



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

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**ORIGINAL: ENGLISH**

**TRIAL CHAMBER II**

**Before:** Judge Arlette Ramaroson, Presiding  
Judge Taghrid Hikmet  
Judge Joseph Masanche

**Registrar:** Adama Dieng

**Date:** 6 December 2010

**THE PROSECUTOR**

**v.**

**Ildephonse HATEGEKIMANA**

**Case No. ICTR-00-55B-T**

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**JUDGEMENT AND SENTENCE**

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**The Prosecution:**

William T. Egbe  
Peter Tafah  
Adama Niane  
Disengi Mugeyo  
Amina Ibrahim

**The Defence:**

Jean de Dieu Momo  
Ata Quam Dovi Avouyi

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## CHAPTER I: INTRODUCTION

### 1. JURISDICTION OF THE TRIBUNAL

1. The Judgement in the present case of the *Prosecutor v. Ildephonse Hategekimana* is issued by Trial Chamber II (the “Chamber”) of the International Criminal Tribunal for Rwanda (the “Tribunal” or “ICTR”), composed of Judges Arlette Ramarosan, presiding, Taghrid Hikmet and Joseph Masanche.

2. In response to the request of the Government of Rwanda to establish an international tribunal to prosecute persons responsible for genocide against the civilian *Tutsi* population and for other serious violations of international humanitarian law committed in Rwanda between April and July 1994,<sup>1</sup> the United Nations Security Council created the ICTR on 8 November 1994 by Resolution 955. Pursuant to this Resolution, the Tribunal is governed by the ICTR Statute (the “Statute”). The work of the Tribunal is also governed by the Rules of Procedure and Evidence (the “Rules”), adopted pursuant to Article 14 of the Statute, and by the jurisprudence established by the Appeals Chamber.<sup>2</sup>

### 2. OVERVIEW OF THE CASE

#### 2.1 Procedural Background

3. The Accused in this case is Ildephonse Hategekimana. During the events in 1994, he was the Commander of the Ngoma Military Camp (“Ngoma Camp”) in Butare *Préfecture*, holding the rank of a lieutenant in the *Forces armées rwandaises* and a member of the Butare *préfectoral* Security Council.<sup>3</sup>

4. Hategekimana was first indicted on 2 February 2000 with two co-Accused, Tharcisse Muvunyi and Ildephonse Nizeyimana. Following his arrest on 14 February 2003 in Congo-Brazzaville, Hategekimana made an initial appearance before Trial Chamber III on 28 February 2003, during which he pleaded not guilty to all charges against him.<sup>4</sup>

5. On 11 December 2003, the Prosecution severed Muvunyi, one of the co-Accused, from the Indictment, following his arrest on 5 February 2000. The Prosecution severed Hategekimana’s case from that of Ildephonse Nizeyimana on 25 September 2007, and on 1 October 2007 the Prosecution filed an amended Indictment, charging Hategekimana with four counts: genocide, complicity in genocide, and murder and rape as crimes against humanity. On 9 November 2007, Hategekimana pleaded not guilty to all counts.

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<sup>1</sup> The Appeals Chamber has taken judicial notice that genocide against *Tutsis* and widespread or systematic attacks against a civilian population, based on *Tutsi* ethnic identification, which occurred in Rwanda between April and July 1994, are facts of common knowledge, not subject to reasonable dispute. *The Prosecutor v. Karemera et al*, Case No. ICTR-98-44-B, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 29, 35. See also, *Semanza* Appeal Judgement para. 192.

<sup>2</sup> Under the Statute, the Tribunal has the authority to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandan citizens responsible for such crimes, committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994. The Rules and the Statute are available on the Tribunal’s website at: <http://www.icttr.org>.

<sup>3</sup> Indictment para. 2.

<sup>4</sup> Initial Appearance, T. 28 February 2003 p. 24. The original Indictment against Hategekimana was confirmed on 2 February 2000. See *The Prosecutor v. Tharcisse Muvunyi, Ildephonse Nizeyimana, Ildephonse Hategekimana*, Case No. ICTR-00-55-I, Decision to Confirm the Indictment (TC), 2 February 2000.

6. On 7 September 2007, the Prosecution filed a motion, pursuant to Rule 11*bis* of the Rules, for the referral of the case against Hategekimana to the courts of the Republic of Rwanda.<sup>5</sup> The motion was denied on 19 June 2008.<sup>6</sup>

7. The trial of Ildephonse Hategekimana commenced on 8 March 2009 and closed on 28 April 2010. Over the course of 22 trial days, the Prosecution called 20 witnesses. The Defence case opened on 22 June 2009 and was conducted over two trial sessions. The first session ended on 13 July 2009, and the second commenced on 23 September 2009, running until 6 October 2009. During 21 trial days, the Defence called 20 witnesses. The Chamber and the Parties visited sites in Rwanda related to the charges against Hategekimana from 2 to 6 November 2009. The parties filed their Closing Briefs on 1 February 2010 and presented their Closing Arguments on 26 and 28 April 2010.

8. The Chamber delivered the oral summary of its Judgement on 6 December 2010 and filed the written version on 14 February 2011. The procedural history of this case is set out in full in Annex I to the Judgement.

## **2.2 Synopsis of the Parties' Allegations and the Chamber's Findings**

9. The Prosecution has alleged Hategekimana's criminal responsibility, both as an individual and as a superior, for crimes of genocide, complicity in genocide and murder and rape as crimes against humanity committed in Butare *Préfecture* between 7 April and 31 May 1994. The Defence disputes all charges. Below follows an overview of the main allegations.

### **(i) Meeting on 7 April 1994 at the ESO Military Camp**

10. The Prosecution alleges that Hategekimana attended a meeting of Butare *Préfecture* military officials at the *École des Sous Officiers* ("ESO") Camp on 7 April 1994, the morning after the death of President Habyarimana. The Prosecution also asserts that, in accordance with a decision taken at the meeting, the Accused ordered Ngoma Camp soldiers under his command to kill *Tutsis* and to rape *Tutsi* women before killing them. The Defence denies that Hategekimana attended the meeting or that such a meeting was ever held.

11. One Prosecution witness, a soldier from ESO Military Camp, testified that Hategekimana attended a meeting with named military officers on 7 April 1994 at ESO Camp. However, the witness presented no direct or reliable evidence regarding the subject matter of the meeting. The witness did not attend this meeting and did not hear Hategekimana ever issue the alleged order to soldiers under his command to kill *Tutsis* or to rape *Tutsi* women before killing them. The Chamber does not find that this allegation has been proven beyond reasonable doubt and dismisses it.

### **(ii) Rapes of *Tutsi* Women in Butare *Préfecture***

12. The Prosecution submits that Hategekimana, as well as soldiers, *Interahamwe* and armed civilians under his military command or effective control, raped *Tutsi* women at Hategekimana's residence and at other places in and around Butare town. The Defence denies these allegations.

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<sup>5</sup> Decision on Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda Pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence (TC), 7 September 2007.

<sup>6</sup> Decision on Prosecutor's Motion for the Referral of the Case of Ildephonse Hategekimana to Rwanda (TC), 19 June 2008.



13. The Prosecution relies on two principal witnesses, one of whom was a *Tutsi* victim of a series of gang rapes. The witness stated that among the unidentified soldiers who raped her was a soldier from the Ngoma Camp. However, the Prosecution did not establish either the clear identity of the alleged soldier or his affiliation with Ngoma Camp. The Chamber doubts the reliability of both witnesses and finds that the Prosecution did not establish beyond reasonable doubt Hategekimana's involvement in these crimes. Therefore, the Chamber dismisses these allegations.

**(iii) Roadblock Outside of Ngoma Camp**

14. The Prosecution alleges that, from 7 April until 31 May 1994, Hategekimana instructed soldiers stationed at the Ngoma Camp to erect a roadblock outside and opposite the main entrance into the camp to intercept, identify, arrest and kill *Tutsis*. According to the Prosecution, this roadblock was manned by soldiers from the Ngoma Camp under the supervision of the Accused. Many *Tutsi* civilians were arrested at this roadblock and killed or seriously injured. The Defence does not dispute the existence of the roadblock but argues that the roadblock, common to all military camps, had no criminal purpose.

15. On the basis of the evidence presented by twelve witnesses, the Chamber finds that Hategekimana bears no criminal liability for establishing and manning a roadblock outside of the Ngoma Camp. Therefore the Chamber dismisses this allegation.

**(iv) Distribution of Weapons**

16. The Indictment asserts that, from 7 April until 14 July 1994, Hategekimana distributed weapons to Ngoma Camp soldiers, *Interahamwe* and civilians. According to the Prosecution, these weapons were used to kill *Tutsi* civilians. The Chamber finds that the evidence is insufficient to establish this allegation and, accordingly, dismisses it.

**(v) Issuance of *Laissez-Passer* to Assailants**

17. The Prosecution argues that Hategekimana provided *laissez-passer* to facilitate the movement and equipping of soldiers, *Interahamwe* and armed civilians who participated in the killings in Butare *Préfecture*. The Chamber has heard testimony from one witness that he received a *laissez-passer*, signed by Hategekimana, to conduct his private business. No other evidence was presented linking the issuance of *laissez-passer* to the Accused. The Chamber has not found that Hategekimana is criminally liable for the issuance of *laissez-passer* and dismisses this allegation.

**(vi) Murder of Jean Bosco Rugomboka**

18. The Prosecution alleges that, on or about the night of 8 to 9 April 1994, Hategekimana led an attack on the home of the Rugomboka family. During the course of this attack, Hategekimana allegedly ordered soldiers, *Interahamwe* and armed civilians to arrest, torture and kill Jean Bosco Rugomboka on the basis of his identification as a member of the *Tutsi* ethnic group. The Defence claims that the Prosecution evidence is not credible. Specifically, the Defence asserts that members of the *Interahamwe* killed Rugomboka because of his political affiliation with the Rwandan Patriotic Front ("RPF").

19. The Chamber has heard a detailed and credible eyewitness account of Hategekimana's authoritative conduct during the abduction of Jean Bosco Rugomboka from his home by Ngoma Camp soldiers. The Chamber has also heard direct accounts about the threatening presence of

Hategekimana and Ngoma Camp soldiers during the removal of Jean Bosco Rugomboka's mutilated body from a pine wood as well as during and after the burial of the victim. The Chamber finds beyond reasonable doubt that Jean Bosco Rugomboka was tortured and killed between 8 and 9 April 1994 by soldiers from the Ngoma Camp and that Hategekimana ordered Jean Bosco Rugomboka's murder.

20. The evidence shows that the basis for Jean Bosco Rugomboka's torture and killing was political. The evidence of Rugomboka's expressed leanings towards the RPF, the soldiers' fixation on Rugomboka's T-shirt bearing the image of a political martyr named Rwigema, the forcing of Jean Bosco Rugomboka to wear the T-shirt before he was abducted from his house and the traces of torture, whereby Rwigema's effigy was carved through the T-shirt into Jean Bosco Rugomboka's chest, are strongly indicative that Jean Bosco Rugomboka was killed for his political opinions and not because of his *Tutsi* ethnicity. The Chamber therefore has found Hategekimana criminally liable for the murder of Jean Bosco Rugomboka as a crime against humanity but has not found him guilty of genocide.

**(vii) Speech by Interim President Sindikubwabo at the MRND Palace**

21. According to the Indictment, Hategekimana attended the swearing-in ceremony for the new *Préfet* of Butare *Préfecture*, Sylvain Nsabimana, which was held at the *Mouvement Révolutionnaire National pour la Démocratie et le Développement* ("MRND") Palace on 19 April 1994. At this meeting, interim President of Rwanda, Théodore Sindikubwabo, presented a speech which called on the Butare population to massacre the *Tutsis*. The Prosecution asserts that, by his presence, Hategekimana endorsed the sentiments expressed by the President to eliminate the *Tutsis*. There is no dispute that President Sindikubwabo delivered a speech on 19 April in Butare. However, the Defence denies that Hategekimana was present during the ceremony. It also denies any direct link between the message expressed in President Sindikubwabo's speech and Hategekimana's actions.

22. The Chamber finds that the evidence is insufficient to establish that Hategekimana attended the swearing-in ceremony. The Chamber therefore dismisses this allegation.

**(viii) Massacre at the Matyazo Primary School**

23. The Prosecution alleges that, on or about 21 April 1994, Hategekimana ordered Ngoma Camp soldiers, *Interahamwe* and armed civilians to kill a large number of *Tutsis* who had sought refuge at the Matyazo Primary School. The Prosecution also alleges that Hategekimana was present at the Matyazo Primary School shortly before the attack. The Defence denies the participation of the Accused or Ngoma Camp soldiers in this attack.

24. The Chamber finds that the evidence is insufficient to establish that Hategekimana was involved in the killings perpetrated at the Matyazo Primary School. The Chamber therefore dismisses this allegation.

**(ix) Massacre at the Matyazo Health Centre**

25. The Prosecution alleges that, on or about 21 or 22 April 1994, Ngoma Camp soldiers, *Interahamwe* and armed civilians launched an attack on *Tutsis* who had taken refuge at the Matyazo Health Centre. The Prosecution accuses Hategekimana of having ordered this attack, which resulted in the killing of many *Tutsis*. The Defence does not dispute that the Matyazo Health Centre was attacked but denies the involvement of Hategekimana or Ngoma Camp soldiers. The Defence

maintains that the attack was perpetrated by armed civilians only, over whom Hategekimana exercised no authority.

26. The Chamber, Judge Masanche dissenting, finds that the evidence is insufficient to prove beyond reasonable doubt Hategekimana's criminal responsibility for the killings at the Matyazo Health Centre. Accordingly, the Chamber dismisses the allegation.

**(x) Murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa**

27. The Prosecution alleges that, on or about the night of 23 April 1994, Hategekimana, accompanied by certain soldiers from the Ngoma Camp, visited the home of Salomé Mujawayezu in Ngoma *Secteur*, Butare town. They demanded to see the identification cards of the residents. Salomé Mujawayezu and her cousins Alice Mukarwesa and Jacqueline Mukaburasa, who were identified as *Tutsi*, were dragged outside the home and killed by the soldiers and *Interahamwe* in Hategekimana's presence. The Defence denies the involvement of Hategekimana or of any soldiers from the Ngoma Camp in these murders. It contends that the Prosecution evidence is insufficient and lacks credibility and reliability.

28. The Chamber considers that the manner in which Salomé Mujawayezu and her cousins were selected and killed on the basis of their *Tutsi* ethnicity demonstrates that their murders were perpetrated with genocidal intent. The evidence shows that Hategekimana was present before, during and after their murders and that his conduct demonstrated endorsement, if not encouragement. By lending armed reinforcements to the *Interahamwe* assailants, Hategekimana substantially contributed to the killings. The evidence also shows that these murders were targeted, intentional and committed as part of a widespread and systematic attack on the *Tutsi* civilian population. Accordingly, the Chamber finds Hategekimana guilty beyond reasonable doubt for genocide and murder as a crime against humanity for the killings of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa.

**(xi) Rape of Nura Sezirahiga**

29. The Indictment alleges that Hategekimana led Ngoma Camp soldiers and *Interahamwe*, on or about the night of 23 April 1994, to the home of Sadiki Sezirahiga. The assailants attacked the residents, and one of the soldiers raped Sadiki Sezirahiga's daughter Nura Sezirahiga, who was subsequently killed.

30. One Prosecution eyewitness presented a detailed account of the rape of Nura Sezirahiga, perpetrated by a soldier, on the night of 23 April 1994. This witness presented credible and reliable evidence identifying Hategekimana, Ngoma Camp soldiers and *Interahamwe* at Sadiki Sezirahiga's home during the attack. However, the evidence does not establish that Nura was a *Tutsi* or that she was raped with genocidal intent. Accordingly, the Chamber finds Hategekimana to be criminally responsible for the rape of Nura Sezirahiga as a crime against humanity but not as genocide.

**(xii) Massacre at the *Groupe Scolaire***

31. According to the Prosecution, on or about 27 April 1994, Hategekimana led armed soldiers to the *Groupe Scolaire*, a secondary school in Butare, where orphans and refugees had sought shelter. Hategekimana ordered them to separate *Tutsis* from *Hutus* and to kill the *Tutsis*. The Defence denies the presence of Hategekimana at the *Groupe Scolaire* and maintains that the Prosecution evidence is not credible.

32. Only one Prosecution witness testified about the massacre. This witness was not present at the secondary school during the killings, and no other witnesses provided evidence to support his account. The Chamber does not find that this allegation has been proven beyond reasonable doubt and dismisses it.

**(xiii) Massacre at Ngoma Parish**

33. The Prosecution alleges that Hategekimana led a group of armed soldiers, *Interahamwe* and civilians under his effective control to the Ngoma Parish, on or about 30 April 1994. Hategekimana ordered them to attack and kill refugees identified as *Tutsis* who had sought shelter at the Ngoma Parish. The Defence claims that the Prosecution evidence lacks credibility.

34. The evidence shows that, on 29 April 1994, refugees who had sought shelter at the Ngoma Parish repelled assailants with stones and traditional weapons. The evidence also demonstrates that the following morning, 30 April 1994, two soldiers from the Ngoma Camp arrived to warn Father Masinzo, a *Tutsi*, that Hategekimana intended to kill him. One of the soldiers specified that Hategekimana had ordered the massacre of all the refugees at the Parish. Another priest, Father Eulade Rudahunga, provided a consistent and corroborative account that Hategekimana, accompanied by Ngoma Camp soldiers and *Interahamwe*, was present at the Ngoma Parish prior to the selection and killing of *Tutsis* on 30 April 1994. The Chamber finds beyond reasonable doubt that Hategekimana is responsible for the killing of a large number of *Tutsis* at Ngoma Parish on 30 April 1994.

**(xiv) Massacre at the *Maison Générale* (Benebikira Convent)**

35. The Prosecution alleges that, on or about 30 April 1994, Hategekimana led armed Ngoma Camp soldiers, *Interahamwe* and civilians under his effective control to the *Maison Générale*. Hategekimana ordered them to select, abduct and kill the *Tutsi* refugees sheltering in the Convent. The Defence disputes the credibility of the Prosecution witnesses, and asserts that neither Hategekimana nor Ngoma Camp soldiers participated in the abduction and killing of *Tutsis* from the *Maison Générale*.

36. Three eyewitnesses, all *Tutsi* women survivors, presented detailed and convincing testimonies of the attack on the Convent and the abduction of refugees. The Chamber finds their corroborated evidence to be credible. Accordingly, it finds beyond reasonable doubt that Hategekimana is responsible for the selection, abduction and killing of many *Tutsis* from the *Maison Générale* on 30 April 1994.

37. The Indictment also charges Hategekimana with the murder of three identified children among the abducted refugees from the *Maison Générale* on 30 April 1994. However, the corroborated evidence specifically identifies only one of the named children who was abducted and killed: Solange, a daughter of the Karenzi family. Accordingly, the Chamber finds beyond reasonable doubt that Hategekimana is responsible for the murder of Solange Karenzi.

**2.3 Verdict**

38. The Chamber has found Ildephonse Hategekimana guilty of genocide (Count 1) for: the killing of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994;

the killing of *Tutsis* at the Ngoma Parish on 30 April 1994; and the killing of *Tutsis* at the *Maison Générale* on 30 April 1994.

39. The Chamber has further found Hategekimana guilty of murder as a crime against humanity (Count 3) for: the murder of Jean Bosco Rugomboka on the night of 8 to 9 April 1994; the murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994; and the murder of Solange Karenzi on 30 April 1994.

40. Finally, the Chamber has found Hategekimana guilty for rape as a crime against humanity (Count 4) for the rape of Nura Sezirahiga on 23 April 1994.

41. Hategekimana is not guilty of complicity in genocide (Count 2).

## **2.4 Sentencing**

42. The Chamber has considered the gravity of each of the crimes for which Hategekimana has been convicted as well as aggravating and mitigating circumstances mentioned by the parties. The Chamber has the discretion to impose a single sentence and chooses to do so. Considering the relevant circumstances discussed in this Judgement, the Chamber sentences Ildephonse Hategekimana to a single sentence of life imprisonment. He shall remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

## CHAPTER II: PRELIMINARY ISSUES

### 1. ISSUES RELATING TO THE INDICTMENT

43. In its Closing Brief, the Defence raised issues relating to the specificity of the charges in the Indictment<sup>7</sup> and the designation of Hategekimana as “Bikomago.”<sup>8</sup> The Prosecution responded in its Closing Arguments.<sup>9</sup> The Chamber will address these submissions in turn.

#### 1.1 Notice of the Charges

##### 1.1.1 Introduction

44. In its Closing Brief, the Defence challenged the notice provided to the Accused of the material facts underpinning the charges in the Indictment. It submitted that the Indictment is vague and defective in relation to the majority of the alleged crimes, thus causing prejudice to Hategekimana and violating his fair trial rights.<sup>10</sup>

45. The Prosecution has responded that the allegations of vagueness in the pleadings were resolved prior to the commencement of trial, and that, insofar as the Defence did not challenge the form of the Indictment during the proceedings, the pleadings “provided the Accused sufficient notice of the case that he had to face.”<sup>11</sup>

46. In the present section, the Chamber will consider the challenged paragraphs of the Indictment, in view of the general legal principles recapitulated below.

47. An accused before this Tribunal is guaranteed, under Article 20(4)(a) of the Statute, the fundamental right “to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her.” This guarantee translates into an obligation for the Prosecution to know its case before proceeding to trial and to provide a concise statement of the material facts in the indictment, detailing the crimes charged, in order to provide notice to the accused.<sup>12</sup> Defects in an indictment may come to light during the proceedings because the evidence turns out to be different than expected, and such situations may call for measures such as an amendment of the indictment, an adjournment or the exclusion of evidence outside the scope of the indictment.<sup>13</sup> In reaching its judgement, a Trial Chamber can convict the accused only of crimes that are charged in the indictment.<sup>14</sup>

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<sup>7</sup> Defence Closing Brief paras. 15, 17-23, 357-359, 516-528, 607-617, 732. See also Defence Closing Arguments T. 26 April 2010 pp. 42-44.

<sup>8</sup> Defence Closing Brief para. 16. See also Defence Closing Arguments T. 26 April 2010 pp. 42, 43.

<sup>9</sup> T. 26 April 2010 pp. 7, 8.

<sup>10</sup> Defence Closing Brief paras. 7, 20-21, 15, 17, 732, referring to the following paragraphs in the Indictment: 6, 7, 9, 12, 14, 15, 17, 19-22, 25-27, 30-33, 35, 37-39, 41, 42, 44-49.

<sup>11</sup> Prosecution Closing Arguments T. 26 April 2010 p. 7.

<sup>12</sup> *Muvunyi* Appeal Judgement para. 18; *Seromba* Appeal Judgement paras. 27, 100; *Simba* Appeal Judgement para. 63; *Muhimana* Appeal Judgement paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement para. 49; *Ndindabahizi* Appeal Judgement para. 16.

<sup>13</sup> *Muvunyi* Appeal Judgement para. 18; *Ntagerura et al.* Appeal Judgement para. 27. See also *Kvočka et al.* Appeal Judgement para. 31; *Niyitegeka* Appeal Judgement para. 194; *Kupreškić et al.* Appeal Judgement para. 92.

<sup>14</sup> *Muvunyi* Appeal Judgement para. 18; *Nahimana et al.* Appeal Judgement para. 326; *Ntagerura et al.* Appeal Judgement para. 28; *Kvočka et al.* Appeal Judgement para. 33.

48. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the Indictment is the nature of the alleged criminal conduct charged to an accused.<sup>15</sup> The Appeals Chamber has held that criminal acts that were physically committed by the accused must be specifically set forth in the Indictment, including where feasible “the identity of the victim, the time and place of the events and the means by which the acts were committed.”<sup>16</sup> Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the “particular acts” or “the particular course of conduct” of the accused which forms the basis for the charges in question.<sup>17</sup>

49. Joint criminal enterprise (“JCE”) is a form of “committing” included in Article 6(1) of the ICTR Statute. Article 6(1) has been interpreted to encompass three forms of joint criminal enterprise: basic, systemic and extended.<sup>18</sup> If the Prosecution intends to rely on joint criminal enterprise to hold an accused criminally responsible as a principal perpetrator of the underlying crimes, rather than as an accomplice, the pleading in the indictment should be unambiguous and specify on which form of joint criminal enterprise the Prosecution will rely.<sup>19</sup> In addition, the Prosecution must plead the purpose of the enterprise, the identity of the co-participants and the nature of the accused’s participation in the enterprise.<sup>20</sup>

50. When it is the Prosecution’s intention to rely on superior responsibility to hold an accused criminally responsible for a crime under Article 6(3) of the Statute, the indictment should plead the following material facts: (1) that the accused was 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 to have 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 necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>21</sup>

51. A superior need not necessarily know the exact identity of his or her subordinates who perpetrated crimes in order to incur liability under Article 6(3) of the Statute.<sup>22</sup> The Appeals Chamber has held that an accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp and acting under the accused’s authority.<sup>23</sup> It has also

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<sup>15</sup> *Kupreškić et al.* Appeal Judgement para. 89.

<sup>16</sup> *Muhimana* Appeal Judgement para. 76; *Gacumbitsi* Appeal Judgement para. 49; *Ntakirutimana* Appeal Judgement para. 32, citing *Kupreškić et al.* Appeal Judgement para. 89. See also *Ndindabahizi* Appeal Judgement para. 16.

<sup>17</sup> *Ntagerura et al.* Appeal Judgement para. 25.

<sup>18</sup> *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement paras. 82-83, *Ntakirutimana* Appeal Judgement paras. 463-465, *Vasiljević* Appeal Judgement paras. 96-99, *Krnojelac* Appeal Judgement para. 30.

<sup>19</sup> *Simba* Trial Judgement para. 389, citing *Krnojelac* Appeal Judgement paras. 138-145, *Ntakirutimana* Appeal Judgement paras. 475-484, *Kvočka et al.* Appeal Judgement paras. 41-42.

<sup>20</sup> *Simba* Trial Judgement para. 389, citing *Kvočka et al.* Appeal Judgment paras. 28, 42.

<sup>21</sup> *Muvunyi* Appeal Judgement para. 19; *Nahimana et al.* Appeal Judgement para. 323; *Ntagerura et al.* Appeal Judgement paras. 26, 152. See also *Naletilić and Martinović* Appeal Judgement para. 67; *Blaškić* Appeal Judgement para. 218.

<sup>22</sup> *Muvunyi* Appeal Judgement para. 55; *Blagojević and Jokić* Appeal Judgement para. 287.

<sup>23</sup> *Muvunyi* Appeal Judgement para. 56; *Ntagerura et al.* Appeal Judgement paras. 140, 141, 153.

held that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.<sup>24</sup>

52. The Appeals Chamber has stated that the facts relevant to the acts of persons for which an accused is alleged to be responsible as a superior will usually be stated with less precision because the details of those acts are often unknown, and because the acts themselves are often not very much an issue.<sup>25</sup> Furthermore, 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>26</sup>

53. Finally, a Trial Chamber may infer knowledge of the crimes from their widespread nature and may infer a superior's failure to prevent or punish them from the continuing nature of the violations. The superior's knowledge of the crimes and his or her failure to prevent or punish them follow from reading the indictment as a whole.<sup>27</sup>

54. An indictment lacking this precision is defective. The defect may be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charge.<sup>28</sup> The Pre-Trial Brief can provide such information in certain circumstances.<sup>29</sup> However, the principle that a defect in an indictment can be cured is not without limits.<sup>30</sup>

55. Objections based on lack of notice should be specific and timely. They should be raised at the pre-trial stage, for instance in a motion challenging the indictment, or at the time the evidence of a new material fact is introduced. Although failure to object at that time does not prohibit the Defence from objecting at a later date, the Trial Chamber should determine whether the objection was untimely such that the burden of proof has shifted from the Prosecution to the Defence to demonstrate that the accused's ability to defend himself has been materially impaired. Relevant factors to consider include whether the Defence has provided a reasonable explanation for its failure to raise its objection at the time the evidence was introduced, and whether it has shown that the objection was raised as soon as possible.<sup>31</sup>

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<sup>24</sup> See e.g., *Simba* Appeal Judgement paras. 71-72 (concerning identification of other members of a joint criminal enterprise), quoting *Simba* Trial Judgement paras. 393-396.

<sup>25</sup> *Ntagerura et al.* Appeal Judgement para. 26 fn. 82, quoting *Blaškić* Appeal Judgement para. 218. See also *Muvunyi* Appeal Judgement para. 58.

<sup>26</sup> *Muvunyi* Appeal Judgement para. 58; *Muhimana* Appeal Judgement para. 79; *Gacumbitsi* Appeal Judgement para. 50; *Kupreškić et al.* Appeal Judgement para. 89.

<sup>27</sup> *Muvunyi* Appeal Judgement para. 62.

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

<sup>29</sup> *Muhimana* Appeal Judgement para. 82; *Gacumbitsi* Appeal Judgement paras. 57, 58; *Ntakirutimana* Appeal Judgement para. 48; *Naletilić and Martinović* Appeal Judgement para. 45.

<sup>30</sup> In this respect, the Appeals Chamber has emphasised: “[T]he “new material facts” should not lead to a “radical transformation” of the Prosecution’s case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Trial Chamber to amend the Indictment and the Trial Chamber should only grant leave if it is satisfied that it would not lead to unfairness or prejudice to the Defence.” See *Bagosora et al.* Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Chamber 1 Decision on Motion for Exclusion of Evidence (AC), 18 September 2006 para. 30 (internal citations omitted).

<sup>31</sup> *Bagosora et al.* Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Chamber 1 Decision on Motion for Exclusion of Evidence (AC), 18 September 2006 paras. 45-46.



### 1.1.2 General Challenges to the Indictment

56. The Defence has submitted that the Indictment is vague and defective in several respects, thereby causing prejudice to Hategekimana and violating his fair trial rights.<sup>32</sup> In particular, the Defence contends that 30 out of 49 paragraphs of the Indictment insufficiently specify the location or the time frame of the alleged crimes, the identities of the perpetrators or the form of liability asserted.<sup>33</sup>

57. According to the Prosecution, the allegations of vagueness of the pleadings were resolved prior to the commencement of the trial, and the failure of the Defence to challenge the form of the Indictment during the trial proceedings “establishes the fact that the pleadings had provided the Accused sufficient notice of the case that he had to face.”<sup>34</sup>

58. The Chamber observes that allegations of vagueness should normally be addressed during the pre-trial stage of the proceedings.<sup>35</sup> The Defence has not provided any explanation for its delay in raising its challenges to the Indictment until its Closing Brief.<sup>36</sup> Nonetheless, the Chamber finds that its duty to ensure the integrity of the proceedings and to safeguard the rights of the Accused warrants full consideration of the arguments of the Defence.

59. According to the Appeals Chamber, blanket objections that the entire indictment is defective are insufficiently specific.<sup>37</sup> Indeed, the Chamber notes that the arguments of the Defence regarding the vagueness of the present Indictment are overly general. Before the commencement of trial, the Defence raised similarly general objections to the entirety of the Indictment. The Trial Chamber addressed these objections and rejected them.<sup>38</sup> Specifically the Chamber determined that the approximate dates or date ranges in the Indictment, which the Defence had challenged, were reasonable, given the nature of the allegations against Hategekimana.<sup>39</sup>

60. In its Closing Brief, the general focus of the Defence shifted to the Indictment’s lack of precision in identifying alleged perpetrators, other than Hategekimana. According to the Appeals Chamber, physical perpetrators of crimes may be identified by category in relation to a particular crime site.<sup>40</sup> Such is the pleading in the present Indictment, where the physical perpetrators are consistently identified in many paragraphs as Ngoma Camp soldiers, *Interahamwe* and/or armed civilians.<sup>41</sup> However, certain alleged physical perpetrators are also identified by name in several

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<sup>32</sup> Defence Closing Brief paras. 15, 17, 732.

<sup>33</sup> Defence Closing Brief paras. 15, 17-19, 20-21, 732. The Defence challenges paragraphs 33, 46, 47 and 48 on the ground that they insufficiently specify the location at which the alleged criminal acts occurred; paragraphs 32, 33, 47 and 48 on the basis that they insufficiently specify the time frame in which the alleged criminal acts occurred; and paragraphs 6, 7, 9, 12, 14, 15, 17, 19, 20, 21, 22, 25, 26, 27, 30, 31, 32, 33, 35, 37, 38, 39, 41, 42, 44, 45, 46, 47, 48 and 49 on the ground that they insufficiently identify the alleged perpetrators.

<sup>34</sup> Prosecution Closing Arguments T. 26 April 2010 p. 7.

<sup>35</sup> *Kupreškić et al.* Appeal Judgement para. 79. See also Rule 72 (F).

<sup>36</sup> Defence Closing Brief paras. 15-23.

<sup>37</sup> *Bagosora et al.* Decision on Exclusion of Evidence (AC) para. 46.

<sup>38</sup> See *The Prosecutor v. Ildelphonse Nizeyimana and Ildelphonse Hategekimana*, Case No. 00-55-I, Decision on the Prosecutor’s Application for Severance and Leave to Amend the Indictment against Ildelphonse Hategekimana (TC), 25 September 2007 paras. 23 (“[T]he added particulars provide further notice to the Accused of the case against him and will allow the Accused to tailor his investigations and enhance his ability to prepare his defence.”), 31-34 (“Decision on Severance and Leave to Amend Indictment”). See also Oral Decision T. 16 March 2009 p. 2.

<sup>39</sup> Decision on Severance and Leave to Amend Indictment (TC) para. 33.

<sup>40</sup> *Simba* Appeal Judgement paras. 71, 72 (concerning identification of other members of a joint criminal enterprise).

<sup>41</sup> See Indictment paras. 7-12, 14-33, 35-41.

paragraphs of the Indictment.<sup>42</sup> In addition, *chapeau* paragraphs 6, 21, 34 and 42 of the Indictment provide the details that the Defence alleges are lacking, and introduce the specific events described in paragraphs 7-20, 22-33, 35-37 and 43-45.<sup>43</sup> Accordingly, the Chamber considers that the Indictment is neither vague nor defective regarding the identity of the alleged perpetrators.

61. The Defence also asserts that, apart from the rape of Nura Sezirahiga in Ngoma on 23 April 1994, the allegations of rape in paragraphs 8, 32, 33, 44, 47 and 48 are imprecise in relation to the location of the crimes, the identity of the victims and perpetrators as well as the time frame in which the rapes occurred.<sup>44</sup> In the Chamber's view, the identification of the alleged locations and perpetrators of the rapes are sufficiently precise, within the context of the entire Indictment, for the Defence to pursue investigations.<sup>45</sup> While the time frame of the alleged rapes spans a two-month period,<sup>46</sup> the Chamber reiterates that a broad date range, in itself, does not invalidate a paragraph of an indictment. In this respect, the Appeals Chamber has stated that, 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 dates of the commission of the crimes and the identity of the victims.<sup>47</sup> One example, according to the Appeals Chamber, is where the accused participated as a member of a military force "in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings."<sup>48</sup> In light of the large scale of the alleged rapes in and around Butare town, the Chamber accepts that the Prosecution was not necessarily in a position to provide greater specificity about either the dates or the victims of the crimes.

62. Therefore, the Chamber considers that the Indictment is not defective with respect to the time frame, the location and the identification of the perpetrators or the victims of the rapes alleged in paragraphs 32, 33, 44, 47 and 48 of the Indictment.

#### *Notification of the Form of Joint Criminal Enterprise*

63. The Defence argues that the Prosecution erred in merely alleging that Hategekimana participated in a joint criminal enterprise, without specifying the object of the enterprise, the clear identity of all the participants, the form of joint criminal enterprise alleged, or the "effective nexus between the Accused and his co-participants."<sup>49</sup> The Defence also contends that the Prosecution's Opening Statement failed to mention the events linked to a joint criminal enterprise, as well as the intention to adduce evidence on this mode of liability, thereby "severely test[ing] the jurisprudential

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<sup>42</sup> See Indictment paras. 16-18, 28, 36, 45, 49.

<sup>43</sup> *Chapeau* paragraphs 6 and 21 introduce alleged criminal responsibility, 6(1) or 6(3) respectively, for events relating to the charge of genocide. *Chapeau* paragraphs 34 and 42 introduce alleged criminal responsibility, 6(1) or 6(3) respectively, for events relating to crimes against humanity.

<sup>44</sup> Defence Closing Brief paras. 17-19, referring to paragraphs 32, 33, 44, 47 and 48 of the Indictment.

<sup>45</sup> The rapes are alleged to have occurred either at "the house of Ildéphonse Hategekimana *alias* Bikomago" (see Indictment paras. 8, 44), or "in and around Butare Town" (see Indictment paras. 33, 47, 48). The Chamber notes that paragraph 32 of the Indictment omits a location, but the Prosecution Pre-Trial Brief clarifies that the rapes alleged therein also occurred "in and around Butare Town" (see Prosecution Pre-Trial Brief para. 122). The rapists were alleged to be the Accused himself (see Indictment paras. 8, 44), or Ngoma Camp soldiers, *Interahamwe*, and/or armed civilians (see Indictment paras. 32, 33, 47, 48).

<sup>46</sup> The rapes are alleged to have occurred "[o]n diverse unknown dates between 6 April and 31 May 1994" (see Indictment paras. 8, 33, 44, 48), "[o]n or between 7 April and 31 May 1994" (see Indictment para. 47), or "at diverse unknown dates from or after 7 April 1994" (see Indictment para. 32).

<sup>47</sup> *Muvunyi* Appeal Judgement para. 58; *Muhimana* Appeal Judgement para. 79; *Gacumbitsi* Appeal Judgement para. 50; *Kupreškić et al.* Appeal Judgement para. 89.

<sup>48</sup> *Kupreškić et al.* Appeal Judgement paras. 89, 90, 95; *Ntakirutimana* Trial Judgement para. 55.

<sup>49</sup> Defence Closing Brief para. 22.

requirements obliging the Prosecution to adequately inform the Accused of the charges against him.”<sup>50</sup>

64. While the Indictment does not specify the alleged form of joint criminal enterprise, the Pre-Trial Brief cures this potential defect by clarifying that the Prosecution relies solely upon the first or basic category of joint criminal enterprise. In its Closing Arguments, the Prosecution confirms reliance on the basic category of joint criminal enterprise,<sup>51</sup> and submits that all the pleading requirements for this mode of liability have been met.<sup>52</sup> According to the basic category, all participants share a common intent, and one or more actually perpetrate the crime.<sup>53</sup> The precise pleading in the Pre-Trial Brief is consistent with the allegations in *chapeau* paragraphs 6, 34 and 42 of the Indictment.<sup>54</sup>

65. Specifically, paragraphs 6, 34 and 42 accuse Hategekimana of participating in a joint criminal enterprise with several co-participants, identified both by category and by name. The object and common purpose of the joint criminal enterprise, as alleged in the same paragraphs, was the commission throughout Rwanda, and in Butare *Préfecture* in particular, of genocide as well as murder and rape as crimes against humanity against the *Tutsi* group and/or persons identified as *Tutsi* and/or those perceived to be their sympathisers. The precise nature of Hategekimana’s participation in the joint criminal enterprise is pleaded in paragraphs 7-20 in relation to genocide, paragraphs 35-37 in relation to murder and paragraphs 43-45 in relation to rape.

66. The Chamber, therefore, considers Hategekimana to have been on notice of the fact that he stood accused of the basic form of joint criminal enterprise.

#### *Notification of the Material Facts of Superior Responsibility*

67. The Defence asserts that the Indictment fails to plead the material facts of Hategekimana’s alleged superior responsibility in relation to the attacks at the Matyazo Health Centre,<sup>55</sup> the Ngoma Parish,<sup>56</sup> and the *Maison Générale* (Benebikira Convent).<sup>57</sup> In this respect, the Chamber will consider the Indictment in relation to the elements of superior responsibility as articulated above.

68. Paragraphs 21, 38, and 46 of the Indictment allege that Hategekimana is responsible as a superior for genocide, as well as for murder and rape as crimes against humanity:

because specific criminal acts were committed by subordinates of the Accused over whom he exercised effective control, and the Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed, or that such subordinates had committed such acts, and the Accused

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<sup>50</sup> Defence Closing Brief para. 34.

<sup>51</sup> Prosecution Closing Arguments T. 26 April 2010 p. 8.

<sup>52</sup> Prosecution Closing Arguments T. 26 April 2010 p. 7, *referring to* Indictment, paras. 6, 7, 34, 42.

<sup>53</sup> Prosecution Pre-Trial Brief para. 37.

<sup>54</sup> Paragraph 42 of the Indictment, which relates to rape as a crime against humanity, also pleads, in the alternative, that “the common purpose of the joint criminal enterprise was the destruction in whole or in part of the *Tutsi* racial or ethnic group; the participants in this joint criminal enterprise, including the Accused, were aware that the commission, by one or more participants in the joint criminal enterprise, of rape as a crime against humanity was a natural and foreseeable consequence of effecting their common purpose, and the [A]ccused willingly took the risk that this might occur.”

<sup>55</sup> Defence Closing Brief paras. 357-359.

<sup>56</sup> Defence Closing Brief paras. 516-528.

<sup>57</sup> Defence Closing Brief paras. 607-617.

failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.<sup>58</sup>

69. It is insufficient to merely repeat the elements of superior responsibility without also setting out the underlying material facts.<sup>59</sup>

*First Element: Identification of Subordinates*

70. The Chamber notes that paragraphs 21, 38, and 46 of the Indictment identify Hategekimana's subordinates over whom he exercised effective control to include soldiers under his command at the Ngoma Camp, *Interahamwe* and armed civilians. These three *chapeau* paragraphs introduce, respectively, paragraphs 22-33, 39-41 and 47-49 of the Indictment. The following paragraphs all further identify the perpetrators of the alleged crimes either by name or by category. A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order for him or her to incur liability under Article 6(3) of the Statute.<sup>60</sup> An accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp and are under his or her authority.<sup>61</sup> Moreover, the Chamber reiterates that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.<sup>62</sup> The Chamber therefore finds the Indictment to have sufficiently pleaded the first element of superior responsibility: the identity of Hategekimana's alleged subordinates.

*Second Element: Actions of Subordinates*

71. As for the second element, the Chamber recalls that "the facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior [...] will usually be stated with less precision because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue."<sup>63</sup> The paragraphs of the Indictment in question, paragraphs 22-33, 39-41 and 47-49, provide a general description of the alleged criminal actions of Hategekimana's subordinates in relation to the following events: the establishment and manning of a roadblock outside of the Ngoma Camp; the use of weapons distributed by Hategekimana; the use of *laissez-passer* provided by Hategekimana to move throughout the area; the arrest, torture and killing of Jean Bosco Rugomboka, the attacks on Matyazo Primary School and the Matyazo Health Centre; the killing of Salomé Mujawayezu, Alice Mukarweza and Jacqueline Mukaburasa; the attacks on *Tutsis* gathered at the *Groupe Scolaire*, the Ngoma Parish and the *Maison Généralice*; as well as the rapes of *Tutsi* women, including the rape of Nura Sezirahiga. In view of the delineation of these events involving Ngoma Camp soldiers, *Interahamwe* and/or armed civilians, the Chamber considers that the Indictment has sufficiently pleaded the second element of superior responsibility: the criminal acts of Hategekimana's subordinates.

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<sup>58</sup> This text is identical in paragraphs 21, 38 and 46 of the Indictment. However, paragraph 46, which relates to rape as a crime against humanity, adds that the crimes of Hategekimana's subordinates were committed "as part of a widespread and/or systematic attack on the *Tutsi* civilian population on racial, ethnic and/or political grounds."

<sup>59</sup> *Muvunyi* Appeal Judgement para. 44; *Ntagerura et al.* Appeal Judgement paras. 26, 152.

<sup>60</sup> *Muvunyi* Appeal Judgement para. 55; *Blagojević and Jokić* Appeal Judgement para. 287.

<sup>61</sup> *Muvunyi* Appeal Judgement para. 56; *Ntagerura et al.* Appeal Judgement paras. 140, 141, 153.

<sup>62</sup> *Simba* Appeal Judgement paras. 71, 72 (concerning identification of other members of a joint criminal enterprise).

<sup>63</sup> *Muvunyi* Appeal Judgement para. 58; *Ntagerura et al.* Appeal Judgement para. 26 fn. 82, quoting *Blaškić* Appeal Judgement para. 218.

*Third Element: Superior Knowledge of Subordinates' Acts*

72. With respect to the third element, however, the Indictment does not specify the conduct that is alleged to indicate Hategekimana's knowledge or reason to know of the crimes that had been or were about to be committed in relation to each event. When reading the Indictment as a whole, it becomes clear that Hategekimana's knowledge of the crimes may be implied by virtue of his alleged presence and/or orders,<sup>64</sup> or by the boasting of his subordinates.<sup>65</sup> The Chamber may also infer knowledge of the crimes from their widespread or systematic nature.<sup>66</sup> The Chamber considers that the Indictment has sufficiently pleaded the third element of superior responsibility: Hategekimana's superior knowledge of the criminal conduct of his subordinates.

*Fourth Element: Superior's Failure to Take Measures to Prevent or Punish Subordinates' Acts*

73. Concerning the fourth element, the Chamber recalls that it is sufficient in many cases to plead, as in the present case, that the accused did not take necessary and reasonable measure to prevent or punish the commission of criminal acts.<sup>67</sup> The Appeals Chamber has also held that a Trial Chamber may infer a superior's failure to prevent or punish the crimes from the continuing nature of the violations, which also follows from reading the Indictment as a whole.<sup>68</sup> Indeed, in view of the nature of the allegations against Hategekimana and the context of the events presented in the Indictment, the Chamber considers that the fourth element of superior responsibility has been sufficiently pleaded: Hategekimana's failure to take measures to prevent or punish the criminal conduct of his subordinates.

74. Accordingly, the Chamber considers that the Indictment is sufficiently specific to provide Hategekimana with fair notice to prepare his defence against the charges. The Chamber has thus addressed the notice issues pertaining to this case and will not consider them in the course of its factual findings.

## **1.2 Identification in the Indictment of the Accused as "Bikomago"**

75. In its Closing Brief, the Defence asserts that the Prosecution's references to Hategekimana in the Indictment as "Bikomago" are prejudicial to the rights and interests of the Accused.<sup>69</sup> The Defence argues that the Prosecution's failure to take steps to strike the *alias* "Bikomago" from the Indictment, despite the Chamber's clear injunctions against using it when referring to Hategekimana, made it impossible to answer to the crimes alleged therein for they concerned a person wrongfully identified as Hategekimana.<sup>70</sup>

76. The Chamber notes that the Defence has previously raised this issue, and that it has already been addressed. The issue first arose when the Prosecution sought leave to amend the original

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<sup>64</sup> Indictment, paras. 9, 22 (killings at roadblock outside Ngoma Camp – in this case knowledge may also be inferred from the proximity of the roadblock to Ngoma Camp); paras. 12, 25, 39 (murder of Jean Bosco Rugomboka); paras. 14, 26 (attack at Matyazo Primary School); paras. 15, 27 (attack at Matyazo Health Centre); paras. 16, 28, 40 (murders of Salomé, Alice, and Jacqueline); paras. 17, 49 (rape and murder of Nura); paras. 18, 29 (attack at *Groupe Scolaire*); paras. 19, 30 (attack at Ngoma Parish); paras. 20, 31, 41 (attack at Benebikira Convent).

<sup>65</sup> Indictment, paras. 32, 47 (rapes in and around Butare town).

<sup>66</sup> *Muvunyi* Appeal Judgement para. 62.

<sup>67</sup> *Nahimana et al.* Appeal Judgement, para. 323.

<sup>68</sup> *Muvunyi* Appeal Judgement para. 62.

<sup>69</sup> Defence Closing Brief para. 16.

<sup>70</sup> Defence Closing Brief para. 16.

Indictment and proposed, among other things, to introduce the *alias* “Bikomago.”<sup>71</sup> The Defence objected to the designation of Hategekimana by this *alias* because its allusion to another notorious individual known by the same *alias*, who allegedly committed many crimes, “fortuitously and unjustifiably identif[ies] the Accused with such a character,” thereby violating the presumption of Hategekimana’s innocence.<sup>72</sup> The Chamber, which granted the Prosecution’s request to amend the original Indictment, rejected the Defence’s argument, stating that “the proposed Amended Indictment seeks to introduce the use of the nickname ‘Bikomago’ to assist in identifying Mr Hategekimana as well as his alleged crimes, and not to confuse or associate the Accused with any such person named Bikomago who may have committed crimes in Burundi or elsewhere.”<sup>73</sup>

77. In entering a plea following the issuance of the (amended and operative) Indictment, Hategekimana acknowledged that his real name is Ildephonse Hategekimana and pleaded not guilty to all charges against him under his real name only, rejecting the assertion that he is also known under the *alias* “Bikomago.”<sup>74</sup> At the same time, the Defence expressed its “reservation that this artificial and circumstantial identity, which the Prosecutor has inserted into the document, is creating a confusion which may undermine the entire Indictment.”<sup>75</sup> In the period leading up to the commencement of the trial, the Defence repeatedly requested the removal of the *alias* “Bikomago” from the Indictment, reiterating that Hategekimana did not acknowledge the *alias* attributed to him, that it prevented him from answering the charges against him, and that it affected the presumption of his innocence.<sup>76</sup> On 16 March 2009, the first day of trial, the Chamber recalled its previous decision rejecting the request as well as the reasons for that decision, and stated that “the Defence has belaboured an issue that has already been determined. Accordingly, the Chamber emphasise[d] that this issue ha[d] been settled.”<sup>77</sup>

78. The following day, Hategekimana refused to appear in the courtroom due to his objection to being referred to as “Bikomago.”<sup>78</sup>

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<sup>71</sup> The Prosecutor’s Application for Severance and Leave to Amend the Indictment against Idelphonse Hategekimana (confidential), 9 October 2006, Annex B: Proposed Amended Indictment.

<sup>72</sup> Defence Observations on Proposed Amended Indictment pp. 1, 2. See also *Rappel des observations et réserves de la Défense relatives à la requête du Procureur aux fins d’obtenir une disjonction d’instance et d’être autorisé à modifier l’acte d’accusation établi contre Ildephonse Hategekimana*, 7 November 2007.

<sup>73</sup> Decision on Severance and Leave to Amend Indictment (TC) para. 26 (emphasis added).

<sup>74</sup> Further Initial Appearance T. 9 November 2007 pp. 1, 19-21.

<sup>75</sup> Further Initial Appearance T. 9 November 2007 pp. 19, 20; See also Status Conference T. 15 December 2008 p. 13.

<sup>76</sup> *Requête respectueuse de la Défense en rappel de ses observations à l’audience de mise en état du 15/12/08, suite aux prescriptions de l’ordonnance de la Chambre III du 22 décembre 2008 portant “Scheduling Order Concerning the Commencement of Trial Rule 54 of the Rules of Procedure and Evidence,”* 9 January 2009, paras. 3-8, 12, 13; Defence Exceptions to Identity and Defects in the Indictment, paras. 12-18, 27-29. See also *Requête de la défense en rappel de l’état du dossier et de la nécessité d’une décision de la Chambre sur les exceptions préjudicielles avant le début du procès*, 16 March 2009 para. 3; Status Conference, T. 16 March 2009 pp. 8-10.

<sup>77</sup> T. 16 March 2009 p. 1.

<sup>78</sup> T. 17 March 2009 pp. 1-4: In this respect, the Defence stated: “We are in criminal proceedings, which is hinged fundamentally on the presumption of innocence. So when at the outset you seek a label on an accused person, a label which is a very expressively negative, in such case I believe that such practices can prejudice the basic principles of law. The Accused is not called Bikomago. Yesterday you saw that the Prosecutor preferred systematically to call him Bikomago. I heard him call him Commander or Major Bikomago as if that were his real name. Our client, Mr. Idelphonse Hategekimana, does not have that name. That’s not his identity. Therefore, it’s not possible for someone to force matters at [...] this stage of the proceedings and already stick a label on the Accused by calling him a name which is not his. Now, for all these reasons and for the possible consequences of these reasons, the client opted not to come here, although he is ready and willing to participate in all other acts of the proceedings. But then the Tribunal has to agree that he should be referred to by his real name, which is his known name, in other words, Idelphonse Hategekimana.” In response, the Chamber stated: “We call on the Prosecutor not to use the name Bikomago because the Accused up to this point is benefiting from the presumption of innocence. Witnesses can testify to what they know

79. The Defence's contention that the Prosecution should have expunged "Bikomago" from the Indictment misrepresents the Chamber's instruction, which was limited to preventing the Prosecution from posing leading questions. As such, the Chamber declines to reconsider its decision not to strike the *alias* from the Indictment, and does not consider the Defence to have shown any prejudice in this regard. Hategekimana is presumed innocent until proven guilty. The fact that the Prosecution identifies him by an *alias* allegedly shared by another individual does not constitute an infringement of the presumption of innocence, and the fact that Hategekimana disputes the attribution of that *alias* to himself does not constitute grounds for striking it from the Indictment. Like any other allegation in the Indictment, the *alias* is a matter of evidence, the veracity of which the Chamber will decide upon in the relevant factual findings section below. Moreover, the Chamber did not take into account this alleged *alias* in its deliberations. Therefore, the Chamber has rejected its use in this Judgement.

## 2. ALIBI

80. The Chamber is guided by the definition of alibi provided in *Musema*, where the Trial Chamber stated that:

[I]n raising the defence of 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>79</sup>

81. Pursuant to Rule 67(A)(ii)(a) of the Rules, the Defence is required to notify the Prosecution of its intent to enter a defence of alibi as early as reasonably practicable. The Chamber recalls, however, that the failure of the Defence to provide such notice in a timely manner shall not limit the right of the accused to rely on the defence of alibi.<sup>80</sup> While this does not prevent the accused from relying on an alibi defence,<sup>81</sup> it may diminish its probative value as it raises the question of whether the alibi was recently invented to fit the case against him.

82. In this case, the Defence did not provide any notice of alibi at any time during the proceedings. During the Status Conference held on 18 June 2009, the Prosecutor stated that he was ready to examine the first Defence witness subject to being provided with any notice of alibi that the Defence would like to raise. The Chamber declared that the Prosecutor would be entirely free to ask for an investigation if necessary to answer the Defence allegations. The Chamber set the date for the Defence witnesses' examination to start on 22 June 2009. The Prosecutor agreed with this date. Therefore, the Chamber notes that the Prosecutor did not raise any objection regarding the date of the examination of the Defence witnesses and did not request an adjournment of the hearing during the examination-in-chief of Witnesses CKB, MLA, CBM2 and CBN1, who testified about Hategekimana's alleged absence from Ngoma during the alleged crimes.

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about that issue. And you can ask questions on the basis of the witnesses' answers [...] rather than actually call him from the outset Bikomago."

<sup>79</sup> *Musema* Trial Judgement para. 198, *Musema* Appeal Judgment paras. 205-206.

<sup>80</sup> Rule 67 (B). See also *Rutaganda* Appeal Judgement para. 243 and fn. 392; *Musema* Trial Judgement para. 107, citing *Kayishema et al.* Trial Judgement para. 237.

<sup>81</sup> An alibi can be defined as "a defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time" (Black's Law Dictionary, 7th Edition).

83. Nevertheless, the Chamber considers that such a defence is implied in the testimonies of at least four Defence witnesses as well as in the Defence Closing Brief. The Accused is in effect denying that he was in a position to commit the crimes with which he is charged, since according to these four witnesses he was not present in the Ngoma Camp during the period of the alleged crimes.

84. The Defence challenges the Prosecution witnesses' identification of the Accused because they did not mention his prominent beard.<sup>82</sup> It relies on Witnesses CBM2, BJ3, CKB, MZA, ZML and RGF.<sup>83</sup> Nevertheless, apart from Witness BJ3 who stated that Hategekimana had a beard in April 1994,<sup>84</sup> the Chamber notes that none of these Defence witnesses testified to having seen him with a beard during the period alleged in the Indictment. As for Witness BJ3's testimony, the Chamber considers it not to be relevant as he admitted not knowing anything about what happened in the Ngoma area and stated that he could only talk about what happened in the ESO Camp.<sup>85</sup> The Chamber also notes that his testimony mainly concerns the ESO Camp meeting which was held on 7 April 1994 and, therefore, does not apply to the events that followed. In light of the foregoing, the Chamber dismisses the Defence's submission on this point.

85. The Chamber concludes that even if this does not constitute a proper alibi within the meaning of Rule 67, the evidence that the Accused was elsewhere at the time of the crime was committed must be considered in conjunction with the Prosecution's evidence that he was at the alleged crime scenes at the time and that he allegedly committed the crimes. Therefore, the Chamber will deal with this issue in the course of its preliminary factual findings.

### **3. EVIDENTIARY ISSUES**

86. The Defence emphasises the presumption of the Accused's innocence and the burden of proof to be met by the Prosecution. The Defence argues that, in light of the credibility issues relating to the evidence of the 20 Prosecution witnesses in this case, there is clear doubt about Hategekimana's guilt. It submits that Hategekimana has a right to benefit from even the slightest doubt, leading to an acquittal, and requests the Chamber to rigorously evaluate the evidence.<sup>86</sup>

#### **3.1 Admission of Evidence**

87. Rule 89 sets out the general evidentiary guidelines of the Tribunal. In accordance with this Rule, a Chamber may admit any relevant evidence which it deems to have probative value. The Chamber observes that in this case prior written statements of witnesses were not systematically tendered into evidence in their entirety. Rather, when the Parties used such statements during examination, they generally read the relevant portions of the statements into the record. When inconsistencies were raised between the content of a prior statement and the testimony during trial, the Chamber's point of departure was the account given by a witness in his or her testimony in court. When assessing the evidence, a Trial Chamber has broad discretion to determine the weight to be given to discrepancies between a witness's testimony and any prior statements.<sup>87</sup> The Chamber notes that differences between prior statements and testimony in court may be due to

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<sup>82</sup> Defence Closing Brief paras. 586, 676: the Defense alleges that "the only visible characteristic that could distinguish him from the others" was that he had a beard.

<sup>83</sup> Witness CBM2, T. 9 July 2009 pp. 20, 30-33; Witness BJ3, T. 24 September 2009 pp. 26-34, 39; Witness CKB, T. 8 July 2009 pp. 5-12, 58; Witness MZA, T. 23 June 2009 pp. 16-22, 33; Witness ZML, T. 22 June 2009 pp. 10-17, 19; Witness RGF, T. 2 October 2009 pp. 20, 23-27.

<sup>84</sup> T. 24 September 2009 p. 33.

<sup>85</sup> T. 24 September 2009 p. 73.

<sup>86</sup> Defence Closing Brief paras. 731-733; Defence Closing Argument T. 26 April 2009.

<sup>87</sup> *Gacumbitsi* Appeal Judgement para. 74; *Kajelijeli* Appeal Judgement para. 96.



various factors, including the lapse of time, the language used, the questions addressed to the witness, the accuracy of interpretation and transcription and the impact of trauma on the witness. However, when the inconsistencies cannot be explained to the satisfaction of the Chamber, the probative value of the testimony may be questioned.

### 3.2 Standard of Proof and Assessment of the Evidence

88. Article 20(3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused beyond reasonable doubt rests solely on the Prosecution and never shifts to the Defence. The Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her.<sup>88</sup>

89. 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>89</sup> An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.<sup>90</sup> Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must determine whether the evidence that it accepts establishes the accused's guilt beyond reasonable doubt.<sup>91</sup>

90. The general principle enshrined in Rule 90(A) of the Rules is that witnesses should be heard directly by the Trial Chamber.<sup>92</sup> However, there are well established exceptions to the Chamber's preference for direct, live, in-court testimony, including the taking of witness testimony by deposition<sup>93</sup> and the admission of written statements, in lieu of oral testimony, which do not go to proof of the alleged conduct of the accused as charged in the Indictment.<sup>94</sup>

### 3.3 Hearsay Evidence

91. While direct evidence is preferred, hearsay evidence is not *per se* inadmissible.<sup>95</sup> The Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case.<sup>96</sup> In certain circumstances, hearsay evidence may require the Prosecution to adduce other credible or reliable evidence in order to support a finding of fact beyond reasonable doubt. "The source of information, the precise character of the information, and the fact that other evidence corroborates the hearsay evidence are relevant criteria in assessing the weight or probative value of hearsay evidence."<sup>97</sup>

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<sup>88</sup> See also Rule 87(A) of the Rules: "[...] A finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt."

<sup>89</sup> *Kayishema* Appeal Judgement para. 117; *Niyitegeka* Appeal Judgement paras. 60-61.

<sup>90</sup> *Čelebići* Appeal Judgement para. 458.

<sup>91</sup> *Nchamihigo* Trial Judgement para. 13.

<sup>92</sup> *Simba* Appeal Judgement para. 19.

<sup>93</sup> Rule 71 of the Rules.

<sup>94</sup> Rule 92*bis* of the Rules.

<sup>95</sup> *Muvunyi* Trial Judgement para. 12; *Rutaganda* Appeal Judgement para. 34.

<sup>96</sup> Rule 89 of the Rules; *Rutaganda* Appeal Judgement para. 34; *Aleksovski*, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999 para. 15.

<sup>97</sup> *Karera* Appeal Judgement para. 39 (internal citations omitted).

### 3.4 Evidence of a Single Witness

92. In general, a Chamber can make a finding of fact based on the evidence of a single witness if it finds such evidence to be relevant and credible.<sup>98</sup> Corroboration of a witness's testimony is not a requirement in the practice of the Tribunal.<sup>99</sup> Similarly, even if the Trial Chamber finds that a witness's testimony is inconsistent or otherwise problematic, it may still choose to accept the evidence because it is corroborated by other evidence.<sup>100</sup>

### 3.5 Evidence of Detained Witnesses

93. The evidence of detained witnesses is admissible. However, the Chamber has evaluated such evidence with caution in order to ensure a fair trial and to avoid prejudice to the Accused.<sup>101</sup>

### 3.6 Evidence of Accomplice Witness

94. Some factors are particularly relevant for the assessment of accomplice witnesses, including: the extent to which discrepancies in the testimony were explained;<sup>102</sup> whether the accomplice witness has made a plea agreement with the Prosecution; whether he has already been tried and, if applicable, sentenced for his own crimes or is still awaiting the completion of his trial;<sup>103</sup> and whether the witness may have any other reason for animosity against the accused.<sup>104</sup> Corroboration is also one of many potential factors relevant to the Trial Chamber's assessment of a witness's credibility.<sup>105</sup> The application of these factors, and the impact they may have on the witness's credibility, varies according to the specific circumstances of each case.

95. Nothing in the Statute or the Rules prohibits a Trial Chamber from relying upon the testimony of accomplice witnesses.<sup>106</sup> However, such evidence is to be treated with caution, "the main question being to assess whether the witness concerned might have motives or incentives to implicate the accused."<sup>107</sup> As such, when weighing the probative value of such evidence, a Chamber is bound to carefully consider the totality of the circumstances in which it was tendered,<sup>108</sup> and as a corollary it should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused.<sup>109</sup> Nevertheless, a Trial Chamber retains discretion to rely on uncorroborated, but otherwise credible, witness testimony<sup>110</sup> because it is best

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<sup>98</sup> *Karera* Appeal Judgement para. 45; *Musema* Appeal Judgement paras. 37-38.

<sup>99</sup> *Karera* Appeal Judgement para. 45; *Musema* Appeal Judgement para. 36.

<sup>100</sup> *Ntakirutimana* Appeal Judgement para. 132.

<sup>101</sup> *Ntagerura et al.* Appeal Judgement paras. 203-205; *Niyitegeka* Appeal Judgement para. 98; *Muvunyi* Trial Judgement para. 13. In *Simba*, the Trial Chamber viewed the testimonies of Witnesses YH and KXX, the alleged accomplices of the Accused, with caution. The Chamber also treated the testimony of Witness YC with caution since he was a detained witness who had pleaded guilty to acts of genocide in the relevant area. See *Simba* Trial Judgement paras. 164, 288.

<sup>102</sup> *Nchamihigo* Appeal Judgement para. 47; *Simba* Appeal Judgement para. 129; *Kordić and Čerkez* Appeal Judgement para. 266.

<sup>103</sup> *Nchamihigo* Appeal Judgement para. 47; *Blagojević and Jokić* Trial Judgement para. 24.

<sup>104</sup> *Nchamihigo* Appeal Judgement para. 47; *Kajelijeli* Trial Judgement para. 151.

<sup>105</sup> *Nchamihigo* Appeal Judgement para. 47; *Simba* Appeal Judgement para. 24.

<sup>106</sup> *Nchamihigo* Appeal Judgement para. 42; *Niyitegeka* Appeal Judgement para. 98.

<sup>107</sup> *Nchamihigo* Appeal Judgement para. 42; *Nahimana et al.* Appeal Judgement para. 439; *Ntagerura et al.* Appeal Judgement paras. 203-206. See also *Niyitegeka* Appeal Judgement para. 98.

<sup>108</sup> *Niyitegeka* Appeal Judgement para. 98.

<sup>109</sup> *Krajišnik* Appeal Judgement para. 146.

<sup>110</sup> *Nchamihigo* Appeal Judgement para. 42; *Muvunyi* Appeal Judgement para. 128.

placed to evaluate the probative value of evidence.<sup>111</sup> Acceptance of and reliance upon uncorroborated evidence does not in itself constitute an error of law.<sup>112</sup>

96. It may be necessary, depending on the circumstances of the case, to employ a critical approach towards witnesses who are charged with crimes of a similar nature to those alleged against the accused. However, in most cases, such witnesses will not have the same tangible motives for giving false evidence as a witness who was allegedly involved in the same criminal acts as the accused. Therefore, as long as no special circumstances have been identified, it is reasonable not to employ the same cautious approach towards the testimony of witnesses who are merely charged with similar crimes as to the testimony of accomplices in the ordinary sense of the word.<sup>113</sup>

### **3.7 Circumstantial Evidence**

97. It is established jurisprudence that it is permissible to rely on circumstantial evidence to prove material facts.<sup>114</sup> A Trial Chamber has indeed the discretion to decide in the circumstances of each case whether corroboration of evidence is necessary.<sup>115</sup> However, caution is warranted in such circumstances.<sup>116</sup> When confronted with circumstantial evidence, the Trial Chamber may convict where it is the only reasonable inference.<sup>117</sup>

### **3.8 Witness Protection Issues**

98. Part of the evidence in this case was presented during closed sessions of the proceedings because of witness protection concerns. In analysing evidence received during closed sessions, the Chamber has been mindful of the need to avoid unveiling identifying information about protected witnesses in order to prevent disclosure of their identities to the public, whilst seeking to set forth the basis of its reasoning as clearly as possible. In view of these concerns, when referring to evidence received in closed sessions in this Judgement, the Chamber has used language designed not to reveal protected information yet specific enough to convey the basis for its reasoning.

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<sup>111</sup> *Nchamihigo* Appeal Judgement para. 42; *Rutaganda* Appeal Judgment para. 29; *Musema* Appeal Judgment, paras. 36-38; *Kayishema and Ruzindana* Appeal Judgement paras. 154, 187, 320, 322; *Čelebići* Appeal Judgement para. 506; *Aleksovski* Appeal Judgement paras. 62, 63; *Tadić* Appeal Judgement para. 65.

<sup>112</sup> *Nchamihigo* Appeal Judgement para. 42; *Niyitegeka* Appeal Judgement para. 92.

<sup>113</sup> *Kalimanzira* Trial Judgement para. 73, citing *Ntagerura et al.* Appeal Judgement para. 234.

<sup>114</sup> *Gacumbitsi* Appeal Judgement para. 72, citing *Ntakirutimana* Appeal Judgement para. 262.

<sup>115</sup> *Muhimana* Appeal Judgement para. 49, *Kajelijeli* Appeal Judgement para. 170, citing *Niyitegeka* Appeal Judgement para. 92 (“The Appeals Chamber has consistently held that a Trial Chamber is in the best position to evaluate the probative value of evidence and that it may, depending on its assessment, rely on a single witness’s testimony for the proof of a material fact.”).

<sup>116</sup> *Muvunyi* Appeal Judgement para. 70; *Ndindabahizi* Appeal Judgement para. 115.

<sup>117</sup> *Seromba* Appeals Judgement para. 221: “[A]s in any case where the Prosecution intends to rely on circumstantial evidence to prove a particular fact upon which the guilt of the accused depends, the finding of the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence.”

## CHAPTER III: FACTUAL FINDINGS

### A. INTRODUCTION

99. In its factual findings, the Chamber examines the evidence, detailed event by event, to determine whether the Prosecution has proven beyond reasonable doubt the material facts, both pleaded in the Indictment and presented during the course of the proceedings, which establish its charges of genocide and crimes against humanity.

100. The Defence asserts that the evidence of Hategekimana's involvement in these events lacks credibility. It presented evidence of three witnesses that Hategekimana was not in Ngoma *Commune* when the alleged crimes occurred. The Defence further claims that the Prosecution has mistaken the identity of Hategekimana with that of another person.

### B. PRELIMINARY FACTUAL FINDINGS

#### 1. Alleged Alibi Raised in the Evidence

101. Cognisant of established jurisprudence, the Chamber has carefully assessed the evidence presented by Defence Witnesses MLA, CBM2, CBN1 and CKB, who claim that the Accused was not present at the Ngoma Camp during the events alleged in the Indictment and, therefore, could not have committed the alleged crimes.<sup>118</sup> Defence Witnesses MLA, CBM2 and CBN1 testified that the Accused was not in Ngoma *Commune* on the dates of the alleged crimes. Witness CKB stated that the Accused visited him in a Kigali hospital on at least two occasions in April 1994.

102. The Defence Witness MLA testified that, from 7 April until early June 1994, he never left the Camp.<sup>119</sup> Witness MLA stated that he did not see the Accused at the Ngoma Camp from the end of March 1994 until late April or early May 1994.<sup>120</sup> He did not know where the Accused was during this time, but had heard that the Accused was in Kigali.<sup>121</sup> According to Witness MLA, the Accused returned to the camp at the beginning of May 1994 with his replacement, a man named Ntambabazi, and then he left.<sup>122</sup> Witness MLA assumed that the Accused was transferred elsewhere.<sup>123</sup>

103. Defence Witness CBM2 testified that Senior Warrant Officer Utabazi was the commanding officer at the Ngoma Camp when he arrived in March 1993.<sup>124</sup> Later, Lieutenant Hategekimana assumed command of the camp.<sup>125</sup> Hategekimana was replaced during the first week of May 1994 by Major Ntambabazi,<sup>126</sup> who in turn was replaced by Major Ntuyahaga, who served until July 1994.<sup>127</sup> According to the witness, the Accused returned to the Ngoma Camp on 15 or 16 April

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<sup>118</sup> See the testimonies of Defence Witnesses MLA (T. 2 July 2009), CBM2 (T. 9 July 2009) and CBN1 (T. 9 July 2009). See Witness RBU regarding the attack on the Benebikira Convent, T. 6 October 2009; Defence Closing Brief para. 675.

<sup>119</sup> T. 2 July 2009 p. 15.

<sup>120</sup> T. 2 July 2009 pp. 11, 34.

<sup>121</sup> T. 2 July 2009 p. 11.

<sup>122</sup> T. 2 July 2009 pp. 23, 35.

<sup>123</sup> T. 2 July 2009 pp. 34-35.

<sup>124</sup> T. 9 July 2009 p. 7.

<sup>125</sup> T. 9 July 2009 p. 10.

<sup>126</sup> T. 9 July 2009 p. 15.

<sup>127</sup> T. 9 July 2009 pp. 9-10, 14-15, 17, 39-40, 43. Witness CBM2 stated that he learnt of President Habyarimana's death at approximately 10.00 p.m. on 6 April 1994 through a telegram from the Army's General Staff. According to the witness, the Accused was in Kigali at the time and had been absent from Ngoma Camp for approximately one week

1994 but was almost immediately recalled to Kigali.<sup>128</sup> This was the last time the witness saw the Accused in Butare.<sup>129</sup> Major Ntambabazi replaced the Accused as the Commander of the Ngoma Camp during the first week of May 1994.<sup>130</sup> The Accused was transferred to the General Staff in Kigali.<sup>131</sup> Witness CBM2 personally saw the document recalling the Accused to the General Staff and the document arrived around 15 or 16 April 1994.<sup>132</sup>

104. The Defence Witness CBN1 left Ngoma Camp on only one occasion during the period from 7 April 1994 until he went into exile in early July 1994. Therefore, he was only able to testify about the events that occurred within the Camp.<sup>133</sup> He was “not aware of events that occurred outside of the military camp.”<sup>134</sup> According to Witness CBN1, the Accused was absent from the Ngoma Camp for about one week at the time that the President’s plane was shot down, and he did not return until sometime between 15 and 17 April 1994.<sup>135</sup> The witness stated that after this brief visit, the Accused did not return to the Camp until May 1994, when he came with Major Ntambabazi who replaced him as Commander.<sup>136</sup>

105. Defence Witness CKB, a *Hutu*, was 33 years old and a Second Lieutenant in the Rwandan Armed Forces during the events of April 1994.<sup>137</sup> The witness and the Accused were classmates at the *École Supérieure Militaire* in Kigali until 1989 and maintained friendly relations.<sup>138</sup> Witness CKB testified that he was injured on 13 April 1994 and was admitted to CHK hospital in Kigali on that day.<sup>139</sup> He stated that the Accused visited him and his wife briefly in the hospital “at around 10 o’clock in the evening.”<sup>140</sup> Witness CKB further stated that he saw the Accused again on 19 April 1994 in Kigali as he and his wife were leaving the hospital.<sup>141</sup>

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prior to 6 April 1994. During his absence, Senior Warrant Officer Utabazi was the officer in charge. The Accused returned to the Camp on 15 or 16 April 1994. Witness CMB2 denied that the Accused attended a meeting at the ESO Camp on 7 April 1994. He stated that the Accused “could not have been in that meeting, given that he was not in Butare.” He also testified that, prior to 6 April 1994, the Accused “frequently travelled to Kigali for personal reasons.” Witness CMB2 explained that, because of his job at the Camp, he was in a position to know the Commander’s movements. He stated that “each time the Commander of the military Camp travelled, the Camp Commander had to ask for authorisation from the General Staff.”

<sup>128</sup> T. 9 July 2009 pp. 14, 44-45, 47.

<sup>129</sup> T. 9 July 2009 pp. 14, 47.

<sup>130</sup> T. 9 July 2009 p. 15.

<sup>131</sup> T. 9 July 2009 p. 44.

<sup>132</sup> T. 9 July 2009 pp. 44-45. The document in question was not entered into evidence.

<sup>133</sup> T. 10 July 2009 p. 4

<sup>134</sup> T. 10 July 2009 pp. 4, 61-62: Witness CBN1 testified that on 6 April 1994, around 10.00 or 11.00 p.m., the non-commissioned officer on duty at Ngoma Camp came to his dormitory and told the soldiers that the President’s plane had been shot down. On 7 April 1994, Sergeant Major Mutabaruka organised an assembly at Ngoma Camp where Chief Warrant Officer Utabazi read aloud a telegram announcing that the President of Rwanda along with the President of Burundi had died “in the attack against the plane.” After this meeting, the witness saw Second Lieutenant Niyonteze arrive at the Camp, and the soldiers returned to their normal duties.

<sup>135</sup> T. 9 July 2009 p. 61.

<sup>136</sup> T. 9 July 2009 pp. 62, 74.

<sup>137</sup> T. 8 July 2009 pp. 38-39, 51.

<sup>138</sup> T. 8 July 2009 pp. 40, 42-43, 47- 48.

<sup>139</sup> T. 8 July 2009 pp. 42-43. The witness testified that on that day, “RPF soldiers had attacked and captured Mount Jali. [...] I was wounded during the fighting [...] and then I was evacuated to CHK hospital.”

<sup>140</sup> T. 8 July 2009 pp. 42, 47, 48. CKB testified that his wife had been living in Gikondo when he arrived in hospital, and she was then brought to ESM because it was safe. When she arrived she was told that the witness had been admitted to the hospital.

<sup>141</sup> T. 8 July 2009 p. 42.

106. Based on these testimonies and other Prosecution witnesses, the Chamber finds that there are serious questions about the credibility of the implied alibi evidence. Furthermore the Chamber notes that the mere fact that Defence Witnesses MLA, CBM2 and CNB1 did not see the Accused at the Ngoma Camp during April 1994<sup>142</sup> does not mean he was not there throughout the month. In other words, while the Accused may have been away from the Ngoma Camp at certain times during April 1994, this does however not raise a reasonable doubt about the Prosecution case. In this regard, the Chamber notes the testimony of Defence Witness CKB, who stated that he was injured and hospitalised in Kigali, and that the Accused visited him at the hospital on 13 April and again on 19 April 1994. Even if this evidence is believed, it would only raise questions about the Accused's presence in Butare at the time of Interim President Sindikubwabo's speech on 19 April 1994. It would not cast a doubt on the Prosecution's assertion that the Accused participated in other crimes charged.

107. Accordingly, the Defence evidence is not credible with respect to the alleged alibi. The Chamber considered clear, detailed and convincing evidence and therefore in the course of its factual findings will determine that Hategekimana was present at various crime scenes in Ngoma *Commune* at least on 8-10, 23 and 30 April 1994. In the Chamber's view, the evidence of the Defence which seeks to establish that Hategekimana was not present in Ngoma *Commune* during the period alleged in the Indictment is not reliable. Therefore, the Chamber finds that Hategekimana was indeed present when the following charged crimes occurred: (1) murder of Jean Bosco Rugomboka, (2) murders at the residence of Salomé Mujawayezu, (3) rape at Nura Sezirahiga's house, (4) killings at Ngoma Parish, and (5) killings at the Benebikira Convent.

## **2. Physical Ability of Ngoma Camp Soldiers**

### **2.1 Introduction**

108. Some Defence witnesses claim that the Accused was physically disabled during the events alleged in the Indictment, like many soldiers who were appointed to the Ngoma Camp.<sup>143</sup> The Defence asserts in its Closing Brief that, as a result of injuries sustained at the war front in February 1993, the Accused was sent to the Ngoma Camp to convalesce; that he was "symbolically promoted as acting commander" of the Camp; and that he had "physical disabilities" as a result of which his "duties were reduced to managing administrative files."<sup>144</sup>

109. According to the Prosecution, the Chamber should not give any credence to the Defence theory that only physically disabled soldiers were based at the Ngoma Camp during April and May 1994 because the evidence, including that of several Defence witnesses, suggests that Ngoma Camp soldiers were able to carry out military duties such as guarding the Camp.<sup>145</sup>

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<sup>142</sup> CBM2 and CBN1 stated nevertheless that they saw Hategekimana at Ngoma Camp during a short visit between the 15 and 17 April 1994.

<sup>143</sup> Witness CKB, T. 8 July 2009 pp. 42, 46-47; Witness Faustin Ntilikina, T. 30 June 2009 p. 17.

<sup>144</sup> Defence Closing Brief paras. 6-7.

<sup>145</sup> Prosecution Closing Brief para 460; Prosecution Closing Arguments T. 26 April 2010 p. 33.

## 2.2 Evidence

### *Defence Witness MLA*

110. Defence Witness MLA, a *Hutu*, served as a private in the Rwandan Army during the events of April 1994.<sup>146</sup> The witness testified that the Rwandan Army used the Ngoma Camp to house sick and injured soldiers.<sup>147</sup>

111. Witness MLA stated that, prior to President Habyarimana's death on 6 April 1994, soldiers from both the Ngoma Camp and the ESO Camp guarded the Ngoma Camp.<sup>148</sup> According to Witness MLA, able-bodied Ngoma Camp soldiers guarded the Camp during the day, but "at night, soldiers from the ESO would come."<sup>149</sup> The witness stated that, prior to 6 April 1994, between 20 and 25 ESO Camp soldiers regularly came to guard the Ngoma Camp.<sup>150</sup> He claimed that, due to their injuries, Ngoma Camp soldiers were incapable of providing for their own security and that ESO Camp soldiers protected the Ngoma Camp each evening from 6 April to 2 July 1994.<sup>151</sup>

112. Witness MLA stated that, while most of the soldiers at the Ngoma Camp were injured or disabled, they possessed varying degrees of mobility and physical capacity.<sup>152</sup> The level of disability ranged from those who were confined to their beds to those who were able to move about on their own and "could be given weapons and work."<sup>153</sup>

113. The witness said he never left the Ngoma Camp between April and July 1994 and, therefore, could not attest to any event occurring outside the Camp.<sup>154</sup>

### *Defence Witness CBM2*

114. Defence Witness CBM2, a *Hutu*,<sup>155</sup> was a 28-year-old corporal in the Rwandan Army in April 1994.<sup>156</sup>

115. The witness testified that when the war broke out in Rwanda, Ngoma Camp soldiers were sent to the front.<sup>157</sup> According to him, in 1994, there were no active soldiers in the Ngoma Camp.

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<sup>146</sup> T. 2 July 2009 pp. 6, 7, 10, 29.

<sup>147</sup> T. 2 July 2009 p. 6. MLA supported this statement by claiming that "[t]he able-bodied soldiers were at the front. Once a soldier felt a lot better, he was reassigned to another camp to carry out other duties."

<sup>148</sup> T. 2 July 2009 p. 17.

<sup>149</sup> T. 2 July 2009 p. 17.

<sup>150</sup> T. 2 July 2009 p. 17.

<sup>151</sup> T. 2 July 2009 p. 17.

<sup>152</sup> T. 2 July 2009 p. 22. The witness divided the Ngoma Camp soldiers into three categories: "[1] There were six soldiers who, however, could do some work, and people who were unwell but who could move about and assist other patients. [2] And then there were those who were disabled or in bed. They could only move about with special assistance, including the machines. [3] And those who could stand could be given weapons and work -- to do other duties but some couldn't do even that."

<sup>153</sup> T. 2 July 2009 p. 22.

<sup>154</sup> T. 2 July 2009 p. 15.

<sup>155</sup> Protected Information Sheet of Witness CBM2.

<sup>156</sup> T. 9 July 2009 p. 6, 24, 27, 29: He joined the Rwandan Army in 1988 and was sent to the war front at Mutara in 1990. After recovering from wounds sustained in combat, he was transferred to Kimihurura in 1992, where he received training in communication signals and transmission. In March 1993, he was transferred to the Ngoma Camp where he worked as a radio operator until July 1994 when he went into exile.

<sup>157</sup> T. 9 July 2009 p. 31.

“The only soldiers in the military camp were soldiers who had been injured at the front.”<sup>158</sup> The witness was wounded on the head and thought the Accused had injured his ribs.<sup>159</sup>

116. Witness CBM2 insisted that everyone at the Camp was disabled, but acknowledged that many of the soldiers could work.<sup>160</sup> In addition to those who worked with him in the transmission centre, he testified that there were soldiers who worked in the dispensary, the officers’ mess and the troops’ canteen, as well as drivers and administrative staff.<sup>161</sup> He denied that there were masons, carpenters and electricians at the Camp.<sup>162</sup> He stated that these services were provided by soldiers from the ESO Camp.<sup>163</sup>

117. According to Witness CBM2, because the Ngoma Camp housed disabled soldiers, “during periods of difficulty” soldiers from the ESO Camp guarded the camp.<sup>164</sup> He testified that ESO Camp soldiers would arrive at the Ngoma Camp at around 7.30 or 8.00 p.m. and would return to the ESO Camp in the morning.<sup>165</sup> The ESO Camp soldiers provided security for the Ngoma Camp both before and after the death of President Habyarimana.<sup>166</sup>

#### *Defence Witness CBN1*

118. In April 1994, Defence Witness CBN1 was a 27-year-old soldier in the Rwandan Army stationed at the Ngoma Camp.<sup>167</sup> Witness CBN1 testified that the Ngoma Camp was a place for disabled soldiers. Since Ngoma Camp soldiers were disabled, ESO Camp soldiers guarded the Ngoma Camp during the nights, both before and after 6 April 1994.<sup>168</sup> The witness denied that Ngoma Camp soldiers could have killed any refugees at the Ngoma Parish or the Matyazo Health Centre because they were too disabled to carry out such orders.<sup>169</sup> He stated that soldiers from the Ngoma Camp “were not able bodied persons. They were suffering. Those soldiers could not have committed such atrocities.”<sup>170</sup>

### **2.3 Deliberation**

119. Defence Witnesses MLA, CBM2 and CBN1 testified that they were soldiers in the Rwandan Army and were transferred to the Ngoma Camp after sustaining injuries at the war front. These witnesses stated that most of the Ngoma Camp soldiers were disabled and incapable of engaging in the crimes alleged in the Indictment.

120. Regarding the ability of Ngoma Camp soldiers to participate in criminal activities, Prosecution Witness BYQ, who was a soldier based at the Ngoma Camp in April 1994, identified three categories of soldiers housed at the Camp: able-bodied soldiers, injured soldiers who

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<sup>158</sup> T. 9 July 2009 p. 10.

<sup>159</sup> T. 9 July 2009 pp. 52-53.

<sup>160</sup> T. 9 July 2009 pp. 27-28.

<sup>161</sup> T. 9 July 2009 pp. 27-29.

<sup>162</sup> T. 9 July 2009 p. 29.

<sup>163</sup> T. 9 July 2009 p. 29.

<sup>164</sup> T. 9 July 2009 p. 11.

<sup>165</sup> T. 9 July 2009 p. 54.

<sup>166</sup> T. 9 July 2009 pp. 11-12.

<sup>167</sup> T. 9 July 2009 p. 59, 60, 64: He joined the Rwandan Army in 1986 and was wounded during a battle in 1991. In November 1992, he was transferred to Ngoma Camp where he continued recovering from his injury. He remained at the camp until 3 July 1994 when he fled Butare.

<sup>168</sup> T. 10 July 2009 pp. 2, 3; T. 9 July 2009 p. 66.

<sup>169</sup> T. 10 July 2009 p. 5.

<sup>170</sup> T. 10 July 2009 p. 5.



performed light work, and handicapped soldiers who could not work at all.<sup>171</sup> He was slightly disabled and worked at the Camp's refectory in April 1994. He testified that, following the massacre of *Tutsis* at the Ngoma Parish on 30 April 1994, the soldiers who had been involved in the killings returned to the Camp and informed him of their activities.

121. Furthermore, the Prosecution evidence about the activities of Ngoma Camp soldiers throughout the relevant period suggests that not only disabled soldiers but also able-bodied men were based at the Camp. In fact, even the evidence of the Defence witnesses leads to the conclusion that some of the soldiers based at the Ngoma Camp in April 1994 were able to carry out normal military duties. For instance, according to Defence Witnesses MLA and CBM2, able-bodied Ngoma Camp soldiers guarded the Camp during the day and it was only at night that soldiers from the ESO Camp would come in to assist them. In addition, Defence Witness Faustin Ntilikina stated that Hategekimana "was standing on both legs" and that he could carry a weapon. He also stated that "there were some soldiers who were fit" and that they could, therefore, use their personal weapons.<sup>172</sup>

122. Having considered the totality of the evidence, the Chamber takes the view that there were some disabled and injured soldiers at the Ngoma Camp. However, their injuries and disabilities did not necessarily preclude them from committing the alleged crimes along with able-bodied soldiers at the Camp.

## C. FACTUAL FINDINGS

### 1. Meeting at the ESO Military Camp, Ngoma Commune, Butare Préfecture, on or about 7 April 1994

#### 1.1 Overview of the Parties' Accounts

123. The Prosecution alleges that, on or about 7 April 1994, Hategekimana attended a meeting at the ESO Camp of Butare attended by military officials including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Nizeyimana, Major Cyriaque Habyaratura, as well as senior officers of the Rwandan Army and *Gendarmerie*. At this meeting, a decision was taken that "all *Tutsi* should be killed and that *Tutsi* women should be raped before being killed." The Prosecution further asserts that, following the meeting, Hategekimana issued orders to Ngoma Camp soldiers, in accordance with the alleged decision, "to kill *Tutsi* and to rape *Tutsi* women before killing them." As a result, *Tutsis* were raped and killed in and around the town of Butare from 7 April to 31 May 1994 by armed soldiers, *Interahamwe* and civilians, who were members of a joint criminal enterprise. On the basis of these alleged acts, the Prosecution has charged Hategekimana, under Article 6(1) of the Statute, with genocide and rape as a crime against humanity. The Prosecution relies on the testimonies of Witnesses BUR and BRS.<sup>173</sup>

124. The Defence disputes that the alleged meeting was held at the ESO Camp on 7 April 1994 and, pursuant to an alleged decision taken at the meeting, that Hategekimana issued orders to kill *Tutsis* and to rape *Tutsi* women before killing them. The Defence relies on the testimonies of Witnesses CBB and BJ3.<sup>174</sup>

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<sup>171</sup> T. 31 March 2009 p. 34.

<sup>172</sup> T. 1 July 2009 p. 29.

<sup>173</sup> Indictment paras. 7, 43; Prosecution Pre-Trial Brief paras. 62, 63, 153; Prosecution Closing Brief paras. 149-174.

<sup>174</sup> Defence Closing Brief paras. 28-50.

## 1.2. Evidence

### *Prosecution Witness BUR*

125. Witness BUR, a *Hutu*, was a soldier stationed at the ESO Camp in April 1994.<sup>175</sup> He testified that, between 11.00 a.m. and noon on 7 April 1994, Colonel Muvunyi convened a meeting at the ESO Camp, which served as the General Staff headquarters for Butare *Préfecture*. Five military commanders, including Captain Nizeyimana from the ESO Camp, Major Habyarabatura from the Tumba Unit, Captain Sebahura from Gikongoro, the Commander of Nyanza, and Hategekimana from the Ngoma Camp, attended the meeting. The witness stated that he had an unobstructed view of the command office, where the meeting was held, from his position on the tarmac approximately “5 steps away.”<sup>176</sup>

126. Witness BUR testified that he saw Hategekimana arrive at the ESO Camp in a green Toyota pickup and enter the conference room. Hategekimana was wearing military boots, a black beret, and a camouflage military uniform with two stars on each shoulder. The witness explained that he recognised Hategekimana from previous encounters.<sup>177</sup>

127. According to Witness BUR, the meeting lasted between 30 minutes and one hour. The witness saw all the participants leave the meeting, including Hategekimana, who drove away in the direction of Ngoma. The witness testified that, immediately after the officers’ meeting, Captain Nizeyimana convened an assembly of ESO Camp military staff. At that assembly, Captain Nizeyimana instructed the ESO Camp soldiers “that *Tutsis* had to die,” and should be killed “with bayonets in order to economise or save ammunition.” The ESO Captain also directed the soldiers “to rape the *Tutsi* women and kill them afterwards.”<sup>178</sup> The witness stated that the “decisions had been taken in the course of the meeting that just ended.”<sup>179</sup>

128. Witness BUR heard from an Ngoma Camp sergeant named Nginshuti, towards the end of April 1994, that Hategekimana had issued the same instructions to soldiers under his command. According to Sergeant Nginshuti, Hategekimana had told Ngoma Camp soldiers “that *Tutsis* had to die and that their daughters and wives had to be raped before being killed.”<sup>180</sup> Witness BUR personally witnessed the rape of a young girl by a soldier in Nginshuti’s military unit at Queen Gicanda’s residence.<sup>181</sup> When the witness reported that the girl was in “a very bad state,” Nginshuti responded that “there was nothing he could do because instructions had been given.”<sup>182</sup>

### *Prosecution Witness BRS*

129. Witness BRS, a *Hutu*, was a soldier stationed at the Ngoma Camp in April 1994.<sup>183</sup> Witness BRS testified that, in the morning of 7 April 1994, Lieutenant Hategekimana returned from Kigali and called an assembly of Ngoma Camp military staff to provide information about the critical

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<sup>175</sup> T. 6 April 2009 p. 49; T. 7 April 2009 p. 15; Prosecution Exhibit 14 (Protected Information of Witness BUR).

<sup>176</sup> T. 6 April 2009 pp. 50, 51; T. 7 April 2009 pp. 27, 28.

<sup>177</sup> T. 6 April 2009 pp. 51-52.

<sup>178</sup> T. 6 April 2009 p. 53.

<sup>179</sup> T. 6 April 2009 pp. 52-53.

<sup>180</sup> T. 6 April 2009 p. 54-55.

<sup>181</sup> T. 6 April 2009 pp. 54 -55; 7 April 2009 pp. 2-6. See also below, Rapes of *Tutsi* women in Butare *Préfecture* between 7 April and 31 May 1994.

<sup>182</sup> T. 7 April 2009 p. 4.

<sup>183</sup> T. 8 April 2009 pp. 3-4, 7-10.

situation.<sup>184</sup> According to the witness, following the assembly, Hategekimana left the Camp with his escort “in a green double-cabin Toyota.”<sup>185</sup>

#### *Defence Witness CBB*

130. Witness CBB, a *Hutu*, was a “trainee soldier” stationed at the ESO Camp in April 1994.<sup>186</sup> He told the Chamber that he had not “witnessed” or heard about an officers’ meeting held on 7 April 1994 at the ESO Camp.<sup>187</sup> However, he recalled that two assemblies were held on that day. The first was a general assembly, led in the morning by Captain Nizeyimana, in which the death of President Habyarimana was confirmed.<sup>188</sup> The witness denied that instructions were issued at this time to kill *Tutsis* and to rape *Tutsi* girls before killing them. A second assembly was held at 2.00 p.m., where ESO units were given special assignments.<sup>189</sup> The witness testified that one of the “security” assignments issued to his patrol was to guard the Ngoma Camp, where he was on duty on 7 April and “either on the 15<sup>th</sup> or the 16<sup>th</sup> of April.”<sup>190</sup> The witness was not asked about and did not specify other assignments. Witness CBB stated that he did not know Hategekimana and was not aware that Hategekimana was the Commander of the Ngoma Camp in April 1994.<sup>191</sup>

#### *Defence Witness BJ3*

131. Witness BJ3, a *Hutu*, was a soldier stationed at the ESO Camp in April 1994.<sup>192</sup> The witness testified that the usual assembly of military staff was held near the dispensary at 7.00 a.m. on 7 April 1994.<sup>193</sup> He did not attend the assembly but saw the hoisted flag and soldiers dispersing afterwards.<sup>194</sup> The witness acknowledged being absent from the ESO Camp from around 9.00-9.30 a.m. until almost noon.<sup>195</sup> However, he asserted that no officers’ meeting was held at the ESO Camp on 7 April 1994 and that ESO soldiers were not ordered to “kill or rape *Tutsis*.”<sup>196</sup>

132. Witness BJ3 testified that he knew Hategekimana, the Commander of the Ngoma Camp in 1994. The witness described the Accused as a man “of average build” who was “neither fat nor thin.” “He sported a beard, and his complexion was between light and dark.” The witness identified Hategekimana in court.<sup>197</sup> BJ3 stated that he did not see Hategekimana or any commander of another military camp at the ESO Camp on 7 April 1994.<sup>198</sup>

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<sup>184</sup> T. 8 April 2009 p. 11.

<sup>185</sup> T. 8 April 2009 p. 32.

<sup>186</sup> T. 8 July 2009 pp. 4, 20, 32; Defence Exhibit 9 (Protected Information of Witness CBB).

<sup>187</sup> T. 8 April 2009 p. 19.

<sup>188</sup> T. 8 April 2009 pp. 9, 13, 18-19.

<sup>189</sup> T. 8 July 2009 pp. 10, 18.

<sup>190</sup> T. 8 July 2009 pp. 31-32.

<sup>191</sup> T. 8 July 2009 p. 13.

<sup>192</sup> T. 24 September 2009 pp. 17, 42; Defence Exhibit 16 (Protected Information of Witness BJ3).

<sup>193</sup> T. 24 September 2009 pp. 20, 31.

<sup>194</sup> T. 24 September 2009 p. 20.

<sup>195</sup> T. 24 September 2009 pp. 24, 25.

<sup>196</sup> T. 24 September 2009 pp. 29, 31, 32, 46, 47.

<sup>197</sup> T. 24 September 2009 pp. 27-28.

<sup>198</sup> T. 24 September 2009 pp. 29, 31, 46, 47.

### 1.3. Deliberation

133. The Defence submits that Hategekimana was absent from Butare at the time of the alleged officers' meeting in the morning of 7 April 1994 at the ESO Camp. As discussed above, the Chamber does not believe Hategekimana's alibi.

134. The Prosecution led no evidence regarding Hategekimana's participation in any decision reached during the alleged meeting of Butare military officers at the ESO Camp on 7 April 1994. While Witness BUR testified that Hategekimana attended this meeting, which was held inside the command office, the witness did not attend the meeting and did not hear any of the discussion. Witness BUR's evidence does not establish what role, if any, Hategekimana played at the alleged meeting beyond his mere presence in the command office.

135. Witness BUR's allegations about the officers' meeting at the ESO Camp are uncorroborated. Indeed, Defence Witnesses BJ3 and CBB, both ESO Camp soldiers in April 1994, denied that a Butare military officers' meeting was held at the ESO Camp on 7 April. Witness BUR claims to have seen Hategekimana arrive at the ESO Camp to attend the meeting. The witness also claims to have heard Captain Nizeyimana issue instructions to soldiers assembled at the ESO Camp to rape and kill *Tutsis*, shortly following the officers' meeting. However, the witness' conclusion that a decision to kill and rape *Tutsis* was taken at the officers' meeting is speculative, and his testimony that Hategekimana issued those same instructions at the Ngoma Camp is hearsay. The Chamber considers that such evidence should be treated with caution.

136. Witness BUR's testimony that he saw Hategekimana arrive at the ESO Camp, in the morning of 7 April 1994, in a green Toyota pickup is supported by the account of Prosecution Witness BRS that Hategekimana left the Ngoma Camp, on the same morning, "in a green double-cabin Toyota."<sup>199</sup> However, in the Chamber's view, Witness BRS's testimony offers only limited corroboration of Witness BUR's account. Taken together, their evidence does not directly link the Accused to the killing of *Tutsis* and the rape of *Tutsi* women, before killing them, pursuant to a decision taken at the Butare officers' meeting.

137. Consequently, owing to the lack of sufficient and reliable evidence, the Chamber does not find that the Prosecution has proven the allegations, set forth in paragraphs 7 and 43 of the Indictment, that Hategekimana attended a meeting of military officials at the ESO Camp, on or about 7 April 1994, or that he issued orders to Ngoma Camp soldiers to kill *Tutsis* and to rape *Tutsi* women before killing them.

## 2. Rapes of *Tutsi* Women in Butare Préfecture between 7 April and 31 May 1994

### 2.1 Overview of the Parties' Accounts

138. The Prosecution alleges that, between 6 April and 31 May 1994, Hategekimana raped *Tutsi* women in his home, and that he knew that Ngoma Camp soldiers, *Interahamwe*, and armed civilians under his effective control were raping *Tutsi* women in houses and other locations in and around Butare town but failed to prevent these rapes or to punish the perpetrators.<sup>200</sup> Prosecution Witnesses BUR and BUQ testified about the alleged rapes.

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<sup>199</sup> T. 8 April 2009 p. 32.

<sup>200</sup> Indictment paras. 8, 32, 33, 44, 47, 48; Prosecution Pre-Trial Brief paras. 122-126, 151, 152, 154, 155-159; Prosecution Closing Brief paras. 175-191, 425-448.

139. The Defence disputes the credibility and reliability of Witnesses BUR and BUQ.<sup>201</sup> It relies on the testimonies of Witnesses RGF, ZRW and UAY.

## 2.2 Evidence

### *Prosecution Witness BUR*

140. Witness BUR, a *Hutu*, was a soldier stationed at the ESO Camp in 1994.<sup>202</sup> The witness testified that, following the death of President Habyarimana on 6 April 1994, he was assigned to patrol the Taba neighbourhood of Butare, where military officers, including Hategekimana, resided. Around 10.30 a.m. on 23 or 24 April 1994, while Witness BUR was standing guard at the residence of the former *Préfet* Jean-Baptiste Habyarimana, he saw Hategekimana, accompanied by two escorts, drive up in a Land Rover pickup. Hategekimana opened the gate to the *Préfet*'s house, entered the residence, exited with the *Préfet*'s wife and forced her into his vehicle. Witness BUR recalled that the *Préfet*'s wife "was in a bad way. She was *Tutsi* and the *Tutsis* were targeted by the killings. [...] [I]t was a person who was going to be killed and who was just awaiting death."<sup>203</sup>

141. Witness BUR testified that, two or three days later, while continuing to patrol the Taba area, he saw the *Préfet*'s wife in the courtyard of Hategekimana's residence. With her were members of Hategekimana's escort, in charge of his personal security. Among these soldiers, Witness BUR named "Kazungu," "Cyubahiro," "Uwamahoro" and "Ndayambaje."<sup>204</sup> Kazungu and Ndayambaje informed Witness BUR that Hategekimana had taken her as his wife, using the word "*kubohoza*." According to the witness, during the genocide, the word "*kubohoza*" meant to rape a *Tutsi* woman, or to forcibly take her as a wife. Witness BUR testified that, on this day, the *Préfet*'s wife was wearing the same clothing that she wore when he saw her abducted from her home. The witness testified, "She had been treated with disrespect. She seemed to be demoralised."<sup>205</sup>

142. Witness BUR saw the *Préfet*'s wife again in the courtyard of Hategekimana's residence approximately three days later, while he was on patrol. She was wearing the same clothes, and soldiers from Hategekimana's escort were still with her. The next time the witness passed by Hategekimana's house, Kazungu informed Witness BUR that Hategekimana had handed the *Préfet*'s wife over to the *Interahamwe*. The witness testified that the *Préfet*'s wife was no longer alive.<sup>206</sup>

143. Witness BUR testified that, between the end of April and the beginning of May 1994, he also saw four young girls at Hategekimana's residence. The girls were not in good health but looked like "moving skeletons." The witness testified that Hategekimana's escort Uwamahoro told him that the girls were *Tutsis*. Using the word "*kubohoza*," Uwamahoro said that "now they had found women, wives, they were no longer single." The witness recalled, "We joked about it." Witness BUR no longer saw the girls at Hategekimana's house after 10 May 1994. He speculated that they were handed over to the *Interahamwe* to be killed, and explained that "[t]he instruction was not to keep them as wives, but to rape them and then kill them."<sup>207</sup>

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<sup>201</sup> Defence Closing Brief paras. 51-86.

<sup>202</sup> T. 6 April 1994 p. 49; Prosecution Exhibit 14 (Protected Information of Witness BUR).

<sup>203</sup> T. 6 April 2009 pp. 56-59; T. 7 April 2009 pp. 42, 43.

<sup>204</sup> T. 6 April 2009 pp. 60-62.

<sup>205</sup> T. 6 April 2009 pp. 65-66.

<sup>206</sup> T. 6 April 2009 pp. 66-67.

<sup>207</sup> T. 6 April 2009 pp. 68-70. See also above, ESO Camp Meeting, 7 April 1994.

144. Witness BUR testified that, towards the end of April 1994, he met Sergeant Nginshuti, a soldier from the Ngoma Camp, at *Tutsi* Queen Gicanda's house in Butare town. Witness BUR's unit had been sent to guard the Queen's house and to determine whether there were any *Inkotanyi* among the displaced from Bugesera who had taken refuge there. Nginshuti and his Ngoma Camp unit had also been deployed to the Queen's residence. Witness BUR testified that he heard a girl screaming from inside the Queen's house. When he entered the house to investigate, he saw five soldiers in the house. One of the soldiers was on top of the girl raping her while the other four were standing nearby. The witness testified that the girl "was completely naked and she was [...] lying on a mattress, and the soldier was on top of her." The witness continued, "She was shouting and was begging for mercy: 'Have pity on me. Don't treat me this way. I would rather have you kill me or shoot me.'"<sup>208</sup>

145. Witness BUR expressed the opinion that Sergeant Nginshuti was aware that Ngoma Camp soldiers under his authority were raping a *Tutsi* girl at this time. According to Witness BUR, Nginshuti knew of the rape "because the young girl was shouting so loudly that he could hear her."<sup>209</sup> When the witness informed Nginshuti that the girl "was in a very bad state," the Sergeant replied that there was nothing he could do because Hategekimana had personally ordered the Ngoma Camp soldiers to rape *Tutsi* women before killing them. Witness BUR stated that soldiers from the ESO Camp had received the same instructions.<sup>210</sup>

146. Witness BUR testified that, around 11.00 a.m. on 15 May 1994, while on patrol he saw Hategekimana again in Butare town at the Benebikira Convent, located behind the Butare Cathedral, not far from the *Groupe Scolaire*. Hategekimana was leaving the Convent with "a very beautiful girl." She was "very slim, light in complexion, still very young [...] and clearly *Tutsi*." The girl was walking between Hategekimana and two members of his escort, Kazungu and Ndayambaje. Witness BUR testified that the girl, who appeared to be terrified, left with Hategekimana in a Land Rover pickup. The witness assumed that Hategekimana intended to rape the girl.<sup>211</sup>

147. Witness BUR stated that he then entered the Convent, where 15 to 20 *Tutsi* girls were hiding. The girls informed him that soldiers had just abducted one of them and had ordered the others to remain where they were. According to the girls, one of the soldiers had stars on his shoulders and a pistol in his hand. Because Witness BUR had just seen Hategekimana leave the Convent, he "understood who they were talking about."<sup>212</sup>

#### *Prosecution Witness BUQ*

148. Witness BUQ, a *Tutsi* woman, served as a domestic worker in 1994.<sup>213</sup> The witness testified that her employers fled their home in the Taba neighbourhood at around 9.30 or 10.00 p.m. on the night of 6 April 1994 because "[t]hey were afraid of violence or war breaking out following the President's death."<sup>214</sup>

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<sup>208</sup> T. 7 April 2009 pp. 2-6.

<sup>209</sup> T. 7 April 2009 p. 5.

<sup>210</sup> T. 6 April 2009 pp. 54-55; T. 7 April 2009 pp. 4-6.

<sup>211</sup> T. 6 April 2009 pp. 71-73; T. 9 April 2009 pp. 75-77.

<sup>212</sup> T. 6 April 2009 pp. 73-75.

<sup>213</sup> T. 24 March 2009 p. 4.

<sup>214</sup> T. 24 March 2009 pp. 48-50; T. 25 March 2009 p. 13.

149. Witness BUQ testified that several hours later, around 3.00 or 4.00 a.m. on 7 April 1994, five soldiers entered the house and broke into the room where Witness BUQ and her two young female colleagues were hiding. The witness recognised one soldier named Rubaga from the ESO Camp, whom she had previously seen pass in front of her employers' house. According to the witness, the soldiers blamed the *Tutsis* for the President's death.<sup>215</sup> The soldiers told the young women that they "had received orders that they should rape woman [*sic*] and girls and that they should kill *Tutsis* in general."<sup>216</sup> The witness testified that the soldiers also stated that "*Tutsi* women and girls were free for them [...] and that they could do whatever they wanted to do with us."<sup>217</sup> The witness said that at least one of her colleagues was also a *Tutsi*.<sup>218</sup>

150. According to Witness BUQ, the soldiers pushed the girls to the ground, then undressed and raped them. The soldiers did not remove their own clothing; they merely pulled down their trousers. Witness BUQ testified that the soldiers took turns raping each of the girls, some of whom were virgins before that night. After the soldiers had finished raping the three girls, they left in the direction of the officers' houses in the neighbourhood.<sup>219</sup>

151. Witness BUQ stated that hours later, on the night of 7 April 1994, four other soldiers again visited her employers' home. The soldiers, who arrived from the direction of the officers' houses, wore military overcoats and carried firearms. Like the first group of soldiers who had raped the girls in the early morning, they said that they would no longer have to pay for sexual intercourse and that *Tutsi* women and girls could not "treat them with scorn." The soldiers said that if *Tutsi* women "refused to be raped, they would kill them because they had been ordered to rape and kill them." The soldiers raped the Witness BUQ and her colleagues.<sup>220</sup>

152. During the night of 8 April 1994, three soldiers again came to the house and raped Witness BUQ and her colleagues. The witness testified that by this time "we were exhausted and we were hoping that we would be killed."<sup>221</sup>

153. According to Witness BUQ, one of the three soldiers whispered to her outside the house that he wanted her as his wife. Introducing himself as Innocent Ndererimana from the Ngoma Camp, the soldier informed the witness that he was a member of Hategekimana's escort. Ndererimana also told her that Hategekimana had instructed the soldiers to hunt down *Tutsis*, rape the women and girls and kill the men. The witness postulated that the two soldiers might also have been from the Ngoma Camp because they were wearing the same uniform and beret as Ndererimana.<sup>222</sup>

154. Witness BUQ testified that Ndererimana took her to an empty house near both her employers' home and Hategekimana's house. According to the witness, Ndererimana hid her in a storeroom and kept her as a sexual slave. He did not live in the house with her. Rather, he visited the house approximately three times a week to rape her. Witness BUQ testified that Ndererimana came to the house "without the knowledge of other people" and that he told her that "he did not want people to see him bringing food, so he brought tinned food."<sup>223</sup>

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<sup>215</sup> T. 24 March 2009 pp. 5-6.

<sup>216</sup> T. 24 March 2009 p. 6.

<sup>217</sup> T. 24 March 2009 pp. 6-7.

<sup>218</sup> T. 24 March 2009 p. 7.

<sup>219</sup> T. 24 March 2009 pp. 7, 8; T. 25 March 2009 p. 16.

<sup>220</sup> T. 24 March 2009 pp. 8, 9, 23, 54.

<sup>221</sup> T. 24 March 2009 pp. 9, 11.

<sup>222</sup> T. 24 March 2009 pp. 10, 11; T. 25 March 2009 pp. 6, 8.

<sup>223</sup> T. 24 March 2009 pp. 12-16.

155. Witness BUQ recalled that she remained in the house for approximately two weeks, until Ndererimana informed her that he was leaving the area because the *Inkotanyi* were approaching Butare.<sup>224</sup> The witness stated that she suffered infections because of the rapes, and that some of her organs had been damaged, requiring surgery. She did not know what had become of her colleagues after Ndererimana took her from her employer's house.<sup>225</sup>

*Defence Witness RGF*

156. Witness RGF, a *Hutu* and a clothing salesman, denied that soldiers conducted patrols in Butare following the death of the President.<sup>226</sup> According to the witness, "The soldiers were at the war front. [...] It was us, we, the members of the population, that organised patrols in our neighbourhoods." He further stated that only disabled and wounded persons were stationed at the ESO Camp, Ngoma Camp and Butare *Groupe Scolaire* in April and May 1994.<sup>227</sup>

157. Witness RGF testified that, while he was in prison, he learned from the former Brigadier Vincent of the Ndora *communal* police and the former *Bourgmistre* Célestin Rwankubito of Ndora *Commune* that *Préfet* Habyarimana's wife was killed at a roadblock in Rwasave. According to the witness, Brigadier Vincent and *Bourgmistre* Rwankubito took the *Préfet*'s wife from Butare in the *Bourgmistre*'s vehicle. He testified that the vehicle was driven by the Brigadier, who escorted the *Bourgmistre*. The vehicle was stopped at a roadblock in Rwasave. Those manning the roadblock removed the *Préfet*'s wife, who had no identity papers, from the vehicle and killed her.<sup>228</sup>

158. The witness testified that the *Préfet*'s wife was attacked because "the *bourgmestre* was transporting goods that the assailants wanted to seize and the *bourgmestre* refused to give them those goods." Indeed, according to Witness RGF, the Brigadier "blamed the *bourgmestre* for having been responsible for the death of that lady, because he had refused to hand over those goods to the assailants who wanted to seize them." The witness testified that, following an interrogation by state counsel about his role in the death of the *Préfet*'s wife, *Bourgmistre* Rwankubito committed suicide.<sup>229</sup>

159. Witness RGF testified that he never heard that the *Préfet*'s wife had been raped. He claimed that, if she had been raped, he would have heard about it. He conceded on cross-examination, however, that he could not say whether the *Préfet*'s wife had been raped at her residence or elsewhere prior to her death. Witness RGF insisted that the *Préfet*'s wife was a *Hutu* and that her family were *Hutus*. He stated that, if she had been *Tutsi*, she would have been sent away with the *Préfet*. The witness neither knew the *Préfet*'s wife in April 1994 nor saw her between April and July 1994.<sup>230</sup>

*Defence Witness ZRW*

160. Witness ZRW, a *Hutu*, was an agronomy student in 1994. He testified that he met former *Préfet* Jean-Baptiste Habyarimana's wife, Joséphine Mukaruhimbi, in front of a kiosk around 10.00

<sup>224</sup> T. 24 March 2009 pp. 13, 17, 53; T. 25 March 2009 p. 10.

<sup>225</sup> T. 24 March 2009 pp. 16, 17.

<sup>226</sup> T. 2 October 2009 pp. 9, 14.

<sup>227</sup> T. 2 October 2009 p. 14; Defence Exhibit 23 (Protected Information of Witness RGF).

<sup>228</sup> T. 2 October 2009 pp. 20, 22; T. 5 October 2009 p. 44.

<sup>229</sup> T. 2 October 2009 pp. 20-22; T. 5 October 2009 pp. 44, 45.

<sup>230</sup> T. 2 October 2009 pp. 20-22; T. 5 October 2009 pp. 45-46.



a.m. at the cross-roads in front of the Butare Cathedral. The witness greeted the *Préfet's* wife, who told him that she had just returned from the *préfectoral* office. She had been unable to meet with *Préfet* Sylvain Nsabimana or obtain a *laissez-passer* and transportation to return to her native village.<sup>231</sup>

161. According to the Witness ZRW, the *Préfet's* wife told him that she was waiting for transportation to the Butare *Économat général*, where she was to meet her children. The witness waited with Joséphine until around 11.00 a.m., when *Bourgmestre* Célestin Rwankubito of Ndora *Commune* drove by in a white “stout” pickup, stopped and offered her transportation.<sup>232</sup> The *Préfet's* wife accepted, and ZRW saw her leave with the *Bourgmestre* in the direction of her native village. The witness did not see her again. When Witness ZRW returned to his village on 2 June 1994, he heard that assailants had removed Joséphine from the *Bourgmestre's* vehicle at Rwasave and killed her. Her brother, Emmanuel Kalimijabo, later confirmed to the witness that his sister and her children had been killed at a roadblock in Rwasave, approximately nine kilometres from her residence.<sup>233</sup>

162. Witness ZRW testified that he knew the *Préfet* and his wife prior to April 1994. The witness testified that *Préfet* Habyarimana was a *Tutsi* and that his wife was a *Hutu*. When asked on cross-examination whether the *Préfet's* wife needed a *laissez-passer* to travel to her home village in May 1994, Witness ZRW testified that “[i]t was enough for her to carry her identity card.” He speculated, however, that because ethnicity was mentioned on identity cards, the *Préfet's* wife may have been seeking *laissez-passer* to protect her children, who were considered to be *Tutsis*.<sup>234</sup>

#### *Defence Witness UAY*

163. Witness UAY, a *Hutu* woman, served as a domestic employee in a private home in April 1994.<sup>235</sup> She testified that she was friends with Witness BUQ and two other domestic employees, who all worked and lived in the same private residence, located “between 250 to 300 metres” from her employers’ home. Witness UAY stated that she was not aware of “any security problem” in the Taba neighbourhood where she worked, subsequent to the death of President Habyarimana on 6 April 1994.<sup>236</sup> Witness UAY denied that Witness BUQ or her colleagues were raped or that any act of violence was committed at this time. Witness BUQ insisted that if Witness BUQ and her colleagues had been raped, they would have confided in her.<sup>237</sup>

164. Witness UAY testified that her employers left Butare five to seven days after the death of the President and that Witness BUQ’s employers left during the same period.<sup>238</sup> Witness UAY and the other three young women left the Taba neighbourhood together on the same day to return to their respective villages. They travelled as a group through the market and the Arab neighbourhood until Mukoni, where Witness BUQ’s two colleagues went their separate ways. Witnesses BUQ and UAY remained together until the Nyirabugare Bridge.<sup>239</sup>

<sup>231</sup> T. 29 September 2009 pp. 8, 19, 23, 40.

<sup>232</sup> T. 29 September 2009 pp. 24, 40, 41.

<sup>233</sup> T. 29 September 2009 pp. 24, 25, 44.

<sup>234</sup> T. 29 September 2009 pp. 19, 20, 39, 40, 48.

<sup>235</sup> T. 28 September 2009 pp. 5, 6, 17, 35.

<sup>236</sup> T. 28 September 2009 pp. 10, 13.

<sup>237</sup> T. 28 September 2009 pp. 13, 29-30.

<sup>238</sup> T. 28 September 2009 pp. 9, 10, 23.

<sup>239</sup> T. 28 September 2009 pp. 9-11.

### 2.3 Deliberation

165. There is no dispute that rapes were committed in Butare as part of a series of attacks perpetrated against *Tutsis* and moderate *Hutus* during the 1994 events in Rwanda. Indeed, the Chamber has heard evidence from both the Prosecution and the Defence that such rapes were notorious.<sup>240</sup> The issue before the Chamber is whether Hategekimana participated in these rapes, or whether his subordinates over whom he exercised effective control participated in the rapes with his knowledge, and without his taking preventative or punitive action.

166. In support of these allegations, the Prosecution presented only Witnesses BUR and BUQ. Witness BUR testified about rapes which allegedly occurred at Hategekimana's house and at Queen Gicanda's house, whereas Witness BUQ testified about being raped in the house of her employers and in a nearby house. Witness BUR also testified about the abduction of a young *Tutsi* girl by Hategekimana from the Benebikira Convent. The witness could only speculate, however, that Hategekimana took the girl away in order to rape her.

#### *Rapes at Hategekimana's Residence*

167. Witness BUR testified about the alleged rapes of the *Préfet's* wife and four *Tutsi* girls at Hategekimana's home. Although the witness was physically present at the site of the alleged crimes, while he was on patrol in the Taba neighbourhood, he did not see any victim raped. Rather, Witness BUR's testimony that Hategekimana raped *Préfet* Habyarimana's wife and other *Tutsi* girls was based on accounts that he received from members of Hategekimana's escort, as well as inferences drawn from his own observations. His evidence about the *actus reus* of these rapes is therefore hearsay. The Chamber considers that such evidence should be treated with caution.

168. In this respect, the Chamber notes inconsistencies in Witness BUR's evidence regarding his stated reason for being at *Préfet* Habyarimana's house when he saw Hategekimana abduct the *Préfet's* wife, Joséphine. The witness, an ESO Camp soldier, testified that he and other soldiers in his unit had been instructed to watch the house of the *Préfet*, who was a *Tutsi*, in order to ensure that the *Préfet* did not leave.<sup>241</sup> However, on cross-examination, the witness denied having been assigned to guard the *Préfet's* house, claiming rather that he happened to pass by the *Préfet's* house while patrolling the neighbourhood.<sup>242</sup> Later, the witness contradicted himself again, stating that he left the *Préfet's* house as soon as Hategekimana abducted the *Préfet's* wife because "our mission was accomplished [...] so we didn't have any reason to remain there."<sup>243</sup>

169. The Chamber also observes an inconsistency in Witness BUR's testimony in relation to his identification of Hategekimana's house and his knowledge of the officers' residences. When the witness was asked during trial how he knew that the *Préfet's* wife had been taken to Hategekimana's house, he first stated, "All the residences of the officers were in Taba and I knew those houses." The witness specified that he was able to identify the home as Hategekimana's because he "saw the *Préfet's* wife" and "members of his escort there."<sup>244</sup> In the Chamber's view,

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<sup>240</sup> See e.g., Witness Laurien Ntezimana, T. 20 March 2009 pp. 18, 19; Witness CBA1, T. 13 July 2009 p. 10.

<sup>241</sup> T. 6 April 2009 p. 58; T. 7 April 2009 pp. 36, 39.

<sup>242</sup> T. 9 April 2009 p. 73.

<sup>243</sup> T. 7 April 2009 p. 44.

<sup>244</sup> T. 6 April 2009 p. 61. Witness BUR testified, "All the residences of the officers were in Taba and I knew those houses. And I confirmed that it was the residence of Hategekimana because I saw members of his escort there and I also saw the *Préfet's* wife, and I had seen her abducted from the *Préfet's* house so I knew that it was the residence of Hategekimana."

the basis for Witness BUR's recognition of Hategekimana's residence appears to be speculative. Later in his testimony, the witness contradicted his initial claim to know "all the residences of the officers" in the Taba neighbourhood, and acknowledged that he was unable to identify the homes of General Gatsinzi and Colonel Muvunyi, the commanding officers of the ESO Camp, where he was stationed. The Chamber considers it doubtful that Witness BUR would have been able to identify the home of an officer of the Ngoma Camp but not know the residences of his own ESO commanders. The Chamber finds the inconsistency to be significant and questions the reliability of the witness's uncorroborated identification of Hategekimana's residence, which is a site of the rapes alleged in paragraphs 8 and 44 of the Indictment.

170. The Chamber also notes a discrepancy between Witness BUR's testimony and his statement of August 2006 to Tribunal investigators regarding the identification of individuals in Hategekimana's escort. During trial, Witness BUR specifically named the members of the escort whom he saw outside of Hategekimana's residence with *Tutsi* women in April 1994, while he was on patrol. However, in his out-of court statement, the witness declared that he did "not know the names of [...] the soldiers in the Bikomago escort. I did not see them ever again and I no longer remember their names."<sup>245</sup> When questioned about this matter, Witness BUR acknowledged that he did not know the individuals' identities in 1994 but subsequently remembered their names while he was in exile in the Congo in 2004.<sup>246</sup> When asked on cross-examination why he did not provide the escorts' names to ICTR investigators in 2006, the witness stated that he did not retain the names after hearing them in exile in 2004 but recalled them only after meeting a member of Hategekimana's escort in 2007. The witness further testified, "I believe that I have already told the Tribunal investigators that I knew those names, but they did not want to include the names in my written statement. They suggested to me that I mention those names here before the Trial Chamber."<sup>247</sup> In the Chamber's view, the witness' explanation raises doubts about the reliability of his identification of the members of Hategekimana's escort.

171. Witness BUR's testimony provides some support for the allegation that Hategekimana ordered Ngoma Camp soldiers to rape *Tutsi* women. However, the witness' uncorroborated testimony is second-hand and circumstantial,<sup>248</sup> based largely on his inference that Ngoma Camp soldiers received the same instructions to rape as did he and other ESO Camp military staff. The witness specifically testified that ESO Camp soldiers received orders from their superiors "to rape the *Tutsi* women and kill them afterwards" and that "we followed the instructions that were given."<sup>249</sup> The witness stated that he did not intervene to assist the rape victims because he could not disobey orders.<sup>250</sup> The witness also emphasised that neither he nor any other soldier could disobey the orders issued to them to rape and kill *Tutsi* women.<sup>251</sup> When questioned about whether he participated in rapes, the witness answered, "[I]f I had committed such acts, then the *Gacaca* courts would have convicted me, and I would currently be serving a prison sentence."<sup>252</sup> The Chamber does not consider this answer to negate the possibility that Witness BUR also might have committed rapes and thus may have been an accomplice, particularly in light of his repeated assertions that instructions to rape and kill could not have been disobeyed.

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<sup>245</sup> Rule 66(A)(ii) Disclosure, Witness BUR's Statement, 29 and 31 August 2006, K0375633.

<sup>246</sup> T. 6 April 2009 p. 64.

<sup>247</sup> T. 7 April 2009 pp. 53, 54.

<sup>248</sup> T. 6 April 2009 pp. 54, 55; T. 7 April 2009 pp. 4-6.

<sup>249</sup> T. 6 April 2009 p. 53.

<sup>250</sup> T. 9 April 2009 p. 78.

<sup>251</sup> T. 6 April 2009 p. 70; T. 7 April 2009 pp. 4, 5.

<sup>252</sup> T. 7 April 2009 pp. 6, 36. Witness BUR testified that he appeared before a *Gacaca* court, but was not accused of any crimes and was therefore released.

172. In view of these problematic aspects of Witness BUR's testimony and of the fact that he may have been under duress, the Chamber declines to rely on his evidence, without further corroboration, in respect of the alleged rapes of the *Préfet's* wife and four *Tutsi* girls at Hategekimana's residence. Therefore the Chamber does not find it established beyond reasonable doubt that soldiers from the Ngoma Camp kept *Tutsi* women against their will at Hategekimana's residence, where he raped them, as pleaded in paragraphs 8 and 44 of the Indictment.

#### *Rapes at Queen Gicanda's Residence*

173. Witness BUR testified that he saw a girl being raped by Ngoma Camp soldiers, under the command of Sergeant Nginshuti, at Queen Gicanda's home.<sup>253</sup> As discussed above, the Chamber has reservations about the reliability of Witness BUR's evidence, without credible corroboration. In particular, the Chamber recalls the possibility that Witness BUR, or soldiers in his own unit, might also be implicated in the rapes that he has described. Therefore, the Chamber dismisses the allegation that Ngoma Camp soldiers raped a *Tutsi* girl at the home of Queen Gicanda.

#### *Rapes of Witness BUQ*

174. Witness BUQ testified about being gang raped repeatedly in her employers' home for three consecutive nights immediately following the death of President Habyarimana. She identified the perpetrators as soldiers, but could not recognise any of them except for Rubaga, whom she recognised as being from the ESO Camp. It was not until the third day that another soldier, unknown to her, introduced himself as Ndererimana, one of Hategekimana's escorts from the Ngoma Camp. According to Witness BUQ, the Ngoma Camp soldier kept her as a sexual slave in a nearby residence for approximately two weeks. The Chamber notes that Witness BUQ's testimony concerning one named Ngoma Camp soldier provides the only relevant evidence linking Hategekimana to the crimes of rape perpetrated against Witness BUQ.

175. The Chamber finds Witness BUQ's timeline of events to be problematic. Specifically, the Chamber is concerned about the inconsistency in the Prosecution and Defence evidence about the date on which Witness BUQ's employers left their home in the Taba neighbourhood. In the absence of corroborative evidence, the Chamber has serious reservations about the veracity of Witness BUQ's testimony that her employers left Butare at 10.00 p.m. on 6 April 1994.<sup>254</sup> Similarly, the Chamber doubts that Witness BUQ was raped on the night of 6 to 7 April 1994, within hours of her employers' departure, by soldiers who had already received orders to rape and kill *Tutsi* women. For instance, Prosecution Witness BRS, a soldier stationed at the Ngoma Camp in April 1994, testified that Ngoma Camp soldiers were not notified of the President's death until 2.00 or 3.00 a.m. on 7 April 1994 by Second Lieutenant Niyonteze.<sup>255</sup> The Chamber also observes that no testimony was offered or evidence tendered during trial identifying any Ngoma Camp soldier by the name of Ndererimana. A doubt therefore subsists as to whether the named soldier identified by Witness BUQ served under Hategekimana's command. Thus, the Chamber finds that the Prosecution has not established that the soldier who raped Witness BUQ was one of Hategekimana's subordinates.

176. In light of the problems discussed above, the Chamber finds that it cannot rely on the evidence of Witness BUQ without credible corroboration.

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<sup>253</sup> T. 7 April 2009 pp. 2-6; T. 9 April 2009 p. 77.

<sup>254</sup> T. 24 March 2009 p. 50.

<sup>255</sup> T. 8 April 2009 p. 10.

177. Indeed, the Prosecution evidence has not established Hategekimana's alleged superior responsibility for the rapes perpetrated in houses and other places throughout Butare, as alleged in paragraphs 47 and 48 of the Indictment. The Prosecution has not led any evidence to suggest that Hategekimana knew that the named Ngoma Camp soldier detained and raped Witness BUQ at a house in Butare. The Chamber recalls that Witness BUQ testified that her captor did not want others to know that he was hiding a *Tutsi* woman and that he visited the house where she was detained "without the knowledge of other people."<sup>256</sup> The witness stated that "if it had been known that he was hiding a *Tutsi* in that house, he would have had negative consequences."<sup>257</sup>

178. Accordingly, the Prosecution has not proven beyond reasonable doubt that Hategekimana raped *Tutsi* women in his home and that he knew of the perpetration of rapes on *Tutsi* women by Ngoma Camp soldiers, *Interahamwe* and armed civilians under his effective control in houses and other locations in and around Butare town. The Chamber therefore dismisses the allegations in paragraphs 8, 32, 33, 44, 47, 48 of the Indictment.

### **3. Roadblock Outside the Ngoma Camp, Ngoma Commune, Butare Préfecture, between 7 April and 31 May 1994**

#### **3.1 Overview of the Parties' Accounts**

179. The Prosecution alleges that Hategekimana ordered soldiers stationed at the Ngoma Camp to erect a roadblock outside the camp in order to facilitate his further instructions to "intercept, identify, arrest and kill or cause serious bodily or mental harm to any person carrying a *Tutsi* identity card." The Prosecution submits that Hategekimana is responsible, both individually and as a superior, for the killing of *Tutsis* by Ngoma Camp soldiers at this roadblock. The Prosecution relies on the testimonies of Witnesses QCL, XR, BYR, Jérôme Masinzo and Laurien Ntezimana.<sup>258</sup>

180. The Defence denies that a roadblock was established near the Ngoma Camp in April 1994 and argues that there was only a guard post at the entrance, which was constructed prior to April 1994 in order to control entry into the Camp. This, the Defence submits, is commonplace at military camps throughout the world. The Defence also challenges the relevance of the Prosecution evidence in relation to the allegations in the Indictment. The Defence relies on the testimonies of Witnesses MBA, MLA, BJ3, ZVK and MZA.<sup>259</sup>

#### **3.2 Evidence**

##### *Prosecution Witness Jérôme Masinzo*

181. In 1994, Jérôme Masinzo was a *Tutsi* priest at the Ngoma Parish in Butare.<sup>260</sup> He testified that, on 12 April 1994, he heard that the corpses of several youths aged seventeen to twenty years were lying on the road leading to Akanyaru. Father Masinzo later heard that they had been arrested, tortured and killed by Ngoma Camp soldiers upon reaching the roadblock at the Camp and had been

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<sup>256</sup> T. 24 March 2009 pp. 14, 16.

<sup>257</sup> T. 24 March 2009 p. 14.

<sup>258</sup> Indictment paras. 9, 22; Prosecution Closing Brief paras. 192-211; Prosecution Closing Arguments T. 26 April 2010 pp. 12, 13. See also Prosecution Pre-Trial Brief paras. 11, 99, 100.

<sup>259</sup> Defence Closing Brief paras. 87-153; Defence Closing Arguments T. 26 April 2010 pp. 49-51.

<sup>260</sup> T. 19 March 2009 pp. 15, 19; Prosecution Exhibit 3 (Information Sheet of Jérôme Masinzo).

“tied with the blankets that they had in their luggage and [...] thrown along the road.” Father Masinzo believed the children to be *Tutsis* because of the “atrocious death” they had suffered.<sup>261</sup>

182. Father Masinzo testified that he passed through a roadblock facing the Ngoma Camp manned by Ngoma Camp soldiers several times in April 1994 and was requested to show his ID card on some occasions but not on others. He further recalled that, on 16 April 1994, he saw persons with *Tutsi* identity cards sitting at the side of the road when he passed through and on his return at 3.00 p.m. Then, on 18 April 1994, as he was driven through the roadblock, he overheard Second Lieutenant Niyonteze of the Ngoma Camp tell *Bourgmestre* Ladislas of Nyakizu *Commune*, “When you catch an *Inyenzi*, do not jail him, kill him.” Father Masinzo further testified that, on 20 April 1994, as he passed through the roadblock with two neighbours while driving them to hospital, soldiers checked the *Hutu* identity cards of his neighbours and told him, “If they had been *Inyenzi* you would have gone with them.” He explained that the term “*Inyenzi*” described *Tutsis*.<sup>262</sup>

183. Father Masinzo also heard that, on 22 April 1994, a number of Benedictine sisters from Sovu who were travelling with *Bourgmestre* Jonathas Ruremesha were arrested at the roadblock opposite the Ngoma Camp. The *Bourgmestre* had attempted to evacuate the sisters to the “Butare bishop’s house,” but after they were stopped, he drove them to Ngoma Parish instead. Their mother superior, Sister Gertrude, called Hategekimana using Father Masinzo’s parish phone to ask for assistance, and Hategekimana sent soldiers to escort the sisters back to Sovu.<sup>263</sup>

184. Father Masinzo testified that he did not see Hategekimana at the roadblock or at the Ngoma Camp during April 1994. He stated that, although he was a *Tutsi*, he was allowed to pass through the roadblocks without showing his identity card because the soldiers knew him. He had previously celebrated Mass in the Ngoma Camp and acknowledged that there was an additional checkpoint at the entrance to the Camp, which had been erected following the death of President Habyarimana on 6 April 1994.<sup>264</sup>

#### *Prosecution Witness BYR*

185. Witness BYR, a *Hutu* soldier stationed at the Ngoma Camp in April 1994, testified that, from 19 April 1994, the movement of the population in Butare was controlled by roadblocks, one of which was in front of the Ngoma Camp and manned by more than five of its soldiers.<sup>265</sup> Witness BYR speculated that the camp commander had made the decision to erect the roadblock following instruction from military superiors. The witness recalled that those attempting to pass through the roadblock without identity papers were stopped, with *Tutsis* being separated and taken elsewhere. On 19 April 1994, Witness BYR observed between ten and fifteen arrested people waiting at the roadblock; they were gone later that day when Witness BYR returned. He believed them to be *Tutsis* and explained that they had been taken to a small building for interrogation, subsequent to which he saw them entering a Hilux driven by a man named Inani, who then transferred them to an unknown destination.<sup>266</sup> The witness stated that they never returned to the Camp and he does not know what happened to them.<sup>267</sup>

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<sup>261</sup> T. 18 March 2009 pp. 48-52; T. 19 March 2009 pp. 32-36.

<sup>262</sup> T. 18 March 2009 pp. 51-53, 65-67.

<sup>263</sup> T. 19 March 2009 pp. 11, 12.

<sup>264</sup> T. 18 March 2009 p. 53; T. 19 March 2009 pp. 8, 36.

<sup>265</sup> Prosecution Exhibit 17 (Protected Information of Witness BYR).

<sup>266</sup> In the French transcript the name of this civilian is also referred with the spelling Enani.

<sup>267</sup> T. 9 April 2009 pp. 32-35, 63-64.

*Prosecution Witness QCL*

186. Witness QCL was a *Tutsi* businessman in 1994. The witness testified that, after 8 April 1994, he saw soldiers from the Ngoma Camp committing acts of violence at the roadblock near his house.<sup>268</sup> He explained that there was a roadblock opposite the Ngoma Camp and that several roadblocks had been in place throughout town from 1993 because of the ongoing war in northern Rwanda. Witness QCL testified that people's identity cards were checked at the roadblocks in order to verify their ethnicity and that, as a *Tutsi*, he was beaten, searched, disrobed and insulted by soldiers from the Ngoma Camp throughout the genocide on a daily basis. He did not specify, however, where this mistreatment occurred or whether it was connected to a roadblock.<sup>269</sup>

*Prosecution Witness Laurien Ntezimana*

187. Laurien Ntezimana, a *Hutu* man, was responsible for theology classes at the Butare Catholic Diocese in April 1994.<sup>270</sup> He testified that there were many roadblocks in Butare during the 1994 genocide and he assumed that they had been established at the behest of the *préfectoral* Security Committee composed of the *Préfet*, the commander of the military camp, the area commander, the *Bourgmestre*, the commander of the *Gendarmerie* and those responsible for intelligence. Ntezimana explained that ESO Camp soldiers manned the roadblocks in Butare town *Secteur*, whereas soldiers from the Ngoma Camp manned those in Ngoma and Matyazo *Secteurs*.<sup>271</sup>

188. Ntezimana testified that *Tutsis* were arrested at the roadblocks and either taken to a military camp where their fate was unknown or killed next to the roadblock. He explained that, although the official purpose of the roadblocks was to ensure security during the war, the reality was that all those resembling the stereotype of a *Tutsi* or who did not have *Hutu* identity cards were arrested.<sup>272</sup>

*Prosecution Witness XR*

189. Witness XR, a Congolese man, worked at the Butare National University in 1994. He testified that, around the first or second week of May 1994, he walked to the roadblock at the Ngoma Camp. It was manned by Ngoma Camp soldiers, including one nicknamed Katangais with whom he spoke.<sup>273</sup> Witness XR waited at the roadblock for approximately twenty minutes and did not observe "anything special." He recalled that Hategekimana, Commander of the Ngoma Camp, left the Camp through the roadblock in a green vehicle and, after speaking briefly to Witness XR, asked the witness to return home.<sup>274</sup>

*Defence Witness MLA*

190. Witness MLA, a *Hutu* soldier at the Ngoma Camp in April 1994, testified that the only roadblock in front of the Camp was a "guard post" at the entrance, opposite to and approximately six metres from the road leading to Matyazo and Butare town.<sup>275</sup> He recalled that it was a metallic crossbar and had been in place since at least August 1992. The purpose of the roadblock was to

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<sup>268</sup> T. 17 March 2009 p. 6.

<sup>269</sup> T. 17 March 2009 pp. 6, 10, 29; T. 18 March 2009 pp. 4, 7.

<sup>270</sup> T. 20 March 2009 pp. 5, 10; Prosecution Exhibit 4 (Information Sheet of Laurien Ntezimana).

<sup>271</sup> T. 20 March 2009 pp. 13-15, 28.

<sup>272</sup> T. 20 March 2009 pp. 16, 17.

<sup>273</sup> T. 1 April 2009 p. 55; T. 2 April 2009 p. 7.

<sup>274</sup> T. 2 April 2009 p. 7.

<sup>275</sup> Defence Exhibit 8 (Protected Information of Witness MLA).

verify the identities and purposes of individuals seeking to enter the Camp. Witness MLA recalled that the soldiers stopped and interviewed people at the post, where they would be met by Ngoma Camp staff members whom they were visiting. The witness stated that no one was intercepted or killed at the roadblock. He testified that he never saw Hategekimana at the roadblock or any person arrested there during the 1994 events.<sup>276</sup>

#### *Defence Witness MZA*

191. In April 1994, Witness MZA, a *Hutu*, worked as a taxi driver.<sup>277</sup> According to the witness, at the entrance to the Ngoma Camp, there was a crossing made of wood approximately ten metres from the road. He recalled that the roadblock had been located at the same site since he was a young child, including during the period that the Camp had previously served as police barracks. Witness MZA further recalled that the roadblock controlled access to the Camp. Witness MZA neither saw nor heard of anyone being arrested there. He did not see a roadblock on the main road or at any other site after the camp on the road towards Butare town, including any place before the Matyazo junction.<sup>278</sup>

#### *Defence Witness MBA*

192. Witness MBA, a *Hutu* man, worked as a beer distributor in April 1994.<sup>279</sup> The witness testified that there was a roadblock at the entrance to the Ngoma Camp, approximately three to five metres from the road leading to Matyazo, and that it had been there since before 1992. He recalled that the roadblock was manned by one or two soldiers. Witness MBA further recalled that he neither heard of nor saw anyone being arrested at this roadblock, nor did he see any dead bodies when he passed by. He explained that the nearest roadblocks to the Ngoma Camp were on the road to the centre for the deaf and dumb and on the road to Matyazo, respectively, 700 metres and one kilometre from the Camp. The roadblocks consisted of lengths of wood approximately one metre long with a crossbar placed across them, and were manned by young *Interahamwe* militiamen. He testified that, upon producing his identity card and *laissez-passer*, he was permitted to pass, except for the roadblock at the Ngoma Camp which he never crossed because it was intended to control access to the Camp. Witness MBA stated that the roadblock at the Ngoma Camp was not across the main road.<sup>280</sup>

#### *Defence Witness ZVK*

193. Witness ZVK, a *Hutu* man, was a secondary school student in April 1994. The witness testified that, for several years prior to 1994, the entrance to the Ngoma Camp had a cypress fence and a roadblock manned by a soldier, which he characterised as a “guard post.” Witness ZVK recalled that it was four to six metres from the road and that its purpose was to check those coming in and out of the Camp. He acknowledged that he did not pass by the roadblock in April 1994 and would therefore not have known who manned it or what happened there during that period of time. However, he did pass by in May 1994 and saw no dead bodies or persons being intercepted. Witness ZVK testified that the only roadblock he saw between April and June 1994 was one located just after Eighth Avenue, leading to Matyazo and to the Ngoma Camp beyond.<sup>281</sup>

<sup>276</sup> T. 2 July 2009 pp. 8, 16, 20, 32, 41.

<sup>277</sup> T. 24 June 2009 p. 50.

<sup>278</sup> T. 23 June 2009 pp. 25, 26.

<sup>279</sup> Defence Exhibit 3 (Protected Information of Witness MBA).

<sup>280</sup> T. 24 June 2009 p. 59; T. 25 June 2009 pp. 6-9, 21.

<sup>281</sup> T. 25 June 2009 pp. 41, 42, 62, 64, 65.



*Defence Witness BJ3*

194. Witness BJ3, a *Hutu*, was a corporal at the ESO Camp in April 1994.<sup>282</sup> The witness was familiar with the Ngoma Camp because he used to visit friends at the Camp prior to April 1994. He testified that there was a roadblock opposite the Ngoma Camp on the road that branched off the main road to Gikongoro. He stated that he visited the Ngoma Camp around 25 March, as well as 3 and 4 May 1994, and that this roadblock did not exist prior to April 1994. Witness BJ3 explained that the roadblock controlled access to the Camp. There was a permanent checkpoint at the entrance to the Camp, and the roadblock had been erected some 15 metres from that checkpoint.<sup>283</sup>

*Defence Witness CBB*

195. Witness CBB, a *Hutu* cadet at the ESO Camp in April 1994, testified that ESO Camp soldiers were assigned to protect the Ngoma Camp from 7 April 1994.<sup>284</sup> He stated that when leaving Butare to drive to Matyazo, there was a roadblock approximately three metres from the entrance to the Ngoma Camp, which was designed to monitor those going in and out of the Camp. Witness CBB recalled that the roadblock consisted of a piece of wood placed across the gate and that it was next to a guard post and small jail for drunken soldiers. The roadblock was manned by the same soldiers who controlled the guard post, and it was located on the road that branched off the main route from Butare.<sup>285</sup>

*Defence Witness ZML*

196. Witness ZML, a *Tutsi* man, drove a motorcycle taxi in 1994.<sup>286</sup> He testified that, prior to and during April 1994, there was a roadblock, manned by a soldier at the entrance to the Ngoma Camp, designed to “control movements into and out of the Camp.” Witness ZML recalled that, following the death of President Habyarimana, he passed the roadblock two to three times per week and did not see anyone being arrested there. Witness ZML further recalled that the nearest roadblock to the Camp was in Matyazo, approximately 2.5 kilometres away. He saw no dead bodies on the road near the roadblock between April and July 1994.<sup>287</sup>

### 3.3 Deliberation

197. In response to the Prosecution allegation that Hategekimana ordered the erection of a relatively new roadblock outside the Ngoma Camp after 7 April 1994 for purposes of facilitating the killing and causing of serious mental harm to *Tutsis*, the Defence submits that the guard post in issue had been erected before April 1994 for the ordinary purpose of regulating the passage of people in and out of the Camp. Indeed, the testimonies of all Defence witnesses consistently affirm that the guard post at the Ngoma Camp was established and served as a regular checkpoint to monitor persons entering and exiting the Camp.<sup>288</sup>

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<sup>282</sup> T. 24 September 2009 pp. 18, 42, 44; Defence Exhibit 16 (Protected Information of Witness BJ3).

<sup>283</sup> T. 24 September pp. 33-35, 52.

<sup>284</sup> Defence Exhibit 9 (Protected Information of Witness CBB).

<sup>285</sup> T. 8 July 2009 pp. 11, 12, 24.

<sup>286</sup> T. 22 January 2009 p. 16; Defence Exhibit 2 (Protected Information of Witness ZML).

<sup>287</sup> T. 22 January 2009 pp. 16, 17, 46, 47.

<sup>288</sup> Defence Closing Brief para. 152.

198. Having carefully assessed the accounts of all witnesses, the Chamber finds that the Prosecution has failed to adduce any testimony or other evidence to substantiate the allegation that Hategekimana ordered the roadblock at the Ngoma Camp to be erected.

199. Prosecution Witnesses BYR, QCL and Ntezimana testified that many roadblocks were established throughout Butare. Witness QCL testified that he saw Ngoma Camp soldiers committing acts of violence at a roadblock near his home. Ntezimana also stated that, while the official purpose of the roadblocks was to ensure security, in reality, their purpose was to arrest and kill *Tutsis*. The evidence of all three of these Prosecution witnesses establishes that *Tutsis* were openly and notoriously killed at roadblocks throughout Butare. However, neither their evidence nor that of any other Prosecution witness demonstrates beyond reasonable doubt that *Tutsis* were killed at the roadblock post outside the Ngoma Camp, which was allegedly erected on the instructions of Hategekimana.

200. Similarly, the Prosecution did not offer evidence establishing beyond reasonable doubt that Hategekimana ordered Ngoma Camp soldiers to intercept, identify, and arrest *Tutsis* at this roadblock before killing and physically or mentally harming them. Indeed, the Prosecution adduced little evidence that crimes were even committed at the alleged roadblock or as a result of actions taken there. In this connection, it is notable that Witness XR's evidence was limited to establishing the existence of the roadblock, while the testimonies of Ntezimana and Witness QCL were limited to providing contextual information about actions at roadblocks in Butare in general. Only the testimonies of Father Masinzo and Witness BYR were relevant to the specific allegations in paragraphs 9 and 22 of the Indictment.

201. Father Masinzo testified that, on 30 April 1994, Corporal "Innocent Nkurunziza" of the Ngoma Camp told him that Hategekimana had deployed soldiers from the Ngoma Camp to carry out the killings "in Matyazo."<sup>289</sup> Father Masinzo also testified that he had been informed that eight youths had been killed by Ngoma Camp soldiers at the roadblock erected outside the Camp.<sup>290</sup> This hearsay was not corroborated, which significantly reduces its probative value. Furthermore, although Father Masinzo's testimony about the utterances of soldiers about *Inyenzi* at the roadblock outside the Ngoma Camp may indicate motive, it does not constitute evidence of crimes having been committed there.

202. Witness BYR provided a first-hand account of the conduct of Ngoma Camp soldiers at the roadblock. He testified that he observed 10 to 15 *Tutsis* being arrested at a roadblock opposite the Ngoma Camp and taken for interrogation within the Camp, after which they were transferred elsewhere.<sup>291</sup> Father Masinzo also testified to having seen persons with *Tutsi* identity cards being arrested and made to sit at the side of the road next to the roadblock.<sup>292</sup> While the Chamber believes the evidence of Witness BYR and Father Masinzo, it notes that the acts of arrest and interrogation alone do not constitute serious physical or mental harm. Moreover, the Chamber observes that no evidence was presented that these unnamed individuals, identified by Witness BYR and Father Masinzo as *Tutsis*, were later killed or subjected to serious mental or bodily harm by Ngoma Camp soldiers, under the command or effective control of Hategekimana.

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<sup>289</sup> T. 18 March 2009 pp. 56-59.

<sup>290</sup> T. 18 March 2009 pp. 48-50; T. 19 March 2009 pp. 32, 33.

<sup>291</sup> T. 9 April 2009 pp. 32-35, 63-64.

<sup>292</sup> T. 18 March 2009 p. 51.

203. Consequently, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Hategekimana ordered, instigated, committed or otherwise aided and abetted genocide. The Chamber, therefore, dismisses the allegations in paragraphs 9 and 22 of the Indictment.

#### **4. Distribution of Weapons, Ngoma Commune, Butare Préfecture, on and/or after 7 April 1994**

##### **4.1 Overview of the Parties' Accounts**

204. The Prosecution alleges that on and/or after 7 April 1994, Hategekimana distributed “weapons including grenades” to Ngoma Camp soldiers, *Interahamwe* and civilians, who were participants in a joint criminal enterprise, for the purpose of killing or causing serious bodily or mental harm to *Tutsi* civilians.<sup>293</sup> In support of these allegations, the Prosecution relies on the testimonies of Witnesses BYO, BYS, QCQ, BYP and XR.<sup>294</sup>

205. The Defence submits that the Prosecution “failed to adduce any evidence on the distribution of weapons.”<sup>295</sup> Relying on the testimonies of Witnesses CBN1, MLA and Faustin Ntilikina,<sup>296</sup> the Defence contends that the Ngoma Camp “had no weapons to distribute to civilians and *Interahamwe*.”<sup>297</sup>

##### **4.2 Evidence**

###### *Prosecution Witnesses BYO, BYS and QCQ*

206. Witness BYO, a *Tutsi* nun, was a resident of the *Maison Généralice* Convent of the Bénébikira Order and was present during the attack on the Convent on 30 April 1994.<sup>298</sup> The witness testified that the assailants were soldiers, armed with guns, and *Interahamwe*, who carried traditional weapons and jerry cans full of petrol.<sup>299</sup> Prosecution Witness BYS, a *Tutsi* novice residing at the Convent, was also present during the attack.<sup>300</sup> She testified that the assailants included soldiers carrying firearms as well as *Interahamwe*, armed with traditional weapons such as machetes and clubs.<sup>301</sup> Witness QCQ, a *Tutsi* student who resided at the Convent, also witnessed the attack. She recalled that the soldiers were armed with rifles.<sup>302</sup>

###### *Prosecution Witness BYP*

207. Witness BYP was a staff sergeant at the Ngoma Camp in 1994.<sup>303</sup> According to the witness, Hategekimana provided “major form[s] of assistance” to *Interahamwe* who attacked *Tutsi* refugees, who had sought shelter at the Matyazo Health Centre, by providing weapons, deploying armed

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<sup>293</sup> Indictment paras. 10, 23; Prosecution Pre-trial Brief para. 69; Prosecution Closing Brief para. 212.

<sup>294</sup> Prosecution Closing Brief para. 213.

<sup>295</sup> Defence Closing Brief para. 156.

<sup>296</sup> Defence Closing Brief paras. 158-161.

<sup>297</sup> Defence Closing Brief para. 162.

<sup>298</sup> T. 4 May 2009 pp. 7, 10, 22, 31.

<sup>299</sup> T. 4 May 2009 pp. 15, 17, 22.

<sup>300</sup> T. 15 April 2009 p. 5.

<sup>301</sup> T. 15 April 2009 pp. 13, 34.

<sup>302</sup> T. 8 April 2009 p. 61.

<sup>303</sup> T. 15 April 2009 p. 40.

soldiers to assist, and entrusting them with a mission.<sup>304</sup> Witness BYP explained that soldiers, armed with firearms and grenades from the Ngoma Camp, initiated the attack on the *Tutsi* civilians, while *Interahamwe* “finished them off with clubs, machetes and other weapons.”<sup>305</sup>

#### *Prosecution Witness XR*

208. Prosecution Witness XR testified about the killing of his relatives in the evening of 23 April 1994 by *Interahamwe*, who were armed with clubs, spears, machetes and swords.<sup>306</sup> After first being driven away by the witness’s neighbours, the *Interahamwe* returned approximately 30 minutes later, accompanied by Ngoma Camp soldiers who “fired several gunshots into the air so that members of the public would not dare to intervene.”<sup>307</sup>

#### *Defence Witness MLA*

209. Defence Witness MLA, a *Hutu* soldier, was stationed at the Ngoma Camp in 1994.<sup>308</sup> He stated that, prior to 6 April 1994, soldiers stationed at the Ngoma Camp stored their assigned weapons in an armoury. The weapons were issued only to soldiers serving guard duty and only for the duration of their duty.<sup>309</sup> However, around 2.00 p.m. on 7 April 1994, the camp administration distributed Kalashnikovs and light automatic guns to every Ngoma Camp soldier with orders to carry the weapons at all times.<sup>310</sup> Witness MLA testified that Hategekimana was not present at the camp on 7 April 1994, when the weapons were distributed. He further stated that he did not see Hategekimana distribute any weapons to civilians.<sup>311</sup>

#### *Defence Witness CBN1*

210. Defence Witness CBN1 was a soldier based at the Ngoma Camp in April 1994.<sup>312</sup> The witness testified that, prior to 6 April 1994, “the only soldiers who had an authorisation to carry their weapons were those soldiers who had been assigned to guard duty.”<sup>313</sup> However, the situation changed as of 7 April 1994, and all the able-bodied soldiers who had been issued weapons received new orders to “carry them at all times.”<sup>314</sup> Because none of the soldiers at the camp could handle heavy weaponry, only “hand-held weapons” were issued, and only to able-bodied soldiers.<sup>315</sup> Witness CBN1 testified that he did not observe Hategekimana or any other military figure at the Ngoma Camp distribute weapons to civilians.<sup>316</sup>

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<sup>304</sup> T. 15 April 2009 pp. 42-43, 47-49. Witness BYP testified that the massacre at the Matyazo Health Centre occurred between 18 and 22 April 1994.

<sup>305</sup> T. 15 April 2009 pp. 46-47.

<sup>306</sup> T. 1 April 2009 pp. 61-66.

<sup>307</sup> T. 1 April 2009 p. 63.

<sup>308</sup> T. 2 July 2009 pp. 5-6.

<sup>309</sup> T. 2 July 2009 p. 18.

<sup>310</sup> T. 2 July 2009 pp. 17-18, 38-39. According to Witness MLA, approximately 50 soldiers were stationed at the Ngoma Camp on this date, and weapons were distributed to all of the soldiers.

<sup>311</sup> T. 2 July 2009 pp. 12, 18, 20.

<sup>312</sup> T. 9 July 2009 p. 59.

<sup>313</sup> T. 9 July 2009 p. 68.

<sup>314</sup> T. 9 July 2009 p. 68.

<sup>315</sup> T. 9 July 2009 p. 68.

<sup>316</sup> T. 9 July 2009 p. 68.

*Defence Witness Faustin Ntilikina*

211. Witness Faustin Ntilikina was a major in the Rwandan Army during the 1994 events in Rwanda.<sup>317</sup> According to the Defence, the witness had significant knowledge of the “staff strength and operationality” of all army units, including the Ngoma Camp.<sup>318</sup> The witness testified that Hategekimana could not have distributed weapons to civilians and *Interahamwe* because “Ngoma Camp had been emptied of most of its units,” and the munitions stock had been nearly depleted, leaving only enough weapons for the soldiers who were based at the Camp.<sup>319</sup> He further explained that when soldiers left their garrison at the Ngoma Camp, they were required to return all issued weapons, which were then sent to the logistics base in Kigali. Thus, according to the witness, there were no reserve weapons at the Ngoma Camp available for distribution.<sup>320</sup> The witness acknowledged that civilians could have used light weapons during the attacks in Butare. He stated that, between 1990 and 1994, it was common to find military weapons in civilian hands and that Kalashnikovs could be purchased on the street.<sup>321</sup>

### 4.3 Deliberation

212. The Defence claims that Hategekimana did not distribute weapons to soldiers, *Interahamwe* and civilians for the purpose of killing or causing serious bodily or mental harm to *Tutsi* civilians. According to the Defence, the Ngoma Camp served primarily as a base for soldiers convalescing from injuries sustained at the war front; the number of weapons available at the Camp did not exceed the number of soldiers; and, therefore, there were no surplus weapons to distribute to civilians.

213. Prosecution Witnesses BYO, BYS, QCQ and XR testified to seeing soldiers with firearms or grenades, as well as *Interahamwe* and civilians armed with traditional weapons such as clubs, spears, machetes and jerry cans of petrol, during attacks committed in Ngoma, Matyazo and Buye *Secteurs*.<sup>322</sup> While these witnesses testified that the assailants used such weapons during specific attacks within Ngoma *Commune*, they provided no information about the origin of the weapons.

214. The issue before the Chamber is whether Hategekimana distributed these weapons to the assailants as part of a joint criminal enterprise as alleged in the Indictment.

215. Only one Prosecution witness, BYP, testified that the Ngoma Camp supplied weapons and ammunition to soldiers, *Interahamwe* and civilians to kill *Tutsis* in Ngoma *Commune*. Specifically, Witness BYP referred to weapons used by assailants who participated in the massacre at the Matyazo Health Centre.<sup>323</sup> In the Chamber’s view, Witness BYP’s uncorroborated account provided no substantive information concerning the time, place and circumstances of a delivery or a distribution of weapons from the Ngoma Camp to assailants at the Matyazo Health Centre. Nor did Witness BYP provide evidence that he personally saw or heard of Hategekimana or any other named Ngoma Camp military figure supplying any identified assailant with arms for the purpose of killing *Tutsis*.

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<sup>317</sup> T. 30 June 2009 pp. 5-7.

<sup>318</sup> Defence Closing Brief para. 160.

<sup>319</sup> T. 30 June 2009 p. 27.

<sup>320</sup> T. 30 June 2009 pp. 27-28.

<sup>321</sup> T. 1 July 2009 p. 32.

<sup>322</sup> See also the testimonies of Prosecution Witnesses BYP, BYQ, QCN, QCO, Father Jérôme Masinzo and Sadiki Sezirahiga.

<sup>323</sup> T. 16 April 2009 p. 18; T 15 April 2009 pp. 48-49.

216. While there is testimony by Defence Witnesses MLA and CBN1, both soldiers at the Ngoma Camp, and Faustin Ntilikina, a major in the Rwanda military, that able-bodied soldiers from the Ngoma Camp were issued individual weapons, such evidence does not suggest Hategekimana's involvement in the alleged distribution of weapons. Rather, it seems only logical and in accordance with standard military practice that soldiers should be issued weapons during a period of conflict to maintain security at a military camp.

217. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Hategekimana distributed weapons to members of a joint criminal enterprise, including soldiers, *Interahamwe* and civilians, for the purpose of killing or causing serious bodily or mental harm to *Tutsi* civilians, as pleaded in paragraphs 10 and 23 of the Indictment.

## **5. Issuance of *Laissez-Passer* to Assailants, Ngoma Commune, Butare Préfecture, between 7 April 1994 and 31 May 1994**

### **5.1 Overview of the Parties' Accounts**

218. The Prosecution alleges that, between 7 April and 31 May 1994, Hategekimana provided and facilitated the issuance of *laissez-passer* to soldiers, *Interahamwe*, armed civilians and other participants in the joint criminal enterprise alleged in paragraph 6 of the Indictment, to enable them to travel and to equip themselves to kill and/or to cause serious bodily or mental harm to *Tutsis*.<sup>324</sup> The Prosecution relies on the testimonies of Witnesses Jérôme Masinzo and Laurien Ntezimana.

219. The Defence claims that the Prosecution failed to prove beyond reasonable doubt that Hategekimana issued *laissez-passer* for criminal purposes. It further asserts that *laissez-passer* were issued by *préfectoral* authorities, not by the Commander of the Ngoma Camp.<sup>325</sup> Defence Witnesses MZA, MBA, and MLA testified about this allegation.

### **5.2 Evidence**

#### *Prosecution Witness Laurien Ntezimana*

220. Laurien Ntezimana, a *Hutu* man, worked at the Butare Catholic Diocese in April 1994.<sup>326</sup> He testified that, following the death of President Habyarimana, an announcement was broadcast on the national radio prohibiting people throughout Rwanda from leaving their homes. In order to travel within the region, it was necessary to receive official authorisation. Ntezimana testified that, sometime after 10 April 1994, he requested a *laissez-passer* from Hategekimana, the Commander of Ngoma Camp, in order to look for sorghum flour for children and wounded persons who had sought refuge at the Matyazo Health Centre. Ntezimana did not recall speaking directly to Hategekimana or receiving authorisation from Hategekimana himself, but affirmed that he personally applied for permits at the Ngoma Camp and that each of the daily permits issued to him bore Hategekimana's signature.<sup>327</sup>

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<sup>324</sup> Indictment paras. 11, 24; Prosecution Pre-Trial Brief paras. 12, 104, 105. See also Prosecution Closing Brief paras. 225-234. In its Closing Brief, the Prosecution also alleges that *laissez-passer* "essentially obliged *Tutsi* civilians mainly to remain in their homes and communities making it easy for the attackers to locate and kill them."

<sup>325</sup> Defence Closing Brief paras. 164-178; T. 26 April 2010 p. 51.

<sup>326</sup> T. 20 March 2009 pp. 5, 10.

<sup>327</sup> T. 20 March 2009 pp. 7, 8, 13, 16, 34.

221. The witness explained that there were two types of permits: the daily permit issued by Hategekimana and the monthly permit issued by the deputy *commandant de place*, Lieutenant-Colonel Muvunyi. After receiving his daily *laissez-passer*, Ntezimana “would cross the town and go to the rural areas in order to get the flour he needed.”<sup>328</sup>

222. Ntezimana testified that, despite having a *laissez-passer*, he was stopped several times at roadblocks, where “I almost lost my life.”<sup>329</sup> He was once refused passage through a roadblock outside the *Hôtel Faucon*, which was manned by ESO Camp soldiers, and was allowed to travel through with his driver only after Hategekimana intervened by sending a warrant officer to ensure their safety. Ntezimana was similarly obstructed at a roadblock at Configi on Sobu Road as well as at the Matyazo roadblock, despite producing a *laissez-passer*.<sup>330</sup>

223. Ntezimana explained that he carried a *laissez-passer* only when travelling for unofficial reasons, such as locating food for displaced persons who had sought shelter in the area. He recalled that, when travelling on official business at the request of Hategekimana and *Bourgmestre* Kanyabashi to Matyazo to relocate refugees, he had been accompanied by a soldier and had not been required to show his *laissez-passer*. While Ntezimana testified that he also carried an identity card stating his *Hutu* ethnicity, he did not state whether he presented his identity card when crossing roadblocks.<sup>331</sup> Asked whether he saw persons detained at roadblocks either because they carried no *laissez-passer* or *Hutu* identity card, the witness said, “I did not often find any other people, apart from those who were manning the roadblocks, because those who were arrested [...] would be taken elsewhere.”<sup>332</sup> Ntezimana explained that the persons arrested at the roadblocks were *Tutsis*, who were taken to the military camps or were “done away with right next to the roadblock.”<sup>333</sup>

#### *Prosecution Witness Jérôme Masinzo*

224. In 1994, Jérôme Masinzo, a *Tutsi*, was a priest at the Ngoma Parish in Butare.<sup>334</sup> He testified that, on 7 April 1994, an announcement from the Minister of Defence was broadcast on the radio instructing all Rwandans to remain in their homes until further notice. In accordance with the official security policy, Father Masinzo remained home until 12 April 1994. By this time, *Bourgmestre* Joseph Kanyabashi had modified the restrictions on movement in Ngoma *Commune* to allow members of the public to leave their homes until “about up to 3 o’clock” on Tuesdays, Thursdays and Saturdays. The witness did not know whether special authorisation was required to travel out of Ngoma and from one *commune* to another, since he did not need such permission.<sup>335</sup> Despite the restrictions, he travelled “to town” without an official permit on both Monday 18 April 1994 and Friday 22 April 1994, passing in front of the Ngoma Camp, where the soldiers allowed him to travel without incident.<sup>336</sup>

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<sup>328</sup> T. 20 March 2009 pp. 8, 13, 34.

<sup>329</sup> T. 20 March 2009 p. 14.

<sup>330</sup> T. 20 March 2009 pp. 13-14.

<sup>331</sup> T. 20 March 2009 pp. 15, 16, 20.

<sup>332</sup> T. 20 March 2009 p. 16.

<sup>333</sup> T. 20 March 2009 p. 16.

<sup>334</sup> T. 19 March 2009 pp. 4, 12, 16-17, 19; Prosecution Exhibit 3 (Information Sheet of Jérôme Masinzo).

<sup>335</sup> T. 19 March 2009 p. 8.

<sup>336</sup> T. 19 March 2009 p. 8.

*Defence Witness MZA*

225. Witness MZA, a *Hutu* man, worked as a taxi driver in 1994.<sup>337</sup> He testified that, on 7 April, following the death of President Habyarimana, a curfew was imposed, prohibiting any travel out of a resident's *secteur*. The witness explained that "[t]he entire country was paralysed" after the death of the President and that no *laissez-passers* were delivered. According to Witness MZA, the issuance of *laissez-passers* was not one of Hategekimana's duties. Rather, under normal circumstances, a citizen would apply to the *nyumbakumi* of the *cellule*, who would process the request through the *conseiller*, for issuance by the *bourgmestre* of the *commune*.<sup>338</sup>

*Defence Witness MBA*

226. Witness MBA, a *Hutu* man, was a beer and foodstuffs trader in 1994.<sup>339</sup> According to the witness, in the immediate aftermath of President Habyarimana's death, "some activities were paralysed but there were no security problems" in Butare *Préfecture*. However, as of 17 April 1994, "the situation changed" and there was great "unrest." After spending ten days immobilised, the witness sought and was granted official travel authorisation to be allowed to circulate and distribute beer throughout Butare *Préfecture*.<sup>340</sup> The witness explained that his *laissez-passer* was issued by a civil authority, one of the four *sous-Préfets*, whose name he provided to the Chamber.<sup>341</sup> Unlike a permit issued by a *bourgmestre*, restricting travel to a *commune*, a *laissez-passer* provided by a *sous-Préfet* allowed the witness to circulate throughout the entire *Préfecture*.

227. Witness MBA testified that *laissez-passers* were intended and obligatory for persons travelling by motorcycle or automobile. Witness MBA presented both his identity card and motorcycle licence to receive his *laissez-passer*.<sup>342</sup> According to the witness, travel authorisation was not required for persons who travelled on foot.<sup>343</sup> Witness MBA testified that he did not approach the Ngoma Camp for travel authorisation because permits were issued by civilian authorities.<sup>344</sup> While acknowledging that he was not from Ngoma *Commune*, he stated that Hategekimana might have issued authorisation to soldiers but not to civilians.<sup>345</sup>

*Defence Witness MLA*

228. Witness MLA, a *Hutu* man, was a soldier stationed at the Ngoma Camp in 1994.<sup>346</sup> He testified that civilian authorities, specifically the office of the *Bourgmestre* and the Prosecutor, issued *laissez-passers*. He emphasised that the army administration did not issue *laissez-passers*. Witness MLA explained that the army issued road passes bearing a military stamp to soldiers travelling from the Camp as documented proof that they were not deserters.<sup>347</sup>

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<sup>337</sup> T. 24 June 2009 p. 50.

<sup>338</sup> T. 23 June 2009 pp. 14, 48, 64, 65.

<sup>339</sup> T. 24 June 2009 pp. 53-56; Defence Exhibit 4 (Protected Information of Witness MBA).

<sup>340</sup> T. 24 June 2009 pp. 55-56.

<sup>341</sup> T. 24 June 2009 p. 56 ; T. 25 June 2009 p. 4.

<sup>342</sup> T. 25 June 2009 pp. 2-5.

<sup>343</sup> T. 25 June 2009 p. 2.

<sup>344</sup> T. 24 June 2009 p. 56.

<sup>345</sup> T. 24 June 2009 pp. 55-56.

<sup>346</sup> T. 2 July 2009, pp. 5, 29; Defence Exhibit 8 (Protected Information of Witness MLA).

<sup>347</sup> T. 2 July 2009 pp. 20, 41, 42.



### 5.3 Deliberation

229. Defence Witnesses MZA, MBA, and MLA testified that *laissez-passer* were issued by civilian not military authorities. Father Masinzo provided no evidence to implicate Hategekimana in the issuance of travel documents.<sup>348</sup> Only Prosecution Witness Ntezimana testified in support of the allegation that Hategekimana provided or facilitated the provision of *laissez-passer* within Ngoma *Commune*.

230. The Chamber observes that Ntezimana was unable to recall speaking or meeting directly with Hategekimana on any occasion when he visited the Ngoma Camp to apply for a *laissez-passer*. The witness' account of Hategekimana's involvement in issuing travel permits is limited to his observation that the permits bore Hategekimana's signature.<sup>349</sup> Even if it could be concluded that Hategekimana directly provided Ntezimana with daily *laissez-passer*, the Chamber heard no evidence that the Accused also issued *laissez-passer* to soldiers, *Interahamwe*, armed civilians or any other members of an alleged joint criminal enterprise. Additionally, no evidence was presented to link the killing of *Tutsis* to the issuance of *laissez-passers*. Rather, the only evidence heard by the Chamber was that daily *laissez-passer* bearing the signature of Hategekimana were issued to Ntezimana, who used these travel documents to assist *Tutsi* refugees.

231. Accordingly, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Hategekimana provided and facilitated the provision of *laissez-passer* to soldiers, *Interahamwe*, armed civilians, and other members of an alleged joint criminal enterprise to enable them to travel in Ngoma *Commune* and to equip themselves to kill or to cause serious bodily or mental harm to *Tutsis*. The Chamber therefore dismisses the allegations in paragraphs 11 and 24 of the Indictment.

## 6. Murder of Jean Bosco Rugomboka, Ngoma *Commune*, Butare *Préfecture*, on or about the Night of 8-9 April 1994

### 6.1 Overview of the Parties' Accounts

232. The Prosecution alleges that on the night of 8 to 9 April 1994 or thereabouts, Hategekimana led an attack against the home of the Rugomboka family in Ngoma *Secteur*. During the attack, he ordered armed soldiers, *Interahamwe* and civilians, to arrest, torture and kill Jean Bosco Rugomboka, on the basis of his identification as a member of or a sympathiser with the *Tutsi* ethnic or racial group. He thus ordered, instigated, committed or otherwise aided and abetted the commission of genocide. The Prosecution relies on the testimonies of Witnesses QDC, QCN, Jérôme Masinzo, XR, QCL and BYR.

233. The Defence claims that the Prosecution evidence is not credible and that the allegations have not been proven beyond reasonable doubt. The Defence does not contest that Rugomboka was abducted, but denies the involvement of Hategekimana or any soldiers from Ngoma Camp in Rugomboka's abduction and murder. The Defence asserts that members of the *Interahamwe* committed these crimes. Defence Witnesses ZML, MZA and ZVK have testified that Rugomboka was not killed because he belonged to the *Tutsi* ethnic group, but because of his political affiliation with the Rwandan Patriotic Front (RPF), which he publicly expressed by wearing a T-shirt with the effigy of Rwigema, one of the founding members of the RPF. Other Defence Witnesses, CBA1 and

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<sup>348</sup> T. 19 March 2009 p. 25.

<sup>349</sup> T. 20 March 2009 pp. 7, 14, 16.

CBJ, testified that Rugomboka was killed in retaliation for walking his dog, draped with the emblem of the MRND government, to celebrate the death of President Habyarimana.

## 6.2 Evidence

### *Prosecution Witness QDC*

234. Prosecution Witness QDC, a *Tutsi* woman, was present during Rugomboka's abduction. She testified that the day after the President's death, Rugomboka, who was working for a NGO, travelled to Gikongoro to deliver food to Burundian expatriates who had returned to their country.<sup>350</sup> He returned home on Friday, 8 April around 4.00 p.m. and did not leave. Witness QDC testified that around 11.00 p.m. that evening, "people came" and knocked incessantly on the front and back doors of Rugomboka's house.<sup>351</sup> The residents refused to open the door because the persons outside refused to identify themselves. These people called Rugomboka and one of his brothers by their first names and demanded that they open the door. Hamdani, a neighbour who came to their assistance, also requested that the residents open the door. However, when the residents asked to know who were with him, Hamdani, pressured by the soldiers, did not answer. When the residents heard the soldiers cocking their guns, Rugomboka and his brother finally opened the door. Many soldiers stepped into the living room. Before they entered, Witness QDC recognized a number of civilians among them, who remained outside. She identified them as Jean-Claude Murekezi, known by the nickname "Fils," and his brother Deo Murekezi.<sup>352</sup>

235. About five soldiers remained in the living room with the occupants, while the other soldiers first went to loot the children's house located in the backyard. After visually begging for approval from one of the soldiers, those who remained in the living room ordered the occupants of the house to sit down. The said soldier stood against the wall and did not move about with the other soldiers who were searching the houses in the compound for hidden weapons.<sup>353</sup> The soldier was a stout man, of average height, fair-skinned, and with a "pot belly."<sup>354</sup> He wore a knee-length coat over his military uniform.<sup>355</sup> He seemed to be the person in charge or the leader.<sup>356</sup>

236. Witness QDC testified that the soldiers discovered a T-shirt bearing the effigy of "Rwigema" in a wardrobe and a spear that they handed to the person who seemed to be their leader. The latter told them to put the spear back in its place because every head of a household should, traditionally, have such weapons in his house. He then took the T-shirt, "put it in his left hand to make sure that effigy and the T-shirt would be visible."<sup>357</sup> He then asked the residents who the owner of the T-shirt was. Witness QCN replied that she knew nothing about it.<sup>358</sup> After the alleged leader had insisted by repeating the question three times, Rugomboka stood up and replied that the T-shirt belonged to him.<sup>359</sup> When the soldiers went to put back the spear in the room, Martial, the elder brother of Rugomboka, whispered in Witness QDC's ears: "Be careful, this person is the

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<sup>350</sup> T. 23 March 2009 p. 39.

<sup>351</sup> T. 23 March 2009 p. 27.

<sup>352</sup> T. 23 March 2009 p. 81.

<sup>353</sup> T. 23 March 2009 pp. 28, 29.

<sup>354</sup> T. 23 March 2009 p. 68.

<sup>355</sup> T. 23 March 2009 pp. 67, 68.

<sup>356</sup> T. 23 March 2009 p. 29.

<sup>357</sup> T. 23 March 2009 p. 29.

<sup>358</sup> T. 23 March 2009 p. 29.

<sup>359</sup> T. 23 March 2009 p. 30.

leader of the soldiers and his name is Bikomago.” Witness QDC did not know him before. However, according to the witness, all the children in the neighbourhood knew Bikomago.<sup>360</sup>

237. The soldiers then requested the occupants of the house to show their identity cards. The occupants handed them to the person who seemed to be the leader. The witness, Rugomboka and his brothers were *Tutsis*. Two other *Hutu* occupants were present.<sup>361</sup> The alleged leader gave back their identity cards but withheld that of Rugomboka.<sup>362</sup> He advised the two *Hutu* tenants to go and rent a house elsewhere.<sup>363</sup> He then ordered two soldiers “to undress him [Rugomboka] to the waist” and they forced him to wear the T-shirt.<sup>364</sup> They then took him away. The soldiers ordered the occupants not to lock the door because they were going to come back. Indeed, around 4 a.m.,<sup>365</sup> after the abduction of Rugomboka, about eight soldiers came back to his residence.<sup>366</sup> Witness QDC testified that “Bosco had given them some information and they were coming to look for items which were in the children's house.”<sup>367</sup> It was almost daylight when the assailants left. They took nothing away, after having searched the children’s house in vain.<sup>368</sup>

238. Rugomboka’s brother told Witness QDC that he had identified some soldiers as being the persons called “Pacifique,” “Gatwaza” and “Habimana.”<sup>369</sup> The witness testified that he saw soldiers at the entrance of the house with their neighbour Hamdani. The soldiers wore black berets.<sup>370</sup> Among the assailants, he identified “Jean-Claude Murekezi,” also known as “Fils,” and his brother.<sup>371</sup>

239. Many neighbours, including Witness QCN and the *conseiller* of the *secteur* came that morning to enquire about the events that had taken place the night before.<sup>372</sup> *Conseiller* “Saidi” told the family that “he was going to inform *Bourgmestre* Kanyabashi of what had happened [...] the night before [...] and that [they were] also going to contact the commander of the Ngoma Camp, Ildephonse Bikomago, so he could resolve the problem.”<sup>373</sup> However, the *conseiller* did not come back and neither did the witness see the *bourgmestre*. That day, Witness QDC went in vain to look for Rugomboka in the various places where he could have been detained. But Witness QDC did not find him. When the soldiers were certain that Rugomboka was not in the communal police jail, the former commune offices or at the *gendarmerie*, Witness QDC then heard them making a mockery of her efforts in the following terms: “Maybe he has met Bikomago.”<sup>374</sup>

240. On Sunday 10 April 1994, the soldiers came back for the third time to Rugomboka’s house and put a lock on the main gate to prevent his family from going out, and ordered them to remain indoors.<sup>375</sup> That same day, some people came through the back gate to announce to Rugomboka’s family that his body had been found. A lady called Tamasha also came to tell the witness that

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<sup>360</sup> T. 23 March 2009 pp. 29, 42, 50.

<sup>361</sup> T. 23 March 2009 p. 32.

<sup>362</sup> T. 23 March 2009 pp. 79, 80.

<sup>363</sup> T. 23 March 2009 pp. 32, 33.

<sup>364</sup> T. 23 March 2009 p. 33.

<sup>365</sup> T. 23 March 2009 p. 34.

<sup>366</sup> T. 23 March 2009 p. 34.

<sup>367</sup> T. 23 March 2009 pp. 40, 77, 78.

<sup>368</sup> T. 23 March 2009 p. 41.

<sup>369</sup> T. 23 March 2009 pp. 63, 64.

<sup>370</sup> T. 23 March 2009 p. 35.

<sup>371</sup> T. 23 March 2009 p. 36.

<sup>372</sup> T. 23 March 2009 pp. 41, 42.

<sup>373</sup> T. 23 March 2009 pp. 37, 38.

<sup>374</sup> T. 23 March 2009 p. 42.

<sup>375</sup> T. 23 March 2009 p. 42.

herdsmen had discovered Rugomboka's body.<sup>376</sup> Witness QDC then went to the indicated location, followed by the witness' neighbours, and they actually found the body in a "pine wood located down the road from the Ngoma Camp."<sup>377</sup> Rugomboka's body was in a "bad state." He had been stabbed in his upper body through his T-shirt. There was a hole in his throat, and his Adam's apple had been taken out. He had been stabbed repeatedly on the chest through the T-shirt he was wearing. It was only the lower body that had not been stabbed.<sup>378</sup>

241. The soldiers who were at the location prohibited those who were gathered there from using a vehicle to transport the remains of Rugomboka. They then used a traditional stretcher.<sup>379</sup> Many young people transported the body to Rugomboka's house in spite of the "intimidating" presence on the road of armed soldiers who, nevertheless, did not come to their assistance.<sup>380</sup> After breaking the padlock on the main gate, the neighbours put the body inside the house where it stayed the whole night, until burial the following day.<sup>381</sup> Witness QDC, together with the witness' neighbours, cleaned the body after removing the T-shirt. During that time, armed soldiers were patrolling the street and their presence was "intimidating." Witness QDC testified that "the leader" of the soldiers did not come to their house. Many armed soldiers were also present during the burial of Rugomboka. After the burial, the soldiers followed Witness QDC to her house and remained outside.<sup>382</sup> After the genocide, the witness learned that Bikomago actually bore the name of Hategekimana and that he was the commander of Ngoma Camp.<sup>383</sup>

#### *Prosecution Witness QCN*

242. Witness QCN, a *Tutsi* woman, lived near Rugomboka's residence in 1994. She testified that in the night of 8 April 1994, between 10 p.m. and 11 p.m., her house was surrounded by soldiers who subsequently went to Rugomboka's house.<sup>384</sup> From her window, she and her husband observed the attack led by soldiers against Rugomboka's family home. The door was open and the lights were on and "there were many soldiers who were in Rugomboka's living room."<sup>385</sup> Believing that they were being attacked by soldiers, Witness QCN's husband called the Ngoma Camp and the *gendarmerie* brigade for assistance, but they did not come. In the meantime, Witness QCN and her husband called for assistance, and the soldiers immediately ordered them to stop and go back to their bedroom.<sup>386</sup> The witness testified that the soldiers spent the whole night in Rugomboka's family home and only left around 5 a.m.<sup>387</sup> She did not witness the abduction of Rugomboka.<sup>388</sup>

243. That morning, Witness QCN visited Rugomboka's family to enquire "about what had happened there during the night."<sup>389</sup> Witness QDC told her about the attack that had been carried out by soldiers from the Ngoma Military Camp and the abduction of Rugomboka.<sup>390</sup> She also told

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<sup>376</sup> T. 23 March 2009 p. 42.

<sup>377</sup> T. 23 March 2009 p. 42.

<sup>378</sup> T. 23 March 2009 p. 43.

<sup>379</sup> T. 23 March 2009 p. 43.

<sup>380</sup> T. 23 March 2009 pp. 49, 50.

<sup>381</sup> T. 23 March 2009 pp. 49, 50.

<sup>382</sup> T. 23 March 2009 p.49

<sup>383</sup> T. 23 March 2009 p.49

<sup>384</sup> T. 26 March 2009 pp. 28, 29; T. 30 March 2009 p. 16.

<sup>385</sup> T. 26 March 2009 p. 28; 30 March 2009 p.10.

<sup>386</sup> T. 26 March 2009 pp. 31, 32.

<sup>387</sup> T. 26 March 2009 p. 31.

<sup>388</sup> T. 30 March 2009 p. 12.

<sup>389</sup> T. 26 March 2009 pp. 31, 32.

<sup>390</sup> T. 26 March 2009 p. 36; T. 30 March 2009 pp. 12, 13.

her that Rugomboka knew some of the assailants, but she did not know why they had taken him away.<sup>391</sup> She added that Bosco's brothers had recognized the soldiers called "Pacifique, Gatwaza and Rubayiza" in the group and that she had identified a person nicknamed "Fils."<sup>392</sup> Witness QCN did not accompany Witness QDC when she went to look for Rugomboka. Witness QCN only lent her phone to Marceline, Rugomboka's sister, who called the *gendarmerie* brigade, *Bourgmestre* Kanyabashi and the Ngoma Camp to enquire about Rugomboka, but she got no answer.<sup>393</sup> On Sunday 10 April 1994, Tamasha, a neighbour, came to inform Witness QCN that Rugomboka's body had been discovered by herders near a pine wood, opposite Ngoma Camp, but Witness QCN did not go there.<sup>394</sup> However, she went to see the body of the victim at his residence and noticed that it was in a bad state: he was wearing a T-shirt bearing the effigy of Rwigema, riddled with holes as a result of the stabbings he had sustained. Witness QCN knew that Rwigema was an RPF soldier.<sup>395</sup>

244. The following day, Witness QCN attended the burial of Rugomboka. Ngoma Camp soldiers were everywhere along the road and at the cemetery, "everyone knew them."<sup>396</sup> The witness recognized "Ismael Rubyiza, Pacifique, Gatwaza and Uwamahoro." After the burial, the soldiers ordered people to go back home and they continued patrolling in the neighbourhood.<sup>397</sup>

#### *Prosecution Witness QCL*

245. Witness QCL, a *Tutsi* man, lived in Ngoma. He was Rugomboka's friend. He knew Hategekimana because he had met him during many sport events.<sup>398</sup> He knew him more precisely under the nickname of Bikomago in 1993. The witness identified the Accused in court as being "Bikomago," specifying that he "ha[d] not changed that much."<sup>399</sup> Witness QCL testified that Rugomboka was abducted during the night by soldiers from Ngoma Camp for the simple reason that he was *Tutsi* and because he was wearing a T-shirt bearing the effigy of Rwigema with the inscription "FPR-*Inkotanyi*." According to the witness, Hategekimana and Ngoma Camp soldiers carried out the abduction. That is why he turned to Hategekimana and Joseph Kanyabashi for information regarding the disappearance of Rugomboka. The officials sent him back and forth to each other without giving him an answer. Subsequently, in the morning of 10 April 1994, some herders announced that they had found Rugomboka's body below the road leading to Ngoma Camp.<sup>400</sup>

246. Witness QCL testified that he followed the herders to go and see Rugomboka's body which they actually found in the pine wood. On the way, they met the *Conseiller* who followed them. Witness QCL observed that Rugomboka's Adam's apple and his eyes had been taken out and his tongue and fingers cut. His abductors had also used a knife to draw on his chest the effigy of Rwigema similar to that which was on his T-shirt. The *conseiller* told those who had gathered

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<sup>391</sup> T. 26 March 2009 p. 36; T. 30 March 2009 pp. 12, 13.

<sup>392</sup> T. 26 March 2009 pp. 36, 38; T. 30 March 2009 pp. 12, 13.

<sup>393</sup> T. 26 March 2009 pp. 34, 35.

<sup>394</sup> T. 26 March 2009 p.32.

<sup>395</sup> T. 26 March 2009 p.36.

<sup>396</sup> T. 26 March 2009 p.36.

<sup>397</sup> T. 26 March 2009 pp. 36, 37.

<sup>398</sup> T. 16 March 2009 p. 32; T. 17 March 2009 p. 12.

<sup>399</sup> T. 16 March 2009 p. 32; T. 18 March 2009 pp. 2, 4, 13: "At the time, I knew his name was Commander Bikomago. But this name "Bikomago" was the name under which he was well known. But I also knew his other names, that is, Ildephonse Hategekimana. [D]uring competitions he was wearing sports clothes, and when he was on duty he was wearing his military uniform."

<sup>400</sup> T. 23 March 2009 p 42.

around the body that the authorization of the Ngoma Camp commander was needed before it could be transported. The *conseiller* then went to seek authorization from the commander.

247. He returned with about five soldiers led by Hategekimana and then left.<sup>401</sup> The soldiers said nothing but pointed their guns at those who were gathered around Rugomboka's body. Witness QCL and those present remained calm and, after praying, decided to defy the soldiers and transported Rugomboka's body on a stretcher to his home.<sup>402</sup> There were soldiers throughout the procession and they surrounded the house. Hategekimana arrived at the scene about five minutes later. He "led those soldiers" and said that "he did not want mourning to take place there and that we should not be more than two people there."<sup>403</sup> Those who transported the body then returned to their homes.<sup>404</sup>

248. The following day, 11 April 1994, few people attended Rugomboka's burial because they were scared. While some of them were digging the tomb, the witness testified that she saw some soldiers observing them. During the burial, the soldiers surrounded those who were present and took aim at them. When the procession returned to Rugomboka's house, Hategekimana reiterated that he did not want any mourning for "security reasons."<sup>405</sup>

#### *Prosecution Witness BYR*

249. Witness BYR was a *Hutu* soldier, assigned to Ngoma Military Camp from March 1994 to 5 July 1994,<sup>406</sup> following an injury he had sustained at the front.<sup>407</sup> At the time, Hategekimana was the Camp Commander and Fabien Niyonteze was his assistant.<sup>408</sup> Every soldier had a nickname, and that of the commander was "Bikomago."<sup>409</sup> The witness did not know the origin of that nickname. In the night of 8 April 1994, from 7 p.m. to 7 a.m., Witness BYR was on duty at the camp reception, located about 60 or 70 metres from the main building, which included the commander's office, the mess and the jail.<sup>410</sup> On 9 April 1994, at 7 a.m., Witness BYR saw three soldiers on board a Hilux-type vehicle belonging to the Ngoma Camp enter the Camp.<sup>411</sup> In the vehicle was an individual sitting in the "back cabin," with his legs stretched out and his hands tied behind his back. He noticed that the individual was wearing a whitish short-sleeved T-shirt. However, he was unable to observe his physical condition, or the presence of distinctive signs on his T-shirt.<sup>412</sup> Witness BYR identified the soldiers in the vehicle as being "Gatwaza," "Niyonzima Pacifique" and Second Lieutenant "Fabien Niyonteze," Assistant Commander of Ngoma Camp.<sup>413</sup>

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<sup>401</sup> T. 16 March 2009 p. 32: Witness QCL described Hategekimana as a man who "was not tall" and had "a [pot belly] and was not very dark in complexion. I believe he took care of his skin because he was handsome."

<sup>402</sup> T. 17 March 2009 p. 14: "We kept our cool. And we started praying. "We thought that they had not authorised us to retrieve the body and [...] were targeting us with a gun, but we decided to show courage. We lifted Bosco's body. We put it on a traditional stretcher. And we took the body to our neighbourhood."

<sup>403</sup> T. 17 March 2009 pp. 13, 14; T. 18 March 2009 pp. 16, 17.

<sup>404</sup> T. 17 March 2009 pp. 13, 14.

<sup>405</sup> T. 17 March 2009 p. 15.

<sup>406</sup> T. 9 April 2009 pp. 6-7.

<sup>407</sup> T. 9 April 2009 p. 46.

<sup>408</sup> T. 9 April 2009 pp. 6-7.

<sup>409</sup> T. 9 April 2009 p. 39.

<sup>410</sup> T. 9 April 2009 pp. 25- 26.

<sup>411</sup> T. 9 April 2009 pp. 25, 56.

<sup>412</sup> T. 9 April 2009 p. 26.

<sup>413</sup> T. 9 April 2009 pp. 15, 16, 27, 36, 58. Witness BYR also identified Chinani Nsabimana as another soldier who was on board the vehicle. He had earlier identified him as being part of Hategekimana's escort.

250. The vehicle, driven by its usual driver called “Inani,”<sup>414</sup> parked in front of the main building and the individual was put in jail.<sup>415</sup> The Accused came to the camp one hour later.<sup>416</sup> According to Witness BYR, Hategekimana, as commander of the military camp, was obviously aware of the presence and fate of the individual who was in jail because he was informed “every morning” of all the happenings in the camp.<sup>417</sup> A camp soldier called Mukangahe informed Witness BYR that the prisoner had been taken out of the camp the following night.<sup>418</sup> Mukangahe got this information from other soldiers and from Inani the driver.<sup>419</sup> In the morning of 10 April 1994 members of the population discovered a body in a pine wood about 40 metres away from Ngoma Camp and immediately alerted the camp soldiers. The soldiers who arrived at the scene identified him as being “Bosco.” The witness then realized that it was the “same individual” who had been taken to the camp and put in jail.<sup>420</sup>

#### *Prosecution Witness XR*

251. Prosecution Witness XR, of a *Tutsi* mother and a Congolese father, was an employee of the National University of Rwanda in Butare in 1994. Witness QDC told him that “the night before, soldiers from the Ngoma Camp had come and abducted her son,”<sup>421</sup> and that the soldiers were Rugomboka’s friends. Witness QDC added that Martial, the elder brother of Rugomboka, knew some of the soldiers who had abducted him. Witness QDC also informed him of the discovery of Rugomboka’s body in a pine wood around Ngoma Camp. When Witness XR helped in washing Rugomboka’s body on 10 April, he noticed that it had stab wounds to the chest.<sup>422</sup> He concluded that he had been killed because of the T-shirt bearing the effigy of Rwigema.<sup>423</sup> On 11 April, the day Rugomboka was buried, Witness XR saw soldiers at the cemetery.<sup>424</sup>

#### *Prosecution Witness Jérôme Masinzo*

252. Witness Jérôme Masinzo, a *Tutsi* priest, served at the Ngoma Parish Catholic Church.<sup>425</sup> In the evening of 8 April, a neighbour called to inform him that soldiers had started abducting people from their homes to an unknown destination. Rugomboka had also just been abducted.<sup>426</sup> Father Masinzo knew Rugomboka’s mother well because she was one of his parishioners. As soon as he heard the news, he tried to contact the *gendarmérie* commander so that Rugomboka should be released.

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<sup>414</sup> T. 9 April 2009 pp. 27, 34, 35, 56, 57. During the trial proceedings, Witness BYR also mentioned the name of “Enani.” The Chamber is convinced that it is the same person.

<sup>415</sup> T. 9 April 2009 p. 27.

<sup>416</sup> T. 9 April 2009 p. 29.

<sup>417</sup> T. 9 April 2009 p. 30.

<sup>418</sup> T. 9 April 2009 p. 28, 60-61: “I think he was removed from there by the same people who had brought him to the military camp because I was not present when he was taken out of the military [camp]. I did not witness the scene, but I do know he was taken outside the military camp by the same people who had brought him there.”

<sup>419</sup> T. 9 April 2009 p. 58.

<sup>420</sup> T. 9 April 2009 p. 31: “Actually, members of the population, after finding the body, alerted the soldiers, and when they saw the body, the soldiers gave the name of the deceased, and that was when we understood that it was the same individual. ..They said he was called Bosco, but I do not remember the other name that they mentioned.”

<sup>421</sup> T. 1 April 2009 pp. 55-56.

<sup>422</sup> T. 1 April 2009 p. 56.

<sup>423</sup> T. 1 April 2009 p. 56.

<sup>424</sup> T. 1 April 2009 p. 58.

<sup>425</sup> T. 19 March 2009 pp. 16-17. In late 1995, Father Masinzo set up “*Ubutwari bwo kubaho*,” an association whose objective is to help widows of the genocide, as well as *Hutu* women whose husbands are in prison.

<sup>426</sup> T. 18 March 2009 p. 46.

253. On 10 April 1994, many parishioners informed him of the discovery of Rugomboka's body near Ngoma Camp. After Mass, Father Masinzo went to Rugomboka's house between midday and 1 p.m. and learned that Rugomboka had been abducted by soldiers from Ngoma Camp, notably by a person called Pacifique. Father Masinzo knew Pacifique because he often came to worship at the Ngoma Parish.<sup>427</sup>

254. The witness did not stay at the Rugomboka home for long because he was scared and gripped with fear on seeing Rugomboka's mutilated chest.<sup>428</sup> He also saw two UNAMIR soldiers around the house. He did not see other soldiers.<sup>429</sup> Witness Jérôme Masinzo also stated that he knew the Accused under the nickname of "Bikomago," which was mainly used by soldiers.<sup>430</sup>

*Defence Witness ZML*

255. Defence Witness ZML, a *Tutsi* man, drove a motorcycle taxi in April 1994. He testified hearing that Rugomboka had been abducted and killed as a result of a dispute between the RPF and MRND.<sup>431</sup> Rugomboka was killed because he wore a T-shirt bearing the effigy of Rwigema after learning of the death of the President. He testified hearing that Jean-Claude Murekezi was involved in Rugomboka's murder.<sup>432</sup>

*Defence Witness MZA*

256. Witness MZA, a *Hutu* man, was a taxi driver in 1994. *Conseiller* Saidi Munyankumburwa told him that Rugomboka had been abducted at night in a bar, following a dispute between members of the MRND and PL political parties, for wearing a T-shirt bearing the effigy of Rwigema.<sup>433</sup> He was then killed by a group of people led by Jean-Claude Murekezi, also called "Fils."<sup>434</sup> Witness MZA alleged that on 10 April 1994, herdsmen discovered Rugomboka's body in a pine wood below Ngoma airfield, near Karubanda prison, about 400 or 500 metres from Ngoma Camp.<sup>435</sup> The herdsmen who discovered the body informed the *conseiller*, who then informed the witness.

257. Witness MZA followed the *conseiller* to the scene on 10 April 1994, between 10.00 a.m. and 11.00 a.m., and noticed that Rugomboka's T-shirt was covered with blood. He concluded that Rugomboka had been stabbed to death. Members of the population who were at the scene consulted each other at length on how to transport Rugomboka's body to his home. An initial group of six to eight men increased to 65 persons. Witness MZA testified that he did not see Witness QDC or any

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<sup>427</sup> T. 18 March 2009 p. 46.

<sup>428</sup> T. 18 March 2009 p. 48: "When I got to the house I saw something which really frightened me. I was told that he had been burnt on his chest with an ironing box. On top of that [...] he had been stabbed on his chest as well. When I got there the neighbours were actually putting cotton on the wounds. So what I did is I started praying. But I was "so scared" that I did not stay there for a long time. So I went back home immediately."

<sup>429</sup> T. 19 March 2009 p. 32.

<sup>430</sup> T. 19 March 2009 p. 37: "I heard soldiers calling him by that nickname. That was from the end of 1993 up to when the genocide started. In any case, that has to be after the death of the Burundian president, Melchior Ndadaye. So maybe as a reference we could look at the date of Ndadaye's murder. So from that time onwards he was no longer referred to as Idelphonse Hategekimana, he was called Bikomago. But soldiers were the ones who were calling him by that nickname, not civilians."

<sup>431</sup> T. 22 June 2009 pp. 15, 45.

<sup>432</sup> T. 22 June 2009 p. 45: "I heard mention made of Jean Claude Murekezi, and it would appear he even put up a flag of the MRND 'in' his house. So mention was made of Murekezi being involved in the killing of Rugomboka."

<sup>433</sup> T. 23 June 2009 p. 18.

<sup>434</sup> T. 22 June 2009 p. 51.

<sup>435</sup> T. 23 June 2009 pp. 18, 20.



soldiers at the scene.<sup>436</sup> The witness explained that the soldiers did not intervene because the matter fell within the jurisdiction of the *conseiller* and not of the soldiers.<sup>437</sup>

258. Witness MZA and others transported Rugomboka's body to his home after a coffin had been made.<sup>438</sup> Mourning was organized and burial took place the following day between 11.00 a.m. and midday. Witness MZA did not see soldiers at Rugomboka's home on the day of the burial.<sup>439</sup>

#### *Defence Witness ZVK*

259. Witness ZVK, a *Hutu* man, was a secondary school student in April 1994. He heard that, in the week following the death of President Habyarimana, a group of *Interahamwe* youth, led by Fils and Édouard, had abducted Rugomboka and subsequently killed him because he had publicly declared that he was a member of the RPF.<sup>440</sup>

260. The witness heard that Rugomboka's body had been found in a "pine wood that was below the Ngoma airport [...] on landed property owned by members of the population," located 800 metres away from Ngoma Camp.<sup>441</sup> The *conseiller* of the *secteur* and the *responsables* of the *cellule* went there and brought back Rugomboka's body to his home. The following day, Rugomboka was buried. Witness ZVK testified that those who told him about the event never mentioned the presence of soldiers.<sup>442</sup>

#### *Defence Witness CBA1*

261. Witness CBA1, a *Hutu* man, was a pastor who lived near Ngoma Camp at the time of the events. He knew a majority of the camp soldiers, notably the Accused.<sup>443</sup> Witness CBA1 heard people say that, after the President's death, a young PL member, called Rugomboka, had rejoiced over the President's death by draping his dog in the emblem of the MRND. In retaliation, members of the MRND then attacked his house, abducted and killed Rugomboka.<sup>444</sup> The names of "Jacques Habimana," "Fils," "Mukiga," "Abdulla" and "Donat" were mentioned to him.<sup>445</sup> Witness CBA1 attended the wake of Rugomboka,<sup>446</sup> but did not see soldiers there.<sup>447</sup> He did not attend Rugomboka's burial.

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<sup>436</sup> T. 23 June 2009 p. 21.

<sup>437</sup> T. 23 June 2009 p. 22: "You should know that that was the *conseiller's* duty and the *conseiller* never asked for the assistance of soldiers. He simply asked members of the population to come and help."

<sup>438</sup> T. 23 June 2009 p. 24.

<sup>439</sup> T. 23 June 2009 p. 39.

<sup>440</sup> T. 23 June 2009 p. 21.

<sup>441</sup> T. 23 June 2009 p. 35.

<sup>442</sup> T. 10 July 2009 pp. 32-33: "The Ngoma camp commander is someone I knew. I saw him for the last time in March and his name was Ildephonse Hategekimana."

<sup>443</sup> T. 10 July 2009 p. 25; 13 July 2009 pp. 2-3.

<sup>444</sup> T. 10 July 2009 p. 26; 13 July 2009 p. 6.

<sup>445</sup> T. 13 July 2009 p. 18: "I explained that I attended the mourning of the funeral of Jean-Bosco. But or, rather, I participated in the mourning or vigil, but since my wife was not well, I did not attend the burial. I participated at the funeral vigil but I did not attend the burial itself."

<sup>446</sup> T. 13 July 2009 p. 18.

<sup>447</sup> T. 13 July 2009 p. 35.

### *Defence Witness CBJ*

262. Witness CBJ, a *Hutu* student, lived next to Rugomboka's home. She testified that Rugomboka was abducted by MRND members who were furious with him because, on 7 April 1994, he paraded his dog, draped in MRND colours, together with other RPF members, to rejoice over the President's death.<sup>448</sup> She heard MRND party youths living in the neighbourhood, namely "Murekezi," the son of Jacques, "Abdulla" and "Mukiga" boast of the abduction of Rugomboka. She concluded that the same persons were responsible for his murder.<sup>449</sup> She specified that she did not hear any noise when Rugomboka's residence was being attacked; had she heard, she and her neighbours would have come out of their houses to see what was happening.<sup>450</sup> She learned about his death on 10 April,<sup>451</sup> as his body was found "below Ngoma airfield" and then taken to his home.<sup>452</sup> She went to Rugomboka's family home on the day of the funeral but did not see the body. She heard people say that Rugomboka had "provoked the fate he had received."<sup>453</sup> Witness CBJ did not see any soldiers there.<sup>454</sup>

### **6.3 Deliberation**

#### *Place of abduction*

263. There is no dispute that Rugomboka was abducted during the night of 8 to 9 April 1994 and that his mutilated body was subsequently discovered in a pine wood. As to the place of abduction, Prosecution Witnesses QDC, QCN, QCL, XR and Jérôme Masinzo and Defence Witnesses ZVK and CBA1 acknowledged that Rugomboka was abducted at his home. Only Defence Witness MZA alleged that Rugomboka was abducted at night in a bar and not at his home. The Chamber notes that Witness MZA's testimony is hearsay that is not corroborated by reliable evidence. Besides, the Chamber notes that, according to Witness QDC, Rugomboka took care of expatriates in Gikongoro on 8 April and returned home only around 4 p.m. that day. He did not go out again. The Chamber considers that Rugomboka could not be in a bar that night, as the security situation was dangerous and people were prohibited from going out of their houses after the death of the President. After carefully considering the testimonies of Witnesses QDC, QCN, QCL, XR and Jérôme Masinzo, ZVK and CBA1, the Chamber is convinced beyond reasonable doubt that Rugomboka was abducted from his home during the night of 8 to 9 April 1994.

#### *Sequence of the Attack*

264. As direct factual witnesses, Witnesses QCN and QDC corroborated each other's testimonies on the sequence of the attack. Witness QCN, a neighbour of Rugomboka's family, saw soldiers in Rugomboka's living room from her window, as "the lights were on" in Witness QDC's house.<sup>455</sup> Witness QDC thus corroborated the fact that the witness' lights were on and that the witness noticed that Witness QCN's curtains were drawn. Both of them testified that the assailants were soldiers who had come in large numbers.

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<sup>448</sup> T. 13 July 2009 pp. 35, 52.

<sup>449</sup> T. 13 July 2009 pp. 36, 53-54.

<sup>450</sup> T. 13 July 2009 p. 62.

<sup>451</sup> T. 13 July 2009 pp. 36, 54.

<sup>452</sup> T. 13 July 2009 p. 57: "[T]he body had been found on the lower side of the airfield, and that place is not opposite [...] it is not opposite Ngoma Camp."

<sup>453</sup> T. 13 July 2009 p. 38.

<sup>454</sup> T. 13 July 2009 p. 38: "I did not see any soldiers, nor did I hear anyone say that the soldiers had come to disrupt the funeral."

<sup>455</sup> T. 26 March 2009 p. 30.

265. The Defence contends that the testimony of Witness QCN is not reliable because of the inconsistencies between her prior written statement of 30 May 1998, in which she alleged that the attack began between 8 p.m. and 9 p.m. and her in-court testimony, in which she alleged that she had no watch and that the attack began between 9 p.m. and 10 p.m. or even 11 p.m. The Chamber finds plausible the explanation that she had no watch and considers that to be a minor discrepancy because, due to trauma and the passage of time, Witness QDC could no longer remember the facts exactly.<sup>456</sup> Such a discrepancy does not impugn the reliability of her in-court testimony.

266. The Defence submits that the testimonies of Witnesses QCN and QDC are not credible because they are inconsistent as to the time the assailants came into Rugomboka's house. Witness QCN specified that the door of Rugomboka's residence was open between 10.00 p.m. and 11.00 p.m.,<sup>457</sup> whereas she had stated in prior written statement of 30 May 1998 that Rugomboka's door was open from 8.00 p.m. to 9.00 p.m.<sup>458</sup> However, according to the Defence, Witness QDC testified that the door was closed until 2.30 a.m. when Rugomboka opened it.<sup>459</sup>

267. The Chamber notes the similarity between the testimonies of Witnesses QDC and QCN as to when the attack began. However, their testimonies are inconsistent as to when the assailants came into Rugomboka's residence. Indeed, Witness QCN's testimony shows that the assailants entered shortly after the attack on Rugomboka's residence, whereas Witness QDC testified that Rugomboka opened the door only at 2.30 a.m. The Chamber underscores the significance of the sequence of events in the present case and considers established the fact that the assailants entered the house in the night of 8 to 9 April 1994, regardless of the time specified by the two witnesses.<sup>460</sup> The Chamber finds that the varying estimates as to when the assailants came into Rugomboka's residence are minor discrepancies which do not impugn the credibility of Witnesses QCN and QDC.

268. Of the two witnesses, only Witness QDC testified that a neighbour called Hamdani was among the soldiers and that she heard him call Rugomboka to open the door. The Chamber accepts that, because of the great number of assailants and the distance between her house and that of Witness QDC, Witness QCN could not see Hamdani among the soldiers or hear his voice. The Chamber considers that the fact that Witness QCN did not mention the presence of Hamdani does not impugn her credibility or that of Witness QDC.

#### *Identity of the Assailants*

269. The Prosecution relies on the direct testimonies of Witnesses QDC and QCN to establish that soldiers attacked Rugomboka's family during the night of 8 to 9 April 1994. Witness QDC testified that there were also civilians and *Interahamwe* among the assailants. Moreover, Witness XR testified hearing Witness QDC say that Ngoma Camp soldiers had abducted Rugomboka. The Defence disputes the presence of soldiers and submits that only members of the *Interahamwe* perpetrated the attack, and in support of its allegations, presented Witnesses ZML, MZA, ZVK, CBA1 and CBJ. The Chamber notes that Prosecution Witness QDC identified Ngoma Camp soldiers, based on information from Martial, Rugomboka's elder brother, who was at the scene during the abduction. In fact, Martial recognized "Pacifique," "Gatwaza Rubyiza" and

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<sup>456</sup> See *Muhimana* Appeal Judgement para. 156.

<sup>457</sup> T. 26 March 2009 p. 29.

<sup>458</sup> Witness QCN's written statement of 30 May 1998 p. 437.

<sup>459</sup> T. 23 March 2009 p. 28.

<sup>460</sup> T. 26 March 2009 p. 29: "My husband was in the living room and he was able to observe that the neighbour's door was open."

“Habimana,”<sup>461</sup> all Ngoma Camp soldiers.<sup>462</sup> The Defence disputes the credibility of Witness QDC, describing her as someone who was “nursing rancour, anger, and resentment.” According to the Defence, her subjective testimony cannot serve the real cause of justice, since Witness QDC can only “peddle information that would best relieve her pain.”<sup>463</sup> The Chamber accepts Witness QDC’s testimony, which was corroborated by other witnesses, on the sequence of events, specifically the attack on Rugomboka’s house, his abduction and burial.

270. Witnesses QCN, QCL, XR and Father Masinzo confirmed hearing that the assailants came from Ngoma Camp. Father Masinzo and Witness QCL<sup>464</sup> confirmed that Pacifique was actually an Ngoma Camp soldier who often came to Ngoma Parish.<sup>465</sup> Furthermore, Witness BYR recognised “Gatwaza,” “Pacifique” and “Niyonteze” in the vehicle carrying a civilian who wore a whitish T-shirt.<sup>466</sup>

271. Witness QDC also noticed the presence of civilians, namely<sup>467</sup> Jean-Claude Murekezi, nicknamed “Fils” and his brother “Deo Murekezi.”<sup>468</sup> The Chamber accepts the testimonies of Defence Witnesses on the presence of *Interahamwe* among the assailants. Witnesses ZML, MZA, ZVK, CBA1 and CBJ also mentioned “Fils” or “Murekezi” as being an *Interahamwe* or an MRND youth member who was involved in the attack. Witnesses ZVK, CBJ and CBA1 heard that other civilian assailants were also involved, including “Édouard,” “Mukiga,” “Abdullah,” “Donat” and “Habimana.” Although the *Interahamwe* were present during the attack, the testimonies of Witnesses QDC and QCN show that Rugomboka was abducted by soldiers. Witnesses QCL,<sup>469</sup> XR<sup>470</sup> and Father Masinzo<sup>471</sup> also confirmed hearing that Ngoma Camp soldiers abducted Jean Bosco Rugomboka.

272. Witness QCN was an eyewitness to the presence of soldiers during the attack on Rugomboka’s residence. From their window, Witness QCN and her husband observed soldiers surrounding their house and that of Rugomboka. Witness QCN noticed that the door of Rugomboka’s residence was open and that there were “many soldiers” in the living room. The assailants left the residence only around 5 a.m. The Chamber considers that her testimony on the attack preceding the abduction is coherent and supplements the testimony of Witness QDC. In fact, the respective testimonies of Witnesses QDC and QCN show that the soldiers who attacked Rugomboka’s residence were also those who subsequently abducted him. All other Prosecution and Defence evidence relating to the abduction and circumstances surrounding the abduction up to the following day is based on hearsay. Prosecution Witnesses QCN, QCL, XR and Father Masinzo all heard that Rugomboka had been abducted by soldiers.

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<sup>461</sup> T. 23 March 2009 p. 40. This man may be different from the *Conseiller du Secteur* who was also called Habimana.

<sup>462</sup> See Witness QCL, T. 17 March 2009 pp. 5-6.

<sup>463</sup> Defence Closing Brief paras. 213-214.

<sup>464</sup> T. 30 March 2009 p. 4: “Since Pacifique usually came to church, I would see him quite often.”

<sup>465</sup> T. 18 March 2009 p. 47. Father Masinzo said that Pacifique was a native of Nyundo, Rubavu *Commune*, Gisenyi *Préfecture*, and that he was 24 years old at the time of the events.

<sup>466</sup> T. 9 April 2009 pp. 27-28, 36, 58.

<sup>467</sup> T. 23 March 2009 p. 63: “Before opening the door, we had not seen those people. It is true that they were with the soldiers. I do not know whether they came there at the same time as the soldiers. However, after opening the door, we saw them. Fils was present.”

<sup>468</sup> Witness QDC’s written Statement of 18 May 1998 p. 475 para. 2.

<sup>469</sup> T. 17 March 2009 p. 10.

<sup>470</sup> T. 1 April 2009 p. 56.

<sup>471</sup> T. 18 March 2009 p. 46; T. 30 March 2009 p. 4.

273. The Defence submits that there was an inconsistency between Witness QCN's prior statement of 30 May 1998 and her in-court testimony on the identity of the assailants. According to the Defence, Witness QCN first mistook the assailants for bandits before realizing that they were soldiers, whereas in her in-court testimony she stated in "blatant contradiction" that from the very beginning of the attack she had identified soldiers at the scene.<sup>472</sup> In support of this argument, the Defence added that Witness QCN's husband called Ngoma Camp for assistance as they had been attacked by unknown persons which, according to the Defence, confirms that the attackers were "otherwise unidentified attacking bandits."<sup>473</sup>

274. The allegation of the Defence is incorrect. In her written statement of 30 May 1998, Witness QCN specified that as soon as the attack began, her husband saw many "soldiers on their wall" and "many soldiers" in Rugomboka's living room. Witness QCN then thought that they were being attacked by bandits.<sup>474</sup> Her husband then phoned to call for assistance saying that they had been attacked by "[people] wearing military uniforms."<sup>475</sup> The Chamber notes that during the proceedings, Witness QCN consistently testified that soldiers had surrounded her house before going to Rugomboka's house and that she had seen many soldiers in Rugomboka's living room. The Chamber finds that Witness QCN's prior statement does not in any way contradict her in-court testimony, notably the fact that she actually saw soldiers and thought initially that they were bandits.

275. The Chamber also dismisses the Defence's submission that it is unlikely that Witness QCN and her husband pulled their curtains and observed what was happening in Rugomboka's living room for hours, thereby exposing themselves to the "fury" of the assailants. Contrary to the Defence's submission, the Chamber notes that Witness QCN by no means testified that she spent hours watching what was happening in Rugomboka's house, be it during the proceedings or in her prior statement.

276. Furthermore, the Chamber dismisses the Defence's contention that "it is utterly absurd to request help from one's attackers in order to get out of trouble."<sup>476</sup> The Chamber notes that there is no contradiction in Witness QCN's account of the facts as she always maintained that it was only the following day that she knew that the assailants came from Ngoma Camp.<sup>477</sup>

277. As to the credibility of Witness XR, the Chamber notes the discrepancies raised by the Defence in his testimony relating to the abduction of Rugomboka. Witness XR testified before the Chamber that the abduction took place in the night of 8 April 1994, whereas he had given the date of 18 April 1994 in his prior statement of 29 May 1998.<sup>478</sup> Witness XR explained that he did not read his statement before signing it, and that the date of 18 April 1994 was not properly recorded.<sup>479</sup> The Chamber considers that the discrepancies are minor and do not undermine the credibility and reliability of his testimony.

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<sup>472</sup> Defence Closing Brief p. 42, para. 201; T. 30 March 2009 pp. 9-10.

<sup>473</sup> Defence Closing Brief p. 41 para. 202.

<sup>474</sup> Witness QCN's written statement of 30 May 1998 p. 437.

<sup>475</sup> T. 30 March 2009 p. 3.

<sup>476</sup> Defence Closing Brief p. 41 para. 202.

<sup>477</sup> T. 30 March 2009 p. 16: "[W]hen we called the Ngoma Camp, we did not know that the soldiers who had attacked Bosco's house had come from that same camp, that is, Ngoma Camp."

<sup>478</sup> Defence Closing Brief para. 207.

<sup>479</sup> T. 2 April 2009 pp. 23-24.

278. As to the credibility of Defence Witnesses ZML, MZA, ZVK, CBA1 and CBJ, their testimonies must be considered with caution. In fact, Witness ZML is facing charges of genocide and rape before the *Gacaca* courts.<sup>480</sup> Witness MZA is a *Hutu* exile who is also facing charges before the *Gacaca* courts.<sup>481</sup> Witness ZVK is a *Hutu* exile who is also alleged to have committed genocide in Ngoma *Secteur* in April and May 1994.<sup>482</sup> Witness CBA1's role during the genocide is also suspicious because he refused to shelter *Tutsis* in his parish. Moreover, the Chamber notes that all Defence witnesses, except MZA, testified that they were not aware of the fact that they had been summoned by the Tribunal to testify on behalf of the Accused.<sup>483</sup> The Chamber is not persuaded by such statements.

279. The Chamber is not convinced by the accounts of Defence Witnesses MZA, ZML, ZVK, CBA1 and CBJ, who heard that Rugomboka was abducted only by the *Interahamwe*. As stated earlier, the accounts of the said witnesses are inconsistent, more specifically as regards the scene of the abduction. Witness MZA testified that Rugomboka was abducted in a bar, while Witnesses ZVK and CBA1 testified that he was abducted at his home. The testimonies of Defence witnesses show that none of them was present during the attack, the abduction and burial of Rugomboka, apart from Witness MZA who alleged that he witnessed the removal of Rugomboka's body and his burial. The presence of civilian assailants does not cast doubt on evidence about the participation of the soldiers.

280. For the foregoing reasons, the Chamber dismisses Defence witness allegations that there were no soldiers when Rugomboka's residence was attacked or when he was abducted. The Chamber is therefore convinced beyond reasonable doubt that Ngoma Camp soldiers attacked Rugomboka's residence and abducted him during the night of 8 to 9 April 1994.

281. Witness QDC is the only eyewitness who testified that Hategekimana was present at Rugomboka's residence when he was abducted. The Chamber notes that this witness's account of the abduction was honest, convincing and reliable. The Chamber notes that Witness QDC did not know Hategekimana prior to Rugomboka's abduction. The witness knew his name only when Martial, Rugomboka's elder brother, whispered in her ear that the man "standing against the wall" was the leader of the soldiers and that he was called "Bikomago Ildephonse."<sup>484</sup> Witness QDC's neighbour, Witness QCN, confirmed that the entire neighbourhood, including children and young people, knew Bikomago.<sup>485</sup> The Chamber therefore accepts that Hategekimana was commonly known by the young people and children of the neighbourhood and that Martial, a young man of the neighbourhood and Rugomboka's elder brother, specifically identified the commander of Ngoma Camp. The Chamber considers, on account of the credibility and reliability of the testimony of Witness QDC, that the witness was well apprised of the identity of Hategekimana, known by his nickname of "Bikomago."

282. Moreover, Witness QDC gave a detailed physical description of the individual who seemed to be the "leader" of the soldiers when they were in Rugomboka's living room. Witness QDC

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<sup>480</sup> T. 22 June 2009 pp. 35-36.

<sup>481</sup> T. 24 June 2009 p. 9.

<sup>482</sup> T. 25 June 2009 pp. 65, 66.

<sup>483</sup> T. 22 June 2009 p. 33; T. 25 June 2009 p. 46; T. 13 July 2009 pp. 22, 47-48, 70.

<sup>484</sup> T. 23 March 2009 p. 31.

<sup>485</sup> T. 23 March 2009 p. 41. Witness QCN corroborated the testimony of Witness QDC that the young people and children of the neighbourhood knew the commander of Ngoma Camp: "He was a superior officer, and he often moved around on board a vehicle through the neighbourhoods. He used a green vehicle, and he wore his military uniform. Everyone knew him. Even children knew him. When children would see him pass by, they would say, "That is the commander of the Ngoma camp who is going by."

mentioned a man of medium height, who was quite stocky, not very dark, with a pot belly. Witness QCL, who exercised with him, described him in a similar manner as a man who ‘was not tall, and was not very dark, with a big stomach.’<sup>486</sup>

283. Witness QDC also testified that Hategekimana’s comportment was that of a leader in charge of soldiers. He stood out from the other soldiers because he wore a knee-length coat. The witness specified that he gave orders which the soldiers clearly obeyed. As soon as the soldiers entered Rugomboka’s residence, he ordered them to have the occupants of the house sit down and to search the residence. Hategekimana stood near the wall, waiting for his orders to be executed. The soldiers handed him the objects found, the spear and the T-shirt, and he asked to know who owned the T-shirt. The soldiers then presented him the identity cards of the occupants and he withheld that of Rugomboka. He also instructed the two *Hutu* tenants of the residence to look for another accommodation. Then, Hategekimana prohibited Witness QDC from following him while the soldiers took Rugomboka away.

284. The Chamber finds that the individual who was standing against the wall and giving orders to soldiers was Hategekimana. First, that fact is confirmed by Witness QDC, who was informed by Martial, Rugomboka’s elder brother, who recognized him as being “Bikomago Ildephonse,” commander of Ngoma Camp. Second, the physical description of the alleged leader given by Witness QDC and evidence of the presence of soldiers from Ngoma Camp unquestionably establish that it was Hategekimana who was supervising and monitoring the actions of the soldiers.

285. Having assessed the entirety of the evidence, the Chamber is convinced beyond reasonable doubt of Hategekimana’s presence when Rugomboka was abducted. The Chamber also finds that, during Rugomboka’s abduction, Hategekimana directed operations and gave instructions which were followed by Ngoma Camp soldiers.

#### *Murder of Rugomboka*

286. The Chamber notes the absence of eyewitnesses to what happened immediately after Rugomboka’s abduction, the alleged torture he suffered and the resulting murder. However, the Chamber notes that Witnesses QDC and QCL gave evidence on Hategekimana’s responsibility for Rugomboka’s fate after his abduction. The Chamber notes that, on 9 April, Witness QDC enquired in vain about Rugomboka from those who were authorized to hold a prisoner at the ESO camp, the commune jail and the *gendarmerie* brigade. When he went to the *gendarmerie*, one of the *gendarmes* told him ironically: “Maybe he has met Bikomago.” On 9 April, Witness QCL turned to the Accused and Joseph Kanyabashi to seek information on Rugomboka’s disappearance. Each official sent the witness back and forth without giving an answer. The Chamber finds that Rugomboka was detained by Hategekimana and Ngoma Camp soldiers after his abduction.

287. In support of its case for the murder of Rugomboka, the Prosecution presented Witness BYR who allegedly saw an individual being driven to Ngoma Camp in the morning of 9 April 1994. The Prosecution alleged that this individual, who wore a whitish T-shirt, was none other than Rugomboka, and that, the day after his abduction, his mutilated body was found in a pine wood near the Ngoma Camp. The Prosecution relies mainly on Witness BYR’s testimony that a prisoner was taken out of the camp at night, and his body was found the following morning by members of

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<sup>486</sup> T. 16 March 2009 p. 32. The Chamber notes that the physical description of Hategekimana given by Witnesses QDC and QCL tallies with that given by many witnesses deemed to be credible by the Chamber.

the population, who alerted Ngoma camp soldiers. Having seen the body, the soldiers identified him as “Bosco.”<sup>487</sup>

288. The Chamber notes that Witness BYR did not formally identify Rugomboka as being the prisoner who was taken to Ngoma Camp, in a vehicle with soldiers, in the morning of 9 April 1994. However, there are many facts in his testimony which corroborate and supplement the testimonies of Witnesses QDC, QCN, QCL and MZA. First, the facts relate to the existence of a T-shirt which, according to Witness BYR, the prisoner was wearing. The Chamber notes that, shortly before, at Rugomboka’s house, in the presence of Witness QDC, two soldiers had, on Hategekimana’s orders, forced Rugomboka to wear the T-shirt before he was abducted. Witnesses BYR and QDC respectively specified the whitish and white colour of the T-shirt.<sup>488</sup> Witnesses QDC, QCL and MZA all testified that Rugomboka’s body was found in a pine wood and was donning a T-shirt. Second, the time of arrival of the vehicle to Ngoma Camp coincided with the time of the soldiers’ departure after the second search conducted at Rugomboka’s house. Third, Witness BYR clearly identified the soldiers Gatwaza and Pacifique who were, according to Witness QDC, present at Rugomboka’s residence and had taken part in his abduction. Lastly, Hategekimana who, according to Witness QDC, led the abduction, arrived at the Camp one hour after the car which was transporting the prisoner and his escort. In any case, Hategekimana could not be unaware of the fact that a prisoner had been brought into the Camp, given that he was briefed daily on all the happenings in the camp.

289. Having carefully considered the totality of the evidence, including the detailed and coherent evidence of Witness BYR, the Chamber considers that there is overwhelming, specific and coherent circumstantial evidence that the prisoner who was taken to Ngoma Camp on 9 April 1994 was none other than Rugomboka.

290. The Defence submits that Witness BYR’s account that the vehicle which took the prisoner away arrived at Ngoma Camp between 7.00 a.m. and 9.00 a.m. on 9 April 1994 is blatantly inconsistent with the testimonies of Witnesses QDC and QCL. The Defence contends that, if the abduction ended at 4.00 a.m., then the soldiers’ vehicle should have arrived at the camp before 7.00 a.m. The Defence asserts that it could not have taken the soldiers in a vehicle “three or even five hours to cover a distance of a few hundreds of metres” between Rugomboka’s house and Ngoma Camp. Additionally, the Defence points out that, there is only one road between Rugomboka’s home and the Ngoma Camp.<sup>489</sup>

291. The Chamber considers that, contrary to the allegation of the Defence, Witness QCN, Witness QDC’s neighbour, specified that the assailants spent the whole night at Rugomboka’s house and left only around 5.00 a.m. Witness QDC testified that about eight soldiers returned around 4.00 a.m. to search the children’s house. They left when “it was almost daylight” and there was no need to turn on the lights. The Chamber notes that Witness QCN only saw the soldiers leave and did not notice that about eight of them returned to the scene. Considering the second search, which lasted until when “it was almost daylight,” the Chamber finds it plausible that the vehicle, transporting the prisoner and soldiers, arrived at the Camp around 7.00 a.m., as recounted by Witness BYR. The Chamber finds that the testimonies of Witnesses QDC, QCN and BYR are coherent as to the sequence of events: the soldiers left with Rugomboka, and subsequently returned to look for objects that “Bosco had talked to them about.”<sup>490</sup> They finally returned to Ngoma Camp

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<sup>487</sup> T. 9 April 2009 p. 31.

<sup>488</sup> T. 9 April 2009 p. 27; T. 23 March 2009 p. 28.

<sup>489</sup> Defence Closing Brief para. 208.

<sup>490</sup> T. 23 March 2009 p. 40.



when “it was almost daylight.” Furthermore, the Chamber specifies that during the site visit it was never mentioned that there was only one road between the Rugomboka residence and the Ngoma Camp. The Chamber therefore dismisses this allegation.

292. The Chamber has assessed Witness BYR’s evidence to the effect that Rugomboka was taken out of the Camp during the night of 9 to 10 April. A soldier called Mukangahe told Witness BYR that he heard Ngoma Camp soldiers say that the prisoner had been taken out of the camp at night, “by the same people who had brought him to the military camp.”<sup>491</sup> It is not disputed that the body which was found in a pine wood in the morning was that of Rugomboka. Considering the insufficiency of the evidence, the Chamber cannot specifically determine when Rugomboka was taken out of the camp and killed and when his body was dumped in the pine wood. However, it accepts that Rugomboka was taken out of the camp. The Chamber further accepts the fact that Prosecution Witnesses QCN, QDC, QCL and Defence Witness MZA noticed Rugomboka’s mutilated chest and riddled T-shirt and were unanimous that he was tortured before being killed.<sup>492</sup> However, the Chamber cannot specifically place when and where the torture was committed.

293. The Defence alleges that there were inconsistencies in Witness BYR’s evidence and submits that “it is doubtful whether BYR was ever a member of Ngoma Camp or even of the Rwandan Army.”<sup>493</sup> The Chamber has verified Witness BYR’s identification form, showing that he had a specific function as a Ngoma Camp soldier in April 1994. During his in-court-testimony, Witness BYR displayed his knowledge of the camp and of the soldiers who were there. To this effect, he produced a list of soldiers assigned to the Camp during the same period and whose names were mentioned by other witnesses during the trial.<sup>494</sup> As previously shown, the Chamber is also convinced of the reliability of Witness BYR’s evidence.

294. Moreover, the Defence submits that Witness BYR’s allegation that the effigy of Corporal Nyandwi was at the entrance of Ngoma Camp, is “completely false and erroneous” because the effigy belonged to the ESO Camp.<sup>495</sup> The Chamber is convinced by the witness’s explanation that he could not remember the exact date of the erection of the effigy at Ngoma Camp. The Defence also alleged that it is “unthinkable” that a military vehicle should be driven by a civilian.<sup>496</sup> However, in the present case, a civilian called Inani had driven the vehicle. The Chamber considers that these arguments are mere speculations based on no reliable evidence.

295. The Chamber notes that Witness BYR is facing charges before the Rwandan courts for weapons distribution, participation in the attack on Ngoma Parish and the erection of roadblocks. He is currently on trial. As an accomplice to other acts involving Hategekimana, he could have accused him falsely and could have formally recognized Jean Bosco Rugomboka in the vehicle in order to implicate Hategekimana directly in the murder of Rugomboka. However, he did not. The Chamber considers Witness BYR’s testimony credible.

296. Although the parties do not agree on the perpetrators of Rugomboka’s abduction, they do acknowledge that the persons who abducted him were the same as those who tortured and killed him. The Chamber considers this inference to be logical and reasonable. Having found that

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<sup>491</sup> T. 9 April 2009 p. 28.

<sup>492</sup> T. 23 June 2009 p. 21: “Looking at the body, one could easily realise that the young man had been stabbed. His clothes, particularly his T shirt, [were] covered with blood.”

<sup>493</sup> Defence Closing Brief para. 211.

<sup>494</sup> Prosecution Exhibit No. 18.

<sup>495</sup> Defence Closing Brief para. 209

<sup>496</sup> Defence Closing Brief para. 209.

Rugomboka was abducted by Hategekimana and Ngoma Camp soldiers, the Chamber infers that his abductors were also those who killed him. The Chamber notes that the body that was discovered, and identified by soldiers, near Ngoma Camp was that of Rugomboka. Thus, the Chamber finds that Rugomboka was taken away from the Camp at night and killed by Ngoma Camp soldiers who subsequently dumped his body in the pine wood.

*Role of Soldiers During the Transportation of the Body of Rugomboka and His Burial*

297. The Chamber notes the dubious behaviour of Ngoma Camp soldiers in locking the main gate of Rugomboka's residence, between his abduction and the discovery of his body, to prevent the occupants of the house from going out. The Chamber also notes their threatening presence, similar to Hategekimana's, when Rugomboka's body was discovered and transported from the pine wood to his house and during his burial. Lastly, the Chamber notes that Hategekimana twice ordered the family of the deceased not to mourn, notably, when his body was discovered and after it was buried.

298. The Chamber further notes that Witness QCL's testimony differs from that of Witness QDC about the specific presence of Hategekimana at the sites when Rugomboka's body was discovered and when it was being taken to his house. In fact, Witness QCL's testimony shows that the *conseiller* left the pine wood to seek authorization from the Ngoma Camp commander to transport Rugomboka's body and that he returned, with Hategekimana and five soldiers, who pointed guns at the persons gathered around Rugomboka's body. However, the *conseiller* did not remain at the site but left immediately. Hategekimana was also present when the body arrived at Rugomboka's house. On the contrary, Witness QDC did not in any way mention the behaviour of the five soldiers and Hategekimana's presence either at the scene where Rugomboka's body was discovered or when it arrived at Rugomboka's house. The witness, however, testified that she saw a large number of soldiers in the pine wood and on the road.

299. Having found Witness QCL's testimony to be detailed and reliable, the Chamber thus accepts it with regard to the behaviour of the five soldiers and Hategekimana's presence at the scenes. The Chamber finds that, owing to the fright and trauma caused by the events, it is possible that Witness QDC did not see Hategekimana and the five soldiers pointing guns at them or notice Hategekimana's presence when the body arrived near Rugomboka's house. The Chamber also accepts Witness QCL's testimony that Pacifique and Gatwaza were observing them when Rugomboka's body was discovered and when it was buried.

300. The Defence also submits that, in his written Statement, Witness QCL placed Rugomboka's burial on 14 April instead of 10 April. Contrary to the allegations of the Defence, the Chamber notes that the witness corrected himself during the proceedings and actually retained the date of 10 April.<sup>497</sup> Considering these facts, the Chamber dismisses the arguments of the Defence on this point.

301. The Chamber is not convinced by Witness MZA's account that there were no soldiers when Rugomboka's body was discovered and when it was being buried. The Chamber does not find it credible that no Ngoma Camp official, in charge of maintaining peace and security in the *secteur*, intervened at any moment during the event. Moreover, the Chamber is not convinced by Witness MZA's account that, firstly, no woman, not even Witness QDC, or a member of Rugomboka's family, was at the scene when the body was discovered and, secondly that they waited for many

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<sup>497</sup> T. 18 March 2009 p. 21.

hours before transporting the body home because they had to construct a coffin.<sup>498</sup> Thus, the Chamber dismisses Witness MZA's testimony about this incident and notes that no other Defence witness witnessed the discovery of the body or its burial.

302. The Chamber further notes that the Defence disputes that Rugomboka's body was found a short distance away from Ngoma Camp, namely 30 or 40 metres, as emphasized by the Prosecution. Rather, the Defence submits that his body was found near the airfield, which is located 500 metres away from the camp, thereby establishing that Rugomboka was not murdered by soldiers. During a visit to the sites, the Chamber indeed noted that the airfield was quite far from Ngoma Camp. Having so specified, the Chamber finds in light of the foregoing that, whatever the distance between where Rugomboka's body was found and Ngoma Camp, it has no impact on the fact that Ngoma Camp soldiers participated in the commission of the crime. Moreover, having found Witness MZA's account of the discovery and transportation of Rugomboka's body not to be credible, the Chamber is of the opinion that his allegation that the body was discovered near the airfield at about 400 or 500 metres from Ngoma camp<sup>499</sup> does not in any way cast doubt on the direct, credible and reliable testimonies of Witnesses QDC and QCL that the body was discovered near the camp.<sup>500</sup>

303. The foregoing reasoning shows that civilians and *Interahamwe* participated in the attack, but the Chamber does not have before it sufficient evidence to determine that they participated in Rugomboka's abduction, torture and murder.

304. While no witness testified that Hategekimana explicitly ordered the killing of Rugomboka, the Chamber notes that evidence given by witnesses it deems to be credible, notably QDC, QCN and QCL, establishes the existence of Hategekimana's order. In fact, it is established that Hategekimana led the abduction and that soldiers under his command clearly obeyed him and executed his orders. After the abduction, Hategekimana detained Rugomboka at Ngoma Camp. Rugomboka was taken out of the camp and the soldiers dumped his body in a pine wood. In a threatening manner, Hategekimana then closely monitored the actions and gestures of members of the population, by preventing any action on their part during the transportation of Rugomboka's body to his house and during his burial. Hategekimana specifically prohibited the family from leaving their residential compound after Rugomboka's abduction. He also prohibited the family, as well as members of the population, from using a vehicle to transport Rugomboka's body, from mourning and from gathering after the burial. After considering the entirety of the evidence, the Chamber finds that the only logical and reasonable inference is that Hategekimana ordered the murder of Rugomboka.

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<sup>498</sup> The Chamber notes that Witness MZA is a fugitive from justice. A *Gacaca* court convicted him *in absentia* for the role he played in similar crimes committed in the Ngoma region. He stated that he neither had knowledge of the judgement pronounced nor of the arrest warrant issued against him.

<sup>499</sup> T. 23 June 2009 p. 20. Witnesses ZVK and CBJ testified during the trial proceedings that Rugomboka's body was discovered near the airfield. See Witness ZVK, T. 25 June 2009 p. 41, see also Witness CBJ, T. 13 July 2009 p. 35.

<sup>500</sup> Witness QDC, T. 23 March 2009 p. 41: "And we found Bosco's body in Sunday in a wood near Ngoma Camp," p. 42: "We found Bosco's body in the pine wood located down the road from the Ngoma camp;" Witness QCL, T. 17 March 2009 p. 13: "[H]erdsmen came to our neighbourhood and told us that Bosco's dead body had been found in a pine wood that was down the road from the Ngoma camp. [...] We indeed found Bosco's body in the wood." Witnesses BYR and QCN, as well as Father Masinzo, also testified to hearing that Rugomboka's body had been discovered near Ngoma Camp. See Witness BYR, T. 9 April 2009 p. 31: "The body was found in a wood that is located opposite the military camp[...] The distance is between 30 and 40 metres," see QCN, T. 26 March 2009 p. 30: "[T]he body was found [...] next to the military camp;" see Jérôme Masinzo, T. 18 March 2009 p. 47: "His family said that his body had been found next to the Ngoma Military Camp."

305. The Chamber also notes that Rugomboka was not arrested, abducted and killed because he was *Tutsi*, but rather because he was an RPF sympathizer. Witness ZVK even testified that Rugomboka boasted about being an RPF member. In fact, during the night of 8 to 9 April, after having checked the identity cards of members of his *Tutsi* family, Hategekimana withheld only that of Rugomboka. No member of his *Tutsi* family at his home was abducted or killed. Moreover, Hategekimana suspected Rugomboka of conniving with the RPF, which explains why his house was searched for hidden weapons and other “objects” establishing that he was a RPF accomplice. Thus, the Chamber finds that Rugomboka was murdered for political reasons.

306. Therefore, the Chamber is convinced beyond reasonable doubt that, following the attack perpetrated by soldiers, civilians and *Interahamwe*, Rugomboka was abducted, tortured and murdered during the night of 9 to 10 April 1994 by Ngoma Camp soldiers led by Hategekimana.

## **7. Speech of the Interim President Sindikubwabo at the Inauguration of *Préfet Nsabimana*, Butare *Préfecture*, 19 April 1994**

### **7.1 Overview of the Parties’ Accounts**

307. The Prosecution alleges that, on 19 April 1994, Sylvain Nsabimana was sworn in as the new *Préfet* of Butare at a ceremony held at the MRND Palace in Butare. In addition to several other high-ranking officials, interim President Théodore Sindikubwabo attended the ceremony and delivered an inflammatory speech calling upon the population of Butare to “follow the example of the other *préfectures*” and to kill *Tutsis*. The Prosecution alleges that Hategekimana attended the meeting and argues that, by virtue of his presence, he endorsed President Sindikubwabo’s speech and agreed to pursue its aims.<sup>501</sup> Prosecution Witnesses Jérôme Masinzo, Laurien Ntezimana, Sadiki Sezirahiga and BRU testified about this event.

308. The Defence does not dispute that President Sindikubwabo delivered an inflammatory speech at the swearing-in ceremony on 19 April 1994, but denies that Hategekimana was present at the meeting and accordingly refutes the allegation that Hategekimana supported the message conveyed. The Defence argues that no criminal responsibility may arise in respect of this allegation. Defence Witness MZA testified about this event.<sup>502</sup>

### **7.2 Evidence**

#### *Prosecution Witness Jérôme Masinzo*

309. On 19 April 1994, Father Masinzo, a *Tutsi* priest, was in Butare town and observed that the road in front of the MRND Palace had been blocked by *gendarmes*. Father Masinzo assumed that a meeting was taking place. He subsequently learned that indeed a meeting had been held and that President Sindikubwabo had been present.<sup>503</sup> Later that evening, Father Masinzo heard President Sindikubwabo’s speech, delivered at the ceremony, broadcast over the radio. Father Masinzo understood the speech to be inflammatory. He stated, “[i]t was as if [President Sindikubwabo] was authorising the people to kill *Tutsis*.” Father Masinzo further testified that in the days immediately following President Sindikubwabo’s speech, killings escalated in Butare, including the Matyazo area.<sup>504</sup>

<sup>501</sup> Indictment para. 13; Prosecution Pre-Trial Brief para. 68; Prosecution Closing Brief paras. 280-285.

<sup>502</sup> Defence Closing Brief paras. 226-236.

<sup>503</sup> T. 18 March 2009 p. 54; T. 19 March 2009 pp. 53-54.

<sup>504</sup> T. 18 March 2009 pp. 54-55; T. 19 March 2009 p. 54.

*Prosecution Witness Laurien Ntezimana*

310. Laurien Ntezimana, a *Hutu* man, testified that on 19 April 1994, President Sindikubwabo delivered a speech at a ceremony at the MRND Palace in Butare *Préfecture*. At this ceremony, Sylvain Nsabimana was sworn in to replace incumbent *Préfet* Jean-Baptiste Habyarimana, who the witness testified was killed. Because of the important nature of the ceremony, “almost all the leaders of the *Préfecture*” and “central authorities” including President Sindikubwabo, Prime Minister Jean Kambanda and other ministers such as Pauline Nyiramasuhuko were present. Following the ceremony, there was “a turnaround in the behaviour of the Butare *Préfecture*.” Witness Ntezimana stated that, although there was violence in Butare prior to 19 April 1994, large-scale killings did not commence until after the new *Préfet*’s inauguration. According to the witness, the Presidential Guard and *Interahamwe*, who had been transferred from Kigali, launched the killings.<sup>505</sup>

*Prosecution Witness BRU*

311. Witness BRU, a *Tutsi* woman, testified that she heard a radio broadcast of a speech by President Sindikubwabo, delivered at a *commune* near Ngoma in Butare, although she could not recall the exact date of the speech or the name of the *commune*. The witness recalled that the President “used very subtle expressions in Kinyarwanda to tell the people to work,” that he “he tried to incite Rwandans to commit genocide” and that he referred to “separating the bad weeds from good crops,” which, the witness explained, “meant that *Hutus* should be separated from *Tutsis*.”<sup>506</sup>

*Prosecution Witness Sadiki Sezirahiga*

312. In 1994, Sadiki Sezirahiga was a *Hutu* member of the opposition political party, *Parti social démocrate*. Sezirahiga testified that the killings in Ngoma commenced around 22 April 1994, following a speech delivered by President Sindikubwabo in Butare, in which the President declared that “the inhabitants of Butare were indifferent and that we had to work or allow other people to work.” The witness was not asked and did not state the source of his information about the content of the speech. According to Witness Sezirahiga, following the delivery of President Sindikubwabo’s speech, soldiers and *Interahamwe*, who arrived from Kigali, perpetrated killings of *Tutsis*. On 23 April 1994, Sezirahiga was the victim of an attack upon his home, which he alleged was led by Hategekimana, and he personally witnessed soldiers and *Interahamwe* killing a *Tutsi* agronomist.<sup>507</sup>

*Defence Witness MZA*

313. Witness MZA, a *Hutu* man, testified that the violence in Ngoma intensified following a ceremony on 19 April 1994 at the MRND Palace. However, he was unsure whether the increased violence was a result of the meeting. While acknowledging that he did not attend the ceremony, the witness maintained that the *préfectoral* authorities of Butare, as well as President Sindikubwabo, were present.<sup>508</sup>

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<sup>505</sup> T. 20 March 2009 pp. 9, 17; T. 23 March 2009 p. 20.

<sup>506</sup> T. 30 March 2009 pp. 68-70.

<sup>507</sup> T. 2 April 2009 pp. 51, 53-55, 59; T. 6 April 2009, pp. 24-25.

<sup>508</sup> T. 23 June 2009 pp. 58-59.

### 7.3 Deliberation

314. There is no dispute that a ceremony, attended by high-ranking local and government officials including President Sindikubwabo, was held on 19 April 1994 at the MRND Palace in Butare, and that at this ceremony Sylvain Nsabimana was inaugurated as the new *Préfet* of Butare. Nor does the Defence appear to contest that President Sindikubwabo delivered an inflammatory speech calling for the massacre of the local *Tutsi* population.<sup>509</sup> Therefore, the principal issue for the Chamber to consider is whether Hategekimana was present at the meeting, and if so, whether his presence is sufficient to incur criminal responsibility.

315. The Prosecution submits that, as the Commander of the Ngoma Camp and a member of the *préfectoral* Committee, Hategekimana “was bound by duty to be present at this official visit of the President of the Republic to his *Préfecture*.”<sup>510</sup> The Defence argues that the Prosecution adduced no evidence to prove that Hategekimana attended the ceremony, participated in it or otherwise endorsed President Sindikubwabo’s speech.<sup>511</sup>

316. The Chamber notes that no Prosecution or Defence witness was present at the event, nor did any witness testify that Hategekimana attended the ceremony. In addition, the Prosecution does not substantiate its assertion that Hategekimana was duty-bound to attend the 19 April swearing-in ceremony. The only evidence to suggest Hategekimana’s presence at the ceremony was given by Prosecution Witness Laurien Ntezimana and Defence Witness MZA, who asserted that *préfectoral* authorities were present.<sup>512</sup> Insofar as neither of these witnesses attended the meeting nor heard that Hategekimana was present, this evidence does not constitute proof beyond reasonable doubt of Hategekimana’s presence at the MRND Palace on 19 April 1994.

318. Furthermore, the Prosecution presented no evidence that Hategekimana endorsed the President’s message as expressed at the ceremony on 19 April 1994; nor did the Prosecution adduce any evidence that, on 19 April 1994, Hategekimana agreed to further the President’s purpose of eliminating *Tutsis*.

319. Accordingly, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Hategekimana was present at the 19 April 1994 swearing-in ceremony held at the MRND Palace, where President Sindikubwabo delivered an inflammatory speech, or that Hategekimana in any way endorsed or agreed to further the purpose expressed by the President at this ceremony to eliminate *Tutsis*. The Chamber, therefore, dismisses the allegations in paragraph 13 of the Indictment.

## 8. Massacre at Matyazo Primary School, Ngoma Commune, Butare Préfecture, on or about 21 April 1994

### 8.1 Overview of the Parties’ Accounts

320. The Indictment alleges that Hategekimana is criminally responsible, both individually and as a superior, for the killing of *Tutsis* at the Matyazo Primary School, on or about 21 April 1994. According to the Prosecution, following the visit of Hategekimana to the primary school, where many *Tutsi* refugees had sought shelter, Ngoma Camp soldiers, *Interahamwe* and armed civilians,

<sup>509</sup> Defence Closing Brief para. 235.

<sup>510</sup> Prosecution Closing Brief para. 284.

<sup>511</sup> Defence Closing Brief para. 235; T. 26 April 2010 p. 56.

<sup>512</sup> See Witness Laurien Ntezimana, T. 23 March 2009 p. 20; Witness MZA, T. 23 June 2009 p. 59.

who were members of a joint criminal enterprise, launched an attack and killed a large number of the refugees. The attack commenced around twilight and continued until the early morning. In support of this allegation, the Prosecution relies on the testimonies of Witnesses BRU, Jérôme Masinzo and BRS.<sup>513</sup>

321. The Defence does not dispute the killings at the Matyazo Primary School. However, it argues that the evidence is insufficient to prove Hategekimana's individual or superior criminal responsibility for the crimes. The Defence refers to the testimony of Witness MZA.<sup>514</sup>

## 8.2 Evidence

### *Prosecution Witness BRU*

322. Prosecution Witness BRU, a *Tutsi* woman, was a teacher at the Matyazo Primary School until the events of April 1994.<sup>515</sup> She did not belong to any political organisation in 1994, but subsequently was a member of *Ibuka* from 1996 until 1998.<sup>516</sup>

323. Witness BRU recalled that *Bourgmestre* Joseph Kanyabashi and *Conseiller* Athanase drove by her neighbourhood in a vehicle in the morning of 21 April 1994, instructing the residents, "Go to the school."<sup>517</sup> About the same time, several *Tutsis* in the area, whom Witness BRU identified by name in court, were being arrested.<sup>518</sup> Witness BRU's mother, after observing armed assailants approaching their *Tutsi* neighbour's home, begged the witness and her brother to flee.<sup>519</sup> Following their mother's instructions, they climbed the fence behind their home and ran in different directions to the Pentecostal Church. However, the pastor refused their entry "because he did not want his church to be bloodied" and redirected them towards the Matyazo Primary School.<sup>520</sup>

324. At the primary school, Witness BRU saw many *Tutsis* from various localities and a number of *Hutus*, as well as *Bourgmestre* Kanyabashi, *Conseiller* Athanase and soldiers whom she thought to be the two officials' escorts. The witness heard the *Bourgmestre* tell those assembled at the school to remain calm, which she understood was "a way for him to assure that we did not flee."<sup>521</sup> Shortly afterwards, Ngoma Camp soldiers and *Interahamwe* arrived. She recognised that the soldiers were from the Ngoma Camp by their black berets and by some of their "faces," which she had previously seen several times. She also heard them say that they came from the Ngoma Camp.<sup>522</sup> When the witness observed that the soldiers and *Interahamwe* had surrounded the premises, cocking their guns and preparing to use their clubs and hatchets, she begged to be released from the school compound. A man named Ntambara convinced the other soldiers to allow her to escape. The witness did not testify to seeing Hategekimana at the Matyazo Primary School.<sup>523</sup>

<sup>513</sup> Indictment paras. 14, 26; Prosecution Pre-Trial Brief paras. 71-74, 107-108; Prosecution Closing Brief paras. 286-294.

<sup>514</sup> Defence Closing Brief paras. 237-343.

<sup>515</sup> T. 30 March 2009 p. 34.

<sup>516</sup> T. 30 March 2009 p. 64. The witness understands the organisation to be dedicated to the memory of those who died in the genocide and does "not believe that *Ibuka* has any business in the trials like the one we have before us today."

<sup>517</sup> T. 30 March 2009 p. 42.

<sup>518</sup> T. 30 March 2009 pp. 37-39.

<sup>519</sup> T. 31 March 2009 p. 12.

<sup>520</sup> T. 31 March 2009 p. 12.

<sup>521</sup> T. 31 March 2009 p. 4.

<sup>522</sup> T. 30 March 2009 p. 37. The witness was aware of other military camps in Butare, specifically the ESO and Tumba *gendarmes* camps. The witness knew Ngoma soldiers wore black berets and Tumba *gendarmes* wore red berets, but didn't recall what kind of caps ESO soldiers wore.

<sup>523</sup> T. 30 March 2009 p. 36.

325. Witness BRU fled to the house of a colleague, located approximately 500 metres from the primary school, where she hid “under a bed” for a day and a half. Throughout the night of 21 April 1994 and until dawn, the witness heard gunshots, which she asserted came from the primary school. The following day, she learned from her colleague that “some work [had been] done at the school” and that “all the people at Matyazo had been killed.” They had been shot, hacked by machetes, or burned alive. Witness BRU testified that she left her colleague’s house at nightfall on 22 April 1994, after the assailants had moved on to continue killing elsewhere.<sup>524</sup>

326. After finding her mother’s dead body near the family home, Witness BRU hid in and around a large cypress tree for several days.<sup>525</sup> From her hiding place, she saw wounded people and dead bodies in a banana field. She also watched as victims were led to a mass grave, which was surrounded by Ngoma Camp soldiers and *Interahamwe*.<sup>526</sup> When the witness left this area, she ran to her godmother’s “toilet,” where a “militiaman” found and raped her.<sup>527</sup> He then led the witness to the residence of a woman who sold beer and *kanyaga*. Witness BRU remained at this residence for about “25 days,” hiding much of the time under a bed.<sup>528</sup> From her hiding place, the witness overheard snatches of conversation and observed military boots and trousers, leading her to believe that among the patrons who bought beer from the woman were Ngoma Camp soldiers and *Interahamwe*.<sup>529</sup> Witness BYR recalled hearing the soldiers discuss a mission, ordered by the Ngoma Camp Commander, to kill two persons who opposed the genocide, Boniface and a former member of parliament, Charles Murindahabi.<sup>530</sup>

#### *Prosecution Witness Jérôme Masinzo*

327. Jérôme Masinzo, a *Tutsi*, was a priest at Ngoma Parish in 1994. The witness testified that, even after the death of President Habyarimana, many parishioners continued to attend mass until 20 April 1994. On that day, he received a telephone call informing him that soldiers had surrounded the Matyazo area, including the Matyazo Primary School, and were killing *Tutsis*. He also learned of the killings at the primary school from survivors who sought refuge at Ngoma Parish, as of 21 April 1994. Father Masinzo further recalled that Corporal “Innocent Nkurunziza” of the Ngoma Camp, who had saved his life on 30 April 1994 at Ngoma Parish, informed him that Hategekimana had deployed soldiers from the Camp to perpetrate the killings “in Matyazo.”<sup>531</sup>

#### *Prosecution Witness BRS*

328. Witness BRS, a *Hutu*, was a soldier stationed at the Ngoma Camp in 1994.<sup>532</sup> The witness testified that, on 7 April 1994, he was deployed to protect a governmental radio transmission antenna on Mount Huye in Butare, where he remained for two and a half weeks. From this site, the witness heard gunshots day and night. Upon his return to the Ngoma Camp around 24 April 1994, Witness BRS observed that many soldiers had acquired numerous new possessions. Some soldiers, including “Pacifique,” “Uwimana” and “Tuyizere,” boasted that they had looted their booty from

<sup>524</sup> T. 30 March 2009 pp. 36-37, 42-43; T. 31 March 2009 pp. 13-16.

<sup>525</sup> T. 30 March 2009 p. 44; T. 31 March 2009 pp. 16, 18-20.

<sup>526</sup> T. 30 March 2009 pp. 44-45.

<sup>527</sup> T. 30 March 2009 pp. 52-53; T. 31 March 2009 pp. 15, 23-25.

<sup>528</sup> T. 30 March 2009 pp. 52-53.

<sup>529</sup> T. 30 March 2009 p. 53.

<sup>530</sup> T. 30 March 2009 pp. 53-54.

<sup>531</sup> T. 18 March 2009 pp. 56, 59.

<sup>532</sup> T. 8 April 2009 p. 9; Prosecution Exhibit 15 (Protected Information of Witness BRS).



“Ngoma and Matyazo,” where they had killed *Tutsis* on the orders of Hategekimana. Witness BRS learned from “Cacana,” a sergeant major at the Ngoma Camp, that the gunfire he had heard from Mount Huye came from Matyazo and Ngoma.<sup>533</sup>

#### *Defence Witness MZA*

329. Witness MZA, a *Hutu*, was a taxi driver in 1994. The witness stated that he received information some time after 27 April 1994 that bandits had attacked the Matyazo area, notably the Matyazo Health Centre.<sup>534</sup>

### **8.3 Deliberation**

330. The Chamber observes that the evidence provided by Defence Witness MZA related to the “the refugees at Matyazo,”<sup>535</sup> particularly at the Matyazo Health Centre.<sup>536</sup> On a review of Witness MZA’s testimony, the Chamber does not consider that it is relevant to the massacre at the Matyazo Primary School.

331. With respect to the date of the attack at the primary school, the Chamber notes that the secondhand account of Witness BRS, a Ngoma Camp soldier, broadly placed the killings and lootings “in Ngoma and Matyazo” between 7 and 24 April 1994. Only Prosecution Witness BRU, who recounted her escape from the primary school, specifically situated the massacre as occurring during the night of 21 April 1994. Father Masinzo’s evidence, based on survivors’ accounts and a telephone call from a parishioner on 20 April 1994, supports Witness BRU’s testimony that many *Tutsis* were killed on or about 21 April 1994. While the Defence does not dispute that *Tutsi* civilians were massacred at the Matyazo Primary School, it denies that Hategekimana or Ngoma Camp soldiers participated in the killings.

332. The Chamber notes that the evidence led by the Prosecution is largely based on hearsay. None of the witnesses was present during the attack against *Tutsis* at the Matyazo Primary School. None of the witnesses saw or heard of Hategekimana’s presence at the school before or during the attack. None of the witnesses saw any identified Ngoma Camp soldier kill a victim at the school. Witness BRU’s eyewitness account is limited to seeing *Interahamwe* and soldiers, whom she identified as coming from the Ngoma Camp, surrounding the school premises on 21 April 1994, before the attack. The only other direct evidence Witness BRU provided was of gunshots, which she heard throughout the night of 21 April 1994. Her knowledge of the perpetrators of the killings at the Matyazo Primary School is limited to the account that she received from her colleague, and from her observations following the massacre, after she fled from her colleague’s home on the evening of 22 April 1994.

333. The Chamber observes that the source of the information about the attack provided by Witness BRU’s colleague was based on hearsay, which greatly diminishes its reliability and probative value.<sup>537</sup> Moreover, Witness BRU acknowledged that her recollection of events was damaged by the severe trauma that she suffered because of her experiences during the 1994

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<sup>533</sup> T. 8 April 2009 pp. 9-15.

<sup>534</sup> T. 23 June 2009 pp. 11, 40.

<sup>535</sup> Defence Closing Brief para. 341. The Chamber notes that the Defence made an error in its Closing Brief by referring to Witness MLA instead of Witness MZA.

<sup>536</sup> T. 23 June 2009 pp. 30, 37-40, 61, 63.

<sup>537</sup> T. 30 March 2009 p. 43.

genocide.<sup>538</sup> The Chamber considers that the witness's ability to identify the soldiers whom she observed prior to the attack as being from the Ngoma Camp may, therefore, lack reliability without adequate corroboration.

334. In this respect, the Chamber notes that Witness BRU, in her prior statement of 11 March 2003 given to Prosecution investigators, identified the soldiers whom she saw at the primary school on 21 April 1994, as coming from both the Ngoma and ESO Camps.<sup>539</sup> Similarly, contrary to her testimony at trial, in her prior statement, Witness BRU did not mention that she had recognised Ngoma Camp soldiers by the black berets they wore, as distinct from the red berets worn by *Tumba gendarmes*. Nor did she mention hearing the soldiers identify themselves as coming from the Ngoma Camp.<sup>540</sup> Rather, in her prior statement, the witness claimed that the Ngoma and ESO Camp soldiers whom she saw at the primary school on 21 April 1994 wore red or "spotted" berets.<sup>541</sup> Thus, although the Chamber does not doubt Witness BRU's sincerity, it does not consider her testimony to be reliable without further corroboration.

335. Both Father Masinzo and Witness BRS testified that they heard from Ngoma Camp soldiers of Hategekimana's orders to kill *Tutsis* "in Matyazo." Although their testimonies lend some support to Witness BRU's trial account, they do not corroborate her identification of Ngoma Camp soldiers at the Matyazo Primary School prior to the attack. Moreover, the Chamber considers that the reference to killings "in Matyazo" lacks specificity as to location. Indeed the inference that killings "in Matyazo" included the killings at the primary school is not the only reasonable inference to be drawn from the evidence presented. Notably, the Chamber heard testimony of other killings, targeted and large-scale, in other parts of the Matyazo area, including the Matyazo Health Centre around 21 or 22 April 1994.<sup>542</sup> Indeed, Witness BRU testified that in the morning of 21 April 1994, *Tutsis* were abducted from their Matyazo homes and killed.<sup>543</sup> She also stated that, after leaving her colleague's home on the evening of 22 April 1994, she found corpses, including her mother's, throughout the area.<sup>544</sup>

336. In view of the evidence provided, an equally reasonable inference exists that the killings that were allegedly perpetrated "in Matyazo" by Ngoma Camp soldiers on Hategekimana's orders were perpetrated in certain areas of Matyazo, but not in others. A reasonable inference also exists that even if Ngoma Camp soldiers were present prior to the attack on the primary school, they left before the attack was launched. In this regard, the Chamber notes that on 11 March 2003, Witness BRU stated that in the morning of 21 April 1994, she spoke with two soldiers, one from the Ngoma Camp and the other from the ESO Camp, both of whom told her that "their superiors had ordered them to kill *Tutsis* but that they had refused to do so."<sup>545</sup>

337. Accordingly, in view of the paucity of relevant and reliable evidence, the Chamber finds that the Prosecution has not proven beyond reasonable doubt Hategekimana's criminal responsibility for the killings at the Matyazo Primary School. The Chamber, therefore, dismisses the allegations in paragraphs 14 and 26 of the Indictment.

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<sup>538</sup> T. 31 March 2009 pp. 17, 22, 23.

<sup>539</sup> Rule 66(A)(ii) Disclosure, Witness BRU statement of 11 March 2003, K0266193.

<sup>540</sup> T. 30 March 2009 p. 37.

<sup>541</sup> Rule 66(A)(ii) Disclosure, Witness BRU Statement of 11 March 2003, K0266193.

<sup>542</sup> See below, Massacre at Matyazo Health Centre.

<sup>543</sup> T. 30 March 2009 pp. 36-39; T. 31 March 2009 p. 12.

<sup>544</sup> T. 30 March 2009 pp. 41, 44; T. 31 March 2009 p. 7.

<sup>545</sup> Rule 66(A)(ii) Disclosure, Witness BRU Statement of 11 March 2003, K0266193.

## 9. Massacre at Matyazo Health Centre, Ngoma Commune, Butare Préfecture, on or about 21 April 1994

### 9.1 Overview of the Parties' Accounts

338. The Indictment alleges that Hategekimana is criminally responsible, both individually and as a superior, for the killing of *Tutsis* at the Matyazo Health Centre, on or about 21 April 1994. According to the Prosecution, Hategekimana ordered Ngoma Camp soldiers, *Interahamwe* and armed civilians, who were members of a joint criminal enterprise, to launch this attack. The Prosecution relies on Witnesses BYP, BYR, QCL, Father Masinzo and Laurien Ntezimana.<sup>546</sup>

339. The Defence acknowledges that refugees were killed at the Matyazo Health Centre on or about 21 April 1994 but denies the involvement of Hategekimana or Ngoma Camp soldiers. Relying on the evidence of Witnesses BMR, CBJ and MZA, the Defence asserts that the perpetrators were armed civilians, over whom Hategekimana exercised no authority.<sup>547</sup>

### 9.2 Evidence

#### *Prosecution Witness Jérôme Masinzo*

340. Father Masinzo was a *Tutsi* priest at the Ngoma Parish in 1994. He testified that by 14 April 1994 approximately 300 persons had fled from attacks in their home areas to seek refuge at the Matyazo Health Centre.<sup>548</sup> About the same date, Father Masinzo met with local officials, including Hategekimana and *Bourgmestre* Kanyabashi, at the Matyazo Health Centre to assess the refugee situation. During this meeting, Father Masinzo requested and was granted permission to provide the refugees with food and health care.<sup>549</sup> The witness recalled that “there were soldiers, particularly soldiers from the Ngoma Military Camp” who guarded the refugees at the health centre.<sup>550</sup> On 15 or 16 April 1994, Father Masinzo met again with Hategekimana, *Bourgmestre* Kanyabashi and other local officials at the Matyazo Health Centre. At this meeting they decided to evacuate the refugees, whose numbers were increasing daily.<sup>551</sup> The *Bourgmestre* enlisted the witness and Laurien Ntezimana for this task because the refugees trusted them,<sup>552</sup> and he instructed Hategekimana to provide soldiers to escort the group.<sup>553</sup> In response to a question from the witness about the refugees' security, Hategekimana stated that the selected areas of relocation, Runyinya and Simba, were safe.<sup>554</sup> According to Father Masinzo, the number of persons at the Matyazo Health Centre had swelled from approximately 300 on 14 April 1994 to more than 1,500 on 17 April 1994.<sup>555</sup>

341. Father Masinzo stated that Laurien Ntezimana made an exploratory trip to Runyinya to determine whether the area was actually safe, before evacuating the refugees.<sup>556</sup> After travelling

<sup>546</sup> Indictment paras. 15, 27; Prosecution Pre-Trial Brief paras. 75, 76, 109; Prosecution Closing Brief paras. 295-321. For the sake of consistency, the Chamber designates the location of this event as the “Matyazo Health Centre” although witnesses also refer to it as the Matyazo “dispensary,” “centre,” “clinic,” or “health clinic.”

<sup>547</sup> Defence Closing Brief paras. 251-428, 435, 436.

<sup>548</sup> T. 19 March 2009 p. 47.

<sup>549</sup> T. 19 March 2009 p. 3. Father Masinzo recalled that the first meeting with the local officials was held between 13 and 14 April 1994.

<sup>550</sup> T. 18 March 2009 p. 58.

<sup>551</sup> T. 18 March 2009 p. 72; T. 19 March 2009 pp. 43, 46.

<sup>552</sup> T. 18 March 2009 p. 73; T. 19 March p. 43.

<sup>553</sup> T. 19 March 2009 pp. 43-44.

<sup>554</sup> T. 19 March 2009 pp. 43, 48.

<sup>555</sup> T. 19 March 2009 p. 47.

<sup>556</sup> T. 19 March 2009 pp. 44, 47.

four or five kilometres, Ntezimana saw houses burning and persons carrying spears and other weapons.<sup>557</sup> According to the witness, Ntezimana returned to the health centre and informed the local officials that it would not be safe to move the refugees to Runyinya.<sup>558</sup>

342. Father Masinzo testified that Hategekimana then decided that all of the refugees at the Matyazo Health Centre were to be evacuated to the Simbi Parish.<sup>559</sup> Hategekimana assigned Sergeant Musabyimana and 10 or 12 other soldiers from the Ngoma Camp to accompany the group on their trip. The witness identified two of the soldiers as Second Lieutenant Niyonteze and Corporal Innocent Nkurunziza.<sup>560</sup> Around 1.00 p.m. on 17 April 1994, Father Masinzo and Laurien Ntezimana departed with the refugees from the Matyazo Health Centre for Simbi. The refugees travelled by foot. Laurien Ntezimana transported persons who were “ill or vulnerable” in a Daihatsu pickup, and the witness followed in a Volkswagen beetle with two of the soldiers from the Ngoma Camp.<sup>561</sup> The re-location was unsuccessful, however. On route to the Simbi Parish, assailants attacked the refugees at Gako. Although the soldiers repulsed the attackers, Father Masinzo and Laurien Ntezimana, having determined that the area was not safe, led the refugees back to the Matyazo Health Centre on the night of 17 April 1994.<sup>562</sup> The refugees at the Matyazo Health Centre were attacked a few days later.<sup>563</sup> “There were only a few survivors.”<sup>564</sup>

343. On 21 April 1994, Father Masinzo learned that the Matyazo *Secteur* had been surrounded and that killings had been committed at the Matyazo Primary School and at various houses in the neighbourhood.<sup>565</sup> Survivors of the massacres in Matyazo sought shelter at the Ngoma Parish between 22 and 27 April 1994.<sup>566</sup> According to the witness, the survivors included many children as well as “young people and adults,”<sup>567</sup> all of whom were killed shortly afterwards in a massacre at the Ngoma Parish on 30 April 1994.<sup>568</sup> The survivors told Father Masinzo and another priest that “soldiers had led *Interahamwe* in carrying out those killings” at the Matyazo Health Centre.<sup>569</sup> Father Masinzo also testified that Corporal Innocent Nkurunziza of the Ngoma Camp said that Hategekimana had ordered him to commit killings “in Matyazo.”<sup>570</sup>

344. Father Masinzo testified that he initially “had trust” in Hategekimana, as an official who was “trying to help the refugees.”<sup>571</sup> The witness also believed that Hategekimana would protect the Ngoma Parish until 30 April 1994, the day that 476 refugees were killed at the Parish.<sup>572</sup> Father Masinzo stated that he “lost confidence in Hategekimana, subsequently and gradually, following

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<sup>557</sup> T. 18 March 2009 p. 73; T. 19 March 2009 pp. 44, 47. Presumably Ntezimana related this information to Father Masinzo, although the witness did not specify the source of his information.

<sup>558</sup> T. 19 March 2009 pp. 44, 47.

<sup>559</sup> T. 19 March 2009 p. 73.

<sup>560</sup> T. 18 March 2009 p. 65; T. 19 March 2009 pp. 13, 46.

<sup>561</sup> T. 18 March 2009 p. 73; T. 19 March 2009 p. 47.

<sup>562</sup> T. 19 March 2009 pp. 47-48.

<sup>563</sup> T. 18 March 2009 p. 57.

<sup>564</sup> T. 18 March 2009 p. 57.

<sup>565</sup> T. 18 March 2009 p. 54-56; T. 19 March 2009 p. 60.

<sup>566</sup> T. 18 March 2009 pp. 57-58. Father Masinzo recalled that *Conseiller* Athanase evacuated children who had survived the Matyazo massacre. The *Conseiller* transported a first group of children in his pickup truck to an orphanage in Butare. He brought a second group of children to the Ngoma Parish.

<sup>567</sup> T. 18 March 2009 p. 62. “There were 302 children. When I talk about children, I’m talking about children from one year old to 12 years old. And then you had young people and adults, and they were 174 in number.”

<sup>568</sup> T. 18 March 2009 pp. 57-58.

<sup>569</sup> T. 18 March 2009 p. 58.

<sup>570</sup> T. 18 March 2009 p. 59; T. 19 March 2009 pp. 13, 60.

<sup>571</sup> T. 19 March 2009 p. 44.

<sup>572</sup> T. 19 March 2009 pp. 44, 57-58.

what happened.”<sup>573</sup> The witness expressed the opinion that the soldiers, “particularly soldiers from the Ngoma Military Camp,” who guarded the refugees at the Matyazo Health Centre, were the same soldiers who led the *Interahamwe* in committing the killings at the same site.<sup>574</sup>

*Prosecution Witness Laurien Ntezimana*

345. Ntezimana, a *Hutu* man working at the Butare Catholic Diocese in April 1994, testified that, around 10 or 11 April 1994, a parishioner informed him that many refugees had gathered at the Matyazo Health Centre. Ntezimana and the parishioner then visited the Matyazo Health Centre, where they indeed found many refugees. As these people were without food or water, Ntezimana received authorisation to provide supplies. He testified that “[i]nitially, there were about 50 [refugees]. But, towards the end, there were more than 150-200 people there.”<sup>575</sup>

346. Ntezimana testified that “the *préfectoral* security committee asked the people to gather at the Matyazo [Health] [C]entre.”<sup>576</sup> According to the witness, Hategekimana and *Bourgmestre* Kanyabashi asked him to work with Father Masinzo to evacuate the refugees from Matyazo to Karama or Simbi. Hategekimana also assigned a sergeant and five soldiers to assist in the refugees’ transfer on 17 April 1994. On their way, however, they realised that the road was not “practicable” and that killings had commenced in those areas.<sup>577</sup> Because of the obvious danger to the refugees, he and Father Masinzo returned with the refugees to the Matyazo Health Centre. Ntezimana stated that “with hindsight,” he understood that in evacuating the refugees, “we were sending them to their deaths.”<sup>578</sup>

347. Ntezimana learned that armed soldiers had killed the refugees at the Matyazo Health Centre three or four days later. Ntezimana could not identify with certainty the military camp where the soldiers were based, as he did not personally witness the killings. However, the witness stated that the Ngoma Camp was responsible for the security of Ngoma and Matyazo *Secteurs*.<sup>579</sup>

*Prosecution Witness QCL*

348. Witness QCL, a *Tutsi*, worked as a trader and livestock breeder in 1994. The witness testified that, during the month of April 1994, he, as well as Father Masinzo, Laurien Ntezimana and others, provided food to *Tutsis* who had sought shelter at the Matyazo Health Centre. Upon first visiting the health centre, Witness QCL observed “about 700 refugees,” but the number increased until there were “at least 1500.” According to the witness, civilian and military authorities often visited the Matyazo Health Centre between 11 and 20 April 1994. Among the officials, the witness identified *Bourgmestre* Kanyabashi, the *Bourgmestre* of Huye *Commune*, as well as Hategekimana, who was usually escorted by “about 12 soldiers.”<sup>580</sup> Following a meeting held around 10.00 a.m. on 16 or 17 April 1994 at the Matyazo Health Centre with the same officials, Kanyabashi announced the decision to evacuate the refugees. Witness QCL recalled that the refugees even applauded because they thought that Kanyabashi’s announcement was “good news.”<sup>581</sup>

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<sup>573</sup> T. 19 March 2009 p. 44.

<sup>574</sup> T. 18 March 2009 p. 58.

<sup>575</sup> T. 20 March 2009 p. 12.

<sup>576</sup> T. 20 March 2009 p. 15.

<sup>577</sup> T. 20 March 2009 p. 20.

<sup>578</sup> T. 20 March 2009 p. 20.

<sup>579</sup> T. 20 March 2009 pp. 11-12, 15, 20, 21; T. 23 March 2009 pp. 8-10.

<sup>580</sup> T. 17 March 2009 p. 17.

<sup>581</sup> T. 16 March 2009 p. 30; T. 17 March 2009 pp. 16-18.

349. That evening, Hategekimana returned with other soldiers, including Pacifique, in a military vehicle. Witness QCL testified that the soldiers departed with a limited number of refugees “for Simbi, near Sovu, where it was safer.”<sup>582</sup> However, eventually some of the refugees returned to the Matyazo Health Centre because massacres had already commenced at Sovu.<sup>583</sup>

350. Witness QCL recalled that, on 20 or 21 April 1994, Hategekimana arrived at the Matyazo Health Centre with “a group of soldiers.” They led the witness and other volunteers who were preparing food for the refugees to the market square nearby, where they beat the volunteers with their rifles butts. The witness stated that “they prevented us from returning to the health centre ... to assist the refugees.”<sup>584</sup> During the beatings, the witness heard a soldier ask Hategekimana, “Can’t we stop all this?” Hategekimana replied, “Let them do what they are doing. They know what they are doing.”<sup>585</sup> On 21 April 2009, Witness QCL, who feared for his life, went into hiding.<sup>586</sup>

#### *Prosecution Witness BYP*

351. Witness BYP was an Ngoma Camp soldier in 1994. Although he was a *Tutsi*, his identity card designated his ethnicity as *Hutu*.<sup>587</sup> According to Witness BYP, Hategekimana did not know his ethnicity. However, Hategekimana did not trust the witness and did not assign any missions to him.<sup>588</sup> Witness BYP testified that he was not present at the massacres in Matyazo, which were committed over several days.<sup>589</sup>

352. According to Witness BYP, towards 18 April 1994, *Tutsis* who were fleeing from the *Interahamwe* sought shelter at the Matyazo Health Centre.<sup>590</sup> The witness recalled that, sometime after 23 April 1994, he “passed through” the Matyazo Health Centre, where he saw prisoners loading dead bodies onto a “bulldozer.”<sup>591</sup> He heard that soldiers had shot or thrown grenades at the refugees, and that *Interahamwe* had used clubs, machetes and other weapons to kill victims who were still alive.<sup>592</sup> Among the soldiers who participated in the attack at the Matyazo Health Centre, Witness BYP named First Sergeant Hitimana, Corporal Gatwaza, Corporal Rubayiza, Private Pacifique Niyozima, Private Ruteruzi and Private Cyubahiro. The witness stated that “[t]hose soldiers, in particular, boasted about what they had done.”<sup>593</sup> They spoke openly “because they did not foresee any [...] consequences.”<sup>594</sup> Witness BYP stated that the soldiers who attacked Matyazo were under the command of Second Lieutenant Fabien Niyonteze.<sup>595</sup>

353. Witness BYP further testified that *Interahamwe* leader Janvier and *Conseiller* Jacques Habimana, “collaborated” with the Ngoma Camp Commander.<sup>596</sup> They visited the Camp to request

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<sup>582</sup> T. 17 March 2009 p. 19.

<sup>583</sup> T. 17 March 2009 p. 19.

<sup>584</sup> T. 17 March 2009 p. 20.

<sup>585</sup> T. 17 March 2009 p. 20.

<sup>586</sup> T. 16 March 2009 p. 30. The witness did not clarify how long he was in hiding.

<sup>587</sup> T. 15 April 2009 p. 49.

<sup>588</sup> T. 15 April 2009 p. 49.

<sup>589</sup> T. 15 April 2009 pp. 43, 46; T. 16 April 2009 pp. 6, 13.

<sup>590</sup> T. 15 April 2009 p. 44.

<sup>591</sup> T. 15 April 2009 p. 42; T. 16 April 2009 pp. 12-13.

<sup>592</sup> T. 15 April 2009 p. 46.

<sup>593</sup> T. 15 April 2009 p. 46.

<sup>594</sup> T. 16 April 2009 p.21.

<sup>595</sup> T. 15 April 2009 p. 46.

<sup>596</sup> T. 15 April 2009 p. 47.

military reinforcements to assist them in killing *Tutsis*. The witness did not recall the dates of the meetings, but he testified that, following one meeting, Hategekimana allocated soldiers to assist the *Interahamwe* in attacks against refugees at the Matyazo Health Centre.<sup>597</sup> When asked to explain the nature of the assistance which Hategekimana provided, the witness replied, “When you assign soldiers and give them weapons and entrust to them a mission that is already a major form of assistance.”<sup>598</sup> Witness BYP further testified that Hategekimana organised briefings before sending soldiers on missions to kill *Tutsis*.<sup>599</sup> The witness stated that, while he was not included in the briefings, he heard about the mission to Matyazo from other soldiers, who “never talked in secret.”<sup>600</sup> According to Witness BYP, “They had been sent by their superior, and they were sure of the total impunity of their acts.”<sup>601</sup>

#### *Prosecution Witness BYR*

354. Witness BYR, a *Hutu*, was a soldier at the Ngoma Camp in April 1994. The witness testified that, on 20 April 1994, he travelled to the Matyazo area to visit a friend, who was a member of his prayer group. During this visit he learned that “most people” in the area were fearful about the “influx of refugees” who had gathered at the Matyazo Health Centre.<sup>602</sup> According to Witness BYR, “there was a mix of refugees” at the health centre during the day. However, at night “the refugees were separated on the basis of their ethnicity.”<sup>603</sup> The witness testified that he did not know who separated the refugees at night but expressed the opinion that soldiers from the Ngoma Camp and civilians were involved.<sup>604</sup>

355. Witness BYR testified that “later on some of those refugees were killed” by Ngoma Camp soldiers and civilians.<sup>605</sup> Among the soldiers involved in the killings, and subsequent lootings of the victims, Witness BYR named “Fabien Niyonteze,” “Gatwaza,” “Pacifique Niyonzima,” and “Chinani Nsabimana.” The witness learned about their participation from their driver, as well as from the soldiers who “brag[ged] about their acts and their exploits.”<sup>606</sup> He also learned from these soldiers that Hategekimana had ordered the killings “in Matyazo.”<sup>607</sup> Witness BYR asserted that Hategekimana, as the Commander, must have known that Ngoma Camp soldiers were involved in the killings of refugees at the Matyazo Health Centre.<sup>608</sup>

#### *Defence Witness BMR*

356. Witness BMR was 17 years old and had finished primary school in 1994. The witness’s ethnicity was contested at trial.<sup>609</sup> According to Witness BMR, around 20 or 21 April 1994, the

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<sup>597</sup> T. 15 April 2009 p. 48.

<sup>598</sup> T. 15 April 2009 pp. 48-49.

<sup>599</sup> T. 16 April 2009 pp. 8-9: “Secondly, after their briefing, people knew that they had been briefed because they would come and pick out the soldiers who had to accompany them. And those soldiers were chosen with the knowledge of everyone, and the destinations were given to the soldiers. Now, talking about Matyazo, I told you—I already mentioned the names of those who went to the Matyazo health centre.”

<sup>600</sup> T. 16 April 2009 pp. 11-12.

<sup>601</sup> T. 16 April 2009 p. 12.

<sup>602</sup> T. 9 April 2009 p. 35.

<sup>603</sup> T. 9 April 2009 pp. 35-36.

<sup>604</sup> T. 9 April 2009 p. 36.

<sup>605</sup> T. 9 April 2009 p. 36.

<sup>606</sup> T. 9 April 2009 p. 36.

<sup>607</sup> T. 8 April 2009 p. 14.

<sup>608</sup> T. 9 April 2009 pp. 35-36, 64.

<sup>609</sup> T. 29 September 2009 pp. 53-54, 65; Defence Exhibit 20 (Protected Information of Witness BMR).

witness fled to the Matyazo Health Centre after members of the population attacked her neighbourhood, burning houses and killing people. Witness BMR estimated that there were more than 100 refugees at the health centre when she arrived. Between 6.00 and 7.00 a.m. the following day, 21 or 22 April 1994, the witness awakened to whistle blows and drum beats. She saw men dressed in banana leaves and carrying clubs, spears and machetes, who were advancing towards the Matyazo Health Centre. While these assailants were breaking into the health centre and commencing their attack on the refugees, Witness BMR escaped by crawling through a hole in the barbed wire surrounding the compound. The witness testified that she did not see any soldiers among the assailants. She heard that the attack was led by an *Interahamwe* leader called “Safari.”<sup>610</sup>

#### *Defence Witness CBJ*

357. Witness CBJ, a *Hutu* woman, was studying to become a tailor in 1994. The witness testified that the Matyazo Health Centre was attacked on a Friday, approximately two weeks after President Habyarimana’s death.<sup>611</sup> On that Friday, 22 April 1994, between 9.00 and 9.30 a.m., the witness had gone to buy provisions from a wholesale shop across the road from the Matyazo Health Centre. The shop was closed, but she remained close by to observe an attack on the health centre by 50 to 100 civilian assailants in dirty clothes with their heads covered in banana leaves. They were carrying clubs, sticks, bows and machetes. Among the attackers, she named “Gakenda,” “Alphonse Karanganza” and “Mageza.” Witness CBJ did not see any soldiers among the assailants, and she did not hear of any military involvement in the attack. The witness remained on the site until around 11.00 a.m. when the noise had abated and the assailants had finished looting the corpses of their victims. Then she returned home, traumatised by what she had witnessed.<sup>612</sup>

#### *Defence Witness MZA*

358. Witness MZA, a *Hutu*, was a taxi driver and a local official in 1994. The witness testified that he attended a meeting, led by *Bourgmestre* Kanyabashi on 16 or 17 April 1994, to discuss the situation of the refugees who had congregated at the Matyazo Health Centre. According to the witness, Hategekimana was not present at this meeting.<sup>613</sup> The witness heard that, between 17 and 18 April 1994, “bandits” from Matyazo killed the refugees at the Matyazo Health Centre.<sup>614</sup>

### **9.3 Deliberation**

359. There is no dispute that, on or about 21 or 22 April 1994, an attack was launched on the Matyazo Health Centre, where *Tutsi* refugees were killed. There is also no dispute that *Interahamwe* and armed civilians participated in these killings.

#### *Refugee Situation at Matyazo Health Centre Prior to Attack on or about 21 April 1994*

360. Prosecution Witnesses Father Masinzo, Laurien Ntezimana and QCL all testified that they visited the Matyazo Health Centre on several occasions between 14 and 20 April 1994, where they provided food and medical care to the refugees who had sought shelter there. According to their corroborative first-hand accounts, the number of refugees increased on a daily basis. While their

<sup>610</sup> T. 29 September 2009 pp. 55-59, 71-76; T. 30 September 2009 p. 8.

<sup>611</sup> T. 13 July 2009 pp. 39, 49. The witness also testified that the attack occurred sometime in May.

<sup>612</sup> T. 13 July 2009 pp. 39-42, 58-64.

<sup>613</sup> T. 23 June 2009 p. 37.

<sup>614</sup> T. 23 June 2009 p. 40.



estimates of the number of persons whom they saw and fed varies, their testimonies confirm that there were at least 150 persons at the Matyazo Health Centre on or about 21 April 1994.<sup>615</sup>

361. Concerning the time period leading up to the attack, the testimonies of Father Masinzo, Ntezimana and Witness QCL indicate that, around 16 April 1994, a meeting was held at the Matyazo Health Centre with local officials, including *Bourgmestre* Kanyabashi and Hategekimana, where a decision was taken to evacuate the refugees to another location. The evidence of these witnesses establishes that Hategekimana provided Ngoma Camp soldiers to assist in a safe evacuation on 17 April 1994. Their evidence further establishes that, when the refugees encountered violence on route to Simbi, the Ngoma Camp soldiers repelled the assailants and safely escorted the refugees back to the Matyazo Health Centre. The Defence Witness MZA attended the meeting concerning the evacuation of the refugees but he stated that Hategekimana was not present at this meeting.<sup>616</sup>

362. While the Defence does not challenge this evidence, it does deny the involvement of Hategekimana or Ngoma Camp soldiers in the killings committed at the Matyazo Health Centre on or about 21 April 1994. The Chamber is convinced that there was a meeting, as alleged, and the evacuation of the refugees followed.

#### *Identification of Assailants and Role of the Accused*

363. The evidence in support of the Prosecution's allegation, that Hategekimana or Ngoma Camp soldiers were responsible for the massacre at the Matyazo Health Centre, is circumstantial and based on hearsay. No witness saw Hategekimana at the scene of the massacre, heard him order, instigate or plan the massacre. The only direct accounts of the massacre were provided by Defence Witnesses BMR and CBJ, who both testified that the assailants were civilians, not soldiers. Witness BMR, who observed the attackers before escaping through the barbed wire fence of the health centre compound, described them as "wearing banana leaves."<sup>617</sup> Witness CBJ, who watched the massacre from a shop across the road, stated that the attackers were armed with bows and arrows and that their heads were covered with banana leaves.<sup>618</sup> Both Defence eyewitnesses placed the attack on 22 April 1994. The Chamber has afforded little weight to the hearsay evidence of Defence Witness MZA, who testified that "bandits" killed the refugees at the Matyazo Health Centre between 17 or 18 April 1994.<sup>619</sup>

364. Four Prosecution witnesses have provided hearsay accounts in relation to the alleged involvement of Hategekimana or Ngoma Camp soldiers in killing *Tutsis* at the Matyazo Health Centre on or about 21 April 1994: Father Masinzo, Laurien Ntezimana and two former Ngoma Camp soldiers, Witnesses BYP and BYR.

365. Father Masinzo's hearsay testimony about the attack and the identity of the assailants derives from two sources: (i) from survivors of the killings at the Matyazo Health Centre, who

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<sup>615</sup> T. 17 March 2009 p. 16 (Witness QCL estimated that there were between 700 to 1500 refugees at the Matyazo Health Centre.); T. 19 March 2009 p. 47 (Father Masinzo testified that the number of refugees swelled from 300 on 14 April 1994 to more than 1500 by 17 April 1994); T. 20 March 2009 p. 12 (Laurien Ntezimana estimated that initially there were approximately 50 refugees at the health centre but that their number increased to 150 to 200).

<sup>616</sup> T. 23 June 2009 p. 37.

<sup>617</sup> T. 29 September 2009 p. 59.

<sup>618</sup> T. 13 July 2009 p. 39.

<sup>619</sup> T. 23 June 2009 p. 40.

provided details of the circumstances of the attack;<sup>620</sup> and (ii) from an Ngoma Camp soldier, who informed him that Hategekimana had ordered Ngoma Camp soldiers to kill “in Matyazo.”<sup>621</sup>

366. Only the first source is specific concerning the location of the attack. The Chamber notes that, according to Father Masinzo, the survivors, who fled to the Ngoma Parish after the attack on the Matyazo Health Centre, included many children as well as “young people and adults.”<sup>622</sup> From these survivors, Father Masinzo learned that soldiers had led members of the *Interahamwe* in killing the refugees at the centre.<sup>623</sup> While the survivors did not name or identify the soldiers, Father Masinzo expressed the opinion that “particularly soldiers from the Ngoma Military Camp” committed the killings at the Matyazo Health Centre.<sup>624</sup> He became convinced that Hategekimana was also involved in the massacre.<sup>625</sup>

367. With respect to the first source of information, Father Masinzo based his opinion of Hategekimana’s involvement in the massacre on the accounts of survivors, who fled to Ngoma Parish between 22 and 27 April 1994, after having experienced a traumatic, life-threatening experience at the Matyazo Health Centre. Specifically, Father Masinzo testified that “the survivors from the Matyazo dispensary massacres told [him] that soldiers and *Interahamwe* – or, rather, soldiers had led *Interahamwe* in carrying out those killings.”<sup>626</sup> The Chamber notes that Father Masinzo did not provide a detailed testimony of the survivors’ descriptions of the attack at the health centre or of the assailants. Nor did he single out any specific survivor’s account, leading him to identify the soldiers from the Ngoma Camp with the attackers, which included *Interahamwe*. In the Chamber’s view, Father Masinzo’s evidence lacks requisite precision as to the identity of the soldiers or the camp where they were based. The evidence, derived from the accounts of unnamed and deceased victims, is uncorroborated, and his personal opinion of Hategekimana’s involvement is based solely on conjecture.<sup>627</sup>

368. The Chamber notes that Ntezimana also heard that the refugees at the health centre were killed by armed soldiers. However, he was unable to specify with certainty the camp from which the soldiers originated, and his evidence does not provide specific or substantial corroboration of Father Masinzo’s evidence.<sup>628</sup> As such, the first source, survivors’ accounts, of Father Masinzo’s identification of Ngoma Camp soldiers as among the perpetrators of the Matyazo Health Centre

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<sup>620</sup> T. 18 March 2009 pp. 57, 58.

<sup>621</sup> T. 18 March 2009 p. 59. Father Masinzo also received a telephone call on 20 April 1994 from a woman, who informed him that soldiers were preventing people from leaving Matyazo, and that killings had commenced there. However, as the call was placed two days prior to the killings at the Matyazo Health Centre, it may not directly relate to the specific massacre at the Matyazo Health Centre.

<sup>622</sup> T. 18 March 2009 p. 62. “There were 302 children. When I talk about children, I’m talking about children from one year old to 12 years old. And then you had young people and adults, and they were 174 in number.”

<sup>623</sup> T. 18 March 2009 p. 58: “People who survived the massacres at the dispensary and at the primary school came gradually on the 21st at night and even on the 22nd, and up to the 27th. So those people came to the parish and they told us exactly what had happened in respect of the killings that had been perpetrated in Matyazo and Ngoma.”

<sup>624</sup> T. 18 March 2009 p. 58.

<sup>625</sup> T. 18 March 2009 p. 65: “I thought that the massacres had stopped. [...] As I told you, there had been massacres prior to that in Matyazo and in Ngoma. So I thought that the refugees who were at the parish would survive. I also thought that I had to speak to a soldier whom I knew well, who was the Ngoma Camp commander, Ildephonse Hategekimana, but I realised that I had made a mistake in thinking that way.”

<sup>626</sup> T. 18 March 2009 p. 58.

<sup>627</sup> T. 18 March 2009 p. 58 “I can confirm that there were soldiers, particularly soldiers from the Ngoma military camp. Those soldiers were guarding the refugees who were at the Matyazo dispensary. And the survivors from the Matyazo dispensary massacres told us that soldiers and *Interahamwe* – or, rather, soldiers had led *Interahamwe* in carrying out those killings.”

<sup>628</sup> T. 23 March 2009 pp. 8, 9.

attack is hearsay evidence, which the Chamber does not consider to be reliable, without adequate corroboration.

369. With respect to Father Masinzo's second source of information, Ngoma Camp soldier's account, he testified that Corporal Innocent Nkurunziza of the Ngoma Camp informed him of Hategekimana's involvement in the Matyazo massacres. Specifically, when talking to Father Masinzo on 30 April 1994, the corporal admitted his responsibility for the killings of *Tutsis* "in Matyazo," as ordered by Commander Hategekimana.<sup>629</sup> The Chamber notes that Father Masinzo's evidence is supported by the hearsay account of Witness BRS, who also heard from Ngoma Camp soldiers that Hategekimana ordered them to kill *Tutsis* "in Matyazo."<sup>630</sup> However, the reference "in Matyazo" lacks specificity as to location. It is reasonable that the killings "in Matyazo" may have been committed in certain areas of Matyazo, such as the Matyazo Primary School,<sup>631</sup> but not in other areas, such as the Matyazo Health Centre, the location of the killings alleged in paragraphs 15 and 27 of the Indictment. The Chamber, therefore, considers the hearsay evidence of Father Masinzo about the involvement of Hategekimana and/or Ngoma Camp soldiers in this specific massacre to be unreliable without further adequate corroboration.

370. Both Witnesses BYP and BYR were soldiers stationed at the Ngoma Camp in April 1994. However, according to their accounts, neither witness was an eyewitness to or participated in the killings at the Matyazo Health Centre, and neither witness provided any specific information about the attack. Their testimonies implicating other Ngoma Camp soldiers in the killings at the health centre are based on hearsay information from other soldiers, who allegedly boasted about killing and looting. The Chamber notes a lack of specificity in the testimonies of Witnesses BYP and BYR about the subject matter of the boasts or the date, duration, time or circumstances of the attack, as related by the other soldiers.

371. The Chamber also has assessed the testimony of Witness BYP about the alleged meetings among Hategekimana, the *Interahamwe* leader Janvier and *Conseiller* Jacques Habimana to discuss requested military reinforcements to kill the *Tutsis*.<sup>632</sup> The witness acknowledged that he was not present at these meetings and that he did not know or could not directly speak about the specific subject matter. Again the Chamber considers that this evidence lacks specificity and coherence regarding the place, time or date of the alleged meetings. Similarly, in relation to the alleged briefings that Hategekimana organised in preparation for the attack on the Matyazo Health Centre, Witness BYP admittedly was not included and did not know or testify about the specific subject matter.

372. Accordingly, the Chamber considers the hearsay evidence provided by Witnesses BYR and BYP, implicating Ngoma Camp soldiers in the attack on the Matyazo Health Centre, to be speculative. The witnesses' assertions that Hategekimana must have authorised Ngoma Camp soldiers to attack the Matyazo Health Centre, that he provided military reinforcements to the *Interahamwe* of Matyazo *Secteur*, or that he must have known that these soldiers killed refugees at the centre are equally speculative.

373. In view of the paucity of evidence in relation to this event, the Chamber, by majority, is unable to establish any conclusive findings about Hategekimana's alleged responsibility for the

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<sup>629</sup> T. 18 March 2009 p. 59; T. 19 March 2009 pp. 13, 60.

<sup>630</sup> See T. 8 April 2009 p. 14. See also above, Massacre at Matyazo Primary School.

<sup>631</sup> See above, Massacre at Matyazo Primary School.

<sup>632</sup> T. 15 April 2009 p. 48.

killings at the Matyazo Health Centre. Accordingly, the Chamber, Judge Masanche dissenting, dismisses the allegations in paragraphs 15 and 27 of the Indictment.

## **10. Murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, Ngoma Commune, Butare Préfecture, on or about 23 April 1994**

### **10.1 Overview of the Parties' Accounts**

374. The Indictment alleges that Hategekimana is criminally responsible, both individually and as a superior, for killing three *Tutsi* women on or about the night of 23 April 1994. The Prosecution submits that on this night Hategekimana, accompanied by soldiers from the Ngoma Camp, *Conseiller* Jacques Habimana and members of the *Interahamwe*, attacked the home of Salomé Mujawayezu in the Ngoma *Secteur* of Butare town. Hategekimana and *Conseiller* Habimana demanded to see the identification cards of the residents. Salomé Mujawayezu, Alice Mukarwesa and her sister Jacqueline Mukaburasa, who were identified as *Tutsi*, were immediately taken outside the home and killed by soldiers and *Interahamwe*, who were participants in a joint criminal enterprise. In support of its allegations, the Prosecution relies on the evidence of Witness XR.<sup>633</sup>

375. The Defence denies the involvement of Hategekimana or of any soldiers from the Ngoma Camp in the murders of the three *Tutsi* women.<sup>634</sup> It argues that the Prosecution's evidence lacks credibility. The Defence relies on the evidence presented by Witnesses ZVK and BTN.<sup>635</sup>

### **10.2 Evidence**

#### *Prosecution Witness XR*

376. Witness XR, a Congolese man, was an employee at the National University in 1994. According to the witness, "eight to ten" *Interahamwe*, armed with clubs, spears, machetes and swords, attacked the home of Salomé Mujawayezu between 6.30 and 7.00 p.m. on the evening of 23 April 1994.<sup>636</sup> This attack was successfully repelled by neighbours who came to the residents' assistance.<sup>637</sup> However, approximately 30 minutes later, the same *Interahamwe* returned, accompanied by five armed soldiers in military uniform, one of whom the witness recognised as the Commander of the Ngoma Camp.<sup>638</sup> The Commander held a pistol and his soldiers carried rifles.<sup>639</sup> They came "on foot," and as they approached Mujawayezu's home, they fired several gunshots into the air to disperse the neighbours and to dissuade them from lending any further assistance."<sup>640</sup>

<sup>633</sup> Indictment paras. 16, 28, 36 and 40; Prosecution Closing Brief paras. 322-337, 502-508. See also Prosecution Pre-Trial Brief paras. 77-82, 110-112, 138-140, 146.

<sup>634</sup> Defence Closing Brief paras. 448-450.

<sup>635</sup> Defence Closing Brief paras. 441-449, 451-453.

<sup>636</sup> T. 1 April 2009 pp. 61, 63.

<sup>637</sup> T. 1 April 2009 p. 61, T. 2 April 2009 pp. 29, 30-31. Witness XR recognised the following persons among the "eight to ten" *Interahamwe* in the first attack: Gatera, Célestin Maniragena, Jean-Marie Rugerinyange, Michel Murigande, Zairois, Édouard and Jacques Habimana. Among his "ten or fifteen" neighbours who repelled this attack, Witness XR identified: Idrissa Gatera, Froduald and Jean Gatawa.

<sup>638</sup> T. 1 April 2009 pp. 63-65.

<sup>639</sup> T. 2 April 2009 pp. 31, 40, 46. Witness XR first testified that four soldiers, including the Commander of Ngoma Camp, arrived at his home. Later in his testimony, he stated that the "Commander and four soldiers, that is, five soldiers, all came back to my house."

<sup>640</sup> T. 1 April 2009 pp. 63-64; T. 2 April 2009 pp. 27-31, 46. Witness XR told the Tribunal that "all the neighbours who had assisted us before, when they heard the gunshots, they fled."

377. Upon their arrival, the soldiers knocked on the gate and were let into Mujawayeze's house. Witness XR recognised the soldiers as military because the lights were on outside the house. When they entered, the Commander of the Ngoma Camp and "the *Conseiller*, Jacques" demanded to see identity cards.<sup>641</sup> The residents identified the *Tutsi* housemaid, who was too young to have been issued an identity document, as a *Hutu*. The only other *Tutsis* among them were Mujawayeze and her two cousins, Alice Mukarwesa and Jacqueline Mukaburasa, all whom were hiding within the house. The other residents, including Mujawayeze's husband, were Congolese. When searching the premises, the *Interahamwe* and soldiers found Mujawayeze and her cousins, whom they forced out of the house. The Commander accompanied the assailants outside. Mujawayeze and her cousins were immediately killed on the road in front of their home. There were no gunshots. Because of the outside lighting provided by several residences in the neighbourhood, the witness saw the dead bodies of the three women on the road, as he looked through the window of the house. The time was about 8.00 p.m.<sup>642</sup>

378. Witness XR testified that the Commander and the same four soldiers returned that night to Mujawayeze's home at approximately 11.00 p.m.<sup>643</sup> The Commander told the residents to present their identity cards again and to follow him outside the house, where other civilians were being killed openly.<sup>644</sup> The Commander ordered the soldiers to keep an eye on the residents to ensure that they would not escape. He then walked to his vehicle, a green Toyota pickup, which was parked about eight metres from Mujawayeze's home, and spoke for "about 20 minutes" with an unidentified man.<sup>645</sup> Before the Commander and the soldiers left the scene in the green Toyota pickup, the witness requested permission to move the bodies of Mujawayeze and her cousins into the house. However, the Commander "strictly prohibited" the witness from touching the bodies, asserting that it "was a matter for the [S]tate" and he was told to return home.<sup>646</sup>

379. On the following morning, 24 April 1994, Witness XR examined the corpses of the three *Tutsi* women, before covering them with a sheet. He observed that the bodies had been neither stabbed nor shot, concluding that the women must have been strangled or clubbed.<sup>647</sup> Around noon, prisoners arrived with a tractor to collect the bodies of the three women, as well as the bodies of other victims killed in the neighbourhood on the night of 23 April 1994.<sup>648</sup> Witness XR learned the same day that the man to whom the Commander had spoken the previous night was Michel Murigande. According to the witness, Murigande explained that he had intervened and convinced the Commander to spare the lives of the residents because they were foreigners.<sup>649</sup>

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<sup>641</sup> T. 1 April 2009 p. 64; T. 2 April 2009 p. 9. Witness XR testified that he recognised Hategekimana from having seen him at a close distance three days before at a community security meeting attended by approximately 200 persons from Ngoma. Before taking the floor to address the audience, Hategekimana was introduced by *Bourgmestre* Kanyabashi as the Commander of Ngoma Camp. The witness stated, "During the meeting, we were told that he was the Commander of the Ngoma camp. Later on I learnt his name, but at the time of the meeting, we were not told his name."

<sup>642</sup> T. 1 April 2009 pp. 59, 60, 64, 65. Witness XR stated that when the Commander came to the house with the assailants, he "did not say anything. I imagine that he had talked to those people before. When they arrived, they did what they had to do."

<sup>643</sup> T. 1 April 2009 p. 66.

<sup>644</sup> T. 1 April 2009 p. 66-67. According to Witness XR, the assailants left the *Tutsi* identity cards of their victims "at the place where they had been killed," and he was certain that he too would be killed and his body left on the road.

<sup>645</sup> T. 1 April 2009 p. 66; T. 2 April 2009 p. 45. On cross-examination, the witness confirmed that the vehicle was a green "stout Toyota pickup" with civilian plates.

<sup>646</sup> T. 1 April 2009 pp. 67.

<sup>647</sup> T. 2 April 2009 pp. 4, 47.

<sup>648</sup> T. 2 April 2009 pp. 4, 5.

<sup>649</sup> T. 1 April 2009 p. 66; T. 2 April 2009 p. 3.

380. Witness XR testified that a few days later, around 3.30 or 4.00 p.m., a soldier arrived at Mujawayeze's house. The witness recognised him as one of the assailants who had accompanied the Commander of the Ngoma Camp the night of the killings of Mujawayeze and her cousins. The soldier claimed that the Commander had asked for Mujawayeze's 17-year old daughter to be brought to him. The witness surmised that the Commander wanted the girl for sexual purposes and begged the soldier not to take her away. The soldier in turn demanded money in exchange for reporting to the Commander that the girl could not be found. Unable to provide the money, the witness instead offered the girl's bicycle, which the soldier accepted.<sup>650</sup>

381. Approximately two weeks after this incident, Witness XR walked to the Ngoma Camp to recover the bicycle of Mujawayeze's daughter. As he was conversing with a soldier manning the roadblock at the camp, he saw the Commander, leaving in a green Toyota vehicle and signalled for him to stop. The witness then explained to the Commander how a soldier had come to Mujawayeze's house and had taken the bicycle, but he omitted to mention that the soldier's stated purpose was to deliver Mujawayeze's daughter to the Commander. According to Witness XR, Hategekimana replied that he knew nothing about the matter and told him to return home.<sup>651</sup>

382. Witness XR explained that he recognised the Commander of the Ngoma Camp on the night of 23 April 1994, after having seen and heard him speak at a community meeting "some three days" earlier.<sup>652</sup> The witness recalled that approximately 200 people from Ngoma attended this meeting, which was held at the parish in the courtyard of Electrogaz. Before Hategekimana took the floor, *Bourgmestre* Joseph Kanyabashi introduced him as the Commander of the Ngoma Camp. The witness recalled that Hategekimana told the crowd that "the *Inyenzi*" had killed President Habyarimana and that he entreated them to "ensure [their] own safety."<sup>653</sup> In the courtroom, the witness identified Hategekimana as the Commander who had accompanied the soldiers to Mujawayeze's home on 23 April 1994.<sup>654</sup>

383. Apart from Hategekimana, Witness XR did not recognise any of the other soldiers among the assailants on the night of 23 April 1994.<sup>655</sup> The witness testified that he knew the soldiers were from the Ngoma Camp because they were led by Hategekimana, whom he knew to be their commander.<sup>656</sup> He also said that, because the two attacks occurred in rapid succession, the soldiers could not have come from the more distant ESO or *gendarmerie* camps.<sup>657</sup>

#### *Defence Witness ZVK*

384. Witness ZVK, a *Hutu*, was a secondary student in 1994. After learning that Mujawayeze, his former primary school teacher, had been killed on 23 April 1994, the witness and several friends set off to visit her family to express their condolences.<sup>658</sup> Upon arrival in her neighbourhood about 10.00 a.m., they "realised the situation was different" than expected, when they saw three dead

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<sup>650</sup> T. 2 April 2009 pp. 5, 6. Witness XR also testified that this soldier was wearing a black beret.

<sup>651</sup> T. 2 April 2009 pp. 44-45.

<sup>652</sup> T. 1 April 2009 p. 63.

<sup>653</sup> T. 2 April 2009 p. 9. Witness XR, elaborating on the significance of this statement, commented, "Everyone should know where his neighbour was. Everybody had to know where their neighbours were."

<sup>654</sup> T. 2 April 2009 p. 10-11.

<sup>655</sup> T. 1 April 2009 p. 64.

<sup>656</sup> T. 2 April 2009 p. 33.

<sup>657</sup> T. 2 April 2009 p. 33.

<sup>658</sup> T. 25 June 2009 pp. 37-39, 60-61. Witness ZVK could not recall the exact time or date of this visit but estimated that it was about 10.00 a.m. "a couple of days after the twentieth [of April 1994]."

women's bodies, including Mujawayezu's, near the family home.<sup>659</sup> The witness did not speak with Witness XR, who was standing at the front door, apparently in shock, or enter the house, but left the neighbourhood "less than ten minutes" after arriving.<sup>660</sup>

385. Witness ZVK heard that the three women had been killed by *Interahamwe* militiamen, including "Gatera, Édouard, and others." Witness ZVK testified that he heard no mention that soldiers had participated in the murders.<sup>661</sup> On cross-examination, the witness acknowledged that he did not know whether soldiers had joined the *Interahamwe* in killing the three *Tutsi* women.

#### *Defence Witness BTN*

386. Witness BTN, a *Hutu*, was a driver and an apprentice auto mechanic in 1994.<sup>662</sup> He testified that, on 23 April 1994, he saw, from the window of his residence, a group of 30-40 *Interahamwe* attack the homes of Mujawayezu's neighbours, Sadiki Sezirahiga and QCO between 7.00 and 8.00 p.m.<sup>663</sup> Witness BTN did not see any soldiers among them.<sup>664</sup> The witness recalled that the assailants, led by *Conseiller* Jacques Habimana, arrived on foot.<sup>665</sup> The *Conseiller* held a rifle,<sup>666</sup> and a *communal* policeman named Marc carried a gun. The other assailants wielded "stakes and clubs."<sup>667</sup> Because of the outside lights from neighbouring residences, the witness saw "what was happening in the street."<sup>668</sup>

387. After attacking Sezirahiga's house, the assailants proceeded to Witness QCO's residence, which was adjacent.<sup>669</sup> Following these attacks, Witness BTN observed the same assailants walk up the road leading to Mujawayezu's home, located approximately 100-110 metres from Witness QCO's residence. The witness testified that he did not see the attack on Mujawayezu's residence.<sup>670</sup> However, while he was imprisoned, the witness learned from other detainees that the same assailants attacked Mujawayezu's, Witness QCO's and Sezirahiga's residences on the night of 23

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<sup>659</sup> T. 25 June 2009 pp. 37, 39, 60-61. Witness ZVK testified that neither he nor the individuals who informed him of the attack were present when Mujawayezu and her two cousins were killed.

<sup>660</sup> T. 25 June 2009 p. 39.

<sup>661</sup> T. 25 June 2009 pp. 37-40, 61, 62.

<sup>662</sup> T. 23 September 2009 pp. 5, 7.

<sup>663</sup> T. 23 September 2009 pp. 10, 12-14, 24-25. Witness BTN testified that he saw, from the window of a near-by residence, the attacks on the homes of Witnesses Sezirahiga and QCO, which were committed on the same night that Mujawayezu and her two *Tutsi* cousins were killed. Witness BTN's testimony in respect of the attack on Sezirahiga's house is developed more fully in the section of this Judgement addressing the Rape of Nura Sezirahiga.

<sup>664</sup> T. 23 September 2009 p. 27. When asked whether he knew whether Ngoma soldiers participated in the attack, Witness BTN testified that "the difference between a soldier and a civilian is clear." I'm not an intellectual – an expert. "I cannot state the difference between a soldier and a civilian." (emphasis added). The Chamber notes that the corresponding French version translates "I can tell the difference between a soldier and a civilian." Considering the French transcripts to be authoritative, the Chamber understands that the witness is merely emphasising his stated ability to distinguish between categories of assailants.

<sup>665</sup> T. 23 September 2009 pp. 14, 18.

<sup>666</sup> T. 23 September 2009 pp. 14-15. Witness BTN recalled with some detail *Conseiller* Jacques Habimana's attire. He testified that Habimana wore a military jacket and "slip-ons" as shoes; he did not wear a military shirt, military trousers or any hat on his head.

<sup>667</sup> T. 23 September 2009 pp. 14, 23. Among the assailants, Witness BTN identified Jacques Habimana, who was the *Conseiller de Secteur*, "Fils," Édouard Nyagashi, Théogène Mukwiye (*alias* "Ruhango"), Michel Murigande and a *communal* policeman named Marc.

<sup>668</sup> T. 23 September 2009 pp. 12, 25. Asked whether he participated in the attack on Sezirahiga's residence, Witness BTN did not provide a clear answer.

<sup>669</sup> T. 23 September 2009 pp. 15-18, 26-29.

<sup>670</sup> T. 23 September 2009 pp. 31-32. Witness BTN acknowledged that he was not physically present and was therefore unable to ascertain whether or not soldiers were present at Mujawayezu's home when she was killed.

April 1994.<sup>671</sup> On the following day, Witness BTN assisted in burying the corpses of the victims who had been killed throughout the neighbourhood during the night of 23 September 2009.<sup>672</sup> Later, while in prison, the witness learned about Mujawayezu's death from co-detainees, who had been accused of killing her. The detainees did not refer to Mujawayezu's cousins or any other persons who might have died with her.<sup>673</sup>

### 10.3 Deliberation

388. There does not appear to be any dispute that Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa were killed on the night of 23 April 1994, following an attack on Mujawayezu's home. Nor is there any dispute that *Interahamwe* participated in the attack. The crucial issue before the Chamber is whether Hategekimana and soldiers from the Ngoma Camp were present and participated in the attack and the killings.

#### *Attack and Killings*

389. Prosecution Witness XR is the sole eyewitness to the attack on the night of 23 April 1994. The witness testified that he was present at Mujawayezu's home during both the first unsuccessful attack by *Interahamwe* and the second attack, perpetrated by the same *Interahamwe*, who returned with the Commander of the Ngoma Camp and four armed soldiers. Witness XR described how Hategekimana and the "Conseiller Jacques" entered Mujawayezu's home, demanded the residents' identity cards and forced Mujawayezu and her two *Tutsi* cousins outside onto the road, where they were immediately killed. The witness remained in the house and did not see the killings. However, he observed the corpses of the three women later that night and covered them with a sheet the next morning on 24 April 1994. The women had been neither stabbed nor shot, and Witness XR expressed the opinion that they must have been clubbed or strangled. When the Commander returned about 11.00 p.m. on the same night, Witness XR requested his permission to move the bodies of Mujawayezu and her two cousins into the house. The Commander "strictly prohibited" him from touching the bodies, asserting that it "was a matter for the [S]tate."<sup>674</sup>

390. According to established jurisprudence, it is reasonable for a trier of fact to accept some, but not all, of a witness's evidence.<sup>675</sup> In this respect, the Chamber notes that Witness ZVK's testimony corroborates XR's account about the date and place of the attack, as well as the existence of three dead female victims, one of whom he recognised as his former primary teacher, Mujawayezu. Similarly, Witness BTN provided an account of two preceding attacks on the residences of Sezirahiga and Witness QCO, on the night of 23 April 1994, following which he watched the same assailants walking toward Mujawayezu's home. The next day he assisted in removing the corpses of victims of the attacks in the neighbourhood. His recollection of the victims is not clear, however. It appears from Witness BTN's testimony that he "remained on the road" while others working with him collected the individual bodies to be buried on 24 September 1994.<sup>676</sup> The witness indicated that he did not know, until told years later by a co-detainee in prison, that Mujawayezu's corpse was among those that he removed from the public road and buried.<sup>677</sup> In the Chamber's view, Witness

<sup>671</sup> T. 23 September 2009 pp. 31. Witness BTN stated, that, while he was imprisoned, detainees accused of killing Mujawayezu also confessed to having first attacked the residences of Sezirahiga and QCO.

<sup>672</sup> T. 23 September 2009 pp. 17, 29-30.

<sup>673</sup> T. 23 September 2009 p. 30.

<sup>674</sup> T. 1 April 2009 p. 67.

<sup>675</sup> *Muvunyi* Appeal Judgement para. 128; *Seromba* Appeal Judgement para. 110; *Simba* Appeal Judgement para. 212; *Kamuhanda* Appeal Judgement para. 248; *Ntakirutimana* Appeal Judgement paras. 184, 215, 280.

<sup>676</sup> T. 23 September 2009 pp. 29-30.

<sup>677</sup> T. 23 September 2009 p. 30.



BTN's failure to identify three victims of the attack on Mujawayezu's home does not diminish the persuasiveness of Witness XR's account, as corroborated by Witness ZVK's testimony, that three women, Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, were killed on the road near Mujawayezu's home. The Chamber concludes that Witness BTN's testimony is not reliable on this issue.

#### *Identity of the Assailants*

391. In regard to the civilian assailants of the first attack, Witness XR clearly identified "eight to ten" *Interahamwe*. He specifically named Gatera, Célestin Maniragena, Jean-Marie Rugerinyange, Michel Murigande, Zairois, Édouard and Jacques Habimana. Witness XR's identification of civilian assailants is consistent with the hearsay evidence of Defence Witnesses ZVK and BTN. For example, Witness ZVK heard that Gatera and Édouard were involved in the attack and killing, and Witness BTN specifically identified Jacques Habimana among the civilian assailants.

392. Witness XR's evidence about the involvement of Hategekimana and four soldiers in the attack is first-hand but uncorroborated. The Chamber recalls that it retains discretion to rely on uncorroborated, but otherwise credible, witness testimony<sup>678</sup> because it is best placed to evaluate the probative value of evidence.<sup>679</sup>

393. Witness XR stated that the four soldiers, who accompanied the assailants during the second attack, were led by the Commander of the Ngoma Camp, Hategekimana.<sup>680</sup> The witness recognised him because, three days prior to the attack on Mujawayezu's home, he had attended a meeting where Hategekimana addressed members of the community, after he was introduced by *Bourgmestre* Kanyabashi as the Commander of the Ngoma Camp.<sup>681</sup> Witness XR had every possibility to observe Hategekimana as the witness was sitting at a distance of five meters away from the persons chairing the meeting.<sup>682</sup> According to the witness, the meeting was held at the parish in the courtyard of the Electrogaz company. At this meeting, Hategekimana, who was previously unknown to Witness XR exhorted the crowd of approximately 200 persons to "ensure their own safety." The Chamber considers that this occasion, in conjunction with two subsequent encounters with Hategekimana, confirms Witness XR's assertion that he was able to recognise the Accused as the Commander of the Ngoma Camp.<sup>683</sup>

394. The Defence denies the existence of this meeting. According to the Defence, "it is a matter of common knowledge that prior to 23 April 1994, that is around 20 April, *Bourgmestre* Kanyabashi held no other meetings in Butare at Electrogaz." The Defence asserts that the only official meeting chaired by *Bourgmestre* Kanyabashi during this period of time was "that of President Sindikubwabo, which took place on 19 April 1994."<sup>684</sup> In the Chamber's view, it is highly improbable that no other meetings were held in the region during this period, in light of the

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<sup>678</sup> *Nchamihigo* Appeal Judgement para. 42; *Muvunyi* Appeal Judgement para. 128.

<sup>679</sup> *Nchamihigo* Appeal Judgement para. 42; *Rutaganda* Appeal Judgment paras 28-29, 353, 367; *Musema* Appeal Judgment paras. 36-38; *Kayishema and Ruzindana* Appeal Judgement paras. 154, 187, 320, 322; *Čelebići* Appeal Judgement para. 506; *Aleksovski* Appeal Judgement paras. 62, 63; *Tadić* Appeal Judgement para. 65.

<sup>680</sup> T. 1 April 2009 pp. 63-65.

<sup>681</sup> T. 2 April 2009 p. 34, T. 1 April 2009 p. 63.

<sup>682</sup> T. 2 April 2009 p. 8.

<sup>683</sup> Witness XR testified that he spoke with Hategekimana later on the night of 23 April 1994, when he asked for permission to remove the bodies of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa from the road. The witness also stated that he spoke to Hategekimana several days later at the Ngoma Camp, when he attempted to retrieve the bicycle of Mujawayezu's daughter.

<sup>684</sup> Defence Closing Brief para. 447.

prevailing critical security situation. The Chamber considers that Witness XR provided a consistent and convincing first-hand account of the meeting, and finds that the unsupported arguments of the Defence cast no doubt on his evidence.

395. The Defence further challenges Witness XR's credibility, asserting that he "harbours rancour, anger and resentment" and "resorts to tricks in a bid to blame [...] the Accused."<sup>685</sup> After closely assessing Witness XR's testimony, the Chamber does not accept the assertion of the Defence that the witness is emotionally driven to falsely implicate Hategekimana in the killings of Mujawayezu and her two cousins. Indeed, the argument of the Defence is incompatible with the witness's testimony that several of the assailants whom he named have already been convicted, or are currently in detention, for the murders of the three women.<sup>686</sup> In the Chamber's view, Witness XR provided a coherent, unexaggerated, and internally consistent first-hand testimony. He was in a position to have closely observed the Commander, whom he saw during the meeting held with Kanyabashi, the soldiers and the *Interahamwe* as they entered and searched Mujawayezu's home and as they forced the three women out to the road. He later observed that their bodies had been neither stabbed nor shot. The Chamber finds that Witness XR provided convincing and credible testimony with respect to the event.

396. In assessing Witness XR's testimony, the Chamber has also considered the evidence of Defence Witnesses BTN and ZVK. Their accounts, however, do not call into question that of Witness XR about the presence of Hategekimana and soldiers at Mujawayezu's home on the night of 23 April 1994. Indeed, in April 1994, Witness ZVK had never seen Hategekimana, although he had heard of him.<sup>687</sup> The Chamber notes that Witness BTN was not asked about his knowledge of Hategekimana.

397. Neither Defence Witness ZVK nor BTN was an eyewitness to the attack on Mujawayezu's house or to the murders of Mujawayezu and her cousins. Witness ZVK admitted that he was therefore unable to know whether or not Hategekimana and Ngoma Camp soldiers were present during the attack and ensuing murders.<sup>688</sup> Similarly, Witness BTN conceded that he could only assume the lack of military involvement in the crimes, since he did not see either the first or the second attack on Mujawayezu's home.<sup>689</sup> Moreover, in light of Witness BTN's inconsistent prior out-of-court Statements, the Chamber does not believe Witness BTN's testimony that no soldiers were involved in the attack. On cross-examination, the Prosecution produced a *pro justitia* statement, entitled "Republic of Rwanda, Ministry of Justice, the Officer of the Public Prosecutor, Butare."<sup>690</sup> In this document, dated 2 September 1999, the witness is recorded as having stated that soldiers were involved in killings which occurred the same night at the homes of Sadiki Sezirahiga and Witness QCO.<sup>691</sup>

398. The hearsay testimonies of Witnesses ZVK and BTN therefore carry little weight and do not cast doubt on Witness XR's credible and internally consistent evidence that Hategekimana and soldiers under his command were involved in the attack. Accordingly, the Chamber is convinced beyond reasonable doubt that *Interahamwe*, civilians and soldiers participated in attacking Mujawayezu's house and in killing Salomé Mujawayezu and her two cousins.

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<sup>685</sup> Defence Closing Brief paras. 444-445.

<sup>686</sup> Defence Closing Brief paras. 444-446; T. 2 April 2009 p. 47.

<sup>687</sup> T. 25 June 2009 pp. 47, 49-50, 55.

<sup>688</sup> T. 25 June 2009 pp. 61-62

<sup>689</sup> T. 23 September 2009 p. 31.

<sup>690</sup> Prosecution Exhibit 35A.

<sup>691</sup> T. 23 September 2009 pp. 39-40.

399. The Chamber will now assess the reliability of Witness XR's identification of Hategekimana. While Witness XR specifically identified Hategekimana and several civilian assailants who demanded entry into Mujawayezu's residence,<sup>692</sup> he did not know any of the soldiers who were among them. The witness concluded that the four soldiers were based at the Ngoma Camp because, within half an hour after the *Interahamwe*'s first failed attack, they returned with four soldiers and the Commander of the Ngoma Camp, whom he knew. According to Witness XR, the assailants, including the Commander and the soldiers, arrived on foot.<sup>693</sup> In light of his identification of Hategekimana as the Commander of the Ngoma Camp, the witness deduced that the four soldiers were based at the Ngoma Camp.

400. The Chamber notes that "identifications made in difficult circumstances, such as darkness, obstructed view, or traumatic events, require careful and cautious analysis by a trial chamber."<sup>694</sup> In this respect, Witness XR's identification of Hategekimana during the attack was made under traumatic circumstances. However, the witness had several opportunities to have a close-up view of Hategekimana that night. Specifically, the witness stood in close proximity to Hategekimana when he and *Conseiller* Jacques Habimana entered Mujawayezu's home with the other assailants, demanded the residents' identity documents and then walked outside with Mujawayezu and her two cousins. Similarly, the witness stood again in close proximity to Hategekimana when the Commander returned the same night to Mujawayezu's home and ordered the remaining residents to produce their identity documents, before shepherding them outside to the road. There was adequate time and lighting, both in the house and on the road, for Witness XR to closely observe Hategekimana. Days later, when the witness sought to recover the bicycle of Mujawayezu's daughter, he had another opportunity to see and speak to Hategekimana in close proximity, as the Commander was departing from the Ngoma Camp in a green Toyota vehicle. The witness described Hategekimana as short, stout and of medium complexion.<sup>695</sup> He also positively identified Hategekimana in court.<sup>696</sup> After a cautious analysis of XR's testimony, the Chamber considers his identification of Hategekimana to be credible and reliable.

#### *Role of the Accused*

401. In light of Witness XR's convincing, first-hand evidence, the Chamber has no doubt that Hategekimana provided military assistance to the civilian assailants and that he was present during the murders of the three *Tutsi* women. Moreover, the only logical inference is that the four soldiers who accompanied Hategekimana were based at the Ngoma Camp. The Chamber's finding is based on Hategekimana's authoritative conduct *vis-à-vis* the soldiers both in Mujawayezu's house and later that night outside on the road. The Chamber also bases its finding on Witness XR's testimony that the armed reinforcements arrived on foot only 30 minutes after the failed first attempt by civilian assailants,<sup>697</sup> thereby indicating that the soldiers were from nearby the Ngoma Camp, and

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<sup>692</sup> T. 1 April 2009 p. 61, T. 2 April 2009 p. 27. Witness XR recognised the following persons among the "eight to ten" *Interahamwe* in the first attack: Gatera, Célestin Maniragena, Jean-Marie Rugerinyange, Michel Murigande, Zairois, Édouard and Jacques Habimana.

<sup>693</sup> T. 1 April 2009 pp. 63, 64; T. 2 April 2009 p. 33. Witness XR thought that the soldiers must have come from the Ngoma Camp, commanded by Hategekimana, and not the more distant ESO or *gendarmérie* camps.

<sup>694</sup> *Kalimanzira* Appeal Judgement para. 96.

<sup>695</sup> T. 2 April 2009 pp. 10, 35.

<sup>696</sup> T. 2 April 2009 p. 11.

<sup>697</sup> T. 2 April 2009 p. 33. Witness XR testified, "I was able to know that the soldiers came from the Ngoma Camp because the Ngoma camp commander was leading them, that is to say, Commander Ildephonse. That is one thing. And the second thing is that the two attempts – or, the two attacks came in rapid succession. So the soldiers could not have come from the ESO camp or the *gendarmérie* camp. This is why I am saying that they had come from the Ngoma camp. And thirdly, the commander is present here and can tell you where they came from."

not the ESO Camp, located elsewhere in Butare town, or the gendarmerie camp, located in Tumba.<sup>698</sup>

402. The Chamber therefore finds beyond reasonable doubt that, on 23 April 1994, Salomé Mujawayezu, Alice Mukarwesa, and Jacqueline Mukaburasa were killed by *Interahamwe* and armed civilians outside of Mujawayezu's home in the presence and with the assistance of Hategekimana and of Ngoma Camp soldiers.

403. The Chamber recalls that ordering may be proven by circumstantial evidence.<sup>699</sup> In the present case, the evidence shows that, on the night of 23 April 1994, Hategekimana arrived to support the *Interahamwe*, after the failure of their first attack. The evidence also reveals that Hategekimana, in association with the *Conseiller* Jacques Habimana, was searching for *Tutsi*. Indeed he asked the residents of Mujawayezu's home for identification documents twice that same night. The evidence further demonstrates that Hategekimana supervised the sequence of operations following the second attack: identifying the three women victims on the basis of their ethnicity; forcing them from Mujawayezu's home; killing them on the road, prohibiting Witness XR from touching or removing their dead bodies. According to the evidence, Hategekimana returned to Mujawayezu's home hours later on the same night with the same four soldiers. He again asked for identification documents, forced Witness XR and the remaining residents to the road and ordered the soldiers to watch them, while he spoke with an unidentified man. The soldiers obeyed his orders. As Hategekimana was the Commander of the soldiers, the only reasonable inference is that he ordered the soldiers to participate in the operations with the *Interahamwe* and/or armed civilians, including the killing of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on the basis of their ethnicity.

404. On the basis of the credible and reliable evidence presented, the Chamber concludes that Hategekimana was present on or near the road where these three *Tutsi* women were killed. Not only did Hategekimana approve of the criminal acts but he participated in their commission, along with the soldiers, the *Interahamwe* and armed civilians.

## **11. Rape of Nura Sezirahiga, Ngoma Commune, Butare Préfecture, on or about 23 April 1994**

### **11.1 Overview of the Parties' Accounts**

405. The Prosecution alleges that on or about 23 April 1994, soldiers and *Interahamwe*, led by Hategekimana, went to the house of Sadiki Sezirahiga in Ngoma *Secteur*, where they attacked the inhabitants. During the attack, Michel Murigande ordered one of the soldiers present to rape Nura Sezirahiga, daughter of Sadiki Sezirahiga. She was raped and then killed. The Prosecution relies essentially on the testimonies of Witnesses Sezirahiga and QCO in support of its allegation.

406. The Defence disputes the Prosecution allegation that soldiers and Hategekimana were in Sezirahiga's house during the rape and murder of his daughter, Nura.<sup>700</sup> The Defence refers to the testimonies of Witnesses BTN, MBA, MZA and ZVK in support of its submission.

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<sup>698</sup> As discussed above, Ngoma Camp was located in Ngoma *Secteur*, whereas the ESO Camp was located elsewhere in Butare Town, and the *gendarmerie* camp was located in Tumba. See also T. 2 April 2009 p. 21.

<sup>699</sup> *Kamuhanda* Appeal Judgement para. 76.

<sup>700</sup> Defence Closing Brief paras. 486, 692

## 11.2 Evidence

### *Prosecution Witness Sadiki Sezirahiga*

407. Witness Sadiki Sezirahiga, a *Hutu* Muslim, was unemployed in April 1994.<sup>701</sup> He was living in the Ngoma neighbourhood, Ngoma *Secteur*, on Ninth Avenue.<sup>702</sup> At that time, Sezirahiga was a member of the *Parti social démocrate*, a political party that was opposed to the *Mouvement révolutionnaire national pour la démocratie et le développement*, the then ruling party. The witness stated that he was one of the targeted people during the genocide because he was in the opposition party.<sup>703</sup>

408. Sezirahiga testified that the massacres started in Ngoma on 22 April 1994. On that day, at about 9.30 a.m. or 10 a.m., the witness saw a *Tutsi* agronomist being chased and killed by soldiers on Ninth Avenue.<sup>704</sup> On 23 April 1994, at around 9.30 a.m., his neighbour, Safari, a former soldier, who had become an *Interahamwe*, came to his house to warn him of an imminent attack on his house. He advised him to flee immediately with his family and to go and hide. Safari disclosed to him that he had attended a meeting during which the witness had been accused of complicity with the *Inkotanyi* and where it had been decided that he and his family “had to die.”<sup>705</sup> Sezirahiga stated that “when the attackers arrived,” a child of his neighbour, QCO, came to alert him.<sup>706</sup>

409. Around 11.30 p.m., a first group of attackers encircled the witness’s house, while he was trying to hide his *Tutsi* wife. They fired gunshots, shattering all the window panes, and they asked him to open the door.<sup>707</sup> Fearing that the attackers would throw a grenade into the house and kill all the people that were inside, his wife requested him to open the door, so that she could give herself up to the attackers. She also requested him to take care of the children after her death. According to her, the attackers had come to kill her because of her *Tutsi* ethnicity. The lights outside were on. Then, after putting on the lights inside the house, the witness opened the door. He recognized, among the soldiers, those who had killed the agronomist the previous day.<sup>708</sup> He also recognized, among the *Interahamwe*, neighbours that were close to him. They were not wearing a complete military uniform. Some wore a military jacket, and others wore a military pair of trousers.<sup>709</sup>

410. Five minutes later, Hategekimana arrived with the second group of soldiers, who joined those who were attacking Sezirahiga’s house.<sup>710</sup> The witness stated: “so I understood that these were soldiers from the Ngoma camp ... and that those soldiers were under Hategekimana’s

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<sup>701</sup> T. 2 April 2009 p. 60.

<sup>702</sup> T. 2 April 2009 p. 64.

<sup>703</sup> T. 2 April 2009 p. 65.

<sup>704</sup> T. 2 April 2009 pp. 66-68. Sezirahiga stated: “There were between three to seven soldiers” that were chasing the agronomist.

<sup>705</sup> T. 2 April 2009 p. 69.

<sup>706</sup> T. 2 April 2009 p. 76; T. 6 April 2009 p. 56.

<sup>707</sup> T. 2 April 2009 p. 76.

<sup>708</sup> T. 2 April 2009 p. 76.

<sup>709</sup> T. 6 April 2009 p. 27. Sezirahiga stated: “When I talk about *Interahamwe*, I am talking about my neighbours, neighbours that I knew.” He added: “You can, therefore, not say that there was anarchy because he was wearing such a uniform. I am talking about neighbours. And you know, when we live in town, we know almost everyone. We know many people. I said that these were people with whom we shared everything. These same people with whom we shared everything were the ones who attacked us.”

<sup>710</sup> T. 2 April 2009 p. 72. Sezirahiga stated: “I knew soldiers, generally speaking. I knew that they were soldiers when their commander, Ildephonse Hategekimana, came there with another group of soldiers who joined the soldiers who were already at my place. That was when I understood that all those soldiers were under his orders.”

orders.”<sup>711</sup> Hategekimana arrived in a small, blue Daihatsu pick-up truck, accompanied by Michel Murigande. He was wearing a camouflage outfit and was armed with a pistol.<sup>712</sup> Witness Sezirahiga used to see the commander, but he did not know his name.<sup>713</sup> It was only while they were in prison that he learnt from Michel Murigande that the commander was called Hategekimana.<sup>714</sup>

411. After dropping the soldiers, Hategekimana left the place at a time Sezirahiga did not specify. According to Sezirahiga, Hategekimana “left them [soldiers] there, and the two groups together continued killing people.”<sup>715</sup>

412. During the attack, the witness was with his wife, Adidja Umumararungu, his sons, Adamou Sezirahiga, Sadi Sezirahiga and Sefu Sezirahiga, his daughters, Narame Nura Sezirahiga, Fatuma Uwabyeyi, Sada Umotoni and Safia Uwabyeyi, as well as other people who were hiding in his house, notably a teacher called Jean-Baptiste Mutabaruka, his wife and child, a young girl called Alice and a young boy called Toto.<sup>716</sup>

413. The witness recounted what followed in the following words: “They [soldiers] held me by the belt as if they were trying to raise me up. They took me outside the house. They took me two metres away from the house.”<sup>717</sup> Jean-Claude “Fils” Murekezi brought the rest of my family outside.<sup>718</sup> A person called Jacques Habimana then asked him if he remembered that he had said at some point that MRND and CDR were “parties for killers.” When the witness answered in the affirmative, Jacques Habimana said: “now we shall show you how the MRND and the CDR kill” and that they would first kill his children before his eyes, and then they would kill his wife and, after that, they would kill him.<sup>719</sup>

414. Shortly after bringing Sezirahiga’s wife and children out of the house, Jean-Claude Murekezi stabbed Adamou, the witness’s son, on his sides, killing him instantly.<sup>720</sup> Michel Murigande then caught Nura, daughter of Sezirahiga, and handed her over to the *Interahamwe* and soldiers.<sup>721</sup> The witness stated that a soldier raped her while Murigande was immobilizing her. She was then killed.<sup>722</sup> This incident took place four metres away from the spot where Sezirahiga stood. He described the incident in the following terms: “I do not want to repeat what they did to her here. But I know my daughter was shouting and saying: ‘Dad, dad, I am going to die.’ And then she died, indeed.”<sup>723</sup>

415. Shortly afterwards, the attackers seized Sezirahiga’s wife and made her lie on the ground, and they struck her on the head with a machete. Believing that she was dead, they stopped striking

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<sup>711</sup> T. 6 April 2009 pp. 37-38.

<sup>712</sup> T. 2 April 2009 p. 72.

<sup>713</sup> T. 2 April 2009 p. 4. Sezirahiga stated: “I personally saw them, and someone who was with them explained to me that it was Hategekimana. I knew him as being the Ngoma camp commander at that time.”

<sup>714</sup> T. 2 April 2009 p. 4. Sezirahiga stated: “So Michel Murigande gave me the name of Ildephonse Hategekimana, whom I knew simply as being the Ngoma military camp commander.”

<sup>715</sup> T. 2 April 2009 pp. 80-81.

<sup>716</sup> T. 2 April 2009 p. 73.

<sup>717</sup> T. 2 April 2009 p. 76.

<sup>718</sup> T. 2 April 2009 p. 77.

<sup>719</sup> T. 2 April 2009 p. 77.

<sup>720</sup> T. 2 April 2009 p. 76. Jean-Claude Murekezi was known by his *alias* “Fils.”

<sup>721</sup> T. 2 April 2009 p. 78; T., 6 April 2009, pp. 11, 59. Sezirahiga also added that Murigande had already been tried in Rwanda as his co-accused, during which trial Murigande pleaded guilty and confessed to participating in the attack perpetrated against his home.

<sup>722</sup> T. 6 April 2009 p. 11.

<sup>723</sup> T. 2 April 2009 p. 78.

her and left her body lying on the road. Then, the soldiers, seizing the witness, started slapping and hitting him.<sup>724</sup> The witness remarked that some of the soldiers were killing members of his family, while others were simply watching.<sup>725</sup> He was two metres from where his family members were being killed. He could see all that was happening because the street lights were on.<sup>726</sup>

416. One of the soldiers then ordered the other attackers not to kill Sezirahiga until they found the firearms that had allegedly been given to him by the *Inkotanyi*.<sup>727</sup> The soldiers then searched the house, but they found nothing. Convinced that the attackers had lied to him when they told him that Sezirahiga was an accomplice of the *Inkotanyi*, the soldier ordered that they should spare his life. The soldiers and the *Interahamwe* left the witness there, near the dead bodies of his family members.<sup>728</sup> Subsequently, Jacques Habimana came back in order to force him to accompany him and the *Interahamwe* to the house of his elder brother and his wife, who were considered as *Inkotanyi* because they were members of the PSD. The attackers did not find Sezirahiga's elder brother in his house, so they told him to go back to his house.<sup>729</sup>

417. Although the attackers prohibited him from collecting the dead bodies of his family members, Sezirahiga told them that he was ready to die rather than to allow the dogs to eat their bodies. He stated that his wife was still breathing and that, in spite of the risk he was taking that night, he took the bodies of his wife and children to his house.<sup>730</sup>

418. The day after the attack, on 24 April 1994, around 8.30 a.m., a group of more than 30 soldiers and *Interahamwe* came back to Sezirahiga's house. He received them at the door of his house, so as to prevent them from entering the house and killing his wife who was already seriously wounded.<sup>731</sup> Jacques Habimana, leader of the *Interahamwe*, had sent them there, in order to arrest the witness and bring him to the *Secteur* office, "so that he should personally deal with the case," which meant the physical elimination of the witness. Throughout their journey, Sezirahiga saw dead bodies of *Tutsis* and witnessed the killing of one of them.<sup>732</sup>

419. Upon his arrival at the *Secteur* office, Sezirahiga saw the soldier who had saved his life the previous day. He ran towards him and reminded him of the previous day's events. The soldier intervened to, once again, save the witness, threatening the attackers in the following words: "If you kill him, I will kill all of you and I will kill even members of your family."<sup>733</sup> He then ordered the *Interahamwe* to accompany him to his home.<sup>734</sup>

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<sup>724</sup> T. 2 April 2009 p. 78.

<sup>725</sup> T. 2 April 2009 p. 80. Sezirahiga testified: "I was with the attackers. The attackers argued amongst themselves, since someone wanted -- some of them wanted to kill those people and others did not want the people to be killed."

<sup>726</sup> T. 2 April 2009 p. 80.

<sup>727</sup> T. 2 April 2009 p. 79.

<sup>728</sup> T. 2 April 2009 p. 80.

<sup>729</sup> T. 2 April 2009 pp. 79, 80, 84. On their way, the attackers stopped in front of the house of an old *Tutsi* man, called Hassani Muterahajuri, and forced him with his wife and a young girl, called Donatille, to come out of the house. Donatille was stabbed to death by Gatera, the younger brother of Nyagashi. Then they beat the old man and his wife.

<sup>730</sup> T. 2 April 2009 p. 85.

<sup>731</sup> T. 6 April 2009 pp. 2, 3, 4.

<sup>732</sup> T. 6 April 2009 pp. 3, 6. When he arrived at the Ninth Avenue, he recognized the body of a young businessman, called Kamina and that of a football coach, called Charles; both of them were *Tutsi*. He also witnessed the killing of Musa Kamina's brother by two of the *Interahamwe*, Kagabo and Kassim, as he was getting ready to flee.

<sup>733</sup> T. 6 April 2009 p. 7.

<sup>734</sup> T. 6 April 2009 pp. 5-9. While waiting for the *Interahamwe* to take him to his house, he watched how they were gathering together people to be killed. The witness mentioned, *inter alia*, the name of a medical doctor, Tharcisse Munyepuru, a *Tutsi* and member of the PSD, as well as the name of his wife. However, the *Interahamwe* spared the life

420. Sezirahiga was detained for three years pending his trial, and he was finally acquitted.<sup>735</sup> However, after his acquittal, the Prosecutor's Office refused to release him because of other charges against him. Nevertheless, in 1997, he was again acquitted. The witness explained that after having denounced the people who had killed his children, the said people implicated him in the killings.

#### *Prosecution Witness QCO*

421. Witness QCO, a *Tutsi* Muslim, was living in Ngoma in April 1994 with her husband and their five children.<sup>736</sup> QCO testified that attacks in her neighbourhood started on 22 April 1994. That morning, she witnessed the killing, by soldiers and *Interahamwe*, of Frédéric, a person of *Tutsi* origin, who was hiding in her house.<sup>737</sup>

422. On 23 April 1994, between 10.00 a.m. and 11.30 a.m., their neighbour, Omar, an *Interahamwe* of *Hutu* ethnicity, came to warn the witness's husband that attackers were getting ready to attack them.<sup>738</sup> That night, around 1.00 a.m., many soldiers and civilians, armed with clubs, machetes, spears and other traditional weapons came to attack their house. In their flight, QCO and her family hid themselves in several hideouts, with two of her children taking refuge in Sezirahiga's home. From her hideout, QCO saw soldiers from Ngoma camp, armed with guns, as well as civilians bearing traditional weapons, searching their house and killing one of her children.<sup>739</sup> She testified as follows: "[I]t was a big group. They did not fear anything. They left making lots of noise, shouting."<sup>740</sup> She stated that she was able to see how the attack was carried out because there was moonlight.<sup>741</sup>

423. The attackers then took different directions, with some going to her mother-in-law's house and others, to Sezirahiga's house. Upon arriving at Sezirahiga's house, the attackers forced his children, Adamou Sezirahiga and Nura Narame, to come out of the house, and killed them. They beat up his wife seriously.<sup>742</sup> According to QCO, the attackers said that they had confused them with QCO's children. Sezirahiga was a *Hutu* married to a *Tutsi* woman and, therefore, his children were of *Hutu* ethnicity.<sup>743</sup>

424. QCO testified that civilians had the approval of the soldiers, who stood watching them and encouraged them to perpetrate these crimes.<sup>744</sup> These "criminals" were *Interahamwe*, trained, in general, by soldiers. According to the witness, the attackers knew their victims in advance; they had lists of houses to attack and they carried out their attack plans according to the list.<sup>745</sup>

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of Munyeperu after Witness Sadiki had confirmed that he was, indeed, a *Hutu*. They beat up his wife to the point that her hand was paralyzed as a result of the beating.

<sup>735</sup> T. 6 April 2009 p. 16. Sezirahiga stated: "I was tried by the court of first instance and acquitted by that same court. I was also tried at the *Gacaca* court, and I was acquitted by that tribunal. And that is why you can see me here before you."

<sup>736</sup> T. 25 March 2009 pp. 25-37.

<sup>737</sup> T. 25 March 2009 pp. 39, 45, 46.

<sup>738</sup> T. 25 March 2009 p. 47.

<sup>739</sup> T. 25 March 2009 pp. 49, 50, 64.

<sup>740</sup> T. 25 March 2009 p. 51.

<sup>741</sup> T. 25 March 2009 p. 51.

<sup>742</sup> T. 25 March 2009 pp. 55- 65.

<sup>743</sup> T. 25 March 2009 p. 65.

<sup>744</sup> T. 25 March 2009, pp. 52, 63.

<sup>745</sup> T. 26 March 2009 p. 6.



425. QCO testified to having heard soldiers “encouraging” members of the population to “work”<sup>746</sup> and she heard them talking about Bikomago when they were “at work.” After “their work,” the commander told them to go.<sup>747</sup> According to the witness, those who knew these soldiers well used to say that they were based in Ngoma Camp.<sup>748</sup> She did not personally know the commander, but when the crimes were being committed, she heard that he was called Bikomago and, subsequently, she knew that his real name was Hategekimana.<sup>749</sup> He ordered civilians to bury the victims in order to prevent “the whites” from taking photographs and from seeing what they were doing.<sup>750</sup> On the day when the soldiers killed people on Tenth Avenue, QCO also heard them say: “Let us go. Bikomagu [*sic*] has already left. He has left us behind. Work is over.”<sup>751</sup>

#### *Defence Witness BTN*

426. Witness BTN, a *Hutu*, was a taxi driver and lived in Ngoma *secteur* in 1994.<sup>752</sup> The witness was arrested in August, 1994, and sentenced to 10 years’ imprisonment by an ordinary law court.<sup>753</sup> He was co-accused with Sadiki Sezirahiga and 30 or 35 other people for participating in the killing of his neighbour, Kamina.<sup>754</sup> After his release, he no longer returned to Rwanda, for fear that the *Gacaca* court would prosecute him again, as was the case with other people who had already been convicted by ordinary courts.<sup>755</sup>

427. On 23 April 1994, around 7.00 p.m. or 8.00 p.m., Witness BTN heard noise and the blowing of whistles. From his window he saw attackers going towards Sezirahiga’s house, located near his own.<sup>756</sup> He watched the scene vigilantly, fearing that his house would be the next to be attacked.<sup>757</sup> Lights from the outside of his house and from his neighbour’s house enabled him to observe what was happening in the street. BTN described a group of 30 to 40 attackers, armed with sticks and clubs. He also identified the perpetrators of the killings that took place in his neighbourhood, such as Jacques Habimana, *conseiller du secteur*, who was wearing a military jacket, Marc, a communal policeman, Mukwiye Théogène, *alias* Ruhango, and Michel Murigande.<sup>758</sup> BTN recounted how he saw the attackers knocking on the door of Sezirahiga’s house and asking Sezirahiga to open the door for them to enter. He saw them kill Sezirahiga’s children and inflict serious wounds on his wife. The attack lasted barely 20 minutes.<sup>759</sup>

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<sup>746</sup> T. 25 March 2009 p. 65.

<sup>747</sup> T. 26 March 2009 p. 7: “When those soldiers were passing, they were saying that they were at work. And when they finished what they referred to as work, their commander would tell them, ‘Let us go. Work is over.’”

<sup>748</sup> T. 6 April 2009 p. 7.

<sup>749</sup> T. 25 March 2009 p. 65; T. 26 March 2009 p. 7. Witness QCO stated: “Later on the people who knew the commander of the Ngoma Camp mentioned his name. They said that that commander was called Ildéphonse Hategekimana. We only learnt his name in the course of time.”

<sup>750</sup> T. 25 March 2009 p. 65: “They would tell the civilians to bury the victims because the whites were taking photographs and the whites were not supposed to see what they were doing. It is the leader of those soldiers who was saying that to members of the population. And from what I heard, that leader was called Bikomagu [*sic*].”

<sup>751</sup> T. 25 March 2009 p. 8.

<sup>752</sup> T. 23 September 2009 p. 7.

<sup>753</sup> T. 23 September 2009 p. 9.

<sup>754</sup> T. 23 September 2009 pp. 8, 9.

<sup>755</sup> T. 23 September 2009 p. 10: “But, subsequently, I learnt that some of my friends who had been sentenced by ordinary courts were also tried by *Gacacas*. And that is why I didn't go back to Rwanda.”

<sup>756</sup> T. 23 September 2009 pp. 15, 16.

<sup>757</sup> T. 23 September 2009 p. 35.

<sup>758</sup> T. 23 September 2009 pp. 18, 33. The Chamber notes that he mentions Michel Muligande in the transcript of 23 September 2009. The Chamber is of the view that he was, in fact, referring to Michel Murigande.

<sup>759</sup> T. 23 September 2009 pp. 19, 20.

428. Shortly afterwards, Witness BTN saw the attackers as they came out of Sezirahiga's house and move towards the house of his neighbour, QCO, and then to the home of QCO's mother-in-law. The attackers killed two of QCO's children, as well as her mother-in-law and the latter's grandchildren. The attack lasted for about 40 minutes.<sup>760</sup> After the attacks perpetrated in the homes of QCO and her mother-in-law, the attackers went to the home of Salomé Mujawayezu, whom they also killed. BTN learnt of that while in prison, from co-detainees who had been accused of murdering Salomé Mujawayezu. BTN also testified that on the day following the attack, he went to QCO's residence, as well to Sezirahiga's residence and then to the home of Salomé Mujawayezu.<sup>761</sup> He stated as follows: "Actually, we were asked to immediately bury the corpses of the victims. And I was amongst those who buried the bodies of those victims."<sup>762</sup> BTN confirmed that the attack was led by *Conseiller* Jacques Habimana. He did not see any soldier among the attackers, nor did he hear any explosions during the attacks.<sup>763</sup>

#### *Defence Witness MZA*

429. Witness MZA, a *Hutu*, was a taxi driver and was living in Ngoma *secteur* in the month of April 1994.<sup>764</sup> According to this witness, the attacks, led by Jacques Habimana and Jean-Claude Murekezi, called "Fils," started in Ngoma *secteur* on 20 April 1994. The witness stated that Gatera and Murekezi, together with bandits, attacked the Muslim neighbourhood, including the homes of Sezirahiga and QCO, killing their children.<sup>765</sup> However, MZA stated that he was not an eyewitness to the attacks, but only heard of them from members of the population who were talking about them. MZA testified that the attack against Sezirahiga's family was because of a quarrel between Murekezi and Sezirahiga.<sup>766</sup> From the information received by the witness, Gatera and Murekezi perpetrated the killings, and no soldier was involved in the attacks.<sup>767</sup>

430. Witness MZA fled from Rwanda on 4 July 1994 and went to live in exile in Goma, Congo.<sup>768</sup> When he returned to Rwanda in 1998,<sup>769</sup> he was arrested and imprisoned for three years for participating in the genocide.<sup>770</sup>

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<sup>760</sup> T. 23 September 2009 p. 21.

<sup>761</sup> T. 23 September 2009 pp. 36-38.

<sup>762</sup> T. 23 September 2009 p. 22.

<sup>763</sup> T. 23 September 2009 pp. 18-24.

<sup>764</sup> T. 23 June 2009 p. 13.

<sup>765</sup> T. 23 June 2009 p. 46: "A certain Gatera in the company of Jean Claude Murekezi launched an attack. They were with the bandits and rogues I talked about before. They attacked the Muslim quarters at the home of a man called Sadiki. And in the course of that attack, some children were killed."

<sup>766</sup> T. 23 June 2009 p. 47.

<sup>767</sup> T. 23 June 2009 p. 48.

<sup>768</sup> T. 23 June 2009 p. 48.

<sup>769</sup> T. 23 June 2009 p. 61.

<sup>770</sup> T. 23 June 2009 p. 50; T. 24 June 2009 pp. 61, 62. Subsequently, because of the intervention of the International Committee of the Red Cross, he was released and he returned to Gisagara, where nobody accused him of having participated in the genocide. He lived there for one-and-a-half years before proceeding again into exile in 2002. In a judgement rendered *in absentia* by the *Gacaca* court in 2007, he was convicted of participation in the 1994 genocide and an arrest warrant was issued against him. In his cross-examination, he stated that he was not aware of the judgement nor of the arrest warrant issued against him. He further stated that he did not take part in the genocide and that he fled from Rwanda because he feared that he would be killed, given that he was a relative of the former interim president. T. 23 June 2009 p. 50; T. 24 June 2009 pp. 61, 62.

*Defence Witness ZVK*

431. In April 1994, Witness ZVK, a *Hutu*, was a secondary school student.<sup>771</sup> He was holidaying with his family in Ngoma *secteur* at the time of the events.<sup>772</sup>

432. ZVK testified that he was not present at the time of the attack on Sezirahiga's residence, but was only told of the massacre of Sezirahiga's family members, as well as those of Salomé Mujawayezu and QCO.<sup>773</sup> He learnt that two of Sezirahiga's children, as well as other people who were hiding in his house had been killed, and that his wife had been beaten to death by the assailants. He could not recall the date of the events.<sup>774</sup> From the reports he received, the people who attacked Sezirahiga's family were the same people who had attacked QCO's family, thus causing the death of many more people.<sup>775</sup> The two houses are located side by side, and the assailants first attacked that of Sezirahiga and subsequently QCO's.<sup>776</sup>

433. That night, he heard people crying for help, but he did not go out of his house to see what was happening, for it was still dark.<sup>777</sup> ZVK also testified that he could not remember the source of his information, indicating, however, that "everyone was talking about the events."<sup>778</sup> He was not in a position to describe the perpetrators of the killings, as he was not present.<sup>779</sup> He got reports that QCO's family had been attacked by *Interahamwe* and that the attackers were the same people who had gone to the homes of Sezirahiga and Salomé Mujawayezu. The attackers included Gatera and Édouard.<sup>780</sup> Moreover, Witness ZVK went neither to Sezirahiga's house, nor to that of QCO, after the attacks.<sup>781</sup>

*Defence Witness MBA*

434. Witness MBA, a *Hutu*, sold food and beer.<sup>782</sup> The witness recounted that, in July 1994, when the *Inkotanyi* took control of his locality, he fled to Burundi and returned to Rwanda in August 1995. He testified that he pleaded guilty to genocide because that was the only means by which his release could be guaranteed.<sup>783</sup>

435. Witness MBA explained that, while in detention, he participated in *Gacaca* committee matters and participated in a project for the construction of a building in Kwitaba.<sup>784</sup> During that period, he got information on what had happened in Ngoma, Matyazo and other areas, such as

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<sup>771</sup> T. 25 June 2009 p. 34.

<sup>772</sup> T. 25 June 2009 p. 35.

<sup>773</sup> T. 25 June 2009 p. 72.

<sup>774</sup> T. 25 June 2009 p. 46.

<sup>775</sup> T. 25 June 2009 p. 46.

<sup>776</sup> T. 25 June 2009 p. 47.

<sup>777</sup> T. 26 June 2009 p. 8.

<sup>778</sup> T. 25 June 2009 p. 46.

<sup>779</sup> T. 25 June 2009 p. 72.

<sup>780</sup> T. 25 June 2009 p. 45: "Based on the reports that we had, it was said it was the same people, Gatera, Édouard, and others who were perpetrating those crimes."

<sup>781</sup> T. 25 June 2009 p. 47.

<sup>782</sup> T. 24 June 2009 p. 71.

<sup>783</sup> T. 24 June 2009 p. 80. When he returned, he was arrested and prosecuted for genocide, and was detained in the communal prison, then transferred to Karubanda prison. On 31 August 2005, he was released; then, he returned to his home, following a Presidential decision, ordering the release of detainees who had pleaded guilty. In January 2006, he went into exile for reasons of personal security, as members of the local community had threatened to imprison him.

<sup>784</sup> T. 24 June 2009 p. 81.

Muyira and Kibayi.<sup>785</sup> Moreover, he had been detained, together with Sezirahiga, in the Karubanda prison, and thus became conversant with his file. According to MBA, Sezirahiga accused another detainee called Murekezi “Fils” of carrying out the killing of his family in his house. He also mentioned the names of Édouard Nyagashi, Kalisa and others. However, MBA stated that, in his file, Sezirahiga never made mention of the involvement of soldiers.<sup>786</sup>

436. Witness MBA further stated, in support of his assertions, that two men called “Johnny” and “Mushi” had visited Sezirahiga in prison in order to discuss his case. MBA testified that he overheard, in part, the conversation between Sezirahiga and Johnny, and that Sezirahiga incited him to involve soldiers in his case. Subsequently, at Sezirahiga’s request, Johnny brought in additional facts about his case in order to implicate the soldiers.<sup>787</sup> But his efforts were in vain because the *Gacaca* committee refused to include these new allegations.<sup>788</sup>

### 11.3 Deliberation

#### *Preliminary Issue*

437. Paragraphs 17, 45 and 49 of the Indictment generally pertain to an attack launched at Sezirahiga’s home by soldiers and *Interahamwe*, led by the Accused Ildephonse Hategekimana, during which Nura, Sadiki Sezirahiga’s daughter, was raped and then killed.

438. Through the testimonies of Witnesses Sezirahiga and QCO, the Prosecution provided details of the attack on Sezirahiga’s home which occurred on 23 April 1994. However, given that the Indictment does not specifically mention that the Accused is responsible for the murder of Sezirahiga’s son or the serious injuries inflicted on his wife, the Chamber will make no finding regarding those events, although they were described in detail during Sezirahiga’s testimony.

#### *Attack on Sezirahiga’s Home*

439. That an attack was launched against Sezirahiga’s home and that Nura was killed are not contested. The fundamental issue is to determine whether Hategekimana and the soldiers of Ngoma Camp were present at the scene of the crime and if they were involved in the attack.

440. Witness Sezirahiga gave a detailed and credible description of the attack on his house which started around 11.30 p.m. on 23 April 1994. A first group comprising soldiers and *Interahamwe* arrived and surrounded his house. About five minutes later, Hategekimana followed with a second group of soldiers in a blue Daihatsu pick-up with Michel Murigande on board.

441. The Chamber notes that the account given by Witness QCO, Sezirahiga’s neighbour, corroborates most of Sezirahiga’s testimony. While providing minute details, QCO submits that many soldiers armed with guns, and civilians carrying machetes, spears and other traditional weapons, first attacked her house in the night of 23 April 1994. She escaped with her husband and children and they hid themselves at different locations. From her hiding place, she saw soldiers coming out of her house and killing one of her children who had remained in the house after they fled. QCO also witnessed the murder of her other children who had found refuge at her mother-in-

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<sup>785</sup> T. 24 June 2009 p. 81.

<sup>786</sup> T. 24 June 2009 p. 81.

<sup>787</sup> T. 24 June 2009 p. 86.

<sup>788</sup> T. 24 June 2009 p. 86.

law's house. She stated clearly that the soldiers came from Ngoma Camp.<sup>789</sup> The soldiers and *Interahamwe* then separated and went in different directions, including that of Sezirahiga's house. She watched the soldiers and civilians as they got into Sezirahiga's home that night of 23 April 1994.<sup>790</sup> Her testimony corroborated Sezirahiga's account that the soldiers and civilians had killed two of his children and seriously injured his wife on the road, in front of his house. It was because of the moonlight that she was able to witness that tragic scene.

442. The Chamber notes that Sezirahiga stated that his house had been attacked on 23 April 1994 around 11.30 p.m., while QCO said that the attack occurred "in the same night" around 1.00 a.m. The Chamber considered QCO's testimony before the court that her neighbour Omar came and warned her, around 11.00 a.m. on 23 April, of an impending attack on her house. She said that the attack took place on that same day at "one o'clock in the morning."<sup>791</sup> The Chamber understands that reference is being made to 1 o'clock in the morning of 24 April, as she said in her prior statement of 1 October 1998.<sup>792</sup> The Chamber finds that the testimonies of the two witnesses do not show any major discrepancies as to the exact time of the attacks but show, at the most, that the attacks took place either very late in the night of 23 April 1994 or very early in the morning of 24 April 1994. The Chamber also notes that Defence Witness BTN had testified that the attack commenced in the night of 23 April 1994 around 7 or 8 p.m., which is different from the time estimated by Sezirahiga and QCO. The Chamber holds that that is a minor discrepancy, given that the three witnesses agree that the attack took place either in the night of 23 April 1994, or very early in the morning of 24 April, around 1.00 a.m.

#### *Identity of the Assailants*

443. Prosecution Eyewitnesses Sezirahiga and QCO testified that soldiers were present, while Defence Witness BTN denies any involvement of soldiers in the attack.

444. Witness Sezirahiga testified that two groups of soldiers had attacked his house on 23 April 1994. And, among the assailants, he also identified his neighbours whom he described as *Interahamwe*. His neighbours were not wearing a complete uniform but were wearing either a military jacket or a military pair of trousers. The witness also recognized Jean-Claude Murekezi Jr., Jacques Habimana and Murigande who participated in the rape and murder of his daughter Nura, in the murder of his son Adamou and in the attempted murder of his wife. Witness QCO corroborated Sezirahiga's testimony about the participation of armed soldiers and civilians in the attack.

445. The Defence argues that Witness QCO mentioned "the presence of two battalions of soldiers at her home," comprising a total number of not less than 1000 (one thousand) individuals."<sup>793</sup> The Chamber considers that the Defence misconstrued Witness QCO's testimony and notes that QCO only mentioned the presence of many soldiers and *Interahamwe* in the night of 23 April 1994. The Chamber therefore dismisses this Defence allegation.

446. The Defence also alleges that there is "a blatant contradiction between the testimonies of Prosecution Witnesses Sadiki Sezirahiga and QCO regarding the presence and participation of soldiers in the crimes." On the one hand, according to QCO, "the soldiers were present at the scene but [they] remained passive, meaning that [they] let the civilians commit the alleged [crimes]." On

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<sup>789</sup> T. 25 March 2009 p. 64.

<sup>790</sup> T. 25 March 2009 pp. 49-51.

<sup>791</sup> T. 26 March 2009 pp. 11-15.

<sup>792</sup> T. 26 March 2009 p. 15.

<sup>793</sup> Defence Closing Brief para. 461.

the other hand, according to Sezirahiga, the Commander of Ngoma [camp] had “brought soldiers as reinforcements,” who took active part in the crimes.<sup>794</sup> The Chamber notes that, in fact, Witness QCO said that the soldiers watched *Interahamwe* massacre Sezirahiga’s family, but the witness also added that the soldiers were overseeing the *Interahamwe* and their attitude encouraged the *Interahamwe* to commit the crimes. The Chamber concludes that soldiers, by their presence and overseeing of the *Interahamwe*, actively participated in the commission of the alleged crimes. Consequently, the Chamber dismisses the allegation of the Defence on this point.

447. Defence Witness BTN is the only eyewitness who contests the presence of soldiers during the attack on Sezirahiga’s home. He said that he saw only *Interahamwe*, from his window, during that attack.

448. The Chamber notes that BTN’s court testimony contradicts his statement in 1997 at the Public Prosecutor’s Office in Butare. In that prior statement, BTN admitted that soldiers had attacked the houses of Sezirahiga and QCO, and that the Muslims of the neighbourhood, who came to their rescue, had been able to stop them. Nevertheless, the said soldiers asked for reinforcement from the officers of ESO camp and returned to the attack.<sup>795</sup> BTN said that he had made his statement under duress and that he had been beaten and forced into saying that the soldiers were involved in the attack. His testimony is said to have been rejected by a Rwandan court for the above-mentioned reasons. The Chamber finds that Witness BTN has not provided any plausible explanation on the circumstances in which his statement was given and the reasons why he had been forced to do so.

449. Furthermore, the Chamber observes that the witness was sentenced to 10 years imprisonment for the murder of Kamina, one of his *Tutsi* neighbours, who was also a neighbour to Sezirahiga. As a consequence, his testimony should be considered with the necessary caution and circumspection. After examining his evidence, the Chamber expresses its doubts over his explanation that he was afraid of being attacked that night by *Interahamwe* that he was anxiously watching from his window. The Chamber notes that, taking into account the judgement delivered against him, during the events, BTN is said to have been one of the attackers who purportedly killed his *Tutsi* neighbour. The Chamber finds that BTN’s testimony is neither credible nor reliable solely as concerns the involvement of *Interahamwe* in the attack against the Sezirahiga family.<sup>796</sup>

450. Apart from Witness BTN, the Defence presented three other witnesses: MBA, MZA and ZVK, who equally denied the presence of soldiers during the attack against the Sezirahiga family. MBA did not witness the attack but challenged the veracity of Sezirahiga’s account. While in detention for genocide, MBA took part in *Gacaca* court proceedings and got acquainted with the case file of Sezirahiga who at the time was detained in the same prison.<sup>797</sup> MBA said that Sezirahiga had never mentioned the participation of soldiers in that attack, not until the day a certain “Johnny” and “Mushi” had visited him in prison. After his conversation with these persons,

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<sup>794</sup> Defence Closing Brief para. 463.

<sup>795</sup> T. 23 September 2009 pp. 47, 50. The documents are entitled: “Republic of Rwanda, Ministry of Justice, Public Prosecutor’s Office, Butare.”

<sup>796</sup> The Chamber notes a marked difference between the French and English versions of the transcript of 23 September 2009. In fact, Witness BTN said in the French version (p. 35): “*Quoi qu’il en soit, la différence entre un militaire et un civil est nette. Je ne suis pas un intellectuel, je dirais, mais ça ne demande pas un expert de pouvoir établir la différence entre un militaire et un civil,*” whereas the English version indicates (p. 27): “The difference between a soldier and a civilian is clear. I’m not an intellectual – an expert. I cannot state the difference between a soldier and a civilian.” Since the French version is authentic in the circumstances, so the Chamber will retain the French original version of the transcript of 23 September 2009.

<sup>797</sup> The Chamber notes that MBA was detained in 1995 and *Gacaca* courts were set up only as from the year 2000.

Sezirahiga “wanted to include soldiers in his case [...] but his attempt [was] aborted.”<sup>798</sup> The Chamber notes that MBA testified that he did not follow the entire discussion with Johnny and Mushi. Furthermore, he did not mention the date of their visit or provide any details about their identity.<sup>799</sup> These shortcomings raise a doubt as to the credibility and reliability of his testimony. In any event, Witness Sezirahiga had already constantly referred to the presence of armed soldiers and civilians in his *pro-justitia* testimonies of 2 May 1997 and 2 November 1997<sup>800</sup> before the *Gacaca* courts on the attack launched against his house. The Chamber consequently dismisses MBA’s allegation on the non-involvement of soldiers.

451. Defence Witnesses MZA and ZVK were not present at the scene and their testimonies are based only on hearsay, without any further detail about their source of information. The Chamber cannot therefore accept their testimony on the absence of soldiers.

452. Although Defence witnesses are not credible as concerns the non-involvement of soldiers in the attack against the Sezirahiga family, the Chamber nevertheless retains from their testimony that *Interahamwe* leaders were present; in particular, Gatera, Jean-Claude Murekezi, Jacques Habimana and Michel Murigande.<sup>801</sup> The Chamber also notes that Witness Sezirahiga also identified a number of *Interahamwe*, such as Jean-Claude Murekezi Jr., Jacques Habimana and Michel Murigande. According to his testimony, Murekezi stabbed his son Amadou, Murigande participated in the rape of his daughter Nura, and Jacques Habimana wanted to kill him because he had weapons. In fact, the latter ordered *Interahamwe* to take him to the communal office the following morning so that he could “take care of him.” Murigande entered a plea of guilty and was convicted for the crimes he committed.

453. It emerges from the foregoing that the Chamber is convinced beyond reasonable doubt that the assailants at Sadiki Sezirahiga’s home were armed soldiers, *Interahamwe* and civilians.

#### *Presence of the Accused*

454. Sezirahiga is the only eyewitness of Hategekimana’s presence during the attack against his family. He clearly identified the Commander of Ngoma Camp as the leader of the second group of soldiers. He knew him before but did not know his name.<sup>802</sup> The Chamber recalls that it is settled jurisprudence that a Trial Chamber may, in the exercise of its sovereign power of assessment, rely on uncorroborated testimony of a witness, as long as the witness is credible.<sup>803</sup>

455. The Chamber is of the view that Sezirahiga must have known the authorities of his *secteur*; in particular, the commander of the camp responsible for the maintenance of peace and security in his *secteur*. Sezirahiga further testified that Michel Murigande, one of the assailants who pleaded guilty to the attack against his family, told him, while both of them were in detention at Karubanda

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<sup>798</sup> T. 24 June 2009 p. 85.

<sup>799</sup> T. 24 June 2009 p. 83.

<sup>800</sup> A *pro-justitia* is an investigation report prepared by the Legal Officer of the Specialized Chamber of the Court of First Instance.

<sup>801</sup> T. 23 June 2009 p. 47. Witness MZA said “A certain Gatera, accompanied by Jean-Claude Murekezi, launched an attack. They were with the hoodlums or bandits I talked about. They attacked the home of a man called Sadiki in *Quartier Musulman* and, during that attack, children were killed.” T. 24 June 2009 p. 82. Witness MBA heard Sezirahiga saying that Murekezi Jr. had led “an attack that had resulted in the killing of his children.” T. 23 September 2009 pp. 18, 22, 33. Witness BTN identified Jacques Habimana, “Fils,” and Michel Murigande among the 30 to 40 assailants who attacked Sezirahiga’s family.

<sup>802</sup> T. 6 April 2009 pp. 4, 47.

<sup>803</sup> *Gacumbitsi* Appeal Judgement para. 72; *Niyitegeka* Appeal Judgement para. 92.

prison, that the name of the Commander of Ngoma Camp was Ildephonse Hategekimana.<sup>804</sup> While entering his plea of guilty, Michel Murigande had acknowledged the involvement of Hategekimana and soldiers of Ngoma Camp in the attack.<sup>805</sup> For his part, Sezirahiga lodged a complaint against the Commander of Ngoma Camp, but the latter, like the other soldiers being sought for prosecution, could not be found.<sup>806</sup> The Chamber accepts that he knew Hategekimana before the events as Commander of Ngoma Camp and, even if he did not know his name, he usually saw him in the neighbourhood.<sup>807</sup>

456. The Chamber notes that Sezirahiga indicated that Hategekimana had left his house at one point in time, leaving behind soldiers, who continued to commit crimes. He could have therefore further implicated Hategekimana in the crimes he has described. But he did not do so. Consequently, the Chamber does not doubt Sezirahiga's sincerity and considers that his testimony is direct, reliable and coherent evidence.

457. The Defence contests the credibility of Sezirahiga's testimony regarding the presence of Hategekimana who is said to have led a second group of soldiers to the scene.<sup>808</sup> To support this assertion, the Defence points out that, in his statement of 1 October 1998, the witness had talked about the presence of two Second Lieutenants among the group of assailants who came to attack his family. In that statement, Sezirahiga did not expressly mention the presence of the Accused at the scene of the crime. The Chamber notes that the witness stated as follows: "The group of assailants was led by a second lieutenant whom I knew long before at Ngoma Camp; I do not know his name but he was short and a bit light in complexion. The group also included another Second Lieutenant who was fat and I later learnt from Michel Murigande that he hailed from Ruhengeri." The Chamber notes that Sezirahiga saw a Second Lieutenant whom he knew before, which is consistent with his court testimony.<sup>809</sup> Further, the physical description of a Second Lieutenant who was "short and a bit light in complexion" fits Hategekimana.<sup>810</sup> The witness stated clearly that the link was "Ngoma Camp." The Chamber points out that there were two Lieutenants in charge of Ngoma

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<sup>804</sup> T. 6 April 2009 pp. 4, 47. The Defence argued that "[Sadiki Sezirahiga was] incoherent and lack [ed] credibility, by claiming in the same circumstances at one point that he saw Lt. Hategekimana at the crime scene where he purportedly led a second group of attackers to the witness' home and at another point that he was only informed of the presence of Lt. Hategekimana at the scene on that fateful day by Michel Murigande when he was in prison"; Defence Closing Brief para. 462. The Chamber however notes that this is a misconstruction of the witness' testimony. The witness said that he only got to know the name in prison.

<sup>805</sup> T. 6 April 2009 pp. 63, 64: "I simply talked about the commander. It is only recently that I learned his name, that is, when Michel Murigande confessed and pleaded guilty. That is when he mentioned his name [Hategekimana]."

<sup>806</sup> T. 6 April 2009 pp. 48, 63.

<sup>807</sup> T. 2 April 2009 p. 72: "I did not visit him, but I used to see him. So I knew him."

<sup>808</sup> T. 6 April 2009 pp. 38, 46.

<sup>809</sup> T. 2 April 2009 p. 72.

<sup>810</sup> T. 16 March 2009 p. 52. Witness QCL: "At the time, that is in 1994, Bikomago was a young man who was handsome, strong, and he always wore his military attire, except when he was taking his exercises. He always wore military camouflage. He wasn't tall, he had a big chest, and he was not very dark. I believe he took care of his skin because he was handsome." Witness Father Jérôme: "He was dark in complexion, and he had an average height. I believe he must have been about 1 metre 70 or 1 metre 75. He was a young, strong man. He appeared to be younger than myself. He could have been my junior brother. At the time, in 1994, I was 30-and-a-half years, and I believe he must have been around 28. He could not look people in their eyes when they talked to him. He would often look to the ground." (T. 19 March 2009 p. 10); Witness QDC: "I was able to see him from close quarters. He was of medium height, quite stocky." (T. 23 March 2009 pp. 68, 69); Witness BUR: "Hategekimana has a dark complexion. He is of average height. He has red eyes. And he has a full face." (T. 7 April 2009 p. 9); Witness QCQ: "He was of average height with a complexion that was neither very light nor very dark." (T. 8 April 2009 p. 78); Witness BYO: "He was a man with a black—a dark complexion in military uniform, and he was wearing a coat. I wouldn't know whether it was a civilian or military coat. He was a man aged approximately 38 years. And he was somewhat stockily built." (T. 4 May 2009 p. 27).



Camp during the events: Commander Hategekimana and his deputy, Niyonteze.<sup>811</sup> The Chamber concludes from Sezirahiga's account that the person concerned can only be Hategekimana. The Chamber considers that the witness's statement of 1 October 1998 is consistent with his court testimony regarding the presence of Hategekimana during the attack against his family. Consequently, the Chamber dismisses Defence allegations on this point.

458. After assessing the totality of the evidence, the Chamber is of the view that Sezirahiga recognized the Commander of Ngoma Camp whose name was later confirmed to him as being Ildephonse Hategekimana. The Chamber therefore finds that it was indeed Hategekimana who was leading the soldiers of Ngoma Camp in the attack against Sezirahiga's family.

#### *Rape of Nura*

459. Sezirahiga is the only eyewitness to the rape of his daughter Nura. From a distance of four metres, he saw Michel Murigande "deliver" his daughter to a soldier from Ngoma Camp and *Interahamwe*. The soldier raped her while Murigande was immobilizing her. Thereafter, she was killed. After assessing the evidence, the Chamber cannot determine exactly whether Hategekimana was at Sezirahiga's residence when Nura was being raped. According to the witness, Hategekimana dropped off Michel Murigande and a reinforcement of soldiers at the scene in the night of 23 April and then left, as the attackers remained and continued "to kill people together."<sup>812</sup> The Chamber notes that Witness BTN also testified about the presence of Murigande among the assailants at Sezirahiga's home.

460. The Defence contends that "nothing identifies the rapist in the testimony of [Sadiki Sezirahiga]. In the circumstances, there is no basis for linking that unknown soldier, if he ever existed, to Ngoma Camp."<sup>813</sup> The Chamber however notes that it found that Ngoma Camp soldiers were present during the attack, as was Hategekimana. Consequently, the only possible deduction is that it is a soldier from Ngoma Camp who raped Nura.

461. On cross-examination, the Defence raised the contradiction between Sezirahiga's court testimony and his prior statement of 2 November 1997.<sup>814</sup> In that statement, Sezirahiga said that Michel Murigande had raped his daughter; while during the trial, he said that Murigande had delivered his daughter to soldiers and *Interahamwe*. And then one of the soldiers had raped her while Michel Murigande purportedly immobilized her. The witness explained the discrepancy between the two versions by saying that, whether it was Murigande or the soldier, they were together and Michel Murigande had immobilized his daughter. The Chamber finds that there is no major discrepancy between the two versions. And since testimony under oath has more probative value than prior statements, the Chamber finds that Nura was raped by a soldier.

462. Although QCO witnessed the murder of Sezirahiga's children, she did not mention that she saw Nura being raped. Taking into account the place where QCO was and the number of soldiers and *Interahamwe* surrounding the victims, the Chamber is of the view that she might not have witnessed the rape of Nura. However, the fact that she did not witness the rape of Nura does not negatively affect the credibility and reliability of Sezirahiga's direct testimony.

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<sup>811</sup> The Chamber notes that, in April 1994, the chain of command of the Ngoma Military Camp was as follows: Lieutenant Ildephonse Hategekimana was the Commander of Ngoma Military Camp, Second Lieutenant Fabien Niyonteze was the Deputy Commander, and Staff Sergeant Cacana was the non-commissioned officer.

<sup>812</sup> T. 2 April 2009 p. 81.

<sup>813</sup> Defence Closing Brief para. 462.

<sup>814</sup> T. 6 April 2009 pp. 11, 59.

463. Furthermore, the Chamber is convinced that, as a father, Sezirahiga could not have fabricated the rape of his own daughter. The Chamber observed that, during his testimony, Witness Sezirahiga was sincere when he was talking about the rape of his daughter.<sup>815</sup> After carefully considering Prosecution evidence, the Chamber is convinced beyond reasonable doubt that Nura was raped during the attack at his house on 23 April 1994 by a soldier from Ngoma Camp. As concerns Hategekimana's responsibility, the Chamber is convinced that he was present at Sezirahiga's home in the night of the attack and that he brought a reinforcement of soldiers there and they were involved in the rape and murder of Nura Sezirahiga.

464. Consequently, the Chamber is convinced beyond reasonable doubt that soldiers from Ngoma Camp, led by the Accused, and in concert with *Interahamwe* and armed civilians, participated in the rape and murder of Nura Sezirahiga.

## **12. Massacre at *Groupe Scolaire*, Ngoma Commune, Butare Préfecture, on or about 27 April 1994**

### **12.1 Overview of the Parties' Accounts**

465. The Prosecution alleges that, on or about 27 April 1994, Hategekimana ordered Ngoma Camp soldiers to kill a large number of *Tutsi* refugees who had sought shelter at the Butare Secondary School, known as the *Groupe Scolaire*. In support of this allegation, the Prosecution relies solely on the testimony of Witness BRS.<sup>816</sup>

466. The Defence denies that Hategekimana is criminally responsible for the massacre at the *Groupe Scolaire*. The Defence relies on the testimony of Witness BS3.<sup>817</sup>

### **12.2 Evidence**

#### *Prosecution Witness BRS*

467. In April 1994, Witness BRS, a *Hutu* man, was a sergeant based at the Ngoma Camp.<sup>818</sup> The witness testified that he was absent from the Camp between 7 April and "about" 24 April 1994 while on a mission to Mount Huye to guard a government television antenna. On his return to the Ngoma Camp, Witness BRS resumed his duties as head of the guard post and weekly duty sergeant.<sup>819</sup>

468. Witness BRS testified that he was serving as duty sergeant at the Ngoma Camp when the killings were perpetrated at the *Groupe Scolaire*.<sup>820</sup> While the witness did not recall the specific date of the massacre, he estimated that it occurred in May or some time following his return, on 24 April 1994, from a mission to Mount Huye.<sup>821</sup> According to Witness BRS, "around 8 o'clock in the morning," after the raising of the flag in the assembly area at the Ngoma Camp, Hategekimana

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<sup>815</sup> The Chamber had to adjourn because of Sadiki Sezirahiga's indisposition.

<sup>816</sup> Prosecution Closing Brief paras. 354 -373; Prosecution Closing Arguments; T. 26 April 2010 p. 17; T. 28 April 2010 p. 13.

<sup>817</sup> Defence Closing Brief paras. 474 -500.

<sup>818</sup> T. 8 April 2009 pp. 3, 4; Prosecution Exhibit 15 (Protected Information of Witness BRS).

<sup>819</sup> T. 8 April 2009 pp. 11-13, 17.

<sup>820</sup> T. 8 April 2009 p. 17.

<sup>821</sup> T. 8 April 2009 pp. 17, 20, 37.

announced that *Tutsis* from Kigali and from Gitarama had sought refuge at the *Groupe Scolaire*.<sup>822</sup> Witness BRS testified that Hategekimana then “hand-picked ten soldiers to go and kill those people.”<sup>823</sup> The selected soldiers included Corporal Gatwaza, Corporal Baguma, Corporal Goumire, First Sergeant Pacifique Uwimana, Private Class I Tuyizere, Jean-Baptiste Bayavuge, Corporal Rutareka, Second Lieutenant Niyonteze and his bodyguard.<sup>824</sup> Witness BRS heard Hategekimana order the soldiers to check the refugees’ identity cards. Hategekimana said that “if they found any *Tutsis* among them, they should be killed.”<sup>825</sup> According to Witness BRS, around 9.00 a.m., Second Lieutenant Niyonteze left Ngoma Camp with the soldiers, followed by Hategekimana and his usual escort of two soldiers, Kazungu and Nibahagarare.<sup>826</sup>

469. Witness BRS testified that Hategekimana and the selected Ngoma Camp soldiers “obviously went to the school complex” and that he heard the soldiers boast about their “exploits” upon their return to the military camp around 2.00 p.m. the same day. The soldiers told him that “they had sorted the refugees” and that they had taken the *Tutsis* somewhere ... to kill them.”<sup>827</sup> According to Witness BRS, Hategekimana returned to the Ngoma Camp approximately 30 minutes after the soldiers. Witness BRS stated that he had never spoken to Hategekimana, although he was the witness’s commander.<sup>828</sup> The witness identified the Accused in court.<sup>829</sup>

#### *Defence Witness BS3*

470. Defence Witness BS3, a *Hutu* man, was a mutton trader and a resident of the *Groupe Scolaire* in 1994.<sup>830</sup> The witness testified that, prior to 6 April 1994, many residents had temporarily left the school because of the Easter holidays. However, after the death of President Habyarimana, numerous refugees from the Kacyiru Red Cross and from the Emujeco Company in Gikongoro sought shelter at the *Groupe Scolaire* and were housed in the school’s dormitories.<sup>831</sup>

471. Witness BS3 stated that “security was more or less maintained” at the *Groupe Scolaire* until “around the 18<sup>th</sup> of April.”<sup>832</sup> Then, between the “18<sup>th</sup> and 20<sup>th</sup> April,” at approximately 11.00 a.m., a resident of the school, Jean-Marie Vianney Ngabonziza, led 25 to 30 *Interahamwe*, who were “strangers to the city of Butare,” to the school. Witness BS3 recalled that the *Interahamwe* were armed with guns, clubs and machetes and that they wore a combination of military and civilian clothing.<sup>833</sup> According to Witness BS3, the assailants entered the *Groupe Scolaire* through the main gate, and Ngabonziza led them to the buildings where the refugees were housed. The assailants searched the refugees and seized personal belongings, including watches, money, jewellery and bracelets. According to the witness, the assailants left without harming anyone.<sup>834</sup>

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<sup>822</sup> T. 8 April 2009 pp. 17, 19.

<sup>823</sup> T. 8 April 2009 p. 17.

<sup>824</sup> T. 8 April 2009 pp. 17-19.

<sup>825</sup> T. 8 April 2009 p. 19.

<sup>826</sup> T. 8 April 2009 pp. 17-20.

<sup>827</sup> T. 8 April 2009 pp. 19, 20, 38.

<sup>828</sup> T. 8 April 2009 pp. 20, 38.

<sup>829</sup> T. 8 April 2009 p. 21.

<sup>830</sup> T. 30 September 2009 pp. 13, 16, 32-38; Defence Exhibit 21 (Protected Information of Witness BS3); Defence Exhibit 22 (Sketch Map of *Groupe Scolaire* in Butare by Witness BS3). The witness presented a detailed description of the physical layout, location and residents of the *Groupe Scolaire* in April 1994.

<sup>831</sup> T. 30 September 2009 pp. 18-20.

<sup>832</sup> T. 30 September 2009 p. 20.

<sup>833</sup> T. 30 September 2009 pp. 20, 21.

<sup>834</sup> T. 30 September 2009 p. 21.

472. According to Witness BS3, in late April 1994, approximately 30 to 40 armed assailants participated in a second and “major attack” on selected refugees at the *Groupe Scolaire*. Witness BS3 testified that the assailants, dressed in an assortment of military and civilian clothes, arrived at the school in vehicles and on motorcycles between 4.00 p.m. and 5.00 p.m. Teachers who were waiting at the main entrance led them to the refugees.<sup>835</sup> Shortly afterwards, the assailants herded the refugees out to the school yard, where they “made a selection” of victims who were “taken away and killed” at the far end of the soccer field, near a plot of bamboo plants. Following the massacre, the assailants left the *Groupe Scolaire* between 6.00 and 7.00 p.m.<sup>836</sup> While Witness BS3 did not know the number of refugees who were killed, he stated that “there were many.”<sup>837</sup>

473. Witness BS3 identified the assailants as *Interahamwe*, who were “newcomers” to the area and associated with Robert Kajuga, teachers from the *Groupe Scolaire* as well as “three residents of the city of Butare.”<sup>838</sup> The witness testified that he did not see any apparent leader or any soldiers among the assailants, and stated that he did not know the ethnicity of the victims or of the teachers who participated in the attack.<sup>839</sup> The witness said that he “never heard people talking about Mr. Ildephonse Hategekimana at the *Groupe Scolaire*.”<sup>840</sup>

474. Witness BS3 also testified about a third “incident” that occurred at the school in May 1994.<sup>841</sup> Around 9.00 p.m., Diogène Dushimana, a teacher from the *Groupe Scolaire*, and “other unidentified people,” carrying knives and clubs, killed four men in front of the cinema hall at the school.<sup>842</sup> Witness BS3 did not recall whether the four victims were refugees, and he did not know their ethnicity.<sup>843</sup>

475. The witness testified that he did not know Hategekimana and had never seen him before appearing before the Chamber. The witness further stated that he was unaware that he had been called to Arusha to testify in the defence of the Accused.<sup>844</sup>

### 12.3 Deliberation

476. The Parties do not dispute that assailants attacked and killed refugees at the *Groupe Scolaire* in late April 1994. At issue is whether Hategekimana is criminally responsible for the massacre and whether the victims were targeted because of their *Tutsi* ethnicity. The Prosecution presented Witness BRS to demonstrate that, on or about 27 April 1994, Hategekimana led soldiers from the Ngoma Camp to the *Groupe Scolaire*, where he ordered them to separate the refugees according to their ethnicity, and to kill the *Tutsis*. In contrast, Defence Witness BS3 testified that he saw no soldiers or military leader among the assailants. Rather he identified the assailants as *Interahamwe* who did not hail from the area, teachers at the *Groupe Scolaire* and three residents of the Butare. Moreover, Witness BS3 provided no evidence that the victims were *Tutsis*.

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<sup>835</sup> T. 30 September 2009 pp. 21-24. Witness BS3 stated that the vehicles used by the assailants were “new to the city of Butare” and he did not recognise any of them.

<sup>836</sup> T. 30 September 2009 pp. 21, 23.

<sup>837</sup> T. 30 September 2009 p. 23.

<sup>838</sup> T. 30 September 2009 pp. 21, 59.

<sup>839</sup> T. 30 September 2009 pp. 23, 26, 59, 60; T. 1 October 2009 p. 31.

<sup>840</sup> T. 30 September 2009 p. 62.

<sup>841</sup> T. 30 September 2009 p. 62.

<sup>842</sup> T. 30 September 2009 pp. 27-28.

<sup>843</sup> T. 30 September 2009 pp. 27-28, 61; T. 1 October 2009 p. 31.

<sup>844</sup> T. 30 September 2009 pp. 62-63.

477. The Prosecution's sole witness, BRS, stated that he saw and heard Hategekimana select ten Ngoma Camp soldiers and instruct them to kill *Tutsis* at the *Groupe Scolaire*. Some aspects of Witness BRS's testimony were detailed and specific: he named the soldiers selected by Hategekimana; the approximate time in the morning that they left the camp; and the approximate time in the afternoon that they returned. However, Witness BRS was not present at the *Groupe Scolaire* during the attack and did not witness the killings. Moreover, Witness BRS's testimony that Ngoma Camp soldiers killed *Tutsis* at the *Groupe Scolaire* is based on the hearsay accounts of unnamed soldiers from the camp, who allegedly boasted of their "exploits" during the massacre.<sup>845</sup> In light of the Appeals Chamber's jurisprudence in relation to hearsay, the Chamber considers that BRS's evidence of the attack by Ngoma Camp soldiers warrants caution.<sup>846</sup>

478. In addition, Witness BRS's testimony about Hategekimana's alleged selection and ordering of soldiers to perpetrate killings at the *Groupe Scolaire* is uncorroborated. No other witness stationed at the Ngoma Camp between April and July 1994 testified about this event, which, according to the Witness BRS, occurred in the camp's open assembly area. While a conviction may be based on the evidence of a sole witness, the Chamber notes that corroboration may be a significant and relevant factor in assessing both the credibility and reliability of a witness's testimony.<sup>847</sup>

479. Furthermore, the Chamber queries whether or not BRS's evidence relates to the massacre at the *Groupe Scolaire*, alleged in the Indictment, or to another event. Specifically, the Chamber observes a lack of precision in Witness BRS's identification of the date that he saw Hategekimana select ten Ngoma Camp soldiers for an attack on refugees at the *Groupe Scolaire*. Whereas the Indictment alleged that the massacre was perpetrated "on or about 27 April," Witness BRS testified that he could not specify the date. He recalled only that the killings could have occurred in May or "some time" after 24 April 1994, following his arrival at Camp from Mount Huye.<sup>848</sup> In light of Witness BRS's 16 March 2000 Statement to Prosecution investigators, the Chamber also has doubts about the date of the witness's actual return from the Mount Huye mission. While BRS testified that the date was 24 April 1994; in his Statement made nine years earlier, he recalled returning to the camp "on or about the 27<sup>th</sup> of April."<sup>849</sup> If the witness were present at the Ngoma Camp only as of the later date, his evidence regarding Hategekimana's selection of soldiers would not clearly and precisely relate to the massacre identified by the Indictment.

480. In light of the problematic aspects of Prosecution Witness BRS's testimony, the Chamber has not assessed the probative value of the Defence evidence in relation to the allegations in paragraphs 18 and 29 of the Indictment. Having closely examined Witness BRS's account, of which a significant part is uncorroborated hearsay, the Chamber doubts its reliability and is not convinced that it relates specifically to the massacre at the *Groupe Scolaire*, which occurred "on or about 27 April."

481. Accordingly, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Hategekimana led soldiers in an attack against *Tutsi* refugees at the *Groupe Scolaire* on or about 27 April 1994, as alleged in paragraphs 18 and 29 of the Indictment.

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<sup>845</sup> T. 8 April 2009 p. 20.

<sup>846</sup> See e.g., *Kalimanzira* Appeal Judgement para. 199; *Muvunyi* Appeal Judgement para. 70; *Akayesu* Appeal Judgement paras. 286, 292.

<sup>847</sup> *Muvunyi* Appeal Judgement para. 128; *Ntakirutimana* Appeal Judgement para. 132.

<sup>848</sup> T. 8 April 2009 p. 17.

<sup>849</sup> Defence Closing Brief para. 490; T. 8 April 2009 pp. 35-37.

### 13. Massacre at Ngoma Parish, Ngoma Commune, Butare Préfecture, on or about 30 April 1994

#### 13.1 Overview of the Parties' Accounts

482. The Prosecution alleged that, on or about 30 April 1994, Ildephonse Hategekimana led a group of armed soldiers, *Interahamwe* and armed civilians to Ngoma Parish where 500 *Tutsis*, largely children, had sought refuge. After searching the premises, Ildephonse Hategekimana ordered the soldiers, *Interahamwe* and armed civilians to attack and kill the refugees. The attack lasted all day and resulted in the killing or causing of serious bodily or mental harm to most of the *Tutsis* at Ngoma Parish.<sup>850</sup> In support of its allegations, the Prosecution relied on the evidence of Witnesses Father Jérôme Masinzo, Father Eulade Rudahunga and Laurien Ntezimana, BYQ and BYR.<sup>851</sup>

483. The Defence submitted that the Prosecution evidence was not credible and that the allegations were not established beyond a reasonable doubt.<sup>852</sup> The Defence relied on the evidence of the two eyewitnesses, ZML and MZA, who testified that they saw neither soldiers nor the Accused during the massacre.<sup>853</sup> The Defence also relied on the evidence of Witnesses CBA1 and RGF, who heard about the massacre. Witness RGF saw the attackers when he visited the parish after the massacre.<sup>854</sup>

#### 13.2 Evidence

##### *Prosecution Witness Father Jérôme Masinzo*

484. Father Jérôme Masinzo, a *Tutsi* Catholic priest, served at Ngoma Parish in 1994.<sup>855</sup> He testified that many *Tutsis* who had sought refuge at the Matyazo Health Centre and at the Matyazo Primary School were killed by soldiers and *Interahamwe* around 20 April 1994.<sup>856</sup> The survivors, including 302 children aged between one and 12, subsequently sought refuge at Ngoma Parish.<sup>857</sup> A young man and three young *Hutu* girls were among them.<sup>858</sup>

485. Father Masinzo testified that, on 29 April 1994 around 8.00 p.m., some members of the population, neighbours of the parish, carrying torch lights and armed with machetes, axes and other traditional weapons, attacked Ngoma Parish and ordered the refugees to come out.<sup>859</sup> The refugees rang the bell for about 45 minutes to raise the alarm. They repelled the assailants by throwing stones at them.<sup>860</sup> Some of the parish refugees recognized Jacques Habimana, Édouard Niyitegeka and Gatera among the assailants.<sup>861</sup> In the meantime, Father Masinzo unsuccessfully sought

<sup>850</sup> Prosecution Closing Brief para. 374.

<sup>851</sup> Prosecution Closing Brief para. 374.

<sup>852</sup> Defence Closing Brief para. 579.

<sup>853</sup> Defence Closing Brief para. 583.

<sup>854</sup> T. 5 October 2009 p. 54. The witness testified that he met “Niyamungu,” “Payilot,” “Fisi” and “Ruhango.” As they were many, he could not identify all of them.

<sup>855</sup> He now lives in Huye district, South Province of Rwanda where he has been exercising his ministry since September 2007. In 1995, he founded an NGO called “*Ubutwari bwo kubaho*” whose objective is to assist widows of the genocide and *Hutu* women whose husbands are in prison.

<sup>856</sup> T. 18 March 2009 pp. 54-58.

<sup>857</sup> T. 18 March 2009 pp. 58, 60-63.

<sup>858</sup> T. 18 March 2009 pp. 60-61, 62-63.

<sup>859</sup> The assailants were civilians who did not carry firearms.

<sup>860</sup> T. 18 March 2009 pp. 63, 64.

<sup>861</sup> T. 19 March 2009 pp. 55-57.

assistance from the Ngoma Camp commander, but the person who received the call refused to transfer it. The witness also called Prosecutor Bushishi, who promised to send assistance.<sup>862</sup>

486. About two hours after the telephone call, a group of about seven or eight soldiers, led by Second Lieutenant Niyonteze, arrived at Ngoma Parish. Father Masinzo knew Niyonteze as being the Accused's assistant and had seen him on two occasions.<sup>863</sup> Niyonteze asked to see the refugees and visited the various parish buildings which were housing them. He then rebuked Father Masinzo in these terms: "Why are you hiding so many *Inyenzi* near a military camp during the time of war?" He added: "I know how malicious *Tutsis* are."<sup>864</sup> Niyonteze then conversed with the assailants and left the premises, accompanied by his soldiers who were being followed by the assailants.<sup>865</sup>

487. The following day, Gaspard Mpakaniye and Innocent Nkurinziza, two Ngoma Camp corporals, came to warn Father Masinzo of the imminent arrival of "Bikomago"<sup>866</sup> who was going to kill him in "a cruel or atrocious manner." The priest was told that he had to flee in order to save his life.<sup>867</sup> At the same time, a lady called Gaudence telephoned the parish to warn Father Masinzo that he should flee immediately as the assailants were about to arrive.<sup>868</sup>

488. As Father Masinzo no longer had time to flee, the corporals helped him to hide in the false ceiling above his room, which also extended over the kitchen in his apartment.<sup>869</sup> He hid close to the kitchen chimney in which he could climb if the soldiers were to look for him.<sup>870</sup> Corporal Mpakaniye had stamped his boots on the wall adjacent to the false ceiling to make the assailants believe that he had already inspected the premises.<sup>871</sup>

489. From his hiding place, Father Masinzo heard the assailants arrive at the parish complex shortly afterwards.<sup>872</sup> They prepared to fire at the false ceiling, but Corporal Mpakaniye dissuaded them from doing so.<sup>873</sup> Father Masinzo testified: "I was perspiring profusely [...] I thought that my sweat would fall on those who were in the room ... my heart was beating at top speed. And I was even tempted to jump out of the false ceiling and I would have gotten caught."<sup>874</sup> He heard the assailants call Hategekimana by his name.<sup>875</sup> The commander asked Father Rudahunga in an angry tone where Father Masinzo was. Father Masinzo then heard the Accused say: "If you find him, bring him to me."<sup>876</sup> The witness estimated that, at this moment, Hategekimana was about five metres away from his hiding place. Father Masinzo recognized Hategekimana's voice since he had met him on three prior occasions. One of the most recent meetings occurred a few days before,

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<sup>862</sup> T. 18 March 2009 pp. 63, 64; T. 19 March 2009 pp. 54, 55.

<sup>863</sup> T. 19 March 2009 pp. 63-66. He knew him in March 1994 and saw him again on 18 April 1994 at a road block manned by soldiers near Ngoma Camp.

<sup>864</sup> Those comments frightened Father Masinzo.

<sup>865</sup> T. 18 March 2009 pp. 63, 64.

<sup>866</sup> T. 19 March 2009 pp. 37, 38. Father Masinzo knew that "Bikomago" was a nickname given by the soldiers to the Accused.

<sup>867</sup> T. 18 March 2009 p. 59; T. 19 March 2009 p. 63.

<sup>868</sup> T. 18 March 2009 p. 60; T. 19 March 2009 pp. 60, 61.

<sup>869</sup> T. 18 March 2009 p. 60; T. 19 March 2009 pp. 60, 61, 63, 64. The Chamber understands that Father Masinzo often came down from but returned to the hiding place in the false ceiling for a period of approximately two weeks.

<sup>870</sup> T. 18 March pp. 71, 72; T. 19 March 2009 pp. 63, 64.

<sup>871</sup> T. 19 March 2009 pp. 63, 64.

<sup>872</sup> T. 18 March 2009 p. 60.

<sup>873</sup> T. 19 March 2009 pp. 63- 64.

<sup>874</sup> T. 19 March 2009 p. 63.

<sup>875</sup> T. 18 March pp. 60, 68, 69.

<sup>876</sup> T. 18 March 2009 pp. 68, 69; T. 19 March 2009 p. 9.

when they had discussed at length arrangements for the evacuation of refugees from the Matyazo Health Centre.<sup>877</sup>

490. According to Father Masinzo, on this same day, Corporals Mpakaniye and Nkurunziza informed him that Hategekimana had planned the attack and that he was among the assailants. Father Rudahunga also informed the witness of Hategekimana's presence at the parish during the attack.<sup>878</sup> Father Masinzo testified that many of the civilian assailants on 30 April were the same assailants who had attacked the parish the previous night. However, on 30 April 1994, these civilian assailants were led by Hategekimana and his soldiers.<sup>879</sup>

491. On the evening of 30 April 1994, when Father Masinzo climbed from his hiding place, he saw dead bodies below the presbytery along the Ngoma-Matyazo Road.<sup>880</sup> However, there were no corpses inside the church.<sup>881</sup> He heard that the assailants referred to themselves as Christians and said that they did not want to kill their victims inside the church.<sup>882</sup> Through a window, the witness observed assailants killing the dying victims. He also saw women and children undressing and looting the victims' corpses.<sup>883</sup> Father Masinzo later learned that a young *Hutu* man and three young *Hutu* girls who were among the refugees had been spared. The young man was saved because his identity card indicated his *Hutu* ethnicity; the young girls were not killed because their mother was *Hutu*, and the assailants overlooked the *Tutsi* ethnicity of their father.<sup>884</sup>

492. Father Masinzo received information about the massacre from Laurien Ntezimana, who visited the parish to verify whether the priests were still alive. Laurien Ntezimana told the witness that he had seen dead bodies below the church and on the field. These included corpses of women and young girls who had been raped. He told the witness that, on 1 May 1994,<sup>885</sup> prisoners from Karubanda came to the parish to dispose of the refugees' dead bodies.<sup>886</sup>

493. Father Masinzo testified that the soldiers who attacked Ngoma Parish on 30 April 1994 arrived with their commanders. Instead of firing at the refugees to kill them more quickly, the assailants handed them over to civilians, who were armed with traditional weapons and machetes. The young girls and women were raped before being killed.<sup>887</sup> That evening, after the massacre, Corporals Mpakaniye and Nkurunziza returned to the parish, and Nkurunziza asked the witness for the sum of 500,000 francs for having saved his life.<sup>888</sup> Father Masinzo was obliged to pay in "several instalments."<sup>889</sup> That same evening, Corporal Mpakaniye also confided to the witness that Hategekimana had ordered him to lead the attack on Ngoma Parish.<sup>890</sup>

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<sup>877</sup> T. 18 March 2009 pp. 71-73; T. 19 March 2009 pp. 61, 62. Father Masinzo testified that he met the Accused for the first time in 1993 at the wedding of Warrant Officer Mutabaruka. At the wedding reception, he sat next to Hategekimana, and they conversed with each other. The witness had also met him in front of Ngoma Camp where they spoke briefly with each other. Lastly, they had conversed at length during the removal of refugees from the Matyazo Health Centre in April 1994.

<sup>878</sup> T. 18 March 2009 pp. 70, 71.

<sup>879</sup> T. 18 March 2009 p. 63.

<sup>880</sup> T. 18 March 2009 p. 63; T. 19 March 2009 p. 5.

<sup>881</sup> T. 19 March 2009 p. 5.

<sup>882</sup> T. 19 March 2009 p. 5.

<sup>883</sup> T. 19 March 2009 pp. 5, 6.

<sup>884</sup> T. 18 March 2009 pp. 62, 63.

<sup>885</sup> T. 18 March 2009 pp. 62, 63.

<sup>886</sup> T. 19 March 2009 p. 6.

<sup>887</sup> T. 19 March 2009 pp. 6, 68.

<sup>888</sup> T. 19 March 2009 p. 68.

<sup>889</sup> T. 19 March 2009 p. 69.

<sup>890</sup> T. 19 March 2009 p. 70.



494. Father Masinzo described the Accused as a man of average height, dark in complexion, about 1.70 metres tall and about 28 years old at the time. He recognized the Accused in court.<sup>891</sup>

*Prosecution Witness Eulade Rudahunga*<sup>892</sup>

495. Father Eulade Rudahunga, a *Tutsi* priest aged 72 at the time, resided at the Ngoma Parish during the events of April 1994.<sup>893</sup> He testified that he saw a massive influx of refugees into Ngoma Parish after the commencement of massacres in the region.<sup>894</sup> Based on the quantity of food distributed to the refugees, he estimated that they were more than 400 at the parish.<sup>895</sup> The refugees were *Tutsis* coming from Matyazo, Ngoma and the neighbouring hills.<sup>896</sup>

496. On the night of 21 to 22 April, a *Hutu* woman, who did not disclose her identity, telephoned the witness and Father Masinzo to inform them that murders had commenced in her region and to warn them of an imminent attack on Ngoma Parish.<sup>897</sup> That night, the two men hid in a bush, but nothing happened.<sup>898</sup> However, on 29 April, the parish was attacked. Prior to the attack, Father Rudahunga had heard people say that they wanted to kill Father Masinzo.<sup>899</sup>

497. According to Father Rudahunga, a group of civilians attacked the parish on 29 April 1994, around 10.00 p.m.<sup>900</sup> He called Ngoma Camp for assistance. Soldiers arrived about 50 minutes or one hour later, when the assailants had already been repelled.<sup>901</sup> Upon their arrival at the parish, the soldiers left shortly, when they realized that there were no assailants.<sup>902</sup> On 30 April 1994, around 8.00 or 8.30 a.m., the Ngoma Camp Commander, accompanied by five or six soldiers and a “swarm” of civilians, arrived at the Ngoma Parish.<sup>903</sup> The soldiers opened the gate and entered the yard located between the dormitory and the administrative block, while the civilians remained behind the gate.<sup>904</sup> The witness did not know the commander’s name at the time, but he later learned that he was called Hategekimana.<sup>905</sup> The commander asked to see Father Masinzo. When Father Rudahunga did not find the other priest in his room, he told the commander that he had not seen him. The witness testified that the commander departed from the parish alone, leaving the soldiers behind, after failing to catch Father Masinzo.<sup>906</sup> Hategekimana ordered the soldiers to spare Father Masinzo, to leave the priest for him.<sup>907</sup> Father Rudahunga was unable to estimate the number of people who accompanied Hategekimana to the parish, but he stated that “these were the persons who killed the refugees.”<sup>908</sup>

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<sup>891</sup> T. 19 March 2009 p. 22.

<sup>892</sup> As the witness was physically unable to come to testify in Arusha, his statement was recorded in Rwanda on 21 April 2009.

<sup>893</sup> T. 21 April 2009 pp. 3, 4.

<sup>894</sup> T. 21 April 2009 pp. 10, 11.

<sup>895</sup> T. 21 April 2009 p. 5.

<sup>896</sup> T. 21 April 2009 p. 5.

<sup>897</sup> T. 21 April 2009 pp. 10, 11.

<sup>898</sup> T. 21 April 2009 pp. 10, 11.

<sup>899</sup> T. 21 April 2009 p. 7.

<sup>900</sup> T. 21 April 2009 pp. 11, 12.

<sup>901</sup> T. 21 April 2009 pp. 11, 12, 15.

<sup>902</sup> T. 21 April 2009 pp. 10, 11.

<sup>903</sup> T. 21 April 2009 p. 7.

<sup>904</sup> T. 21 April 2009 p. 7.

<sup>905</sup> T. 21 April 2009 p. 10.

<sup>906</sup> T. 21 April 2009 pp. 6, 7, 11.

<sup>907</sup> T. 21 April 2009 pp. 12, 14.

<sup>908</sup> T. 21 April 2009 p. 7.

498. The Ngoma Camp Commander did not explain to Witness Rudahunga why he was looking for Father Masinzo. However, a few days before the commander's visit, Father Rudahunga had heard rumours circulating about a plan to kill Father Masinzo, and he inferred that the commander wanted to kill the priest.<sup>909</sup> That day, four or five minutes before Hategekimana's arrival with Ngoma Camp soldiers, Corporal Mpakaniye had gone ahead of his colleagues to warn Father Masinzo that an attack was imminent. Mpakaniye then helped Father Masinzo to hide in the false ceiling above his room.<sup>910</sup> Mpakaniye also warned him that Hategekimana had ordered him to kill all the refugees, but "to spare" Father Masinzo.<sup>911</sup> The witness acknowledged that he did not see Mpakaniye, but was told after the massacre by Father Masinzo how he had been saved by him.<sup>912</sup>

499. Father Rudahunga testified that, after the commander had left the parish, he realized the fate that awaited the refugees. He begged the soldiers to give him five minutes to pray with the refugees in the church and to bestow a "general blessing." The witness thought that the assailants were then going to kill the refugees inside the church.<sup>913</sup> However, Mpakaniye led the refugees in groups of five out of the church, after telling them, "Don't be afraid, we are not going to kill you."<sup>914</sup>

500. Father Rudahunga did not witness what happened afterwards, but a survivor told him the circumstances in which the refugees were killed. After having taken them out of the church in groups of five persons, the soldiers then handed them over to the assailants who were waiting in front of the gate. Each assailant took a refugee away to kill in the parish neighbourhood, either on the football field or in a farm located below the road.<sup>915</sup> Through a window, Father Rudahunga saw bodies below the road and heard the screams of dying victims. Father Rudahunga testified that the victims were *Tutsis* because the *Tutsis* were being "hunted down."<sup>916</sup> Only five refugees who had *Hutu* identity cards were spared.<sup>917</sup>

501. Father Rudahunga knew that the soldiers came from Ngoma Camp, located near the Ngoma Parish.<sup>918</sup> He knew Hategekimana very well by his title of camp "Commander." After the massacre, Mpakaniye told the witness that he was called Ildephonse Hategekimana.<sup>919</sup> Father Rudahunga personally recognized Hategekimana as being the leader, the senior military officer, because of his military uniform and the insignia on his beret which distinguished him from his subordinates.<sup>920</sup> Later on, Mpakaniye asked for money from Fathers Masinzo and Rudahunga to bribe the soldiers who had accompanied him not to disclose to the commander that they were still alive. They agreed on the amount of 500,000 francs.<sup>921</sup>

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<sup>909</sup> T. 21 April 2009 p. 7.

<sup>910</sup> T. 21 April 2009 p. 12.

<sup>911</sup> T. 21 April 2009 pp. 12, 14.

<sup>912</sup> T. 21 April 2009 p. 12.

<sup>913</sup> T. 21 April 2009 pp. 7, 8.

<sup>914</sup> T. 21 April 2009 p. 8.

<sup>915</sup> T. 21 April 2009 pp. 7, 8.

<sup>916</sup> T. 21 April 2009 p. 5.

<sup>917</sup> T. 21 April 2009 p. 6.

<sup>918</sup> T. 21 April 2009 p. 8.

<sup>919</sup> T. 21 April 2009 pp. 5, 6.

<sup>920</sup> T. 21 April 2009 pp. 13, 15. After the massacre, Mpakaniye told Father Rudahunga that he would come back at 5 p.m. and that Father Masinzo had to leave the false ceiling where he was hiding.

<sup>921</sup> T. 21 April 2009 p.13.

*Prosecution Witness Laurien Ntezimana*

502. Witness Laurien Ntezimana, a *Hutu* man aged 39, was at the time of the events responsible for theology classes at the Butare Catholic Diocese.<sup>922</sup> The witness testified that he infiltrated the Ngoma *Secteur* Security Council by registering as a member in order to thwart its objectives.<sup>923</sup> While pretending to subscribe to the objectives of the committee, the witness was able to hide and feed *Tutsis*. He was able to hamper the killers' actions and to preach against them in church.<sup>924</sup>

503. The witness testified that around 30 April 1994, militiamen and Ngoma Camp soldiers attacked the parish and killed a large number of *Tutsi* refugees.<sup>925</sup> He acknowledged that he did not witness the attack on the parish,<sup>926</sup> but he was informed about it around 1.00 p.m. after the massacre had ended.<sup>927</sup> He then went there to see what had happened to two of his friends, Innocent Samusoni and Father Masinzo.<sup>928</sup> When he was passing in front of the Bizeramariya Sisters' house, he saw a group of "killers,"<sup>929</sup> namely civilians, accompanied by two or three soldiers.<sup>930</sup>

504. As he moved towards a grove strewn with dead bodies, two killers followed him.<sup>931</sup> Realizing that he was being taken for an accomplice of the enemy, he escaped by running to the football field. When he reached the edge of the forest bordering the football field, he saw bodies in spread-out positions, among which there were two or three bodies of women who, in his opinion, had been raped before being killed.<sup>932</sup> The witness assumed these women had been raped because they were naked and were lying in a peculiar way.<sup>933</sup> Father Masinzo and Father Rudahunga informed the witness that the attack had been perpetrated by Ngoma Camp soldiers.<sup>934</sup>

505. Laurien Ntezimana subsequently learned from a soldier who had seen one of his colleagues hiding Father Masinzo that the priest was still alive. The soldier told the witness, "If you don't give me money, I would denounce you, and I would say that Father Jérôme is still alive."<sup>935</sup> Laurien Ntezimana then paid him the sum of 50,000 francs each week for his silence. The witness also sneaked food into the parish for the priest.<sup>936</sup>

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<sup>922</sup> T. 20 March 2009 p. 5.

<sup>923</sup> T. 20 March 2009 pp. 26-28. According to Laurien Ntezimana, the objectives of the security committee included the erection and supervision of road blocks and patrols by members of the population in Ngoma *secteur* and, notably, the possibility for young people to learn how to handle firearms. In reality, these objectives were intended to monitor the *Tutsis*.

<sup>924</sup> T. 20 March 2009 pp. 30, 31.

<sup>925</sup> T. 20 March 2009 pp. 17, 18.

<sup>926</sup> T. 20 March 2009 p. 18.

<sup>927</sup> T. 20 March 2009 p. 18.

<sup>928</sup> T. 20 March 2009 p. 18.

<sup>929</sup> T. 20 March 2009 p. 18.

<sup>930</sup> T. 20 March 2009 p. 18.

<sup>931</sup> T. 20 March 2009 p. 18.

<sup>932</sup> T. 20 March 2009 p. 18.

<sup>933</sup> T. 20 March 2009 p. 19.

<sup>934</sup> T. 20 March 2009 p. 22.

<sup>935</sup> T. 23 March 2009 p. 20.

<sup>936</sup> T. 23 March 2009 p. 20.

*Prosecution Witness BYQ*

506. Prosecution Witness BYQ, a *Hutu*, was a corporal based at the Ngoma Camp in April 1994.<sup>937</sup> He heard of the killings at the Ngoma Parish in late April 1994 from the soldiers who had perpetrated the crimes.<sup>938</sup>

507. The witness testified that on the day of the attack, he was acting as duty officer and his duties included providing rations to the soldiers.<sup>939</sup> Soldiers spoke to him about the attack on the Ngoma Parish when he provided them with their meal upon their return to the camp.<sup>940</sup> Among the participating soldiers he named Corporal Rutarihubwoba, Pacifique Niyozima, Gaspard Harerimana, Corporal Rugumire, Corporal Rutareka, Corporal Butera, Mahoro, and Bitorwa.<sup>941</sup> The witness learned that, because these soldiers did not want to kill the refugees inside the church, they tricked them into leaving the sanctuary.<sup>942</sup> The *Interahamwe* then led away and killed the refugees with machetes and clubs.<sup>943</sup> No firearm was used, as the soldiers were present only to supervise “the work” of the *Interahamwe*.<sup>944</sup> BYQ recalled that some of the returning soldiers were boastful about their exploits, while others “were sad because of what had happened.”<sup>945</sup>

508. Witness BYQ stated that “if the soldiers had not been there, the *Interahamwe* would not have had the courage to massacre those *Tutsis*.”<sup>946</sup> He testified that Corporal Rutarihubwoba returned to camp with a “big Honda motorcycle,” while other soldiers brought back watches.<sup>947</sup> The soldiers told the witness that, after leaving Ngoma Camp around 10.00 a.m. that morning, they proceeded to Ngoma Parish, where they killed *Tutsis* until approximately 2.00 p.m.<sup>948</sup> The witness inferred that the soldiers travelled to Ngoma Parish on foot because the distance between the camp and the parish was less than one kilometre and he did not see them return in a vehicle.

509. According to Witness BYQ, the soldiers told him of their participation in the massacre because he was “an old corporal,” and most of them were his subordinates.<sup>949</sup> They also told him that the Accused and Second Lieutenant Fabien Niyonteze were at the site during the killings.<sup>950</sup> The witness inferred that Second Lieutenant Fabien Niyonteze was present because the Accused had “assigned him as the leader of the group of soldiers who committed the massacres.”<sup>951</sup> Witness BYQ stated that, had the soldiers acted without the commander’s knowledge, they would have been punished. He also testified that he was fortunate not to have been selected for the Ngoma Parish attack because he would have had to obey orders.<sup>952</sup> Witness BYQ recognized Hategekimana in the courtroom.<sup>953</sup>

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<sup>937</sup> Prosecution Exhibit P.11; T. 31 March 2009 pp. 31-32, 37.

<sup>938</sup> T. 31 March 2009 pp. 41, 48. The witness could not provide a precise date.

<sup>939</sup> T. 1 April 2009 p. 29.

<sup>940</sup> T. 1 April 2009 p. 29.

<sup>941</sup> T. 31 March 2009 p. 41.

<sup>942</sup> T. 31 March 2009 p. 43.

<sup>943</sup> T. 31 March 2009 pp. 40, 42, 43.

<sup>944</sup> T. 31 March 2009 p. 43.

<sup>945</sup> T. 31 March 2009 pp. 39, 47.

<sup>946</sup> T. 31 March 2009 p. 43.

<sup>947</sup> T. 31 March 2009 p. 44.

<sup>948</sup> T. 31 March 2009 pp. 43, 47.

<sup>949</sup> T. 31 March 2009 p. 49.

<sup>950</sup> T. 31 March 2009 pp. 43, 47, T. 1 April 2009 pp. 27, 28.

<sup>951</sup> T. 31 March 2009 pp. 27, 28.

<sup>952</sup> T. 31 March 2009 pp. 43, 41.

<sup>953</sup> T. 31 March 2009 pp. 43, 46, 47.

*Prosecution Witness BYR*

510. Witness BYR, a *Hutu* man, was a soldier stationed at Ngoma Camp from March to July 1994<sup>954</sup> after being wounded at the war front.<sup>955</sup> The witness testified that refugees were killed at Ngoma Parish on 30 April 1994.<sup>956</sup> He did not witness the killings, but he visited the scene much later, after the attack.

511. According to Witness BYR, the attackers were civilians and soldiers.<sup>957</sup> He knew the names of four soldiers of Ngoma Camp who participated in the killings, namely Fabien Niyonteze, Gatwaza, Pacifique Niyonzima and Chinani Nsambimana.<sup>958</sup> According to the witness, there were other soldiers of Ngoma Camp who also participated in the attack, but whose names he could not remember.<sup>959</sup> Witness BYR testified that as Commander of Ngoma Camp, the Accused had to have been aware of the acts that were being perpetrated by soldiers of his camp. Although he did not witness the orders being given explicitly by the camp commander, Witness BYR believed that it was the military hierarchy who issued the orders to the soldiers.<sup>960</sup>

*Defence Witness ZML*

512. Witness ZML, a *Tutsi* man, was 24 years of age and worked as a “motorcycle taxi” driver in Ngoma *Commune* in April 1994.<sup>961</sup> His mother was *Tutsi*, and his father was from Uganda. However, the witness testified that, for security reasons, the reference in his identity card was *Hutu*.<sup>962</sup>

513. Witness ZML participated in a massacre of *Tutsis* at Ngoma Parish towards the end of April 1994.<sup>963</sup> He described two attacks on the parish. During the first attack, refugees hiding within the parish repelled the attackers by throwing stones.<sup>964</sup> The assailants then sought reinforcements.<sup>965</sup> They called in young people from all the *cellules* in the neighbourhood to join the attack, under pain of being classified as enemies.<sup>966</sup> As part of the first attack, the witness attended preparatory meetings to demonstrate his support them and to avoid being viewed with suspicion.<sup>967</sup> During that meeting, participants discussed the plan for the attack on the parish. The witness testified that the group of attackers was composed of ordinary members of the population from Ngoma, Matyazo, Huye and Mpare and also of *Interahamwe* from Butare who were members of Kajuga’s escort.<sup>968</sup>

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<sup>954</sup> T. 9 April 2009 p. 9.

<sup>955</sup> T. 9 April 2009 pp. 45, 46.

<sup>956</sup> T. 9 April 2009 pp. 38, 39.

<sup>957</sup> T. 9 April 2009 pp. 38, 39.

<sup>958</sup> T. 9 April 2009 pp. 38, 39.

<sup>959</sup> T. 9 April 2009 pp. 38, 39.

<sup>960</sup> T. 9 April 2009 pp. 38, 39.

<sup>961</sup> T. 22 June 2009 pp. 12, 13, 27.

<sup>962</sup> T. 22 June 2009 pp. 12, 27. The witness explained that his father was from Uganda, but that for security reasons, he had asked his children to have it inserted in their identity cards that they were *Hutu*. But he indicated that he was actually of the *Tutsi* ethnic group, like his mother.

<sup>963</sup> T. 22 June 2009 pp. 17, 18. The witness could not recall the exact date of the massacre

<sup>964</sup> T. 22 June 2009 pp. 18, 19, 36, 37, 40.

<sup>965</sup> T. 22 June 2009 pp. 18, 19, 36, 37, 40.

<sup>966</sup> T. 22 June 2009 pp. 19, 37; T. 23 June 2009 p. 4.

<sup>967</sup> T. 22 June 2009 p. 18.

<sup>968</sup> T. 22 June 2009 pp. 19-21. The witness seems to have identified his neighbour, Jacques Gatera, as the leader.

This group was led by Jacques Gatera and other persons such as Édouard Murekezi, Mbilizi Rubeni and Marc.<sup>969</sup>

514. The second attack occurred the following morning, between 10.00 and 11.00 a.m.<sup>970</sup> Young people, including the witness, “were posted at various locations,” They were told not to let anyone survive.<sup>971</sup> The “strongest” were posted at the entrance to the parish, while the witness was posted “behind the parish to prevent the refugees from fleeing.”<sup>972</sup> When the attackers realized that the church was locked, Jacques Gatera asked the parish priest to hand over the refugees to authorities for transport to the Butare *Préfecture* office, where they would be safe.<sup>973</sup> That request was actually a ruse because the attackers planned to take away the refugees in groups to kill.<sup>974</sup> The witness knew the older priest. He recalled that the priest must have been 50 or 60 years old, and that he was of medium height, wore glasses and had a receding hairline. However, the witness had forgotten his name.<sup>975</sup>

515. Having accepted Jacques Gatera’s proposal, the priest opened the door of the church, allowing groups of ten refugees to be removed at a time, taken behind the church and killed.<sup>976</sup> The refugees who remained inside did not know what was happening and continued to exit with the attackers, who were armed with iron bars, sticks, machetes and knives.<sup>977</sup> The *Interahamwe* had their own weapons and firearms, including Kalashnikovs and grenades.<sup>978</sup> Firearms and grenades were not used in the attack. The witness estimated the number of attackers, including the *Interahamwe*, at about 60 or 70 persons.<sup>979</sup> The witness was unable to say how many refugees were inside the church, but he testified that “they were many.”<sup>980</sup>

516. Witness ZML testified that there were no soldiers among the attackers and that only *Interahamwe* were present.<sup>981</sup> He stated that the attackers had sought reinforcements from Kajuga’s *Interahamwe*, who were lodged at the Ibis Hotel in Butare.<sup>982</sup> The *Interahamwe* wore mixed civilian and military attire. He recalled that some wore a military shirt and a civilian pair of trousers.<sup>983</sup> ZML estimated that there were 10 to 15 *Interahamwe* during the massacre, but he did not know any of them.<sup>984</sup> He did not see the Accused at the scene of the killings, and he did not see any Ngoma Camp soldiers. Since, in his opinion, there were only disabled persons at the camp, he did not believe that any Ngoma Camp soldier could have participated in the Ngoma Parish attack.<sup>985</sup> Witness ZML conceded that, if soldiers involved in the attack had been dressed in civilian clothing,

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<sup>969</sup> T. 22 June 2009 pp. 18, 19, 37, 38.

<sup>970</sup> T. 22 June 2009 p. 20; T. 23 June 2009 pp. 4, 6.

<sup>971</sup> T. 22 June 2009 pp. 18-20.

<sup>972</sup> T. 22 June 2009 pp. 19, 39, 40.

<sup>973</sup> T. 22 June 2009 pp. 18, 19.

<sup>974</sup> T. 22 June 2009 pp. 19, 20.

<sup>975</sup> T. 22 June 2009 pp. 19, 20; T. 23 June 2009 p. 6.

<sup>976</sup> T. 22 June 2009 pp. 18-20; T. 23 June 2009 pp. 5, 6.

<sup>977</sup> T. 22 June 2009 pp. 19, 40.

<sup>978</sup> T. 22 June 2009 pp. 20, 21; T. 23 June 2009 p. 5.

<sup>979</sup> T. 22 June 2009 p. 6.

<sup>980</sup> T. 22 June 2009 pp. 40, 41.

<sup>981</sup> T. 22 June 2009 p. 20.

<sup>982</sup> T. 22 June 2009 p. 20.

<sup>983</sup> T. 22 June 2009 pp. 20, 40.

<sup>984</sup> T. 22 June 2009 pp. 20, 40.

<sup>985</sup> T. 22 June 2009 p. 40.

he would not have recognized them.<sup>986</sup> The witness testified that on 6 April 1994, he saw gendarmes move around in the area; he did not see soldiers.<sup>987</sup>

*Defence Witness MZA*

517. Witness MZA, a *Hutu*, was 28 years old and worked as a motorcycle taxi driver in Ngoma *Secteur* in April 1994.<sup>988</sup> He held the position of “*nyumbakumi*.”<sup>989</sup>

518. Witness MZA testified that many people from neighbouring localities sought refuge in Ngoma Parish in April 1994.<sup>990</sup> He recalled that killings throughout Ngoma Commune, “supervised by a certain Jacques,” commenced on 20 April 1994.<sup>991</sup> After “about a week” of bloodshed, the *bourgmestre* of Ngoma Commune organized a meeting on the Ngoma football field. At the meeting, he asked members of the population to stop the killing.<sup>992</sup> The witness testified that some members of the community “were very happy” to hear the announcement, but a group led by Jacques Habimana refused to comply with the instruction, and at nightfall attacked the refugees at Ngoma Parish.<sup>993</sup>

519. Witness MZA recalled that Laurien Ntezimana informed him of a first, failed attack led by Jacques Habimana, on refugees at Ngoma Parish.<sup>994</sup> After being repelled by the refugees, who threw stones, the assailants sought reinforcements.<sup>995</sup> The next day, around 10.00 or 11.00 a.m., they returned to the parish,<sup>996</sup> with new recruits from various locations: a group from Matyazo led by Janvier, a group from Huye led by Mubiligi Muganga, a group led by Kabiligi from Runyinya, and Robert Kajuga’s *Interahamwe* that were lodged at the Ibis Hotel in Butare.<sup>997</sup>

520. Before carrying out the second attack, the attackers assembled close to the witness’s home; they said they “were going to look” for the *Inyenzi* that were in the church. So Witness MZA decided to follow them. He stopped at the *secteur* office, while the attackers continued walking to the Ngoma parish. From Witness MZA’s vantage point, he saw the attackers taking the refugees from the church to the areas where they were killed. Some of the victims were led to the playground and others to the school buildings located close to the church. He could hear them screaming. He saw that some of the attackers were carrying spears.<sup>998</sup>

521. On cross-examination, Witness MZA testified that in front of the Ngoma Parish, “There was a huge house, a kind of hall for games” and, “because of that huge house,” he could not see the gate

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<sup>986</sup> T. 22 June 2009 p. 41

<sup>987</sup> T. 22 June 2009 p. 41

<sup>988</sup> T. 23 June 2009 p.10.

<sup>989</sup> T. 23 June 2009 p. 13. The *nyumbakumi* is in charge of managing 10 to 15 households. His duty is to monitor the movement of residents and visitors in the neighbourhood, that is, to be aware of the number of visitors, the length of their visit and the identity of persons moving from or coming to settle in the neighbourhood. The *nyumbakumi* was directly answerable to the *responsable de cellule*, and the *responsable de cellule* reported to the *Conseiller de secteur*.

<sup>990</sup> T. 23 June 2009 p. 29.

<sup>991</sup> T. 23 June 2009 p. 32.

<sup>992</sup> T. 23 June 2009 p. 32.

<sup>993</sup> T. 23 June 2009 p. 32.

<sup>994</sup> T. 23 June 2009 p. 32.

<sup>995</sup> T. 23 June 2009 p. 32.

<sup>996</sup> T. 23 June 2009 p. 32.

<sup>997</sup> T. 23 June 2009 p. 33.

<sup>998</sup> T. 23 June 2009 p. 34.

that led into the premises of the church.<sup>999</sup> He added, however, that this structure did not prevent him from seeing the “movement of people” who were at the scene.<sup>1000</sup>

522. Witness MZA recognized certain killers, such as Jacques Habimana, the leader of the *Interahamwe*, Gatera, Jean-Claude Murekezi *alias* Fils, Murigande, Édouard Nyagashi, Mbilizi, Gakende Alphonse of Matyazo, Nyandwi of Ngoma, Kabiligi and Muganga.<sup>1001</sup> He also saw members of the *Interahamwe* who were lodged at the Ibis Hotel.<sup>1002</sup>

523. The witness testified that he neither saw soldiers at the parish nor heard that the Commander of Ngoma Camp or soldiers were present.<sup>1003</sup> Furthermore, he did not hear the sound of gunfire coming from the direction of the parish.<sup>1004</sup>

#### *Defence Witness CBA1*

524. Witness CBA1, a *Hutu* man of 34, was a pastor in Ngoma in April 1994.<sup>1005</sup> He testified that he knew a good number of the personnel of the Ngoma Camp from March to June 1994,<sup>1006</sup> including the Accused whom he saw for the last time in March 1994.<sup>1007</sup> Witness CBA1 was not an eyewitness to the events at Ngoma Parish. However, as he walked by the parish days prior to the attack, he saw refugees in the compound and inside the church.<sup>1008</sup>

525. Witness CBA1 testified that massacres were perpetrated both at the Ngoma Parish and at the Matyazo Health Centre,<sup>1009</sup> but he was unable to give the exact dates of these crimes. He thought that the killings took place after 16 April 1994.<sup>1010</sup> Witness CBA1 testified, without giving the source of his information, that the inhabitants of his locality, led by “Jacques,” attacked the refugees of the parish.<sup>1011</sup> He stated that the attackers were led by young members of the MRND—the ruling party—and that the victims in general were *Tutsis* and *Hutus* who were opposed to the government.<sup>1012</sup> The witness denied that any soldiers participated in the attack on Ngoma Parish. He said, “No one told me that he had seen people in uniform amongst the attackers.”<sup>1013</sup> The witness did not know whether the attackers who had attacked the Ngoma Parish refugees were the same ones who went on to massacre those of the Matyazo Health Centre.<sup>1014</sup> He did not give a date as to when the health centre was attacked in relation to the attack on Ngoma Parish.

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<sup>999</sup> T. 23 June 2009 p. 6.

<sup>1000</sup> T. 23 June 2009 p. 61.

<sup>1001</sup> T. 23 June 2009 pp. 33, 34.

<sup>1002</sup> T. 23 June 2009 p. 33.

<sup>1003</sup> T. 23 June 2009 pp. 35, 62.

<sup>1004</sup> T. 23 June 2009 p. 35.

<sup>1005</sup> T. 13 July 2009 p. 29; T. 13 July 2009 p. 25.

<sup>1006</sup> T. 10 July 2009 pp 33, 34.

<sup>1007</sup> T. 10 July 2009 p. 40.

<sup>1008</sup> T. 13 July 2009 p. 9.

<sup>1009</sup> T. 10 July 2009 p. 27.

<sup>1010</sup> T. 13 July 2009 p. 8.

<sup>1011</sup> T. 10 July 2009 p. 27.

<sup>1012</sup> T. 10 July 2009 p. 28.

<sup>1013</sup> T. 13 July 2009 p. 9.

<sup>1014</sup> T. 10 July 2009 p. 27.



*Defence Witness RGF*

526. Witness RGF, a *Hutu*, was 20 years old and sold clothes in the Butare market in 1994.<sup>1015</sup> The witness testified that he walked to Ngoma Parish with “Pilot” following the massacre.<sup>1016</sup> According to Witness RGF, the assailants were “coming in and going away” and they were looting the belongings of the refugees.<sup>1017</sup> The witness testified that he participated in the looting and appropriated a mattress that he found in the rear courtyard of the parish.<sup>1018</sup>

527. Witness RGF testified that he did not see anyone who survived the killings.<sup>1019</sup> Nevertheless, he saw corpses of men and women on the scene but could not identify them because those refugees had come from Nyaruguru.<sup>1020</sup> Since he arrived on the scene after the attack had taken place, he recognized some attackers, “Nyiamungu,” “Payilote,” “Fisi” and “Ruhango.”<sup>1021</sup> But he was unable to recognize them all as there were very many of them.<sup>1022</sup> Witness RGF also stated that the civilians “Ruhango,” “Rwamugo,” “Pilot,” “Fils” and “Eugène” later acknowledged that they participated in the massacres.<sup>1023</sup> Witness RGF asserted that had the soldiers of Ngoma Camp participated in the attack, he certainly would have met them on his way to the church,<sup>1024</sup> but he saw none of them.<sup>1025</sup> He reckoned that the distance between Ngoma Parish and Ngoma Camp is five to six kilometres.<sup>1026</sup>

### 13.3 Deliberation

*Submission of the parties*

528. The parties do not dispute that Ngoma Parish, where about 500 *Tutsis* had sought refuge, was attacked on 29 and 30 April. The Prosecution submits that a group of armed civilians attacked Ngoma Parish on 29 April 1994. After the parish priests, Father Rudahunga and Father Masinzo, phoned Ngoma Camp in to seek assistance, soldiers arrived but did nothing to help them. The Prosecution contends that the attackers returned the following day with soldiers from Ngoma Camp, led by Hategekimana. All the refugees were killed, with the exception of five people from the *Tutsi* ethnic group. The Prosecution relies partly on the eyewitness accounts of the two priests who saw the soldiers at the parish on 30 April, and partly on the evidence of Witnesses BYR and BYQ, who were both soldiers at Ngoma Camp and heard about the massacre.

529. The Defence strongly disputes that any soldiers from Ngoma Camp participated in the attack on Ngoma Parish. It submits that the attackers were solely *Interahamwe* and armed civilians. In

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<sup>1015</sup> T. 2 October 2009 p. 8.

<sup>1016</sup> T. 5 October 2009 pp. 22, 23, 26. According to his testimony, the witness walked to the Parish in the company of Théogène. The English interpreter, however, explained later that he talked of Pilote and not Théogène. The witness stated that Pilote was on the Fifth Avenue and that he had met attackers on the 6th Avenue near the sisters' convent.

<sup>1017</sup> T. 5 October 2009 p. 26.

<sup>1018</sup> T. 5 October 2009 pp. 23, 61. He testified that he participated in the killings at Ngoma Parish.

<sup>1019</sup> T. 5 October 2009 p. 61.

<sup>1020</sup> T. 5 October 2009 p. 61.

<sup>1021</sup> T. 5 October 2009 pp. 22, 23, 54. When giving the identity of the civilians, Witness RGF mentioned “Fisi” and “Fils,” as well as “Payilote” and “Pilote” Having reviewed the entirety of the evidence, the Chamber acknowledges that “Fisi” and “Fils” refer to the same person. This is also the case with “Payilote” and “Pilote.”

<sup>1022</sup> T. 5 October 2009 p. 54.

<sup>1023</sup> T. 5 October 2009 p. 22.

<sup>1024</sup> T. 5 October 2009 p. 27.

<sup>1025</sup> T. 5 October 2009 p. 27.

<sup>1026</sup> T. 5 October 2009 p. 27.

support of its argument, the Defence relies on the eyewitness accounts of ZML and MZA, as well as the evidence of Witnesses CBAI and RGF who heard about the attack.

*The Attack of 29 April 1994*

530. Regarding the attack of 29 April 1994, the Prosecution relies mainly on the testimonies of Father Masinzo and Father Rudahunga, who were at the scene. Their testimonies about the attack tally with respect to major facts. They both testified that the attack on the parish was launched by armed civilians on the night of 29 April 1994. They further testified that they phoned Ngoma Military Camp to seek assistance. However, Father Masinzo's testimony of the attack is more detailed and comprehensive than Father Rudahunga's account. Father Masinzo recalled that the attackers carried torches and were armed with machetes, axes and other traditional weapons. Father Masinzo also testified that the refugees drove back the attackers that night by throwing stones. This account was corroborated by Defence Witness ZML. According to Father Masinzo, the refugees then rang the church bell for 45 minutes to alert the community. Some refugees told both priests that they recognized Jacques Habimana, Édouard Niyitegeka and Gatera among the attackers. Both Father Masinzo and Father Rudahunga confirmed the arrival of soldiers, who responded to their urgent phone call.

531. However, there are slight discrepancies between the two testimonies. In the Chamber's view, these differences may be accounted for by the lapse of time since the event and the fact that the witnesses observed the scene from three different vantage points. Firstly, Father Masinzo referred to the arrival of seven or eight soldiers led by Second Lieutenant Niyonteze, two hours after the phone call, while Father Rudahunga stated that the soldiers arrived after 50 minutes or one hour. The Chamber considers this time difference to be a minor discrepancy which does not affect the credibility of the testimonies.

532. Father Masinzo testified that, on the night of 29 April 1994, he saw Niyonteze talking to the attackers who had been repelled, while Father Rudahunga concluded that the attackers were no longer in front of the parish when the soldiers arrived and that they had "probably left." The Chamber does not find any contradiction between the two accounts, since Father Rudahunga was not certain that he saw the attackers. From his vantage point, it is possible that he could have neither noticed Niyonteze nor seen him talk to Father Masinzo nor witnessed Niyonteze talking with the attackers.<sup>1027</sup> The Chamber therefore admits Father Masinzo's testimony and concludes that Niyonteze was indeed present that night and that he spoke with the attackers.

533. The Chamber notes the inaction of the Ngoma Camp authorities, who were responsible for peace-keeping and for the security of the Ngoma civilian community. In the face of serious danger, they did not offer assistance to the residents or refugees at Ngoma Parish. Moreover, since Ngoma Camp was close to Ngoma Parish, the soldiers of Ngoma Camp should have heard the bell, which rang for 45 minutes in an unusual manner and late at night. They therefore must have known that the refugees were in danger. It should not have been necessary to phone the Ngoma Camp for assistance. Moreover, the very fact that Niyonteze spoke with the attackers, and did not arrest them, suggests that he tacitly approved of the attack and that he even colluded with the attackers.

534. The Chamber is convinced that Niyonteze, who was supposed to afford assistance to the Ngoma parish refugees on the night of 29 April, was instead an emissary of his superior, Hategekimana. Niyonteze inspected and investigated the parish premises, verifying the number of

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<sup>1027</sup> T. 21 April 2009 p.11: The witness stated that "but when they arrived, the assailants had left."

refugees and their location, in readiness for the attack the following day. The Chamber further notes that the following day, Corporals Mpakaniye and Nkurunziza informed Father Masinzo that Hategekimana had planned the attack.

535. In the Chamber's view, this conclusion is reinforced by the fact that, instead of discussing the means to be deployed in order to organize and guarantee the safety of the premises and of the refugees, the second lieutenant instead bitterly criticized Father Masinzo for keeping a large number of "*Inyenzi*" near a camp that was supposed to guarantee the security of the region during a time of war, adding that he knew "how malicious" they were. The fact of referring to the refugees as *Inyenzi* and, therefore enemies, reveals an intention other than that of assisting the refugees. These words explain the attack launched on Ngoma parish the following day.

536. On the basis of the foregoing evidence, the Chamber concludes that Second Lieutenant Niyonteze had tacitly approved the attack of 29 April 1994 by armed civilians. In view of Father Masinzo's testimony, the Chamber also finds that the same attackers who attacked the parish on the night of 29 April returned the following day.<sup>1028</sup> This is further corroborated by the testimonies of Defence Witnesses MZA and ZML, who acknowledged having been present during both attacks.

537. The Chamber therefore finds that there was obvious coordinated action between the attacks of 29 and 30 April 1994.

#### *Identity of the Assailants*

538. The parties do not contest that *Interahamwe* and armed civilians participated in the 30 April attack on Ngoma Parish. The Prosecution alleges that the assailants of the first attack on 29 April returned with reinforcements, including Ngoma Camp soldiers, led by Hategekimana, to kill the *Tutsis* at the parish on 30 April. According to the Defence, no soldier was present or participated in the 30 April attack on the parish.

539. Prosecution witnesses, Father Masinzo, Father Rudahunga, Laurien Ntezimana, BYQ and BYR, testified that civilians, as well as soldiers, attacked Ngoma Parish and killed *Tutsis*, who had taken refuge there. The Chamber finds that Father Rudahunga's account of Hategekimana's arrival at the parish on the morning of 30 April with about six soldiers, *Interahamwe* and armed civilians to be detailed, consistent and reliable. Father Rudahunga saw the soldiers enter the parish compound, led by Hategekimana, while a crowd of civilians, namely, "the killers" whose numbers he could not estimate stood by the gate. Similarly, Father Masinzo presented a reliable and consistent account of the arrival of two Corporals - Gaspard Mpakaniye and Innocent Nkurunziza - who warned him that Hategekimana would soon arrive to kill him that day.

540. Father Rudahunga, who is the Prosecution's only eyewitness to the Ngoma Parish attack on 30 April, referred to the presence of armed civilians, *Interahamwe* and soldiers. Defence Witness ZML confirmed that a priest aged between 50 and 60 years, of average in size and with a receding hairline was present at the site. He knew him but had forgotten his name. The Chamber notes that only two priests resided at Ngoma Parish in April 1994. As Father Masinzo was 38 years old at the time, the Chamber is satisfied that Witness ZML was describing the older priest, Father Rudahunga, and that he was present at the site.

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<sup>1028</sup> T. 19 March 2009 p. 62.

541. The Chamber observes that Father Rudahunga not only referred to the presence of armed civilians and soldiers but also described their acts during the massacre. The Chamber is satisfied that Mpakaniye informed Father Rudahunga that Hategekimana had ordered him to kill the refugees. The Chamber finds that, after Hategekimana's departure, the massacre started immediately. It was led and supervised by the same Mpakaniye who had, on orders from Hategekimana, led the search for Father Masinzo. He assembled the refugees in groups of five, forced them from the church and delivered them to the armed civilians who had accompanied the Accused to Ngoma Parish.

542. Although the parties do not agree on the identities of the attackers, the Chamber notes that the manner in which the 30 April massacre was carried out does not seem to be disputed by the parties. Indeed, the testimonies of Father Rudahunga and of Defence Witnesses ZML, BYQ and MZA corroborate the fact that the attackers led the *Tutsi* refugees from the church in small groups, took them to the fields adjoining the parish and killed them with traditional weapons.<sup>1029</sup>

543. Witness BYQ also testified that Ngoma Camp soldiers were involved in the 30 April attack on Ngoma Parish. BYQ did not participate in the attack and did not provide a first hand account. However, while working in the Ngoma Camp canteen, he heard soldiers talk about the crimes they had committed, on their return from the parish. The date of his conversation at the canteen with the soldiers who perpetrated the massacre coincides with the date of the massacre perpetrated at the parish. He heard them boasting about their exploits. He was an eyewitness to the looted property. He personally saw Rutarihubwoba return with a motorcycle and other soldiers with watches taken from the victims of the massacre. Witness BYQ specifically identified the soldiers who admitted participating in the Ngoma Parish massacre as Corporals Rutarihubwoba, Rugumire, Rutareka and Butera as well as soldiers Pacifique Niyozima, Gaspard Harerimana, Mahoro and Bitorwa.

544. While Witness BYQ was not an eyewitness to the massacre, he provided a credible and consistent testimony that Ngoma Camp soldiers, - some of whom were his subordinates - were involved in the Ngoma Parish attack.

545. The Chamber, however, notes that Witness BYQ was convicted by the Gacaca courts although he was acquitted in February 2007. The Chamber holds that this incident does not affect his testimony, which it found credible.

546. Defence Witness BYR provided a corroborative account that both soldiers and civilians were involved in the Ngoma Parish massacre. Like Witness BYQ, he named Pacifique Niyozima as one of the participating Ngoma Camp soldiers. He also stated that Fabien Niyonteze, Gatwaza, Pacifique Niyonzema and Chinani Nsambimana participated in the attack.

547. The Chamber notes that Witness BYR did not indicate the source of his information. Furthermore, he is currently detained in Rwanda for distributing weapons, erecting roadblocks and participating in the attack on Ngoma Parish. Witness BYR is still in prison awaiting trial. He is a potential accomplice of the Accused, and the Chamber will assess his testimony with caution. The Chamber will therefore assess his statement with the necessary caution. While Witness BYR did not

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<sup>1029</sup> According to Father Rudahunga, a survivor reported that the soldiers handed over the refugees to armed civilians. Witness BYQ testified that he heard soldiers from Ngoma Camp say that they had tricked the refugees into leaving the church one by one, and that the *Interahamwe* subsequently killed them with traditional weapons. Witness MZA testified that the refugees were killed outside the church by civilians and *Interahamwe*. According to Witness ZML, Jacques Gatera had promised Father Rudahunga that he would take the refugees to the *Préfecture* office, where they would be secure. The refugees were, however, killed by the civilians and *Interahamwe* with traditional weapons.

directly implicate Hategekimana in the attack on the parish, he stated that, as commander of Ngoma Camp, the Accused should have known about the acts perpetrated by the soldiers from his camp. The Chamber finds Witness BYR's testimony to be sincere and credible.

548. The testimonies of Father Rudahunga, BYQ and BYR are corroborated by Laurien Ntezimana's account. Ntezimana also testified that he saw both civilians and soldiers when he visited the parish, following the massacre, to find his two friends, Father Masinzo and Innocent Samusoni.

549. On the basis of his background, the Chamber finds that Laurien Ntezimana, a *Hutu*, is a neutral witness who is above suspicion. He tried to save the refugees at the Matyazo Health Centre by helping Father Masinzo to find them a safe haven. He provided the refugees with food and also hid *Tutsis* in his home.<sup>1030</sup>

550. The Defence denies any involvement by soldiers from Ngoma Camp and by Hategekimana in the attack on the Ngoma Parish without, however, contesting the participation of armed civilians and *Interahamwe*. Defence Witnesses ZML and MZA, who both acknowledged having witnessed the attack, claimed that no soldiers were involved. Witness ZML contended that the soldiers from Ngoma camp could not fight because they were all handicapped. The Chamber has already determined that there were many able-bodied soldiers at Ngoma Camp and accordingly discounts this assertion.

551. Witness ZML acknowledged having attended a meeting in preparation for the massacre of refugees at Ngoma Parish. In his detailed account to the Chamber, he maintained that the attacks had been perpetrated solely by civilians from Ngoma, Matyazo, Huye and Mpare, as well as by Robert Kajuga's *Interahamwe* led by Jacques Habimana. He named other *Interahamwe*, such as Édouard Murekezi, Mbilizi Rubeni and Marc. The Chamber does not believe his argument that he was forced to participate in the Ngoma Parish attack out of fear of being branded an enemy.

552. Witness ZML was a self-acknowledged accomplice in the Ngoma Parish massacre. In addition to his role in the massacre, his testimony raised other questions as to his credibility. For example, he denied awareness that his brother was charged with genocide and died in prison.<sup>1031</sup> He was evasive when questioned about seeing or hearing about the involvement of Ngoma Camp soldiers in the killing of Jean-Bosco Rugomboka.<sup>1032</sup> He said that he did not notice any dead bodies in the area between April and July 1994.<sup>1033</sup> For all these reasons, the Chamber views Witness ZML's testimony with caution and does not find his testimony sufficiently credible to cast doubt on the Prosecution's evidence as to the involvement of soldiers in the 30 April 1994 attack on Ngoma Parish. Moreover, the Chamber observes that his testimony is not corroborated by any other reliable testimony.

553. Defence Witness MZA, while corroborating the testimonies of the Prosecution witnesses in nearly all respects, stated that no soldiers participated in the Ngoma Parish attack. He testified that he heard about the failed attack of 29 April on the parish, led by Jacques Habimana, from Laurien Ntezimana. However, Laurien Ntezimana, who testified before the Chamber, did not refer to the attack of 29 April and did not witness the attack of 30 April. Rather, Ntezimana arrived at the parish only after the attack, although in time to see several of the assailants. Contrary to Witness MZA's

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<sup>1030</sup> His sister is a national heroine who chose to die with her *Tutsi* sisters.

<sup>1031</sup> T. 22 June 2009 p. 48.

<sup>1032</sup> T. 22 June 2009 p. 45 *et seq.*

<sup>1033</sup> T. 22 June 2009 p. 47.

contention that soldiers did not participate in the second attack, Laurien Ntezimana stated that among the assailants were both soldiers and *Interahamwe*.

554. Witness MZA, who denied his participation in the 30 April attack on the Ngoma Parish, testified that he remained on the road in front of the *bureau de secteur* for approximately an hour. He stated that, from this vantage point, he could see the *Tutsi* refugees being taken to their deaths. In the Chamber's view, the witness could have warned the authorities about the attack during this period of time, had he so desired. Witness MZA denied any participation of Ngoma Camp soldiers or Hategekimana in the massacre, asserting instead that the assailants were civilians led by Jacques Habimana. He maintained that he did not hear any gunshots.

555. Witness MZA stated that, after the failure of the first attack on 29 April, civilians from various areas reinforced the assailants in the 30 April massacre. The reinforcements consisted of the Matyazo group, led by Janvier, the Huye group, led by Mubiligi Muganga, the group from Runyinya led by Kabiligi, the *Interahamwe* group led by Robert Kajuga, and the group of Jacques Habimana, the *Interahamwe* leader; he also recognized Gatera, Jean-Claude Murekezi *alias* Fils, Murigande and Édouard Nyagashi, Mbilizi, Gakende, Alphonse from Matyazo, Nyandwi from Ngoma, Kabiligi and Muganga. The Chamber notes that the witness also mentioned the groups from Huye, Runyinya, Matyazo, Ngoma and Mtare among those who attacked the parish.<sup>1034</sup>

556. Witness MZA testified that, between his vantage point and the church, "there was a huge house, a kind of hall for games," which blocked the view of gate leading to the church premises. Despite the presence of the building, he could observe all the "movement" of the attackers who were leading the refugees from the church to kill them. The Chamber notes that during the inspection of the site, the actual distance between the *Secteur* office and the parish was measured as 100 metres, not 40 to 50 metres, as stated by the witness. In addition, the inspection of the site revealed that only the left side of the church was visible from the *Secteur* office. Witness MZA could not have freely observed, as he claimed, the movements of the assailants and victims from his vantage point. Therefore, the witness was not in a position to rebut the credible testimony of Father Rudahunga, who placed the soldiers on the right side of the church. The Chamber does not consider Witness MZA's identification of the assailants, which excludes soldiers, to be thorough or reliable.

557. Witness MZA, who lives in exile, denied that he left Rwanda for fear of prosecution for participation in genocide. However, a Gacaca court tried the witness *in absentia* in 2007, following which it issued a judgement and a warrant for Witness MZA's arrest.<sup>1035</sup> The witness denied knowledge of the judgement against him.<sup>1036</sup> Based on the foregoing, the Chamber does not discount the possibility that Witness MZA was involved in the Ngoma Parish massacre.

558. In the light of the totality of evidence, the Chamber finds that Witness MZA's testimony that soldiers did not participate in the attack on Ngoma Parish is not credible or reliable.

559. Defence Witness CBA1 testified that the attack on Ngoma Parish was perpetrated solely by civilians led by member of the MRND party. The Chamber notes that the witness did not indicate

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<sup>1034</sup> T. 23 June 2009 p. 34: "There was the leader of the attackers whose name was Jacques. There was Gatera; Murekezi, Jean Claude, *alias* Fils. There was Murigande, Édouard Nyagashi. There were people from Matyazo, like Mbilizi, Gakende, Alphonse, who came from Matyazo; Nyandwi from Ngoma; and of course, Kabiligi whom I knew very well; a certain Janvier; as well as Muganga who was well known to me."

<sup>1035</sup> T. 24 June 2009 p. 9.

<sup>1036</sup> T. 24 June 2009 p. 9.

the source of his information and that he merely reported hearsay. The Chamber does not consider Witness CBA1's evidence to be reliable.

560. Witness RGF stated that he was not an eyewitness to the massacre at Ngoma Parish. It was only after the attack on the parish that he visited the scene, where he acknowledged having stolen a mattress. The witness asserted that the assailants involved in the attack were civilians, among whom he recognized Niyamungu, Ruhango, Rwamugo, Payilote, Fisi and Eugène. He also claimed that no soldiers were involved, as he would have surely met them on the road to the parish. However, if the witness's claim to arriving after the massacre was already over is true, then he may well not have been in a position to have seen all of the assailants. Additionally, Witness RGF's testimony raises serious questions about his own actions at Ngoma Parish. He implicated his own travelling companion, Pilot ("Payilote"), as a participant in the massacre and admitted that he was a looter.

561. Witness RGF acknowledged that, after being detained from 1998-2007, he had been granted a provisional release, pursuant to a Gacaca court ruling but that he was "still wanted."<sup>1037</sup> The witness admitted his confession before the Gacaca court about having participated in attacks and acts of looting, and having failed to provide assistance to persons in danger. He said that he did not commit any "blood crimes."<sup>1038</sup> However, on cross-examination, he stated that he was charged with genocide and that he did "play a role in the death of certain persons," although he "did not personally kill any individual."<sup>1039</sup> In addition, Witness RGF admitted in the *Kalimanzira* trial that he had falsified documents and that he had participated in killing a named individual.<sup>1040</sup> In view of the witness's criminal record, as well as his conflicting and unclear testimony, the Chamber does not find Witness RGF to be credible or reliable. The Chamber cannot therefore rely on his testimony in respect of the involvement of soldiers in the Ngoma Parish attack.

562. In view of the foregoing, the Chamber is satisfied that soldiers were present and that they participated in the attack on Ngoma Parish on 30 April 1994. The soldiers included Corporals Gaspard Mpakaniye and Nkurunziza, who came to warn Father Masinzo that Hategekimana intended to kill him. Witness BYQ also cited Corporals Rutarihubwoba, Rugumire, Rutareka and Butera and soldiers Pacifique Niyozima, Gaspard Harerimana, Mahoro and Bitorwa.

563. Having carefully reviewed the evidence, the Chamber finds beyond reasonable doubt that soldiers from Ngoma Camp, armed civilians and *Interahamwe* attacked Ngoma Parish on 30 April 1994 and massacred *Tutsis* who had sought refuge at the parish.

#### *Presence of the Accused*

564. Father Rudahunga was the only eyewitness to Hategekimana's presence at the Ngoma Parish before the launch of the 30 April attack. He recognized Hategekimana when he arrived at the parish with about six soldiers, *Interahamwe* and armed civilians. At this time, Hategekimana greeted him and sought to know the whereabouts of Father Masinzo. Before the attack, the witness knew Hategekimana as Commander. Subsequently, he learned Ildephonse Hategekimana's name from soldiers from Ngoma Camp, whom the commander had sent to kill the refugees at the parish. Following the attack, Corporal Mpakaniye confirmed to the priest that the commander's name was Hategekimana. According to Father Rudahunga, the soldiers, led by Hategekimana, entered the parish courtyard, while a crowd of civilian killers, whose number he could not estimate, remained at

<sup>1037</sup> T. 2 October 2009 pp. 9-19.

<sup>1038</sup> T. 2 October 2009 p. 17.

<sup>1039</sup> T. 5 October 2009 p. 10.

<sup>1040</sup> T. 5 October 2009 p. 11.

the gate. Hategekimana was distinguishable from the other soldiers because he wore a beret with distinctive insignia. The Chamber believes that Father Rudahunga provided a detailed, consistent and reliable account of Hategekimana's presence at the parish on 30 April 1994.

565. Similarly, Father Masinzo provided a credible and consistent account of the arrival of the two corporals, Gaspard Mpakaniye and Innocent Nkurunziza, who came to warn him that Hategekimana intended to kill him "in a cruel or atrocious manner." The Chamber is cognizant that Father Rudahunga saw neither Corporal Mpakaniye nor Corporal Nkurunziza, and that he did not witness the sequence of events leading to Father Masinzo's hiding in the false ceiling. However, in assessing the totality of the evidence, the Chamber finds that Father Masinzo presented a true and sincere account of how the two corporals helped him to hide from Hategekimana. The Chamber finds that the testimonies of Father Rudahunga and Father Masinzo are consistent and complementary.

566. The Chamber believes that Father Masinzo clearly recognized Hategekimana's voice because he had the opportunity to talk to him on at least three occasions. The first occasion was at a wedding party in 1993, when they were seated next to one another. The second opportunity was in front of Ngoma Camp, and the third was at meetings held at Matyazo Health Centre, on 13, 14 or 16 April, where they discussed at length the food distribution and the transfer of the refugees to a safe location outside of Matyazo. The Chamber finds that the frequency and duration of these meetings were sufficient to enable Father Masinzo to recognize Hategekimana's voice. Father Masinzo also gave a compelling, credible and detailed testimony of the close, threatening presence of Hategekimana and the anguish and trauma he experienced while he was hiding in the false ceiling. He sensed that Hategekimana, who was extremely angry, was looking for him. Although the witness could not see him, he estimated that Hategekimana was standing approximately five metres away from him. Father Masinzo also heard the attackers call the commander by name.

567. Father Rudahunga heard rumours that Hategekimana wanted to catch and kill Father Masinzo. On 30 April, having looked for Father Masinzo in vain, Hategekimana issued this message: "If you find him, bring him to me." He thus confirmed Mpakaniye's warning that Hategekimana wanted to kill Father Masinzo.<sup>1041</sup> The Chamber believes the priest's testimony that he was forced to give Mpakaniye money in exchange for his silence. Witness Laurien Ntezimana was also blackmailed by another soldier who threatened to reveal that Father Masinzo was still alive if he were not paid.

#### *Role of the Accused*

568. It was Hategekimana's duty as Commander of Ngoma Camp to safeguard the community and to maintain order and security in Ngoma, particularly in the Matyazo *Secteur*. After President Habyarimana's death, the soldiers from Ngoma camp appeared to maintain order by patrolling the Ngoma *Secteur* and by restricting residents' movement outside of their homes. The Chamber notes that Hategekimana could make decisions relating to the safety of persons and property in the *secteur* that was under his protection. Thus, Father Masinzo had made arrangements with Hategekimana for the evacuation of refugees from the health centre to a safer location. In light of Hategekimana's authority, Father Masinzo and Father Rudahunga called Ngoma Camp for assistance in protecting the refugees against the armed assailants who attacked the parish on the night of 29 April 1994.

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<sup>1041</sup> T. 19 March 2009 pp. 9, 63.



569. However, the Chamber notes that, judging from the above acts and those of his subordinates, Hategekimana had no intention of protecting the refugees. On the contrary, he intended to eliminate Father Masinzo and to kill the *Tutsi* refugees at the parish.

570. Having considered the evidence presented, the Chamber concludes that Hategekimana intended to kill Father Masinzo because, in protecting the *Tutsi* refugees, the priest was hindering his actions. Hategekimana considered Father Masinzo to be an accomplice of the *Inyenzi* because he provided them with shelter, food and medical care. After Lieutenant Niyonteze's visit to the parish on the night of 29 April 1994, Hategekimana personally accompanied soldiers to the parish the next morning to eliminate Father Masinzo, and he ordered the massacre of the *Tutsi* refugees.

571. The testimonies of Father Rudahunga and Father Masinzo relating to Hategekimana's intentions and to his presence at the Ngoma Parish on 30 April 1994 are corroborated by the evidence of Witness BYQ. The Chamber recalls that BYQ heard Ngoma Camp soldiers returning from the massacre say that Second Lieutenant Fabien Niyonteze was present at the parish. According to Witness BYQ, Hategekimana designated Niyonteze to lead the Ngoma Parish massacre. Witness BYQ also testified that he heard of Hategekimana's presence at the parish on 30 April 1994.

572. The evidence establishes that the majority of the Ngoma Parish victims were *Tutsis*.<sup>1042</sup> According to Father Masinzo, only three girls and a young man survived the massacre because they were *Hutus*.<sup>1043</sup> Father Rudahunga also confirmed that the victims of the massacre were *Tutsis*. He stated that there were at most five survivors of the massacre, and that they were spared because they were or were thought to be *Hutus*.<sup>1044</sup>

573. The Prosecution has established that the targeted victims of the Ngoma Parish massacre were *Tutsis*. Thus, the Chamber finds beyond reasonable doubt that the perpetrators intended to destroy, in whole or in part, the *Tutsi* ethnic group. This is a constituent element of genocide.

574. On the basis of the totality of the evidence, the Chamber finds that Hategekimana and soldiers from Ngoma Camp were present during the attack on *Tutsi* refugees at Ngoma Parish on 30 April 1994. The massacre commenced after Hategekimana's departure from the parish, after he failed to locate Father Masinzo. The Chamber is satisfied that the massacre at the parish was committed jointly by soldiers from Ngoma camp, on orders from Hategekimana, as well as by *Interahamwe* and armed civilians.

## **14. Massacre at *Maison Générale* (Benelikira Convent), Ngoma Commune, Butare Préfecture, on or about 30 April 1994**

### **14.1 Overview of the Parties' Accounts**

575. The Prosecution alleges that Hategekimana led armed Ngoma Camp soldiers, *Interahamwe* and civilians, who were participants in a joint criminal enterprise, to the *Maison Générale* on or about 30 April 1994, ordering them to separate, abduct and kill refugees sheltered at the convent

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<sup>1042</sup> T. 20 March 2009 p. 18; T. 31 March 2009 p. 39.

<sup>1043</sup> T. 18 March 2009 pp. 62, 63.

<sup>1044</sup> T. 21 April 2009 p. 5.

identified as *Tutsis*.<sup>1045</sup> Among the victims were three children named Solange Karenzi, Mulinga Karenzi and Clémence. In support of its allegations of genocide and murder, Prosecution relies upon the testimonies of Witnesses BYO, QCQ and BYS.<sup>1046</sup>

576. Hategekimana disputes the credibility of Witnesses BYO, QCQ and BYS.<sup>1047</sup> The Defence relies on the testimony of Witness RBU, a brick mason, who was repairing an exterior wall of the *Maison Générale* when the attack was launched, and on the evidence of Witnesses CBM2, CBN1 and MLA, who testified that Hategekimana was absent from Ngoma *Commune* between 16 April and the month of May 1994, and thus could not have participated in the abduction and killing of *Tutsis* from the *Maison Générale*.<sup>1048</sup>

## 14.2 Evidence

### *Prosecution Witness BYO*

577. Prosecution Witness BYO is a *Tutsi* Catholic nun. During the 1994 genocide, she had been ordained into the Benebikira Order, and she served as the secretary for an affiliated religious congregation. The witness resided at the *Maison Générale* (Benebikira Convent) on 30 April 1994.<sup>1049</sup>

578. Witness BYO testified that many refugees, who were primarily *Tutsis*, had fled from the *Interahamwe* and had sought shelter at the *Maison Générale* as of 10 April 1994.<sup>1050</sup> She stated that, among the refugees, were young children, “students around 17, 18 and 19 years old,” “adult women more than 30 years old” and nuns who had come from Nyumba and Zaza, such as Sister Caritas, Sister Espérance, Sister Donatille and Sister Catharine. Among the refugees, the witness specifically identified, three *Tutsi* children of the Karenzi family: an older daughter Solange, another child called Marc and a young boy, whose first name she could not recall.<sup>1051</sup>

579. Witness BYO recalled that, prior to the events on 30 April 1994 around 5.00 in the morning, Sister Spéciose received a telephone call from a young man named Innocent, warning of an “imminent attack” on the convent by Ngoma Camp soldiers.<sup>1052</sup> Following Innocent’s call, Sister Spéciose awakened BYO and the other nuns to pray about the situation. According to the witness, despite the warning, there was no material way to protect the convent from an attack.<sup>1053</sup> If the

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<sup>1045</sup> Indictment paras. 20, 31, 37, 41; Prosecution Closing Brief para. 402. The Indictment alleges that Hategekimana is both individually responsible for the crimes, pursuant to Article 6(1) of the Statute, and responsible as a superior, pursuant to Article 6(3) of the Statute, for the acts of subordinates.

<sup>1046</sup> Prosecution Closing Brief para. 402.

<sup>1047</sup> Defence Closing Brief para. 672; Defence Closing Arguments T. 26 April 2010 pp. 41, 48, 66-67.

<sup>1048</sup> Defence Closing Brief para. 671; T. 2 July 2009 pp. 11, 34; T. 9 July pp. 14, 44-45, 47, 62-63, 74.

<sup>1049</sup> T. 4 May 2009 pp. 7, 10, 22, 31. Witness BYO was unable to travel to the site of the Tribunal in Arusha, and testified by video-link. Her cross-examination was conducted by Defence Counsel from Arusha, where the Chamber was sitting. The witness testified that the *Maison Générale* in Taba *Secteur*, where she resided at the time of the attack on 30 April 1994, is one of four convents that belong to the Benebikira Convent in Butare *Préfecture*. According to Witness BYO, in 1994 the *Maison Générale* was located in a compound consisting of several buildings, which included housing for nuns and students, with two guarded entrances, each facing a different road. The compound was fenced by a hedge of cypress trees.

<sup>1050</sup> T. 4 May 2009 pp. 10-12.

<sup>1051</sup> T. 4 May 2009 p. 13. Witness BYO stated that she was not certain whether the child’s name was Marc, Marik or Malik.

<sup>1052</sup> T. 4 May 2009 pp. 15, 16, 36-41. Witness BYO identified Innocent as a domestic helper for Ngoma Camp officers who “lived in a house adjacent to the convent.” The witness did not personally know Innocent.

<sup>1053</sup> T. 4 May 2009 pp. 16, 41-42.

refugees had fled, BYO said, they would have been apprehended and killed at the roadblock, which had been erected below the convent.<sup>1054</sup>

580. Witness BYO recalled that Innocent had called the convent on at least two other occasions prior to 30 April 1994, advising the nuns to hide certain refugees, including Solange Karenzi.<sup>1055</sup> He requested the nuns not to allow Solange to answer any phone calls from the Ngoma soldiers because they “could hurt that girl.”<sup>1056</sup> According to the witness, Innocent suspected that the soldiers “were going to come and abduct that girl in order to rape her.”<sup>1057</sup>

581. Later the same day, around 11.30 a.m., Witness BYO was in the chapel with other nuns when refugees came running to inform them that the convent was under attack. BYO saw both soldiers, armed with loaded rifles, and *Interahamwe*, carrying traditional weapons and jerry cans full of petrol. They were outside the *Maison Généralice*, banging incessantly on the gate.<sup>1058</sup> She heard people shouting that the convent should not be burned and that they were going to find a ladder to scale the entry.<sup>1059</sup> The witness, who had accompanied the Mother Superior, Sister Médard, to the gate, saw a vehicle leave. However, before the assailants returned in the vehicle with a ladder, Sister Médard had already opened the exterior entry. The witness saw soldiers, wearing military uniforms of a green, camouflage colour and black berets, storm the convent, attack young men inside the entrance and drag them to the lawn of the interior courtyard.<sup>1060</sup> Witness BYO did not recall the number of soldiers involved in the attack, only that “[t]here were many of them, and we were afraid.”<sup>1061</sup>

582. The assailants “forced” the nuns to back away from the gate, ordering them to their respective rooms.<sup>1062</sup> A soldier followed BYO, then entered her room. He ordered her “to give him the radios with which [the nuns] could communicate with the *Inyenzi*” and demanded to know whether there were any *Inyenzi* present within the convent.<sup>1063</sup> The witness asked the soldier to which *Inyenzi* he was referring; the soldier responded that “they were looking for *Tutsis* collaborating with the *Inyenzi*.”<sup>1064</sup> After searching “everywhere, under the bed, in the cupboards, even on the roof,” the soldier was joined by an *Interahamwe*, carrying a traditional weapon “meant

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<sup>1054</sup> T. 4 May 2009 p. 41. Witness BYO stated that a roadblock had been erected “below” and “on the right-hand side” of one of the two entrances to the convent.

<sup>1055</sup> T. 4 May 2009 p. 13. Witness BYO recalled that the Karenzi children arrived at the convent, after the deaths of their father and mother, around 21 April 1994.

<sup>1056</sup> T. 4 May 2009 pp. 12-13, 38-40. Witness BYO explained that, following the killing of Professor Karenzi and his wife, prior to 30 April 1994, Innocent had called the nuns, informing them that the Karenzi children had been apprehended at a roadblock and taken to the officers’ house. Shortly after this telephone call, the youngest Karenzi children, accompanied by soldiers, arrived at the convent. “They came together with Kanyabugoya’s children, including Thierry and Emile.” The nuns asked where the older daughter Solange was, and one of the soldiers said “that was not his business.” Following “a long interrogation” by the nuns, the soldiers brought Solange to the convent later that day.

<sup>1057</sup> T. 4 May 2009 pp. 38-39.

<sup>1058</sup> T. 4 May 2009 pp. 15, 17, 22, 26, 42-44.

<sup>1059</sup> T. 4 May 2009 p. 22.

<sup>1060</sup> T. 4 May 2009 pp. 15, 22, 35, 45, 51, 58.

<sup>1061</sup> T. 4 May 2009 pp. 15, 19, 36, 41. Witness BYO testified that she knew the soldiers were from Ngoma Camp, located about 20-30 minutes from the *Maison Généralice*, but that she did not know the road or direction from which they had come in the morning of the 30 April 1994 attack.

<sup>1062</sup> T. 4 May 2009 pp. 20, 22, 45-46, 54. Witness BYO stated, “Each nun went and stood in front of the door to her room, and each of the soldiers went into the room accompanied by a soldier who would search everywhere.”

<sup>1063</sup> T. 4 May 2009 pp. 22-23.

<sup>1064</sup> T. 4 May 2009 p. 23.

to kill.” The witness recognised the *Interahamwe* as Ignace, her former economics teacher at the *Groupe Scolaire*.<sup>1065</sup>

583. During the search of her room and person, Witness BYO was unable to observe the events unfolding on the convent grounds.<sup>1066</sup> However, afterwards she joined other nuns who had gathered “[w]here they had put us” in the courtyard, “waiting for what would happen.”<sup>1067</sup> From her position, BYO saw the soldiers search and separate the refugees on the lawn, after verifying their identity documents.<sup>1068</sup> The witness stated, “[t]he soldiers did not ask the reverend sisters to show their identity cards,” for “our time had not yet come.”<sup>1069</sup>

584. Witness BYO testified that, while she and other nuns huddled together discussing the abduction of the refugees, she observed a soldier standing apart, who was later identified by Sister Frédérique as Hategekimana. He was standing “about 3 to 4 metres” away from the witness, inside the convent “chatting” with Sister Frédérique.<sup>1070</sup> Although frightened, BYO followed their conversation and understood that Hategekimana was Sister Frédérique’s former neighbour from Gitarama.<sup>1071</sup> The witness heard the soldier tell Sister Frédérique about recently meeting her brother. BYO observed Sister Spéciose and another nun, also from Gitarama, approach and greet Hategekimana while he was conversing with Sister Frédérique.<sup>1072</sup> BYO further recalled that, shortly afterwards, Sister Frédérique stepped over to the group of nuns and said, “The commander has sent me to tell you that if you continue making noise, he will take you away also.”<sup>1073</sup>

585. Witness BYO described the commander as approximately 38 years of age, having a “dark complexion” and being “somewhat stockily built.” He wore a black beret and a knee-length coat over a military uniform.<sup>1074</sup> The commander was not carrying a gun.<sup>1075</sup> After he left the convent later that morning with the assailants and refugees, Sister Frédérique identified him to the witness and other nuns as “Commander Ildephonse Hategekimana from Ngoma Camp.”<sup>1076</sup>

586. Witness BYO did not see Hategekimana enter the convent amidst the influx of assailants when Sister Médard opened the convent’s exterior gate. She first observed him “when he was already standing in the courtyard” with Sister Frédérique<sup>1077</sup> and then watched him shortly afterwards as he “went out and ordered the soldiers to go away with the refugees.”<sup>1078</sup> According to Witness BYO, the nuns “pleaded” to be taken with the children, but the soldiers refused, after

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<sup>1065</sup> T. 4 May 2009 pp. 22, 26. According to Witness BYO, Ignace was “one of the killers.” The witness asked him, “Ignace, have you also dared to come and abduct young children who are five or six years old? Are you also one of the attackers?” Witness BYO testified that Ignace was convicted and executed for his participation in the 1994 genocide.

<sup>1066</sup> T. 4 May 2009 p. 46.

<sup>1067</sup> T. 4 May 2009 p. 48.

<sup>1068</sup> T. 4 May 2009 pp. 23, 44.

<sup>1069</sup> T. 4 May 2009 pp. 44-45.

<sup>1070</sup> T. 4 May 2009 pp. 20-22.

<sup>1071</sup> T. 4 May 2009 pp. 18-21, 48-49. According to Witness BYO, the soldier told Sister Frédérique that her brother had just bought a white vehicle.

<sup>1072</sup> T. 4 May 2009 p. 21.

<sup>1073</sup> T. 4 May 2009 pp. 21, 22, 49.

<sup>1074</sup> T. 4 May 2009 pp. 20-21, 51, 59. In response to a question raised by the Defence about the overcoat, Witness BYO stated that “it usually rains in the month of April, which explains why someone may want to cover him or herself with an overcoat.”

<sup>1075</sup> T. 4 May 2009 p. 49.

<sup>1076</sup> T. 4 May 2009 pp. 18-19, 22, 48-51; Defence Closing Brief para. 621.

<sup>1077</sup> T. 4 May 2009 pp. 21-22, 49, 55.

<sup>1078</sup> T. 4 May 2009 p. 21.

threatening to return later for them.<sup>1079</sup> The soldiers herded “some fifty children” and a few adults, who had been identified as *Tutsis*, outside the convent, “piled” them into a “big Daihatsu vehicle” waiting by the roadside and drove away.<sup>1080</sup> The witness stated that a military truck, which she thought was used by the commander, immediately followed the Daihatsu.<sup>1081</sup> She described this second vehicle as a “greenish,” “camouflage” “multi-coloured” pickup “that could carry quite a significant number of people in its rear cabin.”<sup>1082</sup>

587. Witness BYO testified, “[a]ll the children were taken away, and they died.”<sup>1083</sup> Some time after the abduction, BYO and other Benebikira sisters found the refugees’ remains in different areas of the *commune*, including Kabutare, near the *Groupe Scolaire*, and buried them.<sup>1084</sup> Among the victims abducted from Benebikira Convent were three children of Professor Karenzi, a *Tutsi* university lecturer.<sup>1085</sup> The witness recalled the names of two of the children, Solange and Malik, but could not remember the name of the young Karenzi boy.<sup>1086</sup>

588. Witness BYO testified that after the refugees’ abduction, soldiers from the Ngoma Camp, returned to the *Maison Généralice* “at about 12 and went towards the place where they had found drinks.”<sup>1087</sup> BYO recognised among them “the faces” of many of the assailants who had abducted the refugees earlier in day, and first thought that they had returned to take the nuns away also.<sup>1088</sup> Rather, “[t]hey served themselves drinks, and [...] we talked.” While drinking, the soldiers told the witness and other nuns that “they were based at the Ngoma Camp.”<sup>1089</sup> The soldiers also told the nuns that they had taken their victims to the Butare *Préfecture*.<sup>1090</sup> The nuns did not believe them, for “those children did not come back.”<sup>1091</sup>

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<sup>1079</sup> T. 4 May 2009 pp. 18, 44-45, 52, 54.

<sup>1080</sup> T. 4 May 2009 pp. 23, 25, 27, 41, 44, 52, 54-55, 60.

<sup>1081</sup> T. 4 May 2009 pp. 22, 49, 52-55.

<sup>1082</sup> T. 4 May 2009 pp. 54-55. Witness BYO did not know whether some of the victims were transported in the second military vehicle with the assailants.

<sup>1083</sup> T. 4 May 2009 p. 60. BYO estimated that approximately 50 refugees were taken away.

<sup>1084</sup> T. 4 May 2009 pp. 24, 57. Witness BYO was not asked and did not specify the dates that the victims’ remains were identified or the identification process. She specified, “The *Tutsis* were, of course, killed because none of them came back.” She added, “I say so because in 1994 it was the *Tutsis* who were targeted during the massacres. And when we were attacked, the refugees were sorted out on the basis of their ethnicity. And the *Hutus* were taken to the convent, and the *Tutsis* were taken away. And the *Tutsis* who were taken away never came back.” On cross-examination, she stated that “as of the 30th of April 1994, none of the refugees came back to the convent. Furthermore, we had occasion to bury the bones of those refugees subsequently.”

<sup>1085</sup> T. 4 May 2009 p. 12. The witness recalled that the children arrived at the convent on 21 April 1994, following the deaths of Mr. and Mrs. Karenzi on 19 and 20 April 1994, respectively.

<sup>1086</sup> T. 4 May 2009 pp. 12-13. Witness BYO was not certain whether the name of the second child was Malik, Marik or Marc. The witness recalled that the Karenzi children arrived at the convent with Thierry and Emilie, two children of Mr. Kanyabugoyi, who had died in Kigali.

<sup>1087</sup> T. 4 May 2009 pp. 18-19, 25, 41, 51-52. The soldiers told the nuns that they would return to the convent to take them away. The witness testified that the distance from the convent to the camp could be covered in 20 or 30 minutes.

<sup>1088</sup> T. 4 May 2009 pp. 18-20, 51. Witness BYO testified that the nuns, who thought that they too would be abducted if they remained at the convent, “were preparing to leave.” However, the soldiers availed themselves of the beer stock, which they had discovered during their search of the convent in the morning and spoke with the nuns.

<sup>1089</sup> T. 4 May 2009 pp. 18, 25. Witness BYO testified, “We did not ask to know who their commander was. But we knew where they had come from.”

<sup>1090</sup> T. 4 May 2009 pp. 25, 51-52, 56.

<sup>1091</sup> T. 4 May 2009 p. 52.

Prosecution Witness QCQ

589. Prosecution Witness QCQ, a *Tutsi* woman, resided at the *Maison Généralelice*, in Ngoma *Commune* during the 1994 events. In April of that year she was nearly 14 years old.<sup>1092</sup> Witness QCQ testified that, in the morning of 30 April 1994, she was inside, not far from the left entrance, when “many” civilian *Interahamwe* and soldiers “broke open” the entry door, smashing the glass, and “forced themselves” into the convent.<sup>1093</sup> The soldiers wore camouflage-coloured shirts and trousers and were armed with rifles.<sup>1094</sup> According to Witness QCQ, “the soldiers were mixed with *Interahamwe*,” and she was unable to estimate their number.<sup>1095</sup> The soldiers and *Interahamwe* ordered the nuns to their rooms, but ordered all others, including the refugees and the witness, outside to the courtyard garden.<sup>1096</sup> There the assailants separated persons from Butare on one side of the garden and those from Gikongoro, Kigali or Cyangugu on the other side.<sup>1097</sup> The soldiers and *Interahamwe* demanded identity cards and beat any one who refused to comply.<sup>1098</sup>

590. When a soldier asked the witness’s ethnicity, Sister Médard explained that QCQ was an orphan. According to Witness QCQ, “[a]fter that, the attackers put me on the side.”<sup>1099</sup> She stated that a few others were also spared, after Sister Athanasie insisted that they were “her children” for whom the assailants would be “held responsible” if their blood were shed.<sup>1100</sup>

591. Witness QCQ testified that, from a distance of “about seven metres,” she observed the soldiers’ “leader,” as he was speaking with nuns on the “path through the compound,” close to the area where the refugees had been ordered to sit in the courtyard.<sup>1101</sup> The witness heard the leader “issuing orders to the attackers.”<sup>1102</sup> He stood “as if he were observing what the others were doing.”<sup>1103</sup> Because QCQ was “so scared,” she did not take a close look at the man, but recalled that he wore a long khaki overcoat or raincoat that fell below his knees.<sup>1104</sup> He was “of average height with a complexion that was neither very light nor very dark.”<sup>1105</sup> QCQ recalled that the leader stopped a soldier from forcing the refugees to sing. In response to the order, the soldier replied, “Yes, Lieutenant.”<sup>1106</sup> The leader ordered one of Karenzi’s children to be placed in the group of refugees to be taken away “because he was an *Inyenzi*.”<sup>1107</sup> He ordered the assailants to make the refugees stand; he gave the order to “go and kill us.”<sup>1108</sup>

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<sup>1092</sup> T. 8 April 2009 pp. 58-59; T. 9 April 2009 p. 4.

<sup>1093</sup> T. 8 April 2009 pp. 60-61, 67, 80.

<sup>1094</sup> T. 8 April 2009 pp. 59-62, 80. Witness QCQ stated that 30 April is the date when the nuns commemorate the *Maison Généralelice* victims who were abducted and killed. According to Witness QCQ, there were “two roads into the convent;” there was “one entrance on the left-hand side and one entrance on the right-hand side” of the convent. Inside the compound, which was “fenced” with a hedge of Cyprus trees, were many buildings, including two on the left, one on the right, two on the lower side and one in the middle of the convent.

<sup>1095</sup> T. 8 April 2009 p. 67.

<sup>1096</sup> T. 8 April 2009 p. 63.

<sup>1097</sup> T. 8 April 2009 p. 63.

<sup>1098</sup> T. 8 April 2009 p. 64.

<sup>1099</sup> T. 8 April 2009 p. 64.

<sup>1100</sup> T. 8 April 2009 p. 66.

<sup>1101</sup> T. 8 April 2009 pp. 66, 68, 81; T. 9 April 2009 p. 4. According to Witness QCQ, before he left the convent, the leader said that he had checked the number of people remaining.

<sup>1102</sup> T. 8 April 2009 p. 62.

<sup>1103</sup> T. 8 April 2009 p. 63.

<sup>1104</sup> T. 8 April 2009 pp. 62, 66, 81.

<sup>1105</sup> T. 8 April 2009 p. 62.

<sup>1106</sup> T. 8 April 2009 p. 62.

<sup>1107</sup> T. 8 April 2009 pp. 63-64. Witness QCQ identified three of the Karenzi children as Solange, Karenzi and Thierry.

<sup>1108</sup> T. 8 April 2009 pp. 66, 68, 81; T. 9 April 2009 p. 4.

592. More than 30 *Tutsis*, mainly children, were led outside the convent, where two waiting vehicles were parked.<sup>1109</sup> According to Witness QCQ, “[t]he victims were boarded onto one of the vehicles. Then the attackers sat on the victims in that vehicle,” which she thought to belong to the military.<sup>1110</sup> The witness recalled that Sister Athanasie intervened to save a number of children from Gishamvu, who were standing next to the vehicle. Sister Athanasie told the soldiers that if “her children” were “taken away,” they would be “held responsible for their bloodshed.”<sup>1111</sup> Witness QCQ did not see the leader drive away, because “immediately after making the victims board the vehicle, we were forced to go back into the building.” The assailants refused to allow the Benebikira sisters to accompany the children, for “they did not want to soil their hands with the blood of nuns.”<sup>1112</sup> The witness did not see any of the victims again but learned later that they had been killed.<sup>1113</sup> She participated in the burial of their remains, which the nuns subsequently had found at Kabutare, “not far from the school known as the *Groupe Scolaire de Butare*.”<sup>1114</sup>

593. Witness QCQ testified that “approximately ten minutes after the abduction of the children,” soldiers, dressed in military uniforms, returned to the *Maison Générale*.<sup>1115</sup> The witness believed that they were the same soldiers who had taken away the refugees in the morning, for, after drinking beer, the soldiers checked on the children whom they had left behind.<sup>1116</sup> Witness QCQ testified that, because she was afraid of being abducted, she kept her distance and did not count the number of soldiers who returned. However, she recalled that they filled a military pickup truck.<sup>1117</sup> The man, whom the witness considered to be their leader, was not among the soldiers who returned to the convent.<sup>1118</sup>

#### *Prosecution Witness BYS*

594. Prosecution Witness BYS is a *Tutsi* Catholic nun. In 1994 she was 15 years old and a resident of the *Maison Générale*, where she was preparing to enter the Benebikira Order.<sup>1119</sup> While several nuns and students permanently resided at the convent in 1994, the population swelled, with the arrival of successive groups of *Tutsis*, the majority of whom were children, fleeing from ethnic attacks.<sup>1120</sup> Among the refugees were approximately seven or eight children from the Karenzi family.<sup>1121</sup>

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<sup>1109</sup> T. 8 April 2009 pp. 66-68, 75. On cross-examination, Defence Counsel pointed out that QCQ, in her previous written statement, said that 27 refugees were abducted from the convent, while in her testimony she estimated that there were more than thirty. QCQ explained that the number 27 was an estimate and that she learned of the exact number of refugees who had been abducted from the convent only during a commemoration ceremony.<sup>1109</sup>

<sup>1110</sup> T. 8 April 2009 p. 68.

<sup>1111</sup> T. 8 April 2009 p. 66.

<sup>1112</sup> T. 8 April 2009 p. 68.

<sup>1113</sup> T. 8 April 2009 p. 70; T. 9 April 2009 p. 3.

<sup>1114</sup> T. 8 April 2009 p. 69.

<sup>1115</sup> T. 8 April 2009 p. 70; T. 9 April 2009 p. 4.

<sup>1116</sup> T. 8 April 2009 p. 70.

<sup>1117</sup> T. 8 April 2009 p. 70.

<sup>1118</sup> T. 9 April 2009 p. 4.

<sup>1119</sup> T. 15 April 2009 pp. 5, 8-9. According to the witness, the convent consisted of “a huge complex” of buildings, surrounded by a “fence,” with two gates through which vehicles could enter. “The fence was made up of trees which marked the boundary of the compound. Some of the walls of the buildings actually formed part of the fence.”

<sup>1120</sup> T. 15 April 2009 pp. 9, 11-12. Witness BYS did not count the refugees but noted, while distributing food to the newcomers, that “with each passing day their number increased.”

<sup>1121</sup> T. 15 April 2009 pp. 9, 11-12, 16. The witness believed that a young man, who seemed to be the oldest Karenzi child, was called Thierry, and the eldest daughter was named Florence.

595. Witness BY5 testified that she was “in the middle of the convent” when she saw “people in military uniform carrying firearms” and *Interahamwe* in civilian attire, “armed with machetes and clubs,” assail the convent.<sup>1122</sup> “They were everywhere, even on the windows of the chapel,” she recalled.<sup>1123</sup> BY5 did not remember the exact date of the attack but estimated that “it must have been between the 15<sup>th</sup> and the 25<sup>th</sup> of April.”<sup>1124</sup> She did not count the soldiers, of whom there were many. Her concern “was to hide,” to “keep my distance from them in order to save my life,” and she “did not pay attention to be able to notice whether there was a leader giving them orders.”<sup>1125</sup>

596. According to Witness BY5, the assailants ordered the nuns to remain inside the convent while they “[took] care of the *Inyenzi*.”<sup>1126</sup> Then the assailants demanded that all *Inyenzi* be found.<sup>1127</sup> Witness BY5, after looking for the keys, “opened all the doors to the buildings,” before joining refugees, whom the assailants had ordered to sit together in the courtyard.<sup>1128</sup> She recalled, “They called us *Inyenzi*.”<sup>1129</sup> The witness testified that the assailants entered the various buildings, forced out everyone who was inside and demanded identity cards.<sup>1130</sup> If the card showed the person to be a *Tutsi*, the assailants shouted, “This is an *Inyenzi*” and took the person away immediately. Refugees without identity documents were shoved outside to the garden, where they were beaten and ordered to sing “We were going to die because of the *Inkotanyi*.”<sup>1131</sup>

597. Witness BY5 testified that the assailants prodded all persons identified as *Inyenzi* outside the compound. The Karenzi children were the first victims to be loaded onto a Toyota or Daihatsu pickup truck with an open back.<sup>1132</sup> Karenzi’s son had been beaten severely before being thrown into the pickup.<sup>1133</sup> According to Witness BY5, “between 50 and 80” *Inyenzi* were “piled” one on top of the other in the vehicle.<sup>1134</sup> Although BY5 saw only one pickup, she believed that there must have been another vehicle to transport the soldiers and *Interahamwe*.<sup>1135</sup>

598. Witness BY5 explained that she, another young girl and a child were spared because, when the vehicle was “almost full,” they claimed that they had lost their identify cards, when fleeing from

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<sup>1122</sup> T. 15 April 2009 pp. 13-14, 29, 35.

<sup>1123</sup> T. 15 April 2009 p. 13.

<sup>1124</sup> T. 15 April 2009 p. 13.

<sup>1125</sup> T. 15 April 2009 pp. 13-14, 29-30, 33-35. The witness testified that the soldiers’ uniforms were dark in color, and some of the soldiers wore small military caps, also dark in color, perhaps dark green. Witness BY5 was not able to identify the camp where the soldiers were stationed, and she did not know the name Ildephonse Hategekimana.

<sup>1126</sup> T. 15 April 2009 pp. 13-15. Witness BY5 testified that the assailants “split into groups,” surrounded the compound to intercept anyone who attempted to flee and banged on the entrance doors, wielding machetes and clubs, shouting, “Open up, you are hiding *Inyenzi*.”<sup>1126</sup> The witness recalled, “We opened the two gates, and the attackers quickly entered, but in disorder.”<sup>1126</sup> Refugees who attempted to flee by jumping the fence were shot, and Witness BY5 heard grenades exploding outside the convent.<sup>1126</sup>

<sup>1127</sup> T. 15 April 2009 p. 15.

<sup>1128</sup> T. 15 April 2009 pp. 13-15.

<sup>1129</sup> T. 15 April 2009 p. 14.

<sup>1130</sup> T. 15 April 2009 p. 14.

<sup>1131</sup> T. 15 April 2009 pp. 14-15, 32. Witness BY5 stated that the assailants, who “went everywhere” throughout the convent, “were most likely natives of the locality” who “knew our convent very well.” On cross-examination, the witness denied that the assailants were from another region who had pursued their victims to Butare. She specifically recalled hearing one of the assailants say, as he was beating a child, “This is one of the *Inkotanyi* from the [Butare] school.”

<sup>1132</sup> T. 15 April 2009 pp. 16-17, 31.

<sup>1133</sup> T. 15 April 2009 pp. 11-12, 16, 31. Witness BY5 identified the boy as Thierry. She could not recall the names of the other Karenzi children.

<sup>1134</sup> T. 15 April 2009 pp. 17, 31. Witness BY5 further recalled that some of the victims “were standing,” “some were lying on other people” and “there was no space for soldiers or *Interahamwe*” in the vehicle.

<sup>1135</sup> T. 15 April 2009 p. 16.



the north, and that only their “mothers were *Tutsi*.”<sup>1136</sup> BYS heard from several nuns that the refugees were taken to the *Préfecture* office to be killed.<sup>1137</sup>

*Defence Witness RBU*

599. Defence Witness RBU, a *Hutu*, worked as a brick mason in 1994. According to the witness, in the morning of 30 April 1994, he and ten labourers were repairing the exterior brick wall of the *Maison Généralice*, when, between 9.00 and 10.00 a.m., he saw “about 20 or 25” *Interahamwe* approaching on foot from the north.<sup>1138</sup> From his position outside the convent, the witness observed the assailants, from “less than 10 metres away.” They were armed with guns, clubs, machetes and sticks.<sup>1139</sup> Some wore *kitenges*, or “lion” clothes; others were dressed in military trousers and civilian shirts.<sup>1140</sup> According to the witness, the armed men stopped at the exterior gate before encircling the convent. Approximately five of the assailants entered the convent, while the others remained outside.<sup>1141</sup>

600. Witness RBU referred to the armed men as “*Interahamwe*,” however, he acknowledged that he “couldn’t distinguish between soldiers and civilians by looking at the assailants.”<sup>1142</sup> Among the *Interahamwe*, Witness RBU recognised “Jean-Pierre, Muzehe and Kadegede.”<sup>1143</sup> Other than these three men, the witness said, “I knew neither the soldiers nor the *Interahamwe*, and I could not identify anyone.”<sup>1144</sup> He asserted that he did not know Lieutenant Hategekimana and did not see any assailants wearing or carrying an overcoat.<sup>1145</sup>

601. Witness RBU testified that, after the arrival of the armed men at the entrance to the convent, he and his labourers left their work site on the exterior wall and approached the gate “to watch what was happening.”<sup>1146</sup> Then, according to the witness, assailants “encircled” them, checked their identity documents and ordered them to sit with a group of refugees near the guard house inside the convent compound.<sup>1147</sup> From this location, the witness observed other refugees being taken “one by one” out of the buildings. The assailants assembled and ordered their victims to sit down in a small

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<sup>1136</sup> T. 15 April 2009 p. 16. Witness BYS believed that only three persons, in addition to the nuns and herself, survived the attack and the abduction.

<sup>1137</sup> T. 15 April 2009 pp. 17-19. Witness BYS also heard that the attackers raped the women and children first and that the male refugees were killed immediately.

<sup>1138</sup> T. 5 October 2009 pp. 8, 69-70, 74-75, 79, 82-83; T. 6 October 2009 pp. 8, 11, 37-38, 46, 49. According to Witness RBU, in mid-March of 1994, he contracted to repair the external wall of the Benebikira Convent in Ngoma *Commune*, which had been “broken down by a vehicle.” The witness described the wall, which was part of the entrance to the convent and next to the road, as about 20 metres in length and about two metres high. He testified that he and his helpers worked on rebuilding the wall from mid-March until mid-May, ceasing work temporarily during the month of April, after the death of President Habyarimana. Near the end of April, the witness returned to work at the *Maison Généralice*. The Bench asked the witness about the costs of building materials for the wall; however, the witness was unable to provide any details or cost break-down of the materials.

<sup>1139</sup> T. 6 October 2009 pp. 7-9, 11, 52-55. Witness RBU said that he could see the assailants arriving from a road north of where he was working but that he did not know from where they were coming.

<sup>1140</sup> T. 6 October 2009 p. 9.

<sup>1141</sup> T. 6 October 2009 pp. 8-9, 55.

<sup>1142</sup> T. 6 October 2009 p. 54.

<sup>1143</sup> T. 6 October 2009 p. 12. According to Witness RBU, these three *Interahamwe* resided at the Ibis Hotel.

<sup>1144</sup> T. 6 October 2009 p. 55.

<sup>1145</sup> T. 6 October 2009 pp. 13, 36, 48, 55, 56. The witness testified, “Not only did I not know Hategekimana, I did not know the other soldiers in Butare.”

<sup>1146</sup> T. 6 October 2009 p. 8.

<sup>1147</sup> T. 6 October 2009 pp. 9-10, 57.

courtyard, before taking them away.<sup>1148</sup> Witness RBU testified that he and his labourers remained “on the spot” from “start to finish of the abduction process,” from approximately 9.30 a.m. until midday.<sup>1149</sup> During this time, Witness RBU did not see any assailant checking any victim’s identity card.<sup>1150</sup> The witness stated that he did not know the ethnicity of his labourers but deduced that they were *Hutus*, since the armed men, after checking their identity documents, “left them alone.”<sup>1151</sup>

602. According to Witness RBU, the assailants took away “between 12 and 15 people” on foot.<sup>1152</sup> He said, “[T]he refugees that were abducted never came back nor did the assailants return to the convent.”<sup>1153</sup> Among the abducted refugees, Witness RBU recognised two daughters of Professor Karenzi, a *Tutsi* lecturer at the National University.<sup>1154</sup> “One of those young girls was maybe 12 or 13 years old, while the other one was 17 or 18 years.”<sup>1155</sup> Witness RBU stated that on the day following the abduction of the *Tutsis*, he and four labourers returned to work at the *Maison Générale*.<sup>1156</sup> The witness did not explain the absence of the other six helpers.

### 14.3 Deliberation

#### *Attack on the Maison Générale and Abduction of Tutsi Refugees*

603. The Prosecution and Defence do not dispute that assailants attacked and abducted refugees, most of whom were children, from the *Maison Générale* on or about 30 April 1994.<sup>1157</sup> While Witness BYS placed the attack and abduction between 15 and 25 April 1994, her description of the event comports with the accounts of Prosecution Witnesses BYO and QCQ, who situated the attack and abduction on 30 April 1994, and that of Defence Witness RBU, who placed the event shortly after 27 April. The Chamber is satisfied that all witnesses are describing the same attack and abduction of *Tutsis* from the *Maison Générale*.

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<sup>1148</sup> T. 6 October 2009 pp. 5-8, 18-19; Defence Exhibit 25. The witness provided a sketch of the convent showing the location of the convent, the wall he was working on and the place the refugees were assembled before they were taken away.

<sup>1149</sup> T. 6 October 2009 p. 10. Witness RBU denied hearing any explosions around the convent and denied hearing that refugees had been killed as they fled and jumped over the convent wall.

<sup>1150</sup> T. 6 October 2009 pp. 10, 56, 62. Witness RBU saw no selection of the refugees. He stated that “maybe the assailants had asked the refugees [for their identity documents] inside the buildings,” but that he did not see them checking the victims’ identity cards in the courtyard. The witness recalled that all the nuns were scared and that Mother Superior, who was standing at the entrance to the convent, was crying.

<sup>1151</sup> T. 5 October 2009 p. 83; T. 6 October 2009 pp. 10, 44-45.

<sup>1152</sup> T. 6 October 2009 pp. 10-12, 48-49, 56. Witness RBU stated, “Those assailants did not have any vehicle or bicycle. They went with the refugees on foot” in the direction of the Faucon Hotel and the *Préfecture*.

<sup>1153</sup> T. 6 October 2009 pp. 11, 62. Witness RBU stated that, after the assailants had left the convent on foot with their victims, he and his labourers abandoned their work tools and fled.

<sup>1154</sup> T. 6 October 2009 pp. 11, 15 19. Witness RBU stated that he had worked on the construction of a new home for the professor in 1993.

<sup>1155</sup> T. 6 October 2009 p. 15. Witness RBU testified that “there was nothing” he could do to save Mr. Karenzi’s daughters. “We were a group of *four* workers on the work site, and there was no way we could face up to a group of 20 assailants” (emphasis added). There appears to be an inconsistency in Witness RBU’s recollection of the number of laborers who were working for him. On direct examination he claimed that there were ten laborers with him on the site; however, on cross-examination, he referred to only four labourers.

<sup>1156</sup> T. 6 October 2009 pp. 11-13, 41, 63. Witness RBU testified that, after receiving a message from the Mother Superior the following day, he returned to the convent to continue construction work on the wall. RBU stated that he assisted the Mother Superior because she was “living almost in the open.” The witness further stated that only four of the ten labourers returned to work after 30 April 1994. He did not know whether their absence was related to ethnicity.

<sup>1157</sup> Prosecution Closing Brief para. 402; Defence Closing Brief para. 645; Prosecution Closing Argument T. 26 April 2010 p. 19.

604. The fundamental features of the testimonies of Prosecution eyewitnesses BYO, QCQ and BYS, who were all residents of the *Maison Générale* in April 1994, are largely consistent in relation to the time, date and description of the attack.<sup>1158</sup> Similarly, Defence Witness RBU, a *Hutu* brick mason who testified that he repaired the convent's exterior wall, provided a direct account of the attack by assailants. RBU further observed the abduction of refugees from the convent, among whom he recognised two *Tutsi* teenage daughters of Professor Karenzi.<sup>1159</sup>

605. The Chamber notes some variance in the evidence of the four witnesses about the number of victims abducted from the convent. Witness BYO estimated that there were "about 50" *Tutsis*, who were mainly children; QCQ said that "more than 30" *Tutsi* refugees were abducted; BYS believed that there were "between 50 and 80 people"; and Defence Witness RBU testified that he saw about "12-15" refugees taken away.<sup>1160</sup> In light of the significant passage of time and the traumatic circumstances of the attack by armed men on a group of unarmed persons, most of whom were children, the Chamber is satisfied that a lack of precision as to the number of victims is understandable and does not diminish the reliability of the witnesses' testimonies regarding the ethnic abduction of *Tutsis*.

606. In view of the undisputed evidence, the Chamber finds that armed assailants abducted no fewer than 12 to 15 *Tutsi* refugees from the *Maison Générale* of the Benebikira Convent on or about 30 April 1994.

#### *Identity of the Accused and Assailants*

607. A crucial issue before the Chamber is whether the evidence establishes beyond reasonable doubt that Hategekimana, as well as armed soldiers, *Interahamwe* and civilians, perpetrated the crimes at the *Maison Générale* of the Benebikira Convent on or about 30 April 1994.

608. The Prosecution's three eyewitness survivors, BYO, QCQ and BYS, provided detailed and credible testimony as to the participation of both *Interahamwe* and soldiers in the attack. Both Witnesses BYO and QCQ observed a soldier who issued orders and appeared to be the assailants' leader during the attack. On the basis of hearsay information, BYO identified the leader as Ildephonse Hategekimana. In contrast, the Defence presented one eyewitness, RBU, who identified the assailants only as *Interahamwe*, although he acknowledged that he "couldn't distinguish between soldiers and civilians by looking at the assailants" and that he did not know either Lieutenant Hategekimana or other soldiers in Butare.<sup>1161</sup>

609. Turning first to the Prosecution evidence, the Chamber notes that Witnesses BYO, QCQ and BYS are all *Tutsi* women survivors of the *Maison Générale* attack and abduction. Witness BYO, the eldest, was then 22 years old and an ordained nun. She held a position of responsibility and trust as the secretary for the Benebikira Order. Witness QCQ, an orphan, was nearly 14 years old and Witness BYS, then 15 years of age, was preparing to enter the Benebikira Order. Although all three Prosecution witnesses testified about their fear of abduction, only the younger two, Witnesses QCQ and BYS, were physically threatened, being ordered to sit apart with the refugees and to undergo

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<sup>1158</sup> The witnesses also provided corroborative descriptions of the physical lay-out of the Benebikira Convent, which was surrounded by a hedge of Cypress trees.

<sup>1159</sup> T. 6 October 2009 pp. 11, 15, 19. Contrary to the Prosecution evidence, Defence Witness RBU stated that the assailants led the victims away on foot.

<sup>1160</sup> T. 4 May 2009 p. 23; T. 8 April 2009 pp. 66-68, 75; T. 6 October 2009 p. 10; T. 15 April 2009 p. 17; Witnesses BYO, QCQ, RBU and BYS respectively.

<sup>1161</sup> T. 6 October 2009 pp. 9, 13, 36, 48, 53, 55-56.

the ethnic selection process in the convent courtyard.<sup>1162</sup> Because of their varying vantage points and individual experiences during the attack, their narrations differ in slight detail from the account of BYO. However, their testimonies considered together are consistent and corroborative in material respects.

(a) Prosecution Witness BYO

610. The Prosecution relies principally on the evidence of Witness BYO in identifying Hategekimana and Ngoma Camp soldiers among the assailants who perpetrated the crimes at the *Maison Générale*. The Chamber observes that the basis of Witness BYO's identification is hearsay, provided by three sources: from an informant named Innocent, who warned of an imminent attack on the convent by Ngoma Camp soldiers; from BYO's religious colleague, Sister Frédérique, who personally knew the soldiers' "leader" and identified him as the Commander of the Ngoma Camp; and from the admission by soldiers themselves, following the abduction, that they were based at the Ngoma Camp.

611. According to established jurisprudence, "the Trial Chamber has the discretion to cautiously consider hearsay evidence and has the discretion to rely on it."<sup>1163</sup> The Chamber recalls that it retains full discretion in the assessment of a witness's credibility.<sup>1164</sup> Because it is best placed to evaluate the probative value of evidence, the Trial Chamber may reasonably rely on uncorroborated testimony of a single witness, which it deems credible.<sup>1165</sup> The Chamber has cautiously analysed BYO's identification evidence in its assessment of the witness's credibility.<sup>1166</sup>

(b) Defence Challenges to the Credibility of Prosecution Witness BYO

612. The Defence argues that Witness BYO's evidence, identifying the presence and actions of Hategekimana and Ngoma Camp soldiers during the abduction of *Tutsi* refugees from the *Maison Générale*, is fabricated. It questions the existence of the domestic employee Innocent and his information about an "imminent attack" by Ngoma Camp soldiers. It doubts the alleged conversation between Sister Frédérique and the soldiers' leader, following which the Sister identified him by name to Witness BYO as the Commander of the Ngoma Camp. The Defence also challenges Witness BYO's evidence that unnamed soldiers returned to the convent, after the refugees' abduction, and identified themselves as being from the Ngoma Camp.<sup>1167</sup>

613. In assessing Witness BYO's credibility, the Chamber also has considered the Defence arguments about alleged discrepancies between the witness's prior Statement to Prosecution investigators and her in-court testimony. First, in her previous Statement, signed on 12 November 2008, BYO had not mentioned the informant Innocent.<sup>1168</sup> Second, the witness previously had identified "a certain Ignace" among the soldiers involved in the attack, but testified in court that Ignace was an *Interahamwe*, not a soldier.<sup>1169</sup> Finally, the witness's prior Statement suggested that

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<sup>1162</sup> T. 8 April 2009 pp. 63-64, 66-67; T. 15 April 2009 pp. 16-17, 31. As an ordained nun, Witness BYO was not asked to show her identity papers since, according to one assailant, her "time had not yet come." Witness QCQ was spared because of the intervention of the Mother Superior and Witness BYO was saved at the last moment, while standing with other refugees being "piled" into a Toyota or Daihatsu pickup truck, because she claimed to have lost her identity card.

<sup>1163</sup> *Kalimanzira* Appeal Judgement para. 96, citing *Karera* Appeal Judgement para. 39 (internal citations omitted).

<sup>1164</sup> *Nahimana et al.* Appeal Judgement para. 194.

<sup>1165</sup> *Nchamihigo* Appeal Judgement para. 42; *Kupreškić et al.* Appeal Judgement para. 33.

<sup>1166</sup> *Kalimanzira* Appeal Judgement para. 98.

<sup>1167</sup> Defence Closing Brief paras. 657-664.

<sup>1168</sup> T. 4 May 2009 pp. 9, 36.

<sup>1169</sup> T. 4 May 2009 pp. 17, 42-44.

she knew the soldiers' origin and the Accused's identity almost immediately upon their arrival at the convent.<sup>1170</sup> The Chamber also notes that the Witness BYO did not mention Sister Frédérique in her Statement.<sup>1171</sup>

614. In the Chamber's view, Witness statements to investigators of the Prosecution may have considerably less probative value than directly sworn testimony, which is subject to cross-examination.<sup>1172</sup> In response to the Defence challenges, Witness BYO explained to the Chamber that her Statement was recorded in English by Prosecution investigators, who spoke no Kinyarwanda, and that they did not ask her to elaborate details. The witness acknowledged a transcription error regarding her identification of Ignace as a soldier rather than an *Interahamwe* and an omission of detail about how and when she learned the identities of the Accused and the Ngoma Camp soldiers.<sup>1173</sup> After reviewing Witness BYO's prior Statement in its entirety, which consists of three short paragraphs, the Chamber considers that her oral testimony clarifies, rather than contradicts, this prior Prosecution record. In view of the language of the interview, the questions put to the witness, the difficulties of recollecting precise details many years after the occurrence of events and the frequent lack of precision in translation, the Chamber finds that the above minor transcription errors and omissions do not cast any doubt on the internal consistency and credibility of BYO's candid in-court testimony.

615. Witness BYO identified the assailants as both soldiers, with their green, camouflage military uniforms and firearms, and *Interahamwe*, who carried traditional weapons and jerry cans of petrol.<sup>1174</sup> The witness identified by name one *Interahamwe*, Ignace, who had been her economics instructor at the *Groupe Scolaire*.<sup>1175</sup> BYO testified that, while in the courtyard with the other nuns, she watched soldiers search, separate and lead away about 50 refugees, after checking their identity documents.<sup>1176</sup> She saw soldiers load the victims into a big Daihatsu pickup truck, before they boarded a greenish, camouflage military vehicle.<sup>1177</sup> Shortly after both vehicles were driven away from the *Maison Généralice*, soldiers, many of whom BYO recognised as the morning abductors, returned to the convent. While drinking beer, these soldiers told the witness and other nuns that they were based at the Ngoma Camp.<sup>1178</sup> The Chamber observes that BYO did not personally know any of the soldiers before the attack and abduction and that she was not able to provide the name of any soldier.<sup>1179</sup> However, in the Chamber's view, the witness's lack of acquaintance with military personnel does not diminish the credibility and reliability of her evidence.

616. In the face of rigorous questions on both direct and cross-examination, Witness BYO offered unwavering testimony that the soldiers who attacked the *Maison Généralice* and abducted the *Tutsi* refugees were from the Ngoma Camp and that she saw and heard a military man, later identified to her as the Commander of the Ngoma Camp, Ildephonse Hategekimana, giving them orders.<sup>1180</sup> Witness BYO's direct observation of an hierarchic military relationship between the

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<sup>1170</sup> T. 4 May 2009 pp. 46-48.

<sup>1171</sup> T. 4 May 2009 pp. 47-50.

<sup>1172</sup> *Gacumbitsi* Appeal Judgement para. 74.

<sup>1173</sup> T. 4 May 2009 pp. 29, 43, 47-49.

<sup>1174</sup> T. 4 May 2009 pp. 15, 17, 22, 26, 42-44.

<sup>1175</sup> T. 4 May 2009 pp. 26, 60. According to Witness BYO, Ignace was "one of the killers" who was convicted and executed for his participation in the 1994 genocide.

<sup>1176</sup> T. 4 May 2009 pp. 23, 44, 55.

<sup>1177</sup> T. 4 May 2009 pp. 25, 55.

<sup>1178</sup> T. 4 May 2009 pp. 18-19. Witness BYO recognised some of the soldiers who returned to drink at the convent.

<sup>1179</sup> T. 4 May 2009 p. 35. Witness BYO testified that, although she did not know any soldiers personally, she "used to see them pass by."

<sup>1180</sup> T. 4 May 2009 pp. 18, 25, 35-36, 47-48.

commander and soldiers, combined with her detailed account of identifying links, commencing with the telephone call warning of an “imminent attack” by Ngoma Camp soldiers and followed by the admission of soldiers themselves that they were based at the Ngoma Camp, further confirms the reliability of her identification of the soldiers.<sup>1181</sup>

(c) Prosecution Witnesses QCQ and BYS

617. The first-hand testimonies of Witnesses QCQ and BYS corroborate Witness BYO’s identification of the assailants as both soldiers and *Interahamwe*. Specifically, BYS testified that, among the assailants were *Interahamwe* in civilian attire, with traditional weapons, and soldiers, dressed in military uniforms and carrying firearms. While the witness did not count the soldiers, she estimated that there were “between 15 and 20,” who were “scattered in different groups.”<sup>1182</sup> According to BYS, the assailants, whether soldiers or *Interahamwe*, separated, beat, and ordered the *Tutsis* to sing “We are going to die because of the *Inkotanyi*” before herding them into a large vehicle, which was driven away.<sup>1183</sup> Similarly, Witness QCQ stated that among the *Interahamwe* there were “many” soldiers, who wore “camouflage-coloured shirts and trousers.”<sup>1184</sup> The witness recalled that the soldiers were armed with rifles.<sup>1185</sup> Like Witnesses BYO and BYS, she testified that soldiers drove the *Tutsi* victims away from the convent in one or two military vehicles.

618. Although neither QCQ nor BYS testified that the soldiers were from the Ngoma Camp, both witnesses provided complementary circumstantial evidence supporting BYO’s identification. QCQ substantiated Witness BYO’s account that, shortly after the assailants left with the refugees in a military vehicle, soldiers dressed in military uniforms returned to the *Maison Générale*.<sup>1186</sup> According to the witness, the soldiers “filled a military pickup truck.”<sup>1187</sup> Witness QCQ stated that she was afraid of being abducted and thus did not approach the soldiers. However, from within the convent, she observed their activities. The witness believed that they were the same soldiers who had abducted the refugees, for, after drinking beer, they checked on the children whom they had left behind.<sup>1188</sup>

619. According to BYS, the soldiers, and other assailants, were “residents of our town” who “knew the convent very well.”<sup>1189</sup> They also knew some of the victims, such as the Karenzi children, before identifying, beating and abducting them.<sup>1190</sup> BYS’s testimony is relevant, in light of the evidence that the Ngoma Camp was located within close proximity and that Ngoma Camp soldiers were responsible for the security of Ngoma *Commune*, including the neighbourhood of the

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<sup>1181</sup> Defence Closing Brief para. 658; T. 4 May 2009 pp. 15-16. The Defence challenges the reliability of the hearsay evidence.

<sup>1182</sup> T. 15 April 2009 p. 30.

<sup>1183</sup> T. 15 April 2009 pp. 15, 30. The Chamber notes that Witness BYS provided varying estimates of the number of persons present at the convent at the time of the attack. On direct-examination, the witness estimated the number of permanent residents at the convent to be about fourteen and the number of refugees to be approximately fifteen. Later in her testimony the witness recalled that the number of refugees swelled on a daily basis. Witness BYS also stated that approximately 50 to 80 people were forced into vehicles and taken from the convent. In light of the passage of time, the traumatic circumstances of the event, the phrasing of the in-court-questions as well as translation issues, the Chamber considers that such numerical discrepancies do not weaken the credibility or reliability of the witness’s evidence.

<sup>1184</sup> T. 8 April 2009 p. 61.

<sup>1185</sup> T. 8 April 2009 p. 61.

<sup>1186</sup> T. 8 April 2009 p. 70; T. 9 April 2009 p. 4.

<sup>1187</sup> T. 8 April 2009 p. 70.

<sup>1188</sup> T. 8 April 2009 p. 70.

<sup>1189</sup> T. 15 April 2009 p. 33.

<sup>1190</sup> T. 15 April 2009 p. 32. Witness BYS specifically recalled hearing one of the assailants say, “This is one of the *Inkotanyi* from the school,” while beating a child.

*Maison Générale*. In the Chamber's view, the combined accounts of Witnesses QCQ and BYS provide circumstantial support of BYO's identification of Ngoma Camp soldiers as among the assailants who attacked and abducted *Tutsis* from the *Maison Générale*.

(d) Defence Witness RBU

620. The Chamber has viewed the Prosecution evidence in light of the testimony of Defence Witness RBU. According to RBU, the assailants were *Interahamwe*, not soldiers. However, he acknowledged on cross-examination that as a civilian he could not distinguish between soldiers and civilians by looking at the assailants.<sup>1191</sup> In relation to the overall sequence of events at the convent, the witness's account does not contradict the evidence of Witnesses BYO, QCQ and BYS. However, in the Chamber's view, many aspects of RBU's account are doubtful: specifically, his description of the contract, arranged with the Mother Superior, to repair an exterior brick wall of the *Maison Générale*; the narration of his fearless observation of the assailants' arrival;<sup>1192</sup> his estimation that only "about five" of the attackers entered and orchestrated the attack within the convent, while the others remained outside the gate;<sup>1193</sup> his decision to join the assailants who entered the convent "to watch what was happening;"<sup>1194</sup> and his "remaining on the spot," sitting with ten labourers, among the refugees, from "start to finish of the abduction process."<sup>1195</sup> In the Chamber's view, Witness RBU presented an evasive and inconsistent account of the events at the *Maison Générale*, casting strong doubt on his credibility and reliability.

621. Witness RBU's assertion that he was present at the convent on 30 April 1994 to repair a brick wall is invalidated by the findings of the Chamber's site visit, as well as by the evidence of Prosecution Witnesses BYO, QCQ and BYS that the *Maison Générale* was surrounded by a "fence" of Cypress trees.<sup>1196</sup> The Chamber observes that the witness, while claiming to be an experienced masonry foreman, was unable to provide any information about the cost of materials for the construction of the convent's exterior wall.<sup>1197</sup> Moreover, not one of the Prosecution Witnesses BYO, QCQ or BYS, all residents of the *Maison Générale* in April 1994, mentioned that an exterior wall was under construction, that a civilian man and his labourers were grouped with the refugees during the ethnic selection process or that these civilians were among the survivors of the abduction.

622. While the Chamber notes that Witness RBU appears to have an intimate knowledge of the physical layout of the *Maison Générale* and the events of 30 April 1994, it has serious reservations about his stated reason for being present at the convent on that day.<sup>1198</sup> The Chamber's doubts regarding Witness RBU's reliability are accentuated by his admission of travelling to the Tribunal on falsified documents and by his claim of being unaware of testifying in Hategekimana's

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<sup>1191</sup> T. 6 October 2009 p. 9.

<sup>1192</sup> T. 6 October 2009 pp. 7, 9, 11, 52-55.

<sup>1193</sup> T. 6 October 2009 pp. 8-9.

<sup>1194</sup> T. 6 October 2009 p. 8.

<sup>1195</sup> T. 6 October 2009 p.10.

<sup>1196</sup> Prosecution Closing Brief paras. 421-424; Site Visit Report, p. 6; T. 4 May 2009 p. 10; T. 15 April 2009 p. 8; Defence Closing Argument T. 26 April 2010 p. 67. In its Closing Arguments, the Defense asserts that an exterior wall around the convent was found during the site visit. The Chamber does not agree.

<sup>1197</sup> T. 6 October 2009 pp. 37-38.

<sup>1198</sup> T. 5 October 2009 p. 69; T. 6 October 2009 pp. 16, 22-26; Prosecution Exhibits 49, 50, 51. Adding to the Chamber's doubt are the facts surrounding Witness RBU's travel. The witness fled to Burundi in July 1994 and returned in 1995. The witness stated that he is not currently in exile but divides his time between Kigali and Bujumbura for professional reasons. However, he admitted to travelling to the Tribunal from Burundi on falsified papers.

defence.<sup>1199</sup> Having carefully assessed Witness RBU's full account, the Chamber concludes that his testimony concerning the identities of the assailants and their participation in the crimes committed at the *Maison Générale* is not sufficiently credible to cast reasonable doubt on the first-hand testimonies of Prosecution Witnesses BYO, QCQ and BYS.

623. After cautious review of the record, the Chamber considers that Witness BYO's detailed account, supported by the evidence of Witnesses QCQ and BYS, provided consistent and convincing evidence that armed assailants, among whom were armed soldiers from the Ngoma Camp and civilian *Interahamwe*, attacked and abducted *Tutsis* from the *Maison Générale* on or about 30 April 1994.

#### *Presence and Role of Hategekimana During the Attack and Abduction*

##### (a) Physical Description of the "Leader"

624. Both Witnesses BYO and QCQ observed a soldier who issued orders and appeared to be the assailants' "leader" during the attack and abduction at the *Maison Générale*. Both witnesses provided similar descriptions of the "leader" in relation to his appearance and attire, his greeting of several nuns in the courtyard area of the convent his supervision of the separation of *Tutsis* from *Hutus* and his presence during the abduction of the *Tutsi* refugees. Witness QCQ recalled that the "leader" wore a long khaki overcoat or raincoat that fell below his knees.<sup>1200</sup> He was "of average height with a complexion that was neither very light nor very dark."<sup>1201</sup> Witness BYO testified that she observed a man, wearing a black beret, a military uniform and an overcoat, who appeared to be the "leader" of the soldiers. She described him as being approximately 38 years of age, having a "dark complexion" and being "somewhat stockily built."<sup>1202</sup>

##### (b) Role of the "Leader"

#### Prosecution Witness BYO

625. From a distance of "about 3 to 4 metres," Witness BYO overheard the "leader" tell Sister Frédérique that he had seen her brother, who had just purchased a new car. The witness understood, from the conversation, that the military "leader" was the Sister's former neighbour from Gitarama.<sup>1203</sup> Before he left the convent, the witness heard the "leader" issue orders to the soldiers to "go away with the refugees."<sup>1204</sup> On the basis of the information, provided later the same day by Sister Frédérique, BYO identified the "leader" as Ildephonse Hategekimana, Commander of the Ngoma Camp.<sup>1205</sup>

626. Witness BYO provided a direct account of two incidents leading her to believe that the "leader" was in command of the soldiers at the convent.<sup>1206</sup> The first incident related to his

<sup>1199</sup> T. 5 October 2009 p. 69; T. 6 October 2009 pp. 23-26, 36-37.

<sup>1200</sup> T. 8 April 2009 pp. 62, 66, 81.

<sup>1201</sup> T. 8 April 2009 p. 62.

<sup>1202</sup> T. 4 May 2009 pp. 20-21.

<sup>1203</sup> T. 4 May 2009 pp. 18-21, 48-49. Witness BYO recalled that Hategekimana told Sister Frédérique about recently meeting her brother, who had just purchased a white vehicle.

<sup>1204</sup> T. 4 May 2009 p. 21.

<sup>1205</sup> Defence Closing Brief para. 663; T. 4 May 2009 pp. 10-11, 18-20, 22. According to Witness BYO, Sister Frédérique knew the Accused personally from their home village. The Defence challenges the veracity of BYO's evidence.

<sup>1206</sup> T. 4 May 2009 p. 21.



message, delivered by Sister Frédérique, for the nuns to stop “making noise” about the plight of the refugees or he would take them away also.<sup>1207</sup> The second was the leader’s order to soldiers “to go away with the refugees.”<sup>1208</sup>

#### Prosecution Witness QCQ

627. Witness BYO’s description of the “leader’s” actions is supported by the detailed testimony of Witness QCQ. While in the courtyard, from a distance of “approximately seven metres,” Witness QCQ observed the “leader” as he was “issuing orders to the attackers,” among whom were soldiers.<sup>1209</sup> He ordered the attackers to make the refugees to stand and to kill them.<sup>1210</sup> Witness QCQ stated that the “leader” chastised one soldier for making the refugees sing, because that was not their purpose for being at the convent. The witness heard the soldiers address the “leader” as “Lieutenant,” which was the military rank of Hategekimana in the *Forces Armées Rwandaises* in 1994, and that they obeyed his orders.<sup>1211</sup> Witness QCQ testified that, on the Accused’s orders, the refugees were boarded onto one of two vehicles parked outside of the convent and were driven away by soldiers.<sup>1212</sup>

628. Upon careful review of the accounts of Witnesses BYO and QCQ, the Chamber notes that both witnesses stood in close physical proximity to the “leader,” while he was in the courtyard of the convent, and that their identification of his presence and actions occurred during daylight hours without any apparent visual obstruction.<sup>1213</sup> From their different vantage points, both witnesses identified his authority over the soldiers, who were from Ngoma Camp soldiers, as the Chamber has found above. The Chamber is cognizant that only BYO, on the basis of hearsay, specifically named the “leader” as Ildéphonse Hategekimana, Commander of the Ngoma Camp. According to BYO’s evidence, which the Chamber finds sincere and believable, the hearsay source of her information is Sister Frédérique, a specifically identified religious and professional colleague. Moreover, from her direct observation of Hategekimana’s interactions with the soldiers and of his orders for them “to go away with the refugees,” BYO believed that he was “the leader or the commander” of the soldiers.”<sup>1214</sup> Accordingly, the Chamber is convinced that BYO’s testimony identifying Hategekimana as the leader of the Ngoma Camp soldiers, is credible and reliable.

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<sup>1207</sup> T. 4 May 2009 pp. 21, 22, 49.

<sup>1208</sup> T. 4 May 2009 p. 21.

<sup>1209</sup> Defence Closing Brief paras. 668, 681; T. 8 April 2009 p. 62; T. 9 April p. 4. The Defence challenges the credibility of Prosecution Witnesses BYO and QCQ on the basis of a difference in their recollections of whether or not the leader wore a military uniform under his raincoat. The Chamber finds this discrepancy to be minor. Moreover, in light of Witness QCQ’s explanation that “she was scared” and “did not take a close look at his clothes,” the Chamber finds it understandable that she may not have been able to clearly observe all of his clothing.

<sup>1210</sup> T. 8 April 2009 p. 66.

<sup>1211</sup> Defence Closing Brief para. 668; T. 8 April 2009 pp. 62, 81. The Defence challenges Witness QCQ’s testimony that a soldier answered “Yes, Lieutenant” in English, given that Rwanda was a “completely French speaking country” in 1994. In light of the totality of the evidence, the Chamber finds that the language purportedly used by the soldier does not diminish the credibility of Witness QCQ’s detailed and internally consistent account. The Chamber also notes an inconsistency between Witness QCQ’s previous statement, given to a Prosecution investigator on 3 June 1998, and her in-court testimony about a first “attack” by soldiers on the *Maison Générale* on 23 April 1994. The Chamber is satisfied by Witness QCQ’s explanation that, on 23 April 1994, soldiers visited the convent but did not attack any of the refugees on that date.

<sup>1212</sup> T. 8 April 2009 p. 68.

<sup>1213</sup> *Kalimanzira* Appeal Judgment para. 96; *Baglishema* Appeal Judgement para. 75.

<sup>1214</sup> T. 4 May 2009 p. 21.

Defence Witness RBU

629. Witness RBU did not identify Hategekimana or any “leader” at the *Maison Générale*.<sup>1215</sup> In the Chamber’s view, Witness RBU’s failure to see the Accused during the criminal events at the convent does not weaken the detailed identification evidence presented by Prosecution Witness BYO, which is supported by the testimony of Witness QCQ.

630. After cautious assessment of the eyewitness testimonies of Prosecution Witnesses BYO and QCQ, the Chamber is convinced beyond reasonable doubt that, on or about 30 April 1994, Hategekimana was present at the *Maison Générale* and that he instructed the soldiers from the Ngoma Camp, to separate the refugees, according to their ethnicity, and to take away the *Tutsis* to be killed. *Interahamwe*, as identified by all witnesses who testified about this event, were also present and participated in the identification and abduction of the *Tutsis* from the *Maison Générale*.

*Killing of the Victims Abducted from the Maison Générale*

631. The evidence concerning the killing of the *Maison Générale* refugees is circumstantial.<sup>1216</sup> Witness QCQ testified that the leader ordered the soldiers to “go and kill us,” and that assailants told the reverend sisters to return to the convent because “they did not need the nuns’ blood.”<sup>1217</sup> Witnesses QCQ and BYS both stated that soldiers ordered the refugees to sing “[w]e were going to die because of the *Inkotanyi*”<sup>1218</sup> and that the assailants ordered the nuns to return to the convent while they “took care of the *Inyenzi*.”<sup>1219</sup> Moreover, Witness BYO testified that when the nuns asked to accompany the children, the soldiers said that “our time had not yet come.”<sup>1220</sup>

632. Both Witnesses BYO and BYS heard that the *Tutsi* victims were taken to the *Préfecture* office to be killed.<sup>1221</sup> According to Witness BYO, the nuns did not believe this information from the soldiers who returned to the convent following the abduction, for the victims were never seen again.<sup>1222</sup> BYO testified that, after she and other nuns found the victim’s remains in “Kabutare and other places,” they held a ceremony to bury their bones.<sup>1223</sup> Witness QCQ provided corroborative evidence, testifying that she also participated in the burial ceremony of the victims’ remains and that 30 April is the commemoration day of their abduction from the convent.<sup>1224</sup>

633. The Prosecution provided no direct evidence to establish who killed the *Tutsis* abducted from the *Maison Générale* or when or how they were killed. However, there is an abundance of convincing circumstantial evidence, including the widespread killing of *Tutsis* in Rwanda in

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<sup>1215</sup> While Witness RBU did not identify any “leader” directing the assailants, he acknowledged that he did not know Hategekimana. The Chamber notes that the witness’s account of the event and the assailants was evasive and lacking in detail.

<sup>1216</sup> T. 15 April 2009 pp. 13-14. No other witness testified that the assailants shot certain refugees.

<sup>1217</sup> T. 8 April 2009 pp. 63, 66.

<sup>1218</sup> T. 8 April 2009 p. 62; 15 April 2009 p. 15.

<sup>1219</sup> T. 15 April 2009 p. 15.

<sup>1220</sup> T. 4 May 2009 p. 52.

<sup>1221</sup> T. 15 April 2009 pp. 17-18. Witness BYO also heard that the refugees were taken to the *Préfecture* office.

<sup>1222</sup> T. 4 May 2009 p. 24.

<sup>1223</sup> T. 4 May 2009 pp. 24, 57. Witness QCQ also testified that the nuns told them they had found the bones of the victims in Kabutare, not far from the *Groupe Scolaire*.

<sup>1224</sup> T. 8 April 2009 p. 69.

1994,<sup>1225</sup> Hategekimana's order to remove and kill the refugees from the *Maison Générale*,<sup>1226</sup> the fact that the abducted victims were never seen alive again as well as the subsequent burial of the refugees' remains.

634. Accordingly, after assessing the entirety of the evidence, the Chamber finds beyond reasonable doubt that the abduction of the *Tutsi* refugees from the convent resulted in their deaths. Indeed the chain of circumstantial evidence established by the Prosecution allows only one reasonable conclusion: that the *Tutsi* abducted from the *Maison Générale*, on or about 30 April 1994, were killed; that Hategekimana ordered the soldiers, under his military control to abduct and kill the *Tutsis*, on the basis of their ethnicity,<sup>1227</sup> and that Ngoma Camp soldiers, acting in concert with *Interahamwe* and armed civilians, committed these crimes.

#### *Murder of the Karenzi Children*

635. The Indictment charges Hategekimana with the murder of three children named as "Solange Karenzi, Mulinga Karenzi and Clémence."<sup>1228</sup> While there is no dispute between the Prosecution and Defence that children of the Karenzi family were among the refugees abducted from the *Maison Générale* and subsequently killed, there is a question about their identities. Of the three victims listed in the Indictment, the evidence of Witnesses BYO and QCQ identifies, by name and description, only Solange, the elder daughter of the Karenzi family. The Chamber recalls that Witness BYO knew Solange Karenzi and specifically identified her as a girl whom the nuns were warned to "hide," to prevent the Ngoma Camp soldiers from harming her.<sup>1229</sup> Defence Witness RBU's identification of Professor Karenzi's two teenage daughters among the abducted refugees largely corroborates the evidence of BYO and QCQ, and the Chamber accepts that the elder daughter seen and identified by RBU is Solange Karenzi.

636. No evidence specifically identifies any child from the Karenzi family who was abducted and killed, other than Solange. In the Chamber's view, the lack of precision in describing other young victims, believed by the witnesses to be Karenzi children, and the failure to link these victims to the individuals listed in the Indictment, by name, by physical features or other descriptive detail, raise questions of identity.<sup>1230</sup> Accordingly, the Chamber considers the evidence insufficient to prove beyond reasonable doubt that any victim, other than Solange, was one of the Karenzi children identified in the Indictment.

637. Accordingly, the Chamber finds beyond reasonable doubt that Hategekimana is criminally responsible for the murder of Solange Karenzi, who was among the *Tutsi* refugees abducted from the *Maison Générale* on 30 April 1994.

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<sup>1225</sup> See *Prosecutor v. Karemera*, Decision of 16 June 2006 Concerning Judicial Notice of Genocide and Widespread Killing in Rwanda in 1994.

<sup>1226</sup> T. 8 April 2009 pp. 66, 81; T. 9 April 2009 p. 4.

<sup>1227</sup> See *Martinović and Naletilić* Trial Judgement paras. 499-500; *Krstić* Trial Judgement paras. 81-82; *Akayesu* Trial Judgment paras. 422, 449.

<sup>1228</sup> Indictment paras. 37, 41.

<sup>1229</sup> T. 4 May 2009 pp. 12-13, 38-40.

<sup>1230</sup> T. 15 April 2009 pp. 11-12, 16-17, 31. Witness BYO testified that one of the Karenzi children, a boy named Thierry, was badly beaten. She also recalled that the Karenzi children were among the first victims to be loaded into the assailants' truck. In the Chamber's view, the witness's evidence, while credible, does not link, beyond reasonable doubt, the identities of these victims with the individuals named in the Indictment.

## CHAPTER IV: LEGAL FINDINGS

### 1. INTRODUCTION

638. The Prosecution charges Hategekimana with genocide (Count I) or, in the alternative, complicity in genocide (Count II), murder (Count III) and rape (Count IV) as crimes against humanity. Hategekimana's alleged criminal responsibility is based on Article 6(1), encompassing joint criminal enterprise, and Article 6(3) of the Statute.<sup>1231</sup>

639. In its Factual Findings, the Chamber found that Hategekimana participated in the abduction and murder of Jean Bosco Rugomboka on 8-9 April 1994; the murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994; the rape of Nura Sezirahiga on 23 April 1994; the murder of approximately 500 *Tutsi* refugees at the Ngoma Parish on 30 April 1994; the murder of at least 25 *Tutsi* refugees at the *Maison Générale* (Benebikira Convent) on or about 30 April 1994; and the murder of Solange Karenzi on 30 April 1994. In this chapter, the Chamber will address the legal consequences of Hategekimana's participation in these crimes.

### 2. CRIMINAL RESPONSIBILITY

640. Paragraphs 6-20 of the Indictment set out the concise statement of facts alleging Hategekimana's individual criminal responsibility for genocide, or complicity in genocide, pursuant to Article 6(1) of the Statute. In paragraphs 21-33 of the Indictment, the Prosecution alleges Hategekimana's criminal responsibility as a superior, pursuant to Article 6(3) of the Statute.

641. Paragraphs 34-37 of the Indictment set out the concise statement of facts alleging Hategekimana's individual criminal responsibility, pursuant to Article 6(1), for murder and rape as crimes against humanity, while paragraphs 42-49 allege his superior responsibility, under Article 6(3) of the Statute.

#### 2.1 Article 6(1) of the Statute

642. Article 6(1) of the Statute stipulates various modes of individual criminal liability applicable to crimes falling under the Tribunal's jurisdiction, including planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of a crime provided for in Articles 2 to 4 of the Statute.

643. "Planning" requires that one or more persons conceive the commission of a crime in terms of both the preparation and the execution.<sup>1232</sup> It is sufficient to show that the planning substantially contributed to the 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>1233</sup>

644. "Instigating" implies prompting another person to commit an offence.<sup>1234</sup> It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused. It

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<sup>1231</sup> The Parties' submissions concerning joint criminal enterprise can be found in the Prosecution Closing Brief paras. 108-115; Defence Closing Brief paras. 27, 685-692; Closing Oral Arguments, T. 26 April 2010 pp. 7-9; T. 28 April 2010 pp. 13-28.

<sup>1232</sup> *Gacumbitsi* Trial Judgement para. 271, citing *Blaškić* Trial Judgement para. 386, *Musema* Trial Judgement para. 119; *Akayesu* Trial Judgement para. 480.

<sup>1233</sup> *Setako* Trial Judgement para. 446, citing *Nsengimana* Trial Judgement para. 796.

<sup>1234</sup> *Setako* Trial Judgement para. 447, *Nahimana* Appeal Judgement para. 480, *Nsengimana Trial Chamber* para. 797.

is sufficient simply to show that the incitement substantially contributed 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 acts or omissions instigated.<sup>1235</sup>

645. “Ordering” requires that a person in a position of authority instructs another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator of the crime is required. It is sufficient that there is a proof of some position of authority on the part of the accused that would compel another person to commit a crime in following the accused’s order.<sup>1236</sup> The authority creating the type of relationship envisaged under Article 6(1) of the Statute for ordering may be informal or temporary in nature.<sup>1237</sup> A superior is someone with *de jure* or *de facto* power or authority over his subordinates and the power or authority need not be conferred through a formal appointment.<sup>1238</sup>

646. “Committing,” covers primarily the physical perpetration of a crime, with criminal intent, or a culpable omission of an act that is mandated by a rule of criminal law.<sup>1239</sup> It is established in the jurisprudence of the Tribunal that “committing” is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime.<sup>1240</sup> “Committing” has also been interpreted to mean participation in any of the three forms of joint criminal enterprise, namely, the basic, the systemic and the extended forms.<sup>1241</sup> The Chamber discusses below Hategekimana’s alleged participation in a joint criminal enterprise.

647. The Prosecution has pleaded that it intends to rely on the basic form of joint criminal enterprise in a clear and unambiguous manner in the Indictment. In addition to stating the mode, extent and nature of Hategekimana’s participation, the Indictment refers to joint criminal enterprise under all four counts in connection with responsibility under Article 6(1). The Prosecution has set forth the purpose of the enterprise and has identified the co-perpetrators alleged to have materially committed the crimes forming part of the common criminal purpose.<sup>1242</sup> Several of the alleged co-perpetrators are named in various paragraphs throughout the Indictment in connection with the commission of the crimes.<sup>1243</sup>

648. The Defence raises general issues with respect to the pleading of the requisite elements of joint criminal enterprise. The Chamber has already addressed these and other preliminary issues in Chapter II of this Judgement.<sup>1244</sup>

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<sup>1235</sup> *Setako* Trial Judgement para. 447, *Nahimana* Appeal Judgement para. 480.

<sup>1236</sup> *Gacumbitsi* Appeal Judgement para. 182; *Semanza* Appeal Judgement para. 361.

<sup>1237</sup> *Setako* Trial Judgement para. 449; *Bagosora* Appeal Judgement para. 2008, citing *Semanza* Appeal Judgement para. 361 and 363.

<sup>1238</sup> *Kajelijeli* Appeal Judgement para. 85, citing *Bagilishema* Appeal Judgement para. 50, citing *Čelebići* Appeal Judgement para. 192.

<sup>1239</sup> *Nahimana et al.* Appeal Judgement para. 480; *Seromba* Appeal Judgement para. 161; *Gacumbitsi* Appeal Judgement para. 60.

<sup>1240</sup> *Seromba* Appeal Judgement para. 161, citing *Gacumbitsi* Appeal Judgement para. 60.

<sup>1241</sup> *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement paras. 82-83; *Ntakirutimana* Appeal Judgement paras. 463-465, *Vasiljević* Appeal Judgement paras. 96-99, *Krnojelac* Appeal Judgement para. 30.

<sup>1242</sup> Indictment paras. 6, 34, 42.

<sup>1243</sup> See *e.g.*, paragraph 16 refers to Gatwaza, Pacifique, Rutanihubwoba and *Conseiller* Jacques Habimana.

<sup>1244</sup> See Chapter II, Notice Section.

649. The *actus reus* for joint criminal enterprise requires the following elements:

- i) A plurality of persons participated in the commission of the crime;
- ii) The existence of a common plan, design or purpose that involves committing a crime provided for in the Statute. It is not necessary for the plan to have been previously formulated. It may materialise extemporaneously and may be inferred from the facts; and
- iii) The participation of the accused in the common purpose is necessary, and involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime provided for in the Statute, but may take the form of assistance in, or contribution to, the execution of the common purpose.<sup>1245</sup>

650. The *mens rea* varies for each form of joint criminal enterprise.<sup>1246</sup> In the instant case, the Prosecution relies exclusively on the basic form, in which all the co-perpetrators, including the accused, had a common purpose and a shared criminal intent.<sup>1247</sup>

651. The Appeals Chamber in *Kvočka et al.* provided guidance on distinguishing between joint criminal enterprise and other forms of liability, such as aiding and abetting.<sup>1248</sup>

652. “Aiding and abetting” implies that the accused provided assistance and support for the commission of the crime. This can be either through material assistance, by encouragement or through moral support that has a substantial effect on the perpetration of the crime. The mere presence of the accused at the scene of the crime is not sufficient to prove his participation by aiding and abetting, unless it can be shown that his presence had the effect of legitimising or of substantially encouraging the acts of the principal perpetrator of the crime.<sup>1249</sup>

## 2.2 Article 6(3) of the Statute

### 2.2.1 Legal Principles

653. The following three elements must be proven to hold a military or a civilian superior criminally responsible, pursuant to Article 6(3) of the Statute, for crimes committed by his or her subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior’s knowledge or reason to know that the criminal acts were about to be or had been committed by his or her

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<sup>1245</sup> *Tadić* Appeal Judgement paras. 227, 229.

<sup>1246</sup> *Tadić* Appeal Judgement para. 220.

<sup>1247</sup> Prosecution Pre-Trial Brief, para. 37.

<sup>1248</sup> *Kvočka et al.* Appeal Judgement para. 90 (“Where the aider and abettor only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator.”).

<sup>1249</sup> *Seromba* Trial Judgement para. 308, citing *Krnjelac* Trial Judgement para. 89.

subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrators.<sup>1250</sup>

654. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. The superior must have effective control over the subordinates at the time the offence was committed. Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders.<sup>1251</sup> This requirement is not satisfied by a showing of general influence on the part of the accused.<sup>1252</sup>

655. A superior will be found to have possessed the requisite *mens rea* sufficient to incur criminal responsibility if: (a) it is established, through direct or circumstantial evidence, that the superior had actual knowledge that his subordinates were about to commit, were committing, or had committed, a crime under the Statute; or (b) the superior possessed information providing notice of the risk of such offences by indicating the need for additional investigations in order to ascertain whether such offences were about to be committed, were being committed, or had been committed by his or her subordinates.<sup>1253</sup>

656. With respect to actual knowledge, relevant factors include: the number, type and scope of illegal acts committed by the subordinates, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts was widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved and the location of the superior at the time.<sup>1254</sup>

## 2.2.2 Superior-Subordinate Relationship

657. Paragraphs 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 38, 39, 40, 41 and 46 plead that Hategekimana exercised effective control over soldiers under his command at the Ngoma Camp, *Interahamwe* and armed civilians. In paragraphs 28 and 47 the Prosecution alleges Hategekimana's effective control over only Ngoma Camp soldiers and *Interahamwe* for the alleged genocide of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa as well as the rapes of *Tutsi* women in and around Butare town. Paragraphs 29, 33 and 48 further limit Hategekimana's effective control to soldiers, under his command at the Ngoma Camp, in relation to the killings of *Tutsis* at the *Groupe Scolaire* and the rapes of *Tutsi* women in houses around Butare town.

658. At the time relevant to the Indictment, Hategekimana held the rank of Lieutenant in the *Forces armées rwandaises* and served as a member of the Butare *Préfectoral Security Council*. Throughout the month of April 1994, he was the Commander of the Ngoma Camp, with military authority over the soldiers based at this camp. Hategekimana's rank and professional situation indicate that he was a person of influence and an authoritative figure in Butare. However, his status

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<sup>1250</sup> *Bagosora et al.* Trial Judgement para. 2011, citing *Orić* Appeal Judgement para. 18, *Nahimana et al.* Appeal Judgement para. 484, *Gacumbitsi* Appeal Judgement para. 143.

<sup>1251</sup> *Orić* Trial Judgement para. 311, citing *Čelebići* Trial Judgement para. 378.

<sup>1252</sup> *Renzaho* Trial Judgement para. 745, citing *Bagosora et al.* Trial Judgement para. 2012.

<sup>1253</sup> *Bagosora et al.* Trial Judgement para. 2013, citing *Delalić et al.* Appeal Judgement para. 232. See also *Hadžihasanović and Kubura* Appeal Judgement para. 28; *Galić* Appeal Judgement para. 184; *Bagilishema* Appeal Judgement paras. 37, 42; *Ntagerura et al.* Trial Judgement para. 629; *Semanza* Trial Judgement para. 405; *Renzaho* Trial Judgement para. 746.

<sup>1254</sup> *Bagosora et al.* Trial Judgement para. 2014 citing *Delić* Trial Judgement para. 64; *Strugar* Trial Judgement para. 68; *Limaj et al.* Trial Judgement para. 524; *Renzaho* Trial Judgement para. 747.

alone is insufficient to demonstrate that he exercised authority as a superior over *Interahamwe* and civilians in Ngoma *Commune* and/or Butare *Préfecture*. Moreover, there is no evidence that Hategekimana's position entitled him to any particular *de jure* or *de facto* authority over the *Interahamwe* and civilians.

659. Hategekimana was the Commander of the Ngoma Camp at the time referred to in the Indictment and was generally known to be so.<sup>1255</sup> He was not only known as the Commander but was respected as such. Prosecution Witness BYQ stated that Hategekimana, as the Commander of the Camp, had to be respected like one has to respect the President of the Republic.<sup>1256</sup> He added that "[a]ccording to military law, when a commander orders that no one should go out, [they] do not go out, and soldiers obey the orders issued by their camp commander to the letter."<sup>1257</sup> Moreover, it has been proven that Hategekimana was at that time the most senior officer in the camp.<sup>1258</sup>

660. Hategekimana exercised *de facto* authority in many respects. He authorised those persons who wanted to enter the Camp to do so.<sup>1259</sup> Together with *Bourgmestre* Kanyabashi, Hategekimana took the decisions with regard to the refugees in consultation with a civil authority. In this regard, Witness Father Masinzo testified that when he asked *Bourgmestre* Kanyabashi's authorisation to take care of the refugees, Hategekimana was present. He further stated that Ngoma Camp soldiers settled the refugees in Matyazo.<sup>1260</sup> Witness BYQ also stated that Hategekimana had the power to arrange for the protection of the refugees, since the refugees were located in his area of command.<sup>1261</sup> It thus appears that Hategekimana played a key role with regard to the protection of the refugees.

661. Hategekimana furthermore played an active role when important events took place in Ngoma *Commune*. QCL testified that, after Rugomboka's abduction and murder, Hategekimana led the soldiers who were surrounding Rugomboka's house and that he forbade the mourning and the vigil to take place. He put forward security reasons.<sup>1262</sup> Hategekimana also refused XR to move the bodies of Mujawayezu and her cousins into the house, asserting that it "was a matter for the [S]tate."<sup>1263</sup>

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<sup>1255</sup> Prosecution Witness BYR, a former Ngoma Camp soldier, replied to the Prosecution that Hategekimana was the Camp Commander when he was a soldier there and that Hategekimana was replaced in May 1994. Prosecution Witnesses BYQ, also a former Ngoma Camp, corroborated this. He testified that he saw Hategekimana many times at Ngoma Camp. Defence Witnesses Bernard Uwizeyimana, CBM2 and Faustin Ntilikina also stated that Hategekimana was Ngoma Camp Commander in April 1994. Members of the civilian population such as Prosecution Witnesses QCN and Laurien Ntezimana also knew the Accused as the Commander of the Camp. See T. 9 April 2009 p. 9 and Prosecution Exhibit 18 where Witness BYR wrote the names of Ngoma Camp soldiers he knew when he served there as a soldier; T. 31 March 2009 p. 51; T. 8 July 2009 p. 62, T. 9 July 2009 p. 10; T. 30 June 2009 p. 17-18 and T. 26 March 2009 p. 41: "He was a superior officer, and he often moved around on board a vehicle through the neighbourhoods. He used a green vehicle, and he wore his military uniform. Everyone knew him. Even children knew him. When children would see him pass by, they would say, "That is the commander of Ngoma Camp who is going by." T. 20 March 2009 p. 5: "When I met him in 1994, he was a lieutenant in the Rwandan armed forces, the commander of Ngoma Camp, which was less than 500 metres away from my place of residence."

<sup>1256</sup> T. 31 March 2009 p. 50.

<sup>1257</sup> T. 31 March 2009 p. 51.

<sup>1258</sup> T. 31 March 2009 p. 50.

<sup>1259</sup> To be able to enter the Camp and to pray with the Roman Catholic members of Ngoma Camp, Father Masinzo had to receive the authorisation of the Camp Commander. See T. 19 March 2009 p. 36.

<sup>1260</sup> T. 19 March 2009 p. 3.

<sup>1261</sup> T. 31 March 2009 p. 51.

<sup>1262</sup> T. 17 March 2009 p. 14.

<sup>1263</sup> T. 1 April 2009 p. 67.



662. Therefore, the Chamber concludes that Hategekimana was an influential person with respect to his title as the Commander of the Ngoma Camp and the functions he exercised therein. He was the person to refer to in the event of danger in the area and one of his tasks was to ensure security and protection of the local population.

663. Moreover, Hategekimana exercised effective control over the soldiers at the Ngoma Camp because he had the material ability to prevent the crimes committed by them and to punish the perpetrators. As an insider, BYQ testified that Hategekimana had the power to stop Ngoma Camp soldiers from carrying out killings of *Tutsi* refugees.<sup>1264</sup> Evidence indicates that Hategekimana gave orders to his soldiers and these orders were respected. BYQ testified that he was sent once in late April 1994 by Hategekimana to watch over the house of an elderly lady whose residence had been attacked.<sup>1265</sup> BYO testified that she saw Hategekimana ordering the soldiers to leave with the refugees from Benebikira convent.<sup>1266</sup> In addition, he had the ability to punish the soldiers as the *de jure* and *de facto* Commander of the Ngoma Camp. BYQ testified that “had the soldiers left the camp without the Accused’s knowledge, they would have been punished upon their return.”<sup>1267</sup>

664. In its Factual Findings, the Chamber determined that Hategekimana ordered only Ngoma Camp soldiers, under his command, to kill Jean Bosco Rugomboka on 8-9 April 1994, but not that he gave orders to other assailants. The Chamber further found that Hategekimana ordered soldiers from the Ngoma Camp to kill *Tutsis* at the Ngoma Parish and the *Maison Générale* on 30 April 1994. Although *Interahamwe* and armed civilians jointly participated in these two killings on 30 April 1994, the Chamber did not find that Hategekimana gave them any orders. Nor did the Chamber find that Hategekimana gave orders to *Interahamwe* or armed civilians in killing the three *Tutsi* women, Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, on 23 April 1994.

665. In its Factual Findings the Chamber also determined that, shortly after Hategekimana arrived with four military reinforcements from the Ngoma Camp to assist assailants in attacking the Sezirahiga home, one of these soldiers raped Nura Sezirahiga. The Chamber heard credible evidence to demonstrate Hategekimana’s effective control over the soldier who committed the rape. In the Chamber’s view, this incident, similar to the massacres at the Ngoma Parish and the *Maison Générale*, as well as the killings of Rugomboka and the three *Tutsi* women, demonstrates Hategekimana’s effective control over Ngoma Camp soldiers, but not over other assailants.

666. The Chamber has addressed the submissions of the Defence regarding alleged lack of notice of Hategekimana’s superior responsibility in Chapter II of the Judgement.<sup>1268</sup>

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<sup>1264</sup> T. 31 March 2009 p. 51: “And had the commander, being on the site, and had he refused that such a thing happen, nothing would have been done. The refugees would still be alive.” Witness BYP also stated that if the military *Secteur* under Ngoma Camp had been properly protected, the refugees would not have been killed. Since Hategekimana had the power to prevent the killings, he was the person of reference in case of danger. Father Masinzo spontaneously called the Accused thinking he could protect the refugees; T. 15 April 2009 p. 52: “Moreover, if Hategekimana had told his soldiers as follows, “My soldiers, we are supposed to provide security for Ngoma Camp. We are, therefore, supposed to protect members of the population as we protect the camp,” all of that would not have happened. Maybe there were some leaders who were opposed to it”; T. 19 March 2009 p. 11; T. 18 March 2009 p. 65: “As a matter of fact, we were attacked by soldiers under his command—who were under him, rather. So I thought that he was the person who could stop the massacres in Ngoma. If he was in a position to prevent soldiers from killing people, he could also have prevented civilians from killing other people. Well, at least that is what I thought at the time.”

<sup>1265</sup> T. 31 March 2009 p. 37.

<sup>1266</sup> T. 4 May 2009 p. 21.

<sup>1267</sup> T. 31 March 2009 p. 44. Punishment could have included jail or dismissal from the army. T. 1 April 2009, p. 50.

<sup>1268</sup> See Chapter II, Notice Section.

### 3. COUNTS I AND II: GENOCIDE

667. Count I of the Indictment charges Hategekimana with genocide, under Article 2(3)(a) of the Statute. As an alternative, Count II charges Hategekimana with complicity in genocide under Article 2(3)(e). In support of these charges, the Prosecution alleges Hategekimana's criminal responsibility for his direct participation, under Article 6(1), and his responsibility as a superior pursuant to Article 6(3) for the crimes allegedly committed by his subordinates. To the extent that the Chamber finds Hategekimana criminally responsible under Count I, it will not deal with his liability under Count II.

#### 3.1 Legal Principles

668. To find an accused guilty of genocide, it must be established that the accused committed any of the acts enumerated in Article 2(2) with the requisite specific intent, to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity or religion.<sup>1269</sup> While there is no numeric threshold for the number of victims, the Prosecution must prove beyond reasonable doubt that the perpetrator acted with the intent to destroy at least a substantial part of the group.<sup>1270</sup> The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.<sup>1271</sup>

669. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond reasonable doubt to the existence of the intent.<sup>1272</sup> Factors that may establish intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group or the repetition of destructive and discriminatory acts.<sup>1273</sup>

670. The Indictment charges Hategekimana with killing or causing serious bodily or mental harm to members of the *Tutsi* ethnic group.<sup>1274</sup> According to the established jurisprudence of this Tribunal, the *Tutsi* ethnicity is a protected group.<sup>1275</sup> Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.<sup>1276</sup>

671. In its Closing Brief, the Prosecution alleges that Hategekimana committed genocide "in that he planned, ordered, instigated, committed or otherwise, aided and abetted in the planning, preparation and/or execution of these crimes with soldiers, armed civilians and *Interahamwe* militia during the period between 7 April and 31 May 1994."<sup>1277</sup> As a result, *Tutsi* civilians were killed and

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<sup>1269</sup> *Semanza* Trial Judgement paras. 311-313.

<sup>1270</sup> *Semanza* Trial Judgement para. 316; *Simba* Trial Judgement para. 412.

<sup>1271</sup> *Ntakirumana* Appeal Judgement paras. 302-304; *Niyitegeka* Appeal Judgement paras. 48-53.

<sup>1272</sup> *Kayishema and Ruzindana* Appeal Judgement (Reasons) para. 159.

<sup>1273</sup> See *Rutaganda* Appeal Judgement para. 525; *Ndindabahizi* Trial Judgement para. 454; *Ntagerura et al.* Trial Judgement para. 663.

<sup>1274</sup> Indictment paras. 6-20.

<sup>1275</sup> Every judgement rendered by this Tribunal concerning genocide has recognised that the *Tutsi* ethnicity is a protected group. See *The Prosecutor v. Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza* Appeal Judgement para. 192.

<sup>1276</sup> *Bagosora et al.* Trial Judgement para. 2117 citing *Simba* Trial Judgement para. 414 referring to *Kayishema and Ruzindana* Appeal Judgement para. 151.

<sup>1277</sup> Prosecution Closing Brief para. 137.

raped at various places in Butare *Préfecture*, particularly in Matyazo, Ngoma and Buye *Secteurs* of Ngoma *Commune*. The Prosecution also alleges that Hategekimana “wilfully and knowingly participated in a joint criminal enterprise whose common purpose and object was the execution of the genocide against the *Tutsi* ethnic group.”<sup>1278</sup> Members of the alleged joint criminal enterprise included soldiers from the Ngoma Camp, members of *Interahamwe*, military officers, government officials, political leaders and other soldiers in the Butare area.

## 3.2 Application

### 3.2.1 Murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994

672. Paragraph 16 of the Indictment charges Hategekimana with individual criminal responsibility for genocide, pursuant to Article 6(1) of the Statute, for the murders of Salomé Mujawayezu, Alice Mukarwesa, and Jacqueline Mukaburasa. Paragraph 28 of the Indictment also charges Hategekimana with superior responsibility for the acts of subordinates, pursuant to Article 6(3), based on the same set of facts.

673. The Chamber has determined that the initial attack on the Mujawayezu home, involving *Interahamwe* and armed civilians, occurred between 6.30 and 7.00 p.m. on 23 April 1994. The residents of the home, with the assistance of their neighbours, succeeded in fending off *Interahamwe* and armed civilians. Approximately 30 minutes later, Hategekimana arrived on foot at Mujawayezu’s residence, accompanied by four armed Ngoma Camp soldiers and the same *Interahamwe* and armed civilians who had been repelled in the first attack. Hategekimana and *Conseiller* Jacques Habimana demanded to see the identity cards of the residents.<sup>1279</sup> When searching the premises, the *Interahamwe* and Ngoma Camp soldiers found Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, whom they forced out of the house. All three women, who bore identity cards indicating their *Tutsi* ethnicity, were killed on the road immediately by a plurality of assailants. Among the *Interahamwe* and armed civilians who were involved in the attack and in the murders were Gatera, Célestin Maniragenza, Jean-Marie Rugerinyange, Michel Murigande, Zairois as well as Édouard and Jacques Habimana.

#### *Criminal Responsibility: Joint Criminal Enterprise*

674. In the Chamber’s view, the Commander and the *Conseiller* acted with a common criminal purpose in coordinating a second attack by soldiers, *Interahamwe* and armed civilians, and in identifying the three *Tutsi* women to be killed. Hategekimana returned with the same four soldiers at approximately 11.00 p.m. that night to demand once again the residents’ identity cards and to verify their ethnicity. He ordered the residents outside to the road, which was strewn with the bodies of *Tutsis*. Close to their dead bodies were the victim’s identity cards, left by the assailants.

675. In the Chamber’s view, the attack on Mujawayezu’s home can only be described as a coordinated operation involving Hategekimana and two categories of assailants. On the one hand, there were *Interahamwe* and civilians, armed with traditional weapons; and, on the other hand, there were Ngoma Camp soldiers carrying firearms.

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<sup>1278</sup> Prosecution Closing Brief para. 137.

<sup>1279</sup> Indictment paras. 16, 28, 36, 40; T. 6 April 2009 pp. 2-3. According to Witness Sezirahiga, *Conseiller* Jacques Habimana was an *Interahamwe* leader.

676. Hategekimana participated in the joint criminal enterprise by leading armed soldiers from the Ngoma Camp to assist *Conseiller* Jacques Habimana and the other assailants in the attack. The Chamber notes that, prior to Hategekimana's arrival with the Ngoma Camp soldiers, *Interahamwe* and civilians, who relied principally on traditional weapons, had been unsuccessful in their attack on Mujawayezu's residence. The added elements of coordination, armed soldiers and the use of guns proved decisive. The only reasonable inference from the evidence is that Hategekimana participated in a joint criminal enterprise by providing military reinforcements to the *Interahamwe* and civilians, who were the physical perpetrators of the killings.

677. The Chamber is satisfied that when the initial attack was repelled with the assistance of neighbours, the *Interahamwe* and armed civilians sought and obtained support from Hategekimana and Ngoma Camp soldiers. In its Factual Findings, the Chamber concluded that the three women were killed with the help of soldiers from the Ngoma Camp; that Hategekimana ordered the killing; and that the attack would not have succeeded without Hategekimana and the Ngoma Camp soldiers. Accordingly, the Chamber finds, beyond reasonable doubt, that Hategekimana committed genocide when, as a co-perpetrator in a joint criminal enterprise, he ordered the deaths of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994. Therefore, the Chamber finds Hategekimana guilty on Count I, genocide.

678. The question of whether Hategekimana and the co-perpetrators in the joint criminal enterprise possessed the requisite *mens rea* for the underlying crime will be addressed in the Chamber's legal findings on genocide and crimes against humanity.

#### *Finding on Genocide*

679. It is not disputed that *Tutsis* are members of a protected group under the Statute. The Chamber has found that Hategekimana participated in a joint criminal enterprise to kill three *Tutsi* civilians, Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, by providing armed military assistance as well as ordering the physical perpetrators to commit the crimes. Hategekimana and *Conseiller* Jacques Habimana directly contributed to the killings by entering Mujawayezu's home with the assailants, by demanding the residents' identity cards and by accompanying the assailants out of the home with the three women, who bore identity cards indicating their *Tutsi* ethnicity. From the evidence, the Chamber is convinced that the intent of Hategekimana and the soldiers under his command, as well as *Interahamwe* and armed civilians, was to identify and kill *Tutsis* and that the three women were singled out because of their ethnicity. Moreover, Hategekimana's shared criminal intent with his co-perpetrators can be inferred from the fact that he ordered these killings.

680. The Chamber has heard extensive evidence, which it accepts, about the targeting of *Tutsi* civilians in Butare *Préfecture*, particularly following the speech of interim President Sindikubwabo on 19 April 1994. The Chamber has found that a substantial number of *Tutsis* sought refuge at the Ngoma Parish and the *Maison Générale* and that many *Tutsis* were attacked in their homes. These *Tutsi* civilians were killed in large numbers over the course of many days. Given the scale of the killings and their context, the only reasonable inference is that the assailants who physically perpetrated the killings of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa possessed the intent to destroy in whole or in part a substantial part of the *Tutsi* group. This genocidal intent was shared by all co-perpetrators in the joint criminal enterprise, including Hategekimana.

681. Accordingly, the Chamber finds beyond reasonable doubt that Hategekimana is criminally responsible under Article 6(1) of the Statute based on his participation in a joint criminal enterprise to kill three *Tutsi* women, Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa, on 23 April 1994. Therefore, the Chamber finds Hategekimana guilty on Count I of the Indictment for genocide.<sup>1280</sup>

### 3.2.2 Massacre of *Tutsis* at Ngoma Parish on 30 April 1994

682. In its Factual Findings, the Chamber concluded that Hategekimana led a group of armed civilians, *Interahamwe* and Ngoma Camp soldiers who attacked and killed *Tutsi* refugees at Ngoma Parish on 30 April 1994. The Chamber considered that, prior to this attack, *Interahamwe* and armed civilians had arrived at Ngoma Parish in the evening of 29 April 1994. The following day, the same group of attackers, reinforced by Hategekimana and Ngoma Camp soldiers, returned to Ngoma Parish. These soldiers perpetrated the crimes in collaboration with armed *Interahamwe* and civilians.

#### *Criminal Responsibility: Joint Criminal Enterprise*

683. In the Chamber's view, the killings of approximately 500 *Tutsi* refugees at the Ngoma Parish on 30 April 1994 can only be described as a coordinated operation involving *Interahamwe* and armed civilians as well as Ngoma Camp soldiers, led by Hategekimana. The Chamber notes that on the evening of 29 April 1994, *Interahamwe* and armed civilians, using traditional weapons, had been unsuccessful in their attack on the refugees at the Ngoma Parish. That same evening the second in command of the Ngoma Camp, Lieutenant Niyonteze, responded to the attack alarm, after the assailants had been repelled by the refugees. He asked one of the priests, Father Masinzo, to show him where the refugees were located. The following morning, many of the same assailants, reinforced by Ngoma Camp soldiers, returned with Hategekimana to attack the refugees at the Ngoma Parish.

684. By leading soldiers to the Ngoma Parish, Hategekimana contributed significantly to the success of the attack on 30 April 1994. The massive scale and the relative efficiency of the killings necessarily required the involvement of a plurality of persons. The Chamber acknowledges that armed civilians and *Interahamwe* from diverse areas reinforced and assisted the local assailants in killing the *Tutsi* refugees. Specifically, reinforcements included assailants from Matyazo led by Janvier, from Huye led by Mubiligi Mugnga, from Runynia led by Kabiligi, as well as *Interahamwe* led by Robert Kajuga and *Conseiller* Jacques Habimana. As the Ngoma Camp Commander and a respected local figure, his presence in the morning of 30 April 1994 and his orders contributed significantly to the success of the attack.<sup>1281</sup> The massive scale and the relative efficiency of the killings necessarily required the involvement of a plurality of persons. In addition, Hategekimana's presence and his orders served to legitimise the actions of the physical perpetrators of the crime.

685. By his presence and by his orders, the Chamber finds beyond reasonable doubt, that Hategekimana shared the common purpose with Ngoma Camp soldiers, under his command, as well as *Interahamwe* and armed civilians, of killing the *Tutsis* who had taken refuge at the Ngoma Parish. The question of whether Hategekimana and the other participants in the joint criminal

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<sup>1280</sup> The Chamber notes that Hategekimana's actions could equally be described as "ordering." However, in the Chamber's view, the most appropriate description for Hategekimana's actions is "committing" under Article 6(1) of the Statute for his participation in a joint criminal enterprise to kill Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa since a plurality of persons participated in the crime with shared intent.

<sup>1281</sup> *Simba* Appeal Judgement para. 303, *Brdanin* Appeal Judgement para. 430.

enterprise possessed the requisite *mens rea* for the underlying crime of genocide will be addressed in the Chamber's legal findings below on genocide.

### *Finding on Genocide*

686. In its findings on criminal responsibility the Chamber determined that Hategekimana's assistance to the assailants, in the form of armed military reinforcements, his presence and his orders substantially influenced the killings that followed. In its Factual Findings, the Chamber determined that the *Hutu* refugees (approximately five) were separated from the *Tutsis*. Soldiers from the Ngoma Camp herded the *Tutsis* from the church in small groups and delivered them to the *Interahamwe* and armed civilians, who led them away to areas around Ngoma Parish, where they killed the *Tutsis* with traditional weapons.

687. In light of the foregoing and given the organised nature and the scale of these killings at the Ngoma Parish on 30 April 1994, within the context of the ongoing genocide in Rwanda,<sup>1282</sup> the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the genocidal intent to destroy in whole or in part a substantial part of the *Tutsi* group. Hategekimana and all the other participants in the joint criminal enterprise, *Interahamwe* and armed civilians in the case at hand, shared this genocidal intent.

688. The Chamber finds that Hategekimana is criminally responsible under Article 6(1) of the Statute based on his participation in a joint criminal enterprise to kill *Tutsi* civilians at Ngoma Parish. Therefore, the Chamber finds Hategekimana guilty on Count I of the Indictment for genocide.<sup>1283</sup>

### **3.2.3 Massacre of *Tutsis* at the Maison Généralice (Benebikira Convent) on 30 April 1994**

689. In its Factual Findings, the Chamber determined that, on or about 30 April 1994, Ngoma Camp soldiers, led by Hategekimana, as well as *Interahamwe* and armed civilians abducted and killed at least 25 *Tutsi* refugees from *Maison Généralice* of the religious order of Benebikira. The Chamber found that, among the victims was a young girl named Solange Karenzi.

### *Criminal Responsibility: Joint Criminal Enterprise*

690. The attack on *Maison Généralice* commenced about 11.30 a.m., on 30 April 1994, when *Interahamwe* and armed civilians, carrying traditional weapons and jerry cans full of petrol, as well as soldiers, armed with loaded rifles, surrounded and attacked the Convent. After searching the nuns' persons and rooms, the assailants assembled and separated the refugees on the lawn after looking at their identity documents.<sup>1284</sup> A military officer identified Hategekimana, as standing in the courtyard, supervising and giving orders to the soldiers. Hategekimana ordered the soldiers to take away and to kill the *Tutsi* refugees, most of whom were children. The soldiers and other assailants loaded the *Tutsis* in at least one vehicle, a Toyota or Daihatsu pickup truck. None of the refugees was ever seen again.

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<sup>1282</sup> See *The Prosecutor v. Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25.

<sup>1283</sup> The Chamber notes that Hategekimana's actions could equally be described as "ordering." However, in the Chamber's view, the most appropriate description for Hategekimana's actions is "committing" under Article 6(1) of the Statute for his participation in a joint criminal enterprise to kill about 500 *Tutsis* at Ngoma Parish since a plurality of persons participated in the crime with shared intent.

<sup>1284</sup> T. 4 May 2009 pp. 23, 44, 49, 55.

691. In the Chamber's view, the only reasonable inference from the evidence is that a common criminal purpose existed among the *Interahamwe*, armed civilians and soldiers, who were under Hategekimana's command and followed his orders. Hategekimana participated in the joint criminal enterprise through his orders given during the separation and the abduction of the *Tutsi* from the Convent. He also participated by providing well-armed soldiers. Hategekimana's actions at the *Maison Générale* constituted a significant contribution to the separation, abduction and killing of the *Tutsi* refugees.

692. The Chamber is mindful of the appearance of a consistent pattern of conduct involving Hategekimana and the same categories of co-participants, namely, armed Ngoma Camp soldiers, *Interahamwe* and civilians. The evidence establishes that the same categories of participants who, under Hategekimana's leadership, attacked the refugees at Ngoma Parish, went on to attack the *Maison Générale*. In light of this evidence, the only reasonable inference is that a common criminal purpose existed to kill the *Tutsis* who had sought refuge at the Convent, and that Hategekimana was a co-perpetrator in this joint criminal enterprise. In reaching this conclusion, the Chamber has considered the concerted and coordinated manner in which Hategekimana and the other assailants entered the Convent, separated the *Tutsi* refugees from the *Hutus* and loaded the *Tutsis* onto a pickup truck before taking them away. Although the evidence concerning the killing of the refugees is circumstantial, the Chamber has determined that the only reasonable conclusion it could reach, was that the abducted *Tutsi* refugees were subsequently killed; and that Hategekimana ordered the soldiers under his control, to abduct and kill the *Tutsis*, on the basis of their ethnicity. The Chamber finds beyond reasonable doubt that Hategekimana shared the common purpose of abducting *Tutsis* from the *Maison Générale* based on his presence and his orders at the convent.

693. The Chamber will address the question of whether Hategekimana and the other perpetrators in the joint criminal enterprise possessed the requisite *mens rea* for the underlying crime in its legal findings below on genocide.

#### *Finding on Genocide*

694. Hategekimana was present at the Convent when the *Tutsis* were abducted. He provided military assistance to the *Interahamwe* and civilians in the form of armed soldiers. Additionally, he issued orders to the soldiers to take away and kill the *Tutsis*. In view of the concerted manner in which the assailants separated and abducted the *Tutsis* from the *Maison Générale*, the Chamber finds that the assailants intentionally targeted and killed members of a protected group. Although the evidence concerning the killing of the refugees is circumstantial, the Chamber has determined that the only reasonable inference is that Hategekimana ordered the soldiers, under his authority and control, to take away and kill the *Tutsis*, on the basis of their ethnicity. The *Tutsis* were then loaded onto a pickup truck and taken away.<sup>1285</sup> They were never seen again. The Chamber has found that, among the victims was a young *Tutsi* girl named Solange Karenzi.

695. In light of these facts, the only reasonable conclusion is that the *Interahamwe*, armed civilians and Ngoma Camp soldiers, who physically perpetrated the killings of the refugees from the *Maison Générale*, possessed the intent to destroy in whole or in part a substantial number of the *Tutsi* group. The fact that Hategekimana was present at the Convent when the *Tutsis* were abducted and that he ordered and provided military assistance in the form of armed soldiers for the

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<sup>1285</sup> Indictment paras. 20 and 31

abduction and the subsequent killings of the *Tutsis* shows that he had genocidal intent. This intent was shared by all the perpetrators in the joint criminal enterprise.

696. The Chamber finds beyond reasonable doubt that Hategekimana is criminally responsible under Article 6(1) of the Statute based on his participation in a joint criminal enterprise to kill *Tutsi* civilians at the *Maison Générale* on 30 April 1994. Therefore, the Chamber finds Hategekimana guilty on Count I of the Indictment for genocide.<sup>1286</sup>

### 3.3 Conclusion

697. Accordingly, the Chamber finds Hategekimana guilty of genocide (Count I) pursuant to Article 6(1) of the Statute for his participation in a joint criminal enterprise, with soldiers from the Ngoma Camp, *Interahamwe* and armed civilians, in killing: Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994; about 500 *Tutsis* at the Ngoma Parish on 30 April 1994; and more than 25 *Tutsis* at the *Maison Générale* on 30 April 1994.

698. Having found Hategekimana guilty of genocide, the Chamber will not make a finding on the alternative charge of complicity to commit genocide. Therefore Count II is dismissed.

## 4. COUNT III: MURDER AS A CRIME AGAINST HUMANITY

699. Count III of the Indictment charges Hategekimana with murder as a crime against humanity under Article 3(a) of the Statute. The Prosecution alleges Hategekimana's individual criminal responsibility pursuant to Article 6(1), as well as his superior responsibility under Article 6(3) of the Statute, for the crimes charged. The Prosecution also alleges that Hategekimana "wilfully and knowingly participated in a joint criminal enterprise whose common purpose and object was the commission of murder as a crime against humanity."<sup>1287</sup>

### *Widespread and Systematic Attack*

700. In order for any of the crimes enumerated under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.<sup>1288</sup> An attack against a civilian population signifies the perpetration against that population of a series of acts of violence, or of the kind of mistreatment referred to in sub-paragraphs (a) to (i) of Article 3.<sup>1289</sup> The elements of the definition are disjunctive, with the term "widespread" referring to the large scale of the attack, while the term "systematic" describes the organised nature of the acts of violence and the improbability of their random occurrence.<sup>1290</sup>

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<sup>1286</sup> The Chamber notes that Hategekimana's actions could equally be described as "ordering." However, in the Chamber's view, the most appropriate description for Hategekimana's actions is "committing" under Article 6(1) of the Statute for his participation in a joint criminal enterprise to kill *Tutsi* civilians at the *Maison Générale*, since a plurality of persons participated in the crime with shared intent.

<sup>1287</sup> Indictment para. 34.

<sup>1288</sup> *Ntakirutimana* Appeal Judgement paras. 516.

<sup>1289</sup> *Bagosora et al.* Trial Judgement para. 2165; *Nahimana et al.* Appeal Judgement paras. 915-918; *Kordić et Čerkez* Appeal Judgement para. 666; *Kunarac et al.* Appeal Judgement para. 89.

<sup>1290</sup> *Setako* Trial Judgement para. 476; *Semanza* Trial Judgement paras. 328-329; *Bagosora et al.* Trial Judgement para. 2165 citing *Nahimana et al.* Appeal Judgement para. 920 quoting *Kordić and Čerkez* Appeal Judgement para. 94, *Ntakirutimana* Appeal Judgement para. 516, *Mpambara* Trial Judgement para. 11, *Semanza* Trial Judgement paras. 328-329, *Kunarac et al.* Trial Judgement para. 429, *Kunarac and al.* Appeal Judgement para. 94, *Gacumbitsi* Appeal



701. The requisite *mens rea* is that the perpetrator must have acted with the knowledge of the broader context and the knowledge that his acts formed part of the attack, but he need not share the purpose or goals behind the broader attack.<sup>1291</sup> Despite the supplementary requirement that crimes against humanity have to be committed “on national, political, ethnic, racial or religious grounds,” it is not necessary to establish a discriminatory *mens rea*.<sup>1292</sup>

#### 4.1 Legal Principles

702. Murder is the intentional killing of a person without any lawful justification or excuse, or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim’s death.<sup>1293</sup>

#### 4.2 Application

703. Witnesses for both Parties gave their accounts with regard to the targeting of *Tutsi* homes in the days following the death of President Habyarimana on 6 April 1994. Between 10 and 14 April 1994, *Tutsis* coming from outside Butare *Préfecture* were pursued and went to find shelter at the Matyazo Health Centre. The number of refugees increased there on a daily basis. Father Masinzo, a Prosecution witness, testified that this number swelled from 300 on 14 April 1994 to more than 1500 by 17 April 1994.<sup>1294</sup> These refugees came mostly from Runynia, Maraba and from other places in Butare *Préfecture*. Some of these refugees went to Kamara and Simbi on 20 April 1994. Nevertheless, killings also happened in those places. Defence witness MZA also testified the presence of *Tutsi* refugees at the Matyazo Health Centre on 16 and 17 April 1994. According to Defence witness BMR, the killings were perpetrated around 20 or 21 April and two weeks after the death of President Habyarimana according to Defence witness CBJ.

704. Therefore, the Chamber is convinced that a widespread and systematic attack against *Tutsis* existed in Butare *Préfecture* and Ngoma *Commune* before the events for which Hategekimana has been found guilty.

705. Political opponents of the MRND *régime* were also targeted 7 April 1994 onwards. The evidence of the attacks on refugees at various sites and the massive scale of the killings perpetrated against them can lead to no other conclusion. Having considered the totality of the evidence, and in particular the evidence concerning the ethnic composition of the individuals who sought refuge at

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Judgement para. 101 citing *Gacumbitsi* Trial Judgement para. 299, *Stakić* Appeal Judgement para. 246, *Blaškić* Appeal Judgement para. 101, *Limaj et al.* Trial Judgement para. 180, *Brđanin* Trial Judgement para. 133.

<sup>1291</sup> *Setako* Trial Judgement para. 477; *Ndindabahizi* Trial Judgement 2004, para. 478.

<sup>1292</sup> *Setako* Trial Judgement para. 477; *Bagosora and al.* Judgement para. 2166 citing *Akayesu* Trial Judgement paras. 464-469, 595, *Bagilishema* Trial Judgement para. 81.

<sup>1293</sup> *Renzaho* Trial Judgement para. 786; *Bagosora et al.* Trial Judgement para. 2169 citing *The Prosecutor v. Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 25; *Karera* Trial Judgement para. 558. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. See, for instance, *Bagilishema* Trial Judgement para. 86; *Ntagerura and al.* Trial Judgement para. 700; *Semanza* Trial Judgement para. 339. The Chamber is satisfied that the killings at issue in the present case would constitute murder as a crime against humanity under both standards.

<sup>1294</sup> T. 19 March 2009 pp. 46-47. See also T. 17 March 2009 p. 16 (Witness QCL estimated that there were between 700 to 1500 refugees at the Matyazo Health Centre.); T. 20 March 2009 p. 12 (Laurien Ntezimana estimated that initially there were approximately 50 refugees at the health centre but that their number increased to 150 to 200).

the various sites, the Chamber finds that in April 1994 there was a widespread attack against the civilian *Tutsi* population in Ngoma *Commune* on ethnic grounds.<sup>1295</sup>

706. The Chamber finds that Hategekimana and the other participants in the joint criminal enterprise must have been aware, during the events of April 1994, that their actions formed part of a widespread and systematic attack against the *Tutsi* civilian population. Hategekimana was familiar with the situation in Rwanda nationally; due to his position as the commander of a military camp, he must have received regular intelligence reports about the situation not only in the Butare *Préfecture* but around the country. In addition, he was a member of the Butare *Préfectoral* Security Council and must have attended meetings together with other participants in the joint criminal enterprise. The assailants who physically perpetrated the killings also must have been aware of the broader context, particularly given the scale of the atrocities.

707. The evidence supports the conclusion that there were widespread and systematic attacks against the *Tutsi* population in Ngoma *Commune*, Butare *Préfecture*, in April and May of 1994. The Chamber has considered the totality of the evidence, in particular concerning the ethnic and political affiliations of the individuals who were targeted and killed during the events in this case. Not only were *Tutsis* singled out, but *Hutus* perceived to be sympathetic to the *Tutsi* cause, or opposed to the MRND *régime*, were also targeted. The Chamber is convinced that there was a widespread and systematic attack against the civilian population on ethnic and political grounds. Given the specific nature of the killings, as well as Hategekimana's rank and position in the military, the Chamber finds that he and the co-perpetrators in the joint criminal enterprise knew that their actions formed part of this widespread and systematic attack.

#### **4.2.1 Murder of Jean Bosco Rugomboka on 8-9 April 1994**

##### *Deliberation*

708. Paragraph 35 of the Indictment charges Hategekimana with individual criminal responsibility, under Article 6(1) of the Statute, for murder as a crime against humanity. Paragraph 39 of the Indictment also charges Hategekimana with superior responsibility for the same crime, pursuant to Article 6(3) of the Statute.

709. In its Factual Findings, the Chamber determined Hategekimana to be criminally responsible for ordering the murder of Jean Bosco Rugomboka, which was committed by Ngoma Camp soldiers on 8-9 April 1994. The Chamber has already discounted the possibility that Rugomboka was specifically targeted on ethnic grounds, insofar as other *Tutsis*, including the victim's close relatives who were present during his abduction, were spared.

710. The evidence in this case supports the conclusion that in the immediate aftermath of President Habyarimana's death, political opponents of the MRND *régime* were targeted and that there was a systematic attack against the civilian population on political grounds. Hategekimana must have known that opponents of the *régime* were being targeted throughout Rwanda, including in various parts of the Butare *Préfecture*.

711. On the night of 8-9 April 1994, Hategekimana and soldiers under his command forced their entry into Rugomboka's home and demanded to see the residents' identity documents. Other

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<sup>1295</sup> See *The Prosecutor v. Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza* Appeal Judgement, para. 192.

assailants remained outside the home. While searching the premises for weapons or other objects indicating the residents' affiliation with the Rwandan Patriotic Front, the soldiers found a T-shirt bearing the image of a political martyr named Rwigema. Evidence of Hategekimana's orders to and supervision of the soldiers, as well as evidence of the soldiers' forcing of Jean Bosco Rugomboka to wear the T-shirt before he was abducted from his house and the traces of torture whereby Rwigema's effigy was carved through the T-shirt into Jean Bosco Rugomboka's chest are strongly indicative that Jean Bosco Rugomboka was killed for his political opinions and not because of his *Tutsi* ethnicity.

#### *Finding on Crimes Against Humanity*

712. The Chamber finds Hategekimana guilty of murder as a crime against humanity, based on Article 6(1) of the Statute for ordering the abduction and killing of Jean Bosco Rugomboka on 8-9 April 1994. The Chamber further finds Hategekimana responsible of murder as a crime against humanity, as a superior based on Article 6(3) of the Statute, for the killing of Jean Bosco Rugomboka. The Chamber will take into account Hategekimana's liability as a superior in sentencing.<sup>1296</sup>

#### **4.2.2 Murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994**

##### *Deliberation*

713. Paragraphs 36 and 40 of the Indictment, respectively, charge Hategekimana with individual criminal responsibility, under Article 6(1), and superior responsibility, under Article 6(3) of the Statute, for the murders of three *Tutsi* women as crimes against humanity.

714. In its Legal Findings on genocide, the Chamber has already determined beyond reasonable doubt that the separation, removal and killing of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa constituted genocide. On the same basis, the Chamber is satisfied that these intentional murders were conducted on ethnic grounds, and accordingly also constitute murder as a crime against humanity.<sup>1297</sup>

715. The Chamber has already determined that Hategekimana bears responsibility under Article 6(1) of the Statute, based on his participation in a joint criminal enterprise.

##### *Finding on Crime Against Humanity*

716. The Chamber finds Hategekimana guilty of murder as a crime against humanity, on the basis of Article 6(1) of the Statute, for ordering the killings of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994. The Chamber will not make a finding on Hategekimana's responsibility, as a superior under Article 6(3), for these crimes.<sup>1298</sup>

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<sup>1296</sup> *Kajelijeli* Appeal Judgement para. 81, *Nahimana and al.* Appeal Judgement para. 487.

<sup>1297</sup> *Renzaho* Trial Judgement para. 787.

<sup>1298</sup> The Chamber recalls that according to the jurisprudence of the ICTR and ICTY Appeals Chambers, it is a reversible error of law to aggregate a finding of guilt based on individual criminal responsibility pursuant to Articles 6(1) of the Statute and a finding of guilt as a hierarchical superior pursuant to Articles 6(3), for the same counts and based on the same facts. Therefore, in determining the individual criminal responsibility of an accused on the basis of Articles 6(1) and 6(3) of the Statute, and if all the criteria are met, the Trial Chamber should enter a finding of guilt based on Article 6(1) alone and view the accused's position of authority as an aggravating factor. In light of these criteria, the Chamber will proceed to consider only the Accused's individual criminal responsibility on the basis of Article 6(1) and will

### 4.2.3 Murder of Solange Karenzi on 30 April 1994

#### *Deliberation*

717. Paragraphs 37 and 41 of the Indictment charge Hategekimana with murder as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, respectively, for the killings of three children, who were among the *Tutsis* abducted from the *Maison Générale*.<sup>1299</sup> In its Factual Findings, the Chamber determined beyond reasonable doubt that Hategekimana was criminally responsible for the killing of one of these named children, Solange Karenzi.

718. In its Legal Findings, the Chamber found Hategekimana to be guilty of genocide for his participation in a joint criminal enterprise, under Article 6(1) of the Statute, for killing at least 25 *Tutsi* refugees, who were abducted from *Maison Générale*. In this section, the Chamber will consider the charge of murder as a crime against humanity for the killing of an identified individual among these *Tutsi* refugees, Solange Karenzi.

719. The Chamber has already determined that the separation, abduction and killing of at least 25 *Tutsis*, which included Solange Karenzi, constituted genocide. On the same basis, the Chamber finds that her murder was conducted on ethnic grounds. Further the Chamber considers it inconceivable that Hategekimana and other perpetrators in the joint criminal enterprise -- Ngoma Camp soldiers, *Interahamwe* and armed civilians – did not know during the abduction and killing of Solange Karenzi that their actions formed part of a widespread attack against the *Tutsi* civilian population. Given the manner in which the attack on *Maison Générale* was conducted, the many assailants involved, the weapons used, the Chamber finds beyond reasonable doubt that Hategekimana, as well as the co-perpetrators in the joint criminal enterprise, intentionally participated in the abduction and mass killing of members of the *Tutsi* group, including Solange Karenzi.

#### *Finding on Crime Against Humanity*

720. The Chamber finds beyond reasonable doubt that Hategekimana is criminally responsible, under Article 6(1) of the Statute, for the murder of Solange Karenzi as a crime against humanity, based on his participation in a joint criminal enterprise to kill *Tutsi* refugees at *Maison Générale* on 30 April 1994.

### 4.3 Conclusion

721. Accordingly, the Chamber finds Hategekimana guilty of murder (Count III) as a crime against humanity for ordering the murder of Jean Bosco Rugomboka on 8-9 April 1994, under Article 6(1) of the Statute; for his joint participation with Ngoma Camp soldiers, *Interahamwe* and armed civilians in the murders of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa on 23 April 1994, under Article 6(1) of the Statute; and for his joint participation with Ngoma Camp soldiers, *Interahamwe* and armed civilians in the murder of Solange Karenzi on 30 April 1994, under Article 6(1) of the Statute. Therefore, he is guilty on Count III of the Indictment for murder as a crime against humanity.

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consider his position as a superior in determining the sentence. See *Kajelijeli* Appeal Judgement para. 81, *Nahimana et al.* Appeal Judgement para. 487.

<sup>1299</sup> Indictment paras. 37, 41.

## 5. COUNT IV: RAPE AS A CRIME AGAINST HUMANITY

722. Paragraphs 45 and 49 charge Hategekimana with rape as a crime against humanity, pursuant to both Articles 6(1) and 6(3) of the Statute. The Prosecution also seeks to establish Hategekimana's criminal liability for the rape of Nura Sezirahiga under Article 6(1) based on joint criminal enterprise.

### 5.1 Legal Principles

723. According to the Tribunal's established jurisprudence, rape is a "physical invasion of a sexual nature, committed on a person under circumstances which are coercive."<sup>1300</sup> In *Kunarac*, the Appeals Chamber articulated the parameters of what would constitute a "physical invasion of a sexual nature."<sup>1301</sup>

724. The *mens rea* for rape as a crime against humanity is the intention to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.<sup>1302</sup> The *Kunarac* Appeals Chamber observed that circumstances that prevail in most cases charged as crimes against humanity will be almost universally coercive, thus vitiating consent.<sup>1303</sup>

### 5.2 Application

725. The Chamber has found that Nura Sezirahiga was singled out, raped and killed on the night of 23 April 1994. Within the context of the crimes established by the evidence in this case, the Chamber finds that the rape was part of a discriminatory, widespread and systematic attack against *Tutsi* civilians and *Hutu* moderates. Nura Sezirahiga was *Hutu*, but she was raped and killed because of the perceived political affiliation of her father. The evidence establishes that the assailants who attacked the Sezirahiga home were searching for firearms or other objects to show that her father, Sadiki Sezirahiga, was an *Inkotanyi* accomplice.<sup>1304</sup>

726. The Chamber has already found that Hategekimana was present during the attack on Sezirahiga's house, following which his wife and son were brutally assaulted and left for dead and his daughter raped and killed. Sadiki Sezirahiga, the one eyewitness to the crime, whom the Chamber found credible and reliable, did not see Hategekimana during the rape of his daughter Nura Sezirahiga. However, on the basis of his evidence, the Chamber found that one of the four Ngoma Camp soldiers who accompanied Hategekimana to the site raped Nura Sezirahiga. The soldier raped her in the presence of other soldiers and the same *Interahamwe* and armed civilians who had attacked the residents of the Sezirahiga home.

727. Hategekimana came with his subordinates, four Ngoma Camp soldiers, to attack Sezirahiga's house. He was present when Nura and her family were forced from their home and when the *Interahamwe* and armed civilians brutally attacked the residents. The rape was perpetrated

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<sup>1300</sup> *Akayesu* Trial Chamber para. 688.

<sup>1301</sup> *Kunarac et al.* Appeal Judgement paras. 127-128; *Bagosora et al.* Trial Judgement para. 2199; *Semanza* Trial Judgement para. 344. *Semanza* concisely articulated the *Kunarac* Appeal Chamber's definition as: "the non-consensual penetration, however slight of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator." See *Muhimana* Trial Chamber paras. 537-551.

<sup>1302</sup> *Bagosora et al.* Trial Judgement para. 2200, citing *Kunarac et al.* Appeal Judgement paras. 127; *Semanza* Trial Judgement para. 346.

<sup>1303</sup> *Kunarac et al.* Appeal Judgement para. 130.

<sup>1304</sup> T. 2 April 2009 pp. 64-65.

as one of several crimes against family members, which were not charged in the Indictment, specifically the battery of Nura's mother, the murder of her brother and her own murder. Nura died immediately after the rape. In the Chamber's view, even if Hategekimana was not present during the rape, he had reason to know that one or more of the soldiers were about to commit such an offence or had done so. Hategekimana took no necessary nor reasonable measures to prevent the rape or to punish the perpetrator.

728. The Chamber finds that Hategekimana had effective control over the soldiers under his command. Insofar as the evidence establishes that the rape was committed by one of the Ngoma Camp soldiers, and not by any other assailant, the Chamber has determined that Hategekimana is responsible as a superior.

### **5.3 Conclusion**

729. Accordingly, the Chamber finds Hategekimana guilty, as a superior, for the rape of Nura Sezirahiga, committed by a soldier from the Ngoma Camp, as a crime against humanity (Count IV) under Article 6 (3) of the Statute.

**CHAPTER V: VERDICT**

730. For the reasons set out in this judgement, having considered all evidence and arguments, the Trial Chamber unanimously finds Ildephonse Hategekimana:

Count 1: **GUILTY of genocide**

Count 2: **NOT GUILTY of complicity in genocide**

Count 3: **GUILTY of murder as a crime against humanity**

Count 4: **GUILTY of rape as a crime against humanity**

## CHAPTER VI: SENTENCE

### 1. INTRODUCTION

731. Having found Ildephonse Hategekimana guilty on counts I, II and III of the Indictment for genocide, murder and rape as crimes against humanity, the Chamber must determine the appropriate sentence.

732. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>1305</sup> The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation.<sup>1306</sup> Pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Trial Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences (the gravity of the crimes for which the accused has been convicted and the form of responsibility for these crimes) as well as the individual circumstances of the convicted person, including aggravating and mitigating circumstances.<sup>1307</sup> As noted by the Appeals Chamber, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall ensure that any penalty imposed by a court of any State on the accused for the same act has already been served,<sup>1308</sup> and shall credit the accused for any time spent in detention pending his surrender to the Tribunal and during trial.<sup>1309</sup>

### 2. SUBMISSIONS

733. The Prosecution submits that the appropriate penalty is imprisonment for the remainder of the Accused's life.<sup>1310</sup> It emphasises the gravity of the crimes, their premeditated, willful and intentional execution, as well as his direct participation in their commission, and his abuse of authority and breach of trust.<sup>1311</sup> The Prosecution alludes to other life sentences handed down by the Tribunal and notes that no sentence other than life imprisonment would properly reflect an appropriate and proportionate punishment for the grave crimes that Hategekimana committed.<sup>1312</sup> The Prosecution seeks concurrent sentences for the remainder of the Accused's life for each count of the Indictment for which the Trial Chamber finds the Accused guilty.<sup>1313</sup> The Defence submits that the Accused should be acquitted on all counts of the Indictment and did not make any sentencing submissions in the alternative.<sup>1314</sup>

### 3. DELIBERATION

#### 3.1 Gravity of the Offence

734. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Trial Chambers are vested with a broad, though not unlimited, discretion in determining the

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<sup>1305</sup> Rule 101(A) of the Rules.

<sup>1306</sup> See *Nahimana et al.* Appeal Judgement para. 1057; *Stakić* Appeal Judgement para. 402.

<sup>1307</sup> *Bikindi* Trial Judgement para. 443.

<sup>1308</sup> Articles 23(1) and 23(2) of the Statute and Rule 101(B) of the Rules.

<sup>1309</sup> Rule 101(C) of the Rules.

<sup>1310</sup> Prosecution Closing Brief paras. 543, 569; Prosecution Closing Arguments T. 28 April 2010, pp. 23-25.

<sup>1311</sup> Prosecution Closing Brief paras. 542, 547, 549-556.

<sup>1312</sup> Prosecution Closing Brief paras. 542-543.

<sup>1313</sup> Prosecution Closing Brief paras. 564-569.

<sup>1314</sup> Defence Closing Brief para. 739.



appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the convicted person and to reflect the gravity of the crimes.<sup>1315</sup>

735. In determining an appropriate sentence, the Appeals Chamber has stated that, “sentences of like individuals in like cases should be comparable.”<sup>1316</sup> However, it has also noted the inherent limits to this approach because “any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual.”<sup>1317</sup>

736. The Chamber has found Hategekimana guilty of genocide for his participation in a joint criminal enterprise, intended to destroy the *Tutsi* ethnic group, pursuant to which these crimes were committed, i.e. the killings of *Tutsi* civilians at Ngoma Parish and Benebikira Convent, as well as the killings of Salomé Mujawayezu, Alice Mukarwesa and Jacqueline Mukaburasa. He has also been found guilty of murder and rape as crimes against humanity for the killings of Jean Bosco Rugomboka, Salomé Mujawayezu, Alice Mukarwesa, Jacqueline Mukaburasa and Solange Karenzi, as well as for the rape of Nura Sezirahiga. His participation in this common criminal purpose consisted of lending human resources, and ordering the perpetrators to commit the killings. Hundreds of *Tutsi* civilians died in these attacks. The Chamber determined that, as the Ngoma Camp Commander and a respected local figure, Hategekimana’s presence and utterances on the various crime scenes had a substantial effect on the killings which followed. His role in the joint criminal enterprise makes him a co-participant.

737. The Chamber considers that, under Rwandan law, genocide and crimes against humanity carry the possible penalties of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused’s participation.<sup>1318</sup> In the Tribunal’s jurisprudence, principal perpetration generally warrants a higher sentence than aiding and abetting.<sup>1319</sup> Offenders receiving the most severe sentences also tend to be senior authorities.<sup>1320</sup>

738. At the time of the events, Hategekimana was the *de jure* and *de facto* Commander of the Ngoma Camp and a local influential figure. He was the person referred to in case of security matters and in particular, matters related to the protection of refugees. He was also a member of the *préfectoral* Security Council.

739. In the Chamber’s view, genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Crimes against humanity are also extremely serious offences because they are heinous in nature and shock the collective conscience of mankind.<sup>1321</sup> In *Renzaho*, the Trial Chamber determined life imprisonment

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<sup>1315</sup> *Seromba* Appeal Judgement para. 228; *Rugambarara* Sentencing Judgement Trial Chamber paras. 19-20.

<sup>1316</sup> *Kvočka et al.* Appeal Judgement para. 681.

<sup>1317</sup> *Kvočka et al.* Appeal Judgement para. 681.

<sup>1318</sup> Rwandan Organic Law No. 8/96, on the Organisation of Prosecutions for Offences Constituting Genocide or Crimes Against Humanity Committed Since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.

<sup>1319</sup> *Semanza* Appeal Judgement para. 388.

<sup>1320</sup> Life sentences have been imposed against senior government authorities in: *Ndindabahazi* Trial Chamber paras. 505, 508, 511 (Minister of Finance); *Niyitegeka* Trial Judgement paras. 499, 502 (Minister of Information); *Kambanda* Trial Chamber paras. 44, 61-62 (Prime Minister); *Kamuhanda* Trial Judgement paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See, e.g., *Musema* Trial Judgement paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda* Trial Judgement paras. 466-473 (second vice-president of *Interahamwe* at national level).

<sup>1321</sup> *Ruggiu* Trial Judgement para. 48; *Rugambarar* Sentencing Judgement Trial Chamber para. 19.

to be the appropriate sentence for the direct participation, except for the rapes of three persons, in genocide, murder and rape as crimes against humanity, and murder and rape as serious violations of Article 3 Common to the Geneva Conventions, at four massacre sites.<sup>1322</sup> Renzaho was the *Préfet* of Kigali-Ville and a colonel in the Rwandan Army and therefore was clearly an important and influential authority of the Rwandan government.<sup>1323</sup> In *Seromba*, the Appeals Chamber decided to increase the sentence handed down in the first trial from 15 years to life imprisonment after having granted one count of the Prosecution's appeal regarding the destruction of a church where 1,500 refugees died or were seriously injured. This act was considered in appeal as a crime of genocide and not only as constituting the crime of extermination. He was therefore convicted of both genocide and extermination for his role in the destruction of the church. Given the extraordinary gravity of the crimes, the Appeals Chamber therefore imposed on the Accused a sentence of imprisonment for the remainder of his life.<sup>1324</sup> In *Gacumbitsi*, the Appeals Chamber also increased the Accused's previous conviction of 30 years to life imprisonment. In reaching its conclusion, the Appeals Chamber noted that Gacumbitsi played a central role in planning, instigating, ordering, committing, and aiding and abetting genocide and extermination in his *Commune* of Rusumo, where thousands of *Tutsis* were killed or seriously harmed.<sup>1325</sup>

### 3.2 Individual, Aggravating and Mitigating Factors

740. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. Whilst aggravating circumstances need to be proved beyond reasonable doubt, mitigating circumstances need only be established on a balance of probabilities.<sup>1326</sup> Any particular circumstance that is included as an element of the crime for which the Accused is convicted will not also be considered as an aggravating factor.<sup>1327</sup>

741. The Prosecution submits that the aggravating factors against Hategekimana include: his position; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; and the duration of the offences and suffering of his victims.<sup>1328</sup> The Chamber notes that it is well established in the ICTR and ICTY's jurisprudence that the manner in which the accused exercised his command or the abuse of an accused's personal position in the community may be considered as an aggravating factor.<sup>1329</sup>

742. The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor.<sup>1330</sup> The Chamber notes Hategekimana's position as the *de jure* and *de facto* Commander of the Ngoma Camp. The influence he derived from his position and his local status made it likely that others would follow his example, which is an aggravating factor.<sup>1331</sup>

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<sup>1322</sup> *Renzaho* Trial Judgement paras 812, 825-826.

<sup>1323</sup> *Renzaho* Trial Judgement paras. 1, 819.

<sup>1324</sup> *Seromba* Appeal Judgement paras. 238-239.

<sup>1325</sup> *Gacumbitsi* Appeal Judgement paras 204-205.

<sup>1326</sup> *Simba* Appeal Judgement para. 328; *Nahimana et al.* Appeal Judgement para. 1038.

<sup>1327</sup> *Ndindabahizi* Trial Judgement para. 502; *Semanza* Trial Judgement para. 571.

<sup>1328</sup> Prosecution Closing Brief para. 546.

<sup>1329</sup> *Seromba* Appeal Judgement para. 230; *Aleksovski*, Appeal Judgement para. 183; *Kayishema and Ruzindana*, Appeal Judgement paras. 357-358; *Ntakirutimana* Appeal Judgement para. 563; *Kamuhanda* Appeal Judgement paras. 347-348; *Bisengimana* Trial Judgement para. 120; *Serugendo* Trial Judgement para. 48; *Ndindabahizi*, Appeal Judgement para. 136.

<sup>1330</sup> *Simba* Appeal Judgement paras. 284-285.

<sup>1331</sup> *Semanza* Appeal Judgement para. 336.

743. The Chamber notes his role as a superior *vis-à-vis* Ngoma Camp soldiers in the abduction and murder of Jean Bosco Rugomboka and therefore takes this into account in the sentence as an aggravating factor in accordance with its legal findings. With respect to Hategekimana's abuse of authority, the Chamber has taken into account the fact that he was a member of the Butare *préfectoral* Council and that he was in charge of peace and security in the Ngoma *Commune*, as an aggravating circumstance. In this respect, he abused the trust that the population had placed in him. Instead of promoting peace and security, he participated in committing genocide with armed civilians and *Interahamwe* or let Ngoma Camp soldiers, under his command, commit crimes such as the rape of Nura Sezirahiga. In the Chamber's view, Hategekimana's abuse of his role as an influential authority in connection with the other crimes for which he has been convicted under Article 6(1) of the Statute for ordering and for his participation in a joint criminal enterprise also amounts to an aggravating factor.

744. Furthermore, the Chamber considers the fact that the Accused is an educated person to be an aggravating factor. As an educated person, the Accused should have appreciated the dignity and value of human life and should have been aware of the need for peaceful co-existence between communities.<sup>1332</sup>

745. The Chamber further considers the number of victims which resulted from the killings as an aggravating factor in relation to his conviction for genocide, which is a crime with no numeric minimum of victims.<sup>1333</sup>

746. The Mitigating circumstances need not be directly related to the offences.<sup>1334</sup> The Chamber finds few mitigating circumstances in this case. It takes note that Hategekimana became an orphan at the age of eight and that he must have had a difficult childhood. The Chamber is mindful of his career in the Rwandan Army and his difficult work on the front when the war broke out with the RPF in 1990. The fact that he formerly "demonstrated an irreproachable service and bravery in combat"<sup>1335</sup> can not act as a mitigating circumstance with regard to the crimes he committed. The Chamber has considered his background and individual circumstances. However, it accords these mitigating circumstances very limited weight in view of the gravity of his crimes.

### 3.3 Conclusion

747. The Chamber has the discretion to impose a single sentence and notes that this practice is usually appropriate where the offences may be characterised as belonging to a single criminal transaction.<sup>1336</sup>

748. The Chamber has considered the gravity of each of the crimes for which the Accused has been convicted as well as the aggravating and mitigating circumstances mentioned by the parties. Considering the relevant circumstances discussed in the Judgement and having ensured that the Accused is not being punished twice for the same offence, the Chamber sentences the Accused to a single sentence of LIFE IMPRISONMENT.

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<sup>1332</sup> *Nzabirinda* Trial Judgement paras. 59, 63; *Bisengimana* Trial Judgement para. 120.

<sup>1333</sup> *Semanza* Appeals Judgement para. 337-338.

<sup>1334</sup> *Rugambarara* Sentencing Judgement Trial Chamber para. 30; *Nikolić* Trial Judgement para. 145; *Deronjić* Trial Judgement para. 155.

<sup>1335</sup> Defence Closing Brief para. 7.

<sup>1336</sup> *Karera* Trial Chamber para. 585; *Ndindabahizi* Trial Chamber para. 497.

### **3.4 Consequential Orders**

749. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

750. Until his transfer to his designated places of imprisonment, Ildephonse Hategekimana shall be kept in detention under the present conditions.

751. Pursuant to Rule 102(B) of the Rules, on notice of appeal, if any, enforcement of the above sentence shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 6 December 2010

Arlette Ramarosan  
Presiding Judge

Taghrid Hikmet  
Judge

Joseph Masanche  
Judge

[Seal of the Tribunal]

## **DISSENTING OPINION OF JUDGE MASANCHE**

1. In this Judgement, the Majority dismisses the allegations in paragraphs 15 and 27 of the Indictment concerning Hategekimana's criminal responsibility for the massacre of *Tutsi* refugees at the Matyazo Health Centre on or about 21 or 22 April 1994. For the reasons expressed below, I respectfully disagree with both the reasoning and the conclusion of the Majority.
2. Prosecution Witnesses BYP, BYR, QCL, Jérôme Masinzo, and Laurien Ntezimana testified to this event. Defence Witnesses BMR, CBJ, and MZA also testified to this event. I agree with the Majority's acceptance of the evidence of Witness QCL, Father Masinzo, and Ntezimana that the refugees who had gathered at the Matyazo Health Centre were evacuated from there on 17 April 1994 with the assistance of Ngoma Camp soldiers, and subsequently safely returned to the Matyazo Health Centre when they encountered violence on the way.
3. In addition, the Majority accurately notes that the Prosecution evidence regarding the involvement of Hategekimana and/or Ngoma Camp soldiers in the killings at the Matyazo Health Centre in the days subsequent to the refugees' return is largely circumstantial and based on hearsay. Indeed, no witness saw Hategekimana at the scene of the crime or heard him give any order.
4. Nevertheless, there is a significant amount of evidence, albeit hearsay, showing that Ngoma Camp soldiers committed killings at the Matyazo Health Centre. Father Masinzo heard of their involvement directly from survivors of the attack. The Majority finds that the evidence derived from the accounts of unnamed and deceased victims is uncorroborated rendering Father Masinzo's hearsay testimony in this respect unreliable. I would agree with this finding if this were the only evidence on the record. In other words, I would add the caveat that Father Masinzo's hearsay testimony in this respect is unreliable *on its own*.
5. However, Father Masinzo's account relaying what he heard from the survivors of the Matyazo Health Centre does not stand alone. His account is supported by Ntezimana's hearsay evidence regarding the involvement of soldiers in these killings. Although Ntezimana could not be more specific as to the military camp from which the soldiers originated, I consider his account to generally strengthen Father Masinzo's in respect of a military presence.
6. Father Masinzo also relayed information he received from an Ngoma Camp soldier, Corporal Innocent Nkurunziza, that Hategekimana had deployed Ngoma Camp soldiers to carry out the killings "in Matyazo." Although I agree with the Majority's opinion that the phrase "in Matyazo" lacks specificity as to location, I nevertheless consider this evidence to support Father Masinzo's account from the survivors specifically implicating Ngoma Camp soldiers in the killings at the Matyazo Health Centre.
7. Moreover, Witnesses BYP and BYR provided names of Ngoma Camp soldiers whom they heard boasting about their participation in this event. The Majority finds that it is unclear from the evidence of Witnesses BYP and BYR what exactly the soldiers were boasting about, and considers these witnesses' implication of Ngoma Camp soldiers in the attack on the Matyazo Health Centre to be speculative.

8. I respectfully disagree. When asked to provide the names of soldiers “that may have participated in the killing of refugees” or “that were involved in attacks on refugees” at the Matyazo Health Centre, Witness BYP provided the names of soldiers whom he stated had “boasted about what they had done.”<sup>1337</sup> Similarly, when asked how he became aware that the Ngoma Camp soldiers he identified were involved in the killings of refugees at the Matyazo Health Centre, Witness BYR replied, “The driver and other people said that those people participated in the killings” and “when those soldiers came back to the military camp, they would brag about their acts and their exploits.”<sup>1338</sup> I consider such hearsay evidence to be clear that the boasts, acts, and exploits referred to by these witnesses were the killings at the Matyazo Health Centre. Accordingly, I consider their evidence to further strengthen Father Masinzo’s account from the survivors of these killings specifically implicating Ngoma Camp soldiers.
9. In my opinion, further support arises from Witness QCL’s evidence that, a day or two prior to the killings, Hategekimana and a group of soldiers came to the Matyazo Health Centre, wherefrom the witness and others were taken to a nearby market square and beaten there, preventing them from returning to the health centre to further assist the *Tutsi* refugees.<sup>1339</sup> Witness QCL heard one of the soldiers ask Hategekimana “Can’t we stop all this?” in relation to the plight of the refugees, and Hategekimana responded, “Let them do what they are doing. They know that they are doing.”<sup>1340</sup> I consider such a statement to be indicative of endorsement, if not prior knowledge, of the imminent doom awaiting the refugees at the Matyazo Health Centre. At the very least, I consider Witness QCL’s evidence to strengthen Father Masinzo’s account from the surviving refugees.
10. I believe all of the aforementioned witnesses, and consider that, as a whole, their evidence is sufficiently reliable to sustain a conviction. The Appeals Chamber jurisprudence requires caution to be exercised before basing convictions on hearsay evidence.<sup>1341</sup> In this case, as detailed above, I find that there is sufficient other credible and reliable evidence adduced by the Prosecution in order to support the finding that Ngoma Camp soldiers participated in the killings of *Tutsi* refugees at the Matyazo Health Centre.
11. The Defence evidence raises no doubt in this respect. Defence Witness MZA testified that he never heard that soldiers took part in the killings at the Matyazo Health Centre. Defence Witnesses BMR and CBJ, who were present during the attack, testified that they did not see any soldiers there. Rather, they only saw *Interahamwe* and armed civilians. Given the number of refugees and assailants that were present at the site, I do not consider that Witnesses BMR’s and CBJ’s failure to see the presence of soldiers to cast doubt on other credible and reliable evidence that they were there. With respect to Witness BMR, given her limited vantage point, the traumatic circumstances under which she witnessed the attack, and the short time that she was there before fleeing the scene, she could not have been in a position to see everything that transpired or everyone who was present. Similarly, Witness CBJ had an even more limited vantage point, observing the attack from the outside of the health centre, and admitted to only taking fleeting glances out of fear. She could therefore not have had a comprehensive view of the attack.

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<sup>1337</sup> T. 15 April 2009 p. 46.

<sup>1338</sup> T. 9 April 2009 p. 36.

<sup>1339</sup> T. 17 March 2009 p. 20.

<sup>1340</sup> T. 17 March 2009 pp. 20, 21.

<sup>1341</sup> See e.g., *Kalimanzira* Appeal Judgement para. 199; *Muvunyi* Appeal Judgement para. 70.

12. For these reasons, there is no doubt in my mind that Ngoma Camp soldiers participated in the attack on the *Tutsis* who had sought refuge at the Matyazo Health Centre. There is no evidence that Hategekimana planned, instigated, ordered, and/or committed these killings, as alleged at paragraph 15 of the Indictment. However, given that the soldiers involved openly boasted about what they had done, there is no doubt in my mind that Hategekimana knew about these crimes of his subordinates. On the basis of Witness QCL's evidence of Hategekimana's failure to respond to the plight of the refugees a day or two prior to the killings, I find that Hategekimana did not take any necessary reasonable measure to prevent the subsequent commission of the killings. Moreover, given the continuing nature of such violations,<sup>1342</sup> the only reasonable inference is that Hategekimana did not take any necessary and reasonable measure to punish the commission the killings at the Matyazo Health Centre either.
13. Accordingly, I find that Hategekimana bears superior responsibility for genocide for the killings of *Tutsi* refugees perpetrated by Ngoma Camp soldiers at the Matyazo Health Centre on or about 21 or 22 April 1994, as pleaded at paragraph 27 of the Indictment. The Majority's opinion, however, results in Hategekimana's acquittal for these killings. I therefore do not deem it necessary to consider the issues of notice raised by the Defence in relation to this event.

Arusha, 6 December 2010, done in English.

Joseph Masanche  
Judge

[Seal of the Tribunal]

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<sup>1342</sup> I recall that Hategekimana has been found criminally responsible for four events subsequent to the killings at Matyazo Health Centre. See above, Murders of Salomé Mujawayezu, Alice Mukarwesa, and Jacqueline Mukaburasa, 23 April 1994; Rape of Nura Sezirahiga, 23 April 1994; Massacre at Ngoma Parish, 30 April 1994; Massacre at *Maison Générale*, 30 April 1994.

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# **ANNEX A**

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## ANNEX A: PROCEDURAL HISTORY

### 1. Pre-Trial Proceedings

1. On 23 January 2000, the Prosecution filed its original Indictment against three accused persons at large: Tharcisse Muvunyi, Ildephonse Nizeyimana and Ildephonse Hategekimana.<sup>1343</sup> Judge Yakov Ostrovsky confirmed the Indictment on 2 February 2000.<sup>1344</sup> On the same date, he issued a warrant of arrest and an order for the transfer and detention of all three Co-Accused.<sup>1345</sup>
2. On 3 November 2000, Judge Ostrovsky granted the Prosecution's request to file a corrected Indictment, and on 7 November 2000 he further authorised the Prosecution to correct a redaction error in the French version of the Indictment.<sup>1346</sup> The corrected Indictment reflecting these changes was filed on 7 November 2000.
3. On 11 December 2003, the Prosecution severed Muvunyi, one of the three co-Accused, from the Indictment, following his arrest on 5 February 2000.<sup>1347</sup>
4. On 19 February 2001, Judge Ostrovsky withdrew the warrant of 2 February 2000 and issued a new warrant to the Government of Congo Brazzaville for the arrest and transfer of Ildephonse Hategekimana.<sup>1348</sup> On 15 February 2002, Judge William Sekule issued a warrant to all Member States of the United Nations for the arrest, search and seizure, transfer and detention of Ildephonse Hategekimana.<sup>1349</sup>
5. Ildephonse Hategekimana was arrested in Congo Brazzaville on 16 February 2003 and transferred to the United Nations Detention Facility in Arusha, Tanzania on 19 February 2003. At his initial appearance on 28 February 2003, before Trial Chamber III, Hategekimana pleaded not guilty to all counts in the Indictment.<sup>1350</sup>
6. On 11 November 2003, Trial Chamber III, then seized of the case, granted a Prosecution motion for the deposition of Witness QX, finding that the age and critical condition of the witness constituted exceptional circumstances within the meaning of Rule 71 of the Rules.<sup>1351</sup>

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<sup>1343</sup> *The Prosecutor v. Tharcisse Muvunyi, Ildephonse Nizeyimana and Ildephonse Hategekimana*, Case No. ICTR-2000-55-I, Indictment of 21 January 2000, filed on 23 January 2000. Another copy of the Indictment, dated 12 May 2000, was filed on 2 November 2000. [It should be noted that in Annex D of the Prosecution's "Application for Severance and Amendment in the Case of *The Prosecutor v. Hategekimana and Nizeyimana*" filed on 9 September 2006, the Prosecution indicates that it now believes Ildephonse to be the correct spelling of Hategekimana's first name.]

<sup>1344</sup> *Muvunyi et al.* "Decision to Confirm the Indictment," (TC), 2 February 2000.

<sup>1345</sup> *Muvunyi et al.* "Warrant of Arrest and Order for Transfer and Detention," (TC), 2 February 2000.

<sup>1346</sup> *Muvunyi et al.* "Decision on the Prosecutor's Motion to Grant Leave for Correction of Indictment ICTR-2000-55-I," 3 November 2000; "Decision on Prosecutor's Request to Correct a Redaction Error in the French Text of Indictment ICTR-2000-55-I," (TC), 7 November 2000.

<sup>1347</sup> *Muvunyi et al.* "Decision Regarding the Prosecutor's Motion for Leave to Sever an Indictment and for Direction on the Trial of Tharcisse Muvunyi," (TC), 11 December 2003.

<sup>1348</sup> *Muvunyi et al.* "Warrant of Arrest and Order for Transfer and Detention of Ildephonse Hategekimana," (TC), 19 February 2001.

<sup>1349</sup> *Muvunyi et al.* "Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure," (TC), 15 February, 2002.

<sup>1350</sup> Initial Appearance, 28 February 2003.

<sup>1351</sup> *Muvunyi et al.* "Decision on the Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX," (TC), 11 November 2003; "Decision on the Request of the Accused for Certification to Appeal Against the Decision Authorising the Deposition of Prosecution Witness QX," (TC), 27 November 2003; "Order to Duty Counsel Regarding the Deposition of Prosecution Witness QX," 28 November 2003; T. 4 December 2003; T. 5 December 2003; "Decision on Accused Hategekimana's Motion for Review of the Decision of 27 November 2003," (TC), 10 February 2004.

7. On 7 September 2007, the Prosecution filed a motion, pursuant to Rule 11*bis* of the Rules, for the referral of Hategekimana's case to the courts of the Republic of Rwanda.<sup>1352</sup> The Designated Trial Chamber denied the motion in a Decision dated 19 June 2008.<sup>1353</sup> The Appeals Chamber upheld the Designated Trial Chamber's ruling on 4 December 2008.<sup>1354</sup>

8. On 25 September 2007, Trial Chamber III granted the Prosecution leave to sever the cases of the remaining two co-Accused, Hategekimana and Nizeyimana.<sup>1355</sup> Accordingly, on 1 October 2007, the Prosecution filed an amended Indictment 1 October 2007 against Hategekimana, charging him with four counts: genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. At his Further Initial Appearance on 9 November 2007, Hategekimana pleaded not guilty to all four counts in the amended Indictment.<sup>1356</sup>

9. Following the decision not to refer Hategekimana's case to the courts of Rwanda, Trial Chamber III held a pre-trial status conference with the Parties on 15 December 2008.<sup>1357</sup> The Trial Chamber then issued a Scheduling Order, on 22 December 2008, setting the date for the commencement of trial on 26 January 2009.<sup>1358</sup>

10. The Prosecution filed its Pre-Trial Brief on 5 January 2009.<sup>1359</sup> On 15 January 2009, Trial Chamber III granted the Prosecution's motion, pursuant to Rule 90*bis*, for the transfer of detained witnesses to Arusha.<sup>1360</sup> On 16 January 2009, Trial Chamber III also granted the Prosecution's motion for protective measures to safeguard the identity of several witnesses.<sup>1361</sup>

11. On 26 January 2009, the date set for the commencement of the trial, Trial Chamber I, then seized of the case, held a Status Conference with the Parties. The Presiding Judge, Florence Rita Arrey, announced that she was recusing herself from Hategekimana's trial because she had been a member of the Chamber that had made factual findings about Hategekimana in the trial of his former Co-Accused, Tharcisse Muvunyi.<sup>1362</sup> The Status Conference re-convened before Judge Lee Gacuiga Muthoga, on 28 January 2009. The Prosecution indicated that it was prepared to proceed, but the Defence Counsel argued for a postponement of the trial. Judge Muthoga declined to schedule a new date and urged the Parties to prepare for the commencement of the trial as soon as practicable.<sup>1363</sup>

12. On 23 February 2009, Trial Chamber III, composed of Judge Khalida Rachid Khan, issued a new Scheduling Order adjourning the commencement of Hategekimana's trial until 16 March 2009.<sup>1364</sup> The case was then reassigned to Trial Chamber II, composed of Judges Arlette

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<sup>1352</sup> "Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda Pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence," filed on 7 September 2007; « Requête aux fins de poursuite de la procédure en cours et pendante devant *TPIR* », filed on 21 September 2007; "Decision on Defence Motion for the Continuation of Proceedings before the Tribunal," (TC), 5 November 2007.

<sup>1353</sup> "Decision on the Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda," (TC), 19 June 2008.

<sup>1354</sup> "Decision on the Prosecution's Appeal Against Decision on Referral Under 11*bis*," (AC), 4 December 2008.

<sup>1355</sup> *The Prosecutor v. Ildephonse Nizeyimana and Ildephonse Hategekimana*, Case No. ICTR-2000-55-I "Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment Against Idelphonse Hategekimana," (TC), 25 September 2007.

<sup>1356</sup> Amended Indictment, 1 October 2007; Transcript of the Further Initial Appearance T. 9 November 2007.

<sup>1357</sup> Status Conference, 15 December 2008.

<sup>1358</sup> "Scheduling Order Concerning the Commencement of Trial," (TC), 22 December 2008.

<sup>1359</sup> "The Prosecutor's Pre-Trial Brief Pursuant to Rule 73*bis* of the Rules of Procedure and Evidence," 5 January 2009.

<sup>1360</sup> "Decision on Prosecution Request for the Transfer of Detained Witnesses" (TC), 15 January 2009.

<sup>1361</sup> "Decision on Prosecution Extremely Urgent Motion for Protective Measures" (TC), 16 January 2009.

<sup>1362</sup> Status Conference 26 January 2009.

<sup>1363</sup> Status Conference 28 January 2009.

<sup>1364</sup> "Scheduling Order" (TC), 23 February 2009.

Ramaroson, presiding, Taghrid Hikmet and Joseph Masanche. On 9 March 2009, Trial Chamber II granted the Prosecution motion to transfer two witnesses detained in Rwanda to Arusha.<sup>1365</sup>

13. By a series of motions filed prior to the commencement of trial on 16 March 2009, the Defence requested that the Trial Chamber order the Prosecution to file a new amended indictment which excluded any prejudicial reference to the Accused by the *alias* “Bikomago.”<sup>1366</sup>

14. A final pre-trial status conference was held in the morning of 16 March 2009, before Trial Chamber II.<sup>1367</sup> Upon reconvening, following the mid-day recess, the Trial Chamber denied the Defence motions regarding the identification of the Accused in the Indictment as “Bikomago” and the translation of certain documents from English to French. The Chamber ordered the trial to commence immediately that afternoon.<sup>1368</sup>

## 2. The Prosecution Case

15. The trial commenced before Trial Chamber II, composed of Judges Ramaroson, presiding, Hikmet and Masanche, on 16 March 2009.<sup>1369</sup> Over the course of 22 trial days, the Prosecution called 20 witnesses and tendered 51 exhibits. The Prosecution case concluded on 4 May 2009.

16. The Accused failed to appear in court in the morning of 17 March 2009, protesting the Prosecution’s reference to him by the *alias* “Bikomago.” On the same day, the Trial Chamber ordered the Prosecution to refrain from calling the Accused “Bikomago.”<sup>1370</sup> On the tenth day of trial, 31 March 2009, the Trial Chamber denied a Defence motion for an adjournment of the proceedings, and scheduled a status conference the following day, 1 April 2009.<sup>1371</sup>

17. On 6 April 2009, the Chamber granted the Prosecution motion for three witnesses to testify by video-link from Rwanda.<sup>1372</sup> A status conference was held, on 14 April 2009, to reschedule the video-link testimony of Prosecution witnesses from Rwanda.<sup>1373</sup> On 15 April 2009, the Trial Chamber also granted an urgent motion for the deposition of Prosecution Witness QX in Rwanda because of his poor health.<sup>1374</sup> The Chamber, represented by Judge Masanche, travelled to Rwanda for this deposition.

18. On 4 May 2009, Prosecution Witness BYO testified by video-link from Rwanda. The Defence Counsel did not appear in Rwanda for the video-link testimony. Following a delay in the proceedings because of the absence of the Defence Counsel, the Trial Chamber ordered the video-link testimony to proceed, despite a request by the Defence for adjournment. The Chamber ruled

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<sup>1365</sup> “Decision on Prosecution Request for the Transfer of Detained Witnesses (TC), 9 March 2009.

<sup>1366</sup> 1) *Requête respectueuse de la défense en rappel de ses observations à l’audience de mise en état du 15/12/08 suite aux prescriptions de l’ordonnance de la Chambre III du 22 décembre 08 portant « Scheduling Order Concerning the Commencement of Trial, Rule 54 of the Rules of Procedure and Evidences »*, 8 January 2009; 2) *Exceptions tirées de l’erreur sur la personne de l’accusé et des vices de forme de l’acte d’accusation modifié, Article 72 A) i) et ii) du Règlement de Procédure et de Preuve*, 22 January 2009; and 3) *Requête de la défense en rappel de l’état du dossier et de la nécessité d’une décision de la Chambre sur les exceptions préjudicielles avant le début du procès*, 13 March 2009.

<sup>1367</sup> Status Conference, 16 March 2009.

<sup>1368</sup> Transcript of Continued Trial, T. 16 March 2009.

<sup>1369</sup> Transcript of Continued Trial, T. 16 March 2009.

<sup>1370</sup> T. 17 March 2009 p. 4.

<sup>1371</sup> T. 31 March 2009 p. 45.

<sup>1372</sup> “Decision on the Prosecution Requests for the Video-Link Testimony of Witnesses QX, BYO and BYS” (TC), 6 April 2009.

<sup>1373</sup> Status Conference, 14 April 2009.

<sup>1374</sup> “Extremely Urgent Decision to Reconsider the Trial Chamber’s Decision of 6 April 2009 and to Order the Testimony of Witness QX to be Taken by Deposition,” (TC), 15 April 2009. [It should be noted that this witness had been previously deposed in the context of the joint Indictment with Muvunyi and Nizeyimana.]

that the interests of the Accused were effectively safeguarded by his Co-Counsel's representation in the courtroom in Arusha.<sup>1375</sup>

19. On the same date, the Trial Chamber granted the Defence motion to postpone the commencement of its case, scheduled for 15 June, until 22 June 2009.<sup>1376</sup> Following a brief status conference, the Trial Chamber adjourned the proceedings until 22 June 2009.<sup>1377</sup>

### 3. The Defence Case

20. On 5 May 2009, the Trial Chamber issued a Scheduling Order for the Defence to file a list of witnesses and exhibits as well as a statement of admitted and contested facts, by 1 June 2009.<sup>1378</sup>

21. On 12 May 2009, the Defence filed a motion for acquittal pursuant to Rule 98*bis* of the Rules.<sup>1379</sup> By its Decision of 5 June 2009, the Trial Chamber denied the motion.<sup>1380</sup>

22. The Defence case opened on 22 June 2009.<sup>1381</sup> The first session continued until 7 July 2009. The second session commenced on 23 September and concluded on 6 October 2009. Over the course of 21 trial days, the Defence called 20 witnesses and tendered 25 exhibits.<sup>1382</sup>

23. A Scheduling Conference was held on 18 September 2009 to address the lack of notice of alibi and to enquire about the availability of Defence witnesses set to testify.<sup>1383</sup>

### 4. Further Proceedings

24. On 19 October 2009, the Chamber issued a Scheduling Order instructing the Parties to file their Closing Briefs by 15 January 2010 and to present their closing oral arguments on 25 February 2010.<sup>1384</sup> By its Decision of 13 January 2010, the Chamber granted the Defence motion for an extension of time to file its Closing Brief and present closing oral arguments.<sup>1385</sup>

25. From 2 to 6 November 2009, the Chamber and the Parties visited sites in Rwanda relevant to the allegations against Hategekimana.<sup>1386</sup>

26. The Parties filed their respective Closing Briefs on 1 February 2010.<sup>1387</sup> On 16 February 2010, the Chamber ordered the Registry to reclassify the Prosecution's Pre-Trial and Closing Briefs as "strictly confidential" and to remove them from the public domain. The Chamber further ordered the Prosecution to redact those documents in order to safeguard the anonymity of protected

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<sup>1375</sup> T. 4 May 2009 pp. 3-4.

<sup>1376</sup> "Decision on Defence Motion to Reconsider Trial Date" (TC), 4 May 2009.

<sup>1377</sup> Status Conference T. 4 May 2009.

<sup>1378</sup> Scheduling Order (TC), 5 May 2009.

<sup>1379</sup> « Requête de Ildephonse Hategekimana aux Fins D'Acquittement en Vertu de L'Article 98*bis* du Règlement de Procédure et de Preuve », filed on 12 May 2009.

<sup>1380</sup> Decision on Motion for Acquittal Pursuant to Rule 98*bis* (TC), 5 June 2009.

<sup>1381</sup> T. 22 June 2009.

<sup>1382</sup> Scheduling Order (TC), 14 July 2009.

<sup>1383</sup> Status Conference 18 September 2009.

<sup>1384</sup> Scheduling Order with Regard to Closing Briefs and Closing Arguments (TC), 19 October 2009.

<sup>1385</sup> Decision Regarding Motions for Extension of Time to File Closing Briefs and to Present Closing Arguments (TC), 13 January 2010.

<sup>1386</sup> "Decision on Prosecution's Motion for Judicial View of the *Locus In Quo* in the Present Case," (TC), 9 October 2009; "Report on Site Visit (2-6 November 2009)," 19 November 2009.

<sup>1387</sup> "Prosecutor's Closing Brief," 1 February 2010; "Defence Closing Brief," 1 February 2010.

witnesses.<sup>1388</sup>

27. On 16 March 2010, the Chamber decided to postpone Closing Oral Arguments from 25 February until 26 April 2010, because the translation of the Parties' Closing Briefs had been delayed.<sup>1389</sup>

28. On 19 March 2010, the Chamber ordered the Prosecution to further redact its Pre-Trial and Closing Briefs and to remove the remaining references to the identity of protected witnesses.<sup>1390</sup>

29. Closing Oral Arguments started on 26 April 2010 and concluded on 28 April 2010.

30. Citing the loss of confidence and a breakdown in communication between him and his Lead Counsel, the Accused did not appear for the Closing Oral Arguments in the morning of 26 April and the Chamber ordered his attendance.<sup>1391</sup> The Chamber also read out its Oral Decision on that date denying the Accused's motion for withdrawal of Counsel.<sup>1392</sup> A written decision was filed on 30 April 2010.<sup>1393</sup>

31. On 6 December 2010, the Chamber delivered a summary of its Judgement and Sentence in a public hearing. Before the delivery of the summary, the Defence requested the Chamber's intervention in respect of a hand-written document posted at a public location in the Tribunal premises relating to the charges against Hategekimana. The Chamber directed the Registry to investigate the Defence allegation.<sup>1394</sup> After dealing with this request the Chamber read the summary of its judgement. The Chamber found Hategekimana guilty of genocide (Count I), murder as a crime against humanity (Count III) and rape as a crime against humanity (Count IV) and dismissed Count II, complicity in genocide. The Chamber sentenced Hategekimana to imprisonment for the remainder of his life.

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<sup>1388</sup> "Extremely Urgent Order to Reclassify the Prosecution Pre-Trial and Closing Briefs as Strictly Confidential" (TC), 16 February 2010.

<sup>1389</sup> "Order Rescheduling Closing Arguments" (TC), 16 March 2010.

<sup>1390</sup> "Further Order Regarding Witness Security in Prosecution Pre-Trial and Closing Briefs" (TC), 19 March 2010.

<sup>1391</sup> T. 26 April 2010 p. 2.

<sup>1392</sup> T. 26 April 2010 pp. 2-3.

<sup>1393</sup> "Decision on Hategekimana's Motion for Withdrawal of Counsel and Adjournment of Closing Arguments" (TC), 30 April 2010.

<sup>1394</sup> "Minutes of Proceedings" (TC), 6 December 2010.

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# **ANNEX B**

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## **ANNEX B: CITED MATERIALS AND DEFINED TERMS**

### **JURISPRUDENCE**

#### **ICTR**

##### **Akayesu**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (“*Akayesu* Trial Judgement”).

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“*Akayesu* Appeal Judgement”).

##### **Bagilishema**

*The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 (“*Bagilishema* Trial Judgement”).

*The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement (Reasons), 3 July 2002 (“*Bagilishema* Appeal Judgement”).

##### **Bagosora et al.**

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005.

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Appeals Chamber 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, 18 September 2006.

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-T, Judgement (TC), 18 December 2008 (“*Bagosora et al.* Trial Judgement”).

##### **Bikindi**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008 (“*Bikindi* Trial Judgement”).

##### **Bisengimana**

*The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence (TC), 13 April 2006 (“*Bisengimana* Trial Judgement”).

##### **Gacumbitsi**

*The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 (“*Gacumbitsi* Trial Judgement”).

*Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 (“*Gacumbitsi* Appeal Judgement”).

### **Kajelijeli**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003 (“*Kajelijeli Trial Judgement*”).

*Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“*Kajelijeli Appeal Judgement*”).

### **Kalimanzira**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement (TC), 22 June 2009 (“*Kalimanzira Trial Judgement*”).

*Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 (“*Kalimanzira Trial Judgement*”).

### **Kambanda**

*The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998 (“*Kambanda Trial Judgement*”).

### **Karemera et al.**

*Karemera et al.*, Case No. ICTR-98-44-T, Appeals Chamber 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 Trial Judgement*”).

*François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 (“*Karera Appeal Judgement*”).

### **Kamuhanda**

*The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004 (“*Kamuhanda Trial Judgement*”).

*Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda Appeal Judgement*”).

### **Kayishema and Ruzindana**

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-I-T, Judgement (TC), 21 May 1999 (“*Kayishema and Ruzindana Trial Judgement*”).

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-I-A, Judgement (AC), 1 June 2001 (“*Kayishema and Ruzindana Appeal Judgement*”).

### **Mpambara**

*The Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 (“*Mpambara Trial Judgement*”).



### **Muhimana**

*The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T, Judgement and Sentence (TC), 28 April 2005 (“*Muhimana* Trial Judgement”).

*Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 (“*Muhimana* Appeal Judgement”).

### **Musema**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000 (“*Musema* Trial Judgement”).

*Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 (“*Musema* Appeal Judgement”).

### **Muvunyi**

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Judgement and Sentence (TC), 12 September 2006 (“*Muvunyi* Trial Judgement”).

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi* Appeal Judgement”).

### **Nahimana et al.**

*Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al.* Appeal Judgement”).

### **Nchamihigo**

*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence (TC), 12 November 2008 (“*Nchamihigo* Trial Judgement”).

*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, Judgement (AC), 18 March 2010 (“*Nchamihigo* Appeal Judgement”).

### **Ndindabahizi**

*The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004 (“*Ndindabahizi* Trial Judgement”).

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“*Ndindabahizi* Appeal Judgement”).

### **Niyitegeka**

*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003 (“*Niyitegeka* Trial Judgement”).

*Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“*Niyitegeka* Appeal Judgement”).

### **Ntagerura et al.**

*The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 (“*Ntagerura et al.* Trial Judgement”).

*The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Ntagerura et al.* Appeal Judgement”).

### **Ntakirutimana**

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003 (“*Ntakirutimana* Trial Judgement”).

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana* Appeal Judgement”).

### **Nzabirinda**

*The Prosecutor v. Joseph Nzabirinda*, Case No. ICTR-2001-77-T, Sentencing Judgement (TC), 23 February 2007 (“*Nzabirinda* Trial Judgement”).

### **Renzaho**

*The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009 (“*Renzaho* Trial Judgement”).

### **Rugambarara**

*The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59-T, Sentencing Judgement (TC), 16 November 2007 (“*Rugambarara* Trial Judgement”).

### **Ruggiu**

*The Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence (TC), 1 June 2000 (“*Ruggiu* Trial Judgement”).

### **Rutaganda**

*The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999 (“*Rutaganda* Trial Judgement”).

*Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 (“*Rutaganda* Appeal Judgement”).

### **Rwamakuba**

*André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004.

### **Semanza**

*The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003 (“*Semanza* Trial Judgement”).

*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 (“*Semanza Appeal Judgement*”).

### **Seromba**

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Judgement (TC), 13 December 2006 (“*Seromba Trial Judgement*”)

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-A, Judgement (AC), 12 March 2008 (“*Seromba Appeal Judgement*”).

### **Serugendo**

*The Prosecutor v. Joseph Serugendo*, Case No. ICTR-2005-84-I, Trial Judgement (TC), 12 June 2006 (“*Serugendo Trial Judgement*”).

### **Setako**

*The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Trial Judgement and Sentence (TC), 25 February 2010 (“*Setako Trial Judgement*”).

### **Simba**

*The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005 (“*Simba Trial Judgement*”).

*Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 (“*Simba Appeal Judgement*”).

### **Zigiranyirazo**

*Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 (“*Zigiranyirazo Appeal Judgement*”).

## **ICTY**

### **Aleksovski**

*The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement (AC), 24 March 2000 (“*Aleksovski Appeal Judgement*”).

*The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999.

### **Blagojević and Jokić**

*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”).

### **Blaškić**

*The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“*Blaškić Appeal Judgement*”).

### **Brđanin**

*The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgement (TC), 1 September 2004 (“*Brđanin Trial Judgement*”).

*The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 (“*Brđanin Appeal Judgement*”).

### **Čelebići**

*The Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-T, Judgement (TC), 16 November 1998 (“*Čelebići Trial Judgement*”).

*The Prosecutor v. Zejnil Delalić Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Čelebići Appeal Judgement*”).

### **Delić**

*The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Judgement (TC) 15 September 2008 (“*Delić Trial Judgement*”).

### **Deronjić**

*The Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Sentencing Judgement (TC), 30 March 2004 (“*Sentencing Judgement*”).

### **Galić**

*The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 (“*Galić Appeal Judgement*”).

### **Hadžihasanović & Kubura**

*The Prosecutor v. Enver Hadžihasanović, Amir Kubura, Mehmed Alagić*; Case No. IT-01-47-A, Judgement (AC), 23 April 2008, (“*Hadžihasanović & Kubura* Appeal Judgement”).

### **Kordić and Čerkez**

*The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 (“*Kordić and Čerkez* Appeal Judgement”).

### **Krajišnik**

*The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009 (“*Krajišnik* Appeal Judgement”).

### **Krnojelac**

*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement and Sentence (TC), 15 March 2002 (“*Krnojelac* Trial Judgement”).

### **Krstić**

*The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement (TC), 2 August 2001 (“*Krstić* Trial Judgement”).

*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 (“*Krnojelac* Appeal Judgement”).

### **Kunarac et al.**

*The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T, Judgement (TC), 22 February 2001 (“*Kunarac et al.* Trial Judgement”).

*The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-A and IT-96-23/1-A, Judgement (AC), 12 June 2002 (“*Kunarac et al.* Appeal Judgement”).

### **Kupreškić et al.**

*The Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”).

### **Kvočka et al.**

*The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 (“*Kvočka et al.* Appeal Judgement”).

### **Limaj et al.**

*The Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement (TC), 30 November 2005 (“*Limaj et al.* Trial Judgement”).

### **Naletilić and Martinović**

*The Prosecutor v. Mladen Naletilić, a.k.a. “TUTA” and Vinko Martinović, a.k.a. “ŠTELA,”* Case No. IT-98-34-A, Judgement (AC), 3 May 2006 (“*Naletilić and Martinović* Appeal Judgement”).

**Nikolić**

*The Prosecutor v. Dragan Nikolić*, Case No. IT-94-2, Judgement (TC), 18 December 2003 (“*Nikolić Trial Judgement*”).

**Orić**

*The Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement and Sentence (TC), 30 June 2006 (“*Orić Trial Judgement*”).

**Stakić**

*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 (“*Stakić Appeal Judgement*”).

**Strugar**

*The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Trial Judgement (TC), 31 January 2005 (“*Strugar Trial Judgement*”).

**Tadić**

*The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić Appeal Judgement*”).

**Vasiljević**

*The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 (“*Vasiljević Appeal Judgement*”).

## **DEFINED TERMS AND ABBREVIATIONS**

### **CDR**

*Coalition pour la Défense de la République*

### **Defense Closing Brief**

*The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Defence Closing Brief, 1 February 2010

### **ESO**

*École des Sous Officiers*

### **Ibuka**

Ibuka is an umbrella organisation for survivor associations in Rwanda, representing them at national and international levels. Ibuka means “remember.”

### **ICTR or Tribunal**

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

### **ICTY**

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 Neighboring States, between 1 January 1994 and 31 December 1994

### **Indictment**

*The Prosecutor v. Ildephonse Hategekimana*, Amended Indictment, 25 September 2007

### **Inkotanyi**

RPF soldiers and/or members. Sometimes used to refer to *Tutsis* or *Hutus* who were accused of being RPF accomplices

### **Interahamwe**

Name for youth wing of MRND. Sometimes used to refer to *Hutus* who were involved in the genocide, irrespective of party membership

### **Inyenzi**

Kinyarwanda word for “cockroach.” Sometimes used to refer to *Tutsis* in general

### **MDR**

*Mouvement Démocratique Républicain*

**MRND**

*Mouvement Révolutionnaire National pour la Démocratie et le Développement*

**n.**

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**PL**

*Parti Libéral*

**PSD**

*Parti Social Démocrate*

**Prosecution Closing Brief**

*The Prosecutor v. Ildephonse Hategekimana*, Case No. 00-55B-T, Prosecutor's Closing Brief, 1 February 2010

**Prosecution Pré-Trial Brief**

*The Prosecutor v. Ildephonse Hategekimana*, Case No. 00-55B-I, The Prosecutor's Pré-Trial Brief Pursuant to Rule 73 Bis of the Rules of Procedure and Evidence; 5 January 2009

**RPF**

Rwandan (also Rwandese) Patriotic Front

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

**Statute**

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

**T.**

Transcript

**UNAMIR**

United Nations Assistance Mission for Rwanda



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# **ANNEX C**

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