Ndayambaje's speeches. Prosecution Witnesses FAG and FAL allege that both Nteziryayo and Ndayambaje used parables concerning the need to clean the house of dirt and place it outside.<sup>12297</sup> Witness FAU gave corroborative hearsay evidence to the effect that killers who came to his house had come from a meeting where Nteziryayo and Ndayambaje had told them "when you clean a house, you do not keep the dirt inside the house, but you take it outside of the house and if anyone is protecting a girl, he or she must hand her over to the assailants; otherwise, he will be killed by the assailants".<sup>12298</sup>

4623. In contrast to Witnesses FAG and FAL, Witness TO testified that only Nteziryayo told the fable concerning the consequences of the failure to sweep dirt,<sup>12299</sup> whereas Witness QAL offered hearsay evidence that Ndayambaje told the population to clean up and put the dirt out, to the extent that they should be able to find a needle in that heap of dirt.<sup>12300</sup> Witness TP also testified that Nteziryayo referred to the need to sweep dirt and the consequences of the population's failure to do so,<sup>12301</sup> and thus corroborated Witness TO. However the Chamber

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<sup>12292</sup> T. 4 March 2004 p. 77; T. 8 March 2004 p. 91 (ICS) (Witness FAU).

<sup>12293</sup> T. 8 March 2004 p. 80 (Witness FAU).

<sup>12294</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 8 March 2004 pp. 83-84 (ICS) (Witness FAU).

<sup>12295</sup> T. 8 March 2004 pp. 80-81 (Witness FAU).

<sup>12296</sup> T. 4 March 2004 p. 77 (Witness FAU).

<sup>12297</sup> T. 1 March 2004 p. 33 (Witness FAG); T. 3 March 2004 pp. 24-25 (Witness FAG); T. 9 February 2004 pp. 38, 59-60 (Witness FAL); T. 9 February 2004 pp. 77-78 (ICS) (Witness FAL); T. 5 February 2004 p. 68 (Witness QAF); T. 9 February 2004 p. 16 (Witness QAF).

<sup>12298</sup> T. 4 March 2004 p. 75; T. 8 March 2004 pp. 80, 90; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12299</sup> T. 4 March 2002 pp. 15, 20-21 (Witness TO).

<sup>12300</sup> T. 25 February 2004 p. 11 (Witness QAL).

<sup>12301</sup> T. 11 February 2004 pp. 28, 33; T. 12 February 2004 p. 43 (Witness TP).

notes Witness TP also testified that Nteziryayo further spoke about the need to destroy the snake's eggs,<sup>12302</sup> which the Chamber notes no other witness testified about. In contrast, Witnesses RV and QAF both testified that only Ndayambaje recounted the fable of sweeping dirt.<sup>12303</sup>

4624. With respect to statements other than those concerning "dirt", Witness QAF testified Nteziryayo congratulated the population for their work, asked those still protecting Tutsi girls to hand them over to the killers,<sup>12304</sup> and threatened that if men did not give up their Tutsi girls, they would be killed with them.<sup>12305</sup> This was corroborated by Witness QAL who testified that Nteziryayo started by greeting the people and asked if they had carried out the instructions given to them; people answered they had.<sup>12306</sup> Nteziryayo also asked people who had married Tutsis and had children to kill all Tutsis as he did not want any Tutsis around anymore.<sup>12307</sup> Witness FAU's hearsay testimony is also corroborative insofar as he testified that the killers told him that those protecting Tutsis who refused to hand them over would be killed.<sup>12308</sup> Witness TP also testified that Nteziryayo thanked the population for what they had done, but said they should not relax because there was a lot yet to be done.<sup>12309</sup> Further, the Chamber notes that both Witness FAL and Witness TO testified that Nteziryayo criticised Bimenyimana's poor performance as *bourgmestre*,<sup>12310</sup> although the Chamber notes no other witness confirmed this.

4625. Witness FAL testified that Nteziryayo talked about killing the Tutsis,<sup>12311</sup> that Nteziryayo stated the enemy had to be fought, that the enemy was Tutsi, and that all *Inkotanyi* were Tutsis,<sup>12312</sup> and Nteziryayo criticised the outgoing *bourgmestre*, who Nteziryayo deemed incapable of hunting down and killing Tutsis,<sup>12313</sup> *Abatutsi*,<sup>12314</sup> and *Inkotanyi*.<sup>12315</sup> In contrast however, in addition to the Defence witnesses, Witness TP also testified that Nteziryayo did not pronounce the word Tutsi or *Inkotanyi* in his speech.<sup>12316</sup> Witness QAL also did not hear either Nteziryayo or Ndayambaje use the words *Inkotanyi* or *Ibyitso*; they rather spoke about Tutsis.<sup>12317</sup>

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<sup>12302</sup> T. 11 February 2004 pp. 28, 33; T. 12 February 2004 p. 43 (Witness TP).

<sup>12303</sup> T. 17 February 2004 p. 7 (ICS) (Witness RV); T. 5 February 2004 p. 68; T. 9 February 2004 p. 16 (Witness QAF).

<sup>12304</sup> T. 5 February 2004 pp. 66-67 (Witness QAF).

<sup>12305</sup> T. 6 February 2004 p. 7 (Witness QAF).

<sup>12306</sup> T. 25 February 2004 p. 11 (Witness QAL).

<sup>12307</sup> T. 25 February 2004 pp. 12, 20 (Witness QAL).

<sup>12308</sup> T. 4 March 2004 p. 75; T. 8 March 2004 pp. 80, 90; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12309</sup> T. 11 February 2004 pp. 28, 32-33; T. 12 February 2004 p. 43 (Witness TP).

<sup>12310</sup> T. 9 February 2004 pp. 37-38, 57-59 (Witness FAL); T. 4 March 2001 p. 13 (Witness TO).

<sup>12311</sup> T. 9 February 2004 p. 58 (Witness FAL).

<sup>12312</sup> T. 9 February 2004 pp. 58-59 (Witness FAL).

<sup>12313</sup> T. 9 February 2004 pp. 57-58 (Witness FAL).

<sup>12314</sup> T. 9 February 2004 p. 58 (Witness FAL).

<sup>12315</sup> T. 9 February 2004 p. 59 (Witness FAL).

<sup>12316</sup> T. 12 February 2004 p. 44 (Witness TP).

<sup>12317</sup> T. 25 February 2004 pp. 19-20 (Witness QAL).



4626. Insofar as Prosecution Witnesses QAF and TP variously testified that Nteziryayo<sup>12318</sup> and Ndayambaje<sup>12319</sup> thanked the population for their “work” and/or urged them to continue their “work”, Ntakirutimana testified that “*gukora*” has several meanings in Kinyarwanda, including to do something bad, to work arduously and thank you.<sup>12320</sup> In his Expert Report, Ntakirutimana wrote that “*gukora*” was synonymous with to work, to kill, to remove, to clean, communal work, *umuganda*, finish the job, rape and take away.<sup>12321</sup> “To work” could be going to destroy someone’s house, or to raid and steal from someone.<sup>12322</sup> In the context of the 1994 conflict, “to work” meant “to kill”. You must work with a weapon, and what you do with the weapon is quite clear. If you do work, you will get the Tutsis’ land. All those who did not wish to work should be set aside.<sup>12323</sup> The operation to eliminate the enemy or the snake was a euphemism for “work”.<sup>12324</sup>

4627. As to the meaning of the parable concerning the sweeping of dirt, Witnesses FAG, FAL and TO testified that Ndayambaje explained the parable [used by either both Nteziryayo and Ndayambaje or Nteziryayo alone] which they understood meant that those Tutsi women and children in hiding needed to be killed such that no Tutsis survived.<sup>12325</sup> Although disagreeing with the evidence of Witnesses FAG and FAL as to who pronounced the parable, Witness TO nevertheless agreed with Witnesses FAG and FAL that Ndayambaje explained the fable to the population; he referred to people who were hiding Tutsis, while Tutsis were being sought after.<sup>12326</sup> Witness TP also understood that the parable was encouraging the killing of surviving children,<sup>12327</sup> although he alleged it was stated by Nteziryayo.

4628. Witnesses QAF and RV testified they understood Ndayambaje’s speech concerning the removal of dirt to mean that those young Tutsis still alive were to be killed.<sup>12328</sup> Witness TO further testified that while Nteziryayo did not mention the word “Tutsis” in all his alleged speeches, the witness stated that the fable Nteziryayo recounted made clear the meaning of his message.<sup>12329</sup> Although it was the first time Witness TO heard the fable, its meaning was made clear by subsequent events.<sup>12330</sup> Witness QAL also testified that it was a common proverb in Rwanda and Witness QAL understood it to mean that good and bad people should be separated and people who were undesirable should be killed.<sup>12331</sup> According to Ntakirutimana, proverbs

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<sup>12318</sup> T. 5 February 2004 pp. 66-68 (Witness QAF); T. 11 February 2004 p. 32 (Witness TP); T. 19 November 2001 p. 56 (Witness QAR); T. 21 November 2001 p. 93 (Witness QAR).

<sup>12319</sup> T. 11 February 2004 p. 32 (Witness TP).

<sup>12320</sup> T. 13 September 2004 pp. 47, 68-69 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 34.

<sup>12321</sup> Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 34.

<sup>12322</sup> T. 13 September 2004 p. 68 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 32.

<sup>12323</sup> T. 13 September 2004 p. 68 (Ntakirutimana).

<sup>12324</sup> T. 13 September 2004 p. 69 (Ntakirutimana); Prosecution Exhibit 158B (*Sociolinguistic Analysis*, by Ntakirutimana) p. 32.

<sup>12325</sup> T. 1 March 2004 p. 33; T. 3 March 2004 p. 25 (Witness FAG); T. 9 February 2004 p. 38; T. 9 February 2004 p. 78 (ICS) (Witness FAL); T. 4 March 2002 p. 25 (Witness TO).

<sup>12326</sup> T. 4 March 2002 p. 25 (Witness TO).

<sup>12327</sup> T. 11 February 2004 pp. 29, 33 (Witness TP).

<sup>12328</sup> T. 5 February 2004 p. 68 (Witness QAF); T. 9 February 2004 p. 19 (Witness QAF); T. 17 February 2004 p. 7 (ICS) (Witness RV).

<sup>12329</sup> T. 5 March 2002 pp. 56-57 (Witness TO).

<sup>12330</sup> T. 6 March 2002 pp. 14, 32-33 (Witness TO).

<sup>12331</sup> T. 25 February 2004 p. 46 (ICS) (Witness QAL).

referring to the sweeping outside of dirt were truisms which could be easily understood. In the context of the war situation, such a proverb would have been understood to mean that the people who attacked Rwanda and came from outside, needed to be thrown out of the country.<sup>12332</sup>

4629. Witnesses FAG, FAL, QAF, QAL and TP testified that after the swearing-in ceremony, Nteziryayo's and Ndayambaje's statements resulted in further attacks against Tutsis who were tracked down and killed.<sup>12333</sup> Witness TO testified that this was engaged in by "some scoundrels and a few thieves [who] engaged in flushing out women and children and [engaged] in looting", in compliance with Nteziryayo's instructions, but did not otherwise involve the general population.<sup>12334</sup>

4630. The Chamber notes that while Witness QAF pled guilty to one crime before the *Gacaca* courts<sup>12335</sup> he was released on 5 May 2003 following a presidential decree.<sup>12336</sup> In contrast, Witness RV had confessed to his involvement in the 1994 genocide<sup>12337</sup> and was detained at the time of giving his testimony.<sup>12338</sup> Further, Witnesses FAL and FAG had also pled guilty to crimes committed during the 1994 genocide and at the time of their respective testimonies before the Chamber were awaiting decisions by a *Gacaca* court regarding their sentence.<sup>12339</sup> Appropriate caution must therefore be exercised when deliberating on the evidence of these Prosecution witnesses as they may have had incentives to implicate either Ndayambaje or Nteziryayo in order to secure favourable or lenient treatment or to apportion blame to the authorities. Lastly, the Chamber notes Witness TO was briefly imprisoned during Ndayambaje's previous tenure as *bourgmestre*,<sup>12340</sup> which the Chamber considers may also provide Witness TO with a motive to seek revenge against Ndayambaje.

4631. The Chamber considers that witnesses will not always have an exactly identical recollection with respect to the same event, and all the more so where many years have passed between the occurrence of an event and the giving of testimony. The Chamber further considers that not only the passage of time, but also the deterioration of human memory should be kept in mind when assessing a witness' evidence with respect to certain events. In the present circumstances, the Chamber has considered the witnesses' evidence with respect to the swearing-in ceremony. As analysed, the Chamber considers the account of most of the Prosecution witnesses differs in varying degrees as to the content of what was said by both Ndayambaje and Nteziryayo. The Chamber is nevertheless of the view that the discrepancies can be attributed to a variety of reasons, such as the level of education of the witnesses, the late

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<sup>12332</sup> T. 13 September 2004 pp. 51-52 (Ntakirutimana).

<sup>12333</sup> T. 1 March 2004 pp. 33-34 (Witness FAG); T. 3 March 2004 p. 25 (Witness FAG); T. 9 February 2004 pp. 61, 64 (Witness FAL); T. 5 February 2004 p. 68 (Witness QAF); T. 6 February 2004 p. 16 (Witness QAF); T. 25 February 2004 p. 12 (Witness QAL); T. 11 February 2004 pp. 28-29 (Witness TP).

<sup>12334</sup> T. 4 March 2002 pp. 26-27; T. 6 March 2002 pp. 46, 60-61 (Witness TO).

<sup>12335</sup> T. 5 February 2004 pp. 82-83 (Witness QAF).

<sup>12336</sup> T. 6 February 2004 pp. 27-28 (ICS); T. 9 February 2004 p. 5 (Witness QAF).

<sup>12337</sup> T. 17 February 2004 pp. 8, 36 (ICS) (Witness RV).

<sup>12338</sup> T. 17 February 2004 p. 8 (ICS) (Witness RV).

<sup>12339</sup> T. 9 February 2004 pp. 46-47, 52 (ICS) (Witness FAL); T. 3 June 2008 p. 45 (ICS) (Witness FAG).

<sup>12340</sup> T. 5 March 2002 p. 77 (ICS) (Witness TO).

arrival of certain witnesses,<sup>12341</sup> their position at the venue of the meeting,<sup>12342</sup> the quality of the megaphone or the clarity of the speakers.

4632. The Chamber considers the differences in the testimony of the eight Prosecution witnesses as to the content of Ndayambaje and Nteziryayo's speeches can be explained by virtue of these variable factors and for this reasons considers that these particular discrepancies are not significant. The Chamber is strengthened its view having regard to the countervailing and consistent evidence of the Prosecution witnesses that either Nteziryayo or Ndayambaje or both incited the population by means of parables principally relating to the sweeping of dirt, as well as plain speech.<sup>12343</sup> The Prosecution evidence also consistently establishes that the audience understood that Tutsis in hiding needed to be killed.<sup>12344</sup> The Chamber further notes the consistent, albeit often general, evidence of the Prosecution witnesses to the effect that after the meeting, killings occurred.<sup>12345</sup>

4633. In contrast to the Prosecution witnesses, Witness BOZAN, Brother Stan, Witness KEPIR, Witness AND-11, Witness AND-73, Siborurema, Ndayambaje and Nteziryayo testified that Nteziryayo's speech concerned problems of security and the situation at the front, and that Nteziryayo invited the population to ensure its own security and safety within the locality, as well as discussed the Turquoise area and the arrival of the French.<sup>12346</sup> Numerous Defence witnesses also testified that *Préfet* Nteziryayo did not use proverbs or parables during his address.<sup>12347</sup>

4634. With respect to Ndayambaje's speech, Witness BOZAN, Brother Stan, Witness KEPIR, Witness AND-11, Witness AND-73, Ndayambaje and Nteziryayo also testified that

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<sup>12341</sup> T. 3 March 2004 p. 22 (Witness FAG); T. 9 February 2004 pp. 37, 56 (Witness FAL); T. 5 February 2004 p. 66 (Witness QAF); T. 6 February 2004 p. 4 (Witness QAF); T. 9 February 2004 pp. 7, 12 (Witness QAF); T. 25 February 2004 pp. 18, 37 (Witness QAL); T. 25 February 2004 p. 46 (ICS) (Witness QAL).

<sup>12342</sup> T. 3 March 2004 p. 24 (Witness FAG) (sitting 21 metres from the speakers); T. 9 February 2004 p. 76 (ICS) (Witness FAL) (sitting 3 metres from the speakers); T. 12 February 2004 p. 43 (Witness TP) (sitting 12 metres from the dignitaries).

<sup>12343</sup> T. 1 March 2004 p. 33 (Witness FAG); T. 3 March 2004 pp. 24-25 (Witness FAG); T. 9 February 2004 pp. 38, 59-60 (Witness FAL); T. 9 February 2004 pp. 77-78 (ICS) (Witness FAL); T. 4 March 2002 pp. 15, 20-21, 25 (Witness TO); T. 11 February 2004 pp. 28, 33 (Witness TP); T. 12 February 2004 p. 43 (Witness TP); T. 17 February 2004 p. 7 (ICS) (Witness RV); T. 5 February 2004 p. 68 (Witness QAF); T. 9 February 2004 p. 16 (Witness QAF).

<sup>12344</sup> T. 1 March 2004 p. 33 (Witness FAG); T. 3 March 2004 p. 25 (Witness FAG); T. 9 February 2004 p. 38 (Witness FAL); T. 9 February 2004 p. 78 (ICS) (Witness FAL); T. 4 March 2002 pp. 25, 56-57 (Witness TO); T. 11 February 2004 pp. 29, 33 (Witness TP); T. 5 February 2004 p. 68 (Witness QAF); T. 9 February 2004 p. 19 (Witness QAF); T. 17 February 2004 p. 7 (ICS) (Witness RV).

<sup>12345</sup> T. 1 March 2004 pp. 33-34 (Witness FAG); T. 3 March 2004 p. 25 (Witness FAG); T. 9 February 2004 pp. 61, 64 (Witness FAL); T. 5 February 2004 p. 68 (Witness QAF); T. 6 February 2004 p. 16 (Witness QAF); T. 11 February 2004 pp. 28-29 (Witness TP); T. 4 March 2002 pp. 26-27 (Witness TO); T. 6 March 2002 pp. 46, 60-61 (Witness TO).

<sup>12346</sup> T. 16 September 2008 p. 35 (Witness BOZAN); T. 17 September 2008 p. 64 (Witness BOZAN); T. 22 September 2008 p. 59 (Brother Stan); T. 11 September 2008 pp. 30, 71 (Witness KEPIR); T. 1 February 2007 pp. 51-52 (Witness AND-11); T. 12 February 2007 p. 55 (Witness AND-73); T. 26 August 2008 p. 24 (Siborurema); T. 10 November 2008 p. 41 (Ndayambaje); T. 2 December 2008 pp. 9, 11-12 (Ndayambaje); T. 11 June 2007 pp. 13-14 (Nteziryayo).

<sup>12347</sup> T. 13 November 2008 p. 7 (Ndayambaje); T. 2 December 2008 p. 12 (Ndayambaje); T. 11 June 2007 p. 14 (Nteziryayo); T. 16 September 2008 pp. 37-38 (Witness BOZAN); T. 22 September 2008 pp. 60-61 (Brother Stan); T. 11 September 2008 p. 33 (Witness KEPIR); T. 12 February 2007 p. 57 (Witness AND-73).

Ndayambaje focused on castigating wrong-doers, urging the population to collaborate to restore peace and stability, denouncing those who played a key role in the massacres, and asking them to do everything to reconstruct their society.<sup>12348</sup> Several Defence witnesses equally testified Ndayambaje did not use proverbs or parables in his messages to the public.<sup>12349</sup>

4635. The Chamber also notes Brother Stan, Witness AND-11, Witness AND-73 and Ndayambaje denied that following the swearing-in ceremony there were massacres by the local population in Muganza *commune*,<sup>12350</sup> although Ndayambaje testified there was news of people being chased by the RPF in the northeast of the region,<sup>12351</sup> and Brother Stan and Witness AND-11 testified to some looting carried out by groups of thugs.<sup>12352</sup> Witness GABON testified that at the time of Ndayambaje's swearing-in the killings had diminished in intensity and that during the first week of Ndayambaje's tenure, killings had virtually ended and people were fleeing.<sup>12353</sup>

4636. The Chamber recalls that Nteziryayo and Ndayambaje, as the Accused, may have a motive in seeking to reduce their personal responsibility for the alleged incitement in question. Further, while the Chamber notes that none of the remaining Defence witnesses were detained at the time of their testimony such that they would not have a motive to lie to seek any leniency, the Chamber nevertheless recalls that all of the Ndayambaje Defence witnesses have close ties to Ndayambaje.

4637. As already discussed elsewhere, Brother Stan was a close friend of Ndayambaje's, having known him since 1988.<sup>12354</sup> Witness GABON formerly had professional ties with Ndayambaje. Witness KEPIR lived and worked a short distance from the *commune* office in Remera, used to report to Ndayambaje on matters related to his professional activities and accompanied him on various trips throughout Butare in the latter half of April 1994.<sup>12355</sup> Witness KEPIR also testified that he was a friend of Ndayambaje.<sup>12356</sup> Furthermore, the Chamber recalls Witness EV's testimony with respect to events at Kabuye Hill, namely that Witness EV saw Witness KEPIR with Ndayambaje on two separate occasions at Kabuye Hill during which refugees came under attack ().<sup>12357</sup> On the second occasion, Witness KEPIR was

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<sup>12348</sup> T. 16 September 2008 pp. 36-37 (Witness BOZAN); T. 18 September 2008 p. 55 (Brother Stan); T. 11 September 2008 p. 32 (Witness KEPIR); T. 1 February 2007 p. 56 (Witness AND-11); T. 12 February 2007 p. 55 (Witness AND-73); T. 13 November 2008 p. 7 (Ndayambaje); T. 11 June 2007 p. 15 (Nteziryayo).

<sup>12349</sup> T. 13 November 2008 pp. 8, 14-15, 21-22 (Ndayambaje); T. 2 December 2008 p. 12 (Ndayambaje); T. 16 September 2008 pp. 37-38 (Witness BOZAN); T. 18 September 2008 p. 57 (Brother Stan); T. 11 September 2008 p. 33 (Witness KEPIR); T. 1 February 2007 p. 56 (Witness AND-11); T. 12 February 2007 p. 57 (Witness AND-73).

<sup>12350</sup> T. 18 September 2008 p. 60 (Brother Stan); T. 1 February 2007 pp. 62, 64 (ICS) (Witness AND-11); T. 13 February 2007 p. 13 (Witness AND-73); T. 13 November 2008 pp. 23-24 (Ndayambaje).

<sup>12351</sup> T. 13 November 2008 pp. 23-24 (Ndayambaje).

<sup>12352</sup> T. 18 September 2008 p. 60 (Brother Stan); T. 1 February 2007 p. 64 (ICS) (Witness AND-11).

<sup>12353</sup> T. 2 September 2008 pp. 21, 45 (ICS) (Witness GABON).

<sup>12354</sup> T. 18 September 2008 p. 65 (Witness Brother Stan).

<sup>12355</sup> T. 3 September 2008 p. 66 (ICS); T. 4 September 2008 p. 8 (ICS); T. 10 September 2008 pp. 45-46, 59, 73 (ICS) (Witness KEPIR).

<sup>12356</sup> T. 10 September 2008 p. 39; T. 15 September 2008 p. 15 (Witness KEPIR).

<sup>12357</sup> T. 25 February 2004 pp. 74-75; T. 26 February 2004 pp. 60-61 (Witness EV).

driving a blue double-cabin Hilux.<sup>12358</sup> Witness FAU also testified that Ndayambaje used Witness KEPIR's blue vehicle to drive to the Muganza *commune* office to pick up weapons for use at Kabuye Hill.<sup>12359</sup> This association between Witness KEPIR and Ndayambaje also has a bearing on Witness KEPIR's credibility. Witness BOZAN would also have had professional ties with Ndayambaje during both of Ndayambaje's periods in office. Accordingly, the evidence of these Defence witnesses with respect to Ndayambaje must be reviewed bearing these personal ties in mind.

4638. With respect to Nteziryayo, both Witnesses AND-11 and AND-73 knew Nteziryayo before the events because they were in the army together.<sup>12360</sup> Witness AND-11 also knew Nteziryayo well from the time he began to work in Kabayi *commune* from 1991.<sup>12361</sup> Witness AND-11 called Nteziryayo a friend with whom he would sometimes have a drink after APAME meetings.<sup>12362</sup>

4639. Accordingly, notwithstanding the largely consistent nature of the testimony of these witnesses, the Chamber finds the credibility of the foregoing witnesses diminished by the potential motivations and personal ties of each of the Defence witnesses with Ndayambaje and Nteziryayo.

4640. As for Brother Stan, the Chamber also notes the discrepancies between earlier statements given by Brother Stan in 1995 to a Belgian judge and his testimony at trial. In his previous statement before the Belgian judge, Brother Stan said that Ndayambaje talked about "restoring order in the house", whereas in court Brother Stan testified he could not recall any statement about putting order in the house, only "putting order in ... Muganza *commune*". Further, insofar as his previous statement included a reference to "the dust behind the fireplace", Brother Stan claimed that the Belgian judge who had taken his statement must have added that expression to his statement, thereby putting words in Brother Stan's mouth.<sup>12363</sup> Both these discrepancies, and moreover Brother Stan's explanation, which the Chamber does not find credible, cast doubt on Brother Stan's testimony as to the contents of Ndayambaje and Nteziryayo's speeches at the swearing-in ceremony.

4641. As such, the Chamber considers the Defence evidence on the whole is not sufficiently credible as to raise a reasonable doubt about the nature of the utterances made by Ndayambaje and Nteziryayo at Ndayambaje's swearing-in ceremony.

4642. Accordingly, the Chamber finds it established beyond a reasonable doubt that on the occasion of Ndayambaje's swearing in ceremony on 22 June 1994, an event attended by the general population,<sup>12364</sup> Nteziryayo and Ndayambaje told the population to continue with their

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<sup>12358</sup> T. 26 February 2004 p. 61 (Witness EV).

<sup>12359</sup> T. 4 March 2004 pp. 71-72, 78; T. 9 March 2004 pp. 42, 46-47 (Witness FAU).

<sup>12360</sup> T. 7 February 2007 p. 9 (ICS) (Witness AND-11); T. 8 February 2007 p. 29 (ICS) (Witness AND-73).

<sup>12361</sup> T. 31 January 2007 p. 78 (ICS); T. 7 February 2007 pp. 8-9 (ICS) (Witness AND-11).

<sup>12362</sup> T. 7 February 2007 p. 10 (ICS) (Witness AND-11).

<sup>12363</sup> T. 23 September 2008 pp. 42-43 (Brother Stan).

<sup>12364</sup> T. 3 March 2004 pp. 22-23 (Witness FAG) (there were about 1,000 people at the meeting and did not see any Tutsis present); T. 9 February 2004 pp. 76-77 (ICS) (Witness FAL) (more than 5,000 people attended the meeting); T. 17 February 2004 p. 7 (ICS) (Witness RV) (approximately 1,000 people attended); T. 25 February

“work” and urged them to “sweep the dirt outside”. Having regard to the witnesses’ own testimony as to what they understood “work” and “sweeping dirt” to mean, which was also corroborated by Ntakirutimana in the context of 1994, the Chamber accepts that these witnesses understood they needed to kill Tutsis.

4643. The Chamber will now consider the allegation that Witness TP’s son was taken away and killed after the swearing-in ceremony. Witness TP testified that she witnessed the killing of her three-and-a-half year son who was taken the following night<sup>12365</sup> and someone helped her bury him.<sup>12366</sup> Her brother-in-law’s children were also taken and killed on the day Nteziryayo spoke those words.<sup>12367</sup> She saw their bodies from about 21 metres.<sup>12368</sup> The children of Tutsi neighbours were also taken away and killed.<sup>12369</sup> While the Chamber accepts the witness’ account as to the taking of her and her brother-in-law’s children, the Chamber notes that the witness did not identify who the killers who took the children away were, or how the Accused were otherwise implicated in the taking of her child.

4644. In the absence of any evidence that either of the Accused were either present or in some way responsible for the taking of the children, the Prosecution has not discharged its burden of proving beyond a reasonable doubt that either Nteziryayo or Ndayambaje are responsible, either directly or indirectly, for the taking and killing of Witness TP’s child.

4645. Therefore, having considered the totality of the evidence before it, the Chamber finds the Prosecution has established beyond a reasonable doubt that at Ndayambaje’s swearing-in as the *bourgmestre* of Muganza *commune* on 22 June 1994, an event attended by the general population, Ndayambaje and Nteziryayo urged the population to “sweep the dirt” and instructed that those hiding Tutsis who refused to hand them over should be killed. Further, the Chamber finds it established beyond a reasonable doubt that after Ndayambaje’s swearing-in ceremony searches for Tutsis took place and killings followed. In contrast the Chamber does not find that the Prosecution discharged its burden of proof with respect to the taking and killing of Witness TP’s son.

### **3.6.44 Abduction of Tutsi Women and Girls, June 1994**

#### **3.6.44.1 Introduction**

4646. The Ndayambaje Indictment alleges that “as from 20 April 1994, in Muganza *commune* and the surrounding area, Ndayambaje ordered, supervised and participated in massacres of the Tutsi population, committed by militiamen, soldiers, communal policemen and communal authorities”.<sup>12370</sup>

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2004 p. 42 (ICS); T. 25 February 2004 p. 11 (Witness QAL) (Inhabitants from three *secteurs* were present; she estimated 200 people attended, none of which were Tutsis as they had been killed).

<sup>12365</sup> T. 11 February 2004 pp. 29-30 (Witness TP).

<sup>12366</sup> T. 11 February 2004 pp. 30-31 (Witness TP).

<sup>12367</sup> T. 11 February 2004 p. 29 (Witness TP).

<sup>12368</sup> T. 11 February 2004 pp. 31-32 (Witness TP).

<sup>12369</sup> T. 11 February 2004 p. 30 (Witness TP).

<sup>12370</sup> Para. 6.37 of the Ndayambaje Indictment (in support of all counts).

4647. The Prosecution further alleges that following Ndayambaje's swearing-in ceremony on 22 June 1994, at which Ndayambaje incited the population to kill Tutsis, a group of Tutsi girls were abducted from Mugombwa *secteur*, with Ndayambaje's knowledge, and subsequently killed.<sup>12371</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAR, QAF and FAU.

4648. The Ndayambaje Defence does not dispute that a group of Tutsi women and girls were abducted from Mugombwa *secteur*. The Ndayambaje Defence submits, however, that the abduction took place in mid-May 1994, well before Ndayambaje's swearing-in ceremony on 22 June 1994. The Ndayambaje Defence further submits that the Prosecution witnesses lack credibility and that Ndayambaje was not present at the Statue of the Virgin Mary in Mugombwa during the Tutsi women and girls' abduction.<sup>12372</sup> The Defence relies on the testimonies of Defence Witnesses ANGES, BOZAN, Brother Stan, JAMES, KWEP, MATIC, MUZIK, SABINE and Ndayambaje.

### 3.6.44.2 Preliminary Issues

4649. With regard to Ndayambaje's alleged presence during the abduction of Tutsi girls prior to their killing, the Indictment did not specify the site or date of this allegation. The Chamber therefore finds that this allegation was not sufficiently pled and the Indictment was defective. The Chamber will rely on the principles set out in the Preliminary Issues section of this Judgement (), to determine whether the defect in the Indictment was subsequently cured through timely, clear and consistent notice to the Ndayambaje Defence.

4650. The summary of Prosecution Witness QAR's anticipated testimony in the Appendix to the Pre-Trial Brief stated that she attended a meeting chaired by Nteziryayo and attended by Ndayambaje in June 1994. The following day there was a house-to-house search for girls and women in hiding. Four girls and a teacher were brought out. The people were divided as to whether or not these women should be killed. It was decided to wait for Ndayambaje to ask him what to do with them. Ndayambaje arrived and said, "[w]ere you not told that if you sweep the dirt towards your house, it heaps up and ends up chasing you out of your house? Then throw away the dirt".<sup>12373</sup> Witness QAR later heard that the women were taken by a group to the Mugombwa brickyard.<sup>12374</sup>

4651. Witness QAR's previous statement of 14 October 1997 included the same information as contained in the Pre-Trial Brief. Furthermore, in her previous statement of 20 June 1995, Witness QAR stated that she was a witness to the killing of women and girls who had so far been spared by assailants from Saga, on the orders of Ndayambaje. Ndayambaje claimed that some of the refugees knew how to write and corresponded with the *Inkotanyi*. On being asked if they should be killed Ndayambaje replied, "[d]o as you please. Are they not the ones who are going to related [*sic*] what happened when the *Inkotanyi* arrive?" Upon that, they got them up and massacred them on the spot.<sup>12375</sup> She did not mention the incident in her previous statement of 20 May 1997; this statement to Tribunal investigators dealt solely with the

<sup>12371</sup> Prosecution Closing Brief, pp. 476-477, paras. 94, 98.

<sup>12372</sup> Ndayambaje Closing Brief, paras. 783-785, 787-791, 793-800.

<sup>12373</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAR (5).

<sup>12374</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAR (5).

<sup>12375</sup> 20 June 1995, Statement of Witness QAR, disclosed 4 December 2000.

massacre at Mugombwa Church in April 1994. Both these statements were disclosed to the Defence on 4 December 2000, well before the start of Witness QAR's testimony on 15 November 2001.<sup>12376</sup>

4652. The summary of Prosecution Witness QAF's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief states that a meeting was held by Nteziryayo, near the *commune* office around May or June 1994, at which Ndayambaje was present. Ndayambaje spoke using metaphoric language, saying that all the garbage had to be swept out – this was interpreted to mean that all Tutsi women had to be eliminated. The morning after the meeting, Witness QAF saw an attack on the homes of young Hutu men who were hiding Tutsi girls. Witness QAF learned that several other girls were taken from their hiding places and killed.<sup>12377</sup>

4653. In his previous statement of 14 October 1997, Witness QAF stated that he attended a meeting at the Muganza *commune* office in May or June 1994, attended by Ndayambaje, the *bourgmestre*. After the meeting, a wave of panic swept over the people. The following morning, he heard shouts and saw Jean Baptiste Mukararinda lead an attack on Mugombwa to search the homes of the young Hutu men who were hiding Tutsi girls. He saw people from Saga escorting three girls they had discovered at the home of Jean Mukundirehe. Several other girls were taken from their hiding places and killed. This statement was disclosed to the Defence on 4 November 1998, prior to Witness QAF's testimony on 5 February 2004.<sup>12378</sup>

4654. Considering the content of the Prosecution Pre-Trial Brief and the previous statements of Witnesses QAR and QAF, the Chamber considers that the Ndayambaje Defence was provided with clear, timely and consistent notice that following a meeting at the Muganza *commune* office in June 1994 there was an abduction of Tutsi women and girls in Mugombwa *secteur* by assailants from Saga, that Ndayambaje was present during the abduction and that the women and girls were subsequently killed. Consequently, Ndayambaje was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence case.

### 3.6.44.3 Evidence

#### Prosecution Witness QAR

4655. Witness QAR, a Tutsi woman from Muganza *commune*, testified that she knew Ndayambaje since they were both children.<sup>12379</sup> She identified Ndayambaje in court.<sup>12380</sup>

4656. Witness QAR testified that the *conseiller* of Mugombwa wrote a letter that he sent to the authorities in Saga, identifying the Tutsi women and girls who had so far been spared.<sup>12381</sup>

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<sup>12376</sup> 20 June 1995, Statement of Witness QAR, disclosed 4 December 2000; 14 October 1997, Statement of Witness QAR, disclosed 17 June 1999 in English, 10 December 1999 in French.

<sup>12377</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAF (35) (cited in support of Counts 1 and 4 against Ndayambaje).

<sup>12378</sup> 14 October 1997, Statement of Witness QAF, disclosed 4 November 1998, 15 November 2000 in French and English.

<sup>12379</sup> T. 19 November 2001 pp. 101-102 (ICS) (Witness QAR).

<sup>12380</sup> T. 19 November 2001 p. 104 (ICS) (Witness QAR).



4657. On 18 June 1994, in the days after she had attended a meeting behind the *commune* office in Muganza *commune*, a group of assailants led by a man she knew named Masima arrived in Mugombwa from Saga. They took eight women and adolescent girls from their homes. The witness was detained with them. Seven of the women were from Mugombwa; one was a teacher from Saga. Witness QAR had spent the night with one of the women, a farmer from Mugombwa, at the priest's house following the massacre at Mugombwa Church in April 1994. This woman was pregnant and was accompanied by her three-year-old child.<sup>12382</sup>

4658. Initially, there was some disagreement between the attackers from Saga and some people who were trying to protect them, but it was agreed to wait for the *bourgmestre* to decide what to do with the Tutsi women and girls. They were made to wait near the Statue of St. Mary in Mugombwa for his arrival. Ndayambaje arrived in a vehicle. He did not get out but spoke to Masima from inside.<sup>12383</sup> On being asked by Masima what to do with the women, Ndayambaje replied, “[d]o whatever you want to do.”<sup>12384</sup> On cross-examination, Witness QAR testified that Ndayambaje said, “I realise that among these people there are intellectuals and therefore take them away”.<sup>12385</sup> When the *bourgmestre* left, Masima told the women and girls that they had been delivered to him and ordered them to stand up. The women were taken away to be killed.<sup>12386</sup>

4659. They were taken to Gasenyi, a valley between Mugombwa and Kibayi where there were furnaces. Witness QAR testified that the assailants took away eight women. She did not go with them to Gasenyi. Before leaving Mugombwa, the assailants realised that there had been confusion over Witness QAR's identity. She was told that her hour had not yet come and she was released. The woman they wanted had the same first name as her but a different surname. None of the women and girls came back. They were killed.<sup>12387</sup>

4660. On cross-examination, Witness QAR was referred to her previous statement of 14 October 1997 which states that there was a house-to-house search and four girls from Karonkano *cellule*, Mugombwa *secteur*, and a teacher from Saga were brought out. The teacher was accused of writing to the *Inkotanyi*. The statement also recorded that when Ndayambaje arrived in Mugombwa he said, “[w]ere you not told that if you sweep the dirt towards your house it heaps up and ends up chasing you out of your house, then throw away the dirt”.<sup>12388</sup> Witness QAR testified her statement was not recorded correctly: more than four women were detained; four were from Mugombwa and four were from other *secteurs*. She testified that the words she attributed to Ndayambaje in her trial testimony had the same meaning as those reflected in her previous statement.<sup>12389</sup> Although the statement of 14

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<sup>12381</sup> T. 19 November 2001 p. 57 (Witness QAR); T. 21 November 2001 p. 61 (Witness QAR).

<sup>12382</sup> T. 21 November 2001 pp. 91, 95-99, 103 (Witness QAR).

<sup>12383</sup> T. 19 November 2001 p. 60; T. 21 November 2001 pp. 99-100 (Witness QAR).

<sup>12384</sup> T. 19 November 2001 p. 60 (Witness QAR).

<sup>12385</sup> T. 21 November 2001 p. 101 (Witness QAR).

<sup>12386</sup> T. 19 November 2001 pp. 60-61; T. 21 November 2001 pp. 101-102, 107 (Witness QAR).

<sup>12387</sup> T. 19 November 2001 p. 58; T. 21 November 2001 pp. 97-98, 101-102, 106-107 (Witness QAR).

<sup>12388</sup> T. 21 November 2001 p. 104 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (14 October 1997, Statement of Witness QAR).

<sup>12389</sup> T. 21 November 2001 pp. 105-106 (Witness QAR).

October 1997 states that Witness QAR did not know what finally happened to the women, she later learned that they had been taken to a brickyard in Mugombwa.<sup>12390</sup>

4661. Witness QAR was also referred to her statement of 20 June 1995 to Belgian authorities which stated that the women and girls in Mugombwa who had been spared were massacred on the orders of Ndayambaje by assailants from Saga. According to the statement, Ndayambaje said that among the women were some who could write and were in correspondence with the *Inkotanyi*. According to the statement the women were massacred “on the spot”.<sup>12391</sup> Witness QAR testified that this was not correct; she did not say that they were killed on the spot, but that they were taken to the furnaces at Gasenyi.<sup>12392</sup>

4662. Witness QAR testified that before 6 April 1994, she attended several meetings convened by Ndayambaje at the Muganza *commune* office. Those meetings in Muganza *commune* took place both before and after the war. There was approximately one meeting per month. After the death of the President, there were meetings almost every day.<sup>12393</sup>

#### Prosecution Witness QAF

4663. Witness QAF, a Hutu farmer from Mugombwa *secteur*, Muganza *commune*, convicted of genocide-related crimes and released from prison in 2003,<sup>12394</sup> testified that he attended a meeting at the Muganza *commune* office.<sup>12395</sup> Witness QAF arrived late and was told when he arrived that Ndayambaje had been appointed the new *bourgmestre* but he had missed the announcement.<sup>12396</sup>

4664. The day after the meeting at the Muganza *commune* office, young Tutsi girls from Witness QAF’s neighbourhood were abducted. He later heard that they had been killed. One of the girls was the daughter of Nyarunani, another the daughter of Melchior, and the last one was the daughter of Pascal.<sup>12397</sup> They were young and none of them had children. The girls had been seeking refuge at Jean Mukundirehe’s house, since their fathers had been killed. The mothers of two of the girls were still alive. The girls were flushed out from Mukundirehe’s house and were subsequently killed.<sup>12398</sup>

4665. On the day of the abduction the witness was at home and heard screaming. He saw a large group of people leading the girls away. He recognised one of the assailants, Jean Baptiste Mukurarinda, who appeared to be the leader of the group. The attackers were armed with traditional weapons, including machetes, clubs and spears. He could not say how many

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<sup>12390</sup> T. 21 November 2001 pp. 107-108 (Witness QAR); see Defence Exhibit 11B (Ndayambaje) (14 October 1997, Statement of Witness QAR).

<sup>12391</sup> T. 21 November 2001 p. 111 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, Statement of Witness QAR to Belgian Authorities).

<sup>12392</sup> T. 21 November 2001 pp. 111-113 (Witness QAR).

<sup>12393</sup> T. 15 November 2001 pp. 139, 141, 143; T. 20 November 2001 pp. 69-71 (Witness QAR).

<sup>12394</sup> T. 6 February 2004 pp. 26-28 (ICS); T. 9 February 2004 p. 5 (Witness QAF); Prosecution Exhibit 74 (Personal Particulars).

<sup>12395</sup> T. 9 February 2004 p. 7 (Witness QAF).

<sup>12396</sup> T. 5 February 2004 p. 68; T. 6 February 2004 pp. 6-7 (Witness QAF).

<sup>12397</sup> T. 5 February 2004 p. 68; T. 5 February 2004 p. 73 (ICS); T. 6 February 2004 pp. 16, 19, 30 (ICS) (Witness QAF).

<sup>12398</sup> T. 6 February 2004 pp. 16, 18-19 (ICS) (Witness QAF).

assailants there were since they were running when they passed his house. The abduction took place early in the morning.<sup>12399</sup> He did not see the girls being killed but Mukundirehe, his neighbour, told him he participated in the burial of the girls.<sup>12400</sup> Witness QAF did not know Witness QAR.<sup>12401</sup>

4666. Witness QAF testified that he knew Ndayambaje well. When they were young, they attended the same primary school and later he saw Ndayambaje when Ndayambaje became the *bourgmestre* who replaced Chrysologue Bimenyimana. The witness identified Ndayambaje in court.<sup>12402</sup>

#### Prosecution Witness FAU

4667. Witness FAU, a Hutu farmer from Muganza *commune* and a detainee in Rwanda at the time of his testimony, testified that he met an 18-year-old Tutsi girl called Nambaje.<sup>12403</sup> She was the daughter of Anaclet and was with a five-year-old girl.<sup>12404</sup> He found them in Kivumo *secteur* with the girl's grandfather and brought them to a house.<sup>12405</sup> Witness FAU admitted that during the period that he hid Nambaje at a house and he sexually abused her.<sup>12406</sup>

4668. After a month, in late May or early June 1994, three assailants called Cassien Ngonza, Nyambindi and Rutabana came to the house, accompanied by a crowd who remained outside.<sup>12407</sup> They took Nambaje and the young girl and killed them in the home of a Tutsi named Kinyagiwo who had also been killed.<sup>12408</sup> Witness FAU testified that before taking Nambaje, Cassien Ngonza told the witness that there had been a meeting the purpose of which was to swear in Ndayambaje,<sup>12409</sup> and at which Nteziryayo and Ndayambaje had said, "when you clean a house, you do not keep the dirt inside the house, but you take it outside of the house and if anyone is protecting a girl, he or she must hand her over to the assailants; otherwise, he will be killed by the assailants."<sup>12410</sup> The assailants said if a person hiding a Tutsi refused to hand that Tutsi over to the killers, that person would also be killed because the people hiding Tutsis in their homes were going to cause subsequent problems.<sup>12411</sup>

4669. Witness FAU did not attend the meeting but heard it was attended by the *conseillers* and other people leading the attacks. Witness FAU did not take part in that meeting because he was protecting Nambaje and the five-year-old child who was with her and he wanted to avoid

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<sup>12399</sup> T. 6 February 2004 pp. 18-19, 30 (ICS) (Witness QAF).

<sup>12400</sup> T. 6 February 2004 p. 40 (ICS) (Witness QAF).

<sup>12401</sup> T. 6 February 2004 p. 20 (ICS) (Witness QAF).

<sup>12402</sup> T. 5 February 2004 pp. 69-70; T. 9 February 2004 p. 5 (Witness QAF).

<sup>12403</sup> T. 8 March 2004 p. 80; T. 8 March 2004 pp. 88-89 (ICS) (Witness FAU).

<sup>12404</sup> T. 8 March 2004 p. 80; T. 8 March 2004 p. 84 (ICS) (Witness FAU).

<sup>12405</sup> T. 4 March 2004 pp. 74-75; T. 9 March 2004 pp. 28-30 (Witness FAU).

<sup>12406</sup> T. 8 March 2004 p. 88 (ICS) (Witness FAU).

<sup>12407</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 9 March 2004 p. 22 (ICS); T. 9 March 2004 p. 27 (HC) (Witness FAU) (French) (for the spelling of the assailants' names).

<sup>12408</sup> T. 4 March 2004 pp. 75, 77 (Witness FAU).

<sup>12409</sup> T. 8 March 2004 p. 80; T. 8 March 2004 pp. 93-94 (ICS) (Witness FAU).

<sup>12410</sup> T. 4 March 2004 p. 75; T. 9 March 2004 p. 23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12411</sup> T. 4 March 2004 p. 76 (Witness FAU).

a situation in which they would be taken away.<sup>12412</sup> All the inhabitants of his *secteur* including the *conseillers* were aware that he was hiding Nambaje.<sup>12413</sup>

4670. The meeting ended at approximately 5.00 or 6.00 p.m. after which the assailants came to the house. The witness knew Ndayambaje but not Nteziryayo, but he had been told that Nteziryayo was the *préfet* and chaired the ceremony at which Ndayambaje was sworn in as the *bourgmestre*.<sup>12414</sup> When it was put to the witness that his previous statement said that this meeting with Nteziryayo and Ndayambaje took place before the killings at Mugombwa Church and at Kabuye Hill, the witness explained that in fact, the ceremony during which it was said that they had to sweep dirt out took place after the events of Mugombwa and Kabuye.<sup>12415</sup> Witness FAU also testified that he joined the army approximately one week after Nambaje was killed, but did not complete the training because the RPF arrived.<sup>12416</sup>

4671. When confronted with his statement to the Rwandan Prosecutor that said he saw Nteziryayo at a meeting in his *commune*, Witness FAU stated his statement must have been taken down mistakenly because while he talked about that meeting, he did not attend it.<sup>12417</sup>

4672. Witness FAU identified Ndayambaje in court.<sup>12418</sup> Throughout his testimony, the witness referred to Ndayambaje as *bourgmestre* of Muganza *commune*.<sup>12419</sup> The witness saw Ndayambaje three times:<sup>12420</sup> the first time at a meeting convened by *Bourgmestre* Chrysologue at Mugombwa;<sup>12421</sup> the second time when they went together to Kibuye;<sup>12422</sup> and the last time when he joined the army at a place called Foyer, on which occasion, he and Ndayambaje both travelled in the same vehicle.<sup>12423</sup> Witness FAU did not see Ndayambaje again after he arrived at the Foyer.<sup>12424</sup>

#### Ndayambaje Defence Witness JAMES

4673. Witness JAMES, a Hutu student with a Tutsi mother, was 14 years old in 1994 and from Mugombwa *secteur*, Muganza *commune*.<sup>12425</sup> Witness JAMES testified that Witness QAR gave false testimony about the abduction of Tutsi women and girls.<sup>12426</sup> Witness JAMES testified that he lived in a house 400 metres from that of Witness QAR.<sup>12427</sup> On cross-examination, Witness JAMES testified that he last met with Witness QAR the day before he left to testify before this Tribunal. The witness stated that he never discussed the events at

<sup>12412</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80 (Witness FAU).

<sup>12413</sup> T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>12414</sup> T. 4 March 2004 p. 76; T. 9 March 2004 pp. 21-22 (ICS) (Witness FAU).

<sup>12415</sup> T. 10 March 2004 pp. 26-27 (Witness FAU).

<sup>12416</sup> T. 8 March 2004 pp. 80-81 (Witness FAU).

<sup>12417</sup> T. 9 March 2004 p. 20 (ICS) (Witness FAU).

<sup>12418</sup> T. 4 March 2004 p. 79 (Witness FAU).

<sup>12419</sup> T. 9 March 2004 p. 32 (Witness FAU).

<sup>12420</sup> T. 9 March 2004 p. 62 (Witness FAU).

<sup>12421</sup> T. 9 March 2004 pp. 62-63 (Witness FAU).

<sup>12422</sup> T. 4 March 2004 pp. 77-79 (Witness FAU).

<sup>12423</sup> T. 4 March 2004 pp. 77, 79; T. 9 March 2004 p. 63 (Witness FAU).

<sup>12424</sup> T. 4 March 2004 p. 77; T. 9 March 2004 p. 63 (Witness FAU).

<sup>12425</sup> T. 2 June 2008 p. 14 (ICS) (Witness JAMES).

<sup>12426</sup> T. 2 June 2008 p. 48 (ICS) (Witness JAMES).

<sup>12427</sup> T. 2 June 2008 p. 22 (ICS) (Witness JAMES).

Mugombwa in 1994 with Witness QAR but Witness QAR often discussed the events with Witness JAMES' mother and he listened to their conversations.<sup>12428</sup>

4674. Witness JAMES identified the house where Witness QAR sought refuge during the events, as the building on the extreme left of Defence Exhibit 655A. To the extreme right of Defence Exhibit 655A was the bar where he worked, which was his brother's old house.<sup>12429</sup>

4675. Witness JAMES testified that around 20 and 21 May 1994, young women and girls who remained in his area were killed.<sup>12430</sup> At around 1.00 p.m. that day, the witness was working outside at his brother's bar<sup>12431</sup> when he saw some assailants pass by with seven or eight girls, heading towards the Statue of the Virgin Mary. The women and girls had been taken from their hiding places in the village. Witness JAMES recognised Yacinthe from Mpatsimondo, and Nyirangazari among them. He did not see Witness QAR with them. According to Witness JAMES, Witness QAR was at the house all day on the day of the abduction and did not travel to the Statue of the Virgin Mary with the assailants.<sup>12432</sup> On cross-examination, Witness JAMES testified that Hyacinthe, Juvénal's daughter, was a relative of his. She was a Tutsi, like all women and girls who were abducted with her.<sup>12433</sup>

4676. Witness JAMES testified that the group of assailants was led by a very well-known person called Masima from Saga *secteur*, in Kibayi *commune*. The group was armed with traditional weapons. Witness JAMES followed the convoy up to the Statue of the Virgin Mary. The distance between his elder brother's bar and the statue was 115 metres. Witness JAMES saw Witness BOZAN at the Statue of the Virgin Mary. Witness BOZAN was trying to convince the assailants to release the women and girls but the assailants refused. Witness JAMES stayed at the statue for less than five minutes before returning to his brother's bar to resume his work. He did not see Witness QAR or Ndayambaje in the vicinity or at the Statue of the Virgin Mary on that day. The witness testified that young people from Mugombwa told him afterwards that the girls and women were killed at the Statue of the Virgin Mary. Chrysologue was the *bourgmestre* of Muganza *commune* when the abduction of the young women and girls occurred.<sup>12434</sup>

4677. Witness JAMES testified that he knew Ndayambaje, who lived in Nyarunazi, Mugombwa *secteur* in Muganza *commune*, in 1994. Ndayambaje was a student at that time. A distance of 100 to 120 metres separated the witness' parents' house and that of Ndayambaje.<sup>12435</sup>

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<sup>12428</sup> T. 3 June 2008 pp. 28-29 (ICS) (Witness JAMES).

<sup>12429</sup> T. 3 June 2008 p. 24 (ICS) (Witness JAMES).

<sup>12430</sup> T. 2 June 2008 p. 45 (ICS) (Witness JAMES).

<sup>12431</sup> T. 3 June 2008 p. 24 (ICS) (Witness JAMES).

<sup>12432</sup> T. 2 June 2008 pp. 45, 47-48 (ICS) (Witness JAMES).

<sup>12433</sup> T. 3 June 2008 p. 33 (ICS); T. 4 June 2008 p. 15 (ICS) (Witness JAMES).

<sup>12434</sup> T. 2 June 2008 pp. 46-47, 49-50, 52, 53-54 (ICS); T. 2 June 2008 p. 55 (Witness JAMES).

<sup>12435</sup> T. 2 June 2008 pp. 13-14 (ICS) (Witness JAMES).

Ndayambaje Defence Witness BOZAN

4678. Witness BOZAN, a Hutu civil servant from Muganza *commune*, testified that he knew Yasina, who was Nyarunani's daughter.<sup>12436</sup> Nyarunani lived in the same *secteur* as the witness in 1994. The witness stated that Yasina took refuge at his home. At the beginning of the unrest in April 1994, Yasina and another girl called Nyirakadori sought refuge at the house of the witness' neighbour, Jean Mukundirehe. The witness testified that his house was about 100 metres away from Jean Mukundirehe's house.<sup>12437</sup>

4679. Witness BOZAN testified that Yasina and Nyirakadori were abducted by a group of about 30 assailants between 15 and 20 May 1994.<sup>12438</sup> The assailants included some Burundians and were led by Jean Baptiste Mukurarinda, also known as Masima, and Raymond. The witness also recognised Damascene Nyamukwaya among them. They were armed with traditional weapons. The witness was in front of his house when Masima and his group launched an attack resulting in the abduction of Yasina and Nyirakadori. The attack took place at about 3.00 p.m. Yasina and Nyirakadori were in company of Witness MATIC in a field where they were abducted.<sup>12439</sup> The abducted girls were Tutsis.<sup>12440</sup> The convoy of assailants passed by his house taking with them Yasina and Nyirakadori. Witness BOZAN tried to intercept them but one of the assailants pointed his spear to at him and told him it was not any of his business. Witness BOZAN followed the convoy to the Statue of the Virgin Mary not far from the church where other abducted girls were. There were two girls called Yasina among the abductees. In addition to Yasina and Nyirakadori, Nyarunani's daughters, Yasina, Mpatsimondo's daughter from Mugombwa *secteur*, Karonkano *cellule*, was among them.<sup>12441</sup> Nyarunani and Mpatsimondo were both dead. Nyarunani had been dead for some time and Mpatsimondo died in April 1994. Both men were Tutsis.<sup>12442</sup>

4680. The convoy reached the Statue of the Virgin Mary at about 3.15 p.m. Witness BOZAN testified that upon their arrival at the Statue of the Virgin Mary, he asked the assailants to release the girls or at least to inform their respective families, but his request was rejected.<sup>12443</sup> There were other people present at the scene who were arguing with the assailants. Witness MATIC was there, as was Nyarunani's wife and the cousins of the abducted girls but they could not do anything.<sup>12444</sup> Witness BOZAN indicated that his conversation with the assailants lasted about five minutes.<sup>12445</sup>

4681. Witness BOZAN went to Kalinda's house to ask him for a motorbike in order to go and inform the *bourgmestre* of what was going on. Witness BOZAN did not see Ndayambaje between his arrival at the Statue of the Virgin Mary and his departure to Kalinda's place, close by. The witness met Kalinda at his house and asked Kalinda to drive him to the *commune*

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<sup>12436</sup> T. 16 September 2008 p. 12 (ICS) (Witness BOZAN).

<sup>12437</sup> T. 16 September 2008 pp. 12-14 (ICS) (Witness BOZAN).

<sup>12438</sup> T. 16 September 2008 pp. 14-15 (ICS); T. 17 September 2008 p. 69 (Witness BOZAN).

<sup>12439</sup> T. 16 September 2008 pp. 14-15, 45 (ICS) (Witness BOZAN).

<sup>12440</sup> T. 17 September 2008 p. 68 (Witness BOZAN).

<sup>12441</sup> T. 16 September 2008 p. 17 (ICS) (Witness BOZAN).

<sup>12442</sup> T. 18 September 2008 pp. 12-13 (ICS) (Witness BOZAN).

<sup>12443</sup> T. 16 September 2008 pp. 17-18 (ICS) (Witness BOZAN).

<sup>12444</sup> T. 18 September 2008 pp. 11-12 (ICS) (Witness BOZAN).

<sup>12445</sup> T. 16 September 2008 p. 18 (ICS) (Witness BOZAN).

office. On arrival at the *commune* they were told that the *bourgmestre* was not present so they decided to wait for him to return. After about 45 minutes, they decided to go back to the Statue of the Virgin Mary but before they left they asked a policeman at the *commune* office to report the incident to the *bourgmestre*.<sup>12446</sup> The round-trip took about one hour and 15 minutes to one hour and 25 minutes.<sup>12447</sup> When he returned to the Statue of the Virgin Mary, he was told that the girls had been taken to Gasenyi to be killed.<sup>12448</sup> He did not see Ndayambaje present at the statue.<sup>12449</sup>

4682. Witness BOZAN testified that he knew Witness QAR and that she was not among the girls who were abducted and taken to the Statue of the Virgin Mary.<sup>12450</sup> The witness denied Prosecution Counsel's suggestion that the abductions took place in mid-June 1994, during the harvest. Witness BOZAN testified that he wrote a report on the incident for the attention of the *conseiller*, which was transmitted to the *commune* office. However, no assailant was arrested.<sup>12451</sup>

#### Ndayambaje Defence Witness MUZIK

4683. Witness MUZIK, a Hutu farmer from Muganza *commune*<sup>12452</sup> and husband of Defence Witness MATIC, testified that after the death of the president on 6 April 1994, when the war broke out, two girls, Yasina and Nyirakadori, sought refuge at Nyirabashytsi's house on 22 April 1994. Witness MUZIK testified that Nyirakadori's father was Melchior Nibizi and Yasina's father was Juvénal Nyarunani; both girls were Tutsis.<sup>12453</sup>

4684. Witness MUZIK testified that one day in mid-May 1994, he went to Macumi's home to collect money from a sale of banana wine. On his return, he met an old woman called Nyiramanywa who told the witness that Yasina and Nyirakadori had been abducted from Nyirabashytsi's house. On arriving home, Witness MUZIK's wife was crying and she told him that Yasina and Nyirakadori had been with her collecting sweet potato plants when they were abducted.<sup>12454</sup> They were abducted by assailants from Saga in Kibayi *commune*, led by Masima Baptiste.<sup>12455</sup> Witness MUZIK went to Nyirabashytsi's house and learned that Mukundirehe was not there. He followed the assailants from his home, towards the road below the parish because he had learned that the abductors had gone in that direction. He joined a number of people, including Jean Mukundirehe, at Felesi's home below the parish. They followed the attackers to Gasenyi.<sup>12456</sup>

4685. The killing of Yasina and Nyirakadori took place at Gasenyi. Witness MUZIK testified that on arriving at Gasenyi, on the border between Kibayi and Muganza, the assailants were

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<sup>12446</sup> T. 16 September 2008 pp. 18, 20-21 (ICS) (Witness BOZAN).

<sup>12447</sup> T. 18 September 2008 pp. 6-7 (ICS) (Witness BOZAN).

<sup>12448</sup> T. 16 September 2008 p. 21 (ICS) (Witness BOZAN).

<sup>12449</sup> T. 18 September 2008 p. 7 (ICS) (Witness BOZAN).

<sup>12450</sup> T. 16 September 2008 p. 19 (ICS) (Witness BOZAN).

<sup>12451</sup> T. 18 September 2008 p. 10 (ICS) (Witness BOZAN).

<sup>12452</sup> T. 19 June 2008 p. 26 (ICS) (Witness MUZIK).

<sup>12453</sup> T. 19 June 2008 pp. 29-30 (ICS) (Witness MUZIK).

<sup>12454</sup> T. 19 June 2008 pp. 31, 33 (ICS) (Witness MUZIK).

<sup>12455</sup> T. 19 June 2008 pp. 46, 69 (ICS) (Witness MUZIK).

<sup>12456</sup> T. 19 June 2008 pp. 30, 34-35 (ICS) (Witness MUZIK).

already on the other side. The assailants pointed out the bodies of Yasina and Nyirakadori to them. These bodies had been hacked into pieces using machetes and the corpses had been dumped in pits which were used as ovens for making bricks. There were a total of five dead bodies in the pits, including three other girls he did not know. Witness MUZIK and some others buried the corpses using hoes borrowed from the home of Mr. Butoyi and Mr. Sendegeya who lived above Gasenyi. They left the site between 4.00 p.m. and 5.00 p.m.<sup>12457</sup>

4686. After the burial of Yasina, Nyirakadore and the other three girls at Gasenyi, he went with others to the *conseiller* of Mugombwa *secteur*, Viateur Singirankabo, to report the incident. The *conseiller* was recovering from an illness. On receiving the news he insisted on being escorted to break the news to the authorities. The witness and others accompanied the *conseiller* to the Muganza *commune* office where they met *Bourgmestre* Chrysologue Bimenyimana at around 5.00 p.m.<sup>12458</sup>

4687. Witness MUZIK testified that *Bourgmestre* Bimenyimana told the *conseiller* that someone else had already informed him about the dead girls and he would visit the site the next day with an investigation officer to carry out an investigation on the killings.<sup>12459</sup>

4688. Witness MUZIK testified that Ndayambaje was reinstated as *bourgmestre* of Muganza *commune* at the end of June 1994. He did not see Ndayambaje on the day of the abduction of Yasina and Nyirakadori. Ndayambaje was not the *bourgmestre* at the time of the abduction and killing of Yasina and Nyirakadori.<sup>12460</sup> Chrysologue Bimenyimana was *bourgmestre*.<sup>12461</sup> The witness disagreed that the attack took place in June 1994, insisting that the girls were abducted in mid-May 1994.<sup>12462</sup>

4689. On cross-examination, Witness MUZIK denied that someone bearing his name, and whose father and mother had the same names as his father and mother, had been the subject of *Gacaca* proceedings in Rwanda in 2007, and was sentenced to 17 years imprisonment for participation in killings and destruction of houses. He testified that he knew nothing about this.<sup>12463</sup>

4690. On cross-examination, Witness MUZIK denied participating in an attack at Come. He also denied participating in an attack launched on the house of Wagibago or in the attacks during the course of which Baributsa and Ntirantekura were killed.<sup>12464</sup>

4691. Witness MUZIK testified that he was illiterate and could not recall the exact dates of events, though he could give estimates.<sup>12465</sup> He further stated that his wife was aware that he testified before the Tribunal but was unaware of the content of his testimony.<sup>12466</sup>

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<sup>12457</sup> T. 19 June 2008 pp. 35-37 (ICS) (Witness MUZIK).

<sup>12458</sup> T. 19 June 2008 pp. 26-27, 37-38 (ICS) (Witness MUZIK).

<sup>12459</sup> T. 19 June 2008 pp. 42-43 (Witness MUZIK).

<sup>12460</sup> T. 19 June 2008 pp. 16, 45; T. 19 June 2008 p. 46 (ICS) (Witness MUZIK).

<sup>12461</sup> T. 19 June 2008 p. 38 (ICS) (Witness MUZIK).

<sup>12462</sup> T. 19 June 2008 p. 47 (ICS) (Witness MUZIK).

<sup>12463</sup> T. 19 June 2008 pp. 52-53, 56 (ICS) (Witness MUZIK).

<sup>12464</sup> T. 19 June 2008 pp. 67-68 (ICS) (Witness MUZIK).

<sup>12465</sup> T. 19 June 2008 pp. 22, 60 (Witness MUZIK).



Ndayambaje Defence Witness MATIC

4692. Witness MATIC, a Hutu farmer and wife of Defence Witness MUZIK, from Muganza *commune*,<sup>12467</sup> testified that one Thursday in April 1994, two Tutsi girls, Nyirakadori and Yasina, came to seek refuge at Agnes Nyirabashyitsi's house where Mukundirehe also lived. Nyarunani was Yasina's father, and Melchior Nibizi was Nyirakadori's father.<sup>12468</sup>

4693. Witness MATIC testified that about 20 assailants made up of Burundian refugees led by Masima, came from Saga and found the witness, Yasina and Nyirakadori in a sorghum field while they were harvesting sweet potatoes at about 3.00 p.m.<sup>12469</sup> Witness MATIC knew that they were Burundians because they were speaking Kirundi, a Burundian language.<sup>12470</sup> On cross-examination, she stated that they were collecting sweet potato stems from a sorghum farm.<sup>12471</sup> The assailants were armed with clubs and disguised in a way that made it impossible for the witness to recognise them. The assailants seized Yasina and Nyirakadori and took them away. This incident happened in mid-April 1994.<sup>12472</sup> On cross-examination she testified that the abductions took place in May 1994. Ndayambaje was reinstated as the *bourgmestre* in June 1994.<sup>12473</sup> On being questioned by the Bench following her cross-examination, the witness testified that the abductions took place at nightfall around mid-April 1994.<sup>12474</sup>

4694. Witness MATIC's husband told her that after their abduction, Yasina and Nyirakadori were subsequently killed.<sup>12475</sup> Her husband was away on the day Yasina and Nyirakadori were abducted; he left in the morning and returned that evening, after the girls had been taken away.<sup>12476</sup>

4695. The witness was illiterate and testified that she did not retain dates.<sup>12477</sup> The witness discussed the events of 1994 with her husband and he told her what he was going to say in his testimony before the Tribunal.<sup>12478</sup>

Ndayambaje Defence Witness ANGES

4696. Witness ANGES, a Hutu shopkeeper from Muganza *commune*, testified that in May 1994, she witnessed an attack in Mugombwa. The attack was led by Masima, a primary school teacher from Saga. Burundian assailants participated in that attack.<sup>12479</sup> The witness was at her shop and saw that the assailants abducted persons, among them a girl from Saga called Pelagie

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<sup>12466</sup> T. 19 June 2008 p. 69 (ICS) (Witness MUZIK).

<sup>12467</sup> T. 18 June 2008 p. 52 (ICS) (Witness MATIC).

<sup>12468</sup> T. 18 June 2008 pp. 59, 62-63 (ICS) (Witness MATIC).

<sup>12469</sup> T. 18 June 2008 p. 65 (ICS) (Witness MATIC).

<sup>12470</sup> T. 19 June 2008 p. 15 (ICS) (Witness MATIC).

<sup>12471</sup> T. 19 June 2008 p. 8 (ICS) (Witness MATIC).

<sup>12472</sup> T. 18 June 2008 pp. 65-66, 69 (ICS) (Witness MATIC).

<sup>12473</sup> T. 19 June 2008 p. 16 (Witness MATIC).

<sup>12474</sup> T. 19 June 2008 p. 19 (ICS) (Witness MATIC).

<sup>12475</sup> T. 18 June 2008 p. 70 (ICS) (Witness MATIC).

<sup>12476</sup> T. 19 June 2008 p. 9 (ICS) (Witness MATIC).

<sup>12477</sup> T. 18 June 2008 p. 74 (Witness MATIC).

<sup>12478</sup> T. 18 June 2008 p. 76 (ICS) (Witness MATIC).

<sup>12479</sup> T. 20 August 2008 pp. 48-51, 53 (ICS) (Witness ANGES).

and another girl. Later, she learned from some people who had followed the assailants that the abducted persons had been killed at a brick factory between Saga and Mugombwa.<sup>12480</sup>

4697. Witness ANGES testified that at the time of the abduction, Chrysologue was the *bourgmestre* of Muganza *commune*, not Ndayambaje. Ndayambaje was sworn in as *bourgmestre* later, towards the end of June 1994.<sup>12481</sup>

Ndayambaje Defence Witness Constant Julius Goetschalckx a.k.a. Brother Stan

4698. Brother Stan testified that in early May 1994, he heard broadcasts on Radio *Muhabura* that the RPF was aware that the witness and others had cleaned Mugombwa Church. This news created a wave of panic regarding how the RPF had become aware of what had happened at Mugombwa. It also led to the hunting down of a number of girls living in Mugombwa, who were subsequently killed in the valley below the brick manufacturing industry between the parish and Saga, on 11 May 1994. He knew the date because he fell ill with malaria following this event. On that day, Brother Stan was driving through Mugombwa Parish towards the school, APAME, when he was surrounded by a group of young men carrying spears, chasing a young girl who was trying to escape. The attackers ran past the witness and continued chasing the girl. The witness carried on towards the school.<sup>12482</sup>

4699. Brother Stan testified that he met Ndayambaje in 1988, when he was *bourgmestre* of Muganza *commune*.<sup>12483</sup>

Ndayambaje Defence Witness KWEPO

4700. Witness KWEPO, a Hutu banana beer vendor from Muganza *commune*, testified that in April 1994, two or three days after the outbreak of the war in Muganza, Witness FAU forced a Tutsi girl, Nambaje, who was about 16 years old, into marriage.<sup>12484</sup> The witness saw Nambaje sometimes helping her husband sell banana beer. According to Witness KWEPO, Nambaje remained in Witness FAU's house for about a week and a half.<sup>12485</sup> Witness KWEPO testified that Witness FAU lived with his parents in Mugombwa *secteur*, Muganza *commune*, about one kilometre away from the witness' house. In 1994, Witness FAU was between 16 and 17 years old.<sup>12486</sup>

4701. Witness KWEPO testified that Nambaje was killed in early May 1994.<sup>12487</sup> Witness KWEPO saw many attackers, among them Masima, Ngona and Nyirinkwaya. They passed in front of KWEPO's house escorting six or seven abducted girls and forced the girls to cross the river. Among the abducted persons were Adele, Nambaje and Ntanpuhwe's daughter.<sup>12488</sup> Witness KWEPO testified that shortly afterwards he went to Witness FAU's house where

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<sup>12480</sup> T. 20 August 2008 pp. 52-53 (ICS) (Witness ANGES).

<sup>12481</sup> T. 20 August 2008 pp. 54, 59 (ICS); T. 20 August 2008 p. 55 (Witness ANGES).

<sup>12482</sup> T. 18 September 2008 p. 49 (Brother Stan).

<sup>12483</sup> T. 18 September 2008 p. 27 (Brother Stan).

<sup>12484</sup> T. 27 August 2008 pp. 17, 52 (ICS) (Witness KWEPO).

<sup>12485</sup> T. 27 August 2008 pp. 16-17 (ICS) (Witness KWEPO).

<sup>12486</sup> T. 27 August 2008 pp. 11-12 (ICS) (Witness KWEPO).

<sup>12487</sup> T. 27 August 2008 pp. 16-17 (ICS) (Witness KWEPO).

<sup>12488</sup> T. 27 August 2008 pp. 17-18 (ICS); T. 28 August 2008 p. 22 (ICS) (Witness KWEPO).

Witness FAU confirmed that his wife was among the abducted persons. The witness suggested that Witness FAU contact the authorities, in particular the *bourgmestre*, Chrysologue Bimenyimana, to prevent the attackers from harming the victims. In the evening of that day, a person called Nsangande told Witness KWEPO that the girls had been killed near a brick factory located at Gasenyi, on the border between Saga and Mugombwa.<sup>12489</sup> Witness KWEPO testified that the abduction of the girls did not take place on the day of Ndayambaje's swearing-in as *bourgmestre*, contrary to Witness FAU's testimony.<sup>12490</sup>

#### Ndayambaje Defence Witness SABINE

4702. Witness SABINE, a Hutu farmer from Muganza *commune* who had convictions for genocide-related killings, had already served his sentence and been released from prison when he gave evidence before the Tribunal.<sup>12491</sup> The witness testified that, along with Ngonza and Nsanzuwera, he participated in attacks on Josiah's children after they fled Kabuye Hill in April 1994. Witness SABINE killed one of Josiah's sons at Ntabizi's house.<sup>12492</sup> The witness along with other attackers took Jacqueline, Lydie and Adele out of Maharariyeri's house.<sup>12493</sup> Jacqueline was about 16 years old, Lydie nearly 19 and Adele was about 23. They were the daughters of Josiah and Doroka.<sup>12494</sup> Déo Gakwandi immediately took Adele away to forcibly marry her. The other girls were killed on the roadside by Ngarukiye, Nyirinkwaya, Kanyota and Sendama.<sup>12495</sup> On cross-examination it was pointed out that in a record of *Gacaca* proceedings involving Witness SABINE in 2006, the witness had stated that the killings took place in May 1994, rather than April 1994 as he testified at trial. Witness SABINE testified that this was mistakenly recorded.<sup>12496</sup>

4703. Witness SABINE testified that Adele was killed towards the end of April 1994. He learned of her death from Déo Gakwandi who had taken her as his wife by force. On the day she was taken away, she passed close to the witness' house.<sup>12497</sup> On cross-examination, Witness SABINE testified that he had told the Defence that Adele was killed in the first few days of May 1994. On being asked by the Prosecution to clarify when Adele died, he testified that she died towards the end of April or early May 1994. He witnessed her abduction. There were between 10 and 15 girls; some Tutsis, some Hutus whose fathers were said to be giving contributions to the *Inkotanyi*. Some of the girls' fathers had already been killed.<sup>12498</sup>

4704. Witness SABINE testified that Witness FAU forcibly married a Tutsi girl named Nambaje, daughter of Anaclet. He knew Nambaje prior to the events of April 1994. He could not recall the dates but thought that Witness FAU took her as his wife at the beginning of the killings. Nambaje lived with Witness FAU for less than one week. Witness SABINE saw her

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<sup>12489</sup> T. 27 August 2008 pp. 17-19 (ICS) (Witness KWEPO).

<sup>12490</sup> T. 27 August 2008 p. 19 (ICS) (Witness KWEPO).

<sup>12491</sup> Defence Exhibit 659 (Ndayambaje) (Personal Particulars); T. 16 June 2008 p. 36 (ICS) (Witness SABINE).

<sup>12492</sup> T. 12 June 2008 pp. 32-34 (ICS) (Witness SABINE).

<sup>12493</sup> T. 12 June 2008 p. 36 (ICS); T. 16 June 2008 p. 22 (ICS); T. 16 June 2008 p. 23 (HC) (Witness SABINE) (French).

<sup>12494</sup> T. 12 June 2008 p. 36 (ICS); T. 16 June 2008 p. 59 (ICS) (Witness SABINE).

<sup>12495</sup> T. 12 June 2008 p. 36 (ICS) (Witness SABINE).

<sup>12496</sup> T. 16 June 2008 pp. 58-59 (ICS) (Witness SABINE).

<sup>12497</sup> T. 12 June 2008 pp. 37, 39-40 (ICS) (Witness SABINE).

<sup>12498</sup> T. 16 June 2008 pp. 62-63 (ICS) (Witness SABINE).

every day, and confirmed that she was forcibly married to Witness FAU.<sup>12499</sup> Witness SABINE testified that Nambaje was killed in an attack spearheaded by Ngonza towards mid-April 1994.<sup>12500</sup> On cross-examination he testified that she was killed towards the end of April 1994.<sup>12501</sup> He learned from Witness FAU that Nambaje had been abducted and killed by Ngonza and his band.<sup>12502</sup> It was said that Nambaje was not killed because she was Tutsi but because she was supporting the *Inkotanyi*. Her father, Anaclet, was supporting the *Inkotanyi*. Nambaje was killed because she was his daughter.<sup>12503</sup>

4705. When Nambaje was killed, Chrysologue Bimenyimana was the *bourgmestre* of Muganza *commune*; Nambaje was not abducted and killed on the day Ndayambaje was installed as *bourgmestre*. His father told him about the swearing-in of Ndayambaje and the days do not correspond. Witness SABINE fled to Burundi in July 1994, one week after the swearing-in ceremony. There were no more killings going on at that time.<sup>12504</sup>

4706. Witness SABINE did not agree that between April and July 1994 it was primarily Tutsis who were killed; he stated that both Hutus and Tutsis died.<sup>12505</sup> Witness SABINE testified that in 1994, he knew Ndayambaje. Ndayambaje was a student in 1994.<sup>12506</sup> He saw Ndayambaje in July 1994 when they were fleeing Rwanda.<sup>12507</sup>

#### Ndayambaje

4707. Ndayambaje testified that he was aware of the abduction of three girls by Masima's group; however this event occurred in May 1994, not after his swearing-in ceremony on 22 June 1994. He never met Masima and the other assailants at the Statue of the Virgin Mary in Mugombwa. At the time of the abduction he was bed-ridden, which is when he learned about the incident.<sup>12508</sup>

#### **3.6.44.4 Deliberations**

4708. It is not disputed that a group of Tutsi women and girls were abducted from Mugombwa *secteur*, Muganza *commune* by some assailants from Saga and were subsequently killed. What is in dispute is when the abduction took place, and whether Ndayambaje was present during the abduction.

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<sup>12499</sup> T. 16 June 2008 pp. 64-65 (ICS) (Witness SABINE).

<sup>12500</sup> T. 12 June 2008 p. 46 (ICS) (Witness SABINE).

<sup>12501</sup> T. 16 June 2008 p. 64 (ICS) (Witness SABINE).

<sup>12502</sup> T. 12 June 2008 p. 46 (ICS) (Witness SABINE).

<sup>12503</sup> T. 16 June 2008 p. 65 (ICS) (Witness SABINE).

<sup>12504</sup> T. 12 June 2008 p. 47 (ICS) (Witness SABINE).

<sup>12505</sup> T. 16 June 2008 p. 63 (ICS) (Witness SABINE).

<sup>12506</sup> T. 12 June 2008 pp. 21-22 (Witness SABINE).

<sup>12507</sup> T. 17 June 2008 p. 6 (Witness SABINE).

<sup>12508</sup> T. 13 November 2008 pp. 36-37, 39-40 (Ndayambaje).

#### 3.6.44.4.1 Timing and Reason for the Abductions

4709. The Prosecution alleges that the abduction took place the day after Ndayambaje's swearing-in ceremony on 22 June 1994. The Ndayambaje Defence asserts that the abduction took place long before Ndayambaje's swearing-in, around mid-May 1994.<sup>12509</sup>

4710. Witness QAR testified that she was a survivor of the abduction in Mugombwa. According to her testimony, the abduction took place on 18 June 1994, in the days following a meeting at the Muganza *commune* office.<sup>12510</sup> Witness QAR testified that she remembers the date of the abduction as being 18 June 1994 because on that day she was lucky enough to escape with her life.<sup>12511</sup> The Chamber refers to its findings with respect to Ndayambaje's swearing-in ceremony and finds that it is not evident that the meeting about which Witness QAR testified is Ndayambaje's swearing-in ceremony. Furthermore, the Chamber observes that Witness QAR may well have been mistaken while placing the purported meeting in mid-June 1994 due to the various meetings she attended at the Muganza *commune* office before, during and after the war.<sup>12512</sup> Furthermore, the Chamber recalls its previous finding that Witness QAR did not attend Ndayambaje's swearing-in ceremony, given that she was a Tutsi (). The Chamber previously considered that Witness QAR's testimony as to what occurred at the swearing-in ceremony was hearsay evidence based upon what she subsequently gleaned from others ().

4711. The Chamber nevertheless finds Witness QAR to be credible in all other respects. Witness QAR may have a distorted view of the timing of the events in question given the passage of time, yet she corroborates that the event took place in June 1994. In this regard, she provided a very specific date and the level of detail proffered buttresses her credibility.

4712. Witness QAF testified that the abduction took place early in the morning on the day after Ndayambaje's swearing-in ceremony, a meeting which he attended.<sup>12513</sup> The Chamber has previously found his testimony regarding this meeting to be credible. This corroborates Witness QAR's testimony that the abduction occurred in June 1994.

4713. The Chamber observes that Witness FAU was a detained witness at the time of his testimony and was awaiting trial in Rwanda for crimes related to the 1994 genocide.<sup>12514</sup> The Chamber will therefore treat his testimony with appropriate caution. Witness FAU testified that the abductions took place in late May or early June 1994, and gave hearsay testimony that this followed a meeting at the Muganza *commune* office at which Nteziryayo and Ndayambaje had said, "when you clean a house, you do not keep the dirt inside the house, but you take it outside of the house and if anyone is protecting a girl, he or she must hand her over to the

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<sup>12509</sup> Ndayambaje Closing Brief, para. 785.

<sup>12510</sup> T. 21 November 2001 pp. 91, 95 (Witness QAR).

<sup>12511</sup> T. 21 November 2001 p. 96 (Witness QAR).

<sup>12512</sup> T. 15 November 2001 p. 143; T. 20 November 2001 pp. 69-70 (Witness QAR).

<sup>12513</sup> T. 5 February 2004 p. 68; T. 6 February 2004 pp. 6, 16, 18 (ICS) (Witness QAF).

<sup>12514</sup> T. 8 March 2004 pp. 84-86 (ICS) (Witness FAU).

assailants; otherwise, he will be killed by the assailants.”<sup>12515</sup> According to Witness FAU, the abduction took place in the evening of the same day.<sup>12516</sup>

4714. Witness FAU also testified that he joined the army approximately one week after Nambaje was killed, but did not complete the training because the RPF arrived.<sup>12517</sup> However, the Chamber also recalls that Witness FAU testified that he took in Nambaje the day after the killings at Kabuye Hill,<sup>12518</sup> and kept Nambaje at the house for one month, perhaps from April until the end of May or early June, when assailants came to take Nambaje away and kill her.<sup>12519</sup>

4715. Notwithstanding the inconsistencies in Witness FAU’s evidence, he was living with Nambaje prior to her abduction and death.<sup>12520</sup> Consequently, the Chamber finds that he would have been in a better position to know as to what date this abduction occurred. Furthermore, even though Witness FAU did not partake in that day’s ceremony,<sup>12521</sup> he was informed by assailants who came to the house to abduct Nambaje that they had attended a meeting that day,<sup>12522</sup> and the meeting’s purpose was to swear in Ndayambaje.<sup>12523</sup> It was the assailants who told Witness FAU that at the meeting they attended Nteziryayo and Ndayambaje had referred to the need to clean a house, and throw the dirt out, and that those protecting Tutsi girls must hand them over to the assailants or be killed.<sup>12524</sup> The Chamber therefore considers Witness FAU’s hearsay testimony to corroborate Witnesses QAR and QAF with regard to the date of the abduction.

4716. Ndayambaje Defence witnesses testified that the abduction of Tutsi girls in Mugombwa took place in, variously: mid-April,<sup>12525</sup> late April,<sup>12526</sup> early May,<sup>12527</sup> early-mid May,<sup>12528</sup> and mid-May 1994.<sup>12529</sup>

4717. Notwithstanding the evidence brought by the Ndayambaje Defence, and the specific date provided by Witness QAR, the Chamber considers that the detailed evidence proffered by Prosecution Witnesses QAF and FAU affirms that the abduction took place after Ndayambaje’s swearing-in ceremony on 22 June 1994. On the basis of Witness FAU’s hearsay evidence that the assailants came to search for the girls because they were told to search for

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<sup>12515</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12516</sup> T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>12517</sup> T. 8 March 2004 pp. 80-81 (Witness FAU).

<sup>12518</sup> T. 8 March 2004 p. 80 (Witness FAU).

<sup>12519</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 80; T. 8 March 2004 pp. 83-84 (ICS) (Witness FAU).

<sup>12520</sup> T. 10 March 2004 p. 41 (Witness FAU).

<sup>12521</sup> T. 4 March 2004 p. 75; T. 8 March 2004 p. 90 (ICS) (Witness FAU).

<sup>12522</sup> T. 9 March 2004 p. 21 (ICS) (Witness FAU).

<sup>12523</sup> T. 8 March 2004 pp. 93-94 (ICS) (Witness FAU).

<sup>12524</sup> T. 4 March 2004 pp. 75-76; T. 8 March 2004 pp. 80, 90; T. 9 March 2004 pp. 22-23 (ICS); T. 10 March 2004 p. 24 (Witness FAU).

<sup>12525</sup> T. 18 June 2008 p. 66 (ICS) (Witness MATIC); T. 19 June 2008 p. 19 (ICS) (Witness MATIC); T. 12 June 2008 p. 46 (ICS) (Witness SABINE).

<sup>12526</sup> T. 12 June 2008 p. 37 (ICS) (Witness SABINE).

<sup>12527</sup> T. 27 August 2008 p. 17 (ICS) (Witness KWEPO).

<sup>12528</sup> T. 18 September 2008 p. 49 (Brother Stan).

<sup>12529</sup> T. 16 September 2008 p. 14 (ICS) (Witness BOZAN); T. 17 September 2008 p. 69 (Witness BOZAN); T. 19 June 2008 p. 31 (ICS) (Witness MUZIK); T. 19 June 2008 p. 16 (Witness MATIC).

and throw out dirt, the Chamber also accepts that searches were carried out with a view to locating Tutsis.

#### 3.6.44.4.2 Ndayambaje's Alleged Presence During the Abductions

4718. The Chamber will now consider whether Ndayambaje was present during the abduction in Mugombwa, which neither party contests occurred between April and June 1994.

4719. Witness QAR testified that she was among the women and girls who were abducted in Mugombwa. According to her testimony, Ndayambaje came to the Statue of the Virgin Mary during the abduction, where the attackers were waiting for him, and told the attackers to do what they wanted with the women and girls and to take them away.<sup>12530</sup> She is the only witness to have testified to this fact.

4720. As the sole Prosecution witness to testify to Ndayambaje's alleged presence during the abduction, the Chamber will treat her testimony with appropriate caution. There were a number of eyewitnesses brought by the Prosecution and the Defence who testified to having witnessed various stages of the abduction: Prosecution Witnesses QAF and FAU and Defence Witnesses JAMES, BOZAN, MATIC, ANGES, Brother Stan and KWEPO. Defence Witnesses MUZIK, SABINE and Ndayambaje gave hearsay testimony regarding the attack.

4721. As to the evidence of Witness SABINE, the Chamber notes that this witness has convictions for genocide-related killings and his testimony should therefore be treated with appropriate caution. This was the only witness who specified that Ndayambaje was not killed because she was Tutsi but because she was supporting the *Inkotanyi*, as her father did.<sup>12531</sup> The Chamber considers this a strange statement to make considering Ndayambaje was only 16 years old at the time.

4722. Furthermore, Witness SABINE's testimony with regard to the dates of the death of the girls was internally inconsistent. He changed his story from April 1994, to May 1994, to the end of April 1994, to the first few days of May and then the end of April and early May 1994.<sup>12532</sup> The Chamber finds this witness to be unreliable, especially given that he did not agree that between April and July 1994 it was primarily Tutsis who were killed; but stated that both Hutus and Tutsis died.<sup>12533</sup> The Chamber considers the witness is denying the genocide and therefore cannot be found credible in this regard.

4723. Witness QAR testified that she had known Ndayambaje since they were children.<sup>12534</sup> This was not challenged by the Ndayambaje Defence. The Chamber considers that Witness QAR's eyewitness testimony of the abduction is corroborated by both Prosecution and Defence witnesses with respect to a number of salient features of the attack; the identity of the attackers, the number of girls abducted, that some of the abductees were adolescents, that they were abducted from houses in Mugombwa, that the assailants gathered the women and girls at

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<sup>12530</sup> T. 19 November 2001 pp. 60-61; T. 21 November 2001 pp. 60, 64 (Witness QAR).

<sup>12531</sup> T. 16 June 2008 p. 65 (ICS) (Witness SABINE).

<sup>12532</sup> T. 16 June 2008 p. 58 (ICS); T. 12 June 2008 p. 37 (ICS); T. 16 June 2008 pp. 62-63 (ICS) (Witness SABINE).

<sup>12533</sup> T. 16 June 2008 p. 63 (ICS) (Witness SABINE).

<sup>12534</sup> T. 19 November 2001 pp. 101-102 (ICS) (Witness QAR).

the Statue of the Virgin Mary in Mugombwa where they argued with those who wanted to protect them, and that the girls were subsequently killed in Gasenyi, a valley between Mugombwa and Kibayi where there were furnaces.<sup>12535</sup>

4724. Witness QAR testified that a man she knew, Masima from Saga, led the group of assailants.<sup>12536</sup> This is corroborated by a number of eyewitness accounts: Witness QAF who identified Masima by his real name, Jean Baptiste Mukurarinda, testified that he appeared to be the leader of the group;<sup>12537</sup> Witness BOZAN testified that the assailants were led by Jean Baptiste Mukurarinda, also known as Masima;<sup>12538</sup> Witness JAMES testified that the group of assailants was led by a well-known person called Masima from Saga *secteur*;<sup>12539</sup> Witness MATIC testified that the abductors were led by Masima from Saga,<sup>12540</sup> and Witness KWEPO testified that Masima was among the attackers.<sup>12541</sup>

4725. Witness QAR's account that eight women and girls were abducted<sup>12542</sup> is largely corroborated by Witness JAMES' testimony that there were seven or eight girls,<sup>12543</sup> Witness KWEPO's testimony that there were six or seven girls,<sup>12544</sup> and Witness MUZIK's testimony that he saw five dead bodies at Gasenyi, including the bodies of two girls he knew, who were among those abducted.<sup>12545</sup>

4726. That the group of abductees included adolescent girls, as asserted by Witness QAR<sup>12546</sup> is corroborated by Witness QAF, who testified that he knew three of the abducted girls to be the young daughters of Nyarunani, Melchior and Pascal, none of whom had children;<sup>12547</sup> Witness FAU, who testified that Nambaje was 18 years old;<sup>12548</sup> Witness KWEPO, who testified that Nambaje was about 16 years old;<sup>12549</sup> and Brother Stan, who testified that as he drove through Mugombwa he witnessed a group of young men chasing a young girl.<sup>12550</sup>

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<sup>12535</sup> T. 19 November 2001 pp. 58, 60-61 (Witness QAR); T. 21 November 2001 pp. 95-97, 101-103, 106 (Witness QAR); T. 5 February 2004 p. 73 (ICS) (Witness QAF); T. 6 February 2004 pp. 16, 18-19, 30 (ICS) (Witness QAF); T. 16 September 2008 pp. 15, 17-18, 21, 45 (ICS) (Witness BOZAN); T. 2 June 2008 pp. 45-48, 50 (ICS) (Witness JAMES); T. 18 June 2008 p. 65 (ICS) (Witness MATIC); T. 27 August 2008 pp. 18-19, 52 (ICS) (Witness KWEPO); T. 28 August 2008 p. 22 (ICS) (Witness KWEPO); T. 19 June 2008 pp. 34-37 (ICS) (Witness MUZIK); T. 8 March 2004 p. 89 (ICS) (Witness FAU); T. 9 March 2004 p. 22 (ICS) (Witness FAU); T. 18 September 2008 p. 49 (Brother Stan).

<sup>12536</sup> T. 21 November 2001 p. 97 (Witness QAR).

<sup>12537</sup> T. 6 February 2004 pp. 18-19, 30 (ICS) (Witness QAF).

<sup>12538</sup> T. 16 September 2008 pp. 15, 45 (ICS) (Witness BOZAN).

<sup>12539</sup> T. 2 June 2008 p. 46 (ICS) (Witness JAMES).

<sup>12540</sup> T. 18 June 2008 p. 65 (ICS) (Witness MATIC).

<sup>12541</sup> T. 27 August 2008 p. 18 (ICS) (Witness KWEPO).

<sup>12542</sup> T. 21 November 2001 pp. 97-98, 106 (Witness QAR).

<sup>12543</sup> T. 2 June 2008 pp. 45, 47 (ICS) (Witness JAMES).

<sup>12544</sup> T. 28 August 2008 p. 22 (ICS) (Witness KWEPO).

<sup>12545</sup> T. 19 June 2008 p. 37 (ICS) (Witness MUZIK).

<sup>12546</sup> T. 21 November 2001 pp. 97-98 (Witness QAR).

<sup>12547</sup> T. 5 February 2004 p. 73 (ICS); T. 6 February 2004 pp. 16, 18 (ICS) (Witness QAF).

<sup>12548</sup> T. 8 March 2004 p. 80 (Witness FAU).

<sup>12549</sup> T. 27 August 2008 pp. 17, 52 (ICS) (Witness KWEPO).

<sup>12550</sup> T. 18 September 2008 p. 49 (Brother Stan).



4727. The circumstances of the abduction about which Witness QAR testified, namely that the women and girls were taken from their homes,<sup>12551</sup> is corroborated by the eyewitness accounts of Witness QAF, who testified that the girls were flushed out from Jean Mukundirehe's house where they had been seeking refuge,<sup>12552</sup> and Witness FAU's testimony that Nambaje was taken from a house by the attackers.<sup>12553</sup>

4728. Witness QAR testified that the women and girls were gathered at the Statue of the Virgin Mary in Mugombwa where there was a disagreement between the attackers from Saga and some people who were trying to protect them.<sup>12554</sup> In this respect, her account is corroborated by Witness JAMES who testified that he followed the convoy of assailants and abducted women and girls up to the Statue of the Virgin Mary in Mugombwa, where he remained for about five minutes.<sup>12555</sup> According to Witness JAMES, he saw Witness BOZAN at the Statue of the Virgin Mary trying to convince the assailants to release the women and girls.<sup>12556</sup> Witness BOZAN's testimony provides further corroboration of this sequence of events; Witness BOZAN testified that he followed the convoy to the Statue of the Virgin Mary where he asked the assailants to release the girls, or to at least inform their respective families, but his request was rejected. There were other people present at the scene who were arguing with the assailants.<sup>12557</sup>

4729. Witness QAR gave hearsay testimony that the women and girls were taken to Gasenyi, a valley between Mugombwa and Kibayi where there were furnaces,<sup>12558</sup> and where the women and girls were killed.<sup>12559</sup> She testified that she knew they were killed because none of them came back.<sup>12560</sup> Witness MUZIK's eyewitness account supports Witness QAR's hearsay testimony. Witness MUZIK testified that he followed the attackers to Gasenyi, on the border between Kibayi and Muganza *communes*, where he saw the bodies of five dead girls in pits which were used as ovens for making bricks. The bodies had been hacked into pieces using machetes. Witness MUZIK and some others buried the corpses.<sup>12561</sup> Witness ANGES, Witness KWEPO and Brother Stan gave hearsay testimony that the abducted persons had been killed at a brick factory between Saga and Mugombwa<sup>12562</sup> and Witness BOZAN gave hearsay testimony that the girls had been taken to Gasenyi to be killed.<sup>12563</sup>

4730. Witness FAU testified that in late May or early June 1994, three assailants called Cassien Ngona, Nyambindi and Rutabana came to a house, accompanied by a crowd who

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<sup>12551</sup> T. 21 November 2001 p. 103 (Witness QAR).

<sup>12552</sup> T. 6 February 2004 p. 19 (ICS) (Witness QAF).

<sup>12553</sup> T. 9 March 2004 p. 22 (ICS) (Witness FAU).

<sup>12554</sup> T. 19 November 2001 p. 60; T. 21 November 2001 p. 99 (Witness QAR).

<sup>12555</sup> T. 2 June 2008 pp. 49-50 (ICS) (Witness JAMES).

<sup>12556</sup> T. 2 June 2008 p. 50 (ICS) (Witness JAMES).

<sup>12557</sup> T. 16 September 2008 pp. 17-18 (ICS) (Witness BOZAN).

<sup>12558</sup> T. 19 November 2001 p. 58; T. 21 November 2001 p. 101 (Witness QAR).

<sup>12559</sup> T. 19 November 2001 pp. 60-61; T. 21 November 2001 pp. 102, 107 (Witness QAR).

<sup>12560</sup> T. 21 November 2001 pp. 102, 107 (Witness QAR).

<sup>12561</sup> T. 19 June 2008 pp. 34-37 (ICS) (Witness MUZIK).

<sup>12562</sup> T. 20 August 2008 p. 53 (ICS) (Witness ANGES); T. 18 September 2008 p. 49 (Brother Stan); T. 27 August 2008 pp. 17-18 (ICS) (Witness KWEPO).

<sup>12563</sup> T. 16 September 2008 p. 21 (ICS) (Witness BOZAN).

remained outside.<sup>12564</sup> They took Nambaje and the young girl she was looking after, and killed them in the home of a Tutsi named Kinyagi, who had also been killed.<sup>12565</sup>

4731. The Chamber considers Witness MUZIK's account of the event to be not credible. The witness was charged with the custody of Yasina and another girl,<sup>12566</sup> the daughter of his cousin's wife, and yet was not able to prevent her death. He was not present during their abduction and therefore his evidence is questionable. The Chamber considers his testimony to be not credible in this regard.

4732. The Chamber finds that while Witness QAR's account of the circumstances of the abduction is corroborated in material respects by both Prosecution and Defence witnesses, she is the sole witness to testify that she was among the abducted women and girls, and that Ndayambaje was present during the abduction.

4733. The Chamber recalls that on cross-examination, the Ndayambaje Defence sought to adduce some inconsistencies between Witness QAR's testimony at trial and her previous statements to the Tribunal's investigators. Witness QAR was referred to her previous statement of 14 October 1997 which states that there was a house-to-house search and that four girls from Karonkano *cellule*, Mugombwa *secteur*, and a teacher from Saga were brought out. The teacher was accused of writing to the *Inkotanyi*. The statement recorded that when Ndayambaje arrived in Mugombwa he said, "[w]ere you not told that if you sweep the dirt towards your house it heaps up and ends up chasing you out of your house, then throw away the dirt".<sup>12567</sup> Witness QAR testified her statement was not recorded correctly. More than four women were detained; four were from Mugombwa and four were from other *secteurs*.<sup>12568</sup> She further testified that the words that she attributed to Ndayambaje in her testimony at trial, *i.e.* that the attackers should do what they wanted with the women and girls, and that among those abducted were intellectuals who should be taken away, had the same meaning as those reflected in her previous statement.<sup>12569</sup> According to this statement, Witness QAR did not know what finally happened to the abducted women and girls, but she later learned that they had been taken to a brickyard in Mugombwa.<sup>12570</sup>

4734. On being referred to her previous statement of 20 June 1995, which stated that among the women were some who could write and were in correspondence with the *Inkotanyi*, and that the women were massacred "on the spot", Witness QAR testified that this was not correct; she did not say that they were killed on the spot but that they were taken to the furnaces at Gasenyi.<sup>12571</sup> The Chamber accepts Witness QAR's explanation for this minor discrepancy. The Chamber does not consider these alleged inconsistencies between her testimony at trial and her previous statements of 14 October 1997 and 20 June 1997 to be sufficiently serious to

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<sup>12564</sup> T. 9 March 2004 p. 22 (ICS); T. 9 March 2004 p. 27 (HC) (Witness FAU) (French) (for spelling of the assailants' names).

<sup>12565</sup> T. 4 March 2004 pp. 75, 77 (Witness FAU).

<sup>12566</sup> T. 19 June 2008 pp. 30-31 (ICS) (Witness MUZIK).

<sup>12567</sup> Defence Exhibit 11B (Ndayambaje) (14 October 1997, Statement of Witness QAR).

<sup>12568</sup> T. 21 November 2001 pp. 105-106 (Witness QAR).

<sup>12569</sup> T. 21 November 2001 p. 106 (Witness QAR).

<sup>12570</sup> T. 21 November 2001 pp. 107-108 (Witness QAR).

<sup>12571</sup> T. 21 November 2001 pp. 111-113 (Witness QAR); Defence Exhibit 11B (Ndayambaje) (20 June 1995, Statement of Witness QAR to Belgian Authorities).

undermine Witness QAR's credibility; the inconsistencies are minor and do not go to the root of her account.

4735. The Chamber observes that Defence Witnesses JAMES and BOZAN directly contradict Witness QAR's testimony. According to their testimonies, Witness QAR was not among the abductees and Ndayambaje did not speak with the assailants at the Statue of the Virgin Mary during the abduction.<sup>12572</sup>

4736. The Chamber accepts Witness JAMES' evidence insofar as it corroborates Witness QAR's account of the abduction of the Tutsi women and girls and their gathering at the Statue of the Virgin Mary in Mugombwa. The Chamber observes that Witness JAMES testified that Witness QAR gave false testimony regarding the abduction of Tutsi women and girls. According to Witness JAMES, Witness QAR was at a house all day on the day of the abduction and did not travel to the Statue of the Virgin Mary with the assailants.<sup>12573</sup>

4737. Witness JAMES testified that on the day of the abduction he was working outside, at his brother's bar.<sup>12574</sup> The Chamber observes that Defence Exhibit 655A identifies the location of the witness' brother's bar in relation to the house where the witness asserts Witness QAR sought refuge during the day of the abduction.<sup>12575</sup> The Chamber considers that, notwithstanding the proximity between the two locations, Witness JAMES was working on that day and therefore was not in a position to testify that Witness QAR did not leave the house at all on the day of the abduction. Furthermore, according to his testimony, when he followed the assailants to the Statue of the Virgin Mary, he was there for less than five minutes before returning to his place of work.<sup>12576</sup>

4738. According to Witness QAR's testimony, the assailants waited for some time for Ndayambaje to arrive.<sup>12577</sup> Given the short time that Witness JAMES was present at the Statue of the Virgin Mary, his testimony does not preclude Witness QAR's presence at the statue after he left. The Chamber therefore rejects Witness JAMES' testimony that Witness QAR gave false testimony regarding the abduction of Tutsi women and girls since he was not in a position to make this assertion.

4739. With respect to Witness JAMES' testimony that Ndayambaje was not present at the Statue of the Virgin Mary, the Chamber finds that he was at the Statue of the Virgin Mary for less than five minutes before returning to work, 115 metres away from the statue.<sup>12578</sup> Witness JAMES was therefore not in a position to testify that Ndayambaje did not arrive at the statue during the abduction, particularly since Witness QAR testified that Ndayambaje arrived in a vehicle and did not get out when he spoke with Masima.<sup>12579</sup>

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<sup>12572</sup> T. 2 June 2008 pp. 47-48, 52 (ICS) (Witness JAMES); T. 16 September 2008 p. 19 (ICS) (Witness BOZAN); T. 18 September 2008 p. 7 (ICS) (Witness BOZAN).

<sup>12573</sup> T. 2 June 2008 pp. 47-48 (ICS) (Witness JAMES).

<sup>12574</sup> T. 3 June 2008 p. 24 (ICS) (Witness JAMES).

<sup>12575</sup> T. 3 June 2008 p. 24 (ICS) (Witness JAMES).

<sup>12576</sup> T. 2 June 2008 p. 50 (ICS) (Witness JAMES).

<sup>12577</sup> T. 19 November 2001 p. 60; T. 21 November 2001 pp. 99-100 (Witness QAR).

<sup>12578</sup> T. 2 June 2008 pp. 49-50 (ICS) (Witness JAMES).

<sup>12579</sup> T. 21 November 2001 p. 100 (Witness QAR).

4740. The Chamber recalls its previous finding that Witness JAMES' testimony is not credible in respect of his assertion that Witness QAR lied in relation to the massacre at Mugombwa Church (). The Chamber also recalls its previous finding that Witness JAMES' testimony that Witness QAR did not attend Ndayambaje's swearing-in ceremony was not credible (). Based upon the above considerations, the Chamber therefore finds that Witness JAMES' testimony that Ndayambaje did not come to the Statue of the Virgin Mary does not cast doubt on Witness QAR's eyewitness account.

4741. Witness BOZAN testified that he went to the Statue of the Virgin Mary during the abduction to ask the assailants to release the women and girls.<sup>12580</sup> Witness BOZAN's presence at the statue is corroborated by Witness JAMES who saw him speaking with the attackers.<sup>12581</sup> The Chamber accepts the testimony of Witness BOZAN and Witness JAMES on this point.

4742. According to Witness BOZAN's testimony, neither Ndayambaje nor Witness QAR were present at the statue at this time.<sup>12582</sup> Witness BOZAN testified that the conversation between him and the assailants lasted about five minutes, after which time he left to inform the *bourgmestre* of what was going on.<sup>12583</sup> The Chamber finds that Witness BOZAN was only at the statue for about five minutes, at the same time as Witness JAMES. Like Witness JAMES, he too was not in a position to testify that Witness QAR or Ndayambaje were not present at the statue during the abduction at a later time.

4743. Witness BOZAN testified that he returned to the Statue of the Virgin Mary one hour and 15 to one hour and 25 minutes later.<sup>12584</sup> Upon return, he was informed that the girls had been taken to Gasenyi to be killed.<sup>12585</sup>

4744. The Chamber therefore finds that Witness BOZAN's testimony that neither Witness QAR nor Ndayambaje were present at the Statue of the Virgin Mary during the abduction does not cast doubt on Witness QAR's eyewitness account. Witness BOZAN was an official and should have, as such, been the first port of call for protection for these girls. He failed to take any steps to issue this protection and even though he knew the assailants, he did not arrest them. Furthermore, Witness BOZAN was implicated in the massacres at Mugombwa and was said to have had a machete when he went there. The Chamber therefore considers the testimony of Witness BOZAN is not credible.

4745. In summary, the presence of Witnesses BOZAN and JAMES in the vicinity of the Statue of the Virgin Mary on the day of the abduction, for a short overlapping period of time, does not preclude either Witness QAR's or Ndayambaje's presence at the site. Their evidence, although consistent, is not conclusive.

4746. In light of all of the foregoing, the Chamber finds Witness QAR's account of the abduction of Tutsi women and girls in Mugombwa to be credible. She was a survivor of the abduction and her testimony was compelling with respect to this allegation. The Chamber

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<sup>12580</sup> T. 16 September 2008 p. 18 (ICS) (Witness BOZAN).

<sup>12581</sup> T. 2 June 2008 p. 50 (ICS) (Witness JAMES).

<sup>12582</sup> T. 16 September 2008 pp. 18-19 (ICS); T. 18 September 2008 p. 7 (ICS) (Witness BOZAN).

<sup>12583</sup> T. 16 September 2008 p. 18 (ICS) (Witness BOZAN).

<sup>12584</sup> T. 18 September 2008 p. 6 (ICS) (Witness BOZAN).

<sup>12585</sup> T. 16 September 2008 p. 21 (ICS) (Witness BOZAN).

therefore finds that the Prosecution has proven beyond a reasonable doubt that Ndayambaje came to the Statue of the Virgin Mary during the abduction and that he made it clear that the abductors were free to do what they wanted with the girls. The Chamber also finds it established beyond a reasonable doubt that the abducted women and girls were subsequently killed at a brick factory at Gasenyi.

### **3.6.45 Evacuation of Tutsi Orphans, Mid-June 1994**

#### **3.6.45.1 Introduction**

4747. The Nyiramasuhuko and Ntahobali Indictment and the Nsabimana and Nteziryayo Indictment both allege that in mid-June 1994, Ntahobali and Nteziryayo attempted to prevent the evacuation from Butare of about 300 orphans and their adult supervisors. They selected approximately 40 individuals whom they believed to be adult Tutsis, and forced them to remain in Rwanda.<sup>12586</sup>

4748. The Prosecution submits that on 5 June 1994, a convoy of orphans was to leave the *Groupe Scolaire* for the Burundi border. As the children were boarding the vehicles, Ntahobali arrived with *Interahamwe* and tried to prevent the children from embarking. The Prosecution contends that Ntahobali kicked and dragged the children and struck them with his rifle butt, and the *Interahamwe* in his company created disorder and pandemonium. At that stage, Colonel Munyengango and *Préfet* Nsabimana arrived and spoke with Ntahobali and his group, who then allowed the convoy to leave.<sup>12587</sup>

4749. The Prosecution further submits that when the convoy arrived at the Akanyaru border in the evening, Nteziryayo collated the lists of the members of the convoy, read the names and prevented some people from crossing over. The Prosecution argues that Ntahobali and Nteziryayo segregated about 30 people, who were loaded into buses and taken back to Butare, on the basis that they were Tutsis.<sup>12588</sup>

4750. The Prosecution submits that Nteziryayo's ability to intercept an International Red Cross evacuation and prevent individuals from crossing the border is indicative of Nteziryayo's power.<sup>12589</sup>

4751. In support of its submissions, the Prosecution relies on the testimony of Prosecution Witness TQ and Prosecution Expert Witness Alison Des Forges.

4752. The Ntahobali Defence denies that Ntahobali was present at the *Groupe Scolaire*, submitting alibi evidence placing him in Cyangugu from around 26 or 27 May 1994 to 5 June 1994. The Ntahobali Defence further submits that there was no incident of violence before the convoy set out. It also submits that the incidents described at the *Groupe Scolaire* during this time were perpetrated by wounded soldiers. The Defence submits that a civilian figure of

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<sup>12586</sup> Para. 6.36 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10 against Ntahobali); Para. 6.33 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo and in support of all counts against Nsabimana).

<sup>12587</sup> Prosecution Closing Brief, p. 173, para. 45.

<sup>12588</sup> Prosecution Closing Brief, p. 173, para. 46.

<sup>12589</sup> Prosecution Closing Brief, p. 346, para. 129.

authority, and not the *Interahamwe*, sent the adults back from the border.<sup>12590</sup> Furthermore, the Ntahobali Defence denies that Nsabimana was present at the *Groupe Scolaire* at the outset of the convoy.<sup>12591</sup>

4753. The Nteziryayo Defence does not deny that Nteziryayo was present throughout the evacuation of 5 June 1994.<sup>12592</sup> However, it denies Prosecution Witness TQ's uncorroborated evidence concerning the events that occurred along the route from *Groupe Scolaire* to the border and at the border itself.<sup>12593</sup>

4754. In support of its submissions, the Ntahobali and Nteziryayo Defence teams rely on the testimonies of Ntahobali Defence Witness WTHSA, Nsabimana Defence Witness Alexis Briquet, Nsabimana and Nteziryayo. In support of his alibi, the Ntahobali Defence relies on Ntahobali, Nyiramasuhuko Defence Witnesses Denise Ntahobali, Clarisse Ntahobali, Céline Nyiraneza, Witness WBUC, Maurice Ntahobali and Ntahobali Defence Witnesses Béatrice Munyenyezi and Witness WDUSA.

### 3.6.45.2 Preliminary Issues

4755. The Chamber notes that this allegation that Ntahobali and Nteziryayo attempted to prevent the evacuation of about 300 orphans and their adult supervisors from Butare, and subsequently selected approximately 40 individuals whom they believed to be adult Tutsis, forcing them to remain in Rwanda, was pled directly in the respective Nyiramasuhuko and Ntahobali and Nsabimana and Nteziryayo Indictments.<sup>12594</sup>

4756. The Ntahobali Defence does not deny that the evacuation of orphans took place on 5 June 1994 from the *Groupe Scolaire*. It submits, however, that these events, directly implicating Ntahobali, were not clearly set forth in the Indictment and that the evidence led in relation thereto expanded the criminal responsibility alleged.<sup>12595</sup>

4757. The Chamber recalls that the structure of Paragraph 6.33 of the Nsabimana and Nteziryayo Indictment and Paragraph 6.36 of the Nyiramasuhuko and Ntahobali Indictment are identical. Paragraph 6.36 of the Nyiramasuhuko and Ntahobali Indictment alleges that in mid-June 1994, Ntahobali and Nteziryayo attempted to prevent the evacuation of orphans.<sup>12596</sup> Nevertheless, this paragraph fails to specify the actual date of the evacuation and the location where these incidents were purported to have occurred. The Chamber therefore finds this paragraph to be defective.

4758. The Chamber must then determine whether this specific paragraph has been cured of these defects through subsequent Prosecution disclosures.

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<sup>12590</sup> Ntahobali Closing Argument, T. 23 April 2009 p. 10.

<sup>12591</sup> Ntahobali Closing Brief, paras. 318, 320-322; Ntahobali Closing Argument, T. 23 April 2009 p. 10.

<sup>12592</sup> T. 6 June 2007 p. 42 (Nteziryayo).

<sup>12593</sup> Nteziryayo Closing Brief, paras. 710, 714-715; Nteziryayo Closing Argument, T. 28 April 2009 pp. 29-30.

<sup>12594</sup> Para. 6.36 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.33 of the Nsabimana and Nteziryayo Indictment.

<sup>12595</sup> Ntahobali Closing Brief, para. 78 (xvi).

<sup>12596</sup> Para. 6.36 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.33 of the Nsabimana and Nteziryayo Indictment.

4759. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness TQ, who was expected to testify that he organised a convoy of children to be evacuated from the *Groupe Scolaire* to the Burundian border on 5 June 1994. Prior to the evacuation, as the children were being loaded, Ntahobali arrived with a group of militiamen and soldiers, in order to prevent the children from embarking. The children were physically struck by members of this group. Ntahobali's group only abated in their attacks and let the convoy pass through when Nsabimana subsequently spoke to him.<sup>12597</sup>

4760. Furthermore, Witness TQ was expected to testify that as the convoy went on its way, Ntahobali and Nteziryayo both tried to cut off the convoy being led by Nsabimana. Although the convoy made it to the border and managed to negotiate passage for the children without identification checks, Ntahobali and Nteziryayo arrived and imposed identification checks prior to allowing passage. They also refused to let about 30 people cross. These people were selected by Nteziryayo on the basis of their physical appearance.<sup>12598</sup> The Chamber notes that the summary of the intended evidence of Witness TQ provided in the Prosecution Pre-Trial Brief provides adequate details as to the exact date and the specific locations.

4761. The Chamber further observes that the prior statement of Witness TQ, dated 28 and 29 July 1998, was disclosed to the Defence on 4 November 1998, 15 November 2000 and again on 4 December 2000. This statement made specific reference to the evacuation of orphans on 5 June 1994, and to the involvement of Ntahobali and Nteziryayo respectively. These disclosures were made well before the start of Witness TQ's testimony on 6 September 2004.<sup>12599</sup>

4762. The Chamber finds that the substance of Witness TQ's previous statement is consistent with the summary of its anticipated testimony contained in the Appendix to the Pre-Trial Brief with respect to the attempts to prevent the evacuation of orphans and their adult supervisors and Ntahobali's and Nteziryayo's involvement therein.

4763. For the foregoing reasons, the Chamber considers that Paragraph 6.36 of the Nyiramasuhuko and Ntahobali Indictment is cured by the disclosure of timely, clear and consistent information in line with previous jurisprudence.<sup>12600</sup> Consequently, Ntahobali was reasonably able to understand the nature of the charges against him and there was no apparent prejudice in the preparation of his defence case.

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<sup>12597</sup> Prosecution Pre-Trial Brief – Appendix; Witness TQ (95) (in support of Counts 1-3, 8-9, 11 against Ntahobali).

<sup>12598</sup> Prosecution Pre-Trial Brief – Appendix; Witness TQ (95) (in support of Counts 1-3, 5-9 against Nteziryayo and in support of Counts 1-3, 8-9, 11 against Ntahobali).

<sup>12599</sup> 28 and 29 July 1998, Redacted Statement of Witness TQ, disclosed 4 November 1998 in French and in English; 28 and 29 July 1998, Unredacted Statement of Witness TQ, disclosed 1 February 2002 in French and in English

<sup>12600</sup> See generally *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105.

### 3.6.45.3 Evidence

#### Prosecution Witness TQ

4764. Witness TQ, a Hutu, was a detained witness when he gave his previous statement in July 1998, but was subsequently acquitted on charges of genocide when he gave evidence at trial.<sup>12601</sup> He was released on 21 January 2003.<sup>12602</sup> When testifying about refugees that were sheltered at the *Group Scolaire*, Witness TQ stated that on 21 April 1994,<sup>12603</sup> soldiers and civilians forced more than 1,500 Red Cross orphans, Red Cross employees and refugees outside and took them to the basketball courts.<sup>12604</sup> Around 40 persons were identified as Tutsis, based upon their identity cards or physical features, including the size of their nose, and were separated from the others. They were beaten, intimidated by the soldiers, characterised as RPF accomplices and called *Inkotanyi* and *Inyenzi* by the *Interahamwe*.<sup>12605</sup>

4765. Witness TQ testified that on or around 28 May 1994, he and Alexis Briquet, a representative of the NGO *Terre des Hommes* went to see *Préfet* Nsabimana at the Butare *préfecture* office.<sup>12606</sup> They went there to show the *préfet* an official document which would allow them to evacuate children gathered at the *Groupe Scolaire* to Burundi.<sup>12607</sup> While Briquet was discussing matters with *Préfet* Nsabimana, Witness TQ saw Colonel Nteziryayo with Colonel Simba.<sup>12608</sup> The former told him that Red Cross employees were conniving with the enemy, sending youths to Burundi to join the ranks of the *Inkotanyi*.<sup>12609</sup>

4766. Witness TQ testified that there were four convoys in total, evacuating orphans and refugees to the Burundian border, two of which left from the *Groupe Scolaire*; the first on 4 June 1994 and the second on 5 June 1994.<sup>12610</sup>

4767. On 5 June 1994 between 12.00 p.m. and 1.00 p.m., approximately 500 people, including Red Cross orphans, students from the *Groupe Scolaire*, refugees, orphans from Butare town or surrounding areas and members of the orphanage who belonged to the congregation of brothers, were prepared to travel in the long convoy of vehicles.<sup>12611</sup>

4768. This convoy consisted of three ONATRACOM buses provided by the ESO command and *Préfet* Nsabimana, and a number of trucks belonging to the Catholic Relief Services and the ICRC.<sup>12612</sup> The number of evacuees on 4 and 5 June 1994 totalled more than 700 people, 80 percent of which were Tutsi orphans.<sup>12613</sup> The witness averred that each supervisor was in

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<sup>12601</sup> T. 7 September 2004 p. 21 (ICS) (Witness TQ).

<sup>12602</sup> T. 7 September 2004 p. 22 (ICS) (Witness TQ).

<sup>12603</sup> T. 9 September 2004 p. 16 (ICS) (Witness TQ).

<sup>12604</sup> T. 6 September 2004 p. 48 (ICS) (Witness TQ).

<sup>12605</sup> T. 6 September 2004 p. 48 (ICS) (Witness TQ).

<sup>12606</sup> T. 6 September 2004 pp. 68-69 (ICS); T. 9 September 2004 p. 24 (ICS) (Witness TQ).

<sup>12607</sup> T. 6 September 2004 p. 69 (ICS) (Witness TQ).

<sup>12608</sup> T. 9 September 2004 p. 25 (ICS) (Witness TQ).

<sup>12609</sup> T. 6 September 2004 pp. 68-69 (ICS); T. 9 September 2004 p. 25 (ICS) (Witness TQ).

<sup>12610</sup> T. 7 September 2004 pp. 5, 8 (ICS); T. 9 September 2004 p. 28 (ICS) (Witness TQ).

<sup>12611</sup> T. 9 September 2004 p. 28 (ICS) (Witness TQ).

<sup>12612</sup> T. 7 September 2004 pp. 7-8 (ICS) (Witness TQ).

<sup>12613</sup> T. 7 September 2004 pp. 7, 9 (ICS); T. 9 September 2004 p. 26 (ICS) (Witness TQ).



charge of groups of five children, and had a list of those under his care.<sup>12614</sup> However, the names on these lists were not the real names of the children and most of the children had no identity cards or documents with them.<sup>12615</sup>

4769. Ntahobali, accompanied by around 20 *Interahamwe* and civilians, arrived at the *Groupe Scolaire* just as the children were boarding the first bus.<sup>12616</sup> The militiamen were wearing *Interahamwe* uniforms, namely the *kitenge*, while others were dressed in civilian clothes. They were bearing firearms and others were carrying traditional weapons. Ntahobali was sporting a very large beard; he was wearing trousers and was carrying a firearm, but had no uniform on.<sup>12617</sup> Soldiers arrived at the *Groupe Scolaire* prior to Ntahobali and his group and positioned themselves on the sidelines awaiting instructions from their superiors.<sup>12618</sup>

4770. Ntahobali personally hit some children with his rifle butt, kicked them and dragged them away from the vehicles, preventing them from boarding the buses.<sup>12619</sup> The perpetrators acted in plain sight of everyone and in broad daylight.<sup>12620</sup> The children struck by Ntahobali and his group were less than 14 years of age. Some of them sustained fractures<sup>12621</sup> and it clearly appeared as though it was an operation to prevent the children from fleeing.<sup>12622</sup>

4771. At this point, Colonel Munyengango and *Préfet* Nsabimana arrived. The officials spoke to Ntahobali and his group, who then stood aside, and the children boarded the vehicles. There was pandemonium, and some of the young girls got injured, were dragged down and had their clothes torn off them so they were naked.<sup>12623</sup>

4772. The witness testified that the convoy subsequently departed for Burundi under the aegis of *Préfet* Nsabimana and Munyengango.<sup>12624</sup> The families of several military authorities, including those of Major Ntambabazi and Colonel Munyengango travelled in the convoy, thus ensuring their security.<sup>12625</sup>

4773. *Préfet* Nsabimana, Colonel Munyengango and Nteziryayo were also part of the convoy.<sup>12626</sup> He could not recall if Nteziryayo joined the convoy from the *Groupe Scolaire*. Ntahobali also accompanied the convoy from the *Groupe Scolaire* aboard a Combi vehicle.<sup>12627</sup>

4774. Colonel Munyengango and his entourage sat in a pickup truck. There were soldiers in the back cabin of the pickup and there was only one military vehicle of this sort. Colonel

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<sup>12614</sup> T. 7 September 2004 p. 7 (ICS) (Witness TQ).

<sup>12615</sup> T. 8 September 2004 p. 10 (ICS) (Witness TQ).

<sup>12616</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12617</sup> T. 8 September 2004 p. 17 (ICS) (Witness TQ).

<sup>12618</sup> T. 8 September 2004 p. 16 (ICS) (Witness TQ).

<sup>12619</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12620</sup> T. 8 September 2004 p. 17 (ICS) (Witness TQ).

<sup>12621</sup> T. 7 September 2004 p. 9 (ICS) (Witness TQ).

<sup>12622</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12623</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12624</sup> T. 7 September 2004 pp. 8, 10 (ICS) (Witness TQ).

<sup>12625</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12626</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 28 (ICS) (Witness TQ).

<sup>12627</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 pp. 28-29 (ICS) (Witness TQ).

Munyengango's vehicle changed position throughout the duration of the convoy. He would be in the front of the convoy and negotiate for the roadblocks to be opened for the convoy to move on and then would come to the back to ensure that they had not left anybody behind. The witness himself was in a hearse vehicle belonging to the Red Cross, which followed Colonel Munyengango's vehicle, as the Munyengango presented the vehicle as belonging to the Red Cross and would intimate that the vehicle was intended for the evacuation of children.

4775. The convoy was stopped at the Kigembe roadblock in between the road leading to Gikongoro and the Nyakibanda Major Seminary, by members of the civil defence group who wanted the children to get off the trucks.<sup>12628</sup> Nteziryayo came to the roadblock and discussed with those members of the civil defence group in a very ordinary manner as if they were acquainted with one another.<sup>12629</sup> The witness stated that Nteziryayo was the head of the civil defence group.<sup>12630</sup> He indicated that members of the civil defence group were armed and brutal and it was clear that these people had been incited to hatred. On asking people to show their identification papers, members of civil defence would beat the people and call them *Inyenzi/Inkotanyi*.<sup>12631</sup> The civil defence group then became violent and indicated that the children were to disembark from the vehicles and walk through the roadblock "one after the other".<sup>12632</sup>

4776. At this point, the Combi vehicle in which Ntahobali was travelling caught on fire, left behind a trail of smoke and caught the attention of those at the roadblock, who ran to verify as to what was happening.<sup>12633</sup> Ntahobali and the other passengers got out of the burning vehicle. At that time Ntahobali was carrying a Kalashnikov rifle.<sup>12634</sup> The convoy managed to continue and reached the Akanyaru border without any further incident and without going through any other roadblock.<sup>12635</sup>

4777. The witness also testified that they were stopped at a roadblock at Kumukoni where the *Interahamwe* almost shot at the soldiers who were escorting Colonel Munyengango. *Préfet* Nsabimana explained to them that the evacuation was a Government authorised operation and the *Interahamwe* were appeased and the convoy could pass.

4778. The witness recalled that there was a roadblock at the *Groupe Scolaire*, set up in front of a place where there were some sisters. There was also one "where Ntahobali was", another near or at Mandarungira's house, one in Kumukoni, others set up at a place called Mukura, one at Kigembe and finally one near the border at Kanyaruga.

4779. Witness TQ testified that upon arrival at the Akanyaru border in the evening, the witness drew up a list with names of the orphans and refugees and asked the instructors to gather the children.<sup>12636</sup> All the lists were given to Alexis Briquet, however subsequently it was

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<sup>12628</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>12629</sup> T. 7 September 2004 pp. 10, 15 (ICS) (Witness TQ).

<sup>12630</sup> T. 7 September 2004 p. 14 (ICS) (Witness TQ).

<sup>12631</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>12632</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>12633</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ).

<sup>12634</sup> T. 9 September 2004 p. 36 (ICS) (Witness TQ).

<sup>12635</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>12636</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

Witness TQ himself who executed a roll-call of all the names on the list.<sup>12637</sup> However, the list was taken from the witness by Colonel Nteziryayo, who read out the names, allowing some of the children and refugees to cross the border to Burundi and forbidding others from crossing the border.<sup>12638</sup> The witness opined that there was disorder at this stage. According to the witness, “we were told that we should let the Hutus cross over and hold back the Tutsis.” He responded that the children were from all ethnic backgrounds and that some were so young that their ethnic background was not known.<sup>12639</sup>

4780. The witness then requested Nteziryayo to be indulgent and let the children and their instructors cross the border without any prior conditions.<sup>12640</sup> Both Ntahobali and Nteziryayo segregated the orphans and refugees, which they claimed were Tutsis, based on their physical characteristics. These persons were then “encircled by *Interahamwe* and loaded into buses.” Among the people set aside was Nathan Bicunda.<sup>12641</sup>

4781. The witness specified that 30 of the 500 evacuees were set aside during the process.<sup>12642</sup> Among them were around eight to ten children.<sup>12643</sup> Although the witness went on to speculate that there were more than 20 out of the 30 people who were over the age of 14.<sup>12644</sup> When asked as to why he only specified that adults were kept back in his previous statement of 28 and 29 July 1998, the witness responded that on that day Ntahobali and Nteziryayo were saying that these were big children and that the distinction was between small children and older children. The witness said, “... it is the term ‘adults’ which comes to mind when you say they are elderly people, but in fact, there were children who were referred to as adults so that they can prevent them from crossing the border. So, in fact, they were children, but the killers referred to them as adults as to prevent them to cross the border.”<sup>12645</sup>

4782. The witness testified that Red Cross staff who came to help the children pass the border went away with those who were authorised to go through. As for the remaining 30 individuals, *Préfet* Nsabimana and Colonel Munyengango agreed to find a place for them to spend the night and they asked the witness to stay with those people. At that point, the witness told an ICRC employee that he “[could not] guarantee their safety, but [he] agree[d] to stay on with them.” Nteziryayo reprimanded the witness for his comments and asked in what capacity he thought he could guarantee anyone’s safety.<sup>12646</sup>

4783. The witness then got into a bus and accompanied the 30 individuals back to a centre in Karubanda, in Butare. They only arrived there at around 7.30 p.m. to 8.00 p.m. as they had spent a lot of time at Akanyaru. The witness stayed there for about one month.<sup>12647</sup>

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<sup>12637</sup> T. 9 September 2004 pp. 29-30 (ICS) (Witness TQ).

<sup>12638</sup> T. 7 September 2004 p. 15 (ICS); T. 9 September 2004 pp. 29-30 (ICS) (Witness TQ).

<sup>12639</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>12640</sup> T. 7 September 2004 pp. 15-16 (ICS) (Witness TQ).

<sup>12641</sup> T. 7 September 2004 p. 16 (ICS) (Witness TQ).

<sup>12642</sup> T. 7 September 2004 p. 16 (ICS); T. 9 September 2004 p. 30 (Witness TQ).

<sup>12643</sup> T. 8 September 2004 p. 11 (ICS) (Witness TQ).

<sup>12644</sup> T. 9 September 2004 p. 30 (ICS) (Witness TQ).

<sup>12645</sup> T. 8 September 2004 p. 12 (ICS) (Witness TQ).

<sup>12646</sup> T. 7 September 2004 p. 17 (ICS) (Witness TQ).

<sup>12647</sup> T. 7 September 2004 p. 17 (ICS) (Witness TQ).

4784. The witness testified that there were two further evacuation convoys organised; between 16 and 18 June 2004 and on 2 July 1994 as part of *Operation Turquoise*.<sup>12648</sup> The first convoy involved the evacuation of 180 children, and was from Karubanda to Akanyaru.<sup>12649</sup> They encountered no problems on this occasion.<sup>12650</sup> The convoy of 2 July 1994 was assisted by French soldiers, and evacuated those 30 persons who had been prevented from crossing the border into Burundi on 5 June 1994.<sup>12651</sup>

4785. The witness identified Nsabimana, Nteziryayo and Ntahobali in court.<sup>12652</sup> He said he knew Ntahobali since childhood because they had attended the same school in Butare, the Butare school complex. The witness claimed to know his likings and his preferences. According to the witness, Ntahobali was an *Interahamwe*.<sup>12653</sup> He added that during the events, he also saw Ntahobali at a roadblock mounted in front of the Ntahobali family house.<sup>12654</sup> He testified that he saw Ntahobali driving his mother, Pauline Nyiramasuhuko, in a *Peugeot* pickup truck that belonged to a man named Rwamukwaya who was killed during the genocide and who was a neighbour of Nyiramasuhuko. This was around 20 or 21 June 1994.<sup>12655</sup>

#### Prosecution Expert Witness Alison Des Forges

4786. Alison Des Forges testified that Nsabimana had told her that the convoy left the *Groupe Scolaire* at about 3.00 p.m. Des Forges deduced that the problem encountered at “Shalom’s barrier” shortly after this departure was fairly brief, under one and a half hours in duration. She further testifies that at some point Nsabimana went to get the help of higher military officers because he was unable to proceed. However the witness stated she may have been confusing the situation, but that Nsabimana was definitely assisted by high ranking military officers.<sup>12656</sup>

#### Ntahobali Defence Witness WTHSA

4787. Witness WTHSA, a Hutu studying at the University of Butare testified that in April 1994 he noticed the presence of children at the *Groupe Scolaire*. He stated that there were some displaced children from Kacyiru orphanage and other orphans who were under the responsibility of the brothers who ran the school.<sup>12657</sup> He personally witnessed these children boarding buses and other vehicles and leaving the *Groupe Scolaire* during the first week of June 1994.<sup>12658</sup> He testified that of the evacuees, there were more young children but there were also adolescents and those who were in charge of the group.<sup>12659</sup>

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<sup>12648</sup> T. 7 September 2004 pp. 17, 19 (ICS); T. 9 September 2004 p. 32 (ICS) (Witness TQ).

<sup>12649</sup> T. 7 September 2004 pp. 17-18 (ICS) (Witness TQ).

<sup>12650</sup> T. 7 September 2004 p. 17 (ICS) (Witness TQ).

<sup>12651</sup> T. 7 September 2004 p. 19 (ICS); T. 9 September 2004 p. 30 (ICS) (Witness TQ).

<sup>12652</sup> T. 6 September 2004 p. 52 (ICS); T. 7 September 2004 pp. 11, 19-20 (ICS) (Witness TQ).

<sup>12653</sup> T. 7 September 2004 pp. 9-10 (ICS) (Witness TQ).

<sup>12654</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ).

<sup>12655</sup> T. 9 September 2004 pp. 33-34 (ICS) (Witness TQ).

<sup>12656</sup> T. 17 June 2004 p. 30 (Des Forges).

<sup>12657</sup> T. 23 January 2006 p. 34 (Witness WTHSA).

<sup>12658</sup> T. 23 January 2006 pp. 34, 50 (Witness WTHSA).

<sup>12659</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

4788. He was on the premises at the time of the evacuation because those who worked in the hospital knew that the children were going to be evacuated.<sup>12660</sup> He was already outside and waiting when the vehicles arrived.<sup>12661</sup> He stated that he had been informed in the morning, by those who lived at *Groupe Scolaire*, such as “Phocus” and other students, that there was going to be an evacuation.<sup>12662</sup> He said that he was at the *Groupe Scolaire*, in front of the building known as Kigoma, when he learned that the evacuation was going to take place.<sup>12663</sup> He further testified that he did not ask those who informed him how they knew that people were going to be evacuated.<sup>12664</sup>

4789. The witness estimated that between 70 and 120 children and adolescents were waiting to be evacuated on that day and that he thought they boarded two buses.<sup>12665</sup> Prior to boarding the buses, the children were in the inner court of the *Groupe Scolaire*, close to the head office. The children were in a normal state and were ready to leave. They were carrying their bags and waiting for the time to depart.<sup>12666</sup>

4790. The children and those that were guiding them were sitting down. He claimed that the buses came and stopped in front of the “cathedral”, and that those guiding the children then led them towards the buses. He stated that a crowd was following both the children and their guardians to see what was going on. At the time the children were assembled and at the time of the boarding there was no violence or agitation.<sup>12667</sup>

4791. Before the buses arrived, there were sick soldiers at the *Groupe Scolaire*, but there were also some soldiers who came at the same time as the buses. He stated that when the sick soldiers heard the children were going to be evacuated, they wanted to be displaced first and requested that the children be taken care of after them. He testified that these soldiers did not physically intervene in the departure of the children.<sup>12668</sup>

4792. The witness testified that before the children were taken away, they were sitting in front of the administrative block. Some children were sitting at the veranda and others were in front of the veranda. He stated that the children were many and were scattered all about the courtyard in front of the veranda, with the brownish earth.<sup>12669</sup>

4793. Most of the sick soldiers, who were criticising the fact that the children were being evacuated rather than them, were on the staircase of Kigoma near the Kigoma veranda, and others were around the children.<sup>12670</sup> Some of the wounded soldiers slept in the building referred to as Kigoma, others occupied the buildings of the *Groupe Scolaire*, and others, whose health situation was more serious, were at the hospital.<sup>12671</sup> He testified that there were around

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<sup>12660</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12661</sup> T. 23 January 2006 p. 61(ICS) (Witness WTHSA).

<sup>12662</sup> T. 24 January 2006 p. 6 (ICS) (Witness WTHSA).

<sup>12663</sup> T. 24 January 2006 pp. 6-7 (ICS) (Witness WTHSA).

<sup>12664</sup> T. 24 January 2006 p. 6 (ICS) (Witness WTHSA).

<sup>12665</sup> T. 23 January 2006 p. 62 (ICS) (Witness WTHSA).

<sup>12666</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12667</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12668</sup> T. 23 January 2006 p. 36 (Witness WTHSA).

<sup>12669</sup> T. 23 January 2006 pp. 43-44 (Witness WTHSA).

<sup>12670</sup> T. 23 January 2006 p. 44 (Witness WTHSA).

<sup>12671</sup> T. 23 January 2006 p. 62 (ICS) (Witness WTHSA).

30 sick soldiers in uniform in the courtyard around the children while they were waiting to be evacuated.<sup>12672</sup>

4794. The buses were ordinary, green, Government buses but he could not identify the other “vehicle”.<sup>12673</sup> He remembered seeing two buses, but could not remember the exact number.<sup>12674</sup> He testified that there was a military vehicle at the front of the convoy, and another vehicle at the end of the convoy.<sup>12675</sup> Although he later stated that he was behind the convoy, and therefore it was difficult to see which vehicles were ahead of the buses.<sup>12676</sup> However, he insists that there was a military vehicle in front, because, even though it was an ordinary vehicle and not a military truck, there were a number of soldiers on board.<sup>12677</sup>

4795. He knew one of the soldiers who was part of the escort as Colonel Munyengango. He stated that he did not know Colonel Munyengango previously but that some of the sick soldiers who were at the hospital referred to him as Colonel Munyengango.<sup>12678</sup> He claimed that Colonel Munyengango arrived with the company of soldiers in the convoy of buses between 9.00 a.m. and 10.30 a.m.<sup>12679</sup>

4796. Witness WTHSA testified that he waited because he wanted to see whether his three classmates would get into that convoy. He testified that only two of these three were able to board the buses.<sup>12680</sup> One was Hutu and the other was Tutsi.<sup>12681</sup> He stated that everyone wanted to be evacuated because war was getting closer and closer to the place where they were.<sup>12682</sup> He estimated that the buses left for Burundi between 11.00 a.m. and 1.00 p.m.<sup>12683</sup>

4797. The witness testified that he was upset that he was not evacuated but he was hesitating a bit. When it was suggested that he did not want to be evacuated at all, which is why he did not get on the bus, he replied that the reason he did not get on the bus was because there were no more seats and because he did not have more information about the health of his mother who was at home and unwell. He stated that if he had found a seat on the bus, he would have left. He stated that he went to check on his ill mother once a week. It was put to the witness that he had no wish to be evacuated and, in fact, wanted to stay behind to join in the attack on the children. He replied that he wanted to be evacuated as the war was intensifying and that everybody wanted to leave the country.<sup>12684</sup>

4798. The witness testified that during the time he was present on the premises until the time of the departure of the convoy, he did not notice any armed civilians, or persons who may have

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<sup>12672</sup> T. 23 January 2006 p. 62 (ICS); T. 24 January 2006 p. 17 (ICS) (Witness WTHSA).

<sup>12673</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12674</sup> T. 23 January 2006 p. 60 (ICS) (Witness WTHSA).

<sup>12675</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12676</sup> T. 23 January 2006 p. 60 (ICS) (Witness WTHSA).

<sup>12677</sup> T. 23 January 2006 pp. 60-61 (ICS) (Witness WTHSA).

<sup>12678</sup> T. 23 January 2006 p. 36 (Witness WTHSA).

<sup>12679</sup> T. 23 January 2006 p. 61 (ICS) (Witness WTHSA).

<sup>12680</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12681</sup> T. 23 January 2006 p. 48 (ICS) (Witness WTHSA).

<sup>12682</sup> T. 23 January 2006 p. 62 (ICS) (Witness WTHSA).

<sup>12683</sup> T. 23 January 2006 p. 48 (ICS) (Witness WTHSA).

<sup>12684</sup> T. 24 January 2006 p. 9 (Witness WTHSA).

been referred to as militia, or Prosecution Witness TQ.<sup>12685</sup> The witness testified that he knew Witness TQ as he taught him French phonetics when the witness was in his first year at *Groupe Scolaire*, and supervised students in their dormitories there.<sup>12686</sup> The witness was said to have joined the school complex in 1988.<sup>12687</sup> He testified that on the day of the convoy of children, he did not see Ntahobali on the premises. The witness denied having seen Ntahobali anywhere in Butare between 6 April 1994 and 3 July 1994.<sup>12688</sup> The witness denied that he met Ntahobali in Dennis Karema's room at the *Groupe Scolaire* at this time, attending meetings where the *Interahamwe* was present.<sup>12689</sup>

4799. Witness WTHSA testified that as a student, he knew Ntahobali, who was in a higher class. Other than that there was no special relationship between them.<sup>12690</sup> He knew Ntahobali's sister, Brigitte, his mother, Nyiramasuhuko, and his father, Maurice Ntahobali.<sup>12691</sup> However, he asserted that neither Pauline Nyiramasuhuko nor Maurice Ntahobali knew him.<sup>12692</sup>

4800. Witness WTHSA testified that other than this evacuation, he did not witness any other evacuations of orphans or children or any other persons from the *Groupe Scolaire*.<sup>12693</sup>

#### Nsabimana Defence Witness Alexis Briquet

4801. Alexis Briquet testified that in April 1994, he was in charge of emergency operations for the *Terre des Hommes* foundation which had activities in Kigali, Rwanda.<sup>12694</sup> He further testified that in order to facilitate his work, he needed to get in touch with the local official in authority and so he was introduced to *Préfet* Nsabimana by Mr. Costa Pierantonio who was the Honorary Consul of Italy in Kigali.<sup>12695</sup> Briquet testified that when he met Nsabimana at the *préfecture* office on the two occasions of 28 May 1994 and 18 June 1994, Witness TQ, a Rwandese who was working at the *Groupe Scolaire*, was also in attendance.<sup>12696</sup> Witness TQ had become Briquet's local agent in Butare and was involved as far as possible in the official steps taken during this period.<sup>12697</sup> A protocol agreement to evacuate orphans was signed on 28 May 1994.<sup>12698</sup>

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<sup>12685</sup> T. 23 January 2006 pp. 36-37 (Witness WTHSA).

<sup>12686</sup> T. 23 January 2006 pp. 30, 58 (ICS); T. 24 January 2006 p. 13 (ICS) (Witness WTHSA).

<sup>12687</sup> T. 23 January 2006 p. 59 (ICS) (Witness WTHSA).

<sup>12688</sup> T. 23 January 2006 p. 37 (Witness WTHSA).

<sup>12689</sup> T. 24 January 2006 pp. 10-11 (Witness WTHSA).

<sup>12690</sup> T. 23 January 2006 p. 27 (Witness WTHSA).

<sup>12691</sup> T. 23 January 2006 pp. 27-28 (Witness WTHSA).

<sup>12692</sup> T. 23 January 2006 p. 27 (Witness WTHSA).

<sup>12693</sup> T. 23 January 2006 p. 60 (ICS) (Witness WTHSA).

<sup>12694</sup> T. 28 August 2006 pp. 10-11 (Briquet).

<sup>12695</sup> T. 28 August 2006 pp. 22-23, 29-30 (Briquet).

<sup>12696</sup> T. 31 August 2006 pp. 14, 50 (ICS) (Briquet).

<sup>12697</sup> T. 31 August 2006 p. 50 (ICS) (Briquet).

<sup>12698</sup> T. 28 August 2006 p. 29 (Briquet). See Defence Exhibit 458B (Nsabimana) (Memorandum of Understanding between the Government of Rwanda and *Terre des Hommes*, Swiss Foundation, on the Children Support Programme for Children who are on their own, 28 May 1994).

4802. The witness testified that *Préfet* Nsabimana supported the project of the evacuation of orphans.<sup>12699</sup> After signing the agreement in Gitarama, Briquet stated that he went back to Bujumbura to meet with his counterparts and thereafter returned to Butare to inform *Préfet* Nsabimana of it and to commence the evacuation operations.<sup>12700</sup> Briquet stated that the Government did not provide support in the form of soldiers to ensure the safety of the children.<sup>12701</sup>

4803. The witness testified that there were three convoys altogether representing more than 1,000 evacuees. He refuted that there were four major convoys or that there were two convoys on successive days.<sup>12702</sup> The first convoy was organised for the 4 or 5 June 1994, containing hundreds of children from an orphanage that was under the authority of the Belgian Red Cross.<sup>12703</sup> During this first evacuation, 300 to 400 children were evacuated, in three or four vehicles.<sup>12704</sup>

4804. Those loaded onto the vehicles during the first convoy were without priority; everyone who could find a seat could get onboard.<sup>12705</sup> However, the witness admitted that he did not remember what happened and did not remember being present throughout the period when children were put on board the vehicles. A supervisor who was attached to take care of the children or supervise them boarding onto the vehicles would have been in a better position to specify as to what actually happened when the children were boarding.<sup>12706</sup>

4805. The convoy had difficulty starting off at around 5.00 p.m. because the gate was blocked by civilians who refused to open it.<sup>12707</sup> Colonel François Munyengango had to negotiate with about half a dozen men and finally the gate opened and the convoy was able to pass.<sup>12708</sup> When questioned as to why the gates were blocked by the civilians, the witness responded that the civilians simply wanted to prevent the convoy from leaving. These civilians were inside the *Groupe Scolaire* grounds.<sup>12709</sup> Briquet further testified that *Préfet* Nsabimana had intervened to authorise the convoy to travel.<sup>12710</sup>

4806. The witness testified that Witness TQ was present during the journey between the *Groupe Scolaire* and the Akanyaru border. During the journey he was in a vehicle with the Italian Consul and others, including probably Witness TQ, but could not be certain that Witness TQ was in the vehicle.<sup>12711</sup>

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<sup>12699</sup> T. 28 August 2006 p. 29 (Briquet).

<sup>12700</sup> T. 28 August 2006 p. 36 (Briquet).

<sup>12701</sup> T. 30 August 2006 p. 34 (Briquet).

<sup>12702</sup> T. 28 August 2006 p. 36 (Briquet).

<sup>12703</sup> T. 28 August 2006 pp. 37, 50 (Briquet).

<sup>12704</sup> T. 28 August 2006 p. 37 (Briquet).

<sup>12705</sup> T. 28 August 2006 p. 51 (Briquet).

<sup>12706</sup> T. 31 August 2006 p. 38 (Briquet).

<sup>12707</sup> T. 31 August 2006 p. 38 (Briquet).

<sup>12708</sup> T. 28 August 2006 p. 44; T. 31 August 2006 p. 38 (Briquet).

<sup>12709</sup> T. 28 August 2006 p. 44 (Briquet).

<sup>12710</sup> T. 31 August 2006 p. 10 (Briquet).

<sup>12711</sup> T. 31 August 2006 p. 13 (ICS) (Briquet).



4807. The witness testified that upon leaving the *Groupe Scolaire*, the convoy turned left and then left once again onto the main road which led to the border. He was not able to recall the name of this main road.<sup>12712</sup>

4808. Briquet testified that while the convoy was on its way, they were stopped at a first roadblock, as was expected, which was at the level of the Butare bishopric. They then were stopped for a long time at a second roadblock based on a road that was slightly sloped, with a bend towards the left. The roadblock was on the right-hand side where there were small houses as well as stalls. He did not remember any roadblock manned by soldiers; they were manned mainly by civilians. The witness was stuck in his car, behind the trucks with the children. He went out of his car and approached the roadblock, where he saw Colonel Munyengango agitatedly talking to the people around him. There were people trying to board the truck that was in front of him, and he heard people saying “but it’s full of Tutsis” as a means of deterrent.<sup>12713</sup>

4809. The witness testified that while they were at this roadblock, Colonel Munyengango was negotiating their passage and looked at the witness angrily, especially after the witness told him that if they were not able to pass through the roadblock in five minutes, then the convoy should go back. It was at that moment that *Préfet* Nsabimana arrived. The witness briefly explained their situation to him and Nsabimana went and spoke to those manning it, and after a few minutes, they were able to pass through.<sup>12714</sup>

4810. Briquet testified that throughout the trip from the *Groupe Scolaire* to the Burundian border for a distance of about 30 kilometres, they were stopped at all the 22 roadblocks so that it was necessary to negotiate at every stop.<sup>12715</sup> The roadblocks were manned by civilians armed with machetes and grenades. The witness testified that this was the longest and most difficult trip he had made.<sup>12716</sup>

4811. Briquet testified that when they got to the border, at around 11.00 p.m. or even midnight, there were a certain number of soldiers and also civilians present.<sup>12717</sup> It was an extremely lengthy exercise to go through the Rwandan border. The witness claimed that *Préfet* Nsabimana had gone back to Butare by this point; he did not recall having seen him during this process.<sup>12718</sup> He testified that Witness TQ was busy with the lists that had been prepared, as he was the person who must have created the lists.<sup>12719</sup> There were a number of adults who had infiltrated the convoy and the witness opined that this is what led to the subsequent problems they experienced.<sup>12720</sup> The main problem was that a number of adults were sent back by the Rwandan authorities, because the witness believed that they did not have the requisite documents.<sup>12721</sup> There were some 30 adults in this regard. Among these adults was a young

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<sup>12712</sup> T. 28 August 2006 p. 44 (Briquet).

<sup>12713</sup> T. 28 August 2006 p. 45 (Briquet).

<sup>12714</sup> T. 28 August 2006 p. 46 (Briquet).

<sup>12715</sup> T. 28 August 2006 pp. 46-47 (Briquet).

<sup>12716</sup> T. 28 August 2006 p. 47 (Briquet).

<sup>12717</sup> T. 28 August 2006 p. 47; T. 31 August 2006 p. 10 (Briquet).

<sup>12718</sup> T. 28 August 2006 p. 47 (Briquet).

<sup>12719</sup> T. 31 August 2006 p. 13 (ICS) (Briquet).

<sup>12720</sup> T. 28 August 2006 pp. 47-48 (Briquet).

<sup>12721</sup> T. 31 August 2006 p. 11 (Briquet).

woman who would not hesitate to claim her rights. However, a military officer whom he had seen on several occasions was there and made a very brief speech in a very stern manner in response to her claims. The witness also testified that some of the children and young people were badly injured when they came out of the trucks.<sup>12722</sup>

4812. The witness could not identify Nteziryayo by name, but testified that he knew of the person who became *préfet* after Nsabimana. The witness confirmed that he saw Nteziryayo at the border. The witness had met Nteziryayo on a number of occasions and therefore recognised Nteziryayo's face.<sup>12723</sup> Nteziryayo was very involved in listing out the names of the children and reading them aloud at the Akanyaru border.<sup>12724</sup> At that time, Nteziryayo was in military uniform as he was acting in his military capacity.<sup>12725</sup>

4813. The 30 adults, who were kept in Rwanda, were taken back to the Karubanda Social School.<sup>12726</sup> The witness confirmed that it was not *Préfet* Nsabimana who sent these adults back towards Butare.<sup>12727</sup> Briquet stated that the evacuation operation was for unaccompanied minors. Those that were prevented from crossing were not minors and mainly, if not all, women. On the other side of the border they would have been left to their own devices, as the organisations that were expecting these unaccompanied minors could not be expected to also take on 30 adults.<sup>12728</sup>

4814. Briquet testified that the second convoy was on 18 June 1994, during which they evacuated about 200 children, and that Witness TQ participated in the evacuation, interpreting for the children who spoke Kinyarwanda.<sup>12729</sup> Following the second evacuation, some children were left at Karubanda and their numbers increased almost every day, as the centre was a gathering point where children could be housed, fed and treated, if possible. Witness TQ was also there.<sup>12730</sup> The third convoy took place before the end of June 1994 or the first days of July, on either 4 or 5 July 1994.<sup>12731</sup>

### Nsabimana

4815. Nsabimana testified that he personally participated in the evacuation of children from Rwanda, organised by *Terre des Hommes*, after several days of planning and organisation.<sup>12732</sup> He said that there were three evacuations and he was personally involved in two, and was personally evacuated in the third. The date of the first evacuation was 5 June 1994.<sup>12733</sup> The children were living in dormitories on the one side of *Groupe Scolaire* and the soldiers of the medical team were staying on the other side.<sup>12734</sup> These soldiers were under the command of

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<sup>12722</sup> T. 28 August 2006 p. 48 (Briquet).

<sup>12723</sup> T. 31 August 2006 p. 24 (Briquet).

<sup>12724</sup> T. 31 August 2006 pp. 10-11 (Briquet).

<sup>12725</sup> T. 31 August 2006 p. 24 (Briquet).

<sup>12726</sup> T. 28 August 2006 p. 50 (Briquet).

<sup>12727</sup> T. 30 August 2006 p. 48 (Briquet).

<sup>12728</sup> T. 30 August 2006 p. 61 (Briquet).

<sup>12729</sup> T. 28 August 2006 p. 51; T. 31 August 2006 p. 50 (ICS) (Briquet).

<sup>12730</sup> T. 31 August 2006 p. 52 (ICS) (Briquet).

<sup>12731</sup> T. 30 August 2006 p. 18 (Briquet).

<sup>12732</sup> T. 12 October 2006 p. 67 (Nsabimana).

<sup>12733</sup> T. 12 October 2006 p. 68 (Nsabimana).

<sup>12734</sup> T. 12 October 2006 p. 69 (Nsabimana).

Colonel Mugemanyi.<sup>12735</sup> Nsabimana testified that Colonel Munyengango came to his office on 5 June 1994 and told him that he would participate in the evacuations. On that same day, Nsabimana also asked Nteziryayo to participate.<sup>12736</sup>

4816. He explained that he requisitioned two buses from ONATRACOM, the national public transport agency in Butare, for the evacuation.<sup>12737</sup> He confirmed that soldiers from *Groupe Scolaire* who were convalescing from the medical team tried to prevent the evacuation.<sup>12738</sup> They were opposed to the evacuation exercise. As Nsabimana was unarmed and simply an observer, other military officers stepped in to calm the situation down, including Colonel Nteziryayo who Nsabimana had previously informed that he would require his assistance. There were also two officers there, Colonel Munyengango and Colonel Bizumuremyi.<sup>12739</sup> Nsabimana was clear that it was down to the actions of these officers that the convoy was able to depart.<sup>12740</sup> Nsabimana said that the soldiers from the medical team were otherwise “categorically opposed” to the departure and were armed.<sup>12741</sup>

4817. Nsabimana testified that the small children aged between two and three, but who were capable of sitting, boarded the buses in front of the office of the Director of the *Groupe Scolaire*, which is where the Accused was standing.<sup>12742</sup> The convoy must have easily totalled 500 people, or perhaps slightly more, including the children and those accompanying them. It left the *Groupe Scolaire* at around 3.00 p.m. or 4.00 p.m., and reached the upper Akanyaru at around 5.00 p.m. or even later.<sup>12743</sup>

4818. Upon leaving the *Groupe Scolaire*, there was a small roadblock of soldiers on the road that went from the *Groupe Scolaire* up towards the *préfecture* offices.<sup>12744</sup> They reached the “*procure*”, or rather the houses where the white reverend father stayed, and stopped there to organise the convoy. Nsabimana testified that at some point he was in front of the convoy and at other points he was in the middle and behind depending on the circumstances or the situation. For example, if they reached a roadblock he may have gone ahead to discuss with those manning the roadblocks.<sup>12745</sup>

4819. The first roadblock they encountered was at *Chez Bihira*. This roadblock was manned mostly by *gendarmes* and they stopped there for a short while to have a routine discussion.<sup>12746</sup> The next roadblock was the EER roadblock, located near the Hotel Ihuliro, manned by civilians.<sup>12747</sup> The convoy stopped at this roadblock for a long time. Nsabimana was initially at the rear of the convoy and once he realised that things were not moving he left the rear and drove up front to where the roadblock was. The initial problem at the roadblock was that

<sup>12735</sup> T. 12 October 2006 p. 69 (Nsabimana).

<sup>12736</sup> T. 16 October 2006 p. 42 (Nsabimana).

<sup>12737</sup> T. 12 October 2006 p. 69; T. 16 October 2006 p. 41 (Nsabimana).

<sup>12738</sup> T. 12 October 2006 p. 71; T. 18 October 2006 p. 66 (Nsabimana).

<sup>12739</sup> T. 12 October 2006 p. 72 (Nsabimana).

<sup>12740</sup> T. 12 October 2006 pp. 72-73; T. 18 October p. 66 (Nsabimana).

<sup>12741</sup> T. 12 October 2006 p. 73 (Nsabimana).

<sup>12742</sup> T. 12 October 2006 p. 71 (Nsabimana).

<sup>12743</sup> T. 12 October 2006 p. 73; T. 16 October 2006 p. 8 (Nsabimana).

<sup>12744</sup> T. 12 October 2006 p. 73 (Nsabimana).

<sup>12745</sup> T. 12 October 2006 pp. 73-74 (Nsabimana).

<sup>12746</sup> T. 12 October 2006 p. 74 (Nsabimana).

<sup>12747</sup> T. 12 October 2006 p. 75 (Nsabimana).

students had come from Byumba, who had also been at the *Groupe Scolaire*, and the people at the roadblock would not let them go through. Colonel Munyengango tried to get the issue sorted, but those at the roadblock refused. Nsabimana resolved the problem by asking Colonel Munyengango to stay with the students while he went with the convoy, to deal with it upon his return. Colonel Bizumuremyi also remained there. The second incident at the roadblock was that those manning the roadblock entered into two of the buses but did not bring anyone out from within.<sup>12748</sup>

4820. Nsabimana testified that at this roadblock he was told that a certain Shalom was in charge. He was told to go to see him at Hotel Ihuliro, where he met with somebody, who he later realised was not actually Ntahobali; he met the actual Ntahobali at a later date.<sup>12749</sup> Before any discussions occurred with this man, the roadblock was opened and they continued on their way.<sup>12750</sup> Nsabimana convened Shalom to his office at an unspecified later date, and confirmed that it was Ntahobali but that he looked different to how he looked in the courtroom.<sup>12751</sup> Nsabimana confirmed that this occasion was the first time he had seen Ntahobali.<sup>12752</sup> Nsabimana testified that he did not see any Combi vehicle that caught fire.<sup>12753</sup>

4821. Nsabimana indicated that under normal circumstances the distance between Butare and upper Akanyaru would be 30 minutes, however on 5 June 1994 it took the convoy one hour or more. Nsabimana testified that the convoy passed through several roadblocks, more or less 20, all manned by civilians. Those manned by more people than others were armed with traditional weapons such as machetes. At smaller roadblocks, the people were armed with sticks and the like. There were roadblocks where the convoy was stopped and where it was necessary to negotiate, yet there were others where they would just pass through, either because the people manning them knew Nsabimana or Colonel Munyengango.<sup>12754</sup> Nsabimana testified that those at the roadblocks would check who was in the buses despite the presence of Nsabimana and Colonel Munyengango and check that it was an official convoy.<sup>12755</sup>

4822. Nsabimana testified that Nteziryayo was part of the convoy and was driving in his own Toyota Land Cruiser, alone and without bodyguards or escorts.<sup>12756</sup>

4823. It was still daylight when they reached the border at around 5.00 p.m., as night fell not long after they arrived. The process at the border took a while. Nsabimana left at around 10.00 p.m. or 11.00 p.m. The children and those accompanying them were able to cross, with the exception of 10 or so people. Nsabimana testified that there was a group of people who had worked with the orphans at the *Groupe Scolaire* and were cooks. They were given the choice as to whether they should leave with the children or to go back to Butare. They chose the latter

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<sup>12748</sup> T. 12 October 2006 p. 76 (Nsabimana).

<sup>12749</sup> T. 28 November 2006 p. 48 (Nsabimana).

<sup>12750</sup> T. 12 October 2006 p. 78 (Nsabimana).

<sup>12751</sup> T. 18 October 2006 p. 67; T. 28 November 2006 p. 48 (Nsabimana).

<sup>12752</sup> T. 18 October 2006 p. 68 (Nsabimana).

<sup>12753</sup> T. 18 October 2006 p. 66 (Nsabimana).

<sup>12754</sup> T. 16 October 2006 p. 7 (Nsabimana).

<sup>12755</sup> T. 16 October 2006 pp. 7-8 (Nsabimana).

<sup>12756</sup> T. 16 November 2006 p. 75 (Nsabimana).

option. Nsabimana heard later that the Bicunda family also came back, but not with the cooks, but he did not know why they came back to Butare.<sup>12757</sup>

4824. Nsabimana testified that Nteziryayo did not in any way stop anyone from leaving at the border.<sup>12758</sup> He further testified that he did not see Ntahobali at all during the 5 June 1994 evacuation.<sup>12759</sup> He further gave evidence that no one had requested, be it in written form or orally, that he participate in these evacuation operations. Nsabimana testified that he saw the written agreement dated 28 May 1994 for the first time in this courtroom, when tendered as evidence.<sup>12760</sup>

4825. Nsabimana testified that the second evacuation took place on 17 June 1994, and it was of orphans and unaccompanied children who were housed at the Karubanda Social School since 6 June 1994.<sup>12761</sup> He explained the purpose of the convoy at the roadblocks, and those manning them let them go through. He said that they arrived at the border at around 2.00 p.m. and everyone crossed through the border with no major difficulties.<sup>12762</sup>

### Nteziryayo

4826. Nteziryayo testified that he participated in three operations for the evacuation of orphans, on 5 June, 18 June and 3 July 1994.<sup>12763</sup> He stated that he participated at the request of Nsabimana in the evacuation on 5 June 1994, about which he had not received any information until that very day.<sup>12764</sup> Nteziryayo testified that he did not know if there was an evacuation of small children on 4 June 1994 in the evening, as alleged by Witness TQ.<sup>12765</sup> Nteziryayo testified that no member of the Rwandan Interim Government sought to prevent any of the evacuations of the orphans.<sup>12766</sup>

4827. On 5 June 1994, about 400 children, orphans from Kacyiru, Kigali were gathered at the *Groupe Scolaire* in order for them to be evacuated on buses to the Democratic Republic of Congo via Burundi.<sup>12767</sup> Nteziryayo testified that the orphans were of various ethnic groups.<sup>12768</sup>

4828. Nteziryayo testified that a group of persons, some of them soldiers, others dressed in civilian attire, were opposed to the departure of those orphans; they caused disorder and disturbance and tried to prevent the children from boarding the vehicles.<sup>12769</sup> The soldiers who caused the trouble were mainly disabled or ill soldiers who had run away from the military

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<sup>12757</sup> T. 16 October 2006 p. 8 (Nsabimana).

<sup>12758</sup> T. 16 November 2006 p. 73 (Nsabimana).

<sup>12759</sup> T. 18 October 2006 p. 66; T. 28 November 2006 p. 34 (Nsabimana).

<sup>12760</sup> T. 16 October 2006 p. 43 (Nsabimana).

<sup>12761</sup> T. 16 October 2006 p. 26 (Nsabimana).

<sup>12762</sup> T. 16 October 2006 p. 35 (Nsabimana).

<sup>12763</sup> T. 6 June 2007 p. 41 (Nteziryayo).

<sup>12764</sup> T. 6 June 2007 pp. 39, 42; T. 19 June 2007 p. 23 (Nteziryayo).

<sup>12765</sup> T. 6 June 2007 p. 52 (ICS) (Nteziryayo).

<sup>12766</sup> T. 19 June 2007 p. 27 (Nteziryayo).

<sup>12767</sup> T. 6 June 2007 pp. 39, 45; T. 14 June 2007 p. 32 (Nteziryayo).

<sup>12768</sup> T. 14 June 2007 p. 32 (Nteziryayo).

<sup>12769</sup> T. 6 June 2007 pp. 39-40, 42-43 (Nteziryayo).

hospital where Colonel Mugemanyi was the head, but other soldiers may have been involved.<sup>12770</sup>

4829. Nteziryayo testified that the persons who tried to stop the children from getting on board the vehicles on 5 June 1994 were not *Interahamwe* in the company of Ntahobali.<sup>12771</sup> These persons were soldiers and had no distinctive features or signs that would show that they were members of the *Interahamwe* organisation.<sup>12772</sup> In addition, he stated that he never heard anyone talk about Ntahobali being present.<sup>12773</sup> However, Nteziryayo admitted that on 5 June 1994 he did not recognise every one of the persons who attempted to prevent the evacuation and that he would not have recognised Ntahobali, if he would have been there, because Nteziryayo did not know him at that time.<sup>12774</sup>

4830. Nteziryayo testified that on 5 June 1994 he had fetched medicine from the hospital and was standing in front of the *Groupe Scolaire*, when Nsabimana approached Nteziryayo and asked him to assist him with the evacuation and to help him to convince the people to let the operation be carried out.<sup>12775</sup> Nteziryayo agreed to assist because he thought he could facilitate the operation.<sup>12776</sup> Nteziryayo testified that he did not ask Nsabimana about the reason of the evacuation and the fact that Nsabimana personally was involved in this.<sup>12777</sup> He stated that Nsabimana had told him in 1994 that the Government had authorised the evacuation of those children.<sup>12778</sup>

4831. Nteziryayo testified that he became privy to the information as to the evacuation when he was present at the *Groupe Scolaire* on 5 June 1994, and responded when asked by the *préfet* to assist; he had not known in advance that there was an evacuation operation of orphans.<sup>12779</sup> He joined Nsabimana and his assistants; some of them kept the troublemakers at bay, others helped the children to get on board the vehicles.<sup>12780</sup> Nteziryayo added that in a calm negotiation they reasoned with the troublemakers that they should not oppose the authority.<sup>12781</sup> He testified that when he helped the *préfet* to put those children on board the vehicles, he did not witness any person striking the children.<sup>12782</sup>

4832. Nteziryayo testified that *Préfet* Nsabimana had also requested some officers to assist in the operation and to keep the troublemaking soldiers at bay. Among the assistants was the area commander, Colonel François Munyengango.<sup>12783</sup> Munyengango told Nteziryayo that he had been dispatched by the Government to assist in the evacuation of the children at the request of

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<sup>12770</sup> T. 6 June 2007 p. 44; T. 21 June 2007 p. 9 (Nteziryayo).

<sup>12771</sup> T. 6 June 2007 pp. 52-53 (ICS) (Nteziryayo).

<sup>12772</sup> T. 6 June 2007 p. 53 (ICS) (Nteziryayo).

<sup>12773</sup> T. 6 June 2007 p. 53 (ICS) (Nteziryayo).

<sup>12774</sup> T. 9 July 2007 pp. 23-24 (Nteziryayo).

<sup>12775</sup> T. 6 June 2007 pp. 40, 46 (Nteziryayo).

<sup>12776</sup> T. 6 June 2007 p. 42 (Nteziryayo).

<sup>12777</sup> T. 21 June 2007 p. 33 (Nteziryayo).

<sup>12778</sup> T. 21 June 2007 p. 45 (Nteziryayo).

<sup>12779</sup> T. 6 June 2007 p. 45; T. 9 July 2007 pp. 14-15 (Nteziryayo).

<sup>12780</sup> T. 6 June 2007 p. 42 (Nteziryayo).

<sup>12781</sup> T. 9 July 2007 p. 11 (Nteziryayo).

<sup>12782</sup> T. 14 June 2007 p. 32 (Nteziryayo).

<sup>12783</sup> T. 6 June 2007 p. 43 (Nteziryayo).

the Red Cross.<sup>12784</sup> Colonel Munyengango and his escort were already present when Nteziryayo arrived at *Groupe Scolaire*.<sup>12785</sup> He further testified that the head of the military hospital, Mugemanyi and another doctor, Colonel François Bizumuremyi, were also present.<sup>12786</sup>

4833. Nteziryayo testified that all the children together with their supervisors succeeded to board the vehicle that drove off to the border.<sup>12787</sup> Nteziryayo stated that the vehicle set off at around 3.00 p.m. under the supervision of *Préfet* Nsabimana, the officer of *Terre des Hommes*, and Colonel Munyengango, who escorted the convoy with a military escort.<sup>12788</sup>

4834. Nteziryayo averred that after having delivered the medicine he collected from the *Groupe Scolaire* to a family where his family members were staying, he drove in his personal vehicle, a white Peugeot 405 car, in the direction of the convoy towards Akanyaru, reaching the convoy after the Tumba *gendarmerie* camp on the way to Bujumbura.<sup>12789</sup> He testified that he never owned a Toyota Land Cruiser vehicle.<sup>12790</sup> Then, he followed the convoy at its tail end.<sup>12791</sup> Nteziryayo testified that the road from Butare town to upper Akanyaru was tarred. He gave evidence that in the course of the journey of the convoy, he did not intervene at any point in time. Nteziryayo further testified that given his position at the end of the convoy, he could not see how people conducted themselves or the negotiations at roadblocks that barred their route.<sup>12792</sup>

4835. He further testified that the convoy encountered difficulties in going across barriers or roadblocks. Nteziryayo stated that the convoy had to stop at at least 15 or more roadblocks.<sup>12793</sup> At every stop Nsabimana and Munyengango explained the reasons for the evacuation and the convoy could pass through the roadblock. He testified that he did not personally intervene at the roadblocks.<sup>12794</sup> He specifically did not intervene during the stop at the Kigembe roadblock.<sup>12795</sup> Contrary to the testimony of Prosecution Witness TQ, he did not speak in familiar terms to members of the population and the civilian defence who refused to open the Kigembe roadblock, where there was a road that led to Gikongoro for the convoy.<sup>12796</sup>

4836. Nteziryayo testified that no Combi vehicle which belonged to Ntahobali followed the convoy to Akanyaru or caught fire at the Kigembe roadblock or at any other spot on the way to Akanyaru, as alleged by Witness TQ.<sup>12797</sup>

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<sup>12784</sup> T. 6 June 2007 p. 43; T. 19 June 2007 p. 24 (Nteziryayo).

<sup>12785</sup> T. 9 July 2007 p. 10 (Nteziryayo).

<sup>12786</sup> T. 6 June 2007 p. 44 (Nteziryayo).

<sup>12787</sup> T. 6 June 2007 p. 42 (Nteziryayo).

<sup>12788</sup> T. 6 June 2007 pp. 46-47 (Nteziryayo).

<sup>12789</sup> T. 6 June 2007 pp. 46-47 (Nteziryayo).

<sup>12790</sup> T. 6 June 2007 p. 47 (Nteziryayo).

<sup>12791</sup> T. 6 June 2007 p. 46 (Nteziryayo).

<sup>12792</sup> T. 21 June 2007 p. 44 (Nteziryayo).

<sup>12793</sup> T. 6 June 2007 p. 47 (Nteziryayo).

<sup>12794</sup> T. 6 June 2007 p. 48 (Nteziryayo).

<sup>12795</sup> T. 6 June 2007 p. 54 (ICS) (Nteziryayo).

<sup>12796</sup> T. 6 June 2007 pp. 54-55 (ICS) (Nteziryayo)

<sup>12797</sup> T. 14 June 2007 p. 33 (Nteziryayo)

4837. In response to the question as to why he accompanied the convoy up until the border, although the *préfet* had asked him only to assist in putting the children on board on the buses, Nteziryayo responded that he was convinced that his mission, or the reason for which he was invited to be there, was not finished yet.<sup>12798</sup>

4838. He testified that the convoy reached the border at around 6.00 p.m.<sup>12799</sup> At the border near the immigration office, many young delinquents or persons were gathered; the convoy's arrival caused a disorder. The supervisors of the convoy had to deal with this situation before the authorities dealt with the formalities for the departure of the children.<sup>12800</sup> Nteziryayo testified that *Préfet* Nsabimana was in charge of the whole organisation; that he supervised it and that he talked with the immigration officials, with the officials of *Terre des Hommes* and the other organisations.<sup>12801</sup>

4839. Nteziryayo affirmed that he did not see anyone being set aside on the grounds of their ethnicity. He further testified that he did not notice the presence of the *Interahamwe* in the convoy and therefore did not see them directly contravene the instructions of the *préfet*, which were generally being complied with by all involved. He did recognise that there were some people who were not authorised to leave with the orphans.<sup>12802</sup> He believed that they did not amount to 30 persons.<sup>12803</sup>

4840. Nteziryayo testified that he and others took care that the children were safely ushered out of the vehicles and brought to the location from where they would depart. They lined up the children, and called up their names from a list prepared by the Red Cross, *Terre des Hommes* officials and those who had been in charge of the orphans at Kacyiru, because most of those children had come from there. The children waited in a line in front of the barrier to be opened for them to pass through. He testified that all the children crossed the border at about 10.00 p.m. and that he returned to Butare town, arriving there after 11.00 p.m.<sup>12804</sup>

4841. A group of about 20 or 30 persons claimed to belong to the convoy and wanted to pass the border to Burundi along with the convoy, but they had to stay in Rwanda.<sup>12805</sup> They did not have the necessary papers or documents that authorised them to go out of the country, and their names were not on the list that had been prepared by the organisers of the evacuation exercise, that is, by the officials of *Terre des Hommes* and of the Red Cross.<sup>12806</sup> *Préfet* Nsabimana ordered them to return to Butare and accommodated them in Karubanda.<sup>12807</sup>

4842. He did not read out names on a list, deciding who was allowed to cross the borders and who had to remain in Rwanda. He had a list with him, but he never refused anyone from

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<sup>12798</sup> T. 21 June 2007 p. 33 (Nteziryayo).

<sup>12799</sup> T. 6 June 2007 p. 48 (Nteziryayo).

<sup>12800</sup> T. 6 June 2007 p. 49 (Nteziryayo).

<sup>12801</sup> T. 6 June 2007 p. 50 (Nteziryayo).

<sup>12802</sup> T. 14 June 2007 p. 34 (Nteziryayo).

<sup>12803</sup> T. 14 June 2007 p. 35 (Nteziryayo).

<sup>12804</sup> T. 6 June 2007 p. 52 (Nteziryayo).

<sup>12805</sup> T. 6 June 2007 pp. 50-51 (Nteziryayo).

<sup>12806</sup> T. 6 June 2007 p. 51 (Nteziryayo).

<sup>12807</sup> T. 6 June 2007 p. 52 (Nteziryayo).



crossing the border.<sup>12808</sup> He testified that he did not, together with Ntahobali, chose people on the basis of the size of their noses and their heights suspected to be Tutsis, who were then surrounded by *Interahamwe* and loaded up into buses.<sup>12809</sup> This would not have been possible as Nsabimana, the area commander and the organisation *Terre des Hommes* were supervising the convoy.<sup>12810</sup> Nteziryayo stated that Nsabimana in his evidence had confirmed that he, himself, sent these persons back to Butare.<sup>12811</sup>

4843. Nteziryayo testified that among the persons who had to return to Butare was Nathan Bicunda, whom Nteziryayo knew while he was a student in the National University of Rwanda. Nteziryayo stated that he did not stop Bicunda from crossing the border, as alleged by Prosecution Witness TQ.

4844. In cross-examination Nteziryayo was shown Prosecution Exhibit 144A and read from it: “MINITRASO file MINITRASO file. That the children be led to south Kivu, *Teré de hoecs* those in charge of the operation are youngsters of the Red Cross, they are more numerous than the children. It is recruitment by the RPF that is disguised, three buses.” Nteziryayo testified that “hoecs” meant *hommes* or men and that MINITRASO was Rwandan and referred to a ministry, “SO” stood for Social.<sup>12812</sup> Nteziryayo he did not remember if there was a representative of MINITRASO present on the convoy of 5 June 1994.<sup>12813</sup> He denied the proposition that the above-mentioned text meant that the Government intervened in that evacuation operation.<sup>12814</sup>

4845. Nteziryayo testified that on 18 June 1994 he participated in a second evacuation of children.<sup>12815</sup> It started off from the Karubanda Social School where the children had been assembled.<sup>12816</sup> The final destination was Bukavu in the Democratic Republic of Congo via Burundi, and the evacuation consisted of between 300 and 400 children.<sup>12817</sup>

4846. Nteziryayo testified that on 2 July 1994 the humanitarian organisation notified the *sous-préfet* in charge of social affairs, who informed him that they had planned an evacuation on 3 July 1994.<sup>12818</sup> Again it started from the building of the Social School in Karubanda, where the children had been assembled and went via Burundi to Bukavu, in the Democratic Republic of Congo.<sup>12819</sup> More than 200 children were evacuated at that time.<sup>12820</sup>

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<sup>12808</sup> T. 6 June 2007 p. 55 (ICS) (Nteziryayo).

<sup>12809</sup> T. 6 June 2007 p. 55 (ICS); T. 14 June 2007 pp. 33-34 (Nteziryayo).

<sup>12810</sup> T. 6 June 2007 p. 55 (ICS) (Nteziryayo).

<sup>12811</sup> T. 9 July 2007 p. 11 (Nteziryayo).

<sup>12812</sup> T. 21 June 2007 p. 46 (Nteziryayo).

<sup>12813</sup> T. 21 June 2007 p. 47 (Nteziryayo).

<sup>12814</sup> T. 21 June 2007 p. 46 (Nteziryayo).

<sup>12815</sup> T. 6 June 2007 p. 58 (Nteziryayo).

<sup>12816</sup> T. 6 June 2007 p. 58 (Nteziryayo).

<sup>12817</sup> T. 6 June 2007 pp. 58-59 (Nteziryayo).

<sup>12818</sup> T. 7 June 2007 p. 6 (Nteziryayo).

<sup>12819</sup> T. 7 June 2007 pp. 3-5 (Nteziryayo).

<sup>12820</sup> T. 7 June 2007 p. 4 (Nteziryayo).

Nyiramasuhuko

4847. Nyiramasuhuko referred to the 31 May 1994 Security Council meeting, chaired by the *préfet* of Butare *préfecture*, in her testimony. At this meeting, a report was issued on the progress made up until that date in Butare *préfecture*. In that context, the evacuation of the orphans in Butare *préfecture*, among other things, was discussed. The Government representatives invited those present in that meeting to assist with the evacuation of orphans in Butare and elsewhere. The Government was represented by the Ministry of Social Affairs (“MINITRASO”) and the Head of Government.<sup>12821</sup>

4848. Nyiramasuhuko testified that the entry for 29 May 1994 in her diary read “MINITRASO file, children taken to south Kivu, Red Cross, *Terre des Hommes*, supervisors are youths of whom there are more than children. This is RPF recruitment in disguise, three buses”.<sup>12822</sup> This referred to the programme drawn up by the government with NGOs during the meeting in order to evacuate children,<sup>12823</sup> and the *préfet* of Butare was supposed to supervise it.<sup>12824</sup> She stated that the evacuation of the children had been discussed for a while in Cabinet meetings, beginning in May 1994.<sup>12825</sup> The Minister of Social Affairs was responsible for those contracts and told the Cabinet when they had been signed.<sup>12826</sup> In her diary, the evacuation was mentioned only in the entry for 29 May 1994.<sup>12827</sup>

4849. Nyiramasuhuko denied that “RPF recruitment in disguise, three buses”, were her words about the evacuation of the children under the supervision of Nsabimana. Rather, she took them down as she heard them from Nsabimana himself, after ensuring that the contract with the NGOs regarding the evacuation of the children had been complied with. Asked whether Nsabimana could say these words when it was him who was ensuring the evacuation of the children, Nyiramasuhuko stated that he was ensuring respect for the contract which had been signed by the Government, but that it was not his initiative.<sup>12828</sup>

4850. Nyiramasuhuko averred that when she was taking down those notes she did not know where the children were, however, she was aware that the contract with the NGOs specified that a group of the children be evacuated to the south, through Butare, and another one to the north to Ngoma through Gisenyi. Nyiramasuhuko speculated that the children were at the *Groupe Scolaire* prior to the evacuation, but could not confirm this. She knew the contracts had been signed and she added that the *préfet* actually accompanied them as they went.<sup>12829</sup> However, on the actual day of the evacuation, Nsabimana said “[t]he children went but I took

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<sup>12821</sup> T. 10 October 2005 p. 60 (Nyiramasuhuko).

<sup>12822</sup> T. 26 October 2005 p. 55 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994) entry for 29 May 1994, p. 21.

<sup>12823</sup> T. 26 October 2005 p. 55 (Nyiramasuhuko).

<sup>12824</sup> T. 26 October 2005 pp. 55-56 (Nyiramasuhuko).

<sup>12825</sup> T. 26 October 2005 pp. 57-58 (Nyiramasuhuko).

<sup>12826</sup> T. 26 October 2005 p. 57 (Nyiramasuhuko).

<sup>12827</sup> T. 26 October 2005 pp. 57-58 (Nyiramasuhuko).

<sup>12828</sup> T. 26 October 2005 p. 58 (Nyiramasuhuko).

<sup>12829</sup> T. 26 October 2005 p. 56 (Nyiramasuhuko).

the decision to bring back the bigger ones to Butare so that their cases should be examined.”<sup>12830</sup>

4851. When it was put to Nyiramasuhuko that on 5 June 1994 Nsabimana actually evacuated the children, so he could not at the same time have said words to the effect that this was “disguised recruitment by the RPF”, she retorted that he was analysing the contract with the NGOs, which had specifically entailed “children” and not the older ones who were also involved in the convoy.<sup>12831</sup> He did not confirm that it was “disguised recruitment”, but made the statement on the same day he had made the evacuation and stated that he had decided to bring the youths back to Butare from Akanyaru, to examine their cases further. Nyiramasuhuko agreed with this measure.<sup>12832</sup>

4852. Nyiramasuhuko stated that her explanations regarding the evacuation of the children were not an attempt to attribute to the Government the activities which were carried out by Nsabimana.<sup>12833</sup> Asked if she had a document that showed that the Government had authorised Nsabimana to supervise the evacuation of the children, she stated that he, just like the other *préfets* or other state officials, was bound to implement the programme of the Government when he accepted to become a *préfet*. The contract signed by the Government and the NGOs was given to the *préfets*.<sup>12834</sup>

#### 3.6.45.4 Deliberations

4853. The Prosecution and Defence witnesses are consistent to the effect that an evacuation of orphans took place on or around 5 June 1994 from the *Groupe Scolaire* to the Burundian border.<sup>12835</sup> Although there was a slight variation in the precise date by Defence Witnesses Briquet and WTHSA, who contended that the date may have been 4 or 5 June 1994 and ‘the first week of June’ respectively, the Chamber notes that the details they provided, for example, in relation to the number of vehicles involved and the presence of Colonel Munyengango specifically, is indicative of the fact that they are talking about the same evacuation.

4854. Witnesses TQ, Briquet, Nsabimana and Nteziryayo agree with regard to the number of evacuees on the 5 June 1994 convoy.<sup>12836</sup> Defence Witness WTHSA, however, provided a lower number of between 70 to 120 children.<sup>12837</sup> Nonetheless, he stated that the evacuation departed from the *Groupe Scolaire*,<sup>12838</sup> which was in line with the description proffered by the

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<sup>12830</sup> T. 26 October 2005 p. 56 (Nyiramasuhuko).

<sup>12831</sup> T. 26 October 2005 pp. 58-59 (Nyiramasuhuko).

<sup>12832</sup> T. 26 October 2005 p. 59 (Nyiramasuhuko).

<sup>12833</sup> T. 26 October 2005 p. 61 (Nyiramasuhuko).

<sup>12834</sup> T. 26 October 2005 p. 62 (Nyiramasuhuko).

<sup>12835</sup> T. 7 September 2004 pp. 5, 8 (ICS) (Witness TQ); T. 9 September 2004 p. 28 (ICS) (Witness TQ); T. 28 August 2006 pp. 37, 50 (Briquet) (Witness Briquet stated that it was either 4 or 5 June 1994); T. 23 January 2006 pp. 34, 53 (Witness WTHSA) (Witness WTHSA claimed that it was during the first week of June but could not remember the exact date); T. 12 October 2006 p. 68 (Nsabimana); T. 6 June 2007 p. 41 (Nteziryayo).

<sup>12836</sup> T. 9 September 2004 p. 9 (ICS) (Witness TQ); T. 28 August 2006 p. 37 (Briquet) (Witness Briquet said there were 300-400 evacuees); T. 12 October 2006 p. 12; T. 16 October 2006 p. 8 (Nsabimana) (Nsabimana said there were 500 evacuees); T. 6 June 2007 p. 45 (Nteziryayo) (Nteziryayo said there were 400 evacuees).

<sup>12837</sup> T. 23 January 2006 p. 62 (ICS) (Witness WTHSA).

<sup>12838</sup> T. 23 January 2006 pp. 34, 53 (Witness WTHSA).

other witnesses.<sup>12839</sup> The relevant witnesses agreed that the subsequent evacuations departed from the Karubanda Social School.<sup>12840</sup> The Chamber considers that Witness WTHSA is testifying about the same evacuation convoy on 5 June 1994 and that the discrepancy with respect to the actual number of persons who boarded the buses for evacuation purposes on that day does not constitute a major issue in the instant case.

4855. The contentious issues are: (1) whether Ntahobali was present when the evacuees boarded the buses at the *Groupe Scolaire* and whether he along with others perpetrated violence on these evacuees as a means of preventing the convoy from departing; and (2) whether Nteziryayo and Ntahobali both prevented 30 Tutsis among the evacuees from exiting the Rwandan territory once the convoy reached the Akanyaru border.

4856. Witness TQ was the only Prosecution eyewitness to testify about the allegation that Ntahobali was present at the *Groupe Scolaire* during this time and tried to prevent the children from embarking the buses.<sup>12841</sup> Ntahobali was accompanied by around 20 *Interahamwe* and civilians bearing firearms and others carrying traditional weapons.<sup>12842</sup> He further testified that he saw Ntahobali personally hit some children with his rifle butt, kick them and drag them away from the vehicles.<sup>12843</sup>

4857. Both Nsabimana and Nteziryayo conceded that at the time of the evacuation on 5 June 1994, neither of them would have been able to recognise Ntahobali, as they did not know him.<sup>12844</sup> As a result, neither of them was in a position to refute or affirm Ntahobali's presence at the time of boarding.

4858. Witness WTHSA testified that he knew Ntahobali from his school days, but that Ntahobali was in a higher class.<sup>12845</sup> He denied that Ntahobali was present at the *Groupe Scolaire* when the evacuees boarded the buses.<sup>12846</sup> He further testified that he did not see Witness TQ during the time he was present on the premises until the time of the departure of the convoy, even though he knew Witness TQ from his days at the *Groupe Scolaire* as a student.<sup>12847</sup> In the Chamber's view, the fact that Witness WTHSA saw neither Ntahobali nor Witness TQ does not mean that they were not there. It is quite possible that Witness WTHSA's attention was drawn to other facts, given the significant number of persons present and the prevailing circumstances at the *Groupe Scolaire* at this particular time. In addition, the Chamber considers Briquet's testimony to be credible as to establishing the presence of Witness TQ on that day.<sup>12848</sup>

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<sup>12839</sup> T. 7 September 2004 pp. 5, 8 (ICS) (Witness TQ); T. 9 September 2004 p. 28 (ICS) (Witness TQ); T. 17 June 2004 p. 30 (Des Forges); T. 28 August 2006 p. 44 (Briquet); T. 12 October 2006 p. 73 (Nsabimana); T. 6 June 2007 pp. 39, 45; T. 14 June 2007 p. 32 (Nteziryayo).

<sup>12840</sup> T. 7 September 2004 pp. 17-18 (ICS) (Witness TQ); T. 31 August 2006 p. 52 (ICS) (Briquet); T. 16 October 2006 p. 26 (Nsabimana); T. 6 June 2007 p. 58 (Nteziryayo).

<sup>12841</sup> T. 7 September 2004 p. 8 (ICS); T. 8 September 2004 p. 17 (ICS) (Witness TQ).

<sup>12842</sup> T. 8 September 2004 pp. 8, 17 (ICS) (Witness TQ).

<sup>12843</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>12844</sup> T. 18 October 2006 p. 68 (Nsabimana); T. 9 July 2007 pp. 23-24 (Nteziryayo).

<sup>12845</sup> T. 23 January 2006 p. 27 (Witness WTHSA).

<sup>12846</sup> T. 23 January 2006 p. 37 (Witness WTHSA).

<sup>12847</sup> T. 23 January 2006 pp. 30, 58 (ICS); T. 24 January 2006 p. 13 (ICS) (Witness WTHSA).

<sup>12848</sup> T. 31 August 2006 p. 13 (ICS) (Briquet).

4859. In terms of the boarding process, both Nsabimana and Nteziryayo confirmed that the soldiers convalescing at the *Groupe Scolaire* tried to prevent the evacuation.<sup>12849</sup> Nteziryayo did concede, however, that other soldiers may have been involved and that there were civilians who were also opposed to the departure.<sup>12850</sup> However, he categorically affirmed that they were not the *Interahamwe* with Ntahobali as they showed no distinctive features or signs that they were members of the *Interahamwe*.<sup>12851</sup> Witness WTHSA provided an uncorroborated account that the boarding process was without incident.<sup>12852</sup> The Chamber will not give credence to Witness WTHSA's account, for the reasons set out above.

4860. Briquet admitted to not remembering precisely what happened and did not remember being present throughout the period when children were put on board the vehicles.<sup>12853</sup> In this way, he confirmed that a supervisor who was attached to take care of the children or supervise them boarding onto the vehicles would have been in a better position to specify as to what actually happened when the children were boarding.<sup>12854</sup> This supervisor was Prosecution Witness TQ.<sup>12855</sup> Furthermore, the Chamber recalls Briquet's assertions that when they arrived at the border, and the children disembarked from the buses, some of the children and young people were badly injured.<sup>12856</sup> This corroborates the fact that they suffered some means of violence at some point along the evacuation process and that the children were attacked prior to the boarding process.<sup>12857</sup>

4861. Witness WTHSA claimed that he did not witness any violent acts prior to the children boarding the buses at this time and that he was present until the convoy left.<sup>12858</sup> However, the testimony of the other Defence witnesses who were indisputably present, leads the Chamber to believe that the orphans were the subject of acts of violence at the time of boarding.<sup>12859</sup>

4862. All of the witnesses, including Witness WTHSA, were consistent regarding the fact that Colonel Munyengango and Nsabimana were present at the evacuation, and that because of their intervention to abate the violence the convoy could leave the *Groupe Scolaire* under their aegis.<sup>12860</sup>

4863. Nsabimana and Nteziryayo were the only two whose testimony referred to Nteziryayo's presence at the *Groupe Scolaire*. Nsabimana explained that Nteziryayo was there to help calm the situation down during the boarding process at the *Groupe Scolaire*, and that

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<sup>12849</sup> T. 12 October 2006 pp. 71-72; T. 18 October 2006 p. 66 (Nsabimana); T. 6 June 2007 pp. 39-40, 42-43 (Nteziryayo).

<sup>12850</sup> T. 6 June 2007 p. 44; T. 21 June 2007 p. 9 (Nteziryayo).

<sup>12851</sup> T. 6 June 2007 pp. 52-53 (ICS) (Nteziryayo).

<sup>12852</sup> T. 23 January 2006 p. 35 (Witness WTHSA).

<sup>12853</sup> T. 31 August 2006 p. 38 (Briquet).

<sup>12854</sup> T. 31 August 2006 p. 38 (Briquet).

<sup>12855</sup> T. 31 August 2006 p. 38; 31 August 2006 p. 50 (Briquet).

<sup>12856</sup> T. 28 August 2006 p. 48 (Briquet).

<sup>12857</sup> T. 7 September 2004 p. 9 (ICS) (Witness TQ).

<sup>12858</sup> T. 23 January 2006 pp. 35, 48 (Witness (WTHSA)).

<sup>12859</sup> T. 12 October 2006 p. 73 (Nsabimana); T. 6 June 2007 pp. 52-53 (ICS) (Nteziryayo); T. 28 August 2006 p. 48 (Briquet).

<sup>12860</sup> T. 7 September 2004 pp. 8, 10 (ICS) (Witness TQ); T. 23 January 2006 p. 36 (Witness WTHSA); T. 28 August 2006 p. 44; T. 31 August 2006 pp. 10, 38 (Briquet); T. 12 October 2006 pp. 72-73 (Nsabimana); T. 6 June 2007 pp. 43-44 (Nteziryayo).

he was informed of the evacuation prior to the date.<sup>12861</sup> Nteziryayo stated that he participated at the request of Nsabimana in the evacuation, and had not heard about it until he was present at the *Groupe Scolaire* that day.<sup>12862</sup> He was getting medicine from the hospital when Nsabimana approached him and asked him to assist him with the evacuation and to help him to convince the people to let the operation be carried out.<sup>12863</sup> Nteziryayo agreed to assist, because he thought he could facilitate the operation.<sup>12864</sup> There was no further reference to his role at the *Groupe Scolaire*.

4864. The Prosecution and Defence witnesses are further consistent to the effect that the convoy had to repeatedly stop at roadblocks and negotiate its way through them, before reaching the Akanyaru border.<sup>12865</sup> Prosecution Witness TQ was the only witness to testify that Ntahobali was present during the route of the convoy.<sup>12866</sup> He testified that the only reason why they were able to pass through the roadblock, associated with Ntahobali, was because Ntahobali's Combi vehicle caught on fire.<sup>12867</sup> This caused enough of a distraction as to enable the convoy to pass through with no further issue.<sup>12868</sup> Witness TQ was also the sole witness to testify that Nteziryayo took part in the negotiations at the roadblocks in order that the convoy could pass.<sup>12869</sup> Nteziryayo himself confirmed, however, that he was following the convoy in his own vehicle.<sup>12870</sup> According to Witness TQ, Nteziryayo also accompanied the convoy, but he could not recall as to whether he was part of the convoy as from the *Groupe Scolaire*.<sup>12871</sup> Nsabimana testified that Nteziryayo was part of the convoy and was driving in his own Land Cruiser; he was alone without bodyguards or escorts.<sup>12872</sup> According to Nteziryayo, he accompanied the convoy up until the border, because he was convinced that his mission, or the reason for which he was invited to be there by Nsabimana, was not finished yet.<sup>12873</sup>

4865. The Chamber considers Witness TQ's evidence to be credible, that Ntahobali followed the convoy in a Combi vehicle that caught on fire and that Nteziryayo took part in obtaining passage for the convoy through the roadblocks.

4866. At the Akanyaru border, all the witnesses agreed that everyone in the convoy managed to cross over the border, except 30 or so people.<sup>12874</sup> The contentious issue is by whom they were prevented and why. According to Witness TQ, these selected people were prevented from crossing by Nteziryayo and Ntahobali together, because they were Tutsis, a characteristic

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<sup>12861</sup> T. 12 October 2006 p. 72 (Nsabimana).

<sup>12862</sup> T. 6 June 2007 pp. 39-40, 42, 46; T. 19 June 2007 p. 23 (Nteziryayo).

<sup>12863</sup> T. 6 June 2007 pp. 40, 46 (Nteziryayo).

<sup>12864</sup> T. 6 June 2007 p. 42 (Nteziryayo).

<sup>12865</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ); T. 17 June 2004 p. 30 (Des Forges); T. 28 August 2006 p. 45 (Briquet); T. 12 October 2006 pp. 74-75; T. 16 October 2006 p. 7 (Nsabimana); T. 6 June 2007 p. 47 (Nteziryayo).

<sup>12866</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>12867</sup> T. 7 September 2004 p. 10 (ICS) (Witness TQ).

<sup>12868</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>12869</sup> T. 7 September 2004 pp. 10, 15 (ICS) (Witness TQ).

<sup>12870</sup> T. 6 June 2007 pp. 46-47 (Nteziryayo).

<sup>12871</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 28 (ICS) (Witness TQ).

<sup>12872</sup> T. 16 November 2006 p. 75 (Nsabimana).

<sup>12873</sup> T. 21 June 2007 p. 33 (Nteziryayo).

<sup>12874</sup> T. 7 September 2004 p. 16 (ICS); T. 9 September 2004 p. 30 (ICS) (Witness TQ); T. 28 August 2006 p. 50 (Briquet); T. 16 October 2006 p. 8 (Nsabimana); T. 6 June 2007 p. 51; T. 14 June 2007 pp. 34-35 (Nteziryayo).

ascertained mainly by assessing their physical features.<sup>12875</sup> Witness TQ said that Nteziryayo took the list of names from him and read out the names, allowing some to cross and forbidding others.<sup>12876</sup>

4867. Briquet was under the impression that those who were sent back by the Rwandan authorities were adults who had infiltrated the convoy without the requisite documents, and for whom the evacuation agreement did not provide.<sup>12877</sup> However, the Chamber notes his recognition of Nteziryayo's presence at the border, reading aloud the list containing the names of the children, and acting in a military capacity.<sup>12878</sup> This corroborates Witness TQ's assertion above.

4868. Equally, Nsabimana claimed that those who were sent back to Butare worked at the *Groupe Scolaire* with the orphans, as cooks.<sup>12879</sup> They were given the choice as to whether to cross over into Burundi or to return to Butare.<sup>12880</sup> The Chamber notes that Nsabimana did not implicate Nteziryayo at this juncture.<sup>12881</sup>

4869. Nteziryayo claimed that many young delinquents gathered at the immigration office, who caused disorder when the convoy arrived.<sup>12882</sup> He asserted that nobody was prevented from crossing based on ethnicity.<sup>12883</sup> He vigorously asserted that he only learned of the evacuation on the day thereof, when Nsabimana asked him for help with the boarding process at the *Groupe Scolaire*.<sup>12884</sup> Evidence was adduced that Nteziryayo did in fact know of the evacuations prior to his arrival at the *Groupe Scolaire* that day. This was clearly demonstrated by his comments to Witness TQ at the Butare *préfecture* offices, that the Red Cross employees were conniving with the enemy by sending youths to Burundi to join the ranks of the *Inkotanyi*.<sup>12885</sup> The Chamber considers that Nteziryayo did know of the evacuation prior to 5 June 1994.

4870. The Chamber finds Briquet's evidence to be credible and to largely corroborate that of Witness TQ. Briquet might not have fully comprehended why the 30 adults were not allowed to progress across the border. He was, however, certain that it was Nteziryayo who was very involved in listing out the names of the children and reading them aloud.<sup>12886</sup>

4871. The Chamber recalls that Witness TQ is the only Prosecution witness to testify that Ntahobali was present at all during the whole evacuation process,<sup>12887</sup> and to testify that it was

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<sup>12875</sup> T. 7 September 2004 p. 16 (ICS) (Witness TQ).

<sup>12876</sup> T. 7 September 2004 p. 15 (ICS); T. 9 September 2004 pp. 29-30 (ICS) (Witness TQ).

<sup>12877</sup> T. 31 August 2006 p. 11 (Briquet).

<sup>12878</sup> T. 31 August 2006 pp. 10-11, 24 (Briquet).

<sup>12879</sup> T. 16 October 2006 p. 8 (Nsabimana).

<sup>12880</sup> T. 16 October 2006 p. 8 (Nsabimana).

<sup>12881</sup> T. 16 November 2006 p. 73 (Nsabimana).

<sup>12882</sup> T. 6 June 2007 p. 49 (Nteziryayo).

<sup>12883</sup> T. 14 June 2007 p. 34 (Nteziryayo).

<sup>12884</sup> T. 6 June 2007 pp. 39, 42; T. 19 June 2007 p. 23 (Nteziryayo).

<sup>12885</sup> T. 6 September 2004 pp. 68-69 (ICS); T. 9 September 2004 p. 25 (ICS) (Witness TQ).

<sup>12886</sup> T. 31 August 2006 pp. 10-11 (Briquet).

<sup>12887</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

Nteziryayo and Ntahobali who segregated and prevented the 30 people from crossing the border.<sup>12888</sup>

4872. In the Chamber's view, Prosecution Witness TQ was an eyewitness and was involved in the entire evacuation process, from the organisation to the execution, acting in his capacity as supervisor of the evacuation procedure. Briquet corroborated Witness TQ's role.<sup>12889</sup> Witness TQ knew the children and the supervisors and is therefore a very strong witness in this regard. The Chamber recalls that Witness TQ was vigorously cross-examined by three different defence attorneys. Despite this intense cross-examination, Witness TQ's testimony remained internally consistent. There is no doubt that the person he saw at the *Groupe Scolaire* leading the group of assailants was Ntahobali, with whom he was already well acquainted from having attended the *Groupe Scolaire* together as children.<sup>12890</sup> Witness TQ further identified him as the son of Minister Pauline Nyiramasuhuko.<sup>12891</sup>

4873. He also identified Nteziryayo in court and affirmed that he was head of civil defence in Butare.<sup>12892</sup> The Chamber considers that he had no reason to implicate any one of the Accused, as he was acquitted prior to testifying in this case and by virtue of the fact that he was ethnically speaking, a Hutu. The Chamber finds Prosecution Witness TQ to be a salient and credible witness in this regard.

4874. Ntahobali presented an alibi that he was in Cyangugu outside of Butare *préfecture* during the 5 June 1994 attack at the *Groupe Scolaire*. The Chamber has previously determined that this alibi is not credible (). Therefore, the evidence presented by Ntahobali in support of this alibi does not raise a doubt as to his presence at the *Groupe Scolaire* on 5 June 1994.

4875. In light of all the foregoing, having assessed the totality of the evidence, the Chamber finds that the Prosecution has proven beyond reasonable doubt the allegations contained in Paragraphs 6.36 of the Nyiramasuhuko and Ntahobali Indictment and Paragraph 6.33 of the Nsabimana and Nteziryayo Indictment. The Chamber finds that Ntahobali was present at the *Groupe Scolaire* on 5 June 1994, accompanied by *Interahamwe* and civilian militiamen, and together they perpetrated violent acts as an attempt to hinder the evacuation of orphans. The Chamber further finds that Ntahobali and Nteziryayo attempted to prevent the evacuation from Butare of about 300 orphans and their adult supervisors and selected about 30 individuals whom they believed to be Tutsi adults and forced them to remain in Rwanda.

### **3.6.46 Gikore Secteur Meeting, Late June 1994**

#### **3.6.46.1 Introduction**

4876. Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment allege that from April to July 1994, Nteziryayo incited the population to slaughter the Tutsis in Butare

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<sup>12888</sup> T. 7 September 2004 p. 16 (ICS) (Witness TQ).

<sup>12889</sup> T. 31 August 2006 p. 38; 31 August 2006 p. 50 (Briquet).

<sup>12890</sup> T. 7 September pp. 9-10 (ICS) (Witness TQ).

<sup>12891</sup> T. 9 September 2004 pp. 32-34 (ICS) (Witness TQ).

<sup>12892</sup> T. 6 September 2004 p. 52 (ICS); T. 7 September 2004 p. 20 (ICS); T. 7 September 2004 p. 14 (ICS) (Witness TQ).



*préfecture*.<sup>12893</sup> Paragraphs 6.53 and 6.59 allege that between April and June 1994, Nteziryayo not only incited, but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>12894</sup> Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment alleges that after the handing over of office on 21 June 1994, the newly appointed *préfet*, Nteziryayo, continued to incite the population to “finish off” the enemy and its “accomplices”, most notably during the swearing-in ceremony of the Muganza *bourgmestre*, Élie Ndayambaje.<sup>12895</sup>

4877. The Prosecution submits that Nteziryayo made public statements inciting people to exterminate the Tutsi population as part of the genocidal plan of the Interim Government.<sup>12896</sup> To this end, Nteziryayo attended a meeting in Gikore *secteur* around mid-June 1994 where Nteziryayo ordered the population to flush out and kill the remaining Tutsi survivors.<sup>12897</sup> The Prosecution relies upon the testimony of Witness FAH.

4878. In addition to its submissions on the defective nature of the Nsabimana and Nteziryayo Indictment,<sup>12898</sup> and its request to exclude the evidence of Witness FAH,<sup>12899</sup> considered below, the Nteziryayo Defence submits that the only occasion Nteziryayo went to Gikore between April and July 1994, was for a security council meeting on 24 May 1994.<sup>12900</sup> Nteziryayo did not attend a second meeting approximately two or three weeks after the Gikore meeting on 24 May 1994.<sup>12901</sup> The Defence relies upon the testimony of Nteziryayo.

### 3.6.46.2 Preliminary Issues

#### *Failure to Plead Second Meeting at Gikore Secteur*

4879. The Nteziryayo Defence submits that the Nsabimana and Nteziryayo Indictment is defective insofar as it failed to plead the Gikore meeting of June 1994. Further, the Defence submits that references in Witness FAH’s previous statements to a meeting which took place in April 1994 did not provide adequate notice that Witness FAH would testify as to a meeting in June 1994.<sup>12902</sup>

4880. Paragraph 5.8 of the Nsabimana and Nteziryayo Indictment alleges that from April to July 1994, incitement to hatred and violence was propagated by various prominent persons, including Nteziryayo, who publicly incited the people to exterminate the Tutsi population and its “accomplices”.<sup>12903</sup> Paragraph 6.31 of the Nsabimana and Nteziryayo Indictment alleges that between April and June 1994, Nteziryayo incited the population to slaughter the Tutsis in

<sup>12893</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>12894</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>12895</sup> Para. 6.34 Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>12896</sup> Prosecution Closing Brief, pp. 312, 352-353, paras. 24, 153-154.

<sup>12897</sup> Prosecution Closing Brief, pp. 356-357, paras. 166-167.

<sup>12898</sup> Nteziryayo Closing Brief, para. 137.

<sup>12899</sup> Nteziryayo Closing Brief, para. 765.

<sup>12900</sup> Nteziryayo Closing Brief, paras. 179-181; T. 6 June 2007 p. 10 (Nteziryayo).

<sup>12901</sup> T. 6 June 2007 pp. 10, 19-21 (Nteziryayo).

<sup>12902</sup> Nteziryayo Closing Brief, para. 137.

<sup>12903</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

Butare *préfecture*.<sup>12904</sup> Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment alleges that after the handing over of office on 21 June 1994, newly appointed *Préfet* Nteziryayo continued to incite the population to “finish off” the enemy and its “accomplices”, most notably during the swearing-in ceremony of the Muganza *bourgmestre*, Élie Ndayambaje.<sup>12905</sup> The Chamber notes Paragraph 6.34 is not pled in support of any counts against Nteziryayo.

4881. Paragraphs 6.53 and 6.59 of the Nsabimana and Nteziryayo Indictment allege that between April and June 1994, Nteziryayo not only incited but also aided and abetted the population in massacring the Tutsis in Butare *préfecture*.<sup>12906</sup>

4882. The Chamber notes that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement, as well as Paragraphs 6.53 and 6.59 relating to aiding and abetting are very general in nature. Aside from alleging that Nteziryayo publicly incited as well as aided and abetted people to exterminate Tutsis over a four-month period, these paragraphs fail to provide any details of specific incidents of incitement. In particular, no reference is made to any meeting in Gikore *secteur*. The Chamber therefore considers each of these paragraphs to be defective. Further, as previously established in the Preliminary Issues section of this Judgement (), the Chamber will not make findings regarding paragraphs other than those specifically pled in support of counts. Thus, the Chamber will not make any finding against Nteziryayo with respect to Paragraph 6.34 of the Nsabimana and Nteziryayo Indictment.

4883. The Chamber must then determine whether 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement, as well as Paragraphs 6.53 and 6.59 relating to aiding and abetting, were cured of their respective defects through subsequent Prosecution disclosures.

4884. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the Prosecution Pre-Trial Brief makes no reference to a meeting at Gikore *secteur*. The Chamber notes the Prosecution relies upon the testimony of Witness FAH with respect to this allegation.<sup>12907</sup> The witness summary grid with respect to Witness FAH shows this witness was intended to testify that Nteziryayo and Muvunyi made a speech inviting people to fight together to stop the enemy; urging those who could not go to the frontline to post themselves at roadblocks and conduct a thorough search of the Tutsis, and kill them because the Tutsis are “a bad race, a race of snakes”. Witness FAH was also supposed to testify that three or four weeks later a meeting was held at the same venue where Nteziryayo, Ruzindaza and Muvunyi told people to look for the Tutsis everywhere and then kill them.<sup>12908</sup> The second meeting is the object of the current allegation.

4885. The Chamber notes that the summary of the intended evidence of Witness FAH provided in the Prosecution Pre-Trial Brief was listed as being brought in support of Counts 1 (conspiracy to commit genocide) and 4 (direct and public incitement to commit genocide)

<sup>12904</sup> Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>12905</sup> Para. 6.34 Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>12906</sup> Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>12907</sup> Prosecution Closing Brief, pp. 356-357, paras. 166-167.

<sup>12908</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAH (20).

against Nteziryayo. Further, the Chamber notes that the summary of the intended evidence of Witness FAH provided in the Prosecution Pre-Trial Brief fails to give any details as to the time or location of the alleged incident of incitement.

4886. Witness FAH's statements provide further detail with respect to Nteziryayo's alleged inciting speech. Witness FAH's first statement of 7 April 1999 stated that towards the end of April 1994 the *conseiller* for Gikore *secteur* informed the population of a meeting with the *bourgmestre* and the *préfet* at the Gikore Centre in Nyarunazi *cellule*.<sup>12909</sup> Among others, *Préfet* Nteziryayo, Colonel Muvunyi, the President of the Court of First Instance, Ruzindaza, and the *bourgmestre* of Nyaruhengeri were in attendance. Witness FAH's statement then refers to a second meeting which took place three to four weeks after the first visit, towards the end of May 1994, where all the foregoing leaders returned to Gikore. On that occasion, Witness FAH recalled that the *préfet* said that the Hutus were fools because some of them were hiding Tutsis, others were living with Tutsi spouses while others forced Tutsi women to live with them without marriage. He said, "[y]ou have to kill them and destroy those who are hiding the enemy just like you destroy the enemy", and explained that when a snake twirls round a calabash, the calabash must be broken in order to destroy the snake. After the departure of the *préfet*, systematic searches were organised in houses and all over the surrounding hill. Several Tutsis were killed yet again.<sup>12910</sup>

4887. Witness FAH's second statement of 3 February 2000 also refers to the same two meetings that took place in Gikore *secteur*, held three to four weeks apart, but does not provide any further detail as to Nteziryayo's role at that meeting.<sup>12911</sup>

4888. The Chamber finds that the substance of Witness FAH's previous statements is consistent with the summary of his expected testimony contained in the Appendix to the Pre-Trial Brief. Although the summary of Witness FAH's expected testimony contained in the Appendix to the Pre-Trial Brief failed to mention either the time or location of the incident in question, the omission of such details was remedied by information contained in Witness FAH's statements which identified two meetings that both took place in Gikore *secteur*.

4889. With respect to the timing of these meetings, the Chamber recalls that the witness' first statement placed the first meeting in April 1994 and the second meeting, three or four weeks later. Nevertheless, the Chamber notes that the witness' statements claim *Préfet* Nteziryayo was present at both meetings. In the Chamber's view therefore, the second meeting must have taken place after Nteziryayo took office as *préfet*. The witness' trial testimony reinforced this conclusion. He testified that the first meeting took place around the end of May or beginning of June 1994,<sup>12912</sup> and a second meeting was called about two or three weeks after the first meeting.<sup>12913</sup> Witness FAH's previous statements were disclosed respectively to the Defence in November and December 2000, over three years prior to Witness FAH's testimony in April 2004.

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<sup>12909</sup> 8 October 1999, Statement of Witness FAH, disclosed 15 November 2000.

<sup>12910</sup> 8 October 1999, Statement of Witness FAH, disclosed 15 November 2000.

<sup>12911</sup> 3 February 2000, Statement of Witness FAH, disclosed 4 December 2000.

<sup>12912</sup> T. 22 April 2004 p. 9; T. 22 April 2004 pp. 19-20 (ICS) (Witness FAH).

<sup>12913</sup> T. 21 April 2004 p. 19 (Witness FAH).

4890. Having regard to the content of Witness FAH's statements which refer to Nteziryayo as *préfet*, the Chamber is of the view that the Nteziryayo Defence was on notice that the meeting about which Witness FAH would testify must have occurred in June 1994. As such, the Chamber also considers the discrepancy in dates to be minor and not such as to violate the right of the Accused to adequate notice.<sup>12914</sup> For the foregoing reasons, the Chamber considers that Paragraphs 5.8 and 6.31 of the Nsabimana and Nteziryayo Indictment relating to incitement, as well as Paragraphs 6.53 and 6.59 relating to aiding and abetting were cured by the disclosure of clear, consistent and timely information. The Chamber is of the view that the Nteziryayo Defence was on notice that it would need to defend itself against the allegation that Nteziryayo incited the population by speeches he gave at a meeting in Gikore *secteur* sometime in June 1994 when he was *préfet*, in support of Counts 1 and 4 of the Nteziryayo Indictment. The Chamber further considers the Defence did not suffer any prejudice and that the Defence's right to prepare was not violated.

#### *Exclusion of the Evidence of Witness FAH*

4891. The Nteziryayo Defence submits that at the time of filing the Nteziryayo Closing Brief its motion requesting the exclusion of portions of evidence of several Prosecution witnesses, including Witness FAH, filed on 23 January 2009,<sup>12915</sup> was pending.<sup>12916</sup> The Chamber observes that on 25 February 2009 the Chamber denied that motion in its entirety. The Chamber considered it was inappropriate to deal with the motion during trial, and chose to decide such issues in its final deliberations.<sup>12917</sup>

4892. Having regard to the Chamber's finding that the Nteziryayo Defence received sufficient notice of the current allegation, the Chamber considers there is no reason to exclude the evidence of Witness FAH. In addition to Witness FAH's evidence being provided in a clear and consistent manner, Witness FAH's previous statements were disclosed respectively to the Defence in November and December 2000, over three years prior to Witness FAH's testimony in April 2004 and well before the commencement of the Nteziryayo Defence case in December 2006. For these reasons the Chamber considers the Defence had sufficient time to prepare Nteziryayo's defence with regard to this allegation. For the foregoing reasons the Chamber considers the Defence did not suffer any prejudice and that the Defence's right to prepare was not violated. Accordingly, the Chamber declines the Defence's request to exclude the evidence of Witness FAH.

### **3.6.46.3 Evidence**

#### Prosecution Witness FAH

4893. Witness FAH, a Hutu farmer, testified that around the end of May or beginning of June 1994,<sup>12918</sup> authorities went to various hills and informed the population in his *commune* that a

<sup>12914</sup> *Rutaganda*, Judgement (AC), paras. 296, 304-305.

<sup>12915</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009.

<sup>12916</sup> Nteziryayo Closing Brief, para. 765.

<sup>12917</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>12918</sup> T. 22 April 2004 pp. 9, 19-20 (Witness FAH).

meeting would take place on the same day at Gikore *secteur* in Nyaruhengeri *commune*.<sup>12919</sup> *Préfet* Nteziryayo attended that first meeting.<sup>12920</sup> On that occasion the *bourgmestre* of his *commune* introduced Nteziryayo as the “new *préfet* of Butare *préfecture*” before he introduced the other guests.<sup>12921</sup> Nteziryayo delivered a speech in which he said that Rwanda had been attacked by the “enemy” who had come to exterminate Hutus and that it was important that Tutsis, in reference to whom Nteziryayo referred to as “accomplices”, be killed before the enemy arrived.<sup>12922</sup>

4894. A second meeting at Gikore *secteur*, Nyaruhengeri *commune*, was called about two or three weeks after the first meeting.<sup>12923</sup> The inhabitants were again informed by persons sent by the authorities about that meeting on the day the meeting was held.<sup>12924</sup> They were informed the meeting was to start at 9.00 a.m., but it actually started at 10.30 a.m.<sup>12925</sup> People from Gikore and Bimba *secteurs*, as well as people from Kibaye, Kigembe and Muganza attended the meeting.<sup>12926</sup>

4895. Witness FAH testified that he came to the venue before the meeting started<sup>12927</sup> and saw the new *préfet*, Nteziryayo, and other authorities arrive one after the other in their cars.<sup>12928</sup> Nteziryayo wore civilian clothes, a suit and a tie.<sup>12929</sup>

4896. Nteziryayo addressed the population after an introduction by the *bourgmestre*.<sup>12930</sup> Nteziryayo talked about the circumstances under which the country had been attacked by the enemy. He further talked about the means at their disposal in order to take over the enemy.<sup>12931</sup> Nteziryayo told the population that they “did not comply by our instructions.”<sup>12932</sup> The witness recounted that Nteziryayo further stated:

That some were engaged in looting the belongings of the Tutsi, others were eating their cows or livestock; that young people had taken Tutsi girls as wives. You had forgotten to comply with your duty, carry out your duty. I would like to tell you that you have gone astray because the enemy has already infiltrated our ranks.... How can you take a Tutsi girl for your wife whereas you had killed her relatives ... ? ... those Tutsis you are hiding must all die.... [T]he person who would not comply with what I am asking for or would continue to hide or keep as wives Tutsi girls, ... should be killed at the same time as the others.... These people could be compared to snakes that have ...

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<sup>12919</sup> T. 21 April 2004 p. 11; T. 21 April 2004 p. 25 (ICS) (Witness FAH).

<sup>12920</sup> T. 21 April 2004 p. 12 (Witness FAH).

<sup>12921</sup> T. 21 April 2004 p. 14 (Witness FAH).

<sup>12922</sup> T. 21 April 2004 p. 15 (Witness FAH).

<sup>12923</sup> T. 21 April 2004 p. 19 (Witness FAH).

<sup>12924</sup> T. 21 April 2004 p. 20; T. 21 April 2004 p. 25 (ICS) (Witness FAH).

<sup>12925</sup> T. 21 April 2004 p. 20 (Witness FAH).

<sup>12926</sup> T. 21 April 2004 p. 25 (ICS) (Witness FAH).

<sup>12927</sup> T. 21 April 2004 p. 20 (Witness FAH).

<sup>12928</sup> T. 21 April 2004 p. 21 (Witness FAH).

<sup>12929</sup> T. 22 April 2004 pp. 39-40 (Witness FAH).

<sup>12930</sup> T. 21 April 2004 p. 21 (Witness FAH).

<sup>12931</sup> T. 21 April 2004 p. 21 (Witness FAH).

<sup>12932</sup> T. 21 April 2004 p. 21 (Witness FAH).

wrapped around the house. You would need to break that house in order to kill the snake.<sup>12933</sup>

4897. Nteziryayo also said that when you clean a house, you do not leave the dirt inside it, you take the dirt outside.<sup>12934</sup>

4898. Speeches by Colonel Muvunyi, President of the Court of First Instance Ruzindaza and *Bourgmestre* Kabeza followed Nteziryayo's speech.<sup>12935</sup> Colonel Muvunyi said that the population had not complied with the authorities' former instructions. He added if the population did not fight the Tutsis, who were accomplices, then the Tutsis would exterminate the population. He told the population to search everywhere for the Tutsis, including those that they were hiding, and to kill them.<sup>12936</sup> Ruzindaza quoted from the book of Jeremiah, Chapter 6, verses 22 to 25, and said that the enemy was coming from the north and that if the population would not kill the Tutsis, they would face serious problems because the enemy was pitiless.<sup>12937</sup> The *bourgmestre* asked the attendees to implement the instructions delivered in the speeches and then closed the meeting.<sup>12938</sup>

4899. Witness FAH testified that on the day of the meeting he and the members of his group started to kill the Tutsi survivors in compliance with the instructions given.<sup>12939</sup> The witness said he and his "comrade" killed and buried two men from Bugesera.<sup>12940</sup> The witness injured his neighbour's child with a machete and threw the child into a latrine pit.<sup>12941</sup> He subsequently stated that he did not actively participate in killing anyone.<sup>12942</sup> The second wave of killings lasted only a short time because it aimed to identify and to "flush out" the few remaining Tutsi survivors.<sup>12943</sup>

4900. Witness FAH saw Nteziryayo for the first time when he arrived at the first meeting.<sup>12944</sup> He knew it was Nteziryayo because he was introduced by the *bourgmestre*.<sup>12945</sup> Witness FAH saw Nteziryayo for the last time at the second meeting.<sup>12946</sup> Witness FAH identified Nteziryayo in court.<sup>12947</sup>

4901. When put to Witness FAH that his first statement of 7 April 1999 stated the population was informed of a first meeting towards the end of April 1994, Witness FAH testified the meeting did not take place at the end of the month of April 1994, in spite of what was recorded in his statement.<sup>12948</sup> He stated he corrected this error in his second statement.<sup>12949</sup> When put to

<sup>12933</sup> T. 21 April 2004 p. 21 (Witness FAH).

<sup>12934</sup> T. 21 April 2004 p. 22 (Witness FAH).

<sup>12935</sup> T. 21 April 2004 pp. 22-23 (Witness FAH).

<sup>12936</sup> T. 21 April 2004 p. 22 (Witness FAH).

<sup>12937</sup> T. 21 April 2004 p. 23 (Witness FAH).

<sup>12938</sup> T. 21 April 2004 p. 23 (Witness FAH).

<sup>12939</sup> T. 21 April 2004 pp. 23-24 (Witness FAH).

<sup>12940</sup> T. 21 April 2004 p. 23 (Witness FAH).

<sup>12941</sup> T. 21 April 2004 pp. 23-24 (Witness FAH).

<sup>12942</sup> T. 21 April 2004 p. 19 (Witness FAH).

<sup>12943</sup> T. 21 April 2004 p. 24 (Witness FAH).

<sup>12944</sup> T. 21 April 2004 p. 29; T. 22 April 2004 p. 32 (Witness FAH).

<sup>12945</sup> T. 22 April 2004 p. 45 (ICS) (Witness FAH).

<sup>12946</sup> T. 21 April 2004 p. 29; T. 22 April 2004 p. 39 (Witness FAH).

<sup>12947</sup> T. 21 April 2004 p. 30 (Witness FAH).

<sup>12948</sup> T. 22 April 2004 pp. 10-11, 38 (Witness FAH).

the witness that his second statement of 3 February 2000 also referred to a meeting at which Colonel Muvunyi spoke that took place in late April 1994,<sup>12950</sup> Witness FAH explained that he never made these statements but that the person who recorded the first statement made a mistake and this mistake reoccurred in other documents.<sup>12951</sup>

4902. Witness FAH explained that he wanted to correct these mistaken references to late April 1994 but was told he could do so at a later time. When put to him why he initialled other corrections in that statement, but not the references to late April, he claimed the investigators did not allow him to correct all the mistakes in his statement.<sup>12952</sup> Witness FAH first noticed errors in his statement in October or November 1998 when he made his confession.<sup>12953</sup>

4903. When put to Witness FAH that his confessional statement of 29 May 2003 confessed to participation in killings that occurred in April 1994, the witness stated that the attacks actually took place in June, after the meeting chaired by *Préfet* Nteziryayo where they were asked to kill Tutsis.<sup>12954</sup> He stated that his confessional statement contained errors for which he was not responsible.<sup>12955</sup>

4904. Witness FAH testified that Nteziryayo was *préfet* of Butare at the time of both the first and second meeting in Gikore *secteur*.<sup>12956</sup> Witness FAH knew that Nteziryayo replaced Nsabimana as *préfet* of Butare but could not recall the date of Nteziryayo's appointment. When confronted with Defence Exhibit 5,<sup>12957</sup> Nteziryayo's official letter of appointment as *préfet* of Butare of 21 June 1994, Witness FAH maintained that he was not mistaken about the dates of the meetings and that the letter of appointment might be fraudulent.<sup>12958</sup>

### Nteziryayo

4905. Nteziryayo testified that the only occasion he went to Gikore between April and July 1994 was for a meeting on 24 May 1994.<sup>12959</sup> This meeting was one of several which formed part of the authorities' tour of the southern *communes*, pursuant to a decision taken at a meeting of the Security Council on 20 May 1994. Nteziryayo was not introduced as the new *préfet* of Butare at the time of the first meeting in Gikore as alleged by FAH because he was not *préfet* at that time.<sup>12960</sup>

4906. Contrary to the testimony of Witness FAH, he did not attend a second meeting two or three weeks after the meeting held in Gikore on 24 May 1994.<sup>12961</sup> He contested Witness FAH's testimony that he spoke about the means to fight the enemy; that he said that

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<sup>12949</sup> T. 22 April 2004 pp. 33-35 (Witness FAH).

<sup>12950</sup> T. 22 April 2004 pp. 11, 37 (Witness FAH).

<sup>12951</sup> T. 22 April 2004 p. 38 (Witness FAH).

<sup>12952</sup> T. 22 April 2004 pp. 12-13 (Witness FAH).

<sup>12953</sup> T. 22 April 2004 p. 49 (Witness FAH).

<sup>12954</sup> T. 22 April 2004 pp. 20-22 (ICS) (Witness FAH).

<sup>12955</sup> T. 22 April 2004 p. 22 (ICS) (Witness FAH).

<sup>12956</sup> T. 22 April 2004 p. 45 (ICS) (Witness FAH).

<sup>12957</sup> T. 22 April 2004 p. 46 (Witness FAH).

<sup>12958</sup> T. 22 April 2004 p. 47 (Witness FAH).

<sup>12959</sup> T. 6 June 2007 p. 10 (Nteziryayo).

<sup>12960</sup> T. 6 June 2007 p. 10 (Nteziryayo).

<sup>12961</sup> T. 6 June 2007 pp. 10, 19-21 (Nteziryayo).

instructions had not been complied with; that he requested the population to kill Tutsis, even those persons who had taken Tutsi wives or girlfriends; and that he compared Tutsis to snakes and referred to them as dirt that needed to be put out.<sup>12962</sup> Nteziryayo stated that since he did not attend the second meeting, he did not know what others said at the alleged second meeting in Gikore.<sup>12963</sup>

### 3.6.46.4 Deliberations

4907. The issue in question is whether a second meeting took place in Gikore *secteur* sometime in mid-June 1994 at which Nteziryayo ordered the population to flush out and kill the remaining Tutsi survivors.<sup>12964</sup> Witness FAH testified to two meetings that took place in Gikore *secteur*, attended by various authorities including Nteziryayo, Nsabimana, Colonel Muvunyi, and President of the Court of First Instance Ruzindaza. The first meeting took place around the end of May or beginning of June 1994,<sup>12965</sup> which the Chamber considers to be consistent with Nteziryayo's evidence of a Security Council meeting in Gikore *secteur* on 24 May 1994.<sup>12966</sup> Witness FAH testified that a second meeting was called about two or three weeks after the first meeting.<sup>12967</sup> In contrast to Witness FAH's testimony, Nteziryayo testified that the only occasion he went to Gikore between April and July 1994 was for a meeting on 24 May 1994,<sup>12968</sup> and denied attending a second meeting two or three weeks after the 24 May 1994 meeting.<sup>12969</sup>

4908. Witness FAH was the only Prosecution witness to testify regarding the second Gikore *secteur* meeting.<sup>12970</sup> In its Closing Brief, the Prosecution asserts that Witness FAG also testified to a second Gikore *secteur* meeting, about two weeks after a first meeting.<sup>12971</sup> The Chamber notes that the portion of the transcript extracted under the sub-heading "Witness FAG" in the Prosecution Closing Brief is in fact the evidence of Witness FAH. Witness FAG only testified to inflammatory speeches made by Nteziryayo at Ndayambaje's swearing-in ceremony.<sup>12972</sup> Only Witness FAH testified with respect to the meeting in question, and this testimony is uncorroborated.

4909. The Chamber recalls that Witness FAH was a detained witness at the time of his testimony.<sup>12973</sup> Witness FAH pled guilty to genocide in Rwanda in 1998<sup>12974</sup> and had not been sentenced at the time of his testimony. Despite initially testifying that he and his "comrade" killed and buried two men from Bugesera,<sup>12975</sup> and injured his neighbour's child with a

<sup>12962</sup> T. 6 June 2007 pp. 10-11 (Nteziryayo).

<sup>12963</sup> T. 6 June 2007 pp. 12-13 (Nteziryayo).

<sup>12964</sup> Prosecution Closing Brief, pp. 356-357, paras. 166-167.

<sup>12965</sup> T. 22 April 2004 pp. 9, 19-20 (Witness FAH).

<sup>12966</sup> T. 6 June 2007 p. 10 (Nteziryayo).

<sup>12967</sup> T. 21 April 2004 p. 19 (Witness FAH).

<sup>12968</sup> T. 6 June 2007 p. 10 (Nteziryayo).

<sup>12969</sup> T. 6 June 2007 pp. 10, 19-21 (Nteziryayo).

<sup>12970</sup> Prosecution Closing Brief, pp. 356-357, paras. 166-167.

<sup>12971</sup> Prosecution Closing Brief, p. 356, para. 166.

<sup>12972</sup> T. 1 and 3 March 2004 (Witness FAG); Prosecution Closing Brief, p. 359, para. 173.

<sup>12973</sup> T. 21 April 2004 p. 10; T. 21 April 2004 p. 46 (ICS) (Witness FAH).

<sup>12974</sup> T. 21 April 2004 pp. 10, 40-41 (Witness FAH).

<sup>12975</sup> T. 21 April 2004 p. 23; T. 21 April 2004 p. 27 (ICS) (Witness FAH).



machete before throwing him into a latrine pit,<sup>12976</sup> in addition to other killings,<sup>12977</sup> Witness FAH subsequently downplayed his role in the genocide before the Tribunal, stating that he did not actively participate in killing anyone.<sup>12978</sup> The Chamber considers that Witness FAH may have had an interest in attributing responsibility for acts he committed during the genocide as being authorised by the authorities and therefore officially sanctioned, in order to potentially reduce his sentence. Having regard for the foregoing, the Chamber considers that Witness FAH's testimony should be viewed with appropriate caution.

4910. The Chamber notes that Witness FAH testified that the attacks he executed in June 1994 arose after the meeting chaired by *Préfet* Nteziryayo where they were asked to kill Tutsis.<sup>12979</sup> In the circumstances, the Chamber considers that the witness' particular motive to enhance Nteziryayo's role in these killings in order to diminish his own role indicates that he is not credible with respect to matters incriminating Nteziryayo.

4911. While the Chamber appreciates that it is not prohibited from relying upon the testimony of accomplice witnesses (), and that there is no legal requirement that a witness' testimony be corroborated (), the Chamber nevertheless has discretion as to whether to rely on uncorroborated, but otherwise credible, witness testimony.<sup>12980</sup> The Chamber is best placed to evaluate the probative value of evidence.<sup>12981</sup>

4912. Turning to the substance of his testimony, the Chamber notes there were several discrepancies between Witness FAH's prior statements and his oral evidence concerning the timeline of events. Both the witness' prior statements to ICTR Investigators, as well as his confessional statement to the Rwandan authorities, refer to April 1994 as the month when the first meeting and first attacks in which he was involved occurred. At trial Witness FAH explained that the person who recorded the first statement made a mistake and this mistake reoccurred in other documents.<sup>12982</sup> Witness FAH explained that he wanted to correct the mistaken references to late April 1994 in his statements but was told he could do so at a later time. He claimed the investigators did not allow him to correct all the mistakes in his statement.<sup>12983</sup> The witness' confessional statement also contained errors for which Witness FAH claimed not to be responsible.<sup>12984</sup>

4913. The Chamber considers that Witness FAH's confusion as to the timing of this meeting casts doubt on its occurrence. Further, the Chamber does not accept as plausible the witness' explanation that the investigators did not allow him to correct the mistaken references to late

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<sup>12976</sup> T. 21 April 2004 pp. 23-24 (Witness FAH).

<sup>12977</sup> T. 21 April 2004 p. 27 (ICS) (Witness FAH).

<sup>12978</sup> T. 21 April 2004 p. 19 (Witness FAH).

<sup>12979</sup> T. 22 April 2004 pp. 20-22 (ICS) (Witness FAH).

<sup>12980</sup> *Muvunyi I*, Judgement (AC), para. 128; *see Karera*, Judgement (AC), para. 46 (“a Trial Chamber has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary and to rely on uncorroborated, but otherwise credible, witness testimony.”).

<sup>12981</sup> *See Rutaganda*, Judgement (AC), para. 29 (“It is possible for one Trial Chamber to prefer that a witness statement be corroborated, but neither the jurisprudence of the International Tribunal nor of the ICTY makes this an obligation.”).

<sup>12982</sup> T. 22 April 2004 p. 38 (Witness FAH).

<sup>12983</sup> T. 22 April 2004 pp. 12-13 (Witness FAH).

<sup>12984</sup> T. 22 April 2004 p. 22 (ICS) (Witness FAH).

April 1994 in his statements,<sup>12985</sup> but that he nevertheless amended other details in his statements.<sup>12986</sup>

4914. In the present circumstances, the Chamber is of the opinion that Witness FAH's evidence, standing alone, is not sufficiently reliable to ground a finding of fact beyond reasonable doubt that a meeting took place in Gikore *secteur* sometime in June 1994 during which Nteziryayo incited the population to kill Tutsis. As a result, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Nteziryayo incited the population to flush out and kill any remaining Tutsi survivors in hiding at a meeting in Gikore *secteur* in June 1994, in furtherance of a plan to exterminate Tutsis.

### **3.6.47 Distribution of Condoms, June 1994**

#### **3.6.47.1 Introduction**

4915. The Nyiramasuhuko and Ntahobali Indictment alleges that during the events at issue, soldiers, militiamen and *gendarmes*, among others, widely and notoriously committed rapes, sexual assaults and other crimes of a sexual nature throughout Rwanda. These crimes were perpetrated against the Tutsi population, and in particular against Tutsi women and girls.<sup>12987</sup> The Nyiramasuhuko and Ntahobali Indictment further alleges that these assaults were the result of a strategy adopted and elaborated by Pauline Nyiramasuhuko and other political, civil and military authorities in the country, at both the national and local level who conspired to exterminate the Tutsi population.<sup>12988</sup> The Indictment also alleges that Pauline Nyiramasuhuko participated in the planning, preparation or execution of a common scheme, strategy or plan to commit the atrocities set forth. The crimes were committed by her personally, by persons she assisted or by her subordinates, and with her knowledge or consent.<sup>12989</sup>

4916. The Nyiramasuhuko and Ntahobali Indictment also alleges that from late 1990 until July 1994, members of the Government conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population. The components of this plan consisted of, *inter alia*, recourse to hatred and ethnic violence. In executing the plan, they organised, ordered and participated in the massacres perpetrated against the Tutsi population. Nyiramasuhuko elaborated, adhered to and executed this plan.<sup>12990</sup> The Indictment further alleges that from April to July 1994, incitement to hatred and violence was propagated by various prominent persons, including members of the Government and local authorities.

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<sup>12985</sup> T. 22 April 2004 pp. 12-13 (Witness FAH).

<sup>12986</sup> T. 22 April 2004 pp. 12-13 (Witness FAH).

<sup>12987</sup> Para. 5.18 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-11 against Nyiramasuhuko).

<sup>12988</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-6, 8 and 10-11 against Nyiramasuhuko).

<sup>12989</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-3, 5-11 against Nyiramasuhuko).

<sup>12990</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8 and 10-11 against Nyiramasuhuko).

Nyiramasuhuko publicly incited the people to exterminate the Tutsi population and its “accomplices” and to get involved in the massacres in Butare *préfecture*.<sup>12991</sup>

4917. The Prosecution submits that in early June 1994, Nyiramasuhuko, in the company of at least four men and another woman and in a public place, handed out two boxes of condoms to a woman named Anastasie Mukasakindi, and said: “Distribute these condoms to our young men for them to rape the Tutsi, and after having raped them they should kill them. And moreover, it is these Tutsi women that steal away our husbands. Not a single one of them should survive. Rape them first and use the condom – by using the condoms, and after that kill them. Let no Tutsi woman survive.”<sup>12992</sup> In support of its submissions, the Prosecution relies on the testimony of Prosecution Witness FAE.

4918. The Nyiramasuhuko Defence denies the allegation and asserts that Witness FAE’s testimony is not credible and uncorroborated. It contends that Prosecution Witness FAE lived in hiding in several locations from 23 April 1994, and therefore it was hard to believe that she suddenly left her hiding place and was able to see the distribution of condoms by Nyiramasuhuko.<sup>12993</sup>

4919. The Nyiramasuhuko Defence also denies that Nyiramasuhuko was present at the time of the alleged event. The Nyiramasuhuko Defence notes that the Prosecution alleged that Nyiramasuhuko may have travelled between Murambi and Butare during this time. Instead, the Defence submits alibi evidence placing her in Muramba in Gisenyi *préfecture* at the time of this alleged incident, and asserts that she could not have travelled to Butare to distribute condoms.<sup>12994</sup> In support of her alibi evidence, Nyiramasuhuko relies on Nyiramasuhuko Defence Witnesses Denise Ntahobali, WZJM, Céline Nyiraneza, WBUC, Maurice Ntahobali, Shalom Ntahobali, WZNA, Nsabimana, WTMP, Edmond Babin and Nyiramasuhuko.

4920. The Defence further submits that if a public personality like Minister Nyiramasuhuko came to their *secteur* or *cellule*, everybody would have known. Yet three Defence witnesses testified they did not see Nyiramasuhuko. Furthermore, the Defence questions the believability of the Prosecution argument that Nyiramasuhuko developed a sudden concern in June 1994 to distribute condoms in order to prevent AIDS.<sup>12995</sup>

4921. In addition, the Nyiramasuhuko Defence argues that Prosecution Witness FAE was an active militant of the Association of Genocide Survivors (*Association des Rescapés du Génocide*), an organisation run by *Ibuka*. The Defence asserts that this organisation is known for its active role in the fabrication of testimony against the accused persons of the ICTR.

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<sup>12991</sup> Para. 5.8 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-6 and 8-10 against Nyiramasuhuko); Para. 6.20 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-5, 8 and 10 against Nyiramasuhuko); Para. 6.38 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-5, 8 and 10 against Nyiramasuhuko); Para. 6.47 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-6, 8 and 10 against Nyiramasuhuko).

<sup>12992</sup> Prosecution Closing Brief, pp. 109, 121-122, paras. 280, 322.

<sup>12993</sup> Nyiramasuhuko Closing Brief, paras. 291-293.

<sup>12994</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 7.

<sup>12995</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 46.

Thus, the Defence submits that FAE's testimony is not credible.<sup>12996</sup> In support of its submissions, the Nyiramasuhuko Defence relies on the testimony of Nyiramasuhuko Defence Witnesses MNW, WZNA and WNMN and Nyiramasuhuko.

4922. The Ntahobali Defence submits, on behalf of Nyiramasuhuko, that this allegation was not included in the Indictment.<sup>12997</sup>

### 3.6.47.2 Preliminary Issues

4923. The Chamber notes that as submitted by the Ntahobali Defence, the allegation that Nyiramasuhuko handed out two boxes of condoms in Cyarwa-Sumo *secteur*, Ngoma *commune* in early June 1994, and requested that the condoms be distributed among the young Hutu men to rape the Tutsi women and then kill them, is not specifically pled in the Nyiramasuhuko and Ntahobali Indictment.<sup>12998</sup> The Chamber therefore finds the Indictment to be defective in this regard.

4924. Recalling the principles of notice previously articulated in this Judgement (), the Chamber will now determine whether the Indictment has been cured of these defects through subsequent Prosecution disclosures.

4925. The Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness FAE, who was expected to testify that in Cyarwa-Sumo *secteur*, she saw Nyiramasuhuko with a gun, accompanied by four men. One of these men handed over a box of condoms to another woman, and instructed her to give them to their young supporters so that they could use them when raping the Tutsi women. The witness summary further states that Nyiramasuhuko told this woman that Tutsi women were to be killed "because they are taking their husbands".<sup>12999</sup>

4926. The Chamber notes that the summary of the intended evidence of Witness FAE provided in the Appendix to the Prosecution Pre-Trial Brief provides adequate details as to the location where this event purportedly occurred, but does not specify a time.

4927. The Chamber observes that the prior statement of Witness FAE, dated 7 May 1999, was disclosed to the Defence on 15 November 2000, 13 December 2001 and again on 21 December 2001.<sup>13000</sup> This statement made further specific references to the location, and specifically mentioned the time frame as "early June 1994". These disclosures were made well before the start of Witness FAE's testimony on 17 March 2004.

4928. The Chamber finds that the substance of Witness FAE's previous statement is consistent with the summary of her anticipated testimony contained in the Appendix to the

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<sup>12996</sup> Nyiramasuhuko Closing Brief, para. 286; The Chamber notes that it has previously set out the evidence of Witness WNMN as it relates to the alleged fabrication claim (). The Chamber will take this evidence into account in the Deliberations section.

<sup>12997</sup> Ntahobali Closing Brief, para. 78 (vi).

<sup>12998</sup> Ntahobali Closing Brief, para. 78 (vi).

<sup>12999</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAE (17).

<sup>13000</sup> 7 May 1999, Redacted Statement of Witness FAE, disclosed 15 November 2000; 7 May 1999, Unredacted Statement of Witness FAE, disclosed 13 December 2001.

Pre-Trial Brief regarding Nyiramasuhuko's presence in Cyarwa-Sumo *secteur* and her actions and statements in distributing the condoms and inciting others to rape and kill Tutsi women.

4929. For the foregoing reasons, the Chamber considers that the defect in the Nyiramasuhuko and Ntahobali Indictment is cured by the disclosure of clear, consistent and timely information.<sup>13001</sup> Consequently, Nyiramasuhuko was reasonably able to understand the nature of the charges against her and there was no prejudice to the preparation of her defence.

### 3.6.47.3 Evidence

#### Prosecution Witness FAE

4930. Witness FAE, a Tutsi, identified Nyiramasuhuko in court.<sup>13002</sup> The witness had known Nyiramasuhuko for several years before the genocide; she would see her at the university where Nyiramasuhuko used to work and also during MRND meetings.<sup>13003</sup> She often saw Nyiramasuhuko at the hospital accompanying her mother to seek medical attention.<sup>13004</sup> Nyiramasuhuko looked for a Hutu physician to treat her mother because of her hatred of Tutsis.<sup>13005</sup> Nyiramasuhuko was the Minister of Women's Affairs.<sup>13006</sup>

4931. Witness FAE averred that between April and July 1994 she did not stay in her house, but hid in several places, including people's homes, bushes and sorghum plantations.<sup>13007</sup> On 22 April 1994, her husband took and hid their children in the house of a Hutu neighbour.<sup>13008</sup> On 23 April 1994, the witness' husband went to live with his other wife. The same day, the witness also left her home and did not return until early June 1994.<sup>13009</sup> She hid in the house of a Hutu physician during this time, but she did not stay in the same place for too long, as the Tutsis were being chased and were afraid of being caught.<sup>13010</sup>

4932. Shortly after the witness returned to her house in June 1994, she saw Nyiramasuhuko not far from her (the witness') house.<sup>13011</sup> During the afternoon, she heard the noise of a vehicle passing on the road.<sup>13012</sup> At that time, Witness FAE was inside her house and looked discreetly out a window because she was afraid, and did not want to be seen.<sup>13013</sup> She saw a white double-cabin vehicle stopped on the road around 7.5 metres from her house, slightly to the right and opposite the house of a neighbour.<sup>13014</sup>

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<sup>13001</sup> See generally *Muvunyi I*, Judgement (AC), para. 20; *Seromba*, Judgement (AC), paras. 104-105.

<sup>13002</sup> T. 17 March 2004 pp. 84-85 (Witness FAE).

<sup>13003</sup> T. 17 March 2004 pp. 74-75; T. 18 March 2004 pp. 47-48, 50-51 (ICS) (Witness FAE).

<sup>13004</sup> T. 17 March 2004 pp. 74-75 (Witness FAE).

<sup>13005</sup> T. 17 March 2004 pp. 74-75; T. 18 March 2004 p. 24 (Witness FAE).

<sup>13006</sup> T. 17 March 2004 p. 75; T. 18 March 2004 p. 24 (Witness FAE).

<sup>13007</sup> T. 17 March 2004 p. 72 (ICS) (Witness FAE).

<sup>13008</sup> T. 17 March 2004 pp. 72-73 (ICS) (Witness FAE).

<sup>13009</sup> T. 17 March 2004 p. 73 (ICS) (Witness FAE).

<sup>13010</sup> T. 18 March 2004 p. 46 (ICS) (Witness FAE).

<sup>13011</sup> T. 17 March 2004 p. 73 (ICS) (Witness FAE).

<sup>13012</sup> T. 17 March 2004 pp. 74, 78 (Witness FAE).

<sup>13013</sup> T. 17 March 2004 p. 74 (Witness FAE).

<sup>13014</sup> T. 17 March 2004 pp. 75-78 (Witness FAE).

4933. The car contained five people, including Nyiramasuhuko. She could identify Nyiramasuhuko because the window of the vehicle was wound down.<sup>13015</sup> Doctor Chrysostome Ndindabahizi was driving the car. In the front passenger seat sat Simeon Remera, a medical assistant at the Butare psychiatric centre. In the rear seat, behind the driver, was an *Interahamwe* named Speratus Sibomana.<sup>13016</sup> Another *Interahamwe* named Jean-Bosco Hategekimana sat on the other side and Nyiramasuhuko sat in between the two.<sup>13017</sup>

4934. Witness FAE testified that the car stopped in front of the house owned by a woman next door to hers.<sup>13018</sup> Simeon Remera and Doctor Ndindabahizi got out.<sup>13019</sup> Simeon Remera carried a khaki-coloured box on which was the drawing of a condom and the word “*Prudence*”.<sup>13020</sup>

4935. Doctor Ndindabahizi thereafter gave the box to the woman who owned the house and said, “[g]ive this to our young *Interahamwe* for them to use when they rape the Tutsi, so that they are not contaminated with HIV or AIDS”.<sup>13021</sup> Sibomana, who was sitting next to Nyiramasuhuko in the car, gave Nyiramasuhuko another box and she in turn gave the box to the lady who owned the house.<sup>13022</sup> Nyiramasuhuko said: “Go and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands.”<sup>13023</sup> The witness commented that the “young men” referred to were the *Interahamwe*.<sup>13024</sup>

4936. Witness FAE further testified that Nyiramasuhuko did not get out of the car; she gave the box to Sibomana, who was sitting to her left in the car, and who in turn gave the box, through the window, to the lady.<sup>13025</sup> Witness FAE testified that she could hear what was being said because the vehicle in which Nyiramasuhuko sat was located not far from the window through which she was watching the events unfold.<sup>13026</sup>

4937. Nyiramasuhuko was wearing a military camouflage uniform, with the sleeves of the shirt rolled up.<sup>13027</sup> The witness commented that she could see that Nyiramasuhuko’s sleeves were rolled up when Nyiramasuhuko handed the box to the lady through the window.<sup>13028</sup>

4938. The witness averred that the boxes were about the width of the screen before her as she testified at trial, and that they were well sealed and were cube-shaped.<sup>13029</sup> The measurements of the screen before the witness were 31 by 23 centimetres.<sup>13030</sup>

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<sup>13015</sup> T. 17 March 2004 p. 74 (Witness FAE).

<sup>13016</sup> T. 17 March 2004 p. 79 (Witness FAE).

<sup>13017</sup> T. 17 March 2004 p. 79; T. 18 March 2004 p. 36 (Witness FAE).

<sup>13018</sup> T. 17 March 2004 p. 79; T. 17 March 2004 p. 82 (ICS) (Witness FAE).

<sup>13019</sup> T. 17 March 2004 p. 79 (Witness FAE).

<sup>13020</sup> T. 17 March 2004 pp. 79-80, 82; T. 18 March 2004 pp. 36-37 (Witness FAE).

<sup>13021</sup> T. 17 March 2004 p. 83; T. 18 March 2008 p. 37 (Witness FAE).

<sup>13022</sup> T. 17 March 2004 pp. 79-80 (Witness FAE).

<sup>13023</sup> T. 17 March 2004 pp. 83-84 (Witness FAE).

<sup>13024</sup> T. 17 March 2004 p. 83; T. 18 March 2004 p. 68 (ICS) (Witness FAE).

<sup>13025</sup> T. 17 March 2004 p. 84 (Witness FAE).

<sup>13026</sup> T. 18 March 2004 p. 35 (Witness FAE).

<sup>13027</sup> T. 17 March 2004 p. 84 (Witness FAE).

<sup>13028</sup> T. 17 March 2004 p. 84; T. 18 March 2004 p. 40 (Witness FAE).

4939. Witness FAE was confronted with her written statement of 7 May 1999 in which she declared that Nyiramasuhuko was seated in the front seat of the car with a gun between her legs.<sup>13031</sup> The witness explained that during her testimony she limited herself to answering questions asked by the Prosecutor, and was not asked whether Nyiramasuhuko had a gun. She further pointed out that a truck has a cabin in front and the bed of the truck is in the back, in which no one sits. Because it was a double-cabin vehicle, Nyiramasuhuko was sitting in the back seat of the cabin which was still part of the front of the vehicle.<sup>13032</sup>

4940. It was also put to Witness FAE that her prior statement indicated that the three *Interahamwe* were in the back seat. The witness reaffirmed her earlier testimony that Simeon Remera was seated next to the driver in the front seat.<sup>13033</sup>

4941. When put to Witness FAE that her prior statement did not mention the second box of condoms, Witness FAE stated that her statement was delivered and written in French, a language in which she was not fluent.<sup>13034</sup> She testified that she gave her statement in French using the little French she knew and in the absence of an interpreter.<sup>13035</sup> She averred that she did make certain corrections to the written version of her French statement, but may have overlooked certain other errors that needed to be corrected.<sup>13036</sup>

4942. Witness FAE confirmed that she was a member of the ARG (Association of Rwandan genocide survivors of 1994) which was aided by *Ibuka*.<sup>13037</sup> She denied that this association had a custom of character destruction, and averred that she was simply telling the court what she saw and heard at the time.<sup>13038</sup> She further denied that members of the ARG denounced people in order to be requited with scholarships for their children. She underscored that she, and no one else, paid for her children's studies.<sup>13039</sup>

#### Nyiramasuhuko Defence Witness MNW

4943. Witness MNW, a Hutu, testified that she knew Prosecution Witness FAE.<sup>13040</sup> She met Witness FAE immediately upon moving to Cyarwa-Sumo and Witness FAE lived approximately 300 metres from Witness MNW's home.<sup>13041</sup> They were not friends, but greeted each other when they met as neighbours.<sup>13042</sup> Witness MNW identified Witness FAE as tall, thin and dark with relaxed hair, and approximately 1 metre 70 centimetres in height.<sup>13043</sup>

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<sup>13029</sup> T. 18 March 2004 p. 37 (Witness FAE).

<sup>13030</sup> T. 18 March 2004 p. 71 (ICS) (Witness FAE).

<sup>13031</sup> T. 18 March 2004 pp. 33-34 (Witness FAE); Defence Exhibit 214 (Nyiramasuhuko) (7 May 1999, Statement of Witness FAE).

<sup>13032</sup> T. 18 March 2004 p. 34 (Witness FAE).

<sup>13033</sup> T. 18 March 2004 pp. 34-35 (Witness FAE).

<sup>13034</sup> T. 18 March 2004 p. 42; Defence Exhibit 214 (Nyiramasuhuko) (7 May 1999, Statement of Witness FAE).

<sup>13035</sup> T. 18 March 2004 pp. 42-43 (Witness FAE).

<sup>13036</sup> T. 18 March 2004 pp. 27-28 (Witness FAE).

<sup>13037</sup> T. 18 March 2004 p. 58 (ICS) (Witness FAE).

<sup>13038</sup> T. 18 March 2004 p. 59 (ICS) (Witness FAE).

<sup>13039</sup> T. 18 March 2004 pp. 59-60 (ICS) (Witness FAE).

<sup>13040</sup> T. 10 February 2005 pp. 64-65 (ICS) (Witness MNW).

<sup>13041</sup> T. 10 February 2005 p. 65 (ICS) (Witness MNW).

<sup>13042</sup> T. 10 February 2005 p. 66 (ICS) (Witness MNW).

<sup>13043</sup> T. 10 February 2005 pp. 66-69 (ICS); T. 14 February 2005 p. 11 (ICS) (Witness MNW).

Witness FAE worked at the university health centre in Butare, had five children, and was never legally married.<sup>13044</sup> A man went to Witness FAE's house about once a week. People said that the man was Witness FAE's husband.<sup>13045</sup> The witness testified that she did not see Witness FAE during the entire month of June 1994, as people had already begun to flee.<sup>13046</sup>

4944. Witness MNW knew Nyiramasuhuko, though only through hearing her speak on the radio and reading information about her.<sup>13047</sup> In 1994, the witness knew Nyiramasuhuko as Minister of Family and Women's Affairs.<sup>13048</sup>

4945. Witness MNW testified that she did not see Nyiramasuhuko in the *secteur* where she lived in May or June 1994.<sup>13049</sup>

4946. Witness MNW added that, in her capacity as a minister, everyone would have been informed of any potential visit by Nyiramasuhuko to their *secteur*, especially during a time of war, but this was not the case.<sup>13050</sup> She conceded that it was possible that Nyiramasuhuko could have made a private or covert visit, but believed that even if it was a private visit, the residents that saw her would have talked about it.<sup>13051</sup>

4947. Witness MNW stated that no one in her *secteur* told her that they heard Nyiramasuhuko say that Tutsi women had to be killed after having been raped.<sup>13052</sup> Witness MNW did not agree that Nyiramasuhuko had visited the Cyarwa-Sumo *secteur* in June 1994, distributed condoms and said "Tutsi females should be raped and killed".<sup>13053</sup> She had a "drinking joint" in her house and claimed that if Nyiramasuhuko had said either of these things, she would have known and heard of such a pronouncement from the people who came to that bar. Her patrons would have been happy with the distribution of condoms.<sup>13054</sup> Witness MNW testified that the bar she operated was not functional from 20 April 1994 until the killing stopped in early May 1994, and the bar closed again from the first days of June 1994 for the rest of the month due to a lack of supplies.<sup>13055</sup>

4948. Witness MNW confirmed that she lived at a crossroads and could see all the vehicles passing on the road. Witness MNW denied that Nyiramasuhuko could have visited the house next to Witness FAE's in early June 1994 without her knowledge. Her husband's boss lived within 100 metres of Witness FAE's house. She visited her husband's boss at least once a week, and he would have told her of any visit in this regard.<sup>13056</sup> However, she agreed that

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<sup>13044</sup> T. 10 February 2005 pp. 65-66 (ICS) (Witness MNW).

<sup>13045</sup> T. 10 February 2005 p. 66 (ICS) (Witness MNW).

<sup>13046</sup> T. 10 February 2005 p. 77 (Witness MNW).

<sup>13047</sup> T. 10 February 2005 p. 76 (Witness MNW).

<sup>13048</sup> T. 10 February 2005 pp. 76-77 (Witness MNW).

<sup>13049</sup> T. 10 February 2005 pp. 77, 79 (Witness MNW).

<sup>13050</sup> T. 10 February 2005 p. 79; T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13051</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13052</sup> T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13053</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13054</sup> T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13055</sup> T. 14 February 2005 p. 10 (ICS) (Witness MNW).

<sup>13056</sup> T. 14 February 2005 p. 12 (Witness MNW).



there were over 1,000 people in her *secteur*, and it was be impossible to hear of every event or activity in her *secteur*.<sup>13057</sup>

4949. Witness MNW testified that as a mother, Nyiramasuhuko could not possibly undertake actions such as those alleged. She also testified that Nyiramasuhuko could not have said that Tutsi women had to be killed after having been raped, and opined that perhaps it had been in another *secteur*.<sup>13058</sup> She further averred that the allegation was shameful as Nyiramasuhuko was a married Rwandan woman with children and was also a Minister of a high post. The witness had heard people talk about condoms, and had seen pictures of condoms, but did not see any.<sup>13059</sup> She stated that people in Rwanda would not use condoms unless they were sick, so she did not know to whom the condoms would have been distributed.<sup>13060</sup> She did not believe a minister would have risked distributing them because the minister would have been described as an “uneducated person.”<sup>13061</sup>

#### Nyiramasuhuko Defence Witness WZNA

4950. Witness WZNA, a Hutu, testified that he knew Nyiramasuhuko and that she had been Minister of Women’s Affairs since 1992.<sup>13062</sup> He got to know Nyiramasuhuko and her husband, Maurice Ntahobali, through his brother and a neighbour who were friends with the Ntahobali family.<sup>13063</sup> He saw Nyiramasuhuko once in early July 1994 when he was on his way back from the ESO. He said he saw her in front of the building her family owned in Butare.<sup>13064</sup>

4951. Witness WZNA testified that he had known Witness FAE for more than 10 years.<sup>13065</sup> Witness WZNA’s wife, his friend Speratus Sibomana and Witness FAE worked at the same place.<sup>13066</sup>

4952. Witness WZNA testified that Witness FAE was a Tutsi and her partner was a Hutu.<sup>13067</sup> Witness FAE had six children.<sup>13068</sup> He described Witness FAE as not very tall, about 1.6 or 1.65 metres, dark in complexion and around 30 to 36 years old.<sup>13069</sup> He told the court that Witness FAE had been living in Agateme when he arrived there in 1980 and was still living there between April and July 1994.<sup>13070</sup>

4953. Witness WZNA visited Witness FAE’s house between the months of April and July 1994. He went inside Witness FAE’s house in April and May 1994 on more than one occasion;

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<sup>13057</sup> T. 14 February 2005 p. 4 (Witness MNW).

<sup>13058</sup> T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13059</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13060</sup> T. 14 February 2005 pp. 12-13 (Witness MNW).

<sup>13061</sup> T. 14 February 2005 p. 13 (Witness MNW).

<sup>13062</sup> T. 4 April 2005 p. 7 (Witness WZNA).

<sup>13063</sup> T. 4 April 2005 pp. 7-8; T. 4 April 2005 p. 17 (ICS) (Witness WZNA).

<sup>13064</sup> T. 4 April 2005 pp. 58-59 (Witness WZNA).

<sup>13065</sup> T. 4 April 2005 pp. 21, 23 (ICS) (Witness WZNA).

<sup>13066</sup> T. 4 April 2005 pp. 16, 21 (ICS) (Witness WZNA).

<sup>13067</sup> T. 4 April 2005 p. 22 (ICS) (Witness WZNA).

<sup>13068</sup> T. 4 April 2005 pp. 22-23 (ICS) (Witness WZNA).

<sup>13069</sup> T. 4 April 2005 p. 23 (ICS) (Witness WZNA).

<sup>13070</sup> T. 4 April 2005 p. 25 (ICS) (Witness WZNA).

he confirmed that both Witness FAE and her children were inside the house on these occasions. The witness further testified that in April and May 1994 he passed in front of Witness FAE's house without entering, on his way to visit his brother. During these times he would see Witness FAE and her children as he walked by and at other times they were inside the house and he could not see them. The witness averred that in June 1994 he also saw Witness FAE and her children at their house.<sup>13071</sup>

4954. Witness WZNA testified that from the sitting room of Witness FAE's house, one could see what was happening outside only when the door was open, or if standing at the one window in the room, which overlooked the road. Only the front part of Witness FAE's neighbour's house could be seen from that window, but not the front door. He confirmed that from the window in Witness FAE's living room, it would be impossible to see if people were entering the neighbour's house.<sup>13072</sup>

4955. Witness WZNA gave evidence that his friend Speratus Sibomana, who was also the godfather of his son, continued to work between April and July 1994.<sup>13073</sup> He confirmed that they saw each other in early June 1994.<sup>13074</sup> He averred that Speratus Sibomana never talked to him about delivering condoms in June 1994 to Witness FAE's neighbour's house with Nyiramasuhuko.<sup>13075</sup> He stated that Sibomana would have told him of this occurrence if it had occurred, as it would have been an unusual event for Sibomana to be in the company of a minister.<sup>13076</sup>

4956. Witness WZNA testified that he did not know if there were people who supplied or delivered condoms to individuals in Butare *préfecture*. Aside from getting them from a hospital or pharmacy, he did not know of any other means through which condoms were distributed.<sup>13077</sup>

4957. Witness WZNA testified that he never heard of Nyiramasuhuko ordering people to rape others. He further stated that she would not have had time to complete such tasks due to the ministerial position she held. During the period between April and June 1994 he did not hear the name of Nyiramasuhuko mentioned and, except on the one occasion when he saw her in front of her building in early July 1994, he did not see her again.<sup>13078</sup>

#### Nyiramasuhuko Defence Witness WNMN

4958. Witness WNMN, a Hutu, identified Witness FAE as his sister's colleague and neighbour.<sup>13079</sup> In 1994, Witness WNMN had known FAE for over five years. She had been friends with his sister a long time, and he had seen her for a long time. Witness FAE's house and that of Witness WNMN's sister were about 300 or 400 metres apart; they spent almost all

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<sup>13071</sup> T. 4 April 2005 pp. 33-34 (Witness WZNA).

<sup>13072</sup> T. 4 April 2005 pp. 30-31 (Witness WZNA).

<sup>13073</sup> T. 4 April 2005 p. 19 (ICS); T. 4 April 2005 pp. 13, 35, 37 (Witness WZNA).

<sup>13074</sup> T. 4 April 2005 p. 19 (ICS) (Witness WZNA).

<sup>13075</sup> T. 4 April 2005 p. 35 (Witness WZNA).

<sup>13076</sup> T. 4 April 2005 pp. 35-36 (Witness WZNA).

<sup>13077</sup> T. 4 April 2005 p. 36 (Witness WZNA).

<sup>13078</sup> T. 4 April 2005 pp. 58-59 (Witness WZNA).

<sup>13079</sup> T. 14 June 2005 pp. 16-17 (ICS) (Witness WNMN).

of their evenings together, mostly at the witness' sister's home, where they would share a drink and compare notes.<sup>13080</sup>

4959. Witness WNMN described Witness FAE as very tall, around 170 centimetres. She had a long face and she wore spectacles. She straightened her hair and was of average build. She was about 40 years old, like the witness' sister, and a Tutsi. She had a partner who visited her from time to time who owned a drycleaning office. The couple had four children together. There was a fifth child as well, who had a different father.<sup>13081</sup> The witness saw two of Witness FAE's children once between April and the end of June 1994, when they were playing with the neighbour's children in the courtyard.<sup>13082</sup>

4960. Witness WNMN further testified that he saw Witness FAE twice in May 1994.<sup>13083</sup> He met Witness FAE once more at his sister's home, during his four-day stay there towards the end of June 1994.<sup>13084</sup>

4961. Witness WNMN testified that he had known Nyiramasuhuko for a long time, because she worked with his father.<sup>13085</sup> Nyiramasuhuko and the witness were not personal friends, and he never went to any of the houses in which she lived.<sup>13086</sup> Witness WNMN did not see Nyiramasuhuko between the day President Habyarimana died and the day he departed from Butare on 4 July 1994.<sup>13087</sup> Asked whether he was in a position to report as to what Nyiramasuhuko did or said anywhere in Butare *préfecture* from the beginning of April to 4 July 1994, the witness responded that to do so would have been an invention.<sup>13088</sup>

4962. Witness WNMN testified that he was a native of Mpare *secteur* in Butare *préfecture*.<sup>13089</sup> He was teaching in early 1994, but in April 1994 he was on Easter holidays. He spent this time at his parents' home at Mpare *secteur*.<sup>13090</sup> Schools broke for Easter between 25 and 27 March 1994, and normally the holidays lasted two weeks.<sup>13091</sup>

4963. Witness WNMN stated that while teaching, he lived at his sister's home in Cyarwa *secteur*, as it was closer to the school where he was teaching. The witness stated that in 1994 the academic year did not follow the normal timetable due to the war.<sup>13092</sup> He testified that after the Easter holidays, classes resumed during the first two weeks of May 1994 and he taught for about two weeks and about three or five days.<sup>13093</sup> During this time, the witness went to his sister's house each day as the road to his school passed in front of her house.<sup>13094</sup>

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<sup>13080</sup> T. 14 June 2005 p. 37 (ICS) (Witness WNMN).

<sup>13081</sup> T. 14 June 2005 pp. 37-38 (ICS) (Witness WNMN).

<sup>13082</sup> T. 14 June 2005 p. 45 (ICS) (Witness WNMN).

<sup>13083</sup> T. 14 June 2005 pp. 41-43 (ICS) (Witness WNMN).

<sup>13084</sup> T. 14 June 2005 pp. 44-45 (ICS) (Witness WNMN).

<sup>13085</sup> T. 14 June 2005 p. 19 (ICS) (Witness WNMN).

<sup>13086</sup> T. 14 June 2005 p. 23 (ICS) (Witness WNMN).

<sup>13087</sup> T. 14 June 2005 p. 64 (ICS) (Witness WNMN).

<sup>13088</sup> T. 15 June 2005 p. 59 (ICS) (Witness WNMN).

<sup>13089</sup> T. 14 June 2005 p. 11 (Witness WNMN).

<sup>13090</sup> T. 14 June 2005 p. 33 (ICS) (Witness WNMN).

<sup>13091</sup> T. 15 June 2005 p. 39 (ICS); T. 15 June 2005 p. 16 (Witness WNMN).

<sup>13092</sup> T. 14 June 2005 p. 15 (ICS) (Witness WNMN).

<sup>13093</sup> T. 14 June 2005 p. 36 (ICS); T. 15 June 2005 pp. 6-7 (ICS) (Witness WNMN).

<sup>13094</sup> T. 14 June 2005 pp. 40-41 (ICS) (Witness WNMN).

He would go from his parents' house in Mpare *secteur*.<sup>13095</sup> After this period of two weeks and three days, he saw refugees coming in from other *communes*, and the school was forced to shut down because there were too many refugees. After the classes stopped, he went home.<sup>13096</sup>

### Nyiramasuhuko

4964. Nyiramasuhuko testified that Doctor Ndindabahizi was the chairman of the PSD Party in Butare. However, she did not know if he still held this position in June 1994. Nyiramasuhuko denied that during the war she sat in a vehicle with Doctor Ndindabahizi and distributed condoms with him. She added that she never moved around in a vehicle dressed in a military uniform with a firearm between her legs.<sup>13097</sup> Nyiramasuhuko testified that she knew Witness FAE. She further stated that she worked with Witness FAE in 1977, but never spoke to her.<sup>13098</sup> Nyiramasuhuko never saw Witness FAE from 1978 until the end of 1994.<sup>13099</sup>

#### **3.6.47.4 Deliberations**

4965. The issues at hand are whether Nyiramasuhuko was present at Cyarwa-Sumo *secteur* in the beginning of June 1994, and whether she in fact came to distribute condoms intended for distribution to the *Interahamwe*.

4966. Witness FAE is the only Prosecution eyewitness to testify as to the allegation that Nyiramasuhuko came to Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994 and distributed condoms for the *Interahamwe*, to be used in the raping and killing of Tutsi women in that *secteur*.<sup>13100</sup> She provided extensive testimony on Nyiramasuhuko's arrival in Cyarwa-Sumo *secteur*.<sup>13101</sup> She knew Nyiramasuhuko from when she worked at the University, when she went to MRND meetings with her husband, and when Nyiramasuhuko took her mother to hospital to be treated.<sup>13102</sup> She described her vehicle as a white double-cabin vehicle, and delineated and identified the passengers in the vehicle and the order in which they were sitting.<sup>13103</sup> Witness FAE described that Nyiramasuhuko wore a camouflage military uniform with the sleeves rolled up.<sup>13104</sup> Furthermore, the witness provided a coherent analysis of the events that occurred. She avers that only the driver, Doctor Ndindabahizi and Remera, who was sitting in the front next to the driver, alighted from the vehicle, while the three remaining passengers stayed within the vehicle.<sup>13105</sup> The witness also proffered that the boxes handed over were khaki-coloured, with a drawing of a condom upon them, and the word

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<sup>13095</sup> T. 14 June 2005 p. 41 (ICS) (Witness WNMN).

<sup>13096</sup> T. 14 June 2005 p. 45 (ICS) (Witness WNMN).

<sup>13097</sup> T. 6 September 2005 pp. 25-26 (Nyiramasuhuko).

<sup>13098</sup> T. 6 September 2005 pp. 17-18 (ICS) (Nyiramasuhuko).

<sup>13099</sup> T. 6 September 2005 p. 23 (ICS) (Nyiramasuhuko).

<sup>13100</sup> T. 17 March 2004 pp. 83-84 (Witness FAE).

<sup>13101</sup> T. 17 March 2004 p. 73 (ICS); T. 17 March 2004 pp. 74-76, 78 (Witness FAE).

<sup>13102</sup> T. 17 March 2004 pp. 74-75; T. 18 March 2004 pp. 47-48, 50-51 (ICS) (Witness FAE).

<sup>13103</sup> T. 17 March 2004 pp. 58, 74-76, 78-79; T. 18 March 2004 p. 36 (Witness FAE).

<sup>13104</sup> T. 17 March 2004 p. 84 (Witness FAE).

<sup>13105</sup> T. 17 March 2004 pp. 79, 84 (Witness FAE).

“Prudence” marked on its surface.<sup>13106</sup> She was able to describe the dimensions of the boxes as well, comparing them to the screen before her during her testimony at trial.<sup>13107</sup>

4967. The witness also provided detailed excerpts of what was said by the relevant actors at this point. She stated that Ndindabahizi gave the first box to her female neighbour and said, “[g]ive this to our young *Interahamwe* for them to use when they rape the Tutsi, so that they are not contaminated with HIV or AIDS.”<sup>13108</sup> The Chamber notes that Witness FAE provided inconsistent testimony as to who gave the second box of condoms to the woman. Initially she said that Sibomana, who was sitting next to Nyiramasuhuko in the back seat of the car, handed Nyiramasuhuko a box which she gave to the woman.<sup>13109</sup> Nyiramasuhuko then said: “Go and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands.”<sup>13110</sup> Witness FAE stated that she could hear these words clearly because the vehicle in which Nyiramasuhuko sat was located close to the window through which she was watching the events unfold.<sup>13111</sup> The witness also testified that Nyiramasuhuko gave the box to Sibomana, who in turn gave the box through the window to the woman.<sup>13112</sup> Witness FAE then reiterated that Nyiramasuhuko handed the box to the lady, explaining that she could see that the sleeves of Nyiramasuhuko’s shirt were rolled up when she handed the box through the window.<sup>13113</sup>

4968. The Chamber notes inconsistencies between Witness FAE’s prior statement and her testimony at trial. The prior statement declared that Nyiramasuhuko was seated in the front of the car with a gun between her legs.<sup>13114</sup> However, she did not describe the presence of a gun at any point in her testimony. The witness responded that she merely answered questions posed by the Prosecution and did not improvise or pre-empt with information that was not specifically requested.<sup>13115</sup> Witness FAE’s statement and testimony were also inconsistent as to the order of seating in the vehicle among the passengers. In her prior statement, Witness FAE stated that Nyiramasuhuko was seated in the front of the vehicle.<sup>13116</sup> However, in her testimony, she said Nyiramasuhuko was seated in the back.<sup>13117</sup> She justified this discrepancy by offering an explanation as to the dynamics of a double-cabin vehicle of this type. She claimed that the front part of the vehicle encompasses a cabin and the back is the bed of the truck, in which no one sits. Nyiramasuhuko was sitting in the back seat of the front cabin of the vehicle.<sup>13118</sup>

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<sup>13106</sup> T. 17 March 2004 pp. 79-80; T. 17 March 2004 p. 82 (ICS); T. 18 March 2004 pp. 36-37 (Witness FAE).

<sup>13107</sup> T. 18 March 2004 p. 37; T. 18 March 2004 p. 71 (ICS) (Witness FAE).

<sup>13108</sup> T. 17 March 2004 p. 83 (Witness FAE).

<sup>13109</sup> T. 17 March 2004 p. 80 (Witness FAE).

<sup>13110</sup> T. 17 March 2004 pp. 83-84 (Witness FAE).

<sup>13111</sup> T. 18 March 2004 p. 35 (Witness FAE).

<sup>13112</sup> T. 17 March 2004 p. 84 (Witness FAE).

<sup>13113</sup> T. 17 March 2004 p. 84; T. 18 March 2004 p. 40 (Witness FAE).

<sup>13114</sup> Defence Exhibit 214 (Nyiramasuhuko) (7 May 1999, Statement of Witness FAE).

<sup>13115</sup> T. 18 March 2004 p. 34 (Witness FAE).

<sup>13116</sup> Defence Exhibit 214 (Nyiramasuhuko) (7 May 1999, Statement of Witness FAE).

<sup>13117</sup> T. 17 March 2004 p. 79; T. 18 March 2004 p. 36 (Witness FAE).

<sup>13118</sup> T. 18 March 2004 p. 34 (Witness FAE).

4969. The witness explained that the inconsistencies occurred because of her inability to master the French language, which also prevented her from correcting the inconsistencies at the time.<sup>13119</sup> She asserted that she gave this prior statement in French without an interpreter present, which accounted for these discrepancies.<sup>13120</sup> The Chamber accepts Witness FAE's explanation with regard to the aforementioned discrepancies, which the Chamber does not consider, in any case, to be material.

4970. Witness WZNA provided a detailed description of Witness FAE's sitting room window, overlooking the road, and what could be viewed from that standpoint. Witness WZNA stated that the front side of the neighbouring house could be seen but that the front door was not visible.<sup>13121</sup> Although this does not provide corroboration to Witness FAE's testimony that she was at the window when she viewed the events in front of her neighbour's house, it does confirm that Witness FAE would have been able to see both the car and the passengers seated within.

4971. Witnesses MNW, WZNA and WNMN all denied that Nyiramasuhuko was present during this time in Cyarwa-Sumo *secteur*.<sup>13122</sup> Witness MNW lived at the crossroads and so would have seen any vehicle that would have passed during that time.<sup>13123</sup> However, Witness MNW's theory as to why Nyiramasuhuko did not visit the *secteur* in June 1994 is based on the fact that she did not hear about it from others or her husband's boss.<sup>13124</sup> She had a "drinking joint" in her house and claimed that if Nyiramasuhuko had come or said these things, she would have heard about it from her patrons.<sup>13125</sup> However, Witness MNW conceded that the bar she operated was closed from the first few days of June 1994 for the rest of the month due to lack of supplies.<sup>13126</sup>

4972. The Chamber therefore considers that the testimony of Witness MNW in this regard is of limited value. Not only is the witness unreliable in terms of Nyiramasuhuko's whereabouts during that period, but she did not demonstrate first-hand knowledge of the situation.

4973. Witness WZNA stated that his friend Sibomana, who according to Witness FAE was in the vehicle with Nyiramasuhuko on that day, would have told him about delivering condoms in the presence of Nyiramasuhuko. This would have been an unusual turn of events, considering that he was in the company of a minister.<sup>13127</sup> Witness WZNA also claimed to have seen Witness FAE and her children in their house in June 1994.<sup>13128</sup> The witness based his conclusion that Nyiramasuhuko was not present at that time and did not distribute condoms, on the fact that Sibomana did not inform him of its occurrence. His evidence in this regard is neither compelling nor conclusive.

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<sup>13119</sup> T. 18 March 2004 p. 42 (Witness FAE).

<sup>13120</sup> T. 18 March 2004 pp. 42-43 (Witness FAE).

<sup>13121</sup> T. 4 April 2005 pp. 30-31 (Witness WZNA).

<sup>13122</sup> T. 10 February 2005 pp. 77, 79 (Witness MNW); T. 4 April 2005 pp. 35-36 (Witness WZNA); T. 14 June 2005 p. 64 (ICS) (Witness WNMN).

<sup>13123</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13124</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13125</sup> T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13126</sup> T. 14 February 2005 p. 10 (ICS) (Witness MNW).

<sup>13127</sup> T. 4 April 2005 pp. 35-36 (Witness WZNA).

<sup>13128</sup> T. 4 April 2005 p. 34 (Witness WZNA).

4974. Witness WNMN was a native of Mpare *secteur*, but lived with his sister in Cyarwa-Sumo *secteur* while he was teaching.<sup>13129</sup> In 1994, the academic year did not follow the normal timetable due to the war.<sup>13130</sup> He testified that after the Easter holidays, classes resumed during the first two weeks of the month of May 1994, and he taught for about two weeks and three or five days.<sup>13131</sup> During this time, the witness went to his sister's house each day as the road to his school passed in front of her house.<sup>13132</sup> He would go from his parents' house in Mpare *secteur*.<sup>13133</sup> The witness averred that after this period, he saw refugees coming in from other *communes* and the school was forced to shut down because there were too many refugees. After the classes stopped he went home to his parents' house.<sup>13134</sup> He also stated that he met Witness FAE at his sister's home towards the end of June 1994, when he spent four days there.<sup>13135</sup> The Chamber notes that Witness WNMN was not present in Cyarwa-Sumo *secteur* during the time of this incident, as he claimed to have been at his parents' house.<sup>13136</sup> He may have visited Cyarwa-Sumo *secteur*, but these visits may have been sporadic. Therefore Witness WNMN would not have been in a position to provide eyewitness testimony or direct knowledge of the whereabouts of Nyiramasuhuko.

4975. Each of the Defence witnesses provided their own hypotheses as to why Nyiramasuhuko could not have possibly distributed condoms and ordered rapes. Witness MNW initially testified that she had not heard any news of condom distribution in her *secteur*, which she claimed she was in a prime position to hear because of the bar in her house.<sup>13137</sup> Under cross-examination, it arose that Witness MNW had heard people talk about condoms and had even seen pictures of condoms.<sup>13138</sup> However, she did not elaborate as to whether the condoms she had heard of were linked back to Nyiramasuhuko. On the contrary, she claimed that this allegation against Nyiramasuhuko was untrue because as a mother, a married Rwandan woman, and a Minister of a high post, Nyiramasuhuko would not risk distributing condoms for fear of being labelled an "uneducated person".<sup>13139</sup>

4976. Witness WZNA stated that, due to her ministerial position, Nyiramasuhuko would not have had the time to complete such tasks.<sup>13140</sup> However, Witness WNMN recognised that he was not in a position to report as to Nyiramasuhuko's actions or words from April to 4 July 1994.<sup>13141</sup>

4977. Defence Witnesses MNW, WZNA and WNMN testified as to when they saw Witness FAE between April and June 1994. Witness MNW stated that she did not see Witness FAE in June 1994.<sup>13142</sup> Witness WZNA testified that between April and July 1994 he visited Witness

<sup>13129</sup> T. 14 June 2005 p. 11; T. 14 June 2005 p. 15 (ICS) (Witness WZNA).

<sup>13130</sup> T. 14 June 2005 p. 15 (ICS) (Witness WZNA).

<sup>13131</sup> T. 14 June 2005 p. 36 (ICS); T. 15 June 2005 pp. 6-7 (ICS) (Witness WZNA).

<sup>13132</sup> T. 14 June 2005 pp. 40-41 (ICS) (Witness WZNA).

<sup>13133</sup> T. 14 June 2005 p. 41 (ICS) (Witness WNMN).

<sup>13134</sup> T. 14 June 2005 p. 45 (ICS) (Witness WNMN).

<sup>13135</sup> T. 14 June 2005 pp. 44-45 (ICS) (Witness WNMN).

<sup>13136</sup> T. 14 June 2005 p. 45 (ICS) (Witness WNMN).

<sup>13137</sup> T. 10 February 2005 p. 81 (ICS) (Witness MNW).

<sup>13138</sup> T. 14 February 2005 p. 12 (Witness MNW).

<sup>13139</sup> T. 14 February 2005 pp. 12-13 (Witness MNW).

<sup>13140</sup> T. 4 April 2005 p. 59 (Witness WZNA).

<sup>13141</sup> T. 15 June 2005 p. 59 (ICS) (Witness WNMN).

<sup>13142</sup> T. 10 February 2005 p. 77 (Witness MNW).

FAE's house on multiple occasions and confirmed that both Witness FAE and her children were inside the house on these occasions.<sup>13143</sup> Witness WNMN stated that he saw Witness FAE twice in May 1994 and again towards the end of June 1994, at his sister's home.<sup>13144</sup> The Defence witnesses are not consistent as to when they saw Witness FAE. However, the Chamber notes that they may have seen her at different times and on different occasions. Witness FAE testified that she was only away from her house from 23 April 1994 to early June 1994.<sup>13145</sup> Nonetheless, the Chamber finds it unbelievable that during that time, Witness FAE would be openly at home with her children or that she would be visiting Witness WNMN's sister, who was a Hutu. Witness FAE testified that between April and July 1994, Tutsis were being pursued and she was hiding in various locations.<sup>13146</sup> The Chamber therefore finds Witnesses WZNA and WNMN not credible on this point.

4978. Nyiramasuhuko admitted she knew Witness FAE, but testified that the present allegation was implausible.<sup>13147</sup> She would not have sat in a vehicle along with Doctor Ndindabahizi, the leader of the PSD Party in Butare, and would not have gone with him to distribute condoms.<sup>13148</sup>

4979. The Chamber notes that Defence Witnesses MNW, WZNA and WNMN all provided hearsay accounts as to why the allegation is implausible, without any convincing and detailed analyses. Indeed, among the Defence witnesses there are inconsistencies as to when they saw Witness FAE. Witness MNW testified that she did not see Witness FAE in June 1994, whereas Witnesses WZNA and WNMN both testified as to seeing Witness FAE in June 1994.<sup>13149</sup> The Chamber considers it impossible to rely on these witnesses to establish that Witness FAE was not in the area in June 1994 or that Nyiramasuhuko did not visit the area at that time.

4980. The Nyiramasuhuko Defence relied on Witness WNMN in submitting that Witness FAE was a "militant" member of the Association of Genocide Survivors, an association run by *Ibuka* and known for fabricating testimony against accused at the ICTR.<sup>13150</sup>

4981. Prosecution Witness FAE was asked during cross-examination whether the survivors association that she belonged to had a custom of character destruction. She responded: "We are telling you what we saw and we are telling you about things that we heard with our own ears."<sup>13151</sup> When asked whether they denounced people in order to be requited with scholarships for their children, she responded that she, and no one else, paid for her children's studies.<sup>13152</sup>

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<sup>13143</sup> T. 4 April 2005 pp. 33-34 (Witness WZNA).

<sup>13144</sup> T. 14 June 2005 pp. 41, 43-44 (ICS) (Witness WNMN).

<sup>13145</sup> T. 17 March 2004 p. 73 (ICS) (Witness FAE).

<sup>13146</sup> T. 17 March 2004 p. 72 (ICS); T. 18 March 2004 p. 46 (ICS) (Witness FAE).

<sup>13147</sup> T. 6 September 2005 pp. 17-18 (ICS); T. 6 September 2005 p. 25 (Nyiramasuhuko).

<sup>13148</sup> T. 6 September 2005 p. 25 (Nyiramasuhuko).

<sup>13149</sup> T. 10 February 2005 p. 77 (Witness MNW); T. 4 April 2005 p. 34 (Witness WZNA); T. 14 June 2005 pp. 44-45 (ICS) (Witness WNMN).

<sup>13150</sup> Nyiramasuhuko Closing Brief, paras. 285-293, 606-609.

<sup>13151</sup> T. 18 March 2004 p. 59 (ICS) (Witness FAE).

<sup>13152</sup> T. 18 March 2004 pp. 59-60 (ICS) (Witness FAE).



4982. Taking into account the foregoing, the Chamber finds that Witness WNMN's assertions about Witness FAE were not sufficiently credible or convincing to undermine the veracity of Witness FAE's testimony under oath.

4983. The Chamber recalls that Prosecution Witness FAE is the only Prosecution witness to implicate Nyiramasuhuko in the events at Cyarwa-Sumo *secteur*. The Chamber recalls that it may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible (). It is not disputed that Witness FAE knew Nyiramasuhuko prior to the events and that she identified the Accused clearly in court and as being present at the time of the alleged events.<sup>13153</sup> Although there were slight inconsistencies in her testimony, the Chamber determines that Witness FAE was a reliable witness who provided credible testimony with regard to this allegation. Her proximity to the location where the incident occurred placed her in a strong position to have witnessed the distribution of condoms as specified.

4984. The Chamber recalls Nyiramasuhuko's alibi evidence for early June 1994 (). The Chamber has considered this evidence with regard to the present allegation and finds that the Prosecution has discharged its burden of proof. Regardless of whether Nyiramasuhuko was staying in Murambi, Gitarama *préfecture*, from 12 April to 5 June 1994, the short distance between Butare and Murambi would have permitted Nyiramasuhuko to be present in Cyarwa-Sumo *secteur*, for the distribution of condoms at this time (). The Chamber notes that the analysis regarding Nyiramasuhuko's other alibi evidence in relation to June 1994, is equally relevant to this allegation (). Therefore, Nyiramasuhuko's alibi evidence does not raise a reasonable doubt that she was present at Cyarwa-Sumo *secteur* in early June 1994.

4985. The Chamber finds that the testimony of Prosecution Witness FAE, provides sufficient and unchallenged detail so as to establish beyond a reasonable doubt the allegation that Nyiramasuhuko came to Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994 and distributed condoms for the *Interahamwe*, to be used in the raping and killing of Tutsi women in that *secteur*. The Chamber further finds that Nyiramasuhuko ordered the woman to whom she distributed the condoms to “[g]o and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands.”

### **3.6.48 Rango Forest, June 1994**

#### **3.6.48.1 Introduction**

4986. The Kanyabashi Indictment and the Nsabimana and Nteziryayo Indictment allege that “around late April 1994,” Kanyabashi, accompanied by certain members of the *commune* police, escorted two busloads of Tutsi refugees from the Butare *préfecture* office to Rango

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<sup>13153</sup> T. 17 March 2004 pp. 74-75, 84-85; T. 18 March 2004 pp. 47-48, 50-51 (ICS) (Witness FAE).

Forest.<sup>13154</sup> The refugees were confined in an enclosure, deprived of food, beaten and some died.<sup>13155</sup>

4987. The Prosecution submits that Kanyabashi accompanied the convoy of refugees to Rango Forest and upon arrival, he instructed *Interahamwe* to guard the Tutsi refugees and prevented them from leaving.<sup>13156</sup> Pits were dug and Kanyabashi told the refugees that they would be buried there on 5 July 1994.<sup>13157</sup> The Prosecution also alleges that refugees at Rango Forest were denied food, water or shelter and were beaten and raped.<sup>13158</sup> The survivors did not leave Rango Forest until they were freed by the RPF.<sup>13159</sup> In support of its submissions, the Prosecution relies on the testimony of Witnesses TA, FAP, RE, QBQ, QY, SD, SS, SU, SJ, QBP, TK and Expert Witness Alison Des Forges.

4988. Apart from the preliminary issues that will be addressed in the section below, the Kanyabashi Defence submits that the Prosecution evidence on this allegation was insufficiently precise to support a finding beyond a reasonable doubt.<sup>13160</sup> The Kanyabashi Defence bases its submission on the testimony of Prosecution Witnesses FAP, QBP, RE, SD, SU, SS, TA, TK, Des Forges, Defence Witnesses D-1-4-O and WMKL, Nsabimana and Nteziryayo.<sup>13161</sup>

4989. The Kanyabashi Defence further submits that Kanyabashi accompanied the refugees to Rango Forest in order to ensure their safe passage and, once there, he requested that the refugees be protected.<sup>13162</sup> In this regard, the Kanyabashi Defence contests the credibility of Prosecution Witnesses TA and FAP.<sup>13163</sup>

4990. The Kanyabashi Defence also submits that while at Rango Forest the refugees were not detained or attacked, but “protected”, and that Kanyabashi took care of them, acting in cooperation with religious and humanitarian organisations in order to improve their living conditions and keep them alive.<sup>13164</sup> The only holes dug were for latrines, for which disinfectant was provided, and the three deaths that occurred at Rango Forest were due to natural causes.<sup>13165</sup> In making its submissions, the Kanyabashi Defence relies upon the testimony of Prosecution Witnesses SJ, TA, FAP, SD, SU, RE, TK, SS, QBP, QBQ and QY, Defence Witnesses WMKL, D-1-4-0, D-2-10-Y and Nteziryayo.

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<sup>13154</sup> The Chamber notes that the Prosecution, the Nsabimana and Nteziryayo Defence, and their respective witnesses have referred to “Rango Forest”, “Rango compound”, and “Rango” interchangeably. For ease of reference, the Chamber will refer to “Rango Forest” throughout the Judgement.

<sup>13155</sup> Para. 6.42 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute); Para. 6.40 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>13156</sup> Para. 6.42 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute); Para. 6.40 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Prosecution Closing Brief, p. 416, para. 112a; pp. 424-425, para. 142.

<sup>13157</sup> Prosecution Closing Brief, p. 267, para. 120; p. 425, para. 142.

<sup>13158</sup> Prosecution Closing Brief, pp. 428-429, paras. 155-158.

<sup>13159</sup> Prosecution Closing Brief, p. 416, para. 112a.

<sup>13160</sup> Kanyabashi Closing Brief, paras. 486-545.

<sup>13161</sup> Kanyabashi Closing Brief, para. 486.

<sup>13162</sup> Kanyabashi Closing Argument, T. 29 April 2009 pp. 6-7; Kanyabashi Closing Brief, para. 524.

<sup>13163</sup> Kanyabashi Closing Brief, paras. 492-493, 517-521.

<sup>13164</sup> Kanyabashi Closing Brief, paras. 496, 501; Kanyabashi Closing Argument, T. 29 April 2009 pp. 6-7.

<sup>13165</sup> Kanyabashi Closing Brief, paras. 533-536; Kanyabashi Closing Argument, T. 29 April 2009 pp. 7, 10.

4991. In addition to its preliminary issues on the vagueness of the Indictment, which will be addressed below, the Nsabimana Defence submits that the Nsabimana and Nteziryayo Indictment is vague and therefore the responsibility of Nsabimana cannot be assessed with regard to the events at Rango Forest.<sup>13166</sup>

4992. The Nteziryayo Defence also submits that the factual allegation in relation to the “killing of the refugees at Rango” cannot be considered for the purposes of determining Nteziryayo’s responsibility, since it falls outside the scope of the Indictment.<sup>13167</sup> Alternatively, it submits that the Prosecution witnesses who testified about the events at Rango Forest gave either contradictory or uncorroborated testimony. Although most of these witnesses testified that they left the BPO after Nteziryayo had been appointed *préfet*, they did not mention Nteziryayo as one of the persons who had authority during the period when they stayed at the BPO, nor did they testify as to any involvement by Nteziryayo with regards to the events at Rango Forest.<sup>13168</sup>

### 3.6.48.2 Preliminary Issues

#### *Kanyabashi Indictment*

##### *Vagueness of Paragraph 6.42*

4993. The Kanyabashi Defence contends that Paragraph 6.42 of the Indictment does not adequately plead Article 6 (3) responsibility because it does not specify the involvement of Kanyabashi’s subordinates, their identity, the acts allegedly committed or Kanyabashi’s alleged knowledge in this regard.<sup>13169</sup>

4994. The Chamber notes that Paragraph 6.42 of the Kanyabashi Indictment makes a general accusation that Kanyabashi was involved in the transfer of the refugees from the BPO to Rango Forest. The Indictment does not identify the role either Kanyabashi or his subordinates are alleged to have played in the transfer.

4995. The Chamber recalls that an indictment must be read as a whole (). Thus, the allegation that in April 1994 Kanyabashi escorted Tutsi refugees to Rango Forest must be read in the wider context of the offences alleged in the Indictment against him. Kanyabashi was the *bourgmestre* of Ngoma *commune* in Butare *préfecture* from April 1974 until around 4 July 1994.<sup>13170</sup> A joint reading of Paragraphs 4.3 and 6.32 of the Kanyabashi Indictment indicate that Kanyabashi, in such capacity, exercised authority over his subordinates, notably *conseillers de secteur* and *commune* policemen. Paragraph 3.5 of the Kanyabashi Indictment clearly states that the *bourgmestre* represents the executive power at the *commune* level and has authority over the civil servants posted in his *commune*, in addition to policing duties in regard to maintaining order and law enforcement. More generally, Paragraph 1.29 of the Indictment sets out the role of local authorities, including *bourgmestres*, at the time of the

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<sup>13166</sup> Nsabimana Closing Brief, paras. 518-523 (referring to Para. 6.57 of the Nsabimana and Nteziryayo Indictment and to the Prosecution Pre-Trial Brief, paras. 22-23).

<sup>13167</sup> Nteziryayo Closing Brief, para. 765.

<sup>13168</sup> Nteziryayo Closing Brief, paras. 741-742.

<sup>13169</sup> Kanyabashi Closing Brief, para. 485.

<sup>13170</sup> Para. 4.2 of the Kanyabashi Indictment (not in support of counts).

alleged crimes; this included issuing directives in execution of the plan to exterminate the Tutsis; inciting and ordering their subordinates to perpetrate the massacres; and taking direct part in them.

4996. In light of a contextual and systematic reading of the Indictment, the Chamber considers that the allegation in Paragraph 6.42 of the Indictment, that Kanyabashi “accompanied by members of the communal police” escorted the Tutsi refugees from the BPO to Rango Forest, clearly refers to the involvement of Kanyabashi’s subordinates in the transfer and to Kanyabashi’s supervisory role in it. Accordingly, the Chamber finds the Indictment adequately pled Article 6 (3) responsibility in relation to Kanyabashi, with respect to the events at Rango Forest.

#### *Time of the Transfer*

4997. The Kanyabashi Defence submits that Kanyabashi should be acquitted of the allegation concerning the transfer to Rango Forest, because this event took place at the end of June and not “around the end of April” as alleged in the Indictment.<sup>13171</sup>

4998. The Chamber reiterates that an indictment must be read as a whole (). Furthermore, considering that the indictment cannot have the degree of specificity of the evidence underpinning it, if the evidence at trial does not conform to the indictment, the Chamber must determine whether a fair trial requires exclusion of evidence outside the scope of the indictment.<sup>13172</sup> In this regard, the Appeals Chamber held that “in general, minor differences between the indictment and the evidence presented at trial are not such as to prevent the Trial Chamber from considering the indictment in the light of the evidence presented at trial”.<sup>13173</sup> This is to be assessed on a case-by-case basis and taking into account the rights of the accused to be informed of the nature of the charges against him, which entails that he must be able to identify the criminal acts and conduct alleged in the indictment in all circumstances.<sup>13174</sup>

4999. The Chamber notes that the Kanyabashi Indictment covers acts allegedly committed between 1 January and 31 December 1994. More specifically, the crimes alleged in Paragraph 6.42 fall within the framework of allegations set forth by a combined reading of Paragraphs 6.18, 6.44, 6.45 and 6.58, which cover the time period between April and July 1994. Therefore, the allegation in Paragraph 6.42 does not, as such, fall outside the temporal scope of the Indictment.

5000. In any event, as will be outlined in the following paragraphs, a significant amount of evidence establishes beyond a reasonable doubt that the transfer to Rango Forest occurred in June 1994, and not late April as the Indictment alleges. Thus, the Indictment is defective. However, the Chamber first notes that such evidence was adduced by both Prosecution and Defence witnesses, including Kanyabashi Defence Witnesses D-1-4-0 and D-2-10-Y, who

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<sup>13171</sup> Kanyabashi Closing Brief, para. 486.

<sup>13172</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 18.

<sup>13173</sup> *Rutaganda*, Judgement (AC), para. 302; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 70.

<sup>13174</sup> *Rutaganda*, Judgement (AC), paras. 302-303. See *Nahimana et al.*, Judgement (AC), para. 322 (“The indictment is pleaded with sufficient particularity only if it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him or her so that he or she may prepare his or her defence.”).

testified that the refugees were transferred to Rango Forest in June 1994.<sup>13175</sup> Further, the trial record does not show that Kanyabashi indicated to the Chamber that the evidence at trial fell outside the scope of the Indictment, nor that he requested additional time to prepare for his defence.<sup>13176</sup> Thus, the Chamber is satisfied that Kanyabashi was aware of the time period alleged during the course of the trial in relation to the events at Rango Forest and he suffered no prejudice from the defect in the Indictment.

5001. Secondly, Kanyabashi never contested the issue of the time of the transfer to Rango Forest prior to his Closing Brief. In light of recent jurisprudence of the Tribunal, the Chamber takes into account Kanyabashi's failure to object to this error earlier in the trial and the lack of any reasonable explanation for it.<sup>13177</sup> Therefore, the Chamber considers Kanyabashi acknowledged that the transfer occurred in June 1994, as demonstrated by the evidence adduced during the proceedings.

5002. The Chamber is thus of the view that, although the discrepancy between the time of the transfer as alleged in the Indictment, and the actual time such transfer was carried out according to the evidence presented, may appear considerable, the error in Paragraph 6.42 of the Indictment did not result in any prejudice to the rights of the Accused.<sup>13178</sup> This inaccuracy did not mislead Kanyabashi as to the nature of the charges against him, nor did it influence or alter the Chamber's approach towards the evaluation of the evidence thereto.<sup>13179</sup> Kanyabashi was able to identify the crime and criminal conduct alleged and had adequate time to prepare his defence. Consequently, the Chamber will consider the allegation at Paragraph 6.42 in relation to Kanyabashi, in light of the evidence presented at trial.

*Nsabimana and Nteziryayo*

*Lack of Notice Concerning Nsabimana's and Nteziryayo's Involvement in the Transfer*

5003. Both the Nsabimana and Nteziryayo Defences assert that the allegations regarding the transfer to Rango Forest fall outside the scope of the Indictment. The Chamber notes that the Nsabimana and Nteziryayo Indictment does not allege Nsabimana's involvement in the transfer of the refugees to Rango Forest and is silent on any specific meeting concerning this issue. With regard to Nteziryayo, the Indictment generally alleges his responsibility in the ongoing massacres from 19 April to July 1994 through his participation in a "strategy adopted and elaborated by political, civil and military authorities in the country" with the aim of

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<sup>13175</sup> T. 6 May 2008 pp. 54, 56 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 9-10 (Witness D-2-10-Y).

<sup>13176</sup> See *Rutaganda*, Judgement (AC), para. 304.

<sup>13177</sup> See *Muvunyi I*, Judgement (AC), para. 123 (quoting *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. 46 ("As to timeliness, the objection should be raised at the pre-trial stage ... or at the time the evidence of a new material fact is introduced. However, an objection raised at trial will not automatically lead to a shift in the burden of proof: the Trial Chamber must consider relevant factors, such as whether the Defence provided a reasonable explanation for its failure to raise the objection earlier in the trial.")).

<sup>13178</sup> See *Kunarac et al.*, Judgement (AC), para. 217 ("minor discrepancies between the dates in the Trial Judgement and the Indictment go to prove the difficulty, in the absence of documentary evidence, of reconstructing events several years after they occurred and not that the events charged in the Indictment did not occur"); see also *Rutaganda*, Judgement (AC), paras. 302-303.

<sup>13179</sup> See *Rutaganda*, Judgement (AC), para. 303.

exterminating the Tutsis.<sup>13180</sup> Paragraph 6.40 of the Indictment mentions the transfer of the refugees to Rango Forest, but solely in connection with Kanyabashi. Thus, the Chamber finds the Indictment is defective, as it did not give any notice to Nsabimana or Nteziryayo of their alleged involvement in the transfer to Rango Forest.

5004. Further, Paragraph 6.40 of the Nsabimana and Nteziryayo Indictment was not pled in support of any count. In light of the Preliminary Issues section contained above (), and considering that Paragraph 6.40 is of no particular background or relevance in the context of the Nsabimana and Nteziryayo Indictment, the Chamber will not base a conviction on this paragraph.

### **3.6.48.3 Evidence**

#### Prosecution Witness TA

5005. Witness TA, a Tutsi woman, testified that in mid-June 1994, the refugees who had not been killed and who remained at the BPO were transported in two buses to Rango Forest.<sup>13181</sup> Before leaving towards Rango Forest the refugees were taken towards Nyange, however they got turned back at the roadblock.<sup>13182</sup>

5006. Witness TA testified that the transportation of the refugees was decided during a meeting held at the MRND Palace, where it was said that the refugees that remained there “were ghosts, Tutsi ghosts, and that it was decided that it was out of the question that the international community knew anything about [the refugees’] existence...”.<sup>13183</sup> The witness heard from passersby and from the bus drivers that the *bourgmestre* of Ngoma *commune*, Kanyabashi, the *préfet* and Nyiramasuhuko participated in the meeting and that it was convened upon the request of Kanyabashi.<sup>13184</sup> Witness TA also heard “that place was beginning to stink because of [the] presence [of the refugees] and because of the many dead bodies that were there and there was a lot of flies in that location.”<sup>13185</sup>

5007. Witness TA testified that at this meeting it was further decided that “one day [the refugees] will be killed and that [their] bodies will be laid on the body of Habyarimana after he is buried”. According to the witness, this is the reason why the transport was organised, so that the refugees would be killed at the roadblocks.<sup>13186</sup>

5008. Witness TA testified that the *Interahamwe* and soldiers came to the BPO and forced the refugees to get onto two buses.<sup>13187</sup> The *Interahamwe* and soldiers beat the refugees with their guns and with sticks and spat at them.<sup>13188</sup> There was no guard on the buses; however the witness stated that it was not possible to leave the buses “because it was the order issued by the

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<sup>13180</sup> Para. 6.57 of the Nsabimana and Nteziryayo Indictment (in support of all counts).

<sup>13181</sup> T. 29 October 2001 pp. 61-62; T. 6 November 2001 pp. 62-63; T. 7 November 2001 pp. 25-26, 29 (Witness TA).

<sup>13182</sup> T. 7 November 2001 p. 25 (Witness TA).

<sup>13183</sup> T. 29 October 2001 pp. 62-63, 65-68 (Witness TA).

<sup>13184</sup> T. 29 October 2001 pp. 64-67 (Witness TA).

<sup>13185</sup> T. 29 October 2001 p. 65 (Witness TA).

<sup>13186</sup> T. 29 October 2001 p. 63 (Witness TA).

<sup>13187</sup> T. 7 November 2001 pp. 28-29 (Witness TA).

<sup>13188</sup> T. 7 November 2001 pp. 28-29; T. 8 November 2001 p. 30 (Witness TA).

authorities” and they had nowhere to go.<sup>13189</sup> After the buses left for Rango Forest, no surviving refugee remained at the BPO.<sup>13190</sup>

5009. Witness TA testified to staying at Rango Forest for more than three weeks.<sup>13191</sup> There were not many *Interahamwe* guarding the refugees but they occasionally beat them.<sup>13192</sup> On one occasion, a priest gave food to the refugees. He was attacked by *Interahamwe* who threatened to kill him, so he fled.<sup>13193</sup>

5010. At the beginning of July 1994, the *Inkotanyi* took the refugees away from Rango Forest.<sup>13194</sup> Witness TA testified she saw Nyiramasuhuko, Ntahobali and Nteziryayo at the BPO.<sup>13195</sup> She never saw Kanyabashi at the BPO, the EER or Rango Forest.<sup>13196</sup>

### Prosecution Witness FAP

5011. Witness FAP, a Tutsi farmer, testified that the refugees were transferred in buses to Rango Forest after being informed by someone named Grégoire that the military *préfet*, Nteziryayo, did not want “dirt” in front of his office. When the refugees were told that they had to leave the BPO, Kanyabashi, Laurent Kubwimana and Grégoire were present.<sup>13197</sup> Witness FAP testified that the refugees understood “dirt” to mean Tutsis. Grégoire told them that those who refused to go to Rango Forest would be killed; instead, they would be given provisions and safety there.<sup>13198</sup>

5012. Witness FAP testified that all the refugees boarded the buses and were taken away from the BPO; some street children were also among them, while others were left behind. Witness FAP did not know what happened to those who were afraid to board the bus; once she got on board, she did not turn around to see if anyone remained in the courtyard.<sup>13199</sup> Witness FAP testified that there was no list drawn up of refugees going to Rango Forest.<sup>13200</sup> The refugees were taken as far as Mukuni, when the driver said he would take the road to the left, via Cyarwa, because considering the state they were in, he could not take them past President Sindikubwabo’s residence in Tumba.<sup>13201</sup>

5013. Witness FAP testified that when she arrived at Rango Forest, the authorities, including Kanyabashi and Grégoire were already there in their Suzuki. When the refugees descended from the bus, they entered the perimeter that was fenced with barbed wire and people, including Fidèle and Alexis, opened the gate upon Kanyabashi’s instruction. The witness did

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<sup>13189</sup> T. 7 November 2001 p. 29; T. 8 November 2001 p. 30 (Witness TA).

<sup>13190</sup> T. 7 November 2001 p. 105 (Witness TA).

<sup>13191</sup> T. 29 October 2001 pp. 68-69 (Witness TA).

<sup>13192</sup> T. 29 October 2001 pp. 66-67; T. 6 November 2001 pp. 90-91; T. 7 November 2001 pp. 29-30 (Witness TA).

<sup>13193</sup> T. 6 November 2001 pp. 87-88; T. 8 November 2001 pp. 33-34 (Witness TA).

<sup>13194</sup> T. 29 October 2001 p. 69 (Witness TA).

<sup>13195</sup> T. 24 October 2001 p. 96 (Witness TA).

<sup>13196</sup> T. 7 November 2001 pp. 122-123 (Witness TA).

<sup>13197</sup> T. 11 March 2003 p. 63; T. 13 March 2003 p. 39 (Witness FAP).

<sup>13198</sup> T. 11 March 2003 p. 64; T. 13 March 2003 p. 40 (Witness FAP).

<sup>13199</sup> T. 13 March 2003 p. 40 (Witness FAP).

<sup>13200</sup> T. 13 March 2003 p. 39 (Witness FAP).

<sup>13201</sup> T. 11 March 2003 p. 64; T. 13 March 2003 pp. 40, 47 (Witness FAP).

not know who Fidèle and Alexis were.<sup>13202</sup> She stated that she was three and a half metres from Kanyabashi when he spoke to Fidèle, it was not raining and it was still light out.<sup>13203</sup> She stated that the military *préfet* was not at Rango Forest.<sup>13204</sup> Witness FAP stated that she knew Kanyabashi well enough that she could not confuse him with the new military *préfet*.<sup>13205</sup>

5014. While Witness FAP could not remember how many days she spent at Rango Forest, she did recall that it was already June when the refugees arrived there.<sup>13206</sup> Witness FAP identified Prosecution Exhibit 36A as a photograph of Rango Forest.<sup>13207</sup> She stated that they never approached the house in the photograph.<sup>13208</sup>

5015. Witness FAP testified that they did not receive any food, nor were they supplied with water. On one occasion, a white man brought provisions, but the provisions were given to the two people responsible for the protection of the refugees and not shared with the refugees. After “white people” came and photographed the refugees, provisions were brought but only maize was distributed. On two occasions, people went with Fidèle to fetch water from the Mukura River, but they discovered larva from rotting corpses so they stopped drawing water from the river. They dug holes to gather rain water which they drank.<sup>13209</sup> Witness FAP was not among the people who went to the river.<sup>13210</sup>

5016. Witness FAP testified that the refugees were told by the *Interahamwe* guarding them that they would be used as “specimens” to show people what Tutsis looked like. Pits were dug and the refugees were told they would be buried there on 5 July.<sup>13211</sup> The witness did not get close enough to see the pits that were being dug so she did not know how big they were.<sup>13212</sup>

5017. Witness FAP stated that Kanyabashi told the person in charge of the refugees that the Tutsis were government refugees and that their safety should be ensured. Kanyabashi also said that any death would have to be reported, but the fate of the refugees would be sealed on 5 July.<sup>13213</sup> The witness understood this reference to their “fate” to mean that they would be killed.<sup>13214</sup>

5018. Witness FAP testified that she and other refugees were living under the trees and were regularly covered with sacks and beaten on their stomachs at Rango Forest.<sup>13215</sup> Fidèle witnessed the beatings but did nothing to prevent it.<sup>13216</sup> One of the refugees suffered a

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<sup>13202</sup> T. 11 March 2003 p. 64 (Witness FAP).

<sup>13203</sup> T. 13 March 2003 pp. 42-43 (Witness FAP).

<sup>13204</sup> T. 13 March 2003 p. 48 (Witness FAP).

<sup>13205</sup> T. 13 March 2003 p. 42 (Witness FAP).

<sup>13206</sup> T. 11 March 2003 p. 64 (Witness FAP).

<sup>13207</sup> T. 12 March 2003 p. 9 (Witness FAP).

<sup>13208</sup> T. 12 March 2003 p. 11 (Witness FAP).

<sup>13209</sup> T. 11 March 2003 p. 65; T. 13 March 2003 p. 59 (Witness FAP).

<sup>13210</sup> T. 13 March 2003 p. 59 (Witness FAP).

<sup>13211</sup> T. 11 March 2003 p. 65 (Witness FAP).

<sup>13212</sup> T. 13 March 2003 p. 58 (Witness FAP).

<sup>13213</sup> T. 12 March 2003 pp. 9-10; T. 13 March 2003 p. 45 (Witness FAP).

<sup>13214</sup> T. 12 March 2003 p. 12 (Witness FAP).

<sup>13215</sup> T. 12 March 2003 p. 11 (Witness FAP).

<sup>13216</sup> T. 13 March 2003 pp. 50, 55-56 (Witness FAP).



miscarriage as a result of the beatings.<sup>13217</sup> A white priest brought a consignment of food, but Fidèle and others told him that they were not going to allow the “snakes” to eat.<sup>13218</sup> She saw some orphans being fed but no one else. The refugees lacked cooking or medical facilities at Rango Forest.<sup>13219</sup>

#### Prosecution Witness RE

5019. Witness RE, a Tutsi woman who was 16 years old in 1994, testified that the departure of the remaining refugees from the BPO to Rango Forest coincided with the new military *préfet*'s appointment. The military *préfet* said that he no longer wanted to see the “dirt” in that place when he would come back the following day and he sent one of his bodyguards, named Kazungu, to tell the refugees that buses were going to drive them to Rango Forest. Witness RE interpreted the word “dirt” as meaning the Tutsis.<sup>13220</sup>

5020. Witness RE testified that when she and the other refugees left the BPO for Rango Forest, Kanyabashi's vehicle accompanied the convoy. Kanyabashi gave instructions to the *Interahamwe* who were watching over the refugees to take good care of the Tutsi survivors among them because they were to be presented to the international community, and they were to be killed on 5 July.<sup>13221</sup>

5021. Witness RE testified that the refugees received no food during their stay at Rango Forest. A white man attempted to provide them with food, but it was taken away by the *Interahamwe*. The witness testified that the *Interahamwe* beat the refugees during the day and raped women and girls at Rango Forest. She remained at Rango Forest until 4 July 1994, when she and the other refugees were rescued by soldiers of the *Inkotanyi*.<sup>13222</sup> The witness also stated that her mother died at Rango Forest from cholera.<sup>13223</sup>

#### Prosecution Witness QBQ

5022. Witness QBQ, a Tutsi woman who was 24 years old in 1994, testified that she arrived at the BPO towards the end of April 1994. The day after arrival, the refugees from the BPO were transported to the EER, but they stayed there only for a week due to the difficult living conditions, and they were brought back to the BPO. The next day, the refugees were transported to Rango Forest by Kanyabashi.<sup>13224</sup> The witness did not know who Kanyabashi was, but other people pointed him out to her.<sup>13225</sup> Upon arrival at Rango Forest, Kanyabashi ordered the *Interahamwe*, including Fidèle, to protect them. Fidèle made sure that nobody attacked the refugees, however, they continued to live in terrible conditions. Witness QBQ

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<sup>13217</sup> T. 13 March 2003 pp. 50-51 (Witness FAP).

<sup>13218</sup> T. 13 March 2003 p. 59 (Witness FAP).

<sup>13219</sup> T. 13 March 2003 p. 60 (Witness FAP).

<sup>13220</sup> T. 24 February 2003 p. 31 (Witness RE).

<sup>13221</sup> T. 24 February 2003 p. 32 (Witness RE).

<sup>13222</sup> T. 24 February 2003 p. 33 (Witness RE).

<sup>13223</sup> T. 24 February 2003 p. 34 (Witness RE).

<sup>13224</sup> T. 3 February 2004 pp. 23-24, 51; T. 4 February 2004 p. 15 (Witness QBQ).

<sup>13225</sup> T. 3 February 2004 p. 24 (Witness QBQ).

testified that she saw the *Interahamwe* digging a ditch, but when they finished digging the *Inkotanyi* arrived and took the refugees away.<sup>13226</sup>

#### Prosecution Witness QY

5023. Witness QY, a Tutsi woman who was 17 years old in 1994, testified that Kanyabashi accompanied the refugees to Rango Forest.<sup>13227</sup> Upon arrival, two *Interahamwe* named Alexis and Fidèle took the refugees out of the bus and showed them where they should stay, in the woods. Kanyabashi instructed the two *Interahamwe* that the refugees were not to be killed and that it should be reported to him if anyone was to die.<sup>13228</sup> Witness QY testified that refugees were not attacked at Rango Forest and were protected by *gendarmes*; she identified two *gendarmes* as Alexis and Fidèle.<sup>13229</sup> However, the refugees endured bad conditions and were not fed.<sup>13230</sup> They also had to dig holes in order to collect rain water. The witness saw two pits at Rango Forest.<sup>13231</sup>

#### Prosecution Witness SD

5024. Witness SD, a Tutsi woman, testified that after the abortive trip to Nyange, she stayed at the BPO for a week, by which time Nteziryayo had been appointed the new *préfet*. The witness stated that Nteziryayo was introduced to the refugees at the BPO. After less than one week from Nteziryayo's appointment as the new *préfet*, the refugees were transferred to Rango Forest by bus. Kanyabashi and Grégoire organised the transport.<sup>13232</sup>

5025. Witness SD testified that Grégoire informed the refugees that they would be taken to Rango Forest, but Kanyabashi and Nteziryayo were present as well. The witness had seen Grégoire at the BPO before; this occasion, when he accompanied Kanyabashi to Rango Forest, was the last time she saw him. Witness SD never saw Nteziryayo at Rango Forest.<sup>13233</sup>

5026. Witness SD testified that Kanyabashi told the refugees that they would be protected at Rango Forest. There were very nearly only women and children boarding the two buses to Rango, as all but two of the men had been killed. Some Hutu women whose husbands had been killed were also taken to Rango Forest.<sup>13234</sup> The buses left the BPO at about 3.00 p.m. and it took about 30 minutes to reach Rango Forest.<sup>13235</sup>

5027. Witness SD testified that she arrived at Rango Forest in June.<sup>13236</sup> Witness SD stated that upon arrival, Kanyabashi instructed the *Interahamwe* to protect the refugees and to inform him if any of the refugees died. Among the *Interahamwe* was someone called Fidèle, who

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<sup>13226</sup> T. 3 February 2004 p. 25 (Witness QBQ).

<sup>13227</sup> T. 25 March 2003 p. 70 (Witness QY).

<sup>13228</sup> T. 19 March 2003 p. 64 (Witness QY).

<sup>13229</sup> T. 25 March 2003 pp. 69-70; 26 March 2003 pp. 17-18 (ICS) (Witness QY).

<sup>13230</sup> T. 19 March 2003 p. 64; T. 25 March 2003 p. 70 (Witness QY).

<sup>13231</sup> T. 19 March 2003 pp. 64, 69 (Witness QY).

<sup>13232</sup> T. 17 March 2003 pp. 11-12; T. 18 March 2003 p. 28 (Witness SD).

<sup>13233</sup> T. 18 March 2003 p. 28 (Witness SD).

<sup>13234</sup> T. 18 March 2003 p. 29 (Witness SD).

<sup>13235</sup> T. 18 March 2003 p. 30 (Witness SD).

<sup>13236</sup> T. 17 March 2003 p. 12; T. 17 March 2003 p. 37 (ICS); T. 18 March 2003 p. 32 (Witness SD).

carried a gun, and two others who carried clubs, knives and grenades.<sup>13237</sup> The witness stated that Fidèle did not respect Kanyabashi's instructions to protect the refugees, and they were beaten. As a result, one woman miscarried.<sup>13238</sup>

5028. Witness SD testified that upon arrival at Rango Forest, the refugees dug a latrine. No food was provided beyond some porridge for the children. At some point, a priest brought some food, but it was not distributed.<sup>13239</sup> Blankets were distributed. A doctor came, but the witness did not see him treat anyone and testified that he stayed in one of the buildings which the refugees were prohibited from approaching. The *Interahamwe* stayed at the gate of the perimeter during the night and did not mingle with the refugees.<sup>13240</sup>

5029. Witness SD testified that while they were at Rango Forest, two pits, of which the larger was approximately two metres by one and a half metres and the smaller was about half that size, were dug by people from outside, who had been sent there by Kanyabashi.<sup>13241</sup> The *Interahamwe* told the refugees that they [the refugees] would be buried in those pits on the same day the President of the Republic was going to be buried.<sup>13242</sup> Witness SD testified that the RPF arrived just as the holes were finished being dug at about 9.00 or 10.00 a.m. The *Interahamwe* left when they heard the RPF gunshots.<sup>13243</sup> Witness SD testified the refugees left Rango Forest on 4 July 1994, when they were found by *Inkotanyi* of the RPF.<sup>13244</sup>

#### Prosecution Witness SS

5030. Witness SS, a Tutsi woman, testified that towards the end of June 1994, she left the BPO for Rango.<sup>13245</sup> Witness SS could not remember the exact date of her departure from the BPO, but she testified that this occurred when Alphonse Nteziryayo had just been appointed *préfet*, replacing Sylvain Nsabimana.<sup>13246</sup> At the BPO, the Tutsi refugees were put in two buses and taken away in the evening under escort.<sup>13247</sup> The Hutu refugees did not board the buses and they left before the vehicles departed to Rango Forest.<sup>13248</sup> The refugees were taken to a fenced forest.<sup>13249</sup> During their stay at Rango Forest, the refugees were supervised regularly by two *Interahamwe*: Fidèle, who was armed with rifles and wore civilian clothes, and Alexi.<sup>13250</sup>

5031. Witness SS testified that, at some point in time, a white person came with food, but the *Interahamwe* did not allow him to distribute the food to the refugees. Fidèle accompanied the refugees to go and fetch water in the river called Macura.<sup>13251</sup> Distribution of porridge took

<sup>13237</sup> T. 17 March 2003 p. 12 (Witness SD).

<sup>13238</sup> T. 18 March 2003 p. 37 (Witness SD).

<sup>13239</sup> T. 17 March 2003 p. 17; T. 18 March 2003 p. 35 (Witness SD).

<sup>13240</sup> T. 18 March 2003 pp. 31, 35-36 (Witness SD).

<sup>13241</sup> T. 17 March 2003 pp. 12, 17; T. 18 March 2003 pp. 36, 38 (Witness SD).

<sup>13242</sup> T. 17 March 2003 p. 12 (Witness SD).

<sup>13243</sup> T. 18 March 2003 p. 37 (Witness SD).

<sup>13244</sup> T. 17 March 2003 p. 12; T. 17 March 2003 p. 37 (ICS) (Witness SD).

<sup>13245</sup> T. 3 March 2003 p. 67 (Witness SS).

<sup>13246</sup> T. 3 March 2003 p. 37 (Witness SS).

<sup>13247</sup> T. 3 March 2003 pp. 67-68; T. 10 March 2003 pp. 42-43 (Witness SS).

<sup>13248</sup> T. 4 March 2003 pp. 19, 21 (Witness SS).

<sup>13249</sup> T. 3 March 2003 p. 70 (Witness SS).

<sup>13250</sup> T. 10 March 2003 pp. 43-44 (Witness SS).

<sup>13251</sup> T. 3 March 2003 p. 70 (Witness SS).

place there, especially for sick children, but in small quantities. Blankets were distributed, but the *Interahamwe* took them back.<sup>13252</sup> At some point in time, doctors came, however they did not give medical attention to anyone. As a result, during the witness' stay at Rango Forest, two or three deaths occurred due to illness.<sup>13253</sup> Witness SS saw people digging pits or graves that were to be used to bury the refugees, but in the meantime the refugees used them as latrines.<sup>13254</sup> The RPF arrived on 4 July 1994 and the refugees who were not wounded were jubilant.<sup>13255</sup>

#### Prosecution Witness SU

5032. Witness SU, a Tutsi woman, testified that in late June, the refugees were forcibly transferred by buses to a fenced property at Rango Forest.<sup>13256</sup> The witness did not indicate how many refugees were transferred. The refugees boarded the buses under the supervision of Kanyabashi, assisted by a civilian *Interahamwe* called Fidèle and one other armed man, known to the witness only as Gregwa.<sup>13257</sup> Witness SU stated that Kanyabashi rode in another vehicle and accompanied the convoy of buses to Rango Forest.<sup>13258</sup> The witness also saw Kanyabashi give Fidèle a list with the names of the refugees and tell him, “[i]f the representatives of the international community come here, we will show them these persons and we will tell them that these are the remaining Tutsis in Rwanda. ... If any of these persons die, Fidel, you have to submit a report.”<sup>13259</sup>

5033. Witness SU testified that the living conditions at Rango Forest were just as deplorable as those at the BPO.<sup>13260</sup> After a few days, the refugees were asked to dig pits. Fidèle and another local *Interahamwe* took over the task because the refugees were too weak to finish it. Witness SU testified that the refugees were asked to go inside the pits to see if they could fit in them.<sup>13261</sup> In early July, RPF soldiers arrived and liberated the refugees from Rango Forest.<sup>13262</sup>

#### Prosecution Witness SJ

5034. Witness SJ, a Tutsi woman who was 29 in 1994, testified that she was transported by bus from the BPO to Rango Forest with other refugees,<sup>13263</sup> where she stayed for about two weeks.<sup>13264</sup> At Rango Forest, the refugees were guarded by the *Interahamwe* and the forest was fenced. The refugees were denied food and water.<sup>13265</sup> One night, the *Interahamwe* left and never came back. Elements of the national army arrived the day after, between 1.00 and 2.00

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<sup>13252</sup> T. 10 March 2003 pp. 45-46 (Witness SS).

<sup>13253</sup> T. 10 March 2003 p. 47 (Witness SS).

<sup>13254</sup> T. 3 March 2003 p. 70 (Witness SS).

<sup>13255</sup> T. 3 March 2003 pp. 70-71 (Witness SS).

<sup>13256</sup> T. 15 October 2002 pp. 4, 6-7 (Witness SU).

<sup>13257</sup> T. 15 October 2002 pp. 5, 7 (Witness SU).

<sup>13258</sup> T. 15 October 2002 p. 5 (Witness SU).

<sup>13259</sup> T. 15 October 2002 pp. 8-9 (Witness SU).

<sup>13260</sup> T. 15 October 2002 p. 9 (Witness SU).

<sup>13261</sup> T. 15 October 2002 p. 10 (Witness SU).

<sup>13262</sup> T. 15 October 2002 pp. 10-11 (Witness SU).

<sup>13263</sup> T. 29 May 2002 pp. 117-118 (Witness SJ).

<sup>13264</sup> T. 29 May 2002 p. 120 (Witness SJ).

<sup>13265</sup> T. 29 May 2002 pp. 119-120 (Witness SJ).

p.m., and took the refugees to the *préfecture*.<sup>13266</sup> Witness SJ testified this probably happened at the beginning of July; she testified that *Interahamwe* “kept referring to the date of the 5<sup>th</sup>”, however, she could not be sure what exactly they were referring to.<sup>13267</sup>

### Prosecution Witness QBP

5035. Witness QBP, a Tutsi woman, testified that in the last week of June, buses were brought to transport refugees to Rango Forest.<sup>13268</sup> The military *préfet* and the *bourgmestre* of Ngoma *commune*, Kanyabashi, were present when the buses were brought to the BPO. When questioned by the Chamber, Witness QBP clarified that the military *préfet* who was present at the BPO when the buses arrived “was dark skinned and was in military uniform.”<sup>13269</sup> Witness QBP testified that Kanyabashi accompanied the refugees to Rango Forest, but she did not see him there afterwards.<sup>13270</sup> Witness QBP testified that no refugees remained at the BPO after the buses left for Rango Forest.<sup>13271</sup>

5036. Witness QBP testified that the refugees were told they would be taken to Rango Forest because they were hindering the operations of the *préfecture* and were causing problems at the BPO, and that they were going to be shown where to stay.<sup>13272</sup> Upon arrival at Rango Forest, Kanyabashi gave a document to an *Interahamwe* carrying a gun and told him to report to him if any of the refugees were to go missing.<sup>13273</sup> At Rango Forest, the *Interahamwe* told the refugees to dig pits in which they were to be buried. Since the refugees were weak, the *Interahamwe* dug the pits themselves, however the refugees were told to go in to measure them up. Neither the *préfet* nor the *bourgmestre* of Ngoma provided the refugees at Rango Forest with food or water. While a priest attempted to give food to the refugees, he was accused by the *Interahamwe* of being an accomplice and was chased away.<sup>13274</sup> In the first week of July, the *Inkotanyi* of the RPF came and liberated the refugees.<sup>13275</sup>

### Prosecution Witness TK

5037. Witness TK, a Tutsi woman, testified that the refugees were transferred by bus from the BPO to Rango Forest.<sup>13276</sup> Upon arrival at Rango Forest, Kanyabashi appeared.<sup>13277</sup> Kanyabashi was welcomed by street children as the “Muzehé”, which is a mark of respect.<sup>13278</sup> The witness testified this was the first and only time she saw Kanyabashi.<sup>13279</sup> Kanyabashi told the *Interahamwe* to let them through, as Rango Forest was fenced.<sup>13280</sup> The *Interahamwe*

<sup>13266</sup> T. 29 May 2002 pp. 122-123 (Witness SJ).

<sup>13267</sup> T. 3 June 2002 pp. 57-58 (ICS) (Witness SJ).

<sup>13268</sup> T. 24 October 2002 p. 88 (Witness QBP).

<sup>13269</sup> T. 30 October 2002 p. 92 (ICS) (Witness QBP).

<sup>13270</sup> T. 24 October 2002 pp. 88-91 (Witness QBP).

<sup>13271</sup> T. 30 October 2002 p. 75 (Witness QBP).

<sup>13272</sup> T. 24 October 2002 pp. 89-90 (Witness QBP).

<sup>13273</sup> T. 24 October 2002 p. 89 (Witness QBP).

<sup>13274</sup> T. 24 October 2002 p. 90 (Witness QBP).

<sup>13275</sup> T. 24 October 2002 p. 91; T. 29 October 2002 p. 95 (ICS) (Witness QBP).

<sup>13276</sup> T. 20 May 2002 p. 101 (Witness TK).

<sup>13277</sup> T. 20 May 2002 pp. 101-102 (Witness TK).

<sup>13278</sup> T. 20 May 2002 p. 103 (Witness TK).

<sup>13279</sup> T. 20 May 2002 pp. 104-105 (Witness TK).

<sup>13280</sup> T. 20 May 2002 p. 102 (Witness TK).

present at Rango Forest were the same who were at the BPO, and they “continued their work, which was to kill”. Witness TK only noticed one man disappearing and never saw him afterwards. At the beginning of their stay at Rango Forest, the refugees were assisted by a religious man, but at some point the *Interahamwe* took away the supplies he had given them.<sup>13281</sup> Some refugee women were forced to marry *Interahamwe* and were given food by those *Interahamwe*; these women enabled other refugees to survive by sharing that food with them.<sup>13282</sup> Nevertheless, some of the refugees died from hunger and cholera.<sup>13283</sup>

#### Prosecution Expert Witness Alison Des Forges

5038. Alison Des Forges testified that, during two conversations she had with Nsabimana,<sup>13284</sup> she learned that the presence of the refugees at the BPO had been a problem for Nsabimana and that he was left alone with it, since no one else would take responsibility. According to Des Forges, Nsabimana also said that the group of refugees was sent away to the EER school where they remained for approximately 10 days, until the authorities in charge sent them back to the BPO. At that point in time, the *Interahamwe* came to the BPO to kill; “soldiers and others” came to take away and rape women, while other refugees were selected to be killed. From the BPO, the refugees were sent away to Rango Forest.<sup>13285</sup>

5039. Des Forges testified that she heard testimonies that the transfer to Rango Forest was ordered by Nteziryayo on the day he took over as *préfet*, 20 June 1994, and that Kanyabashi and one of the *sous-préfets* supervised the move.<sup>13286</sup> Des Forges testified that the transfer to Rango Forest occurred perhaps two weeks after the transfer to Nyange and was carried out with several vehicles, but probably in one despatch. She indicated she was not entirely sure about this, since the sources of such information were people who were transferred both to Rango Forest and to Nyange and therefore might have confused elements of the two trips.<sup>13287</sup> Des Forges testified that some of the refugees boarded the buses voluntarily while others did not want to leave, since they were afraid they were going to be killed; so they were forced onto the buses.<sup>13288</sup>

#### Kanyabashi Defence Witness D-1-4-0

5040. Witness D-1-4-0, a Hutu who was working as a health assistant at the Rango Holy Cross Centre at Rango Forest,<sup>13289</sup> testified that in June 1994, between 200 and 300 refugees were transferred from the BPO to Rango Forest. Some of them were wounded or sick, while others suffered from diarrhea.<sup>13290</sup>

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<sup>13281</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13282</sup> T. 20 May 2002 p. 107 (Witness TK).

<sup>13283</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13284</sup> T. 9 June 2004 pp. 50-51 (Des Forges) (these conversations took place on 25 March and 3 April 1996).

<sup>13285</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>13286</sup> T. 7 July 2004 pp. 9-10 (Des Forges).

<sup>13287</sup> T. 7 July 2004 pp. 8-10 (Des Forges).

<sup>13288</sup> T. 7 July 2004 p. 9 (Des Forges).

<sup>13289</sup> In light of all the evidence, the Chamber is satisfied that the Holy Cross Centre was a health centre located at Rango Forest and notes, *inter alia*, that this was referred to also as the “*Frères de la Sainte Croix*”. For ease of reference, the Chamber will refer to the “Holy Cross Centre”.

<sup>13290</sup> T. 6 May 2008 p. 54 (ICS) (Witness D-1-4-0).

5041. Witness D-1-4-0 testified that he learned from Patrick Kayiranga – Kanyabashi’s son, who also worked at the health centre as a lab technician – that refugees arrived at Rango Forest between 15 and 17 June 1994. The witness was assigned to provide medical care to those refugees following a message from Kanyabashi relayed by Kayiranga.<sup>13291</sup> Witness D-1-4-0 was the only health attendant who was on duty at the Rango health centre during the events.<sup>13292</sup> The witness stated that he first went to see the refugees on the day after their arrival, and that he went to the Rango Holy Cross Centre to provide medical attention to them on five occasions in total.<sup>13293</sup>

5042. Witness D-1-4-0 testified that the refugees were comprised mainly of children and women.<sup>13294</sup> He indicated that he knew many of those refugees were native of Gishamvu, while others hailed from Runyinya and Nyakizu *communes*, or from Gikongoro *préfecture*.<sup>13295</sup> Witness D-1-4-0 testified there were fewer than 30 men among the refugees.<sup>13296</sup> The number of refugees at Rango Holy Cross Centre did not increase during the time he went there to provide medical care.<sup>13297</sup> Witness D-1-4-0 stated that he treated more than 30 people during the time he was assigned to the Rango Holy Cross Centre,<sup>13298</sup> and he was the only person who provided medical attention to the refugees that were brought there. Father Danielo and a nun also took care of the refugees by supplying them with foods, pots, blankets and soap.<sup>13299</sup> The witness testified that at Rango Forest, the refugees cooked for themselves and could also fetch firewood in the vicinity.<sup>13300</sup>

5043. Witness D-1-4-0 testified that other foodstuffs like maize were also brought from the Ngoma *commune* office by Anicet, who was reported to be Kanyabashi’s son.<sup>13301</sup> Witness D-1-4-0 saw Anicet arrive aboard a green Toyota pickup belonging to Ngoma *commune*.<sup>13302</sup> This vehicle was known to people in Ngoma who called it “*ruhumbengegare*” in Kinyarwanda, meaning “the car that picks up hoodlums.”<sup>13303</sup> The witness pointed out that he often saw that vehicle before April 1994, but just once between April and July 1994.<sup>13304</sup> He testified that he knew very few members of the *commune* staff of Ngoma, citing as examples Rutayisire, the person in charge of the finances and who often came to the health centre, Kanyabashi and policeman Cassien, who lived near the health centre.<sup>13305</sup>

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<sup>13291</sup> T. 6 May 2008 pp. 53-54 (ICS); T. 7 May 2008 p. 27 (ICS) (Witness D-1-4-0).

<sup>13292</sup> T. 6 May 2008 p. 54 (ICS) (Witness D-1-4-0).

<sup>13293</sup> T. 6 May 2008 pp. 57, 60 (ICS) (Witness D-1-4-0).

<sup>13294</sup> T. 6 May 2008 p. 55 (ICS) (Witness D-1-4-0).

<sup>13295</sup> T. 6 May 2008 pp. 39, 55 (ICS) (Witness D-1-4-0).

<sup>13296</sup> T. 7 May 2008 p. 24 (ICS) (Witness D-1-4-0).

<sup>13297</sup> T. 7 May 2008 p. 46 (ICS) (Witness D-1-4-0).

<sup>13298</sup> T. 8 May 2008 p. 41 (ICS) (Witness D-1-4-0).

<sup>13299</sup> T. 6 May 2008 p. 58 (ICS) (Witness D-1-4-0).

<sup>13300</sup> T. 6 May 2008 p. 67 (ICS) (Witness D-1-4-0).

<sup>13301</sup> T. 6 May 2008 p. 58 (ICS) (Witness D-1-4-0).

<sup>13302</sup> T. 6 May 2008 p. 67 (ICS) (Witness D-1-4-0).

<sup>13303</sup> T. 7 May 2008 p. 30 (ICS) (Witness D-1-4-0).

<sup>13304</sup> T. 7 May 2008 pp. 30-31 (ICS) (Witness D-1-4-0).

<sup>13305</sup> T. 7 May 2008 p. 34 (ICS) (Witness D-1-4-0).

5044. Witness D-1-4-0 testified that at Rango Forest the people in charge of security were Fidèle, who assisted in the distribution of supplies, and another person named Gashirabake.<sup>13306</sup> Witness D-1-4-0 testified that Fidèle was not an *Interahamwe*.<sup>13307</sup>

5045. Witness D-1-4-0 testified that he never witnessed any assault on the refugees,<sup>13308</sup> nor heard any of them complaining that they had been beaten up during the time he treated them at the Rango Holy Cross Centre.<sup>13309</sup> The witness learned that on one occasion, people from outside the centre attempted to get in to assault the refugees, but they were repelled by Fidèle.<sup>13310</sup> The assailants were called *Abatomba*, referring to a community that lived in the vicinity.<sup>13311</sup>

5046. Witness D-1-4-0 testified that the refugees had access to clean water, which they fetched from a place called Mpazi. Water was stored in gallons supplied by Ngoma *commune*.<sup>13312</sup> The refugees stayed outside in the verandas and corridors as the buildings were locked up.<sup>13313</sup> Witness D-1-4-0 testified that three toilet facilities were put up for the refugees at Rango Forest and their construction was supervised by the witness himself, who also provided disinfectant so that the facilities could be better maintained. The refugees dug the latrine pits, assisted by Fidèle and Gashirabake.<sup>13314</sup>

5047. Witness D-1-4-0 testified that he went to the health centre for the last time on 1 or 2 July 1994, just before he left Rwanda. At that time, the refugees were still present at Rango Forest.<sup>13315</sup>

5048. Witness D-1-4-0 testified that the refugees talked about Kanyabashi; they said that Kanyabashi had been of service to them because he had transported them from the *préfecture* offices where they were living under poor conditions and that Kanyabashi had even accompanied them in the buses.<sup>13316</sup> On cross-examination, the witness stated that he had not asked the refugees if it was Kanyabashi who ordered them to board the buses.<sup>13317</sup> The witness testified that the refugees never told him if they had received any assistance from Ngoma *commune* while they were at the *préfecture* office.<sup>13318</sup>

5049. Witness D-1-4-0 testified that the only *Interahamwe* he saw at Rango Forest was called Cyiza. Cyiza was married to one of his colleagues at the health centre and never went to Rango Holy Cross Centre during the time the refugees settled there. Witness D-1-4-0 remembered

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<sup>13306</sup> T. 6 May 2008 pp. 58, 60 (ICS) (Witness D-1-4-0).

<sup>13307</sup> T. 7 May 2008 p. 38 (ICS) (Witness D-1-4-0).

<sup>13308</sup> T. 6 May 2008 p. 66 (ICS) (Witness D-1-4-0).

<sup>13309</sup> T. 7 May 2008 p. 44 (ICS) (Witness D-1-4-0).

<sup>13310</sup> T. 6 May 2008 p. 66 (ICS) (Witness D-1-4-0).

<sup>13311</sup> T. 7 May 2008 p. 43 (ICS) (Witness D-1-4-0).

<sup>13312</sup> T. 6 May 2008 p. 68 (ICS) (Witness D-1-4-0).

<sup>13313</sup> T. 7 May 2008 p. 46 (ICS) (Witness D-1-4-0).

<sup>13314</sup> T. 6 May 2008 p. 69 (ICS) (Witness D-1-4-0).

<sup>13315</sup> T. 6 May 2008 p. 57 (ICS) (Witness D-1-4-0).

<sup>13316</sup> T. 6 May 2008 p. 69 (ICS) (Witness D-1-4-0).

<sup>13317</sup> T. 7 May 2008 p. 28 (ICS) (Witness D-1-4-0).

<sup>13318</sup> T. 8 May 2008 p. 40 (ICS) (Witness D-1-4-0).



Cyiza said on one occasion that “Kanyabatutsi”—referring to Kanyabashi—“prevented them [the *Interahamwe*] from killing”.<sup>13319</sup>

Kanyabashi Defence Witness D-2-10-Y

5050. Witness D-2-10-Y, a Tutsi who worked as a gardener at the congregation of *Salesiens de Rango* in 1994,<sup>13320</sup> testified that he arrived at the BPO towards the end of May 1994.<sup>13321</sup> Kanyabashi told the witness and other refugees at the BPO that they were to be transferred to Rango Forest where they would be better protected.<sup>13322</sup> Witness D-2-10-Y testified that he spent two weeks at the BPO<sup>13323</sup> and was transferred to Rango Forest in June.<sup>13324</sup>

5051. Witness D-2-10-Y testified that, while at the BPO, the *Interahamwe* asked the refugees to gather because Kanyabashi would speak to them.<sup>13325</sup> The witness could not recall when exactly this happened. The witness testified that Kanyabashi was the first to inform the refugees about their travel to Rango Forest.<sup>13326</sup> Kanyabashi told them for the first time on one morning, when he came alone to the BPO; and on a second occasion, when he returned to the BPO at about 12.00 p.m. on the departure date. This time, Kanyabashi was accompanied by a police officer who was on board his vehicle.<sup>13327</sup> The witness said that he saw Kanyabashi at the BPO only on these two occasions, which occurred on different days.<sup>13328</sup>

5052. Witness D-2-10-Y testified that after being informed about their transfer to Rango Forest, the refugees were afraid, but Kanyabashi told them that he would provide policemen for their security.<sup>13329</sup> In the presence of Kanyabashi, around 300 refugees boarded two buses belonging to ONATRACOM and were transported to Rango Forest.<sup>13330</sup> When questioned if there could have been up to 1,000 refugees involved in the transfer, the witness said this was unrealistic. The witness testified that he did not see any refugee being forced to board the buses, nor did he see people using machetes to wound the refugees before they boarded the buses.<sup>13331</sup>

5053. Witness D-2-10-Y testified that his father and other family members were transported along with him from the BPO to Rango Forest.<sup>13332</sup> The witness stated that street children who spent nights with the refugees at the BPO were not transported to Rango Forest.<sup>13333</sup> Witness D-2-10-Y testified that there were policemen on board each of the buses, who helped them to

<sup>13319</sup> T. 7 May 2008 pp. 44-45 (ICS) (Witness D-1-4-0).

<sup>13320</sup> The Chamber understands the reference to the “congregation of *Salesiens de Rango*” is a reference to the Rango Holy Cross Centre. For the purposes of this Judgement, the Chamber will refer to “Holy Cross Centre”.

<sup>13321</sup> T. 29 April 2008 pp. 10, 26 (Witness D-2-10-Y).

<sup>13322</sup> T. 29 April 2008 p. 10 (Witness D-2-10-Y).

<sup>13323</sup> T. 5 May 2008 p. 59 (Witness D-2-10-Y).

<sup>13324</sup> T. 29 April 2008 pp. 9-10 (Witness D-2-10-Y).

<sup>13325</sup> T. 29 April 2008 p. 35 (Witness D-2-10-Y).

<sup>13326</sup> T. 29 April 2008 p. 28 (Witness D-2-10-Y).

<sup>13327</sup> T. 29 April 2008 pp. 28-29 (Witness D-2-10-Y).

<sup>13328</sup> T. 1 May 2008 p. 34 (Witness D-2-10-Y).

<sup>13329</sup> T. 29 April 2008 p. 11; T. 5 May 2008 p. 57 (Witness D-2-10-Y).

<sup>13330</sup> T. 29 April 2008 pp. 8-10; T. 5 May 2008 p. 57 (Witness D-2-10-Y).

<sup>13331</sup> T. 29 April 2008 p. 32 (Witness D-2-10-Y).

<sup>13332</sup> T. 1 May 2008 p. 36 (Witness D-2-10-Y).

<sup>13333</sup> T. 29 April 2008 p. 31 (Witness D-2-10-Y).

cross the roadblocks on their way to Rango Forest.<sup>13334</sup> Witness D-2-10-Y did not see any soldiers or *Interahamwe* on the buses.<sup>13335</sup>

5054. Witness D-2-10-Y testified that they arrived at Rango Forest past 2.00 p.m. but before nightfall,<sup>13336</sup> and that Kanyabashi was present.<sup>13337</sup> Kanyabashi indicated to the refugees the person in charge of their security, Fidèle, who had been an employee at the Holy Cross Centre at Rango Forest prior to 6 April 1994.<sup>13338</sup> Kanyabashi spoke with Fidèle, standing at a certain distance to the witness and other refugees. Kanyabashi greeted and waved at the refugees, asking them to be patient.<sup>13339</sup> Kanyabashi told Fidèle that he had to ensure the refugees' security and that he should not allow anyone to disturb them.<sup>13340</sup> Witness D-2-10-Y testified that Fidèle carried a firearm but did not wear military attire.<sup>13341</sup> Fidèle obeyed Kanyabashi's orders.<sup>13342</sup>

5055. Witness D-2-10-Y testified that refugees at Rango Forest were spread out into the forest surrounding the Holy Cross Centre.<sup>13343</sup> The witness stated that the Reverend Brothers were not present when the refugees were staying at Rango Forest.<sup>13344</sup> The witness did not see any *gendarmes* at the premises of Rango Forest.<sup>13345</sup>

5056. Witness D-2-10-Y testified that during his stay at Rango Forest, Fidèle led the refugees to the Mpazi stream to fetch water.<sup>13346</sup> The witness testified that they did not go to Mukura River to fetch water, nor did he hear that other refugees did. The witness did not hear that Mukura River contained decomposed bodies and, therefore, was "liver borne" (*sic*). Witness D-2-10-Y testified that they had to fetch water because the water supply was not sufficient to cater to the refugees.<sup>13347</sup> In cross-examination, Witness D-2-10-Y testified that when he went to fetch water, he saw a roadblock on a small road linking Rango market to Butare town.<sup>13348</sup>

5057. Witness D-2-10-Y testified that at one time, Father Danello supplied the refugees with food. The food was brought in a green vehicle called "*Ruhumbangegera*", normally used to transport offenders. That vehicle belonged to the *commune* and was driven by the son of Kanyabashi's wife, Anicet. Witness D-2-10-Y testified that Danello and Fidèle distributed food supplies to the refugees.<sup>13349</sup> The witness denied that persons in charge of the refugees' security or anybody else took the food away. Witness D-2-10-Y added that the refugees also

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<sup>13334</sup> T. 29 April 2008 pp. 11, 30 (Witness D-2-10-Y).

<sup>13335</sup> T. 29 April 2008 pp. 30, 32 (Witness D-2-10-Y).

<sup>13336</sup> T. 29 April 2008 p. 32 (Witness D-2-10-Y).

<sup>13337</sup> T. 29 April 2008 p. 11 (Witness D-2-10-Y).

<sup>13338</sup> T. 29 April 2008 pp. 11-12 (Witness D-2-10-Y).

<sup>13339</sup> T. 29 April 2008 p. 21 (Witness D-2-10-Y).

<sup>13340</sup> T. 29 April 2008 pp. 11-12 (Witness D-2-10-Y).

<sup>13341</sup> T. 29 April 2008 pp. 37, 51; T. 1 May 2008 p. 5 (Witness D-2-10-Y).

<sup>13342</sup> T. 6 May 2008 p. 7 (Witness D-2-10-Y).

<sup>13343</sup> T. 6 May 2008 p. 8 (Witness D-2-10-Y).

<sup>13344</sup> T. 6 May 2008 p. 26 (Witness D-2-10-Y).

<sup>13345</sup> T. 29 April 2008 p. 39 (Witness D-2-10-Y).

<sup>13346</sup> T. 29 April 2008 pp. 12-13 (Witness D-2-10-Y).

<sup>13347</sup> T. 29 April 2008 pp. 12-13; T. 6 May 2008 p. 19 (Witness D-2-10-Y).

<sup>13348</sup> T. 5 May 2008 pp. 30-31 (ICS) (Witness D-2-10-Y).

<sup>13349</sup> T. 29 April 2008 pp. 14-16 (Witness D-2-10-Y).

received buckets, blankets and some rice.<sup>13350</sup> Witness D-2-10-Y testified that a nun, accompanied by a person called Murokore, visited the Holy Cross Centre at Rango Forest three times to provide health services to the refugees. They treated wounded persons and provided them with drugs and medication.<sup>13351</sup> The witness testified that three persons died of illness during their stay at Rango Forest, but he was not aware that any other person died during that time.<sup>13352</sup>

5058. Witness D-2-10-Y testified that, while at Rango Forest, the refugees dug two pits to serve as toilets, on the instruction of Murokore. He was not aware that any pits were dug in order for the refugees to be buried in.<sup>13353</sup>

5059. Witness D-2-10-Y testified that no *Interahamwe* stayed at Rango Forest with the refugees,<sup>13354</sup> but at some point two *Interahamwe*, known as Gikongoro and Ngoma, arrived.<sup>13355</sup> The witness also testified that when Fidèle went back home, the *Interahamwe* and persons from a specific Hutu ethnic group known as *Abakomba* arrived to kill the refugees. Fidèle heard the cries of the refugees and returned immediately to the premises; the assailants fled.<sup>13356</sup>

5060. Witness D-2-10-Y testified that when some refugees went to Rudandi to buy provisions, an *Interahamwe* known as Gashirabake, who was the other person in charge of the security of the refugees beside Fidèle, put several persons in a bag and beat them up at Rango Forest. According to the witness, such an incident happened only once during his stay at Rango Forest.<sup>13357</sup> Gashirabake obeyed Kanyabashi's orders together with Fidèle.<sup>13358</sup> Witness D-2-10-Y testified that at the time of his testimony, the man who was with Fidèle, Gashirabake, was being prosecuted by the national court for having taken part in killings.<sup>13359</sup>

5061. Witness D-2-10-Y testified that two weeks after his arrival at Rango Forest, the RPF arrived in the area and released the refugees.<sup>13360</sup> In cross-examination, the witness said that the RPF arrested the population – Hutus as well as Tutsis – and sent them to Rango town for their safety. His father and his five brothers remained in town, while the witness and his sister Alphonsine went to Gikongoro; since then, the witness has not seen his family members.<sup>13361</sup> Witness D-2-10-Y testified that he decided to go to Gikongoro even though the RPF had told the refugees that they were safe in Rango, because there were also Tutsis at Gikongoro.<sup>13362</sup>

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<sup>13350</sup> T. 29 April 2008 pp. 15-16, 19 (Witness D-2-10-Y).

<sup>13351</sup> T. 29 April 2008 p. 17 (Witness D-2-10-Y).

<sup>13352</sup> T. 29 April 2008 pp. 17-18 (Witness D-2-10-Y).

<sup>13353</sup> T. 29 April 2008 pp. 18-19 (Witness D-2-10-Y).

<sup>13354</sup> T. 29 April 2008 p. 16 (Witness D-2-10-Y).

<sup>13355</sup> T. 29 April 2008 pp. 35-36 (Witness D-2-10-Y).

<sup>13356</sup> T. 29 April 2008 pp. 19-20 (Witness D-2-10-Y).

<sup>13357</sup> T. 29 April 2008 pp. 20-21, 37 (Witness D-2-10-Y).

<sup>13358</sup> T. 6 May 2008 p. 7 (Witness D-2-10-Y).

<sup>13359</sup> T. 6 May 2008 pp. 7, 26 (Witness D-2-10-Y).

<sup>13360</sup> T. 29 April 2008 p. 12 (Witness D-2-10-Y).

<sup>13361</sup> T. 5 May 2008 pp. 67-68, 70 (ICS) (Witness D-2-10-Y).

<sup>13362</sup> T. 5 May 2008 p. 70 (ICS) (Witness D-2-10-Y).

The witness testified that, beside his twin sister who was killed in Kabakobwa, all the family members who had taken refuge at the BPO had survived.<sup>13363</sup>

#### Nyiramasuhuko Defence Witness WMKL

5062. Witness WMKL, a Hutu teacher at one of the Butare schools in 1994, testified that there were no longer refugees at the BPO during the first week of June 1994.<sup>13364</sup> The witness testified that in June the refugees were moved from the BPO to the Holy Cross Centre at Rango Forest. Witness WMKL attended a meeting during which Kanyabashi stated that the refugees were transferred from the BPO so that they could not be the object of any intimidation by members of the population.<sup>13365</sup> Witness WMKL further testified that he never heard that those refugees were maltreated during their stay at Rango Forest.<sup>13366</sup>

#### Nteziryayo

5063. Nteziryayo testified that about 250 persons were transferred to Rango Forest either on 19 or 20 June 1994. He learned this from the *sous-préfet* in charge of social affairs, Everest Bicamumpaka. Nteziryayo testified that the refugees were transferred before he started working as *préfet*. His first day at work as the new *préfet* was 21 June 1994; therefore, he was not at the BPO when the transfer occurred.<sup>13367</sup> Nteziryayo further testified that he did not take part in the decision to transfer them to Rango Forest.<sup>13368</sup> Nteziryayo denied the portion of Prosecution Witness FAP's testimony, where Witness FAP stated that he was transferred to Rango Forest after Nteziryayo's appointment and that he was told by Grégoire that Nteziryayo "no longer wanted garbage in front of his office".<sup>13369</sup>

5064. Nteziryayo testified that the plan to move the refugees from the BPO to Rango Forest had been initiated during the tenure of *Préfet* Nsabimana,<sup>13370</sup> between humanitarian organisations and the *préfecture* authorities.<sup>13371</sup> Nteziryayo agreed with the plan to transfer the refugees, *vis-à-vis* the *sous-préfets*, Hakizamungu and Bicamumpaka, as discussed at a meeting he had with them on 19 June, because it did not entail any problems and the refugees would be better off at Rango Forest.<sup>13372</sup> Clergymen of Rango had provided their convent for accommodating the refugees so they could live in better conditions than in Butare, where they had been living in the open, in front of the offices or behind the BPO, exposed to all passersby and open for everyone to come in.<sup>13373</sup> Nteziryayo could not recall whether, by the time of the said meeting, the refugees had already been transported to Rango Forest.<sup>13374</sup>

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<sup>13363</sup> T. 28 April 2008 p. 41 (ICS); T. 5 May 2008 p. 56 (Witness D-2-10-Y).

<sup>13364</sup> T. 6 April 2005 pp. 69-70 (Witness WMKL).

<sup>13365</sup> T. 11 April 2005 p. 5 (Witness WMKL).

<sup>13366</sup> T. 11 April 2005 p. 6 (Witness WMKL).

<sup>13367</sup> T. 11 June 2007 pp. 4-5; T. 7 June 2007 pp. 55-56, 58; T. 25 June 2007 pp. 13-14 (Nteziryayo).

<sup>13368</sup> T. 7 June 2007 pp. 57-58; T. 11 June 2007 p. 5 (Nteziryayo).

<sup>13369</sup> T. 7 June 2007 pp. 57-58 (Nteziryayo).

<sup>13370</sup> T. 25 June 2007 p. 16 (Nteziryayo).

<sup>13371</sup> T. 7 June 2007 p. 56 (Nteziryayo).

<sup>13372</sup> T. 25 June 2007 pp. 18-19 (Nteziryayo).

<sup>13373</sup> T. 7 June 2007 p. 56 (Nteziryayo).

<sup>13374</sup> T. 7 June 2007 p. 58 (Nteziryayo).

5065. Nteziryayo testified that Bicumumpaka personally participated in moving the refugees to Rango Forest, working together with Kanyabashi. Upon arrival at Rango Forest, the refugees were taken care of by Kanyabashi, by Caritas, the clergymen in Rango, Bicumumpaka and other persons connected to the various officials who sought to improve on the living conditions of those refugees.<sup>13375</sup> Nteziryayo testified that the *préfecture* authorities had contacted Caritas, a humanitarian service belonging to the Butare diocese, as well as Father Vieckoslav, a cleric from Rango, and another religious personality, called Daniello. All of these people and organisations were called upon to supply the refugees with food, health care, clothing and other items.<sup>13376</sup>

5066. Nteziryayo testified that he was informed by Bicumumpaka that the refugees were receiving considerable aid from humanitarian organisations and that Ngoma *commune* was also working hard to sustain the refugees. Nteziryayo stated that he instructed Bicumumpaka to follow up the situation of those refugees and to remain in touch with the humanitarian organisations that were assisting the refugees.<sup>13377</sup>

5067. Nteziryayo testified that on one occasion, he went to Rango Forest and inspected the site where the refugees stayed; he was satisfied that their situation was better there than the *préfecture* courtyard.<sup>13378</sup> Nteziryayo testified that the refugees were still under “minimal living conditions”, but at least they were in a fenced place, with shade, and Ngoma *commune* had provided guards for their safety. The “religious” looked after them and some persons provided them with health care. Caritas provided food; other humanitarian organisations had given them blankets, cooking utensils and other useful items and medical care. Bicumumpaka went there regularly, if not on a daily basis, to reassure the refugees.<sup>13379</sup>

5068. Nteziryayo testified that refugees at Rango Forest were not beaten up. The persons who took care of the refugees were in good faith. Otherwise, according to Nteziryayo, the refugees would have complained *vis-à-vis* the *préfet* or other authorities. Bicumumpaka did not report any cases of maltreatment.<sup>13380</sup> Nteziryayo denied that the authorities who tried to improve the living conditions of those refugees refused to let a white person distribute food among the refugees.<sup>13381</sup> Nteziryayo further stated that the refugees were not thrown into mass graves; none of the refugees were ever killed; there were no attacks or threats against those refugees;<sup>13382</sup> and the refugees were not waiting to be buried in mass graves on 5 July 1994.<sup>13383</sup> Nteziryayo testified that Witness FAM’s testimony that Nteziryayo had led Tutsi refugees from Muganza to Rango Forest, first to the house of Ruhashyankiko and later to the house of Pierre Rwakayonza to kill them, was false.<sup>13384</sup>

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<sup>13375</sup> T. 7 June 2007 pp. 21, 58 (Nteziryayo).

<sup>13376</sup> T. 20 June 2007 pp. 35-37 (Nteziryayo).

<sup>13377</sup> T. 7 June 2007 pp. 21, 58 (Nteziryayo).

<sup>13378</sup> T. 7 June 2007 p. 59 (Nteziryayo).

<sup>13379</sup> T. 7 June 2007 pp. 21, 59-60 (Nteziryayo).

<sup>13380</sup> T. 7 June 2007 pp. 21, 60 (Nteziryayo).

<sup>13381</sup> T. 7 June 2007 p. 62 (Nteziryayo).

<sup>13382</sup> T. 7 June 2007 pp. 60-61; T. 9 July 2007 p. 45 (Nteziryayo).

<sup>13383</sup> T. 7 June 2007 pp. 61-62 (Nteziryayo).

<sup>13384</sup> T. 22 May 2007 p. 4 (Nteziryayo).

5069. Nteziryayo testified that as the *préfet* he received an update of the situation at Rango Forest on a daily basis and was personally satisfied that the transfer to Rango Forest was aimed at improving the situation of those refugees and making it “more humane”. Therefore, it would have been contradictory if people had maltreated them at the same time.<sup>13385</sup> Nteziryayo testified that after 28 June 1994, he contacted humanitarian organisations to assist in looking after the refugees in the Mubumbano or the Rango Forest refugee camp. Nteziryayo testified that he had to take care that the refugees would not be attacked by other persons, and that he had to look for supplies and means of transport.<sup>13386</sup> The refugees remained at Rango Forest until the arrival of the RPF in Butare town.<sup>13387</sup>

### 3.6.48.4 Deliberations

5070. It is undisputed that refugees were transferred from the BPO to Rango Forest. Both Prosecution and Defence witnesses presented compelling evidence in this regard, as indicated below.<sup>13388</sup> The issues for the Chamber to determine are: when the transfer occurred; the number of refugees involved; and whether criminal acts were perpetrated against the refugees throughout and/or as a consequence of the transfer. Further, the Chamber must assess whether Kanyabashi was involved in the transfer and the extent of his involvement. As stated above, the Chamber will not consider the allegation concerning the transfer to Rango Forest in relation to Nteziryayo and Nsabimana.

#### 3.6.48.4.1 Time Period of the Transfer

5071. The Chamber heard consistent evidence from Prosecution Witnesses TA, SS, SU, QBP and Des Forges to the effect that the transfer of the refugees to Rango Forest occurred in June 1994.<sup>13389</sup> In addition Prosecution Witness SD testified the transfer was carried out about one week after the appointment of Nteziryayo as the new *préfet*.<sup>13390</sup> Prosecution Witness FAP corroborated this evidence, testifying that at the time of the transfer to Rango Forest, Nteziryayo had already taken over his duties as the new *préfet*.<sup>13391</sup> The Chamber has previously found that Nteziryayo was appointed *préfet* of Butare by the Interim Government on 17 June 1994 (). In light of this evidence and the testimony of Witnesses SD and FAP, the transfer to Rango Forest occurred in the second half of June 1994. The Chamber has also considered the testimony of Prosecution Witness SJ, who was not able to give a precise indication of the time period she was transferred to Rango Forest. Nevertheless, she testified that the refugees were rescued probably at the beginning of July, about two weeks after their arrival at Rango Forest. She therefore also places the transfer as occurring sometime in late June 1994.<sup>13392</sup> Defence Witnesses D-1-4-0, D-2-10-Y and WMKL corroborated this

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<sup>13385</sup> T. 7 June 2007 p. 61 (Nteziryayo).

<sup>13386</sup> T. 12 June 2007 pp. 16, 18 (Nteziryayo).

<sup>13387</sup> T. 25 June 2007 p. 19 (Nteziryayo).

<sup>13388</sup> Prosecution Witnesses TA, FAP, RE, QBQ, QY, SD, SS, SU, SJ, QBP, Des Forges, and TK; Defence Witnesses D-1-4-0, D-2-10-Y, WMKL, and Nteziryayo.

<sup>13389</sup> T. 29 October 2001 pp. 61-62 (Witness TA); T. 6 November 2001 pp. 62-63 (Witness TA); T. 7 November 2001 p. 123 (Witness TA); T. 3 March 2003 p. 67 (Witness SS); T. 15 October 2002 pp. 4, 6-7 (Witness SU); T. 24 October 2002 p. 88 (Witness QBP); T. 7 July 2004 pp. 9-10 (Des Forges).

<sup>13390</sup> T. 17 March 2003 pp. 11-12; T. 18 March 2003 p. 28 (Witness SD).

<sup>13391</sup> T. 11 March 2003 p. 63; T. 13 March 2003 p. 39 (Witness FAP).

<sup>13392</sup> T. 3 June 2002 pp. 55, 57-58 (ICS) (Witness SJ).

testimony, stating that the transfer to Rango Forest occurred in June 1994.<sup>13393</sup> Nteziryayo gave evidence that the transfer to Rango Forest was carried out either on 19 or 20 June 1994.<sup>13394</sup>

5072. Witness QBQ's testimony conflicts with the accounts that the refugees were transferred in late June 1994. She testified that she arrived at the BPO towards the end of April, and the day after her arrival she was transported with the other refugees to the EER. She stayed at the EER for one week only, after which she and the other refugees were brought back to the BPO. The following day, they were immediately transported to Rango Forest.<sup>13395</sup> According to this evidence, between the witness' arrival at the BPO and her departure to Rango Forest, just over a week had passed. The Chamber observes that this account appears contradictory with Witness QBQ's subsequent testimony in cross-examination, where she stated that she arrived at the BPO at the end of April and she departed to Rango Forest about one month later.<sup>13396</sup> Therefore, the Chamber does not find Witness QBQ credible as to the time frame when the refugees were transferred to Rango Forest.

5073. In light of the foregoing, and having assessed all the evidence before it, the Chamber finds beyond a reasonable doubt that the transfer of the refugees to Rango Forest occurred sometime in June 1994.

#### 3.6.48.4.2 Number of Refugees Transported to Rango Forest

5074. Prosecution Witnesses TA, FAP, SU, SS, QBP and Des Forges testified that the transfer was carried out with two or more buses.<sup>13397</sup> This account is consistent with the Chamber's previous finding, in the context of the transport of the refugees from the BPO to Nyange, which was carried out by way of two or more buses (). Defence Witness D-2-10-Y corroborated this account.<sup>13398</sup> Defence Witnesses D-1-4-0 and D-2-10-Y gave figures ranging from 200 to slightly more than 300 refugees being transported from the BPO to Rango Forest.<sup>13399</sup>

5075. Witness TA was not able to indicate a precise number of refugees, but testified that there were less than 1,000 people in the two buses.<sup>13400</sup> The Chamber recalls that the Ntahobali Defence challenged the credibility of Witness TA during cross-examination, on the grounds that the witness lacked precision in some answers with respect to time and date, but was able to give very specific details about other facts.<sup>13401</sup> The Chamber has already assessed this aspect of Witness TA's testimony with respect to the incidents at the BPO and has come to the

<sup>13393</sup> T. 6 May 2008 p. 54 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 9-10 (Witness D-2-10-Y); T. 11 April 2005 p. 5 (Witness WMKL).

<sup>13394</sup> T. 11 June 2007 pp. 4-5; T. 7 June 2007 pp. 55-56, 58; T. 25 June 2007 pp. 13-14 (Nteziryayo).

<sup>13395</sup> T. 3 February 2004 pp. 23-24, 51; T. 4 February 2004 p. 15 (Witness QBQ).

<sup>13396</sup> T. 3 February 2004 p. 52 (Witness QBQ).

<sup>13397</sup> T. 29 October 2001 pp. 61-62 (Witness TA); T. 6 November 2001 pp. 62-63 (Witness TA); T. 7 November 2001 pp. 25-26, 29 (Witness TA); T. 11 March 2003 p. 63 (Witness FAP); T. 13 March 2003 p. 39 (Witness FAP); T. 15 October 2002 pp. 4, 6-7 (Witness SU); T. 24 October 2002 p. 88 (Witness QBP); T. 7 July 2004 pp. 8-10 (Des Forges); T. 3 March 2003 pp. 67-68 (Witness SS); T. 10 March 2003 pp. 42-43 (Witness SS).

<sup>13398</sup> T. 29 April 2008 pp. 10-11, 30-31 (Witness D-2-10-Y).

<sup>13399</sup> T. 6 May 2008 p. 54 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 8-10, 32 (Witness D-2-10-Y); T. 5 May 2008 p. 57 (Witness D-2-10-Y).

<sup>13400</sup> T. 7 November 2001 p. 28 (Witness TA).

<sup>13401</sup> T. 30 October 2001 pp. 7-12 (Witness TA).

conclusion that Witness TA's testimony is credible with respect to the time of her arrival and her experience at the BPO (). However, in relation to the number of refugees present at Rango Forest, the Chamber cannot rely on Witness TA's testimony, for the reasons explained below.

5076. The testimony by Prosecution witnesses that there were two or more buses supports Defence Witnesses D-1-4-0 and D-2-10-Y's account on the number of refugees involved (250 to 300). The Chamber is of the opinion that, it is reasonable that a few hundred people were transferred by means of two or more buses.

5077. The Chamber also recalls Defence Exhibit 473 (at 20:06) which was a video recording of the refugees at the BPO around 15 June 1994. Based upon the Chamber's earlier finding, by this date, about 200 refugees had returned to the BPO from the EER (). The Chamber finds this Exhibit corroborates Defence Witnesses D-1-4-0 and D-2-10-Y's testimony outlined above.

5078. Regarding the composition of the group of refugees, Witness SD testified that only women, children, and two old men boarded the two buses to Rango Forest, as all the rest of the men had been killed.<sup>13402</sup> This conflicts with other testimonies which, although not entirely consistent with each other, indicate that there were some men among the refugees. Defence Witness D-1-4-0 testified that fewer than 30 of the refugees who settled at Rango Forest were men.<sup>13403</sup> Defence Witness D-2-10-Y testified that there were around 100 men among the refugees, around a third of the refugee population.<sup>13404</sup> Prosecution Witness TK testified that, at some point during her stay at Rango Forest she noticed one male refugee disappearing.<sup>13405</sup> In addition, Defence Exhibit 473, which shows some of the refugees prior to the transfer to Rango Forest, captured images of several men. In light of the foregoing, the Chamber is convinced that both men and women were transferred to Rango Forest, but the number of men had diminished significantly due to the killings at the BPO and EER ().

5079. Regarding the ethnicity of the refugees, the Chamber notes discrepancies between the testimonies of Witnesses SD and SS. Prosecution Witness SD stated that there were some Hutu women among the refugees,<sup>13406</sup> whereas Prosecution Witness SS testified that, prior to being put on the buses the Tutsi refugees were separated from the Hutus and only the Tutsis were taken away.<sup>13407</sup> The Chamber recalls its finding that Hutu refugees were separated from Tutsi refugees and taken to Mubumbano refugee camp (). Therefore, most if not all Hutu refugees had been taken from the BPO to Mubumbano by 15 June 1994. The Chamber considers that although there may have been some Hutus among the refugees, the majority of refugees were Tutsis.

5080. In sum, the Chamber concludes that approximately 250 to 300 mainly Tutsi refugees were transported to Rango Forest, by a convoy which comprised at least two buses.

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<sup>13402</sup> T. 18 March 2003 p. 29 (Witness SD).

<sup>13403</sup> T. 7 May 2008 p. 24 (ICS) (Witness D-1-4-0).

<sup>13404</sup> T. 5 May 2008 p. 59 (Witness D-2-10-Y).

<sup>13405</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13406</sup> T. 18 March 2003 p. 29 (Witness SD).

<sup>13407</sup> T. 3 March 2003 pp. 38, 67; T. 4 March 2003 pp. 19, 21 (Witness SS).



### 3.6.48.4.3 Whether the Transfer Was Forceful

5081. Witness TA testified that at the BPO the refugees were forced onto the buses by the *Interahamwe*, who beat them.<sup>13408</sup> Witness TA further stated that, although there was no guard onboard, it was not possible to leave the buses “because it was the order issued by the authorities”, and they had nowhere to go.<sup>13409</sup> This evidence is corroborated by Prosecution Witness SU, who also testified that the refugees were forced onto the buses under Kanyabashi’s supervision.<sup>13410</sup> Witness SU further stated that a civilian *Interahamwe* called Fidèle and one other armed man known as Grégoire were present during the transfer.<sup>13411</sup> Witnesses FAP and SD testified that the refugees were told in the presence of Kanyabashi, Laurent Kubwimana and Grégoire, that they had to leave the BPO.<sup>13412</sup> Grégoire told them that those who refused to go to Rango Forest would be killed; instead, they would be given provisions and safety at Rango Forest.<sup>13413</sup> According to Witness RE, the transfer of the refugees occurred under the supervision of *Interahamwe*.<sup>13414</sup> According to Des Forges, some of the refugees boarded the buses voluntarily while others did not want to leave, since they were afraid they were going to be killed. They were therefore forced onto the buses.<sup>13415</sup>

5082. Defence Witness D-1-4-0 disagreed with Witness SU and testified that Fidèle was not an *Interahamwe*.<sup>13416</sup> Likewise, Defence Witness D-2-10-Y testified that he did not see any soldiers or *Interahamwe* on the buses, and that Fidèle carried a firearm but did not wear military attire.<sup>13417</sup> Further, Witness D-2-10-Y testified that no force was used to board the refugees onto the buses and that there were policemen on board of each of the buses, who helped them to cross the roadblocks on their way to Rango Forest.<sup>13418</sup>

5083. The Chamber believes there are some credibility issues with regard to Defence Witness D-1-4-0. This witness was added to the Kanyabashi Defence witnesses’ list at a late stage of the trial on 24 April 2008.<sup>13419</sup> The Chamber notes that Witness D-1-4-0 was a Hutu and that he was chosen to be the health attendant at Rango Forest directly by Kanyabashi. This indicates the witness might have had a prior relationship with Kanyabashi.<sup>13420</sup> Further, in the Chamber’s view, Witness D-1-4-0 might have had personal reasons to lie since he was involved in the transfer. The Chamber considers these factors impact the witness’ credibility and will therefore not rely on his evidence. This leaves the testimony of Witness D-2-10-Y alone supporting the assertion that the transfer was not forceful. However, considering that his

<sup>13408</sup> T. 29 October 2001 p. 62; T. 6 November 2001 pp. 62-63; T. 7 November 2001 pp. 26, 28-29; T. 8 November 2001 p. 30 (Witness TA).

<sup>13409</sup> T. 8 November 2001 p. 30 (Witness TA).

<sup>13410</sup> T. 15 October 2002 pp. 4-7 (Witness SU).

<sup>13411</sup> T. 15 October 2002 pp. 5, 7 (Witness SU).

<sup>13412</sup> T. 11 March 2003 p. 63; T. 13 March 2003 p. 39 (Witness FAP); T. 18 March 2003 p. 28 (Witness SD).

<sup>13413</sup> T. 11 March 2003 p. 64; T. 13 March 2003 p. 40 (Witness FAP).

<sup>13414</sup> T. 24 February 2003 p. 32 (Witness RE).

<sup>13415</sup> T. 7 July 2004 p. 9 (Des Forges).

<sup>13416</sup> T. 7 May 2008 p. 38 (ICS) (Witness D-1-4-0).

<sup>13417</sup> T. 29 April 2008 pp. 30, 37, 51; T. 1 May 2008 p. 5 (Witness D-2-10-Y).

<sup>13418</sup> **T. 29 April 2008 pp. 11, 30, 32 (Witness D-2-10-Y).**

<sup>13419</sup> *Kanyabashi*, Decision on Kanyabashi’s Three Motions to Vary His List of Witnesses and to Admit Written Statements Under Rule 92 bis (TC), 24 April 2008, paras. 67-71.

<sup>13420</sup> T. 6 May 2008 pp. 54, 60 (ICS) (Witness D-1-4-0).

evidence is uncorroborated, and having weighed all the evidence by Prosecution witnesses as outlined above, the Chamber does not find the testimony of Witness D-2-10-Y credible in relation to this issue.

5084. In light of the foregoing, the Chamber is convinced that “guards”, including members of the *Interahamwe*, supervised the boarding of the buses. Further, the Chamber finds the evidence sufficient to establish beyond a reasonable doubt that the environment in which the transfer was carried out was coercive and the refugees had no other choice than to board the buses.

#### 3.6.48.4.4 Events at Rango

5085. Prosecution Witnesses SS and SJ testified that the refugees were taken to a fenced forest where they were guarded by the *Interahamwe*.<sup>13421</sup> Witness SS further stated that during their stay at Rango Forest the refugees were supervised regularly by two *Interahamwe* in civilian clothes: Fidèle, who was armed with rifles, and Alexi.<sup>13422</sup> They were assisted by other *Interahamwe* at night.<sup>13423</sup> Likewise, Prosecution Witness SD testified that upon arrival at Rango Forest, Kanyabashi instructed the *Interahamwe* to protect the refugees and to inform him if any of the refugees died. Among the *Interahamwe* was Fidèle, who carried a gun and two others who carried clubs, knives and grenades.<sup>13424</sup>

5086. Nteziryayo’s account corroborates these testimonies in part, stating that the refugees were provided guards for their safety.<sup>13425</sup> Further corroboration came from the testimony of Defence Witness D-1-4-0, who stated that Fidèle was a guard on duty at Rango Forest, who was in charge of security and assisted in the distribution of supplies, along with another person, Gashirabake.<sup>13426</sup> The Chamber recalls there are some credibility concerns in relation to Witness D-1-4-0 and it will therefore not rely on his testimony with regard to this issue. The Chamber further notes that only one Defence witness, Witness D-2-10-Y, challenged the testimony of the Prosecution witnesses in relation to the presence of the *Interahamwe* at Rango Forest.<sup>13427</sup> Witness D-2-10-Y testified that there was no *Interahamwe* staying at Rango Forest with the refugees,<sup>13428</sup> but at some point two *Interahamwe*, known as Gikongoro and Ngoma, came.<sup>13429</sup> This testimony is uncorroborated and therefore the Chamber will not rely on it.

5087. In light of all the evidence presented, the Chamber finds beyond a reasonable doubt that members of the *Interahamwe* guarded the refugees at Rango Forest.

5088. Prosecution Witness SU testified that refugees were put in a shed and confined within a fenced area at Rango Forest.<sup>13430</sup> Defence Witness D-1-4-0 disagreed with Witness SU and testified that the refugees stayed outside on the verandas and corridors as the buildings were

<sup>13421</sup> T. 3 March 2003 p. 70 (Witness SS); T. 29 May 2002 p. 120 (Witness SJ).

<sup>13422</sup> T. 10 March 2003 pp. 43-44 (Witness SS).

<sup>13423</sup> T. 10 March 2003 pp. 45-46 (Witness SS).

<sup>13424</sup> T. 17 March 2003 p. 12 (Witness SD).

<sup>13425</sup> T. 7 June 2007 pp. 59-60 (Nteziryayo).

<sup>13426</sup> T. 6 May 2008 pp. 58, 60 (ICS) (Witness D-1-4-0).

<sup>13427</sup> T. 29 April 2008 pp. 39, 46 (Witness D-2-10-Y).

<sup>13428</sup> T. 29 April 2008 pp. 16, 39, 46 (Witness D-2-10-Y).

<sup>13429</sup> T. 29 April 2008 pp. 35-36 (Witness D-2-10-Y).

<sup>13430</sup> T. 14 October 2002 p. 89; T. 15 October 2002 p. 9 (Witness SU).

locked up.<sup>13431</sup> These testimonies are not corroborated and therefore the Chamber cannot make a determination on this issue. However, having considered all the evidence before it, the Chamber is convinced that the refugees, whether in a shed or outdoors, were confined in an enclosure and prevented from crossing the fence.<sup>13432</sup>

5089. Several Prosecution witnesses gave congruent testimony with regard to beatings taking place at Rango Forest. Witness TA testified that during the time spent at Rango Forest the few *Interahamwe* present beat the refugees.<sup>13433</sup> Witness RE testified that the *Interahamwe* beat the refugees during the day and raped women and girls at Rango Forest.<sup>13434</sup> Similarly, Witness FAP testified that she and other refugees were living under the trees and were regularly covered with sacks and beaten on their stomachs at Rango Forest.<sup>13435</sup> Additionally, the Chamber observes that Defence Witness D-2-10-Y corroborated Witness FAP's testimony, stating that he witnessed one incident in which an *Interahamwe* known as Gashirabake (who was the other person in charge of the security of the refugees beside Fidèle) put several persons in a bag and beat them up.<sup>13436</sup> Prosecution Witness FAP further stated that Fidèle witnessed the beatings but did nothing to prevent them.<sup>13437</sup> One of the refugees suffered a miscarriage as a result of the beatings.<sup>13438</sup> Witness SD corroborated this evidence, testifying that Fidèle did not respect Kanyabashi's instructions to protect the refugees. She said that they were beaten and one woman miscarried.<sup>13439</sup> Finally, Witness TK testified that the *Interahamwe* present at Rango Forest were the same who were at the BPO and they "continued their work, which was to kill."<sup>13440</sup> However, the witness only noticed one man disappearing and she never saw him afterwards.<sup>13441</sup>

5090. Only one Prosecution witness, Witness QY, testified that refugees at Rango Forest were not attacked, but instead stated that the *gendarmes*, including Alexis and Fidèle, were instructed not to attack the refugees and to report any deaths.<sup>13442</sup> The Chamber does not discount Witness QY's testimony and believes that she might not have witnessed or experienced any maltreatment herself. However, in light of the consistency among the testimony of Prosecution Witnesses FAP, RE, TA, TK and SD, the Chamber finds their account credible, that refugees were beaten by *Interahamwe* at Rango Forest and that one woman miscarried.

5091. The Chamber also heard evidence from numerous Prosecution witnesses to the effect that the refugees at Rango Forest endured deplorable conditions, were not given food or water,

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<sup>13431</sup> T. 7 May 2008 p. 46 (ICS) (Witness D-1-4-0).

<sup>13432</sup> See T. 3 March 2003 p. 70 (Witness SS); T. 29 May 2002 p. 120 (Witness SJ); T. 7 June 2007 pp. 59-60 (Nteziryayo).

<sup>13433</sup> T. 29 October 2001 pp. 66-67; T. 6 November 2001 pp. 90-91; T. 7 November 2001 pp. 29-30 (Witness TA).

<sup>13434</sup> T. 24 February 2003 p. 33 (Witness RE).

<sup>13435</sup> T. 12 March 2003 p. 11 (Witness FAP).

<sup>13436</sup> T. 29 April 2008 pp. 19-21, 37 (Witness D-2-10-Y).

<sup>13437</sup> T. 13 March 2003 pp. 50, 55-56 (Witness FAP).

<sup>13438</sup> T. 13 March 2003 pp. 50-51 (Witness FAP).

<sup>13439</sup> T. 18 March 2003 p. 37 (Witness SD).

<sup>13440</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13441</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13442</sup> T. 19 March 2003 p. 64; T. 25 March 2003 pp. 69-70 (Witness QY).

and lacked sanitary and medical care.<sup>13443</sup> Prosecution Witnesses FAP, RE, QBP, SD, SS, TA and TK testified that the only attempt by a white priest to feed them was stopped by some members of the *Interahamwe*.<sup>13444</sup> Prosecution Witnesses SS and SD testified that blankets were distributed, but the *Interahamwe* took them back.<sup>13445</sup> Witness SS further stated that at some point in time, doctors had come, however they did not give medical attention to anyone.<sup>13446</sup> Prosecution Witnesses SS and FAP also testified that, on a couple of occasions, the refugees were accompanied by Fidèle to fetch water from the Mukura River, but they had to stop because they discovered rotting corpses being eaten by maggots there. Thereafter, they dug holes to gather rain water for drinking.<sup>13447</sup>

5092. The Chamber notes that a significant amount of congruent evidence from Prosecution witnesses exists concerning the maltreatment to which the refugees at Rango Forest were subject, even in relation to details and specific events. Thus, the Chamber finds their account credible.

5093. The Chamber also heard from Prosecution Witnesses FAP and SD that some orphans or sick children among the refugees were fed.<sup>13448</sup> The Chamber considers their evidence credible, particularly in light of the fact that Witnesses FAP and SD were refugees themselves. They did not have any reason to lie about the fact that some refugees were provided with care. In light of all the evidence, the Chamber believes that some orphans or sick children among the refugees at Rango Forest were fed.

5094. The Chamber further notes that Prosecution Witness TK testified that during their stay at Rango Forest, the refugees only survived due to the help of refugee women who had been forced to marry *Interahamwe* and who shared the food they received from them [*Interahamwe*].<sup>13449</sup> Nonetheless, she testified that some of the refugees died from hunger and cholera.<sup>13450</sup> Likewise, according to Prosecution Witness SS, two or three deaths occurred due to illness.<sup>13451</sup> This evidence was corroborated by Defence Witness D-2-10-Y's account that three persons died of illness during their stay at Rango Forest; the witness was not aware that any other person died during that time.<sup>13452</sup>

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<sup>13443</sup> T. 19 March 2003 p. 64 (Witness QY); T. 25 March 2003 p. 70 (Witness QY); T. 15 October 2002 p. 10 (Witness SU); T. 29 May 2002 p. 119 (Witness SJ).

<sup>13444</sup> T. 13 March 2003 p. 59 (Witness FAP); T. 6 November 2001 pp. 87-88 (Witness TA); T. 8 November 2001 pp. 33-34 (Witness TA); T. 24 February 2003 p. 33 (Witness RE); T. 24 October 2002 p. 90 (Witness QBP); T. 17 March 2003 p. 17 (Witness SD); T. 18 March 2003 p. 35 (Witness SD); T. 24 October 2002 p. 90 (Witness QBP); T. 20 May 2002 p. 106 (Witness TK).

<sup>13445</sup> T. 10 March 2003 pp. 46-47 (Witness SS); T. 17 March 2003 p. 17 (Witness SD); T. 18 March 2003 p. 35 (Witness SD).

<sup>13446</sup> T. 10 March 2003 p. 47 (Witness SS).

<sup>13447</sup> T. 11 March 2003 p. 65 (Witness FAP); 13 March 2003 p. 59 (Witness FAP); T. 3 March 2003 p. 70 (Witness SS).

<sup>13448</sup> T. 13 March 2003 p. 60 (Witness FAP); T. 17 March 2003 p. 17 (Witness SD); T. 18 March 2003 p. 35 (Witness SD); T. 10 March 2003 pp. 45-46 (Witness SS).

<sup>13449</sup> T. 20 May 2002 p. 107 (Witness TK).

<sup>13450</sup> T. 20 May 2002 p. 106 (Witness TK).

<sup>13451</sup> T. 10 March 2003 p. 47 (Witness SS).

<sup>13452</sup> T. 29 April 2008 pp. 17-18 (Witness D-2-10-Y).

5095. Nteziryayo challenged the testimony of several Prosecution witnesses, including Witnesses SD, TK and RE. He testified that refugees at Rango Forest were not beaten up, there were no cases of maltreatment reported by the *sous-préfet* in charge of social affairs, and none of the refugees were killed.<sup>13453</sup> Nteziryayo further testified that as the *préfet* he received an update of the situation at Rango Forest on a daily basis and was personally satisfied that the transfer to Rango Forest was aimed at improving the situation of those refugees and making it “more humane”. Therefore, it would have been contradictory if people had maltreated them at the same time.<sup>13454</sup> In addition, while challenging the testimony of Prosecution Witnesses RE, QBP, SS and TK specifically, Nteziryayo testified that the refugees were looked after by the “religious” as well as humanitarian organisations. Nteziryayo said the refugees were provided with health care and food. He denied that the authorities refused to let a white person distribute food among the refugees.<sup>13455</sup> According to Nteziryayo, the situation of the refugees at Rango Forest was better than at the BPO courtyard.<sup>13456</sup> Nteziryayo testified that the refugees were still living under “minimal living conditions”, but at least they were in a fenced place with shade and were protected.<sup>13457</sup>

5096. Defence Witness D-1-4-0 supported Nteziryayo’s account, stating that he never witnessed any assault on the refugees,<sup>13458</sup> and did not hear any of them complaining that they had been beaten up at Rango Forest during the time he treated them at the Rango Holy Cross Centre.<sup>13459</sup> Witness D-1-4-0 only learned that on one occasion people coming from outside attempted to get in to assault the refugees, but they were repelled by Fidèle.<sup>13460</sup> This evidence is corroborated by Witness D-2-10-Y’s testimony.<sup>13461</sup> Defence Witnesses D-1-4-0 and D-2-10-Y further testified that food supplies, blankets, soap and medical attention were provided to the refugees.<sup>13462</sup> They also stated that the refugees had access to clean water which they fetched from a place called Mpazi, led by Fidèle.<sup>13463</sup> Witness D-1-4-0 also testified that the refugees cooked for themselves and they could also fetch firewood in the vicinity.<sup>13464</sup>

5097. The Chamber notes the consistency between the testimony of Witnesses D-1-4-0 and D-2-10-Y. However, in relation to their evidence that Fidèle was a guard in charge of security at Rango Forest and that he also repelled an attack by *Interahamwe* coming from outside, the Chamber notes that it was not presented with any evidence indicative of acts of violence on behalf of Fidèle himself towards the refugees. On the other hand, sufficient evidence established that members of the *Interahamwe* beat the refugees, whether or not Fidèle was aware of it. In addition, the Chamber recalls there are credibility issues in relation to Witness D-1-4-0 concerning the events at Rango Forest, and observes that Nteziryayo’s account on this

<sup>13453</sup> T. 7 June 2007 pp. 60-61 (Nteziryayo); T. 9 July 2007 p. 45 (Nteziryayo).

<sup>13454</sup> T. 7 June 2007 p. 61 (Nteziryayo).

<sup>13455</sup> T. 7 June 2007 pp. 59-60, 62 (Nteziryayo).

<sup>13456</sup> T. 7 June 2007 p. 59 (Nteziryayo).

<sup>13457</sup> T. 7 June 2007 pp. 59-60 (Nteziryayo).

<sup>13458</sup> T. 6 May 2008 p. 66 (ICS) (Witness D-1-4-0).

<sup>13459</sup> T. 7 May 2008 p. 44 (ICS) (Witness D-1-4-0).

<sup>13460</sup> T. 6 May 2008 p. 66 (ICS) (Witness D-1-4-0).

<sup>13461</sup> T. 29 April 2008 pp. 19-20 (Witness D-2-10-Y).

<sup>13462</sup> T. 6 May 2008 p. 58 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 14-17, 19 (Witness D-2-10-Y).

<sup>13463</sup> T. 6 May 2008 p. 68 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 12-13 (Witness D-2-10-Y).

<sup>13464</sup> T. 6 May 2008 p. 67 (ICS) (Witness D-1-4-0).

matter, which only partially corroborates the testimony of Witnesses D-1-4-0 and D-2-10-Y, is hearsay.

5098. Thus, having weighed all the evidence before it, the Chamber finds the Prosecution has proven beyond a reasonable doubt that, during their stay at Rango Forest some refugees were subject to physical violence, including beatings, on behalf of members of the *Interahamwe*. In light of the totality of the evidence, the Chamber also finds beyond a reasonable doubt that the refugees at Rango Forest endured deplorable living conditions. Although there had been occasions when humanitarian organisations or refugee women married to *Interahamwe* distributed food to the refugees, they were nevertheless deprived of food by the authorities. As a result of these conditions of mistreatment and violence, some of the refugees died.

5099. In relation to the purpose of the transfer of the refugees to Rango Forest, the Chamber recalls Witness TA's testimony that the transportation was decided upon during a meeting held at the MRND Palace, on the grounds that "that place was beginning to stink because of [the] presence [of the refugees]." <sup>13465</sup> She also testified that the refugees were going to be killed and that their bodies "will be laid on the body of Habyarimana after he is buried". <sup>13466</sup> The Chamber also heard from Prosecution Witness QBP, who testified that the refugees were told they would be taken to Rango Forest because they were hindering the operations of the *préfecture* and were causing problems at the BPO. <sup>13467</sup> Similarly, Des Forges testified that she learned from Nsabimana that the refugees had been a problem and no one wanted to take responsibility, so they were sent away from the BPO. <sup>13468</sup>

5100. Prosecution Witnesses FAP and RE partly corroborate this account. They testified that they were informed that Nteziryayo did not want "dirt" in front of his office, and they understood this as referring to the "Tutsi". <sup>13469</sup> Prosecution Witness RE stated that Kanyabashi gave instructions to the *Interahamwe* to take good care of the refugees, because they were going to be presented to the international community, but that they would be killed on 5 July. <sup>13470</sup> Nteziryayo challenged this testimony, <sup>13471</sup> and stated that he had to take care of the refugees at Rango Forest and make sure they would not be attacked by anyone; for this, he sought support of humanitarian organisations. <sup>13472</sup> Defence Witness WMKL supported Nteziryayo's account, stating that he heard from Kanyabashi that the refugees were to be transferred away, so that they could not be the object of any intimidation. <sup>13473</sup> Also Prosecution Witness QY testified that, once at Rango, Kanyabashi instructed the two *Interahamwe* that the refugees were not to be killed and that it should be reported to him if anyone was to die. <sup>13474</sup>

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<sup>13465</sup> T. 29 October 2001 pp. 62-63, 65-68 (Witness TA).

<sup>13466</sup> T. 29 October 2001 pp. 63-66 (Witness TA).

<sup>13467</sup> T. 24 October 2002 pp. 89-90 (Witness QBP).

<sup>13468</sup> T. 9 June 2004 p. 51 (Des Forges).

<sup>13469</sup> T. 11 March 2003 p. 64 (Witness RE); T. 24 February 2003 pp. 17, 31 (Witness RE); *see also* T. 31 October 2002 p. 51 (Witness FAI); T. 5 November 2002 pp. 61-63 (Witness FAI); 13 March 2003 p. 40 (Witness FAP) (all testifying that Nteziryayo ordered that the refugees left at the BPO be killed).

<sup>13470</sup> T. 24 February 2003 p. 32 (Witness RE).

<sup>13471</sup> T. 7 June 2007 pp. 57-58 (Nteziryayo).

<sup>13472</sup> T. 12 June 2007 p. 18 (Nteziryayo).

<sup>13473</sup> T. 11 April 2005 p. 5 (Witness WMKL).

<sup>13474</sup> T. 19 March 2003 p. 64 (Witness QY).

5101. The Chamber notes the consistency between the testimonies of Prosecution Witnesses FAP and RE, and finds their account credible, namely that the refugees were informed they would be killed shortly. The Chamber also believes the testimonies of Witnesses QY and WMKL to the extent that what was made public to the eyes of the international community was that the refugees would be transferred for their own safety. However, having weighed all the evidence, the Chamber considers this might have been part of the strategy to improve the international community's perception of the authorities in Rwanda and hide their true intentions, which were to get rid of the Tutsi refugees.

5102. In this regard, the Chamber has also considered that several Prosecution witnesses, in particular Witnesses SS, FAP, SD, SU and QBP, testified that pits were dug at Rango Forest in order to bury the refugees.<sup>13475</sup> Witness SU even stated that the refugees were asked to go inside the pits to see if they could fit in them.<sup>13476</sup> This account is partly corroborated by the testimony of Witnesses D-2-10-Y and Witness D-1-4-0, who also testified that refugees dug three latrine pits, assisted by Fidèle and Gashirabake,<sup>13477</sup> however, he stated he was not aware that any pits were dug in order to bury the refugees.<sup>13478</sup> Similarly, Nteziryayo testified that the refugees were not thrown into mass graves nor was there a plan to do so.<sup>13479</sup> The Chamber however recalls that Nteziryayo gave hearsay evidence on this issue.

5103. As to the ultimate fate of the refugees at Rango Forest, the Chamber notes that several Prosecution witnesses testified that the *Inkotanyi* of the RPF rescued the refugees at the beginning of July 1994.<sup>13480</sup> This was corroborated by Nteziryayo and Defence Witness D-2-10-Y, although they did not indicate a precise time frame.<sup>13481</sup> The Chamber notes these testimonies were not challenged.

5104. Having considered all the evidence before it, the Chamber is convinced that at least two pits were dug at Rango Forest, and that the refugees were told they would be buried in them, in early July 1994. In relation to the transport to Rango Forest, the Chamber finds the Prosecution has not proven beyond a reasonable doubt that the ultimate purpose of this transfer was to kill the Tutsi refugees. Further, in light of all the evidence the Chamber is satisfied that the refugees were rescued by the *Inkotanyi* of the RPF in early July 1994.

#### 3.6.48.4.5 Involvement of the Accused

5105. The Prosecution presented compelling evidence indicating that Kanyabashi was involved in the transfer of the refugees to Rango Forest. Witnesses RE, QY, QBP and QBQ testified that Kanyabashi accompanied the convoy of refugees to Rango Forest.<sup>13482</sup> Similarly,

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<sup>13475</sup> T. 3 March 2003 p. 70 (Witness SS); T. 11 March 2003 p. 65 (Witness FAP); T. 17 March 2003 p. 12 (Witness SD); T. 18 March 2003 p. 19 (Witness SD); T. 15 October 2002 p. 10 (Witness SU); T. 24 October 2002 p. 90 (Witness QBP).

<sup>13476</sup> T. 15 October 2002 p. 10 (Witness SU).

<sup>13477</sup> T. 6 May 2008 p. 69 (ICS) (Witness D-1-4-0); T. 29 April 2008 pp. 18-19 (Witness D-2-10-Y).

<sup>13478</sup> T. 29 April 2008 pp. 18-19 (Witness D-2-10-Y).

<sup>13479</sup> T. 7 June 2007 pp. 60-61 (Nteziryayo).

<sup>13480</sup> T. 29 October 2001 p. 69 (Witness TA); T. 24 February 2003 p. 33 (Witness RE); T. 3 February 2004 p. 25 (Witness QBQ); T. 3 March 2003 pp. 70-71 (Witness SS); 24 October 2002 p. 91 (Witness QBP).

<sup>13481</sup> T. 25 June 2007 p. 19 (Nteziryayo); T. 29 April 2008 p. 12 (Witness D-2-10-Y).

<sup>13482</sup> T. 24 February 2003 p. 32 (Witness RE); T. 25 March 2003 p. 70 (Witness QY); T. 24 October 2002 pp. 88-89 (Witness QBP); T. 3 February 2004 p. 24 (Witness QBQ); T. 4 February 2004 p. 15 (Witness QBQ).

Witness SD testified that Kanyabashi was present at the BPO when the transfer was organised and that he accompanied the convoy of refugees all the way to Rango Forest.<sup>13483</sup> Des Forges stated that Kanyabashi supervised the move.<sup>13484</sup> Witness FAP testified that Kanyabashi was already present at Rango Forest when the refugees arrived.<sup>13485</sup>

5106. Defence Witness D-1-4-0's testimony corroborated this evidence. He testified that he heard refugees saying that Kanyabashi "had been of service to them because he had transported them from the *préfecture* ... and he had even accompanied them in the buses".<sup>13486</sup> Similarly, Defence Witness D-2-10-Y stated that the refugees boarded the buses in Kanyabashi's presence and that, upon arrival at Rango Forest, Kanyabashi was there.<sup>13487</sup> Nteziryayo testified that Kanyabashi was involved in the transport of the refugees to Rango Forest, along with the *sous-préfet* in charge of social affairs.<sup>13488</sup> The Chamber recalls the credibility issues in relation to Witness D-1-4-0, and it is also mindful that Nteziryayo's testimony on this issue is hearsay and that he is a co-Accused in this case. However, in light of the considerable amount of corroborating evidence by Prosecution witnesses, the Chamber finds Witness D-1-4-0's and Nteziryayo's accounts credible with respect to Kanyabashi's involvement in the transfer of the refugees to Rango Forest.

5107. Having considered all the evidence before it, the Chamber is satisfied that Kanyabashi carried out the transfer of the refugees, from the departure from the BPO up until their arrival at Rango Forest, with the assistance of the *Interahamwe*. The Chamber further observes that, as found above, crimes at Rango Forest were committed by the *Interahamwe*. However, the Chamber notes that the evidence has demonstrated Kanyabashi's presence at Rango Forest only on the day of the transfer, or otherwise for a short while afterwards; the length of Kanyabashi's stay at Rango Forest was not established. Therefore, the Prosecution did not prove that he witnessed or otherwise knew of the beatings and mistreatment of the refugees at Rango Forest by the *Interahamwe*.

5108. In addition to Kanyabashi's role in coordinating and supervising the transfer as found above, the Chamber heard from Prosecution Witness RE that once at Rango Forest, Kanyabashi gave instructions to the *Interahamwe* to watch over the refugees, stating that this was only for the purpose of showing them to the international community, whereas they were going to be killed on 5 July.<sup>13489</sup> Similarly, Prosecution Witness FAP testified that at Rango Forest, Kanyabashi gave instructions to the person in charge of the refugees, in order to ensure their safety, although their fate was sealed on 5 July.<sup>13490</sup> Prosecution Witness SD also testified that upon arrival at Rango Forest, Kanyabashi instructed the *Interahamwe* to protect the refugees and to inform him if any of the refugees died.<sup>13491</sup> The Chamber finds these testimonies reliable and concludes it has been established that upon arrival at Rango Forest, Kanyabashi gave orders to the *Interahamwe* as to how to deal with the refugees.

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<sup>13483</sup> T. 18 March 2003 p. 28 (Witness SD).

<sup>13484</sup> T. 7 June 2004 pp. 9-10 (Des Forges).

<sup>13485</sup> T. 11 March 2003 p. 64 (Witness FAP).

<sup>13486</sup> T. 6 May 2008 p. 69 (ICS) (Witness D-1-4-0).

<sup>13487</sup> T. 29 April 2008 pp. 8-11 (Witness D-2-10-Y).

<sup>13488</sup> T. 7 June 2007 p. 58 (Nteziryayo).

<sup>13489</sup> T. 24 February 2003 p. 32 (Witness RE).

<sup>13490</sup> T. 11 March 2003 p. 65 (Witness FAP).

<sup>13491</sup> T. 17 March 2003 p. 12; T. 17 March 2003 p. 37 (ICS); T. 18 March 2003 pp. 31-32 (Witness SD).



### 3.7 Training and Arming the Population, Roadblocks and Civil Defence

#### 3.7.1 Training by Kanyabashi

##### 3.7.1.1 Introduction

5109. Paragraphs 5.1, 5.12 and 6.31 of the Kanyabashi Indictment allege that between March and June 1994, Kanyabashi facilitated and assisted the military training of militiamen and certain members of the civilian population in Ngoma *commune*.<sup>13492</sup>

5110. As part of the charge of conspiracy to commit genocide against Kanyabashi, the Prosecution submits that between February and July 1994, Kanyabashi used his position and power to provide and participate in training civilians and militia groups, namely young Hutu men under the age of 40. They were trained in the use of weapons at the *commune* stadium in Ngoma *commune*. In doing so, Kanyabashi exercised effective control over those persons.<sup>13493</sup> These individuals went on to carry out attacks against Tutsi civilians, and thus participated in the preparation of the genocide.<sup>13494</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAH, FAI, QG, FAM and Expert Witness Des Forges.

5111. The Kanyabashi Defence submits that Paragraphs 5.12 and 6.31 of the Kanyabashi Indictment do not allege a crime, as the training of civilians is not a crime.<sup>13495</sup> It asserts that Kanyabashi did not participate or instigate the military training of civilians in Ngoma *commune*. The Kanyabashi Defence asserts that the training of civilians took place in June 1994 and was a legitimate exercise in self-defence in light of the RPF's advance into Butare.<sup>13496</sup> In support of its submissions the Kanyabashi Defence relies on the testimony of Kanyabashi Defence Expert Witness Reyntjens.

5112. The Kanyabashi Defence further submits that the Kanyabashi Indictment is vague and fails to identify Kanyabashi's alleged subordinates and the dates and circumstances of the alleged training.<sup>13497</sup> The Chamber recalls that the Kanyabashi Defence first raised this issue in its Preliminary Motion for Defects in the Form of the Indictment on 9 October 1999. The Kanyabashi Defence requested that Paragraphs 5.1, 5.12 and 6.31 among others, be deleted on account of their imprecision and vagueness and, in particular, due to the failure to identify his alleged subordinates and provide specific time references.<sup>13498</sup>

5113. The Kanyabashi Defence further submits that the evidence presented by the Prosecution lacks credibility.<sup>13499</sup> It asserts that Witness QG is part of a group of persons who

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<sup>13492</sup> Para. 5.1 of the Kanyabashi Indictment (in support of all counts); Para. 5.12 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9); Para. 6.31 of the Kanyabashi Indictment (omitting the word "civilian") (not in support of counts).

<sup>13493</sup> Prosecution Closing Brief, pp. 404, 413, paras. 71, 101.

<sup>13494</sup> Prosecution Closing Brief, pp. 393-394, 399-401, 406-407, 431, paras. 12, 26-28, 49-52, 56, 80, 166; Prosecution Closing Argument, T. 21 April 2009 p. 13.

<sup>13495</sup> Kanyabashi Closing Brief, paras. 546, 599.

<sup>13496</sup> Kanyabashi Closing Brief, paras. 552, 589, 592-593, 597.

<sup>13497</sup> Kanyabashi Closing Brief, para. 546.

<sup>13498</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, paras. 1.5-1.6, 2, 2.1.

<sup>13499</sup> Kanyabashi Closing Brief, paras. 67, 73, 547, 554, 556, 559-560, 568, 572, 575, 577, 580-581.

fabricated testimony,<sup>13500</sup> and that Witnesses QAH and FAM incited their co-detainees to implicate Kanyabashi.<sup>13501</sup> In addition, the testimonies of Prosecution Expert Witnesses Des Forges and Guichaoua fail to establish the criminal involvement of Kanyabashi in training civilians.<sup>13502</sup>

5114. In support of these submissions, the Kanyabashi Defence relies on the testimony of Kanyabashi Defence Expert Witness Reyntjens, Kanyabashi Defence Witnesses D-2-YYY, D-2-13-D, D-2-21-T, Ntahobali and Nteziryayo.

### 3.7.1.2 Preliminary Issues

5115. The Kanyabashi Defence submits that the Kanyabashi Indictment is vague, fails to identify Kanyabashi's alleged role in the training, his subordinates and the dates and circumstances of the alleged military training.<sup>13503</sup> Paragraphs 5.1, 5.12 and 6.31 do not specify dates, places, nor identify the people whom Kanyabashi is alleged to have trained.

5116. The Chamber notes that Paragraphs 5.1, 5.12 and 6.31 of the Kanyabashi Indictment make a general accusation that Kanyabashi facilitated the training of certain members of the civilian population in Ngoma *commune* between March and June 1994. The relevant paragraphs contain a broad date range, vague reference to venue, and fail to specify the nature of Kanyabashi's participation in the training. The Chamber therefore finds that the Indictment is defective.

5117. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that information regarding Kanyabashi's alleged role in facilitating training can be found in the witness summaries contained in the Appendix to the Prosecution Pre-Trial Brief. Further, the Chamber will assess whether the Kanyabashi Defence was prejudiced by the testimony of Prosecution Witnesses FAM and FAI who did not mention their intention to testify to the training allegation in the Prosecution Pre-Trial Brief but testified to the allegation at trial.

5118. In the summary of his anticipated testimony in the Appendix to the Pre-Trial Brief, Witness QG stated that after seeing Kanyabashi's visit to the *conseiller* in his *secteur*, the *conseiller* said that he had been ordered by Kanyabashi to select Hutus to be sent for training in the use of rifles and traditional weapons. Neither the location of the training nor the time frame is specified in Witness QG's summary. The summary further stated that Witness QG would testify that he heard from people who were trained that Kanyabashi asked for the training to be done by military trainers from the *École des Sous Officiers* ("ESO").<sup>13504</sup>

5119. Witness QG's previous statement of 12 June 1996, disclosed to the Defence on 13 December 2001, over three years prior to his testimony, contains further details of the allegation. Witness QG stated that the visit by Kanyabashi to the *conseiller* took place at the end of March 1994 in Ngoma *commune* and that the training took place in Huye Stadium by

<sup>13500</sup> Kanyabashi Closing Brief, paras. 547, 556.

<sup>13501</sup> Kanyabashi Closing Brief, paras. 73, 547, 559, 572-573.

<sup>13502</sup> Kanyabashi Closing Brief, para. 552.

<sup>13503</sup> Kanyabashi Closing Brief, para. 546.

<sup>13504</sup> Prosecution Pre-Trial Brief – Appendix; Witness QG (55).

ESO trainers before being moved to Kamena Stadium.<sup>13505</sup> The Chamber finds that the substance of Witness QG's previous statement is consistent with the summary of its anticipated testimony contained in the Appendix to the Pre-Trial Brief with regard to a location and time frame for the alleged training allegation.

5120. Furthermore, the summary of Witness QAH's anticipated testimony mentions that the *cellule conseiller* came to see civilians with a list of those to train at Kamena Stadium. The summary does not specify in which *cellule* or *commune* the recruitment is alleged to have taken place. The summary further states that five days later, those who underwent the training met Kanyabashi. The Chamber observes that while the site of the training is contained in the summary, the identity of the trainees and the recruiters is not specified, nor is the month of the alleged training. Furthermore, Kanyabashi's alleged role in the training is not specified. The Chamber observes that the Prosecution provided the Defence with additional information in Witness QAH's previous statements of 28 October 1997, disclosed to the Defence on 4 December 2000.<sup>13506</sup> In this statement, Witness QAH stated that in April 1994, the *cellule conseiller* recruited civilians for military training at Kamena Stadium. In his subsequent statement of 11 April 2001, disclosed to the Defence on 23 May 2001, almost three months before his testimony before the Tribunal, Witness QAH stated that he underwent training at the end of May 1994 after Kanyabashi had instructed that all members of the *cellules* and all men under the age of 40 receive weapons training.

5121. Taking into consideration the contents of the Pre-Trial Brief and previous statements of Witnesses QG and QAH, the Chamber concludes that the Kanyabashi Defence was provided with timely, clear and consistent notice of his alleged role in facilitating the training of civilians in Ngoma *commune* such that the Accused suffered no prejudice in the preparation of his defence.

5122. The Kanyabashi Defence submits that Prosecution Witness FAI was not expected to testify against Kanyabashi insofar as the summary of Witness FAI's testimony in the Appendix to the Prosecution Pre-Trial Brief does not mention Kanyabashi.<sup>13507</sup> The Chamber recalls the Kanyabashi Defence was first informed of Witness FAI's intention to testify against Kanyabashi through his statement of 28 January 2001, disclosed to the Defence on 6 June 2002.<sup>13508</sup> In its Decision on Kanyabashi's motion to exclude Witness FAI's testimony, dated 6 July 2002, the Chamber ruled that, since the information on which FAI was going to testify was additional information discovered during the course of further investigations by the Prosecution, no basis existed to bar Witness FAI from giving evidence in court. The Chamber further ruled that, although the Prosecution had made late disclosure of Witness FAI's 28 January 2001 statement, the Kanyabashi Defence had three months to prepare for cross-examination of Witness FAI, and therefore Kanyabashi had adequate notice of the charges

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<sup>13505</sup> 12 June 1996, Redacted Statement of Witness QG, disclosed 4 December 2000 in French and in English; Unredacted Statement of Witness QG, disclosed 13 December 2001 in French and in English.

<sup>13506</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAH (37).

<sup>13507</sup> Kanyabashi Closing Brief, para. 583; Kanyabashi Closing Argument, T. 29 April 2009 p. 21.

<sup>13508</sup> 28 January 2001, Statement of Witness FAI, disclosed 6 June 2002 in English.

against him and suffered no prejudice from such late disclosure.<sup>13509</sup> In the present circumstances, the Chamber sees no reason to depart from its earlier ruling.<sup>13510</sup>

5123. The Chamber observes that the Prosecution Pre-Trial Brief did not mention Witness FAM's intention to testify regarding Kanyabashi's alleged role in facilitating training.<sup>13511</sup> FAM did not mention Kanyabashi in relation to military training in his previous statement of 24 February 2000. He testified that this was because he was detained with Kanyabashi's children at the time.<sup>13512</sup> However, he mentions Kanyabashi in relation to other allegations, including the erection of roadblocks and the murder of Tutsis, in his previous statement of 24 February 2000.<sup>13513</sup>

5124. The Chamber finds that the material facts to which Witness FAM testified regarding the present allegation were set out in the Pre-Trial Brief and the witness statements as set out above. Furthermore, the Defence cross-examined Witness FAM over the course of four days. The Chamber notes that Witness FAM is illiterate but gave detailed testimony regarding the site, circumstances and identification of those who allegedly underwent training. The Chamber therefore finds the fact that he testified that the training took place in February 1994 will not preclude the Chamber from considering his testimony on this allegation, insofar as it may lend weight to credible witness testimony regarding Kanyabashi's role in training between March and June 1994.

5125. The Chamber finds that the Kanyabashi Defence had adequate notice of the training allegation and did not suffer prejudice from the testimony of Witnesses FAI and FAM on this allegation.

### 3.7.1.3 Evidence

#### Prosecution Witness QAH

5126. Witness QAH, a Hutu farmer from Ngoma *commune* and detainee in Rwanda at the time of his testimony, testified that before April 1994, when recruitment was planned for the Rwandan army, the *bourgmestre* received applications for recruitment.<sup>13514</sup> In May 1994, *Bourgmestre* Kanyabashi sent written instructions to *Conseiller* Pascal Habyarimana, ordering men under the age of 40 years to learn how to manipulate weapons.<sup>13515</sup> Witness QAH confirmed that such instructions would ordinarily be in writing and that in his capacity, he personally saw this letter.<sup>13516</sup>

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<sup>13509</sup> *Kanyabashi et al.*, Decision on Kanyabashi's Motion to Exclude Witness "FAI"'s Testimony Against Him Pursuant to Rules 54 and 73 of the Rules (TC), 6 July 2002, para. 14.

<sup>13510</sup> *See 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. 35.

<sup>13511</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>13512</sup> T. 11 March 2002 p. 79; T. 12 March 2002 pp. 93-94 (Witness FAM).

<sup>13513</sup> 24 February 2000, Redacted Statement of Witness FAM, disclosed 1 October 2001 in English.

<sup>13514</sup> T. 6 April 2004 pp. 14, 16 (ICS); T. 6 April 2004 p. 53; T. 7 April 2004 p. 33 (Witness QAH).

<sup>13515</sup> T. 6 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH).

<sup>13516</sup> T. 6 April 2004 pp. 14, 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH).

5127. The civil defence training programme in Ngoma *commune* did not start until the end of May 1994 and continued until mid-June 1994.<sup>13517</sup> The criteria for selecting those who were to attend the training were age and ethnicity.<sup>13518</sup> He recollected that his *conseiller* told the group that no Tutsis could participate in the training.<sup>13519</sup> On receipt of the *conseiller's* instructions, the witness recruited 35 young men from his *secteur* and they walked to the Ngoma *commune* office to undergo military training.<sup>13520</sup> On arrival at about 7.30 a.m., they found Kanyabashi and some policemen who directed them to Kamena Stadium where the training was to take place.<sup>13521</sup> The training lasted nine or 10 days in total. There were also other training centres at Huye Stadium and the ESO.<sup>13522</sup>

5128. Witness QAH testified that he had known Kanyabashi since 1975.<sup>13523</sup> Before 1994, he saw Kanyabashi regularly even though he never spoke to him, because he considered Kanyabashi to be a person of authority, namely the *bourgmestre* of the witness' *commune*.<sup>13524</sup> The witness identified Kanyabashi in court.<sup>13525</sup>

#### Prosecution Witness FAI

5129. Witness FAI, a Hutu former civil servant currently detained in Rwanda testified that during the genocide, the *bourgmestres* received instructions to encourage youths to undergo training and that these youths volunteered for training in Ngoma *commune*.<sup>13526</sup> The training took part in an old building in Ngoma *commune* opposite the Court of First Instance.<sup>13527</sup> He saw approximately 60 youths who were undergoing or had undergone training.<sup>13528</sup> The responsibilities of the *bourgmestres* included following up on the youths who had gone to be trained to see how they were doing in their training, and encouraging them and boosting their morale.<sup>13529</sup>

5130. The training centre was under the responsibility of Jean Baptise Ruzindaza, the President of the Court of First Instance, and the training exercises were supervised by instructors from the ESO military college.<sup>13530</sup> The training was military in nature and involved physical fitness and the handling of weapons.<sup>13531</sup> The youths were taught how to assemble, disassemble and aim guns.<sup>13532</sup> Those who received training were not civilians, as they carried

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<sup>13517</sup> T. 7 April 2004 p. 34 (Witness QAH).

<sup>13518</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13519</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13520</sup> T. 6 April 2004 p. 16 (ICS) (Witness QAH).

<sup>13521</sup> T. 6 April 2004 p. 17 (ICS) (Witness QAH).

<sup>13522</sup> T. 6 April 2004 p. 62 (Witness QAH).

<sup>13523</sup> T. 6 April 2004 p. 17 (Witness QAH).

<sup>13524</sup> T. 6 April 2004 pp. 14, 17 (ICS) (Witness QAH).

<sup>13525</sup> T. 6 April 2004 pp. 36, 50 (Witness QAH).

<sup>13526</sup> T. 31 October 2002 pp. 35-36 (Witness FAI).

<sup>13527</sup> T. 31 October 2002 p. 35 (Witness FAI).

<sup>13528</sup> T. 31 October 2002 p. 36 (Witness FAI).

<sup>13529</sup> T. 31 October 2002 p. 37 (Witness FAI).

<sup>13530</sup> T. 31 October 2002 p. 37 (Witness FAI).

<sup>13531</sup> T. 31 October 2002 p. 37 (Witness FAI).

<sup>13532</sup> T. 31 October 2002 p. 37 (Witness FAI).

weapons, but they were not soldiers either.<sup>13533</sup> They were *Ibisumizi* and there was no difference between them and the *Interahamwe*.<sup>13534</sup>

### Prosecution Witness QG

5131. Witness QG, a Tutsi from Ngoma *commune*, testified that two to four days after the death of Habyarimana, Kanyabashi came to meet with the *conseiller* at the *secteur* office.<sup>13535</sup> The witness did not attend this meeting, he learned about it from Joseph and Safari.<sup>13536</sup> He learned that after the meeting, the *conseiller* went to the *cellule* leaders and the *cellule* committee and told them to teach young Hutus how to use weapons.<sup>13537</sup> The weapons training took place at Huye Stadium and Kamena Stadium in Butare.<sup>13538</sup> Witness QG could not say precisely when the training took place, just that he learned about the training from Joseph and Safari who, along with Mingoti, Antoine, Edouard and Pierre Nsimiyeyezu, were among the youths who received the training.<sup>13539</sup> Some of those recruited, like Safari and Mingoti, later took part in attacks against Tutsis.<sup>13540</sup>

5132. Witness QG testified before the Tribunal that he knew Kanyabashi before April 1994; he recalled seeing Kanyabashi on two occasions after 6 April 1994.<sup>13541</sup> He identified Kanyabashi in court.<sup>13542</sup> Witness QG testified that he was told that “nothing was going to happen in Ngoma *commune* because Joseph Kanyabashi was liked by the Tutsi”.<sup>13543</sup> The witness confirmed that he said something similar in a prior statement.<sup>13544</sup>

### Prosecution Witness FAM

5133. Witness FAM, a Hutu labourer and detainee in Rwanda, testified that he saw a document from the *commune* office, signed by Kanyabashi, instructing all young men to register for training.<sup>13545</sup> The training took place in February 1994.<sup>13546</sup> On cross-examination, Witness FAM rejected Defence Counsel’s suggestion that the training took place at the end of May 1994, reiterating that those who were trained in the handling of weapons received them in February 1994.<sup>13547</sup> According to the witness, the recruits had to be between 18 and 20 years

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<sup>13533</sup> T. 31 October 2002 p. 31 (Witness FAI).

<sup>13534</sup> T. 31 October 2002 pp. 31, 33 (Witness FAI). According to the translation department “*Ibisumizi*” is a Kinyarwanda term denoting a group of brave and violent attackers.

<sup>13535</sup> T. 15 March 2004 p. 17 (ICS); T. 15 March 2004 pp. 15, 32-33; T. 16 March 2004 pp. 18, 20-21 (ICS) (Witness QG); Defence Exhibit 204 (Kanyabashi) (12 June 1996, Statement of QG).

<sup>13536</sup> T. 15 March 2004 pp. 6, 15 (Witness QG).

<sup>13537</sup> T. 15 March 2004 pp. 6, 20 (Witness QG).

<sup>13538</sup> T. 16 March 2004 p. 19 (ICS) (Witness QG).

<sup>13539</sup> T. 16 March 2004 pp. 19, 21 (ICS); T. 15 March 2004 p. 6 (Witness QG).

<sup>13540</sup> T. 15 March 2004 p. 12 (Witness QG).

<sup>13541</sup> T. 15 March 2004 p. 5 (saw Kanyabashi twice prior to 6 April 1994); T. 15 March 2004 p. 25 (saw Kanyabashi twice after April 1994); T. 15 March 2004 pp. 32-33 (Witness QG) (clarifying he saw Kanyabashi regularly prior to April 1994, and implying he saw Kanyabashi twice after 6 April 1994).

<sup>13542</sup> T. 15 March 2004 pp. 25-26 (Witness QG).

<sup>13543</sup> T. 15 March 2004 p. 63 (Witness QG).

<sup>13544</sup> T. 15 March 2004 p. 64 (Witness QG); Defence Exhibit 204 (Kanyabashi) (12 June 1996, Statement of QG).

<sup>13545</sup> T. 7 March 2002 p. 8 (Witness FAM).

<sup>13546</sup> T. 7 March 2002 p. 106 (Witness FAM).

<sup>13547</sup> T. 13 March 2002 pp. 103-105 (Witness FAM).

old.<sup>13548</sup> He did not enroll because he was above the required age and he had a scar on his arm. The training that took place in February 1994 was not related to recruitment for the Rwandan army. He identified the young people who went through the training as Mutakirwa, Anastas, Hitimana, Joseph, Jean Bosco and Dumel, among others.<sup>13549</sup>

5134. Witness FAM testified that when the group arrived at the *commune* office they were boarded on the *commune* vehicle, known as *Ruhumbangeera*. The vehicle was driven by the *commune*'s driver, Mathias Nsanzabahizi, and was authorised to move around by a permit signed by the *commune* authorities. This demonstrated that it was the *commune* authorities who had organised the transportation for the training.<sup>13550</sup>

5135. Confronted with the fact that he did not mention Kanyabashi in relation to military training or the distribution of weapons in his previous statement of 3 August 1998, the witness explained that he did so because he feared for his own safety and that of his family as he was detained with Kanyabashi's children at the time.<sup>13551</sup>

5136. Witness FAM testified that he had known Kanyabashi since 1985.<sup>13552</sup> He identified him as the *bourgmestre* of Ngoma *commune* and identified him in court.<sup>13553</sup>

#### Prosecution Expert Witness Alison Des Forges

5137. Alison Des Forges testified that she had found a letter in the Butare *préfecture* office from Tharcisse Muvunyi, dated 21 April 1994, asking the *bourgmestres* to recruit 10 young men per *secteur* for self-defence training.<sup>13554</sup> Training for civil defence differed from training for the military.<sup>13555</sup>

5138. She referred to Prosecution Exhibit 123, a letter from the director of the ISAR to the *préfet* of Butare and three *bourgmestres*, including the *bourgmestre* of Ngoma, regarding training and weapons, dated 25 May 1994, which, in her view, indicated a functioning administrative hierarchy responsible for the recruitment and training of civilians.<sup>13556</sup>

#### Kanyabashi Defence Witness D-2-YYYY

5139. Witness D-2-YYYY agreed with the Prosecution's suggestion that he was aware of young people in Butare town learning how to handle weapons during April and May 1994. The training took place at Kamena Stadium. Kanyabashi did not play any part in the recruitment of youths for this training.<sup>13557</sup>

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<sup>13548</sup> T. 7 March 2002 p. 111 (Witness FAM).

<sup>13549</sup> T. 7 March 2002 pp. 92-93 (Witness FAM).

<sup>13550</sup> T. 7 March 2002 p. 108 (Witness FAM).

<sup>13551</sup> T. 11 March 2002 p. 79; T. 12 March 2002 pp. 93-94 (Witness FAM).

<sup>13552</sup> T. 6 March 2002 pp. 79-80 (Witness FAM).

<sup>13553</sup> T. 7 March 2002 pp. 14-15 (Witness FAM).

<sup>13554</sup> T. 9 June 2004 p. 5 (Des Forges); Prosecution Exhibit 123 (Letter from Director of ISAR).

<sup>13555</sup> T. 9 June 2004 p. 14 (Des Forges).

<sup>13556</sup> T. 9 June 2004 p. 36 (Des Forges).

<sup>13557</sup> T. 4 December 2007 pp. 67-68 (ICS) (Witness D-2-YYYY).

5140. The witness stated that he had known Kanyabashi since 1974 or 1975 which was about when he became the *bourgmestre* of Ngoma *commune*.<sup>13558</sup> The witness stated that he was not friends with Kanyabashi and knew him only as the *bourgmestre*.<sup>13559</sup> However, he stated that he was a fair person who worked hard and did not discriminate against people.<sup>13560</sup> The witness identified Kanyabashi in court.<sup>13561</sup>

#### Kanyabashi Defence Witness D-2-13-D

5141. Witness D-2-13-D, a Hutu mill owner from Rango, testified that during his time at the Butare prison there was a group of people who were trying to incriminate Kanyabashi.<sup>13562</sup> The group included Witnesses FAM and QAH together with a certain Ruvugabigwi from Ruhengeri *commune*, and Mageza from Gikongoro.<sup>13563</sup>

5142. According to the witness, Mageza, together with Witness FAM, found Witness D-2-13-D in his cell and told him that they that they wanted to recruit him into their community. They said that there was a group that was going to testify against Kanyabashi in Arusha. The witness testified that he told them that he did not know anything about Kanyabashi and asked them to leave.<sup>13564</sup>

5143. The witness testified that he had known the *bourgmestre*, Kanyabashi, for a very long time since Kanyabashi worked at the university teaching hospital in 1974 or 1976.<sup>13565</sup> Kanyabashi was from Mpare *secteur*, Huye *commune*.<sup>13566</sup> In 1994, Kanyabashi had been *bourgmestre* of Ngoma *commune* for approximately 17 years. The witness clarified that in April 1994, he only saw Kanyabashi on two occasions.<sup>13567</sup> He stated that before the President's accident, he had never attended a meeting with Kanyabashi, but then stated that there were meetings in Tumba, Nkubi, Sahera and Rango. The witness identified Kanyabashi in court.<sup>13568</sup>

#### Ntahobali

5144. Ntahobali testified that at a meeting at Huye Stadium on 26 April 1994, members of the public requested that the authorities should train them in the use of firearms. Kanyabashi told the audience that he was going to consider the matter of training and firearms with the soldiers, and that he thought that it was the soldiers who were supposed to organise and establish a plan.<sup>13569</sup>

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<sup>13558</sup> T. 27 November 2007 p. 8 (Witness D-2-YYYY).

<sup>13559</sup> T. 27 November 2007 p. 11 (Witness D-2-YYYY).

<sup>13560</sup> T. 27 November 2007 p. 11 (Witness D-2-YYYY).

<sup>13561</sup> T. 27 November 2007 p. 10 (Witness D-2-YYYY).

<sup>13562</sup> T. 30 August 2007 pp. 49-50 (ICS) (Witness D-2-13-D).

<sup>13563</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>13564</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>13565</sup> T. 29 August 2007 p. 11 (Witness D-2-13-D).

<sup>13566</sup> T. 3 September 2007 p. 5 (Witness D-2-13-D).

<sup>13567</sup> T. 3 September 2007 pp. 6, 9 (Witness D-2-13-D).

<sup>13568</sup> T. 3 September 2007 p. 10 (Witness D-2-13-D).

<sup>13569</sup> T. 24 April 2006 pp. 50-51 (Ntahobali).



Nteziryayo

5145. Nteziryayo was referred to Prosecution Exhibit 115A (Letter from Tharcisse Muvunyi titled: “*Recrutement des jeunes pour l’autodéfense populaire*”, 21 April 1994).<sup>13570</sup> The letter requested that the recruitment be done immediately by the *bourgmestre* and the *commune conseillers* and would take place in the *commune* offices and the training would be provided by *commune* policemen.<sup>13571</sup> Nteziryayo testified that on reading that document when he was *préfet* of Butare, he understood that the recruitment had been requested by the Minister of Defence through the *secteur* commander who spoke to the *bourgmestre* telling him to immediately recruit the persons.<sup>13572</sup> The area commander was responsible for supervising the recruitment.<sup>13573</sup>

5146. Nteziryayo testified that the person responsible for training in Ngoma *commune* was Chief Warrant Officer Pierre Claver Ntirigira.<sup>13574</sup> Nteziryayo testified that shortly after he had assumed his duties as *préfet*, he read a letter addressed to the *conseiller de secteur* signed by Kanyabashi dated 20 June 1994.<sup>13575</sup> The letter invited the *conseillers* to select youngsters for training as part of the civil defence programme and informing them of an upcoming meeting with those who had undergone firearms training at Huye Stadium on 24 June 1994.<sup>13576</sup> Nteziryayo testified that he saw this letter at the *préfecture* office in mid- to late June 1994.<sup>13577</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

5147. Reyntjens testified that Kanyabashi played a role in the civil defence programme in Butare.<sup>13578</sup> He stated that in Butare, the recruitment of young people for civil defence started around the end of May 1994.<sup>13579</sup> According to him, it is likely that Kanyabashi participated in the recruitment of young people for training in weapons handling in May or June 1994. He testified that by 28 May 1994, Ntyazo *commune* had already been occupied by the RPF.<sup>13580</sup>

5148. Having been shown a letter from the director of the ISAR to the *préfet* of Butare and three *bourgmestres*, including the *bourgmestre* of Ngoma, regarding training and weapons, dated 25 May 1994, Reyntjens agreed that the letter was a request from the director of the ISAR asking the *bourgmestres* to consider a number of ISAR staff members in the training of civil defence.<sup>13581</sup> He disagreed, however, that this letter indicated that Kanyabashi was

<sup>13570</sup> Prosecution Exhibit 115A (Letter from Tharcisse Muvunyi titled: “*Recrutement des jeunes pour l’autodéfense populaire*”, 21 April 1994) (French).

<sup>13571</sup> T. 22 May 2007 pp. 45, 47 (Nteziryayo).

<sup>13572</sup> T. 22 May 2007 p. 45 (Nteziryayo).

<sup>13573</sup> T. 22 May 2007 p. 45 (Nteziryayo).

<sup>13574</sup> T. 22 May 2007 p. 48 (Nteziryayo).

<sup>13575</sup> T. 22 May 2007 pp. 46, 49-50, 52, 58 (Nteziryayo).

<sup>13576</sup> T. 22 May 2007 pp. 46, 49-50, 52, 58 (Nteziryayo).

<sup>13577</sup> T. 22 May 2007 pp. 46, 49, 54-56 (Nteziryayo); Defence Exhibit 539 (Nteziryayo) (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994).

<sup>13578</sup> T. 1 October 2007 p. 53 (Reyntjens).

<sup>13579</sup> T. 1 October 2007 p. 44 (Reyntjens).

<sup>13580</sup> T. 1 October 2007 p. 43 (Reyntjens).

<sup>13581</sup> T. 21 November 2007 p. 75 (Reyntjens); Prosecution Exhibit 123 (Letter from Director of ISAR).

involved in the selection process for the civil defence training.<sup>13582</sup> ISAR was an agricultural research institute, based in Rubona which was not situated in Ngoma *commune*.<sup>13583</sup> He stated that he did not know why this letter was nevertheless directed to Kanyabashi.<sup>13584</sup>

5149. Reyntjens was shown a letter dated 20 June 1994 in which Kanyabashi instructed all his *conseillers* to identify individuals for civil defence training.<sup>13585</sup> The letter mentioned that Kanyabashi would hold a meeting with the trainees on 24 June 1994 at Huye Stadium from 8.00 a.m. and that those who were trained in the handling of weapons should leave their firearms at roadblocks with their colleagues who had not received training.<sup>13586</sup>

#### 3.7.1.4 Deliberations

5150. It is not disputed that training of civilians took place in Ngoma *commune* in June 1994.<sup>13587</sup> It is disputed whether military training took place in Ngoma *commune* in April and May 1994 and whether Kanyabashi played any role in facilitating the training between April and June 1994.

5151. Witness QAH testified that the training began in May 1994.<sup>13588</sup> Witness QG gave hearsay evidence that military training occurred after the President's death but he was unsure precisely when it took place.<sup>13589</sup> Witness FAI testified that training took place during the genocide but he could not be more specific as to the time frame.<sup>13590</sup> The Chamber observes that Witnesses QAH and FAI were detainees in Rwanda at the time of their testimony.<sup>13591</sup> Witness QAH had been sentenced to death at his trial for his participation in the genocide, while Witness FAI had not been sentenced at the time of his testimony.<sup>13592</sup> The Chamber will therefore consider each witness' testimony with appropriate caution.

5152. Witness QAH's testimony is corroborated by Witness D-2-YYYY's hearsay evidence that young people in Butare learned how to handle weapons during May 1994 and Defence Expert Witness Reyntjens' testimony that the recruitment of young people for civil defence started around the end of May 1994.<sup>13593</sup> Taking all the evidence into consideration, the Chamber finds that the testimony of Prosecution Witness QAH, corroborated by the hearsay testimony of Defence Witness D-2-YYYY and Reyntjens established, beyond a reasonable doubt, that training of civilians in Ngoma *commune* took place in May 1994.<sup>13594</sup>

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<sup>13582</sup> T. 21 November 2007 pp. 75-76 (Reyntjens).

<sup>13583</sup> T. 21 November 2007 p. 76 (Reyntjens).

<sup>13584</sup> T. 21 November 2007 p. 76 (Reyntjens).

<sup>13585</sup> Defence Exhibit 539 (Nteziryayo) (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994); T. 1 October 2007 pp. 51-52 (Reyntjens).

<sup>13586</sup> Defence Exhibit 539 (Nteziryayo) (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994); T. 1 October 2007 pp. 51-52 (Reyntjens).

<sup>13587</sup> T. 7 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH); T. 1 October 2007 pp. 43-44 (Reyntjens).

<sup>13588</sup> T. 6 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH).

<sup>13589</sup> T. 16 March 2004 p. 15; T. 16 March 2004 p. 19 (ICS) (Witness QG).

<sup>13590</sup> T. 31 October 2002 pp. 35-36 (Witness FAI).

<sup>13591</sup> T. 8 April 2004 pp. 7-8 (ICS) (Witness QAH); T. 7 March 2002 p. 35 (Witness FAI).

<sup>13592</sup> T. 6 April 2004 p. 13 (Witness QAH); T. 30 October 2002 p. 96 (Witness FAI).

<sup>13593</sup> T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY); T. 1 October 2007 p. 44 (Reyntjens).

<sup>13594</sup> T. 6 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH); T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY); T. 1 October 2007 p. 44 (Reyntjens).

5153. With respect to the sites of military training in Ngoma *commune*, Witness QAH testified that he personally attended military training at Kamena Stadium.<sup>13595</sup> This evidence is corroborated by the hearsay testimony of Prosecution Witness QG and Kanyabashi Defence Witness D-2-YYYY.<sup>13596</sup> The Chamber accepts the hearsay testimony of Witness QAH and QG that Huye Stadium was another site of military training; Witness QAH's testimony is corroborated by Witness QG's hearsay testimony.<sup>13597</sup> In addition, Defence Exhibit 539 (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994) states Kanyabashi's intention to hold a meeting with the trainees on 24 June 1994 at Huye Stadium at 8.00 a.m.<sup>13598</sup> The Chamber considers that the Prosecution has established beyond a reasonable doubt that weapons training also took place at Huye Stadium in Ngoma *commune* in May and June 1994.

5154. The Chamber observes that Witness QAH gave hearsay testimony that military training of civilians also took place at the ESO and that Witness FAI gave hearsay testimony that the training was supervised by instructors from the ESO military college.<sup>13599</sup> The Chamber notes that the hearsay testimony of FAI does not establish whether training took place at the ESO. The Chamber therefore concludes that the hearsay testimony of QAH is not sufficient to prove beyond a reasonable doubt that training took place at the ESO between March and June 1994.

5155. The Chamber notes that Ntahobali testified that at a meeting at Huye Stadium on 26 April 1994, Kanyabashi responded to the requests of members of the public to be trained in the use of firearms by telling those present that he was going to consider the matter of training and firearms with the soldiers.<sup>13600</sup> The Chamber notes that as a co-Accused, Ntahobali may be motivated to shift blame by attributing responsibility for acts committed during the genocide as being authorised by Kanyabashi. The Chamber will therefore give limited weight to the uncorroborated testimony of Ntahobali on this point (). The Chamber therefore finds that it is not established beyond a reasonable doubt that Kanyabashi stated that he would discuss the training of civilians with soldiers at the meeting of 26 April 1994.

5156. With regard to Kanyabashi's alleged role in facilitating the training of civilians in May and June 1994, Witness QAH testified that he personally recruited 35 young men from his *secteur* to undergo military training and that Kanyabashi directed them to Kamena Stadium where the training took place.<sup>13601</sup> Witness QAH also testified that in May 1994, Kanyabashi sent written instructions to *Conseiller* Pascal Habyarimana ordering men under the age of 40 to learn how to manipulate weapons and that he personally saw this letter.<sup>13602</sup>

5157. The Chamber finds the testimony of Witness QAH, that Kanyabashi instructed his *conseillers* to recruit young men for training, to be credible. The Chamber observes that QAH's testimony regarding the role of *bourgmestres* in recruiting and encouraging youths to

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<sup>13595</sup> T. 6 April 2004 p. 17 (ICS) (Witness QAH).

<sup>13596</sup> T. 16 March 2004 p. 19 (ICS) (Witness QG); T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY).

<sup>13597</sup> T. 6 April 2004 p. 62 (Witness QAH); T. 16 March 2004 p. 19 (ICS) (Witness QG).

<sup>13598</sup> Defence Exhibit 539 (Nteziryayo) (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994); T. 1 October 2007 pp. 51-52 (Reyntjens).

<sup>13599</sup> T. 6 April 2004 p. 62 (Witness QAH); T. 31 October 2002 p. 37 (Witness FAI).

<sup>13600</sup> T. 24 April 2006 pp. 50-51 (Ntahobali).

<sup>13601</sup> T. 6 April 2004 pp. 16-17 (ICS) (Witness QAH).

<sup>13602</sup> T. 6 April 2004 p. 53; T. 6 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH).

undergo training from May to June 1994 is corroborated by Witness FAI who testified that the *bourgmestres* received instructions to encourage youths to undergo training and that it was the *bourgmestres*' responsibility to follow up on their progress.<sup>13603</sup>

5158. Witness QAH's testimony on Kanyabashi's role in training in his capacity as *bourgmestre* is further corroborated by the testimony of Witness FAM who testified that he saw a letter signed by Kanyabashi instructing young men to register for training and by Nteziryayo who testified to seeing a letter signed by Kanyabashi containing similar content to that seen by Witness QAH.<sup>13604</sup>

5159. The Chamber observes that Witness FAM did not mention Kanyabashi in relation to military training or the distribution of weapons in his previous statement of 3 August 1998. He stated that this was because he feared for his own safety and that of his family as he was detained with Kanyabashi's children at the time.<sup>13605</sup> However, the Chamber notes that he mentioned Kanyabashi in relation to other allegations in his previous statement of 24 February 2000 including the erection of roadblocks and the massacre of Tutsis.<sup>13606</sup> Therefore, the Chamber does not accept his explanation to be credible. Nonetheless, the Chamber finds that Witness FAM's testimony regarding the role of the *commune* authorities in the training is credible and reliable, despite his insistence that the training took place in February 1994, and lends weight to the eyewitness testimony of Witness FAI. Expert Witness Des Forges gave evidence that a functioning administrative hierarchy which included Kanyabashi was responsible for the training of civilians.<sup>13607</sup> Her testimony further lends weight to the eyewitness testimony of Witness FAI.

5160. The Chamber notes that the Kanyabashi Defence relied on the testimony of Kanyabashi Defence Witness D-2-13-D in submitting that Prosecution Witness FAM belonged to a pressure group in prison whose mission was to incriminate Kanyabashi.<sup>13608</sup> Witness D-2-13-D testified that Witness FAM was among a group of three people who approached him in jail, and asked him to join their group in testifying against Kanyabashi. Witness D-2-13-D did not testify that the group members asked him to lie. In fact, when he asked them to leave him because he knew nothing about Kanyabashi's alleged involvement, they apparently did so.<sup>13609</sup> Further, Witness D-2-13-D did not state why he thought the group was preparing to testify falsely against Kanyabashi. Therefore, the Chamber does not find that Witness D-2-13-D's testimony undermines the testimony of Witness FAM.

5161. Witness D-2-13-D also testified that Witness QAH was a member of the group that approached him in jail and asked him to join in testifying against Kanyabashi.<sup>13610</sup> Defence Witness D-2-13-D testified that Witness QAH told him that he wished to falsely incriminate

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<sup>13603</sup> T. 31 October 2002 pp. 35-37 (Witness FAI).

<sup>13604</sup> T. 7 March 2002 p. 8 (Witness FAM); T. 22 May 2007 pp. 46, 49, 54-56 (Nteziryayo); Defence Exhibit 539 (Nteziryayo) (Letter from Kanyabashi to the *conseillers* of Ngoma *commune* regarding Civil Defence Training, 20 June 1994).

<sup>13605</sup> T. 11 March 2002 p. 79; T. 12 March 2002 pp. 93-94 (Witness FAM).

<sup>13606</sup> Defence Exhibit 20 (Kanyabashi) (24 February 2000, Statement of Witness FAM).

<sup>13607</sup> T. 9 June 2004 p. 36 (Des Forges).

<sup>13608</sup> Kanyabashi Closing Brief, paras. 11, 113.

<sup>13609</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

<sup>13610</sup> T. 30 August 2007 p. 50 (ICS); T. 10 September 2007 p. 63 (ICS) (Witness D-2-13-D).

Kanyabashi because he had a long-standing grudge against him.<sup>13611</sup> The Chamber recalls Witness QAH testified that many years before the genocide he had been employed as a civil servant for several years. He testified that he resigned after a dispute with some colleagues and denies that he was sacked for professional misconduct.<sup>13612</sup> Witness QAH, however, testified that he had never spoken to Kanyabashi and only knew him as an authority.<sup>13613</sup> The Chamber attaches more weight to Witness QAH's testimony under oath than hearsay statements attributed to him by another witness. The Chamber recalls Witness D-2-13-D's testimony that when he asked the group to leave him because he knew nothing about Kanyabashi's alleged involvement, they apparently did so. The Chamber finds that Witness D-2-13-D's testimony does not impact the credibility of Witness QAH.

5162. The Defence also adduced evidence through Witnesses D-2-21-T to support the assertion that Prosecution Witness QG was an *Ibuka* member who participated in meetings where they were asked to falsely accuse Kanyabashi regarding events about which the witness had no personal knowledge.<sup>13614</sup> The Chamber finds that because Witness D-2-21-T lacked credibility, as discussed above (), her testimony does not undermine the testimony of Witness QG.

5163. Considering the evidence, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that Kanyabashi, in his capacity as *bourgmestre*, was responsible for recruiting men for civil defence training in Ngoma *commune* in May and June 1994.

5164. With respect to the purpose of the training in Ngoma *commune*, the Chamber recalls the testimony of Witness FAI who testified that those who underwent military training were not civilians but not soldiers either.<sup>13615</sup> According to his testimony, those trained were *Ibisumizi*: there was no difference between them and the *Interahamwe*.<sup>13616</sup> Witness QAH gave hearsay testimony that he was told by the *conseiller* that no Tutsis could participate in the training.<sup>13617</sup> Witness QG gave hearsay evidence that some individuals who underwent the training later took part in attacks against Tutsis.<sup>13618</sup> The Kanyabashi Defence asserts that the training of civilians took place in May and June 1994 and was a legitimate exercise in self-defence in light of the RPF's advance into Butare.<sup>13619</sup> Expert Witness Reyntjens gave expert evidence that by 28 May 1994, Ntyazo *commune* had already been occupied by the RPF and the RPF was advancing on Butare.<sup>13620</sup>

5165. The Chamber declines to make a finding at this stage with respect to the purpose of the military training of civilians in Ngoma *commune* during May and June 1994. The Chamber will determine the purpose of the training, taking into consideration all the evidence with

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<sup>13611</sup> T. 30 August 2007 p. 52 (ICS) (Witness D-2-13-D).

<sup>13612</sup> T. 7 April 2004 pp. 75-76 (ICS) (Witness QAH).

<sup>13613</sup> T. 7 April 2004 pp. 75-76 (ICS) (Witness QAH).

<sup>13614</sup> T. 3 November 2008 pp. 37, 39, 49, 56, 66 (ICS) (Witness D-2-21-T).

<sup>13615</sup> T. 31 October 2002 p. 31 (Witness FAI).

<sup>13616</sup> T. 31 October 2002 pp. 31, 33 (Witness FAI).

<sup>13617</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13618</sup> T. 15 March 2004 p. 12 (Witness QG).

<sup>13619</sup> Kanyabashi Closing Brief, paras. 552, 589, 592-593, 597.

<sup>13620</sup> T. 1 October 2007 p. 43 (Reyntjens).

respect to training, weapons distribution and the civil defence system at a later stage of the Judgement.

### 3.7.2 Training by Nteziryayo

#### 3.7.2.1 Introduction

5166. Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment alleges that Nteziryayo facilitated and assisted the military training of militiamen.<sup>13621</sup> Paragraph 6.29 of the Nsabimana and Nteziryayo Indictment further alleges that between April and June 1994, Nteziryayo, the official in charge of civil defence for Butare *préfecture*, supervised the training of militiamen, at least once with the assistance of Ndayambaje.<sup>13622</sup> Paragraph 5.12 of the Nsabimana and Nteziryayo Indictment further alleges that Nteziryayo facilitated and assisted the military training of certain members of the civilian population in Ngoma and Nyakizu *communes* between March and June 1994.<sup>13623</sup> The Prosecution submits that Nteziryayo was directly involved in facilitating military training in an official capacity to give effect to the genocidal plan.<sup>13624</sup> In support of its submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAH, FAM, FAI, RV, TO and QAL.

5167. The Nteziryayo Defence submits that the Prosecution failed to adequately inform Nteziryayo of the material facts of the allegations against him. The Nteziryayo Defence submits that all evidence implicating Nteziryayo in the weapons training in Ngoma *commune*, Ntyazo *commune* and Butare town should be excluded since it is outside the scope of the Nsabimana and Nteziryayo Indictment.<sup>13625</sup> In the alternative, the Nteziryayo Defence submits that the evidence presented by the Prosecution lacks credibility. The Nteziryayo Defence relies on Defence Witness WUNBJ, Ndayambaje and Nteziryayo.

#### 3.7.2.2 Preliminary Issues

5168. The Nteziryayo Defence submits that the evidence relating to Nteziryayo's alleged role in training constituted new material facts not pled in the Indictment.<sup>13626</sup> It submits the Prosecution failed to adequately set out Nteziryayo's alleged role in the training exercises or the acts or omissions alleged to have been committed by his subordinates.<sup>13627</sup>

5169. The Chamber recalls that the Nteziryayo Defence raised this submission in its Motion for Exclusion of Evidence filed on 23 January 2009. The Chamber further recalls that in its Decision of 25 February 2009, it denied Nteziryayo's Motion and noted that it would address issues relating to alleged defects in the Indictment, vagueness, credibility and the evaluation of

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<sup>13621</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>13622</sup> Para. 6.29 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>13623</sup> Para. 5.12 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo); see also Prosecution Closing Brief, p. 314, para. 30.

<sup>13624</sup> Prosecution Closing Brief, pp. 309, 314, 316, paras. 14-15, 31-32, 37.

<sup>13625</sup> Nteziryayo Closing Brief, para. 765.

<sup>13626</sup> Nteziryayo Closing Brief, para. 765 (recalling the Defence's submissions in the Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence, 25 February 2009). See *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>13627</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAH (37); Witness FAI (21); Witness FAM (7); Witness QG (55); Expert Des Forges (100); Expert Guichaoua (101).

evidence in its final deliberations.<sup>13628</sup> The Chamber will now address the Indictment paragraphs alleging that Nteziryayo conducted military training.

*Training in Muganza Commune*

5170. Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment contains a general allegation that Nteziryayo facilitated the training of militiamen in the context of a conspiracy to commit genocide. Paragraph 6.29 of the Indictment alleges that between April and June 1994, Nteziryayo supervised the training of militiamen. The Chamber notes that Paragraphs 5.1 and 6.29 of the Indictment generally allege that Nteziryayo, along with others, facilitated the training of militiamen but does not identify those that Nteziryayo is alleged to have trained, nor the dates and circumstances of the alleged training. The Chamber therefore finds that Paragraphs 5.1 and 6.29 of the Indictment are unduly vague. Accordingly, the Chamber will proceed to determine whether Paragraphs 5.1 and 6.29 of the Indictment were cured of their defects through subsequent Prosecution disclosure.

5171. The Chamber observes that information regarding the circumstances of Nteziryayo's alleged role in facilitating the training of militiamen is contained in the Appendix to the Prosecution Pre-Trial Brief through the summary of Prosecution Witness SM's anticipated testimony. Witness SM's expected testimony stated that Nteziryayo was responsible for the training of militiamen with traditional weapons.<sup>13629</sup> Witness SM's previous statement of 19 June 1995, disclosed to the Defence on 16 October 2001, stated that Nteziryayo came to Muganza *commune* and taught the men and youth how to handle traditional weapons and organise themselves into ranks in order to attack. In his previous statement of 25 September 1997, disclosed to the Defence on 4 December 2000, Witness SM stated that Nteziryayo attended a meeting with *commune* authorities at which Nteziryayo explained to the militiamen how to use traditional weapons and what to do in case of an attack by the *Inyenzi*. A banana tree trunk had been stuck in the ground a few metres from the militiamen, who were trained with spears and arrows. He showed them how to aim at the banana trunk, which he compared to an *Inyenzi*.<sup>13630</sup>

5172. The Chamber notes that the summary of Witness SM's testimony and his previous statements fail to identify the month or months of the alleged training, stating broadly that the training occurred during the genocide. The Chamber considers that as a result, the Nteziryayo Defence did not have sufficient notice of this allegation to enable it to mount an effective defence. The Chamber therefore finds that the defect in the Indictment with regard to this allegation was not cured of its defect. In any event, the Chamber considers that the evidence is not sufficient to support a finding that Nteziryayo facilitated training at the Muganza *commune* office.

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<sup>13628</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009, para. 28.

<sup>13629</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAQ (28) (did not testify); Witness SM (79) (did not testify).

<sup>13630</sup> 19 June 1995, Statement of Witness SM, disclosed 16 October 2001; 16 April 1997, Statement of Witness SM, disclosed 23 May 2001; 25 September 1997, Statement of Witness SM, disclosed 4 December 2000. Witness SM did not mention Nteziryayo in his statement of 16 April 1997.

5173. The Chamber observes that there is no mention of Nteziryayo facilitating training at Ndayambaje's swearing-in ceremony and two weeks later at the Muganza *commune* office in the Indictment, the Prosecution Pre-Trial Brief or the Prosecution opening statement. The summary of Witness TO's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief does not mention the witness' intention to testify to this allegation.<sup>13631</sup> Furthermore, TO's previous statements of 8 October 1995, 11 June 1997 and 16 October 1997, disclosed to the Defence on 1 October 2001 do not mention training.<sup>13632</sup> In the present case, the Chamber considers that the information regarding Ndayambaje's alleged facilitation of training at his swearing-in ceremony, and at a meeting at the Muganza *commune* office two weeks later, amount to new material facts. The Nteziryayo Defence did not have sufficient notice of this allegation to enable it to mount an effective defence. As a result, the Chamber finds that it would prejudice the Defence to consider the evidence of Witness TO on these allegations. In any event, the Chamber considers that the evidence is not sufficient to support this allegation.

5174. The Chamber recalls that in the summary of Witness QAL's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief, Witness QAL stated that she attended a meeting at the Muganza *commune* office in May 1994 at which Nteziryayo spoke to ask those present if they had prepared their weapons as Nteziryayo had advised. According to the summary, Nteziryayo then told them to sharpen their weapons so that they would be able to kill in one stroke. The people present at the meeting were advised to secure the nails properly in their clubs, and those with bows were advised to pull the strings well so that the arrows could travel further.<sup>13633</sup>

5175. No mention was made in the summary that Witness QAL intended to testify that Nteziryayo facilitated or participated in training at the Muganza *commune* office. Therefore, the Chamber does not find that the summary of Witness QAL's anticipated testimony provided the Nteziryayo Defence with adequate notice that he was alleged to have facilitated training at the Muganza *commune* office in late June or early July 1994. Furthermore, none of Witness QAL's previous statements disclosed to the Defence indicated his intention to do so. The Chamber therefore concludes that it would prejudice the Defence to consider the evidence of Witness QAL on this allegation. In any event, the Chamber considers that the evidence is not sufficient to support a finding that Nteziryayo facilitated training at the Muganza *commune* office at the end of June or beginning of July 1994.

#### *Training in Ngoma and Nyakizu Communes*

5176. Paragraph 5.12 of the Indictment alleges that Nteziryayo facilitated and assisted the military training of certain members of the civilian population between March and June 1994 in Ngoma and Nyakizu *communes*. The Chamber notes that while the Indictment specifies the specific *communes* in which Nteziryayo is alleged to have facilitated training and a period of four months, it does not identify the members of the civilian population Nteziryayo is alleged to have trained, nor the specific dates or circumstances of the alleged training. The Chamber therefore finds that Paragraph 5.12 of the Indictment is unduly vague and insufficient to enable Nteziryayo to prepare his defence. Accordingly, the Chamber will proceed to determine

<sup>13631</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6).

<sup>13632</sup> 8 October 1995, 11 June 1997, 16 October 1997, Statements of Witness TO, disclosed 1 October 2001.

<sup>13633</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAL (40).



whether Paragraph 5.12 of the Indictment was cured of its defects through subsequent Prosecution disclosure.

5177. The Chamber observes that the summary of Witness QAH's anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief stated that Witness QAH intended to testify that he completed his military training under the supervision of Nteziryayo at Kamena Stadium in Ngoma *commune* and that Nteziryayo taught the men how to dismantle and assemble guns.<sup>13634</sup> Furthermore, the Prosecution provided the Nteziryayo Defence with additional substantive information of the allegation through Witness QAH's previous statements of 28 October 1997 disclosed to the Defence on 4 December 2000, and 11 April 2001 disclosed to the Defence on 1 October 2001, three years before Witness QAH testified in April 2004.<sup>13635</sup>

5178. In his previous statement of 28 October 1997, Witness QAH stated that: (1) he underwent training at Kamena Stadium; (2) Nteziryayo and Chief Warrant Officer Ntirigira were the instructors; (3) the recruits were taught to handle guns, grenades and camouflage technique; (4) Nteziryayo taught the recruits how to assemble and disassemble gun parts; and (5) weapons were distributed to the trainees and five days later the trainees were introduced to General Gatsinzi at a ceremony at the Ngoma *commune* office.<sup>13636</sup>

5179. In his previous statement of 11 April 2001, Witness QAH stated that Nteziryayo trained him in the use of weapons in early June 1994 at Kamena Stadium in Ngoma *commune*.<sup>13637</sup> Witness QAH's previous statement provided that sometime at the end of May 1994, the *conseiller*, Pascal Habyarimana, acting on the orders of *Bourgmestre* Kanyabashi ordered all men under the age of 40 years to go for training in guns so that they would be able to protect themselves. Witness QAH stated that he was one of the recruits, that the recruits went to Kamena Stadium where they found Nteziryayo, Warrant Officer Ntirigira and two *commune* policemen. The training started on 28 May 1994. The trainers had FAL automatic rifles and showed the trainees how to dismantle and assemble the guns and how to use grenades. The trainees were taken to a firing range in a forest near the ESO where they practiced firing guns. The training ended in early June 1994.

5180. The Chamber considers that the information contained in the Appendix to the Pre-Trial Brief and Witness QAH's previous statements is clear and consistent and was disclosed to the Defence in a timely fashion. These materials set forth the specific locations of the trainings, a specific description of the individuals trained and the circumstances regarding these trainings. Therefore, the Chamber finds that Nteziryayo had sufficient notice that he was alleged to have facilitated the training of civilians in late May and early June 1994 at Kamena Stadium in Ngoma *commune* and the Defence was not prejudiced in its ability to prepare its case with regard to this allegation.

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<sup>13634</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAH (37).

<sup>13635</sup> 28 October 1997, Statement of Witness QAH, disclosed 4 December 2000; 11 April 2001, Statement of Witness QAH, disclosed 1 October 2001.

<sup>13636</sup> 28 October 1997, Statement of Witness QAH, disclosed 4 December 2000.

<sup>13637</sup> 11 April 2001, Statement of Witness QAH, disclosed 1 October 2001.

*Exclusion of Evidence of Witness QAH*

5181. The Nteziryayo Defence submits that at the time of filing its Closing Brief, its motion requesting the exclusion of portions of evidence of several Prosecution witnesses, including Witness QAH, filed on 23 January 2009, was pending.<sup>13638</sup> The Chamber observes that on 25 February 2009 the Chamber denied that motion in its entirety. The Chamber considered it was inappropriate to deal with the motion during trial, and chose to decide such issues in its final deliberations.<sup>13639</sup>

5182. Having regard to the Chamber's finding that the Nteziryayo Defence received sufficient notice of the current allegation, the Chamber considers there is no reason to exclude the evidence of Witness QAH. Witness QAH's statements were disclosed two and a half years before Witness QAH testified. For this reason the Chamber considers the Defence had sufficient time to prepare Nteziryayo's defence with regard to this allegation. For the foregoing reasons the Chamber concludes that the evidence on training given by Witness QAH was properly adduced by the Prosecution and thus denies the Defence's request to exclude his testimony.

5183. Witness RV testified that he attended a meeting in Kirarambogo at which Nteziryayo explained that he was responsible for sensitising the population about how to manipulate traditional weapons and for encouraging youths to join the army.<sup>13640</sup> The Chamber notes that it may consider Witness RV's evidence insofar as it may lend weight to Nteziryayo's alleged role in facilitating military training in Ngoma *commune*, since the Chamber has found that the Defence had sufficient notice of this allegation. It will not consider Witness RV's evidence in respect of any other allegation that Nteziryayo facilitated training.

*Other Individual Allegations of Training*

5184. In his previous statement of 24 February 2000, disclosed to the Defence on 15 November 2000, Witness FAI mentions Nteziryayo's encouragement of youths to sign up for training at the Butare *préfecture* office. With regard to the Butare *préfecture* office as a location at which Nteziryayo facilitated training, the Chamber finds that Witness FAI's mention of Nteziryayo in relation to training in a single previous statement does not constitute clear notice of the allegation. The Chamber therefore concludes that Witness FAI's previous statement did not constitute clear and consistent notice of the allegation that Nteziryayo facilitated training at the Butare *préfecture* office.

5185. The Nteziryayo Defence also submits that the evidence from Prosecution Witness FAI in respect of the training in the use of weapons opposite the Court of First Instance in Ngoma *commune* should be excluded since it is outside the scope of the Nsabimana and Nteziryayo Indictment.<sup>13641</sup> The Chamber observes that neither the summary of anticipated evidence for Witness FAI in the Prosecution Pre-Trial Brief, nor any of Witness FAI's previous statements,

<sup>13638</sup> Nteziryayo Closing Brief, pp. 242-243, para. 765; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009.

<sup>13639</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo's Motion for Exclusion of Evidence (TC), 25 February 2009.

<sup>13640</sup> T. 16 February 2004 p. 49 (ICS) (Witness RV).

<sup>13641</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Alphonse Nteziryayo's Motion for Exclusion of Evidence, 23 January 2009, Annex p. 14; Nteziryayo Closing Brief, para. 765.

mentioned that Witness FAI would testify that Nteziryayo was responsible for military training opposite the Court of First Instance in Ngoma *commune* during the genocide. The Nteziryayo Defence was therefore not given sufficient notice that Nteziryayo was alleged to have facilitated training in this location. The Chamber will not consider the evidence brought by this witness in its deliberations. In any event, the Chamber considers that the evidence is not sufficient to support a finding that Nteziryayo facilitated training opposite the Court of First Instance in Ngoma *commune*.

5186. The Chamber also notes that in view of the absence of any mention of training that took place in Nyanza or Ntyazo *communes* in the Nsabimana and Nteziryayo Indictment, the Prosecution Pre-Trial Brief, or the Prosecution opening statement, the Chamber will not consider evidence led at trial relating to these allegations. In any event, the evidence is not sufficient to support a finding that Nteziryayo facilitated training in Nyanza or Ntyazo *communes*.

### 3.7.2.3 Evidence

#### Prosecution Witness QAH

5187. Witness QAH, a Hutu farmer from Ngoma *commune* and detainee in Rwanda, testified that he underwent training at Kamena Stadium at the end of May 1994.<sup>13642</sup> *Bourgmestre* Kanyabashi sent written instructions to *Conseiller* Pascal Habyarimana, ordering men under the age of 40 to learn how to manipulate weapons.<sup>13643</sup> Witness QAH confirmed that such instructions would ordinarily be in writing and that in his capacity, he personally saw this letter.<sup>13644</sup>

5188. The civil defence training programme in Ngoma *commune* did not start until the end of May 1994 and continued until mid-June 1994.<sup>13645</sup> The criteria for selecting those who were to attend the training were age and ethnicity.<sup>13646</sup> He recollected that his *conseiller* told the group that no Tutsis could participate in the training.<sup>13647</sup> On receipt of the *conseiller's* instructions, the witness recruited 35 young men from his *secteur* and they walked to the Ngoma *commune* office to undergo military training.<sup>13648</sup> On arrival at about 7.30 a.m., the recruits found Kanyabashi and some policemen who directed them to Kamena Stadium where the training was to take place.<sup>13649</sup> The training lasted nine or 10 days in total.<sup>13650</sup>

5189. Witness QAH testified that the first time he ever saw Nteziryayo was at Kamena Stadium when he went there for training. The witness, who in 1994 was a military recruit under Nteziryayo, positively identified Nteziryayo in court.<sup>13651</sup> There were approximately 250

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<sup>13642</sup> T. 6 April 2004 p. 17 (ICS); T. 6 April 2004 p. 29 (Witness QAH).

<sup>13643</sup> T. 6 April 2004 p. 16 (ICS); T. 7 April 2004 p. 33 (Witness QAH).

<sup>13644</sup> T. 6 April 2004 pp. 14, 16 (ICS); T. 6 April 2004 p. 53; T. 7 April 2004 p. 33 (Witness QAH).

<sup>13645</sup> T. 7 April 2004 p. 34 (Witness QAH).

<sup>13646</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13647</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13648</sup> T. 6 April 2004 p. 16 (ICS) (Witness QAH).

<sup>13649</sup> T. 6 April 2004 p. 17 (ICS) (Witness QAH).

<sup>13650</sup> T. 6 April 2004 p. 61; T. 7 April 2004 p. 36 (Witness QAH).

<sup>13651</sup> T. 6 April 2004 pp. 36, 59 (Witness QAH).

recruits in total.<sup>13652</sup> Nteziryayo and Senior Warrant Officer Ntirigira were in charge of the training and were assisted by two policemen; Canisius and Cassien.<sup>13653</sup>

5190. Nteziryayo addressed the group and asked them to make sure that there were no Tutsis among them before they began the training.<sup>13654</sup> Nteziryayo told the recruits that the purpose of the training was to counter the enemy.<sup>13655</sup> The training began at 7.30 or 8.00 a.m. and went on until 3.00 p.m. each day.<sup>13656</sup> Nteziryayo came every day to teach the trainees.<sup>13657</sup> Nteziryayo and Chief Warrant Officer Ntirigira taught them how to dismantle and re-assemble weapons, how to shoot and how to use grenades.<sup>13658</sup> One day the recruits were taken below the Ngoma military camp to the firing range where they were taught how to throw grenades and how to identify targets.<sup>13659</sup>

5191. Witness QAH testified that Nteziryayo's role at Kamena Stadium was twofold: he taught them how to operate arms and incited them to hate the Tutsis.<sup>13660</sup> On the first day of training, the witness heard Nteziryayo tell them, "[I]et us look around and make sure there is no Tutsi among us before we begin the training proper".<sup>13661</sup> Two days later, Nteziryayo told them again about the wickedness of the Tutsis who were living both in the country and abroad and that the Tutsis living in the country had cattle and money and had made their children available to fight them.<sup>13662</sup>

5192. Witness QAH testified that in early June, as they were being trained, Colonel Cyriaque Habyarabatura of the *gendarmarie* arrived at Kamena Stadium with a military soldier named Tharcisse Muvunyi. They spoke to Nteziryayo who told them that the Gitarama – Kigali road had been cut off by the RPF. According to Witness QAH, this was the first time he heard that the RPF was going to take over their town. Witness QAH testified that the recruits requested Nteziryayo that they be given guns so they could go fight and he responded that they would be given guns so that they could replace the soldiers who would then go to fight.<sup>13663</sup>

#### Prosecution Witness RV

5193. Witness RV, a Hutu civil servant in Rwanda and a detainee at the time of his testimony, testified that he attended a meeting in Kirarambogo chaired by Nteziryayo, who was head of civil defence in the region.<sup>13664</sup> Nteziryayo explained that he was responsible for

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<sup>13652</sup> T. 6 April 2004 p. 22 (Witness QAH).

<sup>13653</sup> T. 6 April 2004 pp. 17-18 (ICS); T. 6 April 2004 p. 55 (Witness QAH).

<sup>13654</sup> T. 6 April 2004 p. 18 (ICS) (Witness QAH).

<sup>13655</sup> T. 6 April 2004 p. 52 (Witness QAH).

<sup>13656</sup> T. 6 April 2004 p. 57 (Witness QAH).

<sup>13657</sup> T. 6 April 2004 p. 18 (ICS); T. 6 April 2004 p. 59 (Witness QAH).

<sup>13658</sup> T. 6 April 2004 p. 19 (ICS); T. 6 April 2004 p. 56 (Witness QAH).

<sup>13659</sup> T. 6 April 2004 p. 61 (Witness QAH).

<sup>13660</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>13661</sup> T. 6 April 2004 p. 18 (ICS); p. 55 (Witness QAH).

<sup>13662</sup> T. 6 April 2004 p. 19 (ICS); pp. 21, 55 (Witness QAH).

<sup>13663</sup> T. 6 April 2004 pp. 21, 23, 27, 62 (Witness QAH).

<sup>13664</sup> T. 16 February 2004 pp. 31, 48 (ICS) (Witness RV).

educating the population to manipulate traditional weapons such as bows, arrows and spears and for encouraging youths to join the army.<sup>13665</sup>

5194. Witness RV had not heard of civil defence before May 1994.<sup>13666</sup> He stated that in June 1994 soldiers started to desert the army and he heard of the advance of the RPF over the radio. People were encouraged to train in the use of traditional weapons so that they could assist the soldiers. They told the population they would distribute weapons.<sup>13667</sup> The witness stated that Nteziryayo had some relationship with the civil defence force. He saw Nteziryayo at meetings dealing with the issue of personnel for the civil defence force.<sup>13668</sup>

#### Defence Witness WUNBJ

5195. Witness WUNBJ, a detainee in Rwanda, testified that he had undergone weapons training at Kamena Stadium between the middle and end of May 1994.<sup>13669</sup> The training lasted one to two weeks.<sup>13670</sup> During the training the witness learned how to clean, dismantle and reassemble a rifle and how to shoot firearms.<sup>13671</sup> The purpose of the training was to assist the army at the front and to provide security within their *cellules*.<sup>13672</sup> According to the witness, the purpose of the training was not to kill Tutsis but to ensure security. He testified that they were informed at the training that the RPF was the enemy, that they were armed and that they had to learn how to use weapons in order to defend themselves.<sup>13673</sup>

5196. Witness WUNBJ was in the second group of trainees.<sup>13674</sup> Candidates for training were chosen by criteria of physical appearance and good moral reputation.<sup>13675</sup> The training was provided by a soldier.<sup>13676</sup> The witness could not specify whether the candidates were Tutsis or Hutus.<sup>13677</sup> He testified that after the training firearms were distributed to the candidates by a warrant officer, whose name the witness cannot recall.<sup>13678</sup> General Marcel Gatsinzi did not come to Kamena Stadium; however the witness met him after the training outside the *commune* office.<sup>13679</sup> Along with other participants of the training he was waiting for Gatsinzi because they were told that the general wanted to ask them about the training they had received.<sup>13680</sup> The witness testified that to the best of his knowledge Nteziryayo never attended civil self-defence training.<sup>13681</sup>

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<sup>13665</sup> T. 16 February 2004 p. 49 (ICS) (Witness RV).

<sup>13666</sup> T. 19 February 2004 p. 12 (ICS) (Witness RV).

<sup>13667</sup> T. 19 February 2004 p. 11 (ICS) (Witness RV).

<sup>13668</sup> T. 19 February 2004 p. 22 (ICS) (Witness RV).

<sup>13669</sup> T. 8 March 2006 pp. 34, 36 (ICS); T. 5 April 2006 pp. 12, 42 (ICS) (Witness WUNBJ).

<sup>13670</sup> T. 5 April 2006 p. 14 (ICS) (Witness WUNBJ).

<sup>13671</sup> T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>13672</sup> T. 8 March 2006 p. 36; T. 5 April 2006 pp. 10, 42 (ICS) (Witness WUNBJ).

<sup>13673</sup> T. 5 April 2006 p. 10 (Witness WUNBJ).

<sup>13674</sup> T. 5 April 2006 p. 10 (Witness WUNBJ).

<sup>13675</sup> T. 8 March 2006 p. 37; T. 5 April 2006 p. 10 (Witness WUNBJ).

<sup>13676</sup> T. 8 March 2006 p. 37 (Witness WUNBJ).

<sup>13677</sup> T. 5 April 2006 p. 67 (ICS) (Witness WUNBJ).

<sup>13678</sup> T. 8 March 2006 pp. 37-38 (Witness WUNBJ).

<sup>13679</sup> T. 5 April 2006 p. 14 (ICS) (Witness WUNBJ).

<sup>13680</sup> T. 5 April 2006 p. 15 (ICS) (Witness WUNBJ).

<sup>13681</sup> T. 5 April 2006 p. 10 (Witness WUNBJ).

Defence Witness D-2-YYYY

5197. Witness D-2-YYYY, a Hutu civil servant,<sup>13682</sup> testified that he was aware of young people in Butare town learning how to handle weapons during April and May 1994.<sup>13683</sup> The training took place at Kamena Stadium.<sup>13684</sup> He had not heard of Nteziryayo being involved in training.<sup>13685</sup> He had heard that a chief warrant officer was involved in the training and had seen him on a woman's bicycle; however, he did not know him.<sup>13686</sup>

Nteziryayo

5198. Nteziryayo testified that he did not aid, facilitate or encourage youths to receive military training in order to facilitate the killing of Tutsis.<sup>13687</sup> He was never involved in any way with the recruitment of youth; he never asked anybody to recruit youths to be trained for the civil defence in Rwanda.<sup>13688</sup> He was not in a position to give instructions for training, particularly weapons training.<sup>13689</sup> Nteziryayo testified he did not attend any training sessions in weapons handling between April and July 1994.<sup>13690</sup> He never trained members of the population in the handling of arms in Kamena Stadium in Ngoma *commune* nor did he train recruits for Gikongoro and Butare *préfectures* under the authority of Colonel Simba and Senior Warrant Officers Rekeraho and Ntarugera.<sup>13691</sup>

5199. Nteziryayo testified that the *bourgmestre* was responsible for the recruitment of youths for training.<sup>13692</sup> Nteziryayo testified that when he became *préfet* he saw a document dated April 1994 from the area commander to the *commune* authorities and the *bourgmestre* requesting the recruitment of youths.<sup>13693</sup>

**3.7.2.4 Deliberations**

5200. With respect to the alleged military training of civilians at Kamena Stadium in Ngoma *commune*, the Prosecution relied on the testimony of Witness QAH. The Chamber notes that Witness QAH was a detainee in Rwanda at the time of his testimony and had been sentenced to death at his trial for his participation in the genocide. The Chamber will therefore approach his testimony with appropriate caution.

5201. Witness QAH testified that, on the *conseiller's* instructions, he personally recruited 35 young men from his *secteur* and attended military training at Kamena Stadium at the end of May 1994 with the other recruits.<sup>13694</sup> The Chamber observes that Witness QAH's testimony

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<sup>13682</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>13683</sup> T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY).

<sup>13684</sup> T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY).

<sup>13685</sup> T. 5 December 2007 p. 68 (ICS) (Witness D-2-YYYY).

<sup>13686</sup> T. 5 December 2007 p. 66 (ICS) (Witness D-2-YYYY).

<sup>13687</sup> T. 5 June 2007 p. 38; T. 12 June 2007 p. 36 (Nteziryayo).

<sup>13688</sup> T. 22 May 2007 pp. 42, 44 (Nteziryayo).

<sup>13689</sup> T. 5 June 2007 p. 24 (Nteziryayo).

<sup>13690</sup> T. 14 June 2007 p. 62 (Nteziryayo).

<sup>13691</sup> T. 22 May 2007 p. 61 (Nteziryayo).

<sup>13692</sup> T. 22 May 2007 p. 44 (Nteziryayo).

<sup>13693</sup> T. 22 May 2007 p. 37 (Nteziryayo).

<sup>13694</sup> T. 6 April 2004 p. 17 (ICS) (Witness QAH).

on this allegation is clear and detailed and finds his testimony on this allegation to be credible. Furthermore, his testimony is corroborated by the first hand testimony of Witness WUNBJ who spent one to two weeks undergoing weapons training at the stadium in mid- to late May 1994, and the hearsay testimony of Witness D-2-YYYY who heard that civilians were undergoing weapons training at Kamena Stadium at this time.<sup>13695</sup> Taking the evidence into consideration, the Chamber finds that the testimony of Prosecution Witness QAH, corroborated by the testimony of Defence Witness WUNBJ and the hearsay testimony of Defence Witness D-2-YYYY establishes, beyond a reasonable doubt, that the training of civilians took place at Kamena Stadium in Ngoma *commune* in May 1994.<sup>13696</sup>

5202. Witness QAH testified that Nteziryayo was responsible for the training of civilians at Kamena Stadium at the end of May 1994. The Chamber observes that Defence Witness WUNBJ underwent training at the same location over the course of one or two weeks between the middle and end of May 1994. Witness QAH's and Witness WUNBJ's testimony regarding the length of the training and its content were generally consistent. Both witnesses testified that the training consisted of learning to assemble, disassemble and shoot firearms and both witnesses agreed that the training was provided by soldiers. The witnesses differed, however, on the involvement of Nteziryayo in the training. Witness QAH testified that Nteziryayo personally trained the recruits in the handling of firearms while Witness WUNBJ denied that Nteziryayo was involved in the training.

5203. The Chamber finds, however, that Witness WUNBJ's account does not contradict that of Witness QAH. Witness QAH testified that he underwent training at Kamena Stadium at the end of May 1994, while Witness WUNBJ testified that he attended training at the stadium between the middle and end of May 1994.<sup>13697</sup>

5204. Witness QAH testified that there were a large number of trainees; approximately 250 recruits in total, while Witness WUNBJ testified that he was in the second group of trainees.<sup>13698</sup> More than one group of trainees was undergoing training at Kamena Stadium and Witness WUNBJ's testimony that Nteziryayo was not involved in his training does not vitiate Witness QAH's testimony that Nteziryayo participated in the training of the recruits that he himself attended. The Chamber considers Witness QAH's testimony that Nteziryayo trained recruits at Kamena Stadium to be clear and detailed and the Chamber finds him credible with regard to this allegation. The Chamber therefore finds that, through the testimony of Witness QAH, the Prosecution has proven beyond a reasonable doubt that Nteziryayo facilitated the training of civilians at Kamena Stadium in May 1994.

5205. The Chamber declines to make a finding at this stage on the purpose of the military training of civilians which took place at Kamena Stadium in Ngoma *commune* during May and June 1994. The Chamber will reserve judgement on this issue until a later stage in its

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<sup>13695</sup> T. 16 March 2004 p. 19 (ICS) (Witness QG); T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY).

<sup>13696</sup> T. 7 April 2004 p. 34 (Witness QAH); T. 4 December 2007 p. 67 (ICS) (Witness D-2-YYYY).

<sup>13697</sup> T. 6 April 2004 p. 17 (ICS) (Witness QAH); T. 6 April 2004 p. 29 (Witness QAH); T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ); T. 8 March 2006 p. 36 (Witness WUNBJ); T. 5 April 2006 pp. 12, 42 (ICS) (Witness WUNBJ).

<sup>13698</sup> T. 6 April 2004 p. 22 (Witness QAH); T. 5 April 2006 p. 10 (Witness WUNBJ).

deliberations where it will consider all the evidence relating to military training, the distribution of weapons and civil defence.

### 3.7.3 Nteziryayo's Words to Recruits at Kamena Stadium in Ngoma Commune

#### 3.7.3.1 Introduction

5206. Paragraph 5.3 of the Nsabimana and Nteziryayo Indictment alleges that the incitement to ethnic hatred and violence was a fundamental part of the plan put in place. The Indictment alleges that the incitement was articulated before and during the genocide by members of the Government and local authorities.<sup>13699</sup> Paragraph 5.8 further alleges that from April to July 1994, Nteziryayo propagated incitement to hatred and violence and publicly incited the people to exterminate the Tutsi population and its "accomplices".<sup>13700</sup> Paragraph 6.31 of the Nsabimana and Nteziryayo Indictment alleges that Nteziryayo, as official in charge of civil defence for Butare *préfecture*, incited the population to slaughter the Tutsis in Butare *préfecture*.<sup>13701</sup> The Indictment alleges that between April and June 1994 Nteziryayo incited and also aided and abetted the population, including his subordinates, to slaughter the Tutsis in Butare *préfecture*.<sup>13702</sup>

5207. The Prosecution submits that in June 1994 at Kamena Stadium, Nteziryayo said to the newly trained recruits: "Go and exterminate, go and exterminate, thereafter you can then go to the battle front. . . You do not sweep dirt and leave it inside the house, you must take it outside of the house".<sup>13703</sup>

5208. The Prosecution contends that Nteziryayo employed these statements as incitement to find and kill Tutsis, and that they resulted in subsequent killings.<sup>13704</sup> The Prosecution further submits that Nteziryayo told these recruits to stop people at roadblocks and check their identity papers because there could be *Inyenzi*, namely Tutsis, who were to be killed.<sup>13705</sup> The Prosecution relies on the testimony of Prosecution Witness QAH.

5209. The Nteziryayo Defence submits that the evidence presented by the Prosecution lacks credibility, and that Witness QAH's identification of Nteziryayo was flawed.<sup>13706</sup>

#### 3.7.3.2 Preliminary Issues

5210. Paragraphs 5.8, 6.31, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment relate to incitement and were pled in support of counts. These paragraphs generally allege that Nteziryayo incited the population to kill Tutsis and further indicate that the incitement occurred in Butare *préfecture*. While these paragraphs allege that Nteziryayo publicly incited

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<sup>13699</sup> Para. 5.3 of the Nsabimana and Nteziryayo Indictment (not in support of counts).

<sup>13700</sup> Para. 5.8 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>13701</sup> Para. 6.31 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>13702</sup> Para. 6.32 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.53 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo); Para. 6.59 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nteziryayo).

<sup>13703</sup> Prosecution Closing Brief, pp. 353-354, para. 158.

<sup>13704</sup> Prosecution Closing Brief, pp. 353-354, paras. 158-161.

<sup>13705</sup> Prosecution Closing Brief, p. 275, para. 147.

<sup>13706</sup> Nteziryayo Closing Brief, paras. 657, 659-661, 663-666.



people to exterminate Tutsis over a four-month period in Butare *préfecture*, these paragraphs fail to provide any details of specific incidents of incitement. In particular, no reference is made to incitement occurring at Kamena Stadium or to the fact that this incitement was directed at the recruits trained there. The Chamber therefore finds each of these paragraphs to be defective.

5211. The Chamber must then determine whether Paragraphs 5.8, 6.31, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment relating to incitement were cured of their respective defects through subsequent Prosecution disclosures.

5212. Recalling the principles of notice previously articulated in this Judgement (), the Chamber observes that the witness summary grid in the Appendix to the Prosecution Pre-Trial Brief lists one witness, Witness QAH, who refers to Nteziryayo's presence at Kamena Stadium in Butare *préfecture*, during the military training exercises at that location. The summary for Witness QAH further indicates that Nteziryayo taught the men how to dismantle and assemble gun parts, that these men were given weapons in the presence of Nteziryayo, and that these men were later summoned and introduced to Marcel Gatsinzi, Nsabimana and Kanyabashi.<sup>13707</sup>

5213. The Chamber notes that this summary does not refer to the alleged statements made by Nteziryayo. While it does refer to Nteziryayo's presence at Kamena Stadium and links him to the training of these recruits, it does not specify as to any alleged inflammatory statements by Nteziryayo at this location, nor does it offer any time frame for this alleged incitement. The Chamber notes that the summary of the intended evidence of Witness QAH provided in the Prosecution Pre-Trial Brief was listed as being brought in support of Counts 1 (Conspiracy to Commit Genocide) and 3 (Complicity in Genocide) against Nteziryayo, but not Direct and Public Incitement to Commit Genocide. The Chamber therefore considers that the Nteziryayo Defence was not provided with adequate notice of the Prosecution's intention to lead evidence of incitement at Kamena Stadium, and finds that the defects in Paragraphs 5.8, 6.31, 6.32 and 6.53 of the Nsabimana and Nteziryayo Indictment were not cured by subsequent Prosecution disclosures. Accordingly, the Chamber will not consider the Prosecution evidence insofar as it relates to this allegation.

### **3.7.4 Training by Ndayambaje**

#### **3.7.4.1 Introduction**

5214. The Ndayambaje Indictment alleges that from late 1990 to July 1994, Ndayambaje conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. The plan was alleged to consist of, *inter alia*, the training of and distribution of weapons to militiamen. The Ndayambaje Indictment alleges that Ndayambaje, together with others, adhered to and executed this plan and in doing so, organised, ordered and participated in massacres against Tutsis and moderate Hutus.<sup>13708</sup> Each of the Indictments further alleges that Ndayambaje assisted Nteziryayo, the official in charge of civil defence for

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<sup>13707</sup> Pre-Trial Brief – Appendix; Witness QAH (37).

<sup>13708</sup> Para. 5.1 of the Ndayambaje Indictment (in support of all counts).

Butare *préfecture*, at least once with the training of the militiamen between April and June 1994.<sup>13709</sup>

5215. The Prosecution submits that although Ndayambaje did not himself train the population, training was done during his swearing-in, in his presence and that he acquiesced to, and oversaw the training.<sup>13710</sup> The Prosecution also submits that Ndayambaje is responsible for training the population under Article 6 (3).<sup>13711</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses FAU and TO.

5216. The Ndayambaje Defence submits that the Indictment does not specify the dates, places and aim of the alleged training of civilians and militiamen, or the alleged role played by Ndayambaje. It neither specifies the identities of the alleged militiamen nor any particular massacre in which the persons trained allegedly participated. No evidence was brought by the Prosecution to support the allegation that Ndayambaje assisted Nteziryayo in the training of civilians.<sup>13712</sup> In the alternative, the Ndayambaje Defence submits that the evidence presented by the Prosecution lacks credibility. The Ndayambaje Defence relies on Prosecution Witnesses RV and FAL and Defence Witnesses BOZAN, GABON, KEPIR, Brother Stan, AND-11, AND-31, AND-73 and Ndayambaje.

5217. As a preliminary matter, the Chamber notes the Ndayambaje Defence submission that the Prosecution adduced no evidence as to Paragraph 6.34 during trial and that the Chamber must not consider this paragraph in its findings.<sup>13713</sup> The Chamber observes that it addressed this matter in its Decision on Defence Motions for Acquittal under Rule 98 *bis* of 16 December 2004. In its Decision, the Chamber found that the evidence led by Prosecution Witness TO, if believed, could be sufficient to sustain a conviction against Ndayambaje on this paragraph of the Indictment and denied Ndayambaje's request for acquittal on this paragraph. The Chamber therefore finds that there is no merit in the Defence's submission.

### 3.7.4.2 Preliminary Issues

5218. The Ndayambaje Defence submits that Paragraph 5.1 is too vague to adequately inform the Accused of the criminal acts charged or specify the essential elements of the alleged crimes.<sup>13714</sup> The Defence recalls that it previously raised objections in its motions on the defects in the form of the Indictment,<sup>13715</sup> on acquittal on the basis of Rule 98 *bis* of the Rules<sup>13716</sup> and on exclusion of evidence.<sup>13717</sup>

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<sup>13709</sup> Para. 6.34 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9).

<sup>13710</sup> Prosecution Closing Brief, p. 461, para. 42.

<sup>13711</sup> Prosecution Closing Brief, p. 469, para. 69.

<sup>13712</sup> Ndayambaje Closing Brief, para. 59.

<sup>13713</sup> Para. 6.34 of the Ndayambaje Indictment (stating that between April and July 1994 Ndayambaje assisted Nteziryayo in the training of militiamen); Ndayambaje Closing Brief, para. 973.

<sup>13714</sup> Ndayambaje Closing Brief, para. 47.

<sup>13715</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Preliminary Motion (Amendment and Harmonisation of the Indictment) Pursuant to Rule 72B(ii) of the Rules of Procedure and Evidence, 6 February 2001.

<sup>13716</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête d'Élie Ndayambaje aux fins d'acquiescement en application de l'article 98 bis du règlement de procédure et de preuve*, 25 October 2004, para. 55.

5219. The Chamber notes that Ndayambaje's preliminary motion alleged that Paragraph 5.1 of the Ndayambaje Indictment lacked clarity and precision. In particular, it alleged that the time frame was too imprecise, there was no specific mention of the identities of those with whom the Accused allegedly conspired or the capacity in which he acted, and there was no specification as to the components of the conspiracy.<sup>13718</sup> The Chamber dismissed the motion on the basis that the Defence had failed to show good cause warranting waiver of the time-bar and did not consider the merits of the application.<sup>13719</sup> Regarding Ndayambaje's motion for acquittal under Rule 98 *bis*, the Defence submitted, *inter alia*, that Ndayambaje should be acquitted of conspiracy to commit genocide because the Prosecution had failed to adduce evidence that Ndayambaje met, discussed or even knew his alleged co-conspirators.<sup>13720</sup> The Chamber dismissed Ndayambaje's motion on this point as it considered that the evidence adduced, if believed, could be sufficient for a reasonable trier of fact to find beyond reasonable doubt Ndayambaje's responsibility on the facts pled in Paragraph 5.1 of the Indictment.<sup>13721</sup> Furthermore, in Ndayambaje's motion on exclusion of evidence, the Defence sought the exclusion of the testimonies or parts of testimonies of 14 Prosecution witnesses because they concerned facts or elements not pled in the Indictment and because it did not have timely notification of those allegations.<sup>13722</sup> The Chamber denied the motion in its entirety, but observed that some of the matters raised could be considered at a later stage of the proceedings and that issues relating to the credibility and evaluation of testimony should be considered with the totality of the evidence.<sup>13723</sup> The Chamber finds that there is no ground to revisit its decision and will address the matters raised in the motion as they arise in the Chamber's deliberations.

5220. The Chamber finds that Paragraph 5.1 of the Indictment does not specify the individuals who are alleged to have received the training, the location, date or time, or Ndayambaje's alleged role in facilitating training. For these reasons, the Chamber considers that the Ndayambaje Indictment is defective.

5221. The Chamber will determine whether the Ndayambaje Indictment was cured of its defects through subsequent Prosecution disclosure. The Chamber notes that in the Appendix to the Prosecution Pre-Trial Brief, the summary of Witness FAU's anticipated testimony states that Witness FAU saw Ndayambaje and Nteziryayo participating in arms distribution and the

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<sup>13717</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006.

<sup>13718</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Preliminary Motion (Amendment and Harmonisation of the Indictment) Pursuant to Rule 72B(ii) of the Rules of Procedure and Evidence, 6 February 2001, para. 22.

<sup>13719</sup> *Ndayambaje*, Decision on the Defence Motion for the Amendment and for the Harmonization of the Accused's Indictment (TC), 25 April 2001.

<sup>13720</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête d'Élie Ndayambaje aux fins d'acquiescement en application de l'article 98 bis du règlement de procédure et de preuve*, 25 October 2004, para. 29.

<sup>13721</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98*bis* (TC), 16 December 2004, para. 202.

<sup>13722</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, *Requête en extrême urgence d'Elie Ndayambaje aux fins d'exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l'acte d'accusation*, 31 May 2006. The witnesses involved were QAR, TO, QAQ, QAF, FAL, TP, TW, QAL, RV, FAU, EV, RT, QBZ and FAG.

<sup>13723</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006.

training of youths.<sup>13724</sup> The Prosecution provided the Defence with further details of the allegation through Witness FAU's previous statements of 10 October 1999 and 22 February 2001 which were disclosed to the Defence on 14 March 2001. These statements contained the allegation that Ndayambaje facilitated the training of the witness at the *commune* office and at Ngoma military camp shortly before the RPF arrived.<sup>13725</sup> The Chamber considers that the information contained in the statements of Witness FAU was timely, clear and consistent, and therefore sufficient to inform Ndayambaje of the nature of the charges against him and to enable him to prepare his defence. The Chamber therefore finds that the defects in the Indictment were cured through the Prosecution's subsequent disclosure with regard to this allegation, and the Defence suffered no prejudice in the preparation of its case.

5222. The Chamber observes, however, that the Prosecution Pre-Trial Brief does not mention the allegation of Ndayambaje facilitating training at his swearing-in ceremony or afterwards at the *commune* office. The summary of Witness TO's testimony in the Appendix to the Prosecution Pre-Trial Brief does not mention the witness' intention to testify to this allegation. Furthermore, there was no mention of training in Witness TO's previous statements of 8 October 1995, 11 June 1997 or 16 October 1997, disclosed to the Defence on 1 October 2001. The Chamber recalls that in its Decision of 1 September 2006, it denied the Ndayambaje Defence's motion for exclusion of the testimony of Witness TO. The Chamber stated that it was not satisfied that there was a basis to exclude the concerned testimony at that stage of the proceedings but that the matter may be considered at a later stage.<sup>13726</sup>

5223. At this stage, the Chamber considers that the information regarding Ndayambaje's alleged facilitation of training at his swearing-in ceremony, and at a meeting two weeks later, amount to new material facts. The Chamber further considers that the Ndayambaje Defence did not have sufficient notice of this allegation to enable the Defence to mount an effective defence. As a result, the Chamber finds that it would unduly prejudice the Accused to consider the evidence of Witness TO on these allegations. Therefore, the Chamber will not make a finding on whether Ndayambaje facilitated training at his swearing-in ceremony, and at the *commune* office two weeks later. In any event, the Chamber notes that the evidence was not sufficient to prove these allegations beyond a reasonable doubt.

### **3.7.4.3 Evidence**

#### Prosecution Witness FAU

5224. Witness FAU, a Hutu farmer from Muganza *commune* and a detainee in Rwanda at the time of his testimony, testified that he joined the army at Ngoma military camp<sup>13727</sup> at the end of May or beginning of June 1994.<sup>13728</sup> Ndayambaje told the witness that if he refused to spill his blood for his country, dogs would drink his blood for free. For this reason, the witness

<sup>13724</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAQ (28).

<sup>13725</sup> From Witness FAU's prior statement dated 10 October 1999 (disclosed 16 March 2001), it appears Ngoma Foyer and Ngoma hostel are the same place. The English version of the statement reads "Ngoma hostel" and the French version reads "*foyer de Ngoma*" or Ngoma Foyer.

<sup>13726</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006, para. 25.

<sup>13727</sup> T. 9 March 2004 p. 15 (ICS) (Witness FAU).

<sup>13728</sup> T. 4 March 2004 p. 77; T. 8 March 2004 p. 91 (ICS) (Witness FAU).

joined the army and went for training to Ngoma military camp in a vehicle with Ndayambaje.<sup>13729</sup> At Ngoma military camp, soldiers taught the recruits to manipulate firearms. Prime Minister Kambanda and a priest called Martin came for some celebrations during which a competition was held. The winner received 5,000 francs and the others 2,000 francs. The trainees sang and danced and there were demonstrations in the dismantling and the assembling of guns.<sup>13730</sup>

5225. The training took 12 days but was not completed because the country fell to the RPF.<sup>13731</sup> The witness was told that he had to fight to prevent the country from being run over. He was not sure if the training was to make the recruits into soldiers.<sup>13732</sup> The witness did not fight in the battles of Butare and Ntyazo on 4 and 6 June 1994 since he had not finished his military training to become a soldier. He wore a military shirt and he participated in some fighting with advancing RPF soldiers until he was chased out of Butare. He subsequently fled to Zaire.<sup>13733</sup>

#### **3.7.4.4 Deliberations**

5226. The Chamber notes that Witness FAU was a detained witness at the time of his testimony, awaiting trial in Rwanda for crimes of extermination and genocide and will treat his evidence with appropriate caution.<sup>13734</sup>

5227. The Chamber notes the existence of numerous discrepancies between Witness FAU's previous statements and his testimony before the Tribunal regarding his participation in military training and subsequent fighting. In his 22 November 2001 previous statement, Witness FAU stated Kambanda visited those undergoing military training on 23 May 1994. In his testimony, he did not say this occurred in May.<sup>13735</sup> In his previous statement of 30 October 2001, Witness FAU stated that he was a soldier at Ngoma military camp in April 1994. However he testified he was a soldier at Ngoma military camp in June 1994, not April.<sup>13736</sup> The witness also testified that a number of incidents which his previous statements place as occurring in May, had in fact taken place in June 1994.<sup>13737</sup> He disavowed the portion of his 30 October 2001 previous statement which indicated that he had killed many people during the war, namely during the battle of Ntyazo on 4 and 6 June 1994. Instead, he testified that he was not present at Ntyazo in June 1994 but that he participated in fighting with the RPF as he fled Butare. He could not say how many people he may have killed.<sup>13738</sup>

5228. The witness explained the discrepancies between his previous statements and his testimony at trial by stating that the investigators had made mistakes in recording his

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<sup>13729</sup> T. 9 March 2004 p. 68 (Witness FAU).

<sup>13730</sup> T. 4 March 2004 p. 78 (Witness FAU).

<sup>13731</sup> T. 4 March 2004 p. 77 (Witness FAU).

<sup>13732</sup> T. 8 March 2004 pp. 80-81 (Witness FAU).

<sup>13733</sup> T. 8 March 2004 pp. 89-90 (ICS); T. 9 March 2004 pp. 14-15 (ICS) (Witness FAU).

<sup>13734</sup> T. 8 March 2004 pp. 84-86 (ICS); T. 9 March 2004 p. 16 (ICS) (FAU).

<sup>13735</sup> T. 8 March 2004 p. 92 (ICS) (Witness FAU); Defence Exhibit 194 (Ndayambaje) (30-31 October and 22 November 2001, Statement of Witness FAU).

<sup>13736</sup> Defence Exhibit 194 (Ndayambaje) (30-31 October and 22 November 2001, Statement of Witness FAU).

<sup>13737</sup> T. 8 March 2004 pp. 92-93 (ICS) (Witness FAU); Defence Exhibit 194 (Ndayambaje) (30-31 October and 22 November 2001, Statement of Witness FAU).

<sup>13738</sup> T. 8 March 2004 p. 90 (ICS); T. 9 March 2004 pp. 13-15, 19 (ICS) (Witness FAU).

statements.<sup>13739</sup> In re-examination, the witness stated that his confessions were given in different formats; in some he told the story of the events, while others were a question and answer format, which could explain the differences.<sup>13740</sup> While the Chamber accepts that the dates may have been wrongly recorded by Tribunal investigators, it does not accept the witness' explanation for the substantive discrepancies between his previous statements and his testimony at trial, in particular the witness' indecision over whether or not he participated in the battle of Ntyazo in June 1994 and whether or not he killed anyone during his flight from Butare.

5229. The Chamber also finds that Witness FAU's testimony contained internal discrepancies with respect to this allegation. The witness testified that he was not sure if the military training was for the army, and also that the training went on for about 12 days. On cross-examination he specified that he joined the army and underwent military training for a few days.<sup>13741</sup> Perhaps most pertinently, the witness testified that Ndayambaje persuaded him to go for training, whereas on cross-examination he stated that he was enrolled in the army through the *secteur conseiller*.<sup>13742</sup>

5230. Taking these discrepancies into account, the Chamber finds that Witness FAU is not credible on this allegation and that the Prosecution has not proven beyond a reasonable doubt that Ndayambaje facilitated military training at Ngoma military barracks at the end of May or beginning of June 1994.

### **3.7.5 Weapons Distribution by Kanyabashi**

#### **3.7.5.1 Introduction**

5231. The Kanyabashi Indictment alleges that Kanyabashi, along with other persons, was responsible for distributing weapons to militiamen and other members of the civilian population between March and July 1994.<sup>13743</sup> The Indictment alleges that the purpose of distributing weapons was to exterminate the Tutsi population and eliminate its "accomplices".<sup>13744</sup>

5232. The Prosecution submits that in the context of the killings that were already taking place in which the *conseillers* were involved, Kanyabashi was distributing weapons and ammunition in order to facilitate the killing of Tutsis.<sup>13745</sup> The Prosecution relies on the testimony of Prosecution Witnesses FAM and QAH, Defence Witness WUNBJ and Expert Witness Des Forges.

5233. The Kanyabashi Defence submits that the Kanyabashi Indictment is vague and fails to identify Kanyabashi's alleged subordinates or the dates and circumstances of the alleged

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<sup>13739</sup> T. 9 March 2004 pp. 13, 20 (ICS); T. 9 March 2004 pp. 61, 72-73; T. 10 March 2004 p. 22 (Witness FAU).

<sup>13740</sup> T. 10 March 2004 p. 40 (Witness FAU).

<sup>13741</sup> T. 4 March 2004 p. 77; T. 8 March 2004 pp. 85-86 (ICS) (Witness FAU).

<sup>13742</sup> T. 10 March 2004 pp. 29-30 (Witness FAU).

<sup>13743</sup> Para. 5.1 of the Kanyabashi Indictment (in support of all counts), Para. 5.13 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>13744</sup> Para. 5.13 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9).

<sup>13745</sup> Prosecution Closing Brief, p. 400, para. 55.

distribution of weapons.<sup>13746</sup> In the alternative, the Kanyabashi Defence submits that the evidence presented by the Prosecution witnesses lacks credibility, and that the Prosecution failed to prove beyond a reasonable doubt that Kanyabashi's distribution of weapons formed part of a criminal enterprise.<sup>13747</sup> The Kanyabashi Defence submits that the events must be placed in context. The Kanyabashi Defence submits that defending one's country when it is at war is not a reprehensible act and that weapons were distributed to *conseillers* of the *secteurs* on 28 May 1994 when the RPF was just 30 kilometres from Butare.<sup>13748</sup> The Kanyabashi Defence relies on the testimony of Defence Witnesses D-2-YYY, D-2-5-I, D-2-5-W, Innocent Rutayisire and Defence Expert Witness Filip Reyntjens.

### 3.7.5.2 Preliminary Issues

5234. The Kanyabashi Defence submits that Paragraph 5.1 of the Indictment does not specify the dates, places or circumstances, or identify the people to whom Kanyabashi is alleged to have distributed weapons. The Defence submits that the Indictment is therefore defective and has not been cured.<sup>13749</sup> The Chamber recalls that the Kanyabashi Defence first raised this issue in its preliminary motion for defects in the form of the Indictment on 9 October 1999. The Kanyabashi Defence requested that Paragraphs 5.1 and 5.13, among others, be deleted on account of their imprecision and vagueness and, in particular, due to the failure to identify his alleged subordinates and provide specific time references.<sup>13750</sup> In its Decision of 31 May 2000, the Chamber dismissed the Defence's request to set aside the Indictment for vagueness, but held that the Prosecution must clearly distinguish the acts for which the Accused incurs criminal responsibility under Article 6 (1) of the Statute from those for which he incurs criminal responsibility under Article 6 (3).<sup>13751</sup>

5235. The Chamber notes the Prosecution's allegation that Kanyabashi distributed weapons forms part of its case in relation to the count of conspiracy to commit genocide. The Chamber considers Kanyabashi's alleged distribution of weapons to be material to the count of conspiracy to commit genocide because it is a key element of the conduct imputed to Kanyabashi and forms the basis of the conspiracy charge. While the Indictment indicates the identities of those to whom Kanyabashi is alleged to have distributed weapons, it does not specify the dates and circumstances of the alleged distribution. The Chamber therefore finds that the information contained in Paragraph 5.1 of the Indictment did not provide adequate details to enable Kanyabashi to prepare his defence, and therefore considers Paragraph 5.1 of the Kanyabashi Indictment to be defective.

5236. The Chamber notes that Paragraph 5.13 of the Indictment makes a general accusation that Kanyabashi, along with others, distributed weapons to militiamen and certain members of the civilian population with the intent to exterminate the Tutsi population and its

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<sup>13746</sup> Kanyabashi Closing Brief, paras. 546, 600.

<sup>13747</sup> Kanyabashi Closing Brief, paras. 601-605, 614.

<sup>13748</sup> Kanyabashi Opening Statement, T. 10 July 2007 p. 8.

<sup>13749</sup> Kanyabashi Closing Brief, paras. 18-19; *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Preliminary Motion Based on Rule 72 B(ii) of the Rules of Procedure and Evidence, 9 October 1999, para. 42.

<sup>13750</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, paras. 1.5, 1.6.

<sup>13751</sup> *Kanyabashi*, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000.

“accomplices”. The Indictment identifies the individuals to whom Kanyabashi is alleged to have distributed weapons, but does not indicate the dates or circumstances of the alleged distribution. The Chamber considers that Paragraph 5.13 of the Indictment is unduly vague and insufficient to enable Kanyabashi to prepare his defence. Accordingly, the Chamber will proceed to determine whether Paragraphs 5.1 and 5.13 of the Indictment were cured of their defects through subsequent Prosecution disclosure.

5237. The Chamber notes that the summary of the anticipated testimony of Witness QAH contained in the Appendix to the Prosecution Pre-Trial Brief did not mention Kanyabashi’s alleged role in distributing weapons.<sup>13752</sup> However, the Prosecution later disclosed Witness QAH’s prior statement of 11 April 2001 which stated that Kanyabashi was aware of the distribution of weapons in Ngoma *commune*.<sup>13753</sup> This statement was disclosed to the Defence on 15 June 2001, almost three years before Witness QAH testified before the Tribunal in April 2004. The Chamber therefore concludes that the Kanyabashi Defence was provided with timely, clear and consistent notice of his alleged role in distributing weapons in Ngoma *commune*, ensuring that Kanyabashi suffered no undue prejudice in the preparation of his defence.

5238. In addition, further information regarding Kanyabashi’s alleged role in distributing weapons is contained in the Appendix to the Prosecution Pre-Trial Brief which provided notice that Kanyabashi would be accused of distributing weapons through the summaries of evidence of four witnesses who did not testify at trial: Prosecution Witnesses FAT, QC, QE and RM.

5239. The summary of Witness FAT’s anticipated testimony stated that Kanyabashi participated in the distribution of arms to the *conseillers*, including in May 1994.<sup>13754</sup> The summary does not identify in which *commune* this distribution took place. The Chamber therefore finds that the summary in the Pre-Trial Brief was not sufficient to inform the Defence of the allegation against him. However, Witness FAT’s previous statement of 21 February 2001, disclosed to the Defence on 14 March 2001, stated that the distribution of weapons to the *conseillers de secteurs* took place in May and June 1994 in Ngoma *commune* and Butare town. The weapons distributed in May were given to Kanyabashi in order to be distributed to the *conseillers*.<sup>13755</sup>

5240. Witness QC’s summary in the Pre-Trial Brief stated that Kanyabashi was part of the Butare Security Council, which was responsible for civil defence and the distribution of weapons in his *commune*. Witness QC learned that Kanyabashi was in charge of the weapons in his *commune* and that he had written to all the *secteur* chiefs in his *commune* asking them to designate young Hutus for military training. He saw a Kalashnikov and grenades that a friend got from the *commune* office.<sup>13756</sup> In addition, the Chamber observes that in his previous statement of 13 June 1996, disclosed to the Defence on 4 December 2000, prior to the filing of the Prosecution Pre-Trial Brief, it was apparent that these events took place in Ngoma

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<sup>13752</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAH (37).

<sup>13753</sup> 11 April 2001, Statement of Witness QAH, disclosed 15 June 2001, 1 October 2001.

<sup>13754</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAT (31).

<sup>13755</sup> 21 February 2001, Statement of Witness FAT, disclosed 14 March 2001.

<sup>13756</sup> Prosecution Pre-Trial Brief – Appendix; Witness QC (50).



*commune*.<sup>13757</sup> His statement reveals that at the height of the war, Kanyabashi was part of Butare's Security Council and that he had requested the *secteur* chiefs to designate young Hutus for military training. The time frame clearly fits within April to June 1994, as set out in the Indictment.

5241. Witness QE's summary in the Pre-Trial Brief stated that Kanyabashi regularly visited the home of Habimana, the *conseiller* of Ngoma *commune*, and that Witness QE heard Habimana giving instructions to killers. He stated that guns were given to Ngoma *secteur* for training and that the *commune* vehicle was used for transporting those being taught to use rifles.<sup>13758</sup> Witness QE's statement of 28 September 1994, disclosed to the Defence on 4 December 2000, prior to the filing of the Prosecution Pre-Trial Brief, stated that six guns were given to Ngoma *secteur* to use for weapons training.<sup>13759</sup>

5242. Finally, Witness RM's summary in the Appendix to the Pre-Trial Brief stated that one night, he saw Kanyabashi distribute two rifles to the head of the night patrol and his deputy. He understood that Kanyabashi intended that they be used to kill Tutsis.<sup>13760</sup> Witness RM's statement of 18 June 1996, disclosed to the Defence on 13 December 2001, stated that he participated in night patrols in Butare town. One night in June 1994, Kanyabashi came about 6.30 p.m. and distributed two rifles to the head of the patrol and his deputy. During the patrols, Tutsis were killed.<sup>13761</sup>

5243. Taking into consideration the information contained in the Prosecution Pre-Trial Brief and the disclosure of the previous statements of Witness QAH who testified, and Witnesses FAT, QC, QE and RM who did not testify, the Chamber considers that the Defence had timely, clear and consistent notice that Kanyabashi was alleged to have been responsible for the distribution of weapons in Ngoma *commune* and Butare town, that he distributed weapons to the *conseillers* and to others and that the *commune* office was used to store weapons and the *commune* vehicle to transport those learning to train individuals to use them. Kanyabashi was thereby informed of the material facts that the Prosecution intended to prove at trial and was able to prepare his defence. The Indictment defect was thereby cured and there was no prejudice in the preparation of his defence case.

5244. With respect to the alleged distribution of traditional weapons by Kanyabashi at Kabakobwa in April 1994, the Chamber observes that this allegation was not pled in the Indictment. The Chamber notes that Prosecution Witness FAM did not mention his intention to testify on this issue in the summary of his anticipated evidence in the Prosecution Pre-Trial Brief.<sup>13762</sup> Furthermore, there was no mention of Kanyabashi's alleged distribution of traditional weapons at Kabakobwa in Witness FAM's prior statements of 3 August 1998, 18 August 1998 and 24 February 2000 or in subsequent disclosures by the Prosecution. Witness FAM was the only witness to testify to Kanyabashi's alleged distribution of traditional weapons at Kabakobwa. In the circumstances, the Chamber considers that the Kanyabashi

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<sup>13757</sup> 13 June 1996, Statement of Witness QC, disclosed 4 December 2000.

<sup>13758</sup> Prosecution Pre-Trial Brief – Appendix; Witness QE (53).

<sup>13759</sup> 28 September 1994, Statement of Witness QE, disclosed 4 December 2000.

<sup>13760</sup> Prosecution Pre-Trial Brief – Appendix; Witness RM (71).

<sup>13761</sup> 18 June 1996, Statement of Witness RM, disclosed 13 December 2001.

<sup>13762</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

Defence did not have notice of this allegation to enable him to mount an effective defence. The Chamber observes that the Kanyabashi Defence objected to Witness FAM testifying to alleged events at Kabakobwa during trial. This matter is considered by the Chamber elsewhere in the Judgement (). As a result, the Chamber will not consider the evidence of Witness FAM relating to the alleged distribution of traditional weapons by Kanyabashi at Kabakobwa in April 1994.

5245. The Chamber notes that Witness FAM also provided testimony regarding the distribution of firearms at the Ngoma *commune* office in February 1994. The Chamber considers that the Prosecution Pre-Trial Brief makes no mention of the alleged distribution of weapons by Kanyabashi in February 1994. The Chamber therefore concludes that the Kanyabashi Defence was not provided with sufficient notice of this allegation.

### 3.7.5.3 Evidence

#### Prosecution Witness QAH

5246. Witness QAH, a Hutu farmer from Ngoma *commune* and detainee in Rwanda convicted of genocide at the time of his testimony, testified that he underwent training at Kamena Stadium at the end of May 1994.<sup>13763</sup> Guns were distributed among the recruits in early June 1994.<sup>13764</sup> About 35 people from the witness' *secteur* attended the training.<sup>13765</sup> Alphonse Nteziryayo distributed Kalashnikovs to those present, assisted by police officers and Chief Warrant Officer Ntirigira.<sup>13766</sup> Witness QAH stated that there were about 250 to 260 recruits when the weapons were distributed. They were given the weapons so that they could man the roadblocks as replacements for the regular soldiers who were deployed to fight the RPF.<sup>13767</sup>

5247. Witness QAH was employed by Kanyabashi as a tax collector in Ngoma *commune* between 1975 and 1979. He testified that he resigned after a dispute with some colleagues and denied Defence Counsel's suggestion that he was sacked for misappropriating funds. Witness QAH testified that he had personally never spoken to Kanyabashi and only knew him as an authority in the *commune*.<sup>13768</sup>

#### Prosecution Witness FAI

5248. Witness FAI, a Hutu former civil servant who was detained in Rwanda at the time of his testimony, testified that during the genocide, the *bourgmestres* received instructions to encourage youths to undergo training and that these youths volunteered for training in Ngoma

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<sup>13763</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>13764</sup> T. 6 April 2004 pp. 21-22 (Witness QAH).

<sup>13765</sup> T. 6 April 2004 p. 22 (Witness QAH).

<sup>13766</sup> T. 6 April 2004 pp. 23, 27 (Witness QAH).

<sup>13767</sup> T. 6 April 2004 pp. 21-22, 55, 64 (Witness QAH).

<sup>13768</sup> T. 6 April 2004 p. 17 (ICS); T. 7 April 2004 p. 75 (ICS) (Witness QAH).

*commune*.<sup>13769</sup> The training took part in an old building in Ngoma *commune* opposite the Court of First Instance.<sup>13770</sup>

5249. Colonel Muvunyi carried out the weapons distribution at the end of the training, handing the weapons over to the soldiers responsible for the training for subsequent distribution.<sup>13771</sup>

#### Prosecution Expert Witness Alison Des Forges

5250. Relying on Prosecution Exhibit 124 (record of handing over of firearms issued by Kanyabashi to the *conseillers de secteur* in his *commune*, 28 May 1994), Alison Des Forges indicated in her Expert Report that Kanyabashi had 68 firearms, which he handed out to *conseillers de secteurs* on 28 May 1994, requiring each to sign a receipt noting the registration numbers of the weapons.<sup>13772</sup>

#### Ntahobali Defence Witness WUNBJ

5251. Witness WUNBJ, a detainee in Rwanda at the time of his testimony, testified that after undertaking weapons training at Kamena Stadium in the middle to end of May 1994, firearms were distributed to the recruits.<sup>13773</sup> Major Habyarabatura, *Bourgmestre* Kanyabashi and a warrant officer were present when the arms were distributed. The arms were generally distributed at the *secteur* level and received by the *conseiller*, or in his absence, by a distinguished person of the *commune*.<sup>13774</sup>

#### Kanyabashi Defence Witness D-2-5-I

5252. Witness D-2-5-I, a Hutu civil servant, testified that Kanyabashi's signature is on the bottom right corner of Prosecution Exhibit 124.<sup>13775</sup> He testified that the guns in question transited through Ngoma *commune*, but were distributed not by the *bourgmestre* but by soldiers. The soldiers brought the weapons to the *commune* for the purpose of distribution. He did not know whether *Conseiller* Uwizeye in turn distributed the weapons to the youth in his *secteur*.<sup>13776</sup>

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<sup>13769</sup> T. 31 October 2002 p. 31 (Witness FAI).

<sup>13770</sup> T. 31 October 2002 p. 35 (Witness FAI).

<sup>13771</sup> T. 6 November 2002 p. 12 (Witness FAI).

<sup>13772</sup> Prosecution Exhibit 110A (Des Forges Expert Report) p. 51; T. 9 June 2004 p. 39 (Des Forges); Prosecution Exhibit 124A (Record of handing over of firearms issued by Kanyabashi to *conseillers de secteur* in his *commune*, 28 May 1994).

<sup>13773</sup> T. 8 March 2006 p. 37 (Witness WUNBJ).

<sup>13774</sup> T. 8 March 2006 p. 39 (Witness WUNBJ).

<sup>13775</sup> T. 29 January 2008 p. 8 (ICS) (Witness D-2-5-I); Prosecution Exhibit 124 (Record of handing over of firearms issued by Kanyabashi to *conseillers de secteur* in his *commune*, 28 May 1994).

<sup>13776</sup> T. 29 January 2008 p. 9 (ICS) (Witness D-2-5-I).

Kanyabashi Defence Witness D-2-YYYY

5253. Witness D-2-YYYY, a Hutu civil servant,<sup>13777</sup> testified that he heard that the brigadier had distributed firearms outside the *commune* office at the end of May 1994, and was told that at least each *secteur conseiller* received three firearms.<sup>13778</sup>

Kanyabashi Defence Witness D-2-15-N

5254. Witness D-2-15-N, a Hutu trader, testified that there were many firearms at the *commune* office and when the order to go and hunt down people was issued, firearms were distributed. Shyirambere, the *commune* brigadier, was the *commune* authority who had handed the firearms to those manning the roadblock.<sup>13779</sup>

Nsabimana Defence Witness Innocent Rutayisire

5255. Innocent Rutayisire, a Hutu trader from Butare town, testified that Kanyabashi was not involved in civil defence nor was he involved in the distribution of weapons.<sup>13780</sup>

Kanyabashi Defence Expert Witness Filip Reyntjens

5256. Referring to Prosecution Exhibit 124, Expert Witness Reyntjens testified that Kanyabashi's role in distributing the weapons listed was limited to passing on instructions from the authorities.<sup>13781</sup> Reyntjens testified that within the framework of civil defence, traditional weapons such as bows, arrows, machetes and spears, as well as firearms, mainly Kalashnikovs, were distributed. The witness added that traditional weapons were useless in fighting the advance of the RPF and therefore appeared to be distributed at least in part for the genocide. On the other hand, the firearms may have been distributed with the aim of sending people to the front to stop the advance of the RPF. Reyntjens stated that some officers of the Rwandan army, who were aware that civilians were being armed for the purpose of sending them to the front, expressed their disagreement because those civilians could not fight against the RPF effectively.<sup>13782</sup>

Nyiramasuhuko

5257. Nyiramasuhuko testified that during a Butare Security Council meeting held on 31 May 1994, she learned that firearms had been distributed in Butare urban *commune* on Kanyabashi's request. The *bourgmestre* wanted guns to defend himself because it was a time of war.<sup>13783</sup>

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<sup>13777</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>13778</sup> T. 4 December 2007 p. 64 (ICS) (Witness D-2-YYYY).

<sup>13779</sup> T. 31 October 2007 pp. 38-39 (ICS) (Witness D-2-15-N).

<sup>13780</sup> T. 3 October 2006 p. 66 (Rutayisire).

<sup>13781</sup> T. 24 September 2007 p. 34 (Reyntjens).

<sup>13782</sup> T. 24 September 2007 p. 37 (Reyntjens).

<sup>13783</sup> T. 5 October 2005 pp. 21, 24 (Nyiramasuhuko).

## Ntahobali

5258. Ntahobali testified that following the meeting of 26 April 1994, weapons were distributed to members of the public who had undergone weapons training.<sup>13784</sup> He learned this from the *conseiller* at the end of May 1994.<sup>13785</sup> During his conversation with the *conseiller* he learned that the *conseiller* had received numerous firearms and that he had distributed them to the various places that it had been decided that roadblocks would be erected. The *conseiller* told him that this was in line with the wishes of the people expressed at the meeting on 25 April 1994.<sup>13786</sup>

5259. Ntahobali testified that there was a document admitted as an exhibit that shows who received and who distributed the weapons. All *secteur conseillers* in Ngoma *commune* received firearms according to that document, which states that they received the firearms on 28 May 1994.<sup>13787</sup>

5260. Ntahobali further testified that on 6 June 1994, his birthday, Grégoire Ngendahimana and Padiri requested him to go to a roadblock because instructions had been given for the erection of a roadblock by the *conseiller*.<sup>13788</sup> They told him that they had received a gun to be used in manning that roadblock. They also said that the *conseiller* had received weapons for distribution to the other roadblocks and that the weapons were being carried by men who had been trained for that purpose.<sup>13789</sup>

### **3.7.5.4 Deliberations**

5261. It is disputed whether Kanyabashi played any role in the distribution of traditional weapons and whether he distributed weapons to militiamen between April and July 1994. It is also disputed whether firearms were distributed in April 1994. It is undisputed that firearms were distributed in late May and June 1994 when the RPF was advancing on Butare. It is disputed, however, whether Kanyabashi played any role in the distribution.

5262. The Chamber recalls that Ntahobali was the only witness to testify that following the public meeting of 26 April 1994 at Huye Stadium at which Kanyabashi spoke, weapons were distributed to members of the public who had undergone weapons training.<sup>13790</sup>

5263. The Chamber notes that as a co-Accused, Ntahobali may be motivated to shift blame by attributing responsibility for acts committed during the genocide as being authorised by Kanyabashi, and therefore officially sanctioned. Taking this into consideration, the Chamber will give limited weight to the testimony of Ntahobali on this point. The Chamber therefore

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<sup>13784</sup> T. 25 April 2006 p. 61 (Ntahobali); Prosecution Exhibit 124 (Record of handing over of firearms issued by Kanyabashi to *conseillers de secteur* in his *commune*, 28 May 1994).

<sup>13785</sup> T. 26 April 2006 p. 16 (Ntahobali).

<sup>13786</sup> T. 26 April 2006 p. 18 (Ntahobali).

<sup>13787</sup> T. 26 April 2006 p. 19 (Ntahobali).

<sup>13788</sup> T. 26 April 2006 pp. 13-14 (Ntahobali).

<sup>13789</sup> T. 26 April 2006 pp. 14-16 (Ntahobali).

<sup>13790</sup> T. 25 April 2006 p. 61 (Ntahobali); Prosecution Exhibit 124 (Record of handing over of firearms issued by Kanyabashi to *conseillers de secteur* in his *commune*, 28 May 1994).

finds that it is not established beyond a reasonable doubt that the *conseillers* distributed weapons at the end of April 1994.

5264. Through Prosecution Exhibit 124 (record of handing over of firearms issued by Kanyabashi to the *conseillers de secteurs* in his *commune*, 28 May 1994), the Prosecution introduced evidence of Kanyabashi's distribution of weapons to *conseillers* in Ngoma *commune* in May 1994. Defence Witness D-2-5-I, a civil servant who worked closely with Kanyabashi during the events in 1994 (), testified that Kanyabashi's signature was on the bottom of Prosecution Exhibit 124. Expert Witnesses Des Forges and Reyntjens also testified that Prosecution Exhibit 124 displayed Kanyabashi's role in distributing weapons. In light of the foregoing, the Chamber finds that the Prosecution has established beyond a reasonable doubt that Kanyabashi distributed weapons to the *conseillers* in Ngoma *commune* in May 1994.

5265. The Chamber observes that Witness FAI testified that weapons were distributed by soldiers after training took place opposite the Court of First Instance in Ngoma *commune*.<sup>13791</sup> Witness FAI pled guilty to genocide in Rwanda in 1997.<sup>13792</sup> The Chamber observes that as an accomplice witness, Witness FAI may have had an interest in attributing responsibility for acts he committed during the genocide as being authorised by the authorities and therefore officially sanctioned. Accordingly, the Chamber will treat his evidence with appropriate caution. Furthermore, the Chamber notes that Witness FAI's testimony on this point is uncorroborated. While the Chamber has discretion to rely on the uncorroborated testimony of an accomplice witness, in the present case the Chamber retains reservations over the credibility of his testimony in this respect. The Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt that weapons were distributed by soldiers after training opposite the Court of First Instance in Ngoma *commune* in May and/or June 1994.

5266. The Chamber observes that Prosecution Witness QAH and Ntahobali Defence Witness WUNBJ testified that weapons were distributed to trainees at Kamena Stadium in Ngoma *commune* at the end of May and beginning of June 1994. Witness QAH was a detainee in Rwanda at the time of his testimony.<sup>13793</sup> The Chamber will therefore consider his testimony with appropriate caution.

5267. The Chamber also notes that Witness QAH is alleged to be part of a group of individuals who wish to falsely incriminate Kanyabashi.<sup>13794</sup> Defence Witness D-2-13-D testified that QAH told him in prison that he wished to falsely incriminate Kanyabashi because he had a long-standing grudge against him.<sup>13795</sup> The Chamber notes its previous observation that it will treat the testimony of Witness D-2-13-D with appropriate caution (). With respect to Defence Counsel's suggestion that Witness QAH harboured a grudge against Kanyabashi because he was sacked from his job in 1979 for misappropriating funds,<sup>13796</sup> the Chamber accepts Witness QAH's explanation that he did not know Kanyabashi personally, only in his

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<sup>13791</sup> T. 31 October 2002 pp. 35, 37 (Witness FAI).

<sup>13792</sup> T. 30 October 2002 pp. 96-97 (Witness FAI).

<sup>13793</sup> T. 7 April 2004 p. 40 (Witness QAH).

<sup>13794</sup> T. 30 August 2007 pp. 49-52 (ICS) (Witness D-2-13-D).

<sup>13795</sup> T. 30 August 2007 pp. 50-52 (ICS) (Witness D-2-13-D).

<sup>13796</sup> T. 7 April 2004 p. 75 (ICS) (Witness QAH).

capacity as a *commune* authority and finds that there is no merit to this assertion. The Chamber observes that Witness QAH stopped working as a tax collector in Ngoma *commune* 25 years before he testified at trial and the Defence's assertion that he held a grudge does not affect his credibility on this allegation. The Chamber thus considers that Defence Witness D-2-13-D's account is not substantiated.

5268. Witness QAH does not allege that Kanyabashi played a specific role in the distribution of weapons at Kamena Stadium, merely that the distribution took place in his *commune*. Witness QAH testified that Alphonse Nteziryayo distributed Kalashnikovs among those who had undergone training at Kamena Stadium in early June 1994, assisted by police officers and Chief Warrant Officer Ntirigira.<sup>13797</sup> Witness QAH stated that there were about 250 to 260 recruits when the weapons were distributed and they were given the weapons so that they could man the roadblocks as replacements for the regular soldiers who were deployed to fight the RPF.<sup>13798</sup> The Chamber finds Witness QAH's eyewitness testimony regarding this allegation to be detailed, credible and consistent.

5269. Furthermore, Witness QAH's testimony is corroborated by Witness WUNBJ's eyewitness account that after undertaking weapons training at Kamena Stadium in the middle to end of May 1994, firearms were distributed to the recruits.<sup>13799</sup> The Chamber therefore finds that the Prosecution has proven beyond a reasonable doubt that firearms were distributed by soldiers at Kamena Stadium at the end of May and/or early June 1994.

5270. The Chamber observes that the Prosecution did not bring any evidence to support the allegation that Kanyabashi had knowledge of the weapons distribution at Kamena Stadium in May or June 1994. Ntahobali Defence Witness WUNBJ testified that Kanyabashi was present when the arms were distributed.<sup>13800</sup> The Chamber observes that no other witness corroborates Witness WUNBJ's assertion that Kanyabashi had knowledge of the distribution of weapons by soldiers at Kamena Stadium in May and June 1994 and will not rely on the evidence of this witness in this respect. The Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt that Kanyabashi had knowledge of the weapons distribution at Kamena Stadium.

5271. The Chamber declines to make a finding at this stage with respect to the purpose of the weapons distribution at Kamena Stadium in May or June 1994. The Chamber will determine the purpose of the weapons distribution, taking into consideration all the evidence with respect to military training and the civil defence system, at a later stage of the Judgement.

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<sup>13797</sup> T. 6 April 2004 pp. 21-23, 27 (Witness QAH).

<sup>13798</sup> T. 6 April 2004 pp. 21-22, 55, 64 (Witness QAH).

<sup>13799</sup> T. 8 March 2006 pp. 36-37 (Witness WUNBJ).

<sup>13800</sup> T. 8 March 2006 p. 39 (Witness WUNBJ).

### 3.7.6 Weapons Distribution by Nteziryayo

#### 3.7.6.1 Introduction

5272. The Nsabimana and Nteziryayo Indictment alleges that Nteziryayo was responsible for distributing weapons to militiamen between late 1990 and July 1994.<sup>13801</sup> The Indictment further alleges that Nteziryayo distributed weapons to militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and eliminate its “accomplices”.<sup>13802</sup> Between April and June 1994, Nteziryayo, the official in charge of civil defence for Butare *préfecture*, distributed weapons to militiamen, at least once with the assistance of Ndayambaje.<sup>13803</sup> Each of the Indictments alleges that from April to July 1994, in the course of the massacres, some soldiers gave assistance to militiamen, notably by providing them with weapons.<sup>13804</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses QAH, FAI, FAM and QBV.<sup>13805</sup>

5273. In addition to its submissions on defects in the Nteziryayo and Nsabimana Indictment considered below, the Nteziryayo Defence submits that Nteziryayo was not responsible, and did not participate in, the distribution of weapons to civilians and/or militiamen. The Nteziryayo Defence relies on Defence Witnesses WUNBJ, AND-16, AND-50 and Nteziryayo.

#### 3.7.6.2 Preliminary Issues

5274. The Nteziryayo Defence submits that the allegation that Nteziryayo distributed weapons is unduly vague and was not sufficiently pled in the Indictment.<sup>13806</sup> The Prosecution failed to adequately set out Nteziryayo’s alleged role in the distribution of weapons or the acts or omissions alleged to have been committed by his subordinates. The Chamber recalls that in its Decision of 25 February 2009, it denied Nteziryayo’s Motion for Exclusion of Evidence and stated that it would address issues relating to alleged defects in the Indictment, vagueness, credibility and evaluation of evidence in its final deliberations.<sup>13807</sup>

5275. The Chamber notes that Paragraphs 5.1, 5.13 and 6.29 of the Nsabimana and Nteziryayo Indictment make a general accusation that Nteziryayo, along with others, distributed weapons to militiamen and certain carefully selected members of the civilian population but do not specify the dates or locations of the alleged distributions.

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<sup>13801</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>13802</sup> Para. 5.13 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo).

<sup>13803</sup> Para. 6.29 of the Nsabimana and Nteziryayo Indictment (in support of Counts 1-3, 5-9 against Nteziryayo); Para. 6.34 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 against Ndayambaje).

<sup>13804</sup> Para. 6.56 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).

<sup>13805</sup> Prosecution Closing Brief, pp. 315, 317, 319-320, 340, 344, 367, paras. 33, 41-43, 49, 51, 111, 123, 199. For the Prosecution submission that Nteziryayo incurred 6 (3) responsibility for distribution of weapons, see Prosecution Closing Brief, p. 338, para. 106.

<sup>13806</sup> Nteziryayo Closing Brief, paras. 5, 639.

<sup>13807</sup> *Nteziryayo*, Decision on Alphonse Nteziryayo’s Motion for Exclusion of Evidence (TC), 25 February 2009, para. 28.



5276. The Chamber notes that Paragraph 5.1 of the Indictment sets forth a four year time span and states that, in general, as part of a conspiracy of which Nteziryayo was a part, militiamen were trained and distributed weapons. This paragraph lacks crucial details, including any location, specific date or indication as to who distributed weapons. Paragraph 5.13 states that Nteziryayo and others distributed weapons to militiamen in Butare *préfecture*. However, this paragraph is not in support of counts, and the identification of Butare *préfecture* is insufficiently specific to allow the Defence to properly investigate such a charge. Finally, Paragraph 6.29 alleges that Nteziryayo went to Butare *préfecture* and that between April and June 1994, Nteziryayo supervised the training of militiamen and distributed weapons to them. Again, the paragraph does not specify a location other than Butare *préfecture* and sets forth a period of three months.

5277. The Chamber therefore finds that Paragraphs 5.1, 5.13 and 6.29 of the Indictment are unduly vague, insufficient to enable Nteziryayo to adequately prepare his defence and therefore defective. Bearing in mind the principles of notice previously articulated in this Judgement (), the Chamber will consider whether the specific Prosecution allegations were cured by subsequent disclosures.

5278. The Nteziryayo Defence submits that the following allegations were not sufficiently pled in the Indictment: (1) Nteziryayo's alleged distribution of weapons in February 1994; (2) Nteziryayo's alleged distribution of weapons at Kabakobwa in April 1994; (3) Nteziryayo's alleged role in the distribution of weapons at a roadblock in Kibilizi *secteur* on 23 April 1994; and (4) Nteziryayo's alleged distribution of weapons at Kamena Stadium in early June 1994. The Chamber will review these submissions in turn.

5279. The Chamber notes that the summary of Witness FAM's anticipated testimony contained in the Appendix to the Prosecution Pre-Trial Brief states that Nteziryayo was the most senior military official in Butare and he supervised the recruitment and training of youths. When the training was over, Nteziryayo distributed guns to those who had participated.<sup>13808</sup>

5280. Witness FAM did not mention Nteziryayo in his three confessional statements of 18 August 1998. In his previous statement of 24 February 2000, Witness FAM stated that Nteziryayo was the most senior military official in Butare and in February 1994 recruitment and training of youths was done under his supervision. Nteziryayo refused to recruit the witness for training in the handling of weapons, because he had a scar on his left arm. In mid-March, when the training was over, Nteziryayo distributed guns to those who had participated. These were the same youths who later came to be in charge of roadblocks during the genocide, together with the local population.<sup>13809</sup> The Chamber observes that this previous statement was disclosed to the Defence on 1 October 2001.

5281. Witness FAM's statement fails to provide additional details such as the location of the alleged training and distribution of weapons, which the Chamber considers is a material detail necessary for allowing Nteziryayo to prepare a defence. As such, the information provided in Witness FAM's statement did not suffice to cure the defect in Indictment Paragraphs 5.1, 5.13

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<sup>13808</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>13809</sup> 24 February 2000, Statement of Witness FAM, disclosed 1 October 2001.

and 6.29. For this reason, the Chamber will not make a finding against Nteziryayo with respect to this allegation.

5282. As concerns the alleged distribution of weapons at Kabakobwa, the Chamber notes that the only reference linking Nteziryayo to the Kabakobwa massacre is found in the summary of Prosecution Witness FAM's anticipated testimony in the Appendix to the Prosecution Pre-Trial Brief, which states that Nteziryayo brought soldiers to kill the Tutsis gathered at Kabakobwa.<sup>13810</sup> No mention is made of distribution of weapons. Furthermore, no mention is made of Nteziryayo's alleged distribution of weapons in Witness FAM's subsequent statement of 24 February 2000. The summary of Witness FAM's anticipated evidence states that one Friday in April 1994, Nteziryayo arrived at Kabakobwa onboard a white Pajero followed by a military truck full of soldiers and that on the same Friday, the Tutsis who had gathered at Kabakobwa were killed by soldiers brought there by Nteziryayo.<sup>13811</sup>

5283. The Chamber considers that the disclosure provided by the Prosecution in the form of Witness FAM's summary of anticipated testimony and Witness FAM's previous statements is inconsistent, and thus did not cure the defect in the Nsabimana and Nteziryayo Indictment with regard to the alleged distribution of weapons by Nteziryayo at Kabakobwa. Thus, the Chamber will not consider evidence presented on the alleged distribution of weapons by Nteziryayo at Kabakobwa in support of counts against Nteziryayo.

5284. Turning to the alleged distribution of weapons at a roadblock in Kibilizi *secteur*, the Chamber observes that Witness QBV's anticipated testimony in the Prosecution Pre-Trial Brief mentioned that Muvunyi distributed 20 grenades to attackers in Kibilizi *secteur*. It did not mention, however, the distribution of any other types of weapons or a roadblock. In his previous statement of 11 October 1998, Witness QBV stated that on 23 April 1994, Nteziryayo and Muvunyi were passing through Kibilizi *secteur* in Mugusa *commune*. Muvunyi distributed grenades to the youths who had undergone training. Muvunyi handed over the grenades to an influential trader who was in charge of the roadblocks in the *commune*.<sup>13812</sup> In his second statement of 11 May 2000, Witness QBV stated that on 23 April 1994, Nteziryayo incited the Hutu youth to kill Tutsis and Muvunyi distributed grenades to those that had undergone training, including the trader Ndayisaba.<sup>13813</sup> In a third statement of 30 March 2001, Witness QBV stated that on 23 April 1994, Muvunyi and Nteziryayo brought firearms intended for the *commune* which were distributed on the same day by Brigadier Athanase.<sup>13814</sup>

5285. The Chamber finds that the summary of Witness QBV's anticipated testimony in the Prosecution Pre-Trial Brief was sufficient to put Nteziryayo on notice that he was alleged to have been present with Muvunyi while grenades were distributed to Hutu youths in Mugusa *commune* on 22 or 23 April 1994. Witness QBV's previous statements of 11 October 1999, 11 May 2000 and 30 March 2001 are clear and consistent in their assertion that Nteziryayo was present during the distribution of weapons in Kibilizi *secteur* on 23 April 1994 and were disclosed to the Defence between 15 November 2000 and 20 September 2001, the last

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<sup>13810</sup> Prosecution Pre-Trial Brief – Appendix; Witness FAM (7).

<sup>13811</sup> 24 February 2000, Statement of Witness FAM, disclosed 1 October 2001.

<sup>13812</sup> 11 October 1998, Statement of Witness QBV, disclosed 23 April 2001.

<sup>13813</sup> 11 May 2000, Statement of Witness QBV, disclosed 15 November 2000.

<sup>13814</sup> 30 March 2001, Statement of Witness QBV, disclosed 20 September 2001.

disclosure taking place approximately six months before Witness QBV testified at trial. As such, disclosure occurred in a timely manner. The Chamber therefore concludes that the Nteziryayo Defence was provided with sufficient notice that the Prosecution intended to bring evidence regarding the alleged distribution of weapons in Kibilizi *secteur*, Mugusa *commune*, on 23 April 1994,<sup>13815</sup> such that Paragraphs 5.1, 5.13 and 6.29 of the Indictment were cured of their defect.

5286. Information regarding the allegation that Nteziryayo distributed weapons to civilians who had undergone military training at Kamena Stadium is contained in the summary of Witness QAH's anticipated testimony in the Prosecution Pre-Trial Brief.<sup>13816</sup> In a previous statement of 28 October 1997, Witness QAH stated that Nteziryayo and Chief Warrant Officer Ntirigira instructed recruits in military training at Kamena Stadium and weapons were distributed after the training in their presence by Chief Warrant Officer Ntirigira and Colonel Habyarabatura.<sup>13817</sup>

5287. In his previous statement of 11 April 2001, Witness QAH stated that in early June 1994, when the witness was undergoing training at Kamena Stadium, Nteziryayo was about to provide the recruits with guns so that they could kill the Tutsis. At this time, the RPF were controlling the route from Gitarama to Kigali. The recruits requested that Nteziryayo take them to the battlefield but he refused, stating that they would be provided with guns but would replace the soldiers in Butare town who were maintaining security, while the soldiers would go to the front. After Nteziryayo addressed the recruits, Muvunyi and Major Habyarabatura went away in a jeep, returning 30 minutes later with Kalashnikovs which they gave to Nteziryayo to distribute to the recruits. Nteziryayo and two *commune* policemen distributed the guns according to the recruits' *secteurs* and each of the eight *secteurs* of Ngoma *commune* received eight or nine guns.<sup>13818</sup>

5288. The Prosecution disclosed to the Nteziryayo Defence Witness QAH's first statement of 28 October 1997 in November 1998, and the second statement of 11 April 2001 in June 2001, thus well before Witness QAH testified before the Tribunal in April 2004.

5289. The Chamber finds that the information contained in the Prosecution Pre-Trial Brief and Witness QAH's previous statements is clear and consistent and was disclosed to the Defence in a timely fashion. Each statement places Nteziryayo in Kamena Stadium during the military training and describes him taking an active role in the distribution: physically handing guns to the recruits, or simply being present while his colleagues distributed them. The Chamber is of the view that these sources of information sufficiently informed the Defence of the Prosecution's intention to lead evidence that Nteziryayo was involved in the distribution of weapons following the military training of recruits at Kamena Stadium in Ngoma *commune* in June 1994. The Chamber therefore concludes that the evidence on the alleged distribution of weapons by Nteziryayo, given by Witness QAH, was properly adduced by the Prosecution and it will consider this evidence in support of the Prosecution's submissions.

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<sup>13815</sup> Prosecution Pre-Trial Brief – Appendix; Witness QBV (12).

<sup>13816</sup> Prosecution Pre-Trial Brief – Appendix; Witness QAH (37).

<sup>13817</sup> 28 October 1997, Statement of Witness QAH, disclosed 4 November 1998, 15 June 1999, 4 December 2000.

<sup>13818</sup> 11 April 2001, Statement of Witness QAH, disclosed 15 June 2001.

### 3.7.6.3 Weapons Distribution at Kibilizi Secteur, Mugusa Commune

#### 3.7.6.3.1 Evidence

##### Prosecution Witness QBV

5290. Witness QBV, a Hutu farmer from Mugusa *commune* and detainee who had confessed but not yet been sentenced at the time of his testimony,<sup>13819</sup> testified that he had participated in *Interahamwe* training from 7 April 1994 at the Mugusa *commune* office on six occasions, but he fell ill and did not complete the training.<sup>13820</sup>

5291. Nteziryayo arrived at a roadblock on the Butare-Mugusa road in Kibilizi *secteur* at about 2.00 p.m. on 22 April 1994.<sup>13821</sup> He was travelling with Muvunyi in a red double-cabin pickup, carrying guns, grenades and other tools in the back.<sup>13822</sup> They were both wearing military uniforms.<sup>13823</sup> The witness was two to three metres away from Nteziryayo when Nteziryayo introduced himself and Muvunyi to the crowd of approximately 200 people assembled at the roadblock.<sup>13824</sup> Nteziryayo saw that Witness QBV was carrying an axe and asked the witness his ethnicity and how he came to be in possession of the axe. Witness QBV told him that it had been given to him by soldiers from the Gikonko barracks.<sup>13825</sup> *Conseiller* Gasana told Nteziryayo that Witness QBV had undergone weapons training and that he was in charge of the roadblock.<sup>13826</sup>

5292. Witness QBV testified that Muvunyi took three rifles, two Kalashnikovs, an M16 and a box of cartridges from the back of the red pickup, which he gave to Nteziryayo and who in turn passed them to the *conseiller*. Muvunyi then gave a box of 30 Chinese-type grenades to Nteziryayo which he gave to the businessman Ndayisaba.<sup>13827</sup> Muvunyi gave a carton of matches to Nteziryayo who handed them over to Leodomir Mwimbanzu, the *secteur* President of the MRND Party.<sup>13828</sup>

5293. Witness QBV testified that after distributing the arms, Nteziryayo told the assembled group that they would need these weapons to kill the Tutsis.<sup>13829</sup> Nteziryayo stayed at the roadblock for approximately one hour and left with Muvunyi in the red pickup.<sup>13830</sup> Witness QBV took part in a massacre on the following day<sup>13831</sup> in which the guns and grenades distributed by Nteziryayo were used to kill the Tutsis and the matches to burn their houses.<sup>13832</sup>

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<sup>13819</sup> T. 14 March 2002 p. 10 (Witness QBV).

<sup>13820</sup> T. 14 March 2002 pp. 10-11 (Witness QBV).

<sup>13821</sup> T. 14 March 2002 pp. 12, 19; T. 18 March 2002 p. 87; T. 19 March 2002 p. 36 (Witness QBV).

<sup>13822</sup> T. 14 March 2002 pp. 12-13, 19; T. 18 March 2002 pp. 88-90 (Witness QBV).

<sup>13823</sup> T. 14 March 2002 p. 13 (Witness QBV).

<sup>13824</sup> T. 14 March 2002 pp. 14-16, 18-19 (Witness QBV).

<sup>13825</sup> T. 14 March 2002 pp. 14-15; T. 18 March 2002 pp. 99-100 (Witness QBV).

<sup>13826</sup> T. 14 March 2002 pp. 14-15 (Witness QBV).

<sup>13827</sup> T. 14 March 2002 p. 19; T. 14 March 2002 p. 126 (ICS) (Witness QBV).

<sup>13828</sup> T. 14 March 2002 p. 19; T. 14 March 2002 pp. 124-125 (ICS) (Witness QBV); *see* T. 14 March 2002 p. 144 (HC) (Witness QBV) (French) (for the spelling of Leodomir's surname).

<sup>13829</sup> T. 14 March 2002 pp. 19-20 (Witness QBV).

<sup>13830</sup> T. 14 March 2002 pp. 21-22 (Witness QBV).

<sup>13831</sup> T. 19 March 2002 p. 103 (ICS); T. 19 March 2002 p. 105 (Witness QBV).

<sup>13832</sup> T. 14 March 2002 pp. 21, 34-36; T. 18 March 2002 p. 127 (Witness QBV).

5294. In cross-examination, when it was put to Witness QBV that his prior statements only discussed the distribution of grenades, but not other weapons such as Kalashnikovs, M16s or matches, Witness QBV testified that perhaps the writer of his statements did not properly follow the order of his statements, and that his statements were just provisional documents.<sup>13833</sup>

5295. Witness QBV testified that at the time of giving his statements he was detained with some of Nteziryayo's relatives, including one Nshimabarezi, Nteziryayo's brother-in-law, who pressured him not to give the Tribunal investigators many details that would incriminate Nteziryayo, but rather to say that only Muvunyi distributed weapons.<sup>13834</sup>

#### Prosecution Witness FAM

5296. Witness FAM testified that Nteziryayo was involved in the distribution of weapons and ammunition at roadblocks during the massacres.<sup>13835</sup> The weapons were made available by Nteziryayo, but it was the driver of the *commune* office, Nsanzabahizi, who was in charge of the weapons and ammunition.<sup>13836</sup>

#### Nteziryayo Defence Witness AND-16

5297. Witness AND-16, a Hutu businessman from Mugusa *commune* testified that roadblocks were erected in his *commune* around 21 or 22 April 1994, on the orders of the *conseiller*, Gasana.<sup>13837</sup> The main roadblock was in Sakindi, Kibilizi *secteur*, and it was under the responsibility of Witness QBV.<sup>13838</sup> Witness QBV controlled that roadblock.<sup>13839</sup> Witness AND-16 never saw any soldiers at the roadblocks; only civilians were involved.<sup>13840</sup>

5298. Weapons were not distributed at the roadblock manned by Witness QBV on 22 April 1994, or prior to this date in the *secteur*. Those present at the roadblock had traditional weapons including clubs, and those that had weapons had obtained them from elsewhere.<sup>13841</sup> People killed at the roadblock were killed with traditional weapons such as clubs and hoes, and not with guns or other modern weapons. Witness AND-16 denied that Nteziryayo gave grenades to him at the roadblock manned by Witness QBV. Witness AND-16 denied that Nteziryayo had given weapons to him, the *conseiller* and other authorities at the roadblock that Witness QBV was manning and also denied that he was told that those weapons were to be used to kill Tutsis.<sup>13842</sup>

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<sup>13833</sup> T. 18 March 2002 pp. 135-136 (Witness QBV); Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV); Defence Exhibit 25B (Nteziryayo) (30 March 2001, Statement of Witness QBV); Defence Exhibit 26B (Nteziryayo) (16 August 2001, Statement of Witness QBV).

<sup>13834</sup> T. 19 March 2002 pp. 12-14; T. 19 March 2002 pp. 18, 20 (ICS) (Witness QBV).

<sup>13835</sup> T. 7 March 2002 pp. 42, 44 (Witness FAM).

<sup>13836</sup> T. 7 March 2002 p. 91 (Witness FAM).

<sup>13837</sup> T. 22 January 2007 pp. 34-35 (ICS) (Witness AND-16).

<sup>13838</sup> T. 22 January 2007 p. 35 (ICS) (Witness AND-16).

<sup>13839</sup> T. 24 January 2007 p. 31 (ICS) (Witness AND-16).

<sup>13840</sup> T. 24 January 2007 pp. 31-32 (ICS) (Witness AND-16).

<sup>13841</sup> T. 22 January 2007 pp. 36-37 (ICS) (Witness AND-16).

<sup>13842</sup> T. 22 January 2007 p. 37 (ICS) (Witness AND-16).

5299. Witness AND-16 had three grenades in his possession but he had not received them from Nteziryayo.<sup>13843</sup> Witness AND-16 bought the grenades from a cousin<sup>13844</sup> on 15 April 1994 in order to provide for the safety of his family and his property.<sup>13845</sup> Otherwise, he said members of the population made traditional weapons such as clubs, machetes and other traditional weapons.<sup>13846</sup> Witness AND-16 testified that he believed that his cousin obtained the grenades from a soldier, Antoine Ngwije, who lived in Akabanga *cellule*, in Kibilizi *secteur*. The witness said he saw him carrying grenades but he did not know where he obtained them. The witness also said that a certain person by the name Emmanuel also had grenades but he did not know how he had obtained them.<sup>13847</sup> Witness AND-16 testified that Nteziryayo did not go to Mugusa *commune* between April and July 1994.<sup>13848</sup>

#### Nteziryayo Defence Witness AND-5

5300. Witness AND-5, a Hutu policeman from Mugusa *commune* and a detainee appealing a life sentence for crimes committed during the 1994 genocide at the time of his testimony, testified that Nteziryayo could not have distributed weapons at a roadblock in Kibilizi *secteur* on 22 April 1994, since Nteziryayo did not visit Mugusa *commune* between April and June 1994.<sup>13849</sup>

5301. Witness AND-5 testified that in early June 1994 the *commune* received a consignment of weapons from the ESO camp.<sup>13850</sup> These weapons were distributed at roadblocks, after the massacres.<sup>13851</sup> Witness AND-5 believed that Colonel Aloys Simba was in charge of civilian defence in the Butare and Gikongoro *préfectures* at this time.<sup>13852</sup>

5302. On cross-examination, the Prosecution suggested to Witness AND-5 that some of the guns that Witness AND-5 handed out to those manning the roadblocks were used to kill Tutsis. Defence Witness AND-5 responded that this was impossible because he did not distribute any guns until after Ntyazo had been taken by the RPF; no distribution was made during the killings.<sup>13853</sup>

5303. Witness AND-5 rejected the Prosecution's suggestion that he was denying that Nteziryayo came to Mugusa *commune* between April and June 1994 to distribute arms and attend meetings in order to downplay his own involvement in such events in Mugusa *commune*.<sup>13854</sup>

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<sup>13843</sup> T. 22 January 2007 p. 37 (ICS); T. 23 January 2007 p. 28 (ICS); T. 24 January 2007 pp. 29-30 (ICS) (Witness AND-16).

<sup>13844</sup> T. 22 January 2007 p. 37 (ICS); T. 24 January 2007 pp. 29-30 (ICS) (Witness AND-16).

<sup>13845</sup> T. 23 January 2007 pp. 28, 43 (ICS); T. 24 January 2007 p. 29 (ICS) (Witness AND-16).

<sup>13846</sup> T. 22 January 2007 p. 37 (ICS); T. 23 January 2007 p. 28 (ICS) (Witness AND-16).

<sup>13847</sup> T. 23 January 2007 p. 44 (ICS); T. 24 January 2007 p. 29 (ICS) (Witness AND-16).

<sup>13848</sup> T. 22 January 2007 p. 36 (ICS) (Witness AND-16).

<sup>13849</sup> T. 5 December 2006 pp. 53-54 (ICS); T. 4 December 2006 p. 41 (ICS) (Witness AND-5).

<sup>13850</sup> T. 5 December 2006 pp. 52-53 (ICS) (Witness AND-5).

<sup>13851</sup> T. 4 December 2006 p. 34 (ICS) (Witness AND-5).

<sup>13852</sup> T. 4 December 2006 p. 37 (ICS) (Witness AND-5).

<sup>13853</sup> T. 5 December 2006 p. 53 (ICS) (Witness AND-5).

<sup>13854</sup> T. 5 December 2006 p. 63 (ICS) (Witness AND-5).

Nteziryayo Defence Witness AND-72

5304. Witness AND-72, a Hutu civil servant and a detainee convicted of crimes committed during the 1994 genocide, testified that the *commune* authorities distributed guns to the *conseillers* and to other people in Mugusa *commune* after the RPF took control of Ntyazo *commune*, in June 1994.<sup>13855</sup> These weapons were the ones that *commune* policemen used to protect the *commune* office.<sup>13856</sup> The witness testified that he himself received one gun to ensure security in his *secteur*.<sup>13857</sup> Witness AND-72 testified that he never saw Nteziryayo come to the *commune* office between April and July 1994.<sup>13858</sup>

## 3.7.6.3.2 Deliberations

5305. Witness QBV is the only witness to testify that Nteziryayo distributed weapons to individuals present at a roadblock in Kibilizi *secteur*, Mugusa *commune* on 22 April 1994. The Chamber notes that Witness QBV was a detainee in Rwanda at the time of his testimony who had confessed but had not yet been sentenced for crimes committed during the genocide and is an accomplice witness.<sup>13859</sup> The Chamber will therefore approach his testimony with appropriate caution.

5306. Witness QBV testified that the distribution of weapons took place on 22 April 1994.<sup>13860</sup> On cross-examination, Witness QBV was referred to his previous statement of 11 October 1999, which stated that on 23 April 1994, Muvunyi distributed grenades to the youths who had undergone training. According to this statement, Muvunyi handed over the grenades to an influential trader who was in charge of the roadblocks in the *commune*.<sup>13861</sup> He was also referred to his second statement of 11 May 2000 that also stated that Muvunyi distributed grenades to those who had undergone training on 23 April 1994, including the trader Ndayisaba.<sup>13862</sup> Witness QBV testified that when his previous statements were read back to him by the Tribunal's investigators he noticed that the date was wrongly recorded. He attributed this to an error in translation.<sup>13863</sup> The Chamber accepts his explanation on this point and finds that it does not materially affect his testimony on this allegation.

5307. Witness QBV testified that he had participated in weapons training on 7 April 1994 at the Mugusa *commune* office.<sup>13864</sup> On cross-examination the Nteziryayo Defence pointed out that in his previous statement of 11 October 1999, Witness QBV stated that he had not previously undergone weapons training and therefore he was not given grenades.<sup>13865</sup> In his

<sup>13855</sup> T. 6 December 2006 p. 21 (ICS) (Witness AND-5).

<sup>13856</sup> T. 6 December 2006 p. 22 (ICS) (Witness AND-5).

<sup>13857</sup> T. 6 December 2006 p. 21 (ICS) (Witness AND-5).

<sup>13858</sup> T. 6 December 2006 p. 28 (ICS) (Witness AND-5).

<sup>13859</sup> T. 14 March 2002 p. 10 (Witness QBV).

<sup>13860</sup> T. 14 March 2002 pp. 12, 19; T. 18 March 2002 p. 87; T. 19 March 2002 p. 36 (Witness QBV).

<sup>13861</sup> T. 18 March 2002 pp. 128-129 (Witness QBV); Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV).

<sup>13862</sup> T. 18 March 2002 pp. 130-132, 135 (Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV).

<sup>13863</sup> T. 18 March 2002 p. 36 (Witness QBV).

<sup>13864</sup> T. 14 March 2002 pp. 10-11 (Witness QBV).

<sup>13865</sup> T. 18 March 2002 pp. 128-129 (Witness QBV); Defence Exhibit 23B (Nteziryayo) (11 October 1999, Statement of Witness QBV).

previous statements of 11 May 2000 and 30 March 2001, he did not mention that he had undergone training, despite describing the training that others had undergone in his latter statement.<sup>13866</sup> On cross-examination it was pointed out by the Nteziryayo Defence that no mention was made in his previous statements regarding the distribution of rifles, Kalashnikovs, an M16 and a box of cartridges at the roadblock on 23 April 1994.<sup>13867</sup>

5308. Witness QBV testified that he did not tell the whole truth in his statements to the Tribunal's investigators because he was detained with relatives of Nteziryayo, including his brother-in-law and he was afraid for his safety.<sup>13868</sup> Nteziryayo's relatives put pressure on him to talk about events in a way which did not incriminate Nteziryayo; to deny having seen Nteziryayo and to testify before the Tribunal that Muvunyi, and not Nteziryayo, distributed weapons.<sup>13869</sup> He received letters to this effect but did not have a copy of any of the letters he claimed to have received while in prison.<sup>13870</sup> Witness QBV testified that he informed the Prosecutor's office of the pressure he was being put under and these individuals were transferred to another prison yard.<sup>13871</sup> Witness QBV explained that in his subsequent statements, he gave further details and that he told the whole truth in his testimony before the Tribunal.<sup>13872</sup>

5309. The Chamber accepts that Witness QBV may have been under pressure from his co-detainees not to testify against Nteziryayo, but to attribute the distribution of weapons solely to Muvunyi. This does not, however, explain why no mention was made in his previous statements of the distribution of rifles, Kalashnikovs, an M16 and a box of cartridges at the roadblock in addition to the distribution of 20 grenades.<sup>13873</sup> Having already implicated Nteziryayo, it does not make sense that he would fail to mention the other weapons in order to protect himself from retribution from Nteziryayo's family or friends.

5310. The Chamber observes that Witness AND-16's testimony corroborates that of Witness QBV with regard to the existence of the roadblock and the presence of Witness QBV at the roadblock on 22 April 1994. However, the witnesses' testimonies diverge at this point. Witness QBV testified to the presence of Witness AND-16 at the roadblock and his role in the distribution by Nteziryayo and Muvunyi. Witness QBV testified that Nteziryayo personally distributed weapons, while Witness AND-16 denied that Nteziryayo played any part in the distribution.<sup>13874</sup>

5311. Witness AND-16 testified that Nteziryayo never went to Mugusa *commune* between April and June 1994.<sup>13875</sup> Similarly, Witness AND-5 testified that Nteziryayo could not have

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<sup>13866</sup> T. 18 March 2002 pp. 130-132, 135 (Witness QBV); Defence Exhibit 24B (Nteziryayo) (11 May 2000, Statement of Witness QBV); T. 19 March 2002 pp. 5-6, 9-11 (Witness QBV); Defence Exhibit 25B (Nteziryayo) (30 March 2001, Statement of Witness QBV).

<sup>13867</sup> T. 18 March 2002 pp. 135-136 (Witness QBV).

<sup>13868</sup> T. 19 March 2002 pp. 12-14; T. 19 March 2002 pp. 18, 20 (ICS) (Witness QBV).

<sup>13869</sup> T. 19 March 2002 pp. 13-14; T. 19 March 2002 pp. 18, 20 (ICS) (Witness QBV).

<sup>13870</sup> T. 19 March 2002 pp. 18, 21, 136 (ICS) (Witness QBV).

<sup>13871</sup> T. 19 March 2002 p. 13; T. 19 March 2002 p. 18 (ICS) (Witness QBV).

<sup>13872</sup> T. 19 March 2002 p. 13; T. 19 March 2002 pp. 18, 22 (ICS) (Witness QBV).

<sup>13873</sup> T. 18 March 2002 p. 135 (Witness QBV).

<sup>13874</sup> T. 14 March 2002 p. 19 (Witness QBV); T. 22 January 2007 p. 36 (ICS) (Witness AND-16).

<sup>13875</sup> T. 22 January 2007 p. 36 (ICS) (Witness AND-16).



distributed weapons at the roadblock in Kibilizi *secteur* on 22 April 1994, since Nteziryayo did not visit Mugusa *commune* between April and July 1994.<sup>13876</sup> The Chamber finds the assertions by Witnesses AND-16 and AND-5 that Nteziryayo did not go to Mugusa *commune* between April and June 1994 not to be credible; neither witness was in a position to make such an expansive statement and their testimonies do not cast doubt on the testimony of Prosecution Witness QBV.

5312. Nonetheless, the Chamber recalls that Witness QBV is an accomplice witness who confessed to killing a large number of Tutsis the day after the alleged distribution at the roadblock.<sup>13877</sup> The Chamber observes that while it may rely on a single accomplice witness to establish a fact, in the present case there are a number of factors which cast doubt on his testimony in respect of this allegation. Witness QBV had not been sentenced for crimes committed during the genocide at the time of his testimony and he may have been motivated to attribute responsibility to Nteziryayo in order to obtain a more lenient sentence. Furthermore, as the Chamber has observed above, there are inconsistencies in his prior statements and between his previous statements and his testimony at trial that were not adequately explained by the witness. In the absence of corroboration, the Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt that Nteziryayo distributed weapons at a roadblock in Kibilizi *secteur*, Mugusa *commune* on 22 April 1994.

### **3.7.6.4 Weapons Distribution at Kamena Stadium in Ngoma Commune, Early June 1994**

#### 3.7.6.4.1 Evidence

##### Prosecution Witness QAH

5313. Witness QAH, a Hutu farmer and official from Ngoma *commune* and detainee in Rwanda convicted of genocide at the time of his testimony, testified that the first time he ever saw Nteziryayo was at Kamena Stadium when he went there for training. The witness, who in 1994 was a military recruit under Nteziryayo, positively identified Nteziryayo in court.<sup>13878</sup> The criteria for selecting those who were to attend the training were age and ethnicity.<sup>13879</sup> Witness QAH testified that his *conseiller* told the group that no Tutsis could participate in the training.<sup>13880</sup> There were approximately 250 recruits in total.<sup>13881</sup> Nteziryayo and Senior Warrant Officer Ntirigira were in charge of the training and were assisted by two policemen, Canisius and Cassien.<sup>13882</sup>

5314. Nteziryayo addressed the group and asked them to make sure that there were no Tutsis among them before they began the training.<sup>13883</sup> Nteziryayo told the recruits that the purpose of the training was to counter the enemy.<sup>13884</sup> The training began at 7.30 or 8.00 a.m. and went on

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<sup>13876</sup> T. 5 December 2006 p. 53 (ICS); T. 4 December 2006 p. 41 (ICS) (Witness AND-5).

<sup>13877</sup> T. 18 March 2002, pp. 80-81 (ICS); T. 20 March 2002, pp. 26-28 (ICS) (Witness QBV).

<sup>13878</sup> T. 6 April 2004 pp. 36, 59 (Witness QAH).

<sup>13879</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13880</sup> T. 6 April 2004 p. 54 (Witness QAH).

<sup>13881</sup> T. 6 April 2004 p. 22 (Witness QAH).

<sup>13882</sup> T. 6 April 2004 pp. 17-18 (ICS); T. 6 April 2004 p. 55 (Witness QAH).

<sup>13883</sup> T. 6 April 2004 p. 18 (ICS) (Witness QAH).

<sup>13884</sup> T. 6 April 2004 p. 52 (Witness QAH).

until 3.00 p.m. each day.<sup>13885</sup> Nteziryayo came every day to teach the trainees.<sup>13886</sup> Nteziryayo and Chief Warrant Officer Ntirigira taught them how to dismantle and re-assemble weapons, how to shoot and how to use grenades.<sup>13887</sup> One day the recruits were taken below the Ngoma military camp to the firing range where they were taught how to throw grenades and how to identify targets.<sup>13888</sup>

5315. Witness QAH testified that Nteziryayo's role at Kamena Stadium was twofold: he taught them how to operate arms and incited them to hate the Tutsis.<sup>13889</sup> On the first day of training, the witness heard Nteziryayo tell them, "[I]et us look around and make sure there is no Tutsi among us before we begin the training proper".<sup>13890</sup> Two days later, Nteziryayo told them again about the wickedness of the Tutsis who were living both in the country and abroad and that the Tutsis living in the country had cattle and money and had made their children available to fight them.<sup>13891</sup>

5316. The civil defence training programme in Ngoma *commune* did not start until the end of May 1994.<sup>13892</sup>

5317. In early June 1994, Colonel Habyarabatuma, Cyriaque and a soldier called Tharcisse, came to Kamena Stadium. After speaking with them Nteziryayo told the trainees that Gitarama-Kigali road had been cut off by the RPF.<sup>13893</sup> The recruits who were undergoing the training asked Nteziryayo to be given guns in order to fight against the RPF. Nteziryayo told them that they would be given guns in order to replace the soldiers at the roadblock so that they could go to fight along the main road.<sup>13894</sup> Shortly afterwards Tharcisse Muvunyi and Colonel Habyarabatuma gave guns to Nteziryayo who distributed them to the various *secteurs* who had sent people for the training.<sup>13895</sup> About 35 people from the witness' *secteur* attended the training.<sup>13896</sup> Kalashnikovs were distributed by Nteziryayo who was assisted by the police officers and the Chief Warrant Officer, Ntirigira.<sup>13897</sup> Nteziryayo told the group to exterminate Tutsis, after which he distributed Kalashnikovs to the recruits.<sup>13898</sup>

5318. Witness QAH testified that there were about 250 to 260 recruits present when the weapons were distributed in early June 1994. They were given the weapons so that they could man the roadblocks to replace the soldiers who were deployed to fight the RPF.<sup>13899</sup> When Muvunyi and Habyarabatuma brought the guns to Kamena Stadium in the evening, the recruits assembled themselves according to their *secteur*. One person from each *secteur* was selected to

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<sup>13885</sup> T. 6 April 2004 p. 56 (Witness QAH).

<sup>13886</sup> T. 6 April 2004 p. 18 (ICS); T. 6 April 2004 p. 59 (Witness QAH).

<sup>13887</sup> T. 6 April 2004 p. 19 (ICS); T. 6 April 2004 pp. 55-56 (Witness QAH).

<sup>13888</sup> T. 6 April 2004 p. 61 (Witness QAH).

<sup>13889</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>13890</sup> T. 6 April 2004 p. 18 (ICS); T. 6 April 2004 p. 55 (Witness QAH).

<sup>13891</sup> T. 6 April 2004 p. 19 (ICS); T. 6 April 2004 pp. 21, 55 (Witness QAH).

<sup>13892</sup> T. 7 April 2004 p. 34 (Witness QAH).

<sup>13893</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>13894</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>13895</sup> T. 6 April 2004 pp. 22, 62 (Witness QAH).

<sup>13896</sup> T. 6 April 2002 p. 22 (Witness QAH).

<sup>13897</sup> T. 6 April 2002 pp. 23, 27 (Witness QAH).

<sup>13898</sup> T. 6 April 2002 pp. 23, 27 (Witness QAH).

<sup>13899</sup> T. 6 April 2004 pp. 21-22, 55, 64 (Witness QAH).

be in charge. His responsibility was to provide the *secteur* with weapons.<sup>13900</sup> Each *secteur* received seven guns plus one for the *conseiller* and ammunition.<sup>13901</sup> Witness QAH's brother was in charge of the guns in his *secteur*. No list was prepared to show who had received the guns. The witness received a gun from his brother who had received it from Nteziryayo.<sup>13902</sup> The *responsable de cellule* distributed the guns and appointed each recruit to a particular roadblock. After receiving the Kalashnikovs, the witness and the other recruits returned to their *secteur*. He testified that when the recruits stopped a Tutsi at the roadblock they would either kill him or take him to the authorities.<sup>13903</sup> Witness QAH shot three persons at a roadblock.<sup>13904</sup>

#### Prosecution Witness FAI

5319. Witness FAI, a Hutu civil servant and detainee in Rwanda at the time of his testimony, testified that Nteziryayo, in his capacity as head of civil defence, was responsible for giving weapons to Hutu youths so that they could assist the military at the front and participate in the killings of the Tutsis.<sup>13905</sup> Weapons training took place during the genocide in an old building in Ngoma *secteur*, opposite the Court of First Instance.<sup>13906</sup> Jean-Baptiste Ruzindaza, President of the Court of First Instance, was in charge of the training. Training exercises were supervised by instructors who came from the ESO Military College. After the training, people who had just undergone the training received guns, so that they could go and help the army at the front or go and help the inhabitants to kill the Tutsis who were still alive.<sup>13907</sup>

5320. Witness FAI testified that the guns that were distributed after the training in Butare came from the Officers' College and that it was Colonel Muvunyi who distributed them to the soldiers responsible for the training in Ngoma *commune*.<sup>13908</sup>

#### Ntahobali Defence Witness WUNBJ

5321. Witness WUNBJ, a Hutu civil servant, testified that he had undergone weapons training at Kamena Stadium towards the middle or the end of May 1994.<sup>13909</sup> The training lasted between one and two weeks.<sup>13910</sup> During the training the witness learned how to clean, dismantle, reassemble and shoot a rifle.<sup>13911</sup> The purpose of the training was not to kill Tutsis but to assist the army at the front and to provide security within their *cellules*.<sup>13912</sup> The witness was informed that the RPF were the enemy and were armed so the recruits had to learn to use weapons in self-defence.<sup>13913</sup>

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<sup>13900</sup> T. 6 April 2002 p. 62 (Witness QAH).

<sup>13901</sup> T. 6 April 2002 pp. 62-63 (Witness QAH).

<sup>13902</sup> T. 6 April 2002 p. 64 (Witness QAH).

<sup>13903</sup> T. 6 April 2002 p. 27 (Witness QAH).

<sup>13904</sup> T. 6 April 2002 pp. 45, 73 (ICS) (Witness QAH).

<sup>13905</sup> T. 31 October 2002 pp. 32-33, 37 (Witness FAI).

<sup>13906</sup> T. 31 October 2002 p. 35 (Witness FAI).

<sup>13907</sup> T. 31 October 2002 p. 37 (Witness FAI).

<sup>13908</sup> T. 6 November 2002 p. 12 (Witness FAI).

<sup>13909</sup> T. 8 March 2006 p. 34 (ICS); T. 8 March 2006 p. 36; T. 5. April 2006 pp. 12, 42 (ICS) (Witness WUNBJ).

<sup>13910</sup> T. 5 April 2006 p. 14 (ICS) (Witness WUNBJ).

<sup>13911</sup> T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>13912</sup> T. 8 March 2006 p. 36; T. 5 April 2006 p. 10; T. 5 April 2006 p. 42 (ICS) (Witness WUNBJ).

<sup>13913</sup> T. 5 April 2006 p. 10 (Witness WUNBJ).

5322. Witness WUNBJ testified that after the training, firearms were distributed to the recruits by a warrant officer, whose name the witness could not recall.<sup>13914</sup> The firearms were generally distributed at the *secteur* level and received by the *conseiller*, or in his absence, by a distinguished person of the *commune*.<sup>13915</sup> Witness WUNBJ did not see Nteziryayo between April and June 1994.<sup>13916</sup> To his knowledge, Nteziryayo never attended civil self-defence training nor distributed weapons there.<sup>13917</sup>

#### Nteziryayo Defence Witness AND-50

5323. Witness AND-50, a Hutu teacher from Kigali, testified that Nteziryayo never distributed any weapons. He was not able to do so as he had left the army.<sup>13918</sup> Nteziryayo was not responsible for civil defence in Butare between April and July 1994.<sup>13919</sup> Colonel Aloys Simba was responsible for civil defence.<sup>13920</sup>

#### Nteziryayo

5324. Nteziryayo testified that he did not distribute firearms to the population of Ngoma *commune* as part of the civil defence programme between January 1994 and July 1994, nor did he distribute weapons to recruits trained in a stadium in Ngoma *commune*.<sup>13921</sup> However, Nteziryayo testified that the area commander distributed firearms to people between April and July 1994 for the civil defence in Butare *préfecture*.<sup>13922</sup>

5325. Nteziryayo testified that between April and July 1994, and in his role as *préfet*, he did not receive or possess any stock of weapons for civil defence distribution, and he did not know whether there was such a stock of weapons in the *préfecture*.<sup>13923</sup> Nteziryayo testified that he never received any weapons for distribution in the *communes* of Butare *préfecture*. The officials of Ngoma *commune* did not request any weapons of him or ask him to train members of the population in the handling of weapons; he had no contact with authorities of the Ngoma *commune*. Nteziryayo denied distributing weapons to recruits trained in a stadium in Ngoma *commune*.<sup>13924</sup> Nteziryayo testified that he did not distribute weapons to militia members and members of the civilian population and he did not actively participate in the massacres in Butare or elsewhere.<sup>13925</sup>

#### 3.7.6.4.2 Deliberations

5326. The Prosecution relied on the testimony of Witness QAH with regard to the allegation of distribution of weapons at Kamena Stadium. The Chamber notes that Witness QAH was a

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<sup>13914</sup> T. 8 March 2006 pp. 37-39 (Witness WUNBJ).

<sup>13915</sup> T. 8 March 2006 p. 39 (Witness WUNBJ).

<sup>13916</sup> T. 5 April 2006 p. 9 (Witness WUNBJ).

<sup>13917</sup> T. 5 April 2006 p. 10 (Witness WUNBJ).

<sup>13918</sup> T. 2 May 2007 p. 46 (Witness AND-50).

<sup>13919</sup> T. 2 May 2007 pp. 48-49 (Witness AND-50).

<sup>13920</sup> T. 2 May 2007 p. 15 (Witness AND-50).

<sup>13921</sup> T. 22 May 2007 pp. 5-6 (Nteziryayo).

<sup>13922</sup> T. 23 May 2007 pp. 9-10 (Nteziryayo).

<sup>13923</sup> T. 23 May 2007 p. 10 (Nteziryayo).

<sup>13924</sup> T. 22 May 2007 pp. 5-6 (Nteziryayo).

<sup>13925</sup> T. 12 June 2007 p. 36 (Nteziryayo).

detainee in Rwanda at the time of his testimony and had been sentenced to death at his trial for his participation in the genocide. The Chamber will therefore approach his testimony with appropriate caution.

5327. Witness QAH gave eyewitness testimony that Nteziryayo distributed weapons to the *secteurs* who had sent people for the training.<sup>13926</sup> Nteziryayo distributed Kalashnikovs to those who underwent training at Kamena Stadium in early June 1994.<sup>13927</sup>

5328. The Chamber observes that Defence Witness WUNBJ also underwent training at Kamena Stadium over the course of one or two weeks between the middle and end of May 1994 and was present during the distribution of weapons at the end of the training. The Chamber finds his account to be detailed, credible and consistent. Witness QAH and Witness WUNBJ's accounts of weapons distribution are generally consistent with each other. Both witnesses testified that the distribution among the recruits took place according to their respective *secteurs* and that a Warrant Officer participated in the distribution.<sup>13928</sup> The witnesses differed, however, on the involvement of Nteziryayo in the distribution of weapons. Witness QAH testified that Nteziryayo personally distributed weapons, while Witness WUNBJ denied that Nteziryayo played any part in the distribution.

5329. The Chamber observes that Witness WUNBJ testified that weapons were distributed at Kamena Stadium in May 1994, while Witness QAH testified that he witnessed a distribution of weapons in June 1994. Witness WUNBJ's testimony that Nteziryayo was not involved in the distribution of weapons at Kamena Stadium in May 1994, does not vitiate Witness QAH's eyewitness testimony that Nteziryayo distributed weapons to the recruits in June 1994. The Chamber observes that his testimony on this allegation is not corroborated with respect to Nteziryayo's involvement in the distribution of weapons. Nonetheless, the Chamber considers Witness QAH's testimony that Nteziryayo distributed weapons at Kamena Stadium to be clear and detailed and the Chamber finds him credible with regard to this allegation. The Chamber therefore finds that, through the testimony of Witness QAH, the Prosecution has proven this allegation beyond a reasonable doubt.

5330. The Chamber declines to make a finding at this stage on whether the distribution of weapons at Kamena Stadium in Ngoma *commune* in June 1994 constituted preparation for the genocide or self-defence against the advancing RPF. The Chamber will reserve judgement on this issue until a later stage in its deliberations.

### **3.7.7 Weapons Distribution by Ndayambaje**

#### **3.7.7.1 Introduction**

5331. Each of the Indictments allege that Ndayambaje was responsible for distributing weapons to militiamen from late 1990 until July 1994.<sup>13929</sup> The Indictments allege that Ndayambaje distributed weapons to militiamen and members of the civilian population with

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<sup>13926</sup> T. 6 April 2004 pp. 22, 62 (Witness QAH).

<sup>13927</sup> T. 6 April 2002 pp. 23, 27 (Witness QAH).

<sup>13928</sup> T. 6 April 2002 pp. 23, 27 (Witness QAH); T. 8 March 2006 pp. 37-38 (Witness WUNBJ).

<sup>13929</sup> Para. 5.1 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).

the intent to exterminate the Tutsi population and its “accomplices”.<sup>13930</sup> The Indictments further allege that between April and June 1994, Ndayambaje assisted Nteziryayo, the official in charge of civil defence for Butare *préfecture*, in the distribution of weapons.<sup>13931</sup> Each of the Indictments also allege that from April to July 1994, in the course of the massacres, some soldiers gave assistance to militiamen, notably by providing them with weapons.<sup>13932</sup>

5332. In support of these submissions, the Prosecution relies on the testimony of Prosecution Witnesses QBZ and TO.

5333. The Ndayambaje Defence submits that the Indictment is unduly vague and does not adequately inform Ndayambaje of the material facts of the allegations brought against him. Specifically, the Ndayambaje Defence submits that the Prosecution failed to plead the allegations that Ndayambaje distributed weapons at the Remera *commune* office on 7 April 1994; that he assisted Nteziryayo in the distribution of weapons at the Muganza *commune* office in June 1994; or that he was responsible under Article 6 (3) for the distribution of weapons carried out by soldiers in the course of the massacres.<sup>13933</sup>

5334. In the alternative, the Ndayambaje Defence submits that the Prosecution witnesses lack credibility and that the Prosecution failed to prove the allegations beyond a reasonable doubt.<sup>13934</sup> The Defence relies on the testimonies of Ndayambaje Defence Witnesses GABON, Brother Stan, AND-31, KEPIR and Ndayambaje.

### **3.7.7.2 Muganza Commune Office in Remera, 7 April 1994**

5335. The Chamber observes that the Prosecution did not specifically plead the alleged distribution of weapons at the Remera *commune* office on 7 April 1994.<sup>13935</sup> According to the Ndayambaje Defence, the Indictment is defective and such defects have not been cured.<sup>13936</sup>

5336. The allegation that Ndayambaje distributed weapons at the Muganza *commune* office in Remera on 7 April 1994 amounts to a material fact which was not sufficiently pled in the Indictment. The Prosecution Pre-Trial Brief includes no reference to this specific incident. In his previous statement of 30 March 2001, disclosed to the Defence on 23 May 2001, Witness QBZ stated that Ndayambaje distributed a machine gun to a policeman at the *commune* office which was used to kill Tutsi prisoners.<sup>13937</sup> The alleged distribution of weapons at the *commune* office was not mentioned in Witness QBZ’s previous statement of 9 October 1999, disclosed on 1 December 1999.<sup>13938</sup> The Chamber finds that the Ndayambaje Defence did not have timely, clear or consistent notice of this allegation. Thus, the Chamber will not make a finding on the alleged distribution of weapons by Ndayambaje at the *commune* office on 7

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<sup>13930</sup> Para. 5.13 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 against Ndayambaje).

<sup>13931</sup> Para. 6.34 of the Ndayambaje Indictment (in support of Counts 1-3, 5-9 against Ndayambaje).

<sup>13932</sup> Para. 6.53 of the Ndayambaje Indictment (in support of all counts against Ndayambaje).

<sup>13933</sup> Ndayambaje Closing Brief, paras. 47, 49, 59, 68, 79, 81, 144, 153, 167, 973.

<sup>13934</sup> Ndayambaje Closing Brief, paras. 996, 999, 1009, 1020.

<sup>13935</sup> Ndayambaje Closing Brief, para. 153.

<sup>13936</sup> Ndayambaje Closing Brief, paras. 115-118.

<sup>13937</sup> 30 March 2001, Statement of Witness QBZ, disclosed 23 May 2001.

<sup>13938</sup> 9 October 1999, Statement of Witness QBZ, disclosed 1 December 1999.

April 1994. In any event, the Chamber notes that the evidence was not sufficient to prove this allegation beyond a reasonable doubt.

### 3.7.7.3 Muganza Commune Office, June 1994

5337. In its Decision on Defence Motions for Acquittal under Rule 98 *bis* of 16 December 2004, the Chamber previously addressed the submission that no evidence has been adduced by the Prosecution that Ndayambaje assisted Nteziryayo in the distribution of weapons to militiamen.<sup>13939</sup> The Chamber found that the evidence led by Prosecution Witness TO, if believed, could be sufficient to sustain a conviction against Ndayambaje on this paragraph of the Indictment and denied Ndayambaje's request for acquittal regarding this paragraph.<sup>13940</sup>

5338. The Ndayambaje Defence submits that Paragraph 6.34 of the Ndayambaje Indictment is vague.<sup>13941</sup> In the Chamber's view, the Prosecution failed to expressly plead the alleged weapons distribution at the Muganza *commune* office in June 1994. Therefore the Indictment is defective in this regard.

5339. Recalling the principles of notice previously outlined in this Judgement (), the Prosecution Pre-Trial Brief does not mention the allegation that Ndayambaje distributed weapons at the Muganza *commune* office in June 1994. Furthermore, the summary of Witness TO's testimony in the Appendix to the Prosecution Pre-Trial Brief does not mention the witness' intention to testify to this allegation.<sup>13942</sup> Furthermore, there was no mention of the distribution of weapons in TO's previous statements of 16 October 1997 or 11 June 1997 which were disclosed to the Defence on 4 November 1998 and 30 March 1999 respectively.<sup>13943</sup> The Chamber recalls that in its Decision of 1 September 2006, the Chamber denied the Ndayambaje Defence's motion for exclusion of the testimony of Witness TO. The Chamber stated that it was not satisfied that there was a basis to exclude the concerned testimony at that stage of the proceedings but that the matter may be considered at a later stage.<sup>13944</sup>

5340. At this stage, the Chamber considers that the information regarding Ndayambaje's alleged distribution of weapons in June 1994 amounts to the pleading of new material facts. The Chamber further considers that the Ndayambaje Defence did not have sufficient notice of this allegation to enable the Defence to mount an effective defence. As a result, the Chamber finds that it would unduly prejudice the Accused to consider the evidence of Witness TO on these allegations. Therefore, the Chamber will not make a finding on whether Ndayambaje distributed weapons at the Muganza *commune* office in June 1994. In any event, the Chamber notes that the evidence was not sufficient to prove this allegation beyond a reasonable doubt.

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<sup>13939</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, paras. 62-64, 198.

<sup>13940</sup> *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, para. 198.

<sup>13941</sup> Ndayambaje Closing Brief, para. 59.

<sup>13942</sup> Prosecution Pre-Trial Brief – Appendix; Witness TO (6).

<sup>13943</sup> 16 October 1997, Statement of Witness TO, disclosed 4 November 1998; 11 June 1997, Statement of Witness TO, disclosed 30 March 1999.

<sup>13944</sup> *Ndayambaje et al.*, Decision on Ndayambaje's Motion for Exclusion of Evidence (TC), 1 September 2006, para. 25.

### **3.7.7.4 Weapons Distribution by Soldiers Under the Control of Ndayambaje**

5341. The Ndayambaje Defence contends that Paragraph 6.53 of the Ndayambaje Indictment lacks detail, as it does not specify the main offences or the role played by Ndayambaje in the alleged events. It further submits that the Prosecution presented no evidence that from April to July 1994 some soldiers gave assistance to militiamen by providing them with weapons and that Ndayambaje was responsible under Article 6 (3) for this distribution. Consequently, it asserts that the Chamber must not consider this paragraph in its deliberations and findings.<sup>13945</sup> The Chamber finds that the Ndayambaje Defence did not have timely, clear or consistent notice of this allegation and thus will not make a finding on this allegation.

5342. Paragraph 6.53 of the Indictment alleges that Ndayambaje was responsible under Article 6 (3) for the distribution of weapons to militiamen carried out by soldiers under his command.<sup>13946</sup> If the Prosecution intends to rely on the theory of superior responsibility, the subordinates of the Accused must be sufficiently identified and the criminal conduct of those for whom the Accused is alleged to be responsible must be established.<sup>13947</sup> The Chamber considers that Paragraph 6.53 of the Ndayambaje Indictment is therefore defective. Recalling the principles of notice previously defined in this Judgement (), neither the Prosecution Pre-Trial Brief, nor the Prosecution opening statement refers to soldiers, subordinate to Ndayambaje, distributing weapons to militiamen.

5343. The Prosecution has also failed to lead any evidence on the identities of the soldiers who allegedly distributed weapons or to establish Ndayambaje's responsibility for the acts of these individuals. The Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt that Ndayambaje was responsible under Article 6 (3) for the distribution of weapons to militiamen carried out by soldiers under his command.

## **3.7.8 Weapons Distribution by Nsabimana**

### **3.7.8.1 Introduction**

5344. Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment alleges that from late 1990 until July 1994, military personnel, members of the government, political leaders, civil servants and other personalities conspired among themselves and with others to work out a plan with the intent to exterminate members of the opposition, so that they could remain in power. The components of this plan consisted of among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organised, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutus. Ladislav Ntaganzwa, Pauline Nyiramasuhuko, André Rwamakuba, Sylvain Nsabimana, Alphonse Nteziryayo, Élie Ndayambaje and Shalom Arsène Ntahobali elaborated, adhered to and executed this plan.<sup>13948</sup>

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<sup>13945</sup> Ndayambaje Closing Brief, paras. 68, 973.

<sup>13946</sup> Para. 6.53 of the Ndayambaje Indictment.

<sup>13947</sup> See, e.g., *Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323.

<sup>13948</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo).



5345. The Prosecution alleges that Nsabimana distributed weapons to the *bourgmestres*, his subordinates in the hierarchy of the *préfecture*, to be used in civilian defence. These weapons were used to kill the Tutsi civilian population. The Prosecution submits that in order to facilitate the massacres, Nsabimana personally signed for and distributed 60 guns to the *bourgmestres* of Butare *préfecture* on 16 May 1994, for use in the *communes* in furtherance of the plan to exterminate the Tutsis.<sup>13949</sup> In support of these submissions, the Prosecution relies on the testimony of Prosecution Expert Witness Des Forges and Defence Witnesses SOLO and AND-5.<sup>13950</sup>

5346. In addition to its submissions on defects in the Nteziryayo and Nsabimana Indictment, the Nsabimana Defence submits that the Prosecution has not proven that Nsabimana distributed weapons to an individual or institutions in Butare *préfecture*.<sup>13951</sup> It relies on the testimony of Nsabimana.

### 3.7.8.2 Preliminary Issues

5347. The Nsabimana Defence submits that Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment is unduly vague and fails to specify dates, circumstances and locations of his alleged activities and fails to identify the identities of his alleged subordinates.<sup>13952</sup> The Indictment is therefore defective.

5348. The Nsabimana Defence further submits that Nsabimana is not accused of distributing weapons in Butare *préfecture*. Paragraph 5.13 of the Nsabimana and Nteziryayo Indictment alleges that Nteziryayo, Ndayambaje, Kanyabashi, Ladislas Ntagwanza and others distributed weapons in Butare *préfecture*. No mention is made of Nsabimana's alleged role.<sup>13953</sup> The Chamber will not consider the specific allegation of distribution of weapons in Paragraph 5.13 since it is not listed in support of a count against Nsabimana.

5349. The Chamber notes that the Prosecution's allegation that Nsabimana distributed weapons in Paragraph 5.1 of the Indictment supports the count of conspiracy to commit genocide but it does not specify dates, places, nor identify the people whom Nsabimana is alleged to have distributed weapons. Paragraph 5.1 of the Indictment did not give Nsabimana sufficient information to adequately prepare his defence against the charge of distributing weapons as part of a criminal conspiracy. For these reasons, the Chamber considers that the Nsabimana and Nteziryayo Indictment is defective.

5350. The Chamber will proceed to determine whether this defect was cured. The Prosecution Pre-Trial Brief stated that from April to July 1994, during the course of the massacres, some soldiers gave assistance to militiamen, notably by providing them with logistical support, *i.e.* weapons, transport and fuel. The massacres were the result of a strategy planned, adopted and instigated by Nsabimana and others to destroy and exterminate the Tutsi population.<sup>13954</sup> The

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<sup>13949</sup> Prosecution Closing Brief, p. 262, para. 101; T. 15 November 2006 p. 8; Prosecution Exhibit 125B (Delivery Slip).

<sup>13950</sup> Prosecution Closing Brief, p. 262, paras. 101-102.

<sup>13951</sup> Nsabimana Closing Brief, paras. 1065, 1068-1071.

<sup>13952</sup> Nsabimana Closing Brief, paras. 129-130.

<sup>13953</sup> Nsabimana Closing Brief, para. 1061.

<sup>13954</sup> Prosecution Pre-Trial Brief, para. 28.

Chamber notes that no mention is made of Nsabimana's alleged distribution of weapons in Butare between April and July 1994 in the summaries of anticipated Prosecution witnesses' testimony in the Appendix to the Pre-Trial Brief, or in the Prosecution opening statement.

5351. The Chamber considers that the defect in the Nsabimana and Nteziryayo Indictment was not cured. Nsabimana was not provided with sufficient information regarding the dates, locations and circumstances of his alleged distribution of weapons in Paragraph 5.1 of the Nsabimana and Nteziryayo Indictment. The Chamber will therefore not make any finding regarding this allegation. The Chamber further observes that the Prosecution did not bring any witnesses to support this allegation.

### 3.7.9 Roadblocks – Overview

#### 3.7.9.1 Introduction

5352. All of the Indictments allege that in the hours following the crash of President Habyarimana's plane, military and militiamen set up roadblocks where they checked the identity cards of passers-by and killed or summarily executed those or most of those who were identified as Tutsis. As of the night of 6 to 7 April 1994, in the capital, elements of the Presidential Guard and Para-Commando Battalion set up roadblocks on the major roads, controlling people's movements.<sup>13955</sup>

5353. All of the Indictments further allege that on 27 April 1994, the Interim Government ordered that roadblocks be set up, knowing that the roadblocks were being used to identify the Tutsis and their "accomplices" for the purpose of eliminating them.<sup>13956</sup>

5354. The Prosecution submits that roadblocks were in existence before the assassination of President Habyarimana and were a means of controlling people's movements during a time of conflict.<sup>13957</sup> During the genocide more roadblocks were established, becoming an important tool in the commission of the genocide. They were a means of identifying Tutsis in order to kill them, set up under the auspices and with the authorisation of the authorities under the guise of self-defence. They were manned by a combination of soldiers, *gendarmes*, *Interahamwe*, other militia, *commune* police and civilians.<sup>13958</sup> Trained and armed militia were regularly and routinely positioned by the authorities to search and kill Tutsis.<sup>13959</sup>

5355. The Defence did not make specific submissions on the Prosecution's allegation that Tutsis were targeted and killed at roadblocks in Butare *préfecture*. However, the five Accused

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<sup>13955</sup> Para. 1.26 of each Indictment (not in support of counts); Para. 6.8 of each Indictment (not in support of counts). These two paragraphs were not pled in support of counts, and therefore, the Chamber will not make factual findings as to whether such events were proven. However, these paragraphs provide context for the Indictment paragraphs that were pled in support of counts regarding conduct of the Accused related to roadblocks in Butare *préfecture*.

<sup>13956</sup> Para. 6.15 of all the Indictments (not in support of counts).

<sup>13957</sup> Prosecution Closing Brief, p. 91, para. 212.

<sup>13958</sup> Prosecution Closing Brief, p. 92, para. 212; p. 166, para. 30; p. 259, para. 93; p. 318, para. 45; p. 401, para. 57; p. 462, para. 47; Prosecution Closing Argument, T. 20 April 2009 pp. 9, 21, 58.

<sup>13959</sup> Prosecution Closing Brief, p. 259, para. 94; p. 401, para. 57.

gave evidence as to the use and purpose of roadblocks.<sup>13960</sup> These will be considered in the evidence section below.

### 3.7.9.2 Preliminary Issues

5356. The Chamber notes that the allegation that the Interim Government ordered that roadblocks be set up on 27 April 1994 knowing that roadblocks were being used to identify and eliminate Tutsis, was not pled in support of counts against any of the Accused. Recalling the principles previously articulated in this Judgement (), the Chamber observes that it cannot base a conviction of the Accused solely on this Paragraph of the Indictment. However, the Chamber will consider this evidence to the extent that it provides context to the events which occurred in Butare *préfecture* during the period at issue and to assess whether genocide was committed. The Chamber specifically addresses in this section the allegation that Tutsis were targeted and killed at roadblocks in Butare *préfecture*.

### 3.7.9.3 Evidence

#### Prosecution Witness FAI

5357. Witness FAI, a Hutu civil servant in 1994<sup>13961</sup> and detainee in Rwanda at the time of his testimony,<sup>13962</sup> testified that roadblocks were set up immediately after 19 April 1994 in his *secteur* to prevent Tutsis from escaping by catching and killing them.<sup>13963</sup> Roadblocks were monitored by the Hutu inhabitants of each *cellule*. Witness FAI testified that at the beginning of the killings, Tutsis passing by roadblocks were systematically killed.<sup>13964</sup>

#### Prosecution Witness QJ

5358. Witness QJ, a Tutsi, testified that to pass through the roadblock, one had to present identity papers.<sup>13965</sup> The witness spoke specifically of the roadblock in front of the Hotel Faucon.<sup>13966</sup> Hutus would be allowed to pass through roadblocks and Tutsis were asked to stand aside and sit on the ground next to the roadblock.<sup>13967</sup> The Tutsis at the roadblock were taken to the Kabutare Forest, behind the Hotel Faucon, and killed.<sup>13968</sup> Later, people were

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<sup>13960</sup> T. 27 September 2005 pp. 8-9, 51-52 (Nyiramasuhuko); T. 29 September 2005 p. 32 (Nyiramasuhuko); T. 12 October 2005 pp. 5-6, 61-62 (Nyiramasuhuko); T. 13 April 2006 pp. 17, 35-39 (Ntahobali); T. 3 May 2006 pp. 17, 26 (Ntahobali); T. 4 July 2007 pp. 57-61 (Nteziryayo); T. 19 November 2008 p. 6 (Ndayambaje); T. 25 November 2008 p. 36 (Ndayambaje).

<sup>13961</sup> T. 31 October 2002 pp. 10-11 (ICS); T. 4 November 2002 p. 35 (ICS); T. 5 November 2002 p. 41 (ICS) (Witness FAI).

<sup>13962</sup> T. 31 October 2002 pp. 71-72, 75-76 (ICS); T. 4 November 2002 pp. 11-12 (ICS) (Witness FAI).

<sup>13963</sup> T. 30 October 2002 p. 101 (ICS) (Witness FAI).

<sup>13964</sup> T. 6 November 2002 p. 10 (Witness FAI).

<sup>13965</sup> T. 8 November 2001 p. 142 (ICS); T. 12 November 2001 p. 14 (Witness QJ).

<sup>13966</sup> T. 8 November 2001 pp. 98, 102-103 (ICS); T. 12 November 2001 pp. 13-14 (Witness QJ).

<sup>13967</sup> T. 12 November 2001 p. 14 (Witness QJ).

<sup>13968</sup> T. 12 November 2001 pp. 14-15; Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma Commune – Genocide Sites).

taken aside and killed just away from the main road.<sup>13969</sup> Other people were taken from the Hotel Faucon roadblock across the street to a University bookshop and killed by soldiers.<sup>13970</sup>

#### Prosecution Witness FAU

5359. Witness FAU, a Hutu farmer detained at the time of his testimony,<sup>13971</sup> testified that roadblocks were erected in his area immediately following the death of President Habyarimana.<sup>13972</sup> Witness FAU participated in patrols and worked at a roadblock. Witness FAU was told to check identity cards; if someone did not have an identity card, they were taken for an *Inyenzi* and were to be killed. He averred that *Inyenzi* meant Tutsi.<sup>13973</sup>

#### Prosecution Witness QCB

5360. Witness QCB, a Hutu driver in 1994 and detained witness at the time of testimony,<sup>13974</sup> testified that all the roadblocks that he knew about were set up on the night of 20-21 April 1994.<sup>13975</sup> He testified to a roadblock at the house of Amanda Rugira.<sup>13976</sup> The *Interahamwe* and two soldiers armed with knives and Kalashnikov guns manned the roadblock.<sup>13977</sup> *Interahamwe* were checking people's identity cards to determine whether they were Tutsis or Hutus, detaining the Tutsis and allowing the Hutus to move on towards town.<sup>13978</sup> A woman was asked to produce her identification card, and did so reluctantly; she was killed with knives.<sup>13979</sup>

5361. Witness QCB also testified as to a roadblock located in front of the home of Maurice Ntahobali.<sup>13980</sup> Witness QCB arrived at this roadblock in the morning of 21 April 1994 with Léopold Ruvurajabo, a Tutsi.<sup>13981</sup> He testified as to the killing of Ruvurajabo. He said *Interahamwe* asked Ruvurajabo, who was a Tutsi, for his identification, but he refused to provide it. The *Interahamwe* told Ruvurajabo to step aside at a nearby school. He again refused and was then ordered to be killed.<sup>13982</sup>

#### Prosecution Witness FAK

5362. Witness FAK, a Hutu farmer and detained witness at the time of testimony,<sup>13983</sup> testified that his *conseiller de secteur* ordered roadblocks be set up after 6 April 1994.<sup>13984</sup> The

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<sup>13969</sup> T. 12 November 2001 pp. 15-16 (Witness QJ).

<sup>13970</sup> T. 12 November 2001 pp. 16-17, 23-24 (Witness QJ).

<sup>13971</sup> T. 8 March 2004 pp. 84-85 (ICS) (Witness FAU); Prosecution Exhibit 85 (Personal Particulars).

<sup>13972</sup> T. 9 March 2004 p. 66 (Witness FAU).

<sup>13973</sup> T. 4 March 2004 p. 65 (Witness FAU).

<sup>13974</sup> T. 20 March 2002 pp. 34, 36-37 (Witness QCB); Prosecution Exhibit 52 (Personal Particulars).

<sup>13975</sup> T. 25 March 2002 pp. 34, 36 (Witness QCB).

<sup>13976</sup> T. 20 March 2002 pp. 58-59 (Witness QCB).

<sup>13977</sup> T. 20 March 2002 p. 57 (Witness QCB).

<sup>13978</sup> T. 20 March 2002 p. 59 (Witness QCB).

<sup>13979</sup> T. 20 March 2002 p. 57 (Witness QCB).

<sup>13980</sup> T. 20 March 2002 p. 60 (Witness QCB).

<sup>13981</sup> T. 20 March 2002 p. 61 (Witness QCB).

<sup>13982</sup> T. 20 March 2002 pp. 61-62, 65-66 (Witness QCB).

<sup>13983</sup> T. 14 April 2004 p. 54 (Witness FAK); Prosecution Exhibit 103 (Personal Particulars).

<sup>13984</sup> T. 14 April 2004 p. 13; T. 14 April 2004 p. 14 (ICS) (Witness FAK).

witness manned two roadblocks in his *secteur*.<sup>13985</sup> The man in charge of one roadblock gave instructions that the roadblock was set up for the purpose of checking the *Inkotanyi* so that they would not enter the *commune*.<sup>13986</sup> The witness and others were later made to understand that *Inkotanyi* were Tutsis.<sup>13987</sup> People checked identity cards, which were used to identify the “*Inkotanyi*”, as the cards bore the ethnic origin of the individual; if the identity card read Tutsi, the Tutsis were to be killed.<sup>13988</sup> Roadblocks were manned by Hutu civilians.<sup>13989</sup> On the evening of 19 April 1994, some people brought a Tutsi couple to the roadblock and killed them; they were buried down the hill from the roadblock.<sup>13990</sup>

5363. After a meeting in Kibayi *commune* at a football field, Witness FAK went to a roadblock with Augustin Rwabuhungu and one Laurent, where they encountered the *conseiller de secteur*.<sup>13991</sup> Augustin said that he had a Tutsi girl in his home and the *conseiller* directed that she be brought to the roadblock. Witness FAK testified that they then killed the Tutsi girl with a club.<sup>13992</sup> The Tutsi woman had a child with her, who was killed by Rwabuhungu on the same day.<sup>13993</sup>

#### Prosecution Witness QBV

5364. Witness QBV, a Hutu farmer and detained witness at the time of testimony,<sup>13994</sup> testified that every civilian pedestrian or motorist would be checked at the roadblocks for firearms and verification of ethnicity by checking their identification cards. If the civilian was a Tutsi, he would be asked to step aside and be reported to the *conseiller*.<sup>13995</sup>

#### Prosecution Witness TB

5365. Witness TB, a Tutsi teacher, testified that she saw a roadblock located on the road that went to the school centre in front of what is called *économat* [bursary] near the Catholic cathedral of Butare, where people were killed with traditional weapons.<sup>13996</sup>

#### Nsabimana Defence Witness TWW

5366. Witness TWW, a Hutu, testified that the authorities decided to set up roadblocks in order to maintain the peace and safety within the population.<sup>13997</sup> He stated that in 1994, identity cards displayed a person’s ethnic identity. Witness TWW did not see if identity cards

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<sup>13985</sup> T. 14 April 2004 p. 15 (ICS); T. 14 April 2004 pp. 66-67 (Witness FAK).

<sup>13986</sup> T. 14 April 2004 p. 15 (ICS); T. 14 April 2004 pp. 16-17; T. 15 April 2004 p. 6 (Witness FAK).

<sup>13987</sup> T. 14 April 2004 p. 16; T. 15 April 2004 p. 6 (Witness FAK).

<sup>13988</sup> T. 14 April 2004 p. 16 (Witness FAK).

<sup>13989</sup> T. 14 April 2004 p. 66 (Witness FAK).

<sup>13990</sup> T. 14 April 2004 pp. 16-17 (Witness FAK).

<sup>13991</sup> T. 14 April 2004 p. 29 (ICS) (Witness FAK).

<sup>13992</sup> T. 14 April 2004 pp. 30, 32 (ICS); T. 14 April 2004 pp. 66-67 (Witness FAK).

<sup>13993</sup> T. 14 April 2004 p. 32 (ICS) (Witness FAK).

<sup>13994</sup> T. 14 March 2002 p. 10 (Witness QBV); Prosecution Exhibit 51 (Personal Particulars).

<sup>13995</sup> T. 20 March 2002 pp. 8-9 (Witness QBV).

<sup>13996</sup> T. 4 February 2004 pp. 53-54 (Witness TB); T. 4 February 2004 p. 56 (Witness TB) (French) (for the spelling of “*économat*”).

<sup>13997</sup> T. 11 July 2006 p. 44 (ICS) (Witness TWW).

were checked at roadblocks; he was not asked to show his. The witness did not know if Tutsis were crossing roadblocks.<sup>13998</sup>

Nsabimana Defence Witness SOLO

5367. Witness SOLO, a Hutu judicial police inspector in 1994,<sup>13999</sup> testified that there were roadblocks in Rusatiro *commune*; at each of the roadblocks, he was made to show his identity card, without knowing the reason for it, after which he was ordered to go on his way.<sup>14000</sup>

Nsabimana Defence Witness Patrick Fergal Keane

5368. Patrick Fergal Keane, a journalist for the BBC,<sup>14001</sup> testified that he saw people checking for identity cards at the roadblocks, and remembered being told by the people at the roadblocks that they were checking for infiltrators who could be men, women or children.<sup>14002</sup> Referring to a video, Keane described what he saw as a soldier of the Rwandan army checking the identities of the people in a mini-bus, and a prisoner standing beside the soldier, wearing a pink uniform.<sup>14003</sup> From his experience of roadblocks in Rwanda, the witness said that people were stopped at the roadblocks to ascertain their identity.<sup>14004</sup> Keane testified that the people at the roadblocks spoke about their fear that they were going to be colonised by the Tutsis again; one man said he did not feel the Tutsis regarded them as human beings. This was the general tenor of what the people said at the roadblocks.<sup>14005</sup> Keane said that in the interview, the young man who worked at the roadblock used the phrase “*Inyenzi*”, which they were led to understand referred to cockroaches, a term used to reflect Tutsis.<sup>14006</sup> He understood the word *Inyenzi* meant cockroach and was applied to RPF soldiers or Tutsi civilians and Tutsi as an ethnic group in 1994.<sup>14007</sup>

Nsabimana Defence Witness Charles Karemano

5369. Charles Karemano, the National Secretary of the PSD in 1994 and a Hutu, testified that he was in Kigali in April 1994.<sup>14008</sup> At the time of the attack on the President, the *préfet* of Kigali, the RTL, and the Interim Government, were all asking the population to come out onto the streets to set up roadblocks.<sup>14009</sup> On 7 April 1994, neighbours asked him to man the roadblocks and check on the passage of enemies or traitors.<sup>14010</sup> Everyone was obliged to go, without exception, unless one was part of the enemy.<sup>14011</sup> He was allowed to leave the roadblock around 9 April 1994 as he felt sick from the images of dead bodies and parts of cut-

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<sup>13998</sup> T. 12 July 2006 pp. 19-20 (Witness TW).  
<sup>13999</sup> T. 5 July 2006 p. 31 (ICS) (Witness SOLO).

<sup>14000</sup> T. 5 July 2006 pp. 35-36 (ICS) (Witness SOLO).  
<sup>14001</sup> T. 25 September 2006 p. 7 (Keane).

<sup>14002</sup> T. 28 September 2006 pp. 27-28 (Keane).  
<sup>14003</sup> T. 25 September 2006 pp. 23-24 (Keane).

<sup>14004</sup> T. 25 September 2006 p. 26 (Keane).  
<sup>14005</sup> T. 25 September 2006 p. 33 (Keane).

<sup>14006</sup> T. 27 September 2006 pp. 74-75, 77 (Keane); Defence Exhibit 474B (Nsabimana) (Transcript of Interview).  
<sup>14007</sup> T. 27 September 2006 p. 78 (Keane).

<sup>14008</sup> T. 21 August 2006 p. 23 (Karemano).  
<sup>14009</sup> T. 24 August 2006 p. 66 (Karemano).

<sup>14010</sup> T. 21 August 2006 p. 31; T. 23 August 2006 p. 57 (ICS) (Karemano).  
<sup>14011</sup> T. 21 August 2006 p. 31 (Karemano).

up bodies which were piled up on the road.<sup>14012</sup> He assumed that these bodies were not killed by the RPF, because the bodies were exposed in an area that had not yet been conquered by the RPF.<sup>14013</sup>

5370. Karemano testified that the killings in Butare and Cyarwa began in April 1994. Soldiers began the killings and invited people to loot houses.<sup>14014</sup> The leaders of the roadblocks instigated killings, there were no guidelines provided by the political authorities. The Cyarwa *conseiller de secteur*, Nicodeme, even told the witness that he was manhandled at roadblocks. After 19 April 1994, those manning the roadblocks were civilians.<sup>14015</sup>

5371. Karemano testified that between 18 April 1994 and 3 July 1994 he went to Mbazi, Ngoma and Ruhashya *communes*.<sup>14016</sup> At roadblocks, identity cards were often requested; the witness thought that one's physical features and the information on the card would determine whether one was allowed to pass or not.<sup>14017</sup> He was able to move around because he had papers indicating he was Hutu and his facial features made him recognisable as a Hutu.<sup>14018</sup> In addition to an identity card, it was advisable to hold a *laissez-passer* to present at roadblocks authorising movement between *communes*.<sup>14019</sup> In normal times this document could be obtained from the *commune* or *bourgmestre*, but in those times possibly even a commander could issue them.<sup>14020</sup> He went to the *préfecture* to ask for one, but was not issued one.<sup>14021</sup>

5372. Nevertheless, a *laissez-passer* did not necessarily ensure safe passage or that one would not be killed, mistreated or threatened; some people who had documents were stopped and killed, whereas some people who did not have any papers were not affected by any violence. However it was thought to be better to have documents than not to have them.<sup>14022</sup>

5373. In general, those manning the roadblocks were bandits and people escaping from justice.<sup>14023</sup> Those manning the roadblocks were taking power into their own hands and were not people appointed by the *bourgmestre*, *préfet* or *secteur*.<sup>14024</sup> Karemano was also stopped at roadblocks and asked to show his identity card. The witness saw people stopped at other roadblocks.<sup>14025</sup>

5374. Karemano testified that generally the technique at roadblocks was not to kill; leaders of the roadblocks decided that the people to be killed would be taken elsewhere.<sup>14026</sup> The official

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<sup>14012</sup> T. 23 August 2006 pp. 51-53 (Karemano).

<sup>14013</sup> T. 23 August 2006 p. 69 (Karemano).

<sup>14014</sup> T. 22 August 2006 p. 16 (Karemano).

<sup>14015</sup> T. 22 August 2006 p. 19 (Karemano).

<sup>14016</sup> T. 24 August 2006 p. 78 (Karemano).

<sup>14017</sup> T. 24 August 2006 pp. 78-79 (Karemano).

<sup>14018</sup> T. 25 August 2006 p. 44 (Karemano).

<sup>14019</sup> T. 24 August 2006 pp. 78-79 (Karemano).

<sup>14020</sup> T. 24 August 2006 p. 79; T. 25 August 2006 p. 43 (Karemano).

<sup>14021</sup> T. 24 August 2006 p. 79 (Karemano).

<sup>14022</sup> T. 25 August 2006 pp. 43-44 (Karemano).

<sup>14023</sup> T. 21 August 2006 pp. 53-54 (Karemano).

<sup>14024</sup> T. 22 August 2006 p. 14 (Karemano).

<sup>14025</sup> T. 21 August 2006 p. 54 (Karemano).

<sup>14026</sup> T. 22 August 2006 p. 15 (Karemano).

reason that people would go to roadblocks, was to stop the enemy from infiltrating the population, although other people went there to kill and then loot the person's house.<sup>14027</sup>

5375. Karemano testified that there was a meeting at the University around mid-May 1994 chaired by Prime Minister Kambanda at which academics made heinous speeches saying that Tutsis and, in particular, Tutsi university lecturers should be shot down.<sup>14028</sup> By mid-May 1994, Tutsi professors Karenzi and Rumiya and many others had already been killed.<sup>14029</sup> A professor named Gaetan, whom people considered to be Tutsi, was also killed; to his knowledge all the Tutsi lecturers of the university who were in Butare on the campus, were killed immediately after 19 April 1994.<sup>14030</sup>

#### Nsabimana Defence Witness BE

5376. Witness BE, a student at the *Groupe Scolaire* in 1994 and a Hutu,<sup>14031</sup> testified that he passed through roadblocks at Rango and Nkubi manned by civilians; since the people manning these roadblocks knew him well, they let him through.<sup>14032</sup> Local people went to roadblocks at night to carry out night patrols; the witness did not see people of Tutsi ethnicity arrested, killed or mistreated at those roadblocks.<sup>14033</sup>

#### Nsabimana Defence Witness Alexandre Bararwandika

5377. Alexandre Bararwandika, a Hutu doctor from Burundi, testified that, officially, roadblocks were set up to prevent infiltration of the RPF fighters.<sup>14034</sup> He could not refute that unofficially the roadblocks were used to determine ethnicity.<sup>14035</sup> Bararwandika saw the corpse of a man next to a roadblock behind the MSM garage near a mechanic shop, and the corpses of four women in the compound of the primary school.<sup>14036</sup> The witness also saw people arrested at the roadblocks.<sup>14037</sup>

5378. Bararwandika presented his UNHCR identification card at the roadblocks; he said it was likely that the fact that his identity card indicated his nationality as Burundian satisfied the people at the roadblocks that his ethnicity was Hutu, as most Burundian refugees in Rwanda were Hutus. The witness testified that Rwandans had to show identity cards that displayed their ethnicity, which were asked for at the roadblocks.<sup>14038</sup> Mere mention of one's ethnicity was not enough because, officially, the checks were intended to limit the infiltration of the RPF combatants.<sup>14039</sup>

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<sup>14027</sup> T. 22 August 2006 pp. 15-16 (Karemano).

<sup>14028</sup> T. 5 September 2006 pp. 52-53 (Karemano).

<sup>14029</sup> T. 5 September 2006 p. 53 (Karemano).

<sup>14030</sup> T. 5 September 2006 p. 54 (Karemano).

<sup>14031</sup> T. 11 July 2006 p. 65 (ICS) (Witness BE).

<sup>14032</sup> T. 10 July 2006 p. 38 (ICS) (Witness BE).

<sup>14033</sup> T. 10 July 2006 p. 67 (ICS) (Witness BE).

<sup>14034</sup> T. 3 July 2006 p. 45; T. 4 July 2006 pp. 56-57 (Bararwandika).

<sup>14035</sup> T. 4 July 2006 p. 57 (Bararwandika).

<sup>14036</sup> T. 3 July 2006 pp. 46-47, 52; T. 5 July 2006 p. 14 (Bararwandika).

<sup>14037</sup> T. 3 July 2006 p. 47 (Bararwandika).

<sup>14038</sup> T. 4 July 2006 p. 56 (Bararwandika).

<sup>14039</sup> T. 4 July 2006 pp. 56-57 (Bararwandika).



5379. The witness transported four Tutsi children from Rango and was worried about how to get them across roadblocks. He went to see the *bourgmestre* who gave him completed identification papers. The secret at the roadblocks was to mention that the children he was evacuating were Hutus, and the strategy worked. In another case this strategy did not work because the person involved was killed before the witness could supply identification papers.<sup>14040</sup>

Nyiramasuhuko Defence Witness Céline Nyiraneza

5380. Céline Nyiraneza, Ntahobali's aunt and Nyiramasuhuko's sister,<sup>14041</sup> testified that she went to Butare town a few days after the assassination of the President and stayed at the Hotel Ihuliro, crossing two roadblocks on the way. The first was located in front of Hotel Faucon and the second in front of the Rector's office. Two young people in civilian attire manned the roadblocks. When her vehicle got to the roadblock, it came to a stop. The witness was with her three children and another child, a niece of her husband. Those manning the roadblock asked people above 16 years of age to show their identity card. She was asked for her identification in order to determine whether the names of the children appeared in the identity card and ensure that the children who accompanied her were her own.<sup>14042</sup> Nyiraneza testified that she and her eldest child had their identity cards, however, her two younger children did not and were therefore characterised as being accomplices. They were still able to get to the Hotel Ihuliro.<sup>14043</sup>

Nyiramasuhuko Defence Witness Maurice Ntahobali

5381. Maurice Ntahobali, Nyiramasuhuko's husband, Ntahobali's father and Rector of Rwandan National University,<sup>14044</sup> testified that people were stopped at roadblocks; they were identified in order to determine whether they lived within the area and needed to go through the roadblock in order to get to their homes.<sup>14045</sup> Ntahobali was aware that one of his friends, Professor Pierre Claver Karenzi, was murdered in April 1994 in Butare. He heard of this crime a few days after it occurred.<sup>14046</sup>

Nyiramasuhuko Defence Witness CEM

5382. Witness CEM, a Hutu teacher,<sup>14047</sup> testified that she did not know the ethnicity of the people who manned the roadblocks.<sup>14048</sup> The witness stated that roadblocks were not erected to kill people; when one got to a roadblock one was asked to present identification papers and were then allowed to go.<sup>14049</sup> She said she never saw anybody killed near a roadblock, and never witnessed anybody killed during the day.<sup>14050</sup> The witness testified that she knew that

<sup>14040</sup> T. 4 July 2006 p. 45 (Bararwandika).

<sup>14041</sup> T. 23 February 2005 p. 72 (Céline Nyiraneza).

<sup>14042</sup> T. 24 February 2005 p. 34 (Céline Nyiraneza).

<sup>14043</sup> T. 24 February 2005 p. 35 (Céline Nyiraneza).

<sup>14044</sup> T. 12 September 2005 pp. 16, 47 (Maurice Ntahobali).

<sup>14045</sup> T. 16 September 2005 p. 83 (Maurice Ntahobali).

<sup>14046</sup> T. 16 September 2005 p. 73 (Maurice Ntahobali).

<sup>14047</sup> T. 14 February 2005 p. 19 (Witness CEM).

<sup>14048</sup> T. 15 February 2005 pp. 34-35 (Witness CEM).

<sup>14049</sup> T. 15 February 2005 p. 35 (Witness CEM).

<sup>14050</sup> T. 15 February 2005 p. 34 (Witness CEM).

both Hutus and Tutsis were killed in May 1994.<sup>14051</sup> At the Hotel Faucon and EER roadblocks, she presented her identity card when asked and it was given back to her and she went on her way.<sup>14052</sup> Everyone who passed the roadblock was asked to stop and show their identity card.<sup>14053</sup> She said that when one presented an identity card, it was checked and handed back.<sup>14054</sup> She agreed ethnicity was indicated on identity cards.<sup>14055</sup>

Nyiramasuhuko Defence Witness WZNA

5383. Witness WZNA, a Hutu factory worker,<sup>14056</sup> testified that she had to go through various roadblocks to get to her place of work, including Mukoni, one near the University laboratory, one near the Rector's office, at Hotel Faucon and Rwabuye. At all the roadblocks the situation was the same; the soldiers manning the roadblock asked for identity papers and then let the vehicle through.<sup>14057</sup>

Nyiramasuhuko Defence Witness WKNKI

5384. Witness WKNKI, a Hutu trader, testified that towards the end of May 1994 roadblocks were mounted throughout the country, and there was at least one in each *secteur*. They were mounted as part of the civil defence operation in order to check infiltrations.<sup>14058</sup> Witness WKNKI manned a roadblock; they were not intended to prevent people from fleeing. They checked for infiltrators by asking for identity cards; roadblocks aimed to find out who was coming from out of the country and attacking Rwanda, not to single out Tutsis.<sup>14059</sup>

Ntahobali Defence Witness WKNMJ

5385. Witness WKNMJ, a Hutu farmer, testified that she saw roadblocks at Mukoni, near the University and at the IPN (National Pedagogic Institute). Identification cards were checked at roadblocks. She agreed that her identity card bore her ethnicity. She said soldiers were present at the roadblocks and she saw no dead bodies near the roadblocks.<sup>14060</sup>

Ntahobali Defence Witness WCNMC

5386. Witness WCNMC, a Hutu student in 1994, testified that when she got to a particular roadblock, people would be stopped, show their identity card and then be allowed to continue.<sup>14061</sup> One morning, when she was on her way to Butare, she saw three people being arrested at the Mukoni roadblock for not having any identity cards but she did not witness any

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<sup>14051</sup> T. 15 February 2005 pp. 15-16 (Witness CEM).

<sup>14052</sup> T. 14 February 2005 pp. 43, 48 (Witness CEM).

<sup>14053</sup> T. 15 February 2005 p. 12 (Witness CEM).

<sup>14054</sup> T. 14 February 2005 p. 45 (Witness CEM).

<sup>14055</sup> T. 15 February 2005 p. 12 (Witness CEM).

<sup>14056</sup> T. 4 April 2005 pp. 43-44 (ICS); T. 5 April 2005 p. 24 (ICS) (Witness WZNA).

<sup>14057</sup> T. 4 April 2005 pp. 48-50 (Witness WZNA).

<sup>14058</sup> T. 2 March 2005 pp. 5-6 (Witness WKNKI).

<sup>14059</sup> T. 2 March 2005 pp. 60-61 (Witness WKNKI).

<sup>14060</sup> T. 29 November 2005 pp. 6-7 (ICS) (Witness WKNMJ).

<sup>14061</sup> T. 29 November 2005 pp. 35, 37 (Witness WCNMC).

killings at the roadblocks.<sup>14062</sup> She confirmed that her ethnicity was indicated on her identity card and that she was allowed to pass through the roadblocks.<sup>14063</sup>

#### Ntahobali Defence Witness WUNBJ

5387. Witness WUNBJ, a *préfecture* employee, manned a roadblock in his *cellule*; between April and July 1994 all able-bodied men were expected to man roadblocks.<sup>14064</sup> Witness WUNBJ was told that the enemy was the RPF, who carried guns. As such, the witness, with others, checked those carrying luggage to see if they carried guns because the RPF infiltrated the members of the population who were fleeing.<sup>14065</sup> He did not see any RPF carrying firearms at the roadblock, nor did they ever arrest anyone.<sup>14066</sup>

5388. Witness WUNBJ stated that the second page of identity cards showed a photograph of the bearer under which was the bearer's ethnic origin, Tutsi, Parmehutu or Twa.<sup>14067</sup> One's ethnic group was clearly visible under the photo, and not hidden.<sup>14068</sup> Witness WUNBJ testified that he never witnessed any killings or crimes at roadblocks.<sup>14069</sup> At roadblocks manned by civilians, people who did not carry bags or luggage could pass through without being checked. He did not ask people without luggage to show identity cards. He explained that people were only asked to present their identity cards at roadblocks manned by soldiers.<sup>14070</sup> The witness testified that if people did not have identity papers, they could also provide their professional service card, and if they were simple peasants, they could provide an authorisation or paper given by the *conseiller de secteur*.<sup>14071</sup> People who went through roadblocks were questioned as to where they came from and where they were going, their cars and bicycles were searched and people's possessions were unloaded and checked.<sup>14072</sup>

#### Ntahobali Defence Witness H1B6

5389. Witness H1B6, a Hutu student at the National University in 1994, testified that they were asked to show their identity cards at the roadblocks. They produced their student cards, which did not contain any reference to their ethnic origin, and were allowed to pass. He did not see people sitting or killed, and did not see any blood at the roadblocks.<sup>14073</sup>

#### Ntahobali Defence Witness WCMNA

5390. Witness WCMNA, a Hutu, testified that he heard that during April to June 1994 in Butare, Tutsis and persons who were unable to show their identification papers at the

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<sup>14062</sup> T. 29 November 2005 pp. 37-38 (Witness WCNMC).

<sup>14063</sup> T. 29 November 2005 pp. 38, 55 (Witness WCNMC).

<sup>14064</sup> T. 5 April 2006 p. 42 (ICS) (Witness WUNBJ).

<sup>14065</sup> T. 5 April 2006 p. 43 (ICS) (Witness WUNBJ).

<sup>14066</sup> T. 5 April 2006 p. 66 (ICS) (Witness WUNBJ).

<sup>14067</sup> T. 8 March 2006 p. 24 (ICS) (Witness WUNBJ).

<sup>14068</sup> T. 5 April 2006 p. 41 (ICS) (Witness WUNBJ).

<sup>14069</sup> T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>14070</sup> T. 5 April 2006 p. 43 (ICS) (Witness WUNBJ).

<sup>14071</sup> T. 8 March 2006 pp. 24, 28 (ICS) (Witness WUNBJ).

<sup>14072</sup> T. 8 March 2006 p. 22 (ICS) (Witness WUNBJ).

<sup>14073</sup> T. 1 December 2005 p. 57 (ICS) (Witness H1B6).

roadblocks were killed by Hutus.<sup>14074</sup> He did not see anyone being killed at a roadblock in Butare between April and July 1994.<sup>14075</sup> Towards the beginning of June 1994, other roadblocks were mounted in Butare town, due to the massive influx of persons displaced by the war, which rendered it necessary to see if there were infiltrators among the displaced persons.<sup>14076</sup> At the time it was considered that since the infiltrators were alleged to have come from outside the country, they therefore would not have identity papers, and those who came to roadblocks without Rwandan or internationally-recognised identity papers could be the enemy. In general, people with papers were able to pass roadblocks, but that was not always the case.<sup>14077</sup>

#### Ntahobali Defence Witness WCKJ

5391. Witness WCKJ, a Hutu trainer at the CFP in 1994, often passed the roadblocks at Kangoma, *Groupe Scolaire* and the one in front of Hotel Faucon; each time he went through the roadblock near the Hotel Faucon he was asked to provide his identity card.<sup>14078</sup> He stated that when a person passed a roadblock, the person was asked to show his papers and if the person was carrying a bag, their bag was checked, and then the person continued on his way.<sup>14079</sup> Although he heard people saying so, he never saw anyone killed at those roadblocks, or dead bodies, although he did not know if people were killed at the roadblock and then moved.<sup>14080</sup>

#### Nteziryayo Defence Witness AND-72

5392. Witness AND-72, a Hutu government official, testified that the population agreed to set up roadblocks in order to make sure that no one, or rather no RPF soldiers, would infiltrate the *commune*, and in order to ensure security in the different *secteurs* of the *commune*.<sup>14081</sup> Persons in charge of roadblocks were instructed to check foreigners who intended to enter the *secteur*, inspect their identity cards, arrest wrong-doers and hand them over to the *commune* authorities.<sup>14082</sup> *Commune* security ordered the *conseiller* to set up roadblocks.<sup>14083</sup> Identity cards were checked at roadblocks in order to determine the persons' ethnic origin. Civilians, including women and children, were killed at the roadblocks.<sup>14084</sup>

#### Nteziryayo Defence Witness AND-60

5393. Witness AND-60, a Hutu accountant in 1994, stated that he went through a roadblock in Mamba *secteur*, but was not required to show his identity card as the persons manning the

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<sup>14074</sup> T. 21 February 2006 p. 65 (ICS) (Witness WCMNA).

<sup>14075</sup> T. 21 February 2006 p. 66 (ICS) (Witness WCMNA).

<sup>14076</sup> T. 21 February 2006 pp. 24-25 (ICS); T. 22 February 2006 p. 16 (Witness WCMNA).

<sup>14077</sup> T. 22 February 2006 pp. 16-17 (Witness WCMNA).

<sup>14078</sup> T. 31 January 2006 p. 61 (Witness WCKJ).

<sup>14079</sup> T. 31 January 2006 p. 22 (Witness WCKJ).

<sup>14080</sup> T. 31 January 2006 p. 61 (Witness WCKJ).

<sup>14081</sup> T. 6 December 2006 p. 13 (ICS) (Witness AND-72).

<sup>14082</sup> T. 6 December 2006 p. 14 (ICS) (Witness AND-72).

<sup>14083</sup> T. 6 December 2006 p. 37 (ICS) (Witness AND-72).

<sup>14084</sup> T. 6 December 2006 p. 36 (ICS) (Witness AND-72).

roadblock knew him. Only unknown persons or those carrying goods were asked to show their identity cards.<sup>14085</sup>

#### Nteziryayo Defence Witness AND-53

5394. Witness AND-53, a Hutu farmer, testified that civilians armed with sticks manned the roadblock at Kanga Junction.<sup>14086</sup> A roadblock was set up there to monitor the passage of persons who did not have identity cards, to make sure those passing were not RPF troops. If people refused to show their identification papers, those manning the roadblocks were to blow whistles to alert the population to come to their rescue. At no time did RPF soldiers pass by.<sup>14087</sup> He testified he never heard that people had been killed at the roadblock.<sup>14088</sup>

#### Nteziryayo Defence Witness AND-30

5395. Witness AND-30, a Hutu teacher, testified that people thought the RPF was about to invade Ndora *commune* and in the aftermath roadblocks were set up to identify those who passed through their *commune*.<sup>14089</sup> He heard that those who manned the roadblocks examined identity cards and baggage to identify who was an enemy or an accomplice of the enemy. The roadblocks had to be manned by men from the *commune*, and they were manned 24 hours a day.<sup>14090</sup> He never saw or heard that people had been killed at a roadblock in his area.<sup>14091</sup>

#### Nteziryayo Defence Witness AND-16

5396. Witness AND-16, a Hutu trader, testified that a roadblock erected at Sakindi on 22 April 1994, was intended to stop members of the population from fleeing. In the evening he saw corpses at the roadblock and learned that the roadblock was erected to control the migration of displaced persons.<sup>14092</sup> He was told that Semunkima and Kagewje had stopped the people and killed them after having asked them to show their identification cards.<sup>14093</sup>

5397. On 22 April 1994 about seven Tutsi women and girls who had escaped an attack sought refuge in his house. He said that members of their families had been killed and their houses had been destroyed. When those women wanted to flee towards the Mugogwe *secteur*, they were prevented from crossing the roadblock.<sup>14094</sup>

#### Kanyabashi Defence Expert Witness Filip Reyntjens

5398. Filip Reyntjens was referred to the minutes of a Security Council meeting of 20 April 1994 which provided that: “People who do not have identity papers or identification papers

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<sup>14085</sup> T. 14 March 2007 pp. 43-44 (Witness AND-60).

<sup>14086</sup> T. 15 February 2007 pp. 66-67 (Witness AND-53).

<sup>14087</sup> T. 19 February 2007 p. 5 (Witness AND-53).

<sup>14088</sup> T. 15 February 2007 p. 67 (Witness AND-53).

<sup>14089</sup> T. 27 February 2007 pp. 12-13 (Witness AND-30).

<sup>14090</sup> T. 27 February 2007 p. 13 (Witness AND-30).

<sup>14091</sup> T. 27 February 2007 p. 12 (Witness AND-30).

<sup>14092</sup> T. 25 January 2007 p. 32 (ICS) (Witness AND-16).

<sup>14093</sup> T. 25 January 2007 p. 33 (ICS) (Witness AND-16).

<sup>14094</sup> T. 23 January 2007 p. 62 (ICS) (Witness AND-16).

should be careful so that no one should suffer injustice.”<sup>14095</sup> He was further shown a passage from Des Forges’ Report that read “[r]ecognizing that all those who did not have identification papers ran the risk of being killed, participants [of the 20 April 1994 Security Council meeting] declared that it was, indeed, necessary to make sure that ‘innocent people do not become victims as well’, no doubt meaning those Hutu who had fled their homes without the necessary documents”.<sup>14096</sup> When asked about Des Forges’ interpretation, Reyntjens remarked that while Des Forges referred to “innocent people”, the text of the Security Council meeting said that “no one”, not only innocent people, should suffer injustice [at roadblocks].<sup>14097</sup> Reyntjens testified that most of the time people were not handed over to authorities but were killed on the spot.<sup>14098</sup>

#### Kanyabashi Defence Witness D-2-YYYY

5399. Witness D-2-YYYY, a Hutu civil servant,<sup>14099</sup> stated that he had to pass through a given roadblock each time he went to and from work.<sup>14100</sup> Each time he had to produce his identification because those manning the roadblock said that *Inyenzi* could disguise themselves dressing in a similar manner.<sup>14101</sup> At the Hotel Faucon roadblock he saw the body of the university lecturer, Karenzi.<sup>14102</sup>

#### Kanyabashi Defence Witness D-2-20-F

5400. Witness D-2-20-F, a Hutu cook at *Groupe Scolaire*, testified that around 14 or 15 May 1994, 13 Hutu persons were arrested for having perpetrated killings against Tutsis. He saw people with firearms, bows, arrows and spears arresting his elder brother and taking him away. The witness said the *conseiller* tried to bring the arrested persons to the authorities, but soldiers intervened and shot the persons down at the roadblock at the University Laboratory.<sup>14103</sup>

#### Kanyabashi Defence Witness D-2-13-O

5401. Witness D-2-13-O, a Hutu driver in 1994,<sup>14104</sup> testified that Kanyabashi issued a Hutu identity card to his Tutsi wife that enabled them to cross several roadblocks.<sup>14105</sup> At each roadblock the witness was asked to show his identity card and was then allowed to pass.<sup>14106</sup>

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<sup>14095</sup> T. 2 October 2007 p. 39 (Reyntjens); Defence Exhibit 465C (Nsabimana) (Minutes of the Security Council meeting chaired by Nsabimana on 20 April 1994).

<sup>14096</sup> T. 2 October 2007 p. 40 (Reyntjens); Prosecution Exhibit 110A (Des Forges Expert Report) p. 24.

<sup>14097</sup> T. 2 October 2007 p. 41 (Reyntjens).

<sup>14098</sup> T. 21 November 2007 pp. 66-67 (Reyntjens).

<sup>14099</sup> Defence Exhibit 612 (Kanyabashi) (Personal Particulars); T. 26 November 2007 p. 61 (Witness D-2-YYYY).

<sup>14100</sup> T. 28 November 2007 p. 52 (ICS); T. 11 December 2007 p. 12 (ICS) (Witness D-2-YYYY).

<sup>14101</sup> T. 28 November 2007 p. 53 (ICS) (Witness D-2-YYYY).

<sup>14102</sup> T. 28 November 2007 pp. 54-55 (ICS); T. 11 December 2007 pp. 11-12 (ICS) (Witness D-2-YYYY).

<sup>14103</sup> T. 10 March 2008 pp. 68, 70-71 (ICS) (Witness D-2-20-F).

<sup>14104</sup> T. 5 November 2007 pp. 18-19 (ICS) (Witness D-2-13-O); Defence Exhibit 600 (Kanyabashi) (Personal Particulars).

<sup>14105</sup> T. 8 November 2007 p. 26 (ICS) (Witness D-2-13-O); Defence Exhibit 604B (Nsabimana) (8 December 2004, Statement of D-2-13-O).

<sup>14106</sup> T. 5 November 2007 pp. 49-50 (Witness D-2-13-O).

Kanyabashi Defence Witness D-2-13-D

5402. Witness D-2-13-D, a Hutu mechanic, stated that on about 10 April 1994 the *Interahamwe* were at the Butare MSM garage roadblock and asked for his identification papers.<sup>14107</sup> On another occasion, at the Hotel Faucon roadblock, he saw Cassien Nkundumeremye, a *commune* policeman, being asked for his identification. Those at the roadblock checked Cassien's card and gave it back to him but said that he had a wife that was a Tutsi. He also saw other people crossing the roadblocks having their identity documents checked.<sup>14108</sup> Witness D-2-13-D also testified that Jean Semwiza ordered people to set up roadblocks in mid-May in his *secteur*.<sup>14109</sup>

Kanyabashi Defence Witness D-2-11-D

5403. Witness D-2-11-D, a Hutu farmer, testified that he was asked to show his identity card at a roadblock at the Ngoma/Huye *commune* border. The roadblock was manned by about 10 local people from Huye, dressed in civilian attire and armed with firearms.<sup>14110</sup> Those manning the roadblock also had traditional weapons like machetes, swords and bows.<sup>14111</sup>

Kanyabashi Defence Witness D-2-5-I

5404. Witness D-2-5-I, a Hutu civil servant, testified that at the Hotel Faucon roadblock, which was manned by soldiers, he saw the body of university lecturer, Claver Karenzi.<sup>14112</sup> He said it was obvious the soldiers had killed Karenzi. He did not see bodies at this roadblock on other days.<sup>14113</sup>

Kanyabashi Defence Witness D-1-4-O

5405. Witness D-1-4-O, a Hutu working at a health clinic in 1994, testified that while crossing some roadblocks in May 1994, he was required to produce his identification card, while at others he was let through without producing any document or having to answer any questions. Children who accompanied him were allowed to cross without difficulties.<sup>14114</sup>

Kanyabashi Defence Witness D-13-D

5406. Witness D-13-D, a Hutu driver for a government agency, testified that he was let through roadblocks by showing a pass signed by Gatsinzi to the persons manning the roadblock.<sup>14115</sup> He also showed his identity card which identified him as a Hutu.<sup>14116</sup>

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<sup>14107</sup> T. 10 September 2007 p. 23 (ICS) (Witness D-2-13-D).

<sup>14108</sup> T. 30 August 2007 pp. 57-58 (ICS) (Witness D-2-13-D).

<sup>14109</sup> T. 30 August 2007 pp. 54, 56 (ICS) (Witness D-2-13-D).

<sup>14110</sup> T. 23 October 2007 pp. 7-8 (ICS) (Witness D-2-11-D).

<sup>14111</sup> T. 23 October 2007 p. 11 (ICS) (Witness D-2-11-D).

<sup>14112</sup> T. 21 January 2008 p. 34 (ICS); T. 31 January 2008 pp. 10-11 (ICS) (Witness D-2-5-I).

<sup>14113</sup> T. 31 January 2008 p. 11 (ICS) (Witness D-2-5-I).

<sup>14114</sup> T. 8 May 2008 p. 49 (ICS) (Witness D-1-4-O).

<sup>14115</sup> T. 19 February 2008 p. 60; T. 25 February 2008 pp. 12-13 (ICS) (Witness D-13-D).

<sup>14116</sup> T. 25 February 2008 p. 13 (ICS) (Witness D-13-D).

### Nyiramasuhuko

5407. Having regard to Kambanda's instructions of 27 April 1994 concerning the establishment of roadblocks, Nyiramasuhuko testified that the government insisted on officially recognised roadblocks because there was information that some people were taking it upon themselves to mount roadblocks.<sup>14117</sup> Nyiramasuhuko testified that those who were looting or stealing were to be arrested and punished.<sup>14118</sup> Nyiramasuhuko stated that between 20 and 30 April 1994, the Cabinet learned there were killings in Butare *préfecture*.<sup>14119</sup> In June 1994, massacres were gradually coming to an end and there were sporadic killings perpetrated by bandits or infiltrators.<sup>14120</sup> Identity cards were checked because Rwanda was being attacked by the *Inkotanyi* who were coming from Uganda, along with Ugandans, Sudanese, Burundians, and some people from Tanzania; luggage was searched because the RPF carried bullets in their luggage.<sup>14121</sup>

### Ntahobali

5408. Ntahobali testified that roadblocks and night patrols were necessary to search for and keep an eye on foreigners.<sup>14122</sup> At a meeting at Huye Stadium on 26 April 1994, the authorities told the population that acts of violence and killings were perpetrated by thugs, gangsters or hoodlums, who were working for the enemy. Roadblocks were set up to prevent these hoodlums from killing.<sup>14123</sup>

### Nteziryayo

5409. Nteziryayo testified that the main reason for the establishment of civil defence was to protect and defend the population, and not to kill Tutsis.<sup>14124</sup>

### Nsabimana

5410. Nsabimana testified that he closed down several roadblocks erected by civilians. He also urged Colonel Muvunyi to close other unjustified roadblocks but only soldiers could do something at the roadblocks manned by soldiers; a lay-person could not interfere with roadblocks manned by soldiers.<sup>14125</sup>

### Ndayambaje

5411. Ndayambaje testified that RPF propaganda claimed that roadblocks were set up with a view to facilitating massacres, such that any person at a roadblock was regarded as a killer and

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<sup>14117</sup> T. 27 September 2005 p. 9; T. 29 September 2005 p. 32 (Nyiramasuhuko); Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>14118</sup> T. 27 September 2005 pp. 10-12 (Nyiramasuhuko).

<sup>14119</sup> T. 10 October 2005 p. 43 (Nyiramasuhuko).

<sup>14120</sup> T. 10 October 2005 p. 47 (Nyiramasuhuko).

<sup>14121</sup> T. 4 October 2005 p. 31 (Nyiramasuhuko).

<sup>14122</sup> T. 13 April 2006 p. 17 (Ntahobali).

<sup>14123</sup> T. 3 May 2006 pp. 25-26 (Ntahobali).

<sup>14124</sup> T. 27 June 2007 p. 31 (Nteziryayo).

<sup>14125</sup> T. 18 September 2006 pp. 73-74 (Nsabimana).



came to be known as an *Interahamwe*.<sup>14126</sup> He said the mounting of roadblocks was a reflex which had occurred even before 1990, they were not mounted in a bid to attack anyone.<sup>14127</sup>

### 3.7.9.4 Deliberations

#### 3.7.9.4.1 Location of Roadblocks and Presence of Soldiers, *Interahamwe* and Civilians

5412. The Parties agreed as to the existence of roadblocks in Butare *préfecture* during the period in question. Although some roadblocks existed prior to 6 April 1994 in Butare *préfecture*, the number of roadblocks increased substantially after that date.<sup>14128</sup> The Chamber accepts that some roadblocks were set up in Butare town starting in 1990.

5413. After 6 April 1994, roadblocks existed at major intersections in Butare town.<sup>14129</sup> The Chamber has already noted that it was uncontested that the number of roadblocks in Butare in May 1994 was considerable, restricting ease of movement (). The Chamber recalls its finding, for example, regarding the existence of the roadblock which existed near Nyiramasuhuko and Ntahobali's house, located at a distance of approximately 50-100 metres from the Hotel Ihuliro ().

5414. Although some witnesses referred to these roadblocks by differing names, the Chamber has considered maps and photographs of the intersections as well as witness testimony and is

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<sup>14126</sup> T. 19 November 2008 p. 6 (Ndayambaje).

<sup>14127</sup> T. 25 November 2008 p. 36 (Ndayambaje).

<sup>14128</sup> T. 13 September 2005 pp. 37-38 (Maurice Ntahobali) (roadblocks around Butare town in 1990); T. 10 October 2005 p. 12 (Nyiramasuhuko) (civil defence system in place between 1990-1994); T. 13 April 2006 pp. 35-36, 44-45 (Ntahobali) (roadblocks in Butare and Kigali after the 1990 attack); T. 18 April 2006 pp. 11, 13 (Ntahobali) (roadblocks mounted in Butare town from 1990 when the RPF attacked Rwanda); T. 17 February 2004 p. 56 (ICS) (Witness RV) (roadblocks set up since the RPF launched an attack against Rwanda in 1992. Number increased following the death of President Habyarimana); T. 15 April 2004 p. 55 (Witness RK) (two roadblocks in his *secteur* erected when the *Inkotanyi* attacked and another two erected after the President was killed); T. 14 February 2008 pp. 44-45 (extract) (Witness D-13-D) (several roadblocks in Ngoma *commune* existed after 10 April 1994 which were manned by soldiers); T. 14 February 2008 p. 47 (ICS) (roadblocks not mounted before Habyarimana's death); T. 12 October 2005 pp. 61-62 (Nyiramasuhuko) (roadblocks existed between 1992 and 1994, but after 6 April 1994, the number of roadblocks increased tremendously); T. 25 November 2008 p. 36 (Ndayambaje) (roadblocks mounted even before 1990, so it was not surprising that they were re-mounted in 1994).

<sup>14129</sup> T. 20 March 2002 pp. 57-59 (Witness QCB) (roadblock at the house of Amanda Rugira); T. 12 September 2006 pp. 36-38 (Nsabimana) (roadblocks at Mukoni, opposite the University Laboratory, *Chez Bihira*, Hotel Faucon); T. 11 July 2006 p. 6 (ICS) (Witness BE) (roadblocks at Mukoni, near university gate, and on the road to *Groupe Scolaire*); T. 3 July 2006 p. 44 (Bararwandika) (roadblocks at *Groupe Scolaire, économat general*, ESO and the MSM garage); T. 1 June 2005 p. 55 (Witness WBUC) (roadblocks at the entrance to Butare on Gikongoro road, Hotel Faucon and Rectory); T. 9 February 2005 pp. 51-52 (Clarisse Ntahobali) (roadblocks at Rector's office, Hotel Faucon and close to *préfet's* residence); T. 4 April 2005 pp. 48-50 (Witness WZNA) (roadblocks at Mukoni, University Laboratory, office of the Rector, Hotel Faucon and Rwabuye); T. 1 December 2005 pp. 56-57 (ICS) (Witness H1B6) (roadblocks near Rugira's house, at ESO and rectorat manned by soldiers); T. 2 February 2006 pp. 6-7 (Witness WCNJ) (roadblocks at Ngoma Camp, Hotel Faucon, Mukoni, at *Préfet* Habyarimana's house, and at the EER); T. 21 February 2006 pp. 14, 61 (roadblocks at Hotel Faucon, office of the Rector); T. 31 January 2006 pp. 21-22 (Witness WCKJ) (one week after death of President, he only saw a roadblock at Ngoma military camp); T. 31 January 2006 pp. 29-30 (ICS) (Witness WCKJ) (on 19 or 20 May 1994, roadblocks at Hotel Ibis, Hotel Faucon, Mukoni and *Groupe Scolaire*); T. 21 January 2008 p. 59 (ICS) (Witness D-2-5-I) (roadblock at the rectorate/*Chez Bihira*); T. 8 May 2008 p. 48 (ICS) (Witness D-1-4-O) (roadblocks at dancing bar, University Laboratory, Hotel Ihuliro, *Groupe Scolaire*, and Hotel Faucon).

satisfied that the testimony referred to roadblocks at the same locations.<sup>14130</sup> Soldiers initially manned these roadblocks.<sup>14131</sup> Members of the Presidential Guard manned the roadblock at the Mukoni intersection near the home of President Sindikubwabo.<sup>14132</sup>

5415. In late April or May 1994, civilians started to man the roadblocks with the soldiers and to mount new roadblocks in other locations throughout Ngoma *commune*.<sup>14133</sup> These civilian

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<sup>14130</sup> The witnesses named roadblocks according to the buildings found nearby. Where several buildings were in a particular area, the witnesses referred to these roadblocks by different names. For example, the rector's office was near *Chez Bihira*, CUSP, and the Butare *préfecture* office; *Chez Rugira* was near the University Laboratory; and Mukoni junction was near President Sindikubwabo's house. See Defence Exhibit 412 (Ntahobali) (Sketch of Ngoma *commune* roadblocks by Ntahobali); Defence Exhibit 231 (Ntahobali) (Des Forges' Sketch Map of Ngoma *Commune* – Genocide Sites) (indicating major roadblocks); Prosecution Exhibit 54 (Sketch of Butare town by Witness QCB).

<sup>14131</sup> T. 1 March 2005 pp. 35, 37 (Witness WKNKI) (on 11 April 1994, roadblocks at ESO, University Avenue and road towards Cyarwa were also manned by soldiers); T. 28 September 2005 pp. 29-30 (Nyiramasuhuko) (roadblocks located at military camp, entrance to Butare, *préfecture* office, Rwabuye, Hotel Faucon, near Bihira were all guarded by soldiers on 14 April 1994); T. 29 November 2005 p. 32 (Witness WCNMC) (roadblocks at Mukoni and *Chez Rugira* manned by soldiers); T. 8 March 2006 pp. 20, 22-23 (ICS) (Witness WUNBJ) (one week after 6 April 1994, roadblocks at Mukoni, University Laboratory, IPN/Rector's office manned by soldiers); T. 14 February 2006 pp. 20, 29 (Witness WCUJM) (one week after 7 April 1994, roadblocks at Mukoni, University Laboratory, and IPN manned by soldiers); T. 29 November 2005 p. 6 (ICS) (Witness WKNMJ) (roadblocks at Mukoni, University, and IPN manned by soldiers between April and June 1994); T. 12 April 2006 pp. 16, 67 (Ntahobali) (between 1990 and 1994, all roadblocks manned by soldiers and *gendarmes* except one in Kabutare manned by civilians); T. 24 April 2006 pp. 8-9 (Ntahobali) (13 April 1994, roadblocks at Hotel Faucon and rector's office manned by ESO soldiers); T. 19 April 2007 p. 31 (Witness AND-44) (Hotel Faucon roadblock manned by armed soldiers); T. 27 November 2007 pp. 36-37 (ICS) (Witness D-2-YYYY) (first week after the death of President, roadblocks mounted at Mukoni, University, *Chez Bihira*, Hotel Faucon, and Magerwa manned by soldiers); T. 5 November 2007 pp. 48-49 (Witness D-2-13-O) (there were roadblocks at hospital, laboratory, BPO, Hotel Ibis; *Chez Bihira* roadblock manned by 2-3 soldiers and some civilians); T. 30 August 2007 p. 57 (ICS) (Witness D-2-13-D) (about 10 April 1994, the roadblocks at University Road, the rector's office, and Hotel Faucon manned by soldiers; the Hotel Ihuliro and Ibis Hotel roadblocks manned by *Interahamwe*); T. 23 October 2007 p. 12 (ICS) (Witness D-2-11-D) (Hotel Faucon and *Chez Bihira* roadblocks manned by armed soldiers); T. 14 September 2006 pp. 64, 74 (Nsabimana) (Muvunyi got clear information that roadblocks in town manned by his soldiers, but one manned by a *commune* policeman); T. 3 July 2006 p. 45 (Bararwandika) (*Groupe Scolaire* and rector office roadblocks manned by soldiers); T. 25 September 2006 p. 12 (Keane) (around June 1994, stronger military component to roadblocks closer to Butare); T. 1 June 2005 p. 55 (Witness WBUC) (roadblocks at Hotel Faucon and Rectory manned by men in military uniforms); T. 14 February 2005 pp. 43-45 (Witness CEM) (one or two weeks after the assassination of the President, roadblocks at Hotel Faucon and *Groupe Scolaire* manned by people wearing military uniforms); T. 24 February 2005 p. 34 (Céline Nyiraneza) (Hotel Faucon and Rector's office roadblocks manned by young people in civilian attire); T. 28 February 2005 p. 22 (Céline Nyiraneza) (possible that roadblocks manned by soldiers, not civilians); T. 31 January 2007 p. 14 (ICS) (Witness AND-17) (no roadblock at Hotel Faucon, but soldiers on the road nearby).

<sup>14132</sup> T. 20 March 2002 pp. 38, 55 (Witness QCB); T. 30 August 2007 p. 57 (ICS) (Witness D-2-13-D); T. 19 November 2007 p. 38 (Bernadette Kamanzi); T. 14 February 2008 pp. 44, 59 (Witness D-13-D); T. 13 June 2007 pp. 10-11 (Nteziryayo); *but see* T. 4 April 2005 p. 48 (Witness WZNA) (Mukoni roadblock manned by soldiers).

<sup>14133</sup> T. 13 April 2004 p. 7 (Witness QBU); T. 13 April 2004 p. 42 (ICS) (Witness QBU) (roadblock at Nyiramasuhuko's residence, manned by *Interahamwe*, between April and July 1994); T. 25 March 2003 pp. 53, 55-56 (Witness QY) (Nyaruhengeri roadblock manned by civilians but she was not sure if there were also soldiers. She later testified that there were only civilians and no soldiers at the roadblock. There were also *Interahamwe* who were people "from the populous" at the roadblock); T. 17 March 2003 pp. 69-70 (Witness SD) (roadblocks at Mukoni and at Cyarwa all manned by *Interahamwe*); T. 11 March 2003 pp. 41-43 (Witness FAP) (*Interahamwe* manned a roadblock at Nyiramasuhuko's residence between April and July 1994); T. 7 September 2004 p. 10 (ICS) (Witness TQ) (Kigembe roadblock in between the road leading to Gikongoro and the Nyakibanda Major Seminary manned by members of civil defence); T. 29 October 2001 pp. 30-31 (Witness TA)

roadblocks were not mounted spontaneously. Rather civilians were encouraged by government leaders, including *responsables de cellule*, *conseillers de secteur*, *bourgmestres* and individuals, to mount and man these roadblocks.<sup>14134</sup>

(*Interahamwe* manned roadblocks near the BPO); T. 22 August 2006 pp. 16, 19 (Karemano) (after 19 April 1994 civilians manned roadblocks); T. 25 September 2006 p. 12 (Keane) (during his 15 June 1994 visit to Butare a large number of roadblocks between Burundi and Butare were manned by civilians); T. 26 September 2006 p. 63 (Keane) (many of those civilians manning roadblocks were *Interahamwe*); T. 25 September 2006 p. 76 (Keane) (at the roadblock near the BPO, young men wore quasi-military uniforms; some wore military jackets and jeans); T. 15 February 2005 p. 11 (Witness CEM) (in May, Ihuliro roadblock manned by civilians); T. 27 October 2005 p. 30 (Nyiramasuhuko) (on 7 May 1994, “*Interahamwe*” meant all youths at roadblocks; armed, unemployed persons); T. 12 October 2005 p. 5 (Nyiramasuhuko) (new roadblocks were created between 14 and 30 May 1994 and new roadblocks were installed after 31 May 1994); T. 8 March 2006 pp. 24, 26-27 (ICS) (Witness WUNBJ) (two or three weeks after the first roadblocks were set up, new roadblocks appeared in Rango, Tumba and Nkubi *secteurs* and Bwanakeye, manned by members of the population); T. 21 February 2006 pp. 24-25 (ICS) (Witness WCMNA) (new roadblocks were mounted at the beginning of June at rectorat, Episcopal church, primary school and Sindikubwabo’s house); T. 18 April 2006 p. 46 (Ntahobali) (end of May or early June 1994, new roadblocks were created and manned by civilians); T. 5 December 2006 pp. 47, 50 (ICS) (Witness AND-5) (roadblocks were initially manned by Hutus and Tutsis; but after meeting of 27 April 1994 manned only by Hutus); T. 14 February 2008 p. 58 (Witness D-13-D) (new roadblock at end of April-early May 1994); T. 19 February 2008 p. 54 (ICS) (Witness D-13-D) (end of April or early May 1994, roadblock at Chez Rugira was initially manned by soldiers and subsequently by civilians); T. 31 May 2005 pp. 41-42, 46 (ICS) (Witness WBTT) (on 9 April 1994, Hotel Faucon roadblock was manned by soldiers; on 20 April 1994, Hotel Faucon roadblock was manned by soldiers and some civilians); T. 9 June 2005 pp. 30-31 (Denise Ntahobali) (roadblocks at rector’s office and Hotel Faucon were manned by soldiers, other roadblocks were manned by members of the public); T. 25 January 2006 pp. 21, 23 (ICS) (Witness WQMJP) (some were manned by soldiers and civilians and others manned by only soldiers); T. 14 February 2006 p. 22 (Witness WCUJM); T. 14 February 2006 p. 48 (ICS) (Witness WCUJM) (after May, another roadblock was mounted in his *secteur*, and it was expected that all inhabitants show up to man it); T. 13 November 2001 pp. 117-118 (Witness QJ) (after President Sindikubwabo attended the Party meeting at the MRND Palace in Butare town, sometime between 17 and 21 April 1994, many more roadblocks were erected); T. 3 July 2006 p. 55 (Bararwandika) (people at roadblocks were mainly militiamen and soldiers); T. 25 March 2004 p. 46 (ICS) (Witness QI) (Hotel Ihuliro roadblock was manned by civilians, soldiers and *Interahamwe*).

<sup>14134</sup> T. 3 March 2003 pp. 26, 28, 33 (Witness SS) (Nyiramasuhuko appeared to be in charge of the roadblock in front of Nyiramasuhuko’s house); T. 30 June 2004 pp. 53, 64 (ICS) (Witness FA) (people killed at the roadblock near the Hotel Ihuliro from April until June 1994. Nyiramasuhuko controlled the roadblock, and her son often manned the roadblock); T. 30 October 2002 p. 101 (ICS) (Witness FAI) (on 19 April 1994, the *conseiller* of Nyamure *secteur* called a meeting at which the mounting of roadblocks was discussed, after which roadblocks were immediately erected); T. 31 October 2002 pp. 7-8 (ICS) (Witness FAI); T. 4 November 2002 p. 51 (Witness FAI); T. 14 April 2004 p. 14 (ICS) (Witness FAK); T. 14 April 2004 pp. 66-67 (Witness FAK) (immediately after 6 April 1994, Kibayi *secteur conseiller*, Jean-Bosco Ndagijama, ordered roadblocks be set up); T. 11 July 2006 p. 44 (ICS) (Witness TWW); T. 12 July 2006 p. 18 (Witness TWW) (after the arrival of refugees, *cellule* head ordered roadblocks be set up); T. 24 August 2006 p. 66 (Karemano) (Interim Government asked population to set up roadblocks); T. 13 February 2007 p. 54 (Witness AND-73) (*cellule* and *secteur* authorities organised nightly patrols and drew up lists of people who should participate); T. 6 December 2006 p. 13 (ICS) (Witness AND-72) (one week after President’s death, *bourgmestre* of Muganza *commune* convened a meeting during which authorities agreed to set up roadblocks); T. 22 January 2007 p. 34 (ICS) (Witness AND-16) (witness’ *conseiller* built roadblocks on 7 April 1994, but they were dismantled by attackers from Shyanda on 15 or 16 April; new *conseiller* built other roadblocks on 21 or 22 April 1994); T. 4 December 2006 p. 32 (ICS) (Witness AND-5) (on 12 and 14 April 1994, the *bourgmestre* of Mugusa *commune* held a meeting at which he instructed the population on methods of erecting roadblocks; roadblocks were built); *but see* T. 31 October 2002 pp. 86-87 (ICS) (Witness FAI) (appointed one of his workers as head of a roadblock situated at Bugina); T. 30 August 2007 p. 54 (ICS) (Witness D-2-13-D) (member of the population named Semwiza ordered people to set up a roadblock in mid-May); T. 12 December 2007 p. 14 (ICS) (Witness D-2-5-I) (witness imagined that military authorities ordered soldiers to mount roadblocks).

5416. Furthermore, it was largely uncontested that people who passed through the roadblocks in Butare *préfecture* were asked for identification by civilians, soldiers and *Interahamwe* manning the roadblocks and that national identification cards at that time indicated the ethnic group of the individual.<sup>14135</sup>

#### 3.7.9.4.2 Targeting and Killing at Roadblocks

5417. The Parties contested whether Tutsis were targeted and killed at roadblocks. The Prosecution contends that the roadblocks were used to identify Tutsis. The Defence argues the roadblocks were used to identify the RPF and that identification was checked to determine

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<sup>14135</sup> T. 30 October 2002 pp. 101-102 (ICS) (Witness FAI) (anyone who came upon the roadblock was supposed to show identity papers); T. 12 November 2001 p. 14 (Witness QJ) (Hutus would be allowed to pass through while those whose identification cards read “Tutsi” would be asked to step aside); T. 4 March 2004 pp. 63, 65; T. 9 March 2004 p. 63 (Witness FAU) (people were told during a meeting to ask the Tutsis for their identity cards); T. 20 March 2002 p. 57 (Witness QCB) (woman was asked to produce her identification at the Rugira roadblock); T. 14 April 2004 p. 16 (Witness FAK) (identification cards used to identify the “*Inkotanyi*” bore the bearer’s ethnic origin); T. 20 March 2002 p. 9 (Witness QBV) (verification of ethnicity by checking their identification cards); T. 12 July 2006 p. 20 (Witness TWW) (in 1994, identification cards displayed a person’s ethnic identity); T. 5 July 2006 p. 36 (ICS) (Witness SOLO) (witness made to show his identity card, but did not know what they were checking for); T. 24 August 2006 p. 79 (Karemano); T. 21 August 2006 p. 54 (Karemano) (it was often the identity card that was requested at roadblocks); T. 4 July 2006 p. 56 (Bararwandika) (Rwandans had to show identification cards that displayed their ethnicity at the roadblocks); T. 24 February 2005 p. 34 (Céline Nyiraneza) (at roadblocks, identification would be checked to ensure whether the names of the children appeared in the identity card and that those children were really yours); T. 15 February 2005 p. 35 (Witness CEM) (at roadblocks one was asked to present identification papers and then allowed to go); T. 15 February 2005 p. 12 (Witness CEM) (everyone passing roadblock asked to stop and show identity card); T. 29 November 2005 p. 7 (ICS) (Witness WKNMJ) (identification cards checked at roadblocks. Witness’ identification bore her ethnicity, being “Hutu”); T. 29 November 2005 p. 37 (Witness WCNMC) (people stopped at roadblocks to show identity cards and would then be allowed to continue); T. 5 April 2006 p. 43 (ICS) (Witness WUNBJ) (people were only asked to present their identification cards at roadblocks which were manned by soldiers); T. 8 March 2006 p. 24 (ICS) (Witness WUNBJ); T. 5 April 2006 p. 41 (ICS) (Witness WUNBJ) (ethnic origin appeared on identification card); T. 1 December 2005 p. 57 (ICS) (Witness H1B6) (asked to show identification cards at roadblocks; produced student cards that did not contain any reference to their ethnic origin and allowed to pass); T. 31 January 2006 p. 61 (Witness WCKJ) (at Hotel Faucon roadblock asked to provide his identity card every time he passed); T. 6 December 2006 p. 14 (ICS) (Witness AND-72) (persons in charge of roadblocks were instructed to check foreigners who intended to enter the *secteur* and inspect their identity cards); T. 14 March 2007 pp. 43-44 (Witness AND-60) (only unknown persons or those carrying goods were asked to show their identity cards); T. 19 February 2007 p. 5 (Witness AND-53) (roadblock set up at Kanga Junction to monitor the passage of persons who did not have identification cards, to make sure those passing were not RPF troops); T. 27 February 2007 p. 13 (Witness AND-30) (heard that those who manned the roadblocks examined identity cards and baggage to identify who was an enemy or an accomplice of the enemy); T. 25 January 2007 p. 33 (ICS) (Witness AND-16) (those manning roadblocks asked passers-by to show them identification cards at roadblock); T. 28 November 2007 p. 53 (ICS) (Witness D-2-YYYY) (each time he had to produce his identification because those manning the roadblock said that *Inyenzi* could disguise themselves wearing police uniforms); T. 5 November 2007 pp. 49-50 (Witness D-2-13-O) (at each roadblock the witness was asked to show his identity card and was then allowed to pass); T. 10 September 2007 p. 23 (ICS) (Witness D-2-13-D) (*Interahamwe* at the Butare MSM garage roadblock asked for identification papers); T. 30 August 2007 p. 58 (ICS) (Witness D-2-13-D) (other people crossing roadblocks had their identity documents checked); T. 23 October 2007 p. 7 (ICS) (Witness D-2-11-D) (at the roadblock at the Ngoma/Huye *commune* border he was asked to show his identity card); T. 8 May 2008 p. 49 (ICS) (Witness D-1-4-O) (required to produce his identification card at some roadblocks, while at others he was let through without producing any document or having to answer questions); T. 25 February 2008 p. 13 (ICS) (Witness D-13-D) (showed his identification card at roadblocks identifying him as Hutu).

whether a person was a foreigner, which may indicate membership in the RPF or an accomplice from another country,<sup>14136</sup> who might be carrying guns or bullets.<sup>14137</sup>

5418. The evidence presented at trial established that identification cards were verified at the roadblocks. Witness FAI testified that the roadblocks were set up to prevent Tutsis from escaping by catching and killing them.<sup>14138</sup> At one roadblock mounted near the witness' place of work, anyone who came upon the roadblock was to show identity papers,<sup>14139</sup> and Tutsis were killed.<sup>14140</sup>

5419. Witness QJ provided eyewitness testimony as to the search for and killing of Tutsis at roadblocks. Witness QJ testified that to pass through the Hotel Faucon roadblock, one had to present identity papers.<sup>14141</sup> Tutsis were asked to stand aside and sit on the ground next to the Hotel Faucon roadblock.<sup>14142</sup> He specified that in April, May and June 1994, those stopped at the roadblock were taken to Kabutare and shot, but that in June they were thrown everywhere on the streets.<sup>14143</sup> As time went by, Tutsis were shot next to roadblocks and their bodies would be strewn by the roadside.<sup>14144</sup> People were taken from the Hotel Faucon roadblock across the street to a University bookshop and killed by soldiers.<sup>14145</sup> The whole town stank and it was impossible to go to a roadblock without seeing a dead body.<sup>14146</sup>

5420. Witness QCB testified as to a roadblock manned by *Interahamwe* near the house of Amanda Rugira; the *Interahamwe* checked people's identity cards to determine whether they were Tutsis or Hutus, detaining the Tutsis and allowing the Hutus to move on towards town.<sup>14147</sup> Witness QCB further testified that a woman was asked to produce her identity card, and was subsequently killed at the Rugira roadblock.<sup>14148</sup> Witness QCB also testified as to the killing of a Tutsi man named Léopold Ruvurajabo at the Hotel Ihuliro roadblock.<sup>14149</sup> Witness QCB further testified that at the roadblock close to the mosque, he saw that Tutsis kept there were being held at the EER School and were subsequently killed.<sup>14150</sup>

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<sup>14136</sup> T. 28 September 2006 pp. 27-28 (Keane); T. 22 August 2006 pp. 15-16 (Karemano); T. 3 July 2006 p. 45 (Bararwandika); T. 24 February 2005 p. 35 (Céline Nyiraneza); T. 2 March 2005 p. 5 (Witness WKNKI); T. 5 April 2006 p. 43 (ICS) (Witness WUNBJ); T. 21 February 2006 pp. 24-25 (ICS) (Witness WCMNA); T. 6 December 2006 p. 14 (ICS) (Witness AND-72); T. 19 February 2007 p. 5 (Witness AND-53); T. 27 February 2007 p. 13 (Witness AND-30); T. 13 April 2006 p. 17 (Ntahobali).

<sup>14137</sup> T. 4 October 2005 p. 31 (Nyiramasuhuko); T. 2 March 2005 p. 61 (Witness WKNKI); T. 5 April 2006 pp. 43, 66 (ICS) (Witness WUNBJ); T. 21 February 2006 pp. 24-25 (ICS) (Witness WCMNA); T. 13 April 2006 p. 17 (Ntahobali); T. 6 December 2006 p. 13 (ICS) (Witness AND-72); T. 12 July 2006 p. 19 (Witness TWW).

<sup>14138</sup> T. 30 October 2002 p. 101 (ICS) (Witness FAI).

<sup>14139</sup> T. 30 October 2002 pp. 100-102 (ICS); T. 31 October 2002 p. 86 (ICS) (Witness FAI).

<sup>14140</sup> T. 31 October 2002 pp. 9-10 (ICS) (Witness FAI).

<sup>14141</sup> T. 8 November 2001 p. 142 (ICS) (Witness QJ); T. 12 November 2001 p. 14 (Witness QJ).

<sup>14142</sup> T. 12 November 2001 p. 14 (Witness QJ).

<sup>14143</sup> T. 12 November 2001 pp. 14-15, 23-24 (Witness QJ).

<sup>14144</sup> T. 12 November 2001 pp. 15-16, 33 (Witness QJ).

<sup>14145</sup> T. 12 November 2001 pp. 16-17, 23-24 (Witness QJ).

<sup>14146</sup> T. 12 November 2001 pp. 16, 33 (Witness QJ).

<sup>14147</sup> T. 20 March 2002 p. 59 (Witness QCB).

<sup>14148</sup> T. 20 March 2002 p. 57 (Witness QCB).

<sup>14149</sup> T. 20 March 2002 pp. 61-62, 65-66 (Witness QCB).

<sup>14150</sup> T. 20 March 2002 pp. 78, 88 (Witness QCB).

5421. Witness FAK stated that people checked identity cards to identify the “*Inkotanyi*”, as the cards bore the ethnic origin of the individual; if the identity card read Tutsi, the Tutsis were to be killed.<sup>14151</sup> Witness FAK testified that towards the evening of 19 April 1994, a lot of people brought a Tutsi couple to the roadblock and killed them.<sup>14152</sup> After a meeting in Kibayi *commune*, Witness FAK went to a roadblock with Augustin and Laurent, where they encountered the *conseiller de secteur*.<sup>14153</sup> Augustin said that he had a Tutsi girl in his home and the *conseiller* directed that she be brought to the roadblock. Witness FAK testified that they then killed the Tutsi girl with a club,<sup>14154</sup> and Augustin killed the girl’s child.<sup>14155</sup>

5422. Witness FA testified that in April 1994, she saw a man beaten and detained at a roadblock after producing his identity card.<sup>14156</sup> Witness SX testified that identity cards were checked and Tutsis massacred at the Hotel Ihuliro roadblock.<sup>14157</sup> Witness TB testified to a vehicle being stopped at the Hotel Ihuliro roadblock. The people in the vehicle were made to show their identity cards, after which some were beaten and detained.<sup>14158</sup> Witness TQ testified that he and a Tutsi woman were stopped at Hotel Ihuliro roadblock.<sup>14159</sup> The witness, who knew the woman to be a Tutsi, instructed her not to show her identity card because according to the witness, the woman could not have gone beyond the roadblock if she had been identified as Tutsi<sup>14160</sup> (). Witness TQ also testified that at the Kigembe roadblock, on asking people to show their identification papers, members of civil defence would beat the people and call them *Inyenzi/ Inkotanyi*<sup>14161</sup> ().

5423. Witness FAU testified that he searched for and killed Tutsis at a roadblock; he testified that if someone did not have an identity card, they were taken for an *Inyenzi* and were to be killed.<sup>14162</sup> Defence Expert Witness Reyntjens was referred to the minutes of a Security Council meeting of 20 April 1994 which provided that “[p]eople who do not have identity papers or identification papers should be careful so that no one should suffer injustice.”<sup>14163</sup> He was also referred to Des Forges’ report which concluded that “no one” meant Hutus who had fled their homes without the necessary documents.<sup>14164</sup> Reyntjens remarked that while Des Forges referred to “innocent people”, the text of the Security Council meeting said that “no one”, not only innocent people, should suffer injustice [at roadblocks].<sup>14165</sup> Given the credible and consistent accounts of the above Prosecution witnesses, as to what happened at roadblocks in April, May and June 1994 in Butare *préfecture*, the Chamber does not find Reyntjens’ interpretation of the Security Council Minutes to be credible.

<sup>14151</sup> T. 14 April 2004 p. 16 (Witness FAK).

<sup>14152</sup> T. 14 April 2004 pp. 16-17 (Witness FAK).

<sup>14153</sup> T. 14 April 2004 p. 29 (ICS) (Witness FAK).

<sup>14154</sup> T. 14 April 2004 pp. 30, 32 (ICS); T. 14 April 2004 pp. 66-67 (Witness FAK).

<sup>14155</sup> T. 14 April 2004 p. 32 (ICS) (Witness FAK).

<sup>14156</sup> T. 30 June 2004 pp. 55-56 (ICS); 1 July 2004 p. 28 (Witness FA).

<sup>14157</sup> T. 27 January 2004 pp. 15-16 (Witness SX).

<sup>14158</sup> T. 4 February 2004 pp. 41-50; T. 4 February 2004 p. 55 (ICS) (Witness TB).

<sup>14159</sup> T. 7 September 2004 pp. 11-12, 62-63 (ICS) (Witness TQ).

<sup>14160</sup> T. 7 September 2004 p. 11 (ICS) (Witness TQ).

<sup>14161</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>14162</sup> T. 4 March 2004 p. 65 (Witness FAU).

<sup>14163</sup> T. 2 October 2007 p. 39 (Reyntjens); Defence Exhibit 465C (Nsabimana) (Minutes of the Security Council meeting chaired by Nsabimana on 20 April 1994).

<sup>14164</sup> T. 2 October 2007 p. 40 (Reyntjens); Prosecution Exhibit 110A (Des Forges Expert Report) p. 24.

<sup>14165</sup> T. 2 October 2007 p. 41 (Reyntjens).

5424. Defence witnesses provided testimony consistent with that of Prosecution witnesses regarding the targeting and killing of Tutsis at roadblocks. Defence witness Charles Karemano testified that one's physical features and identity card determined whether one could pass a roadblock.<sup>14166</sup> The witness was able to move around because he had papers indicating he was Hutu and his facial features made him recognisable as a Hutu.<sup>14167</sup> Defence Witness Bararwandika also testified that he presented his UNHCR identification card at the roadblocks, which indicated his nationality to be Burundian thus satisfying the people at the roadblocks that his ethnicity was Hutu, as most Burundian refugees in Rwanda were Hutus.<sup>14168</sup> Bararwandika also testified that Rwandans had to show identity cards that displayed their ethnicity at roadblocks; mere mention of one's ethnicity was not enough because officially, the checks were intended to limit the infiltration of the RPF combatants, although unofficially the roadblocks were used to determine ethnicity.<sup>14169</sup> The Chamber considers that both Witnesses Karemano and Bararwandika had no reason to give false testimony in this regard. They were able to provide detailed testimony corroborating the evidence that those manning roadblocks checked identity cards in order to ascertain the ethnicity of individuals. The Chamber finds these two witnesses to be highly credible.

5425. Other Defence witnesses provided consistent testimony that Tutsis were targeted and killed at roadblocks. Witnesses D-2-5-I and D-2-YYYY testified that they saw the dead body of the Tutsi lecturer Karenzi at the Hotel Faucon roadblock.<sup>14170</sup> Witness D-2-5-I said the soldiers had killed Karenzi.<sup>14171</sup> Maurice Ntahobali testified that Karenzi had been murdered at the Hotel Faucon roadblock.<sup>14172</sup> Charles Karemano testified that all the Tutsis lecturers who were on the university campus in Butare were killed immediately after 19 April 1994.<sup>14173</sup> Witness AND-72 testified that Tutsi civilians, including women and children, were killed at the roadblocks.<sup>14174</sup> Witness AND-16 averred that a roadblock erected at Sakindi was intended to stop members of the population from fleeing; one evening he saw corpses at that roadblock.<sup>14175</sup> The witness knew the perpetrators of those killings; he was told that Semunkima and Kagewje had stopped the people and killed them after having asked them to show them their identification cards.<sup>14176</sup> Reyntjens testified that most of the time people were not handed over to authorities but were killed on the spot.<sup>14177</sup> Witness D-2-20-F said that on one occasion where the *conseiller* tried to bring persons they had arrested to the authorities, soldiers intervened and shot persons down at the roadblock at the University Laboratory.<sup>14178</sup>

<sup>14166</sup> T. 24 August 2006 pp. 78-79 (Karemano).

<sup>14167</sup> T. 25 August 2006 p. 44 (Karemano).

<sup>14168</sup> T. 4 July 2006 p. 56 (Bararwandika).

<sup>14169</sup> T. 4 July 2006 pp. 56-57 (Bararwandika).

<sup>14170</sup> T. 28 November 2007 pp. 54-55 (ICS) (Witness D-2-YYYY); T. 11 December 2007 pp. 11-12 (ICS) (Witness D-2-YYYY); T. 21 January 2008 p. 34 (ICS) (Witness D-2-5-I); T. 31 January 2008 pp. 10-11 (ICS) (Witness D-2-5-I).

<sup>14171</sup> T. 31 January 2008 p. 11 (ICS) (Witness D-2-5-I).

<sup>14172</sup> T. 16 September 2005 p. 73 (Maurice Ntahobali).

<sup>14173</sup> T. 5 September 2006 p. 54 (Karemano).

<sup>14174</sup> T. 6 December 2006 pp. 36-37 (ICS) (Witness AND-72).

<sup>14175</sup> T. 25 January 2007 p. 32 (ICS) (Witness AND-16).

<sup>14176</sup> T. 25 January 2007 p. 33 (ICS) (Witness AND-16).

<sup>14177</sup> T. 21 November 2007 pp. 66-67 (Reyntjens).

<sup>14178</sup> T. 10 March 2008 pp. 68, 70-71 (ICS) (Witness D-2-20-F).

5426. Considering the strong evidence that roadblocks were used to identify and kill Tutsis, the Chamber is convinced that those who were unable to produce identification were sometimes killed because they were thought to be Tutsis. The Chamber considers that these accounts from Defence witnesses buttress the evidence that those manning roadblocks were in fact looking for Tutsis, and not just the RPF.

5427. Some Defence witnesses testified that identification cards were checked at roadblocks but no one was harmed and all were allowed to pass.<sup>14179</sup> The Chamber however notes that the Defence witnesses who testified that they were not harmed or harassed at roadblocks were Hutus. If those at the roadblocks were looking for Tutsis, it is logical that Hutus would be permitted to pass. It is also plausible that some of these Defence witnesses did not see any dead bodies at roadblocks, as the evidence supported the fact that Tutsis were identified at roadblocks, but were sometimes taken to be killed elsewhere.<sup>14180</sup> The Chamber further considers that many of these Defence witnesses were not truthful and turned a blind eye to violence against Tutsis at roadblocks. For example, Witness CEM testified that she had no idea of the ethnicity of those manning roadblocks and had not observed any killings during the day or at roadblocks.<sup>14181</sup> The Chamber does not find it credible that she could have lived through the events of April to July 1994 in Butare *préfecture* and not seen evidence of killings.

5428. Ntahobali testified that at a meeting at Huye Stadium on 26 April 1994 authorities told the population that gangsters or hoodlums, who were killing people, were working for the enemy. He said roadblocks were set up to prevent these hoodlums from killing.<sup>14182</sup> In view of the killings that continued to occur at the EER, the BPO and the *Groupe Scolaire*, the Chamber does not find this account to be credible. In short, the Chamber is not convinced that roadblocks were set up to check identification and baggage, rather than to identify and kill Tutsis.

5429. Contrary to Prosecution evidence that Tutsis were selected and killed at roadblocks, Witness QBV testified that if he encountered Tutsis at his roadblock, he should report them to the authorities.<sup>14183</sup> In this regard, Witness WCNMC also testified that she did not witness any killings at the roadblocks, but that, one morning she saw three people being arrested at the Mukoni roadblock for not having any identity cards.<sup>14184</sup> Having considered the foregoing evidence, the Chamber is convinced that this was not the policy followed at roadblocks.

5430. In this regard, the Chamber notes the evidence of Witness AND-72, who testified that persons in charge of roadblocks were instructed to check foreigners who intended to enter the *secteur*, inspect their identity cards, and arrest wrong-doers and hand them over to the *commune* authorities.<sup>14185</sup> Nonetheless, he testified Tutsi civilians, including women and

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<sup>14179</sup> T. 10 July 2006 pp. 38, 67 (ICS) (Witness BE); T. 24 February 2005 p. 34 (Céline Nyiraneza); T. 16 September 2005 p. 83 (Maurice Ntahobali); T. 15 February 2005 pp. 34-35 (Witness CEM); T. 1 December 2005 p. 57 (ICS) (Witness H1B6); T. 29 November 2005 pp. 37-38 (Witness WCNMC); T. 8 March 2006 p. 34 (ICS) (Witness WUNBJ).

<sup>14180</sup> T. 12 November 2001 pp. 14-17, 23-24 (Witness QJ).

<sup>14181</sup> T. 15 February 2005 pp. 34-35 (Witness CEM).

<sup>14182</sup> T. 3 May 2006 pp. 25-26 (Ntahobali).

<sup>14183</sup> T. 20 March 2002 p. 9 (Witness QBV).

<sup>14184</sup> T. 29 November 2005 p. 38 (Witness WCNMC).

<sup>14185</sup> T. 6 December 2006 p. 14 (ICS) (Witness AND-72).



children, were killed at the roadblocks.<sup>14186</sup> Expert Witness Reyntjens also testified that most of the time people were not handed over to authorities but were killed on the spot.<sup>14187</sup> Moreover, the Chamber recalls the substantial evidence that Tutsis were killed at or near roadblocks and then transported elsewhere. The Chamber finds that Tutsis, once identified, were not handed over to authorities.

5431. In sum, the Chamber finds it established beyond a reasonable doubt that Tutsis were targeted and killed at roadblocks in Butare *préfecture*.

### 3.7.10 Civil Defence

#### 3.7.10.1 Introduction

5432. The Nteziryayo Indictment alleges that from late 1990 until July 1994, military personnel, members of Government, political leaders and civil servants conspired among themselves to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition so they could remain in power. The components of this plan included recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated. Nsabimana, Nteziryayo, Nyiramasuhuko, Kanyabashi, Ndayambaje and Ntahobali elaborated, adhered to and executed this plan.<sup>14188</sup>

5433. The Nteziryayo Indictment further alleges that on 25 May 1994, the Interim Government adopted directives concerning the civil defence programme.<sup>14189</sup> Its purpose was to legalise the distribution of weapons to militiamen and to legitimise the massacres of the civilian population. The Interim Government appointed several military officers to lead “self-defence committees” established in each *préfecture*, some of which took an active part in the massacres, including Nteziryayo in Butare.<sup>14190</sup>

5434. The Prosecution submits that the 25 May 1994 Directives of the Interim Government on civil defence demonstrate that the Interim Government was fully functioning and was reinforcing the actions needed to carry out civil defence against the enemy.<sup>14191</sup> It submits Nteziryayo actively trained and armed civilians while giving them orders to kill Tutsis under the guise of civil defence.<sup>14192</sup> Civil defence entailed organising as large a section of the population as possible to hunt down Tutsis, either to kill them on the spot or to hand them over

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<sup>14186</sup> T. 6 December 2006 pp. 36-37 (ICS) (Witness AND-72).

<sup>14187</sup> T. 21 November 2007 pp. 66-67 (Reyntjens).

<sup>14188</sup> Para. 5.1 of the Nsabimana and Nteziryayo Indictment (in support of all counts against Nsabimana and Nteziryayo); Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 1-6, 8, 10-11 against Nyiramasuhuko and Counts 1-3, 5-6, 8, 10-11 against Ntahobali); Para. 5.1 of the Ndayambaje Indictment (in support of all counts); Para. 5.1 of the Kanyabashi Indictment (in support of all counts).

<sup>14189</sup> The Parties referred to “civil defence” and “civilian self-defence”. The Chamber considers these terms to be synonymous. Throughout this section the Chamber refers to “civil defence”.

<sup>14190</sup> Para. 6.16 of the Nsabimana and Nteziryayo Indictment (not in support of counts); Para. 6.16 of the Ndayambaje Indictment (not in support of counts); Para. 6.16 of the Nyiramasuhuko and Ntahobali Indictment (not in support of counts); Para. 6.16 of the Kanyabashi Indictment (not in support of counts).

<sup>14191</sup> Prosecution Closing Brief, p. 59, para. 106.

<sup>14192</sup> Prosecution Closing Argument, T. 20 April 2009 p. 73.

to local authorities for execution, and Nteziryayo was *de facto* in charge of the programme.<sup>14193</sup>

5435. It submits that Nteziryayo, as the authority figure in charge of civil defence for Butare, conspired with other government officials at a 20 May 1994 meeting to get the public more involved in the killing of Tutsis and that he spoke at a series of meetings along the *communes* bordering Burundi to spread this information, where he promulgated genocide under the guise of the civil self-defence programme.<sup>14194</sup> The Nteziryayo Defence submits that the Prosecution case against Nteziryayo is premised almost entirely on his functions as the head of civil defence in Butare *préfecture*.<sup>14195</sup> It submits that the Prosecution failed to establish that a superior-subordinate relationship existed between Nteziryayo and the members of civil defence and/or other members of the population in Butare. It submits the Prosecution failed to identify the alleged subordinates of Nteziryayo, failed to show Nteziryayo was in a position of command, failed to show that he had the power to issue orders, and failed to show Nteziryayo was capable of taking disciplinary action against the perpetrators.<sup>14196</sup>

5436. In particular, it argues the Prosecution failed to prove that despite Colonel Simba's evident position as the *de jure* head of civil defence in Butare and Gikongoro *préfectures*, Nteziryayo was the *de facto* head of civil defence in Butare.<sup>14197</sup>

### 3.7.10.2 Preliminary Issues

#### *Failure to Plead Time Frame of Civil Defence*

5437. The Nteziryayo Defence submits Paragraphs 4.5, 4.6, 6.16, 6.29 and 6.31 of the Nsabimana and Nteziryayo Indictment are defective because they do not identify with specificity the time frame during which Nteziryayo was allegedly in charge of civil defence.<sup>14198</sup> It asserts the only paragraph to identify a time frame in relation to civil defence is Paragraph 6.16 which states that on 25 May 1994 the Interim Government adopted directives concerning civil defence. It argues that any factual evidence as to events prior to 25 May 1994 falls outside the temporal scope of this paragraph and should not be considered against Nteziryayo.<sup>14199</sup>

5438. The Chamber recalls that an indictment must be read as a whole. Paragraph 4.5 states: "Nteziryayo held the office of *Préfet* of Butare from 17 June 1994 until he left Rwanda in July 1994. Before that, he was responsible for the Civil Defence of the *préfecture* of Butare." Paragraph 6.29 states: "In the days following the death of the President Habyarimana, Alphonse Nteziryayo went to Butare to take over his new assignment. Between April and June 1994, Alphonse Nteziryayo, the official in charge of civil defence for Butare *préfecture*, supervised the training of the militiamen and distributed weapons to them, at least once with

<sup>14193</sup> Prosecution Closing Argument, T. 20 April 2009 p. 69.

<sup>14194</sup> Prosecution Closing Argument, T. 20 April 2009 p. 72.

<sup>14195</sup> Nteziryayo Closing Brief, para. 1.

<sup>14196</sup> Nteziryayo Closing Brief, paras. 22, 24.

<sup>14197</sup> Nteziryayo Closing Argument, T. 27 April 2009 pp. 28, 33-34; Nteziryayo Closing Rejoinder Argument, T. 30 April 2009 pp. 73-74.

<sup>14198</sup> Nteziryayo Closing Brief, paras. 5-10.

<sup>14199</sup> Nteziryayo Closing Brief, para. 5.

the assistance by Élie Ndayambaje.” When read together, these paragraphs make clear the Prosecution’s allegation that Nteziryayo was in charge of civil defence starting after the death of the President and until Nteziryayo became *préfet* of Butare. Although Paragraph 6.16 alleges the Interim Government adopted civil defence directives on 25 May 1994, this does not exclude the possibility that civil defence existed prior to that date. Therefore, the Chamber finds that the Nteziryayo and Nsabimana Indictment did not limit the scope of Nteziryayo’s alleged criminal conduct under the rubric of civil defence to conduct after 25 May 1994.

*Transcript of 14 May 1994 University Meeting Speeches*

5439. The Chamber admitted into evidence the transcripts of two audio recordings of speeches allegedly made at a 14 May 1994 meeting at the University attended by Prime Minister Kambanda and University authorities, including Maurice Ntahobali. These exhibits are Defence Exhibit 552 and Prosecution Exhibit 171.<sup>14200</sup>

5440. As to Defence Exhibit 552, the speech of Prime Minister Kambanda, adduced by the Nteziryayo Defence, Nteziryayo testified that he heard only the latter portion of Kambanda’s speech as it was broadcast on Radio Rwanda.<sup>14201</sup> Nteziryayo however did not testify as to the authenticity of the remainder of the audio recording. The Chamber made an oral ruling that Counsel had not established a sufficient basis to warrant the admission of the speech in its entirety into evidence. The Chamber disallowed questions as to earlier portions of the speech which were not in evidence.<sup>14202</sup> Therefore, the Chamber will only consider portions of the speech authenticated by Nteziryayo.

5441. As to Prosecution Exhibit 171, Nyiramasuhuko Defence Witness Maurice Ntahobali testified that he recognised his own voice in an audio-recorded speech he made in response to Kambanda’s remarks on 14 May 1994. Several other speeches of University lecturers were also on the same recording, admitted as Prosecution Exhibit 171.<sup>14203</sup> Maurice Ntahobali did not attest to the authenticity of those portions of the recording. Considering those portions of the recording were not authenticated and that no questions were posed thereon, the Chamber will not consider the substance of those subsequent responses to Kambanda’s speech.

*Disclosure and Reliance on Evidence Adduced Through Des Forges*

5442. The Nyiramasuhuko Defence argues that allowing exhibits adduced through Des Forges to be considered as evidence in the case would violate Rule 94 *bis*, because the book and exhibits were not served on the Defence 14 days prior to Des Forges’ testimony.<sup>14204</sup> As these exhibits are relevant to the issue at hand, the Chamber addresses Nyiramasuhuko’s argument here.

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<sup>14200</sup> T. 16 September 2005 pp. 50-51 (Maurice Ntahobali) (for Prosecution Exhibit 177); T. 27 June 2007 p. 21 (Nteziryayo) (for Defence Exhibit 552).

<sup>14201</sup> T. 27 June 2007 pp. 5, 11; T. 28 June 2007 p. 26 (Nteziryayo) (acknowledging that he heard a portion of Kambanda’s speech of 14 May 1994 on the radio and identifying portions of Defence Exhibit 552 corresponding thereto).

<sup>14202</sup> T. 28 June 2007 p. 29 (Nteziryayo).

<sup>14203</sup> T. 16 September 2005 p. 48 (Maurice Ntahobali) (identifying his own voice on a cassette introduced as Prosecution Exhibit 171); *see also* Prosecution Exhibit 171D (Transcripts of Maurice Ntahobali’s speech).

<sup>14204</sup> T. 7 June 2004 p. 65 (Des Forges); Nyiramasuhuko Closing Brief, para. 395.

5443. The Chamber recalls the Nyiramasuhuko Defence filed a motion on 11 April 2000 seeking the disclosure of certain documents, including: (1) copies of all documents seized at the Butare *préfecture* office; and (2) the transcript of Nsabimana's interview with Human Rights Watch and Nsabimana's manuscript, *The Truth About the Massacres in Butare*.<sup>14205</sup> In its Decision of 1 November 2000, the Chamber ordered the Prosecution to permit the Nyiramasuhuko Defence to inspect the documents seized at the Butare *préfecture* office. The Chamber held that all the interviews with Nsabimana and his manuscript entitled *The Truth About the Massacres in Butare* were given by Nsabimana to Human Rights Watch. Therefore, it held that the Nyiramasuhuko Defence must seek those items from Nsabimana himself.<sup>14206</sup>

5444. In its Decision of 8 June 2001, the Chamber granted Nyiramasuhuko's renewed request seeking discovery of the documents seized at the Butare *préfecture* office and ordered the Prosecutor to report back in 10 days on compliance with the order.<sup>14207</sup> On 18 June 2001, the Prosecutor reported to the Chamber that the Legal Assistant to the Nyiramasuhuko Defence team conducted an inspection of the Butare *préfecture* documents on 16 June 2001 and that it had provided a courtesy copy of Exhibit 5 ("Butare *Préfecture* Documents") from the Prosecutor's list of Exhibits as filed on 30 April 2001.<sup>14208</sup> The Nyiramasuhuko Defence did not object to this representation.

5445. Furthermore, during Des Forges' testimony the Prosecution sought to introduce as evidence documents seized at the Butare *préfecture* office. The Nyiramasuhuko Defence did not assert that the exhibits cited in Des Forges' report had not been disclosed to the Defence. In fact, none of the Defence teams made this argument.<sup>14209</sup> Therefore, the Chamber finds no merit to Nyiramasuhuko's argument that the exhibits supporting Des Forges' testimony were not disclosed to the Defence.

5446. In a related matter, the Nyiramasuhuko Defence asserts the exhibits introduced through Des Forges were not admitted for the truth of their contents, but for the support they offer to Des Forges' report and evidence.<sup>14210</sup>

5447. In this case, Des Forges testified that in conducting her research she found several documents at the Butare *préfecture* office which pertained to the Government's civil defence programme.<sup>14211</sup> These included Prosecution Exhibits 115, 118, 119, 120, 121 and 122. In an oral ruling of 9 June 2004, the Chamber held that certain documents adduced through Des

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<sup>14205</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, *Requête en communication de preuve*, 11 April 2000, p. 16.

<sup>14206</sup> *Nyiramasuhuko & Ntahobali*, Decision on Defence Motion for Disclosure of Evidence (TC), 1 November 2000, paras. 53-54.

<sup>14207</sup> *Nyiramasuhuko*, *Décision Relative à la Requête de la Défense en Extrême Urgence Tenant au Respect, par le Procureur, de la « Décision Relative à la Requête de la Défense en Communication de Preuves » Rendue le 1<sup>er</sup> Novembre 2000* (TC), 8 June 2001, p. 9.

<sup>14208</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Prosecutor's Report Filed in Compliance With the Decision of 8 June 2001, Orders I through IX, 18 June 2001, paras. 13-16.

<sup>14209</sup> The Nyiramasuhuko Defence argued that Nsabimana's prior statements, Prosecution Exhibit 113, could not be introduced as evidence against Nyiramasuhuko because the alleged conspiracy was complete at the time of the statement. It further argued, as to Exhibit 114, that document was not authenticated because it was not signed and because the chain of custody was not established: T. 8 June 2004 pp. 55, 65; T. 9 June 2004 p. 8 (Des Forges).

<sup>14210</sup> Nyiramasuhuko Closing Brief, para. 395.

<sup>14211</sup> T. 9 June 2004 pp. 7, 14 (Des Forges).

Forges were admissible for limited purposes only.<sup>14212</sup> The Chamber held that this evidence was admissible as evidence relied upon by Des Forges in forming her expert opinion and the weight to be accorded to these exhibits would be determined at the end of the trial taking into account all of the circumstances.<sup>14213</sup> The Chamber admitted these Exhibits to help substantiate Des Forges' opinion. The Chamber's deliberations on these matters necessarily implicate the weight and probative value to be attributed to Des Forges' opinion as well as the materials upon which she relied. The Exhibits were therefore admitted for their content. Furthermore, Nyiramasuhuko, Nsabimana, Nteziryayo and Maurice Ntahobali acknowledged the authenticity of these documents in their testimony.

### 3.7.10.3 Evidence

#### Prosecution Witness FAI

5448. Witness FAI, a Hutu civil servant in 1994, testified that towards the middle of May 1994, on the day before Ndahimana's swearing-in ceremony [22 May 1994],<sup>14214</sup> Prime Minister Jean Kambanda issued a *communiqué* addressed to the nation, saying that it was necessary to put an end to the killing, that it was necessary that Rwandans stop killing one another, that the enemy was the RPF, that the accomplices were not all Tutsis, but only those who were associated with the RPF. However, Witness FAI testified that the policy communicated by Kambanda was intended to mislead the public because the massacres continued and people in power were aware of it.<sup>14215</sup> The announcement was put on the radio and documents containing the substance of the *communiqué* were circulated in *secteurs* and *communes*. Witness FAI testified that the words were not sincere because people who were hiding in the bushes came out in broad daylight and were eventually killed.<sup>14216</sup>

5449. Witness FAI testified that in the afternoon of 22 May 1994, he attended the swearing-in ceremony of Mathieu Ndahimana, the new *bourgmestre* of Ntyazo *commune*.<sup>14217</sup> Witness FAI testified that Nteziryayo was introduced as the person responsible for civil defence.<sup>14218</sup> Witness FAI stated that he learned on the day of Ndahimana's swearing-in ceremony that Lieutenant Colonel Nteziryayo was a subordinate of Colonels Muvunyi and Simba.<sup>14219</sup> Colonel Simba was actually in charge of civil defence in both Butare and Gikongoro, but he

<sup>14212</sup> T. 9 June 2004 p. 12 (Des Forges) (The Chamber held: "[Des Forges] is giving evidence as an expert. She at time[s] makes reference to documents or to sources of information that go to form her opinion ... and that opinion, that evidence, certainly will be assessed ... on what weight to be attached .... The concept of hearsay evidence with regard to that kind of evidence is certainly admissible. The weight to be made out of that is – will be done at the end after the parties had been heard, cross-examination had been done. And for that reason, we are of the view that this document which is indicated to her has come from and obtained from a source known, is admissible for that limited extent. And as to weight, as we said in our previous decision, will have to be weighed and be determined at the end. And ... we are of the view that there is a marked distinction between this evidence here and what is being referred to by learned counsel with regard to factual witness who testified, or conduct of certain elements during the testimony of particular witnesses").

<sup>14213</sup> T. 8 June 2004 pp. 47-49; T. 9 June 2004 p. 12 (Des Forges).

<sup>14214</sup> T. 5 November 2002 p. 31 (ICS) (Witness FAI).

<sup>14215</sup> T. 5 November 2002 p. 30 (ICS) (Witness FAI).

<sup>14216</sup> T. 5 November 2002 p. 31 (ICS) (Witness FAI).

<sup>14217</sup> T. 31 October 2002 pp. 10-11 (ICS); T. 5 November 2002 pp. 31-32 (ICS) (Witness FAI).

<sup>14218</sup> T. 31 October 2002 pp. 11-12 (ICS); T. 31 October 2002 p. 32 (Witness FAI).

<sup>14219</sup> T. 5 November 2002 p. 32 (ICS) (Witness FAI).

was assisted in Butare *préfecture* by Nteziryayo.<sup>14220</sup> Colonel Simba introduced himself to the population as the person responsible for civil defence for Butare and Gikongoro *préfectures*.<sup>14221</sup>

5450. Civil defence was the strategy put in place during the genocide, aimed at providing military training to youth and giving them weapons so that they could assist the military at the front and participate in the killing of Tutsis. There was no difference between these trained youths and the *Interahamwe*.<sup>14222</sup> The civil defence programme was strengthened by intensifying training with the intent of providing more importance to the army.<sup>14223</sup> The offices of the civil defence programme were located in a social centre in Ngoma *secteur*.<sup>14224</sup>

5451. Witness FAI further testified that at a meeting at the BPO in early June 1994, Nteziryayo answered the call of two *bourgmestres* from Kibayi and Kigembe *communes* who requested help in controlling the influx of Tutsi refugees into their *communes*. Nteziryayo said that he had at his disposal youths who had undergone their training and that he would send them as soon as possible.<sup>14225</sup> Witness FAI testified that Nteziryayo sent some *Ibisumizi* to Kibayi to kill those Tutsis.<sup>14226</sup> Witness FAI testified that he was present when Nteziryayo gave Célestin Harindintwari directives to transport the *Ibisumizi* to the Kibayi *commune*, so that they could help the Hutu inhabitants as requested.<sup>14227</sup>

#### Prosecution Witness RV

5452. Witness RV, a Hutu civil servant in Rwanda and a detainee at the time of his testimony, testified that on about 5 May 1994, he attended a meeting in Kirarambogo chaired by Alphonse Nteziryayo.<sup>14228</sup> It was attended, among others, by Colonel Muvunyi, the Butare commander, Jean Baptiste Ruzindaza, the Chairman of the *Tribunal de Première Instance*, and Dominique Ntawukuliyayo, the former *sous-préfet* of Gisagara *sous-préfecture*.<sup>14229</sup> The witness testified that during this period, Nteziryayo was the chairman of the civil defence committee in the region.<sup>14230</sup> According to Nteziryayo's speech during that meeting, Nteziryayo was responsible for sensitising the people about their training in the use of traditional weapons, *i.e.* bows and arrows, spears and other traditional weapons. Nteziryayo was also responsible for sensitising youth to get them to enrol in the army. He reminded the people that they should exterminate all the accomplices so that the Tutsis who had gone into exile would not have any witnesses to tell them what happened upon their return to the country.<sup>14231</sup>

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<sup>14220</sup> T. 31 October 2002 pp. 11-12 (ICS); T. 5 November 2002 pp. 36-37, 45 (ICS) (Witness FAI).

<sup>14221</sup> T. 5 November 2002 p. 36 (ICS) (Witness FAI).

<sup>14222</sup> T. 31 October 2002 p. 33 (Witness FAI).

<sup>14223</sup> T. 6 November 2002 p. 5 (Witness FAI).

<sup>14224</sup> T. 5 November 2002 pp. 48-49 (ICS) (Witness FAI).

<sup>14225</sup> T. 31 October 2002 pp. 31-34; 5 November 2002 pp. 44-45 (ICS) (Witness FAI).

<sup>14226</sup> T. 31 October 2002 p. 32 (Witness FAI).

<sup>14227</sup> T. 31 October 2002 p. 33; T. 5 November 2002 pp. 49-50 (ICS) (Witness FAI).

<sup>14228</sup> T. 16 February 2004 p. 48 (ICS) (Witness RV).

<sup>14229</sup> T. 16 February 2004 pp. 48-49 (ICS); T. 19 February 2004 pp. 30-31 (ICS) (Witness RV).

<sup>14230</sup> T. 16 February 2004 pp. 48-49 (ICS); T. 19 February 2004 p. 31 (ICS) (Witness RV).

<sup>14231</sup> T. 16 February 2004 p. 49 (ICS) (Witness RV).

5453. In order to obtain petrol from April to June 1994, one had to ask Nsabimana for a fuel voucher. The fuel was stored at the BPO and the use of fuel was controlled by the army.<sup>14232</sup> Sometime in May 1994, Witness RV encountered Nsabimana at the BPO and asked for a fuel voucher. Nsabimana told Witness RV that Witness RV was no longer interested in security as he no longer participated in the programme of assaults against the Tutsis.<sup>14233</sup>

5454. Witness RV stated that he had not heard of civil defence before May 1994.<sup>14234</sup> In June 1994, soldiers started to desert and they heard of the advance of the RPF over the radio. People were encouraged to train in the use of traditional weapons so that they could assist the soldiers. They told the population they would distribute weapons.<sup>14235</sup> Nteziryayo had some relationship with the civil defence force; even if Nteziryayo was not responsible for this particular programme, he saw Nteziryayo at meetings dealing with the issue of personnel for the civil defence force.<sup>14236</sup> The witness acknowledged his signature on a letter to the commander of the area, Colonel Muvunyi, dated 27 April 1994.<sup>14237</sup> It listed the names of 14 candidates who had come forward to join the Rwandan army, including their dates of birth, *secteurs* of origin and levels of education.<sup>14238</sup>

#### Prosecution Witness TQ

5455. Witness TQ testified that Nteziryayo was *de facto* head of civil defence in Butare *préfecture*.<sup>14239</sup> He collaborated with Colonel Simba in training and in maintaining civil defence, which included manning and executing the roadblock system.<sup>14240</sup>

5456. Witness TQ testified that around 20 April 1994, teachers from the *Groupe Scolaire* at Butare, such as Faustin Twagirayezu and Faustin Niyomzima and a person called Jean-Marie Diogene joined the civil defence group.<sup>14241</sup> Members of civil defence had guns and sometimes traditional weapons; civil defence was a well organised and hierarchical group with a leader and a deputy. According to the witness, they could be distinguished from *Interahamwe*, because members of *Interahamwe* were young people wearing MRND uniforms.<sup>14242</sup>

5457. Witness TQ was shown Prosecution Exhibit 115, a document dated 21 April 1994, signed by Colonel Muvunyi with the topic “recruitment of youths for popular defence.”<sup>14243</sup> The witness confirmed that the document referred to a request from higher officials, the ministry, to train young people for civil defence and that Area Commander Muvunyi suggested the organisation of a meeting with other officials, to organise that training programme.<sup>14244</sup> The

<sup>14232</sup> T. 16 February 2004 p. 47 (ICS) (Witness RV).

<sup>14233</sup> T. 16 February 2004 pp. 47-48 (ICS) (Witness RV).

<sup>14234</sup> T. 19 February 2004 pp. 12-13 (ICS) (Witness RV).

<sup>14235</sup> T. 19 February 2004 p. 11 (ICS) (Witness RV).

<sup>14236</sup> T. 19 February 2004 p. 22 (ICS) (Witness RV).

<sup>14237</sup> T. 19 February 2004 pp. 16, 22 (ICS) (Witness RV); Defence Exhibit 154 (Nteziryayo) (Telegram Addressed to Area Commander of Butare-Gikongoro).

<sup>14238</sup> T. 19 February 2004 p. 22 (ICS) (Witness RV).

<sup>14239</sup> T. 6 September 2004 p. 52 (ICS); T. 9 September 2004 pp. 14-15 (ICS) (Witness TQ).

<sup>14240</sup> T. 7 September 2004 pp. 14-16 (ICS); T. 9 September 2004 p. 12 (ICS) (Witness TQ).

<sup>14241</sup> T. 6 September 2004 p. 51 (ICS) (Witness TQ).

<sup>14242</sup> T. 6 September 2004 p. 52 (ICS) (Witness TQ).

<sup>14243</sup> T. 9 September 2004 pp. 12-13 (ICS) (Witness TQ).

<sup>14244</sup> T. 9 September 2004 p. 14 (ICS) (Witness TQ).

witness stated that civil defence existed long before 21 April 1994, organised by high Rwandan authorities; the training referred to in the letter only sought to reinforce the group that already existed.<sup>14245</sup>

5458. According to Witness TQ, among the perpetrators of the *Groupe Scolaire* attacks were “soldiers wearing a military uniform of the national army”, and civilians wearing civilian clothing or MRND uniforms. There were about 50 assailants.<sup>14246</sup> He testified that he recognised among the attackers several members of the civil defence, namely Faustin Niyonzima, Faustin Twagirayezu and André Bandora. He also recognised Jean-Marie, also known as Ovibar who carried a firearm, and a man called Mutereye.<sup>14247</sup>

5459. Witness TQ testified that he assisted with the evacuation of orphans from the *Groupe Scolaire* on 5 June 1994.<sup>14248</sup> The convoy evacuating the orphans was stopped at the roadblock at Nyakibanda Major Seminary by members of the civil defence group.<sup>14249</sup> The witness said that he could differentiate between members of the population and members of the civil defence group at that roadblock, because civil defence was armed and more brutal. On asking people to show their identification papers, members of civil defence beat the people and called them *Inkotanyi*.<sup>14250</sup>

5460. Colonel Munyengango, whose family was also in the convoy,<sup>14251</sup> went to the front of the convoy so that the convoy would be let through, but members of the civil defence group refused to open the roadblock. Nteziryayo arrived and spoke to those who were at the roadblock.<sup>14252</sup> The witness added that they talked in an ordinary manner as if they knew each other.<sup>14253</sup> Following a discussion with Nteziryayo, the civil defence group indicated that the children were to disembark from the vehicles and walk through the roadblock “one after the other”.<sup>14254</sup>

#### Prosecution Expert Witness Alison Des Forges

5461. Alison Des Forges testified civil defence saw a single enemy to be attacked. This enemy was the RPF and Tutsis who were defined as part of the enemy because of their ethnicity and because of their presumed association with the RPF. Persons who did civil defence training were regularly deployed at the barriers, where they participated in selecting Tutsis from among those who attempted to pass and prevented their passage. The selected Tutsis were then either killed or delivered to authorities, who then participated in killing them. This effort worked under the guise of protecting civilians but was in fact a military

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<sup>14245</sup> T. 9 September 2004 pp. 14-15 (ICS) (Witness TQ).

<sup>14246</sup> T. 6 September 2004 p. 53 (ICS) (Witness TQ).

<sup>14247</sup> T. 6 September 2004 pp. 53-54 (ICS) (Witness TQ).

<sup>14248</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>14249</sup> T. 7 September 2004 pp. 10, 14 (ICS) (Witness TQ).

<sup>14250</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>14251</sup> T. 7 September 2004 p. 8 (ICS) (Witness TQ).

<sup>14252</sup> T. 9 September 2004 p. 29 (ICS) (Witness TQ).

<sup>14253</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>14254</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).



organisation designed to attack other civilians, to make no distinction between combatants and non-combatants, and to identify the civilian targets by their ethnicity.<sup>14255</sup>

5462. October 1993 marked the official implementation of the civil defence system.<sup>14256</sup> Aloys Simba was the head of civil defence for Butare and Gikongoro *préfectures* but Nteziryayo, whether formally ordered to or not, acted in some capacity in relation to civil defence.<sup>14257</sup> In her interview with Nsabimana, Des Forges determined that Nsabimana did not have a concrete sense of Nteziryayo's role in Butare.<sup>14258</sup>

5463. Des Forges was told by Nsabimana that Nteziryayo was a fund-raiser for the civil defence programme, although she did not include this in her Report as she could not confirm its veracity.<sup>14259</sup> Nsabimana and Simba gave pacification speeches at Nyakizu on 21 May 1994.<sup>14260</sup> Despite a lack of documentation, Des Forges affirmed that Nteziryayo was "heavily involved" in the civil defence programme.<sup>14261</sup> Des Forges stressed that authorities wanting to hinder the genocide were not powerless; they had military guards and could have verified the information they were receiving at the time.<sup>14262</sup>

5464. Given Nteziryayo was director of *commune* police and was seconded from the Ministry of Defence to the Ministry of Interior and was the direct subordinate of Kalimanzira, Des Forges confirmed the statement contained in her Report that Nteziryayo was in charge of coordination with the civilian authorities regarding civilian defence.<sup>14263</sup>

5465. Colonel Simba was commonly spoken of as the head of the civil defence for both Butare and Gikongoro *préfectures* although his activities were more in the *préfecture* of Gikongoro. According to Simba's statement obtained by Des Forges, he did not wish to be involved in Butare because he found he had too much work to do in Gikongoro.<sup>14264</sup>

5466. Nteziryayo was in a position of power even before he became *préfet* since he continued to be attached to the Ministry of Interior and under the direct orders of Kalimanzira, who completely identified with the programme of the genocide and its implementation through civil defence.<sup>14265</sup>

#### *Prosecution Exhibits 120 and 122*

5467. Des Forges testified as to Prosecution Exhibit 120, a 15 May 1994 letter from the Minister of Defence, Augustin Bizimana, to Lieutenant Colonel Aloys Simba. The letter appoints Simba as *conseiller* for civil defence in Butare and Gikongoro *préfectures* and directs him to work with the *préfets*, *bourgmestres* and *conseillers* of all the *secteurs* to carry out the

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<sup>14255</sup> T. 6 July 2004 p. 69 (Des Forges).

<sup>14256</sup> T. 6 July 2004 p. 57 (Des Forges).

<sup>14257</sup> T. 6 July 2004 p. 60 (Des Forges).

<sup>14258</sup> T. 6 July 2004 p. 61 (Des Forges).

<sup>14259</sup> T. 6 July 2004 p. 67 (Des Forges).

<sup>14260</sup> T. 6 July 2004 p. 68 (Des Forges).

<sup>14261</sup> T. 7 July 2004 p. 5 (Des Forges).

<sup>14262</sup> T. 6 July 2004 p. 54 (Des Forges).

<sup>14263</sup> T. 7 July 2004 pp. 4-5 (Des Forges).

<sup>14264</sup> T. 6 July 2004 p. 60 (Des Forges).

<sup>14265</sup> T. 6 July 2004 p. 60 (Des Forges).

plan through the chain of command. The letter directs Simba to train 10 men from each *secteur* to organise civil defence. Simba appointed Emmanuel Rekeraho as his immediate subordinate. Des Forges testified that in her opinion, this document showed that the military was working together with the administrative hierarchy, including the *préfet*, *bourgmestres* and *conseillers de secteur*.<sup>14266</sup>

5468. As to Prosecution Exhibit 122, a letter dated 25 May 1994 from Édouard Karemera to the *préfets* of Rwanda on implementing the civil defence system, Des Forges noted that the personnel changes over time within the government administration indicated a continued commitment to eliminating the enemy Tutsi. This document indicates that they must keep an eye out for those people who are handicapping the programme. The real objective could be seen by the people who were hired and fired.<sup>14267</sup>

5469. Des Forges stated that while the army was important, the civil administration was essential for assuming the mobilisation of the civilian population, for the carrying out of massacres, and for organising roadblocks and patrols. Had the civilian administration refused to participate, the resources available to the military would never have sufficed to carry out a killing campaign on this scale.<sup>14268</sup>

5470. Des Forges testified that she spoke with Nsabimana by telephone on 3 April 1996. Nsabimana explained that civil defence funds were established in all the *préfectures* by a Directive from the Ministry of Interior. The funds were intended to provide refreshments “for the militia”: the funds paid for arms and petrol, and provided beer and drugs to militia manning the barriers to keep them aggressive and reward them for their activities. In Butare, the fund was administered by Nteziryayo and Nyiramasuhuko.<sup>14269</sup>

5471. Des Forges testified that she received two documents from Nsabimana, including a manuscript drafted by Nsabimana entitled *The Truth About the Massacres in Butare*, introduced as Prosecution Exhibit 113, and the transcript of a journalist’s interview of Nsabimana taken in October 1994, introduced into evidence as Prosecution Exhibit 114.

5472. Prosecution Exhibit 113, *The Truth About the Massacres in Butare*, was signed and attributed to Nsabimana. With regard to civil defence and roadblocks, Nsabimana stated:

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<sup>14266</sup> T. 9 June 2004 p. 28 (Des Forges); Prosecution Exhibit 120 (Letter from Minister of Defence Bizimana to Lt.-Col. Aloys Simba, appointing Simba as civilian defence advisor to the *préfets* of Butare and Gikongoro, 15 May 1994).

<sup>14267</sup> T. 9 June 2004 p. 35 (Des Forges) Prosecution Exhibit 122B (Implementing the Directives of the Prime Minister on Organizing the Civil Self-Defence, 25 May 1994).

<sup>14268</sup> T. 9 June 2004 pp. 87-88 (Des Forges).

<sup>14269</sup> T. 9 June 2004 p. 32 (Des Forges).

While I [Nsabimana] struggled to restore order in town, while I chaired meetings in the *communes* to restore calm, there were meetings whose agenda I did not know taking place without my knowledge. Such meetings were convened and chaired by the Director of the Cabinet [and] Minister of the Interior and Community Development, Calleste [*sic*] Kalimanzira.

His ministry was responsible for the spreading of MRND propaganda, the erection of roadblocks and the establishment and operation of the so called Civilian Defence Force.

...

There were many roadblocks, especially in the *communes* and in town. Their purpose was evil (theft, injustices .... All the youth were converted into militiamen mainly [out] of fear. In the countryside, the roadblocks gave occasion for robberies.

In town, there were some killings at the roadblocks.<sup>14270</sup>

5473. Des Forges also testified as to the transcript of an interview sent to her by Nsabimana. The transcript of that interview was introduced into evidence as Prosecution Exhibit 114A and provided:

Already before April, maybe around January, we were aware of people being trained by the military. We were thinking that these militias had to be for use against the opposition. That was my feeling, that the militias were to be used against all the opposition parties. After the plane crash, of course, the Presidential Guard had already killed people from the opposition, then 2-3 days later began to kill people from the Tutsi group. At that time there were many people from the Presidential Guard and the militia. But my feeling at the time was that the militia was trained to kill people from the opposition first. Then when people from the opposition were eliminated, it was already out of human understanding but it was also very easy to determine who had done the killing. I think it was a strategy to kill Tutsis.

...

There were roadblocks. At the roadblocks, they decided if you would go through or not. Of course, if you were a Tutsi, you couldn't go. They checked identity cards. If you looked like a Tutsi, then they could kill you. I had to go to the roadblocks to tell people not to do that. The people on the roadblocks, I did not know them. Most of the time they were not from Butare. Maybe one or two from Butare, but most I think from Kigali. Trained people of course.

...

Militia and military, especially the Presidential Guard came to kill people at the churches. The plan was to kill Tutsis no matter where they were, in churches, the countryside, it didn't matter, anywhere, they must be killed.<sup>14271</sup>

5474. Des Forges agreed that the RPF used agents behind the lines. They sent soldiers behind the lines to gather information and received information of a civilian nature rather than military nature from civilian supporters of the RPF political movement within the country.<sup>14272</sup>

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<sup>14270</sup> Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) pp. K0016628, K0016630.

<sup>14271</sup> Prosecution Exhibit 114 (Interview with Nsabimana, 1 October 1994) pp. K0120067, K0120069, K0120072.

<sup>14272</sup> T. 6 July 2004 p. 44 (Des Forges).

She said an entire civil population defined by its ethnicity is not a reasonable definition of accomplices. Accomplices would have been perhaps numbered in the dozens, in the entire country. They could have been identified and arrested and tried according to legitimate legal procedures. They did not require the mobilisation of an entire population to unmask this group.<sup>14273</sup>

Prosecution Expert Witness André Guichaoua

5475. André Guichaoua testified that the civil defence programme included an awareness campaign, recruitment and training, distribution and making of modern or traditional weapons and finding sources of finance.<sup>14274</sup> Patrols and roadblocks had to be organised and monitored and searches, seizures and *umuganda* were to be carried out under the auspices of the civil defence programme.<sup>14275</sup> All of these operations were monitored by the *bourgmestres* and the *préfet*, who were in charge of organising the meetings regarding civil defence around 25 April 1994.<sup>14276</sup> The civil defence programme was a pretext for what Guichaoua called the “killing machine” through which the organisers of the genocide mobilised individuals to take part in the killings under the auspices of “security”. He pointed to the various benefits to be gained by individuals participating in the activities of the civil defence programme. In his view, robberies and rapes at roadblocks, occupation of lands, the stealing of tiles or of door or window frames before burning houses and the provision of alcohol were payments in kind for those participating in the killings.<sup>14277</sup>

5476. Guichaoua referred to some neighbourhoods of Ngoma *commune* where inhabitants had set up self-organised civilian defence groups in early May 1994 in order to protect themselves from any external attacks. This type of civilian defence group was non-political, was not in charge of roadblocks, and was not involved in matters of identification of the enemy. According to Guichaoua, those systems of civilian self-defence needed to be distinguished from the civil defence programme which was implemented by the authorities in Butare at the end of April 1994.<sup>14278</sup>

5477. Guichaoua testified that Nteziryayo had ups and downs during his career. He had impressive promotions at the beginning and then was cast aside. Nteziryayo’s reputation was always sterling. On 6 April 1994 and the following days, different people stayed with Nteziryayo who were saved. However, Nteziryayo had a change of attitude when he went to Butare and when he was effectively under the orders of Callixte Kalimanzira. On 16 June 1994, Nteziryayo was chosen to replace *Préfet* Nsabimana because the Interim Government thought Nteziryayo was in a better position to apply the government’s instructions.<sup>14279</sup>

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<sup>14273</sup> T. 7 July 2004 p. 13 (Des Forges).

<sup>14274</sup> T. 29 June 2004 p. 47 (Guichaoua).

<sup>14275</sup> T. 29 June 2004 p. 47 (Guichaoua).

<sup>14276</sup> T. 29 June 2004 p. 48 (Guichaoua).

<sup>14277</sup> T. 29 June 2004 p. 54 (Guichaoua).

<sup>14278</sup> T. 29 June 2004 p. 42 (Guichaoua).

<sup>14279</sup> T. 30 June 2004 p. 37 (Guichaoua).

5478. Further, Guichaoua stated in his Report that:

Callixte Kalimanzira, who, as Minister of Interior *Ad Interim*, until the appointment of Édouard Karemera, was in charge of civilian self-defence matters in liaison with a group of officers formed around Théoneste Bagosora. Both operationally and hierarchically, the civilian self-defence unit was not under the command of the highest ranking officer in Butare and Gikongoro area, Lieutenant Colonel Tharcisse Muvunyi. It was directly coordinated by the ministry of the interior outside the military chain of command. Even though the texts ... produced late by the Ministry of the Interior states that, the officer in charge of civilian self-defence of the *préfectural* committee was under the *préfet*, there was no direct hierarchy relationship between this unit and the *préfet* at the local level.

Alphonse Nteziryayo directly reported to the authorities in charge of self-defence, both civilian and military at the national level. In view of this, the itinerary followed by Alphonse Nteziryayo to the post of *préfet* appears to be straight-forward. In his capacity as officer in charge of the civilian popular self-defence program for Butare, he had already been active in the massacres since the end of April. He only added the title of *préfet* to his prerogatives when civilian self-defence became the very essence of the Ministry of the Interior's security policy. According to several witness testimonies, Alphonse Nteziryayo is said to have accepted the promotion due to the will of and trust from Pauline Nyiramasuhuko, native of a neighbouring *commune* and of the same generation, and of Callixte Kalimanzira, who wanted to get rid of Sylvain Nsabimana as soon as possible.<sup>14280</sup>

#### *25 May 1994 Directive*

5479. Guichaoua commented on a letter dated 25 May 1994 from Prime Minister Jean Kambanda to all the *préfets* telling them how the civil defence should be organised (Prosecution Exhibit 121). It described the hierarchy and the implementation process for civil defence. It describes the entire hierarchy all the way down to the *communes*, with one heading that specifies the role of the area commander from the Armed Forces in that programme.<sup>14281</sup> Civil defence was put under the responsibility of the Minister of Interior, whether or not this was his official duty. The civil defence also fell under the Ministry of Defence, who would take care of the training, supply the weapons and even avail the officers or petty officers or troops. In the *préfectures* all forces were asked to participate to eradicate the enemy from within: soldiers, *gendarmes*, *commune* police officers, militiamen, committees set up by the officials, local Government officials and their recruits all worked together in a clear hierarchy.<sup>14282</sup>

#### Defence Expert Witness Filip Reyntjens

##### *14 May 1994 Meeting with Prime Minister Kambanda*

5480. Filip Reyntjens testified that he analysed the transcripts of Prime Minister Kambanda's 14 May 1994 speech at the university campus in Butare, admitted into evidence as Defence

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<sup>14280</sup> Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 131.

<sup>14281</sup> T. 29 June 2004 p. 44 (Guichaoua).

<sup>14282</sup> T. 29 June 2004 p. 46 (Guichaoua).

Exhibit 574.<sup>14283</sup> Reyntjens testified that in the speech, the Prime Minister addressed the audience, which included the rector, the *préfet*, the vice-rector, the *sous-préfets*, researchers, university employees and inhabitants of Butare; Kanyabashi was not present at that meeting.<sup>14284</sup>

5481. According to Reyntjens, Kambanda associated the *commune* authorities with the RPF in several passages of his speech. Kambanda stated in the speech:

*A conseiller*, a member of the *cellule* committee, a *préfet*, a *sous-préfet* or any other official has the right to be an *Inkotanyi*. However, when we will be fighting the *Inkotanyi* we will fight him as well. ... Those who support the RPF shall join them and they shall assign him an RPF posts [*sic*]; they should not unjustly occupy our posts.<sup>14285</sup>

Moreover, we know that some *bourgmestres*, here in Butare and elsewhere work for the RPF. ... So, do not be surprised if some ... *bourgmestres* are removed and replaced by others. They have to wait for the RPF and the new Government of national unity, including the RPF, to be put in place and then work with them. For the time being, they have to be removed and replaced by people who work for the good of Rwandans and the Rwandan Government.<sup>14286</sup>

5482. Kambanda announced the implementation of civil defence during his speech, although this programme was already in place.<sup>14287</sup> Reyntjens referred to the following passage of Kambanda's speech: "As we have explained on the air, we are currently looking into ways of setting up a Civil Defence force.... A committee could be set up for that purpose for it will be useful to us at this moment."<sup>14288</sup>

5483. Reyntjens testified that the speech showed that Kambanda wanted the civil defence programme to be formalised and generalised throughout the country in compliance with the instructions he issued on 25 May 1994.<sup>14289</sup> Kambanda blamed the Butare authorities, especially the *bourgmestre* of Ngoma urban *commune*, for his lack of commitment, as was evidenced by Kambanda saying "people are thinking that there is no war in Butare, no roadblocks have been set up", with the obvious threat towards those who would refuse to fully commit themselves to the policy.<sup>14290</sup>

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<sup>14283</sup> T. 21 September 2007 pp. 27-29, 32 (Reyntjens); Defence Exhibit 574B (Kanyabashi) (Transcript of the speech of Prime Minister Jean Kambanda of 14 May 1994).

<sup>14284</sup> T. 21 September 2007 pp. 27-28; T. 24 September 2007 p. 24 (Reyntjens).

<sup>14285</sup> T. 24 September 2007 p. 25 (Reyntjens); Defence Exhibit 574B (Kanyabashi) (Transcript of the speech of Prime Minister Jean Kambanda of 14 May 1994) p. 10.

<sup>14286</sup> T. 24 September 2007 pp. 25-26 (Reyntjens); Defence Exhibit 574B (Kanyabashi) (Transcript of the speech of Prime Minister Jean Kambanda of 14 May 1994) p. 13.

<sup>14287</sup> T. 24 September 2007 pp. 24-25 (Reyntjens).

<sup>14288</sup> T. 24 September 2007 p. 26 (Reyntjens); Defence Exhibit 574B (Kanyabashi) (Transcript of the speech of Prime Minister Jean Kambanda of 14 May 1994) p. 3.

<sup>14289</sup> T. 24 September 2007 p. 26; T. 2 October 2007 p. 28 (Reyntjens).

<sup>14290</sup> T. 24 September 2007 pp. 26-27; T. 2 October 2007 p. 28 (Reyntjens).

*Other Exhibits*

5484. Reyntjens agreed Prosecution Exhibit 120 indicates that Colonel Simba was appointed as the civilian defence advisor for the *préfectures* of Butare and Gikongoro.<sup>14291</sup> Reyntjens agreed that the fact that Nsabimana received a civilian defence advisor showed that Nsabimana had some responsibility in civilian defence.<sup>14292</sup> Reyntjens agreed that the letter indicated that the advisor should work in collaboration with *préfets*, *bourgmestres* and *conseillers* to supervise civil defence training on how to prevent “infiltration of the ENI”, which meant the enemy, *i.e.* the RPF *Inkotanyi* and its accomplices, or in other words the Tutsi.<sup>14293</sup>

Nyiramasuhuko Defence Witness Maurice Ntahobali

5485. Maurice Ntahobali, the husband of Nyiramasuhuko and father of Shalom Ntahobali, testified that between April and July 1994, he did not learn that there were massacres in Butare *préfecture*.<sup>14294</sup>

*14 May 1994 Meeting with Prime Minister Kambanda*

5486. Maurice Ntahobali testified that he did not leave the Hotel Ihuliro in April 1994.<sup>14295</sup> However, he did leave the hotel and moved around in Butare between the end of April and the beginning of July 1994. He recalled Prime Minister Kambanda’s visit at the invitation of MDR members of the university community in mid-May 1994 when his wife was also in Butare.<sup>14296</sup>

5487. The meeting was held at the Butare University campus, and the witness was informed of the meeting by the vice-rector, Jean Bacumas Nshimyumuremyi. The purpose of the meeting was to disseminate information regarding the political situation. The witness agreed that the date of the meeting was around 14 May 1994.<sup>14297</sup> Nyiramasuhuko did not take part in the 14 May 1994 University meeting.<sup>14298</sup> The audio recording of Kambanda’s and Maurice Ntahobali’s speeches broadcast on 15 May 1994 was admitted into evidence as Prosecution Exhibit 171A.<sup>14299</sup>

5488. At this meeting, Prime Minister Kambanda addressed pacification and also alluded to civil defence. Civil defence was a way of ensuring the security of the country. Kambanda did not suggest that those involved in civil defence should try to eliminate the Tutsis within the country.<sup>14300</sup> He said Kambanda’s speech stressed that the university population should

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<sup>14291</sup> T. 21 November 2008 p. 72 (Reyntjens); Prosecution Exhibit 120 (Letter from Minister of Defence Bizimana to Lt.-Col. Aloys Simba, appointing Simba as civilian defence advisor to the *préfets* of Butare and Gikongoro, 15 May 1994).

<sup>14292</sup> T. 21 November 2008 p. 72 (Reyntjens).

<sup>14293</sup> T. 21 November 2008 pp. 72-73 (Reyntjens).

<sup>14294</sup> T. 14 September 2005 p. 48 (Maurice Ntahobali).

<sup>14295</sup> T. 13 September 2005 p. 19 (Maurice Ntahobali).

<sup>14296</sup> T. 14 September 2005 p. 39 (Maurice Ntahobali).

<sup>14297</sup> T. 14 September 2005 p. 39; T. 16 September 2005 pp. 36-37, 39 (Maurice Ntahobali).

<sup>14298</sup> T. 14 September 2005 p. 36 (Maurice Ntahobali).

<sup>14299</sup> T. 16 September 2005 pp. 50-51 (Maurice Ntahobali); *see also* Prosecution Exhibits 171B-D (Transcripts of the speeches of 14 May 1994 in Kinyarwanda, French and English respectively).

<sup>14300</sup> T. 14 September 2005 pp. 48-49 (Maurice Ntahobali).

cooperate and try to solve the problem relating to the war which Rwanda was waging against the RPF.<sup>14301</sup>

5489. Maurice Ntahobali made a statement at the meeting expressing his and the university community's support for the institutions of the Republic, the President, and for the Government of Jean Kambanda. He talked about the *Inkotanyi*, who in English are referred to as RPF, and said they were people who sought to take power by force of arms. Maurice Ntahobali's statement also indicated that the university lecturers felt that the Arusha Accords were no longer of any value because the RPF had a lot of benefit from them. The lecturers also felt it necessary to sensitise members of the population so that they could find means to defend themselves, meaning civil defence.<sup>14302</sup>

### *Civilian Defence*

5490. Maurice Ntahobali stated that he did not know before fleeing from Butare that Colonel Aloys Simba was in charge of civilian defence in Butare and Gikongoro.<sup>14303</sup> He never knew that prior to his appointment as *préfet*, Alphonse Nteziryayo played any role whatsoever in civil defence in Butare.<sup>14304</sup>

5491. Maurice Ntahobali heard about a committee for the funding of civilian defence between April and July 1994. He knew his name was included on the list of members of the committee, but he did not attend the committee's meetings or participate in its mission. It was an *ad hoc* committee, not a permanent entity, and, therefore, did not have its own premises. Whenever the committee had to meet, it was at the behest of the convener with resources that were made available by the *préfecture* office. Nobody invited the witness to attend a meeting until the end of June 1994.<sup>14305</sup>

5492. Maurice Ntahobali was shown Tables 14 and 15 in Guichaoua's Report. Table 14 contains a list of purported members of the civil defence supervision committee and the civil defence *préfecture* committee. Table 15 contains a list of names of purported members of the financial committee of civil defence. The witness could not confirm whether before 3 July 1994, they had indeed been members. The witness also could not state whether the people listed in Table 14 were members of the civil defence supervisory committee or of the civil defence *préfecture* committee.<sup>14306</sup>

### Nsabimana Defence Witness Charles Karemano

5493. Charles Karemano testified that the University held a meeting around mid-May 1994 to which Prime Minister Kambanda was invited. At that meeting academics made heinous speeches in an effort to please the Government. They said that people from the other ethnic group, *i.e.* Tutsis, and Tutsi university lecturers should be shot down, although Karemano

<sup>14301</sup> T. 16 September 2005 p. 54 (Maurice Ntahobali).

<sup>14302</sup> T. 16 September 2005 pp. 45-46 (Maurice Ntahobali).

<sup>14303</sup> T. 14 September 2005 pp. 49-50 (Maurice Ntahobali).

<sup>14304</sup> T. 14 September 2005 pp. 54-55 (Maurice Ntahobali).

<sup>14305</sup> T. 13 September 2005 p. 30; T. 14 September 2005 p. 50 (Maurice Ntahobali).

<sup>14306</sup> T. 14 September 2005 p. 54 (Maurice Ntahobali); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 184-186.



testified that most of them had already been shot down at that time. It was being said that in the university one should not let any enemies or people from the other race remain.<sup>14307</sup> Tutsi lecturers who had already been killed included Professors Karenzi, Rumiya and Gaétan, but there were many more.<sup>14308</sup>

#### Nyiramasuhuko Defence Witness Eugène Shimamungu

5494. Eugène Shimamungu testified as to Defence Exhibit 288, a *communiqué* broadcast on Radio Rwanda and signed by Nsabimana. It stated: “The looting and massacres must cease immediately and the attackers who are armed with all sorts of weapons but who are not assigned to man any roadblock recognised by the authorities, must stop their activities.”<sup>14309</sup>

#### Nyiramasuhuko

##### *Civil Defence*

5495. Nyiramasuhuko was shown Prosecution Exhibit 120, a document dated 15 May 1994 referring to the appointment of Aloys Simba as civil defence adviser of the *préfets* of Butare and Gikongoro.<sup>14310</sup> She explained that the Government had decided to set up a civil defence system. The officials implementing the system came under the Ministry of Defence, which appointed them.<sup>14311</sup> She learned about Simba’s appointment during the meeting of the enlarged Security Council, held in Butare on 16 May 1994, based upon what was said by *Préfet* Nsabimana.<sup>14312</sup> Nyiramasuhuko did not know why Rekeraho attended the council meeting. She noted that he spoke and thought that he was there as a representative of a political party. She later learned that Rekeraho was Simba’s assistant in the civil defence field.<sup>14313</sup>

##### *14 May 1994 Meeting with Prime Minister Kambanda*

5496. Nyiramasuhuko testified that she learned about a meeting in Butare on 14 May 1994 after the fact.<sup>14314</sup> She was told that Butare authorities had received the Prime Minister at this meeting. The authorities preparing the reception were the *préfet* of Butare and the vice-rector, Nshimyumuremyi. She thought that the meeting was held at the faculty of medicine at the National University of Rwanda, but was not sure. Nyiramasuhuko said that the director of the National University of Rwanda, Butare campus, was aware of the meeting with the Prime Minister, as both the vice-rector and *préfet* had informed him.<sup>14315</sup> The rector, Nyiramasuhuko’s husband, attended the meeting.<sup>14316</sup>

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<sup>14307</sup> T. 5 September 2006 pp. 52-53 (Karemano).

<sup>14308</sup> T. 5 September 2006 pp. 53-54 (Karemano).

<sup>14309</sup> T. 23 March 2005 pp. 31-32, 34 (Shimamungu); Defence Exhibit 288 (Nteziryayo) (*Communiqué* Broadcast on Radio Rwanda, 27 April 1994).

<sup>14310</sup> T. 4 October 2005 p. 65; T. 10 October 2005 pp. 48-49 (Nyiramasuhuko).

<sup>14311</sup> T. 10 October 2005 p. 49 (Nyiramasuhuko).

<sup>14312</sup> T. 10 October 2005 p. 50 (Nyiramasuhuko).

<sup>14313</sup> T. 10 October 2005 p. 50 (Nyiramasuhuko).

<sup>14314</sup> T. 26 October 2005 pp. 20-21 (Nyiramasuhuko).

<sup>14315</sup> T. 26 October 2005 p. 20 (Nyiramasuhuko).

<sup>14316</sup> T. 26 October 2005 pp. 20-21 (Nyiramasuhuko).

5497. Nyiramasuhuko stated that when she reached Butare, her husband told her that the Prime Minister had visited the Butare intellectuals. She did not take notes in her diary regarding the meeting, as she did not attend it.<sup>14317</sup> Nyiramasuhuko testified that there had been radio coverage of the meeting,<sup>14318</sup> that she had not listened to it, but she read a transcript of it and listened to a recording of it in Arusha.<sup>14319</sup>

5498. Nyiramasuhuko stated that the Prime Minister's trip to Butare on 14 May 1994 had not been discussed previously in a Cabinet meeting, and that the ministers therefore did not know of this trip.<sup>14320</sup>

5499. Nyiramasuhuko testified that she went to Butare on 14 May 1994 because she was not feeling well.<sup>14321</sup> She also wanted to visit her family, and there was a state nurse among them. Given she was in Murambi on 13 May 1994, she had no way of knowing a meeting was going to be held on 14 May 1994 at the University campus in Butare. Her absence from the meeting was borne out by the absence of her name or any other minister's name in the transcripts of the radio broadcast, as well as by a letter from Kalimanzira which stated that she had been with him that evening.<sup>14322</sup>

#### *25 May 1994 Directive from Jean Kambanda*

5500. Nyiramasuhuko testified that Prosecution Exhibit 121, the directives and guidelines on the Government's civilian defence of 25 May 1994, had been examined by the Government prior to its issuance.<sup>14323</sup> She did not remember the date on which the Government decided that the document of 25 May 1994 was satisfactory and fit for dissemination. When the ministers who were supposed to determine whether the document was ready did so, they forwarded it to the Prime Minister. He added what he deemed necessary, and signed it on 25 May 1994.<sup>14324</sup>

5501. Nyiramasuhuko testified that when she went to attend a meeting on 31 May 1994, she inquired in passing of Colonel Munyengango about the roadblocks she had seen in Butare town. Colonel Munyengango told her that he had been told that those who were manning roadblocks were people of good character known by the *commune* administration, and who had received some training. Munyengango further said that the roadblocks were part of the civilian defence and that there was a problem of soldiers, who were in the north of Butare *préfecture* since the *Inkotanyi* were already within the vicinity. In addition, she had been told that firearms had been distributed within the framework of civilian defence.<sup>14325</sup>

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<sup>14317</sup> T. 26 October 2005 p. 21 (Nyiramasuhuko).

<sup>14318</sup> T. 26 October 2005 pp. 24-25 (Nyiramasuhuko) (maybe there had been radio coverage of the meeting); *see* T. 26 October 2005 p. 28 (Nyiramasuhuko) (French) (there was radio coverage of the meeting).

<sup>14319</sup> T. 26 October 2005 pp. 24-25 (Nyiramasuhuko).

<sup>14320</sup> T. 26 October 2005 p. 25 (Nyiramasuhuko).

<sup>14321</sup> T. 26 October 2005 p. 25 (Nyiramasuhuko).

<sup>14322</sup> T. 26 October 2005 p. 26 (Nyiramasuhuko).

<sup>14323</sup> T. 4 October 2005 p. 64 (Nyiramasuhuko).

<sup>14324</sup> T. 4 October 2005 p. 65 (Nyiramasuhuko).

<sup>14325</sup> T. 12 October 2005 pp. 5-6 (Nyiramasuhuko).

Nsabimana

5502. Nsabimana testified that Prime Minister Kambanda visited Butare National University on 14 May 1994.<sup>14326</sup> He testified that the vice-rector's invitation for this meeting was not sent to the *préfet*. The *préfecture* was informed of the visit belatedly, but he along with his *sous-préfet* in charge of administration attended. Nsabimana said that at the meeting the Prime Minister had discussions with the staff of the University.<sup>14327</sup> He also said that there was no *bourgmestre* at this meeting.<sup>14328</sup> Nsabimana did not know the speech had been broadcast and could not recall the contents of Kambanda's speech although he testified that Kambanda always had the same belligerent themes in his speeches.<sup>14329</sup>

5503. Nsabimana testified that Prosecution Exhibit 121, the Prime Minister's Directive on civil defence dated 25 May 1994, never got to his hands, though it reached the *bourgmestres*.<sup>14330</sup> He testified that the Directive was not discussed during the *préfets'* meeting with the Prime Minister on 28 May 1994, and that he only saw the Directive when Des Forges was tendering her exhibits.<sup>14331</sup> He insisted the document was in the custody of certain persons but did not come from him.<sup>14332</sup>

5504. Nsabimana testified that in late May 1994, Kambanda went to the guest house of the National University of Rwanda, where he met with the vice-rector and there they discussed weapons for civilian defence.<sup>14333</sup>

5505. Nsabimana testified that he did not make any financial transactions with the bank accounts of the *préfecture* during his tenure as *préfet*.<sup>14334</sup> Pursuant to a meeting of the Security Council on 15 June 1994, Nsabimana acknowledged that he had signed a letter to the Bank of Kigali to request an account for civil defence.<sup>14335</sup> In his letter of request of 15 June 1994, Nsabimana had designated four account trustees who were required co-signatories for all withdrawals. That same day, Nsabimana received a letter from the vice-rector of the National University of Rwanda informing Nsabimana of the opening of a civil defence bank account with the Rwandan Bank of Commerce of Butare.<sup>14336</sup> The vice-rector subsequently made a deposit in this latter bank. Nsabimana said the trustees of the account in the Rwandan Bank of Commerce into which the vice-rector deposited funds were not designated by Nsabimana.<sup>14337</sup>

<sup>14326</sup> T. 10 October 2006 p. 76; T. 27 November 2006 p. 26 (Nsabimana).

<sup>14327</sup> T. 10 October 2006 p. 76 (Nsabimana).

<sup>14328</sup> T. 11 October 2006 p. 3 (Nsabimana).

<sup>14329</sup> T. 18 October 2006 pp. 16, 20 (Nsabimana).

<sup>14330</sup> T. 21 September 2006 p. 49 (Nsabimana); Prosecution Exhibit 121B (Prime Minister's Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994).

<sup>14331</sup> T. 21 September 2006 p. 49; T. 21 November 2006 p. 32 (Nsabimana).

<sup>14332</sup> T. 21 September 2006 p. 50 (Nsabimana).

<sup>14333</sup> T. 11 October 2006 pp. 6-7 (Nsabimana).

<sup>14334</sup> T. 20 November 2006 pp. 22-23 (Nsabimana).

<sup>14335</sup> T. 12 October 2006 pp. 19-20; T. 15 November 2006 pp. 79-80 (Nsabimana); Defence Exhibit 484 (Nsabimana) (Letter from Nsabimana to the Bank of Kigali, 15 June 1994).

<sup>14336</sup> T. 15 November 2006 pp. 88, 90 (Nsabimana); Defence Exhibit 485 (Nsabimana) (Letter from the vice-rector of the National University of Rwanda to Nsabimana, 15 June 1994).

<sup>14337</sup> T. 15 November 2006 p. 90 (Nsabimana).

Nteziryayo

5506. Nteziryayo testified that from September 1991 up until he was appointed *préfet* of Butare, he was director of *commune* police in the Ministry of Interior.<sup>14338</sup> During that time, his superiors were the Minister of the Interior, Faustin Munyazesa, the Director-General Aloys Ngendahimana and the Director of Political and Administrative Affairs François Harerimana.<sup>14339</sup> He was solely under the authority of the Minister of Interior, despite the fact that the Ministry of Defence still paid his salary.<sup>14340</sup> In April, May and June 1994 he did not receive his salary, although in July 1994 he met the army accountant in Cyanguu and received his salary for all three months.<sup>14341</sup>

5507. Nteziryayo testified that he did not exercise any authority on members of the *commune* police staff.<sup>14342</sup> He referred to Prosecution Exhibit 189 which contained substantive provisions of the organisation of the *commune* police. According to Article 104 (4) of the provisions laid down in Prosecution Exhibit 189, only the *bourgmestre* had powers to exercise authority over *commune* police staff.<sup>14343</sup> Further, he did not possess the authority to pay the salary, to hire or to dismiss *commune* police officers.<sup>14344</sup> Defence Exhibit 523, the Rwandan law pertaining to the organisation of *commune* police, confirmed that *commune* police were under the authority of the *bourgmestre*.<sup>14345</sup> He testified that in 1994 there were many reservists of the Rwandan army within the *commune* police force, because they had priority over civilians in the event of recruitment of members for the *commune* police force.<sup>14346</sup>

5508. Regarding Defence Exhibit 522 concerning the division of the *commune* police within the Ministry of the Interior, Nteziryayo stated that even though according to the document the discipline of the *commune* police in Rwanda also fell under his responsibility as chief of the divisional *commune* police, Nteziryayo never carried out such controls of discipline because of a lack of information.<sup>14347</sup> In addition, as director of the *commune* police division it was his responsibility to hand over the weapons – including guns and ammunition – from the Ministry of Defence to the *bourgmestres* when they came to receive them.<sup>14348</sup>

5509. Nteziryayo testified that his daughter was born on 30 March 1994. He took leave from his work in the Ministry of the Interior on 22 or 23 March 1994 to be of assistance to his pregnant wife.<sup>14349</sup> The leave was to be due on 8 or 9 April 1994, but because fighting started after the events of 6 April 1994, he did not return to work, even though he was still officially

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<sup>14338</sup> T. 14 May 2007 p. 42 (Nteziryayo).

<sup>14339</sup> T. 14 May 2007 p. 63 (Nteziryayo).

<sup>14340</sup> T. 9 July 2007 pp. 58-59 (Nteziryayo).

<sup>14341</sup> T. 4 July 2007 p. 55 (Nteziryayo).

<sup>14342</sup> T. 14 May 2007 p. 42 (Nteziryayo).

<sup>14343</sup> T. 14 May 2007 pp. 45-46 (Nteziryayo).

<sup>14344</sup> T. 13 June 2007 p. 24 (Nteziryayo).

<sup>14345</sup> T. 14 May 2007 pp. 46-47 (Nteziryayo); Defence Exhibit 523 (Nteziryayo) (Law of 4 October 1977, *Organisation Communale – Police Communale*) Art. 1.

<sup>14346</sup> T. 27 June 2007 pp. 61-62 (Nteziryayo).

<sup>14347</sup> T. 4 July 2007 p. 29 (Nteziryayo); Defence Exhibit 522 (Ntahobali) (15 November 1992, Official Gazette of the Republic of Rwanda relating to Prime Ministerial Orders of 27 and 28 August 1992).

<sup>14348</sup> T. 4 July 2007 pp. 35-36 (Nteziryayo).

<sup>14349</sup> T. 15 May 2007 pp. 26, 41 (Nteziryayo).

serving at the Ministry of the Interior.<sup>14350</sup> Between 5 and 16 April 1994, he did not speak with anyone in the Ministry of the Interior or in army headquarters.<sup>14351</sup> The fighting in Kigali continued until Nteziryayo left on 15 April to Butare; therefore it was impossible for him and for other state civil servants to go to work between 7 and 15 April 1994, such that Nteziryayo stayed permanently at home.<sup>14352</sup> On their arrival in Butare his family went directly to the house of a friend in Ngoma *commune* and was accommodated there.<sup>14353</sup> Because there was not enough room in the friend's home, Nteziryayo went to the Hotel Ibis.<sup>14354</sup> He visited his family often, sometimes several times a day, and brought food and medical treatment for several sick persons.<sup>14355</sup> On 18 April 1994 he organised the evacuation of Gatera and Gatera's wife to Burundi.<sup>14356</sup>

5510. During the period from 15 April to 21 June 1994, he was not engaged in any state activity or duties; he mainly took care of his family and the other persons lodging at a friend's house.<sup>14357</sup> Despite his high rank in the army and the fact that the army had insufficient qualified staff and was recruiting people, he stayed in Butare because he had no occupation.<sup>14358</sup> Nteziryayo denied that he remained in Butare because he held a position there; the Ministry existed but it was in Gitarama and all civil servants were on holiday.<sup>14359</sup> Contrary to Guichaoua's Report, he did not set up an office as Director of the *commune* police in Butare and he did not carry out any activity that had to do with his duties as Director of *commune* police.<sup>14360</sup> He testified that until 17 June 1994, he still considered himself as Chief of *commune* police in the Ministry of the Interior, which still existed at that period and had moved first to Gitarama and afterwards to Gisenyi.<sup>14361</sup> He did not go to Gitarama to ask the Minister of Interior Édouard Karemera for directives because the *communiqué* of the Minister of Defence on 7 April 1994 had stated that everyone should stay indoors until further notice so no one felt obliged to go to work.<sup>14362</sup>

5511. He stated that between 15 April and 3 July 1994 in Butare he always wore a military uniform for his security,<sup>14363</sup> and generally carried his pistol with him.<sup>14364</sup> In Butare he had some extra military uniforms.<sup>14365</sup> In addition, members of his family who remained in Kigali brought him some military uniforms but no civilian clothes.<sup>14366</sup>

<sup>14350</sup> T. 15 May 2007 p. 42 (Nteziryayo).

<sup>14351</sup> T. 4 July 2007 p. 50 (Nteziryayo).

<sup>14352</sup> T. 15 May 2007 p. 34; T. 18 June 2007 pp. 42-43, 50; T. 20 June 2007 p. 57 (Nteziryayo).

<sup>14353</sup> T. 15 May 2007 pp. 58-59 (ICS) (Nteziryayo).

<sup>14354</sup> T. 15 May 2007 p. 61 (Nteziryayo).

<sup>14355</sup> T. 15 May 2007 pp. 66, 70 (Nteziryayo).

<sup>14356</sup> T. 15 May 2007 p. 70 (Nteziryayo).

<sup>14357</sup> T. 16 May 2007 p. 7 (Nteziryayo).

<sup>14358</sup> T. 21 June 2007 p. 27 (Nteziryayo).

<sup>14359</sup> T. 21 June 2007 p. 29 (Nteziryayo).

<sup>14360</sup> T. 16 May 2007 pp. 41-42 (Nteziryayo).

<sup>14361</sup> T. 21 June 2007 pp. 23-24 (Nteziryayo).

<sup>14362</sup> T. 9 July 2007 p. 74 (Nteziryayo).

<sup>14363</sup> T. 21 June 2007 pp. 18-19 (Nteziryayo).

<sup>14364</sup> T. 9 July 2007 p. 8 (Nteziryayo).

<sup>14365</sup> T. 20 June 2007 p. 58; T. 21 June 2007 p. 19 (Nteziryayo).

<sup>14366</sup> T. 21 June 2007 p. 22 (Nteziryayo).

*Appointment as Préfet*

5512. Nteziryayo stated that he assumed that the Minister of Interior Édouard Karemera had proposed him as *préfet*, because he usually proposed names for the position of *préfet*.<sup>14367</sup> The reason for his appointment was, as he learned later from the Minister of Interior during Nteziryayo's swearing-in ceremony, his position as a soldier. The Government hoped that a soldier could deal with the pressure of the RPF advancing on Butare and that he could cooperate with French and Rwandan soldiers simultaneously, as they intended to ask the French soldiers who were part of the *Mission Turquoise* to include Butare *préfecture* in the demilitarised zone. Finally, they thought Nteziryayo would be able to organise a possible necessary evacuation of the population.<sup>14368</sup> He had not expected the appointment and was very surprised. He had spent a long time in Butare without any duties, and he was never asked or contacted by anyone beforehand.<sup>14369</sup>

5513. Nteziryayo confirmed that soldiers were under obligations to accept appointments from the Government in capacities other than that of a soldier.<sup>14370</sup> He had no choice but to accept the post of *préfet* of Butare, in view of the gravity of the war. In view of his own weak position within the military, he saw it as an opportunity at least to become active after he had not done anything since 1994.<sup>14371</sup> He also wanted to be of service to the population in the difficult period.<sup>14372</sup>

5514. During the handover procedure on 20 June 1994 Nsabimana told him only generally about the financial aspect of civil defence.<sup>14373</sup> Nteziryayo stated that prior to being *préfet* he did not have any information as to whether the Government, an organisation or citizens had allocated an amount of money for civil defence.<sup>14374</sup> In cross-examination, Nteziryayo testified that during his tenure as *préfet* he knew only in a general manner about all the bank accounts belonging to Butare *préfecture*.<sup>14375</sup>

5515. Nteziryayo testified that he had access to the cash deposited in the safe, less than 1,000,000 in cash, but that he was not able to carry out any transactions from the *circa* 10 different bank accounts which the *préfecture* possessed at the *Banque commerciale du Rwanda*, the Rwandan commercial bank, and the *Banque de Kigali* in Butare.<sup>14376</sup> This was because until the time he went into exile on 3 July 1994, he did not receive the necessary authorisation, *i.e.* the instrument of appointment, a letter signed by the President of the Republic, and countersigned by the Minister of Interior, announcing officially and in public that Nteziryayo was the new *préfet* of Butare.<sup>14377</sup> Nteziryayo stated that he still was able to run the *préfecture* without funds because he was *préfet* in very extraordinary times

<sup>14367</sup> T. 21 June 2007 pp. 57, 59-60 (Nteziryayo).

<sup>14368</sup> T. 7 June 2007 p. 8; T. 21 June 2007 p. 61 (Nteziryayo).

<sup>14369</sup> T. 7 June 2007 p. 7 (Nteziryayo).

<sup>14370</sup> T. 7 June 2007 p. 8; T. 9 July 2007 p. 43 (Nteziryayo).

<sup>14371</sup> T. 9 July 2007 p. 43 (Nteziryayo).

<sup>14372</sup> T. 7 June 2007 pp. 8-9 (Nteziryayo).

<sup>14373</sup> T. 19 June 2007 pp. 30-31 (Nteziryayo).

<sup>14374</sup> T. 19 June 2007 p. 33 (Nteziryayo).

<sup>14375</sup> T. 27 June 2007 p. 49 (Nteziryayo).

<sup>14376</sup> T. 7 June 2007 pp. 26-27; T. 19 June 2007 pp. 32-33 (Nteziryayo).

<sup>14377</sup> T. 7 June 2007 pp. 24-26, 28; T. 9 July 2007 p. 72 (Nteziryayo).

when the administration did not function properly; especially from 27 June 1994 onwards, when Butare was flooded by displaced persons, Nteziryayo did not need to rely on funds in the bank to settle problems in the *préfecture*.<sup>14378</sup>

5516. Nteziryayo confirmed that as *préfet* his responsibilities also included civilian defence, as had been put down in the directives of the Minister of Interior; civil defence had already been implemented at the time Nsabimana had been *préfet* and Nteziryayo had discussed this subject with Nsabimana during the handover ceremony.<sup>14379</sup>

5517. Nteziryayo said that as *préfet* he had no rights to punish any soldiers or members of the *gendarmérie* who were also soldiers, irrespective of his rank, because the *préfet* had no such legal authority.<sup>14380</sup>

### *Civil Defence*

5518. Nteziryayo testified that throughout his service in the Ministry of the Interior he was not involved in the organisation or execution of the civil defence project.<sup>14381</sup> Nteziryayo testified that he had heard about the concept referred to as “civil defence”, “popular self-defence” or “civilian defence” in 1992 while working in the Ministry of the Interior.<sup>14382</sup> The Rwandan Armed Forces and the Ministry of Defence had initiated civil defence to back up the Rwandan Armed Forces, to gain a better protection of the population and to defend it against the RPF’s “infiltration techniques.”<sup>14383</sup> The RPF had started this “infiltration technique” around the end of 1991, applying a combination of guerrilla and conventional warfare. They first killed or expelled civilians from a territory to occupy it and to use it strategically for surprise attacks on the Rwandan Armed forces. Due to the attacks the population increasingly lost confidence in the Government.<sup>14384</sup> Nteziryayo testified that around the end May 1994 the Interim Government implemented the “reorganisation of civil defence.”<sup>14385</sup>

### *14 May 1994 Meeting with Prime Minister Kambanda*

5519. Nteziryayo testified that prior to his arrival in Butare he did not know if civil defence existed in Butare. He was told that Prime Minister Kambanda spoke at the National University of Rwanda on 14 May 1994 and said that civil defence was going to be established in Butare *préfecture*.<sup>14386</sup>

5520. Nteziryayo testified that between 1 January and 21 June 1994 he was not involved in the civil defence system.<sup>14387</sup> Between 21 June and 3 July 1994, as *préfet* of Butare he was, in accordance with the instructions of the Prime Minister of 25 May 1994, *ex-officio* in charge of

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<sup>14378</sup> T. 9 July 2007 p. 72 (Nteziryayo).

<sup>14379</sup> T. 9 July 2007 p. 36 (Nteziryayo).

<sup>14380</sup> T. 21 June 2007 pp. 17-18 (Nteziryayo).

<sup>14381</sup> T. 22 May 2007 p. 21 (Nteziryayo).

<sup>14382</sup> T. 22 May 2007 p. 19 (Nteziryayo).

<sup>14383</sup> T. 22 May 2007 pp. 19-20 (Nteziryayo).

<sup>14384</sup> T. 22 May 2007 p. 21 (Nteziryayo).

<sup>14385</sup> T. 22 May 2007 p. 21; T. 26 June 2007 p. 65 (Nteziryayo).

<sup>14386</sup> T. 22 May 2007 pp. 22-24; T. 14 June 2007 p. 35; T. 27 June 2007 p. 7 (Nteziryayo).

<sup>14387</sup> T. 22 May 2007 pp. 31-35 (Nteziryayo).

civil defence in that *préfecture*, but he did not promote civil defence.<sup>14388</sup> Contrary to Des Forges' assertion, he did not get any support from Kalimanzira and Nyiramasuhuko for promoting civil defence.<sup>14389</sup>

5521. Nteziryayo testified that between April and 3 July 1994 Prime Minister Kambanda and his Government requested members of the population to participate in their own security. The Prime Minister issued directives for the Rwandan population and during several speeches and meetings he talked about civil defence, including on one occasion at the National University of Rwanda on 14 May 1994.<sup>14390</sup>

5522. Nteziryayo testified that he did not attend Kambanda's 14 May 1994 speech at the National University of Rwanda but he heard portions of Kambanda's speech on the evening of 14 May 1994 or during the next day over Radio Rwanda delivered in Kinyarwanda.<sup>14391</sup>

5523. Nteziryayo agreed that Kambanda said during the speech that Aloys Simba was going to be in charge of civil defence for Butare and Gikongoro, and Colonel Gasake was in charge at the national level in Rwanda. Kambanda did not mention Nteziryayo in connection with the civil defence structure in his speech.<sup>14392</sup>

5524. Nteziryayo testified that Kambanda spoke about the need for civil defence. He urged the staff of the university to join civil defence and to undergo military training.<sup>14393</sup> He said that the *commune* authorities of Ngoma *commune* had to recruit 100 persons, not specifically youth, for each *secteur* and that the organisation was under the responsibility of the *bourgmestre*, who would be assisted by *commune* policemen and reserve officers. The military operations commander of Butare had to draw up and to supervise the programmes.<sup>14394</sup> During his speech, Kambanda said that training for civil defence had started and directives were being formulated.<sup>14395</sup>

5525. Nteziryayo confirmed that the speech of Prime Minister Kambanda contained the following remarks: that according to the intelligence service, the enemy was making attempts to infiltrate into that town, and that they should start to protect that town seriously because there were not enough roadblocks; that no one would have the right to move freely throughout

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<sup>14388</sup> T. 22 May 2007 pp. 32, 34 (Nteziryayo).

<sup>14389</sup> T. 22 May 2007 p. 35 (Nteziryayo).

<sup>14390</sup> T. 14 June 2007 p. 35; T. 27 June 2007 p. 7 (Nteziryayo).

<sup>14391</sup> T. 22 May 2007 pp. 40-41; T. 14 June 2007 p. 43; T. 14 June 2007 p. 48 (ICS); T. 27 June 2007 p. 5 (Nteziryayo) (Nteziryayo testified that only an extract of the speech had been broadcast); T. 14 June 2007 pp. 48-49 (ICS) (Nteziryayo) (He heard the aspect of the speech requesting university staff to support the Government, thanking them for their contribution and the part dealing with the civil defence programme. Nteziryayo testified that he also heard the portions of the speech where the President said the RPF had distributed weapons everywhere and that they should not be afraid of those weapons); T. 18 June 2007 p. 5 (Nteziryayo) (Nteziryayo also read a portion of the speech where Prime Minister Kambanda said, in essence, that there weren't enough roadblocks in the town and asked those in charge of security in that *préfecture* and in the *commune* to create roadblocks that would be manned either by civilians, farmers, or members of the population in general. He also acknowledged having read the portion where the Minister encouraged all citizens to defend the town).

<sup>14392</sup> T. 14 June 2007 p. 45; T. 27 June 2007 pp. 30-31 (Nteziryayo).

<sup>14393</sup> T. 27 June 2007 pp. 28-29 (Nteziryayo).

<sup>14394</sup> T. 14 June 2007 pp. 43-44 (Nteziryayo).

<sup>14395</sup> T. 27 June 2007 p. 30; T. 14 June 2007 p. 44 (Nteziryayo).



the town by giving directives serving the interest of the enemy, and those who so conducted themselves would also be considered as the enemy; and that someone who tells members of the population not to man roadblocks, not to protect their town, not to check the movements of persons entering into their town and exiting from their town, was an enemy of the country, in general, and in Butare.<sup>14396</sup>

5526. Nteziryayo testified that Kambanda did not say that the Tutsis should be eliminated. The main reason for the establishment of civil defence was to protect and defend the population. Therefore, Nteziryayo did not understand his speech as incitement to eliminate Tutsis.<sup>14397</sup>

5527. Nteziryayo testified that Colonel Simba, whom he met in Butare in 1994, told Nteziryayo that he was in charge of civil defence in Butare and Gikongoro *préfectures*.<sup>14398</sup> Lieutenant Colonel Simba's appointment had been signed by the defence minister.<sup>14399</sup>

5528. Nteziryayo testified that during a meeting held on 22 May 1994 in Ntyazo *commune*, Simba told him that he had appointed senior warrant officer Rekeraho as his deputy.<sup>14400</sup> Nteziryayo denied that he was ever the deputy of Lieutenant Colonel Simba in respect of civil defence in Butare and Gikongoro *préfectures*.<sup>14401</sup> He could not have been appointed because on 15 May 1994, he was not a reserve, non-commissioned or retired officer.<sup>14402</sup>

#### 25 May 1994 Directive

5529. Nteziryayo was shown Prosecution Exhibit 121 and testified that he had read it shortly after he took office as *préfet*.<sup>14403</sup> In the Directive dated 25 May 1994 the Prime Minister stated that the objectives of civil defence were to protect the population, to gather information, to defend the population against hostile actions before the intervention of the armed forces and to function as a relay to the armed forces.<sup>14404</sup> Nteziryayo testified that point two of the Directive dealt with the defence of the fatherland. According to point three the enemy was the attacker of Rwanda, *i.e.* the RPF, and everyone who assisted the attackers.<sup>14405</sup> Nteziryayo said by "accomplices" the document was not referring to Tutsis.<sup>14406</sup> He added that between April and July 1994, he did not hear that the enemy of Rwanda included both Tutsis from inside and Tutsis in the RPF.<sup>14407</sup>

<sup>14396</sup> T. 28 June 2007 pp. 29-30 (Nteziryayo).

<sup>14397</sup> T. 27 June 2007 p. 31 (Nteziryayo).

<sup>14398</sup> T. 22 May 2007 p. 23 (Nteziryayo).

<sup>14399</sup> T. 27 June 2007 p. 36 (Nteziryayo).

<sup>14400</sup> T. 22 May 2007 p. 26 (Nteziryayo).

<sup>14401</sup> T. 22 May 2007 pp. 26-27 (Nteziryayo).

<sup>14402</sup> T. 22 May 2007 p. 24 (Nteziryayo); *see* Prosecution Exhibit 120 (Letter from Minister of Defence Bizimana to Lt.-Col. Aloys Simba, appointing Simba as civilian defence advisor to the *préfets* of Butare and Gikongoro, 15 May 1994).

<sup>14403</sup> T. 23 May 2007 pp. 5-6; T. 3 July 2007 p. 26 (Nteziryayo); Prosecution Exhibit 121B (Prime Minister's Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994).

<sup>14404</sup> T. 23 May 2007 p. 5; T. 27 June 2007 p. 31; T. 3 July 2007 p. 26 (Nteziryayo).

<sup>14405</sup> T. 3 July 2007 p. 26 (Nteziryayo).

<sup>14406</sup> T. 3 July 2007 pp. 26-27 (Nteziryayo).

<sup>14407</sup> T. 3 July 2007 p. 27 (Nteziryayo).

5530. Nteziryayo testified that according to point 8 of Prosecution Exhibit 121 the civil defence committee was planned to function at various levels. Point 8 read: “To ensure better coordination of civil defence operations, the *préfecture* authorities are requested to point out the rapid putting in place of civil defence committees at the level of the *secteurs*, *communes* and *préfectures*.”<sup>14408</sup>

5531. Nteziryayo was shown Prosecution Exhibit 122 which discussed the implementation of the Prime Minister’s directives and was signed by the Minister of Interior, Édouard Karemera.<sup>14409</sup> He read out paragraph four of Prosecution Exhibit 122, “[i]dentification of people resources, to train as small groups of civil defence members at the political and ideological level”, and testified that this document dealt with the training sessions to be given to youth in different *secteurs* on civilian self-defence.<sup>14410</sup>

5532. Nteziryayo testified that he learned between 15 April and 3 July 1994 that Faustin Twagirayezu was the chairman of the civil defence committee that was situated in Butare town; he lived in Butare town but operated within the whole of Butare *préfecture*.<sup>14411</sup> Nteziryayo added that he never met Twagirayezu.<sup>14412</sup> When he took office as *préfet*, this self-defence committee was already operating. It was chaired by Faustin Twagirayezu.<sup>14413</sup>

5533. Contrary to Guichaoua’s assertions, Nteziryayo had not been relocated into the army as a reserve officer at the request of Théoneste Bagosora to become a member of the civil defence committee. Bagosora, who fell under the Ministry of National Defence, had no authority over Nteziryayo, who had been under the authority of the Ministry of Interior.<sup>14414</sup>

5534. Nteziryayo testified that he had never been in charge of the popular civil defence committee, be it a provisional committee or a fully-fledged committee contrary to the statement in Guichaoua’s Report.<sup>14415</sup> Nteziryayo testified that contrary to Des Forges’ Report he was not in charge of coordinating civil defence with the civilian authorities.<sup>14416</sup>

5535. Nteziryayo testified that when he became *préfet*, he learned that civil defence in Butare *préfecture* was funded.<sup>14417</sup> He learned from documents in the *préfecture* that there were various funds earmarked for civil defence in Butare *préfecture*, among them funds earmarked by the staff of the National University of Rwanda.<sup>14418</sup> Nteziryayo stated that part of the money was kept in the safe of the *préfecture*, which he also used to store money, but the substantial part was kept in one of the banks in Butare, as he learned from documents handed over to him when he became *préfet*.<sup>14419</sup> Around 22 or 23 June 1994, he received 2,000,000 Rwandan

<sup>14408</sup> T. 23 May 2007 p. 6; T. 3 July 2007 p. 31 (Nteziryayo).

<sup>14409</sup> T. 9 July 2007 p. 18 (Nteziryayo); Prosecution Exhibit 122B (Implementing the Directives of the Prime Minister on Organizing the Civil Self-Defence, 25 May 1994).

<sup>14410</sup> T. 9 July 2007 p. 19 (Nteziryayo).

<sup>14411</sup> T. 27 June 2007 p. 37; T. 28 June 2007 pp. 20-21 (Nteziryayo).

<sup>14412</sup> T. 27 June 2007 p. 37 (Nteziryayo).

<sup>14413</sup> T. 23 May 2007 pp. 6-7 (Nteziryayo).

<sup>14414</sup> T. 23 May 2007 p. 9 (Nteziryayo).

<sup>14415</sup> T. 23 May 2007 p. 20 (Nteziryayo).

<sup>14416</sup> T. 23 May 2007 p. 9 (Nteziryayo).

<sup>14417</sup> T. 22 May 2007 p. 27 (Nteziryayo).

<sup>14418</sup> T. 22 May 2007 pp. 27-28 (Nteziryayo).

<sup>14419</sup> T. 22 May 2007 p. 28 (Nteziryayo).

francs earmarked for civil defence by the Ministry of Interior and *commune* development. Nteziryayo stated that he kept the money in the vault and left it there when he left the country. He did not know what happened to the money afterwards.<sup>14420</sup>

5536. Nteziryayo testified that he did not take part in the funding intended for organising civil defence.<sup>14421</sup> Between 6 April and 21 June 1994 he had no relations with the bank accounts of the civil defence in Butare.<sup>14422</sup> As *préfet* between 21 June and 3 July 1994 he was in charge of the accounts of civil defence, but he did not actively raise funds for civil defence.<sup>14423</sup>

5537. Nteziryayo testified that after 20 June 1994, the chairman of the civil defence committee in Butare, Faustin Twagirayezu, and the adjutant chef, Pierre Claver Ntirigira, were in charge of training for civil defence.<sup>14424</sup> He added that Pierre Claver Ntirigira supervised the training programme in Ngoma *commune*.<sup>14425</sup>

5538. Nteziryayo testified that as *préfet* he saw from several documents that the training programme existed before Kambanda's speech on 14 May 1994.<sup>14426</sup> Nteziryayo was shown Prosecution Exhibit 115, a letter dated from the end of April 1994 authored by the area commander and addressed to the *commune* authorities, and testified that it contained information about the recruitment and training of people for civilian defence and requested *bourgmestres* to do the recruitment.<sup>14427</sup>

5539. Nteziryayo testified that he was never concerned in any way with the recruitment of youth and that he never asked anybody to recruit youths to be trained for civil defence in 1994 in Rwanda.<sup>14428</sup>

#### Nteziryayo Defence Witness AND-5

5540. Witness AND-5, a Hutu civil servant and a detainee appealing a life sentence for crimes committed during the 1994 genocide at the time of his testimony, testified that between April and July 1994, a civil defence programme existed in Mugusa *commune*.<sup>14429</sup> The office of the *préfecture* would write to the *bourgmestre* requesting them to select young people to be sent to Butare for training.<sup>14430</sup> The youths were taken to Butare by the *bourgmestre* in a car and with a policeman as escort. Before 1994, recruitment for the army took place every six months. After the RPF took over Ntyazo during 15 to 30 May 1994, training was organised in Mugusa *commune* at the request of the *bourgmestre* to train young people to handle guns to fight the *Inkotanyi* at the front.<sup>14431</sup> According to Witness AND-5, the police force conducted

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<sup>14420</sup> T. 22 May 2007 p. 27 (Nteziryayo).

<sup>14421</sup> T. 22 May 2007 p. 28 (Nteziryayo).

<sup>14422</sup> T. 22 May 2007 p. 30 (Nteziryayo).

<sup>14423</sup> T. 22 May 2007 pp. 30, 32 (Nteziryayo).

<sup>14424</sup> T. 22 May 2007 p. 58 (Nteziryayo).

<sup>14425</sup> T. 22 May 2007 pp. 37, 48; T. 14 June 2007 p. 36 (Nteziryayo).

<sup>14426</sup> T. 22 May 2007 pp. 37, 40 (Nteziryayo).

<sup>14427</sup> T. 22 May 2007 pp. 40, 43-44 (Nteziryayo).

<sup>14428</sup> T. 22 May 2007 pp. 42, 44 (Nteziryayo).

<sup>14429</sup> T. 4 December 2006 p. 35 (ICS) (Witness AND-5).

<sup>14430</sup> T. 4 December 2006 pp. 35, 49-50 (ICS) (Witness AND-5).

<sup>14431</sup> T. 4 December 2006 pp. 35-37 (ICS) (Witness AND-5).

the trainings themselves, and no one from outside the *commune* came to assist them.<sup>14432</sup> He stressed that they were not trained to kill Tutsis, as the training took place after the massacres.<sup>14433</sup> Witness AND-5 believed Colonel Aloys Simba was in charge of civil defence in Butare and Gikongoro *préfectures* at this time.<sup>14434</sup>

#### Nteziryayo Defence Witness AND-44

5541. Witness AND-44, a former *Gendarmerie* Camp Commander,<sup>14435</sup> testified that towards the end of April 1994 and the beginning of May 1994 he heard a radio announcement by the government inviting soldiers to retreat and come take part in civil defence to identify disguised RPF infiltrators, who had come to kill members of the local population.<sup>14436</sup> A number of retired soldiers were called up on the radio as recruits to the civil defence; the witness heard the names of Barahira from Butare, Aloys Simba from the southern region and Jean Damascene Ukurikiyezi from the centre of the country, all of whom had previously retired from the army; the witness never heard Nteziryayo's name mentioned in relation to the civil defence programme.<sup>14437</sup>

#### Nteziryayo Defence Witness AND-50

5542. Witness AND-50, a Hutu teacher from Kigali, testified that Nteziryayo was not responsible for civil defence in Butare between April and July 1994. According to the witness, Colonel Aloys Simba was responsible for civil defence.<sup>14438</sup>

#### Nteziryayo Defence Witness AND-60

5543. Witness AND-60, a Hutu accountant from Muyaga *commune*, testified that he never heard that Nteziryayo was the chairman of civil defence in Butare, but knew that Colonel Aloys Simba was responsible for civil defence in Butare and Gikongoro. The witness could not say anything as to Colonel Simba's responsibilities in civil defence or what civil defence entailed.<sup>14439</sup>

#### Nteziryayo Defence Witness AND-74

5544. Witness AND-74, a Hutu civil servant, testified that around 15 or 16 May 1994 there was a radio announcement calling all civil servants and officers to help with civil defence. At this time Jean Damascène Ukurikiyezi had been appointed to coordinate the civil defence activities for Gitarama *préfecture* and Colonel Aloys Simba had been appointed to coordinate

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<sup>14432</sup> T. 4 December 2006 p. 37 (ICS) (Witness AND-5).

<sup>14433</sup> T. 4 December 2006 p. 36 (ICS); T. 5 December 2006 pp. 33, 36 (ICS) (Witness AND-5).

<sup>14434</sup> T. 4 December 2006 p. 37 (ICS) (Witness AND-5).

<sup>14435</sup> T. 17 April 2007 p. 9 (ICS) (Witness AND-44).

<sup>14436</sup> T. 17 April 2007 p. 50 (Witness AND-44).

<sup>14437</sup> T. 17 April 2007 pp. 50-51; T. 19 April 2007 p. 40 (Witness AND-44).

<sup>14438</sup> T. 2 May 2007 pp. 15, 49 (Witness AND-50).

<sup>14439</sup> T. 14 March 2007 pp. 20-22 (Witness AND-60).

the civil defence of Gikongoro.<sup>14440</sup> The witness testified that civil defence was intended to help the civilian population ensure its own security in the face of RPF infiltration.<sup>14441</sup>

#### Nteziryayo Defence Witness AND-75

5545. Witness AND-75, a Hutu farmer from Ntyazo *commune*, testified that he attended Mathieu Ndahimana's swearing-in ceremony on 22 May 1994.<sup>14442</sup> After Nteziryayo, Colonel Simba took the floor and stated that he was the person in charge of civilian defence in Butare and Gikongoro *préfectures*, and introduced his assistant for this task, Emmanuel Rekeraho. Simba did not introduce Nteziryayo as his assistant during this meeting.<sup>14443</sup> Simba did not call upon the Hutu population to hunt down and kill Tutsis.<sup>14444</sup> Simba stated that he was going to help the population to set up vigilante groups for self-defence.<sup>14445</sup>

#### Ndayambaje

5546. Ndayambaje testified that there were some RPF fighters who had infiltrated the country. He testified that accomplices included sympathisers who had taken up arms and attacked the country,<sup>14446</sup> people who provided financial support to the RPF, and people who sent young people to swell the ranks of the RPF at the front. Among those, some returned to the hills. Training was given to some members of clandestine brigades of the RPF. These were all accomplices. Ndayambaje stated that innocent Hutu and Tutsi children were killed in the violence although Tutsi children were not accomplices.<sup>14447</sup>

#### *25 May 1994 Directive*

5547. Ndayambaje testified that he complied with several measures of civil defence, for example, not to disturb security and not to consider his neighbour as his enemy.<sup>14448</sup> Ndayambaje testified that he respected the security measures that were given by Prime Minister Kambanda in the "Instructions to restore security in the country."<sup>14449</sup> Some of the measures were within his scope and if the occasion were to arise, he might talk about them.<sup>14450</sup>

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<sup>14440</sup> T. 6 March 2007 p. 76 (ICS) (Witness AND-74).

<sup>14441</sup> T. 7 March 2007 p. 66 (ICS) (Witness AND-74).

<sup>14442</sup> T. 7 May 2007 pp. 21-22 (Witness AND-75).

<sup>14443</sup> T. 7 May 2007 pp. 28-29 (Witness AND-75).

<sup>14444</sup> T. 7 May 2007 p. 29 (Witness AND-75).

<sup>14445</sup> T. 7 May 2007 p. 28 (Witness AND-75).

<sup>14446</sup> T. 25 November 2008 p. 34 (Ndayambaje).

<sup>14447</sup> T. 25 November 2008 p. 35 (Ndayambaje).

<sup>14448</sup> T. 25 November 2008 p. 29 (Ndayambaje).

<sup>14449</sup> T. 25 November 2008 p. 37 (Ndayambaje); see Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994).

<sup>14450</sup> T. 25 November 2008 pp. 36-37 (Ndayambaje).

### 3.7.10.4 Deliberations

5548. As illustrated by the 25 May 1994 Directive, the objectives of civil defence were to:

- Make the people feel secure and encourage them to defend themselves against RPF attacks rather than abandon their homes;
- Protect infrastructure and other public property;
- Obtain information on the acts or presence of the enemy in the *commune*, *cellule*, or neighbourhood;
- Denounce infiltrators and enemy allies;
- Disrupt all enemy action before the intervention of the armed forces;
- Serve as antennae for the army and the *Gendarmerie Nationale*.<sup>14451</sup>

5549. The objectives were to be achieved by setting up a hierarchy and training certain members of the population in the use of weapons.<sup>14452</sup>

5550. The Prosecution asserts that civil defence was composed of: an awareness campaign, recruitment and training, distribution and making of modern or traditional weapons and finding sources of finance.<sup>14453</sup> Roadblocks were allegedly the essence of the civilian self-defence systems which controlled the movement of people. The policy of the Interim Government to install roadblocks was transmitted by the *préfet* to the *communes*.<sup>14454</sup> Guichaoua likewise testified that patrols and roadblocks had to be organised and monitored and searches, seizures and *umuganda* (or community labour) were to be carried out under the auspices of the civil defence programme.<sup>14455</sup> In short, he said that the civil defence programme was a pretext for what he called the “killing machine”.<sup>14456</sup>

5551. According to Nteziryayo, the main reason for the establishment of civil defence was to protect and defend the population.<sup>14457</sup> He said the RPF “infiltration technique” was a combination of guerrilla and conventional warfare. Nteziryayo stated that they first killed or expelled civilians from a territory to occupy it and to use it strategically for surprise attacks on the Rwandan Armed Forces.<sup>14458</sup> Shalom Ntahobali testified that pacification involved the assistance of the public to set up roadblocks and participate in night patrols to prevent the hoodlums from committing criminal acts.<sup>14459</sup> Maurice Ntahobali agreed that civil defence was a way of ensuring the security of the country.<sup>14460</sup> There was some evidence to support the argument that there was a legitimate military threat of RPF incursions.

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<sup>14451</sup> Prosecution Exhibit 121B (Prime Minister’s Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994) p. 2.

<sup>14452</sup> Prosecution Exhibit 121B (Prime Minister’s Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994).

<sup>14453</sup> T. 29 June 2004 p. 47 (Guichaoua).

<sup>14454</sup> T. 9 June 2004 p. 24 (Des Forges).

<sup>14455</sup> T. 29 June 2004 p. 47 (Guichaoua).

<sup>14456</sup> T. 29 June 2004 p. 54 (Guichaoua).

<sup>14457</sup> T. 27 June 2007 p. 31 (Nteziryayo).

<sup>14458</sup> T. 22 May 2007 p. 21 (Nteziryayo).

<sup>14459</sup> T. 3 May 2006 p. 26 (Ntahobali).

<sup>14460</sup> T. 14 September 2005 pp. 48-49 (Maurice Ntahobali).

5552. In this regard, a 15 May 1994 letter from Minister of Defence Bizimana to Lieutenant Colonel Aloys Simba, appoints Simba to be “Civilian Defence adviser” to the *préfets* of Butare and Gikongoro *préfectures*. It charges Simba with training 10 men in each *secteur* on how to prevent the infiltration of the “ENI,” *i.e.* the enemy. It also urges him to prioritise the civil defence programme in the *communes* bordering Burundi to prevent infiltrations from Burundi.<sup>14461</sup> Therefore, the Minister of Defence was evidently concerned about the infiltration of the enemy and saw civil defence as a way to address it.

5553. In addition, Defence Exhibit 537B, a 2 July 1992 memorandum from Lieutenant Colonel Nsengiyumva to the Rwandan Army Chief of Staff regarding internal security, states: “*Inyenzi* infiltrators are increasingly settling in Kigali and elsewhere in the country.” It recommends: “Measures to track down the *Inyenzi* infiltrators should be implemented.” In particular, it names several members of the Rwandan army who were allegedly key players in a counterfeiting network and says that such funds were being used to recruit *Inyenzi-Inkotanyi* in Burundi. The memorandum does not cite any sources and merely recounts unconfirmed suspicions as to RPF infiltrators.<sup>14462</sup> The Chamber considers this only to support the fact that there was a climate of fear from 2 July 1992, within which members of the army suspected their colleagues of materially supporting the RPF.<sup>14463</sup>

5554. Des Forges also acknowledged the existence of RPF infiltrators in Rwanda. However, she said that the number of infiltrators was likely in the dozens and that it was unreasonable for the Interim Government to consider an entire ethnic group to be infiltrators.<sup>14464</sup> In this connection, the Chamber examines the evidence as to the identity of the “accomplices” to the RPF.

#### 3.7.10.4.1 Enemy/Accomplices

5555. The Chamber recalls its earlier finding that the Interim Government, of which Nyiramasuhuko was a member, adopted directives, including the 27 April 1994 Directive, and issued instructions during Cabinet meetings with an intent to encourage the population to hunt down and take action against the enemy and its accomplices, terms which referred to Tutsis in general ().

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<sup>14461</sup> Prosecution Exhibit 120 (Letter from Minister of Defence Bizimana to Lt.-Col. Aloys Simba, appointing Simba “Civilian Defence adviser” to the *préfets* of Butare and Gikongoro *préfectures*, 15 May 1994).

<sup>14462</sup> Defence Exhibit 537B (Nteziryayo) (Memo from Lt.-Col. Nsengiyumva to the Rwandan Army Chief of Staff regarding internal security, 2 July 1992).

<sup>14463</sup> Guichaoua stated in his Report that civil defence was the essence of the Ministry of the Interior’s security policy. Kalimanzira helped to elevate Nteziryayo to *préfet* because he wanted to dismiss Nsabimana: Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 131. Kalimanzira’s supervisory role in civil defence was corroborated by Nsabimana: Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) p. K0016628. However, Nyiramasuhuko contradicted this account, testifying that the civil defence system came under the Ministry of Defence, which appointed the *responsables*: T. 10 October 2005 p. 49 (Nyiramasuhuko). The 25 May 1994 Directive indicates that both the Minister of Defence and the Minister of Interior had leadership roles in the civil defence system. It designates that the coordination committee at the national level shall be composed of the Minister of the Interior and Communal Development as its president, and the Minister of Defence as vice-president: Prosecution Exhibit 121B (Prime Minister’s Directive to *Préfets* on the Organization of Civil Defence, 25 May 1994) p. 5. Therefore, the Chamber is convinced that both Ministries had a role in civil defence.

<sup>14464</sup> T. 6 July 2004 p. 44; T. 7 July 2004 p. 13 (Des Forges).

5556. The 27 April 1994 Kambanda Directive identified the enemy, stating, “[t]he enemy who attacked Rwanda is well known: it is the RPF-INKOTANYI.”<sup>14465</sup> However, as Des Forges noted, this Directive continues, stating: “Nevertheless, the population must remain watchful in order to unmask the enemy and his accomplices and hand them over to the authorities...”.<sup>14466</sup> Therefore, by issuing the 27 April 1994 Kambanda Directive, the public was being asked to be aware of the enemy and his accomplices.

5557. Des Forges testified that the enemy was defined as the RPF and “accomplices”. Thus, the effort under the guise of protecting civilians was, in fact, a military organisation to attack other civilians and to identify the civilian targets by their ethnicity.<sup>14467</sup> According to Des Forges, the proof that someone was a real accomplice was sometimes simply the identity card that said a person was Tutsi.<sup>14468</sup> Although she did not state a basis for this conclusion, the Chamber considers, based upon numerous Prosecution and Defence witnesses, that Tutsis were targeted and killed at roadblocks based upon their ethnicity which was clearly marked on national identification cards ().

5558. Reyntjens testified that in the 27 April 1994 Kambanda Directive, Kambanda said that the enemy was the RPF *Inkotanyi*; the enemy and accomplices included Tutsis as well as Hutus, although during that time, Tutsis as a whole were considered accomplices of the RPF.<sup>14469</sup> Although Reyntjens’ opinion was that “accomplice” might include some Hutus, the majority were Tutsis. Contrary to the instructions in the Directive, suspected accomplices were not handed over to authorities, but instead were killed on the spot.<sup>14470</sup> Therefore, Reyntjens agreed with Des Forges on this matter. Witness FAI stated in his testimony that he understood “accomplices”, as used in the 27 April 1994 Kambanda Directive, to be all Tutsis.<sup>14471</sup>

5559. Nyiramasuhuko testified that accomplices were RPF infiltrators.<sup>14472</sup> She also said that Radio Muhabura announced regularly that the RPF was present everywhere.<sup>14473</sup> It would have been redundant for the 27 April 1994 Kambanda Directive to name the RPF-*Inkotanyi* and its accomplices if “accomplice” simply meant RPF. The Chamber does not find Nyiramasuhuko’s testimony convincing on the definition of “accomplice”.

5560. Ndayambaje testified that there were some RPF fighters who had infiltrated the country. He testified that accomplices included sympathisers who had taken up arms and attacked the country,<sup>14474</sup> people who provided financial support to the RPF and people who sent young people to swell the ranks of the RPF at the front.<sup>14475</sup> Among those, some returned to the hills. Training was given to some members of clandestine brigades of the RPF. These

<sup>14465</sup> Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994) p. 2.

<sup>14466</sup> T. 7 July 2004 p. 13 (Des Forges); Prosecution Exhibit 118B (Prime Minister Kambanda’s instructions to restore security in the country, 27 April 1994) pp. 2-3.

<sup>14467</sup> T. 6 July 2004 p. 69 (Des Forges).

<sup>14468</sup> T. 9 June 2004 pp. 23-24 (Des Forges).

<sup>14469</sup> T. 21 November 2007 p. 66 (Reyntjens).

<sup>14470</sup> T. 21 November 2007 pp. 66-67 (Reyntjens).

<sup>14471</sup> T. 5 November 2002 p. 33 (ICS) (Witness FAI); *see also* ().

<sup>14472</sup> T. 29 September 2005 p. 32 (Nyiramasuhuko).

<sup>14473</sup> T. 21 November 2005 pp. 15, 37 (Nyiramasuhuko).

<sup>14474</sup> T. 25 November 2008 p. 34 (Ndayambaje).

<sup>14475</sup> T. 25 November 2008 p. 35 (Ndayambaje).



were all accomplices. Ndayambaje stated that innocent Hutu and Tutsi children were killed in the violence although Tutsi children were not accomplices.<sup>14476</sup>

5561. Although Nsabimana did not clarify the definition of “accomplice” in his testimony, in his interview, admitted as Prosecution Exhibit 114, Nsabimana asserted:

This time [in 1994] nobody was protected because Interahamwe wanted a massacre and those who wanted a massacre were always in power. If you were a civilian and you decided to protect Tutsis, these people in power said you were working with Tutsis so you also had to be killed, you are an enemy. For them, if you were protecting Tutsis or doing any kind of work with them, you are an enemy to the country.<sup>14477</sup>

5562. Therefore, Nsabimana indicated in this interview, which he acknowledged reflected his own views,<sup>14478</sup> that the *Interahamwe* considered anyone that helped Tutsi to be an enemy.

5563. Moreover, in his 14 May 1994 Speech at the University, Kambanda asserted, “[w]e have explained to them that it is inconceivable that seven million Rwandans have been displaced from the country by a group of Tutsis, most of who [*sic*] reside in Uganda and are an offshoot of the *Inyenzi*.”<sup>14479</sup>

5564. As to roadblocks, Kambanda stated: “According to the intelligence unit, the enemy is going to try to infiltrate this town. We request reinforcement for the town for we have come to realise that we do not have enough roadblocks.” This Directive was followed by the population as additional roadblocks were mounted in May 1994 (). Tutsis were targeted and killed at these roadblocks ().

5565. While RPF soldiers may have been legitimate military targets, and there was evidence that some RPF soldiers had infiltrated Rwanda, the Interim Government did not limit itself to RPF soldiers. It vilified accomplices which, according to Ndayambaje, included sympathisers who had taken up arms and attacked the country, and people who provided financial support to the RPF.<sup>14480</sup> Nsabimana acknowledged in his interview (Prosecution Exhibit 114) that the *Interahamwe* considered all those who helped Tutsis to be the enemy. Des Forges and Witness FAI stated quite plainly that all Tutsis were considered accomplices. As Tutsis were targeted and killed at roadblocks throughout Butare *préfecture*, it is clear that the civil defence forces understood that Tutsis were to be targeted as accomplices of the enemy.

#### 3.7.10.4.2 Beginning of Civil Defence

5566. The Nteziryayo Defence suggests that 25 May 1994 marked the beginning of the civil defence programme.<sup>14481</sup> However, numerous witnesses testified to the contrary. Witness TQ testified that on 20 April 1994 teachers from *Groupe Scolaire* joined the civil defence group,

<sup>14476</sup> T. 25 November 2008 p. 35 (Ndayambaje).

<sup>14477</sup> Prosecution Exhibit 114 (Interview with Nsabimana, 1 October 1994) p. K0120072.

<sup>14478</sup> T. 13 November 2006 p. 14 (Nsabimana).

<sup>14479</sup> Defence Exhibit 552 (Nsabimana) (Transcripts of Speech of Prime Minister Kambanda, broadcast 15 May 1994) p. 13.

<sup>14480</sup> T. 25 November 2008 pp. 34-35 (Ndayambaje).

<sup>14481</sup> Nteziryayo Closing Brief, paras. 5, 96-97.

but that civil defence had existed long before 21 April 1994.<sup>14482</sup> Prosecution Exhibit 115, a document dated 21 April 1994 and signed by Colonel Muvunyi, refers to a request from higher officials, the ministry, to train young people for civil defence.<sup>14483</sup>

5567. Nteziryayo agreed that this document contained information about the recruitment and training of people for civilian defence and requested *bourgmestres* to do the recruitment.<sup>14484</sup> Nteziryayo himself admitted that he had heard about civil defence in 1992 while working in the Ministry of the Interior.<sup>14485</sup> He agreed with Reyntjens that there were documents that showed that the training programme existed prior to Kambanda's speech on 14 May 1994.<sup>14486</sup>

5568. Nsabimana stated in his interview, admitted as Prosecution Exhibit 114, that even before 25 May 1994, perhaps around January 1994, he was aware of people being trained by the military, that these militia were trained to kill people from the opposition first and then to continue by killing Tutsis.<sup>14487</sup> Des Forges testified that October 1993 marked the official implementation of the civil defence system.<sup>14488</sup> However she did not present documentary evidence in support of this assertion.

5569. Witness RV stated he had not heard of civil defence before May 1994,<sup>14489</sup> but this does not obviate the existence of civil defence prior to that date.

5570. Civilians responded favourably to the call for volunteers. Defence Exhibit 540B, a 25 April 1994 letter from faculty at the National University of Rwanda to the local commander of Butare-Gikongoro, requested the training of the senior staff of the University in the use of firearms. Likewise, Defence Exhibit 541B, a 25 May 1994 letter from the president of the Committee of Students to the *Commandant de place* requested intensive training in civil defence. Finally, Prosecution Exhibit 123B, a 25 May 1994 letter from the director of ISAR to the *préfet* of Butare and the *bourgmestre*, put forward the names of 12 ISAR staff members for training in civil defence.

5571. Based on this evidence, the Chamber is convinced that civil defence was organised long before April 1994. Thereafter, the 25 May 1994 Interim Government Directive solidified a formal hierarchical authority over civil defence.

#### 3.7.10.4.3 Financing of Civil Defence

5572. The Chamber next addresses the issue of the financing of civil defence. Although the Indictment does not include a specific charge of financial support for civil defence, this evidence may be relevant to establish ties between Nteziryayo and the civil defence programme.

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<sup>14482</sup> T. 6 September 2004 p. 51 (ICS); T. 9 September 2004 p. 15 (ICS) (Witness TQ).

<sup>14483</sup> T. 9 September 2004 pp. 12-14 (ICS) (Witness TQ).

<sup>14484</sup> T. 22 May 2007 pp. 40, 43-44 (Nteziryayo).

<sup>14485</sup> T. 22 May 2007 p. 19 (Nteziryayo).

<sup>14486</sup> T. 22 May 2007 pp. 37, 40 (Nteziryayo); T. 24 September 2007 pp. 24-25 (Reyntjens).

<sup>14487</sup> Prosecution Exhibit 114 (Interview with Nsabimana, 1 October 1994) pp. K0120067, K0120069, K0120072.

<sup>14488</sup> T. 6 July 2004 p. 57 (Des Forges).

<sup>14489</sup> T. 19 February 2004 pp. 12-13 (ICS) (Witness RV).

5573. Des Forges testified that she was told by Nsabimana that Nteziryayo was a fund-raiser for the civil defence programme.<sup>14490</sup> She indicated the funds were used for arms and petrol, and provided beer and drugs to militia manning the barriers to keep them aggressive and reward them for their activities. She said this fund was administered by Nteziryayo and Nyiramasuhuko in Butare.<sup>14491</sup> Guichaoua corroborated the fact that civilian militiamen needed to be compensated in some way. In his view, robberies and rapes at roadblocks, occupation of lands, the stealing of tiles or of doors or window frames before burning houses and the provision of alcohol were payments in kind for those participating in the killings.<sup>14492</sup>

5574. Maurice Ntahobali testified that he heard about a committee for the funding of civilian defence between April and July 1994. He knew that his name was included on the list of members of that committee, but he did not attend the committee's meetings or participate in its mission.<sup>14493</sup> He was unable to confirm or deny other members of the financing committee as suggested by Guichaoua's Report.<sup>14494</sup>

5575. Nteziryayo testified that he did not take part in the funding intended for organising civil defence.<sup>14495</sup> Nteziryayo testified that between 6 April and 21 June 1994 he had no relations with the bank accounts of the civil defence in Butare.<sup>14496</sup> As *préfet* between 21 June and 3 July 1994 he was in charge of the accounts of civil defence, but he did not actively raise funds for civil defence.<sup>14497</sup> Nteziryayo testified that when he became *préfet*, he learned that civil defence in Butare *préfecture* was funded.<sup>14498</sup> He learned from documents in the *préfecture* that there were various funds earmarked for civil defence in Butare *préfecture*, among them funds earmarked by the staff of the National University of Rwanda.<sup>14499</sup> Nteziryayo stated that part of the money was kept in the safe of the *préfecture*, which he also used to store money in, but the substantial part was kept in one of the banks in Butare, as he learned from documents handed over to him when he became *préfet*.<sup>14500</sup> Nteziryayo stated that he kept the civil defence money in the vault and left it there when he left the country. He did not know what happened to the money afterwards.<sup>14501</sup>

5576. Based upon this evidence, the Chamber concludes that a committee existed to fund civil defence and that Nteziryayo left civil defence funds in the vault when he left the country.

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<sup>14490</sup> T. 6 July 2004 p. 67 (Des Forges).

<sup>14491</sup> T. 9 June 2004 p. 32 (Des Forges).

<sup>14492</sup> T. 29 June 2004 p. 54 (Guichaoua).

<sup>14493</sup> T. 13 September 2005 p. 30; T. 14 September 2005 p. 50 (Maurice Ntahobali).

<sup>14494</sup> T. 14 September 2005 p. 54 (Maurice Ntahobali); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) pp. 184-186.

<sup>14495</sup> T. 22 May 2007 p. 28 (Nteziryayo).

<sup>14496</sup> T. 22 May 2007 p. 30 (Nteziryayo).

<sup>14497</sup> T. 22 May 2007 pp. 30, 32 (Nteziryayo).

<sup>14498</sup> T. 22 May 2007 p. 27 (Nteziryayo).

<sup>14499</sup> T. 22 May 2007 pp. 27-28 (Nteziryayo).

<sup>14500</sup> T. 22 May 2007 p. 28 (Nteziryayo).

<sup>14501</sup> T. 22 May 2007 p. 27 (Nteziryayo).

#### 3.7.10.4.4 Leadership of Civil Defence

5577. The parties do not dispute that Lieutenant Colonel Aloys Simba was formally appointed civil defence adviser to the *préfets* of Butare and Gikongoro *préfectures*. However, the parties dispute whether Nteziryayo had a *de facto* leadership role in civil defence.

5578. The evidence was consistent that Simba had *de jure* responsibility for civil defence in Gikongoro and Butare *préfectures*. Prosecution Exhibit 120 is a letter from Minister of Defence Augustin Bizimana to Lieutenant Colonel Aloys Simba, appointing him *conseiller* for civil defence in Butare and Gikongoro *préfectures*.<sup>14502</sup> Des Forges, Nyiramasuhuko and Reyntjens all agreed that this document showed that Colonel Simba was in charge of civil defence in Butare *préfecture*.<sup>14503</sup> Nsabimana acknowledged that Colonel Simba came to his office to tell Nsabimana that Simba had been appointed to the post of *responsable* for civil defence.<sup>14504</sup>

5579. As to the leader of civil defence, Kambanda stated in his 14 May 1994 speech at the University:

Military leaders in charge of Civil Defence have been appointed; they are mainly retired officers with military experience. Their names will be communicated to you in the next few days but I believe that the Butare-Gikongoro area will be under Colonel Simba's command. At the national level, Colonel Gasake will be in charge of Civil Defence Operations. We are organizing ourselves in order to put in place this Civil Defence structure.<sup>14505</sup>

5580. Likewise, Nteziryayo testified that the only time he had responsibility with regard to civil defence was in accordance with the instructions of the Prime Minister of 25 May 1994 after he became *préfet*. At that time, he became *ex-officio* in charge of civil defence in that *préfecture*, but he did not promote civil defence.<sup>14506</sup> Further he did not get any support from Kalimanzira and Nyiramasuhuko for promoting civil defence. He never spoke to either of them about civil defence.<sup>14507</sup>

5581. Des Forges testified that she did not see any documents at the BPO sent to or by Nteziryayo concerning civil defence.<sup>14508</sup> Nonetheless, based on witness testimony, Des Forges testified it was probable that Nteziryayo, whether formally ordered to or not, acted in some capacity in relation to civil defence with Simba.<sup>14509</sup> Des Forges testified that it was difficult to define Nteziryayo's role because documentation was not available. However, she confirmed the statement in her Report that Nteziryayo was in charge of coordination with the civilian authorities regarding civilian defence.<sup>14510</sup> Although Colonel Simba was *de jure* responsible

<sup>14502</sup> T. 9 June 2004 p. 28 (Des Forges).

<sup>14503</sup> T. 6 July 2004 p. 60 (Des Forges); T. 10 October 2005 pp. 48-49 (Nyiramasuhuko); T. 21 November 2008 p. 72 (Reyntjens).

<sup>14504</sup> T. 21 November 2006 p. 32 (Nsabimana).

<sup>14505</sup> Defence Exhibit 552 (Nsabimana) (Transcripts of Speech of Prime Minister Kambanda, broadcast 15 May 1994) p. 15

<sup>14506</sup> T. 22 May 2007 pp. 32, 34 (Nteziryayo).

<sup>14507</sup> T. 22 May 2007 p. 35 (Nteziryayo).

<sup>14508</sup> T. 6 July 2004 p. 57 (Des Forges).

<sup>14509</sup> T. 6 July 2004 p. 60 (Des Forges).

<sup>14510</sup> T. 7 July 2004 pp. 4-5 (Des Forges).

for civil defence in Gikongoro and Butare, Des Forges testified that according to Simba's statement, he did not wish to be involved in Butare because he found he had too much work to do in Gikongoro.<sup>14511</sup>

5582. The Chamber notes the testimony of three witnesses who testified as to Nteziryayo's leadership role in civil defence for Butare *préfecture*. First, Witness FAI testified that Nteziryayo was responsible for civil defence.<sup>14512</sup> He testified that he learned on the day of *Bourgmaster* Ndahimana's swearing-in ceremony that Colonel Simba was actually in charge of civil defence in both Butare and Gikongoro, but he was assisted in Butare by Lieutenant Colonel Nteziryayo.<sup>14513</sup> He further testified that at a meeting at the BPO in early June 1994, Nteziryayo answered the call of two *bourgmestres* from Kibayi and Kigembe *communes* who requested help in controlling the influx of Tutsi refugees into their *communes*. Nteziryayo said that he had at his disposal youths who had undergone their training and that he would send them as soon as possible.<sup>14514</sup> Witness FAI testified that Nteziryayo sent some *Ibizumizi* to Kibayi to kill those Tutsis.<sup>14515</sup> Witness FAI testified that he was present when Nteziryayo gave Célestin Harindintwari directives to transport the *Ibizumizi* to Kibayi *commune*, so that they could help the Hutu inhabitants as requested.<sup>14516</sup>

5583. Witness RV testified Nteziryayo was the chairman of the civil defence committee in the region.<sup>14517</sup> Nteziryayo had some relationship with the civil defence force; he saw Nteziryayo at meetings dealing with the issue of personnel for the civil defence force.<sup>14518</sup>

5584. Witness TQ testified that Nteziryayo was *de facto* head of civil defence in Butare *préfecture*.<sup>14519</sup> Nteziryayo collaborated with Colonel Simba in training and in maintaining civil defence, which included manning and executing the roadblock system.<sup>14520</sup> Witness TQ recounted how, during the evacuation of orphans to Burundi, Nteziryayo intervened with certain members of the civilian defence who were manning a roadblock. They talked in an ordinary manner as if they knew each other.<sup>14521</sup> Following a discussion with Nteziryayo, the civil defence group indicated that the children were to disembark from the vehicles and walk through the roadblock "one after the other".<sup>14522</sup>

5585. The Chamber recalls several findings in other sections of this Judgement which also support a conclusion that Nteziryayo had a leadership role in the civil defence programme. In May 1994 for example, Nteziryayo trained civilians () and distributed weapons () at Kamena

<sup>14511</sup> T. 6 July 2004 p. 60 (Des Forges).

<sup>14512</sup> T. 31 October 2002 p. 32 (Witness FAI).

<sup>14513</sup> T. 31 October 2002 pp. 11-12 (ICS); T. 5 November 2002 pp. 32, 36-37, 45 (ICS) (Witness FAI).

<sup>14514</sup> T. 31 October 2002 pp. 31-34; T. 5 November 2002 pp. 44-45 (ICS) (Witness FAI).

<sup>14515</sup> T. 31 October 2002 p. 32 (Witness FAI).

<sup>14516</sup> T. 31 October 2002 p. 33; T. 5 November 2002 pp. 49-50 (ICS) (Witness FAI): The Chamber recalls its previous finding that the Nteziryayo Defence did not receive notice regarding the *Ibizumizi* allegation (). The Chamber considers this not as a material fact which may form the basis of a conviction but instead as evidence that is relevant to other allegations pled in the Indictment. *See generally Renzaho*, Judgement (AC), paras. 71, 90.

<sup>14517</sup> T. 16 February 2004 pp. 48-49 (ICS); T. 19 February 2004 p. 31 (ICS) (Witness RV).

<sup>14518</sup> T. 19 February 2004 p. 22 (ICS) (Witness RV).

<sup>14519</sup> T. 6 September 2004 p. 52 (ICS); T. 9 September 2004 pp. 14-15 (ICS) (Witness TQ).

<sup>14520</sup> T. 7 September 2004 pp. 14-16 (ICS); T. 9 September 2004 p. 12 (ICS) (Witness TQ).

<sup>14521</sup> T. 7 September 2004 p. 15 (ICS) (Witness TQ).

<sup>14522</sup> T. 7 September 2004 p. 10 (ICS); T. 9 September 2004 p. 29 (ICS) (Witness TQ).

Stadium. Witness QAH stated that Nteziryayo addressed the group and asked them to make sure that there were no Tutsis among them before they began the training.<sup>14523</sup> Nteziryayo told the recruits that the purpose of the training was to counter the enemy.<sup>14524</sup> Nteziryayo taught them how to operate arms and urged them to kill the Tutsis.<sup>14525</sup>

5586. Furthermore, Nteziryayo did not dispute that he made speeches during the swearing-in ceremony of the Ntyazo *bourgmestre*, at meetings held in Kirarambogo, Muganza *commune*, and during meetings in Muyaga and Kibayi *communes* on 22 and 23 May and in mid-June 1994 respectively. Although the Chamber found that it was not proven that Nteziryayo made inciting remarks at the swearing-in ceremony of the *bourgmestre* of Ntyazo *commune* on 22 May 1994, nor at a meeting in Kirarambogo, Muganza *commune*, on 23 May 1994, the Chamber found that Nteziryayo incited the population during meetings held in Muyaga and Kibayi *communes* around mid-June 1994 ().

5587. Finally, the Chamber has held that Nteziryayo attempted to prevent the evacuation from Butare of about 300 orphans and their adult supervisors. He selected about 30 individuals, whom he believed to be Tutsi adults and forced them to remain in Rwanda. He and Ntahobali segregated and prevented the 30 people from crossing the border ().

5588. Nteziryayo claims that between 15 April and 21 June 1994, when he was sworn-in as *préfet* of Butare, he was not engaged in any state activities or duties.<sup>14526</sup> It is not contested that Nteziryayo was in Kigali from 6 April 1994 until 15 April 1994. He states that he mainly took care of his family who were residing in a friend's home in Ngoma *commune*.<sup>14527</sup> However, he chose to live in the Hotel Ibis instead because there was insufficient room for him at the friend's home.<sup>14528</sup> Although Nteziryayo claims to not have worked or to have sought direction from the Minister of the Interior in Gitarama, from April to 17 June 1994,<sup>14529</sup> he accepted his salary for the months of May and June from the army accountant in Cyangugu (albeit belatedly).<sup>14530</sup> He continued to consider himself the Chief of *commune* police in the Ministry of the Interior.<sup>14531</sup> Despite the fact that the army was understaffed and was recruiting people during this time, and Nteziryayo was, according to him, without an occupation, he claims he served no function in the Government or army in Butare in this time.<sup>14532</sup> Nonetheless, Nteziryayo testified that he always wore his military uniform and generally carried his pistol with him.<sup>14533</sup> The Chamber does not find it credible that Nteziryayo was not serving the Government given that he intentionally separated himself from his family, continued to wear his military uniform, and accepted his salary for the months of May and June 1994.

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<sup>14523</sup> T. 6 April 2004 p. 18 (ICS) (Witness QAH).

<sup>14524</sup> T. 6 April 2004 p. 52 (Witness QAH).

<sup>14525</sup> T. 6 April 2004 p. 21 (Witness QAH).

<sup>14526</sup> T. 16 May 2007 p. 7 (Nteziryayo).

<sup>14527</sup> T. 15 May 2007 pp. 66, 70 (Nteziryayo).

<sup>14528</sup> T. 15 May 2007 p. 61 (Nteziryayo).

<sup>14529</sup> T. 21 June 2007 p. 27; T. 9 July 2007 p. 74 (Nteziryayo).

<sup>14530</sup> T. 4 July 2007 p. 55 (Nteziryayo).

<sup>14531</sup> T. 21 June 2007 p. 24 (Nteziryayo).

<sup>14532</sup> T. 21 June 2007 p. 27 (Nteziryayo).

<sup>14533</sup> T. 21 June 2007 pp. 18-19; T. 9 July 2007 p. 8 (Nteziryayo).

5589. In sum, the Chamber is convinced beyond a reasonable doubt that the civil defence programme was created before April 1994 in order to protect against the infiltration of RPF agents, but also the enemy and their accomplices, which included Tutsis both within and without the country. From the evidence and from Nteziryayo's own conduct, such as his involvement in weapons distribution and training, and his activities in meetings the Chamber finds beyond a reasonable doubt that Nteziryayo had a leadership role in civil defence in Butare *préfecture*.

## CHAPTER IV: LEGAL FINDINGS

### 4.1 Criminal Responsibility

#### 4.1.1 Article 6 (1) of the Statute

5590. 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.

5591. "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>14534</sup>

5592. "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>14535</sup>

5593. A person in a position of authority may incur responsibility for "ordering" another person to commit an offence if the order has a direct and substantial effect on the commission of the illegal act. Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently by the person who received the order. There is no requirement of a formal superior-subordinate relationship between the orderer and the perpetrator; 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 following the accused's order.<sup>14536</sup>

5594. "Committing" covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission.<sup>14537</sup> Physical perpetration can include physical killing, as well as other acts that constitute direct participation in the *actus reus* of the crime. "The question is

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<sup>14534</sup> *Dragomir Milošević*, Judgement (AC), para. 268; *Nahimana et al.*, Judgement (AC), para. 479.

<sup>14535</sup> *Karera*, Judgement (AC), para. 317; *Nahimana et al.*, Judgement (AC), para. 480.

<sup>14536</sup> *Renzaho*, Judgement (AC), paras. 315, 480; *Kalimanzira*, Judgement (AC), para. 213; *Boškoski & Tarčulovski*, Judgement (AC), para. 164; *Nahimana et al.*, Judgement (AC), para. 481; *Semanza*, Judgement (AC), paras. 360-361, 363.

<sup>14537</sup> *Nahimana et al.*, Judgement (AC), para. 478 (which also states commission includes participation in a joint criminal enterprise). As the Prosecution has not charged the Accused with any such alleged participation, the Chamber will not discuss joint criminal enterprise here.



whether an accused's conduct 'was as much an integral part of the genocide as were the killings which it enabled.'<sup>14538</sup>

5595. "Aiding and abetting" entails carrying out acts or omissions specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on the perpetration of the crime. The assistance need not serve as condition precedent for the commission of the crime and may occur before, during or after the principal crime has been perpetrated. The requisite mental element is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator. *Mens rea* can also be established if the accused is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed. Specific intent crimes, such as genocide, also require that the aider and abettor must know of the principal perpetrator's specific intent.<sup>14539</sup>

5596. The Appeals Chamber has confirmed that "[a]n accused can be convicted for aiding and abetting a crime when it is established that his [or her] conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime."<sup>14540</sup> This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission.<sup>14541</sup>

5597. Omission proper may lead to individual criminal responsibility under Article 6 (1) of the Statute where there is a legal duty to act. The *actus reus* of aiding and abetting by omission consists of the failure to discharge a legal duty, where that failure assisted, encouraged or lent moral support to the perpetration of the crime and had a substantial effect on the realisation of that crime. This implicitly requires that the accused had the ability to act, such that means were available to the accused to fulfil his or her duty. As for the *mens rea*, the aider and abettor must know that his or her omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal.<sup>14542</sup>

5598. The Chamber will discuss these modes of liability, where applicable, in making its legal findings.

#### 4.1.2 Article 6 (3) of the Statute

5599. The Prosecution charges all six Accused in this case with superior responsibility pursuant to Article 6 (3) of the Statute.

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<sup>14538</sup> *Kalimanzira*, Judgement (AC), para. 219 (citing *Gacumbitsi*, Judgement (AC), para. 60); see also *Seromba*, Judgement (AC), para. 161.

<sup>14539</sup> *Kalimanzira*, Judgement (AC), paras. 74, 86; *Rukundo*, Judgement (AC), para. 53; *Haradinaj et al.*, Judgement (AC), para. 58; *Karera*, Judgement (AC), para. 321; *Nahimana et al.*, Judgement (AC), para. 482; *Muhimana*, Judgement (AC), para. 189; see also *Seromba*, Judgement (AC), paras. 171-174, 182.

<sup>14540</sup> *Kalimanzira*, Judgement (AC), para. 74 (quoting *Brđanin*, Judgement (AC), para. 273).

<sup>14541</sup> *Brđanin*, Judgement (AC), para. 273; *Ntagerura et al.*, Judgement (AC), para. 338.

<sup>14542</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43.

#### 4.1.2.1 Notice of Alleged Subordinates

5600. When the Prosecution seeks a conviction under Article 6 (3) of the Statute for superior-subordinate responsibility, the Indictment should plead: (1) that the accused is the superior of subordinates sufficiently identified; (2) the criminal conduct of those others for whom he or she is allegedly responsible; (3) the accused's conduct by which he or she may be found to have known or to have had reason to know that his or her subordinates were about to commit crimes or had committed them; and (4) the accused's conduct by which he or she may be found to have failed to take necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>14543</sup>

5601. Although the Indictment must sufficiently identify the alleged subordinates of the accused, an alleged superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability pursuant to Article 6 (3). Physical perpetrators of the crimes may be identified by category in relation to a particular crime site.<sup>14544</sup>

5602. The Chamber has made findings concerning the acts of the six Accused in this case, and of *Interahamwe*, soldiers, *gendarmes*, *commune* police, *conseillers* of Ngoma *commune* and civilians.

5603. The Chamber will now assess the extent to which the Prosecution charged each Accused with responsibility as a superior over these persons. In doing so, the Chamber will also determine whether the Accused received sufficient notice of their alleged subordinates.

5604. Regarding the other three elements required for notice of alleged superior responsibility, the Chamber will address these when discussing the acts of alleged subordinates in the appropriate section of the legal findings below.

##### 4.1.2.1.1 Nyiramasuhuko

5605. The Nyiramasuhuko and Ntahobali Indictment charges Nyiramasuhuko with criminal responsibility as a superior in relation to various paragraphs of the Indictment.<sup>14545</sup>

5606. The Prosecution identifies numerous categories of persons over whom Nyiramasuhuko allegedly bears responsibility pursuant to Article 6 (3), including *Interahamwe*, soldiers, *gendarmes*, Ntahobali, "prefects, bourgmestres and all of their subordinates", civilians and others.<sup>14546</sup> The Chamber considers it clear that, even though the Prosecution does not

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<sup>14543</sup> *Renzaho*, Judgement (AC), para. 64; *Muvunyi I*, Judgement (AC), para. 19; *Nahimana et al.*, Judgement (AC), para. 323; *Ntagerura et al.*, Judgement (AC), paras. 26, 152.

<sup>14544</sup> *Renzaho*, Judgement (AC), para. 64; *Muvunyi I*, Judgement (AC), para. 55; *Blagojević & Jokić*, Judgement (AC), para. 287.

<sup>14545</sup> These Indictment Paragraphs are 5.1, 6.20, 6.27, 6.30, 6.31, 6.33, 6.37, 6.38, 6.39, 6.47, 6.49, 6.50, 6.51, 6.53, 6.54, 6.55, 6.56.

<sup>14546</sup> The Prosecution also alleges superior responsibility or effective control over staff of the Ministry of Family and Women's Development, civil leaders, *responsables de cellule*, other local authorities, the "Rwandan political administration", the armed forces, the Presidential Guard, militia, members of the civil defence, perpetrators, persons at the roadblock near her house and at the BPO, and "subordinates in the administrative political system of Rwanda who implemented the government's strategy of genocide and widespread or systematic attacks against

explicitly mention *commune* police when alleging Nyiramasuhuko's superior responsibility, they could be encompassed as alleged subordinates of *préfets* and *bourgmestres*.<sup>14547</sup>

5607. The Nyiramasuhuko Defence refers to the submissions made in the Ntahobali Closing Brief concerning the joint Indictment. That Brief submits that the Indictment fails to specify the requisite elements for superior responsibility, and is thus defective. In particular, the Ntahobali Defence states that the Indictment fails to provide sufficient notice of the identity of alleged perpetrators and accomplices, of dates and places of alleged crimes, and of the factual allegations against the Accused that are capable of sustaining a conviction. These defects have not been cured and have impaired the Defences' ability to prepare themselves adequately, and therefore require an acquittal on all charges of superior responsibility.<sup>14548</sup>

5608. Although the Indictment lacks any paragraph specifically detailing Nyiramasuhuko's alleged subordinates, the Chamber recalls that the Indictment must be read as a whole.

5609. The Indictment charges Nyiramasuhuko with superior responsibility in relation to 17 paragraphs.<sup>14549</sup> This information, coupled with a review of these paragraphs, would have provided the Nyiramasuhuko Defence with sufficient notice of her alleged subordinates. For example, Paragraph 6.30 – pled in support of Article 6(3) responsibility – alleges that Nyiramasuhuko and Ntahobali were “accompanied by *Interahamwe* militiamen ... and soldiers” in their visits to the *préfecture* office from April through June 1994.<sup>14550</sup> The Chamber considers that this provided requisite notice that Nyiramasuhuko's alleged subordinates included *Interahamwe* and soldiers.

5610. Nyiramasuhuko is also charged as a superior in relation to Paragraphs 6.37, 6.47 and 6.53. Paragraph 6.37 identifies only Ntahobali.<sup>14551</sup> Because Nyiramasuhuko bears alleged responsibility as a superior for the acts alleged in this paragraph, the Chamber considers that she would have known that Ntahobali was pled as one of her subordinates. Paragraph 6.47 alleges that Nyiramasuhuko incited, and aided and abetted, “the population”<sup>14552</sup> which, in the Chamber's view, identifies civilians to be alleged subordinates of Nyiramasuhuko. Similarly, Paragraph 6.53 describes the alleged acts of “soldiers, militiamen and gendarmes”.<sup>14553</sup> When considered alongside Nyiramasuhuko's alleged superior responsibility according to this

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Tutsis”: Prosecution Closing Brief, pp. 28-30, 68-69, 104-106, 115-117, 122-126, 131, 134, paras. 5-13, 133-134, 262-267, 270, 289, 301, 306, 308, 326-336, 343, 359, 372; Prosecution Closing Argument, T. 20 April 2009 pp. 15-16, 20, 29-32, 36-37.

<sup>14547</sup> See, e.g., Prosecution Closing Brief, p. 28, para. 6 (“[S]he had authority over a wide range of persons beyond the staff of her own Ministry, including ... civic leaders throughout Rwanda's pyramid-like administrative structure such as prefects, bourgmestres and all of their subordinates and civilians. Pauline Nyiramasuhuko was in a superior relationship to a wide range of persons beyond the staff in her own Ministry.”).

<sup>14548</sup> Nyiramasuhuko Closing Brief, para. 1; Ntahobali Closing Brief, paras. 18, 20, 25-31, 59-64; Nyiramasuhuko Closing Argument, T. 21 April 2009 p. 70; Nyiramasuhuko Closing Rejoinder Argument, T. 30 April 2009 p. 62.

<sup>14549</sup> Paras. 5.1, 6.20, 6.27, 6.30, 6.31, 6.33, 6.37, 6.38, 6.39, 6.47, 6.49, 6.50, 6.51, 6.53, 6.54, 6.55 and 6.56 of the Nyiramasuhuko and Ntahobali Indictment (all pled pursuant to Article 6(3) of the Statute).

<sup>14550</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14551</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14552</sup> Para. 6.47 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14553</sup> Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment.

paragraph, the paragraph provided notice that her alleged subordinates included soldiers, militiamen and *gendarmes*.<sup>14554</sup>

5611. Accordingly, a holistic reading of the Indictment demonstrates that numerous paragraphs pled in support of Article 6 (3) responsibility identify Nyiramasuhuko's alleged subordinates. These paragraphs provide that Nyiramasuhuko is alleged to be superior to *Interahamwe*, Ntahobali, soldiers, *gendarmes* and civilians.<sup>14555</sup>

5612. Even were this not the case, the Chamber notes that the Prosecution Pre-Trial Brief, filed after the operative Indictment,<sup>14556</sup> specifically alleges that Nyiramasuhuko supervised *Interahamwe*, *gendarmes* and soldiers.<sup>14557</sup> Similarly, the witness summaries appended to the Pre-Trial Brief confirm that Nyiramasuhuko was an alleged superior of Ntahobali and *Interahamwe*.<sup>14558</sup>

5613. Under these circumstances, the Chamber considers that Nyiramasuhuko received sufficient notice that she was charged with superior responsibility for the alleged acts of *Interahamwe*, Ntahobali, soldiers, *gendarmes* and civilians.

5614. The Prosecution also alleges Nyiramasuhuko's responsibility over *préfets* and *bourgmestres*. In this regard, the Chamber notes that Paragraph 6.33 is pled in support of superior responsibility.<sup>14559</sup> Because this paragraph alleges that "Nyiramasuhuko asked [Nsabimana] what those people [the Tutsis] were doing at the *préfecture* offices, and why they had not yet been killed",<sup>14560</sup> the Chamber considers that Nyiramasuhuko would have known the subordinate over whom she was alleged to bear superior responsibility in that paragraph, was Nsabimana. The Chamber therefore finds that the paragraph provides sufficient notice that Nyiramasuhuko was charged as a superior to Nsabimana in regard to this specific allegation.

5615. Other paragraphs pled in support of Article 6 (3) refer to Nteziryayo, Kanyabashi and Ndayambaje, but none allege the sort of relationship that could provide clear notice to

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<sup>14554</sup> Given the context, the Chamber considers it clear that the "militiamen" referenced in this Indictment would have been understood as *Interahamwe*, and that Nyiramasuhuko received sufficient notice of these alleged subordinates in this regard; *see, e.g.*, Paras. 1.17 (conflating the militia and the *Interahamwe*), 3.10 (same), 4.4 (same), 4.5 (same), and 6.20 (same) of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14555</sup> Paras. 6.20, 6.27, 6.30, 6.37, 6.38, 6.47, 6.50, 6.51, 6.53 of the Nyiramasuhuko and Ntahobali Indictment; *see also* Paras. 5.1, 6.39, 6.49, 6.52, 6.54, 6.55, 6.56 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14556</sup> The Prosecution filed the Nyiramasuhuko Indictment on 1 March 2001, and filed its Pre-Trial Brief on 11 April 2001. For the preference of post-indictment submissions when conducting a curing analysis, *see generally* *Ntawukulilyayo*, Judgement (TC), para. 47.

<sup>14557</sup> Prosecution Pre-Trial Brief, paras. 21, 29; *see also* Prosecution Pre-Trial Brief, paras. 30-31.

<sup>14558</sup> *See, e.g.*, Prosecution Pre-Trial Brief – Appendix; Witness TA (3) cited in support of all counts against Nyiramasuhuko and Counts 1-3, 5-11 against Ntahobali ("Nyiramasuhuko was superior to Ntahobali"); Witness QBQ (45), cited in support of all counts against Nyiramasuhuko, and Counts 1-3, 5-9 against Kanyabashi ("Nyiramasuhuko came to the Prefecture office with *Interahamwe* and *commune* police. Nyiramasuhuko ordered them to kill men and rape women before killing them"); Witness RB (63) cited in support of Counts 1-2, 5 against Nyiramasuhuko, Counts 1-3 against Ntahobali, and Counts 1-3, 5-9 against Kanyabashi ("RB learned that Ntahobali murdered on behalf of Nyiramasuhuko").

<sup>14559</sup> Para. 6.33 is pled in support of superior responsibility only in relation to the charge of genocide; *see* Nyiramasuhuko and Ntahobali Indictment, Count 2.

<sup>14560</sup> Para. 6.33 of the Nyiramasuhuko and Ntahobali Indictment.

Nyiramasuhuko of an alleged superior-subordinate relationship over these persons.<sup>14561</sup> In this regard, the Indictment is defective. Moreover, the Chamber has not identified any form of timely, clear and consistent notice that would cure this defect, nor has the Prosecution referred to any possibly curative instrument.<sup>14562</sup> Accordingly, the Chamber considers that Nyiramasuhuko did not receive adequate notice that she was being charged with superior responsibility in relation to Nteziryayo, Kanyabashi and Ndayambaje.

5616. Finally, of the Indictment paragraphs pertaining to Nyiramasuhuko's alleged superior responsibility, none mention *commune* police. The Indictment is defective in omitting this information. While it is possible to remedy vagueness in an indictment, omissions cannot be remedied.<sup>14563</sup> Accordingly, the Chamber concludes that Nyiramasuhuko did not receive adequate notice that she was being charged as a superior to *commune* police, and will not address any such responsibility below.

#### 4.1.2.1.2 Ntahobali

5617. The Nyiramasuhuko and Ntahobali Indictment charges Ntahobali with superior responsibility under numerous Indictment paragraphs.<sup>14564</sup>

5618. The Prosecution alleges that Ntahobali bears responsibility as a superior over *Interahamwe* and soldiers.<sup>14565</sup> Because *Interahamwe* and soldiers were potentially implicated in numerous factual findings, the Chamber will assess whether sufficient notice was provided to Ntahobali of his alleged responsibility over these categories of persons.

5619. As set out above (), the Ntahobali Defence submits that the Indictment is defective in failing to specify the elements for superior responsibility, and that these defects have not been cured. According to the Ntahobali Defence, these uncured defects have resulted in prejudice to the Ntahobali Defence, and therefore require an acquittal on all charges of superior responsibility.<sup>14566</sup>

5620. The Chamber observes that the Indictment identifies Ntahobali as a leader of a group of *Interahamwe* during the events referred to in the Indictment, and alleges that he "exercised authority over *Interahamwe* militiamen in Butare *préfecture*".<sup>14567</sup> Although the Indictment does not explicitly state that Ntahobali's subordinates included soldiers, numerous paragraphs

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<sup>14561</sup> Paras. 6.39, 6.47, 6.52, 6.54, 6.56 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14562</sup> The Prosecution appears to argue that, in addition to the Indictment, Nyiramasuhuko received adequate notice of her alleged subordinates through the testimony of witnesses: Prosecution Closing Brief, p. 124, para. 332. The Chamber is not convinced that witness testimony could provide timely notice, and the Prosecution does not elaborate on this argument.

<sup>14563</sup> See *Renzaho*, Judgement (AC), para. 55; *Karera*, Judgement (AC), para. 293.

<sup>14564</sup> The relevant Indictment Paragraphs are 5.1, 6.27, 6.30, 6.31, 6.34, 6.35, 6.37, 6.39, 6.49, 6.50, 6.51, 6.53, 6.54, 6.55 and 6.56.

<sup>14565</sup> The Prosecution also alleges that Ntahobali bears superior responsibility over Jean Pierre. Prosecution Closing Brief, pp. 156-163, 165-166, 171-172, 174, 176-178, 181-182, 184-190, 192, 197-198, 201-202, 204-205, 207, paras. 2-11, 13-14, 18, 21, 28-30, 42, 44, 47, 54-56, 63-64, 66, 71-73, 77-79, 84-85, 89, 95, 112-114, 122-125, 133, 135, 142; Prosecution Closing Argument, T. 20 April 2009 pp. 37-40, 42-47; Prosecution Closing Rebuttal Argument, T. 30 April 2009 pp. 54, 57.

<sup>14566</sup> Ntahobali Closing Brief, paras. 18, 20, 25-31, 59-63; Ntahobali Closing Argument, T. 22 April 2009 pp. 70-71, 73-74.

<sup>14567</sup> Paras. 4.4, 4.5 of the Nyiramasuhuko and Ntahobali Indictment.

pled pursuant to superior responsibility allege a superior-subordinate relationship between the two.<sup>14568</sup> Under these circumstances, the Chamber considers that the Indictment, when read as a whole, provides sufficient notice that *Interahamwe* and soldiers were among Ntahobali's alleged subordinates.

#### 4.1.2.1.3 Nsabimana

5621. The Nsabimana and Nteziryayo Indictment charges Nsabimana with responsibility as a superior under numerous Indictment paragraphs.<sup>14569</sup>

5622. The Prosecution submits a range of persons over whom Nsabimana allegedly bears superior responsibility, including soldiers, *Interahamwe*, Kanyabashi, Ndayambaje and *conseillers* of Butare *préfecture*.<sup>14570</sup>

5623. The Nsabimana Defence contends that the Indictment was defective in pleading each element of superior responsibility, and that no conviction can be based on this alleged responsibility.<sup>14571</sup>

5624. The Chamber recalls that it has already found that the Indictment sufficiently informed Nsabimana that he was charged with superior responsibility regarding soldiers (). As to the *Interahamwe*, the Chamber has concluded the Indictment was defective in pleading Article 6 (3) responsibility over them, and this defect was not cured ().

5625. The Indictment alleges that Nsabimana exercised authority over his subordinates in his capacity as *préfet* of Butare, a post which he held from 19 April to 17 June 1994. According to the Indictment, the *préfet* “has hierarchical authority over all civil servants and all persons holding public office within the boundaries of the *préfecture*, including the *bourgmestres* and *conseillers de secteur*”.<sup>14572</sup>

5626. As for Nsabimana's alleged superior responsibility over *bourgmestres*, the Indictment identifies Kanyabashi as a *bourgmestre* during the time when Nsabimana was *préfet*.<sup>14573</sup> This suffices to identify Kanyabashi as an alleged subordinate of Nsabimana.

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<sup>14568</sup> Paras. 6.27, 6.30, 6.34, 6.54 of the Nyiramasuhuko and Ntahobali Indictment; *see also* Paras. 5.1, 6.50, 6.51, 6.53 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14569</sup> The relevant Indictment Paragraphs are 5.1, 5.8, 6.21, 6.22, 6.25, 6.26, 6.28, 6.32, 6.33, 6.35, 6.36, 6.37, 6.38, 6.41, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.57, 6.58 and 6.59. The Chamber recalls that it has already acquitted Nsabimana on the charges found in Para. 6.25; *see Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, p. 61. However, the Chamber, considers that this is not relevant in determining whether Nsabimana received adequate notice of the allegations against him.

<sup>14570</sup> The Prosecution also alleges that Nsabimana was superior to, or had effective control over, “all the *sous-préfets*, *bourgmestres* ... and cell leaders in [Butare] prefecture”, local authorities, and “others who were involved in killings and massacres of Tutsi throughout the Prefecture”: Prosecution Closing Brief, pp. 229-230, 233, 257-258, 262-263, 269-270, 273, 278-279, 282, 285-288, paras. 3-8, 19, 90-91, 102, 107, 127-130, 139, 162, 165-166, 176, 178, 188, 195, 199, 203; Prosecution Closing Argument, T. 20 April 2009 pp. 60-63.

<sup>14571</sup> Nsabimana Closing Brief, paras. 45-57; Nsabimana Closing Argument, T. 23 April 2009 p. 69; Nsabimana Closing Argument, T. 24 April 2009 pp. 33-34, 40, 42; Nsabimana Closing Argument, T. 27 April 2009 pp. 6, 17.

<sup>14572</sup> Paras. 3.3, 3.4, 4.2, 4.3 of the Nsabimana and Nteziryayo Indictment.

<sup>14573</sup> Paras. 6.22, 6.37, 6.49 of the Nsabimana and Nteziryayo Indictment.

5627. As to Ndayambaje, the Indictment states that Ndayambaje was reappointed as *bourgmestre* on 20 June 1994, after Nsabimana was replaced as *préfet*.<sup>14574</sup> Although the Indictment identifies Ndayambaje as the *de facto bourgmestre* while Nsabimana was *préfet*,<sup>14575</sup> it gives no indication that Nsabimana's capacity as *préfet* would have included alleged superior responsibility over non-officeholders like Ndayambaje. The Indictment is thus defective in pleading that Ndayambaje was an alleged subordinate of Nsabimana. Because the Chamber has not identified any form of timely, clear and consistent notice that might have cured this defect, the Chamber will not consider below whether Nsabimana might bear responsibility as an alleged superior to Ndayambaje.

5628. Reading the Indictment as a whole, the Chamber considers that the Prosecution sufficiently pled Nsabimana's superior responsibility over soldiers, and over Kanyabashi and *conseillers* from the period of 19 April to 17 June 1994.

#### 4.1.2.1.4 Nteziryayo

5629. The Chamber notes that the Nsabimana and Nteziryayo Indictment charges Nteziryayo with responsibility as a superior under various Indictment paragraphs.<sup>14576</sup>

5630. The Prosecution identifies various alleged subordinates of Nteziryayo, including *bourgmestres*, *conseillers*, *Interahamwe*, and certain civilians in Butare *préfecture*.<sup>14577</sup>

5631. The Nteziryayo Defence does not appear to claim that it received insufficient notice of this form of responsibility, though it highlights certain Indictment paragraphs that it considers to be vague and thus inadequately pled.<sup>14578</sup>

5632. The Indictment alleges that Nteziryayo was *préfet* of Butare from 17 June 1994 until he left Rwanda in July 1994, and that in this capacity he exercised authority over his subordinates, who included "all civil servants and all persons holding public office within the boundaries of the *préfecture*, including the *bourgmestres* and *conseillers de secteur*".<sup>14579</sup> The Chamber considers this to provide sufficient notice to Nteziryayo of his alleged superior responsibility

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<sup>14574</sup> Paras. 6.34, 6.46 of the Nsabimana and Nteziryayo Indictment.

<sup>14575</sup> Para. 6.43 of the Nsabimana and Nteziryayo Indictment. In its opening statement, the Prosecution also stated that Muganza *commune* fell under Ndayambaje's jurisdiction, including during the time that Nsabimana was *préfet*. However, there is no explicit reference to Nsabimana, and it does not appear that this statement was intended to expand the list of Nsabimana's alleged subordinates; see Prosecution Opening Statement, T. 12 June 2001 p. 85.

<sup>14576</sup> The relevant Indictment Paragraphs are 5.1, 5.8, 5.12, 5.13, 6.16, 6.29, 6.30, 6.31, 6.33, 6.41, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.57, 6.58 and 6.59.

<sup>14577</sup> The Prosecution also alleges that Nteziryayo was a superior to members of the civil defence programme. As the Chamber has not found that these persons participated in any crimes, it will not address Nteziryayo's notice of alleged superior responsibility over them. Prosecution Closing Brief, pp. 306-308, 320, 322, 327-330, 332-334, 337-339, 345, 348-349, 351-352, 365-367, 369, 371-372, 374-375, paras. 2-11, 52, 58, 73, 75-78, 80, 82, 87, 90-91, 100, 102-107, 109, 127, 139-140, 147, 150, 192-193, 197-198, 204, 213, 219, 226-227; Prosecution Closing Argument, T. 20 April 2009 pp. 68-70, 72-74, 77, 79-80; Prosecution Closing Argument, T. 21 April 2009 p. 3; Prosecution Closing Rebuttal Argument, T. 30 April 2009 pp. 54, 57.

<sup>14578</sup> Nteziryayo Closing Brief, paras. 5-10; Nteziryayo Closing Argument, T. 27 April 2009 pp. 28-34, 39-42, 52-53; Nteziryayo Closing Argument, T. 28 April 2009 pp. 18, 21; see also Nteziryayo Closing Brief, paras. 1-2, 24.

<sup>14579</sup> Paras. 3.3, 3.4, 4.5, 4.6 of the Nsabimana and Nteziryayo Indictment.

over these persons, including Kanyabashi and Ndayambaje while they were *bourgmestres*, during the indicated time period starting on 17 June 1994.

5633. To the extent that the Prosecution pursues superior responsibility over these persons before 17 June 1994, the Chamber notes that the Indictment, read as a whole, does not provide adequate notice of such responsibility. Moreover, no instrument has been identified that might cure any defect in this regard. The Chamber will thus not consider whether, prior to 17 June 1994, Nteziryayo was superior to *bourgmestres* such as Kanyabashi and Ndayambaje, or to *conseillers*.<sup>14580</sup>

5634. The Indictment also alleges that Nteziryayo was responsible for the civil defence of Butare *préfecture*, and that he thus “exercised authority over *Interahamwe* militiamen and certain civilians in the *préfecture*”.<sup>14581</sup> Reading the Indictment as a whole, the Chamber considers that this provided sufficient notice that Nteziryayo was allegedly responsible as a superior for *Interahamwe* and civilians in Butare *préfecture* throughout the relevant time period.

#### 4.1.2.1.5 Kanyabashi

5635. Kanyabashi is charged with superior-subordinate responsibility pursuant to numerous paragraphs of his Indictment.<sup>14582</sup>

5636. The Prosecution alleges that various persons were subordinates of Kanyabashi, including soldiers, *Interahamwe*, *commune* police, *conseillers* and civilians.<sup>14583</sup>

5637. The Kanyabashi Defence does not appear to make any submissions concerning notice for 6 (3) responsibility.

5638. The Indictment alleges that Kanyabashi was *bourgmestre* of Ngoma *commune* from April 1974 until around 4 July 1994, and that he exercised authority over the civil servants posted in his *commune*, including *conseillers* and *commune* policemen.<sup>14584</sup> Kanyabashi therefore received sufficient notice that he was being charged as a superior in relation to them.

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<sup>14580</sup> The Chamber also notes that the Indictment alleges that Ndayambaje was appointed *bourgmestre* on 20 June 1994: Para. 6.46 of the Nsabimana and Nteziryayo Indictment.

<sup>14581</sup> Paras. 4.5, 4.6 of the Nsabimana and Nteziryayo Indictment.

<sup>14582</sup> The relevant Indictment Paragraphs are 5.1, 6.28, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.35, 6.37, 6.38, 6.41, 6.42, 6.43, 6.44, 6.45, 6.46, 6.57, 6.58, 6.60, 6.63, 6.64 and 6.65. The Chamber recalls that it has already acquitted Kanyabashi on the charges found in Para. 6.38, and has stated that Kanyabashi need not defend against a specific aspect of Para. 6.43: *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004, p. 62. The Chamber considers, however, that this is not relevant in determining whether Kanyabashi received adequate notice of the allegations against him.

<sup>14583</sup> The Prosecution also considers that Kanyabashi was a superior to *responsables de cellule*, militiamen, Prosecution Witness FAM, and others. Prosecution Closing Brief, pp. 385-387, 391, 403-405, 412-419, 422-425, 427, 430, 432, 449, paras. 3-8, 21, 67-72, 76, 100-120, 134-136, 139-140, 144, 152, 160, 169, 228; Prosecution Closing Argument, T. 21 April 2009 pp. 17-18, 23-24, 28. The Chamber considers it clear, given the context, that the “militiamen” referenced in this Indictment would have been understood as *Interahamwe*, and that Kanyabashi received sufficient notice of these alleged subordinates in this regard; *see, e.g.*, Paras. 1.17 (conflating the militia and the *Interahamwe*), 3.10 (same), 6.20 (same), and 6.40 (same) of the Kanyabashi Indictment.

<sup>14584</sup> Paras. 4.2, 4.3, 6.32 of the Kanyabashi Indictment.



5639. A reading of the Indictment paragraphs pled in support of 6 (3) responsibility demonstrates that Kanyabashi also received sufficient notice that he was charged as a superior to soldiers, *Interahamwe* and civilians.<sup>14585</sup>

#### 4.1.2.1.6 Ndayambaje

5640. Ndayambaje is charged with criminal responsibility as a superior in relation to various paragraphs of his Indictment.<sup>14586</sup>

5641. The Prosecution alleges that Ndayambaje is responsible as a superior over various groups of people, including soldiers, *Interahamwe*, *gendarmes*, *conseillers*, *commune* police and civilians.<sup>14587</sup>

5642. The Ndayambaje Defence submits that the Indictment was vague, and that essential information was lacking. This prevented investigations or an adequate rebuttal, and should result in an acquittal on all allegations under Article 6 (3) of the Statute.<sup>14588</sup>

5643. The Indictment alleges that Ndayambaje was *bourgmestre* of Muganza *commune* from 1983 to 1992, acted as a *de facto bourgmestre* starting on 19 April 1994, and was reappointed *bourgmestre* on 20 June 1994.<sup>14589</sup> The Indictment alleges that as *bourgmestre*, Ndayambaje had “authority over the civil servants posted in his *commune*”, and that Ndayambaje continued to exercise this authority even after 1992.<sup>14590</sup>

5644. Reading the Indictment as a whole, it is clear from the paragraphs pled in support of 6 (3) responsibility that Ndayambaje received sufficient notice that he was being charged as a superior to soldiers, *Interahamwe*, *gendarmes* and civilians, and to the *conseillers* and Muganza *commune* police.<sup>14591</sup>

#### 4.1.2.2 Superior-Subordinate Relationships

5645. For an accused to incur criminal responsibility under Article 6 (3) of the Statute, in addition to establishing beyond a reasonable doubt that his or her subordinate is criminally responsible, the following elements must be established beyond a reasonable doubt: (1) the

<sup>14585</sup> Paras. 6.31, 6.33, 6.34, 6.35, 6.38, 6.41, 6.45, 6.58, 6.60, 6.63 of the Kanyabashi Indictment; *see also* Paras. 5.1, 6.32, 6.37, 6.57, 6.64, 6.65 of the Kanyabashi Indictment.

<sup>14586</sup> The relevant Indictment Paragraphs are 5.1, 5.8, 5.13, 6.28, 6.30, 6.31, 6.32, 6.33, 6.34, 6.36, 6.37, 6.38, 6.39, 6.50, 6.51, 6.52, 6.53 and 6.54.

<sup>14587</sup> The Prosecution also alleges that Ndayambaje was a superior over “subordinates in the *commune* office”: Prosecution Closing Brief, pp. 450-456, 466, 469, 477-479, 494-497, paras. 3-26, 59, 69, 100-102, 105, 149, 154, 160, 162, 165, 169; Prosecution Closing Argument, T. 21 April 2009 pp. 37, 42; Prosecution Closing Rebuttal Argument, T. 30 April 2009 p. 55.

<sup>14588</sup> Ndayambaje Closing Brief, paras. 50, 62, 974, 976-977, 979-980; Ndayambaje Closing Argument, T. 29 April 2009 pp. 59, 63; *see also* Ndayambaje Closing Brief, paras. 882-883.

<sup>14589</sup> Paras. 4.2, 6.28, 6.38 of the Ndayambaje Indictment.

<sup>14590</sup> Paras. 3.5, 4.3 of the Ndayambaje Indictment.

<sup>14591</sup> Paras. 5.8, 5.13, 6.30, 6.31, 6.34, 6.37, 6.50, 6.52, 6.53 of the Ndayambaje Indictment; *see also* Para. 5.1 of the Ndayambaje Indictment. Given the context, the Chamber considers it clear that the “militiamen” referenced in this Indictment would have been understood as *Interahamwe*, and that Ndayambaje received sufficient notice of these alleged subordinates in this regard; *see, e.g.*, Paras. 1.17 (conflating the militia and the *Interahamwe*), 3.10 (same), 6.20 (same), 6.44 (same) of the Ndayambaje Indictment.

existence of a superior-subordinate relationship and that the superior had effective control over this subordinate; (2) that the superior knew or had reason to know that his or her subordinate was about to commit a crime or had done so; and (3) that the superior failed to take necessary and reasonable measures to prevent or punish the commission of the crime by his or her subordinate. The accused need not have the same intent as the perpetrator of the criminal act.<sup>14592</sup>

5646. Superior responsibility encompasses criminal conduct by subordinates under all modes of participation pursuant to Article 6 (1) of the Statute. As a result, a superior can be held criminally responsible for his or her subordinates' planning, instigating, ordering, committing or otherwise aiding and abetting a crime. An accused, however, cannot be held responsible for a subordinate's criminal conduct before he or she assumed command over this subordinate.<sup>14593</sup>

5647. The threshold for a superior-subordinate relationship is established by showing that the accused had effective control over a subordinate at the time the offence was committed. Effective control requires that the accused had the material ability to prevent or punish criminal conduct. The superior must also have possessed power or authority over subordinates either *de jure* or *de facto*. The superior-subordinate relationship entails that the accused, by virtue of his or her position, is senior to the perpetrator in a formal or informal hierarchy.<sup>14594</sup>

5648. The Trial Chambers of the ICTY have established that a superior-subordinate relationship need not be of a permanent nature, but instead could arise on an *ad hoc* or temporary basis.<sup>14595</sup> "To be held liable for the acts of [persons] who operated under [the Accused] on an *ad hoc* or temporary basis, it must be shown that, at the time when the acts charged in the Indictment were committed, these persons were under the effective control of that particular individual."<sup>14596</sup>

5649. A direct and individualised superior-subordinate relationship is not required for responsibility pursuant to Article 6 (3). Effective control may descend from the superior to the subordinate culpable of the crime through intermediary subordinates.<sup>14597</sup>

5650. The Chamber recalls that although the possession of *de jure* powers may suggest a material ability to prevent or punish criminal acts of subordinates, it is not sufficient to prove

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<sup>14592</sup> *Dragomir Milošević*, Judgement (AC), para. 280; *Orić*, Judgement (AC), para. 18; *Nahimana et al.*, Judgement (AC), para. 484; *Gacumbitsi*, Judgement (AC), para. 143.

<sup>14593</sup> *Orić*, Judgement (AC), paras. 20-21; *Nahimana et al.*, Judgement (AC), para. 486; *Halilović*, Judgement (AC), para. 67.

<sup>14594</sup> *Orić*, Judgement (AC), para. 20; *Halilović*, Judgement (AC), para. 59; *Gacumbitsi*, Judgement (AC), para. 143; *Ntagerura et al.*, Judgement (AC), paras. 341 (quoting *Ntagerura et al.*, Judgement (TC), paras. 628, 636-637), 342; *Kajelijeli*, Judgement (AC), paras. 85-87.

<sup>14595</sup> *Dorđević*, Judgement (TC), para. 1881; *Mrkšić et al.*, Judgement (TC), para. 560; *Limaj et al.*, Judgement (TC), para. 522; *Halilović*, Judgement (TC), para. 61; *Strugar*, Judgement (TC), para. 362; *Kunarac et al.*, Judgement (TC), para. 399. The Chamber notes that the *Semanza* Appeal Judgement uses similar language, albeit in the context of ordering pursuant to Article 6 (1) of the Statute; see *Semanza*, Judgement (AC), para. 363 ("It should be recalled that authority creating the kind of superior-subordinate relationship envisaged under Article 6 (1) of the Statute for ordering may be informal or of a purely temporary nature.").

<sup>14596</sup> *Kunarac et al.*, Judgement (TC), para. 399 (citing *Delalić et al.*, Judgement (AC), paras. 197-198, 256).

<sup>14597</sup> *Orić*, Judgement (AC), para. 20; *Nahimana et al.*, Judgement (AC), para. 785.

such ability. Even where *de jure* powers have been established, the Prosecution still bears the burden of proving beyond a reasonable doubt that the accused has effective control over his or her subordinates.<sup>14598</sup>

5651. Other factors indicative of effective control include the accused's position, the procedure for appointment, the actual tasks performed, his or her capacity to issue orders, the nature of such orders, and whether any orders were followed.<sup>14599</sup> The Chamber recalls that although the authority to issue orders may be indicative of effective control over subordinates, it does not automatically establish such control.<sup>14600</sup> Effective control can only be determined by looking at the evidence in its entirety on a case-by-case basis.<sup>14601</sup>

### 4.1.3 Cumulative Convictions

5652. It is not appropriate to convict an accused on a particular count for the same conduct under both Article 6 (1) and Article 6 (3).<sup>14602</sup> Where the conduct of an accused constitutes a violation of both Article 6 (1) and Article 6 (3), the Chamber will enter a conviction on the basis of Article 6 (1) of the Statute alone and consider whether the superior position of the accused is an aggravating factor.<sup>14603</sup> While a position of authority, even at a high level, does not automatically warrant a harsher sentence, it is the abuse of such authority which may serve as an aggravating factor in sentencing.<sup>14604</sup>

## 4.2 Genocide

### 4.2.1 Conspiracy to Commit Genocide

#### 4.2.1.1 Introduction

5653. All of the Indictments allege that the military, political leaders and civil servants conspired among themselves to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition so they could remain in power. The components of this plan included recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen and the preparation of lists of people to be eliminated. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje elaborated, adhered to, and executed this plan.<sup>14605</sup>

5654. All of the Indictments also allege that the massacres and assaults were the result of a conspiracy adopted at the national as well as the local level by military and political leaders,

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<sup>14598</sup> *Orić*, Judgement (AC), paras. 91-92; *Hadžihasanović & Kubura*, Judgement (AC), para. 21; *Gacumbitsi*, Judgement (AC), para. 143.

<sup>14599</sup> *Strugar*, Judgement (AC), para. 254; *Halilović*, Judgement (AC), para. 66; *Blaškić*, Judgement (AC), para. 69.

<sup>14600</sup> *Strugar*, Judgement (AC), para. 253.

<sup>14601</sup> *Strugar*, Judgement (AC), para. 254; *Halilović*, Judgement (AC), para. 66.

<sup>14602</sup> *Renzaho*, Judgement (AC), para. 564; *Nahimana et al.*, Judgement (AC), paras. 487-488; *Kajelijeli*, Judgement (AC), paras. 81-82, 318-319; *Blaškić*, Judgement (AC), para. 91.

<sup>14603</sup> *Renzaho*, Judgement (AC), para. 564; *Nahimana et al.*, Judgement (AC), paras. 487-488.

<sup>14604</sup> *Dragomir Milošević*, Judgement (AC), para. 302.

<sup>14605</sup> Para. 5.1 of the Nyiramasuhuko and Ntahobali Indictment; Para. 5.1 of the Nsabimana and Nteziryayo Indictment; Para. 5.1 of the Kanyabashi Indictment; Para. 5.1 of the Ndayambaje Indictment.

including the Accused.<sup>14606</sup> All but the Kanyabashi Indictment further provide that the Accused acted in concert with one another to participate in the planning, preparation, or execution of a common scheme, strategy, or plan, to commit the atrocities set forth in the Indictment.<sup>14607</sup>

#### 4.2.1.2 Law

5655. Conspiracy to commit genocide is an agreement between two or more persons to commit the crime of genocide. The *actus reus* of the crime is the existence of such an agreement between individuals to commit genocide. As for *mens rea*, the individuals involved in the agreement must have the intent to destroy in whole or in part a national, ethnical, racial or religious group as such.<sup>14608</sup>

5656. Regarding the *actus reus*, the agreement can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred from circumstantial evidence. The concerted or coordinated action of a group of individuals can constitute evidence of an agreement. The qualifiers “concerted or coordinated” are important; it is not sufficient to show similarity of conduct or guilt by association. In certain cases, the existence of a conspiracy to commit genocide between individuals controlling institutions could be inferred from the interaction between these institutions. When based on circumstantial evidence, the finding of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence.<sup>14609</sup>

#### 4.2.1.3 Preliminary Issues

5657. The Ntahobali Defence submits, on behalf of Nyiramasuhuko and Ntahobali, that the charge of conspiracy to commit genocide is not adequately pled in their Indictment and that the defects in this respect were not cured.<sup>14610</sup> It submits the Indictment paragraphs that are pled in support of conspiracy are inconsistent as to the identity of the co-conspirators, the applicable form of responsibility, and the time frame of the alleged conspiracy.<sup>14611</sup>

5658. The Nsabimana Defence contends that Paragraphs 5.1, 6.37 and 6.57 of the Nsabimana and Nteziryayo Indictment did not provide sufficient notice to enable it to investigate the allegation of conspiracy.<sup>14612</sup> Paragraph 5.1 of the Ndayambaje Indictment fails to provide the essential elements of the alleged crime, while Paragraph 6.54 does not specify the strategy by which Tutsis were exterminated or the identities of individuals with whom Ndayambaje participated in that strategy.<sup>14613</sup> The Kanyabashi Defence submits that Paragraphs 5.1 and

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<sup>14606</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.57 of the Nsabimana and Nteziryayo Indictment; Para. 6.62 of the Kanyabashi Indictment; Para. 6.54 of the Ndayambaje Indictment.

<sup>14607</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.61 of the Nsabimana and Nteziryayo Indictment; Para. 6.58 of the Ndayambaje Indictment.

<sup>14608</sup> *Nahimana et al.*, Judgement (AC), para. 894; *Ntagerura et al.*, Judgement (AC), para. 92.

<sup>14609</sup> *Seromba*, Judgement (AC), para. 221; *Nahimana et al.*, Judgement (AC), paras. 896-897, 907.

<sup>14610</sup> Ntahobali Closing Brief, paras. 20-24, 41-58.

<sup>14611</sup> Ntahobali Closing Brief, paras. 21-22.

<sup>14612</sup> Nsabimana Closing Brief, paras. 126-132, 715-718, 1568, 1589.

<sup>14613</sup> Ndayambaje Closing Brief, para. 69.

6.62 of the Kanyabashi Indictment, which are pled in support of the conspiracy charge, are vague and imprecise.<sup>14614</sup>

5659. The Prosecution submits that each of the Accused received notice of the paragraphs that would be relied on for the charge of conspiracy to commit genocide.<sup>14615</sup>

5660. The Chamber notes that Paragraph 5.1 of each Indictment alleges that from late 1990 until July 1994 military personnel, political leaders, and civil servants conspired among themselves to work out a plan with the intent to exterminate the civilian Tutsi population. Each Indictment alleges the conspiracy was on the national as well as the local level,<sup>14616</sup> and that all of the Accused were part of this conspiracy.<sup>14617</sup> The Chamber therefore considers that the basic elements of the alleged conspiracy were set forth in Paragraph 5.1 of the Indictments.

5661. However, the Chamber notes there are a number of ambiguities with regard to the alleged conspiracy. Paragraph 5.1 states the Accused “elaborated, adhered to and executed” the plan. The Indictments later state the Accused planned, prepared, and executed the common scheme.<sup>14618</sup> This presupposes the existence of an agreement between certain individuals, but the Indictments do not identify the specific individuals who entered into this agreement. Nor do the Indictments state when and where the agreement was executed and when the conspiracy ended. For these reasons, the Chamber finds each of the Indictments to be defective in their charge of conspiracy.

5662. In its opening statement, the Prosecution further outlined the charge of conspiracy against the Accused. It referred to a plan that had been masterminded by the government to exterminate the Tutsi ethnic group with the assistance and participation of militiamen.<sup>14619</sup> It also asserted the Accused had clearly laid out functions and roles in this plan.<sup>14620</sup> The Prosecution noted that the part of the plan regarding military authorities was lacking in this case.<sup>14621</sup> According to the Prosecution, the six Accused were civilian authorities who were all involved in the strategy in Butare *préfecture*.<sup>14622</sup>

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<sup>14614</sup> Kanyabashi Closing Brief, paras. 18-20.

<sup>14615</sup> Prosecution Closing Rebuttal Argument, T. 30 April 2009 pp. 50-51; *see also* Prosecution Closing Brief, p. 337, para. 101; Prosecution Closing Argument, T. 20 April 2009 pp. 12-13.

<sup>14616</sup> Para. 6.52 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.57 of the Nsabimana and Nteziryayo Indictment; Para. 6.62 of the Kanyabashi Indictment; Para. 6.54 of the Ndayambaje Indictment.

<sup>14617</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.61 of the Nsabimana and Nteziryayo Indictment; Para. 6.64 of the Kanyabashi Indictment; Para. 6.58 of the Ndayambaje Indictment.

<sup>14618</sup> Para. 6.56 of the Nyiramasuhuko and Ntahobali Indictment; Para. 6.61 of the Nsabimana and Nteziryayo Indictment; Para. 6.64 of the Kanyabashi Indictment; Para. 6.58 of the Ndayambaje Indictment.

<sup>14619</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 30-31.

<sup>14620</sup> Prosecution Opening Statement, T. 12 June 2001 p. 31. It further stated that there was a Hutu plan to exterminate Tutsis through large-scale killings long before 1994: Prosecution Opening Statement, T. 12 June 2001 p. 47. This plan was evidenced by public speeches by extremists inciting hate, including one in November 1992 by the vice-chairman of the MRND and by radio broadcasts on *Radio Télévision Libre des Mille Collines* (RTLM): Prosecution Opening Statement, T. 12 June 2001 pp. 48-49. The plan was also evidenced by the distribution of weapons and military training of civilians from November 1993 to March 1994: Prosecution Opening Statement, T. 12 June 2001 pp. 49-50.

<sup>14621</sup> Prosecution Opening Statement, T. 12 June 2001 p. 52.

<sup>14622</sup> Prosecution Opening Statement, T. 12 June 2001 p. 59.

5663. As to the agreement, the Prosecution argued the Prime Minister and the Ministers of the Interim Government, including Nyiramasuhuko, dismissed *Préfet* Habyalimana and appointed Nsabimana in order to complete the killings that had started elsewhere. On 19 April 1994, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje listened to the speech of Sindikubwabo, understood it and expressed their desire to organise in Butare the killings that were occurring elsewhere based on the same strategy.<sup>14623</sup>

5664. The Chamber considers the Prosecution opening statement clarified the charge of conspiracy in the Indictments. The Prosecution alleges the Interim Government, of which Nyiramasuhuko was a member, masterminded a plan to kill Tutsis. The Interim Government, including Nyiramasuhuko, removed the obstacle to killing in Butare, which was *Préfet* Habyalimana, and replaced him with Nsabimana in order to execute this plan. The agreement originated between the members of the Interim Government, including Nyiramasuhuko. Therefore, the Chamber considers the Prosecution opening statement cured the defects in the Indictment with regard to the charge of conspiracy against Nyiramasuhuko.

5665. The Prosecution alleges Kanyabashi, Nsabimana, Nteziryayo and Ndayambaje were present at the 19 April 1994 swearing-in of Nsabimana. They understood the Interim Government's plan to kill Tutsis and agreed at that time to execute the killings in their respective areas of influence and therefore joined the conspiracy. Ntahobali identified venues where Tutsis would be killed and executed the killings.<sup>14624</sup> Therefore, the Chamber considers the Prosecution opening statement also cured the defects in the Indictments with regard to the charge of conspiracy against each of the other Accused. They suffered no prejudice as a result.

#### **4.2.1.4 Deliberations**

##### **4.2.1.4.1 Nyiramasuhuko**

5666. The Prosecution submits that the meetings held by the Interim Government, the directives it issued, the words its members used, and its actions or lack of actions, lead to the only reasonable conclusion that there was an agreement to commit genocide through the perpetration of massacres of Tutsis and Hutu moderates.<sup>14625</sup> It further submits that between April and July 1994 many people, including the six Accused, entered into an agreement to commit genocide of Tutsis in Butare. The Accused played a prominent role in implementing a plan that had been masterminded by the Interim Government.<sup>14626</sup> The Prosecution submits there was an ongoing strategy designed to commit genocide which included the Interim

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<sup>14623</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 74, 75 (“Some of our accused were present at that [19 April 1994] ceremony. They include the minister, Pauline Nyiramasuhuko, and the préfets and the bourgmestre, Joseph Kanyabashi.”); (“The Prosecutor will show that the Butare authorities, and in the first place Sylvain Nsabimana and Joseph Kanyabashi, as well as the other bourgmestre, Elie Ndayambaje, for instance, and other bourgmestres who are not among the accused, understood the message of Sindikubwabo. But not only that, they did express their desire to organise in Butare the same activities that occurred in the other pr[é]fectures to comply with the demands of President Sindikubwabo’s government; that is, to comply with their desires, and that is very important.”).

<sup>14624</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 76, 78-79, 81-82.

<sup>14625</sup> Prosecution Closing Brief, p. 36, para. 27.

<sup>14626</sup> Prosecution Closing Argument, T. 20 April 2009 p. 14.

Government's pacification programme, instructions to restore security, roadblocks, civil defence and the distribution of weapons to Hutus.<sup>14627</sup>

5667. The Nyiramasuhuko Defence submits that "pacification" was an attempt by the Interim Government to restore calm to the population and to stop the killings. The Interim Government knew that the population did not distinguish between the enemy RPF and the Tutsis within the country at the time of the hostilities, but it was unable to obtain information which would permit it to follow the development of the massacres.<sup>14628</sup> It submits that the Interim Government, including Nyiramasuhuko, was without the necessary resources, but was looking for solutions to stop the killings at the same time as it defended itself against the RPF.<sup>14629</sup>

5668. The Chamber recalls the following factual findings which are the most relevant to the conspiracy charge against Nyiramasuhuko.

*Cabinet Meetings ()*

5669. Between 9 April and 14 July 1994, numerous Cabinet meetings were held during which ministers, including Nyiramasuhuko, were briefed on the situation *vis-à-vis* massacres of the civilian population. In particular, on 9 April 1994, Nyiramasuhuko was well aware that massacres of Tutsis were taking place.<sup>14630</sup> During the Cabinet meeting of 21 April 1994, she again recognised the on-going nature of the massacres, stating in her diary: "Situation – Killings continue ... Rivers Mwongo and Nyabarongo strewn with bodies."<sup>14631</sup> Yet the Interim Government, including Nyiramasuhuko, did nothing to stop the massacres. Rather, the Interim Government, of which Nyiramasuhuko was a member, adopted directives and issued instructions which were designed to encourage the population to kill Tutsis. These included the Interim Government Directives of 27 April 1994 regarding the establishment of roadblocks which were used to identify and kill Tutsis.

*Removal of Habyalimana and Swearing-in of Nsabimana ()*

5670. The Interim Government made the final decision to remove Habyalimana and replace him with Nsabimana at a 16-17 April 1994 Cabinet meeting. Nyiramasuhuko admits that she took part in this meeting and that the decision to remove *Préfet* Habyalimana was taken there.<sup>14632</sup> For these reasons, the Chamber found that Nyiramasuhuko, as a member of the Interim Government, participated in the decision to remove *Préfet* Habyalimana from office.

5671. Furthermore, the speeches delivered by Sindikubwabo and Kambanda at Nsabimana's swearing-in ceremony on 19 April 1994 were inflammatory and contained coded language that was understood by the attendees and the public. In particular, the term "enemy," as used in their speeches meant Tutsis and the word "work" (*gukora*) meant to kill Tutsis.

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<sup>14627</sup> Prosecution Closing Argument, T. 20 April 2009 p. 23.

<sup>14628</sup> Nyiramasuhuko Closing Brief, para. 525.

<sup>14629</sup> Nyiramasuhuko Closing Brief, para. 529.

<sup>14630</sup> Defence Exhibit 346C (Nyiramasuhuko) (Nyiramasuhuko's Notes on the Cabinet Meeting of 9 April 1994).

<sup>14631</sup> T. 17 November 2005 pp. 39-40 (Nyiramasuhuko); Prosecution Exhibit 144C (Nyiramasuhuko Diary, 1994).

<sup>14632</sup> T. 27 September 2005 p. 30; T. 28 September 2005 pp. 43-45; T. 16 November 2005 pp. 22, 64 (Nyiramasuhuko).

5672. At this time, Nyiramasuhuko was a member of the Interim Government. Her presence at the ceremony and her failure to dissociate herself from the statements made by the President effectively endorsed the President's inflammatory statements and the directives and instructions to the population contained therein.

5673. Finally, the removal of *Préfet* Habyalimana and the appointment of Nsabimana as *préfet*, were two factors that coincided with the commencement of widespread killings and large-scale massacres throughout Butare *préfecture* in the wake of these events, including in the large number of *communes* that had resisted such massacres until that time. The speeches of Sindikubwabo and Kambanda, endorsed by Nyiramasuhuko, along with the removal of *Préfet* Habyalimana and appointment of Nsabimana, contributed significantly in triggering the mass killings in Butare *préfecture*.

#### *Roadblocks (; )*

5674. On 27 April 1994, Prime Minister Kambanda issued a Directive on behalf of the Interim Government, in which he called for *commune*, *secteur* and *cellule* authorities to set up roadblocks "in order to prevent the enemy from infiltrating".<sup>14633</sup> The Chamber has found that language such as this was used to refer to Tutsis.

5675. In late April or May 1994, in response to encouragement from government leaders such as *bourgmestres*, *conseillers de secteur* and *responsables de cellule*, civilians started to mount and man roadblocks in Butare *préfecture*. Tutsis were targeted and killed at these roadblocks.

#### *Conclusion*

5676. From 9 April until 14 July 1994, and in particular between 9 April and 19 April 1994, Nyiramasuhuko agreed with other members of the Interim Government to issue directives to the population to encourage the population to hunt down and kill Tutsis. There was no distinction between the RPF invading force and Tutsis within the country, as the terms "enemy" and "accomplices" encompassed both groups. On 16 or 17 April 1994, Nyiramasuhuko agreed with the other members of the Interim Government to remove Habyalimana who had posed an obstacle to the killing of Tutsis and chose to replace him with Nsabimana. On 19 April 1994, she attended the swearing-in ceremony of Nsabimana, lending further support to the Interim Government's decision. The Interim President and the Prime Minister used coded language to encourage the killing of Tutsis in Butare. Nyiramasuhuko listened to the inflammatory speeches of Sindikubwabo and Kambanda, and effectively endorsed these speeches. These events coincided with the commencement of large-scale killings in Butare *préfecture*.

5677. Furthermore, the Interim Government, including Nyiramasuhuko, issued a Directive on 27 April 1994, encouraging the population to mount and man roadblocks. The Interim Government's intent in issuing this Directive was to encourage the population to kill Tutsis. In fact, the roadblocks mounted throughout Butare *préfecture* were used to identify and kill

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<sup>14633</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994) pp. 2-3.



Tutsis throughout Butare *préfecture*. This further evidences a prior-existing agreement among the members of the Interim Government to organise the killing of Tutsis in Butare *préfecture*.

5678. Considering all of these elements, the only reasonable conclusion is that Nyiramasuhuko entered into an agreement with members of the Interim Government on or after 9 April 1994 to kill Tutsis within Butare *préfecture* with the intent to destroy, in whole or in part, the Tutsi ethnic group. As a member of the Interim Government, Nyiramasuhuko participated in many of the Cabinet meetings at which the massacre of Tutsis was discussed, and took part in the decisions which triggered the onslaught of massacres in Butare *préfecture*. There can be no other inference from these facts than that Nyiramasuhuko conspired with the Interim Government to commit genocide against the Tutsis of Butare *préfecture*.<sup>14634</sup>

#### 4.2.1.4.2 Ntahobali

5679. The Prosecution submits it can be inferred from the depth and extent of his participation in the killing campaign, combined with evidence that he worked in conjunction with his mother, Nteziryayo and national *Interahamwe* leaders, that Ntahobali agreed to participate in an effort to consolidate and strengthen the political power of the Interim Government by eliminating the Tutsi ethnic group.<sup>14635</sup>

5680. In its closing argument, the Prosecution submits that Ntahobali acted in concert with his mother. In addition, it submits that Ntahobali conspired with Nsabimana and Nteziryayo to execute a plan to destroy the Tutsis of Rwanda.<sup>14636</sup> It later suggested the agreement was between “Ntahobali and one or more of the accused persons and/or other persons.”<sup>14637</sup> It submits the methodical and systematic nature of the attacks supports the conclusion that they were perpetrated according to a pre-existing plan or agreement.<sup>14638</sup>

5681. The Ntahobali Defence submits the Prosecution did not demonstrate the alleged conspiracy to commit genocide against the Tutsis. The only evidence regarding this allegation came in the form of statements and opinions by those who conceived this theory, namely Prosecution Expert Witnesses Des Forges and Guichaoua. The Ntahobali Defence submits that these witnesses were

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<sup>14634</sup> The Chamber notes that there appears to be a split of authority regarding whether convictions may be entered simultaneously for conspiracy to commit genocide and for genocide; see *Gatete*, Judgement (TC), paras. 654-662 (addressing this split and, after considering that the scenario was similar to that faced by the Trial Chamber in *Popović et al.*, following the approach taken in that case); *Popović et al.*, Judgement (TC), paras. 2117-2127 (discussing this split and concluding that it would be redundant to enter a conviction for conspiracy to commit genocide and for genocide, which had been committed through a joint criminal enterprise). The Chamber considers, however, that it does not need to address this issue because the conduct that serves as the basis for conspiracy to commit genocide (entering into an agreement with members of the Interim Government on or after 9 April 1994) is different from that which is addressed below as the basis for genocide (engaging in acts or omissions on or after 19 April 1994, generally with persons who were not members of the Interim Government). In any event, the Chamber notes its view that, because joint criminal enterprise does not feature as a form of commission in this case, conspiracy to commit genocide and genocide each contain a materially distinct element, and thus a conviction could be entertained on both charges under the present circumstances.

<sup>14635</sup> Prosecution Closing Brief, p. 178, para. 57; Prosecution Closing Argument, T. 20 April 2009 p. 38.

<sup>14636</sup> Prosecution Closing Argument, T. 20 April 2009 p. 37.

<sup>14637</sup> Prosecution Closing Argument, T. 20 April 2009 p. 39.

<sup>14638</sup> Prosecution Closing Argument, T. 20 April 2009 p. 38.

biased and that evidence of conspiracy cannot be based solely on the evidence of expert witnesses unless it is corroborated by other evidence, whether factual or documentary.<sup>14639</sup>

5682. The Chamber notes the apparent disconnect between the Prosecution's opening statement and closing argument. In its opening statement, the Prosecution asserted Ntahobali participated in a conspiracy with the other Accused by identifying venues where Tutsis would be sorted out. In its closing statement, the Prosecution was not clear as to the identity of Ntahobali's co-conspirators. It stated he conspired with his mother, then argued that he conspired with Nteziryayo and Nsabimana, before finally settling on "one or more of the accused and/or other persons." Although there was considerable evidence that Ntahobali participated in raping and killing Tutsis from April to July 1994, e.g. at the Butare *préfecture* office, there was no credible evidence that he participated in planning meetings, in particular with the co-Accused in this case. Further, it has not been established that, in furtherance of a plan, he identified locations where Tutsis should be killed.

5683. Ntahobali did participate in the attacks at the BPO and these attacks were methodical. Further, Ntahobali co-perpetrated these attacks at the BPO with Nyiramasuhuko, who was a member of the Interim Government which formulated a conspiracy to kill Tutsis in Butare *préfecture*. However, there was no clear-cut evidence that Ntahobali acceded to Nyiramasuhuko's agreement with the Interim Government. The only evidence that could lead to an inference that Ntahobali agreed to commit genocide was his participation in acts of genocide. However, the co-perpetration of genocide does not equate to a conspiracy to commit genocide. Without some evidence pointing to Ntahobali's awareness of, and accession to, the Interim Government's conspiracy, the inference that Ntahobali joined a pre-existing plan is not the only reasonable one from the evidence.

5684. The Prosecution must be held to the case it formulated, and the facts for which the Ntahobali Defence had notice, prior to trial.<sup>14640</sup> The Prosecution did not allege prior to trial that the proof of Ntahobali's participation in the conspiracy would be based upon his participation in the attacks at the BPO. In any event, the Chamber considers there is no clear evidence to convict Ntahobali for conspiring with Nyiramasuhuko to commit the acts of genocide at the BPO.

5685. Considering the foregoing, as well as the evidence as a whole, the Chamber finds that it was not proven that Ntahobali joined the Interim Government's conspiracy to commit genocide.

#### 4.2.1.4.3 Nsabimana

5686. The Prosecution submits that Nsabimana knew of the genocidal plan before April 1994 and helped carry out the plan by accepting the position of *préfet*. It argues Nsabimana was

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<sup>14639</sup> Ntahobali Closing Brief, para. 57.

<sup>14640</sup> See generally *Nchamihigo*, Judgement (AC), para. 337 (The Prosecution is expected to know its case before proceeding to trial and cannot mould its case against the accused in the course of the trial depending on how the evidence unfolds); *Muvunyi I*, Judgement (AC), para. 18; *Ntagerura et al.*, Judgement (AC), para. 27.

aware of a conspiracy to kill Tutsis and agreed to join it on 19 April 1994 when he accepted the appointment as *préfet* of Butare *préfecture*.<sup>14641</sup>

5687. The Prosecution submits Nsabimana played a role in the conspiracy to commit genocide against the Tutsi population. The evidence cited by the Prosecution to support this submission includes that Nsabimana convened and attended meetings both at the *préfecture* office and in the *communes*, assisted the civil defence effort, supplied fuel to help transport youths, distributed weapons to the *communes*, encouraged youths to join the army, and encouraged others to join in the genocidal effort to kill the Tutsis. He was one of the persons who gave effect to the plan. By convening and attending meetings regularly, he oversaw the plan to exterminate the Tutsis.<sup>14642</sup>

5688. The Nsabimana Defence submits that the attacks which occurred during the events were not planned, as alleged by the Prosecution. The Defence asserts that everyone made himself a chief in his own area and dictated his own law.<sup>14643</sup> It submits that the 27 April 1994 Directive issued by Nsabimana was a message to the inhabitants of Ngoma *commune* aimed at controlling the massacres. It clearly indicates that the population was prohibited from carrying out massacres and looting. Even if it is accepted that “accomplices” were Tutsis, the messages were intended to stem assaults on persons of the Tutsi ethnic group and to prevent members of the population from assaulting Tutsis.<sup>14644</sup>

5689. The Chamber recalls the following factual findings which are the most relevant to the conspiracy charge against Nsabimana.

*Swearing-in of Nsabimana ()*

5690. As noted above, Sindikubwabo and Kambanda’s speeches on 19 April 1994 were inflammatory and encouraged the population to kill Tutsis. The Chamber found that Nsabimana was aware of a plan to kill Tutsis when he accepted the post of *préfet*.

*20 April 1994 Meeting ()*

5691. The 20 April meeting primarily dealt with issues of safety, security, displaced persons, and measures to be taken in order to keep the situation under control. It was not established that the furtherance of the massacres was discussed. Furthermore, it was not proven that after the 20 April meeting the *bourgmestres* returned to their *communes* and ordered to kill, while those who refused to do so were dismissed. There was no established link between the massacres and this meeting. It was not established that the killings in Butare continued because Nsabimana failed to act during the 20 April meeting.

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<sup>14641</sup> Prosecution Closing Brief, p. 231, paras. 13-14.

<sup>14642</sup> Prosecution Closing Brief, pp. 231-232, paras. 14-15.

<sup>14643</sup> Nsabimana Closing Argument, T. 24 April 2009 p. 10.

<sup>14644</sup> Nsabimana Closing Brief, paras. 727-766.

*26-28 April Meetings ()*

5692. While both Nsabimana and Prime Minister Kambanda issued a Directive on 27 April 1994,<sup>14645</sup> there is insufficient evidence to find a relationship between the two Directives. It was not established that the purpose of Nsabimana's message to the people of Butare on 27 April 1994 was to implement the Interim Government's national policy on pacification.

*Butare Préfecture Office ()*

5693. Nsabimana was presented with requests for assistance from the refugees and was aware that they were being abducted and killed at the BPO at night. He only posted soldiers to the BPO around 5-15 June 1994, long after the attacks started in May 1994.

*Conclusion*

5694. The Chamber notes that several elements cited by the Prosecution in support of the conspiracy charge against Nsabimana were not proven beyond a reasonable doubt. It was not proven that Nsabimana distributed fuel to *bourgmestres* to assist in the killing of Tutsis. It was not proven that Nsabimana assisted in the training of civilians or militiamen or that he distributed weapons to them. Likewise, there was insufficient evidence that Nsabimana encouraged the youth to join the army. These findings undercut the assertion that Nsabimana had a significant role in civil defence.

5695. The Prosecution's case therefore relies on Nsabimana's acceptance of the post of *préfet* on 19 April 1994 and his failure to prevent massacres throughout Butare during his tenure as *préfet*.

5696. It is not clear, however, that Nsabimana, by accepting the appointment as *préfet*, intended to join the conspiracy to kill Tutsis. In his acceptance speech, Nsabimana merely thanked the people who showed that they had confidence in him and called the *bourgmestres* and heads of department to attend a meeting which was held the following day on 20 April 1994.<sup>14646</sup> Furthermore, when Nsabimana spoke was not clear from the evidence. Therefore, Nsabimana's address may not have been in direct response to either Sindikubwabo's or Kambanda's statements. It was not proven that Nsabimana discussed the furtherance of massacres at the 20 April 1994 meeting or encouraged *bourgmestres* to kill. Although the 27 April 1994 Interim Government Directive was issued with an intent to extend the killings, it was not proven that Nsabimana was aware of this Directive when he issued his own Directive of 27 April 1994. It was also not proven that Nsabimana sought to implement the Interim Government's pacification campaign in issuing his own Directive.

5697. The Chamber notes there are a number of other reasonable inferences that might be drawn from Nsabimana accepting the post of *préfet* and participating in the 19 April 1994 swearing-in ceremony at which Kambanda and Sindikubwabo gave inflammatory speeches. Nsabimana may have accepted the post of *préfet* out of self-preservation, or for the power it

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<sup>14645</sup> Prosecution Exhibit 118B (Prime Minister Kambanda's instructions to restore security in the country, 27 April 1994); Prosecution Exhibit 119B (Nsabimana's Message of Pacification to the *Communes* of Butare *Préfecture*, 27 April 1994); T. 20 September 2006 pp. 16-18, 20 (Nsabimana).

<sup>14646</sup> T. 16 February 2004 p. 38 (ICS) (Witness RV).

would have given him to protect his own family, and potentially to facilitate their departure from Rwanda. He may also have accepted the position, as he suggested, to prevent a member of the MRND from accepting the post. In short, there is insufficient evidence to conclude that Nsabimana joined an on-going conspiracy to kill Tutsis. Therefore, Nsabimana's actions do not constitute the crime of conspiracy to commit genocide.

#### 4.2.1.4.4 Nteziryayo

5698. The Prosecution submits Nteziryayo's role in the conspiracy was to assist in the planning of the genocide by attending meetings during which the genocidal machinery was fine-tuned, take responsibility for the civil self-defence programme in Butare, train youths in the manipulation of weapons, arm those youths with weapons, encourage the youths to join the army, and encourage others to join in the genocidal effort to kill the Tutsis.<sup>14647</sup>

5699. The Nteziryayo Defence submits that the Prosecution failed to prove that despite Colonel Simba's evident position as the *de jure* head of civil defence in Butare and Gikongoro *préfectures*, Nteziryayo was the *de facto* head of civil defence in Butare.<sup>14648</sup> The Nteziryayo Defence submits that the Prosecution witnesses who testified as to Nteziryayo's authority over civil defence, and to his leadership role in training and the distribution of weapons, were not credible.<sup>14649</sup>

5700. The Chamber recalls the following factual findings which are the most relevant to the conspiracy charge against Nteziryayo.

#### *Training and Distribution of Weapons (; )*

5701. Nteziryayo trained civilians at Kamena Stadium in May 1994 and distributed weapons at the stadium in early June 1994.

#### *Border Meetings ()*

5702. Nteziryayo made speeches during the swearing-in ceremony of the Ntyazo *bourgmestre* on 22 May 1994, at a meeting held in Muganza *commune* on 23 May 1994 and at meetings in Muyaga and Kibayi *communes* around mid-June 1994. The Chamber found that, during the Muyaga and Kibayi *commune* meetings, Nteziryayo incited people to kill Tutsis.

#### *Evacuation of Orphans ()*

5703. Nteziryayo attempted to prevent the evacuation from Butare of about 300 orphans and their adult supervisors. He selected about 30 individuals, whom he believed to be Tutsi adults and forced them to remain in Rwanda. He and Ntahobali segregated and prevented the 30 people from crossing the border.

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<sup>14647</sup> Prosecution Closing Brief, p. 309, para. 14.

<sup>14648</sup> Nteziryayo Closing Argument, T. 27 April 2009 p. 28; Nteziryayo Closing Rejoinder Argument, T. 30 April 2009 pp. 73-74.

<sup>14649</sup> Nteziryayo Closing Argument, T. 27 April 2009 pp. 43-45, 51, 60.

*Ndayambaje's Swearing-in ()*

5704. At Ndayambaje's swearing-in ceremony on 22 June 1994, Nteziryayo urged the population to "sweep the dirt" and instructed that those hiding Tutsis who refused to hand them over should be killed. Searches for Tutsis took place and killings followed the meeting.

*Civil Defence ()*

5705. The evidence as a whole points to Nteziryayo's involvement in a programme to educate the population about a plan to identify Tutsis, to train and arm civilians and to locate infiltrators and "accomplices". Nteziryayo had a leadership role in the civil defence programme in Butare *préfecture*.

*Conclusion*

5706. The Indictment did not identify a particular moment when Nteziryayo joined a conspiracy to kill Tutsis. It notes that Nteziryayo came to Butare *préfecture* in April 1994 to take up his new post. However, it did not assert that taking up this new post constitutes agreeing to commit genocide.

5707. The Prosecution relies on Nteziryayo's leadership role in civil defence to show concerted and coordinated action which would support an inference that Nteziryayo joined the Interim Government's conspiracy to commit genocide in Butare *préfecture*. However, there was no clear-cut evidence that Nteziryayo joined the Interim Government's conspiracy. Although Nteziryayo participated in activities that were set forth in the Interim Government's directives, there was no credible evidence that Nteziryayo met with members of the Interim Government to discuss the killing of Tutsis or the methods by which to complete them. It was not shown that he was present at the 19 April 1994 swearing-in ceremony of Nsabimana. Furthermore, there was evidence to suggest Nteziryayo was in Kigali until 15 April 1994<sup>14650</sup> and would not have had any opportunity to meet with members of the Interim Government in Butare *préfecture* or in Murambi, Gitarama *préfecture* during this time period.

5708. Based on the evidence, the Chamber cannot conclude that he must have agreed to join the Interim Government's conspiracy to commit genocide against the Tutsis in Butare *préfecture*. Because the allegation that Nteziryayo joined the conspiracy is not the only reasonable inference from the evidence, the Chamber finds that the Prosecution has not established this crime beyond a reasonable doubt.

4.2.1.4.5 Kanyabashi

5709. The Prosecution submits that Kanyabashi's role in the conspiracy was to attend meetings, give instructions to clear the bush while being fully cognisant that "clearing the bush" was in fact a clarion call to kill any Tutsis who were in hiding, use his position and

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<sup>14650</sup> It was uncontested that Nteziryayo was in Kigali between 5 April and 15 April 1994: T. 15 May 2007 pp. 34, 53-54; T. 4 July 2007 p. 50 (Nteziryayo).

power to incite the population to join in the killings, and provide administration support for the training and arming of civilians in the context of the genocide.<sup>14651</sup>

5710. The Kanyabashi Defence submits that there was no credible evidence as to Kanyabashi's involvement in a conspiracy to commit genocide.<sup>14652</sup> It submits that Kanyabashi's name is not found in the organising documents of civil defence and he was not involved in its organisation.<sup>14653</sup> Kanyabashi did not have any semblance of control over what was happening in his *commune*.<sup>14654</sup> His involvement with civil defence measures was minimal. Des Forges and Guichaoua testified as to the extent to which some may have taken advantage of the civil defence mechanism to kill Tutsis, but gave no concrete indication of any involvement of Kanyabashi in this "criminal" aspect of civil defence.<sup>14655</sup>

5711. The Chamber recalls the following factual findings which are the most relevant to the conspiracy charge against Kanyabashi.

*Swearing-in of Nsabimana ()*

5712. As noted above, Sindikubwabo's and Kambanda's speeches on 19 April 1994 were inflammatory and encouraged the population to kill Tutsis. The presence of Kanyabashi at the ceremony and his failure to dissociate himself from the statements made by the President constituted tacit approval of the President's inflammatory statements and the directives and instructions to the population contained therein.

5713. More importantly, Kanyabashi's speech was in support of Sindikubwabo and Kambanda, and contained a commitment to execute the directives and instructions previously announced by the President and Prime Minister.

*Training and Distribution of Weapons (;)*

5714. The Chamber found that Kanyabashi distributed weapons to *conseillers* in Ngoma *commune* in May 1994. The Chamber also found that Kanyabashi, in his capacity as *bourgmestre*, was responsible for recruiting men for civil defence training in Ngoma *commune* in May and June 1994. Lastly, the Chamber also found that firearms were distributed by soldiers at Kamena Stadium at end of May and/or early June 1994, but it was not proven that Kanyabashi was aware of these distributions.

*Matyazo Clinic ()*

5715. In late April 1994, and following an initial attack by soldiers, Kanyabashi went to Matyazo clinic and ordered soldiers to open fire on the Tutsis who were sheltering inside.

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<sup>14651</sup> Prosecution Closing Brief, p. 388, para. 12.

<sup>14652</sup> Kanyabashi Closing Brief, para. 29.

<sup>14653</sup> Kanyabashi Closing Brief, para. 60.

<sup>14654</sup> Kanyabashi Closing Brief, para. 64.

<sup>14655</sup> Kanyabashi Closing Brief, para. 551.

*Megaphone Announcements ()*

5716. Around late May 1994, Kanyabashi drove through Butare town with a megaphone and instructed the population to search for the enemy among them. Around mid-June 1994, Kanyabashi used a megaphone to tell the population to clear bushes along the road in order to remove potential hiding places for the *Inkotanyi*, to flush out people who were hiding in the bushes, and to kill those found there, including children, old men, and women. Following Kanyabashi's megaphone announcements in mid-May 1994 and in June 1994, searches were conducted for Tutsis, and consequently, more Tutsis were killed.

*Conclusion*

5717. The key moment with regard to Kanyabashi's involvement in the Interim Government's conspiracy was his response to the inflammatory speeches of Sindikubwabo and Kambanda at the 19 April 1994 swearing-in ceremony. The Chamber has found that Kanyabashi's speech supported the Interim President and the Prime Minister and committed him to executing the directives and instructions announced by them. However, it was not clear that Kanyabashi intended to join the Interim Government's conspiracy to kill Tutsis. He may have felt pressure to voice support for the Government in order to ensure his own survival, or he may have made this speech in the hope of retaining his position as *bourgmestre* in order to protect his family.

5718. Kanyabashi made announcements over the megaphone encouraging the population to clear the bush and kill Tutsis. He was also responsible for recruiting men to the civil defence programme. However neither of these findings leads inevitably to the conclusion that Kanyabashi must have entered into an agreement with the Interim Government to kill Tutsis. Because the allegation that Kanyabashi joined the conspiracy is not the only reasonable inference from the evidence, and in the absence of additional evidence, the Chamber cannot conclude beyond a reasonable doubt that Kanyabashi conspired with the Interim Government to commit genocide.

4.2.1.4.6 Ndayambaje

5719. The Prosecution submits that Ndayambaje's role in the conspiracy was to gather support for the genocide from 1993 and the early months of 1994, prepare people for the upcoming massacres, incite the population to commit killings, provide them with weapons, and order and supervise the killing of Tutsis.<sup>14656</sup>

5720. The Ndayambaje Defence submits the Prosecution failed to adduce any evidence as to the existence of a plan to kill Tutsis. It did not establish that Ndayambaje knew the military personnel, members of the Interim Government, and the other personalities cited. Lastly, there was no evidence to prove that there were meetings or encounters with these persons with the aim of preparing or executing a plan.<sup>14657</sup>

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<sup>14656</sup> Prosecution Closing Brief, p. 457, paras. 28-29.

<sup>14657</sup> Ndayambaje Closing Brief, para. 985.



5721. The Chamber recalls the following factual findings which are the most relevant to the conspiracy charge against Ndayambaje.

*Swearing-in Ceremony of Nsabimana ()*

5722. As noted above, the Chamber has found that Sindikubwabo's and Kambanda's speeches on 19 April 1994 were inflammatory and encouraged the population to kill Tutsis. It was not proven that Ndayambaje was present at the swearing-in ceremony.

*Mugombwa Church (), Kabuye Hill () and Ndayambaje's Swearing-in ()*

5723. The Chamber recalls that Ndayambaje participated in the massacres at Mugombwa Church and Kabuye Hill and that he made inciting statements at his swearing-in ceremony. In particular, a massacre took place at Mugombwa Church on 20 and 21 April 1994 and Ndayambaje was present at the church before the attacks. It further found that Ndayambaje transported attackers to Kabuye Hill, distributed weapons to the attackers and was present during the attacks against Tutsis at Kabuye Hill and that thousands were killed.

*Conclusion*

5724. In its opening statement, the Prosecution argued that Ndayambaje joined the conspiracy to kill Tutsis at the 19 April 1994 swearing-in ceremony of Nsabimana by expressing a desire to organise in Butare the killings that were occurring elsewhere based on the same strategy.<sup>14658</sup> The Chamber notes that Ndayambaje's presence at this ceremony was not established by the Prosecution. Therefore, it did not prove that Ndayambaje joined the Interim Government conspiracy at the 19 April 1994 meeting.

5725. In its closing brief, the Prosecution instead relies, *inter alia*, on various allegations, such as that Ndayambaje trained civilians, incited the population to commit killings, and armed militia groups.<sup>14659</sup> In this regard, the Chamber recalls that the Prosecution did not establish that Ndayambaje trained militiamen. Therefore, this aspect of the Prosecution's case in support of the charge of conspiracy against Ndayambaje fails.

5726. The Chamber also notes that there was no direct evidentiary link between Ndayambaje's actions at Mugombwa Church and Kabuye Hill, and the Interim Government's agreement to commit genocide. There are other reasonable inferences other than an inference that he joined the government conspiracy. He may have initiated these killings of his own accord. Because the allegation that Ndayambaje joined the conspiracy is not the only reasonable inference from the evidence, and in the absence of additional evidence, the

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<sup>14658</sup> Prosecution Opening Statement, T. 12 June 2001 pp. 74, 75 ("Some of our accused were present at that [19 April 1994] ceremony. They include the minister, Pauline Nyiramasuhuko, and the prefets and the bourgmestre, Joseph Kanyabashi."); ("The Prosecutor will show that the Butare authorities, and in the first place Sylvain Nsabimana and Joseph Kanyabashi, as well as the other bourgmestre, Elie Ndayambaje, for instance, and other bourgmestres who are not among the accused, understood the message of Sindikubwabo. But not only that, they did express their desire to organise in Butare the same activities that occurred in the other pr[é]fectures to comply with the demands of President Sindikubwabo's government; that is, to comply with their desires, and that is very important.").

<sup>14659</sup> Prosecution Closing Brief, pp. 456-469, paras. 26-70.

Chamber cannot conclude beyond a reasonable doubt that Ndayambaje conspired with the Interim Government to commit genocide.

#### **4.2.1.5 Conclusion**

5727. In sum, the Chamber finds the only reasonable inference based on the evidence of Nyiramasuhuko's participation in Cabinet meetings and decisions of the Interim Government is that she conspired with the Interim Government to commit genocide against the Tutsi population in Butare *préfecture* between 9 April 1994 and 14 July 1994. The Chamber therefore finds Nyiramasuhuko guilty of committing conspiracy to commit genocide, pursuant to Article 2 (3)(b) of the Statute.

5728. As to Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje, the Chamber finds that there are reasonable inferences other than the inference that they joined an Interim Government conspiracy to commit genocide against the Tutsi population in Butare *préfecture*. The Chamber therefore acquits them of this charge.

### **4.2.2 Genocide**

#### **4.2.2.1 Introduction**

5729. The Accused are charged with genocide under Article 2 (3)(a) of the Statute. This charge comprises Count 2 of each Indictment.

#### **4.2.2.2 Law**

5730. 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, ethnical, 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>14660</sup>

5731. 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>14661</sup> The Appeals Chamber has described rape as a “quintessential” example of serious bodily harm,<sup>14662</sup> and has stated that serious mental harm includes “more than a minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat”.<sup>14663</sup>

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<sup>14660</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; *Krnjelac*, Judgement (AC), para. 102; *Jelisić*, Judgement (AC), para. 49; *Kayishema & Ruzindana*, Judgement (AC), para. 161.

<sup>14661</sup> *Seromba*, Judgement (AC), para. 46.

<sup>14662</sup> *Seromba*, Judgement (AC), para. 46; see also *Kunarac et al.*, Judgement (AC), para. 150 (stating, in its discussion of torture, that “[s]exual violence necessarily gives rise to severe pain or suffering, whether physical or mental”); *Akayesu*, Judgement (TC), para. 731 (with regard to “rape and sexual violence, the Chamber wishes to underscore ... [that] they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims ....”).

<sup>14663</sup> *Seromba*, Judgement (AC), para. 46.

The Appeals Chamber has also noted that “nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings”.<sup>14664</sup>

5732. The jurisprudence accepts that, in most cases, genocidal intent will be proved by circumstantial evidence. Such intent may be inferred from a number of facts and circumstances, including 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. 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>14665</sup>

#### **4.2.2.3 Deliberations**

##### 4.2.2.3.1 Cabinet Meetings, 9 April – 14 July 1994

5733. Between 9 April and 14 July 1994, numerous Cabinet meetings were held by the Interim Government, of which Nyiramasuhuko was a member. The Interim Government adopted directives and issued instructions during these meetings, with the intention of encouraging the population to hunt down and take action against Tutsis ().

5734. The Chamber, however, has not found what role, if any, Nyiramasuhuko played at these Cabinet meetings. It has not been established, for instance, that Nyiramasuhuko was assigned responsibility for “pacification” in Butare ().

5735. The Chamber therefore finds that the Prosecution has not established, beyond a reasonable doubt, that Nyiramasuhuko bears criminal responsibility pursuant to Article 6 (1) of the Statute in relation to these Cabinet meetings.

##### 4.2.2.3.2 Removal of *Préfet* Habyalimana and Swearing-in Ceremony of *Préfet* Nsabimana, 17-19 April 1994

#### *Nyiramasuhuko*

5736. The Chamber has found beyond a reasonable doubt that Nyiramasuhuko, as a member of the Interim Government, participated in the decision to remove *Préfet* Habyalimana from office for reasons other than maintaining peace (). Habyalimana was a major force in limiting killings within Butare *préfecture*, and his removal was one of the events that triggered the start of mass-killings in Butare ().

5737. On 19 April 1994, Nsabimana was sworn in as *préfet*. Due to the political context, the existence of war, and the attendance of high-profile government officials, this was a very

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<sup>14664</sup> *Seromba*, Judgement (AC), para. 46.

<sup>14665</sup> *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.

important occasion. At the time of this ceremony, the people of Butare were looking for guidance from the Interim Government ()).

5738. The Chamber has found that the speeches made at Nsabimana's swearing-in ceremony by Prime Minister Kambanda and President Sindikubwabo were inflammatory and called on the audience and the public to identify and kill Tutsis and their accomplices (; ).

5739. The Chamber further found that the presence of Nyiramasuhuko, Nsabimana and Kanyabashi at the ceremony, and their failure to dissociate themselves from the statements made by the Prime Minister and President, constituted tacit approval of these inflammatory statements and the directives and instructions to the population contained therein (; ; ; ).

5740. In addition, the Chamber has found that Kanyabashi's speech was in support of Kambanda and Sindikubwabo, and contained a commitment to execute the directives and instructions as set forth in the speeches of Kambanda and Sindikubwabo ()).

5741. Finally, the Chamber has found that widespread killings of Tutsis did not occur in Butare *préfecture* prior to 18 or 19 April 1994. The Chamber has found that the inflammatory nature of the speeches delivered at the swearing-in ceremony on 19 April 1994 contributed to, and endorsed, the instigation of widespread killings and large-scale massacres in Butare *préfecture* (; ).

5742. The Chamber recalls its finding that, after the swearing-in ceremony, massacres and attacks took place at various locations in Butare, including Mugombwa Church (), Kabuye Hill (), Kabakobwa Hill () and Matyazo Clinic ()).

#### *Nyiramasuhuko and Nsabimana – Article 6 (1) Responsibility*

5743. The Prosecution has charged Nyiramasuhuko and Nsabimana with genocide pursuant to Article 6 (1) of the Statute in relation to this ceremony.

5744. The Chamber has made numerous findings of fact in relation to these events. The Chamber does not consider these facts to be sufficient to conclude beyond a reasonable doubt that Nyiramasuhuko's or Nsabimana's actions constituted the planning, instigating, ordering, or committing of genocide.

5745. The Chamber will assess below whether Nyiramasuhuko's or Nsabimana's actions constitute the aiding and abetting of genocide.

5746. As described above, the Chamber has found that Nyiramasuhuko and Nsabimana tacitly approved of Kambanda's and Sindikubwabo's speeches. As set out above, Nyiramasuhuko's participation in the Interim Government's conspiracy was further evidenced, *inter alia*, by her presence at the ceremony, and her effective endorsement of the message of the President and the Prime Minister (). However, although Kambanda's and Sindikubwabo's speeches contributed to the instigation of widespread killings and large-scale massacres in Butare *préfecture*, the Chamber recalls that approval may constitute aiding and abetting of a crime such as genocide only if the Prosecution proves that the Accused's conduct substantially contributed to a crime (). Here, the Prosecution has adduced insufficient evidence to prove

beyond a reasonable doubt that Nyiramasuhuko's and Nsabimana's conduct contributed to later crimes in a substantial manner.

5747. Accordingly, the Chamber does not find it established beyond a reasonable doubt that Nyiramasuhuko and Nsabimana's tacit approval of the speeches substantially contributed to the killings that followed. The Chamber therefore does not consider it proven that they are responsible for aiding and abetting genocide in relation to these events. The Chamber notes, however, that it will consider Nyiramasuhuko's and Nsabimana's conduct elsewhere in determining whether they possessed the requisite intent for genocide.

#### *Nsabimana – Article 6 (3) Responsibility*

5748. The Prosecution also charges Nsabimana with superior responsibility in relation to his swearing-in ceremony.<sup>14666</sup> In particular, Paragraph 6.22 of his Indictment appears to allege that, after Nsabimana became *préfet*, Kanyabashi spoke in support of Sindikubwabo's call to begin the massacres. This paragraph identifies Kanyabashi as a *bourgmestre*.<sup>14667</sup>

5749. It is clear that Nsabimana, under Rwandan law and in his capacity as *préfet*, was granted authority over *bourgmestres* in Butare *préfecture*,<sup>14668</sup> including Kanyabashi. When *préfet*, Nsabimana thus held *de jure* authority over Kanyabashi. The Chamber recalls that it has not made a finding as to whether Nsabimana became *préfet* before or after Kanyabashi's speech (). The Chamber is therefore unable to conclude that Nsabimana exercised *de jure* authority over Kanyabashi at the time of his speech.

5750. In any event, there is also insufficient evidence that might establish that Nsabimana exercised *de facto* authority or effective control over Kanyabashi when he spoke on 19 April 1994.

5751. The Chamber therefore finds that the Prosecution has not established a superior-subordinate relationship between Nsabimana and Kanyabashi at the time of Kanyabashi's speech on 19 April 1994. Because this alleged superior relationship has not been established, the Chamber finds that Nsabimana is not responsible as a superior for the events at his swearing-in ceremony.

#### *Kanyabashi*

5752. After Kambanda and Sindikubwabo spoke on 19 April 1994 and asked the audience to search for and kill Tutsis, Kanyabashi gave his own speech in which he supported their message and committed to carrying out their instructions.

5753. The Chamber has also found that widespread killings of Tutsis did not occur in Butare *préfecture* prior to 18 or 19 April 1994. After the ceremony at which Kanyabashi spoke on 19

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<sup>14666</sup> Paras. 6.21 and 6.22 of the Nsabimana and Nteziryayo Indictment (pled in support of all counts, except direct and public incitement to commit genocide, pursuant to Article 6 (3) of the Statute).

<sup>14667</sup> Para. 6.22 of the Nsabimana and Nteziryayo Indictment; *see also* Para. 6.21 of the Nsabimana and Nteziryayo Indictment.

<sup>14668</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*), Art. 15; Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*), p. 914, Art. 59.

April 1994, large-scale massacres took place in Butare that constituted genocide (*see, e.g., ; ;*). The Chamber has found that the inflammatory nature of the speeches contributed to these genocidal killings. While the Chamber has found beyond a reasonable doubt that Kambanda's and Sindikubwabo's speeches were inflammatory, the Chamber has not found that Kanyabashi's speech was inflammatory. In light of these findings and the evidence in its totality, the Chamber does not find that Kanyabashi's speech substantially contributed to the genocide that followed.

#### 4.2.2.3.3 Mugombwa Church Massacres, 20-21 April 1994

5754. The Chamber has found it established beyond a reasonable doubt that on the morning of 20 April 1994 Ndayambaje spoke with various community leaders at Bishya, after which they told members of the population that Ndayambaje was ordering all those present in Bishya to go to Mugombwa Church. At about noon that day Ndayambaje came to Mugombwa Church. Ndayambaje showed the refugees in the church a picture of President Habyarimana and told them that those in the church were going to be killed because they were accomplices of the *Inkotanyi* who had killed the President. Ndayambaje also spoke to a group of armed people posted outside the church. He told them that since the people in the church were now gathered together, their work would no longer be very difficult. He told the attackers that some of them should stay and watch those in the church and others should go and look for those that were hiding in ditches and in bushes. After this, many people left and some stayed behind at the church. Ndayambaje remained there for about 15 minutes and left. At around 4.00 p.m., the armed people launched an attack against the Tutsis sheltering in the church ().

5755. The following morning, 21 April 1994, Ndayambaje came back at around 10.00 a.m. He addressed the crowd outside the church, stating that he could see they were interested in the Tutsis' cows and asking them what they would pay if the Tutsi owners of the cattle escaped. He then left, but returned to the church for a second time around 10.30 a.m. At about 3.00 p.m., people outside the church threw grenades at the church and set it on fire. Refugees escaping the church were attacked and killed in the courtyard. The attacks on the Mugombwa Church during the two days resulted in the death of hundreds, if not thousands, of Tutsis who sought refuge there ().

#### *Ndayambaje – Article 6 (1) Responsibility*

5756. Having regard to the organised nature of the attack and the fact it continued over two successive days, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group at Mugombwa Church. Further, in view of the large number of Tutsi victims, the fact that Ndayambaje told the attackers that their work would be simple since the people in the church were all gathered together, and that some attackers left to continue searching for those still in hiding upon Ndayambaje's instructions, the Chamber finds that the assailants possessed genocidal intent during the attack and that Ndayambaje knew of this intent.

5757. In the circumstances, the Chamber is convinced that the only reasonable inference to be drawn is that Ndayambaje came to Mugombwa Church on 20 and 21 April 1994 to encourage the civilians in their attacks, and in this way substantially contributed to the perpetration of the attacks on the Tutsi refugees at Mugombwa Church. The Chamber notes that Ndayambaje exercised considerable moral authority over the population in Muganza *commune* at the time.

As such, the Chamber considers that Ndayambaje's presence at Mugombwa Church before each attack encouraged the attacks, and the Chamber is satisfied that Ndayambaje knew that his presence would be considered by the assailants as tacit approval of the attack. Given the circumstances as a whole, the Chamber has no doubt that Ndayambaje knew that the assailants possessed genocidal intent, and that he substantially contributed to their attacks.

5758. As such, the Chamber finds Ndayambaje guilty of genocide for aiding and abetting the killing of Tutsi refugees on 20 and 21 April 1994 at Mugombwa Church under Article 6 (1) of the Statute.

*Ndayambaje – Article 6 (3) Responsibility*

5759. The Chamber next addresses Ndayambaje's potential Article 6 (3) superior responsibility over the civilian perpetrators of the massacre at Mugombwa Church, for possible consideration in sentencing.

5760. The Prosecution alleges that Ndayambaje, as former *bourgmestre* of Muganza *commune* for a period of 11 years, was seen as a key authority figure by the population. The Prosecution submits that even after leaving office in 1993, Ndayambaje continued to be respected and obeyed, and was, in effect, a *de facto bourgmestre*. It alleges that he continued to exercise authority over *commune* office personnel, such as *conseillers* and *commune* police, since they had been appointed during his tenure, and that he continued to play a role in *commune* administration. Further, the Prosecution submits that Ndayambaje was an active and influential figure within his *commune* due to the other positions he held on various boards and committees.<sup>14669</sup>

5761. The Ndayambaje Defence denied that Ndayambaje played the role of a *de facto bourgmestre* after he left office. It submits that Ndayambaje had no authority over *commune* personnel and policemen after he left office, ceased all activities related to his office as *bourgmestre* of Muganza *commune* after his resignation, and did not resume such activities until he was sworn in on 22 June 1994.<sup>14670</sup>

5762. The Chamber recalls that Ndayambaje was the *bourgmestre* of Muganza *commune* from 1982 until March 1993,<sup>14671</sup> at which time he left to pursue studies, and was reappointed *bourgmestre* of Muganza *commune* on 22 June 1994 (). As such, at the time of the events at Mugombwa Church between 20 and 24 April 1994, Ndayambaje did not hold any public office and thus did not exercise any *de jure* authority.

5763. The Chamber accepts that Ndayambaje, as former *bourgmestre* of Muganza *commune* for a period of 11 years, and the holder of a number of other offices, was a well-known authority figure and was influential within his *commune*. However, irrespective of how substantial Ndayambaje's influence in Muganza *commune* may have been from 6 April 1994

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<sup>14669</sup> Prosecution Closing Brief, pp. 450-456, paras. 3-25.

<sup>14670</sup> Ndayambaje Closing Brief, paras. 882-932.

<sup>14671</sup> Defence Exhibit 682 (Ndayambaje) (Presidential Order No. 88/04 of 12 March 1993, Granting Special Leave Without Pay To Bourgmestres).

until 22 June 1994, Ndayambaje will not incur responsibility under Article 6 (3) unless he also exercised effective control over any subordinates.<sup>14672</sup>

5764. The Chamber notes that the Prosecution failed to lead sufficient evidence that Ndayambaje had effective control over the civilians who participated in the attacks at Mugombwa Church. The Chamber is of the view that Ndayambaje's influence, if any, over civilians in Muganza *commune* does not meet the threshold of effective control necessary for the imposition of criminal responsibility for the acts of this group.

5765. The Chamber does not find it established beyond a reasonable doubt that Ndayambaje was in a superior-subordinate relationship over civilians at Mugombwa Church. Accordingly, the Chamber does not find that Ndayambaje bears superior responsibility for their crimes. The Chamber thus will not take Ndayambaje's alleged superior responsibility into account in sentencing.

#### 4.2.2.3.4 Kabuye Hill, 20-24 April 1994

##### *Arrest and Transportation of Tutsis to Kabuye Hill, 20 April 1994*

5766. The Chamber has found it established beyond a reasonable doubt that on 20 April 1994, Ndayambaje travelled to Ngiriyi Bridge in Gisagara, Ndora *commune*, with several armed soldiers and *commune* policemen where they arrested fleeing Tutsi refugees, fired shots in the air and threatened them with their guns and forced them to return to Gisagara marketplace. Thereafter, soldiers and policemen escorted the refugees on foot to Kabuye Hill ().

5767. The Chamber cannot discern any identifiable act of genocide involved in the arrest and forced movement of the refugees to Kabuye Hill. The Chamber does not find that the interception or forced escorting of the refugees to Kabuye Hill itself constitutes genocide. While the Chamber accepts that their arrest by armed soldiers and *commune* policemen, the firing of guns and their forced return to Gisagara and Kabuye may have caused them significant fear and mental suffering in view of the context at the time, the Chamber does not consider it proven that the mental harm suffered was more than minor or temporary.<sup>14673</sup>

5768. As such, the Chamber acquits Ndayambaje of any responsibility, under either Article 6 (1) or 6 (3), for the interception and forced movement of the Tutsi refugees from Ngiriyi Bridge to Kabuye Hill under Count 2.

##### *Attack on Kabuye Hill, 22-24 April 1994*

5769. The Chamber has found beyond a reasonable doubt that on 22 April 1994, Ndayambaje was present during an attack at Kabuye Hill where soldiers and *commune* policemen with guns, as well as civilians armed with traditional weapons attacked Tutsi refugees gathered on the hill, resulting in the death of thousands of Tutsis. That night survivors of the attack at Kabuye Hill were guarded and prevented from escaping ().

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<sup>14672</sup> *Delalić et al.*, Judgement (AC), paras. 258, 266, 300, 306; *Orić*, Judgement (TC), para. 311; *Karera*, Judgement (TC), para. 564.

<sup>14673</sup> *Seromba*, Judgement (AC), para. 46.



5770. Considering Ndayambaje, along with armed soldiers and *commune* policemen arrested the same fleeing Tutsi refugees in Gisagara and escorted them to Kabuye hill two days earlier, on 20 April 1994, in addition to the planned and protracted nature of the attack carried out on 22 April 1994, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group at Kabuye Hill.

5771. Further, in view of the forced return of the Tutsi refugees to Kabuye Hill, the fact that after the attack the surviving Tutsi refugees were guarded to prevent their escape, and events unfolding simultaneously at Mugombwa Church, the Chamber is satisfied that the assailants at Kabuye Hill possessed genocidal intent at the time of their attack on 22 April 1994, and that Ndayambaje knew of this intent.

5772. The Chamber has found it established beyond a reasonable doubt that on 23 April 1994 Ndayambaje distributed weapons including rifles and grenades at both the Muganza *commune* office and Kabuye Hill, which were later used in the massacres at Kabuye Hill on 23 and 24 April 1994. Ndayambaje further transported soldiers, civilians and *commune* policemen to Kabuye Hill where they participated in attacks against Tutsis. Finally, Ndayambaje was present during the attacks against Tutsis at Kabuye Hill on 23 and 24 April 1994, and thousands of deaths resulted from these attacks ().

5773. Having regard to the planned nature of the attack, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group at Kabuye Hill on 23 and 24 April 1994. As such, the Chamber is of the view that Ndayambaje and the assailants also possessed the requisite intent to destroy, in whole or in substantial part, the Tutsi group at the time of the attacks on 23 and 24 April 1994, and that Ndayambaje again knew of the principal perpetrators' specific intent.

5774. The Chamber has found that Ndayambaje was present during the attack at Kabuye Hill on 22 April 1994 (). The Chamber recalls that Ndayambaje exercised considerable moral authority over the population in his *commune* at the time (). As such, the Chamber finds that Ndayambaje's presence at Kabuye Hill during the attack encouraged and substantially contributed to the attack at Kabuye Hill, and the Chamber is satisfied that Ndayambaje knew that his presence would be considered by the assailants as tacit approval of the attack.

5775. It is the Chamber's finding that Ndayambaje's acts of distributing weapons at both the Muganza *commune* office and Kabuye Hill on 23 April 1994, weapons which were used in the subsequent attacks at Kabuye Hill, as well as transporting soldiers, civilians and *commune* policemen to Kabuye Hill, substantially contributed to the commission of the crimes at Kabuye Hill on 23 and 24 April 1994. Ndayambaje was also present during the attacks at Kabuye Hill on 23 and 24 April 1994, which in the Chamber's view encouraged the same attacks. The Chamber is satisfied that Ndayambaje knew that his positive acts substantially contributed to the commission of the attacks at Kabuye Hill on 23 and 24 April 1994 and knew that his presence would be considered by the assailants as tacit approval of the attack.

5776. The Chamber has also considered whether Ndayambaje crossed the line separating aiding and abetting from committing genocide, and thus whether he became a principal

perpetrator of the crime itself.<sup>14674</sup> While Ndayambaje played a role in events surrounding the killings, and substantially contributed to them, the Chamber does not find that his conduct was as much an integral part of the genocide as the killings themselves.<sup>14675</sup> The Chamber therefore considers that aiding and abetting is the mode of responsibility that best captures Ndayambaje's role in the attacks.

5777. The Chamber finds it established, beyond a reasonable doubt, that Ndayambaje is guilty of aiding and abetting genocide for his role in the attacks at Kabuye Hill on 22 through 24 April 1994.

#### *Ndayambaje – Article 6 (3) Responsibility*

5778. The Chamber next addresses Ndayambaje's potential 6 (3) superior responsibility over the perpetrators of the massacre at Kabuye Hill, for any possible consideration in sentencing.

5779. Notwithstanding the prominent role that Ndayambaje played in contributing to the attacks at Kabuye Hill, and the fact he was often together with soldiers, *commune* police, and civilians, the Prosecution failed to lead any evidence that Ndayambaje had effective control over these perpetrators or over *Interahamwe*. For example, there was no evidence that any of these perpetrators were acting pursuant to Ndayambaje's orders, that soldiers reported back to him, or that Ndayambaje had any authority or ability to prevent or punish offences committed by them.

5780. In the circumstances the Chamber does not find it established beyond a reasonable doubt that Ndayambaje held a *de facto* superior position as a civilian over soldiers, *commune* police, civilians, or *Interahamwe* present and participating in the events preceding, or the attacks at, Kabuye Hill between 22 and 24 April 1994.

5781. As the Prosecution did not prove beyond a reasonable doubt the existence of a superior-subordinate relationship between Ndayambaje and the soldiers, *commune* policemen, civilians, and *Interahamwe* at Kabuye Hill, the Chamber will not take this element into account in sentencing.

#### 4.2.2.3.5 IRST Massacre, 21 April 1994

##### *Ntahobali*

5782. The Chamber has found beyond a reasonable doubt that on 21 April 1994, Ntahobali participated in the abduction of approximately 40 Tutsis at the "Rugira roadblock", and that he ordered the *Interahamwe* present to take them to a place between the IRST and the Laboratory. It was further found that once at the IRST, Ntahobali issued orders to the *Interahamwe* to kill the Tutsis that had been arrested. Ntahobali's orders were followed and approximately 200 Tutsis were killed at the IRST on 21 April 1994 ().

5783. The Chamber has found that genocide was committed in Butare *préfecture* against the Tutsi population (*see, e.g., ; ;*). In the present circumstances, the Chamber observes that the

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<sup>14674</sup> See generally *Seromba*, Judgement (AC), para. 182.

<sup>14675</sup> See generally *Kalimanzira*, Judgement (AC), para. 219 (quoting *Gacumbitsi*, Judgement (AC), para. 60).

victims of the abduction and killings at the IRST were of Tutsi ethnicity. In light of the background and context to this event, the Chamber finds that it constituted the crime of genocide. There is no doubt that the *Interahamwe* possessed genocidal intent when they killed the Tutsis.

5784. Further, the Chamber is satisfied that the only reasonable inference to be drawn from Ntahobali's actions in this event is that he possessed the specific intent to destroy the Tutsi ethnic group by killing the Tutsis abducted from the "Rugira roadblock", along with the other Tutsis that had already been arrested and transported to the IRST. Ntahobali's instructions in this regard were clear.

5785. The Chamber further considers that the only reasonable inference to be drawn from the fact that Ntahobali's orders to kill were followed by the *Interahamwe* is that he possessed authority over them.

5786. Therefore, the Chamber finds Ntahobali is responsible as a principal perpetrator, for ordering genocide through the underlying act of killing.

5787. The Chamber recalls that Ntahobali was also charged with superior responsibility in relation to the *Interahamwe* (), and that he received sufficient notice of his responsibility for the IRST incident ().

5788. In discussing the notice received by Ntahobali for this incident, the Chamber highlighted the curative effect of the summary of Witness QCB's intended testimony, annexed to the Pre-Trial Brief (). The Chamber notes, however, that the summary does not provide that Ntahobali supervised *Interahamwe* with relation to the events at the IRST.<sup>14676</sup> Accordingly, the Chamber concludes that Ntahobali did not receive sufficient notice of the alleged criminal conduct of the *Interahamwe* over whom he was allegedly responsible.

#### *Nsabimana and Nteziryayo*

5789. The Chamber notes that Nsabimana and Nteziryayo also appear to be charged with 6 (3) responsibility as to these events.<sup>14677</sup> The Chamber further notes that Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment mentions only Ntahobali as the alleged perpetrator. As noted above, in its closing submissions, the Prosecution does not specify Ntahobali as an alleged subordinate of either Nsabimana or Nteziryayo (;). The Chamber therefore concludes that neither Nsabimana nor Nteziryayo is responsible as a superior for these events. The Indictment also charges Nsabimana and Nteziryayo with 6 (1) responsibility as to these events.<sup>14678</sup> The Prosecution has failed to satisfy its burden as to these allegations.

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<sup>14676</sup> Prosecution Pre-Trial Brief – Appendix; Witness QCB (52) (in support of Counts 1-3, 5-6, 8-11 against Ntahobali).

<sup>14677</sup> Para. 6.51 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Accused, except for direct and public incitement to commit genocide, pursuant to Article 6 (3) of the Statute).

<sup>14678</sup> Para. 6.51 of the Nsabimana and Nteziryayo Indictment (in support of all counts against both Accused, pursuant to Article 6 (1) of the Statute).

4.2.2.3.6 Kabakobwa Hill, 21-24 April 1994

5790. On the morning of 21 April 1994, Kanyabashi gave a speech at Rango market stating that Tutsis should be “allowed to go through” to Kabakobwa. On the same day various local authorities as well as members of the *Interahamwe* directed Tutsis to Kabakobwa, while other individuals were directed to go to Kabakobwa to guard the Tutsis. The Chamber has not found it established that Kanyabashi ordered his subordinates to direct Tutsis towards Kabakobwa under the guise of protection ().

5791. On 22 April 1994, 200-250 people from nearby *secteurs*, armed with traditional weapons, surrounded at least 500 and up to 10,000 mostly Tutsi refugees at Kabakobwa Hill. Hutus present at Kabakobwa were told to leave and one Nsanzabahizi, a *commune* driver and former *commune* policeman told the refugees “[y]our hour has come”. Sometime shortly before noon both *Interahamwe* and soldiers came to Kabakobwa Hill and, upon seeing the number of refugees there, left to report to Kanyabashi and Muvunyi respectively to get reinforcements for the attack. At around 2.00 or 3.00 p.m. soldiers opened fire on the refugees and civilians attacked with traditional weapons. Ngoma *commune* police and Nsanzabahizi participated in the killings at Kabakobwa on 22 April 1994. At least hundreds, if not thousands, of refugees were killed. Some of the attackers returned to Kabakobwa on 23 April 1994 to finish off the survivors and loot their property. It was not established that Kanyabashi was present at Kabakobwa on 22 or 23 April 1994 ().

5792. Having regard to the planned nature of the attack, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group at Kabakobwa Hill. In view of the large number of Tutsi victims at Kabakobwa Hill, the fact that Hutus present were told to leave, and the content of Nsanzabahizi’s words, the Chamber is also satisfied that the assailants possessed the requisite intent to destroy, in whole or in substantial part, the Tutsi group as such.

5793. The Prosecution only charged Kanyabashi with superior responsibility for the attack at Kabakobwa under Article 6 (3).<sup>14679</sup> The perpetrators of the attacks at Kabakobwa Hill included soldiers, civilians/*Interahamwe*, and Ngoma *commune* employees, including police officers. The Chamber recalls that it has already found that the Indictment sufficiently informed Kanyabashi that he was charged with superior authority over these categories of persons (), such that the Chamber will consider whether a superior-subordinate relationship existed between Kanyabashi and these groups during the period in question.

*Kanyabashi – Soldiers*

5794. The Chamber refers to its finding elsewhere that Kanyabashi is responsible as a superior of soldiers for the massacre at Matyazo dispensary (). Although testimony in that instance suggests a certain relationship between Kanyabashi and soldiers, in the Chamber’s view it is not a sufficient basis upon which to conclude Kanyabashi also had *de facto* authority over soldiers at Kabakobwa.

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<sup>14679</sup> Paras. 6.32, 6.33 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute); see also Para. 6.45 of the Kanyabashi Indictment (same).

5795. Considering the evidence as a whole, and in particular in relation to the events at Kabakobwa, the Chamber cannot conclude beyond a reasonable doubt that Kanyabashi exercised effective control over the soldiers at Kabakobwa Hill.

5796. As the Prosecution did not establish the existence of a superior-subordinate relationship between Kanyabashi and the soldiers at Kabakobwa, the Chamber finds Kanyabashi is not responsible as a superior under Article 6 (3) for the acts of soldiers at Kabakobwa.

*Kanyabashi – Civilians/Interahamwe*

5797. The Chamber did not find it necessary to determine whether the civilian attackers at Kabakobwa were part of the official *Interahamwe*, namely the MRND's youth wing, although the witnesses' testimony evidenced that the term "*Interahamwe*" was used to refer to all civilians participating in the attack (). No evidence was led that Kanyabashi had effective control over the official *Interahamwe*. As such the evidence is insufficient to establish that a *de jure* superior-subordinate relationship existed between Kanyabashi and the *Interahamwe*. Similarly, Kanyabashi did not exercise *de jure* authority over civilians.

5798. The Chamber recalls that a group of *Interahamwe* came to Kabakobwa and then left, saying that "they were going to announce to the *bourgmestre* that people at Kabakobwa were sufficient in number". The *Interahamwe* said they would return to confront those in Kabakobwa, and they later returned armed and with *commune* police (). Although this testimony suggests a certain relationship between Kanyabashi and the *Interahamwe* in this instance, it is not a sufficient basis upon which to conclude that Kanyabashi had *de facto* control over the civilians/*Interahamwe* in the sense of having the material ability to prevent or punish their criminal conduct.

5799. As such, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt the alleged superior-subordinate relationship between Kanyabashi and the civilians/*Interahamwe*. Accordingly, the Chamber finds Kanyabashi is not responsible as a superior under Article 6 (3) for their acts at Kabakobwa.

*Kanyabashi – Ngoma Commune Policemen*

5800. The Chamber recalls its finding that the evidence established beyond a reasonable doubt that Ngoma *commune* police were present at and participated in the killings that occurred at Kabakobwa on Friday 22 April 1994.

5801. The Chamber further recalls its earlier finding that Kanyabashi received notice of his alleged superior responsibility over *commune* police (), and notes that the Indictment clearly pleads their role in relation to the events at Kabakobwa.<sup>14680</sup> The Chamber considers that Kanyabashi received adequate notice of these allegations.

5802. Rwandan law provided that *bourgmestres* wielded legal authority over *commune* police. *Bourgmestres* had power over the hiring, suspension, and termination of *commune*

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<sup>14680</sup> Paras. 6.32 and 6.33 of the Kanyabashi Indictment; *see also* Para. 6.65 of the Kanyabashi Indictment.

police officers.<sup>14681</sup> Although it appears that these powers could be exercised only after consultation with the *commune* counsel and the Minister of the Interior,<sup>14682</sup> Rwandan law also provided that “the *bourgmestre* has sole authority over the members of the *commune* police”.<sup>14683</sup> As *bourgmestre* of Ngoma *commune*, Kanyabashi enjoyed *de jure* authority over the *commune* police of Ngoma.

5803. The Chamber notes that it has found that Kanyabashi arranged for police officers to force refugees onto a bus to transfer them from the BPO to Nyange ().

5804. The Chamber is satisfied that Kanyabashi exercised effective control over the police within his *commune*. In addition to his *de jure* authority, the Chamber is satisfied that Kanyabashi maintained effective control over the *commune* policemen, in the sense of having the material ability to prevent or punish their criminal conduct.<sup>14684</sup>

5805. The Chamber must now determine whether *Bourgmestre* Kanyabashi knew or had reason to know that Ngoma *commune* police were about to or had committed criminal acts at Kabakobwa. The Chamber recalls: the day before the attack, Kanyabashi gave a speech during which he stated that Tutsis should be “allowed to go through” to Kabakobwa, and thus was fully aware of the presence of refugees and of their plight at Kabakobwa; various *commune* authorities, including a *conseiller* and a *responsable de cellule*, and *Interahamwe* directed Tutsis to Kabakobwa; *Interahamwe* came to Kabakobwa Hill before noon the next morning and, upon seeing the number of refugees there, left to report to Kanyabashi, before returning to commence the attack that afternoon (; ).

5806. Further, the Chamber recalls Witness D-2-YYYY testified that Kanyabashi chaired a police meeting at the *commune* office on the very morning of the attack, at 8.30 a.m. where the *bourgmestre* raised the issue of the killing of Tutsis and in turn the policemen reported what they had seen in relation to the killing of Tutsis, for example, the death of one Karangana at Mukura bridge on 21 April 1994.<sup>14685</sup> Moreover, during the course of 22 April 1994, both Witness D-2-YYYY and Witness D-2-5-I were at the *commune* office and testified they could hear gunshots from Kabakobwa.<sup>14686</sup> Considering the testimony of Witnesses D-2-5-I,<sup>14687</sup> and D-2-YYYY<sup>14688</sup> that Kanyabashi left the *commune* office around 4.30 or 5.00 p.m. that day,

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<sup>14681</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) p. 917, Arts. 103-105, 108-109.

<sup>14682</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) pp. 916-917, Art. 93 (“*Le pouvoir d’engagement, de suspension, et de révocation appartient au bourgmestre après avis du Conseil communal conformément aux instructions du Ministre de l’Intérieur*”).

<sup>14683</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) p. 917, Art. 104 (“*Le bourgmestre a seul autorité sur les agents de la Police commune...*”).

<sup>14684</sup> *Ntagerura et al.*, Judgement (AC), paras. 341-342; *Kajelijeli*, Judgement (AC), para. 86; *Bagilishema*, Judgement (AC), para. 50; *Muvunyi I*, Judgement (TC), para. 475.

<sup>14685</sup> T. 11 December 2007 pp. 26-28 (ICS) (Witness D-2-YYYY).

<sup>14686</sup> T. 11 December 2007 p. 25 (ICS) (Witness D-2-YYYY); T. 28 January 2008 p. 32 (ICS) (Witness D-2-5-I).

<sup>14687</sup> T. 21 January 2008 p. 48 (ICS) (Witness D-2-5-I) (Witness was told that Kanyabashi had gone home at 4.30 p.m. that day).

<sup>14688</sup> T. 28 November 2007 p. 21 (ICS); T. 3 December 2007 p. 49 (ICS); T. 11 December 2007 p. 29 (ICS) (Witness D-2-YYYY) (Kanyabashi went home for the day at about 5.00 p.m.).

and the proximity between the *commune* office and Kabakobwa Hill,<sup>14689</sup> the Chamber concludes Kanyabashi was present at the *commune* office and should similarly have been able to hear the gunshots. The Chamber also recalls Witness D-2-14-D's description of the attack as "remarkable" and testimony that his *conseiller de secteur* and Kanyabashi would have heard of it, considering Kabakobwa was within Ngoma *commune* and under Kanyabashi's jurisdiction.<sup>14690</sup>

5807. Lastly, the Chamber recalls Defence Witness D-2-YYYY's evidence that in April 1994, there were approximately 25 to 30 Ngoma *commune* police officers.<sup>14691</sup> Given the relatively small number of policemen in Ngoma *commune*, Kanyabashi's control over the policemen, and the fact that he remained in regular contact with these policemen by regular meetings, several of whom were stationed at his house on the weekend of the Kabakobwa attacks, the Chamber does not accept that Kanyabashi had no knowledge of the participation of any of the Ngoma *commune* police in such a systematic, large-scale attack. To this end, the Chamber also recalls that Witness D-2-14-W testified about a meeting at Huye Stadium around 25 or 26 April 1994, where Kanyabashi publicly condemned killings that had occurred in Kabakobwa, Butare town, Buye, the Matyazo school centre, and the dispensary and said that the perpetrators of those killings had to be punished.<sup>14692</sup>

5808. Considering the circumstances in which the Kabakobwa attack took place, the Chamber is satisfied that Kanyabashi knew or had reason to know about the attack and the participation of his subordinates therein. Even accepting that one Semwiza was arrested in the days after the Kabakobwa attack for his role in the attacks, the Chamber considers that the totality of the evidence establishes beyond a reasonable doubt that Kanyabashi took no steps to prevent the attack or to punish any Ngoma *commune* policeman for participating in the attack at Kabakobwa on 22 April 1994.

5809. Therefore, the Chamber finds Kanyabashi guilty of genocide under Article 6 (3) for the crimes committed by Ngoma *commune* policemen at Kabakobwa Hill on 22 April 1994.

#### *Kanyabashi – Ngoma Commune Personnel*

5810. Rwandan law for the period covered by the Indictment provided that the administration of Ngoma *commune* was under the direct authority of the *bourgmestre*.<sup>14693</sup> More specifically, after consultation with the *commune* council and the Minister of the Interior, the *bourgmestre*

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<sup>14689</sup> T. 27 August 2007 p. 61 (Witness D-2-14-D) (Witness D-2-14-D testified that the Ngoma *commune* office was approximately 15 kilometres from Kabakobwa and the trip would take approximately 20 minutes by vehicle); T. 11 December 2007 p. 29 (ICS) (Witness D-2-YYYY) (Witness D-2-YYYY corroborated this insofar as he estimated that it could take 20 or 30 minutes to reach Kabakobwa from the *commune* office, although he could not be sure because he had never covered that distance by car).

<sup>14690</sup> T. 28 August 2007 p. 9 (Witness D-2-14-D).

<sup>14691</sup> T. 27 November 2007 p. 7 (ICS); T. 5 December 2007 pp. 46-47 (ICS) (Witness D-2-YYYY). For the names of specific policemen; see T. 3 December 2007 p. 28 (ICS); T. 4 December 2007 pp. 41-42 (ICS) (Witness D-2-YYYY).

<sup>14692</sup> T. 11 February 2008 pp. 27, 38 (ICS) (Witness D-2-14-W).

<sup>14693</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) p. 914, Art. 60 ("L'administration communale est placée sous l'autorité directe du bourgmestre").

had power over the hiring, suspension, and termination of *commune* personnel.<sup>14694</sup> In light of the *bourgmestre's* powers to suspend or terminate employment, the Chamber finds that Kanyabashi, as *bourgmestre* of Ngoma *commune*, enjoyed a *de jure* superior-subordinate relationship over Ngoma *commune* personnel.

5811. With respect to Kanyabashi's *de facto* control over Ngoma *commune* personnel,<sup>14695</sup> the Chamber notes that Kanyabashi made no attempt to refute that he had effective control over Ngoma *commune* personnel. While the burden of proof nonetheless remains on the Prosecution, the Chamber is satisfied that the evidence establishes that in addition to his *de jure* authority, Kanyabashi maintained effective control over the *commune* personnel, in the sense of having the material ability to prevent or punish their criminal conduct.<sup>14696</sup>

5812. It was not disputed that Mathias Nsanzabahizi was a driver for Ngoma *commune*, and former *commune* policeman, who participated in attacks at Kabakobwa ().

5813. The Kanyabashi Defence acknowledges that a former *commune* policeman named Nsanzabahizi was a driver for the *commune* and an attacker at Kabakobwa, but submits Kanyabashi was not driven by this man.<sup>14697</sup> The Chamber considers that as a *commune* employee, there existed a formal hierarchical relationship between Nsanzabahizi and Kanyabashi from which flowed Kanyabashi's ability to punish Nsanzabahizi.

5814. However, the Prosecution did not adduce sufficient evidence that Kanyabashi knew or had reason to know that *commune* drivers or Nsanzabahizi were about to, or had, committed criminal acts at Kabakobwa. Similarly, the Chamber cannot conclude that Kanyabashi was informed of these acts at any time. As such, the Chamber finds Kanyabashi is not responsible as a superior under Article 6 (3) for the acts of *commune* drivers or Nsanzabahizi at Kabakobwa.

#### 4.2.2.3.7 Mutunda Stadium Killings, Around 25-27 April 1994

5815. After about 3,000 Tutsis gathered at Mutunda Stadium, many were killed there around 25 through 27 April 1994. The Chamber has found, however, that the Prosecution has not established Nyiramasuhuko's presence during the attack (). Similarly, the Chamber finds that the Prosecution has not proven that Nyiramasuhuko or Nsabimana bear criminal responsibility for these events, pursuant to either Article 6 (1) or 6 (3) of the Statute.

#### 4.2.2.3.8 Save Roadblock, April 1994

5816. The Chamber has found beyond a reasonable doubt that Kanyabashi came to a roadblock in Save in April 1994. He asked the people who manned this roadblock to search for

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<sup>14694</sup> Prosecution Exhibit 189 (Law of 23 Novembre 1963, *Organisation Communale*) p. 916, Art. 93 (“*Le pouvoir d’engagement, de suspension, et de révocation appartient au bourgmestre après avis du Conseil communal conformément aux instructions du Ministre de l’Intérieur*”); Art. 94 (“*Toutes décisions concernant l’engagement, la suspension, ou la révocation de personnel doivent être approuvées par le préfet ou son délégué*”).

<sup>14695</sup> *Nahimana et al.*, Judgement (AC), para. 625; *Gacumbitsi*, Judgement (AC), para. 143; *Bagilishema*, Judgement (AC), paras. 59-62; *Bagilishema*, Judgement (TC), para. 39.

<sup>14696</sup> *Ntagerura et al.*, Judgement (AC), paras. 341-342; *Kajelijeli*, Judgement (AC), para. 86; *Bagilishema*, Judgement (AC), para. 50; *Muvunyi I*, Judgement (TC), para. 475.

<sup>14697</sup> Kanyabashi Closing Brief, paras. 188-191.



a Tutsi lecturer and offered a reward for whoever found him (). There is no evidence as to what occurred after this request.

5817. As there is insufficient evidence to establish that Kanyabashi's words at the roadblock substantially contributed to any subsequent crime, the Chamber finds Kanyabashi not guilty of genocide with respect to this allegation.

#### 4.2.2.3.9 Matyazo Clinic, Late April 1994

5818. In late April 1994, following an initial attack by soldiers, Kanyabashi went to Matyazo Clinic. He addressed the Tutsis who were sheltering in the clinic and then ordered soldiers to open fire on the Tutsis, resulting in many deaths ().

5819. The Chamber notes that although Paragraph 6.34 of the Kanyabashi Indictment alleges that "Kanyabashi ordered soldiers to open fire on the refugees" at Matyazo clinic, the Prosecution does not charge Kanyabashi with this crime pursuant to ordering or another mode of responsibility under Article 6 (1) of the Statute.<sup>14698</sup> In the Chamber's view, this is a serious omission on the part of the Prosecution.

5820. The Prosecution instead charges Kanyabashi with superior responsibility for the events at Matyazo Clinic.<sup>14699</sup> Accordingly, the Chamber will only consider whether Kanyabashi is responsible as a superior for the role of his alleged subordinates at Matyazo Clinic.

5821. As discussed above (), the Chamber has concluded that Kanyabashi received sufficient notice of his alleged superior responsibility in relation to the soldiers' actions at Matyazo Clinic. The Chamber will now assess whether the Prosecution has proved this allegation beyond a reasonable doubt.

5822. Although the Prosecution alleges that Kanyabashi exercised *de jure* authority over the soldiers,<sup>14700</sup> it identifies no possible source for such authority. Considering the evidence in its totality, the Chamber concludes that Kanyabashi did not have *de jure* authority over the soldiers at Matyazo Clinic in late April 1994.

5823. The Chamber recalls, however, that Kanyabashi ordered the soldiers to shoot at the Tutsis sheltering at Matyazo Clinic in late April 1994, and that the soldiers obeyed this order (). Based on this fact, the Chamber finds beyond a reasonable doubt that Kanyabashi exercised effective control over these soldiers on an *ad hoc* or temporary basis, and that he was in a superior-subordinate relationship over them. The Chamber also considers that Kanyabashi acted with genocidal intent, which was further evidenced by his conduct at the 19 April 1994 swearing-in ceremony ().

5824. The Chamber likewise finds that Kanyabashi's orders demonstrate that he knew that soldiers were about to commit a crime and that he failed to prevent their crimes. Similarly,

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<sup>14698</sup> Para. 6.34 of the Kanyabashi Indictment (pled in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute only).

<sup>14699</sup> Para. 6.34 of the Kanyabashi Indictment (pled in support of Counts 1-3, 5-9 pursuant to Article 6 (3) of the Statute only).

<sup>14700</sup> Prosecution Closing Argument, T. 21 April 2009 p. 28.

Kanyabashi knew afterwards that the soldiers had committed a crime. Based on the evidence, the only reasonable inference is that Kanyabashi also failed to punish them for obeying his order to shoot the Tutsis at Matyazo Clinic.

5825. Given the context and the totality of the evidence, the Chamber finds beyond a reasonable doubt that the soldiers, in shooting at the Tutsis, possessed the genocidal intent to destroy the Tutsi ethnic group. Many Tutsis died as a result. There is no doubt that the soldiers committed genocide.

5826. Accordingly, the Chamber finds beyond a reasonable doubt (J. Ramaroson dissenting), that the soldiers committed genocide of Tutsis at Matyazo Clinic in late April 1994, and that Kanyabashi bears responsibility as a superior for genocide.

#### 4.2.2.3.10 Ngoma Parish Church Massacre, Late April 1994

5827. In relation to the Prosecution allegation that numerous Tutsis were massacred at the Ngoma Parish Church at the end of April 1994, the Chamber has concluded that the Prosecution has not proven beyond a reasonable doubt that Kanyabashi played any role in this attack (). The Chamber therefore finds that Kanyabashi does not bear criminal responsibility for this event.

#### 4.2.2.3.11 Hotel Ihuliro Roadblock, Late April 1994

##### *Notice of Rape as Genocide*

5828. As a preliminary matter, the Chamber notes that Paragraph 6.27 of the Nyiramasuhuko and Ntahobali Indictment, which pertains to the allegations at the Hotel Ihuliro roadblock, and which was pled in support of the count of genocide, does not allege that rape was perpetrated during the abductions and killings of Tutsis at this location. This Indictment paragraph was not pled in support of the count alleging rape as a crime against humanity or outrages upon personal dignity.<sup>14701</sup>

5829. Paragraph 6.53 of the Indictment, pled in support of both genocide and rape as a crime against humanity and outrages upon personal dignity, alleges that rapes were widely committed throughout Rwanda. However this paragraph does not identify any location in Butare *préfecture* where these alleged rapes occurred.<sup>14702</sup>

5830. The crime of rape features prominently in Paragraph 6.37 of the Indictment, which alleges that Ntahobali kidnapped and raped Tutsi women. Given this allegation, the Chamber considers it significant that it was not pled in support of genocide, but was instead pled in support of rape as a crime against humanity and outrages upon personal dignity.<sup>14703</sup>

5831. Reading the Indictment as a whole, the Chamber cannot conclude that the Prosecution pled rapes in support of genocide. In particular, the Chamber notes that the paragraph concerning the Hotel Ihuliro roadblock omitted any reference to rape. Moreover, the paragraph

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<sup>14701</sup> Para. 6.27 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14702</sup> Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14703</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment.

that explicitly ties Ntahobali to rape was not pled as genocide. The Indictment is therefore defective in failing to plead rape as genocide.

5832. The Chamber recalls that defects in the Indictment can be cured if the Prosecution provides information that is timely, consistent and clear (). Although the Prosecution Pre-Trial Brief and opening statement make reference to rape as genocide,<sup>14704</sup> these indications do not clarify whether the Prosecution intended to pursue this allegation against the Accused.

5833. Similarly, the Appendix to the Pre-Trial Brief provides witness summaries that are pled in support of genocide and that allege various rapes and killings, but there is no clear indication of whether the rapes themselves are intended to support this charge in addition to the killings.<sup>14705</sup>

5834. The Chamber also recalls that on 17 August 1998 the Prosecution filed a request for leave to amend the Indictment a second time. In its request, the Prosecution submitted that “[t]he new charges contained in the proposed amended indictment, accurately reflect the totality of the accused[’s] alleged criminal conduct and allows the Prosecutor to present the full scope of available, relevant evidence”.<sup>14706</sup> This proposed Indictment added various charges, including rape as a crime against humanity pled against Nyiramasuhuko. No mention was made of pleading rape as genocide.<sup>14707</sup> The Chamber granted the Prosecution request on 10 August 1999.<sup>14708</sup>

5835. While there is ample notice that Nyiramasuhuko and Ntahobali were being charged with rapes under the counts of rape as crime against humanity, and of outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, the Prosecution provided insufficient notice of its intention to pursue rape as genocide.

5836. Under the present circumstances, the Chamber concludes that the Prosecution did not provide sufficient notice that could be capable of curing the defects in the Indictment. Because it would be prejudicial to hold the Accused responsible for a charge of which they had insufficient notice, the Chamber will not enter a conviction for genocide on the basis of any rapes that occurred at the Hotel Ihuliro roadblock.

5837. The Chamber notes, however, that it will mention rapes in the course of its legal findings on genocide. This will be done to convey the entire set of facts in a coherent fashion, and will not be taken into account by the Chamber in assessing genocide. Instead, they will be considered when assessing the counts of rape as a crime against humanity, and outrages upon

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<sup>14704</sup> See Prosecution Pre-Trial Brief, paras. 44, 134; Prosecution Opening Statement, T. 12 June 2001 pp. 90-91.

<sup>14705</sup> See Prosecution Pre-Trial Brief – Appendix; Witness TN (10); Witness SX (88); Witness TB (90).

<sup>14706</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Prosecutor’s Request for Leave to File an Amended Indictment, 17 August 1998, para. 5 (a).

<sup>14707</sup> See, e.g., *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Prosecutor’s Request for Leave to File an Amended Indictment, 17 August 1998, para. 4.

<sup>14708</sup> *Nyiramasuhuko & Ntahobali*, Decision on the Prosecutor’s Request for Leave to Amend the Indictment (TC), 10 August 1999, p. 6.

personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.<sup>14709</sup>

*Ntahobali*

*Notice of Alleged Responsibility*

5838. Regarding Ntahobali's alleged superior responsibility over soldiers and *Interahamwe* (), the Chamber notes that Paragraph 6.27 of his Indictment is pled in support of such responsibility. This paragraph identifies soldiers as allegedly assisting Ntahobali at the roadblock near Hotel Ihuliro, and the Chamber therefore finds that it pleads Ntahobali's alleged superior responsibility over soldiers in relation to the incidents there.<sup>14710</sup>

5839. This Indictment paragraph, however, makes no mention of *Interahamwe* as alleged subordinates of Ntahobali. The Indictment is defective in this regard. Notably, however, this paragraph also mentions "other unknown persons".<sup>14711</sup> This phrase lends itself to curing, as an exceptional measure, through the provision of timely, clear and consistent notice.<sup>14712</sup>

5840. The Chamber recalls that the Appendix to the Prosecution Pre-Trial Brief contains a summary of Witness QCB's anticipated testimony pertaining to the events at this roadblock (). A review of this summary reveals that Ntahobali was alleged to be in a superior-subordinate relationship with the *Interahamwe* at the roadblock near Hotel Ihuliro.<sup>14713</sup> Moreover, this witness' statement alleges that the *Interahamwe* played a role in the attack on Ruvurajabo.<sup>14714</sup> The Chamber finds that the defect in the Indictment was cured and that there was no prejudice to Ntahobali, who received sufficient notice of his alleged superior responsibility over *Interahamwe* for their actions at the Hotel Ihuliro roadblock, including the attack on Ruvurajabo.

5841. Given that Ntahobali was alleged to have been present during the events at the Hotel Ihuliro roadblock, and was alleged to have been a superior there, the Chamber finds that Ntahobali received sufficient notice of his alleged superior responsibility pursuant to Article 6 (3) of the Statute.<sup>14715</sup>

*Responsibility*

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<sup>14709</sup> For similar reasons, the Chamber will not address rapes when considering persecution and other inhumane acts as crimes against humanity, and violence to life, health and physical or mental well-being of persons as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

<sup>14710</sup> Para. 6.27 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14711</sup> Para. 6.27 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14712</sup> See, e.g., *Karera*, Judgement (AC), para. 293.

<sup>14713</sup> Prosecution Pre-Trial Brief - Appendix; Witness QCB (52) (cited in support of Counts 1-3, 5-6, 8-11 against Ntahobali, Count 3 against Nyiramasuhuko, and Counts 1 and 2 against Kanyabashi) ("Then they came to a third roadblock supervised by Ntahobali. The roadblock was opposite Ntahobali's parents' house, The *Interahamwe* and civilians wearing military vests were checking identification cards ... QCB's acquaintance's [*sic*] refused to join the Tutsi group and Ntahobali ordered his killing and he was immediately killed").

<sup>14714</sup> 7 April 1999, Statement of Witness QCB, disclosed 1 October 2001.

<sup>14715</sup> See also Para. 6.55 of the Nyiramasuhuko and Ntahobali Indictment.

5842. In April 1994 Ntahobali manned the roadblock near Hotel Ihuliro. With the assistance of soldiers and other unknown persons he utilised the roadblock to abduct and kill members of the Tutsi population. Towards the end of April 1994, Ntahobali personally raped and murdered one Tutsi girl, and instructed the *Interahamwe* to kill Léopold Ruvurajabo, who was subsequently killed, at the roadblock near Hotel Ihuliro. It was established that various crimes, in particular beatings, rapes and killings, were carried out mostly against Tutsis at this roadblock during the relevant time period ().

5843. The Chamber recalls that it will not take into account rapes when assessing genocide. Instead, they will be considered when assessing the counts of rape as a crime against humanity, and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

5844. The Chamber finds that Ntahobali intentionally committed the mentioned crimes. The victims of these crimes were Tutsis. Further, the Chamber recalls its findings in other sections that Ntahobali specifically targeted Tutsis (*see, e.g., ; ;* ). In light of the totality of the evidence, the Chamber finds beyond a reasonable doubt that Ntahobali possessed the intent to destroy, in whole or in substantial part, the Tutsi group when he committed these crimes at the Hotel Ihuliro roadblock.

5845. The Chamber finds that these events constitute the crime of genocide. It further finds Ntahobali guilty as a principal perpetrator, for committing and ordering genocide, through the underlying acts of murder and causing serious bodily and mental harm. The Chamber will now address Ntahobali's alleged superior responsibility over soldiers and *Interahamwe*, for possible consideration in sentencing.

5846. The Chamber has found that Ntahobali received assistance from soldiers, but has not concluded that he gave them any orders (). There is insufficient evidence that would permit the Chamber to conclude that Ntahobali exercised a superior-subordinate relationship over the soldiers. The Chamber finds that the Prosecution has not established this alleged relationship beyond a reasonable doubt.

5847. As for the *Interahamwe*, the Chamber has found that Ntahobali instructed them to kill Ruvurajabo. They subsequently killed him as ordered (). The Chamber considers that the only reasonable inference to be drawn is that Ntahobali exercised effective control over the *Interahamwe* present at the roadblock. As such, Ntahobali was in a superior-subordinate relationship to them, on an *ad hoc* or temporary basis, when they killed Ruvurajabo.

5848. Given Ntahobali's presence at the roadblock when this crime took place, the Chamber finds that he knew the crime was being committed and failed to take any measure to stop the *Interahamwe* or to punish them. Therefore, the Chamber also finds Ntahobali bears superior responsibility over the *Interahamwe* for the killing of Ruvurajabo.

5849. The Chamber considers that this killing falls within the context of the genocide committed by members of the *Interahamwe* over whom Ntahobali bears superior responsibility (; ). The Chamber will take this into account in sentencing.

*Nyiramasuhuko*

5850. Because the Prosecution has not established beyond a reasonable doubt that Nyiramasuhuko was present at the time when any specific crime was actually perpetrated, the Chamber cannot conclude that Nyiramasuhuko played any direct role in relation to the mentioned crimes. Similarly, the Prosecution has adduced insufficient evidence to establish that Nyiramasuhuko was in a superior-subordinate relationship with anyone involved in these crimes at the time they occurred. The Chamber therefore acquits Nyiramasuhuko on this allegation under the Indictment pursuant to Article 6 (1) and 6 (3) of the Statute.

*Nsabimana and Nteziryayo*

5851. The Chamber notes that Nsabimana and Nteziryayo are charged with Article 6 (3) responsibility for the events at the Hotel Ihuliro roadblock.<sup>14716</sup> The Chamber further notes that Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment mentions only Nyiramasuhuko and Ntahobali as alleged perpetrators. In its closing submissions, however, the Prosecution does not specify either Nyiramasuhuko or Ntahobali as alleged subordinates of Nsabimana or Nteziryayo (; ). The Chamber therefore concludes that neither Nsabimana nor Nteziryayo is responsible as a superior for the events at the Hotel Ihuliro roadblock. The Indictment also charges Nsabimana and Nteziryayo with Article 6 (1) responsibility as to these events. The Prosecution has failed to satisfy its burden as to these allegations.

4.2.2.3.12 Rwamukwaya Family, Around 29-30 April 1994

*Ntahobali*

5852. The Chamber has found beyond a reasonable doubt that, given the narrow time frames involved between Ntahobali's threat pronounced against the Rwamukwaya family, the sighting of their bodies, and the first sightings of Ntahobali in Rwamukwaya's vehicle, Ntahobali is responsible for killing Rwamukwaya and his family, on or about 29 or 30 April 1994. The Chamber also found that the Rwamukwaya family was of Tutsi ethnicity ().

5853. It was established that genocide was committed in Rwanda, in this period against members of the Tutsi population (*see, e.g., ; ;*).

5854. In light of the background to this crime, and considering the totality of the evidence, the Chamber finds that only one reasonable inference is open to it: that the principal perpetrators killed the Rwamukwaya family with genocidal intent, and that Ntahobali was aware of this intent.

5855. Therefore, the Chamber finds this event constitutes the crime of genocide. In view of Ntahobali's announcement of his intention to have the Rwamukwaya family killed, the Chamber considers Ntahobali substantially contributed to the commission of the Rwamukwayas' death. The Chamber therefore finds that Ntahobali is guilty of aiding and abetting the killing of the Rwamukwaya family. As for Ntahobali's alleged superior responsibility, the Chamber does not find this to have been established beyond a reasonable doubt.

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<sup>14716</sup> Para. 6.51 of the Nsabimana and Nteziryayo Indictment.

*Nsabimana and Nteziryayo*

5856. The Chamber notes that Nsabimana and Nteziryayo appear to be charged with Article 6 (3) responsibility as to the killing of the Rwamukwaya family.<sup>14717</sup> The Chamber further notes that Paragraph 6.51 of the Nsabimana and Nteziryayo Indictment mentions only Ntahobali as the alleged perpetrator. As noted above, in its closing submissions, the Prosecution does not specify Ntahobali as an alleged subordinate of either Nsabimana or Nteziryayo (; ). The Chamber therefore concludes that neither Nsabimana nor Nteziryayo is responsible as a superior for these events. The Indictment also charges Nsabimana and Nteziryayo with Article 6 (1) responsibility as to the killing of the Rwamukwaya family. The Prosecution has failed to satisfy its burden in this regard.

4.2.2.3.13 Butare *Préfecture* Office (“BPO”), End of April – First Half of June 1994

*Notice of Rape as Genocide*

5857. The Chamber notes that Paragraph 6.30 of the Nyiramasuhuko and Ntahobali Indictment which pertains to the allegations at the Butare *préfecture* office, and which was pled in support of the count of genocide, does not allege that rape was perpetrated during the attacks, abductions, and killings of Tutsis there. This Indictment paragraph was not pled in support of the count alleging rape as a crime against humanity or outrages upon personal dignity.<sup>14718</sup>

5858. As discussed above (), Paragraph 6.53 of the Indictment, pled in support of both genocide and rape as a crime against humanity and or outrages upon personal dignity, alleges that rapes were widely committed throughout Rwanda. However this paragraph does not identify any location in Butare *préfecture* where these alleged rapes occurred.<sup>14719</sup>

5859. The crime of rape features prominently in Paragraph 6.37 of the Indictment, which alleges that Ntahobali kidnapped and raped Tutsi women. Given this allegation, the Chamber considers it significant that it was not pled in support of genocide, but was instead pled in support of rape as a crime against humanity and outrages upon personal dignity.<sup>14720</sup>

5860. Reading the Indictment as a whole, the Chamber cannot conclude that the Prosecution pled rapes in support of genocide. In particular, the Chamber notes that the paragraphs concerning the Butare *préfecture* office omitted any reference to rape. Moreover, the paragraph that explicitly ties Ntahobali to rape was not pled as genocide. The Indictment is therefore defective in failing to plead rape as genocide.

5861. The Chamber recalls that defects in the Indictment can be cured if the Prosecution provides information that is timely, consistent and clear (). Although the Prosecution Pre-Trial Brief and opening statement make reference to rape as genocide,<sup>14721</sup> these indications do not clarify whether the Prosecution intended to pursue this allegation against the Accused.

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<sup>14717</sup> Para. 6.51 of the Nsabimana and Nteziryayo Indictment.

<sup>14718</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14719</sup> Para. 6.53 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14720</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14721</sup> Prosecution Pre-Trial Brief, paras. 44, 134; Prosecution Opening Statement, T. 12 June 2001 pp. 89-90.

Similarly, the Appendix to the Pre-Trial Brief provides witness summaries that are pled in support of genocide and that allege various rapes and killings, but there is no clear indication of whether the rapes themselves are intended to support this charge in addition to the killings.<sup>14722</sup>

5862. The Chamber also recalls that, on 17 August 1998, the Prosecution filed a request for leave to amend the Indictment a second time. In its request, the Prosecution submitted that “[t]he new charges contained in the proposed amended indictment, accurately reflect the totality of the accused[’s] ... alleged criminal conduct and allows the Prosecutor to present the full scope of available, relevant evidence ...”.<sup>14723</sup> This proposed Indictment added various charges, including rape as a crime against humanity pled against Nyiramasuhuko. No mention was made of pleading rape as genocide.<sup>14724</sup> The Chamber granted the Prosecution request on 10 August 1999.<sup>14725</sup>

5863. While there is ample notice that Nyiramasuhuko and Ntahobali were being charged with rapes under the counts of rape as crime against humanity, and of outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, the Prosecution provided insufficient notice of its intention to pursue rape as genocide.

5864. Under the present circumstances, the Chamber concludes that the Prosecution did not provide sufficient notice that could be capable of curing the defects in the Indictment. Because it would be prejudicial to hold the Accused responsible for a charge of which they had insufficient notice, the Chamber will not enter a conviction for genocide on the basis of any rapes that occurred.

5865. The Chamber notes, however, that it will mention rapes in the course of its legal findings on genocide. This will be done to convey the entire set of facts in a coherent fashion, including that the intensity and repeated nature of the attacks provides evidence that rape was, in fact, utilised as a form of genocide. The Chamber will not take this into account in assessing genocide, but instead will consider this for the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.<sup>14726</sup>

### *Mid-May 1994 Attack*

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<sup>14722</sup> See Prosecution Pre-Trial Brief – Appendix; Witness TA (3); Witness FAP (27); Witness QBP (44); Witness QBQ (45); Witness QZ (62); Witness RF (66); Witness RJ (68).

<sup>14723</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Prosecutor’s Request for Leave to File an Amended Indictment, 17 August 1998, para. 5 (a).

<sup>14724</sup> *Prosecutor v. Nyiramasuhuko & Ntahobali*, Case No. ICTR-97-21-I, Prosecutor’s Request for Leave to File an Amended Indictment, 17 August 1998, para. 4.

<sup>14725</sup> *Nyiramasuhuko & Ntahobali*, Decision on the Prosecutor’s Request for Leave to Amend the Indictment (TC), 10 August 1999, p. 6.

<sup>14726</sup> For similar reasons, the Chamber will not take rapes into account when considering persecution and other inhumane acts as crimes against humanity, and violence to life, health and physical or mental well-being or persons as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.



5866. As an introduction, the Chamber notes that, as the violence in other parts of Rwanda pushed people to seek refuge in places they considered safe like churches and government offices, numerous already traumatised, mainly Tutsi, civilians went to the Butare *préfecture* office seeking refuge. Hoping to find safety and security, they instead found themselves subject to abductions, rapes and murder. The evidence presented by these survivors, and accepted by the Chamber, is among the worst encountered by this Chamber; it paints a clear picture of unfathomable depravity and sadism.

5867. Between mid-May and mid-June 1994 Nyiramasuhuko, Ntahobali, *Interahamwe* and soldiers went to the BPO to abduct hundreds of Tutsis; the Tutsi refugees were physically assaulted and raped; and were killed in various locations throughout Butare *préfecture*.<sup>14727</sup> In mid-May 1994, Nyiramasuhuko, Ntahobali and about 10 *Interahamwe* came to the BPO aboard a camouflaged pickup. Nyiramasuhuko pointed out Tutsi refugees to the *Interahamwe*, ordering them to force the refugees onto the pickup (; ). Ntahobali also gave the *Interahamwe* orders, telling them to stop loading the truck because it could not accept anymore dead.<sup>14728</sup> The refugees were taken to other locations in Butare to be killed. Therefore, both Nyiramasuhuko and Ntahobali were responsible for ordering the killings of numerous Tutsi refugees who were forced on board the pickup.

5868. Furthermore, Witness TA and two other women were raped during this mid-May attack. The Chamber notes that rape is one of the quintessential examples of serious bodily or mental harm.<sup>14729</sup> To support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.<sup>14730</sup> Witness TA was brutally raped by a gang of about eight *Interahamwe* in addition to Ntahobali. At least two other Tutsi women were raped on this occasion by the *Interahamwe*. This was the first of many such attacks from mid-May until mid-June 1994 during which Tutsi women, including Witness TA were raped (; ). Considering the brutality and repetitive nature of these attacks, the vulnerable nature of the population seeking refuge at the BPO and the fact that they were Tutsis, there can be no question that the bodily and mental harm inflicted by Ntahobali and the *Interahamwe* on the Tutsi women at the BPO was of such a serious nature as to threaten the destruction in whole or in part of the Tutsi ethnic group. The Chamber recalls that it will not take rapes into account in assessing genocide, but instead will consider them for charges that were properly pled.

5869. There was no evidence of Nyiramasuhuko's direct involvement in ordering the rape of Witness TA or the other Tutsi women on this occasion in mid-May 1994. Nonetheless, the *Interahamwe* were acting under the orders of Ntahobali and Nyiramasuhuko to load the truck with people. The *Interahamwe* accompanied Ntahobali and Nyiramasuhuko who were in the cabin of the vehicle as it transported the *Interahamwe* to the BPO. This assisted, encouraged or lent moral support to the perpetration of the rapes and had a substantial effect on the realisation of these crimes. Therefore, Nyiramasuhuko, by her presence and position of authority, is guilty of aiding and abetting the rapes at the BPO.<sup>14731</sup> As discussed above, the Chamber considers

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<sup>14727</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

<sup>14728</sup> T. 29 October 2001 pp. 46-47, 49-51 (Witness TA).

<sup>14729</sup> *Seromba*, Judgement (AC), para. 46.

<sup>14730</sup> *Seromba*, Judgement (AC), para. 46.

<sup>14731</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

the bodily harm or the mental harm inflicted on the Tutsi refugees at the BPO was of such a serious nature as to threaten the destruction in whole or in part of the Tutsi ethnic group.

5870. Moving to the *mens rea* of genocide, it was clear that those staying at the BPO were Tutsis and this fact was widely known throughout the *préfecture*. The *Interahamwe* were armed and forced the defenceless Tutsi refugees to board a Toyota Hilux. Those who refused were killed on the spot. Furthermore, there was a pattern of killing at the BPO itself. There were pits dug which contained those killed at the BPO. The *Interahamwe* were armed with traditional weapons. Ntahobali instructed them to spare no one. Likewise, Nyiramasuhuko issued instructions to rape the women.

5871. In evaluating Nyiramasuhuko's *mens rea* at the BPO, the Chamber also considers Nyiramasuhuko's conduct at Nsabimana's swearing-in ceremony on 19 April 1994 (; ), where she tacitly approved of the inflammatory speeches of President Sindikubwabo and Prime Minister Kambanda, and also her distribution of condoms in June 1994 (), where she urged Hutus to rape Tutsi women. These actions can only be understood as intending to eliminate this group of persons. By attacking this group of wounded and sick Tutsi refugees, and in light of the evidence as a whole, the only reasonable conclusion is that Ntahobali, Nyiramasuhuko and the other *Interahamwe* assailants possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

#### *Last Half of May 1994 Attack*

5872. During the last half of May 1994, Ntahobali and *Interahamwe* came to the BPO on two more occasions. Ntahobali violently raped Witness TA, hitting her on the head. *Interahamwe* following the orders of Ntahobali raped six other women. In a subsequent attack during this same time period, Ntahobali ordered about seven other *Interahamwe* to rape Witness TA (). As discussed above, the Chamber considers the bodily harm or the mental harm inflicted on the Tutsi refugees at the BPO in the perpetration of these rapes was of such a serious nature as to threaten the destruction in whole or in part of the Tutsi ethnic group. These Tutsis were entirely helpless and consisted mainly of women and children. The only reasonable conclusion is that Ntahobali and his co-perpetrators possessed genocidal intent in committing these rapes. However, as stated above, the Chamber will not take rapes into account in assessing genocide, but instead will consider them for charges that were properly pled.

#### *End of May/Beginning of June 1994 Attack*

5873. Around the end of May to the beginning of June 1994, Ntahobali, Nyiramasuhuko and *Interahamwe* came to the BPO on board a camouflaged pickup on three occasions in one night.<sup>14732</sup> They abducted Tutsi refugees each time, some of whom were forced to undress, and took them to other sites in Butare *préfecture* to be killed. Nyiramasuhuko ordered *Interahamwe* to rape refugees (; ). This evidences Nyiramasuhuko's intent to destroy, in whole or in part, the Tutsi group. The *Interahamwe* beat, abused and raped many Tutsi women. As discussed above, the Chamber considers the bodily harm or the mental harm inflicted on the Tutsi refugees at the BPO in the perpetration of these rapes was of such a serious nature as to threaten the destruction in whole or in part of the Tutsi ethnic group. They were all committed

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<sup>14732</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

with genocidal intent. Therefore, the acts of Nyiramasuhuko and Ntahobali constitute genocide. The Chamber again recalls that it will not take rapes into account in assessing genocide, but instead will consider them for charges that were properly pled.

*First Half of June 1994 Attack*

5874. In the first half of June 1994, Nyiramasuhuko ordered *Interahamwe* to rape Tutsi women at the BPO and as a result numerous women were raped at that location.<sup>14733</sup> Ntahobali, injured soldiers, and *Interahamwe* came to the BPO to rape women and abduct refugees. During at least one of these attacks, Ntahobali again handed Witness TA over to about seven *Interahamwe* to rape Witness TA (; ). Each of these attacks constitutes the *actus reus* of genocide. Likewise, as discussed above, the Chamber finds Nyiramasuhuko and Ntahobali possessed genocidal intent.

5875. Moreover, the Chamber finds that Ntahobali aided and abetted the rapes of Witness TA. The *Interahamwe* who raped Witness TA on this occasion possessed genocidal intent, and Ntahobali knew of their intent. He specifically acted to assist and encourage their rape of Witness TA, and his actions substantially contributed to these rapes. Regardless of this conclusion, the Chamber recalls that it will not take rapes into account in assessing genocide, but instead will consider them for charges that were properly pled.

*Nyiramasuhuko and Ntahobali – Article 6 (1) Responsibility*

5876. Based upon the above, the Chamber finds Nyiramasuhuko and Ntahobali responsible for ordering killings. The Chamber has no doubt that these killings constituted genocide for which Nyiramasuhuko and Ntahobali are responsible, pursuant to Article 6 (1).

5877. The Chamber also finds that the evidence establishes that Ntahobali committed rapes, that Nyiramasuhuko aided and abetted rapes, and that they both ordered rapes. However, for the reasons explained above, the Chamber will not take rapes into account in assessing genocide, but instead will consider them for the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

*Nyiramasuhuko and Ntahobali – Article 6 (3) Responsibility*

5878. The Chamber recalls its earlier finding that Nyiramasuhuko received notice of her alleged superior responsibility over Ntahobali, *Interahamwe* and soldiers (). The Chamber also finds that pursuant to Paragraph 6.30 of the Nyiramasuhuko and Ntahobali Indictment, Ntahobali received notice that he was being charged as a superior to *Interahamwe* and soldiers at the BPO. Reading this Indictment Paragraph along with Paragraphs 6.31, 6.53, 6.55 and 6.56, the Chamber finds that Nyiramasuhuko and Ntahobali received sufficient notice of their alleged superior responsibility.

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<sup>14733</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

*Nyiramasuhuko – Ntahobali*

5879. The Chamber has found that Nyiramasuhuko and Ntahobali went to the Butare *préfecture* office together between April and June 1994 (). Witness testimony describes them arriving together in a vehicle with *Interahamwe*,<sup>14734</sup> but little additional evidence is available concerning any interactions between the two.

5880. In this regard, the Chamber notes that Witness TA, when specifically asked to identify who was superior to whom at the BPO in late April 1994, stated her view that Nyiramasuhuko was in charge. The witness appeared to explain this view by saying that Nyiramasuhuko pointed at three refugees who had been cut up and ordered that they be loaded onto the vehicle, after which they were taken away.<sup>14735</sup> The Chamber notes, however, that Witness TA also testified that Ntahobali ordered *Interahamwe* to stop killing refugees, as the number of dead people were in excess to what could be loaded in the vehicle. Moreover, the witness testified that Nyiramasuhuko and Ntahobali did not speak to each other, and that they both led the *Interahamwe* at the scene.<sup>14736</sup> While the witness' impression that Nyiramasuhuko was in charge of Ntahobali carries some evidential value, it does not suffice to make findings beyond a reasonable doubt.

5881. Witness FAP, by contrast, described the events of late May or early June 1994 at the Butare *préfecture* office. She ascribed various orders to Nyiramasuhuko, and testified that afterwards, Ntahobali and *Interahamwe* walked towards their eventual victims. Later that evening, according to the witness, Ntahobali joined the *Interahamwe* in loading Tutsis onto a vehicle. When asked what prompted this action, Witness FAP said that Nyiramasuhuko had encouraged it.<sup>14737</sup>

5882. The Chamber acknowledges that Witness FAP's testimony gives the impression that Ntahobali was obeying the orders of Nyiramasuhuko, and thus may have been a subordinate of hers. The Chamber recalls, however, that it has not found that Nyiramasuhuko issued any orders to Ntahobali ().

5883. In view of the totality of the evidence, the Chamber considers that the relationship between Nyiramasuhuko and Ntahobali in 1994 was complex, owing in part to the familial and interpersonal relationship shared by these two Accused. This complexity, however, cannot be confused for a superior-subordinate relationship. Cognisant that the burden of proof falls on the Prosecution to establish this element, the Chamber finds that there is insufficient evidence

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<sup>14734</sup> See T. 25 October 2001 pp. 29-30 (Witness TA); T. 29 October 2001 pp. 45, 51-52 (Witness TA); T. 31 October 2001 pp. 41, 43 (Witness TA); T. 6 November 2001 p. 57 (Witness TA); T. 20 May 2002 pp. 73-75, 95-98 (Witness TK); T. 24 February 2003 pp. 19, 21 (Witness RE); T. 3 March 2003 pp. 48-49 (Witness SS); T. 11 March 2003 pp. 48, 50, 56, 60 (Witness FAP); T. 12 March 2003 p. 52 (Witness FAP); T. 3 February 2004 pp. 10, 21-22, 63 (Witness QBQ). In making its factual findings concerning the Butare *préfecture* office, the Chamber has relied on the testimony of these witnesses for either its substance or its corroborative value.

<sup>14735</sup> The Chamber notes that while the transcripts for 29 October 2001 are equivocal as to whether Nyiramasuhuko saved three people from being taken away or ordered three people be taken away: T. 29 October 2001 p. 48; T. 29 October 2001 p. 53 (Witness TA) (French), the transcripts for two other trial dates indicate that the three people Nyiramasuhuko pointed out were subsequently taken away: T. 6 November 2001 p. 56; T. 8 November 2001 p. 43 (Witness TA).

<sup>14736</sup> T. 29 October 2001 pp. 46-51 (Witness TA).

<sup>14737</sup> T. 11 March 2003 pp. 55, 60-62 (Witness FAP).

to enter a finding of a superior-subordinate relationship between Nyiramasuhuko and Ntahobali beyond a reasonable doubt.

*Nyiramasuhuko and Ntahobali – Interahamwe*

5884. As set out above, throughout the events at the BPO, Nyiramasuhuko and Ntahobali issued orders to *Interahamwe* and the *Interahamwe* complied with these orders and perpetrated the acts asked of them, which included abductions, rapes and killings. In view of these findings, and considering the evidence in its entirety, the Chamber has no doubt that Nyiramasuhuko and Ntahobali wielded effective control over the *Interahamwe* at the BPO. The only reasonable conclusion is that Nyiramasuhuko and Ntahobali had a superior-subordinate relationship over these *Interahamwe*.

5885. The Chamber likewise finds that their orders demonstrate that they knew that the *Interahamwe* were about to commit a crime and had later done so, and that they failed to prevent the crimes. It is also clear from that evidence that they did not punish the *Interahamwe* for obeying their orders.

5886. Accordingly, the Chamber finds beyond a reasonable doubt that Nyiramasuhuko and Ntahobali bear superior responsibility pursuant to Article 6 (3) for the acts of the *Interahamwe* at the BPO, including their abductions, rapes and killings. As the Chamber has found that Nyiramasuhuko and Ntahobali are criminally responsible pursuant to Article 6 (1) of the Statute, their superior responsibility will only be considered in sentencing, and the Chamber will not enter a conviction based on their superior responsibility for these actions.

*Nyiramasuhuko and Ntahobali – Soldiers*

5887. Although the Chamber has found that soldiers played a role in the events at the BPO, no evidence has been led to establish any relationship between the soldiers and Nyiramasuhuko or Ntahobali. Accordingly, the Chamber finds that Nyiramasuhuko and Ntahobali do not bear superior responsibility for the acts of soldiers at the BPO.

*Nsabimana*

5888. The Chamber recalls its earlier finding that Nsabimana did not have notice that he was being charged with Article 6 (3) responsibility for the crimes perpetrated by Nyiramasuhuko, Ntahobali and *Interahamwe*, including at the BPO (; ). Furthermore, as discussed elsewhere in the Legal Findings, Nsabimana did not have a superior-subordinate relationship with soldiers in Butare (). Therefore, the Chamber will restrict its analysis to Article 6 (1) responsibility.

5889. The Chamber further recalls that it will not take rapes into account in assessing genocide.

5890. The evidence does not support an argument that Nsabimana committed, planned, ordered, or instigated the crimes perpetrated at the BPO. The Chamber will therefore address only whether he aided and abetted these crimes. An accused may be responsible for aiding and abetting in two different manners: (1) by positive acts including, providing tacit approval and

encouragement; or (2) by omission, namely failing to discharge a legal duty to act.<sup>14738</sup> Aiding and abetting by tacit approval and encouragement appears to require the presence of the accused at or near the scene of the crime.<sup>14739</sup> Here, it was not contested that Nsabimana was absent from the BPO at night when the attacks were perpetrated by Nyiramasuhuko, Ntahobali and *Interahamwe*. Therefore, aiding and abetting by tacit approval or encouragement is inapplicable to Nsabimana's conduct.

5891. However, aiding and abetting by omission may serve as a basis for liability even where the accused is not present at or near the scene of the crime.<sup>14740</sup> Pursuant to this form of responsibility, the failure to discharge a legal duty must assist, encourage or lend moral support to the perpetration of a crime and have a substantial effect on the realisation of that crime.<sup>14741</sup> This implicitly requires that the accused had the ability to act, such that the means were available to the accused to fulfil his or her duty.<sup>14742</sup> The aider and abettor must know that his or her omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal perpetrator.<sup>14743</sup>

5892. The Prosecution argues that Nsabimana is responsible for the abductions, rapes and killings at the BPO when those taking refuge there should have been under his protection.<sup>14744</sup> The Prosecution referred to the Rwandan Organic Law which, it argued, gives the *préfet* a legal duty to ensure the peace, public order and security of persons and property, including those taking refuge at the BPO.<sup>14745</sup>

#### *Legal Duty to Act*

5893. A prerequisite of criminal liability for aiding and abetting by omission is a legal duty to act.<sup>14746</sup> The Chamber notes that the Rwandan Penal Code imposes an obligation on every Rwandan citizen to provide assistance to persons in danger where it would not cause risk to oneself, and failure to do so is a criminal offence.<sup>14747</sup> This obligation was considered by the

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<sup>14738</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43; *Ntagerura et al.*, Judgement (AC), para. 370.

<sup>14739</sup> See *Brđanin*, Judgement (AC), para. 273 (noting that “[i]n the cases where this category [of conduct amounting to tacit approval and encouragement of the crime] was applied, the accused held a position of authority, he was physically present on the scene of the crime, and his non-intervention was seen as tacit approval and encouragement”); see also *Seromba*, Judgement (TC), para. 307; *Bagilishema*, Judgement (TC), para. 36 (“liability for aiding and abetting as an ‘approving spectator’ presupposes actual presence at the scene of the crime, or at least presence in the immediate vicinity of the scene of the crime.”).

<sup>14740</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43.

<sup>14741</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43.

<sup>14742</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49.

<sup>14743</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43.

<sup>14744</sup> Prosecution Closing Brief, pp. 248, 264-268, 279, 296, paras. 63, 109-123, 164, 229-230.

<sup>14745</sup> Prosecution Closing Argument, T. 20 April 2009 p. 61; Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*).

<sup>14746</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 49; *Orić*, Judgement (AC), para. 43.

<sup>14747</sup> Defence Exhibit 582 (Ntahobali) (Law of 18 August 1977, Rwandan Penal Code) p. 409, Art. 256, paras. 1-2 (“Article 256 : Sera puni d’un emprisonnement de deux mois à cinq ans et d’une amende de dix mille francs au maximum, ou de l’une de ces peines seulement :

*1. quiconque pouvant empêcher par son action immédiate, sans risque pour lui ou pour les tiers, soit un fait qualifié crime, soit un délit contre l’intégrité corporelle de la personne, s’abstient volontairement de le faire;*

Trial Chamber in *Rutaganira* at sentencing.<sup>14748</sup> Although the Rwandan Penal Code provides a justification for failure to act, namely where there is risk to oneself, the *Rutaganira* Trial Chamber held that “[v]iolence to physical well-being suffered by thousands of people during the said events affects the very fundamental interests of Humanity as a whole, and the protection of such interests cannot be counterbalanced by the mere personal risk that may have been faced by any person in a position of authority who failed to act in order to assist people whose lives were in danger.”<sup>14749</sup> In *Rutaganira*, the Chamber considered that the accused in that case “was under a duty to provide assistance to people in danger.”<sup>14750</sup> Likewise, in the present case, the Chamber finds that *Préfet* Nsabimana was under a duty to provide assistance to people in danger, pursuant to Article 256 of the Rwandan Penal Code.

5894. Further, under Rwandan domestic law, Nsabimana had an obligation to ensure the tranquillity, public order, and security of people and property within his *préfecture*.<sup>14751</sup> The Appeals Chamber in the *Ntagerura et al.* case held that the *Blaskić* Appeal Judgement did not address, and it had not been settled at that time, whether the legal obligation to act must stem from a rule of criminal law, or whether any legal obligation is sufficient. In the circumstances of that case, the Appeals Chamber found that it was not necessary for it to decide the issue.<sup>14752</sup>

5895. The Chamber further notes that a legal duty to act may also be imposed by the laws and customs of war.<sup>14753</sup> In *Mrkšić & Šljivančanin*, the ICTY Appeals Chamber held that Article 13 of Geneva Convention III imposes a duty to protect prisoners of war.<sup>14754</sup> Likewise, the

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2. *quiconque s’abstient volontairement de porter à une personne en péril l’assistance que, sans risque pour lui ni pour les tiers, il pouvait lui prêter, soit par son action personnelle, soit en provoquant un secours.*”) (emphasis added).

<sup>14748</sup> In *Rutaganira*, the Trial Chamber, in sentencing the accused after a guilty plea, identified several sources of legal duties to act, including the Rwandan Penal Code: *Rutaganira*, Judgement (TC), paras. 80-82. This Judgement was not appealed.

<sup>14749</sup> *Rutaganira*, Judgement (TC), para. 81 (citing *Erdemović I*, Judgement (TC), para. 19: “With regard to a crime against humanity, the Trial Chamber considers that the life of the accused and that of the victim are not fully equivalent. As opposed to ordinary law, the violation here is no longer directed at the physical welfare of the victim alone but at humanity as a whole.”).

<sup>14750</sup> *Rutaganira*, Judgement (TC), para. 82.

<sup>14751</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*), Art. 8(2) (“*En tant que principal responsable de l’administration et du développement de la préfecture, le préfet a, notamment, pour mission de: ... 4) assurer la tranquillité, l’ordre public et la sécurité des personnes et des biens.*”). The Chamber notes that the Trial Chamber in the *Ntagerura et al.* case stated that because this legal duty was not mandated by a rule of criminal law, it would not impose criminal liability; see *Ntagerura et al.*, Judgement (TC), para. 660. The Chamber does not consider this statement to be binding authority, and notes in particular the Appeals Chamber’s similar pronouncements, as detailed in the next footnote. In any event, the Chamber considers that it does not need to resolve this issue, given that Nsabimana enjoyed a legal duty from additional, and distinct, sources of law.

<sup>14752</sup> *Ntagerura et al.*, Judgement (AC), paras. 334-335 (The Appeals Chamber found that even if the failure to fulfil such a duty to protect the population could entail criminal responsibility, the Prosecution had not shown what means were open to Bagambiki to fulfil his duties under the Rwandan domestic law). The Chamber notes the Appeals Chamber in *Mrkšić & Šljivančanin* did not address this issue, although it was contended by the Parties, since the Appeals Chamber considered that the duties imposed on *Šljivančanin* arose from the laws and customs of war; see *Mrkšić & Šljivančanin*, Judgement (AC), paras. 148-151.

<sup>14753</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 151; see also Article 13 of Geneva Convention III (“[P]risoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.”).

<sup>14754</sup> *Mrkšić & Šljivančanin*, Judgement (AC), para. 151; *Blaskić*, Judgement (AC), para. 663, fn. 1384.

*Blaskić* Appeals Judgement noted that Article 27 of Geneva Convention IV imposes a legal duty to protect civilians against acts of violence.<sup>14755</sup> More specifically, it held that Blaskić was under a duty imposed by the laws or customs of war to care for protected persons put in danger, and to intervene and alleviate that danger.<sup>14756</sup>

5896. Article 13 of Geneva Convention III and Article 27 of Geneva Convention IV are limited in application to armed conflict of an international nature. However, Additional Protocol II to the Geneva Conventions contains similar obligations and is applicable to non-international armed conflicts.<sup>14757</sup>

5897. The Chamber notes that Article 7 of Additional Protocol II to the Geneva Conventions provides: “All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, *shall be* respected and *protected*.”<sup>14758</sup> In addition, Article 13 of Additional Protocol II states:

1. The civilian population and individual civilians *shall enjoy general protection* against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, *shall not be the object of attack*. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.<sup>14759</sup>

5898. It was clear that the Tutsis taking refuge at the BPO were civilians and that many of them were sick and injured.

5899. Although these provisions do not explicitly reference individual criminal liability, the Chamber considers they are applicable to the situation prevailing at the BPO from the end of April to mid-June 1994. The Chamber recalls the ICTY Appeals Chamber’s holding that “customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules of protection on the protection of victims of internal armed conflict”.<sup>14760</sup> The Chamber considers the criminalisation of individual conduct, includes, but is not limited to Article 3 common to the Geneva Conventions. As the ICTY Appeals Chamber held in *Delalić et al.*: “Common Article 1 thus imposes upon State parties, upon ratification, an obligation to implement the provisions of the

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<sup>14755</sup> *Blaskić*, Judgement (AC), para. 663, fn. 1384; Article 27 of Geneva Convention IV (“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, *and shall be protected especially against all acts of violence* or threats thereof and against insults and public curiosity.”) (emphasis added).

<sup>14756</sup> *Blaskić*, Judgement (AC), para. 668.

<sup>14757</sup> Below (), the Chamber finds beyond a reasonable doubt that a non-international armed conflict existed on Rwandan territory during the relevant period covered by the Indictments.

<sup>14758</sup> Article 7 (1) of Additional Protocol II (emphases added).

<sup>14759</sup> Article 13 of Additional Protocol II (emphases added).

<sup>14760</sup> *Duško Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (AC), 2 October 1995, para. 128; *see also* para. 134 (quoting Trial of the Major War Criminals (Proceedings of the International Military Tribunal, Sitting at Nuremberg, Germany 1947), Part 22, p. 447 (“Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”)).



Geneva Conventions in their domestic legislation. *This obligation clearly covers the Conventions in their entirety* and this obligation thus includes common Article 3.”<sup>14761</sup> In the Chamber’s view, the criminalisation of individual conduct encompasses the Geneva Conventions in their entirety, including Articles 7 and 13 of Additional Protocol II. Therefore, these provisions impose a legal duty on the Accused to protect civilians, including the wounded and sick, against acts or threats of violence.

*Assistance to, and Substantial Effect on, the Perpetration of Crimes*

5900. The Chamber has found that Nyiramasuhuko, Ntahobali, *Interahamwe* and soldiers were responsible for raping numerous Tutsi women and for killing hundreds of Tutsi refugees abducted from the BPO from mid-May until mid-June 1994. Nsabimana was the *préfet* of Butare during this time period. Although many people took refuge at the BPO precisely because they thought the *préfet* would protect them, Nsabimana refused to help.<sup>14762</sup> His attitude in this respect was evidenced by Witness TQ who approached Nsabimana at the BPO asking for help in burying the bodies of orphans that had been killed at the school complex. Nsabimana told Witness TQ that he was a madman.<sup>14763</sup> By refusing to take action in the midst of the continuing attacks at the BPO, Nsabimana assisted Nyiramasuhuko, Ntahobali and the *Interahamwe* in the perpetration of their attacks. Further, his failure to act had a substantial effect on the realisation of these crimes. Witness SS described an incident in which soldiers prevented attacks at the BPO.<sup>14764</sup> Had Nsabimana posted *gendarmes* or soldiers sometime prior to 5-15 June 1994, he could have prevented the mass killing and rape, at least in part, at the BPO.

*Ability to Act*

5901. Pursuant to Rwandan Law, the *préfet* has the power to request the intervention of the Armed Forces to restore public order.<sup>14765</sup> In addition, the *préfet* may verbally request the intervention of the National *Gendarmerie* pursuant to the Rwandan Law on the creation of the *Gendarmerie*.<sup>14766</sup>

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<sup>14761</sup> *Delalić et al.*, Judgement (AC), para. 164 (emphasis added); see also *Delalić et al.*, Judgement (AC), para. 171 (“The Appeals Chamber is unable to find any reason of principle why, once the application of rules of international humanitarian law came to be extended (albeit in an attenuated form) to the context of internal armed conflicts, their violation in that context could not be criminally enforced at the international level.”).

<sup>14762</sup> T. 27 March 2002 p. 42 (Witness QCB) (They had sought refuge at the BPO, believing the *préfet* had a responsibility to protect them); T. 28 May 2002 p. 112 (Witness SJ) (There was no security where she was from so she went to where the authorities were located at the BPO, hoping she would be protected there). The Chamber notes that at least three witnesses testified to persons going to Nsabimana’s office to seek assistance; see T. 14 October 2002 p. 83 (Witness SU) (Three women go to Nsabimana’s office to tell him about the security situation); T. 10 March 2003 p. 15 (ICS) (Witness SS) (same); T. 27 February 2003 pp. 5-7 (Witness RE) (A man and a woman went to see Nsabimana).

<sup>14763</sup> T. 8 September 2004 p. 42 (ICS) (Witness TQ).

<sup>14764</sup> T. 10 March 2003 pp. 34-35 (Witness SS) (A group of soldiers chased away a vehicle that came to the Butare *préfecture* office to abduct people).

<sup>14765</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*), Art. 11.

<sup>14766</sup> Defence Exhibit 583 (Nsabimana) (Law of 23 January 1974, *Création de la Gendarmerie*), Section 2, Art. 32.

5902. Nsabimana in fact requisitioned forces around 5-15 June 1994. At that time, 5-6 soldiers were seconded to the BPO under the command of a female lieutenant. The evidence establishes that these soldiers forestalled attacks against those taking refuge at the Butare *préfecture* office.<sup>14767</sup> This shows that Nsabimana, pursuant to his powers as *préfet*, had the ability to requisition forces that could forestall the attacks.

5903. Despite this, Nsabimana failed to take any steps to prevent the ongoing attacks at the BPO for a significant period between the end of April and mid-June 1994. Even if the soldiers' presence may not have been able to stop the attacks altogether, the evidence establishes that their presence would have alleviated the situation of recurring abductions, rapes and killings. These means were available to Nsabimana to fulfil his duty and to forestall these harms, but he did nothing.

#### *Knowledge and Awareness*

5904. Nsabimana knew that those taking refuge at the BPO were Tutsis and on multiple occasions, they asked him directly for protection from the ongoing attacks. He knew that they were being abducted, raped and killed. Nsabimana admitted that he was aware of a plan to kill Tutsis, that Tutsis were being killed, and that the militia had been trained for this purpose.<sup>14768</sup> Therefore, he was aware of the perpetrators' genocidal intent.

5905. Furthermore, the Chamber concludes that Nsabimana also knew that his failure to act assisted in the commission of the crimes. Nsabimana knew the attacks were occurring at night when he was not at the BPO and when there were likely to be fewer witnesses. Moreover, he testified that after he learned of the massacres, he would go home at night fearing that the refugees would not be at the BPO when he returned in the morning.<sup>14769</sup> Yet, the perpetrators of these attacks were given free reign to repeatedly attack the BPO for a significant period between the end of April and mid-June 1994.

5906. In sum, Nsabimana failed to take action to stop the massacres at the BPO during his tenure as *préfet*. Although Nsabimana posted *gendarmes* or soldiers at the BPO around 5-15 June 1994, he was responsible for aiding and abetting genocide for failing to discharge his

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<sup>14767</sup> T. 21 October 2002 p. 38 (Witness SU); T. 10 March 2003 pp. 34-35 (Witness SS).

<sup>14768</sup> See Prosecution Exhibit 113A (*The Truth About the Massacres in Butare*, by Nsabimana) pp. K0016623, K0016626 ("In everybody's opinion the final whistle was blown by the architects of the plan .... [A]mong those victimized for being Tutsi and well respected persons were the businessmen Semanzi, Rangira, Kayiranga, and Deogratias."); Prosecution Exhibit 114A (Interview with Nsabimana) pp. K0120067, K0120073 ("But my feeling at the time was that the militia was trained to kill people from the opposition first. Then when people from the opposition were eliminated, it was already out of human understanding but it was also very easy to determine who had done the killing. I think it was a strategy to kill Tutsis. ...The people planning this were intelligent. But this plan was a bad plan. The planners were specialists. To say people went crazy is false, people were not crazy. I had always thought this kind of killing was a possibility although maybe not on this scale.").

<sup>14769</sup> T. 9 October 2006 pp. 80-81 (Nsabimana) ("And from the moment you get such information [that massacres were taking place], you cannot be at peace with yourself, because you can go home in the evening, and in the morning you come and you cannot find them. Those were the thoughts that were in my mind at the time....").

duty to protect civilians until that time. Noting that Nsabimana was charged with this culpable omission,<sup>14770</sup> the Chamber finds him guilty of aiding and abetting genocide.<sup>14771</sup>

#### *Nteziryayo*

5907. The Chamber notes that Nteziryayo is charged with Article 6 (1) responsibility for the events at the BPO.<sup>14772</sup> There was no evidence to support a finding implicating Nteziryayo personally in these events. Therefore, the Prosecution has failed to meet its burden of proof.

5908. The Prosecution also charges Nteziryayo with Article 6 (3) responsibility for these events.<sup>14773</sup> Although Paragraph 6.41 of the Indictment mentions *Interahamwe* and soldiers as perpetrators of this event and Paragraph 4.6 asserts Nteziryayo exercised authority over *Interahamwe* militiamen, there is insufficient evidence to establish that Nteziryayo had effective control over the perpetrators at the BPO. The Chamber therefore concludes that Nteziryayo does not bear 6 (3) responsibility for the events at BPO, as alleged by the Prosecution.

#### 4.2.2.3.14 *École Évangéliste du Rwanda* (“EER”), Mid-May – Early June 1994

5909. The Chamber found that *Préfet* Nsabimana ordered the transfer of the refugees from the BPO to the EER pursuant to a Security Council decision and that soldiers thereafter escorted the refugees to the EER (). Refugees at the BPO were transferred to the EER between 15 and 20 May 1994 (). There were at least 200 refugees at the EER during late-May 1994. Those who took refuge at the EER were predominantly Tutsis ().

5910. During the refugees’ stay at the EER between mid-May and the beginning of June 1994, Ntahobali led *Interahamwe* in carrying out attacks against the Tutsi refugees at the EER. Ntahobali and *Interahamwe* abducted refugees from the EER and killed them in the woods near the EER school complex. Soldiers were also present at the EER and participated in the attacks and killings at or near the EER; they also raped women and young girls there ().

#### *Notice of Rape as Genocide*

5911. The Chamber notes that the paragraph of the Nyiramasuhuko and Ntahobali Indictment that concerns the EER, Paragraph 6.30, is the same as that concerning the Butare *préfecture* office.<sup>14774</sup> For the same reasons as explained above (), the Chamber will not enter a conviction for genocide on the basis of any rapes that occurred at the EER. Instead, these rapes will be considered in the sections addressing rape as a crime against humanity and outrages upon

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<sup>14770</sup> See Paras. 6.36-6.38, 6.41 of the Nsabimana and Nteziryayo Indictment (pled in support of Counts 1-3, 5-9 against Nsabimana, which include that he was being charged for “the acts or omissions described in paragraphs 5.1 to 6.59”). See generally *Mrkšić & Šljivančanin*, Judgement (AC), paras. 140-141 (Indictment paragraphs that reference “by these acts and omissions” sufficed to plead the nature of the charges against the Accused with regard to aiding and abetting by omission).

<sup>14771</sup> The fact that Nsabimana later discharged his legal duty to act around 5-15 June 1994 may serve as a fact in mitigation of his sentence.

<sup>14772</sup> Para. 6.41 of the Nsabimana and Nteziryayo Indictment.

<sup>14773</sup> Para. 6.41 of the Nsabimana and Nteziryayo Indictment.

<sup>14774</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment.

personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

*Ntahobali*

5912. There was no direct evidence that Ntahobali was personally responsible for killing any of the abducted refugees. The Chamber is nevertheless satisfied that his presence alongside *Interahamwe* and soldiers at the EER amounted to tacit approval and encouragement of the acts of *Interahamwe* and soldiers at the EER.

5913. The Chamber also recalls Ntahobali's prior conduct in working alongside *Interahamwe* and soldiers in abducting hundreds of refugees from the BPO who were physically assaulted and raped and thereafter killed in various locations throughout Ngoma *commune*, and that he personally committed genocide at the Hotel Ihuliro roadblock ( ; ; ). As such, Ntahobali's presence at the EER alongside *Interahamwe* and soldiers, when considered together with his prior conduct, leads the Chamber to conclude that Ntahobali's conduct at the EER amounted to his sanctioning of the acts of the *Interahamwe* and soldiers, and thereby substantially contributed to the commission of these crimes.<sup>14775</sup> The Chamber recalls that it will not consider rapes when assessing genocide, but will instead take them into account when assessing charges that were properly pled.

5914. Recalling that those who took refuge at the EER were predominantly Tutsis, the Chamber thus finds it proven beyond a reasonable doubt that Ntahobali committed the *actus reus* of aiding and abetting genocide, through the acts of killing members of the group.

5915. Viewing these attacks in the context of the widespread killing of Tutsis occurring throughout Rwanda, the Chamber finds beyond a reasonable doubt that the soldiers and *Interahamwe* who participated in various killings at or near the EER did so with the intent to destroy, in whole or in substantial part, the Tutsi group. Having regard to the events that surrounded the abductions, and the situation in Rwanda generally, the Chamber is also satisfied that Ntahobali must have known of the soldiers' and *Interahamwe's* intent<sup>14776</sup> and knew that he was substantially assisting them in the commission of their crimes.

5916. As such, the Chamber finds Ntahobali guilty of genocide for aiding and abetting the killing of Tutsi refugees abducted from the EER under Article 6 (1) of the Statute.

5917. The Chamber has already found that Ntahobali had *de facto* authority over *Interahamwe*, for which reason the Chamber also finds Ntahobali responsible under Article 6 (3) for these same underlying acts of genocide committed at or near the EER.<sup>14777</sup> Since the Chamber has found Ntahobali guilty under Article 6 (1) of the Statute, it will only consider

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<sup>14775</sup> See *Muvunyi I*, Judgement (AC), para. 80.

<sup>14776</sup> See generally *Seromba*, Judgement (AC), para. 56; *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 500-501.

<sup>14777</sup> The Chamber considers that Ntahobali had sufficient notice of his alleged Article 6 (3) responsibility over *Interahamwe* with regard to the events at EE; see Paras. 6.30, 6.55 of the Nyiramasuhuko and Ntahobali Indictment.

Ntahobali's superior position as an aggravating circumstance for the purpose of sentencing.<sup>14778</sup>

*Nsabimana*

5918. The Chamber recalls it declined to make a finding against Nsabimana on the basis of Paragraph 6.39 as it was not charged in support of counts. As noted above (; ), however, the Chamber will consider whether Nsabimana bears superior responsibility for the allegations contained in Paragraph 6.38.

5919. Paragraph 6.38 identifies only Kanyabashi and soldiers as alleged subordinates of Nsabimana. The Chamber recalls that it has already found that the Indictment sufficiently informed Nsabimana that he was charged with superior authority over soldiers (; ). The Chamber also recalls that it has already determined that the Indictment was defective with regard to pleading a superior-subordinate relationship between Nsabimana and *Interahamwe* (). Further, the Prosecution did not cure the defect in the Indictment for failing to plead a superior-subordinate relationship between Nsabimana and the *Interahamwe*. As such, the Chamber will only consider Nsabimana's responsibility under Article 6 (3) for the criminal acts of soldiers at or near the EER between mid-May and June 1994.

5920. The Chamber found that *Préfet* Nsabimana ordered the transfer of the refugees from the BPO to the EER pursuant to a Security Council decision and that soldiers thereafter escorted the refugees to the EER.

5921. A review of Rwandan Organic Law of 11 March 1975, Structure and Functioning of the *Préfecture*, shows that Article 8 (2) makes the *préfet* responsible for “[e]nsuring peace, public order and the security of persons and property”. To this end, Article 9 provides that “[i]n the accomplishment of his mission, the *Préfet* shall be able to draw on the State services within the prefecture.” Article 11 empowers the *préfet* “to request the intervention of the Armed Forces to restore public order” in accordance with the Legislative Decree on the Creation of the *Gendarmerie*.<sup>14779</sup> Thus, as *préfet* at the time of this transfer, Nsabimana exercised policing duties and could request the intervention of the army.<sup>14780</sup> Notwithstanding this power, the Chamber is not satisfied that this law equally gave Nsabimana *de jure* authority to give orders to soldiers or to discipline soldiers. The Chamber is equally not satisfied that there is sufficient reliable evidence to indicate that Nsabimana had *de facto* authority over the soldiers in the sense that he either issued orders to or commanded soldiers who obeyed him. While there is evidence that Nsabimana requisitioned soldiers to provide security at various sites, such as the BPO, there is insufficient evidence that he maintained any control over how these soldiers carried out their tasks.

5922. Notwithstanding his ability to request the use of and instruct soldiers, the Chamber is of the view that Nsabimana, even in his position as *préfet*, did not exercise effective control over

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<sup>14778</sup> See *Nahimana et al.*, Judgement (AC), paras. 487-488; *Kajelijeli*, Judgement (AC), paras. 81-82, 318-319; *Bagosora et al.*, Judgement (TC), paras. 2161, 2189, 2197, 2216, 2223, 2248.

<sup>14779</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*), Arts. 8-9, 11.

<sup>14780</sup> Defence Exhibit 468 (Nsabimana) (Law of 11 March 1975, Structure and Functioning of the *Préfecture*), Arts. 8-9, 11.

soldiers, in the sense of having the material ability to prevent or punish their criminal conduct.<sup>14781</sup>

5923. As the Prosecution did not establish the existence of a superior-subordinate relationship between Nsabimana and the soldiers in Butare, it is unnecessary under Article 6 (3) of the Statute to consider whether he knew or had reason to know about the criminal acts of these principal perpetrators or whether he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

5924. As such, the Prosecution did not prove beyond a reasonable doubt that Nsabimana was responsible as a superior under Article 6 (3) for killings carried out by soldiers at or near the EER. Accordingly, the Chamber acquits Nsabimana of genocide on the basis of this allegation.

#### *Nyiramasuhuko*

5925. No evidence was led to support Nyiramasuhuko's alleged involvement in events at the EER (). The Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt that Nyiramasuhuko bears responsibility pursuant to Article 6 (1) or 6 (3) of the Statute.

#### *Kanyabashi*

5926. The Chamber recalls that no evidence was led with respect to Kanyabashi's involvement in events at the EER (). In the circumstances, the Chamber finds Kanyabashi's alleged involvement in these events, pursuant to Article 6 (1), has not been established beyond a reasonable doubt.

5927. The Chamber also recalls that resulting from the orders he issued to soldiers at Matyazo Clinic, Kanyabashi bears superior responsibility for their actions. The Chamber finds that concerning the events at EER, the Prosecution has failed to adduce sufficient evidence to establish Kanyabashi's superior responsibility over soldiers and *Interahamwe*.

#### 4.2.2.3.15 Announcements by Megaphone, May and June 1994

5928. Around late May 1994 Kanyabashi drove through Butare town with a megaphone and instructed the population to search for the enemy among them. In June 1994 Kanyabashi again used a megaphone to announce to the population to clear bushes along the road in order to remove potential hiding places for the *Inkotanyi*, to flush out people who were hiding in the bushes, and to kill those found there, including children, old men and women. The term "enemy" when used by Kanyabashi, referred to Tutsis in general.

5929. The Chamber has found that following Kanyabashi's megaphone announcements in mid-May and June 1994, searches were conducted for Tutsis and, consequently, more Tutsis were killed ().

5930. Notwithstanding evidence led through Witnesses QJ, TK and QI of general searches and killings subsequent to Kanyabashi's megaphone announcements, there is limited evidence

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<sup>14781</sup> *Ntagerura et al.*, Judgement (AC), para. 341; *Kajelijeli*, Judgement (AC), para. 86; *Bagilishema*, Judgement (AC), para. 50; *Muvunyi I*, Judgement (TC), para. 475.

of any specific acts committed by members of the population subsequent to Kanyabashi's megaphone announcements. Because there is insufficient evidence to establish that Kanyabashi's announcements substantially contributed to the subsequent killings,<sup>14782</sup> the Chamber finds that Kanyabashi is not guilty of instigating, ordering or aiding and abetting genocide in relation to his announcements.

5931. As such, the Prosecution did not prove beyond a reasonable doubt that Kanyabashi is responsible for genocide as a result of killings committed after his megaphone announcements. The Prosecution also failed to prove beyond a reasonable doubt that Kanyabashi was responsible as a superior for the killing of any Tutsis after Kanyabashi's megaphone announcements in mid-May and June 1994. Accordingly, the Chamber acquits Kanyabashi of genocide on the basis of this allegation.

#### 4.2.2.3.16 Transfer of Refugees to Nyange, Early June 1994

5932. In the first few days or week of June 1994, Nsabimana ordered the transfer of Tutsi refugees from the BPO to Nyange, Nyaruhengeri *commune*. Kanyabashi provided Nsabimana with two *commune* policemen to help with the transfer. The *commune* policemen forced the refugees to board the buses, beat them during boarding, and thereafter accompanied them on the bus to Nyange. The transfer was carried out over two consecutive days: Tutsi refugees at the BPO boarded at least two ONATRACOM buses on day one that went to Nyange, and a third bus departed on day two, but did not reach Nyange and returned to the BPO with its passengers on board. The Tutsi refugees who left the BPO on day two aboard the third bus were refused passage by *Interahamwe* at a roadblock between Kibilizi and Nyange *secteurs*, who claimed they did not want to bury any more dead bodies, such that the third bus returned to the BPO. The Tutsi refugees who left the BPO by bus on day one were attacked by *Interahamwe* at Nyange and all but a handful of those refugees were killed ().

5933. Having regard to the organised nature of the attack and the *Interahamwe*'s words, namely that they were tired of killing, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group at Nyange. Further, in view of the large number of Tutsi victims at Nyange, the ongoing attacks against Tutsis at the BPO, in addition to the extensive evidence of the targeting of members of this group in Butare *préfecture* since the swearing-in ceremony of *Préfet* Nsabimana on 19 April 1994, the Chamber is satisfied that the assailants possessed the requisite intent to destroy, in whole or in substantial part, the Tutsi group.

#### *Nsabimana*

5934. The Chamber found Nsabimana ordered the transfer of the refugees from the BPO to Nyange (). Notwithstanding the foregoing findings, the Chamber lacks sufficient reliable evidence to determine that Nsabimana gave orders to, or otherwise directed *Interahamwe* at Nyange or anyone else, that the refugees on board the buses should be killed.

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<sup>14782</sup> See *Kalimanzira*, Judgement (AC), paras. 76-77; *Ndindabahizi*, Judgement (AC), para. 116 (stating, before overturning a conviction for instigating and aiding and abetting murder as a crime against humanity, that "it is [also] not established whether the persons who were instigated by the Appellant on 20 May 1994 were those who killed [the victim] on 26 May 1994").

5935. As such, the Chamber does not find Nsabimana responsible pursuant to Article 6 (1) for ordering, instigating, aiding and abetting, or otherwise participating in the killing of Tutsi refugees at Nyange. As the Prosecution did not prove beyond a reasonable doubt the existence of a superior-subordinate relationship between Nsabimana and *Interahamwe*, the Chamber acquits Nsabimana of responsibility under Article 6 (3) on the basis of the current allegation for the acts committed by *Interahamwe* at Nyange. Accordingly, the Chamber finds Nsabimana not guilty of genocide on the basis of this allegation.

#### *Kanyabashi*

5936. As noted, Kanyabashi provided Nsabimana with two *commune* policemen to help with the transfer but was not present during the boarding of the buses. The *commune* policemen beat the refugees, forced them to board the buses, and escorted the refugees to Nyange where they were killed (). However, the Prosecution has failed to adduce sufficient evidence for the Chamber to conclude beyond a reasonable doubt that Kanyabashi knew the purpose of the transfer, or that he was aware the refugees on board the buses would be killed at Nyange.

5937. As such, the Chamber does not find Kanyabashi responsible pursuant to Article 6 (1) for aiding and abetting, or otherwise participating in the killing of Tutsi refugees at Nyange. The Chamber will not make any finding as to Kanyabashi's superior responsibility for the crimes of policemen, or other assailants, at Nyange pursuant to Article 6 (3) of the Statute since such charge was neither adequately pled in the Kanyabashi Indictment, nor subsequently cured (). Accordingly, the Chamber acquits Kanyabashi of genocide on the basis of this allegation.

#### 4.2.2.3.17 Distribution of Condoms, Early June 1994

5938. The Chamber has found beyond a reasonable doubt that Nyiramasuhuko came to Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994 and distributed condoms for the *Interahamwe*, to be used in the raping and killing of Tutsi women in that *secteur*. The Chamber further found that Nyiramasuhuko ordered the woman to whom she distributed the condoms to: "Go and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands" ().

5939. The Chamber lacks sufficient reliable evidence to show a link between Nyiramasuhuko's actions in distributing the condoms on this occasion, in addition to her utterances evincing her clear intent to target Tutsi women, and actual rapes committed against said Tutsi women. Therefore, the requirement of the commission of the actual crime, namely the rapes as a result of this distribution, has not been met in this instance. The Chamber is not satisfied that the evidence reasonably supports the Prosecution charge of genocide.

5940. The Chamber does not find Nyiramasuhuko guilty of the crime of instigating, ordering or aiding and abetting genocide for distributing condoms in Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994, to be used in the raping and killing of Tutsi women in that *secteur*. However, the Chamber finds that this circumstantial evidence shows Nyiramasuhuko's intent to destroy, in whole or in substantial part, the Tutsi group.



4.2.2.3.18 Rango Forest, June 1994

5941. The Chamber has found beyond a reasonable doubt that in June 1994, approximately 250-300 mainly Tutsi refugees were forcibly transferred to Rango Forest by Kanyabashi with the assistance of the *Interahamwe*. Upon arrival, the refugees were confined in an enclosure, were subject to mistreatment and deplorable conditions, and as a result some of them died or otherwise suffered severe consequences ( ).

5942. In light of the context and background to this allegation, a reasonable inference may be drawn that the refugees were targeted for transfer on the basis of their Tutsi ethnicity. However, the Prosecution did not establish beyond a reasonable doubt that the transfer to Rango Forest was carried out with the purpose to kill these refugees or otherwise to bring about their destruction. Therefore, the Chamber does not find that these events constitute the crime of genocide.

4.2.2.3.19 Ntahobali and Nteziryayo Prevented the Evacuation of Tutsis, Mid-June 1994

5943. The Chamber has found beyond a reasonable doubt that Ntahobali was present at the *Groupe Scolaire* on 5 June 1994, accompanied by *Interahamwe* and civilian militiamen, and together they perpetrated violent acts as an attempt to hinder the evacuation of orphans. Nteziryayo knew of the evacuation prior to 5 June 1994, and he joined Ntahobali in attempting to prevent the evacuation to Burundi of about 300 orphans and their adult supervisors. Nteziryayo and Ntahobali selected about 30 adults, whom they believed to be Tutsis, and forced them to remain in Rwanda ( ).

5944. As there is insufficient evidence as to what happened to the 30 persons who were forced to remain in Rwanda, the Chamber does not find that these events constitute the crime of genocide.

4.2.2.3.20 Border Meetings in Muyaga and Kibayi *Communes*, Mid- to Late June 1994

5945. The Chamber has found beyond a reasonable doubt that during meetings held in Muyaga *commune* around mid-June 1994, and Kibayi *commune* around mid- to late June 1994, Nteziryayo, in his capacity as *préfet*, urged people to kill Tutsis. Nteziryayo urged the audience to hunt down, flush out and kill Tutsis without any distinction. At the Kibayi *commune* meeting, Nteziryayo urged the population to kill the remaining Tutsi survivors in the *commune*. As a result of his words, members of the population carried out searches and killed surviving Tutsis ( ; ).

5946. Notwithstanding the evidence of killings which occurred after the speeches, there is limited evidence of any specific acts committed by members of the population subsequent to Nteziryayo's speeches. As there is insufficient evidence to establish that Nteziryayo's words at these meetings substantially contributed to any subsequent crime,<sup>14783</sup> the Chamber finds that

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<sup>14783</sup> See *Kalimanzira*, Judgement (AC), paras. 76-77; *Ndindabahizi*, Judgement (AC), para. 116 (stating, before overturning a conviction for instigating and aiding and abetting murder as a crime against humanity, that "it is [also] not established whether the persons who were instigated by the Appellant on 20 May 1994 were those who killed [the victim] on 26 May 1994").

Nteziryayo is not criminally responsible for genocide, under either Article 6 (1) or 6 (3) of the Statute, with respect to this allegation.

5947. Similarly, the Chamber finds that Nsabimana does not bear criminal responsibility, under either Article 6 (1) or 6 (3), for genocide in relation to this event.

4.2.2.3.21 Ndayambaje's Swearing-In Ceremony and the Ensuing Abduction of Tutsi Girls, 22 June 1994

5948. On 22 June 1994, Nteziryayo and Ndayambaje told the population to continue with their "work" and urged them to "sweep the dirt outside" in reference to the killing of Tutsis. To this end, the Chamber accepted that after the swearing-in ceremony searches for Tutsis took place and killings of Tutsis followed ().

5949. The Chamber found it proven beyond a reasonable doubt that a group of Tutsi women and girls from Mugombwa *secteur*, Muganza *commune*, were abducted by assailants from Saga after Ndayambaje's swearing-in ceremony of 22 June 1994 including one Nambaje who was abducted from a home. During the abduction, Ndayambaje came to the Statue of the Virgin Mary and made it clear that the abductors were free to do what they wanted with the girls, and the abducted women and girls were subsequently taken to a brick factory at Gasenyi where they were killed ().

*Nteziryayo*

5950. The abduction and killing of these Tutsi girls was not part of the Prosecution's case against Nteziryayo who did not defend against this allegation. Further, other testimony, to the effect that killings occurred after Ndayambaje's swearing-in, was general and devoid of any detail.

5951. As such, the Chamber finds there is insufficient evidence of any specific acts committed by members of the population subsequent to Nteziryayo's utterances at Ndayambaje's swearing-in ceremony, for the Chamber to conclude that Nteziryayo's utterances substantially contributed to the subsequent killing of Tutsis.<sup>14784</sup>

5952. The Prosecution did not prove beyond a reasonable doubt that Nteziryayo was responsible, personally or as a superior, for any acts that occurred after Ndayambaje's swearing-in ceremony on 22 June 1994. Accordingly, the Chamber acquits Nteziryayo of genocide on the basis of this allegation.

*Ndayambaje*

5953. Noting that proof is required of a causal connection between the instigation and the *actus reus* of the crime,<sup>14785</sup> the Chamber recalls its finding that the assailants came to search

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<sup>14784</sup> See *Kalimanzira*, Judgement (AC), paras. 76-77; *Ndindabahizi*, Judgement (AC), para. 116; *Ndindabahizi*, Judgement (TC), para. 466.

<sup>14785</sup> See, e.g., *Karera*, Judgement (AC), para. 317 ("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

for the girls because they had attended Ndayambaje's swearing-in where they were told to search for and throw out dirt. As such, the Chamber is satisfied there is a causal connection between Ndayambaje's words at the swearing-in ceremony, and the abduction and killing of these Tutsi girls, including one Nambaje, in the days following the ceremony.

5954. In view of the widespread killing of Tutsis throughout Rwanda as well as the fact that the assailants who abducted Nambaje came to a house claiming to look for Tutsis, the Chamber concludes that the assailants participated in the attacks with the intent to destroy, in whole or in substantial part, the Tutsi group.

5955. Because the Chamber also finds that Ndayambaje's words prompted the assailants to perpetrate these crimes, the Chamber finds it proven beyond a reasonable doubt that Ndayambaje committed the *actus reus* of instigating genocide.

5956. The Chamber has found that by encouraging attendees at the swearing-in ceremony to "sweep the dirt outside" and "to work", Ndayambaje had the requisite intent to destroy, in whole or in part, the Tutsi ethnic group. It is also clear that Ndayambaje intended to prompt others to act. Accordingly, the Chamber also finds it proven beyond a reasonable doubt that Ndayambaje had the requisite *mens rea* to instigate genocide.

5957. The Chamber also finds that Ndayambaje's presence at the Statue of the Virgin Mary during the abduction encouraged the completion of the crime. Ndayambaje's words during the abduction made it clear that the assailants were free to do what they wanted with the girls, and thus facilitated the killing of the abducted Tutsi girls. Insofar as Ndayambaje was the newly appointed *bourgmestre* at the time of uttering these words, the Chamber considers that his words substantially contributed to the crime. As such, the Chamber finds it proven beyond a reasonable doubt that Ndayambaje committed the *actus reus* of instigating the killing of the abducted Tutsi girls and one Nambaje, which constituted genocide.

5958. Having regard to the events that preceded the abductions, and the situation in Rwanda generally, considering the assailants asked Ndayambaje what they should do with the abducted Tutsi women, Ndayambaje must have known of the assailants' intent. Further, the Chamber is convinced that Ndayambaje could not have been unaware that his words to the assailants would likely lead them to kill the abducted Tutsi girls and Nambaje. In view of the foregoing, the Chamber is satisfied that the Prosecution has proved beyond a reasonable doubt Ndayambaje knew he was assisting in the deaths of the abducted Tutsi girls and Nambaje.

5959. As such, the Chamber finds Ndayambaje guilty of genocide for instigating the killings of Tutsis, including the girl Nambaje, in Butare under Article 6 (1) of the Statute. However, the Prosecution did not prove beyond a reasonable doubt that Ndayambaje was responsible for the acts of the assailants as a superior under Article 6 (3) for these same killings.

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factor substantially contributing to the conduct of another person committing the crime."); *Ndindabahizi*, Judgement (AC), para. 116.

#### 4.2.2.3.22 Training, Arming and Civil Defence

5960. The Chamber has found beyond a reasonable doubt that civil defence was organised before April 1994 ().

5961. It was also established beyond a reasonable doubt that in May and June 1994, recruitment of men for civil defence training was undergoing in some *communes* in Butare *préfecture*. During the same period, when the RPF were advancing on Butare, firearms were distributed to the recruits.

5962. Nteziryayo was an official in charge of civil defence (). It was proven beyond a reasonable doubt that Nteziryayo facilitated the training of civilians at Kamena Stadium in May 1994 (). Nteziryayo also distributed weapons to the recruits ().

5963. Kanyabashi, in his capacity as *bourgmestre*, was responsible for recruiting men for civil defence training in Ngoma *commune*, in May and June 1994 (). Kanyabashi also distributed weapons to the *conseillers* in Ngoma *commune* in May 1994 ().

5964. The Chamber has further found that the civil defence forces understood that Tutsis were to be targeted as accomplices of the enemy, namely the RPF (). The Chamber notes, however, that it has not found that Nteziryayo or Kanyabashi was responsible for inculcating this understanding among the civil defence forces.

5965. Nonetheless, in the Chamber's view, these facts give rise to an inference that the civil defence forces targeted Tutsis, and that Nteziryayo and Kanyabashi are responsible for any such attacks. The question for the Chamber, however, is whether this is the only reasonable inference under the circumstances.

5966. The Chamber considers it significant that the training of recruits and the distribution of weapons overlapped with the advance of the RPF into Butare. This raises the possibility that Nteziryayo and Kanyabashi trained and armed the civil defence forces in order to forestall the RPF advance. The Chamber finds this possibility to be a reasonable one under the circumstances.

5967. Therefore, the Chamber cannot conclude that the only reasonable inference is that Nteziryayo and Kanyabashi are responsible for any attacks by the civil defence forces that targeted Tutsis. In any event, the Chamber recalls that it has not made any findings that civil defence forces targeted or killed Tutsis.

5968. Cognisant that the burden of proof falls upon the Prosecution to prove its case beyond a reasonable doubt, the Chamber finds that Kanyabashi and Nteziryayo are not responsible for genocide in relation to these allegations.

#### **4.2.2.4 Conclusion**

##### *Nyiramasuhuko*

5969. Nyiramasuhuko ordered the killings of Tutsis taking refuge at the Butare *préfecture* office, which constituted genocide.

5970. The Chamber therefore finds Nyiramasuhuko guilty of genocide, pursuant to Article 6 (1) of the Statute. Nyiramasuhuko's responsibility as a superior in relation to these events will be taken in account in sentencing.

*Ntahobali*

5971. Ntahobali killed Tutsis at the Hotel Ihuliro roadblock and ordered the killing of a Tutsi named Léopold Ruvurajabo. Ntahobali also ordered the killing of about 200 Tutsis at the IRST and of Tutsis taking refuge at the Butare *préfecture* office. In addition, Ntahobali aided and abetted both the killing of the Rwamukwaya family and the killing of Tutsis abducted from the EER. All of these acts constituted genocide. The Chamber therefore finds Ntahobali guilty of genocide, pursuant to Article 6 (1) of the Statute. His responsibility as a superior at the Hotel Ihuliro roadblock, in relation to the Butare *préfecture* office and at the EER will be considered in sentencing.

*Nsabimana*

5972. As *préfet* of Butare, Nsabimana had a legal duty to act, and he failed to discharge his duty. His failure both provided assistance to the perpetration of the crime of genocide, and had a substantial effect on the realisation of this crime. Nsabimana had the ability to act, but he did nothing, despite his awareness of the perpetrator's genocidal intent and his knowledge of the ongoing genocide at the Butare *préfecture* office. The Chamber therefore finds Nsabimana guilty of aiding and abetting genocide.

*Nteziryayo*

5973. Because the Prosecution has not proven beyond a reasonable doubt that Nteziryayo is responsible for genocide pursuant to either Article 6 (1) or 6 (3) of the Statute, the Chamber acquits him of this charge.

*Kanyabashi*

5974. Kanyabashi bears superior responsibility for soldiers' genocide of Tutsis at Matyazo clinic in late April 1994 (J. Ramaroson dissenting), and for the genocide committed by Ngoma *commune* policemen at Kabakobwa Hill on 22 April 1994.

5975. The Chamber therefore finds Kanyabashi guilty of genocide, pursuant to Article 6 (3) of the Statute.

*Ndayambaje*

5976. Ndayambaje aided and abetted the killing of Tutsis at Mugombwa Church on 20 and 21 April 1994 and at Kabuye Hill from 22 through 24 April 1994. Ndayambaje also instigated the killing of Tutsis after his swearing-in ceremony on 22 June 1994. All of these acts constituted genocide.

5977. The Chamber therefore finds Ndayambaje guilty of genocide, pursuant to Article 6 (1) of the Statute.

### 4.2.3 Complicity in Genocide

#### 4.2.3.1 Introduction

5978. The Accused are charged with complicity in genocide under Article 2 (3)(e) of the Statute. This charge comprises Count 3 of each Indictment.

5979. According to their Indictments, Nyiramasuhuko, Ntahobali and Kanyabashi are charged with complicity in genocide as an alternative to genocide.<sup>14786</sup> Nsabimana, Nteziryayo and Ndayambaje are also charged with this crime in the alternative, as clarified by the Prosecution Closing Brief.<sup>14787</sup>

#### 4.2.3.2 Law

5980. 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>14788</sup>

#### 4.2.3.3 Deliberations and Conclusion

5981. The Chamber has found Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi and Ndayambaje guilty of genocide in relation to various allegations. Because the Prosecution pleads complicity in genocide as an alternative to genocide, the Chamber dismisses this count in respect to these allegations.

5982. 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 the Accused of complicity in genocide.

5983. The Chamber therefore dismisses this charge in relation to Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi and Ndayambaje, all of whom are guilty of genocide. The Chamber acquits Nteziryayo of complicity in genocide.

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<sup>14786</sup> Nyiramasuhuko and Ntahobali Indictment, pp. 38-39 ("Count 2 ... Or, Alternatively: Count 3"); Kanyabashi Indictment, pp. 41-42 (same); *see also* Prosecution Pre-Trial Brief, para. 3.

<sup>14787</sup> Prosecution Closing Brief, pp. 271, 273, paras. 132, 139; pp. 351-352, paras. 148, 152; pp. 478-479, paras. 103, 105; *see also* Prosecution Pre-Trial Brief, para. 49 (that recognises generally that an accused cannot be held responsible for genocide and complicity in genocide for the same act).

<sup>14788</sup> *See Bagaragaza*, 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; *Duško Tadić*, Judgement (AC), para. 229); *see also Blagojević & Jokić*, Judgement (AC), paras. 119-124; *Krstić*, Judgement (AC), paras. 137-144.

## 4.2.4 Direct and Public Incitement to Commit Genocide

### 4.2.4.1 Introduction

5984. Nyiramasuhuko, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje are charged with direct and public incitement to commit genocide under Article 2 (3)(c) of the Statute. This charge comprises Count 4 of each of their Indictments.

### 4.2.4.2 Law

5985. A person may be found guilty of direct and public incitement to commit genocide if he or she directly and publicly incited the commission of genocide, and had the intent to directly and publicly incite others to commit genocide. Such intent in itself presupposes a genocidal intent.<sup>14789</sup>

5986. “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>14790</sup>

5987. 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>14791</sup> Moreover, 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>14792</sup>

### 4.2.4.3 Deliberations

#### 4.2.4.3.1 Cabinet Meetings, 9 April – 14 July 1994

5988. Between 9 April and 14 July 1994, the Interim Government, of which Nyiramasuhuko was a member, held numerous Cabinet meetings at which it adopted directives and issued

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<sup>14789</sup> *Kalimanzira*, Judgement (AC), para. 155; *Bikindi*, Judgement (AC), para. 135; *Nahimana et al.*, Judgement (AC), para. 677.

<sup>14790</sup> *Nahimana et al.*, Judgement (AC), paras. 692-693, 700-701, 703.

<sup>14791</sup> *Kalimanzira*, Judgement (AC), paras. 155-156. In making this statement, the Appeals Chamber noted that the *Kalimanzira* Trial Judgement was an exception, and went on to reverse this conviction: *Kalimanzira*, Judgement (AC), paras. 156, 165, 243.

<sup>14792</sup> *Kalimanzira*, Judgement (AC), para. 158.

instructions. The intention was to encourage the population to hunt down and take action against the Tutsis ().

5989. The Chamber, however, has not been able to determine what role, if any, Nyiramasuhuko played at these Cabinet meetings. Accordingly, the Chamber finds that the Prosecution has not established, beyond a reasonable doubt, that Nyiramasuhuko bears criminal responsibility for any direct and public incitement to commit genocide in relation to these meetings.

#### 4.2.4.3.2 Removal of *Préfet* Habyalimana and Swearing-in Ceremony of *Préfet* Nsabimana, 17-19 April 1994

5990. The Chamber has found that the speeches made by Prime Minister Kambanda and President Sindikubwabo at Nsabimana's swearing-in ceremony were inflammatory and called on the population to identify and kill Tutsis. In particular, Kambanda and Sindikubwabo used coded language that was understood by the attendees to refer to the killing of Tutsis (; ; ).

#### *Nyiramasuhuko*

5991. The Chamber has found that Nyiramasuhuko does not bear criminal responsibility for genocide in relation to these events (). Similarly, insofar as there was no evidence that her tacit approval/presence at the ceremony substantially contributed to the incitement pronounced by Kambanda and Sindikubwabo, the Chamber does not find it established beyond a reasonable doubt that she bears responsibility for direct and public incitement to commit genocide arising out of this ceremony.

#### *Kanyabashi*

5992. After Kambanda's and Sindikubwabo's speeches advocating and inciting genocide, Kanyabashi addressed the audience. He supported their speeches and his address contained a commitment to execute the directives and instructions announced by Kambanda and Sindikubwabo (; ).

5993. The Chamber recalls that "when [an accused] is indicted [for direct and public incitement to commit genocide], he cannot be held accountable for hate speech that does not directly call for the commission of genocide".<sup>14793</sup> Although Kanyabashi stated his support and commitment for the preceding speeches, the Chamber cannot conclude that conduct rose to the level of directly inciting genocide. Nor has the Prosecution adduced sufficient evidence to support that Kanyabashi substantially contributed to any incitement made by Kambanda, Sindikubwabo, or other speakers at this event.

5994. The Chamber, therefore, finds that Kanyabashi does not bear criminal responsibility for direct and public incitement to commit genocide in relation to this incident.

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<sup>14793</sup> *Nahimana et al.*, Judgement (AC), para. 693.



#### 4.2.4.3.3 Mugombwa Church Massacres, 20-21 April 1994

5995. The Chamber has found that on 20 April 1994, Ndayambaje came to Mugombwa Church, showed a picture of President Habyarimana to those taking refuge inside, and told them that they would be killed. He then spoke to a group of armed people outside Mugombwa Church. He told them that since the people in the church were now gathered together, their work would no longer be very difficult. He also told the attackers that some of them should stay and watch those in the church and others should go and look for those that were hiding in ditches and in bushes. After this speech, many people left, whereas some stayed behind at the church. Later that day, the armed people launched an attack against the Tutsis sheltering in the church ().

5996. The next morning, Ndayambaje again addressed the crowd outside the church. He stated that he could see they were interested in the Tutsis' cows, and he asked them what they would pay if the cattle's Tutsi owners escaped. That afternoon, the crowd set the church on fire and, as those taking refuge inside escaped from the church, the crowd attacked and killed them ().

5997. The Chamber has no doubt that Ndayambaje's addresses to the attackers were public and that he intended to make these statements publicly.

5998. The Chamber recalls that even when a speech contains no explicit appeal to commit genocide, it may still constitute direct incitement to commit genocide in a particular context.<sup>14794</sup>

5999. The Chamber considers it significant that before Ndayambaje addressed the crowd on 20 April 1994, he first told those taking refuge inside the church that they would be killed. This context, combined with Ndayambaje's speech that the crowd's work would no longer be difficult, establishes that Ndayambaje possessed the requisite intent to directly incite the commission of genocide.

6000. Moreover, after Ndayambaje spoke to the crowd on both 20 and 21 April 1994, the armed people there attacked the Mugombwa Church. The Chamber considers that this provides circumstantial evidence that Ndayambaje's speeches were understood by his intended audience as direct calls to commit genocide.<sup>14795</sup>

6001. In light of this context, the Chamber finds beyond a reasonable doubt that Ndayambaje directly incited the commission of genocide at Mugombwa Church, and that he had the requisite intent to do so.

6002. Accordingly, the Chamber finds Ndayambaje guilty of direct and public incitement on the basis of this allegation under Article 6 (1) of the Statute.

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<sup>14794</sup> *Nahimana et al.*, Judgement (AC), para. 703; see also *Nahimana et al.*, Judgement (AC), paras. 700-701.

<sup>14795</sup> See generally *Nahimana et al.*, Judgement (AC), para. 700 (“[I]t may be helpful to examine how a speech was understood by its intended audience in order to determine its true message.”).

#### 4.2.4.3.4 Kabakobwa Hill, 21-24 April 1994

6003. The Prosecution charged Kanyabashi with responsibility under Article 6 (1) for incitement, presumably before the attack at Kabakobwa.<sup>14796</sup>

6004. The Chamber has already found that Kanyabashi gave a speech at Rango market on the morning of Thursday 21 April 1994, during which he stated that Tutsis should be “allowed to go through” to Kabakobwa. The Chamber accepted those words led Witness QCB to believe that the safety of these refugees would be protected ().

6005. Notwithstanding this finding, the Chamber is not satisfied that these words were such as to incite others to commit the crime of genocide such that they could amount to direct and public incitement. As such, the Prosecution has failed to prove the *actus reus* of this crime.

6006. As such, the Chamber acquits Kanyabashi of the crime of direct and public incitement to commit genocide on the basis of the speech he gave at Rango market on 21 April 1994.

#### 4.2.4.3.5 Save Roadblock, April 1994

6007. The Chamber has found beyond a reasonable doubt that Kanyabashi came to a roadblock in Save in April 1994. He asked the people who manned this roadblock to search for a Tutsi lecturer and offered a reward for whoever found him ().

6008. The evidence establishes that Kanyabashi directed his speech to individuals manning a roadblock, but not that he directed his remarks towards anyone else. The Appeals Chamber has specified that statements made only to individuals manning a roadblock are not sufficiently public to satisfy this element of the crime.<sup>14797</sup> As the Prosecution did not establish that Kanyabashi directed his remarks towards anyone other than the individuals at the roadblock, the Chamber considers that Kanyabashi did not possess the *mens rea* for direct and public incitement to commit genocide. The Chamber thus acquits Kanyabashi of this charge in relation to this allegation.

#### 4.2.4.3.6 Announcements by Megaphone, May and June 1994

6009. Around late May 1994 Kanyabashi drove through Butare town with a megaphone and instructed the population to search for the enemy among them. Further, around mid-June 1994 Kanyabashi used a megaphone to tell the population to clear bushes along the road in order to remove potential hiding places for the *Inkotanyi*, to flush out people who were hiding in the bushes, and to kill those found there, including children, old men and women. After both of Kanyabashi’s announcements in mid-May and June 1994 searches were conducted for Tutsis, and consequently, more Tutsis were killed ().

6010. The Chamber recalls that after hearing Kanyabashi’s announcements by megaphone in May and June 1994, the public understood that the “enemy” and “*Inkotanyi*” were Tutsis and they were to be killed, as further evidenced by the fact that after both megaphone

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<sup>14796</sup> Para. 6.32 of the Kanyabashi Indictment (in support of Counts 1-3, 5-9 pursuant to Article 6 (3) and Count 4 pursuant to Article 6 (1) responsibility).

<sup>14797</sup> *Kalimanzira*, Judgement (AC), para. 161; see also *Nahimana et al.*, Judgement (AC), para. 862.

announcements searches were conducted and more Tutsis were killed. The Chamber finds beyond a reasonable doubt that these announcements constituted direct incitement to commit genocide.

6011. Further, because Kanyabashi circulated throughout Butare town addressing the general population, the Chamber finds beyond a reasonable doubt that Kanyabashi's announcements by megaphone in May and June 1994 were "public".

6012. The Chamber also considers Kanyabashi's spoken words encouraging the population to search for the "enemy" and "clear bushes", being references to killing Tutsis, evidences Kanyabashi had the requisite intent to destroy, in whole or in part, the Tutsi ethnic group.

6013. The Chamber finds that in so encouraging the population on two occasions in May and June 1994 Kanyabashi is individually criminally responsible, pursuant to Article 6 (1) of the Statute, for inciting the population to cause the death and serious bodily and mental harm of Tutsi refugees in Butare, as provided in Article 2 (3)(c). Accordingly, the Chamber finds Kanyabashi guilty of direct and public incitement to commit genocide.

#### 4.2.4.3.7 Distribution of Condoms, Early June 1994

6014. The Chamber has found beyond a reasonable doubt that Nyiramasuhuko came to Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994 and distributed condoms for the *Interahamwe*, to be used in the raping and killing of Tutsi women in that *secteur*. The Chamber further found that Nyiramasuhuko ordered the woman to whom she distributed the condoms to: "Go and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands" ().

6015. The Chamber observes that this is not a vague or indirect suggestion and cannot be considered ambiguous within the context of the rapes and parallel large-scale massacres being committed throughout Butare *préfecture* and Rwanda at this time.<sup>14798</sup>

6016. However, the Chamber is not satisfied that the "public" element of this crime has been established. The evidence shows that Nyiramasuhuko directed her speech to one woman, in the presence of four other men. In order to possess the requisite *mens rea* for the crime of direct and public incitement, the audience must be much broader than that found in the present circumstance.<sup>14799</sup> Here, Nyiramasuhuko's statements are more akin to a "conversation", consistent with the definition of private incitement found in the *travaux préparatoires* of the Genocide Convention.<sup>14800</sup> There is no indication in the record that anyone other than those cited was present.

<sup>14798</sup> *Nahimana et al.*, Judgement (AC), paras. 692-693.

<sup>14799</sup> See generally *Kalimanzira*, Judgement (AC), paras. 156 ("[A]ll 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>14800</sup> *Kalimanzira*, Judgement (AC), para. 159 (citing *Nahimana et al.*, Judgement (TC), paras. 718-719).

6017. The Chamber is therefore not satisfied that the evidence reasonably supports the Prosecution charge of direct and public incitement.

6018. Therefore, the Chamber does not find Nyiramasuhuko guilty of the crime of direct and public incitement to commit genocide for distributing condoms in Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994, to be used in the raping and killing of Tutsi women in that *secteur*. Accordingly the Chamber acquits Nyiramasuhuko of direct and public incitement to commit genocide. However, the Chamber finds that this circumstantial evidence shows Nyiramasuhuko's intent to destroy, in whole or in substantial part, the Tutsi group.

#### 4.2.4.3.8 Ntahobali and Nteziryayo Prevented the Evacuation of Tutsis, Mid-June 1994

6019. The Chamber has found that Ntahobali and Nteziryayo attempted to prevent the evacuation of about 300 orphans and their adult supervisors and selected about 30 individuals, whom they believed to be Tutsi adults, and forced them to remain in Rwanda ().

6020. There is insufficient evidence, however, that Nteziryayo incited genocide in relation to this event. Accordingly, the Chamber finds that the Prosecution has not discharged its burden of proof as to this charge of the Indictment.

6021. As for Ntahobali, the Chamber recalls that the Prosecution did not charge him with direct and public incitement to commit genocide.

#### 4.2.4.3.9 Border Meetings in Muyaga and Kibayi *Communes*, Mid- to Late June 1994

6022. The Prosecution charges Nteziryayo with direct and public incitement to commit genocide, based on his speeches at the Muyaga and Kibayi *commune* meetings. Nteziryayo urged the audience to hunt down, flush out and kill Tutsis without any distinction. At the Kibayi *commune* meeting, Nteziryayo specifically incited the population to kill the remaining Tutsi survivors in the *commune*. As a result of the speeches, members of the population carried out searches and killed surviving Tutsis (; ). In light of this evidence, and considering the context of the killings in Butare *préfecture* at that time, the Chamber considers that Nteziryayo's speeches constituted a direct appeal to kill Tutsis and could not have been considered ambiguous.

6023. Nteziryayo made these speeches to large, fully public assemblies.

6024. The Chamber considers that Nteziryayo intended to directly and publicly incite members of the population in Muyaga *commune* and Kibayi *commune* to commit genocide, as confirmed by his encouraging words, spoken at these large gatherings. This in turn establishes Nteziryayo's genocidal intent.<sup>14801</sup>

6025. The Chamber, therefore, finds Nteziryayo guilty of the crime of direct and public incitement to commit genocide, for inciting the killing of Tutsis at the Muyaga *commune* and Kibayi *commune* meetings.

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<sup>14801</sup> *Kalimanzira*, Judgement (AC), para. 155; *Bikindi*, Judgement (AC), para. 135; *Nahimana et al.*, Judgement (AC), para. 677.

4.2.4.3.10 Ndayambaje's Swearing-in Ceremony and the Ensuing Abduction of Tutsi Girls, 22 June 1994

*Swearing-in Ceremony*

6026. On the occasion of Ndayambaje's swearing-in ceremony on 22 June 1994, an event attended by the general population, Nteziryayo and Ndayambaje told the population to continue with their "work" and urged them to "sweep the dirt outside", a reference to the killing of Tutsis, after which searches for Tutsis took place and killings followed ().

6027. When considered in the context of the inter-ethnic killings prevalent in Rwanda in 1994, the war between the Tutsi-dominated Rwandan Patriotic Front rebels and the Hutu-dominated Rwandan Army, as well as considering the culture and language of Rwanda, the Chamber is satisfied that the audience understood the words of both Accused, namely "to work" and "sweeping dirt", to mean they needed to kill Tutsis. This was further evidenced by searches conducted and the killing of Tutsis after the ceremony. For this reason, the Chamber finds the Accused's words at Ndayambaje's swearing-in ceremony were direct incitements to commit genocide. Given that these inciting statements were made at a ceremony attended by the population, the Chamber has no doubt that Nteziryayo and Ndayambaje made them publicly.

6028. In light of the substance of these statements, the context in which they were made, and the evidence as a whole, the Chamber has no doubt that both Nteziryayo and Ndayambaje possessed genocidal intent when they addressed the population. The Chamber is also satisfied that they intended to incite the population to commit genocide.

6029. The Chamber finds that in urging the population "to work" and "to sweep dirt outside" at Ndayambaje's swearing in ceremony, Nteziryayo and Ndayambaje are criminally responsible, pursuant to Article 6 (1) of the Statute, for inciting the population to cause the death and serious bodily and mental harm of Tutsi refugees in Butare. Accordingly, the Chamber finds that Nteziryayo and Ndayambaje are guilty of committing direct and public incitement to commit genocide.

*Abduction of Tutsi Girls*

6030. During the ensuing abduction of Tutsi girls, Ndayambaje came to the Statue of the Virgin Mary during the abduction and made it clear that the abductors were free to do what they wanted with the girls. According to Witness QAR's account, which the Chamber found to be credible, the abductors had waited for some time for Ndayambaje to arrive ().

6031. The Chamber recalls that it has found Ndayambaje's actions at this event to constitute the instigation of genocide ().

6032. The Chamber, however, cannot conclude that Ndayambaje's conduct satisfies the "public" element of the crime of direct and public incitement to commit genocide. In particular, the Chamber notes that Ndayambaje addressed only the abductors and not the

general public.<sup>14802</sup> That the abductors specifically waited for Ndayambaje's instructions also provides evidence that they were not members of the general public, and that Ndayambaje would not have perceived them this way.

6033. Because this element of the crime has not been established beyond a reasonable doubt, the Chamber acquits Ndayambaje of direct and public incitement to commit genocide in relation to this event.

#### **4.2.4.4 Conclusion**

##### *Nyiramasuhuko*

6034. Because the Prosecution has not proven beyond a reasonable doubt that Nyiramasuhuko is responsible for direct and public incitement to commit genocide pursuant to Article 6 (1) of the Statute, the Chamber acquits her of this charge.

##### *Nsabimana*

6035. The Prosecution has not proven beyond a reasonable doubt that Nsabimana is responsible, pursuant to Article 6 (1) of the Statute, for direct and public incitement to commit genocide. The Chamber therefore acquits him of this charge.

##### *Nteziryayo*

6036. For his speeches at the Muyaga and Kibayi *commune* meetings in June 1994, as well as for his speech at Ndayambaje's swearing-in ceremony on 22 June 1994, the Chamber finds Nteziryayo guilty of committing the crime of direct and public incitement to commit genocide, pursuant to Article 6 (1) of the Statute.

##### *Kanyabashi*

6037. The Chamber has concluded that Kanyabashi's megaphone announcements on two occasions in May and June 1994, constituted direct and public incitement to commit genocide. Accordingly, the Chamber finds him guilty of committing this crime, pursuant to Article 6 (1) of the Statute.

##### *Ndayambaje*

6038. Ndayambaje directly incited a crowd outside of Mugombwa Church to commit genocide on 20 and 21 April 1994. He also directly and publicly incited genocide at his swearing-in ceremony on 22 June 1994. The Chamber therefore finds Ndayambaje guilty of committing direct and public incitement to commit genocide, pursuant to Article 6 (1) of the Statute.

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<sup>14802</sup> See *Kalimanzira*, Judgement (AC), paras. 159-165 (engaging in a conversation with persons at roadblocks did not qualify as "public", even in a circumstance where members of the general public were present); *Nahimana et al.*, Judgement (AC), para. 862 (message intended only for individuals manning roadblocks, instead of for the general public, did not qualify as direct and public incitement to commit genocide).

## 4.3 Crimes Against Humanity

### 4.3.1 Introduction

6039. The Accused are charged with extermination, murder, persecution and other inhumane acts as crimes against humanity under Article 3 (a), (b), (h) and (i) of the Statute. In addition, Nyiramasuhuko and Ntahobali are charged with rape as a crime against humanity under Article 3 (g) of the Statute. These charges comprise Counts 5 to 9 of the Nyiramasuhuko and Ntahobali Indictment, and Counts 5 to 8 of the Nsabimana and Nteziryayo Indictment, the Kanyabashi Indictment and the Ndayambaje Indictment.

### 4.3.2 Widespread and Systematic Attack

6040. In order to constitute a crime against humanity under Article 3 of the Statute, the acts of an accused must be part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. An “attack against a civilian population” means the perpetration against a civilian population of a series of acts of violence, or of the kind of mistreatment referred to in subparagraphs (a) to (i) of Article 3. “Widespread” refers to the large-scale nature of the attack and the number of victims, whereas “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>14803</sup>

6041. 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>14804</sup>

6042. As a preliminary matter, the Chamber recalls that it has taken judicial notice that widespread or systematic attacks directed against a civilian population based on Tutsi ethnic identification occurred in Rwanda between April and July 1994 ().<sup>14805</sup> As mentioned above, however, this does not shift the burden of proof, which remains with the Prosecution.<sup>14806</sup>

6043. The Chamber has considered the evidence in its totality, especially as it relates to the ethnic composition of the persons who sought refuge throughout Butare *préfecture*, and who were targeted for attack. In the wake of the events of 19 April 1994 (), Tutsis were either separated from Hutus prior to being attacked, or else were singled out and targeted in areas

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<sup>14803</sup> *Nahimana et al.*, Judgement (AC), paras. 918, 920; *Gacumbitsi*, Judgement (AC), para. 101 (quoting *Gacumbitsi*, Judgement (TC), para. 299); *Stakić*, Judgement (AC), para. 246; *Kordić & Čerkez*, Judgement (AC), paras. 93-94, 666; *Blaškić*, Judgement (AC), paras. 98, 101; *Kunarac et al.*, Judgement (AC), paras. 85-87, 90-91, 93-96, 98-100.

<sup>14804</sup> *Gacumbitsi*, Judgement (AC), paras. 86 (quoting *Gacumbitsi*, Judgement (TC), para. 302), 103; *Semanza*, Judgement (AC), paras. 268 (quoting *Akayesu*, Judgement (AC), para. 467), 269; *Kordić & Čerkez*, Judgement (AC), paras. 99-100; *Blaškić*, Judgement (AC), paras. 124, 126; *Kunarac et al.*, Judgement (AC), paras. 102-103.

<sup>14805</sup> See generally *Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, paras. 115-116, pp. 20-22 (denying judicial notice at that stage of the proceedings).

<sup>14806</sup> *Semanza*, Judgement (AC), para. 192.

where Hutus were present. This attack continued for more than two months, and overwhelmed large segments of Butare and its inhabitants. The Chamber is convinced beyond a reasonable doubt that, starting on 20 April 1994, there was a widespread and systematic attack in Butare against Tutsis on the basis of their ethnicity.

6044. Given that many of these Tutsis were taking refuge, and considering the evidence as a whole, the Chamber is satisfied beyond a reasonable doubt that this attack was directed against the civilian population.

6045. The Chamber also finds beyond a reasonable doubt that the acts perpetrated in relation to the Hotel Ihuliro roadblock, IRST, BPO, Rwamukwaya Family, EER, Matyazo Clinic (J. Ramarason dissenting), Kabakobwa Hill, Mugombwa Church, Kabuye Hill, Ndayambaje's Swearing-in, the abduction of Tutsi girls, and the distribution of condoms constituted part of this widespread and systematic attack.

6046. Finally, taking into account the specific nature and duration of the attack, the Chamber has no doubt that the six Accused and the principal perpetrators of this prolonged attack knew that their acts formed part of this attack.

### **4.3.3 Extermination**

#### ***4.3.3.1 Introduction***

6047. The Accused are charged with extermination as a crime against humanity under Article 3 (b) of the Statute. This charge comprises Count 6 of each Indictment.

#### ***4.3.3.2 Law***

6048. The crime of extermination is the act of killing on a large scale. The expression "on a large scale" does not, however, suggest a numerical minimum. The *actus reus* consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals. The *mens rea* requires that the accused intend, by his or her acts or omissions, to kill or subject a number of people to conditions of living that would inevitably lead to death.<sup>14807</sup>

#### ***4.3.3.3 Deliberations and Conclusion***

##### *Nyiramasuhuko*

6049. The Chamber has found that between 19 April and late June 1994, Nyiramasuhuko went to the Butare *préfecture* office to abduct hundreds of Tutsis. Tutsis taking refuge there were later killed in various locations throughout Ngoma *commune* (). The Chamber considers that these killings occurred on a large scale.

6050. The Chamber has also found Nyiramasuhuko guilty of genocide for ordering the killing of Tutsis taking refuge at the Butare *préfecture* office (). Based on the same reasoning, the

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<sup>14807</sup> *Rukundo*, Judgement (AC), para. 185; *Seromba*, Judgement (AC), para. 189; *Brđanin*, Judgement (AC), paras. 471, 476 (citing *Brđanin*, Judgement (TC), para. 395); *Gacumbitsi*, Judgement (AC), para. 86; *Ndindabahizi*, Judgement (AC), para. 135; *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 516, 522.



Chamber finds that the principal perpetrators possessed the intent to commit extermination, that Nyiramasuhuko knew of this intent, was in a position of authority when she ordered the killings, and that she intended that extermination be committed.

6051. The Chamber therefore finds beyond a reasonable doubt that Nyiramasuhuko is guilty of ordering extermination as a crime against humanity, pursuant to Article 6 (1) of the Statute.

6052. As for the allegation of superior responsibility in relation to these killings, the Chamber will take this into account in sentencing.

*Ntahobali*

6053. The Chamber has found Ntahobali guilty of genocide for: killing Tutsis at the Hotel Ihuliro roadblock, including a Tutsi girl who he had first raped (); ordering the killing of a Tutsi named Léopold Ruvurajabo (); ordering the killing of about 200 Tutsis at the IRST (); ordering the killing of Tutsis taking refuge at the Butare *préfecture* office (); aiding and abetting the killing of the Rwamukwaya family (); and aiding and abetting the killing of Tutsis abducted from the EER ().

6054. Based on the same reasoning, the Chamber finds that Ntahobali intended to commit extermination, and knew that other principal perpetrators also possessed this intent. The Chamber also considers that these killings, taken by themselves or collectively, occurred on a large scale.

6055. The Chamber therefore finds beyond a reasonable doubt that Ntahobali is guilty of committing, ordering and aiding and abetting extermination as a crime against humanity, pursuant to Article 6 (1) of the Statute.

6056. The Chamber will take Ntahobali's alleged superior responsibility into account in sentencing.

*Nsabimana*

6057. The Chamber has found that, after 19 April 1994, Tutsis taking refuge at the Butare *préfecture* office were abducted by the hundreds and killed (). The Chamber considers that these killings occurred on a large scale.

6058. The Chamber has found Nsabimana guilty of genocide for aiding and abetting by omission the killings that occurred at the Butare *préfecture* office (). Based on this reasoning, the Chamber finds that the principal perpetrators intended to commit extermination, that Nsabimana knew of this intent, and that he substantially contributed to the extermination that occurred by failing to discharge his duty.

6059. The Chamber therefore finds beyond a reasonable doubt that Nsabimana is guilty of aiding and abetting by omission extermination as a crime against humanity, pursuant to Article 6 (1) of the Statute.

*Nteziryayo*

6060. The Chamber has acquitted Nteziryayo of genocide (). For the same reasons, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Nteziryayo is responsible for extermination as a crime against humanity pursuant to either Article 6 (1) or 6 (3) of the Statute. The Chamber therefore acquits Nteziryayo of this crime.

*Kanyabashi*

6061. The Chamber has found that as a result of Kanyabashi's orders at Matyazo Clinic, many deaths occurred (). Hundreds, if not thousands, of Tutsis were killed in the attack at Kabakobwa Hill (). These killings undoubtedly occurred on a large scale.

6062. In relation to these killings of Tutsis at Matyazo Clinic and at Kabakobwa Hill, the Chamber has found Kanyabashi guilty of genocide pursuant to Article 6 (3) of the Statute (; ). Based on the same reasons, the Chamber finds that Kanyabashi bears superior responsibility over soldiers at Matyazo Clinic in late April, and over Ngoma *commune* policemen at Kabakobwa Hill on 22 April 1994, and that his subordinates acted with the intent to exterminate Tutsis.

6063. Therefore, the Chamber finds beyond a reasonable doubt that Kanyabashi is guilty of extermination as a crime against humanity, pursuant to Article 6 (3) of the Statute.

*Ndayambaje*

6064. The Chamber has found Ndayambaje guilty of genocide for aiding and abetting the killing of Tutsis at Mugombwa Church () and Kabuye Hill (), and instigating the killing of Tutsis after his swearing-in ceremony ().

6065. Based on this reasoning, the Chamber finds that Ndayambaje knew that other principal perpetrators possessed genocidal intent. The Chamber considers that these killings, taken by themselves or collectively, occurred on a large scale.

6066. Therefore, the Chamber finds beyond a reasonable doubt that Ndayambaje is guilty of instigating and aiding and abetting extermination as a crime against humanity, pursuant to Article 6 (1) of the Statute.

#### **4.3.4 Murder**

##### ***4.3.4.1 Introduction***

6067. The Accused are charged with murder as a crime against humanity under Article 3 (a) of the Statute. This charge comprises Count 5 of each Indictment.

##### ***4.3.4.2 Law***

6068. For the crime of murder to be established, it must be shown that a victim died and that the victim's death was caused by an act or omission. To satisfy the *mens rea* for murder, it is

required that there was an act or omission, with the intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.<sup>14808</sup>

#### 4.3.4.3 Cumulative Convictions

6069. Multiple criminal convictions based on the same conduct, but entered under different statutory provisions, are permissible only if each statutory provision involved has a materially distinct element not contained in the other.

6070. When comparing the crimes against humanity of murder and of extermination, the Appeals Chamber has found that murder as a crime against humanity does not contain a materially distinct element from extermination as a crime against humanity.<sup>14809</sup> Accordingly, where the Chamber has entered a conviction for extermination as a crime against humanity, it will not consider the same underlying conduct as a basis for a conviction for murder as a crime against humanity.<sup>14810</sup>

#### 4.3.4.4 Deliberations and Conclusion

6071. The Chamber has found Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi and Ndayambaje guilty of extermination as a crime against humanity. In particular, the Chamber has found Nyiramasuhuko, Ntahobali and Nsabimana guilty of extermination in relation to the killing of Tutsis taking refuge at the Butare *préfecture* office. The Chamber has also found Ntahobali guilty of extermination for: his role in the killing of Tutsis at the Hotel Ihuliro roadblock, including Léopold Ruvurajabo and a Tutsi girl who he first raped; at the IRST; of the Rwamukwaya family; and of Tutsis abducted from the EER. Kanyabashi is guilty of extermination in relation to the killing of Tutsis at Matyazo Clinic and at Kabakobwa Hill. Ndayambaje is guilty of extermination for his role in the killing of Tutsis at Mugombwa Church, at Kabuye Hill, and after his swearing-in ceremony ().

6072. The Chamber therefore considers that Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi and Ndayambaje would also be responsible, in relation to these events, for murder as a crime against humanity. Recalling the law on cumulative convictions, however, the Chamber dismisses this charge as to these five Accused.

6073. As for Nteziryayo, the Chamber has found him not guilty of genocide and extermination as a crime against humanity (). For the same reasons, the Chamber acquits Nteziryayo of murder as a crime against humanity.

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<sup>14808</sup> *Dragomir Milošević*, Judgement (AC), para. 108 (quoting *Dragomir Milošević*, Judgement (TC), para. 931); see also *Bagosora et al.*, Judgement (TC), para. 2169, fn. 2351.

<sup>14809</sup> *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 542. The Appeals Chamber explained that the only element that distinguishes these offences is the requirement of extermination that the killings occur on a mass scale.

<sup>14810</sup> The Chamber has also taken into account the jurisprudence on cumulative convictions for other crimes; see, e.g., *Stakić*, Judgement (AC), paras. 359, 361-364 (persecution as a crime against humanity is not cumulative of the crimes against humanity of murder, extermination, and other inhumane acts); *Semanza*, Judgement (AC), paras. 368-369 (convictions for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, are not cumulative because each has a materially distinct element); *Kordić & Čerkez*, Judgement (AC), paras. 1032-1033, 1035-1044; *Rutaganda*, Judgement (AC), paras. 582-583; *Musema*, Judgement (AC), paras. 366-367; *Delalić et al.*, Judgement (AC), paras. 412-413.

### 4.3.5 Rape

#### 4.3.5.1 Introduction

6074. Nyiramasuhuko and Ntahobali are charged with rape as a crime against humanity under Article 3 (g) of the Statute. Although Ntahobali is charged pursuant to both Article 6 (1) and 6 (3) of the Statute, Nyiramasuhuko is charged pursuant only to Article 6 (3) of the Statute. This charge comprises Count 7 of their Indictment.

#### 4.3.5.2 Law

6075. 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>14811</sup>

#### 4.3.5.3 Deliberations

##### 4.3.5.3.1 Hotel Ihuliro Roadblock, Late April 1994

6076. The Chamber recalls that it would not consider rapes at the Hotel Ihuliro roadblock for the count of genocide, but that it would address them under the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto ().

##### *Ntahobali*

6077. The Chamber has found beyond a reasonable doubt that Ntahobali personally raped one Tutsi girl at the roadblock near Hotel Ihuliro, around the end of April 1994 (). The Chamber is satisfied that Ntahobali intentionally committed this crime. Further, the Chamber considers the circumstances surrounding this offence, namely that before perpetrating the rape Ntahobali dragged the girl into the woods. It was also established that her dead body was later found with vaginal injuries.

6078. The Chamber is satisfied this event occurred without the consent of the victim. The Chamber also finds that Ntahobali intended to effect the sexual penetration in the knowledge that it occurred without this consent.

6079. The Chamber has already found that there was a widespread or systematic attack against the civilian population and that the Accused knew that their acts formed part of this attack ().

6080. Therefore, the Chamber finds this offence constitutes rape as a crime against humanity, and that Ntahobali is responsible as a principal perpetrator for committing it.

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<sup>14811</sup> *Gacumbitsi*, Judgement (AC), para. 151 (quoting *Kunarac et al.*, Judgement (AC), paras. 127-129).

6081. The Chamber recalls that it was also proven beyond a reasonable doubt that during the time when Ntahobali manned the roadblock, other crimes including rapes were committed against members of the Tutsi population ().

6082. The Chamber has found that Ntahobali bore superior responsibility over the *Interahamwe* at this roadblock (). However, because there is insufficient evidence to establish beyond a reasonable doubt that the *Interahamwe* committed rapes at or near this roadblock, the Chamber does not find that Ntahobali is responsible as a superior for the rapes that occurred near this roadblock. This alleged responsibility, therefore, will not be taken into account in sentencing.

#### *Nyiramasuhuko*

6083. The Chamber has also found that Nyiramasuhuko was present at the roadblock near Hotel Ihuliro on occasions during the period of time when crimes were carried out, but recalls that she was not found to be present when any crime was perpetrated there (). Moreover, the evidence is insufficient to conclude that she played any role in relation to the rapes there, or that she bears superior responsibility for them.

6084. Therefore, the Chamber finds Nyiramasuhuko not guilty of rape as a crime against humanity, in relation to the rapes carried out at the roadblock near Hotel Ihuliro.

#### 4.3.5.3.2 Butare *Préfecture* Office (“BPO”), End of April – First Half of June 1994

6085. The Chamber recalls that it would not consider rapes at the Butare *préfecture* office for the count of genocide, but that it would address them under the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto ().

6086. The Chamber is satisfied that the rapes of Witness TA and many other unnamed Tutsi women at the BPO were conducted on ethnic grounds. The Chamber finds that Ntahobali bears responsibility as a principal perpetrator for committing these acts, for ordering *Interahamwe* to commit rapes, and also for aiding and abetting rapes. Similarly, the Chamber considers that Ntahobali bears superior responsibility for the rapes committed by the *Interahamwe*, and will take this into account in sentencing.

6087. Nyiramasuhuko was only charged with rape as a crime against humanity pursuant to Article 6 (3) of the Statute, which the Chamber considers to be a serious omission on the part of the Prosecution. The Chamber has already found that Nyiramasuhuko ordered *Interahamwe* to rape Tutsi women at the BPO ().

6088. Nyiramasuhuko had a superior-subordinate relationship with the *Interahamwe* who accompanied her to the BPO. Her effective control over them was evidenced by the fact that she brought them to the BPO with her son Ntahobali and the fact that her orders to rape were obeyed. She knew of, and failed to prevent or punish, these rapes. Therefore, Nyiramasuhuko bears responsibility as a superior for the rapes perpetrated by the *Interahamwe* at the BPO.

#### 4.3.5.3.3 *École Évangéliste du Rwanda* (“EER”), Mid-May – Early June 1994

6089. The Chamber recalls that it would not consider rapes at or near the EER for the count of genocide, but that it would address them under the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto ().

6090. The Chamber has found that soldiers raped women and girls at or near the EER (). Although Ntahobali was implicated in some of the attacks at the EER, it has not been established that he is responsible for rapes that occurred during this general time period. The Chamber has also found that Nyiramasuhuko’s alleged involvement in the events at the EER, including rapes, has not been established beyond a reasonable doubt.

#### 4.3.5.3.4 Distribution of Condoms, Early June 1994

6091. The Chamber lacks sufficient reliable evidence to show a link between Nyiramasuhuko’s actions in distributing the condoms, and actual rapes committed against said Tutsi women. Therefore, the requirement of the commission of the actual crime, namely the rapes as a result of this distribution, has not been met in this instance. Therefore, the Chamber is not satisfied that the evidence reasonably supports the Prosecution charge of rape as a crime against humanity.

6092. Therefore, the Chamber does not find that these events constitute rape as a crime against humanity.

#### **4.3.5.4 Conclusion**

##### *Nyiramasuhuko*

6093. Nyiramasuhuko ordered *Interahamwe* to rape Tutsis at the Butare *préfecture* office, and bears responsibility as a superior for their rapes. The Chamber therefore finds her guilty of rape as a crime against humanity, pursuant to Article 6 (3) of the Statute.

##### *Ntahobali*

6094. Ntahobali raped a Tutsi girl near the Hotel Ihuliro roadblock. He also raped Tutsi women at the Butare *préfecture* office, ordered *Interahamwe* to rape Tutsis, and aided and abetted the rapes of a Tutsi. For these acts, the Chamber finds Ntahobali guilty of committing, ordering, and aiding and abetting rape as a crime against humanity, pursuant to Article 6 (1) of the Statute.

#### **4.3.6 Persecution**

##### **4.3.6.1 Introduction**

6095. The Accused are charged with persecution as a crime against humanity under Article 3 (h) of the Statute. This charge comprises Count 8 of the Nyiramasuhuko and Ntahobali Indictment, and Count 7 of the Nsabimana and Nteziryayo, Kanyabashi, and Ndayambaje Indictments.

#### 4.3.6.2 Law

6096. Persecution consists of an act or omission which discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law, and was carried out deliberately with the intention to discriminate on one of the protected grounds. This discriminatory intent requirement amounts to *dolus specialis*. But not every act of discrimination will constitute the crime of persecution; the underlying acts, considered in isolation or in conjunction with other acts, must be of gravity equal to the crimes listed under Article 3 of the Statute.<sup>14812</sup>

6097. The enumerated grounds of discrimination for persecution in Article 3 (h) of the Statute do not expressly include ethnic grounds, which is included in the list of discriminatory grounds for the attack contained in the *chapeau* of Article 3. Notwithstanding, the Appeals Chamber in the *Nahimana et al.* case held that discrimination on ethnic grounds could constitute persecution if the accompanying violation of rights was sufficiently serious, such as killings, torture and rape. It affirmed a conviction for persecution based on the supervision of roadblocks where Tutsis were killed.<sup>14813</sup>

#### 4.3.6.3 Deliberations

##### 4.3.6.3.1 Killings

###### *Nyiramasuhuko*

6098. The Chamber has found that Nyiramasuhuko ordered the killings of Tutsis taking refuge at the Butare *préfecture* office, which constitutes genocide and extermination as a crime against humanity (; ).

6099. Based on similar reasoning, the Chamber finds beyond a reasonable doubt that the principal perpetrators carried out their acts with discriminatory intent, and that Nyiramasuhuko knew of their intent. Nyiramasuhuko was in a position of authority when she ordered the killings, and she substantially contributed to them. These killings were serious violations of fundamental rights. The Chamber therefore finds Nyiramasuhuko guilty of persecution as a crime against humanity.

###### *Ntahobali*

6100. The Chamber has found that Ntahobali killed Tutsis at the Hotel Ihuliro roadblock, including a Tutsi girl who he first raped; that he ordered the killing of a Tutsi named Léopold Ruvurajabo, the killing of about 200 Tutsis at the IRST, and the killing of Tutsis taking refuge at the Butare *préfecture* office; and that he aided and abetted the killing of the Rwamukwaya family and of Tutsis abducted from the EER. These acts constitute genocide and extermination as a crime against humanity (; ).

<sup>14812</sup> *Nahimana et al.*, Judgement (AC), para. 985 (quoting *Krnojelac*, Judgement (AC), para. 185); *Simić*, Judgement (AC), para. 177; *Stakić*, Judgement (AC), paras. 327-328, 362; *Kvočka et al.*, Judgement (AC), paras. 320-321; *Kordić & Čerkez*, Judgement (AC), paras. 101-103, 110-112; *Blaškić*, Judgement (AC), paras. 131, 164-166; *Vasiljević*, Judgement (AC), para. 113.

<sup>14813</sup> *Bagosora et al.*, Judgement (TC), para. 2209 (citing *Nahimana et al.*, Judgement (AC), paras. 986-988, 1002).

6101. Based on this reasoning, the Chamber finds beyond a reasonable doubt that Ntahobali and the principal perpetrators acted with discriminatory intent, and that the facts establish the various requirements for committing, ordering, and aiding and abetting these serious violations of fundamental rights. The Chamber therefore finds Ntahobali guilty of persecution as a crime against humanity.

*Nsabimana*

6102. The Chamber has found that Nsabimana aided and abetted the killing of Tutsis at the Butare *préfecture* office by failing to discharge his duty. This constitutes genocide and extermination as a crime against humanity (; ).

6103. Based on its earlier reasoning, the Chamber finds beyond a reasonable doubt that the principal perpetrators of these crimes acted with discriminatory intent, that Nsabimana knew of their discriminatory intent, and that his failure to discharge his duty substantially contributed to these killings. These crimes were serious violations of fundamental human rights, and the Chamber therefore finds Nsabimana guilty of persecution as a crime against humanity.

*Nteziryayo*

6104. Because the Chamber has found that Nteziryayo is not criminally responsible for any killings (; ), it will not consider whether he bears responsibility for persecution for these acts.

*Kanyabashi*

6105. The Chamber has found that Kanyabashi bears superior responsibility for the killing of Tutsis at Matyazo Clinic by soldiers, and at Kabakobwa Hill by Ngoma *commune* police. These crimes constitute genocide and extermination as a crime against humanity (; ).

6106. Based on the same reasoning, the Chamber finds that Kanyabashi bears superior responsibility over soldiers at Matyazo clinic in late April, and over Ngoma *commune* policemen at Kabakobwa Hill on 22 April 1994, and that his subordinates acted with discriminatory intent. These crimes also amount to serious violations of fundamental human rights, and the Chamber therefore finds Kanyabashi guilty of persecution as a crime against humanity.

*Ndayambaje*

6107. The Chamber has found that Ndayambaje aided and abetted the killing of Tutsis at Mugombwa Church and Kabuye Hill, and instigated the killing of Tutsis after his swearing-in ceremony. These crimes constitute genocide and extermination as a crime against humanity (; ).

6108. Based on the same reasoning, the Chamber finds beyond a reasonable doubt that Ndayambaje and the principal perpetrators acted with discriminatory intent, and that the facts establish the various requirements for instigating and aiding and abetting the killings. These killings constitute serious violations of fundamental rights, and the Chamber finds that Ndayambaje is guilty of persecution as a crime against humanity.



#### 4.3.6.3.2 Kabuye Hill, 20-24 April 1994

6109. The Chamber has already taken account of the killings that occurred at Kabuye Hill, and will now address whether Ndayambaje is also criminally responsible for the arrest and transportation of Tutsis to Kabuye Hill that preceded the attack.

6110. The Chamber has found that Ndayambaje, several armed soldiers and *commune* policemen arrested fleeing Tutsi refugees at Ngiryi Bridge and obliged them to return to Gisagara marketplace, and thereafter soldiers and policemen escorted the refugees on foot to Kabuye Hill (). The Chamber considers that the interception and forced return of the refugees to Gisagara and then Kabuye Hill, when many refugees were trying to flee to Burundi, constitutes a denial of the right to freedom of movement, as cited by the Trial Chamber in *Bikindi*.<sup>14814</sup> The right to freedom of movement both within one's country, and the right to leave one's country, are basic fundamental rights.<sup>14815</sup> The Chamber is further of the view that the forced return of the fleeing refugees may have violated their right to security.<sup>14816</sup>

6111. While the Chamber recognises the importance of these rights, the Chamber recalls that, to qualify as persecution, their violation must be of similar gravity to other crimes against humanity enumerated in the Statute.

6112. Other crimes against humanity, pursuant to Article 3 of the Statute, include murder, extermination, enslavement, deportation, imprisonment, torture and rape.

6113. The Chamber is unable to conclude that the specific circumstances at issue here rise to a similar gravity as these other crimes against humanity. Because the arrest and later transportation of the Tutsis to Kabuye Hill, while serious, are not of comparable gravity to these enumerated crimes against humanity, the Chamber finds that they do not constitute persecution as a crime against humanity.

6114. In making this finding, the Chamber recalls that it has considered the killings of Tutsis at Kabuye Hill separately, and has found that these killings constitute persecution as a crime against humanity ().

#### 4.3.6.3.3 Rango Forest, June 1994

6115. As outlined above (), the Chamber has determined that Kanyabashi did not possess *de facto* authority over the *Interahamwe* and thus a superior-subordinate relationship was not established. Further, the Chamber has found that the Prosecution failed to establish that Kanyabashi knew of the beatings and mistreatment of the refugees at Rango Forest and he was therefore not in a position to take measures to prevent or punish the perpetrators for the commission of such crimes ().

6116. Therefore, the Chamber finds that Kanyabashi does not bear superior responsibility over the *Interahamwe* for the persecution of the Tutsi refugees at Rango Forest.

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<sup>14814</sup> *Bikindi*, Judgement (TC), para. 392.

<sup>14815</sup> See Articles 13-14 of the Universal Declaration of Human Rights.

<sup>14816</sup> *Nahimana et al.*, Judgement (AC), para. 986. On the right to security, see, e.g., Universal Declaration of Human Rights, Art. 3 ("Everyone has the right to life, liberty and security of person.").

#### 4.3.6.3.4 Ntahobali and Nteziryayo Prevented the Evacuation of Tutsis, Mid-June 1994

6117. The Chamber has found that Ntahobali and Nteziryayo attempted to prevent the evacuation of about 300 orphans and their adult supervisors and selected about 30 individuals, whom they believed to be Tutsi adults, and forced them to remain in Rwanda ().

6118. As discussed above (), however, the Chamber has not heard any evidence of killings or other acts that may have been related to this incident.

6119. Without any further evidence, the Chamber cannot conclude that the act of requiring 30 persons to remain in Rwanda is of similar gravity to other crimes against humanity listed in the Statute. Accordingly, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that this incident qualifies as persecution as a crime against humanity, or that Ntahobali or Nteziryayo are responsible for it.

#### **4.3.6.4 Conclusion**

##### *Nyiramasuhuko*

6120. The Chamber finds Nyiramasuhuko guilty of ordering persecution as a crime against humanity, pursuant to Article 6 (1) of the Statute.

##### *Ntahobali*

6121. The Chamber finds Ntahobali guilty of committing, ordering, and aiding and abetting persecution as a crime against humanity, pursuant to Article 6 (1) of the Statute.

##### *Nsabimana*

6122. For failing to discharge his duty, the Chamber finds Nsabimana guilty of aiding and abetting persecution as a crime against humanity, pursuant to Article 6 (1) of the Statute.

##### *Nteziryayo*

6123. Because the Prosecution has not proven that Nteziryayo is criminally responsible for persecution as a crime against humanity, the Chamber acquits him of this charge.

##### *Kanyabashi*

6124. The Chamber finds Kanyabashi guilty of persecution as a crime against humanity, pursuant to Article 6 (3) of the Statute for superior responsibility.

##### *Ndayambaje*

6125. The Chamber finds Ndayambaje guilty of instigating and aiding and abetting persecution as a crime against humanity, pursuant to Article 6 (1) of the Statute.

### 4.3.7 Other Inhumane Acts

#### 4.3.7.1 Introduction

6126. The Accused are charged with other inhumane acts as a crime against humanity under Article 3 (i) of the Statute. This charge comprises Count 9 of the Nyiramasuhuko and Ntahobali Indictment, and Count 8 of the Nsabimana and Nteziryayo, Kanyabashi, and Ndayambaje Indictments.

#### 4.3.7.2 Law

6127. The crime of other inhumane acts was deliberately designed as a residual category for sufficiently serious acts which are not otherwise enumerated in Article 3 of the Statute. For an act or an omission to be “inhumane” under this Article, the victim must have suffered serious bodily or mental harm or must have been the subject of a serious attack on human dignity. Moreover, the suffering must be the result of an act or omission of the accused or his or her subordinate, and the accused or subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim when the offence was committed.<sup>14817</sup>

#### 4.3.7.3 Deliberations

6128. The Chamber considers that many of the criminal acts in this case either fall squarely within other crimes against humanity enumerated above, or do not constitute crimes against humanity. The Chamber will address below only those events which might fall under the rubric of other inhumane acts as a crime against humanity.

##### 4.3.7.3.1 Kabuye Hill, 20-24 April 1994

6129. The Chamber has found that on the night of 22 April 1994, after the attack that resulted in the death of a large number of Tutsi refugees, survivors of the attack at Kabuye Hill were guarded and prevented from escaping ().

6130. The Chamber considers the act of guarding the Tutsi refugees on the night of 22 April 1994 such that they could not escape from Kabuye Hill, after they had already survived that day’s attack and seen many people killed, inflicted great fear and mental suffering on them, and constitutes a serious attack on human dignity.

6131. However the Prosecution failed to lead any evidence as to Ndayambaje’s role in the guarding of the Tutsi refugees on the night of 22 April 1994. As such, the Chamber acquits Ndayambaje of responsibility for the occurrence of other inhumane acts as crimes against humanity under Article 6 (1) on the basis of the current allegation. As the Prosecution did not prove beyond a reasonable doubt the existence of a superior-subordinate relationship between Ndayambaje and the soldiers, *commune* policemen, civilians and *Interahamwe* at Kabuye Hill, the Chamber acquits Ndayambaje of responsibility under Article 6 (3) on the basis of the current allegation. In any event, the Prosecution also failed to lead any evidence that

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<sup>14817</sup> *Bagosora et al.*, Judgement (TC), para. 2218; *Galić*, Judgement (AC), paras. 155, 157; *Stakić*, Judgement (AC), paras. 315-316, 362; *Kordić & Čerkez*, Judgement (AC), para. 117.

Ndayambaje knew or should have known of the acts of his alleged subordinates in this specific instance.

4.3.7.3.2 *École Évangéliste du Rwanda* (“EER”), Mid-May – Early June 1994

6132. The Chamber has found beyond a reasonable doubt that Ntahobali, soldiers and *Interahamwe* frequented the EER at night during the period from mid-May to the beginning June 1994, from where they abducted refugees and took them to a nearby forest where they were killed (). Considering that the *Interahamwe* told the refugees “it was over for the Tutsis” and that very few of the abducted refugees returned to the EER, the Chamber considers the regular nightly visits and abductions inflicted great fear and psychological trauma among the refugees. The Chamber further accepted that at least some of the abducted refugees had been killed with clubs and machetes while they were naked, and that some bodies were decapitated (). The Chamber finds this constituted serious bodily and mental harm.

*Nyiramasuhuko and Ntahobali*

6133. The Chamber notes that Paragraph 6.30 of the Nyiramasuhuko and Ntahobali Indictment, pled in support of the charge of other inhumane acts, alleges that “[t]he survivors [of attacks at the *préfecture* offices] were taken to various locations in the *préfecture* to be executed, notably in the woods next to the [EER]”.<sup>14818</sup> This paragraph provides no further information about any inhumane acts at the EER.

6134. Paragraph 6.31, also pled in support of other inhumane acts, alleges that Nyiramasuhuko and Ntahobali “often forced [their victims] to undress completely before forcing them into vehicles and taking them to their deaths”.<sup>14819</sup> In the Chamber’s view, this serves as an example of sufficient notice that would suffice for the charge of other inhumane acts.

6135. Reading the Indictment as a whole, the Chamber concludes that the Indictment provides notice that Nyiramasuhuko and Ntahobali allegedly forced their victims to undress, and that this constituted another inhumane act. To the extent the Prosecution intended to charge other acts against Nyiramasuhuko and Ntahobali, the Chamber finds the Indictment to be defective by omitting these charges.

6136. The Chamber recalls that while it is possible to cure the vagueness of an indictment, omitted charges cannot be remedied.<sup>14820</sup>

6137. Therefore, the Chamber considers only the allegation that Nyiramasuhuko and Ntahobali forced their victims to undress. As the Prosecution has not adduced sufficient

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<sup>14818</sup> Para. 6.30 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10).

<sup>14819</sup> Para. 6.31 of the Nyiramasuhuko and Ntahobali Indictment (in support of Counts 2-3, 5-6, 8-10).

<sup>14820</sup> See, e.g., *Renzaho*, Judgement (AC), para. 55; *Rukundo*, Judgement (AC), para. 29; *Karera*, Judgement (AC), para. 293 (“[A] clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. While it is possible, as stated above, to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment *only* by a formal amendment pursuant to Rule 50 of the Rules.”) (emphasis added).

evidence to support this allegation, the Chamber finds that Nyiramasuhuko and Ntahobali do not bear criminal responsibility in relation to these events.

*Nsabimana*

6138. The Chamber recalls Nsabimana is only charged with responsibility for acts that occurred at the EER pursuant to Article 6 (3) of the Statute. As the Prosecution failed to establish beyond a reasonable doubt the existence of a superior-subordinate relationship between Nsabimana and soldiers, the Chamber acquits Nsabimana of other inhumane acts as a crime against humanity on the basis of this allegation.

*Kanyabashi*

6139. The Chamber has found that the Prosecution failed to establish beyond a reasonable doubt Kanyabashi's involvement, if any, in killings at the EER between mid-May and the beginning of June 1994. Consequently, the Chamber acquits Kanyabashi of any superior responsibility pursuant to Article 6 (1) and 6 (3) on the basis of this allegation.

4.3.7.3.3 Rango Forest, June 1994

6140. As outlined above, the Chamber has determined that Kanyabashi did not possess *de facto* authority over the *Interahamwe* and thus a superior-subordinate relationship was not established (). Further, the Chamber has found that the Prosecution failed to establish that Kanyabashi knew of the beatings and mistreatment of the refugees at Rango Forest and he was therefore not in a position to take measures to prevent or punish the perpetrators for the commission of such crimes ().

6141. Therefore, the Chamber finds that Kanyabashi does not bear superior responsibility over the *Interahamwe* for inhumane acts committed against the Tutsi refugees at Rango Forest.

4.3.7.3.4 Ntahobali and Nteziryayo Prevented the Evacuation of Tutsis, Mid-June 1994

6142. The Chamber has found that Ntahobali and Nteziryayo attempted to prevent the evacuation of about 300 orphans and their adult supervisors and selected about 30 individuals, whom they believed to be Tutsi adults, and forced them to remain in Rwanda ().

6143. As discussed above (), the Chamber has not heard any evidence of killings or other acts that may have been related to this incident.

6144. Without further evidence, the Chamber cannot conclude that the act of requiring 30 persons to remain in Rwanda led to serious bodily or mental harm, or constituted a serious attack on human dignity. Accordingly, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that this incident qualifies as an inhumane act as a crime against humanity, or that Ntahobali or Nteziryayo are responsible for it.

#### 4.3.7.4 Conclusion

6145. The Chamber finds that the Prosecution has not proven, beyond a reasonable doubt, that any of the Accused bear criminal responsibility for other inhumane acts as a crime against humanity. Accordingly, the Chamber acquits all six Accused of this charge.

### 4.4 Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

#### 4.4.1 Introduction

6146. The Accused are charged with violence to life, health and physical or mental well-being of persons as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, under Article 4 (a) of the Statute. In addition, Nyiramasuhuko and Ntahobali are charged with outrages upon personal dignity as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, pursuant to Article 4 (e) of the Statute. These charges comprise Counts 10 and 11 of the Nyiramasuhuko and Ntahobali Indictment, and Count 9 of the Nsabimana and Nteziryayo Indictment, the Kanyabashi Indictment and the Ndayambaje Indictment.

#### 4.4.2 Threshold Elements

6147. In connection with crimes within the scope of Article 4 of the Statute, the Prosecution must prove, as a threshold matter, the following elements: (1) the existence of a non-international armed conflict; (2) the existence of a nexus between the alleged offence and the armed conflict; and (3) that the victims were not taking any active part in the hostilities at the time of the alleged violation, and that the perpetrator knew or should have been aware of this.<sup>14821</sup>

6148. The Ndayambaje Closing Brief, quoting the *Akayesu* Trial Judgement, contends that the Prosecution must also prove that the Accused acted as “a member of the armed forces under the military command of either of the belligerent parties”.<sup>14822</sup>

6149. The Chamber recalls, however, that the Appeals Chamber disagreed with this statement when the Judgement was appealed.<sup>14823</sup> Accordingly, the Ndayambaje Defence’s contention is unfounded in law, and the Chamber will not consider it below.

##### 4.4.2.1 Non-International Armed Conflict

6150. Preliminarily, the Chamber recalls that it has taken judicial notice that there was an armed conflict not of an international character in Rwanda between 1 January 1994 and 17

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<sup>14821</sup> *Boškoski & Tarčulovski*, Judgement (AC), para. 66; *Bagosora et al.*, Judgement (TC), para. 2229, *Akayesu*, Judgement (AC), para. 438.

<sup>14822</sup> Ndayambaje Closing Brief, paras. 1018-1020 (quoting *Akayesu*, Judgement (TC), para. 640).

<sup>14823</sup> See *Akayesu*, Judgement (AC), paras. 431-445 (quoting the same language as quoted in the Ndayambaje Closing Brief, and concluding that “[i]n the opinion of the Appeals Chamber, it does not follow that the perpetrator of Article 3 must of necessity have a specific link with one of the above-mentioned Parties” and found that the “Trial Chamber erred ... by restricting the application of common Article 3 to a certain category of persons”).

July 1994 (). As stated above, the judicial notice of facts does not shift the burden of proof, which remains with the Prosecution.<sup>14824</sup>

6151. The Chamber has also taken judicial notice of the fact that the President of the Republic of Rwanda was killed when his plane was shot down on 6 April 1994 (),<sup>14825</sup> and has found that the Interim Government held numerous Cabinet meetings beginning on 9 April 1994 and lasting through 14 July 1994 ().

6152. After considering the totality of evidence in this case, the Chamber has no doubt that a non-international armed conflict existed on Rwandan territory during the relevant period covered by the Indictments.

#### 4.4.2.2 Nexus

6153. A nexus exists between the alleged offence and the armed conflict when they are closely related. The existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit the offence, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed. If it can be established that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his or her acts were closely related to the armed conflict.<sup>14826</sup>

6154. In discussing the nexus requirement, the Appeals Chamber has stated that this element "would not be negated if the crimes were temporarily and geographically remote from the actual fighting. It would be sufficient, for instance, ... that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict."<sup>14827</sup>

6155. The Chamber has found that widespread killings of Tutsis did not occur in Butare *préfecture* prior to 19 April 1994, when Nsabimana was sworn in as *préfet* in a public ceremony (). This ceremony featured inflammatory speeches which underlined the existence of war. In the context of the armed conflict with the RPF, words like "enemy" linked the speeches to the conflict. The speeches urged the people of Butare to take action against the "enemy" and their accomplices, which the Chamber has found referred to Tutsis. These speeches contributed to the commencement of widespread killings and large-scale massacres in Butare (; ). All of the events at issue occurred after this ceremony, and the Chamber considers that they all took place in the context of these inflammatory speeches, which in turn had referred to the armed conflict with the RPF.

6156. The Chamber also notes the near-universal role played by soldiers in the events. Soldiers are implicated in the events at the Hotel Ihuliro roadblock (), Matyazo Clinic (), IRST (), Kabakobwa Hill (), Kabuye Hill (), the Butare *préfecture* office () and the EER (). Soldiers also manned various roadblocks throughout Butare, including the one near the corpses of the

<sup>14824</sup> *Semanza*, Judgement (AC), para. 192.

<sup>14825</sup> *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002, para. 105, pp. 18, 20, 28.

<sup>14826</sup> *Rutaganda*, Judgement (AC), paras. 569-570 (quoting *Kunarac et al.*, Judgement (AC), paras. 58-59).

<sup>14827</sup> *Kunarac et al.*, Judgement (AC), para. 57.

Rwamukwaya family (; ; ). The Chamber considers that the implication of soldiers in these events provides further corroboration of the nexus to the armed conflict.

6157. Although it has not been established whether soldiers played any role in the attack on Mugombwa Church, the Chamber notes that prior to the attack, Ndayambaje told those taking refuge inside that they would be killed because they were accomplices of the *Inkotanyi* (). The Chamber considers that this statement also corroborates that the ensuing attack on Mugombwa Church was linked to the armed conflict.

6158. The Chamber also considers that other events provide further context as to the nexus to the armed conflict. For example, the Interim Government held Cabinet meetings between 9 April and 14 July 1994, during which they issued instructions to encourage the population to take action against the “enemy” and its “accomplices”, both of which referred to Tutsis in general (). Widespread killings and massacres commenced throughout Butare *préfecture* only after the swearing-in ceremony of Nsabimana on 19 April 1994, which featured inflammatory speeches referring to Tutsis as the “enemy” (). The civil defence programme was used to train and arm civilians to locate infiltrators and accomplices, referring to Tutsis (). Kanyabashi also used the terms “enemy” and “*Inkotanyi*” during his megaphone announcements in May and June 1994, which others understood to refer to Tutsis ().

6159. After considering the evidence in its totality, the Chamber finds that the only reasonable inference to be drawn is that the Accused and the perpetrators who committed these crimes in Butare *préfecture* after 19 April 1994 were either acting in furtherance of the armed conflict or under its guise. Accordingly, the Chamber finds beyond a reasonable doubt that the alleged violations of Article 4 of the Statute had the requisite nexus to the armed conflict.

#### **4.4.2.3 Victims**

6160. Many of the victims in this case, at the time they were killed or raped, were taking refuge throughout Butare *préfecture*. This includes the victims at the Matyazo Clinic (), Mugombwa Church (), Kabakobwa Hill (; ), Kabuye Hill (), the Butare *préfecture* office () and the EER ().

6161. Other victims were killed or raped near roadblocks. These include the victims at the Hotel Ihuliro roadblock (; ) and those who were taken to the IRST to be massacred (). The corpses of the Rwamukwaya family were also sighted near a roadblock ().

6162. The Chamber considers that these victims were primarily civilians. Considering the evidence in its totality, the Chamber finds beyond a reasonable doubt that the victims were not taking an active part in the hostilities at the time of the alleged violations of Article 4 of the Statute.

### **4.4.3 Violence to Life, Health and Physical or Mental Well-Being of Persons**

#### **4.4.3.1 Introduction**

6163. The Accused are charged with violence to life, health and physical or mental well-being of persons as a serious violation of Article 3 common to the Geneva Conventions and of



Additional Protocol II thereto, under Article 4 (a) of the Statute. This charge comprises Count 10 of the Nyiramasuhuko and Ntahobali Indictment, and Count 9 of the Nsabimana and Nteziryayo, Kanyabashi, and Ndayambaje Indictments.

#### **4.4.3.2 Law**

6164. Article 4 (a) of the Statute provides that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, including “[v]iolence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment”.

6165. Murder requires an act or omission intended to kill or inflict grievous bodily harm, in the reasonable knowledge that it might lead to death, and that caused the death of another person.<sup>14828</sup>

#### **4.4.3.3 Deliberations and Conclusion**

##### *Nyiramasuhuko*

6166. Nyiramasuhuko ordered the killings of Tutsis who were taking refuge at the Butare *préfecture* office. The Chamber has found that this constitutes genocide and the crimes against humanity of extermination and persecution (; ;).

6167. The Chamber likewise finds Nyiramasuhuko guilty of ordering violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

##### *Ntahobali*

6168. Ntahobali killed Tutsis at the Hotel Ihuliro roadblocks, including a Tutsi girl who he first raped; ordered the killing of a Tutsi named Léopold Ruvurajabo, of about 200 Tutsis at the IRST and of Tutsis taking refuge at the Butare *préfecture* office; and aided and abetted the killing of the Rwamukwaya family and the killing and serious bodily and mental harm of Tutsis abducted from the EER. The Chamber has found that these acts constitute genocide and the crimes against humanity of extermination and persecution (; ;).

6169. Based on the same reasoning, the Chamber finds Ntahobali guilty of committing, ordering, and aiding and abetting violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

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<sup>14828</sup> *Dragomir Milošević*, Judgement (AC), para. 108 (quoting *Dragomir Milošević*, Judgement (TC), para. 931); see also *Bagosora et al.*, Judgement (TC), paras. 2169, fn. 2351, 2242.

*Nsabimana*

6170. By failing to discharge his duty, Nsabimana aided and abetted the killings at the Butare *préfecture* office. The Chamber has found that this constitutes genocide and the crimes against humanity of extermination and persecution (; ;).

6171. Based on similar reasoning, the Chamber finds Nsabimana guilty of aiding and abetting violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

*Nteziryayo*

6172. The Prosecution has not proven beyond a reasonable doubt that Nteziryayo is criminally responsible for any killings or other acts of violence. Accordingly, the Chamber acquits Nteziryayo of the charge of violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

*Kanyabashi*

6173. Kanyabashi bears superior responsibility for the killings of Tutsis by soldiers at Matyazo Clinic, and by Ngoma *commune* policemen at Kabakobwa Hill. The Chamber has found that these acts constitute genocide and the crimes against humanity of extermination and persecution (; ;).

6174. The Chamber likewise finds Kanyabashi guilty, pursuant to Article 6 (3) of the Statute, of violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

*Ndayambaje*

6175. Ndayambaje aided and abetted the killing of Tutsis at Mugombwa Church on 20 and 21 April 1994 and at Kabuye Hill from 22 through 24 April 1994, and instigated the killing of Tutsis after his swearing-in ceremony on 22 June 1994. The Chamber has found that these acts constitute genocide and the crimes against humanity of extermination and persecution (; ;).

6176. Based on the same reasoning, the Chamber finds Ndayambaje guilty of instigating and aiding and abetting violence to life, health and physical or mental well-being of persons, as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

#### **4.4.4 Outrages Upon Personal Dignity**

##### **4.4.4.1 Introduction**

6177. Nyiramasuhuko and Ntahobali are charged with outrages upon personal dignity as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, pursuant to Article 4 (e) of the Statute. This charge comprises Count 11 of their Indictment.

#### 4.4.4.2 Law

6178. Article 4 (e) of the Statute provides that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, including “[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”.

6179. Outrages upon personal dignity are constituted by any act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity. The *mens rea* requires only knowledge of the possible consequences of the charged act or omission.<sup>14829</sup>

#### 4.4.4.3 Deliberations and Conclusion

6180. The Chamber recalls that it would not consider rapes at the Hotel Ihuliro roadblock, the Butare *préfecture* office, or the *École Évangéliste du Rwanda* for the count of genocide, but that it would address them under the counts of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto (; ; ).

6181. The Chamber also recalls that it did not find that Nyiramasuhuko was responsible for rapes at the Hotel Ihuliro roadblock ( ), and that neither Nyiramasuhuko nor Ntahobali were criminally responsible for the rapes committed by soldiers at the EER ( ). The Chamber considers that the same reasoning applies here.

#### *Nyiramasuhuko*

6182. Nyiramasuhuko ordered *Interahamwe* to rape Tutsis at the Butare *préfecture* office ( ). Although this could have been charged pursuant to Article 6 (1) of the Statute, the Chamber notes that Paragraph 6.37, concerning rapes, was pled only in support of Nyiramasuhuko’s superior responsibility.<sup>14830</sup> Under these circumstances, and taking into account the Chamber’s discussion of this paragraph and of notice, above ( ), the Chamber will only consider whether Nyiramasuhuko bears superior responsibility for events at the Butare *préfecture* office.

6183. The Chamber has found, in the context of rape as a crime against humanity, that Nyiramasuhuko bears superior responsibility for these events ( ). For the same reasons, the Chamber finds Nyiramasuhuko guilty, pursuant to Article 6 (3) of the Statute, of outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

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<sup>14829</sup> *Kunarac et al.*, Judgement (AC), paras. 163 (quoting *Kunarac et al.*, Judgement (TC), para. 507), 165 (quoting *Kunarac et al.*, Judgement (TC), para. 512); *Bagosora*, Judgement (TC), para. 2250.

<sup>14830</sup> Para. 6.37 of the Nyiramasuhuko and Ntahobali Indictment (pled in support of Counts 7 and 11 against Nyiramasuhuko pursuant to Article 6 (3) of the Statute, and in support of Counts 7 and 11 against Ntahobali pursuant to Article 6 (1) and 6 (3) of the Statute).

*Ntahobali*

6184. Ntahobali raped a Tutsi girl near the Hotel Ihuliro roadblock. He also raped Tutsi women at the Butare *préfecture* office, ordered *Interahamwe* to rape Tutsis there, and aided and abetted the rapes of a Tutsi there. The Chamber has found that these acts constitute rape as a crime against humanity ().

6185. Based on the same reasoning, the Chamber finds Ntahobali guilty of committing, ordering, and aiding and abetting outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

## **CHAPTER V: VERDICT**

6186. 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

**PAULINE NYIRAMASUHUKO** as follows:

- Count 1: GUILTY of Conspiracy to Commit Genocide
- Count 2: GUILTY of Genocide
- Count 3: DISMISSED (Complicity in Genocide)
- Count 4: NOT GUILTY of Direct and Public Incitement to Commit Genocide
- Count 5: DISMISSED (Murder as a Crime Against Humanity)
- Count 6: GUILTY of Crimes Against Humanity (Extermination)
- Count 7: GUILTY of Crimes Against Humanity (Rape)
- Count 8: GUILTY of Crimes Against Humanity (Persecution)
- Count 9: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 10: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)
- Count 11: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Outrages upon Personal Dignity)

**ARSÈNE SHALOM NTAHOBALI** as follows:

- Count 1: NOT GUILTY of Conspiracy to Commit Genocide
- Count 2: GUILTY of Genocide
- Count 3: DISMISSED (Complicity in Genocide)
- Count 4: None Charged
- Count 5: DISMISSED (Murder as a Crime Against Humanity)
- Count 6: GUILTY of Crimes Against Humanity (Extermination)

- Count 7: GUILTY of Crimes Against Humanity (Rape)
- Count 8: GUILTY of Crimes Against Humanity (Persecution)
- Count 9: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 10: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)
- Count 11: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Outrages upon Personal Dignity)

**SYLVAIN NSABIMANA** as follows:

- Count 1: NOT GUILTY of Conspiracy to Commit Genocide
- Count 2: GUILTY of Genocide
- Count 3: DISMISSED (Complicity in Genocide)
- Count 4: NOT GUILTY of Direct and Public Incitement to Commit Genocide
- Count 5: DISMISSED (Murder as a Crime Against Humanity)
- Count 6: GUILTY of Crimes Against Humanity (Extermination)
- Count 7: GUILTY of Crimes Against Humanity (Persecution)
- Count 8: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 9: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)

**ALPHONSE NTEZIRYAYO** as follows:

- Count 1: NOT GUILTY of Conspiracy to Commit Genocide
- Count 2: NOT GUILTY of Genocide
- Count 3: NOT GUILTY of Complicity in Genocide
- Count 4: GUILTY of Direct and Public Incitement to Commit Genocide

- Count 5: NOT GUILTY of Crimes Against Humanity (Murder)
- Count 6: NOT GUILTY of Crimes Against Humanity (Extermination)
- Count 7: NOT GUILTY of Crimes Against Humanity (Persecution)
- Count 8: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 9: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)

**JOSEPH KANYABASHI** as follows:

- Count 1: NOT GUILTY of 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: DISMISSED (Murder as a Crime Against Humanity)
- Count 6: GUILTY of Crimes Against Humanity (Extermination)
- Count 7: GUILTY of Crimes Against Humanity (Persecution)
- Count 8: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 9: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)

**ÉLIE NDAYAMBAJE** as follows:

- Count 1: NOT GUILTY of 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: DISMISSED (Murder as a Crime Against Humanity)

- Count 6: GUILTY of Crimes Against Humanity (Extermination)
- Count 7: GUILTY of Crimes Against Humanity (Persecution)
- Count 8: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
- Count 9: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Violence to Life, Health and Physical or Mental Well-Being of Persons)



## CHAPTER VI: SENTENCING

### 6.1 Introduction

6187. Having found Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje guilty of crimes under the jurisdiction of the Tribunal, the Chamber must determine appropriate sentences.

### 6.2 Law

6188. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>14831</sup> When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualise penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.<sup>14832</sup>

6189. The gravity of the offences committed is the deciding factor in the determination of the sentence.<sup>14833</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>14834</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>14835</sup>

6190. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable".<sup>14836</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>14837</sup> In light of this, the Appeals Chamber has recognised that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results".<sup>14838</sup>

6191. 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>14839</sup>

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<sup>14831</sup> *Kayishema & Ruzindana*, Judgement (AC), para. 367 (quoting Article 1 of the Statute).

<sup>14832</sup> *Nahimana et al.*, Judgement (AC), para. 1037; *Kajelijeli*, Judgement (AC), para. 291.

<sup>14833</sup> *Nshogoza*, Judgement (AC), para. 98; *Nahimana et al.*, Judgement (AC), para. 1060.

<sup>14834</sup> *Rukundo*, Judgement (AC), para. 243.

<sup>14835</sup> *Kalimanzira*, Judgement (AC), para. 229.

<sup>14836</sup> *Dragomir Milošević*, Judgement (AC), para. 326; *Strugar*, Judgement (AC), para. 348; *Kvočka et al.*, Judgement (AC), para. 681.

<sup>14837</sup> *Dragomir Milošević*, Judgement (AC), para. 326; *Kvočka et al.*, Judgement (AC), para. 681.

<sup>14838</sup> *Dragomir Milošević*, Judgement (AC), para. 326 (citing *Limaj et al.*, Judgement (AC), para. 135; *Dragan Nikolić*, Judgement (AC), para. 19).

<sup>14839</sup> *Seromba*, Judgement (AC), para. 228; *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 290.

6192. Under Rwandan law, similar crimes as those at issue here carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.<sup>14840</sup>

6193. Aggravating circumstances need to be proven beyond a reasonable doubt.<sup>14841</sup> The Chamber may only consider aggravating circumstances that are pled in the indictment,<sup>14842</sup> and any circumstance that is included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.<sup>14843</sup>

6194. 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 active participation of a superior in the criminal acts of subordinates, the sexual and violent nature of the acts, the vulnerability of the victims, the status of the victims, and the circumstances of the offences generally.<sup>14844</sup>

6195. A particularly large number of victims can also be an aggravating circumstance. This is true even for extermination as a crime against humanity, which requires "killing on a large scale", so long as the extent of the killings exceeds that required for extermination.<sup>14845</sup>

6196. In circumstances where the Chamber has not found alleged superior responsibility beyond a reasonable doubt, the Chamber may consider an individual's influence as an aggravating circumstance.<sup>14846</sup> Similarly, while a position of authority does not automatically warrant a harsher sentence, the abuse of such a position may constitute an aggravating factor. This remains the case even where the Chamber has taken this authority into account in finding responsibility as a superior.<sup>14847</sup>

6197. Mitigating circumstances need only be established by the balance of the probabilities.<sup>14848</sup> Such circumstances include any 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

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<sup>14840</sup> *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (assessing Rwanda's penalty structure); *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 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.") (quoting *Serushago*, Judgement (AC), para. 30); *Dragan Nikolić*, Judgement (AC), para. 69.

<sup>14841</sup> *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), paras. 82, 294.

<sup>14842</sup> *Renzaho*, Judgement (AC), para. 615; *Simba*, Judgement (AC), para. 82.

<sup>14843</sup> *Ndindabahizi*, Judgement (AC), para. 137.

<sup>14844</sup> *Blaškić*, Judgement (AC), para. 686.

<sup>14845</sup> *Ndindabahizi*, Judgement (AC), para. 135.

<sup>14846</sup> *Semanza*, Judgement (AC), paras. 335-336.

<sup>14847</sup> *Dragomir Milošević*, Judgement (AC), paras. 302-303.

<sup>14848</sup> *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 294.

victims.<sup>14849</sup> Selective assistance of Tutsis may be given only limited weight as a mitigating factor.<sup>14850</sup>

6198. An absence of mitigating factors does not require the maximum sentence,<sup>14851</sup> while the existence of mitigating factors does not preclude a life sentence where the gravity requires that the maximum sentence be imposed.<sup>14852</sup> There is no category of case where a life sentence is required, nor a category where a life sentence is barred.<sup>14853</sup>

6199. 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. 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>14854</sup> The Defence teams generally declined, to various extents, to make submissions concerning sentencing.<sup>14855</sup> Nevertheless, the Chamber will consider any mitigating circumstances in the interests of justice.

### 6.3 Nyiramasuhuko

6200. The Chamber has found Nyiramasuhuko guilty of conspiracy to commit genocide, genocide, rape as a crime against humanity, extermination and persecution as crimes against humanity, and two separate counts of serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber must determine an appropriate sentence.

#### 6.3.1 Submissions

6201. The Prosecution submits that Nyiramasuhuko’s crimes place her in the category of the most serious offenders.<sup>14856</sup> The Prosecution requests that Nyiramasuhuko be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14857</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14858</sup>

6202. The Prosecution argues that Nyiramasuhuko held one of the highest positions in the country as Minister for Family and Women’s Affairs in the Interim Government during the events. One of her roles was to protect the population. Instead, she caused an inconceivable

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<sup>14849</sup> *Blaškić*, Judgement (AC), para. 696.

<sup>14850</sup> *Nchamihigo*, Judgement (AC), para. 389; *see also Rukundo*, Judgement (AC), para. 256; *Kajelijeli*, Judgement (AC), para. 311.

<sup>14851</sup> *Muvunyi II*, Judgement (AC), para. 70.

<sup>14852</sup> *Renzaho*, Judgement (AC), para. 612.

<sup>14853</sup> *Rukundo*, Judgement (AC), para. 260.

<sup>14854</sup> *Rukundo*, Judgement (AC), para. 255; *Bikindi*, Judgement (AC), para. 165; *Muhimana*, Judgement (AC), para. 231.

<sup>14855</sup> For example, the Defence for Ntahobali, Kanyabashi and Ndayambaje stated this position explicitly in their Closing Briefs: *see* Ntahobali Closing Brief, paras. 776-780; Kanyabashi Closing Brief, para. 666; Ndayambaje Closing Brief, paras. 1021-1025. During their Closing Arguments, however, the Defence teams addressed mitigation to varying degrees.

<sup>14856</sup> Prosecution Closing Brief, p. 523, para. 15.

<sup>14857</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14858</sup> Prosecution Closing Brief, p. 526, para. 29.

number of deaths in Butare *préfecture* as result of her direct participation in elaborating and executing the plan of genocide.<sup>14859</sup> It stresses that the crimes in which Nyiramasuhuko took part were heinous.<sup>14860</sup>

6203. The Prosecution underscores that there are no mitigating circumstances for Nyiramasuhuko that would justify a lesser sentence than the maximum penalty.<sup>14861</sup>

6204. The Defence submits that Nyiramasuhuko has been unreasonably detained for the last 12 years in Arusha and that this fact should be taken into account while determining her sentence in case of conviction.<sup>14862</sup>

### 6.3.2 Gravity of the Offences

6205. The Chamber has found Nyiramasuhuko guilty of conspiracy to commit genocide. The Chamber has also found Nyiramasuhuko guilty of genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, with respect to her involvement in various crimes including rape, abduction and killing of Tutsis committed at the Butare *préfecture* office between 19 April 1994 and late June 1994. The Chamber notes in particular the seriousness and atrocity of crimes repetitively perpetrated at the Butare *préfecture* office throughout a period of time where hundreds of Tutsis were abducted, raped and killed.

### 6.3.3 Individual, Aggravating and Mitigating Circumstances

6206. The Chamber considers the vast number of victims, far in excess of the threshold for extermination as a crime against humanity, to be an aggravating circumstance.

6207. The Appeals Chamber has held that an accused's abuse of his or her superior position or influence may be considered as an aggravating factor.<sup>14863</sup> In the Chamber's view, Nyiramasuhuko's position as Minister for Family and Women's Affairs during the events made her a person of high authority, influential and respected within the country and especially in Butare *préfecture* from where she hails. Instead of preserving the peaceful co-existence between communities and the welfare of the family, Nyiramasuhuko, on a number of occasions, used her influence over *Interahamwe* to commit crimes such as rape and murder. This abuse of general authority *vis-à-vis* the assailants is an aggravating factor.

6208. The Chamber notes as an aggravating factor the catastrophic number of victims across Butare *préfecture* who perished and suffered as a result of Nyiramasuhuko's participation in the conspiracy to commit genocide. The Chamber further considers as an aggravating factor the numerous victims of rapes and killings at the Butare *préfecture* office in particular,<sup>14864</sup> many of whom were particularly vulnerable.

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<sup>14859</sup> Prosecution Closing Brief, p. 527, paras. 33-34.

<sup>14860</sup> Prosecution Closing Brief, p. 528, para. 35.

<sup>14861</sup> Prosecution Closing Brief, p. 528, para. 36.

<sup>14862</sup> Nyiramasuhuko Closing Argument, T. 22 April 2009 p. 53.

<sup>14863</sup> *Simba*, Judgement (AC), paras. 284-285.

<sup>14864</sup> *Semanza*, Judgement (AC), paras. 337-338.

6209. The Chamber has considered Nyiramasuhuko's background and individual circumstances. In mitigation, the Chamber notes Nyiramasuhuko's service as a Government minister since 1992.<sup>14865</sup> The Chamber notes as well her long service in the Ministry of Health.<sup>14866</sup> These mitigating factors are, however, of a very limited weight, given the gravity of the crimes committed by Nyiramasuhuko.

## 6.4 Ntahobali

6210. The Chamber has found Ntahobali guilty of committing, ordering, and aiding and abetting genocide, extermination and persecution as crimes against humanity, and violence to life, health and physical or mental well-being of persons as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber has also found Ntahobali guilty of committing and ordering rape as a crime against humanity, and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

### 6.4.1 Submissions

6211. The Prosecution submits that Ntahobali's crimes place him in the category of the most serious offenders.<sup>14867</sup> The Prosecution requests that Ntahobali be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14868</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14869</sup>

6212. The Prosecution submits that the crimes that Ntahobali and his subordinates committed were of the most serious gravity. They were deliberate, unprovoked and brutal; they were aimed at vulnerable Tutsi civilians who were not participating in any hostilities.<sup>14870</sup>

6213. The Prosecution argues that Ntahobali was a very influential *Interahamwe* who was feared by his subordinates over whom he exercised power and authority.<sup>14871</sup> It emphasised the continuous repetition of Ntahobali's crimes, his repeated issuance of orders to commit crimes, and his continuous supervision of the commission of these crimes. All of his acts were premeditated.<sup>14872</sup> No mitigation of his sentence is warranted.<sup>14873</sup>

6214. The Defence submits that the absence of cooperation between the Accused and the Prosecution and the gravity of the crime, among others, should not be considered as aggravating factors. In any event, Ntahobali's acceptance to be interviewed suffices as an indicator of his desire or will to cooperate.<sup>14874</sup>

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<sup>14865</sup> Nyiramasuhuko Closing Brief, para. 508.

<sup>14866</sup> T. 31 August 2005 pp. 33-35, 38-39 (Nyiramasuhuko).

<sup>14867</sup> Prosecution Closing Brief, p. 523, para. 15.

<sup>14868</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14869</sup> Prosecution Closing Brief, p. 526, para. 29.

<sup>14870</sup> Prosecution Closing Brief, p. 529, para. 42.

<sup>14871</sup> Prosecution Closing Brief, p. 530, paras. 44-45.

<sup>14872</sup> Prosecution Closing Brief, p. 531, para. 48.

<sup>14873</sup> Prosecution Closing Brief, p. 531, paras. 49-51.

<sup>14874</sup> Ntahobali Closing Argument, T. 23 April 2009 p. 54.

6215. Contrary to the Prosecution submissions, the Defence argues that Ntahobali should benefit from mitigating factors. The Chamber should take into account his willingness to surrender to the Tribunal, his young age during the events and at the time of his arrest, the fact that he is father of three young children and his good character before and during the events as testified to by various witnesses.<sup>14875</sup>

#### **6.4.2 Gravity of the Offences**

6216. The Chamber has found Ntahobali guilty of genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, with respect to his involvement in various crimes. These crimes include the rapes and killings of Tutsis at the Hotel Ihuliro roadblock, the killings of Tutsis at the IRST, the rapes and killings of Tutsis at the Butare *préfecture* office, the killing of the Rwamukwaya family and the killing of Tutsis abducted from the EER.

6217. The Chamber considers that these crimes are of the utmost gravity. These crimes were not isolated instances, but occurred in various parts of Butare *préfecture*, throughout a significant period of time. In particular, the Chamber notes the seriousness and atrocity of crimes repetitively perpetrated at the Butare *préfecture* office, where hundreds of Tutsis were abducted, raped and killed.

#### **6.4.3 Individual, Aggravating and Mitigating Circumstances**

6218. The Chamber considers the vast number of victims, far in excess of the threshold for extermination as a crime against humanity, to be an aggravating circumstance.

6219. In addition, the repetitive atrocities perpetrated by Ntahobali at the Butare *préfecture* office in particular shows that these acts were premeditated making the Chamber believe that they may have continued as long as the refugees remained there. Such premeditation amounts to an aggravating factor.

6220. The Chamber also recalls that Ntahobali's responsibility as a superior at the Hotel Ihuliro roadblock, in relation to the Butare *préfecture* office, and at the EER are to be considered in sentencing.

6221. The Chamber notes Ntahobali's young age during the events, the fact that he is father of three young children, and any good character before these events can be considered as mitigating factors in his favour. The Chamber concludes, however, that these are of very limited weight. Of greater weight as a mitigating circumstance is that Ntahobali voluntarily surrendered himself to the jurisdiction of the Tribunal.

6222. Despite the weight accorded to these mitigating circumstances, the Chamber considers that they pale in comparison to the sheer gravity of Ntahobali's crimes, even before aggravating circumstances are taken into account.

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<sup>14875</sup> Ntahobali Closing Argument, T. 23 April 2009 pp. 54-55, 57-58.

## 6.5 Nsabimana

6223. The Chamber has found Nsabimana guilty of aiding and abetting genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber must now determine an appropriate sentence.

### 6.5.1 Submissions

6224. The Prosecution submits that Nsabimana's crimes place him in the category of the most serious offenders.<sup>14876</sup> The Prosecution requests that Nsabimana be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14877</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14878</sup>

6225. According to the Prosecution, aggravating factors include Nsabimana's position as *préfet*, his breach of trust, the vulnerability and suffering of the victims, the duration of the offences, and his abuse of authority by failing to utilise his power under the law to protect and defend the people of Butare *préfecture*.<sup>14879</sup>

6226. The Prosecution further submits that any mitigating factors are countered by Nsabimana's self-serving demeanour. His assistance of persons taking refuge and his evacuation of orphans should be seen as a further aggravating factor as they show that Nsabimana had the power to save lives and simply chose to save a few. There are also no mitigating factors. Accordingly, the Prosecution argues that he should be sentenced to life imprisonment on each count in his Indictment.<sup>14880</sup>

6227. The Nsabimana Defence submits that mitigating factors include the circumstances surrounding Nsabimana's appointment as *préfet* of Butare and his obligation to accept the post, his attempt to stem the wave of killings, and the evidence that he never participated actively in the killings.<sup>14881</sup> The Defence submits that albeit with enormous difficulties, Nsabimana conceived and enabled the evacuation to Burundi of close to a thousand, if not more, Tutsis and other persons, including children and that he organised several other discrete and individual evacuations with foreign dignitaries. He protected some Tutsi individuals and their families in his home and elsewhere in the *préfecture*, helping and providing better protection for the lives of some Rwandan Tutsis and Hutus alike through food, medical facilities and drugs.<sup>14882</sup> The Defence submits that he deserves extensive mitigating circumstances, as he was able to save several human lives irrespective of ethnicity in an atmosphere of terror and at risk to his own life.<sup>14883</sup>

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<sup>14876</sup> Prosecution Closing Brief, p. 523, para. 15.

<sup>14877</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14878</sup> Prosecution Closing Brief, p. 526, para. 29.

<sup>14879</sup> Prosecution Closing Brief, p. 3, para. 7; p. 229, paras. 3-4; p. 282, para. 176; p. 523, para. 15; pp. 532-537, paras. 53-56, 58-71.

<sup>14880</sup> Prosecution Closing Brief, p. 3, paras. 7-9; p. 523, para. 15; p. 526, para. 30; pp. 532-536, paras. 53-55, 58-70.

<sup>14881</sup> Nsabimana Closing Brief, paras. 1838-1860, 1949, 1964, 2001-2002.

<sup>14882</sup> Nsabimana Closing Brief, paras. 1966-1993, 1995, 2016.

<sup>14883</sup> Nsabimana Closing Brief, paras. 1879, 1997, 2000.

6228. Furthermore, the Interim Government placed Nsabimana on its list of accomplices and he was consequently dismissed under humiliating conditions. The Defence submits that Nsabimana expressed regrets, that he wilfully presented himself for trial, where his conduct was good as he did not obstruct justice in any way, that he has exhibited exemplary conduct in detention, and that he condemned the massacres that were committed.<sup>14884</sup>

### 6.5.2 Gravity of the Offences

6229. The Chamber has determined that, between 19 April 1994 and 17 June 1994, Nsabimana was *préfet* of Butare, and as such was the highest authority in the *préfecture*. In this regard, there is no doubt that he was a very prominent person in Butare *préfecture* at this time. For a period of almost two months, numerous persons participated in a campaign of abductions, rapes and slaughter that targeted Tutsi civilians, including those who were particularly vulnerable, taking refuge at the Butare *préfecture* office.

6230. The Chamber has not found that Nsabimana was a direct perpetrator in any massacre or killing perpetrated in Butare *préfecture*, or that he ordered or was in any other way directly associated with any given attack. Nevertheless, the magnitude of human devastation could only have occurred because he failed to discharge his legal duty. Nsabimana's position as *préfet* imposed upon him a duty to act to protect those vulnerable people within his realm. His omission in this regard at the Butare *préfecture* office, despite his knowledge that these acts were occurring around him, was central to the crimes that resulted.

### 6.5.3 Individual, Aggravating and Mitigating Circumstances

6231. The victims of the attacks at the Butare *préfecture* office were particularly vulnerable. The Chamber considers this as an aggravating circumstance. The Chamber notes, however, that other potentially aggravating factors have not been proven in Nsabimana's case, including any active criminal participation and premeditation.

6232. Instead, Nsabimana participated in the crimes at the *préfecture* office indirectly through his omission which, in the Chamber's view, warrants substantial mitigation. The Chamber also takes into account that Nsabimana discharged his legal duty around 5 to 15 June 1994 by requisitioning forces to the *préfecture* office. In addition, the Chamber was presented with evidence concerning humanitarian actions on behalf of Nsabimana, for instance providing help to the Rumiya family in seeking refuge in Mbazi *commune*,<sup>14885</sup> and assisting other individuals and groups of people in finding refuge, including one lady named José, whose husband had been killed; another one named Immaculée Mukantaganira, who had been attacked in the home of the family where she was staying; and a certain Madeleine Mukakagaba with her four children, who needed assistance.<sup>14886</sup> Nsabimana also participated in evacuations of orphans,

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<sup>14884</sup> Nsabimana Closing Brief, paras. 2011-2014, 2019.

<sup>14885</sup> T. 12 October 2004 p. 10 (Guichaoua); Prosecution Exhibit 136B (Guichaoua Expert Report, Vol. 1) p. 54; T. 22 August 2006 p. 25 (Karemano).

<sup>14886</sup> T. 12 October 2006 pp. 46, 48-52 (Nsabimana).



on different occasions during the relevant time, including facilitating the evacuation of approximately 600 children from *Group Scolaire*.<sup>14887</sup>

6233. The Chamber further considers Nsabimana's expression of remorse<sup>14888</sup> and his comportment in detention.<sup>14889</sup>

## 6.6 Nteziryayo

6234. The Chamber has found Nteziryayo guilty of committing direct and public incitement to commit genocide.

### 6.6.1 Submissions

6235. The Prosecution submits that Nteziryayo's crimes place him in the category of the most serious offenders.<sup>14890</sup> The Prosecution requests that Nteziryayo be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14891</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14892</sup>

6236. The Prosecution submits that Nteziryayo was a person of considerable influence in Butare *préfecture*. He made it to the higher ranks of military command in the Rwandan Armed Forces, which would have commanded respect and even awe. Instead of harnessing this influence to put an end to the killings, he actively trained, armed and led civilians so they could be more effective killers.

6237. The Prosecution submits Nteziryayo was directly responsible for the killing of innocent people, who had entrusted their lives to him as their *préfet*. His premeditation and his direct participation as a perpetrator, should serve as aggravating factors. It submits that there are no mitigating circumstances, as any assistance he may have proffered to Tutsis was overshadowed by his self-serving motives to evacuate his own family and by his failure to garner his power to save more. Accordingly, the Prosecution submits that he should be sentenced to imprisonment for the remainder of his life.<sup>14893</sup>

6238. The Nteziryayo Defence submits that Nteziryayo's actions in saving Tutsis and protecting ordinary citizens, nuns, monks, bishops and others, should be considered in mitigation. It asserts that Nteziryayo has been detained for over 11 years and that his health problems should be factored into his sentencing as mitigation.<sup>14894</sup>

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<sup>14887</sup> T. 5 July 2004 p. 75; T. 6 July 2004 p. 11 (Des Forges); 28 September 2006 pp. 42, 47 (Keane); T. 9 November 2006 pp. 24-25 (Witness AGWA); T. 3 July 2006 pp. 62-63 (Bararwandika).

<sup>14888</sup> T. 17 October 2006 p. 44 ("personally, I would like to ask for pardon from the survivors who are today ... in no position to see their family members. That is the main thing that I have in my mind.")

<sup>14889</sup> See Nsabimana Closing Brief (French), Annex II (Attestation of Good Conduct from the Commanding Officer of the United Nations Detention Facility in Arusha, signed 16 February 2009).

<sup>14890</sup> Prosecution Closing Brief, p. 523, para. 15.

<sup>14891</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14892</sup> Prosecution Closing Brief, p. 526, para. 29.

<sup>14893</sup> Prosecution Closing Brief, pp. 538-542, paras. 74-89.

<sup>14894</sup> Nteziryayo Closing Argument, T. 28 April 2009 pp. 27-31.

### 6.6.2 Gravity of the Offences

6239. The Chamber has found that Nteziryayo incited the population to kill Tutsis at meetings. He was not a direct perpetrator in any massacre or killing perpetrated in Butare *préfecture*.

6240. The Chamber has determined that Nteziryayo had a leadership role in the civil defence programme in Butare *préfecture*, and that he was later sworn in as *préfet* of Butare, on 17 June 1994. As such, he exerted considerable authority and power in Butare *préfecture* at this time. During this period, soldiers and civilian militiamen participated in a widespread and systematic campaign of slaughter and targeted Tutsi civilians, including those who were particularly vulnerable, as well as Hutu moderates.

### 6.6.3 Individual, Aggravating and Mitigating Circumstances

6241. In aggravation, the Chamber has considered Nteziryayo's role as leader of the civil defence programme and his position as *préfet* of Butare *préfecture*. Given his high profile position, Nteziryayo's active incitement and encouragement of the public to commit genocide demonstrates the abuse of his position.<sup>14895</sup> This constitutes an aggravating factor.

6242. The Chamber has already discussed the background and individual circumstances of Nteziryayo. It has taken into account his selective assistance to some Tutsis in Butare *préfecture* during this period, including Egide Gatera and his wife Rose Umulisa, who he welcomed into his house and helped evacuate to Burundi, as well as, among others, six seminarians of Mbazi, in cooperation with Father Vieckoslav.<sup>14896</sup> The Chamber has assessed his efforts to facilitate the evacuation of orphans on 18 June 1994 and 3 July 1994 respectively. It is mindful of Nteziryayo's endeavours in relation to the protection of Bishop Gahamanyi, a Tutsi, and other priests, Tutsi nuns and monks at the Karubanda minor seminary, and religious personalities in Save, including the Tutsi parish of Father Calver Rahundi and the Mother Superior of the Benebikira sisters, where many Tutsi refugees had sought sanctuary.<sup>14897</sup> In the Chamber's view, this selective assistance carries only limited weight as a mitigating factor.

6243. The Chamber has assessed these mitigating factors presented. However, helping a handful of Tutsi civilians does not outweigh the gravity of the crimes for which Nteziryayo has been charged.<sup>14898</sup> In the Chamber's view, the gravity of the crimes and the aggravating factors negate any mitigating factors.

## 6.7 Kanyabashi

6244. The Chamber has found Kanyabashi guilty of genocide, direct and public incitement to commit genocide, extermination and persecution as crimes against humanity and serious

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<sup>14895</sup> *Seromba*, Judgement (AC), para. 230; *Simba*, Judgement (AC), para. 284.

<sup>14896</sup> T. 15 May 2007 pp. 30, 54, 61-62 (Nteziryayo); Nteziryayo Closing Argument, T. 28 April 2009 pp. 27-28. See *Rugambarara*, Judgement (TC), para. 37; *Nzabirinda*, Judgement (TC), para. 77; *Serugendo*, Judgement (TC), paras. 68-69.

<sup>14897</sup> Nteziryayo Closing Argument, T. 28 April 2009 pp. 27-28.

<sup>14898</sup> *Kajelijeli*, Judgement (AC), para. 314.

violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber must determine an appropriate sentence.

### 6.7.1 Submissions

6245. The Prosecution submits that Kanyabashi's crimes place him in the category of the most serious offenders.<sup>14899</sup> The Prosecution requests that Kanyabashi be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14900</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14901</sup>

6246. The Prosecution submits that Kanyabashi's crimes constitute the most serious offences known to law. They were committed in a cold, premeditated and brutal manner; they were directed against thousands of vulnerable and innocent people, who had entrusted their lives to Kanyabashi as he was their *bourgmestre*.<sup>14902</sup>

6247. The Prosecution submits that, as the *bourgmestre* of one of the most modern and powerful *communes* of Rwanda, Kanyabashi wielded powers and influence by virtue of his position. He held *de jure* powers over the *conseillers* and policemen in Ngoma *commune*, and *de facto* powers over soldiers and *commune* police. Kanyabashi abused his position to encourage and instigate his subordinates to commit the most atrocious crimes upon their fellow citizens, and he betrayed the confidence and trust of his own people by leading the killers and organising the massacres.<sup>14903</sup>

6248. The Prosecution submits that evidence adduced at trial demonstrates that Kanyabashi planned, led and directly participated in the killings carried out at various locations in Ngoma *commune*, including Kabakobwa and Matyazo Clinic. Kanyabashi wilfully and knowingly ordered the killing of thousands of innocent civilians based solely on their ethnicity.<sup>14904</sup>

6249. The Prosecution underscores that Kanyabashi did not surrender to the Tribunal. It further submits that Kanyabashi has not, at any time, cooperated with the Prosecution, has not shown any remorse or acknowledged his guilt for the crimes committed. Therefore, no evidence of mitigating circumstances exists in the case of Kanyabashi.<sup>14905</sup>

6250. The Kanyabashi Defence does not make any submission in relation to sentencing;<sup>14906</sup> however, throughout its Closing Brief it refers to a series of factors that might be considered as mitigating circumstances by the Chamber in determining a sentence against Kanyabashi.

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<sup>14899</sup> Prosecution Closing Brief, p. 523, para. 15.

<sup>14900</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14901</sup> Prosecution Closing Brief, p. 526, para. 29.

<sup>14902</sup> Prosecution Closing Brief, pp. 542, 544, paras. 90, 96.

<sup>14903</sup> Prosecution Closing Brief, pp. 543-545, paras. 92-94, 97-100.

<sup>14904</sup> Prosecution Closing Brief, pp. 545-546, paras. 101-109.

<sup>14905</sup> Prosecution Closing Brief, pp. 546-547, paras. 110-111.

<sup>14906</sup> Kanyabashi Closing Brief, para. 666.

6251. The Kanyabashi Defence underscores Kanyabashi's purported good character. It submits that in 1991, Kanyabashi earned the nickname of *Kanyabatutsi* because he was considered a friend of the Tutsis and he did not have any discriminatory tendency.<sup>14907</sup>

6252. The Kanyabashi Defence submits there is clear evidence of Kanyabashi's efforts to stop the killings and call for peace on several occasions between April and June 1994. In particular, it submits that Kanyabashi's actions show that he did everything in his power to forestall the massacres from spreading to Ngoma *commune*, by establishing blockades at the *commune's* periphery; by organising meetings with civilians, bringing together the entire population; and also meetings with policemen, where they were instructed not to take part in the killings, to resist the assailants, to collaborate with the population without any distinction, to provide security and assistance to the entire population, to help and rescue targeted persons and allow refugees into the *commune*.<sup>14908</sup>

### 6.7.2 Gravity of the Offences

6253. The Chamber has found Kanyabashi guilty of genocide pursuant to Article 6 (3) for the massacres at Matyazo Clinic and Kabakobwa Hill. Based upon these events, the Chamber has also found Kanyabashi guilty of extermination and persecution as crimes against humanity, and of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto. Finally, the Chamber has found Kanyabashi guilty of direct and public incitement to commit genocide for his megaphone announcements in May and June 1994. The Chamber considers that all these crimes are of an obvious gravity resulting in a significant number of casualties in terms of death and injuries.

### 6.7.3 Individual, Aggravating and Mitigating Circumstances

6254. The Chamber considers the number of victims resulting from the killings at Matyazo and Kabakobwa as an aggravating factor in relation to Kanyabashi's conviction.<sup>14909</sup> In addition, the Chamber considers Kanyabashi's direct role in the Matyazo massacres, along with the position of authority he held over the physical perpetrators. The Chamber notes that Kanyabashi abused his position of authority in committing this crime, which amounts to an aggravating factor.

6255. The Chamber notes as well that as *bourgmestre* of Ngoma *commune*, Kanyabashi was an influential, respected figure in Butare. This aggravating factor is particularly significant in light of Kanyabashi's convictions for direct and public incitement to commit genocide. Rather than using his influence to stem the tide of the massacres occurring in his *commune*, Kanyabashi used his status and influence to further these tremendous crimes. The Chamber considers this abuse of authority as an aggravating factor.

6256. The Chamber has considered Kanyabashi's background and individual circumstances. It takes into account Kanyabashi's purported good character and his 20 years of service as a *bourgmestre*. It further considers the evidence indicative of Kanyabashi's efforts, on occasions, to stop the massacres from spreading and to assist the refugees. However, these

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<sup>14907</sup> Kanyabashi Closing Brief, paras. 23-24, 27.

<sup>14908</sup> Kanyabashi Closing Brief, paras. 108, 174-177, 635, 644-646.

<sup>14909</sup> *Semanza*, Judgement (AC), paras. 337-338.

mitigating elements are of limited weight compared to the gravity of the crimes for which Kanyabashi has been convicted.

## 6.8 Ndayambaje

6257. The Chamber has found Ndayambaje guilty of genocide, direct and public incitement to commit genocide, extermination and persecution as crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber must determine an appropriate sentence.

### 6.8.1 Submissions

6258. The Prosecution submits that Ndayambaje's crimes place him in the category of the most serious offenders.<sup>14910</sup> The Prosecution requests that Ndayambaje be sentenced to the maximum penalty of life imprisonment for each count of the Indictment upon which a finding of guilt is based.<sup>14911</sup> It submits that by imposing a sentence on each count, the Chamber will assist in deterring other potential offenders.<sup>14912</sup>

6259. The Prosecution submits that Ndayambaje was directly responsible for the killing of thousands of innocent people. He committed these crimes in a cold, pre-meditated, and brutal manner. He abused the authority that was entrusted to him to protect and defend the people of Muganza. He had the ability to prevent and punish the perpetrators, however he chose not to, and instead he was in the forefront in the organisation of the killings and directing them.<sup>14913</sup>

6260. The Prosecution further submits that Ndayambaje had tremendous influence over Muganza *commune* in his capacity as *de jure bourgmestre* for so many years and then as *de facto bourgmestre* who was later reappointed. He used his political powers by virtue of his position to encourage and instigate his subjects to commit the most atrocious crimes upon their fellow citizens, and spearheaded massacres against Tutsis.<sup>14914</sup>

6261. As aggravating circumstances, the Prosecution suggests Ndayambaje's position as *bourgmestre* and his breach of trust, his premeditation, his direct participation as a perpetrator, the violent and humiliating nature of his acts and the vulnerability of the victims, and the duration of the offences and suffering of his victims.<sup>14915</sup>

6262. The Prosecution argues that an influential person in the community such as Ndayambaje should be held to a higher standard because he violated the trust placed in him.<sup>14916</sup> The Prosecution contends that Ndayambaje betrayed the confidence and trust of his people by leading the killers and organising the massacres. According to the Prosecution, such betrayal constitutes a gravely aggravating factor.<sup>14917</sup>

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<sup>14910</sup> Prosecution Closing Brief, p. 3, para. 7.

<sup>14911</sup> Prosecution Closing Argument, T. 21 April 2009 p. 48; Prosecution Closing Brief, p. 526, para. 30.

<sup>14912</sup> Prosecution Closing Brief, p. 526, para. 29.

<sup>14913</sup> Prosecution Closing Brief, p. 547, para. 112.

<sup>14914</sup> Prosecution Closing Brief, p. 547, para. 114.

<sup>14915</sup> Prosecution Closing Brief, p. 548, para. 117.

<sup>14916</sup> Prosecution Closing Brief, p. 548, para. 118.

<sup>14917</sup> Prosecution Closing Brief, pp. 548-549, paras. 119-120.

6263. The Prosecution submits that Ndayambaje was a willing participant who knowingly ordered the killing of thousands of innocent civilians based solely on their ethnicity. Ndayambaje not only planned the massacres but also directly participated in some of them. This is a seriously aggravating factor. The Prosecution underscores that the Tutsi victims of Ndayambaje's crimes were killed in the most atrocious manner.<sup>14918</sup>

6264. The Prosecution concludes that no evidence of any mitigating circumstances exists in the case of Ndayambaje. He did not cooperate with the Prosecution, did not show any remorse for his crimes and did not surrender.<sup>14919</sup>

6265. The Defence submits that in case of conviction, Ndayambaje should benefit from the broadest mitigating circumstances, taking into account everything that emerged from this trial relating to his personality and the circumstances under which he experienced the extremely difficult events from April to June 1994.<sup>14920</sup>

### 6.8.2 Gravity of the Offences

6266. The Chamber has found Ndayambaje guilty of genocide for his direct participation in the massacres at Mugombwa Church and Kabuye Hill in April 1994, and for his role in the ensuing killings of Tutsis in Muganza *commune* following an inciting speech he made during his swearing-in ceremony on 22 June 1994. Based upon his participation in these events, the Chamber has also found Ndayambaje guilty of extermination and persecution as crimes against humanity, and of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto. The Chamber has also found Ndayambaje guilty of direct and public incitement to commit genocide at Mugombwa Church and at his swearing-in ceremony. It is difficult to find befitting words to describe the gravity of these offences which led to a loss of life on a massive scale and caused immense human suffering.

### 6.8.3 Individual, Aggravating and Mitigating Circumstances

6267. The Chamber considers that the number of victims, which far surpasses the threshold for extermination, is an aggravating factor.<sup>14921</sup> The Chamber recalls that hundreds, if not thousands, of predominantly Tutsis who took refuge at Kabuye Hill and at Mugombwa Church perished following days of intensified attacks.

6268. The Chamber notes as well that Ndayambaje was an influential, respected figure in Butare. Ndayambaje had been *bourgmestre* of Muganza *commune* between 1983 and 1992, prior to his participation in the attacks at Mugombwa Church and Kabuye Hill. Furthermore, he committed genocide and incitement to commit genocide both before and after his reinstallation as *bourgmestre* in June 1994. Ndayambaje used his status and influence to further these grave crimes. The Chamber considers this abuse of authority as an aggravating factor.

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<sup>14918</sup> Prosecution Closing Brief, p. 549, paras. 122-124.

<sup>14919</sup> Prosecution Closing Brief, p. 550, paras. 126, 128.

<sup>14920</sup> Ndayambaje Closing Brief, para. 1025.

<sup>14921</sup> *Semanza*, Judgement (AC), paras. 337-338.

6269. The Chamber observes that massacres at Mugombwa Church and Kabuye Hill in particular, were carried out over days with the use of weapons capable of killing on a mass scale. As result of these repetitive attacks, very few out of hundreds if not thousands of refugees who gathered at these places survived. In the Chamber's view, the premeditated nature of these attacks constitutes an aggravating factor.

6270. The Chamber has considered Ndayambaje's background and individual circumstances. The Chamber notes in particular the propriety of Ndayambaje's first tenure as *bourgmestre* between 1983 and October 1992. Witnesses described him as an honest man who was concerned about the welfare of the people and the agricultural sector. At that time, there was no ethnic tension in Muganza *commune* and no favouritism towards any specific ethnic group.<sup>14922</sup> The Chamber also notes that during the events in May 1994, Ndayambaje accommodated two Tutsis in his home.<sup>14923</sup> However, the Chamber accords these mitigating circumstances very limited weight in view of the gravity of Ndayambaje's crimes and the nature of his involvement in them.

## 6.9 Conclusion

6271. The Chamber has the discretion to impose a single sentence, and it chooses to do so in this case.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Pauline Nyiramasuhuko to life imprisonment.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Shalom Ntahobali to life imprisonment.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Sylvain Nsabimana to 25 years' imprisonment.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Alphonse Nteziryayo to 30 years' imprisonment.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Joseph Kanyabashi to 35 years' imprisonment.

Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Élie Ndayambaje to life imprisonment.

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<sup>14922</sup> T. 8 September 2008 p. 33 (Father Tiziano).

<sup>14923</sup> T. 27 October 2008 pp. 51-52, 56 (Ndayambaje).

## 6.10 Consequential Orders

6272. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje shall receive credit for time served since their arrest, where applicable, pursuant to Rule 101 (C) of the Rules. In this regard, the Chamber notes that Nyiramasuhuko and Nsabimana were arrested on 18 July 1997, Ntahobali was arrested on 24 July 1997, Nteziryayo was arrested on 24 April 1998, and Kanyabashi and Ndayambaje were arrested on 28 June 1995.<sup>14924</sup>

6273. The above sentences 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.

6274. Until their transfer to their designated places of imprisonment, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje shall be kept in detention under the present conditions.

6275. Pursuant to Rule 102 (A) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted persons nevertheless remaining in detention.

Arusha, 14 July 2011

William H. Sekule  
Presiding Judge

Arlette Ramaroson  
Judge

Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

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<sup>14924</sup> See, e.g., Fourth Annual Report of the ICTR, 7 September 1999, Annex pp. 1-3.



## ANNEX A: PROCEDURAL HISTORY

### 1.1 Pre-Trial Proceedings

#### 1.1.1 Arrest Through Initial Appearance

##### 1.1.1.1 Joseph Kanyabashi (1995 – 1999)

6276. Joseph Kanyabashi was arrested in Belgium on 28 June 1995.<sup>14925</sup> On 11 January 1996, Trial Chamber II (the “Chamber”) issued a Decision requesting that the Kingdom of Belgium defer any pending criminal proceedings against Kanyabashi in favour of the competence of the Tribunal.<sup>14926</sup>

6277. On 11 July 1996, the Prosecution proffered an Indictment against Kanyabashi.<sup>14927</sup> On 15 July 1996 Judge Yakov Ostrovsky confirmed the Indictment<sup>14928</sup> and issued an Order directing the Kingdom of Belgium to transfer Kanyabashi to the United Nations Detention Facility (“UNDF”).<sup>14929</sup> He was transferred to the UNDF on 8 November 1996.<sup>14930</sup>

6278. On 29 November 1996, Kanyabashi made his initial appearance before the Chamber. In default of a pleading by Kanyabashi, on the basis that he lacked legal representation of his choosing, the Chamber entered pleas of not guilty to all five counts against him,<sup>14931</sup> issued an Order for the continued detention of Kanyabashi, and set 8 April 1997 as the date for his trial.<sup>14932</sup>

6279. On 6 March 1997, the Chamber granted a motion by the Prosecution and ordered protective measures for victims and witnesses.<sup>14933</sup>

6280. On 18 June 1997, the Chamber dismissed a motion by Kanyabashi which challenged the jurisdiction of the Tribunal.<sup>14934</sup>

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<sup>14925</sup> Application by the Prosecutor for a Formal Deferral by the Kingdom of Belgium, 8 January 1996.

<sup>14926</sup> Case No. ICTR-96-2-D, In the Matter of a Proposal for a Formal Request for Deferral to the Competence of the Tribunal: The Kingdom of Belgium in Respect of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, 11 January 1996.

<sup>14927</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Indictment, 11 July 1996.

<sup>14928</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision Confirming the Indictment, 15 July 1996.

<sup>14929</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Warrant of Arrest and Order for Surrender, 15 July 1996.

<sup>14930</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defence Motion for the Provisional Release of the Accused, 21 February 2001, p. 2.

<sup>14931</sup> T. 29 November 1996 pp. 21-26 (Pre-Joiner Transcript: *see* Case No. ICTR-96-15).

<sup>14932</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision Following the Initial Appearance, 29 November 1996.

<sup>14933</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Prosecutor’s Motion for the Protection of Witnesses and Victims, 6 March 1997.

<sup>14934</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction, 18 June 1997. Kanyabashi filed a Notice of Appeal with respect to this decision, but it was dismissed by the Appeals Chamber as it did not set forth the grounds of the appeal. Although the Appeals Chamber granted Kanyabashi an extension of time within which to file a new notice of appeal, Kanyabashi withdrew his appeal without re-filing the notice: *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-AR72, Scheduling Order, 29 July 1997; *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-AR72, Order by Appeal Chamber, 19 August 1997.

6281. On 29 October 1997, the Chamber granted both Kanyabashi's request for the withdrawal of his Lead Counsel and the oral request of then Lead Counsel for Kanyabashi to withdraw from the case.<sup>14935</sup> On 28 October 2003, the Registrar withdrew the assignment of Michel Boyer as Co-Counsel for Kanyabashi.<sup>14936</sup>

6282. On 25 November 1997, the Chamber granted witness protection measures sought by the Kanyabashi Defence.<sup>14937</sup>

6283. On 24 September 1998, the Chamber issued an oral Decision on Kanyabashi's objection to an *ex parte* amendment to the Indictment and ruled that the confirming judge must approve the amendment after confirmation, and the Chamber must approve the amendment, *inter partes*, after the initial appearance.<sup>14938</sup>

6284. On 12 August 1999, the Chamber granted a Prosecution motion to amend the Indictment against Kanyabashi.<sup>14939</sup> The Prosecutor proffered an Amended Indictment the same day, which added four new counts. At his appearance on the Amended Indictment on 12 August 1999, Kanyabashi pled not guilty to all nine counts against him.<sup>14940</sup>

#### 1.1.1.2 *Élie Ndayambaje (1995 – 1999)*

6285. *Élie Ndayambaje* was arrested in Belgium on 28 June 1995.<sup>14941</sup> On 11 January 1996, the Chamber issued a Decision requesting the Kingdom of Belgium to defer criminal proceedings against *Ndayambaje* in favour of the competence of the Tribunal.<sup>14942</sup>

6286. On 17 June 1996, the Prosecutor submitted an Indictment against *Ndayambaje*, which was confirmed three days later by Judge Tafazzal H. Khan.<sup>14943</sup> Judge Khan issued a warrant of arrest and an order for surrender, directed to the Kingdom of Belgium, on 21 June 1996.<sup>14944</sup> On 8 November 1996, *Ndayambaje* was transferred to the UNDF.<sup>14945</sup>

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<sup>14935</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Accused's Motion for Withdrawal of his Lead Counsel, 29 October 1997.

<sup>14936</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-T, Registrar's Decision of Withdrawal of Mr. Michel Boyer Co-Counsel of the Accused Kanyabashi, 28 October 2003.

<sup>14937</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Protective Measures for Defence Witnesses and their Families, 25 November 1997.

<sup>14938</sup> T. 24 September 1998 p. 88.

<sup>14939</sup> T. 12 August 1999 pp. 6-9 (Pre-Joinder Transcript: *see* Case No. ICTR-96-15-I); *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Reasons for the Decision on the Prosecutor's Request for Leave to Amend the Indictment, 12 August 1999 (reasons given 10 September 1999). The Appeals Chamber dismissed Kanyabashi's appeal with respect to the Amendments to the Indictment: *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-A, Decision Rejecting Notice of Appeal, 21 January 2000.

<sup>14940</sup> T. 12 August 1999 pp. 18-21 (Pre-Joinder Transcript: *see* Case No. ICTR-96-15); Indictment is attached to the Judgement.

<sup>14941</sup> Application by the Prosecutor for a Formal Deferral by the Kingdom of Belgium, 8 January 1996.

<sup>14942</sup> Case No. ICTR-96-2-D, In the Matter of a Proposal for a Formal Request for Deferral to the Competence of the Tribunal: The Kingdom of Belgium in Respect of *Élie Ndayambaje*, *Joseph Kanyabashi* and *Alphonse Higaniro*, 11 January 1996.

<sup>14943</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Decision on the Review of the Indictment, 21 June 1996.

<sup>14944</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Warrant of Arrest and Order for Surrender, 21 June 1996.

<sup>14945</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision Following the Initial Appearance, 29 November 1996.

6287. Ndayambaje made his initial appearance before the Chamber on 29 November 1996 and pled not guilty to all five counts against him.<sup>14946</sup> The Chamber set 20 May 1997 as the date for trial and ordered Ndayambaje's continued detention.<sup>14947</sup>

6288. On 11 March 1997, the Chamber granted the Prosecution's motion for protective measures for victims and witnesses in the proceedings against Ndayambaje.<sup>14948</sup>

6289. On 8 September 1997, the Chamber granted a motion by the Ndayambaje Defence seeking protective measures for Defence witnesses.<sup>14949</sup>

6290. On 16 February 1998, the Registry issued a notice stating that Ndayambaje's trial would begin 20 April 1998.<sup>14950</sup>

6291. On 7 July 1998, the Chamber granted Ndayambaje's request for the withdrawal of his Lead Counsel, Charles Tchoungang, and Co-Counsel, Jean Jacques Makolle.<sup>14951</sup>

6292. On 10 August 1999, the Chamber confirmed amendments to Ndayambaje's Indictment, including the addition of three counts.<sup>14952</sup>

6293. At his appearance on the Amended Indictment on 12 August 1999, Ndayambaje pled not guilty to all nine counts against him.<sup>14953</sup>

### ***1.1.1.3 Pauline Nyiramasuhuko and Arsène Shalom Ntahobali (1997 – 1999)***

6294. The Prosecution submitted an Indictment against Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on 26 May 1997.<sup>14954</sup> On 29 May 1997, Judge Yakov Ostrovsky confirmed

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<sup>14946</sup> T. 29 November 1996 pp. 27-28 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8-I).

<sup>14947</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Decision Following the Initial Appearance, 29 November 1996.

<sup>14948</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Motion Filed by the Prosecutor for the Protection of Victims and Witnesses, 11 March 1997.

<sup>14949</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Defence Motion for Protection of its Witnesses, 8 September 1997.

<sup>14950</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Setting a Date for the Trial in the Matter of the Prosecutor versus Élie Ndayambaje, Case No. ICTR-96-8-T, 16 February 1998.

<sup>14951</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Motion of the Accused for the Replacement of Appointed Counsel, 7 July 1998.

<sup>14952</sup> T. 10 August 1999 pp 4-6 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8); *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Prosecutor's Request for Leave to File an Amended Indictment, 2 September 1999. This Amended Indictment was filed on 11 August 1999. Ndayambaje filed a notice of appeal, which the Appeals Chamber ruled should be re-filed within seven days of a written opinion by Trial Chamber II: *Ndayambaje v. Prosecutor*, Case No. ICTR-96-8-A, Scheduling Order, 13 September 1999. The appeal was later dismissed by the Appeals Chamber: *Ndayambaje v. Prosecutor*, Case No. ICTR-96-8-A, Decision Rejecting Notice of Appeal, 2 November 1999; Indictment is attached to the Judgement.

<sup>14953</sup> T. 12 August 1999 pp. 17-20 (Pre-Joinder Transcript: *see* Case No. ICTR-96-8-I); Indictment is attached to the Judgement.

<sup>14954</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Indictment, 26 May 1997 (The Initial Indictment contained seven counts, the first five against both Nyiramasuhuko and Ntahobali and the last two against Ntahobali only).

the Indictment<sup>14955</sup> and issued a warrant for the arrest and transfer of Nyiramasuhuko and Ntahobali.<sup>14956</sup>

6295. On 18 July 1997, Pauline Nyiramasuhuko was arrested in Kenya and transferred to the UNDF.<sup>14957</sup> On 24 July 1997, Arsène Shalom Ntahobali was arrested in Kenya and transferred to the UNDF.<sup>14958</sup>

6296. On 28 August 1997, Trial Chamber I set 3 September 1997 as the date for the initial appearance for Nyiramasuhuko.<sup>14959</sup> On 3 September 1997 the Chamber granted the Prosecution's motion to amend the form of the Indictment.<sup>14960</sup> Nyiramasuhuko pled not guilty to all five counts against her.<sup>14961</sup>

6297. On 8 September 1997, Trial Chamber I set 16 October 1997 as the date for an initial appearance for Ntahobali.<sup>14962</sup> On 15 October 1997, Trial Chamber I set 17 October 1997 as the date for his initial appearance,<sup>14963</sup> and on 17 October 1997 the Chamber granted the Prosecution's request to amend the Indictment.<sup>14964</sup> Ntahobali pled not guilty to all seven counts against him.<sup>14965</sup>

6298. On 27 November 1997, the Prosecution proffered an Amended Indictment against Nyiramasuhuko and Ntahobali.<sup>14966</sup>

6299. On 13 March 1998, Trial Chamber I granted Nyiramasuhuko a protective order for 10 Defence witnesses and their families<sup>14967</sup> and ordered the Registry to name a Co-Counsel for Nyiramasuhuko.<sup>14968</sup>

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<sup>14955</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Decision to Confirm the Indictment, 29 May 1997.

<sup>14956</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Warrant for Arrest and Order for Surrender, 29 May 1997.

<sup>14957</sup> T. 8 June 2000 p. 23 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21-I).

<sup>14958</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Decision on the Preliminary Motion by Defence Counsel on Defects in the Form of Indictment, 4 September 1998, p. 2.

<sup>14959</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Setting a Date for the Initial Appearance in Case No. ICTR-97-21-I: The Prosecutor versus Pauline Nyiramasuhuko & Arsène S. Ntahobali, 28 August 1997.

<sup>14960</sup> T. 3 September 1997 p. 19 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21).

<sup>14961</sup> T. 3 September 1997 pp. 31-35 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21).

<sup>14962</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Setting a Date for the Initial Appearance in the Matter of Pauline Nyiramasuhuko & Arsène Shalom Ntahobali, 8 September 1997.

<sup>14963</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Setting a Date for the Initial Appearance in the Matter of Pauline Nyiramasuhuko & Arsène Shalom Ntahobali, 15 October 1997.

<sup>14964</sup> T. 17 October 1997 p. 9 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21).

<sup>14965</sup> T. 17 October 1997 pp. 37-44 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21).

<sup>14966</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Amended Indictment, 27 November 1997.

<sup>14967</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Protective Measures for Defence Witnesses and their Families and Relatives, 13 March 1998.

<sup>14968</sup> T. 13 March 1998 pp. 7-8 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21); *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on a Preliminary Motion by the Defence for the Assignment of a Co-Counsel to Pauline Nyiramasuhuko, 13 March 1998, signed 23 March 1998. The Appeals Chamber dismissed Nyiramasuhuko's notice of appeal based on a lack of jurisdiction: *Prosecutor v. Nyiramasuhuko and*

6300. On 29 May 1998, Trial Chamber I dismissed Ntahobali's motion requesting that he be tried separately from Nyiramasuhuko.<sup>14969</sup>

6301. On 4 September 1998, Trial Chamber I dismissed a motion by Ntahobali for amendments to the Indictment.<sup>14970</sup>

6302. On 10 August 1999, Trial Chamber I granted a Prosecution motion to amend the Indictment. The Prosecution added six charges and consolidated two existing charges.<sup>14971</sup>

6303. On 12 August 1999, before Trial Chamber I, Nyiramasuhuko pled not guilty to all 11 counts against her<sup>14972</sup> and Ntahobali pled not guilty to all 10 counts against him.<sup>14973</sup>

6304. On 2 April 2001, the Registrar rejected Ntahobali's request for withdrawal of his Lead Counsel René Saint-Leger.<sup>14974</sup> The Registrar's decision was confirmed by Judge Navanethem Pillay on 4 June 2001.<sup>14975</sup>

#### ***1.1.1.4 Sylvain Nsabimana and Alphonse Nteziryayo (1997 – 1998)***

6305. On 16 July 1997, Judge Laïty Kama ordered that Sylvain Nsabimana be transferred to and detained in the UNDF based on three provisional charges.<sup>14976</sup>

6306. On 18 July 1997, Nsabimana was arrested in Kenya and transferred to the UNDF.<sup>14977</sup> On 14 August 1997, Judge Kama granted the Prosecutor's request to extend the provisional detention.<sup>14978</sup> On 16 September 1997, Judge Navanethem Pillay extended Nsabimana's detention by another 30 days.<sup>14979</sup>

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*Ntahobali*, Case No. ICTR-97-21-A, Order Dismissing Appeal, 28 October 1998. Judge Shahabuddeen appended a declaration explaining that the appeal was out of time: *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-A, Declaration of Judge Shahabuddeen, 28 October 1998.

<sup>14969</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on a Preliminary Motion by the Defence Counsel of Arsène Shalom Ntahobali for Separate Trials, 29 May 1998.

<sup>14970</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-I, Decision on the Preliminary Motion by Defence Counsel on Defects in the Form of the Indictment, 4 September 1998.

<sup>14971</sup> T. 10 August 1999 pp. 3-5 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21).

<sup>14972</sup> T. 12 August 1999 pp. 24-28 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21); Indictment is attached to the Judgement.

<sup>14973</sup> T. 12 August 1999 pp. 29, 41-44 (Pre-Joinder Transcript: *see* Case No. ICTR-97-21); Indictment is attached to the Judgement.

<sup>14974</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-I, Decision to Reject Ntahobali's Request for Withdrawal of His Lead Counsel, Mr. René Saint-Leger, 2 April 2001.

<sup>14975</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, The President's Decision on Review, in Accordance with Article 19 (E) of the Directive on Assignment of Defence Counsel, 4 June 2001.

<sup>14976</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-DP, Order for Transfer and Provisional Detention, 16 July 1997.

<sup>14977</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-1, Warrant for Arrest and Order for Continued Detention, 16 October 1997.

<sup>14978</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-DP, Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days, 14 August 1997.

<sup>14979</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-DP, Extension of the Provisional Detention for a Maximum Period of Thirty Days, 16 September 1997.

6307. On 16 October 1997, the Prosecution proffered an Indictment against Sylvain Nsabimana and Alphonse Nteziryayo. Judge Lennart Aspegren confirmed the Indictment, issued a warrant for Nteziryayo's arrest, addressed to the government of Burkina Faso, and ordered Nsabimana's continued detention.<sup>14980</sup>

6308. At Nsabimana's initial appearance on 24 October 1997, the Chamber granted the Prosecution's motion to amend the Indictment.<sup>14981</sup> Nsabimana pled not guilty to all five counts against him.<sup>14982</sup>

6309. Nteziryayo was arrested in Burkina Faso on 24 April 1998.<sup>14983</sup>

6310. On 8 July 1998, the Chamber denied Nsabimana's request to sever his case from Nteziryayo but noted that Nsabimana could renew his request if Nteziryayo was not arrested within a reasonable amount of time.<sup>14984</sup>

6311. On 24 September 1998, the Chamber directed the Prosecution to amend the Indictment against Nsabimana.<sup>14985</sup>

6312. At Nteziryayo's initial appearance on 17 August 1998 before Trial Chamber I, Nteziryayo pled not guilty to all six counts against him.<sup>14986</sup>

6313. On 24 September 1998, the Chamber granted in part a motion by Nsabimana and ordered the Prosecutor to amend the Indictment.<sup>14987</sup>

6314. On 12 November 1998, the Prosecutor submitted an Amended Indictment pursuant to the amendments agreed to during the confirmation process.<sup>14988</sup>

6315. On 21 May 1999, the Chamber ordered the Prosecutor to comply with its Decision of 24 September 1998 and Order of 16 October 1997. The Chamber also dismissed Nsabimana's motion for withdrawal of the Indictment and his immediate release from detention.<sup>14989</sup>

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<sup>14980</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-I, Warrant for Arrest and Order for Continued Detention, 16 October 1997; *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29B-1, Warrant of Arrest and Order for Surrender, 16 October 1997.

<sup>14981</sup> T. 24 October 1997 pp. 21-23 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29).

<sup>14982</sup> T. 24 October 1997 pp. 24-28 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29).

<sup>14983</sup> Nteziryayo Opening Statement, T. 4 December 2006 p. 7.

<sup>14984</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-I, Decision on the Defence Motion for Orders to Sever Proceedings, Set a Date for a Status Conference and for the Return of Personal Effects, 8 July 1998.

<sup>14985</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Defence Motion for Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses, 24 September 1998.

<sup>14986</sup> T. 17 August 1998 pp 16-21 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29B).

<sup>14987</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-T, Decision on the Defence Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses, 24 September 1998.

<sup>14988</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Indictment as modified during the confirmation procedure, 12 November 1998.

<sup>14989</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Decision on the Prosecutor's Urgent Motion for Stay of Execution of Decision of 24 September 1998, & Decision on Nsabimana's Motion for Withdrawal of the Indictment and Immediate Release, 21 May 1999. *See also* T. 21 April 1999 p. 60 where the Trial Chamber orally dismissed the Defence Motion.

6316. On 24 June 1999, the Prosecutor submitted an Amended Indictment pursuant to the direction set out in the Chamber's Decision of 24 September 1998.<sup>14990</sup>

6317. On 12 August 1999, the Chamber rendered an oral decision granting the Prosecutor's request to add four counts to the Indictment and to expand the existing counts.<sup>14991</sup> The same day, the Prosecutor submitted an Amended Indictment.<sup>14992</sup>

6318. On 13 August 1999, both Nsabimana and Nteziryayo pled not guilty to all nine counts against them.<sup>14993</sup> The Chamber issued a written Decision on 27 August 1999, denying a motion by Nteziryayo seeking withdrawal of the Indictment, finding that while the Prosecutor had failed to comply with the Chamber's Decision of 16 October 1997 ordering amendments to the Indictment, and admonishing the Prosecution for such failure, this failure did not warrant withdrawal of the Indictment or Nteziryayo's release. The Chamber dismissed Nteziryayo's motion in all other respects.<sup>14994</sup>

#### ***1.1.1.5 Nyiramasuhuko et al. – Joinder of Indictments***

6319. On 6 March 1998, pursuant to Rule 47, the Prosecution submitted a joint Indictment alleging new charges against the six Accused and 23 others.<sup>14995</sup> On 31 March 1998, in an ex parte proceeding, Judge Khan dismissed the joint Indictment.<sup>14996</sup> The Appeals Chamber rejected the Prosecution's appeal of the decision on 8 June 1998.<sup>14997</sup>

6320. On 14 July 1998 and 14 August 1998, the Prosecutor filed motions to amend the Indictments against Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje. On 5 October 1999, the Chamber ordered that the cases of Nyiramasuhuko and Ntahobali, Nsabimana and Nteziryayo, Kanyabashi and Ndayambaje be tried together.<sup>14998</sup>

6321. On 16 February 2000, Judge Kama ordered the Prosecution to permit the Defence for Nsabimana to examine all books, documents, photographs and other materials in its possession

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<sup>14990</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Indictment incorporating the changes following the confirmation procedure and the decision of Trial Chamber II dated 24 September 1998.

<sup>14991</sup> T. 12 August 1999 pp. 7-12 (Pre-Joinder Transcript: *see* Case No. ICTR-97-29). A written decision was issued on 10 September 1999: *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Decision on Prosecutor's Request for Leave to File an Amended Indictment, 12 August 1999.

<sup>14992</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Amended Indictment as per the decision of Trial Chamber II of August 12 1999, 12 August 1999.

<sup>14993</sup> T. 13 August 1999 pp. 23-29 (Pre-Joinder Transcript (French): *see* Case No. ICTR-97-29); Indictment is attached to the Judgement.

<sup>14994</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-I, Decision on Nteziryayo's Preliminary Motions Brought by the Defence Following the Initial Appearance of the Accused, 27 August 1999.

<sup>14995</sup> Case No. ICTR-98-37-I.

<sup>14996</sup> *Prosecutor v. Bagosora and 28 Others*, Case No. ICTR-98-37-I, Dismissal of Indictment, 31 March 1998.

<sup>14997</sup> *Prosecutor v. Bagosora and 28 Others*, Case No. ICTR-98-37-I, Decision on the Admissibility of the Prosecution's Appeal from the Decision of a Confirming Judge Dismissing an Indictment Against Théoneste Bagosora and 28 Others, 8 June 1998.

<sup>14998</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-I, Decision on the Prosecutor's Motion for Joinder of Trials, 5 October 1999.

that were material to the case or to the preparation of his defence, or that were obtained from or belonged to the Accused.<sup>14999</sup>

6322. On 25 February 2000, the Bureau of the Tribunal<sup>15000</sup> denied a motion by Kanyabashi to remove Judge Sekule from the case.<sup>15001</sup>

6323. On 2 March 2000, the Chamber dismissed a motion by Nteziryayo which alleged defects in his second initial appearance.<sup>15002</sup>

6324. On 13 April 2000, the Appeals Chamber rejected Kanyabashi's appeal of this Decision and refused to review its decision on 12 September 2000.<sup>15003</sup> On 16 June 2000, the Appeals Chamber rejected Nyiramasuhuko's request for review of its Decision, noting that only a final judgement or a decision that terminates proceedings may be reviewed.<sup>15004</sup>

6325. On 9 May 2000, the Chamber declared inadmissible a motion by Nsabimana seeking the withdrawal of certain counts in his Indictment.<sup>15005</sup> The Chamber also denied Nteziryayo's request for the Prosecution to clarify or remove certain paragraphs in the Indictment against him.<sup>15006</sup>

6326. On 23 May 2000, the Chamber denied Kanyabashi's motion for a writ of *habeas corpus* and a stay of the proceedings against him.<sup>15007</sup>

6327. On 31 May 2000, the Chamber ordered further amendments to the Kanyabashi Indictment.<sup>15008</sup> The Prosecution submitted amended Indictments on 29 June 2000 and 2 November 2000.<sup>15009</sup> On 8 June 2001, the Chamber granted the Prosecutor's request to harmonise the French and English versions of the Indictment.<sup>15010</sup>

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<sup>14999</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on the Defence Motion for Disclosure of all Materials the Prosecution Intends to Use at Trial, 16 February 2000.

<sup>15000</sup> The Bureau of the Tribunal is a body composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers. See Rules 2, 23 (A) of the Rules of Procedure and Evidence.

<sup>15001</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision of the Board pursuant to Rule 15 (B) of the Rules, 25 February 2000.

<sup>15002</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Decision on the Preliminary Motion Brought by the Defence Following the Second Initial Appearance of the Accused, 2 March 2000.

<sup>15003</sup> *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-I, Decision on the Appeal Against Trial Chamber II's Decision of 5 October 1999, 13 April 2000; *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-AR72, Decision on Motion for Review or Reconsideration, 12 September 2000.

<sup>15004</sup> *Nyiramasuhuko v. Prosecutor*, Case No. ICTR-97-21-AR72, Decision on Request for Review, 16 June 2000.

<sup>15005</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-I, Decision on the Defence Motion to Withdraw Certain Counts of the Indictment Against the Accused Nsabimana, Ordered on 12 August 1999, 9 May 2000.

<sup>15006</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-I, Decision on the Defence Motion Asking the Prosecution to Clarify and/or Remove Certain Paragraphs of the Indictment, 9 May 2000.

<sup>15007</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defence Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings, 23 May 2000.

<sup>15008</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment, 31 May 2000.

<sup>15009</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Amended Indictment: as Per the Decision of Trial Chamber II of August 12 1999 and 31 May 2000, 2 November 2000.

<sup>15010</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Prosecutor's Urgent Motion for Harmonization of the English and French Version of the Amended Indictment, 8 June 2001.



6328. On 8 September 2000,<sup>15011</sup> 25 April 2001,<sup>15012</sup> and 8 June 2001,<sup>15013</sup> the Chamber rejected Nsabimana, Ndayambaje and Ntahobali's respective motions for separate trials.

6329. On 8 September 2000, the Chamber ordered the disclosure to the Prosecution and Defence of a confidential Security Council memorandum regarding the 6 April 1994 plane crash which killed Rwandan President Habyarimana and Burundian President Ntaryamira.<sup>15014</sup>

6330. On 12 October 2000, the Chamber dismissed a motion by Nyiramasuhuko to exclude certain evidence and to return seized property. However, the Chamber ordered that property not required for the Prosecution be returned to Nyiramasuhuko and that the remaining seized property be sealed.<sup>15015</sup>

6331. On 23 October 2000, the Registry issued an order withdrawing Calvin Saunders as Nteziryayo's Co-Counsel.<sup>15016</sup>

6332. On 1 November 2000, the Chamber granted in part an amended preliminary motion by Ntahobali and ordered the Prosecution to modify its Amended Indictment.<sup>15017</sup> It also granted in part an amended preliminary motion by Nyiramasuhuko and ordered the Prosecution to modify the Amended Indictment.<sup>15018</sup> On 14 February 2001, the Chamber denied Nyiramasuhuko's motion for review of its 1 November 2000 Decision.<sup>15019</sup>

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<sup>15011</sup> *Prosecutor v. Nsabimana et al.*, Case No. ICTR-97-29A-T, Decision on the Defence Motion Seeking a Separate Trial of the Accused Sylvain Nsabimana, 8 September 2000.

<sup>15012</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on the Defence Motion for Separate Trial, 25 April 2001.

<sup>15013</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on the Defence Motion for Separate Trials, 8 June 2001.

<sup>15014</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on the Defence Motion for Disclosure of Evidence, 8 September 2000. Judge Güney filed a separate and dissenting opinion to this decision, noting that the memorandum was not the result of an official inquiry, and that the Defence therefore could not establish its exculpatory value. Furthermore, none of the charges against Nyiramasuhuko referred to her individual responsibility for the attack against President Habyarimana. Consequently, Judge Güney would not have provided a copy of the memorandum to the parties: *see Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Separate and Dissenting Opinion by Judge Güney on the Defence Request for Communication of Proof, 8 September 2000.

<sup>15015</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Defence Motion for Exclusion of Evidence and Restitution of Property Seized, 12 October 2000.

<sup>15016</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Decision by the Registry of Withdrawal of Mr. Calvin C. Saunders's as Co-Counsel of Mr. Alphonse Nteziryayo, 23 October 2000.

<sup>15017</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment, 1 November 2000.

<sup>15018</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in Form and the Substance of the Indictment, 1 November 2000.

<sup>15019</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Pauline Nyiramasuhuko's Motion Seeking Review and on Prosecutor's Motion for Clarification and Harmonization of Court Orders, 14 February 2001.

6333. On 21 February 2001 the Chamber dismissed Kanyabashi's motion for provisional release.<sup>15020</sup> On 13 June 2001, the Appeals Chamber dismissed Kanyabashi's motion for leave to appeal the 21 February 2001 Decision.<sup>15021</sup>

6334. On 1 March 2001, the Registrar affirmed a request by Ndayambaje for withdrawal of his Co-Counsel, Robert Giacomet.<sup>15022</sup>

6335. On 20 March 2001, 27 March 2001 and 3 April 2001, the Chamber granted protective measures for potential Defence and Prosecution witnesses.<sup>15023</sup>

6336. On 2 February 2001, a pre-trial conference was held before Judge Laity Kama, Judge William Sekule and Judge Mehmet Güney. The Chamber set the trial date for 14 May 2001.<sup>15024</sup> On 19 April 2001, a pre-trial conference was held before Judge William Sekule and Judge Mehmet Güney, in the absence of Judge Kama who was ill. The Chamber ordered the Prosecutor to file a list of the exhibits by 30 April 2001.<sup>15025</sup> On 6 May 2001, Judge Kama passed away.<sup>15026</sup>

6337. On 30 May 2001, the Chamber granted in part a motion by the Prosecution and declared that the English version of the oral Decision of 12 August 1999 was authoritative. The Chamber held that the Amended Indictment of 12 August 1999 was the valid charging document against the Accused, and directed the Registry to issue a Corrigendum to the French transcript of 12 August 1999.<sup>15027</sup>

6338. On 8 June 2001, the Chamber dismissed a motion by Ntahobali which sought a declaration that statements made by Ntahobali at the time of his arrest should not be admitted as evidence. The Chamber stated that he could only object to the admissibility of the statements if and when the Prosecution sought to use them as evidence.<sup>15028</sup>

6339. On 8 June 2001, the Chamber ordered the Prosecutor to disclose all unredacted witness statements of individuals the Prosecution intended to call at trial and to permit Nyiramasuhuko

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<sup>15020</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Kanyabashi's Motion for the Provisional Release of the Accused, 21 February 2001.

<sup>15021</sup> *Kanyabashi v. Prosecutor*, Case No. ICTR-96-15-A, Decision (on Application for Leave to Appeal Filed under Rule 65(D) of the Rules of Procedure and Evidence), 13 June 2001.

<sup>15022</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Decision on the Withdrawal of Robert Giacomet, Co-Counsel for Ndayambaje, 1 March 2001.

<sup>15023</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Pauline Nyiramasuhuko's Motion for Protective Measures for Defence Witnesses and their Family Members, 20 March 2001; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses, 27 March 2001 (one witness was not granted protective measures); *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion for Protective Measures for Defence Witnesses, 3 April 2001.

<sup>15024</sup> T. 2 February 2001 p. 118 (Pre-Trial Status Conference).

<sup>15025</sup> T. 19 April 2001 p. 117 (Pre-Trial Status Conference).

<sup>15026</sup> International Criminal Tribunal for Rwanda, Press Release No. ICTR/INFO-9-2-265.EN, 7 May 2001.

<sup>15027</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Prosecutor's Motion for a Declaratory Ruling, 30 May 2001.

<sup>15028</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on the Defence Motion to Suppress Custodial Statements by the Accused, 8 June 2001.

to examine certain evidence.<sup>15029</sup> It also ordered that several other documents be communicated to the Defence.<sup>15030</sup>

6340. On 11 June 2001, the Chamber granted a Prosecution motion to vary the order in which it intended to call its witnesses,<sup>15031</sup> dismissed Ntahobali's motion for the disclosure of the particulars of identification,<sup>15032</sup> and granted a Prosecution motion to amend Kanyabashi's Indictment.<sup>15033</sup>

## 1.2 Trial Proceedings

### 1.2.1 The Prosecution Phase

6341. The joint trial of Ndayambaje, Kanyabashi, Nyiramasuhuko, Ntahobali, Nsabimana and Nteziryayo began on 12 June 2001 before Trial Chamber II (the "Chamber"), which was composed of Judge William Sekule, presiding, Judge Winston Maqutu and Judge Arlette Ramarson.<sup>15034</sup>

6342. On 15 June 2001, the Chamber convened to hear Ntahobali's urgent motion for the withdrawal of his Lead Counsel, René St-Léger, and his Co-Counsel, James Michael Bailey, which was granted in a written decision issued one week later.<sup>15035</sup>

6343. On 26 June 2001, the Chamber granted Nyiramasuhuko's motion to exclude as evidence excerpts of videotape in lieu of the original footage.<sup>15036</sup> On 25 June 2001, the Chamber denied a Prosecution motion that the hearing with respect to charges of contempt of court be held *in camera*.<sup>15037</sup>

6344. On 27 June 2001, at the end of a scheduled trial session, the Chamber adjourned to 22 October 2001 for the continuation of trial.<sup>15038</sup>

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<sup>15029</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Full Disclosure of the Identity and Unredacted Statements of the Protected Witnesses, 8 June 2001.

<sup>15030</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Defence Extremely Urgent Motion Asking the Prosecutor to Respect the "Decision on the Defence Motion for Communication of Proof" Rendered 1 November 2000, 8 June 2001.

<sup>15031</sup> T. 11 June 2001 pp. 3, 4 (The Chamber noted that one detained witness referred to in the initial motion, filed 14 May 2001, was also the subject of a supplementary motion filed 16 June 2001. The Chamber deferred a decision with respect to this witness until a later time).

<sup>15032</sup> T. 11 June 2001 pp. 5, 6.

<sup>15033</sup> T. 11 June 2001 pp. 19-21; Indictment is attached to the Judgement.

<sup>15034</sup> Minutes, T. 12 June 2001.

<sup>15035</sup> Minutes, T. 15 June 2001. On 22 June 2001, the Trial Chamber directed the Registry to immediately withdraw the assignment of Counsel Saint-Léger and Co-Counsel James Michael Bailey to Ntahobali, to provide him with a list of potential counsel, and to proceed with assignment of new counsel without delay: *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Withdrawal of Counsel, 22 June 2001. On 24 June 2001 the Registrar ordered the withdrawal of the two Counsel: *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Registry Decision on the Withdrawal of Counsel Rene Saint-Leger, Principal Counsel and of Counsel James Michael Bailey, Co-Counsel for the Accused Ntahobali, 24 June 2001.

<sup>15036</sup> T. 26 June 2001 pp. 155-156.

<sup>15037</sup> T. 25 June 2001 pp. 106-107.

<sup>15038</sup> Minutes, T. 27 June 2001.

6345. During the trial phase of *Nyiramasuhuko et al.*, Trial Chamber II composed of Judges Sekule, Maqutu and Ramaroson, also presided over *Prosecutor v. Kajelijeli* and *Prosecutor v. Kamuhanda*.<sup>15039</sup> From 4 July 2001 until 25 July 2001, Trial Chamber II presided over the proceedings in *Kajelijeli*.<sup>15040</sup>

6346. On 10 July 2001, the Chamber granted in part the Prosecutor's request for harmonisation of the protective measures afforded to its witnesses. However, it dismissed the Prosecutor's request for investigations on allegations of contempt and conflict of interest with regard to members of the Defence team, and issued a warning pursuant to Rule 46 (A) for the Prosecution Counsel's improper and reckless conduct.<sup>15041</sup>

6347. On 13 July 2001, the Chamber dismissed a motion by Kanyabashi for leave to file a supplementary document in support of its response to the Prosecutor's motion for an investigation of contempt of the Tribunal.<sup>15042</sup> On 19 July 2001, in response to the Prosecution's *ex parte* motion regarding further allegations of contempt, the Chamber: ordered that the motion be translated and served on the Defence; that the Prosecutor make all necessary applications should certain witnesses require protection; and authorised the Prosecution to use pseudonyms where necessary, and to issue redacted statements in relation to such witnesses.<sup>15043</sup> On 30 November 2001, the Chamber dismissed the Prosecutor's further allegations of contempt.<sup>15044</sup>

6348. On 24 July 2001, the Chamber granted in part a Prosecution motion for leave to add Witnesses FAW and RV to the Prosecution Witness list, and for the transfer of 27 detained witnesses.<sup>15045</sup>

6349. From 3 September 2001 until 25 September 2001, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15046</sup> Then from 1 October 2001 until 5 October 2001, the Chamber presided over the proceedings in *Kajelijeli*.<sup>15047</sup>

6350. On 18 September 2001, the Chamber ordered, in part, the disclosure to Nsabimana and Nteziryayo of documents requested in a Defence motion.<sup>15048</sup> It also granted, in part, a motion

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<sup>15039</sup> *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44, Judgement (TC), 1 December 2003; *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54, Judgement (TC), 22 January 2004.

<sup>15040</sup> *Kajelijeli*, Judgement (TC), para. 25.

<sup>15041</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Allegations of Contempt, the Harmonisation of the Witness Protection Measures and Warning to the Prosecutor's Counsel, 10 July 2001.

<sup>15042</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Extremely Urgent Defence Motion for Leave to File a Supplementary Document in Support of its Response to the Prosecutor's Motion for an Investigation of Contempt of the Tribunal, 13 July 2001.

<sup>15043</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Order in the Matter of the Prosecutor's *Ex Parte* Further Allegations of Contempt, 19 July 2001.

<sup>15044</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Further Allegations of Contempt, 30 November 2001.

<sup>15045</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses, 24 July 2001.

<sup>15046</sup> *Kamuhanda*, Judgement (TC), para. 25.

<sup>15047</sup> *Kajelijeli*, Judgement (TC), para. 26.

<sup>15048</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-T, Decision on the Defence Motions for Disclosure of Copies of the Prosecutor's Exhibit, 18 September 2001.

by Nteziryayo for protective measures for witnesses, and dismissed a motion by Nyiramasuhuko for the disclosure of statements or other documents relating to the judicial proceedings of certain Prosecution witnesses detained in Rwanda.<sup>15049</sup>

6351. On 22 October 2001, the hearing of the trial resumed. The Chamber denied Counsel for Ntahobali's motion to adjourn proceedings in order to be given more time to prepare his defence.<sup>15050</sup>

6352. On 23 October 2001, the Chamber dismissed a request by Nyiramasuhuko to be allowed to cross-examine on matters not arising from the examination-in-chief.<sup>15051</sup>

6353. On 25 October 2001, the Chamber held that Ndayambaje's refusal to attend his trial constituted a waiver of his right to be present, and that the trial would continue.<sup>15052</sup>

6354. On 12 November 2001, the Chamber granted a Prosecution motion to add Witness QBX to the witness list and ordered the transfer of that detained witness.<sup>15053</sup>

6355. On 13 November 2001, the Chamber granted motions by Nyiramasuhuko, Ndayambaje and Kanyabashi, and ordered the Prosecution to fully disclose to all Accused the identity and unredacted statements of witnesses expected to testify at trial.<sup>15054</sup> Two days later the Chamber granted Ndayambaje's and Nsabimana's motion for full disclosure of statements made by detained witnesses.<sup>15055</sup>

6356. On 21 November 2001, the Chamber granted a Prosecution motion for the extension of the time that Witnesses FAM, QBV and QBC could remain at UNDF prior to their testimony in these proceedings, and noted that the prior statement by Witness QAR if available should be disclosed to the Defence.<sup>15056</sup>

6357. From 26 November 2001 until 13 December 2001, Trial Chamber II again presided over the proceedings in *Kajelijeli*.<sup>15057</sup>

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<sup>15049</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Defence Motion for Disclosure of the Declarations of the Prosecutor's Witnesses Detained in Rwanda and All Other Documents or Information Pertaining to the Judicial Proceedings in their Respect, 18 September 2001; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Review of the Decision Regarding Communication of Documents and Information Relating to Prosecution Witnesses Detained in Rwanda, 14 December 2001. The Chamber refused to review this decision.

<sup>15050</sup> T. 22 October 2001 p. 31.

<sup>15051</sup> Minutes, T. 23 October 2001.

<sup>15052</sup> T. 25 October 2001 pp. 14-19.

<sup>15053</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion to Add and Transfer Detained Witness QBX, 12 November 2001.

<sup>15054</sup> *Prosecutor v. Nyiramasuhuko, Ndayambaje and Kanyabashi*, Case Nos. ICTR-97-21-T, ICTR-96-8-T and ICTR-96-15-T, Decision on Defence Motions by Nyiramasuhuko, Ndayambaje and Kanyabashi on, *Inter Alia*, Full Disclosure of Unredacted Prosecution Witness Statements, 13 November 2001.

<sup>15055</sup> *Prosecutor v. Ndayambaje and Nsabimana*, Case Nos. ICTR-96-8-T and ICTR-97-29A-T, Decision on the Defence Motions Seeking Documents relating to Detained Witnesses or Leave of the Chamber to Contact Protected Detained Witnesses, 15 November 2001.

<sup>15056</sup> Minutes, T. 21 November 2001.

<sup>15057</sup> *Kajelijeli*, Judgement (TC), para. 26.

6358. On 22 November 2001, at the end of a scheduled trial session, the Chamber adjourned to 4 March 2002 for the continuation of the trial.<sup>15058</sup>

6359. On 27 November 2001, the Chamber granted a motion by Nyiramasuhuko to inspect certain exhibits under seal on the Prosecutor's exhibit list.<sup>15059</sup>

6360. On 14 December 2001, the Chamber declared inadmissible an urgent motion by Ntahobali seeking the re-instatement of a suspended investigator, Thaddée Kwitonda.<sup>15060</sup> On 13 November 2002, Judge Pillay, confirmed the Registrar's prior decisions pertaining to the assignment of an investigator for Ntahobali and dismissed the Accused's motion for review of that decision.<sup>15061</sup> On 9 April 2003, Judge Pillay ordered the Registrar to annul its Decision of 3 October 2002 and ordered the reappointment of Damasse Birekeraho and Daniel Tuyizere as Defence investigators for Nyiramasuhuko and Ntahobali.<sup>15062</sup>

6361. From 28 January 2002 until 19 February 2002, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15063</sup>

6362. On 15 February 2002, the Registrar granted Richard Perras' request to withdraw as Co-Counsel for Nteziryayo.<sup>15064</sup>

6363. On 8 March 2002, the Registrar confirmed the withdrawal of Isabelle Lavoie as Co-Counsel for Ndayambaje.<sup>15065</sup>

6364. On 19 March 2002, the Chamber directed the Prosecutor to obtain the confessional statement of Witness QBV and to disclose it to the Defence.<sup>15066</sup>

6365. At the end of session on 4 April 2002, the Chamber adjourned the proceedings until 20 May 2002.<sup>15067</sup>

6366. On 16 April 2002, the Chamber ordered that all other documents seized during the arrest of Accused Joseph Nzabirinda (Case No. ICTR-01-77-I) in December 2001, be given to the Prosecution.<sup>15068</sup>

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<sup>15058</sup> Minutes, T. 22 November 2001.

<sup>15059</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion to Inspect Certain Exhibits Under Seal on the Prosecutor's Exhibit List, 27 November 2001.

<sup>15060</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Extremely Urgent Motion for the Re-Instatement of Suspended Investigator, Mr. Thaddée Kwitonda, 14 December 2001.

<sup>15061</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, The President's Decision on the Application by Arsène Shalom Ntahobali for Review of the Registrar's Decisions Pertaining to Assignment of an Investigator, 13 November 2002.

<sup>15062</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, The President's Decision on an Application by Pauline Nyiramasuhuko for Review of the Registrar's Decision Declining the Reappointment of Her Two Investigators, 9 April 2003.

<sup>15063</sup> *Kamuhanda*, Judgement (TC), para. 25.

<sup>15064</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Registrar's Decision of Withdrawal of Mr. Richard Perras as Co-Counsel of the Accused Alphonse Nteziryayo, 15 February 2002.

<sup>15065</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-I, Decision of Withdrawal of Ms. Isabelle Lavoie as Co-Counsel of the Accused Ndayambaje, 8 March 2002.

<sup>15066</sup> Minutes, T. 19 March 2002.

<sup>15067</sup> Minutes, T. 4 April 2002.

6367. From 6 May 2002 until 14 May 2002, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15069</sup>

6368. On 15 May 2002, the Chamber granted in part a Prosecution motion for judicial notice and admission of evidence.<sup>15070</sup>

6369. On 20 May 2002, the Chamber denied motions by Nsabimana and Nyiramasuhuko, objecting to the disclosure of a new will-say document on the day of a witness testimony.<sup>15071</sup>

6370. On 28 May 2002, the Chamber granted a motion by Ntahobali objecting to evidence disclosed by the Prosecution through the will-say statements of Witness SJ on 21, 22 and 23 May 2002. The Chamber limited the testimony of Witness SJ to those matters previously disclosed.<sup>15072</sup>

6371. On 31 May 2002, the Chamber ruled that the Prosecution was not required to disclose the content of certain witness statements which would prejudice ongoing investigations.<sup>15073</sup>

6372. On 6 June 2002, the Chamber dismissed a motion by Nteziryayo to rule hearsay evidence inadmissible, in relation to portions of the testimony of Witness TA.<sup>15074</sup>

6373. On 26 June 2002, the Chamber denied a motion by Ntahobali which sought a finding that Witness QCB gave false testimony and warned the Defence about bringing frivolous motions.<sup>15075</sup>

6374. On 27 June 2002, the Chamber adjourned the trial session to 14 October 2002 for the continuation of the proceedings.<sup>15076</sup>

6375. On 1 July 2002 the Chamber denied a motion by Ntahobali to rule inadmissible the evidence of Prosecution Witness TN.<sup>15077</sup>

6376. On 6 July 2002, the Chamber denied a motion by Kanyabashi to exclude Witness FAI's testimony against him.<sup>15078</sup>

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<sup>15068</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Nsabimana's Motion to Return to Nsabimana's Defence Documents Seized from Nzabirinda at the Time of Nzabirinda's Arrest, 16 April 2002.

<sup>15069</sup> *Kamuhanda*, Judgement (TC), para. 25.

<sup>15070</sup> Oral arguments in this matter were heard on 16 November 2001: T. 16 November 2001; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence, 15 May 2002.

<sup>15071</sup> T. 20 May 2002 pp. 15-17.

<sup>15072</sup> T. 28 May 2002 pp. 102-106.

<sup>15073</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor *Ex-Parte* Motion pursuant to Rule 66(C) to be Relieved of Obligation to Disclose Certain Documents, 31 May 2002.

<sup>15074</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Decision on Nteziryayo's Motion to Rule Hearsay Evidence Inadmissible, 6 June 2002.

<sup>15075</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "QCB" Pursuant to Rule 91(B) of the Rules, 26 June 2002.

<sup>15076</sup> Minutes, T. 27 June 2002.

<sup>15077</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion to Rule Inadmissible the Evidence of Prosecution Witness "TN", 1 July 2002.

6377. From 19 August 2002 until 12 September 2002, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15079</sup>

6378. On 23 August 2002, the Chamber denied a motion by Nsabimana for a review of the evidence in the Registry's possession, and denied a request that items that could help identify witnesses be placed in Defence custody.<sup>15080</sup>

6379. From 16 September 2002 until 9 October 2002, Trial Chamber II presided over the proceedings in *Kajelijeli*.<sup>15081</sup>

6380. On 17 October 2002, the Chamber granted an uncontested motion by the Prosecution to lift the seal on Nyiramasuhuko's diary for the purposes of translation.<sup>15082</sup>

6381. On 21 October 2002, the Chamber dismissed a motion by Ndayambaje seeking his provisional release.<sup>15083</sup>

6382. On 24 October 2002, the Chamber denied two oral Prosecution motions: one related to the use of a specific statement unrelated to the subject of the cross-examination and not recognised by Witness SU;<sup>15084</sup> and the other concerned the submission of prior statements to show that Witness SU was consistent.<sup>15085</sup>

6383. On 13 November 2002, the Chamber overruled a Prosecution objection to the admission of a statement made by Witness QAQ to the Belgian authorities, and adjourned the Proceedings to 24 February 2003.<sup>15086</sup>

6384. From 18 November 2002 until 12 December 2002, Trial Chamber II presided over the proceedings in *Kajelijeli*.<sup>15087</sup>

6385. On 20 November 2002, the Chamber dismissed a motion by Nyiramasuhuko for access to her investigators and their assistants in the absence of her Counsel.<sup>15088</sup>

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<sup>15078</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Kanyabashi's Motion to Exclude Witness "FAI"'s Testimony Against Him Pursuant to Rules 54 and 73 of the Rules, 6 July 2002.

<sup>15079</sup> *Kamuhanda*, Judgement (TC), para. 27.

<sup>15080</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Nsabimana's Extremely Urgent Motion for Implementation of the Decision of 16 April 2002, in the Presence of the Former Investigator with the Defence Joseph Nzabirinda, 23 August 2002.

<sup>15081</sup> *Kajelijeli*, Judgement (TC), para. 29.

<sup>15082</sup> T. 17 October 2002 p. 58 (Witness SU).

<sup>15083</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision on the Defence Motion for the Provisional Release of the Accused, 21 October 2002. The Appeals Chamber affirmed this decision: *Ndayambaje v. Prosecutor*, Case No. ICTR-96-8-A, Decision on Defence Motion to Appeal against the Provisional Release Decision of Trial Chamber II of 21 October 2002, 10 January 2003.

<sup>15084</sup> T. 24 October 2002 pp. 35-36 (ICS) (Witness SU).

<sup>15085</sup> T. 24 October 2002 pp. 64-65 (Witness SU).

<sup>15086</sup> T. 13 November 2002 pp. 12-13, 23 (Witness QAQ).

<sup>15087</sup> *Kajelijeli*, Judgement (TC), para. 29.

<sup>15088</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on the Defence Motion for Access for Investigators and Assistants to the Accused in the Absence of Counsel, 20 November 2002.



6386. From 13 January 2003 until 30 April 2003, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15089</sup> In addition, from 31 March 2003 until 24 April 2003, Trial Chamber II presided over the proceedings in *Kajelijeli*.<sup>15090</sup>

6387. On 22 January 2003 the Chamber granted a Prosecution motion to remove five deceased witnesses from their witness list, but denied a motion to admit into evidence the witness statements of four of those witnesses.<sup>15091</sup>

6388. On 26 March 2003, at the end of a scheduled trial session, the Chamber adjourned the proceedings to 9 June 2003.<sup>15092</sup>

6389. From 5 May 2003 until 15 May 2003, Trial Chamber II presided over the proceedings in *Kamuhanda*.<sup>15093</sup>

### 1.2.2 Replacement of Judge Maqutu

6390. On 26 June 2003, the Chamber, composed of Judge William H. Sekule, presiding, and Judge Arlette Ramaroson only, ordered the Parties to present written submissions on the issue of continuing the *Butare* Trial with a substitute judge pursuant to Rule 15 *bis* (D), given Judge Maqutu's departure.<sup>15094</sup> On 15 July 2003, the Chamber decided to continue the Trial with a substitute judge on the basis of the existing trial record and decisions in the case.<sup>15095</sup>

6391. All six Accused filed appeals on this issue.<sup>15096</sup> On 24 September 2003, the Appeals Chamber dismissed the Defence appeals.<sup>15097</sup>

6392. On 20 October 2003 Judge Solomy Balungi Bossa joined Trial Chamber II. On 5 December 2003 she certified her familiarisation with the proceedings prior to her appointment to the Chamber.<sup>15098</sup>

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<sup>15089</sup> *Kamuhanda*, Judgement (TC), para. 27.

<sup>15090</sup> *Kajelijeli*, Judgement (TC), para. 29.

<sup>15091</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion to Remove from Her Witness List Five Deceased Witnesses and to Admit into Evidence the Witness Statements of Four of Said Witnesses, 22 January 2003.

<sup>15092</sup> T. 26 March 2003 pp. 42-43 (Witness QY).

<sup>15093</sup> *Kamuhanda*, Judgement (TC), para. 27.

<sup>15094</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order in the Matter of Proceedings Under Rule 15 *bis* (D), 26 June 2003.

<sup>15095</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision in the Matter of Proceedings Under Rule 15 *bis* (D), 15 July 2003.

<sup>15096</sup> On 22 August 2003, Judge Mohamed Shahabuddeen declared admissible the motion by Nyiramasuhuko and Ntahobali seeking an extension of time to file a reply to the "Prosecutor's response to the appeals by Nyiramasuhuko, Ntahobali, Nteziryayo, Kanyabashi, and Ndayambaje of the Decision by the Trial Chamber in the Matter of Proceedings under Rule 15 *bis* (D)". Justice Shahabuddeen noted that the delay had not caused any prejudice to the Prosecution's case: *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-A, Decision on Request for Extension of Time, 22 August 2003.

<sup>15097</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42T, Decision in the Matter of Proceedings under Rule 15 *bis* (D), 24 September 2003.

<sup>15098</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42T, Certification in the Matter of Proceedings Under Rule 15 *bis* (D), 5 December 2003.

### 1.2.3 Resumption of Proceedings

6393. The proceedings resumed on 26 January 2004.<sup>15099</sup>

6394. On 28 and 30 January 2004, the Chamber adjourned the proceedings for the day because Ndayambaje, Nyiramasuhuko, Ntahobali, Nteziryayo and their respective Defence teams were not present.<sup>15100</sup> On 29 January 2004, the Chamber ruled that if the Accused chose not to be present, they would be deemed to have waived their right under Article 20 (4)(d) of the Statute.<sup>15101</sup> On 30 January 2004, the Chamber adjourned the proceedings to allow Counsel to go to UNDF to meet with their clients.<sup>15102</sup>

6395. On 16 February 2004, the Chamber dismissed a motion by Nyiramasuhuko to declare inadmissible parts of the evidence of Witnesses RV and QBZ.<sup>15103</sup> It also ordered the Prosecution to ensure that the documents were made available to the Parties involved in a timely manner.<sup>15104</sup> The next day, the Chamber urged the Prosecution to follow up on alleged confession statements made by detained witnesses before Rwandan authorities and to bring the statements before the Chamber.<sup>15105</sup>

6396. On 20 February 2004, the Chamber dismissed a motion by Kanyabashi for a continuation of the trial before Judge Sekule, Judge Maqutu and Judge Ramaroson and for a termination of proceedings.<sup>15106</sup>

6397. Also on 20 February 2004, the Chamber dismissed a motion by Nyiramasuhuko for a stay of proceedings and abuse of process based on continuation with a substitute judge.<sup>15107</sup>

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<sup>15099</sup> Minutes, T. 26 January 2004.

<sup>15100</sup> T. 28 January 2004 p. 3; T. 30 January 2004 p. 6.

<sup>15101</sup> T. 29 January 2004 pp. 3, 4.

<sup>15102</sup> Minutes, T. 30 January 2004; T. 30 January 2004 p. 6.

<sup>15103</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible, 16 February 2004. Trial Chamber II certified an appeal under Rule 73 (B) of the Rules of Procedure and Evidence. *See also Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. 97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on the Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 18 March 2004; *Ntahobali and Nyiramasuhuko v. Prosecutor*, Case No. ICTR-98-42-AR73, Order of the Presiding Judge to Assign Judges, 1 April 2004; *Ntahobali and Nyiramasuhuko v. Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 2 July 2004 (A panel of the Appeal Chamber, composed of Judge Shahabuddeen, Judge Mumba, Judge Pocar, Judge Schomburg, and Judge Weinberg de Roca, dismissed the appeal on 2 July 2004).

<sup>15104</sup> T. 16 February 2004 p. 23.

<sup>15105</sup> Minutes, T. 17 February 2004.

<sup>15106</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Defence Motion for Trial to Proceed Before Trial Chamber II, Composed of Judges Sekule, Maqutu, and Ramaroson and for Termination of Proceedings, 20 February 2004. Trial Chamber II dismissed Kanyabashi's motion for certification to appeal this decision, as it was filed out of time: *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Defence Motion Requiring Authorisation to Appeal, 19 March 2004.

<sup>15107</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR97-21-T, Decision on Defence Motion for a Stay of Proceedings and Abuse of Process, 20 February 2004. The Trial Chamber refused to certify an appeal of this decision and refused to reconsider this decision: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Defence Motion for Certification to Appeal the "Decision on Defence Motion for a Stay of Proceedings and Abuse of Process", 19 March 2004; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T,

On the same day, the Chamber dismissed a motion by Ntahobali for a stay of proceedings and for an order on the non-applicability of Rule 15 *bis* (D), noting that the gravity of the charges against the Accused and the complexity of the case did not render the length of proceedings unreasonable.<sup>15108</sup>

6398. On 23 February 2004, the Chamber refused Ntahobali's oral motion for postponement of Witness QBZ's testimony.<sup>15109</sup>

6399. On 3 March 2004, the Chamber ordered the Prosecution to follow-up with respect to statements mentioned by Witness FAC, and to disclose the statements to the Defence once they had been obtained.<sup>15110</sup> It also dismissed motions by Kanyabashi to exclude evidence by Witness FAC and ruled that the facts contained therein were sufficiently pled.<sup>15111</sup>

6400. On 30 March 2004, the Chamber granted the Prosecution motion to add Witnesses FA, FCC and Evariste Ntakirutimana to its witness list and to delete 30 witnesses. The Chamber ordered the Prosecution to immediately disclose the unredacted statements of the new witnesses, and to call them at the end of its case.<sup>15112</sup>

6401. On 16 April 2004, the Chamber denied Nyiramasuhuko's motion to declare the evidence of Witness FAS inadmissible.<sup>15113</sup>

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Decision on Nyiramasuhuko's Motion for Reconsideration of the "Decision on Defence Motion for Certification to Appeal the 'Decision on Defence Motion for a Stay of Proceedings and Abuse of Process'", 20 May 2004.

<sup>15108</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Stay of Proceedings and Order for the Non-Applicability of Newly Amended Rule 15 *bis*, 20 February 2004.

<sup>15109</sup> T. 23 February 2004 pp. 8, 10. The Chamber held that there was no prejudice to the Defence in taking Witness QBZ's evidence at that time, and noted that in the event Ntahobali would be successful before the Appeals Chamber, it would be possible for the evidence of Witness QBZ to be expunged from the record.

<sup>15110</sup> T. 3 March 2004 p. 41 (ICS) (Witness FAG).

<sup>15111</sup> T. 3 March 2004 pp. 63-64, 67 (ICS) (Witness FAG).

<sup>15112</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion to Drop and Add Witnesses, 30 March 2004.

<sup>15113</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion to Declare the Evidence of Witness FAS Inadmissible Against Her, 16 April 2004. Subsequently, on 20 April 2004, the Trial Chamber issued a Corrigendum recognising that the Prosecution had in fact filed its response to Nyiramasuhuko's motion on 22 March 2004, but that the response did not have any effect on the outcome of the Decision already rendered: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Corrigendum to the Decision on Nyiramasuhuko's Motion to Declare the Evidence of Witness FAS Inadmissible Against Her, 20 April 2004. On 27 April 2004, the Trial Chamber denied Nyiramasuhuko's motion to delay the testimony of Witness FAS pending a decision on the certification to appeal the 16 April 2004 Decision: T. 27 April 2004 pp. 7-8. However, on 6 May 2004, Trial Chamber II granted Nyiramasuhuko's motion for certification to appeal the Decision, noting that the instant motion met the same merits as the Accused's former motion for certification and that the request fell within the purview of Rule 73 (B) of the Rules of Procedure and Evidence. *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on the Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 18 March 2004; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Certification to Appeal the "Decision on Nyiramasuhuko's Motion to Declare the Evidence of Witness FAS Inadmissible Against Her", 6 May 2004. On 23 July 2004, Judge Meron of the Appeals Chamber issued an order delineating the composition of the Appeals Chamber for an extension of time in which to file an interlocutory appeal in relation to the Decision on Witness FAS: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73, Order of the Presiding Judge Assigning Judges, 23 July 2004.

6402. On 27 April 2004, the Chamber dismissed two motions by Nyiramasuhuko, one objecting to the Prosecution's use of a diary, seized from Nyiramasuhuko during her arrest on 18 July 1997, which had been placed under seal,<sup>15114</sup> and the other seeking to forbid parties in other trials from using the diary.<sup>15115</sup>

6403. On 30 April 2004, the Chamber held a Status Conference.<sup>15116</sup> The Chamber granted the Defence additional time to prepare its case by scheduling trial to resume on 7 June 2004, instead of 24 or 31 May 2004 as proposed by the Prosecution.<sup>15117</sup>

6404. On 6 May 2004, the Chamber denied a motion by Nyiramasuhuko to recall Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD and QY, or alternately for a disjunction of trial or a stay of proceedings against the Accused.<sup>15118</sup> The Chamber granted a motion by Ndayambaje to recall Witness TO<sup>15119</sup> and denied motions to recall Witnesses QAQ and QAR.<sup>15120</sup>

6405. On 7 June 2004, the Chamber ruled that witness Dr. Alison Des Forges was qualified to testify as an expert on the history of Rwanda up to and including the events of 1994, and as an expert in the analysis and research of the human rights situation in Rwanda up to and including the events of 1994.<sup>15121</sup>

6406. On 8 June 2004, the Chamber ruled that *The Truth About the Massacres in Butare*, written by Nsabimana, was admissible and could be admitted through Expert Witness Alison

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<sup>15114</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Oral Motion Regarding Prosecution's Use of Material Under Seal, 27 April 2004. On 20 May 2004 Trial Chamber II dismissed the motion for certification to appeal either decision: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Certification to Appeal the "Decision on Nyiramasuhuko's Oral Motion Regarding Prosecution's Use of Material Under Seal", 20 May 2004.

<sup>15115</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Urgent Motion to Forbid the Parties in the "Government I" Trial and Any Other Trial from Using the Alleged Diary of Pauline Nyiramasuhuko, 27 April 2004. On 20 May 2004, Trial Chamber II dismissed the motion for certification to appeal either decision. *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Urgent Motion to Forbid the Parties in the "Government I" Trial and Any Other Trial from Using the Alleged Diary of Pauline Nyiramasuhuko, 20 May 2004.

<sup>15116</sup> Minutes, T. 29 April 2004; Minutes, T. 30 April 2004.

<sup>15117</sup> T. 30 April 2004 p. 19 (Status Conference).

<sup>15118</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Defence Motion for Recall of Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD, and QY, or, in Default, a Disjunction of Trial or a Stay of Proceedings Against Nyiramasuhuko, 6 May 2004. On 25 May 2004 the Trial Chamber dismissed a motion by Nyiramasuhuko seeking certification to appeal the 6 May 2004 Decision: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Certification to Appeal the "Decision on Defence Motion For Recalling Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD and QY or, in default, a Disjunction of Trial or a Stay of Proceedings Against Nyiramasuhuko", 25 May 2004.

<sup>15119</sup> The Chamber decided that the recall be limited to cross-examination on the issue of Witness consumption of alcoholic drinks during the party at the Accused Nteziryayo's relatives home: *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on Defence Motion Requesting the Recall of Witness "TO" Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15 bis (D), 6 May 2004.

<sup>15120</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on Defence Motion Requesting the Recall of Witness "QAQ" Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15 bis (D), 6 May 2004; *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on Defence Motion Requesting the Recall of Witness "QAR" Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15 bis (D), 6 May 2004.

<sup>15121</sup> T. 7 June 2004 pp. 57, 58, 59 (Des Forges). T. 7 June 2004 p. 18 (Des Forges) (The Chamber also overruled Nyiramasuhuko's objection to admission of Des Forges' curriculum vitae before she was qualified as an expert).

Des Forges.<sup>15122</sup> The Chamber also held that an interview with Nsabimana from 1 October 1994 was admissible.<sup>15123</sup>

6407. On 9 June 2004, the Chamber ordered that Nyiramasuhuko would be the first to cross-examine Prosecution witnesses; the other Accused would follow in the order that they are listed in the style of cause.<sup>15124</sup>

6408. On 18 June 2004, the Chamber granted a motion by Ndayambaje and Nteziryayo to recall Witness FAG following the disclosure of a new statement.<sup>15125</sup>

6409. On 23 June 2004, the Chamber ruled that Professor André Guichaoua was qualified to testify as an expert witness in the field of political science.<sup>15126</sup>

6410. On 24 June 2004, the Chamber overruled Kanyabashi's objection to the admission of Volume I: Guichaoua's Expert Report and to the admission of Volume II: Guichaoua's analysis of the alleged diary of Nyiramasuhuko.<sup>15127</sup> On 25 June 2004, the Chamber granted a Prosecution motion to unseal and admit Nyiramasuhuko's diary into evidence<sup>15128</sup> and sustained objections by Ndayambaje and Nyiramasuhuko to the admission of documents on the basis that relevance had not been adequately established.<sup>15129</sup>

6411. On 28 June 2004, the Chamber overruled Nyiramasuhuko's objection to the admission of a document comprised of a compilation of expert reports;<sup>15130</sup> and Kanyabashi's objection to the admission of a document from an "unknown source" during the testimony of Expert Witness Guichaoua.<sup>15131</sup>

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<sup>15122</sup> T. 8 June 2004 pp. 47-49 (Des Forges).

<sup>15123</sup> Minutes, T. 8 June 2004.

<sup>15124</sup> T. 9 June 2004 p. 89 (Des Forges) (*i.e.* Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi, and Ndayambaje).

<sup>15125</sup> *Prosecutor v. Ndayambaje and Nteziryayo*, Case Nos. ICTR-96-8-T and ICTR-97-27-T, Decision on Elie Ndayambaje's and Alphonse Nteziryayo's Request for the Recall of Witness FAG Following the Disclosure of a New Confessional Statement, 18 June 2004.

<sup>15126</sup> T. 23 June 2004 p. 23 (Guichaoua).

<sup>15127</sup> T. 24 June 2004 pp. 12-17 (Guichaoua). On 15 July 2004, Trial Chamber II granted the Nyiramasuhuko's motion seeking certification to appeal this decision; *Prosecutor v. Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko's Motion for Certification to appeal the Oral Decision of 24 June 2004 on the Defence Motion on Inadmissibility of Evidence, 15 July 2004. However, the appeal was dismissed by the Appeals Chamber on 4 October 2004: *Nyiramasuhuko v. Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 4 October 2004.

<sup>15128</sup> T. 25 June 2004 p. 4 (Guichaoua). An appeal of this oral decision was certified by the Trial Chamber on 15 July 2004: *Prosecutor v. Nyiramasuhuko et al.*, Case no. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko's Motion for Certification to Appeal the Oral Decision of 24 June 2004 on the Defence Motion for Admissibility, 15 July 2004. The appeal was denied: *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 4 October 2004.

<sup>15129</sup> T. 25 June 2004 pp. 14, 28-29 (Guichaoua).

<sup>15130</sup> T. 28 June 2004 pp. 17-19 (Guichaoua).

<sup>15131</sup> T. 28 June 2004 pp. 55-56 (Guichaoua).

6412. On 29 June 2004, the Chamber denied Ntahobali's motion to recall witnesses TA, SJ, QCB, TK, TN, FAP, SS, QY, RE, Ghandi Shukry, QBP, QJ and SU,<sup>15132</sup> and ruled that it is not bound by expert opinion, but may assess it along with other evidence.<sup>15133</sup>

6413. On 12 July 2004, the Chamber denied Ndayambaje's motion to suppress references to him in Des Forges' Expert Report.<sup>15134</sup> The next day, the Chamber granted in part Nyiramasuhuko's motion to further cross-examine Expert Witness Des Forges and to conduct further cross-examination on certain specific issues.<sup>15135</sup>

6414. On 14 July 2004, the Chamber adjourned the proceedings to 6 September 2004.<sup>15136</sup>

6415. On 15 July 2004, the Chamber dismissed Ntahobali's motion objecting to the testimony of Prosecution Witness TQ and held that this witness could testify against any of the Butare Accused.<sup>15137</sup>

6416. On 6 September 2004, the Chamber granted two oral motions by Ntahobali on the issue of notice regarding witness statements and will-say statements of Witness TQ.<sup>15138</sup>

6417. On 13 September 2004, the Chamber qualified Dr. Ntakirutimana as an expert in social linguistics, discourse analysis, lexicology, semantics and language planning.<sup>15139</sup>

6418. On 23 September 2004, the Chamber granted the Prosecution's *ex parte* motion for leave to disclose closed session transcripts of Professor Guichaoua's testimony from the *Rutaganda* case in the *Butare* case.<sup>15140</sup>

6419. On 24 September 2004, Trial Chamber I granted Ntahobali's request for disclosure of confidential material from the *Bagosora* trial.<sup>15141</sup>

6420. On 1 October 2004, the Chamber refused to admit various written documents. The Chamber also declined to request the verification of a diary that the Prosecution alleged belonged to Nyiramasuhuko.<sup>15142</sup>

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<sup>15132</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Recall of Witnesses, 29 June 2004.

<sup>15133</sup> T. 29 June 2004 p. 16 (Guichaoua).

<sup>15134</sup> T. 12 July 2004 pp. 47-48 (Des Forges).

<sup>15135</sup> T. 13 July 2004 pp. 2-5 (Des Forges).

<sup>15136</sup> Minutes, T. 14 July 2004.

<sup>15137</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Extremely Urgent Motion for Inadmissibility of Witness TQ's Testimony, 15 July 2004.

<sup>15138</sup> T. 6 September 2004 pp. 41, 67-68 (ICS) (Witness TQ).

<sup>15139</sup> T. 13 September 2004 pp. 29, 30 (Ntakirutimana).

<sup>15140</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's *Ex Parte* and Extremely Urgent Motion for Leave to Access Closed Session Transcripts in Case No. ICTR-96-3-A for Disclosure in Case No. ICTR-98-42-T, 23 September 2004.

<sup>15141</sup> *Prosecutor v. Bagosora et al.*, Case No. ICTR98-41-T, Decision on Disclosure of Confidential Material Requested by Defence for Ntahobali, 24 September 2004.

<sup>15142</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision of Prosecutor's Motion for Verification of the Authenticity of Evidence Obtained Out of Court, Namely the Alleged Diary of Pauline Nyiramasuhuko, 1 October 2004.

6421. On 4 October 2004, the Chamber ordered the Prosecutor to disclose Expert Witness Guichaoua's testimony in the *Rutaganda* case to the Defence as requested.<sup>15143</sup>

6422. On 14 October 2004, the Chamber granted a Prosecution motion for leave to add Antipas Nyanjwa, a handwriting expert, to their witness list<sup>15144</sup> and denied a Prosecution motion to admit affidavits relating to the chain of custody of a diary.<sup>15145</sup> The Chamber also ruled that Ndayambaje's questions to Expert Witness Guichaoua on prison conditions in Rwanda were not relevant and would not be permitted.<sup>15146</sup>

6423. On 18 October 2004, the Chamber refused to admit certain documents relating to Witness TQ tendered by the Defence, including a Rwandan judgement.<sup>15147</sup> That day the Prosecutor acknowledged that her case was complete, with the exception of the evidence of Antipas Nyanjwa, the handwriting expert.<sup>15148</sup> Accordingly, the Chamber ordered that, apart from this matter, the Prosecution case was closed.<sup>15149</sup> The Chamber had planned to start the Defence cases on 17 January 2005.<sup>15150</sup> Upon the request of Defence counsel, the Chamber scheduled the Defence cases to start on 31 January 2005 in order to give the Defence an additional two weeks to prepare its case.<sup>15151</sup>

6424. The Chamber ordered that the Pre-Defence Briefs and other documents be filed by 31 December 2004 and that Nyiramasuhuko would be the first Accused to present her case.<sup>15152</sup> The Chamber also ordered that the identity of Defence witnesses be disclosed to the Chamber, the Prosecution and the other Accused 21 days before the witness testified.<sup>15153</sup>

6425. On 21 October 2004, the Chamber denied motions by Ndayambaje and Nyiramasuhuko for an extension of time to file a motion for judgement of acquittal.<sup>15154</sup>

6426. On 25 October 2004, the Chamber dismissed a motion to exclude the testimony of Witnesses FAG, FAL, FAU, QAF, QBZ and RV.<sup>15155</sup>

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<sup>15143</sup> Minutes, T. 4 October 2004.

<sup>15144</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion for Leave to Add a Handwriting Expert to his Witness List, 14 October 2004.

<sup>15145</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion for Leave to be Authorised to have Admitted the Affidavits Regarding the Chain of Custody of the Diary of Pauline Nyiramasuhuko Under Rule 92 *Bis*, 14 October 2002.

<sup>15146</sup> T. 14 October 2004 pp. 63-64 (Guichaoua).

<sup>15147</sup> T. 18 October 2004 p. 5.

<sup>15148</sup> T. 18 October 2004 pp. 14, 19.

<sup>15149</sup> T. 18 October 2004 p. 14

<sup>15150</sup> T. 18 October 2004 p. 6 (Status Conference).

<sup>15151</sup> T. 18 October 2004 p. 17 (Status Conference).

<sup>15152</sup> T. 18 October 2004 p. 20.

<sup>15153</sup> T. 18 October 2004 pp. 20, 22.

<sup>15154</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision on Defence Extremely Urgent Motion for Extension of Time for Filing a Motion Under Rule 98 *Bis*, 21 October 2004; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-T, Decision on Defence Motion for Extension of Time for Filing of a Motion of Acquittal Under Rule 98 *Bis*, 21 October 2004. Nteziryayo's oral request to extend the time within which to file a motion for judgement of acquittal under Rule 98 *bis* was refused on 18 October 2004: T. 18 October 2004 p. 22.

<sup>15155</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on Ndayambaje's Confidential Motion to have Detainee Testimony Declared Inadmissible, 25 October 2004. On 1 December 2004, the Chamber denied

6427. On 4 November 2004, the Chamber qualified Antipas Nyanjwa as an expert in the analysis of handwriting and heard his testimony.<sup>15156</sup> The next day, after Nyanjwa had finished testifying, the Chamber confirmed that the Prosecution case was complete.<sup>15157</sup> In total, the Prosecutor called 59 witnesses over 212 days.<sup>15158</sup>

6428. On 5 November 2004, the Chamber adjourned proceedings to 31 January 2005.<sup>15159</sup>

6429. On 23 November 2004, the Chamber partially granted Kanyabashi's motion to meet Prosecution Witnesses SW and FAT and all those whose identities had not been disclosed to the Defence.<sup>15160</sup>

6430. On 30 November 2004, the Chamber denied the Prosecution motion for disclosure of evidence for the Defence and harmonisation of protective measures for victims and witnesses.<sup>15161</sup> On 4 February 2005, the Chamber further denied the Prosecution motion for certification to appeal the 30 November 2004 Decision.<sup>15162</sup>

6431. On 1 December 2004, the Chamber denied a Prosecution motion for extension of time to file a consolidated response to the Defence Rule 98 *bis* application and for official translation of Defence replies.<sup>15163</sup>

6432. On 16 December 2004, the Chamber dismissed Nyiramasuhuko's, Ntahobali's and Ndayambaje's motions for judgement of acquittal in their entirety and partially acquitted Kanyabashi and Nsabimana on one charge.<sup>15164</sup> The Chamber also dismissed the Prosecutor's motion for an order of disclosure of closed session transcripts and sealed Prosecution exhibits.<sup>15165</sup>

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Ndayambaje's motion requesting certification to appeal the 25 October 2004 Decision: *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision on Elie Ndayambaje's Motion Requesting Certification to Appeal the "Decision on Ndayambaje's Confidential Motion to have Detainee Testimony Declared Inadmissible" issued on 25 October 2004, 1 December 2004.

<sup>15156</sup> T. 4 November 2004 p. 47.

<sup>15157</sup> T. 5 November 2004 p. 29.

<sup>15158</sup> Minutes, T. 5 November 2004.

<sup>15159</sup> Minutes, T. 5 November 2004.

<sup>15160</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Joseph Kanyabashi's Request to Meet SW and FAT and All Other Persons Whose Identities were not Disclosed to the Defence, 23 November 2004.

<sup>15161</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion for Disclosure of Evidence for the Defence and Harmonisation of Protective Measures for Victims and Witnesses, 30 November 2004.

<sup>15162</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion for Certification to Appeal the Decision of the Trial Chamber Dated 30 November 2004 on the Prosecution Motion for Disclosure of Evidence of the Defence, 4 February 2005.

<sup>15163</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Extremely Urgent Motion for Extension of Time to File a Consolidated Response and for Official Translation of Defence Replies, 1 December 2004.

<sup>15164</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Defence Motions for Acquittal under Rule 98 *bis*, 16 December 2004.

<sup>15165</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion for an Order of Disclosure of Closed Session Transcripts and Sealed Prosecution Exhibits Pursuant to Rules 69 and 75, 16 December 2004.



## 1.2.4 The Defence Phase

### 1.2.4.1 Nyiramasuhuko Defence Case (31 January 2005 – 24 November 2005)

6433. On 31 January 2005, Nyiramasuhuko opened her case, presented an opening statement,<sup>15166</sup> and called Witness WFGS as her first witness.<sup>15167</sup> That same day the Chamber denied an oral request by Ntahobali to stay proceedings and established a procedure through which Ntahobali could defer questioning until the motion with respect to a separate trial had been determined.<sup>15168</sup> The Chamber ordered that Ntahobali must deliver any opening statement before Nyiramasuhuko called any joint witnesses<sup>15169</sup> and invited all Accused to reduce the number of witnesses expected to testify.<sup>15170</sup> The Chamber also granted Kanyabashi's motion to return un-redacted documents that had been mistakenly given to the Prosecution.<sup>15171</sup>

6434. On 2 February 2005, the Chamber denied Ntahobali's motion for a separate trial.<sup>15172</sup>

6435. On 3 February 2005, the Chamber granted an oral Prosecution request for a handwriting sample from Witness WMCZ.<sup>15173</sup>

6436. On 4 February 2005, the Chamber granted in part a request by Nteziryayo to meet with Witness FAT.<sup>15174</sup>

6437. On 16 February 2005, the Chamber issued a formal warning to Ms Bergevin, Counsel for Nyiramasuhuko, for being disrespectful to the Chamber.<sup>15175</sup>

6438. On 18 February 2005, the Chamber ordered Nyiramasuhuko to immediately comply with the Chamber's Order of 18 October 2004, to disclose the identities of all Defence witnesses 21 days before the testimonies of the witnesses, and to disclose to all parties a summary of the facts about which each witness would testify.<sup>15176</sup>

6439. On 1 March 2005, the Chamber ordered the Defence to make any necessary disclosures regarding the defence of alibi.<sup>15177</sup> It also denied an *ex parte* motion by Nyiramasuhuko for

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<sup>15166</sup> T. 31 January 2005 pp. 15-25.

<sup>15167</sup> T. 31 January 2005 p. 25.

<sup>15168</sup> T. 31 January 2005 pp. 14, 15.

<sup>15169</sup> T. 31 January 2005 p. 12.

<sup>15170</sup> T. 31 January 2005 p. 11.

<sup>15171</sup> T. 31 January 2005 pp. 73-75.

<sup>15172</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Separate Trial, 2 February 2005. On 22 February 2005, the Chamber denied Ntahobali's motion for reconsideration of this decision: *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Reconsideration of the 'Decision of Ntahobali's Motion for Separate Trial', 22 February 2005.

<sup>15173</sup> T. 3 February 2005 pp. 20-21.

<sup>15174</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Decision on Alphonse Nteziryayo's Request to Meet Witness FAT in the Absence of the Prosecution, 4 February 2005.

<sup>15175</sup> T. 16 February 2005 p. 53.

<sup>15176</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion for Exclusion of Witnesses whose Identities have been Disclosed Out of Time Pursuant to Rules 54, 73, 73 *ter* and the Chamber's Order of 18 October 2004, 18 February 2005.

<sup>15177</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Confidential Prosecutor's Motion to be Served with Particulars of Alibi Pursuant to Rule 67 (A)(ii)(a), 1 March 2005. The Chamber

additional protective measures for Witnesses WBNC, WBND, WFMG, WHNC, BN and NEM, but granted Witnesses BN and NEM a limited immunity from prosecution or detention for acts or convictions falling within the jurisdiction of the Tribunal.<sup>15178</sup>

6440. On 1 March 2005, the Chamber denied Ntahobali's oral motion to stay the evidence of Witness WKNKI.<sup>15179</sup>

6441. On 14 March 2005, the Chamber granted in part a Prosecution motion for reciprocal inspection of Nyiramasuhuko and Ndayambaje's materials and directed the Ntahobali Defence to comply with Rule 67 (C).<sup>15180</sup> The Chamber also granted a Prosecution motion to delay the testimony of Witness WZNA to allow the Prosecution and the other parties the opportunity to prepare any cross-examination of that witness<sup>15181</sup> and stated that the late disclosure of will-say statements by Ms. Bergevin, counsel for Nyiramasuhuko, amounted to a flouting of the Rules.<sup>15182</sup>

6442. On 15 March 2005, the Chamber recognised Dr. Eugène Shimamungu as an expert witness in: linguistic science; grammar in the Kinyarwanda language; political information; political information communication; lexicography; terminology; translation in Kinyarwanda and French; and analysis of oral and written political discourse.<sup>15183</sup>

6443. On 22 March 2005, the Chamber ruled that the translation of original tapes could be used, but that other Parties could contest the accuracy of the translation.<sup>15184</sup>

6444. On 1 April 2005, the Chamber denied Ntahobali's request for further cross-examination of Dr. Shimamungu.<sup>15185</sup>

6445. On 6 April 2005, the Chamber granted Kanyabashi's objection to evidence implicating him which was not disclosed in the will-say statements of Witness WMKL.<sup>15186</sup>

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declined to enter an order that the Defence call only those witnesses that would not testify to alibi evidence until such a time as the Prosecutor had been served with an alibi notice and particulars.

<sup>15178</sup> *Prosecutor v Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Some Defence Witnesses, 1 March 2005. On 14 April 2005, Trial Chamber II denied motions by the Prosecution and Nyiramasuhuko for reconsideration or certification to appeal this decision: *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Prosecutor's Urgent Motion for Reconsideration or Certification to Appeal Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for some Defence Witnesses Dated 1 March 2005, 14 April 2005; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Certification to Appeal the Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Some Defence Witnesses and Reconsideration of that Decision as regards Witness BK, 14 April 2005.

<sup>15179</sup> T. 1 March 2005 p. 4.

<sup>15180</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion Requesting Reciprocal Inspection of the Materials of the Accused Persons Pursuant to Rule 67(C) of the Rules of Procedure and Evidence, 14 March 2005.

<sup>15181</sup> T. 14 March 2005 p. 8.

<sup>15182</sup> Minutes, T. 14 March 2005.

<sup>15183</sup> T. 15 March 2005 pp. 52, 53.

<sup>15184</sup> T. 22 March 2005 p. 35.

<sup>15185</sup> T. 1 April 2005 pp. 20, 21.

6446. On 13 April 2005, the Chamber held that Mr. Edmond Babin was not qualified to testify as an expert in crime scene analysis, but that he could testify as a factual witness.<sup>15187</sup>

6447. On 21 April 2005, the Chamber ruled that written summaries of DVD recordings would not be admitted.<sup>15188</sup>

6448. On 25 April 2005, the Chamber ruled that questions could be posed about the circumstances of a confidential conversation between Ntahobali, his Counsel and agents, but not the content of that conversation.<sup>15189</sup>

6449. On 26 April 2005, the Chamber adjourned the proceedings to 30 May 2005 for the continuation of the Defence case.<sup>15190</sup>

6450. On 30 May 2005, the Chamber ruled that Counsel remain assigned to the Defence team of Ntahobali.<sup>15191</sup>

6451. On 1 June 2005, the Chamber granted Nyiramasuhuko's request to remove Serge Desouter and Remigius Kintu as experts from their list of witnesses, and replace them with a new expert, Baributsa Maniragaba.<sup>15192</sup>

6452. On 6 June 2005, Judge Møse of Trial Chamber I, acting in his capacity as President, dismissed Ntahobali's appeal filed against the Registrar's refusal to permit a confidential interview with Georges Rutaganda.<sup>15193</sup>

6453. On 9 June 2005, the Registrar issued a decision ordering the withdrawal of Mr. Duncan Mwanyumba as Lead Counsel for Ntahobali.<sup>15194</sup> The Chamber ruled that notwithstanding a lack or insufficiency of notice with respect to a potential defence of alibi, Witness Denise Ntahobali's testimony was permitted though the Chamber reserved the right to consider lack of notice when deliberating.<sup>15195</sup>

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<sup>15186</sup> T. 6 April 2005 pp. 64-65, 66.

<sup>15187</sup> Minutes, T. 13 April 2005.

<sup>15188</sup> T. 21 April 2005 p. 74.

<sup>15189</sup> T. 25 April 2005 p. 56.

<sup>15190</sup> Minutes, T. 26 April 2005.

<sup>15191</sup> T. 30 May 2005 pp. 19-20.

<sup>15192</sup> T. 1 June 2005 p. 20.

<sup>15193</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, The President's Decision on the Appeal Filed Against the Registrar's Refusal to Permit a Confidential Interview with Georges Rutaganda, 6 June 2005.

<sup>15194</sup> *Prosecutor v. Ntahobali*, Case No. ICTR97-21-T, Décision de Retrait de la Commission d'Office de Maître Duncan Mwanyumba à titre de Conseil Principal de M. Arsène Shalom Ntahobali, 9 June 2005. The English translation is dated six days later: *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision to Withdraw the Assignment of Mr. Duncan Mwanyumba as Lead Counsel for Mr. Arsène Shalom Ntahobali, 15 June 2005.

<sup>15195</sup> T. 9 June 2005 pp. 41-42, 43.

6454. On 15 June 2005, the Chamber denied a motion by Nyiramasuhuko for additional protective measures for Witnesses BK and WBNM, but granted an order for safe conduct, so that the witness could testify in Arusha.<sup>15196</sup>

6455. On 16 June 2005, the Chamber held a Status Conference<sup>15197</sup> and adjourned to 15 August 2005 for the continuation of the Defence case.<sup>15198</sup>

6456. On 4 July 2005, the Chamber granted in part a motion by Nyiramasuhuko which sought reconsideration of the Chamber's decision with respect to additional protective measures for Witness WBNM and allowed Witness WBNM's testimony to be heard via video-link from Belgium.<sup>15199</sup>

6457. On 19 August 2005, the Chamber directed Ntahobali to abide by all disclosure obligations so that his defence could proceed in a smooth and uninterrupted manner on or after 29 August 2005.<sup>15200</sup>

6458. On 23 August 2005, the Chamber granted a confidential Prosecution motion, ordered Ntahobali to file 10 redacted will-say statements and reiterated its 27 March 2001 Order that pseudonyms be used for Prosecution Witnesses.<sup>15201</sup>

6459. On 26 August 2005, the Chamber granted in part a motion by Ntahobali to modify his witness list and directed the Defence to disclose all identifying information for the additional permitted witnesses once protective measures were put into place.<sup>15202</sup> The Chamber also

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<sup>15196</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness BK, 15 June 2005; *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM, 17 June 2005.

<sup>15197</sup> T. 16 June 2005 (Status Conference).

<sup>15198</sup> Minutes, T. 16 June 2005.

<sup>15199</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko's *Ex-Parte* - Extremely Urgent Motion for Reconsideration of Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM, 4 July 2005. Witness WBNM was a resident of Belgium at that time.

<sup>15200</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's Motion Pursuant to Rules 54, 73 and 73ter to Proceed with the Evidence of the Accused Nyiramasuhuko as a Witness on 15 August 2005 or in the Alternative to Proceed with the Defence Case of the Accused Ntahobali, 19 August 2005.

<sup>15201</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Extremely Confidential Motion – Under Seal – in response to the Motion of Arsene Shalom Ntahobali on the Disclosure of the Identity and Will Say Statements of Witnesses, 23 August 2005.

<sup>15202</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali (Rule 73ter (E), Rules of Procedure and Evidence), 26 August 2005. On 21 September 2005, Trial Chamber II denied a motion by Ntahobali for certification to appeal the 26 August 2005 Decision in relation to a select number of witnesses. The Chamber ruled that the motion was filed out of time and therefore was time barred. On 12 October 2005, the Chamber later denied a motion by Ntahobali for reconsideration of the 21 September 2005 Decision. The Chamber denied an additional request to reconsider the 26 August 2005 decision, with respect to certain witnesses, on 27 January 2006. *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR97-21-T, Decision on Arsène Shalom Ntahobali's Motion for Certification to Appeal the "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" (Article 73 (*sic*) of the Rules of Procedure and Evidence), 21

denied a motion by Ntahobali to enter into evidence the written report of investigator Ralph Lake, in lieu of oral testimony.<sup>15203</sup>

6460. On 29 August 2005, the Chamber granted a Prosecution motion to temporarily unseal documents seized from Nyiramasuhuko and to permit the Prosecution to study the seized property in the presence of all parties.<sup>15204</sup> The Chamber denied Nyiramasuhuko's motion to delay her testimony until after Witness WBMN testified, and reiterated its Order that she take the stand immediately if Witness WBMN was unavailable.<sup>15205</sup>

6461. On 30 August 2005, the Chamber granted Nyiramasuhuko's request for time to examine the unsealed documents.<sup>15206</sup> The Chamber also dismissed a motion by Ntahobali to admit additional statements by Witnesses QBQ and QY, holding that this motion had been rendered moot by its 26 August 2005 Decision.<sup>15207</sup>

6462. On 31 August 2005, Nyiramasuhuko began testifying in her own defence.<sup>15208</sup>

6463. On 5 September 2005, the Chamber granted a Prosecution motion to compel disclosure of documents used by the Defence and ruled that once an accused person elects to testify on his own behalf, the obligations that attach to the testimony of an ordinary witness will also apply.<sup>15209</sup>

6464. On 12 September 2005, the Chamber granted Witness WNBW's request to testify in his own name, Maurice Ntahobali, in full open session.<sup>15210</sup>

6465. On 16 September 2005, the Chamber granted a Prosecution request to admit an audio tape, in which the witness concerned had identified his own voice.<sup>15211</sup>

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September 2005; *Prosecutor v. Ntahobali and Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion for Reconsideration of the "Decision on Arsène Shalom Ntahobali's Motion for Certification to Appeal the Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali", 12 October 2005; *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion to Amend his Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali", 27 January 2006.

<sup>15203</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on the Defence Motion to Enter into Evidence the Report of the Investigator Ralph Lake (Article 92 *bis (sic)*, Rules of Procedure and Evidence), 26 August 2005.

<sup>15204</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion to Unseal Documents Seized from Pauline Nyiramasuhuko, 29 August 2005.

<sup>15205</sup> T. 29 August 2005 pp. 14, 15.

<sup>15206</sup> Minutes, T. 30 August 2005.

<sup>15207</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Notice of Intention to File on the Record Written Statements of Witnesses and the Transcripts of their Testimony before the ICTR in Lieu of Oral Testimony, 30 August 2005.

<sup>15208</sup> Minutes, T. 31 August 2005.

<sup>15209</sup> T. 5 September 2005 p. 56.

<sup>15210</sup> T. 12 September 2005 pp. 11, 12.

<sup>15211</sup> T. 16 September 2005 p. 50.

6466. On 19 September 2005, the Chamber granted a Prosecution motion to declare an audio tape inadmissible, as there was no foundation to establish that it contained Nyiramasuhuko's voice.<sup>15212</sup>

6467. On 22 September 2005, the Chamber dismissed a motion by Nyiramasuhuko to extend the deadline for filing an expert report but *proprio motu* ordered that it be filed within two weeks.<sup>15213</sup> It also dismissed a motion by Nyiramasuhuko for the Prosecution to disclose a document entitled "After Gatabazi's Death."<sup>15214</sup>

6468. On 23 September 2005, the Chamber denied a motion by Ntahobali to initiate an investigation into the alleged false testimony given by Prosecution Witness QY.<sup>15215</sup>

6469. On 6 October 2005, the Chamber denied Ntahobali's request to change the order in which the Defence teams would conduct cross-examination of Nyiramasuhuko.<sup>15216</sup> That day, Nyiramasuhuko filed the Expert Report of Balibutsa Maniaragaba, along with an urgent motion seeking an additional extension to the deadline, which had expired the previous day.<sup>15217</sup> On 13 October 2005, the Chamber denied this motion but admitted the report. The Chamber issued a formal warning to the Defence for Nyiramasuhuko for exceeding time frames again and instructed the Defence not to repeat this conduct.<sup>15218</sup>

6470. At the close of proceedings on 13 October 2005, the Chamber adjourned the trial session to 25 October 2005.<sup>15219</sup>

6471. On 2 November 2005, the Chamber overruled an objection by Nyiramasuhuko to the admission of a document tendered by Kanyabashi.<sup>15220</sup>

6472. On 7 November 2005, the Chamber sustained an objection by Nyiramasuhuko to the use of a document in Kinyarwanda disclosed two hours prior to the attempted use in court.<sup>15221</sup> The Chamber ruled that documents used during cross-examination must be disclosed with sufficient time for the Parties to translate and understand them.<sup>15222</sup>

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<sup>15212</sup> T. 19 September 2005 pp. 56, 57.

<sup>15213</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Pauline Nyiramasuhuko's Motion to Extend the Time Within which to File the Expert Report of Proposed Expert Witness Balibutsa Maniaragaba, 22 September 2005.

<sup>15214</sup> T. 22 September 2005 pp. 7-8, 9.

<sup>15215</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion to have Perjury Committed by Prosecution Witness QY Investigated (Article 91 of the Rules of Procedure and Evidence), 23 September 2005.

<sup>15216</sup> T. 6 October 2005 pp. 52, 53.

<sup>15217</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, *Requête urgente de l'accusé Pauline Nyiramasuhuko en extension de délai aux fins de production du rapport d'expert Monsieur Balibutsa Maniaragaba*, 6 October 2005.

<sup>15218</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Pauline Nyiramasuhuko's Urgent Motion to Extend the Time Within which to File the Expert Report of Balibutsa Maniaragaba, 13 October 2005.

<sup>15219</sup> Minutes, T. 13 October 2005 p. 39.

<sup>15220</sup> Minutes, T. 2 November 2005.

<sup>15221</sup> T. 7 November 2005 pp. 68-70.

<sup>15222</sup> T. 7 November 2005 pp. 69, 70.

6473. On 24 November 2005, Trial Day 320, the re-examination of Nyiramasuhuko was completed<sup>15223</sup> and the Chamber declared her case closed, with the exception of one final expert witness, Baributsa Maniragaba.<sup>15224</sup> Nyiramasuhuko called 25 witnesses, including herself.<sup>15225</sup>

#### **1.2.4.2 Ntahobali Defence Case (28 November 2005 – 26 June 2006)**

6474. On 28 November 2005, the Defence for Ntahobali opened its case.<sup>15226</sup> The Defence had already made an opening statement on 12 April 2005, prior to calling Witness Babin, a common witness between Ntahobali and Nyiramasuhuko.<sup>15227</sup>

6475. On 1 December 2005, the Chamber granted a request by Ntahobali to reserve the right to recall Witness H1B6.<sup>15228</sup> On 6 December 2005, the Chamber granted a motion by Nsabimana to re-cross examine Witness H1B6.<sup>15229</sup>

6476. On 12 December 2005, the Chamber denied a motion by Nyiramasuhuko to use a photo of a televised program.<sup>15230</sup>

6477. On 14 December 2005, the Chamber ordered that: Ntahobali's defence case resume on 23 January 2006; Ntahobali and Nsabimana comply with all disclosure obligations in a timely fashion; the Registry ensure that all subsequent filings by Ntahobali be translated as a matter of priority; Ntahobali file with the Registry his detailed list of witnesses for the next trial session by 23 December 2005; Ntahobali ensure that his defence be completed in a timely fashion; Ntahobali and Nyiramasuhuko liaise with respect to the scheduling of Witness Maniragaba and keep the Chamber informed; all five remaining defendants file concise, precise, and complete will-say statements for the witnesses they intend to call; the remaining five defendants review their witness lists with a view to reducing both the total number of witnesses and the number of witnesses called to prove the same facts; and that they file an updated precise list of witnesses by 23 January 2006.<sup>15231</sup>

6478. On 23 January 2006, Nyiramasuhuko, Ntahobali, Nteziryayo and Ndayambaje did not appear for the start of proceedings or after an adjournment to permit Defence Counsel to contact these Accused and advise them that if they failed to appear they would be taken to waive their right to be present at trial that day.<sup>15232</sup> As Nyiramasuhuko, Ntahobali and Ndayambaje had not mandated their counsel to proceed in their absence, the Chamber directed the Registry to assign counsel for these Accused, effective immediately.<sup>15233</sup>

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<sup>15223</sup> Minutes, T. 24 November 2005.

<sup>15224</sup> T. 24 November 2005 p. 32. The expert witness, Baributsa Maniragaba was expected to testify in 2006.

<sup>15225</sup> Minutes, T. 24 November 2005.

<sup>15226</sup> T. 28 November 2005 p. 3.

<sup>15227</sup> Ntahobali Opening Statement, T. 12 April 2005 pp. 2-7.

<sup>15228</sup> Minutes, T. 1 December 2005.

<sup>15229</sup> T. 6 December 2005 pp. 10, 11.

<sup>15230</sup> T. 12 December 2005 p. 17 (ICS).

<sup>15231</sup> *Prosecutor v. Ndayambaje et al.*, Scheduling Order, 14 December 2005.

<sup>15232</sup> T. 23 January 2006 p. 4.

<sup>15233</sup> T. 23 January 2006 pp. 4, 13, 14.

6479. On 27 January 2006, the Chamber granted in part a motion by Ntahobali to add Georges Rutaganda and Witness WDUSA to his witness list, and to expand the scope of Witness MJ110's testimony.<sup>15234</sup> The Chamber later ordered that Witness WDUSA testify via videoconference from The Hague.<sup>15235</sup>

6480. On 31 January 2006, the Chamber dismissed a motion by Ntahobali for disclosure of certain requested documents but ordered the Prosecution to allow the Defence to inspect them.<sup>15236</sup>

6481. On 14 February 2006, the proceedings were adjourned to 20 February 2006 for the continuation of the Defence case as no witnesses were available until that date.<sup>15237</sup>

6482. On 15 February 2006, the Registrar withdrew the assignment of Claude Desrochers as Co-Counsel for Ndayambaje.<sup>15238</sup>

6483. On 20 February 2006, the Chamber granted Nyiramasuhuko's request to withdraw Expert Witness Balibutsa Maniragaba.<sup>15239</sup>

6484. On 28 February 2006, the Chamber ruled that factual witnesses do not have the right to protect their sources in the same manner as expert witnesses.<sup>15240</sup>

6485. On 3 March 2006, the Chamber dismissed a motion by Ntahobali for greater access by Defence Counsel to Ntahobali at UNDF.<sup>15241</sup> It also granted in part a motion by Ntahobali to

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<sup>15234</sup> The scope of testimony by Georges Rutaganda and Witness WDUSA were limited by this Decision: *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion to Amend his Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali", 27 January 2006. On 6 February 2006 Trial Chamber II issued a corrigendum to this decision which acknowledged that Ntahobali filed responding materials in a timely manner. The Chamber deleted Paragraph 19 from the Decision of 27 January 2006 and reiterated that decision in all other respects: *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Corrigendum to the Decision on Arsène Shalom Ntahobali's Motion to Amend his Witness List and to Reconsider the Decision of 26 August 2005 entitled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" Dated 27 January 2006, 6 February 2006.

<sup>15235</sup> *Prosecutor v. Ntahobali and Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Extremely Urgent Motion for Video Link Testimony of Defence Witness WDUSA in Accordance with Rule 71 (A) and (D) of the Rules of Procedure and Evidence, 15 February 2006.

<sup>15236</sup> *Prosecutor v. Ntahobali and Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion for Disclosure of Documents, 31 January 2006. The Chamber later refused to issue a corrigendum with respect to this decision, and reiterated its decision of 31 January 2006: *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Request for a Corrigendum to the "Decision on Arsène Shalom Ntahobali's Motion for Disclosure of Documents" of 31 January 2006, 3 March 2006.

<sup>15237</sup> T. 14 February 2006 pp. 62-63.

<sup>15238</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision de retrait de la commission d'office de Maître Claude Desrochers à titre de co-conseil de M. Élie Ndayambaje, 15 February 2006.

<sup>15239</sup> T. 20 February 2006 p. 5.

<sup>15240</sup> T. 28 February 2006 p. 23 (ICS).

<sup>15241</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Extremely Urgent Motion for Greater Access to the Accused at UNDF, 3 March 2006.



recall Witness QY for further cross-examination, but denied the motion with regard to Witnesses TN and QBQ.<sup>15242</sup>

6486. On 7 March 2006, the Bureau composed of Judge Erik Møse, President, and Judge Khalida Rachid Khan, Presiding Judge of Trial Chamber III, denied a motion by Ntahobali seeking the disqualification of Judges Sekule, Ramaroson and Bossa.<sup>15243</sup>

6487. On 8 March 2006, the Chamber denied a motion by Ntahobali for the suspension of his testimony pending a decision on Nyiramasuhuko's motion for a separate trial.<sup>15244</sup> It also adjourned the proceedings until 3 April 2006.<sup>15245</sup>

6488. On 3 April 2006, the Chamber granted the Parties' request to reserve their rights to re-cross-examine Witness WUNBJ.<sup>15246</sup>

6489. On 7 April 2006, the Chamber denied Nyiramasuhuko's motion for severance, a new trial, and a stay of proceedings in all respects. The Chamber held that counsel for Nyiramasuhuko had attempted to re-litigate matters decided in 2003, and imposed sanctions pursuant to Rule 73 (F).<sup>15247</sup>

6490. On 15 May 2006, the Chamber ruled admissible interviews of Ntahobali conducted by the Prosecution in 1997. The Chamber granted in part a motion by Nyiramasuhuko to cross-examine Ntahobali, despite having waived her right to do so, but refused to change the order in which cross-examinations are normally conducted.<sup>15248</sup>

6491. On 17 May 2006, the Chamber overruled an objection by Ntahobali to a question relating to a conversation between Ntahobali and his wife, holding that there is no "spousal privilege" under the Tribunal's Rules.<sup>15249</sup>

6492. On 30 May 2006, the Chamber allowed Nyiramasuhuko to cross-examine Ntahobali on his statements to Prosecution Investigators in 1997.<sup>15250</sup>

6493. On 1 June 2006, the Chamber reached the end of the trial session, and adjourned the proceedings to 19 June 2006.<sup>15251</sup>

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<sup>15242</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Strictly Confidential Motion to Recall Witnesses TN, QBQ, and QY, for Additional Cross-Examination, 3 March 2006. Trial Chamber II refused to certify an appeal of this decision with respect to the refusal to recall Witnesses TN and QBQ: *Prosecutor v. Nyiramasuhuko et. al.*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion for Certification to Appeal the "Decision on Ntahobali's Strictly Confidential Motion to Recall Witnesses TN, QBQ, and QY for Additional Cross-Examination", 4 April 2006.

<sup>15243</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-T, Decision on Motion for Disqualification of Judges, 7 March 2006.

<sup>15244</sup> T. 8 March 2006 pp. 4, 5, 6.

<sup>15245</sup> T. 8 March 2006 pp. 60, 63-64.

<sup>15246</sup> Minutes, T. 3 April 2006.

<sup>15247</sup> *Prosecutor v. Nyiramasuhuko and Ntahobali*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Separate Proceedings, a New Trial, and Stay of Proceedings, 7 April 2006.

<sup>15248</sup> T. 30 May 2006 p. 36.

<sup>15249</sup> T. 17 May 2006 pp. 60, 61.

<sup>15250</sup> Minutes, T. 30 May 2006.

6494. On 13 June 2006, the Registrar withdrew the assignment of Charles Tchakoute Patie as Co-Counsel for Nsabimana.<sup>15252</sup>

6495. On 22 June 2006, the Chamber sustained, in part, Ntahobali's objections to the admissibility of one portion of a video.<sup>15253</sup>

6496. Ntahobali closed his case on 26 June 2006, Trial Day 389, after calling 22 witnesses, including himself.<sup>15254</sup>

#### ***1.2.4.3 Nsabimana Defence Case (27 June 2006 – 28 November 2006)***

6497. Nsabimana opened his case on 27 June 2006.<sup>15255</sup>

6498. On 29 June 2006, the Chamber denied a Prosecution motion for disclosure of unredacted witness statements from Nsabimana's defence.<sup>15256</sup> The Chamber granted a motion by Nsabimana to vary the order in which he called witnesses.<sup>15257</sup>

6499. On 5 July 2006, the Chamber dismissed a motion by Ndayambaje (supported by Nyiramasuhuko, Ntahobali and Nteziryayo) to delay the resumption of the trial session.<sup>15258</sup>

6500. On 12 July 2006, the Chamber adjourned the proceedings to 21 August 2006 for the continuation of the Defence Case.<sup>15259</sup>

6501. On 13 July 2006, the Registrar withdrew the assignment of Frédéric Palardy as Co-Counsel for Ndayambaje.<sup>15260</sup>

6502. On 14 July 2006, the Chamber granted in part Nteziryayo's requests to modify his witness list by deleting 22 witnesses and adding 12 witnesses and urged him to significantly reduce his witness list. The Chamber also allowed Nsabimana to remove several witnesses from his witness list, and to add Witness AGWA, who would be called near the end of its case, to allow other counsel sufficient time to prepare.<sup>15261</sup>

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<sup>15251</sup> T. 1 June 2006, p. 71.

<sup>15252</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8, *Décision de retrait de la commission d'office de Maître Charles Tchakoute Patie à titre de co-conseil de l'accusé Sylvain Nsabimana*, 14 June 2006.

<sup>15253</sup> T. 22 June 2006 pp. 40-41.

<sup>15254</sup> T. 26 June 2006 p. 57. Ntahobali's case was closed subject to conditions including the following: Witness ANMBMP be called in September 2006; two exhibits to be filed; and a pending motion for disclosure of documents.

<sup>15255</sup> Nsabimana Opening Statement, T. 27 June 2006 pp. 3-7.

<sup>15256</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-T, Decision on the Prosecutor's Urgent Motion to Compel Disclosure of Unredacted Witness Statements by Nsabimana's Defence, 29 June 2006.

<sup>15257</sup> T. 29 June 2006 p. 51.

<sup>15258</sup> Minutes, T. 5 July 2006.

<sup>15259</sup> T. 12 July 2006 p. 50.

<sup>15260</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision de retrait de la commission d'office de Maître Frédéric Palardy à titre de co-conseil de M. Elie Ndayambaje, 13 July 2006.

<sup>15261</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29A-T, Decision on Sylvain Nsabimana's Extremely Urgent Motion to Drop and Add Witnesses, 14 July 2006.

6503. On 17 August 2006, the Chamber denied a motion by Nsabimana to have Witness AGWA testify via video link,<sup>15262</sup> but granted his motion to delete three witnesses from his list, and to add Witness DEDE. The Chamber again ordered Nsabimana to call this newly added witness towards the end of his case.<sup>15263</sup> The Chamber dismissed a motion by Nyiramasuhuko for an extension of time to file responses to various motions on the grounds that it was frivolous and directed the Registry to deny all fees associated with its preparation.<sup>15264</sup>

6504. The proceedings resumed on 21 August 2006.<sup>15265</sup> The Chamber overruled an objection by Nyiramasuhuko to an alleged lack of notice with respect to portions of Witness BURU's proposed testimony which referred to Nyiramasuhuko.<sup>15266</sup> The Chamber found it was improper for Kanyabashi to have contacted Nsabimana's witness and stated that once the identity of a witness is known, and it is clearly indicated that the witness is going to testify for a particular party, then all other teams must avoid contact with that witness unless a formal request has been made.<sup>15267</sup>

6505. On 23 August 2006, the Chamber dismissed a motion by Nyiramasuhuko to admit evidence from another case before the Tribunal and held that proper procedure required that a motion be made to the Chamber seized of the other trial.<sup>15268</sup> The Chamber also refused to admit into evidence a book written by Witness Karemano.<sup>15269</sup>

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<sup>15262</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Sylvain Nsabimana's Extremely Urgent – Strictly Confidential – Under Seal – Motion to Have Witness AGWA Testify via Video-Link, 17 August 2006.

<sup>15263</sup> The Chamber also ordered Nsabimana to make timely disclosure of the identifying information of this witness and to provide further and better particulars with respect to the will-say statement: *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Sylvain Nsabimana's Extremely Urgent Motion to Drop and Add Witnesses, 17 August 2006. Subsequently the Chamber made further orders with respect to this decision: *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Decision on the Prosecution's Urgent Motion to Compel Compliance with the Trial Chamber's Decision of 17 August 2006, 5 September 2006. The Chamber granted this motion in part, and ordered Nsabimana to: (i) provide detailed information on the areas where Witness DEDE was expected to contradict the testimony of Prosecution Witness SJ; (ii) give details on the "aid" that Nsabimana allegedly gave to Prosecution Witness SJ; (iii) to specifically mention the name or position held by the "MRND dignitaries" mentioned in the supplementary will-say statement and, if this included any of the Accused, to identify them; and (iv) to make the required disclosures regarding the proposed testimony of Witness DEDE as soon as possible and in any case before the close of business on 8 September 2006. Nsabimana complied with this order and filed additional material on 7 September 2006 which indicated that the "MRND dignitaries" included Nyiramasuhuko. On 19 September 2006, Trial Chamber II denied a motion by Nyiramasuhuko which sought to prevent Witness DEDE from testifying on facts relating to Nyiramasuhuko, or alternatively, sought additional disclosure: *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, Decision on Pauline Nyiramasuhuko's Extremely Urgent Motion for Exclusion of Evidence or Subsidiarily for Further Disclosure Regarding Witness DEDE's Expected Testimony, 19 September 2006.

<sup>15264</sup> *Prosecutor v. Nyiramasuhuko*, ICTR-97-21-T, Decision on Pauline Nyiramasuhuko's Extremely Urgent Motion for Extension of Time within which to File a Response, 17 August 2006.

<sup>15265</sup> Minutes, T. 21 August 2006.

<sup>15266</sup> T. 21 August 2006 pp. 14-15.

<sup>15267</sup> T. 21 August 2006 pp. 18-19.

<sup>15268</sup> T. 23 August 2006 pp. 7-8 (ICS). However, on 4 September 2006, Trial Chamber II granted Nyiramasuhuko's request to put an additional question in cross-examination to Witness Karemano, despite the fact that she had closed her cross-examination of that witness: T. 4 September 2006 p. 8 (ICS). The question was put to the witness as an assertion, without indicating that the assertion was evidence in another trial.

<sup>15269</sup> T. 23 August 2006 p. 23.

6506. On 25 August 2006, the Chamber issued a warning to Mr. Boulé, counsel for Ndayambaje, with respect to his discourteous and offensive conduct.<sup>15270</sup>

6507. On 1 September 2006, the Chamber dismissed Ndayambaje's motion for the exclusion of testimony or parts of testimony of 14 Prosecution witnesses. The Chamber was not satisfied that there was a basis to exclude the testimonies, but held that some of the matters raised could be considered at a later stage of the proceedings.<sup>15271</sup>

6508. On 5 September 2006, the Chamber directed the Registry to inform Nyiramasuhuko, Ntahobali and Ndayambaje that if they failed to appear in court, they would be deemed to have waived their right to be tried in their presence, and the proceedings would continue in their absence.<sup>15272</sup> When the proceedings resumed, all Accused were present.<sup>15273</sup>

6509. On 15 September 2006, the Chamber dismissed a motion by Nsabimana to admit a written statement by Witness JAMI in lieu of oral testimony,<sup>15274</sup> and dismissed a motion by Ntahobali seeking the admission of custodial statements made by Kanyabashi to Belgian authorities upon his arrest.<sup>15275</sup>

6510. On 25 and 27 September 2006, the Chamber dismissed motions by Nsabimana to admit video footage where the foundation had not been laid, or the footage had not been disclosed to the other parties in a timely manner.<sup>15276</sup>

6511. On 5 October 2006, the Chamber ordered Nteziryayo, Ndayambaje and Kanyabashi to reduce the total number of witnesses they intended to call and to file realistic and updated witness lists by 6 November 2006. The Chamber ordered Nteziryayo to proceed with the presentation of his defence as soon as Nsabimana's Defence was closed; Nteziryayo was also ordered to ensure that all relevant disclosures were made in due time to avoid any delay in the proceedings.<sup>15277</sup>

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<sup>15270</sup> T. 25 August 2006 p. 31.

<sup>15271</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion for Exclusion of Evidence, 1 September 2006. Note the Chamber earlier granted a motion by Ndayambaje for an extension of time to file a reply to the Prosecutor's response to its motion: *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Ndayambaje's Motion for Extension of Time to Reply to the Prosecutor's Response to its Motion for Exclusion of Evidence, 30 June 2006. On 5 October 2006 Trial Chamber II refused to certify an appeal of this decision: *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, Decision on Élie Ndayambaje's Motion for Certification to Appeal the Decision on Ndayambaje's Motion for Exclusion of Evidence Issued on 1 September 2006, 5 October 2006. On 2 November 2006, the Chamber refused to reconsider its refusal of certification: *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion for Reconsideration of the Chamber's Decision to Deny Certification to Appeal Its Decision on the Motion for Exclusion of Evidence, 2 November 2006.

<sup>15272</sup> T. 5 September 2006 p. 17.

<sup>15273</sup> T. 5 September 2006 p. 18.

<sup>15274</sup> *Prosecutor v. Nsabimana*, Case No. ICTR-97-29-T, *Decision on Nsabimana's Motion to Admit the Written Statement of Witness JAMI in lieu of Oral Testimony Pursuant to Rule 92 bis*, 15 September 2006.

<sup>15275</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion to Admit Kanyabashi's Custodial Statements, 15 September 2006.

<sup>15276</sup> T. 25 September 2006 p. 69; T. 27 September 2006 p. 29.

<sup>15277</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Scheduling Order, 5 October 2006.

6512. On 18 October 2006, at the end of a scheduled trial session, the Chamber adjourned the proceedings to 6 November 2006,<sup>15278</sup> when the Chamber reconvened.<sup>15279</sup>

6513. On 9 November 2006, the Chamber observed that Nteziryayo, Kanyabashi and Ndayambaje had failed to comply with previous scheduling orders, and that Counsels' non-compliance with the Chamber's orders obstructs the proceedings and is contrary to the interests of justice. The Chamber ordered Nteziryayo, Ndayambaje and Kanyabashi to review their witness lists and to file realistic and updated lists of witnesses by 4 December 2006.<sup>15280</sup>

6514. That day, the Chamber overruled objections by Nyiramasuhuko and Ntahobali to the admission of Witness AGWA's testimony explaining that even though his relationship to a certain meeting was not specifically pled in the Indictment, this alone does not render the evidence inadmissible.<sup>15281</sup>

6515. On 15 November 2006, the Chamber formally warned Counsel Kadji for disclosing certain documents to Nsabimana while he was under cross-examination.<sup>15282</sup>

6516. Nsabimana closed his case on 28 November 2006, trial day 446, after calling 11 witnesses.<sup>15283</sup>

#### ***1.2.4.4 Nteziryayo Defence Case (4 December 2006 – 9 July 2007)***

6517. Nteziryayo opened his case on 4 December 2006<sup>15284</sup> and his Counsel, Mr. Pacere, made an opening statement.<sup>15285</sup>

6518. On 7 December 2006, the Chamber reached the end of the scheduled trial session and adjourned the trial to 22 January 2007.<sup>15286</sup>

6519. On 8 December 2006, the Registrar granted Richard Perras' request to withdraw as Co-Counsel for Nteziryayo.<sup>15287</sup>

6520. On 13 December 2006, the Chamber ordered Ndayambaje and Kanyabashi to further review their witness lists to significantly reduce the total number of witnesses they intended to call and to file final and realistic lists of witnesses by 31 January 2007.<sup>15288</sup>

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<sup>15278</sup> T. 18 October 2006 p. 91.

<sup>15279</sup> Minutes, T. 6 November 2006.

<sup>15280</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Scheduling Order, 9 November 2006.

<sup>15281</sup> T. 9 November 2006 pp. 11-12, 53-54.

<sup>15282</sup> T. 15 November 2006 pp. 58-59.

<sup>15283</sup> T. 28 November 2006 p. 57. Nsabimana's case was closed subject to the finalization and tendering of certain portions of an interview which had been used in cross-examination. See also Minutes, T. 28 November 2006. The Chamber declared the Nsabimana's case "completely closed" following the admission of certain exhibits on 4 December 2006.

<sup>15284</sup> Nteziryayo Opening Statement, T. 4 December 2006 pp. 6-17.

<sup>15285</sup> Minutes, T. 4 December 2006.

<sup>15286</sup> T. 7 December 2006 p. 32.

<sup>15287</sup> *Prosecutor v. Nteziryayo*, Case No. ICTR-97-29-T, Decision on Withdrawal of the Assignment of Mr. Richard Perras, Co-Counsel for the Accused Alphonse Nteziryayo, 8 December 2006.

<sup>15288</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Scheduling Order, 13 December 2006.

6521. On 22 January 2007, the Chamber convened to resume the proceedings.<sup>15289</sup>
6522. On 25 January 2007, the Chamber held that the Prosecution was not obligated to disclose an out of court statement made by Witness AND-16 as the Parties had not been demonstrably prejudiced.<sup>15290</sup>
6523. On 29 January 2007, the Chamber granted Nteziryayo's motion to vary his witness list.<sup>15291</sup>
6524. On 21 February 2007, the Chamber dismissed a motion by Nyiramasuhuko to change the order in which the parties would cross-examine the witness.<sup>15292</sup>
6525. On 22 February, 1 March, 8 March and 19 March 2007, the Chamber granted motions by Nteziryayo to vary the order of witnesses.<sup>15293</sup>
6526. On 8 March 2007 the Chamber issued a formal warning to Ms. Bergevin, Counsel for Nyiramasuhuko, with regard to disrespectful language.<sup>15294</sup>
6527. On 9 March 2007, the Chamber granted a motion by Nteziryayo to delete Witness AND-20 and to add Witness AND-75 to the list. It ordered Nteziryayo to disclose Witness AND-75's identifying information at least 21 days prior to the date of that witness' expected testimony and to call that witness towards the end of its case.<sup>15295</sup>
6528. On 21 March 2007, the Chamber denied motions by Kanyabashi and Ndayambaje for changes to the witness lists and an extension of time within which to file a response to the Chamber's 13 December 2006 Scheduling Order. The Chamber accepted the deletion of witnesses from Kanyabashi's witness list, ordered Kanyabashi and Ndayambaje to file revised witness lists; and ordered both Defence teams not to file additional motions for variation of their witness lists until they had complied.<sup>15296</sup>

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<sup>15289</sup> Minutes, T. 22 January 2007.

<sup>15290</sup> Minutes, T. 25 January 2007.

<sup>15291</sup> T. 29 January 2007 pp. 4-5.

<sup>15292</sup> T. 21 February 2007 pp. 70-71.

<sup>15293</sup> T. 22 February 2007 p. 49; T. 1 March 2007 pp. 47-48; T. 8 March 2007 pp. 75-76 (ICS); T. 19 March 2007 pp. 9-10.

<sup>15294</sup> T. 8 March 2007 pp. 16-17 (ICS).

<sup>15295</sup> *Prosecutor v. Nsabimana and Nteziryayo*, Case No. ICTR-97-29-T, Decision on Nteziryayo's Motion for Variation of Witness List (Rule 73 *ter*), 9 March 2007.

<sup>15296</sup> *Prosecutor v. Ndayambaje et al*, Case No. ICTR-98-42-T, Decision on Joseph Kanyabashi's Motions for Modification of his Witness List, the Defence Responses to the Scheduling Order of 13 December 2006 and Ndayambaje's Request for Extension of Time Within Which to Respond to the Scheduling Order of 13 December 2006, 21 March 2007. Trial Chamber II granted a motion for certification to appeal this decision on 3 May 2007: *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Joseph Kanyabashi's Motion for Certification to Appeal the Decision of 21 March 2007, 3 May 2007. A bench of the Appeals Chamber was constituted by order issued one week later: *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-AR73, Order Assigning Judges to a Case Before the Appeals Chamber, 10 May 2007. On 21 August 2007, the Appeals Chamber dismissed the appeal of this decision: *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007.

6529. On 23 March 2007, Judge Asoka de Silva, sitting as a single Judge pursuant to Rule 75 (H) granted a motion by Nteziryayo for the immediate disclosure of the closed session transcripts of Witness M078 in the *Muvunyi* case, to all of the parties in the *Nyiramasuhuko et al.* case.<sup>15297</sup>

6530. On 27 March 2007, the Chamber granted a motion by Nsabimana and adjourned Witness AND-59's testimony to the next trial session.<sup>15298</sup> The Chamber adjourned the proceedings until 16 April 2007,<sup>15299</sup> on which date the proceedings resumed.<sup>15300</sup>

6531. On 19 April 2007, the Chamber granted a motion by Nyiramasuhuko for time to examine a document and reiterated that documents to be used in cross-examination should be disclosed prior to the start of the cross-examination.<sup>15301</sup> The Chamber granted a motion by Nteziryayo to vary the order in which he intended to call his witnesses.<sup>15302</sup>

6532. On 25 April 2007, the Chamber granted Nteziryayo's request to vary the order of witnesses.<sup>15303</sup> On 10 May 2007, the Chamber denied a motion by Nteziryayo for certification to appeal an Oral Decision rendered on 19 and 23 April 2007.<sup>15304</sup>

6533. On 1 May 2007, the Chamber held that a will-say statement is not a statement of the witness, and cannot be used to impeach the witness.<sup>15305</sup>

6534. On 8 May 2007, the Chamber directed Kanyabashi to prepare a list of witnesses that he intended to call, and to comply with the related disclosure obligations.<sup>15306</sup>

6535. On 11 May 2007, the Chamber denied a motion by Nyiramasuhuko to recall Witness AND-44, or to reconsider an Oral Decision of 19 April 2007 which allowed the use of immigration documents pertaining to that witness released during cross-examination. The Chamber also denied certification to appeal.<sup>15307</sup>

6536. On 17 May 2007, the Chamber adjourned the trial until 21 May 2007, due to the Accused Nteziryayo's ill health and directed the Registry to ensure that he obtain all necessary

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<sup>15297</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-00-55, Decision on Extremely Urgent Motion from the Accused Alphonse Nteziryayo to Disclose Closed Session Transcripts for Witness M078, 23 March 2007.

<sup>15298</sup> T. 27 March 2007 pp. 66-67 (ICS).

<sup>15299</sup> T. 27 March 2007 p. 71.

<sup>15300</sup> Minutes, T. 16 April 2007.

<sup>15301</sup> T. 19 April 2007 pp. 51-52 (ICS).

<sup>15302</sup> T. 19 April 2007 p. 74 (ICS).

<sup>15303</sup> T. 25 April 2007 p. 5.

<sup>15304</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nteziryayo's Motion for Certification to Appeal the Oral Decisions of 19 and 23 April 2007, 10 May 2007.

<sup>15305</sup> T. 1 May 2007 pp. 24-25.

<sup>15306</sup> T. 8 May 2007 p. 44.

<sup>15307</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko's Motion for Recall or Reconsideration of Witness AND-44, or Certification to Appeal the Decision of 23 April 2007, 11 May 2007. The Chamber refused to reconsider this decision, holding that there is no reasonable ground to warrant recall, reconsideration, or certification to appeal the Chamber's decision of 23 April 2007: *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko's Motion for Reconsideration of the Decision on Pauline Nyiramasuhuko's Motion for Recall or Reconsideration of Witnesses AND-44, or Certification to Appeal the Decision of 23 April 2007, 24 May 2007.

medical treatment.<sup>15308</sup> The Chamber also directed Kanyabashi to arrange with WVSS the travel of his witnesses to Arusha and indicated that it expected his case to begin on 4 June 2007.<sup>15309</sup>

6537. On 23 May 2007, the Chamber reached the end of the trial session, and adjourned the proceedings to 4 June 2007,<sup>15310</sup> when it convened to resume the trial<sup>15311</sup>

6538. On 26 June 2007, the Chamber overruled an objection by Nyiramasuhuko to the admission of a document which was disclosed after the start of cross-examination by Nsabimana.<sup>15312</sup>

6539. On 29 June 2007, the Chamber denied a motion by Ntahobali to exclude the anticipated evidence of Witness D-2-13-O.<sup>15313</sup>

6540. On 3 July 2007, the Chamber informed the parties that the defence of Kanyabashi would start immediately after the conclusion of the Nteziryayo Defence.<sup>15314</sup>

6541. On 4 July 2007, the Chamber granted a motion by Kanyabashi to vary the order of his witness list and ordered him to detail how the witnesses would be appearing.<sup>15315</sup>

6542. On 5 July 2007, the Chamber issued a warning to Ms. Bergevin, Counsel for Nyiramasuhuko, for improper conduct.<sup>15316</sup> The Chamber granted Nteziryayo's motion for an adjournment of the proceedings until 9 July 2007 on the basis of his ill health.<sup>15317</sup>

6543. On 9 July 2007, trial day 530, Nteziryayo closed his case but for the possible evidence of Witness AND-23.<sup>15318</sup> Nteziryayo called 23 witnesses, including himself.

#### **1.2.4.5 Kanyabashi Defence Case (10 July 2007 – 20 May 2008)**

6544. The Defence for Kanyabashi opened its case on 10 July 2007 with an opening statement.<sup>15319</sup> The Chamber adjourned the hearing of Kanyabashi's first witness to 20 August 2007.<sup>15320</sup>

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<sup>15308</sup> T. 17 May 2007 p. 4.

<sup>15309</sup> T. 17 May 2007 p. 5.

<sup>15310</sup> T. 23 May 2007 p. 65.

<sup>15311</sup> Minutes, T. 4 June 2007.

<sup>15312</sup> T. 26 June 2007 p. 39.

<sup>15313</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Arsène Shalom Ntahobali's Motion to Exclude Certain Evidence from the Expected Testimony of Kanyabashi's Witness D-2-13-O, 29 June 2007. On 2 July 2007 the Chamber issued a corrigendum to this decision noting a typo with respect to the date on p. 4: *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Corrigendum to the Decision on Arsène Shalom Ntahobali's Motion to Exclude Certain Evidence from the Expected Testimony of Kanyabashi's Witness D-2-13-O, 2 July 2007. On 20 August 2007, the Chamber issued a decision denying certification for appeal: *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Arsène Ntahobali's Motion for Certification to Appeal the Decision of 29 June 2007, 20 August 2007.

<sup>15314</sup> T. 3 July 2007 p. 71.

<sup>15315</sup> T. 4 July 2007 pp. 6-7.

<sup>15316</sup> T. 5 July 2007 p. 25.

<sup>15317</sup> T. 5 July 2007 pp. 44-45.

<sup>15318</sup> T. 9 July 2007 p. 78; Minutes, T. 9 July 2007.



6545. On 25 July 2007, the Registry issued a decision withdrawing the assignment of Mr. Guy Larue, co-counsel for Nteziryayo.<sup>15321</sup>

6546. On 7 September 2007, the Registry issued a decision withdrawing the assignment of Mr. Louis Huot, co-counsel for Ntahobali.<sup>15322</sup>

6547. On 9 September 2007, the Registry issued a decision withdrawing the assignment of Mr. Phillippe Larochelle, co-counsel for Nteziryayo.<sup>15323</sup>

6548. On 18 September 2007, the Chamber denied motions by Nyiramasuhuko and Ntahobali for the exclusion of portions of Mr. Filip Reyntjens' Expert Report and expected testimony.<sup>15324</sup> On 19 September 2007, the Chamber qualified Mr. Reyntjens as an expert in: the history of Rwanda; the contemporary history of Rwanda including the events in 1994; the law and government measures in Rwanda; the inquiry and historical analysis of events in Rwanda, including the events in 1994; and human rights and individual rights in Rwanda, including investigation and analysis in this domain and the situation of the rights of the persons in Rwanda, before, during and after the events in 1994.<sup>15325</sup>

6549. On 27 September 2007, the Chamber sustained an objection by Kanyabashi for a request to produce correspondence between the Expert Witness Reyntjens and the Kanyabashi Defence team.<sup>15326</sup>

6550. On 4 October 2007, the Chamber denied a motion by Ntahobali regarding the immigration status and counsel of Witness NMBMP.<sup>15327</sup> At the close of proceedings the trial session was complete and the Chamber adjourned the trial to 22 October 2007<sup>15328</sup> when the Chamber convened to resume the proceedings.<sup>15329</sup>

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<sup>15319</sup> T. 10 July 2007 pp. 3-10.

<sup>15320</sup> T. 10 July 2007 p. 23. The trial session had been scheduled to run for three additional days, through 13 July 2007; however, in light of the long and demanding session that was drawing to a close, the fact that Nteziryayo's defence had just ended, and the fact that Kanyabashi's had just begun with his opening statement, the Chamber held that it would be more productive to start with Kanyabashi's first witness following the summer recess.

<sup>15321</sup> *Prosecutor v. Nteziryayo et al.*, Case No. ICTR-98-42-T, Decision on Withdrawal of the Assignment of Mr. Guy Larue, Co-Counsel for the Accused Alphonse Nteziryayo, 25 July 2007.

<sup>15322</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-97-21--T, Decision on Withdrawal of the Assignment of Mr. Louis Huot, Co-Counsel for the Accused Arsène Shalom Ntahobali, 7 September 2007.

<sup>15323</sup> *Prosecutor v. Nteziryayo et al.*, Case No. ICTR-97-29-T, Decision on Withdrawal of the Assignment of Mr. Philippe Larochelle, Co-Counsel for the Accused Alphonse Nteziryayo, 9 September 2007.

<sup>15324</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali and Nyiramasuhuko's Extremely Urgent Motions to Limit the Extent and Nature of the Report and Testimony of Filip Reyntjens, 18 September 2008. Although Nyiramasuhuko and Ntahobali filed separate motions, the substance was similar; the Chamber therefore found it expedient to deal with both motions at the same time.

<sup>15325</sup> T. 19 September 2007 pp. 4-5.

<sup>15326</sup> T. 27 September 2007 p. 49.

<sup>15327</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion to Have Counsel Present During Witness NMBMP's Testimony, 4 October 2007.

<sup>15328</sup> T. 4 October 2007 p. 48.

<sup>15329</sup> Minutes, T. 22 October 2007.

6551. On 5 November 2007, the Chamber granted in part motions by Nyiramasuhuko and Ntahobali by excluding portions of the anticipated evidence of one witness.<sup>15330</sup>

6552. On 21 November 2007, the Chamber granted in part Kanyabashi's request to change the order of appearance of witnesses.<sup>15331</sup>

6553. On 6 December 2007, the Chamber granted another motion by Kanyabashi to vary the order of his witnesses.<sup>15332</sup>

6554. On 12 December 2007, the Chamber adjourned the proceedings until 21 January 2008,<sup>15333</sup> when the proceedings resumed.<sup>15334</sup>

6555. On 24 January 2008, the Chamber refused to admit a document which Witness D-2-5-I did not recognize.<sup>15335</sup> The Chamber granted Kanyabashi's request to vary the order of his witnesses.<sup>15336</sup>

6556. On 31 January 2008, the Chamber denied a motion by Ntahobali to re-open his cross-examination of Witness D-2-5-I.<sup>15337</sup>

6557. On 4 February 2008, the Chamber granted a motion by Kanyabashi to vary the order of witnesses he intended to call.<sup>15338</sup>

6558. On 7 February 2008, the Chamber issued an order with respect to the appearance of Kanyabashi's next few witnesses, to ensure the smooth continuation of the trial despite the unavailability of a particular witness.<sup>15339</sup>

6559. On 14 February 2008, the Chamber overruled Ntahobali's objection to the admission of evidence led by Kanyabashi, which Ntahobali claimed may incriminate him.<sup>15340</sup>

6560. On 15 February 2008, the Chamber granted in part a motion by Kanyabashi to vary his witness list.<sup>15341</sup>

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<sup>15330</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's and Nyiramasuhuko's Oral Motions to Exclude Certain Evidence from the Expected Testimony of Kanyabashi's Witnesses D-2-13-O, D-2-15-S, and D-20-H, 5 November 2007. On 15 November 2007, Trial Chamber II denied a motion by Nyiramasuhuko which sought to bar Witness D-20-H from testifying on certain matters prior to the decision on certification with respect to the Chamber's decision on Nyiramasuhuko's motion for the exclusion of evidence: T. 15 November 2007 p. 36.

<sup>15331</sup> T. 21 November 2007 pp. 83-84.

<sup>15332</sup> T. 6 December 2007 p. 72 (ICS).

<sup>15333</sup> T. 12 December 2007 p. 35.

<sup>15334</sup> Minutes, T. 21 January 2008.

<sup>15335</sup> T. 24 January 2008 p. 27 (ICS).

<sup>15336</sup> T. 24 January 2008 p. 42 (ICS).

<sup>15337</sup> T. 31 January 2008 pp. 25-26 (ICS).

<sup>15338</sup> T. 4 February 2008 pp. 63-64 (ICS).

<sup>15339</sup> T. 7 February 2008 pp. 43-44 (ICS). The Chamber provided further elaboration on the expected order of Kanyabashi's witnesses a few days later: T. 11 February 2008 p. 67.

<sup>15340</sup> T. 14 February 2008 pp. 53-54.

6561. On 18 February 2008, the Chamber granted Nyiramasuhuko's request for more time to prepare her cross-examination of Witness D-13-D.<sup>15342</sup>

6562. On 25 February 2008, the Chamber granted Ntahobali's motion to re-examine Witness D-13-D following a question put to this witness by the Bench.<sup>15343</sup>

6563. On 3 March 2008, the Chamber granted a motion by Kanyabashi for additional time prior to announcing whether or not the Accused would testify in his own defence.<sup>15344</sup>

6564. On 4 March 2008, the Chamber granted Nyiramasuhuko's motion to allow Ntahobali to cross-examine Witness D-2-20-F before she began her cross-examination.<sup>15345</sup>

6565. On 6 March 2008, the Chamber granted in part a motion by Ntahobali to put further questions to Witness D-2-20-F regarding a document the witness claimed not to recognize.<sup>15346</sup>

6566. On 10 March 2008, the Chamber dismissed a motion by Ntahobali for disclosure by Kanyabashi of an alleged confession by Witness D-2-20-F.<sup>15347</sup> On 11 March 2008, the Chamber ordered that Witness MMBMP would appear by videoconference from New York starting on 22 April 2008.<sup>15348</sup>

6567. On 11 March 2008, the Chamber dismissed a motion by the Prosecutor to admit into evidence a Rwandan *Gacaca* judgement relating to Witness D-2-20-F<sup>15349</sup> but later granted Ntahobali's motion to admit excerpts of the *Gacaca* judgement of Witness D-13-D.<sup>15350</sup>

6568. On 19 March 2008, at the end of the scheduled trial session, the Chamber adjourned the trial until 14 April 2008<sup>15351</sup> when it convened to resume the proceedings.<sup>15352</sup>

6569. On 15 April 2008, the Chamber granted a motion by Ndayambaje to vary his witness list.<sup>15353</sup>

6570. On 16 April 2008, the Chamber ordered Ndayambaje to immediately disclose the un-redacted statements or will-says and identification sheets for the first 10 witnesses he intended to call.<sup>15354</sup>

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<sup>15341</sup> *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion to Vary his List of Witnesses Pursuant to Rule 73 *ter*, 15 February 2008.

<sup>15342</sup> T. 18 February 2008 pp. 42-43.

<sup>15343</sup> T. 25 February 2008 p. 29 (ICS).

<sup>15344</sup> T. 3 March 2008 p. 15.

<sup>15345</sup> T. 4 March 2008 p. 44 (ICS).

<sup>15346</sup> T. 6 March 2008 p. 13 (ICS).

<sup>15347</sup> T. 10 March 2008 p. 9.

<sup>15348</sup> T. 11 March 2008 pp. 53-54.

<sup>15349</sup> T. 11 March 2008 p. 21 (ICS).

<sup>15350</sup> T. 11 March 2008 p. 67.

<sup>15351</sup> T. 19 March 2008 p. 63.

<sup>15352</sup> Minutes, T. 14 April 2008.

<sup>15353</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion to Vary his list of Witnesses, 15 April 2008.

<sup>15354</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Scheduling Order, 16 April 2008.

6571. On 23 April 2008, the Chamber sustained a Prosecution objection that the testimony of Witness NMBMP was outside the scope of the notice of alibi prepared for this witness in relation to the Accused Ntahobali; however, the Chamber observed that the Accused could not be limited in developing and relying on his defence of alibi.<sup>15355</sup> At the end of the session, Nteziryayo informed the Chamber that his last remaining witness would not testify; consequently the Chamber declared the case for Nteziryayo closed.<sup>15356</sup>

6572. On 24 April 2008, the Chamber granted a Prosecution motion to unseal and disclose to Canadian authorities the transcripts of Witness QA and Exhibit P-93 for use in the trial of Desiré Munyaneza in Canada.<sup>15357</sup> The Chamber partially granted a motion by Kanyabashi for the distribution of transcripts from the *Munyaneza* case in Canada.<sup>15358</sup>

6573. The same day, the Chamber partially granted three motions for additions, deletions and substitutions of various witnesses on Kanyabashi's witness list and directed the Defence to file a new list of witnesses immediately.<sup>15359</sup>

6574. On 28 April 2008, Ntahobali closed his case except for the filing of outstanding documents.<sup>15360</sup> That day, the Chamber ordered all parties that filed notices of alibi to confirm that these notices were properly filed and served on all parties.<sup>15361</sup>

6575. On 29 April 2008, the Chamber denied a motion by Nyiramasuhuko for disclosure of various documents by the Prosecution.<sup>15362</sup>

6576. On 30 April 2008, the Chamber granted a motion by Kanyabashi to vary the order in which he would call his witnesses.<sup>15363</sup>

6577. On 7 May 2008, the Chamber granted in part a motion by Kanyabashi for additional protective measures for Witness D-2-21-T.<sup>15364</sup>

6578. On 12 May 2008, the Chamber issued an order that Ndayambaje be ready to begin presentation of his defence case on 2 June 2008, and that if Ndayambaje's counsel wished to make an opening statement, it should be prepared to do so before 2 June 2008<sup>15365</sup> in the event

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<sup>15355</sup> T. 23 April 2008 pp. 15-16 (ICS).

<sup>15356</sup> T. 23 April 2008 p. 28.

<sup>15357</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor's Motion to Unseal and Disclose to Canadian Authorities the Transcripts of Witness QA and Exhibit P-93, 24 April 2008.

<sup>15358</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Confidential Motion for Disclosure of the Transcripts of Witness QA's Statement before Canadian Judicial Authorities, 30 September 2008.

<sup>15359</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Three Motions to Vary his list of Witnesses and to Admit Written Statements Under Rule 92 bis, 24 April 2008.

<sup>15360</sup> T. 28 April 2008 p. 81.

<sup>15361</sup> T. 28 April 2008 p. 4.

<sup>15362</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Motion for Disclosure of Documents Under Rule 68 and for Re-Opening of her Case, 29 April 2008.

<sup>15363</sup> T. 30 April 2008 p. 18.

<sup>15364</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion for Additional Protective Measures for Witness D-2-21-T, 7 May 2008.

<sup>15365</sup> Note that the transcript says "22 June 2008"; T. 13 May 2008 p. 61, which says "2 June". Also, note 22 June 2008 was a Sunday.

that Kanyabashi's remaining witnesses completed their testimonies early or were unable to attend court as planned.<sup>15366</sup>

6579. On 13 May 2008, the Chamber granted Ndayambaje's motion to vary the order in which he intended to call his witnesses.<sup>15367</sup> The Chamber instructed Ndayambaje to be ready to begin his defence case by 2 June 2008.<sup>15368</sup>

6580. On 14 May 2008, the Chamber denied Ndayambaje's motion to add new facts to Witness D-2-18-O's will-say statement.<sup>15369</sup>

6581. On 20 May 2008, the Chamber declared Kanyabashi's Defence case closed but for the testimony of Witnesses D-2-17-A and D-2-21-T.<sup>15370</sup> The Chamber later granted Kanyabashi's request to remove Witness D-2-17-A from his witness list.<sup>15371</sup> It was Trial Day 646. In total, Kanyabashi called 25 witnesses.<sup>15372</sup> He did not testify on his own behalf.

#### ***1.2.4.6 Ndayambaje Defence Case (20 May 2008 – 2 December 2008)***

6582. The Defence for Ndayambaje opened its case on 20 May 2008. Mr. Boulé, counsel for Ndayambaje, made an opening statement.<sup>15373</sup> As it was the end of the scheduled trial session, the Chamber adjourned the proceedings to 2 June 2008<sup>15374</sup> when it convened to resume the proceedings.<sup>15375</sup>

6583. On 4 June 2008, the Chamber granted a motion by Ndayambaje to allow him to remove Witness COMET and reinstate Witness MARVA; it further directed the Defence to disclose Witness MARVA's address in 1994 to the Prosecution.<sup>15376</sup>

6584. On 2 July 2008, the Chamber issued a Scheduling Order with respect to the Parties' final trial briefs, specifying word and page limits for each Party, and timelines for filing final briefs and closing arguments.<sup>15377</sup> On 29 August 2008, the Chamber granted in part a motion for reconsideration of the orders relating to the final briefs.<sup>15378</sup> Further motions by all Defence parties seeking to extend the deadlines for filing the brief and for increases in the page limits of the briefs were denied.<sup>15379</sup>

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<sup>15366</sup> *Prosecutor v. Ndayambaje*, Case No. ICTR-98-42-T, Scheduling Order, 12 May 2008.

<sup>15367</sup> T. 13 May 2008 p. 63.

<sup>15368</sup> T. 13 May 2008 p. 63.

<sup>15369</sup> T. 14 May 2008 pp. 58-59.

<sup>15370</sup> T. 20 May 2008 p. 29.

<sup>15371</sup> T. 19 June 2008 p. 41 (ICS).

<sup>15372</sup> T. 20 May 2008 p. 46.

<sup>15373</sup> Ndayambaje Opening Statement, T. 20 May 2008 pp. 30-46.

<sup>15374</sup> Minutes, T. 20 May 2008.

<sup>15375</sup> Minutes, T. 2 June 2008.

<sup>15376</sup> *Prosecutor v. Ndayambaje.*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion to Vary his List of Witnesses, 4 June 2008.

<sup>15377</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.

<sup>15378</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Parties Oral Motions to Review the Timeframes and Length of Closing Briefs of the 2 July 2008 Scheduling Order, 29 August 2008.

<sup>15379</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Urgent Motions for Variance in Page Limit of Closing Brief, Nteziryayo's, Ndayambaje's, Nsabimana's and Ntahobali's Urgent

6585. That day, the Chamber also granted Kanyabashi's request to recall Prosecution Witness QA, and permitted cross-examination or re-examination by all Parties on the contradictions in his testimony.<sup>15380</sup>

6586. On 4 July 2008, at the end of the scheduled trial session, the Chamber adjourned the proceedings to 18 August 2008,<sup>15381</sup> when it convened to resume the proceedings.<sup>15382</sup>

6587. On 8 September 2008, the Chamber issued a warning to Pierre Boulé, Counsel for Ndayambaje, for raising his voice during proceedings.<sup>15383</sup>

6588. On 30 September 2008, the Chamber denied a motion by Ntahobali to admit 36 documents.<sup>15384</sup>

6589. On 29 October 2008, the Chamber granted Nyiramasuhuko and Ntahobali's motion for further cross-examination of Prosecution Witness QA.<sup>15385</sup> The Chamber also granted a motion by these parties to warn Prosecution Witness TQ of the duty to tell the truth and possible consequences of a failure to do so.<sup>15386</sup>

6590. On 7 November 2008, the Chamber granted in part a motion by Ntahobali and ordered an investigation into the false testimony of Witness QA. The Chamber ordered an investigation, pursuant to Rule 77, into Witness QA's allegations of intimidation and bribery. The Chamber directed the Registrar to appoint an *amicus curiae* to investigate the false testimony of Witness QA and the related allegations of contempt and to report back to the Chamber.<sup>15387</sup>

6591. On 11 November 2008, following review of a medical report indicating that Nteziryayo was well enough to follow the proceedings, the Chamber ordered that he appear in court.<sup>15388</sup>

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Motions for Variance in Page Limits and Deadline for the Closing Briefs and Kanyabashi's Motion for Extension of Deadline for Filing of the Closing Brief, 13 February 2009.

<sup>15380</sup> *Prosecutor v. Kanyabashi*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion to Re-Open his Case and to Recall Prosecution Witness QA, 2 July 2008. The request to recall Witness QA was an alternative request; the Chamber denied the primary request in this motion, which was to re-open Kanyabashi's case. Trial Chamber II also denied a motion for protective measures for a potential witness that Kanyabashi had hoped to call if his case were reopened. On 19 January 2009 the Chamber denied a motion to reconsider these decisions: *Prosecutor v. Kanyabashi et al.*, Decision on Kanyabashi's Motions for Reconsideration of the 2 July 2008 Decision, Requesting that Witnesses D-2-23-C and D-11-AB be Called to Testify, and for Special Protective Measures for Witnesses D-2-23-C and D-11-AB, 19 January 2009; *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's and Nsabimana's Motions to Cross-Examine Prosecution Witness QA on Additional Topics, 28 October 2008; T. 29 October 2008 pp. 7-8.

<sup>15381</sup> T. 4 July 2008 p. 21.

<sup>15382</sup> Minutes, T. 18 August 2008.

<sup>15383</sup> T. 8 September 2008 p. 56.

<sup>15384</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Admission of Documents into Evidence, 30 September 2008. Trial Chamber II earlier granted in part a Prosecution motion for an extension of the time to file its response to this motion: *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Prosecution Motion for Extension of Time, 2 September 2008.

<sup>15385</sup> T. 29 October 2008 p. 7.

<sup>15386</sup> T. 29 October 2008 p. 42 (ICS).

<sup>15387</sup> *Prosecutor v. Ntahobali*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for an Investigation Relative to False Testimony and Contempt of Court, 7 November 2008.

<sup>15388</sup> T. 11 November 2008 p. 5.

Two days later, the Chamber again ruled that it expected Nteziryayo to attend and remain in court.<sup>15389</sup>

6592. On 14 November 2008, the Chamber denied a motion by Ntahobali to admit two Rwandan judgements relating to Prosecution Witness TQ.<sup>15390</sup>

6593. On 20 November 2008, the Chamber denied motions by Ntahobali and Nsabimana to recall Witness QCB. However, the Chamber granted in part a motion by Kanyabashi and ordered the recall of this witness so that the Defence might cross-examine and the Prosecution might re-examine Witness QCB on specific enumerated contradictions.<sup>15391</sup>

6594. On 25 November 2008, the Chamber dismissed a motion by the Prosecution to use portions of a statement that Ndayambaje made to Belgian authorities at the time of his arrest in cross-examination of this Accused.<sup>15392</sup> The Chamber sustained an objection by Nyiramasuhuko to questions the Prosecution attempted to put to the Accused Ndayambaje in cross-examination.<sup>15393</sup>

6595. On 26 November 2008, the Chamber dismissed a motion by Ntahobali which alleged various violations of his right to be tried without undue delay.<sup>15394</sup>

6596. Ndayambaje's Defence closed its case on 2 December 2008.<sup>15395</sup> The Chamber ordered that the 60-day period for the filing of the final trial briefs by all parties would begin to run, and would conclude on 17 February 2009.<sup>15396</sup> Ndayambaje called 24 witnesses, including himself.

6597. The joint trial concluded on 2 December 2008 after 714 trial days. Collectively, the Defence called 130 witnesses; the Chamber adjourned the proceedings *sine die*.<sup>15397</sup>

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<sup>15389</sup> T. 13 November 2008 p. 6.

<sup>15390</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Admission of Two Rwandan Judgements Involving Prosecution Witness TQ, 14 November 2008. The Chamber dismissed motions by Ntahobali for reconsideration of this decision and for certification to appeal it: *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Reconsideration of the Decision Concerning Prosecution Witness QCB of 20 November 2008, 9 December 2008; *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Certification to Appeal the Decision on Ntahobali's Motion for Admission of Two Rwandan Judgements Involving Prosecution Witness TQ, 14 January 2009.

<sup>15391</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Defence Motions for Recall and Further Cross-Examination of Prosecution Witness QCB, 20 November 2008. On 14 January 2009, Trial Chamber II denied a motion by Ntahobali for certification to appeal this decision. The Chamber directed the Registrar, pursuant to Rule 73 (F), not to pay the Defence any fees or costs related to this motion, due to Counsel's failure to heed the Chamber's warnings with respect to filing multiple motions relating to the same issue: *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Certification to Appeal the 9 December 2008 Decision Concerning Prosecution Witness QCB, 14 January 2009.

<sup>15392</sup> T. 25 November 2008 pp. 5-6.

<sup>15393</sup> T. 25 November 2008 p. 27.

<sup>15394</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay, 26 November 2008.

<sup>15395</sup> T. 2 December 2008 p. 37.

<sup>15396</sup> T. 2 December 2008 pp. 37-40. The Chamber noted that the closing of the case was without prejudice to the Prosecution witness who was to be recalled and to the pending motions on similar topics and on other issues.

<sup>15397</sup> T. 2 December 2008 p. 41.

### 1.3 Post-Trial Proceedings

6598. On 3 December 2008, the Chamber granted in part a motion by Ntahobali to recall Prosecution Witnesses QY and SJ on specific issues.<sup>15398</sup>

6599. On 9 December 2008, the Chamber denied a motion by Nyiramasuhuko regarding Witness TK's evidence.<sup>15399</sup> The Chamber granted in part a motion by Nyiramasuhuko to recall Witness QBQ for cross-examination and re-examination on specific contradictions concerning meetings at the *prefecture* office.<sup>15400</sup>

6600. On 14 January 2009, the Chamber denied motions by Kanyabashi and Nsabimana for the recall of Prosecution Witness FAI.<sup>15401</sup>

6601. On 15 January 2009, the Chamber denied motions by Nyiramasuhuko, Ntahobali and Nsabimana for certification to appeal a formal statement made by the Chamber with respect to the filing deadlines for the Parties' final trial briefs.<sup>15402</sup> The Chamber also denied a motion by Nyiramasuhuko to stay the proceedings, holding that the Prosecution did not violate its disclosure obligation, the Accused had not suffered any prejudice, and there was no basis for the request to order a stay of proceedings.<sup>15403</sup>

6602. On 19 January 2009, the Chamber denied a motion by Ntahobali for the exclusion of evidence or the recall of various witnesses.<sup>15404</sup>

6603. On 22 January 2009, the Chamber denied a motion by Nyiramasuhuko for the Chamber to take judicial notice of findings made by the Appeals Chamber in the *Kanyarukiga* case on the subject of witnesses testifying in Rwanda.<sup>15405</sup>

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<sup>15398</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others, 3 December 2008.

<sup>15399</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Motion for Exclusion of Evidence, Alternatively for Admission of Documents into Evidence or for Recall of Witness TK, 9 December 2008.

<sup>15400</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-Case No. 98-42-T, Decision on Nyiramasuhuko's Motion for Exclusion of Evidence, or Admission of the Testimony of the Witness QBQ in the Trial of Désiré Munyaneza, or Recall of Witness QBQ, 9 December 2008.

<sup>15401</sup> *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's and Nsabimana's Motions for Recall of Prosecution Witness FAI, 14 January 2009.

<sup>15402</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's, Nyiramasuhuko's and Nsabimana's Motions for Certification to Appeal the Formal Statement of 2 December 2008, 15 January 2009.

<sup>15403</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Motion for Stay of Proceedings for Violations of Her Right to a Fair Trial Following the Non-Disclosure of Evidence Under Rule 68, 15 January 2009. The Chamber reiterated in this decision that the purpose of a response is to give a full answer to the issues raised in a motion, and not to submit separate or additional requests. Kanyabashi's request for consideration of this issue with respect to his case was therefore improper and was not considered. Although Kanyabashi did eventually submit a separate motion for disclosure, Kanyabashi's motion did not allege violations of his right to fair trial. Kanyabashi's motion was also denied by the Chamber: *Prosecutor v. Kanyabashi et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion for Disclosure Pursuant to Rule 68, 25 February 2009.

<sup>15404</sup> *Prosecutor v. Ntahobali et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Witnesses, 19 January 2009.



6604. On 23 and 24 February 2009, the Chamber convened for the further cross-examination of Witnesses QCB, QY and SJ.<sup>15406</sup> The Chamber denied a motion by Nyiramasuhuko and Kanyabashi for an order that would compel Witness QY to testify<sup>15407</sup> and dismissed motions by Nyiramasuhuko and Ntahobali which sought “full possibility of calling back all witnesses” to determine whether or not they were invited to testify that they did not know each other.<sup>15408</sup>

6605. On 25 February 2009, the Chamber dismissed a motion by Nteziryayo for the exclusion of portions of the evidence of certain Prosecution witnesses.<sup>15409</sup> It admitted several exhibits and thereafter adjourned the proceedings *sine die*.<sup>15410</sup>

6606. On 26 February 2009, the Chamber dismissed a motion by the Prosecution for site visits in Rwanda.<sup>15411</sup>

6607. On 5 March 2009, the Chamber granted in part motions by Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Ndayambaje and the Prosecution for further extensions to the time frame of oral submissions of closing arguments and ordered that the closing arguments should be heard continuously from 20 April 2009 to 30 April 2009 with prescribed time limits. The Chamber ordered the Parties to address matters of sentencing during closing arguments and ordered the Registry to provide translations in a timely manner.<sup>15412</sup>

6608. On 13 March 2009, the Chamber denied a motion by Ndayambaje for disclosure of various materials from the *Kalimanzira* and *Ntawukulilyayo* cases.<sup>15413</sup>

6609. On 19 March 2009, the Chamber granted motions by Kanyabashi and Ntahobali and ordered an investigation into the alleged false testimony of Prosecution Witnesses QY and SJ. The Chamber also ordered an investigation into the allegations of coercion related to these witnesses. The Chamber directed the Registrar to appoint an independent *amicus curiae* to

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<sup>15405</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko’s Motion for Judicial Notice of an Appeals Chamber Factual Finding, 22 January 2009.

<sup>15406</sup> Minutes, T. 23 February 2009.

<sup>15407</sup> T. 23 February 2009 pp. 67-68 (ICS).

<sup>15408</sup> T. 24 February 2009 pp. 57-58 (ICS).

<sup>15409</sup> *Prosecutor v. Nteziryayo et al.*, Case No. ICTR-98-42-T, Decision on Alphonse Nteziryayo’s Motion for Exclusion of Evidence, 25 February 2009.

<sup>15410</sup> Minutes, T. 25 February 2009.

<sup>15411</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor’s Motion for Site Visits in the Republic of Rwanda, 26 February 2009. With respect to this motion, Trial Chamber II had earlier issued a scheduling order requiring all Parties to complete their pleadings within five days of the order: *Prosecution v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order, 26 September 2008. The Chamber had earlier denied a similar motion by the Prosecution for site visits: *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda Under Rules 4 and 73 of the Rules of Procedure and Evidence, 23 September 2004.

<sup>15412</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Oral Motions By Nyiramasuhuko, Ndayambaje, Nsabimana, Nteziryayo, Ntahobali and the Prosecution for Reconsideration of the Timeframes of Oral Submissions set in the 29 August 2008 Decision and to Fix the Duration of Oral Submissions and Scheduling Order, 5 March 2009.

<sup>15413</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Decision on Ndayambaje’s Extremely Urgent Motion for Disclosure Under Rules 66 and 68 and for Admission into Evidence of Transcripts in the *Kalimanzira* Case, 13 March 2009.

investigate the false testimony of Witnesses QY and SJ and the related allegations of contempt.<sup>15414</sup>

6610. Between 20 and 30 April 2009, the Chamber convened to hear closing arguments by all Parties.<sup>15415</sup> On 30 April 2009, the Chamber held that the Butare joint case was closed and retired for deliberations.<sup>15416</sup>

6611. On 28 May 2009, the Registry issued an order withdrawing Mylène Dimitri's assignment as Ntahobali's Co-Counsel.<sup>15417</sup>

6612. On 8 June 2009, the Registry issued an order withdrawing Claver Sindayigaya assignment as Ndayambaje's Co-Counsel.<sup>15418</sup>

6613. On 30 October 2009, the Chamber issued an order directing the Registrar to appoint a new independent *amicus curiae* to conduct an investigation into Witness QA's allegations of intimidation and bribery. The order also required an investigation into the alleged false testimony of Prosecution Witnesses QY and SJ, as well as an investigation into the allegations of coercion related by these witnesses.<sup>15419</sup>

6614. On 4 March 2010, the Chamber denied motions by Ntahobali, Nyiramasuhuko and Kanyabashi to transmit to the Parties an *amicus curiae* report filed pursuant to Rules 77 (D) and 91 (C) on 1 July 2009.<sup>15420</sup>

6615. The Chamber pronounced its Judgement on 24 June 2011. The Chamber filed the written Judgement on 14 July 2011, following completion of the editorial process.

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<sup>15414</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42, Decision on Ntahobali's Motion for an Investigation into False Testimony and Kanyabashi's Motion for an Investigation into Contempt of Court Relative to Prosecution Witnesses QY and SJ, 19 March 2009.

<sup>15415</sup> Minutes, T. 20 April 2009; Minutes, T. 21 April 2009; Minutes, T. 22 April 2009; Minutes, T. 23 April 2009; Minutes, T. 24 April 2009; Minutes, T. 27 April 2009; Minutes, T. 28 April 2009; Minutes, T. 29 April 2009; and Minutes, T. 30 April 2009.

<sup>15416</sup> T. 30 April 2009 pp. 78-79

<sup>15417</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Withdrawal of the Assignment of Ms Mylène Dimitri, Co-Counsel for the Accused Arsène Shalom Ntahobali, 28 May 2009.

<sup>15418</sup> *Prosecutor v. Ndayambaje et al.*, Case No. ICTR-98-42-T, Decision on Withdrawal of the Assignment of Claver Sindayigaya, Co-Counsel for the Accused Élie Ndayambaje, 8 June 2009.

<sup>15419</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42, Order – Rules 77 and 91 of the Rules of Procedure and Evidence, 30 October 2009.

<sup>15420</sup> *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision Regarding Nteziryayo, Nyiramasuhuko and Kanyabashi's Motions to Transmit the *Amicus Curiae* Report, 4 March 2010.

## **ANNEX B: CITED MATERIALS AND DEFINED TERMS**

### **1.1 Cited Materials**

#### **1.1.1 Jurisprudence**

##### **1.1.1.1 ICTR**

###### **Akayesu**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (“*Akayesu*, Judgement (TC)”)

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“*Akayesu*, Judgement (AC)”)

###### **Bagaragaza**

*The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, Sentencing Judgement (TC), 17 November 2009 (“*Bagaragaza*, 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-T, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005 (“*Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005”)

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-T, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006 (“*Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006”)

*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 (TC), 18 December 2008 (“*Bagosora et al.*, Judgement (TC)”)

## **Bikindi**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on the Defence *Requête en Exclusion des Éléments de Preuve Produits par l'Accusation pour Etablir des Faits Non Contenus dans l'Acte d'Accusation* (TC), 26 June 2007 (“*Bikindi*, Decision on the Defence *Requête en Exclusion des Éléments de Preuve Produits par l'Accusation pour Etablir des Faits Non Contenus dans l'Acte d'Accusation* (TC), 26 June 2007”)

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008 (“*Bikindi*, Judgement (TC)”)

*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, Decision on Prosper Mugiraneza’s Third Motion to Dismiss Indictment for Violation of His Right to a Trial Without Undue Delay (TC), 10 February 2009 (“*Bizimungu et al.*, Decision on Prosper Mugiraneza’s Third Motion to Dismiss Indictment for Violation of His Right to a Trial Without Undue Delay (TC), 10 February 2009”)

*The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-AR73.8, Decision on Appeals Concerning the Engagement of a Chamber Consultant or Legal Officer (AC), 17 December 2009 (“*Bizimungu et al.*, Decision on Appeals Concerning the Engagement of a Chambers Consultant or Legal Officer (AC), 17 December 2009”)

## **Gacumbitsi**

*The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 (“*Gacumbitsi*, Judgement (TC)”)

*Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 (“*Gacumbitsi*, Judgement (AC)”)

## **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”)

*The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-T, Judgement and Sentence (TC), 31 March 2011 (“*Gatete*, Judgement (TC)”)

## **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**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Decision on Defence Motion to Exclude Prosecution Witnesses BWM, BWN, BXB, BXC, BXD and BXL (TC), 24 June 2008 (“*Kalimanzira*, Decision on Defence Motion to Exclude Prosecution Witnesses BWM, BWN, BXB, BXC, BXD and BXL (TC), 24 June 2008”)

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Consolidated Decision on Prosecution Motion Concerning Defence Compliance With Rule 73ter and Defence Motions to Vary Witness List (TC), 13 November 2008 (“*Kalimanzira*, Consolidated Decision on Prosecution Motion Concerning Defence Compliance With Rule 73ter and Defence Motions to Vary Witness List (TC), 13 November 2008”)

*Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 (“*Kalimanzira*, Judgement (AC)”)

### **Kamuhanda**

*The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-T, Judgement and Sentence (TC), 22 January 2003 (“*Kamuhanda*, Judgement (TC)”)

*Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda*, Judgement (AC)”)

### **Kanyabashi**

*Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-A, Scheduling Order (AC), 18 December 1998 (“*Kanyabashi*, Scheduling Order (AC), 18 December 1998”)

*Joseph Kanyabashi v. The Prosecutor*, Case No. ICTR-96-15-A, Decision on Extremely Urgent Defence Motion Requesting the Postponement of Appeals Chamber’s Decision To Be Rendered on 3 June 1999, in the Matter of *Joseph Kanyabashi v. The Prosecutor* (AC), 3 June 1999 (“*Kanyabashi*, Decision on Extremely Urgent Defence Motion Requesting the Postponement of Appeals Chamber’s Decision To Be Rendered on 3 June 1999, in the Matter of *Joseph Kanyabashi v. The Prosecutor* (AC), 3 June 1999”)

*Joseph Kanyabashi v. The Prosecutor*, Case No. ICTR-96-15-A, Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I (AC), 3 June 1999 (“*Kanyabashi*, Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I (AC), 3 June 1999”)

*Joseph Kanyabashi v. The Prosecutor*, Case No. ICTR-97-15-A, Decision (Appeal Against Trial Chamber II’s Decision of 5 October 1999) (AC), 13 April 2000 (“*Kanyabashi*, Decision (Appeal Against Trial Chamber II’s Decision of 5 October 1999) (AC), 13 April 2000”)

## **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")

*Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("Karemera et al., Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006")

## **Karera**

*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence (TC), 7 December 2007 ("Karera, Judgement (TC)")

*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 and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999 ("Kayishema & Ruzindana, Judgement (TC)")

*The Prosecutor v. Clément Kayishema and 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)")

## **Musema**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, 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**

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005 ("Muvunyi, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005")

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence (TC), 12 September 2006 (“*Muvunyi I*, Judgement (TC)”)

*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.**

*The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003 (“*Nahimana et al.*, Judgement (TC)”)

*Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al.*, Judgement (AC)”)

### **Nchamihigo**

*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence (TC), 12 November 2008 (“*Nchamihigo*, Judgement (TC)”)

*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**

*Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“*Niyitegeka*, Judgement (AC)”)

### **Nshogoza**

*Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-2007-91-A, Judgement (AC), 15 March 2010 (“*Nshogoza*, Judgement (AC)”)

### **Ntagerura et al.**

*The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 (“*Ntagerura et al.*, Judgement (TC)”)

*The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Ntagerura et al.*, Judgement (AC)”)

### **Ntahobali**

*Arsène Shalom Ntahobali v. The Prosecutor*, Case No. ICTR-97-21-A, Decision (Appeal Against Trial Chamber II’s Decision of 5 October 1999) (AC), 13 April 2000 (“*Ntahobali*, Decision (Appeal Against Trial Chamber II’s Decision of 5 October 1999) (AC), 13 April 2000”)

### **Ntahobali & Nyiramasuhuko**

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**Renzaho**

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**Rutaganda**

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**Rutaganira**

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## **Simba**

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## **Blaškić**

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## **Boškoski & Tarčulovski**

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*Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement (TC), 10 December 1998 (“*Furundžija*, Judgement (TC)”)

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**Dragan Nikolić**

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**Orić**

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*Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 (“*Orić*, Judgement (AC)”)

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**Simić et al.**

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*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 (“*Simić*, Judgement (AC)”)

**Stakić**

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**Strugar**

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### **Vasiljević**

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#### **1.1.1.4 International Military Tribunal**

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Trial of the German Major War Criminals (Proceedings of the International Military Tribunal, Sitting at Nuremberg, Germany 1947) (H.M. Stationery Office, London, 1950) (“Trial of the Major War Criminals (Proceedings of the International Military Tribunal, Sitting at Nuremberg, Germany 1947)”)

#### **1.1.1.5 Nyiramasuhuko et al. Trial Chamber Decisions and Orders**

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*The Prosecutor v. Élie Ndayambaje*, Case No. ICTR-96-8-I, Warrant of Arrest and Order for Surrender (TC), 21 June 1996 (“*Ndayambaje*, Warrant of Arrest and Order for Surrender (TC), 21 June 1996”)

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**Ntahobali**

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Separate Trial (TC), 2 February 2005 ("Ntahobali, Decision on Ntahobali's Motion for Separate Trial (TC), 2 February 2005")

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Reconsideration of the "Decision on Ntahobali's Motion for Separate Trial" (TC), 22 February 2005 ("Ntahobali, Decision on Ntahobali's Motion for Reconsideration of the 'Decision on Ntahobali's Motion for Separate Trial' (TC), 22 February 2005")

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for an Investigation Relative to False Testimony and Contempt of Court (TC), 7 November 2008 ("Ntahobali, Decision on Ntahobali's Motion for an Investigation Relative to False Testimony and Contempt of Court (TC), 7 November 2008")

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008 ("Ntahobali, Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay (TC), 26 November 2008")

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others (TC), 3 December 2008 ("Ntahobali, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others (TC), 3 December 2008")

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Witnesses (TC), 19 January

2009 (“*Ntahobali*, Decision on Ntahobali’s Motion for Exclusion of Evidence or for Recall of Witnesses (TC), 19 January 2009”)

### **Nteziryayo**

*The Prosecutor v. Alphonse Nteziryayo*, Case No. ICTR-97-29B-I, Warrant of Arrest and Order for Surrender (TC), 16 October 1997 (“*Nteziryayo*, Warrant of Arrest and Order for Surrender (TC), 16 October 1997”)

*The Prosecutor v. Alphonse Nteziryayo*, Case No. ICTR-97-29-T, Decision on Alphonse Nteziryayo’s Motion for Exclusion of Evidence (TC), 25 February 2009 (“*Nteziryayo*, Decision on Alphonse Nteziryayo’s Motion for Exclusion of Evidence (TC), 25 February 2009”)

### **Nyiramasuhuko**

*The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, *Décision Relative à la Requête de la Défense en Extrême Urgence Tenant au Respect, par le Procureur, de la « Décision Relative à la Requête de la Défense en Communication de Preuves » Rendue le 1<sup>er</sup> Novembre 2000* (TC), 8 June 2001 (“*Nyiramasuhuko, Décision Relative à la Requête de la Défense en Extrême Urgence Tenant au Respect, par le Procureur, de la « Décision Relative à la Requête de la Défense en Communication de Preuves » Rendue le 1<sup>er</sup> Novembre 2000* (TC), 8 June 2001”)

*The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-41-T, Decision on Defence Motion for Recall of Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD and QY or, in Default, a Disjunction of Trial or a Stay of Proceedings Against Nyiramasuhuko (TC), 6 May 2004 (“*Nyiramasuhuko*, Decision on Defence Motion for Recall of Witnesses TA, QJ, TK, SJ, SU, SS, QBP, RE, FAP, SD and QY or, in Default, a Disjunction of Trial or a Stay of Proceedings Against Nyiramasuhuko (TC), 6 May 2004”)

### **Nyiramasuhuko & Ntahobali**

*The Prosecutor v. Pauline Nyiramasuhuko & Arsène Shalom Ntahobali*, Case No. ICTR-97-21-I, Decision to Confirm the Indictment (TC), 29 May 1997 (“*Nyiramasuhuko & Ntahobali*, Decision to Confirm the Indictment (TC), 29 May 1997”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-I, Decision on the Prosecutor’s Request for Leave to Amend the Indictment (TC), 10 August 1999 (“*Nyiramasuhuko & Ntahobali*, Decision on the Prosecutor’s Request for Leave to Amend the Indictment (TC), 10 August 1999”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Ntahobali*, Case No. ICTR-97-21-T, Decision on Defence Motion for Disclosure of Evidence (TC), 1 November 2000 (“*Nyiramasuhuko & Ntahobali*, Decision on Defence Motion for Disclosure of Evidence (TC), 1 November 2000”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000 (“*Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000 (“*Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Preliminary Motion Based on Defects in the Form and the Substance of the Indictment (TC), 1 November 2000”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on the Motion for Separate Trials (TC), 8 June 2001 (“*Nyiramasuhuko & Ntahobali*, Decision on the Motion for Separate Trials (TC), 8 June 2001”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: “Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali” (TC), 27 January 2006 (“*Nyiramasuhuko & Ntahobali*, Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: ‘Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali’ (TC), 27 January 2006”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Corrigendum to the Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: “Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali” Dated 27 January 2006 (TC), 6 February 2006 (“*Nyiramasuhuko & Ntahobali*, Corrigendum to the Decision on Arsène Shalom Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: ‘Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali’ Dated 27 January 2006 (TC), 6 February 2006”)

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko's Motion for Separate Proceedings, a New Trial, and Stay of Proceedings (TC), 7 April 2006 (“*Nyiramasuhuko & Ntahobali*, Decision on Nyiramasuhuko's Motion for Separate Proceedings, a New Trial, and Stay of Proceedings (TC), 7 April 2006”)

### **Nyiramasuhuko et al.**

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-97-21-I, Case No. ICTR-97-29A and B-I, Case No. ICTR-96-15-T & Case No. ICTR-96-8-T, Decision on the Status of the Hearings for the Amendment of the Indictments and for Disclosure of Supporting Material (TC), 30 September 1998 (“*Nyiramasuhuko et al.*, Decision on the Status of the Hearings for

the Amendment of the Indictments and for Disclosure of Supporting Material (TC), 30 September 1998”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-97-21-I, Case No. ICTR-97-29A and B-I, Case No. ICTR-96-15-T & Case No. ICTR-96-8-T, Decision on the Prosecutor’s Motion for Joinder of Trials (TC), 5 October 1999 (“*Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Joinder of Trials (TC), 5 October 1999”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Decision on Prosecutor’s Motion for Extension of Time Within Which to Comply With Court Order to File an Indictment (TC), 2 March 2001 (“*Nyiramasuhuko et al.*, Decision on Prosecutor’s Motion for Extension of Time Within Which to Comply With Court Order to File an Indictment (TC), 2 March 2001”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, Case No. ICTR-97-29-T, Case No. ICTR-96-15-T & Case No. ICTR-96-8-T, Decision on the Prosecutor’s Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001 (“*Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002 (“*Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence (TC), 15 May 2002”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision in the Matter of Proceedings Under Rule 15 *bis* (D) (TC), 15 July 2003 (“*Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15 *bis* (D) (TC), 15 July 2003”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Certification in the Matter of Proceedings Under Rule 15 *bis* (D) (TC), 5 December 2003 (“*Nyiramasuhuko et al.*, Certification in the Matter of Proceedings Under Rule 15 *bis* (D) (TC), 5 December 2003”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Defence Urgent Motions to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible (TC), 16 February 2004 (“*Nyiramasuhuko et al.*, Decision on Defence Urgent Motions to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible (TC), 16 February 2004”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004 (“*Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal under Rule 98 *bis* (TC), 16 December 2004”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision on Ntahobali’s Motion for Reconsideration of the Decision of 2 March 2006 (TC), 11 June 2007

(“*Nyiramasuhuko et al.*, Decision on Ntahobali’s Motion for Reconsideration of the Decision of 2 March 2006 (TC), 11 June 2007”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision on Pauline Nyiramasuhuko’s Motion for Judicial Notice of an Appeals Chamber Factual Finding (TC), 22 January 2009 (“*Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko’s Motion for Judicial Notice of an Appeals Chamber Factual Finding (TC), 22 January 2009”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision on the Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), 26 February 2009 (“*Nyiramasuhuko et al.*, Decision on the Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), 26 February 2009”)

*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Decision on Ntahobali’s Motion for an Investigation into False Testimony and Kanyabashi’s Motion for an Investigation into Contempt of Court Relative to Prosecution Witnesses QY and SJ (TC), 19 March 2009 (“*Nyiramasuhuko et al.*, Decision on Ntahobali’s Motion for an Investigation into False Testimony and Kanyabashi’s Motion for an Investigation into Contempt of Court Relative to Prosecution Witnesses QY and SJ (TC), 19 March 2009”)

## **1.1.2 Other Materials**

### ***1.1.2.1 Conventions***

#### **Additional Protocol II**

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II), 1125 UNTS 609, 8 June 1977 (“Additional Protocol II”)

#### **Geneva Convention III**

Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 75 UNTS 135, 12 August 1949 (“Geneva Convention III”)

#### **Geneva Convention IV**

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, 12 August 1949 (“Geneva Convention IV”)

### ***1.1.2.2 United Nations Documents***

#### **Fourth Annual Report of the ICTR**

Fourth Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January

and 31 December 1994, delivered to the General Assembly and the Security Council, UN Doc. S/1999/943, 7 September 1999 (“Fourth Annual Report of the ICTR, 7 September 1999”)

### **Report of the Secretary-General on the Establishment of the Commission of Experts**

Report of the Secretary-General on the Establishment of the Commission of Experts, delivered to the General Assembly and the Security Council, UN Doc. S/1994/879, 26 July 1994 (“Report of the Secretary-General on the Establishment of the Commission of Experts, 26 July 1994”)

### **Report of the Secretary-General on the Situation in Rwanda**

Report of the Secretary-General on the Situation in Rwanda, delivered to the General Assembly and the Security Council, UN Doc. S/1994/924, 3 August 1994 (“Report of the Secretary-General on the Situation in Rwanda, 3 August 1994”)

### **Report on the Situation of Human Rights in Rwanda**

Report on the situation of human rights in Rwanda prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution S-3/1 and Economic and Social Council decision 1994/223, delivered to the General Assembly and the Security Council, UN Doc. S/1994/1157, 13 October 1994 (“Report on the Situation of Human Rights in Rwanda, 13 October 1994”)

### **Security Council Resolution 955**

Security Council Resolution 955, UN Doc. S/RES/955, 8 November 1994 (“Security Council Resolution 955”)

### **Security Council Resolution 1482**

Security Council Resolution 1482, UN Doc. S/RES/1482, 19 May 2003 (“Security Council Resolution 1482”)

### **Universal Declaration of Human Rights**

Universal Declaration of Human Rights, General Assembly Resolution 217A (3rd Session), UN Doc. A/RES/217A (III), 10 December 1948 (“Universal Declaration of Human Rights”)

## **1.2 Defined Terms and Abbreviations**

### ***Abasa***

A survivor’s association affiliated with *Ibuka*

### **APAME**

Association of parents of Mugombwa Parish furthering education



**ARG**

*Association des Rescapés du Génocide* (Association of the Survivors of the Genocide)

**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

**Avega**

*Association des veuf(ves) du genocide – Agahozo* (Association of widows and widowers of the genocide); “*Agahozo*” means consolation

**BBC**

British Broadcasting Corporation

**Bourgmestre**

Mayor of a *commune*

**BPO**

Butare *préfecture* office

**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*

**DRC**

Democratic Republic of Congo (named Zaire in 1994)

**EER**

*École Évangéliste du Rwanda*

**ESO**

*École des Sous-Officiers*

**fn.**

Footnote

***Gendarme***

An officer of the *Gendarmerie*

***Gendarmerie nationale***

Replaced the National Police force in 1973, 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

**HC**

Reference to French transcripts heard in closed session

***Ibuka***

Association of genocide survivors

**ICS**

Reference to English transcripts heard in closed session

**ICTR or Tribunal**

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

**ICTY**

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

**INADES**

*Institut Africain pour le Développement Economique et Social*

***Interahamwe***

The youth wing of the MRND

**IPN**

*Institut de Pedagogie Nationale* (National Pedagogic Institute)

**IRST**

*L'Institut de Recherche Scientifique et Technique* (National Institute of Scientific Research)

**Kanyabashi Closing Brief**

*The Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-98-42-T, Joseph Kanyabashi's Final Closing Brief, 17 February 2009

**Kanyabashi Indictment**

*The Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Amended Indictment, 11 June 2001

**Judgement**

*The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-98-42-T, Judgement and Sentence (TC), 24 June 2011

**MDR**

*Mouvement Démocratique Républicain*

**MDR-Power**

A wing of the *Mouvement Démocratique Républicain* Party

**MIFAPROFE**

Ministry of the Family and Women's Development

**MIJEUMA**

Ministry of Youth and Associated Movements

**MINIFOP**

Ministry of Public Service and Employment

**MININTER**

Ministry of the Interior

**MINITRAP**

Ministry of Public Works

**MINITRASO**

Ministry of Labour and Social Affairs

**MRND**

*Mouvement Révolutionnaire National pour la Démocratie et le Développement*

**MSF**

*Médecins Sans Frontières*

**Ndayambaje Closing Brief**

*The Prosecutor v. Élie Ndayambaje*, Case No. ICTR-98-42-T, Élie Ndayambaje's Defence Brief, 17 February 2009

**Ndayambaje Indictment**

*The Prosecutor v. Élie Ndayambaje*, Case No. ICTR-96-8-I, Amended Indictment, 11 August 1999

**NGO**

Non-Governmental Organisation

**Nsabimana Closing Brief**

*The Prosecutor v. Sylvain Nsabimana*, Case No. ICTR-98-42-T, Final Brief of Sylvain Nsabimana's Trial, 17 February 2009

**Nsabimana and Nteziryayo Indictment**

*The Prosecutor v. Sylvain Nsabimana and Alphonse Nteziryayo*, Case No. ICTR-97-29-I, Amended Indictment, 12 August 1999

**Ntahobali Closing Brief**

*The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-98-42-T, Arsène Shalom Ntahobali's Final Trial Brief and Annexes Thereto, 17 February 2009

**Nteziryayo Closing Brief**

*The Prosecutor v. Alphonse Nteziryayo*, Case No. ICTR-98-42-T, Alphonse Nteziryayo Closing Brief, 17 February 2009

**Nyiramasuhuko Closing Brief**

*The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-98-42-T, Closing Brief of Pauline Nyiramasuhuko with Annex, 17 February 2009

**Nyiramasuhuko and Ntahobali Indictment**

*The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-I, Amended Indictment, 11 March 2001

**OAU**

Organisation of African Unity

**ONATRACOM**

*Office National de Transport en Commun* (National Office for Public Transport)

**ORINFOR**

*Office Rwandais d'Information* (Rwandan Office of Information)

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**PAMU**

*Projet Agricole de Muganza* (Muganza Agricultural Project)

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paragraph (paragraphs)

**PDC**

*Parti Démocrate Chrétien* (Christian Democrat Party)

**PL**

*Parti Libéral* (Liberal Party)

***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 specialised unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

**Prosecution Closing Brief**

*The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Prosecutor's Closing Brief, 17 February 2009

**Prosecution Pre-Trial Brief**

*The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Prosecution Pre-Trial Brief Pursuant to Rule 73 *bis* (B)(i), 14 May 2001

**PSD**

*Parti Social Démocrate*

***Responsable de cellule***

An individual responsible for the administration of a *cellule*

**RPF**

Rwandan (also Rwandese) Patriotic Front

**RTL**

*Radio Télévision Libre des Mille Collines*

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for 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

**UN**

United Nations

**UNAMIR**

United Nations Assistance Mission for Rwanda

**UNHCR**

United Nations High Commissioner for Refugees

**ANNEX C: INDICTMENTS**